

# FREEDOM FROM RELIGION *foundation*

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March 18, 2019

**SENT BY EMAIL & U.S. MAIL:**

kgardner@stlouiscao.org

The Hon. Kimberly Gardner  
St. Louis Circuit Attorney  
Carnahan Courthouse  
1114 Market St., Room 401  
St. Louis, MO 63101

Re: Unconstitutional Display of Bible Verse at Circuit Attorney's Office

Dear Circuit Attorney Gardner:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to urge you to remove an unconstitutional display from the Circuit Attorney's Office. FFRF is a national nonprofit organization with more than 31,000 members across the country, including members in Missouri. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on the topic of nontheism.

A concerned resident of St. Louis County reported that your office prominently displays a bible verse at your office in the Carnahan Courthouse. We understand that the verse is affixed to the wall directly outside of your office, right beneath plaques bearing your name, title, and the seal of the St. Louis Circuit Attorney. The sign reads:

“Justice, and Only Justice, You Shall Pursue...” – DEUT. 16:20.<sup>1</sup>

We write to request that this sign be removed, both because it represents a government endorsement of religion in violation of the First Amendment, and because it advocates a form of “justice” that is incompatible with constitutional principles.

**This sign represents an unconstitutional government endorsement of religion.**

The Establishment Clause 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 Cty., 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.*, 330 U.S. 1, 15–16 (1947). The Court has also ruled, “The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief.” *Cty. of Allegheny v. ACLU*, 492 U.S. 573, 593–94 (1989). Like the Ten Commandments posters in *McCreary* and the crèche in *Allegheny*, a reasonable observer would view this sign as an endorsement of religion, and it is accordingly unconstitutional.

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<sup>1</sup> A photograph of the sign is enclosed.

Federal courts have upheld restrictions on religious displays on government property because such restrictions exist to avoid Establishment Clause violations. The Ninth Circuit Court of Appeals has stated that the “government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it.” *Tucker v. Dept. of Educ.*, 97 F.3d 1204, 1214 (9th Cir. 1996); *see also Berry v. Dept. of Soc. Serv.*, 447 F.3d 642, 651 (9th Cir. 2006) (“materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state”). A bible quote certainly falls within the category of religious speech that the government must not sponsor to avoid the appearance of religious favoritism.

In *Berry*, the court upheld restrictions on religious displays in work spaces, even private cubicles or offices, because public access to the area could cause someone to “reasonably interpret the presence of visible religious items as a government endorsement of religion.” *Id.* at 652. The court concluded that “[d]isplaying the Bible implicitly endorses a religious message and it is precisely that message which the Department reasonably seeks to avoid.” *Id.* Courts have recognized that “the state has a legitimate interest, for example, in preventing the posting of crosses or Stars of David in the main hallways, by the elevators, or in the lobbies, and in other locations throughout its buildings. Such a symbol could give the impression of impermissible government support of religion.” *Tucker*, 97 F.3d at 1216.

The Fifth Circuit has likewise held that religious displays on government property impermissibly endorse religion. For example, Harris County, Texas was required to remove a monument near the entrance to the county courthouse because it contained an open bible. *Staley v. Harris Cty., Tex.*, 461 F.3d 504, 515 (5th Cir. 2006), *on reh’g en banc*, 485 F.3d 305 (5th Cir. 2007) (upholding injunction without reviewing Establishment Clause question). The court concluded that it was unconstitutional because “public grounds... may not reflect preference in matters of religion.” *Id.* at 505.

The Circuit Attorney’s Office is charged with serving all citizens regardless of belief or nonbelief. This message alienates the one in five St. Louisans who are nonreligious<sup>2</sup> and expresses a preference for Judeo-Christian faith in a government building responsible for administering and upholding our laws. This “sends the ... message to ... nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members.’” *McCreary*, 545 U.S. at 860.

