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November 25, 2015

*Via Email and Fax*

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**Re: Unconstitutional and Discriminatory sign**

Dear Sheriff Jolley, Harris County Board of Commissioners, Mr. Wood, and Ms. Slater,

A concerned citizen has contacted our office to request assistance with regard to a serious constitutional violation that is occurring under the authority of the Harris County Sheriff's Office. Recently, Sheriff Mike Jolley reportedly placed a large sign outside of the Harris County Sheriff's Office. Sheriff Jolley, depicted below, is standing by the new sign that reads: "WARNING: Harris County is politically incorrect. We say: Merry Christmas, God Bless America, and in God We Trust. We salute our troops and our flag. If this offends you… LEAVE!" The purpose of this letter is to inform you that the sign violates the Establishment Clause of the

First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment, and must be removed immediately.


The American Humanist Association (AHA) is a national nonprofit organization with over 510,000 supporters and members across the country, including in Georgia. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including in Georgia, and we have litigated constitutional cases in state and federal courts from coast to coast, including in Georgia.

While some residents of your community may support a sign with such a message, there can be no question that it conveys a religiously biased message that is invidious toward those who do not hold theistic, and particularly Christian, views. For a government official to affirmatively order those who do not support "Merry Christmas" to leave the community, to expressly state that visitors must accept "God Bless America" and other theistic messaging, is unquestionably an unconstitutional act of hostility. No doubt the sheriff holds political and religious views consistent with such messaging on a personal level, but under no circumstances can a sign be posted outside official government offices conveying such messaging. This is not just a question of bad taste and poor public relations—surely even many Christians will see the sheriff's actions as reflecting ugly intolerance, feigned persecution, and backward thinking—it is a question of unconstitutional and discriminatory behavior.

Please note that the sheriff has been quoted in the press conceding that he sees these actions as promoting a pro-Christian agenda.[1] Not only is this virtually an admission of unconstitutional activity, but the fact that he has paid for the sign himself – apparently thinking

[1] http://www.ledger-enquirer.com/news/local/article46241055.html

he is cleverly avoiding constitutional exposure by doing so – also acts as an admission that he realizes the sign is unlawful.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). Separation "means separation, not something less." *McCollum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948). The Establishment Clause "create[s] a complete and permanent separation of the spheres of religious activity and civil authority." *Everson v. Bd. of Ed*, 330 U.S. 1, 31-32 (1947). *Accord Engel v. Vitale*, 370 U.S. 421, 429 (1962). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it "'may not favor religious belief over disbelief.'" *Id.* at 593 (citation omitted). In short, the government "may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,[2] pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).[3]

As shown below, it is beyond clear that the sheriff's explicitly anti-atheist sign, prominently placed on government property and with the government's approval, violates the Establishment Clause pursuant to these tests as well as directly applicable precedent. *See Stone v. Graham*, 449 U.S. 39, 41 (1980) (Ten Commandments display unconstitutional); *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110 (11th Cir. 1983) (cross displayed in public park held unconstitutional under *Lemon*); *see also Am. Humanist Ass'n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *1 (M.D. Fla. July 2, 2015) ("Mayor and Police Chief, violated the Establishment Clause to the U.S. Constitution by organizing and promoting the prayer vigil"); *Newman v. City of East Point*, 181 F. Supp. 2d 1374 (N.D. Ga. 2002) ("Mayor's Community Prayer Breakfast" violated the Establishment Clause); *Allen v. Morton*, 495 F.2d 65, 77-79 (D.C. Cir. 1973) (government's sponsorship of a Christmas pageant held on a park adjacent to the White House violated Establishment Clause); *Milwaukee Deputy Sheriffs' Ass'n v. Clarke*, 588 F.3d 523, 524-26 (7th Cir. 2009) (county sheriff violated Establishment Clause by inviting a religious group to speak at the sheriff's department leadership conference and related employee gatherings violated Establishment Clause); *Doe v. Village of Crestwood, Ill*, 917 F.2d 1476 (7th Cir. 1990) (Village of Crestwood improperly sponsored a Roman Catholic mass held during a municipal Italian Festival because information published in the Village paper would "lead an objective observer to conclude that the Village itself is the sponsor, or at least a sponsor"

[2] The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

[3] In addition to the *Lemon* test, in *Lee*, the Supreme Court formulated the separate "coercion test," declaring, "at a minimum, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

of the mass); *Gilfillan v. Philadelphia*, 637 F.2d 924, 929 (3d Cir. 1980) (city violated the Establishment Clause under the purpose prong of *Lemon* by funding and constructing a platform for the Pope's visit); *Knight v. State Dep't of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (Christian state employees were properly disciplined for proselytizing to clients while on state business; religious activity threatened the state's ability to perform its legitimate functions); *Marrero-Méndez v. Pesquera*, 2014 U.S. Dist. LEXIS 116118, 1-2 (D.P.R. Aug. 19, 2014) (Puerto Rico Police Department violated Establishment Clause by including prayer in police department meeting); *Daniels v. City of Arlington*, 246 F.3d 500 (5th Cir. Tex. 2001) (state could prohibit police officer from pinning cross to uniform; "The city's interest in conveying neutral authority through that uniform far outweighs an officer's interest in wearing any non-department- related symbol on it.").

Where, as here, the government sponsors an "intrinsically religious practice" or a "patently religious" display, it "cannot meet the secular purpose prong." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 830 (11th Cir. 1989). *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000); *Stone v. Graham*, 449 U.S. 39, 41 (1980); *Holloman v. Harland*, 370 F.3d 1252, 1285-86 (11th Cir. 2004) (even though teacher's purpose was to show "that praying is a compassionate act; such an endorsement of an intrinsically religious activity" fails the purpose test); *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110 (11th Cir. 1983) (Christian monument in public park held unconstitutional under *Lemon*) (internal footnote omitted). Many "courts addressing . . . challenges to the maintenance of religious symbols" and displays have ruled that the symbols fail *Lemon* upon the "finding of a religious purpose." *Id.* at 1110 n.23.[4] *See also Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd*, 472 U.S. 38 (1985); *Mellen v. Bunting*, 327 F.3d 355, 373 (4th Cir. 2003); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991) (finding religious purpose in judge's practice of opening court sessions with prayer, as it involved "an act so intrinsically religious"); *Hall v. Bradshaw*, 630 F.2d 1018, 1020-21 (4th Cir. 1980) (state's inclusion of prayer on state map failed purpose prong). The secular purpose must be the "pre-eminent" and "primary" force driving the action, and "has to be genuine, not a sham[.]" *McCreary Cnty. v. ACLU*, 545 U.S. 844, 864 (2005).

A religious purpose may thus be inferred in this instance since "the government action itself besp[eaks] the purpose . . . [because it is] patently religious." *Id.* at 862-63. *See Stone*, 449 U.S. at 41 ("The pre-eminent purpose for posting the Ten Commandments on schoolroom walls

[4] *See McCreary Cnty. v. ACLU of Ky*., 545 U.S. 844 (2005) (Ten Commandments); *Stone v. Graham*, 449 U.S. 39, 41-42 (1980) (same); *Deweese*, 633 F.3d at 434 (same); *ACLU v. Ashbrook*, 375 F.3d 484, 492 (6th Cir. 2004) (same); *Baker v. Adams County/Ohio Valley Sch. Bd*., 86 Fed. Appx. 104 (6th Cir. 2004) (same); *Adland v. Russ*, 307 F.3d 471 (6th Cir. 2002) (same); *Ind. Civ. Liberties Union v. O'Bannon*, 259 F.3d 766, 770-71 (7th Cir. 2001) (same); *Books v. City of Elkhart*, 235 F.3d 292, 304 (7th Cir. 2000) (same); *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus); *Gonzales*, 4 F.3d at 1421 (cross); *Harris*, 927 F.2d at 1414 (cross); *Rabun*, 698 F.2d at 1110 (cross); *Eckels*, 589 F. Supp. 222 (cross); *Gilfillan*, 637 F.2d at 930 (cross); *Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, *19 (cross); *Kimbley v. Lawrence Cnty*., 119 F. Supp. 2d 856 (S.D. Ind. 2000) (Ten Commandments); *Mendelson*, 719 F. Supp. 1065 (cross); *Mississippi State*, 652 F. Supp. at 382 (cross); *Libin*, 625 F. Supp. at 399 (cross); *Fox*, 22 Cal.3d 792 (1978) (cross); *CCSCS v. Denver*, 481 F. Supp. 522 (D.C. Colo.1979) (creche); *Ahlquist*, 840 F. Supp. 2d at 522 (prayer mural); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 37 (C.D. Ill. 1996) (religious sign); *Burelle v. Nashua*, 599 F. Supp. 792, 797 (D.N.H. 1984) (creche).

is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths."). *See also ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 434 (6th Cir. 2011) ("The poster's patently religious content reveals Defendant's religious purpose"); *Gonzales*, 4 F.3d at 1421 (the court could find "no secular purpose served by a crucifix"); *Indiana Civ. Liberties Union, Inc. v. O'Bannon*, 110 F. Supp. 2d 842, 852 (S.D. Ind. 2000) (finding unconstitutional religious purpose based on "the very design"); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 36-37 (C.D. Ill. 1996) ("the sign 'THE WORLD NEEDS GOD' is undeniably a religious message….[and thus lacks a] secular purpose."). *Cf. Am. Humanist Ass'n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *1-3, *30-31 (M.D. Fla. July 2, 2015).[5]

Regardless of the unabashedly religious purposes motivating the sign, it clearly violates the Establishment Clause pursuant to *Lemon's* effect prong. The "effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion]." *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The "prohibition against governmental endorsement of religion 'preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.'" *Allegheny*, 492 U.S. at 593 (citation omitted). Whether "the key word is 'endorsement' 'favoritism,' or 'promotion,' the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]" *Id.* at 593-94.

Moreover, the "'disparate treatment of theistic and non-theistic religions is as offensive to the Establishment Clause as disparate treatment of theistic religions.'" *Am. Humanist Ass'n v. United States*, 63 F. Supp. 3d 1274, 1283 (D. Or. 2014) (citation omitted). The Supreme Court has stated that:

> an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents *as a disapproval*, of their individual religious choices.

*School Dist. v. Ball*, 473 U.S. 373, 390 (1985) (internal citation omitted, emphasis added). Indeed, it is well settled that

> [f]eelings of marginalization and exclusion are cognizable forms of injury, particularly in the Establishment Clause context, because one of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion 'that they are *outsiders*, not full members of the political community.'

[5] *See also ACLU v. Rabun Cnt'y Chamber of Commerce, Inc.*, 698 F.2d 1098, 1111 (11th Cir. 1983) ("even if the . . . purpose for constructing the cross was to promote tourism, this . . . would not have provided a sufficient basis for avoiding conflict with the Establishment Clause"); *Mendelson v. St. Cloud*, 719 F. Supp. 1065, 1069-70 (M.D. Fla. 1989) (rejecting contention that a cross had "secular and historical value as a guidepost for fishermen" because "[s]ecular means are availing"); *Downing v. W. Haven Bd. of Educ.*, 162 F. Supp. 2d 19, 27-28 (D. Conn. 2001) (allowing teacher to wear shirt "that was emblazoned with the words 'JESUS 2000 - J2K'" would "not have a secular purpose").

*Moss v. Spartanburg Cnty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012), (quoting *McCreary Cnty. v. ACLU of Ky*., 545 U.S. 844, 860 (2005) (emphasis added in *Moss*)).[6]

The sign has the obvious effect of endorsing God-belief, and Christianity in particular, and disapproving atheism, thus violating the Establishment Clause. *See Holloman*, 370 F.3d at 1286-87. *See also Santa Fe*, 530 U.S. at 309-10 (holding that student-initiated, student-led prayers at public high school football game were unconstitutional).[7] Even the "mere appearance of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion," and, therefore, has the impermissible primary effect of advancing religion. *Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982).

For state action to violate the Establishment Clause under the second prong of *Lemon*, "the resulting advancement need not be material or tangible. An implicit symbolic benefit is enough." *Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777, 781 (10th Cir. 1985). *See Allegheny*, 492 U.S. 573 (finding that the fact that a crèche exhibited a sign disclosing its ownership by a Roman Catholic organization did not alter the conclusion that it sent a message that the county supported Christianity). *See also Am. Humanist Ass'n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *36-37 (M.D. Fla. July 2, 2015) ("the communications made by the Mayor of the City and its Chief of Police are evidence of the City's apparent involvement in planning and promoting the prayer vigil").

By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff'd*, 174 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) "clip art" cross violated the Establishment Clause—reasoning, "the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was not intended, but this made no difference in the observer's perception."

Holding that a portrait of Jesus displayed in a public school violated the Establishment Clause, the Sixth Circuit in *Washegesic v. Bloomingdale Pub. Sch*., 33 F.3d 679, 684 (6th Cir. 1994) explained: "Christ is central only to Christianity, and his portrait has a proselytizing, affirming effect that some non-believers find deeply offensive. … [I]t [i]s a governmental statement favoring one religious group and downplaying others. It is the rights of these few [non-adherents] that the Establishment Clause protects." *Id.* at 684.

The very text of the sheriff's sign – "Merry Christmas, God Bless America, and in God We Trust" – alone, without more, unconstitutionally endorses religion. *See McCreary*, 354 F.3d

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[6] *See also Catholic League for Religious & Civ. Rights v. City & Cnty. of San Francisco*, 624 F.3d 1043, 1049-51 (9th Cir. 2009) (recognizing numerous examples of standing based solely on such "unwelcome direct contact," including "cases involving displaying crosses on government land").

