

No. 17-3581

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

FREEDOM FROM RELIGION FOUNDATION, INC., *et al.*,

Plaintiffs-Appellees,

v.

THE COUNTY OF LEHIGH,

Defendant-Appellant.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Pennsylvania
No. 5:16-cv-04504-EGS, Hon. Edward G. Smith

**BRIEF OF RELIGIOUS AND CIVIL-LIBERTIES ORGANIZATIONS
AS *AMICI CURIAE* SUPPORTING APPELLEES AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Amici are nonprofit entities. They have no parent corporations, and no publicly held corporation owns any portion of any of them.

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INTEREST OF THE *AMICI CURIAE*¹

Amici are religious and civil-liberties organizations that represent diverse faiths and beliefs but are united in respecting the important but distinct roles of religion and government in the life of the Nation. From the time of the founding, the Establishment Clause and the religious and philosophical ideals that motivated it have protected religious freedom for all Americans by ensuring that government does not interfere in private matters of conscience. Although the court below decided this case correctly, it cast doubt on these essential constitutional safeguards. *Amici* write to dispel any resulting confusion so that these protections are not undermined. The *amici*, described more fully in the Appendix, are:

- Americans United for Separation of Church and State.
- American Atheists.
- American Civil Liberties Union.
- ACLU of Pennsylvania.
- American Humanist Association.
- Anti-Defamation League.
- Center for Inquiry.
- Central Conference of American Rabbis.

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission. The parties have consented to this filing.

- Disciples Center for Public Witness.
- Disciples Justice Action Network.
- Hadassah, the Women’s Zionist Organization of America, Inc.
- Hindu American Foundation.
- Interfaith Alliance Foundation.
- Men of Reform Judaism.
- Muslim Advocates.
- National Council of Churches.
- National Council of Jewish Women, Inc.
- Sikh Coalition.
- Union for Reform Judaism.
- Women of Reform Judaism.

INTRODUCTION AND SUMMARY OF ARGUMENT

Religious symbols are powerful. Contemplating a symbol of one’s own faith can be a profound experience. Encountering a government-sponsored symbol of a faith to which one does not subscribe can likewise be a profound experience—in a quite different way. When government employs the primary symbol of one religion for its official insignia, it communicates an impermissible message of favoritism and exclusion that stigmatizes nonadherents while also demeaning the faith that it endorses.

The dictates of the Establishment Clause are therefore clear, as the court below recognized: Lehigh County's use of the Latin cross for its seal and flag cannot withstand constitutional scrutiny.

But despite reaching the correct legal result, the court below devoted a substantial portion of its opinion to questioning settled Supreme Court and Circuit precedent, based on inaccurate descriptions of the history, purpose, and fundamental objectives of the First Amendment. The court characterized Establishment Clause jurisprudence as having drifted away from "its drafters' intent" and suggested that this case really ought to come out the other way. App. 17, 21.

In actuality, the drafters of the First Amendment effected a separation of government and religion as the means to ensure enduring religious freedom. And as our Nation becomes increasingly pluralistic, that aim is more crucial than ever. Use of the Latin cross—the preeminent symbol of Christianity—for the official seal of Lehigh County sends divisive and exclusionary messages that are directly contrary to this fundamental objective: It co-opts the cross's spiritual content for governmental purposes, potentially offending Christians. It tells members of other religions, or of no religion, that they are second-class citizens. And it divides communities along religious lines. The judgment here is thus not only doctrinally compelled but also historically justified and critically

important to prevent religiously based civil strife that would intrude on our fundamental commitment to religious freedom for all.

ARGUMENT

A. The Judgment Is Correct As a Matter of Law.

To satisfy the Establishment Clause, state action must have a primary purpose and principal effect that are secular. *See Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); *Modrovich v. Allegheny County*, 385 F.3d 397, 401 & n.1 (3d Cir. 2004). Lehigh County is thus required to maintain strict “‘governmental neutrality between religion and religion, and between religion and nonreligion’” (*McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968))) and is forbidden to take action that “an objective observer . . . would perceive . . . as a state endorsement” of religion (*Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 76 (1985) (O’Connor, J., concurring in the judgment)); *accord Modrovich*, 385 F.3d at 401).

“The Latin Cross . . . is the principal symbol of Christianity around the world” *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring in part and concurring in the judgment). Hence, the courts of appeals have repeatedly held that depiction of the cross as part of a city or county seal violates the

Establishment Clause. *See, e.g., Robinson v. City of Edmond*, 68 F.3d 1226, 1232 (10th Cir. 1995) (“The religious significance and meaning of the Latin or Christian cross are unmistakable.”); *Friedman v. Bd. of Cty. Comm’rs*, 781 F.2d 777, 782 (10th Cir. 1985) (en banc) (“[T]he seal . . . conveys a strong impression to the average observer that Christianity is being endorsed.”). “[A] Latin cross on the corporate seal . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity. It presents to any observer a clear endorsement of all those beliefs associated with a Latin cross in violation of the Establishment Clause of the first amendment.” *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991).

