IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

AMANDA KONDRAT'YEV, ANDREIY KONDRAT'YEV,' ANDRE RYLAND, and DAVID SUHOR,

Plaintiffs,

v.

CASE NO.: 3:16cv195-MCR/CJK

CITY OF PENSACOLA, FLORIDA, ASHTON HAYWARD, in his official capacity as Mayor of the City of Pensacola, and BRIAN COOPER, in his official capacity as Director of the City of Pensacola Parks & Recreation Department,

Defendants.

/

ANSWER TO COMPLAINT

Come now the Defendants, City of Pensacola, Ashton Hayward, in his official capacity as Mayor of the City of Pensacola, and Brian Cooper, in his official capacity as Director of the City of Pensacola Parks & Recreation Department, by and through their undersigned attorneys, and answer the Complaint as follows:

INTRODUCTION

"[T]he Constitution [does not] require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984). The Supreme Court has upheld a number of government actions that contained a

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 2 of 18

religious element against Establishment Clause claims: a town's practice of opening monthly board meetings with prayer by a local clergy member¹; a display of the Ten Commandments in a public park²; a display of the Ten Commandments on the Texas State Capitol grounds³; display of the cross by the Ku Klux Klan on the statehouse plaza⁴; the display of a Chanukah menorah outside a city-county building⁵; the display of a Nativity scene in a public Christmas display⁶; a state legislature's practice of opening each day with a prayer led by a chaplain paid with state funds⁷; a state's property tax exemption for religious organizations⁸; and a township's program for reimbursing parents for the cost of transporting their children to parochial schools⁹. Each of these cases involved religion. But taken in context, none of the government actions violated the Establishment Clause.

The cross which is the subject of Plaintiffs' Complaint, which was erected in 1969, also does not violate the Establishment Clause. It was paid for by money raised by the Pensacola Chapter of the Jaycees. The cross is a permanent marker recognizing an annual community gathering that was first held on Easter of 1941, when the world was at war and this country was only months away from formally joining that conflict.¹⁰ Prior to the 1941 service, a native pine cross was constructed and erected by the National Youth Association (NYA). The City of Pensacola and the military it supported would play an intimate and pivotal role in the war. The

¹ *Town of Greece v. Galloway*, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

² Pleasant Grove City v. Summum, 555 U.S. 460, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009)

³ Van Orden v. Perry, 5a45 U.S. 677, 681, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005).

⁴ *Capitol Square Review & Advisory Bd. of Pinette*, 515 U.S. 753, 115 S. Ct. 2440, 132 L. Ed. 2d 650 (1995).

⁵ County of Allegheny v. ACLU, 492 U.S. 573, 578-79, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989).

⁶ Lynch v. Donnelly, 465 U.S. 668, 670-71, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984).

⁷ Marsh v. Chambers, 463 U.S. 783, 784-86, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983).

⁸ Waltz v. Tax Comm'n, 397 U.S. 664, 667, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

⁹ Everson v. Bd. of Edu., 330 U.S. 1, 8-11, 67 S. Ct. 504, 911 K, Ed. 711 (1947).

¹⁰ On that same day sunrise services were held at Arlington cemetery in Washington, at Soldier Field in Chicago, at Fort Benning, Georgia, and all across the country.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 3 of 18

sunrise service was heralded as "the first in the history of Pensacola." It was organized by the Pensacola Junior Chamber of Commerce (which later became known as the "Jaycees").

City, Army and Navy officials cooperated with the Junior Chamber of Commerce to arrange bus transportation for Army and Navy personnel to attend the service. The Boy Scouts provided ushers. The Fort Barrancas band began playing at 5:45 a.m. The sun stood behind the native pine cross as Army buglers sounded off with trumpets from the opposite side of Bayou Texar to signal the opening of the service.

