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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

REVEREND FATHER IAN ELLIOTT  
DAVIES; REVEREND J. EDWIN  
BACON, JR.; SHAKEEL SYED;  
RABBI HAROLD M. SCHULWEIS;  
REVEREND TERA LITTLE; RABBI  
JOHN RO SOVE; REVEREND PETER  
LAARMAN; DAVID N. MYERS;  
AND RABBI AMY BERNSTEIN,

*Plaintiffs,*

v.

LOS ANGELES COUNTY BOARD  
OF SUPERVISORS; AND WILLIAM  
T. FUJIOKA,

*Defendants.*

Case No. 2:14-cv-00907-CAS-FFM

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PERMANENT INJUNCTION  
(Dkt. 84)**

I.

**INTRODUCTION**

On February 6, 2014, plaintiffs Reverend Father Ian Elliott Davies, Reverend J. Edwin Bacon, Jr., Shakeel Syed, Rabbi Harold M. Schulweis, Reverend Tera Little, Rabbi John Rosove, Reverend Peter Laarman, David N. Myers, and Rabbi Amy Bernstein (collectively, “plaintiffs”) filed the instant action against defendants Los Angeles County Board of Supervisors (“the Board” or “the County”), and County Chief Executive Officer William T. Fujioka (collectively, “defendants”). Dkt. 1 (Complaint). In brief, plaintiffs allege that the Board’s January 7, 2014 motion approving the restoration of a Latin cross to the official County seal by placing the cross atop the seal’s depiction of the San Gabriel Mission violates (1) the No Aid Clause of article XVI, section 5 of the California Constitution; (2) the No Preference Clause of article I, section 4 of the California Constitution; and (3) the Establishment Clause of the First Amendment to the United States Constitution. See Complaint at ¶¶ 9, 38-49.

On September 17, 2015, plaintiffs filed the instant motion for a permanent injunction. Dkt. 84 (“Motion”).<sup>1</sup> On October 8, 2015, defendants filed an opposition to plaintiffs’ motion. Dkt. 97 (“Opp’n”).<sup>2</sup> On October 19, 2015,

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<sup>1</sup> In support of their motion for a permanent injunction, plaintiffs filed the following declarations: Dkt. 85 (Declaration of Reverend Father Ian Elliott Davies (“Davies Decl.”)); Dkt. 86 (Declaration of Reverend J. Edwin Bacon, Jr. (“Bacon Decl.”)); Dkt. 87 (Declaration of Shakeel Syed (“Syed Decl.”)); Dkt. 88 (Declaration of Reverend Tera Little (“Little Decl.”)); Dkt. 89 (Declaration of Rabbi John Rosove (“Rosove Decl.”)); Dkt. 90 (Declaration of Reverend Peter Laarman (“Laarman Decl.”)); Dkt. 91 (Declaration of David N. Myers (“Myers Decl.”)); Dkt. 92 (Declaration of Rabbi Amy Bernstein (“Bernstein Decl.”)); Dkt. 93 (Declaration of Michael J. Gonzalez, Ph. D. (“Gonzalez Decl.”)); Dkt. 94 (Declaration of Jeffrey S. Siker, Ph. D. (“Siker Decl.”)); Dkt. 95 (Declaration of Jill Vesci (“Vesci Decl.”)); and Dkt. 96 (Declaration of Linda M. Burrow (“Burrow Decl.”)).

<sup>2</sup> In support of their opposition to the instant motion, defendants filed the following declarations: Dkt. 98 (Declaration of John Dietler, Ph. D. (“Dietler Decl.”)); Dkt. 99 (Declaration of Stephen W. Hackel, Ph. D. (“Hackel Decl.”)); Dkt. 100 (Declaration of Frank J. Ozello (“Ozello Decl.”)); Dkt. 101 (Declaration of Lori Glasgow, Ph. D. (“Glasgow Decl.”)); Dkt. 102 (Declaration of Jho-

1 plaintiffs filed a reply. Dkt. 121 (“Reply”). On November 10, 2015, the Court held  
2 a one-day bench trial.<sup>3</sup> Having carefully considered the parties’ arguments, the  
3 Court finds and concludes as follows.

4  
5 An Ignacio (“Ignacio Decl.”); Dkt. 103 (Declaration of David Sommers (“Sommers Decl.”);  
6 Dkt. 104 (Declaration of Gerardo Ramirez (“Ramirez Decl.”)); Dkt. 105 (Declaration of Susan  
7 Herman (“Herman Decl.”); Dkt. 106 (Declaration of Joseph M. Nicchitta (“Nicchitta Decl.”));  
8 Dkt. 107 (Declaration of Ernestina Rhind (“Rhind Decl.”)); Dkt. 108 (Declaration of Adela  
9 Guzman (“Guzman Decl.”)); Dkt. 109 (Declaration of Kenneth A. Maranga (“Maranga Decl.”));  
10 and Dkt. 110 (Declaration of Timothy T. Coates (“Coates Decl.”)). In addition, defendants filed  
11 objections to plaintiffs’ declarations. See Dkts. 111-117. In particular, defendants object to the  
12 testimony of one of plaintiffs’ three experts, Jill Vesci, who offers her opinion as an architectural  
13 historian. See Dkt. 117 (Defendants’ Objections to Vesci Decl.). Pursuant to Federal Rule of  
14 Evidence 702(a), defendants object to Vesci’s testimony on the grounds that she lacks the  
15 requisite expertise, knowledge, skill, training, or education necessary to testify about the  
16 “architectural history of the Mission.” Id. Defendants contend that Vesci’s deposition testimony  
revealed that she (1) received no formal education in the history of California Missions or the San  
Gabriel Mission, (2) has no specialized knowledge or teaching experience regarding mission  
architecture, (3) does not consider herself to be an expert on California missions, and (4) has  
never served as an expert in any field. Id. at 2-3. Defendants further argue that Vesci’s testimony  
is not the result of reliable principles and methods, and therefore is not based on sufficient facts or  
data. Id. at 3 (citing Fed. R. Evid. 702(b)-(d)). Without reaching the merits of defendants’  
objections, the Court notes that it has not cited or otherwise relied upon Vesci’s testimony in  
reaching its findings and conclusions here.

17 <sup>3</sup> Throughout this order, the Court cites to exhibits included in the parties’ Joint Exhibit List, dkt.  
18 144, as follows: “Tr. Ex. [Exhibit Number].” Defendants lodge blanket objections, under Federal  
19 Rules of Evidence 602 (Need for Personal Knowledge) and 901 (Authentication), to many of  
20 plaintiffs’ exhibits, including documents that defendants produced in discovery and that plaintiffs  
21 attached as exhibits to the Declaration of Linda M. Burrow. See Dkt. 112 (Defendants’  
22 Objections to Burrow Decl.). Of course, “[a]uthentication is a ‘condition precedent to  
23 admissibility,’ and this condition is satisfied by ‘evidence sufficient to support a finding that the  
24 matter in question is what its proponent claims.’ ” Orr v. Bank of Am., NT & SA, 285 F.3d 764,  
25 773 (9th Cir. 2002) (citing Fed. R. Evid. 901(a)). A proper foundation need not be established  
26 through personal knowledge, but may rest on any manner permitted by Federal Rule of Evidence  
27 901(b) or 902. See Fed. R. Evid. 901(b) (providing ten approaches to authentication); Fed. R.  
28 Evid. 902 (self-authenticating documents need no extrinsic foundation). Documents that are  
produced in response to discovery requests and that contain certain indicia of reliability may be  
deemed authentic when later offered by a party-opponent. See Orr, 285 F.3d at 777  
 (“Authentication can also be accomplished through judicial admissions such as . . . production of  
items in response to . . . [a] discovery request.”) (quoting 31 Federal Practice & Procedure:  
Evidence § 7105, at 39); Maljack Prods., Inc. v. GoodTimes Home Video Corp., 81 F.3d 881, 889  
n.12 (9th Cir. 1996) (documents bearing a party’s letterhead that were produced by the party in  
discovery were deemed authentic when offered by the party-opponent); Snyder v. Whittaker  
Corp., 839 F.2d 1085, 1089 (5th Cir. 1988) (same). To the extent the Court relies upon plaintiffs’  
documentary evidence (in particular, documents produced by defendants in discovery), the Court

1 **II.**

2 **FINDINGS OF FACT<sup>4</sup>**

3 Plaintiffs are citizens and taxpayers of the County of Los Angeles who  
 4 regularly come into contact with the County Seal. See Davies Decl. at ¶ 2; Bacon  
 5 Decl. at ¶ 2; Syed Decl. at ¶ 2; Little Decl. at ¶ 2; Rosove Decl. at ¶ 2; Laarman  
 6 Decl. at ¶ 2; Myers Decl. at ¶ 2; and Bernstein Decl. at ¶ 2. Defendant Los Angeles  
 7 County Board of Supervisors is the governing body of the County of Los Angeles.  
 8 In 2014, when the instant suit was filed, defendant William T. Fujioka served as the  
 9 Chief Executive Officer of the County of Los Angeles, and the Board of  
 10 Supervisors consisted of the following five elected members: Supervisor Gloria  
 11 Molina (District No. 1), Supervisor Mark Ridley-Thomas (District No. 2),  
 12 Supervisor Zev Yaroslavsky (District No. 3), Supervisor Don Knabe (District No.  
 13 4), and Supervisor Michael D. Antonovich (District No. 5).<sup>5</sup> Tr. Ex. 67.

14 On January 2, 1957, the Board of Supervisors adopted a new official seal for  
 15 the County of Los Angeles (the “1957 Seal”). Tr. Ex. 7. The 1957 Seal was  
 16 designed by former Supervisor Kenneth Hahn and depicted, among other things, an  
 17 image of the Hollywood Bowl, with two stars and an unadorned Latin cross situated  
 18 in the sky above it. Id. According to official County documents, the depiction of  
 19 the Hollywood Bowl on the 1957 Seal represents cultural activities, and the two  
 20 stars represent the motion picture and television industries. Id. It is unclear from  
 21

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22 deems these items to be authentic under either Federal Rules of Evidence 901(b)(4) (noting the  
 23 “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item,  
 24 taken together with all the circumstances,” may support a finding of authenticity) or 902(1)-(2)  
 (noting certain domestic public documents are self-authenticating).

25 <sup>4</sup> To the extent necessary, each of these findings of fact may be deemed to be a conclusion of law.

26 <sup>5</sup> Defendant William T. Fujioka was sued in his official capacity as County Chief Executive  
 27 Officer and has since resigned from this position. Dkt. 127. Pursuant to Federal Rule of Civil  
 28 Procedure 25(d), Sachi Hamai, Fujioka’s successor, is automatically substituted as a defendant in  
 this action. Subsequent proceedings should be in the substituted party’s name. Fed. R. Civ. P.  
 25(d).

1 the record whether the unadorned Latin cross was meant to represent “the influence  
2 of the church and missions of California,” *id.*, or, more simply, religion.<sup>6</sup> In  
3 addition to the cross, the 1957 Seal also depicted an image of Pomona, “the goddess  
4 of gardens and fruit trees,” to represent agriculture; the Spanish galleon *San*  
5 *Salvador*, which sailed into San Pedro Harbor on October 8, 1542; a tuna, to  
6 represent the fishing industry; the champion cow Pearlette, to represent the dairy  
7 industry; engineering instruments, to represent the County’s “contribution to the  
8 conquest of space”; and oil derricks, to represent oil fields discovered on Signal  
9 Hill. *Id.*

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11 <sup>6</sup> Plaintiffs argue that the Board of Supervisors originally included the Latin cross on the 1957  
12 Seal for religious purposes. In support of this contention, plaintiffs rely upon a letter from the  
13 County Chief Clerk, dated February 28, 1957, filing the 1957 Seal with the California Secretary  
14 of State. *See* Tr. Ex. 9. The letter states that it is being forwarded “in conformance with Part 2 of  
15 the Government Code, Paragraph 25004, which provides that a description and impression of the  
16 Seal shall be filed in the office of the County Clerk and the Secretary of State.” *Id.* The body of  
17 the letter lists the following eight items as having been “specified” by the 1957 Seal’s artist,  
18 Millard Sheets, on the “mat” of the original design: “Agriculture”; “Earth, Sea, and Sun”; “Oil  
19 and Galleon”; “Hollywood Bowl”; “*Religion*”; “Dairy Farming”; “Fishing”; and “Industry.” *Id.*  
20 (emphasis added). It is unclear from the record whether or not the artist of the 1957 Seal was a  
21 County employee. The County objects to plaintiffs’ reliance upon this document, arguing, among  
22 other things, that the document is not properly authenticated and contains inadmissible hearsay—  
23 i.e., the statement that the cross on the Seal symbolizes “[r]eligion.” *See* Dkt. 112, Objection No.  
24 4 (citing Fed. R. Evid. 602, 801, 802, 901). However, pursuant to the Court’s discussion *supra* at  
25 n.3 and Federal Rule of Evidence 901(b)(4), the Court finds no reason to question the authenticity  
26 of the document, which defendants themselves produced and which contains “distinctive  
27 characteristics” indicative of its authenticity. Fed. R. Evid. 901(b)(4). Furthermore, the  
28 statements contained therein are not excluded by the rule against hearsay for at least two reasons.  
First, the statements fall under an exception to the rule against hearsay, as they are included “in a  
document that is at least 20 years old and whose authenticity is established.” Fed. R. Evid.  
803(16). Second, the statements in the document are not offered for their truth, but rather as an  
official statement of the County, filed pursuant to California Government Code section 25004.  
*See* Cal. Gov’t Code § 25004 (stating Board of Supervisors “may adopt a seal” and that “[a]  
description and impression of the seal shall be filed in the office of the county clerk”). In  
addition, the statements contained in the document were publicly referenced by Supervisor  
Yaroslavsky during the Board’s 2004 meetings, and therefore inform the reasonable, objective  
observer’s perception of the reasons for the County’s revisions of the seal. *See* Tr. Ex. 13 (June  
8, 2004 Board Meeting Minutes), at 203 (stating that the County in its 1957 filings with the  
Secretary of State had “explained what the cross stood for” and “didn’t say [the cross] was part of  
our history, to represent our history,” but rather said “one word. . . Religion”).

1           The 1957 Seal served as the County’s official seal until 2004. On May 19,  
2 2004, the ACLU Foundation of Southern California (“ACLU”) sent a letter to  
3 County officials stating that the presence of the cross on the 1957 Seal “reflects an  
4 impermissible endorsement of Christianity by the County” and was therefore  
5 unconstitutional. See Tr. Ex. 11. In its letter, the ACLU also indicated that it “was  
6 prepared to negotiate a reasonable time frame” for the 1957 Seal’s replacement, but  
7 would file suit against the County if it did not agree to remove the Latin cross. Id.

8           On June 1, 2004, during a closed session of the Board of Supervisors, the  
9 five members of the Board voted 3-2 to instruct County Counsel to “negotiate with  
10 the ACLU” to determine whether the ACLU would refrain from filing suit if the  
11 County were to (1) add to the seal “a representation of the region’s indigenous  
12 peoples,” and (2) replace the Latin cross “with a depiction of a California  
13 mission.”<sup>7</sup> Tr. Ex. 82.

14           On June 8, 2004, at one of several public meetings wherein the Board  
15 discussed potential revisions to the 1957 Seal, the Board heard testimony from  
16 members of the public, many of whom objected to the removal of the Latin cross on  
17 religious grounds. See Tr. Ex. 13 (June 8, 2004 Board Meeting Minutes), at 86 (“If  
18 there’s no cross, there’s no compromise.”), 101 (“This is an attack on the body of  
19 Christ.”), 112 (“My lord and savior died on that cross and it would be horrible for  
20 me to just let it be erased.”), 135 (“The cross represents not just the passion that we  
21 are presenting today but the passion of Christ and [that] this is a Christian nation.”),  
22 187 (“It’s a symbol of the love of Christ.”).

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25 <sup>7</sup> At the time, the Board consisted of the following five members: Supervisor Gloria Molina  
26 (District No. 1), Supervisor Yvonne Burke (District No. 2), Supervisor Zev Yaroslavsky (District  
27 No. 3), Supervisor Don Knabe (District No. 4), and Supervisor Michael D. Antonovich (District  
28 No. 5). With the exception of Supervisor Burke, who was later replaced by Supervisor Mark  
Ridley-Thomas, the composition of the Board remained unchanged through the filing of the  
instant lawsuit on February 6, 2014.

1           Following the time for public comment, each of the five members of the  
2 Board shared his or her views on revising the 1957 Seal. Supervisor Michael D.  
3 Antonovich stated his view that “[t]he cross is a part of a historical fact with the  
4 founding of the County of Los Angeles, just as the Star of David on the Sheriff’s  
5 badge is a reflection of . . . the Judaic heritage and the laws of Moses.” Id. at 192-  
6 93; see also id. at 194 (stating that the 1957 Seal “reflects the historical nature of  
7 the County of Los Angeles”), 219 (“The County Seal does not lack historical  
8 significance and it’s just reporting a historical fact.”), 219 (“In this case, it’s  
9 reflecting a historical fact on the County of Los Angeles and there’s been no  
10 Supreme Court decision that outlaws that.”). Regarding the proposed changes to  
11 the seal, Antonovich stated that “[i]f you replace [the cross] with a mission without  
12 a cross[,] that’s not a mission anymore.” Id. at 219-20. He also noted “additional  
13 problems” related to “the costs [of] redoing a county seal,” asking, “why should we  
14 spend time and effort to make replacements when our time and effort ought to be  
15 spent in getting those resources to keep the libraries open, to get the children  
16 adopted, and to help public safety?” Id. at 193, 220. Antonovich further stated that  
17 changing the 1957 Seal might expose the County to liability for infringing upon the  
18 original artist’s intellectual property rights in the depiction, to the extent any such  
19 rights existed. Id. at 193. Accordingly, Antonovich proposed a motion to seek  
20 additional, outside legal counsel regarding the constitutionality of the 1957 Seal,  
21 and to reject the proposal to amend the seal. Id. at 195.

22           Supervisor Don Knabe then stated that the legal issues presented by the 1957  
23 Seal were “debatable,” further asserting as follows:

24  
25           The issue is, where does it all end? And I think this  
26 Board needs to stand up and say, wait a minute. We have  
27 a great history in this County. We have a great history of  
28 our people in this County, in this state, and enough is  
enough.

1 Id.

2  
3 Comments from Supervisor Zev Yaroslavsky followed. Yaroslavsky stated  
4 that in its 1957 filings with the Secretary of State, the County had “explained what  
5 the cross stood for” and “didn’t say [the cross] was part of our history, to represent  
6 our history. It was one word. They said Religion.” Id. at 203. Yaroslavsky further  
7 stated that although he had been called “anti-Christian” and “insensitive to our  
8 history” by members of the public, he felt that “part of a responsible governing  
9 body is to be able to stand up like grown men and women and take a legal opinion  
10 for what it is.” Id. at 197. Regarding the proposal to remove the cross and add an  
11 image of a mission, Yaroslavsky stated:

12 If we’re talking about the history of Los Angeles County  
13 and the role that the missionaries played in the  
14 development, in the settlement of California in the 18th  
15 and 19th century, and it is clearly a part of our history,  
16 then a mission depicts that history as much as anything.  
17 If you don’t believe that a mission is a sufficient symbol  
18 to represent the history, if you believe alternatively, as I  
19 think I said in closed session last week, that the only way  
20 to represent the history of L.A. County, as it relates to the  
21 missionaries, is with a religious symbol of the Latin cross,  
22 you’ve got a constitutional problem.

21 Id. at 202. Yaroslavsky further stated that “if the issue is history and not religion,  
22 then there are a thousand and one ways to depict history and I think we chose a  
23 pretty good one.” Id. at 203.

24 Supervisor Yvonne Burke characterized the June 8, 2004 meeting, which  
25 included many interruptions by members of the public, as a “religious frenzy” and  
26 “as close to the inquisition as we have seen in the 21st century.” Id. at 209, 211.  
27 She added,



1 I've listened here for a few hours and I kept thinking that,  
2 if this case goes to trial, I would hate for them to play this  
3 hearing because, if there's ever any question of what was  
4 being moved forward and what the objection was to the  
5 vote that had been taken, it was clearly, it was a religious  
6 one.

6 See id. at 209. Supervisor Gloria Molina also noted the “emotional” and  
7 “religiously charged” nature of the hearing. Id. at 214. She added that although she  
8 did not “feel that strongly about [the 1957 Seal],” which she felt didn’t “reflect who  
9 [she was] or who we are as a county,” she felt “very strongly” that she was  
10 “upholding the Constitution” in supporting removal of the cross. Id. at 214, 217.  
11 Ultimately, the Board decided to make an administrative request of the County  
12 Chief Administrative Office and County Counsel to investigate and report back  
13 regarding a process for adopting a new County seal. See Tr. Ex. 83.

14 Over three months later, on September 14, 2004, the County Chief  
15 Administrative Officer sent a letter to the Board recommending that it approve and  
16 adopt a proposed new County seal, which came attached to the letter. See id. The  
17 proposed new seal (the “2004 Seal”) (1) removed the unadorned Latin cross from  
18 above the Hollywood Bowl; (2) replaced the image of the oil derricks with a sketch  
19 of the eastern façade of the San Gabriel Mission (“the Mission”), without any cross  
20 atop its roof; and (3) replaced the goddess Pomona with an image of a Native  
21 American woman carrying a basket. See Tr. Ex. 25; see also Tr. Exs. 82-83. At the  
22 time, the actual San Gabriel Mission’s eastern façade was not adorned by a cross.  
23 See Dietler Decl. at ¶ 36; Hackel Decl. at ¶ 101.

24 Also on September 14, 2004, the Board held a public meeting regarding  
25 whether the County should adopt the Chief Administrative Officer’s proposed seal.  
26 Tr. Ex. 24. During this meeting, Supervisor Knabe called the existing depiction of  
27 the cross on the 1957 Seal “a reflection of the history of this great County.” Id. at  
28 297. Knabe accordingly expressed concern that the Board was “trying to change

1 the course of history . . . .” Id. Supervisor Antonovich likewise stated that “[f]or  
2 50-plus years, there’s not been a problem with . . . having a seal that signified a  
3 historical foundation of the County of Los Angeles.” Id. at 292; see also id. (“The  
4 old saying, if it isn’t broken, don’t fix it.”). Antonovich also took issue with the  
5 proposed new seal’s depiction of the San Gabriel Mission, noting that the depiction  
6 did not include a cross:

7  
8 What is depicted is a back door, the rear end of the  
9 church. That is not the symbol of the Mission. The  
10 symbol of the Mission was an open door to bring the good  
11 news and it was a fact that it reflects the historical  
12 significance of the County of Los Angeles.

13 Id. at 294-95.<sup>8</sup>

14 During the public meeting, the County Administrative Officer stated that a  
15 “good figure” for the estimated cost of adopting the 2004 Seal throughout the  
16 County was \$800,000. Id. at 292-93. Ultimately, the Board voted 3-2 in favor of  
17 the proposed revisions, with Supervisors Burke, Molina, and Yaroslavsky voting to  
18 pass the motion, and Supervisors Antonovich and Knabe voting against it. See id.  
19 at 309-10.

20 On October 26, 2004, the County Chief Administrative Officer sent the  
21 Board a final cost estimate of \$700,000 to replace the County seal on County-  
22 owned and leased facilities, decals affixed to County vehicles, and all computer  
23 applications, including websites, electronic letterhead, and software. Tr. Ex. 27.  
24 Thereafter, the 2004 Seal was adopted throughout the County.<sup>9</sup>

25 <sup>8</sup> Christians often refer to the gospel (the four books in the Bible that describe the life of Jesus  
26 Christ) as the “good news” of redemption through Jesus’s life and death. See Davies Decl. at ¶ 4.  
27 The term “gospel” derives from Greek, Old English, and Middle English words meaning, “good  
28 news.” Id.

<sup>9</sup> In 2004, a resident and employee of the County filed a lawsuit against the Board of Supervisors  
and the County of Los Angeles alleging that the “removal of the cross from the seal conveyed a

1 In 2009, a Latin cross was placed atop the eastern façade of the actual San  
2 Gabriel Mission. See Hackel Decl. at ¶ 101; Dietler Decl. at ¶ 36.

3 On December 31, 2013, Supervisors Antonovich and Knabe introduced a  
4 motion to add a Latin cross atop the depiction of the Mission on the 2004 County  
5 Seal. See Tr. Ex. 36 (Motion); see also Rhind Decl. at Ex. 1, pp. 4-6 (same). The  
6 motion reads, in relevant part, as follows:

7  
8 The current rendering of the Mission on the seal is  
9 aesthetically and architecturally inaccurate. At the time  
10 that the seal was redesigned in 2004, the cross had been  
11 missing from the top of the mission since 1989 when it  
12 was taken down to retrofit the structure after damage from  
13 the Whittier Narrows earthquake. The cross was returned  
14 to the top of the Mission in 2009 after being lost for  
15 decades.

16 WE, THEREFORE, MOVE that the Board of Supervisors  
17 direct the Chief Executive Officer to make the County  
18 seal artistically, aesthetically and architecturally correct  
19 by placing the cross on top of the San Gabriel Mission in  
20 order to accurately reflect the cultural and historical role  
21 that the Mission played in the development of the Los  
22 Angeles County region.

23 Tr. Ex. 36. The motion did not address the accuracy of the other images on the  
24 2004 Seal, and Supervisors Antonovich and Knabe proposed no other changes to  
25 the seal. See id. The motion did not cite any confusion by constituents regarding  
26 the existing depiction of the Mission (without a cross) on the 2004 Seal. Id.

27 state-sponsored message of hostility toward Christians” and thereby violated the Establishment  
28 Clause of the First Amendment. Vasquez v. Los Angeles Cty., 487 F.3d 1246, 1248 (9th Cir.  
2007). The district court dismissed the action with prejudice, and the Ninth Circuit later affirmed,  
finding that defendants’ “removal of the cross is more reasonably viewed as an effort to restore  
their neutrality,” “ensure their continued compliance with the Establishment Clause,” and “avoid  
unwanted future litigation.” Id. at 1257.

1 One week later, on January 7, 2014, the Board held a public meeting  
2 regarding the motion brought by Supervisors Antonovich and Knabe to add the  
3 cross to the 2004 Seal’s depiction of the Mission. See Tr. Ex. 52 (January 7, 2014  
4 Board Meeting Minutes). During the period for public comment, some members of  
5 the public referenced the County’s 2004 revisions to the 1957 Seal. See id. at 378  
6 (“I liked the old seal and I fought to keep it the way it was . . . [and] am glad and  
7 sad at the same time to see that item back on the agenda because it never should  
8 have been [*sic*].”), 380 (“[T]his is obviously a very controversial issue. This would  
9 be a decade later that we are re-visiting it.”). The ACLU publicly opposed the  
10 motion during the meeting. See id. at 380 (Comments of the ACLU’s Peter  
11 Eliasberg) (“[T]he government is returning a sectarian religious symbol to a seal  
12 less than ten years after its removal and one of the major objections to the removal  
13 in the first place [was] very strong religious objection[.]”); see also Ramirez Decl.  
14 at Ex. 1, p. 4.

15 Supervisor Antonovich stated that he and Supervisor Knabe introduced the  
16 motion “to make a historical correction on [the 2004] seal.” Tr. Ex. 52, at 383.  
17 Specifically, Antonovich described the motion as an attempt to place “a  
18 proportionately accurate cross at the apex of the [Mission’s] roof . . . in order to  
19 accurately reflect the cultural and historical role that the Mission played in the  
20 development of Los Angeles County’s region.” Id. at 374, 384 (“[W]e are not  
21 changing anything other than the cross.”).

22 Later in the public meeting, Antonovich elaborated as follows:

23  
24 The purpose of the Municipal Seal [is to] accurately  
25 reflect[] the municipality’s history and culture. As you  
26 can see behind me, Ventura County, San Benito County,  
27 and San Luis Obispo City, they have seals that also have a  
28 cross on top of the missions. Because it reports a  
historical fact. . . . We all know that the County of Los  
Angeles’ beginnings began in the San Gabriel Mission . . .

1 So what we have is correcting a situation where the  
2 Mission has the cross. Because it is historical, we are not  
3 adding—we are reflecting upon a historical event that  
4 occurred in the creation of th[e] County of Los Angeles.

5 Id. at 382.

6 Supervisor Yaroslavsky, who a decade earlier had voted to remove the  
7 unadorned Latin cross from the 1957 Seal and to adopt the 2004 Seal, stated as  
8 follows:

9 [B]ecause we removed the [cross from the 1957 Seal] in  
10 2004, . . . restoring it now represents a higher burden on  
11 our part to defend the principal symbol of a religion on  
12 our seal. The issue of accuracy is an interesting one but  
13 it's not a constitutional one. Whether the mission is  
14 accurately depicted in every aspect or whether the  
15 Hollywood Bowl is accurately depicted in every aspect,  
16 which it is not, or the [cow Pearlette] is accurately  
17 reflected, which she is not, is not a constitutional issue;  
18 it's a judgment call by the Board. What is a constitutional  
19 issue is the placement of a symbol, a principal symbol of  
20 a religion on a county seal.

