



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

January 26, 2022

Via Email

Honorable Members of the Placerville City Council
Placerville City Council
c/o Regina O'Connell, City Clerk
City Clerk Department
3101 Center St.
Placerville, CA 95667
roconnell@cityofplacerville.org

Re: City of Placerville's Festival of Lights

Dear Honorable Members of the Placerville City Council:

We are writing on behalf of the American Civil Liberties Union of Northern California. It has come to our attention that certain aspects of the City of Placerville's Festival of Lights holiday celebration may violate the First Amendment's Establishment Clause. In particular, it is our understanding that the 2020 and 2021 Festival's entertainment programs featured predominantly, if not exclusively, religious music as well as other religious messaging. We appreciate that holiday celebrations, like Placerville's longstanding Festival of Lights, foster an important sense of community, particularly amidst challenges like the Caldor Fire and COVID-19 pandemic. But that sense of community is undermined when government actions privilege or appear to privilege specific religious beliefs over others. We urge you to consider the impact that the religious overtones over the recent Festivals may have on members of your community who do not share the same beliefs. We also hope you will choose to celebrate future holiday seasons in an inclusive and secular, and thus lawful, manner.

We understand the events giving rise to this letter as follows: For many years, the City has sponsored the Festival of Lights, an annual holiday celebration taking place the day after Thanksgiving in downtown Placerville. The event features, among other things, decorative holiday lights along Main Street, stagecoach rides, food and drink, live musical performances,

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and a tree-lighting ceremony. The Festival of Lights is an important Placerville tradition: not only does it attract business to downtown stores, it also brings residents together in celebration.

Historically, the Festival’s music program has featured diverse local groups, including the Placerville Gold Rush Chorus, El Dorado High School Brass Band, and Cantare Chorale.¹ For at least the past two years, however, the City of Placerville has, in its words, “teamed up with [the] Faith Community” for the Festival of Lights with the “Musical Program Provided by the Faith Community.”² As used by the City, “Faith Community” appears to reference only the Christian community. This partnership has produced an overtly Christian live-entertainment program that has become the Festival’s focal point.

For the November 27, 2020 Festival of Lights, a group of local churches put on an hour-long livestreamed program in front of the superior court. The performance opened with one secular song, “Jingle Bells,” before transitioning to a number of religious carols celebrating the birth of Christ, such as “The First Noel,” “O Come Let Us Adore Him,” and “Mary, Did You Know?”³ The program, emceed by two pastors, also featured prayers by the Executive Director of the Sierra Law Enforcement Chaplaincy and pastors from local churches. Both the Vice Mayor and Mayor gave remarks. As the then-Vice Mayor noted, “This has truly been a faith-based event and we’re a lucky town to have them here.”⁴

¹ See, e.g., Placerville Downtown Association, *Festival of Lights to Brighten Historic Main Street Tonight*, MOUNTAIN DEMOCRAT (Nov. 24, 2014), <https://www.mtdemocrat.com/special-sections/miracle-on-main-st-2014/festival-of-lights-to-brighten-historic-main-street-tonight/>; Placerville Downtown Association, *Festival of Lights Brings Christmas to Main Street*, MOUNTAIN DEMOCRAT (Nov. 19, 2012), <https://www.mtdemocrat.com/special-sections/miracle-on-main-st-2012/festival-of-lights-kicks-off-christmas-season/>.

² See November 27, 2020 Miracle on Mainstreet Event Flyer, City of Placerville, California, <https://www.cityofplacerville.org/MiracleonMain> (last accessed Jan. 26 2022).

³ See generally *Miracle on Main Street 2020 Video*, Placerville IT (Nov. 27, 2020), <https://www.youtube.com/watch?v=lax8HM8craI>.

⁴ *Id.* at 49:17–49:33. While the then-Vice Mayor emphasized that “there was no funding coming from the city” to support the Festival of Light’s music program specifically, *id.*, City staff recognize the Festival of Lights as a City-sponsored event. See, e.g., Rebecca Neves, City Engineer, City Manager’s Report for Item No. 12.4, Oct. 27, 2020 City Council Meeting, <https://tinyurl.com/ye25c6c8>. In addition, the City pays to install the decorative lights on Main Street and maintain the decorated community Christmas tree. *Id.* Finally, the music program takes place on public property in front of the superior court. “[T]he Establishment Clause does not limit only the religious content of the government’s own communications. It also prohibits the government’s support and promotion of religious communications by religious organizations.” *County of Allegheny v. ACLU*, 492 U.S. 573, 593–94 (1989), *abrogated on other grounds by Town of Greece, N.Y. v. Galloway*, 572 U.S. 565 (2014).