During the service hymns were sung by the Stetson University Glee club and musical selections were given by the combined Army and Navy bands. There was a prayer and scripture reading. The pastor of the First Christian Church stated that the cross was a revelation of the fact that the law of life for society as well as for the individual is self-giving rather than self-seeking. Masses of flowers were placed around the pine cross and were later distributed among patients at the Army, Navy, and Pensacola Hospitals. Over 3,000 people attended that first service. It was so successful it became an annual feature in Pensacola.

In 1942, the second service was held. Its theme was "prayer for the resurrection of a world at war" Flowers were placed at the foot of cross, and were later taken to the Army and Navy hospitals.

In 1943, 5,000 people attended the event where Army Chaplain McClung "called on his listeners to remember the men in the service in their prayers."

In 1944, the cross was again erected and people were asked to bring flowers "for loved ones overseas." The memorial flowers were given to the sick in hospitals.

In 1946, thousands attended the service and placed flowers at the cross "in memory of an individual or some principle."

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 4 of 18

In 1947, 8,000 people were expected to attend. People were invited to "place flowers at the foot of the cross in honor of some person. The event was broadcast over radio station WCOA for the benefit of "stay-at-homes."

In 1948, 4,500 people attended the service, and members of the audience "brought flowers to the foot of the cross in honor of departed relatives and friends."

In 1949, 6,000 people attended the service and members of the audience laid flowers at the foot of the cross in "memory of those departed." Afterwards the flowers were taken to hospitals.

The annual event carried on for years, with memorial flowers being placed at the foot of the cross "in memory of an individual or some principle". Each year, the flowers were taken to the hospitals after the services. Each year, the event was organized by the Jaycees, but the participants included local high school choirs, bands, military chaplains, and pastors from all denominations.

In 1969, at the height of the Vietnam War, thousands from the community attended the sunrise event. The current cross was erected that year. U.S. Navy Chaplain Raymond Johnson was the speaker during the dedication of the cross. While serving in Vietnam, Chaplain Johnson had been wounded twice, received the Silver Star and the Legion of Merit and was recommended for the Navy Cross. A sunrise service was also held at Pensacola Naval Air Station.

Plaintiffs' now demand that the cross be removed based on the argument that it amounts to a government endorsement of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

NATURE OF THE CLAIMS

1. Denied.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 5 of 18

2. Denied. The cross is neither prominently displayed nor does it "dominate the visual space." Denied that the cross has the purpose and effect of endorsing Christianity. Furthermore, a reasonable observer, mindful of the history, purpose, and context of the cross would not conclude that it conveys the message that the City of Pensacola endorses a religion.

3. Admitted only that the Plaintiffs are seeking relief. Denied that Plaintiffs are entitled to any relief.

JURISDICTION AND VENUE

4. Admitted for jurisdictional purposes.

5. Admitted that venue is proper. Denied that any events have occurred giving rise to a claim by Plaintiffs.

PARTIES

6. Denied that Amanda Kondrat'yev lives within the city limits of Pensacola. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion. Admitted that Amanda Kondrat'yev publically promotes herself as a humanist and an atheist. Otherwise, these Defendants are without knowledge and demand proof thereof.

7. These Defendants are without knowledge and demand proof thereof. More specifically, but without limitation, these Defendants are without knowledge as to what Plaintiff, Amanda Kondrat'yev, means by "unwelcome contact" as the cross is a passive object. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 6 of 18

8. These Defendants are without knowledge and demand proof thereof. More specifically, but without limitation, these Defendants are without knowledge as to what Plaintiff, Amanda Kondrat'yev, means by "unwelcome contact" as the cross is a passive object.

