

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

Christa Schultz, et al.,

Plaintiffs,

v.

Medina Valley Independent School District,

Defendant.

Civil Action No. SA-11-CA-0422-FB

Chief Judge Fred Biery
Magistrate Judge Pamela A. Mathy

Plaintiffs' Motion for Partial Summary Judgment

Donald H. Flanary, III (Bar No. 24045877)
GOLDSTEIN, GOLDSTEIN & HILLEY
310 South St. Mary's Street, Suite 2900
San Antonio, Texas 78205
(210) 226-1463
(210) 226-8367 (fax)
donflanary@hotmail.com

Ayesha N. Khan (*pro hac vice*)
Gregory M. Lipper (*pro hac vice*)
AMERICANS UNITED FOR SEPARATION
OF CHURCH AND STATE
1301 K Street NW, Suite 850E
Washington, DC 20005
(202) 466-3234
(202) 898-0955 (fax)
khan@au.org | lipper@au.org

Counsel for Plaintiffs

Table of Contents

Table of Photographs ii

Table of Authorities iii

Introduction..... 1

Statement of Facts..... 4

 A. The School District’s Control Over Graduation Ceremonies..... 5

 B. The School District Regulates, Reviews, and Revises Student Graduation Speeches 6

 C. Graduation Ceremonies Feature Multiple Prayers 9

 D. The School District Reiterates Its Support for Graduation Prayer. 12

 E. The School District Controls the Presentation of Prayer at Football Games. 14

 F. The School District Promotes Religion Throughout the School. 17

 G. The Schultz Family’s Attendance At School-District Graduations and
 Football Games..... 21

Argument 22

I. Prayer At School-District Graduation Ceremonies Violates The Establishment Clause 23

 A. As in *Santa Fe v. Doe*, the Presentation of Student Prayer at Public Graduation
 Ceremonies Violates the Establishment Clause 23

 B. The School District’s Endorsement of Student Prayer is Reinforced by the
 Circumstances Surrounding the Graduation Ceremonies..... 26

 1. The School District Selects and Limits the Number of Graduation Speakers. 26

 2. The School District Regulates, Reviews, and Revises the Speeches’ Content. 27

 3. The School District Shows Its Approval of Religious Graduation Speeches..... 31

II. Prayer At School-District Football Games Violates The Establishment Clause 32

III. The School District Is Liable For These Establishment Clause Violations,
 And All Four Plaintiffs Are Entitled To Retrospective And Prospective Relief..... 33

Conclusion 35

Table of Photographs

Photo 1: Framed newspaper article autographed by Angela Hildenbrand
(Exhibit BB45)12

Photo 2: Fellowship of Christian Athletes plaque displayed by Brian Emerson
(Exhibit BB60).....19

Photo 3: “The Prayer of a Sportsman” displayed in boys’ locker room
(Exhibit BB61).....19

Photo 4: “In God We Trust” poster displayed in classroom of Patti Maldonado
(Exhibits BB37–BB38).....20

Photo 5: “Cowboy’s Ten Commandments” displayed in classroom of Mark Wolfshohl
(Exhibits BB20–21)20

Photo 6: “Steps to Failure” displayed in office of Deputy Sheriff Sides’s office in Library
(Exhibit BB24).....21

Table of Authorities**Cases**

<i>ACLU of New Jersey v. Black Horse Pike Regional Board of Education</i> , 84 F.3d 1471 (3d Cir. 1996) (en banc).....	24, 29
<i>ACLU of Ohio v. DeWeese</i> , 633 F.3d 424 (6th Cir. 2010)	22
<i>Adler v. Duval County School Board</i> , 250 F.3d 1330 (11th Cir. 2001) (en banc)	30
<i>American International Specialty Lines Insurance Co. v. Canal Indemnity Co.</i> , 352 F.3d 254 (5th Cir. 2003)	22
<i>Appenheimer v. School Board</i> , No. 01-1226, 2001 WL 1885834 (C.D. Ill. May 24, 2001)	24
<i>Carey v. Piphus</i> , 435 U.S. 247 (1978).....	35
<i>Cole v. Oroville Union High School District</i> , 228 F.3d 1092 (9th Cir. 2000)	24, 29
<i>Corder v. Lewis Palmer School District No. 38</i> , 566 F.3d 1219 (10th Cir. 2009)	24, 26
<i>Doe v. Duncanville Independent School District</i> , 70 F.3d 402 (5th Cir. 1995)	31, 33
<i>Doe v. Indian River School District</i> , 653 F.3d 256 (3d Cir. 2011).....	25, 31
<i>Doe v. Santa Fe Independent School District</i> , 168 F.3d 806 (5th Cir. 1999)	23
<i>Doe v. Wilson County School System</i> , 564 F. Supp. 2d 766 (M.D. Tenn. 2008).....	31
<i>Does v. Enfield Public Schools</i> , 716 F. Supp. 2d 172 (D. Conn. 2010).....	25
<i>Does 1–7 v. Round Rock Independent School District</i> , 540 F. Supp. 2d 735 (W.D. Tex. 2007).....	25
<i>Gearon v. Loudon County School Board</i> , 844 F. Supp. 1097 (E.D. Va. 1993)	24

Hazelwood School District v. Kuhlmeier,
484 U.S. 260 (1988).....23

Ingebretsen v. Jackson Public School District,
88 F.3d 274 (5th Cir. 1996)30

Jager v. Douglas County School District,
862 F.2d 824 (11th Cir. 1989)24

Jones v. Clear Creek Independent School District,
977 F.2d 963 (5th Cir. 1992)25

Lassonde v. Pleasanton Unified School District,
320 F.3d 979 (9th Cir. 2003)24–26, 29

Lee v. Weisman,
505 U.S. 577 (1992).....2, 23

Legend Night Club v. Miller,
637 F.3d 291 (4th Cir. 2011)35

Lundberg v. West Monona Community School District,
731 F. Supp. 331 (N.D. Iowa 1989).....24

Piotrowski v. City of Houston,
237 F.3d 567 (5th Cir. 2001)34

Santa Fe Independent School District v. Doe,
530 U.S. 290 (2000)..... passim

Stone v. Graham,
449 U.S. 39 (1980) (per curiam).....25

Statutes and Other Authorities

28 U.S.C. § 2201.....35

Federal Rule of Civil Procedure 5622

Religious Viewpoints Antidiscrimination Act,
Tex. Educ. Code § 25.156 *et seq*30

Tex. Educ. Code § 11.002.....34

Tex. Educ. Code § 11.151.....34

Craig Kapitan, *Medina Valley Graduates Hear Prayers Aplenty*,
San Antonio Express-News, June 4, 20114

Plaintiffs move for partial summary judgment that the Establishment Clause prohibits the delivery of prayers at Medina Valley High School graduation ceremonies and football games. Plaintiffs also respectfully request a hearing on this motion.

Introduction

At their best, Medina Valley Independent School District graduations and football games can “bring together students and faculty as well as friends and family”—“from years present and past”—to celebrate or support “a common cause.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000). As in the past, members of the Schultz family wish to attend these events, as part of the School District community. They wish to do so without being forced to hear prayers.

The Establishment Clause grants them this right, even if those prayers come from students. For although these School District events are open to the public, the School District has not created a public forum for their student speakers. The School District plans, oversees, and controls virtually every aspect of its graduation ceremonies and football games—down to the dress codes, program layout, speaking order, choice of venue, and loudspeaker. So extensive is the School District’s oversight that in April 2010, the Assistant Superintendent informed Plaintiffs, “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.” Exhibit A1 to Seventh Declaration of Gregory M. Lipper at MVISD-157 (unless otherwise noted, all Exhibit citations are to the Lipper Declaration).

The School District’s oversight and support extends to the choice of student speakers and the contents of their speeches. Graduation speeches are reserved for a select few: Student-Council officers, the senior-class President, and the Valedictorian and Salutatorian. At football games, just a single student—either the Student-Council Vice-President or senior-class Vice-

President—has spoken for the full season. The School District’s Student Expression Policy tells students what they can say: Graduation speeches must “relate to the purpose of the graduation ceremony, marking and honoring the occasion,” and speeches at football games must “relate to the purpose of introducing the designated event.” Ex. I at 2–4. The Policy also prescribes what students can’t say, and contains an open-ended ban on anything that “[c]reates reasonable cause to believe that the speech would result in material and substantial interference with school activities or the rights of others.” *Id.* at 4.

To enforce these restrictions, graduation speeches are reviewed by the Principal and football speeches by the Student-Council advisor. Student speakers have been required to excise jokes about rival schools or comments deemed to be “insults.” When asked why the School District restricts and sometimes revises the content of student speeches, the Superintendent stated,

Because we’re not in the ‘60s anymore. We don’t do protests. We’re here to do a school. We have a—you can say what you want to say, but there is something called taste. There is a value system that we instill. And those values are nothing that we want to have—if they want to do free speech like this, they need to go on the street corner, not in our schools.

Ex. B1 (Stansberry Dep.) at 146:18–25.

There is just one topic that the Policy specifically authorizes: Speech from a “religious viewpoint.” Moreover, until Plaintiffs filed this lawsuit, each School District football game featured a designated Invocation, and each School District graduation featured a designated Invocation and Benediction. The Supreme Court has recognized that when a school district solicits speeches with these names, “from a constitutional perspective it is as if a state statute decreed that the prayers must occur.” *Lee v. Weisman*, 505 U.S. 577, 586–87 (1992).

And occurred they have. Every year, Medina Valley High School graduation ceremonies have featured multiple prayers—many of them overtly Christian, most of them asking the audience to join. Some of the prayers have been so similar from year-to-year that they appear to fol-

low a script, which is unsurprising since the School District supplies the prior year's speeches to the current year's speakers. A prayer has also been delivered before virtually every home football game for at least the past three years, if not longer. Shedding the names "Invocation" and "Benediction"—in response to this lawsuit—has not reduced the number or intensity of prayers. To the contrary, the Superintendent has testified that it's "common sense" that future graduations and football games will feature even more prayer, because "when you tell people you cannot pray, they pray." Ex. B1 (Stansberry Dep.) at 93:4–94:11.

