

FREEDOM FROM RELIGION *foundation*

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December 23, 2015

SENT VIA EMAIL AND U.S. MAIL:

mcarnahan@cityofwalton.org

The Honorable Mark Carnahan
Mayor
City of Walton
P.O. Box 95
Walton, KY 41094-0095

Re: Nativity on government property

Dear Mayor Carnahan:

I am writing on behalf of the Freedom From Religion Foundation regarding a nativity scene sponsored by the City of Walton. FFRF is a national nonprofit organization with 23,000 members across the country, including many members in Kentucky and a state chapter, FFRF Kentucky. Our purpose is to protect the constitutional principle of separation between state and church.

A concerned local resident informed us that a nativity scene sits on the front lawn of Walton City Hall, visible from US-25, Walton's main thoroughfare. The nativity scene appears to stand alone, although the opposite side of the lawn includes several lighted displays, which are smaller than the crèche. A picture of the scene is enclosed for your review.

The display of this inherently religious scene—in effect standing alone on the City Hall lawn—raises constitutional concerns. It is unlawful for the 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. Am. Civil Liberties Union 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 that displaying the crèche had the unconstitutional effect of "promoting or endorsing religious beliefs." *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.

Given its prominent location, any Walton citizen would conclude that the crèche is the focal point of the City Hall display. Though some small lighted figures appear elsewhere on the lawn, they are barely visible during the day and do not detract from the nativity's religious

theme. 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, given the distance between the nativity display and other displays, it is of no consequence that the City also includes secular decorations elsewhere. At least one federal court found that a nativity scene was a solitary display despite nearby decorations. *See Am. Jewish Congress v. City of Chicago*, 827 F.2d 120, 125–26 (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. A nativity scene isolated and situated away from another decoration is a “self-contained” display.

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 endorses the religious beliefs embodied in the display. When the City displays this manger scene, which depicts the legendary birth of Jesus Christ, it signals the government's approval of Christianity. This excludes citizens who are not Christian, including the 23% of American adults who are nonreligious, including 35% of millennials.¹ Putting up a nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their 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 you are taking to address these concerns.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is stylized, with the first name "Ryan" and last name "Jayne" clearly legible, and the middle initial "D." written in a smaller, more cursive script.

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

Enclosure

¹ *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