Here, the County’s seal was designed with an unambiguously religious purpose (*see* App. 26), and its display has the overwhelmingly religious effect of communicating to observers that the County favors Christianity (*see* App. 28). Notably, the county commissioner who designed the seal publicly stated that the “‘huge cross’ . . . signifies ‘Christianity and the God-fearing people . . . of [Lehigh] County.’” App. 9 (alteration in original). And in 2015, the commissioners voted to retain the design “to honor [Lehigh County’s] original settlers who were Christian.” App. 26. Thus, this case is an easy one: The County’s seal and flag straightforwardly violate the Establishment Clause. *See, e.g., Harris*, 927

F.2d at 1415 (“[T]he City may not honor its history by retaining the blatantly sectarian seal, emblem, and logo. These symbols transcend mere commemoration, and effectively endorse or promote the Christian faith.”); *see also Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1034 (10th Cir. 2008) (“The putative secular explanation of the Christian cross[,] . . . that it reflected the Christian heritage of the area . . . , is not a secular explanation at all.”).

The County contends (at Br. 44) that the Supreme Court has “long abandoned” the jurisprudence employed in *Robinson*, *Harris*, *Friedman*, *Modrovich*, and the Supreme Court’s own decision in *McCreary*, offering up (at Br. 38) what the County describes as the contrary authority of “[t]he most recent Supreme Court ‘religious display’ case,” *Van Orden v. Perry*, 545 U.S. 677 (2005). But the Supreme Court issued the “recent” decision in *Van Orden* and the supposedly “long abandoned” decision in *McCreary* on the same day. The argument that one supplanted the other is therefore meritless. And since that day, this Court has consistently, and correctly, continued to follow settled Supreme Court precedent by applying the tests described in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring). *See, e.g., Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 283 (3d Cir. 2011) (applying *Lemon* and endorsement tests); *Stratechuk v. Bd. of Educ.*, 587 F.3d 597,

604, 608 (3d Cir. 2009) (same); *Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89, 100 (3d Cir. 2009) (applying *Lemon* test); *Borden v. Sch. Dist.*, 523 F.3d 153, 175 (3d Cir. 2008) (applying endorsement test); *Petruska v. Gannon Univ.*, 462 F.3d 294, 311 (3d Cir. 2006) (applying *Lemon* test). The district court's identification and application of controlling authority (*see* App. 21) were correct as a matter of law.

B. The Controlling Jurisprudence Is Consistent With The History, Purpose, And Original Understanding Of The Establishment Clause.

Yet while correctly recognizing that long-standing, unequivocal, binding precedent compels the conclusion that the County's seal and flag violate the Establishment Clause, the court below expressed disagreement with that precedent, arguing that, beginning with *Everson v. Board of Education*, 330 U.S. 1 (1947), the Supreme Court set the federal courts on a path that "does not accurately reflect the plain text of the Establishment Clause or its drafters' intent" (App. 18, 21). We respectfully submit that the district court's views concerning the First Amendment and its history are mistaken; and the implications of that misunderstanding threaten the Amendment's essential protections for religious freedom.

1. Our Nation is built on the recognition that governmental involvement with religion is a grave threat to religious freedom.

The architects of the First Amendment recognized that “religion & Govt. will both exist in greater purity, the less they are mixed together.” Letter from James Madison to Edward Livingston (July 10, 1822), <http://bit.ly/2zUXhBT>. This principle, that religion flourishes best when government is least involved, has deep roots in theology and political philosophy going back well before the founding of the Republic. Grounded in the understanding that freedom of conscience is an essential component of faith, as well as the experience of a long, sad history of religiously based strife and oppression, the constitutional principle of separation recognizes that governmental support for religion corrodes true belief, makes religious denominations and houses of worship beholden to the state, and places subtle—or not so subtle—coercive pressure on individuals and groups to conform.

The notion of freedom of conscience as a moral virtue traces back to the thirteenth-century teachings of Thomas Aquinas, who wrote that conscience must be a moral guide and that acting against one’s conscience constitutes sin. See Noah Feldman, *The Intellectual Origins of the Establishment Clause*, 77 N.Y.U. L. REV. 346, 356–57 (2002). Martin Luther built on these ideas, teaching that the Church lacks authority to

bind believers' consciences on spiritual questions: "the individual himself c[an] determine the content of his conscience based on scripture and reason." *Id.* at 358–59. And John Calvin preached that individual conscience absolutely deprives civil government of authority to dictate in matters of faith. *See id.* at 359–61.

These tenets found expression in the New World in the teachings of Roger Williams, the Baptist theologian and founder of Rhode Island. Williams preached that, for religious belief to be genuine, people must come to it of their own free will. Coerced belief and punishment of dissent are anathema to faith; religious practices are sinful unless performed "with[] faith and true persuasion that they are the true institutions of God." Roger Williams, *The Bloody Tenent, of Persecution for Cause of Conscience* (1644), reprinted in 3 COMPLETE WRITINGS OF ROGER WILLIAMS 12 (Samuel L. Caldwell ed., 1963). When government involves itself in matters of religion, even if merely to express support for a particular faith or set of beliefs, Williams warned, the coercive authority of the state impedes the exercise of free will, while also causing bloody civil strife. Thus, Williams taught, keeping religion and government separate is crucial both to protect religious dissenters against persecution and to safeguard religion itself against impurity and dilution. *See id.*; EDWIN S. GAUSTAD, ROGER WILLIAMS 13, 59, 70 (2005); RICHARD P. MCBRIEN,

CAESAR'S COIN: RELIGION AND POLITICS IN AMERICA 248 n.37 (1987)
 (“[T]he Jews of the Old Testament and the Christians of the New Testament ‘opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world. . . . [I]f He will ever please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world.’” (quoting Williams)).

Not only did this theology shape the development of religion in America, but it became the foundation for the political thought on which our Nation was built. Notably, for example, John Locke incorporated the view into his argument for religious toleration:

Whatsoever may be doubtful in Religion, yet this at least is certain, that no Religion, which I believe not to be true, can be either true, or profitable unto me. In vain therefore do Princes compel their Subjects to come into their Church-communion, under pretence of saving their Souls. . . . [W]hen all is done, they must be left to their own Consciences.

