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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 EASTERN DIVISION

13 FREEDOM FROM RELIGION) Case No.: 5:14-CV-2336
14 FOUNDATION, INC., DOE 1, a)
minor by and through his/her) COMPLAINT FOR EQUITABLE
15 guardian, DOE 2, and DOE 2) RELIEF AND DAMAGES
individually, DOE 3, and DOE 4,)
16)
Plaintiffs,)
17 vs.)
18 CHINO VALLEY UNIFIED)
SCHOOL DISTRICT BOARD OF)
19 EDUCATION, and CHINO VALLEY)
UNIFIED SCHOOL DISTRICT)
20 BOARD OF EDUCATION BOARD)
MEMBERS JAMES NA, SYLVIA)
21 OROZCO, CHARLES DICKIE,)
ANDREW CRUZ, AND IRENE)
22 HERNANDEZ-BLAIR in their)
official representative capacities,)
23)
Defendants.)
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COMPLAINT

Nature of the Claims

1. The central question in this case is about the constitutionality of prayer at public school board meetings. The answer will affect more than 32,000 public school students.

2. The Chino Valley School Board (hereinafter the “Board”) begins each meeting with a prayer. Indeed the meetings resemble a church service more than a school board meeting, complete with Bible readings by the Board members, Bible quotations by Board members, and other statements by Board members promoting the Christian religion. Plaintiffs, who have personally endured these religious impositions and who have an interest in the administration of the schools, bring this suit to stop those prayers and other conduct and recover damages.

3. Underlying this case are substantive legal issues under the United States Constitution and the California Constitution. Courts have consistently held that organized prayer in public schools, at public school events, and in public school contexts is unconstitutional. But courts have allowed state legislatures and city councils to open their meetings with prayer. Does the Establishment Clause of the First Amendment, which separates state and church, prohibit prayer at public school board meetings as the Third and Sixth Circuit (the only circuits to decide the issue) have found?

4. This case raises the same issue regarding Defendants’ conduct under the California Constitution under the No Preference and Establishment Clauses and under California Civil Code Section 52.1.

1 profit educational charity under IRS Code 501(c)(3), FFRF works to defend the
2 constitutional principle of separation between church and state, as well as to educate
3 the public about the views of non-theists. FFRF represents over 3,300 members in
4 California and more than 21,500 nationwide. FFRF members oppose government
5 endorsements of, and entanglements with religion and violations of the Establishment
6 Clause of the First Amendment and the Equal Protection Clause of the Fourteenth
7 Amendment to the U.S. Constitution. Plaintiffs Doe 1, Doe 2, Doe 3, and Doe 4 are
8 members of FFRF.

9 13. Other FFRF members who are local, but who do not have standing, have
10 expressed their support for FFRF's lawsuit and, though unable to act as plaintiffs, are
11 willing to be named. This includes Colin Campbell and James F. Thompson

12 14. Plaintiff Doe 1, a minor, is a student at Chino Hills High School. Doe 1
13 has attended school board meetings and been subjected to the prayers, Bible readings
14 and quotations by Board members, and other statements by Board members promoting
15 the Christian religion. Doe 1 has endured at least three Board prayers in the last 12
16 months and intends to go to future board meetings.

17 15. Plaintiff Doe 2 is Doe 1's parent.

18 16. Doe 2 has attended school board meetings and been subjected to the
19 prayers, Bible readings and quotations by Board members, along with other statements
20 by Board members promoting the Christian religion. Within the last year, Doe 2 has
21 endured at least 3 Board prayers and intends to go to future board meetings.

22 17. Plaintiff Doe 3 is a Chino Valley Unified School District (CVUSD)
23 employee. Doe 3 has attended meetings and been subjected to these prayers, Bible
24 readings and quotations by Board members, and other statements by Board members

1 promoting the Christian religion, as a result of being employed by the public school
2 district. Doe 3 intends to go to future board meetings.

3 18. Plaintiff Doe 4 is a CVUSD employee and has been for more than 15
4 years. Doe 4 has attended meetings and been subjected to these prayers, Bible
5 readings and quotations by Board members, along with other statements by Board
6 members promoting the Christian religion, as a result of being employed by the public
7 school district. Doe 4 intends to go to future board meetings.

8 19. Does 3 and 4 have attended multiple meetings each year of their
9 employment and been subjected to prayers at those meetings. Does 3 and 4 fear
10 retribution from the Board, many of whom are unabashedly attempting to inject
11 religion in CVUSD.

12 20. Defendant Chino Valley Unified School District Board of Education
13 (Board) is the governing body responsible for operating, controlling, and supervising
14 all public schools within the Chino Valley Unified School District. Under Cal. Educ.
15 Code § 35162 “the district is designated the governing board [and] may sue and be
16 sued, and hold and convey property for the use and benefit of the school district.”

17 21. Defendants Chino Valley Unified School District Board members James
18 Na, Sylvia Orozco, Charles Dickie, Andrew Cruz, and Irene Hernandez-Blair are sued
19 in their official capacities as board members. They are responsible for the
20 administration and management of the schools in Chino Valley Unified School
21 District.

Facts: School Board Meetings

22. The Board is an integral part of the public school system. “The control of the Chino Valley Unified School District shall be vested in the Board...” *See* Board Bylaw 9000 (a).

23. The purpose of the Board is to promote and support the public school system.

24. The Board sets educational policy, adopts courses of study, appoints or hires personnel, proscribes rules and regulations for the management of schools, evaluates schools within the District, enforces school attendance, enforces student discipline such as suspension and expulsion, and purchases textbooks and other equipment.

25. The Board also approves field trips, handles locker installation, deals with student transportation, sets the student dress and grooming code, and other minutiae.

26. To accomplish these goals, the Board typically has 18 regular meetings each year.

27. Students attend Board meetings to receive awards, to speak about issues affecting their schools, to appear before the Board as representatives of student government, to attend disciplinary hearings, and to perform for the assembled crowd.

