

*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

**JAMES J. LYONS, JR.**  
**STATE REPRESENTATIVE**  
18<sup>TH</sup> ESSEX DISTRICT  
ANDOVER, BOXFORD,  
NORTH ANDOVER, TEWKSBURY

Committees:  
Public Health  
Judiciary  
Personnel and Administration

STATE HOUSE, ROOM 443  
TEL. (617) 722-2460  
James.Lyons@MAhouse.gov

December 15, 2016

Tyrone Lawless  
Director of State House Operations  
Room 115, State House  
Boston, MA 02133

Dear Mr. Lawless,

On November 30, we had a phone conversation where I requested permission to display a Nativity scene on the State House lawn. During that conversation you stated that, "I have had this type of request over the years, but religious displays are not allowed." Additionally, I submitted an application for the indoor display on December 8, 2016. On December 9, you wrote to me that you were waiting for permission from the Speaker's office on both the interior and exterior request. On December 13, I requested an update of the status of both requests.

As of today, December 15, 2016, I have still not heard anything regarding these requests. I believe that my request is lawful and have solicited the Thomas More Society to provide some legal background on the matter. Please find attached a legal opinion from Thomas Brejcha, President and Chief Counsel of the Thomas More Society, outlining the legal basis for granting our request.

Thank you for your consideration.

Merry Christmas,

James J. Lyons, Jr.  
18<sup>th</sup> Essex District

CC: Speaker Robert A. DeLeo



## Thomas More SOCIETY

A national public interest law firm defending life, family, and religious liberty

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December 14, 2016

Rep. James Lyons  
Massachusetts Nativity Display Committee  
12 Highvale Lane  
Andover, MA 01810

**RE: Citizens' First Amendment Rights to Display a Nativity Scene at the MA State House**

Dear Rep. Lyons:

You asked us to address the question whether citizens of your state – specifically, the members and supporters of the Massachusetts Nativity Display Committee (“the Committee”), in their capacity as private citizens of the United States and the Commonwealth of Massachusetts – have a legal right to put up a privately funded and sponsored Nativity Display, either on the lawn in front of the MA State House, or inside its Great Hall, or both, in light of the following facts.

By way of preface, let us reiterate some of the background facts that we had discussed when you first contacted us last week. Our Thomas More Society, acting as counsel for the American Nativity Scene Committee as well as various local groups, has so far successfully secured permission to state Nativity Displays at State Capitol venues in all these states: Illinois; Florida; Georgia; Mississippi; Michigan; Nebraska; Texas; Missouri; Rhode Island; and Oklahoma (outside Governor’s mansion), initiated in prior years and continued. This year new Nativity Displays will grace the Capitol steps in Sacramento, CA, beginning next Sunday and continuing until after Christmas Day, and another was unveiled after which a Lighting Ceremony was held this past Monday in the Iowa State Capitol Rotunda in Des Moines, which will also be on display through Christmas.

We are advised, moreover, that additional private Nativity Displays have been allowed in State Capitols in Wisconsin, in Washington, and in Arkansas, although we played no role in securing permission for, or otherwise assisting with, those Nativity Displays

Neither the ACLU, nor the Freedom from Religion Foundation, nor American United for Separation of Church and State, nor any other group objected to any of the Nativity Displays with which we have been involved, let alone filed any legal action against them. Quite the contrary, ACLU representatives in Illinois, in Texas, and just the day before yesterday in Des Moines, IA have been quoted or videotaped, concurring with our legal opinion that these privately sponsored and privately funded displays, appearing in traditional or designated public *fora*, are fully protected under the First Amendment as both free speech and the free exercise of religious faith.

The government has no role as either endorser or censor of these private displays, as its sole role is that of a neutral gatekeeper assuring unbiased open access to the public forum for all citizens, subject only to reasonable restrictions unrelated to the content of the sponsors’ message.

Yet, in your case you related that, on or about November 30<sup>th</sup> of this year, you conveyed a request, on behalf of the Committee, to Mr. Tyrone Lawless of the State House Bureau, as to whether the Committee could put a Nativity Scene on the lawn in front of the State House, paid for only with private funds. Mr. Lawless – after you had clarified what the Nativity Scene would consist of – responded in these or words of like substance and effect, “I have had this type of request over the years but religious displays are not allowed.”

