

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

CHRISTA SCHULTZ and DANNY SCHULTZ,  
both individually and as parents and  
guardians of minor child C.S., a student in  
the Medina Valley Independent School District;  
C.S., a minor, individually, by his next best friends  
Christa Schultz and Danny Schultz;  
and TREVOR SCHULTZ, individually,

*Plaintiffs,*

v.

MEDINA VALLEY INDEPENDENT  
SCHOOL DISTRICT,

*Defendant.*

CIVIL ACTION NO. 5:11-cv-422

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND A PRELIMINARY INJUNCTION

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## INTRODUCTION

The U.S. Supreme Court held in *Lee v. Weisman*, 505 U.S. 577, 596 (1992), that it is unconstitutional for public schools to include prayer in graduation ceremonies, as “[t]he Constitution forbids the State to exact religious conformity from a student as the price of attending her own high school graduation.” Yet, for years, the Medina Valley Independent School District (“the District”) has had a student deliver an “invocation” and “benediction” as part of its graduation ceremonies. The plaintiffs, a graduating student and his family, informed the District that this practice is unconstitutional. Nevertheless, the District plans to include a prayer at the June 4, 2011 graduation ceremony of Medina Valley High School (“Medina High”). The plaintiffs — left with no choice but to sue to enforce settled Supreme Court precedent which the District has knowingly chosen to disregard — therefore move for a temporary restraining order and a preliminary injunction prohibiting inclusion of a prayer at the 2011 Medina High graduation ceremony.

## FACTS

The District has a longstanding practice of sponsoring prayers at graduation ceremonies, going back to at least 2008. Declaration of Christa Schultz (“Schultz Decl.”) ¶¶ 5-6. The graduation prayers are fully facilitated by the school administration, as evidenced by an “invocation” and “benediction,” as well as the names of the delivering students, being formally listed on the official graduation-ceremony program. Schultz Decl. ¶¶ 6, 8; Schultz Decl., Ex. 1 (2009 graduation program); Declaration of C.S. (“C.S. Decl.”) ¶ 7. School officials also provide the sound system through which the prayers are delivered, select and make available the venue for the presentation, determine the order of the events at the ceremonies, and otherwise

orchestrate the presentation. Schultz Decl. ¶¶ 6, 8, 20-21; Schultz Decl., Ex. 2 at 2 (e-mail from Superintendent Martinez); C.S. Decl. ¶ 7.

The graduation prayers have been delivered in a school environment that is characterized by pervasive religiosity. A member of the student council is tasked with delivering a prayer over the loudspeaker at Medina High sporting events, including football games. Schultz Decl. ¶ 13; C.S. Decl. ¶ 10. The prayers are submitted to, and approved by, the Medina High Principal before they are presented. C.S. Decl. ¶ 10. Medina High's Principal regularly makes religious statements — such as asking for God's blessing — over the school's loudspeaker during the morning announcements, and the school's former vice principal, who recently left his position, regularly did the same thing. Schultz Decl. ¶¶ 14-15; C.S. Decl. ¶¶ 11-12. The former vice-principal also sent school e-mails signed with biblical messages, and he displayed a sign in his office window, with the text facing a hallway regularly traversed by students, quoting Proverbs 3:5, "Trust in the Lord with all your Heart." Schultz Decl. ¶ 15; C.S. Decl. ¶ 12. Teachers have told students that they will "pray for you" and, when separating a male and female student engaging in a public display of affection, "Make sure to leave a little room for Jesus between you." Schultz Decl. ¶ 16; C.S. Decl. ¶ 13.

Plaintiffs Christa and Danny Schultz are parents of Trevor Schultz, who graduated from Medina High in 2009, and C.S., a minor who will graduate from Medina High this June. Schultz Decl. ¶ 4; C.S. Decl. ¶¶ 3, 5. The Schultz family does not subscribe to any religion; they consider themselves to be agnostic. Schultz Decl. ¶ 3; C.S. Decl. ¶ 4. Christa and Danny attended the graduation ceremony of a family friend at Medina High in 2008, where they were exposed to unwelcome prayers. Schultz Decl. ¶¶ 5-6. Then, in 2009, Christa, Danny, Trevor, and C.S. all

attended Trevor's graduation ceremony. Schultz Decl. ¶ 7; C.S. Decl. ¶ 6. At that ceremony, an official prayer was given by a graduating student, who asked the members of the audience to stand and pray. Schultz Decl. ¶¶ 8, 9; Schultz Decl., Ex. 1; C.S. Decl. ¶ 7. The Schultzes stayed seated, because they are not religious people and do not believe that official prayer at a public-high-school graduation ceremony is appropriate. Schultz Decl. ¶ 9. Other audience members surrounding the Schultzes glared and pointed at them and whispered about them, asking each other whose family they were. Schultz Decl. ¶ 10. One person sitting near the Schultzes went so far as to move several rows away from them. Schultz Decl. ¶ 10.

The members of the Schultz family object to the District's graduation prayers for a number of reasons, including that the prayers coercively expose them to publicly sponsored religious exercises and demean and exclude their religious beliefs. Schultz Decl. ¶ 26; C.S. Decl. ¶ 20. Indeed, C.S. is so bothered by the prayers that he may not attend his graduation ceremony at all if the prayers are not enjoined; he will certainly attend if there is no prayer. Schultz Decl. ¶ 24; C.S. Decl. ¶ 19. Thus, although the four members of the Schultz family all deeply want to attend the ceremony and watch C.S. graduate together with his peers, they may be deprived of this once-in-a-lifetime occasion if the prayers are allowed to continue. Schultz Decl. ¶ 25; C.S. Decl. ¶ 19.

In April 2010, Christa and Danny spoke with and sent a letter to District Assistant Superintendent Chris Martinez, objecting to the graduation prayers and other religious activities at Medina High. Schultz Decl. ¶ 18. In response, Mr. Martinez sent the Schultzes a letter that defended all of those activities and included the following passage:



While you may respectfully disagree with the format or religious portions of our district ceremonies, they are overseen and supported by our Board of Trustees. We have faith and belief that these elected officials represent the values and standards of our community. With that being said, there are no plans to change or sway from the current graduation format that has traditionally been used.

Schultz Decl. ¶¶ 20-21, Schultz Decl., Ex. 2 at 2.

On October 15, 2010, plaintiffs' counsel sent a letter to the District's superintendent and Medina High's principal, explaining that the graduation prayers and other religious activities were unconstitutional, and requesting that the practices be discontinued. Ex. A. Plaintiffs' counsel received no response. On May 25, 2011, Medina High's principal orally confirmed to C.S. that this year's graduation ceremony, like past graduation ceremonies, will include prayer. Schultz Decl. ¶ 23; C.S. Decl. ¶ 18. That same day, plaintiffs' counsel sent a follow-up letter to the superintendent, the principal, and every member of the District's school board explaining that the plaintiffs planned to file suit unless the District promptly agreed to remove the prayers from the graduation ceremony. Ex. B. In response, Plaintiffs' counsel received a letter from Superintendent Stansberry, taking the position that the invocation and benediction are permissible and will proceed as scheduled. Ex. C.

## ARGUMENT

### **I. The school district's practice of holding prayers at graduations is plainly unconstitutional.**

*Lee v. Weisman*, 505 U.S. 577 (1992), held that public schools cannot include prayers within their graduation ceremonies because the Establishment Clause of the First Amendment "guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Id.* at 587. The Court noted that "there are heightened concerns with protecting

freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Id.* at 592. A prayer at a graduation ceremony, concluded the Court, “places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation.” *Id.* at 593. As described above, the Schultz family personally experienced intense pressure of this very kind from other audience members, as well as the prayer-giver, at the 2009 Medina High graduation. Schultz Decl. ¶ 10.

The Court concluded in *Lee* that, by injecting a prayer into a graduation ceremony, “the State, in a school setting, in effect required participation in a religious exercise.” *Id.* at 594. The Court found it irrelevant that students are not required to go to graduation, for “high school graduation is one of life’s most significant occasions,” so “a student is not free to absent himself from the graduation exercise in any real sense of the term ‘voluntary.’” *Id.* at 595. Nor would allowing students to “remain apart from the ceremony at the opening invocation and closing benediction” cure the violation, as graduation is “an environment analogous to the classroom setting,” where the “risk [of] compelling conformity” is especially high. *Id.* at 596; *see also Sch. Dist. v. Schempp*, 374 U.S. 203, 224-25 (1963) (allowing students to leave during classroom prayers did not render the prayers constitutional); *Engel v. Vitale*, 370 U.S. 421, 430 (1962) (same). Finally, it did not matter that the graduation prayers were non-sectarian, as even the giving of a non-sectarian prayer at graduation is “a formal religious exercise which students, for all practical purposes, are obliged to attend.” *Lee*, 505 U.S. at 589.