Much of this activity reflects what even the Superintendent admits: "[T]he religion of the community is reflected in the culture of the school district." *Id.* at 80:22–24. A reasonable observer would be aware that School-District teachers have prayed in class, School-District security officers have proselytized, and School-District administrators have done both. Religious displays and quotations continue to populate Medina Valley High School—including, in the boys' locker room, a framed sign reciting "The Prayer of a Sportsman," under the school's logo.

Perhaps the best evidence of the School District's constitutional violations are video recordings of speeches from the 2011 graduation; hyperlinks to these videos are embedded into this motion. The Invocation-turned-Opening was a prayer; the Benediction-turned-Closing was a two-minute prayer to Christ that quoted Scripture. The Valedictorian delivered a Christian prayer lasting nearly two minutes; the Salutatorian praised her for "walk[ing] in Christ." The invited Keynote Speaker, an elected State Representative, observed that "[t]he Judge of all judges commands us to pray," and urged the audience to "believe unto our Lord and Savior Jesus Christ." These recordings illustrate that "[a]ppause erupted from the school's packed football stadium with each 'amen'—more so than during speakers' frequent references to school spirit and claims of Medina Valley's superiority over other schools," and that the ceremony "resembled a revival

as much as a small town graduation.” Craig Kapitan, *Medina Valley Graduates Hear Prayers Aplenty*, San Antonio Express-News, June 4, 2011.

If the Establishment Clause means anything, there must be daylight between public-school events and worship services. Members of the Schultz family had and have the right to participate in the School-District community and attend public, School-District events—without checking their freedom of conscience at the gate.

Statement of Facts

Although the School District now purports to embrace the virtues of student individuality and free expression, it actually treats its students as representatives of the school and larger community. Students must “acknowledg[e] patriotism toward their country by participating in events such as Veteran’s Day Ceremonies, Pledge of Allegiance, and Flag Raising.” Ex. C1 (2008–09 Student Handbook) at MVIDS-557. Students “must obtain prior approval from the principal before posting, circulating, or distributing written materials, handbills, photographs, pictures, petitions, films, tapes, posters, or other visual or auditory materials that were not developed under the oversight of the school.” Ex. C2 (2009–10 Student Handbook) at MVIDS-618. Students follow a strict dress code that reflects traditional gender norms; the School District regulates hair color and length, jewelry style and placement, and makeup hue—each with different rules for boys and girls. *See* Ex. C1 (2008–09 Student Handbook) at MVIDS-543–544.¹

Students, then, are viewed as extensions of the School District and expected to “exhibit[] behaviors and attitudes”—“in and out of school”—“that reflect positively on their families, their school district, and their community.” *Id.* at MVIDS-557. This, in turn, informs the School Dis-

¹ *See also* Ex. C1 (2008–09 Student Handbook) at MVIDS-532 (distribution of written materials); Ex. C2 (2009–10 Student Handbook) at MVIDS-619, 651–52 (dress code); Ex. C3 (2010–11 Student Handbook) at MVIDS-737 (distribution of written materials), MVIDS-738, 774–75 (dress code); Ex. C4 (2011–12 Student Handbook) at MVIDS-835 (distribution of written materials), MVIDS-836, 879–80 (dress code).

trict's control over student's participation in graduation ceremonies and football games.

A. The School District's Control Over Graduation Ceremonies.

The School District controls virtually all aspects of graduation, which the School District treats as the "Super Bowl." Ex. D1 (Center Dep.) at 165:13–17. Among other things, the School District has "full control over and responsibility for the sound system over which District graduation ceremonies are broadcast, the selection of the venue for District graduation ceremonies, the selection of student speakers for District graduation ceremonies, the order of events at District graduation ceremonies, and the dress code for students at District graduation ceremonies." Ex. E1 (Def.'s Responses to RFAs) at 4–5.

For instance, the Principal must approve the graduation dress code, which is even stricter than usual, Ex. F1 at MVISD-1388–89, and "[s]trict dress code adherence is required for [the] graduation ceremony," Ex. C1 (2008–09 Handbook) at MVISD-512; Ex. C2 (2009–10 Student Handbook) at MVISD-626; Ex. C3 (2010–11 Student Handbook) at MVISD-747; Ex. C4 (2011–2012 Handbook) at MVISD-848. The School District must approve the senior class's choice of motto, flower, and song. *See, e.g.*, Ex. F2 (MVISD-1048–50); Ex. G (Hildenbrand Dep.) at 183:23–184:12; Ex. H (Bippert Dep.) at 53:22–54:7. The graduation program is drafted by a school official and approved by the Principal, who even decides whether to include the Pledge of Allegiance or National Anthem. *See* Ex. AA at MVISD-937, 1385, 1544, 1575, 1578, 1591.

The School District selects graduation speakers. *See, e.g.*, Ex. D1 (Center Dep.) at 171:21–173:3. Eligibility is limited to the top three students in the graduating class, the senior-class President, and Student-Council officers. *See* Ex. I (Student Expression Policy) at 3. Student-Council officers have already been vetted by the School District; candidates may not run for office without faculty approval, based on candidates' "scholarship," "citizenship," "dependability," "cooperation," and "conduct." Ex. C1 (2008–09 Student Handbook) at MVISD-509–10.

The School District's Superintendent also invites an outside speaker to deliver the graduation's Keynote Address, and the School District is "very careful" to ensure that the keynote speakers' remarks "are consistent with the school district's values." Ex. B1 (Stansberry Dep.) at 177:13–17. In 2011, the Superintendent encouraged the keynote speaker to have his remarks "approved by the Attorney General," in order "to protect the school district" from any fallout resulting from the speech. *Id.* at 178:11–12, 179:9–13.

School-District graduation planners revere tradition. *See, e.g.*, Ex. D1 (Center Dep.) at 183:8–14. When asked when the 2012 graduation ceremony would be planned, the Superintendent testified, "They planned that three or four years ago. They don't change. They just keep doing the same thing." Ex. B1 (Stansberry Dep.) at 300:4–9.

B. The School District Regulates, Reviews, and Revises Student Graduation Speeches.

The School District controls the contents of student graduation speeches. According to the Student Expression Policy, opening and closing speeches "shall be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event; honoring the occasion, the participants, and those in attendance; bringing the audience to order; and focusing the audience on the purpose of the event." Ex. I at 3. The other speeches must "relate[] to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future." *Id.* at 4.

This Policy often guides students towards religion and prayer, which can almost always fit within criteria that are otherwise event-specific. According to one 2011 graduation speaker, "[The Policy] said that the speeches that are given were supposed to talk about the things that brought you to this point and all—and things that had gotten you to graduation. And I believe that I got there because of my faith and the things—and the resources that God has given me. So

I mean, I needed to thank who I believe was responsible for that.” Ex. J (Petty Dep.) at 151:9–17. Moreover, the Policy specifically singles out religious speech and religious speech alone, permitting “a student’s voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject.” Ex. I at 4.

Until Plaintiffs filed suit, the School District designated one speech as an “Invocation” and another as a “Benediction.” *See* Ex. E1 (Def.’s Responses to RFAs) at 4; Ex. O1 (2007 program) at Schultz-229; Ex. O2 (2009 program) at Schultz-235; Ex. O3 (2010 program) at MVISD-972; Ex. O4 (draft 2011 program) at MVISD-949. In so doing, the School District ensured that students would deliver prayers. For instance, the 2011 Benediction assignee drafted a prayer, because she “was told that [the Benediction] was the same as the invocation”; when previously asked to give an Invocation at football games, she “used Google Definitions and found out what an invocation was.” Ex. K (Gouard Dep.) at 26:22–25, 27:18–24, 29:7–8.

The School District also provides each year’s speakers with copies of the previous year’s speeches—many of which were themselves prayers. For instance, when the students selected to speak in 2011 asked Ms. Center (the graduation planner) for guidance about content, she distributed the prior year’s speeches as a “way to address all the questions [she was] getting about what should [the speeches] say.” Ex. D1 (Center Dep.) at 178:17–179:3; *see also* Ex. L (Moreno-Hewitt Dep.) at 99:2–19; Wurn Aff. [Dkt. # 118-27] ¶ 9. Ms. Center told the 2011 speakers that they “could say the exact same thing as the year before.” Ex. J (Petty Dep.) at 113:13–18.

The Student Expression Policy contains additional restrictions on graduation speeches, prohibiting students from saying anything that (1) “[p]romotes illegal drug use”; (2) “[v]iolates the intellectual property rights, privacy rights, or other rights of another person”; (3) contains “defamatory statements about public figures or others”; (4) “[a]dvocates imminent lawless action

and is likely to incite or produce such action”; or (5) “[c]reates reasonable cause to believe that the speech would result in material and substantial interference with school activities or the rights of others” Lipper Decl., Ex. I at 4. According to the Superintendent, these restrictions help the School District prevent “students from hurting other students or embarrassing people or causing harm, embarrassment to themselves at a young age.” Ex. B1 (Stansberry Dep.) at 134:5–8.

When asked why the School District doesn’t offer student speakers more latitude, the Superintendent explained,

Because we’re not in the ‘60s anymore. We don’t do protests. We’re here to do a school. We have a—you can say what you want to say, but there is something called taste. There is a value system that we instill. . . .

Id. at 146:18–25. He added, “if [students] want to do free speech like this, they need to go on the street corner, not in our schools.” *Id.*

To enforce these restrictions on student speech, the School District requires graduation speakers to submit their remarks for prior approval. Students give their remarks to the school official in charge of planning graduation, who reviews the speeches and gives them to the Principal for his review. *See, e.g.*, Ex. D1 (Center Dep.) at 190:14–19, 195:13–196:5; Ex. L (Moreno-Hewitt Dep.) at 101:10–15, 103:9–17; Wurn Aff. [Dkt. # 118-27] ¶ 7.

The School District reserves the right to require revisions. *See* Ex. F3 (graduation to-do list) at MVISD-1916 (“Check for appropriate content as well. Be sure to get their e-mail address, in case you need to have them revise their speeches.”). And according to the Student Expression Policy, “[a] student is not using his or her own words when the student is reading or performing from an approved script, is delivering a message that has been approved in advance, or otherwise supervised by school officials.” Ex. I at 1.

