

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 08-CI-1950

AMERICAN ATHEISTS INC, *ET AT AT*

PLAINTIFFS

V.

AFFIDAVIT OF JAN EWING
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
AND IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMMONWEALTH OF KENTUCKY, *ET AL*

DEFENDANTS

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Comes the affiant, Jan Ewing and, after being duly affirmed, deposes and says:

1. I am one of the Plaintiffs in the above styled and numbered action that challenges the constitutionality of KRS 39A.285(3) Legislative findings and KRS 39G.010 (2)(a) Kentucky Office of Homeland Security executive director -- Duties -- Delegation of duties -- Notification of disaster or emergency.
2. I am a citizen of the United States, reside in Lexington, Kentucky, and am a taxpayer of the United States and of the Commonwealth of Kentucky.
3. I believe that these statutes constitute a violation of the First Amendment to the Constitution of the United States as well as violating Section 5 of the Constitution of Kentucky.
4. I am a firm supporter of the separation of church and state, and I believe the Kentucky Revised Statutes, KRS 39G.010 (2)(a) and KRS 39A.285 (3), are unconstitutional, and an infringement upon ,and a compromise of, my rights under both the United States and Kentucky Constitutions.
5. I believe that I have suffered, and will continue to suffer d, damages and community marginalization from the continued existence and implementation of the aforementioned Kentucky Revised Statutes. Having previously lost employment at a state funded institution, with unwarranted threat to my KRS based professional license because I could not support religion in my workplace, the challenged laws only serve to extenuate my sense of being marginalized.
6. I am personally aware of unnamed Theists, in Kentucky, who have expressed dismay over this breach of the separation of church and state.
7. I am personally aware of unnamed Atheists, who are Kentucky residents, who feel equally offended and injured by the existence of the aforementioned statutes. However, for fear of reprisals, they are unwilling to come forward and publically state their objections.
8. I feel that the organization American Atheists, Inc. can adequately protect the rights of these unnamed individuals.
9. Upon information and belief, the Kentucky Revised Statutes challenged are unconstitutional in that they have no secular purpose, unlawfully establish religion, and unnecessarily entangle religion and government.
10. My civil rights, and my rights of citizenship, are infringed upon in that these statutes state that only believers who have the ability to rely on "Almighty God" can be safe and secure within the Commonwealth of Kentucky. Non-believers are placed in an inferior status as compared to their believing co-citizens.
11. The emphasis upon the exclusionary and absolute language contained in KRS 39A.285 (3), claiming that "[t]he safety and security of the Commonwealth *cannot be achieved apart from reliance upon Almighty God* as set forth in

the public speeches and proclamations of American Presidents, ..." implies that nonbelievers, who do not subscribe to these religious directives, cannot be safe within the Commonwealth of Kentucky. This does not me any options in how I may be protected apart from trusting my safety to those who are performing religious rituals seeking to invoke a supernatural entity, which I believe to be nonexistent, to come to the rescue of citizens of Kentucky..

12. I feel directly threatened by the deference to highly selective, religious portions of non-binding, past Presidential speeches and proclamations, now codified into law within KRS 39A.285(3) and KRS 39G.010(2)(a).

Historically, protection is not guaranteed to those who invoke "Almighty God" or who use specific prescribed religious rituals.

Reliance upon prayer, fasting and Old Testament scripture to achieve the protection of "Almighty God", did not grant such protection for the Jews against their Egyptian bondage, their conquest by the Assyrians, their exile into Babylonia, additional conquests by the Syrians and the Romans, the Diaspora and the 20th century Holocaust - resulting in the systematic, bureaucratic, state-sponsored persecution and murder of approximately six million Jews.

The legal directive to rely on "Almighty God", as stated in KRS 39A.285(3) and included upon the resultant plaque at the Kentucky Office of Emergency Management, refers to President Lincoln's March 30, 1893, non-binding Presidential Proclamation. The invocation by Lincoln of "Almighty God" did not serve to protect him from dying two years later from an assassin's bullet on April 15, 1865.

