

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**FREEDOM FROM RELIGION FOUNDATION.
INC.**, a Wisconsin non-profit corporation, and
DOUGLAS J. MARSHALL, a Michigan individual,

Plaintiffs,

Case No.

v.

**CITY OF WARREN, MICHIGAN,
CITY OF WARREN DOWNTOWN DEVELOPMENT
AUTHORITY**, and **JAMES R. FOUTS**, Mayor of
Warren, Michigan,

Defendants.

BUTZEL LONG, a professional corporation
Robin Luce-Herrmann (P46880)
Danielle J. Hessel (P68667)
Jennifer Dukarski (P74257)
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(248) 258-1616
Attorneys for Plaintiffs

**PLAINTIFFS DOUGLAS MARSHALL AND FREEDOM FROM RELIGION
FOUNDATION, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Freedom From Religion Foundation, Inc. ("FFRF") and Douglas J. Marshall ("Marshall," together with FFRF, "Plaintiffs"), by their attorneys, Butzel Long, a professional corporation, move this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure to preliminarily enjoin Defendants and Defendants' officers, agents, employees, representatives and assigns, and all persons acting in concert with them, from imposing unreasonable and content-

based restrictions on Plaintiffs' private expression of religious speech by denying their request to place a sign in proximity to a nativity scene prominently displayed in the Warren Civic Center.

In support of this Motion, Plaintiffs rely on the reasons and authority stated in their Brief in Support.

Respectfully submitted,

BUTZEL LONG, a professional corporation

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Dated: December 22, 2011

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

ISSUE PRESENTED

The United States Supreme Court has clearly held that government may not prohibit private expression of religious speech in a public forum except under the auspices of reasonable, content-neutral time, place, and manner restrictions. The City of Warren has permitted a private organization to display a nativity scene in a prominent location in City Hall, but has proscribed Plaintiffs' private expression of religious speech by denying their request to place a sign in proximity to the nativity scene solely because of the sign's content. Should the Court preliminarily enjoin the City from imposing its unreasonable, content-based restrictions?

Plaintiffs answer: Yes

CONTROLLING AUTHORITY

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INTRODUCTION

This matter involves the violation by City government of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Defendants the City of Warren, Michigan ("City"), the City of Warren Downtown Development Authority ("DDA"), and the Mayor of Warren, James R. Fouts ("Mayor Fouts") have permitted the Warren Rotary Club to place a nativity scene display in a prominent location in the Atrium of the Warren Civic Center, commonly referred to as City Hall. Plaintiffs, Freedom From Religion Foundation, Inc. ("FFRF") and its member, Douglas J. Marshall ("Marshall"), requested permission to place a sign espousing the separation of state and church next to the nativity scene display. After a delay of almost two weeks, Defendants finally responded to Plaintiffs' request by denying permission to place the sign in the Civic Center. Defendants' denial was, on its face, based solely on the content of Plaintiffs' proposed sign.

Plaintiffs have therefore filed the instant lawsuit (*See* Complaint, **Exhibit A**) in order to obtain redress for Defendants' violations of their constitutional rights. Plaintiffs also seek a preliminary injunction and ask the Court to enjoin Defendants' unconstitutional denial of Plaintiffs' request to place the sign next to the nativity scene promoted by Defendants. Plaintiffs are entitled to a preliminary injunction ordering Defendants to permit placement of the requested sign in the Civic Center Atrium because: (1) Plaintiffs show a strong likelihood of success on the merits of their First Amendment claims; (2) Plaintiffs will suffer irreparable harm if the injunction is not issued; (3) the issuance of the injunction would not cause substantial, or indeed any, harm to others; and (4) the public interest would be served by issuing the injunction.

STATEMENT OF FACTS

Nativity scenes are inherently Christian religious displays that are intended to have religious significance. For the City, the DDA and/or Mayor Fouts deliberately undertook to place a Christian nativity scene ("Nativity Scene") in a prominent place in the Atrium of the Warren Civic Center. The Nativity Scene has been placed in the Atrium of the Civic Center during the 2011 winter holiday season, although the City has apparently placed it in the same, or a similar, location during previous winter holiday seasons.

The Nativity Scene at issue bears a sign stating that it was sponsored and provided by the Warren Rotary Club, although, upon information and belief, the City, the DDA, and Mayor Fouts approved the placement and location of the Nativity Scene in the Atrium of the Warren Civic Center, which is commonly referred to as "City Hall." The Civic Center is the main government building for the City of Warren, and it houses the Mayor's office, the City Clerk's office, and numerous other city offices and conference rooms.

The Atrium of the Civic Center is approximately five stories high, and currently houses the display of the Nativity Scene. The Atrium also contains at least one artificial Christmas tree, nutcracker, elf, reindeer, Santa's mailbox, and other wreaths and greenery. Also located in the Atrium is a "prayer station," or a table that is often staffed by one or two individuals. The Nativity Scene is separated by several feet from the other decorative items in the Atrium, and is placed prominently near the front glass wall of the Civic Center. It is open to the public and is a place where other groups, such as the Warren Rotary Club and certain religious organizations, have been permitted to place displays and to provide leaflets and other information, and it is therefore a traditional public forum.

On January 20, 2010, FFRF sent Mayor Fouts a letter objecting to the placement of the Nativity Scene in the Civic Center Atrium during the month of December, 2009, because it was an unconstitutional endorsement of religion in violation of the First Amendment of the Constitution of the United States. **Exhibit A** at tab 1, January 20, 2010 Letter. FFRF received no response to this letter. Then, on March 4, 2010, FFRF again wrote to Mayor Fouts, requesting information regarding the steps being taken to remedy the City's First Amendment violations. **Exhibit A** at tab 2, March 4, 2010 Letter. Again, FFRF received no response to this letter.

With the 2010 holiday season approaching, FFRF sent yet another letter to Mayor Fouts on November 9, 2010, renewing its request that the City refrain from displaying the Nativity Scene in the Civic Center Atrium. **Exhibit A** at tab 3, November 9, 2010 Letter. On December 8, 2010, Mayor Fouts finally responded to FFRF's correspondence. **Exhibit A** at tab 4, December 8, 2010 Letter. In his letter, Mayor Fouts stated that "[t]he city of Warren is **NOT** 'promoting or endorsing religious beliefs.' If we were doing this, other religions would not be allowed to display their religious holy seasons in our atrium. However, they have been allowed and will be allowed." *Id.* (emphasis in original).

The following holiday season, on December 9, 2011, Plaintiff Marshall wrote to Mayor Fouts requesting, on behalf of himself and other Warren residents who are members of FFRF, to display a sign (the "Sign") near the Nativity Scene. **Exhibit A** at tab 5, December 9, 2011 Letter. Marshall hand-delivered the letter to Mayor Fouts' office and was told that he would receive a response no later than December 12, 2011. In that letter, Marshall provided photographs of the proposed Sign, along with the following description:

The display is an attractive "sandwich board" and the dimensions are 40 ½ x 24 ½, and it reads as follows:

Front: "At this season of
The Winter Solstice
May reason prevail.
There are no gods,
No devils, no angels,
No heaven or hell.
There is only our natural world.
Religion is but
Myth and superstition
That hardens hearts
And enslaves minds."

"Placed by the Freedom From Religion Foundation
On behalf of its State Members.
Ffrf.org"

Back: "State/Church
Keep them Separate
Freedom From Religion Foundation
Ffrf.org"

Id. Plaintiff Marshall received no response to his December 9, 2011 letter.

Mr. Marshall visited the Mayor's office on December 13th and 15th, and was repeatedly told by Mayor Fouts' staff that the Mayor was aware of his request and would respond soon. Having received no response on December 14, 2011, however, Plaintiff Marshall again wrote to Mayor Fouts, requesting a response to his request to display the Sign. **Exhibit A** at tab 6, December 14, 2011 Letter. Marshall received no response to his December 14, 2011 letter.

Plaintiff FFRF's staff attorney Stephanie Schmitt placed additional telephone calls to the Mayor's office on or about December 7, 15, and 16, 2011. During those telephone calls, Ms. Schmitt spoke with various people in the Mayor's office, and also, eventually, with Mayor Fouts. Ms. Schmitt was informed that the DDA maintained responsibility for approval of any requested

displays in the Civic Center Atrium, and that an application would have to be submitted to the DDA for Plaintiffs' request to display the Sign. Ms. Schmitt was also informed that Mayor Fouts had to consult with the Warren City Attorney before any decision could be made on Plaintiffs' requested Sign.

On December 20, 2011, undersigned counsel for Plaintiffs sent yet another letter to Mayor Fouts, requesting a decision on Plaintiffs' request to display the Sign in the Civic Center Atrium. **Exhibit A** at tab 7, December 20, 2011 Letter. Enclosed with that letter was a completed form provided by the DDA to request the use of the Atrium to display the proposed Sign. *Id.*

Almost two weeks after Mr. Marshall sent his first letter to Mayor Fouts, the Mayor finally responded to Plaintiffs' request to place the Sign in the Atrium of the Civic Center on December 21, 2011. **Exhibit A** at tab 8, December 21, 2011 Letter. In his letter, Mayor Fouts denied Plaintiffs' request to place the Sign in the Atrium, stating:

I have received a letter (December 9, 2011) from Mr. Douglas J. Marshall, a member of your organization, for permission to display a sign in the City Hall atrium near the Nativity Scene.

I have reviewed the proposed 2-sided "sandwich board" sign. The language on the proposed sign is clearly anti-religion and meant to counter the religious tone of the Nativity Scene, which could lead to confrontations and a disruption of city hall.

This proposed sign is antagonistic toward all religions and would serve no purpose during this holiday season except to provoke controversy and hostility among visitors and employees at city hall.

Your phrase that "Religion is but myth and superstition that hardens hearts and enslaves minds," [sic] is highly offensive and is not a provable statement. Likewise, your statement that there are "no gods" and "no angels" is also not provable.

If you requested permission to put up a sandwich board saying that there is no Santa Claus, you would be met with the same response. Santa Claus lives in the minds and hearts of many millions of children. The belief of God and religion lives in the hearts and minds of hundreds of millions of people and is as much a part of the fabric of America, [sic] as the belief in democracy and freedom.

Indeed, our country was founded upon basic religious beliefs. The President takes the oath of office on the Holy Bible. The U.S. Congress has a house chaplain. [sic] Both major political party leaders invoke God in their speeches and pronouncements. Our coins have "In God We Trust." We have a whole host of other religious traditions in government situations at all levels.

Everyone has a right to believe or not believe in a particular belief system, but no organization has the right to disparage the beliefs of many Warren and U.S. citizens because of their beliefs.

Thus, I cannot and will not sanction the desecration of religion in the Warren City Hall atrium.

As I would not allow displays disparaging any one religion, so I will not allow anyone or any organization to attack religion in general. Your proposed sign cannot be excused as a freedom of religion statement because, to my way of thinking, this right does not mean the right to attack religion or any religion with mean-spirited signs. The proposed sign would only result in more signs and chaos.