28. Board members and District employees have encouraged students to attend and participate in School Board meetings.

29. In certain cases, student attendance at Board Meetings is mandatory.

30. Students and minors often attend the meetings.

1 41. For instance, at May 15, 2014 meeting, the presentations included a
2 “Student Showcase” during which “Glenmeade Elementary School third grade
3 students presented famous people biographies.” Then JROTC students from Don
4 Lugo High School “presented the colors.” The Board then “presented certificates and
5 flags to graduating seniors who have enlisted in the armed forces.” For the final
6 presentation, the Don Lugo High School girls’ varsity softball team expressed
7 gratitude to the Board for improvements to their field. *See Minutes of the Regular*
8 *Meeting of the Board*, May 15, 2014.

9 42. The May 1, 2014 presentations included a “Student Showcase” featuring
10 the Rhodes Elementary School spirit leaders, the Rhodettes, performing cheer routines.
11 The Presentations also included “Student Recognition” of a seventh-grader for
12 receiving an award. *See Minutes of the Regular Meeting of the Board*, May 1, 2014.

13 43. In one of the student presentations, first graders at Hidden Trails
14 Elementary School performed for the Board. The Board left their dais, and sat with
15 the audience to watch the 12-minute performance. The children sang “This is our
16 World (treat it right),” “Swinging on a Star,” and then recognized their heroes from
17 George Washington to Abraham Lincoln, to their moms and dads. *Available at*
18 <https://www.youtube.com/watch?v=tC0KysjRKZ0>.

19 44. Like the Hidden Trails first-graders’ presentation, student recognition by
20 and presentations to the Board are often a team or class affair. The entire athletic team
21 (like the Rhodettes or the Don Lugo HS varsity softball team) or student club (like the
22 Don Lugo HS JROTC) or class is invited to the Board meeting.

1 58. Mr. Na and Mr. Cruz typically do this during the Communications part.
2 Mr. Cruz closes with a Bible reading. For instance, the minutes show that Mr. Cruz
3 read:

- 4 a. Psalm 143:8 Feb. 6, 2014
- 5 b. 2 Corinthians Feb. 20, 2014
- 6 c. Galatians 16 [*sic*] March 6, 2014
- 7 d. Galatians 2 March 20, 2014
- 8 e. Romans 15:6² May 1, 2014
- 9 f. Galatians 5:22-23 May 15, 2014

11 Hear my prayer, O Lord; listen to my plea! Answer me because you are
12 faithful and righteous.
13 Don't put your servant on trial, for no one is innocent before you.
14 My enemy has chased me.
15 He has knocked me to the ground and forces me to live in darkness like
16 those in the grave.
17 I am losing all hope; I am paralyzed with fear.
18 I remember the days of old. I ponder all your great works and think about
19 what you have done.
20 I lift my hands to you in prayer. I thirst for you as parched land thirsts for
21 rain.
22 Come quickly, Lord, and answer me, for my depression deepens. Don't
23 turn away from me, or I will die.
24 Let me hear of your unfailing love each morning, for I am trusting you.
25 Show me where to walk, for I give myself to you.
26 Rescue me from my enemies, Lord; I run to you to hide me.
Teach me to do your will, for you are my God.
May your gracious Spirit lead me forward on a firm footing.
For the glory of your name, O Lord, preserve my life. Because of your
faithfulness, bring me out of this distress.
In your unfailing love, silence all my enemies and destroy all my foes,
for I am your servant.

² Romans 15:6 (New Living Translation) reads, "Then all of you can join together with one voice, giving praise and glory to God, the Father of our Lord Jesus Christ."

1
2 59. Mr. Cruz “read a prayer regarding being a sinner and about forgiveness.”

3 *See* April 17, 2014 minutes.

4 60. Mr. Na often injects religion into his comments. Mr. Na does this to the
5 point of proselytizing and discussing theology.

6 61. For instance, Mr. Na:

7 a. “congratulated Calvary Chapel Solid Rock for their work on the
8 National Day of Prayer at Chino Hills city hall, and said that guest
9 pastor Larry Powers from Calvary Chapel Golden Springs gave a
10 great message; spoke about being created in God’s image.” *See* May
11 1, 2014 minutes.

12 b. mentioned a tragic news story “and said this tells us how much we
13 need God in today’s society; thanked God for sending his son Jesus
14 Christ so that our sins are forgiven and may have eternal life in
15 heaven; and wished everyone a nice Easter.” *See* April 17, 2014
16 minutes.

17 c. “said we have a short time on this earth and that he wants
18 misconceptions to be cleaned out, the cloud removed, and for God to
19 give us wisdom.” *See* March 6, 2014 minutes.

20 d. “said that he as a Christian has hope with Jesus Christ as Savior.”
21 *See* February 20, 2014 minutes.

22 e. “thanked God for sending His Son so that we could have eternal
23 life ... [and] thanked the students still present at the Board meeting at
24 10:31 p.m.” *See* December 12, 2013 minutes.

1 f. “said we have all different fingerprints and are all specially made
2 by God.” *See* November 11, 2013 minutes.

3 62. The day after the Supreme Court’s first decisions on gay marriage
4 (*United States v. Windsor*, 133 S. Ct. 2675 (2013); *Hollingsworth v. Perry*, 133 S. Ct.
5 2652 (2013)) Mr. Na “spoke about recent local or federal rulings and the negative
6 impact to staff and community members; spoke about man being flawed and
7 incomplete; agreed with what Pastor Frank Gonzales said about Jesus Christ.” *See*
8 June 27, 2013 minutes.

9 63. James Na also reads from the Bible during Board meetings, including
10 John 3:16, “For this is how God loved the world: He gave his one and only Son, so
11 that everyone who believes in him will not perish but have eternal life.” October 3,
12 2013.