JOHN LOCKE, A LETTER CONCERNING TOLERATION 38 (James H. Tully ed., Hackett Publ’g Co. 1983) (1689). Based on this understanding, and the related concern that bloodshed follows when government intrudes into matters of faith, Locke reasoned that “civil government” should not “interfere with matters of religion except to the extent necessary to preserve civil interests.” Feldman, *supra*, at 368.

Many of this Nation's founders took to heart Williams's and Locke's teachings. Benjamin Franklin, for example, stated:

When a Religion is good, I conceive that it will support itself; and when it cannot support itself, and God does not care to support [it], so that its Professors are oblig'd to call for the help of the Civil Power, 'tis a Sign, I apprehend, of its being a bad one.

Letter from Benjamin Franklin to Richard Price (October 9, 1780), <http://bit.ly/2jMsrVO>. And James Madison viewed governmental support for religion as “[r]eligious bondage [that] shackles and debilitates the mind and unfits it for every noble enterprize.” Letter from James Madison to William Bradford (April 1, 1774), <http://bit.ly/2h57Xm5>.

2. The Religion Clauses were designed to prevent even seemingly benign governmental involvement with religion.

a. Though the United States was more homogeneous in 1789 than today, our Nation was, from the beginning, home to unprecedented religious diversity. Congregationalists maintained a stronghold in New England; Anglicans dominated religious life in the South; and Quakers influenced society significantly in Pennsylvania. See AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 45 (2008); JOHN CORRIGAN & WINTHROP S. HUDSON, *RELIGION IN AMERICA* 46–51 (9th ed. 2018). And the founding generation well knew that “[t]he centuries immediately before and contemporaneous with the colonization of America

had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy.” *Everson*, 330 U.S. at 8–9.

The founders thus understood that they were creating a government for a diverse group of people and faiths (*see* JON MEACHAM, *AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION* 101 (2006)), and that religious freedom for all would necessarily require acceptance of religious pluralism (*see* JOHN WITTE JR. & JOEL A. NICHOLS, *RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT* 49 (4th ed. 2016) (citing *THE FEDERALIST NOS. 10, 51* (James Madison))).

b. Experience with persecution of Baptists by Virginia’s established Anglican Church further shaped the notion of freedom of conscience as a critical foundation for the new political order. *See* Andy G. Olree, “*Pride Ignorance and Knavery*”: *James Madison’s Formative Experiences with Religious Establishments*, 36 *HARV. J.L. & PUB. POL’Y* 211, 214–15, 226–27, 266–67 (2013). Thus, in the Virginia legislature’s debate in 1784 over Patrick Henry’s “Bill Establishing a Provision for Teachers of the Christian Religion,” these principles triumphed over a proposal to fund religious education with a property-tax levy. *See* Vincent Blasi, *Essay, School Vouchers and Religious Liberty: Seven Questions from Madison’s Memorial and Remonstrance*, 87 *CORNELL L. REV.* 783, 783–84 & n.3

(2002). Madison strenuously objected to Henry's bill as an offense against individual conscience, a threat to the health of civil government, and a gross intrusion into church governance and the free development of church doctrine. *See, e.g.,* James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶¶ 12–13, 15, *reprinted in Everson*, 330 U.S. at 63–72 (appendix to dissent of Rutledge, J.) (arguing that state support for religion would be “adverse to the diffusion of the light of Christianity,” would “tend to enervate the laws in general, . . . slacken[ing] the bands of Society,” and would infringe “‘the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience’”).

Drawing on Locke's philosophy (*see* Blasi, *supra*, at 789–90 & n.28) and its theological and political underpinnings, Madison argued that religion “must be left to the conviction and conscience of every man” (Madison, *Memorial and Remonstrance* ¶ 1). Governmental support for religion would only “weaken in those who profess [the benefitted] Religion a pious confidence in its innate excellence,” while “foster[ing] in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.” *Id.* ¶ 6.

These same arguments also spurred passage of Thomas Jefferson's Bill for Establishing Religious Freedom. *See* Merrill D. Peterson, *Jefferson and Religious Freedom*, ATLANTIC MONTHLY (Dec. 1994), <http://theatlntc>

/2idj7Xo. The Bill forthrightly declared it an “impious presumption of legislators and rulers, civil as well as ecclesiastical, . . . [to] assume[] dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others.” Thomas Jefferson, *The Virginia Statute for Religious Freedom* (Jan. 16, 1786), reprinted in *FOUNDING THE REPUBLIC: A DOCUMENTARY HISTORY* 94–95 (John J. Patrick ed., 1995). The Bill recognized that governmental favoritism “tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it.” *Id.* at 95. In short, religion neither requires nor benefits from the support of the state: “truth is great and will prevail if left to herself.” *Id.*

c. As the Supreme Court has explained: “the views of Madison and Jefferson, preceded by Roger Williams, came to be incorporated . . . in the Federal Constitution.” *Sch. Dist. v. Schempp*, 374 U.S. 203, 214 (1963) (footnote omitted). Specifically, “the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute.” *Everson*, 330 U.S. at 13 (citing *Reynolds v. United*

States, 98 U.S. 145, 164 (1878); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871); *Davis v. Beason*, 133 U.S. 333, 342 (1890)). Jefferson and Madison’s vision thus defined the original understanding of the Establishment Clause,² which is that religious freedom would be frustrated by what Jefferson termed the “loathsome combination of church and state” (Letter from Thomas Jefferson to Charles Clay (January 29, 1815), <http://bit.ly/2yq06H4>).

