

FREEDOM FROM RELIGION *foundation*

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

December 11, 2015

**SENT VIA EMAIL AND U.S. MAIL:
legalassistant@cityofmenominee.net**

Ms. Jacqueline M. Gasser
Legal Assistant
2511 10th Street
Menominee, MI 49858

Re: Open Records Request

Dear Ms. Gasser:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to once again request assurances that the City of Menominee is not violating the First Amendment by endorsing Christianity. We have written several times before—in 2007, 2011, and 2013—regarding the nativity display on the stage near the marina on 1st Street. Copies of the letters from 2011 and 2013 are attached for your review.

In 2007, local media reported that the City “will now encourage other faiths to display their symbols at the city bandshell.” This seems to suggest that the City is treating the stage as an open forum. FFRF and our local membership are interested in applying for a display on the stage near the nativity scene.

Therefore, we submit an open records request concerning the City’s policy for these displays. Please note the constitutional concerns we discussed in our previous letters if the nativity display is government-sponsored.

Pursuant to Michigan’s Freedom of Information Act (MCL §15.231–15.246), I request the following:

- 1) A copy of any City policy, rule, procedure or any other written guidelines outlining the process for obtaining permission to erect private displays on public property such as the stage near the marina on 1st Street.
- 2) A copy of the application, contract, agreement or permit between the City and the private organization sponsoring the display, or any other document permitting use of this space for the nativity display.

Digital copies of these records (preferred) can be emailed to ryan@ffrf.org. I request these copies within five days. If your agency does not maintain these public records, please let me know the proper custodian.

If you choose to deny this request, please respond with a written explanation of the denial including any references to applicable statutory exemptions upon which you rely.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 608-256-8900.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is fluid and cursive, with the first name "Ryan" and last name "Jayne" clearly legible.

Ryan D. Jayne, Esq.
Diane Uhl Legal Fellow
Freedom From Religion Foundation

Enclosure

FREEDOM FROM RELIGION *foundation*

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December 23, 2011

SENT VIA FAX & U.S. MAIL
(906) 863-3266

Michael Cramer
City Manager
City Hall
2511 10th St
Menominee, MI 49858

Re: Nativity Scene

Dear Mr. Cramer:

I am writing on behalf of a concerned area resident and taxpayer, as well as other Michigan members of the Freedom From Religious Foundation (FFRF), who object to the erection of a nativity scene on city property. Freedom From Religion Foundation is a national nonprofit organization based in Madison, Wisconsin, with over 17,000 members across the country, including over 500 in Michigan. Our purpose is to protect the fundamental constitutional principle of separation of state and church.

Our organization has contacted the City of Menominee in 2007 regarding the nativity scene on government property. It is our information and understanding that the large nativity scene still exists and is prominently on display in the Great Lake Memorial Marina – Park shell. It is our further understanding that snowmen are also on display below the nativity, which are not visible due to the snow fence directly in front of them. It is our understanding that the nativity scene is lit up at night while the snowmen are not. (see photos enclosed). It is also our understanding that in the past city employees have set up and broken down the display, and furthermore that the city pays for the cost of lighting the display on public property. Our complainant informs us that the nativity scene is prominently displayed every year.

The display of this inherently religious scene — elevated on government property — raises grave constitutional concerns. It is unlawful for the City of Menominee (City) to maintain, erect, or host this 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. ACLU of Pittsburgh*, 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.

Furthermore, given the elevated nature of the nativity scene, it is of no consequence that the Marina shell also includes secular decorations like snowmen elsewhere on the grounds. At least one federal court 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. It is clear that a nativity scene elevated and lit up on government property is a "self-contained" display. Its inclusion in the city's celebration of the holiday season should be "dwarfed" by the presence of other secular decorations, not given a heightened status.

It is irrefutable that the crèche is a religious, Christian symbol. *See Lynch v. Donnelly*, 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"). Allowing, much less erecting, the display of an inherently Christian message on government property unmistakably sends the message that the City of Menominee endorses the religious beliefs embodied in the display.

When the City allows this manger scene to be created, which depicts the legendary birth of Jesus Christ, it places the imprimatur of the City 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 Menominee.

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 some religions 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.

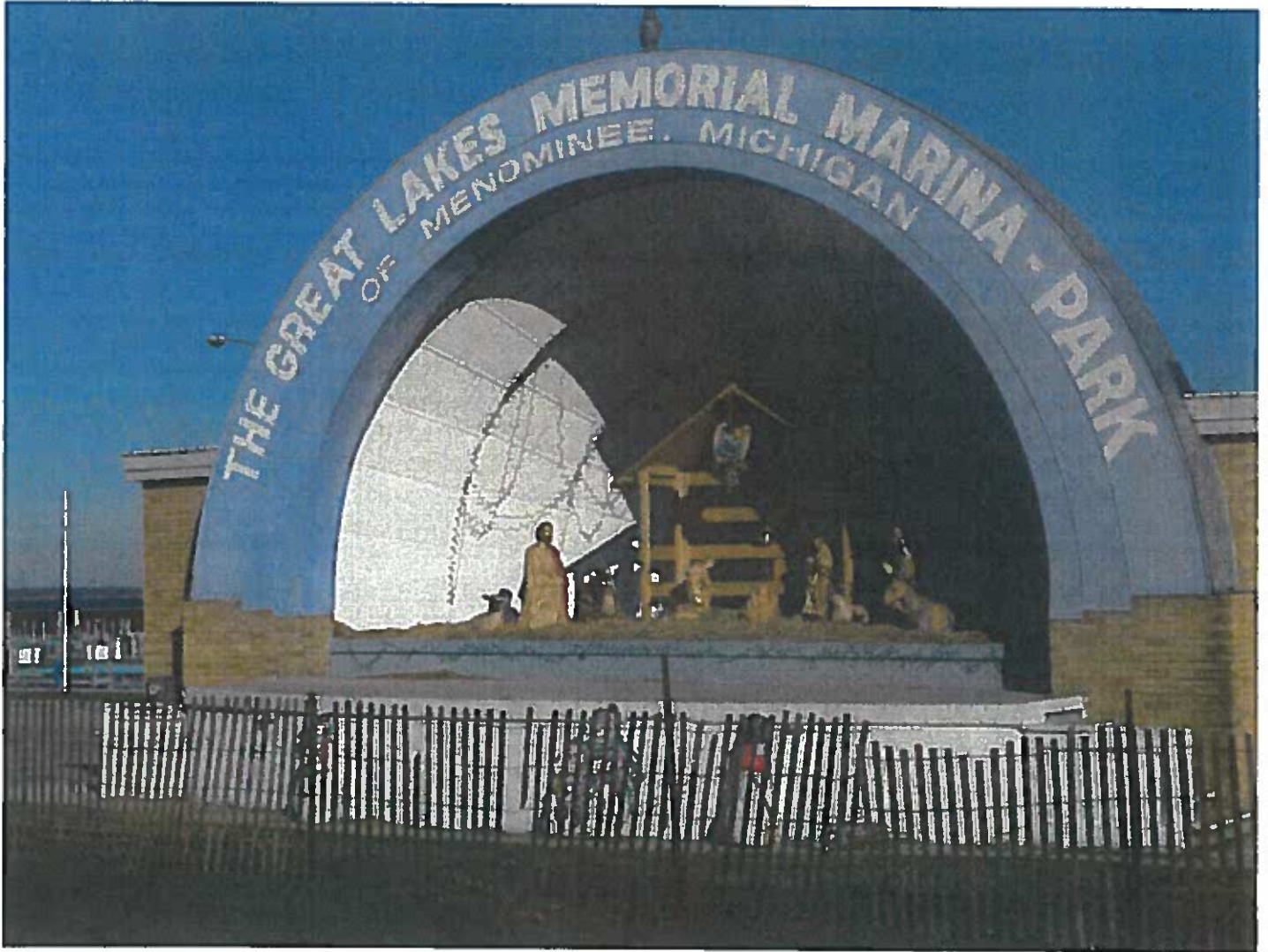
We request that the City of Menominee immediately take action to ensure that no religious displays are on City property. Please inform us in writing of the steps you are taking to remedy this First Amendment violation so that we may notify our complainant.