The scripture quoted in KRS 39A.285(3) is only a partial quote of Psalms 127:1, the King James Version of the Old Testament. The quoted scripture is from President John F. Kennedy's undelivered, November 22, 1963 national security speech. This alleged protective scripture did not manage to keep President Kennedy safe and secure, as he was assassinated, on this very day, before he could deliver his previously prepared speech.

The specific directions of the law, requiring citizens of the Commonwealth to "fast and pray", invokes the terrifying memory of the September 11, 2001 attacks on the World Trade Center. Per a November 18, 2001, Washington Post article, "In Hijacker's Bags, a Call to Planning, Prayer and Death", a document was found in the unloaded luggage of one of the terrorists. This document gave instructed the terrorists: "[y]ou should pray, you should fast. You should ask God for guidance, you should ask God for help..." on the night before their religion based, heinous attack upon the World Trade Center; < http://www.washingtonpost.com/wp-Dyn/content/article/2007/11/18/AR2007111800569_pf.html>.

13. The Kentucky Revised Statutes challenged require that my tax money be used to codify into law religious belief over non-belief, violating both the provisions of the First Amendment of the United States Constitution and Section 5 of the Constitution of Kentucky. The statutes challenged clearly show that belief in, and reliance upon, an alleged supernatural deity is preferred and directed by the Commonwealth of Kentucky over any stance of non-belief in a such an alleged supernatural entity.

14. KRS 39G.010(2)(a) goes further beyond ceremonial or historic deism, as a State Officer is compelled to post religious language within a government facility. I can personally attest to this as I have viewed the plaque containing the language of 39A.285(3), which is located in a common hallway located at the state's Emergency Operations Center. Per KRS 39G.010(2)(a), government employees are also compelled to be exposed to "agency training and educational materials" which contain this "Almighty God", "prayer and fasting" language. This is even if the government employees do not share these beliefs or practices related to the alleged supernatural "Almighty God".

15. Taxpayer funds are being expended to publish the aforementioned statutes on the LRC website, linked from the website of the Kentucky Office of Homeland Security to their Annual Reports, in the agency training and educational materials and in the creation and maintenance of the plaque at the Office of Emergency Management, located at the Boone National Guard Center. The text of KRS 39A.285 is published in the 2006 Kentucky Department of Homeland Security Annual Report < <http://www.e-archives.ky.gov/pubs/homeland/2006kohsannualreport.pdf> >.

The text of this statute is printed on a

stand alone page (page 12 of a 50 page publication), without further explanation. KRS 39A.285(3) is printed as simply the third paragraph of an all encompassing and official statement.

Page 12 follows the authoritative statements from then Governor Ernie Fletcher and the then Executive Director of the Kentucky Office of Homeland Security, (Ret) Maj. Alecia Webb-Edgington, that emphasize prevention and preparedness in keeping the Commonwealth safe in all emergencies and disasters, including terrorist attacks.

The text of KRS 39A.285 is again noted to be published within the 2008 Kentucky Office of Homeland Security Annual Report Supplement, under the heading "Protective Statement".

At the end of the 2008 Annual Report is the notation of "This Document was prepared under a grant from the Kentucky Office of Homeland Security, Office of State and Local Government Coordination and Preparedness (SLGCP) and the United States Department of Homeland Security".

16. As a direct and proximate result of the unconstitutional laws challenged in this litigation, I have suffered both physical and emotional harm and injury.

17. The existence of the challenged statutes creates an overall pervasive state of insecurity, created by the knowledge that the Kentucky legislature looks to a supernatural entity, which I do not believe exists, as the primary source of protection for my safety, and the safety of my loved ones, in the Commonwealth of Kentucky.

18. I do not seek compensation for these injuries, but I do seek to have those laws that created the injuries declared unconstitutional and removed from the law books as well as removal of the plaque created by these laws.

Jan Ewing

Notary Public

State of Kentucky

County of -----

Subscribed and affirmed to before me, a Notary Public, this ----- day of -----, 2009.

Name: -----

Signature: -----

My commission expires: -----