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9
10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 FREEDOM FROM RELIGION
FOUNDATION, INC.; DOE 1, a minor
14 by and through his/her guardian; DOE
2, and DOE 2 individually; DOE 3 and
15 DOE 4

16 Plaintiffs

17 v.

18 CHINO VALLEY UNIFIED SCHOOL
DISTRICT BOARD OF
19 EDUCATION; and CHINO VALLEY
UNIFIED SCHOOL BOARD OF
20 EDUCATION BOARD MEMBERS¹
21 JAMES NA, SONJA SHAW,
22 JONATHAN MONROE, ANDREW
23 CRUZ, JOHN CERVANTES, in their
official representative capacities,

24
25 Defendants

Case No.: EDCV 14-2336-JGB

Hon. Jesus G. Bernal

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
RELIEF FROM FEBRUARY 18,
2016, ORDER UNDER FED. R. CIV.
P. 60**

Date: October 6, 2025
Time: 9:00 a.m.
Dept.: Courtroom 1
Judge: Honorable Jesus G. Bernal

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27
28 ¹ Pursuant to Fed. Rule 25(d), the previous commissioners of Chino Valley Unified School Board have been replaced by the current commissioners.

1
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on October 6, 2025, at 9:00 a.m., or as soon as
4 the matter may be heard, before the Honorable Jesus G. Bernal in Courtroom 1 of the
5 United States District Court for the Central District of California, Eastern Division,
6 located at 3470 Twelfth Street, CA 92501, Defendants will and do hereby move this
7 Court for an order granting relief under Fed. R. Civ. P. 60 on the following grounds:

8 Pursuant to Fed. R. Civ. P. 60(b), Defendant Chino Valley Unified School District
9 Board of Education (“CVUSD” or “Board”) moves the Court for an Order granting
10 CVUSD relief from its Judgment, dated February 18, 2016, Dkt. No. 88. The Judgment
11 enjoined Board members from “conducting, permitting or otherwise endorsing school-
12 sponsored prayer in Board meetings.”

13 The law on which the injunction was based has since been overturned by the
14 Supreme Court. *See Kennedy v. Bremerton School District*, 597 U.S. 507, 535 (2022).
15 The Board, which consists of several new members, now desires to implement a policy
16 allowing for invocations to start school board meetings that comply with the history and
17 tradition of invocations prior to public meetings of deliberative bodies and, in particular,
18 of school boards. As a result, CVUSD requests this Court vacate the injunction in the
19 present matter and permits the new board to create a policy that permits an invocation to
20 be done prior to board meetings in a manner that comports with current law.

21 The last filing in this case occurred on August 2, 2019. *See* ECF No. 124. As of the
22 date of the last filing, the docket reflected that Plaintiffs were represented by attorneys
23 David Kaloyanides, Rebecca Markert, and Andrew Seidel. Declaration of Joel Oster, ¶ 3.
24 All three were listed as counsel of record for Plaintiffs, including the organizational
25 Plaintiff Freedom From Religion Foundation (“FFRF”) and the individual Plaintiffs
26 identified as Michael Anderson, Larry Maldonado, and Does 1 through 20. *Id.* Because
27 the case involved anonymous Plaintiffs (Does 1–20), and due to a protective order entered
28

1 by the Court (ECF No. 30), Defendants’ current counsel was not provided with the
2 identities, contact information, or addresses of the Doe Plaintiffs. *Id.*, ¶ 15.

3 On June 9, 2025, Defendants’ counsel contacted Mr. Kaloyanides by email to
4 request a time to meet and confer regarding Defendants’ proposed Rule 60 motion. *Id.*, ¶
5 5. Mr. Kaloyanides responded that he no longer serves as counsel for Plaintiffs and
6 directed counsel to contact Patrick Elliott, legal counsel with FFRF, for any further
7 communication regarding this case. *Id.*, ¶ 6.

8 On June 18, 2025, counsel participated in a meet and confer regarding Defendants’
9 proposed Rule 60 motion. *Id.*, ¶ 7.

10 Following that meeting, on June 20, 2025, Mr. Elliott confirmed that FFRF now
11 represents only a subset of the original Plaintiffs – specifically, Freedom From Religion
12 Foundation, Michael Anderson, Larry Maldonado, Does 1–12, and Does 16–18. *Id.*, ¶ 8.
13 Mr. Elliott further indicated that FFRF does not represent Doe Plaintiffs 13, 14, 15, 19,
14 and 20. *Id.*, ¶ 9.

15 On June 27, 2025, Defendants’ counsel asked Mr. Elliot if he could provide the
16 appropriate Doe information for the unrepresented Does to properly notify and serve them
17 with the Rule 60 motion. *Id.*, ¶ 10. Mr. Elliot referenced the protective order and requested
18 that we contact Defendants’ prior counsel for the requested information. *Id.*, ¶ 11.

19 On June 27, 2025, Defendants’ counsel emailed Plaintiffs’ other counsel of record,
20 Mr. Seidel and Ms. Markert, to request a time to meet and confer regarding Defendants’
21 proposed Rule 60 motion. *Id.*, ¶ 12. On June 30, 2025, Mr. Seidel notified Defendants’
22 counsel that he does not represent any clients related to this matter. *Id.*, ¶ 13. On July 14,
23 2025, Rebecca S. Markert stated that Does 14 and 15 do not wish to proceed as part of
24 this case. *Id.*, ¶ 14.

25 On June 30, 2025, Defendants’ counsel contacted Defendants’ former counsel,
26 Michael Peffer and Kevin Snider, to request information about the identifies of Does 13,
27 19 and 20, consistent with the active protective order in this case. *Id.*, ¶ 15. On July 11,
28 2025, Mr. Peffer provided information about the identities of the relevant Does. *Id.*, ¶ 16.

1 On Monday, July 21, 2025, Defendants’ counsel sent Does 13, 19 and 20 letters
2 informing them that we will be filing this motion, the basis for the motion, and provided
3 contact information so they could get a hold of counsel if they chose to communicate with
4 us, either personally or through an attorney. *Id.*, ¶ 17. To date, Defendants’ counsel has
5 not received any response from the letters. *Id.*

6 Defendants are serving this motion on the attorneys who appeared as counsel of
7 record for Plaintiffs at the conclusion of this case – specifically FFRF’s counsel and any
8 other counsel listed in the docket. In addition, Defendants’ counsel will continue to serve
9 Does 13, 19 and 20 with the relevant pleadings in this case. *Id.*, ¶ 18.

10 The motion is based upon this Notice, the accompanying Memorandum of Points
11 and Authorities in support, the papers and pleadings on file in this action, and such
12 matters as may be presented to the Court at the time of the hearing.

13
14 DATED: July 31, 2025

ADVOCATES FOR FAITH AND FREEDOM

15
16 By: /s/ Joel Oster

17 Joel Oster, *Pro Hac Vice*
18 Attorneys for Defendants
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Establishment Clause forbids the government from creating a State-sponsored
4 religion through compulsion or force. Throughout our history, official recognition of
5 Divine guidance as part of our tradition has continually been recognized.² However,
6 when this Court first decided that Chino Valley School District’s invocation to begin
7 board meetings violated the Establishment Clause, it expressly declined to consider
8 historical practices and instead relied on the *Lemon* test. But in *Kennedy v. Bremerton*
9 *School District*, 597 U.S. 507, 535 (2022), decided after this Court’s ruling in this case,
10 the Supreme Court overturned *Lemon* and held whether a government practice violates
11 the Establishment Clause turns on the history and tradition of such practices. Because
12 history, tradition, and common sense demonstrate that invocations done to solemnize an
13 occasion and unify government employees prior to a school board session is rooted in
14 our Nation’s history, Defendants bring this Rule 60 motion to obtain relief from this
15

16
17
18 ²“We are a religious people whose institutions presuppose a Supreme Being.”
19 *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952). *Lynch v. Donnelly*, 465 U.S. 668 (1984).
20 “Our history is replete with official references to the value and invocation of Divine
21 guidance in deliberations and pronouncements of the Founding Fathers and contemporary
22 leaders.” *Id.*, at 675. the American people have long followed a “custom of opening
23 sessions of all deliberative bodies and most conventions with prayer” *Holy Trinity Church*
24 *v. United States*, 143 U.S. 457, 471 (1892). “To invoke divine guidance on a public body
25 is not, in these circumstances, an establishment of religion or a step toward establishment;
26 it is simply a tolerable acknowledgment of beliefs widely held among the people of this
27 country.” *Marsh*, 463 U.S. at 792 (quotation removed). “Those government
28 acknowledgments of religion serve, in the only ways reasonably possible in our culture,
the legitimate secular purposes of solemnizing public occasions, expressing confidence in
the future, and encouraging the recognition of what is worthy of appreciation in society.
For that reason, and because of their history and ubiquity, those practices are not
understood as conveying government approval of particular religious beliefs.” *Id.* at 693
(O’Connor, J., concurring).

1 Court’s order that is now inconsistent with the Supreme Court’s rejection of the *Lemon*
2 test.

3 **II. FACTS**

4 In October 2013, the Chino Valley School Board adopted Resolution 2013/2014-
5 11 “Establishing a Policy Regarding Invocations at Meetings of the Board of Education
6 of the Chino Valley Unified School District.” (**Exhibit 1**, Board Resolution). This
7 Resolution did not implement a new policy but formalized the “long followed practice
8 of inviting members of all local clergy of all faiths to provide invocations at Board of
9 Education meetings.” *Id.* The Resolution was expressly limited to such invocations that
10 did “not proselytize or advance any faith or show any purposeful preference of one
11 religious view to the exclusion of others.” *Id.* The intent of the invocations was to
12 “solemnize” board meetings and no individual present at the time was required to
13 participate in the invocation. Furthermore, the invocation was not included in the agenda
14 to further make it “clear the prayer is not considered a part of the public business.” *Id.* A
15 mechanism was also established to ensure that there was equal representation between
16 religions through randomly selecting different religious leaders to lead the invocation.
17 *Id.* When a leader did not show up, a random audience member or board member was
18 permitted to give the invocation regardless of the individual’s personal beliefs.

19 On December 15, 2014, the Freedom From Religion Foundation, together with
20 several other Plaintiffs, filed a complaint against Chino Valley Unified School District
21 Board of Education and its board members – James Na, Sylvia Orozco, Charles Dickie,
22 Andrew Cruz, and Irene Hernandez-Blair. Plaintiffs alleged that the Board and its
23 members violated the Establishment Clause by inviting and permitting invocations by
24 religious leaders at the beginning of its school board meetings. Plaintiffs sought damages,
25 declaratory relief, and an injunction preventing the Board and its members from
26 permitting what Plaintiffs considered to be school-sponsored prayer, and other religious
27 speech.
28

1 On February 18, 2016, the lower court entered judgment declaring the Board’s
2 prayer policy and custom of reciting Bible verses and proselytization a violation of
3 Plaintiffs’ First Amendment rights. (**Exhibit 2**). The lower court also enjoined Board
4 members from “conducting, permitting or otherwise endorsing school-sponsored prayer
5 in Board meetings.” On July 25, 2018, the Ninth Circuit affirmed the lower court’s
6 injunction against the Board of Education members. *Freedom From Religion Found.,*
7 *Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018)
8 (“CVUSD”). On December 26, 2018, the Ninth Circuit denied the Board’s petition for
9 rehearing en banc. *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch.*
10 *Dist. Bd. of Educ.*, 910 F.3d 1297 (9th Cir. 2018).

11 The Ninth Circuit took judicial notice that on November 3, 2016, the Board
12 adopted Policy 9010.5 prohibiting board members from proselytizing. This policy states
13 as follows:

14 Bylaws of the Board BB 9010.5

15 PUBLIC STATEMENTS REGARDING RELIGION OR NON-RELIGION

16 As the elected legislative body of the Chino Valley Unified School District; the
17 Board of Education recognizes that the First Amendment to the United States
18 Constitution guarantees each person’s individual right to free exercise of religion
19 or non-religion and prevents the government and other public officials from
20 establishing a religion or non-religion.

- 21 1. During the public portion of the Board meeting, Board members may discuss
22 religion or religious perspectives to the extent that they are germane to agenda
23 items or public comments.
- 24 2. When acting in their official capacities and when speaking on behalf of the
25 District, Board members shall not proselytize and shall be neutral towards religion
26 and/or non-religion.

27 (**Exhibit 3**)

28 As discussed below, the law on which the injunction was based has since been
overturned by the Supreme Court. The Board, which consists of several new members,
now desires to implement a policy allowing for invocations to start school board

1 meetings that comply with the history and tradition of invocations prior to public
2 meetings of deliberative bodies and, in particular, of school boards.

3 III. LAW & ARGUMENT

4 Federal Rule of Civil Procedure Rule 60(b)(5) allows the Court to relieve a party
5 from a final judgement, including an injunction, when it was based on a standard that has
6 been reversed or where circumstances have changed such that it is no longer equitable.
7 This is little more than a codification of the universally recognized principle that a court
8 has continuing power to modify or vacate a final decree. *Anderson v. Central Point*
9 *School Dist. No. 6*, 746 F.2d 505, 507 (9th Cir. 1984); *System Federation No. 91, Ry.*
10 *Emp. Dept., AFL-CIO v. Wright*, 364 U.S. 642 (1961) (noting the District Court has broad
11 discretion to vacate or modify its prior orders or judgements).

12 A court must never ignore significant changes in the law or the circumstances
13 underlying an injunction lest the decree be turned into an “instrument of wrong.” *U.S. v.*
14 *Swift & Co.*, 286 U.S. 106, 114 (1932). There are three traditional reasons for ordering
15 the modification or vacation of an injunction: (1) changes in operative facts; (2) changes
16 in the relevant decisional law; and (3) changes in any applicable statutory law. 11A
17 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND
18 PROCEDURE, §2961, at 402-03 (2d ed. 1995) (footnotes omitted).

19 Under subsection (d)(1), the court may also “entertain an independent action to
20 relive a party from a judgement, order, or proceeding.” This rule permits a court to
21 entertain an independent action to relieve a party from a judgment to “prevent a grave
22 miscarriage of justice.” *United States v. Beggerly*, 524 U.S. 38, 47 (1998).

23 If a decision or order relied on Establishment Clause precedent which has been
24 eroded by subsequent cases, relief under Rule 60 may be appropriate. *Agostini v. Felton*,
25 521 U.S. 203, 218, 237 (1997) (deciding that Establishment Clause law had significantly
26 changed warranting petitioners’ relief under Rule 60(b)(5).) This is especially relevant
27 when litigation involves vacating a continuing injunction “in light of a bona fide,
28 significant change in subsequent law.” *Id.* at 238-39.

1 **A. The Ninth Circuit Panel Relied On The Now Defunct *Lemon* Test**

2 The Ninth Circuit Court upheld the District Court’s order enjoining the school
3 board from instituting an invocation prior to school board meetings because the “Chino
4 Valley Board's prayer policy lacks a secular legislative purpose and therefore, under
5 *Lemon*, violates the Establishment Clause.” *Freedom from Religion Found., Inc. v. Chino*
6 *Valley Unified School Dist. Bd. of Educ. (Chino I)*, 896 F.3d 1132, 1142-43, 1149 (9th
7 Cir. 2018.) The injunction prohibits Board members “from conducting, permitting or
8 otherwise endorsing school-sponsored prayer in Board meetings.” *Id.* at 1151. In coming
9 to this decision, the Court applied the *Lemon* test first set forth in *Lemon v. Kurtzman*,
10 403 U.S. 602 (1971), to determine the Board’s invocation policy to start school board
11 meetings violated the Establishment Clause. *Id.* at 1148-52. The Ninth Circuit Panel also
12 expressly declined to conduct a historical analysis and stated that such an analysis would
13 be impossible because school boards did not exist at the time of the founding. *Id.* at 1148.

14 The *Lemon* test consisted of three prongs to determine if the government violated
15 the Establishment Clause. A court must consider: (1) whether the government practice
16 has a secular legislative purpose; (2) its principal or primary effect must neither advance
17 nor inhibit religion; and (3) it must not foster an “excessive entanglement with religion.”
18 *Lemon*, 403 U.S. at 612-13. Needless to say, the *Lemon* test does not consider the history
19 or tradition of a policy.