21 \*\*\*

22 [T]his is not just about history; it's about the cross. And  
23 to say anything different would be really somewhat  
24 disingenuous because if we really wanted to talk about the  
25 history of the role that the Missionaries played in  
26 Southern California in the 1700s, we could put a depiction  
27 of Father Junipero Serra on the seal. We could put a  
28 depiction of the *pobladores* walking through the San  
Gabriel Valley towards what would become Los Angeles.  
We could even put Angels. Angels are not the principal  
symbol of any particular religion. There are 100 ways  
which we could depict that history. But the one that's  
been chosen here is the cross.

1 Id. at 386-87.

2 Ultimately, the Board voted 3-2 in favor of the proposed addition of the  
3 cross, with Supervisors Antonovich, Knabe, and Ridley-Thomas voting in favor of  
4 the motion, and Supervisors Molina and Yaroslavsky voting against it.<sup>10</sup> See  
5 Rhind Decl. at Ex. 1, pp. 4-6; Tr. Ex. 52, at 389-90. The only change made to the  
6 Seal in 2014 was the addition of the Latin cross.

7 On January 15, 2014, “[c]onsistent with the instructions issued in 2004  
8 [regarding implementation of the 2004 Seal],” then-County Chief Executive Officer  
9 William T. Fujioka instructed County department heads to “use the new County  
10 seal wherever possible and appropriate.” See Tr. Ex. 67. The County subsequently  
11 used public resources to design and implement the 2014 Seal. See id. On June 3,  
12 2014, and again in late 2014 and early 2015, the County represented to plaintiffs  
13 that it would “voluntarily cease *further* implementation” of the 2014 Seal pending  
14 the outcome of this action. See Ozello Decl. at ¶¶ 2-6 (emphasis added), Exs. 1-4;  
15 Burrow Decl. at ¶¶ 50-53, Exs. 57-58; Ramirez Decl. at ¶ 4, Ex. 2.<sup>11</sup>

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17 <sup>10</sup> As stated supra, Supervisor Mark Ridley-Thomas succeeded Supervisor Yvonne Burke, who  
18 had in 2004 voted with Supervisors Yaroslavsky and Molina to adopt the 2004 Seal and thereby  
remove the unadorned Latin cross from the seal.

19 <sup>11</sup> Plaintiffs argue that despite its agreement to cease further implementation of the new seal, the  
20 County “flouted their self-imposed stay” by continuing to use the 2014 Seal on signage that was  
21 created after June 2014, as well as on official County webpages that are “continually updated” but  
22 from which the 2014 Seal has not yet been removed. See Motion at 7, 19 n.10. In particular,  
23 plaintiffs contend that Supervisors Antonovich and Knabe continued to use the 2014 Seal despite  
24 the agreement to stay further implementation, purportedly displaying it on websites and at public  
25 appearances, and by posting it on stationery, pamphlets, and other official publications. Id. at 19  
26 n.10. Plaintiffs contend that the County’s purported willingness to violate the voluntary stay  
27 further warrants imposition of an injunction here. Defendants challenge plaintiffs’ assertions,  
28 arguing that plaintiffs have failed to demonstrate that the County has, at any point, actually  
violated its agreement to cease *further* implementation of the 2014 Seal. See Opp’n at 25-27.  
According to the County, the evidence upon which plaintiffs rely consists entirely of items either  
not produced by the County, or of stationery, website templates, and other design templates that  
the County changed prior to the voluntary stay. Id. at 26 (citing Guzman Decl. at ¶¶ 3-4;  
Sommers Decl. at ¶¶ 3-7; Ignacio Decl. at ¶¶ 2-5; Ramirez Decl. at ¶¶ 3-4, Exs. 1-2; and Herman  
Decl. at ¶¶ 3-9). In light of the evidence before it, the Court cannot conclude, despite plaintiffs’  
contentions to the contrary, that the County has in fact violated its agreement to cease *further*

1 III.

2 CONCLUSIONS OF LAW<sup>12</sup>

3 A. Plaintiffs Have Standing to Bring the Instant Action

4 To have standing to challenge the Board’s addition of the cross to the County  
5 seal, plaintiffs must suffer “an injury in fact that is fairly traceable to the challenged  
6 conduct, and it must be likely that the injury would be redressed by a favorable  
7 decision.”<sup>13</sup> Buono v. Norton, 371 F.3d 543, 546 (9th Cir. 2004) (citations and  
8 quotation marks omitted). Because an “allegedly improper expenditure of  
9 municipal funds” in support of an action that is alleged to violate the Establishment  
10 Clause is a sufficient injury in fact, the Ninth Circuit has held that plaintiffs have  
11 standing to pursue equitable actions against municipalities if they can demonstrate  
12 their status as municipal taxpayers. Cammack v. Waihee, 932 F.2d 765, 770, 772  
13 (9th Cir. 1991) (holding that state and municipal taxpayers had standing to  
14 challenge constitutionality of statute declaring Good Friday a state holiday).  
15 Plaintiffs in the instant action have standing as municipal taxpayers to challenge the  
16 constitutionality of the 2014 Seal because they pay property taxes to the County.  
17 See supra; We Are Am. v. Maricopa Cnty. Bd. of Supervisors, 297 F.R.D. 373, 383  
18 (D. Ariz. 2013) (establishing plaintiff’s standing as a municipal taxpayer where  
19 plaintiff paid property tax on a residence in the county). Under certain  
20 circumstances, taxpayers also have standing under state law to challenge the illegal  
21 expenditure of public funds. See Cal. Code Civ. Proc. § 526a.

22 In addition, the “spiritual harm resulting from unwelcome direct contact with  
23 an allegedly offensive religious [] symbol is a legally cognizable injury and suffices  
24 to confer Article III standing.” Vasquez, 487 F.3d at 1253. Each Plaintiff has

25 \_\_\_\_\_  
26 implementation of the 2014 Seal. The record on this point is ambiguous, at best.

27 <sup>12</sup> To the extent necessary, each of these conclusions of law may be deemed a finding of fact.

28 <sup>13</sup> The Court notes that defendants do not challenge plaintiffs’ standing to bring the instant action.  
See generally Opp’n.

1 testified to having suffered spiritual harm from the County’s 2014 addition of the  
2 Latin cross to the 2004 Seal. See Davies Decl. at ¶¶ 6-8; Bacon Decl. at ¶ 6;  
3 Rosove Decl. at ¶¶ 4-5; Syed Decl. at ¶¶ 4-6; Little Decl. at ¶ 4; Laarman Decl. at  
4 ¶¶ 4-10; Myers Decl. at ¶¶ 6-12; and Bernstein Decl. at ¶ 4. Accordingly, plaintiffs  
5 have standing to bring the instant action.

6 **B. Plaintiffs Are Entitled to Injunctive Relief**

7 “An injunction is a matter of equitable discretion; it does not follow from  
8 success on the merits as a matter of course.” Winter v. Nat. Res. Def. Council, Inc.,  
9 555 U.S. 7, 32 (2008) (citing Weinberger v. Romero-Barcelo, 456 U.S. 305, 313  
10 (1982) (“[A] federal judge sitting as chancellor is not mechanically obligated to  
11 grant an injunction for every violation of law”). “[T]he balance of equities and  
12 consideration of the public interest” are “pertinent in assessing the propriety of any  
13 injunctive relief, preliminary or permanent.” Id. at 32; see Amoco Prod. Co. v. Vill.  
14 of Gambell, AK, 480 U.S. 531, 546 n.12 (1987) (“The standard for a preliminary  
15 injunction is essentially the same as for a permanent injunction with the exception  
16 that [for a preliminary injunction] the plaintiff must show a likelihood of success on  
17 the merits rather than actual success.”). Specifically, “[u]nder ‘well-established  
18 principles of equity,’ a plaintiff seeking permanent injunctive relief must satisfy a  
19 four-factor test by showing: (1) that it has suffered an irreparable injury; (2) that  
20 remedies available at law, such as monetary damages, are inadequate to compensate  
21 for that injury; (3) that, considering the balance of hardships between the plaintiff  
22 and defendant, a remedy in equity is warranted; and (4) that the public interest  
23 would not be disserved by a permanent injunction.” Cottonwood Env’tl. Law Ctr. v.  
24 U.S. Forest Serv., 789 F.3d 1075, 1088 (9th Cir. 2015) (citing eBay Inc. v.  
25 MercExchange, L.L.C., 547 U.S. 388, 391 (2006)).

26 The County appears only to challenge plaintiffs’ contention that they have  
27 demonstrated success on the merits. That is, defendants do not argue in their  
28



1 opposition that plaintiffs have failed to establish irreparable harm; do not dispute  
2 that the balance of hardships favors entry of a permanent injunction; and do not  
3 deny that an injunction is in the public interest. For reasons explained below, the  
4 Court concludes that plaintiffs have satisfied the standard for injunctive relief: (1)  
5 they have demonstrated success on the merits because the addition of the cross to  
6 the 2004 Seal violates both the California and United States constitutions; (2) they  
7 have suffered an injury in fact and will continue to suffer irreparable harm in the  
8 absence of an injunction, see Klein v. City of San Clemente, 584 F.3d 1196, 1208  
9 (9th Cir. 2009) (“[T]he loss of First Amendment freedoms, for even minimal  
10 periods of time, unquestionably constitutes irreparable injury”) (citation and  
11 internal alterations omitted); (3) the balance of equities tips in plaintiffs’ favor, see  
12 Sammartano v. First Judicial Dist. Court, in & for Cnty. of Carson City, 303 F.3d  
13 959, 973 (9th Cir. 2002) (“the balance of hardships tips sharply” toward plaintiffs  
14 in First Amendment cases); and (4) an injunction is in the public interest, see id. at  
15 974 (recognizing “the significant public interest in upholding First Amendment  
16 principles”). See Winter, 555 U.S. at 20; see also MercExchange, 547 U.S. at 391.

17 **1. Plaintiffs Have Demonstrated Success on the Merits**

18 **a. The Constitutional Avoidance Doctrine**

19 In the instant motion, plaintiffs argue that the County’s addition of the Latin  
20 cross to the 2004 Seal violates the No Aid and No Preference Clauses of the  
21 California Constitution, as well as the Establishment Clause of the First  
22 Amendment to the United States Constitution.<sup>14</sup> Under the constitutional avoidance  
23 doctrine, courts “should avoid adjudication of federal constitutional claims when  
24 alternative state grounds are available,” Vernon v. City of Los Angeles, 27 F.3d  
25 1385, 1391-92 (9th Cir. 1994), including “when the alternative ground is one of  
26

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27 <sup>14</sup> Plaintiffs do not assert a claim under the Establishment Clause of article I, section 4 of the  
28 California Constitution.

1 state constitutional law,” Ellis v. City of La Mesa, 990 F.2d 1518, 1524 (9th Cir.  
2 1993). In light of the constitutional avoidance doctrine, the Ninth Circuit has, at  
3 times, declined to reach federal constitutional claims when alternative state  
4 constitutional grounds exist. See, e.g., Carpenter v. City & Cnty. of San Francisco,  
5 93 F.3d 627, 629, 632 (9th Cir. 1996) (declining to reach plaintiff’s federal  
6 constitutional claims because “the religion clauses of the California Constitution are  
7 read more broadly than their [federal] counterparts” and the Court had already held  
8 “that the Cross violates the No Preference Clause”); Hewitt v. Joyner, 940 F.2d  
9 1561, 1565 (9th Cir. 1991) (declining to address federal constitutional claims after  
10 holding that the county’s ownership of a park featuring religious statues violated  
11 California’s No Aid and No Preference Clauses). Plaintiffs accordingly contend  
12 that because the County’s conduct runs afoul of the California Constitution, the  
13 Court need not reach plaintiffs’ claims under the United States Constitution.

14         However, in light of the relative dearth of authority assessing the  
15 constitutionality of governmental displays under the No Aid and No Preference  
16 Clauses of the California Constitution—and in consideration of the fair number of  
17 cases to have considered federal Establishment Clause challenges to the display of  
18 Latin crosses on county and municipal seals—the Court finds it prudent to reach the  
19 merits of both plaintiffs’ state and federal claims. C.f. Am. Humanist Ass’n v. City  
20 of Lake Elsinore, No. 5:13-CV-00989-SVW, 2014 WL 791800, at \*5-\*6 (C.D. Cal.  
21 Feb. 25, 2014) (Wilson, J.) (applying the Lemon test to plaintiffs’ California and  
22 federal constitutional claims in part because those few California cases assessing  
23 religious displays under the No Preference Clause were factually distinct and  
24 accordingly not instructive).

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1                   **b. The No Aid Clause of the California Constitution**

2                   **i. The No Aid Clause Prohibits the County from**  
3                   **Granting a Benefit to a Sectarian Purpose,**  
4                   **Irrespective of the County’s Purported Secular**  
5                   **Purpose**

6                   Plaintiffs first argue that the addition of the cross to the 2004 Seal violates  
7                   the No Aid Clause of article XVI, section 5 of the California Constitution.<sup>15</sup> The  
8                   No Aid Clause provides, in relevant part, that “[n]either the Legislature, nor any  
9                   county . . . shall ever make an appropriation, or pay from any public fund whatever,  
10                  or grant anything to or *in aid of any religious sect, church, creed, or sectarian*  
11                  *purpose.*” Cal. Const. art. XVI, § 5 (emphasis added). This provision of the  
12                  California Constitution “does not mirror or derive from any part of the federal  
13                  Constitution,” Fox v. City of Los Angeles, 22 Cal.3d 792, 801 (1978) (Bird, C.J.,  
14                  concurring), and “ ‘forbids more than the appropriation or payment of public funds  
15                  to support sectarian institutions. It bans any official involvement, *whatever its*  
16                  *form*, which has the direct, immediate, and substantial effect of promoting religious  
17                  purposes.’ ” E. Bay Asian Local Dev. Corp. v. State of California, 24 Cal. 4th 693,  
18                  721 (2000) (emphasis added) (quoting California Educ. Facilities Auth. v. Priest, 12  
19                  Cal. 3d 593, 605 n.12 (1974) (Mosk, J.)).

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<sup>15</sup> Article XVI, section 5 of the California Constitution reads, in full, as follows:

22  
23                  Neither the Legislature, nor any county, city and county, township, school district, or  
24                  other municipal corporation, shall ever make an appropriation, or pay from any public  
25                  fund whatever, or grant anything to or in aid of any religious sect, church, creed, or  
26                  sectarian purpose, or help to support or sustain any school, college, university, hospital, or  
27                  other institution controlled by any religious creed, church, or sectarian denomination  
28                  whatever; nor shall any grant or donation of personal property or real estate ever be made  
                  by the state, or any city, city and county, town, or other municipal corporation for any  
                  religious creed, church, or sectarian purpose whatever; provided, that nothing in this  
                  section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI.

