

DEC 10 2009

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_ DEP CLERK

THE ARKANSAS SOCIETY OF FREETHINKERS

PLAINTIFF

v.

CASE NO. 4-09-CV-0925 SW-000

CHARLIE DANIELS, in his official capacity as  
ARKANSAS SECRETARY OF STATE

This case assigned to District Judge Wright  
and to Magistrate Judge Deere  
DEFENDANT

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
FOR VIOLATION OF FIRST AMENDMENT RIGHTS**

Plaintiff The Arkansas Society of Freethinkers, for its complaint for violation of its  
First and Fourteenth Amendments rights, states:

Nature of the Action

1. This is an action challenging defendant's refusal to permit plaintiff to install a temporary Winter Solstice display in that area of the state capitol grounds designated by defendant as a public forum.

2. This action seeks a declaration that defendant's decision to deny plaintiff permission to install a temporary Winter Solstice display is unconstitutional and a preliminary and permanent injunction barring defendant from refusing to permit the Winter Solstice display in the designated public forum of the state capitol grounds.

Jurisdiction

3. This case arises under the Constitution and laws of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.

4. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.* Defendant's constitutional violations are taken

under color of state law and are actionable pursuant to 42 U.S.C. § 1983.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391.

#### The Parties

6. The Arkansas Society of Freethinkers is a statewide non-profit organization organized and existing under the laws of this state. Part of its purpose is to promote education and awareness of freethinkers, their history, activities and holidays.

7. Defendant Charlie Daniels is the Arkansas Secretary of State. He is sued in his official capacity. The Secretary of State is responsible for overseeing and maintaining the state capitol grounds, including that area designated as a public forum.

#### Factual Allegations

8. Defendant maintains a policy allowing members of the public to place a temporary display on the state capitol grounds by seeking permission from defendant and complying with certain conditions that are stated in the policy, which is entitled "Temporary Displays on State Capitol Grounds." A copy of this policy is attached as Exhibit 1 to this complaint. Defendant has therefore designated a public forum for temporary displays on the state capitol grounds.

9. On October 16, 2009, plaintiff submitted a written request to defendant to reserve a site for the installation of a temporary Winter Solstice display on the state capitol grounds. The request contained a written description and photographs of the display. A copy of the written request is attached as Exhibit 2 to this complaint.

10. By letter dated November 4, 2009, defendant wrote plaintiff denying its request on the basis that he had the authority to do so under A.C.A. § 12-14-102. A copy of

defendant's November 4, 2009, letter is attached as Exhibit 3 to this complaint. This statute provides authority to the state capitol police to maintain "proper order and decorum."

11. The only temporary display presently on the state capitol grounds in the designated public forum area is a creche with a wood exterior and nativity figures carved out of wood. The display is not decorated with lights or ornamentation of any kind and is devoid of a festive tone.

12. In December 2009, in response to an Arkansas Freedom of Information Act request, defendant provided all applications and correspondence relating to requests for temporary displays and the procedures and rules regulating their installation. The only documents in defendant's possession were plaintiff's applications for a temporary Winter Solstice display for this and the previous year, defendant's denial of these applications, and the policy attached as Exhibit 1 to this complaint.

13. Even though there is a temporary creche display on the state capitol grounds installed by a private organization, there exists no written request or written approval of any request, or any proof of insurance, as required by the defendant's policy. (Exhibit 1)

14. At a December 8, 2009 meeting with representatives of plaintiff and representatives of defendant, the plaintiff's representative reiterated its request for a permit and offer to show defendant's representatives a complete set of photographs of the completed display. Defendant's representative reiterated defendant's decision to deny plaintiff's request. The stated reason for his denial was that he had the authority and the discretion to do so. Further, defendant stated through his representatives that he did not feel the Winter Solstice display was "consistent with the tone of the other decorations and displays." Defendant's

representative confirmed, however, that plaintiff had completed all necessary steps to apply for a temporary display permit. No reason to deny plaintiff's request was stated other than the objection to the "tone" of the Winter Solstice display.

15. The Winter Solstice is an ancient holiday that is observed around the time of the winter solstice, December 21. It is celebrated by members of The Arkansas Society of Freethinkers. The purpose of the Winter Solstice display is to provide an expression of some members of the society's beliefs and to provide an opportunity to educate the public about the Winter Solstice and freethinkers. As such, the display is speech protected by the First Amendment.

16. Defendant's action is preventing plaintiff from exercising its First Amendment rights.

17. Plaintiff is suffering, and will continue to suffer, irreparable harm by reason of defendant's action. If plaintiff is not permitted to install its display on the state capitol grounds as soon as possible, and certainly no later than December 21, 2009, it will be prevented from exercising its First Amendment rights.

18. Unless restrained, defendant will continue to violate the Constitution and reject plaintiff's request.

#### Causes of Action

19. Defendant's action in denying the plaintiff permission for its temporary display violates the First and Fourteenth Amendments because it is based on the defendant's unbridled discretion and conditions access to the designated public forum on the state capitol grounds entirely on defendant's enforcement of his personal acceptance of content and viewpoint

restrictions on otherwise available constitutionally protected speech. Defendant's action unconstitutionally burdens the rights of plaintiff and its members to communicate protected expression.

20. Defendant impermissibly imposes content and viewpoint-based restrictions on speech in a public forum.

21. Defendant's action is not narrowly tailored to accomplish any compelling governmental purpose. Indeed, there is no valid governmental purpose furthered by defendant's action, and he has not articulated any.

Prayer for Relief

WHEREFORE, plaintiff respectfully requests that the Court:

- (a) declare defendant's decision to reject plaintiff's Winter Solstice display to be unconstitutional.
- (b) preliminarily and permanently enjoin defendant from denying plaintiff's request for a temporary display.
- (c) award plaintiff costs and attorney fees as allowed by law; and
- (d) grant to plaintiff such other, further and different relief as may be just and proper.

Respectfully submitted,

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and

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By



Bettina E. Brownstein (85019)  
Cooperating Attorneys for Arkansas Civil  
Liberties Union Foundation, Inc. and  
Attorneys for Plaintiff



Sharon Priest  
SECRETARY OF STATE

## State of Arkansas SECRETARY OF STATE

### Temporary Displays on State Capitol Grounds

In order to place any temporary display on the State Capitol Grounds it is necessary for a sponsor to do the following:

1. The Sponsor shall send a written request.
2. If the display is movable it is necessary to be attended by the sponsor or designee at all times.
3. The Secretary of State or designee shall determine the location and length of time for the display.
4. Sponsor shall hold harmless the Secretary of State or any other governmental agency for any and all damage, destruction, theft or vandalism of the display.
5. Sponsor is responsible for making, maintaining and removing the display.
6. The Sponsor may be responsible for any utilities or labor in making, maintaining and removing display.
7. No display will be allowed to interfere with pedestrian or vehicle traffic flow.
8. Sponsor required to obtain written permission from the Building and Grounds Director to schedule a time to make, maintain and remove display.
9. If the sponsor fails to follow these requirements, the Secretary of State may remove the display at the owner's expense.
10. Sponsor is responsible to return the Capitol Grounds to substantially the same conditions as before the display was placed on the Capitol Grounds. Sponsor is responsible for any and all damage caused by the display and is required to repair such damage. Damage includes personal injury due to display, resodding due to traffic to and from display, damage to the underground sprinkler system and any and all other conditions created by the display. Sponsor will be required to have insurance to cover damages caused by display.

EXHIBIT

tabbles®

1

Page Two

11. If the Sponsor fails to adhere to any of these requirements, the Secretary of State reserves the right to deny access to the Capitol Grounds for future displays.

By signing this document, the sponsor agrees to the above conditions:

\_\_\_\_\_  
Sponsor Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number



Arkansas Society of Freethinkers  
Attn: Mark Love  
P.O. Box 4135  
Little Rock, AR 72214

Jonathon Runnells  
Secretary of State Office: Room 04  
Arkansas State Capitol Building  
Little Rock, AR 72201

Date: October 16, 2009

The Arkansas Society of Freethinkers would like to reserve a spot on the state capitol grounds, for a Winter Solstice Holiday Display, in the same area designated for such displays, as the annual nativity scene. The themes of the display would consist of the following:

- Side 1 of 4: History of festivities that took place around the winter solstice.
- Side 2 of 4: A description of a Freethinker, with a list of famous Freethinkers.
- Side 3 of 4: A wall of knowledge, which would contain book covers from popular books.
- Side 4 of 4: A "Did You Know?" wall, with facts about our ancestry, timeline of life on earth, interesting facts about the universe, and information on the scientific method.

Physical Description of the Winter Solstice Display

A box approximately 4' (feet) wide by 4' deep by 8' high, with walls 5/8" (inch) thick, made by attaching four plywood 4' by 8' by 5/8" thick sheets together at right angles, using 2" by 4" by 8' pieces of lumber. The lumber would be attached to the plywood sheets using both epoxy and screws. The four walls of the display will be bonded to a 4' by 4' frame made of 2" by 4" treated lumber that provides the ground interface. On the inside edge of this frame will sit a floor made of 2" by 4" lumber. A large ballast weight, probably consisting of concrete blocks, will be placed on the floor of the display, to increase its stability during high winds, and make the display difficult for anyone to move. The display will also have a plywood top that is securely fastened to the sides using 2 by 4 lumber and wood screws. The display's content will be on the outside surface of each wall of the box. A spot light will be attached to the outside wall, near the top of each side, to illuminate that side's content at night.

We'd like to illuminate the display at night, and have it available for viewing from November 25, 2010 until January 4, 2010 (41 days) on the capitol grounds. We need to be made aware of any issues you might have with this display, as soon as possible, as we'll be unable to make changes after Oct 26, 2009.

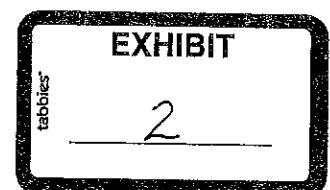
We need information on the following.

- 1) Designated area for the display.
- 2) Electrical power options for illumination of the display.

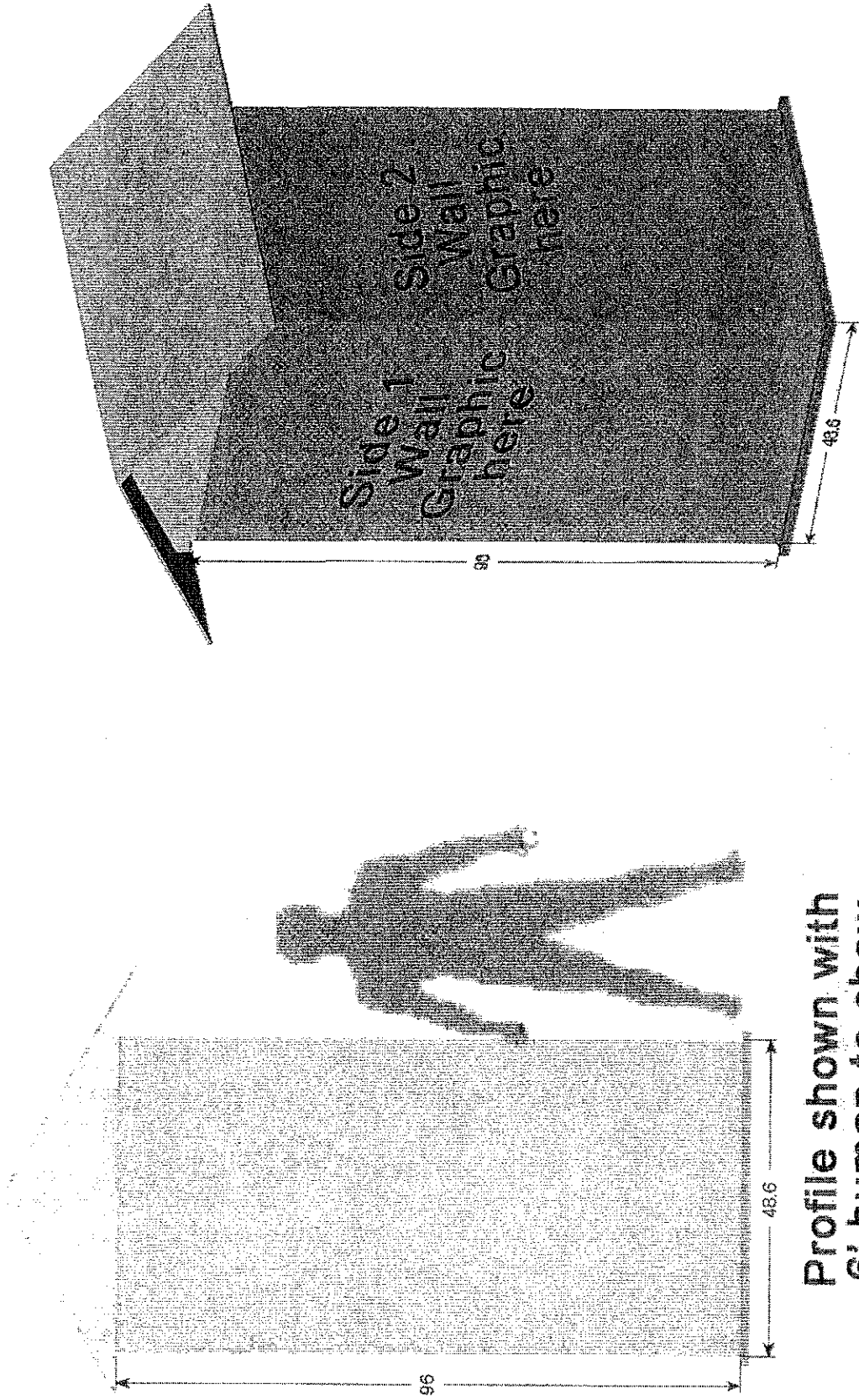
You can reach me at 501-658-4325 for additional information and comments.

Sincerely,

Mark Love



# Physical Appearance of Display



Profile shown with  
6' human to show  
size perspective

# Side 1

## *Season's Greetings!*

Since ancient times, people have waited through the cold dark days of winter for the return of warmth and light. Throughout history, and across many cultures, festivals of light have been practiced during this time of year. "Sol Invictus" was one such celebration held on December 25th during Roman times. "Sol Invictus" literally means "the unconquered sun".

As we pass through the longest nights of the year, we are assured that darkness will not prevail--that light and warmth will return. We gather with friends and family and surround ourselves with joy and celebration. Evergreens and lights remind us that even in the cold stillness of winter, life is triumphant.

As the old year passes and a new year is born, we reflect on that which has passed and hope for a better tomorrow. May the light of reason be a beacon to a brighter future for us all. **HAPPY NEW YEAR** from the Arkansas Society of Freethinkers!!

### Festivities around the Winter Solstice

The Winter Solstice has been celebrated in cultures the world over for thousands of years. This start of the solar year is a celebration of Light and the rebirth of the Sun. In old Europe, it was known as Yule, from the Norse Yul, meaning wheel.

Today, many people in Western-based cultures refer to this holiday as "Christmas." Yet a look into its origins of Christmas reveals its Pagan roots. Emperor Aurelian established December 25 as the birthday of the "Invincible Sun" in the third century as part of the Roman Winter Solstice celebrations. Shortly thereafter, in 273, the Christian church selected this day to represent the birthday of Jesus, and by 336, this Roman solar feast day was Christianized. January 6, celebrated as Epiphany in Christendom and linked with the visit of the Magi, was originally an Egyptian date for the Winter Solstice.

Most of the customs, lore, symbols, and rituals associated with "Christmas" actually are linked to Winter Solstice celebrations of ancient Pagan cultures. While Christian mythology is interwoven with contemporary observances of this holiday time, its Pagan nature is still strong and apparent. Today we can readily celebrate the holiday and the secular New Year by recognizing the Pagan spiritual focus in existing holiday customs and by creating new traditions that draw on ancient ways. Here are some ways to do this:

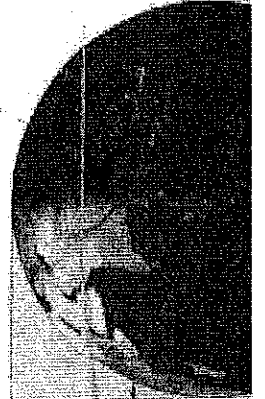
Celebrate Yule with a series of rituals, feasts, and other activities. In most ancient cultures, the celebration lasted more than a day. The ancient Roman Saturnalia festival sometimes went on for a week. Have Winter Solstice Eve and Day be the central focus for your household, and conceptualize other holiday festivities, including New Year's office parties and Christmas visits with Christian relatives, as part of your Solstice celebration.

By adopting this perspective, parents can help their children develop an understanding of the multicultural and interfaith aspects of this holiday time and view "Christmas" as just another form of Solstice. Have gift exchanges and feasts over the course of several days and nights as was done of old. Party hearty on New Year's Eve not just to welcome in the new calendar year, but also to welcome the new solar year.

Adorn the home with sacred herbs and colors. Decorate your home in Druidic holiday colors: red, green, and white. Place holly, ivy, evergreen boughs, and pine cones around your home, especially in areas where socializing takes place. Hang a sprig of mistletoe above a major threshold and leave it there until next Yule as a charm for good luck throughout the year. Have family/household members join together to make or purchase an evergreen wreath. Include holiday herbs in it and then place it on your front door to symbolize the continuity of life and the wheel of the year. If you choose to have a living or a harvested evergreen tree as part of your holiday decorations, call it a Solstice tree and decorate it with Pagan symbols.

Convey love to family, friends, and associates. At the heart of Saturnalia was the custom of family and friends feasting together and exchanging presents. Continue this custom by visiting, entertaining, giving gifts, and sending greetings by mail and/or phone. Consider those who are and/or have been important in your life and share appreciation.