**This verse espouses a form of “justice” that is incompatible with our Constitution.** Those familiar with the Old Testament know that the Book of Deuteronomy primarily consists of Moses’ exhortations to his people to rigorously follow Yahweh’s many commandments. Deuteronomy lays out the biblical god’s laws in exhausting detail, and it is the strict adherence to those laws that this verse refers to as “justice.” In its full context, the verse reads: “Justice, and only justice, you shall pursue, *so that you may live and occupy the land that the LORD your GOD is giving you.*”<sup>3</sup> This is immediately followed by a warning not to worship the goddess Asherah or else risk invoking Yahweh’s wrath.<sup>4</sup>

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<sup>2</sup> “Religious Landscape Survey—Adults in the St. Louis Metro Area,” PEW RESEARCH CENTER, *available at* <http://www.pewforum.org/religious-landscape-study/metro-area/st-louis-metro-area/>.

<sup>3</sup> DEUT. 16:20 (NRSV).

<sup>4</sup> “Do not set up any wooden Asherah pole beside the altar you build to the LORD your GOD, and do not erect a sacred stone, for these the LORD your GOD hates.” DEUT. 16:21–22 (NIV).

Similar prohibitions against the worship of any god but Yahweh are a constant refrain throughout Deuteronomy, and each is a proscription that is wholly incompatible with our secular Constitution. The Establishment Clause and the Free Exercise Clause of our First Amendment work in tandem to safeguard the fullest expression of religious liberty for all; Deuteronomy demands that we worship Yahweh and Yahweh alone, and threatens severe punishment from on high for breaching this dictate.<sup>5</sup> More insidiously, Deuteronomy decrees that all nonbelievers, practitioners of other religions, and apostates must be eradicated, and that it is the peoples' duty to see that these infidels are executed.<sup>6</sup> Deuteronomy goes so far as to order every true believer to murder converts and apostates, whether they be your own parent, child, or dearest friend.<sup>7</sup>

This is what the Old Testament calls “justice”—fear, violence, and servility. This notion of justice stands at odds with the enlightened principles embodied in our Bill of Rights—principles like due process, humane punishment, and the absolute freedom of conscience. As Circuit Attorney, you took an oath to uphold the latter, not the former. It would be appropriate, as well as constitutionally prudent, for the walls of your office to reflect the Circuit Attorney's commitment to a more rational and progressive system of justice than that championed in Deuteronomy.

### **Conclusion**

Put simply, the bible verse outside of your office violates the Constitution, and it enshrines ideas that conflict with constitutional values. We ask that you please remove the verse as soon as possible and inform us in writing so that we may notify our complainant. Thank you for your time and attention to this matter.

Sincerely,



Colin E. McNamara  
*Robert G. Ingersoll Legal Fellow*  
*Freedom From Religion Foundation*

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<sup>5</sup> DEUT. 6:14–15; 8:19–20; 11:17–18; 11:28; 18:10–12; 18:20; 28:15–68; 29:18–27; 30:17–19; 31:16–21; 32:16–25.

<sup>6</sup> DEUT. 7:2–5; 7:15–16; 7:25–26; 12:2–3; 13:5–18; 17:3–7; 20:17–18.

<sup>7</sup> “If your very own brother, or your son or daughter, or the wife you love, or your closest friend secretly entices you, saying, ‘Let us go and worship other gods’ (gods that neither you nor your ancestors have known, gods of the peoples around you, whether near or far, from one end of the land to the other), do not yield to them or listen to them. Show them no pity. Do not spare them or shield them. You must certainly put them to death. Your hand must be the first in putting them to death, and then the hands of all the people. Stone them to death, because they tried to turn you away from the LORD your GOD, who brought you out of Egypt, out of the land of slavery. Then all Israel will hear and be afraid, and no one among you will do such an evil thing again.” DEUT. 13:6–11 (NIV).

**Kimberly M. Gardner**

**CIRCUIT ATTORNEY**



**"Justice, and Only Justice,  
You Shall Pursue..."**  
- DEUT. 16:20



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**CIRCUIT  
ATTORNEYS  
OFFICE**  
ROOM 401

