



CONGRESSIONAL PRAYER CAUCUS FOUNDATION

December 16, 2019

Via Email (rneal@pearidgek12.com) and U.S. Mail

Rick Neal
Superintendent
Pea Ridge Schools
979 Weston
Pea Ridge, Arkansas 72751

Re: Opening School Board Meetings with Prayer

Dear Superintendent Neal and Members of the Board:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves over 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 nearly 40 states (including Arkansas), which have over 1,000 state senators and state representatives in these Legislative Prayer Caucuses. We believe in the power of prayer, and we believe that Americans in all walks of life (including public officials) have the freedom to express their belief in God, and to give glory to God at any time. This freedom is at the core of the First Amendment, since it involves free speech and the free exercise of religion.

It has come to our attention that about three weeks ago, the Freedom From Religion Foundation ("FFRF") sent you a letter complaining of prayer before Board meetings and before school football games. We understand from a news article that Pea Ridge Public Schools has agreed to discontinue these prayers. We encourage you to reconsider this decision and use this occasion as an opportunity to tell the citizens of your school district about our country's religious heritage.

Prayer Before 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

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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. These calls to prayer are not, of course, limited to adults, or those unaffiliated with schools. These are calls from our nation’s foremost public official for prayer from ALL Americans.

The constitutionality of whether a government body like a school board 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.

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.

Justice Kennedy in *Town of Greece* rejected FFRF’s claim that prayer before meetings is divisive. Justice Kennedy wrote: “These ceremonial prayers strive for the idea that people of many faiths may be

united in a community of tolerance and devotion. Even those who disagree as to religious doctrine may find common ground in the desire to show respect for the divine in all aspects of their lives and being. Our tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith." *Id.* at 1823.

Chief Justice Burger in *Marsh v. Chambers*, 463 U.S. 792 provides a good conclusion for the issue of prayer by public officials:

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).

Prayer Before Sporting Events

The Supreme Court has noted that students can be impressionable and confused between voluntary and school-sponsored speech and that public institutions must be evenhanded in making public forums available for speakers of different religions and views. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the school district's pre-football game invocation practice was narrowly (5-4) found to be unconstitutional because the San Antonio schools did not have a policy that addressed this evenhandedness. However, if invocations at sporting events are undertaken consistently with a district policy that addresses these concerns, the practice would not suffer the same deficiencies that caused the San Antonio practice to be struck down.

CPCF strongly supports the efforts of school districts to provide an opportunity for voluntary prayer at sports events. Such prayer fosters good sportsmanship and safety. We encourage your district to draft a policy that addresses the deficiencies in the San Antonio model (e.g., adopt an evenhanded opportunity for volunteers like a drawing; set a time limit; have a short opening statement that this is the volunteer's statement, not the school's). CPCF has prepared such a model policy and it is attached to the conclusion of this letter.

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.

Sincerely,



Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation
National Strategic Center

ADMINISTRATIVE GUIDELINE ON PROVIDING LIMITED OPEN FORUM
FOR INVOCATIONS AT SCHOOL EVENTS

Purpose

This policy sets administrative guidelines for providing a limited open forum for invocations at school events. It balances three important interests.

First, many in our school community, including students, teachers, administrators, parents, and other community attendees at school sporting events, believe it is beneficial to remind participants and spectators (a) of the need for good sportsmanship, (b) that winning at all costs is not an appropriate goal, and (c) that there is an overriding concern for the safety of all the participants in the event. We agree that these are suitable purposes, consistent with the traditions of our schools and community. Such reminders may be done by a welcoming statement, followed by moment of silence; a student-led prayer; or some other means of reinforcing the reminder by means of an invocation.

Second, it is important that our schools do not sponsor or endorse any particular religion or show favoritism to any religious belief or non-belief. We are conversant with the Supreme Court's decisions in this regard, including *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), as well as other applicable court decisions, and have prepared this policy with the intent to act consistently with those court decisions. We do not read those decisions as prohibiting all prayer at school sporting events, but as requiring that it be conducted with appropriate safeguards, which this policy puts in place. We do not accept the notion that permitting an opportunity for voluntary public prayer by individuals and groups at school

athletic events always amounts to an unconstitutional endorsement of whatever the speaker says or that members of our community cannot distinguish between voluntary speech and school-endorsed messages.