20 The Ninth Circuit found that the policy violated all three prongs of the *Lemon* test
21 and, therefore, violated the Establishment Clause. *Chino I*, at 1148-52. The case was
22 denied en banc review. However Senior Judge, Judge O’Scannlain issued an order
23 respecting the denial of rehearing, stating the panel had “failed to faithfully apply *Town*
24 *of Greece* and *Marsh*, and because such error has now created a circuit split.” *Freedom*
25 *from Religion Found., Inc. v. Chino Valley Unified School Dist. Bd. of Educ. (Chino II)*,
26 910 F.3d 1297, 1304, 1306 (9th Cir. 2018) (O’Scannlain, J., respecting the denial of
27 rehearing en banc). Several judges further dissented from the denial of rehearing stating
28 that the panel wrongly applied the *Lemon* test. *Id.* at 307 (Nelson, J., dissenting from

1 denial of rehearing en banc and stating that *Lemon* was “problematic” and “[b]ecause of
2 its numerous shortcomings, *Lemon* has been criticized by members of the Supreme Court
3 and others.”)

4 **B. *Bremerton* Overturned *Lemon* And Replaced The *Lemon* Test With A History
5 And Tradition Analysis.**

6 Roughly four years after the Ninth Circuit Panel issued its decision in *Chino I*, the
7 Supreme Court abrogated the *Lemon* test in *Kennedy v. Bremerton School District*. 597
8 U.S. 507, 535 (2022). In *Kennedy*, the District Court applied *Lemon* to hold that a high
9 school football coach’s prayer following games violated the Establishment Clause. *Id.* at
10 534. In reversing the District Court, the Supreme Court noted that the *Lemon* test and its
11 progeny were an “abstract” and “ahistorical” approach to the Establishment Clause that
12 “invited chaos” to the lower courts. *Id.* The Court noted that the Establishment Clause
13 does not compel the “government to purge from the public sphere anything an objective
14 observer could reasonably infer endorses or partakes of the religious.” *Id.* (citing *Van*
15 *Orden v. Perry*, 545 U.S. 677, 699, (2005) (Breyer, J., concurring in judgment)
16 (quotations omitted).

17 In place of the *Lemon* test, the Court instructed that “the Establishment Clause
18 must be interpreted by reference to historical practices and understandings.” *Id.* (citing
19 *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (internal quotes omitted)). This
20 analysis must focus on original meaning and history. *Id.* at 536. Because the Ninth Circuit
21 had relied on a *Lemon* analysis of Coach Kennedy’s actions, the Supreme Court reversed
22 it. *Id.* at 544.

23 **C. Prayer Before School Board Meetings Is Rooted In History And Tradition And
24 Should Not Be Prohibited By The Establishment Clause**

25 The Court’s decision in *Bremerton* constituted a significant change in the law that
26 renders the continuing injunction in the present matter inequitable. Following *Bremerton*,
27 to determine if a practice violates the Establishment Clause a court must now consider
28 history to determine whether such practices fit within our countries’ history and tradition.

1 597 U.S. at 534-355. History demonstrates that invocations and prayers before public
2 meetings were commonplace. This court previously declined to do a detailed historical
3 analysis because, at the time, the law did not require it to do so. *Chino I*, 896 F.3d at
4 1148. Because the law now requires such an analysis – and that analysis demonstrates
5 that Chino Valley’s practice does not violate the Establishment Clause—this Court should
6 vacate the injunction.

7 In determining the application of constitutional text to the modern times, a court
8 should first consider the “normal and ordinary” meaning of the text. *Bruen*, 597 U.S. at
9 20 (describing the process of historical analysis used in *Heller*). The court may consider
10 the historical background of the text to confirm its view. *Id.*

11 In the present matter, the Ninth Circuit stated that because free public education
12 was virtually non-existent at the time of the founding that the “Framers consequently
13 could not have viewed the Establishment Clause as relevant to local schools’ and school
14 boards’ actions.” *Chino I*, 896 F.3d at 1148. Given *Bremerton*’s requirements, this
15 statement is misguided for two reasons.

16 *First*, the lack of an identical historical practice is not an adequate basis to forego
17 historical analysis. *Bremerton*, 597 U.S. at 534-355. Rather, historical analysis is only
18 meant to illuminate what the Founder’s understood the Establishment Clause to mean.
19 *Town of Greece*, 572 U.S. 565 (2014). This does not require a one-to-one comparison of
20 identical practices. Rather, the court must consider analogous or similar practices that
21 *were* around at the time of the founding to expound on what the Founder’s intended the
22 Establishment Clause to permit. *See Kylo v. United States*, 533 U.S. 27 (2001). As the
23 Supreme Court has made clear, “Historical analysis can be difficult; it sometimes
24 requires resolving threshold questions and making nuanced judgments about which
25 evidence to consult and how to interpret it.” *McDonald v. City of Chicago*, 561 U.S. 742,
26 803–804 (Scalia, J., concurring); *see also Richardson v. Ramirez*, 418 U.S. 24, 54–56
27 (1974).

