

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 GREENVILLE DIVISION

American Humanist Association,)	
John Doe and Jane Doe,)	
as parents and next friends of their)	
minor child, Jill Doe,)	
)	
Plaintiffs,)	Civil Action No. 6:13-cv-2471-BHH
)	
v.)	<u>ORDER</u>
)	
Greenville County School District,)	
)	
Defendant.)	
)	

This matter is before the Court upon Defendant Greenville County School District’s (“the school district” or “the district”) motion to alter or amend judgment.¹ In its motion, the school district asks the Court to reconsider its previous finding that the school district’s practices regarding prayer at graduation ceremonies were not neutral toward religion. For the following reasons, the Court grants in part and denies in part the district’s motion.²

¹ Also pending before the Court is Plaintiffs’ motion for attorneys’ fees, costs, and expenses, which the Court will address in a separate order.

² Although the district does not cite any particular rule in support of its motion, the Federal Rules of Civil Procedure allow a litigant subject to an adverse judgment to file either a motion to alter or amend pursuant to Rule 59(e) or a motion seeking relief from the judgment pursuant to Rule 60(b). The rules appear similar, but they are distinct. Reconsideration of a judgment pursuant to Rule 59(e) is an extraordinary remedy that should be used sparingly. See *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). Ordinarily, a court may grant a motion to alter or amend pursuant to Rule 59(e) for only three reasons: (1) to comply with an intervening change in controlling law; (2) to account for new evidence not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *Pac. Ins. Co.*, 148 F.3d at 403. By contrast, Rule 60(b) provides that a court may relieve a party from an adverse judgment if the party shows either:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, which reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier

Specifically, after reviewing the parties' arguments, the evidence of record, and the applicable law, the Court amends the permanent injunction it issued in this case on July 18, 2019, as outlined below. The Court notes that it does so to prevent manifest injustice and to ensure that the Court's guidelines provide a sufficient balance between the competing interests protected by the Establishment Clause and the Free Speech and Free Exercise Clauses, thereby enabling the district's practices to properly straddle the constitutional fence.

First, the Court deletes from point (1) the following sentence: "The district also shall not include an obviously religious piece of music as part of the official program for a graduation ceremony." After further consideration, the Court agrees with the district that this directive goes beyond the scope of Plaintiffs' complaint, and the Court therefore strikes this sentence from the permanent injunction and leaves the issue of religious music for another lawsuit.³

Second, the Court deletes the second half of point (7) such that it now provides as follows:

(7) If school officials do not review, revise, or edit a student's remarks in any way prior to the graduation ceremony, then a student's remarks may include prayer.

Third, the Court amends point (9) to add additional guidelines. Point (9) now

judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

³ Plaintiffs essentially admit in their reply in response of their motion for attorneys' fees that they "obtained *greater* injunctive relief than they had sought in the complaint." (ECF No. 157 at 7 (emphasis in original).)

provides as follows:

(9) The district shall adopt a written policy that includes these guidelines for graduation ceremonies, and the district shall provide a copy of the written policy to district employees and to any student who is selected to give remarks at a graduation ceremony. The written policy shall inform all district employees that any employee who attends a graduation ceremony as part of his or her official duties may not participate in any student-led prayer by, for example, standing or bowing his or her head, and the written policy shall inform any student who is selected to give remarks at a graduation ceremony that the student may not ask the audience to participate in the student's remarks.

Lastly, the Court finds that the district is not entitled to any of the other relief it seeks in its motion to alter or amend, and the Court denies the district's motion in all other aspects.

CONCLUSION

Based on the foregoing, the Court grants in part and denies in part the district's motion to alter or amend judgment (ECF No. 151). Specifically, the Court amends its prior injunction as outlined in this order, and the permanent injunction now provides as follows.

PERMANENT INJUNCTION

(1) The district shall not include a prayer⁴—whether referred to as a prayer, blessing, invocation, benediction, inspirational reading, or otherwise—as part of the official program for a graduation ceremony.

(2) The district and/or school officials shall not encourage, promote, advance, endorse, or participate in causing prayers during any graduation ceremony.

⁴ In using the term “prayer,” the Court means a communication with a deity including, but not limited to, an invocation, a benediction, or any calling upon a deity to express thanks or to request assistance, guidance, a blessing, or the like. The term does not include a moment of silence, provided that there is no implication that the moment of silence should be used for prayer. The term also does not include customary greetings such as “God Bless You” or “Thank Heavens.”

(3) If any students are selected to make remarks during a graduation ceremony, such students shall be selected (a) based on criteria that are neutral towards religion and (b) in compliance with a written policy.

(4) The district and/or school officials shall not provide copies of student remarks from any prior year's graduation ceremony to any students selected to make remarks during an upcoming graduation ceremony.

(5) The portions of any graduation ceremony devoted to student remarks shall be given the same name in any program or flier, such as "student remarks," "student speech," or a substantially similar, non-religious name. No program or flier may direct the audience or participants to stand for any student's remarks at a graduation ceremony.

(6) If school officials review, revise, or edit a student's remarks in any way prior to the graduation ceremony, then school officials shall ensure that the student's remarks do not include prayer.

(7) If school officials do not review, revise, or edit a student's remarks in any way prior to the graduation ceremony, then a student's remarks may include prayer.

(8) Any program or flier for a graduation ceremony must include the following disclaimer if the ceremony includes a student's remarks: "The views or opinions expressed by students during this program are their own and do not reflect the policy or position of the school district."

(9) The district shall adopt a written policy that includes these guidelines for graduation ceremonies, and the district shall provide a copy of the written policy to district employees and to any student who is selected to give remarks at a graduation ceremony. The written policy shall inform all district employees that any employee who attends a

graduation ceremony as part of his or her official duties may not participate in any student-led prayer by, for example, standing or bowing his or her head, and the written policy shall inform any student who is selected to give remarks at a graduation ceremony that the student may not ask the audience to participate in the student's remarks.

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks
United States District Judge

March 23, 2020
Charleston, South Carolina