

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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FREEDOM FROM RELIGION FOUNDATION, INC.,

Plaintiff,

v.

Case No: \_\_\_\_\_

MANITOWOC COUNTY, WISCONSIN,  
BOB ZIEGELBAUER, Manitowoc County Executive,  
and JEFFREY BEYER, Manitowoc County  
Public Works Director,

Defendants.

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COMPLAINT

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The plaintiff alleges as its complaint as follows:

1. The plaintiff brings suit against the defendants alleging violations of the Establishment Clause of the First Amendment of the United States Constitution and 42 U.S.C. §1983.
2. The Court has jurisdiction pursuant to 28 U.S.C. §1331.
3. Venue is appropriate in the District Court for the Eastern District of Wisconsin, pursuant to 28 U.S.C. §1391 because one or more of the defendants resides within this judicial district, and because the actions giving rise to the claims occurred within the district.
4. The plaintiff, Freedom from Religion Foundation, is a Wisconsin non-stock corporation with its principal office in Madison, Wisconsin.

5. The plaintiff, Freedom from Religion Foundation, has more than 13,000 members who are opposed to government endorsement of religion and violation of the Establishment Clause of the First Amendment to the United States Constitution.

6. The membership of the plaintiff, Freedom from Religion Foundation, includes residents of Manitowoc County who would have standing in their own right as individuals to bring this action.

7. The organizational purpose of the plaintiff, Freedom from Religion Foundation, is to protect the fundamental constitutional principle prohibiting government endorsement of religion, which the Foundation does by representing and advocating on behalf of its members.

8. The plaintiff, Freedom from Religion Foundation, in its representational capacity, and including resident members of Manitowoc County, is opposed to government actions that establish or give the appearance of endorsement of religion, including by advancing and promoting religion.

9. The defendant, Manitowoc County, is a duly organized political subdivision of the State of Wisconsin. The Defendant, Manitowoc County, is sued for violations of the Establishment Clause that have occurred pursuant to decisions constituting the official policy and practice of the County.

10. The defendant, Bob Ziegelbauer, is an adult individual residing in Manitowoc County, Wisconsin, and he is the Manitowoc County Executive, with a place of employment in the Manitowoc County Courthouse, 1010 S. 8th St., Manitowoc, Wisconsin, 54220. The defendant is sued in his official capacity.

11. The defendant, Jeffrey Beyer, is an adult individual residing in Manitowoc County, Wisconsin, and he is the Manitowoc County Public Works Director, with a place of employment in the Manitowoc County Administration Building, 1110 South 9th Street, Manitowoc, Wisconsin, 54220. The defendant is sued in his official capacity.

12. The public sponsorship of religious displays, including Nativity scenes, in prominent public places is a divisive issue.

13. Objection has been made, for example, to the public display of Nativity scenes in Peshtigo, Green Bay and Wisconsin Rapids, Wisconsin, including by the plaintiff, Freedom From Religion Foundation.

14. The defendants know of the divisiveness of public displays of religious symbols, including in Manitowoc County, where there has been prior opposition to a publicly sponsored nativity scene in front of the Manitowoc County Courthouse.

15. A Nativity scene, nonetheless, has again just been erected on the northeast corner of the Manitowoc County Courthouse lawn.

16. The Courthouse Nativity scene depicts the birth of Jesus Christ and includes figurines representing Jesus, Mary, Joseph, a shepherd, a camel, four lambs and a ram.

17. The Courthouse Nativity scene also includes a blonde-haired angel with a sign exclaiming, "Gloria in Excelsis Deo" (Glory to God in the Highest).

18. The Courthouse Nativity scene was erected during the last week of November 2008 and will remain displayed until around January 10, 2009, according to Manitowoc County Executive Ziegelbauer.

19. The location of the Courthouse Nativity scene is intended to be highly visible so as to attract maximum attention.

20. The Courthouse Nativity scene is an inherently Christian religious display that is intended to have religious significance.

