

October 6, 2014

*Via Email*

Mr. Chris Davis, Sheriff  
112 Thompson Street  
Waverly, TN 37185  
[redwards@humphreyscosheriff.com](mailto:redwards@humphreyscosheriff.com)

Jessie R. Wallace, County Executive  
102 Thompson Street  
Waverly, TN 37185  
[jwallace@humphreystn.com](mailto:jwallace@humphreystn.com)  
[sbrown@humphreystn.com](mailto:sbrown@humphreystn.com)

**Re: Unconstitutional Seal**

Dear Mr. Davis and Mr. Wallace,

A concerned citizen has contacted our office to request assistance with regard to what is correctly perceived as a constitutional violation. It is our understanding that the Humphreys County Sheriff's Office has adopted a blatantly Christian seal with the word "Christ" prominently displayed at the top of the seal and with a Christian cross displayed at the seal's center. An image of the seal, taken from the County's Facebook page (<https://www.facebook.com/HumphreysSheriff>) is displayed below. This government seal, which clearly promotes religion over non-religion and Christianity in particular, is a clear violation of the Establishment Clause of the First Amendment of the United States Constitution.



The American Humanist Association (“AHA”) is a national nonprofit organization with over 30,000 members and supporters across the country, over 260 chapters and affiliates nationwide, and an online following of over 330,000. The Appignani Humanist Legal Center, AHA’s legal arm, includes a network of cooperating attorneys from around the country, including Tennessee. The center has litigated cases involving church-state separation and the rights of Humanists, other non-theists, as well as Christians, in state and federal courts nationwide.

The First Amendment’s Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the “government [to] remain secular, rather than affiliate itself with religious beliefs or institutions.” *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). The government “may not promote or affiliate itself with any religious doctrine or organization,” “discriminate among persons on the basis of their religious beliefs and practices.” *Id.* at 590-91. Indeed, the Establishment Clause “create[s] a complete and permanent separation of the spheres of religion activity and civil authority.” *Everson v. Bd. of Ed.*, 330 U.S. 1, 31-32 (1947). Separation “means separation, not something less.” *McCollum v. Bd. of Ed.*, 333 U.S. 203, 231 (1948). In short, the government “may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.” *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,<sup>1</sup> pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

The courts have been virtually unanimous in holding that a government display of the cross is unconstitutional. *See, e.g., Trunk v. City of San Diego*, 629 F.3d 1099, 1066 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012); *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1162 (10th Cir. 2010), *cert. denied*, 132 S. Ct. 12 (2011) (individualized memorial crosses for state troopers on public roadside unconstitutional); *Carpenter v. City & County of San Francisco*, 93 F.3d 627, 630 (9th Cir. 1996); *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) (war memorial cross in public park unconstitutional); *Robinson v. City of Edmond*, 68 F.3d 1226, 1232 (10th Cir. 1995) (cross on city seal unconstitutional); *Ellis v. La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993) (same); *Gonzales v. North Township of Lake County*, 4 F.3d 1412, 1418 (7th Cir. 1993) (war memorial crucifix in public park unconstitutional); *Harris v. City of Zion*, 927 F.2d 1401, 1414 (7th Cir. 1991) (cross on city seal unconstitutional); *ACLU v. City of St. Charles*, 794 F.2d 265 (7th Cir. 1986) (lighted cross on government building unconstitutional); *Friedman v. Board of County Commissioners*, 781 F.2d 777, 782 (10th Cir. 1985) (en banc) (cross on city seal unconstitutional); *ACLU v. Rabun County Chamber of*

