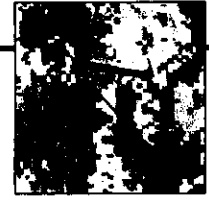


EARLIER THIS YEAR, JASON TORPY, PRESIDENT OF the Military Association of Atheists and Freethinkers (MAAF), located in Washington, DC, visited with atheists in the Tampa area. On January 18 and 19, Mr. Torpy met with Atheists of Florida mem-

## A of F coordinates MAAF visit



bers, secular student groups at the University of South Florida and the newly formed MacDill Atheists & Freethinkers "meetup" group, which he helped form and now meets monthly at MacDill Air Force Base in Tampa. At these meetings, he described the problem of rampant religious fundamentalism within the military and the steps that are

being taken by his organization to check such government proselytizing while protecting the rights of secular service personnel. Mr. Torpy urged all active duty, retired and veteran atheists, secular humanists and freethinkers to join both MAAF and our new A of F sponsored meetup, which meets every third Tuesday at 1pm at the MacDill AFB chapel (meetup details at [www.atheistsofflorida.org](http://www.atheistsofflorida.org)). If you are active duty or retired military located outside of the MacDill area, you can start a military atheist meetup at a base near you; contact Mr. Torpy at [www.militaryatheists.org](http://www.militaryatheists.org) or Atheists of Florida for details.

Jason Torpy is a graduate of the US Military Academy at West Point and served as a US Army officer in the Iraq conflict.

## Staying in contact with Atheists of Florida

The following internet resources will keep you updated with all the latest Atheists of Florida news, activities and meetings: **A of F website** ... <http://atheistsofflorida.org> Our front page carries our most recent news with links to relevant news videos, articles and blogs. Also links to local Meetups; joining or renewing online; contact info and our interactive sites: **A of F Forum** ... <http://free2think.org> **Facebook** ... <http://www.facebook.com/AtheistsOfFlorida> **Twitter** ... <http://twitter.com/AtheistsofFL>

## ATHEISTS OF FLORIDA LEGAL DEFENSE FUND

### Help Fight Injustice in Polk County, Florida

GOVERNMENTAL OFFICIALS IN POLK COUNTY, Florida are trying to force their religious views on all residents, and desperately trying to silence anyone who questions their beliefs. Two members of the Atheists of Florida, who dared to question the constitutionality of Christian invocations occurring at local governmental meetings, have recently been arrested in a deliberate campaign to censor their expressive activities. EllenBeth Wachs, a retired attorney, and legal coordinator of the Atheists of Florida, was arrested on March 3, 2011, on a bogus felony charge of uncensored practice of law, merely for signing public records requests directed to the County with the title "Esquire," a term commonly used by attorneys—whether practicing or not. John Kiefler was dragged out of a Polk County School Board meeting by police officers in February, 2011, and charged with disorderly conduct and resisting arrest without violence, for taking some pictures and talking to an acquaintance during an 'unofficial' Christian prayer before the Board meeting commenced. These arrests are obviously designed to intimidate any citizen who questions the religious practices of the local government in Polk County.

Religious freedom, including the right to be free from religion, is under attack in Polk County, Florida. Those who challenge the established Christian indoctrination conducted by local governmental officials face arrest and persecution at the hands of Sheriff Grady Judd. Anyone who values First Amendment freedoms should be outraged by the heavy-handed tactics.

EllenBeth and John need your help. They are on the front lines of the battle against establishment of religion in this country. They have hired an experienced legal team, and need financial assistance to fight back against this abuse of power.

Donations large or small can be made as follows:

By check payable to:  
**Atheists of Florida Legal Defense Fund**  
c/o Walters Law Group, Trust Account

Sent to:  
**Walters Law Group**  
781 Douglas Ave.  
Altamonte Springs, FL 32714

Or by credit card or PayPal at our Atheists of Florida website ...

<http://atheistsofflorida.org/legaldefense.htm>



# Atheists of Florida

## Dedicated to the absolute separation of State and church

### Quarterly Newsletter

A Founding Member Society of the Atheist Alliance International

Volume XIV No. 8 January—March 2011

## Imperial Polk County: America's Ground-Zero of State & Church Separation Struggle

ON MARCH 3, 2011, ELLEN-Beth Wachs, Vice-President of Atheists of Florida, was served a warrant, arrested at her home and had her home searched (inside and out) by over a dozen SWAT-attired law enforcement officials. The allegation is the unauthorized practice of law because Ms. Wachs, a retired attorney, signed letters using "Esq." (the abbreviation for "esquire"). As mind-boggling as this may seem, it will become clear from reading the associated articles in this newsletter that her arrest can be understood as part of an organized vendetta by Imperial Polk County officials. They see Ms. Wachs and other Atheists of Florida activists as a very real threat to their unconstitutional state church practices; particularly, to Sheriff Grady Judd for Wachs' discovery of his use of the county credit card and resources for personal political gain among his religious constituents.

Ms. Wachs' arrest, however, is part of a larger narrative: an epic confrontation between a civil rights minority atheists—and Polk County's well connected and funded political forces who want to maintain a business-as-usual religious privilege within local government affairs. In an attempt to obstruct and stop permitting the case to proceed.

### Help Fight Injustice in Polk County, Florida

The right to be free from religion is under attack in Polk County, Florida. Two of our Atheists of Florida members, EllenBeth Wachs and John Kiefler, have confronted the establishment of religion by Polk County officials, who have now attempted to intimidate and silence them with retaliatory arrests. EllenBeth and John have hired an experienced legal team and are fighting back. But they need financial assistance to continue the fight. If you wish to help them, please see the back page of this newsletter.

Ms. Wachs' legitimate efforts, local elected officials, including the sheriff, have closed ranks, coordinated, and forcibly acted via "law enforcement." Inextricably related to this larger narrative are four stories, which are detailed in separate articles in this newsletter:

1) **A of F challenges transfer of jail property to churches**  
—*Ongoing from December 28, 2010*  
Ms. Wachs' sends an initial letter followed by Freedom of Information Act (FOIA) requests (Jan. 4 and Feb. 14), to Sheriff Grady Judd concerning his transfer and installation of county property (jail basketball goals) to a r e a churches.

2) **Prayer Lawsuit**  
**can move EllenBeth Wachs forward**—*Ongoing from July 2010*  
Atheists of Florida filed a lawsuit against the City of Lakeland and its mayor, Gow Fields, in which Ms. Wachs is a plaintiff. On March 18, the trial judge denied in part the defense's motion to dismiss, thus permitting the case to proceed.

3) **A of F Officers Ejected from Polk County School Board; President Arrested**—*February 22*  
Ms. Wachs and A of F president John Kiefler are ejected from the Polk County School Board premises and Mr. Kiefler is arrested. The school board is chaired by Kay Fields, Mayor Gow Fields' wife. That day was the first day the school board prayer would be given *prior* to the start of the meeting. Ms. Wachs and Mr. Kiefler milled about as any meeting participants generally do prior to a meeting (taking photos and speaking to each other), which led to their violent ejection. During that ejection, Ms. Wachs states to Ms. Fields, "You got your lawsuit, Kay."

4) **A of F Vice-President Wachs Arrested** *March 3*  
About a week after the school board incident and just days before Ms. Wachs' critical deposition by attorneys for the defendants (including Mayor Fields) in the A of F prayer lawsuit, Ms. Wachs is arrested. Among the items seized during the search of her home were all inflammatory documents against the sheriff (i.e. copies of the sheriff's office credit card receipts), which she had obtained in response to her FOIA request. Noteworthy are the three people whose statements were used to "justify" the arrest affidavit.

"To discriminate against a thoroughly upright citizen because he belongs to some particular church, or because, like Abraham Lincoln, he has not avowed his allegiance to any church, is an outrage against that liberty of conscience which is one of the foundations of American life."  
—President Theodore Roosevelt

Polk County, FL— During a televised press event on December 23, 2010, Polk County Sheriff Grady Judd announced that eight basketball goals located at his jail complexes were being removed by inmates and relocated to area churches. "If you want to play basketball, stay out of jail," he said. Television news footage shows inmates and sheriff's deputies installing the

## A of F challenges transfer of jail property to churches

equipment at one of the churches. Judd con-

ceded the sports gifts with December's holiday season by referring to himself as a "crimch" to jail inmates but "Santa" to the churches. However, five days later, Atheists of Florida delivered a letter to Sheriff Judd requesting that he cease and desist his currently occurring transfer of basketball equipment from the Polk County jail facility to eight area churches. A of F asserted that the sports equipment is the property of county taxpayers and as such cannot be arbitrarily transferred to private religious institutions.

**"there can be little doubt that the sheriff's transfer of public assets to religious facilities constitutes a violation of both the United States and Florida Constitutions"**

While A of F does not challenge the sheriff's right to remove the equipment from the jail facility, we do challenge the beneficiaries of his actions. Atheists of Florida recommends that the county government property be transferred instead to other county facilities such as public parks and/or schools. There is little doubt that the sheriff's transfer of public assets to religious facilities constitutes a violation of both the United States and Florida Constitutions.

A letter signed by EllenBeth Wachs, which was sent to Sheriff Judd, pointed out that, "this measure is in direct violation of the Florida and United States Constitutions. On behalf of our members we request that your office immediately cease and desist this unconstitutional practice."

The letter then quoted the Florida Constitution, Article I, Section 3:

"There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious de-

nomination or in aid of any sectarian institution." Additionally, the First Amendment to the United States Constitution, which is applicable to local governments under the Fourteenth Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

Judd's actions clearly violate the "establishment clauses" of both the Florida and United States Constitutions. The transfer of taxpayer property to churches is a preference of religion over non-religion, and a preference of the recipient churches over other churches and religions.

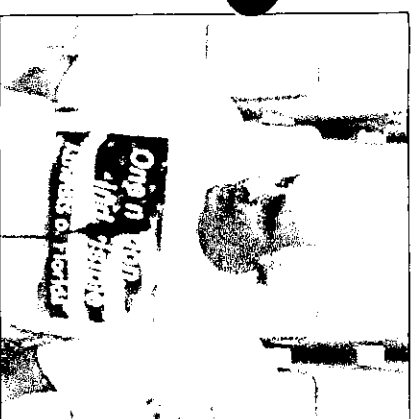
The letter continued:

"There is no secular purpose for your office's policy and practice of specifically choosing to donate public property to churches. The primary effect of the donations is to preferentially aid and advance the receiving churches. This policy and practice cannot avoid excessive entanglement by the government with religion.