Moreover, you had pointed out to Mr. Lawless that a giant (18 ft.) Menorah has been put on display in the State House, and celebrated with a Lighting Ceremony during which state and local officials at times have used a scissor lift to reach the “candle” fixtures atop the Menorah. But you reported that Mr. Lawless simply said that, insofar as any comparison between the Nativity and the Menorah is concerned, “You’ll have to talk to Speaker DeLeo about that.”

Later, on December 8, 2016, you also submitted a written application to the Bureau of the State House, pursuant to instructions on its website, a copy of which is appended hereto, seeking permission for the Committee to display a private Nativity Scene inside the State House, in the Great Hall. You asked that the display occur from 11 a.m. until 5 p.m. on December 22, 2016. Thus your application, submitted 14 days ahead of the planned event, was timely in accord with the Bureau’s guidelines.

The next day, on December 9<sup>th</sup>, you emailed Mr. Lawless, asking whether he had yet sent you a written response to either application, as you had discussed with him. He responded by email, advising that he was “waiting on the speaker’s office concerning both interior and exterior requests.” Thus it appears that Speaker Robert DeLeo must approve requests for private displays and events at the State House, although the State House Bureau website makes no reference to this. Nor have we found any listing of norms, criteria, or standards that would guide or constrain the Speaker’s exercise of discretion in deciding whether to approve or disapprove applications.

Two weeks have elapsed since you requested an outdoor Nativity Display. And almost half of the 14 day period leading up to December 22<sup>nd</sup> has elapsed. Yet you have had no response as to whether either Nativity Display will be permitted, and you have expressed concern that absent a prompt decision you may not have adequate time to make the necessary arrangements to set up and publicize the event to invite speakers and draw a good crowd.

Indeed, you advised that when you submitted the written application almost a week ago, you were told that the Great Hall was available on the date you requested, and you expected a quick approval for the indoor Nativity Scene.

There is every reason to treat the State House lawn as well as its interior spaces as traditional as well as designated public *fora*. This is squarely recognized on the Bureau of the State House’s own website as it describes its mission in these terms: “We strive to efficiently provide a safe, accessible, clean and secure seat of government, place of business, museum of art and history **as well as a site for public congregation.**” (Emph. added). Moreover, a great number of events have been held in the State House, reflecting a broad spectrum of political, cultural, and other points of view. Thus recent “public congregations” have included not only concerts but also rallies for higher wages for fast-food, airport and other workers, educating the

public and policy makers about the impact of homicide on families and communities, women entrepreneurs, World Diabetes Day, and Women Veterans Appreciation Day.

Outside on the State House lawn, the same has been true over many years. Not too many years ago, as attached photos show, a giant Nativity Scene appeared on the lawn, and at least around 1955 a herd of sheep appeared with it (although in those "olden days" these displays may have been funded and sponsored by government). More recently, political rallies are often held on the State House lawn. For example, just a few weeks ago, Boston Mayor Walsh and Attorney General Healey were to join protesters from 30 different groups for a massive rally (30,000 people having indicated an interest for the rally) on November 21, 2016 to protest "a string of hate-fueled acts that have been increasing in frequency around the country." A few years earlier, "advocates on both sides" of the same-sex marriage issue "began showing up early at the State House," as depicted and reported in "MassLive" and "boston.com" internet postings, copies of which are attached.

In light of these facts, as well as our Society's experience in other cities and states around the country, it is our firm legal opinion, with which our Massachusetts co-counsel concurs, that any rejection of your application for permission to place a Nativity Scene either on the State House lawn or in the State House's Great Hall, would constitute a flagrant and invidious denial and deprivation of your fundamental First Amendment rights to free speech and the free exercise of your religious faith. As courts have repeatedly held, from time immemorial our streets and parks have been regarded as traditional public *fora* in which citizens may exercise their rights of free speech, and of course religious expression counts as much as any secular form of expression as fully protected free speech.

