IN THE
SUPREME COURT OF THE UNITED STATES
SITTING IN DAVIS
October Term, 1992

NO. WW92-260701

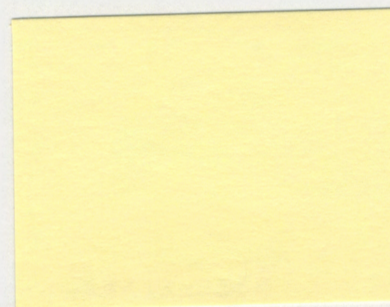
Holy Fundamentalist Church,
Petitioner,

v.

City of Danburg,
Respondent.

ON APPEAL FROM THE FIFTEENTH CIRCUIT
COURT OF APPEALS- DAVIS

BRIEF FOR RESPONDENT



Counsel for Respondent

QUESTION PRESENTED

I. Did the Appellate Court err in holding that the City of Danburg did not violate the Establishment Clause by allowing the Jewish Community Center to display a menorah on public property?

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BRIEF FOR RESPONDENT

STATEMENT OF THE CASE

Every year since 1987, the Danburg Jewish Community Center ("JCC") has sought and received a permit from the Commissioner of the City of Danburg to place a twenty-two foot menorah in City Park during the traditional season of Chanukah. The permit is valid for ten days, which includes the eight-day display, plus construction and removal time. The menorah stands unattended during this period, and it is lighted by electricity twenty-four hours a day. JCC pays the city a $25 permit fee each year, which covers any cleanup, water, and electricity expenses. Danburg City Ordinance section 4786-1 provides the applicable guidelines for the use of Danburg's public parks:

> Upon a duly submitted application, the City Commissioner may issue to any person, organization, association, club, society or other group of any type, a permit to use and occupy any portion of Court Park or City Park, for the purpose of making or presenting any program, public address, exhibit or display, or for any other organized or semi-organized purpose whatever.

Under City Ordinance section 4780-4, a "duly submitted application" includes the $25 permit fee.

City Park and Court Park are the only two public parks in Danburg. Court Park is surrounded by the city's primary government buildings, while City Park, where the menorah is displayed, adjoins the public library and the Board of Education Building.

City Park is recognized as a public forum, and it is used by many different organizations for demonstrations, displays, protests, rallies, and exhibits. Some examples of previous activities include: a Pro-Choice rally; a two-day sculpture

exhibit; a Fourth of July concert; a "Dunk Your City-Councilman" contest; and several "Teen Dances." Local citizens were permitted to tie yellow ribbons around the trees in the park in support of American troops during the Gulf War, and an independent presidential candidate recently gave a speech thanking volunteers for their efforts on behalf of his campaign.

During the first season of the menorah display, several concerned citizens complained that the proximity of the menorah to a city building indicated that the city preferred Judaism over their own faiths. Thereafter, the city requested that the JCC place a sign on the display indicating that the JCC was responsible for it. In every year since 1987, the JCC has placed a two foot by one foot sign next to the menorah, stating, "In Celebration of Chanukah, the Danburg Jewish Community Center Has Placed This Menorah For the Enjoyment of All."

The plaintiff, the Holy Fundamentalist Church, is located directly across a heavily traveled street from the library and the menorah display. The Church brought suit for an injunction under 42 U.S.C. § 1983, alleging that the menorah display on public property violates the Establishment Clause of the First Amendment. The District Court granted the injunction, agreeing with the plaintiff that the display was unconstitutional. The City of Danburg appealed and the Appellate Court reversed, denying the injunction. This Court granted certiorari.

SUMMARY OF THE ARGUMENT

The Court of Appeals did not err in holding that the City of Danburg did not violate the Establishment Clause by allowing the Jewish Community Center to display a menorah on public property. City Park is a traditional public forum, and Danburg cannot justify discriminatory exclusion based on religious content absent a compelling state interest and a regulation which is narrowly tailored to achieve that end.

While comporting with the mandate of the Establishment Clause is admittedly a compelling state interest, the Holy Fundamentalist Church has been unable to demonstrate a violation of that Clause in this case.

Danburg's actions in granting a permit to the JCC do not foster an excessive government entanglement with religion, since the city does not own the display and is in no way responsible for its erection or maintenance.

Furthermore, in granting a permit to the JCC, the City of Danburg has the legitimate secular purposes of maintaining a policy of equal access and promoting the seasonal values of harmony and goodwill.

Finally, the menorah display does not have the principal effect of advancing religion. Viewed in its proper context, the display appears to the reasonable observer not as an official endorsement of Judaism, but as an expression of goodwill from the JCC and a celebration of Chanukah through its traditional symbol. Therefore, the menorah display does not violate the Establishment Clause.

ARGUMENT

I. THE APPELLATE COURT DID NOT ERR IN HOLDING THAT THE CITY OF DANBURG DID NOT VIOLATE THE ESTABLISHMENT CLAUSE BY ALLOWING THE JEWISH COMMUNITY CENTER TO DISPLAY A MENORAH ON PUBLIC PROPERTY.

As was aptly noted by the Court of Appeals, this case involves the inherent tension between two provisions of the First Amendment: the Establishment Clause and the Free Speech Clause. Danburg v. Holy Fundamentalist Church, 1 F.3d 1 (15th Cir. 1992). While the Free Speech Clause prohibits the government from making any law "abridging the freedom of speech", the Establishment Clause forbids any law "respecting an establishment of religion".[1] The two provisions are certainly capable of coexisting peaceably, but conflict is inevitable in situations where the government interest in refraining from religious entanglement collides with the right of a private organization to freely express its religious beliefs.

The Free Speech Clause clearly applies in this case. Although the menorah does not constitute "speech" as that term is commonly understood, this Court has held that the Constitution protects communication through symbols as well as words. Spence v. Washington, 418 U.S. 405, 410 (1974); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 632 (1943). It is also irrelevant for purposes of free speech analysis that a symbol is religious in nature; the Constitution protects religious as well

[1]Although the First Amendment only limits the powers of Congress, both the Free Speech and the Establishment Clauses have been made applicable to the states and their municipalities through the Fourteenth Amendment. See Wallace v. Jaffree, 472 U.S. 38, 48-55 (1985).

as secular expression. Widmar v. Vincent, 454 U.S. 263, 269 (1981) (religious worship and discussion on state university campus protected by First Amendment). Therefore, the JCC's display of the menorah in City Park is entitled to full protection under the Free Speech Clause.

A. JCC'S DISPLAY IN A PUBLIC FORUM IS ENTITLED TO THE HIGHEST DEGREE OF CONSTITUTIONAL PROTECTION, AND DANBURG CANNOT JUSTIFY DISCRIMINATORY EXCLUSION BASED ON RELIGIOUS CONTENT ABSENT A COMPELLING STATE INTEREST AND A NARROWLY DRAWN EXCLUSION

It is not disputed that City Park is a traditional public forum. Danburg has historically permitted private organizations to use the park's facilities in whatever manner they choose, and this open-access policy is reflected by the many different kinds of activities which have taken place in the park.

In Widmar, supra, the Court held that a state university, which makes its facilities generally available for the activities of registered student groups, may not deny the use of its facilities to a registered student group desiring to use the facilities for religious worship and discussion. Id. at 277. The Court reasoned that the classroom facilities were a public forum for the open exchange of ideas, and noted that "cases have required the most exacting scrutiny in cases in which a State undertakes to regulate speech on the basis of its content." Id. at 276. Therefore, in order to exclude a group based on the anticipated content of its speech, the state must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that objective. Id. at 270 (citing Carey v. Brown, 447 U.S. 455, 461, 464-65 (1980)).

The Court in Widmar agreed that compliance with the state's constitutional obligations under the Establishment Clause was a compelling interest, but held that an equal access policy did not violate that clause. Id. at 271. According to the majority, any benefits accruing to a religious group as a result of the policy would be "incidental"; the forum was available to such a wide range of non-religious organizations as to preclude any imprimatur of official state approval on particular religious practices. Id. at 274.

Like the university facilities in Widmar, City Park is a public forum which has traditionally played host to a variety of political, cultural, and artistic activities. This Court has recognized that such "quintessential public forums" have always been used for open communication and the free exchange of ideas. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983). Therefore, the Free Speech Clause of the Constitution forbids the state to enforce content-based exclusions in the absence of a compelling state interest and a narrowly tailored regulation. Id. at 46. While the city recognizes that comporting with the mandate of the Establishment Clause is a compelling state interest, in this case the city has not violated the Establishment Clause by allowing JCC to display its menorah in City Park.

B. WHILE AVOIDING UNCONSTITUTIONAL BEHAVIOR IS A COMPELLING STATE INTEREST, DANBURG HAS NOT VIOLATED THE ESTABLISHMENT CLAUSE BY ALLOWING THE JCC TO DISPLAY A MENORAH IN CITY PARK.

The Establishment Clause simply provides that the state

shall "make no law respecting an establishment of religion". While this phrase is not entirely self-explanatory, it appears to mean at least this: The government cannot set up a church or pass any law aiding religion, nor can it compel a person to profess or deny any religious belief against his will. Everson v. Bd. of Educ., 330 U.S. 1, 15-16 (1946). This is not to suggest, however, that Thomas Jefferson's metaphor of a "wall" separating church and state[2] can or should be construed literally; this image connotes a rigid ideal which it is neither possible nor desirable to enforce. Committee for Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756, 760 (1973). In Marsh v. Chambers, 463 U.S. 783 (1983), this Court held that beginning each day of the Nebraska legislative session with opening prayers did not run afoul of the Establishment Clause. In so holding, the Court noted that paid Chaplains were appointed to offer opening prayers before the First Congress of 1789, a Congress which counted among its early tasks the finalization of the language of the Bill of Rights. Id. at 788.

The Constitution mandates accommodation of all religious beliefs, and not merely tolerance. Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 211 (1948). A manifestation of hostility to religion or religious teaching would be at "war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion." Id. at 211-12. By

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[2]Jefferson advanced this idea in reply to an address by the Danbury Baptist Association following congressional adoption of the First Amendment (January 1, 1802).

granting permission to the JCC to erect its menorah in City Park during the Chanukah holiday, the City of Danburg does not establish a state religion. It does not coerce the community to accept religion in general or Judaism in particular. The city takes no part in the erection, removal, or maintenance of the menorah, and the display includes a sign clearly indicating that the JCC is solely responsible for it. In short, the city has made no law "respecting an establishment of religion". Danburg has simply chosen to implement a policy which provides all private organizations an equal opportunity to exercise their constitutionally protected right to free speech.

This Court has repeatedly refused to take a rigid approach to Establishment Clause analysis. Lynch v. Donnelly, 465 U.S. 678, 679 (1983). The Establishment Clause has been likened to the Due Process Clause in its slipperiness, and has been described as a "blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." Id. at 679 (quoting Lemon v. Kurtzman, 403 U.S. 602, 614 (1971)). Nevertheless, the Court has found the three-pronged Lemon test to be an expedient analytical tool for examining these cases; in fact, the Lemon test has been applied regularly since it was first articulated. Allegheny County v. Greater Pittsburgh A.C.L.U., 492 U.S. 573, 592 (1988). In order to pass constitutional muster under the Lemon test, the challenged state action: 1) must have a secular purpose; 2) must not have a primary or principle effect of advancing or inhibiting religion; and 3) must not foster excessive government entanglement with

religion. Lemon, 403 U.S. at 612-13. While the test has recently been somewhat modified, especially with respect to the meanings of the individual prongs, the basic tripartite inquiry of Lemon remains the accepted framework for Establishment Clause analysis.[3] Because both the District Court and the Court of Appeals found that the entanglement prong of the Lemon test was satisfied, Danburg v. Holy Fundamentalist Church, 1 F.3d at 6; Holy Fundamentalist Church v. Danburg, 1 F. Supp.2d 1, 3 (D. Davis 1992), the city will address this prong only briefly before considering the the other two.

1. THE CITY'S ACTIONS IN GRANTING A PERMIT TO THE JCC DO NOT FOSTER AN EXCESSIVE GOVERNMENT ENTANGLEMENT WITH RELIGION.

By granting the JCC a permit to display its menorah in City Park during the Chanukah season, Danburg in no way "entangles" itself with religion. This Court has recognized two potential varieties of religious entanglement: administrative and political. Lynch v. Donnelly, 465 U.S. at 684. In Lynch, the Court found no administrative entanglement where the city of Pawtucket, R.I. erected and maintained a creche each holiday season as part of a larger Christmas display. Id. The Court found that even though the city owned the creche, the maintenance of the display required no expenditures of municipal funds or "ongoing, day-to-day interaction between church and state", and thus there was no administrative entanglement. Id. It also held

[3]This Court was recently presented with an opportunity to reconsider Lemon, and it explicitly refused to do so. See Lee v. Weisman, 112 S.Ct. 2649, 2651 (1992).

that political divisiveness, standing alone, could not render an otherwise permissible display unconstitutional. Id.

There is even less administrative involvement in the present case than the Court found insufficient to invalidate the city's actions in Lynch. Danburg does not own the menorah, nor does it take any part in the erection or maintenance of the display. As for political divisiveness, this lawsuit is the only evidence of political discord since the JCC erected its sign in 1987. As the Court noted in Lynch, "A litigant cannot, by the very act of commencing a lawsuit ... create the appearance of divisiveness and then exploit it as evidence of entanglement." Id. at 684-685. Therefore, there is no excessive government entanglement with religion and the third prong of the Lemon test is satisfied.

2. THE CITY OF DANBURG HAS A LEGITIMATE SECULAR PURPOSE IN PERMITTING THE JCC TO DISPLAY ITS MENORAH IN CITY PARK DURING THE CHANUKAH SEASON.

The City of Danburg has two important secular purposes in issuing a permit to the JCC. First, the City desires to maintain a policy of equal access. Having created a open public forum, the city assumes an obligation to justify any discriminatory treatment of religious organizations under the Free Speech Clause. Widmar, 454 U.S. at 267. Second, the city wishes to promote the seasonal values of harmony and goodwill, values which are not inherently religious but which are the common secular element of all religious holiday celebrations.

In Lynch v. Donnelly, the Court examined whether the inclusion of a creche in a city-owned Christmas display violated the Establishment Clause. 465 U.S. at 670-71. The display,

which was erected annually in a private park by the city of Pawtucket, R.I., included the creche and other items traditionally associated with the holiday season, such as a Santa Claus house, a Christmas tree, and a large banner reading "Seasons Greetings". The Court applied the Lemon test, and held that the display did not violate the Establishment Clause. Id. at 687. Focusing on the display in the context of the Christmas season, the Court found that the city had the legitimate secular purpose of celebrating the season and acknowledging the historical origins of the Christmas holiday. Id. at 681. Concurring in the majority opinion, Justice O'Connor suggested that the true inquiry was not whether the city had some secular purpose behind the display, but whether the city intended to endorse Christianity by its inclusion of the creche. This "endorsement" standard was not meant to replace the Lemon test, but it was intended to clarify that test as an analytical tool. Id. at 689 (O'Connor, J., concurring). Justice O'Connor agreed with the majority that the city intended not to endorse any particular religion, but to celebrate the public holiday through its historic symbols. Id. at 691.

Similarly, it is clear in this case that the issuance of a permit to the JCC is not a "purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message." Id. at 680. The city is not promoting the religious content of the menorah; it is simply allowing one faith to freely express its message in a public place open to both religious and nonreligious groups. A municipality's decision to

display something and the decision to allow something to be displayed by a private organization are motivated by two wholly different concerns. With the former, the city chooses the exact nature of the message it intends to convey, whereas in the latter instance the city is merely deciding whether there is some compelling interest sufficient to prevent the private organization from exercising its constitutionally protected right of free speech. By granting the JCC a permit to display its menorah in City Park, Danburg is only seeking to further the legitimate secular goal of maintaining a policy of equal access for all applicants.

The city has the additional secular purpose of promoting a spirit of harmony and goodwill in keeping with the holiday season. The fact that the JCC has chosen a menorah to symbolize these values does not render the display an illegitimate endorsement of religion. A menorah is not an exclusively religious symbol. While it certainly carries special religious meaning for adherents of Judaism, this court has noted that "The menorah is the primary visual symbol for a holiday that, like Christmas, has both religious and secular dimensions." Allegheny, 492 U.S. at 614. Unlike Christmas, however, Chanukah has few tangible secular symbols. Santa Claus, candy canes, and decorated trees cannot be used to celebrate the secular aspects of a religious holiday which does not share the same history of commercialization as its Christian counterpart. The menorah is the exclusive traditional symbol of Chanukah, and it encompasses both the secular and religious aspects of the season.

As Justice O'Connor noted in her Lynch concurrence: "Celebration of public holidays, which have cultural significance even if they also have religious aspects, is a legitimate secular purpose." 465 U.S. at 691 (O'Connor, J., concurring).

3. THE MENORAH DISPLAY IN CITY PARK DOES NOT HAVE THE PRIMARY EFFECT OF ADVANCING OR INHIBITING RELIGION.

Obviously, the JCC derives some benefits from being allowed to display the menorah. The display generates publicity for the JCC, and City Park avails the group of a public forum in which to openly celebrate the Chanukah holiday. This Court has recognized, however, that "a religious organization's enjoyment of merely 'incidental' benefits does not violate the prohibition against the 'primary advancement' of religion." Widmar, 454 U.S. at 273 (quoting Committee for Pub. Educ. v. Nyquist, 413 U.S. 756, 771 (1973)). To be violative of the Establishment Clause, government action must have the "principal effect" of advancing or inhibiting religion. Lemon, 403 U.S. at 612.

This Court has considered the "effect" prong of the Lemon test in a number of contexts. In Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982), the Court held that a Massachusetts law granting churches the power to veto applications for liquor licenses within five hundred feet of the church was too standardless a grant of power and had the "primary effect" of advancing religion. Id. at 126. In Illinois ex rel. McCollum v. Board of Educ., supra, the Court held that the availability of religious instruction in public schools impermissibly benefitted religious groups, whose efforts to promulgate religious doctrines

were greatly aided by the state's compulsory public school laws. 333 U.S. at 212.

In Lynch, supra, the Court held that the inclusion of a creche in the city's holiday display did not have the primary effect of advancing religion. 465 U.S. at 683. The majority distinguished Larkin and McCollum, noting that no direct benefits accrued to religious groups as a result of the Christmas display. "[W]hatever benefit there is to one faith or religion or to all religions, is indirect, remote, and incidental". Id.

A majority of the Court adopted the Justice O'Connor's "endorsement" standard in County of Allegheny v. A.C.L.U. of Greater Pittsburgh, 492 U.S. 573 (1989). The majority applied this standard in the context of the traditional Lemon "effect" inquiry:

> [W]hen evaluating the effect of government conduct under the Establishment Clause, we must ascertain whether "the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by nonadherents as a disapproval, of their individual religious choices."

Id. at 597 (quoting School Dist. of Grand Rapids v. Ball, 473 U.S. 373, 390 (1985)). Allegheny involved an Establishment Clause challenge to two separate displays. The Court first examined the constitutionality of a privately sponsored creche which was displayed on the grand staircase inside the Allegheny County Courthouse. The creche was unaccompanied except for a floral display, and included a banner proclaiming "Gloria In Excelsis Deo". Id. at 580. In evaluating whether or not the creche constituted an endorsement of religion, the Court focused

on the setting of the display. Id. at 598. Nothing in the context of the display detracted from the overall religious message of the creche, which sat alone in the most visible area of the building serving as the seat of county government. Id. at 598. Furthermore, the religious proclamation on the banner made its religious meaning "unmistakably clear." Id. A small sign disclosing ownership of the creche by a Roman Catholic organization was deemed insufficient to validate the display, since the Establishment Clause prohibits governmental support of private religious communications as well as the government's own involvement with religion. Id. at 600. Therefore, the creche display inside the courthouse was deemed unconstitutional. Id. at 602.

The Allegheny Court reached a different conclusion with respect to the second display, which consisted of a forty-five foot lighted Christmas tree and an eighteen foot menorah. The combined display stood prominently outside the City-County Building, and was accompanied by a sign declaring the city's "Salute to Liberty." Id. at 582. Evaluating the menorah display in the context of the Christmas tree and the sign, the Court concluded that the overall display communicated not a simultaneous endorsement of both Christianity and Judaism, but a "secular celebration of Christmas coupled with an acknowledgment of Chanukah as a contemporaneous alternative tradition." Id. at 617-18. With respect to the menorah itself, the Court noted that a menorah is not an exclusively religious symbol, but symbolizes both the religious and secular aspects of the Chanukah holiday.

Id. at 613-14. The Court also noted that the city had no reasonable alternative secular symbol of Chanukah, and that this fact must be part of the "context" in which the city's actions are judged. Id. at 618.

