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Dear colleagues:

I am writing to ask you to share with your members the ACLU of Virginia's deep concern about the recent proliferation of sheriffs and police departments that have chosen to emblazon state or county owned vehicles with "In God We Trust" or to include a religious message on their official business cards. We've provided examples of some such actions in an enclosure with this letter.

Because law-enforcement officials carry with them the threat of force at all times, they must be exceedingly cautious when it comes to matters of faith in order to avoid actual or perceived religious coercion. Officers and law-enforcement staff may not proselytize employees, arrestees, witnesses, community members, or anyone else they come into contact with while carrying out their official duties. Nor, even in less coercive settings, may law enforcement officers use their official positions or government property to endorse religious messages or otherwise promote religious activities (such as through their business cards or signs posted in police facilities).

While it is true that, standing alone, the passive display of the national motto can be said to be simply patriotic and ceremonial and without religious significance,<sup>1</sup> the context in which it is displayed may convert the act into the unconstitutional promotion of religion over non-religion or, even, the promotion of one religion by government. In addition, the context may offer support for a cause of action for religious discrimination in violation of Title VII of the Civil Rights Act of 1964 by an employee or applicant for employment. It is one thing for the Virginia legislature to pass a resolution asking that the national motto be posted in public buildings (as it did just after 9/11). It is quite another thing for a public official to solicit or accept money from a particular church or religious group to pay for affixing the national motto to patrol cars and then to say (as one sheriff did) that he was putting the decals on departmental vehicles to let people know he is a “Christian man” or that “we want the public to know that we have strong Christian men and women serving their community.”

### Establishment Clause

The Establishment Clause of the First Amendment to the U.S. Constitution “mandates governmental neutrality between religion and religion, and between religion and non-religion.”<sup>2</sup> To that end, government “sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are non-adherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’”<sup>3</sup>

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<sup>1</sup> The United States Supreme Court has on multiple occasions noted that the motto is a constitutional “reference to our religious heritage.” *Lynch v. Donnelly*, 465 U.S. 668, 676 (1984); see also *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 602-03 (1989).

<sup>2</sup> *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005).

<sup>3</sup> See *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)); see also *ACLU of Ohio Found. v. DeWeese*, 633 F.3d 424, 435 (6th Cir. 2011) (enjoining as unconstitutional county judge’s courtroom display of poster containing Ten Commandments, and “religious statements” such as “God is the final authority, and we acknowledge His unchanging standards of behavior,” and “I join the Founders in personally acknowledging the importance of Almighty God’s fixed moral standards for restoring the moral fabric of this nation,” as well as judge’s distribution of pamphlets declaring that “God has defined for humanity’s own good and happiness what is right and wrong and that those standards cannot be altered or abolished”); *Doe v. Village of Crestwood*, 917 F.2d 1476, 1478 (7th Cir. 1990) (holding that village’s sponsorship of Catholic mass during citywide festival violated endorsement test); *Hall v. Bradshaw*, 630 F.2d 1018, 1020 (4th Cir. 1980) (prohibiting inclusion of “Motorist’s Prayer” on official, state-published map); see also *Wirtz v. City of South Bend*, 813 F.Supp.2d 1051, 1057 (N.D. Ind. 2011) (“Courts have safeguarded this provision by drawing a wide perimeter around it and preventing governments from endorsing one religion over others or religion over non-religion.”); *Davies v. Los Angeles County Board of Supervisors*, F.Supp.3d ----2016 WL 1383458, (C.D. Cal. Apr. 6, 2016) (permanently enjoining addition of Latin cross to official county seal); *Summers v. Adams*, 669 F. Supp.2d 637, 657-60 (D.S.C. 2009) (ruling that state DMV could not to issue a license plate containing the words “I Believe” and a cross superimposed on a stained glass window); *Newman v. City of East Point*, 181 F.Supp.2d 1374, 1380-81 (N.D. Ga. 2002) (holding that city’s funding and promotion of prayer breakfast ran afoul of the Establishment Clause); cf. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957, 965 (9th Cir. 2011) (upholding removal of banners hung in public-school classroom to emphasize various religious messages including, “In God We Trust,” “One Nation Under God,” “God Bless America,” and “God Shed His Grace on Thee”).

