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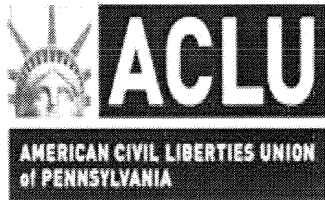
By Facsimile

Maryanne C. Petrilla, Chair
Gregory A. Skrepenak
Stephen A. Urban
Luzerne County Commissioners
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711
Fax: (570) 825-9343

RE: Crèche and Menorah on Courthouse Lawn

Dear Commissioners Petrilla, Skrepenak, and Urban:

We have received complaints regarding two religious displays — a crèche and a menorah — on the lawn of the Luzerne County Courthouse. We understand that the County owns both items and erects and maintains them using County funds. The crèche is illuminated at night by several spotlights that are owned by the County and powered using government funds. We write to inform you that both displays violate the Establishment Clause of the First Amendment to the U.S. Constitution, and to ask that you remove them.



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A public entity may display a religious symbol, if at all, only when the symbol is integrated into a broader display that, taken all together, communicates a secular message to viewers. *See, e.g., County of Allegheny v. ACLU*, 492 U.S. 573 (1989) (striking down a solitary crèche display while upholding a larger, secular display that included a menorah). By contrast, displays on public property are impermissible if religious elements stand alone or predominate over secular ones, or if the items otherwise communicate a message of governmental endorsement of religion. *See, e.g., id.* at 602 (solitary crèche display had “the effect of endorsing a patently Christian message”); *Kaplan v. City of Burlington*, 891 F.2d 1024, 1028-31 (2d Cir. 1989) (solitary menorah display unconstitutional); *Am. Jewish Cong. v. City of Chicago*, 827 F.2d 120, 127-28 (7th Cir. 1987) (solitary crèche display unconstitutional); *ACLU v. City of Birmingham*, 791 F.2d 1561, 1567 (6th Cir. 1986) (same).¹

¹ We understand that the County has a snowman displayed elsewhere on the courthouse grounds. But the placement of the crèche, menorah, and snowman apart from each other and their lack of thematic unity means that each item must be viewed as a separate display for constitutional purposes. *See Allegheny*, 492 U.S. at 581, 598 (noting that while there were other decorations in various areas of the courthouse, the crèche was the single element of the display on the Grand Staircase); *Am. Jewish Cong.*, 827 F.2d at 125-26 (holding that crèche display must be analyzed separately from other displays in City Hall building, because the different displays were not thematically unified and were situated too far away from the crèche).

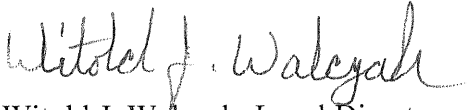
In *American Civil Liberties Union of New Jersey v. Schundler*, 104 F.3d 1435 (3d Cir. 1997), the U.S. Court of Appeals for the Third Circuit, which has jurisdiction over Pennsylvania, struck down a town's display of a crèche and a menorah. In that case, the government owned and erected the items in a city-hall plaza. *Id.* at 1438-39. The city argued that the inclusion of both a menorah and a crèche transformed the display into a secular celebration of diversity. *Id.* at 1446. The court flatly rejected that argument, however, noting that "[i]t remains clear that government celebration of one particular religion, or even more than one religion, can constitute government endorsement of religion that violates the Establishment Clause." *Id.* at 1447.

Here, the constitutional violations are even plainer: The crèche and the menorah are each displayed alone, not integrated even into an interfaith display like the one held unconstitutional in *Schundler*. The crèche is also illuminated at night, thus making it yet more prominent as a standalone religious display. Whether viewed separately or together, the crèche and the menorah cannot survive constitutional scrutiny. *See Allegheny*, 492 U.S. at 601-02 (crèche standing alone endorses Christianity); *Schundler*, 104 F.3d at 1444-49 (display with crèche and menorah endorses religion).

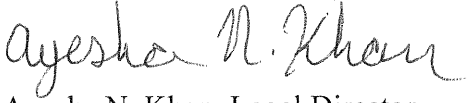
Nor would it change the analysis if the County were to designate the courthouse lawn as a public forum. Speech is attributable to the County where the County shapes, controls, or presents the message. *See, e.g., Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 1131-33 (2009) (permanent monuments donated by private parties and accepted by the government for display in public park are government speech); *Summers v. Adams*, No. 3:08-2265, 2009 WL 3785691 (D.S.C. Nov. 10, 2009) (legislatively created license plates are government speech). Here, Luzerne County is the owner of both the crèche and the menorah, and is in complete control of their content, so the displays constitute the County's speech. And government speech must always conform to the restrictions of the Establishment Clause, even if it occurs alongside private speech. *See Pleasant Grove City*, 129 S. Ct. at 1131-32; *Summers*, 2009 WL 3785691. Messages by private speakers simply cannot wash away the religious meaning of the government's choice to communicate religious messages, even when the private speech occurs alongside the government's speech.

Accordingly, we ask that you remove the crèche and menorah from the courthouse lawn by Friday, December 18. In light of the clear constitutional violation posed by these religious symbols, we ask that you respond to this letter by close of business Tuesday, December 15, informing us whether you will comply with this request. If you refuse to remove the crèche and menorah from government property by December 18, we will have no choice but to seek relief from a federal judge. If we do not hear from you by the appointed time, we will construe your silence as a refusal. Please send your response to Witold Walczak by fax (412-681-8707) or contact him by phone (412-681-7864) if you have any questions. We look forward to hearing from you.

Very truly yours,



Witold J. Walczak, Legal Director
ACLU of Pennsylvania



Ayesha N. Khan, Legal Director
Americans United for Separation of Church and State

Cc: Hon. Chester B Muroski
Joseph Van Jura, Esq.
Doug Pape, County Manager