13 64. Board members inject religion into other aspects of CVUSD as well.
14 Last December, CVUSD Board of Education President James Na, sent a “Merry
15 Christmas” letter to all “CVUSD family member[s].” The 97-word letter contained
16 this 164-word post script for Christians: “For those who celebrate Christmas, I have
17 included an excerpt from the series of Pastor Jack’s Christmas story called, ‘The
18 Greatest Story Ever Told’”:

19 It’s the greatest story ever told. But glory be to God that it is much more
20 than a story, it is the reality that is above all others. It is that God
21 Himself would come to us in what is called Christians. The act and
22 mission of Jesus Christ was to become human like us, to love us, and to
23 purchase for us salvation. It is no wonder then that the Bible proclaims,
24 “For God so loved the world that He gave His only begotten Son, that

1 inherently coercive school environment. Plaintiffs find this excessive entanglement
2 between church and state personally offensive.

3 77. The Does have suffered and will suffer irreparable injury through the
4 unconstitutional establishment of religion as complained of herein, and they have no
5 adequate remedy at law.

6
7 **GROUNDS FOR RELIEF**

8 **First Ground for Relief: Federal Establishment Clause Violation**

9 78. Plaintiffs incorporate and adopt each and every allegation in the
10 preceding paragraphs numbered 1 through 77.

11 79. Defendants' policy and custom of opening board meetings with
12 invocations violates the Establishment Clause of the First Amendment.

13 80. There is no secular or educational purpose for the prayers.

14 81. This custom and practice has the principal and primary purpose of
15 advancing a particular religious preference and religion over nonreligion.

16 82. This custom and practice of Defendants foster an excessive governmental
17 entanglement with religion.

18 83. The customs and practices of Defendants have constituted an
19 establishment of religion in violation of the First and Fourteenth Amendments to the
20 United States Constitution.

21 84. Defendants' policy and custom of including Bible reading proselytizing
22 and Bible reading violates the Establishment Clause of the First Amendment.

23 85. There is no secular or educational purpose for the Bible readings or
24 proselytizing.

1 86. These customs and practices have the principal and primary purpose of
2 advancing a particular religious preference and religion over nonreligion.

3 87. These customs and practices of Defendants foster an excessive
4 governmental entanglement with religion.

5 88. The customs and practices of Defendants have constituted an
6 establishment of religion in violation of the First and Fourteenth Amendments to the
7 United States Constitution.

8 89. The Court should find these practices unconstitutional and award the
9 Plaintiffs appropriate relief under law and equity.

10
11 **Second Ground for Relief: Equal Protection Clause Violation**

12 90. Plaintiffs incorporate and adopt each and every allegation in the
13 preceding paragraphs numbered 1 through 89.

14 91. Defendants' policy and custom of opening board meetings with official
15 sectarian invocations violates the Equal Protection Clause of the Fourteenth
16 Amendment. The invocation and its context offer legal sanctuary, comfort and a public
17 forum to religionists, substantially to the detriment of the religiously unaffiliated and
18 non-theists.

19 92. Defendants' policy and custom of including proselytizing and Bible
20 reading violates the Equal Protection Clause of the Fourteenth Amendment. The
21 invocation and its context offer legal sanctuary, comfort and a public forum to
22 religionists, substantially to the detriment of the religiously unaffiliated and non-
23 theists.

1 not incompetent to be a witness or juror because of his or her opinions on religious
2 beliefs.” Cal. Const. art. I, §4.

3 99. Defendants have, under color of federal and state statutes, ordinances,
4 regulations, policies, custom, and usage, deprived Plaintiffs of rights secured by the
5 California Constitution, entitling them to a remedy.

6
7 **Fourth Ground for Relief: Defendants’ Conduct Force and Coerce Citizens**
8 **to Participate in Religious Rituals In Violation of Plaintiffs’ Rights Under the**
9 **California Constitution.**

10 100. Plaintiffs incorporate and adopt each and every allegation in the
11 preceding paragraphs numbered 1 through 99.

12 101. California Civil Code Section 52.1 authorizes a claim for relief
13 “against anyone who interferes, or tries to do so, by threats, intimidation, or coercion,
14 with an individual’s exercise or enjoyment of rights secured by federal or state law.”
15 *Jones v. Kmart Corp.*, 17 Cal.4th 329, 331, 70 Cal.Rptr.2d 844, 949 P.2d 941 (1998).

16 102. This includes claims against anyone who tries “to force plaintiff to
17 do something that he was not required to do under the law.” *Austin B. v. Escondido*
18 *Union School District*, 149 Cal.App.4th 860, 883, 57 Cal.Rptr. 454 (2007) (citing
19 *Jones*, 17 Cal.4th at 334, 70 Cal.Rptr.2d 844, 949 P.2d 941).

20 103. Defendants force plaintiffs to attend a Christian religious ritual and
21 listen to religious proselytizing in order to exercise their constitutionally protected
22 right to participate in their democratic government and choose their own method and
23 form of worship, including none at all.

1 any school-sponsored religious exercises or prayer, including
2 proselytizing, preaching, Bible-readings, or otherwise using their
3 secular offices to promote their personal religious beliefs as part of
4 any Board meeting;

5 e. Nominal damages for past violations of Plaintiffs' constitutional
6 rights;

7 f. An order awarding Plaintiffs the costs of this action including a
8 reasonable attorney's fee under 42 U.S.C. §1988;

9 g. An order awarding Plaintiffs the costs of this action including a
10 reasonable attorney's fee under California Code of Civil Procedure
11 § 1021.5, California Civil Code § 52.1(h), and under the
12 substantial benefit doctrine;

13 h. Such other relief as this Court deems just and proper.

14
15 Respectfully submitted,

16
17 Dated: November 13, 2014

18 
19 David J.P. Kaloyanides

20 Andrew L. Seidel *PHV Pending*
21 Rebecca Markert *PHV Pending*
22 Freedom From Religion Foundation

23
24 Attorneys for Plaintiffs
25 Freedom From Religion
26 Foundation, Inc. and
Does 1-4, inclusive.

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EXHIBIT 1

Bylaw of the Board

E 9150

STUDENT BOARD MEMBER GUIDELINES

Duties of Student Board Member

The duties of the student board member include the following:

1. To provide continuing input for board deliberations.
2. To strengthen communications between the board and district students.
3. To represent all students and facilitate the discussion of all sides of issues. This does not preclude the student board member from stating his/her individual opinion.

