

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO 08-CI-1950

AMERICAN ATHEISTS, INC. *ET AL*

PLAINTIFFS

V

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT
AND
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COMMONWEALTH OF KENTUCKY, *ET AL*

DEFENDANTS

Come the plaintiffs, and each of them, by and through the undersigned counsel, and, in support of their Response to the motions of the defendants to dismiss and for summary judgment, and in support of plaintiffs' Motion for Summary Judgment, state as follows:

The motions of the defendants to dismiss this action, or in the alternative for summary judgment, should be denied for the reason, set out *infra*, that the plaintiffs herein are entitled to summary judgment in their favor. The defendants' motions should be denied, and the plaintiffs should be granted summary judgment, because the statutes attacked in this action are facially unconstitutional as set forth in the Complaint, as shown by the affidavits of certain plaintiffs, which are attached hereto and incorporated by

reference as fully as if set out verbatim herein, and because the statutory language challenged is repugnant to the First Amendment to the Constitution of the United States and to Section 5 of the Constitution of Kentucky.

Plaintiffs accept as correct the literary recitations of the challenged statutory language set out in defendants' memorandum in support of their motions, and agree with the grounds therein set out upon which summary judgment may be based. Beyond these agreements on the wording of the statutes, and the meaning of the Kentucky Rules of Civil Procedure, agreement between the parties fails.

The defendants would have this Court believe that the challenged language does not violate the rulings of the Supreme Court of the United States, or the guarantees of the constitutions of the United States or of Kentucky as plaintiffs assert. The defendants essentially argue that the statutory language challenged is without meaning, being nothing more than a ceremonial recognition of certain historic events or utterances in the history of our nation. If this be so, plaintiffs argue, why keep such meaningless language when that language is so clearly offensive to them? One is also constrained to question, if the language is but "ceremonial deism," just what "unceremonial deism" might be. Further, plaintiffs query, if the challenged language is not "religious," just how it would look if it were "religious?"

As conceded by defendants, KRS 39A.285(3) states, "The 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" This statute sets forth a religious doctrine. It is not merely a statement that Americans have historically believed in a god. Among the assumptions contained therein are:

- 1) There is a god, and a particular god, in this case named “Almighty God.”
- 2) This god is on the side of the Commonwealth and stands ready to aid the Commonwealth in matters touching upon its safety and security.
- 3) That this god will not so aid the Commonwealth unless the Commonwealth relies on this god.
- 4) That this god cares about the welfare of the Commonwealth and will provide safety and security, if this god is relied upon, and will do so to the detriment of those who do not so rely.
- 5) Without such a reliance on this god, the Commonwealth “cannot” be safe and secure.
- 6) This god is intercessory, and will assist the Commonwealth in achieving safety and security only if affirmatively relied upon to do so.
- 7) Without such reliance upon a god, the Commonwealth will not be safe and secure.

Further, in the words of the defendants:

“KRS 39G.010 outlines the duties of the executive director of the Kentucky Office of Homeland Security and, in relevant part, states that the director shall:

Publicize the findings of the General Assembly stressing the dependence on Almighty God as being vital to the security of the Commonwealth by including the provisions of in its agency training and educational materials. The executive director shall also be responsible for prominently displaying a permanent plaque at the entrance to the state's Emergency Operations Center stating the text of KRS 39A.285(3)...”

KRS 39A.285(3) states:

The General Assembly hereby finds that: ...

(3) The safety and security of the Commonwealth cannot be achieved apart from reliance upon Almighty God...

“Dependence” on a god is not mere recognition of some real or imagined historic fact. It is statement of religious belief. And it is government speech directly reflecting, by its very language, the religious conclusion of the sovereign. **“The General Assembly hereby finds that: ...”** is not an historic reference. It is a statement of a present mental attitude. It is a statement of religious belief. It is a statement of a perceived fact. And it is establishment, by the state, of religion.

