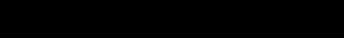
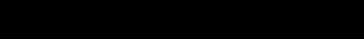


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Bradley G. Hubbard (*pro hac vice pending*)
Matthew Scorcio (*pro hac vice pending*)
Elizabeth A. Kiernan (*pro hac vice pending*)
Stephen J. Hammer (*pro hac vice pending*)
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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Heather Rooks,

Plaintiff,

v.

Peoria Unified School District,

Defendant.

CASE NO. _____

COMPLAINT

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INTRODUCTION

1. For centuries, public officials in the United States have quoted scripture while carrying out their official duties. When President Biden addressed the nation in 2021 after withdrawing American troops from Afghanistan, he said that military members “have drawn inspiration from the Book of Isaiah, when the Lord says, ‘Whom shall I send . . . who shall go for us?’ And the American military has been answering for a long time: ‘Here am I, Lord. Send me.’”¹ When President Lincoln addressed the nation at his second inauguration in 1865, he reminded Americans that the Book of Matthew teaches “[t]he Almighty has His own purposes. ‘Woe unto the world because of offences for it must needs be that offences come; but woe to that man by whom the offence cometh.’”² And when President Washington resigned his command of the Continental Army in 1783, he quoted Micah 6:8 in praying that “God would have you and the State over

¹ Remarks by President Biden on the Terror Attack at Hamid Karzai International Airport (Aug. 26, 2021) (quoting Isaiah 6:8–9), *available at* <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/26/remarks-by-president-biden-on-the-terror-attack-at-hamid-karzai-international-airport/> (last accessed Sept. 25, 2023).

² Second Inaugural Address (Mar. 4, 1865) (quoting Matthew 18:7), *available at* <https://www.loc.gov/resource/lprbscsm.scsm0304/> (last accessed Sept. 25, 2023).

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1 which you preside . . . to do Justice, to love mercy and to demean ourselves,
2 with . . . the Characteristicks of the Divine Author of our blessed Religion.”³

3 2. Heather Rooks isn’t a famous historical figure or a household
4 name, but she too wants to be part of the longstanding tradition of
5 government officials solemnizing public occasions in this way. Elected to
6 the Peoria Unified School District Governing Board in 2022 with the most
7 votes in the District’s history, Rooks took her seat in early 2023. She
8 participates in public meetings where the Board enacts policies and
9 procedures, manages the District’s finances, and makes personnel
10 decisions. During each meeting, the agenda includes a brief “Board
11 comments” period where individual Board members may offer remarks of
12 their own choosing. Since the beginning of her public service on the Board,
13 Rooks has opened her comments by quoting a short scripture from the Bible.

14 3. Rooks’ brief recitation of scripture at the Board meetings made
15 her the target of outside activist groups, who barraged her with complaints,
16 grievances, and threats of legal action. The Board, too, has warned Rooks
17 that, in the Board’s view, quoting scripture during a public meeting is
18 unlawful. To vindicate her statutory and constitutional rights as a Board
19 member and citizen, Rooks respectfully brings this action to declare those

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21 ³ Letter from G. Washington to the States (June 8, 1783) (quoting
22 Micah 6:8), *available at* <https://founders.archives.gov/documents/Washington/99-01-02-11404> (last accessed Sept. 25, 2023).

1 rights—and to dispel the confusion that has regrettably clouded a practice
2 as old as the Republic itself. After all, the current U.S. President, the first
3 U.S. President, and an unbroken chain of U.S. officials in between have
4 quoted scripture to solemnize official occasions or speeches, encourage their
5 fellow citizens, and fortify themselves to carry out their official duties.
6 There is nothing unlawful about Rooks doing likewise.

7 4. Arizona’s history, too, confirms that using religious references
8 to solemnize public occasions is common, lawful, and accepted in this State.
9 When Arizona’s Supreme Court “review[ed] Arizona history and scan[ned]
10 the present day horizon,” it concluded that “religion has never been
11 hermetically sealed off from other institutions in this state, or the nation.”
12 *Kotterman v. Killian*, 972 P.2d 606, 622–23 (Ariz. 1999) (en banc). The
13 State’s Constitution begins with the preamble “We, the people of the State
14 of Arizona, grateful to Almighty God for our liberties, do ordain this
15 Constitution.” *Id.* at 623. And “to this day[,] Arizona legislative sessions
16 begin with a prayer delivered by the Chaplain of the Day.” *Id.* The Peoria
17 City Council also begins each meeting with a prayer.⁴

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19 ⁴ City Council Meeting Notice & Agenda (Sept. 19, 2023), *available at*
20 <https://peoriaaz.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=945&MinutesMeetingID=-1&doctype=Agenda> (last accessed Sept. 25,
21 2023) (listing “Invocation” on meeting agenda); City Council Meeting –
22 09/19/2023 (Sept. 19, 2023), *available at* <https://peoriaaz.ompnet.org/embed/sessions/277114/city-council-meetings-09-19-2023> (last
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FACTUAL BACKGROUND

I. Heather Rooks begins serving as a school board member.

13. As a civic-minded mother of four children attending school in the District, Rooks began attending Board meetings and monitoring the Board’s policy decisions in 2021.

14. Rooks soon decided to run for a seat on the Board. In November 2022, voters in the District elected her with the most votes in the District’s history. She began her term as a Board member in January 2023.

15. As a Board member, one of Rooks’ primary responsibilities is attending and participating in Board meetings. The Board typically meets twice a month to vote on various issues relating to school policy, evaluate budgets, answer questions, and listen to concerns from the community.

16. Board meetings are open to the public and entirely voluntary for anyone to attend, watch online, or not attend at all. Attendees regularly come and go as they desire. There’s no obligation or requirement that an attendee stay for any particular amount of time or for any particular reason. At various times, the Board will invite people who have been recognized for their work or accomplishments to leave before the meeting moves on to other, unrelated matters, if they so choose.

17. Board meetings regularly begin with a moment of silence, followed by reciting the Pledge of Allegiance, including the line “one nation under God.”

1 **II. Rooks quotes scripture during her individual Board**
2 **comments.**

3 18. Board meeting agendas include a time called “Board comments”
4 for individual Board members to make remarks, including on topics not
5 specifically listed on the agenda. At the beginning of her comments, Rooks
6 would often recite a brief Bible verse—a simple quotation without
7 elaboration or further comment. She didn’t ask for or prompt anyone else’s
8 participation or acknowledgment. Each time Rooks recited a scripture, she
9 chose the verse to solemnize the occasion and fortify herself to perform her
10 official duties.

11 19. After reciting a scripture, Rooks used her Board comments to
12 thank the voters, staff, teachers, parents, and other members of the Board;
13 wish members of the community happy Mother’s Day, Father’s Day, and
14 Independence Day; and bring attention to various issues affecting the
15 District.

