

FREEDOM FROM RELIGION *foundation*

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January 22, 2019

SENT VIA FAX & U.S. MAIL:
(605) 773-4711

The Honorable Kristi Noem
Governor of South Dakota
Office of the Governor
500 East Capitol Avenue
Pierre, SD 57501

Re: Government-sponsored worship service

Dear Governor Noem:

I am writing on behalf of the Freedom From Religion Foundation to object to a sectarian religious worship service that you recently hosted in the Capitol rotunda. FFRF is a national nonprofit organization with 31,000 members across the country, including members in South Dakota. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public about matters relating to nontheism.

We understand that on January 6—your first full day as Governor of South Dakota—you sponsored a church service in the Capitol rotunda. The event was billed as an “Inaugural Worship Service with Governor Noem,” explicitly tying this religious event to your inauguration and public office. Despite the Facebook event invitation stating that “all are welcome” this event made no attempt at being an “interfaith” service. Every aspect of the service was decidedly Christian in nature.

The service featured Christian music, a full sermon by a pastor, and multiple group prayers. One of these prayers, led by a woman who identified herself as friend of your family, endorsed a Christian nationalist vision for South Dakota in her prayer, saying (of god): “You are the Lord and King of South Dakota” and “We thank you, Lord God, that we have faith—faith in You. And that Holy Spirit is filling this place now as we worship you, and the Holy Spirit absolutely takes over every corner and every crevice of this Capitol and of this State.” She then prayed that “any demon that may try to come in this place is kicked out.”

We write to remind you that you may your office to impose a religious vision for South Dakota on the people you serve. Instead, we urge you to focus on the secular business of governing, and leave church services where they belong—in a church.

The “inaugural worship service” alienated non-Christian South Dakotans.
As governor, you represent a diverse population that consists of not only Christians, but also atheists, agnostics, Jews, Muslims, Hindus, Wiccans—in short, people of all

beliefs and backgrounds. This worship service summarily excluded the nearly 30% of U.S. adults and the over one-in-five South Dakotans who are not Christian.¹

As you take the reins of government, you should be aware that the non-religious are the fastest-growing segment of the U.S. population by religious identification, now making up 24% of Americans, and 38% of younger Americans.² We hope that you can see how your endorsement of an event at which attendees were asked to pray that “the Holy Spirit absolutely takes over every corner and every crevice of this Captiol and this State” sent a unmistakable message to all non-religious South Dakotans “that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

As a private citizen you may, of course, attend any religious functions you like. But the federal and state constitutions dictate that as governor you may not sponsor religious events or insert religious rituals into government-sponsored events. It is an inappropriate usurpation of the Governor’s Office to organize a worship service. You were elected to govern South Dakota, not to bring it the gospel. To borrow a phrase from Alexander Hamilton, your office “has no particle of spiritual jurisdiction.”³ We only ask that you act accordingly.

The “inaugural worship service” raised constitutional concerns.

At your inauguration, you took an oath of office to uphold the U.S. Constitution, a secular document in which the only references to religion in government are exclusionary, such as the prohibition on religious tests for public office. Using your official position to promote your personal religion directly contravenes this oath.

The Supreme Court has said time and again that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947). Planning and promoting a worship service in the Capitol using your official title contravenes this basic neutrality principle.

Federal courts have echoed this position. For example, in 1993, FFRF won an injunction against the mayor of Denver, Colorado, over his promotion, endorsement, and sponsorship of a “Day of Prayer.” See *FFRF v. Denver*, No. 93-6056 (D. Colo. Nov. 24, 1993) (order granting preliminary injunction). Mayor Wellington Webb had designated December 5 as a “city wide day of prayer.” His office held a press conference announcing the event, issued a press release on government stationery,

¹ *America’s Changing Religious Landscape*, Pew Research Center (May 12, 2015) available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

² Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

³ Alexander Hamilton, *The Federalist* #69.

and formed an interfaith committee to work on the day of prayer. The court enjoined Mayor Webb and other City officials “acting in an official capacity, from promoting, endorsing, or supporting the Day of Prayer.” *Id.* at 5. It reasoned:

Since prayer is exclusively a religious act, the endorsement of a Day of Prayer would logically be interpreted by a reasonable person as an endorsement of religion. Because from all appearances Mayor Webb was acting in his official capacity in issuing the press release and conducting the press conference endorsing the Day of Prayer, the Court concludes that a reasonable person would interpret his conduct as governmental endorsement of religion. As such, it violates the Establishment Clause. *Id.*

Please note that FFRF’s victory did not prevent Mayor Webb from attending privately sponsored prayer events in his personal capacity, and we do not ask you or other state officials to avoid attending privately sponsored religious events either. But it is unlawful under the First Amendment for a governor or state to promote such an event or for such officials to attend the event in their *official* capacity.

Conclusion

This defiance of the U.S. Constitution is a disappointing way to begin your tenure as the 33rd Governor of South Dakota. As you have taken an oath to uphold the U.S. Constitution, FFRF urges you to reflect on the Constitution’s guarantee that each of your constituents are entitled to a secular government that does not take a position on matters of religion. We sincerely hope you will do better in the future.

Sincerely,



Colin E. McNamara
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation