



November 30, 2009

<p>Mayor Ellie Wooten City of Merced 678 West 18th Street Merced, CA 95340 <u>VIA FAX# 209-723-1780 and U.S. Mail</u></p> <p>City Manager John M. Bramble <u>VIA E-mail and U.S. Mail</u> citymanager@cityofmerced.org City of Merced 678 West 18th Street Merced, CA 95340</p>	<p>Mayor Pro Tempore John Carlisle Council Member Michele Gabriault-Acosta Council Member Noah Lor Council Member Joe Cortez Council Membe Jim Sanders Council Member Bill Spriggs City of Merced 678 West 18th Street Merced, CA 95340 <u>VIA FAX# 209-723-1780 and U.S. Mail</u></p> <p>City Attorney Gregory Diaz <u>VIA E-mail and U.S. Mail</u> cityattorney@cityofmerced.org City of Merced 678 West 18th Street Merced, CA 95340</p>
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RE: Legality of Christmas Parade

Dear Mayor, City Attorney, City Manager and Council Members:

At the bequest of Carrie Magleby, a citizen of Merced, we write to encourage your observance of the Christmas holiday and permit Merced’s tradition of having a Christmas parade, rather than changing its name to “holiday” parade. The change in name is not only unnecessary, but patently offensive to the religious sensibilities of all citizens who wish to celebrate Christmas.

Our organization, the Alliance Defense Fund (“ADF”), is a not-for-profit legal alliance of more than 1,300 attorneys and like-minded organizations that educate the public and the government about important constitutional rights, particularly *Our First Liberty* - religious freedom. ADF also litigates in the defense of these rights, and has frequently defended cities and other governmental entities that properly accommodate events and symbols associated with Christmas.

Historically, cities, towns, and villages across America, like Merced, have celebrated the Christmas season by having a parade on its public streets. In recent years, select groups hostile to our Nation’s traditions have spread misconceptions about the constitutionality of Christmas

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parades and displays. But you can be assured that your participation in and acknowledgement of the Christmas holiday and a Christmas parade are constitutionally-protected activities. The City is free to support a parade regarding Christmas, and you are under no obligation to satisfy the demands of any disgruntled individual or civil libertarian group that may oppose such action.

The Supreme Court has long recognized that a municipality offends no constitutional principle in acknowledging the Christmas holiday. In *Lynch v. Donnelly*, for instance, the High Court upheld that the government's display of a nativity scene as constitutional when displayed for legitimate secular purposes, which included the celebration of the Christmas season and depiction of its origins. There, the City of Pawtucket, Rhode Island, erected a Christmas display that included a Santa Claus house, reindeer, a Christmas tree, along with a nativity scene. The Court found that the city could display these things – all provided at the government's expense – without violating the First Amendment. 465 U.S. 668, 679, 681 (1984). As the Supreme Court admonished, the First Amendment “affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.” *Id.*

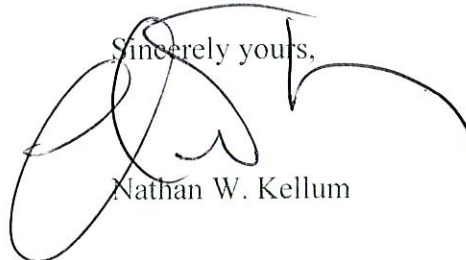
There is obviously nothing illegal about Santa Claus, or Christmas lights, or reindeer, which are all purely secular items. And as long as these types of secular displays are part of the Christmas parade, neither would a purely religious display (like a nativity scene), or the parade itself, be deemed unconstitutional.

Unfortunately, it appears as though unfounded beliefs about Christmas celebrations may have led you to consider self-censorship of the perfectly legal Christmas parade. It is our firm opinion that the City of Merced need not fear legal liability for promoting a Christmas parade in your community. The presence of a Christmas parade would not endorse religion. But, please know that the proposed action of the city – in converting a Christmas parade into a “holiday” parade – would actually demonstrate hostility toward religion.

We hope that this letter will encourage the City of Merced to join the countless cities and towns across the country who will be participating in Christmas parades with full confidence this year. If ADF can provide you with any further information or assistance, or if you receive any threat of litigation to which we may be able to help you respond, please contact us. As a not-for-profit legal organization, our services are provided *pro bono*.

We thank you for your attention to this matter, and for your dedicated public service.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Nathan W. Kellum', with a large, sweeping flourish extending to the right.

Nathan W. Kellum

NWK/mk

cc: Carrie Magleby