

ACLU of Virginia

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January 15, 2010

Via Facsimile (540-658-5963)

Stafford County School Board
Alvin York Bandy Administrative Complex
31 Stafford Avenue
Stafford, Virginia 22554

Re: Prayer at School Board Meetings

Dear School Board Members:

I understand that you recently had a legal training with Charles Haynes of the First Amendment Center to address the issue of opening prayers at school board meetings. I commend you for taking the time to learn about the legal issues involved, and would like to provide you with the ACLU of Virginia's position on the matter. Specifically, the ACLU of Virginia urges you to adopt either a moment of silence in lieu of prayer, or a policy ensuring that prayers be nonsectarian.

As Mr. Haynes noted, a moment of silence is a good option because it allows every individual to pray, or not pray, as he chooses. It allows the widest freedom of choice for participants, and ensures that the Board is not seen to take sides on religious issues.

If the School Board does have an opening prayer, it must be nonsectarian. Obviously, when people pray as individuals, they may do so in any fashion they choose; government may not censor individual prayers. But opening prayers at legislative meetings are *not* expressions of individual religious belief; they are official governmental speech. *Turner v. City Council of City of Fredericksburg*, 534 F.3d 352, 355 (4th Cir. 2008); *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276, 279 (4th Cir. 2005). And when the government speaks, it cannot play favorites among religions: "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982).

This basic principle – that government may not prefer one religious faith over another – holds true in the case of legislative prayer. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court upheld the practice of opening legislative meetings with prayer, but cautioned that the government must not "exploit" the prayer opportunity to "advance any one, or . . . disparage any other, faith or belief." 463 U.S. at 794-95. In a later case, the Court further explained that "'not even 'the unique history' of legislative prayer can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief." *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989). "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.'" *Id.* at 603.

If this were not clear enough, the Fourth Circuit has expressly held that a town council's practice of opening meetings with explicitly Christian prayers violated the First Amendment. *Wynne v. Town Council of Great Falls*, 376 F.3d 292 (4th Cir. 2004):

The invocations at issue, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in *Marsh*. Rather, they embody the precise kind of "advancement" of one particular religion that *Marsh* cautioned against.

Id. at 301-02. The court explained that "[w]hereas the prayers approved of in *Marsh* had been 'nonsectarian' and 'civil,'" the prayers at issue in *Wynne* "contained references to 'Jesus Christ,' and thus promoted one religion over all others, dividing the Town's citizens along denominational lines." *Id.* at 298-99.

In sum, prayers at school board meetings must be nonsectarian. The prayers at the last two school board meetings, which, according to the *Free Lance-Star*, were said "in Jesus Christ's name," violate that principle. The School Board should therefore have a clear policy mandating nonsectarian prayers, and should ensure that those who are invited to give invocations understand the policy. Of course, all of this could be avoided by returning to the moment of silence option.

I hope this information is helpful. Please feel free to contact me at (804) 644-8022 should you have any questions.

Sincerely,

Rebecca K. Glenberg
Legal Director