

July 31, 2012

By Email & U.S. Mail

Peter Goodstein
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Flint, MI 48502
petergoodstein@hotmail.com

Re: *Fifty-Five-Foot-Tall Cross in City-Owned "Cross Park"*

Dear Mr. Goodstein:

We have received a complaint that the City of Frankenmuth displays a fifty-five-foot-tall cross in a City-owned park on South Main Street. Such a display is unconstitutional, as the cross is the preeminent symbol of Christianity, and the City has compounded the violation by emphasizing this cross's Christian significance since its erection. The cross was dedicated in 1976 at a ceremony that included prayers delivered by Rev. John Deterding and Father Charles Keho. Then-Mayor of Frankenmuth Elmer Simon declared at that ceremony that "[t]wo thousand years ago the Lord of all history established an unforgettable symbol The simple cross of Christ assures us that life does not end with death." Mayor Simon went on to say that "[f]rom our local heritage, this Christian symbol suggests that we are also a community under Christ." In recent years, the City has continued to identify the Cross as "a tribute to the religious commitment of the Frankenmuth community." Because the Establishment Clause of the First Amendment to the U.S. Constitution prohibits government bodies from promoting religion on public land, we request that the City promptly remove the cross.



The cardinal rule of the Establishment Clause is that governmental entities cannot take any action that "has the purpose or effect of 'endorsing' religion." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989). Instead, "governmental neutrality between religion and religion, and between religion and nonreligion" must be maintained. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

By displaying a cross on public land, the City unlawfully endorses and promotes Christianity. The Latin cross is “the unmistakable symbol of Christianity.” *ACLU v. City of St. Charles*, 794 F.2d 265, 267 (7th Cir. 1986). As a result, the federal courts have repeatedly prohibited government bodies from displaying solitary crosses on public land. See, e.g., *Trunk v. City of San Diego*, 629 F.3d 1099, 1125 (9th Cir. 2011) (display of cross as part of veteran’s memorial “primarily conveys a message of government endorsement of religion that violates the Establishment Clause”), *cert. denied*, 132 S. Ct. 2535 (2012); *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); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2007) (placement of cross on public land by private parties violated the Establishment Clause because “the cross may reasonably be perceived as governmental endorsement of Christianity”) (quotation marks omitted); *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) (solitary cross in public park “clearly represents governmental endorsement of Christianity”); *Gonzales v. N. Twp. of Lake Cnty.*, 4 F.3d 1412, 1423 (7th Cir. 1993) (placement of cross in public park by a private organization was “permanent government speech in a prominent public area that endorses religion, and violates the Establishment Clause”); *City of St. Charles*, 794 F.2d at 267, 272 (placement of lighted cross atop City fire department “unmistakably signifies Christianity”); *ACLU v. Rabun Cnty. Chamber of Commerce*, 698 F.2d 1098, 1110–11 (11th Cir. 1983) (large, lighted cross displayed in state park was unconstitutionally erected “for a religious purpose”).

Here, the City’s endorsement of Christianity is amplified by the Mayor’s statement at the Cross’s dedication that the Cross is a “Christian symbol [that] suggests that [Frankenmuth is] also a community under Christ.” The City’s recent description of the Cross as “a tribute to the religious commitment of the Frankenmuth community” further strengthens the religious message conveyed by the display of the cross on public land.

Please promptly remove the cross from public property. If a private entity is willing to accept ownership of the cross, the cross could then be constitutionally displayed on that entity’s private property. Failure to remove the cross will expose the City to a significant risk of litigation. We would appreciate a response to this letter within thirty days. If you have any questions, you may contact Benjamin Hazelwood at (202) 466-3234 or hazelwood@au.org.

Sincerely,



Ayesha N. Khan, Legal Director
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* Admitted in New York only. Directly supervised by Ayesha N. Khan, a member of the D.C. Bar.