When I allowed a display in city hall celebrating Ramadan, the Moslem [sic] holy season, I received many calls objecting but I would never have allowed a sign next to the Ramadan display mocking or ridiculing the Moslem [sic] religion.

In my opinion, Freedom of Religion does not mean "Freedom Against or From Religion." And Freedom of Speech is not the right to yell "Fire!" in a crowded theatre. Indeed, there are common sense restraints on all constitutional rights.

Your non-religion is not a recognized religion. Please don't hide behind the cloak of non-religion as an excuse to abuse other recognized religions. You can't make a negative into a positive.

Clearly, your proposed display in effect would create considerable ill will among many people of all **recognized** faiths.

During this holiday season, why don't we try to accomplish the old adage of "Good will toward all"?

Id. (emphasis in original).

Defendants have articulated no reasonable, content-neutral, time, place, and manner restrictions on protected First Amendment activities in the Civic Center. It appears that they do not maintain or follow any such restrictions. But, even if such restrictions exist, they have not been provided to Plaintiffs and Plaintiffs have not been given an opportunity to comply with such restrictions. On the contrary, Defendants adhere to policies, practices, and/or customs of supporting religion and religious belief and, in particular, the Christian religion, and discriminating against non-religious believers. For example, the City's website lists as one of Mayor Fouts' many accomplishments "Defense of Nativity at Warren City Hall." **Exhibit A** at tab 9, City of Warren website screenshot.

Defendants denied Plaintiffs' request to display the Sign in the Atrium next to the Nativity Scene solely because Defendants determined that the Sign's message is "anti-religious." **Exhibit A** at tab 8. Therefore, Defendants' denial is an unconstitutional, content-based restriction on Plaintiffs' expression in a traditional public forum.

ARGUMENT

A. Standard of Review

The Court's decision regarding whether to issue a preliminary injunction is guided by the following test:

- (1) whether the moving party has shown a strong likelihood of success on the merits;
- (2) whether the moving party will suffer irreparable harm if the injunction is not issued;
- (3) whether the issuance of the injunction would cause substantial harm to others; and
- (4) whether the public interest would be served by issuing the injunction.

Overstreet v. Lexington-Fayette Urban County Government, 305 F.3d 566, 573 (6th Cir. 2002). See also *American Civil Liberties Union of Ky. v. McCreary County, Ky.*, 354 F.3d 438, 445 (6th Cir. 2003); *Mc Pherson v. Michigan High School Athletic Ass'n*, 119 F.3d 453, 459 (6th Cir. 1997) (*en banc*). The four considerations are factors to be balanced; they are not prerequisites that must be met. *Overstreet*, 305 F.3d at 573; *In re DeLorean Motors Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

As a preliminary injunction serves the purpose of preserving the positions of parties, “a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than a trial on the merits.” *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 542 (6th Cir. 2007). Thus, a party “is not required to prove his case in full at preliminary injunction hearing and the findings of fact and conclusions of law made by a court granting preliminary injunction are not binding at trial on the merits.” *Id.*

B. Plaintiffs are Entitled to a Preliminary Injunction

1. Plaintiffs are likely to prevail on the merits.

Plaintiffs are likely to be successful on the merits because Defendants refuse to allow displays containing a non-religious or anti-religious viewpoint while preferring religion to non-religion in violation of the First Amendment of the U.S. Constitution. Defendants’ proscribed Plaintiffs’ private expression of religious speech by denying their request to place the Sign next to the Nativity scene solely because of the Sign’s content. This decision was, on its face, not on a reasonable, content-neutral time, place and manner restriction, but was instead strictly content-based. Therefore, Defendants’ conduct unquestionably violates Plaintiffs’ First Amendment rights.

a. Defendants violate the First Amendment freedom of expression by refusing to allow displays containing a non-religious viewpoint.

In its analysis of the First Amendment, the Supreme Court has recognized that the right to communicate opinions and views is not guaranteed at all times and places or in any manner. *Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981). These rights to expression, whether oral or written, are subject to reasonable time, place, and manner restrictions. *Clark v. Community For Creative Non-Violence*, 468 U.S. 288, 293 (1984). "Such restrictions are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a substantial governmental interest, and they leave open ample alternative channels for communication of the information." *Wheeler v. Comm'r of Highways, Com. of Ky.*, 822 F.2d 586, 589 (1987). See also *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 807 (1984); *Heffron*, 452 U.S. at 647-48.

Mayor Fouts, the DDA, and the City of Warren fail to constitutionally apply any such time, place and manner restriction when approving a religious message present in a nativity scene and rejecting a non-religious message. First, the Defendants' policy, in effect, is entirely predicated on content, allowing pro-religious messages (the Nativity Scene which was evidently provided by the Warren Rotary Club) while denying non-religious or anti-religious messages (the proposed Sign). As the Supreme Court has held, this Nativity Scene creates "an unmistakable message that [government] supports and promotes the Christian praise to God that is the crèche's religious message." *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 600 (1989). There is no question that Defendants have approved content promoting religion.

In contrast, the Mayor has expressly rejected the application of a non-religious or anti-religious message while promising to never approve any message with this content. In his December 21, 2011 letter, Mayor Fouts rejected an atheistic message because it was “clearly anti-religion and meant to counter the religious tone of the Nativity Scene.” **Exhibit A** at tab 8. “I cannot and will not sanction the desecration of religion in the Warren City Hall atrium. As I would not allow displays disparaging any one religion, so I will not allow anyone or any organization to attack religion in general.” *Id.* Mayor Fouts supports his position based on his stated belief that the “proposed display in effect would create considerable ill will among many people of all recognized faiths.” *Id.* (emphasis in original). It is clear that the Mayor’s decisions to deny Plaintiffs’ non-religious or anti-religious message is based solely on its content as an opposing viewpoint to Christianity and “recognized faiths.”

There is therefore an extremely strong likelihood of Plaintiffs’ success on the merits of their claim that Defendants have violated their First Amendment rights by proscribing the free expression of their religious speech based solely on the content of the expression. Mayor Fouts as much as admits this is the case in his December 21, 2011 letter. Plaintiffs therefore satisfy the first portion of the test for granting the requested preliminary injunction. *See, e.g., Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 573 (6th Cir. 2002).

2. Plaintiffs will suffer irreparable injury if a preliminary injunction is not granted.

Plaintiffs have been and will continue to be irreparably harmed by Defendants’ violations of the First Amendment. As the Supreme Court has long recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also G & V Lounge, Inc. v. Mich.*

Liquor Control Comm'n, 23 F.3d 1071, 1079 (6th Cir. 1994) (“[V]iolations of [F]irst [A]mendment rights constitute per se irreparable injury”); *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (holding that “even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief”). Accordingly, this factor strongly favors granting Plaintiffs’ request for the issuance of a preliminary injunction.

3. The harm to the Plaintiffs outweighs the harm to Defendants.

The third prong of the test for issuing a preliminary injunction is whether the requested relief would cause harm to others, or, stated differently, whether the harm caused to Plaintiffs by denial of the requested relief would outweigh the harm to Defendants or others by granting the requested relief. In this instance, there is no realistic or reasonable chance that Defendants would suffer any harm due to the requested injunctive relief. On the contrary, the proposed preliminary injunction would simply require the City to allow the presence of the Sign in the Atrium of the Civic Center. Defendant Mayor Fouts’ claim in his letter of December 21st that the sign’s presence “could lead to confrontations and a disruption of city hall” are nothing more than unsupported conjecture, and are not credible arguments against granting the requested injunction. **Exhibit A** at tab 8. This factor clearly weighs in favor of granting Plaintiffs’ requested relief.

4. Issuance of a preliminary injunction would further public interest, not harm it.

The final factor of the preliminary injunction analysis is crucial and weighs heavily in favor of issuing the requested injunction. The Sixth Circuit has recognized that “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998); *see also G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071 (6th Cir. 1994).

CONCLUSION

For the reasons set forth above, Plaintiffs Freedom From Religion Foundation, Inc. and Douglas J. Marshall respectfully request that this Court issue a preliminary injunction prohibiting Defendants from exercising their authority to restrict or proscribe Plaintiffs' private expression of their religious speech, and ordering the placement of the Sign in the Atrium of Warren's Civic Center, in proximity to the Nativity Scene, for as long as the Nativity Scene is also displayed there.

Respectfully submitted,

BUTZEL LONG, a professional corporation

By: s/ Danielle J. Hessel
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Dated: December 22, 2011
1313481

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, and that I caused Defendants to be served via hand delivery to the Warren, Michigan Clerk's Office..

s/ Danielle J. Hessell

Danielle J. Hessell (P68667)

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
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Attorneys for Plaintiffs

COMPLAINT

Plaintiffs Freedom From Religion Foundation, Inc. and Douglas J. Marshall, by their attorneys, Butzel Long, a professional corporation, submit their Complaint against Defendants the City of Warren, Michigan, the City of Warren Downtown Development Authority, and the Mayor of Warren, Michigan, James R. Fouts, as follows:

Nature of the Case

1. Plaintiffs bring this civil rights action under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants' policy decision to deny Plaintiffs the right to engage in protected speech in a traditional public forum in the City of Warren, Michigan, and also challenging Defendants' illegal endorsement of religion by permitting a nativity scene to be displayed prominently in that public forum.

Parties, Jurisdiction & Venue

2. Plaintiff Freedom From Religion Foundation, Inc. ("FFRF") is a Wisconsin non-profit corporation with its principal office in Madison, Wisconsin.

3. The organizational purposes of FFRF, the membership of which numbers more than 17,000, are to protect the fundamental constitutional principle of separation between state and church and to represent the rights and views of nontheists and free thinkers.

4. FFRF counts among its 540 members in Michigan individuals who reside in Warren, Michigan.

5. FFRF, on behalf of its members, is opposed to government actions that give the appearance of endorsement of religion, including by advancing and promoting religion.

6. Plaintiff Douglas J. Marshall ("Marshall") is a resident of Warren, Michigan, and a member of FFRF. As a resident, Marshall often visits the Warren Civic Center.

7. Defendant City of Warren, Michigan ("City") is an organized Michigan municipality.

8. Defendant City of Warren Downtown Development Authority ("DDA") is, upon information and belief, an entity based in Warren, Michigan and created under the State of Michigan Downtown Development Authority Act of 1975, MCL 125.1651 *et seq.*

9. Defendant James R. Fouts ("Mayor Fouts") is the Mayor of Warren, Michigan. Mayor Fouts is named as a defendant in this matter in his official and individual capacities.

10. The Court has subject matter jurisdiction over the parties and all claims pursuant to 28 U.S.C. § 1331.

11. Venue is proper in this Court because, pursuant to 28 U.S.C. § 1391(a), the events giving rise to the claims occurred within this judicial district.

General Allegations

12. Nativity scenes are inherently Christian religious displays that are intended to have religious significance.

13. On information and belief, the City, the DDA, and/or Mayor Fouts deliberately undertook to place a Christian nativity scene ("Nativity Scene") in a prominent place in the Atrium of the Warren Civic Center.

