

FREEDOM FROM RELIGION *foundation*

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June 9, 2017

**SENT VIA EMAIL AND U.S. MAIL:
dnold@oconomowoc-wi.gov**

The Honorable David Nold
Mayor
City of Oconomowoc
174 E. Wisconsin Ave.
Oconomowoc, WI 53066

Re: Unconstitutional religious signs on City property

Dear Mayor Nold:

I am writing again on behalf of the Freedom From Religion Foundation (FFRF) regarding the City's "the churches of Oconomowoc welcome you" signs. We received a brief email from City Administrator Sarah Kitsemel on May 17, but are still awaiting a substantive reply from the City on what steps will be taken to remedy this constitutional violation.

We were informed that the City recently received a letter from the Wisconsin Institute for Law and Liberty (WILL) purporting to "debunk" our previous letter.¹ WILL's letter fundamentally misunderstands this area of the law, and risks dangerously misleading the City on this issue.

First, WILL's letter correctly noted that the context of religious displays is important. But, the letter wrongly stated that sectarian religious symbols are permissible so long as they do not endorse "a religious principle." In fact, the Supreme Court has routinely struck down Latin crosses on public property, as we emphasized in our original letter, without analyzing whether a "religious principle" is being endorsed. Any symbol on government property that shows endorsement of *religion* is impermissible.

Second, the group's analysis of the Supreme Court case *Van Orden v. Perry* is seriously flawed. The display in *Van Orden* was permissible only because it was one display among 21, in a museum-like setting, *Van Orden*, 545 U.S. 677, 681, whereas Oconomowoc's signs are stand-alone Christian displays. Further, Justice Breyer, whose opinion is controlling, described *Van Orden* as a "borderline case." *Id.* at 700 (Breyer, J., concurring). Bender Park is not a

¹ will-law.org/debunks-freedom-religion-foundations-claims-signs/.

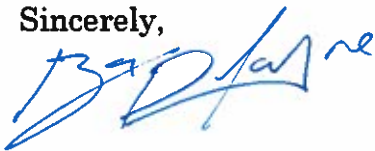
museum-like collection of monuments. It is an open park with one religious sign, which was recently renovated with the City's approval. This is not a borderline case.

FFRF has litigated numerous longstanding stand-alone religious displays on government property, including several in the last five years, and courts have repeatedly held that such displays are unconstitutional.

Finally, WILL's letter shockingly states that the presence of a Latin cross "does not change anything." As we emphasized in our original letter, courts have consistently noted that the Latin cross is the preeminent symbol for Christianity, and only Christianity. A reasonable viewer seeing the crosses atop these signs would understand that the signs send a specifically Christian message. The Seventh Circuit, which has jurisdiction over Wisconsin, has plainly stated that "a Latin cross . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity," *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992), and that "when prominently displayed . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be. Such a display is not only religious but sectarian." *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986), *cert. denied*, 479 U.S. 961 (1986).

Religious displays on government property are divisive, unnecessary, and constitutionally problematic. Indeed, the very fact that Oconomowoc's citizens are turning to outside groups to debate this issue shows just how divisive these signs are. The simplest solution is to remove these signs and to allow private parties to place similar signs on private property. By ensuring that the government does not take sides on religion, a matter that must be left to the individual conscience, the City strikes a blow *for*, not *against*, religious liberty.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne". The signature is stylized and cursive.

Ryan D. Jayne, Esq.
Elaine & Eric Stone Legal Fellow
Freedom From Religion Foundation