

May 1, 2015

By Email & U.S. Mail

City of Cochran

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Cochran City Hall

112 West Dykes Street

Cochran, GA 31014

Re: Display of Christian flag at City Hall

We have received several complaints that the City, against the advice of the City Attorney, is flying the Christian flag at City Hall. See Claire Davis, *Cochran Council Votes To Fly Christian Flag at City Hall*, WMAZ, Apr. 17, 2015, <http://tinyurl.com/cochranflag>; Tony Ortega, *Rural Georgia City Council Votes To Fly 'Christian Flag' at City Hall Over Objections By Its Own Attorney*, Raw Story, Apr. 22, 2015, <http://tinyurl.com/cochranflagattorney>. The Christian flag features a Latin cross. The City is apparently flying the Christian flag to promote a local Bible Reading Marathon sponsored by the International Bible Reading Association.

The City Attorney's concerns were well-founded: the City's display of the Christian flag on public property violates the Establishment Clause of the First Amendment to the U.S. Constitution. Indeed, we recently concluded a lawsuit against the City of King, North Carolina, which had flown the Christian Flag on govern-



Tony Ortega, *Rural Georgia City Council Votes To Fly 'Christian Flag' at City Hall Over Objections By Its Own Attorney*, Raw Story, Apr. 22, 2015, <http://tinyurl.com/cochranflagattorney>

ment property. The court held that the city’s original attempt to fly the Christian flag was a clear violation of the Establishment Clause; and the city then agreed to a settlement and agreed to rescind its subsequent flag policy, remove the Christian flag, and pay a substantial sum in attorneys’ fees. The City of Cochran risks a similar outcome; please remove the Christian flag from City Hall and refrain from flying it in the future.

Any challenge to the City’s display of the Christian flag would be governed by settled Establishment Clause rules. Under the Lemon test, government action must (1) have a secular purpose, (2) not have the principal or primary effect of advancing or inhibiting religion, and (3) not foster an excessive entanglement with religion. *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993) (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). And “[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). In sum, the City may not favor religion over non-religion, and it most certainly may not favor Christianity over other religions.

The City’s display of a flag featuring the Latin cross violates these rules. The Latin cross is “the preeminent symbol of Christianity.” *Trunk v. City of San Diego*, 629 F.3d 1099, 1110–11 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012). As a result, courts have repeatedly prohibited government bodies from displaying Latin crosses on public property. See, e.g., *id.* at 1125 (display of cross as part of veterans’ memorial “primarily conveys a message of government endorsement of religion that violates the Establishment Clause”); *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); *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 619 (9th Cir. 1996) (solitary cross in public park “clearly represents governmental endorsement of Christianity”); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 272 (7th Cir. 1986) (placement of lighted cross atop City fire department “unmistakably signifies Christianity”). In sum, display of the Latin cross aligns the City with religion generally—and Christianity in particular—in violation of the Establishment Clause requirement that the government stay neutral on questions of religion.

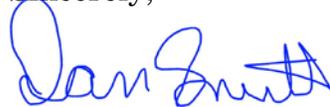
We recently obtained a similar ruling in a challenge to a local government’s display of the Christian flag. In *Hewett v. City of King*, 29 F. Supp. 3d 584 (M.D.N.C. 2014), the City of King had flown the Christian flag at its veterans memorial, and later removed the flag and replaced it with a so-called limited public forum for the flying of religious flags. As to its initial decision to fly the flag at city hall, the court held that “[t]here is little doubt that the original display of the Christian flag by the City would violate all three prongs of the Lemon test based on the evidence currently before the Court, and thus would violate the Establishment Clause.” *Id.* at 620 n. 20. The City of King later agreed to a settlement in which it rescinded even its

fallback flag policy, agreed to stop flying the Christian flag, and paid \$500,000 in costs and fees to the plaintiff's counsel. See Nicholas Elmes, *King Settles*, Stokes News, Jan. 6, 2015, <http://tinyurl.com/kingsettles>.

The constitutional violation is arguably even clearer here than in the cases described above, because the City is flying the Christian flag in order to promote a religious event: a local Bible Reading Marathon sponsored by the International Bible Reading Association. See Oretaga, *supra*. The Establishment Clause prohibits the government from affiliating itself with religious events. See, e.g., *Newman v. City of E. Point*, 181 F. Supp. 2d 1374, 1381–82 (N.D. Ga. 2002). This principle remains true whether the government hosts its own religious event or lends its name or money to support a private organization's event. See, e.g., *Gilfillan v. City of Phila.*, 637 F.2d 924, 930 (3d Cir. 1980). Indeed, “if the [state]-sponsorship is known, that aid connotes the state approval of a particular religion, one of the specific evils the Establishment Clause was designed to prevent.” *Id.* Here, the violation is amplified: the City is flying a religious symbol on City property and is doing so in order to promote a private organization's religious event.

In sum, the City attorney had good reason to advise the City Council against flying the Christian flag at City Hall. Please remove the Christian flag from City Hall and any other government buildings and refrain from flying it in the future. We would appreciate a response to this letter within fourteen days. If you have any questions, please contact Ian Smith at (202) 466–3234 or ismith@au.org.

Sincerely,



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Ian Smith, Staff Attorney