

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

AMERICAN HUMANIST ASSOCIATION,)
and ISAIAH SMITH)

Plaintiffs)

v.)

Case No. 4:15-cv-377

BIRDVILLE INDEPENDENT)
SCHOOL DISTRICT,)
BIRDVILLE INDEPENDENT SCHOOL)
DISTRICT BOARD OF TRUSTEES,)
CARY HANCOCK, in his individual)
and official capacity,)
JACK MCCARTY, in his individual)
and official capacity,)
DOLORES WEBB, in her individual)
and official capacity,)
JOE TOLBERT, in his individual)
and official capacity,)
BRAD GREENE, in his individual)
and official capacity,)
RICHARD DAVIS, in his individual)
and official capacity,)
and RALPH KUNKEL in his individual)
and official capacity)

Defendants)

COMPLAINT

Seeking to protect and vindicate their constitutional rights, Plaintiffs state as their complaint against the above-captioned Defendants the following:

NATURE OF THE CLAIMS

1. This action arises out of the Defendants’ policy, practice, and custom of permitting, promoting, and endorsing prayers delivered by school-selected students at

meetings of the Birdville Independent School District's Board of Trustees in violation of the Establishment Clause of the First Amendment to the United States Constitution.

2. Plaintiffs seek injunctive relief, declaratory relief under 28 U.S.C. § 2201, and damages under 42 U.S.C. § 1983 against the Defendants to redress this constitutional violation, together with recovery of attorney's fees and costs under 42 U.S.C. § 1988.

JURISDICTION AND VENUE

3. This case arises under the First Amendment to the Constitution of the United States and therefore presents a federal question within this Court's jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

4. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because at least one defendant resides within the boundaries of the Northern District of Texas and all defendants are residents of the State of Texas; and pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the Plaintiffs' claims occurred in this judicial district.

PARTIES

5. Plaintiff American Humanist Association ("AHA") is a nonprofit 501(c)(3) organization incorporated in Illinois with its principal place of business at 1777 T Street N.W., Washington, D.C. AHA is a membership organization, with over 30,000 members, 180 chapters and affiliates nationwide, and over 420,000 online supporters and followers. AHA promotes humanism and is dedicated to advancing and preserving separation of church and state and the constitutional rights of humanists, atheists, and other freethinkers. AHA brings this action to assert the First Amendment rights of its members.

6. Plaintiff Isaiah Smith is a citizen of the United States and the State of Texas, and at all times relevant to the facts stated herein resided in Tarrant County, Texas within the Birdville Independent School District. He is a member of the AHA. Mr. Smith attended Birdville High School, a school within the School District, and graduated in May 2014. Mr. Smith has attended numerous School Board meetings during his time as a student and as an alumnus because he believes it is vitally important for citizens to attend such meetings in order to monitor the behavior of their government representatives and ensure their accountability. Mr. Smith has had unwelcome contact with the School District's Christian prayers, which make him feel violated and uncomfortable because it appears to him that the Defendants are endorsing a particular religious ideology over his and all others, as well as religion over non-religion.

7. Defendant Birdville Independent School District ("School District") is the governing body of public schools in Richland Hills, Texas, as well as portions of Colleyville, Fort Worth, Haltom City, Hurst, North Richland Hills, and Watauga, Texas, and exists pursuant to the laws of the State of Texas.

8. Defendant Birdville Independent School District Board of Trustees ("School Board") is the governing body of the School District. According to Birdville ISD policy BA (Legal), "The Board shall constitute a body corporate and shall have the exclusive power to govern and oversee the management of the public schools of the District. Education Code 11.051(a), 11.151(b)." The School Board consists of seven members.

9. Defendant Cary Hancock is president of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of the North Richland Hills Baptist Church.

10. Defendant Jack McCarty is vice president of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of the North Richland Hills Baptist Church.

11. Defendant Dolores Webb is secretary of the School Board and resides in Tarrant County, Texas within the School District. She is a Christian and a member of Legacy Church of Christ.

12. Defendant Joe Tolbert is a member of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of The Hills Church of Christ.

13. Defendant Brad Greene is a member of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of the North Richland Hills Baptist Church.

14. Defendant Richard Davis is a member of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of the Birdville Baptist Church.