Selection and Term

The President of the Student Advisory Council (SAC) serves as the student member on the Board of Education. The selection is made by the student's high school on a rotating basis, alphabetically.

The term of office shall be July 1, - June 30.

Vacancy

If the position of student board member becomes vacant, the Vice President of the SAC shall be sworn in as the student member on the Board of Education for the remainder of the current school year. The selection of the SAC Vice President is made by the student's high school on a rotating basis, alphabetically. The school is the next high school alphabetically from the SAC president's school.

Board Materials/Information

The Superintendent or designee's office shall provide the student board member with full and complete agendas and copies of any materials received by the Board except for those materials covered in closed session and any other confidential materials. The Superintendent's office shall serve as the "home office" for the student board member, where he/she may make use of secretarial facilities and receive advice and/or information upon request.

Chino Valley Unified School District

Exhibit approved: October 7, 2010

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EXHIBIT 2

Bylaws of the Board

AR 9150(a)

STUDENT BOARD MEMBER

Name and Authority

The name of the organization shall be the Student Advisory Council to the Board of Education and the Chino Valley Unified School District, abbreviated SAC.

Purpose

1. To increase leadership opportunities for all students.
2. To provide student input and share common concerns and ideas.
3. To advise the Superintendent, or designee, and/or the Board of Education on matters of concern related to student rights and responsibilities and/or decisions on Board Policies which may be of interest to students.

Bylaws of the Student Advisory Council

The Board of Education and District administration are directly responsible for the welfare of the schools in the District. All student authority in SAC, therefore, is delegated by the Board of Education and is an exercise in student responsibilities.

Membership

1. The membership of SAC shall consist of two ASB members and one member-at-large (total=3) from each comprehensive high school, exclusive of the Board representative.

Each 9-12 alternative school shall be allowed one representative. Each junior high school shall be allowed one representative. Each representative is entitled to one alternate.

Each principal member has one vote; in cases of absence, the respective alternate member will receive the voting privilege.

2. Alternates at each school shall be appointed by the appropriate school's student council.

Officers

1. The SAC shall consist of three officers: a president, a vice president, and secretary. Alphabetical rotation by school shall be used in the selection process for all officers.

AR 9150(b)

STUDENT BOARD MEMBER (cont.)

2. The president shall serve as the student representative on the Board of Education and shall be responsible for providing all SAC reports. The student representative on the Board of Education shall be determined by the appropriate school and shall not be included in the individual school's representation on the SAC. The president shall vote only in the case of a tie.
3. The principal of the school (or designee) shall submit the name of the student representative on the Board of Education to the SAC advisor in writing prior to the last regular Board meeting in May. The student representative on the Board of Education may be sworn in at the first regular Board meeting in June and shall take office commencing July 1.
4. The SAC vice president shall be determined by the appropriate school (next school in alphabetical order). In the absence of the president, the vice president shall preside over the SAC meetings. The vice president will assume responsibility for public relations and communications. All information to be provided to the public and/or schools will be reviewed and approved by the SAC advisor prior to release.
5. The secretary shall be responsible for recording of all SAC meeting minutes. The minutes shall be approved by the SAC advisor before distribution. All minutes and meeting notices shall be distributed by the SAC advisor's secretary.

Meetings

1. SAC shall meet every other month or on as-needed basis. The Superintendent shall designate a District administrator to serve as the SAC advisor. The advisor (or designee) shall be present at all SAC meetings and be responsible for providing SAC members and activities directors/advisors with the official SAC schedule in a timely manner.
2. Nine voting members (president not included) shall be present in order for SAC to conduct official business.
3. Designated alternate members should attend and assume voting privileges in the absence of their respective principal members.
4. The rules contained in *Robert's Rules of Orders* shall govern the SAC in all cases where they are applicable.
5. The president shall have the power to appoint, with the approval of the SAC membership, such committees as he/she deems necessary.

AR 9150(c)

STUDENT BOARD MEMBER (cont.)

Agenda Building

Any SAC member may submit items for the agenda. Agenda items shall be submitted to the SAC advisor's secretary at least five school days prior to the SAC meetings. The advisor's secretary shall be responsible for preparing the SAC agenda.

Qualifications

1. SAC members must maintain a 2.0 grade point average.
2. The SAC president and vice president shall be classified as a junior or senior during the term of office. The SAC secretary shall be classified as a sophomore, junior, or senior during the term of office.

Attendance

Two consecutive unexcused absences shall constitute grounds for replacement of a SAC member. Pursuant to CVUSD Board Policy 5113, excused absences include the following:

- | | |
|------------------------|------------------------------------|
| 1. Illness | 6. Religious holiday or ceremonies |
| 2. Medical appointment | 7. Employment interview |
| 3. Bereavement | 8. Family emergency |
| 4. School activity | 9. Severe weather condition |
| 5. Court appearance | |

Method of Amendment

Any change made in the SAC Bylaws shall be adopted by the Chino Valley Unified School District Board of Education prior to implementation.

Chino Valley Unified School District

Regulation approved: August 17, 1995

Revised: October 7, 2010

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EXHIBIT 3

Dear CVUSD family member:

Merry Christmas!

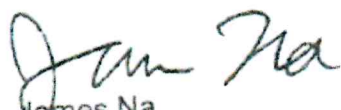
Thank you. I believe working with children is the most honorable role one can achieve in his or her lifetime.

Your every drop of love, encouragement, and discipline to our students has given utmost assurance for this nation's brighter future.

Due to your long unwavering personal commitment and enduring daily sacrifice, our students have continued to prosper in excellent learning environments.

Forever, I will salute and appreciate each one of you for being just who you are: great public servants.

Job well done! Thank you, have a wonderful merry Christmas and a happy New Year.



James Na
Board of Education
Chino Valley Unified School District

P.S. For those who celebrate Christmas, I have included an excerpt from the series of Pastor Jack's Christmas story called, "The Greatest Story Ever Told."

