

FREEDOM FROM RELIGION *foundation*

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November 5, 2015

SENT VIA EMAIL & U.S. MAIL: gjohnson@ci.port-neches.tx.us

The Honorable Glenn Johnson
Mayor of Port Neches
P.O. Box 758
Port Neches, TX 77651

Re: Display of Cross on Government Property

Dear Mayor Johnson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of a cross on public property. We were contacted by a concerned citizen. FFRF is a national nonprofit organization with 23,000 members across the country, including nearly 1,000 members in Texas. FFRF's purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that the Port Neches Riverfront Park contains a white 10-foot tall cross. The cross stands by itself near the river and contains no writing or engravings. Please see enclosed photo.

The religious significance of the Latin cross is unambiguous and indisputable. "The Latin cross . . . is the principal symbol of Christianity around the world, and display of the cross alone could not reasonably be taken to have any secular point." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring). An overwhelming majority of federal courts agree that the Latin cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) ("There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land . . . violates the Establishment Clause"); *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991) ("a Latin cross . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity."), *cert. denied*, 505 U.S. 1218 (1992); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986) ("When prominently displayed . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be. Such a display is not only religious but sectarian."), *cert. denied*, 479 U.S. 961 (1986).

A majority of federal courts have held displays of Latin crosses on public property to be an unconstitutional endorsement of religion. *See, e.g., Trunk v. San Diego*, 629 F.3d 1099 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2535 (2012); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and Cnty. of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun Cnty. Chamber of*

Commerce, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). While most of the aforementioned cases involved the display of a Latin cross in public parks, the display on any government property would also violate the Establishment Clause. Justice Kennedy has stated, "I doubt not, for example, that the Clause forbids a city to permit a permanent erection of a large Latin cross on the roof of city hall" *Cnty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 661 (1989) (Kennedy, J., concurring in part, dissenting in part). Such a religious display "would place the government weight behind an obvious effort to proselytize on behalf of a particular religion." *Id.*

The government's permanent display of a Latin cross on public land is unconstitutional. The inherent religious significance of the Latin cross is undeniable and is not disguisable. No secular purpose, no matter how sincere, will detract from the overall message that the Latin cross stands for Christianity and that the display promotes Christianity. The display of this patently religious symbol on public property confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

The cross unabashedly creates the perception of government endorsement of Christianity. It conveys the message to non-Christians, including the one in five Americans who are not religious, that they are not "favored members of the political community."¹ *Allegheny*, 492 U.S. at 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Port Neches political outsiders.

We ask you to remove the cross from Port Neches Riverfront Park immediately or direct the display be moved to a more appropriate private location. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Rebecca S. Markert
Staff Attorney

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Enclosure

¹ "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012), available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

