



GOVERNOR GREG ABBOTT

MEMORANDUM

TO: Virginia K. Hoelscher, Chair, Opinion Committee,
Office of the Attorney General

FROM: Jimmy Blacklock, General Counsel
Adam W. Aston, Deputy General Counsel

**RE: Whether the display of a cross with a thin blue line on a sheriff
patrol vehicle violates the First Amendment to the U.S. Constitution
(RQ-0089-KP)**

It has come to our attention that the Brewster County Sheriff has allowed his deputies to display a small cross on the windows of their patrol vehicles. We also understand that the district attorney serving Brewster County and the surrounding counties has asked for an attorney general opinion on the permissibility of placing a cross depicted with a thin blue line on a patrol vehicle. The Office of the Governor agrees with the district attorney that this practice is entirely consistent with the First Amendment. We write to support the dedicated men and women of "The Thin Blue Line" who serve and protect Texas families and communities each day.

The U.S. Constitution does not prohibit local officials like the Brewster County Sheriff from publicly acknowledging the religious beliefs and religious heritage of their communities. Nor does the Constitution prevent peace officers from publicly expressing their individual religious beliefs while on duty. The Constitution does prohibit Congress from making a law respecting an establishment of religion. U.S. CONST. Amend. I. Obviously, nothing of the sort has occurred in Brewster County.

Even under the U.S. Supreme Court's expansive interpretation of the Establishment Clause's limited and unambiguous text, the Court has never held that public officials are barred from acknowledging our religious heritage. To the contrary, the U.S. Supreme Court has long recognized the demographic and historical reality that Americans "are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). Moreover, the Supreme Court has repeatedly held that the First Amendment

requires accommodation of religion, not hostility towards religion. “Anything less would require the ‘callous indifference’ [that] was never intended by the Establishment Clause.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (quoting *Zorach*, 343 U.S. at 314); *see also Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring) (Requiring the government “to purge from the public sphere all that in any way partakes of the religious” would “promote the kind of social conflict the Establishment Clause seeks to avoid.”). In fact, “[a] relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

As Attorney General Paxton explained in AG Opinion No. KP-0042, the Supreme Court’s recent cases involving public displays and practices that contain a religious element instruct that an analysis of the permissibility of a display must focus on the nature of the display and our country’s historical practices and understandings. Tex. Att’y Gen. Op. No. KP-0042 (2015) (citing *Van Orden*, 545 U.S. at 686, 689-91; *Lynch*, 465 U.S. at 679-80, 685-86; *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1819 (2014)). When viewed in that context, it is clear that a deputy sheriff may place a cross with a thin blue line on his or her patrol vehicle without establishing a religion in violation of the First Amendment.

In addition to its religious significance, the cross has a long history in America and elsewhere as a symbol of service and sacrifice. For more than a century, crosses have been used at revered places like Normandy American Cemetery and Memorial and Arlington National Cemetery to honor the service and memorialize the ultimate sacrifice of members of the U.S. Armed Forces. When used in this manner, “a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.” *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality opinion).

The use of a cross is not limited to cemeteries and memorials; awards for valor and bravery often include a cross. *See generally* JOHN D. CLARKE, GALLANTRY MEDALS & DECORATIONS OF THE WORLD (2001) (depicting and describing military medals from three dozen countries, twenty-eight of which utilize at least one medal in the shape of a cross); *see also* PETER DUCKERS, EUROPEAN ORDERS AND DECORATIONS TO 1945 5-7 (explaining that “most” of the badges associated with European orders of chivalry, which date back to the Middle Ages, “are based on a cross shape”). In the United States, the Army’s Distinguished Service Cross, the Air Force Cross, and the Navy Cross are the second highest decorations for their respective branches of service, and from 1917-42, the Medal of Honor awarded by the U.S. Navy was in the shape of a cross. *Id.* at 339-47.

The long history of the cross as a symbol of service and sacrifice cannot credibly be questioned. Although the Supreme Court of the United States has not squarely answered the First Amendment question regarding a cross placed on a patrol vehicle or a similar display, *Salazar v. Buono* provides a strong indication of what the Court's answer would be. *Salazar*, 559 U.S. at 721 (plurality opinion); *id.* at 715-16 (plurality opinion) (recognizing the secular purposes of honoring sacrifices made in war with a cross memorial); *id.* at 718-19 (plurality opinion) (explaining that the Constitution “does not require eradication of all religious symbols in the public realm. A cross by the side of a public highway marking, for instance, the place where a state trooper perished need not be taken as a statement of governmental support for sectarian beliefs. The Constitution does not oblige government to avoid any public acknowledgment of religion’s role in society.”).

The Second Circuit’s 2014 decision in *American Atheists, Inc. v. Port Authority of New York and New Jersey* is also instructive. The Second Circuit held that an artifact—a column and cross beam that resembled a Latin cross—recovered from the debris at the World Trade Center could be displayed in a national museum at Ground Zero. *Am. Atheists, Inc. v. Port Authority of N.Y. & N.J.*, 760 F.3d 227, 232-33 (2d Cir. 2014). The Second Circuit determined that the cross display, which the museum had named “The Cross at Ground Zero,” *id.* at 232, was permitted under the First Amendment because the cross “came to be viewed . . . as a symbol of hope and healing for all persons.” *Id.* at 234. Thus, both the actual and perceived purposes of including the cross at the museum were a secular remembrance of September 11, 2001, and its aftermath. *Id.* at 238-242. The effect of the cross would not be to advance or endorse religious belief, *id.* at 242-44, and the display would not serve to entangle government and religion, *id.* at 244-45.

The Brewster County deputies who have chosen to place crosses on their patrol cars have utilized the symbol of the cross in a manner that is consistent with the aforementioned history, traditions, and principles of constitutional law. As Justice Goldberg first explained, “[t]he First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have a meaningful and practical impact [T]he measure of constitutional adjudication is the ability to and willingness to distinguish between real threat and mere shadow.” *Sch. Dist. Of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 308 (1963) (Goldberg, J., concurring).

The Brewster County deputies’ crosses neither establish a religion nor threaten any person’s ability to worship God, or decline to worship God, in his own way. Like those whose service to country is honored by crosses at military cemeteries, law enforcement officers risk their lives to protect us. The symbol of the cross appropriately conveys the solemn respect all Texans should have for the

courage and sacrifice of our peace officers. That is an entirely appropriate public purpose, and the Constitution cannot legitimately be interpreted to prohibit it.