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Supreme Court Again Judges Official Religious Displays

By Ruth Marcus

Washington Post Staff Writer

The Supreme Court, again grappling with the constitutionality of officially sponsored religious displays, yesterday considered whether a nativity scene in the county courthouse in Pittsburgh and a menorah in front of a nearby municipal building violated the doctrine of separation of church and state.

Lawyers for Allegheny County and a Jewish group that provided the menorah urged the justices to overturn an appellate court ruling that the displays violated the constitutional prohibition against state establishment of religion.

Peter Buscemi, the lawyer for Allegheny County in *Allegheny County v. American Civil Liberties Union*, argued that the creche and menorah were permissible under a 1984 decision in which the court, splitting 5 to 4, upheld a government-owned nativity scene displayed each Christmas in the shopping district of Pawtucket, R.I.

Nathan Lewin, representing Chabad, which is affiliated with the Lubavitch branch of Hasidic Judaism, said Pittsburgh should be commended for displaying the menorah alongside a Christmas tree outside its city-county building.

"The city does have an obligation not to convey to its population that there is only one faith in this country, and that is Christian," he said. By displaying the menorah, Pittsburgh, with a Jewish population of less than 10 percent, was demonstrating that members of minority religions "are not second-class citizens," Lewin said.

"The irony of this case," Lewin said, "is that an apparently successful effort on the part of the city of Pittsburgh . . . to demon-

strate its neutrality regarding all religions is being attacked as violating the Establishment Clause."

But Roslyn M. Litman, a lawyer for the Pittsburgh chapter of the American Civil Liberties Union, told the justices that the displays "convey the message to nonadherents that they are outsiders in the political community." The menorah and nativity scene, she said, amount to "government endorsement" of religion in violation of the Establishment Clause.

Litman said the Pittsburgh menorah and creche are different from the nativity scene upheld in Pawtucket because they are displayed on public property—indeed, she said, "at government headquarters." In addition, Litman said, unlike the Pawtucket nativity scene, which was surrounded by "secular" symbols such as plastic reindeer, the creche and menorah at issue here are "undilutedly and intensely religious."

Other than Chabad, Litman noted, major Jewish organizations have urged the court to strike down the menorah display as an unconstitutional breach of the separation of church and state.

"This is not accommodation [of religion], this is promotion," she said. "This is not neutrality, this is favoritism."

The issue of state-sponsored religious displays has been particularly troublesome for the justices. In 1985, dividing 4 to 4, they let stand a ruling overturning a Scarsdale, N.Y., ban on a private group erecting a nativity scene in a public park.

The justices yesterday appeared troubled at the implications of upholding the menorah display, asking whether that would require localities to display symbols of other religions as well or even to hold religious services in public buildings.