

FREEDOM FROM RELIGION *foundation*

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September 29, 2015

SENT VIA EMAIL AND U.S. MAIL:
harold.rainwater@asbury.edu

The Honorable Harold Rainwater
Mayor
City Hall
335 East Main Street,
Wilmore, KY 40390

Re: Display of Cross on Government Property

Dear Mayor Rainwater:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) to object to the display of a cross on public property. FFRF is a nationwide nonprofit organization that works to protect the constitutional principle of separation between state and church. FFRF represents more than 23,000 members across the country, including members in Kentucky and a state chapter, FFRF Kentucky.

It is our understanding that a large cross sits on top of the Wilmore water tower. We also understand that this cross is illuminated at night, making the display even more noticeable to all Wilmore citizens and passersby. The cross is also shown on the top of the city’s website under the “Water and Sewer” heading. A copy of a photo of the cross on the water tower is enclosed for your review.

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., 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). 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.*

No court of final resort has ever upheld the government's permanent display of a Latin cross on public land as constitutional. 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 Wilmore to display a patently religious symbol such as a Christian cross on public property. The Wilmore cross, displayed on the City water tower, unabashedly creates the perception of government endorsement of Christianity. It conveys the message to the nearly 30% 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 Wilmore political outsiders.

We are aware that the water tower itself stands on the campus of Asbury University, a private Christian college, but this is irrelevant. Any reasonable observer would understand the city to endorse any messages on the water tower because the water tower has "WILMORE" printed on it in large letters, and because the tower is displayed on the city's website to represent the city's water and sewage services.

As you probably know, FFRF takes these issues very seriously. In 2011, FFRF sued the Town of Whiteville, Tennessee, over a similar issue. The Town had a large cross displayed on top of the Town's water tower, which lit up at night. Ultimately, the case settled and the Town agreed to pay FFRF's costs and legal fees, totaling \$20,000, in a court case that need not ever have been filed. We wrote them a letter asking for the cross to be removed but were ignored.

We ask that you remove the cross from Wilmore property immediately or direct the display to be moved to a more appropriate private location. Additionally, please remove the picture of the cross from the city's website. We would appreciate a prompt response from you, in writing, informing us of the steps the City of Wilmore will take to resolve this matter.

Sincerely,



Rebecca S. Markert
Staff Attorney

RSM:rdj

Enclosure

