

FREEDOM FROM RELIGION *foundation*

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December 20, 2011

SENT VIA FAX & EMAIL

Mayor Patrick Kitching
Village of Alsip
4500 W. 123rd Street
Alsip IL 60803

Re: Unconstitutional Cross on Water Tower

Dear Mayor Kitching:

I am writing on behalf of a concerned area resident as well as Illinois members of the Freedom From Religion Foundation ("FFRF") to object to the display of a cross on Village property. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation between state and church. We have 17,000 members across the country, including more than 600 in Illinois.

It is our information and understanding that a cross sits on top of the Village of Alsip water tower located near W 119th Street. We also understand that this cross is illuminated at night, making the display noticeable to all passersby including travelers on I-294. We are told that the cross is erected each year and is lit during the weeks leading up to Christmas. From satellite images, it appears that the cross is stored year round on top of the water tower.

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot advance, promote or endorse religion. Thus, the government cannot demonstrate a preference for one particular sect or creed. *See Everson v. Bd. of Educ. of Ewing Township*, 330 U.S. 1, 15-6 (1947). The Village of Alsip's erection and maintenance of a Latin cross atop the water tower demonstrates the Village's preference of Christianity over all other faiths, and impermissibly advances religion over non-religion. Such a government endorsement of Christianity is unconstitutional.

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).

The Village of Alsip’s display on the water tower is akin to that in *ACLU v. St. Charles*, 794 F.2d 265. In that case, the Seventh Circuit prohibited the city of St. Charles from displaying an illuminated Latin cross on the top of the city’s fire department as a part of its annual Christmas display. *Id.* at 267. The court reasoned that this powerful sectarian symbol was not a traditional decoration for the holiday season, but instead was an unmistakable symbol of Christianity. *Id.* at 271. It stated, “when prominently displayed on a public building that is clearly marked as and known to be such, the cross dramatically conveys a message of government support for Christianity...” *Id.* Thus, the court held this display constituted an endorsement of religion, particularly Christianity, which is prohibited by the Establishment Clause of the First Amendment. *Id.* at 270-271.

The display of a cross on government buildings and water towers has long been found to be a violation of the Establishment Clause. It is shocking that the Village has maintained this practice for so long. 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...” *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.* When challenged, these water tower displays have been ruled unconstitutional. See *American Atheists v. City of Starke, Fl*, 2007 WL 842673 (M.D. Fla. Mar 20, 2007) (unpublished); *Mendelson v. City of St. Cloud*, 719 F. Supp. 1065 (M.D. Fla. 1989).

The Alsip water tower is clearly marked with the Village name and the water tower is a notable Alsip landmark. The Village’s hosting of a powerful sectarian symbol cannot be seen as a traditional decoration of the holiday season, but instead can only be a message of government support for Christianity. Given that the cross is prominently displayed each year, and can be seen by many from afar, particularly at night when it is illuminated, a reasonable observer could only conclude that the Village of Alsip supports and approves its religious message.

No court of final resort has ever upheld the government’s permanent display of a Latin cross on public land as constitutional. 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 on the Village water tower confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

FFRF recently brought suit against the Town of Whiteville, Tenn., on this very issue. It should not be necessary to litigate these violations, as the law is clear. Elected officeholders must uphold their duty to follow the Constitution, regardless of their personal religious views. The cross has an exclusionary effect, turning non-Christian and non-believing residents of your community into political outsiders. The government must stay out of the religion business. Private individuals remain free to celebrate holidays as they see fit.

We ask you to immediately cease lighting the cross and remove it from Alsip property. We would appreciate a prompt response from you, in writing, informing us of the steps the Village will take to resolve this matter. Our complainant awaits a response.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Elliott", with a stylized flourish at the end.

Patrick Elliott
Staff Attorney