

# FREEDOM FROM RELIGION *foundation*

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December 1, 2011

SENT VIA MAIL & FAX  
(724) 758-3091

The Honorable Anthony Court  
Mayor  
Ellwood City  
525 Lawrence Avenue  
Ellwood City PA 16117

Re: Unconstitutional Nativity Scene on Ellwood City Property

Dear Mayor Court:

We have corresponded with you in recent years regarding an unconstitutional nativity display. The purpose of this letter is to renew our objections to that display and encourage you to uphold the Constitution instead of violating its core principle of separation of state and church. I would like to remind you that FFRF has almost 600 members in Pennsylvania including a number who reside in Beaver and Lawrence Counties. If you insist on erecting the display FFRF would like to accept your invitation and donate our own display.<sup>1</sup>

## **The Content of the Display**

According to the Constitution and Supreme Court precedent, the Ellwood nativity display is unconstitutional. There are two Supreme Court cases that are factually similar to this display, *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984) and *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989). The factual content of the display determines if it endorses religion and is therefore unconstitutional.

In *Lynch*, the Court upheld an extensive holiday display that sat in a park owned by a nonprofit organization. *Lynch* at 671. The display was set up in cooperation with retail merchants' association and included, among numerous other things, "carolers, cutout figures representing such characters as a clown, an elephant, and a teddy bear..." *Id.*

In *Allegheny*, the Court held that a crèche violated the Establishment Clause. The Court distinguished *Lynch* and *Allegheny* based on the factual differences in the display:

"Here, unlike in *Lynch*, nothing in the context of the display detracts from the crèche's religious message. The *Lynch* display composed a series of

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<sup>1</sup> See video accompanying the news story at <http://www.wfmj.com/story/16142447/wisconsin-based-group-calls-for-removal-of-nativity-scene>.

figures and objects, each group of which had its own focal point. Santa's house and his reindeer were objects of attention separate from the crèche, and had their specific visual story to tell. Similarly, whatever a "talking" wishing well may be, it obviously was a center of attention separate from the crèche. Here, in contrast, the crèche stands alone: it is the single element of the display on the Grand Staircase." *Allegheny* at 598.

The Court noted, "[t]he presence of Santas or other Christmas decorations elsewhere in the county courthouse, and of the nearby gallery forum, fail to negate the endorsement effect of the crèche." *Id.* at n. 48. Furthermore, because the crèche sat on the staircase "of the building that is the seat of county government." *Id.* at 600.

Ellwood City's display is like the display in *Allegheny*, not *Lynch*. First, this display is placed prominently on city property next to the front entrance of the Municipal Building. Any person wishing to conduct business with Ellwood City must encounter the display on their way into the building. The Tax Collector, Animal Control, the Treasurer, the Health Officer, the Building Department, the Mayor, and the Police Department all reside in this building. Ellwood City Borough council meetings are held there and even Congressman Altmire has an office there. Like *Allegheny*, this placement clearly shows that "[n]o viewer could reasonably think that it occupies this location without the support and approval of the government." *Id.* at 599-600.

The prominence of the crèche is furthered by the absence of any other displays, excepting a banner, some lights, garland and a small tree. The non-crèche components of the Ellwood display are fewer, smaller and less diverse than the *Allegheny* display. Furthermore, the crèche dominates those additions. Like the *Allegheny* display, Ellwood's display is unconstitutional.

### **The Display Unconstitutionally Endorses the Christian Religion**

The nature of the display is such that it endorses religion. "*Lynch* teaches that government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine." *Allegheny* at 601. In *Allegheny* the county "transgressed this line. It [chose] to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Jesus Christ. Under *Lynch*, and the rest of our cases, nothing more is required to demonstrate a violation of the Establishment Clause. The display of the crèche in this context, therefore, must be permanently enjoined." *Allegheny* at 601-602. The content and context of the display were such that it endorsed Christianity. Given the similarity of Ellwood's display to the display in *Allegheny*, Ellwood City is also endorsing Christianity.