While the prayer in *Lee* was delivered by a clergyman (*id.* at 581), in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), the Supreme Court made clear that *Lee*’s principles apply equally to prayers delivered by *students*. In *Santa Fe*, the Court held that a

school district violated the Establishment Clause by enacting a policy under which students would vote on whether to have prayers — delivered by students — at school football games. The Court explained that the election mechanism and the use of a student to give the prayers did “not insulate the school from the coercive element” of the prayers (*id.* at 310), as the prayers still had “the improper effect of coercing those present to participate in an act of religious worship” (*id.* at 312). As explained in detail by a court of this district in *Does 1-7 v. Round Rock Independent School District*, 540 F. Supp. 2d 735, 747-50 (W.D. Tex. 2007), *Santa Fe* thus overruled an earlier Fifth Circuit decision that had allowed student-voted prayers at graduations, *Jones v. Clear Creek Independent School District*, 977 F.2d 963, 969 (5th Cir. 1992).

The *Santa Fe* Court also ruled that the prayer policy communicated an unconstitutional message of school endorsement of religion because the prayers were “authorized by a government policy and take place on government property at government-sponsored school-related events.” *Id.* at 302. The prayers here likewise are endorsed by the District — they occur at school-sponsored and school-controlled ceremonies, in accordance with the policies and directives of school officials, and are listed as “invocation” and “benediction” on the official graduation programs. Schultz Decl. ¶¶ 6, 8, 20-21; Schultz Decl., Ex. 1, Ex. 2 at 2; C.S. Decl. ¶ 7. And *Santa Fe* puts to rest a claim by the Superintendent that the prayers are permissible because “the speaker’s presentation is not determined or regulated by the District” and “honor[s] the freedom of expression of the individual speaker.” Ex. C. As the Court explained in *Santa Fe*, a public forum for private speech does not arise where “the policy, by its terms, invites and encourages religious messages.” 530 U.S. at 306. Deeming a student’s speech to be private speech unattributable to the government is especially inapt when, as in the graduation prayers



here, “the only type of message that is expressly [permitted] is an ‘invocation’ — a term that primarily describes an appeal for divine assistance.” *Id.* at 306-07.

In accordance with *Lee* and *Santa Fe*, courts have consistently struck down school-sponsored graduation prayer, whether delivered at the behest of school officials or by student vote. In *ACLU of New Jersey v. Black Horse Pike Regional Board of Education*, 84 F.3d 1471, 1488 (3d Cir. 1996) (en banc), the court invalidated a school policy under which prayers could be given at graduations if approved by a student vote. *Cole v. Oroville Union High School District*, 228 F.3d 1092, 1101-03 (9th Cir. 2000), held that allowing a student selected by student vote to give an invocation at graduation would violate the Establishment Clause. In *Lassonde v. Pleasanton Unified School District*, 320 F.3d 979, 983-85 (9th Cir. 2003), the court ruled that a school could not constitutionally allow a student who was selected as a graduation speaker based on his high academic standing to give a proselytizing religious speech at graduation. *See also Deveney v. Bd. of Educ.*, 231 F. Supp. 2d 483, 485-88 (S.D. W.Va. 2002) (issuing TRO against offering of prayer by student at graduation pursuant to vote of student class officers); *Skarin v. Woodbine Cmty. Sch.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (issuing injunction prohibiting school choir from singing Lord’s Prayer at graduation ceremony); *Appenheimer v. Sch. Bd.*, No. 01-1226, 2001 WL 1885834, at \*6-9, 11 (C.D. Ill. May 24, 2001) (issuing TRO against offering of prayer by student at graduation pursuant to vote of senior class student board); *Committee on Voluntary Prayer v. Wimberly*, 704 A.2d 1199, 1202-03 (D.C. 1997) (holding unconstitutional proposed statute permitting “non-sectarian, non-proselytizing student-initiated voluntary prayer, invocations and/or benedictions” at graduation ceremonies).



The Fifth Circuit has likewise held that prayers cannot be presented at school events. In *Meltzer v. Board of Public Instruction*, 548 F.2d 559 (5th Cir. 1977), *aff'd in part and rev'd in part en banc on other grounds*, 577 F.2d 311 (5th Cir. 1978), and in *Hall v. Board of School Commissioners*, 656 F.2d 999 (5th Cir. 1981), the court invalidated school-district practices of allowing students to give daily prayers or religious readings over school public-address systems. In *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd mem.*, 455 U.S. 913 (1982), the court held unconstitutional a statute and policy authorizing daily, student- or teacher-led prayer in public-school classrooms. In *Doe v. Duncanville Independent School District*, 70 F.3d 402 (5th Cir. 1995), the court struck down a school district's practice of permitting its employees to lead, encourage, promote, and participate in prayers with students during various curricular and extracurricular activities. And in *Ingrebretsen v. Jackson Public School District*, 88 F.3d 274 (5th Cir. 1996), the court held that a state statute permitting student-initiated prayers at compulsory and noncompulsory public-school events was unconstitutional.