21. Manitowoc County, in fact, has allowed this singular religious display on the Courthouse lawn allegedly since 1946.

22. The defendants have given perpetual approval to the Manitowoc County Catholic Women's Club and the Knights of Columbus to display the Nativity scene, despite known public opposition.

23. The defendant Ziegelbauer, who is the Executive official responsible for Manitowoc County, asserts that the Courthouse Nativity scene "was a good idea 10 or 20 years ago, and it still is."

24. The defendant Ziegelbauer considers those who oppose the Courthouse Nativity scene to be political outsiders who will "go away," after January 5 or 7.

25. The defendants routinely allow the Courthouse Nativity scene to be displayed each year without approval, including without approval by the Manitowoc Public Works Committee, which approval is required of others.

26. The Manitowoc County Courthouse lawn is not an open public forum, however, as prior County approval is generally required for displays, but no written guidelines are known to exist to govern the defendants' approval or disapproval of public displays.

27. As a result of the defendants' phantom regulations governing displays on the Courthouse lawn, preference is given for the displays of political insiders, evidenced by the perpetual display of the Courthouse Nativity scene each year.

28. By contrast, the County's unspecified and undocumented prior restraint of other displays is subject to discriminatory effect, as reflected by the comments of Norbert Vogt, a Manitowoc County Board Supervisor on the Public Works Committee, who has publicly stated that the County should not allow atheists to put up a sign declaring "There is no God."

29. According to Supervisor Vogt, "everybody" realizes there is a Supreme Being and therefore it would be unacceptable for the County to allow a sign denying that reality.

30. The defendant Ziegelbauer, for his part, has stated that the Nativity scene "looks wonderful," though he claims not to have been involved in the perpetual approval of the Courthouse Nativity scene, but he also has not countermanded the annual Nativity display, situated all by itself, on the Courthouse lawn.

31. In fact, the defendants do not have an approval process that applies to the Courthouse Nativity scene, unlike for other displays on the Courthouse lawn, but rather, the Nativity has carte blanche approval.

32. Not "everyone" agrees, however, that the County and its officials should lend their perpetual endorsement to inherently religious displays, like the Nativity scene, which is perceived as being endorsed by the County.

33. Letter writers to the Manitowoc Times Reporter, for example, have complained that religious displays do not belong on public property, precisely because of the separation of church and state.

34. The County Nativity scene is perceived by local residents as endorsement by the County of one religion, i.e., Christianity.

35. Others within Manitowoc County also object to the County Nativity scene, but do not want their names identified in support of that position.

36. Persons opposed to the Courthouse Nativity scene face an element of intimidation which is inherent in a public challenge to the government's endorsement of a Christian display, bespeaking the status of political outsider as to those who oppose the County's endorsement of Christianity.

37. The prominent display of religiously significant symbols on the Manitowoc County Courthouse has, in short, been publicly provocative and divisive.

38. The presence of a Courthouse Nativity scene, in fact, does give the indelible appearance of religious endorsement, including a preference for Christianity.

39. The Establishment Clause of the First Amendment to the United States Constitution prohibits the government from maintaining, erecting, or hosting a holiday display that consists solely of a Nativity scene, thus singling out, showing preference for, and endorsing one religion.

40. The Supreme Court of the United States, no less, has determined that a Nativity scene cannot be the sole focus of a display on government property. County of Allegheny v. ACLU of Pittsburgh, 492 U.S. 573 (1989); Lynch v. Donnelly, 465 U.S. 668 (1983).

41. In County of Allegheny v. ACLU, the Supreme Court held that a County government's creche displayed in the Courthouse represented an unconstitutional endorsement of religion, in violation of the long-standing Constitutional principle that the government may not engage in a practice that has the effect of promoting or endorsing religious beliefs. According to the United States Supreme Court, the display of the creche in the Allegheny County Courthouse had such an unconstitutional effect.

42. The display of religious symbols at a County Courthouse, the very center of local government, creates an unmistakable impression: No viewer could reasonably think that the display occupies this location without support and approval of the government.