It's the greatest story ever told. But glory be to God that it is much more than a story, it is the reality that is above all others. It is that God Himself would come to us in what is called Christmas. The act and mission of Jesus Christ was to become human like us, to love us, and to purchase for us salvation. It is no wonder then that the Bible proclaims, "For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish, but have everlasting life. For God did not send His Son into the world to condemn the world, but that the world through Him might be saved." Nothing can take away this eternal truth and gift that is yours through Jesus Christ, God's only Son.

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EXHIBIT 4



5130 Riverside Drive • Chino, CA 91710 • 909.628.1201 • www.chino.k12.ca.us
Student Achievement • Safe Schools • Positive School Climate • Humility • Civility • Service

BOARD OF EDUCATION: Andrew Cruz • Charles E. Dickie • Irene Hernandez-Blair • James Na • Sylvia Orozco • **SUPERINTENDENT:** Wayne M. Joseph

December 13, 2013

Dear religious leader,

The Board of Education makes it a policy to invite members of the clergy in the boundaries of the Chino Valley Unified School District to voluntarily offer a prayer before the beginning of its meetings for the benefit and blessing of the Board of Education. As the leader of one of the religious congregations with an established presence in the local community of the Chino Valley Unified School District, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies within the boundaries of the Chino Valley Unified School District, you are eligible to offer this important service at an upcoming meeting of the Board of Education.

If you have an interest in providing an invocation, please send a written reply at your earliest convenience to the Superintendent's designee at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve, or other random basis. The dates of the Board of Education's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Board of Education requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invitational speaker, nor to disparage any faith or belief different from that of the invitational speaker.

On behalf of the Board of Education, I thank you in advance for considering this invitation.

Sincerely,

Carl Hampton
Coordinator, GATE/AVID
Superintendent's designee

Chino Valley Unified School District



CHINO VALLEY
UNIFIED SCHOOL DISTRICT

Student Achievement • Safe Schools • Positive School Climate
Humility • Civility • Service

2014 Board Meeting Calendar

January 16, 2014	Regular
February 6, 2014	Regular
February 20, 2014	Regular
March 6, 2014	Regular
March 20, 2014	Regular
April 17, 2014	Regular
May 1, 2014	Regular
May 15, 2014	Regular
June 12, 2014*	Regular
June 26, 2014*	Regular
July 17, 2014	Regular
August 7, 2014	Regular
September 4, 2014	Regular
September 18, 2014	Regular
October 2, 2014	Regular
October 16, 2014	Regular
November 6, 2014	Regular
November 20, 2014	Regular
December 11, 2014*	Organizational

Board of Education meetings are held the first and third Thursdays of the month (except where indicated by asterisk). The meetings will begin at 7:00 p.m. in the Board room at the District Service Center, Chino Valley Unified School District, 5130 Riverside Drive, Chino, unless otherwise posted. Additional meetings will be announced by the Board President on an as-needed basis.

**Chino Valley Unified School District
Resolution 2013/2014-11
Establishing a Policy Regarding Invocations
at Meetings of the Board of Education of the
Chino Valley Unified School District**

WHEREAS, the School Board is an elected legislative and deliberative public body, serving the students who attend the Chino Valley Unified School District; and

WHEREAS, legislative bodies in America have long maintained a tradition of solemnizing proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the legislative bodies; and

WHEREAS, the Board of Education has long followed a practice of inviting members of all local clergy of all faiths to provide invocations at Board of Education meetings; and

WHEREAS, the Board of Education now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, such prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "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." *Id.*, at 786; and

WHEREAS, the Supreme Court further held, "To invoke divine guidance on a public body ... 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." *Id.*, at 792; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Id.*, at 675; and

WHEREAS, the Supreme Court further stated, "Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in

society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Id.*, at 693 (O’Connor, J., concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306 (1952), “We are a religious people whose institutions presuppose a Supreme Being.” *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a “custom of opening sessions of all deliberative bodies and most conventions with prayer ...,” *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, “The content of [such] prayer is not of concern to judges where ... there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it should not be the job of the courts or deliberative public bodies “to embark on a sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative public body. *Id.*; and

WHEREAS, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers. See, e.g., *Lee v. Weisman*, 505 U.S. 577, 588-589 (1992); and

WHEREAS, the Board of Education intends, and has intended in past practice, to adopt a policy that upholds an individual’s “free exercise” rights under the First Amendment; and

WHEREAS, the Supreme Court has repeatedly clarified that “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Bd. of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990); and

WHEREAS, the Board of Education intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, this policy set forth below has been approved by two federal courts in the cases of *Pelphrey v. Cobb County* (11th Cir. 2008) 547 F.3d 1263 and *Rubin v. City of Lancaster* (2013) 810 F3d. 1087; and

WHEREAS, the Board of Education recognizes its constitutional duty to interpret, construe, and amend its policies and regulations to comply with constitutional requirements as they are announced.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Chino Valley Unified School District, that the Board of Education does hereby adopt and establish the following written policy regarding opening invocations before meetings of the Board of Education:

1. In order to solemnize proceedings of the Board of Education, it is the policy of the Board of Education to allow for an invocation or prayer to be offered at its meetings for the benefit of the Board of Education and the community.

2. The prayer shall not be listed or recognized as an agenda item for the meeting so that it may be clear the prayer is not considered a part of the public business.