---

<sup>1</sup> The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

*Commerce, Inc.*, 698 F.2d 1098 (11th Cir. 1983) (war memorial cross unconstitutional); *Gilfillan v. City of Philadelphia*, 637 F.2d 924, 930 (3d Cir. 1980) (platform containing a 36-foot-tall cross unconstitutional); *Am. Humanist Ass'n v. City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, \*23-24 (C.D. Cal. 2014) (city monument displaying cross headstone markers held unconstitutional); *Cabral v. City of Evansville*, 958 F. Supp. 2d 1018, 1029 (S.D. Ind. 2013) (“Accordingly, the City is hereby PERMANENTLY ENJOINED from permitting the erection of the display as described and referred to herein as ‘Cross the River’ within the Riverfront area.”); *Am. Atheists, Inc. v. City of Starke*, 2007 U.S. Dist. LEXIS 19512, \*14 (M.D. Fla. 2007) (cross on city water tower unconstitutional); *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (cross on city seal unconstitutional); *Granzeier v. Middleton*, 955 F. Supp. 741, 746 (E.D. Ky. 1997), *aff'd*, 173 F.3d 568 (6th Cir. 1999) (sign containing a 4-inch-high crucifix unconstitutional); *Mendelson v. St. Cloud*, 719 F. Supp. 1065 (M.D. Fla. 1989) (cross on government building unconstitutional); *Jewish War Veterans v. U.S.*, 695 F. Supp. 3 (D.D.C. 1988) (war memorial cross on military base unconstitutional); *ACLU v. Mississippi State General Services Admin.*, 652 F. Supp. 380, 382 (S.D. Miss. 1987) (illuminated cross on state owned-building unconstitutional); *Libin v. Greenwich*, 625 F. Supp. 393, 399 (D. Conn. 1985) (3-by-5 foot cross on firehouse unconstitutional); *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984), *reh'g denied*, 763 F.2d 180 (5th Cir. 1985) (war memorial containing crosses and Star of David in public park unconstitutional); *Fox v. City of Los Angeles*, 22 Cal.3d 792 (1978) (cross on city hall unconstitutional). *See also Allegheny*, 492 U.S. at 606-07 (explaining that there is “no doubt, ‘ . . . that the [Establishment] Clause forbids a city to permit the permanent erection of a large Latin cross . . . because such an obtrusive year-round religious display would place the government’s weight behind an obvious effort to proselytize on behalf of a particular religion.”). Many courts have specifically ruled that a cross featured on a government seal violates the Establishment Clause.<sup>2</sup>

Where, as here, the government promotes an “intrinsically religious” display, such as a seal with a cross, it “cannot meet the secular purpose prong.” *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). *See also Stone v. Graham*, 449 U.S. 39, 41 (1980) (holding that “[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact.”); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd* 472 U.S. 38 (1985); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991). When the government utilizes “religious symbols . . . its ability to articulate a secular purpose becomes the crucial focus under the Establishment Clause.” *Rabun*, 698 F.2d at 1110 (Latin cross in public park held unconstitutional under *Lemon*) (internal footnote omitted).

Federal courts have uniformly recognized that the “cross is the preeminent symbol of Christianity.” *Trunk*, 629 F.3d at 1110-11 (citing *Buono v. Norton*, 371 F.3d 543, 544-45 (9th Cir. 2004); *Eugene*, 93 F.3d at 620; *Carpenter*, 93 F.3d at 630; *Ellis*, 990 F.2d at 1525-27).<sup>3</sup> As such,

---

<sup>2</sup> *See Robinson v. City of Edmond*, 68 F.3d 1226, 1231 (10th Cir. 1995); *Ellis v. La Mesa*, 990 F.2d 1518, 1528 (9th Cir. 1993); *Harris v. Zion*, 927 F.2d 1401 (7th Cir. 1991); *ACLU v. City of Stow*, 29 F. Supp. 2d 845, 853 (N.D. Ohio 1998).