On two occasions, the teacher who planned the 2007, 2008, and 2009 graduation ceremonies revised a student’s graduation speech “when [she] determined that the speaker’s proposed

wording might slander or publicly insult or humiliate another person.” Wurn Aff. [Dkt. # 118-27] ¶ 9. And in 2011, the Principal had a problem with David Wurzbach’s Salutatorian address, and he asked graduation planner Julie Center “to talk to David” about revising the speech, which poked fun at “another school.” Ex. D1 (Center Dep.) at 196:14–21. The Salutatorian’s revised speech omitted the joke. *See id.* at 198:7–199:10.

C. Graduation Ceremonies Feature Multiple Prayers.

Every year, the graduation ceremony contains multiple prayers, including in the Invocation and Benediction. At Trevor Schultz’s graduation in 2009, the Invocation stated, “Thank you for letting us gather here this evening in celebration. . . . [W]e ask for guidance in allowing and encouraging us to use our individual gifts and talents in ways that make a difference. . . . In your name we pray.” Ex. N1 at MVISD-1972. Other years’ Invocations featured similar prayers. *See, e.g., id.* at MVISD-1929 (2007: “Bless us as we gather here today. . . . Thank you for the wisdom, hope, and love you have bestowed upon us. . . . Amen.”); *id.* at MVISD-1947 (2008: “Please reside in all of our hearts and minds, guiding us down the right paths, as we persist in to the future. . . . In your name we pray.”). From 2007–2009, audience members were asked to stand and bow their heads. *See id.* at MVISD-1928–29, 1946–47, 1972, 1974.

Moreover, from 2007 until 2009 the Benedictions were virtually identical:

2007 Benediction	2008 Benediction	2009 Benediction
“The graduates of 2007 would like to close this ceremony with a moment of reflection. <i>Please bow your heads.</i> ”	“The graduates of 2008 would like to close this ceremony with a moment of reflection. <i>Please bow your heads.</i> ”	“The Graduates of 2009 would like to close this ceremony with a moment of reflection. <i>Please bow your heads.</i> ”
“We would like to thank you for allowing us to be brought together this evening to celebrate the many accomplishments in our lives.”	“We would like to thank you for bringing us together this evening to celebrate the many accomplishments in our lives.”	“We would like to thank You for bringing us together tonight to celebrate our many accomplishments.”
“We are incredibly grateful for all the blessings that you have bestowed upon us.”	“We are incredibly grateful for all the blessings that you have bestowed upon us.”	“You have bestowed many blessings upon us.”

2007 Benediction	2008 Benediction	2009 Benediction
"Collossians Chapter 1 verse 10 says: 'And we pray . . . that you may live a life worthy of the Lord and may please him in every way; bearing fruit in every good work, and growing in the knowledge of God.'"	"Romans, Chapter 12 verse 2 says, 'Be not conformed to this world: but be ye transformed by the renewing of your mind, that ye may prove what is the good, and acceptable, and perfect will of God.'"	"Matthew Chapter 17, Verse 20 says, 'I tell you the truth, if you have faith as small as a mustard seed, you can say to this mountain, 'Move from here to there' and it will move. Nothing will be impossible for you.'"
"We ask that you continue to walk with us and support us through our many endeavors as we now go forward into our lives."	"We ask that you continue to walk with us as we are about to face many life changing decisions, and support us through our many endeavors as we now go forward with our lives."	"We ask that You continue to walk with us as we enter into this new and exciting time in our lives."

Id. at MVIDS-1939–40, 1942–43, 1961–62 (emphasis in original). The 2010 graduation ceremony also featured an Invocation and Benediction, Ex. O3 (2010 program); their precise contents are unknown because the School District did not retain its written copies.²

On the eve of the 2011 graduation, in response to this lawsuit, the School District renamed the "Invocation" to "Opening Remarks" and the "Benediction" to "Closing Remarks." Compare Ex. O4 (draft program) at MVIDS-949, with Ex. O5 (final program) at MVIDS-5. The 2011 graduation planner did not think that this change was material: "Q. What is the difference, in your view, between an invocation and an opening statement? A. Nothing. Q. What, in your view, is the difference between benediction and closing statement? A. Nothing." Ex. D1 (Center Dep.) at 215:3–8. The Benediction assignee agreed: "Q. Okay. So opening remarks you understood to simply be another name for the invocation? A. Yes. Q. And did you understand closing remarks to simply be another name for benediction? A. Yes." Ex. K (Gouard Dep.) at 174:10–22.

The contents of the Invocation and Benediction stayed the same after they were renamed.

² Many other graduation speeches have also contained prayers or otherwise promoted Christianity. In 2008, the Class President stated, "You are a child of God. . . . We were born to make manifest the glory of God that is within us." Ex. N1 at MVIDS-1949. The 2008 Valedictorian observed, "we know that God has been there for us as we have struggled because he is here with us now as we succeed." *Id.* at MVIDS-01958–59. In 2009, the Class President urged, "always have faith in yourself and in God." *Id.* at MVIDS-1967. And in 2010, the Salutatorian advised, "follow[] the example of the greatest servant-leader of all, Jesus Christ." *Id.* at AH-016.

The 2011 Opening began, “Those who wish, will you please pray with me,” and continued, “Dear Lord, as we begin this evening’s graduation ceremony, we want to give you the glory. . . . Strengthen our faith, Lord, so that in adversity we can remain true to you. . . . In your name we pray. Amen.” Ex. CC2 ([video of Opening Remarks](#)); Ex. N2 at MVISD-214 (written copy). The Closing was a Christian prayer lasting nearly two minutes; it requested that “[t]hose who wish, please pray with me,” addressed “Dear heavenly father,” quoted Corinthians, asked that “the power of Christ may dwell in me,” called on the “Lord [to] help us all to remain diligent in our faith,” and concluded, “In Jesus’ name we pray.” Ex. CC10 ([video of Closing Remarks](#)); Ex. N3 (Gouard written speech); Ex K (Gouard Dep.) at 7:9–15, 186:2–9.

The Valedictorian, Angela Hildenbrand, delivered a Christian prayer that lasted nearly two-minutes. *See* Ex. G (Hildenbrand Dep.) at 213:11–219:8; Ex. J (Petty Dep.) at 181:25–182:5; Ex. K (Gouard Dep.) at 20:3–21:3. She stated, “Lord I thank you so much for the blessing of this day Lord I thank you so much for your presence in our lives through these eighteen years and I just praise you for your incredible faithfulness God I thank you for the gift of your Son and the forgiveness that surpasses all understanding And it is in Jesus’ name, I pray amen.” Ex. CC6 ([video of prayer](#)); Ex. CC5 ([video of full speech](#)). The Salutatorian, who introduced her, proclaimed that she “walks in Christ.” Lipper Decl., Ex. CC4 ([video of introduction](#)); Ex. CC3 ([video of Salutatorian’s full speech](#)). After each of the Opening, Closing, and Valedictorian prayers, the audience shouted, “Amen!” *See* Exs. CC2, CC6, CC10.

Finally, the Keynote Speaker, State Representative John Garza, prayed and proselytized. He noted that at the 2010 graduation, his daughter had delivered a speech about “service, and it used Christ Jesus as the example,” Ex. CC8 ([first video excerpt](#)), and observed that, “It’s almost humorous that we were almost mandated today not to pray, by our own courts” because “[t]he

Judge of all judges commands us to pray,” Ex. CC9 ([second video excerpt](#)). Then he prayed:

Today is a day to pray. To pray for rain for our farmers and ranchers, to pray to restore our water table, to pray for our U.S. and local economy to be restored and our debts to paid so you guys have a future. . . . Today we need to pray for those devastated by wildfires throughout Texas

We pray for you, graduates, that your future be as bright and promising as the one I share with you today. To join me in this great adventure of faith in God. That if we all work together for the Good, like we did this week, then good things happen.

He ended, “believe unto our Lord and Savior Jesus Christ.” *Id.* ([second video excerpt](#)); *see also* Ex. CC7 ([video of full Rep. Garza Keynote Address](#)).

The Superintendent thought that Representative Garza’s references to prayer were “untimely,” but his concerns were with “the tone of his voice, not what he said as much.” Ex. B1 (Stansbery Dep.) at 178:6–7, 181:10–11. The School District would permit future student speakers to make the same remarks. *See id.* at 182:1–6.

School-District teachers have also demonstrated their support for graduation prayers. For instance, a newspaper article about the 2011 graduation—entitled “Medina Valley Graduates



Hear Prayers Aplenty”—has been framed and is currently displayed in a teacher’s classroom at Medina Valley High School. *See* Exs. BB46–47. Next to it is a framed article detailing Ms. Hildenbrand’s intervention in this case. *See* Ex. BB45. Each article bears her autograph, accompanied by a heart and a cross. *See* Exs. BB45–47.

Photo 1. Newspaper article, autographed by Angela Hildenbrand, displayed in classroom of Donna Schorr (Dec. 23, 2011).

D. The School District Reiterates Its Support for Graduation Prayer.

Since early 2010, the Schultz family has attempted to convince the School District to craft a more inclusive graduation ceremony. In a letter to Mr. Martinez dated April 8, 2010,

Christa Schultz described her family's experience at the 2009 graduation:

As everyone around our group took to their feet and bowed their heads, we were compelled to remain in our seats, overtly excluded from portions of the ceremony that included group prayer, and subjected to immediate consequences by way of glares, whispers ("Whose family is that?"), and pointing from the other (prayerful) parents and attendees. One person nearby went so far as to move several rows away from us, as if close contact might somehow be harmful.

Ex. A1 at MVIDS-150. She asked the School District to instead include a moment of silence in the 2011 ceremony. *Id.* at MVIDS-150–53. The School District refused, explaining, "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." *Id.* at MVIDS-156–57.

