

U.S. CIVIC FLAGS IN CONFLICT WITH THE COURTS

John M. Purcell

Abstract:

Over the past decade the American Civil Liberties Union (ACLU) in the United States has taken at least seven cities to court at the behest of citizens of these cities who complain that their civil rights have been violated because, in each case, some religious symbol was displayed on the various civic seals and flags that did not represent the beliefs of the plaintiffs. The symbols are often crosses, but have included a temple and an ichthus as well. To date, where cases have been concluded, the courts have ruled against all the cities but one, causing them to remove the offending symbols. Other cities in the U.S. are likely future targets of litigation.

Introduction

The First Amendment to the U.S. Constitution guarantees the separation of church and state so that no one religion can be said to be affiliated with or representative of any of the nation's federal, state, or local governments. In the early years of the United States, as the land was settled, it was not unusual for communities to be formed that were largely of one ethnic group whose members were predominantly of the same general religious background. These communities, when they began to adopt symbols to represent their local civic governments, usually the official civic seal, not infrequently employed emblems that included some representation of their religious beliefs, together with depictions of other community aspects they deemed important, such as homes, education, commerce, and industry. It is safe to say that the vast majority of the citizens of any of these communities paid little attention to these symbols, and left their development and use to those relative few who were employed in municipal government. In time, as towns and cities adopted flags, many of the same symbols, and often the civic seal, were transferred to them. Nevertheless, if one were to query the average citizen about the civic flag, most often the reply would have been and indeed, would still be a puzzled look, and some comment to the effect that he or she did not know there was such a flag.

In some U.S. cities within the past decade, however, citizens have come not only to know about their civic flags, but to take up their passionate defense as one by one the flags have been declared illegal by the federal courts because they portray a religious symbol. The agency that is most often responsible for taking a civic government to court in the first place, usually acting on the complaint of a resident of that community who objects to the religious symbol on the flag, is the American Civil Liberties Union, known widely in the United States by its initials, ACLU. It is self-described as follows:

The ACLU is an authoritative and resourceful advocacy organization dedicated to the defense of every person's liberties as covered by the Bill of Rights. The ACLU is neither representative of nor solicitous [sic] of any political, religious, racial or other special interest group.... The organization embodies a courageous commitment to openness and vigilance in guarding the rights of all.¹

"Vigilance in guarding the rights of all" seems to be the key to the motivation of the ACLU in proceeding with its cases against many communities across the U.S. It is interesting to note that in the U.S., the Congress does not normally interfere with the adoption of any civic symbols per se, and so there are probably dozens of communities across the nation that have civic emblems that could be potentially in conflict with the First Amendment if they were challenged in court. Moreover, the ACLU does not go about seeking such civic symbols, but acts only at the request of a citizen who believes his or her civil rights are being violated to the extent that the disputed symbol does not represent that person as a member of the community. Of course a citizen could go to court on his or her own, but the cost is usually prohibitive for an individual, so the ACLU with greater resources, acts on that person's behalf.

St. George, Utah

One of the first cities to defend its flag in court was the city of St. George, Utah, in 1989. The flag of that city was white with a circular logo in its center emphasizing the city's attractions for tourists (fig. 1). A narrow blue band around the logo has the words CITY OF ST. GEORGE across the top, and UTAH at the bottom, in black. The top half of the logo's field is a sunburst of eleven sun-rays, alternately orange and yellow from a central orange sun. A bunch of grapes with leaves, in black, occupies the central yellow ray, beneath the words INCORPORATED 1862, also in black. Across the center of the logo, on the orange rays and sun is the city's motto, "WHERE THE SUMMER SUN SPENDS THE WINTER." The lower half of the logo shows a kind of aerial view of the city's golf course, dexter, in light and dark green; an azure lake, centre bottom; brown mountains and azure sky, centre top; and a Mormon (Latter Day Saints) temple, in black and white, sinister.

It is the temple building, of course, that created the controversy. A citizen of St. George, identified only as one Foremaster, objected to being "confronted by the logo on a daily basis."² After a year in the courts, the case was decided against the city, which was forced to remove the logo from its flag. Although the city did adopt a new logo (fig. 2), it has not yet been put on a flag. The new logo, also circular, is mostly orange and yellow and depicts the sun on the horizon, and could be interpreted as either a sunrise or sunset. The words CITY OF ST. GEORGE are written across the upper half in black in a flowing script. Incidentally, as an interesting side commentary, had the seal of the city been used on the flag, as is so often the case in the U.S., the flag would have been entirely non-controversial, since it merely shows several bunches of grapes in its center, in blue (fig. 3).³

Austin, Texas

Just a year later, in 1991, the capital city of Texas, Austin, was taken to court by one Murray, protesting the use of the Christian cross on the central device of the city's flag, adopted seventy-five years previously in 1916 (fig. 4). Austin's flag has a white field with a modified representation of the coat-of-arms of the city's founder, Stephen F. Austin, for whom the city is named, in the center. The shield is divided vertically into three equal stripes, red, white, red. An inverted triangle in blue forms the top of the shield; in its centre is a golden "Lamp of Knowledge" to mark the fact that the city is a centre of education. The entire shield's outline is fimbriated in gold. Above the shield on a red silhouette of the State Capitol, is the original crest of Stephen Austin, a gold cross between uplifted wings of white, outlined in blue, issuing from a white heraldic wreath. Below the shield appear the words, CITY OF AUSTIN, in blue.⁴ The Court's judgment handed down the following year was in favor of the city, agreeing that the cross, as part of Austin's arms, was historically valid, and could therefore be retained.⁵ Other cities with crosses on their flags, however, have not found similar favour with the courts.

Zion, Illinois

The following year, in 1992, the City of Zion, Illinois, was ordered by the Court to remove the cross from the city seal and flag.⁶ The city's flag previously had a white field with the city seal in blue in the center (fig. 5). The seal shows a shield divided per saltire, with the first quarter (dexter) having a white cross on a gold background; the second quarter (chief) has an inverted double arch; white above, blue below, with a dove and olive branch in white on the blue; the third quarter (sinister) has a white crown and sceptre on gold; and the fourth quarter, at bottom, has a white field with the word ZION in blue. Over the shield is a gold ribbon with the words GOD REIGNS at top, and its ends extend three-quarters of the way down on either side of the shield. Around the whole in a circular band with an outer bevelled edge appear, at top, the words CORPORATE SEAL, which are separated at either end by a star from the words CITY OF ZION. ILLINOIS, around the bottom, all in blue.⁷

As a result of the court order, Zion's City Council, on 3 August 1993, adopted a new city seal and flag. The flag's field remains white, but the center seal, in blue again, is altogether different (fig. 6). The seal now shows a dome that remains of an old city landmark, the Zion Hotel, that, except for the dome (now housing a band shell), was demolished in 1979. This dome is superimposed on a full-colour rendition of the U.S. flag, the stripes of which provide the only red in the otherwise blue and white seal. Above the dome is a ribbon on which the words IN GOD WE TRUST (the national motto of the United States) appear in place of the previous motto; below, is another ribbon with the words HISTORIC PAST...DYNAMIC FUTURE. In a circular band with an outer bevelled edge around the whole are the words CORPORATE SEAL, above, and separated by a star at either end, the words CITY OF ZION, ILLINOIS, below. Apparently the former motto, "God Reigns," was considered to be too closely tied to the cross and crown symbols of the old seal, so the national motto was

substituted for it. Reference to God is evidently not considered to be espousing any one religion, but an atheist or for that matter, a polytheist might well object to such a reference with as much validity as one's objecting to a particular religion. The courts, however, seem to sidestep that issue. ⁸

