

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

February 1, 2017

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

**dbarrone@taosgov.com, nevans@taosgov.com, dfernandez@taosgov.com,  
jcantu@taosgov.com, fhahn@taosgov.com**

The Honorable Daniel R. Barrone  
Taos Town Council  
400 Camino de la Placita  
Taos, NM 87571

Re: Display of Cross on Government Property

Dear Mayor Barrone and Councilmembers:

I am writing once again on behalf of the Freedom From Religion Foundation, a national organization that works to protect the constitutional principle of separation between state and church, in order to follow up on our March 1, 2016 letter regarding the cross sculpture in Taos Plaza. A copy of the original letter is attached for your review.

Despite sending this letter and two follow up letters to Town Manager Rick Bellis, we have received no reply concerning this matter. We expect a written response from the town informing us of the actions taken to resolve this constitutional violation.

FFRF takes very seriously the inappropriate display of religious symbols on public property and the erasure of non-Christian veterans. FFRF is currently suing the city of Pensacola, Florida over a cross in a public park there, and the city of Santa Clara, California, recently moved a cross out of a public park after FFRF filed suit to challenge it.

As laid out in our previous letter, federal courts have consistently struck down crosses on public property because they are an unconstitutional endorsement of religion. The Town of Taos must remove the cross from Taos Plaza and find a secular way to memorialize veterans and victims of the Bataan Death March. Please inform us in writing of the steps you take to resolve this matter.

Sincerely,



Madeline Ziegler, Esq.  
*Patrick O'Reiley Legal Fellow*  
*Freedom From Religion Foundation*

# FREEDOM FROM RELIGION *foundation*

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March 1, 2016

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

**rbellis@taosgov.com**

Rick Bellis  
Town Manager  
Town of Taos  
400 Camino de la Placita  
Taos, NM 87571

**Re: Display of Cross on Government Property**

**Dear Mr. Bellis:**

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 Taos resident. FFRF is a national nonprofit organization with more than 23,500 members across the country, including nearly 250 members in New Mexico. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that a large cross sculpture sits in Taos Plaza. We understand that plaques on this cross state that it is a memorial for those who died in the Bataan Death March during WWII, and also a Veterans Memorial for all wars. The latter plaque is dated 1995. Please see the 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). 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).

Federal courts have consistently 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).

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 fact that the cross is a memorial does not “nullif[y] [its] religious sectarian content because a memorial cross is not a *generic* symbol of death; it is a *Christian* symbol of death that signifies or memorializes the death of a Christian.” *American Atheists, Inc. v. Davenport*, 637 F.3d 1095, 1122 (10th Cir. 2010), *cert. denied*, 132 S. Ct. 12 (2011). As such, “cross memorials would convey to a reasonable observer that the state . . . is endorsing Christianity. The memorials use the preeminent symbol of Christianity, and they do so standing alone.” *Id.* at 1121. In *Trunk v. San Diego*, the Ninth Circuit Court of Appeals struck down the display of a cross as part of a war memorial atop Mt. Soledad in La Jolla, California. 629 F.3d 1099. The court reiterated that “[this] sectarian war memorial carries an inherently religious message and creates an appearance of honoring only those servicemen of that particular religion.” *Id.* at 1101 (quoting *Ellis v. City of La Mesa*, 990 F.2d 1518, 1527 (9th Cir. 1993)). The court also reasoned that “a sectarian war memorial carries an inherently religious messages and creates an appearance of honoring only those servicemen of that particular religion.” *Id.* at 1112 (quoting *Ellis*, 990 F.2d at 1527). It significantly noted that a cross “is ‘not a generic symbol of death’ but rather ‘a *Christian* symbol of death’ . . . a reasonable observer would view a memorial cross as sectarian in nature.” *Id.* The court ultimately concluded, “a reasonable observer would perceive the Memorial as projecting a message of religious endorsement, not simply secular memorialization.” *Id.* at 1118. Thus, the cross memorial “primarily conveys a message of government endorsement of religions that violates the Establishment Clause.” *Id.* at 1125.

A cross memorializes a Christian, and only a Christian, excluding any non-believing or other non-Christian veterans. This display perpetuates the myth that there are no “atheists in foxholes” and either falsely assumes that all veterans are Christian or suggests that the only veterans worth memorializing are Christians.

The cross thus 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.”<sup>1</sup> *Cnty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 594 (1989). The cross has an exclusionary effect, making non-Christian and non-believing residents of Taos political outsiders.

We ask you to remove the cross from Taos Plaza 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 constitutional violation.

Sincerely,



Madeline Ziegler, Esq.  
Cornelius Vanderbroek Legal Fellow  
Freedom From Religion Foundation

Encl.

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<sup>1</sup> *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).