9. Denied. Based on information and belief, the Kondrat'yevs do not live "near" Bayview Park. Andreiy Kondrat'yev has represented to the Supervisor of Elections for Escambia County that his address is 79 Monarch Lane, Pensacola FL 32503. That address is approximately 6.5 miles from Bayview Park. The Escambia County Property Appraiser's records indicate that his address is in Red Level, Alabama. Otherwise, these Defendants are without knowledge and demand proof thereof. More specifically, these Defendants are without knowledge as to the Kondrat'yevs' "feelings," which are wholly irrelevant. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

10. Admitted that Andreiy Kondrat'yev publically promotes himself as a humanist. Denied that Andreiy Kondrat'yev has "no choice" other than to "pass by" the cross. Otherwise, these Defendants are without knowledge and demand proof thereof. More specifically, but without limitation, these Defendants are without knowledge as to what Plaintiff, Andreiy Kondrat'yev, means by "unwelcome contact" as the cross is a passive object.

11. These Defendants are without knowledge as to Andreiy Kondrat'yevs' "feelings" and what the cross symbolizes to him individually. His feelings and subjective assessment are wholly irrelevant. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

12. Denied that the cross would impede a reasonable person's use and enjoyment of the park. These Defendants are without knowledge as to Andreiy Kondrat'yevs' "feelings,"

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 7 of 18

which are wholly irrelevant. Denied that the cross is a government endorsement of religion. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

13. Denied that Andre Ryland lives five miles from the Bayview Cross. Admitted that Andre Ryland promotes himself as an atheist and a humanist. Denied that the cross is a government endorsement of religion. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion. Otherwise, these Defendants are without knowledge and demand proof thereof.

14. These Defendants are without knowledge and demand proof thereof. More specifically, but without limitation, these Defendants are without knowledge as to what Plaintiff, Andre Ryalnd, means by "unwelcome contact" as the cross is a passive object. These Defendants are without knowledge as to Mr. Ryland's "wishes" for the future, which are wholly irrelevant.

15. These Defendants are without knowledge and demand proof thereof.

16. These Defendants are without knowledge as to what David Suhor believes or "feels." Denied that David Suhor's subjective beliefs and feelings are relevant. Denied that the cross is a government endorsement of religion. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

- 17. Admitted.
- 18. Admitted.
- 19. Admitted.

20. Admitted.

ALLEGATIONS

21. Denied.

22. Admitted.

23. Admitted.

24. Admitted that the cross is a Latin cross, and that the Latin cross is one of the symbols of the Christian religion. The cross is also used throughout this country and the world as a well-known symbol to honor the dead.¹¹ The remaining allegations of this paragraph are denied.

25. Admitted.

26. These Defendants are without knowledge as to the date the photographs were taken. Admitted the photographs are of the cross.

27. Admitted that the cross is freestanding and is not decorated.

28. These Defendants deny that the cross is a permanent religious symbol and, therefore, the allegations of this paragraph are denied.

29. Admitted.

30. Admitted.

31. Admitted.

32. Denied. While the cross is not "surrounded by secular symbols of commemoration," it is immediately next to a stage dedicated to the memory of a civic leader.

33. Denied.

¹¹ "...a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people." <u>Salazar v. Buono</u>, 559 U.S. 700, 721 (2010).

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 9 of 18

34. These Defendants are without knowledge as to when the photograph was taken. Otherwise, admitted.

- 35. Admitted.
- 36. Admitted.
- 37. Admitted.

38. Admitted that the cross was paid for with donated money raised by the Pensacola Jaycees and placed on City owned property in 1969.

- 39. Admitted.
- 40. Admitted.

41. Admitted that the cross is adjacent to an amphitheater area. The remaining allegations of this paragraph are denied.

42. Admitted that the stage was constructed in 1951 and pre-dates the current cross. Denied that the stage pre-dates the earlier native pine cross standing at that location.

43. Denied. Upon information and belief, the current cross was erected in 1969. The native pine cross was erected in 1941.

44. Admitted.

45. Admitted that the Pensacola Jaycees raised the money to erect the cross and that the cross was placed on City property with either the express or implied consent of the City.