1 This concept is not new, the Court’s ruling in *Bremerton* is simply its latest in a
2 series of opinions requiring courts to look to history rather than applying rote tests.
3 *See Kyllo*, 533 U.S. 27 (determining whether the use of a thermal-imaging device from
4 the street constitutes a search under the Fourth Amendment despite no such technology
5 at the time of the founding); *South Dakota v. Wayfair, Inc.*, 585 U.S. 162 (2018)
6 (determining how to tax internet commerce under the Commerce Clause); *D.C. v. Heller*,
7 554 U.S. 570 (2008) (determining whether a ban on handguns in the home for self-
8 defense violated the Second Amendment.). In *New York State Rifle & Pistol Ass’n v.*
9 *Bruen*, the Court held the “two-step” intermediate scrutiny test was “one step too many”
10 for determining whether a gun licensing scheme violated the Second Amendment. 597
11 U.S. 1, 19 (2022). Rather, the proper test must consider if a law or regulation violated
12 the text of the Constitution “*as informed by history.*” *Id.* (emphasis added). The Court
13 noted that the Founders created a constitution “intended to endure for ages to come, and
14 consequently, to be adapted to the various crises of human affairs.” *Id.* at 27-28
15 (citing *McCulloch v. Maryland*, 4 Wheat. 316, 415 (1819)). Accordingly, while
16 technology and society change, “the Constitution can, and must, apply to circumstances
17 beyond those the Founders specifically anticipated.” *Id.* Historical understanding must
18 be extrapolated to determine how the clause is meant to apply to contemporaneous
19 practices. *See Marsh v. Chambers*, 463 U.S. 783, 790, (1983). Thus, “[t]he existence
20 from the beginning of the Nation’s life of a practice, [while] not conclusive of its
21 constitutionality ... [,] is a fact of considerable import in the interpretation” of the
22 Establishment Clause. *Walz v. Tax Comm’n of New York City*, 397 U.S. 664, 681, (1970)
23 (Brennan, J., concurring); *see also Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (stating,
24 “The Court’s interpretation of the Establishment Clause has comported with what history
25 reveals was the contemporaneous understanding of its guarantees”); *School Dist. of*
26 *Abington Township v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)
27 (“[T]he line we must draw between the permissible and the impermissible is one which
28 accords with history and faithfully reflects the understanding of the Founding Fathers”).

1 *Second*, a proper historical analysis focuses on understanding of the scope of the
2 right at the time of the founding in 1776 and around the time of the passage of the
3 Fourteenth Amendment in 1868. As the Court noted in *New York State Rifle & Pistol*
4 *Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022), consideration of the history post-ratification
5 is also relevant to how the text was understood immediately following its application to
6 the states through the Fourteenth Amendment. *Id.* at 35 (“examination of a variety of
7 legal and other sources to determine the public understanding of a legal text in the period
8 after its enactment or ratification was ‘a critical tool of constitutional interpretation”).
9 Consideration of the ratification period is especially relevant in the present matter
10 because school boards *did* exist at this time.

11 As discussed below, since the time of the Founding, all three branches of
12 government regularly invoked the Divine during the course of official government
13 business. Likewise, at the time of the ratification of the Fourteenth Amendment, these
14 practices continued, and prayer was a common way for both schools and school board
15 meetings to begin. Accordingly, Chino Valley’s policy of beginning school board
16 meetings with an invocation comports with our countries history and tradition.

17 1. *Establishment Clause at the Founding was not thought to prohibit*
18 *government invocations.*

19 The Establishment Clause prohibits the government from making any law
20 “respecting the establishment of religion.” This phrasing indicates the Founders intended
21 that Congress does not establish or *disestablish* religion. See John Jefferies, James Ryan,
22 *A Political History of the Establishment Clause*, 100 Mich. L.R. 270, 292 (2001). Thus,
23 the national legislature was not permitted to interfere with the churches established by
24 the State. Akhil Amar, *Some Notes on the Establishment Clause* 2 Roger Williams U. L.
25 Rev. 14 (1997) (“The original establishment clause, on a close reading, is not anti-
26 establishment, but pro-states’ rights; it is agnostic on the substantive issue of
27 establishment versus non-establishment and simply calls for the issue to be decided
28 locally”). Accordingly, the actions taken by states prior to the ratification of the

1 Fourteenth Amendment in 1862 are not as relevant when determining the scope of the
2 Establishment clause. However, the actions taken by the Federal government do provide
3 insight as to the scope of the clause as it was understood by the Founders.

4 The First Congress’s interpretation of the Establishment Clause in 1789 is
5 especially significant, as it “was a Congress whose constitutional decisions have always
6 been regarded, as they should be regarded, as of the greatest weight in the interpretation
7 of that fundamental instrument.” *Myers v. United States*, 272 U.S. 52, 174–175 (1926).
8 The First Congress employed congressional Chaplains to offer daily prayers in the
9 Congress. *Lynch*, 465 U.S. 674. Accordingly, the Founding Fathers saw no conflict
10 between public prayer done before legislative session and the Establishment Clause.
11 Through the 18th and 19th century, Congress regularly appropriated public money to
12 religious organizations to provide education to Indian children. *Wallace v. Jaffree*, 472
13 U.S. 38, 103 (1985) (Rehnquist J., dissenting).

14 As to the executive branch, in 1789 President Washington issued a proclamation
15 following a Joint Resolution from Congress that the President “recommend to the people
16 of the United States a day of public thanksgiving and prayer, to be observed by
17 acknowledging with grateful hearts the many and signal favors of Almighty God.”
18 *Jaffree*, 472 U.S. at 102 (Rehnquist J., dissenting) (citing 1 J. Richardson, Messages and
19 Papers of the Presidents, 1789–1897, p. 64 (1897).) President Washington obliged, and
20 his proclamation stated, in part, “[W]e may then unite in most humbly offering our
21 prayers and supplications to the great Lord and Ruler of Nations and beseech Him to
22 pardon our national and other transgressions.” *Id.*

23 As to the Judicial Branch, since the time of John Marshall, the Supreme Court has
24 begun each session by invoking the protection of God, with the traditional cry which
25 ends, “God save the United States and this Honorable Court!” *Engel v. Vitale*, 370 U.S.
26 421, 446–450 (1962) (Stewart, J., dissenting); *see also* 1 C. Warren, *The Supreme Court*
27 *in United States History* 469 (1922).

1 2. *The Establishment Clause after the Enactment of the Fourteenth Amendment*
2 *likewise does not prohibit government invocations*

3 The Fourteenth Amendment’s ratification brought with it the application of the
4 Establishment Clause against the states. Around this time public schools started to
5 become commonplace thanks to reformers like Horace Mann, a Massachusetts legislator
6 and the secretary on the state’s Board of Education. Kaestle, C., *Pillars of the republic: Common schools and American society*, 1780-1860, p. 75; (1983), Hill and Wang.

7 History demonstrates that, since the inception of school boards, many began their
8 meetings in prayer. In Pennsylvania, public school board meetings included clergy-led
9 opening prayer from as early as 1820.³ In 1857, school boards in Wisconsin opened in
10 prayer.⁴ Likewise, as early as 1859, school boards in Iowa began meetings with
11 invocations.⁵

12 Furthermore, school boards at this time were often composed of clergy. In North
13 Carolina delegates chosen from school boards were chosen to attend a statewide
14 delegation in 1859. Many of these delegates were noted to be “ministers of the gospel.”
15 Wicks, *supra* at 31. Likewise, in Massachusetts, public schoolboards were noted to be
16 comprised of clergy. *Id.*

17 3. *Coercion by the Government of specific belief violates the Establishment*
18 *Clause*

19
20
21 ³ Evan Lee, *School Board Prayer: Reconciling the Legislative Prayer Exception and School Prayer Jurisprudence*, 54 Akron L. Rev. 75, 99 (citing Second Annual Report Of The Controllers Of The Public Schools Of The First School District Of The State Of Pennsylvania 7 (1820)).

22 ⁴ *Id.* (citing Proceedings Of The Board Of Regents Of Normal Schools And The Regulations Adopted At Their First Meeting Held At Madison, July 15, 1857 6 (1857).)

23 ⁵ *Id.* (citing Journal Of The Board Of Education Of The State Of Iowa, At Its Second Session, December, A.D. 1859 5 (1860); see also Marie Wicks, *Prayer Is Prologue: the Impact of Town of Greece on the Constitutionality of Deliberative Body Prayer at the Start of School Board Meetings*, 31 J.L. & Pol. 1, 30-31 (2015)).

1 The Court previously held that Chino Valley’s policy did not fit within the
2 legislative exception. *See Chino I*, 896 F.3d 1132. However, this Court did not consider
3 *Marsh* and *Greece* in conjunction with the history as required by *Bremerton* and as laid
4 forth above. Rather the Court relied heavily on the fact that children were present to find
5 the policy violated the Establishment Clause. The presence of children alone is not
6 dispositive because history demonstrates that prayer was done in front of children, such
7 as at presidential inaugural addresses, congressional meetings, and supreme court
8 sittings.

9 While the Court compared the facts of the present matter with *Marsh* and *Greece*—
10 both of which analyzed history—the Court itself did not analyze history as required by
11 *Bremerton*. The history, as discussed above, sheds greater light on *Marsh* and *Greece*.
12 Simply reading these cases with no context only leaves one with half an understanding.
13 More importantly, there is no historical evidence to suggest that prayer before school
14 board meetings were unconstitutional or otherwise not permitted under the First or
15 Fourteenth Amendments.

16 In *Marsh* and *Galloway*, the Supreme Court affirmed that deliberative bodies have
17 a well-established tradition of opening with invocations. In *Marsh v. Chambers*, the
18 Court upheld the practice of opening sessions of legislative “and other deliberative
19 bodies” with prayer as it is “deeply embedded in the history and tradition of this country.”
20 463 U.S. 783 (1983). The Court noted that the tradition began in the colonies and was
21 linked to a State’s established church. Based on this and numerous other examples of
22 legislative sessions beginning in prayer, the Court stated, “Clearly the men who wrote
23 the First Amendment Religion Clause did not view paid legislative chaplains and
24 opening prayers as a violation of that Amendment, for the practice of opening sessions
25 with prayer has continued without interruption ever since that early session of Congress.”
26 *Id.* at 788.

27 In *Town of Greece v. Galloway*, the Court upheld the town beginning its board
28 meetings with a prayer. The Court noted that a practice such as prayer before a meeting

1 does not require an exact historical analogy to be constitutional. *Id.* at 576. Rather,
2 constitutionality of a practice can be by reference to historical practices and
3 understandings at the time. *Id.* The Court affirmed that *Marsh* “stands for the proposition
4 that it is not necessary to define the precise boundary of the Establishment Clause where
5 history shows that the specific practice is permitted.” *Id.* at 577. An invocation lends
6 gravity to the occasion and reflects values long part of our nation’s heritage. *Id.*

7 Given that the history of prayer in public schools and the Supreme Court’s
8 precedent, this Court should vacate the injunction in the present matter and permit the
9 new Chino Valley Board to follow its policy that permits an invocation to be done prior
10 to board meetings that is directed at board members and is meant to solemnify and unify
11 the Board.

12 While this Court previously held that the legislative exception does not apply, the
13 Court only did so by a one-to-two comparison with *Town of Greece* and *Marsh*. *Chino I*,
14 896 F.3d 1132. It did not conduct any historical analysis itself. It also noted that historical
15 analysis could not be done because school boards did not exist at the time of the founding.
16 As discussed above, after *Bremerton* courts are now required to attempt to determine
17 historical practices and such an analysis demonstrates that the Establishment Clause does
18 not prohibit invocations before a school board meeting.

19 IV. CONCLUSION

20 For the reasons stated above, this Court should vacate the injunction in the present
21 matter and permit the new Chino Valley Board to create a policy that permits an
22 invocation to be done prior to board meetings in a manner that comports with current
23 law.

