

# FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL TO:  
melissa.merrell@ucps.k12.nc.us

Ms. Melissa Merrell  
Chairperson  
Union County Board of Education  
2603 Albatross Lane  
Stallings, NC 28104

Re: Unconstitutional Prayer at Board of Education Meetings

Dear Chairperson Merrell:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a serious constitutional violation by the Board of Education. We were contacted by a concerned citizen. FFRF is a national nonprofit organization with 25,000 members across the country, including more than 500 members in North Carolina. Our purpose is to protect the constitutional principle of separation between state and church.

Our complainant informs us that the Board of Education recently added prayer to its meetings. We understand that the Board held a meeting on December 6 at Marvin Ridge High School with many students in attendance. Board member Gary Sides opened the meeting with an invocation. Sides' invocation began by asking the audience to bow their heads and it ended with a prayer "in your son Jesus Christ."

It is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings. Federal courts have struck down school board practices that include this religious ritual. *See Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (holding that prayer at school board meetings conveys message favoring religion); *Doe v. Tangipahoa Parish Sch. Bd.*, 473 F.3d 188 (5th Cir. 2006), *dismissed on other grounds*, 494 F.3d 494 (5th Cir. 2007) (finding a school board's practice of opening meetings with sectarian prayer unconstitutional); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002) (finding that a school board violated the Establishment Clause in allowing prayers "in the name of Jesus"); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999) (finding that a school board's practice of opening its meetings with prayers violated the Establishment Clause).

The Supreme Court has continually and 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) (declaring 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.

In *Indian River School District* the court 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 also 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.

Certainly, 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. In striking down the school board’s prayers in *Coles*, the Sixth Circuit found prayers at school board meetings to be squarely within the context of school prayer cases. The court noted, “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. Therefore, prayer at public school board meetings is no different than a prayer given at other school district events and is unconstitutional.

If the board continues to pray it will subject the school district to unnecessary liability and potential financial strain. When FFRF secured a court order against a California school district regarding its school board prayers earlier this year, the court ordered the district to pay more than \$200,000 in the plaintiffs’ attorney fees and costs. *Freedom From Religion Found. v. Chino Valley Unified Sch. Dist.*, No. EDCV 14-2336-JGB (DTBx) (C.D. Cal. Feb. 18, 2016) (appeal pending).

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. 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, excluding the 23% of Americans, including 35% of millennials who identify as nonreligious.<sup>1</sup>

Calling upon Board members, parents, students, and members of the public to pray is unconstitutional. We ask that you 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 you are taking to remedy this constitutional violation.

Sincerely,



Patrick Elliott  
Staff Attorney

PCE:efs

CC: Dr. Andrew Houlihan  
[andrew.houlihan@ucps.k12.nc.us](mailto:andrew.houlihan@ucps.k12.nc.us)

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<sup>1</sup> *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).