Law-enforcement officials are not exempt from these Establishment Clause limitations.<sup>4</sup> Accordingly, the decision to place decals on state or local vehicles must be analyzed and considered in light of all the circumstances, and we would urge caution in choosing to do so.

A true commitment to community and constitutionally centered policing would counsel against actions that make a statement about the Christian faith of a department's leader or its force or appear to be making such a statement. Such actions send a message of exclusion to applicants for employment, employees, and community members who do not share the favored religious faith, and can leave people with the impression that policing by the department will be biased in favor of people of one faith tradition over others.

## Title VII

As employers, law-enforcement officials and agencies are not exempt from the religious nondiscrimination requirements of Title VII of the Civil Rights Act of 1964, §42 U.S.C. 2000e, et seq. Title VII prohibits discrimination based on religion in advertising, recruiting, and hiring. It also prohibits religious discrimination, including coerced participation in religious activities, on the job. When an agency says that the purpose of putting "In God We Trust" on their cars (as one sheriff said) is to let the public know that they have "strong Christian men and women serving their community," and promotes weekly Bible study groups held by staff, it is sending a message that only Christians need apply and raising a question about whether employees will be coerced to participate in religious activities with which they do not agree or suffer some adverse consequence at work. Such coercion (express or implied) could violate both Title VII and the First Amendment.<sup>5</sup>

Moreover, as public employers, law enforcement agencies have a constitutional obligation to avoid the appearance of endorsing religion that private employers do not have. This gives them greater authority and responsibility to exercise control of religious displays by individual employees in public spaces, particularly where the display might be considered government sponsored.<sup>6</sup>

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<sup>4</sup> See, e.g., *Marrero-Mendez v. Calixto-Rodriguez*, 830 F.3d 38, 40 (1st Cir. 2016) (denying qualified immunity for police officers who coerced subordinate into prayer and punished him when he objected); *Milwaukee Deputy Sheriffs' Assoc. v. Clarke*, 588 F.3d 523, 528-29 (7th Cir. 2009) (holding that county sheriff had unconstitutionally endorsed religion by inviting religious group to give proselytizing presentations to employees as part of mandatory leadership conference and roll call meetings); *Venters v. City of Delphi*, 123 F.3d 956, 970 (7th Cir. 1997), (holding that police chief's alleged "workplace lectures . . . on his views of appropriate Christian behavior" and threats to fire anyone whom he believed to be acting contrary to his religious beliefs, if proven, would violate the Establishment Clause); *Am. Humanist Ass'n, Inc. v. City of Ocala*, 127 F. Supp. 3d 1265, 1284 (M.D. Fla. 2015) (denying qualified immunity to mayor and police chief who allegedly used their official capacities to organize and promote an prayer vigil).

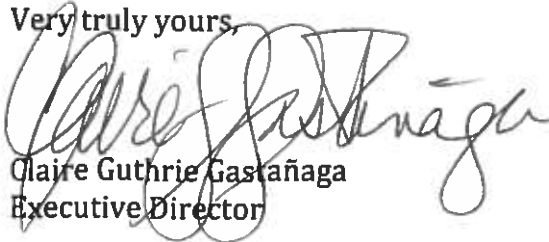
<sup>5</sup> *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 615 (9th Cir. 1988) (holding that an employer must accommodate atheist employee by allowing him to opt out of worship services).

<sup>6</sup> Compare *Berry v. Department of Social Services*, 447 F.3d 642, 651-52 (9th Cir. 2006) (holding that employee couldn't place religious items in his workspace when clients routinely entered that workspace for purposes of consulting with an agent of the state) with *Tucker v. Dept. of Educ.*, 97 F.3d 1204 (9th Cir. 1996) (holding that employee was allowed to place religious items in his workspace when no members of the public had access to that office).

## Conclusion

Law-enforcement and local government officials who wish to build trust between the public and their law enforcement agencies should be cautious about any religious display that constructs a barrier between their department and any people in their communities, including those who do not share the department leader's faith or the majority faith in the department's community. We hope that every law enforcement agency and local government will consider carefully the potential legal claims that can be raised (establishment clause, violation of free exercise, and religious discrimination) and the potential adverse consequences on community policing before allowing religious displays by law enforcement that can be seen as government action preferring religion over non-religion or one faith over another.