3. No member of the Board of Education or District employee or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

4. The prayer shall be voluntarily delivered by an eligible member of the clergy or a religious leader in the boundaries of the Chino Valley Unified School District. To ensure that such person (the "invocational speaker") is selected from among a wide pool of the District's clergy/religious leaders, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The Superintendent's designee shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the boundaries of the Chino Valley Unified School District.

b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages telephone directory or directories published for the Chino Valley Unified School District, research from the Internet, and consultation with local chambers of commerce. All churches, congregations or other religious assemblies with an established presence in the boundaries of the Chino Valley Unified School District are eligible to be included in the Congregations List, and any such church, congregation or religious assembly can confirm its inclusion by specific written request to the Superintendent's designee.

c. The Congregations List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies within the boundaries of the Chino Valley Unified School District or any nearby military facilities.

d. The Congregations List shall be updated, by reasonable efforts of the Superintendent's designee, in November of each calendar year.

e. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the Superintendent's designee shall mail an invitation addressed to the "religious leader" of each church, congregation or religious assembly listed on the Congregations List, as well as to the individual chaplains included on the Congregations List.

f. The invitation shall be dated at the top of the page, signed by the Superintendent's designee at the bottom of the page, and read as follows:

Dear religious leader,

The Board of Education makes it a policy to invite members of the clergy in the boundaries of the Chino Valley Unified School District to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the Board of Education. As the leader of one of the religious congregations with an established presence in the local community of the Chino Valley Unified School District, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies within the boundaries of the Chino Valley Unified School District, you are eligible to offer this important service at an upcoming meeting of the Board of Education.

If you have an interest in providing an invocation, please send a written reply at your earliest convenience to the Superintendent's designee at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve, or other random basis. The dates of the Board of Education's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Board of Education requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invocational speaker, nor to disparage any faith or belief different from that of the invocational speaker.

On behalf of the Board of Education, I thank you in advance for considering this invitation.

Sincerely,

Superintendent's designee

g. Consistent with paragraph 7 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-served, or other random basis to deliver the prayers.

h. If the selected invitational speaker does not appear at the scheduled meeting, the Board President may ask for a volunteer from among the Board or the audience to deliver the invocation.

i. The Superintendent's designee shall post the following information on the District's webpage: (i) this resolution, (ii) the Congregation List and (iii) the invitation set forth herein to churches, congregations and religious associations within the boundaries of the Chino Valley Unified School District.

5. No invitational speaker shall receive compensation for his or her service.

6. The Superintendent's designee shall make every reasonable effort to ensure that a variety of eligible invitational speakers are scheduled for the Board of Education meetings. In any event, no invitational speaker shall be scheduled to offer a prayer at consecutive meetings of the Board of Education or at more than three (3) Board of Education meetings in any calendar year.

7. Neither the Board of Education nor the Superintendent's designee shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invitational speaker.

8. The Board President shall introduce the invitational speaker and the person selected to recite the Pledge of Allegiance and invite only those persons who wish to participate.

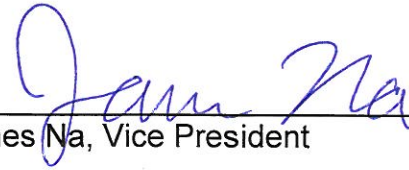
9. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Board of Education with, nor express the Board of Education's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Board of Education's respect for the diversity of religious denominations and faiths represented and practiced among the citizens who reside in the Chino Valley Unified School District.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the Board of Education.

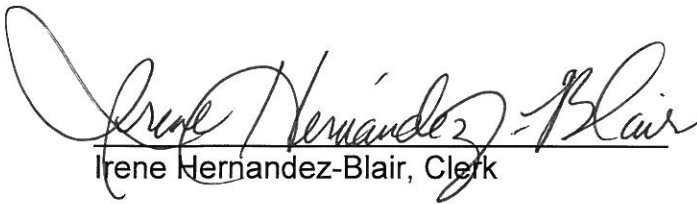
APPROVED, PASSED, AND ADOPTED by the Board of Education of the Chino Valley Unified School District this 17th day of October 2013.




Sylvia Orozco, President



James Na, Vice President



Irene Hernandez-Blair, Clerk



Andrew Cruz, Member



Charles E. Dickie, Member

State of California)
County of San Bernardino) ss
City of Chino)

I, Irene Hernandez-Blair, Clerk of the Board of Education, do hereby certify the foregoing Resolution was duly adopted by the Board of Education at a regular meeting held on the 17th day of October 2013 by the following votes:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:



Irene Hernandez-Blair, Board Clerk

Chino Congregations



<u>Chino Congregations</u>	<u>Address</u>
Chino Police Department Chaplain	13250 Central Avenue
Calvary Chapel Chinese Fellowship	3945 Schaefer Avenue
Calvary Chapel Chino Hills	4201 Eucalyptus Avenue
Calvary Chapel of the Chino Valley	12205 Pipeline Avenue
Calvary Church of Chino Valley	13252 17th Street
Casa de Orocion Cristian	4975 D. Street
Cavern Christian Ministries	13102 6th Street
Centro De Fe Iglesia Cuadrangular	13050 6th Street
Child Evangelism Fellowship	13770 Oaks Avenue
Chino Congregation Jehovah's Witnesses	3999 Walnut Avenue
Chino Spanish Seventh Day Adventist Church	12986 Central Avenue
Chino United Methodist Church	5201 Riverside Drive
Chino Valley Chinese Seventh-day Adventist Church	4136 Riverside Drive
Chino Valley Islamic Center	5565 Daniels Street
Christ Cornerstone	3811 Schaefer Avenue
Christ Lutheran Church ELCA	5500 Francis Avenue
Christ the Cornerstone Community Church	3811 Schaefer Avenue, Suite C
Christian House of Prayer	4975 D. Street
Christ's Kingdom Mighty Wind Church	13831 Roswell Avenue, Suite G
Church of Christ in Chino	11940 Telephone Avenue
Cornerstone Community Church of the Nazarene	13000 Pipeline Avenue
CrossPoint Church	6950 Edison Avenue
East Sarang Community Church	5540 Schaefer Avenue
Father's House	13721 Roswell Avenue #E
Park Christian Fellowship	5559 Park Place
First United Reformed Church	6159 Riverside Drive
Fortress Community Church	13851 Roswell Avenue, Suite A
Gateway Community Church	5885 Schaefer Avenue
Gideon's International Chino Camp	4195 Chino Hills Parkway, PMD 206
Harvest Com. Bible Church-Southern Baptist	3857 Schaefer Avenue
Higher Ground Christian Church	4845 Cheyenne Way
Holy Highway Church	5102 D Street
Immanuel Lutheran Church	5648 Jefferson Avenue
Inland Community Church	5540 Schaefer Avenue
Inland Hills Church	14670 Ramona Avenue
Isaiah's Rock Non-Denominational	13023 7th Street
Islam Ahmadiyya Movement Inc.	
Ahmadiyya Muslim Community	11941 Ramona Avenue
Joy Community Church	13971 Ramona Avenue
La Nueva Jerusalem Church of God	13102 6th Street
Latin American Free Methodist Church	13050 2nd Street
Lifesong Community Church	5171 Edison Avenue, Suite F
Life Christian Fellowship	5171 Edison Avenue
Lionheart Christian Fellowship	3811 Schaefer Avenue

Chino Congregations (cont.)

