

May 1, 2015

By U.S. Mail

County Attorney, Bleckley County
111 E. Cherry St
Cochran, GA 31014

Re: Display of Christian flag at County Courthouse

We have received a complaint that the County has displayed the Christian flag, which features the Latin cross, at the Bleckley County Courthouse. See Tony Ortega, *Rural Georgia City Council Votes To Fly 'Christian Flag' at City Hall Over Objections By Its Own Attorney*, Raw Story, Apr. 22, 2015, <http://tinyurl.com/cochranflagattorney>. The Christian flag is apparently being displayed in connection with the Bible Reading Marathon, an annual event sponsored by the International Bible Reading Association and taking place on the steps of the county courthouse in early May. We understand that "the setup at the county courthouse is put together by a member of the county staff." *Id.* The County, moreover, does not appear to have a general policy allowing members of the public to fly flags of their choosing at the County Courthouse.

 Bible Reading Marathon updated their cover photo.
December 18, 2014 · Edited · 

Cochran, GA – JESUS IS LORD OVER COCHRAN AND BLECKLEY COUNTY, GA.



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The County's display of the Christian flag at the County Courthouse violates the Establishment Clause of the First Amendment to the U.S. Constitution. Indeed, we recently concluded a lawsuit against the City of King, North Carolina, which had flown the Christian Flag on government property. The court held that the city's original attempt to fly the Christian flag was a clear violation of the Establishment Clause; and the city then agreed to a settlement and agreed to rescind its subsequent flag policy, remove the Christian flag, and pay a substantial sum in attorneys' fees. Here, the County risks a similar outcome to the extent that it flies the Christian flag; please refrain from flying the Christian flag at the county courthouse.

Any challenge to the County's display of the Christian flag would be governed by

settled Establishment Clause rules. Under the Lemon test, government action must (1) have a secular purpose, (2) not have the principal or primary effect of advancing or inhibiting religion, and (3) not foster an excessive entanglement with religion. *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993) (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). And “[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). In sum, the City may not favor religion over non-religion, and it most certainly may not favor Christianity over other religions.

The County’s display of a flag featuring the Latin cross violates these rules. The Latin cross is “the preeminent symbol of Christianity.” *Trunk v. City of San Diego*, 629 F.3d 1099, 1110–11 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012). As a result, courts have repeatedly prohibited government bodies from displaying Latin crosses on public property. *See, e.g., id.* at 1125 (display of cross as part of veterans’ memorial “primarily conveys a message of government endorsement of religion that violates the Establishment Clause”); *Am. Atheists, Inc. v. Davenport*, 637 F.3d 1095, 1121 (10th Cir. 2010) (display of crosses by Highway Patrol to honor fallen officers “convey[s] to a reasonable observer that the state ... is endorsing Christianity”), *cert denied* 132 S. Ct. 12 (2011); *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 619 (9th Cir. 1996) (solitary cross in public park “clearly represents governmental endorsement of Christianity”); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 272 (7th Cir. 1986) (placement of lighted cross atop City fire department “unmistakably signifies Christianity”). In sum, display of the Latin cross aligns the County with religion generally—and Christianity in particular—in violation of the Establishment Clause requirement that the government stay neutral on questions of religion.

We recently obtained a similar ruling in a challenge to a local government’s display of the Christian flag. In *Hewett v. City of King*, 29 F. Supp. 3d 584 (M.D.N.C. 2014), the City had flown the Christian flag at its veterans memorial, and later removed the flag and replaced it with a so-called limited public forum for the flying of religious flags. As to its initial decision to fly the flag at city hall, the court held that “[t]here is little doubt that the original display of the Christian flag by the city would violate all three prongs of the Lemon test based on the evidence currently before the Court, and thus would violate the Establishment Clause.” *Id.* at 620 n20. The city later agreed to a settlement in which it rescinded even its fallback flag policy, agreed to stop flying the Christian flag, and paid \$500,000 in costs and fees to the plaintiff’s counsel. *See* Nicholas Elmes, *King Settles*, Stokes News, Jan. 6, 2015, <http://tinyurl.com/kingsettles>.

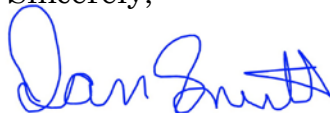
The constitutional violation is arguably even clearer here than in the cases described above, because the County flies the Christian flag in order to promote a religious event: a local Bible Reading Marathon sponsored by the International Bible Reading Association. *See* Oretaga, *supra*. The Establishment Clause prohibits the

government from affiliating itself with religious events. *See, e.g., Newman v. City of E. Point*, 181 F. Supp. 2d 1374, 1381–82 (N.D. Ga. 2002). This principle remains true whether the government hosts its own religious event or lends its name or its money to support a private organization’s event. *See, e.g., Gilfillan v. City of Phila.*, 637 F.2d 924, 930 (3d Cir. 1980). Indeed, “if the [state]-sponsorship is known, that aid connotes the state approval of a particular religion, one of the specific evils the Establishment Clause was designed to prevent.” *Id.* Here, the violation is amplified: the County flies a religious symbol on County property and does so in order to promote a private organization’s religious event.

Finally, courts have been especially wary of allowing religious displays at courthouses. Litigants and their attorneys have no choice but to encounter the Christian flag. *Cf. Glassroth v. Moore*, 335 F.3d 1282, 1292 (11th Cir. 2003) (prohibiting display of Ten Commandments monument in courthouse: “The three plaintiffs are attorneys whose professional duties require them to enter the Judicial Building regularly, and when they do so they must pass by the [Ten Commandments] monument.”). Those appearing in court are entitled to have their legal cases resolved without regard to their religious beliefs; by flying of the Christian flag in front of the courthouse, the County is sending the opposite message.

Please refrain from flying the Christian flag at the county courthouse. We would appreciate a response to this letter within fourteen days. If you have any questions, please contact Ian Smith at (202) 466–3234 or ismith@au.org.

Sincerely,



Ayesha N. Khan, Legal Director
Gregory M. Lipper, Senior Litigation Counsel
Ian Smith, Staff Attorney