

FREEDOM FROM RELIGION *foundation*

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June 14, 2013

SENT VIA U.S. MAIL & FAX (614) 728-9793

The Honorable Richard H. Finan
Chair, CSRAB Space Holocaust Memorial Committee
1 Capitol Square
Columbus, OH 43215

Re: Improper Religious Iconography in Planned Memorial

Dear Senator Finan:

We are writing on behalf of the Freedom From Religion Foundation (“FFRF”) regarding constitutional concerns we have over one detail of a planned Holocaust Memorial to be erected on the Ohio statehouse grounds. FFRF is a nationwide nonprofit organization that works to protect the constitutional principle of separation between church and state, and represents the right and views of nonbelievers. FFRF represents 19,000 members across the country, including more than 500 members in Ohio. Our membership has included Holocaust survivors and their descendants.

It is our information and understanding that a Holocaust Memorial at the Ohio statehouse was proposed by Governor Kasich on May 4, 2011, and was subsequently approved by the legislature. We understand that the monument will largely be privately funded, but that the state will pay for necessary site work such as installation. SB 312, the bill by which the planned memorial was approved, dictates that the purpose of construction is to honor “victims of The Holocaust (1933-1945) and to those Ohioans who participated in the liberation of the death camps during World War II.”

The design selected for the memorial was created by Daniel Libeskind. Libeskind’s design incorporates two rectangular structures made of stainless steel with the story of an Auschwitz survivor embossed upon them. In the negative space between the two structures is a very large sacred religious symbol known as the “Star of David” which dominates the structure, even from a long distance. FFRF believes with the state of Ohio it is important to memorialize the Holocaust. We also believe that the solemnity and import of the task can be accomplished without permanently placing a religious symbol on government property. As the Star of David was deemed by European Jews to be the symbol that “would represent Judaism just as the cross did Christianity,” its prominent inclusion in the memorial gives the impression of an endorsement of Judaism.¹

Mr. Libeskind admitted to the Ohio Statehouse Holocaust Memorial Artist Selection Committee his own concern about whether the Star of David constituted a religious symbol. He ultimately

¹ *The Oxford Dictionary of the Jewish Religion* 433 (R. J. Zwi Werblowsky & Geoffrey Wigoder eds., 1997).

felt that “one cannot separate the holocaust from the star.”² During the artist selection process, however, semi-finalists Jaume Plensa and Ann Hamilton managed to do just that. Plensa’s proposal included a statue of six bronze leaves made of letters from several world languages, including Hebrew. Hamilton’s proposal included a limestone base with tunnels, sycamore trees, and excerpts from the narratives of Holocaust survivors. Either of Plensa’s or Hamilton’s designs would be preferable to avoid a potentially unconstitutional entanglement of government and religion. Therefore, the state, in choosing Libeskind’s plan using a prominent sacred symbol, knowingly selected and endorsed a design with constitutional concerns. This was unwise and contributes to the appearance of endorsement of religion.

Numerous federal courts have indicated an understanding that the Star of David is in fact a sectarian sacred, religious symbol. *See e.g. ACLU Neb. Found v. City of Plattsmouth*, 358 F.3d 1020, fn. 4 (8th Cir. 2003) (stating “[t]he six-point star is the Star of David, a symbol of the Jewish religion”); *Alvarez v. Cate*, 2013 U.S. Dist. LEXIS 32577, 17-18 (N.D. Cal. 2013) (acknowledging that the Star of David is a Jewish religious symbol); *Green v. Bd. of County Comm’rs.*, 450 F. Supp. 2d 1273, 1288 (E.D. Okla. 2006) (referring to the Star of David as an “explicitly and solely religious symbol[]”); *Anderson v. Salt Lake City Corp.*, 348 F. Supp. 1170, 1171 (D. Utah 1972) (stating “the Star of David...is a well known Jewish symbol”). Since the Star of David is a readily identifiable Jewish symbol, it is likely that the effect of its inclusion in the planned memorial could be seen as a government endorsement specific to the Jewish community, as opposed to all other groups affected by the Holocaust.

The fact that this symbol is being included as part of an art project “designed by a noted architect and approved by an art commission does not change its purpose. It simply is an attempt to create an aesthetically pleasing religious symbol; it does not obviate its religious purpose.” *Gonzales v. North Township of Lake County*, 4 F.3d 1412, 1421 (7th Cir. 1993). Even if the sacred symbol is meant to serve as a “visible, recognizable, serious, and symbolic memorial,” it may be violative of the Establishment Clause if it has a religious as opposed to a secular effect. *Jewish War Veterans v. United States*, 695 F. Supp. 3, 7 (D.D.C. 1988). As the court ruled in *Greater Houston Chapter of American Civil Liberties Union v. Eckels*, “the use of religious means to achieve secular goals where nonreligious means will suffice is forbidden.” *Eckels*, 589 F. Supp. 222, 234 (S.D. Tex. 1984)(citations removed).

