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April 3, 2018

Re: FFRF letter of January 26, 2018, Dover's letter of February 4, 2018 and the permanent and temporary displays addressed in the January 26, 2018 letter.

To: FFRF:

Dover has been able to review the issues raised in your letter of January 26, 2018. The short response is:

Dover will not display the cross as part of our seasonal display;
Dover will not display the creche on city property;
Dover will have the Ten Commandments monument moved from city property.

We have factually reviewed the matters raised in your letter, as well as potential legal consequences. The cross or window (we are not sure which it is) is part of a singing choir display. The cross or window will be painted over such there is no suggestion of a cross being part of that display.

While Lynch and subsequent cases have permitted, in overall non-school or courthouse settings, Creche or manger scenes as part of a diverse seasonal display, the movement of this display removes the establishment clause assertion and the possibility that a considered judgment by a judge, or appellate panel, would disagree with that assertion and expose the city to costs and attorney's fees.

In these days of extremely tight budgets and close watching of civic purse strings, Council and the Mayor elected the route that extinguished that exposure. We do so for those reasons. The creche will not be displayed on city property as part of the seasonal display going forward.

With regards to the Ten Commandments monument that is located on the Southwest quadrant of our square, we also believe that it meets the test and setting that are similar to the historical references and display approved in *Van Ogden vs Perry*. As you noted, we did need to investigate whether the monolith was on city property or the Grace Lutheran Church property. It is on city property several feet from the boundary with the church. The Ten Commandments

granite monument was donated to the city by the local Eagles Aerie #515 in 1963. It is probably the same or very similar to the Ten Commandments that was donated to the state of Texas and reviewed by the court in Van Ogden. As in Texas, it is firmly attached to the surface.

Nonetheless, for the monetary reasons noted above, we can have this historical monument moved off city property and remove the unnecessary exposure to monetary costs referenced above. We will move it this year. Immediately behind this monolith is an electric circuit breaker box with electrical conduits. We must coordinate the movement with permanent landscaping that protects pedestrians and the public from the foreseeable hazards associated with these electrical items. To do so, requires both some planning and work after the weather improves after this long winter.

As noted, we will move the Ten Commandments off city property this year and at the same time protect the public from the hazards that would be apparent by an unprotected electrical and trip hazards associated with those electrical connections.

We believe these actions address the questions raised in the January 26, 2018 letter and will resolve all potential establishment clause conflicts. As noted, we disagree with your assertions concerning the creche and the Ten Commandments, but do not believe the exposure to costs if we did not prevail is acceptable. We have therefore decided to take these actions.

S/DOUGLAS J. O'MEARA

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