

FREEDOM FROM RELIGION *foundation*

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April 10, 2024

SENT VIA EMAIL & U.S. MAIL: cwilson@kennett.k12.mo.us

Superintendent Chris Wilson
Kennett School District 39
1400 West Washington Street
Kennett, MO 63857

Re: Unconstitutional prayer at school-sponsored events

Dear Dr. Wilson:

I am in receipt of your letter dated March 14, 2024 in response to my letter dated January 31, 2024. FFRF thanks you for taking this matter seriously. We hope that upon revision and review of KSD policies, graduation prayer will cease. This letter serves to clarify FFRF's position.

We understand, and you state in your letter, that invocations are tradition at Kennett High School graduations. It does not make a difference if a constitutional violation is longstanding. If it violates the Constitution, you are obligated to put a stop to it.

A graduation is not a public forum for any student or person to deliver their own message. *See Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 820 (5th Cir. 1999) (“Neither its character nor its history makes the subject graduation ceremony in general or the invocation and benediction portions in particular appropriate fora for such public discourse.”); *Brody v. Spang*, 957 F.2d 1108, 1117 (3d. Cir. 1992) (“Graduation ceremonies have never served as forums for public debate or discussions, or as a forum through which to allow varying groups to voice their views.”). It is surely not the district's position that any student may deliver a message of their choosing during graduation. Graduations are not the place for personal religious promotion, just as it would taint the occasion if a speaker promoted their personal political beliefs while speaking to those assembled. No district would actually want to open up its ceremonies to religious debate by providing general access to the student body.

At every KSD graduation, only one person delivers the invocation and it is always Christian prayer at the same moment every year. Multiple people do not deliver an invocation. There is clearly a process controlled by the school district for the purpose of selecting a student to deliver a prayer at the graduation ceremony. That is not an allowable purpose for a limited or designated public forum in a public school. The Supreme Court has declared that school officials may not invite a teacher, faculty member, clergy member, or even a student to give any type of prayer, invocation, or benediction at a public high school graduation. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding that a school's policy allowing student-delivered prayers at school events violates the Establishment Clause). “The delivery of such a message—over the school's public address system, by a speaker representing the student body, under the supervision

of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as ‘private’ speech.” *Id.* at 310.

Nor does Missouri’s Constitution allow this conduct. Missouri’s Constitution reads, in part, “that the state shall ensure public school students their right to free exercise of religious expression without interference, *as long as such prayer or other expression is private and voluntary*, whether individually or corporately, and in a manner that is not disruptive and as long as such prayers or expressions abide within the *same parameters placed upon any other free speech under similar circumstances*.” Mo. Const. art. I. § 5 (emphasis added). An invocation, while voluntary, is not private. Additionally, since the school would likely disallow a student giving a political speech at a graduation, a religious invocation would need to be barred as well.

As my initial letter notes, Missouri’s constitutional provisions “‘declaring that there shall be a separation of church and state are not only more explicit but *more restrictive*’ than the First Amendment.” *Gibson v. Brewer*, 952 S.W.2d 239, 246 (Mo. banc 1997) (quoting *Paster v. Tussey*, 512 S.W.2d 97, 101-02 (Mo. banc 1974) (emphasis added)). It is not a constitutional right of any person to deliver a graduation prayer to a captive audience. Thus, even if these invocations somehow were allowed by the First Amendment, Missouri’s constitution nevertheless prohibits graduation prayer.

To clarify our position, we are unconcerned about coercion of the student delivering the prayer. We are satisfied that student volunteers are not being coerced. Instead, we are concerned about the students and parents *in the audience* who must choose between rising, in opposition to their sincerely held beliefs, or sitting, risking their standing in the community. While we appreciate that no students are made to deliver prayer, it does not make this practice constitutional.

We appreciate your response and hope that this letter clarifies our position. To comply with the federal and Missouri Constitution, the District must cease including prayer at its graduation ceremony. Please inform us in writing of any update from your review, including any revisions to the District graduation policy.

Sincerely,

A handwritten signature in cursive script that reads "Hirsh M. Joshi".

Hirsh M. Joshi
Patrick O’Reiley Legal Fellow
Freedom From Religion Foundation