16 20. During Rooks’ Board comments at her first Board meeting on
17 January 12, 2023, she thanked her supporters, promised to stand firm in
18 her service to the community, and recited Joshua 1:9: “Have I not
19 commanded you? Be strong and courageous. Do not be afraid; do not be
20 discouraged, for the Lord your God will be with you wherever you go.” The
21 Board then heard the superintendent’s comments, discussed and approved
22

1 official representation to other committees and organizations, and listened
2 to public comment.⁵

3 21. During Rooks’ Board comments at the February 9, 2023 Board
4 meeting, she recited Isaiah 41:10: “So do not fear, for I am with you; do not
5 be dismayed, for I am your God. I will strengthen you and help you; I will
6 uphold you with my righteous right hand.” After Rooks finished her Board
7 comments, including by thanking staff and teachers, the Board heard public
8 comments about various matters and reviewed a variety of governance
9 documents—including a human resources report, a donation report, staff
10 travel requests, and an application from the Department of Veterans
11 Affairs. The Board continued by voting to approve items including (1) the
12 2022 audit and financial reports for the District; (2) a temporary funding
13 increase for summer school; and (3) policy changes regarding how the
14 District enrolls and educates children who are in foster care.⁶

15 22. Rooks again recited a Bible verse during her Board comments
16 at the February 23, 2023 Board meeting. She recited Proverbs 22:6: “Train
17 up a child in the way he should go: and when he is old, he will not depart

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19 ⁵ Peoria Unified School District Governing Board Meeting (Jan. 12,
20 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

21 ⁶ Peoria Unified School District Governing Board Meeting (Feb. 9,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

1 from it.” Rooks then finished her Board comments, including by thanking
2 various schools, teachers, and staff for their hard work. The Board’s
3 president, David Sandoval, took a moment of silence and asked for thoughts
4 and prayers for a student who had recently passed away. The Board also
5 heard public comments, addressed school social worker salaries, and
6 discussed the master plan regarding school facilities.⁷

7 23. During Rooks’ Board comments at the March 9, 2023 Board
8 meeting, she recited 1 Corinthians 16:13: “Be on guard. Stay awake, stand
9 firm in your faith, be brave, be strong.” After Rooks finished her Board
10 comments, which also included thanking teachers, the Board then
11 appointed a Director of Federal Programs, heard comments from the
12 Superintendent, and approved items on the consent agenda.⁸

13 24. During Rooks’ Board comments at the April 13, 2023 Board
14 meeting, she recited Psalm 16:8: “I will keep my eyes always on the Lord.
15 With him at my right hand, I will not be shaken.” After Rooks finished her
16 Board comments, including by thanking volunteers, staff, and parents, the
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18 ⁷ Peoria Unified School District Governing Board Meeting (Feb. 23,
19 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
20 accessed Sept. 25, 2023).

21 ⁸ Peoria Unified School District Governing Board Meeting (Mar. 9,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

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1 Board appointed a Director of Learning and Teaching, voted on renewing
2 employee health benefits, and listened to a number of informational reports,
3 including on the Arizona legislature.⁹

4 25. During Rooks' Board comments at the April 27, 2023 Board
5 meeting, she recited Psalm 16:1: "Keep me safe, my God, for in you I take
6 refuge." After Rooks finished her Board comments, including by thanking
7 staff and teachers, the Board appointed an Executive Director of Facilities
8 and Planning, as well as principals for two of its schools.¹⁰

9 26. During Rooks' Board comments at the May 11, 2023 Board
10 meeting, she paraphrased 1 John 4:4: "God is greater than the giants you
11 face." After Rooks finished her Board comments, including by thanking
12 staff and teachers and wishing mothers a happy Mother's day, the meeting
13 continued with more travel requests, discussions regarding capital assets,
14 contract extensions with various third-party services, and other policy
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18 ⁹ Peoria Unified School District Governing Board Meeting (Apr. 13,
19 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
20 accessed Sept. 25, 2023).

21 ¹⁰ Peoria Unified School District Governing Board Meeting (Apr. 27,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

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1 matters. The Board then voted on another round of issues relating to the
2 District's budget and policies.¹¹

3 27. During Rooks' Board comments at the May 22, 2023 Board
4 meeting, she recited 1 Corinthians 2:5: "That your faith might not rest in
5 the wisdom of men but in the power of God." After Rooks finished her Board
6 comments, the Board heard comments from the public on a variety of issues,
7 engaged with the District's Chief Financial Officer regarding a possible
8 school bond, and received a detailed report on the adoption process for
9 certain textbooks for the District.¹²

10 28. During Rooks' Board comments at the June 8, 2023 Board
11 meeting, she recited Ephesians 6:13: "Therefore, put on every piece of God's
12 armor so that you will be able to resist the enemy in the time of evil. Then
13 after the battle you will still be standing firm." After Rooks finished her
14 Board comments, including by congratulating recent graduates and
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18 ¹¹ Peoria Unified School District Governing Board Meeting (May 11,
19 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
20 accessed Sept. 25, 2023).

21 ¹² Peoria Unified School District Governing Board Meeting (May 22,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

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1 thanking staff and teachers, the Board appointed an acting superintendent,
2 voted on various school fees, and reviewed enrollment statistics.¹³

3 29. During Rooks' comments at the June 22, 2023 Board meeting,
4 she recited Hebrews 10:23: "Let us hold tightly without wavering to the
5 hope we affirm, for God can be trusted to keep his promise." After Rooks
6 finished her Board comments, including by thanking the Superintendent,
7 Dr. Jason Reynolds, for helping her when she locked her keys in her car,
8 wishing fathers a happy Father's Day, and wishing all a happy
9 Independence Day, the Board meeting continued, and similar to the others,
10 included discussions and votes over matters relating to educational and
11 school policy.¹⁴

12 **III. Outside activist groups complain, and the District advises**
13 **Rooks of its view that quoting scripture during Board**
14 **comments is unlawful.**

15 30. Shortly after the February 9, 2023 Board meeting, the legal
16 director for Secular Communities for Arizona, Inc., an activist group that
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18 ¹³ Peoria Unified School District Governing Board Meeting (June 8,
19 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
20 accessed Sept. 25, 2023).

21 ¹⁴ Peoria Unified School District Governing Board Meeting (June 22,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

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1 says it aims “to ensure a secular state government,”¹⁵ submitted a complaint
2 to the Board asserting that Rooks’ recitation of scripture amounted to
3 “unconstitutional proselytizing.” Ex. A at 1. The letter argued that Rooks
4 had no right under the First Amendment to quote scripture and that
5 “[t]hese practices violate the Establishment Clause of the First
6 Amendment.” Ex. A at 2. The letter further asserted that Rooks violated
7 the Arizona State Constitution, as well as the Governing Board Operation
8 Goals. Ex. A at 4.

9 31. After receiving Secular Communities’ complaint, the Board’s
10 legal counsel, Lisa Anne Smith, prepared an email to Board members
11 stating that they couldn’t pray or recite scripture during Board meetings.