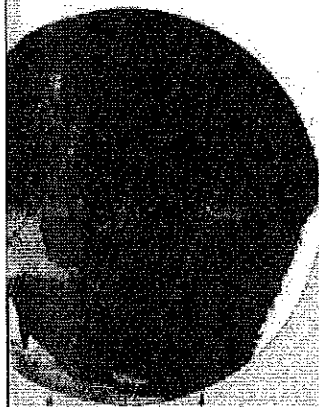
Earth Axis



### The Winter Solstice

In astronomy, the winter solstice is the moment when the earth is at a point in its orbit where one hemisphere is most inclined away from the sun. As the date of the winter solstice approaches, the days get progressively shorter, leading some ancient people to believe that the sun, an object of worship, was dying. In the northern hemisphere, the winter solstice falls on December 21, or December 22. The sun was believed to be dead for three days, since its trajectory was not perceived to have





SUN RAYS

sun. As the date of the winter solstice approaches, the days get progressively shorter, leading some ancient people to believe that the sun, an object of worship, was dying. In the northern hemisphere, the winter solstice falls on December 21, or December 22. The sun was believed to be dead for three days, since its trajectory was not perceived to have moved until December 25, the day associated with the rebirth of the sun. This three day period of death, then resurrection is associated with many of the saviour gods of the past, including Horus, Attila, Osiris, and Mithra, who all had their birthdays celebrated on December 25. The word Solstice comes from two Latin segments, sol (sun), and sistere (to standstill), or sun standstill.

Tropic of Cancer

Equator

Tropic of Capricorn

Arctic Circle

Reclaim Santa Claus as a Pagan God form. Today's Santa is a folk figure with multicultural roots. He embodies characteristics of Saturn (Roman agricultural god); Cronos (Greek god, also known as Father Time); the Holly King (Celtic god of the dying year); Father Ice/Grandfather Frost (Russian winter god); Thor (Norse sky god who rides the sky in a chariot drawn by goats), Odin/ Wotan (Scandinavian/Teutonic All-Father who rides the sky on an eight-legged horse); Frey (Norse fertility god), and the Toms (a Norse Land Spirit known for giving gifts to children at this time of year). Santa's reindeer can be viewed as forms of Herne, the Celtic Horned God. Decorate your home with Santa images that reflect His Pagan heritage. You may also want to include one with a Sun child, such as Isis with Horus. Pagan Goddess forms traditionally linked with this time of year include: Tonantzin (Native Mexican earth goddess of good fortune), Bona Dea (Roman women's goddess of abundance and prophecy), Ops (Roman goddess of plenty), Au/Sel/Isis (Egyptian/multicultural All Goddess whose worship continued in Christian times under the name Mary), Lucina/St. Lucy (Roman/Swedish goddess/saint of light), and Befana (Italian Witch who gives gifts to children at this season).



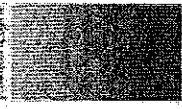
Honor the new solar year with light. Do a Solstice Eve ritual in which you meditate in darkness and then welcome the birth of the sun by lighting candles and singing chants and Pagan carols. If you have a indoor fireplace or an outdoor fire circle, burn an oak log as a Yule log and save a bit to start next year's fire. Decorate the inside and/or outside of your home with electric colored lights. Because of the popularity of five pointed stars as holiday symbols, this is a good time to display a pentagram of blue or white lights.



Contribute to the manifestation of more wellness on Planet Earth. Donate food and clothing to poor in your area. Volunteer time at a social service agency. Put up bird feeders and keep them filled throughout the winter to supplement the diets of wild birds. Donate funds and items to non-profit groups, and environmental organizations. Meditate for world peace. Work magic for a healthier planet. Make a pledge to do some form of good works in the new solar year.



HumanLight presents an alternative reason to celebrate: a Humanist's vision of a good future. It is a future in which all people can identify with one another, care for each other, behave with the highest moral standards, and work together toward a happy, just and peaceful world. It is a vision that we not only wish to celebrate, but which we also wish to communicate to our children, families and friends. We want the people important to us to understand the ideals that we hold most dear to our hearts and, in so doing, to have a fuller understanding of who we are as people.



# Side 2

## Famous Freethinkers



## What is a Freethinker?

A freethinker is one who holds that beliefs should be formed on the basis of science and logic and should not be influenced by emotion, authority, tradition, or any dogma.

Many believe "freethinker" is synonymous with "atheist." However, while an atheist is a freethinker, not all freethinkers are atheists. Atheists, agnostics, secular humanists, deists, and most Unitarian Universalists fall under the heading of "freethinkers." The only real criterion for being a freethinker is to have arrived at your belief system independent of preexisting dogma or authority.

Freethinkers and nonbelievers are the last minority that it is still okay to openly discriminate against. This is because of gross misconceptions about freethinkers. Some equate it with satanic worship, which is ludicrous considering that freethinkers do not believe in Satan (or, in most cases, any supernatural beings). Others think that nonbelievers cannot be moral because they don't believe in



### Freethinker Quotes

Thomas Jefferson (writing Jefferson): "Billions of ignorant men, women and children are fast in the throes of a religious superstition, but of the very lowest type, and are not improving, losing intelligence rather than gaining it. I know of no other means that will fully reach the help of the world's ills and the other half of the population." (National Political Organization)

Mark Twain (writing): "I cannot see how a man of any large degree of intelligence can persist in that over-reliance upon a religion—except he properly want the cross of the world to keep him out of heaven." (Leland T. Bacon's *Mark Twain on the Journey*, Southwell, 17)

Bill Gates (Bill Gates Foundation): "I don't have any evidence of [any] progress [in] Asia in terms of education of women, religious tolerance, or anything else. There's a number of things I would be doing on a Sunday morning." (The Edge, 11/2/04)

Warren Buffett (Buffett Partnership): "I would not want to be a member of my family's religion. Even if it were the only one in the world, I would not want to be a member of my family's religion. I would not want to be a member of my family's religion." (Buffett Partnership)

Stephen Hawking (Stephen Hawking): "I don't see how any man of any large degree of intelligence can persist in that over-reliance upon a religion—except he properly want the cross of the world to keep him out of heaven." (Leland T. Bacon's *Mark Twain on the Journey*, Southwell, 17)

Albert Einstein (Einstein): "I cannot see how a man of any large degree of intelligence can persist in that over-reliance upon a religion—except he properly want the cross of the world to keep him out of heaven." (Leland T. Bacon's *Mark Twain on the Journey*, Southwell, 17)

Freethinkers do not believe in Satan (or, in most cases, any supernatural beings). Others think that nonbelievers cannot be moral because they don't believe in Heaven or Hell. They believe that if you do not fear Hell or believe in Judgment Day, you will only act in selfish and impulsive ways. Those who believe this seem to be insulting themselves from the perspective of the freethinker. We believe that if you only act morally to avoid eternal damnation, you are acting from purely selfish motivations. If it is as if the person who believes this thinks that he or she would start committing heinous acts if they suddenly didn't believe in the existence of Hell.

Freethinkers believe that morality is a necessary trait arising through evolutionary means via natural selection. Humans are incredibly interdependent, and require social living to facilitate individual existence. Those humans who were genetically inclined to having a conscience (that acted as a reward and punishment center in our brains) were more likely to be socially adaptive, thrive, and pass on their sociable genes to their offspring. Over time and through trial and error, humans learned what specific rules needed to be observed to best ensure social harmony, which benefits the whole group through increased cooperation and solidarity. Over time most people evolve to feel good when they abide by social expectations and feel bad when they fail to meet social expectations.

Furthermore, good and bad are not the province of either believers or nonbelievers. Many believers have done primarily good things, while others have done horrible things through holy wars, witch hunts, terrorism, murder of abortion clinic doctors, & homosexuals, etc. It is the same with nonbelievers: some are good, and some are bad, regardless of what they believe in all cases.

Believers often erroneously conclude that society will be damaged or destroyed if it becomes more secular or a large percentage of its population becomes nonbelievers. Statistics don't support this, however. The 2004 United Nations *Human Development Report* ranked the countries of the world according to such indicators of societal health as literacy, crime, income, human rights, mental health, physical health, life expectancy, gender equality, quality and level of education, etc. The top two healthiest countries were Norway and Sweden, and these two nations have the highest percentage of nonbelievers in the world, with average percentage of nonbelievers being around 70-80% in both cases (*Free Inquiry*, Aug/Sep, 2006). These societies reject religion, yet they are the healthiest two societies in the world in almost all the aforementioned categories. Clearly secularism doesn't lead to social ills.

### Myths about Freethinkers

- Freethinkers are immoral → Many people do not blame or credit the supernatural for their behavior. They take responsibility for their own actions, and do not need bribes or threats of hellfire in order to obey secular laws.
- Non-believers are responsible for the world's ills → Religion brought us the Dark Ages, the Crusades, the Inquisition, "witch burnings", pogroms, religious wars and "faith-based" terrorism. It has fueled bigotry, punished heretics, and fought another social, religious and economic war. Without Christianity, the world would be a better place.













Exploring the Question

STEM-CELL RESEARCH

9/11 REPORT

What Is ATHEISM

Short Introduction

DOUGLAS E. KRUEGER

Why I Am Not a Christian

ATHEIST UNIVERSE

HOW TO BUILD A MIND

GRAY'S ANATOMY

ENDING AGING

Deception by Design

The Hinge of Design Assessment in Architecture

DEATH IN BLACK HOLO

REASON DRIVEN

Lecture Hall, Jr.

Why I Am Not a Christian

ATHEIST UNIVERSE

HOW TO BUILD A MIND

GRAY'S ANATOMY

ENDING AGING

The God Virus



The 60B Delusion

Richard Dawkins

ALBERT EINSTEIN

WORLD AS IT SEES IT

THE CONSTITUTION

The Anti-Christ

Friedrich Nietzsche

Why I Am Not a Christian

Telomeres

THE GOD VIRUS

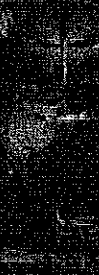
CONSCIOUSNESS

WHY CHRISTIANITY MUST CHANGE OR DIE

JOHN SHELDON SPONG

For Science and the Faithful

THE 60B DELUSION



JOHN SHELDON SPONG

JOHN SHELDON SPONG

WHY CHRISTIANITY MUST CHANGE OR DIE

THE 60B DELUSION

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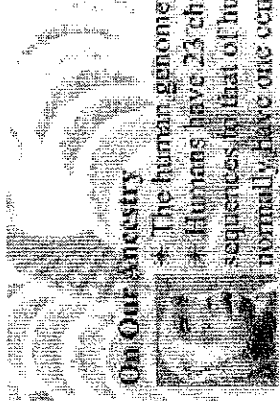
THE 60B DELUSION

THE 60B DELUSION

THE 60B DELUSION



# Side 4



## On Our Ancestry

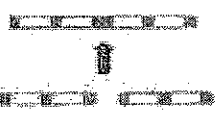
\* The human genome contains 3.4 billion base pairs, with human and bonobo DNA differing by only 1.6%.  
\* Humans have 23 chromosome pairs, apes 24. The closest human relative, the bonobo, has almost identical DNA sequences to that of human chromosome #2, but they are found in two separate chromosomes. Chromosomes normally have one centromere, but human chromosome #2 has two, one of which is inactive. Exactly what one would expect to find if this chromosome is the result of a fusion of two separate chromosomes in our ancestral past.

There is also a vestigial telomere in the middle of this chromosome, with telomeres normally appearing only at the ends of the chromosome. Again, this is what we'd expect to see if a fusion event occurred. Chromosome 2 provides strong evidence that we and the other apes share common descent.

\* Endogenous retroviruses (ERVs) are retroviruses that have integrated their DNA into an organism's genome, at some point in the past, perhaps many generations ago. The infected individual will have a copy of the ERV in the same position in the same chromosome in every single one of their cells. ERVs can be passed on to subsequent generations, via germ-line cells (cells that make sperm and eggs). A particular ERV occurring at the same location in the human and ape genome, would essentially confirm beyond a reasonable doubt that they share a common ancestor, since the probability of that occurring strictly by chance is incredibly small, at 1 in chance, at an astonishingly small  $1 \text{ in } 3 \times 10^{16}$ . ERVs offer irrefutable proof that humans and apes share common descent.



Key  
• Humans  
• Chimpanzees





\* There are an estimated 50 thousand million galaxies in the universe, with the typical galaxy containing 50 thousand million to 100 thousand million stars. It is estimated that there are  $10^{22}$  stars in total in the universe.

\* Astronomers believe that the universe contains one atom for every 88 gallons of space.

\* A galaxy of typical size, about 100 billion suns produces less energy than a single Quasar.

\* As late as 1820, the universe was thought by European scientists to be 6,000 years old. It is now thought to be about 13,700,000,000 years old.

\* The matter in the universe is so thinly dispersed that the universe can be compared with a building twenty miles long, twenty miles wide, and twenty miles high, containing only a single grain of sand.

\* A massive star has a shorter lifetime than a less massive star. The more massive a star, the more tightly its gravity pulls it together, the hotter it must be to keep it from collapsing, and the more rapidly it uses up its hydrogen fuel. The reason there are so few really massive stars is that they do not live very long, as little as a million years. For comparison, our sun has an expected lifetime of about 11,000 million years.

\* The star Betelgeuse, a bright star in the constellation of Orion, is estimated to have a diameter of around 700 million miles. If it were placed at the centre of our solar system, it would extend beyond the orbit of Jupiter.

\* The Milky Way has a radius of about 50,000 light years.

\* The most distant object ever observed is estimated to be around 13,000,000,000 light-years away. Discovered by the Hubble Space Telescope in 2004, it is located behind the galactic cluster Abell 2218, which bends the object's light. It is a small, energetic galaxy whose light that is seen now

would have set out when the universe was just 750 million years old.

\* Brighter stars emit blue light, and cooler stars emit red light.

\* A black hole is a region of space in which the gravitational field is so powerful that nothing, not even light, can escape. The black hole has a one-way surface, called an event horizon, into which objects can fall, but out of which nothing can come. It is called "black" because it absorbs all the light that hits it.

\* A supernova is a stellar explosion, which is extremely luminous, and causes a burst of radiation that often briefly outshines an entire galaxy, before fading from view over several weeks or months. During this short interval, a supernova can radiate as much energy as the sun could emit over its life span.

\* A Comet's tail always points away from the sun.

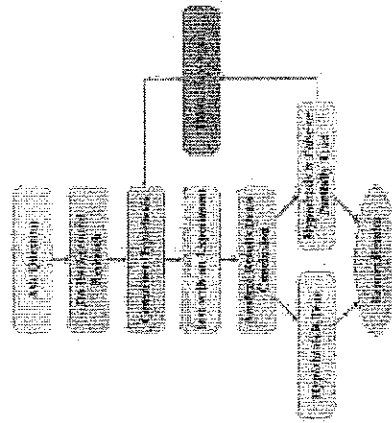
\* The three most common elements in the universe are 1) hydrogen; 2) helium; 3) oxygen.

\* Our sun and the surrounding planets orbit around the center of the Milky Way galaxy once every 250 million years.

\* A day on earth one billion years ago was 18 hours.

\* On its trip around the sun, the earth travels over a million and a half miles per day.

\* The sun burns an estimated 600 million metric tons of hydrogen every second.



### Scientific method

The scientific method is a body of techniques for investigating phenomena and acquiring new knowledge, as well as for correcting and integrating previous knowledge. It is based on observable, empirical, measurable evidence, and subject to laws of reasoning. Although specialized procedures vary from one field of inquiry to another, there are identifiable features that distinguish scientific inquiry from other methods of developing knowledge. Scientific researchers propose specific hypotheses as explanations of natural phenomena, and design experimental studies that test these predictions.



# State of Arkansas Secretary of State

**Charlie Daniels**  
Secretary of State

November 4, 2008

Mr. Mark Love  
Arkansas Society of Freethinkers  
P.O. Box 4133  
Little Rock, AR 72214

RE: Arkansas Society of Freethinkers - Winter Solstice Holiday Display

Mr. Love,

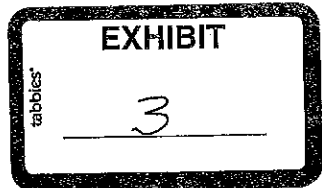
Your request to place a "Winter Solstice Holiday Display" on the State Capitol Grounds has been denied.

As we stated last year, the Arkansas Secretary of State as the custodian of the Capitol Grounds is charged with the responsibility of preserving and maintaining proper order and decorum on the State Capitol Grounds under Ark. Code Ann. § 12-14-102.

Cordially,

Joe Woodson, Jr.  
Legal Counsel  
Arkansas Secretary of State  
State Capitol  
Little Rock, Arkansas 72201-1094  
501-682-6787

|                                |          |
|--------------------------------|----------|
| Business & Commercial Services | 682-3409 |
| Electronics                    | 682-3070 |
| Building & Grounds             | 682-3497 |
| Consumer Affairs & Regulation  | 682-3067 |
| State Capitol Police           | 682-3179 |
| Business Office                | 682-3052 |
| Information Technology         | 682-3411 |



**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

DEC 10 2009

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_

PLAINTIFF <sup>DEP CLERK</sup>

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

THE ARKANSAS SOCIETY OF FREETHINKERS

v.

CASE NO. 4-09-CV-0925 SWV

CHARLIE DANIELS, in his official capacity as  
ARKANSAS SECRETARY OF STATE

DEFENDANT

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Arkansas Society of Freethinkers, pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves for a preliminary injunction in this case, and states:

1. Plaintiff has filed a complaint for declaratory and injunctive relief, alleging that defendant Charlie Daniels, Arkansas Secretary of State, in his official capacity, has violated plaintiff's First and Fourteenth Amendment rights by refusing to grant its request to place a temporary Winter Solstice display on that area of the state capitol grounds designated as a public forum for temporary displays. The reason for defendant's refusal is impermissibly content and viewpoint based and is infected with unbridled discretion.

2. An immediate injunction requiring defendant to allow placement of the display is necessary to protect plaintiff's constitutional rights and to prevent immediate, irreparable harm to plaintiff.

3. Time is of the essence because the winter solstice itself occurs on December 21, 2009. If this Court does not immediately enjoin defendant from his wrongful action, the display will no longer be timely.