Even if the symbol is viewed in the context of a memorial honoring victims of an atrocious genocide, it ignores the fact that there were other victims of the Holocaust. Thus, it gives the impression that only the Jewish victims of the Holocaust are being honored by the state. *Id.* at 235. There were five million non-Jewish victims of the Holocaust, including Jehovah’s Witnesses, Roma Gypsies, resisters to the Nazi regime, Catholic priests and Christian pastors, homosexuals, the disabled, and Africans who were brought to Germany following World War I.³ If the memorial included only a pink triangle, it would appear to honor homosexual victims of the Holocaust above all others. Similarly, including the Star of David so prominently in the planned memorial is exclusionary, ignoring the sacrifices made by the many other groups

² Ohio Jewish Communities, Statehouse Holocaust Memorial, <http://ohiojc.org/statehouseholocaustmemorial.html> (last visited June 14, 2013).

³ Jewish Virtual Library, The Holocaust: Non-Jewish victims, <http://www.jewishvirtuallibrary.org/jsource/Holocaust/NonJewishVictims.html> (last visited June 14, 2013).

targeted by the Nazis during World War II. A reasonable observer could conclude that the government only cares about the Jewish victims of the Holocaust, not Christian, nonreligious, or other non-Jewish victims.

The monument could resemble numerous powerful war memorials across the U.S. which do not use any sectarian images: including the National World War II Memorial, the Vietnam Veterans Memorial and the Korean War Veterans Memorial. Each is secular in nature and without religious reference, which offends no one and is respected by all. The lack of religious imagery within those memorial designs neither diminishes their significance nor detracts from the respect and honor shown for the victims of those conflicts.

FFRF would like to emphasize that we have no objection to the State hosting a memorial to honor victims of the Holocaust and Ohioan veterans who helped liberate Nazi concentration camps. FFRF's own membership includes veterans of World War II and Holocaust survivors. Our contention is that memorials designated by state governments, particularly anything displayed at the seat of state government, should remain free from sectarian religious imagery.

We respectfully urge the Capitol Square Review and Advisory Board Space Holocaust Memorial Committee to reconsider its chosen design for the Ohio statehouse memorial, or to remove the portion of the memorial with the Star of David. A design which does not include religious symbols is vastly preferable to the current design. It would not exclude non-Jewish survivors and liberators of World War II concentration camps, and would avoid entangling the Ohio government in a constitutionally problematic endorsement of religion.

We and everyone who values the Establishment Clause of the First Amendment must oppose the current design because of the terrible legal precedent it would create. Permitting one permanent sectarian and exclusionary religious symbol, even though it represents a minority religion, would create the legal precedent, for instance, to place an equally large or larger permanent Latin cross on Capitol grounds.

As a much-persecuted minority conscious of the history of warfare and genocide in the name of a god and a religion, many U.S. Jewish citizens and groups work hard to keep religion out of government. They and we are aware of the sinister role Christian union with the state played during the Holocaust, of the writings by Hitler, a Roman Catholic, who said in *Mein Kampf* "By fighting off the Jews, I am doing the Lord's work," the concordance between the Roman Catholic and Lutheran denominations with Nazi Germany and Fascist Italy. They and we are aware that "Gott mit uns" ("God [is] with us") was the Nazi motto emblazoned on the buckle of the Nazi German soldiers' uniform — clearly showing the Holocaust was a religiously-motivated genocide. They and we are aware of the long, dark history of religion aligned with the power of the state that has resulted in more people being killed in the name of religion than for any other reason.

To align the State of Ohio with one religion and its sacred symbol—even a minority religion for a worthy memorial—would dishonor the truest protection our country has against a similar holocaust on our shores: the precious constitutional principle separating religion from government. Had there been a separation between religion and state honored and enforced in

Germany, ensuring the government could not favor the dominant religion and persecute and scapegoat minority religion and other “dissidents,” there would not have been a Holocaust.

Please advise us of the Committee’s decision on this matter at your earliest convenience.

Sincerely,

Handwritten signature of Dan Barker in blue ink.

Dan Barker
FFRF Co-President

Handwritten signature of Annie Laurie Gaylor in blue ink.

Annie Laurie Gaylor
FFRF Co-President

cc: Ms. Ginger Warner, co-chair