"Under the federal and state constitutions, no American, Floridian or Polk County resident is obliged to contribute to the support of any religion. However, the transfer of taxpayer property and resources to churches operates to force citizens to do exactly that. You are directing public revenue to religious institutions through the Sheriff's Office, a political subdivision. By this letter, A of F is not expressing any view on the propriety of removing sports equipment or other property from the county jails. Our objection is limited to the use of that property, paid for by public funds, to directly benefit sectarian institutions.

"Since transfer of this property is either ongoing or imminent, we request that the Sheriff's Office respond in writing within five (5) days indicating whether it will cease and desist its policy/practice of giving publicly funded property to religious institutions, including but not limited to sports equipment presently or formerly used in county jails."

The following week, Atheists of Florida made a request under the provisions of the Freedom of Information Act (FOIA) that the Polk County Sheriff's Office and the Polk County Records Management Office provide information concerning purchase documents and other expenses related to the equipment transfer.



A of F Chairman Ed Golly addresses the Cape Coral City Council wearing the "offensive" T-shirt.

Park thanked the council for standing up for the Constitution. The atheist group hasn't told people how to pray other than to recommend a moment of silence for invocations at public meetings, Reinhardt said.

"I thought it was uncalled for me to be escorted out," Kiefler said. "I followed the rule, which has not been changed. The rule was not addressed."

Kiefler pointed out that atheists represent a "hated minority," and said the actions of the mayor did nothing but support that attitude.

### Lawmakers short on reason

WASHINGTON A review of the 112th Congress indicates we are still plagued with too many superstitious representatives.

A study of the religious affiliations of House and Senate members has disclosed that, similar to the U.S. adult population, Protestants make up the majority and about one-quarter are Catholic. But the Jan. 5 study by the Pew Forum on Religion and Public Life also found that one section of the population—the 16% of adults who claim they are atheists, agnostics, unaffiliated or "nothing in particular"—is disproportionately underrepresented.

Only six members of Congress, representing just one percent, count themselves in that category. The 39 Jewish lawmakers in the new Congress constitute more than 7% of the members, while that portion of the general population is only 1.7%. The study also shows Congress has become more religiously diverse, with 3 Buddhists, 2 Muslims and one Sikh now seated.

### Court upholds 'hurtful' speech

The Supreme Court rules that the Westboro Baptist church can not be sued for antigay protests at military funerals

WASHINGTON They're the inmates who appear at military funerals with their raucous demonstrations con-tending some imaginary god is punishing the military for the nation's tolerance of homosexuality. It is, after all, in their Bible. Many claim we are a Christian nation. Where's the argument?

But the Supreme Court reads the Constitution, not the Bible, and consequently ruled on March 2 that the protesters can not be sued.

In an 8-1 ruling, the decision ended a lawsuit by Albert Snyder, who sued church members for the emotional pain they caused by showing up at the funeral of

"This is America. We can believe whatever the hell we want to," Kiefler said.

Sullivan likened the T-shirts to a "commercial," and felt the group, or any group that displays messages in council chambers, were simply bullying the dais.

"We shouldn't allow any group to force us to abide by their rules. We shouldn't let an outside group dictate the rules," Sullivan complained, oblivious to the fact that the "rules" had already been established by the Constitution and he held no power to overrule that document.

Councilmember Brandt said he was personally offended when the members of the group did not say the words "under god" during the Pledge of Allegiance.

Kiefler explained that the original version of the pledge did not contain the phrase, which was added in 1954.

his son, Lance Cpl. Matthew Snyder.

Chief Justice John Roberts Jr. wrote in his opinion for the court that two primary factors required a ruling in favor of the church group. First, its speech was on matters of public concern. While the messages on the signs carried by its members "may fall short of refined social or political commentary, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import."

Second, the members of the church "had the right to be where they were," they were picketing on a public street 1,000 feet from the site of the funeral; they complied with the law and with instructions from the police, and they protested quietly and without violence.

"Any distress occasioned by Westboro's picketing turned on the content and viewpoint of the message conveyed rather than any interference with the funeral itself," Roberts wrote.

All that means, according to Roberts, that the protesters' speech "cannot be restricted simply because it is upsetting or arouses contempt."

The lone dissent came from Justice Samuel Alito, who contended, "It does not follow...that they may intentionally inflict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate." Apparently Alito feels it is his position to determine which particular speech constitutes public debate, or whether atheists should be silenced or jailed because certain government officials consider the word "atheist" capable of inflicting "emotional injury." Fortunately, eight other justices realized that free speech can not be restricted by those who disagree with or don't like it.

Some 21 media organizations urged the court to side with the church citing concerns that a ruling for the prosecution could erode speech rights.

Said Roberts, "As a Nation we have chosen...to protect even hurtful speech on public issues to ensure that we do not stifle the public debate."



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Published quarterly by Atheists of Florida, Inc., a non-profit, educational corporation founded to heighten public awareness about atheism and monitor state/church separation issues. Newsletter is posted on our website and a printed copy is mailed to all active members. Classified advertising free to members. Send newsletter input to info@atheistsofflorida.org Articles may be edited for clarity or length.

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General \$20.00 / yr

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## NEWSFILES

ON JANUARY 25, MEMBERS OF ATHEISTS OF FLORIDA, Inc., led by President John Kieffer, were making their third appearance before the Cape Coral City Council. Most members had appeared wearing T-shirts that read *One Nation, Indivisible*: imposed over an American flag.

The purpose of the first appearance on November 30, 2010, had been to voice objections during the public comment section of the meeting regarding the proposed display of the Ten Commandments in City Hall. Although the council promptly dropped the issue, they continued the practice of beginning every meeting with an invocation.

## Atheist ejected from Cape Coral City Council

Typically indifferent to the offensiveness of the practice toward members of the community of reason, the Council would not consider eliminating the invocation. However, in a display unseen by us when appearing and commenting before various other city council meetings, council members actually offered responses to public comments which allowed us to ascertain the position of the various council members.

When A of F members made a second appearance before the council several weeks later sporting the same T-shirts, Mayor John Sullivan took exception to the shirts, clearly offended by the display of the word *Atheists* contained within the website address on the back of the shirts. Sullivan warned Kieffer that chamber by police. Council members Brandt (left) and Mayor Sullivan were the only two council members who objected to the shirts.



A of F president John Kieffer is escorted from the Cape Coral City Council chamber by police. Council members Brandt (left) and Mayor Sullivan were the only two council members who objected to the shirts.

### Other City Council appearances by A of F

The following made headline news and numerous video broadcasts (see our "Current Events" forum at <http://free2think.org>)

- In 2010 A of F members appeared twice before the Pinellas Park City Council to object to the placement of a bible on the council dais.
- In 2010, the Lakeland City Commission heard several times from A of F members regarding specifically Christian-oriented meeting prayers. **Our lawsuit followed.**
- Throughout 2010, the Tampa City Council was addressed by A of F members who spoke about the unconstitutionality of the council's prayer rituals. News was made when a council member wanted to have us removed for saying "one nation indivisible" during the Pledge of Allegiance.

ber rules prohibited the use of banners, placards or signs to make personal statements or to send obscene or profane messages, and demanded that the shirts be removed, turned inside out, or covered with a jacket.

When Atheists of Florida appeared for the third time on the 25<sup>th</sup> of January, Kieffer, again wearing the T-shirt, was first to stand at the podium for public comment, prepared to address the very rule restricting the shirts. Sullivan immediately gaveled Kieffer and declared him in disobedience of the rules of attire for public comment. When he refused to cover the shirt, Kieffer was escorted from chambers by three police officers.

"They just don't want to obey the rules. They think they can make their own rules," Sullivan said.

Actually, it was Sullivan himself who was making rules without regard to the Constitution.

Kieffer had questioned the rule about messages on T-shirts at the previous meeting. When the actual text of the rule was reviewed by another council member, it could not be determined that the shirts violated the rule. Rather, it appeared that certain council members, including the mayor and Councilman Pete Brandt, were simply offended by any display representing atheism.

"How dare you," Kieffer said as he was led out.

However, before the police could even get Kieffer out of the chamber, Councilmember Chris Chulakes-Leez submitted a motion to allow Kieffer to speak, and it was promptly seconded by Councilmember Kevin McGrail.

The ensuing comments by the council members offered a remarkable display of American government as the members debated the very constitutionality of restricting speech based on displaying a message that might be considered offensive to any government official.

Most council members realized they could not define "offensive" attire in a manner that would allow them to selectively discriminate against public speakers.

Said Chris Chulakes-Leez, who made the motion to allow us to speak, "They should not be prevented from speaking, regardless of their attire."

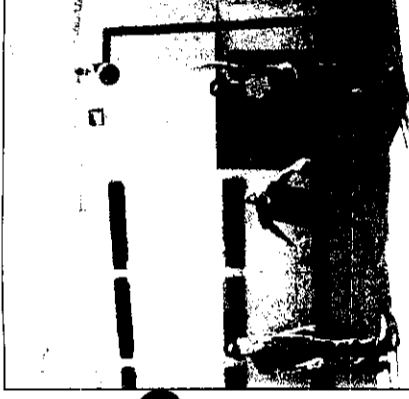
Councilmember Kevin McGrail correctly observed that denying us the ability to speak amounted to "throwing the First Amendment out of the window."

"They have the right to say their piece in a public setting I don't think their T-shirts are particularly offensive," McGrail said.

Following the substantial discussion by the council, the motion was voted upon. We watched as the vote remarkably unfolded 6-2—with Mayor Sullivan and Councilman Brandt dissenting to allow Kieffer back into the council chamber and let him speak.

Following a 20-minute recess, Kieffer and several of the other members spoke to the council, all wearing the T-shirts. All comments were absolutely eloquent, making salient points about discrimination and the bigotry of the members who would have denied us the freedom of speech we, as American citizens, are guaranteed.

Former A of F president Joe Reinhardt of Pinellas



Caught in the act—local TV videos revealed a clear difference between the hoops being removed from the jail grounds (above) and the new hoop being installed at the church (right). Judd was forced to backpedal and admit it was purchased brand new with county funds.

Defending his actions, Judd

responded to the letter at a press conference asserting several times that the equipment was obsolete and that his only choices were to sell it as scrap, take it to a landfill or donate it.

However, Ms. Wachs pointed out that the press photos from the sheriff's well-publicized event on December 23rd clearly showed that the basketball equipment being delivered and installed at the Turning Point Worship Center in Bartow was hardly "obsolete." "It looks virtually new and unused," she said.

