

Civil Action Number: 3:18-cv-01019

PROOF OF SERVICE

(this section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's Signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROGER LAMUNION,)
)
 Plaintiff,)
)
 v.) No. 3:18-cv-01019
)
 FULTON COUNTY, INDIANA,)
)
 Defendant.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. Each December, on the lawn outside the historic Fulton County Courthouse, a sizeable nativity scene is erected for the holiday season. This crèche—which is, of course, one of the pre-eminent symbols of Christianity—is erected not by any private organization or faith but by Fulton County itself. As such, a reasonable observer viewing the display would be forced to conclude that Fulton County supports and endorses the religious message conveyed by the display of the nativity. This message is not in any way dulled by the presence of secular figurines in relative proximity to the crèche. The plaintiff is a resident of Marshall County, the county immediately to the north of Fulton County, who comes into direct and unwelcome contact with the display each year. The display violates the Establishment Clause of the First Amendment to the United States Constitution, and the plaintiff is entitled to declaratory and injunctive relief.

Jurisdiction, Venue, and Cause of Action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution.

Parties

6. Roger LaMunion is an adult resident of Marshall County, Indiana.
7. Fulton County, Indiana is one of Indiana's ninety-two counties and is located in the north-central portion of the state.

Factual Allegations

8. The Fulton County Courthouse ("the Courthouse") is a historic building located in Rochester, Indiana, the county seat of Fulton County ("the County"). Located inside the Courthouse are not only the county courts but also several other government offices, such as the offices of the county clerk, the county prosecutor, and the county's probation department. Since 2000, the Courthouse has been listed on the National Register of Historic Places.
9. The Courthouse, like many other county courthouses in Indiana, is surrounded by a sizeable lawn that, together with the Courthouse, occupies an entire square block in Rochester's central downtown business district. The Courthouse lawn is bordered on the west by Main Street and on the south by Ninth Street, the two primary thoroughfares in Rochester.
10. The Courthouse lawn contains four permanent monuments: a memorial dedicated to the Potawatomi "Trail of Death"; a memorial dedicated to Rochester Normal University; and two war memorials. Aside from these four permanent monuments, the lawn contains a few trees but consists largely of open green space.

11. Each winter, however, the County erects on the south side of the Courthouse lawn a sizeable nativity scene. This crèche consists of a manger constructed from bales of hay and figurines representing several figures present in the story of the birth of Christ: Mary, Joseph, and the Baby Jesus; the three wise men; various animals; and even an angel positioned over the other figures. A photograph of the crèche is attached and incorporated herein as Exhibit 1.
12. This crèche has been displayed by the County on the Courthouse lawn each year for at least the past eight years, and likely for much longer.
13. A crèche, of course, is one of the preeminent symbols of Christianity, and is readily and exclusively associated with that religion. The display of the crèche on the Courthouse lawn lacks a secular purpose, it has the principle effect of advancing religion, and a reasonable observer would conclude that it constitutes governmental endorsement of religion.
14. In addition to the crèche, each year the County erects a “Santa house” on the west side of the Courthouse lawn. This “Santa house” is a small structure that children may visit for a couple of hours each weekend day in order to sit on Santa’s lap and tell Santa what they would like for Christmas. This “Santa house” is physically removed from the crèche, is not a part of the same display as the crèche, and does not in any way dull the religious impact or message of the crèche. A photograph of the “Santa house” is attached and incorporated herein as Exhibit 2.
15. For the past two years, but not before that, the County has also placed four small figurines on the Courthouse lawn: a Santa figurine, a snowman figurine, a reindeer figurine with lights, and a candle figurine. These four figurines are placed on the southwest side of the Courthouse lawn, a short distance—perhaps ten or twenty yards—from the crèche display.

While these four figurines are in relative proximity to the crèche, they are not part of the same display nor would a reasonable person conclude that they were part of the same display. A photograph of these four figurines, showing their proximity to the crèche display, is attached and incorporated herein as Exhibit 3.