On October 15, 2010, Americans United for Separation of Church and State asked the School District, in writing, to refrain from including prayers in the 2011 graduation ceremony. *See* Ex. A2. The School District did not respond. In May 2011, after the School District confirmed to Corwyn Schultz that prayers would take place, Americans United asked the School District to reconsider its decision. *See* Ex. A4 at MVIDS-6. When the School District again refused and the Schultz family filed this lawsuit, the School District issued a press release stating, "[T]raditionally, our student speakers have chosen to speak words that greatly reflect our community standards, beliefs and values. We are proud of them and the words they have spoken for the past 50 years." Ex. A3 at MVIDS-465.

At the 2011 graduation ceremony the following week, the School District included, for the first time, a written and oral disclaimer. Ex. O1 (2007 program) at Schultz-228–32; Ex. O2 (2009 program) at Schultz-234–38; Ex. O5 (2011 program) at MVIDS-4; Ex. E3 (Def.'s Responses to Trevor Interrogatories) at 5. Before reciting the disclaimer, the Superintendent announced, "we have to make a little statement." Ex. CC1 ([disclaimer video](#)).

E. The School District Controls the Presentation of Prayer at Football Games.

The School District exercises the same level of control over speakers at football games. In addition to banning speech that promotes drug use, violates privacy rights, or “[c]reates reasonable cause to believe that the speech would result in material and substantial interference with school activities or the rights of others,” speeches at football games must “relate to the purpose of introducing the designated event.” Ex. I (Student Expression Policy) at 2.

This requirement effectively excludes topics related to politics, policy, or social issues. According to the Superintendent, “if you’re at a football game, you don’t start talking about a problem with the ag[riculture] department”—the speeches should “relate[] to the football.” Ex. B1 (Stansberry Dep.) at 144:7–9. But as with graduation, the Policy expressly permits prayer, even though the link to football is tangential: “Q. Okay. And then how do—how is it that prayers get in there if the purpose is introducing the football game? A. I think they pray for the students on both sides, for their health and their protection.” *Id.* at 144:10–15.

Moreover, until this year, the Student Council Constitution required the Second Vice-President to sign an oath agreeing to “present the welcome *and invocation* at all athletic events when asked and any school or council functions.” *See* Ex. T at MVISD-1796 (emphasis added). Thus, when she was elected Second Vice-President at the end of her junior year, School District officials told Kallisyn Gouard that she would deliver an Invocation at fall 2010 home football games. *See* Ex. K (Gouard Dep.) at 25:18–19.

By soliciting an Invocation, the School District guaranteed a prayer before every game. After receiving her assignment, Ms. Gouard “used Google Definitions and found out what an invocation was.” *Id.* at 26:22–25. Her research revealed that an Invocation was a prayer: “Q. And why did you decide to include a prayer to God in your invocation? A. Because I’m Christian and, all the invocations that I read off of Google, that’s what they were.” *Id.* at 27:18–24.

Ms. Gouard delivered one of three prayers before every home game over the public-address system. *See id.* at 26:4–8. One of them read,

Dear Lord,

Thank you for bringing all athletes, coaches, and fans here together tonight. We ask that the boys play to their greatest ability, and in the most respectable way. We pray for the safety of all athletes competing tonight, on the field and in the gym. And we pray for the well being of the visiting team and the officials on their journey home.

In Jesus' name we pray—Amen.

Ex. U1; Ex. K (Gouard Dep.) at 125:23–127:4. Her other Invocations also began “Dear Lord” and ended with “Amen.”³

In 2011, the School District renamed the “Invocation” to “Moment of Reflection,” and also added a disclaimer for the first time. *See* Ex. B1 (Stansberry Dep.) at 89:1–22; *id.* at 92:23–93:5; Ex. E3 (Def.’s Responses to Trevor Interrogatories) at 5. But the result was the same: A lone senior-class officer delivered a prayer over the public-address system before every home game. During the summer before the 2011–12 school year, the Student Council advisors granted a request from senior-class Vice-President Jenna Bippert that she be selected to deliver the student remarks before each home football game. *See* Ex. H (Bippert Dep.) at 81:21–82:22, 85:3–8. Ms. Bippert was told to deliver a “Moment of Reflection” and to “ask people [in the audience] to join.” *Id.* at 86:9–10. The Student Council advisors required Ms. Bippert to submit her remarks for advance approval. *See id.* at 95:16–96:14.

³ *See id.* (“Dear Lord, Thank you for bringing all the athletes, students, families, friends and fans together tonight. We ask that the boys play to their greatest ability. Keep all athletes safe as they compete, filling their hearts with courage, their spirits with passion and their minds with wisdom. We ask that you protect both teams, coaches, fans, and officials safe on their journey home. Amen.”); *id.* (“Dear Lord, Thank you for bringing all athletes, students, families, friends and fans here tonight. We ask that the boys play to their greatest ability and in the most respectable way. Keep all athletes safe as they compete, filling their hearts with courage, filling their spirits with passion, and their minds with wisdom. We ask that you protect both teams, coaches, fans and officials safe on their journey home. Amen.”).

Before her remarks, the public-address announcer asked the audience to “remain standing please [for] Ms. Jenna Bippert, for the moment of reflection”; with the audience standing, Ms. Bippert delivered the same prayer at each game—beginning “Dear Lord” and concluding, “In your name we pray, Amen.” Ex. CC11 ([video of Oct. 7, 2011 Moment of Reflection](#)); Ex. R (Danny Dep.) at 71:22–72:8; Ex. S (Christa Dep.) at 77:9–11.⁴

From fall 1993 until fall 2008, the School District appears to have played an even greater role in shaping the content of Invocations at football games. The School District has submitted an affidavit from Kathleen Wurn, the Student-Council advisor “[f]rom 1993–94 through 2008–09 school years”; she confirms that each year, remarks at football games were delivered exclusively by the Student-Council Second Vice-President. *See* Wurn Aff. [Dkt. # 118-27] ¶¶ 2–3. Ms. Wurn avers that during this time period, she distributed to speakers a sample, non-religious statement “that they could read from verbatim or use as a template for their own remarks at football games.” *Id.* Finally, Ms. Wurn “required [the selected speakers] to provide [her] a copy of their proposed remarks in writing if they planned to deviate from the sample statement.” *Id.* ¶ 4.

Ms. Wurn also avers that—in response to “the 2000 U.S. Supreme Court decision of *Santa Fe Independent School District v. Doe*,” *id.* ¶ 3—she told students that if they chose to deviate from the pre-written statement that she provided them, “they were not allowed to pray or mention anything religious in their remarks,” and that when she reviewed the drafts of the student remarks, she “purposefully looked for and made sure the students’ remarks did not use anything like ‘God’s name we pray,’ ‘In Jesus’ name we pray,’ ‘Dear Lord,’ ‘Heavenly Father,’ or any-

⁴ *See* Ex. U2 (written copy of Moment of Reflection: “For those who would like to join me, please stand and bow your heads for the moment of reflection. Dear Lord, thank you for allowing us to gather here safely tonight. Please watch over all who are participating in tonight’s events. Please help the players, coaches, and fans show good sportsman-like conduct during tonight’s game. Please watch over all of the troops, especially the ones overseas and let them return safely to their families. Finally Lord, please be with everyone and grant us all a safe journey home. In your name we pray, Amen.”); Ex. H (Bippert Dep.) at 9:21–10:3, 84:25–85:5 (identifying pregame remarks).

thing that would appear to be a prayer in any way.” *Id.* ¶ 4. And she avers that she heard no student deliver a prayer at the home games she attended from fall 2000 until fall 2008. *Id.* ¶ 6.

Despite Ms. Wurn’s efforts, multiple current and former students have testified that prayers were delivered at virtually every home football game that they attended while at Medina Valley High School. *See* Ex. G (Hildenbrand Dep.) at 128:15–19 (attended 20 home games from fall 2007 until fall 2010: “I would say that there was probably a prayer at almost every one of them”); Ex. K (Gouard Dep.) at 27:25–28:17. And Ms. Bippert, who will graduate in 2012, has attended games since she was “[f]our or five” and remembers hearing a prayer before “each home football game.” Ex. H (Bippert Dep.) at 81:9–17. At the least, this third-party testimony confirms that after Ms. Wurn retired, a prayer was delivered before every home football game in fall 2009, fall 2010, and fall 2011.

F. The School District Promotes Religion Throughout the School.

Discovery has illustrated a wide range of prayer and proselytization by School District officials—at board meetings, awards ceremonies, faculty gatherings, athletic competitions, and even in class. For the purpose of this summary-judgment motion, the examples below come exclusively from admissions or testimony of School-District officials or third parties.

The School District acknowledges that nearly every public Board of Trustees meeting from January 2009 to May 2011 began with a prayer delivered by the Superintendent or Assistant Superintendent. *See* Amended Answer [Dkt. # 80] ¶ 65. Since at least 2008, the Superintendent or Assistant Superintendent has also delivered a “Christian prayer” or “Protestant prayer” at the School District’s annual Faculty Convocation. *See* Ex. B1 (Stansberry Dep.) at 76:13–14, 249:5–20; Ex. V (handwritten prayer) at MVISD-1338. The Superintendent has delivered prayers at most if not all employee-appreciation ceremonies, which some students attend. *See* Ex. W1 at MVISD-1212–28; Ex. B1 (Stansberry Dep.) at 257:4–258:10; Ex. Z (Tyler Dep.) at 96:6–7.

Teacher and coach Nicol Houston prayed with her students in class “on two occasions.” Amended Answer [Dkt. # 80] ¶ 38. Until recently, the walls of her classroom displayed two crosses, as well as a poster and a plaque that each contained a Bible verse. *See* Ex. E4 (Def.’s Supp. Responses to First Interrogatories) at 6. The School District has permitted her to continue displaying a cross on her wall. *See* Exs. BB15–17.

Lead Counselor Julie Center, who planned the 2011 graduation, signed many of her school emails with a Biblical quote that reads, “‘Be strong and courageous. Do not be afraid; do not be discouraged, for the LORD your God will be with you wherever you go.’ Joshua 1:9.” *See* Ex. D2 at MVIDS-946, 963, 1149, 1345, 1352–53, 1388, 1390, 1544–45, 1549–56, 1564, 1572, 1574, 1576, 1578, 1583, 1719, 1722–23, 1731. In correspondence with Danny Schultz about Corwyn, then-Vice-Principal Turcato signed certain emails with the phrase “God Bless” or “God bless you.” Ex. X (email examples) at Schultz-282. A Bible verse adorned Mr. Turcato’s window, visible to anyone passing in the hallway. *See* Ex. D1 (Center Dep.) at 271:16–272:9.

Students who are selected by School District officials or elected by their peers have delivered prayers at multiple annual awards banquets and the annual scholarship ceremony. Ex. B1 (Stansberry Dep.) at 98:3–5; 101:7–20; Ex. K (Gouard Dep.) at 136:3–7, 137:17–19; Ex. W2 (2008, 2009, 2011 scholarship ceremony programs) at MVIDS-1782–83, AH-002; Amended Answer [Dkt. # 80] ¶ 105. For instance, a high-school guidance counselor selected a student to deliver the Invocation at the 2011 scholarship ceremony; he gave “a Christian prayer” that referenced “God the Father.” Ex. G (Hildenbrand Dep.) at 143:10–25; Ex. K (Gouard Dep.) at 133:23–134:5; Ex. E2 (Def.’s Responses to Corwyn Interrogatories) at 4.

The School District has repeatedly promoted religion to student athletes. Former students have testified or averred that the coach of the women’s basketball team required team members



Photo 2. Office of head football coach Brian Emerson (Dec. 23, 2011).

to participate in prayer circles, the coach of the volleyball team participated in prayer circles with students, and the coach of the women’s soccer team directed and participated in a prayer circle with students. *See* Ex. K (Gouard Dep.) at 105:23–109:17 (volleyball), 111:1–113:17 (basketball); Dkt. # 14-1, Ex. 7 (Figueroa Decl.) ¶ 4 (women’s soccer). Medina Valley High School administrators—including the Principal—have delivered prayers or proselytized at meetings of the high-school’s chapter of the Fellowship of Christian Athletes. *See* Ex. G (Hildenbrand Dep.) at 92:20–93:1; *id.* at 103:22–104:6; Ex. K (Gouard Dep.) at 50:14–24. The football coach (and athletic director) received an award—still displayed in his office at the school’s athletic facility—praising his “awesome dedication and support” to the “Medina Valley Fellowship of Christian Athletes”: “Where GOD Reigns and Panthers Rule.” *See* Ex. BB60.

In late October 2011, Mr. Emerson wrote to the high-school coaches that they “may not share [their] faith or participate in prayer, etc with our athletes.” Ex. A5 at MVISD-1741. Other than a similar verbal instruction in July 2011, this was the first such admonition since “[i]n or around 2002.” Lipper Decl., Ex. E2 (Def.’s Responses to Corwyn Interrogatories) at 5. Yet as of December 2011, the boys’ locker room displayed a framed sign—bearing the School District’s logo—setting forth the “Prayer of a Sportsman.” Ex. BB61.

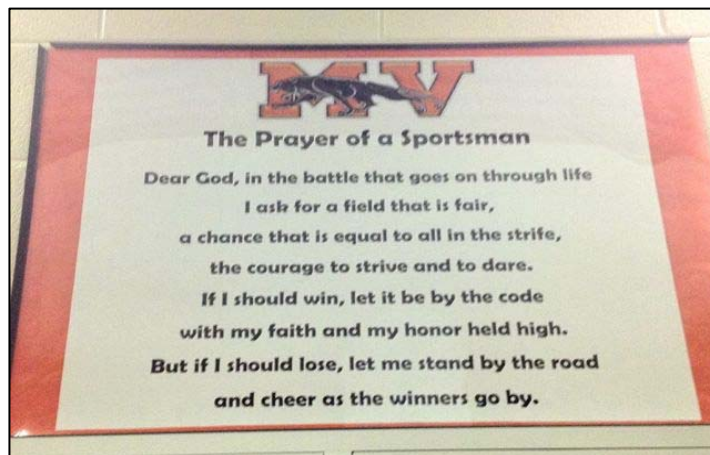


Photo 3. Boys’ locker room (Dec. 23, 2011).

Finally, a number of other religious icons, objects, and quotations appear throughout Medina Valley High School. A sign on the front wall of one classroom proclaims in “God We Trust,” with its small-print identification as the national motto barely visible at the bottom of the sign. *See* Exs. BB37–38. Another classroom has a sign on its wall reciting the “Texas 10 Commandments,” including admonitions to believe in “Just one God,” “Put nothing’ before God,” and “Git yourself to Sunday meeting.” *See* Exs. BB20–21. A cup, containing the logos of both Medina Valley High School and the Baptist Church of Castroville, stores pens and rulers in one classroom; another of the same cup sits on the desk in the main lobby. *See* Exs. BB6–7, BB18–19. The school nurse’s office displays a sign



Photo 4. Classroom of Patti Maldonado (Dec. 23, 2011).

quoting Scripture, Exs. BB13–14, and her office is sometimes visited by students, Ex. Z (Tyler Dep.) at 69:21–23; Ex. P (Corwyn Dep.) at 30:15–18. And a recent inspection of Medina Valley High School revealed over a dozen crosses and over a dozen religious icons, most of which reside in classrooms. *See* Exs. BB2–3, 8, 10, 13, 15, 20, 22, 25, 27, 29, 30, 32–33, 35, 37, 41, 44, 47, 51, 54–55, 57–59, 61, 63, 65, 67–68. The School District permits teachers to display such objects in their classrooms even “when students are present.” Ex. Y (Martinez Dep.) at 674:12–25.

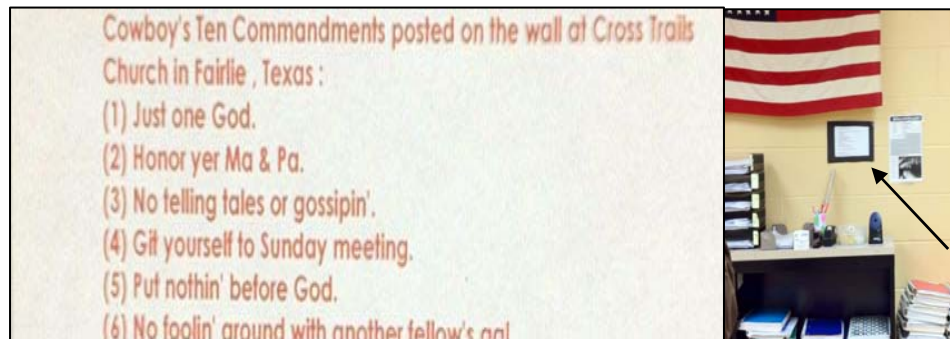


Photo 5. Classroom of Mark Wolfshohl (Dec. 23, 2011).

Finally, the School District’s security officer is a Sheriff’s Deputy, Officer Sides, who is identified on the School District’s website as “District Staff.” *See* Ex. M1; Ex. M2 at Medina-5–

21. When Corwyn was a student, Officer Sides gave him a Christian pamphlet after learning that he was not a Christian. *See* Amended Answer [Dkt. # 80] ¶ 37.

Until this fall, Officer Sides displayed several religious displays—including a wooden cross, posters with biblical references, a clock displaying a Psalm, and a depiction of Jesus—in his office in the school library, where he sometimes meets with students. *See* Ex. E4 (Def.’s Supp. Responses to First Interrogatories) at 6; Ex. B1 (Stansberry Dep.) at 123:22–125:8; Ex. Y (Martinez Dep.) at 299:2–10, 315:2–9. Although it recently required Officer Sides to remove those items, the School District has permitted him to retain an upright wooden cross on his desk, Exs. BB22–23, and a sign warning that “Praylessness” is one of three “Steps to Failure,” Ex. BB24.



Photo 6. Office of Officer Sides in school library (Dec. 23, 2011).

Much of this activity reflects what even the Superintendent admits: “[T]he religion of the community is reflected in the culture of the school district.” Ex. B1 (Stansberry Dep.) at 80:22–24. For instance, the School District has included prayers at various events because “the community is a very religious community,” “[o]ur staff is mostly Christian,” and “it’s been the culture of the school district.” *Id.* at 80:12–21, 81:6–8, 257:19–23. At his first Faculty Convocation, in fall 2007, the Superintendent told the entire faculty that the School District “should be governed by Judeo-Christian values.” *Id.* at 306:5–307:2.

G. The Schultz Family’s Attendance At School-District Graduations and Football Games.

All four Plaintiffs experienced prayers at the 2008 and 2009 graduation ceremonies. Trevor experienced prayers at the 2011 graduation; Corwyn, Christa, and Danny skipped Corwyn’s graduation in 2011 because of the prayers. Corwyn, Christa, and Danny attended all home foot-

ball games in 2007 and 2008; Danny attended two games and Christa attended one game in 2011; Corwyn declined to attend football games this fall because of the likely prospect of prayer. All four Plaintiffs wish to attend the graduation ceremonies of family friends in 2012, 2013, and 2014; Danny and Corwyn wish to attend future home football games as well.⁵

Even the School District's Superintendent admits that prayers at these events are inevitable. He testified that it's "common sense" that there will be more prayers at future School District events, including at graduations and football games, because "when you tell people you cannot pray, they pray." Ex. B1 (Stansberry Dep.) at 93:4–94:11.

Argument

Plaintiffs are entitled to summary judgment on their claims that the School District's policy permitting prayers at graduation ceremonies and football games have violated and will violate their rights under the Establishment Clause. Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate where "the record indicates that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Am. Intern. Specialty Lines Ins. Co. v. Canal Indemnity Co.*, 352 F.3d 254, 260 (5th Cir. 2003) (quotations omitted). The application of the coercion and endorsement standards to undisputed facts is a question of law, *ACLU of Ohio v. DeWeese*, 633 F.3d 424, 434–35 (6th Cir. 2010), and reveals that the graduation and football prayers endorse religion and coerce religious practice.

⁵ *Christa*: Third Christa Decl. [Dkt. #52-2] ¶ 2–4, 9–10; Fifth Christa Decl. [Dkt. # 101-9] ¶ 2; Ex. S (Christa Dep.) at 50:23–53:6, 69:11–16, 80:7–11, 84:9–85:9, 88:12–89:21, 123:20–126:6.

Danny: Second Danny Decl. [Dkt. #52-2] ¶ 2–4, 9–10; Fourth Danny Decl. [Dkt. # 101-9] ¶¶ 2, 12; Ex. R (Danny Dep.) at 47:1–4, 49:9–50:23, 51:2–53:19, 58:11–60:25, 105:17–108:21, 158:24–159:3.

Corwyn: Third Corwyn Decl. [Dkt. #52-2] ¶ 2–4, 8–9; Fifth Corwyn Decl. [Dkt. # 101-9] ¶¶ 2–3; Ex. P (Corwyn Dep.) at 83:8–84:6, 89:2–90:1, 92:6–12.

Trevor: Second Trevor Decl. [Dkt. #52-2] ¶¶ 2–4, 11; Ex. Q (Trevor Dep.) at 43:9–44:17, 46:3–7, 49:12–25.

I. Prayer At School-District Graduation Ceremonies Violates The Establishment Clause.

A. As in Santa Fe v. Doe, the Presentation of Student Prayer at Public Graduation Ceremonies Violates the Establishment Clause.

Despite this case’s controversy, on the fully-developed record it presents a straightforward application of *Lee v. Weisman* and *Santa Fe v. Doe*. When a school includes prayer in its graduation ceremonies, it effectively “require[s] participation in a religious exercise,” *Lee*, 505 U.S. at 594, and conveys “both perceived and actual endorsement of religion,” *Santa Fe*, 530 U.S. at 305. These rules apply even when prayers are presented by invited speakers or students. *See id.* at 307–08; *Lee*, 505 U.S. at 587. As detailed on pages 9–12 and the accompanying links to video recordings, School-District graduation ceremonies have featured multiple prayers each year—including, in 2011, a series of lengthy prayers that were expressly sectarian and that overtly proselytized. *See* Exs. CC2 ([video of Opening Remarks](#)); CC10 ([video of Closing Remarks](#)); CC6 ([video Valedictorian excerpt](#)); CC9 ([video of Keynote Address excerpt](#)).

The School District is unable to inoculate its student prayers by calling the graduation a “limited public forum.” As the Fifth Circuit explained in *Santa Fe*, graduation ceremonies “have never served as forums for public debate or discussions, or as a forum through which to allow varying groups to voice their views.” *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 820 (5th Cir. 1999) (quotations omitted). Rather, when students deliver prayers “on government property at government-sponsored school-related events” and they are “broadcast over the school’s public address system, which remains subject to the control of school officials,” the audience will perceive them to be “delivered with the approval of the school administration.” *Santa Fe*, 530 U.S. at 308. And the Free Speech Clause permits the School District to restrict student prayers that “might reasonably [be] perceive[d] to bear the imprimatur of the school.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988).

Here, the School District exercises total control over the graduation ceremony—it selects the speakers, regulates the content of their speeches, approves their remarks, supplies the venue and loudspeaker, invites the audience, and scripts the ceremony down to the dress code, the program, and even the national anthem. A reasonable observer would not conclude that the School District relinquishes its control over every aspect of student behavior for the brief moment during which handpicked students speak at the most important School-District ceremony of the year.⁶

It matters not that the School District holds no direct student vote on prayer. In *Cole v. Oroville Union High School District*, 228 F.3d 1092 (9th Cir. 2000), the Ninth Circuit held that the Establishment Clause prohibits a school district from allowing the valedictorian “to make a sectarian, proselytizing speech as part of the graduation ceremony,” *id.* at 1103; the court reiterated that holding in *Lassonde v. Pleasanton Unified School District*, 320 F.3d 979, 983–85 (9th Cir. 2003). In *Corder v. Lewis Palmer School District No. 38*, 566 F.3d 1219 (10th Cir. 2009), the Tenth Circuit reached the same conclusion where the school “named valedictory speakers based on the School District’s qualifications.” *Id.* at 1230. Thus, “[a] constitutional violation inherently occurs when, in a secondary school graduation setting, a prayer is offered, regardless of who makes the decision that the prayer will be given and who authorizes that actual wording of the remarks.” *Gearon v. Loudon Cnty. Sch. Bd.*, 844 F. Supp. 1097, 1099 (E.D. Va. 1993).

⁶ See, e.g., *ACLU of N.J. v. Black Horse Pike Reg’l Bd. of Educ.*, 84 F.3d 1471, 1479 (3d Cir. 1996) (en banc) (“School officials decide the sequence of events and the order of speakers on the program,” “ceremonies are typically held on school property at no cost to the students,” and “the atmosphere at [the] graduation is characterized by order and uniformity.”); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 831 (11th Cir. 1989) (“When a religious invocation is given via a sound system controlled by school principals and the religious invocation occurs at a school-sponsored event at a school-owned facility, the conclusion is inescapable that the religious invocation conveys a message that the school endorses the religious invocation.”); *Appenheimer v. Sch. Bd. of Wash. Cmty. High Sch. Dist.* 308, No. 01-1226, 2001 WL 1885834, at *6 (C.D. Ill. May 24, 2001) (“[T]he commencement falls under the imprimatur of the state. . . . the invocation and benediction is delivered to a large audience as part of a regularly scheduled, school-sponsored function conducted on school property. The prayer is broadcast over the school’s public address system, which remains subject to the control of school officials.”); *Lundberg v. W. Monona Cmty. Sch. Dist.*, 731 F. Supp. 331, 337 (N.D. Iowa 1989) (school “organizes, authorizes, and sponsors” the graduation program, conducts it on school property, and “retain[s] control over the type of speech admissible at the ceremony”).

No Fifth Circuit case requires a different result. The Supreme Court’s decision in *Santa Fe* overruled an earlier Fifth Circuit decision that had allowed student prayers at graduations, *Jones v. Clear Creek Independent School District*, 977 F.2d 963, 969 (5th Cir. 1992). As Judge Sparks explained, *Santa Fe* necessarily overruled *Jones* because “to the extent the *Santa Fe* court recognizes differences between a graduation ceremony and a football game, it is to note that a graduation ceremony involves a more coercive atmosphere than an athletic event.” *Does I–7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 748 (W.D. Tex. 2007).

The decision in *Santa Fe*, then, governs the School District’s graduation ceremonies. Even if *Jones* survived and *Santa Fe*’s holding inexplicably applied only to football games, the School District has failed to meet even the requirement in *Jones* that student-initiated prayers be nonsectarian and non-proselytizing. *See* 977 F.2d at 967, 971. As detailed on pages 9–12, many prayers delivered at graduations—in 2011 and before—were sectarian, proselytizing, or both.

The School District’s belated inclusion of a disclaimer in 2011 does not neutralize endorsement or nullify coercion. As to endorsement, a reasonable observer would be aware that no disclaimer appeared at any graduation ceremony until after the filing of this lawsuit; in any event, a disclaimer cannot overcome the otherwise significant indicia of School District sponsorship of students’ remarks.⁷ As to coercion, “regardless of any offered disclaimer, a reasonable dissenter still could feel that there is no choice but to participate in the proselytizing in order to attend high school graduation.” *Lassonde*, 320 F.3d at 984. Even when attendance is “purely voluntary,” prayer “has the improper effect of coercing those present to participate in an act of

⁷ *See, e.g., Stone v. Graham*, 449 U.S. 39, 41–42 (1980) (per curiam) (statute mandating posting of Ten Commandments in public school violated Establishment Clause, in spite of statute’s additional mandate that display be accompanied by disclaimer highlighting secular purpose); *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 285 n.16 (3d Cir. 2011) (prayer at school board meeting was constitutionally impermissible, despite official disclaimer of school endorsement); *Does v. Enfield Pub. Schs.*, 716 F. Supp. 2d 172, 191 n. 24 (D. Conn. 2010) (“although the disclaimer [in school graduation program] informs a reasonable observer’s impressions, it would not cure the constitutional violations that this Ruling finds”).

religious worship.” *Santa Fe*, 590 U.S. at 312.

B. The School District’s Endorsement of Student Prayer is Reinforced by the Circumstances Surrounding the Graduation Ceremonies.

The School District’s responsibility for the content of student prayers is amplified by three additional factors: (1) the School District selects and limits the number of student speakers, (2) the School District regulates, reviews, and revises their speeches’ content, and (3) the School District promotes religion more generally.

1. The School District Selects and Limits the Number of Graduation Speakers.

As in *Santa Fe*, the School District “do[es] not evince . . . any intent to open the [ceremony] to indiscriminate use by the student body generally.” 530 U.S. at 303 (quotations and alterations omitted). For one, the School District limits speaking roles to the top three students in the graduating class, the senior-class President, and Student-Council officers. *See* Ex. I (Student Expression Policy) at 3. Class officers and Student-Council officers have already been elected by students and vetted by the School District based on “scholarship,” “citizenship,” “dependability,” “cooperation,” and “conduct.” Ex. C1 (2008–09 Student Handbook) at MVISD-509–10. Thus, although students do not vote directly on graduation speakers or prayers, the “majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced.” *Santa Fe*, 530 U.S. at 304.

The same is true of the remaining slots, which are reserved for the Valedictorian and Salutatorian. By linking speeches to class rank, the School District has “endorsed and sponsored the speakers as representative examples of the success of the school’s own educational mission,” *Lassonde*, 320 F.3d at 984; the speakers are “so closely connected to the school that it appears the school is somehow sponsoring the speech.” *Corder*, 566 F.3d at 1229 (quotations omitted).

2. The School District Regulates, Reviews, and Revises the Speeches' Content.

As in *Santa Fe*, the School District's graduation speeches are "subject to particular regulations that confine the content and topic of the student's message." 530 U.S. at 303.