Judd also stated that the sports equipment was directed at economically challenged areas where children did not have adequate access to parks or other recreational facilities. Ms. Wachs pointed out, "The churches he picked are not lower income. One is just five min-

TAMPA—On March 15, Atheists of Florida won a first round against attorneys for the City of Lakeland who were attempting to throw out the atheists' prayer lawsuit on technical grounds.

## Prayer Lawsuit can move forward

In a 23 page order, U.S. District Judge Elizabeth A. Kovachevich ruled against the City of Lakeland and Mayor Gow Fields' motion to dismiss A of F's claims that the Defendants violated the Establishment Clause of the U.S. Constitution, and the corresponding clause of the Florida Constitution.

The plaintiff's in the case are Atheists of Florida, Inc. and EllenBeth Wachs, who currently serves as the Vice-President of the organization. The defendants are the City of Lakeland and Mayor Gow Fields. A of F's attorney is Eric O. Husby, Esq., of the Law Office of Eric O. Husby, P.A. in Tampa.

A of F had filed the lawsuit July 2010 in the United States District Court in Tampa demanding an end to the defendants' unconstitutional practice of holding prayer rituals at the start of Lakeland City Commis-

utes from (my home). One is near an exclusive golf club, one charges \$3,300 a year tuition and one just opened a new school. Out of the eight churches only one seems to fit his stated criteria."

At the news conference, Judd said that everyone could play basketball at the churches that received the equipment, including "Even the atheists, and I would encourage them to do so," he said. To that invitation, Ms. Wachs responded, "Mr. Judd seems to be woefully unaware that he does not have the right to invite people onto property that he does not own."

Judd tried to downplay any impending legal action by the atheists saying, "They have no idea how I look forward to their silliness."

John Kieffer, president of Atheists of Florida, answered, "At issue in this case are the principles of the United States and Florida constitutions. Judd may think of it as silliness, but these principles are the foundation of the very laws that he was sworn to defend and protect."

At the time, Atheists of Florida was prepared to go forward with a Preliminary Injunction but since Mr. Judd had already transferred the basketball equipment, the exigent circumstances had passed. Atheists of Florida then proceeded through two FOIA requests (Jan. 4 and Feb. 14) to find out what the equipment was worth; how much additional tax-payer money was spent moving and installing the equipment; and how the sheriff decided to subsidize these specific churches instead of other non-profits, public parks or schools.

"Once we get this information, we'll make a decision on what our next step will be," Ms. Wachs said. "We have had Polk County taxpayers, which are neither atheists nor members of our organization, step forward and volunteer to be Plaintiff's in a lawsuit."

In a news interview (Jan. 5, Ch 8 WFLA), Stetson Law School professor Jeff Brown weighed in on Sheriff Judd's actions: "This is a theft. This property belongs to the taxpayers of Polk County."

tion meetings. A of F reasonably asked that the unconstitutional and unfair practice, which for years was performed entirely by evangelical clergy, be replaced with a moment of seated silence, which would allow all persons in attendance to pray or not, as they saw fit.

As a litigation tactic, after Atheists of Florida formally complained about Lakeland's prayer practices, the defendants included an invocation from a token representative of Lakeland's Jewish community. Also as part of its avowed litigation strategy, the defendants created a city ordinance which attempted to make it appear that the prayer rituals would take place just prior to the beginning of the meeting, disingenuously attempting to create the illusion that the prayer was not part of the official agenda and therefore not subject to constitutional scrutiny. The defendants claimed in their motion to dismiss that the new city ordinance rendered the case "moot." The judge saw through the defendants' legal maneuvering and rejected the defendants' "mootness" argument.

The defendants also argued that the atheists' com-

*Continued next page*

plaint "failed to state a claim on which relief can be granted." However, the court again rejected the City and the Mayor's arguments with respect to the Establishment Clause claims under both the U.S. and the Florida Constitutions.

The defendants also argued that the Mayor should be dismissed from the lawsuit altogether because he was "qualifiedly immune" from suit. The court again rejected defendants' arguments, and the court refused to

BARTOW, FL.—On February 22, 2011, and in front of a packed audience, Atheists of Florida president John Kiefler and Vice President EllenBeth Wachts were ejected from the Polk County School Board meeting facility by City of Bartow police officers. Mr. Kiefler was also arrested.

Ms. Wachts and Mr. Kiefler had been taking photos and speaking to each other in front of the meeting room while a local area pastor conducted a Christian prayer prior to the official start of the school board meeting.

## A of F officers ejected from Polk County School Board; president arrested



Top: EllenBeth Wachts (l) stands next to the preacher during the prayer ritual prior to the beginning of the Polk County School Board meeting. Above: John Kiefler being arrested.

ritual practices may have placed the board at risk of a lawsuit, the Tuesday afternoon meeting was the board's first attempt to change its practice. The change that Kay Fields, chair of the school board, and board members had adopted was an attempt to maintain secular prayers by conducting them just prior to the official start of the meeting. This tactic allowed the meeting to appear, in practice, to start with a Christian prayer while simultaneously maintaining that in fact the meeting had not yet officially started.

