

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JOSEPH TOMPKINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-cv-03315-WTL-MPB
	)	
TOWN OF KNIGHTSTOWN, INDIANA,	)	
	)	
Defendant.	)	

**Memorandum in Support of Motion for Preliminary Injunction**

**Introduction**

The Town of Knightstown has for a number of years erected a lit Latin cross that is placed on top of a large tree, that is also lit for the Christmas holiday season. The display is on the area known as Knightstown’s town square where there are no countervailing images or displays – just the tree crowned with the cross. Although the cross was temporarily removed by the Town when this action was filed, recent actions of the Town indicate that it again wishes to display the cross. Certainly, there is much that is uncertain “in the murky milieu of Establishment Clause jurisprudence.” *Freedom from Religion Foundation, Inc. v. Connellsville Area School Dist.*, 127 F. Supp. 3d 283, 307 (W.D. Pa. 2015). However, what is certain is that the public display of the cross, the preeminent symbol of Christianity, in this context is unconstitutional. Plaintiff (“Mr. Tompkins”) will prevail on his claim and, inasmuch as all the other requirements for the grant of a preliminary injunction are met here, one should issue, without bond.

**The preliminary injunction standard**

The standard in the Seventh Circuit for the granting of a preliminary injunction is clear.

In order to determine whether a preliminary injunction should be granted, the Court weighs several factors:

- (1) whether the plaintiff has established a prima facie case, thus demonstrating at least a reasonable likelihood of success at trial;
- (2) whether the plaintiff's remedies at law are inadequate, thus causing irreparable harm pending the resolution of the substantive action if the injunction does not issue;
- (3) whether the threatened injury to the plaintiff outweighs the threatened harm the grant of the injunction may inflict on the defendant; and
- (4) whether, by the grant of the preliminary injunction, the public interest would be disserved.

*See, e.g., Baja Contractors, Inc. v. City of Chicago*, 830 F.2d 667, 675 (7th Cir. 1987). The heart of this test, however, is “a comparison of the likelihood, and the gravity of two types of error: erroneously granting a preliminary injunction, and erroneously denying it.” *Gen. Leaseways, Inc. v. Nat’l Truck Leasing Ass’n*, 744 F.2d 588, 590 (7th Cir. 1984). Thus, “the more likely [the preliminary injunction movant] is to win, the less the balance of harms must weigh in his favor.” *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir. 2015).

## **Facts**

It is believed that the following facts will be adduced in support of the preliminary injunction request.<sup>1</sup>

Knightstown is a town in Henry County, Indiana. Located in the center of the town on the north side of U.S. 40, is a one block median area, on North Washington Street, referred to as Knightstown's town square. (Declaration of Joseph Tompkins [“Tompkins Dec.”] ¶ 2, attached

---

<sup>1</sup> Inasmuch as discovery has not yet occurred in this case, Mr. Tompkins reserves the right to supplement the following factual information.

to this memorandum as Exhibit 1).<sup>2</sup> The town square is owned and maintained by the town and contains a large evergreen tree, a gazebo, benches, tables, and a flagpole and seasonal plantings.

(*Id.* ¶¶ 3-4; ECF 1-1). This is how the town square looks in a different season:



(ECF 1-1; Tompkins Dec. ¶ 3). The Knightstown police station and Town Hall are located less than one block south of the town square, across U.S. 40 on South Washington Street. (Tompkins Dec. ¶ 5).

For a number of years the Town of Knightstown has placed decorations and lights on the tree during the Christmas season. (*Id.* ¶6). At night the lights are illuminated and the tree becomes a large Christmas tree. (*Id.* ¶ 7). Here is a recent photograph of the tree:

---

<sup>2</sup> Mr. Tompkins executed his declaration on December 8, 2016. At that time the cross was still placed on the top of the tree. The declaration therefore reflects this historical reality. As noted, the cross has been temporarily removed, although the Town's position is that it wants to again display the cross.



(ECF 1-3; Tompkins Dec. ¶ 10). Also for a number of years the Town of Knightstown has placed a large Latin cross at the top of the tree that is also festooned with lights. (Tompkins Dec. ¶ 8). Here are recent photographs:



(ECF 1-5; Tompkins Dec. ¶ 10). Therefore at night the cross is illuminated.