First, the School District requires that Invocations/Opening and Benedictions/Closings "relate[] to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event; honoring the occasion, the participants, and those in attendance; bringing the audience to order; and focusing the audience on the purpose of the event," and it imposes similar requirements for other graduation speeches. *See* Ex. I (Student Expression Policy) at 3–4. These requirements often guide students towards prayer; as one 2011 speaker explained, the Policy instructed students, "[T]o talk about the things that brought you to this point and all— and things that had gotten you to graduation. And I believe that I got there because of my faith and the things—and the resources that God has given me." Ex. J (Petty Dep.) at 151:9–17.

The Court in *Santa Fe* recognized the same phenomenon: By requiring speakers to "solemnize the event, to promote good sportsmanship and student safety, and to establish the appropriate environment for the competition," the school district suggests that "a solemn, yet nonreligious, message, such as commentary on United States foreign policy, would be prohibited" and "invites and encourages religious messages." 530 U.S. at 306. Medina Valley's Student Expression Policy goes one step further by singling out, for protection, "a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject." Ex. I at 1. As in *Santa Fe*, "the expressed purposes of the policy encourage the selection of a religious message"—the "only type of message that is expressly endorsed in the [Policy's] text." 530 U.S. at 306–07.

Second, from 2007 until 2011, the School District designated one student speech as the "Invocation" and another as the "Benediction." *See* Ex. E1 (Def.'s Responses to RFAs) at 4; Ex. O1 (2007 graduation program); Ex. O2 (2009 graduation program); Ex. O3 (2010 graduation

program); Ex. O4 (draft 2011 program). The Court in *Santa Fe* recognized that “Invocation” is “a term that primarily describes an appeal for divine assistance,” 530 U.S. at 306–07; “Benediction” has an equally religious meaning, as even School District administrators acknowledge. *See* Ex. L (Moreno-Hewitt Dep.) at 101:1 (“The word ‘benediction’ to me means blessing.”). Thus, when Kallisyn Gouard was assigned the Benediction in 2011, she delivered a prayer because she “was told that [the benediction] was the same as the invocation.” Ex. K (Gouard Dep.) at 29:7–8. She had been assigned the Invocation at fall 2010 football games, and “used Google Definitions” to determine that an Invocation was a prayer. *Id.* at 26:22–25, 27:18–24.

The belated change to “Opening Remarks” and “Closing Remarks” in 2011 did not solve this problem. Both graduation planners and student speakers understood these terms to be new names for the Invocation and Benediction. *See id.* at 174:10–12 (“Q. Okay. So opening remarks you understood to simply be another name for the invocation? A. Yes.”); *id.* at 174:21–23 (“Q. And did you understand closing remarks to simply be another name for benediction? A. Yes.”); Ex. D1 (Center Dep.) at 215:3–8. The School District did not instruct students to revise their speeches in light of the name change. *Cf. Santa Fe*, 530 U.S. at 309 (“the school did not conduct a new election, pursuant to the current policy, to replace the results of the previous election, which occurred under the former policy”). Unsurprisingly, in 2011 the contents of the Invocation and Benediction did not change with their names.

Third, the School District influences the content of graduation speeches by providing each year’s speakers with copies of the previous year’s speeches, as a substitute for direct guidance, Ex. D1 (Center Dep.) at 178:17–179:3, and with the assurance that students “could say the exact same thing as the year before,” Ex. J (Petty Dep.) at 113:13–18. This practice keeps the conveyor belt moving. Just as in *Santa Fe*, where the school’s “invocations” “always entailed a

focused religious message,” 530 U.S. at 307, at Medina Valley graduations every Invocation, Benediction, Opening Remark, and Closing Remark on record has been a prayer, and other graduation speeches have featured prayers or proselytization. *See* Ex. N1 at MVISD-1928–29, 1939–40, 1942–43, 1946–47, 1961–62, 1972, 1974.

Fourth, the School District’s policy contains additional restrictions on speeches, prohibiting students from promoting drug use, making defamatory statements, or saying anything that “[c]reates reasonable cause to believe that the speech would result in material and substantial interference with school activities or the rights of others.” Ex. I (Student Expression Policy) at 4. According to the Superintendent, these rules enable the School District “to prohibit the students from hurting other students or embarrassing people or causing harm, embarrassment to themselves at a young age.” Ex. B1 (Stansberry Dep.) at 134:5–8.

Fifth, the School District requires advance approval of speeches, including approval from the Principal. *See Lassonde*, 320 F.3d at 984 (graduation speeches attributed to school where “[t]he principal reviewed and approved [them] beforehand”); *Cole*, 228 F.3d at 1103 (same where principal “has final authority to approve”); *Black Horse Pike*, 84 F.3d at 1478 (same where principal may determine that certain topics are “not suitable”). And the School District concedes that “[a] student is not using his or her own words when the student is reading or performing from an approved script, is delivering a message that has been approved in advance, or otherwise supervised by school officials.” Ex. I (Student Expression Policy) at 1.

The School District exercised this control to force the 2011 Salutatorian to remove an insult “in regards to another school.” Ex. D1 (Center Dep.) at 196:14–21. And on two other occasions, the then-Student-Council advisor required student speakers to remove content that she concluded “might slander or publicly insult or humiliate another person.” Wurn Decl. [Dkt. #

118-27] ¶ 9. This subjective determination may reflect a prudent exercise of discretion when planning a public-school event, but it hardly suggests that students speak freely.

This control over content also distinguishes the School District’s graduation prayers from those upheld in *Adler v. Duval County School Board*, 250 F.3d 1330 (11th Cir. 2001) (en banc). In *Adler*, the school district’s policy “[did] not allow (indeed, forb[ade]) any regulation of the content of the speech”—such that the student speaker would “have *complete* autonomy over the message he eventually delivers at graduation”—and “school officials [were] affirmatively *forbidden* from reviewing the content of the message.” *Id.* at 1336 n.2 (emphases in original).

The School District’s control also exceeds that contemplated by the Religious Viewpoints Antidiscrimination Act, Tex. Educ. Code § 25.156 *et seq.*—which, in any event, cannot override the requirements of the federal Constitution. *See, e.g., Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279–80 (5th Cir. 1996) (statute allowing student-initiated prayer at non-compulsory school events violated Establishment Clause). Even the School District’s litigation-induced disclaimer omits the RVAA’s model language that “the district refrained from any interactions with student speakers regarding the student speakers’ viewpoints on permissible subjects,” Tex. Educ. Code § 25.156, because the School District reviews and revises the speeches.

Moreover, the RVAA’s Model Policy includes only a single restriction on students’ speeches: They may not be “obscene, vulgar, offensively lewd, or indecent.” *Id.* The School District has declined requests to repeal its additional restrictions and adopt the RVAA’s more permissive policy, because the latter “[does] not have the exclusions for inciting drug use or—or criminal activity, or name-calling.” Ex. B1 (Stansberry Dep.) at 273:1–3; Ex. B2.

3. The School District Shows Its Approval of Religious Graduation Speeches.

The graduation prayers also reflect School District endorsement because school officials have “manifest[ed] approval and solidarity with student religious exercises.” *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 n.4 (5th Cir. 1995). The School District has stated that student’s religious remarks are “overseen and supported by [the] Board of Trustees.” Ex. A1 at MVIDS-157. After this lawsuit was filed, the School District issued a press release stating, “We are fortunate that, traditionally, our student speakers have chosen to speak words that greatly reflect our community standards, beliefs and values. We are proud of them and the words they have spoken for the past 50 years.” Ex. A3 (Press Release) at MVIDS-465. The Superintendent believes that student prayers are “calming for the school district.” Ex. B1 (Stansberry Dep.) at 96:9–12. And in 2011, the School District’s invited keynote speaker—an elected State Representative—not only praised prayer-givers and ridiculed prayer opponents, but also delivered extensive prayers and otherwise proselytized for Christianity. *See* Exs. CC8–9.

In addition, the reasonable observer takes into account other instances in which the School District promotes or has promoted religion—even when those instances were not experienced by the plaintiffs. *See Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 286 (3d Cir. 2011) (considering past instances of religious exercise in years leading up to challenged practice); *Doe v. Wilson Cnty. Sch. Sys.*, 564 F. Supp. 2d 766, 795 (M.D. Tenn. 2008) (court considered conduct not challenged directly or experienced by plaintiffs, including Ten Commandments in hallway, distribution of Bibles in class, and faculty wearing “I Prayed” stickers inside building). As detailed above on pages 17–21, School District and third-party witnesses have testified to (1) prayers and proselytization by teachers and other staff, (2) administrator prayer and proselytization at Fellowship of Christian Athletes meetings, (3) coaches leading or joining students in prayer circles, and (4) religious objects, icons, and verses in classrooms and other areas visible to students.

The Superintendent admits that “the religion of the community is reflected in the culture of the school district.” Ex. B1 (Stansberry Dep.) at 80:22–24. Confronted with prayer after prayer after prayer at a School District graduation ceremony, a reasonable observer would agree.

II. Prayer At School-District Football Games Violates The Establishment Clause.

For similar reasons, the presentation of prayers at Medina Valley High School football games violates the Establishment Clause. As in *Santa Fe*, the prayers are “delivered to a large audience assembled as part of a regularly scheduled, school-sponsored function conducted on school property” and are “broadcast over the school’s public address system, which remains subject to the control of school officials.” 530 U.S. at 307. As with its graduations, the School District’s selection of speakers, control over content, and the overall religious environment erases any doubts about the endorsement and coercion caused by football-game prayers.

First, as in *Santa Fe* a single student delivers prayers before football games for the entire season. The Student-Council Second Vice-President delivered the remarks before each home football game until and including fall 2010. *See* Wurn Aff. [Dkt. # 118-27] ¶ 2; Ex. K (Gouard Dep.) at 26:4–8. In fall 2011, the senior-class Vice-President was the lone speaker before each home football game. *See* Ex. H (Bippert Dep.) at 85:3–5.

Second, as with graduation speeches, the School District prohibits football-game speakers from making several categories of remarks and also requires that “[t]he subject of the student introductions shall relate to the purpose of introducing the designated event.” Ex. I (Student Expression Policy) at 2. The Superintendent agrees that most subjects are off-limits: “[I]f you’re at a football game, you don’t start talking about a problem with the ag[riculture] department,” and the speeches should “relate[] to the football.” Ex. B1 (Stansberry Dep.) at 144:7–9. Yet the Policy’s sole example of acceptable content is the “expression of a religious viewpoint.” Ex. I at 2.

