

FREEDOM FROM RELIGION *foundation*

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April 25, 2024

SENT VIA EMAIL & U.S. MAIL: dkaplan@wsfcs.k12.nc.us

Deanna Kaplan
Board Chair
WS/FCS Board of Education
P.O. Box 2513
Winston-Salem, NC 27102

Re: Unconstitutional prayer at school board meetings

Dear Chair Kaplan and Board of Education members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Winston-Salem/Forsyth County Board of Education meetings. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 900 members and a local chapter in North Carolina. 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 Winston-Salem/Forsyth County Schools parent has reported that the Board begins each meeting with a Christian prayer led by a board member. The Board's meeting minutes indicate that the majority of recent prayers have been led by school board member Susan Miller. For instance, the April 16, 2024 meeting began with a prayer led by Ms. Miller:

Let us pray. Dear God, we ask that You would clear our minds and our hearts from any animosity so that we may face the relevant issues and address them with an open mind tonight. We pray that all decisions made tonight would be most beneficial for our students, teachers, staff, and our community. In Your name we pray, amen.

We ask that the Board immediately cease opening its meetings with prayer out of respect for the First Amendment rights of and the diversity of its students and the community. 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 government favoritism towards religion, which violates the Establishment Clause of the First Amendment. The Court's decision in *Kennedy v. Bremerton School District* did not alter the law regarding these kinds of coercive prayer practices, nor did it overrule these previous decisions.

Further, federal courts have held that opening public school board meetings with sectarian prayer also violates the Establishment Clause. See *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Ed.*, 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 Sch. Dist.*, 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 Ed.*, 171 F.3d 369 (6th Cir. 1999). Here, as in those cases, the Board's practice of opening meetings with District-led Christian prayers unconstitutionally coerces attendees to participate and observe a religious ritual. The Board's actions display clear favoritism towards religion over nonreligion, and Christianity over all other faiths.

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 Court reaffirmed in *Kennedy* that the schools cannot "'make a religious observance compulsory.'" *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429 (2022) (quoting *Zorach v. Clauson*, 343 U. S. 306, 314 (1952)).

In *Lund v. Rowan Cty., N. Carolina*, the Fourth Circuit Court of Appeals, which controls in North Carolina, found that even legislative prayer is unconstitutional when the members of the legislative body are the only ones giving prayers because the government is delivering prayers that were exclusively prepared and controlled by the government, constituting a "much greater and more intimate government involvement" in the prayer practice than those that have been found constitutional. 863 F.3d 268, 278 (4th Cir. 2017). Here, the prayers are being delivered by school board members. These government-delivered prayers are taking place in the public school context with its heightened Establishment Clause concerns, a violation of the Constitution.

Students and parents have the right—and often reason—to participate in school board meetings. It is coercive, insensitive, and intimidating to force nonreligious citizens, such as our complainant, to choose between making a public showing of their nonbelief by refusing to participate in the prayer or else 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. Needlessly including prayer at Board

meetings excludes those who are among the 37 percent of Americans who are non-Christians,¹ including the 49 percent of Generation Z who are religiously unaffiliated.²

Out of respect for the First Amendment rights and diversity of its community, we ask that the Board cease unconstitutionally including prayers at meetings. Please inform us in writing of the steps the Board is taking to remedy this constitutional violation. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Cc: abohannon2@wsfcs.k12.nc.us, rbarr@wsfcs.k12.nc.us, tbrowngaiter@wsfcs.k12.nc.us, scoone@wsfcs.k12.nc.us, lcrowley@wsfcs.k12.nc.us, smiller3@wsfcs.k12.nc.us, rwatts@wsfcs.k12.nc.us, swood@wsfcs.k12.nc.us

¹ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

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