46. These Defendants are without knowledge as to the current agenda of the Jaycees. Denied that the Pensacola Jaycees had a religious agenda when they erected the cross.

47. These Defendants are without knowledge and demand proof thereof.

48. Denied.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 10 of 18

49. Admitted that the park has been used for a community-wide non-denominational service on Easter from 1941 to the present. Admitted that those services took place prior to the current cross being erected in 1969. Otherwise denied.

50. Denied. "Religious activity" is not the exclusive use of the cross. The cross has a secular purpose – i.e. to mark an annual community service attended by thousands of people and participated in by civic, government, and military leaders, local schools, law enforcement, and the Boy Scouts, at which the Easter holiday was observed and flowers were laid at a cross (often in times of war) in memory of those who had suffered and died defending this country.

51. These Defendants are without knowledge and demand proof thereof. The Defendants specifically assert that the City makes no inquiry regarding the nature of religious services held in the park, and specifically whether those services are Christian in nature.

52. These Defendants are without knowledge and demand proof thereof. The Defendants specifically assert that the City makes no inquiry regarding the nature of religious services held in the park, and specifically whether those services are Christian in nature.

53. These Defendants are without knowledge and demand proof thereof. The Defendants specifically assert that the City makes no inquiry regarding the nature of religious services held in the park, and specifically whether those services are Christian in nature.

54. Admitted that the cross has been the site of religious services, including Easter services, since its inception. It is specifically denied that the cross has been used exclusively for such services since its inception.

55. Denied.

56. Denied.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 11 of 18

57. Admitted that Easter Sunrise services which take place across the world on Easter Sunday are distinctly Christian. These Defendants specifically deny that that fact is relevant to the Establishment Clause challenge raised in this litigation.

58. Admitted that on the occasions when the park and the area around the cross are used by Christians for Easter sunrise services, those participating frequently gather early in the morning to watch the sun rise.

59. Admitted that the Easter services began when this country was on the cusp of war in 1941, and is a community tradition that has continued, periodically, for 75 years.

60. Admitted that the first service was held in 1941.

61. Denied.

62. Denied.

63. These Defendants are without knowledge and demand proof thereof.

64. Admitted.

65. Admitted that First Baptist Church and many other churches of various denominations have participated in services over the years.

66. Admitted that McIlwain Presbyterian Church reserved the cross area in 2015 and that an individual whose name was Joy reserved it in 2014. The remaining allegations of this paragraph are denied.

67. Admitted.

68. Admitted that the annual community service has been periodically advertised by news outlets for 75 years, including online news outlets in recent years.

69. Admitted that in 1941 the service included military, civic, government, and religious leaders, and that services since then have included a mixture of these same leaders.

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 12 of 18

70. Admitted the City has received complaints about the cross. Denied that the cross is a government endorsement of religion. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion.

71. These Defendants are aware of no such objection and demand proof thereof.

72. It is admitted that Plaintiff Suhor has sent emails and public records requests to the City of Pensacola, including the officials listed, regarding various matters. The remaining allegations of this paragraph are denied.

73. These Defendants are without knowledge and demand proof thereof.

74. Admitted.

75. Admitted that the letter speaks for itself.

76. Admitted.

77. Admitted that the letter speaks for itself.

78. Admitted.

79. Admitted that a "Facebook" page was created. Otherwise, these Defendants are without knowledge and demand proof thereof.

80. Admitted that the Facebook page was created and that the "posts" on that page speak for themselves. Denied that a Facebook "post" or any person's subjective belief about the purpose of the cross makes the cross a government endorsement of a religion. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement of religion. These Defendants are without knowledge as to whether a rally actually occurred. Bayview Park is a public park, available for the use of all of the citizens of the City of Pensacola.

81. Denied.

82. Park space rental agreements and applications for special events are different processes. Bayview Park is a public park, available for the use of all citizens of the City of Pensacola. Those citizens frequently use the park without any rental agreement or application for a special event as not all uses require those processes.

83. Admitted that no permit was issued although a reservation was made. Bayview Park is a public park, available for the use of all citizens of the City of Pensacola. Those citizens frequently use the park without any rental agreement or application for a special event as not all uses require those processes.

84. These Defendants are without knowledge and demand proof thereof.

CAUSES OF ACTION

85. All responses to the preceding allegations are incorporated by reference.

86. Admitted that the City maintains the cross and that it is displayed on public property. Otherwise, denied.

87. Denied. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government endorsement or advancement of religion.

88. Denied. Denied that a reasonable observer aware of the history and all other pertinent facts relating to the display would view the cross as a government advancement of religion.

89. Denied. The City has allowed a symbol that marks the location of a communitywide service that brought thousands of our citizens, soldiers, and leaders together during times of tragedy and war (including World War II, the Korean War, and the Vietnam conflict) to remain

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 14 of 18

for 47 years. The cross and the community gathering that it represents are part of the historic and cultural fabric of this community. A reasonable observer aware of the history and all other pertinent facts relating to the display would not view the cross as government endorsement of religion.

90. Denied. See response to paragraph 89. As the Supreme Court has stated, "The goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm."¹² Furthermore, "a relentless and all-pervasive attempt to exclude religion from every aspect of public life," of the type commonly engaged in through our country by the organizations supporting the Plaintiffs in this case, "could itself become inconsistent with the Constitution."¹³

91. Denied.

RELIEF SOUGHT BY PLAINTIFFS

i. Denied that the Bayview Cross violates the Establishment Clause of the First Amendment of the United States Constitution or that it is a violation of the Plaintiffs' constitutional rights under 42 U.S.C. § 1983.

ii. Denied that the Plaintiffs are entitled to an injunction to remove the Bayview Cross. Denied that the Plaintiffs are entitled to an advisory opinion regarding future government action.

iii. Denied that the Plaintiffs have suffered any damages or that they are entitled to nominal damages.

 ¹² Salazar v. Buono, 559 U.S. 700, 718 (2010).
¹³ Lee v. Weisman, 505 U.S. 577, 598 (1992).

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 15 of 18

iv. Denied that the Plaintiffs are entitled to costs, disbursements or attorneys' fees from the Defendants pursuant to 42 U.S.C. § 1988.

v. Denied that the Plaintiffs are entitled to any other or further relief from this Court.

DEFENDANTS' ATTORNEYS FEES AND COSTS

Pursuant to 42 U.S.C. § 1988, the Defendants are entitled to their attorneys' fees paid by the Plaintiffs and are entitled to costs pursuant to Federal Rule of Civil Procedure 54.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE—ADVISORY OPINION. The Plaintiffs ask this Court to enjoin the "Defendants (and their successors) from displaying a Christian cross on government property in violation of the Establishment Clause." The request is directed to action that has not yet occurred and about which the Plaintiffs provide no facts or information that such action is about to occur. "Article III does not permit courts to issue advisory opinions." *Sirpal v. Univ. of Miamii, ---* F.3d --- (11th Cir. Feb. 19, 2013) (*citing BankWest, Inc. v. Baker*, 446i F. 3d 1358, 1367 (11th Cir. 2006) ("If we addressed issues that might arise, we would be rendering an advisory opinion on future conduct and events that may never occur, something which Article III does not permit us to do.").

SECOND AFFIRMATIVE DEFENSE—FIRST AMENDMENT FREE EXERCISE VIOLATION. An injunction to remove the cross would cause the Defendants to violate the Free Exercise rights of the Jaycees who donated the cross and the Free Exercise rights of the different religious and other groups who hold various services at the cross. 42 U.S.C. § 1983.