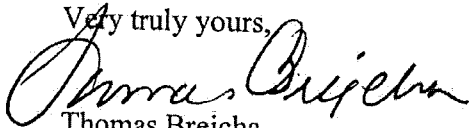
This principle was eloquently and securely articulated in a case argued and won by our former chairman (then a private lawyer), in *Grutzmacher v. Public Bldg. Comm'n*, 700 F.Supp. 1497, 1988 U.S. Dist. LEXIS 13251 (11/23/88), when then Chief Judge James B. Parsons (the first African-American to grace our federal district court in Chicago), held that "religious expressive conduct in a traditional public forum enjoys the same protections afforded political, artistic, or other types of protected speech under the First Amendment. \*\*\* Therefore, the responsibility of the Executive Director and members of the [Cook County Public Building] Commission is to administer this public forum without discrimination against any who would use it regardless of their religion or regardless of their abstention from religion. This is a basic responsibility they must perform. Incidentally it may never be properly performed by saying to any one type of user as against the other, "It is easier for us to administer the city's properties if no religionists come aboard. ***What a revolting and ridiculous position to be taken here in the United States of America*** and presumably under the mandate of our Constitution." (emph. added).

Indeed, rejection of the proposed Nativity Display on account of its religious content would represent a content-based discrimination against the Massachusetts Nativity Display Committee, which would have to be justified by some compelling state interest. Recent Supreme Court precedent makes this indisputably clear. And the Bureau's and Speaker DeLeo's willingness to tolerate and even celebrate so many different political, cultural, artistic, and *religious* viewpoints, while rejecting this proposed self-funded Nativity Display that expresses

private citizens' beliefs as to the core meaning of the Christmas holiday, would clearly constitute a flagrant case of viewpoint bias in defiance of the First Amendment.

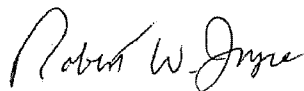
We are prepared to litigate this case for you if those in charge of the Bureau's role as supposedly neutral gatekeeper to this traditional and designated public forum do not promptly fulfill their constitutional duty to exercise their authority in a viewpoint-neutral way that protects the public square as open and freely accessible to citizens of all political, cultural, artistic, and religious persuasions. That would entail their early approval of your application for putting a Nativity Scene in the Great Hall, if not also on the State House lawn. Please feel free to call on us if further action is required.

Very truly yours,



Thomas Brejcha  
President & Chief Counsel  
Thomas More Society

Very truly yours,



Robert W. Joyce, P.C.  
1150 Walnut Street  
Newton, MA 02461

cc: American Nativity Scene Committee  
c/o James P. Finnegan, Barrington, IL  
Ed O'Malley, Mount Prospect, IL

**B**

## Bureau of the State House (FORM B)

State House Function Application: Regular Business Hours

(Events should not be scheduled to start before 9 a.m.)

Completed application and floor plan must be received in Room 1 at least 14 days before the event.

Fax: 617-727-7700 Email: sh.events@state.ma.us

**Applicant Information**

Legislator/Agency Sponsor Name Rep. Jim Lyons	Today's Date 12-8-16
Organization Name MA Nativity Display Committee	Contact Person Jim Lyons
Address 12 Highvale Ln	City, State, Zip Code Andover MA 01810
Phone Number 978 886 9916	Email Address (to receive confirmation) repjimlyons@gmail.com

**Event Information**

Requested Date 12-22-16	Start Time 11am	End Time 5pm
Number of Attendees 75-100	Event Name Celebration of Christmas	

**Event Description**

Display of a nativity scene.

Please see the next page for information on accommodations for your event attendees with disabilities.

