

FREEDOM FROM RELIGION *foundation*

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

January 16, 2014

**SENT VIA FAX & U.S. MAIL
(501) 268-4429**

Buck C. Gibson
City Attorney
City of Searcy
100 N Spring St
Searcy, AR 72143

RE: Display of Cross on Government Property

Dear Attorney Gibson:

As you are aware, the Freedom From Religion Foundation (FFRF) contacted Police Chief Jeremy Clark regarding the white Latin cross situated on the lawn of the City of Searcy Police Department. I understand you are the City Attorney and therefore direct my reply to Chief Clark's letter dated December 2, 2013, to you.

In March 2013, after having been contacted by a Searcy resident who encountered the cross, FFRF sent a letter to then Chief Kyle Osborne requesting the cross's removal. That letter included a picture of the cross. Having received no response to that letter, FFRF followed up and on May 7, 2013, Chief Clark responded "[a]fter careful examination, I have found no such display described in your letter. Therefore, no steps have been taken." FFRF's local complainant confirmed the cross was indeed still on display and on November 20, 2013, FFRF sent another letter to Chief Clark with an updated picture showing the cross on display. His December 2, 2013 reply states that no issue exists because the cross is on display near his "**private entrance**." (emphasis in the original). I have also enclosed all correspondence FFRF has sent and received on this matter for your information.

Chief Clark's response and contention that the cross adorns "his private entrance" does not settle the matter. A Latin cross, the preeminent symbol of Christianity, situated on government property, like police department grounds, is an unconstitutional endorsement of religion. As we informed the Chief, other Latin crosses on public property have been struck down by federal courts across the country for that very reason. *See, e.g., Trunk v. San Diego*, 629 F.3d 1099 (9th Cir. 2011), *cert. denied*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985)(en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984).

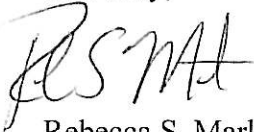
Furthermore, “[t]he defining principle of Establishment Clause jurisprudence is that ‘First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.’” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). The Searcy Police Department, in displaying this cross, violates this principle. The violation is underscored by the strong assertion by Chief Clark that “...Christianity is part of our police department...”¹

The contention that the entrance is a *private entrance* and is therefore immune from constitutional scrutiny is absurd and has no basis in fact or in law. The Searcy Police Department cross is not on Chief Clark’s private lawn. Instead, the cross is located outside of the police department building, on the police department grounds near an entrance to the building and is readily visible from the street as our own complainant can attest and as the pictures FFRF has enclosed in previous letters has shown.

The City should order removal of the cross to remedy the constitutional violation and doing so does not infringe on any of Chief Clark’s First Amendment rights. Federal courts have upheld restrictions on the display of religious materials by government entities because such restrictions exist to avoid an Establishment Clause violation. The Ninth Circuit Court of Appeals has stated 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 Berry v. Department of Social Services*, 447 F.3d 642,651 (9th Cir. 2006)(“materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state.”).

FFRF renews its request that Police Chief Clark immediately remove the Latin cross from the lawn of the Searcy Police Department and or direct the display be moved to a private location. If the Chief is partial to the cross, he can certainly move it to his lawn at his own home. Once again, we ask for a response in writing so that we may inform our Searcy complainant of the action being taken by the City in this matter.

Sincerely,



Rebecca S. Markert
Staff Attorney

Enclosures

cc: Mayor Morris; Chief Clark via U.S. Mail

¹ The Daily Citizen, Jan. 12, 2014. Available online at:
http://www.thedailycitizen.com/news/local/article_aa80bf1c-7a44-11e3-b539-0019bb2963f4.html?_dc=370685152709.48413



POLICE DEPARTMENT

CITY OF *Searcy*

P.O. Box 178 • Searcy, Arkansas 72145
501-268-3531 • police@cityofsearcy.org

JEREMY CLARK
Chief

Dec. 2, 2013

Freedom from Religion Foundation

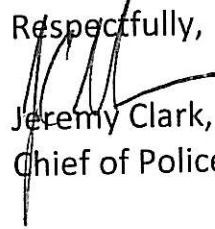
P.O. Box 750

Madison, WI 53701

To Whom It May Concern:

This letter is to reply to your correspondence dated November 20, 2013. The photo attached to your complaint is of my **private entrance**. No one, other than me, has access to the aforementioned **private entrance**. Furthermore, no other entrance, public or private, is visible from the display described in your letter. Since receiving your original correspondence, I have consulted with our city attorney, Buck Gibson along with Mayor David Morris. It is our collective belief that no constitutional violation or offence as described in your letter can be reasonably justified. Therefore, no further action will be taken.

Respectfully,


Jeremy Clark,
Chief of Police

JC:jc

FREEDOM FROM RELIGION *foundation*

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

November 20, 2013

Chief Jeremy Clark
Searcy Police Department
P.O. Box 178
Searcy, AR 72145

Re: Display of Cross on Government Property

Dear Chief Clark:

I am writing on behalf of the Freedom From Religion Foundation, a national organization that works to protect the constitutional principle of separation between state and church, in response to the letter you sent us on May 7, 2013. In that letter you stated that you received our follow up complaint regarding a white cross in front of the police station near one of the public entrances. You also stated that you had found no such display and therefore, no action had been taken. I have attached photos of the offending cross for your reference, with time stamps indicating that it is still on display.

This is an unconstitutional endorsement of religion by a government entity. We would greatly appreciate hearing from you in writing indicating what action has been taken to resolve this issue and ensure it will not occur in the future. If this matter has been referred to your attorney, please advise.

I have also attached a copy of the original letter for your review that was sent to Chief Kyle Osborne on March 12, 2013.

We thank you for your time and attention to this matter.

Sincerely,



Rebecca S. Markert & Patrick C. Elliott
Staff Attorneys

Enclosure

PCE:alp





POLICE DEPARTMENT

CITY OF *Searcy*

P.O. Box 178 • Searcy, Arkansas 72145
501-268-3531 • police@cityofsearcy.org

MAY 15 2013

JEREMY CLARK
Chief

May 7, 2013

Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

To Whom it May Concern:

This letter is in reply to your correspondence dated May 2, 2013. I have received no such letter dated March 12, 2013 until receiving the copy provided in your letter dated May 2, 2013. I have thoroughly read both letters of correspondence you directed to now retired Police Chief Kyle Osborne. After careful examination, I have found no such display described in your letter. Therefore, no steps have been taken.

Sincerely,

A handwritten signature in black ink, appearing to be "JCL", written over the printed name.

Chief Jeremy Clark

JC: jld

FREEDOM FROM RELIGION *foundation*

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March 12, 2013

Chief Kyle Osborne
Searcy Police Department
101 N. Gum Street
Searcy, AK 72143

Re: Display of Cross on Government Property

Dear Chief Osborne:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of a cross on public property. We received a complaint from a concerned local resident and taxpayer. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation between state and church. We represent over 19,000 members across the country, including members in Arkansas.

It is our information that there is a white cross in front of the Searcy Police Station ("Station") near one of the public entrances. We understand that these crosses were made and handed out by a local Methodist Church. Please find a picture of the cross enclosed.

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 has 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*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985)(en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d

1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). While most of the aforementioned cases involved the display of a Latin cross in public parks, the display on any government property would also violate the Establishment Clause. 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* at 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.*

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 City water tower confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

It is unlawful for the City of Searcy to display a patently religious symbol such as a Christian cross on public property. The cross displayed at the Station unabashedly creates the perception of government endorsement of Christianity. It conveys the message to the twenty-six percent of the U.S. population who are not Christians that they are not "favored members of the political community." *Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Searcy political outsiders.

We ask you to remove the cross from the Station immediately or direct the display be moved to a more appropriate private location. We would also appreciate a prompt response from you, in writing, informing us of the steps the City of Searcy will take to resolve this matter. Our complainant awaits action.

Sincerely,



Rebecca S. Markert
Staff Attorney

Enclosure

RSM:chm