Third, the U.S. Congress has required the U.S. Secretary of Education to issue guidance on constitutionally protected prayer in public elementary and secondary schools pursuant to § 9524 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The U.S. Secretary of Education issued such guidance in 2003. A “local education agency” (LEA), which _____ is, risks losing funding if it is not able to certify that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools. This current policy is designed to ensure that _____ is able to make such certification.

Limited Public Forum for Invocations

A school in this district is permitted to provide an opportunity at the beginning of a school or sporting event for an invocation to be given using the public-address loud speaker system otherwise provided at the event, provided the following guidelines are satisfied.

1. A school may, but is not required to, restrict those allowed to lead in an invocation to students. However, it must give all members of whatever group is selected equal opportunity to participate. Selecting the individuals by vote is not permissible, as this may restrict the selection to the majority of the group. The approved method of selection is a

blind drawing of all individuals who have volunteered. Any other method of selection must be approved in advance by the school district's SUPERINTENDENT OR HIS/HER DESIGNEE.

2. A school may publicize the opportunity for an individual to provide an invocation before a school sporting event, but must select such individual on content-neutral grounds and must not require participation by anyone.
3. A school may limit the timing and place of the invocation and should monitor the public proceeding to assure that its guidelines are not being violated. For example, the school may turn off the public-address system if a speaker exceeds the time limit.
4. Speakers of invocations are to be informed of the purposes as stated in the "Purpose" section of this policy and provided a time limit not to exceed one minute. The school will not provide a text to be used by any speaker.
5. At the beginning of any invocation, the following statement will be read by a school representative: "[Name of school] is pleased to have [name and position] lead us in a short invocation today. S/he is doing so as a volunteer and is not sponsored by the school. We request your civility, but do not require your participation."

Group Prayer by Students

6. Some students desire to lead their team in prayer consistent with the interests stated in the "Purpose" section of this policy. Sometimes members of both teams gather after a game for community-building, often including prayer. Such practices are not prohibited, but they should be conducted consistently with this policy.
7. Coaches must clearly inform all students that they are not required to engage in communal prayer led by teammates.

8. Coaches must not discriminate in any way against a student based on whether that student decides to participate in communal prayer, including by making negative or sarcastic comments about any such decision.
9. Coaches must take prompt and appropriate action against any student who exhibits negative behavior against another student based on whether that other student decides to participate in communal prayer, including by making negative or sarcastic comments about any such decision.
10. Coaches may attend and monitor student-led gatherings, but they may not organize, sponsor, or verbally participate in them.

Reporting Potential Violations

11. Potential violations of this policy may be reported to any teacher or administrator. When a teacher or administrator is so informed or otherwise becomes aware of a potential violation, the potential violation must be reported to the school district's SUPERINTENDENT OR HIS/HER DESIGNEE.
12. The school district's SUPERINTENDENT OR HIS/HER DESIGNEE will review every report of a potential violation to determine (a) if there has been a violation, (b) if remedial action is appropriate, and (c) if additional training or instruction is appropriate to minimize the potential for future violations of this policy.

In-person Training

13. Within 30 days of the adoption of this policy, or prior to the beginning of the school year, whichever is earlier, the school district's SUPERINTENDENT OR HIS/HER DESIGNEE will be responsible for providing in-person training on this policy to all school administrators and coaches.

Proactive Amendment of This Policy

14. The school district's SUPERINTENDENT OR HIS/HER DESIGNEE and counsel will keep apprised of any legal developments in this area and revise this policy as appropriate to be consistent with controlling law.

15. Any amendment of this policy will be transmitted promptly to all school administrators and coaches. Consideration will be given to whether in-person training would be desirable to discuss any such amendment.