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**MARJORIE R. ESMAN**  
**EXECUTIVE DIRECTOR**

## OPEN LETTER REGARDING HOLIDAY LIGHTS

November 27, 2012

**Via Regular Mail and Email to [sjones@dspd.net](mailto:sjones@dspd.net)**

Scott Jones, Chief of Police  
City of Denham Springs  
P. O. Box 847  
Denham Springs, LA 70727-0847

Dear Chief Jones:

The ACLU of Louisiana has learned<sup>1</sup> that a Denham Springs police officer recently pressured local resident Sarah Henderson to remove from her home Christmas lights depicting an extended middle finger, citing local “obscenity” ordinances (which we believe do not exist)<sup>2</sup> and threatening a substantial fine. These actions violate the First Amendment, and we write to ensure that no such fines are levied or other penalties imposed if Henderson chooses to reinstall her controversial holiday display.

The law on this issue is perfectly clear: the City may not restrict Henderson’s expression purely because it, or Henderson’s neighbors, finds it vulgar or offensive. *Cohen v. California*, 403 U.S. 15, 26 (1971) (“absent a more particularized and compelling reason for its actions, [a] State may not, consistently with the First and Fourteenth Amendments, make the simple public display ... of [a] four-letter expletive a criminal offense.”) The *Cohen* Court explained why such language is entitled to First Amendment protection although it appears to have little redeeming value:

while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

*Id.* at 25.

The Fifth Circuit U.S. Court of Appeal, which presides over Louisiana, Texas and Mississippi, has specifically commented on the protected expressive nature of a middle finger extended in defiance or protest: “The thumbed nose, the *projected middle finger*, the bronx

<sup>1</sup> <http://theadvocate.com/news/4532114-123/woman-removes-lighted-finger-off>, *The Advocate*, “Woman removes lighted ‘finger’ off roof” Nov. 27, 2012.

<sup>2</sup> <http://library.municode.com/index.aspx?clientId=12624> . Moreover, Louisiana law, LSA R.S. 14:106(E), prohibits municipalities from enacting obscenity laws that are more restrictive than those contained in the state law. A real or a depiction of a projected middle finger, is not included in the list of prohibited activities under 14:106.

(2)

cheer, the grimace and the smile are all conduct intended to convey a message that is sometimes made even more expressive by its bold freedom from a garb of words.” *Davis v. Williams*, 598 F.2d 916, n.5 (5th Cir. 1979) (Emphasis added). In light of that endorsement, it is clear that Ms. Henderson has the absolute right to display her Christmas lights as she sees fit, without interference from the City of Denham Springs.

Rather than pressuring Ms. Hendereson to remove a display that is protected under the U.S. Constitution and Louisiana law, the Denham Springs Police Department should have defended her right of free expression. We therefore assume that should she choose to re-install her display, she will receive appropriate police protection as the law requires.

Happy holidays,

Marjorie Esman  
Executive Director