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Attorneys for Plaintiffs,
American Humanist Association, Gregory Storey, and Charlene Storey

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AMERICAN HUMANIST ASSOCIATION;
GREGORY STOREY; CHARLENE
STOREY;

Plaintiffs,

- against -

BOROUGH OF ROSELLE PARK; and CARL
HOKANSON, in his official capacity as Mayor
of the Borough of Roselle Park;

Defendants.

DOCKET NO. _____

Civil Action

COMPLAINT

A Christian cross display that is owned and maintained by the government has been placed on government property in front of a public library building. When the government displays an iconic religious symbol – the symbol of Christianity – on its property, it sends a strong message of endorsement and exclusion. This message of religious favoritism is even more problematic because the cross display purports to be a government memorial honoring war dead. No such monument should honor just one religious group, but the cross at issue here does exactly that: it exalts Christian veterans and excludes everyone else. Therefore, to protect their civil liberties and constitutional rights, the above-named Plaintiffs (collectively, “Plaintiffs”), by

and through their attorneys, Paul S. Grosswald, Monica L. Miller (*pro hac vice pending*), and David A. Niose (*pro hac vice pending*), by way of Complaint against the above-named Defendants (collectively, Defendants), hereby allege the following:

LOCAL RULE 10.1 STATEMENT

1. The mailing addresses of the parties in this case are as follows:

Plaintiffs

AMERICAN HUMANIST ASSOCIATION
1777 T Street N.W.
Washington, D.C. 20009-7102

GREGORY STOREY
318 Pershing Avenue
Roselle Park, NJ 07204

CHARLENE STOREY
318 Pershing Avenue
Roselle Park, NJ 07204

Defendants

BOROUGH OF ROSELLE PARK
110 East Westfield Avenue
Roselle Park, NJ 07204

CARL HOKANSON
110 East Westfield Avenue
Roselle Park, NJ 07204

NATURE OF THE CLAIMS

2. This action challenges the constitutionality of the Borough of Roselle Park's approval, ownership, installation, maintenance and prominent placement of a display depicting a Christian cross with a soldier kneeling to it (the "Cross Display"), which has been placed at Veterans Memorial Library (the "Library") in the Borough of Roselle Park (the "Borough").

3. The Plaintiffs allege that the Defendants have violated the Establishment Clause of the First Amendment of the United States Constitution, as applied to the Borough by the Fourteenth Amendment thereof.

4. The Plaintiffs seek injunctive and declaratory relief under 42 U.S.C. § 1983 against the Defendants and nominal damages to redress this violation of the separation of church and state, together with recovery of attorney's fees and costs under 42 U.S.C. § 1988(b).

PARTIES

Plaintiffs

5. Plaintiff American Humanist Association (“AHA”), is a nonprofit 501(c)(3) organization incorporated in Illinois with a principal place of business at 1777 T Street N.W., Washington, D.C. AHA is a membership organization, with over 160 chapters and affiliates nationwide (including seven in New Jersey) and approximately 600,000 members and supporters, including residents of the Borough. AHA promotes humanism and is dedicated to advancing and preserving separation of church and state, the constitutional protections found in the Bill of Rights, and, in particular, the First Amendment to the United States Constitution. AHA brings this action to assert the First Amendment rights of its members.

6. Plaintiff Gregory Storey (“Mr. Storey”) is a member of AHA, and a resident of the Borough. He objects to the Borough's approval, ownership, installation, maintenance and prominent placement of the Cross Display on Borough property. He uses the Library regularly and does not want to have unwelcome contact with the Cross Display and its government-endorsed religious message.

7. Plaintiff Charlene Storey (“Councilwoman Storey”) is a member of AHA, a resident of the Borough, and a member of the Borough Council of Roselle Park (“Borough Council”). She objects to the Borough’s approval, ownership, installation, maintenance and prominent placement of the Cross Display on Borough property. She uses the Library regularly and does not want to have unwelcome contact with the Cross Display and its government-endorsed religious message.

8. Due to the placement of the Cross Display outside the entrance to the Library, Mr. Storey and Councilwoman Storey believe it cannot be ignored or overlooked. Its location clearly makes it the property of and a statement by the Borough government. Mr. Storey and Councilwoman Storey believe that the Cross Display associates a Christian religious symbol with the Borough and gives the impression that the Borough supports and approves of Christianity, as opposed to other religions, and that the Borough prefers Christians and Christianity over other religions. As non-Christians, Mr. Storey and Councilwoman Storey are personally offended and feel excluded by this governmental message. They oppose this appearance of governmental favoritism for religion and for a particular religion, Christianity.

9. Mr. Storey and Councilwoman Storey have been residents and homeowners in the Borough for over 30 years. They have in the past and will in the future pay taxes to the Borough, including the property tax the Borough imposes on property they own in the Borough. They object to the Borough’s expenditure of their tax dollars on the installation and maintenance of the Cross Display.

Defendants

10. Defendant Borough of Roselle Park is a municipality in the State of New Jersey.

11. Defendant Carl Hokanson is the Mayor of the Borough (“Mayor Hokanson”). He is sued in his official capacity.

JURISDICTION AND VENUE

12. This case arises under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983 and presents a federal question within this Court’s jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

13. This Court has jurisdiction to issue a declaratory judgment under 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

14. This Court has jurisdiction to provide injunctive relief under 28 U.S.C. § 1343 and Rule 65 of the Federal Rules of Civil Procedure.

15. This Court has jurisdiction to award damages under 28 U.S.C. § 1343.

16. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the Plaintiffs’ claims occurred herein.

17. This Court has personal jurisdiction over Defendant Borough of Roselle Park because it is organized in and conducts its business in New Jersey.

18. This Court has personal jurisdiction over Defendant Carl Hokanson because the events giving rise to this Complaint arose out of his actions while acting in his official capacity as Mayor of the Borough, located in New Jersey.

FACTS

19. On July 29, 2016, the Cross Display was installed on public property in front of the Library by Borough Department of Public Works (“DPW”) employees. True and accurate pictures of the Cross Display are annexed hereto as Exhibit 1.

20. Mayor Hokanson purchased the Cross Display and arranged to have it placed in front of the Library prior to the Borough Council's approval.

21. On August 1, 2016, Councilwoman Storey encountered the Cross Display when she went to the Library to donate books for its book sale, something that she and Mr. Storey do regularly. She went home and got Mr. Storey, and they both returned to the Library to look at the Cross Display.

22. Shortly after encountering the Cross Display, Mr. Storey called Mayor Hokanson and asked him who authorized the Cross Display. Mayor Hokanson said he purchased it and that the Library Board of Trustees authorized it several months ago.

23. On information and belief, the acting Library director knew nothing about the Cross Display or its installation at the Library until she heard DPW workers pounding something into the ground on July 29, 2016.

24. Moreover, Councilwoman Storey, who is Borough Council liaison to the Library Board, knew nothing about it.

25. Both Mr. Storey and Councilwoman Storey checked the minutes of the Library Board meetings. There was no mention of the Cross Display, nor was there a discussion or a vote pertaining to the Cross Display.

26. On August 1, 2016, Councilwoman Storey called Jeff Regan, Library Board vice president, who told her he had previously been shown a picture of the Cross Display at a Roselle Park Democratic Committee meeting by Mayor Hokanson and committee chairman, Dan Petrosky.

27. On August 2, 2016, Mr. Storey emailed Mayor Hokanson saying that, contrary to Mayor Hokanson's statement the previous day, the Library Board had not approved the Cross Display.

28. In that same email, Mr. Storey asked Mayor Hokanson to move the Cross Display off of public property, on the grounds that the community should honor all veterans, not just Christian veterans.

29. Mr. Storey waited briefly for a response from Mayor Hokanson, and then sent a certified letter to Mayor Hokanson making the same points. A true and accurate unsigned copy of that letter is attached hereto as Exhibit 2.

30. On August 11, 2016, Mr. Storey received a response from Borough attorney Richard D. Huxford, saying that the matter of the Cross Display would be addressed at the next Council meeting, and that because of the threat of litigation, the Borough could not comment any further.

31. Also on August 11, 2016, the AHA, through its counsel, sent the Borough a cease-and-desist letter demanding that the Cross Display be removed from government property. A true and accurate copy of that letter is attached hereto as Exhibit 3.

32. The AHA letter informed the Borough that a virtually identical cross display war memorial was found unconstitutional by a federal court in California. The letter also pointed out that the courts have been nearly unanimous in holding government war memorial crosses, and cross displays generally, unconstitutional.

33. The AHA letter asked the Borough to respond to the letter within seven days to avoid litigation.

34. AHA did not receive a response from the Borough.

35. On August 18, 2016, at its regularly scheduled meeting, Borough Council adopted a resolution retroactively accepting Mayor Hokanson's donation of the Cross Display.

