

1 SB277
2 165065-2
3 By Senators Williams, Bussman, Holtzclaw, Albritton, Scofield,
4 Shelnutt, Waggoner, Brewbaker, McClendon, Holley, Melson,
5 Livingston, Stutts, Orr, Allen, Glover, Marsh, Reed, Pittman,
6 Smith, Beasley, Ross, Figures, Hightower, Coleman, Dunn,
7 Smitherman, Whatley and Dial
8 RFD: Judiciary
9 First Read: 18-MAR-15

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8 SYNOPSIS: Existing law does not expressly allow the
9 display of images associated with a religious
10 holiday such as a Christmas image, nativity scene,
11 or Christmas tree on public property.

12 This bill would express certain legislative
13 findings regarding the display of images associated
14 with a religious holiday such as a Christmas image,
15 nativity scene, or Christmas tree on public
16 property.

17 This bill would allow the display of images
18 associated with a religious holiday such as a
19 Christmas image, nativity scene, or Christmas tree
20 on public property if the display has a secular
21 purpose and does not advance a particular religion.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to the display of certain images associated
2 with a religious holiday; to express certain legislative
3 findings regarding the display of images associated with a
4 religious holiday such as a Christmas image, nativity scene,
5 or Christmas tree on public property; and to allow the display
6 of images associated with a religious holiday such as a
7 Christmas image, nativity scene, or Christmas tree on public
8 property if the display has a secular purpose and does not
9 advance a particular religion.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) The Legislature finds, recognizes,
12 and adopts that:

13 (1) The United States Supreme Court has addressed
14 the constitutionality of nativity scenes on public property on
15 more than one occasion.

16 (2) In *Lynch v. Donnelly* 465 U.S. 668, 104 S. Ct.
17 1355, 79 L. Ed. 2d 604, 1984 U.S. 37. (1984), the court ruled
18 that a nativity scene in a shopping district did not promote
19 or endorse Christianity and thus did not violate the
20 Establishment Clause because the display also contained
21 secular symbols of Christmas, such as a Santa Claus and
22 reindeer. In that case the following was noted:

23 a. In every Establishment Clause case, it is
24 necessary to reconcile inescapable tension between the
25 objective of preventing unnecessary intrusion of either church
26 or state upon the other and reality that total separation of
27 the two is not possible.

1 b. The United States Supreme Court's interpretation
2 of the Establishment Clause has comported with what history
3 reveals was the contemporaneous understanding of its
4 guarantees.

5 c. Not every law that confers an "indirect,"
6 "remote," or "incidental" benefit upon religion is for that
7 reason alone constitutionally invalid.

8 d. A municipality does not violate the Establishment
9 Clause of the First Amendment, which is binding on the states
10 through the Fourteenth Amendment, by including a creche or
11 nativity scene in its annual Christmas display and the
12 inclusion of the creche does not impermissibly advance
13 religion or create excessive entanglement between religion and
14 government.

15 e. A municipality that included a nativity scene in
16 its annual Christmas display for purposes of celebrating the
17 Christmas holiday and depicting origins of that holiday, were
18 held to be a legitimate secular purpose and, therefore, the
19 inclusion of a nativity scene did not violate Establishment
20 Clause.

21 f. The concept of a "wall" of separation between
22 church and state is a useful metaphor but is not an accurate
23 description of the practical aspects of the relationship that
24 in fact exists. The Constitution does not require complete
25 separation of church and state; it affirmatively mandates
26 accommodation, not merely tolerance, of all religions, and
27 forbids hostility toward any particular religion.

1 g. Our history is pervaded by official
2 acknowledgment of the role of religion in American life, and
3 equally pervasive is evidence of accommodation of all faiths
4 and all forms of religious expression and hostility toward
5 none.

6 Section 2. An image, scene, or symbol associated
7 with a religious holiday may be displayed on public property
8 such as a nativity scene or Christmas tree, if the display
9 includes a scene or symbol of at least one secular scene or
10 symbol.

11 Section 3. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.