

FREEDOM FROM RELIGION *foundation*

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February 8, 2023

SENT VIA EMAIL AND U.S. MAIL:

lbush@ekschools.org

Lindsay Bush
Board President
East Knox Local School District
23201 Coshocton Road
Howard, OH 43028

Re: Unconstitutional School Board Prayer and Preaching

Dear Ms. Bush:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at East Knox Board of Education meetings. FFRF is a national nonprofit organization with more than 39,000 members across the country, including over 1,000 members in Ohio and local chapters, Central Ohio FFRF and Northern Ohio Freethought Society. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned member of the East Knox Local School District community contacted us to report that over the past several months, local board member and pastor Matt Schwartz has been using his position to engage in unconstitutional prayer and preaching at board of education meetings. It is our understanding that school board meetings regularly open with prayer, and that Mr. Schwartz also gave additional comments targeting a particular student (see enclosure).

At the meeting taking place on December 8, 2022, Mr. Schwartz gave “Comments regarding American History and Christianity within schools”¹ related to the board’s discussion of gendered dress codes. During his comments, he said:

And I’ll always stand with God’s law when man’s law tries to supercede it...I also talked about men wearing women’s apparel, it’s an abomination to the Lord. I remind us all we’re going to be judged by the word of God, not by popular opinion, not by the government. We’re going to all stand before God...You may or may not [] agree with me, you may think that God doesn’t exist...but you’re still

¹ *December 8, 2022 Minutes*, East Knox Local School District, available at <https://www.ekschools.org/cms/lib/OH01001236/Centricity/Domain/251/120822%20Minutes.pdf> (last accessed Jan. 24, 2022).

subject to Him...we're still subject to God, we can chose not to believe it, but when it comes on my judgment day, I'm going to know I've done everything I can to go by the word of God...I had told them, I warned them, and I thought everybody would jump on board with me and say 'right now we're going to take care of this.' They slowed me down, they said 'we've got to do this right.' And I was going to resign, but you're stuck with me for three more years. I don't want this stuff coming in, and I'm going to fight for the next three years to take our schools back.

We get a lot of free money, but it's not free. I'm paying for it, you're paying for it, and it's these rules they keep imposing on us, so we've got to fight these, you're going to have to help us...You need to call and call and all and keep doing all this to the people higher up the food chain than us, too...We're working on that. And I appreciate you guys praying for us, because so many times they say that Christians are against everybody, but we're not, are we? So this is the thing, let's keep working together and I'm going to do my best to stand against the evil things that come at us.

It is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings, and for a board member to preach at meetings while serving in his official capacity at that meeting. These practices violate 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).

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, which has jurisdiction over Ohio, 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.

Further, 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 the 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.

While Board members are permitted to address the Board as private citizens, Mr. Schwartz’s comments were clearly directed to the members of the public in attendance, rather than addressing the Board. By explaining what steps he had taken as a Board member and in what ways he was limited, and encouraging the public to engage in other aspects of the political process to enable him to enact his religious views, he was clearly speaking in his official capacity as a Board member, rather than a private citizen.

In a more 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 as an official part of the meeting, and allowing Mr. Schwartz to use his public position as an extension of his pulpit.

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 by voicing dissent) or else to display deference toward a religious sentiment in which they do not believe, but which their school board members clearly do. The dangers presented by these practices are only heightened in situations like the December 8 meeting, during which divisive topics such as gender nonconformity are discussed. The coercive and discriminatory impact of these negative comments are especially troubling when directed towards the gender nonconformity of an individual student.

Board members are free to pray privately or to worship on their own time in their own way. The Board of Education, 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.²

Calling upon Board members, students and their families, and members of the public to pray, and allowing a Board member to preach during a meeting 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. We also ask that Board members cease using their position to preach their religious beliefs during Board meetings and refrain from singling out individual students for negative attention. 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", with a horizontal line extending to the right.

Kat D. Grant

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

Enclosure

² 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/.



Come alongside Pastor Matt who stands against the “woke” agenda that is destroying the lives of our children.

Please send an email between now and December 8th. The below are talking points to put in your own emails.

1. Use the topic of the 2nd grader that wore a dress and make up to school.
2. Use the problem with the bathroom agenda.
3. All we ask is that you do it in a Christ- Like manner.
4. No need to be crazy with our emails.
5. Like Pastor Matt said, we got to remember this involves a 2nd grade little boy.
6. The 2nd grader will hear about how we conduct ourselves.
7. The 2nd grader might even be at this meeting.
8. We want to show the 2nd grader that we love and care about his innocent little life and his future.
9. Also send Pastor Matt encouraging emails.
10. Randy Reese is a new Christian board member who was just voted in and superintendent Mr. Larcum claims to be a