14. The Nativity Scene has been placed in the Atrium of the Civic Center during the 2011 winter holiday season. Upon information and belief, the Nativity Scene has been placed in the same, or a similar, location during previous winter holiday seasons.

15. The Nativity Scene at issue bears a sign stating that it was sponsored and provided by the Warren Rotary Club, although, upon information and belief, the City, the DDA, and

Mayor Fouts approved the placement and location of the Nativity Scene in the Atrium of the Warren Civic Center.

16. The Warren Civic Center, also commonly referred to as "City Hall," is the main government building for the City of Warren, and it houses the Mayor's office, the City Clerk's office, and numerous other city offices and conference rooms.

17. The Atrium of the Civic Center is approximately five stories high, and currently houses the display of the Nativity Scene. The Atrium also contains at least one artificial Christmas tree, nutcracker, elf, reindeer, Santa's mailbox, and other wreaths and greenery. Also located in the Atrium is a "prayer station," or a table that is often staffed by one or two individuals. Upon information and belief, the Nativity Scene is separated by several feet from the other decorative items in the Atrium, and is placed prominently near the front glass wall of the Civic Center.

18. The Atrium of the Civic Center is open to the public and is a place where other groups, such as the Warren Rotary Club and certain religious organizations, have been permitted to place displays and to provide leaflets and other information, and it is therefore a traditional public forum.

19. On January 20, 2010, FFRF sent Mayor Fouts a letter objecting to the placement of the Nativity Scene in the Civic Center Atrium during the month of December, 2009, because it was an unconstitutional endorsement of religion in violation of the First Amendment of the Constitution of the United States. **Exhibit 1**, January 20, 2010 Letter.

20. FFRF received no response to its January 20, 2010 letter.

21. On March 4, 2010, FFRF again wrote to Mayor Fouts, requesting information regarding the steps being taken to remedy the City's First Amendment violations. **Exhibit 2**, March 4, 2010 Letter.

22. FFRF received no response to its March 4, 2010 letter.

23. On November 9, 2010, FFRF sent yet another letter to Mayor Fouts, renewing its request that the City refrain from displaying the Nativity Scene in the Civic Center Atrium. **Exhibit 3**, November 9, 2010 Letter.

24. On December 8, 2010, Mayor Fouts finally responded to FFRF's correspondence. **Exhibit 4**, December 8, 2010 Letter. In his December 8, 2010 letter, Mayor Fouts stated that "[a]ll religions are welcome to celebrate their religious seasons with a display in city hall," and that "[t]he city of Warren is **NOT** 'promoting or endorsing religious beliefs.' If we were doing this, other religions would not be allowed to display their religious holy seasons in our atrium. However, they have been allowed and will be allowed." *Id.* (emphasis in original).

25. The following holiday season, on December 9, 2011, Plaintiff Marshall wrote to Mayor Fouts requesting, on behalf of himself and other Warren residents who are members of FFRF, to display a sign (the "Sign") near the Nativity Scene. **Exhibit 5**, December 9, 2011 Letter. Marshall hand-delivered the letter to Mayor Fouts' office and was told that he would receive a response no later than December 12, 2011.

26. In his December 9, 2011 letter, Marshall provided photographs of the proposed Sign, along with the following description:

The display is an attractive "sandwich board" and the dimensions are 40 ½ x 24 ½, and it reads as follows:

Front: "At this season of
The Winter Solstice
May reason prevail.
There are no gods,
No devils, no angels,
No heaven or hell.
There is only our natural world.
Religion is but
Myth and superstition
That hardens hearts
And enslaves minds."

"Placed by the Freedom From Religion Foundation
On behalf of its State Members.
Ffrf.org"

Back: "State/Church
Keep them Separate
Freedom From Religion Foundation
Ffrf.org"

Id.

27. Plaintiff Marshall received no response to his December 9, 2011 letter.

28. Plaintiff Marshall visited the Mayor's office on December 13th and 15th, and was repeatedly told by Mayor Fouts' staff that the Mayor was aware of his request and would respond soon.

29. On December 14, 2011, Plaintiff Marshall again wrote to Mayor Fouts, requesting a response to his request to display the Sign. **Exhibit 6**, December 14, 2011 Letter.

30. Plaintiff Marshall received no response to his December 14, 2011 letter.

31. Plaintiff FFRF's staff attorney Stephanie Schmitt placed additional telephone calls to the Mayor's office on or about December 7, 15, and 16, 2011. During those telephone calls, Ms. Schmitt spoke with various people in the Mayor's office, and also, eventually, with

Mayor Fouts. Ms. Schmitt was informed that the DDA maintained responsibility for approval of any requested displays in the Civic Center Atrium, and that an application would have to be submitted to the DDA for Plaintiffs' request to display the Sign. Ms. Schmitt was also informed that Mayor Fouts had to consult with the Warren City Attorney before any decision could be made on Plaintiffs' requested Sign.

32. On December 20, 2011, undersigned counsel for Plaintiffs sent yet another letter to Mayor Fouts, requesting a decision on Plaintiffs' request to display the Sign in the Civic Center Atrium. **Exhibit 7**, December 20, 2011 Letter. Enclosed with that letter was a completed form provided by the DDA to request the use of the Atrium to display the proposed Sign. *Id.*

33. On December 21, 2011, Mayor Fouts sent a letter to Plaintiff FFRF, ostensibly in response to Plaintiff Marshall's December 9, 2011 letter. **Exhibit 8**, December 21, 2011 Letter.

34. In his letter, Mayor Fouts denied Plaintiffs' request to place the Sign in the Atrium, stating:

I have received a letter (December 9, 2011) from Mr. Douglas J. Marshall, a member of your organization, for permission to display a sign in the City Hall atrium near the Nativity Scene.

I have reviewed the proposed 2-sided "sandwich board" sign. The language on the proposed sign is clearly anti-religion and meant to counter the religious tone of the Nativity Scene, which could lead to confrontations and a disruption of city hall.

This proposed sign is antagonistic toward all religions and would serve no purpose during this holiday season except to provoke controversy and hostility among visitors and employees at city hall.

Your phrase that "Religion is but myth and superstition that hardens hearts and enslaves minds," [sic] is highly offensive and is not a provable statement. Likewise, your statement that there are "no gods" and "no angels" is also not provable.

If you requested permission to put up a sandwich board saying that there is no Santa Claus, you would be met with the same response. Santa Claus lives in the minds and hearts of many millions of children. The belief of God and religion lives in the hearts and minds of hundreds of millions of people and is as much a part of the fabric of America, [sic] as the belief in democracy and freedom.

Indeed, our country was founded upon basic religious beliefs. The President takes the oath of office on the Holy Bible. The U.S. Congress has a house chaplain. [sic] Both major political party leaders invoke God in their speeches and pronouncements. Our coins have "In God We Trust." We have a whole host of other religious traditions in government situations at all levels.

Everyone has a right to believe or not believe in a particular belief system, but no organization has the right to disparage the beliefs of many Warren and U.S. citizens because of their beliefs.

Thus, I cannot and will not sanction the desecration of religion in the Warren City Hall atrium.

As I would not allow displays disparaging any one religion, so I will not allow anyone or any organization to attack religion in general. Your proposed sign cannot be excused as a freedom of religion statement because, to my way of thinking, this right does not mean the right to attack religion or any religion with mean-spirited signs. The proposed sign would only result in more signs and chaos.

When I allowed a display in city hall celebrating Ramadan, the Moslem [sic] holy season, I received many calls objecting but I would never have allowed a sign next to the Ramadan display mocking or ridiculing the Moslem [sic] religion.

In my opinion, Freedom of Religion does not mean "Freedom Against or From Religion." And Freedom of Speech is not the right to yell "Fire!" in a crowded theatre. Indeed, there are common sense restraints on all constitutional rights.

Your non-religion is not a recognized religion. Please don't hide behind the cloak of non-religion as an excuse to abuse other recognized religions. You can't make a negative into a positive.

Clearly, your proposed display in effect would create considerable ill will among many people of all recognized faiths.

During this holiday season, why don't we try to accomplish the old adage of "Good will toward all"?

Id. (emphasis in original).

35. The United States Supreme Court has held that government “may impose reasonable, content-neutral time, place, and manner restrictions . . . but it may regulate expressive *content* only if such a restriction is necessary, and narrowly drawn, to serve a compelling state interest.” *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 761 (1995) (emphasis in original).

36. Further, the Supreme Court has stated that “[o]nce a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say.” *Chicago Police Dept. v. Mosley*, 408 U.S. 92 (1972).

37. On information and belief, Defendants do not have or observe any reasonable, content-neutral, time, place, and manner restrictions on protected First Amendment activities in the Civic Center. In the alternative, if such restrictions exist, they have not been provided to Plaintiffs and Plaintiffs have not been given an opportunity to comply with such restrictions.

38. On information and belief, Defendants adhere to policies, practices, and/or customs of supporting religion and religious belief and, in particular, the Christian religion, and discriminating against non-religious believers.

39. For example, the City’s website lists as one of Mayor Fouts’ many accomplishments “Defense of Nativity at Warren City Hall.” **Exhibit 9**, City of Warren website screenshot.

40. Defendants denied Plaintiffs' request to display the Sign in the Atrium next to the Nativity Scene because Defendants determined that the Sign's message is "anti-religious." **Exhibit 8.**

41. Therefore, Defendants' denial is an unconstitutional, content-based restriction on Plaintiffs' expression in a traditional public forum.

42. The United States Supreme Court has held that "a principle at the heart of the Establishment Clause [is] that government should not prefer one religion to another, or religion to irreligion." *Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 703, 114 S.Ct. 2481, 129 L.Ed.2d 546 (1994).

43. Accordingly, Defendants' denial of Plaintiff's request to display the Sign in the public forum of the Atrium, next to the Nativity Scene, also violates the Establishment Clause of the First Amendment of the United States Constitution, by endorsing expressions of a religious nature, such as the Nativity Scene and the prayer table, but by forbidding expressions of a non-religious, or irreligious, nature.

44. The United States Supreme Court has also held that the Establishment Clause of the First Amendment prohibits government from maintaining, erecting or hosting a holiday display that consists solely of a nativity scene. *Allegheny County v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989).

45. Even when accompanied by other religious or secular holiday decorations, a religious display must be examined to determine "whether the government's use of an object with religious meaning has the effect of endorsing religion.... [T]he question is what viewers may fairly understand to be the purpose of the display." *Id.* at 595.

46. Defendants' placement of the Nativity Scene in a position of prominence in the Civic Center Atrium violates the Establishment Clause of the First Amendment because it has the effect of endorsing religion, as Mayor Fouts has made abundantly clear in his December 21, 2011 letter. **Exhibit 8.**

47. Defendants' discriminatory conduct, policy, practice, and/or custom denies Plaintiffs the equal protection of the law guaranteed by the Equal Protection Clause of the Fourteenth Amendment by denying Plaintiffs access to a public forum because Defendants find Plaintiffs' message unacceptable.

COUNT I
First Amendment—Free Speech Clause

48. Plaintiffs restate each of their preceding allegations.

49. Defendants have imposed a content-based restriction on Plaintiff's private speech in a traditional public forum in violation of the Free Speech Clause of the First Amendment, as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

50. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights. Plaintiffs are therefore entitled to declaratory and injunctive relief and nominal damages.

COUNT II
First Amendment—Establishment Clause

51. Plaintiffs restate each of their preceding allegations.

52. Defendants' policy, practice, and/or custom of permitting the display of the Nativity Scene lacks a valid secular purpose, has the primary effect of promoting religion, and creates an excessive entanglement with religion in violation of the United States Constitution.

53. Defendants' policy, practice, and/or custom of permitting the display of the Nativity Scene conveys an impermissible, government-sponsored message of approval of the Christian religion. As a result, Defendants send a clear message to Plaintiffs that they are outsiders and not full members of the political community, and an accompanying message that those who favor the Christian religion are insiders and favored members of the political community, in violation of the United States Constitution.

54. Defendants have, by their conduct, policies, practices, and/or customs, violated the Establishment Clause of the First Amendment, as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

55. As a direct and proximate result of Defendants' violation of the Establishment Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

COUNT III
Fourteenth Amendment—Equal Protection Clause

56. Plaintiffs restate each of their preceding allegations.

57. Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983, in that Defendants, through their conduct, policies, practices, and/or customs, prevented Plaintiffs from

expressing a private message in a public forum based on the content of their speech, thereby denying the use of this forum to those whose messages Defendants find unacceptable.

58. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Defendants violated Plaintiffs' rights protected by the First and Fourteenth Amendments to the United States Constitution, as set forth in this Complaint;
- B. Enjoin Defendants' policy decision to deny Plaintiffs permission to temporarily display their Sign in a traditional public forum in the City of Warren during the 2011 winter holiday season and during future winter holiday seasons, as set forth in this Complaint;
- C. Award Plaintiffs nominal damages for the violations of their constitutional rights;
- D. Award Plaintiffs their reasonable attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- E. Grant such other relief as this Court may find just and proper.

Respectfully submitted,

BUTZEL LONG, a professional corporation

By: s/ Danielle J. Hessel

Robin Luce-Herrmann (P46880)

Danielle J. Hessel (P68667)

Jennifer Dukarski (P74257)

Stoneridge West

41000 Woodward Avenue

Bloomfield Hills, Michigan 48304

Attorneys for Plaintiffs

(248) 258-1616

Dated: December 22, 2011
1313393

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREEDOM FROM RELIGION FOUNDATION.
INC., a Wisconsin non-profit corporation, and
DOUGLAS J. MARSHALL, a Michigan individual,

Plaintiffs,

Case No.

v.

CITY OF WARREN, MICHIGAN,
CITY OF WARREN DOWNTOWN DEVELOPMENT
AUTHORITY, and JAMES R. FOUTS, Mayor of
Warren, Michigan,

Defendants.

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	January 20, 2010 Letter
2	March 4, 2010 Letter
3	November 9, 2010 Letter
4	December 8, 2010 Letter
5	December 9, 2011 Letter
6	December 14, 2011 Letter
7	December 20, 2011 Letter
8	December 21, 2011 Letter
9	City of Warren website screenshot

EXHIBIT 1



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

January 20, 2010

The Honorable John Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren MI 48093-6726

Re: Nativity Scene Displayed in Lobby of City Hall

Dear Mayor Fouts:

I am writing on behalf of a concerned City of Warren resident and taxpayer, who objects to the City's display of a nativity scene in the lobby of City Hall. The Freedom From Religion Foundation (FFRF) is a national nonprofit organization with over 14,000 members across the country including members in Michigan. Our purpose is to protect the constitutional principle of separation between church and state.

It is our information and understanding that during the month of December 2009, a crèche was erected on city property. Our complainant informs us that a nativity scene, depicting the birth of a Christian god, was located on the first floor of the city hall atrium. Upon further investigation, our complainant discovered that the crèche was given to the city years ago by some group but was indeed a city-sponsored display. We are unaware of other holiday displays in the same area.

It is unlawful for the City of Warren 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 *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 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.

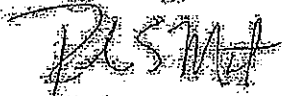
The Court further determined that the placement of the crèche on the Grand Staircase of the county courthouse contributed to its illegality because "no viewer could reasonably think it occupies this location without support and approval of the government." *Id.* at 599-600. Moreover, the Court found that the nativity scene "sent[] 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 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 the lobby of city hall unmistakably sends the message that the City of Warren endorses the religious beliefs embodied in the display. When the government displays this manger scene, 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 Warren.

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 this violation of the First Amendment.

Sincerely,



Rebecca S. Markert
Staff Attorney

EXHIBIT 2



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

March 4, 2010

The Honorable John Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren MI 48093-6726

COPY

Re: Follow-up to Nativity Scene Display in Lobby of City Hall

Dear Mayor Fouts:

Our national organization, which works to protect the constitutional principle of separation between state and church, wrote to you on January 20, 2010, regarding the City's display of a nativity scene in the lobby of City Hall. To date, we have not yet received a response from you regarding our concerns.

We write again to request that you immediately inform us in writing of the steps you are taking to remedy this violation of the First Amendment. A copy of the original letter is attached for your review.

Thank you for your time and attention to this matter, we look forward to your prompt reply.

Sincerely,

Rebecca S. Markert
Staff Attorney

Enclosure

EXHIBIT 3

FREEDOM FROM RELIGION *foundation*

P.O. Box 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFREELONG

November 9, 2010

COPY

The Honorable John Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren MI 48093-6726

Re: 3rd Follow-up to Nativity Scene Display in Lobby of City Hall

Dear Mayor Fouts:

Our national organization, which works to protect the constitutional principle of separation between state and church, wrote to you on January 20, 2010, and again on March 4, 2010, regarding the City's display of a nativity scene in the lobby of City Hall. To date, we have not yet received a response from you regarding our concerns. Enclosed please find copies of those letters attached for your review.

Given that the end of the year holidays are near, we renew our request for the City to refrain from displaying a nativity scene in the lobby of City Hall. We also request that you immediately inform us in writing of the steps you are taking to remedy this violation of the First Amendment.

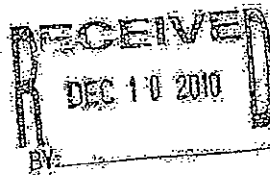
Thank you for your time and attention to this matter; we look forward to your prompt reply.

Sincerely,


Rebecca S. Markert
Staff Attorney

Enclosure

EXHIBIT 4



James R. Feltz - Mayor

OFFICE OF THE MAYOR

ONE CITY SQUARE, SUITE 215

WARREN, MI 48090-6726

(586) 574-4520

www.cityofwarren.org

December 8, 2010

Rebecca S. Markert, Staff Attorney
Freedom from Religion Foundation
P.O. Box 750
Madison, WI 53701

Re: Nativity Scene Display in Atrium of City Hall

Dear Ms. Markert:

I have received your November 9, 2010 letter to me objecting to the Nativity scene placed in the Warren city hall atrium.

Your objections focus on freedom of religion guaranteed by the U.S. Constitution and that the Nativity scene somehow was a violation of that constitutional right because it favors one religion over another.

I vehemently disagree with your objection.

The city of Warren in no way whatsoever shows any favoritism to any religion. All religions are welcome to celebrate their religious seasons with a display in city hall.

For example, the local Islam mosque celebrated Ramadan with a display at city hall this year. I did receive phone calls objecting to this display, but after I explained that all religions can have displays at city hall during their holy seasons, the persons objecting seem to understand.

I repeat, if any religion wants its display at Warren city hall, they are welcome.

We also have a prayer station in the city hall atrium for all religions to use. Furthermore, the National Day of Prayer is observed annually outside Warren city hall - again for ALL faiths. And we invite ALL Warren residents to use the Prayer Station and attend the National Day of Prayer ceremony.

Our Founding Fathers included freedom of religion in the Constitution to prevent any state-sponsored religion and rightly so, but to suggest that the Nativity scene implies a city-sponsored or city-promoted religion is simply inaccurate and an insult to all observers of all religions.

December 8, 2010

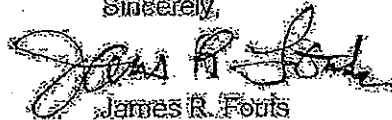
Page 2

The U.S. Supreme Court decision (County of Allegheny V. ACLU of Pittsburgh, 492 U.S. 573, 1989) does state: "... government may not engage in a practice that has the effect of promoting or endorsing religious beliefs." The city of Warren is NOT "promoting or endorsing religious beliefs." If we were doing this, other religions would not be allowed to display their religious holy seasons in our atrium. However, they have been allowed and will be allowed.

In no way, has ANY religion been excluded from displaying its holy season in city hall.

For this reason, the Nativity scene display will remain in the city hall atrium.

Sincerely,



James R. Fouts

Mayor of the City of Warren

EXHIBIT 5

December 9, 2011

The Honorable James R. Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren, MI 48093-6726

Re: Formal Request to Display Sign

Dear Mayor Fouts:

On behalf of myself and other Warren residents who are members of the Freedom of Religion Foundation, I would like to formally request permission to display a sign near the nativity scene that is currently on display in the Atrium of the Civic Center. I request that the sign be displayed from December 12 -- January 3, 2012.

The display is an attractive "sandwich board" and the dimensions are 40 1/2 x 24 1/2 inches, and it reads as follows:

Front: "At this season of
The Winter Solstice
May reason prevail,
There are no gods,
No devils, no angels,
No heaven or hell.
There is only our natural world,
Religion is but
Myth and superstition
That hardens hearts
And enslaves minds."

