

FREEDOM FROM RELIGION *foundation*

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February 10, 2011

**SENT VIA U.S. MAIL AND FAX
(262) 335-4776**

The Honorable Andrew T. Gonring
Washington County Courthouse
432 E Washington St
West Bend, WI 53095

Dear Judge Gonring:

I am writing on behalf of concerned residents of Wisconsin and members of the Freedom From Religion Foundation (FFRF) to alert you to objections to the oath that jurors must take prior to being sworn in. FFRF is a national nonprofit organization with more than 16,000 supporters across the country including nearly 1,300 members in Wisconsin. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that recently a resident of Washington County was summoned for jury duty. We understand the jury orientation began with a video describing the duties of the jury. After the video, the jury panel was then sworn in with an oath that ended with "so help me God." It is our information and understanding that at no point was the option of a secular affirmation given. Nor was there an opportunity to speak to a bailiff or other court personnel to express or declare a desire for a secular affirmation.

First and foremost, the U.S. Supreme Court held that "neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). Decisions held by lower federal courts further exemplify that witnesses and jurors must be allowed to affirm without reference to a deity. See *Ferguson v. Commissioner*, 921 F.2d 588 (5th Cir. 1991)(Court held that a witness' sincere belief that an affirmation has a religious nature is sufficient to implicate free exercise concerns); *Gordon v. Idaho*, 778 F.2d 1397, 1399-1400 (9th Cir. 1985)(Court must explore least restrictive means of assuring truthful testimony); *Society of Separationists v. Herman*, 939 F.2d 1207, 1215-17 (5th Cir. 1982)(Court held that a judge's attempt to coerce a potential juror to take an affirmation, despite religious objections is a violation of the Free Exercise Clause). To do otherwise violates the Free Exercise Clause.

Secondly, under Wisconsin Statute 756.08(1), "The jurors selected to try the issues in the action or proceeding shall take an *oath or affirmation* to try the issues submitted to them..." (Emphasis added) This language clearly provides for a secular affirmation

option. Therefore no juror should be made to take a religious oath. Not providing a secular alternative violates Wisconsin law.

It appears that jurors in your court are unaware that the option even exists. Therefore, it appears as though the Court is lending its power and prestige to religion, amounting to a governmental endorsement that excludes the 15% of the American population that is nonreligious (American Religious Identification Survey 2008). Instead, courts should offer the option upfront; protecting jurors from the potential for embarrassment and from discrimination.

We request that the Court modify its procedure to ensure that all jurors are aware of their right to choose either an oath or affirmation. We request a written reply indicating the steps taken to avoid future violations of the Constitution and Wisconsin Statutes.

Sincerely,



Rebecca S. Markert
Staff Attorney