

FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL: rwhitaker@essex.k12.va.us, mwind@essex.k12.va.us,
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Raymon Whitaker
Board Chair
Essex County School Board
P.O. Box 756
Tappahannock, VA 22560

Re: Unconstitutional Prayer at School Board Meetings

Dear Chair Whiteaker and Essex County School Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Essex County Public Schools. FFRF is a national nonprofit organization with more than 36,000 members across the country, including more than 800 members in Virginia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that the Board recently began opening its meetings with Christian prayer. The Board's agendas confirm that meetings have not typically included prayer, but that on January 31, 2022 during a special meeting, an invocation was included on the agenda and delivered by for Scott Croxton, a member of the board:

Please join me in a prayer according to your personal faith tradition, and allow me to pray for us. Heavenly Father, I just come to You to give you the honor and the praise and the glory, Father, for um, just being our creator, our sustainer, our protector, and just uh recognize that we are a broken people. We are far from perfect, just far from your holiness, Father, and we're desperately in need of your grace and your mercy, and for that we are very thankful. Father, I want to also give you thanks for our community. We have a wonderful community, Father, and many people in the community are represented here tonight, Father. I am thankful for them. I am thankful that they would come out and share their points of view openly and I'm thankful that, and we should all be thankful, that that we were born in and live in a country and a state and a county that makes that possible, Father. And not only makes it possible but celebrates that right to come out and have a lively debate and discuss our differences of opinion and do it freely and we celebrate that, Father. I am thankful for that. I am thankful for our community members. I am thankful for our dedicated teachers and the broader staff and our administrators in the Essex County Public School System, Father. They are just

remarkable and they work tirelessly on behalf of our kids, Father. I am thankful for our kids, Father, that's the reason we're all here, that's the reason we're working so hard and we all have a shared goal of providing our kids the best education possible, so I'm thankful we have that to unify our... I'm thankful for our fellow board members here tonight, Father. I am thankful that we're going to have a deliberate process and debate and discuss some tough issues, and I'm thankful Your protection will be over it all and I am confident that this particular board, Father, no matter how lively the debate or how much the discussion or maybe even the difference of opinion, we will leave here unified, Father, because we're gonna hold the fact that we're a community and the fact that we have a whole lot more in common than we have apart as a much higher priority than anything else, Father. So I'm thankful for all of that, Father, and I pray that You bless this meeting tonight. I pray that You bless these proceedings. I hope it all brings honor and glory to You. In Jesus' name. Amen.

We write to request that the Board immediately cease opening its meetings with Christian prayers in violation of the Establishment Clause of the First Amendment.

The Supreme Court has consistently struck down prayers offered at school-sponsored events. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down school-sponsored prayers at football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer"); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring school-sponsored devotional Bible reading and recitation of the Lord's Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (holding formal recitation of prayers in public schools unconstitutional). In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

It is beyond the scope of a public school board to schedule or 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.), en banc denied, 910 F.3d 1297 (9th Cir. 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 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.

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 the U.S. Supreme Court’s decision in *Town of Greece v. Galloway*, permitting sectarian prayers at legislative meetings, has no applicability to the constitutionality of prayers at public school board meetings. In *Chino Valley*, decided after *Town of Greece v. Galloway*, the court distinguished the Chino Valley School Board from the deliberative legislative bodies considered in *Marsh* and *Galloway* and held that the board’s prayer practice must be analyzed as a school prayer case. The court found that “the nature of the audience at the Chino Valley Board meetings, and the nature of its relationship with the governmental entity making policy, are very different from those within the Marsh-Greece legislative-prayer tradition.” 896 F.3d at 1147. The court reasoned that prayers at school board meetings are “not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate that the legislative-prayer tradition contemplates. Instead, these prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity.” *Id.* at 1142 (internal citations omitted).

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 participating) 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 alienates non-religious Americans.

Non-religious Americans make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.¹

It is unconstitutional for the Board to institute prayers at its meetings. We request that the Board immediately refrain from scheduling prayers as part of future school board meetings to uphold the rights of conscience embodied in our First Amendment. Please inform us in writing at your earliest convenience of the steps the Board is taking to remedy this constitutional violation.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

¹ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.