

FILED

Freedom from Religion Foundation, Inc. v. Weber and United States Forest Service, No. 13-35770

AUG 31 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PREGERSON, Circuit Judge, dissenting:

The First Amendment freedom of religion clauses serve “to assure the fullest possible scope of religious liberty and tolerance for all[,] . . . to avoid that divisiveness based upon religion that promotes social conflict[, and] . . . to maintain that separation of church and state that has long been critical to the peaceful dominion that religion exercises in this country.” *Trunk v. City of San Diego*, 629 F.3d 1099, 1110 (9th Cir. 2011) (citing *Van Orden v. Perry*, 545 U.S. 677, 678 (2005)).

First, despite arguments to the contrary, a twelve-foot tall statue of Jesus situated on government-leased land cannot realistically be looked upon as “predominantly secular in nature.” *Id.* at 1107.

Second, to determine the effect of the statue we ask whether “it would be objectively reasonable for the government action to be construed as sending primarily a message of either endorsement or disapproval of religion.” *Id.* at 1109 (quoting *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1398 (9th Cir. 1994)). I submit that a “reasonable observer would perceive” the statue situated on government land “as projecting a message of religious endorsement.” *Id.* at 1118.

I respectfully dissent.