With the audience seated and board members and staff positioned at their official seats at the dais and without calling the meeting to order, the chair of the school board, Kay Fields, invited the pastor to the speaker's podium and ordered all in the room to rise for prayer. During the prayer, Ms. Wachts and Mr. Kiefler spoke to each other and took photos of board members, the pastor and of each other.

"Go to any meeting and people are milling about and talking prior to the meeting," said Ms. Wachts. "They scripted a drama and I was not an actor in

dismiss the suit against Mayor Fields in his "individual capacity."

The court only granted the defendants' motion on the atheists' secondary claims (not involving the Florida and Federal Establishment Clauses), and the court found that technically the claim against Mayor Fields in his "official capacity" was the same as a claim against the City itself.

it and they got mad. They forgot to include the role of the atheists."

Initial news reports indicated that Kiefler had made a loud outburst during the prayer. Ms. Wachts, however, stated that at no time did either of them address anyone in the meeting area except each other and mostly as adjustments to the arrangement of the photos being taken. "Mr. Kiefler did not have any sort of outburst to anyone and our comments were only to each other in a normal speaking voice," Ms. Wachts said.

However, when the prayer ended, it was school board member Frank O'Reilly who verbally attacked Kiefler by scolding him for being disrespectful to the prayer being offered by the preacher. Simultaneously, several people in the audience began to loudly berate and curse the atheists. Both Mr. Kiefler and Ms. Wachts asked numerous times: "Has the meeting been called to order?"

Within seconds, though, City of Bartow police officers, acting upon the directions of assistant superintendent Fred Murphy, physically engaged and subdued Kiefler, who, incidentally, was wearing the A of F T-shirt, which depicts an American flag inscribed with the words "ONE NATION INDIVISIBLE" and "ATHEISTS OF FLORIDA." As this was occurring, Ms. Wachts turned to Ms. Fields and stated, "You got your lawsuit, Kay," to which Ms. Fields answered, "You shut your mouth."

Kiefler was handcuffed, removed from the meeting room by two police officers and charged with resisting arrest and disorderly conduct. He was released on bail early morning of the following day.

Ms. Wachts was also roughly grabbed by a police officer. Though he obeyed her command to release her, she demanded that she leave the meeting room, which she did. Outside the school board building and while Ms. Wachts was questioning Bartow Police officer Griffith about what Mr. Kiefler was being charged with, Griffith gave her a verbal trespass warning and told her that if she came back on school property she would be subject to arrest. He then commanded Ms. Wachts to leave the property immediately or face arrest to which Ms. Wachts immediately complied.

Several weeks later, the Polk County state attorney added another violation to Mr. Kiefler's charges: Florida Statute 871.01. "Disturbing schools and religious and other assemblies." Mr. Kiefler has secured legal representation and is fighting the charges.



John Kiefler

## SB 1218 deletes the prohibition against using revenues from the public treasury... in aid of any church

euphemism used by the Discovery Institute and other advocates of teaching creationism in the public school science classes.

□ **SB 1550** [Negron] and **HB 1225** [Brandes] would *establish a voucher, or "Education Savings Account Program"* that would provide "a child with an opportunity to attend a public school or with funds to pay for private schooling or tutoring . . ." from kindergarten through high school. The "Savings Account" would be funded by the Department of Education, and that money could be used to pay for private school tuition, including religious schools.

\* \* \*

As would be expected with a conservative legislature, several bills seek to eliminate women's reproductive freedom and plunge Florida back to the dark ages of "back alley" abortions. All are founded on religious belief systems that assert a soul is present at any stage of the development of a fetus.

□ **HB 415** [Van Zant, Ahern, Baxley] would *outlaw all abortions*, except to "prevent the death of the pregnant woman" or "unreasonably reduce the likelihood of successful treatment of a life-threatening disease." There are no exceptions for rape, incest, or fetal anomaly. The bill is a direct challenge to *Roe v. Wade*, the United States Supreme Court, federalism, and has built-in severability clauses if some portions are declared unconstitutional.

□ **SB 1538** [Flores] is a joint resolution to amend the Florida State Constitution to *ban all public funding of abortions* "except as required by federal law or to save the life of the mother," and to overrule court decisions "which conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution." The Florida Constitution's right to privacy is a greater safeguard of essential civil rights and liberties than the federal Constitution, particularly in the areas of reproductive freedom and end of life decisions.

□ **HB 321** [Fruytillo, Ahern, Corcoran, Gaetz, Nuñez, Plakon, VanZant] and **SB 1948** [Storms] would *ban all abortions after 20 weeks "post fertilization."* These bills define an "unborn child" or "fetus" as "an individual organism of the species homo sapiens from fertilization until live birth." The bills have no exceptions for rape, incest, fetal anomalies, or mental health. The only exceptions to the ban arise when the woman "has a condition that so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or avert the serious risk of substantial and irreversible impairment of a major bodily function" or when "necessary to preserve the life of an unborn child." The bills also impose draconian reporting requirements on providers, and provide a private cause of action for violations of the statute, with a statute of limitations of 30 years.

□ **SB 1748** [Flores] *imposes onerous regulations on abortion providers* that are not imposed on other health care providers.

