



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

November 26, 2010

Michael Blitz
President
Brookville Town Council
1020 Franklin Ave
Brookville IN 47012

Eric Roberts
President
Franklin County Commissioners
1010 Franklin Ave
Brookville IN 47012

Re: Nativity Scene Display at Franklin County Courthouse

Dear Mr. Blitz and Mr. Roberts:

I am writing on behalf of concerned members of the Freedom From Religion Foundation ("FFRF"), who object to the erection and maintenance of a nativity scene on government property. FFRF is a national nonprofit organization based in Madison, Wisconsin, with nearly 16,000 members across the country including over 200 in Indiana. Our purpose is to protect the fundamental constitutional principle of separation of church and state.

It is our information and understanding that the Town of Brookville owns a large nativity scene, which is currently displayed on the lawn of the Franklin County Courthouse. Our complainant informs us that this large nativity scene is set up at the flagpole on the lawn. As you can see from the enclosed pictures, the nativity includes life-size figurines of Mary, Joseph, Jesus, angels among others. There is also an angel and star affixed to the flagpole, which appears to be sprouting from the manger scene. We further understand the display is illuminated at night. Our complainant informs us that there are no other decorations immediately near this religious scene.

We understand that there are some lighted reindeer also on the grounds of the courthouse. However, these reindeer are significantly to the left of the crèche and are separated from the other display by a large evergreen. Please see the enclosed pictures of the area.

It is unlawful for a government body to maintain, erect, or host a holiday display that consists solely of a nativity scene, thus singling out, showing preference for, and endorsing one religion. The Supreme Court has ruled it is impermissible to place a nativity scene as the sole focus of a display on government property. See *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1983).

In *County of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989), the Supreme Court held that a county government's crèche displayed in the county courthouse was an unconstitutional endorsement of religion. The Court stated,

“*Lynch v. Donnelly*, confirms, and in no way repudiates, the longstanding constitutional principle that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs. The display of the crèche in the county courthouse has this unconstitutional effect.” *Id.* at 621.

The Court further determined that the placement of the crèche on the Grand Staircase of the county courthouse contributed to its illegality because “no viewer could reasonably think it occupies this location without support and approval of the government.” *Id.* at 599-600. Moreover, the Court found that the nativity scene “sen[t] an unmistakable message that [the county] supports and promotes the Christian praise to God that is the crèche’s religious message.” *Id.* at 600.

The nativity scene at the Franklin County Courthouse does not constitute a portion of a larger seasonal holiday display because there are no other seasonal decorations on that corner of the lawn. In fact, given its prominent location at the foot of the flagpole, any passerby would conclude that the crèche is the focal point. This scene bears no resemblance whatsoever to the large holiday display upheld in *Lynch*, where the Supreme Court pointed out that:

“[T]he Pawtucket display comprises many of the figures and decorations traditionally associated with Christmas, including, among other things, a Santa Claus house, reindeer pulling Santa’s sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures representing such characters as a clown, an elephant, and a teddy bear, hundreds of colored lights, a large banner that reads ‘SEASONS GREETINGS,’ and the crèche.” 465 U.S. at 671.

Furthermore, the Seventh Circuit Court of Appeals, which encompasses Indiana, found that a nativity scene was a solitary display despite nearby decorations. *See American Jewish Congress v. City of Chicago*, 827 F.2d 120, 125-126 (7th Cir. 1987). The court noted that even though the nearest decoration from the nativity scene was only ten feet away, the “nativity scene was self-contained, rather than one element of a larger display.” *Id.* at 125. The Franklin County Courthouse crèche is likewise unconstitutional. Its inclusion in the county’s or the town’s celebration of the holiday season should be “dwarfed” by the presence of other secular decorations.

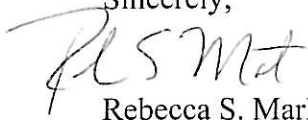
It is irrefutable that the crèche is a religious, Christian symbol. *See Lynch v. Donnelly*, 465 U.S. 668, 711 (1984)(Brennan, J. dissenting)(stating that the crèche is a “re-creation of an event that lies at the heart of the Christian faith”). Displaying an inherently Christian message on public property unmistakably sends the message that Franklin County and the Town of Brookville endorse the religious beliefs embodied in the display. When the government displays this manger scene, which depicts the legendary birth of Jesus Christ, it places the imprimatur of the government behind the Christian religious doctrine. This excludes citizens who are not Christian—Jews, Native American religion practitioners, animists, etc., as well as the significant and growing portion of the U.S.

population that is not religious at all (15% of adults), including complainants and taxpayers in your area.

There are ample private and church grounds where religious displays may be freely placed. Once the government enters into the religion business, conferring endorsement and preference for one religion over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship.

We ask that the nativity scene be removed from the courthouse lawn and moved to private property where it will be more appropriately displayed. We request that you immediate inform us in writing of the steps you are taking to remedy this violation of the First Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSM', is written over the printed name.

Rebecca S. Markert
Staff Attorney

Enclosures