24 DATED: July 31, 2025

ADVOCATES FOR FAITH AND FREEDOM

25 By: /s/ Joel Oster

26 Joel Oster, *Pro Hac Vice*

27 Attorneys for Defendants

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CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 25026 Las Brisas Road, Murrieta, California 92562

On July 31, 2025, I caused to be served the foregoing documents described below on the following interested parties in this action:

**DECLARATION OF JOEL OSTER IN SUPPORT OF DEFENDANTS’
RULE 60 MOTION**

Via **ELECTRONIC CASE FILING**, by which listed counsel will automatically receive e-mail notices with links to true and correct copies of said documents:

- **David J P Kaloyanides**
djpkapl@me.com
- **Andrew L Seidel**
aseidel@ffrf.org
- **Rebecca Markert**
rmarkert@ffrf.org
- **Doe 13**
(via mail)
- **Doe 19**
(via mail)
- **Doe 20**
(via mail)

Executed on July 31, 2025, at Murrieta, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service

/s/ Susan Y. Kenney
Susan Y. Kenney

**Chino Valley Unified School District
Resolution 2013/2014-11
Establishing a Policy Regarding Invocations
at Meetings of the Board of Education of the
Chino Valley Unified School District**

WHEREAS, the School Board is an elected legislative and deliberative public body, serving the students who attend the Chino Valley Unified School District; and

WHEREAS, legislative bodies in America have long maintained a tradition of solemnizing proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the legislative bodies; and

WHEREAS, the Board of Education has long followed a practice of inviting members of all local clergy of all faiths to provide invocations at Board of Education meetings; and

WHEREAS, the Board of Education now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, such prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom." *Id.*, at 786; and

WHEREAS, the Supreme Court further held, "To invoke divine guidance on a public body is not, in these circumstances, an "establishment of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Id.*, at 792; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Id.*, at 675; and

WHEREAS, the Supreme Court further stated, "Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in

society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” Id., at 693 (O’Connor, J., concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306 (1952), “We are a religious people whose institutions presuppose a Supreme Being.” Id., at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a “custom of opening sessions of all deliberative bodies and most conventions with prayer ...,” Id., at 471; and

WHEREAS, the Supreme Court has determined, “The content of [such] prayer is not of concern to judges where there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it should not be the job of the courts or deliberative public bodies “to embark on a sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative public body. Id.; and

WHEREAS, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers. See, e.g., *Lee v. Weisman*, 505 U.S. 577, 588-589 (1992); and

WHEREAS, the Board of Education intends, and has intended in past practice, to adopt a policy that upholds an individual’s “free exercise” rights under the First Amendment; and

WHEREAS, the Supreme Court has repeatedly clarified that “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Bd. of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990); and

WHEREAS, the Board of Education intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, this policy set forth below has been approved by two federal courts in the cases of *Pelphrey v. Cobb County* (11th Cir. 2008) 547 F.3d 1263 and *Rubin v. City of Lancaster* (2013) 810 F3d. 1087; and

WHEREAS, the Board of Education recognizes its constitutional duty to interpret, construe, and amend its policies and regulations to comply with constitutional requirements as they are announced.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Chino Valley Unified School District, that the Board of Education does hereby adopt and establish the following written policy regarding opening invocations before meetings of the Board of Education:

1. In order to solemnize proceedings of the Board of Education, it is the policy of the Board of Education to allow for an invocation or prayer to be offered at its meetings for the benefit of the Board of Education and the community.

2. The prayer shall not be listed or recognized as an agenda item for the meeting so that it may be clear the prayer is not considered a part of the public business.

3. No member of the Board of Education or District employee or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

4. The prayer shall be voluntarily delivered by an eligible member of the clergy or a religious leader in the boundaries of the Chino Valley Unified School District. To ensure that such person (the "invocational speaker") is selected from among a wide pool of the District's clergy/religious leaders, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The Superintendent's designee shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the boundaries of the Chino Valley Unified School District.

b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages telephone directory or directories published for the Chino Valley Unified School District, research from the Internet, and consultation with local chambers of commerce. All churches, congregations or other religious assemblies with an established presence in the boundaries of the Chino Valley Unified School District are eligible to be included in the Congregations List, and any such church, congregation or religious assembly can confirm its inclusion by specific written request to the Superintendent's designee.

c. The Congregations List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies within the boundaries of the Chino Valley Unified School District or any nearby military facilities.

d. The Congregations List shall be updated, by reasonable efforts of the Superintendent's designee, in November of each calendar year.

e. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the Superintendent's designee shall mail an invitation addressed to the "religious leader" of each church, congregation or religious assembly listed on the Congregations List, as well as to the individual chaplains included on the Congregations List.

f. The invitation shall be dated at the top of the page, signed by the Superintendent's designee at the bottom of the page, and read as follows:

Dear religious leader,

The Board of Education makes it a policy to invite members of the clergy in the boundaries of the Chino Valley Unified School District to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the Board of Education. As the leader of one of the religious congregations with an established presence in the local community of the Chino Valley Unified School District, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies within the boundaries of the Chino Valley Unified School District, you are eligible to offer this important service at an upcoming meeting of the Board of Education.

If you have an interest in providing an invocation, please send a written reply at your earliest convenience to the Superintendent's designee at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve, or other random basis. The dates of the Board of Education's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Board of Education requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invocational speaker, nor to disparage any faith or belief different from that of the invocational speaker.

On behalf of the Board of Education, I thank you in advance for considering this invitation.

