

FREEDOM FROM RELIGION *foundation*

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September 24, 2014

SENT VIA U.S. MAIL & EMAIL

kguinn@ocalafl.org

The Honorable Kent Guinn
Mayor of Ocala
110 S.E. Watula Ave.
Ocala, FL 34471

Re: Unconstitutional City Logo

Dear Mayor Guinn:

I am writing on behalf the Freedom From Religion Foundation (FFRF) to notify you that the city seal and motto of Ocala (City) violates the Constitution. We have been contacted by several concerned local citizens. FFRF is a national nonprofit organization with over 21,000 members across the country, including over 1,000 members in Florida and a local chapter, the Central Florida Freethought Community. Our purpose is to protect the constitutional principle of separation between state and church.

We understand that Ocala's motto is "God be with us," and that this phrase is printed in the City's seal and included in a patch on Ocala Police Department uniforms.

This phrase itself has a checkered past. It appears in the Bible in 1 Kings 8:57 and Romans 8:31.¹ Cities cannot adopt bible quotes as their mottos. And, more alarmingly, the phrase was a Nazi motto—every soldier in Nazi Germany's regular army wore belt buckles reading "*Gott mit uns*," the same phrase in German.

The inclusion of a religious phrase on the official city logo violates the Establishment Clause of the First Amendment. The Establishment Clause, "at the very least, prohibits government from appearing to take a position on questions of religious belief or from 'making adherence to a religion relevant in any way to a person's standing in the political community.'" *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 594 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984)). The City's use of the phrase "God be with us" signals an endorsement of religion over nonreligion.

Federal courts have ruled that similar logos violate the Establishment Clause. The Ocala seal is akin to numerous other unconstitutional municipal seals and logos. In *Friedman v. Board of County Commissioners of Bernalillo*, the Tenth Circuit Court of Appeals held that the use of a

¹ Similar versions appear in Catholic liturgy ("the Lord be with you"), as well as 1 Chronicles 22:11-13 ("Now, my son, the Lord be with you . . .") and Joshua 1:5, 9, and 17 ("No one will be able to stand against you all the days of your life. As I [God] was with Moses, so I will be with you . . . do not be discouraged, for the Lord your God will be with you wherever you go . . . Only may the Lord your God be with you as he was with Moses.").

county seal reading “With This We Conquer” in Spanish over a Latin cross on the shoulder patches of a sheriff’s department officers had the primary or principal effect of advancing religion and thus violated the Establishment Clause. 781 F.2d 777 (10th Cir.1985) (en banc), *cert. denied*, 476 U.S. 1169 (1986). In *Harris v. City of Zion* and *Kuhn v. City of Rolling Meadows*, the Seventh Circuit held that the religious imagery and words on the seal of the city of Rolling Meadows, Ill., and the seal, emblem and logo of the city of Zion, Ill., violated the Establishment Clause. 927 F.2d 1401 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992). The City of Zion’s seal contained the phrase “God reigns.” In both cases, the seal/patches violated the “endorsement element” of the *Lemon* test, used to determine when governmental religious activity is unconstitutional: “The aim of the ‘effects’ or endorsement element [of *Lemon*] is to prevent ‘government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. . . . Whether the word is endorsement, favoritism, or promotion, the essential principle remains the same: the Establishment Clause prevents the government from appearing to take a position on questions of religious belief.” *Id.* at 1411-12 (quoting *Allegheny*, 492 U.S. at 593-594 (1989)).

Other courts have also held that seals and patches with religious content violate the Establishment Clause. See *Robinson v. City of Edmond*, 68 F.3d 1226 (10th Cir. 1995) (holding that city seal containing Latin cross in one quadrant violated Establishment Clause); *Foremaster v. City of St. George*, 882 F.2d 1485 (10th Cir. 1989) (finding that Establishment Clause challenge to city logo depicting Mormon Temple could proceed; suit was later settled after the City had substantially stopped using the logo); *Webb v. City of Republic, Mo.*, 55 F. Supp. 2d 994 (W.D. Mo. 1999) (holding city seal with religious fish symbol in one quadrant violated Establishment Clause); *American Civil Liberties Union of Ohio, Inc. v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (holding city seal containing Latin cross violated Establishment Clause).

These patches constitute a governmental endorsement of religion. The City is not maintaining neutrality on the subject of religion as required by the Constitution, instead placing its power and imprimatur behind religion. The Supreme Court has explicitly rejected the idea that the Establishment Clause only prohibits sectarian preference: “this Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another.” *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203, 216 (1963).

At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, **the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.** This conclusion derives support not only from the interest in respecting the individual’s freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, and from recognition of the fact that **the political interest in forestalling intolerance extends beyond intolerance among Christian sects—or even intolerance among ‘religions’—to encompass intolerance of the disbeliever and the uncertain.**”

Wallace v. Jaffree, 472 U.S. 38, 52-54 (1985) (emphasis added) (notes omitted).

The City is prohibited from endorsing religion over nonreligion just as it is prohibited from endorsing one religious sect over another. "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally . . . aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

We urge the City to discontinue using this seal and remove it from all official use, including police uniform badges. The City should adopt a new representation of Ocala that is inclusive of all of your citizens. We request a written response outlining what steps the City is taking to comply with the Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Seidel". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Andrew L. Seidel
Staff Attorney

ALS:mez