

No. 04-20667

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

KAY STALEY,
Plaintiff-Appellee,

v.

HARRIS COUNTY, TEXAS
Defendant-Appellant

On Appeal from the United States District Court
for the Southern District of Texas

**EN BANC BRIEF OF THE ANTI-DEFAMATION LEAGUE, AMERICAN CIVIL
LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF
TEXAS AS AMICUS CURIAE ON BEHALF OF PLAINTIFF-APPELLEE
SUPPORTING AFFIRMANCE OF THE DECISION BELOW**

Steven M. Freeman
Steven C. Sheinberg
David L. Barkey
ANTI-DEFAMATION LEAGUE
605 Third Avenue
New York, NY 10158-3560
Tel. (212) 885-7743
Fax (212) 885-5882

Robert G. Sugarman
Sylvia Ann Mayer*
Katharine J. Caplan
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, Texas 77002
Tel. (713) 546-5000
Fax (713) 224-9511

ATTORNEYS FOR AMICUS CURIAE ANTI-DEFAMATION LEAGUE

Daniel Mach
PROGRAM ON FREEDOM OF RELIGION AND BELIEF
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th St., NW
Washington, DC 20005
Tel. (202) 675-2330

Lisa Graybill
Legal Director
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TEXAS
1210 Rosewood Avenue
Austin, Texas 78702
Phone: (512) 478-7300
Fax: (512) 478-7303

ATTORNEY FOR AMICUS CURIAE
AMERICAN CIVIL LIBERTIES UNION

ATTORNEY FOR AMICUS CURIAE
ACLU TEXAS FOUNDATION

* Counsel of Record

Jan 17, 2007

CERTIFICATE OF INTERESTED PERSONS

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

All persons listed in the Appellee's Brief filed by Kay Staley, Plaintiff-Appellee

Steven M. Freeman
Steven Sheinberg
David L. Barkey
Attorneys for Amicus Curiae Anti-Defamation League

Robert G. Sugarman
Sylvia Ann Mayer
Katharine J. Caplan
Attorneys for Amicus Curiae Anti-Defamation League

Daniel Mach
Attorney for Amicus Curiae American Civil Liberties Union

Lisa Graybill
Attorney for Amicus Curiae American Civil Liberties Union Foundation of Texas

/s/ Sylvia Ann Mayer

Sylvia Ann Mayer

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statement of Amicus Identity and Interest	1
Introduction and Summary of Argument.....	2
Argument.....	6
I. The Bible Monument Does Not Have A Constitutionally Permissible Purpose Under Either <i>Van Orden</i> or <i>McCreary</i>	6
II. The Bible Monument Conveys An Unconstitutional Endorsement Of One Particular Branch Of Christianity To The Exclusion Of Other Faiths And Beliefs	12
A. As the Bible is the central doctrinal text of Christianity, it is inherently religious.....	13
B. The King James Version of the Christian Bible is at the center of theological debate between Protestants and Catholics	14
C. A minority of Protestant churches use the King James Version.....	17
D. Harris County has endorsed the religious message of the Bible Monument	19
Conclusion	21
Certificate of Service	23
Certificate of Compliance	26

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Agostini v. Felton</i> , 521 U.S. 203 (1997)	1
<i>Committee for Public Education v. Nyquist</i> , 413 U.S. 735 (1973)	1
<i>County of Allegheny v. ACLU Greater Pittsburgh Chapter</i> , 492 U.S. 573 (1989)	6, 12, 21
<i>Edwards v. Aguillard</i> , 482 U.S. 578 (1987)	6
<i>Engel v. Vitale</i> , 370 U.S. 421 (1962)	1, 2
<i>Everson v. Board of Ed. of Ewing</i> , 330 U.S. 1 (1947)	7
<i>Glassroth v. Moore</i> , 335 F.3d 1282 (11th Cir. 2003).....	7
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992)	1
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971)	1, 7
<i>McCollum v. Board of Education</i> , 333 U.S. 203 (1948)	1
<i>McCreary County v. ACLU of Ky.</i> 545 U.S. 844, 125 S.Ct. 2722 (2005)	3, 7, 8
<i>Mitchell v. Helms</i> , 530 U.S. 793 (2000)	1
<i>Rosenberger v. Rector and Visitors of the University of Virginia</i> , 515 U.S. 819 (1995)	1
<i>Santa Fe Independent School District v. Doe</i> , 530 U.S. 290 (2000)	1, 6

TABLE OF AUTHORITIES

School District of Abington Township, Pennsylvania v. Schempp,
374 U.S. 203 (1963)12, 21

Staley v. Harris County, Texas,
332 F. Supp. 2d 1030 (S.D. Tex. 2004)4, 9, 12, 14

Staley v. Harris County, Texas,
461 F.3d 504 (5th Cir. 2006).....3, 8, 10, 11

Stone v. Graham,
449 U.S. 39 (1981)6

Texas Monthly, Inc. v. Bullock,
489 U.S. 1 (1989)6

Van Orden v. Perry,
545 U.S. 677, 125 S.Ct. 2854 (2005)3, 8, 10, 11

Van Orden v. Perry,
351 F.3d 173 (5th Cir. 2003),
aff'd, 545 U.S. 677, 125 S.Ct. 2854 (2005)1, 6

Wallace v. Jaffree,
472 U.S. 38 (1985)6

Witters v. Washington Department of Services for the Blind,
474 U.S. 481 (1986)1

Zelman v. Simmons-Harris,
536 U.S. 639 (2002)1

Zobrest v. Catalina Foothills School District,
509 U.S. 1 (1993)1

FEDERAL RULES

Fed. R. App. P. 32(a)(7).....26

MISCELLANEOUS

Daniel B. Wallace, Th.M., Ph.D., *The History of the English Bible, Lectures
for the Staley Bible Lectureship at Lancaster Bible College (March 19-
21, 2001)*.....13, 15, 18

TABLE OF AUTHORITIES

Elizabeth Huwiler, <i>Authorized conflicts: the Bible in church conversations</i> , 3/22/04 BIBLICAL THEOLOGY BULL. 41	13
Jon D. Levenson, THE HEBREW BIBLE, THE OLD TESTAMENT, AND HISTORICAL CRITICISM, p. 1 (1993).....	14
<i>The Interpretation of the Bible in the Church</i> , section I(F) “Fundamentalist Approach”, Presented by the Pontifical Biblical Commission to Pope John Paul II on April 23, 1993	15, 16
J. Hampton Keathley, III, Th.M., <i>Introduction to Bibliology</i>	15
<i>United States Conference of Catholic Bishops</i> , Frequently Asked Questions No. 6	16
Erwin Lutzer, <i>The Doctrines that Divide: A Fresh Look at the Historic Doctrines that Separate Christians</i> , Chapter 8 “How Many Books Are In The Bible” (Grand Rapids: Kregel Publications, 1998)	17
<i>Pastors name the New International Version as their favorite Bible</i> , Ellison Research	18
<i>Specialties: Serving Christian Organizations</i> , Ellison Research	18
U.S. Census Bureau, <i>Statistical Abstract of the United States: 2004-2005</i> , No. 67 “Self-Described Religious Identification of Adult Population: 1990 and 2001	18

STATEMENT OF AMICUS IDENTITY AND INTEREST

Organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States, the Anti-Defamation League (the “ADL”) is today one of the world’s leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. Among ADL’s core beliefs is strict adherence to the separation of Church and State embodied in the Establishment Clause of the First Amendment. Separation, ADL believes, preserves religious freedom and protects our democracy.¹

Amicus American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the preservation and defense of constitutional rights and civil liberties. *Amicus* ACLU Texas Foundation (“ACLU Texas”) is one of its affiliates, with over 19,000 members. Since its founding in 1920, the ACLU has frequently advocated in support of the religious freedoms guaranteed by the First Amendment, both as

¹ In furtherance of this belief, ADL has participated in the major church-state cases of the last half-century. See, e.g., ADL *amicus curiae* briefs filed in *Van Orden v. Perry*, 351 F.3d 173, 180-81 (5th Cir. 2003), *aff’d*, 545 U.S. 677, 125 S.Ct. 2854 (2005); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Mitchell v. Helms*, 530 U.S. 793 (2000); *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000); *Agostini v. Felton*, 521 U.S. 203 (1997); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1 (1993); *Lee v. Weisman*, 505 U.S. 577 (1992); *Witters v. Washington Dept. of Servs. for the Blind*, 474 U.S. 481 (1986); *Committee for Public Education v. Nyquist*, 413 U.S. 735 (1973); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Engel v. Vitale*, 370 U.S. 421 (1962); and *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948).

direct counsel and as *amicus curiae*. Because this case involves fundamental issues of religious liberty, its proper resolution is a matter of significant concern to the ACLU and its members throughout the country.

Amici emphatically reject the notion that the separation principle is inimical to religion, and holds, to the contrary, that a high wall of separation is essential to the continued flourishing of religious practice and beliefs in America, and to the protection of minority religions and their adherents. From day-to-day experience serving their constituents, ADL, ACLU and ACLU Texas can testify that the more government and religion become entangled, the more threatening the environment becomes for each. In the familiar words of Justice Black: “A union of government and religion tends to destroy government and degrade religion.” *Engle*, 370 U.S. at 431.

INTRODUCTION AND SUMMARY OF ARGUMENT

In a clear violation of the Establishment Clause, Harris County authorized the construction of, provided public space for, later maintained, and then sanctioned and commemorated in a religious ceremony the refurbishment of a prominent and permanent display of an open Christian Bible at the very doorstep of the Harris County Courthouse. The district court correctly concluded that the Bible Monument failed the first two elements of the *Lemon* test (lack of secular purpose and effect of advancing or endorsing one religion over others) and thus

violated the Establishment Clause. After the district court's decision, the Supreme Court of the United States decided two cases, *Van Orden v. Perry*, 545 U.S. 677, 125 S.Ct. 2854 (2005), and *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 125 S.Ct. 2722 (2005), on the basis of which a panel of this Court affirmed. *Staley v. Harris County, Tex.*, 461 F.3d 504 (2006). The panel majority's application of *Van Orden* and *McCreary* to this case is correct and compels the conclusion that the district court's decision should be affirmed.

