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23 Attorneys for Plaintiffs

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **COUNTY OF LOS ANGELES**

26 DAVID HOROWITZ,)
27 DAVID R. HERNANDEZ,)
28 RICK DE CASTRO,)
MARIANN GEISER,)
SAMUEL S. MURRAY,)
GREG BELLUOMINI,)
DON HAGNER,)
MICHAEL SANDERS and)
DAVID C. STOLINSKY, individually and on)
behalf of similarly situated taxpayers of the)
County of Los Angeles; and PILGRIM LU-)
THERAN CHURCH, on behalf of itself and)
its members,)
Plaintiffs,)
vs.)
COUNTY OF LOS ANGELES;)

No.)
COMPLAINT FOR:
1. **WASTE OF TAXPAYER FUNDS**
(*CODE OF CIVIL PROCEDURE SEC-*
TION 526a);
2. **ULTRA VIRES EXPENDITURE OF**
TAXPAYER FUNDS (COMMON
LAW);
3. **VIOLATION OF ARTICLE 1, SEC-**
TION 4, OF THE CALIFORNIA CON-
STITUTION (“NO PREFERENCE
CLAUSE”);
4. **VIOLATION OF THE “ESTABLISH-**
MENT CLAUSE” OF THE FIRST

1 GLORIA MOLINA, individually and in her)
official capacity as a supervisor, County of)
2 Los Angeles;)
YVONNE BURKE, individually and in her)
3 official capacity as a supervisor, County of)
Los Angeles;)
4 ZEV YAROSLAVSKY; individually and in)
his official capacity as a supervisor, County of)
5 Los Angeles; and)
DOES 1 through 1000;)
6)

Defendants.

**AMENDMENT (AS APPLIED
THROUGH THE FOURTEENTH
AMENDMENT) OF THE UNITED
STATES CONSTITUTION;**

**5. PRELIMINARY INJUNCTION AND
PERMANENT INJUNCTION; and**

6. DECLARATORY RELIEF

7
8 Plaintiffs allege as follows:

9 **INTRODUCTION**

10 1. The great Seal of the County of Los Angeles, as designed in 1957, reflects the his-
11 tory of Los Angeles County, including its religious and missionary history, portrayed by a small
12 cross in one portion of the seal. On September 14, 2004, the Board of Supervisors of the County
13 of Los Angeles voted to remove the cross from the county seal under the false pretext that it con-
14 veys an unconstitutional establishment of religion. Just the opposite is true: excising such a sig-
15 nificant portion of the County’s history as the founding of this community by religious missio-
16 naries manifests an unconstitutional hostility toward religion and the role religion played in the
17 founding and development of Los Angeles, the City of Angels.

18 2. The County’s decision was made under threat of litigation by the ACLU Founda-
19 tion of Southern California (“ACLU”), a group that has systematically sought to remove even
20 historically-rooted religious symbols from the public square and thereby manifested hostility to-
21 ward religion. Because the appearance of a cross, which reflects the historical importance of re-
22 ligion in the founding and development of the region, as but one among many historical symbols
23 displayed on the County Seal is so palpably permissible under existing Supreme Court precedent,
24 and because the ACLU’s *threat* of litigation was met with *actual* litigation challenging the re-
25 moval of the cross from the Seal prior to the County’s final action removing the cross, and be-
26 cause the overwhelming testimony at public hearings on the subject was in opposition to the
27 County’s action removing the cross, it appears that the members of the County Board of Supervi-

1 sors who voted to remove the cross share or condone the ACLU's antipathy toward public ac-
2 knowledgement of the role that religion has played in the historical development of Los Angeles
3 County.