Thus, the inquiry in the present case is whether the residents of Danburg might reasonably perceive the JCC's menorah display as a city endorsement of Judaism, or a disapproval of their own religions. Viewing the display in the appropriate context of the overall holiday season, it is clear that such a misperception is unreasonable. Unlike the creche inside the county courthouse in Allegheny, the menorah display stands in a public forum. While a religious display inside the building which is the seat of county government might reasonably be perceived as a endorsement of religion, the same cannot be said when a display is erected in a public forum which is made equally available to all religious and non-religious applicants. Furthermore, unlike the creche in Allegheny, the menorah is not accompanied by any patently religious proclamations such as "Gloria In Excelsis Deo." The sign erected by the JCC states only that the menorah is placed "In Celebration of Chanukah ... For the Enjoyment of All."

In evaluating the context of the menorah display in Allegheny, the Court focused on the impact of the display on a "reasonable observer". 492 U.S. at 620. Since the Christmas tree alone in front of the City-County Building could not be reasonably understood as an endorsement of Christianity, "the addition of the menorah 'cannot fairly be understood to' result

in the simultaneous endorsement of Christian and Jewish faiths." Id. (quoting Lynch, 465 U.S. at 693 (O'Connor, J., concurring)). Likewise, in the present case, the fact that the city permits a religious organization to display a menorah in City Park for eight days during the holiday season cannot reasonably be perceived as an endorsement of Judaism. Certainly it would not be reasonable to conclude that Danburg intended to endorse the views of the independent presidential candidate who gave a speech in City Park thanking his campaign volunteers. Nor would the reasonable observer conclude that the city intended to endorse any of the other numerous activities which take place in City Park; in a traditional public forum, such activities are viewed merely as instances of the city allowing one group to utilize the Park in its own manner, and then handing the Park over to another group. Each individual activity is part of the "context" of the others.

The JCC menorah display is no different. When viewed in the dual context of the overall holiday season and the traditional role of City Park as a public forum, it can be reasonably understood as no more than it is: a holiday greeting to the people of Danburg from the Jewish Community Center, and a celebration of Chanukah through its traditional symbol. The fact that the menorah is not accompanied by any other purely secular symbols of the season does not render the display an impermissible government endorsement of religion. The proper focus of inquiry is on the display of the menorah in the context of the holiday season. See Lynch v. Donnelly, 465 U.S. at 679.

A rule requiring that each arguably religious item in a display be offset by a purely secular one would trivialize the constitutional inquiry, rendering the critical subjective analysis of the endorsement standard meaningless and replacing it with a standard based more on counting and measuring than on the likely perceptions of the reasonable observer. No such rule has been proposed by the Supreme Court to date, and none should be adopted here.

In determining the likely effect of the menorah display, "[t]he absence of a more secular alternative symbol is itself part of the context in which the city's actions must be judged". 492 U.S. at 618. The Court relied on this factor in validating the menorah/tree display in Allegheny, and it applies with equal force here. Christmas trees, candy canes and Santa Claus are secular symbols of Christmas, not Chanukah. While a gigantic dreidel might be more secular than a menorah, "[a]n 18-foot dreidel would look out of place and might be interpreted by some as mocking the celebration of Chanukah." Id.

It is also important that, of the two public parks which are accessible to private groups under City Ordinance section 4786-1, the menorah stands in the less "governmental" of the two. City Park adjoins buildings of relatively minor governmental significance: the post office, the department of motor vehicles, the public library, and the Board of Education Building. Court Park, by contrast, is surrounded by those buildings which are traditionally regarded as the hub of local government: the courthouse, the police station, and the City-County Building.

The JCC Chanukah display is situated away from these governmental strongholds, and the proximity of the menorah to buildings such as the public library cannot reasonably be said to reflect an official endorsement of Judaism.

Taking all of these factors into consideration, it is clear that Danburg has not conveyed a message of endorsement of Judaism by merely granting the JCC a permit to display a menorah in City Park. For such an act to be unconstitutional, it must have the impermissible effect of "making adherence to a religion relevant in any way to a person's standing in the political community." Allegheny, 492 U.S. at 595 (quoting Lynch v. Donnelly, 465 U.S. at 687 (O'Connor, J., concurring)). Considering the role of the park as a traditional public forum and the seasonal nature of the JCC's display, it is simply not reasonable for an observer to conclude from the display that those of the Jewish faith are favored members of the political community. Accordingly, the final prong of the Lemon test is satisfied.

CONCLUSION

For the reasons set forth above, I respectfully request this Court to affirm the ruling of the Appellate Court.

Respectfully submitted,

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223-33-9564
Counsel for Respondent