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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

FREEDOM FROM RELIGION FOUNDATION, INC., et al.,

Plaintiffs,

vs.

CHINO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants.

Case No.: 5:14-CV-02336 JGB (DTB)

PLAINTIFFS' OPPOSITION TO MOTION FOR RELIEF FROM JUDGMENT

Date:	October 6, 2025
Time:	9:00 a.m.
Judge:	Hon. Jesus G. Bernal
Courtroom:	Courtroom 1
Action Filed:	November 13, 2014
Judgment Entered:	February 18, 2016

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I. INTRODUCTION

Defendants' Rule 60(b)(5) motion for relief from judgment should be denied on both procedural grounds and the merits. On February 18, 2016, this court enjoined Defendant Chino Valley Unified School District ("CVUSD") Board Members from conducting, permitting, or otherwise endorsing prayer at CVUSD school board meetings. Now, almost nine and a half years later and more than three years after the Supreme Court issued *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), Defendants move for relief on the sole ground that *Kennedy* allegedly invalidated the grounds for this court's permanent injunction. Defendants seek to resume the prayer practices that this court previously held violated the Establishment Clause, in significant part based on their coercive and proselytizing effect on schoolchildren.

Defendants' motion fails for at least three independent reasons: First, Rule 60(b)(5) is not applicable because *Kennedy* did not constitute a "change in law," which is the only basis Defendants argue. Second, Defendants failed to bring the motion within a "reasonable time" as required by Rule 60(c)(1), instead delaying for multiple years after their knowledge of the *Kennedy* decision, prejudicing Plaintiffs. Third, Defendants' motion fails on the merits. The permanent injunction remains supported by the Ninth Circuit's decision, which remains the law of the case, and by controlling Supreme Court precedent, including *Kennedy*.

Additionally, the CVUSD Board of Education should not be included as a movant because it lacks standing, having been previously dismissed from the case.

II. FACTUAL, PROCEDURAL AND PRIOR DECISIONAL BACKGROUND

A. The Board Has An Established History Of Conducting Unconstitutional Religious Exercises At School Board Meetings.

This court granted summary judgment to Plaintiffs in 2016 based on the undisputed facts. ("Order MSJ," Dkt. No. 87, at 7). Defendants do not argue that any facts have changed.

Before the judgment in this case, the CVUSD Board of Education began each open portion of its meetings with a prayer, usually delivered by a clergy member but also at times delivered by a member of the Board. *Id.* On October 17, 2014, the Board adopted a policy formally facilitating those prayers. *Id.* at 4–5.

The invocations by clergy members and Board members and religious statements by Board members at Board meetings were predominantly and overtly Christian. *See id.* at 7–8. As just some examples: Board member James Na "urged everyone who does not know Jesus Christ to go and find Him," told the audience "I would just like to thank God for sending his son Jesus Christ so our sins would be forgiven but have eternal hope, and we'll stay together as we were on this earth but in eternal life in heaven," and told the audience to have hope in Jesus Christ, and that he wants God to give us wisdom; Board member Andrew Cruz said "[i]f we have confessed our sins and ask God's forgiveness, we simply need to keep a forward focus toward the goal of pleasing Christ," and "I think there are very few districts of that powerfulness of having a board such as ourselves having a goal. And that one goal is under God, Jesus Christ." *Id.*; ("Pls.' SUF," Dkt. No. 48-2 ¶¶ 49, 65, 74, 58, 44, 51.) In response to the *Obergefell v. Hodges* decision legalizing same-sex marriage, Pastor Jeff Kerns of Calvary Chapel

Chino Hills delivered the opening prayer, saying, "O Lord, we are in desperate need of you … Lord, our country is just making some big mistakes these days," ending the prayer "in Jesus's name." *Id.* ¶ 102. Board members repeatedly gave the opening prayer themselves. *Id.* ¶¶ 38, 42, 73, 84, 97. Board members also read from the Bible at multiple board meetings. *Id.* ¶¶ 35, 37, 43, 48, 51, 55, 57, 60, 61, 67, 70, 76, 78, 81, 85, 89.

Every Board meeting that Plaintiff Michael Anderson attended began with a prayer, "the vast majority" of which were "overtly Christian." ("Anderson Decl.," Dkt. No. 48-3 ¶ 4.) "On those occasions where the meeting was opened with a non-Christian prayer, either James Na or Andrew Cruz would make religious comments particularly emphasizing Christian beliefs and often asking those in attendance to adopt such beliefs." *Id.* ¶ 7. In all the meetings he attended or watched on TV, Anderson had "never seen any meeting opened by a statement from a non-religious person as a secular invocation or secular solemnization of the meeting." *Id.* ¶ 9.

CVUSD students attended Board meetings and were subjected to these blatantly sectarian religious statements by their school district governing officials. A student representative sits on the Board and is responsible for representing the student body. ("Pls.' SUF," Dkt. 48-2 ¶ 20.) Students regularly attend board meetings to address issues with their schools. *Id.* ¶ 19. Students present to the Board. *Id.* ¶ 26. Students have delivered the Pledge of Allegiance, *id.* ¶ 21, and presented the colors to the Board, *id.* ¶ 109. And the Board recognizes student achievements at board meetings. *Id.* ¶ 18. Notably, before the judgment in this case, student presentations occurred directly after the opening religious invocation. *Id.* ¶ 26.

B. Procedural History.

On November 13, 2014, Plaintiffs filed a complaint seeking declaratory and injunctive relief prohibiting the Board's practice of conducting school-sponsored religious exercises and prayer at board meetings. ("Compl.," Dkt. No. 1 ¶ 107.) This court granted Plaintiffs motion for summary judgment in part on February 18, 2016, and ordered a permanent injunction against four Board members in their official capacities. ("Judgment," Dkt. No. 88 ¶ 2.) The Ninth Circuit affirmed the judgment on July 25, 2018, *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), and then denied rehearing en banc, *id.*, 910 F.3d 1297 (9th Cir. 2018). Defendants did not file a petition for certiorari to the Supreme Court. Defendants now seek relief from the judgement under Fed. R. Civ. P. 60(b) on the sole ground that "[t]he law on which the injunction was based has since been overturned by the Supreme Court." ("Motion," Dkt. No. 126 at 2, citing *Kennedy.*)

C. Based On The Undisputed Facts, This Court Rejected Defendants' Argument That The Legislative Prayer Exception Justified The Board's Proselytizing And Coercive Prayer Practices.

In its summary judgment opinion, this court carefully considered and rejected Defendants' argument that their prayer practices fall within the legislative prayer exception recognized in *Marsh v. Chambers*, 463 U.S. 783 (1983), and *Town of Greece, N.Y. v. Galloway*, 134 S.Ct. 1811 (2014). The court reasoned: "Because of the distinct risk of coercing students to participate in, or at least acquiesce to, religious exercises in the public school context, the Court finds the legislative exception does not apply to the

policy and practice of prayer in Chino Valley School Board Meetings." ("Order MSJ," Dkt. No. 87 at 23.)

The undisputed facts established that "in practice, Board members have delivered the opening invocation on multiple occasions and frequently read from the Bible and proselytized religious messages at other points in the meeting." (*Id*. at 21.) The court concluded that the largely religious content of the opening prayers, combined with undeniably religious Bible readings and references to Jesus Christ by Board members throughout the meetings, was intended to promote Christianity. (*Id*. at 24.) "Board members repeatedly reading from the Bible and 'urging' an audience of students, parents and teachers 'who do not know Jesus Christ to go and find him' cannot be reasonably interpreted any other way." (*Id*. at 25.) Given the undisputed facts, the court concluded that "regardless of the stated purpose of the [invocation] Resolution, it is clear that the Board uses it to bring sectarian prayer and proselytization into public schools through the backdoor." (*Id*.)

In large part based on the evidence establishing that students were routinely exposed to the proselytization at Board meetings, this court held that this case was "controlled" by *Lee v. Weisman*, 505 U.S. 572 (1992), *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), and other school prayer cases, and held that Defendants' practices were unconstitutionally coercive. (Dkt. No. 87 at 23.)

D. The Ninth Circuit Agreed That The Legislative Prayer Exception Does Not Apply To The Facts Here.

The Ninth Circuit affirmed. After reciting the facts establishing the Board's overt proselytization and Christian promotion, the Court concluded that "the Board's

prayer policy and practice violate the Establishment Clause." *FFRF v. Chino Valley*, 890 F.3d at 1140, 1142. The Court expressly distinguished *Marsh v. Chambers* and *Town of Greece v. Galloway*, concluding that Defendants' practices are "not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate, that the legislative prayer tradition contemplates" *Id.* at 1142. To the contrary, the Court recognized that Defendants' prayers "typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity." *Id*.

The Ninth Circuit emphasized that the audience for the prayers in *Marsh* and *Town of Greece* consisted of adults. *Id*. at 1143. The Court also cited the special Establishment Clause concerns that the Supreme Court has repeatedly explained arise in the school context. *Id.* at 1150 (citing, among other cases, *Lee v. Weisman* and *Santa Fe Independent School District*).

In short, Defendants' argument here, that their prayer practices are within the legislative prayer tradition, has already been expressly rejected by this court and the Ninth Circuit.

III. ARGUMENT

A. Rule 60(b)(5) Provides No Ground To Reopen The Judgment.

Defendants' Motion does not satisfy the requirements of Rule 60(b)(5). Defendants argue only that the Supreme Court's *Kennedy* decision constituted a change in the law on which the judgment in this case relied. (Motion at 2.) The *Kennedy*

decision, however, did not purport to effect any change in the law, and even if it had, that would not trigger Rule 60(b)(5).

Under Rule 60(b)(5), a court may relieve a party from a final judgement or order only if "the judgement has been satisfied, released, or discharged; it is based on earlier judgement that has been reversed or vacated; or applying prospectively is no longer equitable."

Defendants rely only on the second prong, arguing that *Kennedy* reversed the decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), one of the many decisions which this court and the Ninth Circuit cited in support of the judgment. (*See* Motion at 2, 11.) Defendants make no claim of changed circumstances, do not suggest there has been any change in facts, and develop no argument that the current injunction is no longer equitable.

Defendants' Motion does not satisfy Rule 60(b)(5) because *Kennedy* did not change the law on which the judgment was based. In *Kennedy,* the Supreme Court explained that it had "long ago abandoned *Lemon* and its endorsement test offshoot." *Kennedy*, 597 U.S. at 534. The Court explained that it had previously instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings, citing *Town of Greece*. *Id.* at 535. The Court also stated that "an analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some 'exception' within the Court's Establishment Clause jurisprudence." *Id.* at 536 (quoting *Town of Greece*, at 575). On its face, therefore, *Kennedy* did not change the law so as to trigger Rule 60(b)(5).

Indeed, while citing *Kennedy*, Defendants' motion relies almost exclusively on *Marsh* and *Town of Greece*, but those decisions long preceded this court's decision. *Kennedy* criticized *Lemon*, but it did not overturn any prior Supreme Court precedent. To the contrary, *Kennedy* cited with approval the decisions in *Lee* and *Santa Fe Independent School District* on which this court and the Ninth Circuit relied. *See* 597 U.S. at 541–42. Moreover, neither *Lee* nor *Santa Fe* turned on *Lemon*. The *Lee* Court expressly declined to consider whether *Lemon* should be overturned because foundational Establishment Clause principles precluded the school prayer practices at issue in that case without any need to rely on the *Lemon* test. *See Lee*, 505 U.S. at 587. The Court's decision in *Santa Fe* similarly applied longstanding principles, citing *Lemon* only in passing in concluding that a facial challenge was appropriate. *Santa Fe*, 530 U.S. at 314. In sum, the *Kennedy* decision, by its own terms, did not purport to effect any "change in the law," let alone a change that would implicate *Lee*, *Santa Fe*, and the other school prayer cases on which the judgment relied here.

Even if *Kennedy* had changed the law, Rule 60(b)(5) still would not justify relief from judgment. Rule 60(b)(5) permits relief from a final judgment if "it is based on earlier judgement that has been reversed or vacated." But that provision permits relief only when the earlier judgment was in the same case. "[T]he fact that, after the judgment being challenged issued, precedent arose in a different case that rendered the challenged judgment flawed or incorrect is not sufficient to implicate subpart (2) of Rule 60(b)(5)." *Schrubb v. Blankenship*, 2022 WL 3971054 at *2 (C. D. Cal. July 26, 2022) (citing and discussing cases); *see also Wright & Miller*, Federal Practice and Procedure § 2862 (3rd Ed. 2024) (prior judgment prong of Rule 60(b)(5) "does not apply

merely because the case relied on as precedent by the court in rendering the present judgment has since been reversed.").

The third prong of Rule 60(b)(5) only provides a basis for relief if it is "no longer equitable" to continue the force and effect of a judgment or order. Defendants have not developed any argument that that prong applies. They have not identified any changed circumstances or facts. Instead, Defendants simply assert that *Kennedy* overturned *Lemon* and then repeat the argument they previously made to this court and the Ninth Circuit that their prayer practices are in the mold of the legislative prayer tradition. The Ninth Circuit's rejection of that argument remains both law of the case and binding precedent, and it is still supported by controlling Supreme Court authority. (See discussion *infra* Section III.D.) Thus, it would not be inequitable to continue this court's permanent injunction.

B. Defendants' Motion Should Be Denied As Untimely.

Defendants' motion should independently be denied because of the more than three-year delay between the Supreme Court's decision in *Kennedy* and Defendants' motion. A Rule 65 motion "must be made within a reasonable time[.]" Fed. R. Civ. P. 60(c)(1). Defendants failed to satisfy this requirement.

