

FREEDOM FROM RELIGION *foundation*

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August 20, 2014

SENT VIA EMAIL & U.S. MAIL

cclark@dnr.in.gov

Cameron F. Clark
Director
Indiana Department of Natural Resources
402 W. Washington St.
Indianapolis, IN 46204

Re: Proposed Display of Cross on Government Property

Dear Mr. Clark:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) to alert you to a proposed unconstitutional display of a cross on public property. We were contacted by a concerned local citizen. FFRF is a nationwide nonprofit organization which works to protect the constitutional principle of separation between state and church. FFRF represents more than 21,000 members across the country, including members in Indiana and more than 4,000 active duty service members and veterans.

It is our understanding that the Indiana Department of Natural Resources (“DNR”) is currently deciding whether to allow a new statue to be placed in Whitewater Memorial Park in Liberty, Indiana. We understand this statue is proposed as a veterans’ memorial and that it includes a Latin cross.

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 agrees 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*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). All of the aforementioned cases involved the display of a Latin cross in public parks.

In *Trunk v. San Diego*, the Ninth Circuit Court of Appeals, struck down the display of a large cross as part of a war memorial atop Mt. Soledad in La Jolla, California. *See* 629 F.3d 1099. The Ninth Circuit 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.

More notably, a federal judge ruled that a veterans’ memorial in the City of Lake Elsinore, California, which was very similar to the monument in question here, is unconstitutional. *Am. Humanist Ass’n v. City of Lake Elsinore*, No. 5:13-CV-00989-SVW (C.D. Cal. Feb. 25, 2014). “Although the cross serves as a tombstone, a religious symbol is not necessary to mark a grave, and... the use of a religious symbol where one is not necessary evidences a religious purpose.” *Id.* at 8. “Because of the Latin cross’s strong ties to Christianity, even when a cross occupies only one part of a larger display, courts have almost unanimously held that its effect is to communicate that the display as a whole endorses religion.” *Id.* at 13.

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 the overall display promotes Christianity. The display of this patently religious symbol in a city park would confer government endorsement of Christianity, a blatant violation of the Establishment Clause.

We have no objection to veterans’ memorials. Our objection is to the message of endorsement of Christianity over other religions and religion over nonreligion. Additionally, the Christian-only memorial will send a message that the government only cares about the deaths of Christian soldiers, not Jewish, other non-Christian, and nonreligious soldiers. This memorial excludes the 25% of military personnel who identify as atheist or agnostic or have no religious preference.¹

¹ Military Leadership Diversity Commission, “Religious Diversity in the U.S. Military,” Issue Paper #22 (June 2010), available at <http://militaryatheists.org/resources/MLDC-RIPSDemographics.pdf>.

This “sponsorship of a religious message is impermissible because it sends the ancillary message to...nonadherents ‘that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (O’Connor, J., concurring)).

It is unlawful for a public park to display a patently religious symbol, such as a Christian cross, on public property. We ask you to replace the statue’s cross with a secular symbol, remove the cross, or deny the statue’s placement in Whitewater Memorial Park in order to honor all veterans. We would also appreciate a prompt response from you, in writing, informing us of the action the DNR takes on this matter.

Sincerely,

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

Rebecca S. Markert
Staff Attorney

RSM:mez