

FREEDOM FROM RELIGION *foundation*

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February 10, 2015

SENT VIA U.S. MAIL & EMAIL TO: apgarr@DeLand.org

The Honorable Robert F. Apgar
Mayor of DeLand
120 S. Florida Ave.
DeLand, FL 32720

Re: Inappropriate Religious City Seal

Dear Mayor Apgar:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the unconstitutional official seal of the City of DeLand (City). We were contacted by several concerned local citizens. FFRF is a national nonprofit organization with more than 21,500 members across the country, including more than 1,000 members in Florida and a local chapter, the Central Florida Freethought Community. Our purpose is to protect the constitutional principle of separation between state and church.

As you know, the DeLand seal contains a Latin cross alongside an anchor, behind a heart. We understand that the City prominently displays this seal, and that the seal is published on the City website, and is affixed to City proclamations, resolutions, and vehicles. We understand the City has received past complaints about the seal, and that it continues to be divisive.

The inclusion of a Latin cross on the official city seal violates the Establishment Clause of the First Amendment. The Establishment Clause, "at the very least, prohibits government from appearing to take a position on questions of religious belief or from 'making adherence to a religion relevant in any way to a person's standing in the political community.'" *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 594 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984)). The City's inclusion of the cross signals government endorsement of Christianity.

Federal courts have ruled that similar seals violate the Establishment Clause. The cities of Zion, Illinois, Edmond, Oklahoma, and La Mesa, Calif., among others, all had seals containing Latin crosses that were struck down as unconstitutional. Even when the Latin cross is not the prominent feature of the seal, courts have required

its removal because there is no reasonable secular justification for the inclusion of a cross on an official government seal.

The DeLand seal is unlike another seal under contention in *King v. Richmond County*, 331 F.3d 1271 (2003). The court emphasized that each Establishment Clause challenge requires a “fact-specific, case-by-case analysis.” *Id.* at 1276. In the eyes of the court, the seal, which contained a depiction of the Ten Commandments, was permissible only because “a pictograph of the Ten Commandments intertwined with the sword helps [even illiterate] viewers recognize the legal validity of documents.” *Id.* at 1278.

A Latin cross is a predominantly Christian symbol that, unlike the tablets of the Ten Commandments, cannot possibly convey a message of lawgiving or legal validity. Rather than sending a permissible message of legal authenticity to citizens, the DeLand seal conveys the message that the City favors Christianity.

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*, 132 S.Ct. 2535 (2012); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm’rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun County 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 would also violate the Establishment Clause. Justice Kennedy has stated, “I doubt not, for example, that the Clause forbids a city to permit a permanent erection of a large Latin cross on the roof of city hall...” *Allegheny*, 492 U.S. at 661 (Kennedy J., concurring in part, dissenting in part). Such a religious display “would place the government weight behind an obvious effort to proselytize on behalf of a particular religion.” *Id.*

The fact that the City seal has been in use for over 130 years does not make it legal; a constitutional violation does not become permissible simply because it has been ongoing for many years. In fact, it can be argued that the longevity of this violation makes it far worse. The City re-publishes the Latin cross each time the seal is used, reiterating that the City endorses Christianity on an ongoing basis. This repeated use of the seal excludes non-Christians and violates the Constitution.

Even if the maintenance of the current seal was legally permissible, the City should take the opportunity to remove exclusionary religious iconography from its seal. Updating the seal, and thereby correcting a 130-year old mistake, would show the citizens of DeLand that their City does not favor any one religion. By remaining neutral on matters of religion, the City would embrace the diversity of its citizens, including non-Christian religious citizens and citizens who have no religion at all.

Fully 19% of Americans are nonreligious, including one-third of adults aged 18-29.¹ Leaving a sectarian religious symbol on the DeLand seal ostracizes these citizens and makes them feel like 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 political community.” *Id.* at 625 (1989) (O’Connor J., concurring) (quoting *Lynch*, 465 U.S. at 688).

In order to demonstrate the City’s respect for our secular Constitution, and the diverse range of religious and nonreligious citizens living in DeLand, we urge you to immediately discontinue using this seal and to adopt a representation of the City that is inclusive of all your citizens.

We request a written response outlining what steps the City is taking to resolve this matter.

Very truly,



Annie Laurie Gaylor
Co-President

ALG:rdj

¹ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012).