As Jefferson explained, historically “the clergy, by getting themselves established by law, & ingrafted into the machine of government, have been a very formidable engine against the civil & religious rights of man.” Letter from Thomas Jefferson to Jeremiah Moore (August 14, 1800), <http://bit.ly/2y9nvNn>. Or as Madison put it: “[E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. . . . What have been [their] fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in

² See, e.g., *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 184 (2012) (identifying Madison as “the leading architect of the religion clauses of the First Amendment”); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 141 (2011) (same); *Walz v. Tax Comm’n*, 397 U.S. 664, 705–06 (1970) (opinion of Harlan, J.) (same); *Flast v. Cohen*, 392 U.S. 83, 103 (1968) (same).

both, superstition, bigotry and persecution.” Madison, *Memorial and Remonstrance* ¶ 7.

“[T]he Virginia struggle for religious liberty thus became warp and woof of our constitutional tradition, not simply by the course of history, but by the common unifying force of Madison’s life, thought and sponsorship.” *Everson*, 330 U.S. at 39 (Rutledge, J., dissenting). See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 284 (Harvey C. Mansfield & Delba Winthrop eds. & trans. 2000) (1835) (observing American understanding that religion “cannot share the material force of those who govern without being burdened with a part of the hatreds to which they give rise”).

Hence, in recognition “that a union of government and religion tends to destroy government and to degrade religion” (*Engel v. Vitale*, 370 U.S. 421, 431 (1962)), “the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere” (*Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948)). The Establishment Clause “stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate.” *Engel*, 370 U.S. at 432 (quoting Madison, *Memorial and Remonstrance* ¶ 5). And it reflects

Madison and Jefferson’s “plan of preserving religious liberty to the fullest extent possible in a pluralistic society,” allowing religion to flourish while quelling the civil strife that pluralism can so easily engender. *See McCreary*, 545 U.S. at 882 (O’Connor, J., concurring).

d. The court below voiced a different set of principles, from which it concluded that the only valid concerns of the Establishment Clause are formal compulsion of religious practice and formal designation of an official church of the United States. *See* App. 16–17, 21, 29.

In addition to being at odds with the Framers’ conceptions of conscience, religious freedom, and the dangers of religiously based social strife, which together animate the Establishment Clause, the district court appears to misunderstand the First Amendment as conferring rights *on* government, when as a matter of law it confers rights *against* government. *Compare* App. 19 n.2 (“*Lemon*’s unpredictable application, coupled with the threat of having to pay plaintiffs’ attorneys’ fees pursuant to 42 U.S.C. § 1988, . . . chill religious expression [by government] that the First Amendment might protect”), *with Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 139 (1973) (Stewart, J., concurring) (“The First Amendment protects . . . from governmental interference; it confers no analogous protection on the Government.”), *NAACP v. Hunt*, 891 F.2d 1555, 1565 (11th Cir. 1990) (“[T]he First Amendment protects

citizens' speech only from government regulation; government speech itself is not protected by the First Amendment.”), *Student Gov't Ass'n v. Bd. of Trs. of the Univ. of Mass.*, 868 F.2d 473, 481 (1st Cir. 1989) (“a state entity[] itself has no First Amendment rights”), and *Estiverne v. La. State Bar Ass'n*, 863 F.2d 371, 379 (5th Cir. 1989) (“the first amendment does not protect government speech”).

e. As this Nation becomes ever more religiously diverse (see Public Religion Research Institute, *America's Changing Religious Identity* (Sept. 6, 2017), <http://bit.ly/2wboSZW>), the fundamental constitutional safeguards for the freedom to believe, or not, and to worship, or not, according to the dictates of conscience are more important today than ever before. To the extent, therefore, that there is a suggestion here that the constitutional jurisprudence of the past seventy years was ill-advised and should be rejected, *amici* can think of no better rejoinder than the following from Justice O'Connor:

At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish. . . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?

McCreary, 545 U.S. at 882 (O'Connor, J., concurring).

C. Enjoining Lehigh County’s Use Of The Latin Cross Advances Religious Freedom.

Settled law and the principles undergirding it forbid Lehigh County’s appropriation and use of the Latin cross for good reason: Official religious displays send impermissible and damaging messages both to those for whom the symbols are sacred and to those for whom they are not.

1. Symbols have concrete, real-world effects.

Symbols have power. They encapsulate many layers of meaning and often communicate complex ideas more effectively and more forcefully than mere words. “The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943); *see also Regan v. Time, Inc.*, 468 U.S. 641, 678 (1984) (Brennan, J., concurring in part and dissenting in part) (“‘one picture is worth a thousand words’”). Symbols “attract public notice, they are remembered for decades or even centuries afterwards. A symbol speaks directly to the heart” NICHOLAS JACKSON O’SHAUGHNESSY, *POLITICS AND PROPAGANDA* 102 (2004). Images of the Stars and Stripes rising from atop Mount Suribachi on Iwo Jima in 1945, and from the rubble of the World Trade Center in 2001, capture American resilience more eloquently than words ever could. “Pregnant with expressive content, the flag as readily signifies this Nation as does

the combination of letters found in ‘America.’” *Texas v. Johnson*, 491 U.S. 397, 405 (1989). That is why “[c]auses and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design.” *Barnette*, 319 U.S. at 632.