Sincerely,

Superintendent's designee

g. Consistent with paragraph 7 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-served, or other random basis to deliver the prayers.

h. If the selected invitational speaker does not appear at the scheduled meeting, the Board President may ask for a volunteer from among the Board or the audience to deliver the invocation.

i. The Superintendent's designee shall post the following information on the District's webpage: (i) this resolution, (ii) the Congregation List and (iii) the invitation set forth herein to churches, congregations and religious associations within the boundaries of the Chino Valley Unified School District.

5. No invitational speaker shall receive compensation for his or her service.

6. The Superintendent's designee shall make every reasonable effort to ensure that a variety of eligible invitational speakers are scheduled for the Board of Education meetings. In any event, no invitational speaker shall be scheduled to offer a prayer at consecutive meetings of the Board of Education or at more than three (3) Board of Education meetings in any calendar year.

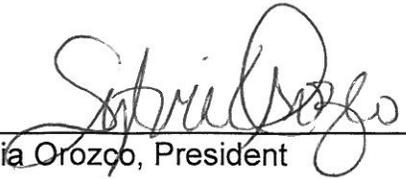
7. Neither the Board of Education nor the Superintendent's designee shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invitational speaker.

8. The Board President shall introduce the invitational speaker and the person selected to recite the Pledge of Allegiance and invite only those persons who wish to participate.

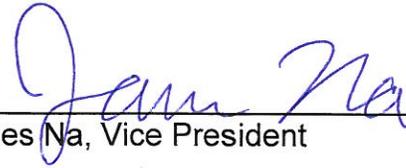
9. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Board of Education with, nor express the Board of Education's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Board of Education's respect for the diversity of religious denominations and faiths represented and practiced among the citizens who reside in the Chino Valley Unified School District.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the Board of Education.

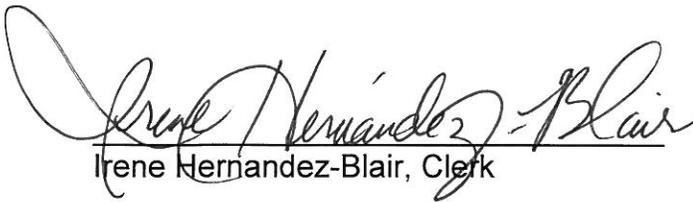
APPROVED, PASSED, AND ADOPTED by the Board of Education of the Chino Valley Unified School District this 17th day of October 2013.



Sylvia Orozco, President



James Na, Vice President



Irene Hernandez-Blair, Clerk



Andrew Cruz, Member



Charles E. Dickie, Member

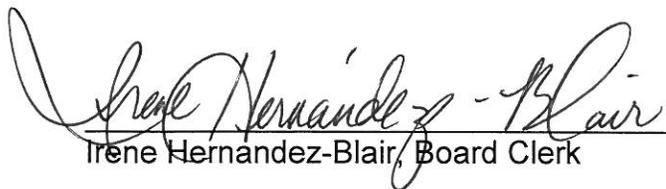
State of California)
County of San Bernardino) ss
City of Chino)

I, Irene Hernandez-Blair, Clerk of the Board of Education, do hereby certify the foregoing Resolution was duly adopted by the Board of Education at a regular meeting held on the 17th day of October 2013 by the following votes:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:


Irene Hernandez-Blair, Board Clerk

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FREEDOM FROM RELIGION)	Case No.
FOUNDATION, INC., ET AL.)	EDCV 14-2336-JGB (DTBx)
)	
Plaintiffs,)	JUDGMENT
)	
v.)	
)	
CHINO VALLEY UNIFIED)	
SCHOOL DISTRICT BOARD OF)	
EDUCATION, ET AL.)	
)	
Defendants.)	
)	
_____)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the Order filed herewith, Plaintiffs' Motion for Summary Judgment is GRANTED as to Plaintiffs' claims under Section 42 U.S.C. § 1983 against Defendants James Na, Sylvia Orozco, Andrew Cruz and Irene Hernandez-Blair, members of the Chino Valley Unified School District Board of Education in their official representative capacities, for violations of Plaintiffs' First Amendment rights.

The Court orders that judgment shall be entered as follows:

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1. The Court DECLARES that the Resolution permitting religious prayer in Board meetings, and the policy and custom of reciting prayers, Bible readings, and proselytizing at Board meetings, constitute unconstitutional government endorsements of religion in violation of Plaintiffs' First Amendment rights.

2. Defendants James Na, Sylvia Orozco, Andrew Cruz and Irene Hernandez-Blair, members of the Chino Valley Unified School District Board of Education in their official representative capacities, are hereby ENJOINED from conducting, permitting or otherwise endorsing school-sponsored prayer in Board meetings.

3. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to costs, including reasonable attorney's fees, incurred in bringing this action to vindicate violations of Plaintiffs' constitutional rights.

IT IS SO ORDERED.

Dated: February 18, 2016



THE HONORABLE JESUS G. BERNAL
United States District Judge

Bylaws of the Board

BB 9010.5

PUBLIC STATEMENTS REGARDING RELIGION OR NON-RELIGION

As the elected legislative body of the Chino Valley Unified School District; the Board of Education recognizes that the First Amendment to the United States Constitution guarantees each person's individual right to free exercise of religion or non-religion, and prevents the government and other public officials from establishing a religion or non-religion.

1. During the public portion of the Board meeting, Board members may discuss religion or religious perspectives to the extent that they are germane to agenda items or public comments.
2. When acting in their official capacities and when speaking on behalf of the District, Board members shall not proselytize, and shall be neutral towards religion and/or non-religion.

(cf. 9271 - Code of Ethics)
(cf. 9010 - Public Statements)

Chino Valley Unified School District
Bylaw Adopted: November 3, 2016