

Sue Jeffers is a legal consultant to the League. You may contact her at sjeffers@mml.org.

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.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

NEWLY
ELECTED
OFFICIALS
TRAINING

YOU WON!

Now What?

This newly elected officials training consists of core topics that will help educate first-time elected officials, as well as seasoned officials, on the basic functions they will need to know in their roles as public leaders. Topics include: introduction to League services; an overview of basic local government; roles and responsibilities of elected officials; Open Meetings Act; Freedom of Information Act; lobbying 101; and a panel discussion with seasoned elected officials.

League member communities, \$75
Nonmember communities, \$130

NOVEMBER 19 Lansing
NOVEMBER 21 Frankenmuth
DECEMBER 5 Holland
DECEMBER 10 Ann Arbor
DECEMBER 12 West Branch
DECEMBER 17 Huntington Woods



michigan municipal league