4. Plaintiff submits an accompanying brief, pursuant to Rule 7.2(e) of the U.S. District Court Rules for the Eastern and Western District of Arkansas.



WHEREFORE, plaintiff respectfully requests that the Court:

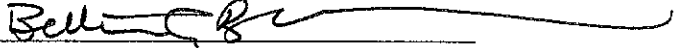
- (a) declare defendant's decision to reject plaintiff's Winter Solstice display to be unconstitutional.
- (b) preliminarily enjoin defendant from denying plaintiff's request for a temporary display.
- (c) award plaintiff costs and attorney fees as allowed by law; and
- (d) grant to plaintiff such other, further and different relief as may be just and proper.

Respectfully submitted,

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and

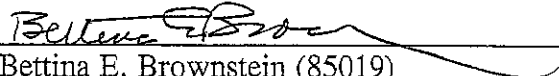
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By   
Bettina E. Brownstein (85019)  
Cooperating Attorneys for Arkansas Civil  
Liberties Union Foundation, Inc. and  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

On December 10, 2009, a copy of the foregoing was served by U.S. mail on

Charlie Daniels  
Arkansas Secretary of State  
State Capitol, Room 250  
Little Rock, Arkansas 72201-1094

  
Bettina E. Brownstein (85019)

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**DEC 10 2009**

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_ DEP. CLERK

**THE ARKANSAS SOCIETY OF FREETHINKERS**

**PLAINTIFF**

v.

**CASE NO. 09 - CV - 0925**

**CHARLIE DANIELS, in his official capacity as  
ARKANSAS SECRETARY OF STATE**

**DEFENDANT**

**PLAINTIFF'S BRIEF IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

**Introduction**

Plaintiff The Arkansas Society of Freethinkers claims in this lawsuit that defendant Charlie Daniels, Arkansas Secretary of State, in his official capacity, has violated rights guaranteed to plaintiff by the First and Fourteenth Amendments to the United States Constitution. Plaintiff asks this Court for an immediate preliminary injunction to allow plaintiff to place a temporary Winter Solstice display on the state capitol grounds in the area designated as a public forum for such purposes and for other relief as the Court deems equitable and just.

As alleged in the complaint, plaintiff will prove that it has met all the Secretary of State's policy requirements for temporary displays in the designated public forum on the state capitol grounds, that defendant impermissibly rejected plaintiff's request to place its Winter Solstice display on the basis of defendant's own unarticulated, vague notions of the proper "tone" for such displays, that this has resulted in content and viewpoint discrimination against plaintiff, and that plaintiff's right to freedom of speech has been violated.

## Preliminary Injunction Factors

There are four factors to be considered as to whether a preliminary injunction should issue: (1) the likelihood that the moving party will succeed on the merits; (2) the threat of irreparable harm to the movant in the absence of the requested injunction; (3) the balance between the harm to the moving party if the injunction is denied, and any harm to other parties if the injunction is granted; and (4) the public interest. *Dataphase Sys. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc). See also, *United Indus. Corp. v. Clorox Co.*, 140 F.3d 1175, 1178-79 (8th Cir. 1998). When applying the *Dataphase* factors, "a court should flexibly weigh the case's particular circumstances to determine whether the balance of equities so favors the movant that justice requires the court to intervene." *Clorox*, 140 F.3d at 1179.

As the Eighth Circuit recently explained, and as is familiar in First Amendment cases:

It is well settled law that a "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burn* 427 U.S. 347, 373 (1976) (plurality). If [the plaintiff] can establish a sufficient likelihood of success on the merits of her First Amendment claim, she will also have established irreparable harm as the result of the deprivation. See *Marcus v. Iowa Pub. Television*, 97 F.3d 1137, 1140-41 (8<sup>th</sup> Cir. 1996); *Kirkeby*, 52F.3d at 775. Likewise, the determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits of the First Amendment challenge because it is always in the public interest to protect constitutional rights. *Connection Distrib.. Co. v. Reno*, 154 F.3d 281, 288 (6<sup>th</sup> Cir. 1998) (quotation omitted); *Kirkeby*, 52 F.3d at 775 (citing *Frisby v. Schultz*, 487 U.S. 474 (1988)). The balance of equities, too, generally favors the constitutionally-protected freedom of expression. In a First Amendment case, therefore, the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue.

*Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8<sup>th</sup> Cir. 2008).

### Fair Chance of Prevailing

In this case, plaintiff seeks a preliminary injunction to restrain the discretionary act of a state official. Therefore, the proper test to justify the issuance of the injunction is whether the plaintiff has a fair chance of prevailing on its First Amendment claim. In *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8<sup>th</sup> Cir. 2008), the Eighth Circuit clarified what is required to demonstrate a sufficient showing of likelihood of success on the merits in order to justify the issuance of a preliminary injunction. In general, while courts should still apply the familiar “fair chance of prevailing” test when a preliminary injunction is sought to enjoin something other than government action based on presumptively reasoned democratic processes, where a party seeks to enjoin preliminarily the implementation of a duly enacted statute, the courts must make a threshold finding that a party is *likely* to prevail on the merits. The present case, however, does not seek to enjoin the implementation of a statute and thus the appropriate test to be applied by this Court is whether plaintiff has a “fair chance of prevailing.” In any event, plaintiff will be able to show that it is indeed likely to prevail on the merits.

The Supreme Court uses a forum analysis for evaluating restrictions of speech on government property, and the Eighth Circuit has recently reviewed and explained this forum analysis. In *Bowman v. White*, 444 F.3d 967, 974-76 (8<sup>th</sup> Cir. 2006), the court explained that a court must first determine whether a property is a traditional public forum, a designated public forum, or a nonpublic forum, and then apply the appropriate standard of scrutiny.