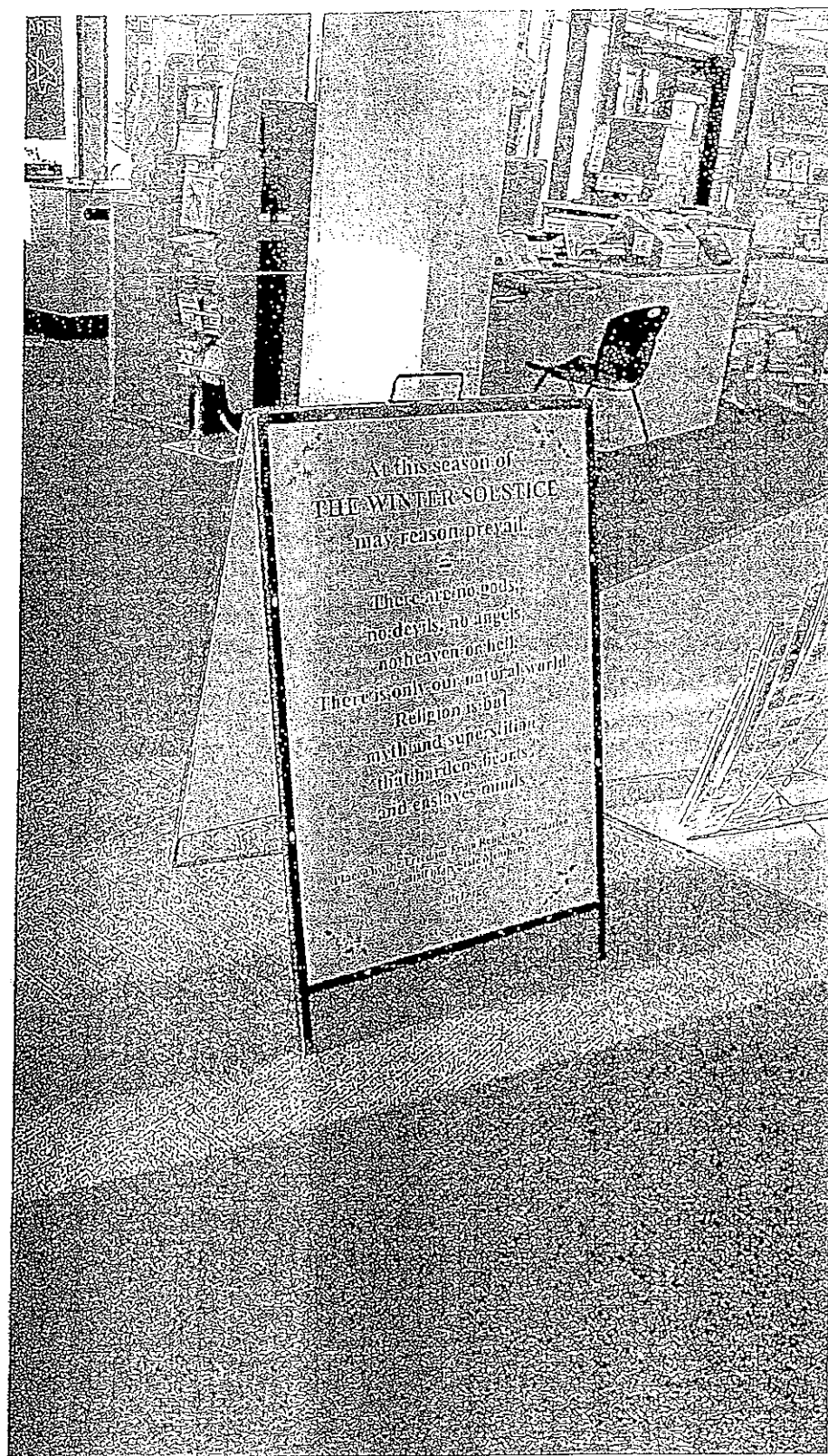
Placed by the Freedom From Religion Foundation
On behalf of its State Members Ffrf.org"

Back: "State/Church
Keep them Separate
Freedom From Religion Foundation Ffrf.org"

Attached are photos for your convenience. Thank you for your time and attention to this matter, I look forward to your prompt reply.

Sincerely,

Douglas J Marshall
Resident of Warren, MI
FFRF Member



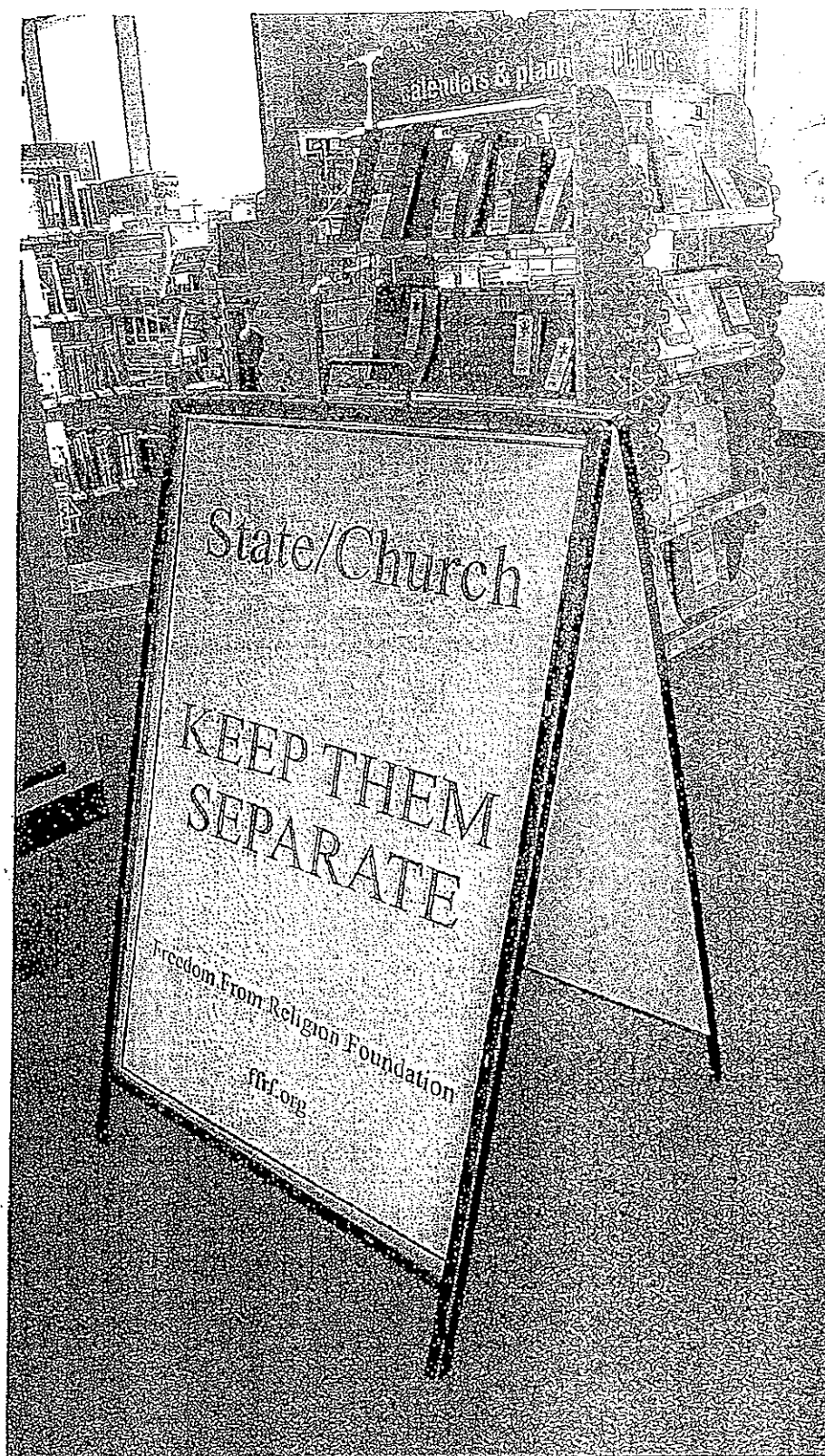


EXHIBIT 6

December 14, 2011

The Honorable James R. Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren, MI 48093-6726

Re: Formal Request to Display Sign

Dear Mayor Fouts:

On December 9, 2011, I hand delivered a request (copy included) for permission to display a holiday sign in the Atrium of the Civic Center near the nativity display. I was assured by the person whom I presented the request that I would receive a response no later than December 12, 2011. Upon checking with your office in person on December 13, 2011 I am still without a response. You assured me last year, when I complained about the city allowing religious displays, that the city would allow any reasonable seasonal display. Please respond to the status of my request. At this time, I also request that the time period be extended to make up for the delay in handling this matter. Your speedy response will be appreciated.

Sincerely

Douglas J Marshall
27750 Roan
Warren, MI 48093
758-0061

EXHIBIT 7

BUTZEL LONG

TORNEYS AND COUNSELORS

a professional corporation

Danielle J. Hessel
248 258 2924
hessel@butzel.com

Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304
T: 248 258 1616 F: 248 258 1439
butzel.com

December 20, 2011

Via Certified Mail and E-mail

Mayor James R. Fouts
One City Square Suite 215
Warren, MI 48093
mayor@cityofwarren.org

Re: Warren Resident Douglas J. Marshall and Freedom From Religion Foundation's
Request to Place Placard in Civic Center Atrium Next to the Nativity Display

Dear Mayor Fouts:

I write to you today on behalf of my clients Douglas J. Marshall and the Freedom From Religion Foundation ("FFRF"). As you know, FFRF and its local member, Mr. Marshall, have requested permission from the City of Warren to place a display in the Atrium of Warren's Civic Center, near the nativity scene display (photo enclosed). To date, my clients have not received any response regarding this request, which has been communicated to your office on several different occasions, and as recently as December 14, 2011. When Mr. Marshall and FFRF have contacted your office, they have simply been informed that you are in receipt of the request, and that you are considering it and should have a response soon. (They have also been told, at various times, that the Downtown Development Authority and/or the City Attorney's office have some decision-making authority on this matter, and I've therefore copied those offices on this correspondence). I enclose copies of the previous written communications between my clients and your office, although there have also been numerous phone calls on this topic, some of which have involved you, personally.

Of course, any delay in a determination by your office of my clients' request will prevent their proposed seasonal display from being placed in proximity to the nativity scene the City has permitted to be displayed in a prominent location in the Atrium of the Warren Civic Center. Therefore, any further delay in a response from your office will constitute a denial of my clients' Constitutional rights. Unless we receive notice by 10:00 a.m. on Wednesday, December 21, 2011 that my clients' proposed display shall be permitted to be displayed next to the nativity scene in the Civic Center for as long as the nativity scene shall remain on display there, or in any

Ann Arbor Bloomfield Hills Detroit Lansing New York Washington D.C.
Alliance Offices Beijing Shanghai Mexico City Monterrey Member Lex Mundi www.butzel.com

Freedom From Religion Foundation
December 20, 2011

other location on government property, we will be left with no choice but to file a lawsuit in the United States District Court for the Eastern District of Michigan against the City of Warren, the Mayor, and the Downtown Development Authority. We will also seek an injunction to halt the unlawful refusal to respond to my clients' request for permission to display their sign alongside the nativity scene or, in the alternative, that the nativity scene be removed from City property, as well as attorney's fees and other litigation expenses as authorized under 42 U.S.C. § 1988.

I remain hopeful, however, that we may hear from you very soon and may resolve this matter without the need for litigation. As you mentioned in your letter to Rebecca S. Markert, Staff Attorney for FFRF, dated December 8, 2010 and enclosed with this correspondence, "[t]he city of Warren in no way whatsoever shows any favoritism to any religion. All religions are welcome to celebrate their religious seasons with a display in city hall." We hope that you will follow through with your commitment to avoid even the appearance of government sponsorship of religion, and permit my clients' proposed display to occupy a position near the nativity scene in the Civic Center Atrium.

