

FREEDOM FROM RELIGION *foundation*

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

March 3, 2022

SENT VIA U.S. MAIL AND FAX: (423) 542-1510

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

Re: Display of Crosses on Government Property

Dear Attorney Day:

I am writing—again—on behalf of the Freedom From Religion Foundation (FFRF) regarding the crosses on Lynn Mountain above Harmon Park. You acknowledged our concerns in writing—in 2018—and indicated you would discuss the issue with city officials and respond accordingly. More than three years later and several follow-up inquiries, we are still waiting.

Our concern remains that the City of Elizabethton is maintaining an unconstitutional religious display on city property. As you are likely aware, since our original letter of complaint, the U.S. Supreme Court has modified its analysis for Establishment Clause violations concerning “established, religiously expressive monuments, symbols, and practices.” *American Legion v. American Humanist Assoc.*, 139 S. Ct. 2067, 2085 (2019). Using this case as precedent, we add some additional information about the history of the Elizabethton crosses that differentiates this situation from the Bladensburg cross in *American Legion*.

In the 1950s, the three crosses were placed by a group of boys who were challenged by their Sunday School teacher to do something unusual for Easter.¹ The activity “almost landed them in jail” for cutting trees and clearing the land without permission. The crosses remain there to “remind us daily of our faith.”

In a video of the crosses at Easter,² a banner adjacent to the crosses reads “JESUS IS LORD.” Two benches are placed between two of the crosses to allow a view from the top of the mountain. Otherwise, the crosses stand alone, that is, there is no memorial associated with the crosses.

In *American Legion*, the Court held that with the passage of time, longstanding monuments, symbols and practices earn a presumption of constitutionality. *Id.* The Court discussed four considerations with established monuments that justify using a different legal framework in place

¹ <https://www.elizabethton.com/2020/03/11/missing-cross-on-lynn-mountain-needs-to-be-replaced/>.

² https://www.youtube.com/watch?v=nLsaF6_nOLU.

of the *Lemon* test. *Id.* at 2082–85. First, the original purpose for building the monument may be difficult to identify with the passage of time. *Id.* at 2082. Second, the purposes for an initially religious monument may multiply with time so that the religious purpose becomes obscure. *Id.* at 2082–83. Third, the message conveyed may change over time. *Id.* at 2084. And, lastly, removing a historically embedded monument could be regarded as religious hostility. *Id.* at 2084–85. The monument analyzed in *American Legion*, which included a Latin cross, was held to be constitutional because the cross was a secular symbol of World War I, the monument was a symbolic resting place for veterans who did not return home, the monument had become a historical landmark, and removal after nearly a century would not be neutral. *Id.* at 2089–90.

The Elizabethton crosses do not satisfy the considerations outlined in *American Legion*. They were erected on city property without permission by a group of boys challenged by their church. The crosses stand alone, except for times when an overtly Christian message accompanies them. The message of the crosses has not changed over time; the religious purpose is not obscured, rather, it is highlighted at certain times, such as Easter. Removing the crosses is necessary to return to the religious neutrality the City of Elizabethton abrogated when it allowed the illegal crosses to continue to stand on government property with no purpose other than providing a prominent symbol of Christianity.

The Establishment Clause requires religious neutrality so that religious and nonreligious are treated equally. Using government property and, possibly, government funds to sponsor a Christian message does not respect this constitutional dictate. Moving the crosses to private property would satisfy the obligation. We request a written response to our concerns so that we may inform our patient complainant.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen M. Heineman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Karen M. Heineman
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation