

FREEDOM FROM RELIGION *foundation*

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December 12, 2018

SENT VIA EMAIL & U.S. MAIL
schilders@ozarkmissouri.org

Stephen Childers, City Administrator
City of Ozark
205 N. First St.
Ozark, MO 65721-0295

Re: Display of Cross on Government Property

Dear Mr. Childers:

Early yesterday, the City issued a statement indicating the cross displayed in Finley River Park violated the Constitution. In a remarkable statement, which outlined just how well the current state of the law was understood, the City agreed:

The First Amendment of the United States Constitution prohibits the government from making any law respecting establishment of religion. The United States Supreme Court has interpreted this clause, generally known as the Establishment Clause, to prohibit items such as the cross from being displayed by the government on government property.

It is the position of the City of Ozark that leaving a religious symbol on public property, in this case a cross, will result in a law suit that we will not win as the other communities throughout the U.S. and our own region have tried this and lost.

Therefore, it is upsetting to see that the City reversed course yesterday afternoon stating:

We released a press release earlier with the facts as they have been presented to us thus far. As the day unfolded and citizens commented on this topic, we have determined that in the best interest of all parties we shall continue working through the legalities of the situation. Therefore, the cross in the Finley River Park will remain in place until a further due diligence can be completed regarding this matter.

We understand that there was immense pressure from the community to keep the cross lit. We also understand the mayor, who also told the media “[The cross] is part of Ozark. This is a Christian county, for Pete’s sake,” ordered the cross to stay lit for the holiday season.

As we mentioned in our November 30th letter, an illuminated cross is not a permissible city holiday decoration. Again, In *ACLU v. St. Charles*, 794 F.2d 265 (7th Cir. 1986), *cert. denied*, 479 U.S. 961 (1986), the Seventh Circuit prohibited the city of St. Charles from displaying an illuminated Latin cross on the top of the city's fire department as a part of its annual Christmas display. *Id.* at 267. The court stated matter of factly that "... the cross is not in fact a common Christmas symbol ... Its absence from Christmas celebrations may indeed be one of the reasons why Christmas is a national holiday celebrated by most Americans regardless of their religious affiliation." *Id.* at 273. The court continued, "But the story of the death and resurrection of Christ, the story that the cross calls to mind, moves only Christians deeply. For others it is the symbol of a system of belief to which they do not subscribe." *Id.* The court found the cross unconstitutional despite its surroundings of other secular trimmings for the holiday seasons including lights, wreaths, Santa, etc. *Id.*

Even in cases upholding nativity scene displays, courts have found Christian crosses to be different. The addition of secular items does not alter the premise that a government display of a Christian cross in observance of a holy day is unconstitutional. In the U.S. Supreme Court case, *See Allegheny v. Am. Civil Liberties Union of Pittsburgh*, both the majority opinion and Justice Kennedy's concurrence specified that the Establishment Clause would unquestionably prohibit a city from placing its imprimatur on a large permanent cross. 492 U.S. at 599, 606-07, 615 n.61 & 661 (Kennedy, J., concurring and dissenting in part). The courthouse holiday display of a crèche surrounded by poinsettias was unconstitutional. *Id.* at 602. In rejecting the county's argument that the floral decoration secularized the display, the Court reasoned, "[i]t is as if the county had allowed the Holy Name Society to display a cross on the Grand Staircase at Easter, and the county had surrounded the cross with Easter lilies. *Id.* at 599. The flowers assuredly could not "negate the endorsement of Christianity conveyed by the cross." *Id.* Likewise, a light display in the park does not negate Ozark's endorsement of Christianity here.

Furthermore, Justice Kennedy wrote in *Allegheny*:

"I doubt not, for example, that the Clause forbids a city to permit the permanent erection of a large Latin cross on the roof of city hall. This is . . . because such an obtrusive year-round religious display would place the government's weight behind an obvious effort to proselytize on behalf of a particular religion."

Id. at 661 (emphasis added) (concurring in part and dissenting in part). We understand that while the cross is only lit for Christmas, the structure of the cross remains in place year-round.

Certainly, after the City conducts this "due diligence" and "works through the legalities of the situation," it will again conclude that the City "may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus." *Allegheny*, 492 U.S. at 601. The cross undeniably promotes the religious aspects of Christmas and thus violates the Establishment Clause.

While the City conducts this research and determines its next step, the solution is not to keep the cross lit and prominently displayed. The correct action, which will be respectful to all citizens of Ozark is to remove the cross.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSM', written in a cursive style.

Rebecca S. Markert
Legal Director

cc: Mayor Richard Gardner (via fax: 471-581-0575)