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Supreme Court Justices Question Lawyers In Pennsylvania Case

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Body

Supreme Court justices sharply questioned attorneys Wednesday who defended two holiday religious displays which a federal appeals court has banned from Pennsylvania public buildings.

At issue in the case involving the line between church and state are a nativity scene displayed inside the main entrance of the Allegheny County Courthouse in Pittsburgh and a Hanukkah menorah at another public building a block away.

The Supreme Court's ruling in the case, expected by July, may also provide guidance to dozens of communities uncertain about the legality of using public resources for Christmas or Hanukkah displays or events.

The case presents Justice Anthony M. Kennedy with his first opportunity to consider how high a wall the Constitution requires between government and religion.

Questions posed by the justices during arguments concerned how local officials could be fair to everyone while displaying Christian and Jewish symbols.

County attorney Peter Buscemi argued that the religious symbols were essentially passive, and that the case presented no government coercion. He said the Constitution did not require the purging of religious symbols by society.

But Kennedy asked: "Are all symbols passive? Would a cross be passive?"

Justice Antonin Scalia suggested that the county had put itself in a difficult position by involving itself in religious symbols.

"What if you had an enormous menorah and a little, tiny creche or an enormous creche and a little, tiny menorah?" Scalia asked.

Scalia also asked whether local officials, by their action, would be bound to honor requests to include symbols of other religions in the displays. That fairness theme was echoed by several other justices.

"How large must the religious group be to be entitled to that type of representation?" asked Justice John Paul Stevens.

"It needn't be that large," replied Nathan Lewin, an attorney for Chabad, a Jewish organization that donated the menorah to the city.

In its case, the county relies largely on a 1984 decision allowing communities nationwide to include nativity scenes in officially sponsored holiday displays.

In that ruling, the high court let Pawtucket, R.I., officials place a creche in a Christmas display because such decorations as Santa Claus, reindeer and snowmen were also included.

But lower courts have treated the 1984 decision as a narrow one, and have disallowed various Christmas displays deemed too religious.

American Civil Liberties Union attorney Roslyn Litman argued Wednesday that to display the nativity scene and menorah, the local governments had taken a religious stance.

"This is not accommodation, this is promotion. This is not neutrality, this is favoritism," she said.

Later, in an interview, she said that "I think they (the justices) did seem concerned about the lack of neutrality being shown."

The nativity scene is part of the Pennsylvania county's Christmas carol program. Local officials say it is donated each year by a Catholic men's organization, which permits it to be exhibited along with a sign with its owner's name on it.

The controversy began when the ACLU asked for the removal of the nativity scene in 1986 by the county commissioners.

They replied that the display endorsed no particular religion, and simply expressed the wish of "Good Will to All Men."

A later complaint filed by the ACLU sought to bar city officials from displaying the menorah outside the City-County building, and the two cases were eventually combined. The menorah was loaned by a Jewish organization. It sat near a Christmas tree.

By 2-1, the 3rd U.S. Circuit Court of Appeals said local officials, because of the Pittsburgh displays, "have tacitly endorsed Christianity and Judaism and have therefore acted to advance religion." The decision meant the displays could not be shown during the holiday season last year.

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