12 32. Kimberly Kontra, executive assistant for the Board, sent the
13 Board an email summarizing Smith’s legal direction:

14 [A] board member acting in their role as such, should not read
15 Scripture during a board meeting, as it violates the
16 Establishment Clause. Legal counsel also stated that the First
17 Amendment is not applicable in this situation, as one is speaking
18 as a member of the public governing body, not an individual. In
19 addition to this topic, it was asked what can be said or shared
20 under Board Comments. The Governing Board attorney stated
21 that Board Comments is meant for a brief summary of current
22 events as it relates to service as a board member, such as school
visits, recognizing students, staff, etc. Anything beyond this
could be a violation of the Open Meeting Law.

¹⁵ Secular AZ, “About Us,” available at <https://secularaz.org/about-secular-az/> (last accessed Sept. 25, 2023).

1 Ex. B at 1.

2 33. During the March 1, 2023 Agenda Planning Meeting—which
3 Rooks as the Board Clerk, Superintendent Reynolds, Board President
4 Sandoval, and Board legal counsel Smith attended online—Rooks sought
5 clarification from Superintendent Reynolds about Smith’s legal opinion.
6 Superintendent Reynolds asked Smith to clarify, and Smith stated that her
7 legal opinion that reading scripture during Board meetings violated the
8 Establishment Clause remained unchanged.

9 34. Following the Agenda Planning Meeting, Superintendent
10 Reynolds sent a memorandum to Board members documenting the fact that
11 Smith’s legal opinion stating that Board members could not recite Scripture
12 during Board meetings remained unchanged.

13 35. At the March 9, 2023 Board meeting, shortly after Rooks recited
14 1 Corinthians 16:13 (“Stay awake, stand firm in your faith, be brave, be
15 strong”), Board President Sandoval interrupted Rooks’ Board comments
16 period to tell her that “each one of us has received an email from legal” that
17 “reciting scripture at a board meeting on this side of the dais goes against
18 the Establishment Clause.”¹⁶

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21 ¹⁶ Peoria Unified School District Governing Board Meeting (Mar. 9,
22 2023), *available at* <https://www.youtube.com/@PUSDOfficialChannel> (last
accessed Sept. 25, 2023).

1 36. On May 25, 2023, a staff attorney from Freedom From Religion
2 Foundation, Inc., a national activist and litigation group describing itself
3 “as an umbrella for those who are free from religion and are committed to
4 the cherished principle of separation of state and church,”¹⁷ sent the Board
5 a letter complaining that Rooks was “using her position on the board to foist
6 her personal religious beliefs upon district parents and community
7 members.” Ex. C at 1. The letter requested “that the Board take whatever
8 action necessary to ensure that Ms. Rooks and all other members of the
9 Board respect the constitutional rights of the Peoria Unified School District
10 community.” Ex. C at 2. If the Board didn’t take such action, Freedom
11 From Religion warned, it “will subject the school district to unnecessary
12 liability and potential financial strain.” Ex. C at 2. The letter claimed that
13 Freedom From Religion had recently recovered more than \$275,000 in legal
14 fees and costs from a school district in a matter it previously litigated. Ex.
15 C at 2.

16 37. Around the time of Rooks’ remarks at the June 29, 2023 Board
17 meeting, a Freedom From Religion attorney sent another letter to the Board
18 about Rooks. This time, the letter made additional demands that “[t]he
19 board should move to censure any school board members who abuse their

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21 ¹⁷ Freedom From Religion Foundation, “What is FFRF’s Purpose?,”
22 *available at* <https://ffrf.org/faq/item/14999-what-is-the-foundations-purpose>
(last accessed Sept. 25, 2023).

1 position by pushing their personal religious beliefs during board meetings”
2 and should “take whatever action necessary to ensure its compliance with
3 the Constitution.” Ex. D at 2–3.

4 38. On July 12, 2023, the Board’s legal counsel, Ms. Smith, emailed
5 the Board in response to Freedom From Religion’s letter. The email made
6 clear that Freedom From Religion and Secular Communities “have
7 threatened that if board members do not stop offering bible verses, they will
8 take further action, such as filing a lawsuit against the District for violating
9 the First Amendment or filing an open meeting law complaint against any
10 board member who recites bible verses.” Ex. E at 1. After explaining why,
11 in the attorney’s view, reciting scripture during Board comments violated
12 the Constitution, the email addressed legal liability. It explained that if
13 sued, the “District would incur significant legal expenses in defending itself
14 against the lawsuit.” Ex. E at 2.

15 39. In contrast, when Board comments have been used for other
16 general remarks and quotations that don’t involve scripture, the District
17 doesn’t reprimand the Board member or send out guidance against the
18 practice. For example, at the August 25, 2022 Board meeting, former Board
19 member Cory Underhill quoted a TED Talk by author Julia Dhar called
20 “How to Disagree Productively and Find Common Ground.” According to
21 Underhill, the TED Talk says that “contempt has replaced conversation” in
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1 society. Underhill encouraged her listeners to instead maintain an open
2 mind to others’ ideas. No one challenged Underhill’s remarks, unlike the
3 District’s treatment of Rooks.¹⁸

4 **IV. Under threat of lawsuits and official reprisals, Rooks seeks a**
5 **judicial determination of her rights.**

6 40. After months of sustained external pressure from outside
7 activist groups and internal pressure from the Board itself, Rooks felt
8 compelled to stop quoting scripture in her Board comments. At the July 13,
9 2023 Board meeting, Rooks explained:

10 I received a letter from the School District directing me to stop
11 reciting Bible verses during School Board Meetings. The
12 District asserts that doing so violates the Establishment Clause
13 of the First Amendment. Based upon the District’s letter, I will
14 refrain from reciting Bible verses at this time and will have my
15 attorneys at First Liberty Institute handle this matter. Thank
16 you.

17 41. To determine her legal rights after receiving threats of legal
18 action and Board action, Rooks filed this declaratory suit.

19 **FIRST CLAIM FOR RELIEF**

20 **Absolute Legislative Immunity**

21 42. Rooks incorporates by reference all preceding factual
22 allegations.

¹⁸ Peoria Unified School District Governing Board Meeting (Aug. 25, 2022), available at <https://www.youtube.com/@PUSDOfficialChannel> (last accessed Sept. 25, 2023).

1 43. The Board performs legislative functions including setting
2 policy for the school district. Arizona has made a “legislative delegation of
3 power to the school board” to adopt “regulations” for school governance.
4 *Pendley v. Mingus Union High Sch. Dist. No. 4 of Yavapai Cnty.*, 504 P.2d
5 919, 924 (Ariz. 1972) (en banc). “Under Arizona law, the governing board
6 of a school district enacts all policies and procedures for schools.” *Canzoneri*
7 *v. Prescott Unified Sch. Dist.*, 2021 WL 3931269, at *4 (D. Ariz. Sept. 2,
8 2021).

9 44. Members of a state or local board that exercises legislative
10 power have legislative immunity for statements made during formal
11 meetings. When the “Arizona legislature delegate[s] legislative powers” to
12 “subordinate legislative bodies,” their members have “absolute immunity”
13 from suit over any acts done in the course of “performing a legislative
14 function,” including “speaking to a legislative body during a formal
15 legislative meeting.” *Sanchez v. Coxon*, 854 P.2d 126, 130 (Ariz. 1993) (en
16 banc).

