

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE AT JACKSON**

FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

vs.

TOWN OF WHITEVILLE,  
TENNESSEE, MAYOR JAMES  
BELLAR and THE WHITEVILLE  
TENNESSEE BOARD OF ALDERMEN,

Defendants.

Case No. 1:11-cv-1374-JDB  
JURY DEMANDED

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**DEFENDANTS' ANSWER TO COMPLAINT**

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**FIRST DEFENSE**

1. In response to ¶¶ 1, 11, 12, 13, 24, 25, 29, 30, 34, 36, 37, 38, 39, 40, 41, and 42, Defendants deny the allegations contained therein.

2. In response to ¶¶ 2, 4, 6, 7, 9, 18, 19, 20, 21, 23, 28, 33, and 35, Defendants admit the allegations contained therein.

3. In response to ¶ 3, Defendants admit the allegations in the first and third grammatical sentences. Defendants deny the allegations in the second grammatical sentence.

4. In response to ¶ 5, Defendants admit this Court has jurisdiction. Defendants, however, deny that 42 U.S.C. § 1983 is the source of any substantive rights. Defendants deny they violated the Foundation's federal constitutional rights.

5. In response to ¶ 8, the Defendants admit the allegations, but note that local churches paid for the cross.

6. In response to ¶ 10, Defendants admit the cross was illuminated. But the Defendants deny they intentionally illuminated the mast that remained after removing part of the cross. Once James Bellar learned the light was shining on the mast, he ordered it turned off.

7. In response to ¶ 14, Defendants deny the Town put the cross up to “endorse Christianity.” The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations because they do not know the identity of “John Doe” or if he even exists. Therefore, they cannot know what he believes.

8. In response to ¶¶ 15 and 31, and Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

9. In response to ¶¶ 16 and 32, the Defendants deny that a reasonable person would conclude that Whiteville welcomes only Christians. Defendants deny that the unknown “Mr. Doe” is a reasonable person as evidenced by his belief that the government should stop private citizen James Bellar from putting a cross in front of his own business.

10. In response to ¶ 17, Defendants admit the Foundation wrote a letter complaining about the cross. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations.

11. In response to ¶¶ 22 and 23, Defendants admit that James Bellar made the statement. But they deny that the Foundation's characterization of the statement accurately reflects its meaning when viewed in context.

12. In response to ¶ 26, Defendants admit James Bellar, as a private citizen, put a cross in front of his privately owned insurance agency. Defendants deny the remainder of the allegations.

13. In response to ¶ 27, Defendants deny the description of the cross, but admit the remainder of the allegations.

14. In response to ¶ 43, Defendants assert that this paragraph is simply the opinion of the Foundation and does not require a response.

15. In response to the prayer for relief, Defendants deny that the Foundation is entitled to damages or any other form of relief from them.

### **SECOND DEFENSE**

The Foundation lacks standing to bring this cause of action.

### **THIRD DEFENSE**

Because the Town removed part of the cross, it is no longer a cross and this was done before the Foundation filed this lawsuit. Therefore, the Foundation has failed to state a claim regarding this cross.

### **FOURTH DEFENSE**

The Foundation has failed to state a claim against James Bellar in his individual capacity.

**FIFTH DEFENSE**

Because the Town is a Defendant, the Foundation's naming the mayor in his official capacity and the Board as Defendants is redundant and the Court should dismiss these claims.

**SIXTH DEFENSE**

Because the Town removed the cross from the water tower before the Foundation filed suit and the remaining crosses were part of Christmas decorations that the Town has taken down, the Foundation's claims are moot.

**SEVENTH DEFENSE**

James Bellar did not violate the clearly established federal constitutional rights of the Foundation or its members. Therefore, he is entitled to the defense of qualified immunity.

Respectfully submitted,

RAINEY, KIZER, REVIERE & BELL, PLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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