Edmond, Oklahoma

In 1995, the City of Edmond, Oklahoma, was sued by Wayne Robinson, et al., to protest the cross that appeared on the city's seal and flag. Edmond's flag, adopted in 1965, showed the seal of the city on a bright blue field, similar in color to the blue of the Oklahoma State flag (fig. 7). The seal of the city had a rather complex design: On a field of red appears an equilateral cross with rounded ends, in gold. At the top, symbolizing commerce, are oil well derricks and a train engine; on the hoist side, symbolizing education, the Old North Tower on the campus of the University of Central Oklahoma, the first college in the state; on the fly side, a plain cross, symbolizing religion; and at the bottom, a commemoration of the city's founding as part of the Land Run of 1889, showing the date and a covered wagon. All the figures are outlined in blue. Overlaying the centre of this figure is a kind of four-pointed star, in white, with its points arrayed in the shape of an X. In the centre of the star, outlined in blue, are two hands clasped in a handshake to symbolize Edmond's friendly spirit. Above the hands, on a gold ribbon, appears the word, EDMOND; in blue, and below, somewhat reduced in size, is a similar gold ribbon with the word, OKLAHOMA, in blue. In a narrow band around the outside edge of the seal appear the words OFFICIAL SEAL OF THE CITY OF EDMOND, OKLAHOMA across the top half, and around the bottom half, A GREAT PLACE TO GROW, all in blue on gold. ⁹

As is frequently the case when emotional issues such as religion are involved, many of the citizens of Edmond were indignant that the cross was threatened with removal. Ultimately, in 1996, the Supreme Court, in handing down its judgment, disallowed the cross on the flag's seal. ¹⁰ As Nancy Nichols, the Director of Administrative Services for the city notes, "...citizens' emotions ran high at the time the cross was ordered to be removed from the seal. The City Council was reluctant to make changes to the seal at that time." ¹¹

What the City Council decided upon finally is a rather novel solution: the flag was retained intact, but the cross was removed, leaving a blank space, the idea being that one could imagine the symbol of his or her choice to fill the space (fig. 8). Ironically, nothing was said about the larger gold cross, perhaps because of its truncated shape, but it still remains on the flag.

Stow, Ohio

Emotions may have run high in Edmond, but in Stow, Ohio, a majority of the residents took action at the ballot box in reaction to a threat from the ACLU in 1996 to take the city to court. The ACLU had warned the city that the cross and open bible on its seal and flag were contrary to the First Amendment (fig. 9). The flag of Stow has a yellow field, divided diagonally by a narrow white stripe from lower hoist to upper fly. On the white stripe, in blue, appear the words, CITY OF STOW, OHIO. In the canton position is the U.S. Liberty Bell in white on a blue field. There is a small eighteenth-century style U.S. flag at the bell's apex. ¹² Surrounding the bell in a circle are seventeen white stars, commemorating the fact that Ohio was the seventeenth state to be admitted to the Union. The city's seal, and source of the controversy, appears in red in the lower fly. The seal is divided into quadrants by a crossroads, symbolizing the main routes of the city. At the intersection of the roads is a compass to represent the city's connection to transportation routes across the country. The first quadrant shows an open Bible with a cross superimposed on it. The seal's designer, Harold F. Baer, in 1966, stated in a letter with his design that he meant the cross and Bible to represent "all religious denominations, which provides each citizen with the fulfillment of his need for faith and inspiration." The second quadrant shows a house, representing the homes in Stow. The third quadrant shows a factory for industry, and the fourth shows a scroll, quill, and ink to represent education.

Because of the then-recent ruling in the Edmond case, City Council in February, 1997, reluctantly voted to change the seal because of the expense involved in going to court. Reaction from those in the community who disagreed with Council's action was swift. Residents calling themselves Concerned Citizens for Constitutional Freedom set forth to gather enough signatures to put the issue on the ballot. They needed 1,196 signatures, but garnered 3,000 in just ten days. At the next general election in November, 57.5% of the votes cast were in favor of retaining the seal and flag. The ACLU retaliated by filing suit in December, 1997, on behalf of four Stow citizens, identified only

as "two John Doe and two Jane Doe residents." ¹³ The case continued in court for the next year, during which time the four "Doe" residents, whose real names were known in the community, received hate mail and threatening telephone calls. Finally, exactly a year after the suit was filed, the judge of the U. S. District Court ruled that the cross and Bible on the seal and flag were unconstitutional. ¹⁴ City Council voted to appeal the ruling to the next higher court; the Sixth District Court of Appeals in Cincinnati, Ohio, on January 14, 1999, but reversed itself almost a month later when the city's insurance company, which had paid the city's costs for the initial suit, announced that it would not fund an appeal that could run as much as \$50,000. Council dropped the appeal and, finally, accepted a compromise design that replaces the cross with the words "In God We Trust" (fig. 10). ¹⁵

