

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL ONLY: [larry.bergeson@washk12.org](mailto:larry.bergeson@washk12.org), [becky.dunn@washk12.org](mailto:becky.dunn@washk12.org), [larene.cox@washk12.org](mailto:larene.cox@washk12.org), [craig.seegmiller@washk12.org](mailto:craig.seegmiller@washk12.org), [kelly.blake@washk12.org](mailto:kelly.blake@washk12.org), [laura.hesson@washk12.org](mailto:laura.hesson@washk12.org), [david.stirland@washk12.org](mailto:david.stirland@washk12.org), [terry.hutchinson@washk12.org](mailto:terry.hutchinson@washk12.org), [brent.bills@washk12.org](mailto:brent.bills@washk12.org), [larry.bergeson@washk12.org](mailto:larry.bergeson@washk12.org)**

Larry Bergeson  
Superintendent  
Washington County School District  
121 West Tabernacle  
St. George, UT 84770

Re: Unconstitutional Prayer at School Board Meetings

Dear Superintendent Bergeson and Board of Education members:

I am writing again on behalf of the Freedom From Religion Foundation (FFRF) regarding a serious constitutional violation occurring in the Washington County School District. On October 7, 2020, we received an email from Lyle Cox, Executive Director, Human Resources, informing us that the Board had consulted with legal counsel, reviewed applicable case precedent, and has adjusted its practices accordingly. If you are represented by counsel, please have them contact me.

Despite this “adjustment,” on November 10, 2020, the Board opened its meeting with a scheduled prayer as it had been doing before we wrote on May 21, 2020. The prayer was listed a a “reverence” in the agenda and was given by board member Kelly Blake:

Our Heavenly Father, we are grateful to gather here as school board members and as administration to discuss the needs of our students, and our faculty, and our teachers. We are grateful for the opportunity to serve. We are thankful for the opportunity to be in school and in person so that our children can be better educated. We pray that thy healing impulse will be upon all those that are suffering and that are sick at this time. Bless those that are high in need. Also that Thou will bless them as they go forward. Bless us in our decisions we make today that we will be blessed with wisdom and be able to make wise decisions on everyone’s behalf that we have responsibility for. We are grateful for the blessings of this free land and we pray for these things this day in the name of Thy Son Jesus Christ. Amen.

As we explained in our previous letter, it is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings. Referring to the prayer as a “reverence” does

not make it legal. 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).

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).

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, 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. 5:14-cv-02336-JGB-DTB (C.D. Cal. Feb. 18, 2016).<sup>1</sup> After appeal, the court ordered the district to pay an additional \$75,000 for plaintiffs' attorney fees and costs associated with the appeal for a total of more than a quarter million dollars.

We request that you immediately refrain from scheduling and conducting 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,

A handwritten signature in blue ink that reads "Chris Line". The signature is written in a cursive, flowing style.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

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<sup>1</sup> [https://ffrf.org/uploads/legal/FFRFvChinoValley\\_FeeOrder.pdf](https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf)