

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

American Civil Liberties Union of Ohio Foundation, Inc.)	Case No. 1:01-CV-00556
)	
)	
Plaintiff,)	Judge Kathleen M. O'Malley
)	
-vs-)	<u>Motion for an Order to Show Cause Why</u>
)	<u>Defendant Should Not be Held in Contempt</u>
Robert Ashbrook, et al.,)	<u>and Supporting Memorandum</u>
)	
Defendant.)	

Plaintiff, by and through undersigned counsel, respectfully requests this Court to issue an Order to show cause why Defendant the Honorable James DeWeese should not be held in contempt for violating this Court's Order of June 11, 2002.

Respectfully submitted,

/s/ Jeffrey M. Gamso
Jeffrey M. Gamso (0043869)
Legal Director, American Civil Liberties
Union of Ohio Foundation, Inc.

Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, Ohio 44103
Telephone: (216)472-2220
Fax: (216) 472-2210
jmgamso@acluohio.org

/s/ Michael T. Honohan
Michael T. Honohan (0014082)
Of Counsel to American Civil Liberties
Union of Ohio Foundation, Inc.
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, Ohio 44103
Telephone: (216)472-2220
Fax: (216) 472-2210
mhonohan@acluohio.org

/s/ Carrie L. Davis
Carrie L. Davis (0077041)
Staff Attorney, American Civil Liberties
Union of Ohio Foundation, Inc.
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, Ohio 44103
Telephone: (216) 472-2220
Fax: (216) 472-2210
cdavis@acluohio.org

MEMORANDUM IN SUPPORT OF MOTION

On June 11, 2002, this Court issued a Memorandum and Order which, *inter alia*, declared the display of the Ten Commandments on the wall of Courtroom One in the Richland County Court of Common Pleas to violate the Establishment Clause of the First Amendment and Article I, Section 7 of the Ohio Constitution, and ordered Defendant Judge DeWeese to immediately remove the display.

On June 14, 2002, this Court denied Defendant Judge DeWeese's request for a stay of the Court's order pending his appeal. On June 20, 2002, the Sixth Circuit also denied a request by Defendant for a stay pending his appeal.

On July 14, 2004, the Sixth Circuit decided Defendant's appeal, affirming the District Court's decision that "Judge DeWeese's display of the Ten Commandments violates the Establishment Clause of the First Amendment." *American Civil Liberties Union of Ohio Foundation, Inc. v. Ashbrook*, 375 F.3d 484, 495 (6th Cir. 2004).

However, despite these rulings, the display of the Ten Commandments remains (or has been reposted) on the wall of Courtroom One in Richland County, albeit in a new frame with an additional list of "Humanist Precepts" printed next to the Decalogue. See Affidavit of Melissa Balancini, (attached as Exhibit A). The current document includes a discussion of the difference between the "Moral Absolutes" of the Ten Commandments and the "Moral Relatives" of the Humanist precepts. It concludes, "I join the founders in personally acknowledging the importance of Almighty God's fixed moral standards for restoring the moral fabric of this nation." This Court has, among its inherent equitable powers, the power to hold in contempt parties who are disobedient of its orders. The contempt power may be used to redress any of a wide variety of forms of misconduct that

occur during the course of litigation and to preserve both the orderly administration of justice and the inherent dignity of the District Court itself. *See Vaughn v. City of Flint*, 752 F.2d 1160 (6th Cir. 1985) (contempt power inherent in trial court); *see also Ohio Hoist Mfg. Co. v. LiRocchi*, 490 F.2d 105, 113 (6th Cir. 1974) (same).

In the case at bar, the use of this power is warranted. This Court unambiguously ordered the removal of the poster of the Ten Commandments from Courtroom One. The Order specified that the removal was to take place “immediately.” Furthermore, both this Court and the Sixth Circuit Court of Appeals clearly ruled that the hanging of a poster of the Ten Commandments violated the Establishment Clause of the First Amendment. Yet, nearly five years later, the Ten Commandments poster can still be seen on the wall in Defendant Judge DeWeese’s courtroom.

The Defendant’s public defiance of an order of both this Court and the Sixth Circuit undermines the orderly administration of justice. The effect is exacerbated when, as here, the party disregarding the order is a judge. Every day the First Amendment is violated in Courtroom One is another day of irreparable harm to the Plaintiff and its members. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (plurality opinion).

Therefore, for the foregoing reasons, Plaintiff respectfully moves this Court for an Order requiring Defendant Judge James DeWeese to Show Cause why he should not be held in contempt.

Respectfully submitted,

/s/ Jeffrey M. Gamso
Jeffrey M. Gamso (0043869)

/s/Michael T. Honohan
Michael T. Honohan (0014082)

/s/ Carrie L. Davis
Carrie L. Davis (0077041)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion and Memorandum was served upon all Counsel of record via electronic filing this 29th day of May, 2008. Concurrently, a copy of said Motion and Memorandum was sent by U.S. Mail, postage prepaid, to Defendant the Hon. James DeWeese, c/o Richland County Courthouse, 50 Park Avenue East, Mansfield, OH 44902.

/s/ Carrie L. Davis
ACLU of Ohio Staff Attorney