

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION



CITIZENS FOR COMMUNITY VALUES, INC., :
 Plaintiff, : Case No. 2:08-cv-00223
 v. : Judge George C. Smith
 UPPER ARLINGTON PUBLIC LIBRARY :
 BOARD OF TRUSTEES, : Magistrate Judge King
 Defendant. :

STATE OF OHIO)
)
 COUNTY OF FRANKLIN) ss.

AFFIDAVIT OF ANGELIQUE PAUL NEWCOMB

I, Angelique Paul Newcomb, after being duly sworn according to law, do hereby voluntarily state the following:

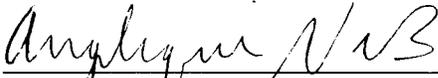
1. I am over eighteen (18) years of age and have personal knowledge of, and am competent to testify to, the facts contained in this affidavit.
2. I am a partner at the law firm of Schottenstein, Zox & Dunn, and am co-counsel to Defendant The Upper Arlington Library Board of Trustees ("Defendant") in the above-captioned case.
3. Attached hereto under Tab A is a true and accurate copy of an on-line article published by The Columbus Dispatch on September 8, 2008.
4. Attached hereto under Tab B is a true and accurate copy of an e-mail I received from David Langdon, Esq., co-counsel for Plaintiff on August 25, 2008.

5. Attached hereto under Tab C is a true and accurate copy of an e-mail I sent to Mr. Langdon on August 25, 2008, including his response on August 29, 2008.

6. I verify that when the Parties were discussing whether they would stipulate as to the reasonableness of the rates charged by Plaintiff's legal team, Timothy Chandler, Esq., submitted a draft declaration to me stating that he was Plaintiff's counsel in Faith Center Evangelistic Ministries v. Glover, 480 F.3d 891 (9th Cir. 2008), which he characterized as "a case very similar to this one." A copy of Mr. Chandler's draft declaration is attached hereto under Tab D.

7. On August 29, 2008, Plaintiff's counsel first asked whether Defendant would stipulate to the reasonableness of its counsel's rates. However, Plaintiff's counsel did not actually disclose the proposed hourly rates it sought to recover until September 19, 2008, after which time I promptly advised Plaintiff's counsel that Defendant would stipulate to their reasonableness.

8. After the Court issued its Opinion and Order granting Plaintiff's Motion for Preliminary Injunction on August 14, 2008, counsel for the Parties engaged in minimal settlement discussions and were unable to reach an agreement to resolve the attorneys' fees and costs issue.



Angelique Paul Newcomb

Sworn to and subscribed before me, a Notary Public, on this 24th day of October, 2008.



Notary Public



TONYA LYNN TOOPS
Notary Public, State of Ohio
My Commission Expires 02-11-11

Keywords

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'PULPIT FREEDOM SUNDAY' Pastors' talk of candidates at issue

Monday, September 8, 2008 3:10 AM

BY MEREDITH HEAGNEY
THE COLUMBUS DISPATCH

Three former Internal Revenue Service executives plan to file a complaint today against a coalition of Christian lawyers who they say are unethically encouraging pastors nationwide to talk about political candidates from the pulpit.

The complainants, including a former IRS commissioner, are challenging the Alliance Defense Fund for organizing Pulpit Freedom Sunday, set for Sept. 28. On that day, pastors have been asked to challenge IRS codes that bar tax-exempt charities such as churches from endorsing political candidates.

The Alliance Defense Fund, which champions conservative Christian causes, employs 40 attorneys and has trained 1,200 more.

"We believe the project of encouraging, of counseling, of assisting large numbers of churches to violate the tax law is a threat to the integrity of the tax system," said Marcus Owens, who was director of the IRS Exempt Organizations Division for 10 years.

A group of 40 central Ohio religious leaders also plans to file a complaint today asking the IRS to shut down Pulpit Freedom Sunday in advance and to investigate the Alliance Defense Fund to see whether it has engaged in political or illegal activities that would compromise its tax-exempt status.

The complaint also asks the IRS to deny tax deductions and benefits to donors and organizations that knowingly contributed to the pulpit initiative.

The pastors filing the complaint include the Rev. Bob Molsberry, conference minister of the Ohio Conference of the United Church of Christ, the Rev. Rebecca Tollefson, executive director of the Ohio Council of Churches, and Rabbi Harold Berman of Congregation Tifereth Israel.

The former IRS executives, working for the Washington tax-law firm Caplin and Drysdale, are filing the complaint as a matter of principle, Owens said. The other complainants are Mortimer Caplin, who was IRS commissioner under President Kennedy, and Cono Namorato, who formerly directed the IRS' Office of Professional Responsibility.

Alliance Defense Fund lawyers could be sanctioned with a broad range of penalties, from a warning to being barred from practice before the IRS, Owens said.