[7] *See also Robinson v. City of Edmond*, 68 F.3d 1226, 1228 (10th Cir. 1995) (holding that a city seal that contained four quadrants, only one of which depicted a Latin cross had the unconstitutional effect of endorsing religion); *Ellis v. La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993) (cross on city seal unconstitutional); *Harris v. City of Zion*, 927 F.2d 1401, 1414 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992) (same); *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (same).

at 453 ("the very text … [of the] displays manifests a patently religious purpose"); *ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 434 (6th Cir. 2011) ("The poster's patently religious content reveals Defendant's religious purpose"); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 36-37 (C.D. Ill. 1996) ("the sign 'THE WORLD NEEDS GOD' is undeniably a religious message…. [and thus lacks a] secular purpose."). The "Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations." *Allegheny*, 492 U.S. at 600. *E.g.*, *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1160-61 (10th Cir. 2010) (roadside memorial crosses held unconstitutional where the motorist is "bound to notice the preeminent symbol of Christianity and the UHP insignia, linking the State to that religious sign."); *Newman v. City of East Point*, 181 F. Supp. 2d 1374, 1381 (N.D. Ga. 2002) ("a flyer advertising the Mayor's Prayer Breakfast" was unconstitutional because the city played a "part in the promotion" by printing the flyers and distributing them). *See also Am. Atheists, Inc. v. City of Starke*, 2007 U.S. Dist. LEXIS 19512, *18 (M.D. Fla. 2007) ("the words 'STARKE' and the Cross on the water tower clearly communicates the City's endorsement of Christianity"); *Knight v. State Dep't of Pub. Health*, 275 F.3d 156, 166 (2d Cir. 2001) ("Here, both Knight and Quental promoted religious messages while working with clients on state business, raising a legitimate Establishment Clause concern").

It is apodictic that government "employees have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment's establishment clause[.]" *Grossman v. S. Shore Pub. Sch. Dist*., 507 F.3d 1097, 1099 (7th Cir. 2007). *See Johnson v. Poway Unified School Dist*., 658 F. 3d 954, 957 (9th Cir. 2011) (rejecting First Amendment challenge by teacher to school requiring that he remove classroom banners that read "In God We Trust," "One Nation Under God," "God Bless America," and "God Shed His Grace on Thee," and "All men are created equal, they are endowed by their CREATOR"); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (a teacher's display of a Bible in his classroom "had the primary effect of communicating a message of endorsement of a religion").

For instance, in *Milwaukee Deputy Sheriff's Ass'n v. Clarke*, 588 F.3d 523, 524-26 (7th Cir. 2009), the county sheriff invited a religious group to speak at the sheriff's department leadership conference and at similar employee gatherings. 588 F.3d at 524-26. The Seventh Circuit found that the religious nature of the church members' presentation, combined with the fact that the sheriff had invited them to speak, signaled, "at the least, the appearance of endorsement by the Sheriff's Department," in violation of the Establishment Clause. *Id.* at 528-29. The sheriff's actions in the present case are even more egregious, as the religious activity in *Milwaukee* was confined to employee gatherings; here, the sign is directed to the entire community.

Because the sign is inherently religious, it also unconstitutionally entangles the government with religion. *E.g.*, *Constangy*, 947 F.2d at 1151-52 (when "a judge prays in court, there is necessarily an excessive entanglement of the court with religion."); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385 (6th Cir. 1999) (finding excessive entanglement where "the school board decided to include prayer" and "chose which member from the local religious community would give those prayers"); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003); *Hall*, 630 F.2d at 1021; *Gilfillan*, 637 F.2d at 932 ("the City's assistance and the extensive

cooperation during the preparations for the Pope's visit, also fail the entanglement test, because of the potential for divisiveness.").

Finally, it bears emphasis that, in addition to violating the Establishment Clause under all three prongs of the *Lemon* test, *supra*, the sign also violates the Establishment Clause under the "coercion test." *Lee v. Weisman*, 505 U.S. 577 (1992) (recognizing that unconstitutional coercion may be exercised both directly and indirectly). Although "coercion is not necessary to prove an Establishment Clause violation," its presence "is an obvious indication that the government is endorsing or promoting religion." *Id.* at 604 (Blackmun, J., concurring).