Symbols play equally influential roles in more mundane aspects of life. In commerce, for example, corporate branding is common because frequent viewing conditions consumers to respond favorably to a company’s products. See JOHN O’SHAUGHNESSY & NICHOLAS JACKSON O’SHAUGHNESSY, *PERSUASION IN ADVERTISING* 63, 67 (2004); O’SHAUGHNESSY, *supra*, at 102. And the more often one views a symbol, the stronger its effect: “Making a brand familiar by repeated exposure through advertising encourages its adoption.” O’SHAUGHNESSY & O’SHAUGHNESSY, *supra*, at 63. Repeated exposure “induces more familiarity and, as a consequence, greater liking” for what is symbolized, “independent of any conscious cognitive appraisal” of quality or value. *Id.* at 63, 67. In other words, simple, evocative symbols foster special affinity for what is being represented, in ways that empirical evidence and rational argument often cannot.

What is true for symbols generally is doubly so for religious ones, many of which are known the world over, conveying at a glance millennia

of shared history and collective aspirations and triumphs to those who hold them dear—and at times the opposite messages to those who do not.

Empirical research confirms that religious symbols can affect behavior, even when they are displayed with no intent to proselytize, persuade, or coerce. Viewing religious symbols, for example, has statistically significant effects on students' academic performance: Researchers found in controlled experiments that Catholic-school students did systematically better on standardized tests when the examiner wore a cross and systematically worse when the examiner wore a Star of David. See Philip A. Saigh, *Religious Symbols and the WISC-R Performance of Roman Catholic Junior High School Students*, 147 *J. GENETIC PSYCHOL.* 417, 417–18 (1986); Philip A. Saigh et al., *Religious Symbols and the WISC-R Performance of Roman Catholic Parochial School Students*, 145 *J. GENETIC PSYCHOL.* 159, 159–62 (1984). And in religiously diverse Lebanon, both Christian and Muslim students scored better than expected when the examiner wore the symbol of the students' faith and worse than expected when the examiner wore the symbol of the other faith. Philip A. Saigh, *The Effect of Perceived Examiner Religion on the Digit Span Performance of Lebanese Elementary Schoolchildren*, 109 *J. SOC. PSYCHOL.* 167, 168–170 (1979). The researchers attributed these effects to students' anxiety over “confessional conflict” with an authority figure, on the one

hand, and comfort in the presence of a coreligionist, on the other. *See* Saigh, *Junior High*, *supra*, at 418; Saigh, *Parochial School Students*, *supra*, at 163; Saigh, *Lebanese Elementary Schoolchildren*, *supra*, at 170–71. But regardless of the psychological mechanism at work, the studies revealed that even slight exposure to religious symbols displayed by authority figures affects students’ performance.

These effects are not limited to children. Research has also revealed that exposure to religious symbols that adult test subjects viewed as negative (such as an inverted pentagram) suppressed brain activity, whereas exposure to religious symbols that the subjects regarded as positive (such as a dove) did not. *See* Kyle D. Johnson et al., *Pilot Study of the Effect of Religious Symbols on Brain Function: Association with Measures of Religiosity*, 1 SPIRITUALITY IN CLINICAL PRACTICE 82, 82, 84 (2014), <http://bit.ly/2ifUo4M>.

Religious symbols, in short, have real, measurable effects both on adherents and on nonadherents.

2. The Latin cross is an unmistakable and powerful religious symbol.

Few things are more universally culturally familiar—to Christians and non-Christians alike—than the Latin cross. *See, e.g.*, ALISTER E. MCGRATH, *CHRISTIANITY: AN INTRODUCTION* 320 (2d ed. 2006). For nearly

two thousand years, the cross has been inextricably and inexorably linked with Christianity. *See id.* (“The cross has been the universally acknowledged symbol of the Christian faith from a very early period . . .”).

It achieved prominence about three hundred years after Jesus’ death, when the Roman Emperor Constantine adopted Christianity for the Empire. Constantine’s embrace of Christianity related concretely to the symbolic power of the cross. *See* BRUCE W. LONGENECKER, *THE CROSS BEFORE CONSTANTINE: THE EARLY LIFE OF A CHRISTIAN SYMBOL* 3 (2015). According to the early Church historian Eusebius, Constantine, while praying, “saw with his own eyes the trophy of a cross of light in the heavens, above the sun, and bearing the inscription, ‘Conquer by this.’” EUSEBIUS, *LIFE OF CONSTANTINE* 1:28 (Averil Cameron & Stuart G. Hall trans. 1999). That night, Eusebius reported, Jesus appeared to Constantine in a dream “with the same sign which he had seen in the heavens, and commanded him to make a likeness of that sign . . . and to use it as a safeguard in all engagements with his enemies.” *Id.* at 1:29.

Since that time, the cross has been consistently identified with Christianity. *See* DOUGLAS KEISTER, *STORIES IN STONE: A FIELD GUIDE TO CEMETERY SYMBOLISM AND ICONOGRAPHY* 173–74 (2004). It was used during the Crusades to distinguish the crusaders from opposing forces. *See*

JONATHAN RILEY-SMITH, *THE CRUSADES: A HISTORY* 15–16 (2d ed. 2005). And the cross was vitally important to Medieval and Renaissance art, when “the painted picture was invaluable as an interpreter and exponent of religious truths,” because it communicated the Church’s message of redemption. GEORGE WILLARD BENSON, *THE CROSS: ITS HISTORY AND SYMBOLISM* 121, 126 (1934). Thus, the countless portrayals of Jesus’ death always included the cross, not just as representational art, but to disseminate Church doctrine. *See* MCGRATH, *supra*, at 321. For similar reasons, crosses have historically adorned and been design elements of churches, inside and out. *See id.*; RICHARD TAYLOR, *HOW TO READ A CHURCH: A GUIDE TO SYMBOLS AND IMAGES IN CHURCHES AND CATHEDRALS* 46–47 (2003).