(ECF 1-6; Tompkins Dec. ¶¶ 9-10). The lights and cross are removed at some point after the New Year's holiday. (Tompkins. ¶ 11).

The Latin cross is the preeminent symbol of Christianity, representing the instrument of the crucifixion of Jesus. (*Id.* ¶ 13). As is apparent from the photographs, the religious significance of the cross on Knightstown's town square is not in any way diminished by any secular objects around it. (*Id.* ¶ 14).

In the course of his every day affairs as a resident of Knightstown Mr. Tompkins is forced to come into direct and unwelcome contact with the cross display that he reasonably perceives to be a religious display. (*Id.* ¶¶ 15, 18). He strongly objects to this display as he believes that the government should not be establishing religion of any kind. (*Id.* ¶ 16).

Subsequent to the filing of this case the Town removed the cross from the tree and announced publicly that it was going to approve a resolution on December 15, 2016, permanently removing the cross. However, on December 15, 2016, the Town determined that it

was not going to approve the resolution and the cross may therefore be returned to the tree at any time.

## **Argument**

### **I. Mr. Tompkins will prevail on the merits of his claim**

#### **A. Background to Establishment Clause principles**

This case arises under the Establishment Clause, which generally “prohibits government from appearing to take a position on questions of religious belief or from ‘making adherence to a religion relevant in any way to a person’s standing in the political community.’” *County of Allegheny v. ACLU*, 492 U.S. 573, 594 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O’Connor, J., concurring)). In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Supreme Court established a three-part test to determine whether governmental action runs afoul of the Establishment Clause: in order to pass constitutional muster, (a) the action must have a secular purpose, (b) the action must have a principal or primary effect that neither advances nor inhibits religion, and (c) the action must not foster excessive governmental entanglement with religion. *Id.* at 612-13.

The so-called *Lemon* test has been subjected to much criticism by Members of the Court and, as this internal criticism has mounted, a number of cases have redefined the first two prongs under a so-called “endorsement” test. The endorsement analysis was first articulated by Justice O’Connor concurring in *Lynch*, 465 U.S. at 692 (O’Connor, J., concurring). In *Lynch* the Court concluded, using the *Lemon* analysis, that a Christmas display in a public park that included a crèche along with a Santa Claus house, candy-striped poles, a Christmas tree, reindeer pulling Santa’s sleigh, carolers, cutout animal figures, lights, and a banner reading “SEASONS GREETINGS,” was not violative of the Establishment Clause. *Id.* at 67. In concurring, Justice

O'Connor noted that the effects prong of *Lemon* should focus on whether the challenged display has "the effect of communicating a message of government endorsement or disapproval of religion. It is only practices having that effect, whether intentionally or unintentionally, that make religion relevant, in reality or public perception, to status in the political community." *Id.* at 692 (O'Connor, J., concurring). Justice O'Connor found that the crèche did not convey a message of endorsement as it, together with all the other displays in the park, are "symbols[s] of the holiday." (*Id.*).

In *County of Allegheny* Justice Blackmun applied the endorsement analysis to find that a crèche given a place of prominence on a staircase inside a county courthouse violated the Establishment Clause, but a display immediately outside a government building containing a large Christmas tree and menorah, along with a sign saluting liberty, did not. 492 U.S. at 592-93. Justice Blackmun noted that, following *Lemon*, "[o]ur subsequent decisions further have refined the definition of governmental action that unconstitutionally advances religion. In recent years we have paid particularly close attention to whether the challenged governmental practice either has the purpose or effect of 'endorsing' religion." *Id.* at 592.

The endorsement approach requires the Court to 'assess[ ] the totality of the circumstances surrounding the display to determine whether a reasonable person would believe that the display amounts to an endorsement of religion.' . . . In other words, the question the Court must resolve is 'whether an objective reasonable observer, aware of the history and text of the community and forum would fairly understand the display to be a government endorsement of religion.'

*Cabral v. City of Evansville, Ind.*, 958 F. Supp. 2d 1018, 1026 (S.D. Ind. 2013), *app. dismissed*, 759 F.3d 639 (7th Cir. 2014) (internal quotation and quotation marks omitted).

Using this analysis the Court in *County of Allegheny* concluded that the crèche display was unconstitutional. Its physical setting sent "an unmistakable message" that the government "supports and promotes the Christian praise to God that is the creche's religious message."

*County of Allegheny*, 492 U.S. at 600. Unlike *Lynch* there was “nothing in the context of the display [that] detracts from the creche’s religious message.” *Id.* at 598. “The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day, by suggesting that people praise God for the birth of Jesus.” *Id.* at 60 (footnote omitted). Conversely, the display of a Christmas tree, menorah, and sign celebrating liberty was deemed to be constitutional because a reasonable observer would not perceive the display as an endorsement of religion, but would understand it “as conveying the city’s secular recognition of different traditions for celebrating the winter-holiday season.” *Id.* at 620 (footnote omitted). In reaching this conclusion the Court stressed that endorsement question must use “the standard of a reasonable observer.” *Id.* (internal quotation marks and citation omitted).

Thus, the endorsement test “dispenses with *Lemon*’s ‘entanglement’ prong and, combining an objective version of *Lemon*’s ‘purpose’ prong with its ‘effect’ prong, asks whether a reasonable observer familiar with the history and context of a religious display would perceive it as a government endorsement of religion.” *Stratechuk v. Board of Educ.*, 587 F.3d 597, 608-09 (3d Cir. 2009) (internal citations omitted). With the advent of the endorsement analysis, and the continuing survival of *Lemon*, courts analyzing the constitutionality of public displays will use both the *Lemon* purpose prong and the *Lemon* effects prong modified by the endorsement analysis. *See, e.g., Books v. City of Elkhart*, 235 F.3d 292, 301-02 (7th Cir. 2000); *Cabral*, 958 F. Supp. 2d at 1026. However, regardless of test:

the touchstone for Establishment Clause challenge remains “the principle that the First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” . . . The determination is case specific: whether a particular practice violates the Establishment Clause is “in large part a legal question to be answered on the basis of judicial interpretation of social facts” which “must be judged in their unique circumstances.”

*Doe ex rel. Doe v. Elmbrook School Dist.*, 687 F.3d 840, 850 (7th Cir. 2012) (en banc).

**B. The Latin cross displayed by Knightstown represents an unconstitutional endorsement of religion**

In *Lynch* Justice O'Connor noted that the crèche in the park was a Christmas symbol whose religiosity was modified by its placement with clearly secular symbols of the Christmas season rendering the display a "celebration of a public holiday with traditional symbols." 465 U.S. at 693 (O'Connor, J., concurring). Here, of course, the symbol being displayed is the Latin cross. In *ACLU of Illinois v. City of St. Charles*, 794 F.2d 265 (7th Cir. 1986), the court affirmed a preliminary injunction enjoining a city from displaying the cross on a television antenna that was on top of its fire department. *Id.* at 267. The cross overlooked a "six-acre area of trees and public building with colored lights to celebrate Christmas. The display includes Christmas trees, wreaths, snowflakes, reindeer, Santa Claus, and other common Christmas symbols." *Id.* Judge Posner, writing for the court, noted that, "[t]he plaintiffs testified – what is anyway obvious – that the Latin cross (a cross whose base stem is longer than the other three arms) is a symbol of Christianity. It is, indeed, the principal symbol of Christianity as practiced in this country today." *Id.* at 271. However, the city argued that much like *Lynch* the cross could not be deemed to be religious in this context, but should be regarded merely as part of a "celebration of a public holiday with traditional symbols," and therefore it cannot convey a message of endorsement." *Id.* at 272 (quoting *Lynch*, 465 U.S. at 693 [O'Connor, J., concurring]) The Seventh Circuit disagreed.

The district judge found, however—we cannot say clearly erroneously—that the cross is not a traditional Christmas symbol. None of the books we have been able to find on the history of Christmas lists "cross" as an index entry. . . . The cross was a device for inflicting a slow and painful death on traitors, pirates, and other serious miscreants. The device that the Romans used to execute Christ, it became the symbol of death, resurrection, and salvation, not of birth—of Easter not of

Christmas. See 4 Encyclopaedia of Religion and Ethics 328 (1912). It is “the principal symbol of the Christian religion, recalling the crucifixion of Jesus Christ and the redeeming benefits of his passion and death.” III Encyclopaedia Britannica, *supra*, at 256. . . .

When Christmas is considered in its secular signification, as a public holiday for Americans of whatever system of religious belief (or nonbelief), the introduction of the cross into the Christmas celebration strikes a discordant chord; for most Americans do not like to think about death in connection with birth. At any rate the cross is not in fact a common Christmas symbol, as far as any member of this panel is aware or the record shows. Its absence from Christmas celebrations may indeed be one of the reasons why Christmas is a national holiday celebrated by most Americans regardless of their religious affiliation. Whether or not you believe in the divinity of Jesus Christ, you cannot fail to be moved by the story of his birth in a manger as told in the New Testament and recalled by Christmas music, pageants, and displays, such as the Nativity tableau. . . . “Essentially, Christmas is the festival of childhood.” But the story of the death and resurrection of Christ, the story that the cross calls to mind, moves only Christians deeply. For others it is the symbol of a system of belief to which they do not subscribe.

*Id.* at 272-73 (some internal citations omitted).

In *Gonzales v. North Tp. of Lake County, Indiana*, 4 F.3d 1412 (7th Cir. 1993), plaintiffs brought suit to enjoin the continued placement of a large crucifix in a public park. In finding that the placement was unconstitutional the court noted that “we are masters of the obvious, and we know that the crucifix is a Christian symbol . . . In fact, the crucifix is arguably the quintessential Christian symbol because it depicts Christ’s death on the cross and recalls thoughts of his passion and death.” *Id.* at 1418 (footnote omitted). Ultimately, the court concluded that “[w]e believe that the crucifix’s presence in the Park conveys the primary message of the Township’s endorsement of Christianity . . . . Not only do we believe that the primary message the crucifix conveys is a government endorsement of religion, we believe that the crucifix does not convey any secular message, whether remote, indirect, or incidental.” *Id.* at 1422-23.

And, in *Harris v. City of Zion, Lake County, Ill.*, 927 F.2d 1401 (7th Cir. 1991), the court concluded that the placement of a cross on a city’s seal violated the First Amendment, noting

that it “enforces or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity. It presents to any observer a clear endorsement of all those beliefs associated with a Latin cross in violation of the Establishment Clause of the first amendment.” *Id.* at 1412.

The Seventh Circuit is not alone in holding that the Latin cross is an unambiguously Christian symbol that bespeaks of unconstitutional endorsement. Thus, in *Separation of Church and State Committee v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996), the court enjoined a large cross that had been placed in a position of prominence in a city park where the city illuminated it during the Christmas season as well as around Thanksgiving day, and on Memorial Day, Independence Day and Veteran’s Day. *Id.* at 618. The court held simply that:

[t]here is no question that the Latin cross is a symbol of Christianity and that its placement on public land by the City of Eugene violates the Establishment Clause. Because the cross may reasonably be perceived as governmental endorsement of Christianity, the City of Eugene has impermissibly breached the First Amendment’s ‘wall of separation’ between church and state.

*Id.* at 620 (footnote omitted). Numerous other cases have found that governmental display of the Latin cross is unconstitutional as endorsing or advancing religion. *See, e.g., American Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1164 (10th Cir. 2010), *amended and superseded on other grounds on rehearing en banc*, 637 F.3d 1095 (10th Cir. 2010) (roadside crosses to memorialize fallen Utah Highway Patrol officers are unconstitutional as conveying a clear message of endorsement); *Davies v. Los Angeles Co. Bd. of Supervisors*, 177 F. Supp. 3d 1194, 1219-22 (C.D. Calif, 2016) (adding a Latin cross to the county seal represents an unconstitutional endorsement of religion); *American Humanist Ass’n v. City of Lake Elsinore*, No. 5:13-cv-00989-SVW-OPx, 2014 WL 791800, \*11-\*15 (C.D. Calif. Feb. 25, 2014) (a veteran’s memorial containing a Latin cross, among other things, unconstitutionally advances religion); *American*

*Atheists, Inc. v. City of Starke, Florida*, No. 3:05-cv-977-J-16MMH, 2007 WL 842673, \*7 (M.D. Fla. March 20, 2007) (a lit cross on top of the city’s water tower violates the Establishment Clause because, among other things, it “has the unconstitutional effect of advancing, affirming or otherwise validating Christianity”); *Jewish War Veterans of U.S. v. U.S.*, 695 F. Supp. 3, 14 (D.D.C. 1988) (large lighted cross at a military base “conveys a message of endorsement of Christianity”). The court in *Jewish War Veterans* cited a host of earlier cases concerning public displays of the Latin cross, including the Seventh Circuit’s *St. Charles* case, and noted that “[r]unning through the decisions of all the federal courts addressing the issue is a single thread: that the Latin cross (a cross whose base stem is longer than the other three arms) is a readily identifiable symbol of Christianity.” (*Id.* at 12-13 [citing cases]).

In this case the Town of Knightstown has put a lit readily identifiable symbol of Christianity at the top of a Christmas tree. What is the reasonable observer to perceive? As noted, in *St. Charles* the Seventh Circuit pointed out what is obvious, a cross is not a symbol associated with Christmas – it is purely religious. Therefore, the reasonable observer will not perceive the cross as part of some small seasonal display. Instead, like the reasonable observer in *St. Charles* and numerous other cases, he or she will perceive the preeminent symbol of Christianity being displayed in a place of prominence by the Town of Knightstown. This is endorsement, plain and simple. Mr. Tompkins will prevail on the merits of its claims.<sup>3</sup>

---

<sup>3</sup> “*Lemon* said that government action must have ‘a secular ... purpose.’” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 864 (2005) (quoting *Lemon*, 403 U.S. at 612). Given that “the only purpose which can be ascribed to the display of the cross is to either advance or endorse the Christian religion,” *American Civil Liberties Union of Mississippi v. Mississippi State General Services Administration*, 652 F. Supp. 380, 383 (S.D. Miss, 1987) (display of a lighted cross on a state owned building during the Christmas season is unconstitutional), it is highly unlikely that the Knightstown cross display will pass muster under the secular purpose prong of *Lemon*. However, Mr. Tompkins will develop this argument further once discovery occurs and Knightstown’s reason for the posting of the Latin cross is articulated and fleshed out.

**II. The other requirements for the grant of a preliminary injunction are met here**

**A. Mr. Tompkins is suffering irreparable harm for which there is no adequate remedy at law**

In *Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006), the court noted that “violations of First Amendment rights are presumed to constitute irreparable injuries.” *Id.* at 867 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The court stated further that “[t]he loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate.” *Id.* at 859. The redisplay of the cross on the tree will cause Mr. Tompkins to suffer irreparable harm for which there is no adequate remedy at law.

**B. The balance of harms favors Mr. Tompkins and the grant of a preliminary injunction**

Given that Mr. Tompkins has established that he is likely to succeed on the merits of his claim, “no substantial harm to others can be said to inhere in its enjoinder.” *Déjà vu of Nashville, Inc., v. Metro Gov’t of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001) (referring to a demonstration that a law violates the First Amendment). Instead, an injunction will only force Knightstown to conform its conduct to what is required by the First Amendment. In *Christian Legal Soc’y*, the court stressed that a governmental entity cannot claim that requiring it to comply with the First Amendment to the United States Constitution is harmful or burdensome. *See Christian Legal Soc’y*, 453 F.3d at 867 (holding that if a governmental entity “is applying [a] policy in a manner that violates [the plaintiff’s] First Amendment rights . . . then [the] claimed harm is no harm at all”). The same is true here. The balance of harms supports the grant of a preliminary injunction.

**C. The public interest favors the grant of a preliminary injunction**

In *Christian Legal Society* the Seventh Circuit noted that “injunctions protecting First

Amendment freedoms are always in the public interest.” 453 F.3d at 859. The public interest therefore favors the grant of the preliminary injunction here.

**D. The preliminary injunction should issue without bond**

Compliance with the preliminary injunction will not cost the Town of Knightstown anything. The law is clear that in the absence of monetary injuries no bond should be required. *See, e.g., Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996).

**Conclusion**

Knightstown’s posting of an illuminated cross during the Christmas season therefore violates the First Amendment. Inasmuch as all other requirements for a preliminary injunction are met one should now issue, without bond, prohibiting the Town from again displaying the cross.

s/ Kenneth J. Falk

Kenneth J. Falk  
No. 6777-49

s/ Jan P. Mensz

Jan P. Mensz  
No. 33798-49  
ACLU of Indiana  
1031 E. Washington St.  
Indianapolis, IN 46202  
317/635-4059 ext. 104  
fax: 317/635-4105  
kfalk@aclu-in.org  
jmensz@aclu-in.org

Attorneys for Plaintiff

**Certificate of Service**

I hereby certify that on this 16th day of December, 2016, a copy of the foregoing was filed electronically with the Clerk of this Court. It was also mailed on this date to the following parties by first class U.S. postage, pre-paid or via certified mail.

Town of Knightstown, Indiana  
Town Hall  
26 S. Washington Street  
Knightstown, IN 46148

*s/ Kenneth J. Falk*

Kenneth J. Falk  
Attorney at Law

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JOSEPH TOMPKINS, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 1:16-cv-03315-WTL-MPB  
 )  
 TOWN OF KNIGHTSTOWN, INDIANA, )  
 )  
 Defendant. )

**Declaration of Joseph Tompkins**

Joseph Tompkins, being duly sworn upon his oath, says that:

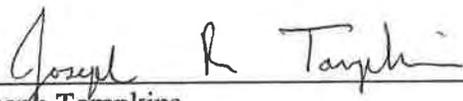
1. I am an adult resident, and taxpayer, of Knightstown, Indiana.
2. Located in the center of Knightstown, on the north side of U.S. 40, is a one block median area, on North Washington Street, referred to as Knightstown's town square.
3. The town square contains a large evergreen tree, a gazebo, benches, tables, and a flagpole and seasonal plantings. Exhibit 1 to the complaint in this cause is an accurate photograph of the town square, although it was obviously taken in warmer weather.
4. The town square is owned and maintained by the Town of Knightstown.
5. The Knightstown police station and Town Hall are located less than one block south of the town square, across U.S. 40 on South Washington Street.
6. For a number of years the Town of Knightstown has placed decorations and lights on the tree during the Christmas season.
7. At night the lights are illuminated and the tree becomes a large Christmas tree.
8. For a number of years the Town of Knightstown has placed a large Latin cross at the top of the tree.

9. It is also illuminated at night.
10. Attached to the complaint in this case, as exhibits 2-6, are photographs that I took immediately prior to the filing of this case showing the square, tree, and cross as it currently appears.
11. I believe that the lights and the cross are generally removed at some point after the New Year's holiday.
12. I am not aware that there is any sort of disclaimer near the tree or on the town square explaining the presence of the cross.
13. I am aware that the Latin cross is the preeminent symbol of Christianity, representing the instrument of the crucifixion of Jesus.
14. The religious significance of the cross on the town square is not in any way diminished by any secular objects around it.
15. The cross on the town square is a religious display and I reasonably perceive it as such.
16. I strongly object to this display as I believe that government should not be establishing religion of any kind.
17. I object to any of my tax dollars going to pay for the erection or maintenance of the display or the lighting of it.
18. As noted, I reside in Knightstown and in the course of my every day affairs and travel in Knightstown I am forced to come into direct and unwelcome contact with the cross display.

**Verification**

I verify, under penalties of perjury, that the foregoing representations are true.

Executed on: 12/9/2016  
Date

  
\_\_\_\_\_  
Joseph Tompkins

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana  
1031 E. Washington St.  
Indianapolis, IN 46202