

FREEDOM FROM RELIGION *foundation*

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August 27, 2020

SENT VIA U.S. MAIL AND EMAIL:

joates@bcswan.net

Dr. Jerry Oates
Superintendent
35 Referendum Drive NE,
Bolivia, NC 28422

Re: Unconstitutional school board prayer

Dear Dr. Oates:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Brunswick County School Board meetings. FFRF is a national nonprofit organization with more than 32,000 members across the country, including over 700 members in North Carolina. FFRF's 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 local resident contacted us to report that the Brunswick County School Board (the Board) has been opening its meetings with prayer, including references to "our heavenly father."¹ We understand that the meeting attendees, including students,² have been asked to stand for the invocations, which are then led by Board Chair Ellen G. Milligan.

We write to request that the Board refrain from engaging in prayer at its meetings. When a government entity like the Board engages in prayer at its meetings, it violates the First Amendment of the U.S. Constitution by showing preference for religious belief.

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

¹ <https://bit.ly/2YHjyyt>.

² Senior LaJuan Daniels is seen speaking at the meeting at the 13:45 minute mark in the link above.

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.

Further, it is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings. Many courts have held that 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. 2018), *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).

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. This is all the more true where, as here, students are present at the meetings.

Further, in *Indian River School District* the Third Circuit Court of Appeals 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 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.

In a 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 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, and it did any of the above-cited circuit court cases. Further, 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.” *Chino Valley*, 896 F.3d at 1142 (internal citations omitted).

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, and the fact that a board meeting is conducted via video conference is no excuse. Board members are free to pray privately or to worship on their own time in their own way. The school board ought not to lend its power and prestige to religion, an action that excludes the 35 percent of Americans who are not Christian, including the 26 percent of which are nonreligious.³

We request that the Board refrain from engaging in prayer as part of future school board meetings. Please respond in writing at your earliest convenience indicating the steps you have taken to remedy this issue. Thank you for your time and attention to this matter, and I hope this letter finds you in good health.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Johnson', with a long horizontal flourish extending to the right.

Brendan Johnson, Esq.,
Robert G. Ingersoll 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/>.