

The Courier-Journal

Court of Appeals: Kentucky can credit 'Almighty God' for homeland security

Peter Smith

October 28, 2011

The state can continue giving official credit for its homeland security to Almighty God, the Kentucky Court of Appeals ruled Friday in a decision overturning a lower-court ruling.

A three-judge panel, in a split decision, rejected the 2009 ruling of Franklin Circuit Judge Thomas Wingate, who declared legislation requiring credit to the Almighty to have “created an official government position on God.”

A group of 10 Kentucky residents filed suit to challenge the legislation in 2008, saying the laws creating an Office of Homeland Security violated the Kentucky and U.S. constitutions’ bans on state-sponsored religion.

Virtually every state legislator, the attorney general and both major-party candidates for governor had weighed in on the case, supporting the law with legal briefs or public statements of support.

Judge Laurance B. VanMeter wrote in his majority opinion that the appeals court disagrees with Wingate’s “assertion that the legislation seeks to place an affirmative duty upon the Commonwealth’s citizenry to rely on ‘Almighty God’ for protection of the Commonwealth.”

“The legislation merely pays lip service to a commonly held belief in the puissance (power) of God,” VanMeter said in an opinion joined by Judge Thomas Wine. “The legislation complained of here does not seek to advance religion, nor does it have the effect of advancing religion, but instead seeks to recognize the historical reliance on God for protection.”

Such a reference couldn’t be unconstitutional, the opinion added, because “that rationale would place this section at odds with the (Kentucky) Constitution’s Preamble,” which itself thanks “Almighty God” for the welfare and freedom of the commonwealth.

At issue are two related laws passed in the wake of the Sept. 11, 2001, terrorist attacks. A 2002 “legislative finding” said the “safety and security of the commonwealth cannot be achieved apart from reliance upon Almighty God.”

And a 2006 act creating the state’s Office of Homeland Security requires its executive director to publicize this “dependence on Almighty God” in agency training and educational materials and through a plaque at the entrance to its emergency operations center.

Senior Judge Ann O’Malley Shake dissented from her colleagues, saying that Wingate was correct in saying the legislation has an “impermissible effect of endorsing religion because it was

enacted for a predominantly religious purpose and conveyed a message of mandatory religious belief.”

The majority compared the case to that of an Ohio law, upheld by a federal appeals court in 2001, establishing a state motto, “With God, All Things Are Possible.” That ruling, the Kentucky appeals court said, harmonized with a long history of “all three government branches recognizing the role of religion in American life.”

But Shake said the Ohio motto is a “passive aphorism that places a duty upon no one,” while the Kentucky legislation requires the Homeland Security director to be “stressing to the public that dependence upon Almighty God is vital.”

The laws, she said, are a “direct affront” to religious freedom.

Edwin Kagin, who represented the plaintiffs and is national legal director of the group American Atheists, said he expected to ask the Kentucky Supreme Court to review the ruling.

“I’m a little stunned by the move toward a theocracy,” said Kagin, of Union, Ky. “The reasoning of Judge Shake was so accurate and so compelling.”

He said he suspected that friend-of-the-court briefs filed by virtually all Kentucky legislators “played some role in this.”

“The legislature has no business to tell the court that their actions are constitutional,” he contended.

The office Attorney General Jack Conway had defended the law, with the support of Gov. Steve Beshear, a fellow Democrat.

“We’re obviously pleased with the court’s ruling,” Conway’s office said in a statement. “As this matter may be appealed, it would be inappropriate for us to comment further.”

Senate President David Williams, the Republican candidate for governor in the Nov. 8 election, was among 35 of 38 senators who put their names on a friend-of-the-court brief defending the law.

It was prepared by lawyers including former Alabama Chief Justice Roy Moore, who was removed from his office in 2003 for defying a federal court order to remove a Ten Commandments monument from Alabama’s judicial building.

The brief called on the Kentucky court essentially to ignore U.S. Supreme Court precedents in church-state case law and instead interpret the First Amendment narrowly to prohibit a “state-sponsored church or denomination,” not a declaration of reliance on God.

And 96 of the state's 100 state representatives asserted, in their own friend-of-the-court brief, that the laws are in keeping with historic U.S. Supreme Court cases describing America as a “Christian nation.”

Also at issue in the appeal was whether American Atheists, as an organization, had standing to join the lawsuit as a plaintiff. Wingate had ruled it did not, and the appeals court unanimously upheld that ruling.