15. Defendant Ralph Kunkel is a member of the School Board and resides in Tarrant County, Texas within the School District. He is a Christian and a member of North Richland Hills Baptist Church.

FACTS

16. The facts alleged as to the parties above are incorporated by reference.

17. Defendant McCarty has been a member of the School Board since 2011.

18. Defendant Webb has been a member of the School Board since 1990.

19. Defendant Tolbert has been a member of the School Board since 2006.

20. Defendant Greene has been a member of the School Board since 2009.

21. Defendant Davis has been a member of the School Board since 2006.

22. Defendant Kunkel has been a member of the School Board since 2002.

23. According to their public profiles on the School District's official website, each School Board member is a member of the Christian faith. A true and accurate depiction of each profile on the School District's website is attached as Exhibit 1.

24. The School Board holds monthly regular meetings.

25. The School Board also periodically holds special meetings.

26. Regular School Board meetings consist of a closed session, which is not open to the public, and an open session, which is open to the public.

27. All regular School Board meetings take place in the School District Administration Building Board Room, 6125 East Belknap, Haltom City, Texas 76117.

28. Open sessions of regular meetings start at 7 p.m.

29. The regular School Board meetings are the primary means for citizens to observe and participate in the business of governing the School District.

30. The official agendas for the School Board meetings are available on its website at the following URL: <http://schools.birdvilleschools.net/Page/30913>.

31. Since at least 1997, Defendants' policy, practice, and custom have been to permit, promote, and endorse prayers at the beginning of the open portion of regular School Board meetings. True and accurate depictions of the School Board agendas from this period indicating these facts are attached as Exhibit 2–Exhibit 19. Because the School Board agendas contain the names of minors throughout, Exhibit 2–Exhibit 19 have been filed separately under seal.

32. Since at least 1997, Defendants and their agents and employees have had a policy, practice, and custom of selecting young elementary and middle school students from schools within the School District to deliver prayers as part of the regular School Board meetings. Occasionally, Defendants invite high school students to deliver the prayers.

33. The prayers are often Christian and make specific references to Jesus and Christ.

34. Prior to the March 26, 2015 School Board meeting, every agenda for regular meetings had a heading or subheading referring to an invocation.

35. For example, at the September 25, 2014 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE,” with the subheading “Invocation.” Ex. 18 at 35.

36. The invocation delivered at the September 25, 2014 School Board meeting was a prayer delivered by a middle school student, K.W., a minor.

37. At the October 23, 2014 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE,” with the subheading “Invocation.” Ex. 18 at 39.

38. The invocation delivered at the October 23, 2014 School Board meeting was a prayer delivered by an elementary school student, A.A., a minor.

39. At the November 20, 2014 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE,” with the subheading “Invocation.” Ex. 18 at 44.

40. The invocation delivered at the November 20, 2014 School Board meeting was a prayer delivered by an elementary school student, C.A., a minor.

41. At the December 11, 2014 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE,” with the subheading “Invocation.” Ex. 18 at 47.

42. The invocation delivered at the December 11, 2014 School Board meeting was a prayer delivered by an elementary school student, C.B., a minor.

43. The invocation C.B. delivered at the December 11, 2014 School Board was the following:

“Please bow your heads in prayer. Heavenly father, thank you for the blessings that we’ve received. Please guide our School Board in making the best decisions that will benefit the students, parents, and staff of the School District. Help them to stay focused on their goals, to keep our school on a forward and positive avenue.”

44. At the January 22, 2015 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE,” with the subheading “Invocation.” Ex. 19 at 2.

45. The invocation delivered at the January 22, 2015 Board meeting was a prayer delivered by an elementary school student, M.P., a minor.

46. At the February 26, 2015 School Board meeting, the meeting agenda contained the heading “INVOCATION AND PLEDGES OF ALLEGIANCE.” Ex. 19 at 7.

47. The invocation delivered at the February 26, 2015 School Board meeting was a prayer delivered by either H.B., a minor, or D.J., a minor, both of whom are high school students.

48. For the March 26, 2015 School Board meeting, the School Board altered the meeting agenda heading it had used for all its previous meetings from “INVOCATION AND PLEDGES OF ALLEGIANCE” to “INTRODUCTION OF MEETING,” which now includes the subheadings “Pledges of Allegiance” and “Student Expression.” Ex. 19 at 10.