The record below is replete with evidence establishing that the Bible Monument had an overtly religious purpose when it was built in 1956 and any doubt of that purpose was dispelled when it was refurbished in 1995. In 1956, Harris County set aside one of the most prominent, heavily trafficked, locations outside of the Harris County Courthouse for a permanent display of a Christian Bible in a lectern-shaped granite monument. While ostensibly erected in memory of William S. Mosher (as reflected in an inscription on the monument), the Bible Monument does not include an image or likeness of Mr. Mosher, any information regarding Mr. Mosher's business, philanthropic or civic endeavors or any analysis or explanation as to the connection between Mr. Mosher and a Bible. Instead, it displays a Christian Bible, the presence of which, as Carloss Morris, who initiated the construction of the Bible Monument, testified, conveys to people that "this is a

Christian government.” *Staley v. Harris County, Tex.*, 332 F. Supp. 2d 1030, 1033 (S.D. Tex. 2004).

In 1995, at the direction of State District Judge Devine who had campaigned on a platform of putting “Christianity back into government,” *Trans.*, vol. 2, p. 240², the monument was refurbished and enhanced. *Staley*, 461 F.3d. at 514. Neither Judge Devine nor his official court reporter, Karen Friend, who assisted him in raising the funds to refurbish the monument, had any relationship with Mr. Mosher, his family or the Star of Hope Mission, the Christian charity that originally conceived of the Bible Monument and obtained Harris County’s approval for its placement in 1956. Thus, honoring his memory could not have been their purpose. A red neon light was added which highlighted the Bible. The dedication ceremony, which was attended by the Harris County chief executive, featured several Christian ministers leading prayers and the singing of the Battle Hymn of the Republic. And, at a rally to support the retention of the monument, after the litigation commenced, little was said about Mr. Mosher. The speeches focused on the Bible.

Upon reviewing this evidence, both the district court and a panel of this Court properly found that the Bible Monument has no valid secular purpose and

² For ease of reference, the transcript of the bench trial before the district court will be referenced as “*Trans.*, vol. ***, p. ***.”

that the Bible Monument evidences governmental favoritism and endorsement of Christianity over other religions and non-religions, in violation of the Establishment Clause. While the Bible, which is clearly the focal point of the monument, is a sacred religious text representing the word of God to many Christians, it is clearly not a sacred text in non-Christian faiths, and thus the original Bible Monument as installed in 1956 conveyed a government endorsement of Christianity over other religions. Moreover, the 1995 installation of a King James Version of the Bible represents the promotion of one particular strand of Protestant Christianity over other Christian and non-Christian faiths. That the King James Version of the Bible is symbolic of a particular message within Protestantism on the centuries-old theological debate between Protestants and Catholics highlights the government's unconstitutional endorsement of one side in that debate.

The Harris County Courthouse is the very building where Constitutional rights should be most protected. Yet, as Catholics, Jews, Muslims, Hindus, Buddhists, Atheists, and other non-Protestants enter that Courthouse, they pass the Bible Monument which displays a neon-lit King James Version of the Christian Bible. Harris County's endorsement and advancement of Christianity and, in particular Protestant Christianity, through sanctioning the Bible Monument is a

clear violation of the Establishment Clause. *Amici* urge this Court to affirm the district court's decision.

ARGUMENT

I. The Bible Monument Does Not Have A Constitutionally Permissible Purpose Under Either *Van Orden* or *McCreary*.

The Establishment Clause of the United States Constitution has been consistently applied to prevent government and its political subdivisions from taking any action with an actual and predominant purpose of advancing or endorsing a particular religious faith or theory. *See Santa Fe Indep. Sch. Dist.*, 530 U.S. at 309, 314-15; *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 17 (1989); *Edwards v. Aguillard*, 482 U.S. 578, 593-94 (1987); *Wallace v. Jaffree*, 472 U.S. 38, 53-56 (1985); and *Stone v. Graham*, 449 U.S. 39, 41-42 (1981). At a minimum, the Establishment Clause means that “government may not demonstrate a preference for one particular sect or creed (including preference for Christianity over other religions).” *County of Allegheny v. ACLU Greater Pittsburg Chapter*, 492 U.S. 573, 603 (1989). This Court has also stated “[t]he guiding principle is government neutrality toward religion in the sense that a state cannot favor religion over non-religion or one religion over another[,]” thus the “proper application of First Amendment principles demands a sense of proportion and [the court’s] inquiry is fact-sensitive.” *Van Orden v. Perry*, 351 F.3d 173, 178 (5th Cir. 2003), *aff’d*, 545 U.S. 677, 125 S.Ct. 2854 (2005). And, as the Supreme Court

acknowledges in *McCreary*, “[t]he importance of neutrality as an interpretive guide is no less true now than it was when the Court broached the principle in *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947).” *McCreary*, 125 S.Ct. at 2742. Accordingly, an analysis of the constitutionality of the Bible Monument includes a fact-sensitive review to elucidate the purpose for its being and an analysis of whether its current incarnation adversely reflects on the government’s neutrality toward religion.

