

FREEDOM FROM RELIGION *foundation*

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URGENT

December 14, 2010

COPY

SENT VIA FAX & U.S. MAIL
(615) 244-5590

Mike Carlton
Assistant Commissioner
Tennessee State Parks Central Office
401 Church St
7th Floor, L&C Annex
Nashville TN 37423

RE: Crucifix at Cove Lake State Park

Dear Mr. Carlton:

Our national organization, which seeks to protect the separation of state and church, sent you a letter yesterday, December 13, 2010, regarding an unconstitutional nativity scene located at Cove Lake State Park. Our complainant has informed us that a crucifix has recently been put on display at this same location.

It is unlawful for the State to display a Christian cross on government property. The display of this patently religious symbol on public property confers government endorsement of Christianity, a blatant violation of the Establishment Clause. Tennessee State Park Department must take immediate action to remove the cross from the Cove Lake State Park.

First and foremost, 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 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.*

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.

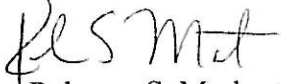
Secondly, a Latin cross is not a permissible Christmas decoration. In *ACLU v. St. Charles*, 794 F.2d 265 (7th Cir. 1986), cert. denied, 479 U.S. 961 (1986), the Seventh Circuit prohibited the city of St. Charles from displaying an illuminated Latin cross on the top of the city’s fire department as a part of its annual Christmas display. *Id.* at 267. The court reasoned that this powerful sectarian symbol was not a traditional decoration for the holiday season, but instead was an unmistakable symbol of Christianity. *Id.* at 271. It stated, “when prominently displayed on a public building that is clearly marked as and known to be such, the cross dramatically conveys a message of government support for Christianity...” *Id.* Thus, the court held this display constituted an endorsement of religion, particularly Christianity, which is prohibited by the Establishment Clause of the First Amendment. *Id.* at 270-271.

Like the Latin cross in *ACLU v. St. Charles*, which violated the Establishment Clause, the Cove Lake State Park cross also violates the Establishment Clause. This area of land is clearly a part of the State park, which allows all passersby to identify it as government property. Its hosting of a powerful sectarian symbol cannot be seen as a traditional decoration of the holiday season, but instead can only be a message of government support for Christianity. Given that the cross is prominently displayed, can be seen by many passersby and has been placed by the nativity scene with biblical references, a reasonable observer could only conclude that Tennessee State Parks Department supports and approves the Christian message.

The Park's cross 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 Tennessee political outsiders.

We ask you to remove the cross from park property 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 you are taking to resolve this matter. Our complainant awaits action.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca S. Markert".

Rebecca S. Markert
Staff Attorney

cc: Kim Moore, Park Manager, Cove Lake State Park