

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

AMANDA KONDRAT'YEV, )  
ANDREIY KONDRAT'YEV, )  
ANDRE RYLAND, and )  
DAVID SUHOR, )

*Plaintiffs,* )

v. )

CASE NO.

CITY OF PENSACOLA, FLORIDA, )  
ASHTON HAYWARD, in his official )  
capacity as Mayor of the City of )  
Pensacola, and BRIAN COOPER, in )  
his official capacity as Director of the )  
City of Pensacola Parks & )  
Recreation Department, )

*Defendants.* )

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**COMPLAINT**

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**INTRODUCTION**

The City of Pensacola has erected, maintains, and displays an enormous twenty-five-foot-tall cement Latin cross—the universally recognized symbol of Christianity—on city property at city expense. The cross is solely used for Christian worship services every Easter morning. Four Pensacola residents challenge the cross because Christian crosses on government property violate their First Amendment rights, as federal courts have held in more than twenty cases.

Seeking to protect and vindicate their civil liberties and constitutional rights, including their right to frequent a public park free from state-sanctioned religious symbols, the above-captioned Plaintiffs state as their complaint against the above-captioned Defendants the following:

### **NATURE OF THE CLAIMS**

1. This action challenges the constitutionality of Defendants' ownership, maintenance and prominent display on government property of a massive Christian cross (the "Bayview Cross"). The Bayview Cross violates the Establishment Clause of the First Amendment of the United States Constitution, as applied to Florida by the Fourteenth Amendment.

2. The large government-owned, government-funded, and government-maintained Christian cross, prominently situated within a popular public park, dominates the visual space. The Bayview Cross has the purpose and effect of endorsing Christianity over other religions and religion over non-religion.

3. Plaintiffs seek injunctive and declaratory relief and damages under 42 U.S.C. § 1983 against the Defendants to redress these constitutional violations, together with recovery of attorneys' fees and costs under 42 U.S.C. § 1988 (b).

### **JURISDICTION AND VENUE**

4. This case arises under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983 and presents a federal

question within this Court's jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). The Court has jurisdiction to issue a declaratory judgment under 28 U.S.C. § 2201 and to provide injunctive relief and damages under 28 U.S.C. § 1343 and Fed. R. Civ. P. 65.

5. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred herein, and because the majority of defendants reside herein.

### **PARTIES**

6. Plaintiff Amanda Kondrat'yev is a citizen and resident of Pensacola, Florida, and has lived in Pensacola for approximately ten years. She currently lives about six and a half miles from the Bayview Cross, along with her husband, Plaintiff Andreiy Kondrat'yev. Ms. Kondrat'yev is a Humanist and an Atheist. She is a member of the American Humanist Association ("AHA"), the Secular Student Alliance, and Humanists of West Florida, an AHA chapter.

7. Ms. Kondrat'yev first encountered the Bayview Cross while walking through Bayview Park with a friend in or about 2008 or 2009. She was immediately affronted by the government's enormous Christian cross display and expressed her feelings of shock to her friend as soon as they saw the imposing Christian symbol. She has had unwelcome contact with the Bayview Cross approximately thirty times since.

8. Ms. Kondrat'yev has two young children, ages three and twelve. She and her husband, Plaintiff Andreiy Kondrat'yev, have raised their children as non-theists and do not want their children to have unwelcome contact with the government's Christian cross display in Bayview Park.

9. Bayview Park is near the Kondrat'yevs' home. The Kondrat'yev family likes to spend time at the beach, and Bayview Park is the closest park to their home with a waterfront. The giant cross in Bayview Park significantly impedes Ms. Kondrat'yev's use and enjoyment of the local park. Due to the presence of the Bayview Cross, and its enormous size, Ms. Kondrat'yev finds it difficult, if not impossible, to fully enjoy the park. She feels the cross cannot be ignored or overlooked. Ms. Kondrat'yev perceives the Bayview Cross to be a clear indication that the government is supporting religion. As a non-Christian, Ms. Kondrat'yev is personally offended and feels excluded by this governmental message.

10. Plaintiff Andreiy Kondrat'yev is Ms. Kondrat'yev's husband and resides with her in Pensacola, Florida. Mr. Kondrat'yev is a physicist and a Humanist. He is a member of AHA and has been a member of the Humanists of West Florida, an AHA chapter, since 2012. Mr. Kondrat'yev first encountered the Bayview Cross in 2010 and has seen it, and has had unwelcome contact with it, approximately thirty times since. He frequently attends meetings and gatherings at

Bayview Park and has had no choice but to pass the Bayview Cross en route to these events.

11. Mr. Kondrat'yev feels that the government-sponsored cross imposes a religious presence on the park and makes non-Christians feel excluded from the community. Mr. Kondrat'yev does not like feeling excluded from a place that he frequents simply because he does not subscribe to the religion that uses the symbol to impose their authority over others.

12. Mr. Kondrat'yev's use and enjoyment of the local park is impeded by the Bayview Cross. He feels a sense of peace and tranquility at the Bayview Park, but feels that is overshadowed by a religious symbol that signifies torture and violence to him.

13. Plaintiff Andre Ryland is a citizen and resident of Pensacola, Florida. He lives approximately five miles from the Bayview Cross. Mr. Ryland is an Atheist and Humanist and does not believe in any god or gods. He has been a member of AHA for about fifteen years and has been a member of Freedom From Religion Foundation (FFRF) for about ten years. He first encountered the Bayview Cross in 2013 and was immediately affronted by the message it sent – that the government was endorsing and promoting Christianity. Mr. Ryland sees the Bayview Cross as a religious symbol and objects to the governmental promotion of and affiliation with religion it embodies.

14. Since first encountering the Bayview Cross in 2013, Mr. Ryland has had unwelcome contact with the cross numerous times. He visits the Bayview Park many times throughout the year. Mr. Ryland does not wish to encounter the Bayview Cross in the future.

15. Plaintiff David Suhor is a citizen and resident of Pensacola, Florida. He has lived in Pensacola for twenty-three years. Mr. Suhor is not a Christian and does not believe in any god or gods. He is a member of AHA, FFRF, and the Humanists of West Florida, an AHA chapter. Mr. Suhor lives about a mile and a half from the Bayview Cross and encounters it on his regular bike rides, as often as twice a week. He also visits Bayview Park regularly.

16. Due to the size and prominence of the Bayview Cross, Mr. Suhor believes it cannot be ignored or overlooked. Mr. Suhor objects to the government's display of the Christian cross because he believes it is an endorsement of Christianity, placed primarily for religious purposes, including aggrandizing Easter Sunday services. He believes that the Bayview Cross associates a Christian religious symbol with the government and gives the impression that the government supports and approves of Christianity, as opposed to other religions, and that the government prefers Christians and Christianity to other religions. As a non-Christian, Mr. Suhor is personally offended and feels excluded by this

governmental message. He opposes this appearance of governmental favoritism for religion and for a particular religion, Christianity.

17. Defendant City of Pensacola (the “City”) is a municipality in the State of Florida, within the county of Escambia, and exists pursuant to the laws of the State of Florida.

18. Defendant Ashton Hayward, sued in his official capacity as mayor of the City of Pensacola, is an individual who has served, and continues to serve, as the mayor of the city, responsible for overseeing day-to-day governmental operations, including but not limited to setting city policy, carrying out city policy, managing and supervising staff, and ensuring that city activities comply with applicable law.

19. Defendant Brian Cooper is an individual who has served, and continues to serve as Director of the City of Pensacola Parks & Recreation Department. He is sued in his official capacity. The Parks & Recreation Board (“the Board”) advises and makes recommendations to the City Council and advises the Mayor’s office via the Director of Parks & Recreation on matters concerning the establishment, maintenance and operation of parks within the City.

20. The Board provides input on master plan updates and improvements, and policy development for the use of recreational facilities. The Board is comprised of nine members appointed by the City Council.

## FACTS

### Physical Attributes, Location, and Ownership of Bayview Cross

21. The Bayview Cross is a towering Christian symbol prominently displayed on government property.

22. The Bayview Cross is situated in a public park known as Bayview Park, within the City of Pensacola, Florida.

23. The Bayview Cross is in the shape of a Latin cross.

24. The Latin cross, a cross whose base stem is longer than the other three arms, is the symbol of Christianity, representing the instrument of the crucifixion of Jesus, according to Christian dogma.

25. The Bayview Cross is white. It stands approximately twenty-five feet tall with a crossbar approximately ten feet wide. The shaft is approximately one foot thick at the base, tapering upwards. The crossbar and the remainder of the shaft are several inches thick, and square in perimeter.

26. True and accurate photographs of the Bayview Cross, taken in or about May 2015, are attached herein as Exhibit 1.

27. The Bayview Cross is a freestanding unadorned cross.

28. The Bayview Cross stands alone as the only permanent religious display in Bayview Park.

29. The Bayview Cross is located in the northeast section of Bayview

Park, between the tennis courts and the Bayou Texar shore, just west of the parking lot and the boat ramp. A true and accurate depiction of the aerial view of the Bayview Cross location on a Google map is attached herein as Exhibit 2. Bayou Texar is a bayou in East Pensacola separating the East Hill and East Pensacola Heights neighborhoods.

30. The Bayview Cross is not part of a larger multi-faith complex, such as one might see in a cemetery.

31. The Bayview Cross is not a part of a unified exhibit in a typical museum setting.

32. The Bayview Cross is not surrounded by secular symbols of commemoration.

33. The Bayview Cross is taller than any buildings and similar structures that are visible in that area.

34. There is a light at the base of the cross, on the ground directly in front of the cross, facing up. A true and accurate photograph of the light fixture in front of the Bayview Cross, taken on or about April 25, 2016, is attached herein as Exhibit 3.

35. Upon information and belief, the City installed a new light fixture at the base of the cross in or about November 2015.

36. Upon information and belief, the City installed yet another new light

fixture at the base of the cross in or about January or February 2016. See Exhibit 3.

37. The City of Pensacola (“City”) owns Bayview Park.

38. The City owns the Bayview Cross.

39. The City is responsible for the maintenance and upkeep of the Bayview Cross.

40. The City has the legal authority to remove the Bayview Cross from its property.

#### **Platform and Plaque for Easter Sunrise by the Bayview Cross**

41. The Bayview Cross stands adjacent to a large elevated platform (also known as a stage or amphitheater). See Exhibit 1.

42. The platform and a dedication plaque attached to the front of the platform were installed in 1951, pre-dating the Bayview Cross, and are owned by the City. A photograph of the plaque, taken in or about November or December 2015, is attached hereto as Exhibit 4.

#### **Religious History and Religious Purpose of Bayview Cross**

43. The Christian cross was placed in Bayview Park sometime after 1951 but before 1965.

44. According to emails sent by City employees, the City has no information about the history of the cross.

45. Upon information and belief, the Junior Chamber of Commerce, also

known as the Jaycees, were involved in erecting the Bayview Cross, with the approval and authorization of the City.

46. The Jaycees have a religious agenda. Their “Creed” begins “We believe that faith in God gives meaning and purpose to human life . . .”

47. The Jaycees’ Florida website states, in part, that the reference to “Faith in God” was added to the Creed in 1951, “affirming the importance of the Jaycees’ belief in God.”

48. The Jaycees have regularly held religious Easter Sunday Services at the Bayview Cross.

49. The Bayview Park was a site for Easter Sunday Services even before the Bayview Cross was erected. Once the Bayview Cross was erected, it became the primary if not exclusive site for Easter Services within the park.

### **Religious Services**

50. The predominant and nearly exclusive use of the Bayview Cross has been for religious activity.

51. Religious services held at Bayview Cross have been exclusively Christian in nature.

52. There is no record of any religious non-Christian events being held at the Bayview Cross.

53. Christians are the primary, if not exclusive, users of the Bayview

Cross.

54. The Bayview Cross has been the site of religious services, and specifically Christian Easter Sunrise services, since its inception.

55. Apart from the Easter Sunrise Services, there are no other regularly scheduled annual events that take place at the Bayview Cross.

56. The City refers to this area of the park as the “Sunrise Service” area. True and accurate copies of Pensacola Parks & Recreation Department Board Meeting Minutes referencing the “Sunrise Service” area at Bayview Park are attached hereto as Exhibit 5.

57. Easter Sunrise service is a distinctly Christian worship service that takes place on Easter.

58. Congregants gather on the lawn in front of the Bayview Cross before dawn on Easter morning to watch the sunrise.

59. Though the exact date of the first Bayview Park Easter Sunrise Service is unclear, Easter Sunrise Services have been held at the site where the cross currently stands in Bayview Park for more than seventy years.

60. Upon information and belief, the first Easter Sunrise Service at Bayview Park was held in or around 1940 or 1941.

61. The 1951 Bayview Park Easter Sunrise Service is referenced in the January 9, 1951 Pensacola City Council meeting minutes and a March 1951

Pensacola News Journal article.

62. On January 9, 1951, the Pensacola City Council unanimously accepted a resolution of the Pensacola Junior Chamber of Commerce, and held “that a plaque be furnished by the City, with dedication services to be held on next Easter at sunrise.”

63. An excerpt from a 1951 Pensacola News Journal article states in part: “The new permanent platform at Bayview park will be completed for the services, Joe Emmanuel, chairman of the Jaycee Easter Sunrise service committee, said Thursday.”

64. Though the Jaycees are the original sponsors of the annual Bayview Park Easter Sunrise Services, local Christian churches have hosted the event in recent years.

65. The First Baptist Church of Pensacola hosted, or co-hosted, the services in the mid-late 1950s.

66. In recent years, and at least 2014 and 2015, the Easter Sunrise Services at the Bayview Cross were sponsored, co-sponsored, or hosted by the McIlwain Presbyterian Church.

67. Easter Sunrise Services were held at the Bayview Cross in 2009 and 2010, as evidenced by the Jaycees’ applications for park space rental and permission letters obtained via public records request.

68. The Bayview Cross Easter Sunrise Services have been advertised in online news outlets for at least the past ten years.

69. The Easter Sunrise Services often include the participation of local Christian leaders as well as the government.

### **Prior Complaints and City's Responses**

70. The City has been put on notice, repeatedly, that the Bayview Cross amounts to unconstitutional governmental endorsement of religion and that it makes non-Christian residents feel excluded from the community.

71. Upon information and belief, another local resident, Bill Caplinger, formally objected to the City about the Bayview Cross approximately twenty years ago.

72. For more than the past year, Plaintiff Suhor has sent numerous emails and public records requests to Pensacola City officials, including Defendant Cooper, Defendant Hayward, and Lysia Bowling, City Attorney.

73. For instance, Mr. Suhor sent emails to various City officials, including the defendants and the City Attorney, asking them to meet and discuss the cross and possible solutions. In these emails, Mr. Suhor suggested modifications to the cross, even offering to find volunteers to help make the modifications.

74. On July 29, 2015, AHA sent a cease-and-desist letter to the City and its officials, Brian Cooper, Mayor Hayward and Lysia Bowling, regarding the

cross. A true and accurate copy of AHA's letter is attached herein as Exhibit 6.

75. In the letter, AHA, on behalf of the Plaintiffs, informed Defendants that the Bayview Cross violates the Establishment Clause of the First Amendment and must be removed immediately. It stated in part: "Specifically, the City of Pensacola is violating the Establishment Clause of the First Amendment by prominently displaying a towering, stand-alone Latin cross – a Christian symbol – on government property at Bayview Park." See Exhibit 6. The letter also asked Defendants to respond to the letter within seven days of receipt of AHA's letter.

76. Defendants did not respond to AHA's letter.

77. Also on July 29, 2015, FFRF sent a cease-and-desist letter to City Attorney Lysia Bowling informing the City that "the government's permanent display of a Latin cross on public land is unconstitutional" as "[t]he cross unabashedly creates the perception of government endorsement of Christianity." A true and accurate copy of FFRF's letter is attached herein as Exhibit 7.

78. Defendants did not respond to FFRF's letter.

### **Public Perception**

79. In response to AHA and FFRF's letters, supporters of the Cross created a Facebook page, "Keep Bayview Cross," excerpts of which are attached hereto as Exhibit 8.

80. On August 15, 2015, a religious rally was held at Bayview Park in

support of the cross's placement on government property. Organizers of the rally, advertising the event on the "Keep Bayview Cross" Facebook page, described the gathering as "a time of prayer, worship and fellowship." One post stated, in part: "This gathering is not just about the removal of some 50+ year old cross, but is about Christians coming together, outside the church walls, making a stand for Christ and their faith. Our nation is in need of a revival. This is an opportunity for us to take a negative situation and use it for God's glory." See Exhibit 8.

### **Additional Evidence of Christian Favoritism**

81. Upon information and belief, the last few Easter Sunrise Services held at the Cross did not go through the same administrative application process required for other groups that use space at the park, suggesting preferential treatment toward religion generally, and Christianity specifically.

82. Park space rental agreements must be submitted at least two weeks prior to an event. City ordinance requires that application for special events in the City of Pensacola be made at least ten days prior to the desired date of the event.

83. The City's responses to Plaintiff Suhor's public records requests revealed that no permit was issued for Easter Sunrise Services between 2012-2015. For those years, there is no permit application, no insurance, and no record on file that the Jaycees, McIlwain Presbyterian Church or any other group reserved the space.

84. When Plaintiff Suhor learned of the religious rally in support of the Cross, he called the City Parks & Recreation Department on August 10, 2015, to ask whether the rally organizers had reserved the space at Bayview Park. He was told that they had not reserved the space, but that a reservation was unnecessary because of “free speech.”

### **CAUSES OF ACTION**

85. All preceding allegations are incorporated herein by reference.

86. The City owns, maintains and prominently displays the Bayview Cross on public property.

87. The City thereby endorses and advances religion (and, specifically, Christianity) in violation of the Establishment Clause of the First Amendment to the United States Constitution.

88. The City’s actions have the effect of advancing religion, and Christianity specifically, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

89. The City’s actions lack a secular purpose in violation of the Establishment Clause of the First Amendment to the United States Constitution.

90. The City’s actions foster excessive governmental entanglement with religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

91. Defendants acted under color of state law in violating the First Amendment as described herein in violation of 42 U.S.C. §1983.

**RELIEF SOUGHT**

The Plaintiffs demand that this court grant the following relief:

i. A declaratory judgment that the government's ownership, maintenance and prominent display on public property of the Bayview Cross violates the Establishment Clause of the First Amendment of the United States Constitution and is a violation of the Plaintiffs' constitutional rights under 42 U.S.C. § 1983;

ii. A permanent injunction ordering Defendants to remove the Bayview Cross from government property, and a permanent injunction enjoining Defendants (and their successors) from displaying a Christian cross on government property in violation of the Establishment Clause;

iii. A judgment in Plaintiffs' favor for nominal damages;

iv. An award to Plaintiffs of their reasonable costs, disbursements and attorneys' fees as allowed by law from the Defendant pursuant to 42 U.S.C. § 1988; and

v. An award of such other and further relief as the Court shall deem just.

