

## Public Entities And Religious Expression During The Holidays

The holiday season often presents challenges for public entities in upholding the First Amendment's protection of religious expression as well as its prohibition against government-sponsored religious endorsement and promotion. The following is a brief reminder of guidelines for public entities, including schools, cities and counties, to follow in this area of the law.

**Holiday Displays: Christmas Trees, Manger Scenes and Menorahs.** Holiday displays on public property are permissible when they are predominantly secular. In deciding that the display of a menorah next to a Christmas tree in front of a government building was permissible, the U.S. Supreme Court found that the combined display did not have the effect of endorsing either faith. (*County of Allegheny v. American Civil Liberties Union* (1989) 492 U.S. 573.) The court also reasoned that both Christmas and Chanukah are part of the same winter holiday season, "which has attained a secular status in our society." However, the court in *Allegheny* further ruled that a manger scene *standing alone* was *not* permissible.

Similarly, in *Lynch v. Donnelly* (1984) 465 U.S. 668, the U.S. Supreme Court found that including a manger scene in a display with other holiday symbols, such as a Santa Claus house, reindeer pulling Santa's sleigh, candy canes, Christmas trees, carolers, and cut-out figures of animals and a clown could be viewed as a traditional holiday symbol and not an attempt to promote religion.

Accordingly, public entities may display predominantly secular holiday symbols and scenes. For instance, displays featuring holiday symbols such as a Christmas tree and a menorah would be within the law because Christmas trees have become secular symbols and menorahs have both secular and religious meanings. Similarly, a display containing a Christmas tree alone is permissible, as it is viewed as a purely secular holiday symbol.

**Classroom Displays and Instruction.** Teachers may *not* use their classrooms to display materials containing religious messages or references promoting a religious viewpoint. (See Lozano Smith's [Client News Brief Number 51](#), September 2011 discussing *Johnson v. Poway Unified School District* (2011) 658 F.3d 954.)

This said, schools are not prohibited from using or referring to religious art, literature, music, dance, theater, visual arts, or other subjects having a religious significance that are *incidental* to a course of study, as long as the use of religious references does not constitute instruction in religious principles or aid to any religious sect, church, creed or sectarian purpose. (Educ. Code § 51511.) In other words, "Although direct instruction in religious principles may not be given in the public schools, it does not follow that every reference to anything religious is prohibited." (25 Ops.Cal.Atty.Gen. 316 (1955).)

**Winter Concerts.** Use of religious music in schools is permissible if it serves an educational, as opposed to a religious, purpose. (Educ. Code § 51511.) School districts must avoid the

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appearance of favoring a particular religious viewpoint, favoring a religious viewpoint over a nonreligious viewpoint, or promoting or inhibiting religious beliefs. School districts should apply viewpoint neutral standards in determining what songs or other performing arts to present at winter concerts. Under these legal principles, courts have found lawful school districts' use of a spectrum of works celebrating the holiday season in winter concerts, ranging in different secular, cultural and religious origins, which are chosen through viewpoint neutral criteria. In one case, *Sechler v. State College Area School District* (M.D. Pa. 2000) 121 F. Supp.2d 439, the federal district court found that a winter holiday celebration that included Christmas, Kwanzaa and Chanukah songs was within the law because it conveyed an "inclusive message of celebration."

If religious works are used in winter concerts or other holiday activities, such school-sponsored activities should focus on, in addition to secular themes, more than one religious, cultural or ethnic holiday tradition. Additionally, students must be given the option of choosing not to participate in activities that have a religious origin without any fear of suffering embarrassment, peer pressure, or negative consequences.

For further analysis of the proper use of viewpoint neutral standards during the holiday season, permitted holiday practices, and other specific instances of religious expression that come with this time of year, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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