



October 18, 2017

The Hon. Michael J. Brown
Sheriff, Bedford County
1345 Falling Creek Road
Bedford, VA 24523

Dear Sheriff Brown:

I am writing on behalf of the ACLU of Virginia to express concern about your expressed intention to put bumper stickers on government-owned vehicles (“deputy’s patrol cars”) that say “Law Enforcement Stands and Places Hand Over Heart for the National Anthem. We Kneel When We Pray.” <http://www.wdbj7.com/content/news/Bedford-sheriff-enters-national-anthem-kneeling-debate-with-highway-billboard-450816253.html>. We support your constitutional right as a candidate for public office to use campaign funds to express this message as you choose. You do not, however, have the right as a public official to choose to emblazon state or county owned vehicles with an overtly religious and implicitly Christian message.

Because law-enforcement officials carry with them the threat of force at all times, they must be exceedingly cautious when it comes to matters of faith so as to avoid religious coercion. Officers and law-enforcement staff may not proselytize employees, arrestees, witnesses, community members, or anyone else they come into contact with as a result of carrying out their official duties. Nor, even in less coercive settings, may law enforcement officers use their official positions or government property to endorse religious messages or otherwise promote religious activities (such as through bumper stickers or decals, their business cards or signs posted in police facilities).

Establishment Clause

The Establishment Clause of the First Amendment to the U.S. Constitution “mandates governmental neutrality between religion and religion, and between religion and non-religion.” *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005). To that end, government “sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are non-adherents ‘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.’” *See Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)); *see also ACLU of Ohio Found. v. DeWeese*, 633 F.3d 424, 435 (6th Cir. 2011) (enjoining as unconstitutional county judge’s courtroom display of poster containing Ten Commandments, and “religious statements” such as “God is the final authority, and we acknowledge His unchanging standards of behavior,” and “I join the

Founders in personally acknowledging the importance of Almighty God's fixed moral standards for restoring the moral fabric of this nation," as well as judge's distribution of pamphlets declaring that "God has defined for humanity's own good and happiness what is right and wrong and that those standards cannot be altered or abolished"); *Doe v. Village of Crestwood*, 917 F.2d 1476, 1478 (7th Cir. 1990) (holding that village's sponsorship of Catholic mass during citywide festival violated endorsement test); *Hall v. Bradshaw*, 630 F.2d 1018, 1020 (4th Cir.1980) (prohibiting inclusion of "Motorist's Prayer" on official, state-published map); see also *Wirtz v. City of South Bend*, 813 F.Supp.2d 1051, 1057 (N.D. Ind. 2011) ("Courts have safeguarded this provision by drawing a wide perimeter around it and preventing governments from endorsing one religion over others or religion over non-religion."); *Davies v. Los Angeles County Board of Supervisors*, F.Supp.3d ----2016 WL 1383458, (C.D. Cal. Apr. 6, 2016) (permanently enjoining addition of Latin cross to official county seal); *Summers v. Adams*, 669 F. Supp.2d 637, 657-60 (D.S.C. 2009) (ruling that state DMV could not to issue a license plate containing the words "I Believe" and a cross superimposed on a stained glass window); *Newman v. City of East Point*, 181 F.Supp.2d 1374, 1380-81 (N.D. Ga. 2002) (holding that city's funding and promotion of prayer breakfast ran afoul of the Establishment Clause); cf. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957, 965 (9th Cir. 2011) (upholding removal of banners hung in public-school classroom to emphasize various religious messages including, "In God We Trust," "One Nation Under God," "God Bless America," and "God Shed His Grace on Thee").

Law-enforcement officials are not exempt from these Establishment Clause limitations. See, e.g., *Marrero-Mendez v. Calixto-Rodriguez*, 830 F.3d 38, 40 (1st Cir. 2016) (denying qualified immunity for police officers who coerced subordinate into prayer and punished him when he objected); *Milwaukee Deputy Sheriffs' Assoc. v. Clarke*, 588 F.3d 523, 528-29 (7th Cir. 2009) (holding that county sheriff had unconstitutionally endorsed religion by inviting religious group to give proselytizing presentations to employees as part of mandatory leadership conference and roll call meetings); *Venters v. City of Delphi*, 123 F.3d 956, 970 (7th Cir. 1997), (holding that police chief's alleged "workplace lectures . . . on his views of appropriate Christian behavior" and threats to fire anyone whom he believed to be acting contrary to his religious beliefs, if proven, would violate the Establishment Clause); *Am. Humanist Ass'n, Inc. v. City of Ocala*, 127 F. Supp. 3d 1265, 1284 (M.D. Fla. 2015) (denying qualified immunity to mayor and police chief who allegedly used their official capacities to organize and promote an prayer vigil).

The decision to place bumper stickers with a message such as is included on the billboard you sponsor must be analyzed and considered in light of all the circumstances. There is no question that the bumper sticker on an official vehicle is government speech or that it is religious in nature. A true commitment to community and constitutionally centered policing would counsel against actions that appear to be or are said to be intended to make a statement about the Christian faith of a department's leader or its force. Such actions send a message of exclusion to applicants for employment, employees and community members who do not share the favored religious faith, and can leave people with the impression that policing by the department will be biased in favor of people of one faith tradition over others.

Title VII

As employers, law-enforcement officials and agencies are not exempt from the religious nondiscrimination requirements of Title VII of the Civil Rights Act of 1964, §42 U.S.C. 2000e, et seq. Title VII prohibits discrimination based on religion in advertising, recruiting, and hiring. It also prohibits religious discrimination, including coerced participation in religious activities, on the job. When an agency says that “law enforcement kneels when it prays” it may be seen as sending a message that only Christians need apply and raising a question about whether employees will be coerced to participate in religious activities with which they do not agree or suffer some adverse consequence at work. Such coercion (express or implied) could violate both Title VII and the First Amendment. *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 615 (9th Cir. 1988) (holding that an employer must accommodate atheist employee by allowing him to opt out of worship services).

Moreover, as public employers, law enforcement agencies have an obligation, not shared by private employers, to avoid the appearance of endorsing religion. This gives public employers greater authority and responsibility to exercise control of religious displays even by individual employees in public spaces. Compare *Berry v. Department of Social Services*, 447 F.3d 642, 651-52 (9th Cir. 2006) (holding that employee couldn't place religious items in his workspace when clients routinely entered that workspace for purposes of consulting with an agent of the state) with *Tucker v. Dept. of Educ.*, 97 F.3d 1204 (9th Cir. 1996) (holding that employee was allowed to place religious items in his workspace when no members of the public had access to that office).

Conclusion

Law-enforcement and local government officials who wish to build trust between the public and their law enforcement agencies should be cautious about any religious display that constructs a barrier between their department and any people in their communities, including those who do not share the department leader's faith or the majority faith in the department's community. We hope that you and the local government officials who have a role in approving your budget will consider carefully the potential legal claims that can be raised (establishment clause, violation of free exercise, and religious discrimination) and the potential adverse consequences on community policing and taxpayers before allowing religious displays by law enforcement that can be seen as government action preferring religion over non-religion or one faith over another.

Very truly yours,



Claire Guthrie Gastañaga
Executive Director

Cc: The Honorable Curry W. Martin, Chair of the County Board of Supervisors
Carl Boggess, County Administrator
Patrick Skelley, County Attorney