What has been true since Constantine’s time remains true today: The cross is not merely *a* symbol of Christianity; it is *the* symbol. *See* MCGRATH, *supra*, at 320; *Salazar v. Buono*, 559 U.S. 700, 725 (2010) (Alito, J., concurring in part and concurring in the judgment) (“The cross is of course the preeminent symbol of Christianity”). It is “hard to think of a symbol more closely associated with a religion than the cross is with Christianity.” KEISTER, *supra*, at 172. It is a “pure religious object” (Frank S. Ravitch, *Religious Objects as Legal Subjects*, 40 WAKE FOREST L. REV. 1011, 1023–24 (2005))—the physical embodiment of Christian tenets of

resurrection and redemption (see *Ellis v. City of La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993) (“[T]he Latin cross . . . ‘represents with relative clarity and simplicity the Christian message of the crucifixion and resurrection of Jesus Christ, a doctrine at the heart of Christianity.’” (quoting *Okrand v. City of Los Angeles*, 254 Cal. Rptr. 913, 922 (Ct. App. 1989))). Pope Francis, for example, has said that “[t]he Christian Cross is not something to hang in the house ‘to tie the room together’ . . . or an ornament to wear, but a call to that love, with which Jesus sacrificed Himself to save humanity from sin and evil.” *Pope Francis: The Cross Is the Gate of Salvation*, VATICAN RADIO (Mar. 12, 2017), <http://bit.ly/2JL4dCW>.

The potency of the cross for transmitting complex messages and encouraging Christian religious practice is why institutions and individuals choose to display it. Thus, in *Harris, supra*, a city council included a cross in the city seal because “[t]he Cross represents everything to us in Redemption, Salvation, Healing, Cleaning and Keeping Power.” 927 F.2d at 1404 (quoting council minutes). The Seventh Circuit, recognizing that the cross is among “the most dominant and recurring images of Christianity,” thus held that the city’s “seal, emblem, and logo inevitably create an unmistakable impression that the local government tacitly endorses Christianity.” *Id.* at 1414.

3. Removing the Latin cross from the seal and flag respects all Lehigh residents.

a. The County's seal and flag, like the seals and symbols in *Harris* and the other cases cited above, employ the cross's clear, unequivocal message to communicate governmental favoritism for Christianity. *See, e.g., id.* ("The . . . seal presents the quintessential violation of the 'long-standing constitutional principle that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs.'") (quoting *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 621 (1989) (opinion of Blackmun, J.)). Not only is that message forbidden by the Establishment Clause, but it disrespects and infringes the religious freedom of Lehigh residents, Christian and non-Christian alike.

As its history makes clear, the cross communicates and reinforces the spiritual identity and sense of moral worth of believers. *See Ravitch, supra*, at 1023–24. At the same time, governmental "sponsorship of a religious message . . . sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'"

Santa Fe, 530 U.S. at 309–10 (quoting *Lynch*, 465 U.S. at 688 (O’Connor, J., concurring)).

Lehigh County is home to considerable religious diversity. See Association of Religion Data Archives, *County Membership Report: Lehigh County, Pennsylvania* (2010), <http://bit.ly/2sf1g9V> (listing 63 different religious traditions represented). To many Jews, Muslims, Hindus, Sikhs, Buddhists, atheists, and others, the County’s prominent display of the central symbol of Christianity is a strong message of exclusion: It officially communicates that ‘Lehigh County is a Christian community; those who don’t share our faith do not belong.’ That message is not just wrong but dangerous. For “nothing does a better job of roiling society” than “when the government weighs in on one side of religious debate.” *McCreary*, 545 U.S. at 876.

And it is not just religious minorities and nonbelievers who may be alienated and pressured by the Latin cross here. By appropriating the preeminent symbol of Christianity to define Lehigh County as a Christian polity, rather than allowing individuals and families to form their own faith communities, the County intrudes on and denigrates the cross’s sacred status. See Ravitch, *supra*, at 1067. And it puts a thumb on the scale in favor of a preferred set of religious beliefs, thus interfering with theological commitments to the free exercise of conscience. After all,

“[v]oluntary religious belief and expression may be as threatened when government takes the mantle of religion upon itself as when government directly interferes with private religious practices.” *McCreary*, 545 U.S. at 883 (O’Connor, J., concurring). The First Amendment makes individuals, not government, the final arbiters in religious matters. *See id.*

b. The view of the court below, that the County’s message of exclusion ought to be constitutional because the seal does not “coerc[e] [citizens] into adhering to or participating in religion” (App. 21), overlooks the real pressure to conform. For when a seal with a Latin cross is displayed pervasively on government buildings and official vehicles and documents (*see* App. 10), “[a] follower of any non-Christian religion might well question [County officials’] ability to provide even-handed treatment”; and those “with no strong religious conviction might conclude that secular benefit could be obtained by becoming a Christian” (*Friedman*, 781 F.2d at 782 (“A person approached by officers leaving a patrol car emblazoned with this seal could reasonably assume that the officers were Christian police, and that the organization they represented identified itself with the Christian God.”); *cf.* *ACLU Greater Pittsburgh*, 492 U.S. at 661 (recognizing coercive effect of “the permanent erection of a large Latin cross on the roof of city hall”) (Kennedy, J., concurring in part and dissenting in part)). “When the power, prestige, and financial support of

government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.’” *Friedman*, 781 F.2d at 782 (quoting *Schempp*, 374 U.S. at 221). To suggest otherwise is to ignore human nature.