I also note that the City Council's Resolution of June 22, 2010, Re-Affirming the American Values of Freedom, Equality and Justice (also enclosed) states, among other things, that "the diversity of our world is a gift to be celebrated, honored, and protected," and that "it is not only our civic but also our moral responsibility to protect the right of all people to live, work, go to school, and worship freely within our cities without the threat of discrimination or harm as a result." Certainly, this Resolution supports my clients' position that the City of Warren should not discriminate against any individual or group based on religion. Unfortunately, the City's refusal to respond to my clients' repeated requests constitutes just such discrimination.

As you know, it is unlawful for the City of Warren 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 that it is impermissible to place a nativity scene as the sole focus of a display on government property. See *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1983). The City of Warren's nativity display is in all respects just as the nativity display in *County of Allegheny*, wherein the Court ruled that "no viewer could reasonably think it occupies this location without support and approval of the government." 492 U.S. at 599-600.

To the extent that the Downtown Development Authority does have any decision-making authority over requests such as these, we enclose the completed form requesting permission to place the FFRF display in the Civic Center Atrium. However, because this form deals with the use of the space for gatherings, and not for the placement of a small, temporary sign such as the one at issue, I do not believe that the form adequately addresses requests such as this. Also, please find enclosed a copy of our FOIA request for all similar application forms or other

BUTZEL LONG

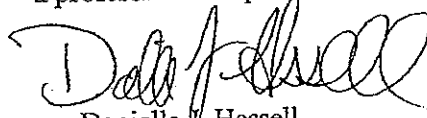
Freedom From Religion Foundation
December 20, 2011

information submitted by the Warren Rotary Club or any other organization or governmental entity related to the nativity display which is currently located in the Civic Center Atrium.

Thank you and I look forward to hearing from you very soon.

Very truly yours,

BUTZEL LONG,
a professional corporation



Danielle J. Hessel

DJH:dll
Encls.

cc: Warren City Council Secretary, Warren Community Center, Second Floor
5460 Arden, Warren, MI 48092 (via Certified Mail)

Cecil St. Pierre, Council President (via e-mail to cdspjr@yahoo.com)

Patrick Green, Council Vice President (via e-mail to pgreen@cityofwarren.org)

Scott Stevens, Council Secretary (via e-mail to scs425@wowway.com)

Keith Sadowski, Council Assistant Secretary (via e-mail to
ksadowski@cityofwarren.org)

Robert Boccomino, Councilman (via e-mail to boccomino2007@wowway.com)

Kelly Colegio, Councilwoman (via e-mail to kcolegio4@aol.com)

Steven Warner, Councilman (via e-mail to sgwarner1@yahoo.com)

Lloyd E. Brown, Chairperson, DDA (via e-mail c/o jhanway@cityofwarren.org)

Charles Earl Jr., Vice Chairperson, DDA (via e-mail c/o jhanway@cityofwarren.org)

BUTZEL LONG

Freedom From Religion Foundation
December 20, 2011

Jon Green, DDA Board Member (via e-mail c/o jhanway@cityofwarren.org)

Michael Wiegand, DDA Board Member (via e-mail c/o jhanway@cityofwarren.org)

David G. Spencer, DDA Board Member (via e-mail c/o jhanway@cityofwarren.org)

Oscar Zamora, DDA Board Member (via e-mail c/o jhanway@cityofwarren.org)

David Gorsich, DDA Board Member (via e-mail c/o jhanway@cityofwarren.org)

Bonnie McInerney, Director, DDA (via e-mail c/o jhanway@cityofwarren.org)

Rob Maleszyk, Treasurer, DDA (via e-mail c/o jhanway@cityofwarren.org)

Mark Liss, City Council Representative, DDA (via e-mail to Mark@MarkLiss.com)

Hon. James M. Biernat, Ret., Warren City Attorney (via facsimile to 586-574-4530)

Stephanie Schmitt, Esq. (via e-mail only)

Douglas J. Marshall (via e-mail only)

Jennifer Dukarski, Esq. (via e-mail only)

Taryn Asher (via e-mail to Taryn.Asher@foxtv.com)

BUTZEL LONG





FREEDOM FROM RELIGION FOUNDATION

P.O. Box 760 • Madison WI 53701 • (608) 236-8960 • www.ffrf.org

January 26, 2012

The Honorable John Banks
Mayor
City of Warren
One City Square
Suite 215
Warren, MI 48093-6726

Re: Nativity Scene Displayed in Lobby of City Hall

Dear Mayor Banks:

I am writing on behalf of a concerned City of Warren resident and taxpayer, who objects to the City's display of a nativity scene in the lobby of City Hall. The Freedom From Religion Foundation (FFRF) is a national nonprofit organization with over 12,000 members across the country including members in Michigan. Our purpose is to protect the constitutional principle of separation between church and state.

It is our information and understanding that during the month of December 2009, a creche was erected on city property. Our complainant informs us that a nativity scene, depicting the birth of a Christian god, was located on the first floor of the city hall atrium. Upon further investigation, our complainant discovered that the creche was given to the city years ago by some group but was indeed a city-sponsored display. We are unaware of other holiday displays in the same area.

It is unlawful for the City of Warren 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 *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 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 creche 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 creche in the county courthouse has this unconstitutional effect." *Id.* at 601.

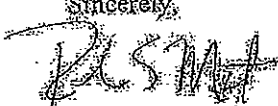
The Court further determined that the placement of the creche on the Grand Staircase of the county courthouse contributed to its illegality because "no viewer could reasonably think it occupies this location without support and approval of the government." *Id.* at 599-600. Moreover, the Court found that the nativity scene "sent[] an unmistakable message that the county supports and promotes the Christian presence and that is the creche's religious message." *Id.* at 600.

It is undeniable that the creche is a religious, Christian symbol. *See Lynch v. Donnelly*, 465 U.S. 668, 701 (1984) (Breman, J. dissenting (stating that the creche is a "recreation of an event that lies at the heart of the Christian faith"). Displaying an inherently Christian message in the lobby of city hall unmistakably sends the message that the City of Warren endorses the religious belief embodied in the display. When the government displays this manger scene, 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, Muslims, etc., as well as the significant and growing portion of the U.S. population that is not religious at all (18% of adults), including complainants and taxpayers in Warren.

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 this violation of the First Amendment.

Sincerely,


Rebecca S. Markert
Staff Attorney



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 276-8800 • www.ffrf.org

March 4, 2010

The Honorable John Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren MI 48093-6724

COPY

Re: Follow-up re Nativity Scene Display in Lobby of City Hall

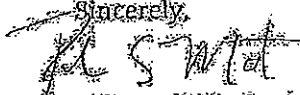
Dear Mayor Fouts:

Our national organization, which works to protect the constitutional principle of separation between state and church, wrote to you on January 20, 2010, regarding the City's display of a nativity scene in the lobby of City Hall. To date, we have not yet received a response from you regarding our concerns.

We write again to request that you immediately inform us in writing of the steps you are taking to remedy this violation of the First Amendment. A copy of the original letter is attached for your review.

Thank you for your time and attention to this matter. We look forward to your prompt reply.

Sincerely,


Rebecca S. Markert
Staff Attorney

Enclosure

FREEDOM FROM RELIGION foundation

P.O. Box 730 • Madison, WI 53701 • (608) 255-5700 • www.freedomfr.org

November 9, 2010

COPY

The Honorable John Pouts
Mayor
City of Warren
One City Square
Suite 215
Warren, MI 48090-6726

Re: ~~2nd Follow-up to Nativity Scene Display in Lobby of City Hall~~

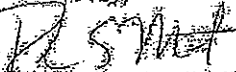
Dear Mayor Pouts:

Our national organization, which works to protect the constitutional principle of separation between state and church, wrote to you on January 20, 2010, and again on March 4, 2010, regarding the City's display of a nativity scene in the lobby of City Hall. To date, we have not yet received a response from you regarding our concerns. Enclosed please find copies of those letters attached for your review.

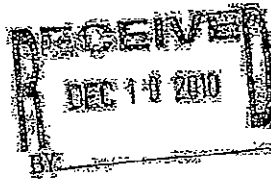
Given that the end of the year holidays are near, we renew our request for the City to refrain from displaying a nativity scene in the lobby of City Hall. We also request that you immediately inform us in writing of the steps you are taking to remedy this violation of the First Amendment.

Thank you for your time and attention to this matter, we look forward to your prompt reply.

Sincerely,


Rebecca S. Markert
Staff Attorney

Enclosure



OFFICE OF THE MAYOR

ONE CITY SQUARE, SUITE 200
WARREN, MI 48093-6726
(586) 374-4520
WWW.CITYOFWARREN.MI

December 8, 2010

Rebecca S. Markert, Staff Attorney
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

Re: Nativity Scene Display in Atrium of City Hall

Dear Ms. Markert:

I have received your November 9, 2010 letter to me objecting to the Nativity scene placed in the Warren city hall atrium.

Your objections focus on freedom of religion guaranteed by the U.S. Constitution and that the Nativity scene somehow was a violation of that constitutional right because it favors one religion over another.

I vehemently disagree with your objection.

The city of Warren in no way whatsoever shows any favoritism to any religion. All religions are welcome to celebrate their religious seasons with a display in city hall.

For example, the local Islam mosque celebrated Ramadan with a display at city hall this year. I did receive phone calls objecting to this display, but after I explained that all religions can have displays at city hall during their holy seasons, the persons objecting seem to understand.

I repeat, if any religion wants its display at Warren city hall, they are welcome.

We also have a prayer station in the city hall atrium for all religions to use. Furthermore, the National Day of Prayer is observed annually outside Warren city hall — again for ALL faiths. And we invite ALL Warren residents to use the Prayer Station and attend the National Day of Prayer ceremony.

Our Founding Fathers included freedom of religion in the Constitution to prevent any state-sponsored religion and rightly so, but to suggest that the Nativity scene implies a city-sponsored or city-promoted religion is simply inaccurate and an insult to all observers of all religions.

December 8, 2010

Page 2

The U.S. Supreme Court decision (*County of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 1989) does state: "... government may not engage in a practice that has the effect of promoting or endorsing religious beliefs." The city of Warren is NOT "promoting or endorsing religious beliefs." If we were doing this, other religions would not be allowed to display their religious holy seasons in our atrium. However, they have been allowed and will be allowed.

In no way has ANY religion been excluded from displaying its holy season in city hall.

For this reason, the Nativity scene display will remain in the city hall atrium.

Sincerely,



James R. Fotts

Mayor of the City of Warren

December 9, 2011

The Honorable John Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren MI 48093-6726

Re: Formal Request to Display Sign

Dear Mayor Fouts:

On behalf of myself and other Warren residents who are members of the Freedom of Religion Foundation, I would like to formally request permission to display a sign near the nativity scene that is currently on display in the Atrium of the Civic Center. I request that the sign be displayed from December 12 - January 8, 2012.

The display is an attractive "sandwich board" and the dimensions are 40 1/2 x 24 1/2, and it reads as follows:

Front: "At this season of
The Winter Solstice
May reason prevail.
There are no gods;
No devils, no angels,
No heaven or hell.
There is only our natural world.
Religion is but
Myth and superstition
That hardens hearts
And enslaves minds."

