

FREEDOM FROM RELIGION *foundation*

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

December 8, 2020

SENT VIA EMAIL & U.S. MAIL: govgeneral@wisconsin.gov

The Honorable Tony Evers
Governor of Wisconsin
115 E. Capitol #1
Madison, WI 53702

Re: Unpermitted, Illegal Religious Display in Wisconsin State Capitol

Dear Governor Evers:

We are writing on behalf of the Freedom From Religion Foundation's 33,000 members, including nearly 1,500 in Wisconsin, to ask that you direct the immediate removal of an unpermitted, illegally placed religious display currently installed in the Wisconsin State Capitol's rotunda.

It is our understanding that in response to your wise decision not to install a holiday tree in the capitol rotunda this year because it is closed to the public due to the pandemic, two Wisconsin State lawmakers have put up their own display. They not only put up their own tree in defiance of your decision, but included a sign with a clear exclusionary Christian message, "The Magic of Christmas is not in the presents but in His Presence." Please see the attached photo. We understand that Rep. Paul Tittl and Rep. Shae Sortwell applied for a permit for this display, but that it was properly denied. We are also aware that when the Capitol has allowed for private displays, such displays have not been allowed on the ground floor of the rotunda.

For more than 20 years, FFRF has requested and received permission to place its own nonreligious displays in order to provide balance to the various Christian displays put up this time of year. We have followed all of the rules—rules that apply equally to everyone.

Your office and the DOA, in making the decision to close the Capitol and discontinue public forums there, have taken the right approach in focusing on the health and welfare of Wisconsin citizens. FFRF looks forward to putting up our displays again in future years, but we are more than willing to take a year off during the pandemic. In order to maintain religious neutrality, follow the law, encourage social distancing and respect the rights of all Wisconsin residents, the private religious display in the Capitol must be removed immediately.

As you are no doubt aware, the state must be neutral toward religion. It is well within the state's power to set time, place, and manner restrictions on displays within the State Capitol. These restrictions must be neutral and apply to everyone, including to the current display.

The State of Wisconsin is not obligated to allow private citizens, even if they are state representatives, to erect unattended displays on state property. The state is well within its rights to prohibit private unattended displays, as it has done on a temporary basis due to the COVID-19 pandemic. A temporary policy that disallows private unattended displays is a valid time, place, or manner restriction consistent with the First Amendment. *See, e.g., Lubavitch Chabad House, Inc. v. City of Chicago*, 917 F.2d 341, 347 (7th Cir. 1990) (“We are not cognizant of . . . any private constitutional right to erect a structure on public property. If there were, our traditional public forums, such as our public parks, would be cluttered with all manner of structures. Public parks are certainly quintessential public forums where free speech is protected, but the Constitution neither provides, nor has it ever been construed to mandate, that any person or group be allowed to erect structures at will.”); *Knights of Columbus v. Town of Lexington*, 272 F.3d 25 (1st Cir. 2001), *cert denied*, 122 S.Ct. 1911 (2002) (finding a ban on unattended displays in a park to be neutral and narrowly tailored); *Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, No. CV 12-8657 (C.D. Cal. Order of Dismissal Nov. 29, 2012).

We urge you to direct the immediate removal of the unpermitted, illegal religious display from the Wisconsin State Capitol. This action is not only permissible, but required in order to uphold the law, respect the rights of all Wisconsin residents, and ensure that no one religious group is favored or excluded by the state. Thank you for your continuing leadership and reliance on science during the pandemic.

Very truly,



Annie Laurie Gaylor & Dan Barker
Co-Presidents

ALG/DB:cal

Cc: David Erwin, Wisconsin State Capitol Police Chief *via* david.erwin@wisconsin.gov

