



CONGRESSIONAL PRAYER CAUCUS FOUNDATION

February 18, 2021

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SENT VIA EMAIL AND U.S. MAIL:

fklegal@hotmail.com

Mr. Frank Kruppenbacher
1218 Guernsey St.
Orlando, FL 32804-6122

Re: Opening School Board Meetings with Prayer

Dear Mr. Kruppenbacher,

I have the honor of serving as the Vice President of Operations 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 a network of Legislative Prayer Caucuses in over 40 states, including Florida, 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 have learned that the Freedom From Religion Foundation has asked your client, the Osceola County School Board, to stop opening school board meetings with prayer. We encourage you to ignore this request, and use this as an opportunity to tell the citizens of your school district about our country's religious heritage.

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. Earlier this month President Biden joined four other Presidents at the National Day of Prayer event in Washington.

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.

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* considered whether prayer before legislative 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.

Since we have seen many similar letters like the one FFRF sent to the Osceola School Board, we suspect that FFRF's letter acknowledged the Supreme Court's holding in *Town of Greece*, but claimed that a school board meeting is different than a town board meeting. FFRF's attorney may have argued that prayer before school board meetings is more analogous to prayer before school athletic events (*Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)) or school commencements (*Lee v. Weisman*, 505 U.S. 577 (1972)). In both of those circumstances, the Court ruled that prayer was unconstitutional.

Whether the present Court would rule today the same it did in *Santa Fe* and *Lee v. Weisman* is doubtful. More importantly, however, are the material differences between athletic events/commencements and legislative school/town board meetings. Students, of course, dominate attendance at school athletic events, and they and their families dominate commencement activities. A few students may attend a school board meeting, particularly if they are petitioning the board for something, or there is a disciplinary matter. Generally, however, students do not attend school board meetings like they do athletic events or graduation. Students are often also present at town board meetings accompanying one of their parents if a babysitter has not been arranged. Because of the small number of students present at school board meetings, the circumstances are much more similar to town board meetings rather than school athletic events or graduation.

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).

Jim Davids is Special Counsel for CPCF and Steve Fitschen is Senior Legal Advisor for CPCF in his capacity as President of the National Legal Foundation. Together, our legal team has decades of experience litigating in state and federal courts. They have won important related victories at the Supreme Court of the United States, various federal courts of appeals, and state supreme courts and courts of appeals. If you believe you need assistance for no fee, please do not hesitate to contact Steve at (757) 463-6133 or via email at nlf@nlf.net.

We applaud you for continuing the time-honored tradition of opening sessions with prayer. May God continue to bless you and the parents and children that benefit from your guidance in Osceola County.

Sincerely,



Lea Carawan
VP of Operations
Congressional Prayer Caucus Foundation