<u>Chino Congregations</u> (cont.)	<u>Address</u>
Living Waters of Chino	6010 Walnut Avenue

Living Word Assembly of God	11887 Telephone Avenue
Living Word Christian Center	5135 "F" Street
Mission Pointe Church	14058 Euclid Ave., Bldg. A
New Beginnings Ministries	4720 Chino Avenue
New Hope Christian Fellowship	13333 Ramona Avenue
Our Lady of Guadalupe	5048 D Street
Pipeline Avenue Baptist Church	11548 Pipeline Avenue
Portuguese Speaking SDA Church	12791 Yorba Avenue
Praise Tabernacle Bible	4550 Eucalyptus Avenue
Saint Margaret Mary Catholic Church	12686 Central Avenue
The Bridge	12765 Oaks Avenue
United Prayer Power	5220 "D" Street
Uplifting Christian Center	4445 Riverside Drive
Valley Christian Church	12410 Norton Avenue
Victory Baptist Church	14132 San Antonio Avenue
Vida Bible Institute	13050 6th Street
Yes to Life Church	13102 6th Street

Chino Hills Congregations

Chino Valley Fire District
 Baja Christian Ministries
Baps Shri Swaminarayan Mandir
 Calvary Chapel Chino Hills
 Calvary Chapel Solid Rock
 Chino Hills Chinese Baptist Church
 Chino Hills Foursquare Church
 Chino Hills Taiwanese Church
 Chino Valley Community Church
 Christ Trinity Community Church
 Crosspoint Church
 Crossroad Community Church
 Emmanuel Romanian Baptist Church
 Evangelical Christian Church
 Fehan Evangelical Chr-Amé 
 Iglesia Le Luz Del Mundo 
 Jemaat Kristen Indon Hosana
 Living Word of Chino Hills
 Loving Savior Chinese Church
 Loving Savior of the Hills
 New Wine Community Church

Address

14011 City Center Drive
 4195 Chino Hills Pkwy # 390
 15100 Fairfield Ranch Road
 4201 Eucalyptus Ave
 15330 Fairfield Ranch Rd Ste C
 2430 Hawkwood Dr.
 15558 Avery Street
 2046 Avenida Hacienda
 14601 Peyton Drive
 4195 Chino Hills Pkwy Ste 177
 6950 Edison Avenue
 2600 Grand Ave
 3144 Wildwood Ct
 4331 Ironwood Drive
 4293 Descanso Avenue
 4333 Descanso Avenue
 2472 White Dove Lane
 15558 Avery Street
 14816 Peyton Drive
 14816 Peyton Drive
 4166 Kelton Ct.

Chino Hills Congregations (cont.)

Parish Holy Child Philipians
 Redeemer Spanish Assembly of God
 St Paul the Apostle Catholic Church
 True Light Presbyterian Church

Address

14373 Shady Hollow Lane
 4293 Descanso Avenue
 14085 Peyton Drive
 3950 Poplar Lane

South Ontario Congregations

Freeway Christian Church

St Elizabeth Ann Seton Church

Address

14393 Euclid Avenue

2713 S. Grove Avenue

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EXHIBIT 5

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 19, 2013

SENT VIA U.S. MAIL & EMAIL to: sylvia_orozco@chino.k12.ca.us

Sylvia Orozco
President
Chino Valley Board of Education
5130 Riverside Drive
Chino, CA 91710

Re: Prayers at Board of Education Meetings

Dear Ms. Orozco and Board Members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a serious constitutional violation occurring in your school district. We were contacted by a Chino Hills resident about the Chino Valley Board of Education ("Board") practice of scheduling prayer as part of its meetings. FFRF is a national nonprofit organization with more than 19,000 members, including more than 2,800 members in California.

It is our information and understanding that the Board begins every meeting with an "invocation," which in practice amounts to a prayer. We understand these prayers are sectarian, include Christian references, and end with "In Jesus' name, Amen." We further understand that there are frequently children from around the district who attend these meetings for a district showcase.

It is beyond the scope of a public school board to schedule prayer as part of its scheduled meetings. Federal courts have struck down school board practices that include this religious ritual. See *Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (holding that prayer at school board meetings conveys message favoring religion); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999) (finding that a school board's practice of opening its meetings with prayers violated the Establishment Clause); *Doe v. Tangipahoa Parish Sch. Bd.*, 473 F.3d 188 (5th Cir. 2006), *dismissed on other grounds*, 494 F.3d 494 (5th Cir. 2007) (finding a school board's practice of opening meetings with sectarian prayer unconstitutional); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355, (9th Cir. Cal. 2002) (finding that a school board violated the Establishment Clause in allowing prayers "in the name of Jesus").

The Supreme Court has continually and consistently struck down prayer by school officials in the public schools. See, e.g., *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring as unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); See also *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"); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), *cert. denied*, 490 U.S. 1090 (1989) (holding unconstitutional pre-game invocations at high school football games). In all of the aforementioned cases, the federal courts have struck down prayer in the public school context because it constitutes a government endorsement of religion, which violates the Establishment Clause of the First Amendment.

The Third Circuit Court of Appeals emphasized in *Doe v. Indian River School District* 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 also 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.* In *Indian River School District*, 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.

Certainly, a public school board is an essential part of the public school system. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d at 381 (“...the 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. In striking down the board's prayers in *Coles*, the Sixth Circuit found prayers at school board meetings to be squarely within the context of school prayer cases. The court noted, “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. Therefore, prayer at public school board meetings is no different than a prayer given at other school district events and is unconstitutional.