Under the case law described above, the District's practice of having students deliver invocation and benediction prayers at graduations is manifestly unconstitutional.

## **II. The plaintiffs are entitled to a temporary restraining order and a preliminary injunction against the graduation prayer.**

In determining whether to grant a preliminary injunction, courts in the Fifth Circuit consider four factors. A plaintiff seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council Inc.*, 129 S. Ct. 365, 374 (2008); *accord*

*Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987); *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). The test for granting a temporary restraining order is the same, except that the plaintiff must show that the threat of harm is immediate. *See, e.g., Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 607 (N.D. Tex. 2006).

As explained above, since Medina High's prayer practice is directly contrary to Supreme Court precedent, the plaintiffs have a virtual certainty of success on the merits.

The plaintiffs will suffer irreparable harm if the prayers are not enjoined, because they will be forced to either take part in an unwelcome religious exercise at C.S.'s graduation ceremony or to miss his graduation ceremony entirely, in violation of the First Amendment's Establishment Clause. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *accord Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338-39 (5th Cir. 1981); *see also Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 166 (5th Cir. 1993) (applying this principle in an Establishment Clause case). Moreover, the threat of irreparable harm is immediate here, as the graduation is scheduled for June 4.

When an injunction is sought against a public institution, the court should "consider together the balancing of the equities required by [the third prong of the injunction analysis] and the question of whether the injunction would disserve the public interest." *Spiegel v. City of Houston*, 636 F.2d 997, 1002 (5th Cir. 1981). The District would suffer no harm if an injunction/TRO were to issue, as it has no vested right in violating the Constitution. The "public interest . . . does not extend so far as to allow . . . actions that interfere with the exercise of fundamental rights." *Deerfield*, 661 F.2d at 338. Indeed, it is in the interest of the public to

ensure that government bodies obey the Establishment Clause. *See, e.g., New Orleans Secular Humanist Ass'n, Inc. v. Bridges*, CIV.A. 04-3165, 2006 WL 1005008, at \*6 (E.D. La. Apr. 17, 2006) (“The public interest is best served by enjoining any statute which impermissibly favors a religious group in violation of the Establishment Clause of the First Amendment until it can be conclusively determined whether the statute withstands constitutional scrutiny.”).

Thus, all relevant legal factors weigh in plaintiffs’ favor. Indeed, several courts have issued TROs enjoining prayers at graduations. *See, e.g., Deveney*, 231 F. Supp. 2d at 483-84, 488 (TRO issued same day as ceremony); *Appenheimer*, 2001 WL 1885834, at \*2, 11 (C.D. Ill. May 24, 2001) (TRO issued within week of ceremony); *Brody v. Spang*, Civ. A. No. 90-3871, 1991 WL 24954, at \*1 (E.D. Pa. Feb. 25, 1991) (TRO issued one day before ceremony).

In issuing a TRO or injunction, the court should waive the bond requirement of Federal Rule of Civil Procedure 65(c). “The Fifth Circuit . . . has recognized an exception to this requirement for litigants who bring suit in the public interest,” and “[w]aiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.” *Advocacy Ctr. for Elderly & Disabled v. Louisiana Dep’t of Health & Hosps.*, 731 F. Supp. 2d 603, 626-27 (E.D. La. 2010) (quoting *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009)); *accord City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981); *see also Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996); *Incubus Investments, L.L.C. v. City of Garland*, CIV.A. 303CV2039-K, 2003 WL 23095680, at \*4 (N.D. Tex. Dec. 17, 2003).

### CONCLUSION

For the foregoing reasons, the plaintiffs’ motion should be granted.

Respectfully Submitted,



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\* Motion for admission *pro hac vice* pending

*Counsel for Plaintiffs*

Dated: May 26, 2011



**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2011, I filed this Motion for a Temporary Restraining Order and Preliminary Injunction, with attached exhibits A, B, & C; a Proposed Order; the Declaration of Christa Schultz, with attached exhibits 1 & 2; and the Declaration of C.S., with the Court at the same time as I filed the Complaint in this case. I served these documents, together with the Complaint, to the Defendant at:

Medina Valley High School  
Office of the Superintendent  
8449 FM 471 S  
Castroville, Texas 78009

Respectfully Submitted,

By: \_\_\_\_\_

Donald H. Flanary, III