

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CASE NO. _____**

AMERICAN ATHEISTS, INC.,

and

MICHAEL G. CHRISTERSON,

and

JAMES F. COFFMAN,

and

LUCINDA HEDDEN COFFMAN,

and

JAN EWING,

and

EMMETT F. FIELDS,

and

ALEX GRIGG,

and

EDWIN HENSLEY,

and

HELEN KAGIN,

and

GARY MARYMAN,

and

DAVID RYAN,

and

JAMES K. WILLMOT,

PLAINTIFFS,

vs.

FIRST AMENDED COMPLAINT

COMMONWEALTH OF KENTUCKY,

Serve:
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

and

JACK CONWAY, as Attorney General of the Commonwealth of Kentucky,

Serve:
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

and

KENTUCKY OFFICE OF HOMELAND SECURITY,

Serve:
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

and

THOMAS L. PRESTON, as Executive Director of the Kentucky Office of Homeland Security,

Serve:
Kentucky Office of Homeland Security
200 Mero Street
Frankfort, KY 40622

DEFENDANTS.

* * * * *

Come the plaintiffs, **AMERICAN ATHEISTS, INC.** (hereinafter “American Atheists”), and **MICHAEL G. CHRISTERSON**, and **JAMES F. COFFMAN**, and **LUCINDA HEDDEN COFFMAN**, and **JAN EWING**, and **EMMETT F. FIELDS**, and **ALEX GRIGG**, and **EDWIN HENSLEY**, and **HELEN KAGIN**, and **GARY MARYMAN** and **DAVID RYAN**, and **JAMES K. WILLMOT**, by and through the undersigned counsel and, for their Complaint and cause of action against the defendants herein, state as follows:

1) This action arises under the Constitution of Kentucky and the Constitution of the United States of America and seeks to void, as repugnant to those Constitutions, KRS 39G.010 and KRS 39A.285.

2) Plaintiff American Atheists is a not-for-profit 501(c)(3) corporation, with its principal place of business in the State of New Jersey. It is in good standing, and registered to do business, in the Commonwealth of Kentucky under Organization Number 0597634. American Atheists is a nationwide movement, having among its goals the defense of the civil liberties of Atheists, and the total, absolute separation of government and religion.

3) American Atheists has members throughout Kentucky whose rights have been, are being, and will be, adversely affected by the unconstitutional actions of the defendants herein alleged, but who, for fear of obloquy, discrimination, and retaliation are disinclined to be named as plaintiffs in this action. American Atheists can assert such members’ interests in this matter and therefore has standing to bring this action.

4) Plaintiffs, **MICHAEL G. CHRISTERSON**, and **JAMES F. COFFMAN**, and **LUCINDA HEDDEN COFFMAN**, and **JAN EWING**, and **EMMETT F. FIELDS**, and **ALEX GRIGG**, and **EDWIN HENSLEY**, and **HELEN KAGIN**, and **GARY MARYMAN**, and **DAVID RYAN**, and **JAMES K. WILLMOT** (hereinafter “named plaintiffs”), and each of them, are citizens and residents of Kentucky, save for Helen Kagin who is a Canadian citizen and a permanent resident of Kentucky. Named plaintiffs are being subjected to, and are being injured in consequence of, statutory laws of the Commonwealth of Kentucky that are facially unconstitutional, and unconstitutional in their operation, in violation of Article VI of the Constitution of the United States, in violation of the First Amendment to the Constitution of the United States, and in violation of Section 5 of the Constitution of Kentucky.

5) Defendant **COMMONWEALTH OF KENTUCKY** (hereinafter “Kentucky”) is a Commonwealth and is, and has been since 1792 CE, a part of the United States of America (hereinafter “United States”), and is subject to the Constitution thereof.

6) Defendant **JACK CONWAY** (hereinafter “Conway”), is the Attorney General of Kentucky and is charged with enforcing the laws thereof. Defendant Conway is sued in his official capacity.

7) Defendant **KENTUCKY OFFICE OF HOMELAND SECURITY** is a subdivision of Kentucky and is charged with enforcing the unconstitutional laws challenged herein.

8) Defendant **THOMAS L. PRESTON** (hereinafter “Preston”) is sued in his official capacity as Executive Director of the Kentucky Office of Homeland Security.

Defendant Preston is charged with implementing the unconstitutional laws challenged herein.

9) On September 11, 2001 CE, the United States was attacked, in an act of war, by religious fanatics in a faith-based initiative designed to "slay the pagans wherever ye find them" and because, as stated *inter alia* by those responsible for the attack, "You [Americans] separate religion from your policies, contradicting the pure nature which affirms Absolute Authority to the Lord and your Creator." The Kentucky Office of Homeland Security was formed to mount a response to this attack on American freedoms.

