



Foundation for Moral Law

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July 13, 2010

VIA E-MAIL AND FIRST-CLASS MAIL

A.W. Bolt, President, and
Board Members
Hoover City Schools Board of Education
2810 Metropolitan Way
Hoover, Alabama 35243
Fax 205.439.1001

Re: Invocations at Hoover School Board meetings

Dear President Bolt and Board Members:

The Foundation for Moral Law (FML) is a religious-liberties legal organization based in Montgomery, Alabama, and dedicated to defending the unalienable right to acknowledge God, whether through public displays of the Ten Commandments, public prayer, and other historic American expressions. We understand that your Board formerly opened its meetings with a prayer but, as of last year, are now opening with a moment of silence instead. We also understand that there has been some discussion to bring prayer back to your meetings, but that Americans United for Separation of Church and State has recently sent you a threatening letter hinting that “the safer course of action would be to prohibit [prayer].” We at FML urge the Board to return opening prayer to its meetings, without censorship, and with the full freedom of religion that the First Amendment guarantees.

It should hardly be surprising that Americans United for Separation of Church and State (AUSCS) would be opposed to prayer at any public meeting. But to assert that such prayers are a violation of the Constitution is incorrect and misleading. Radical secularist groups like AUSCS routinely send bullying letters to city and county entities that contain distorted legal claims in the hopes of intimidating local officials into stopping prayers or at least censoring the content thereof. In reality, the law—and history—is on your side. Public prayers at government meetings comport with the finest of American traditions, dating back to at least the First Continental Congress.

The First Amendment requires that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” An opening prayer at a public meeting is not an unconstitutional “establishment of religion,” as recognized by the U.S. Supreme Court in *Marsh v. Chambers*, 463 U.S. 783 (1983):

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).

Id. at 792. Public prayer is a great American tradition, practiced by the Congress that penned the First Amendment. The founders never intended the First Amendment to prohibit other legislative or deliberative bodies—or anyone else—from asking guidance from the God to whom they prayed.

In its letter, AUSCS referred to several Supreme Court cases involving religious activities in public schools: *Lee v. Weisman*, *Abington School Dist. v. Schempp*, *Engel v. Vitale*, *Santa Fe Independent School District v. Doe*. But these citations are highly misleading. All of these cases involved religious activities for public school students. None of them involved prayers at school board meetings.

The AUSCS letter also refers to only *one* case in which prayer at school board meetings were held unconstitutional, *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999), but that case is not controlling in Alabama (or anywhere outside of Kentucky, Michigan, Ohio, or Tennessee).¹ Rather, Alabama and this Board are under the jurisdiction of the 11th Circuit Court of Appeals, which in 2008 *upheld* opening prayers by invited clergy at meetings of the Cobb County, Georgia Board of Commissioners. *Pelphrey v. Cobb County*, 547 F.3d 1263 (11th Cir. 2008). The Court relied heavily upon *Marsh*, stating:

As the Supreme Court stated in *Marsh*, “[T]here can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our

¹ Other courts have *upheld* opening prayers in the specific context of school board meetings. *See Doe v. Indian River Sch. Dist.*, 685 F. Supp. 2d 524 (D. Del. 2010) (holding that the board of education is a deliberative body and its policy of opening prayer at their meeting is constitutional); *Dobrich v. Walls*, 380 F. Supp. 2d 366 (D. Del. 2005).

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” *Marsh*, 463 U.S. at 792, 103 S.Ct. at 3336.

Prayers offered at school board meetings are no closer to being an unconstitutional “establishment of religion” than when they are offered at county, state, or federal legislative meetings—or even the U.S. Supreme Court. Like many courts around the country, the Supreme Court still opens its sessions with a cry from the Court Marshal: “God save the United States and this Honorable Court.” The Court in *Zorach* called its opening cry a “supplication,” and one of the many “references to the Almighty that run through our laws, our public rituals, [and] our ceremonies.” 343 U.S. at 313. Must the Hoover City Schools Board of Education censor itself of a tradition still regularly practiced by the U.S. Supreme Court? Of course not.

Groups like AUSCS usually advance their secularist agenda not by winning in court as much as by convincing local leaders to back down and surrender without a fight, even before the issue has been dealt with by a relevant court. The Birmingham City Council received a similar letter earlier this year from the atheist organization Freedom From Religion Foundation opposing the council’s prayers, but the council has stood firm. We urge you to also stand firm and return to the practice of opening your meetings with prayer to seek the favor of God.

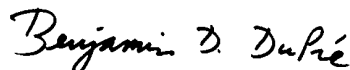
Radical secularists are frustrated by the *Marsh* decision and America’s long tradition of public prayer and will try anything to make such prayer go away. Please do not be intimidated by them, but know that law and history—and probably most of your constituents—support having an invocation at your meetings.

If we can assist you further in defending the Board against AUSCS and groups like it, please contact the Foundation for Moral Law.

Sincerely,
FOUNDATION FOR MORAL LAW



Judge Roy S. Moore, President
Former Chief Justice of the Alabama Supreme
Court



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Legal Counsel