

FREEDOM FROM RELIGION *foundation*

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November 29, 2021

SENT VIA U.S. MAIL AND EMAIL

katharine.thomas@k12.sd.us

Katherine Thomas
President
Board of Education
Rapid City Area Schools
625 9th Street
Rapid City, SD 57701

Re: Unconstitutional Prayer at School Board Meetings

Dear Ms. Thomas:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Rapid City Area Schools. FFRF is a national nonprofit organization with more than 35,000 members, including members in South Dakota. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters related to nontheism.

A concerned parent contacted us to report that the Rapid City Area Schools Board meetings begin with a prayer. The complainant reported that the invocation was introduced at the October 5, 2021 meeting, which is reflected in the Board's agendas and meeting minutes.¹ The video of the November 2nd meeting² recorded the invocation delivered by Pastor James Moore from Journey Church:

Good evening, everyone, would you pray with me. Heavenly Father, we are so absolutely grateful for our leadership. We are so thankful for our president and for this board. Lord, those you have placed here, we know that no one in leadership is there without being placed by you. Lord, tonight more than anything, we ask that each one of these members and our superintendent and staff, Lord, would feel the presence of God, would be blessed tonight to know we appreciate them and, Lord, that you have your hand on them. We pray that every person speaking tonight would have the presence of the Lord and the presence of the Lord would not leave here, that we'd be blessed tonight with the spirit of unity and grace, peace of God and strength but wisdom and discernment. Lord, we know that Saul failed in his leadership because he failed to inquire of God in his decisions. So, Lord, we don't want to make that mistake tonight. We earnestly seek you tonight for your

¹ <https://rcas.org/our-district/board-of-education/board-of-education-21-22-agendas-briefs-minutes-and-videos/>.

² <https://www.youtube.com/watch?v=sJOqL64f9R0>.

wisdom and counsel. Bless this meeting and all involved. In the name of Jesus we pray. Amen. Amen.

Students are present at the board meetings as reflected in the agendas. At the November 5th meeting, the seventh item on the agenda was student representative reports.

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 constituted a government advancement and endorsement of religion, which violated 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. 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 with regards to protecting children from the coercion of government-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).

Student representatives are scheduled to be present at Rapid City Area Schools Board as indicated in the agenda. In school board prayer cases, this fact was found to mean that student participation was effectively compulsory. *See Indian River School District*, 653 F.3d at 277 ("Attendance also borders on compulsory for student government representatives."); *Coles*, 171 F.3d at 383 ("[A]pppearance before the board is more compulsory than are graduation exercises") This increased the risk of coercion to students and justified using school prayer cases, not legislative prayer cases, for the appropriate legal framework. *See Indian River School District* at 275-76; *Coles* at 383. Your school board prayers do not survive this analysis because they do not serve a secular purpose, are coercive to students, entangle the purpose of public school education with religion, and are unnecessary toward furthering any school board duty or responsibility.

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 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 a 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 now identify as religiously unaffiliated.³

By praying at school board meetings the 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 cursive script, appearing to read "Karen M. Heineman".

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

³ *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/>.