Dated: May 4, 2016

Respectfully submitted,

/s/ Monica L. Miller

MONICA L. MILLER

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**ATTORNEYS FOR PLAINTIFFS**

# Exhibit 1



















# Exhibit 2



# Exhibit 3





# Exhibit 4

DEDICATED TO C. FRASIER PHELPS  
OCT. 15, 1907—DEC. 30, 1950  
PRES. JR. CHAMBER OF COMMERCE 1942  
CHM. OF EASTER SUNRISE COM. 1941  
HE LIVED FOR OTHERS

SPONSORED—DONATED  
JUNIOR CHAMBER  
OF COMMERCE  
4-17-1949

# Exhibit 5

**MINUTES**  
**PARKS AND RECREATION BOARD MEETING**  
**City Hall/ 4<sup>TH</sup> FLOOR**  
February 18, 2010

**PRESENT:** Horace Jones, Jake Renfroe and David Mayo

**ABSENT:** Al Condon and Patty Lowery

**STAFF MEMBERS PRESENT:** David Flaherty, Buddy Connelly, Bill Kimball, Kathy Condon, Marsheila Riggs, Charles Morgan, Doug Durden, Kim Sanderson, Kim Carmody and Jeff Pohlman

The meeting was called to order at 8:11am by Horace Jones.

**CORRESPONDENCE**

Letter received from Northwest Florida Modelers, Inc. thanking us for the use of one of our facilities, Bayview Community Center, for their annual Swap & Shop event.

**OLD BUSINESS**

- A. Naming of Parks and Recreation Facilities- Jeff reported on park naming and name changing procedures/staff to come back with more recommendations
- A. The name of Magee Field- Named for Pensacola's First African American Doctor, Dr. A.S Magee in 1917
- B. Calloway Park and CSX Railroad- Gave property back to the Railroad

**NEW BUSINESS**

- A. Request by Willie Goodwin regarding Boat Launch Fee- Board decided not to change fee structure.
- B. Staff Resignation- Kim Sanderson Leaving

## **Director's Report**

- A. Discussion of the new fishing bridge now being open and the bait and tackle shop at the base of the bridge.
- B. Aquatics presentation; presented by Jeff and further discussed by David.
- C. Roger Scott Pool- Bid protest/opening postponed to late June-early July

## **Athletics/Recreation**

- A. Opening of Hunter Pool
- B. Adult Kickball
- C. Youth Basketball
- D. Youth Baseball
- E. Girls Softball
- F. Easter Egg Hunt- March 27<sup>th</sup>
- G. Pensacola Open
- H. Bay City Classic Baseball Tournament- April 8-10
- I. Women's SPA National Tournament
- J. Pensacola Coaches Award Banquet
- K. Baseball Superstar Camp
- L. Summer Camp
- M. Summer Camp flyer/postcards

## **Parks / Facility Maintenance**

- A. Greenwood Park completed – Held the annual Arbor Day Celebration at this location.
- B. Roger Scott Tennis Center entrance and overflow parking lot
- C. Roger Scott Tennis Center lighting
- D. Bayview Park-around tennis courts complete-working on Sunrise Service area
- E. Jefferson St.- install Crapes from Garden down to Jefferson
- F. Fricker Renovations
- G. Cordova Park
- H. City Hall-trees along Main St.
- I. Estramadura Park- volunteer project

**MINUTES**  
**PARKS AND RECREATION BOARD MEETING**  
**City Hall/ 4<sup>TH</sup> FLOOR**  
August 19, 2010

**PRESENT:** Jake Renfroe, David Mayo, Richard Sherrill, Eric Schade, Horace Jones

**ABSENT:** Patty Lowery

**STAFF MEMBERS PRESENT:** David Flaherty, Bill Kimball, John Ewing, Doug Durden, Charles Morgan, and Jeff Pohlman

The meeting was called to order at 8:07 am by Chairman Jake Renfroe.

**SWEARING IN OF MEMBERS:** Eric Schade, Richard Sherrill and David Mayo

**AFFIRMATION OF PRIOR ACTIONS:** Chairman Jake Renfroe recommended to the board to affirm and ratify all actions of the Parks and Recreation Board taken from April 22, 2010 to July 22, 2010. Motion passed unanimously.

**CORRESPONDENCE**

Thank you card received from Parker Circle Neighborhood Association in regards to tree removal. Also there was a letter received from the association in regards to some of the issues occurring around the basketball courts.

**OLD BUSINESS**

- A.** Discussed the two proposals that were received for the Osceola Restaurant Operations. Currently we are negotiating with the new proposal from Daggs & Co. and looking at October 1<sup>st</sup> to start operations. This selection will be presented in September to City Council for the operations to begin in October.
  
- B.** Currently 23 of our 93 Parks have been adopted through our Community Volunteer Initiatives. The efforts made by these associations will be in ways of litter control, debris pick up, call in down limbs or report graffiti to the parks. Have partnered with Clean in Green, Home Depot and members of the Navy to help clean up and adopt many parks such as Admiral Mason Park. City wide beautification days have been used to help clean up these parks on Saturday's from 7am-9am. Monthly newsletter will be created to inform the volunteers of the all current projects that have taken place and will be happening in the future.
  
- C.** Cobb Community Center project is underway. Vision Construction has been hired for the \$1.5 million dollar project.

## **Parks / Facility Maintenance**

Doug and Charlie discussed the issues that have been an ongoing problem along Scenic Hwy in regards to the illegal clearing. Letters have been mailed to all residents along Scenic Hwy as well as to all tree and shrub removal companies in the area.

- A. Bay Bluffs Boardwalk
- B. Live Oak on 12<sup>th</sup> and Lakeview

### Recently Completed Park Projects

- A. Estramadura
- B. Hollice Williams
- C. Elizabeth Fernainy-Peaden Park
- D. Bayview Sunrise Service
- E. Lavallet Park
- F. Partnership with Home Depot for Malaga Square and Miraflores

## **Grants/Marketing/Promotions**

- A. Promotion of the 2011 Parks Calendar Photo Contest
- B. After School Post Card Mail Outs
- C. Fall Program Guide

## **Athletics/Recreation**

- A. Fricker Community Center Donation
- B. Summer Camp
- C. After School Program
- D. July Picture Recap
- E. Roger Scott and Hunter Pools
- F. Adult Sport Leagues
- G. Upcoming Special Events
  - Senior Games
  - Halloween Egg Haunt
  - 31 Days of Christmas

## **FINAL COMMENTS/QUESTIONS – No Report**

## **Adjournment – 9:57 am**

kec

# Exhibit 6



1777 T Street NW, Washington DC 20009-7125 | T 800.837.3792 202.238.9088 | F 202.238.9003 | [legal@americanhumanist.org](mailto:legal@americanhumanist.org) | [www.humanistlegalcenter.org](http://www.humanistlegalcenter.org)

July 29, 2015

*Via Email*

City of Pensacola, Florida

Ashton J. Hayward, Mayor; [mayorhayward@cityofpensacola.com](mailto:mayorhayward@cityofpensacola.com)

Lysia H. Bowling, City Attorney; [legal@cityofpensacola.com](mailto:legal@cityofpensacola.com)

Brian Cooper, Director; [bcooper@cityofpensacola.com](mailto:bcooper@cityofpensacola.com)

cc: East Hill Neighborhood Association; [info@myeasthill.org](mailto:info@myeasthill.org)

**Re: Unconstitutional Cross on Government Property**

Dear Mayor Hayward, Ms. Bowling and Mr. Cooper,

A City of Pensacola resident has contacted our office on behalf of several concerned residents to request assistance with regard to what is correctly perceived as a constitutional violation. Specifically, the City of Pensacola is violating the Establishment Clause of the First Amendment by prominently displaying a towering, stand-alone Latin cross—a Christian symbol—on government property in Bayview Park. An image of this cross is provided below.



Because this cross violates the Establishment Clause, we hereby demand that the City promptly remove it to private property, and if the City does not, our organization will pursue the matter through litigation in federal court.

The American Humanist Association (AHA) is a national nonprofit organization with over 460,000 supporters and members across the country, including many in Florida. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including Florida, and we have litigated constitutional cases in state and federal courts from coast to coast.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It specifically commands that a city "pursue a course of neutrality toward religion" despite a community's "historical acceptance" of a particular religious monument on public property. *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1111 (11th Cir. 1983) (quoting *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963)) (cross placed in a state park violated the Establishment Clause). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it "may not favor religious belief over disbelief." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 593, 610 (1989) (citation omitted). The City's Christian cross prominently displayed on government property violates the Establishment Clause as it strongly affiliates the government with religion and Christianity specifically, while sending a stigmatic message to non-Christians that they are outsiders, unwelcome in their own community. *See id.* at 606-07 ("the [Establishment] Clause forbids a city to permit the permanent erection of a large Latin Cross"); *id.* at 661 (Kennedy, J., concurring and dissenting in part) (same).

Federal courts have been virtually unanimous in holding that a government display of the cross is unconstitutional, including the Eleventh Circuit and Florida District Courts. *See, e.g., ACLU v. Rabun County Chamber of Commerce, Inc.*, 698 F.2d 1098 (11th Cir. 1983) (war memorial cross unconstitutional); *Am. Atheists, Inc. v. City of Starke*, No. 3:05-cv-977-J-16MMH, 2007 U.S. Dist. LEXIS 19512, at \*14 (M.D. Fla. March 19, 2007) (cross on city water tower unconstitutional); *Mendelson v. St. Cloud*, 719 F. Supp. 1065 (M.D. Fla. 1989) (cross on government building unconstitutional); *Trunk v. City of San Diego*, 629 F.3d 1099, 1066 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012); *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1162 (10th Cir. 2010), *cert. denied*, 132 S. Ct. 12 (2011) (individualized memorial crosses for state troopers on public roadside unconstitutional); *Carpenter v. City & County of San Francisco*, 93 F.3d 627, 630 (9th Cir. 1996); *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) (war memorial cross in public park unconstitutional); *Robinson v. City of Edmond*, 68 F.3d 1226, 1232 (10th Cir. 1995) (cross on city seal unconstitutional); *Ellis v. La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993) (three separate

government cross displays unconstitutional); *Gonzales v. North Township of Lake County*, 4 F.3d 1412, 1418 (7th Cir. 1993) (war memorial crucifix in public park unconstitutional); *Harris v. City of Zion*, 927 F.2d 1401, 1414 (7th Cir. 1991) (cross on city seal unconstitutional); *ACLU v. City of St. Charles*, 794 F.2d 265 (7th Cir. 1986) (lighted cross on government building unconstitutional); *Friedman v. Board of County Commissioners*, 781 F.2d 777, 782 (10th Cir. 1985) (en banc) (cross on city seal unconstitutional); *Gilfillan v. City of Philadelphia*, 637 F.2d 924, 930 (3d Cir. 1980) (platform containing a 36-foot-tall cross unconstitutional); *Am. Humanist Ass'n v. City of Lake Elsinore*, No. 5:13-cv-00989-SVX-OPx, 2014 U.S. Dist. LEXIS 25180, at \*23-24 (C.D. Cal. February 25, 2014) (city monument displaying cross headstone markers held unconstitutional); *Cabral v. City of Evansville*, 958 F. Supp. 2d 1018, 1029 (S.D. Ind. 2013) (“Accordingly, the City is hereby PERMANENTLY ENJOINED from permitting the erection of the display as described and referred to herein as ‘Cross the River’ within the Riverfront area.”); *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (cross on city seal unconstitutional); *Granzeier v. Middleton*, 955 F. Supp. 741, 746 (E.D. Ky. 1997), *aff’d*, 173 F.3d 568 (6th Cir. 1999) (sign containing a 4-inch-high crucifix unconstitutional); *Jewish War Veterans v. U.S.*, 695 F. Supp. 3 (D.D.C. 1988) (war memorial cross on military base unconstitutional); *ACLU v. Mississippi State General Services Admin.*, 652 F. Supp. 380, 382 (S.D. Miss. 1987) (illuminated cross on state owned-building unconstitutional); *Libin v. Greenwich*, 625 F. Supp. 393, 399 (D. Conn. 1985) (3-by-5 foot cross on firehouse unconstitutional); *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984), *reh’g denied*, 763 F.2d 180 (5th Cir. 1985) (war memorial containing crosses and Star of David in public park unconstitutional); *Fox v. City of Los Angeles*, 22 Cal.3d 792 (1978) (cross on city hall unconstitutional). *See also Allegheny*, 492 U.S. at 606-07 (explaining that there is “no doubt, ‘ . . . that the [Establishment] Clause forbids a city to permit the permanent erection of a large Latin cross . . . because such an obtrusive year-round religious display would place the government’s weight behind an obvious effort to proselytize on behalf of a particular religion.”).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,<sup>1</sup> pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Id.* at 592. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). *See also Am. Atheists, Inc. v. City of Starke*, 2007 U.S. Dist. LEXIS 19512, \*14 (M.D. Fla. 2007) (in “religious-symbol cases, the Supreme Court has applied the analysis outlined in *Lemon*”).

<sup>1</sup> The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

<sup>2</sup> *See also Robinson*, 68 F.3d at 1232 (“The religious significance and meaning of the Latin or Christian cross are unmistakable.”); *Gonzales*, 4 F.3d at 1418 (“we are masters of the obvious, and we know that the crucifix is a Christian symbol . . . In fact, the crucifix is arguably the quintessential Christian

The courts have held government cross displays unconstitutional even when: (1) the crosses were memorial roadside grave markers for individual fallen troopers, *Duncan*, 616 F.3d at 1162; (2) where the cross was longstanding, e.g., *Trunk*, 629 F.3d at 1110, *Gonzales v. North Twp. of Lake Cnty.*, 4 F.3d 1412 (7th Cir. 1993); (3) where the cross was used to promote tourism, e.g., *Rabun*, 698 F.2d 1098 (11th Cir. 1983); see also *Gilfillan v. City of Philadelphia*, 637 F.2d 924 (3d Cir. 1980); (4) when the crosses accurately replicate a World War II tombstone, *Am. Humanist Ass'n v. City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180 (C.D. Cal. Feb. 25, 2014); (5) serve as a historical landmark, *City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996); *Ellis*, 990 F.2d at 1525; *Mendelson v. St. Cloud*, 719 F. Supp. 1065 (M.D. Fla. 1989); (6) have independent historical significance, *Carpenter*, 93 F.3d at 630; *Harris*, 927 F.2d at 1414 (7th Cir. 1991); and (7) include other secular and patriotic symbols, *Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, or Stars of David, *ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984).

Binding caselaw leaves no room for doubt that the City's cross must be removed. The Eleventh Circuit in *Rabun* specifically held that a cross displayed in a public park violated the Establishment Clause and ordered its removal. 698 F.2d at 1111. The cross had been in that location for two decades. *Id.* at 1101-02. The cross was popular in the community and the site of the Annual Easter Sunrise Service. *Id.* A group of concerned individuals sued to enjoin the placement of the cross on public land and won in both the district court and then the Eleventh Circuit on appeal because the "maintenance of the cross in a state park violates the Establishment Clause of the First Amendment." *Id.* at 1111.

Two U.S. District Courts in Florida have also held cross displays on government property unconstitutional, ordering their removal. *Starke*, 2007 U.S. Dist. LEXIS 19512, at \*16-21; *Mendelson*, 719 F. Supp. at 1069-70. In *Starke*, a City owned and operated a public water tower that had a lit cross affixed to it. 2007 U.S. Dist. LEXIS 19512, at \*5. The court held the cross violated the Establishment Clause. *Id.* at \*21. In *Mendelson*, a Latin cross was donated to a city as a gift and was placed on top of its water tower. 719 F. Supp. at 1066-67. The city argued that the cross was a "landmark for citizens and others," and was an object that made some citizens feel at "home." *Id.* However, the courts in both of these cases explicitly cited and followed the precedent set in *Rabun*, as all District Courts are obligated to do in Florida, and found that the placement of a cross on government-owned property violated the Establishment Clause. *Id.* at 1069-70; *Starke*, 2007 U.S. Dist. LEXIS 19512, at \*21.

Turning to the facts here, the City's stand-alone Latin cross unquestionably violates the Establishment Clause pursuant to *each* prong of the *Lemon* test. "There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land . . . violates the Establishment Clause." *Eugene*, 93 F.3d at 620. See also *Mendelson*, 719 F. Supp. at 1069 ("[A] cross has always been a symbol of Christianity, and *it has never had any secular purpose.*") (emphasis added).

Where, as here, the government promotes an “intrinsically religious” display, such as a cross, it “cannot meet the secular purpose prong” of the *Lemon* test. *Jager v. Douglas County School Dist.*, 862 F. 2d 824, 829-30 (11th Cir. 1989). *See also Stone v. Graham*, 449 U.S. 39, 41 (1980) (holding that “[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact.”); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff’d* 472 U.S. 38 (1985); *N.C. Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991). When the government utilizes “religious symbols . . . its ability to articulate a secular purpose becomes the crucial focus under the Establishment Clause.” *Rabun*, 698 F.2d at 1110 (Latin cross in public park held unconstitutional under *Lemon*) (internal footnote omitted). “Several courts—including the Supreme Court—have noted that the presence of patently religious symbols, such as the Latin cross, suggest that the purpose of erecting a monument is religious motivated.” *Lake Elsinore*, 2013 U.S. Dist. LEXIS 188202, \*36.

Federal courts, including the Eleventh Circuit, have uniformly recognized that the “cross is a universally recognized symbol of Christianity.” *Rabun*, 698 F.2d at 1103; *Trunk*, 629 F.3d at 1110-11 (citing *Buono v. Norton*, 371 F.3d 543, 544-45 (9th Cir. 2004); *Eugene*, 93 F.3d at 620; *Carpenter*, 93 F.3d at 630; *Ellis*, 990 F.2d at 1525-27).<sup>2</sup>

As such, the courts have made it clear that the government has no secular purpose in displaying the cross on its property. *See Rabun*, 698 F.2d at 1110-11 (“even if the . . . purpose for constructing the cross was to promote tourism, this . . . would not have provided a sufficient basis for avoiding conflict with the Establishment clause” as secular means were available); *Gonzales*, 4 F.3d at 1421 (the court could find “no secular purpose served by a crucifix”); *Harris*, 927 F.2d at 1414 (small cross on city logo); *City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, at \*23-24; *City of Starke*, 2007 U.S. Dist. LEXIS 19512, at \*14; *Eckels*, 589 F. Supp. 222 (war memorial cross); *Gilfillan*, 637 F.2d at 930 (platform containing a 36-foot-tall cross); *Mendelson*, 719 F. Supp. at 1069 (the cross is “unmistakably a universal symbol of Christianity, and it [therefore] has no secular purpose.”); *Mississippi State*, 652 F. Supp. at 382 (“it is clear that the overriding and motivating purpose of the display is to convey a message of endorsement of the Christian religion.”); *Libin*, 625 F. Supp. at 399 (explaining that “[b]ecause the cross has no meaning in the context of the celebration of Christmas except as religious symbol, there can be no secular purpose for including it in a Christmas display.”); *Fox v. City of Los Angeles*, 22 Cal.3d 792 (1979) (cross on city hall had religious purpose).

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<sup>2</sup> *See also Robinson*, 68 F.3d at 1232 (“The religious significance and meaning of the Latin or Christian cross are unmistakable.”); *Gonzales*, 4 F.3d at 1418 (“we are masters of the obvious, and we know that the crucifix is a Christian symbol . . . In fact, the crucifix is arguably the quintessential Christian symbol.”); *City of St. Charles*, 794 F.2d at 271 (“It is, indeed, the principal symbol of Christianity . . . When prominently displayed on a [government property] . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be.”); *Friedman*, 781 F.2d at 782 (government’s prominent use of seal bearing Latin cross “conveys a strong impression to the average observer that Christianity is being endorsed”).

