

# FREEDOM FROM RELIGION *foundation*

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April 6, 2023

**SENT VIA EMAIL AND U.S. MAIL:**

**ksheller@cccs.k12.in.us**

Karen Sheller  
President  
Crawford County Board of Education  
5805 E. Administration Road  
Marengo, IN 47140

Re: Unconstitutional School Board Prayer

Dear President Sheller:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Crawford County Board of Education. FFRF is a national nonprofit organization with more than 40,000 members across the country, including over 500 members and a local chapter in Indiana. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

We were contacted by a concerned member of the Crawford County community who reported that members of the Crawford County Board of Education regularly open their public meetings with prayer. It is our understanding that this prayer practice takes place after members of the public have taken their seats in the meeting room, and that all those in attendance are directed to stand by board members during this time as it immediately follows the pledge of allegiance.

We write to ask that the Board of Education immediately cease this practice, and revise its procedures regarding prayer at public Board meetings.

It is beyond the scope of a public school board to conduct prayer as part of its meetings. This practice violates the Establishment Clause of the First Amendment. *See FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018); *Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097; *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).

In *Indian River School District* the Third Circuit Court of Appeals emphasized that school board prayer is analogous to other school prayer cases when it comes to protecting children from the

coercion of school-sponsored prayer, which is heightened in the context of public schools. 653 F.3d at 275. In that case, the court held that school board meetings are “an atmosphere that contains many of the same indicia of coercion and involuntariness that the Supreme Court has recognized elsewhere in its school prayer jurisprudence.” *Id.* The court’s “decision [was] premised on careful consideration of the role of students at school boards, the purpose of the school board, and the principles underlying the Supreme Court’s school prayer case law.” *Id.* at 281. The final conclusion was that the school board prayer policy “[rose] above the level of interaction between church and state that the Establishment Clause permits.” *Id.* at 290.

A public school board is an essential part of the public school system. *See Coles*, 171 F.3d at 381 (“[T]he school board, unlike other public bodies, is an integral part of the public school system.”). Public school boards exist to set policies, procedures, and standards for education within a community. The issues discussed and decisions made at board meetings are wholly school-related, affecting the daily lives of district students and parents. The Sixth Circuit noted in *Coles*, “although meetings of the school board might be of a ‘different variety’ than other school-related activities, the fact remains that they are part of the same ‘class’ as those other activities in that they take place on school property and are inextricably intertwined with the public school system.” *Id.* at 377.

In the most recent case striking down a school board’s prayer practice, the Ninth Circuit Court of Appeals reaffirmed that Establishment Clause concerns are heightened in the context of public schools “because children and adolescents are just beginning to develop their own belief systems, and because they absorb the lessons of adults as to what beliefs are appropriate or right.” *Chino Valley*, 896 F.3d at 1137. The court reasoned that prayer at school board meetings “implicates the concerns with mimicry and coercive pressure that have led us to ‘be [ ] particularly vigilant in monitoring compliance with the Establishment Clause.’” *Id.* at 1146 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987)).

It is important to note that this case is readily distinguishable from the Supreme Court’s recent ruling in *Kennedy v. Bremerton School District*. In *Bremerton*, the Court held that a high school football coach’s silent, private post-game prayer was constitutional. 142 S.Ct. 2407, 2415–16 (2022). Throughout its opinion, the Court repeatedly stressed that the coach silently prayed alone. *Id.* (the coach “offered his prayers quietly while his students were otherwise occupied.”). The prayers “were not publicly broadcast or recited to a captive audience. Students were not required or expected to participate.” *Id.* at 2432. Additionally, the Court concluded the coach’s quiet private prayer was private speech. *Id.* at 2423–24. (the coach’s prayer was not given while he was performing official duties such as instructing players, discussing strategy, or encouraging better performance). In contrast, the Board here is giving a public prayer and actively encouraging participation in it by all attendees.

The fact that the prayers are not on the meeting minutes or agenda do not make prayer at a public Board meeting constitutional. Students and parents have the right—and often have reason—to participate in school board meetings. It is coercive, embarrassing, and intimidating for nonreligious citizens to be required to make a public showing of their nonbelief (by not rising or praying) or else to display deference toward a religious sentiment in which they do not believe,

but which their school board members clearly do. Board members are free to pray privately or to worship on their own time in their own way. The school board, however, ought not to lend its power and prestige to religion, amounting to a governmental endorsement of religion which excludes the thirty-seven percent of Americans who are non-Christian, including the nearly one in three Americans who now identify as religiously unaffiliated.<sup>1</sup>

Calling upon students, parents, and other Board meeting attendees to pray is unconstitutional. We ask that you immediately refrain from scheduling prayers as part of future Board of Education meetings and other school-sponsored events to uphold the rights of conscience embodied in our First Amendment. Please inform us in writing at your earliest convenience of the steps you are taking to remedy these constitutional violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Kat D. Grant". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kat D. Grant

*Equal Justice Works Fellow (sponsored by the Wm. Collins Kohler Foundation)  
Freedom From Religion Foundation*

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<sup>1</sup> Gregory A. Smith, About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated, Pew Research Center (Dec. 14, 2021), available at [www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).