17 45. Rooks is one member of the multi-member Board. Her
18 challenged remarks occurred at formal Board meetings during the official
19 proceedings.

20 46. “Freedom of speech and action in the legislature was taken as
21 a matter of course by those who severed the Colonies from the Crown and
22

1 founded our Nation.” *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951). When
2 Congress enacted the civil rights statutes that form the vehicle for asserting
3 federal rights against state officials, it did not “overturn the tradition of
4 legislative freedom achieved in England by Civil War and carefully
5 preserved in the formation of State and National Governments here,” nor
6 did it “subject legislators to civil liability for acts done within the sphere of
7 legislative activity.” *Id.* at 376.

8 47. Rooks has absolute immunity from federal and state-law claims
9 arising from her statements as a Board member during the official
10 proceedings of a formal Board meeting.

11 **SECOND CLAIM FOR RELIEF**

12 **No Violation of the Establishment Clause**

13 48. Rooks incorporates by reference all preceding factual
14 allegations.

15 49. Rooks’ recitation of a Bible passage, without comment,
16 elaboration, or proselytization, during her Board comments doesn’t violate
17 the Establishment Clause of the First Amendment. The Establishment
18 Clause provides that “Congress shall make no law respecting an
19 establishment of religion.” U.S. Const. amend. I.

20 50. Rooks’ practice accords with over 200 years of this Nation’s
21 historical practices and understandings. *See Marsh v. Chambers*, 463 U.S.
22 783, 786 (1983) (“The opening of sessions of legislative and other

1 deliberative public bodies with prayer is deeply embedded in the history and
2 tradition of this country.”). Public officials from Presidents Washington and
3 Lincoln up through President Biden routinely recited scripture while
4 performing their official duties.

5 51. Rooks’ practice likewise accords with Arizona’s history and
6 tradition. “[R]eligion has never been hermetically sealed off from other
7 institutions in this state, or the nation.” *Kotterman*, 972 P.2d at 622–23.
8 Far from it. Religion “[w]as part of the proceedings” at Arizona’s
9 constitutional convention, where “[e]ach day’s session was opened [with] a
10 prayer.” *Id.* at 623. The preamble to the Arizona Constitution expresses
11 gratitude “to Almighty God for our liberties.” *Id.* And “to this day Arizona
12 legislative sessions begin with a prayer delivered by the Chaplain of the
13 Day.” *Id.*

14 52. Rooks’ decision to recite scripture to solemnize the proceedings
15 and fortify herself to perform her official duties at the beginning of her
16 Board comments fits comfortably within this tradition. *See Town of Greece*
17 *v. Galloway*, 572 U.S. 565, 587 (2014) (“The principal audience for these
18 invocations is not, indeed, the public but lawmakers themselves.”).

19 53. Rooks doesn’t coerce or call for anyone else’s participation. She
20 doesn’t ask for anyone to bow their heads, stand, or participate in reading.
21 *See id.* (“That many appreciate these acknowledgments of the divine in our
22

1 public institutions does not suggest that those who disagree are compelled
2 to join the expression or approve its content.”).

3 54. Rooks’ recitation of scripture during her Board comments is
4 perfectly consistent with the Establishment Clause. This Court should
5 declare that Rooks’ brief quotations of scripture during her Board comments
6 time at public school board meetings do not violate the Establishment
7 Clause.

8 **THIRD CLAIM FOR RELIEF**

9 **Violation of the First Amendment: Freedom of Speech**

10 55. Rooks incorporates by reference all preceding factual
11 allegations.

12 56. The First Amendment forbids the government from “abridging
13 the freedom of speech,” including by regulating protected speech based on
14 its content, message, or viewpoint. U.S. Const. amend. I. Speech related to
15 matters of religious concern is entitled to even greater—or “doubl[ed]”—
16 protection under the First Amendment. *Kennedy v. Bremerton Sch. Dist.*,
17 142 S. Ct. 2407, 2421 (2022) (“That the First Amendment doubly protects
18 religious speech is no accident.”).

19 57. The Supreme Court has made clear that “[t]he manifest
20 function of the First Amendment in a representative government requires
21 that legislators be given the widest latitude to express their views on issues
22 of policy.” *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966). And “[t]he role that

1 elected officials play in our society makes it all the more imperative that
2 they be allowed freely to express themselves on matters of current public
3 importance.” *Wood v. Georgia*, 370 U.S. 375, 395 (1962).

4 58. The District’s official policy and actions—which purport to
5 ensure Rooks does “not read scripture” or “offer bible verses”—regulate her
6 speech based on its content, message, and viewpoint. The District’s policies
7 and actions therefore chill her ability to freely speak, in violation of the First
8 Amendment.

9 59. The threat of looming legal liability also chills Rooks’ protected
10 right to free speech, in violation of the First Amendment. *See, e.g., United*
11 *States v. Alvarez*, 567 U.S. 709, 723 (2012) (plurality).

12 **FOURTH CLAIM FOR RELIEF**

13 **Violation of the First Amendment: Free Exercise of Religion**

14 60. Rooks incorporates by reference all preceding factual
15 allegations.

16 61. The First Amendment’s Free Exercise Clause restricts the
17 government from “prohibiting the free exercise” of religion. U.S. Const.
18 amend. I. “The Clause protects not only the right to harbor religious beliefs
19 inwardly and secretly,” but “does perhaps its most important work by
20 protecting the ability of those who hold religious beliefs of all kinds to live
21 out their faiths in daily life.” *Kennedy*, 142 S. Ct. at 2421. The government
22

1 may not burden “sincere religious practice” by imposing policies that aren’t
2 “neutral’ or ‘generally applicable.’” *Id.* at 2421–22.

3 62. Rooks’ recitation of scripture at Board meetings is motivated by
4 her sincere religious belief.

5 63. The District’s policy and subsequent official actions directing
6 Rooks to “cease offering Bible verses at Board meetings” are neither neutral
7 nor generally applicable. On the contrary, they proceed in a manner
8 intolerant of religious belief. *See id.*

9 64. The District’s actions in forcing Rooks to stop reciting Bible
10 verses at Board meetings substantially burden her religious exercise by
11 forcing her to choose between following the precepts of her religion and
12 retaining her position as a member of the Board.

13 65. The District’s actions don’t serve a compelling government
14 interest and aren’t the least restrictive means of furthering any such
15 interest. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021).
16 The District’s actions violate Rooks’ First Amendment right to free exercise
17 of religion.

18 **FIFTH CLAIM FOR RELIEF**

19 **Violation of Arizona’s Free Exercise of Religion Act:
20 Burden on Free Exercise of Religion**

21 66. Rooks incorporates by reference all preceding factual
22 allegations.

1 67. Arizona’s Free Exercise of Religion Act provides that
2 “government shall not substantially burden a person’s exercise of religion
3 even if the burden results from a rule of general applicability.” Ariz. Rev.
4 Stat. Ann. § 41-1493.01(B). The Act was adopted “to protect Arizona
5 citizens’ right to exercise their religious beliefs free from undue
6 governmental interference.” *Brush & Nib Studio, LC v. City of Phoenix*,
7 448 P.3d 890, 918 (Ariz. 2019); *see also* Ariz. Rev. Stat. Ann. §§ 41-1493–41-
8 1493.04.