1 “Given the ordinary meaning of [Article XVI, section 5’s] words, the text of  
2 the provision has enormous breadth.” Paulson v. City of San Diego, 294 F.3d  
3 1124, 1129 (9th Cir. 2002) (en banc). In Paulson, an en banc panel of the Ninth  
4 Circuit “distill[ed] three themes” from relevant California legal precedent  
5 construing the No Aid Clause. 294 F.3d at 1130. First, the Ninth Circuit noted that  
6 the No Aid Clause “is so broad that state or local governments *need not* provide a  
7 financial benefit or tangible aid in order to violate the provision; they violate it by  
8 doing no more than *lending their ‘prestige and power’ to a ‘sectarian purpose.’*”  
9 Id. (citation omitted) (emphasis added); see also Hewitt, 940 F.2d at 1571 (the No  
10 Aid Clause “admits of no de minimis exception”) (citation omitted).

11 Second, “even a government act that has a secular purpose can violate [the  
12 No Aid Clause] if it also has a direct, immediate, and substantial effect of  
13 promoting a sectarian purpose.” Paulson, 294 F.3d at 1130; see, e.g., Hewitt, 940  
14 F.2d at 1571 (holding that a county park containing religious statues violates the No  
15 Aid Clause—despite the county’s assertion that the purpose of the park was to  
16 promote tourism—because “the California Constitution forbids the County’s use of  
17 a religious statuary park to achieve a secular goal”); Los Angeles Cnty. v.  
18 Hollinger, 221 Cal.App.2d 154, 158 (1963) (holding that publicly financing a film  
19 of a religious parade violated the No Aid Clause even though “publicizing the  
20 attractions of the county is a proper secular purpose”).

21 Third, a “corollary to the second theme” is that “[g]overnment conduct that  
22 aids religious or sectarian purposes, but that does *not* have a direct, immediate, and  
23 substantial effect, does not contravene the provision.” Paulson, 294 F.3d at 1131.  
24 Stated differently, the No Aid Clause “does not prohibit indirect, remote, or  
25 incidental benefits that have a primary public purpose.” Id. (citation omitted).  
26 Pursuant to Paulson, a benefit related to a “primary public purpose” qualifies as  
27 “indirect, remote, or incidental”—and thus does not run afoul of the No Aid  
28

1 Clause—if it is available “on an equal basis” to sectarian and nonsectarian  
2 organizations *and* if it “does not have a substantial effect of supporting religious  
3 activities.” Id. (citation omitted).

4 In sum, therefore, the No Aid Clause prohibits the government from:

5 (1) granting a benefit in any form (2) to any sectarian  
6 purpose (3) regardless of the government’s secular  
7 purpose (4) unless the benefit is properly characterized as  
8 indirect, remote, or incidental. A sectarian benefit that is  
9 ancillary to a primary secular purpose may qualify as  
10 “incidental” if the benefit is available on an equal basis to  
those with sectarian and those with secular objectives.

11 Id.

12 **ii. The Addition of the Cross to the County Seal Grants a**  
13 **Benefit to a Sectarian Purpose, and Thereby Violates**  
14 **the No Aid Clause of the California Constitution**

15 The Latin cross is the “defining and exclusive symbol for the Christian  
16 religion” and invokes “the ongoing and exclusive evangelical meaning of the cross  
17 for Christians and non-Christians alike.” Siker Decl. at ¶ 6; see also Trunk v. City  
18 of San Diego, 629 F.3d 1099, 1110 (9th Cir. 2011) (“We are masters of the  
19 obvious, and we know that the crucifix is a Christian symbol.”) (quoting Gonzales  
20 v. North Township, 4 F.3d 1412, 1418 (7th Cir. 1993)). For purposes of the  
21 Court’s No Aid Clause analysis, the threshold question is whether the County’s  
22 addition of the Latin cross to the seal’s depiction of the Mission grants a “benefit”  
23 to any “sectarian purpose,” irrespective of any purported secular purpose offered by  
24 the County. In light of the “expansive” scope of the foregoing legal standards, the  
25 Court concludes that it does. Paulson, 294 F.3d at 1130. Specifically, the Court  
26 finds that in modifying the 2004 Seal by adding a Latin cross—even if only as a  
27 relatively small symbol situated atop an image of the San Gabriel Mission—the  
28 County has violated the No Aid Clause of the California Constitution by (1)

1 “devot[ing] [the County’s] financial resources” and (2) lending its “power and  
2 prestige” to the “sectarian purpose” of adding to its official seal the primary symbol  
3 of one religion—Christianity—to the exclusion of others. Paulson, 294 F.3d at  
4 1133.

5 In reaching this conclusion, the Court emphasizes that this case does not  
6 simply involve a governmental entity’s *continued* use of a longstanding symbol or  
7 display containing a Latin cross. Rather, plaintiffs challenge the County’s decision  
8 to *add* a cross to a county seal that—unlike its predecessor, the 1957 Seal—has  
9 contained no sectarian symbols for nearly a decade. See Complaint, at ¶ 40  
10 (challenging County’s attempted “*addition* of the cross to the [2004] Seal”)  
11 (emphasis added), ¶ 31 (noting that the County’s 2014 motion would “*restore* a  
12 cross to the County seal . . . .”) (emphasis added). This distinction, and the  
13 foregoing history of the depiction of a cross on the County seal, is significant, if not  
14 critical, as it informs the Court’s assessment of whether a specific “grant” or  
15 “appropriation” has been made to further a “sectarian purpose.” Cal. Const. art.  
16 XVI, § 5. The relevant “benefit” here is not merely the *depiction* of a relatively  
17 small cross on the seal, but rather the County’s *addition* of the cross—and the  
18 implementation that will follow—which comes only ten years after the County, at  
19 significant expense, replaced the 1957 Seal to avoid, in the apparent view of a  
20 majority of the Board at the time, furthering a sectarian purpose.

21 With this distinction and history in mind, the Court also notes that a valid  
22 secular purpose behind the County’s effort to add the cross to the seal—for  
23 example, a desire to reflect a more historically or architecturally accurate depiction  
24 of the San Gabriel Mission—does not mandate a different result. See, e.g.,  
25 Hollinger, 221 Cal.App.2d at 158 (No Aid Clause prohibits publicly financing a  
26 film of a religious parade even though “publicizing the attractions of the county is a  
27 proper secular purpose”). As the Ninth Circuit explained in Paulson, “even a  
28

1 government act that has a secular purpose can violate [the No Aid Clause] if it also  
2 has a direct, immediate, and substantial effect of promoting a sectarian purpose.”  
3 Paulson, 294 F.3d at 1130. This principle is perhaps best illustrated by the  
4 California Court of Appeal’s decision in Frohlinger v. Richardson, 63 Cal. App. 209  
5 (Cal. Ct. App. 1923), wherein the court made a “strong statement . . . that the  
6 existence of a legitimate secular purpose will not redeem otherwise prohibited  
7 governmental aid to religion.” Hewitt, 940 F.2d at 1570 (citing Frohlinger with  
8 approval).

9 In holding that the use of public funds to restore the San Diego Mission  
10 violated the No Aid Clause, the Frohlinger court did not challenge the government’s  
11 proffered secular motivations:

12  
13 We concede that the California missions are of historical  
14 and educational interest from a cultural and literary  
15 standpoint, but they approach no such classification as  
16 would make them the basis of the state’s bounty or the  
17 subject of legislative appropriation in the guise of the  
18 public interest, public good, or public welfare.

19 \*\*\*

20 [W]e are in sympathy with the meritorious movement  
21 having for its object the restoration and preservation of  
22 the missions, but no matter how praiseworthy we may  
23 believe such efforts to be, we must say that, in our  
24 opinion, the state Constitution forbids that such work be  
25 done at the expense of the taxpayers. We believe that the  
26 act of the Legislature under consideration is in manifest  
27 violation of [the No Aid Clause] . . . .

28 Frohlinger, 63 Cal. App. at 217. The Frohlinger court further reasoned that  
“[d]isregard[ing] . . . the constitutional bar” of the No Aid Clause by permitting  
expenditure of public funds to restore the mission “would render the public treasury

1 easy of access for the levying of tribute, under cover of appropriation acts, by sects  
2 of every denomination . . . seeking money for the restoration of old buildings, upon  
3 the ground that they were of historical and educational interest, and therefore of  
4 public concern.” Id.

5 So, too, would permitting expenditure of the County’s time, energy, and  
6 resources here for the sole purpose of adding a Latin cross to an otherwise  
7 unchanged seal create grounds for “sects of every denomination, and other  
8 organizations” to wonder why they are not receiving similar aid from the County.  
9 Id. Indeed, there can be little doubt that any modification of the 2004 Seal will  
10 necessarily require devotion of substantial County resources. The estimated cost of  
11 implementing the 2004 Seal throughout the County—i.e., by replacing the 1957  
12 Seal on County-owned and leased facilities, on decals affixed to County vehicles,  
13 and on all stationary and computer applications—was estimated to be \$700,000.  
14 See Tr. Ex. 26-27; see also Tr. Ex. 24, at 292-93. Comparable financial resources  
15 and effort will be devoted to complete the implementation of the 2014 Seal, which,  
16 again, contains only one modification from the 2004 Seal: the addition of a Latin  
17 cross to the otherwise unaltered image of the San Gabriel Mission that adorned the  
18 seal for ten years. See Ramirez Decl. at ¶ 4, Ex. 2; Tr. Ex. 52 (January 7, 2014  
19 Meeting Minutes, Comments of Supervisor Antonovich), at 374-75 (noting that the  
20 “phase in” of the 2014 Seal was to be “consistent with the manner in which the  
21 [2004 Seal] was phased in following the Board’s 2004 redesign”). Of course, “the  
22 power, authority, and financial resources” of the County stand behind any such  
23 implementation effort, the sole result of which would be the addition of an  
24 undeniably sectarian symbol to the County’s already-ubiquitous 2004 Seal. Priest,  
25 12 Cal.3d at 604; c.f. Hewitt, 940 F.2d at 1571 (County’s ownership and  
26 maintenance of religious statues in park aids religion where county “holds the deed  
27 to the park and pays for its maintenance”).  
28



1 Irrespective of any appropriation of funds, the Court also concludes that the  
2 Board of Supervisors' 2014 motion imparted a benefit to a sectarian purpose by  
3 "enlist[ing] the *power and prestige* of the [County] in support of the [addition] of  
4 the cross" to the County's preeminent symbol. Paulson, 294 F.3d at 1133  
5 (emphasis added); Fox, 22 Cal.3d at 806 (Bird, C.J., concurring) ("The ban is on  
6 aid to religion in any form"); Johnson v. Huntington Beach Union High Sch. Dist.,  
7 68 Cal.App.3d 1, 16 (1977) (upholding school district's rejection of student Bible  
8 study club meetings on campus where meetings "implicate[] school authority and  
9 prestige behind the dissemination of religious dogma"); Sands v. Morongo Unified  
10 Sch. Dist., 53 Cal. 3d 863, 883 (1991) ("[No Aid Clause] prohibits not only  
11 material aid to religion, but *any* official involvement that promotes religion.")  
12 (emphasis in original). Despite the County's contention to the contrary, the  
13 sectarian benefit afforded by adding the cross to the County seal is hardly  
14 comparable to any incidental sectarian benefit afforded by the Los Angeles Unified  
15 School District's "instruction on the missions and [use of] textbooks includ[ing]  
16 photos of missions with crosses on them," or California's use of social studies and  
17 history education guidelines that "specifically direct teaching of the role of missions  
18 in the history of California." Opp'n at 9-10. Unlike textbooks or educational  
19 guidelines, the County's seal is not an educational tool, but a symbolic and  
20 representative one, not unlike a flag or a badge. It carries with it an aura of  
21 prestige, authority, and approval. By singling out the cross for addition to the seal,  
22 the County necessarily lends its prestige and approval to a depiction of one faith's  
23 sectarian imagery. The County also provides a platform for broadcasting that  
24 imagery on County buildings, vehicles, flags, and stationary.

25 It is true, of course, that the No Aid Clause "does not prohibit indirect,  
26 remote, or incidental benefits [to a sectarian purpose]." Paulson, 294 F.3d at 1131  
27 (citation omitted); see also Barnes-Wallace v. City of San Diego, 704 F.3d 1067,  
28

1 1079 (9th Cir. 2012) (“[I]t is important to note that, despite the categorical language  
2 of the No Aid Clause, the California Supreme Court [has] . . . re-emphasized that  
3 the mere conferring of some benefit on a sectarian organization does not *ipso facto*  
4 violate the No Aid Clause.”). A benefit “may qualify as ‘incidental’ if the benefit is  
5 available on an equal basis to those with sectarian and those with secular  
6 objectives.” See Paulson, 294 F.3d at 1131; see also Cal. Statewide Comm. Dev.  
7 Authority v. All Persons Interested in Matter of Validity of Purchase Agreement, 40  
8 Cal.4th 788, 801 (2007) (noting that in order to satisfy the No Aid Clause, the  
9 government action must be available to “both secular and sectarian institutions on  
10 an equal basis”).

11 However, the aid to a sectarian purpose posed here by the addition of the  
12 Latin cross is not properly dismissed as merely “incidental.” Again, the *only*  
13 change to the Seal mandated by the County’s 2014 motion—and the *sole* result of  
14 the resources that will necessarily be expended in effectuating the motion—is the  
15 addition of the Latin cross to the county’s official seal. Permitting such a change  
16 and the associated expenditure of public funds places the County’s power, prestige,  
17 and purse behind a single religion, Christianity, without making any such benefit  
18 available on an equal basis to those with secular objectives or alternative sectarian  
19 views. See Hewitt, 940 F.2d at 1571 (noting that “there may be other [non-  
20 Christian] religious groups in [the county] which would appreciate government  
21 sponsorship of their religious parks or cemeteries,” and for this reason “[t]he  
22 California[n] people have written their constitution to guard against” the county’s  
23 “use of a religious statuary park to achieve a secular goal”); c.f. Barnes-Wallace,  
24 704 F.3d at 1081 (holding that the lease of public land to Boy Scouts was incidental  
25 and not in violation of the No Aid Clause where the services the Scouts provided  
26 were “essentially neutral to religion” and the equivalent to a “broad curriculum in  
27 secular subjects”). Indeed, plaintiffs’ testimony regarding their perception of the  
28

1 2014 Seal as conveying endorsement of Christianity, to the exclusion of other  
2 religious and non-religious beliefs, undermines the County’s claim that the benefit  
3 to Christianity is incidental.<sup>16</sup> See Hewitt, 940 F.2d at 1571 (noting that “[e]ach  
4 plaintiff was surprised and disturbed by the apparent endorsement the County was  
5 giving to the religious message of [the] statues” and that such “testimony at trial  
6 *undermines any argument that the government support to religion here is only  
7 incidental*”) (emphasis added).

