

Governing Board Meeting Prayer Held Unconstitutional

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The Court of Appeals for the Ninth Circuit recently concluded that a school district governing board's policy and practice of conducting religious prayer at its meetings was unconstitutional. (*Freedom From Religion Foundation, Inc. v. Chino Valley Unified School District Board of Education* (9th Cir. 2018) ____ F.3d ____ [2018 WL 3552446].) The Court found that the Board's policy and practice violated the Establishment Clause, which prohibits a governmental establishment of religion, because its predominant purpose was to advance or favor religion. The Court found that the exception from this prohibition which allows legislative bodies to include prayer at the beginning of their meetings did not apply to school district governing boards given the involvement of students and the lack of any historical tradition of prayer at board meetings. This ruling prohibits school district governing boards from having a policy or practice of allowing religious prayer at meetings.

Background

After including prayer as part of its meeting since 2010, in 2013 the Chino Valley Unified School District's governing board adopted a formal policy providing for prayer at each Board meeting. The policy sanctioned prayer during meetings "by an eligible member of the clergy or a religious leader in the boundaries of" the District, or in the absence of selected clergy, by a volunteer solicited by the Board President from the Board or audience at the meeting. During meetings, an "opening prayer" was conducted pursuant to the policy, and, in addition, Board members frequently engaged in readings from the Bible, additional prayers, and other proselytizing activities during meetings. The Plaintiffs sued the District, alleging "meetings resemble a church service more than a school board meeting." The federal district court ruled in the Plaintiffs' favor, finding the Board's policy and practice unconstitutional.

Decision

The Ninth Circuit upheld the lower court's ruling. The Court first rejected the District's argument that the prayer policy should be upheld under the "legislative tradition" line of cases that allow prayer to open legislative sessions. Second, it found that the policy and practice violated the Establishment Clause as its primary purpose was to advance religion. Thus, it concluded the policy and practice was unconstitutional.

The Court distinguished prayers that have traditionally opened sessions of legislatures from

prayers at school board meetings. (See *Marsh v. Chambers* (1983) 463 U.S. 783 and *Town of Greece v. Galloway* (2014) 134 S. Ct. 1811.) It noted, prayer at a governing board meeting “is not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate, that the legislative-prayer tradition contemplates.” The Court pointed out that governing board meetings “function as extensions of the educational experience of the district’s public schools,” and the presence of large numbers of children and adolescents at such meetings, in a “setting under the control of public-school authorities,” made school prayer “inconsonant with the legislative-prayer tradition.” Further, where the historical record suggested that the framers of the Bill of Rights accepted prayer at town halls and state legislative sessions, the historical record did not provide the same support as to school district governing boards given the lack of public education (and public school district governing boards) at the time.

After rejecting the legislative tradition argument, the Court then analyzed the prayer under the test established by the U.S. Supreme Court to determine whether government policy or practice violates the Establishment Clause. (*Lemon v. Kurtzman* (1971) 403 U.S. 602.) Under this test, a governmental practice will be deemed unconstitutional if: (1) it does not have a secular legislative purpose; (2) its principal or primary effect either advances or inhibits religion; or (3) it fosters an “excessive entanglement” with religion. The Court found in this case that the prayer policy and practice violated all three prongs of this test, and in particular the first, because it lacked “a secular legislative purpose.” The Court held that the policy’s predominant purpose was to advance or favor religion. The Court found that the prayer policy also failed the second and third prongs because “the prayers frequently advanced religion in general and Christianity in particular,” and because the policy fostered an excessive government entanglement with religion as there are “many ways besides prayer both to acknowledge the community’s religious diversity and to solemnize the Board meetings.”

Impact

This decision is consistent with prior court opinions on the relationship between religion and governmental entities, and serves as a reminder that local education agencies must be cautious in enacting official policies, or taking official actions, that either advance or inhibit the exercise of religion. This opinion explicitly directs that a governing board should not include prayer as part of its meeting procedure and highlights that in general governmental agencies such as school boards must remain officially neutral regarding religion. If you have any questions, please contact a DWK attorney.

PRACTICE AREAS

- Board Ethics, Transparency and Accountability