Further, the challenged statute places an affirmative duty on the director of the Kentucky Office of Homeland Security to proselytize, to preach a particular doctrine, and to insure that everyone knows the religious rules. The director (and we may well sympathize with the predicament of this fine man) is ordered by the legislature of the Commonwealth to **“publicize”** the **“findings”** of the legislature that **“dependence”** on the god is **“vital to the security of the Commonwealth.”** This is to be accomplished by including this religious mandate **“in its agency training and educational materials.”** What more could possibly be required to show an establishment of religion by the state?

If this is not religious training and indoctrination, how would it look if it was? But furthermore, to placate the god, and to inform the citizens of the Commonwealth of their religious duties, the **“executive director shall also be responsible for prominently displaying a permanent plaque at the entrance to the state's Emergency Operations Center stating the text of KRS 39A.285(3),”** set forth *supra*.

A mere acknowledgement of historic conclusions would not require these affirmative iconographic actions. Yet the law demands an affirmative religious statement of belief, commanding in mandatory language that such be permanently enshrined as an icon of faith in the halls of the government that serves all of the people of Kentucky.

A true copy of a photograph of this “plaque,” obtained from the director of the Kentucky Office of Homeland Security through an Open Records request, is attached hereto and incorporated by reference. If a god exists who is mindful of such things, one might well wonder if the quality of this work will prove altogether satisfactory to that god.

History has recorded, and will recall, that the attacks of September 11, 2001, on the United States were faith-based actions of persons motivated solely by fanatical religious fervor. In consequence of these attacks, as averred by defendants in their memorandum, the Kentucky Office of Homeland Security was established. It is profoundly inappropriate, as well as unconstitutional, for the Kentucky Legislature to, in a fashion reminiscent of the Crusades, set forth one religious belief system as a foil against the belief system that has caused injury, and against which the Commonwealth seeks to protect itself.

With a missionary zeal more appropriate to the tents of the Chautauqua than to the halls of the Legislature, Tom Riner, *et ux*, of Louisville, Kentucky, have improperly used their positions as elected officials to attempt to Christianize Kentucky. Such unlawful expressions of their view of the “great commission” has resulted in controlling law from the Supreme Court of the United States (hereinafter, “SCOTUS”) and cost the

Commonwealth of Kentucky thousands of dollars expended in vain efforts to justify their unconstitutional actions.

The landmark SCOTUS case of *Stone v. Graham*, 449 U.S. 39, 101 S.Ct. 192,

66 L.Ed.2d 199 (1981) was a direct result of the Riners' efforts:

When his wife, Claudia Riner, was a state representative, she sponsored a 1978 bill requiring classrooms across Kentucky display a copy of the Ten Commandments. The U.S. Supreme Court ruled the bill unconstitutional in 1980, but the Riners have never relented in their quest to keep God in the public arena. chicagotribune.com December 4, 2008. www.chicagotribune.com/news/chi-081204-atheists,0,6784488.story

Because of the direct and striking relevance of this case to the case *sub judica*, for the convenience of the Court the holding is set out at some length:

PER CURIAM.

1

A Kentucky statute requires the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public classroom in the State. Petitioners, claiming that this statute violates the Establishment and Free Exercise Clauses of the First Amendment, sought an injunction against its enforcement. The state trial court upheld the statute, finding that its "avowed purpose" was "secular and not religious," and that the statute would "neither advance nor inhibit any religion or religious group" nor involve the State excessively in religious matters. App. to Pet. for Cert. 38-39. The Supreme Court of the Commonwealth of Kentucky affirmed by an equally divided court. 599 S.W.2d 157 (1980). We reverse.

2

This Court has announced a three-part test for determining whether a challenged state statute is permissible under the Establishment Clause of the United States Constitution:

3

"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally the statute must not foster 'an excessive government entanglement with religion.' " *Lemon v. Kurtzman*, 403 U.S. 602, 612-613, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745 (1971) (citations omitted).

4

If a statute violates any of these three principles, it must be struck down under the Establishment Clause. **We conclude that Kentucky's statute requiring the posting of the Ten Commandments in public schoolrooms had no secular legislative purpose, and is therefore unconstitutional.**

5

The Commonwealth insists that the statute in question serves a secular legislative purpose, observing that the legislature required the following notation in small print at the bottom of each display of the Ten Commandments: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States." 1978 Ky. Acts, ch. 436, § 1 (effective June 17, 1978), Ky.Rev.Stat. § 158.178 (1980).

