

## **ACLU Attacks Nativity at Arkansas State Capitol**

12/14/09

Federal District Judge Susan Webber Wright ruled in Little Rock on Monday that the Arkansas Society of Freethinkers has a First Amendment Right to set up their “kiosk” alongside the Nativity Christmas display on the grounds of the State Capitol. Judge Wright ruled that Arkansas Secretary of State Charlie Daniels had established a “public forum” by allowing a private organization, the owners of the Nativity, to set it up.

The Nativity has been a part of Christmas decorations at the state capitol at least since the 1940s. Wright issued an injunction ordering the Arkansas Secretary of State to allow the Freethinkers to set up their four-sided display celebrating the winter solstice. According to Mark Love, a member of the Society of Freethinkers, only one side of the display commemorates the Winter Solstice, the other three sides tell about Freethinkers, promote certain books, and contain an “ancestry timeline”. The monument measures a little over 4 feet square and, including the roof, stands about 10 feet tall. According to Love, the purpose of the monument is to educate people about Freethinkers.

Arkansas Secretary of State Daniels denied the groups application for a display in 2008. Daniels denied the group again in 2009, stating that their display did not fit the tone of the holiday decorum at the State Capitol.

The ACLU assisted the Freethinkers in filing a lawsuit against Daniels, and handled the case for them in Federal Court.

Attorneys for the Arkansas Secretary of State argued that no public forum had been established. Since the Nativity had been part of the State Capitol Christmas display for over 60 years, they argued that the Nativity was simply one of many decorations traditionally displayed at the Capitol during the holidays.

Judge Wright took the opportunity to speak against the Nativity in general. Even though the complaint filed by the Freethinkers argued that rejecting their display violated their free speech rights, Judge Wright interjected her own arguments and made it a religion case. She stated that in its current form the Nativity is likely in violation of the First Amendment Establishment Clause which prohibits state sponsorship of religion. The fact that the Nativity was set up on a location on the south side of the Capitol, away from other holiday decorations, made it suspect, she said. She also pointed out that the Nativity contained no red, green, or white colors, colors normally associated with Christmas festivities. She said that the colors of the Nativity were colors normally associated with the common view of the birth of Christ.

In the 1980s artisans at the Ozark Folk Center in Mountain View, Arkansas, hand-carved life-size people and animals for a new Nativity. A 13 by 26 foot structure was built to house the outdoor display. The Nativity was the property of the State of Arkansas until around 1992, when it was donated to a private foundation known as the Foundation to Protect and Promote the Nativity. The non-profit group has been allowed to set up the

Nativity on the Capitol grounds every Christmas since then. They bear all financial responsibility for the set-up, maintenance, and storage of the Nativity.

Secretary of State Daniels pointed out the fact that he is constitutionally and legally responsible for the Capitol Building and its grounds. He said that he and his staff routinely approve events, including displays, at the State Capitol. Daniels determined that an atheist display did not fit the decorum of the Holiday decorations at the Capitol. He said that they would be welcome to exercise their First Amendment rights by holding a rally or other event on the Capitol steps the same as other groups.

This lawsuit and today's ruling has very little to do with the First Amendment rights of the atheist Freethinkers. It has everything to do with trying to get rid of the Nativity. They've tried and failed to have Nativities removed from public property. The one at the Capitol in Little Rock has stood in spite of objections by the ACLU. Now they're trying to come in through the back door by making Nativity displays so controversial that public officials decide to remove all religious displays, including Nativities.

At the end of the hearing, the judge told everyone to have a "happy holiday, or solstice, or whatever."

- Jerry Cox, President