

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

December 14, 2017

SENT VIA EMAIL AND U.S. MAIL:
lkutch@omro-wi.com

Linda Kutchenriter
City Administrator
Omro City Hall
P.O. Box 399
Omro, WI 54963

Re: Nativity scene on government property

Dear Ms. Kutchenriter:

I am writing on behalf of the Freedom From Religion Foundation regarding an unconstitutional nativity scene sponsored by the City of Omro. FFRF is a Wisconsin-based national nonprofit organization with 30,000 members across the country, including more than 1,300 members in Wisconsin. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that a large nativity display stands in Scott Park in Omro. Please see the attached image. The display appears to stand alone in a prominent location and bears no sign of private sponsorship. The city's Park Facility Rental Form lists "Park Rules and Regulations," including "No Placement of Signs or Advertising Posters in the Park."¹

It is unlawful for the City of Omro 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 *Cty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1984).

In *Allegheny*, 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

¹ See www.omro-wi.com/uploads/4/9/7/0/4970689/park_request_form.pdf.

has the effect of promoting or endorsing religious beliefs. The display of the crèche in the county courthouse has this unconstitutional effect.

492 U.S. 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.

It is irrefutable that the crèche is a religious, Christian symbol. *See Lynch*, 465 U.S. at 711 (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 unmistakably sends the message that the City of Omro endorses the religious beliefs embodied in the display. When the city displays this manger scene, which depicts the birth of Jesus, it signals the government’s approval the Christianity. This excludes the 30% of American adults who are not Christian,² including the 24% who are nonreligious.³ Putting up a nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their own community.

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 request a response in writing about the steps taken to remedy this violation of the First Amendment.

Sincerely,



Ryan D. Jayne
Staff Attorney

Enclosure

² *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

³ Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