In *McCreary*, the Supreme Court reviewed the constitutionality of a Ten Commandment display that had been installed in three successive iterations, following on the heels of litigation over an initial display of the Ten Commandments alone. *McCreary*, 125 S.Ct. at 2728-31. In affirming the Sixth Circuit’s ruling that the display was installed with a religious purpose, the *McCreary* majority opinion reaffirmed the three-pronged *Lemon* test.³ *McCreary*, 125 S.Ct. at 2732. In so doing, the *McCreary* Court refined the purpose prong of the *Lemon* test, noting that (i) “the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective,” (ii) “[t]he eyes that look to purpose belong to an objective observer, one who takes into account [] the

³ Although the test for determining whether there is a violation of the Establishment Clause has been clarified from time to time, inquiry into whether the government action at issue has a valid secular purpose consistently remains a threshold inquiry in analyzing Establishment Clause cases. *Lemon*, 403 U.S. at 612-13; *Glassroth v. Moore*, 335 F.3d 1282, 1297 (11th Cir. 2003).

traditional external signs that show up in the text, legislative history, and implementation of the statute or comparable legal act,” and (iii) “purpose needs to be understood in light of context.” *McCreary*, 125 S.Ct. at 2734-35, 2737; *see also Staley*, 461 F.3d at 509-510.

Focusing on a factual analysis of the nature of the monument, Justice Breyer’s controlling concurring opinion in *Van Orden* found that the analysis required the exercise of legal judgment, taking into account the context of the monument. *Van Orden*, 125 S.Ct. at 2869 (Breyer, J., concurring) (“to determine the message the text here conveys, we must examine how the text is *used*. And that inquiry requires us to consider the context of the display.”) (emphasis in the original).

Both of the Supreme Court’s decisions compel the affirmance of the district court’s opinion, each in its own way. *McCreary* mandates that the Court review the purpose and effect of the government’s action, looking through the eyes of an objective observer for a genuine, secular purpose in harmony with the context of the Bible Monument itself. *Van Orden* teaches that the Court must review the Bible Monument’s history and context.

The evidence in the record establishes that Harris County and the Star of Hope Mission had a profoundly religious purpose when they installed the Bible Monument on government-owned property in 1956. For example, Carloss

Morris, a Director and the President of the Star of Hope Mission at the time that the Mission conceived of the Bible Monument and who sought and obtained Harris County's approval for its placement, testified at trial that: (1) having the Bible on display in front of the Courthouse shows that this is a Christian government (Trans., vol. 2, p. 232); (2) "if everyone in Harris County, you know, accepted Christ as their savior we would be better than if they were all Hindus" (Trans., vol. 2, p. 233); and (3) the Bible Monument promotes religion (Trans., vol. 2, p. 234). Furthermore, minutes from meetings of the Board of Directors of the Star of Hope Mission clearly indicate that the primary and predominant purpose of the display was to focus on a presentation of the Christian Bible. *See Staley*, 332 F. Supp. 2d at 1033, n.2 (noting that minutes from the Star of Hope Mission's Board of Directors meetings refer to the display as "the Bible stand memorial," the "Bible memorial," and "the Bible Stand.") Harris County contends that the Bible Monument was installed for a secular purpose--to honor William S. Mosher and his Christian faith. After reviewing and weighing the evidence of what was said and done at the time, not years later in a litigation, the district court found that Harris County's claimed secular purpose was, in the language of *McCreary*, not genuine and was secondary to a religious objective—to promote Christianity by encouraging people to read the Bible. *See Staley*, 332 F. Supp. 2d at 1037.

A panel of this Court reviewed the district court's findings and, properly applying *Van Orden* and *McCreary*, reached the same result. *Staley*, 461 F.3d at 515 (“[B]ecause the objective observer would conclude that the current purpose of the monument has evolved into, and presently constitutes, a religious symbol, the Mosher monument containing a Bible violates the Establishment Clause.”)

The panel majority did not, as did the district court, find that the monument in its original form was a violation of the Establishment Clause. Instead, the panel majority based its conclusion on the significant changes made in 1995 and certain facts and events leading up to those changes, including the avowed platform of Judge Devine to put “Christianity back into government,” the fact that the Judge and his official court reporter had no connection or relationship with Mr. Mosher or his family, the installation of a particular version of the Bible and neon lighting, and the clearly Christian ceremony which celebrated the re-dedication of the monument. *See Staley*, 461 F.3d at 514 (“[T]he monument was in fact altered, and in ways that are significant to this case.”) All of this establishes that there was no secular purpose for the restoration of the monument which, more than ever, created a religion-based divisiveness sought to be avoided by the Establishment Clause, as discussed in greater detail in Part II. *See, e.g., Van Orden*, 125 S.Ct. at 2871 (Breyer, J., concurring) (remarking prophetically that “a more contemporary state effort to focus attention upon a religious text is certainly likely to prove

divisive in a way that this longstanding, pre-existing monument [the Ten Commandment monument] has not”). Indeed, Justice Breyer’s observation disposes of the panel dissent’s criticism of the majority for relying on the facts surrounding the re-dedication rather than looking at the pre-refurbishment history. While *amici* believe that the entire history of the monument discloses a religious, not a secular purpose, surely, the facts surrounding the re-dedication make that purpose eminently clear and there is no basis on which to ignore recent history, as the dissent suggests. *Staley*, 461 F.3d. at 518-19 (asserting, without citation, that “the predominance test exercises an inertial effect, presuming the centrality of the original purpose, unless there is compelling contrary evidence.”)

Also, unlike the granite monument at issue in *Van Orden*, the Bible Monument is not “passive” and it is difficult to understand how a reasonable observer could possibly conclude that an open Bible conveys anything but a religious message to those passing by, whether or not they read the text. *Van Orden*, 125 S.Ct. at 2863 (finding that the Ten Commandments monument at issue, as well as other similar displays, conveyed both a historical and religious message). Nor is the monument surrounded by numerous other displays as was the Ten Commandments in *Van Orden*.

Properly applying *Van Orden* and *McCreary* to the undisputed facts, a panel of this Court concluded that the purpose of the Bible Monument was religious, not

secular, and that the monument violates the Establishment Clause. That conclusion is correct.

II. The Bible Monument Conveys An Unconstitutional Endorsement Of One Particular Branch Of Christianity To The Exclusion Of Other Faiths And Beliefs.

In addition to not having a valid secular purpose, the Bible Monument also displays an unconstitutional governmental endorsement of one particular ideological approach to Christianity over all other Christian and non-Christian faiths. *See County of Allegheny*, 492 U.S. at 603 (noting that, at a minimum, the Establishment Clause means that “government may not demonstrate a preference for one particular sect or creed (including preference for Christianity over other religions).”) By first allowing installation of the Christian Bible in the Bible Monument, and later allowing the Bible Monument to be refurbished and enhanced to display the King James Version of the Christian Bible, Harris County displayed at least an endorsement of Christianity over non-Christian faiths, and Protestantism over other Christian faiths. The district court appropriately found that such an endorsement violates the basic constitutional precept that government must remain neutral in religious debates. *Staley*, 332 F. Supp. 2d at 1040 (“In the relationship between man and religion, the State is firmly committed to a position of neutrality.” (citing *School District of Abington Township, Pennsylvania v.*

Schempp, 374 U.S. 203, 226, 83 S.Ct. 1560, 1574 (1963))). For the reasons discussed, that conclusion should be affirmed by this Court.

A. *As the Bible is the central doctrinal text of Christianity, it is inherently religious*

Christians believe the Bible to be the word of God that forms the foundation of the Christian Church. See Daniel B. Wallace, Th.M., Ph.D., *The History of the English Bible*, Lectures for the Staley Bible Lectureship at Lancaster Bible College (March 19-21, 2001) (the “Wallace Lectures”) (stating that the Bible “is the faith of the [Christian] Church, and the more widely its true meaning becomes the better it will be”), *citing* JOHN WYCLIFF, *SPECULUM SECULARIUM DOMINORUM, OPERA MINORA*, ed. John Loserth (London: Wycliff Society, 1913) 74, attached at APPENDIX A. For many Christians, the Bible authorizes their communities and provides their identity as Christians. Elizabeth Huwiler, *Authorized conflicts: the Bible in church conversations*, 3/22/04 *BIBLICAL THEOLOGY BULL.* 41., attached at APPENDIX B. Not only does the Bible serve as the backbone for the Christian Church, it also provides guidelines for Christians to determine who is, and who is not, a “believer.” *Id.* (stating that “[w]e Christians have used the Bible not only to recognize other Christians as part of the family; we have also used it to decide who is not part of the family.”) Thus, the authority of the Bible is viewed by some Christians as a kind of boundary-setting authority, setting limits on who can be recognized and included as “one of us” and who is instead excluded. *Id.*

