

## Holiday Displays/Nativity Scenes

### Federal Courts

Federal courts have ruled that local governments can display nativity scenes and other religious symbols of Christmas if these are merely part of displays that also include secular holiday symbols. Secular symbols include wreaths, Christmas trees, Santa, and much more. A nativity scene, by itself, in a public park would not be permissible.

The Establishment Clause of the First Amendment to the U.S. Constitution prohibits Congress from promoting religious principles or organizations. Municipal governments have the same prohibition through the Fourteenth Amendment. Religious displays on government property often trigger complaints that the principle of separation of church and state is being violated, or that the government is advancing the tenets of one religion. In 1989, the U.S. Supreme court ruled again on just such a complaint:

The Allegheny County, PA government put up a nativity scene inside a government building, including the message, "Glory to God in the Highest." Outside the city-county building an 18-foot Menorah was displayed next to a 45-foot Christmas tree and a sign saluting liberty. The U.S. Supreme Court ruled that the nativity scene was unconstitutional, but the Menorah display was permissible, stating that 1) the nativity scene violated the Establishment Clause because it carried a definite Christian message, 2) it was placed in a prominent, government-controlled place, and 3) nothing surrounding the display detracted from, or balanced out, the religious display. The Court ruled that the Menorah showed pluralism instead of delivering a particular religious message. The context of the display did not create the appearance that the government was promoting a religious message.

### Michigan

The City of Warren puts up a holiday display in its civic center every year, including a lighted tree, reindeer, snowmen, nutcrackers, a "Winter Welcome" sign, and a nativity scene. In 2010, the Freedom from Religion Foundation asked the city not to include the nativity scene in its yearly display. The city denied the request. In 2011, the Foundation asked the city to include its own "Winter Solstice" sign in the display. The sign contained statements including "religion is but myth." The city denied the Foundation's request. The Foundation sued, claiming that the nativity scene, together with the exclusion of the Foundation's sign, violated the Establishment and Free Speech Clauses of the Federal Constitution.

The federal district court rejected all of the Foundation's claims.

Generally, the same rules apply to governmental-owned displays placed on private property and to displays owned by a community group but placed on public property. The key is to not cross the line between "neutral accommodation" of religion and "promotion" of religion. Non-religious holiday displays are allowed. A municipality can decorate with all the tinsel, wreaths, and reindeer it wants.

If your municipality wants to decorate with spiritual and secular displays, the best course is to consult first with your municipal attorney.

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# Does a nativity scene in a city's holiday display violate the Establishment Clause of the Federal Constitution?

## FACTS:

Each year, the city of Warren puts up a holiday display in its civic center. Included are a lighted tree, reindeer, snowmen, nutcrackers, a "Winter Welcome" sign, and a nativity scene. In 2010, the Freedom from Religion Foundation asked the city not to include the nativity scene. The city refused, indicating that the nativity scene would remain. In 2011, the Foundation asked the city to include its own sign in the display. The "Winter Solstice" sign contained statements including "religion is but myth." The city refused. The Foundation sued, claiming that the nativity scene together with the exclusion of the Foundation's sign violated the Establishment and Free Speech Clauses of the Federal Constitution.

The federal district court rejected all of the Foundation's claims.

## QUESTION 1:

**Does the inclusion of a nativity scene in the city's holiday display violate the Establishment Clause of the Federal Constitution?**

**Answer according to the 6th Circuit Court of Appeals:**

No. The First Amendment says the "Congress shall make no law respecting an establishment of religion." As made applicable to the states through the Fourteenth Amendment, "the Clause prohibits government from favoring one religion over another or from favoring religion over irreligion (or irreligion over religion)." The Court noted that several U.S. Supreme Court decisions (including *County of Allegheny v ACLU*) have previously examined the issue as applied to very similar facts, i.e., multi-purpose, multi-symbol displays, and determined that such displays do not offend the Establishment Clause. Essential to the Court's decision was the inclusion of all of the symbols.

## QUESTION 2:

**Did the city violate the Foundation's free-speech rights when it refused to add the Winter Solstice sign to the display?**

**Answer according to the 6th Circuit Court of Appeals:**

No. According to the Court, the First Amendment prohibits governments from making any law "abridging the freedom of

speech" of individuals. "As written, the guarantee prevents governments from restricting the speech of individuals; it does not empower individuals to abridge the speech of government." Citing the U.S. Supreme Court decision *Pleasant Grove City, Utah v Sumnum*, the Court held that Warren's holiday display amounts to government speech and, as such, is exempt from First Amendment scrutiny subject, however, to compliance with other constitutional guarantees.

*Freedom from Religion Foundation v City of Warren, No. 12-1858, Sixth Circuit Court of Appeals, Feb. 2013.*

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