□ **HB 1127** [Porter] and **SB 1744** [Storms] are identical to last year's mandatory ultrasound bill, which *required all women who seek an abortion to undergo an ultrasound* as part of "informed consent," and to "allow the woman to view the live ultrasound image" while having the physician or other professional "review and explain the live ultrasound images." The woman can refuse to view the images, but must "complete a form acknowledging that she was offered an opportunity to view her ultrasound but that she rejected that opportunity....not based on any undue influence from a third party." Although the ultrasound bill passed last year, it was vetoed by Gov. Crist.

□ **SB 1094** [Fasano] is another iteration of the fetal homicide bills seen over the past few years. The bill *makes it vehicular homicide to kill "an unborn child,"* defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." There is no *scienter*, or intent requirement, and no requirement that either the person charged or the pregnant woman even be aware of the pregnancy!

□ **HB 97** [Gaetz] and **SB 1414** [Wise] *ban any health insurance policy* "purchased in whole or in part with state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act" *from covering abortions.* Coverage is only permitted "for an abortion that is performed to save the life or physical health of the mother or when the pregnancy resulted from an act of rape or incest."

□ **HB 1247** [Stargel] and **SB 1770** [Hays] *gut the judicial process by which minors obtain waivers of the requirement that a parent or guardian be notified that she is seeking an abortion.* The judicial process, not counting any appeal from a dismissal, is extended from the current 48 hours from the filing of a petition to a potential two weeks for a judicial bypass ruling.

Seems there's one bill they may be overlooking. The "botched abortion" bill, that could, oh, say, prescribe heavy prison sentences for any physician who would "treat, give aid or comfort" to any woman seeking treatment for severe hemorrhaging resulting from a botched back-alley abortion. Some might consider that a "death panel" bill.

If many or most of these bills pass legislation and are signed by the governor, one can only speculate the kind of bills that may follow in successive legislative sessions. Could blasphemy be a prosecutable offense? Would increased oppression of homosexuals be enacted? Will prayer be mandated in what remains of our public schools?

It should be clear that our civil liberties are under extreme threat, and the constitution may be unable to salvage them.

LAKELAND, FL. On March 3, 2011, several days before she was to be questioned in her deposition by the city's attorneys in the prayer lawsuit, Atheists of Florida vice-president EllenBeth Wachs, a retired attorney, was served with a curiously-timed warrant and abruptly arrested for allegedly practicing law without a license.

At about noon, over a dozen sheriff's deputies and other law enforcement officials, many garbed in

## A of F vice-president Wachs arrested

SWAT style para-military gear, descended on her home in unmarked vehicles; arrested Ms. Wachs; and searched her home.

Two bearded officials in SWAT gear held the two employees of her internet jewelry supply business at gunpoint as unidentified agents proceeded, for several hours, to systematically tear apart her house, including searching her cars and employees' cars and belongings. Agents seized Ms. Wachs' personal and business computers, cell phone, documents and other items, including copies of the sheriff's office credit card receipts that Ms. Wachs had received in response to her FOIA requests.

Ms. Wachs was released several hours later that day on \$1,000 bail. She has since secured legal representation to fight the charge.

Of interest are the three people identified as wit-

nesses in the arrest affidavit: Mayor Gow Fields, Ann Gibson and Stacy Butterfield. Fields is significant in two ways: not only is he a named defendant in our prayer lawsuit against the City of Lakeland, but it was his wife, Kay Fields, the chairperson of the Polk County School Board, that Ms. Wachs had promised a lawsuit a few days prior during the February 22<sup>nd</sup> school board "pre-meeting" incident.

Gibson is the attorney for the sheriff's office with whom Ms. Wachs dealt to obtain documents in response to the FOIA requests about the sheriff's misuse of taxpayer resources.

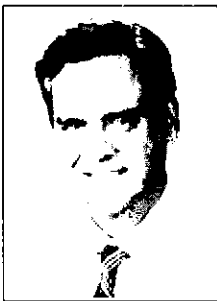
Butterfield is a board member of the homeowner's association where Ms. Wachs resides with whom there had been previous confrontations. Ms. Butterfield is employed at the County Clerk's Office (where Ms. Gibson had been previously employed) and, significantly, shares membership with Mayor Fields and Sheriff Judd on the board of directors of "Polk Vision," described by its website as a "partnership ... to ensure implementation of Polk County's community vision," including "developing [the county's] quality of life ... spiritually."

Ms. Wachs' deposition in the prayer lawsuit (scheduled for March 9) had to be delayed as a result of the havoc caused by the ill-timed arrest, search and seizure of her property.

THERE IS A DISTURBING CASE out of Florida where EllenBeth Wachs, 48, the legal coordinator for the Atheists of Florida had been arrested for unauthorized practice of law because she signed letters using "Esq." for esquire.

## Florida prosecutors charge leading atheist advocate with unauthorized practice of law due to the use of 'Esquire'

~ Jonathan Turley, JD



Wachs notes that her group had just launched an unpopular protest of prayers at public meetings at Polk County as well as criticizing donations by the Polk County Sheriff's Office to churches. What followed was a raid on her house, seizure of things like her computer, and a criminal charge. I must confess some skepticism about the charge.

Fla. Stat. sec. 454.23 states:

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This commentary was published 1 April 2011 on his blog at <http://jonathanturley.org/2011/04/01/florida-prosecutors-charge-leading-atheist-advocate-with-unauthorized-practice-of-law-due-to-the-use-of-esquire/>

Penalties.— Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The State's Attorney's Office charges that Wachs formerly practiced law in Pennsylvania, but she retired from that state's bar around 1997 and is not a member of the Florida bar. Since the law states that a person cannot use "a name, title, addition or description" to imply that they are a practicing lawyer without authorization, the prosecutors have stated that they found numerous letters including "Esq." after her signature.