**Room Selection**

<input checked="" type="checkbox"/> Great Hall	<input type="checkbox"/> Nurses Hall	<input type="checkbox"/> Grand Staircase	<input type="checkbox"/> Gardner Auditorium	<input type="checkbox"/> 4th Floor (Exhibition Only)
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**Equipment Requested**

<input type="checkbox"/> Flags (Commonwealth and US only)	<input checked="" type="checkbox"/> Podium	<input checked="" type="checkbox"/> Sound System/Mic	<input type="checkbox"/> Trash Receptacle	<input type="checkbox"/> Stage (Great Hall only) Ramp available
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Please indicate the number of each item requested below (available on first come, first served basis)

8' Rectangular Tables	60" Round Tables	Chairs
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**Loading Dock Access (Required)**

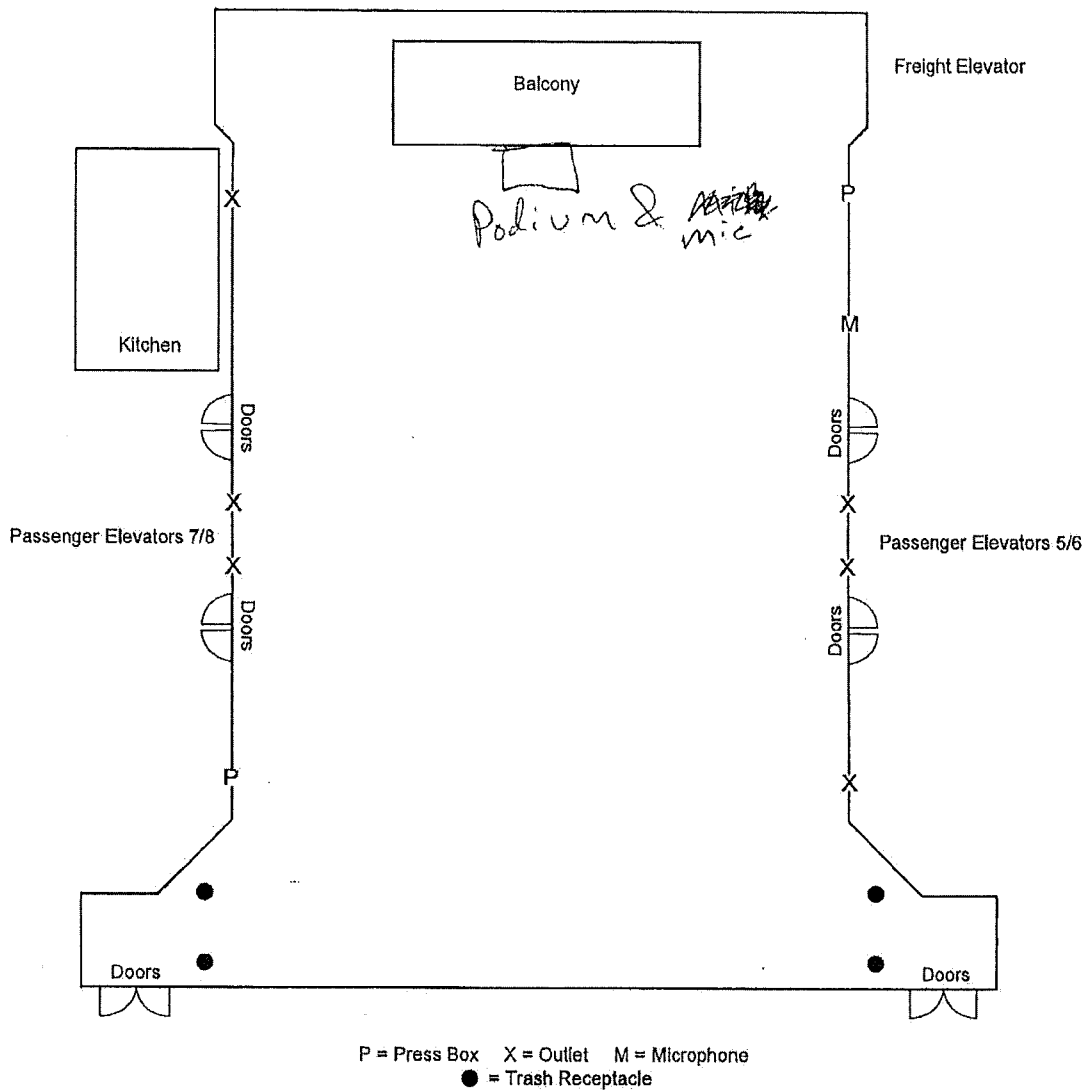
Names and telephone numbers of outside vendors must be listed below or vehicles will not gain access to the loading dock. Attach separate sheet if necessary.