Here, as in the many cases cited above, there is no secular purpose “for the display of the cross.” *Mississippi State*, 652 F. Supp. at 383. Indeed, the “only purpose which can be ascribed to the display of the cross is to either advance or endorse the Christian religion.” *Id.* And, if the government “intended by their official activity to create a display of singularly religious significance, then their action was illegal.” *Id.*

The history of the cross underscores its religious purpose. The Eleventh Circuit was clear in *Rabun* that “the selection of an Easter deadline for completion of the cross, the decision to dedicate the cross at Easter Sunrise Services, and the several inspirational statements contained in the Chamber’s press releases all point to the existence of a religious purpose.” 698 F.2d at 1110-11. *See also Trunk*, 629 F.3d at 1121 (“[T]hat the effect of the symbols’ presence is religious is evidenced by what the site has been used for since the [cross was] constructed [including Easter sunrise services]. There is nothing remotely secular about church worship.” (quoting *Eckels*, 589 F. Supp. at 235)).

This cross is immediately juxtaposed to a platform that itself makes explicit reference to the major Christian holiday of Easter and the Easter Sunrise services for which this platform was intended. The platform and cross were both placed in that location during the same time period, and the news media and the City Council both referenced Easter Sunday services as the deadline and the event at which the dedication of a plaque located at these structures would occur. A local newspaper stated, “The new permanent platform at Bayview park will be completed for services, Joe Emmanuel, chairman of the Jaycee Easter Sunrise service committee, said Thursday.” A member of the City Council stated, “I move that it be complied with, and that a plaque be furnished by the City, with dedication services to be held on next Easter at sunrise.” This particular “history of this Cross only deepens its religious meaning” and purpose. *Trunk*, 629 F.3d at 1124. This history clearly casts “serious doubt on any argument that it was intended as a generic symbol, and not a sectarian one.” *Id.* at 1124.

Such “[p]ublic comments of [a display's] sponsors’ is important evidence to consider in assessing government purpose.” *Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, at \*24. *See McCreary*, 545 U.S. at 866 n.14; *Edwards*, 482 U.S. at 594-95; *Wallace*, 472 U.S. at 57-58; *Am. Atheists, Inc. v. City of Starke*, 2007 U.S. Dist. LEXIS 19512, \*14 (M.D. Fla. 2007). This includes the religious motivations of a display’s private sponsors. *See Rabun*, 698 F.2d at 1111 (finding unconstitutional purpose based in part on “the several inspirational statements contained in the Chamber’s press releases.”); *Gonzales v. North Twp. of Lake Cnty.*, 4 F.3d 1412, 1418 (7th Cir. 1993); *Books v. City of Elkhart*, 235 F.3d 292, 303 (7th Cir. 2000) (“The participation of these influential members of several religious congregations makes it clear that the purpose for displaying the monument was [religious]”); *Cooper v. USPS*, 577 F.3d 479, 493-95 (2d Cir. 2009) (no secular purpose for “displaying [a Christian Church’s] religious material”). The statements by the cross’s sponsors here reveal an unyielding religious purpose.

No avowed governmental purpose can overcome the obvious religious purpose that the City's cross serves. The Supreme Court and the Eleventh Circuit have held that the purpose prong is also violated where, as here, the government uses inherently religious means to achieve ostensibly secular ends. "[A]ttempting to further an ostensibly secular purpose through avowedly religious means is considered to have a constitutionally impermissible purpose." *Holloman v. Harland*, 370 F.3d 1252, 1286 (11th Cir. 2004). The Eleventh Circuit in *Rabun* adopted this reasoning in holding that a memorial cross failed the purpose prong, explaining: "even if the . . . purpose for constructing the cross was to promote tourism, this alleged secular purpose would not have provided a sufficient basis for avoiding conflict with the Establishment Clause." 698 F.2d at 1111 (citations omitted).

Similarly, in *Mendelson*, a cross was given as a gift to a Florida city and was placed on the city's water tower. 719 F. Supp. at 1067. The city contended "that the cross has secular and historical value as a guidepost for fishermen and pilots and as a landmark." *Id.* at 1069-70. Yet the district court in Florida declared: "Even if the court found the City's purpose to be truly secular, a government may not 'employ religious means to reach a secular goal unless secular means are wholly unavailing.'" *Id.* (citation omitted).

The government "cannot overcome the first *Lemon* prong merely by articulating" some secular purpose. *Church of Scientology Flag Serv. v. City of Clearwater*, 2 F.3d 1514, 1527 (11th Cir. 1993). A display "in which an impermissible purpose predominates is invalid even if the legislative body was motivated in part by legitimate secular objectives." *Id.* See *Hall*, 630 F.2d at 1020-21.

Nor is it relevant that the cross may have been donated to the City by a private entity or by the Chamber of Commerce. See *Ellis v. City of La Mesa*, 990 F.2d 1518, 1520-25 (9th Cir. 1993) (finding "unpersuasive the fact that the cross was built and dedicated as a memorial to a private individual before being conveyed, in trust, nevertheless, to the County."). For instance, in *Rabun*, the Chamber of Commerce approved a plan for the erection of a cross on government land. 698 F.2d at 1101. The Chamber sought approval from the Georgia Department of Natural Resources (Department). The Chamber would take full responsibility for the fund-raising of both the construction and maintenance costs. *Id.* The Department merely approved. *Id.* In fact, after receiving a complaint, the Department ordered "the Chamber to remove the cross from state property." *Id.* at 1101-02. The court found the purpose prong violated based largely on the Chamber's "decision to dedicate the cross at Easter Sunrise Services, and the several inspirational statements contained in the Chamber's press releases." *Id.* at 1111 (emphasis added). The Eleventh Circuit specifically held that the Chamber's motives could be imputed for the following reasons: "The cross is located on state property. The state, acting through its Department of Natural Resources, initially approved the Chamber's project and later failed to

require the Chamber to remove the cross. Under the now familiar principles of state action, the state's involvement with the cross is clearly sufficient [.]” *Id.* at 1109, n.19.<sup>3</sup>

In *Eugene*, the Ninth Circuit held that a concrete cross in a city park constituted an impermissible endorsement of Christianity, even though it also served as a war memorial. 93 F.3d 617. “The land was donated to the City . . . From the late 1930s to 1964, private individuals erected a succession of wooden crosses in the park, one replacing another as they deteriorated. In 1964, private individuals erected the cross at issue in th[e] litigation.” *Id.* at 618. There, as here, “[m]emorial ceremonies were [] conducted by the American Legion” for many years. *Id.* at 625 n.9 (O’Scannlain J., concurring). The Ninth Circuit held that it “*clearly* represents governmental endorsement of Christianity[.]” *Id.* at 619 (emphasis added).

In *Murphy v. Bilbray*, 782 F. Supp. 1420, 1432 (S.D. Cal. 1991), *aff’d*, 990 F.2d 1518 (9th Cir. 1993), the court noted that the Mt. Helix cross “stood, unchallenged, on public property for a period of sixty-one years before this lawsuit was filed and, moreover, that the record in this case reveals few public expressions of opposition to the cross' presence.” In the mid-1920's, “Cyrus Carpenter Yawkey and Mary Yawkey White placed a 36-foot Latin cross on the summit of Mount Helix on privately owned land.” *Ellis*, 990 F.2d at 1520-21. The cross was “erected as a memorial” to their mother. *Id.* In 1929, they conveyed 3.2 acres, including the cross and an amphitheater, to San Diego County. *Id.* Despite its original private ownership and the fact it went unchallenged for 61 years, both the district court and the Ninth Circuit held the cross unconstitutional. *Id.* at 1525.

For the foregoing reasons, it is clear that the City’s cross violates the Establishment Clause under the first prong of the *Lemon* test, without more.

But, regardless of the City’s purpose for displaying the cross in Bayview Park, its placement there clearly fails *Lemon*’s effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The “prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Allegheny*, 492 U.S. at 593 (citation omitted). Whether “the key word is ‘endorsement’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]” *Id.* at 593-94. Even the “**mere appearance** of a joint exercise of authority by Church and State provides a significant symbolic

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<sup>3</sup> *Cf. Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1160 n.12 (10th Cir. 2010) *cert. denied*, 132 S. Ct. 12 (2011) (it was irrelevant that “at least one, and perhaps several, of these [cross] memorials are located on private land”).

benefit to religion,” and, therefore, has the impermissible effect of advancing religion. *Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982). The Supreme Court has stated that:

an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

*School Dist. v. Ball*, 473 U.S. 373, 390 (1985) (internal citation omitted). By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff'd*, 173 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) “clip art” cross violated the Establishment Clause reasoning, “the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was not intended, but this made no difference in the observer’s perception.”

The City’s decision to maintain a cross at Bayview Park inevitably has the effect of advancing Christianity because this symbol is inherently religious. *See Rabun*, 698 F.2d at 1109. Numerous courts have likewise held that the government’s display of a cross unconstitutionally endorses Christianity and thus fails the second prong of *Lemon*.<sup>4</sup> *See also Mendelson*, 719 F. Supp. at 1069 (“no federal case has ever found the display of a Latin cross on public land by a state or state subdivision to be constitutional.”); *Jewish War Veterans*, 695 F. Supp. at 8 (“defendants are unable to cite a single federal case where a cross . . . has survived Establishment Clause scrutiny.”); *Mississippi State*, 652 F. Supp. at 384-385 (“in no other federal case either before or since *Lynch v. Donnelly* has the public display of a cross by a state or subdivision thereof been found to be constitutional.”). There “is *no question* that the Latin cross is a symbol of Christianity, and that its placement on public [property] . . . violates the Establishment Clause.” *City of Eugene*, 93 F.3d at 620 (emphasis added). *See also City of St. Charles*, 794 F.2d at 271 (“[w]hen prominently displayed on [government property] . . . the cross dramatically conveys a message of governmental support for Christianity.”).

The Eleventh Circuit made this point clear when it affirmed a ruling by the Northern District Court of Georgia, which found that a cross placed in the Black Rock Mountain State Park was “an obviously Christian emblem . . . [that] can have no other . . . effect but to further

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<sup>4</sup> *See, e.g., Trunk*, 629 F.3d at 1110-11; *Duncan*, 616 F.3d 1145 (individualized memorial crosses for state troopers on public roadside); *Eugene*, 93 F.3d 617 (war memorial cross erected by private group in public park); *Gonzales*, 4 F.3d 1412 (war memorial crucifix in public park); *City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180; *Jewish War Veterans*, 695 F. Supp. 3 (memorial cross on military base); *Eckels*, 589 F. Supp. 222 (three crosses and Star of David war memorial in public park). *See also Allegheny*, 492 U.S. at 599 (using the display of a cross in a government building as the prototypical example of a display that would convey government “endorsement of Christianity”); *Carpenter*, 93 F.3d at 630; *Ellis*, 990 F.2d at 1525-27.

the cause of the religion it symbolizes. It thus fails to pass constitutional muster under the second part of the test . . .” *ACLU v. Rabun County Chamber of Commerce, Inc.*, 510 F. Supp. 886 (N.D. Ga. 1981), *aff’d*, 698 F.2d 1098 (11th Cir. 1983).

There is no question that “a reasonable observer would perceive [the cross] as projecting a message of religious endorsement.” *Trunk*, 629 F.3d at 1118. The “size and prominence of the Cross,” which towers over Bayview Park, “evokes a message of aggrandizement” and “presents a strongly sectarian picture.” *Id.* at 1116 n.18, 1123; *Duncan*, 616 F.3d at 1162 (“[t]he massive size of the crosses . . . unmistakably conveys a message of endorsement”); *City of St. Charles*, 794 F.2d at 267 (the cross was “an overpowering feature”); *Robinson*, 68 F.3d at 1232 n.11; *Joki v. Bd. of Educ.*, 745 F. Supp. 823, 829-31 (N.D.N.Y. 1990) (“the cross occupies a highly prominent place in the painting and draws the attention of the eye.”). In other cases, although crosses on public property were still found to violate the Establishment Clause, courts did consider war memorial plaques or other indicators that may reduce the magnitude of the religious message communicated by the cross. *See e.g., Trunk*, 629 F.3d at 1123. Here, the cross in Bayview Park stands alone and has no such plaque or indicator, reinforcing its clear and exclusive message of endorsement of Christianity.

The cross further conveys a message of endorsement because of its proximity to a platform that is used for and has a plaque referencing Easter Sunday Sunrise services. *E.g., Allegheny*, 492 U.S. at 581; *Trunk*, 629 F.3d at 1123-24; *Mississippi State*, 652 F. Supp. at 384. When the platform was placed at the foot of this cross, there were explicit references to Easter Sunday services, cited above, and the platform was completed in time to hold Easter services at that site. These statements contribute to the to the already overwhelming Christian message of the cross. *E.g., Felix v. City of Bloomfield*, 36 F. Supp. 3d 1233, 1252 (D.N.M. 2014) (“statements at the dedication ceremony heavily contributed to the impression that the City endorsed his religious message.”); *Summers v. Adams*, 2008 U.S. Dist. LEXIS 103729, at \*42 (D.S.C. Dec. 23, 2008).

Furthermore, there is a clear understanding amongst the public that this is a Christian symbol, and this has the effect of endorsing or advancing Christianity. Such “the actions and statements of . . . the community at large . . . also contribute to the perception that the memorial [is] viewed as endorsing religion. In analyzing the effect of the memorial, these statements are probative.” *Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, at \*35-36. *See Trunk*, 629 F.3d at 1119-20 & n.19; *Green*, 568 F.3d at 800 (the reasonable observer would be aware of the “community's response to the Monument”); *Lund*, 2015 U.S. Dist. LEXIS 57840, at \*45; *City of Starke*, 2007 U.S. Dist. LEXIS 19512, at \* 13-14. A mere sample of comments from those who perceive the City’s cross as a religious symbol and/or support the maintenance of the cross include:

“The Cross” in Bayview Park was erected in the 1940s or 50s (date unknown) by the Junior Chamber of Commerce (Jaycees). It was the centerpiece for the once-popular Easter Sunday services, held there for decades and recently resumed by McIlwain Presbyterian Church.’- that is history in my book! what is your definition of history? ~Meghan Routt

“It has historical value to my family. We go down there with the kids every Easter and plant flowers to remember the one who died for our sins. ‘His’story.” ~Meghan Routt

BTW. It's ‘Freedom OF Religion’. NOT, ‘Freedom FROM Religion’. Plain and very simple. It's not just an American thing either. Many countries, even countries with State Religions have a ‘Freedom OF Religion’ stance. ... ~McCall Richardson

For the message of the cross is foolishness to those who are perishing, but to us who are being saved it is the power of God. 1 Corinthians 1:18. That is in the BIBLE, which is probably also offensive to you. What will you say to GOD about this matter when you see His face....and you most certainly will one of these days. I am praying for your eyes to be opened to the Truth and your spirit to be saved before it is too late! ~Nancy Huggins Peters

If it's offensive, don't take it down. Erect other religious icons. ~Crystal Lynn Huber

As a Christian, I enjoy seeing the Cross and in the past have often used it as a place of meditation and reflection. ... ~Andrew Myers

Unlike everyone else on here, I definitely think that the cross at Bayview should be removed . . . [A]s being not a part of the system of religion, I've felt very uncomfortable for a long time around that religious symbol in Bayview, and I'd hate to think how people of other religious affiliations feel about the matter. ~Cooper Dalrymple

The right to religious freedom is granted by the Constitution of the United States. That allows us to practice, or not, our faith without persecution.... ~Dave Kelley

Through its apparent endorsement of Christianity, the City is sending a “stigmatic 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’” of the community. *Trunk*, 629 F.3d at 1109, 1125 (citations omitted). This “message violates the Establishment Clause.” *Id.* at 1125. *See id.* at 1124-25 (the use of the “Christian symbol to

honor all veterans sends a strong message of endorsement and exclusion. It suggests that the government is so connected to a particular religion that it treats that religion's symbolism as its own, as universal. To many non-Christian veterans, this claim of universality is alienating.”).

The third *Lemon* prong, the question of excessive government entanglement with religion, is also violated here. Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion “rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.” *McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).<sup>5</sup> A “government act is more likely to be found unconstitutional if it generates religion-based political division.” *Jewish War Veterans*, 695 F. Supp. at 14. This includes any “polarization of the community” generated by the religiously-tinged public debate about erecting a religious monument. *Id.* Indeed, several courts have specifically ruled that government cross displays foster unconstitutional entanglement with religion.<sup>6</sup> In this situation, “where the underlying issue is the deeply emotional one of Church-State relationships, the potential for seriously divisive political consequences needs no elaboration.” *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 797 (1973).

It bears emphasis that the most efficient way to resolve this constitutional violation is to remove this cross from Bayview Park. Although perhaps tempting as a means of skirting the spirit of the Establishment Clause, merely deeding this land to a private group will not resolve this dispute if such a deed is not executed in accordance with local, state and federal law and in accordance with the Constitution. *Mercier v. Fraternal Order of Eagles*, 395 F.3d 693, 702 (7th Cir. 2005) (sale of land was only upheld because there were no unusual or unlawful circumstances surrounding the sale that would void it). Specifically, this means that any organization that obtains land from the government must pay the fair market value for the land, the organization must assume all traditional duties associated with ownership, the property cannot be one that is “inextricably linked with the seat of government,” and any “reasonable person walking past the Monument [must be able to] quickly recognize that the Monument . . . is not the property of the City.” *Id.* at 698, 700, 703, 704. See *Wirtz v. City of South Bend*, 813 F. Supp. 2d 1051, 1068 (N.D. Ind. 2011). Furthermore, the City could not sell its land to an organization that is tantamount to a straw purchaser, thus leaving the City with continuing power to exercise duties of ownership. *Id.* at 703. And, the City cannot place religious or cross-related requirements in any such deed that would benefit those who would keep the monument but would harm any purchaser in the market who would remove the monument upon purchasing the

<sup>5</sup> See also *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 175 n.36 (3d Cir. 2002) (“‘Entanglement’ still matters, however, . . . in the rare case where government delegates civic power to a religious group.”) (citing *Grumet and Larkin*).

<sup>6</sup> See *Rabun*, 698 F.2d at 1109-10 (affirming district court ruling that “the presence of the cross created a potential for political divisiveness”); *City of Starke*, 2007 U.S. Dist. LEXIS 19512, at \*19; *Mendelson*, 719 F. Supp. at 1071; *Jewish War Veterans*, 695 F. Supp. at 14 (war memorial cross was unconstitutional because it generated “religion-based political division.”).

land. *See Paulson v. City of San Diego*, 249 F.3d 1124, 1127-1128 (9th Cir. 2002) (en banc), *cert. denied*, 538 U.S. 978 (2003).