16. The display of the nativity scene during the holiday season has the principle purpose and effect of advancing one preferred religion over all others. A reasonable person viewing the display could only conclude that the County endorsed the religious display and the Christian faith.
17. Roger LaMunion resides in Argos, Indiana, a small town in Marshall County, Indiana, that is not far from Rochester.
18. Mr. LaMunion previously worked in Rochester, near the Courthouse, although he is now retired. Even though he no longer travels to Rochester on a daily basis, each December he will make multiple trips to Rochester in order to run errands or for other personal reasons. As Rochester is not a large city, these trips will inevitably require him to pass the Courthouse lawn and the nativity scene displayed there.
19. Mr. LaMunion objects to the display of the crèche on the Courthouse lawn as he does not believe that local government should be endorsing a religious faith. However, his trips to Rochester during December bring him into direct and unwelcome contact with the display.
20. The defendant has, at all times, acted or refused to act under color of state law.
21. As a result of the actions or inactions of the defendant, the plaintiff is suffering irreparable harm for which there is no remedy at law.

Legal Claim

22. The display of the nativity scene on the lawn of the Fulton County Courthouse violates the Establishment Clause of the First Amendment to the United States Constitution.

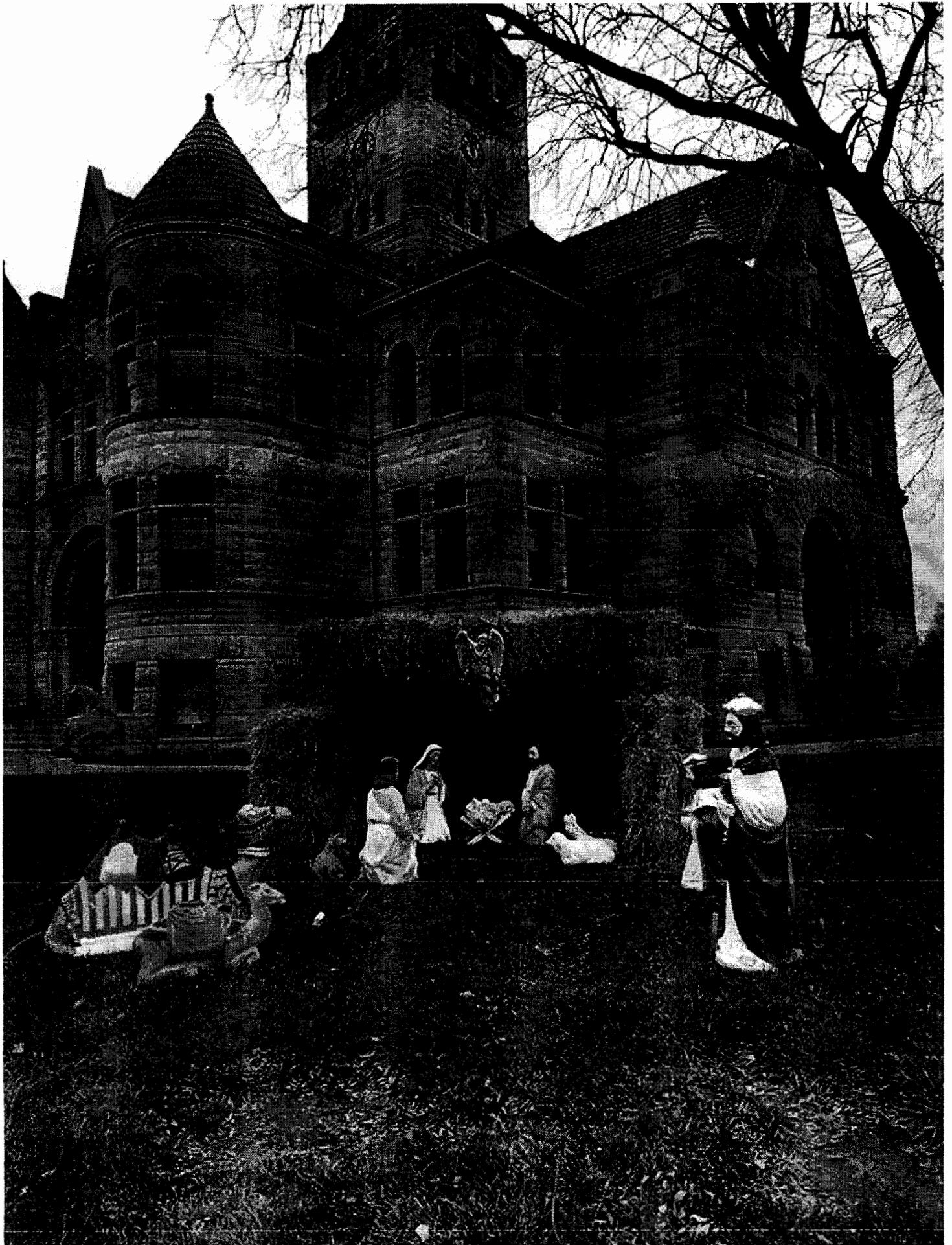
Request for Relief

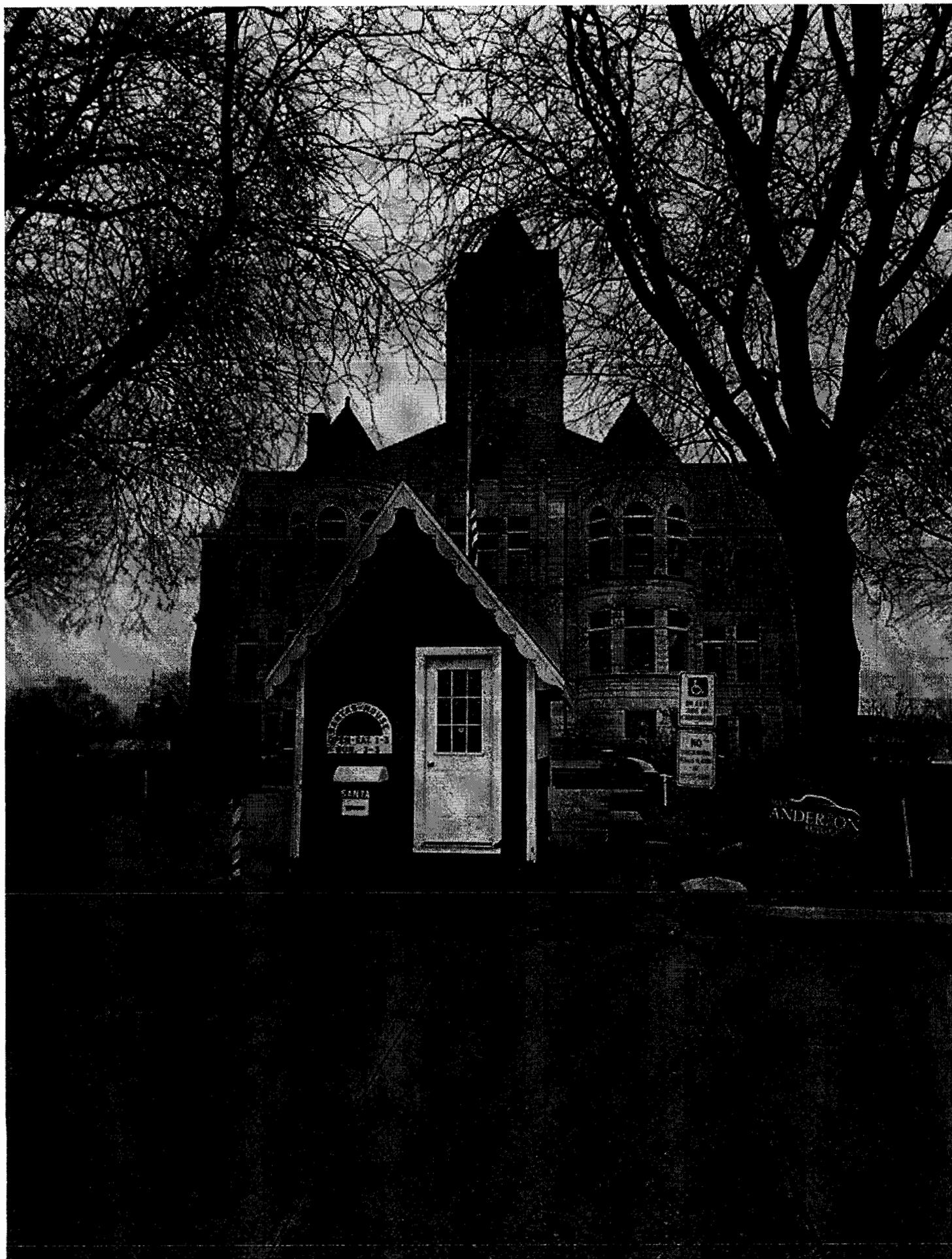
WHEREFORE, the plaintiff requests that this Court:

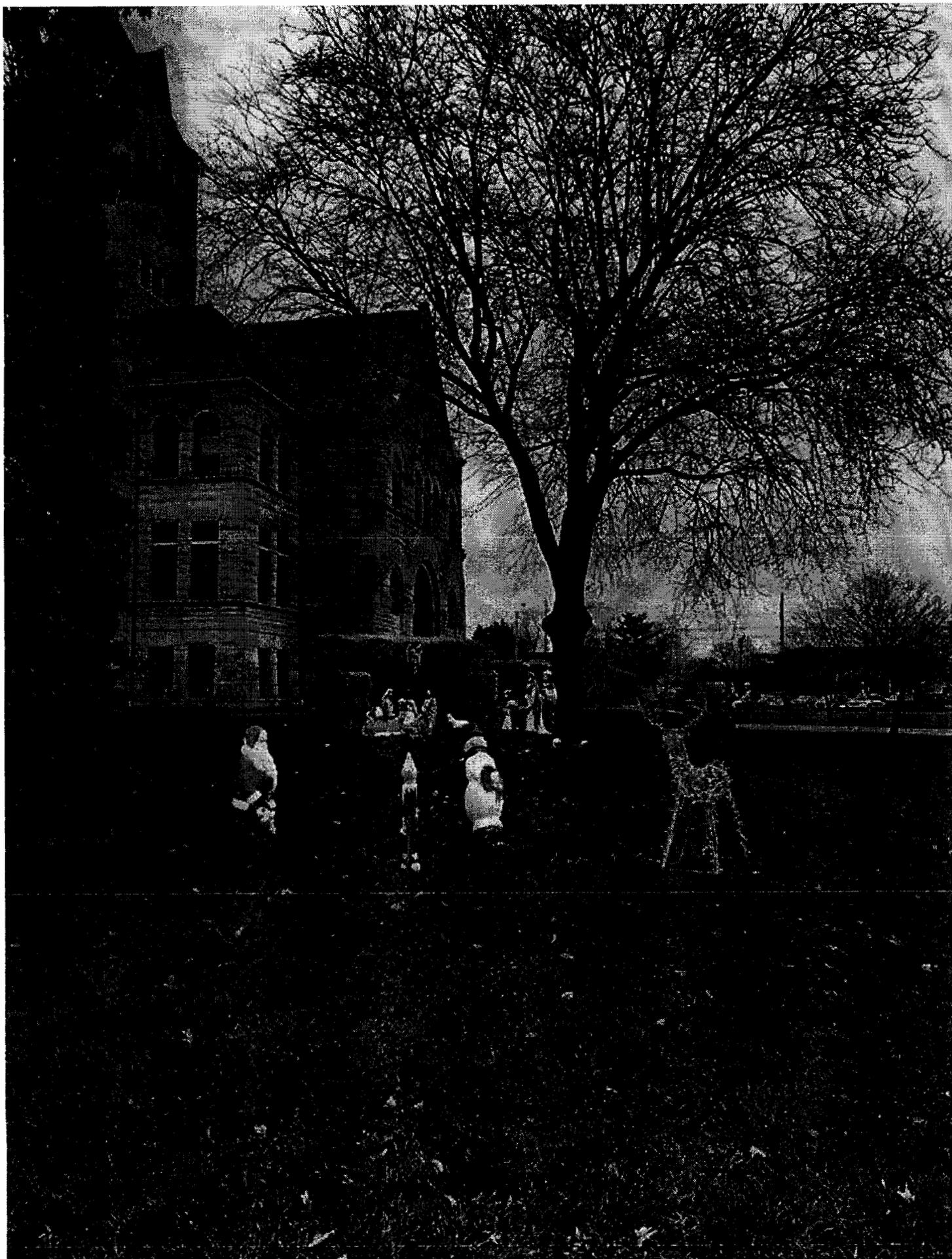
1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendant has violated the rights of the plaintiff for the reason described above.
3. Issue a preliminary injunction, later to be made permanent, prohibiting the defendant from displaying a crèche on the lawn of the Fulton County Courthouse.
4. Award the plaintiff his costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.


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CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Roger LaMunion

DEFENDANTS

Fulton County, Indiana

(b) County of Residence of First Listed Plaintiff Marshall

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gavin M. Rose, ACLU of Indiana, 1031 E. Washington St., Indianapolis, IN, 46202, 317-635-4059, x106

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. s. 1983

Brief description of cause: Challenge to the display of a creche on Courthouse lawn as violative of the First Amendment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: 12/20/2018 SIGNATURE OF ATTORNEY OF RECORD: /s/ Gavin M. Rose

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.