9 68. Rooks’ decision to recite scripture at Board meetings is
10 motivated by her sincere religious belief.

11 69. The District’s direction that Rooks stop reciting scripture at
12 Board meetings substantially burdens her religious exercise by forcing her
13 to choose between following the precepts of her religion and facing official
14 action.

15 70. The District’s actions don’t serve a compelling governmental
16 interest and aren’t the least restrictive means of furthering any purported
17 compelling interest and so violate Arizona’s Free Exercise of Religion Act.

18 71. Rooks is entitled to “appropriate relief against” the District for
19 violating the Act. Ariz. Rev. Stat. Ann. § 41-1493.01(D).

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SIXTH CLAIM FOR RELIEF

Violation of the Arizona Constitution: Free Speech

72. Rooks incorporates by reference all preceding factual allegations.

73. The Arizona Constitution guarantees that “[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” Ariz. Const. art. 2, § 6.

74. Rooks’ recitation of scripture at Board meetings is pure speech protected by the Arizona Constitution.

75. The District’s actions in coercing Rooks to stop reciting scripture chill her ability to freely speak. *See Brush & Nib Studio*, 448 P.3d at 901–02. The District’s direction that Rooks must “not read scripture” or “offer bible verses” regulates Rooks’ speech based on its message, content, and viewpoint.

76. The District has chilled Rooks’ ability to speak freely, in violation of the Arizona Constitution.

PRAYER FOR RELIEF

Rooks respectfully requests that this Court enter judgment against the District and order the following relief:

- A. Declare that Rooks is entitled to absolute legislative immunity for her recitation of scripture during Board comments.

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- B. Declare that Rooks’ recitation of scripture during Board comments doesn’t violate the federal Establishment Clause or the Arizona Constitution.
- C. Declare that any punishment for Rooks’ recitation of scripture during Board comments would violate her rights to free speech and free exercise of religion under the First Amendment to the U.S. Constitution and the Arizona Constitution.
- D. Award Rooks nominal damages for the past violations of her rights and for the District’s violation of Arizona’s Free Exercise of Religion Act.
- E. Award Rooks her costs and attorney’s fees for this lawsuit under Arizona’s Free Exercise of Religion Act, Ariz. Rev. Stat. Ann. § 41-1493.01(d), and any other applicable provision of law.
- F. Award Rooks pre- and post-judgment interest.
- G. Grant Rooks any other relief to which she is entitled.
- H. Retain jurisdiction of this matter as necessary for enforcing this Court’s orders.

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Dated: September 26, 2023

Respectfully submitted,

/s/ Andrew W. Gould
Andrew W. Gould
FIRST LIBERTY INSTITUTE
2001 W. Plano Parkway
Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
State Bar No. 013234

[Redacted]

/s/ Allyson N. Ho
Allyson N. Ho (*pro hac vice pending*)
Bradley G. Hubbard (*pro hac vice pending*)
Matthew Scorcio (*pro hac vice pending*)
Elizabeth A. Kiernan (*pro hac vice pending*)
Stephen J. Hammer (*pro hac vice pending*)
Bryston C. Gallegos (*pro hac vice pending*)
Jason J. Muehlhoff (*pro hac vice pending*)
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

[Redacted]
[Redacted]
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[Redacted]

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Heather Rooks

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Andrew Gould (Heather Rooks)
First Liberty Institute
2001 W. Plano Parkway, Ste. 1600
Plano, Texas 75075
(972) 941-4444**

**Allyson Ho
Gibson, Dunn & Crutcher LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100**

Defendant(s): Peoria Unified School District

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

440 Other Civil Rights

VI. Cause of Action:

U.S. Civil Statutes: 42 U.S.C. § 1983; 28 U.S.C. §§ 2201 and 2202. Brief description: Absolute Legislative Immunity; No Violation of the Establishment Clause; Violation of the First Amendment: Freedom of Speech; Violation of the First Amendment: Free Exercise of Religion;

Violation of Arizona’s Free Exercise of Religion Act: Burden on Free Exercise of Religion; Violation of the Arizona Constitution: Free Speech.

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **Declaratory and nominal monetary relief**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: Andrew Gould

Date: 9/26/2023

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

Exhibit A

From: [Heather Rooks](#)
To: [REDACTED]
Subject: Fw: [EXTERNAL] New form response notification
Date: Friday, February 17, 2023 9:16:41 AM

From: Governing Board Input Form [REDACTED] >

Sent: Sunday, February 12, 2023 1:37 PM

To: Heather Rooks <[REDACTED]>
[REDACTED]
[REDACTED]

Subject: [EXTERNAL] New form response notification

This message originated from outside our district.

Your form has a new entry. Here are all the answers.

| | |
|----------------------|--|
| Your Name | Dianne Post |
| Email Address | [REDACTED] |
| | <p>February 12, 2023 David Sandoval, Governing Board President Heather Rooks, Governing Board Clerk Melissa Ewing, Member Rebecca Hill, Member Dr. Bill Sorenson, Member 6330 W. Thunderbird Road Glendale, AZ 85306 Sent by online form Dear Governing Board Members, I am writing this letter on behalf of Secular Communities for AZ regarding a constitutional violation. Secular Communities is part of Secular Coalition, a nonprofit organization that represents Arizonans across the state. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism. We have received complaints about a constitutional violation at your school board meeting on February 9, 2023. During her opening remarks, Member Rooks used her position to engage in unconstitutional proselytizing. At 33:20 on the video tape of the meeting, she read aloud Isaiah 41:10. She addressed students as well thus indicating she knew there were students in the audience. During the public response, a member of the public mentioned that</p> |

reading scripture at a school board meeting was inappropriate. Member Rooks responded at 1:16:30 that she had the right to say whatever she wanted presumably referring to the First Amendment.

That comment indicates a failure to understand the Constitution and the fact that it protects those rights for everyone. No right exists completely unbound. In law school we tritely say that the First Amendment does not give you the right to shout “fire” in a crowded theatre, and that the right to swing my arm in the air ends where your nose begins. Every right in the Constitution, state and federal, has guardrails around it to protect that same right for everyone not a chosen few.

It is beyond the scope of a public-school board to conduct scripture reading as part of its meetings and for a board member to read scripture at meetings while serving in an official capacity at that meeting. These practices violate the Establishment Clause of the First Amendment. See *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), petition for review en banc denied, No. 16-55425 (9th Cir., Dec. 26, 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).

A public-school board is an essential part of the public school system. See *Coles*, 171 F.3d at 381 (“[T]he school board, unlike other public bodies, is an integral part of the public school system.”). Public school boards exist to set policies, procedures, and standards for education within a community. The issues discussed and decisions made at Board meetings are wholly school-related, affecting the daily lives of district students and parents. The Sixth Circuit noted in *Coles*, “although meetings of the school board might be of a ‘different variety’ than other school-related activities, the fact remains that they are part of the same ‘class’ as those other activities in that they take place on school property and are inextricably intertwined with the public school system.” *Id.* at 377.