Caterer Name	Contact Person	Phone Number
Equipment Rental Name	Contact Person	Phone Number
Other Vendor Name	Contact Person	Phone Number

**Signature**

By signing below, the applicant agrees to abide by the Policies, Terms and Conditions of the Bureau

Signature of Contact Person (Applicant Organization) and Date	12-8-16
Signature of Legislator/State Agency Head Sponsor and Date	12-8-16



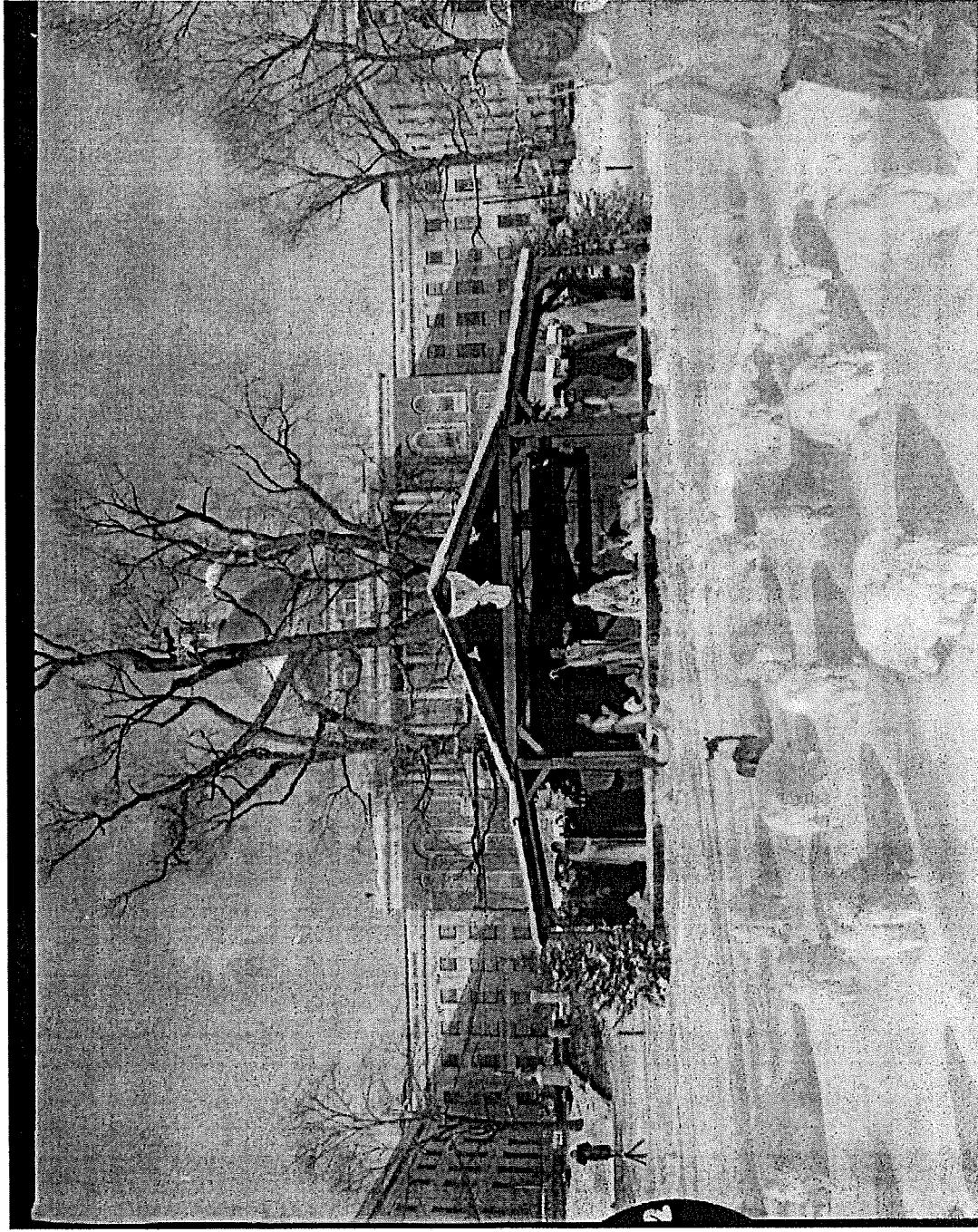
# Great Hall

Capacity: 240 Seated or 400 Standing

<https://www.digitalcommonwealth.org/search/commonwealth:8c97n166h>

3 <https://www.digitalcommonwealth.org/search/commonwealth:8c97n166h>

## Nativity scene in front of State House





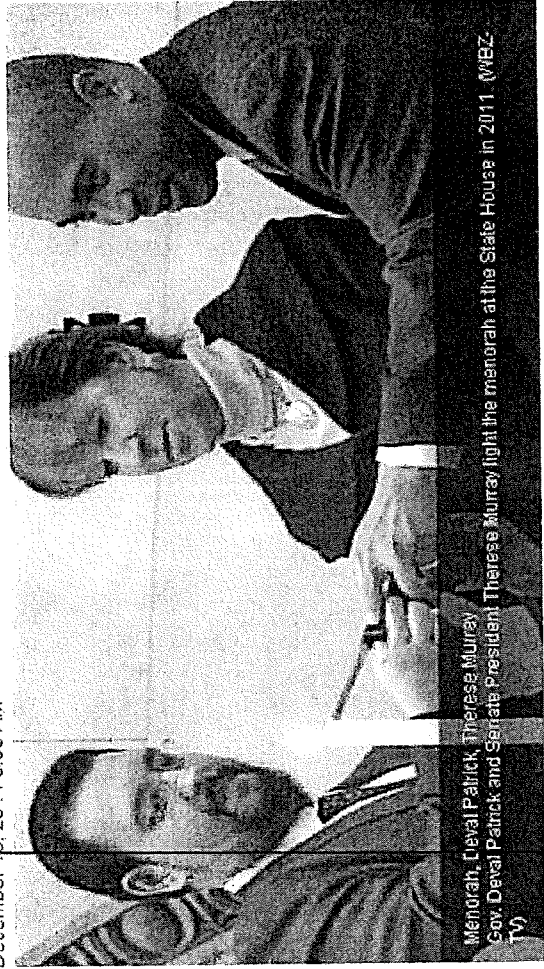
