



February 23, 2016

Sen. Jason Rapert
Arkansas Senate
State Capitol
500 Woodlane St., Suite 320
Little Rock, AR 72201-1090
Jason.Rapert@senate.ar.gov

Dear Senator Rapert,

The American Humanist Association was recently made aware that you have been leading a campaign to raise money for the placement of a Ten Commandments monument to be placed at the Arkansas State Capitol. This letter is to inform you of strong objections to this plan on behalf of Arkansas residents and others who see it as a blatant attempt to promote religion and a clear violation of the First Amendment's Establishment Clause.

Any attempt to erect a religious monument on government property might raise suspicions regarding a possible intent to promote religion, but yours especially so. With a track record of eagerness to mix religion with government, perhaps most obviously via the "Appeal to Heaven" national legislative caucus that you lead, the purpose of your effort couldn't be clearer. From the group's own words, its "mission is to honor the Lord by networking elected officials who are believers in Jesus Christ, who regularly attend and display a commitment to an evangelical, Gospel-centered church and who will commit to live and govern based on Biblical, constitutional and Federalist principles."

Let the record be clear that the American Humanist Association decries any attempt to "govern based on Biblical principles" as being both theocratic and unconstitutional. By pursuing this project you are inviting litigation that will come at the expense Arkansas taxpayers, all for the purpose of promoting your personal religious beliefs.

To comply with the Establishment Clause, a government practice must pass a three-prong test first laid out in the Supreme Court case of *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, government actions pass Establishment Clause scrutiny only if they: (1) have a secular purpose; (2) do not have the effect of advancing or endorsing religion; and (3) do not foster excessive entanglement with religion. Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

Although the fundraising website suggests that the planned monument would be

constitutional because it is a replica of one that was upheld by the Supreme Court in the case of *Van Orden v. Perry*, 545 U.S. 677 (2005), that assumption is incorrect. One of the key factors in Justice Breyer's controlling concurrence in *Van Orden* was that the monument in question had stood for decades with no objection – this monument of yours is raising objections before it is even erected. Moreover, that display was situated “in a large park containing 17 [secular] monuments and 21 historical markers” of similar size. *Id.* The first monument placed on the capitol grounds in 1891 was a secular statue. *Van Orden v. Perry*, 351 F.3d 173, 175-76 (5th Cir. 2003). *Sixteen* “additional monuments” had since been erected; the Ten Commandments were not donated until 1961. *Id.*

The planned monument fails all three prongs of *Lemon*, and will not pass constitutional muster. Its purpose is clearly religious, its effect will be to promote the theology underlying the Ten Commandments, and it clearly represents excessive entanglement between the state and religion. *See also McCreary Cnty. v. ACLU*, 545 U.S. 844 (2005).

The American Humanist Association (“AHA”) is a national nonprofit organization with over 30,000 members and supporters across the country, including many in Arkansas, and over 290 chapters and affiliates nationwide, and an online following of over 540,000. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state. The Appignani Humanist Legal Center, AHA's legal arm, includes a network of cooperating attorneys from around the country, including Arkansas. The center has litigated cases involving church-state separation and the rights of Humanists, other non-theists, as well as Christians, in state and federal courts nationwide, including a recent victory involving a church-state violation in Baxter County, Arkansas. *See Am. Humanist Ass'n v. Baxter Cnty.*, 2015 U.S. Dist. LEXIS 153162, *20 (W.D. Ark. Nov. 12, 2015).

We respectfully request that you scrap this project and focus your attention on matters that are more relevant to the real-life needs of your constituents.

Very truly yours,
Monica Miller, Esq.