

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL**

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112 East Washington Avenue, P.O. Box 668  
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Re: Effingham cross mural

Dear Ms. Willenborg:

I am in receipt of your January 9, 2020, letter in which you state the City of Effingham currently is evaluating its options relative to the use of the Raney Street Overpass headwall. We await the City's decision on that matter. In the interim however, FFRF contests the position taken by the City that the mural constitutes private speech because it was placed by a private organization.

The Supreme Court has already firmly addressed the issue of when public displays constitute government or private speech. “[A] government-commissioned and government-financed monument placed on public land constitutes government speech. So, too, are privately financed and donated monuments that the government accepts for public display on government land.” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 460 (2009). Under *Pleasant Grove* it is wholly irrelevant that a private organization placed the mural on government property, by accepting the mural the City of Effingham has adopted any and all messages contained within the mural as its own.

Similarly, it is also irrelevant that the city claims it was unaware that the mural would contain Christian imagery when it approved the mural. The relevant question for determining what constitutes government speech, as opposed to private speech, is whether the government has the right to control the message. *Pleasant Grove* at 460 (“A government entity is entitled to say what it wishes... for the purpose of delivering a government-controlled message”), *See also Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679, 684 (6th Cir. 1994) (Portrait of Jesus in hallways was government speech because the government “maintains the right to control what is posted there”); *Bannon v. Sch. Dist. of Palm Beach Cty.*, 387 F.3d 1208 (11th Cir. 2004) (School

district had right to remove Christian symbols painted onto a mural without its permission because the mural constituted government speech).

Like the school district in *Bannon*, the City of Effingham should remove the religious symbolism that was added to a government-sponsored mural. We continue to await the City's decision on the matter.

Sincerely,



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*Patrick O'Reiley Legal Fellow*

*Freedom From Religion Foundation*