



October 5, 2012

Via U.S. Mail and Email

Mr. Benjamin N. Hazelwood
Americans United for Separation of Church and State
1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005

Re: Frankenmuth Bicentennial Cross

Dear Mr. Hazelwood:

Please accept this letter on behalf of the City of Frankenmuth in response to yours dated July 31, 2012. In your letter, you asked that the City promptly remove the Bicentennial Cross from public property or face a significant risk of litigation. For the reasons stated below, please be advised that the City will not remove the Cross.

In this case, the constitutional analysis must focus on the Bicentennial Cross in the context of Frankenmuth's celebration of the American Revolution Bicentennial 1776 - 1976. The history of the Cross demonstrates it was erected as a part of City's celebration of the American Revolution Bicentennial and to commemorate the City's unique cultural and historical roots. The purpose of the Cross was not to promote, endorse or coerce anyone to convert to Christianity.

The Frankenmuth Bicentennial Cross was erected to memorialize the sacrifices made by our Founding Fathers in 1776 when they signed the Declaration of Independence which proclaimed that all Men are created equal and that their unalienable rights to life, liberty and the pursuit of happiness come from "their Creator."

The Bicentennial Cross also memorializes and symbolizes the unique story of the founding of Frankenmuth and the courage and sacrifices made by the original 15 settlers in 1845. These settlers were prompted by the call from their spiritual guide, Pastor Wilhelm Loehe, to leave their homes in the province of Middle Franconia, Bavaria, cross the ocean, and bear the hardships of frontier life for the purpose of establishing a religious community for the conversion of the Chippewa Indians.

Moreover, the Cross serves as a reminder of the men and women who serve in the Armed Forces of our country and those who made the supreme sacrifice, to preserve the precious freedoms we enjoy as citizens of this great Nation.

It is against this historical backdrop of the founding of our Nation and the founding of Frankenmuth that the Bicentennial Cross was constructed and erected. The sign next to the Cross reflects that history: "1776 – 1976, A Grateful Community." Clearly, Frankenmuth's Bicentennial Cross has an undeniable historical meaning of self-sacrifice.

In fact, the national guidelines for the Bicentennial celebrations suggested that activities should be structured around three main categories, one of those categories being "Heritage '76." Heritage 76 celebrations were to focus on our Nation's heritage giving a historical perspective of the values and traditions of our Founding Fathers, which included our undeniable religious foundations.

Furthermore, the Frankenmuth Area Bicentennial Commission notice of solicitation for funds corroborates the historical purpose of the Cross:

"[T]o raise funds for a lasting memorial to those who brought freedom to America and those who have preserved it to this day. It will be a grateful community's way of memorializing the struggle, the sacrifice and the heroism of generations of Americans back to the Declaration of Independence."

Of importance to the legal analysis is the fact that the Cross was erected on the City-owned land as the City's symbol for the American Revolution Bicentennial 1776 -1976. The plan for the Cross was developed by the Frankenmuth Area Bicentennial Commission, a non-governmental organization of civic-minded individuals, established for the sole purpose of celebrating the Bicentennial. The Cross was constructed and erected solely through private donations from the community, many of the donations as a result of door-to-door solicitations.

In *Lynch v. Donnelly*, 465 U.S. 668 (1984), Chief Justice Burger writing for the majority, noted:

"There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."

In the 2010 Supreme Court decision of *Salazar v. Buono*, 130 S. Ct. 1803 (2010), Justice Kennedy noted that it is improper to concentrate solely on the religious aspects of a memorial cross, divorced from its background and context, when considering whether the display violates the Constitution. Justice Kennedy observed:

"[A] Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people."

Frankenmuth's Bicentennial Cross is exactly such a symbol.

Mr. Benjamin N. Hazelwood
October 5, 2012
Page 3

Moreover, in the case of *American Atheists, Inc. v. Davenport* cited in your letter, you correctly indicate that certiorari was denied by the U.S. Supreme Court (132 S. Ct. 12, 2011). However, what is important to our analysis here is the dissent from the denial of certiorari by Justice Thomas in which he describes the total confusion caused by the Court's nebulous Establishment Clause jurisprudence. According to Justice Thomas, at least five Justices have questioned the Lemon/Endorsement tests you propound in your letter.