THIRD AFFIRMATIVE DEFENSE—LACK OF STANDING WITH RESPECT TO AMANDA KONDRAT'YEV AND ANDREIY KONDRAT'YEV. Mr. and Mrs. Kondrat'yev have relocated to Canada with the intent to remain there. Thus, they have failed to satisfy the

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 16 of 18

third prong of the standing requirement, that a favorable decision by this Court (an injunction to remove the cross) will actually remedy their alleged injury (offense at seeing the cross). *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992) ("Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"). Past exposure to the conduct is not sufficient . *Id*.

FOURTH AFFIRMATIVE DEFENSE—LACK OF SUBJECT MATTER JURISDICTION BASED ON LACK OF STANDING WITH RESPECT TO AMANDA KONDRAT'YEV AND ANDREIY KONDRAT'YEV. Fed. R. Civ. P. 12(b)(1). *See Righthaven LLC v. Hoehn*, 716 F. 3d 1166, 1172 (9th Cir. 2013) ("In the absence of standing, a federal court 'lacks subject matter jurisdiction over the suit.'") (*Quoting Catecean Cmty. v. Bush*, 386 F. 3d 1169, 1174 (9th Cir. 2004) and in turn citing *Steel Co. v. Citizens for Better Environment*, 623 U.S. 83, 102-3 (1998))).

FIFTH AFFIRMATIVE DEFENSE—MOOTNESS WITH RESPECT TO AMANDA KONDRAT'YEV AND ANDREIY KONDRAT'YEV. The lawsuit has been rendered moot with respect to Amanda Kondrat'yev and Andreiy Kondrat'yev because they have relocated to Canada with the intent to remain there. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 186 L. Ed. 2d 768 (2013) ("Most standing cases consider whether a plaintiff has satisfied the [standing] requirement when filing suit, but Article III demands that an 'actual controversy' persist throughout all stages of litigation."); *La. Envt'l Action Network v. City of Baton Rouge*, 677 F. 3d 737, 743 (5th Cir. 2012) ("Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of the litigation (standing) must continue through its existence (mootness)."

Case 3:16-cv-00195-RV-CJK Document 22 Filed 07/11/16 Page 17 of 18

SIXTH AFFIRMATIVE DEFENSE—FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED. Fed. R. Civ. P. 12(b)(6). The Plaintiffs allege they are "offended" by the Bayview Cross. "Offense however, does not equate to coercion." *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826, 188 L.Ed.2d 835 (2014). "[A]n Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religions views . . ." *Id. See also Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 44, 124 S. Ct. 2301, 159 L.Ed.2d 98 (2004) ("The compulsion of which Justice Jackson was concerned . . . was of the direct sort—the Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree"). Without coercion there is no Establishment Clause violation.

SEVENTH AFFIRMATIVE DEFENSE—LACK OF SUBJECT MATTER JURISDICTION. Fed. R. Civ. P. 12(b)(1). "[T]he text and history of the [Establishment] Clause resis[t] incorporation against the States." *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1835 (2014) (Thomas, J., concurring). Because the Establishment Clause is not incorporated to the states through the 14th Amendment, the district court lacks subject matter jurisdiction.

> /s/ J. Nixon Daniel, III J. NIXON DANIEL, III Florida Bar No. 228761 jnd@beggslane.com Ch@beggslane.com TERRIE L. DIDIER Florida Bar No.: 0989975 tld@beggslane.com aeh@beggslane.com Beggs & Lane, RLLP 501 Commendencia Street (32502) P. O. Box 12950 Pensacola, FL 32591-2950

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of July, 2016, the foregoing was filed with the Clerk of the Court via the CM/ECF Filing System, which will send a notice of electronic filing to:

Monica Lynn Miller David A. Niose American Humanist Association 1777 T St. NW Washington, DC 20009 202-238-9088 mmiller@americanhumanist.org dniose@americanhumanist.org

Rebecca Markert Madeline Ziegler Freedom from Religion Foundation P. O. Box 750 Madison, WI 53701 608-265-8900 mziegler@ffrf.org

/s/ Terrie L. Didier

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