The Alliance Defense Fund, based in Scottsdale, Ariz., calls itself a "legal ministry." Most of its cases involve the First Amendment rights of Christians, although it also litigates cases against abortion, euthanasia and same-sex marriage.

The group is trying to attract an IRS investigation at each participating church. Congregations would then sue the IRS while being represented by the Alliance Defense Fund. The goal is to get the prohibition against political endorsements declared unconstitutional, said Erik Stanley, the group's senior legal counsel.

About 35 churches had signed on as of last week, and they have been advised of the risks, he said.

Churches that violate IRS code could lose their tax-exempt status, but such a punishment

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is extremely rare. Since 1954, when federal law was changed to prohibit nonprofit organizations from endorsing political candidates, only one church has even lost its tax-exempt letter ruling, which simply recognizes the church as a nonprofit.

In that case, the Church at Pierce Creek in New York published full-page advertisements in *USA Today* opposing Bill Clinton for president in 1992. The IRS revoked the church's letter ruling, but the church retained its tax exemption.

Unlike other nonprofits, churches do not need the letter under the tax code, and losing it does not affect their tax-exempt status. However, some churches request it from the IRS as a convenience in case anyone questions their nonprofit status.

Still, the IRS commonly audits churches after complaints, which is an expensive and time-consuming process for the congregations. Owens said. The agency can levy an excise tax for violations, which it prefers to do rather than revoke a tax exemption, he said.

Before 1954, it was commonplace for pastors to speak for or against candidates, Stanley said. He said the IRS is denying preachers' right to free speech and free exercise of religion.

"Politicians didn't get a free pass from moral scrutiny, and they shouldn't get a free pass now," he said. "The Bible has a lot to say about politicians, about certain candidates."

The pastors filing the IRS complaint say they're concerned about churches becoming extensions of political campaigns and worry that pastors or religions could gain political influence by supporting a winning candidate.

In 2006, largely the same group of pastors filed a complaint against the Rev. Rod Parsley of World Harvest Church and the Rev. Russell Johnson, then of Fairfield Christian Church. That complaint said the pastors should forfeit their tax-exempt status because they openly campaigned for Republican gubernatorial nominee J. Kenneth Blackwell.

An IRS spokesman in Ohio didn't return calls last week seeking comment on the outcome of that complaint. A national spokesman for the agency said the IRS generally doesn't comment on investigations.

mheagney@dispatch.com

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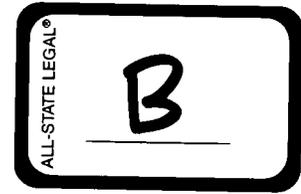
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-----Original Message-----

From: David R. Langdon [mailto:dlangdon@langdonlaw.com]
Sent: Monday, August 25, 2008 8:50 AM
To: Susan Porter; Angelique Paul Newcomb
Cc: 'Tim Chandler'
Subject: CCv v. Upper Arlington Library



Dear Sue and Angel,

CCV would like to schedule to use a meeting room at the library for a Politics and the Pulpit event on the evening of September 25, 2008. Would you prefer that we coordinate the scheduling details through you, or are you okay with our clients contacting the library staff directly?

Also, have you decided yet whether you are going to appeal Judge Smith's decision? If you have decided to appeal, we would like to postpone the resolution of attorney fee issues until all appeals have been resolved, if that is agreeable to you.

Alternatively, if you've not yet decided whether you are going to appeal, would you be opposed to extending our motion deadline until two weeks after the deadline for your notice of appeal?

I believe that our fee motion is due on Thursday of this week (Aug. 28), so if you could get back to me in the next day or so I would appreciate it.

Thank you.

Sincerely,

David R. Langdon, Esq.
LANGDON LAW LLC
11175 Reading Road, Ste. 104
Cincinnati, Ohio 45241
Direct: (513) 733-1038
Fax: (513) 577-7383
Mobile: (513) 604-5872
Email: dlangdon@langdonlaw.com

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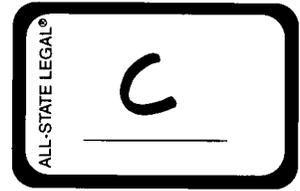
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Any statements made herein regarding tax matters, including attachments, may not be relied upon by anyone to avoid tax penalties and are not to be used or referred to in any publication or marketing materials.

Angelique Paul Newcomb

From: David R. Langdon [dlangdon@langdonlaw.com]
Sent: Friday, August 29, 2008 3:52 PM
To: Angelique Paul Newcomb; Susan Porter
Cc: 'Tim Chandler'
Subject: RE: CCv v. Upper Arlington Library



Thanks Angel. They think they will need more room than that, so they are going to try for a different date. I'm sure they can work something out without the lawyers getting in the way.

