

ACLU OF MASSACHUSETTS
PRESS AND PUBLIC ADVISORY ON RELIGIOUS DISPLAYS
December 6, 1999

In 1998, the ACLU of Massachusetts brought suit challenging the town of Somerset's display of the nativity scene on the lawn of the town offices building. U.S. District Court Judge Richard Stearns declared the display unconstitutional, finding it violated the Establishment Clause of the U.S. Constitution. The town, to get around the decision, chose to add a menorah and many secular symbols to the display of the creche, including an enormous Santa Claus figure, dubbed "Santazilla" by local residents.

Since that time, the ACLU of Massachusetts has received many phone calls and letters raising questions about the constitutionality of a wide range of religious displays. Newspaper articles have appeared, quoting local residents as saying they don't understand why the ACLU has to ruin the celebration of Christmas. Others want to know why we aren't doing anything about the menorah which has been added to the display. In addition, the ACLU has been accused of telling the town it **had** to add secular figures to the display.

First, it should be obvious that we care about religious freedom - our goal is not to ruin celebrations of Christmas or any other religious holiday. Rather, we strongly support freedom of religion and have litigated to defend it. But government sponsorship of religious expression will ultimately undermine the free exercise of religion and cannot be tolerated under the First Amendment's ban on government "establishment of religion." As one Supreme Court justice remarked, "The fullest realization of true religious liberty requires that government ... effect no favoritism among sects or between religion and nonreligion." Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring).

Second, those who care deeply about their important religious symbols should not want the government to display those symbols or demean them by adding enormous plastic figurines of Frosty the Snowman, Santa Claus, or innumerable other secular objects. See, e.g., Lynch v. Donnelly, 465 U.S. 668, 671 (1984) (allowing government display of nativity scene surrounded by a Santa Claus house, reindeer, candy striped poles, Christmas tree, cutout figures of a clown, elephant and teddy bear). In one Supreme Court case, the Governing Board of the National Council of Churches of Christ in the U.S.A. argued that "government acceptance of a creche on public property ... secularizes and degrades a sacred symbol of Christianity." County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 651 n. 8 (1989). Two Roman Catholic priests testified that "the creche display offended them." Id. Jews, too, opposed the government's display of the menorah in that case. Please note that the ACLU of Mass. does **not** tell cities or towns they have to add secular symbols - rather, we think this choice is one of the worst things a municipality can do.

Third, we would like to provide the following information to help people understand the issues involved. While it is our position that the government should not be sponsoring any religious displays, the U.S. Supreme Court has issued a number of decisions that make this a more complicated question legally. In light of those Supreme Court decisions, the following principles apply:

Private religious displays on private property

1. The First Amendment protects the free exercise of religion and freedom of speech; thus, all private parties have the right to display religious symbols on their own private property. For example, churches have a right to display the creche on their land, as do individuals in their yards.

Private religious displays on public property

2. On public property, if a religious symbol is privately paid for and if the government allows equal access for expression of all ideas on that property, the display is probably constitutional. So, at "traditional public forums" like the Boston Common, private groups may be able to sponsor a religious display subject to content-neutral, reasonable, "time, place and manner" restrictions. County of Allegheny v. American Civil Liberties Union, 492 U.S. at 613. On government property that is not open to expression by all, the government may not allow private displays of the creche, menorah, or other religious symbols.

Government-sponsored holiday displays

3. The government itself may sponsor certain holiday displays if the displays do not cross the line and become an "endorsement" of religion. Whether a particular display is constitutional or not can be a complicated question because the Supreme Court requires, on a case by case basis, an analysis of the entire context of the display. Where the government displays the nativity scene as the focal point of a display, generally that will not be permissible because the creche is considered an important Christian religious symbol unlike a Christmas tree which, according to the Supreme Court, is now a secular symbol. On the other hand, if the nativity scene is only one small part of a display containing many secular symbols, courts have allowed towns to sponsor the display. Lynch v. Donnelly, 465 U.S. 668 (1984).

In Somerset, the press has reported that the town rejected an offer from the church across the street to display the creche there. Instead, Somerset officials have changed the display, keeping the nativity scene but adding a huge plastic Santa Claus, a menorah, reindeer, Frosty the Snowman, and a sign saying Season's Greetings.

The town's decision to add a menorah and a variety of secular symbols is probably the worst choice it could have made. Those objecting on constitutional grounds to the town's display of the creche are not satisfied. In addition, the plastic "Santazilla" is offensive to those who believe in the religious meaning of the symbols. "Some devout Christians believe that the creche should be placed only in reverential settings, such as a church or perhaps a private home; they do not countenance its use as an aid to commercialization of Christ's birthday." County of Allegheny v. American Civil Liberties Union, 492 U.S. at 651 (Stevens, J., concurring in part and dissenting in part). According to the Associated Press, the minister of the church across from Somerset's town offices says the current display "trivializes the Christian message. It's worse than not having it at all." The American Jewish Congress also issued a statement, decrying the addition of the menorah and secular symbols as "offensive."

We are also aware that officials in some cities and towns are ignoring, if not openly defying, the now well-settled law regarding religious displays. This is regrettable because it creates the divisiveness within communities that the Establishment Clause was intended to prevent. We urge these public officials to reconsider their displays and provide education and understanding, instead of defiance of court decisions.

Respect for the separation of church and state helps to guarantee freedom of religion. Those who believe in religious freedom should support decisions which prevent government sponsorship of religious displays and they should not encourage town officials to make a mockery of important religious symbols by cluttering them up with secular objects. Cities and towns can celebrate the holiday season while leaving truly religious expression to the adherents of various faiths.