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REPLY TO FLORIDA

December 12, 2018

VIA EMAIL ONLY

Mr. Jeff Dickerson, President
Hocking County Commissioners
1 E. Main St.
Logan, OH 43138
commissioners@co.hocking.oh.us

RE: Hocking County – City of Logan Christmas lights display

Dear President Dickerson:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and public policy organization with an emphasis on First Amendment civil liberties. With offices in Florida, Virginia, and Washington D.C., and hundreds of affiliated attorneys across the nation, we specialize in *pro bono* constitutional litigation, including the defense of traditional American holidays such as Christmas.

Concerned Hocking County (“County”) residents have contacted Liberty Counsel regarding correspondence sent by the Freedom From Religion Foundation (“FFRF”) demanding the County remove Christmas lights in the shape of a Nativity Scene from the Hocking County Courthouse light display. This letter sets forth Liberty Counsel’s understanding of the facts, and Liberty Counsel’s offer of *pro bono* assistance to Hocking County in defense of cherished holiday traditions.

I understand that numerous lighted symbols of the Christmas holiday (from a unified, hand-made collection of public art) are displayed on public property in the City of Logan (“City”) and on or around the Hocking County Courthouse. The collection includes a Nativity Scene, displayed on the exterior of the courthouse. On the same side of the courthouse as the Nativity Scene, in addition to the two lighted reindeer on the courthouse lawn, I further understand that the County has displayed lighted secular Christmas holiday symbols, including a poinsettia, holly leaf wreath, and Christmas bells. The collection has taken

various forms throughout the years, but taken as a whole, has always constituted a mixture of secular and religious Christmas symbols.

The Christmas light collection displayed in downtown Logan and on the courthouse exterior is a 79-year-old holiday tradition. A Logan resident, the late James D. Wells, created these lighted Christmas holiday decorations, beginning in 1939. The hand-drawn designs were sketched out in chalk on cement floor, and steel bar stock was carefully bent to match. The steel pieces were welded or bolted together, painted, and lights and garland were added. Mr. Wells' nine children assisted their father in painting the colored lights by hand. Year after year, Mr. Wells designed more pieces to add to the existing light collection. Residents have come to consider the collection a cherished seasonal display of public art. Under these circumstances, it is entirely permissible for the Hocking County Courthouse to display the Nativity Scene portion of the Christmas holiday light collection.

In recent years, the Christmas light collection has come to the attention of the FFRF, which has ignored the overall secular content of the City/County seasonal art display, and has instead focused on one element – the Nativity Scene. In its 2018 letter, FFRF acknowledges that the “Supreme Court has ruled it is impermissible to place a nativity scene as the **sole** focus of a display on government property.” (Emphasis added). Indeed, the operative words are “sole focus.”

FFRF failed to point out the converse (but important) implication of these rulings; as well as the rulings of numerous other federal courts which do not support its demand. The County may in fact maintain a Christmas display **that includes both religious and secular symbols**, and thereby engage in permissible “government speech.” See *Lynch v. Donnelly*, 465 U.S. 668 (1984), at 681–82 (finding that a city’s inclusion of a Nativity Scene in a holiday display including secular decorations did not violate the Establishment Clause because the purpose of including the Nativity scene was to celebrate the Christmas holiday and depict its origins), as well as *Cty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989) *abrogated by Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014).

Numerous other cases have upheld the display of Nativity Scenes on government property. See also *Elewski v. City of Syracuse*, 123 F.3d 51, 54–55 (2d Cir.1997); *ACLU of N.J. ex rel. Lander v. Schundler*, 168 F.3d 92, 104–08 (3d Cir.1999) (Alito, J.); *Mather v. Village of Mundelein*, 864 F.2d 1291, 1292–93 (7th Cir.1989) (per curiam); *ACLU v. City of Florissant*, 186 F.3d 1095, 1098 (8th Cir.1999); as well as *Doe v. City of Clawson*, 915 F.2d 244 (6th Cir.1990).

FFRF is aware of the strong legal position of municipalities that maintain Christmas displays including religious and secular elements. See *Freedom from Religion Foundation, Inc. v. City of Warren, Mich.*, 873 F. Supp. 2d 850 (E.D. Mich. 2012), *aff'd*, 707 F.3d 686 (6th Cir. 2013). In *City of Warren*, the FFRF sought to have a city’s Nativity Scene declared unconstitutional, or in the alternative, demanded that its offensive sign stating “religion is but myth and superstition” be included next to the Nativity Scene. *Id.* The District Court rejected

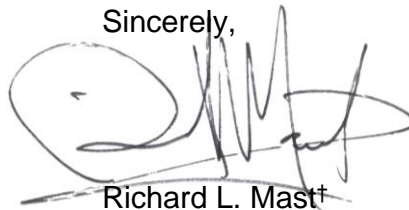
FFRF's claims, and its rejection was affirmed by the Sixth Circuit Court of Appeals.¹ *City of Warren* is the most recent controlling Nativity Scene case in the Sixth Circuit Court of Appeals, which has jurisdiction over Ohio, as well as Kentucky, Michigan, and Tennessee.

"Government speech" consisting of religious and secular Christmas holiday symbols is defensible. The County has not opened a "forum" for others to provide their own speech, and thus need not accept for display at the courthouse (should they be proffered) items such as hateful FFRF banners or other items which have no longstanding connection to the American Christmas holiday. The Christmas light collection – including its Nativity Scene - is legally defensible and should continue to be displayed. There are existing secular symbols of Christmas within the collection and on courthouse property, sufficient to notify the reasonable observer aware of the full context of the collection and its history and tradition, that the collection's purpose, effect and intent is not to "endorse" Christianity; but is simply to celebrate Christmas.

Liberty Counsel has successfully defended government entities against baseless claims of First Amendment violations by the FFRF and others. If the County takes action in accordance with Liberty Counsel's advice, and a representation agreement is signed, we are prepared to defend the County at no charge to the taxpayers.

Should you or others wish to discuss further after reviewing the above cases with counsel, or wish to know more about Liberty Counsel's experience in these matters, please do not hesitate to contact us at 407-875-1776 or via email at Liberty@lc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Mast', written over a horizontal line.

Richard L. Mast

CC:
Horatio G. Mihet,^{††}
Vice President of Legal Affairs and
Chief Litigation Counsel,
Liberty Counsel

County Attorney

¹ *Freedom from Religion Found., Inc. v. City of Warren, Mich.*, 707 F.3d 686 (6th Cir. 2013).

[†] Licensed in Virginia

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