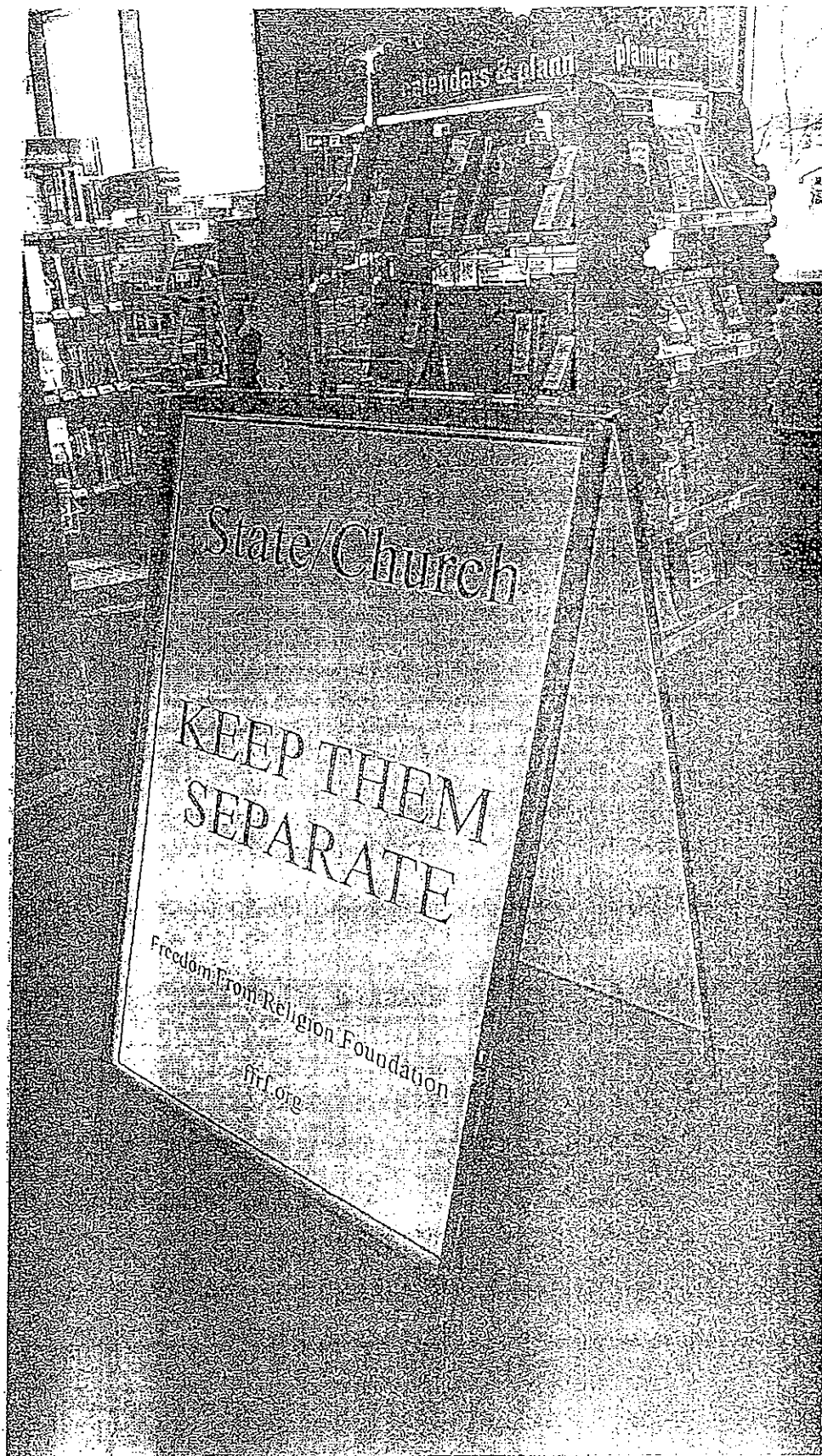
"Placed by the Freedom From Religion Foundation
On behalf of its State Members.
ffrf.org"

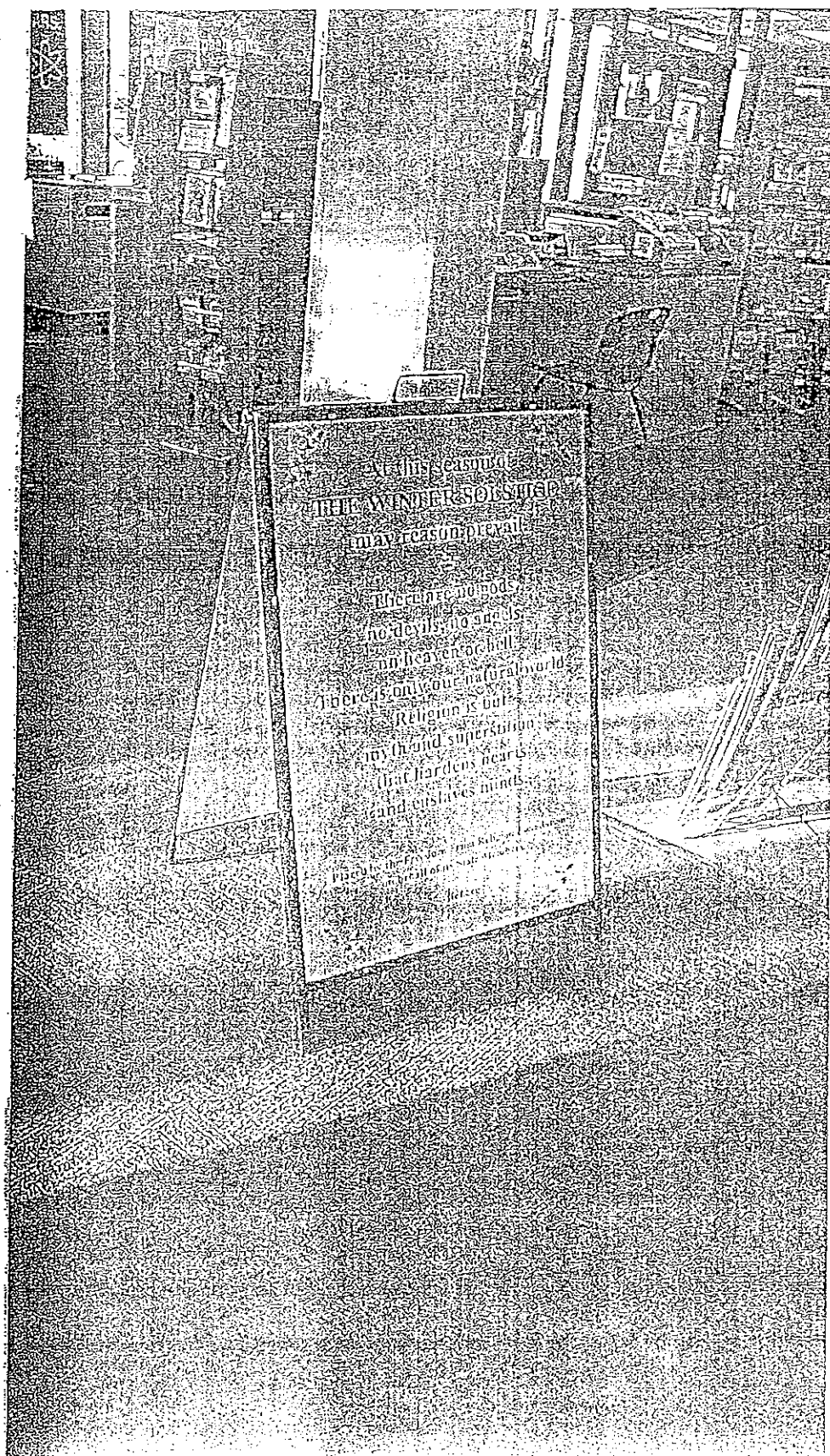
Back: "State/Church
Keep them Separate
Freedom From Religion Foundation.
ffrf.org"

Attached are photos for your convenience. Thank you for your time and attention to this matter. I look forward to your prompt reply.

Sincerely,

Douglas Marshall
Resident of Warren, MI
RRR Member





December 14, 2011

The Honorable James R. Fouts
Mayor
City of Warren
One City Square
Suite 215
Warren, MI 48093-6726

Re: Formal Request to Display Sign

Dear Mayor Fouts:

On December 9, 2011, I hand delivered a request (copy included) for permission to display a holiday sign in the Atrium of the Civic Center near the nativity display. I was assured by the person whom I presented the request that I would receive a response no later than December 12, 2011. Upon checking with your office in person on December 13, 2011 I am still without a response. You assured me last year, when I complained about the city allowing religious displays, that the city would allow any reasonable seasonal display. Please respond to the status of my request. At this time, I also request that the time period be extended to make up for the delay in handling this matter. Your speedy response will be appreciated.

Sincerely

Douglas J Marshall
27750 Roan
Warren, MI 48093
758-0061

[illegible]

**RESOLUTION RE-AFFIRMING THE AMERICAN VALUES OF
FREEDOM, EQUALITY AND JUSTICE**

At a regular meeting of the City Council of the City of Warren, County of Macomb,
State of Michigan, held on June 22, 2010, ^{Daylight Savings} Eastern Standard Time, in the Council
Chamber at the Warren Community Center Auditorium, located at 5460 Arden, Warren,
Michigan.

PRESENT: Councilpersons Kamp, Caumartin, Sadowski, Stevens, Boccomino,
Green, Liss, Vogt, and Warner

ABSENT: Councilpersons none

The following preamble and resolution were offered by Councilperson
Sadowski and supported by Councilperson Liss.

WHEREAS, as people of the diverse community of the City of Warren, Michigan,
we offer this statement in support of freedom, equality and justice, and together share a
commitment to the well-being of every person in our community, and

WHEREAS, the City of Warren believes, as stated in the Declaration of
Independence, that all people are created equal and we champion the inherent worth
and dignity of every person. We assert that ultimately all people of the world belong to
ONE HUMAN RACE. And we declare that the diversity of our world is a gift to be
celebrated, honored, and protected, and

WHEREAS, the City of Warren believes that all deserve the opportunity to reach
their full potential and that all should have equal opportunity for access to education,
health care, housing, and employment. We also believe that it is not only our civic but
also our moral responsibility to protect the right of all people to live, work, go to school,
and worship freely within our cities without the threat of discrimination or harm as a
result. And we pledge to work cooperatively in order to foster peace and build harmony,
and

WHEREAS, the City of Warren is united in speaking out against any expression of prejudice, intimidation, hate, or violence that is aimed at hurting or excluding an individual, a family, or a group of people because of who they are. We are committed to nonviolent solutions to human suffering and injustice, and join together to work for economic well-being and justice for all, and

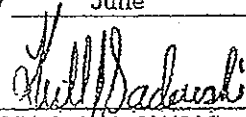
WHEREAS, let it be declared that the City of Warren believes that freedom, equality, and justice are core values of our City which need to be proclaimed, taught, and practiced in our homes, schools, and in daily lives for the health and quality of our community, and ultimately, our world.

