

FREEDOM FROM RELIGION *foundation*

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SENT VIA U.S. MAIL & EMAIL

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Timothy D. Scaffidi
Solicitor
Borough of Clayton
28 Cooper St.
Woodbury, NJ 08096

Re: Unconstitutional Seal and Motto

Dear Mr. Scaffidi:

I am writing again in response to your Oct. 28, 2015 letter regarding the Borough of Clayton's religious seal and motto.

You claimed that both the city seal's Christian church embedded with a cross and the motto which asserts that Clayton is "a great place to . . . pray" both have "the secular purpose of recognizing the history of the Borough." This bare assertion does not reflect the state of the law on this matter, and we therefore renew our request that the Borough of Clayton change its unconstitutional seal and motto.

As laid out in our previous letter, the federal courts have consistently held that religious symbolism on official city seals is unconstitutional, even in the face of claims that the religious portions are in some way historical.

"[T]he City may not honor its history by retaining the blatantly sectarian seal, emblem, and logo. These symbols transcend mere commemoration, and effectively endorse or promote the Christian faith." *Harris v. City of Zion, Lake Cty., Ill.*, 927 F.2d 1401, 1415 (7th Cir. 1991). "Such an appeal to history . . . is indeed an argument which could always 'trump' the Establishment Clause, because of the undeniable significance of religion and religious symbols in the history of many of our communities." *Robinson v. City of Edmond*, 68 F.3d 1226, 1232 (10th Cir. 1995). Instead, "[t]he relevant inquiry is the objective one of what the 'average observer' would perceive when viewing the seal." *Id.* at 1233 (citation omitted).

Even if the seal could somehow be seen as having a secular "historical" purpose, and even if that was genuinely the intent of the seal's creators, that is not sufficient to withstand constitutional scrutiny. "If the challenged practice is likely to be interpreted as advancing religion, it has an impermissible effect and violates the Constitution, regardless of whether it actually is intended to do so." *Friedman v. Bd. of Cty. Comm'rs of Bernalillo Cty.*, 781 F.2d 777, 781 (10th Cir. 1985). The Ninth Circuit accepted a city's argument that a seal depicting a cross had a historical

purpose, but continued, "This secular purpose does not, however, lessen the preference the insignia exhibits for Christianity." *Ellis v. City of La Mesa*, 990 F.2d 1518, 1528 (9th Cir. 1993) We doubt the church and cross are based on the family coat of arms of Clayton's founder, see *Murray v. City of Austin, Texas*, 947 F.2d 147 (5th Cir. 1991). "Without that historical distinctiveness, the case law is well settled on the issue of whether a religious symbol on a city seal passes constitutional muster." *Webb v. City of Republic, Mo.*, 55 F. Supp. 2d 994 (W.D. Mo. 1999).

Similarly, it is not a city's place to declare that it is a good place to pray. The Borough of Clayton ought not to lend its power and prestige to religion by promoting a religious activity in its official motto. It is coercive and intimidating for nonreligious citizens to have their government go out of its way to appear to be a place for religious people, to the exclusion of nonreligious people.

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 Cnty., 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). By endorsing prayer in its official slogan, the city abridges its duty to remain neutral. Whether to pray, and whether to believe in a god who answers prayer, is an intensely personal decision protected under our First Amendment as a matter of conscience.

Therefore, once again, we urge the Borough of Clayton to discontinue its current seal and motto, and adopt new symbols that are constitutional and inclusive of all the Borough's citizens. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Madeline Ziegler, Esq.
Cornelius Vanderbroek Legal Fellow
Freedom From Religion Foundation