4 3. Moreover, the refusal of the Board of Supervisors to permit a vote of the people
5 on the subject at a regularly scheduled election has led, predictably, to the circulation of a ballot
6 initiative that, if certified and adopted as is expected, will require the County to restore the cross
7 to the Seal (or spend approximately \$12 million to hold a special election on the subject). The
8 County's precipitous decision to begin spending significant taxpayer funds to replace the existing
9 seal before the citizens of the County have an opportunity to be heard, only to spend more tax-
10 payer funds to restore the original seal once the citizens have been heard, is the quintessential
11 waste of taxpayer funds. Such waste violates state law even in ordinary times; in times of budget
12 crisis such as the County faces today is not only illegal but foolish. For example, the Board
13 voted to consider closing the trauma center at the King/Drew Medical Center for lack of funds on
14 the same day it voted to begin spending money to remove the cross from the County Seal. As
15 Supervisor Knabe noted at a hearing on June 8, 2004, "the County of Los Angeles is in a very
16 tough financial position given the already proposed \$269 million in cuts to next fiscal year's
17 budget," including cuts in funding for public safety, libraries, parks, AIDS funding, and other
18 vital county services. The waste of taxpayer funds should therefore be halted, and the status
19 quo—the original seal, complete with its cross, oil derricks, and goddess Pomona—should be
20 preserved until the political process has had a chance to run its course, and the legal process has
21 had a chance to confirm definitely that the original seal is not an unconstitutional establishment
22 of religion.

23 **BACKGROUND**

24 4. On June 1, 2004, during closed session, defendant County of Los Angeles, acting
25 by and through its Board of Supervisors ("Board"), instructed the County Counsel to "negotiate"
26 with the ACLU to determine if the ACLU would refrain from filing a lawsuit against the County
27 regarding the presence of a cross on the County seal if the County were to redesign the seal

1 without the cross. The proposal included the possibility of replacing the cross with a depiction of
2 a California mission (excised of any cross) and a representation of the region's indigenous peo-
3 ples. The ACLU agreed that it would not sue the County in light of this proposal.

4 5. On June 8, 2004, the Board reaffirmed its decision to adhere to this agreement by
5 not approving a motion to reject the compromise with the ACLU. Also at the June 8, 2004 Board
6 meeting, the Board requested that County Counsel and the Chief Administrative Officer of the
7 County report back with a design for a new County seal and a process for substituting it for the
8 original County seal.

9 6. Between June 1, 2004, and September 14, 2004, Defendant County of Los Ange-
10 les began developing a cost estimate and replacement schedule for “permanent” depictions of the
11 County seal (e.g., buildings, signs, plaques, etc.). A status report on these efforts was provided to
12 the Board on August 27, 2004. The Board planned to refine the cost estimate and to work with
13 County Counsel to propose a “multi-year” replacement schedule and include this information in
14 the implementation instructions to be issued to County departments.

15 7. On September 14, 2004, the Board held a public hearing to consider a new design
16 for the County seal that was prepared by the Chief Administrative Office of the County without
17 public input, and to direct the Chief Administrative Officer to develop, within 45 days, imple-
18 mentation instructions for County departments regarding access to and utilization of the new seal
19 consistent with the Board’s previous instructions, namely, a “multi-year” replacement schedule.

20 8. Despite the fact that the members of the public who testified regarding the matter
21 were unanimously opposed to the County’s proposed action authorizing the expenditure of funds
22 to excise the cross from the County Seal, the Board of Supervisors voted 3-2 to adopt a new seal
23 excised of the cross (as well as the oil derricks representing the discovery of oil in Signal Hill,
24 and the goddess Pomona, the ancient Roman goddess of gardens and fruit trees, representing the
25 settlement of the eastern end of the County in 1875 by fruit-growers and after whom both the
26 City of Pomona and Pomona College are named), substituting instead a cross-less mission and a
27 Native American woman that, based on an official government report of the Smithsonian Institu-

1 tion, appears to be a depiction of the Native American goddess Nautsiti, daughter of the sun god
2 and giver of life in a prominent Native American creation myth of the Keresan Pueblo tribe of
3 New Mexico.

4 **PARTIES**

5 9. Plaintiffs DAVID HOROWITZ, DAVID R. HERNANDEZ, RICK DE CASTRO,
6 MARIANN GEISER, SAMUEL S. MURRAY, GREG BELLUOMINI, DON HAGNER, MI-
7 CHAEL SAUNDERS, and DAVID C. STOLINSKY, are citizen residents of the County of Los
8 Angeles, are state and county taxpayers, and have paid taxes therein within the last year.

9 10. Plaintiff DAVID HOROWITZ is the President of the Center for the Study of
10 Popular Culture, a Los Angeles-based organization devoted to defending the cultural foundations
11 of a free society against efforts to re-write history by extirpating important symbols of that his-
12 torical tradition, such as was done by the County of Los Angeles in the present case. He is a
13 prominent author and speaker, and a Jewish American by birth who is a convert to Christianity.