Very truly yours,



Claire Guthrie Gastañaga  
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Enclosure

## Examples of Recent Actions Implementing Religious Displays by Law Enforcement

### Frederick County Sheriff

The sheriff's official business card has Romans 13:4 on the back of the card:  
*For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer.*

Other sheriffs have emblazoned "In God We Trust" on their cars accompanied by public statements that suggest that the motivation is to promote a particular religious belief:

### Amelia County Sheriff

<http://wtvr.com/2016/04/25/amelia-sheriff-in-god-we-trust/>

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### ['In God We Trust' placed on Amelia County Sheriff's patrol ...](#)

wtvr.com

AMELIA COUNTY, Va. — The phrase "In God We Trust" will now be displayed on all marked Amelia Sheriff's Office vehicles. With the move, the Amelia ...

Money for the decals was provided by the Christ Family Outreach Church Men's Group, according to the sheriff's office. Signs at Work owner Alan Sloan donated his time to add the decals to the vehicles. "I want to thank the men's group and Christ Outreach Church as well as Alan Sloan for working together and supporting something that I have always felt strongly about," the sheriff wrote.

### Page County Sheriff

<http://www.whsv.com/content/news/Sheriff-in-Virginia-adds-IN-GOD-WE-TRUST-to-patrol-cars-370310371.html>

Sheriff Cubbage said in a statement on Facebook [ [here](#) ], "A lot of people have turned against the police, against God, and against everything I feel is good about this country," and, "I want people to know I am Christian man." Using no taxpayer money, Cubbage says he funded the decal purchases himself and made them available to deputies choosing to use them. "Each person has to make his or her own choices in their belief and faith, but as for me and my house, we will serve the Lord," Cubbage said. Cubbage thanked Sir Excellence Auto Body for donating the decal-application labor. He added, "I ask for your continued prayers for guidance and wisdom," and thanked area pastors for attending the ceremony announcing the use of the motto decals.



[Virginia sheriff adds 'IN GOD WE TRUST' to patrol cars](#)

[www.whsv.com](http://www.whsv.com)

Page County Sheriff, Chad W. Cabbage, began adding decals saying 'IN GOD WE TRUST' to patrol vehicles in February of 2016.

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**York/Poquoson County Sheriff**

<http://wavy.com/2016/02/08/sheriffs-office-puts-in-god-we-trust-on-its-patrol-cars/> "Having 'In God We Trust' on our vehicles does not injure or threaten anyone. It is not an attempt to urge anyone to support or convert to any one religion. God has blessed me and the Sheriff's Office. This is one way of honoring God by acknowledging Him for His blessings upon us and it shows our patriotism by displaying our national motto."

**Tazewell County Sheriff**

<http://www.breitbart.com/big-government/2016/01/25/virginia-sheriff-adds-in-god-we-trust-to-police-cruisers/> "Our department feels very strongly about having In God We Trust on our vehicles. We know there is nothing we can do for our community without the guidance of our Lord," Hieatt said. "We want the public to know," the sheriff added, "that we have strong Christian men and women serving their community. Members of the department actually hold weekly Bible Study meetings, and we are thankful that Pastor Boyd opened up his Church for our class and then donated to our cause."

**Bristol Police Department**

[http://www.richmond.com/news/virginia/bristol-pd-adds-in-god-we-trust-to-cruisers/article\\_a3dfedd3-1cbc-5c64-809e-eeed80983ef5.html](http://www.richmond.com/news/virginia/bristol-pd-adds-in-god-we-trust-to-cruisers/article_a3dfedd3-1cbc-5c64-809e-eeed80983ef5.html) The Bristol Virginia Police Department has added decals proclaiming "In God We Trust" to the back bumper or trunk of its vehicles. The letters, which are capitalized and dark blue, were paid for and provided by NorthStar Baptist Church.

Gary Breeding, youth pastor of NorthStar, said the church approached the department with the idea, as it did a handful of Bristol-area law enforcement departments.

"The police department is getting so hammered," Breeding said. "We just wanted to let these guys know we're praying for them."