

The governor of a state proposes to place a Christmas nativity scene, the components of which would be permanently donated to the state by private citizens, in the state capitol building rotunda where the state legislature meets annually. The governor further proposes to display this state-owned nativity scene annually from December 1 to December 31, next to permanent displays that depict the various products manufactured in the state. The governor's proposal is supported by all members of both houses of the legislature.

If the governor's proposed nativity-scene display is challenged in a lawsuit on establishment clause grounds, will the court likely find it constitutional?

- A. No, because the components of the nativity scene would be owned by the state rather than by private persons.
- B. No, because the nativity scene would not be displayed in a context that appeared to depict and commemorate the Christmas season as a primarily secular holiday.
- C. Yes, because the components of the nativity scene would be donated to the state by private citizens rather than purchased with state funds.
- D. Yes, because the nativity scene would be displayed alongside an exhibit of various products manufactured in the state.

## Explanation:

**Government displays of religious symbols** (eg, nativity scene, menorah) violate the First Amendment **establishment clause**—which guarantees the separation of church and state—unless they satisfy the **endorsement test**. Under this test, a display is prohibited when its **overall context** would cause a **reasonable observer** to conclude that the display **endorses** (or disapproves of) **religion**.

Here, the governor proposes placing a Christmas nativity scene in the state capitol building rotunda. A reasonable observer would likely conclude that this display endorses religion (specifically Christianity) since:

- it would be located on prominent government property *and*
- it would not include secular holiday items (eg, Christmas tree, reindeer) that would negate the endorsement of religion represented by the nativity scene.

And since the nativity scene would not be displayed in a context that depicts and commemorates the Christmas season as a primarily secular holiday, the court will likely find the display unconstitutional.

**(Choice A)** If the proposed nativity scene were displayed in a context that paints Christmas as a primarily secular holiday, the fact that the state (not private persons) owned the display would not make it unconstitutional.

**(Choice C)** The fact that the nativity scene's components would be donated by private persons—if disclosed to the public—could support a reasonable belief that the display is not a government endorsement of religion. But it is unlikely that this one factor would overcome the display's overall appearance of endorsement.

**(Choice D)** Displaying the nativity scene alongside an exhibit of state-manufactured products would only lessen the display's religious endorsement if those products were secular, *holiday-themed* items. Without such evidence, the court cannot conclude that the display commemorates Christmas as a primarily secular holiday.

## Educational objective:

Under the endorsement test, government displays of religious symbols violate the establishment clause when the overall context of the display would cause a reasonable person to conclude that the display endorses religion.

## References

- *Lynch v. Donnelly*, 465 U.S. 668, 692–93 (1984) (finding that a government-sponsored nativity scene surrounded by secular holiday displays is not a government endorsement of religion).

- County of Allegheny v. ACLU, 492 U.S. 573, 598–601 (1989) (holding that a government-sponsored nativity scene located on prominent government property and not surrounded by secular holiday displays is unconstitutional).

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**Establishment clause  
(endorsement of religion prohibited)**

Constitutional display



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Unconstitutional display

