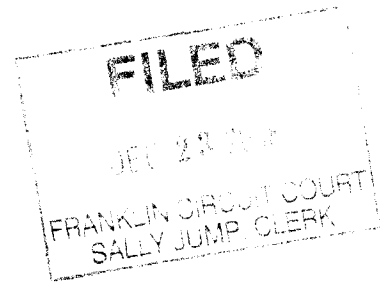


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CASE NO. 08-CI-01950



AMERICAN ATHEISTS, INC., *et al.*

PLAINTIFFS

V.

ANSWER

COMMONWEALTH OF KENTUCKY, *et al.*

DEFENDANTS

* * * * *

Come the Defendants, Commonwealth of Kentucky, Jack Conway, in his capacity as Attorney General of the Commonwealth of Kentucky, the Kentucky Office of Homeland Security, and Thomas L. Preston, in his capacity as Executive Director of the Kentucky Office of Homeland Security, and submit this Answer to the Amended Complaint of the Plaintiffs, stating as follows:

FIRST DEFENSE

With regard to the specific allegation of the Complaint:

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.

ANSWER: The Defendants admit so much of paragraph 1 that states the Complaint purports to challenge various actions of the Commonwealth of Kentucky on constitutional grounds. Defendants deny these laws violate the Kentucky or United States Constitutions in any way.

2. Plaintiff American Atheists is a non-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 from religion.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the averments of paragraph 2 of Plaintiffs' Complaint, and therefore, deny same.

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' interest in this matter and therefore has standing to bring this action.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the residence or location of members of the Plaintiff, American Atheists, and therefore deny same. Defendants further deny that Plaintiffs have been, are being, or will be, adversely affected by any allegedly unconstitutional actions of the Defendants as described in paragraph 3. The Defendants further deny that the American Atheists can assert interests of its members in this matter or have standing during 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 violations 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.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the averments of paragraph 4 pertaining the citizenship or residency of the Plaintiffs. Defendants deny that the Plaintiffs are being subjected to, or are being injured as a consequence of, the laws of the Commonwealth of Kentucky or that the laws of the Commonwealth of Kentucky being challenged herein are unconstitutional in any manner.

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.

ANSWER: Defendants admit the contents of paragraph 5.

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.¹

ANSWER: Defendants admit the contents of paragraph 6.

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

¹ Defendant, Jack Conway, Attorney General of the Commonwealth of Kentucky, has submitted a separate Agreed Order together with the Plaintiffs dismissing him as a party to this action. Said order has not yet been signed by the Court. The Office of the Attorney General will continue its participation in this matter as counsel of record for the Commonwealth and the other remaining Defendants.

ANSWER: Defendants admit that the Kentucky Office of Homeland Security is a subdivision of the executive branch of the Commonwealth of Kentucky and is charged with enforcing certain statutes of the Commonwealth. Defendants deny paragraph 7 to the extent it alleges the challenged statutes are unconstitutional.

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.

ANSWER: Defendants admit that Defendant, Thomas L. Preston, is currently the Executive Director of the Kentucky Office of Homeland Security. The Defendants deny so much of the contents of paragraph 8 which allege the challenged statutes are unconstitutional.

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.

ANSWER: Defendants admit that on September 11, 2001, the United States suffered one of the most egregious attacks upon its soil in the history of this great nation. The Defendants further admit that the creation of the Kentucky Office of Homeland Security was one of a multitude of measures taken by the various constitutional branches of the Commonwealth, to insure the safety and security of the Commonwealth and its citizens. The Defendants are without knowledge and information sufficient to form a belief as to the remainder of the contents of paragraph 9.

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.

ANSWER: The Defendants admit that the Kentucky General Assembly took a multitude of actions to ensure the safety and security of the citizens of Commonwealth of Kentucky, and that in so doing the General Assembly was protecting all of the rights and freedoms bestowed upon its citizens including “the natural and indefensible right to worship Almighty God according to the dictates of their own consciences.”² Defendants deny that any of the actions taken by General Assembly in any way violate the Constitution of the Commonwealth of Kentucky or the Constitution of the United States.

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 education materials. The executive director shall also be responsible for prominently displaying a permanent plaque to the entrance to the state’s Emergency Operations Center stating the text of KRS 39A.2853 (sic). . . .