Further, in *Indian River School District* the Third Circuit Court of Appeals emphasized that school board prayer (and hence scripture reading) is analogous to other school prayer cases when it comes to protecting children from the coercion of school-sponsored prayer (and proselytizing), which is heightened in the context of public schools. 653 F.3d at 275. In that case, the court held that the school board meetings are “an atmosphere that contains many of the same indicia of coercion and involuntariness that the Supreme Court has recognized elsewhere in its school prayer jurisprudence.” *Id.* The court’s “decision [was]

Feedback

premised on careful consideration of the role of students at school boards, the purpose of the school board, and the principles underlying the Supreme Court’s school prayer case law.” *Id.* at 281. The conclusion was that the school board prayer policy “[rose] above the level of interaction between church and state that the Establishment Clause permits.” *Id.* at 290. Member Rooks was aware that students were present as she specifically stated so. While Board members are permitted to address the Board as private citizens, member Rooks comments were clearly directed to the members of the public in attendance, rather than addressing the Board nor did she announce that she was speaking as a private citizen and descend to the public podium.

In a more recent case striking down a school board’s prayer practice, the Ninth Circuit Court of Appeals, that covers Arizona, reaffirmed that Establishment Clause concerns are heightened in the context of public schools “because children and adolescents are just beginning to develop their own belief systems, and because they absorb the lessons of adults as to what beliefs are appropriate or right.” *Chino Valley*, 896 F.3d at 1137. The court reasoned that religion at school board meetings “implicates the concerns with mimicry and coercive pressure that have led us to ‘be [] particularly vigilant in monitoring compliance with the Establishment Clause.’” *Id.* at 1146 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987)).

It is important to note that this case is readily distinguishable from the Supreme Court’s recent ruling in *Kennedy v. Bremerton School District*. In *Bremerton*, the Court held that a high school football coach’s silent, private post-game prayer was constitutional. 142 S.Ct. 2407, 2415–16 (2022). Throughout its opinion, the Court repeatedly stressed that the coach silently prayed alone. *Id.* (the coach “offered his prayers quietly while his students were otherwise occupied.”). The prayers “were not publicly broadcast or recited to a captive audience. Students were not required or expected to participate.” *Id.* at 2432.

Additionally, the Court concluded the coach’s quiet private prayer was private speech. *Id.* at 2423–24. (the coach’s prayer was not given while he was performing official duties such as instructing players, discussing strategy, or encouraging better performance). In contrast, the Board here is allowing a member to use her public position to further her private views.

Students and parents have the right—and often have reason—to participate in school board meetings. It is coercive, embarrassing, and intimidating for citizens from a different religion or nonreligious citizens to display deference toward a religious sentiment in which they do not believe,

but which this school board member does. The dangers presented by these practices are only heightened in situations like the February 9th meeting, during which divisive topics such as gender nonconformity and white supremacy were discussed. The coercive and discriminatory impact of these comments are especially troubling because students affected by these policies were in the audience.

Board members are free to read scripture privately or on their own time in their own way. A member may not however abuse their public position to promote their personal religious beliefs. The Board of Education may not to lend its power and prestige to religion which amounts to a governmental endorsement of religion that excludes the thirty-seven percent of Americans who are non-Christian, including the nearly one in three Americans who now identify as religiously unaffiliated.

The State of Arizona's Constitution has an even stronger provision than the federal ensuring the separation of church and state. The State Constitution provides in Article XX §1:

First. Toleration of religious sentiment

First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

In your own Governing Board Operational Goals, you list A.R.S. §15-341(A)(2) as the legal reference for the requirement that schools must exclude all books, publications, papers, or audiovisual materials of a sectarian, partisan or denominational character. A board member may not read scripture without falling afoul of your own rules. In your oath of office, also in your governing board policy (Board Member Oath of Office), you swear to support the Constitution of the U.S. and AZ. Both constitutions prohibit the establishment of religion by a public body. Also in your Governing Board manual in the section regarding Board Member Ethics, section (A) says that a board member is to represent everyone not a particular interest group. Thus a board member may not promote a particular religion or any religion at all any more than a board member could promote a particular political party. Allowing a Board member to read scripture during a meeting is unconstitutional. We ask that you immediately refrain from this practice to uphold the rights of conscience for everyone embodied in our First Amendment. We also ask that Board members cease using their public position to preach their private religious beliefs during Board meetings. Please inform us in writing at your earliest

convenience of the steps you are taking to remedy these constitutional violations.

Sincerely,
Dianne Post
Legal Director
602 271 9019
[REDACTED]

Sent via [Google Form Notifications](#)

Exhibit B

From: [Heather Rooks](#)
To: [Andy Gould](#)
Subject: Fw: Scripture Reading @ Board Meetings / Board Comments
Date: Wednesday, March 1, 2023 2:39:38 PM

From: Kimberly Kontra <[REDACTED]>
Sent: Wednesday, February 22, 2023 1:40 PM
Subject: Scripture Reading @ Board Meetings / Board Comments

Good afternoon Governing Board,

Recently a fellow board member requested a conversation with the Governing Board's attorney for clarity on the legalities of reading Scripture at board meetings. In summary of the attorney's guidance, a board member acting in their role as such, should not read Scripture during a board meeting, as it violates the Establishment Clause. Legal counsel also stated that the First Amendment is not applicable in this situation, as one is speaking as a member of the public governing body, not an individual. In addition to this topic, it was asked what can be said or shared under Board Comments. The Governing Board attorney stated that Board Comments is meant for a brief summary of current events as it relates to service as a board member, such as school visits, recognizing students, staff, etc. Anything beyond this could be a violation of the Open Meeting Law.

Moving forward, we hope this provides the Governing Board with the legal clarifications needed to conduct efficient business meetings. Please let Dr. Reynolds or myself know if you have any additional questions.

Thank you,

Kim

Kimberly R. Kontra

Executive Assistant, Superintendent & Governing Board

Peoria Unified School District

6330 W. Thunderbird Road

Glendale, AZ 85306

623-486-6005

www.peoriaunified.org



Exhibit C

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

May 25, 2023

SENT VIA EMAIL & U.S. MAIL: [REDACTED]

David Sandoval
President, PUSD Governing Board
Peoria Unified School District
6330 West Thunderbird Road
Glendale, AZ 85306

Re: Repeated abuse of school board position to promote religion

Dear President Sandoval and Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to request that the Peoria Unified School District take appropriate action to stop board members from using their government positions to promote their personal religious beliefs. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 1,000 members and a local chapter in Arizona. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned Peoria Unified School District employee has reported that board member Heather Rooks has been using her position on the board to foist her personal religious beliefs upon district parents and community members. Our complainant reports that Ms. Rooks quotes from the bible at every board meeting, and that other members of the board have started to do so also. For instance, at the most recent meeting on May 11, board member Rebecca Hill recited a disturbing bible verse that threatens those who are not Christian, suggesting that non-Christians or those who lead people away from Christ should be drowned in the sea:

But whoever causes one of these little ones— who believe in me—to stumble and sin by leading him away from my teaching, it would be better for him to have a large millstone hung around his neck and to be drowned in the depths of the sea. - Matthew 18:6.