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The November 26, 2021 Festival of Lights featured a similar program in front of the superior court,⁵ again planned and executed by representatives from local churches “in coordination with the city.”⁶ One of the pastors reprised his role emceeding the hour-long “Main Stage Program,” which again featured a prayer by the Executive Director of the Sierra Law Enforcement Chaplaincy and remarks by the Mayor extolling the “great partnership between the city and the faith community.”⁷ Finally, the band—composed solely of representatives from local churches—performed 10 carols, including “Go Tell It on the Mountain” and “Joy Unto the World.” While the 2020 performance included one secular carol, the 2021 set list included none.

We are concerned that the Placerville Festival of Light’s music program violates the First Amendment’s Establishment Clause because it sends the message that the City supports and promotes specific religious beliefs.

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982); *see also, e.g., McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (government must remain “neutral[] between religion and religion, and between religion and non-religion”) (internal quotation marks, citation omitted). And while the specific test applicable to claims that a government celebration, display, or symbol violates the Establishment Clause has evolved over time, the “essential principle remains the same”: the government cannot “appear[] to take a position on questions of religious belief.” *County of Allegheny*, 492 U.S. at 593–94. Courts closely examine the particular history and context of a display or celebration to determine whether it appears to promote religion. *See id.* at 600.

The City’s Festival of Lights’ music program risks going beyond a secular celebration of the holiday season. The 2020 and 2021 Festivals included almost no secular music to balance the religious message of the Christian faith community’s performance—a significant departure from other government-sponsored and constitutional holiday performances where religious

⁵ November 26, 2021 Festival of Lights Event Flyer, City of Placerville, California, <https://www.cityofplacerville.org/events/64109/> (last accessed Jan. 26, 2022).

⁶ *See* Festival Lights: A Hometown Christmas, Bayside Church of Placerville, <https://www.baysideplacerville.com/fo/> (last accessed Jan. 26, 2022); *see also* Festival of Lights 2021 Video at 42:53–43:08 (Nov. 26, 2021),

<https://www.facebook.com/PlacervilleHomeTownChristmas/videos/478944730321986> (hereafter “Festival of Lights 2021 Video”) (emcee of music program describing the event as “a partnership between our city leadership and our faith community as well as a lot of business partners who joined together to . . . make this a memorable occasion for our community”).

⁷ *See* Festival of Lights 2021 Video at 47:19–47:32.

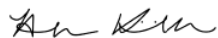
Christmas carols were “only a single component in a much larger, predominantly secular holiday program.” *Soc’y of Separationists, Inc. v. Clements*, 677 F. Supp. 509, 513 (W.D. Tex. 1988) (“effect of the two religious carols” insufficient to overcome secular nature of holiday event for Establishment Clause purposes); *see also, e.g., Torricellas v. Poole*, 954 F. Supp. 1405, 1411–12 (C.D. Cal. 1997), *aff’d* No. 97-55369, 1989 WL 133602 (9th Cir. Mar. 18, 1998) (prison Christmas party “was largely a secular affair” even though “some” carols sung “contained religious lyrics”).

The constitutional problem remains whether the music program is considered on its own or as part of the greater festivities. The hour-long performances serve as the focal point of the Festival of Lights. They feature attention-grabbing music, prayer, and remarks by local officials. They serve as the countdown to the actual lighting of the Christmas tree. And they take place in a prominent location: on Main Street in front of the superior court. *See County of Allegheny*, 492 U.S. at 599–600 (“No viewer could reasonably think that” a crèche on the “main” and “most beautiful part” of the seat of county government “occupies this location without the support and approval of the government”). The fact that the Festival also includes some secular components, like a Christmas tree or sleigh ride, does not balance this otherwise overwhelmingly religious message. *See id.* at 598 n.48 (The “presence of Santas or other Christmas decorations *elsewhere* in the county courthouse . . . fail to negate the endorsement effect of the crèche[.]”).

* * *

The purpose of this letter is not to end the City’s longstanding celebration of the holiday season. To the contrary, we recognize that the Festival of Lights plays an important role in your community and hope that it continues in a manner that can be enjoyed by all community members, and not simply those who hold certain religious beliefs. If you have any questions, please feel free to contact me at hkieschnick@aclunc.org.

Sincerely,



Hannah Kieschnick
Staff Attorney
ACLU Foundation of Northern California

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