



February 15, 2023

SENT VIA EMAIL AND U.S. MAIL: lbush@ekschools.org

CONGRESSIONAL
ADVISORY MEMBERS

Senator James Lankford
Congressman Tim Walberg
Congressman Rick Crawford
Senator John Boozman
Senator Marsha Blackburn
Senator Kevin Cramer
Congressman Robert Aderholt
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Congressman Richard Hudson
Congressman Bill Huizenga
Congressman Doug Lamborn
Congressman Chris Smith
Congressman Glenn Thompson
Congressman Tim Walberg
Congressman Joe Wilson
Congressman Rob Wittman

Lindsay Bush
Board President
East Knox Local School District
23201 Coshocton Road
Howard, OH 43028

RE: School Board Prayer and Preaching

Dear Ms. Bush:

I have the honor of serving as the President of the Congressional Prayer Caucus Foundation. The Foundation serves the 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 40 states (including Ohio), which have nearly 1,000 state senators and state representatives. 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.

We have learned that the Freedom From Religion Foundation ("FFRF") has asked you to stop fellow board member and pastor Matt Schwartz from praying and using religious language in his remarks at Board meetings. We encourage you to ignore this blatant censorship 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, or using religious language during official business, 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 50 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 nine years ago in *Town of Greece v. Galloway*, 572 U.S. 565 (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 576, 587.

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.

As noted by FFRF, we too recognize that school board meetings are different than state legislative meetings, since a few students may attend a school board meeting, particularly if they are petitioning the board for something, or there is a disciplinary matter. We also recognize the case prosecuted by FFRF (*FFRF v. Chino Valley Unified School Dist.*), although we doubt whether that case remains good law after the recent Supreme Court case of *Kennedy v. Bremerton School Dist.*, 2022 WL 2295034 (2022), where the Court upheld the practice of a football coach praying on the 50 yard line in front of students after a game. Generally speaking, however, students do not attend school board meetings like they do normal school days (*Engel v. Vitale*), athletic events (*Santa Fe*) or graduation (*Lee v. Weisman*). Students are often also present at town board meetings accompanying one of their parents if a babysitter has not been arranged, or sitting in legislative chamber galleries when visiting the state or national capitol. 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).

Steven W. Fitschen is Chief Legal Counsel 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. Steve has 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. May God continue to bless you and the parents and children that benefit from your guidance.

Sincerely,



Congressman J. Randy Forbes
President
Congressional Prayer Caucus Foundation
National Strategic Center