49. Defendants Hancock, McCarty, Webb, Tolbert, Greene, Davis, and Kunkel regularly participate in the prayers.

50. Defendants intended, knew, or should have known that invocations delivered at the above-mentioned School Board meetings would take the form of prayers.

51. Plaintiffs are not aware of a single prayer delivered at Defendants’ meetings that was a non-Christian prayer, such as a Muslim prayer or a Humanist invocation.

52. The prayers are directed to the public through the use of words such as “let us pray” and “please stand for the prayer,” “please bow your heads,” and similar phrases.

53. In addition to the students present at the meetings to deliver the School Board’s opening prayers, students and teachers regularly attend School Board meetings as well.

54. For example, at the October 23, 1997 School Board meeting, during which the invocation was delivered by a Smithfield Middle School student, the School Board presented several awards to School District teachers and recognized several students as National Merit Semifinalists. Ex. 2 at 8.

55. At the March 26, 1998 School Board meeting, during which the invocation was delivered by a Hardeman Elementary School student, several coaches were recognized for having won district sports championships. Ex. 3 at 5.

56. At the May 24, 2001 School Board meeting, during which the invocation was delivered by a Snow Heights Elementary School student, a number of National Merit Scholars from the district were recognized. Ex. 6 at 12.

57. At the May 22, 2003 School Board meeting, during which the invocation was delivered by a David E. Smith Elementary student, the School Board recognized the valedictorians and salutatorians from the District's high schools. Ex. 8 at 15.

58. At the August 26, 2004 School Board meeting, during which the invocation was delivered by a Watauga Middle School student, the School Board gave Steve Ellis the Region XI Elementary Principal of the Year award. Ex. 9 at 30–31.

59. At the December 13, 2006 School Board meeting, during which the invocation was delivered by a South Birdville Elementary student, there was a performance by the Richland High School Rebellaires, a school choir group. Ex. 11 at 49.

60. At the June 26, 2008 School Board meeting, during which the invocation was delivered by an Academy at Carrie F. Thomas Elementary student, the School Board recognized the District's Special Olympics athletes, as well as the District's champion coaches and athletes. Ex. 12 at 22.

61. At the December 16, 2009 School Board meeting, during which the invocation was delivered by a Shannon Learning Center student, there was a performance by the Haltom Singers, a school choir group. Ex. 13 at 35.

62. At all relevant times, Defendants Hancock, McCarty, Webb, Tolbert, Greene, Davis, and Kunkel or their predecessors in office were acting within the course and scope of duties as members of the School Board and under color of state and local law.

63. A reasonable observer would conclude that Defendants endorsed the above-mentioned prayers delivered at the beginnings of the School Board meetings.

64. Defendants' policy, practice, and custom for selecting students to give invocations at School Board meetings is intended to seek out, and has the effect of seeking out, students who will deliver prayers.

65. Defendants' agents and employees carry out Defendants' policy, practice, and custom of seeking out students who will deliver prayers at School Board meetings.

66. Defendants' policy, practice, and custom of selecting students to deliver prayers at School Board meetings, regardless of whether the prayers are Christian or non-sectarian, endorses and advances religion over non-religion.

67. A reasonable observer would conclude that Defendants' actions in inviting school children to deliver prayers at Board Meetings to be an endorsement of religion generally, and of Christianity specifically.

68. Plaintiff Smith has attended School Board meetings on numerous occasions, including the December 11, 2014 and April 23, 2015 meetings.

69. Plaintiff Smith considers the School Board's prayers to be divisive and exclusionary, leaving him to conclude that he is unwelcome at School Board meetings and a political outsider in his own community.

70. On December 15, 2014, AHA sent a letter ("AHA Letter") to Defendant Hancock and Darrell Brown, the School District's superintendent, informing them that

Defendant School District's policy, practice, and custom of promoting and sponsoring prayers at Board meetings was unconstitutional. A true and accurate copy of the letter is attached as Exhibit 20.

71. On March 19, 2015, the School District responded to AHA through its counsel, Haley Turner, stating that it would continue its practice of allowing prayers at School Board meetings. A true and accurate copy of Defendant School District's response is attached as Exhibit 21.

