

FREEDOM FROM RELIGION *foundation*

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March 17, 2022

SENT BY EMAIL AND U.S. MAIL: allboardofeducation@d49.org

John Graham
President
District 49 Board of Education
10850 East Woodmen Road
Peyton, CO 80831

Re: Unconstitutional Religious Endorsement

Dear President Graham and Members of the Board:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple instances of religious endorsement by District 49 Board of Education members. FFRF is a national nonprofit organization with more than 36,000 members across the country, including more than 1,100 members and two chapters in Colorado, one of which is in Colorado Springs. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Many concerned District community members have reported that members of the District 49 Board of Education have been using their positions to promote and endorse their personal religious views. One District community member reported that board member, Jamilynn D'Avola, proselytized a student in the District in an email sent as part of official District correspondence. Ms. D'Avola told the student:

God cares very deeply about every person and wants them to know who they are in Him... All people are created equal and no one can take that away from them because it was given to them by God. When someone fully understands who they are in Christ, then they will know they are valued and will be able to overcome depression and thoughts of suicide. They will know that there are only two genders and that there is absolute truth that comes from the Word of God. There is great freedom that comes from knowing the Lord Jesus Christ. He is the way, the truth, and the life, and no one comes to the Father except (sic) through Him. It is for freedom that Christ has set us free, but with this freedom comes great responsibility. We are not free to do whatever we feel like, we must uphold the values and truth of the Bible.

I know that you may not agree with me, and that is ok. I will still see you as the Lord sees you, as a child of the most high God who is loved and valued above all. You are unique, and God has given you special gifts and talents. I pray that God would reveal Himself to you so that you too can experience the love of the Father.

Thank you again for being willing to reach out to me to voice your concerns. You sound like a really neat kid and hopefully I can meet you someday. If you and your parents would like to meet with me and another board member please let me know and we can set this up.

Additionally, we received multiple complaints from District community members informing us that the District 49 Board of Education recently started holding prayer gatherings prior to each of its meetings, just outside of the building where the meetings take place. Our complainants shared a Facebook post made by Treasurer Ivy Liu on February 7, 2022:

The tides are changing! Conservative board members swept almost every district in El Paso County. The work has just begun. We are covered by prayers by several pastors in town. Pastor Mark Cawart of Church for All Nations will lead us in our first ever “Meet at the Flag Pole” at 5:45 PM PRIOR to Board Meeting this Thursday, 10 Feb at 3850 Pony Tracks Dr. Please come and encourage people to come. A pastor will lead the community in prayer prior to every board meeting from here on. All events are led by pastors and associated groups and not sponsored by the BOE.

While that was posted on the “Updates on Education in D49 from my perspective” Facebook page, it is clear that Ms. Liu runs that Facebook page. Ms. Liu posted from her personal Facebook page on March 8, 2022:

Every single school board in El Paso county is covered by prayers throughout our county. Pastor Beatty of the Reach Church will lead our “See You at the Pole” this week PRIOR to the D49 Board Meeting...

Please see the enclosed screenshots.

We write to request that board members immediately refrain from using their positions to promote and endorse religion as it is a violation of the Establishment Clause of the First Amendment. Ms. D’Avola must cease proselytizing students, and the board must cease hosting, organizing, promoting, or endorsing prayer events as part of its meetings. Though Ms. Liu claims in her posts that the flagpole prayer events are “led by pastors and associated groups and not sponsored by the BOE,” they take place just before board meetings, at the location of the meetings, are organized and promoted by school board members, and would be perceived by any reasonable observer as an endorsement of religion.

The Establishment Clause of the First Amendment prohibits government sponsorship of religious messages. The Supreme Court has said time and again that the “First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Ark.*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947). Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.”

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. at 589).

Hosting a prayer gathering prior to each school board meeting is akin to school board prayer, which violates the Establishment Clause of the First Amendment. See *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir.), en banc denied, 910 F.3d 1297 (9th Cir. 2018); *Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011), cert. denied, 132 S. Ct. 1097; *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).

As school board members, you represent a diverse population that consists of not only Christians, but also minority religious and nonreligious students, parents, and community members. Religious endorsements made in your official capacity send a message that excludes the 35 percent of Americans who are non-Christian.¹ Proselytizing students through your official positions and hosting prayer gatherings alienate the non-Christian and nonreligious citizens you represent, turning them into political outsiders in their own community.

Government officials can worship, pray, or spread their personal religious beliefs however they wish when acting in their personal capacities. But they are not permitted to provide prestige to their personal religion by infusing it with their official school board position. As school board members, you are charged with great responsibility and have been given significant trust by members of the District 49 community, including those students, parents, and staff members who do not share your religious viewpoint.

We ask that board members refrain from utilizing their positions to promote and endorse their personal religious beliefs. Ms. Liu and Ms. D'Avola must either fully comply with the Establishment Clause and stop violating the rights of District 49 students and their parents, or they must resign from the Board. Please inform us in writing of the steps taken to respect the rights of conscience of all District 49 community members, regardless of their religious or nonreligious beliefs.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosures

¹ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.



Updates on Education in D49 from my perspective



February 7 · 🌐

🙏🙏 🇺🇸 🙏 The tides are changing! Conservative board members swept almost every district in El Paso County. The work has just begun. We are covered by prayers by several pastors in town. Pastor Mark Cawart of Church for All Nations will lead the community in the first ever "Meet at the Flagpole" at 5:45 PM PRIOR to Board Meeting this Thursday, 10 Feb at 3850 Pony Tracks Dr. Please come and encourage people to come. 🙏🇺🇸🙏 A pastor will lead the community in prayer prior to every board meeting from here on. All events are led by pastors and associated groups and not sponsored by the BOE.



Ivy Liu



March 8 at 1:40 PM · 🌐

🙏🙏 🇺🇸 🙏 Every single school board in El Paso county is covered by prayers throughout our county. Pastor Beatty of the Reach Church will lead our "See You at the Pole" this week PRIOR to the D49 Board Meeting. 545P, Thursday, 10 Mar at 3850 Pony Tracks Dr (corner of Peterson Rd and N Carefree.) Please come show your highly needed community support and encourage all people to come. 🙏🇺🇸🙏 All events are led by pastors and associated groups and not sponsored by the BOE.