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January 20, 2022

The Honorable Lana Greenfield  
Chair  
Education Committee  
South Dakota House of Representatives  
500 East Capitol Avenue  
Pierre, SD 57501

The Honorable Sue Peterson  
Vice-Chair  
Education Committee  
South Dakota House of Representatives  
500 East Capitol Avenue  
Pierre, SD 57501

**Re: Oppose HB 1015–Bills Designed to Promote Prayer in Public Schools Are Unconstitutional**

Dear Chair Greenfield and Vice-Chair Peterson:

On behalf of the South Dakota members and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 1015, which would require public school districts to have a moment of silence each morning. This bill’s real purpose, as Governor Noem has stated, is to “put[] prayer back in our schools,”<sup>1</sup> which violates the U.S. Constitution.<sup>2</sup>

Students already have the right to pray in public schools. The First Amendment to the U.S. Constitution clearly protects students’ rights to pray, so long as it is voluntary, non-disruptive, student-led, and student-initiated. There is no need to “put prayer back” in public schools because it has never been removed.

This bill should be rejected.

**The Purpose of This Bill Is to Promote Prayer in Public Schools**

HB 1015 would require schools to have a moment of silence during which students and school employees “may engage in voluntary prayer, reflection, meditation, or other quiet, respectful activity.” Governor Noem, the sponsor of this bill, has made clear that her goal is to use this bill to promote prayer in public schools.

Governor Noem first discussed this bill in July 2021, when she said she would be “putting prayer back in schools.”<sup>3</sup> She discussed this bill again in September when she lamented that

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<sup>1</sup> Gillian Trudeau, [Governor Kristi Noem Hints at Putting Prayer Back in Public Schools](#), KOTA TV (Jul. 20, 2021).

<sup>2</sup> Likewise, the South Dakota Constitution prohibits giving preference to any “mode of worship.” S.D. Const. art. V, § 3.

<sup>3</sup> Trudeau, *supra* note 1.

families are spending less time in church and reading the Bible together, and that society has “degrade[d] as we’ve removed God out of our lives.”<sup>4</sup> She explained that, in a “stand for biblical principles,” she would be proposing legislation “that will allow us to pray in schools again”<sup>5</sup> When she released the text of the bill in December, she said it would “restore protections for prayer in public schools.”<sup>6</sup> Finally, during her State of the State address just last week, Governor Noem said that she “will protect the freedom to worship and re-instill a right that has been absent for far too long in our schools.”<sup>7</sup>

Adopting a bill with a clear religious purpose is unconstitutional. Indeed, the Supreme Court has struck down moments of silence in public schools where they lack a valid secular purpose and instead serve to promote silent prayer. In *Wallace v. Jaffree*, the Court struck down an Alabama moment of silence bill where—just like here—the purpose of the bill was to “return voluntary prayer” to public schools.<sup>8</sup> The Court explained that the “legislative intent to return prayer to the public schools is, of course, quite different from merely protecting every student’s right to engage in voluntary prayer during an appropriate moment of silence during the schoolday.”<sup>9</sup> Governor Noem’s statements clearly demonstrate an “intent to return prayer to the public schools,” making this bill unconstitutional.<sup>10</sup>

The Supreme Court has also noted there are “heightened concerns” with protecting students from the “subtle coercive pressure in the elementary and secondary public schools” that comes from school-mandated religious activities.<sup>11</sup> Because students are “impressionable, and their attendance is involuntary,” courts are “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.”<sup>12</sup> If this bill were to pass, students might feel pressured to join in prayer each day at school.

### **Public Schools Are Diverse and All Students Should Be Welcome**

Families and students in South Dakota practice a variety of religions and faiths and many are nonreligious. Praying is inherently religious, and choosing to pray is a deeply personal decision. No person, least of all a student in a public school, should feel compelled to pray to fit in or to gain favor from a teacher or coach. Freedom of religion means that parents—

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<sup>4</sup> Steve Benen, [Despite Court Rulings, South Dakota’s Noem Pushes for School Prayer](#), *MSNBC* (Sep. 17, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> Morgan Matzen, [Gov. Kristi Noem Wants “Moment of Silence” Legislation to Protect Prayer in Schools](#), *Argus Leader* (Dec. 13, 2021).

<sup>7</sup> Jackie Hendry, [Lutheran Bishop Doesn’t See Need for School Prayer Legislation](#), *SDPB* (Jan. 12, 2022).

<sup>8</sup> 472 U.S. 38, 57, 60 (1985).

<sup>9</sup> *Id.* at 59.

<sup>10</sup> The First Amendment also prohibits the government from communicating a message that promotes religion. *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 592–94 (1989). Governor Noem’s statements communicate that the government is using this bill to promote religion.

<sup>11</sup> *Lee v. Weisman*, 505 U.S. 577, 592 (1993).

<sup>12</sup> *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987).

not school officials or state legislatures—have the right to decide whether, when, or how to pray. All students should feel welcome in their school, not just those who engage in a particular religious practice.

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For these reasons, we urge you to respect the religious freedom of all students in South Dakota and oppose HB 1015.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nikolas Nartowicz".

Nikolas Nartowicz  
State Policy Counsel

cc: Members of the House Education Committee