

~~MAY 19~~ 2011

In The
Supreme Court of the United States

UTAH HIGHWAY PATROL ASSOCIATION,
Petitioner,

v.

AMERICAN ATHEISTS, INC., et al.,
Respondents.

LANCE DAVENPORT,
JOHN NJORD, and F. KEITH STEPAN,
Petitioners,

v.

AMERICAN ATHEISTS, INC., et al.,
Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

**BRIEF OF *AMICUS CURIAE* UTAH SHERIFFS'
ASSOCIATION IN SUPPORT OF PETITIONERS**

KEVIN T. SNIDER, CA Bar No. 170988
PACIFIC JUSTICE INSTITUTE
212 9th Street, Suite 208
Oakland, CA 94607
Phone: (510) 834-7232
Fax: (510) 834-8784
E-mail: kevinSnider@pacificjustice.org

*Attorney for Amicus Curiae
Utah Sheriffs' Association*

Blank Page



TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
IDENTITY AND INTEREST OF THE <i>AMICUS CURIAE</i> – UTAH SHERIFFS’ ASSOCIATION	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. State actors can use religious symbols to convey civic messages without running afoul of the Establishment Clause	3
II. The hundreds of permanent passive religious displays on government property are used for pedagogical purposes	8
A. Federal Displays	10
B. State Government Displays	14
C. Local Government Displays	18
CONCLUSION	20

TABLE OF AUTHORITIES

	Page
CASES	
<i>Allen v. Hickel</i> , 424 F.2d 944 (D.C. Cir. 1970)	3
<i>Alvarado v. City of San Jose</i> , 94 F.3d 1223 (9th Cir. 1996)	18
<i>American Atheists v. Duncan</i> , 528 F.Supp.2d 1245 (D. Utah 2007).....	3, 7
<i>American Atheists v. Duncan</i> , 616 F.3d 1145 (10th Cir. 2010)	9
<i>Anderson v. Salt Lake City Corp.</i> , 475 F.2d 29 (10th Cir. 1973)	3
<i>Card v. City of Everett</i> , 520 F.3d 1009 (9th Cir. 2008)	5
<i>Ly Shew v. Dulles</i> , 219 F.2d 413 (9th Cir. 1954).....	12
<i>McCreary County, Ky. v. ACLU of Ky.</i> , 545 U.S. 844 (2005).....	5
<i>Stone v. Graham</i> , 449 U.S. 39 (1980).....	5
<i>Suhre v. Haywood County</i> , 55 F.Supp.2d 384 (W.D.N.C. 1999).....	5
<i>Van Orden v. Perry</i> , 545 U.S. 677 (2005)	3, 5, 14
<i>Vasquez v. County of Los Angeles</i> , 487 F.3d 1246 (9th Cir. 2007)	20
<i>Zorach v. Clausen</i> , 343 U.S. 306 (1952).....	10
UNITED STATES CONSTITUTION	
U.S. Const., amend. I	<i>passim</i>

TABLE OF AUTHORITIES – Continued

	Page
STATUTES	
N.M.S.A. 1978 §12-3-3.....	16
OTHER AUTHORITIES	
A. Lincoln, Gettysburg Address, 1 Documents of American History 429 (H. Commager ed.) (9th ed. 1973).....	7
About CA: California Missions Map, http://www.ca.gov/About/Maps/Missions.html	11
Architect of the Capitol: Capitol Campus Art, Brigham Young, http://www.aoc.gov/cc/art/nsh/young.cfm	11
Architect of the Capitol: Capitol Campus Art, Father Junipero Serra, http://www.aoc.gov/cc/art/nsh/serra.cfm	11
Barry Pritzker, <i>A Native American Encyclopedia: History, Culture, and Peoples</i> , pg. 143 Oxford University Press, USA (November 9, 2000).....	16
California State Library: History, Culture and State Symbols, http://www.library.ca.gov/history/symbols.html	15
Courtroom Friezes: South and North Walls, http://www.supremecourt.gov/about/north&southwalls.pdf	13
Greek-Gods.Info: Demeter, http://www.theoi.com/Olympios/Demeter.html	16

TABLE OF AUTHORITIES – Continued

	Page
Greek-Gods.Info: Olympian Gods, Athena, Goddess of Wisdom, http://www.greek-gods.info/greek-gods/athena/	12, 15
Illustrated History of the Roman Empire: Pomona, http://www.roman-empire.net/religion/pomona.html	19
Jori Finkel, <i>Chinese artist Zhang Huan's "Three Heads, Six Arms" a monumental shift: The artist, known for his intense performance works, lands in San Francisco with the 15-ton sculpture that reflects his yearning for harmony</i> , Los Angeles Times, May 14, 2010, http://articles.latimes.com/2010/may/14/entertainment/la-et-zhanghuan-20100514	19
Los Angeles Public Library, Central Library: Art and Architecture in Central Library, http://www.lapl.org/central/art_architecture.html	19
Netstate: New Mexico, http://www.netstate.com/states/symb/flags/nm_flag.htm	16
Netstate: Virginia, http://www.netstate.com/states/symb/seals/va_seal.htm	15
Religion Facts, http://www.religionfacts.com/big_religion_chart.htm	12
Smithsonian Institution: Statue of John Marshall (Sculpture), http://collections.si.edu/search/results.jsp?view=&dsort=&date.slider=&q=marshall+minerva	12

TABLE OF AUTHORITIES – Continued

	Page
South Dakota State Capitol, the Decorated State, http://www.state.sd.us/boa/CapitolTour/completedcap.htm	18
State Capitols: What's On Top, Statues of Ladies Part 1, http://www.statecapitols.tigerleaf.com/wt-statue-fe1.htm	16
Theoi Greek Mythology: Arete, http://www.theoi.com/Daimon/Arete.html	15

Blank Page



IDENTITY AND INTEREST OF THE *AMICUS CURIAE* – UTAH SHERIFFS’ ASSOCIATION¹

This *amicus curiae* brief is being filed by the Utah Sheriffs’ Association. The Utah Sheriffs’ Association is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code. The corporation is dedicated to serving the legitimate needs of Utah Sheriffs to assist them in carrying out the mission of public safety. The Utah Sheriffs’ Association raises funds to provide extensive training. This includes funding the Jail Commanders Certification Academy, funding in-service jail training,² funding in-service law enforcement training, coordinating the national Child ID program, assisting Sheriffs with the TRIAD program for senior citizens, funding and operating the Utah Sheriffs’ Association’s Jail Auditing system, developing model standards for Utah Jails, and participating in a national law enforcement agenda through the National Sheriffs’ Association, and the Western States Sheriffs’ Association.

The Utah Sheriffs’ Association is desirous of honoring the law enforcement officers that it represents

¹ The parties have consented to the filing of this brief. Under Rule 37.6, *amicus curiae*, the Utah Sheriffs’ Association, and its counsel of record, Kevin T. Snider, hereby affirm that no counsel for any party authored this brief in whole or in part. No person or entity, other than the *Amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. The parties were notified ten days prior to the due date of this brief of the intention to file.

² Said training is over one hundred hours per year.

who have been killed in the line of duty through the use of passive displays that may include crosses. As such, the Utah Sheriffs' Association has an interest in defending the rights of law enforcement associations wishing to memorialize these sacrifices.

SUMMARY OF ARGUMENT

A cross is speech. It is a passive display. Establishment Clause analysis for passive displays requires answers to three questions. (1) Who is speaking? (2) What is the venue for the speech? (3) What is being said? This Brief will primarily focus on the last question.

The premise presented is as follows: A religious symbol can be used to communicate a civic message. Stated more fully, a cross appearing on public property, commemorating the death of a fallen officer, does not violate the Establishment Clause because, in context, the cross communicates a civic, rather than a sectarian, message. *Amicus* will demonstrate that displays which (1) use religious symbolism, (2) are passive, and, (3) permanent, are frequently used by the government to teach about something other than religion.

In the first section of the Brief *amicus* will proffer a "pedagogical affirmative defense" for passive displays challenged under the Establishment Clause. The second section will provide a representative sampling from the hundreds of religious symbols located on government property across the nation.

Although the representations are primarily Christian or from the Greek and Roman pantheon, there are pieces from a variety of religions. The pedagogical nature of the religious symbols will become apparent from the sampling.



ARGUMENT

I. State actors can use religious symbols to convey civic messages without running afoul of the Establishment Clause.

The District Court noted that “symbols are capable of simultaneously carrying multiple meanings.” *American Atheists v. Duncan*, 528 F.Supp.2d 1245, 1256 n.6 (D. Utah 2007). Of course, the trial court does not speak alone. “The government may depict objects with a spiritual content” provided that the state does not “give its stamp of approval to such spiritual content.” *Anderson v. Salt Lake City Corp.*, 475 F.2d 29, 32 (10th Cir. 1973) (quoting *Allen v. Hickel*, 424 F.2d 944, 948 (D.C. Cir. 1970)). Indeed, the U.S. Supreme Court has found that classic religious symbols may have a variety of meanings, depending on their context. “Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.” *Van Orden v. Perry*, 545 U.S. 677, 690-91 (2005).

(When *amicus* refers to “state actors” there is a significant caveat which must be underscored. The

speaker in this case is a private entity; the Utah Highway Patrol Association (“UHPA”). That fact alone may be dispositive. A reasonable observer would know that the cross is private, rather than government, speech. The fact that the Utah Department of Transportation provides access to the UHPA to display most of the crosses would indicate favoritism towards UHPA – not Christianity. For UHPA members are directly responsible for highway safety. Families of UHPA members bear the personal trauma when an officer is killed in the line of duty. Stated succinctly, the Utah Department of Transportation and UHPA have a mutual interest in highway safety. However, in the event that this Court comes to the conclusion that the location of the crosses on public property transforms the markers into state speech, the analysis provided by *amicus* would be on point.)

State actors can and do communicate a variety of civic messages via religious symbolism. It is the Utah Sheriffs’ Association’s position that when the primary intent of the symbol is pedagogical, no Establishment Clause violation is present.

There are numbers of examples of the use of religious symbolism to convey a civic message which withstand judicial scrutiny. Courthouses themselves communicate such messages. Indeed, there are numerous cases in which the Ten Commandments have

been displayed on or around courthouses.³ A fair summation of such cases is that the lawfulness of the Decalogue depends on the context and purpose of the display. Put another way, no matter the constitutional test used, it is generally the state messaging which determines the constitutionality.

In addition to the Decalogue, a ubiquitous religious symbol found at courthouses is the Goddess of Justice, also known as Lady Justice. The Goddess of Justice is depicted as a woman standing on a pedestal, holding in Her right hand the sword of authority, while in the left hand She holds poised a pair of scales emblematic of the Scales of Justice.

The mythology of Greece and Rome teaches us that this Goddess of Justice [was] blind when she poised her scales; blind to hatred, revenge and vengeance; blind to passion, prejudice and partisanship; blind to everything except those things that pointed unerringly to the everlasting truth.

Suhre v. Haywood County, 55 F.Supp.2d 384, 387 (W.D.N.C. 1999).

As Her name implies, She is a deity and was worshipped by those who believed in Her presence and power. The image of the Goddess of Justice is a

³ See, *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844 (2005); *Van Orden v. Perry*, 545 U.S. 677 (2005); *Stone v. Graham*, 449 U.S. 39 (1980); *Card v. City of Everett*, 520 F.3d 1009 (9th Cir. 2008).

religious, and indeed a highly sectarian, symbol. However, Her image has been adopted by the government. She is used to adorn courthouses to communicate to the public the functions of the judiciary. For example, the scales weigh the merits of a matter, much as a judge or jury. She is blindfolded to provide equal treatment under the law, regardless of wealth, race, education or other characteristics. The sword in Her hand represents authority. In like manner, the courts have the authority to decide matters, even life and death.

In addition to the Goddess of Justice, there are numerous examples of religious symbols that state actors use to communicate messages. *Amicus* will provide a representative sampling of the multitude of such passive displays to further illustrate this point. (See, "II. The hundreds of permanent passive religious displays on government property are used for pedagogical purposes," *infra*.)

Turning the analysis specifically to the cross, this symbol, though religious, does not communicate an exclusively religious message. As a religious symbol, the cross represents Christianity and the redemptive death and resurrection of Jesus Christ. In Christian theology it is a multifaceted symbol but primarily communicates Christ's sacrifice of His life whereby He pays the penalty for the sin of the world.

In a civic sense, the meaning of the cross is borrowed such that it communicates sacrifice for the benefit of others. The cross is frequently used to

solemnize and honor those in the military who have, as President Lincoln stated, given “that last full measure of devotion.”⁴ Hence, the death of one killed in war has a redemptive purpose. That purpose may include: sacrifice for the greater good; protection of others; preservation of liberties at the price of blood. In other words, this person’s death is not meaningless.

The government borrows the religious symbol of the cross to communicate that civic message. Typically the military, or those wishing to honor military dead, uses religious symbolism as a simple pedagogical tool to convey a civic message. This is similar to the way that the judiciary uses Justice, a sectarian religious symbol, to communicate the purposes of the courts.

The factual record before this Court is consistent with that understanding. The stated purpose of the UHPA is: a. To memorialize troopers who died in the line of service; b. Remind the traveling public of the service and sacrifice of the troopers on the highways and elsewhere in Utah; c. Remind the traveling public to drive safely and vigilantly. *American Atheists v. Duncan*, 528 F.Supp.2d at 1248-49.

Although UHPA is a non-profit organization, the claim is that the crosses are on property owned and controlled by the Utah Department of Transportation. It is apparently being argued by the Respondents

⁴ A. Lincoln, Gettysburg Address, 1 Documents of American History 429 (H. Commager ed.) (9th ed. 1973).

that the Department has thus adopted as its own the message that it allows on its property.

But assuming that is true, for the reasons discussed in this brief, no violation of the Establishment Clause is present. Indeed, *amicus* proffers that even if the memorial crosses were erected and paid for by the Department, the analysis would not change in any material way. Nor does it matter, for constitutional review, that the cross is not used by the majority religion (Church of Jesus Christ of Latter Day Saints) in Utah. When the government uses a religious symbol to communicate a civic message, it is not establishing a religion in any real sense that the drafters of the First Amendment understood.

II. The hundreds of permanent passive religious displays on government property are used for pedagogical purposes.

There is a plethora of passive displays on government property which are directly related to religious symbols or figures. In view of the pantheon of displays, there is insufficient space to attempt so much as a list. Instead, this next section of the brief provides a sampling which is representative of the types of displays found on federal, state and local government properties. There are several generalizations that can be derived from review of the sampling.

- Displays are for pedagogical purposes, i.e., they teach something.
-

- Pieces are not located in government museums or art galleries.
- The displays are physically substantial, if not imposing, and are thus designed to last for long periods of time.⁵
- Religious displays can be either stand-alone or a part of larger collections.
- Items found on government property are typically from either the Greek and Roman pantheon or are Christian, though a variety of other religious faiths can be found, e.g., Judaism, Confucianism, Islam, Native American religion, Buddhism.

This last bullet point is particularly relevant to the Petition before the Court. There is a view held by the Respondents (American Atheists) that only Christian symbols, particularly a Latin cross, violate the Establishment Clause. *American Atheists v. Duncan*, 616 F.3d 1145, 1157 n.9 (10th Cir. 2010). What Respondents seek is strict liability for government use of a Latin cross. Respondents essentially read the word “dominant” into the Establishment Clause, i.e., “Congress shall make no law respecting the establishment of *the dominant* religion.” Such a reading is unorthodox, violating ordinary canons of construction. Moreover, Respondents’ premise violates the principle of the separation of church and state. That

⁵ Hence, the category of displays that *amicus* is referring to does not encompass typical holiday exhibits.

doctrine does not allow the government to single out a particular religion for hostile treatment. *Zorach v. Clausen*, 343 U.S. 306, 313-14 (1952). Finally, the anti-dominant religion theory falsely asserts that other religions, such as the worship of the Greek and Roman pantheon, are extinct. Although that is largely true, the representative sampling below will demonstrate that the government also uses religious symbols from active religions other than Christianity.

It may be protested that certain persons within the faith community will be benefited when state actors use religious symbols. This objection is without merit in that the purpose of borrowing these religious symbols is to convey a civic message. There is no intent in the government's messaging to communicate something spiritual, take sides in a theological debate, or to otherwise establish a religion. At best, the benefit to people of particular faiths is *de minimus*, if at all. As such, the view that use of religious symbolism to communicate a civic message is a violation of the separation of church and state is specious.

A. Federal Displays

The nation's capital has a significant amount (possibly hundreds) of passive displays on federal buildings which use religious symbolism to communicate a civic message.

There are two sculptures in the Capitol Rotunda that *amicus* would like to draw the Court's attention to. A sculpture of Junipero Serra is in the Capitol

Rotunda holding a cross above his head and is looking to heaven. In 1931, the State of California gave this sculpture to the National Statuary Hall Collection. Fr. Serra was “an eloquent speaker and professor of theology.” However, his primary calling was as a Christian missionary.⁶ His labors included the establishment of 21 missions approximately 30-40 miles apart up and down California’s 650 mile coast.⁷ This sculpture communicates the crucial role that the Roman Catholic Church played in the development of the west coast. The Establishment Clause does not demand that the religious heritage of California be redacted from the pages of history.

The Capitol Rotunda also features a statue of Brigham Young which was given by the State of Utah in 1950. Young was the President of the Church of Jesus Christ of Latter Day Saints, the first governor of Utah, and is known as one of the “world’s great colonizers” who “established communities between Mexico and Canada.”⁸ Like California, Utah uses a prominent religious figure to teach about the motivations for settlement in the west.

⁶ Architect of the Capitol: Capitol Campus Art, Father Junipero Serra, <http://www.aoc.gov/cc/art/nsh/serra.cfm> (last visited 5/11/11).

⁷ About CA: California Missions Map, <http://www.ca.gov/About/Maps/Missions.html> (last visited 05/12/11).

⁸ Architect of the Capitol: Capitol Campus Art, Brigham Young, <http://www.aoc.gov/cc/art/nsh/young.cfm> (last visited 5/11/11).

The U.S. Supreme Court Building is rich with art for which religious symbols are used to communicate civic messages. Below are examples of a few of these passive displays.

The sculpture of Chief Justice John Marshall has the Goddess Minerva on the north relief of the marble base. On said relief She is “dictating the words of the Constitution to Young America.”⁹ She is the Roman goddess of wisdom and Her Greek equivalent is Athena.¹⁰ The government is using this religious figure to communicate the simple civic message that the constitutional framework is wise.

On the south wall frieze Confucius is displayed, along with Moses and Solon. Although in Asia Confucius would be the equivalent of what Socrates and Solomon are in the west, Confucius did not start a religion. Nonetheless, a religion has formed under his namesake with an estimated 5-6 million adherents today.¹¹ The information sheet from the Court’s website

⁹ Smithsonian Institution: Statue of John Marshall (Sculpture), <http://collections.si.edu/search/results.jsp?view=&dsort=&date.slider=&q=marshall+minerva> (last visited 05/12/11).

¹⁰ Greek-Gods.Info: Olympian Gods, Athena, Goddess of Wisdom, <http://www.greek-gods.info/greek-gods/athena/> (last visited 05/11/11).

¹¹ Religion Facts, http://www.religionfacts.com/big_religion_chart.htm (last visited 5/9/11). “The three great religions of China are Confucianism, Taoism and Buddhism.” *Ly Shew v. Dulles*, 219 F.2d 413, 419 n.2 (9th Cir. 1954), quoting *Encyclopedia Britannica*, 14th Ed., Vol. 5, pg. 524 (Denman, C.J., dissenting).

demonstrate how Confucius and the other religious figures are used to communicate civic messages.

- **Confucius** (551-478 B.C.) Chinese philosopher whose teachings stressed harmony, learning, and virtue. Within 300 years of his death, the Chinese State adopted his teachings as the basis for government. Although officially abandoned by the Chinese government in 1912, Confucianism continues to have an influence throughout the world.¹²
- **Moses** (c. 1300s B.C.) Prophet, lawgiver, and judge of the Israelites. Mosaic Law is based on the Torah, the first five books of the Old Testament. Moses is depicted in the frieze holding two overlapping tablets, written in Hebrew, representing the Ten Commandments. Partially visible from behind Moses' beard are Commandments six through ten.¹³
- **Solomon** (c. 900s B.C.) King of Israel and renowned judge. His name, meaning "figure of the wise man," has become synonymous with "judicial wisdom."¹⁴
- **Muhammad** (c. 570-632 [A.D.]) The Prophet of Islam. He is depicted holding the Qur'an. The Qur'an provides the primary source of Islamic Law. Prophet Muhammad's teachings

¹² Courtroom Friezes: South and North Walls, <http://www.supremecourt.gov/about/north&southwalls.pdf> (last visited 05/10/11).

¹³ *Id.*

¹⁴ *Id.*

explain and implement Qur'anic principles. The figure above is a well-intentioned attempt by the sculptor, Adolph Weinman, to honor Muhammad and it bears no resemblance to Muhammad. Muslims generally have a strong aversion to sculptured or pictured representations of their Prophet.¹⁵

Is it possible that a Muslim, Confucian or Jew would receive a small measure of psychological satisfaction based upon the depictions of their respective religious leaders? Indeed, that is possible. In contrast, undoubtedly there are some Atheists or persons from other faith traditions that find the passive displays to be less than inspiring if not offensive. But the de minimus benefits or burdens on the psyches of individuals that pause to look at the frieze does not create a per se violation of the Establishment Clause.

B. State Government Displays

Due to the publicity surrounding this Court's decision in *Van Orden v. Perry*, 545 U.S. 677 (2005), the most celebrated of displays on state property is arguably the Decalogue located on the Texas State Capitol grounds. Other than to remind the Court that this display was private speech (i.e., a donation by the Fraternal Order of the Eagles of Texas) *amicus* will not burden the Court with a review of facts for which it is well familiar.

¹⁵ *Id.*

Just miles from the Supreme Court building is the Commonwealth of Virginia. The Great Seal of Virginia features the Roman goddess Virtus standing with a spear in Her hand and one foot on the body of Her vanquished opponent. She is the deity of war and military strength.¹⁶ The seal provides a stunning visual representation of the State's motto: "Sic Semper Tyrannis" (Thus Always to Tyrants).¹⁷

California's seal has a somewhat less marshal emphasis. It depicts the Roman goddess of wisdom, Minerva,¹⁸ holding a spear and gazing at a gold miner working near the Sacramento River. The State's motto is "Eureka" (I Have Found It). The California State Library's website comments on the motto as follows: "Archimedes, the famed Greek mathematician, is said to have exclaimed 'Eureka!' when, after long study, he discovered a method of determining the purity of gold."¹⁹ Another reason to use Minerva is to communicate the manner in which California entered the union. The State Library's website further explains: "Just as Minerva sprung full-grown from the head of Jupiter, California became a state on

¹⁶ Her Greek equivalent is Arete. Theoi Greek Mythology: Arete, <http://www.theoi.com/Daimon/Arete.html> (last visited 05/11/11).

¹⁷ Netstate: Virginia, http://www.netstate.com/states/symb/seals/va_seal.htm (last visited 05/11/11).

¹⁸ The Greek equivalent is Athena. Greek-Gods.Info: Olympian Gods, Athena, Goddess of Wisdom, <http://www.greek-gods.info/greek-gods/athena/> (last visited 05/11/11).

¹⁹ California State Library: History, Culture and State Symbols, <http://www.library.ca.gov/history/symbols.html> (last visited 05/12/11).

September 9, 1850, without having to go through a territorial stage.”²⁰

The State of New Mexico’s flag has the Zia Sun Symbol which is a sacred symbol for the Zia Indian religion.²¹ The State’s flag salute is: “I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures.” N.M.S.A. 1978 §12-3-3. Here the State is using a religious symbol, placing it on its flag no less, to communicate a civic message. Unlike the Greek and Roman pantheon, the Zia religion is still intact.²²

Domes from several state capitols are adorned with religious symbols. Arizona has Nike, the Greek goddess of victory. She is portrayed with wings and the piece is thus called “Winged Victory.”²³ Missouri and Vermont both have castings of the Roman goddess Ceres²⁴ who is the deity for grain, agriculture, bread – the prime sustenance of man.²⁵ Use of these

²⁰ *Id.*

²¹ Netstate: New Mexico, http://www.netstate.com/states/symb/flags/nm_flag.htm (last visited 05/11/11).

²² Barry Pritzker, *A Native American Encyclopedia: History, Culture, and Peoples*, pg. 143 Oxford University Press, USA (November 9, 2000).

²³ State Capitols: What’s On Top, Statues of Ladies Part 1, <http://www.statecapitols.tigerleaf.com/wt-statue-fe1.htm> (last visited 05/11/11).

²⁴ *Id.*

²⁵ The Greek equivalent is Demeter. Greek-Gods.Info: Demeter, <http://www.theoi.com/Olympios/Demeter.html> (last visited 05/17/11).

religious figures is not idolatry in any ordinary sense of the word. The respective states are not soliciting worship of these goddesses by citizens or suggesting that prayers be offered to them. The passive displays are shorthand to communicate the hope of victory, or the prominence of agriculture in the states.

South Dakota's State Capitol is a good representation of the use of religious displays for pedagogical purposes. In 1909, a contract was awarded to provide nine murals for the Capitol building. Five of the murals illustrate *amicus'* theory regarding communicating civic messages through religious symbols. As is common across the country, they are divided between the Greek and Roman pantheon and Christianity. The murals to be noted are as follows:

- "Agriculture" is a mural that depicts the goddess Ceres with stalks of corn.
- "Livestock" which shows Europa with Zeus.
- "Wisdom, Industry and Mining" which depicts the Goddess Minerva operating a steam drill.
- "The Mercy of Law." Flanked by the lion, symbols of courage, stern guardians armed with swords guard the gates of Justice. On the walls by the gates are the sculpted figures of "Law" and "Justice." On each side of the lower part of the painting is shown the despairing and remorseful guilty. In the center is the spirit of Mercy showing compassion and pity for the guilty, but as the guardian of

nature's law, the strong arm of God, she demands their penalty.

- “The Peace That Passes Understanding” is a mural that looks down upon the South Dakota House of Representatives, and represents the first recorded act of Christian worship in South Dakota which shows Jedediah Smith praying while Indians look on.²⁶

C. Local Government Displays

A northern California city paid for and erected a statue of Quetzalcoatl. Quetzalcoatl is a prominent deity in the Aztecan pantheon, and is known as the “feathered serpent.” The sculpture sits in a prominent plaza owned and maintained by the City of San José. The display's purpose is to commemorate Mexican contributions to the City's culture. *Alvarado v. City of San Jose*, 94 F.3d 1223, 1226 (9th Cir. 1996).