A traditional public forum, such as streets, sidewalks, and parks, is property having the objective use and purpose of open public access inherently compatible with expressive conduct

and is historically and traditionally so used. A content-based restriction on speech within a traditional public forum must be necessary to serve a compelling government interest and be narrowly drawn to achieve that interest. The government may also enforce a reasonable, content-neutral time, place and manner restriction in a traditional public forum, if the restriction is narrowly tailored to serve a significant government interest and leaves open alternative channels of communication. *Id.*

A designated public forum, which is at issue in the present case, is a nonpublic forum the government intentionally opens to expressive activity for a limited purpose, such as use by certain groups or use for discussion of certain subjects. It is not created by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional public forum to public discourse. A designated public forum is not limited to a particular type of speech or speaker. The government cannot limit speech in a designated public forum any further than in a traditional public forum. Therefore, the government can impose a reasonable content-neutral time, place and manner restriction in a designated public forum only if the restriction is narrowly tailored to serve a significant government interest and leaves open alternative channels of communication. *Id.*

Underlying all public forum analysis, and the application of all levels of review, is the admonition that the First Amendment prohibits the vesting of unbridled discretion in a government official tasked with making decisions restricting speech in such forums. In *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992), the Court described the breadth of the administrator's discretion in setting a permit fee for an assembly or parade:

There are no articulated standards either in the ordinance or in the county's established practice. The administrator is not required to rely

on any objective factors. He need not provide any explanation for his decision, and that decision is unreviewable. Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application fees. The First Amendment prohibits the vesting of such unbridled discretion in a government official.

*See also, Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1068 (4th Cir. 2006).

In the present case, defendant Charlie Daniels, the state official in charge of the state capitol grounds, has designated by policy a forum for the purpose of temporary displays. This policy is attached as Exhibit 1 to the complaint. Presumably these grounds, though traditionally used as a public forum for conventional free speech activities such as demonstrations, speeches, rallies, and the like, would not otherwise be open for use by the public for the purpose of erecting temporary displays that will be unmanned and left on the grounds for some period of time unless so designated by defendant. Importantly, however, there is nothing in the policy, nor is there anything by practice or custom, limiting either the type of speaker sponsoring the display, or the type of speech contained in or represented by the display. The designated public forum on the capitol grounds is open to any member of the public who complies with the policy's conditions.

Defendant did not articulate in his November 4, 2009, letter denying plaintiff's request any specific reason for the denial. Defendant did cite to his authority under state law to maintain "proper order and decorum" on the state capitol grounds, but such a citation of general authority says nothing about the reasons for denying plaintiff's request. At a December 8, 2009 meeting between plaintiff and defendant's representatives, the latter, who was present under the authority of defendant, stated that defendant had the authority and

discretion to make the decision and that plaintiff's display was not consistent with the tone of the other decorations and displays at the capitol. There has been no other reason given for defendant's decision.

It is apparent that defendant is relying on his unbridled discretion to deny plaintiff's request, a discretion that seems to be informed by his opinion of the "tone" of plaintiff's Winter Solstice display. The exercise of such unbridled discretion to deny speech in any public forum is, of course, contrary to the First Amendment under *Forsyth County*, and is sufficient to render the decision unconstitutional. The lack of any specific reason for the denial other than a vague reference to "tone" is an additional constitutional infirmity.

There is no established limit on the type of speech or display in defendant's policy and thus no objective criterion, or subjective one either, by which a display's "tone" could be assessed. If such a criterion did exist, the wholly amorphous, subjective, and vague nature of such an assessment of "tone" would render any decision suppressing speech based on it a violation of the requirement that the government have a compelling interest in applying such a criterion and that it be narrowly drawn to serve that interest. As the very nature of "tone" bespeaks both content and viewpoint discrimination, it is difficult to identify when, if ever, the government could have any compelling or even significant interest in regulating the "tone" of speech contained in a display in this type of forum.

The only display in the designated area for temporary displays is a Christian religion-based nativity scene.<sup>1</sup> Defendant's citation of "tone," in comparison to other decorations and displays at the capitol, suggests that defendant actually has in mind an authority to reduce the

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<sup>1</sup> Based on the Secretary of State's response to a Freedom of Information Act request, defendant granted permission for this display without adhering to the policy. For instance, no written request exists for this display.



permitted speech to something that he, in his unbridled discretion, can discern has a "tone" that is the same as, or is in some way undefined way compatible with, either the quintessentially Christian religion-based nativity scene or the traditional, festive, secular, holiday decorations on display inside and on the Capitol building itself, which decorations are located more than one hundred yards away from the location of the nativity scene. Aside from considerations of internal consistency and fairness that would ask how a bare Christian nativity scene has the same "tone" as festive secular holiday decorations, while plaintiff's exhibit celebrating the Winter Solstice has an inconsistent "tone," the government can have no legitimate interest, compelling or otherwise, in restricting displays in this forum to any such conforming "tone." Such a restriction, whether it bespeaks defendant's notion of the holiday season, his notion of festivity, or some other notion, is not content-neutral and exhibits on its face an action to suppress speech that discriminates on the basis of the government official's viewpoint. Having opened the public forum to displays, defendant cannot constitutionally condition his permission on an applicant's display reflecting defendant's preferred views, ideas, or "tone."

The fact that the nativity display has been erected on the grounds without its sponsor having to file a written application, as required by the policy, reveals the wholly discretionary tenor of defendant's exercise of his authority over this public forum and reinforces the conclusion that defendant has unlawfully suppressed plaintiff's free speech rights under the First Amendment.

## Conclusion

Defendant has impermissibly restricted plaintiff's free speech rights by denying it permission to participate in a designated public forum for temporary displays on the state capitol grounds. He has done so by exercising unbridled discretion and by failing to identify any legitimate governmental interest in forbidding plaintiff to erect its Winter Solstice display. Plaintiff not only has a fair chance of prevailing on its claim, but a decided likelihood of success. Accordingly, plaintiff is entitled under the law cited above to a preliminary injunction directing defendant to immediately allow plaintiff to erect its display.

Respectfully submitted,

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By



Bettina E. Brownstein (85019)  
Cooperating Attorneys for Arkansas Civil  
Liberties Union Foundation, Inc. and  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

On December 10, 2009, a copy of the foregoing was served by U.S. mail on

Charlie Daniels  
Arkansas Secretary of State  
State Capitol, Room 250  
Little Rock, Arkansas 72201-1094



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Bettina E. Brownstein (85019)