<sup>3</sup> *See also Robinson*, 68 F.3d at 1232 (“The religious significance and meaning of the Latin or Christian cross are unmistakable.”); *Gonzales*, 4 F.3d at 1418 (“we are masters of the obvious, and we know that the crucifix is a Christian symbol . . . In fact, the crucifix is arguably the quintessential Christian symbol.”); *City of St. Charles*, 794 F.2d at 271 (“It is, indeed, the principal symbol of Christianity . . .

the courts have clearly ruled that the government has no secular purpose in displaying the cross on its property or on its insignia. *See Gonzales*, 4 F.3d at 1421 (the court could find “no secular purpose served by a crucifix”); *Harris*, 927 F.2d at 1414 (small cross on city logo); *Rabun*, 698 F.2d at 1110-11 (“even if the . . . purpose for constructing the cross was to promote tourism, this . . . would not have provided a sufficient basis for avoiding conflict with the Establishment Clause” as secular means were available); *City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, \*23-24; *City of Starke*, 2007 U.S. Dist. LEXIS 19512, \*14; *Eckels*, 589 F. Supp. 222 (war memorial cross); *Gilfillan*, 637 F.2d at 930 (platform containing a 36-foot-tall cross); *Mendelson*, 719 F. Supp. at 1069 (the cross is “unmistakably a universal symbol of Christianity, and it [therefore] has no secular purpose.”); *Mississippi State*, 652 F. Supp. at 382 (“it is clear that the overriding and motivating purpose of the display is to convey a message of endorsement of the Christian religion.”); *Libin*, 625 F. Supp. at 399 (explaining that “[b]ecause the cross has no meaning in the context of the celebration of Christmas except as a religious symbol, there can be no secular purpose for including it in a Christmas display.”); *Fox v. City of Los Angeles*, 22 Cal.3d 792 (1978) (cross on city hall had religious purpose).

If the government “intended by their official activity to create a display of singularly religious significance, then their action was illegal.” *Mississippi State*, 652 F. Supp. at 383. Here, as in the many cases cited above, there is no secular purpose “for the display of the cross.” *Id.* Indeed, the “only purpose which can be ascribed to the display of the cross is to either advance or endorse the Christian religion.” *Id.*

Yet regardless of the County’s purpose in displaying the cross and the word “Christ” prominently on its seal, the County’s seal clearly fail *Lemon’s* effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The “prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Allegheny*, 492 U.S. at 593 (1989) (citation omitted). Whether “the key word is ‘endorsement,’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]” *Id.* at 593-94. Even the “**mere appearance** of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion,” and, therefore, has the impermissible effect of advancing religion. *Larkin v. Grendel’s Den*, 459 U.S. 116, 126-27 (1982). The Supreme Court has stated that:

an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

---

When prominently displayed on a [government property] . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be.”); *Friedman*, 781 F.2d at 782 (government’s prominent use of seal bearing Latin cross “conveys a strong impression to the average observer that Christianity is being endorsed”); *Rabun*, 698 F.2d at 1103 (“the latin cross is a universally recognized symbol of Christianity.”).

*School Dist. v. Ball*, 473 U.S. 373, 390 (1985) (internal citation omitted). By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff'd*, 173 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) “clip art” cross violated the Establishment Clause reasoning, “the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was not intended, but this made no difference in the observer’s perception.”

Due to the inherently religious nature of a cross, the County’s display of it on government insignia inevitably conveys the message that Christianity is preferred. *See Trunk*, 629 F.3d at 1109. Numerous courts have likewise held that the government’s display of a cross unconstitutionally endorses Christianity and thus fails the second prong of *Lemon*.<sup>4</sup> *See also Mendelson*, 719 F. Supp. at 1069 (“no federal case has ever found the display of a Latin cross on public land by a state or state subdivision to be constitutional.”); *Jewish War Veterans*, 695 F. Supp. at 8 (“defendants are unable to cite a single federal case where a cross . . . has survived Establishment Clause scrutiny.”); *Mississippi State*, 652 F. Supp. at 384-385 (“in no other federal case either before or since *Lynch v. Donnelly* has the public display of a cross by a state or subdivision thereof been found to be constitutional.”). There “is *no question* that the Latin cross is a symbol of Christianity, and that its placement on public [property] . . . violates the Establishment Clause.” *City of Eugene*, 93 F.3d at 620 (emphasis added). *See also City of St. Charles*, 794 F.2d at 271 (“[w]hen prominently displayed on [government property] . . . the cross dramatically conveys a message of governmental support for Christianity.”).