Ms. Rooks immediately followed this by quoting 1 Corinthians 2:5: “That your faith might not rest in the wisdom of men but in the power of God.”

We also understand that Ms. Rooks has openly embraced Christian nationalism and invites her supporters to attend board meetings en masse, sometimes causing disruptions to the official proceedings.

While board members are free to promote their personal religious beliefs however they wish in their personal capacities outside of the school board, as government officials they cannot be allowed to commandeer the board in order to impose their personal religious beliefs on district students, parents, and employees. We ask that the Board take whatever action necessary to ensure that Ms. Rooks and all other members of the Board respect the constitutional rights of the Peoria Unified School District community.

Our Constitution’s Establishment Clause—which protects Americans’ religious freedom by ensuring the continued separation of religion and government—dictates that the government cannot in any way show favoritism toward religion. As the Supreme Court has put it, “the First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 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*, 505 U.S. at 589). Allowing board members to use their positions to promote their personal religious beliefs to students and community members during a school board meeting violates these constitutional limits on government religious coercion and sends a message that the government supports religion in general and Christianity specifically. By proselytizing during school board meetings, school board members send a religious message on behalf of the Board that is “impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist.*, 530 at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). Furthermore, the Ninth Circuit Court of Appeals has upheld restrictions on employee speech in the course of their government job when such restrictions exist to avoid Establishment Clause violations. *Berry v. Dept. of Soc. Serv.*, 447 F.3d 642 (9th Cir. 2006). “There is no doubt that compliance with the Establishment Clause is a state interest sufficiently compelling to justify content-based restrictions on speech,” including in public fora. *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1151 (9th Cir. 2018) (internal citation omitted).

If board members continue to impose religion on those in attendance, it will subject the school district to unnecessary liability and potential financial strain. When FFRF secured a court order against a California school district regarding its school board prayers, the court ordered the district to pay more than \$200,000 in the plaintiffs’ attorney fees and costs. *Freedom From Religion Found. v. Chino Valley Unified Sch. Dist.*, No. 5:14-cv-02336-JGB-DTB (C.D. Cal. Feb. 18, 2016).¹ After appeal, the court ordered the district to pay an additional \$75,000 for plaintiffs’ attorney fees and costs associated with the appeal for a total of more than a quarter million dollars.

¹ https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf

The statements of school board members are attributable to the district. It is inappropriate and unconstitutional for the district or its agents to promote a religious message because it conveys government preference for religion over nonreligion. The Supreme Court has ruled, “[t]he Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief.” *Cty. of Allegheny v. Am. Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 593–94 (1989).

As school board members, you serve a diverse population that consists not only of Christians, but also minority religious and nonreligious staff members. Religious communications made in your official capacity send a message that excludes those who are among the 37 percent of Americans who are non-Christians, including the nearly one in three adult Americans (29 percent) who are religiously unaffiliated.² Religious endorsements coming from your position on the school board needlessly alienate the non-Christian and nonreligious residents of the Peoria Unified School District, turning them into outsiders in their own community. While many residents may support these religious sentiments, a significant proportion are excluded by them.

While board members are certainly free to express their religious beliefs in their private capacity outside of their role as board members, it is unconstitutional for school board members to push their personal religious beliefs during school board meetings. We request that members of the Board refrain from discussing their religious beliefs during meetings in order to uphold the rights of conscience embodied in our First Amendment, and that the Board take whatever action necessary to ensure its compliance with the Constitution. Please inform us in writing at your earliest convenience with an assurance that this won’t happen again in the future.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

² Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

Exhibit D

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 › MADISON, WI 53701 › (608) 256-8900 › WWW.FFRF.ORG

June 29, 2023

SENT VIA EMAIL & U.S. MAIL: [REDACTED]

David Sandoval
President, PUSD Governing Board
Peoria Unified School District
6330 West Thunderbird Road
Glendale, AZ 85306

Re: Continued abuse of school board position to promote religion and denigrate non-Christians

Dear President Sandoval and Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to once again request that the Peoria Unified School District take appropriate action to stop board members from using their government positions to promote their personal religious beliefs and denigrate non-Christian, especially in light of Rebecca Hill's disconcerting comments doubling down on her attack on non-Christian students, parents, and community members.

It is our understanding that at the most recent school board meeting on June 22, 2023, board members continued to deliver bible verses and religious messages as official pronouncements in their role as school board members. We understand that Ms. Rooks recited Hebrews 10:23, "Let us hold tightly without wavering to the hope we affirm, for God can be trusted to keep his promise." We also understand that during the public comment period, a concerned District community member brought up Rebecca Hill's disturbing bible verse implying that non-Christians should be "drowned in the depths of the sea" that we addressed in our previous letter, Matthew 18:6:

But whoever causes one of these little ones—who believe in me—to stumble and sin by leading him away from my teaching, it would be better for him to have a large millstone hung around his neck and to be drowned in the depths of the sea.

The concerned community member boldly issued an apology to non-evangelical students and families at the meeting, something that Ms. Hill should have done herself:

I'd also like to say to any non-evangelical students and families in attendance or watching that I'm sorry...Last month, one of the board members called for your eradication at the May 22 board meeting. That was wrong, and it should not have been said.

After Ms. Rooks prompted Ms. Hill to respond to this public comment, she did but failed to in any way clarify her disturbing message or refute that it was intended to indicate that non-Christian should be eradicated. She only claimed that this odious message was “God’s word”:

Yes, I’ll respond to that. You’re referring to a scripture verse that I commented on. So that was actually God’s word that I quoted. So, I am referring to the Gospel, so if you want to look it up...I did not mention it out of my personal speak[sic], it actually was God’s word.

We are asking that any board members who value and respect the non-Christian students, families, and community members in Peoria USD stand up for the constitutional rights of all Peoria USD students and families, regardless of their religious beliefs or lack thereof. The board should move to censure any school board members who abuse their position by pushing their personal religious beliefs during board meetings. This would ensure that the board can focus on its students and the important issues arising in the district.

Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as “no religious test shall ever be required” for public office. U.S. Const. art. VI. The United States was the first nation to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity. In our nation, citizens can be any religion they like or none at all. Non-Christians and non-believers are not second-class citizens and our public officials, including school board members may not take sides on religious matters.

This wise separation between religion and government embodied in the Establishment Clause has largely protected the United States from the religious slaughter and persecution rife around the world and historically whenever the government and religion are aligned:

“There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once enter our civil affairs, our government would soon be destroyed. Let it once enter our common schools, they would be destroyed.” *State ex rel. Weiss v. Dist. Bd. of Sch. Dist. No. 8 of City of Edgerton*, 76 Wis. 177, 44 N.W. 967, 981 (1890).

As school board members, you serve a diverse population that consists not only of Christians, but also minority religious and nonreligious students, families, and community members. Promoting Christianity and denigrating non-Christians as school board members is especially concerning when you consider that 49 percent of Generation Z are religiously unaffiliated.¹

While board members are certainly free to express their religious beliefs in their private capacity outside of their role as board members, it is unconstitutional for school board members to push their personal religious beliefs during school board meetings. We, once again, request that members of the Board refrain from discussing their religious beliefs during meetings in order to

¹ 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.