To be more explicit, if the City decides to deed this land to the East Hill Neighborhood Association, both the City and the Association should ensure that they understand all local, state and federal laws associated with this type of land transfer and all of the other ramifications of this decision. The East Hill Neighborhood Association would have to pay the fair market value for the land. The City would have to relinquish all control of and rights to the land, and the East Hill Neighborhood Association would be obligated to take on all duties and liabilities of land ownership. The East Hill Neighborhood Association must then make it clear that this land is no longer a public park because public parks are reasonably understood to passersby to be inextricably linked with the government, and it would have to be explicitly clear to the public that the city is no longer involved or affiliated with this land, this cross or the Christian religion.

In view of the aforementioned authorities, it is clear that the City is in violation of the Establishment Clause. This letter serves as an official notice of the unconstitutional activity and demands that the City remove the cross from Bayview Park immediately. We kindly ask that you notify us in writing within seven (7) days of receipt of this letter setting forth the steps you will take to rectify this constitutional infringement. Thank you for turning your attention to this important matter.

Sincerely,  
Monica Miller, Esq.

# Exhibit 7

# FREEDOM FROM RELIGION *foundation*

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

July 29, 2015

SENT VIA U.S. MAIL AND EMAIL  
legal@cityofpensacola.com

Lysia H. Bowling  
City Attorney, City of Pensacola  
222 West Main Street  
Seventh Floor  
Pensacola, FL 32502

Dear Ms. Bowling:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of a cross on public property. We were contacted by a concerned local resident. FFRF is a national nonprofit organization with over 22,500 members across the country, including over 1,100 members in Florida. FFRF's purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that there is a large (15-20 foot-tall) white cross in Bayview Park in Pensacola. Our complainant informs us that the cross was erected decades ago. This cross has been used as a popular location for Easter sunrise services since at least the 1940's. We further understand that the City is considering plans to re-design the park. Our complainant informs us that in those plans the cross remains a permanent fixture. Please find enclosed pictures of the cross.

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.

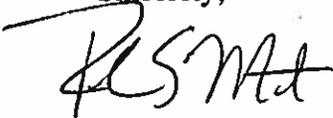
2011), *cert. denied*, 132 S.Ct. 2535 (2012); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and Cnty. of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun Cnty. Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). Most of the aforementioned cases involved the display of a Latin cross in public parks, showing that the case law regarding this issue is clear. Such a religious display “place[s] the government weight behind an obvious effort to proselytize on behalf of a particular religion.” *Cnty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 661 (1989) (Kennedy, J., concurring in part, dissenting in part).

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 endorsement is made stronger by use of the cross for religious services. The history of Easter services held at the cross evidence its religious purpose. *See, e.g., Trunk*, 629 F.3d 1099; *Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098.

The cross unabashedly creates the perception of government endorsement of Christianity. It conveys the message to non-Christians, including the one in five Americans who are not religious, that they are not “favored members of the political community.”<sup>1</sup> *Allegheny*, 492 U.S. at 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Pensacola political outsiders.

We ask that you remove the cross from Bayview Park immediately or direct it be moved to a more appropriate private location. Any plans to redesign the park should not include the cross. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



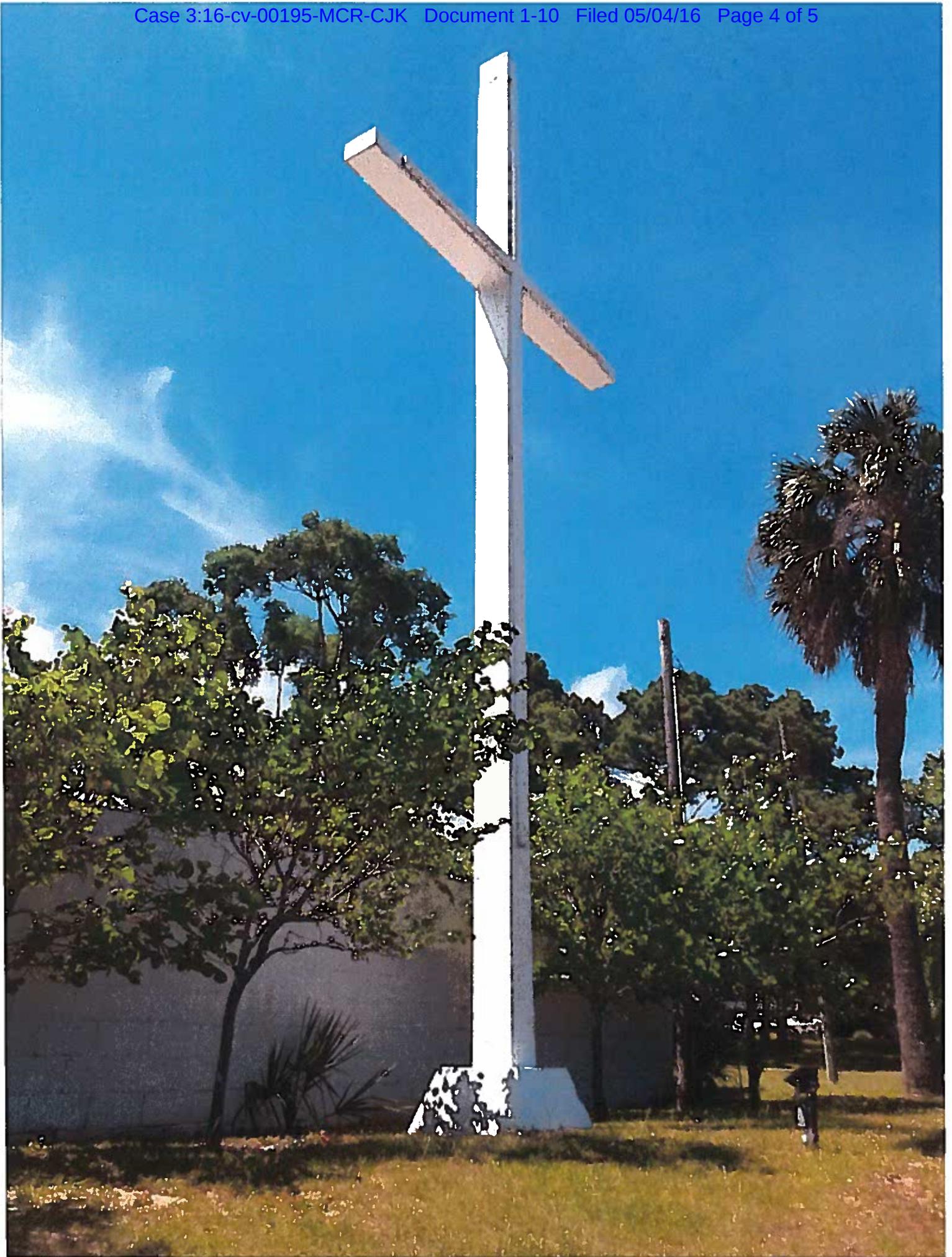
Rebecca Markert  
Staff Attorney

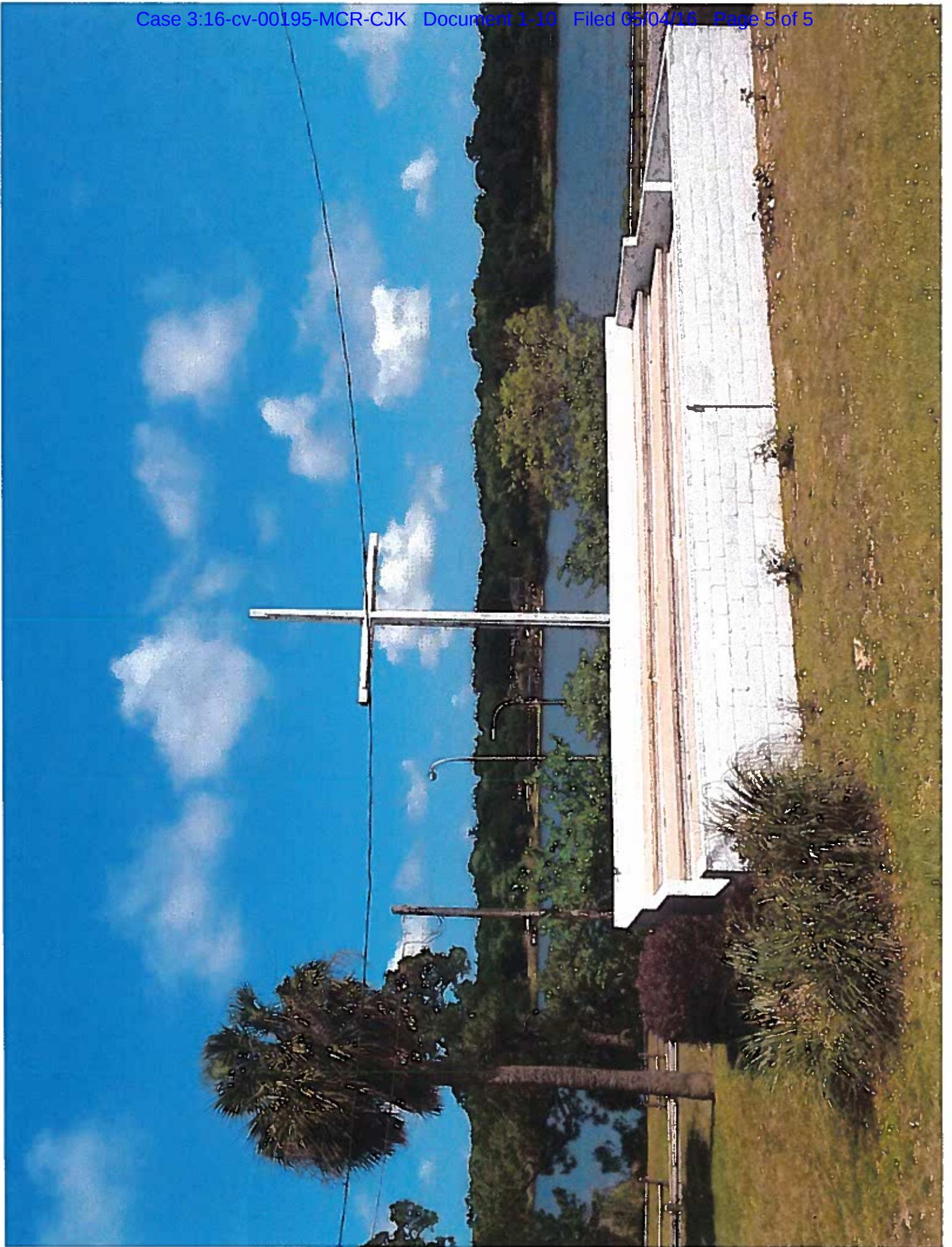
RSM:lkd

Enclosure

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<sup>1</sup> “America’s Changing Religious Landscape,” Pew Research Center, The Pew Forum on Religion & Public Life (May 12, 2015), available at <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>.