8 The County resists these conclusions on various grounds, none of which are  
9 availing. Specifically, the County argues that missions have played a central role in  
10 the history of California and Los Angeles County, as “reflected in the core  
11 curriculum of California schools,” where “[m]ission history is taught as a secular  
12 subject, and routine depiction[s] of missions with crosses are found in a secular  
13 context.” Id. at 8, 10. At bottom, the County’s central argument is that “no  
14 reasonable observer—no resident of California, and in particular in the Los Angeles  
15 area—would view a depiction of the San Gabriel Mission with a cross as one part  
16 of the County Seal . . . as indicating some approval of, or providing a benefit to, a  
17 particular religion.” Opp’n at 12. This argument fails for multiple reasons.

18 First, the relevant government act here is not merely the “depiction of the San  
19 Gabriel Mission with a cross as one part of the County Seal,” but rather the

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20 <sup>16</sup> See, e.g., Little Decl. at ¶ 4 (objecting to “the Board’s decision to alter the County seal solely to  
21 add a cross to it while excluding the symbols of any of the other faiths practiced by citizens of  
22 Los Angeles”); Rosove Decl. at ¶¶ 4-5 (opposing the addition of the cross “with every fiber of  
23 [his] being” and expressing his belief that adding the cross “alienates all faith and non-faith based  
24 religions and communities”); Laarman Decl. at ¶¶ 4-10 (stating that he is “offended as a Christian  
25 minister and theologian” by the addition of the cross to the 2004 Seal which is “blatantly  
26 exclusionary”); Myers Decl. at ¶¶ 7-12 (objecting to the addition of the cross because it is a  
27 “symbol of violence, discrimination, and group hatred” against non-Christian communities); Syed  
28 Decl. at ¶¶ 4-6 (objecting to “the Board’s decision to impose . . . the cross, upon [him] and more  
than half a million fellow Muslims in Los Angeles”); and Bernstein Decl. at ¶ 4 (stating that she  
is “insulted by the Board’s decision to add a cross to the County seal” because the cross  
symbolizes “the oppression and violent persecution of [her] entire faith” and “the seal does not  
include symbols representing Judaism”).

1 County’s specific effort to *add* a Latin cross, at significant expense, to an otherwise  
2 unchanged version of the seal. Second, the County mistakenly argues that recent  
3 decisions purportedly “addressing application of the No-Aid Clause concerning  
4 governmental use or depiction of religious material[] employ analysis virtually  
5 identical to that used in analyzing federal constitutional claims, namely whether a  
6 *reasonable observer* would perceive the government conduct as providing a benefit  
7 to religion.” Opp’n at 4 (emphasis added); see also id. at 4-8. In actuality, as  
8 plaintiffs rightly note, none of the cases upon which the County relies apply a  
9 “reasonable observer” standard *in analyzing the No Aid Clause* of the California  
10 Constitution. See Sedlock v. Baird, 235 Cal.App.4th 874, 889, 889 n.30 (2015)  
11 (holding that the teaching of yoga poses did not violate California’s *Establishment*  
12 *Clause* and declining to analyze California’s No Aid Clause because the Sedlock  
13 plaintiffs—unlike those in the instant action—“provide[d] no independent  
14 arguments in support of [their No Aid Clause] claim[]”); Barnes-Wallace, 704 F.3d  
15 at 1083-84 (9th Cir. 2012) (employing a “reasonable observer” standard only in  
16 applying the Lemon test and only after the Court had already concluded its No Aid  
17 Clause analysis); Brown v. Woodland Joint Unified Sch. Dist., 27 F.3d 1373, 1378  
18 (9th Cir. 1994) (applying the “reasonable observer” standard to determine whether  
19 inclusion of witches and sorcerers as characters in a series of reading textbooks  
20 violated the “effects” prong of the Lemon test). Thus, the Court is not bound by  
21 any such “reasonable observer” standard in its analysis of the No Aid Clause, and  
22 therefore does not employ any such analysis here.

23 In sum, the Court finds that in seeking to expend substantial resources to *add*  
24 a depiction of a undeniably religious symbol to an otherwise unchanged version of  
25 the 2004 Seal, the County has singled out and conferred the government’s prestige  
26 upon the Christian religion, as in Frohliger, 63 Cal. App. at 217 (No Aid Clause  
27 prohibits use of public funds to restore the San Diego Mission despite “historical  
28

1 and educational interest [in California missions] from a cultural and literary  
2 standpoint”), Hewitt, 940 F.2d at 1571 (county’s ownership and maintenance of  
3 religious statues in a park was “direct” and substantial), Hollinger, 221 Cal.App.2d  
4 at 158 (public financing of a film of a religious parade violates the No Aid Clause),  
5 and Paulson, 294 F.3d at 1132 (the city “directly, immediately, and substantially  
6 aided the sectarian purpose of preserving the cross”), among others.<sup>17</sup> The Court  
7 therefore concludes that adding the cross to the 2004 Seal directly benefits  
8 Christianity in violation of the California Constitution’s No Aid Clause, the state’s  
9 “definitive statement of the principle of government impartiality in the field of  
10 religion.” Priest, 12 Cal.3d at 604 (citation omitted).

11 In reaching its conclusion, the Court rejects the County’s implication that  
12 such a finding effectively means that the No Aid Clause is “so broad that it requires  
13 *expungement* of the depiction of any religious image on public property without  
14 regard to the context in which it is displayed and the manner in which it is  
15

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16 <sup>17</sup> In advancing their argument regarding the No Aid Clause, plaintiffs also rely upon Fox v. City  
17 of Los Angeles, 22 Cal.3d 792, 801 (1978). In Fox, the California Supreme Court held that a  
18 large illuminated display of a Latin cross on Los Angeles City Hall violated the California  
19 Constitution, despite the city’s contention that the display “constituted no more than ‘participation  
20 in the secular aspects of the Christmas and Easter holidays.’ ” Id. at 798. In its majority opinion,  
the Supreme Court in Fox did not specify which of California’s various constitutional provisions  
the display violated, discussing the relevant provisions of the California Constitution in general  
terms and without reference to the No Aid Clause:

21 The California Constitution, like the United States Constitution,  
22 does not merely proscribe an establishment of religion. Rather, all  
23 laws “*respecting* an establishment of religion” are forbidden.  
24 (Italics added.) The California Constitution also guarantees that  
25 religion shall be freely exercised and enjoyed “without  
26 discrimination or preference.” Preference thus is forbidden even  
when there is no discrimination. The current interpretations of the  
United States Constitution may not be that comprehensive.

27 Fox, 22 Cal. 3d at 796 (alteration in original). However, because the Fox majority did not  
28 expressly rely upon the No Aid Clause in its analysis, the Court does not rely upon Fox in  
reaching its conclusion here regarding the application of the No Aid Clause as to this case.

1 perceived by a reasonable observer.” Opp’n at 5. No such “expungement” is at  
2 issue here, where the relevant governmental act is the County’s attempt to devote  
3 substantial resources towards an effort whose lone goal is the *addition* of a religious  
4 symbol to the County’s otherwise secular official emblem.

5 **c. The No Preference Clause of the California Constitution**

6 Plaintiffs also contend that the addition of the Latin cross to the County Seal  
7 violates the “No Preference Clause” of article I, section 4 of the California  
8 Constitution, which guarantees the “[f]ree exercise and enjoyment of religion  
9 without discrimination or preference.”<sup>18</sup> Cal. Const. art. I, § 4. The Ninth Circuit  
10 has stated in dicta that the No Preference Clause “has been interpreted by California  
11 state courts as being broader than the Establishment Clause of the First  
12 Amendment.” Vernon, 27 F.3d at 1395 (citing Okrand v. City of Los Angeles, 207  
13 Cal.App.3d 566, 571 (1989) (“California’s constitutional provisions are more  
14 comprehensive than those of the federal Constitution.”) (citations omitted); Fox, 22  
15 Cal.3d at 796 (“Preference thus is forbidden even when there is no discrimination.  
16 The current interpretations of the United States Constitution may not be that  
17 comprehensive.”)). Citing to article I, section 4 of the California Constitution, the  
18 Ninth Circuit has previously distilled several factors relevant to determining  
19 whether, “when viewed in its historical and physical context, a given [religious]  
20 display on public property” violates the California Constitution:

21  
22 [1] the religious significance of the display, [2] the size  
23 and visibility of the display, [3] the inclusion of other  
24 religious symbols, [4] the historical background of the

25 <sup>18</sup> Article I, section 4 of the California Constitution reads, in full, as follows:

26 Free exercise and enjoyment of religion without discrimination or preference are  
27 guaranteed. This liberty of conscience does not excuse acts that are licentious or  
28 inconsistent with the peace or safety of the State. The Legislature shall make no law  
respecting an establishment of religion. A person is not incompetent to be a witness or  
juror because of his or her opinions on religious beliefs.

1 display, and [5] the proximity of the display to  
2 government buildings or religious facilities.

3  
4 Ellis, 990 F.2d at 1525 (holding that San Diego’s ownership of the Mount Helix  
5 Cross, a 36-foot Latin cross in a public park, and the Mount Soledad Cross, a 43-  
6 foot Latin cross in a public park, violated California’s No Preference Clause).  
7 Although the court in Ellis employed the five factors above in finding violation of  
8 the No Preference Clause, the factors “are simply a convenient list to guide a  
9 court’s analysis; they do not form a definitive test utilized by the California courts.”  
10 Carpenter, 93 F.3d at 630 (finding that “all but one of the five Ellis factors counsel  
11 that the Mount Davidson Cross violates the No Preference Clause” and that  
12 “[b]ecause we hold that the Cross violates the No Preference Clause, we need not  
13 reach [plaintiff’s] other claims under the California Constitution or the United  
14 States Constitution”). Nonetheless, plaintiffs encourage the Court to employ the  
15 Ellis factors and thereby find the County’s addition of the cross as violative of the  
16 No Preference Clause.

17 The Court declines to do so, in light of a more recent California Supreme  
18 Court decision that casts doubt on the proposition that the No Preference Clause  
19 affords broader protection than the U.S. Constitution’s Establishment Clause:

20  
21 This court has never had occasion to definitively construe  
22 the no preference clause of article I, section 4 and we  
23 need not do so here. In guaranteeing free exercise of  
24 religion “without discrimination or preference,” the plain  
25 language of the clause suggests, however, that the intent  
26 is to ensure that free exercise of religion is guaranteed  
27 regardless of the nature of the religious belief professed,  
28 and that the state neither favors nor discriminates against  
religion. Having concluded above that an exemption  
from a landmark preservation law satisfies all prongs of  
the Lemon test, it follows that the exemption is neither a

1 governmental preference for or discrimination against  
2 religion.

3 E. Bay Asian Local Dev. Corp. v. State of California, 24 Cal. 4th 693, 719 (2000)  
4 (“East Bay”). Indeed, the Ninth Circuit has recently construed the California  
5 Supreme Court’s decision in East Bay to “h[o]ld that a governmental action that  
6 satisfies the [Lemon] test . . . necessarily passes muster under the California No  
7 Preference Clause.” Barnes-Wallace, 704 F.3d at 1082 (“Accordingly, we need not  
8 separately analyze the plaintiffs’ claims under these state constitutional provisions  
9 because our disposition of this case requires us to address the plaintiffs’ federal  
10 Establishment Clause claims.”); see also Am. Humanist, 2014 WL 791800, at \*6  
11 (“[B]ecause the California Supreme Court in East Bay found the Lemon test to also  
12 govern the analysis under California’s Establishment and No Preference Clauses,  
13 this Court applies the Lemon test to both the state and federal constitutional issues  
14 in question in the instant case.”). Therefore, for purposes of the instant motion, the  
15 Court treats the protections of article I, section 4’s No Preference Clause as  
16 coterminous with those of the U.S. Constitution’s Establishment Clause, such that  
17 application of the Lemon test, discussed infra, decides plaintiffs’ claim under both  
18 California’s No Preference Clause and the First Amendment.

19 **d. The Federal Establishment Clause**

20 The Federal Establishment Clause prohibits the government from making  
21 any law “respecting an establishment of religion” or undertaking any act that  
22 unduly favors one religion over another. U.S. Const. amend. I. The test articulated  
23 by the Supreme Court in Lemon v. Kurtzman “remains the Court’s principal  
24 framework for applying the Establishment Clause,” although Lemon has been  
25 “much criticized both inside and outside the Court,” and “sometimes ignored by the  
26 Court altogether.” Santa Monica Nativity Scenes Comm. v. City of Santa Monica,  
27 784 F.3d 1286, 1299 n.7 (9th Cir. 2015) (citing Lemon v. Kurtzman, 403 U.S. 602,  
28



1 612 (1971)). Under the Lemon test, a government action violates the Establishment  
2 Clause if (1) it lacks a “secular legislative purpose,” (2) “its principal or primary  
3 effect” is to “advance[ or] inhibit[ ] religion,” or (3) it “foster[s] an excessive  
4 government entanglement with religion.” Lemon, 403 U.S. at 612-13 (internal  
5 quotation marks omitted). As explained in the discussion below, the Court  
6 concludes that the County’s addition of the Latin cross to the 2004 Seal violates  
7 both the “purpose” and “effect” prongs of the Lemon test.

8 **i. Lemon Test Prong 1: Sectarian or Secular Purpose**

9 **1. *The Court Assesses the Board’s Purpose from the***  
10 ***Vantage Point of an Objective Observer Familiar***  
11 ***with what History has to Show***

12 Under Lemon’s “purpose” inquiry, the Court assesses the underlying purpose  
13 of the government action from the vantage point of “an ‘objective observer’ ” who  
14 is “presumed to be familiar with the history of the government’s actions and  
15 competent to learn what history has to show.” McCreary Cty., Ky. v. Am. Civil  
16 Liberties Union of Ky., 545 U.S. 844, 862, 866 (2005) (quoting Santa Fe Indep.  
17 Sch. Dist. v. Doe, 530 U.S. 290, 308 (2000)). In assessing purpose, the Court may  
18 “take[] account of the traditional external signs that show up in the ‘text,  
19 legislative history, and implementation of the statute,’ ” or comparable official act.”  
20 Id. at 862 (citation omitted); see also Edwards v. Aguillard, 482 U.S. 578, 594-95  
21 (1987) (noting that the Court’s inquiry looks to the “plain meaning of the statute’s  
22 words, enlightened by their context and the contemporaneous legislative history  
23 [and] the historical context of the statute, . . . and the specific sequence of events  
24 leading to [its] passage”).