14 11. Plaintiff DAVID R. HERNANDEZ is the official proponent of the Los Angeles
15 County Seal Ordinance initiative, the title and summary of which was approved by the County
16 Registrar-Recorder on September 3, 2004, and which is currently being circulated for signatures.

17 12. Plaintiff RICK DE CASTRO is a practicing member of the Jewish faith who
18 views the cross in the existing County Seal as an accurate acknowledgement of the religious and
19 missionary history of the region and who believes that the decision to remove the cross from the
20 seal manifests a hostility toward Christianity that he thinks is an improper action for government.

21 13. Plaintiff MARIANN GEISER is Hispanic American, a Christian, a lifelong resi-
22 dent of Los Angeles, and a descendant of the Sepulveda family, one of the founding families of
23 Los Angeles. She believes that the County's decision removing the cross from the County Seal
24 manifests hostility not only toward religion but toward the Hispanic cultural influence in the his-
25 tory of the region.

1 the County of Los Angeles, are state and county taxpayers, and have paid taxes therein within the
2 last year. Pilgrim has a multi-cultural congregation that includes many converts from other
3 faiths. Its pastor and its elders believe that the County acted precipitously in removing the cross,
4 in derogation of the right of the County's millions of religious citizens to have the religious his-
5 tory of the County be fairly represented in the County seal.

6 20. Plaintiffs bring this action as private attorneys general to enforce important public
7 rights affecting public interest.

8 21. Defendant COUNTY OF LOS ANGELES is a public entity capable of being
9 sued.

10 22. Defendants GLORIA MOLINA, YVONNE B. BURKE, and ZEV YARO-
11 SLAVSKY (together with Defendant COUNTY OF LOS ANGELES collectively referred to
12 herein as "Defendants") are members of the County of Los Angeles Board of Supervisors who
13 voted in favor of expending taxpayer funds to remove the cross (representing the religious and
14 mission history of the County) from the Los Angeles County Seal. At all relevant times, Defen-
15 dants GLORIA MOLINA, YVONNE B. BURKE and ZEV YAROSLAVSKY were agents, ser-
16 vants, and/or employees of the County of Los Angeles, acting under color of state law as that
17 phrase is used in 42 U.S.C. section 1983. Defendants GLORIA MOLINA, YVONNE B.
18 BURKE and ZEV YAROSLAVSKY, are sued in their individual capacities as well as in their
19 official capacity as supervisors pursuant to *Code of Civil Procedure* section 526a.

20 23. The true names and capacities, whether individual, corporate, associate or other-
21 wise, of the defendants named herein as DOES 1 through 1000, inclusive, are unknown to plain-
22 tiff, who therefore sue said defendants by such fictitious names pursuant to *Code of Civil Proce-*
23 *dure* section 474, and Plaintiffs will amend this Complaint to show their true names and capaci-
24 ties when the same has been ascertained. Plaintiffs are informed and believe, and based upon
25 such information and belief, allege that each defendant sued herein as a DOE is in some manner
26 responsible for the acts herein alleged.

1 County of Los Angeles, including Plaintiffs. However, by creating and adopting a policy that
2 targets the cross for removal and exclusion as one of the historical and cultural symbols of the
3 seal, Defendants have now conveyed an anti-Christian religious message prohibited by the No
4 Preference Clause of the California Constitution and the Establishment Clause of the United
5 States Constitution.

6 33. Plaintiffs are informed and believe, and thereon allege, that Defendants' purpose
7 for creating and adopting the policy of targeting the cross for removal from the County Seal re-
8 flects hostility toward religion in general and Christianity in particular, and a rejection of the
9 cross's cultural and historical significance in the founding and development of Los Angeles
10 County.

11 34. The effect of Defendants' policy of targeting the cross for removal is to convey a
12 message of disfavor of and hostility toward religion in general and Christianity in particular, and
13 thereby to cause harm by sending a message to Christians, including certain Plaintiffs, that they
14 are outsiders, not full members of the political community. Once this policy is implemented, this
15 harmful and unconstitutional effect will be repeated each time the Seal without the cross is dis-
16 played

17 35. Defendants have already begun to implement and intend to keep implementing
18 their anti-religious policy and remove the cross from the Original County Seal, which will cause
19 additional and repeated injury to Plaintiffs. Moreover, Defendants' anti-religious policy is
20 funded by and will result in the expenditure of hundreds of thousands or even millions of county
21 and/or state tax dollars, causing further direct injury to Plaintiffs.

