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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMERICAN ATHEISTS, INC., a Texas :
non-profit corporation; **R. ANDREWS,** :
S. CLARK and **M. RIVERS,** :
 :
 Plaintiffs, :

Case No. 02:05-CV-00994 DS

vs. :

COLONEL SCOTT T. DUNCAN, :
Superintendent, Utah Highway Patrol; :
JOHN NJORD, Executive Director, :
Utah Department of Transportation; :
D'ARCY PIGNANELLI, Executive Director, :
Department of Administrative Services; and, :
F. KEITH STEPAN, Director :
Division of Facilities Construction and Management :
Department of Administrative Services, :
 :
 Defendants. \ :

PLAINTIFFS'
OPPOSITION TO MOTION
RE: INTERVENTION

(Judge David Sam)

THE PLAINTIFFS, **AMERICAN ATHEISTS, INC.**, a Texas non-profit corporation,

RICHARD ANDREWS, STEPHEN CLARK and MICHAEL D. RIVERS, by and through counsel, oppose and respond to the Motion to Intervene by the Utah Highway Patrol Association (Doc. # 3) as follows:

Introduction

1. The Utah Highway Patrol Association, (“UHPA”) a Utah non-profit corporation has moved to intervene in this action. Doc. # 3; Doc. # 5, Memo.

2. UHPA submitted several affidavits in support of their request to intervene. Doc. # 6, Aff. of Luke Stradinger; Doc. # 7, Aff. of Lee Perry; Doc. # 8, Aff. of Thorne; Doc. # 9, Aff. of Brumett; Doc. # 10, Aff. of Lund.

3. UHPA has erected thirteen (13) stand-alone large Christian crosses (12" tall) as memorials to Utah Highway Patrol troopers killed in the line of duty. Some are erected on private property adjacent to state highways. Some are erected on Utah government property, *e.g.*, the right-of-way or rest stops adjacent to state highways and in the parking lot of a state office. Defendants herein have granted permission for the erection of some of the religious memorials on the government property. Id. Those crosses, their placement and adornments are the subject matter of this action.

Mis-Characterization of Action

4. UHPA mis-characterizes the nature of this action and plaintiffs’ claims herein. Plaintiffs are not opposed to memorials to public safety employees who have lost their lives in the line of duty. Those officers should be honored. Plaintiffs’ goal is not to prevent memorialization nor in any way restrict how families and friends privately honor and revere

those officers and loved ones. This action is based, *inter alia*, on the Establishment Clause and seeks to restrict official government sanction, endorsement and participation by the State of Utah in the use of a poignant and exclusively religious symbol, the Christian cross, which is the memorial used by UHPA

5. If plaintiffs' claims herein are validated by the Court, UHPA and the family and friends of the fallen officers may continue to memorialize the officers. However, the State of Utah would henceforth be restricted in its endorsement, support and participation in that religious commemoration.

6. Plaintiffs make no challenge to the right of UHPA to memorialize fallen officers. Plaintiffs have no legal authority to do so. Plaintiffs make no challenge to the UHPA's use of Christian crosses to memorialize fallen officers. Plaintiffs have no legal authority to do so.

7. Plaintiffs do not attack "UHPA's property and speech rights to speak in honor of these fallen troopers and to encourage safety on the highways." UHPA should continue to speak in honor of these esteemed public servants, however UHPA could and should do so without government endorsement and participation, especially without government aid and support not granted to others.¹ UHPA owns and maintains the crosses. No ruling by this Court will divest UHPA of that ownership.

8. Plaintiffs do not challenge "the constitutionality of the memorials themselves."

¹ If the UHPA Christian crosses were install exclusively on private property (and not on government property) and if the crosses did not bear the imprimatur of the State in the form of an official Utah Highway Patrol logo, this action would not have been filed.

Plaintiffs challenge the State's active participation in those religious displays.

Exclusive Endorsement & Participation by State of Utah

9. Defendants herein have granted permission for the use of the official Utah Highway Patrol logo on the Christian crosses.

10. Defendants herein have granted permission to UHPA for erection of the Christian crosses on government property.

11. Defendants do not and will not grant any person, group or entity (other than UHPA) permission to erect permanent memorials on right-of-ways and rest area adjacent to state highways.

Christian Cross = Religious Symbol

12. The Christian cross is a religious symbol exclusive to the Christian faith. That exclusivity and that poignant symbolism are not subject to diminution by individuals' claims that their use of the cross was not for a religious purpose.² Similarly, referring to UHPA's Christian crosses as *memorials* does not alter the unquestionable fact that the crosses clearly represent one religion, and, are first and foremost the reminder of the death of Jesus Christ.

13. Some thing less than candor is displayed when government officials and officers of the UHPA publicly state that a Christian cross is not a religious symbol, or that they somehow have nullified that symbolism.

² UHPA attempts to divert attention from the Establishment Clause violation committed by the State of Utah by asserting "UHPA had no religious purpose in erecting the memorials." Regardless of any subjective intent, the incontrovertible result is the bold public display on government property with government endorsement of **the** symbol of Christianity.

UHPA Claims are Against Utah and Not Plaintiffs

14. UHPA’s exclusive right to use government property may be affected by this litigation. UHPA’s exclusive right to use the official UHP logo may be affected by this litigation. However, related potential claims are against defendants and not plaintiffs.

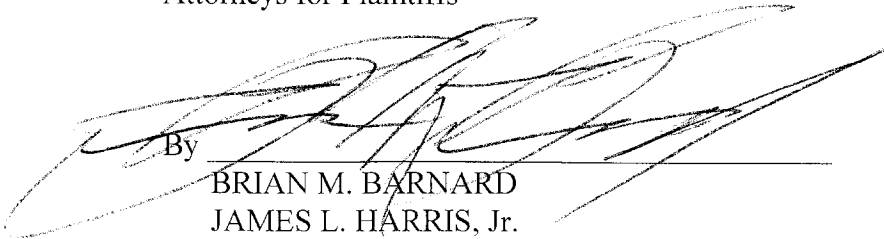
15. UHPA claims this action would impair its interest in memorializing its officers by limiting their ability to freely determine what memorials are appropriate to commemorate the officers’ service to Utah.³ That is not accurate. UHPA can use any symbol it chooses, however, there are constitutional restrictions as to a stand-alone 12" tall Christian cross emblazoned with a government logo erected on government property.

16. UHPA’s free expression dispute, if one there be, is with Utah and not with the plaintiffs herein. Utah has taken no action to limit or restrict UHPA’s free expression.

WHEREFORE, based upon the foregoing, plaintiffs object to and oppose the motion by the Utah Highway Patrol Association for intervention as a defendant.

Dated this 13th day of FEBRUARY 2006.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By 
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

³ UHPA claims it may be unable to memorialize its fallen members “properly.” “Properly” apparently means with government endorsement.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing
OPPOSITION TO MOTION TO INTERVENE to:

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on the 13TH day of FEBRUARY 2006, postage prepaid in the United States Postal Service.

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