

Resolution calling upon the Department of Education to amend its holiday display policy for New York City's public elementary and secondary schools, to allow a crèche or nativity scene to be displayed during the winter holiday season in the same manner it allows other religious symbols, including the menorah and star and crescent, to be displayed.

By Council Members Avella, Foster, Gennaro, Gentile, James, Nelson, Palma, Sanders Jr., Vallone Jr., Arroyo, Sears, Stewart, Gioia and Oddo

Whereas, The Department of Education currently implements a holiday display policy in public elementary and secondary schools that allows for the display of the Jewish menorah, Islamic star and crescent, Christmas tree and other secular holiday symbols so long as they are displayed together temporarily during the winter holiday season; and

Whereas, The Department of Education's holiday display policy currently prohibits displaying a Christian nativity scene or crèche in a manner similar to the way in which the Jewish menorah and the Islamic star and crescent are permitted to be displayed; and

Whereas, In 2006, the United States Court of Appeals for the Second Circuit, in *Skoros v. City of New York*, held that the Department of Education's holiday display policy was not in violation of the Establishment Clause of the United States Constitution because of its stated secular purpose in allowing the display of certain religious symbols; and

Whereas, That court also specifically stated that it was not determining whether there were any circumstances in which the Department of Education could constitutionally include a crèche in a public school winter holiday display; and

Whereas, In *County of Allegheny v. American Civil Liberties Union*, decided in 1989, the Supreme Court ruled that whether the government's use of a religious symbol amounts to an impermissible religious endorsement is determined by examining the object's particular physical setting; and

Whereas, In *Elewski v. City of Syracuse*, decided in 1997, the United States Court of Appeals for the Second Circuit, found the display of a crèche to be constitutional because it was displayed nearby a Jewish menorah and various secular holiday decorations spread throughout a downtown area as part of a town's winter holiday display and would be perceived by a reasonable observer as a "celebration of the diversity of the holiday season, including traditional religious and secular symbols of that season"; and

Whereas, In an earlier 1984 case, *Lynch v. Donnelly*, the Supreme Court held that a display of a crèche by the City of Pawtucket, Rhode Island in a private park along with secular Christmas decorations such as a reindeer, Santa's house and sleigh, and a Christmas tree, did not constitute an endorsement of religion and was permissible, since the display had a secular purpose; and

Whereas, According to the Department of Education, the stated purpose of the holiday display policy is to promote the goal of fostering understanding and respect of all individuals regarding their beliefs, values and customs; and

Whereas, Amending the holiday display policy to allow for the display of a nativity scene or crèche along with other symbols or decorations would enhance the Department of Education's stated purpose, thereby fostering understanding and respect for the different beliefs, values and customs of our schoolchildren; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Department of Education to amend its holiday display policy for New York City's public elementary and secondary schools, to allow a crèche or nativity scene to be displayed during the winter holiday season in the same manner it allows other religious symbols, including the menorah and star and crescent, to be displayed.