

FREEDOM FROM RELIGION *foundation*

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January 12, 2016

SENT VIA EMAIL & U.S. MAIL

pleach@albanyca.org, citycouncil@albanyca.org

Penelope Leach
Albany City Manager
1000 San Pablo Ave.
Albany, CA 94706

Albany City Council
1000 San Pablo Ave.
Albany, CA 94706

Re: Display of Cross on Government Property

Dear Ms. Leach and City Councilors:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of a cross on public property. We were contacted by a concerned local resident. FFRF is a national nonprofit organization with more than 23,000 members across the country, including over 3,000 members in California and a chapter in Sacramento. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that a large Latin cross sits on government property at the summit of Albany Hill. We understand that the cross is lit at Easter and on other occasions. We also understand that the land the cross sits on was donated to the government in the 1970's, and that it is currently in disrepair. We are informed that there are safety issues with the cross's wiring and its foundation.

I am writing to ask you to promptly remove this religious symbol from public property because it violates the Constitution.

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 cross universally represents the Christian religion, and only the Christian religion. *See, e.g., 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).

The Ninth Circuit Court of Appeals, which has jurisdiction over California, has 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); *Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and Cnty. of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *see also Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777 (10th Cir. 1985) (en banc); *ACLU v. Rabun Cnty.*

Chamber of Commerce, 698 F.2d 1098 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984).

The circumstances in *Separation of Church and State Comm. v. City of Eugene* are very similar to the facts here. In that case, private individuals put up a large, lit cross in a donated public park. The Ninth Circuit held that there was “no question that the Latin cross is a symbol of Christianity, and that its placement on public land by the City of Eugene violates the Establishment Clause.” 93 F.3d at 620. Despite the involvement of private citizens, “The maintenance of the cross in a public park by the City of Eugene may reasonably be perceived as providing official approval of one religious faith over others.” *Id.* at 619.

I understand that the land where the cross sits was the subject of litigation in a 1985 California Supreme Court case. *Thompson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139, 699 P.2d 316. The cross’s constitutionality was not at issue in that case, and while the Supreme Court recounted a lower court’s opinion of the cross, it itself did not offer any opinion on the cross’s constitutionality, even in passing.

The government’s permanent display of a Latin cross on public land is unconstitutional. The inherent religious significance of the Latin cross is undeniable and is not disguisable. No supposed secular purpose could detract 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.

The illumination of the cross at Easter and Christmas compounds the problem by suggesting that the City of Albany is celebrating Easter, a wholly religious holiday, and the religious aspects of Christmas. The Supreme Court has stated: “The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 601 (1989).

The cross unabashedly creates the perception of government endorsement of Christianity. It conveys the message to non-Christians, including the one in five Americans who are not religious, that they are not “favored members of the political community.”¹ *Id.* at 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Albany Hill political outsiders.

Decades of federal case law, as well as safety concerns, dictate that the city must remove the cross from Albany Hill. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Madeline Ziegler
Cornelius Vanderbroek Legal Fellow
Freedom From Religion Foundation

¹ “America’s Changing Religious Landscape, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.