A "reasonable time" depends upon the facts of each case, taking into consideration: (1) the interest in finality; (2) the reason for delay; (3) the practical ability of the litigant to learn earlier of the grounds relied upon; and (4) prejudice to the other parties. *Lemoge v. United States*, 587 F.3d 1188, 1196 (9th Cir. 2009) (citing *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (per curiam)). This court has

broad discretion in determining what constitutes a reasonable time. *See, e.g.*, *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981) (six-year delay unreasonable because defendant failed to establish extraordinary circumstances causing the delay); *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (twenty-six month delay unreasonable because ordinary hardship of incarceration does not excuse an excessive delay). All the relevant factors weigh against the timeliness of Defendants' motion.

1. The interest in finality weighs heavily against Defendants.

Both the "abstract interest in finality" and "any reliance interest in the finality of the judgment" weigh heavily in Plaintiffs' favor here. *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 450 (9th Cir. 2019). A reliance interest accrues when "the final judgment being challenged has caused one or more of the parties to change his legal position in reliance on that judgment." *Id.* (quoting *Phelps v. Alameida*, 569 F.3d 1120, 1137–38 (9th Cir. 2009)). Interest in finality is one of the most, if not *the* most important factor in this analysis of whether a Rule 60 motion is timely. "Relief from judgment pursuant to Rule 60(b) should be confined to situations in need of an extraordinary remedy, for the framers of Rule 60(b) set a higher value on the social interest in the finality of litigation." *U.S. Care, Inc. v. Pioneer Life Ins. Co. of Ill.*, 244 F. Supp. 2d 1057, 1061 (C.D. Cal. 2002) (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 683 (7th Cir. 1983)) (citation modified).

Plaintiffs have a strong abstract interest in finality due to the length of the prior litigation. From filing the complaint in 2014 to the final disposition of this case

following appeal, Plaintiffs engaged in five long years of litigation to vindicate their constitutional right to be free from sectarian prayer by their school system, a right that most Americans enjoy without needing to litigate in the first place. Plaintiffs did not battle in court for five years for financial gain, but to protect the rights of themselves, the rights of their minor children, and the rights of other families similarly situated. After that extensive litigation, they have a strong interest in putting this case behind them.

Plaintiffs also have a strong reliance interest in finality. Plaintiffs relied on the final closure of this case to end their retention of their former counsel years ago. As discussed below, Defendants' multi-year delay has forced Plaintiffs to seek out new counsel to defend this motion because their prior counsel is no longer available. Defendants offer no sufficient basis to draw Plaintiffs back into court.

2. Defendants fail to present any reason for their three-year delay.

No good reason justifies Defendants' three-year delay in bringing this motion after the Court decided *Kennedy* in 2022. A Rule 60(b) movant must show "extraordinary circumstances justifying the reopening of a final judgment." *Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). Extraordinary circumstances are those beyond the movant's control that "prevented timely action to protect its interests." *Lehman v. United States*, 154 F.3d 1010, 1017 (9th Cir. 1998). If the movant delays in filing a Rule 60(b) motion without establishing extraordinary circumstances justifying that delay, the motion must be denied. *See Gonzalez*, 545 U.S. at 535. *See, e.g.*, *S.E.C. v. Durante*, 641 F. App'x 73, 79

(2d Cir. 2016) (twenty-nine-month delay "without explanation" unreasonable); *Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir. 2014) (over-ten-year delay unreasonable because movant failed to "articulate a reasonable basis for delay"). Defendants have failed to present *any* reason, let alone "extraordinary circumstances," that justifies the three-year delay in bringing this motion.

3. Defendants knew of *Kennedy* in 2022 and questioned the injunction's validity at that time, but delayed until 2025 anyway.

Defendants had the "practical ability to learn earlier of the grounds" they now rely upon in their Motion. *Lemoge*, 587 F.3d at 1196. Defendants were aware of the *Kennedy* decision in 2022, when it was issued. FFRF attorney Christopher Line sent a letter to Defendants' attorney of record on July 13, 2022, informing her that the final judgment and injunction in this case stand regardless of the *Kennedy* decision. **Declaration of Christopher Line.** That July 13, 2022, letter cited statements by Board member Andrew Cruz which openly questioned the validity of the injunction in light of *Kennedy*. **Line Decl., Ex. A**. Defendants' attorney at the time replied on July 21, 2022, that she advised the Board members of their "ongoing obligations under the existing injunction." **Line Decl., Ex. B.** Yet Defendants still waited *years* to bring this motion.

4. The delay in filing this motion prejudices Plaintiffs, because Plaintiffs had to secure new counsel.

Defendants' multi-year delay in filing this motion has prejudiced Plaintiffs by forcing them to secure new counsel five years after the close of litigation. Plaintiffs are in a worse spot than they would have been if Defendants had filed this motion in 2022, when continuity of counsel would have been possible. Plaintiffs' previous attorneys of

record, David Kaloyanides, Rebecca Markert, and Andrew Seidel, the attorneys who were familiar with this case and litigated through both the trial and appellate courts, are no longer on this case ("Decl. of Joel Oster," Dkt. No. 126-4 ¶ 3), and no longer available to participate. Defendants' delay caused Plaintiffs to have to secure new counsel, and the new attorneys of record have had to familiarize themselves with a new case, with an extensive docket, and at a financial cost to Plaintiff FFRF. That prejudice to Plaintiffs could have been avoided if Defendants timely pursued this motion three years ago.

C. The CVUSD Board Of Education Lacks Standing To Challenge The Injunction Because All Claims Against The Board Were Dismissed.

The motion suffers from yet another procedural problem: The CVUSD Board of Education is challenging an injunction that enjoins only its members, not the Board itself. The claims against the Board were previously dismissed, because "California[] county boards of education are arms of the State for the purposes of Eleventh Amendment immunity." ("Order MSJ," Dkt. No. 87 at 12); *Chino Valley*, 896 F.3d at 1141–42. Since the Board is not a party to this case, it has no standing to challenge the injunction.

D. The Permanent Injunction Remains Proper And Supported By Valid And Controlling Authority.

1. This Court and the Ninth Circuit have already determined that Defendants' prayer practices are not within the legislative prayer tradition of *Marsh* and *Town of Greece*.

Defendants' motion also fails on a third independent ground: on the merits. Defendants once again argue that their prayer practices are within the legislative prayer

tradition upheld in *Marsh* and *Town of Greece*. This court and the Ninth Circuit, however, have already expressly considered and rejected that same argument. Defendants simply ignore the undisputed facts that this court and the Ninth Circuit have already concluded distinguish their practices from practices permitted by the legislative prayer tradition, including because the practices Defendants seek to resume involved proselytization and student coercion. Nothing in *Kennedy* changed any of this.

Kennedy did not invalidate the legal basis for the current injunction. The injunction remains well-supported by Supreme Court authority other than *Lemon* that *Kennedy* cited with approval. *See Lee*, 505 U.S. 577; *Santa Fe*, 530 U.S. 290. The principal decisions on which the Defendants rely, *Marsh* and *Town of Greece*, both predate the judgment in this case and support this court's detailed and fact-sensitive determinations.

The Supreme Court in *Marsh* expressly distinguished prayer practices that, like those at issue here, are not within the legislative prayer tradition. The Court stated:

> The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance anyone, or to disparage any other faith or belief.

Marsh, 463 U.S. at 794–95. As this court and the Ninth Circuit held, the undisputed facts here reflect precisely that kind of exploitation of a "prayer opportunity" to proselytize.

In *Town of Greece*, the Court similarly recognized that government prayer practices violate the Constitution if the evidence "shows that the invocations denigrate non-believers or religious minorities, threaten damnation, or preach conversion"

because at that point, the invocation "falls short of the desire to elevate the purpose of the occasion short and to unite lawmakers in their common effort." 572 U.S. at 583. The record in this case undisputedly establishes that the Defendants' practices were exploited to proselytize as part of a policy of discrimination, non-neutrality, and coercion.

2. The prayer practices by the Board members were unconstitutionally coercive and remain controlled by *Lee* and *Santa Fe*.

This court and the Ninth Circuit also concluded based on the undisputed facts that the Christian invocations sponsored by the Board, and the Christian statements by Board members, were unconstitutionally coercive to students in attendance at Board meetings. Nothing in *Kennedy* changes that analysis. *Kennedy* painstakingly made clear that the facts in that case involved no possible coercion, but, an individual coach who sought to "pray quietly" alone "without his players" in a "brief, quiet, personal religious observance" with "no formal school program accommodating the religious activity at issue." 597 U.S. at 525–26, 541, 543 ("The contested exercise before us does not involve leading prayers with the team or any other captive audience … Mr. Kennedy did not seek to direct any prayers to students…."). The facts here are entirely different.

The Supreme Court has long recognized the unconstitutionally coercive effects that a state-sponsored religion has on the impressionable minds of schoolchildren. *See McCollum v. Bd. of Ed.*, 333 U.S. 203, 227 (1948); *Engel v. Vitale*, 370 U.S. 421, 442 (1962); *Lee*, 505 U.S. at 592 ("Our decisions . . . recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion."); *see also*

Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 307 (1963) (Goldberg, J., concurring); *Santa Fe*, 530 U.S. at 311–13. The Supreme Court has repeatedly held that school-sponsored prayer and Bible readings are prohibited due to their coercive nature.

The *Lee* and *Santa Fe* decisions, in particular, make clear that the coercive effect school-sponsored prayer has on students goes beyond the classroom and school hallways. *Lee* and *Santa Fe* involved school-sponsored prayer at graduation ceremonies and football games, respectively, school events where schoolchildren were present, even if they were not formally compelled to attend. As this court already held, the principles of *Lee* and *Santa Fe* apply to school board meeting prayer when the prayer is facilitated by the school, and they control this case. (*See* "Order MSJ," Dkt. No. 87, at 20.)

School-sponsored prayer "carr[ies] a particular risk of indirect coercion," since "in a school context [prayer] may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." *Lee*, 505 U.S. at 592. "[T]he school district's supervision and control of a high school graduation ceremony 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 and benediction." *Id.* at 593. Adolescents are susceptible to social pressures towards conformity, *id.*, and in conducting school-sponsored prayer, "the government may no more use social pressure to enforce orthodoxy than it may use more direct means." *Id.* at 594.

The invocations and religious statements made by Defendants in this case are as coercive as the practices prohibited by *Lee* and *Santa Fe*. Adolescent students attend

board meetings and are subjected to the coercive effect of proselytizing statements made by government officials with significant power over them. Based on blatantly Christian statements by Board members urging "everyone who does not know Jesus Christ to go and find Him," *supra* at 9, and saying the Board's "one goal is under God, Jesus Christ," *supra* at 9, the Board's religious preference was unmistakably clear for all students in attendance, including those of a minority religious belief.

The Board's unmistakable religious views impermissibly coerced students to follow along with the Board's religious practices to maintain favor with the Board as students sought redress, made presentations, or gained recognition. Board meeting attendance is "voluntary" only in the same way that attending any school event, including graduation or a football game, is voluntary. *See Lee*, 505 U.S. at 595. In each situation, not attending leads to a real loss. *See also, e.g.*, *Karen B. v. Treen*, 653 F.2d 897, 902 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) ("State and school officials point out that student participation in the daily prayer session is allowed to be wholly voluntary. This fact is not relevant to the Establishment Clause inquiry."); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) ("VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are 'voluntary.'").

Defendants' prayer practices at public school board meetings are unconstitutionally coercive and remain prohibited by well-established case law. *Kennedy* reaffirmed the point, emphasizing that "coercion… was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 597 U.S. at 537.

This court discussed *Lee* and *Santa Fe* at length in its 2016 decision ("Order MSJ," Dkt. No. 87, at 15-23) and unambiguously held that "this case is controlled by *Lee* and the school prayer cases[.]" *Id.* at 23. The Ninth Circuit also cited *Lee* and *Santa Fe*. *E.g.*, *Chino Valley*, 896 F.3d at 1143, 1145. Remarkably, despite this court's extensive discussion of how the school board members' prayer practice was controlled by *Lee* and the school prayer cases, Defendants do not address *Lee* or *Santa Fe* even once in their Rule 60(b)(5) motion. Defendants fail to demonstrate, or even argue, that the court's permanent injunction is not supported by controlling authority, including *Lee* and *Santa Fe*. The court does not need to go further to deny the Motion.

3. *Kennedy* did not overrule Establishment Clause cases decided before or after *Lemon*, including post-*Lemon* cases that reference the *Lemon* test.

Defendants argue only that *Kennedy* overruled *Lemon*, and that the Ninth Circuit applied *Lemon* in part of its analysis. Regardless of whether *Kennedy* is deemed to have reversed or vacated *Lemon,* see *supra* Sections III.D.1–2, that decision did not expressly or impliedly overrule other pre-*Lemon* or post-*Lemon* Establishment Clause cases. Throughout the *Kennedy* opinion, the majority approvingly cited a host of Establishment Clause cases that themselves cited *Lemon*, including *Lee* and *Santa Fe*. *See Kennedy*, 597 U.S. at 537 (affirmatively quoting *Lee*, 505 U.S. at 589 ("Government 'may not coerce anyone to attend church,' nor may it force citizens to engage in 'a formal religious exercise.'")); *see also Kennedy*, 597 U.S. at 541–42 (affirmatively citing *Santa Fe*, 530 U.S. at 294).

The Supreme Court has repeatedly held that it is the "Court's prerogative alone to overrule one of its precedents." *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016). Lower courts cannot pick and choose when they follow Supreme Court precedent simply because the court (or one of the parties) thinks the Supreme Court *might* overrule a case at some point in the future. This is true even where a party believes that subsequent Supreme Court rulings have called into question the continuing validity of a prior ruling: "If a precedent of th[e Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to th[e Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 489 (1989); *see also Agostini v. Felton*, 521 U.S. 203, 237–38 (1997) ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent.").

The Supreme Court exercised no such prerogative in *Kennedy.* The Supreme Court, in fact, has affirmatively cited precedent involving the *Lemon* analysis as recently as June 5, 2025. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 145 S. Ct. 1583, 1591–93 (2025) (affirmatively citing *Larson v. Valente*, 456 U.S. 228 (1982), and relying on *Larson* for a significant part of its analysis; affirmatively citing *Santa Fe*, 530 U.S. 290).

The Court in *Kennedy,* moreover, approvingly cited not just post-*Lemon* Establishment Clause cases such as *Lee* and *Santa Fe*, but also the Establishment Clause jurisprudence that led up to *Lemon* itself. *See Kennedy*, 597 U.S. at 533 (citing *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 13, 15 (1947). *Kennedy* also reaffirmed and

applied the long-established principle that the Establishment Clause prohibits government coercion, stating unambiguously that "this Court has long held that government may not, consistent with a historically sensitive understanding of the Establishment Clause, 'make a religious observance compulsory.'") (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)). The *Kennedy* Court concluded, on the facts of that case, that there was no coercion because the particular practice at issue was an individual's "brief, quiet, personal religious observance" that involved only private speech, not government speech. *Kennedy*, 597 U.S. at 529, 543. The Court, however, expressly recognized that coercion remains a viable basis for objection to government religious practices, and the Court resolved the case before it by carefully distinguishing school prayer cases that, like the facts here, involved potential coercion of students.

4. In its original ruling, the Ninth Circuit already took historical practices and understandings into account.

Defendants' motion fails for yet another fundamental reason: The entire premise of Defendants' argument is that an Establishment Clause analysis must focus on history, but this court, and then the Ninth Circuit in *Chino Valley*, 896 F.3d 1132, already carefully and properly considered historical practices and understandings in concluding that Defendants' practices were unconstitutional. While the Ninth Circuit, in part, applied the *Lemon* framework, it first considered in detail the lack of historical precedent allowing school board prayer and the Supreme Court's long history distinguishing school prayer from legislative prayer. *Id.* at 1142–49. That historically focused analysis, by itself, would have been sufficient under *Kennedy*.

The Ninth Circuit determined that the Board's previous prayer policy and practice was "not within the legislative-prayer tradition that allows certain types of prayer to open legislative sessions." *Chino Valley*, 896 F.3d at 1142 (9th Cir. 2018) (citing *Marsh* and *Town of Greece*). The Ninth Circuit fully acknowledged that history and tradition were integral to determining whether the Board's prayer policy violated the Establishment Clause, stating that "[i]n evaluating whether the identified historical tradition of legislative prayer does indeed encompass a particular prayer practice, we must undertake a 'fact-sensitive' inquiry, in which we take into account 'the setting in which the prayer arises and the audience to whom it is directed,' the content of the prayer, and 'the backdrop of historical practice.'" *Chino Valley*, 896 F.3d at 1144 (quoting *Town of Greece*, 572 U.S. at 587). Defendants' assertion that the Ninth Circuit's decision in this case is predicated entirely on *Lemon* is simply wrong. Instead, the Court relied upon Establishment Clause cases that have not been overruled and explicitly applied a historically sensitive approach to its analysis.

In distinguishing the school board meetings in this case from the legislative sessions at issue in *Marsh* and *Town of Greece*, the Ninth Circuit explained that "This is not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate, that the legislative-prayer tradition contemplates .... Instead, these prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity." *Id.* at 1142.

The distinction recognized by the Ninth Circuit is in accordance with the Third and Sixth Circuits' conclusions in analogous cases. *See Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 275 (3d Cir. 2011) ("[W]e conclude that *Marsh*'s legislative prayer exception does not apply and find that *Lee* provides a better framework for our analysis."); *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 371 (6th Cir. 1999). The Ninth Circuit's decision remains binding on this court, both as a matter of precedent and as law of the case. School boards are simply not the same as legislatures. The function of a school board "is uniquely directed toward school-related matters" and the board's relationship with students is of a different character than a legislature's relationship to constituents. *Coles*, 171 F.3d at 381.

5. Defendants fail to show a historical practice and understanding approving of school board prayer, as required by *Kennedy*.

Finally, even if this case were not controlled by still-binding Supreme Court precedent and the law of the case from the Ninth Circuit's decision, Defendants' motion would still fail, because Defendants offer no compelling evidence of a historical practice approving of prayer at public school board meetings with a student audience and student participants. To the contrary, most of the historical examples Defendants offer involve governmental prayer generally, without any consideration of schools. As movants, Defendants have the burden to establish a justification for relief from the judgment. Thus, even if their legal theory were viable (and it is not, for all the reasons previously explained), it would be their burden to prove a robust historical practice justifying the reopening of this closed case. They come nowhere near meeting that burden.