While the Christian Bible is unquestionably uniquely Christian in nature, it nevertheless incorporates portions of texts that other religions view as authoritative in practicing their faith. For example, the Old Testament includes some of the books of the “Old Testament” in the Hebrew Bible, known in Judaism as the Tanach, but in a different sequence that reflects a distinctively Jewish, in contrast to Christian, theology. See Jon D. Levenson, *THE HEBREW BIBLE, THE OLD TESTAMENT, AND HISTORICAL CRITICISM 1* (1993), attached at APPENDIX C. Muslims also believe that portions of the Old Testament, the Torah, the Psalms and the Gospels, as originally revealed, are divine revelations given to God’s prophets. The fact that three of the world’s major religions ascribe some authority to texts that are found in the Bible emphasizes that the Bible is, at base, a religious text. Nevertheless, the Christian Bible is a uniquely “Christian” text and thus its installation at the Courthouse steps would lead a reasonable observer to understand that it was installed to promote Christianity as opposed to other religions. See *Staley*, 332 F. Supp. 2d at 1040 (concluding, after reviewing the evidence, that the Bible Monument “conveys the message that Christianity is favored or preferred by Harris County.”)

B. The King James Version of the Christian Bible is at the center of theological debate between Protestants and Catholics

The King James Version of the Bible was published in 1611 during the Protestant Reformation when Christians across Europe were leaving the Catholic

Church in protest of its policies and leadership.⁴ See Wallace Lectures, attached at APPENDIX A. While the original preface to the King James Version stated that it intentionally “shunned the obscurity of the Papists. . . .” the preface also acknowledged that the King James Version is not the end-all of Bible translations. *Id.* Later editions of the King James Version omitted the preface, thus leading some Protestants to proclaim it to be the perfect and divinely-inspired English translation, adding to the Catholic Church’s resistance to Protestant *sola scriptura*, and later fundamentalist, approaches to the Bible and Scripture. See *The Interpretation of the Bible in the Church*, Section I.F. “Fundamentalist Approach,” Presented by the Pontifical Biblical Commission to Pope John Paul II on April 23, 1993, attached at APPENDIX D.

Indicative of what the Catholic Church saw as an inappropriate and somewhat fundamentalist approach, some Protestant reformers advocated a return to the written word without the interpretation and dispensable traditions surrounding the Catholic faith, proclaiming the Bible as the only definitive, infallible Word. See, J. Hampton Keathley, III, Th.M., *Introduction to Bibliology*, (“One of the battle cries of the reformers was *sola Scriptura*, ‘Scripture only.’ What this meant for the reformers was that ‘the church should not preach,

⁴ The Protestant Reformation was born in October of 1517 when Luther challenged the Roman Catholic Church by affixing his Ninety-five Theses to a castle church door in Wittenberg, Germany.

teach, command, or practice anything contrary to the written Scriptures of the biblical canon.’ It became the basis for the reformation.”), attached at APPENDIX

E. To this day, the Vatican continues its criticism of this fundamentalist Protestant approach to Christianity, stating as recently as 1993:

In its attachment to the principle “Scripture alone,” fundamentalism separates the interpretation of the Bible from the tradition, which, guided by the Spirit, has authentically developed in union with Scripture in the heart of the community of faith. It fails to realize that the New Testament took form within the Christian church and that it is the Holy Scripture of this church, the existence of which preceded the composition of the texts. Because of this, fundamentalism is often anti-church, it considers of little importance the creeds, the doctrines and liturgical practices which have become part of church tradition, as well as the teaching function of the church itself. It presents itself as a form of private interpretation which does not acknowledge that the church is founded on the Bible and draws its life and inspiration from Scripture.

The Interpretation of the Bible in the Church, Section I.F. “Fundamentalist Approach,” Presented by the Pontifical Biblical Commission to Pope John Paul II on April 23, 1993, attached at APPENDIX D. Partially for these reasons, the King James Version of the Bible is not sanctioned for use in Catholic liturgies.⁵

⁵ For example, in response to the question “Is the New American Bible the only translation of Scriptures we can read from at Mass?” the United States Conference of Catholic Bishops’ states: “After May 19, 2002, the revised Lectionary, based on the *New American Bible* will be the only Lectionary that may be read at Mass, except for the current *Lectionary for Masses with Children* which will remain in use.” See *United States Conference of Catholic Bishops, Frequently Asked Questions, No. 6*, attached at APPENDIX F.

Not only does the King James Version relate to the continuing debate between Catholics and Protestants over the most “correct” way to read the Bible and Scripture, but the very text of the King James Version represents a conscious dismissal of several books that are found in the Catholic version of the Old Testament, known to Protestants as the Apocrypha. The Catholic Church acknowledges many of these books as Scripture, refers to these books as deuterocanonical, and considers them to be divinely inspired by the Holy Spirit. In the King James Version, however, Protestants discarded these books for numerous reasons, including the fact that no New Testament writer ever refers to these books as authoritative and the fact that Protestants do not believe the books in the Apocrypha were ever part of the Old Testament Hebrew canon. *See*, Erwin Lutzer, *The Doctrines that Divide: A Fresh Look at the Historic Doctrines that Separate Christians*, Chapter 8 “How Many Books Are in the Bible” (Grand Rapids: Kregel Publications, 1998), attached at APPENDIX G.