In terms of concluding the case, please let us know if you are interested in discussing a fee settlement. We filed our motion yesterday and our supporting documentation and brief are due in a few weeks. If you think settlement discussions might be worthwhile, we could ask the Court for some additional time to file our brief, to give us time to try and work something out.

Thanks-

Dave

From: Angelique Paul Newcomb [mailto:anewcomb@szd.com]
Sent: Monday, August 25, 2008 1:46 PM
To: David R. Langdon; Susan Porter
Cc: Tim Chandler
Subject: RE: CCv v. Upper Arlington Library

David:

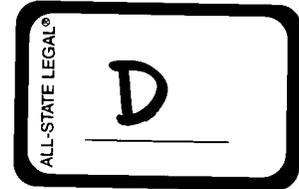
The Library has decided not to appeal the Court's decision.

I forwarded your request to hold a Politics and the Pulpit event on 9/25/08 to Ann Moore, the Library's Director, and she informs me that the Friends Theater and Meeting Room B are both reserved that evening. The only room available is Meeting Room A, which accommodates 14 people. I'm not sure whether that will meet your client's needs. However, your clients are free to contact the Library directly to work with them to schedule your event.

Best regards,

Angel Newcomb

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION



CITIZENS FOR COMMUNITY VALUES, INC.,	:	
	:	
Plaintiff,	:	Case No. 2:08-cv-00223-GCS-NMK
	:	
vs.	:	Judge George C. Smith
	:	Magistrate Judge Norah McCann King
	:	
UPPER ARLINGTON PUBLIC LIBRARY	:	
BOARD OF TRUSTEES,	:	
	:	
Defendant.	:	

**DECLARATION OF TIMOTHY D. CHANDLER IN SUPPORT OF
PLAINTIFF'S REQUEST FOR ATTORNEYS FEES AND NON-TAXABLE EXPENSES**

I, Timothy D. Chandler, state as follows:

1. This affidavit is filed to demonstrate the reasonableness and basis for the hourly rate of compensation requested and the reasonableness of the total number of hours incurred and claimed in this application and attached hereto.

Background

2. I am a 2004 graduate of the University of California at Los Angeles School of Law, where I was president of the Moot Court Executive Board and a member of the UCLA National Moot Court team.

3. Since graduating from law school and passing the California bar exam in 2004, I have been employed by the Alliance Defense Fund (ADF), a non-profit public interest law firm. I am presently the supervising attorney in ADF's regional office in California. In this capacity, I practice exclusively in the areas of religious freedom, freedom of expression, and civil rights

law. I am involved in all aspects of litigation, including researching, drafting of briefs and motions, discovery, and oral argument.

4. I am the plaintiffs' counsel in *Faith Center Evangelistic Ministries v. Glover*, 480 F.3d 891 (9th Cir. 2007), a case very similar to this one. And I have served as lead counsel or co-counsel in many other cases involving constitutional issues, including, *Truth v. Kent School District*, 524 F.3d 957 (9th Cir. 2008), *Harper v. Poway Unified School District*, 445 F.3d 166 (9th Cir. 2006), *vacated as moot*, 127 S.Ct. 1484 (2007); *Elsinore Christian Center v. City of Lake Elsinore*, 197 Fed.Appx. 718 (9th Cir. 2006); *Christianson v. Leavitt*, 482 F.Supp.2d 1237 (W.D.Wash. 2007); *Comfort v. MacLaughlin*, 473 F.Supp.2d 1026 (C.D.Cal. 2006); *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, 44 Cal.4th 1145 (2008), and *Jonathan L. v. Superior Court*, 165 Cal.App.4th 1074 (Cal.App.2.Dist. 2008). I have also drafted amicus curiae briefs in a number of cases involving constitutional issues, including *Morse v. Frederick*, 127 S.Ct. 2619 (2007); *San Diegans for Mt. Soledad National War Memorial v. Paulson*, 126 S.Ct. 2856 (2006); and *In re Marriage of Rice*, 2005 WL 1503544 (Cal.App.4.Dist. 2005).

5. I am licensed in the State of California and have been admitted to the bars of the United States District Court for the Northern, Eastern, Central and Southern Districts of California and the United States Court of Appeals for the Ninth Circuit.

6. For the bars and courts in which I have been admitted, I am a member in good standing and there are no grievance proceedings or any other disciplinary actions pending against me. In addition, I have never been held in contempt of court, censured, disbarred or suspended by any court.

Reasonableness of Rate

7. My billing rate of \$200.00 per hour for my involvement in this case is consistent with the hourly rates of attorneys in the Columbus area with similar experience, and is reasonable in light of my experience in constitutional law.

Executed this _____ day of _____, 2008.

/s/ DRAFT

Timothy D. Chandler

CA Bar No. 234325

ALLIANCE DEFENSE FUND

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