

FREEDOM FROM RELIGION *foundation*

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

August 1, 2012

**SENT VIA EMAIL & FAX
(740-283-6165)**

Mr. Gary Repella
Law Director
City of Steubenville
115 South Third Street
Steubenville, OH 43952

Re: Unconstitutional City Logo

Dear Mr. Repella,

I am writing on behalf the Freedom From Religion Foundation (FFRF) following reports that the City of Steubenville is contemplating accepting legal representation from Christian legal groups. We would like to caution the City about accepting such offers, which will put City taxpayers at risk. It was reported that several Christian right attorneys have sought to represent the City. The best resolution of the dispute over the City logo is for the City to change the logo to comply with constitutional dictates, rather than to become involved in costly and protracted litigation, which it will lose.

As you are aware, the logo is similar to numerous other city seals and logos that have been struck down by the courts. It is unwise for City officials to think that they will be able to overcome nearly 30 years of precedent on this issue. The Latin cross is an unquestionable representation of Christianity. By the logo designer's admission, the chapel and cross are a symbol of "faith." The depiction of the cross and chapel on the City logo is a near copy of the Franciscan University of Steubenville logo, which further blurs the line between church and state. According to Michael Hernon, a spokesman for the University, the Christ the King Chapel and cross are "internationally recognized." He said that these symbols are at the heart of the school's "Catholic educational mission." Apparently, the University does not wish to be represented "in a way that does not honor [its] mission as a faith-based institution." The cross and chapel cannot legally be a part of the City's logo.

The City must consider the substantial costs involved in litigating an issue that is already settled by the courts. Do not be duped by offers from religious right legal groups. They may volunteer their time *pro bono* but they never pick up the plaintiffs' tab. A losing case of this type would involve a great amount of time and money at the taxpayers' expense.

For example, this type of litigation proved costly to two counties in Kentucky that were represented by a Christian legal group. McCreary County and Pulaski County had to split \$460,000 in legal bills covering the plaintiffs' attorney fees and costs in an 11-year dispute over Ten Commandments displays. One of the counties had to take out loans to stay afloat financially.

Other recent Establishment Clause cases have proven costly. Just this month the Enfield School District in Connecticut agreed to a settlement where it would reimburse the plaintiffs' attorneys for an undisclosed portion of nearly \$1 million in legal fees. When FFRF won a case against Rhea County Schools in Tennessee for unlawful religious instruction in its schools (*See Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004), the District Court awarded over \$120,000 for plaintiffs' attorney fees and costs. This amount does not include substantial defense costs.

City Council members have taken an oath to uphold both the secular U.S. Constitution and the Ohio Constitution, which provides that "no preference shall be given, by law, to any religious society." Art 1. § 7. Council members also have a fiduciary responsibility to taxpayers not to gamble or squander tax money.

Legally, it makes no difference how many Steubenville residents want the cross and chapel to be displayed on the City logo. This is not an issue of majority rule, it is an issue of constitutional law. The courts have continually reaffirmed that the rights of minorities are protected by the Constitution. As the Supreme Court has said, "fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 304-305 (2000) (*quoting West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)). As the Court said in *Barnette*,

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. 319 U.S. at 638.

The best resolution, for all parties, is for the City Council to abide by its original vote to revise the logo. We encourage the City to make the change so that it signals that Steubenville is welcome to everyone, including our complainant.

Sincerely,



Patrick C. Elliott
Staff Attorney