C. A minority of Protestant churches use the King James Version

Further emphasizing Harris County’s inappropriate foray into religious theory and debate is the fact that, in addition to being rejected by millions of Catholics nationwide, only a small minority of Protestant churches use the King James Version of the Christian Bible for their religious services. According to research conducted by Ellison Research released on May 4, 2004, only 23% of

Protestant pastors polled named the King James Version of the Bible as the Bible they personally rely on most in their work; 15% of the Protestant ministers polled rated the King James Version as a “poor” choice for people in their congregation to use. *See Pastors Name the New International Version as their Favorite Bible*, attached at APPENDIX H.⁶ According to the Ellison Research poll, the New International Version of the Bible is preferred by 31% of Protestant pastors, yet it is not even in the King James Version lineage of translations. *See Wallace Lectures* (noting that the New International Version is one of the first major translations done by Protestants that is a completely new work and that by 1995 it had outsold the King James Version), attached at APPENDIX A. The survey reveals that only two U.S. Protestant denominations prefer the King James Version: Baptists and Pentecostals, whose combined memberships represent less than one quarter of Christians in the United States. *See U.S. Census Bureau, Statistical Abstract of the United States: 2004-2005, No. 67. Self-Described Religious Identification of Adult Population: 1990 and 2001*, attached at APPENDIX J. Thus, by selecting a King James Version of the Christian Bible, Harris County displayed the religious text used by only a small percentage of the nation’s Christians.

⁶ Ellison Research’s findings are widely relied upon by church leaders and Christian media outlets. *See Ellison Research Specialties: Serving Christian Organizations*, attached at APPENDIX I.

D. Harris County has endorsed the religious message of the Bible Monument

As originally installed, the Bible Monument conveyed the message that, in the words of the leader of the Star of Hope Mission at the time, “We’ve got a Christian nation. . . That’s the only thing that makes America great.” Trans., vol. 2, p. 230. Harris County gave its explicit permission for that message to be permanently affixed to government property, and thus placed its stamp of approval on it, to the exclusion of other religions and faiths.

The religious message of the Bible Monument was further emphasized in 1995 when the lighted King James Version was installed, not because it was the version of the Bible employed in Mr. Mosher’s Presbyterian Church, but rather because a government employee believed it to be the “historically correct” version of the Bible.⁷ Trans., vol. 2, p. 203. The effort to refurbish the Bible Monument was led by State District Judge John Devine, who ran for office on a platform of “putting Christianity back in government.” Trans., vol. 2, p. 239. At the unveiling ceremony for the refurbished Bible Monument – a project which Harris County sanctioned – there were a “whole bunch” of Christian prayers, with pastors from the entire community, and the program included singing “Battle Hymn of the

⁷ Ms. Friend testified at trial that she is a member of First Baptist Church in Houston and that she prefers the King James Version because it is “historically correct.” Trans., vol. 2, pps. 203, 210. As discussed, only Baptists and Pentecostals prefer to use the King James Version in their regular worship services. *See supra* at p. 17-18.

Republic.”⁸ Trans., vol. 2, pps. 206-210, 249-50. With government employees refurbishing the Bible Monument, Harris County paying to light it, government officials attending a Christian ceremony to rededicate it, and Harris County officials reappearing at a rally to support it,⁹ there can be no question that Harris County has placed its endorsement on the inherently religious message of the refurbished Bible Monument.

As discussed, Christians use the Bible to draw a bright line to separate believers and non-believers, some Protestants use the King James Version of the Bible to signal that they do not accept many of the core beliefs of the Catholic Church, and non-Christian faiths recognize only portions of the Bible to have religious authority. Simply stated, the fact that there is such disagreement among religious faiths about the meaning and importance of the Christian Bible is precisely the reason that a government should not take sides in that debate. By first sanctioning the Bible Monument’s original installation, and then approving and rallying in support of the refurbished Bible Monument containing a Protestant version of the Christian Bible, Harris County abandoned any sense of neutrality in

⁸ John Besagno, Ms. Friend’s pastor at First Baptist Church, attended the ceremony celebrating the refurbished Bible Monument. Trans., vol. 2, p. 210.

⁹ Shortly after this suit was filed, a rally was held at the Harris County Courthouse, during regular business hours at which there were Christian prayers and Harris County Judge Robert Eckels and Harris County Attorney Mike Stafford (counsel for Appellant) spoke in support of the Bible Monument. Trans., vol. 2, pp. 112-16.

favor of an express endorsement of Christianity, and in particular a segment of Protestant Christianity, over all other faiths, religions and creeds, in violation of the Establishment Clause. *County of Allegheny*, 492 U.S. at 603 (Establishment Clause prevents government from demonstrating a preference for one religious sect or creed); *School District of Abington Township*, 374 U.S. at 226 (“between man and religion, the State is firmly committed to a position of neutrality.”)

