# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

HAROLD SKLAR and JACQUELINE McKENZIE,	) ) )
Plaintiffs,	)
v.	) Civil Action No. 1:06-CV-103 (IMK)
BOARD OF EDUCATION OF THE COUNTY OF HARRISON et al.,	) ) )
Defendants.	) ) )

## **CONSENT JUDGMENT AND ORDER**

The parties having agreed to resolve this dispute in the manner set forth below, this Court orders and decrees that:

- 1. Defendants agree that they will not restore the Head of Christ portrait or another copy of that portrait to the Bridgeport High School. Nothing in this agreement will preclude the adoption of a textbook or other professionally published curriculum-related material that includes a reproduction of the portrait, so long as the textbook or curriculum-related material is selected for constitutionally valid secular purposes and in accordance with Defendants' normal policies and practices.
- 2. Defendants agree that any pictures, paintings, posters, prints, statues, carvings, or other items with religious content displayed by, or under the authority or direction or with the approval or endorsement of, the Defendants acting in their official capacities will be displayed only:

- a. for constitutionally valid secular purposes as defined by relevant legal authority, including McCreary County, Kentucky v. ACLU of Kentucky, 545
  U.S. 844 (2005), and its progeny, or any other valid decisional law; and,
- b. in accordance with the Defendants' educational mission as set forth in the published policies of the Board of Education and the laws of the state of West Virginia.
- 3. In exchange for Defendants' consent to the entry of this order, Plaintiffs agree that the Court will dismiss this action with prejudice. Plaintiffs also agree, subject to the terms of paragraph 7 below, that they will forgo any claims for attorneys' fees, costs, or expenses accrued in pursuing this action.
- 4. This agreement is a compromise of disputed claims and the Defendants' entry into this agreement is not to be construed in any way as an admission of liability or fault on the part of Defendants or their officers, agents, or employees.
- 5. All agreements and understandings among the parties are stated in this Consent Judgment and Order. The parties agree that each provision is an enforceable term of the contract; none are mere recitals.
- 6. Defendants' violation of the terms of this agreement will be considered a breach of contract and contempt of court, and the United States District Court for the Northern District of West Virginia will retain jurisdiction of this case for purposes of enforcing the parties' agreement.
- 7. In the event that Defendants breach any term in paragraph 1 or paragraph 2 of this agreement, plaintiff Sklar, plaintiff McKenzie, Americans United for Separation of Church and State, or the American Civil Liberties Union of West Virginia Foundation will be entitled to recover

damages in the amount of reasonable attorneys' fees, costs, and expenses incurred to enforce the agreement. They will also be entitled to additional damages for breach of this agreement in the amount of reasonable attorneys' fees, costs, and expenses accrued in this case (No. 1:06-CV-103), on the same terms and to the same extent that Plaintiffs in the current action would be entitled to a fee award under 42 U.S.C. § 1988, 28 U.S.C. § 2412, or any other relevant provision of federal law, unless Plaintiffs have already received a fee award for this case.

8. Nothing in this agreement will be construed to prevent individual Bridgeport High School employees or staff from possessing, displaying, or using religious items in their personal work areas or spaces at the high school in a manner consistent with relevant court decisions and statutory law.

On the terms stated above, the Court dismisses this action with prejudice but retains jurisdiction over any subsequent enforcement action.

Getaber 18, 2006 French Keeley Hon. Irene M. Keeley

United States District Judge

## THE PARTIES HEREBY CONSENT TO THE FORM AND ENTRY OF THIS ORDER:

#### For Plaintiffs:

Ayesha N. Khan Richard B. Katskee Heather L. Weaver

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Date: 10/15/2006

Date: 10/10/2006

Terri S. Baur

ACLU OF WEST VIRGINIA FOUNDATION

### For Defendants:

Benjamin W. Bull Gary S. McCaleb Nathan W. Kellum

ALLIANCE DEFENSE FUND

Richard M. Yurko Jr.

Rodney L. Bean Molly J. Aderholt

STEPTOE & JOHNSON PLLC

Date: /0/18/06