Defendants assert unpersuasively that "history demonstrates that prayer was done in front of children, such as at presidential inaugural addresses, congressional meetings, and supreme court sittings." ("Rule 60 Mot.," Dkt. No. 126, at 19.) None of these examples have anything to do with a public school and the inherently coercive setting of school-sponsored prayers. Acknowledging that there are cases in which prayer involving a mature audience *is* constitutional is not germane here, as audience and forum are vital to the court's analysis.

Audience and context matter when considering whether there is a tradition of public prayer by the government. Broad generalizations are rarely appropriate in Establishment Clause analysis, particularly where schoolchildren are involved. *See Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987) ("The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools"). There are many religious practices that are allowed in other contexts, but not in a school context. *Compare, e.g.*, *Van Orden v. Perry*, 545 U.S. 677 (2005) (holding that a longstanding Ten Commandments display on courthouse grounds did not violate the Establishment Clause), *with Stone v. Graham*, 449 U.S. 39 (1980) (holding a Kentucky statute requiring the Ten Commandments be posted in public school classrooms was unconstitutional).

Defendants cite just three examples involving school boards: Pennsylvania school board meetings with clergy-led opening prayer as early as 1820, Wisconsin school boards opening with prayer in 1857, and Iowa school board invocations as early as 1859. ("Rule 60 Mot.," Dkt. No. 126, at 18). There are glaring problems with these examples.

First, these examples are from nearly a century before the Establishment Clause was incorporated against the states, so their relevance is limited at best. *See generally Everson*, 330 U.S. 1 (holding in 1947 that the Establishment Clause applies to the states). Defendants claim that "The Fourteenth Amendment's ratification brought with it the application of the Establishment Clause against the states," ("Rule 60 Mot.," Dkt. No. 126, at 18), implying that the ratification of the Fourteenth Amendment and the application of the Establishment Clause to the states were concurrent. That is incorrect. The Fourteenth Amendment did not automatically incorporate the Establishment Clause against the states; each provision of the Bill of Rights was only incorporated incrementally, over time. Using pre-*Everson* examples does nothing to show the constitutionality of school board prayer, considering that the Establishment Clause was not incorporated against the states at the time. Moreover, Defendants' examples fail even under Defendants' own theory, because they cite only practices from the 1820s and 1850s, *before* the ratification of the Fourteenth Amendment. Their failure to cite any examples of permissible school board prayer *after* the adoption of the Fourteenth Amendment, when they say the Establishment Clause first applied to the states, fundamentally undermines their historical argument.

Second, three cherry-picked examples from school boards are not representative of American public education as a whole, and do not adequately establish evidence of an accepted historical practice. On the contrary, religious exercise in public schools during Defendants' cited time period was deeply controversial. For example, there were riots in 1844 in Philadelphia between Protestants and Catholics about the use of the Protestant Bible in public schools, leading to the deaths of twenty people. Steven K.

Green, *The Bible, the School, and the Constitution* 80–84 (2012). The dozens of court cases challenging religious exercises in schools in the nineteenth and twentieth centuries demonstrate that these practices were not universally accepted. *Id.* at 93, 136, 236–43. While Defendants note three examples of prayer at school board meetings, these school districts do not represent the entire American public education system.

Ultimately, Defendants offer no compelling evidence of a historical understanding that permits a public school board, with a student member, to open its public meetings where students are present with proselytizing prayers. All other evidence Defendants provide has nothing to do with prayer toward children nor prayer in schools. And none of Defendants' examples suggest that overt proselytization, as established by the undisputed facts at issue here, is permitted in schools.

IV. CONCLUSION

Defendants' Rule 60(b)(5) Motion for Relief from Judgment should be denied. The Motion fails on multiple threshold grounds and is just an attempt to relitigate this court's prior conclusion, affirmed by the Ninth Circuit, that proselytization formally facilitated by a public school board in the presence of school-age children is not protected by the legislative prayer tradition recognized in *Marsh* and *Town of Greece*.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs Freedom From Religion Foundation, Michael Anderson, Larry Maldonado, and Does 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, and 18, certifies that this brief contains 6,837 words, which complies with the word limit of L.R. 11-6.1

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PROOF OF SERVICE

The undersigned hereby certifies that the foregoing has been served via the Court's Electronic Document Submission System. The below listed counsel will automatically receive e-mail notices with links to true and correct copies. The below listed Doe plaintiffs will receive paper copies to their last known mailing address.

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