The "fundamental source of constitutional concern here is that the legislature itself may fail to exercise governmental authority in a religiously neutral way." *Bd. of Educ. v. Grumet*, 512 U.S. 687, 703 (1994). In *Friedman v. Board of County Comm'rs*, 781 F.2d 777, 781-82 (10th Cir. 1985), the Tenth Circuit held that a county's a use of a seal bearing a Latin cross and the Spanish motto, "Con Esta Vencemos," violated the Establishment Clause. In so ruling, the court found it particularly troubling that the "county prominently displays the seal on county vehicles and uses it to identify law enforcement officers." *Id.* As such, a reasonable observer could reasonably believe that "the county government was 'advertising' the Catholic faith." *Id.* To that extent, the seal impermissibly advanced religion under the second prong of *Lemon*. The court's analysis went further though, observing the heighted risk of coercion attendant in any such exercise of religion in the police force:

> A person approached by officers leaving a patrol car emblazoned with this seal could reasonably assume that the officers were Christian police, and that the organization they represented identified itself with the Christian God. A follower of any non-Christian religion might well question the officers' ability to provide even-handed treatment. A citizen with no strong religious conviction might conclude that secular benefit could be obtained by becoming a Christian. "When the power, prestige, and financial support of government is placed behind a particular religious belief, **the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain**."

*Id.* (citing *Schempp*, 374 U.S. 203, 221 (1963); *Engel v. Vitale*, 370 U.S. 421, 430-31 (1962)) (emphasis added). *See also Robinson v. City of Edmond*, 68 F.3d 1226, 1231 (10th Cir. 1995); *Ellis v. La Mesa*, 990 F.2d 1518, 1528 (9th Cir. 1993) ("The use of the insignia is particularly troubling. It is attached to uniforms, included on official correspondence, and prominently displayed on police motor vehicles. A design that focuses attention on the cross, when affixed to the uniforms of government officials, creates the appearance of religious preference."); *Harris v. Zion*, 927 F.2d 1401 (7th Cir. 1991) (same); *ACLU v. City of Stow*, 29 F. Supp. 2d 845, 853 (N.D. Ohio 1998).

Lastly, the blatantly anti-atheist sign violates the Equal Protection Clause, which prohibits invidious discrimination on the basis of religion. Numerous courts have held that the government violates the Equal Protection Clause by discriminating against atheists and humanists. *See, e.g., Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 2014 U.S. App. LEXIS 13354, *8-13 (7th Cir. 2014) (statute violated Equal Protection because it arbitrarily discriminated against Humanists); *Kaufman v. Pugh*, 733 F.3d 692 (7th Cir. 2013) (*Kaufman II*)

(refusal to authorize Atheist study group violated Establishment Clause); *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (*Kaufman I*) (same); *Am. Humanist Ass'n & Jason Michael Holden v. United States*, 2014 U.S. Dist. LEXIS 154670 (D. Or. Oct. 30, 2014) (refusal to authorize secular humanist study group in prison violates Establishment Clause and Equal Protection Clause); *Hatzfeld v. Goord*, 2007 U.S. Dist. LEXIS 98782, *13-14 (N.D.N.Y 2007) (where Hepatitis C treatment could only be obtained through participation in theistic substance abuse program, defendants discriminated against inmate "because he was an atheist.").

As correctly noted by Judge Posner, constitutional jurisprudence treats non-theists as a "sect of nonbelievers." *ACLU v. St. Charles*, 794 F.2d 265, 270 (7th Cir. 1986). *See, e.g.*, *Gillette v. U.S.*, 401 U.S. 437, 439, 461-62 (1971) (entertaining claim "based on a humanist approach to religion"); *U.S. v. Seeger*, 380 U.S. 163, 176 (1965); *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961) ("Secular Humanism" is a "religion"); *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 2014 U.S. App. LEXIS 13354, *8 (7th Cir. 2014) (Humanism is a religion for Establishment Clause purposes); *Am. Humanist Ass'n & Jason Michael Holden v. United States*, 2014 U.S. Dist. LEXIS 154670, *15 (D. Or. Oct. 30, 2014) ("the court finds that Secular Humanism is a religion for Establishment Clause purposes" and for equal protection purposes). Thee Supreme Court in *Torcaso* made clear that the government must not aid "those religions based on a belief in the existence of God as against those religions founded on different beliefs." 367 U.S. at 495. Following that statement, the Court recognized: "Among [those] religions" are "Secular Humanism." *Id.* at n.11.

This letter serves as a notice of the unconstitutional sign and demands that you remove it forthwith. Please contact us *immediately* indicating that you will take the appropriate steps to remedy this clear constitutional violation, including by expressly renouncing any affiliation with or support of the sign and its hostile message. We also ask for written assurances that signs such as this will not be displayed in the future.

The American Humanist Association wishes you and yours a Happy Thanksgiving and a joyous holiday season.

Sincerely,
Monica L. Miller, Esq.
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