“From the beginning, this nation’s conception of religious liberty included, at a minimum, the equal treatment of all religious faiths without discrimination or preference.” *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1257 (10th Cir. 2008); see *Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”). Departures from strict neutrality—even through supposedly benign support for one faith rather than official disfavor toward another—harm both the burdened and the nominally benefitted. And to downplay the spiritual significance of the cross is to misunderstand its essential nature and abiding power, both for those who revere it and for those who do not. Any suggestion that the Latin cross transcends denominational lines and “symbolizes anything other than Christianity may be deemed offensive to Christians” by denying the cross’s deep spiritual meaning for them. *Am. Humanist Ass’n v. Md.–Nat’l Capital Park & Planning Comm’n*, 874 F.3d 195, 207 n.9 (4th Cir. 2017).

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The Establishment Clause “guarantees religious liberty and equality to people of all faiths.” *Id.* at 204. Disallowing official religious displays implies no disrespect for religion, for it is not antireligious to say that matters of faith and belief are best left to individuals, families, and their houses of worship, free from the heavy hand of government. *See Engel*, 370 U.S. at 435. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *Barnette*, 319 U.S. at 642. Lehigh County is bound to respect the beliefs of all its citizens; it may not and should not declare an orthodoxy for them.

CONCLUSION

The district court’s judgment should be affirmed; the criticisms of settled precedent should not.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32 (a)(7)(B) and Fed. R. App. P. 29(a)(5) because it contains 6474 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared using Microsoft Word 2013 in Century Schoolbook, a proportionally spaced typeface, in a size measuring 14 points or larger.

3. The text of the electronic version of this brief is identical to the text in the paper copies of this brief.

4. A virus check was performed on this brief using Webroot SecureAnywhere 9.0.19.43. No virus was detected.

5. Lead Counsel Richard B. Katskee is a member of the Bar of this Court.

/s/ Richard B. Katskee

Dated May 2, 2018

CERTIFICATE OF SERVICE

I certify that on May 2, 2018, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Richard B. Katskee

APPENDIX OF *AMICI CURIAE*

Americans United for Separation of Church and State

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization that represents more than 125,000 members and supporters across the country. Its mission is to advance the free-exercise rights of individuals and religious communities to worship, or not, as they see fit and to preserve the separation of religion and government as a vital component of democratic governance. Since its founding in 1947, Americans United has served as a party, as counsel, or as an *amicus curiae* in scores of church–state cases decided by the Supreme Court, this Court, and the federal and state courts nationwide.

American Atheists

American Atheists is a national civil-rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists

through education, outreach, and community-building and work to end the stigma associated with being an atheist in America.

American Civil Liberties Union and ACLU of Pennsylvania

The American Civil Liberties Union is a nationwide, nonprofit, non-partisan organization with more than 1.5 million members dedicated to defending the principles of liberty and equality embodied in the Constitution and the nation's civil-rights laws. The ACLU of Pennsylvania is a state affiliate of the national ACLU. For nearly a century, the ACLU has been at the forefront of efforts to safeguard the fundamental right to religious liberty, including the core constitutional protections against governmental religious favoritism.

American Humanist Association

The American Humanist Association is a national nonprofit membership organization based in Washington, D.C., with over 236 local chapters and affiliates in 47 states and the District of Columbia, and over 650,000 members and supporters, including many in Pennsylvania. Founded in 1941, AHA is the nation's oldest and largest Humanist organization. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. AHA has successfully litigated

Establishment Clause cases in federal courts from coast to coast, including several involving governmental religious displays, and crosses in particular. *E.g.*, *Am. Humanist Ass'n v. Md.–Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195 (4th Cir. 2017); *Am. Humanist Ass'n v. Borough of Roselle Park*, No. 2:16-cv-06153-JMV-MF (D.N.J. dismissed July 25, 2017) (favorable settlement); *Kondrat'yev v. City of Pensacola*, No. 3:16cv195-RV/CJK, 2017 WL 4334248 (N.D. Fla. June 19, 2017), *appeal docketed*, No. 17-13025 (11th Cir. July 6, 2017); *Am. Humanist Ass'n v. Baxter County*, 143 F. Supp. 3d 816 (W.D. Ark. 2015); *Am. Humanist Ass'n v. City of Lake Elsinore*, No. 5:13-cv-00989-SVW-OPx, 2014 WL 791800 (C.D. Cal. Feb. 25, 2014).

Anti-Defamation League

The Anti-Defamation League was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States. Today, ADL is one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. Among ADL's core beliefs is strict adherence to the separation of church and state. ADL emphatically rejects the notion that the separation principle is inimical to religion, and holds, to the contrary, that a high wall of separation is essential to the

continued flourishing of religious practice and belief in America, and to the protection of minority religions and their adherents.

Center for Inquiry

The Center for Inquiry is a nonprofit educational organization dedicated to promoting a secular society based on reason, science, freedom of inquiry, and humanist values. Through education, research, publishing, social services, and other activities, including litigation, CFI encourages evidence-based inquiry into science, pseudoscience, medicine and health, religion, and ethics. CFI believes that the separation of church and state is vital to the maintenance of a free society that allows for a reasoned exchange of ideas about public policy.