Up the peninsula from San José, the City and County of San Francisco also has a large sculpture in its Civic Center Plaza. In an exchange between Shanghai and San Francisco to mark the thirtieth year of the sister-city relationship, Shanghai provided a sculpture of Buddha entitled *Three Heads Six Arms*. The sculpture is a fifteen ton, 26 foot tall piece located across from City Hall. The piece, which depicts the

²⁶ South Dakota State Capitol, the Decorated State, <http://www.state.sd.us/boa/CapitolTour/completedcap.htm> (last visited 05/11/11).

fracturing of Buddhist sculptures during the Cultural Revolution in China, faces east to symbolize its connection to Shanghai.²⁷

Nearly 400 miles to the south, in the Los Angeles Public Library a mural hangs on the west wall. Entitled "Founding of California," it depicts Roman Catholic priests kneeling in prayer and a crucifix as the focal point. The east wall has a mural showing three Roman Catholic priests speaking with one another surrounded by California Indians and is called "Mission Building."²⁸ Through this art the City of Los Angeles is attempting to teach something about the importance of the religious heritage of California and how it relates to the history of the development of the State.

In the County of Los Angeles, there was controversy and eventually litigation over its seal. The seal displayed a Latin cross, the Roman goddess Pomona,²⁹ engineering instruments, the Spanish galleon San

²⁷ Jori Finkel, *Chinese artist Zhang Huan's "Three Heads, Six Arms" a monumental shift: The artist, known for his intense performance works, lands in San Francisco with the 15-ton sculpture that reflects his yearning for harmony*, Los Angeles Times, May 14, 2010, <http://articles.latimes.com/2010/may/14/entertainment/la-et-zhanghuan-20100514> (last visited 05/11/11).

²⁸ Los Angeles Public Library, Central Library: Art and Architecture in Central Library, http://www.lapl.org/central/art_architecture.html (last visited 05/9/11).

²⁹ Pomona is the Roman goddess of fruitful abundance. Illustrated History of the Roman Empire: Pomona, <http://www.roman-empire.net/religion/pomona.html> (last visited 05/11/11).

Salvador, a tuna, a cow, the Hollywood Bowl, two stars³⁰ and oil derricks. *Vasquez v. County of Los Angeles*, 487 F.3d 1246, 1248 (9th Cir. 2007).³¹ The Latin cross was replaced by a mission. Whichever is used, the two religious symbols serve an educational purpose along with the other items in the County's seal. They teach that Los Angeles was founded by Catholic Franciscans and the Mission San Gabriel is a part of the chain of missions that were established by Catholic missionaries centuries ago. The presence of what is admittedly a highly sectarian item on the seal teaches something of the history of Los Angeles County and thus does not constitute an establishment of religion.

◆

CONCLUSION

The government does not transgress the restrictions under the Establishment Clause when it borrows a religious symbol to communicate a civic

³⁰ The stars represent the County's television and motion picture industries. *Vasquez* at 1248.

³¹ A lawsuit was brought challenging the replacement of the cross with a Catholic mission (Mission San Gabriel). The complainant asserted that the replacement somehow showed hostility to Christianity, something the Ninth Circuit ultimately rejected. Of course, it is self-evident that the mission is more of a sectarian symbol than a Latin cross in that the church (mission) is clearly Roman Catholic whereas a cross is used by most Christian denominations.

message. Such use of a religious symbol is pedagogical in nature. As to the memorial crosses at issue, the record shows that there is no intent in the government's messaging to convey something spiritual, take a position in what is a theological dispute, or to otherwise establish a religion (e.g., a church). Instead, the cross is shorthand for communicating the civic message that the death of a fallen officer is sacrificial and thus has redemptive purpose, something that is worthy of honor and reflection. Therefore, the Utah Sheriffs' Association requests that this Court grant the petitions.

Respectfully submitted,

KEVIN T. SNIDER
PACIFIC JUSTICE INSTITUTE
212 9th Street, Suite 208
Oakland, CA 94607
Phone: (510) 834-7232
Fax: (510) 834-8784
E-mail: kevinSnider@pacificjustice.org

*Attorney for Amicus Curiae
Utah Sheriffs' Association*