For instance, in *Ellis*, the Ninth Circuit held that a small cross on the City of La Mesa insignia unconstitutionally communicated a message of government preference for religion. 990 F.2d at 1525-27. The seal depicted “several hills below two clouds. The cross [was] located at the center . . . atop the highest hill and between the two clouds.” *Murphy v. Bilbray*, 782 F. Supp. 1420, 1412 (S.D. Cal. 1991). Finding the seal unconstitutional, the district court relied on *Harris*, which involved “a challenge to a seal within which the Latin cross was no more prominent than several secular images.” *Id.* at 1436 n.38. The Seventh Circuit in *Harris* held that the City of Zion’s seal, which contained a shield depicting a Latin cross, dove, crown and scepter, and the name “Zion,” violated both the purpose and effect prongs of *Lemon*. 927 F.2d at 1412. The court reasoned that “the City may not honor its history by retaining the blatantly sectarian seal.” *Id.* at 1414-15. The court also invalidated another city’s seal that depicted in just one of its quadrants, the Latin cross, reasoning: “The images on the seal are not just neutral snapshots of the community; they are charged with endorsement.” *Id.* at 1412.<sup>5</sup> The rationale of these cases is

---

<sup>4</sup> *See, e.g., Trunk*, 629 F.3d at 1110-11; *Duncan*, 616 F.3d 1145 (individualized memorial crosses for state troopers on public roadside); *Eugene*, 93 F.3d 617 (war memorial cross erected by private group in public park); *Gonzales*, 4 F.3d 1412 (war memorial crucifix in public park); *Rabun*, 698 F.2d 1098 (cross erected by private group on public land); *City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180; *Jewish War Veterans*, 695 F. Supp. 3 (memorial cross on military base); *Eckels*, 589 F. Supp. 222 (three crosses and Star of David war memorial in public park). *See also Allegheny*, 492 U.S. at 599 (using the display of a cross in a government building as the prototypical example of a display that would convey government “endorsement of Christianity”); *Carpenter*, 93 F.3d at 630; *Ellis*, 990 F.2d at 1525- 27.

<sup>5</sup> *See also Robinson*, 68 F.3d at 1232 (cross on seal unconstitutionally endorsed religion even if it reflected the importance of the Catholic Church in the Southwest); *Friedman*, 781 F.2d 777; *City of Stow*, 29 F. Supp. 2d 845.

that the “depiction of the pre-eminent symbol of a particular faith” on a government “seal conveys a message of approval that is simply inconsistent with the first amendment.” *Id.* at 1412.

Here, as in the above cases, there is no question that “a reasonable observer would perceive [the cross] as projecting a message of religious endorsement.” *Trunk*, 629 F.3d at 1118. In turn, the County is sending a “stigmatic message to 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 community. *Trunk*, 629 F.3d at 1109, 1125 (citations omitted). This “message violates the Establishment Clause.” *Id.* at 1125. *See id.* at 1124-25 (the use of the “Christian symbol to honor all veterans sends a strong message of endorsement and exclusion. It suggests that the government is so connected to a particular religion that it treats that religion’s symbolism as its own, as universal. To many non-Christian veterans, this claim of universality is alienating.”). The seal in this case is even more egregious than those in similar cases because it not only features the cross and only the cross, *cf. Harris*, 927 F.2d at 1412, but it also features the word “Christ” at the top of the seal, leaving no room for doubt that the County endorses Christianity to the exclusion of all other religions. It is difficult to imagine a more egregious endorsement of religion than this.

