

**COMMENTS BY BRIAN J. ROONEY, ESQ.**  
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I represent the Thomas More Law Center, a national public interest law firm.

We represented Andrea Skoros and her children in a lawsuit against the City of New York and Joel Klein, Chancellor of the New York City Department of Education, before the 2<sup>nd</sup> Circuit Court of Appeals. We challenged the Constitutionality of the Department of Education's (DOE) Holiday Display Policy—the policy that is the subject of the resolution proposed today. Although it is true that the 2<sup>nd</sup> Circuit Court did not find the DOE's policy unconstitutional, the court went on to make the important *explicit* point that an *inclusion* of a crèche in the DOE policy would also not necessarily make the DOE policy unconstitutional—contrary to the DOE's reasoning on keeping the crèche out!

Further, the 2<sup>nd</sup> Circuit Court explicitly ruled—again, contrary to the DOE policy—that a Menorah and a Star and Crescent *are* religious symbols. The Court specifically stated that even though the DOE Policy was wrong in regard to the nature of the Menorah and Star and Crescent, the fact that they *are* religious symbols does not make the DOE policy unconstitutional. This line of reasoning by the 2<sup>nd</sup> Circuit Court constitutionally allows for a display of a crèche as well.

The display of a crèche or Nativity scene in public places, including public schools, has long been a part of our American Christmas traditions, reflecting both

our nation and the State of New York in their celebrations of this holiday season. The Department of Education's policy reads to be inclusive and to promote understanding and respect for the rights of all individuals regarding their beliefs, values, and customs. However, a Christmas or "Holiday" tree does not meet the stated goal of the DOE policy—in fact, the Christmas tree actually obscures the true purpose of the state and federal holiday. Whereas a Menorah and a Star and Crescent are very appropriate to further the stated goals of the DOE policy, a Christmas tree is simply inadequate to the task. However, a crèche is a learning tool that represents an historical event surrounding a religious figure; much the same way a Menorah represents an historic event that has religious significance.

The current DOE policy explicitly proscribing crèches creates unnecessary religious hostility in the community by removing a constitutionally permissible tradition. This exclusion utterly fails from an educational perspective. Without question, displaying a crèche in a manner similar to the way in which the Department of Education permits the displays of a Menorah, or a Star and Crescent enhances a student's knowledge of our society's cultural and religious heritage - including our Christmas holiday traditions. It also advances and promotes a fuller understanding of the holidays in general.

Those that are hostile to the Christmas traditions tend to hide behind the mantle of "tolerance," only to promote intolerance. Indeed, we learn to understand and respect traditions, customs, and beliefs not by being offended or threatened by

the traditions of others, but by understanding the meaning of such traditions and why they have the capacity to inspire.

Through the enforcement of the current Holiday Displays Policy, school officials permit and encourage the public display of the Menorah, a Jewish *religious* symbol, and the Star and Crescent, a *religious* symbol of the Islamic faith, during various holiday and seasonal observances. However, the Department of Education's policy prohibits the public display of the Christian Nativity scene or crèche *at any time*, including those times when it would be accompanied by the Menorah, Star and Crescent, and secular symbols of the various holiday and seasonal observances.

The Department of Education's justification for this discriminatory policy against the crèche is fundamentally flawed—much like their characterization and justification for the Menorah and the Star and Crescent were flawed, as ruled by the 2<sup>nd</sup> Circuit Court. The Star and Crescent and Menorah are religious symbols that serve the DOE's secular learning purpose. A crèche is no different. Discrimination is discrimination, and the DOE's policy has the effect of being discriminatory. As politically correct as it may seem in this so-called "multicultural" society, the Department of Education's policy of excluding the crèche is internally inconsistent, objectively hostile and bigoted, and it must be changed.