

# FREEDOM FROM RELIGION *foundation*

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December 3, 2015

**SENT VIA U.S. MAIL AND EMAIL**

**Htowell@cra.countyservice.net**

Hannah Towell  
Craighead County Assessor  
511 Union St Ste 130  
Jonesboro, AR 72401

**Re: Continuing Unconstitutional Display of Crosses in County Assessor's Office**

Dear Ms. Towell:

Our national organization, which works to protect the constitutional principle of separation between state and church, wrote to you in November about an egregious constitutional violation in your office. We understand that you initially remedied the situation by removing the crosses. Our complainant informs us that the crosses have been re-installed and the display is nearly identical to the previous one. These crosses continue to face the public view and at least one is still inscribed with a bible verse, John 3:16 ("For God so loved the world that he gave his one and only son that whoever believes in him shall not perish but have eternal life."), and adds at its base, "He loves. He gave. We believe. We live." This one is posted on a customer window facing the public directly.

We also understand that the Craighead County Quorum Court passed a resolution on November 23<sup>rd</sup> indicating support for this display. As a basis for this resolution, the Quorum Court stated "public service employees do not forfeit their constitutional rights by working in a public office."

We write again to inform you that this display is unconstitutional and must be removed immediately. This display cannot be saved under the guise of free speech and free exercise rights because contrary to the Quorum Court's resolution, government entities may regulate otherwise constitutional activities by their employees when acting in their official roles. These employees are representatives of Craighead County. The County could remove the religious display from the Assessors office without violating any public employee's First Amendment rights to free speech or free exercise. In fact, the County should remove the religious display to uphold the right to freedom of conscience for others who must come into contact with your office's religious display.

When the government is an employer, it surely has an interest in regulating the speech of its employees while they are acting within their government role. While a government employer has an interest in controlling the speech of its employees, 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. Department of Education*, 97 F.3d 1204, 1214 (9th Cir. 1996); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”); *Daniels v. City of Arlington, Tex.*, 246 F.3d 500, 504 (5th Cir. 2001) (discussing *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) test for speech by public employees and ruling that the state could prohibit police officer from pinning cross to uniform). As the court in *Daniels* stated, “the city through its police chief has the right to promote a disciplined, identifiable, and impartial police force by maintaining its police uniform as a symbol of neutral government authority, free from expressions of personal bent or bias.” *Daniels*, 246 F.3d at 504; *see also id.* (“The city’s interest in conveying neutral authority through that uniform far outweighs an officer’s interest in wearing any non-department- related symbol on it.”).

In *Berry*, a case directly on point to the crosses display in Craighead County, the court upheld restrictions on displays of religious materials in workspaces, 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.” *Berry*, 447 F.3d at 652. Here, the display is highly visible to the public, including a cross with a proselytizing message that is outward facing and whose message is visible to county residents visiting the office for services. It is not merely a private workspace. 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.* The 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. Thus, a display need only give an impression of endorsement to be unconstitutional. This elaborate display of multiple crosses with multiple religious messages and biblical verses certainly gives an impression of the County’s endorsement of Christianity. The Quorum Court’s resolution also furthers that impression of endorsement.

Once again, we ask you to remove this display immediately. We again request a written response as to the action your office takes to resolve this constitutional violation.

Sincerely,



Rebecca S. Markert  
Staff Attorney