Ironically, Esquire comes from England where it merely designates a person of distinction. It is based on old French for shield barrier, or "esquier." It is not unheard of for prosecutors to cite the use of the notation as evidence of the unauthorized practice of law. However, I am unaware of a case where it was the core allegation. Notably, "In the Matter of Wyrick," (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, the bar cited the use of Esquire by the accused but only viewed it as problematic when combined with express representations of being a practicing lawyer.

In Office of Disciplinary Counsel v. Brown, 99 Ohio St.3d 114, 2003 Ohio 2568, 789 N.E.2d 210 (2003).

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the Ohio Supreme Court addressed a case where this matter arose. The Court expressly did not prohibit him from using "J.D." or "Juris Doctor" or "esquire." It was the fact that these titles were used as part of an ongoing scheme to induce the belief of authorized practice that led to the individual's charge:

In 2003, when considering prior charges of unauthorized practice of law against respondent, this court declined to enjoin respondent from using "J.D." or "Esq." in connection with his name. *Disciplinary Counsel v. Brown*, 99 Ohio St. 3d 114, 2003 Ohio 2568, 789 N.E.2d 210, P 12, fn. 1. [\*6] However, we expressly admonished respondent that he risked punishment for contempt for continuing to engage in the unauthorized practice of law. Id. Clearly, respondent has not heeded this admonishment, nor has he heeded this court's injunction prohibiting him from engaging in the unauthorized practice of law. Respondent's use of the term "Esq." in connection with his name on his office stationery and business cards is misleading. His use of the term was one of the factors that induced a federal judge, a practicing lawyer, a school teacher, and a city prosecutor into believing that he was an attorney. As the board concluded, the record in this case included substantial credible evidence that respondent's use of the term "Esq." induced clients to believe that he was a lawyer, a misunderstanding that he was aware of and failed to correct.

The federal court in *In Re William J. Patton*, 1998 U.S. Dist. LEXIS 17662 (1998), did state"

Patton's use of the title "Esquire," which in our experience is used exclusively by attorneys, in itself appears to constitute a violation of this stat-

ute. We note, again, however, that we reached the conclusion that Patton was engaged in the unauthorized practice of law in the 9/23 Order without reference to his abuse of the title "Esquire."

It is not uncommon for individuals (who are first found to be practicing without a license) to be barred from the use of the term. Thus, in *In re Banks*, 561 A.2d 158, 166-67 (D.C. 1987), the court imposed the following limitation:

FURTHER ORDERED that respondent is hereby permanently enjoined and restrained specifically from:

\* \* \*

(2) Using such terms to describe himself or his qualifications as "lawyer," "attorney," "counsel," "counselor," "Esquire," "advocate," or any abbreviation of the foregoing terms, or any other term or description which reasonably denotes that respondent is licensed to practice law in the District of Columbia;

There seems in my view a general thrust to the couple of dozen or so cases dealing with such labels. I find it highly disturbing to see the simple use of Esquire as the grounds for an action. I do not view the term as denoting a practicing lawyers in and of itself. These cases almost uniformly cite the use of the title in a highly contextual sense where the cause of the action is based on clear assertions of practice. Esquire, it seems to me, can denote a lawyer (trained in the law) as opposed to an attorney licensed for practice. The key is context.

The context here could not be more disturbing given Wachs' involvement in an unpopular exercise of free speech. To combine that context with such a weak basis for a charge of unauthorized practice raises flags of retaliatory action.

*The ACLU has prepared a list of several bills pending before the 2011 Florida Legislature that threaten civil liberties. These are the bills they consider to be the worst threats to state/church separation.*

TALLAHASSEE It is abundantly evident that many of the conservative legislators have every intention of

revising our state Constitution in order to convert Florida into a Christian Theocracy. The absolute

intolerance demonstrated by these bills exposes the danger of the conservative mindset and their intolerance of any freedom of choice inconsistent with their Medievalist dogma. Their task as they see it, is to completely revoke freedom of conscience from the law

while imposing their religious ideology upon all. Their proposed legislation is the most un-American imaginable.

❑ **SB 1218** [Altman] is a joint resolution to amend the Florida State Constitution to repeal the "no aid" provision. The bill provides that an individual may not be barred from participating in any public program because that individual has chosen to use his or her program benefits at a religious provider, and *deletes the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.* This amendment depicts the refusal of the state to provide funding for religious institutions as religious discrimination. If passed, it would have grave consequences for the public schools, and would remove the most important protections for the separation of state and church.

❑ **SB 1854** [Wise] would require that public schools *teach "[a] thorough and critical analysis of the scientific theory of evolution.*" Although the bill appears innocuous, the term "critical analysis" is a

## Worst bills to watch

*While focusing on the events in Imperial Polk County, we also need to be aware of, and act upon, the following bills working their way through the state legislative process. Please convey your strong disapproval by contacting your state legislators, writing letters to newspapers, and by the many other means. As secular voters, we represent a significant segment of the Florida community; only by being heard loud and clear—and frequently—can we begin to make a difference.*