

FREEDOM FROM RELIGION *foundation*

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SENT VIA MAIL, E-MAIL & FAX
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(618) 997-2028

The Honorable Robert Butler
Mayor
City of Marion
1102 Tower Square
Marion IL 62959

Re: Unconstitutional Crèche and Menorah Displays

Dear Mayor Butler:

I am writing on behalf of concerned Marion residents and taxpayers and members of the Freedom From Religion Foundation ("FFRF") who object to the erection and maintenance of a nativity and other religious displays on city property. FFRF is a national nonprofit organization with nearly 16,000 members across the country including almost 600 members in Illinois. Our purpose is to protect the fundamental constitutional principle of separation of church and state.

It is our information and understanding that the City displays a crèche and menorah at Tower Square. The prominent, life-sized crèche features figurines including Jesus, Mary, Joseph, and angels. There is a large star above the display that is affixed to the clock tower. We also are told that the sound system around Tower Square has been playing Christian music such as "Away in a Manger." On the other side of Tower Square, there is a menorah. It is our understanding that a second crèche is prominently located inside City Hall. The display is positioned in front of large windows at the front of City Hall and is near the City Hall "Welcome" awning. Pictures of the displays are enclosed.

It is our further understanding that Dena Martin and Robert Donelson brought their objections to the display to your attention. We understand that they requested to put up a Wiccan display of their own at Tower Square in celebration of Yule on December 21, 2010. We are told that you said you would "have to think long and hard" about approving the display and have so far declined to allow their display.

It is unlawful for the City of Marion to maintain, erect, or host a nativity scene and menorah on city property, thus singling out, showing preference for, and endorsing particular religions. The Supreme Court has ruled it is impermissible to place a nativity scene as the main 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 "sen[t] an unmistakable message that [the county] supports and promotes the Christian praise to God that is the crèche's religious message." *Id.* at 600.

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"). When the government displays this manger scene, which depicts the legendary birth of Jesus, it places the imprimatur of the government behind the Christian religious doctrine.

The Seventh Circuit Court of Appeals struck down a similar display and held:

Because City Hall is so plainly under government ownership and control, every display and activity in the building is implicitly marked with the stamp of government approval. The presence of a nativity scene in the lobby, therefore, inevitably creates a clear and strong impression that the local government tacitly endorses Christianity.

American Jewish Congress v. City of Chicago, 827 F.2d 120, 128 (7th Cir. 1987)

Furthermore, the Chanukah menorah is a religious symbol and has been recognized as such by the U.S. Supreme Court. *See County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 613 (1989)("The menorah, one must recognize, is a religious symbol: it serves to commemorate the miracle of the oil as described in the Talmud."); *see also American Civil Liberties Union of New Jersey v. Schundler*, 104 F.3d 1435, 1446 (3d Cir. 1997)("the menorah is a religious symbol."); *Kaplan v. City of Burlington*, 891 F.2d 1024, 1028 (2d Cir. 1989)("The menorah, like the crèche, is clearly a religious symbol.").

The dual display of religious symbols does not exempt the City from the requirements of the Establishment Clause. In the particular context of *Allegheny*, a majority of the Supreme Court found a display of the menorah as part of a secular display to be constitutional. Justice O'Connor noted that the secular signage and symbols placed in

conjunction with the menorah did not send a message of religious endorsement. *Allegheny*, 492 at 635 (concurring). However, in other contexts courts have found menorah displays to be in violation of the Establishment Clause. *See ACLU v. Schundler*, 104 F.3d 1435 (holding that Jersey City's display of a crèche and a menorah on the lawn of the city hall violated the Establishment Clause); *Kaplan v. City of Burlington*, 891 F.2d 1024 (2d Cir. 1989)(finding unconstitutional the solitary display of a menorah in a public park adjacent to city hall).

Displaying inherently religious symbols at City Hall and at Tower Square unmistakably sends the message that the City of Marion endorses the religious beliefs embodied in the displays. As Justice O'Connor said, "The display of religious symbols in public areas of core government buildings runs a special risk of 'mak[ing] religion relevant, in reality or public perception, to status in the political community.'" *Allegheny*, 492 U.S. at 626 (concurring)(citations omitted). This excludes citizens who are not Christian or Jewish (like Dena Martin and Robert Donelson and atheists in Marion). The violation is particularly egregious if the City selects particular "favored" messages such as Christian and Jewish messages and censors "unfavored" messages such as those that are Wiccan or of nonbelief. A growing number of the population is non-religious (15%). *See American Religious Identification Survey 2008*. Marion is home to persons of various beliefs and should remain neutral in regards to religion.

There are ample private and church grounds where religious displays may be freely placed. Once the government enters into the religion business, conferring endorsement and preference for some religions over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship.

We request that you immediately remove all religious symbols from City property and immediately inform us in writing of the steps you are taking to remedy these First Amendment violations.

Sincerely,



Patrick C. Elliott
Staff Attorney