22 **FIRST CAUSE OF ACTION**

23 Waste of Taxpayer Funds

24 (*Code of Civil Procedure* section 526a)

25 Against All Defendants

26 36. Plaintiffs hereby incorporate paragraphs 1 through 35 as if set forth fully herein,
27 and reallege each paragraph by this reference.

1 at law. Plaintiffs are further entitled to recover from Defendants their reasonable costs and attor-
2 ney's fees incurred in bringing this action under *Code of Civil Procedure* section 1021.5.

3 **THIRD CAUSE OF ACTION**

4 No Preference Clause

5 (California Constitution, Article 1, Section 4)

6 Against All Defendants

7 49. Plaintiffs hereby incorporate paragraphs 1 through 35 as if set forth fully herein,
8 and reallege each paragraph by this reference.

9 50. By reason of the aforementioned policy, acts and omissions engaged in under
10 color of state law, Defendants have violated Article 1, section 4, of the California Constitution,
11 referred to as the "No Preference Clause."

12 51. Defendants, and each of them, by and through their conduct, have demonstrated
13 hostility and discrimination toward religion by determining that the cross on the County of Los
14 Angeles Seal is a government "endorsement" of religion where no public controversy concerning
15 an interpretation of the Seal had hitherto existed and where the only provocation for acting to
16 remove the cross from the Seal was a threatened lawsuit by the ACLU, which is engaged in a
17 systematic and nationwide crusade to remove evidence of religious tradition in the public square
18 throughout the United States. Indeed, Defendants' motivation to remove the cross from the Seal
19 has its genesis in religious discrimination as evidenced by an aversion to challenging the
20 ACLU's lawsuit.

21 52. Defendants, and each of them, by and through their conduct, have failed to recog-
22 nize the distinction between an unconstitutional establishment of religion and a permissible ac-
23 knowledge of the role religion has played in the historical development of the region. By acting
24 to remove the seal, Defendants, and each of them, have elevated atheism (the lack of religion)
25 over religious tradition and thus have moved a step closer to eliminating all acknowledgement of
26 the historical significance of religion in the County of Los Angeles.

1 historical roots of the County, fosters an endorsement of religion in violation of the California
2 and United States Constitutions.

3
4
5
6 **PRAYER**

7 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
8 follows:

9 1. That this court issue a preliminary injunction and permanent injunction restraining
10 and enjoining Defendants, and each of them, and their officers, agents, employees, representa-
11 tives, and all persons acting in concert, or participating with them, from engaging directly or in-
12 directly in any act that would result in the removal of the cross on the seal of the County of Los
13 Angeles in a manner that constitutes waste or ultra vires use of taxpayer funds or that manifests
14 hostility toward religion;

15 2. For a declaration that the depiction of the cross as one of several historical sym-
16 bols in the Seal of the County of Los Angeles, adopted in 1957, does not violate either the Cali-
17 fornia Constitution or the United States Constitution;

18 3. For a declaration that the removal of the cross from the Seal of the County of Los
19 Angeles, adopted in 1957, under the circumstances present here, manifests hostility toward relig-
20 ion in general and Christianity in particular in violation the California Constitution and/or the
21 United States Constitution;

22 4. For a declaration that the prominent depiction in the Seal adopted by the County
23 on September 14, 2004, of an ahistorical Native American creation myth, which has no basis in
24 the historical roots of the County, sends a signal of endorsement of a particular religious sect, in
25 violation of the California Constitution and/or the United States Constitution;

1 5. For restitution by the individual Defendants to Defendant County of Los Angeles
2 of any and all taxpayer funds wasted or expended ultra vires as the result of the individual De-
3 fendants' actions;

4 6. For reasonable attorneys' fees, costs and expenses pursuant to *Code of Civil Pro-*
5 *cedure* section 1021.5, 42 U.S.C. section 1988 and other applicable law;

6 7. For such other and further relief as the Court may deem just and proper.

7
8 DATED: September 29, 2004

Respectfully submitted,

9 JOHN C. EASTMAN
10 MANUEL S. KLAUSNER
11 WILLIAM J. BECKER, JR.
12 DONALD P. WAGNER

13 By _____
14 Manuel S. Klausner
15 Attorneys for Plaintiffs