Disciples Center for Public Witness

The Disciples Center for Public Witness informs, connects, and empowers Disciples of Christ and other people of faith for ecumenical and interfaith justice advocacy. As a religious movement born on American soil, Disciples of Christ have from our beginnings had a strong commitment to religious liberty as guaranteed by the First Amendment to the Constitution of the United States. In our view, this Amendment not only guarantees freedom of conscience and religious practice to all people of faith and people with no faith, but also secures religious symbols

against political co-option and distortion by federal, state, and local government.

Disciples Justice Action Network

Disciples Justice Action Network is a multiracial, multiethnic, multigenerational, and multi-issue network of congregations and individuals within the Christian Church (Disciples of Christ), all working together to promote greater justice, peace, and the celebration of diversity in our church, our society, and our world. DJAN strongly supports the separation of church and state as the best way to guarantee equal freedom to all our churches, as well as the houses of worship of other communities of faith. This strong support leads us to oppose government misappropriation of the central symbol of the Christian faith for any purposes whatsoever.

Hadassah, the Women's Zionist Organization of America, Inc.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates, and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has a proud history of protecting the rights of women and the

Jewish community in the United States. Hadassah is a strong supporter of the strict separation of church and state as critical in preserving the religious liberty of all Americans, and especially of religious minorities.

Hindu American Foundation

The Hindu American Foundation is a nonprofit advocacy organization for the Hindu American community. Founded in 2003, HAF's work affects a range of issues, from the portrayal of Hinduism in K–12 textbooks to civil and human rights to addressing contemporary problems, such as environmental protection and interreligious conflict, by applying Hindu philosophy. HAF educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work aligns with HAF's objectives. HAF's three areas of focus are education, policy, and community. Since its inception, the Hindu American Foundation has made church–state advocacy one of its main areas of focus. From issues of religious accommodation and religious discrimination to defending the fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large and the courts about the impact of such issues on Hindu Americans as well as various aspects of Hindu belief and practice in the context of religious liberty.

Interfaith Alliance Foundation

Interfaith Alliance Foundation is a 501(c)(3) nonprofit organization that celebrates religious freedom by championing individual rights, promoting policies to protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance Foundation's members belong to 75 different faith traditions as well as to no faith tradition. Interfaith Alliance Foundation has a long history of working to ensure that religious freedom is a means of safeguarding the rights of all Americans and is not misused to favor the rights of some over others.

Muslim Advocates

Muslim Advocates is a national legal-advocacy and educational organization that works on the front lines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates advances these objectives through litigation and other legal advocacy, policy engagement, and civic education. Muslim Advocates also serves as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The issues at stake in this case directly relate to Muslim Advocates' work fighting for civil-rights protections for American Muslim communities.

National Council of Churches

The National Council of Churches is a diverse covenant community of 38 Christian denominations comprising more than 30 million people in over 100,000 congregations, from Protestant, Anglican, Orthodox, Evangelical, historic African-American, and Living Peace traditions. Like Dr. Martin Luther King Jr., we believe that the church should not be the master of the state nor should it be the servant of the state. Recognizing that religious freedom is best served when government does not express a preference for any particular denomination and that the sacred symbols of faith should never be sullied by being put to political uses, the National Council of Churches has always advocated for a healthy separation of church and state.

National Council of Jewish Women, Inc.

The National Council of Jewish Women is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Principles and Resolutions state that "Religious liberty and the separation of religion and state are constitutional principles that must be protected and preserved in order to

maintain our democratic society.” NCJW resolves to work for the enactment, enforcement, and preservation of laws and regulations that protect civil rights and individual liberties for all. Consistent with our Principles and Resolutions, NCJW joins this brief.

Sikh Coalition

The Sikh Coalition is a community-based civil-rights organization that defends civil liberties, including religious freedom, for all Americans. Our mission is to promote educational awareness and advocacy, and to provide legal representation in moving toward a world in which Sikhs and other religious minorities may freely practice their faith without bias or discrimination. The Sikh Coalition is the largest community-based Sikh civil-rights organization in the United States. Since its inception on September 11, 2001, the Sikh Coalition has worked to defend civil rights and liberties for all people, to empower the Sikh community, to create an environment where Sikhs can lead a dignified life unhindered by bias or discrimination, and to educate the broader community about Sikhism in order to promote cultural understanding and diversity. The Sikh Coalition has vindicated the rights of numerous Sikh Americans subjected to bias and discrimination because of their faith. Ensuring the rights of religious and other minorities is a cornerstone of the Sikh Coalition’s work. The

Sikh Coalition joins this *amicus* brief in the belief that the Establishment Clause is an indispensable safeguard for religious-minority communities. We believe strongly that Sikh Americans across the country have a vital interest in the separation of church and state.

Union for Reform Judaism, Central Conference of American Rabbis, Women of Reform Judaism, and Men of Reform Judaism

The Union for Reform Judaism, whose 900 congregations across North America includes 1.5 million Reform Jews, the Central Conference of American Rabbis, whose membership includes more than 2000 Reform rabbis, the Women of Reform Judaism, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, and the Men of Reform Judaism come to this issue out of our long-standing commitment to the principle of separation of church and state, believing that the First Amendment to the Constitution is the bulwark of religious freedom and interfaith amity. The concept of separation of church and state has lifted up American Jewry, as well as other religious minorities, providing more protections, rights, and opportunities than have been known anywhere else throughout history. The prominent display of religious symbols by government threatens the principle of separation of church and state, which is indispensable for the preservation

of that spirit of religious liberty which is a unique blessing of American democracy.