

# FREEDOM FROM RELIGION *foundation*

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May 9, 2023

**SENT VIA EMAIL & U.S. MAIL: [k\\_humphries@marlingtonlocal.org](mailto:k_humphries@marlingtonlocal.org)**

Karen Humphries  
Board President  
Marlington Board of Education  
10320 Moulin Ave.  
Alliance, OH 44601

Re: Unconstitutional school board prayer

Dear President Humphries:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Marlington Local Schools Board of Education meetings. FFRF is a national nonprofit organization with over 40,000 members across the country, including more than 1,000 members and a local chapter in Ohio. 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 district community member reported that the Marlington Local Schools Board of Education (“the BOE”) opens each of its regular meetings with a Christian prayer. We are told that this prayer often ends with “in Jesus’ name” or “in the name of our lord and savior, Jesus Christ.” The April 26, 2023 BOE meeting opened with the following invocation:

Dear Lord, I pray that we have a good meeting tonight. I pray that you give wisdom to our board members as they discuss our future and you provide everyone with a safe ride home. We thank you for getting everyone here. Amen.<sup>1</sup>

It is our understanding that community members, including at least one Jewish family, and past administrators have complained to the BOE about its opening prayer practice, and the BOE responded by stating that Marlington Local Schools is a “Christian community.” Our complainant further stated the BOE’s practice of opening meetings with a Christian prayer makes them feel “upset, uncomfortable, and angry.”

We write to request that the BOE immediately cease opening public meetings with prayer.

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 Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999); *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*

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<sup>1</sup> Marlington Local School District Board of Education - Wednesday, April 26, 2023 at 6:00 p.m., <https://www.youtube.com/watch?v=ekZCt8h3nMc>.

*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).

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 *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.

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 prayer at the beginning of BOE meetings is delivered to the entire audience of meeting attendees.

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. BOE members are free to pray privately or to worship on their own time in their own way. However, the BOE ought not to lend its power and prestige to religion, amounting to government favoritism towards religion which

needlessly alienates those students who are a part of the 49 percent of Generation Z who are religiously unaffiliated.<sup>2</sup>

The BOE must refrain from opening any future public meetings with prayer in order to adhere to the Constitution and respect the First Amendment rights of all attendees. Please respond in writing with the steps the BOE is taking to address this matter so that we may inform our complainant.

Sincerely,

A handwritten signature in black ink that reads "Samantha F. Lawrence". The signature is written in a cursive style with a large initial 'S' and 'L'.

Samantha F. Lawrence  
Anne Nicol Gaylor Legal Fellow  
Freedom From Religion Foundation

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<sup>2</sup> 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge  
<https://religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/>.