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December 14, 2018

VIA EMAIL & U.S. MAIL:
commissioners@co.hocking.oh.us

Jeff Dickerson, President
Hocking County Commissioners
Logan, OH 43138

Re: Nativity Scene on Public Property

Dear Mr. Dickerson:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves a network of Legislative Prayer Caucuses in over 32 states, which have over 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our founding principles and to protect First Amendment rights for all.

It seems like every year, as we approach Christmas, there is a group of organizations that complain if a local government displays a Nativity scene or other Christmas display on public or private property. These secular organizations typically send letters to local governments and schools claiming that any religious recognition of the holiday is an unconstitutional violation of "separation of church and state." Often, these organizations threaten to file a lawsuit, and thereby bully the local government to take down the display. We understand that recently you received one of these letters. We urge you to resist this bullying.

Any claim that there is a "separation of church and state" is wrong. We certainly acknowledge that the government should stay out of church affairs, and we further acknowledge that the government should not coerce people to attend and pay money to the church like the colonial government in America did. Yet, a complete separation is impossible. A fire department must respond to a fire at church, and the city should maintain roads

In front of churches.

In *Lynch v. Donnelly*, 465 U.S. 668 (1984), the U.S. Supreme Court considered whether a city-owned Nativity Scene displayed at Christmas violated the First Amendment. In considering this claim, Chief Justice Burger explained that a complete separation of church and state is impossible. For the Court, the Chief Justice wrote:

No significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. “It has never been thought either possible or desirable to enforce a regime of total separation....” *Committee for Public Education & Religious Liberty v. Nyquist*. Nor does the Constitution require complete separation of church and state; it affirmatively **mandates accommodation**, not merely tolerance, of all religions, and forbids hostility toward any. See, e.g., *Zorach v. Clauson*; *McCullum v. Board of Education*. Anything less would require the “callous indifference” we have said was never intended by the Establishment Clause. *Zorach*. Indeed, we have observed, such hostility would bring us into “war with our national tradition as embodied in the First Amendment’s guaranty of the free exercise of religion.” *McCullum. Id.* at 673 (citations omitted and emphasis added).

Viewing the city-owned Nativity Scene in this light, the Court concluded that it was constitutional to permit the scene with other Christmas symbols.

Justice Anthony Kennedy, dissenting with Chief Justice Rehnquist, Justice White and Justice Scalia in *County of Allegheny v. ACLU*, 492 U.S. 573, 663-64 (1989) correctly in our opinion addressed Christmas displays when he wrote:

In permitting the displays on government property of the menorah and the crèche, the city and county sought to do no more than “celebrate the season,” . . . and to acknowledge, along with many of their citizens, the historical background and the religious, as well as secular, nature of the Chanukah and Christmas holidays. This interest falls well within the tradition of government accommodation and acknowledgment of religion that has marked our history from the beginning. It cannot be disputed that government, if it chooses, may participate in sharing with its citizens the joy of the holiday season, by declaring public holidays, installing or permitting festive displays, sponsoring celebrations and parades, and providing holiday vacations for its employees. All levels of our government do precisely that. As we said in *Lynch*, “Government has long recognized—indeed it has subsidized—holidays with religious significance.”

If government is to participate in its citizens' celebration of a holiday that contains both a secular and a religious component, enforced recognition of only

the secular aspect would signify the callous indifference toward religious faith that our cases and traditions do not require. By commemorating the holiday only as it is celebrated by non-adherents, the government would be refusing to acknowledge the plain fact, and the historical reality, that many of its citizens celebrate its religious aspects as well. Judicial invalidation of government's attempts to recognize the religious underpinnings of the holiday would signal not neutrality but a pervasive intent to insulate government from all things religious. The Religion Clauses do not require government to acknowledge these holidays or their religious component; but our strong tradition of government accommodation and acknowledgment permits government to do so. See *Lynch v. Donnelly*, *supra*; cf. *Zorach v. Clauson*; *Abington School District v. Schempp*. (citations omitted).

Thank you for acknowledging with your Christmas display our nation's strong tradition of government accommodation for religion. As Justice Kennedy noted, you were not *required* to permit the display, but could choose to do so.

Jim Davids is Special Counsel for CPCF and Steve Fitschen is Senior Legal Advisor for CPCF in his capacity as President of the National Legal Foundation. Together, our legal team has decades of experience litigating in state and federal courts. They have won important related victories at the Supreme Court of the United States, various federal courts of appeals, and state supreme courts and courts of appeals. If you believe you need assistance, please do not hesitate to contact Steve at (757) 463-6133 or via email at nlf@nlf.net.

May God bless you, your family, and those members of the public whom you serve this Christmas.

Sincerely,



Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation