

FREEDOM FROM RELIGION *foundation*

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August 1, 2018

SENT VIA FAX & U.S. MAIL
423-542-1510

Roger G. Day, Esq.
City Attorney
City of Elizabethton
136 S. Sycamore St.
Elizabethton, TN 37643

Re: Display of Cross on Government Property

Dear Mr. Day:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of crosses on public property. We were contacted by a concerned local resident. FFRF is a national nonprofit organization with over 32,000 members across the country, including over 400 members in Tennessee. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters of nontheism.

It is our understanding that three large crosses are located on the hill above Harmon Park. Our complainant informs us that the location of the crosses is on city property. We also understand that these crosses are sometimes illuminated for events, such as during the Christmas holiday. We understand that even if the crosses are not illuminated, they are a permanent structure, and are located in a prominent position overlooking the entire town. Please see the enclosed image.

If these allegations are true, this is a serious constitutional violation. Elizabethton cannot display crosses on city property.

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 24% of 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 Elizabethton political outsiders.

Likewise, we have concerns that the cross is allegedly illuminated during the Christmas holiday season. That seems to suggest that the City is celebrating the religious aspect of the Christmas holiday, which is another violation of the First Amendment. 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 v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 601 (1989).

We ask you to remove the cross from city property 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
Legal Director

RSM:lbc

Enclosure

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