36. On that same day, at that same meeting, Borough Council also adopted a resolution retroactively authorizing the Cross Display's placement in front of the Library.

37. Borough Council was divided with respect to both resolutions. Each resolution passed with three votes in favor and two votes against. Councilwoman Storey recused herself from the vote at the request of the Borough's attorney, because she is a member of AHA which was threatening litigation at the time of the vote.

38. Members of the public were permitted to voice their opinions about the Cross Display at the August 18, 2016, meeting prior to those resolutions being adopted.

39. Some of the supporters of the Cross Display who spoke at the August 18, 2016, meeting expressed anti-atheist sentiments. For instance, one member of the public, while lamenting about the possibility that there would be a lawsuit if Borough Council adopted the Cross Display resolutions, complained that the Justices on the United States Supreme Court are "all atheists."

40. Prior to the erection of the Cross Display, there had been no discussion at Borough Council meetings about the need for more war memorials. Moreover, Borough Council never considered secular alternatives that could be used as a war memorial in lieu of the Cross Display.

CAUSE OF ACTION

DEPRIVATION OF RIGHTS PURSUANT TO 42 U.S.C. § 1983

(Arising out of Establishment Clause)

41. All preceding allegations are incorporated herein by reference.

42. The Defendants' approval, ownership, installation, maintenance and prominent

placement of the Cross Display on government property amounts to the advancement of religion and, specifically, an endorsement of and affiliation with Christianity, in violation of the Establishment Clause of the First Amendment to the United States Constitution, as applied to the State of New Jersey and all municipalities and municipal employees therein, including the Defendants, by the Fourteenth Amendment to the United States Constitution.

43. The Defendants' approval, ownership, installation, maintenance and prominent placement of the Cross Display on government property lacks a secular purpose, in violation of the Establishment Clause of the First Amendment to the United States Constitution, as applied to the State of New Jersey and all municipalities and municipal employees therein, including the Defendants, by the Fourteenth Amendment to the United States Constitution.

44. The Defendants' approval, ownership, installation, maintenance and prominent placement of the Cross Display on government property fosters excessive governmental entanglement with religion, in violation of the Establishment Clause of the First Amendment to the United States Constitution, as applied to the State of New Jersey and all municipalities and municipal employees therein, including the Defendants, by the Fourteenth Amendment to the United States Constitution.

45. The Defendants' violation of the Establishment Clause, as described herein, constitutes a deprivation of the Plaintiffs' rights which are secured by the First and Fourteenth Amendments to the Constitution of the United States.

46. The deprivation of the Plaintiffs' rights, which are secured by the First and Fourteenth Amendments to the Constitution of the United States, violates 42 U.S.C. § 1983.

47. The Defendants' violation of § 1983 occurred under color of state law. The Defendants exercised power that they possessed by virtue of state law, in that the Defendants are

a municipality and mayor, and their actions were made possible only because they were clothed with the authority that state law provides to municipalities and their employees.

48. Moreover, Defendants' actions in approving, owning, installing, maintaining and prominently placing the Cross Display on Borough property constitute "state action" as defined by relevant case law.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment be entered for the following relief:

- 1) a declaratory judgment that the Defendants' approval, ownership, installation, maintenance and prominent placement of the Cross Display on Borough property violates the Establishment Clause of the First Amendment of the United States Constitution, as applied to the Defendants by the Fourteenth Amendment to the United States Constitution, and is therefore a violation of the Plaintiffs' constitutional rights under 42 U.S.C. § 1983;
- 2) a permanent injunction ordering the Defendants to remove the Cross Display from government property;
- 3) a permanent injunction enjoining the Defendants, and any successors or assigns, from funding, owning, installing, maintaining, or placing the Cross Display on government property or private property, in violation of the Establishment Clause in the First Amendment of the United States Constitution, as applied to the Defendants by the Fourteenth Amendment to the United States Constitution;
- 4) a judgment in the Plaintiffs' favor for nominal damages;
- 5) an award to the Plaintiffs of reasonable costs, disbursements and attorneys' fees as allowed by law from the Defendants pursuant to 42 U.S.C. § 1988;

- 6) reasonable pre-and post-judgment interest on all monetary awards; and
- 7) such other and further relief as this Court deems equitable and just.

Dated: September 30, 2016

By: s/ Paul S. Grosswald
PAUL S. GROSSWALD
Attorney for Plaintiffs,
**American Humanist Association,
Gregory Storey, and Charlene Storey**