25 Crucially, “although a [legislative body’s] stated reasons will generally get  
26 deference, the secular purpose required has to be genuine, not a sham, and not  
27 merely secondary to a religious objective.” McCreary, 545 U.S. at 864 (citing  
28

1 Santa Fe, 530 U.S. at 308 (“When a governmental entity professes a secular  
2 purpose for an arguably religious policy, the government’s characterization is, of  
3 course, entitled to some deference. But it is nonetheless the duty of the courts to  
4 ‘distinguis[h] a sham secular purpose from a sincere one.’ ”)). Plaintiffs  
5 accordingly argue that when viewed in light of the seal’s broader history, the Board  
6 of Supervisors’ stated purpose for adding the Latin cross to the 2004 Seal—i.e., for  
7 purposes of cultural, historical, architectural, and aesthetic accuracy—is not  
8 genuine. Motion at 26. For reasons explained more fully below, the Court  
9 concludes that a reasonable, objective observer, familiar with what history has to  
10 show, would conclude that a predominantly sectarian purpose informed the  
11 County’s decision to add the cross to the seal, such that the County’s addition of the  
12 cross fails to satisfy the first prong of the Lemon test.

13 The touchstone of the Court’s analysis is the Supreme Court’s 2005 decision  
14 in McCreary, wherein the Court assessed the decisions of two Kentucky counties to  
15 erect large, framed copies of the Ten Commandments in their respective  
16 courthouses.<sup>19</sup> In one of the counties, the display was set up in a ceremony presided  
17 over by the county Judge-Executive, who called the Commandments “good rules to  
18 live by” and further recounted the story of an astronaut who became convinced  
19 “there must be a divine God” after viewing the Earth from the moon. McCreary,  
20 545 U.S. at 851. A pastor who had accompanied the Judge-Executive later told the  
21 press that displaying the Commandments was “one of the greatest things the judge  
22 could have done to close out the millennium.” Id. The erection of the displays  
23 prompted a lawsuit by the ACLU, but before the district court reached the ACLU’s  
24 request for a preliminary injunction, the legislative bodies of each county  
25 authorized a second, expanded display. Id. at 851. The resolutions enacting this  
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27 <sup>19</sup> As the Ninth Circuit has noted, “[t]here can be little doubt after McCreary not only that Lemon  
28 is still alive but that the secular purpose inquiry has been fortified.” Card v. City of Everett, 520  
F.3d 1009, 1017 (9th Cir. 2008) (citing McCreary, 545 U.S. at 900-03 (Scalia, J., dissenting)).

1 second display stated that the Ten Commandments are “the precedent legal code  
2 upon which the civil and criminal codes of . . . Kentucky are founded,” and that the  
3 “Founding Father[s] [had an] explicit understanding of the duty of elected officials  
4 to publicly acknowledge God as the source of America’s strength and direction.”  
5 Id. at 852-53. In addition to the Ten Commandments, the second resolution called  
6 for the display of eight other documents in smaller frames, each having either a  
7 religious theme or excerpted to highlight a religious element. Id. at 853-54.

8 The district court entered a preliminary injunction after finding that the  
9 displays failed to satisfy Lemon’s “secular purpose” prong. Id. at 854. Following  
10 the court’s ruling, the counties erected a third display in the courthouses, albeit  
11 without repealing their previous resolutions or passing a new one. Id. at 855. This  
12 third iteration, entitled, “The Foundations of American Law and Government  
13 Display,” included the following nine framed documents, each accompanied by a  
14 statement about its historical and legal significance: the Ten Commandments, the  
15 Magna Carta, the Declaration of Independence, the Bill of Rights, the lyrics of the  
16 Star Spangled Banner, the Mayflower Compact, the National Motto, the Preamble  
17 to the Kentucky Constitution, and a picture of Lady Justice. Id. at 855-56. The  
18 counties offered several explanations for the new version, including desires to (1)  
19 “demonstrate that the Ten Commandments were part of the foundation of American  
20 Law and Government,” and to (2) “educate the citizens of the county regarding  
21 some of the documents that played a significant role in the foundation of our system  
22 of law and government.” Id. at 856-57.

23 The Supreme Court rejected these statements of purpose as a “litigating  
24 position,” finding that “[n]o reasonable observer could swallow the claim that the  
25 Counties had cast off the objective so unmistakable in the earlier displays.” Id. at  
26 871-72 (noting that “although repeal of the earlier county authorizations would not  
27 have erased them from the record of evidence bearing on current purpose, the  
28

1 extraordinary resolutions for the second displays passed just months earlier were  
2 not repealed or otherwise repudiated”). The counties’ newfound statements of  
3 purpose were further belied by the display itself, which—despite purporting to  
4 include documents “foundational” to American government—“odd[ly]” omitted  
5 both the original Constitution of 1787 as well as the Fourteenth Amendment. Id. at  
6 872. The reasonable observer would be further “puzzled” by the display’s posted  
7 claim that the Ten Commandments’ influence was “clearly seen” in the Declaration  
8 of Independence, despite the Declaration itself holding that the government’s  
9 authority to enforce the law derives “from the consent of the governed,” unlike the  
10 Commandments’ “divine imperatives.” Id. at 872-73. Ultimately, the Court  
11 observed, “[i]f the observer had not thrown up his hands, he would probably  
12 suspect that the Counties were simply reaching for any way to keep a religious  
13 document on the walls of courthouses constitutionally required to embody religious  
14 neutrality.” Id. at 873.

15 In assessing purpose in the instant case, as in McCreary, “reasonable  
16 observers have reasonable memories, and [Supreme Court] precedent[] sensibly  
17 forbid[s] an observer ‘to turn a blind eye to the context in which [the challenged  
18 governmental] policy arose.’ ” Id. at 866 (citation omitted). The relevant “context”  
19 in this case includes the County’s inclusion of an unadorned cross on the 1957 Seal  
20 for nearly fifty years, as well as the Board’s divided vote to remove the cross and  
21 adopt a modified seal in 2004. To the extent the County argues otherwise, it asks  
22 the Court “to ignore perfectly probative evidence” and appears to “want an  
23 absentminded objective observer, not one presumed to be familiar with the history  
24 of the government’s actions and competent to learn what history has to show” Id.  
25 Plainly, such a position “just bucks common sense.”<sup>20</sup> Id.

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26  
27 <sup>20</sup>In a separately-filed motion to strike, defendants seek to exclude much of the evidence plaintiffs  
28 proffer in support of their arguments under Lemon’s first prong. Dkt. 119 (“Mot. to Strike”).  
Specifically, defendants seek to exclude evidence that generally falls into one of three categories:

1  
2 (1) non-public emails and letters, sent by members of the public to individual members of the  
3 Board of Supervisors or County employees, expressing support or disapproval of the 1957 Seal,  
4 the 2004 Seal, or the 2014 Seal, see, e.g., Tr. Exs. 10-11, 14-23, 37, 40-41, 44-47, 50-51, 54-56;  
5 (2) internal emails and memos between County employees regarding the various versions of the  
6 seal, including documents purportedly evidencing continued use of the 1957 Seal following its  
7 2004 revision, see, e.g., Tr. Exs. 28-34, 85-87, as well as memos and emails regarding  
8 implementation of the 2014 seal, see, e.g., Tr. Exs. 26, 67-69, 83; and (3) various emails that were  
9 sent by individual Supervisors and that reference the 2014 Seal, see, e.g., Tr. Exs. 38-39, 42, 48-  
10 49, and 51.

11 The County contends that McCreary limited the scope of information relevant under Lemon's  
12 purpose prong, such that much of plaintiffs' proffered evidence is irrelevant and therefore  
13 inadmissible pursuant to Federal Rules of Evidence 401 and 402. Specifically, the County notes  
14 that "[t]he eyes that look to purpose belong to an 'objective observer,'" and in determining the  
15 government's purpose, the Court must not conduct "any judicial psychoanalysis of a drafter's  
16 heart of hearts." McCreary, 545 U.S. at 862. The County rightly notes that McCreary does not  
17 reference non-public communications to governmental actors, correspondence between  
18 governmental employees, or statements made by governmental actors in a non-public setting—  
19 that is, McCreary does not rely upon evidence of purpose uncovered through pretrial discovery,  
20 but rather upon the "traditional external signs that show up in the text, legislative history, and  
21 implementation of the . . . official act." Id. (internal quotation marks omitted). Because  
22 plaintiffs' evidence was not publicized or otherwise known to McCreary's "objective observer,"  
23 the County argues that such evidence is irrelevant and inadmissible to the federal Establishment  
24 Clause inquiry. The County further asserts that because the challenged evidence is non-public  
25 and has not been produced for public viewing, it is also irrelevant to the No Aid Clause inquiry,  
26 as it has "no bearing on the *effect* of 2014 Seal on religious institutions." Mot. to Strike at 7.

27 Plaintiffs, however, take a much broader view of relevance under McCreary. Specifically,  
28 plaintiffs argue that the challenged evidence, including non-public emails and memos, are  
relevant to McCreary's "objective observer" test, as the evidence is part of the complete "history  
of the [County's] actions" that the Court is entitled to examine in assessing purpose. Opp'n to  
Mot. to Strike at 3 (citing McCreary, 545 U.S. at 866) (explaining that the purpose inquiry is  
viewed through the eyes of an "objective observer" who is "presumed to be familiar with the  
history of the government's actions and competent to learn what history has to show"). First,  
plaintiffs argue that evidence indicating continued use of the 1957 Seal following the 2004  
amendment "is an important part of the sequence of events in this lawsuit" that "can be observed  
objectively, i.e., without inquiring into the Supervisors' subjective thoughts or 'heart of hearts,'  
see McCreary, 545 U.S. at 862," and that such evidence is relevant and admissible to the Court's  
Establishment Clause analysis. Opp'n to Mot. to Strike at 4. Second, plaintiffs contend that  
certain emails sent by individual Supervisors—particularly, Supervisor Antonovich—are relevant  
to discerning the purpose behind the Board's 2014 amendment. Id. at 6-8. Third, plaintiffs argue  
that private email communications and correspondences sent by members of the public to the  
Supervisors are probative of how the general public, and the "objective observer," actually  
perceived purpose and effect of 2014 amendment. Id. at 9-11. Finally, plaintiffs argue that some  
of the challenged evidence is relevant to the No Aid Clause inquiry, which does not look to  
McCreary's "objective observer" standard at all. Id. at 3.

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***2. A Reasonable, Objective Observer Would Find a Sectarian Purpose Behind the County’s Addition of the Cross***

In the instant case, the stated purpose behind the Board’s 2014 amendment to the seal is “to make the County seal artistically, aesthetically and architecturally correct by placing the cross on top of the San Gabriel Mission in order to accurately reflect the cultural and historical role that the Mission played in the development of the Los Angeles County region.” See Tr. Ex. 36. “While the Court is normally deferential to a [County’s] articulation of a secular purpose,” Edwards, 482 U.S. at 586-87, the County’s stated purpose must be “genuine . . . and not merely secondary to a religious objective,” as assessed through “[t]he eyes . . . [of] an ‘objective observer’ ” who is “familiar with the history of the government’s actions and competent to learn what history has to show,” McCreary, 545 U.S. at 862, 864, 865 (citations omitted). Stated differently, because “the world is not made brand new every morning,” an objective observer cannot infer the Board’s purpose “only from the latest news about the last in a series of governmental actions.” Id. at 865. That is, an objective observer assessing the Board’s purpose could not ignore the County’s nearly fifty-year long depiction of an unadorned cross on its seal prior to the 2004 revisions, nor could such an observer fail to recognize the Board’s 2004 decision to remove the Latin cross following a series of

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Having carefully considered the parties’ arguments, the Court concludes that plaintiffs take an overly broad view of relevance and admissibility under McCreary. Nonetheless, the Court declines the County’s invitation to strike broad swaths of evidence on the grounds that such evidence is irrelevant under the inquiry that McCreary requires. To the extent the Court relies upon any of plaintiffs’ challenged evidence, the Court addresses the County’s substantive objections on an individualized basis. Accordingly, the County’s Motion to Strike is **DENIED**. Defendants’ supplemental motions to exclude additional evidence, see dkts. 153, 154, 155, are similarly **DENIED AS MOOT**, as the Court does not rely upon this evidence in reaching its conclusion here.

1 contentious public hearings wherein, as one Supervisor put it at the time, the  
2 public’s vocal objection “was clearly . . . a religious one.” Tr. Ex. 13, at 209. In  
3 light of these considerations, the Court finds that the Board’s stated goal of  
4 achieving artistic, architectural, cultural, and historical accuracy is inconsistent with  
5 how a reasonable, objective observer, familiar with what history has to show,  
6 would construe the Board’s decision to reintroduce a cross to the seal.

7 First, a reasonable, objective observer would find it “odd[]” that the Board’s  
8 purported concern with the seal’s artistic, aesthetic, and architectural accuracy  
9 appears limited to the depiction of the Mission—specifically, to its inclusion of the  
10 cross, the preeminent symbol of Christianity. McCreary, 545 U.S. at 872. If  
11 substantial funds are again to be spent modifying the seal and thereby “accurately  
12 reflect[ing] the cultural and historical role that the Mission played in the  
13 development of the Los Angeles County region,” an objective observer would  
14 necessarily wonder why the Board did not do the same for the seal’s other  
15 significant historical depictions, such as the *San Salvador*, the cow Pearlette, or the  
16 Hollywood Bowl. A likely answer, as the County itself suggests, is that the seal “is  
17 not intended to be an exact diagram of anything,” as all of its “elements . . . are by  
18 necessity somewhat stylized.” Opp’n at 24. And even though, as the County  
19 argues, “a stylized representation has to make clear to an observer what is actually  
20 being depicted,” an objective observer would find the 2004 Seal’s depiction of the  
21 Mission no less clear than its highly-stylized and inaccurate depiction of the  
22 Hollywood Bowl, currently represented by a two-dimensional series of concentric  
23 half-circles. In short, a reasonable, objective observer would find that the County’s  
24 stated purpose behind adding the cross—i.e., achieving “cultural and historical”  
25 accuracy by “mak[ing] the . . . seal artistically, aesthetically and architecturally  
26 correct”—is inconsistent with the County’s apparent willingness to tolerate  
27 inaccurate depictions of other aspects of the seal’s imagery.  
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1           Second, numerous courts have suggested that governmental use of religious  
2 symbols where nonreligious imagery would have sufficed generally evinces a  
3 religious purpose. See, e.g., ACLU v. Rabun Cnty. Chamber of Commerce, Inc.,  
4 698 F.2d 1098, 1111 (11th Cir. 1983) (holding war memorial cross unconstitutional  
5 “even if . . . the purpose for constructing the cross was to promote tourism” because  
6 “a government may not ‘employ religious means to reach a secular goal unless  
7 secular means are wholly unavailing’ ”) (quoting Sch. Dist. of Abington Twp., Pa.  
8 v. Schempp, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)); Am. Humanist,  
9 2014 WL 791800, at \*8 (“Although the cross serves as a tombstone, a religious  
10 symbol is not necessary to mark a grave, and . . . the use of a religious symbol  
11 where one is not necessary evidences a religious purpose.”); Greater Houston  
12 Chapter of ACLU v. Eckels, 589 F. Supp. 222, 234 (S.D. Tex. 1984) (finding  
13 religious purpose behind a city’s use of a cross and a Star of David in war memorial  
14 statues where the memorial could have honored veterans without using religious  
15 symbolism); Mendelson v. City of St. Cloud, 719 F. Supp. 1065, 1070 (M.D. Fla.  
16 1989) (rejecting contention that a lighted cross monument had “secular and  
17 historical value as a guidepost for fisherman and pilots as a landmark” because  
18 “[s]ecular means are availing here”).