6

The trial court found the "avowed" purpose of the statute to be secular, even as it labeled the statutory declaration "self-serving." App. to Pet. for Cert. 37. **Under this Court's rulings, however, such an "avowed" secular purpose is not sufficient to avoid conflict with the First Amendment.** In *Abington School District v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963), this Court held unconstitutional the daily reading of Bible verses and the Lord's Prayer in the public schools, despite the school district's assertion of such secular purposes as "the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature." *Id.*, at 223, 83 S.Ct., at 1572.

7

The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. See Exodus 20: 12-17; Deuteronomy 5: 16-21. Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone,

avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day. See Exodus 20: 1-11; Deuteronomy 5: 6-15.

8

This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like. *Abington School District v. Schempp, supra*, at 225, 83 S.Ct., at 1573. Posting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. **However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.**

9

It does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions, for **the mere posting of the copies under the auspices of the legislature provides the "official support of the State . . . Government" that the Establishment Clause prohibits.** 374 U.S., at 222, 83 S.Ct., at 1571; see *Engel v. Vitale*, 370 U.S. 421, 431, 82 S.Ct. 1261, 1267, 8 L.Ed.2d 601 (1962). Nor is it significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud as in *Schempp* and *Engel*, for **"it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment."** *Abington School District v. Schempp, supra*, at 225, 83 S.Ct., at 1573. We conclude that § 158.178 (1980) violates the first part of the *Lemon v. Kurtzman*, test, and thus the Establishment Clause of the Constitution.

10

The petition for a writ of certiorari is granted, and the judgment below is reversed.

11

It is so ordered (emphasis supplied; footnote citations omitted).

Despite the clarity of this ruling by the nation's highest Court, State Representative Tom Riner sponsored the religious language attacked herein that was inserted into the challenged statutes.

Rep. Tom Riner, architect of this kerfuffle, is a Baptist preacher of enviable persistence. For more than three decades he and his wife, once a Kentucky legislator herself, have pushed to keep God in school, in the courthouse and in all the places Constitutionalists think the Almighty shouldn't be.

"If we don't affirm the right to recognize divine providence, then that puts that right in jeopardy," said Riner, a Democrat. "It's part of our history. Whether we believe it personally or not, it's what America is. And in the struggle to sanitize our classrooms, courtrooms and public buildings of all references to God, we are in many cases suppressing the ability of our young people and others to know our history." chicagotribune.com December 4, 2008.

www.chicagotribune.com/news/chi-081204-atheists,0,6784488.story

This double talk is a thinly disguised attempt at conversion of the citizens of Kentucky and to establish a religion in violation of the First Amendment. "If we don't affirm the right to recognize divine providence, then that puts that right in jeopardy." What nonsense! More correctly, if we do not keep government and religion separate, we truly do put that right in jeopardy.

The First Amendment to the Constitution of the United States, states:

“Congress shall make no law respecting an establishment of religion....”

This command was made applicable to the States by the Fourteenth Amendment of the Constitution. *Engel v. Vitale*, 370 U.S. 421 (1962)

The provisions of the First and Fourteenth Amendments of said Constitution are binding on the states, on the legislatures of the states, and on this Honorable Court..

Article VI of The Constitution of the United States states:

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; **and all treaties** made, or which shall be made, under the authority of the United States **shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.**

3. . . . **no religious test shall ever be required as a qualification to any office or public trust under the United States.**

<http://www.library.csi.cuny.edu/dept/history/lavender/usarticle6.html>

(emphasis supplied).

The year before the passage of the challenged statutes in 2006, SCOTUS again had occasion to consider Kentucky and its attempts to once again unlawfully establish religion. In *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844 (2005), SCOTUS held:

The touchstone for our analysis is the principle that the First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion. *Epperson v. Arkansas*, 393 U. S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U. S. 1, 15.16 (1947); *Wallace v. Jaffree*, *supra*, at 53. **When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government’s ostensible object is to take sides.**

Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U. S. 327, 335 (1987) (.Lemon’s .purpose. requirement aims at preventing [government] from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.). **Manifesting a purpose to favor one faith over another, or adherence to religion generally, clashes with the .understanding, reached . . . after decades of religious war, that liberty and social stability demand a religious tolerance that respects the religious views of all citizens** *Zelman v. Simmons- Harris*, 536 U. S. 639, 718 (2002) (BREYER, J., dissenting).

