

FREEDOM FROM RELIGION *foundation*

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December 10, 2014

SENT VIA U.S. MAIL & ELECTRONIC MAIL

mayor@cityofutica.com

The Honorable Robert Palmieri
Mayor
City of Utica
1 Kennedy Plaza
Utica, NY 13502

Re: Inappropriate Religious Display at Fire Station 4

Dear Mayor Palmieri:

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 21,500 members across the country, including over 1,200 members in New York. FFRF's purpose is to protect the constitutional principle of separation between state and church.

Earlier this year, FFRF sent a letter to Fire Chief Russell Brooks regarding a religious sign that was displayed at the fire station during the 2013 holiday season. This sign read "HAPPY BIRTHDAY JESUS WE LOVE YOU." FFRF asked the chief to refrain from erecting that sign again. In May, Chief Brooks responded to FFRF stating his belief that he was "well within our rights to display our Christmas sign" and that he contacted the Thomas More Law Center¹, a Christian legal group, for legal guidance on this topic. The Thomas More Law Center apparently then sent a memo on the constitutionality of nativity scenes, which Chief Brooks deemed permission to erect this religious sign.

Our area resident complainant contacted us again recently to report that the sign is erected once again on the fire station's grounds. Please find enclosed pictures of this display. We ask that you direct the Fire Chief to remove this sign immediately to disassociate the City of Utica, and its fire department, from endorsement of religion, specifically Christianity.

As you may know, 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

¹ The Thomas More Law Center is headquartered in Michigan and has the purpose "to be the sword and shield for people of faith" and is "the Christian response to the ACLU." Taken from: <http://www.thomasmore.org/about-the-thomas-more-law-center/>

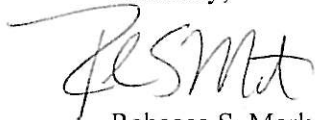
position on questions of religious belief.” *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 593-94 (1989). In *Allegheny*, the Court reasoned that because a crèche display in a county courthouse was located in a government building and endorsed an indisputably 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”), on behalf of the station and City. This is precisely the sort of religious endorsement prohibited by the Establishment Clause.

Further, the Supreme Court has stated: “The 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. By displaying this sign, the City of Utica Fire Department is praising the Christian god (“WE LOVE YOU”). This is in direct violation of the Constitution.

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.² This sign sends the exclusionary message to nonbelievers and non-Christians that they are outsiders in their community.

We ask that that you direct the Fire Chief to remove this sign immediately. 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 your written reply.

Sincerely,



Rebecca S. Markert
Staff Attorney

Enclosure

cc: William Borrill, Corporation Counsel (via electronic mail only)

² “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>.



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