

FREEDOM FROM RELIGION *foundation*

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

January 26, 2018

SENT VIA EMAIL & U.S. MAIL: mayor.homrighausen@doverohio.com

The Honorable Richard P. Homrighausen
Mayor
City of Dover
110 East Third Street
Dover, OH 44622

Re: Religious Displays on Public Property

Dear Mayor Homrighausen:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple religious displays hosted by the City of Dover. FFRF is a national nonprofit organization with 30,000 members across the country, including over 700 members in Ohio and a state chapter. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned area resident has reported that each year during the holiday season the City of Dover displays a nativity scene and a scene featuring a large Latin cross on city property. We also understand that there is a Ten Commandments monument located near Grace Evangelical Lutheran Church that appears to be on city property. Please see the enclosed photos.

Nativity Scene on Public Property

It is unlawful for the City of Dover to maintain, erect, or host a holiday display that consists solely of a nativity scene, thus singling out, showing preference for, and endorsing one religion. The Supreme Court has ruled it is impermissible to place a nativity scene as the sole focus of a display on government property. *See Cty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1984).

In *Allegheny*, the Supreme Court held that a county government's crèche displayed in the county courthouse was an unconstitutional endorsement of religion. The Court stated,

Lynch v. Donnelly confirms, and in no way repudiates, the longstanding constitutional principle that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs. The display of the crèche in the county courthouse has this unconstitutional effect.

492 U.S. at 621.

The Court further determined that the placement of the crèche on the Grand Staircase of the county courthouse contributed to its illegality because "no viewer could reasonably think it occupies this location without support and approval of the government." *Id.* at 599-600. Moreover, the Court found that the nativity scene "sen[t] an unmistakable message that [the county] supports and promotes the Christian praise to God that is the crèche's religious message." *Id.* at 600.

It is irrefutable that the crèche is a religious, Christian symbol. *See Lynch*, 465 U.S. at 711 (1984) (Brennan, J. dissenting) (stating that the crèche is a “re-creation of an event that lies at the heart of the Christian faith”). Displaying an inherently Christian message unmistakably sends the message that the City of Dover endorses the religious beliefs embodied in the display. When the the City of Dover displays this manger scene, which depicts the legendary birth of Jesus Christ, it signals the government’s approval of Christianity. This excludes the 30% of Americans who are not Christian, including the 24% who are nonreligious.¹ Putting up a nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their community.

Latin Cross on Public Property

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 have 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*, 132 S.Ct. 2535 (2012); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and Cty. of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *Friedman v. Bd. of Cty. Comm’rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun Cty. Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984).

A Latin cross is not a permissible Christmas decoration for a city to display. In *ACLU v. St. Charles*, 794 F.2d 265, 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.

The government’s display of a cross on public land is unconstitutional. The inherent religious significance of the Latin cross is undeniable and is not disguisable Latin. No secular purpose detracts from the overall message that the Latin cross stands for Christianity and that the display promotes Christianity. The display of this patently religious symbol on public property confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

¹ Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

Ten Commandments

There is a Ten Commandments monument located next to where the nativity scene is displayed each year. We understand that this monument belongs to Grace Evangelical Lutheran Church, but may actually be standing on city property. We ask that you investigate and ensure that this monument is not being displayed on city property.

There are ample private and church grounds where religious displays may be freely placed. Once the government enters into the religion business, conferring endorsement and preference for one religion over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship. We ask that the city refrain from displaying a nativity scene or Latin cross on city property in the future. Please inform us in writing of the steps you are taking to resolve these matters.

Sincerely,



Christopher Line
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation



