

FREEDOM FROM RELIGION *foundation*

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

April 11, 2014

Fire Chief Russell E. Brooks II
Utica Fire Department
Central Station
552 Bleecker St.
Utica, NY 13501

Re: Inappropriate Religious Display at Fire Station 4

Dear Chief Brooks:

I am writing on behalf of the Freedom From Religion Foundation ("FFRF") to alert you to a constitutional violation at Fire Station 4, on Shepherd Place. FFRF is a national nonprofit organization with more than 20,000 members across the country, including over 1,100 members in New York. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that over the 2013 Christmas season a Christmas display was erected outside Fire Station 4. A concerned area resident contacted us to report that the display included a sign reading "HAPPY BIRTHDAY JESUS WE LOVE YOU." A picture of the display, which also included a two-dimensional Santa and toy soldier, is enclosed for your review. We understand that this display may have remained outside the station from December through at least the end of January.

The Establishment Clause of the First Amendment prohibits government sponsorship of religious messages. The Supreme Court has said time and again that the "First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion." *McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947).

It is inappropriate and unconstitutional for a government entity to display the sign described above because it conveys a preference by the City of Utica for religion over nonreligion. The Supreme Court has ruled, "The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief." *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 593-94 (1989). In *Allegheny*, the Court reasoned that because a crèche display in a county courthouse was located in a government building and endorsed an indisputably religious message, the display was unconstitutional. *Id.* at 598-600. The sign in this case is problematic for the same reasons, but is in fact far worse than the crèche display in *Allegheny*. The sign at Fire Station 4 explicitly invokes the name Jesus, an exclusively Christian god, and makes a direct statement in support of that deity ("WE LOVE YOU"), presumably on behalf of those working at the station. As the

Supreme Court has stated, “[t]he government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Allegheny*, 492 U.S. at 601. This is precisely the sort of religious endorsement prohibited by the Establishment Clause.

Not only is this sectarian display unconstitutional, it is bad policy for a service-focused, community-oriented department. When a government entity like the Fire Department chooses to display a message celebrating the birth of Jesus, it places the imprimatur of the City of Utica behind Christian religious doctrine. This excludes citizens who are not Christian—Jews, Muslims, Native American religious practitioners, etc.—as well as the almost 20% of the American population that is nonreligious.¹ This sign sends the exclusionary message to nonbelievers and non-Christians that they are outsiders in their community.

We ask that the Utica Fire Department not post this type of sectarian religious display on any fire station in the future. All members of the department should be reminded of their constitutional obligation to remain neutral toward religion while acting on behalf of the City of Utica. Please inform us in writing of the actions you are taking to remedy this violation so that we may inform our complainant. We look forward to a reply at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RSM', with a stylized flourish at the end.

Rebecca S. Markert
Staff Attorney

Enclosure

RSM:stg

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>.

