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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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AMERICAN ATHEISTS, INC., a Texas  
non-profit corporation, R. ANDREWS, S.  
CLARK and M. RIVERS,

Plaintiffs,

vs.

COLONEL SCOTT T. DUNCAN,  
Superintendent, Utah Highway Patrol;  
JOHN NJORD, Executive Director, Utah  
Department of Transportation; and, F.  
KEITH STEPAN, Director Division of  
Facilities Construction and Management  
Department of Administrative Services,

Defendants.

**STATE DEFENDANTS'  
MEMORANDUM IN OPPOSITION TO  
MOTIONS TO STRIKE  
DECLARATIONS**

Civil No. 02:05-CV-00994 DS

Judge David Sam

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Defendants Colonel Scott T. Duncan, John Njord, and Keith Stepan (State Defendants),  
by and through their attorney of record, Thom D. Roberts, Assistant Attorney General, hereby  
submit the following Memorandum in Opposition to Plaintiffs' Motion to Strike the Declaration  
of Richard Campbell (Document #69), Plaintiff's Motion to Strike the Declaration of James R.

Baird (Document #67), Plaintiff's Motion to Strike the Declaration of Lee Perry (Document #65):

Plaintiffs brought this action claiming that the action of the State Defendants, in allowing the placement of the highway patrol trooper memorials on state property, violated the First Amendments provisions regarding the establishment of religion. Plaintiffs filed a Motion for Partial Summary Judgment asking the Court determine, as a matter of law, that the cross shape of the trooper memorials which are the subject matter of this suit are "exclusively religious symbols." The State Defendants filed a Memorandum in Opposition and filed various Affidavits concerning symbols, religious symbols, and public and governmental use of symbols, specifically including various forms of crosses.

The U.S. Supreme Court has determined in establishment cases that the meaning, purpose and intent of a symbol or display depends upon its context. McCreary County, Kentucky v. American Civil Liberties Unions, 12 Supreme Ct. 2722, 2737-38 (2005). In addition, it is to be based upon the reasonable knowledgeable observer:

[T]he reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and the forum in which the [display] appears.

McCreary, 125 Supreme Ct. at 2737.

The State Defendants recognize that the symbol of a cross can be, depending upon the circumstances, a religious symbol. The use of a Latin cross on top of a church, or in front of or behind the alter in a church, is undoubtedly religious. However, the cross, including a Latin cross, need not have such a meaning and is not "exclusively" such a symbol. The affidavits involved here show symbols, including Latin crosses and other "Christian" cross forms, being used other than as a religious symbol. Such a use of the symbol of a cross other than in a

religious context is relevant with regard to whether the crosses in question “exclusively” and “as a matter of law” must be religious symbols.

The Affidavit of Col. Richard Campbell (doc #69), containing various military medals, shows the use of various crosses for military purposes. As examples in the photos attached as Exhibits to his Affidavit show, these are crosses of various forms, including Greek crosses, Maltese or Iron crosses, as well as some so called Latin crosses. The example of a use of a Latin cross is sufficient to make his Affidavit relevant. *See* Exhibit 5, medal number seven. However, the use of what in other circumstances are religious symbols but are not religious symbols in these circumstances is relevant to the issue of Plaintiff’s Motion. In addition, some of the medals, while not being Latin crosses, are nonetheless referred to as “crosses” again making them relevant as to the determination of the “cross” in question here. *See* e.g. Campbell affidavit, Exhibit 1, the Utah Cross.

Similarly the Affidavit of Mr. Baird (doc #67), shows an aerial survey marker in the form of a Greek cross. Again, this represents a symbol which may, in certain circumstances, be used as a religious symbol but here is not. These types of uses of what could otherwise be religious symbols, in a non-religious way, are relevant to the issue of whether a symbol can only have one meaning and whether the crosses in the trooper memorials are “exclusively” religious.

Similarly with regard to the Affidavit of Lee Perry, (doc #65). Examples of non-Christian religious symbols being utilized in a way that are not religious, showing that religious symbols are not always religious symbols, are relevant to Plaintiffs’ claims that the religious symbol they complains of is being used in a religious fashion or is “exclusively” or always and only a

religious symbol. Mr. Perry, as one of the creators and initiators of the trooper memorials, studied and analyzed the cross and other symbols of death and memorial and knows the intent and purpose of these memorials. He is thus competent and qualified to state the facts, conclusions and opinions that he does.

Plaintiffs seek to make their argument as a tautology: the cross in the trooper memorial is a “Christian cross”, a “Christian” cross is Christian, and is therefore exclusively a religious symbol. However, naming it such, or calling it such, does not establish the truth and factual basis thereof. This suit concerns memorials to troopers which have a certain structure and image. Within the memorials are elements that may have symbolic meaning. That symbolic meaning is to be determined from the context of the use of the symbol and from the perspective of a reasonable knowledgeable observer who is aware of the history and context of the display and symbol. McCreary, supra. These Affidavits and their attachments are relevant to that inquiry.

#### CONCLUSION

The State Defendants request that Plaintiff’s Motions to Strike the Affidavits of Lt. Col. Campbell, Mr. Baird, and Mr. Perry be denied.

Dated this \_\_\_\_\_ day of May, 2006.

MARK L. SHURTLEFF  
Attorney General

/s/ Thom D. Roberts  
THOM D. ROBERTS  
Assistant Attorney General  
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing **STATE DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTIONS TO STRIKE DECLARATIONS** was served by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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And by means of United States mail, postage prepaid to the following at the below addresses as well as e-mail to the addresses listed below:

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/s/ Sherri L. Cornell