

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

January 4, 2022

SENT VIA U.S. MAIL AND EMAIL

dscotthickamatty@gmail.com

Attorney D. Scott Hickam
Counsel
Lake Hamilton School District
211 Hobson Avenue, Suite C
Hot Springs, AR 71913

Re: Unconstitutional School Board Prayer

Dear Attorney Hickam:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Lake Hamilton School District. We understand from previous communications that you represent the District. If this is no longer the case, please advise. We appreciate your attention and communications regarding previous concerns.

A concerned district parent contacted us regarding prayer at school board meetings. A review of board meeting minutes confirms that meetings are consistently opened with prayer.¹

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.

Scheduling or conducting prayer as part of its meetings is beyond the scope of a public school board and 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).

¹ <https://www.lhwolves.net/o/lhsd/browse/131638>.

In *Indian River School District*, the Third Circuit Court of Appeals emphasized that school board prayer is analogous to other school prayer cases with regards 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 found 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 court concluded 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)).

The 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. Requiring nonreligious citizens 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 do, is coercive, embarrassing, and intimidating. Board members are free to pray privately or to worship on their own time in their own way. By praying at official meetings the school board lends its power and prestige to religion, amounting to a governmental endorsement. Prayer also alienates non-religious Americans who make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, including more than one in four Americans who identify as religiously unaffiliated.²

By praying at school board meetings the Lake Hamilton School Board violates the constitutional requirement of religious neutrality in public schools. We request that the board immediately refrain from scheduling prayers as part of future meetings to uphold the rights of conscience embodied in our First Amendment. Please inform us in writing of the steps the board is taking to remedy this constitutional violation so that we may inform our complainant.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. M. Heineman", with a long horizontal flourish extending to the right.

Karen M. Heineman
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation

² 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/>.