Prayer at public school board meetings is unnecessary, inappropriate, and divisive. Calling upon Board members, as well as parents and students of the school, to pray is coercive, embarrassing, and beyond the scope of our secular school system. Board members are free to pray privately or to worship on their own time in their own way. The school board, however, ought not to lend its power and prestige to religion, amounting to a governmental endorsement of religion that excludes the one in five adult Americans and one in three young Americans who are now nonreligious.¹

We ask that you take immediate action and refrain from scheduling prayers as part of future school board meetings. We further ask that you respond in writing with the steps you are taking to remedy this constitutional violation.

Sincerely,



Andrew L. Seidel
Staff Attorney

ALS:stg

¹ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) *available at* <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

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EXHIBIT 6



LAW OFFICES OF
MARGARET A. CHIDESTER & ASSOCIATES
17762 COWAN, FIRST FLOOR
IRVINE, CALIFORNIA 92614-6096

MARGARET A. CHIDESTER*
STEVEN R. CHIDESTER
LENA Y. SHIRAIWA
TIFFANY M. TRAN

October 7, 2013

TELEPHONE: (949) 474-5040

TELECOPIER: (949) 474-8540

m.chidester@californiaschoollaw.net

*A PROFESSIONAL CORPORATION

REF. OUR FILE

CHI-95.8

VIA U.S. MAIL

Freedom From Religion Foundation
P.O. Box 750
Madison, Wisconsin 53701

Attention: Andrew L. Seidel, Esq.
Staff Attorney

Re: Your Correspondence of September 19, 2013 to
Ms. Sylvia Orozco and the Board of Education of
The Chino Valley Unified School District

Dear Mr. Seidel:

This office is general counsel to the Chino Valley Unified School District. The Superintendent and Board President Ms. Orozco have referred your correspondence to us for response. Your organization objects to the District's long-standing practice of offering the opportunity to community leaders of all faiths to offer a non-proselytizing invocation at the beginning of each School Board meeting. You state, "We understand these prayers are sectarian, include Christian references, and end with "In Jesus' name, Amen."

With the exception of one twelve year-old unpublished trial court case from the 9th Circuit, the authorities you rely upon for your conclusion that invocations at school board meetings are impermissible are from the 3rd Circuit, the 6th Circuit, and the 5th Circuit. None of these authorities binds the District. Further, you neglect the opinion of the United States Supreme Court in *Marsh V. Chambers* 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), which upheld the Nebraska Legislature's decades-old practice of opening each legislative day with a prayer delivered by a state-employed chaplain.

You may not be aware that the 9th Circuit Court of Appeals has recently revisited the issue of legislative prayer and upheld the practice. In *Rubin v. City of Lancaster* 710 F.3d 1087; 2013 U.S.App. LEXIS 6007; (2013), Plaintiff citizens challenged the practice of the City

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MARGARET A. CHIDESTER & ASSOCIATES

Andrew L. Seidel, Esq.

October 7, 2013

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Council of Lancaster, California of opening meetings with privately led prayers, alleging that this caused an unconstitutional establishment of religion.

The City utilized a two step process to solicit volunteers. The City Clerk compiled and maintained a database of religious congregations with an established presence in the City. All such congregations were eligible to appear on the list, which does not probe the faith, denomination or other religious belief of a congregation.

The City then mailed each listed religious group an invitation to open a City Council meeting with an invocation, stating, "This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the City Council requests that the prayer opportunity not be exploited as an effort to convert others ... nor to disparage any faith or belief different [from] that of the invitational speaker." The policy of the City Council expressly stated it was not the intent of the City to in any way affiliate the Council with, nor express the City Council's preference for any faith or religious denomination; rather, to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented among its citizens. For this reason, the Council allowed each congregation a maximum of three non-consecutive invocations per year.

The *Lancaster* Court carefully examined the case law since the decision in *Marsh*, observing the Supreme Court declined to apply the *Lemon* test. It observed that the City had taken protective measures to assure inclusivity. Under the policy, the Clerk must make every reasonable effort to insure that a variety of eligible invitational speakers are scheduled, but in no event, may a speaker be scheduled to offer a prayer at consecutive meetings, or more than three meetings in any calendar year. The Clerk was directed to invite every local religious group that can be found, and to schedule appearances on a first-come, first-served or other random basis.

Plaintiffs complained that between the day the City ratified its policy and the day of the invocation objected to by Plaintiffs, twenty prayers were given by members of Christian denominations, each mentioning the name of Jesus, four were given by a self-identified "metaphysicist", one was given by a Sikh, and another by a Muslim. Plaintiffs argued that the City's facially neutral policy, it advanced Christianity because most of the volunteers so far had been Christian and had given Christian invocations. The court noted, "This argument misconceives the focus of our inquiry. Whatever the content of the prayers or the denomination of the prayer givers, the City chooses neither. That most so far have been Christian is merely a function of local demographics and the choices of the religious leaders who responded out of their own initiative to the City 's invitation."

Like your organization, the *Lancaster* plaintiffs objected because some prayers referred to "Jesus Christ". They sought a ban on prayers in the name of Jesus Christ or any other

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Andrew L. Seidel, Esq.

October 7, 2013

Page 3

religious figure. The *Lancaster* Court rejected this proposed restriction, as it would “assign to the government the task of co-authoring prayers.” The Court determined that a state-imposed requirement that all legislative prayers be non-denominational begins to take the form of an official or civil religion, which could itself be a violation of the Establishment Clause.

CONCLUSION

For many years, the District has, in an inclusive fashion very similar to the *Lancaster* facts, invited leaders of all faiths represented in the Chino community to participate in the invocation process. The Board of Education believes this inclusivity welcomes the diversity of our community, and does not place the imprimatur of the School Board on any particular religious faith.

We trust this information addresses your concern.

Very truly yours,



Margaret A. Chidester

MAC:dg

cc: Ms. Sylvia Orozco, Board President

Board of Education

Mr. Wayne Joseph, Superintendent