Even if Ellwood's display were analogous to *Lynch*, you and Borough Manager Vicarri have admitted that the purpose of the display is wholly religious. "The Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity was motivated wholly by religious considerations." *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984). See also, *Stone v. Graham*, 449 U.S. 39, 41; *Epperson v. Arkansas*, 393 U.S. 97, 107-109 (1968); *Abington School District v. Schempp*, 374 U.S. 203, 223-224.; *Engel v.*

*Vitale*, 370 U.S. 421, 424–425 (1962). There can be no doubt that this display “activity was motivated wholly by religious considerations.” *Id.*

When discussing the nativity display in a recent interview you said, “we are in favor of putting our religious beliefs out.”<sup>2</sup> In other words, the display is religious and you want it erected for that very reason. The overtly religious purpose of this display is further supported by the letters from citizens you chose to quote such as, “Keep religion in Christmas.”<sup>3</sup> You even admitted the religious purpose of the display in your offer to allow FFRF to put up a display that, like the nativity, has “something from their religion...”<sup>4</sup> (see below for our response to this generous offer).

Mr. Vicarri was even more explicit when stating that the purpose of the nativity display was religious, “... it’s there for those who want to see it and honor their religion, their faith.”<sup>5</sup> These admissions, by the two people in charge of the display, leave no room to suggest that the nativity has anything but a religious purpose.

Given the nature and the admitted religious purpose of the display it clearly endorses the Christian religion and is therefore unconstitutional.

It is also worth mentioning that, although you have received many letters supporting the nativity, the whole point of the Constitution is to prevent a tyranny of the majority. “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities ... fundamental rights may not be submitted to vote....” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

### **We Accept**

As stated above, this display is unconstitutional and should not be erected on government grounds. However, if you persist we would like to accept your invitation to display something from our beliefs.<sup>6</sup> Please call or email us with the address where we can send our display. Our display consists of a banner that reads:

“At this season of the Winter Solstice, may reason prevail.  
There are no gods, no devils, no angels, no heaven or hell.  
There is only our natural world.  
Religion is but myth and superstition that hardens hearts and enslaves  
minds.  
Freedom From Religion Foundation.”

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<sup>2</sup> See video accompanying the news story at <http://www.wfmj.com/story/16142447/wisonsin-based-group-calls-for-removal-of-nativity-scene>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See video accompanying news story at <http://www.wpxi.com/news/29846481/detail.html>, quote begins at 0:42.

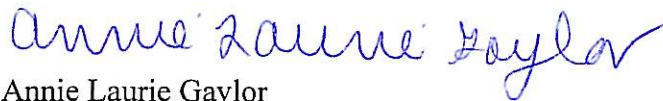
<sup>6</sup> See video accompanying the news story where you said if “they’d like to have something from their religion, their beliefs, by all means let’s do it.” at <http://www.wfmj.com/story/16142447/wisonsin-based-group-calls-for-removal-of-nativity-scene>.

We request that our display receive the same treatment as the crèche. We will provide our display but expect that the Borough Manager will erect it this year, store the display, and put it up next year. We can see from the news videos that you have plenty of storage space near the crèche and our banner takes up significantly less than the crèche.

We expect that you will show the same courtesy to our message as you show to the Christian message. That means our banner must be as prominently displayed as the crèche, in front of the entrance to the same city building. We would be happy with a placement just below or above your "Happy Holidays" banner, however we would prefer placement above the nativity itself. We would also like to express our full confidence that the City will treat our message with the same respect and give it the same protections as the crèche (this should be easy given that it will be hanging right outside the police station.)

Please call me at your earliest convenience so that we can arrange to have our display mailed to you and so that it can be set up along with the nativity scene.

Very truly,



Annie Laurie Gaylor

Cc:

Edward Leymarie Jr., Esq., Ellwood City Solicitor via email to [lemrun@zoominternet.net](mailto:lemrun@zoominternet.net)