19           Although the County argues that the seal was “revised for the proper secular  
20 purpose of accurately depicting a historic landmark in a matter that makes it readily  
21 identifiable,” Opp’n at 8, Dietler Decl. at ¶ 28, Hackel Decl. at ¶¶ 31-32, 35, the  
22 Court rejects the notion that the seal must include a cross in order to “readily”  
23 identify or “accurately depict” the San Gabriel Mission. It is true, as one of the  
24 County’s experts testified, that a cross stood atop the eastern façade of the Mission  
25 for nearly one hundred years, from approximately 1889 through 1987, when the  
26 cross was removed following the Whittier earthquake. Hackel Decl. at ¶ 36; see  
27 also id. at Ex. 2 (containing thirty-five images, dated 1889 through 1973, depicting  
28



1 a cross atop the Mission’s eastern façade). However, the record also indicates that  
2 for nearly the same amount of time, throughout most of the nineteenth century, no  
3 cross adorned this portion of the structure. See Hackel Decl. at ¶¶ 66-70, Exs. 2-6  
4 (painting, ca. 1832-1835), 2-8 (sketch, ca. 1856), 2-9 (photo, ca. 1877), 2-10  
5 (photo, ca. 1877), 2-11 (photo, ca. 1880), 2-12 (photo, ca. 1885), 2-14 (photo, ca.  
6 1877-1880), 2-18 (photo, ca. 1887-1888).

7 More importantly, the County has cited no evidence of confusion on the part  
8 of the public regarding the 2004 Seal’s imagery, which for a decade depicted the  
9 Mission’s eastern façade without a cross. See Hackel Decl. at ¶ 35. Indeed, one of  
10 the County’s own experts notes that the San Gabriel Mission’s eastern façade is  
11 “the original entryway of the oldest, largest and *most distinctive* surviving building  
12 associated with the mission.” Dietler Decl. at ¶ 28 (emphasis added); see also  
13 Hackel Decl. at ¶ 72 (noting “original front of the [M]ission” was its eastern  
14 façade). Its distinctive architectural features contribute to a “fort”-like appearance  
15 that, in the opinion of the County’s expert, architecturally distinguishes the San  
16 Gabriel Mission from all other California missions. Hackel Decl. at ¶ 35. The  
17 Court is not convinced that an objective observer would struggle to recognize the  
18 Mission’s “oldest, largest and most distinctive surviving building” unless the  
19 depiction of the structure is also adorned by a cross.<sup>21</sup> See Dietler Decl. at ¶ 28.

20 Third, additional consideration of “what history has to show”—including  
21 “traditional external signs” that show up in the “text, legislative history, and  
22 implementation of the [County’s official use of the seal]”—would cast further  
23 doubt, in the eyes of a reasonable, objective observer, regarding the County’s  
24 proffered secular purpose for adding the cross. McCreary, 545 U.S. at 866 (citation  
25 and quotation marks omitted). The County’s 1957 Seal included an image of an  
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27 <sup>21</sup> Despite the Mission’s distinctive features, the County, in its opposition to the instant motion,  
28 argues that the 2004 Seal depicts the Mission “simply . . . as a large building without conveying  
its historical significance.” Opp’n at 21.

1 unadorned Latin cross in the sky, flanked by two stars, above an image of the  
2 Hollywood Bowl. Tr. Ex. 7. In 2004, following widely publicized and contentious  
3 public meetings, the Board voted 3-2 to remove the Latin cross and to add the  
4 Mission, unadorned by a cross. Tr. Ex. 24, at 309-10. This vote was publicly  
5 presented as a compromise meant to remove all sectarian imagery on the seal and  
6 thereby avert a constitutional challenge to it. See Vasquez, 487 F.3d at 1257  
7 (finding the Board’s removal of the cross from the 1957 Seal to be “viewed as an  
8 effort to restore their neutrality and to ensure their continued compliance with the  
9 Establishment Clause”).

10 A reasonable, objective observer aware of this contentious history would  
11 likely view the County’s recent decision to reintroduce a cross at substantial  
12 expense as motivated by a sectarian purpose, despite the County’s appeal to  
13 considerations of artistic and historical accuracy.<sup>22</sup> As the Ninth Circuit has noted,  
14 “[t]he argument that a cross has a historic connection cannot, of course, be treated  
15 as ‘an argument which [can] always “trump” the Establishment Clause[ ] because  
16 of the undeniable significance of religion and religious symbols in the history of  
17 many [American] communities.’ ” Trunk, 629 F.3d at 1111 n.11 (citation omitted)  
18 (alterations in original); see also Harris v. City of Zion, 927 F.2d 1401, 1413-15  
19 (7th Cir. 1991) (finding City Council’s 1986 vote “to retain the [cross on its] seal  
20 for historical reasons” to be a “perfunctory appeal to history,” noting that even a  
21 city with “a unique history . . . may not honor its history by retaining [a] blatantly  
22 sectarian seal, emblem, and logo”); Mendelson, 719 F. Supp. at 1070 (finding no  
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24 <sup>22</sup> The Court notes, however, that its holding does not stand for the proposition that a historically  
25 accurate depiction of a Latin cross atop a mission on a county seal or other public display is *per*  
26 *se* impermissible. Nor does the Court’s finding imply that an adoption of such a display  
27 necessarily stems from an impermissible sectarian purpose. As the Supreme Court noted in  
28 McCreary, “[o]ne consequence of taking account of the purpose underlying past actions is that the  
same government action may be constitutional if taken in the first instance and unconstitutional if  
it has a sectarian heritage.” Id. at 866 n.14. This possibility “presents no incongruity, however,  
because purpose matters.” Id.

1 secular purpose behind the display of a cross on a water tower despite defendants’  
2 contention that the cross had “historical value as a guidepost for fishermen and  
3 pilots and as a landmark”).

4 Accordingly, the Court concludes that the County’s addition of the cross to  
5 the 2004 Seal violates Lemon’s first prong.<sup>23</sup> Rather than finding a concern for  
6 artistic or historical accuracy behind the County’s addition of the cross, an objective  
7 observer, familiar with the seal’s history, “would probably suspect that the  
8 Count[y] w[as] simply reaching for any way to keep a religious [symbol] on [an  
9 emblem] . . . constitutionally required to [display] religious neutrality.” McCreary,  
10 545 U.S. at 873.

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13 <sup>23</sup> The County argues that this case is controlled by Newdow v. Rio Linda Union Sch. Dist.,  
14 wherein the Ninth Circuit found a state statute and school district policy calling for voluntary  
15 recitation of the Pledge of Allegiance, including the phrase, “one Nation under God,” to be  
16 constitutional. 597 F.3d 1007, 1012 (9th Cir. 2010). The Court in the instant case reads Newdow  
17 to stand primarily for two propositions, both of which are consistent with the Court’s analysis and  
18 findings here. First, the Newdow court made clear that religious motivations or statements of  
19 individual members of the public cannot, standing alone, themselves defeat a governmental action  
20 that is otherwise based on a plausible, predominantly secular purpose. Id. at 1033-34 (“[The]  
21 dissent errs . . . in focusing solely on what individuals say when they are making political  
22 statements to their constituencies and ending its analysis there . . . [Doing so would] grant[] a  
23 heckler’s veto to anyone who ma[kes] just enough noise in support of an enactment so as to  
24 defeat an otherwise valid measure”) (emphasis in original). Here, the Court has not inferred the  
25 Board’s purpose from statements or documents bearing upon the views expressed by individual  
26 members of the public. Rather, the Court has focused on how a reasonable, objective observer  
27 would perceive the Board’s 2014 motion to change the seal, and the purpose for the change  
28 expressly stated by the County—namely, achieving artistic, aesthetic, architectural, cultural, and  
historical accuracy. Again, as stated supra, the Court has found this stated purpose to be  
inconsistent with how a reasonable, objective observer would construe the County’s decision to  
add a cross to the seal. Second, while under Newdow the purpose inquiry must focus on “the  
contemporaneous legislative history” of the challenged governmental act—in this case, the 2014  
addition of the cross—Newdow also made clear that courts “must examine the relevant history”  
under the “holistic approach” of Wallace v. Jaffree, 472 U.S. 38 (1985). See Newdow, 597 F.3d  
at 1019, 1028 (citing Wallace, 472 U.S. at 58 (finding an impermissible, sectarian purpose behind  
a statute calling for a moment of silence “for meditation or voluntary prayer” based in part upon  
the “character” of a “sequel” statute, passed a year later, authorizing teachers to lead “willing  
students” in a prescribed prayer)). Here, the Court has examined that history in conducting its  
analysis.

1                   ii.    **Lemon Test Prongs 2 and 3: Effect of Advancing**  
2   **Religion**

3                                   1.    *The Court Assesses the Effect of Adding the Cross*  
4   *to the Seal from the Vantage Point of an Objective*  
5   *Observer Familiar with what History has to Show*

6           Under Lemon's second prong, a "[g]overnmental act[]" has the primary effect  
7 of advancing or disapproving of religion if it is 'sufficiently likely to be perceived  
8 by adherents of the controlling denominations as an endorsement, and by the  
9 nonadherents as a disapproval, of their individual religious choices.' " Vasquez,  
10 487 F.3d at 1256 (citation omitted); see also Lynch v. Donnelly, 465 U.S. 668, 690  
11 (1984) (O'Connor, J., concurring) ("The effect prong asks whether, irrespective of  
12 government's actual purpose, the practice under review in fact conveys a message  
13 of endorsement or disapproval."). Under the Lemon test's third prong, a  
14 government action must not "foster[] an excessive government entanglement with  
15 religion." Santa Monica Nativity Scenes Comm., 784 F.3d at 1299 (citation  
16 omitted). While plaintiffs treat these two prongs separately in their motion, "the  
17 Supreme Court essentially has collapsed the[] last two prongs to ask whether the  
18 challenged governmental practice has the effect of endorsing religion." Trunk, 629  
19 F.3d at 1106 (internal quotation marks and citation omitted); see also id. at 1109  
20 (defining "endorsement" as "those acts that send the stigmatic message to  
21 nonadherents 'that they are outsiders, not full members of the political community,  
22 and an accompanying message to adherents that they are insiders, favored  
23 members' ") (citation omitted).

24           Again, the challenged governmental action in this suit is the County's 2014  
25 motion to add a Latin cross to the 2004 Seal. As with the inquiry regarding the  
26 County's *purpose* in doing so, the Court "conduct[s] [its] inquiry [regarding the  
27 *effect* of the County's action] from the perspective of an 'informed and reasonable'  
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1 observer who is ‘familiar with the history of the government practice at issue.’ ” Id.  
2 at 1110 (citation omitted). In Vasquez, for example, the Ninth Circuit assessed the  
3 constitutionality of the County’s “removal of the cross from the [1957] LA County  
4 Seal” from the perspective of “a ‘reasonable observer’ familiar with the history and  
5 controversy surrounding the use of crosses on municipal seals.” 487 F.3d at 1257  
6 (citing Murray v. City of Austin, 947 F.2d 147, 163 (5th Cir. 1991) (Goldberg, J.,  
7 dissenting) (noting that there has been “constant . . . judicial disapproval of  
8 government use of Christian crosses . . . on municipal seals” and “[t]he Supreme  
9 Court itself has repeatedly disapproved in dicta the governmental display of  
10 crosses”). Applying the relevant standard here, the Court finds that an informed  
11 and reasonable observer familiar with the history surrounding the County’s use of a  
12 Latin cross on its seal—and the County’s controversial removal of the cross in  
13 2004—would find its recent effort to reintroduce a cross to the seal as favoring one  
14 set of religious beliefs over another.

15 The Court relies, in large part, on Trunk, wherein the Ninth Circuit found that  
16 the Latin cross and veterans’ war memorial atop Mount Soledad in La Jolla,  
17 California violated the Establishment Clause. 629 F.3d at 1101-02. The particular  
18 display that plaintiffs challenged in Trunk was “the third in a line of Latin crosses”  
19 that had stood on Mount Soledad since 1913. Id. at 1119. Accordingly, in  
20 considering the propriety of the most recent display under Lemon’s second prong,  
21 the Ninth Circuit assessed whether “the entirety” of the memorial, “*when*  
22 *understood against the background of its particular history and setting*, project[ed]  
23 a government endorsement of Christianity.” Id. at 1118 (emphasis added); accord  
24 Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 780 (1995)  
25 (O’Connor, J., concurring) (“[T]he reasonable observer in the endorsement inquiry  
26 must be deemed aware of the history and context of the community and forum in  
27 which the religious display appears.”). Ultimately, despite evidence in the record of  
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1 some secular usage of the memorial site, the court concluded that, on balance,  
2 “[h]istory would lead the reasonable observer to perceive a religious message in the  
3 [m]emorial.” Id. at 1118-19.

4 In finding a sectarian effect to the government’s display of the cross, the  
5 Trunk court cited public statements made by the cross’s supporters in the midst of  
6 the controversy surrounding its potential removal. See id. at 1119-20. Specifically,  
7 the court noted that the cross’s “importance as a religious symbol has been a  
8 rallying cry for many involved in the litigation surrounding the [m]emorial,” some  
9 of whom publicly characterized the campaign to save the cross as a “spiritual  
10 battle.” Id. at 1119-20. Other “Christian advocacy groups” launched national  
11 petition campaigns for the cross and, at a meeting of the San Diego City Council,  
12 denounced their opponents as “Satanists” or “hate[rs] of Christianity.” Id. at 1120.  
13 Still others characterized the efforts to maintain the cross as “saving [a] historic  
14 symbol of Christianity in America.” Id.

15 In the instant case, the County’s 2004 consideration of whether to replace the  
16 1957 Seal and thereby remove the cross from the County’s emblem was met with  
17 similar vocal public opposition. At the first of several public hearings regarding  
18 potential revisions to the 1957 Seal, members of the public objected to the removal  
19 of the Latin cross on religious grounds, with one characterizing the County’s effort  
20 as “an attack on the body of Christ,” Tr. Ex. 13, at 101, and another stating that “[i]f  
21 there’s no cross, there’s no compromise,” id. at 86. Others called the cross “a  
22 symbol of the love of Christ” and a representation “not just [of] the passion that we  
23 are presenting today but [also] the passion of Christ.” Id. at 187, 135. Such  
24 rhetoric, and the overall tone of the hearing, prompted Supervisor Burke to  
25 characterize the hearing as a “religious frenzy” and “as close to the inquisition as  
26 we have seen in the 21st century.” Id. at 209, 211. She further noted that “if  
27 there’s ever any question of what was being moved forward [by the Board] and  
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1 what the objection was to the vote that had been taken, it was clearly . . . a religious  
2 one.” Id. at 209.