By showing a purpose to favor religion, the government .sends the . . . message to . . . nonadherents .that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members. *Santa Fe Independent School Dist. v. Doe*, 530 U. S. 290, 309.310 (2000) (quoting *Lynch v. Donnelly*, 465 U. S. 668, 688 (1984) (O.CONNOR, J., concurring)). (emphasis supplied)

When the Kentucky Legislature states, in clear language, written into our laws, and ordered to be posted and taught, that:

“The General Assembly hereby finds that: ...

(3) The safety and security of the Commonwealth cannot be achieved apart from reliance upon Almighty God...,”

an objective observer could only conclude that the Commonwealth of Kentucky favors a belief in a god over a non-belief in a god, and a belief in this “Almighty God” over the god or gods of other religions. Without a belief in this god, and further an affirmative **reliance** upon this god, Kentuckians cannot, according to the legislative finding, be either safe or secure. Atheists would therefore, to the objective observer, be seen as unacceptable—an unstated position that the sponsors of the legislation doubtless believe and endorse. A belief in, and a reliance upon, a god is the very essence of religion. Also excluded by the legislative finding are those persons who believe in more than one god or in gods with different names that the legislatively approved supernatural entity, “Almighty God.”

The Supreme Court’s decision in *McCreary* notes the reasoning in the Sixth Court’s

Stone v Graham decision.

The Sixth Circuit did not decide whether the display had the impermissible effect of advancing religion because one judge, having found the display motivated by a religious purpose, did not reach that issue. 354 F. 3d, at 462 (Gibbons, J., concurring). The other judge in the majority concluded that a reasonable observer would find that the display had the effect of endorsing religion given the lack of analytical connection between the commandments and the other documents in the display, the courthouse location of the display, and the history of the displays. *Id.*, at 458.459.

Likewise, the insertion of the religious language into the Kentucky Homeland statute has a clear religious purpose and, given the lack of an analytical connection

between the religious declaration and the text of the statute, a reasonable observer would find the insertion has the effect of endorsing religion.

At the same time that *McCreary* was decided, SCOTUS rendered its opinion in *Van Orton v. Perry*, 545 U.S. 677 (2005), a case that defendants seem to believe relieves them from the mandates of *Stone* and *McCreary*. In *Van Orton*, the high court found a Texas display of the Ten Commandments not to be a violation as it had that very day found in *McCreary* from Kentucky. The Court said:

Of course, the Ten Commandments are religious--they were so viewed at their inception and so remain. The monument, therefore, has religious significance. According to Judeo-Christian belief, the Ten Commandments were given to Moses by God on Mt. Sinai. But Moses was a lawgiver as well as a religious leader. And the Ten Commandments have an undeniable historical meaning, as the foregoing examples demonstrate. Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause. See *Lynch v. Donnelly*, 465 U. S., at 680, 687; *Marsh v. Chambers*, 463 U. S., at 792; *McGowan v. Maryland*, *supra*, at 437-440; *Walz v. Tax Comm'n of City of New York*, 397 U. S. 664, 676-678 (1970). (emphasis supplied).

There are, of course, limits to the display of religious messages or symbols. For example, we held unconstitutional a Kentucky statute requiring the posting of the Ten Commandments in every public schoolroom. *Stone v. Graham*, 449 U. S. 39 (1980) (*per curiam*). In the classroom context, we found that the Kentucky statute had an improper and plainly religious purpose. *Id.*, at 41. As evidenced by *Stone's* almost exclusive reliance upon two of our school prayer cases, *id.*, at 41-42 (citing *School Dist. of Abington Township v. Schempp*, 374 U. S. 203 (1963), and *Engel v. Vitale*, 370 U. S. 421 (1962)), it stands as an example of the fact that we have "been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools," *Edwards v. Aguillard*, 482 U. S. 578, 583-584 (1987). Compare *Lee v. Weisman*, 505 U. S. 577, 596-597 (1992) (holding unconstitutional a prayer at a secondary school graduation), with *Marsh v. Chambers*, *supra* (upholding a prayer in the state legislature). Indeed, *Edwards v. Aguillard* recognized that *Stone*--along with *Schempp* and *Engel*--was a consequence of the "particular concerns that arise in the context of public elementary and secondary schools." 482 U. S., at 584-585.

And thus did SCOTUS recognize a test that was a different test from that announced in *Lemon*. This is a type of test permitting historic recognition. And it is this reasoning that the present defendants believe shields them from the condemnations of the trilogy of *Lemon*, *Stone*, and *McCreary*.

However, on February 25, 2009, in *Pleasant Grove City, Utah, et al v. Summum*, in a unanimous opinion, SCOTUS held that a plaque of the Ten Commandments in a public place did not have to compete with other possible offerings because the Decalogue was posted as **government speech**. <http://supremecourtus.gov/opinions/08pdf/07-665.pdf> (case citation not available at this writing). Not as historic speech, such as might be protected by *Van Orton, supra*, but speech issued by the sovereign, and that, as such, need not be fair and required to share the platform with lesser speech. And that government speech would of course have to satisfy the Establishment Clause of the First Amendment—an issue not addressed in the case then before SCOTUS.

It would be difficult to find a more explicit statement of government speech than that contained in the bold declaration of **KRS 39A.285(3)**. Under the heading “**Legislative findings**,” the law making body of Kentucky states:

“The General Assembly hereby finds that: ...

(3) The safety and security of the Commonwealth cannot be achieved apart from reliance upon Almighty God...” (emphasis supplied)

And this government speech is unconstitutional speech respecting an establishment of religion.

When Kentucky was still a part of Virginia, Thomas Jefferson authored the “Virginia Statute for Religious Freedom.” It held:

That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical....

We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”

http://wiki.monticello.org/mediawiki/index.php/Virginia_Statute_for_Religious_Freedom March 8, 2009

This language is clearly the basis for Section 5 of the Kentucky Constitution, which, under the heading “Right of Religious Freedom,” states:

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

The challenged statutes clearly violate this constitutional provision. Public funds must be expended to produce and place the required “plaque” and to fund the publication of the religious mandates in the training manuals as required by the statutes. The amount of this expense is not relevant to the constitutional violations addressed herein. What part of “NO” does the Kentucky Legislature not understand? If an Atheist were to become Governor of Kentucky would such official have to follow the religious mandates of the statutes? Plaintiffs herein have stated in their affidavits filed with this memorandum that they are opposed to their tax money being used in the furtherance of religion required by

the statutes and they believed they have been injured and denied rights of citizenship by virtue of the existence of these laws of the Commonwealth of Kentucky.

The Virginia Statute for Religious Freedom further stated,

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

Jefferson saw the Riners of the future coming. So did the drafters of the Kentucky Constitution, as, in language echoing the sentiments of Jefferson, they declared in Section 26 of the Kentucky Constitution:

To guard against transgression of the high powers which we have delegated, We Declare that every thing in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

Thomas Jefferson was the author of our “Declaration of Independence,” the third President of the United States, and clearly one of the most important figures in the history of the United States. Why then his statements on keeping church and state separate should not have been included in the challenged statutes, wherein the drafters purport to show our nation’s history of religiosity through repeating statements of former Presidents, is only baffling if one accepts that the Legislature meant to follow the law and not establish religion. If one understands that the Legislature indeed intended to establish religion, and to prefer religion over non-religion, the omission becomes most sadly understandable.

Those who persist in insisting that the United States is a Christian nation, and who supply as proof the private religious opinions of past Presidents, never seem to include the declaration of Thomas Jefferson, of January 1, 1802, to the Baptists of Danbury, Connecticut, a minority religion at the time, that

I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof, **thus building a wall of separation between church and state.** (emphasis supplied)
<http://www.usconstitution.net/jeffwall.html> March 8, 2009.

Further, those who would attempt to establish religion using the power of the state, but who disguise their efforts as mere historic rhetoric, seem to never include in their “historic” recitations that true piece of American history known as the U.S. Treaty with Tripoli that “*was sent to the floor of the Senate, June 7, 1797, where it was read aloud in its entirety and **unanimously** approved. John Adams, having seen the treaty, signed it and proudly proclaimed it to the Nation.*”

http://www.stephenjaygould.org/ctrl/treaty_tripoli.html March 9, 2009 (emphasis supplied). It said:

Art. 11. As the Government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquillity, of Mussulmen; and, as the said States never entered into any war, or act of hostility against any Mahometan nation, it is declared by the parties, that no pretext arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries.
http://www.stephenjaygould.org/ctrl/treaty_tripoli.html March 9, 2009 (emphasis supplied).

Nor do those who quote Presidents in vain attempts to prove we are a Christian nation ever mention the speech of President John F. Kennedy to the Greater Houston Ministerial Association, Houston, Texas, of September 12, 1960, where he said,

“I believe in an America where the separation of church and state is absolute. . . . where no religious body seeks to impose its will directly or indirectly upon the general populace or the public acts of its officials. . . . and where Catholics, Protestants and Jews, at both the lay and pastoral level, will refrain from those attitudes of disdain and division which have so often marred their works in the past, and promote instead the American ideal of brotherhood.”
<http://www.bartleby.com/73/669.html> March 9, 2009 (emphasis supplied).

Nor have defendants favored us with these words of Mr. Justice Hugo Black, who, while on SCOTUS, wrote:

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.
http://quotes.liberty-tree.ca/quote/hugo_black_quote_5466 March 9, 2009.

or these,

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. **No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.** Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. **In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."**
http://www.teachingaboutreligion.org/MiniCourse/Lesson1/1st_amendment.htm.
March 9, 2009 (emphasis supplied).

The affidavit of Dr. Edward Buckner, President of plaintiff American Atheists, Inc., which is attached hereto and incorporated by reference as fully as if set out verbatim herein, further powerfully sets out more of the great wealth and tradition of American letters that overwhelmingly support the position of plaintiffs that ours is a secular nation

in which the language contained in the challenged statutes is inappropriate, offensive, and unlawful. Affidavits of other named plaintiffs are also attached and incorporated by reference. These sworn statements passionately show the depth of the patriotic fervor with which these plaintiffs assert and uphold the intent of our founders that we are, and that we must remain, a secular nation.

Defendants, in their memorandum, have mischaracterized, or in greater charity, misunderstood, the meaning of the great weight of authority that mandates that this Court hold the challenged statutes to be unconstitutional, at least insofar as the challenged religious language is concerned. Defendants even attempt to misrepresent the Declaration of Independence when they say, “The last sentence concluded with an affirmation that the Declaration itself was supported ‘with a firm reliance on the protection of divine Providence’.” The Declaration of Independence is no part of the laws of the United States, having been written before there was a United States. However, it was written by Thomas Jefferson, Governor of what was to become Kentucky, and our third President. And it does set to some degree the tone that has echoed down the years. Whatever the “Divine Providence” phrase may have been intended to express, when redacted the true secular meaning shines through today as it did then:

And for the support of this Declaration . . . **we mutually pledge to each other** our Lives, our Fortunes, and our sacred Honor. (emphasis supplied)

For all of the reasons herein stated, the challenged language of KRS 39G.010 KRS 39A.285(3) is unconstitutional on its face under both Section 5 of the Kentucky Constitution and under the First Amendment to the Constitution of the United States.

The motions of the defendants to dismiss, or for summary judgment, should be denied.

The motion of plaintiffs for summary judgment should be granted.

The challenged laws should be declared unconstitutional and void.

For the security of our homeland.

For our own safety's sake.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent, by first class mail, postage prepaid, to Tad Thomas, Esq. and Craig F. Newbern, Jr., Esq., Office of the Attorney General, 700 Capitol Avenue, Ste. 118, Frankfort, KY 40601, this ____ day of March, 2007.

Edwin F. Kagin