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Reply to: Orlando

December 14, 2016

VIA FACSIMILE AND EMAIL

William P. Moon, Jr., Mayor
City of Oil City
21 Seneca Street
Oil City, PA 16301
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Jknight@oilcity.org

RE: Offer of representation and defense of VFW Memorial

Dear Mayor Moon:

By way of brief introduction, Liberty Counsel is an international non-profit litigation, education, and policy organization with an emphasis on First Amendment civil liberties. With offices in Florida, Virginia, and Washington D.C., and hundreds of affiliated attorneys across the nation, we specialize in *pro bono* constitutional litigation, including the defense of monuments to our Nation's history and to veterans.

I understand that Oil City ("City") was recently contacted by the American Atheists Legal Center ("AALC"), because someone locally objected to a Veterans of Foreign Wars memorial in Justus Park, simply because one component of the memorial, a bench, contained a paraphrase of a William Penn quotation which had the word "God" in it. AALC sent the City a letter demanding the bench be removed, on the basis that the quotation "violates the Establishment Clause," and implied legal action against the City if it was not removed.

Liberty Counsel disagrees with the conclusions of American Atheists. Based on the facts of this case as I understand them, Liberty Counsel is prepared to provide a *pro bono* defense of the VFW memorial, in place, with the William Penn paraphrase remaining.

I understand that in 2003, two members of the local Veterans of Foreign Wars Post 464 ("VFW"), Jim Mulch (deceased) and Bill Foyer, desired to create a memorial that honored veterans in their service to America. Mr. Mulch was the prime mover behind the memorial, and it remains today as his legacy to the community. The memorial consists of

two benches, facing a narrow obelisk, with pavers between. The pavers on the ground in front of the obelisk contain the name of VFW Post 464, surrounded by numerous other pavers given in memory of loved ones.

On the front of the obelisk is the following inscription: "IN MEMORY AND HONOR OF ALL OIL CITY MEN AND WOMEN WHO SERVED IN THE ARMED FORCES OF OUR COUNTRY," On the back of the obelisk is inscribed the poem, "The Soldier," by Father Denis Edward O'Brien, Sergeant, USMC:

It is the soldier, not the reporter, who has given us the freedom of the press. It is the soldier, not the poet, who has given us the freedom of speech. It is the soldier, not the campus organizer, who has given us the freedom to demonstrate. It is the soldier who salutes the flag, who serves beneath the flag, and whose coffin is draped by the flag, who allows the protestor to burn the flag.

When viewed from the Riverwalk, the left bench states "All Gave Some, Some Gave All." The right bench is inscribed "Men Who Aren't Governed By God, Will Be Governed By Tyrants." This latter quote, a paraphrase of a quotation attributed to William Penn, has been made an issue by American Atheists, who claim that its inclusion at the veterans' memorial is inappropriate and violates the First Amendment. These claims are incorrect.

In including the William Penn quote, the designers of the memorial wanted to pay tribute to William Penn, who was the founder of Pennsylvania, as well as a soldier, statesman, Quaker, and pacifist. William Penn, like the authors of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights, believed that the rights of man come from God; not government; and not other men. This bench erected in his honor, and in honor of our Nation's veterans, paraphrases Penn's quote: "If we will not be governed by God, we must be governed by tyrants."

Penn was not alone in this sentiment: it "is true that religion has been closely identified with our history and government The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as ... in duty bound, that the Supreme Lawgiver of the Universe ... guide them into every measure which may be worthy of his [blessing ...]' " *Van Orden v. Perry*, 545 U.S. 677, 683 (2005) (quoting *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, at 212-213 (1963)).

Like Penn, the Founders also believed in "self-evident" truths: "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it..." Declaration of Independence, July 4,

1776. The U.S. Supreme Court has recognized that “We are a religious people whose institutions presuppose a Supreme Being.” *Zorach v. Clauson*, 343 U.S. 306, 313–14 (1952). Our National Motto is “In God We Trust.” Millions of American servicemen and women have fought against tyranny to secure our God-given rights, including the right to worship (or not worship) God, according to our own conscience.

Turning to the Tyrants Bench itself, in the context of a memorial to American veterans, in Pennsylvania, a reasonable observer educated about the beliefs of the Founders in general and William Penn in particular would perceive no “endorsement” by the state such as to render the statement on the bench unconstitutional. “In applying the endorsement test, [the Third Circuit has] identified two factors as particularly critical: first, the message that the “reasonable observer” receives from the display, i.e., whether the display sends a message of government endorsement of religion; and second, the context in which the religious display appears. ‘[T]he reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious display appears.... Nor can the knowledge attributed to the reasonable observer be limited to the information gleaned simply from viewing the challenged display....**[O]ur hypothetical observer also should know the general history of the place in which the [object] is displayed...**” *Modrovich v. Allegheny Cty., Pa.*, 385 F.3d 397, 402 (3d Cir. 2004)(*citing Capitol Square*, 515 U.S. at 780, 115 S.Ct. 2440 (O’Connor, J., concurring). (Emphasis added).

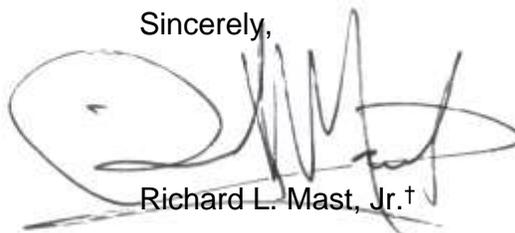
A reasonable observer would read all of the statements, including those on the left bench, the right bench, the front of the obelisk, the ground in front of the obelisk, and the inscription on the back of the obelisk, including the statement “Erected 2003 by Oil City VFW Post 464,” and conclude that the speech on the monument and benches was the sentiment of VFW Post 464, not necessarily that of Oil City (although Oil City may express that sentiment), as part of an overall display for the purpose of honoring veterans which includes the sentiment of William Penn on the source of American liberties. Public art and monuments need not be sanitized of any religious references, in order to be constitutional.

Moreover, within the immediate proximity to the veterans memorial are bronze sculptures depicting children playing by the river; an Oil City “derrick,” a 9/11 memorial, and a sign discussing the historic origins of the park. Thus, the overall effect of a single quotation attributed to William Penn, as one portion of a VFW memorial in context, in a park, surrounded by numerous other secular symbols, does not “advance religion” as claimed by American Atheists.

The veterans memorial, complete with the Tyrants Bench, is constitutionally defensible. The Tyrants Bench in no way violates the Establishment Clause. In expressing an axiom of William Penn and the Founding Fathers of America, it “comports with our tradition and does not coerce participation [in prayer, religion, belief in God, or even in sitting on the bench] by nonadherents.” *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1828 (2014).

For these reasons, Liberty Counsel urges the City Council of Oil City to maintain the bench in place, and to allow Liberty Counsel to defend it at no charge, should a lawsuit materialize. Should you or others wish to discuss further, or wish to know more about Liberty Counsel's experience in these matters, please do not hesitate to contact me at 407-875-1776.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Mast, Jr.", written over a horizontal line.

Richard L. Mast, Jr.†

Attachments

CC
City Council Members
Ron Gustafson
Michael Poff
Isaiah Dunham
Dale Massie

City Manager
Mark G. Shroyer

†Licensed in Virginia
RLM/vab





