

FREEDOM FROM RELIGION *foundation*

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February 9, 2022

SENT VIA U.S. MAIL AND EMAIL

dbortner@dnr.in.gov

Daniel W. Bortner
Director
Indiana Department of Natural Resources
402 West Washington St., Room W256
Indianapolis, IN 46204

Re: Unconstitutional Religious Endorsement on Social Media

Dear Director Bortner:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional concern regarding the promotion of religion on the Indiana Department of Natural Resources (DNR) Facebook page. FFRF is a national nonprofit organization with more than 35,000 members, including almost 500 members and a chapter in Indiana. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

An Indiana resident contacted us regarding the promotion of St. John the Evangelist Catholic Church in a Facebook post on December 28, 2021. A screenshot is enclosed. A photo of the church was made the cover photo for the DNR's Facebook page and the caption emphasized the church's "chancel with altar and nativity scene." The post included an invitation to purchase a DNR Holiday Gift Pack. The post suggests that the photo is included in Outdoor Indiana magazine.

By posting a photo of the interior of a Catholic church emphasizing a nativity scene and associating it with sales of its magazines and permits, the Indiana DNR is endorsing religion, which is prohibited by the Establishment Clause.

The Supreme Court has long held that the Establishment Clause "mandates government 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. Ark.*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947). State sponsorship of a religious message "is impermissible because it sends the ancillary message to members of the audience who are nonadherents '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 (1983) (O'Connor, J., concurring)).

As a state department, you serve a diverse population that consists of not only Christians, but also minority religious and nonreligious citizens. Religious endorsements made by your department send a message that excludes the almost thirty percent of Americans who are not religious.¹ Posting photos of any interiors is an odd use of taxpayer funds for a department of natural resources, but posting photos of church interiors and emphasizing the religious imagery while promoting its magazine and state park permits serves no legitimate purpose and alienates those who do not share the promoted beliefs.

The Supreme Court has described the power of social media sites as “the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (internal citations omitted). Government entities must be particularly diligent not to entangle religious messages with official government pronouncements made in this “modern public square.” Certainly, this also extends to an official DNR magazine.

Government employees can worship, pray, or post religious photos when acting in their personal capacities. But they are not permitted to provide prestige to their personal religion through the machinery and trappings of a government office. The Indiana DNR belongs to the people of Indiana and is tasked with serving all Indiana residents, regardless of personal beliefs.

To avoid further constitutional concerns, the Indiana DNR must refrain from promoting religion on social media and in its literature. Please inform us in writing of the steps taken to respect the rights of conscience of all Indiana residents, regardless of their personal religious or nonreligious beliefs. Thank you for your time and attention to this matter.

Sincerely,



Karen M. Heineman
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation

Enclosure

¹ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), available at www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.



Indiana Department of Natural Resources updated their cover photo.

December 28, 2021 at 9:00 AM · 🌐

The historic St. John the Evangelist Catholic Church's Germanic Gothic Revival chancel with altar and nativity scene. Photo by J. Maxwell. Get one year of Outdoor Indiana magazine w/the \$99 Holiday Gift Pack. Comes with a 2022 Annual Entrance Permit, \$65 Indiana State Parks Camping or Indiana State Park Inns Gift Card (higher values available) and 2022 calendar. Buy yours at stores.innsgifts.com/holiday-packs.

