

FREEDOM FROM RELIGION *foundation*

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

December 21, 2017

**SENT VIA U.S. MAIL & FAX
(731) 658-5721**

Jimmy Sain
County Mayor
PO Box 250
Bolivar, TN 38008

Re: Unconstitutional Live County Nativity Scene

Dear Mayor Sain:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to raise concerns over the county's weeklong live nativity scene. We were contacted by a concerned local resident. FFRF is a national nonprofit organization with 30,000 members across the country, including over 350 members in Tennessee. 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 the County coordinates and sponsors a weeklong live nativity. Our complainant reports that the live nativity is occurring on the square on Main Street this week (December 18th-December 22nd).

During a recent news story on WBBJ about the opening of the event, you were quoted:

“Christmas has become so commercialized, and in Hardeman County we want everybody to realize what the true meaning of Christmas is and about Jesus' birth.”¹

We further understand elected officials are participating as re-enactors.

It is unlawful for Hardeman County to maintain, erect, or host a live 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 focus of a display on government property. *See Cnty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1983).

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,

¹ <http://www.wbbjtv.com/2017/12/18/live-nativity-shares-story-christmas/>

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.

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 nativity is symbolic of the Christian religion. *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 unmistakably sends the message that Hardeman County endorses the religious beliefs embodied in the display. When the County displays this manger scene, which depicts the legendary birth of Jesus Christ, it signals the government’s approval of Christianity. This excludes the nearly 30% of citizens who are not Christian, including the 23% of Americans who are nonreligious.² Organizing and hosting a live nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their community.

Furthermore, your statements about the true meaning of the season evidence a religious purpose for the county’s live nativity, which is also unconstitutional. Hardeman County “may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus.” *Allegheny*, 492 U.S. at 601.

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 that you immediately inform us in writing of the steps you are taking to remedy these First Amendment concerns.

Sincerely,



Rebecca S. Markert
Legal Director

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