Third, until 2011 the Student-Council Constitution required the Second Vice-President to

agree, in writing, to “present the welcome *and invocation* at all athletic events when asked.” Ex. T at MVISD-1796 (emphasis added). When the School District commissions an Invocation, “from a constitutional perspective it is as if a state statute decreed that the prayers must occur.” *Lee*, 505 U.S. at 586–87.

The post-lawsuit renaming of Invocation to “Moment of Reflection” does not remove the endorsement or coercion. The 2011–12 Student Council Constitution still requires the Vice-President to deliver an “Invocation.” Ex. T at MVISD-1831. Each Moment of Reflection in fall 2011 was a prayer. *See* Ex. H (Bippert Dep.) at 84:25–85:8. And the School District’s announcer asks the audience to stand before the prayers. *See* Ex. CC11.

Fourth, the School District pre-screens and pre-approves the speeches. Ex. H (Bippert Dep.) at 95:16–96:21; Wurn Aff. [Dkt. 118-27] ¶¶ 4, 6. The Student Expression Policy provides that “[a] student is not using his or her own words when . . . reading or performing from an approved script [or] delivering a message that has been approved in advance.” Ex. I at 1.

Finally, as with the graduation prayers, the School District “manifests approval and solidarity with” the prayers at football games. *Duncanville*, 70 F.3d at 406 n. 4. In addition to the prayers, practices, icons, and items detailed above on pages 17–21, the School District displays, in the boys locker room, a framed “Prayer of a Sportsman.” *See* Ex. BB61.

III. The School District Is Liable For These Establishment Clause Violations, And All Four Plaintiffs Are Entitled To Retrospective And Prospective Relief.

Each member of the Schultz family has suffered past injury and, without the Court’s intervention, will suffer injury in the future. All Plaintiffs heard prayers at the 2008 and 2009 graduations; Trevor heard prayers at the 2011 graduation, and the remaining Schultzes skipped Corwyn’s 2011 graduation because of the prayers; Corwyn, Christa, and Danny attended all home football games in fall 2007 and fall 2008, Danny attended two games and Christa attended one

game in fall 2011, and Corwyn declined to attend football games in fall 2011 because of the likelihood of prayer; all Plaintiffs wish to attend the graduation ceremonies of family friends in 2012, 2013, and 2014; Danny and Corwyn wish to attend future home football games.⁸

The School District is liable for these constitutional violations. Municipal liability requires “a policymaker; an official policy; and a violation of constitutional rights whose ‘moving force’ is the policy or custom.” *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). The School District is controlled by its Board, Tex. Educ. Code Ann. § 11.002, 11.151(b), (d), whose policies govern the selection of speakers and the content of speeches, Ex. I (Student Expression Policy). The School District maintains that the delivery of prayers at its events is consistent with these policies; in addition, as detailed above on pages 9–12 and 14–17, the presentation of prayers at graduation ceremonies and football games has been longstanding practice, and the planning of graduation ceremonies and football games adheres to School District custom.⁹

⁸ *Past attendance*: Ex. P (Corwyn Dep.) at 89:2–90:1, 92:6–12; Ex. Q (Trevor Dep.) at 43:9–44:17, 46:3–7, 49:12–25; Ex. R (Danny Dep.) at 47:1–3, 49:9–50:23, 51:2–53:19; Ex. S (Christa Dep.) at 84:9–85:9, 88:12–89:21.

Future attendance: Third Christa Schultz Decl. [Dkt. # 52-2] ¶¶ 2–4, 10; Third Corwyn Schultz Decl. [Dkt. # 52-2] ¶¶ 2–4, 9; Second Danny Schultz Decl. [Dkt. # 52-2] ¶¶ 2–4, 10; Second Trevor Schultz Decl. [Dkt. # 52-2] ¶¶ 2–4, 11; Ex. S (Christa Dep.) at 50:23–51:12; *id.* at 52:17–53:6; *id.* at 69:11–16; *id.* at 80:7–11; Ex. R (Danny Dep.) at 105:17–21; *id.* at 106:4–107:16; *id.* at 158:24–159:3; Ex. P (Corwyn Dep.) at 83:8–84:6; Fourth Danny Decl. [Dkt. # 101-9] ¶¶ 2, 12; Fifth Christa Decl. [Dkt. # 101-9] ¶ 2; Fifth Corwyn Decl. [Dkt. # 101-9] ¶¶ 2, 3.

⁹ *School District policy*: Ex. Y (Martinez Dep.) at 647:16–25 (“the district is following board policy and continuing to adhere to State guidelines in regards to freedom of student expression”); Ex. A3 (Press Release) at MVISD-465 (“Our Board of Trustees are aware of the circumstances, and are in full support of our policies, practices, and plans.”); Ex. A4 at MVISD-28 (“Graduation speakers are selected according to the criteria set forth in the board policy.”); Lipper Decl., Ex. E3 (Def.’s Responses to Trevor’s Interrogatories) at 4 (“District Policy . . . provided guidance on the selection of student speakers.”); Ex. Y (Martinez Dep.) at 686:5–9 (“[I]s the process for [speaker] selection . . . consistent with school board policy? A. Yes.”).

Ongoing practice and adherence to custom: Ex. D1 (Center Dep.) at 54:3–11 (“Q. And is [sic] a lot of the decisions you’re making in planning these events based on practices from previous years? A. Yes. . . . What the year before did, we pretty much mirror that.”); *id.* at 183:8–14 (“Q. Had you given any thought—did you ever give any thought to, Let’s do something different this year [at graduation] . . . A. No. Q. Why not? A. I wasn’t going to be the one to change a tradition.”); Ex. L (Moreno-Hewitt Dep.) at 35:6–18 (“Q. And was it your understanding that the—whatever the program had been in the previous years was to be the program for this year? A. Yes. Q. And was that a—was it standard practice that tradition was very much a guide of how these events would take place? A. Yes.”).

To prevent future injury, each Plaintiff is entitled to an injunction prohibiting the School District from sponsoring, inviting, authorizing, or otherwise permitting the delivery of prayers by speakers, including student speakers, at its graduation ceremonies in 2012, 2013, and 2014; Danny and Corwyn are entitled to the same relief with respect to home football games beginning in the 2012–13 season. Here, “monetary damages are inadequate to compensate for the loss of First Amendment freedoms,” the government is not harmed by an injunction that prevents it from violating the Constitution, and “upholding constitutional rights is in the public interest.” *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011) (citations omitted). Further, to redress these past violations, each Plaintiff is entitled to \$1 in nominal damages. *See Carey v. Piphus*, 435 U.S. 247, 266–67 (1978). Finally, under 28 U.S.C. § 2201(a), Plaintiffs are entitled to a declaratory judgment that (1) the School District’s past presentation of prayers at graduations and football games violated the Establishment Clause and (2) future presentation of prayers would do the same.

Conclusion

Plaintiffs are entitled to partial summary judgment with respect to the past and future inclusion of prayers at football games and graduation ceremonies.

Respectfully submitted,

/s/ Gregory M. Lipper

Donald H. Flanary, III (Bar No. 24045877)
 GOLDSTEIN, GOLDSTEIN & HILLEY
 310 South St. Mary’s Street, Suite 2900
 San Antonio, Texas 78205
 (210) 226-1463
 (210) 226-8367 (fax)
 donflanary@hotmail.com

Ayesha N. Khan (*pro hac vice*)
 Gregory M. Lipper (*pro hac vice*)
 AMERICANS UNITED FOR SEPARATION
 OF CHURCH AND STATE
 1301 K Street NW, Suite 850E
 Washington, DC 20005
 (202) 466-3234
 (202) 898-0955 (fax)
 khan@au.org | lipper@au.org

January 5, 2012

Counsel for Plaintiffs

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

Christa Schultz, et al.,

Plaintiffs,

v.

Medina Valley Independent School District,

Defendant.

Civil Action No. SA-11-CA-0422-FB

Chief Judge Fred Biery

Magistrate Judge Pamela A. Mathy

[Proposed] Order Granting Plaintiffs' Motion for Partial Summary Judgment

The Court has reviewed Plaintiffs' January 5, 2012 Motion for Partial Summary Judgment. Pursuant to Federal Rule of Civil Procedure 56, the Court concludes that (1) there are no genuine issues of material fact on Plaintiffs' challenges to prayers at Medina Valley High School graduation ceremonies and football games, and (2) Plaintiffs are entitled to judgment as a matter of law on those claims. Accordingly, Plaintiffs are entitled to partial summary judgment.

For the reasons set forth in Plaintiffs' motion, the Court orders the following relief:

1. Defendant shall pay \$1 in nominal damages to each Plaintiff.
2. Defendant is enjoined from sponsoring, inviting, authorizing, or otherwise permitting the delivery of prayers by speakers, including student speakers, at Medina Valley High School graduation ceremonies in 2012, 2013, and 2014, or at Medina Valley High School home football games beginning with the 2012–13 season.
3. Plaintiffs are entitled to a declaration that (a) Defendant violated the Establishment Clause of the First Amendment to the U.S. Constitution by sponsoring, inviting, authorizing, or otherwise permitting the delivery of prayers by speakers, including student speakers, at Medina

Valley High School graduation ceremonies in 2008, 2009, and 2011, and at home football games in fall 2007, 2008, 2009, and 2011; and (b) the Establishment Clause prohibits Defendant from sponsoring, inviting, authorizing, or otherwise permitting the delivery of prayers by speakers, including students speakers, at Medina Valley High School graduation ceremonies in 2012, 2013, and 2014, and at home football games beginning in the 2012–13 season.

Fred Biery
Chief United States District Judge

Date:

Certificate of Service

On January 5, 2012, I served a copy of this Motion for Partial Summary Judgment on all counsel of record through the Court's ECF system.

/s/ Gregory M. Lipper

Gregory M. Lipper