ANSWER: Defendants state that the language of KRS 39G.010 speaks for itself and deny any averments of paragraph 11 that are inconsistent with the plain language of the statute.

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

² Kentucky Constitution Art. VIII, Sec. 5.

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.'"

ANSWER: Defendants state that the language of KRS 39A.285(3) speaks for itself and deny any averments of paragraph 12 that are inconsistent with the plain language of the statute.

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.

ANSWER: Defendants deny that KRS 39G.010(2)(a) and KRS 39A.285(3) are unconstitutional.

14. The challenged Kentucky statutory law is facially violative of the First Amendment to the Constitution of the United States of America (sic), 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.

ANSWER: Defendants deny the challenged laws of the Commonwealth of Kentucky violate the Constitution of the United States of America. Defendants state that the text of the Constitution of the United States speaks for itself and denies any averments of paragraph 14 that are inconsistent therewith.

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.

ANSWER: Defendants deny that the challenged statutes are unconstitutional in any manner. Defendants state that the language of Article 6 of the United States Constitution speaks for itself and deny any averments that are inconsistent therewith.

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.

ANSWER: Defendants deny the averments of paragraph 16.

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.

ANSWER: Defendants deny the averments of paragraph 17.

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.

ANSWER: Defendants deny the averments of paragraph 18.

SECOND DEFENSE

Defendants affirmatively plead that the Plaintiffs have failed to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

The doctrines of waiver, estoppels and laches serve as a complete bar to any recovery.

FOURTH DEFENSE

The damages, of which the Plaintiffs complain, if any, were caused or brought on in whole or in part, by the actions or inactions of the Plaintiffs, and the Defendants plead Plaintiffs actions or inactions are a complete or partial bar to the Plaintiffs claims.

FIFTH DEFENSE

The damages, of which the Plaintiffs complain, if any, may have been caused in whole or in part as the result of the conduct of other parties not presently named in this action.

SIXTH DEFENSE

The damages, of which the Plaintiffs complaint, if any, were not a foreseeable result of the alleged conduct of the Defendants (which conduct is expressly denied) and the Defendants rely upon same as a complete or partial bar to this action.

SEVENTH DEFENSE

Plaintiffs' failure to mitigate their damages constitute a complete or partial bar to any recovery.

EIGHTH DEFENSE

All allegations of the Plaintiffs' Complaint not expressly admitted to above are hereby denied.

NINTH DEFENSE

Defendants reserve the right to assert additional defenses, whether affirmative or otherwise, about which it presently lacks knowledge or information that which will become available to it during the course of this litigation through discovery or other means.

TENTH DEFENSE

Plaintiffs' Complaint is barred by the Tenth and Eleventh Amendments to the Constitution of the United States, and by the sovereign immunity of the Commonwealth; and, as a result, this Court lacks jurisdiction over the Defendants regarding many of the claims of the Plaintiffs.

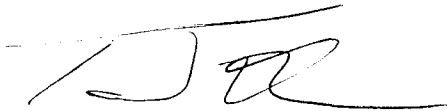
* * * * *

WHEREFORE, the Defendants, the Commonwealth of Kentucky, Jack Conway, Attorney General of Kentucky, the Kentucky Office of Homeland Security, Thomas L. Preston, in his capacity as Executive Director of the Kentucky Office of Homeland Security, demand as follows:

1. Leave to file an Amended Answer pursuant to CR 15 as additional information is discovered;
2. That the Plaintiffs' Complaint be dismissed with prejudice at the cost of the Plaintiffs;
3. For their costs and attorneys fees herein expended;
4. Trial by jury on all issues so triable; and
5. Any and all appropriate relief to which the Defendants may now or hereafter appear to be entitled.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'TAD THOMAS', is written over a horizontal line.

TAD THOMAS
Assistant Deputy Attorney General

CRAIG NEWBERN
Assistant Attorney General

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was served by mailing same, postage prepaid, to Edwin F. Kagin, National Legal Director, American Atheists, Inc., P.O. Box 666, Union, Kentucky 41091, this the 23rd day of December, 2008.



Assistant Attorney General