

FREEDOM FROM RELIGION *foundation*

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October 30, 2014

SENT VIA MAIL & FAX:
605-367-7330

Mr. David Pfeifle
Sioux Falls City Attorney
PO Box 7402
Sioux Falls, SD 57117

Dear Mr. Pfeifle:

I am writing on behalf of the Freedom From Religion Foundation ("FFRF") regarding First Amendment concerns with religious displays painted on two of the City's snow plows. We were contacted by area residents about this violation. FFRF is a national nonprofit organization that has more than 21,000 members across the country, including members in South Dakota who contacted us about this matter. Our purpose is to protect the constitutional principle of separation between state and church.

We understand that the City has invited various schools and youth organizations to paint the blades on City snowplows. One of the plows says, "Jesus Christ" in lettering mimicking a Coca-Cola design and states "WHOEVER DRINKS THE WATER I GIVE HIM WILL NEVER THIRST. JOHN (Sic) 1:14." (The quoted verse is actually found in John 4:14). The other plow says, "Happy Birthday Jesus" alongside a depiction of a crèche and "Sioux Falls Lutheran School."

Please take appropriate action to remove these religious messages from tax-supported city equipment, where they give the unfortunate message of endorsement of religion, including sectarian endorsement of the Christian bible, Jesus as savior, and two Lutheran schools. Such action is needed for the City to adequately demonstrate respect for non-Christian and non-religious citizens and to comply with the Establishment Clause of the First Amendment.

The Establishment Clause prohibits government sponsorship of religious messages. The Supreme Court has said time and again that the "First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion." *McCreary County, 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).

It is inappropriate and unconstitutional for a government entity to display proselytizing Christian messages to its citizens, including on government equipment and facilities. The Supreme Court has ruled, "The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief." *Cnty. of Allegheny v. Am. Civil Liberties Union*

Greater Pittsburgh Chapter, 492 U.S. 573, 593-94 (1989). The religious messages on the snowplows in this case are problematic for the same reasons as was the crèche in *Allegheny*. The plows are, in fact, far worse given their content. The plow blade that proclaims “Jesus Christ” seeks conversion to Christianity and cites to a biblical verse. The other blade depicts a crèche and proclaims “Happy Birthday Jesus.” As the Supreme Court has stated, “[t]he government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Allegheny*, 492 U.S. at 601. This is precisely the sort of religious endorsement prohibited by the Establishment Clause.

It is no defense that Christian schools painted the religious messages. As the Supreme Court said in *Allegheny* when ruling that the display was unconstitutional:

The fact that the crèche bears a sign disclosing its ownership by a Roman Catholic organization does not alter this conclusion. On the contrary, the sign simply demonstrates that the government is endorsing the religious message of that organization, rather than communicating a message of its own. But the Establishment Clause does not limit only the religious content of the government’s own communications. It also prohibits the government’s support and promotion of religious communications by religious organizations. See, e.g., *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 109 S.Ct. 890, 103 L.Ed.2d 1 (1989) (government support of the distribution of religious messages by religious organizations violates the Establishment Clause). Indeed, the very concept of “endorsement” conveys the sense of promoting someone else’s message. Thus, by prohibiting government endorsement of religion, the Establishment Clause prohibits precisely what occurred here: the government’s lending its support to the communication of a religious organization’s religious message.

Id. At 600-01.

The City has control of what is on its snowplow equipment and has an obligation to restrict religious and proselytizing statements. Notably, the plows are a local feature that are viewed in the community by many and are effectively a traveling billboard.¹ Messages and designs on the plows will be viewed throughout the community all winter and are understood to be endorsed by the City.

Notably, messages on City plows may be limited to serve the City’s objectives. Even if the plows were deemed a non-public forum, the City could put a limitation on religious, anti-religious, and proselytizing messages. In *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, the Ninth Circuit Court of Appeals ruled on a similar issue, holding that a school district did not violate the free speech rights of an individual who was prohibited from displaying an ad featuring the Ten Commandments on a baseball field fence. 196 F.3d 958 (9th Cir. 1999). The court ruled that the “baseball field fence was a nonpublic forum open for a limited purpose. Accordingly, the

¹ See <http://www.siouxfalls.org/news/2014/10/08/paint-plows.aspx> (“The honks and waves from people passing by and the excitement of the kids as they see their plow go by are priceless for the drivers. They are definitely conversation pieces all over the city.”)

District's conduct need only be reasonable in light of the purpose served by the forum and viewpoint neutral to be permissible." *Id.* at 967.

When a government entity like the City of Sioux Falls chooses to display a proselytizing message and a message celebrating the birth of Jesus, it places the imprimatur of the City behind Christian religious doctrine. This excludes citizens who are not Christian—Jews, Muslims, Native American religious practitioners, etc.—as well as the almost 20% of the American population that is nonreligious.² These displays send the exclusionary message to nonbelievers and non-Christians that they are outsiders in their community and a corollary message to Christians that they are insiders and favored citizens.

Please inform us in writing of the actions the City is taking to remedy this violation so that we may inform our complainants. We look forward to a reply at your earliest convenience.

Sincerely,



Patrick C. Elliott
Staff Attorney

² "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) *available at* <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.