Republic, Missouri

A very recent case, initiated in July, 1998, has to do with a very different kind of symbol that the ACLU charges is synonymous with Christianity, i.e., the ichthus, or stylized fish drawing found on the logo and flag of the City of Republic, Missouri, adopted in 1990 (fig. 11). This flag is a horizontal tricolour of red, white, and blue, with the white stripe slightly wider than the other two to accommodate the city logo comfortably. ¹⁶ On the red stripe, in large capital letters in white, is the word REPUBLIC. Across the bottom blue stripe is the city's motto, also in white, in smaller letters: "Growing With The Ozarks." Centred on the white stripe is the oval logo, divided quarterly and surrounded by a narrow gold band. In the first quarter is a map of the State of Missouri, in white on a blue field, with a gold star to mark Republic's geographic location. The blue field is said to represent man's eternal hope for a better world. The second quarter shows an outstretched hand toward the fly, palm up, on a red background to represent the giving and caring nature of the city's citizens. The red field symbolizes the power or strength of the people. The fourth quarter has a black silhouette of a nuclear family of parents and two children to mark the city's commitment to its families and, especially its youth. The green field of this quarter represents growth and recalls the city motto, "Growing with the Ozarks."

It is the third quarter that has caused the law suit. On a white field, a color symbolizing peace, is the ichthus, or fish figure, claimed by the city and the logo's designer, Marilyn Schexsnayder (a resident of the city), to be the universal symbol of religion that also represents the moral values of the community. Schexsnayder said that she deliberately used the ichthus rather than a cross so as not to offend the Jewish citizens of the community, and because from childhood she had regarded the fish as a universal symbol of faith. ¹⁷ The ACLU countered that the ichthus is actually a symbol that represents only Christianity, and cited numerous historical references to support its claim. ¹⁸

As in Stow, the citizens of Republic took to the defense of the city flag with great zeal, to the extent that some of the women, including the mayor's wife, had the ichthus symbol painted on their fingernails! ¹⁹ Nevertheless, on July 9, 1999, U. S. District Court Judge Russell G. Clark disallowed the ichthus, stating, "The portrayal of the fish impermissibly excludes other religious beliefs or nonbeliefs and intended or not depicts Christianity as the religion recognized and endorsed by the citizens of Republic.... The Constitution forbids such a result." ²⁰

Pensacola, Florida

From the foregoing cases it would appear that civic sigillography and vexillology in the United States will come under the scrutiny of its citizens and the ACLU in years to come. There are numerous instances waiting to be challenged. To mention just one example, the seal of the City of Pensacola, Florida, not long ago was criticized by one of its citizens for the cross thereon. ²¹ The original design of the seal dates to 26 December 1870, and was revised somewhat in 1938 (fig. 12). A cross is shown above a plumed Spanish helmet of the seventeenth century on a shield, above which is a hand holding a pen, as if signing a document. Around the outside of the shield are dates: 1698 and 1821 (dexter); 1895 and 1913 (sinister); and 1931, at bottom. Encircling the whole in a narrow band are the words THE CITY OF PENSACOLA, at top; with a star at either end separating the word FLORIDA, at bottom.

The cross and helmet represent the founding of the city by the Spaniards in 1698. The other dates represent the years in which new types of city government were adopted. ²² The seal since 1968 shows a radiant cross behind and above the plumed Spanish helmet and a somewhat larger hand with quill (fig. 13). ²³ It seems plausible, however, that Pensacola, if taken to court, might argue that the cross should remain on the basis of historic grounds since the zeal to spread Catholicism was one of the prime motives of the Spanish explorers in the New World.

In any case, the current phenomenon of communities being forced to alter their symbols is a new direction for civic vexillology in the United States, and provides the observant vexillologist with a hitherto untapped field of study. It is perhaps unfortunate that it takes an unrelated issue, that of religion, to have the citizens of the affected communities become aware of the value and meaning of their city flags, or to want to defend them with such passion.