CONCLUSION

For the reasons discussed, the district court and the panel majority of this Court correctly found that the Bible Monument had an impermissible sectarian purpose and conveyed to an objective observer the government’s endorsement of Christianity, which thus violated the Establishment Clause. *Amici* urge this Court to affirm the district court’s well-reasoned and thoughtful decision.

Respectfully submitted,

By: /s/ Steven C. Sheinberg

Steven M. Freeman
Steven C. Sheinberg
David L. Barkey
ANTI-DEFAMATION LEAGUE
605 Third Avenue
New York, NY 10158-3560
Tel. (212) 885-7743
Fax (212) 885-5882

By: /s/ Sylvia Ann Mayer

Robert G. Sugarman
Sylvia Ann Mayer*
Katharine J. Caplan
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, Texas 77002
Tel. (713) 546-5000
Fax (713) 224-9511

ATTORNEYS FOR AMICUS CURIAE ANTI-DEFAMATION LEAGUE

By: /s/ Daniel Mach

Daniel Mach
Program on Freedom of Religion
and Belief
American Civil Liberties Union
Foundation
915 15th St., NW
Washington, DC 20005
Tel. (202) 675-2330

By: /s/ Lisa Greybill

Lisa Graybill
Legal Director
American Civil Liberties Union
Foundation of Texas
1210 Rosewood Avenue
Austin, Texas 78702
Phone. (512) 478-7300
Fax (512) 478-7303

ATTORNEY FOR AMICUS CURIAE
AMERICAN CIVIL LIBERTIES UNION

ATTORNEY FOR AMICUS CURIAE
ACLU TEXAS FOUNDATION

* Counsel of Record

CERTIFICATE OF SERVICE

I certify that I served on all counsel of record listed below two paper copies and one electronic copy of this brief, by First Class United States Mail, on the 17th day of January, 2007:

M. Sean Royall
James C. Ho
Gibson Dunn & Crutcher LLP
2100 McKinney Avenue
Dallas, Texas 75201
ATTORNEYS FOR DEFENDANT/APPELLANT HARRIS COUNTY

Thomas H. Dupree, Jr.
Gibson Dunn & Crutcher LLP
1050 Connecticut Avenue NW
Washington, DC 20036
ATTORNEYS FOR DEFENDANT/APPELLANT HARRIS COUNTY

Mike Stafford
Bruce S. Powers
Harris County Attorney's Office
1019 Congress
Houston, Texas 77002
ATTORNEYS FOR DEFENDANT/APPELLANT HARRIS COUNTY

Ayesha Khan
Richard Brian Katskee
Americans United for Separation of Church and State
518 C St., NE
Washington, DC 20002
ATTORNEYS FOR PLAINTIFF/APPELLEE KAY STALEY

Randall L. Kallinen
Law Office of Randall L. Kallinen
1406 Castle Court
Houston, Texas 77006
ATTORNEY FOR PLAINTIFF/APPELLEE KAY STALEY

Steven W. Fitschen
The National Legal Foundation
2224 Virginia Beach Blvd., St. 204
Virginia Beach, VA 23454
ATTORNEY FOR AMICUS CURIAE NATIONAL LEGAL FOUNDATION

Benjamin W. Bull
Gary S. McCaleb
Jeremy Tedesco
Alliance Defense Fund
15333 North Pima Road, Suite 165
Scottsdale, Arizona 85260
ATTORNEYS FOR AMICUS CURIAE STAR OF HOPE MISSION

David A. Cortman
Alliance Defense Fund
1000 Hurricane Shoals Road, Suite D-600
Lawrenceville, Georgia 30043
ATTORNEYS FOR AMICUS CURIAE STAR OF HOPE MISSION

Gregg Abbott, Attorney General of Texas
Kent C. Sullivan, First Assistant Attorney General
Edward D. Burbach, Deputy Attorney General, Litigation
R. Ted Cruz, Solicitor General
Susanna Dukupil, Assistant Solicitor General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
ATTORNEYS FOR AMICUS CURIAE STATE OF TEXAS

David L. Hagen
61485 County Road 13
Goshen, IN 46526-8713
PRO SE

Edward L. White III
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48105
ATTORNEY FOR AMICUS CURIAE THOMAS MORE LAW CENTER

Kelly J. Shackelford
Hiram S. Sasser, III
Jonathan M. Saenz
Liberty Legal Institute
903 East 18th Street, Suite 230
Plano, Texas 75074
ATTORNEY FOR AMICUS CURIAE MOSHER FAMILY

Douglas G. Smith
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601
ATTORNEY FOR AMICUS CURIAE EAGLE FORUM EDUCATION & LEGAL DEFENSE
FUND

/s/ Sylvia Ann Mayer

Sylvia Ann Mayer

CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2 and .3, I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7).

1. Exclusive of the exempted portions in 5th Cir. R. 32.2, the brief contains 5114 words.
2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2002 in Times New Roman 14-point typeface.
3. I understand that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Fed. R. App. P. 32(a)(7), may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

/s/ Sylvia Ann Mayer
Sylvia Ann Mayer