10) The Kentucky Legislature then created a policy for protecting the constitutional freedoms (that include separation of government and religion) of the people of Kentucky by unconstitutionally making a law respecting an establishment of religion in Kentucky.

11) The challenged Kentucky law, in relevant part, states:

39G.010 Kentucky Office of Homeland Security executive director -- Duties -- Delegation of duties -- Notification of disaster or emergency.

(1) The Kentucky Office of Homeland Security shall be attached to the Office of the Governor and shall be headed by an executive director appointed by the Governor.

(2) The executive director shall:

(a) 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 KRS 39A.285(3) 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). . . .

12) The challenged text of KRA 39A.285(3), required to be "prominently" displayed by KRS 39G.010(2)(a), states:

39A.285 Legislative findings.

The General Assembly hereby finds that:

(1) No government by itself can guarantee perfect security from acts of war or terrorism.

(2) The security and well-being of the public depend not just on government, but rest in large measure upon individual citizens of the Commonwealth and their level of understanding, preparation, and vigilance.

(3) 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, including Abraham Lincoln's historic March 30, 1863, Presidential Proclamation urging Americans to pray and fast during one of the most dangerous hours in American history, and the text of President John F. Kennedy's November 22, 1963, national security speech which concluded: "For as was written long ago: 'Except the Lord keep the city, the watchman waketh but in vain.' "

13) KRS 39G.010(2)(a) and KRS 39A.285(3) are unconstitutional, under the Kentucky Constitution, in that they violate Section 5 of the Kentucky Constitution, which provides:

Right of religious freedom.

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.

14) The challenged Kentucky statutory law is facially violative of the First Amendment to the Constitution of the United States of American, which mandates:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

15) The challenged Kentucky statutory law is facially violative of Article VI of the Constitution of the United States of America, which states, in relevant part:

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, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

16) The challenged laws unlawfully attempt, *inter alia*, to establish religion, endorse belief over non-belief, set up a religious test, indoctrinate Kentucky citizens and state employees in theistic religious beliefs, and diminish the civil rights, privileges or capacities of Atheists and others who do not believe in a god, or who believe in a different god or gods than the presumed supernatural entity unconstitutionally endorsed by the legislation complained of herein. The challenged laws are grossly, and outrageously, at variance with the Constitutions of the United States and of Kentucky, and are retrograde to the very purposes of protecting American freedoms for which the Kentucky Office of Homeland Security was established.

17) The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer, damages, both physical and emotional, from the existence of the challenged laws. Named plaintiffs have suffered somatic discomforts, and mental pain and anguish, from the

knowledge that they are made to feel officially excluded from the ranks of citizens who share the belief in a god that is required by the challenged statutes. Plaintiffs also suffer anxiety from the belief that the existence of these unconstitutional laws suggest that their very safety as residents of Kentucky may be in the hands of fanatics, traitors, or fools.

18) As a direct and proximate result of the unconstitutional existence, operation and enforcement against plaintiffs of KRS 39G.010(2)(a) and KRS 39A.285(3), which are void under the Constitution of the United States and under the Kentucky Constitution, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that said laws are unconstitutional and void, and injunctive relief against their operation and enforcement, together with nominal damages, costs, and attorney fees.

WHEREFORE, plaintiffs pray and demand:

A) For a judgment, finding, and declaration, by the Court, that KRS 39G.010(2)(a) and KRS 39A.285(3) are unconstitutional and that the Court enjoin the operation and enforcement of same.

B) For such damages as may appear to be appropriate, within the jurisdictional limits of the Court.

C) For the costs of this action, together with reasonable attorney fees.

D) For any and all other relief, both legal and equitable, to which plaintiffs may appear to be entitled.

Respectfully submitted:

Edwin F. Kagin
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American Atheists, Inc.
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **FIRST AMENDED COMPLAINT**, filed herein as a matter of right, was served by First Class Mail, postage prepaid, to: **COMMONWEALTH OF KENTUCKY**, Office of the Attorney General 700 Capitol Avenue, Suite 118, Frankfort, KY 40601; **JACK CONWAY**, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, KY 40601; **KENTUCKY OFFICE OF HOMELAND SECURITY**, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, KY 40601; **THOMAS L. PRESTON**, Kentucky Office of Homeland Security, 200 Mero Street, Frankfort, KY 40622, this 2nd day of December, 2008.

Edwin F. Kagin