



Founding Freedoms  
LAW CENTER

September 5, 2023

**Via U.S. Mail & Electronic Mail**

Suffolk City School Board  
100 N. Main Street  
Suffolk, VA 23434

Dear Suffolk City School Board Members:

First Liberty Institute and Founding Freedoms Law Center are both non-profit legal organizations and civil rights law firms specializing in First Amendment religious liberty and speech protections.

It has come to our attention that at your August 10, 2023 School Board meeting, School Board Chairman Tyron D. Riddick prohibited a member of the public, Ms. Angela Kilgore, from using part of her allotted public comment time to say a brief prayer “for Suffolk Public Schools, for all of you [the board members].” Chairman Riddick later explained that he believed allowing Ms. Kilgore to pray as part of her public comment would be unconstitutional.<sup>1</sup> This understanding is mistaken. In fact, the Constitution prohibits the government from excluding religious expression from a public forum; it certainly does not require such censorship. We ask that the School Board clarify its policy accordingly, and we would be happy to work with the School Board to craft new policy that does not discriminate against religious citizens or violate their constitutional rights.

**I. Analysis**

“When the government encourages diverse expression—say, by creating a forum for debate—the First Amendment prevents it from discriminating against speakers based on their viewpoint.” *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1583 (2022); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”). It is impermissible viewpoint discrimination to exclude religious perspectives from a public forum. *Shurtleff*, 142 S. Ct. at 1593; *Rosenberger*, 515 U.S. at 831; *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 112 (2001). This is true even if the government fears that others may disagree or be offended by the religious expression. In *Kennedy v. Bremerton School District*, the U.S. Supreme Court made clear that:

Respect for religious expressions is indispensable to life in a free and diverse Republic. Here, a government entity sought to punish an individual for engaging in a personal religious observance, based on a mistaken view that it has a duty to

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<sup>1</sup> The entire exchange can be viewed at <https://www.youtube.com/watch?v=ekRTEZBiinQ> from 3:35:30 – 3:48:33.

suppress religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination.

142 S. Ct. 2407, 2415 (2022). The U.S. Constitution also prohibits governmental actions that target religious exercise for disfavored treatment, such as by prohibiting prayer. *See Kennedy*, 142 S. Ct. at 2422. The Virginia Constitution, likewise, protects citizens’ free expression and religious exercise. *See Va. Const. Art. 1 §§ 11, 12.*

As a result, prohibiting Ms. Kilgore or any other citizen from praying or otherwise expressing their religious perspective during the public comment period in this fashion is unconstitutional religious and viewpoint discrimination. To the extent the School Board is concerned it would violate the Establishment Clause to allow private citizens to include religious expression in their public comments, it is mistaken. Private citizens speaking during public comment periods speak on their own behalf, not on behalf of the government. Therefore, the rules that govern the prayer practices of legislative bodies do not apply to citizens’ public comments.<sup>2</sup> Concerns about observers believing the School Board has “endorsed” prayers are also misplaced, as the Supreme Court no longer considers the appearance of endorsement in evaluating Establishment Clause questions. *See Kennedy*, 142 S. Ct. at 2426–27. Likewise, the potential for onlookers to take offense is also insufficient to justify censorship. “Where the designed benefit of a content-based speech restriction is to shield the sensibilities of listeners, the general rule is that the right of expression prevails.” *Masterpiece Cakeshop v. Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1747 (2018). Ultimately, “[a] government entity’s concerns about phantom constitutional violations do not justify actual violations of an individual’s First Amendment rights.” *Kennedy*, 142 S. Ct. at 2415 (citation omitted).

## II. Request

It is important that this situation be corrected by issuing a statement rescinding the Board’s policy of prohibiting citizens from engaging in religious expression, including prayer, during the public comment time. Our attorneys are happy to work with you to help formulate a guidance letter and policy that fully comply with the District’s obligations under the First Amendment. Your response can be directed to our address below, or via email to Josh Hetzler at [josh@foundingfreedomslaw.org](mailto:josh@foundingfreedomslaw.org) and Lea Patterson at [lepatterson@firstliberty.org](mailto:lepatterson@firstliberty.org).

Sincerely,



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Founding Freedoms Law Center



Lea Patterson  
Senior Counsel  
First Liberty Institute

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<sup>2</sup> It is also worth noting that the traditional practice of legislative prayer is generally constitutional. *See generally Marsh v. Chambers*, 463 U.S. 783 (1983); *Town of Greece v. Galloway*, 572 U.S. 525 (2014).

**Cc:**

**Suffolk School Board Members**

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