Justice Thomas advocates "that the *Establishment Clause* restrains only the Federal Government, and that even if incorporated, only prohibits 'actual legal coercion....'"

In the 2012 U.S. Supreme Court's denial of certiorari in *Mount Soledad Memorial Association v. Steve Trunk*, 13 S. Ct. 2535, Justice Alito observed,

"The goal of avoiding governmental endorsement [of religion] does not require eradication of all religious symbols in the public realm The Constitution does not oblige government to avoid any public acknowledgement of religion's role in society."

Justice Alito went on to caution, that demolition of the cross in issue would have been interpreted as government hostility on matters of religion and an attempt to eliminate any trace of our country's religious heritage.

Frankenmuth's Bicentennial Cross has adorned the City-owned land for thirty-six years without complaint. Should a court now order its removal or demolition, it will be viewed by the public as government hostility towards religion and our Nation's religious heritage.

Your letter makes reference to the prayers delivered by Reverend Deterding and Father Keho at the 1976 dedication ceremony of the Cross to support your demand for its removal.

Prayers are a traditional part of public ceremonies. Justice Scalia, dissenting in *Lee v. Weisman*, 505 U.S. 577 (1992), noted,

"The history and tradition of our Nation are replete with public ceremonies featuring prayers of thanksgiving and petition."

From our Nation's origin, prayer has been a prominent part of governmental ceremonies and proclamations. The Declaration of Independence, the document marking our birth as a separate people, "appealed to the Supreme Judge of the world for the rectitude of our intentions" and avowed 'a firm reliance on the protection of divine Providence.'"

The City of Frankenmuth Bicentennial Proclamation dated December 31, 1975, and authored by then-mayor Elmer P. Simon reads in part:

Mr. Benjamin N. Hazelwood

October 5, 2012

Page 4

“It is a commendable extension of patriotism to review with gratitude those factors which led our thirteen colonies to form this nation, and also to venerate a bell, since cracked, as a central symbol of a liberty which was then new to this world. The affinity of the Liberty Bell with our “church bells in the forest” should not be lost in our local consideration of reasons to be grateful for the 200 year life of this republic. The authors of our Constitution assured for us the freedom to put our various faiths into practice without interference from the state. Without this expressed tolerance, it is most probable that these generously wooded acres would have been settled some time later, by a different people, probably bearing a shorter community name.

All of the *other* blessings of freedom and democracy should be *also* remembered by our citizens this year, but the beginnings of our own heritage lie within the solid protection of the First Amendment. Therefore, by the power vested in me by the City of Frankenmuth, Michigan, I urge the respect and attention of all upon this historic national anniversary and ask that, as citizens of this community, we resolve to leave a 1976 landmark which will perpetuate our lasting gratitude to the Lord of all the Nations for giving us this particular one.” (Emphasis added)

Of course, the fact that you refuse to identify those individuals who are complaining about the Cross, raises the jurisdictional issue of standing to bring a lawsuit in the first place. For that reason alone, I would never advise the City of Frankenmuth to comply with a request to remove the Cross.

In conclusion, a reasonable observer, familiar with the unique history of our Nation and of the City of Frankenmuth, would understand that the Bicentennial Cross located on public land does not endorse the religion of Christianity. Rather, it is a lasting memorial of America’s religious heritage which our Founding Fathers proclaimed was the foundation of our freedoms and our Nation.

The Frankenmuth Bicentennial Cross was erected to honor and memorialize the courage and sacrifices of the original colonists who settled in Frankenmuth back in 1845, and to honor and memorialize the courage and sacrifice of the men and women from 1776 to this day who have fought to preserve our precious freedoms. The Cross was raised up by a grateful community. And this community will fight to keep it.

Very truly yours,


Richard Thompson

cc: Gary C. Rupperecht, Mayor
Charles B. Graham, City Manager