[http://www.statehousenews.com/twg/index.php?twg\\_album=photos%2F2015%2F12-07Menorah-Lighting-2015&twg\\_show=MG\\_6583.JPG#2](http://www.statehousenews.com/twg/index.php?twg_album=photos%2F2015%2F12-07Menorah-Lighting-2015&twg_show=MG_6583.JPG#2)  
Gov. Baker and Rabbi Liberman light center candle on State House menorah



<http://boston.cbslocal.com/2014/12/15/lighting-of-state-house-menorah-to-mark-start-of-hanukkah/>

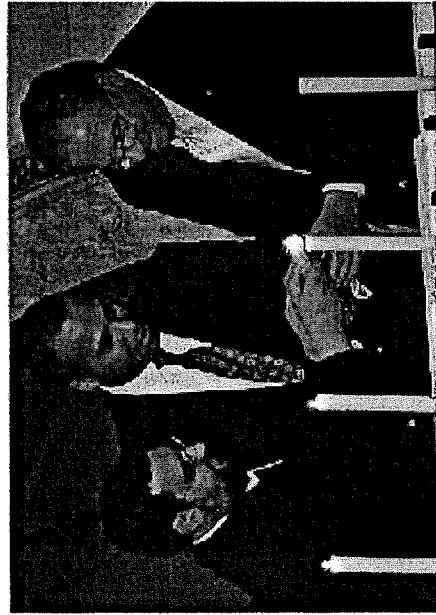
## Lighting Of State House Menorah To Mark Start Of Hanukkah

December 16, 2014 6:00 AM



Menorah, Deval Patrick, Therese Murray  
Gov. Deval Patrick and Sen. Patrick Seriate light the menorah at the State House in 2011. WEEZ-TV

<http://bostoneventsinsider.com/bostonevents/2012/12-09/state-house-menorah-lighting.htm>



The Rabbi with the Governor and the Speaker from last year's ceremony.