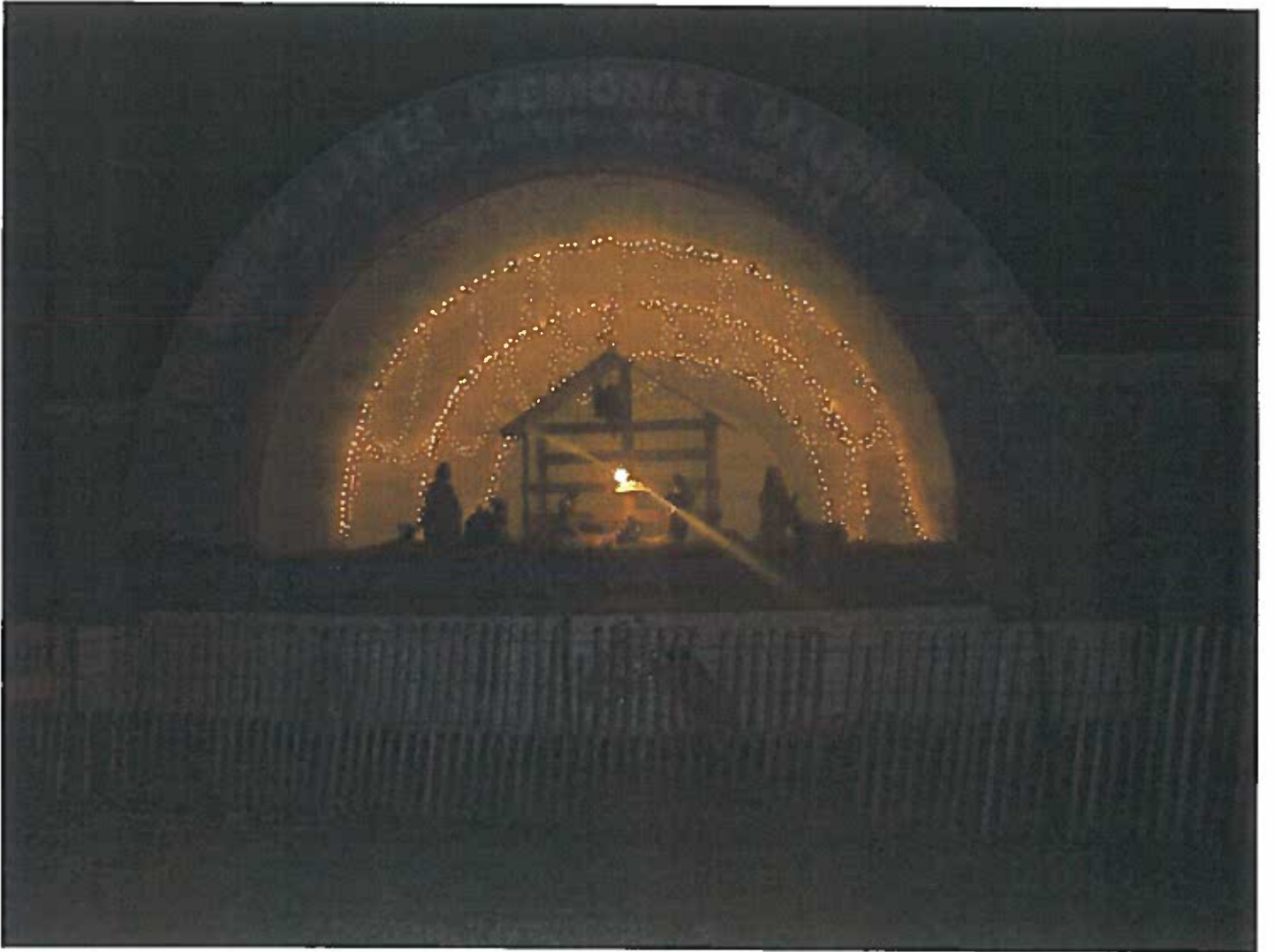
Sincerely,



Stephanie A. Schmitt
Staff Attorney

Enclosures





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December 18, 2013

SENT VIA U.S. MAIL & EMAIL TO:

mcramer@cityofmenominee.net
jstegeman@cityofmenominee.net

Ms. Jean Stegeman
Mayor
City of Menominee
2511 Tenth Street
Menominee, MI 49858

Re: Town-Sponsored Nativity Scene

Dear Mayor Stegeman:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional concern with a nativity scene displayed in your town. FFRF is a national nonprofit organization with nearly 20,000 members across the country, including more than 500 members in Michigan. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that there is a large nativity scene on display on the stage near the marina on 1st Street. We were contacted by a concerned area resident who informs us that the nativity scene includes depictions of Mary, Joseph, and others kneeling in reverence around a baby Jesus. We further understand that the nativity scene is set up in the center of the Park and that it stands apart from any other holiday-related figurines on display. We are aware that there are trees, blue lights, a Santa, and nutcrackers too. We are also aware that none of the non-Christian iconography is centered on the stage and that only the Christian iconography is lit up at night. We are unaware of any policy or permit given to a group or individual to erect this religious display.

As you may be aware, we have complained about this display in the past.

The Supreme Court has ruled it is impermissible to place a nativity scene as the focus of a display on government property. See *County 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,

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. The display in the Park, like the courthouse display in *Allegheny*, features a nativity scene as its focus. The display therefore constitutes a town endorsement of Christianity.

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 in a town park unmistakably sends the message that Menominee endorses the religious beliefs embodied in the display. When the town displays this manger scene, which depicts the legendary birth of Jesus, it places the imprimatur of the government behind the Christian religious doctrine. This excludes citizens who are not Christian—Jews, Muslims, Native American religious practitioners, etc.—as well as the almost 20% of the American population that is nonreligious.¹ Putting up a nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their community.

As the display stands, the nativity is clearly the central focus of the display, with the non-Christian scattered in the surrounding, and unlit, area. The paltry attempt at constitutionality does little to mitigate the City’s endorsement of Christian theology; indeed the ramshackle, afterthought nature of the other displays shows a disrespect for anything but the Christian myths.

There are ample private and church grounds where religious displays may be freely placed. Once the government shows endorsement and preference for some religions 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.

It may be that this crèche was erected by a private group pursuant to a town policy that allows any person to put displays in the Park. If that is the case, we request a copy of the town’s policy on the erection of such displays for review, so that we may erect our own display. If the nativity scene is not privately owned, however, we request that the Menominee ensure that it is removed and that no religious displays are placed on government property in the future. Please inform us in writing of the steps you are taking to address this constitutional concern so that we may notify our complainant.

Sincerely,



Andrew L. Seidel
Staff Attorney

¹ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.