# Exhibit 8

Sign Up

Email or Phone

Password

Log In

Keep me logged in

[Forgot your password?](#)

### Keep Bayview Cross is on Facebook.

To connect with Keep Bayview Cross, sign up for Facebook today.

Sign Up

Log In



## Keep Bayview Cross

Community

Timeline

About

Photos

Likes

Videos



**Keep Bayview Cross**

November 26 at 5:37am ·

Happy Thanksgiving to all!



Like Comment Share

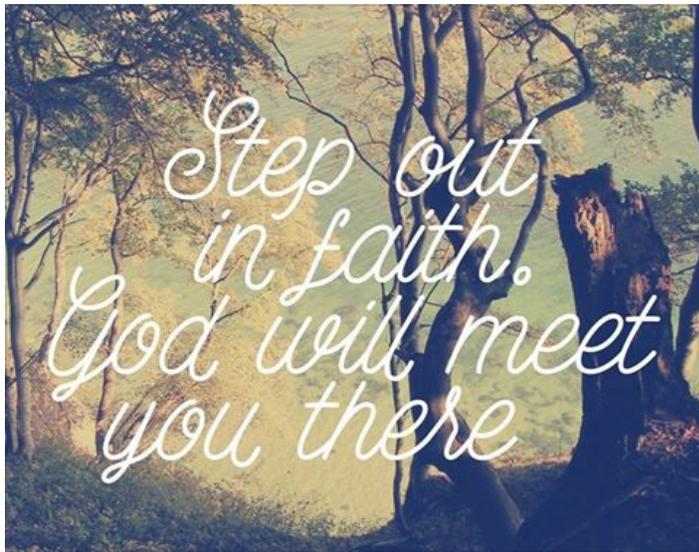
Sue Bartol, Jim Bradford, Jerry Carnley and 16 others like this.

1 share



**Keep Bayview Cross** added a new photo.

November 22 at 7:57am ·



Like Comment Share



**Keep Bayview Cross**

August 15 ·

Today We Celebrate The First Religious Service Held In America  
Tristan De Luna and others at Pensacola Beach, Florida  
August 15, 1559



Like Comment Share

Irene Wesley Christian, Cathy van Gogh, Kathleen Ulrich and 218 others like this. Chronological

80 shares

View 10 more comments

**Todd-Carla Moore** I cant post pictures here so I will share a link. Notice the first 2 pics are at the park....the cross is behind the panels, but the plaque is still there. It is now painted over.  
<http://frankhardymademyphotographstwo.com/.../easter.../>



Easter Sunrise Service in Pensacola at Bayview Park on Bayou Texar ...

FRANKHARDYMADEMYPHOTOGRAPHS1WU.COM

August 18 at 6:13am

**Todd-Carla Moore** What's the latest news? Anything from the city?  
August 21 at 8:11am



**Keep Bayview Cross**

August 14 ·

Though this event is not in conjunction with this facebook page, we still find it necessary to post for all supporters of [#KeepBayviewCross](#)  
"You are invited to join us at the Bayview Cross in Pensacola at 6:00 PM on Saturday, August 15th. We are gathering for a time of prayer, worship and fellowship. The Bayview Park entrance (that is near the cross) is at the corner of Mallory and Osceola Street. This gathering is not just about the removal of some 50+ year old cross, but is about Christians coming together, outside the church walls, making a stand for Christ and their faith. Our nation is in need of a revival. This is an opportunity for us to take a negative situation and use it for God's glory. Don't forget to bring your chairs!" - Todd and Carla Moore



Like Comment Share

Rachel Watts, Jackie Lord, Todd-Carla Moore and 75 others like this. Chronological

**Todd-Carla Moore** Christian soldiers...  
[https://www.facebook.com/WoodlawnMovie/videos/1046383965467845/?hc\\_location=ufi](https://www.facebook.com/WoodlawnMovie/videos/1046383965467845/?hc_location=ufi)



**It's Time to Pray!**  
03:39

1,968,801 Views

**Woodlawn the Movie**  
June 18 · Edited ·

It's time to PRAY, God healed us before, he can heal us again!

1 · August 7 at 4:54am



**Kenneth Bailey** I Like This.

1 · August 7 at 2:18pm



**Mike Mayne** Karen, I wrote a paragraph on this subject but I wrote it at the top of the page and hit post. I don't know where it went.

1 · August 8 at 4:34am

**Todd-Carla Moore** We as believers have an opportunity to come together to make a statement, a real statement of faith, outside the church. Many are afraid that they will appear as radical, or judgmental or that it's just plain hopeless. God allows all things to happen and gives us all opportunities to demonstrate our obedience. Satan loves that so many have thrown up their hands in defeat and are looking to the skies. This is not what we are instructed to do. We are supposed to be working the fields and to be preaching from rooftops until Jesus' return. Jesus may not come back for 100 years, and I know that our country and our people need a revival. IF WE CAN'T TAKE OUR FAITH AND OUR BELIEF IN CHRIST SERIOUSLY, HOW CAN WE EXPECT THE WORLD TO? Please join us at 6:00 PM on August 15th at the Bayview Cross. The cross is located at the Bayview Park entrance at the corner of Osceola and Mallory.

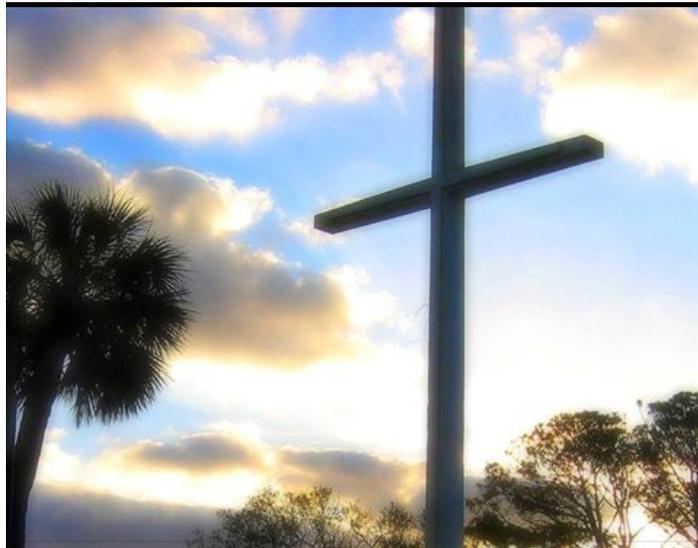
August 8 at 7:23am



**Keep Bayview Cross**

August 6 ·

Keep Bayview Cross  
Please share with your friends and family:  
facebook.com/KeepBayviewCross



Like Comment Share

Cathy van Gogh, Marcia Allen, Lisa Henderson and 492 others like this. Chronological

646 shares



**Chris Gaddis** Is there a way to share this with bigger groups too, like Christian radio stations and churches? Also, we need to start a "keep the beach cross" page too, cause you know that'll come under attack soon as a result of this.

2 · August 6 at 5:34am



**Todd-Carla Moore** Please join us at the Bayview Cross in Pensacola at 6:00 PM on August 15th. We are gathering for a time of prayer, worship and fellowship. The Bayview Park entrance (that is near the cross) is at the corner of Mallory and Osceola Street. As many of you know, the cross is in danger of being removed. This gathering is not just about the removal of some 50+ year old cross, but is about Christians coming together, outside the church walls, making a stand for Christ and their faith. Our nation is in need of a revival. This is an opportunity for us to take a negative situation and use it for God's glory. PLEASE SHARE!

9 · August 6 at 5:40am · Edited



**Todd-Carla Moore** Chris, please try to show up and tell others about us coming together. The media and the world will only take notice if we come together as the Body of Christ. Please share my post.

3 · August 6 at 5:40am



**Lance Brown** I odd-Carla, David Suhor will do everything he can to disrupt the service. Make sure the area is reserved through the City, probably the Parks Division.

2 · August 6 at 6:04am



**Chris Gaddis** And please take plenty of pics/video for me if you can, I won't be able to make it that day... will be praying for you though.

1 · August 6 at 6:21am



**Sherrie Flowers** Copied I odd-Carla Moore post to share.

2 · August 6 at 6:36am



**Susan Hoffman** When did we stop voting in our country and go with the whims of one person? If the majority wants to keep it then we should. It's been there for a long time and no one has ever complained.

5 · August 6 at 7:04am



**Todd-Carla Moore** Sherrie, thank you. Please come out.

August 6 at 7:09am



**Todd-Carla Moore** We need to really come together at the cross on August 15th at 6 pm in numbers. The media and the mayor can't ignore that.

4 · August 6 at 7:12am



**Donna Knowlton** Please keep this cross standing !!!

3 · August 6 at 7:17am



**Todd-Carla Moore** Please contact your pastors and ask them to come too. We have to have the numbers. Remember the media will take notice.