43. A Nativity scene on the Courthouse lawn sends an unmistakable message that the County supports and promotes the Christian praise to God that is the Nativity scene's religious message.

44. A Nativity scene is a re-creation of an event that lies at the heart of the Christian faith. It conveys an inherently Christian message which is endorsed by Manitowoc County when that message is perpetually and preferentially nurtured and repeated on the front lawn of the County Courthouse every year.

45. When the County displays a Nativity scene on the Courthouse grounds, close to the entrance and in a prominent position, it places the imprimatur of the County government

behind the Christian religious doctrine, to the exclusion of citizens who are not Christian, such as Jews, Native American practitioners, Muslims, animists, etc., as well as the significant and growing portion of the United States population that is not religious at all.

46. The Constitutional violation in this case is not alleviated, moreover, simply because the County allows the Manitowoc County Catholic Women's Club a perpetual right to celebrate the alleged birth of Christ on the Courthouse lawn.

47. Even a sign disclosing ownership of the Nativity scene by a Roman Catholic organization would not absolve the County of violating the Establishment Clause; on the contrary, such a sign would simply demonstrate that the government endorses the religious message of that organization.

48. The Establishment Clause obviously limits the religious content of the government's own communications, but it also prohibits the support and promotion of religious communications by religious organizations giving the appearance of preferential endorsement.

49. The defendants' actions have violated the fundamental principle prohibiting government endorsement of religion.

50. The defendants impermissibly are advancing, endorsing, and promoting the establishment of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

51. The actions of the defendants have occurred under the color of State law.

52. The defendants' actions give the appearance of governmental endorsement of religion, including the endorsement of the personal religious preferences of political insiders.



53. The defendants' actions convey a message that religion is favored, preferred, and promoted by Manitowoc County and its officials.

54. The actions of the defendants violate 42 U.S.C. § 1983 because the defendants are violating the United States Constitution, while acting under color of State law, including violations by Manitowoc County, which has authorized the placement of a Christian Nativity scene on the Courthouse lawn as a matter of County policy.

55. The defendants have acted deliberately with the purpose to achieve visibility for the display of religious symbols at prominent public sites, which is exactly the reason that the Nativity display is on the Courthouse lawn, providing a powerful medium of support for the Christian message thereby conveyed.

56. The defendants are acting in willful disregard of the Constitutional principles of the Establishment Clause as they cannot even contemplate that anyone would disagree with the supremacy of the Christian mandate conveyed by the Nativity scene.

57. The defendants marginalize persons who do not share their views regarding the public display and promotion of religion by the County, including members of the Freedom From Religion Foundation who are forced to have and do have unwanted exposure to the Courthouse Nativity scene--and who do not think it "looks wonderful."

58. The defendants have publicly affiliated Manitowoc County, including its official government institutions, with the support of religion, which affiliation is prominently emphasized so that objectors and dissenters are shown to be political outsiders and discouraged

from challenging the official view that public sponsorship of religious displays is an appropriate exercise of government authority.

WHEREFORE, the plaintiff demands judgment as follows:

A. For a declaration that the actions of the defendants violate the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. §1983;

B. For an order enjoining the defendants from promoting, advancing, or endorsing the establishment of religion by public displays of religious symbols that give the appearance of government sponsorship of religion;

C. For judgment awarding such further relief as the Court deems just and equitable;  
and

D. For judgment awarding the plaintiff its reasonable costs, disbursements and attorneys fees as allowed by law, pursuant to 42 U.S.C. §1988.

Dated this 17<sup>th</sup> day of December, 2008.

**BOARDMAN, SUHR, CURRY & FIELD, LLP**

By:



Richard L. Bolton, State Bar No. 1012552

Attorneys for Plaintiff

1 S. Pinckney Street, 4th Floor

P. O. Box 927

Madison, WI 53701-0927

PH: (608) 257-9521 FX: (608) 283-1709

[rbolton@boardmanlawfirm.com](mailto:rbolton@boardmanlawfirm.com)