



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2019

Via U.S. Mail & Fax to (936) 653-3970

Hon. Fritz Faulkner
San Jacinto County Judge
Hon. Laddie McAnally
Hon. Donny Marrs
Hon. David Brandon
Hon. Mark Nettuno
San Jacinto County Commissioners
1 State Highway 150, Room 23
Coldspring, Texas 77331

Re: April 26, 2019 Letter from Freedom from Religion Foundation

Dear Judge Faulkner and County Commissioners:

I am in receipt of a letter you received from the Freedom from Religion Foundation (“FFRF”) dated April 26, 2019 concerning Latin crosses on the San Jacinto County Courthouse. I am also aware that you voted yesterday 5–0 to maintain these crosses on the courthouse. I applaud your decision, and the Office of Attorney General will support that decision should litigation occur.

Before receiving the April 26 letter, you may have been unfamiliar with FFRF. As a small organization from Madison, Wisconsin, FFRF seeks to impose its anti-religion agenda through intimidation tactics like the letter it sent to you. Because of the extreme nature of its agenda, FFRF has stained itself in the eyes of our judicial system. Indeed, the Supreme Court of the United States calls FFRF “an enterprising plaintiff,” and one that the Supreme Court has found guilty of “roam[ing] the country in search of governmental wrongdoing.” *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 632 (2007) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 (1982)). While FFRF threatens more than it sues, it often loses when it does sue. For example, a federal district court in Houston recently rejected FFRF’s attempt to silence a Montgomery County justice of the peace from opening his courtroom with voluntary invocations. See *Freedom from Religion Found., Inc. v. Mack*, No. H-17-881, 2018 WL 6981153, at *5 (S.D. Tex. Sept. 27, 2018) (dismissing FFRF’s claims).

Regarding the substantive concerns shared by FFRF in its letter, we want to make it clear that your county may display historical religious symbols, like crosses, without violating the Establishment Clause of the First Amendment. See *Murray v. City of Austin, Tex.*, 947 F.2d 147, 158 (5th Cir. 1991) (holding display of crosses on City of Austin’s insignia did not violate the Establishment Clause). Since FFRF’s true agenda is to quell all government acknowledgement of religion, you

Judge Faulkner and County Commissioners

May 9, 2019

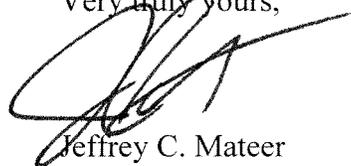
Page 2 of 2

should know that you can reject FFRF's demand to impose its anti-religion bias against San Jacinto County.

The government, in many ways, may recognize the historical significance of religion in the founding and preservation of our State and nation. For these reasons, government bodies like the United States Congress, the Texas Legislature, your Commissioners Court, and school boards may open their meetings with prayer. *Town of Greece v. Galloway*, 572 U.S. 565 (2014); *Marsh v. Chambers*, 463 U.S. 783 (1983); *Am. Humanist Ass'n v. McCarty*, 851 F.3d 521 (5th Cir. 2017). The government may also display nativity scenes depicting core beliefs of the Christian religion. *Lynch v. Donnelly*, 465 U.S. 668 (1984). Likewise, the words "one Nation under God" and "one state under God" in the United States and Texas pledges of allegiance do not violate the Establishment Clause. *See Croft v. Perry*, 624 F.3d 157 (5th Cir. 2010) (upholding the Texas pledge of allegiance with the phrase "one state under God"). And most applicable here, government may display religious symbols like the Ten Commandments and statues of Moses and the Apostle Paul without running afoul of the Establishment Clause. *See Van Orden v. Perry*, 545 U.S. 677, 688–89 (2005) (plurality) (holding the display of the Ten Commandments on the Texas State Capitol grounds did not violate the Establishment Clause); *see also Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995) (holding Ohio did not violate Establishment Clause by permitting display of cross on state capitol grounds); *Briggs v. Mississippi*, 331 F.3d 499 (5th Cir. 2003) (holding that the display of a cross on the Mississippi flag did not violate the Establishment Clause). In similar ways, the crosses on display at the San Jacinto County Courthouse do not violate the Establishment Clause.

Take note that on occasion FFRF will file a lawsuit to try to force government to purge all acknowledgement of religion. If that occurs, we look forward to supporting your lawful decision to retain the crosses.

Very truly yours,



Jeffrey C. Mateer

First Assistant Attorney General