

DONOHUE TESTIFIES ON NATIVITY SCENE

On January 14, Dr. William Donohue testified before the Education Committee of the New York City Council on the issue of allowing a crèche to be displayed in the New York City schools. He spoke in favor of a resolution submitted by Councilman Tony Avella.

Also testifying in support of the resolution was Brian Rooney of the Thomas More Law Center (it was this organization that teamed with the Catholic League to sue New York City over this issue). Frank Milewski of the Polish American Congress also testified, as well as representatives from the Ancient Order of Hibernians and the Ladies AOH.

Speaking against the resolution was Cynthia Rudder, vice president of the New York City chapter of Americans United for Separation of Church and State. She actually said that it was “emotionally disturbing” for students to see certain religious symbols; she provided no evidence.

The following is the text of Donohue’s testimony:

I appreciate the opportunity to speak today before the New York City Committee on Education and the Committee on Youth Services.

In 2001, I learned that New York City schools allowed the display of the menorah and the star and crescent in the classroom, but not the nativity scene. I quickly wrote to Dr. Harold Levy, Schools Chancellor at the time, asking that the crèche be afforded the same treatment given the two other religious symbols. I was astonished when he wrote back saying, “The Supreme Court has previously refused to permit erection of a nativity scene on public property.”

I immediately corrected the record—the high court never said any such thing. Indeed, I told Dr. Levy’s general counsel, Chad Vignola, that if what Dr. Levy said was true, then he should sue both me and the New York City Parks Department. My reasoning? Every year since the mid-1990s, the Catholic League has received a permit from the Parks Department (as we did in 2008) to display a crèche in Central Park. Jews display the menorah and occasionally Muslims display the star and crescent (all are erected on the corner of 59th and 5th). Neither the ACLU nor any other organization has ever challenged this annual tradition, and that’s because it is not unconstitutional to display religious symbols in public parks.

The position of Dr. Levy’s office was that the menorah and star and crescent are secular symbols, and the nativity scene was religious. This, of course, would come as a surprise to observant Jews and Muslims. In any event, with the help of the Thomas More Law Center, a suit was filed against New York City; we secured standing by providing a plaintiff, Catholic League member Andrea Skoros, and the law firm did the litigating. On February 18, 2004, U.S. District Court Judge Charles Sifton ruled that the Schools policy was acceptable because the menorah and star and crescent had a secular dimension but the crèche did not.

On appeal, the Second Circuit disagreed with Judge Sifton on this aspect: it said the menorah and the star and crescent were indeed religious, but it balked at ordering the crèche to be displayed. It reasoned that as long as some Christmas holiday symbol was allowed, namely the Christmas tree, there was no discrimination. But it also said something else—something which explains why I am here today: “We do not here decide whether the City could, consistent with the Constitution, include a crèche in its school holiday displays.”

In other words, there is no legal impediment to displaying the nativity scene in the schools alongside the Jewish and Islamic

religious symbols, just as all three are displayed in Central Park. That is why I implore the City Council to ask the Department of Education to amend its holiday policy by allowing equal treatment of Christian religious symbols in the schools in December. To do anything less is to sanction inequitable treatment. I hasten to add that if the nativity scene were allowed and the menorah and the star and crescent were banned in the schools, I would testify in favor of permitting the Jewish and Islamic religious symbols.

In short, the only thing standing in the way of equal treatment is the will of the legislature. In the spirit of the much-vaunted goal of inclusion, I call upon you to end the disparate treatment afforded Christians and affirm the resolution sponsored by Councilman Tony Avella and others.

Thank you for the chance to explain the position of the Catholic League.