3 Of course, the Court cannot impute the motives of the Board’s constituents to  
4 individual members of the Board. Trunk, 629 F.3d at 1119 n.19; Newdow, 597  
5 F.3d at 1034 (noting that “grant[ing] a heckler’s veto to anyone who ma[kes] just  
6 enough noise in support of an enactment so as to defeat an otherwise valid  
7 measure” would allow such measures to “be banned by the politically motivated  
8 statements of some legislators (or even someone who is not in the legislature . . .  
9 .)”). However, as the Ninth Circuit noted in Trunk, irrespective of “imputed intent,  
10 the history of the [display] is relevant to determining its effect on the reasonable  
11 viewer.” Trunk, 629 F.3d at 1119 n.19. Thus, while evidence of the public’s  
12 religiously-motivated opposition to removing the cross “may not be relevant to [the  
13 Board’s] purpose [in removing it], it cannot be ignored in assessing the history and  
14 context of the [use of the] [c]ross” on the County seal. Id.; see also Am. Humanist,  
15 2014 WL 791800, at \*13 (noting statements from “members of the community, as  
16 well as the overall atmosphere at the . . . Council meeting sent a powerful message  
17 that those who considered [using] the cross [on a memorial] to be inappropriate  
18 were not welcomed”). Indeed, some outside organizations and members of the  
19 public referenced this contentious history in either supporting or opposing the  
20 County’s effort to reintroduce the cross in 2014. See Tr. Ex. 52 (January 7, 2014  
21 Board Meeting Minutes), at 378 (“I liked the old seal and I fought to keep it the  
22 way it was . . . [and] am glad and sad at the same time to see that item back on the  
23 agenda . . . .”), 380 (“[T]his is obviously a very controversial issue. This would be  
24 a decade later that we are re-visiting it.”).

25 Simply put, irrespective of the Board’s purpose in adopting the 2004 Seal,  
26 “[t]he starkly religious message of the [c]ross’s supporters would not escape the  
27 notice of the reasonable observer.” Trunk, 629 F.3d at 1120. Nor would the  
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1 charged nature of the controversy and the publicity surrounding it escape a  
2 reasonable observer's notice. See ACLU v. City of Stow, 29 F.Supp.2d 845, 852  
3 (N.D. Ohio 1998) (noting few "even knew that the city had a seal" before it was  
4 legally challenged, but afterwards "almost everyone [knew] the seal ha[d] a  
5 Christian cross," and "heavy local publicity" surrounding the lawsuit and "the  
6 tension it has created in the community" only "exacerbated the effect of causing  
7 non-Christians . . . to feel like outsiders"). Armed with the memory of this message  
8 and of the County's decision to replace the 1957 Seal at substantial cost and despite  
9 vocal opposition, a reasonable observer in 2014, mindful of what history has to  
10 show, would not view the County's addition of a cross to the Mission as merely an  
11 "anodyne" government approval of religion. Trunk, 629 F.3d at 1109. Rather, a  
12 reasonable observer would likely view the County's willingness to expend upwards  
13 of \$700,000 for the sole purpose of adding a cross to the depiction of the Mission as  
14 an "act[] that send[s] the stigmatic message to nonadherents that they are outsiders,  
15 not full members of the political community, and an accompanying message to  
16 adherents that they are insiders, favored members." Id. (internal quotation marks  
17 and citation omitted); c.f. id. at 1118-19 ("History would lead the reasonable  
18 observer to perceive a religious message in the Memorial.").

19 The County argues against this conclusion, asserting that plaintiffs "utterly  
20 ignore" both (1) "the context in which a cross appears on the 2014 Seal," as well as  
21 (2) "the context in which a reasonable observer would perceive a mission with a  
22 cross . . . ." Opp'n at 28. As to the first point, the County emphasizes that unlike  
23 governmental displays in which a cross "stands alone or as the [display's]  
24 centerpiece," the cross on the 2014 Seal is merely a "small, albeit significant  
25 architectural and historical feature of a large building [that] mak[es] it readily  
26 identifiable as a mission." Id. As to the second point, the County argues that a  
27 reasonable observer "would be aware that missions are routinely depicted with  
28



1 crosses in all sorts of secular contexts, including on commemorative stamps issued  
2 by the post office.” Id. According to the County, “virtually every public school  
3 student in the state has received instruction on the importance of California  
4 missions to California history, including depictions of mission[s] with crosses on  
5 them.” Id. Thus, the County avers—albeit without reference to authority—that  
6 “most Californians” view such depictions as “part and parcel of the history of the  
7 state” and not as evincing “some isolated religious purpose.”<sup>24</sup> Id.

8 For purposes of the Court’s analysis here, the County’s arguments are  
9 unavailing. Specifically, the County fails to apply the Lemon test from “the  
10 perspective of an ‘informed and reasonable’ observer who is ‘familiar with the  
11 history of *the government practice at issue.*’ ”—i.e., familiar with the history of the  
12 County’s display of its seal. Trunk, 629 F.3d at 1110 (emphasis added) (citation  
13 omitted). Instead, the County considers how an “objective observer,” seemingly  
14 unaware of *the seal’s* history but familiar with the history of California missions,  
15 might perceive the 2014 Seal’s depiction of the Mission with a cross. However, the  
16 Ninth Circuit has reminded courts “assessing the effect of a religious display” that  
17 “reasonable observers have reasonable memories” and cannot “turn a blind eye to  
18 the context in which [the particular governmental] *policy* arose.” Trunk, 629 F.3d  
19 at 1118 (emphasis added) (citing McCreary, 545 U.S. at 866) (internal quotation  
20 marks omitted). Thus, the context and history of the County seal—and not merely  
21 the “history of the state,” the “history of the missions,” or “the history of  
22 County”—is crucial to assessing the County’s challenged conduct here. Opp’n at  
23 28, 32; see Trunk, 629 F.3d at 1117 (“[W]e must gauge the overall impact of the  
24 Memorial in the context of *its* history and setting.”) (emphasis added).

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25 <sup>24</sup> Specifically, the County argues that “anyone acquainted with the history of the missions and  
26 well aware of their inclusion [in the] basic curriculum for students throughout the state, including  
27 displaying missions with crosses in textbooks, would not view the display of a mission with a  
28 cross on the County Seal as conveying a primarily religious as opposed to secular message  
signifying the importance of the Mission to the history of County.” Opp’n at 32.

1           Indeed, it is the unique history of the County’s display of the seal that in  
2 large part distinguishes the instant case from Murray v. City of Austin, 947 F.2d  
3 147 (5th Cir. 1991), and Weinbaum v. City of Las Cruces, 541 F.3d 1017 (10th Cir.  
4 2008)—the only two cases defendants cite in which use of a Latin cross on a county  
5 or municipal seal was found to be permissible. In Murray, a divided panel of the  
6 Fifth Circuit held that the city insignia of Austin, Texas, did not violate the  
7 Establishment Clause. The insignia, adopted in 1919 and derived from Stephen F.  
8 Austin’s family coat of arms, is topped by a small Latin cross flanked by a pair of  
9 wings. Id. at 149-50. The court first found that the City of Austin “did not have an  
10 improper purpose in adopting the insignia[,]” and the court further recognized the  
11 “long and unchallenged use” of the cross on the seal. Id. at 158 (5th Cir. 1991).  
12 Such circumstances are unlike the history of the adoption, removal, and re-addition  
13 of the cross on the seal in this action. See also Van Orden v. Perry, 545 U.S. 677,  
14 703 (2005) (Breyer, J., concurring) (distinguishing Van Orden—where the Supreme  
15 Court found a Ten Commandments display outside the Texas State Capitol to be  
16 permissible in part because the display stood for forty years without legal  
17 challenge—from McCreary, where “the short (and stormy) history of the  
18 courthouse Commandments’ display demonstrate[ed] the substantially religious  
19 objectives of those who mounted them, *and the effect* of this readily apparent  
20 objective upon those who view them”) (emphasis added);<sup>25</sup> Stow, 29 F. Supp. 2d at  
21 \_\_\_\_\_

22           <sup>25</sup> “[T]he controlling opinion in Van Orden is, of course, that of Justice Breyer.” Card, 520 F.3d  
23 at 1018 n.10. According to Justice Breyer, the fact that the Ten Commandments monument in  
24 Van Orden stood for forty years without legal challenge “suggest[ed] more strongly than can any  
25 set of formulaic tests that few individuals, whatever their system of beliefs, are likely to have  
26 understood the monument as amounting, in any significantly detrimental way, to a government  
27 effort to favor a particular religious sect, primarily to promote religion over nonreligion . . . .”  
28 Van Orden, 545 U.S. at 702 (Breyer, J., concurring); see also id. at 682 (plurality opinion) (noting  
that plaintiff sued “[f]orty years after the monument’s erection and six years after [he personally]  
began to encounter the monument frequently”). In the instant case, no such period of tranquility  
existed, as the County’s decision to introduce the cross to the 2004 Seal was met with swift  
opposition: plaintiffs filed suit on February 6, 2014, less than a month after the County passed its

1 852 (distinguishing the seal in Murray “not in appearance but in derivation,” noting  
2 “this derivation has constitutional implications”).

3 In Weinbaum, the Tenth Circuit found the use of three Latin crosses on the  
4 City of Las Cruces’s municipal seal to be permissible. 541 F.3d at 1035. In  
5 reaching its decision, the court repeatedly emphasized that the crosses on the seal  
6 were inextricably intertwined with the City’s name—which translates to “The  
7 Crosses”—a fact that “militate[d] against the argument that the symbol’s effect is to  
8 endorse Christianity.” See Weinbaum, 541 F.3d at 1033-35 (finding that the “Las  
9 Cruces community uses the crosses the way Palo Alto uses the tall green tree”—  
10 that is, “to identify the cities by referring (via pictographic shorthand) to the cities’  
11 names”). The Weinbaum court also held that the Las Cruces seal “was []  
12 understood to be secular by the residents of the City” and even “identif[ies] many  
13 secular businesses within the Las Cruces community.” Id. at 1035. Indeed, “it is  
14 hardly startling that a City with the name ‘The Crosses’ would be represented by a  
15 seal containing crosses.” Id. For reasons explained supra, the evidence in this case  
16 demonstrates that the County’s effort to add the cross to the 2004 Seal is not likely  
17 to be understood by County residents as a secular action.

18 Accordingly, the Court concludes that an “ ‘informed and reasonable’  
19 observer who is ‘familiar with the history of the government practice at issue’ ”  
20 would perceive the County’s addition of the cross to the 2004 Seal to constitute  
21 approval or endorsement of a particular set of religious beliefs. Trunk, 629 F.3d at  
22 1110 (citation omitted). Although each case necessarily turns on its own facts,  
23 most courts to have considered challenges to the use of crosses on county or  
24 municipal seals have similarly found them to be unconstitutional under Lemon’s  
25 second prong. See, e.g., Friedman v. Bd. of Cnty. Comm’rs, 781 F.2d 777, 779,

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motion to add the cross. See Dkt. 1 (Complaint).

1 782 (10th Cir. 1985) (en banc) (finding cross on county seal to be unconstitutional  
2 where seal “convey[ed] a strong impression to the average observer that  
3 Christianity [was] being endorsed”); Zion, 927 F.2d at 1415 (finding crosses on two  
4 city seals to be “unconstitutional endorsements of a particular religious faith”);  
5 Robinson v. City of Edmond, 68 F.3d 1226, 1228, 1232, 1233 (10th Cir. 1995)  
6 (finding cross on city seal to be unconstitutional where “religious significance and  
7 meaning of the Latin or Christian cross are unmistakable” and “average observer  
8 would perceive . . . endorsement of Christianity” in viewing the seal); Stow, 29  
9 F.Supp.2d at 851 (finding cross on city seal to be unconstitutional where the  
10 “inclusion of the cross in the seal necessarily excludes other religious beliefs or  
11 nonbeliefs and depicts Christianity as the religion recognized and endorsed by the  
12 people”). In light of the foregoing, the Court similarly concludes that the County’s  
13 addition of the cross to the seal in the instant case violates Lemon’s second prong.

14 **2. Plaintiffs Have Demonstrated Irreparable Injury**

15 The Ninth Circuit has made clear that the loss of constitutional freedoms  
16 “even for minimal periods of time, unquestionably constitutes irreparable injury”  
17 for purposes of issuing an injunction because such issues cannot be adequately  
18 remedied through damages. See, e.g., Klein, 584 F.3d at 1208 (finding irreparable  
19 harm where city’s anti-littering ordinance violated plaintiff’s rights under the  
20 California Constitution and First Amendment); S.O.C., Inc. v. County of Clark, 152  
21 F.3d 1136, 1148 (9th Cir. 1998) (finding irreparable harm where plaintiff was likely  
22 to succeed on a First Amendment claim). Plaintiffs in the instant action will  
23 therefore suffer irreparable injury in the absence of an injunction, as defendants  
24 have violated their constitutional rights, as explained supra. See Klein, 584 F.3d at  
25 1208.

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**3. The Balance of Hardships Tips in Plaintiffs' Favor and a Permanent Injunction is in the Public Interest**

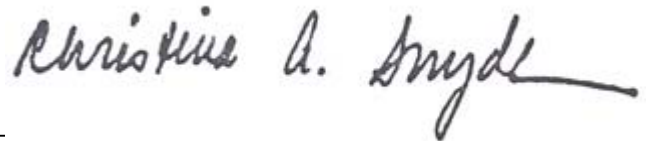
The fact that plaintiffs have “raise[d] serious First Amendment questions” likewise “compels a finding that . . . the balance of hardships tips sharply in [their] favor.” See Sammartano, 303 F.3d at 973 (internal quotation marks and citation omitted); see also Cnty. House, Inc. v. City of Boise, 490 F.3d 1041, 1059 (9th Cir. 2006) (finding the balance of hardships to tip in favor of plaintiffs alleging that governmental aid “has the ‘effect’ of advancing religion”). Moreover, federal courts have consistently held that public interest concerns are implicated when a constitutional right has been violated because all citizens have a stake in upholding the Constitution. See, e.g., Sammartano, 303 F.3d at 974 (recognizing “the significant public interest in upholding First Amendment principles”).

**IV.**

**CONCLUSION**

In accordance with the foregoing, plaintiffs’ motion for a permanent injunction is hereby **GRANTED**. Plaintiffs are directed to prepare a form of judgment to be lodged with the Court in accordance with this decision and the Local Rules of this Court.

DATED: April 6, 2016



Honorable Christina A. Snyder  
United States District Judge

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V.

APPENDIX

Figure 1 (The 2014 Seal)



Figure 2 (The 2004 Seal)



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**Figure 3 (The 1957 Seal)**