Notes

- 1) "Statement of Purpose," ACLU Metropolitan Kansas City Chapter Board Members, ACLU of Kansas and W. Missouri, <<http://www.acluozarks.org/>>, accessed 4 December 1998. The Bill of Rights mentioned in this quote is comprised of the first ten amendments to the U.S. Constitution, and are so-named because they define an individual citizen's rights.
- 2) *Foremaster v City of St. George*, 110 S Ct 1937 (1990).
- 3) Information on the St. George symbols was kindly furnished by Gay A. Cragun, City Recorder, via e-mail and letter (December 3, 1998).
- 4) Information on the Austin city flag was kindly furnished by Elsie Woosley, City Clerk, by letter (February 2, 1962).
- 5) *Murray v City of Austin*, 112 S Ct 3028 (1992).
- 6) The City of Rolling Meadows, Illinois, was also required to remove religious symbols from its seal in 1992. Requests for information about the seal and/or city flag by the writer received no response from either the city administration or library.
- 7) Information on the Zion city flags was kindly furnished by Judy L. Mackey, CMC/AE, City Clerk, by letter (October 26, 1998).
- 8) A similar situation exists with the mottoes of four of the U.S. states: Arizona, "Ditat Deus" ("God Enriches"); Florida, "In God We Trust"; Ohio, "With God All Things Are Possible"; and South Dakota, "Under God the People Rule."
- 9) Information on the Edmond city flags was kindly furnished by Nancy Nichols, Director of Administrative Services, by letter (October 28, 1998).
- 10) *City of Edmond v Robinson*, 134 L Ed 2d, No. 95-879 (1996).
- 11) Nichols, op. cit.
- 12) The canton of this flag has eight white stars in a circle around a larger star, obviously not a flag that was ever in use, but because the flag is so small, doubtlessly was meant merely to suggest an early U.S. flag.
- 13) *Cleveland Plain Dealer*, December 17, 1997. When persons file suit anonymously in the U.S., they are normally identified only as "John Doe" or "Jane Doe," names traditionally used to represent any average citizen.
- 14) *Cleveland Plain Dealer*, December 17, 1998.
- 15) *Cleveland Plain Dealer*, February 13 and April 16, 1999.
- 16) Information on the Republic city flag was kindly furnished by Jim Schmidt, librarian at the Republic Branch Library, by letter (undated, ca. October 16, 1998), and e-mail (October 23, 1998); Dean Thompson, Republic's City Administrator, by letter (October 20, 1998); and Christy Hermansen, Executive Director, Republic Area Chamber of Commerce, by letter and e-mail (both October 26, 1998).
- 17) *Cleveland Plain Dealer*, June 27, 1998.
- 18) Letter from Doug Bonney, a volunteer member of the Legal Panel of the ACLU of Kansas and Western Missouri, to the Hon. Douglas J. Boatright, Mayor of Republic, February 25, 1998.
- 19) *Cleveland Plain Dealer*, June 27, 1998.
- 20) "The Fish Must Go!" ACLU Metropolitan Kansas City Chapter Board Members, ACLU of Kansas and W. Missouri, <<http://www.acluozarks.org/index.html>>, accessed 12 July 1999. The plaintiff is identified as Mrs. Jean Webb.
- 21) *Florida Today*, September 15, 1997, and *NAVA News*, March-April, 1998. The citizen who voiced the complaint was an attorney, Kevin Beck.
- 22) Pensacola's first city government was established in 1821 under General (later President) Andrew Jackson, U. S. Army. The formation of the Aldermanic government was in 1895; that of the Commission government, in 1913; and the institution of the Council-Manager government, in 1931.
- 23) Pensacola does not have a city flag. Information about the city seal was kindly furnished by Shirley F. White, City Clerk, by letter (September 15, 1998).

John M. Purcell

Dr. John M. Purcell is Professor Emeritus of Spanish and Foreign Language Education at Cleveland State University in Ohio, U.S.A. Interested in flags since childhood, he has been a member of NAVA since 1969, and is a founding member of GWAV (Great Waters Association of Vexillology). His particular interest in vexillology is civic flags.



