



(202) 466-3234  
(202) 466-3353 (fax)  
www.au.org

1310 L Street NW  
Suite 200  
Washington, DC 20005

August 16, 2017

**By U.S. Mail**

Mithun Mansinghani, Solicitor General  
Office of the Attorney General  
313 N.E. 21st Street  
Oklahoma City, OK 73105

Re: *Religious iconography in chapel*

Dear Mr. Mansinghani:

We have received your July 10, 2017, letter informing us that you have taken over representation of East Central University with regard to the matter of the religious iconography on the chapel. We have not, however, received any response from your office that addresses the substance of our complaint.

We are aware, however, that in a letter from Attorney General Hunter to Mark Stansberry of the Regional University System of Oklahoma, Mr. Hunter appears to rely on *Van Orden v. Perry*, 545 U.S. 677 (2005), and *Weinbaum v. City of Las Cruces, N.M.*, 541 F.3d 1017 (10th Cir. 2008), to argue that the government may display crosses on public land. Randy Krehbiel, *Oklahoma AG intervenes in ECU campus cross controversy*, Tulsa World, July 5, 2017, <http://tinyurl.com/ycdgf7yv>. Neither case saves the cross at East Central University. We therefore reiterate our request that the cross and other permanent religious iconography be removed from the chapel.

First, *Van Orden* does not hold that religious iconography may be displayed on government property in all circumstances. Justice Breyer's opinion controls because it is the narrowest opinion concurring in the judgment. See *Marks v. United States*, 430 U.S. 188, 193 (1977). That opinion focuses on the *context* of the display and what effect that context has on the message presented by the monument. *Van Orden*, 545 U.S. at 701. It was Justice Breyer's view that the seventeen other monuments and twenty-one historical markers—none of which communicated a religious message—surrounding the Ten Commandments at the Texas State Capitol created a context in which the otherwise religious message of the Commandments was suppressed. *Id.* at 701-03. The cross at ECU has no such contextual cover. Indeed, the context of the ECU cross *enhances* its religious

message: it is a religious symbol on a building that is meant to be used for religious purposes.

Second, in *Weinbaum*, and in keeping with settled Supreme Court precedent, the Tenth Circuit instructed that “[c]ontext carries much weight in the Establishment Clause calculus.” *Weinbaum*, 541 F.3d at 1033. The court upheld the presence of crosses in the Las Cruces city seal because it concluded that a reasonable observer would be aware of the nonreligious historical context behind the use of those crosses and the relevance that they bear to the name of the city. *Id.* at 1029-37. Again, ECU’s cross has no nonreligious context. It was placed on the chapel as a signifier of the Christian religion and to mark the building as a Christian chapel.

Third, Mr. Hunter’s letter fails even to acknowledge the more recent Tenth Circuit opinion that has the most direct application to this issue. In *American Atheists, Inc. v. Davenport*, 637 F.3d 1095, 1121 (10th Cir. 2010), the Tenth Circuit held that the Utah Highway Patrol’s practice of allowing erection of Latin crosses on public property to memorialize fallen officers violated the Establishment Clause because the crosses “convey to a reasonable observer that the state . . . is endorsing Christianity.” The court recognized that the Latin cross “is unequivocally a symbol of the Christian faith,” and concluded that, “there is little doubt that Utah would violate the Establishment Clause if it allowed a private group to place a permanent unadorned twelve-foot cross on public property without any contextual or historical elements that served to secularize the message conveyed by such a display.” *Id.* at 1120. The court then concluded that there were no contextual or historical elements that secularized the crosses, disposing of *Van Orden* and *Weinbaum* in the same way that we have explained above. *Id.* at 1121-22.

According to ECU’s website, the Kathryn P. Boswell Memorial Chapel was donated to the university in 1957 explicitly to be used for religious services. East Central University, *Buildings of ECU – Then and Now*, <http://tinyurl.com/ycqowdxk>. The mere fact that the cross has been there for sixty years is not enough to save it when the cross and its context communicate a religious message—and it would beggar belief to argue that a cross atop a chapel does not communicate a religious message. While it is perfectly legal for the University to create a space for students to engage or participate in religious exercises and *comparable secular ones* as they wish, it is *not* legal for the University to operate a Christian chapel covered in Christian iconography. Please remove the permanent iconography from the chapel.

We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,



Richard B. Katskee, Legal Director  
Alex J. Luchenitser, Associate Legal Director  
Ian Smith, Staff Attorney