

# FREEDOM FROM RELIGION *foundation*

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June 28, 2017

**SENT VIA EMAIL & U.S. MAIL**

**cbennett@cityofsalem.net**

The Honorable Chuck Bennett  
Mayor  
City of Salem  
555 Liberty St. SE RM 220  
Salem, OR 97301

Re: Unconstitutional Roadside Cross

Dear Mayor Bennett:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the City of Salem. A concerned local resident contacted us. FFRF is a national nonprofit organization with 29,000 members across the country, including more than 700 members in Oregon. Our purpose is to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that a large roadside cross is on permanent display off of Keubler Boulevard, about 4 feet tall, just west of Stroh Lane, between Stroh Lane and Battlecreek Road in South Salem. According to our complainant, landscaping for the display is regularly maintained and the city maintains the grass around the display. While it is unclear to us who originally erected the display, the apparent maintenance by the city leads one to believe it is now city property. A picture of the roadside cross is enclosed.

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 Latin cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) (“There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land . . . violates the Establishment Clause”); *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).

A majority of federal courts have 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*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Carpenter v. City and Cty. of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of Cty. Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985)(en banc); *ACLU v. Rabun Cty. Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). While most of the aforementioned cases involved the display of a Latin cross in public parks, the display on any government property, including government roadside property, would also violate the Establishment Clause.

In the only case to date addressing the constitutionality of roadside crosses, the Tenth Circuit Court of Appeals found roadside crosses on government land to be an unconstitutional government endorsement of Christianity. *See Am. Atheists, Inc. v. Duncan*, 637 F.3d 1095 (10th Cir. 2010), *cert. denied*, 132 S. Ct. 12 (2011). The crosses were unconstitutional despite the fact that the crosses were privately funded, owned, and maintained and the private agency retained the right to remove them at any time. *Id.* The court further found that the religious memorials were unconstitutional even though the state agency that allowed the religious memorials stated that they “neither approve[d] or disapprove[d]” of the memorials. *Id.*

The Tenth Circuit concluded that “that the cross memorials would convey to a reasonable observer that the state . . . is endorsing Christianity” because “a memorial cross is not a generic symbol of death; it is a Christian symbol of death that signifies or memorializes the death of a Christian.” *Id.* at 1121-22.

It is blatantly unconstitutional for the City of Salem to display a patently religious symbol like a Christian cross on a public roadside. The cross, displayed on Keubler Boulevard, unabashedly creates the perception of government endorsement of Christianity. It conveys the message to the 23% of Americans who are not religious<sup>1</sup> that they are not “favored members of the political community.” *Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 594 (1989). The cross has an exclusionary effect, making non-Christian and non-believing residents of Oregon into political outsiders.

We ask you to remove the cross from Keubler Boulevard, and any other Latin cross display on Salem public property immediately, and direct the display to be moved to a more appropriate private location. We ask for a prompt response from you, in writing, informing us of the steps you are taking to resolve this matter.

Sincerely,



Rebecca S. Markert  
Staff Attorney

RSM:rmb

Enclosure

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<sup>1</sup> *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).