John M. Purcell, Ph. D.

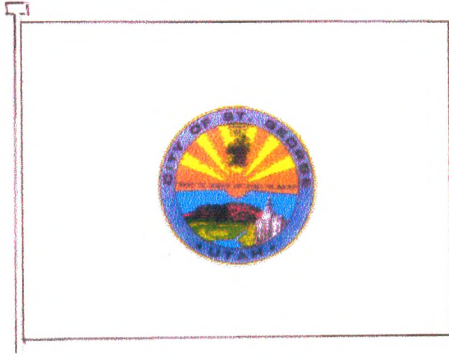


Fig. 1 First Flag of St. George, Utah



Fig. 2 New logo of St. George UT



Fig. 3 City Seal of St. George



Fig. 4 Flag of Austin

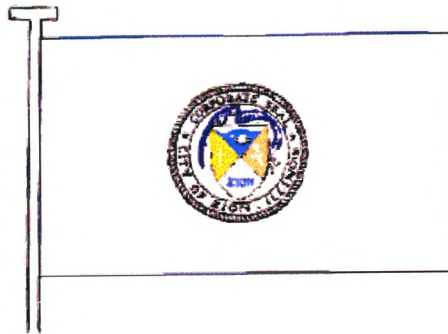


Fig. 5 Flag of Zion, Illinois, above left; seal of Zion enlarged, right.

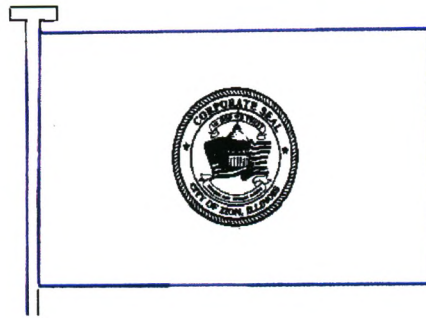


Fig. 6 In black and white, new Flag of Zion. Seal (enlarged) in blue and red, right.



Fig. 7 Former Flag of Edmond, OK



Fig. 8 New Flag of Edmond, without the plain cross



Fig. 9 Stow's former seal, and below is the flag



Fig. 10 Stow's current seal



Flag of Stow

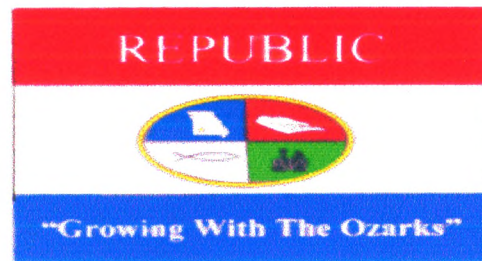


Fig. 11 Flag of Republic, MO

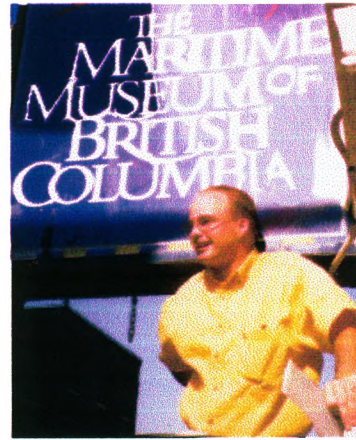


Fig. 12 Pensacola - former seal



Fig. 13 Pensacola - current seal

ICV 18 Photos - The Maritime Museum of British Columbia and elsewhere



John Purcell (Ohio, USA) examines a St. George's Cross; right, ICV 18 Site Organizer and guide James Webb at the Museum entrance.



Dieter Linder (Germany) with a Museum flag; right, Josh Stenberg (Vancouver) who helped at registration.



At the ICV 18 Farewell Luncheon, Peter Edwards (Toronto) dines with David Ruddy (Victoria), Rich Monahan (Ohio, USA) and Martin Francis (CA, USA). Right, below the ICV 18 General Sponsors sign (Elmer's Flag & Banner, Great Waters Association of Vexillology, City of Victoria, Canadian Flag Association), Alain Raullet and Philippe Rault, both of Brittany, visit a book table.