72. The above-mentioned actions are part of a pattern of First Amendment violations committed by Defendants.

73. Prior to sending the December 2014 AHA Letter, AHA had notified Defendants of other First Amendment infringements occurring under their authority.

74. For example, on May 7, 2014, AHA sent a letter to Defendants and its officials at Birdville High School ("BHS"), notifying them that several of their practices violated the Establishment Clause. The letter stated in part: "This letter is to inform you of the following violations of the First Amendment of the United States Constitution: (1) School Sponsorship of Baccalaureates; (2) School-Sponsored Church Overnights and Religious Assemblies; and (3) Christian Iconography in Classrooms." A true and accurate copy of the letter is attached as Exhibit 22.

75. In October 2013, Plaintiff Smith was suspended from BHS for tearing a Bible and then carrying his ripped Bible at school. Mr. Smith carried the ripped Bible to school in response to being bullied by Christian students who told him he would go to hell because he is gay. Mr. Smith was told he could bring a Bible to school but not a ripped Bible. On October 31, 2013, AHA sent a letter to Defendants on behalf of Mr. Smith,

informing them that “[t]he school’s actions amount to egregious viewpoint discrimination in violation of the Free Speech Clause of the First Amendment.” A true and accurate copy of the letter is attached herein as Exhibit 23.

76. On November 6, 2013, Defendants responded to letter, refusing to expunge his record of the suspension. A true and accurate copy of the letter is attached as Exhibit 24.

77. On November 15, 2013, AHA responded, insisting Defendants expunge his record of the suspension. A true and accurate copy of this letter is attached as Exhibit 25. Ultimately, the school agreed to expunge Mr. Smith’s record of suspension.

78. The above-mentioned incidents are indicative of Defendants’ broader policy, practice, and custom of favoring Christianity over all other religions and favoring religion over non-religion.

CAUSES OF ACTION

79. Defendants’ policy, practice, and custom of permitting, promoting, advancing, sponsoring, and endorsing prayers at School Board meetings violates the Establishment Clause of the First Amendment to the United States Constitution (“Establishment Clause”).

80. Defendants’ actions and policies described above lack a secular purpose, have the effect of promoting, favoring, and endorsing religion—particularly Christianity—over non-religion, and result in an excessive entanglement between government and religion, thus violating the Establishment Clause.

81. Defendants’ actions and policies described above create a coercive atmosphere where attendees, particularly children, are pressured to participate in the prayers, thus violating the Establishment Clause.

82. Each of the individual Defendants, in their individual capacities, intentionally, knowingly, or recklessly violated Plaintiffs' well-settled constitutional rights under the Establishment Clause.

83. In violating the Establishment Clause as described above, Defendants acted under color of law in violation of 42 U.S.C. § 1983.

RELIEF SOUGHT

84. Plaintiffs respectfully request that this Court grant the following relief:
- i. A declaratory judgment that Defendants' actions and policies described above violate the Establishment Clause of the First Amendment to the United States Constitution;
 - ii. A permanent injunction enjoining the Defendants, their successors, and any person in active concert with the Defendants from intentionally, knowingly, recklessly, or negligently allowing prayers to be delivered as part of any school-sponsored event, including but not limited to School Board meetings;
 - iii. An award of nominal damages to Plaintiffs;
 - iv. An award of punitive damages to Plaintiffs from Cary Hancock in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
 - v. An award of punitive damages to Plaintiffs from Jack McCarthy in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;

- vi. An award of punitive damages to Plaintiffs from Dolores Webb in her individual capacity for her intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
- vii. An award of punitive damages to Plaintiffs from Joe Tolbert in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
- viii. An award of punitive damages to Plaintiffs from Brad Greene in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
- ix. An award of punitive damages to Plaintiffs from Richard Davis in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
- x. An award of punitive damages to Plaintiffs from Ralph Kunkel in his individual capacity for his intentional, knowing, or reckless disregard of the Plaintiffs' constitutional rights;
- xi. An award of Plaintiffs' attorneys' fees, expenses, and costs reasonably incurred in prosecuting this action pursuant to 42 U.S.C. § 1988(b); and
- xii. An award to Plaintiffs of such other relief as this Court deems just and proper.

May 18, 2015

Respectfully submitted,

s/Patrick Luff

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