NOW, THEREFORE, let it be resolved that the City of Warren City Council:
Stands together in support of freedom, equality and justice, and to speak out against prejudice, discrimination, and violence; works together for the betterment of our entire community; promotes nonviolence, justice, and respect for all; supports all local governments, police, schools, businesses, congregations, and non-profit organizations' efforts to protect the rights of all people and, supports the idea of community events to build bridges of understanding, relationships, and trust among people of different cultures and faith traditions.

AYES: Councilpersons: Kamp, Caumartin, Sadowski, Stevens, Boccomino,
Green, Liss, Vogt and Warner

NAYS: Councilpersons: none

RESOLUTION DECLARED ADOPTED this 22nd day June, 2010.



KEITH J. SADOWSKI
Secretary of the Council

BUTZEL LONG

ATTORNEYS AND COUNSELORS

Danielle J. Hessel
248 258 2924
hessel@butzel.com

Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304
T: 248 258 1616 F: 248 258 1439
butzel.com

December 20, 2011

Annette Gattari-Ross
FOIA Coordinator
City of Warren
One City Square
Warren, MI

Re: Freedom of Information Act
Warren Atrium Nativity Scene

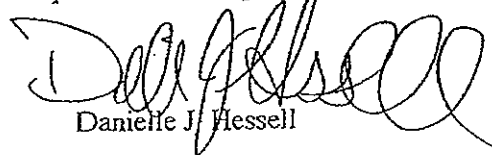
To Whom It May Concern:

Pursuant to the Michigan Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*, as amended, we hereby request a copy of the application for the Nativity Scene located in the Atrium and any related documentation demonstrating City approval and fees or monies collected including but not limited to discussion by the Downtown Development Authority, meeting minutes and written communications.

I trust this information will be supplied within the ten (10) days time limit of the Act. If the cost of this request exceeds \$100.00, please contact me in advance of any copying. Thank you for your assistance in this matter.

Respectfully submitted,

BUTZEL LONG,
a professional corporation



Danielle J. Hessel

DJH/jad



WARREN

Civic Center Facilities Rental Application (574-4676)

Name Douglas J. Marshall Title _____ Organization Freedom From Religion
 Address 27750 Robin Dr City Warren Zip Code 48093
 Phone (home) _____ (work) _____
 (cell) _____ (fax) _____

Email _____ Expected Attendance Open to Public for Ed

Room/Facility requested & type of activity: Display in Atrium

Dates and Times Requested:

Dec 28, 2011 to Jan 3, 2012

Special Equipment Fees

PA/AV/Video \$15.00/day
 DJ/Projector \$15.00/day

Screen \$ 5.00/day

Podium w/ Mic \$25.00/day

PC Cart \$25.00/day

Internet Access \$ 5.00/day

Platform/Stage \$20.00/day

Additional Fees

Kitchen Access \$30.00/day

Weekend Rental \$10.00/hr

(Circle Items Needed)

(Note: Additional days should be placed on a blank sheet of paper and attached to this application)

Room Set-Up Selection (Circle One) (See attached Set-up Sheet)

Conference - U-Shape Style

of Chairs 0 # of Tables 0

Conference - Square Table Style

of Chairs 0 # of Tables 0

Dining/Banquet Style

of Chairs 0 # of Tables 0

Theater Style

of Chairs 0 # of Tables 0

Classroom Style

of Chairs 0 # of Tables 0

Other

of Chairs 0 # of Tables 0

Will Food Be Served? YES NO X Catered? YES NO X (License and Insurance Required)
 Will Alcohol Be Served? YES NO X If yes by whom _____ (Liquor License Required)
 Will You Require User of the Kitchen? YES NO X
 Will You Require Communications Assistance? YES NO X

I hereby make this application for the use of the Warren Civic Center Building facility for the date and hours stated. I also verify that the information on the application is true and correct and I agree to comply with the rental policy pertaining to the use of said facility as adopted by the Warren Downtown Development Authority. I agree to the fee charged and shall be responsible for damage to the use of the facility in accordance with the rental policy. I have read and agree to the Warren Civic Center Building Rental Policies and Rules which were provided to me at the time that my rental application was submitted.

ALSO NOTE: The renter will be held responsible and charged twice for any missing equipment such as cables after use of any of the rooms. I further agree to indemnify, defend and save harmless the Warren Downtown Development Authority and the City of Warren, its officers, agents and employees from and against all loss or exposure (including costs and attorney fees) by reason of liability imposed by law upon the Warren Downtown Development Authority and the City of Warren, its officers, agents and employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or estate, or damage to property including loss or use thereof, arising out of or as a consequence of the performance of this application, whether such injuries to persons or damage to property is due or claimed to be due to the negligence of the contractor, the Warren Downtown Development Authority, the City of Warren, its officers, agents and employees, excepting only such injury or damages as shall have been occasioned by the sole negligence of the Warren Downtown Development Authority, the City of Warren, its officers, agents and employees.

SIGNATURE Douglas J. Marshall DATE 12/22/11

APPLICANT'S DRIVERS LICENSE# _____

(Must be 21 years of age or older)

EXHIBIT 8



OFFICE OF THE MAYOR

ONE CITY SQUARE, Suite 215
WARREN, MI 48093-6728
(586) 674-4520
www.cityofwarren.org

December 21, 2011

Ms. Stephanie Schmitt
Freedom From Religion Foundation
P.O. Box 750
Madison, Wisconsin 53701

Dear Ms. Schmitt:

I have received a letter (December 9, 2011) from Mr. Douglas J. Marshall, a member of your organization, for permission to display a sign in the City Hall atrium near the Nativity Scene.

I have reviewed the proposed 2-sided "sandwich board" sign. The language on the proposed sign is clearly anti-religion and meant to counter the religious tone of the Nativity Scene, which could lead to confrontations and a disruption of city hall.

This proposed sign is antagonistic toward all religions and would serve no purpose during this holiday season except to provoke controversy and hostility among visitors and employees at city hall.

Your phrase that "Religion is but myth and superstition that hardens hearts and enslaves minds," is highly offensive and is not a provable statement. Likewise, your statement that there are "no gods" and "no angels" is also not provable.

If you requested permission to put up a sandwich board saying that there is no Santa Claus, you would be met with the same response. Santa Claus lives in the minds and hearts of many millions of children. The belief of God and religion lives in the hearts and minds of hundreds of millions of people and is as much a part of the fabric of America as the belief in democracy and freedom.

Indeed, our country was founded upon basic religious beliefs. The President takes the oath of office on the Holy Bible. The U.S. Congress has a house chaplain. Both major political party leaders invoke God in their speeches and pronouncements. Our coins have "In God We Trust." We have a whole host of other religious traditions in government situations at all levels.

Everyone has a right to believe or not believe in a particular belief system, but no organization has the right to disparage the beliefs of many Warren and U.S. citizens because of their beliefs.

Ms. Stephanie Schmitt
December 21, 2011
Page 2

Thus, I cannot and will not sanction the desecration of religion in the Warren City Hall atrium.

As I would not allow displays disparaging any one religion, so I will not allow anyone or any organization to attack religion in general. Your proposed sign cannot be excused as a freedom of religion statement because, to my way of thinking, this right does not mean the right to attack religion or any religion with mean-spirited signs. The proposed sign would only result in more signs and chaos.

When I allowed a display in city hall celebrating Ramadan, the Moslem holy season, I received many calls objecting but I would never have allowed a sign next to the Ramadan display mocking or ridiculing the Moslem religion.

In my opinion, Freedom of Religion does not mean "Freedom Against or From Religion." And Freedom of Speech is not the right to yell "Fire" in a crowded theatre. Indeed, there are common sense restraints on all constitutional rights.

Your non-religion is not a recognized religion. Please don't hide behind the cloak of non-religion as an excuse to abuse other recognized religions. You can't make a negative into a positive.

Clearly, your proposed display in effect would create considerable ill will among many people of all recognized faiths.

During this holiday season, why don't we try to accomplish the old adage of "Good will toward all"?

Sincerely,

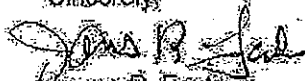
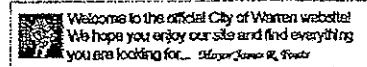

James R. Fouts
Mayor of Warren

EXHIBIT 9

HOME HOW DO I... RESIDENTS BUSINESS DEPARTMENTS GOVERNMENT FORMS & PUBLICATIONS



MAYOR'S OFFICE

Mayor's Accomplishments

State of City 2011

Annual Financial Reports

Budgets

FOIA Request

CityStat

Fouts Forum

Going Green

Mayor's

Accomplishments

MMC Survey

Past Mayors

Press Releases

Student Advisory
Committee

Accomplishments of Warren Mayor James R. Fouts

As Warren Mayor, Fouts has initiated a number of programs to help improve Warren as well as some other notable achievements:

Returned city operated EMS

Cost-savings programs in Sanitation, Building Maintenance and DPW departments

Eliminated city paid cell phones and car allowances for all appointees

Open door policy for the public in the Mayor's office

Volunteer Recognition Ceremony

Created Student Advisory Committee to get the youth of the city more involved in their community

4.0 Students Ceremony

Two successful college fairs

Hands on Inspections by Mayor of businesses and homes in need of cleanup

Neighborhood cleanup sweeps - street by street, house by house, by city inspectors

Consolidated several city departments

Proposed innovative ways of attracting new businesses to locate in Warren such as movie companies and green industries. Started the first city of Warren Green Committee

Film initiatives including approximately 20 shoots already done here in Warren

Demolition of dilapidated buildings

Dismissal of employees who were accused of possession or illegal drug dealing

Random alcohol and drug-testing for all mayoral appointees

New innovated crime-fighting programs including a Citizens Police Academy

Now city-wide drug tip and neighborhood blight hotlines

Special ceremony to honor World War II, Korean War & Vietnam Veterans

Saved thousands on Christmas tree lighting and fireworks

Crackdown on prostitution and drug dealing in Warren

A "Buy American Products" campaign

Collection of donations for the needy and American troops overseas

Saved the city \$30,000 by not using a personal driver and eliminating leased vehicle for Mayor

Defense of Nativity at Warren City Hall

"Buy Warren" initiatives

Urban gardening in Warren & conservation of Monarch Waystations

Weed cutting ordinance 9" to 6"

First Church-Police-City partnership

New used car lot ordinance

Began "Annual Tribute to Frank Sinatra" concerts

Created Code of Ethics for all appointees

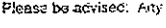
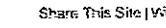
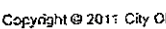
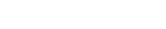
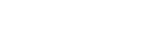
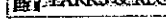
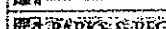
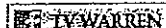
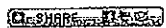
New snow alert policy

Demolition of an adult bookstore

New Parks and Recreation programs

SHARING AND SOCIAL

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