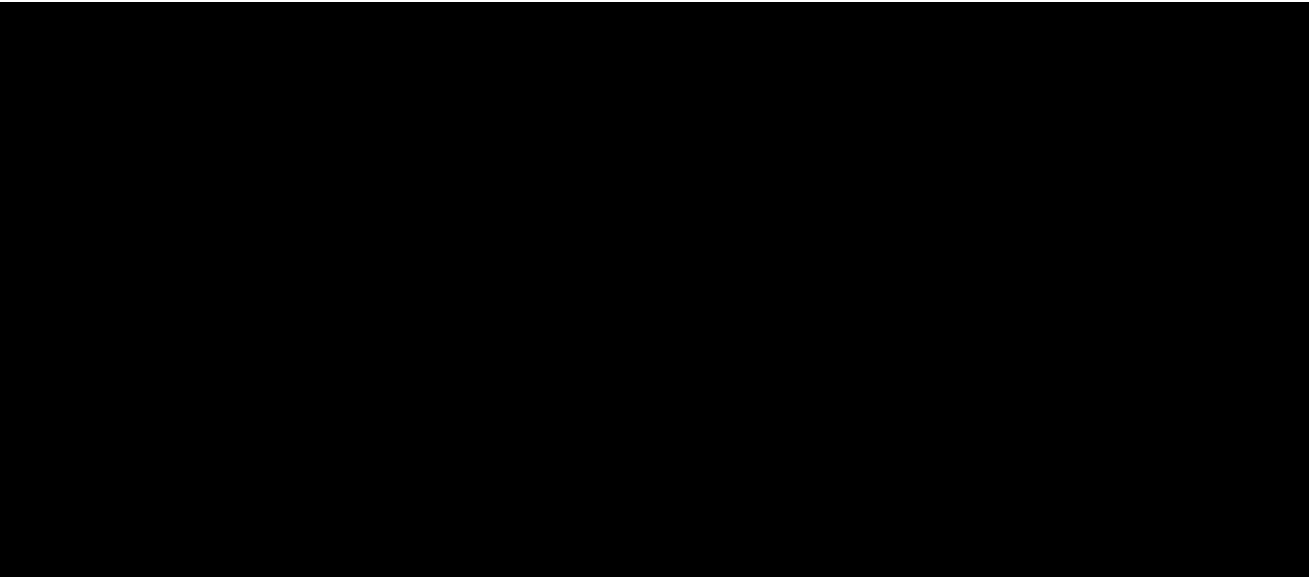
uphold the rights of conscience embodied in our First Amendment, and that the Board take whatever action necessary to ensure its compliance with the Constitution. Please inform us in writing at your earliest convenience informing us of the steps the Board is taking to comply with the law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a long horizontal flourish extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Exhibit E



From: Heather Rooks [REDACTED]
Date: Thursday, July 13, 2023 at 11:00 AM
To: Andy Gould [REDACTED]
Subject: Fw: ATTORNEY CLIENT PRIVILEGED COMMUNICATION: Freedom from Religion Foundation letter

From: Smith, Lisa Anne [REDACTED]
Sent: Wednesday, July 12, 2023 9:06 PM
To: David Sandoval [REDACTED]; Rebecca Hill [REDACTED]; Heather Rooks [REDACTED]; William Sorensen <[REDACTED]>; Melissa Ewing <[REDACTED]>
Cc: Kimberly Kontra <[REDACTED]>; Kevin Molino <[REDACTED]>
Subject: [EXTERNAL] ATTORNEY CLIENT PRIVILEGED COMMUNICATION: Freedom from Religion Foundation letter

This message originated from outside the district. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe.

Board members,

I believe that you all received a copy of the attached letter from the Freedom from Religion Foundation. As you know, this is not the first time that you have been asked by this entity to refrain from offering bible verses during a Governing Board meeting. The District and I have also been contacted by Secular Arizona regarding the same issue. These entities have threatened that if board members do not stop offering bible verses, they will take further action, such as filing a lawsuit against the District for violating the First Amendment or filing an open meeting law complaint against any board member who recites bible verses.

The law is clear that Board members, acting in their official capacities at Board meetings, may

not pray or offer bible verses at Board meetings because it is a violation of the establishment clause of the U.S. Constitution. You are likely familiar with the recent case of *Kennedy v. Bremerton School District*, in which the Supreme Court upheld a coach's right to pray on the football field after a football game. In that case, the Supreme Court relied on the fact that the coach's prayer was a silent, post-game activity that happened when students were busy doing other things. The Supreme Court also relied on the fact that the coach's prayer was private speech, because he was not performing his official duties when he engaged in the prayer. This contrasts with the situation where a board member offers a scripture verse during the meeting itself, while the board member is acting in his/her official capacity.

Furthermore, Arizona law provides that Governing Boards shall "exclude from schools all books, publications, papers or audiovisual materials of a sectarian, partisan or denominational character." While an oral bible verse offered at a board meeting does not fall squarely within this restriction, this law makes it clear that is the Governing Board's role to keep sectarian materials out of the public schools.

In addition, offering bible verses during a board report is a violation of the Open Meeting Law. The Open Meeting Law prohibits the board, and individual board members, from addressing items not on the agenda during an open meeting. Governing Board reports are permitted pursuant to A.R.S. 38-431.02(H), which permits a board member to "present a brief summary of current events without listing in the agenda the specific matters to be summarized," if the summary is listed in the agenda and no discussion or action is taken. Your agenda does list Board Reports on the agenda and states, "The purpose of this item is for Board members to publicly recognize schools, groups, or individuals who have made a contribution to the district, as well as share information related to their service as Board members." Bible verses offered during the Board reports section of the meeting are not properly part of a permissible "summary of current events" and are not within the description set forth on your agendas.

The risk to the District and to individual board members if board members continue to recite bible verses is twofold. First, one or more of these entities, or individual community members, could sue the school district for violating the First Amendment. Should this occur, the District would incur significant legal expenses in defending itself against the lawsuit. If the District lost, which is likely, it would also almost certainly be required to pay the attorneys' fees for the plaintiffs, which would be significant. If the case went to trial, the fees could exceed \$100,000. In addition, if the Attorney General were to pursue an open meeting law complaint, she could do so against both the District as a whole and any individual board member who violates the open meeting law. Violations of the open meeting law can result in fines levied against board members and, in some cases, a lawsuit to remove a board member from office.

For these reasons, it would be in the best interest of the District to cease offering bible verses at Board meetings. Board members are, of course, free to speak to their religious beliefs, to

pray in public, and to offer bible verses on their own time when they are acting as private citizens and not as public officials.

Best,
Lisa Anne

Lisa Anne Smith
DeConcini McDonald Yetwin & Lacy, P.C.
2525 E. Broadway, Suite 200
Tucson, AZ 85716
(520) 322-5000
(520) 322-5585 (fax)



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