The third *Lemon* prong, the question of excessive government entanglement with religion, is also violated here. Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion “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.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).<sup>6</sup> A “government act is more likely to be found unconstitutional if it generates religion-based political division.” *Jewish War Veterans*, 695 F. Supp. at 14. This includes any “polarization of the community” generated by the religiously-tinged public debate about erecting a religious monument. *Id.* Indeed, several courts have specifically ruled that government cross displays foster unconstitutional entanglement with religion.<sup>7</sup> In this situation, “where the underlying issue is the deeply emotional one of Church-State relationships, the potential for seriously divisive political consequences needs no elaboration.” *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 797 (1973).

Finally, it bears emphasis that, in addition to violating the Establishment Clause under all three prongs of the *Lemon* test, *supra*, the County’s seal also violates the Establishment Clause under the “coercion test.” *Lee v. Weisman*, 505 U.S. 577, 587, 588-99 (1992) (recognizing that unconstitutional coercion may be exercised both directly and indirectly). Although “coercion is not necessary to prove an Establishment Clause violation,” its presence “is an obvious indication that the government is endorsing or promoting religion.” *Id.* at 604 (Blackmun, J., concurring).

---

<sup>6</sup> *See also Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 175 n.36 (3d Cir. 2002) (“‘Entanglement’ still matters, however, . . . in the rare case where government delegates civic power to a religious group.”) (citing *Grumet and Larkin*).

<sup>7</sup> *See Rabun*, 698 F.2d at 1109-10 (affirming district court ruling that “the presence of the cross created a potential for political divisiveness”); *City of Starke*, 2007 U.S. Dist. LEXIS 19512, 19; *Mendelson*, 719 F. Supp. at 1071; *Jewish War Veterans*, 695 F. Supp. at 14 (war memorial cross was unconstitutional because it generated “religion-based political division.”).

In *Friedman v. Board of County Comm'rs*, 781 F.2d 777, 781-82 (10th Cir. 1985), the Tenth Circuit held that a county's use of a seal bearing a Latin cross and the Spanish motto, "Con Esta Vencemos," violated the Establishment Clause. In so ruling, the court found it particularly troubling that the "county prominently displays the seal on county vehicles and uses it to identify law enforcement officers." *Id.* As such, a reasonable observer could reasonably believe that "the county government was 'advertising' the Catholic faith." *Id.* To that extent, the seal impermissibly advanced religion under the second prong of *Lemon*. The court's analysis went further though, observing the heightened risk of coercion attendant in any such exercise of religion in the police force:

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. A follower of any non-Christian religion might well question the officers' ability to provide even-handed treatment. A citizen with no strong religious conviction might conclude that secular benefit could be obtained by becoming a Christian. "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.**"

*Id.* (citing *Schempp*, 374 U.S. 203, 221 (1963); *Engel v. Vitale*, 370 U.S. 421, 430-31 (1962)). See also *Robinson v. City of Edmond*, 68 F.3d 1226, 1231 (10th Cir. 1995); *Ellis v. La Mesa*, 990 F.2d 1518, 1528 (9th Cir. 1993) ("The use of the insignia is particularly troubling. It is attached to uniforms, included on official correspondence, and prominently displayed on police motor vehicles. A design that focuses attention on the cross, when affixed to the uniforms of government officials, creates the appearance of religious preference."); *Harris v. Zion*, 927 F.2d 1401 (7th Cir. 1991) (same); *ACLU v. City of Stow*, 29 F. Supp. 2d 845, 853 (N.D. Ohio 1998).

In view of the aforementioned authorities, it is clear that the County is in violation of the Establishment Clause. This letter serves as an official notice of the unconstitutional activity and demands that the County eliminate all religious references from its seal immediately. We kindly ask that you notify us in writing within seven (7) days of receipt of this letter setting forth the steps you will take to rectify this constitutional infringement. Thank you for turning your attention to this important matter.

Sincerely,  
Monica Miller, Esq.