CONGRESSIONAL PRAYER CAUCUS FOUNDATION

March 22, 2019

Sent via Email and U.S. Mail
dtebo@hamiltonschools.us

Superintendent David Tebo &
Members of the School Board
Hamilton Community Schools
4815 136th Avenue
Hamilton, MI 49419

Re: Freedom From Religion Foundation Complaints

Dear Superintendent Tebo and School Board Members:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in over 32 states, including Michigan, which have over 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our founding principles and to protect First Amendment rights for all.

We learned that earlier this month, the Freedom From Religious Foundation ("FFRF") sent you a threatening demand letter regarding certain practices in your school, including choral students attending a church service, allowing a local church youth pastor to visit with students on campus during the school day, and the school board opening its meetings with prayer. FFRF claims that each of these violates the Establishment Clause. Taking them in reverse order, we will show that they do not.

1. Prayer at School Board Meetings

A government official asking people to pray with him is certainly not new. George Washington issued the first presidential call to prayer on October 3, 1789. He wrote, "It is the duty of all nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor." Since then, there have been over 130 presidential calls to prayer, and in 1952 President Harry Truman signed a law making the National Day

of Prayer an annual event.

The constitutionality of whether a government legislative body can open a session in prayer was first considered nearly 45 years ago. In *Marsh v. Chambers*, 463 U.S. 783 (1983), a state legislator challenged his legislature's practice of hiring a chaplain (always a Christian of the same denomination) who always opened the legislative sessions with a Judeo-Christian prayer. The legislator contended that this practice violated the First Amendment's Establishment Clause, a contention soundly rejected by the Supreme Court. Perhaps just as important as the ruling were Chief Justice Burger's following words on behalf of the Court:

> The opening of sessions of legislative *and other deliberative public bodies* with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom. In the very courtrooms in which the United States District Judge and later three Circuit Judges heard and decided this case, the proceedings opened with an announcement that concluded, "God save the United States and this Honorable Court." The same invocation occurs at all sessions of this Court. 463 U.S. at 786 (emphasis added).

After reviewing the colonial practice of opening legislative sessions with prayer, the Chief Justice reviewed the practice of the First Congress, and noted:

> On Sept. 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights . . . Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. It has also been followed consistently in most of the states . . . 463 U.S. at 788-89.

These principles in *Marsh* were reaffirmed a couple years ago in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), where the Supreme Court once again held that opening government meetings in prayer is constitutionally permissible. In his opinion for the Court, Justice Kennedy highlighted our nation's historic use of legislative prayer, further stating that "the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment [which] demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion's role in society. . . . As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom, similar to the Pledge of Allegiance, inaugural prayer, or the recitation of 'God Save the United States and this honorable Court' at the opening of this Court's sessions." *Id.* at 1819, 1825.

FFRF tries to distinguish school board meetings (which we believe fall within the "other deliberative public bodies" category noted in *Marsh v. Chambers*) from town/village board meetings claiming that

young people go to school board meetings but not town/village board meetings and therefore should not be exposed to prayers. We personally believe this preposterous and directly contrary to our country's history and tradition (more children watch a presidential inauguration filled with Scripture and prayer than ever attend school board meetings), and we believe this directly contrary to fact. Our Chief Counsel, Jim Davids, was a public school board member in the Chicago suburbs for four years, and the only time students came was when they were appealing disciplinary action to the board. We strongly encourage you to note how many students come monthly to your meetings so you can make a good, factual record.

Chief Justice Burger in *Marsh v. Chambers*, 463 U.S. 792 provides a good conclusion:

> In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an "establishment" of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country. As Justice Douglas observed, "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

2. On-Campus Visits by a Youth Pastor

For the past few years, we have been following FFRF's attempts to bully local governments to abandon our nation's history and tradition of honoring God, and we have noticed that FFRF's letters often contain misinformation (such as the example in the next section) or simply insufficient information. We assume the latter category (insufficient information) applies here.

We assume that Pastor Scott Davis does not break any school rules by visiting students during the lunch period. We assume that other adults (whether they are parents or not) can meet and interact with students on campus during specific time periods, and that upcoming events (like a trip to Colorado) are frequently announced at the beginning or end of a class. If these assumptions are true (which we suspect they are), what FFRF is trying to do is force you to *discriminate* against religion. That is, FFRF wants you to treat persons with a religious mission differently than those with a secular mission, allowing free access to those with a secular mission, while denying the same opportunity to those with a religious mission. This not only violates the Equal Protection Clause of the Fourteenth Amendment, but also the Establishment Clause which prohibits government from hindering religion. As the Supreme Court in *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952) stated, "We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."

3. Choir Performances at Local Churches

We commend Ms. Holly Israels for being perhaps the best "good will ambassador" that Hamilton Community Schools has. Rather than remaining insulated on the school campus, Ms. Israels has seen the

opportunity to connect with the tax-paying community by seeking out ready-made audiences for the choirs she directs. Recognizing that much choir music was generated by or for churches, Ms. Israels has provided more opportunities for her choirs to perform by going to churches on Sunday mornings.

Churches are not, of course, the only venues for the choirs. The Hamilton Vocal Music Schedule for 2018-19 (found at https://drive.google.com/file/d/1Zyf-BbzoiINQxpKhkoPh3tdmXmA8-cxs/view) lists a wide variety of venues ranging from concerts at school to a retirement home, to basketball games and festivals at Grand Valley State and Western Michigan Universities. To us, the schedule looks well-balanced, not favoring churches, but not excluding them either.

Regarding the choir members supposedly enduring a "hour-long sermon," our Chief Counsel, Mr. Davids, advised that while there is no constitutional problem at hand, a better practice would be to have the choir sing at the beginning of the service and when finished, go to reserved seating in the back pews of the church, allowing those who were unwilling to remain to slip out the back inconspicuously. He said that this was a matter of conscience protected by the Constitution's Free Exercise Clause. That is, just as the government cannot force you to do something religiously against your conscience, people (including public school students) have a right not to attend church without incurring a penalty.

In closing, our nation has enjoyed a cultural heritage of freedom that rests upon Judeo-Christian ethics. Americans have generally appreciated the contributions of religious organizations toward the strengthening of our society. Our government has had a history of benevolent accommodation of religion. It was not until the 1960s that the U.S. Supreme Court gave the Establishment Clause new interpretations that portended a stricter separation from religion would be required in the public sphere. The Supreme Court has backed away from those interpretations in the decades since, but organizations like the Freedom from Religion Foundation pretend that those earlier interpretations are still binding and should be extended to ever greater degrees, causing confusion in our public institutions to this day.

We hope that you will not yield to threats to rob you, your students, and your community of your rights and heritage. To protect our freedom, we must exercise that freedom. If you find that you could benefit from additional First Amendment legal advice, our attorneys are available to counsel you at no charge.

May God bless you and your students,

Lea Carawan

Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation