

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KAIL MARIE, et al,)	
)	
)	
)	
vs.)	Case No. 14-cv-02518-DDC/TJJ
)	
ROBERT D. MOSER, M.D., et al.,)	
)	
Defendants.)	

MOTION TO INTERVENE OF
WESTBORO BAPTIST CHURCH, INC.;
MOTION FOR HEARING; AND,
BRIEF IN SUPPORT

Pursuant to Fed.R.Civ.P. 24(a) and (b), Westboro Baptist Church, Inc. (WBC) moves for leave to intervene as a defendant in this action and to file the attached answer (**Attachment A**). WBC requests a hearing on this motion pursuant to D.Kan.Rule 7.2. As her brief in support hereof, WBC states:

1. WBC is an independent Bible-believing church located in Topeka, Kansas (since 1955), which has had a highly conspicuous public testimony against the proud ruinous sins of this generation; including a nearly 25-year street ministry, engaging the state, nation and world in a robust debate about its policies of sin, and the consequence of such pervasive proud sin to the country and its people. Throughout its years of picketing, WBC has warned Kansas that the sin of

homosexuality, and particularly same sex marriage, will bring great woe and harm to this state. Today the number one moral issue facing this nation is same sex marriage. WBC has a vital interest in what the courts rule regarding this issue, as it directly impacts their religious practices, beliefs, preachments, picketing, association and speech, as well as the wellbeing of their fellow man.

2. At the core of WBC's picketing is the Bible doctrine that a proper marriage is between one man, one woman, for life, is a Scriptural symbol of the great mystery of Christ and His Bride, the Church of the Lord Jesus Christ. (See sample passages bespeaking the seriousness of the marriage covenant and tampering with it at **Addendum 1**). Same sex marriage rips that symbol to shreds, and is utterly contrary to Bible doctrine.
3. This lawsuit is, at its core, a pursuit by the plaintiffs to have the government of the State of Kansas endorse, and officially require respect and dignity and social approval of, same sex marriage, in the form of a government marriage license, which will bind and impact every citizen of the State. All other arguments in plaintiffs' filings and other similar litigation about financial and health issues, and the like, are offered only to buttress this core goal, to wit, societal acceptance, by force of government power, of the same sex union.
4. WBC desires to oppose this effort by the plaintiffs, including by advocating in favor of the current laws of Kansas, which minimally hold the line against complete corruption of a proper Bible marriage.

5. WBC desires to assert that it is constitutional folly to suggest that a sinful-behavior-based union should be a union that is afforded civil rights and granted the imprimatur of respectability by a license from the government; and that in doing so the government violates its duty of religious neutrality; and puts itself in the position of imposing sin on the citizens, to the great detriment and harm of the health and welfare of the citizenry. To the extent any recent law suggests that same sex sexual and romantic unions should be afforded a government marriage license, WBC urges a change in the law herein. Further, any such recent law does not address the unique circumstances that WBC presents, particularly related to the very real need to protect WBC's constitutional rights against an onslaught that will be effectuated if same sex marriage becomes the law of Kansas. It would be naïve to suppose that granting marriage licenses to homosexuals will end the discussion; the Court can take judicial notice of the waves of litigation that have ensued where same sex marriage is recognized, with homosexual activists trying to force others to participate, from bakers, to florists, to clergy, and anyone else on the path of their journey to force all America to call these same sex unions that violate God's law, holy.¹

¹ As just a few examples, please see "Baker forced to make gay wedding cakes, undergo sensitivity training, after losing lawsuit," reported by *FoxNews* June 3, 2014, Online: <http://fxn.ws/1kGIUON> (last visited October 26, 2014). And see "This Guy Cited His Christian Faith in Refusing to Make T-Shirts Advertising a Gay Pride Parade – And Now His Company Is Being Punished," reported by *TheBlaze*, Online: <http://bit.ly/1tp8W3o> (last visited October 26, 2014). The airwaves are thick with such reports, to such a degree that the Court can take judicial notice this is happening.

6. Further WBC desires to assert the constitutional rights of its members, to ensure that should the Court decide to afford plaintiffs relief in any measure, that simultaneously the Court protects the rights of WBC members to not participate in any fashion whatsoever in this great sin against God, pursuant to the promise of the Tenth Circuit Court of Appeals:

We also emphasize, as did the district court, that today's decision relates solely to civil marriage. . . . [R]eligious institutions remain as free as they always have been to practice their sacraments and traditions as they see fit. . . . [W]e continue to recognize the right of the various religions to define marriage according to their moral, historical, and ethical precepts. Our opinion does not intrude into that domain or the exercise of religious principles in this arena. The right of an officiant to perform or decline to perform a religious ceremony is unaffected by today's ruling.

Kitchen v. Herbert, 755 F.3d 1193, 1227 (10th Cir. 2014).

The filings to date in this case by all parties, including the government filings, are woefully silent on any need to protect this right (or any other related right, such as the right not to have any property, office or other aspect of WBC forced to be involved, or the right of any other individual to withhold participation from baking the wedding cake to conducting the religious marriage ceremony). WBC is the most likely target for same-sex-marriage and gay activists, given their high profile public ministry in opposition to this sinful behavior, such that they are in particular need of protection, should the constitutional right to religious liberty have any meaning.

7. WBC seeks to intervene as a matter of right. In *The New Mexico Off-Highway Vehicle Alliance v. United States Forest Service*, 2013 U.S.App. LEXIS 22678

(10th Cir. 2013), the Court vacated an order denying a motion to intervene, finding that two environmental groups had indisputable legally protectable interests in environmental concerns; that those interests would be impaired if the outcome of the district court litigation was other than upholding a travel management plan for a national forest; and that although both the Forest Service and the environmental groups would defend the plan, it could not be assumed that the environmental groups' interests wholly aligned with those of the Forest Service. During administrative proceedings the Forest Service had made comments in disagreement with the environmental groups. Further, the Court noted that there was no guarantee that the Forest Service's policy would not shift during litigation. The Court said:

The final element, the adequate-representation element, places a minimal burden on the environmental groups to show a possibility that neither of the parties will adequately represent their interests. See *WildEarth Guardians [v. Nat'l Park Serv.]*, 604 F.3d [1192] at 1200 [10th Cir. 2010]. Because the NMOHVA represents opposing interests to the environmental groups' interests, the real question is whether the Forest Service would represent them, since both support the Plan. For the following reasons, we conclude the Forest Service would not do so.

On repeated occasions we have recognized that it is impossible for a governmental agency to protect both the public's interests and the would-be intervenor's private interests *Id.* Indeed, "[w]here a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is satisfied." *Id.* This is because

The government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the

litigation. In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor.

2013 U.S.App. LEXIS 22678 at 7-8.

8. The Kansas Attorney General (representing all defendants) is unable to adequately represent WBC because of the political pressure that flows from widespread disagreement with WBC and her ministry and religious message.
9. The Kansas Attorney General is unable to adequately represent WBC because to do so would cause the Attorney General to assert religious viewpoints and constitutionally protected religious rights, which is arguably contrary to the duty of the government to remain neutral on matters of religion, and would constitute a breach of the separation of church and state doctrine.
10. The Kansas Attorney General's filings have reflected arguments such as Eleventh Amendment immunity, standing, and abstention. No arguments are asserted about the constitutional rights of religious liberty, speech, practice, worship, association and speech which are core to protecting WBC's interests.
11. The Kansas Attorney General is unable to adequately represent WBC's interests, in light of comments he has made in his official capacity (both as Attorney General, and in earlier years as the Kansas Senate Majority Leader and "chief

architect” of legislation against WBC), reflecting official disagreement with WBC *expressly related to her religious preachments*.²

12. The Kansas Attorney General cannot adequately represent WBC’s interests, because WBC asserts that the government has a compelling and significant government interest in protecting the health and welfare of the citizens, and same sex marriage is contrary to the health and welfare of the citizens. The Kansas Attorney General has not asserted this position in its filings herein. Specifically,

² For example, in February 2006, a story run by *NBC News* quoted Kansas Senate Majority Leader Derek Schmidt asserting that the Kansas legislature, in proposing a law limiting funeral protests, was not proposing to silence WBC’s speech, “as offensive as most of us find that,” see Online <http://nbcnews.to/1pKY0Gu> (last visited October 25, 2014). In February 2007, a story in the *Topeka Capitol Journal* described Senator Derek Schmidt testifying before a Senate committee in an effort to get a law passed against WBC’s picketing. “I guess we’re here trying again,” the Independence Republican said with a smile.” Online: <http://bit.ly/1uUP0jJ> (last visited October 25, 2014). In July 2007 a story appearing in *Cult News* said concerning efforts to pass a law against WBC’s picketing: “Senate Majority Leader Derek Schmidt, an Independence Republican and a chief architect of the bill, said the Legislature would do whatever was necessary to make the law workable.” Online: <http://bitly.com/12yF1db> (last visited October 25, 2014). Attorney General Derek Schmidt shows on the list of counsel who filed briefs against WBC before the United States Supreme Court in *Snyder v. Phelps*. Online: <http://1.usa.gov/1yyizvi> (last visited October 25, 2014). In March 2011, after the Supreme Court ruled that WBC’s religious picketing was protected in *Snyder v. Phelps*, 562 U.S. ----, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011), Attorney General Derek Schmidt issued a statement that was broadly circulated, saying: “Kansas have endured for so long the embarrassment brought upon our state by the shameful conduct of the Westboro Baptist Church.” Online: <http://bitly.com/1slHqNi> (last visited October 25, 2014). These comments reflect that it is highly unlikely that the Attorney General will adequately represent WBC’s interests in this matter.

the Kansas Attorney General has not, and likely will not assert that the government has a compelling interest in protecting the people from the destructive effects of same sex marriage. “[G]overnment is vested with the responsibility of protecting the health, safety, and welfare of its citizens. See *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756, 105 S. Ct. 2380, 85 L. Ed. 2d 728 (1985) (“The States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons” (internal quotation marks omitted)),” *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330, 342-343, 127 S.Ct. 1786, 1795, 167 L.Ed.2d 655, 667 (2007). Nothing is more harmful to the health and welfare than sin. In his best known sermon, “Sinners in the Hands of an Angry God,” expounding Deuteronomy 32:35, *Holy Bible*, “Their foot shall slide in due time,” American theologian Jonathan Edwards said this:

Sin is the ruin and misery of the soul; it is destructive in its nature; and if God should leave it without restraint, there would need nothing else to make the soul perfectly miserable. The corruption of the heart of man is a thing that is immoderate and boundless in its fury; and while wicked men live here, it is like fire pent up by God's restraints, whereas if it were let loose it would set on fire the course of nature; and as the heart is now a sink of sin, so, if sin was not restrained, it would immediately turn the soul into a fiery oven, or a furnace of fire and brimstone.³

³ This sermon can be found Online at <http://bit.ly/Secdkc>. (last visited October 26, 2014). Jonathan Edwards' (1703-1758) biography can also be found Online at <http://bit.ly/VEhsIW> (last visited October 26, 2014), as part of a full collection of information and sermons at the online Jonathan Edwards Center at Yale University. This revivalist, theologian, pastor, philosopher and (briefly before his death) president of

Nothing is more destructive to a nation than wholesale rejection of the plain standard of God. “The wicked shall be turned into hell, and all the nations that forget God.”⁴ The expositor Adam Clarke’s Commentary on “all the nations that forget God:” “They will not live in his fear. There are both *nations* and *individuals* who, though they *know* God, *forget* him, that is, are *unmindful* of him, do not *acknowledge* him in their designs, ways, and works. These are all to be *thrust down into hell*,” (emphasis in original).⁵ “Righteousness exalteth a nation: but sin is a reproach to any people.”⁶ “But in every nation he that feareth him, and worketh righteousness, is accepted with him.”⁷

It is no small matter for a nation to accept the sin of sodomy, and the lifestyle or agenda⁸ that it entails. The description of the utter annihilation of Sodom and

College of New Jersey (later Princeton University), represents the kind of preacher found in this nation over two hundred years ago.

⁴ Psalm 9:17, *Holy Bible*.

⁵ This commentary by British Methodist theologian and biblical scholar Adam Clarke (1762-1832) can be found Online at <http://bit.ly/VEndpW> (last visited October 26, 2014).

⁶ Proverbs 14:34, *Holy Bible*.

⁷ Acts 10:35, *Holy Bible*.

⁸ We use the term “agenda” advisedly. Justice Scalia in his dissent in *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003), said: “Today’s opinion is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct,” 539 U.S. at 602, 123 S.Ct. at 2496, 156 L.Ed.2d at 541.

Gomorrah and three nearby cities is stark, and directly tied to homosexuality. This historical event described in Genesis 19:1-28, *Holy Bible*, must be considered at this hour, in all its graphic glory, and can be found at **Addendum 2** for ready reference. Every adult, child, suckling and animal – utterly destroyed. (Most likely amidst a lot of talk about committed loving relationships and dignity and respect.) Sodom is held as an example in the New Testament, for instance: “Even as Sodom and Gomorrah, and the cities about them in like manner, giving themselves over to fornication, and going after strange flesh, are set forth for an example, suffering the vengeance of eternal fire.”⁹

Concerning this event, Christ said, “Remember Lot’s wife,”¹⁰ because she looked back on a people God judged to be sinful to the point of destruction, with fondness and longing. Dr. John Gill on this passage: “[T]he reason of her looking was either to see what would be the end of her father’s house and family; or as others, because her heart yearned after her daughters, and she looked back to see if they followed her.”¹¹ Jamieson, Fausset, Brown Commentary say, “Her

An essential part of this agenda is the government’s blessing on these unscriptural unions in the form of a marriage license.

⁹ Jude 1:7, *Holy Bible*.

¹⁰ Luke 17:32, *Holy Bible*

¹¹ This commentary by theologian, English Baptist preacher and biblical scholar Dr. John Gill (1697-1771) can be found Online at <http://bit.ly/VTT56Q> (last visited October 26, 2014).

heart was in Sodom still.”¹² Space does not permit recounting the horrific historical description of the civil war that erupted in ancient Israel after sodomites of the tribe of Benjamin raped a woman to death, and the men of that tribe fought for that sin. The tribe of Benjamin was nearly wiped out, as you can read in the book of Judges, chapters 19-21. It is not a small thing in God’s eyes for a nation to embrace proud sin, let alone the sin of homosexuality.¹³

Worse still is same sex marriage, in its destructive effect on society. The old Jewish writings report that the final offense that brought Noah’s Flood was the making of marriage contracts between men. Here it is described in *A Spiritual and Ethical Compendium to the Torah and Talmud* by Rabbi Arthur Segal and

¹² This commentary by theologian, Scotland preacher and biblical scholar Robert Jamieson (1802-1880); theologian, England preacher and biblical scholar A. R. Fausset (1821-1910); and Scotland preacher, professor of theology and biblical scholar David Brown (1803-1897); published in 1871, can be found Online at <http://bit.ly/1hJDkp> (last visited October 26, 2014).

¹³ Many more passages are found in the Scriptures condemning homosexuality, including the Mosaic code forbidding and calling for the death penalty for homosexuality, Leviticus 18:22 and Leviticus. 20:13, *Holy Bible*, reiterated in the New Testament at Romans 1:32, *Holy Bible*, as a crescendo at the end of an exhaustive condemnation of men with men and women with women, calling it “uncleanness” and “vile affections,” Romans 1:21-31, *Holy Bible*. The Bible refers to practicing homosexuals as dogs because of their nature, see Philippians 3:2 and Matthew 7:6, *Holy Bible*; and they are described as being “without” heaven in the end, Revelation 22:15, *Holy Bible*. The Apostle Peter describes them as “natural brute beasts made to be taken and destroyed,” 2 Peter 2:7-12, *Holy Bible*; and Christ describes the conditions in the last days – at the time of his Second Coming to earth in power and glory – as like the days of Lot and Noah, with men marrying “wives” (divorce/remarriage) and men being “given in marriage,” Luke 17:27, *Holy Bible* (traditionally the woman is *given* in marriage). The inescapable conclusion is that the Bible condemns and prohibits homosexuality and same-sex marriage.

Frank Dunne, Jr., 2008, at 47-48 (online: <http://bit.ly/1rGHgkp> last visited October 26, 2014).

[Genesis] Verse 6:11 says that the world was corrupt and filled with robbery. God was going to destroy the world for this corruption and robbery. This seems awfully harsh, especially in today's world where corruption and theft seems commonplace. Rashi [Rabbi Shlomo Yitzhaki, 1040, France] says a better translation of corruption is immorality and idol worship. The Midrash says that adultery, incest and stealing were all part of man's daily schedule. Powerful men would take any women that they chose. The Midrash also says that a major sin of this generation was sexual relations purely for lascivious gratification. Talmud Tractate Sanhedrin 57A says that the world was immersed in jealousy, greed, theft, violence, lying, impatience, intolerance, deception and fraud. The worst of all the transgressions according to both Rashi and Ibn Ezra was that people exploited each other sexually. Sounds rather familiar, doesn't it? Hold on, there's more.

The Midrash Vayikra Rabba says: "Everyone and everything became amoral. Even animals became so morally corrupt and decadent that one species mated with another species – dogs with wolves, horses with donkeys, snakes with birds. **The generation of the Flood was finally wiped away when they started writing songs extolling cohabitation of males with males and males with animals.**" **Another Midrash says that males just didn't sodomize other males, but that they signed ketobot (marriage contracts) legalizing these relationships.** (Emphasis added.)

Since the Generation of the Flood, all generations have known of Noah's Flood. It bears attending to the details briefly here. Noah preached to his generation for 120 years. None attended to his words, and only he, his wife, his three sons, and their wives, boarded the ark. The description of the complete

destruction of all mankind – a population as or bigger than today’s population¹⁴ – is starkly described in Genesis 7:11-23, *Holy Bible*, and should be considered at this hour; found at **Addendum 3** for ready reference.

The standard for marriage in the Bible is one man, one woman, for life (see Attachment B). When this nation tampers with marriage as properly defined in the Scriptures, it is tampering with the very symbol of Christ and His Bride, the Church. It is a very serious matter; same-sex marriage is totally contrary to the standard of God. Unquestionably it is best for the health, safety and welfare to follow God’s standard on marriage, and the benefits of a proper scriptural

¹⁴ “May this suffice on the subject of the physical world before the Flood. Much more could be said. What has been said is sufficient to show that the world of Adam, Methuselah, of Enoch and Noah, was a wondrous world. A world rich in plant and animal life. A world which yielded food of every kind for man and beast without any great effort on the part of either, a world which could therefore support a population many times greater than our present population.” “It is reasonable to assume that the population was at least equal to the population of the world today.” Alfred M. Rehwinkel, *The Flood in the Light of the Bible, Geology and Archaeology*, Concordia Publishing House, St. Louis, 8th ed., 1962, at pp. 15, 19, available Online at <http://bit.ly/109Pt8h> (last visited October 26, 2014). A recent ABC special by Christiane Amanpour, “Back to the Beginning,” included a segment, “Noah’s Biblical Flood: New Evidence Suggests It Happened,” with information about archeological finds by Robert Ballard (founder of the Titanic), in the Black Sea in Turkey that support the account in Genesis, available Online at <http://abcn.ws/TYwIyr> (last visited October 26, 2014).

opposite-sex, one-man-one-woman-for-life marriage are enumerable, that being a lovely symbol of Christ and His Bride,¹⁵ and being a great blessing from God.¹⁶

But of far more importance is the fact that the government has no greater responsibility than to protect the people from such grievous sin that the inevitable result will be the outpouring of the wrath of God on the land, bringing great mayhem, carnage and destruction. Nothing is better for the health, safety and welfare of the people than to obey God. When a critical moral issue becomes the centerpiece of the discussion, and is put squarely before this Honorable Court, or before any governmental body, the duty is to follow the standard of God. Not invent a multitude of sociological, pseudo-scientific, historical or any other theory or reasoning that leads to ignoring and disobeying the plain standard of God. The highest interest of government is to follow the standard of God; appeal to the people to follow the standard of God; and establish policies and laws that follow the standard of God. This nation has gone astray, letting fornication, adultery, abortion-for-convenience-on-demand, divorce, remarriage

¹⁵ E.g., “Let us be glad and rejoice, and give honour to him; for the marriage of the Lamb is come, and his wife hath made herself ready,” Revelation 19:7, *Holy Bible*.

“For the husband is the head of the wife, even as Christ is the head of the church: and he is the savior of the body,” Ephesians 5:23, *Holy Bible*.

¹⁶ E.g., “Marriage is honourable in all, and the bed undefiled: but whoremongers and adulterers God will judge,” Hebrews 13:4, *Holy Bible*. “Whoso findeth a wife findeth a good thing, and obtaineth favour of the LORD,” Proverbs 18:22, *Holy Bible*. “Who can find a virtuous woman? For her price is far above rubies,” Proverbs 31:10, *Holy Bible*.

and sodomy become the norm. It may be too late. The prophet Jonah certainly thought it was too late for the thriving city of Nineveh, whose repentance (starting with the King) turned back God's wrath, and spared that nation for another one hundred years.¹⁷ Homosexuality is destructive in every way, to the individual and to the nation. Government should not put its seal of approval on that unholy union by issuing a marriage license. Government's interest is in doing the opposite, for the good of the people and the nation.

This is a nation that was built on Bible principles. "[T]his is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. *** If we examine the constitutions of the various States we find in them a constant recognition of religious obligations. *** There is a universal language [pervading], having one meaning: they affirm and reaffirm that this is a religious nation." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 465-472, 12 S.Ct. 511, 514-517, 36

¹⁷ Compare the book of Jonah to the book of Nahum. Matthew Henry's commentary on Nahum 1:1, *Holy Bible*: "About 100 years before this Jonah had, in God's name, foretold the speedy overthrow of this great city; but then the Ninevites repented and were spared, and that decree did not *bring forth*. The Ninevites then saw clearly how much it was to their advantage to turn from their evil way; it was the saving of their city; and yet, soon after, they returned to it again; it became worse than ever, *a bloody city*, and *full of lies* and *robbery*. They repented of their repentance, returned with the dog to his vomit, and at length grew worse than ever they had been. Then God sent them not this prophet, as Jonah, but this prophecy, to read them their doom, which was now irreversible. Note, The reprieve will not be continued if the repentance be not continued in. If men turn from the good they began to do, they can expect no other than that God should turn from the favour he began to show, Jer. 18:10." This commentary by Matthew Henry (1662-1714), nonconformist puritan preacher and expositor, can be found Online at <http://bit.ly/XeRaMg> (last visited October 26, 2014).

L.Ed. 226, 230-232 (1892). “It seems to me rather obvious, when we get back to the early expression of those ideas [which found expression in the Declaration of Independence and the Preamble of the Constitution] and consider the general historical situation out of which the older colonies arose, that one chief source of these ideas was the popular knowledge of the Bible in the Protestant countries of that time.”¹⁸

“The Bible was nothing short of the underlying fabric upon which American society was founded. ... The rule of law began, not with the rules of man but with the rules of God. *** To find [social] sails and helm, [Americans] turned first to the Bible. ... The emergent collaboration between church and state (even if these two arms remain separate while at the same time working together) has remained a fundamental axiom embedded in the nature of American policy ever since. *** [T]he influence of biblical law continued to be felt in American jurisprudence well into the twentieth century. *** To the extent that a modern system is derived from biblical social precepts or even unwittingly presupposes that such precepts are operational in society, the lack of any of the essential elements of that constitutive system may give rise to serious problems in the resultant system. *** Democracy in America has succeeded because its society

¹⁸ Henry Thatcher Fowler, “Influence of the Bible in American Democracy,” *Christian Education*, Vol. 3, No. 1, October 1919, pp. 22-25.

has possessed an underlying moral order, and historically that order has been informed largely by basic ideals supplied by the Bible ...”¹⁹

This Court is not precluded from making decisions based in part on the standard of God; and should not make decisions based in part on defying the standard of God, against public good. “What Baptists and other dissenters wanted, in [Philip] Hamburger’s assessment, was a political voice for their own religious views, unconstrained by establishment; neither they nor the establishment clause of the First Amendment ever intended to keep Christian conviction out of American governance, as secularists today insist,” (emphasis added).²⁰ “[T]he separation of church and state has not denied the political realm a religious dimension.”²¹

“As we explained in *Lynch v. Donnelly*, 465 U.S. 668, 79 L.Ed.2d 604, 104 S.Ct. 1355 (1984): ‘There is an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789.’ *** Recognition of the role of God in our Nation’s heritage has

¹⁹ John W. Welch, “Biblical Law in America: Historical Perspectives and Potentials for Reform,” 2002 *Brigham Young University Law Review* 611, at 619, 630-631, 636-637, available Online at <http://bit.ly/VEBX8j> (last visited October 26, 2014).

²⁰ Tracy Fessenden, “The Nineteenth-Century Bible Wars and the Separation of Church and State,” *Church History*, Vol. 74, No. 4 (Dec. 2005), pp. 784-811, at 809, available Online at <http://bit.ly/UBefrF> (last visited October 26, 2014).

²¹ Robert N. Bellah, “Biblical Religion and Civil Religion in America,” *Journal of the American Academy of Arts and Sciences*, Winter, 1967, Vol. 96, No. 1, pp. 1-21, Online at <http://bit.ly/13cLjuc> (last visited October 26, 2014).

also been reflected in our decisions,” *Van Orden v. Perry*, 545 U.S. 677, 686, 687, 125 S.Ct. 2854, 2861, 162 L.Ed.2d 607, 616, 617 (2005). “[W]e find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.’ *Zorach v. Clauson*, 343 U.S. 306, 313-314, 96 L.Ed. 954, 72 S.Ct. 679 (1952).” *Id.*, 545 U.S. at 684, 125 S.Ct. at 2859, 162 L.Ed.2d at 615.

Separation of church and state has become a battle cry for enabling sin. That was never the intention of the forefathers, but rather they intended to let each member of the new union serve God according to his or her conscience, not according to the dictates of an official state church.²² “The principle of church-state separation—from the time of Becket, to Blackstone, to Benjamin Franklin, to today—has long meant, among other things, that religious communities and institutions enjoy meaningful autonomy and independence with respect to their governance, teachings, and doctrines. This independence, recognized and vindicated in a long line and wide array of decisions by the Supreme Court, is

²² “[B]ut it was reserved for the people and governments of this last settled among the lands to announce the religious equality of all men and all creeds before the law, without preference and without distinction or disqualification. Here, among all the benefits to mankind to which this soil has given rise, this pure religious liberty may be justly rated as the great gift of America to civilization and the world, having among principles of governmental policy no equal for moral insight, and for recognition both of the dignity of the human soul and the spiritual majesty of the Church of God,” Sanford Hoadley Cobb, *The Rise of Religious Liberty in America*, p. 2, available Online at <http://bit.ly/UCAUaP> (last visited October 26, 2014).

entirely consistent with the appropriate powers of civil authorities.”²³ The fact that issues of doctrine and church governance are beyond the jurisdiction of civil government is not the equivalent of civil government abrogating its duty to protect the health, safety and welfare of the people by promulgating laws and policies consistent with the standards of God and the dictates of Holy Scripture.

No form of government will ever survive if it rejects and casts away as rubbish the standards of God. On no issue is this more apparent than the issue of same sex marriage. Many laws in this nation are based on Bible standards. This Court should not disregard the Bible standard on the question of same sex marriage, any more than it would ignore the Bible standard on the issue of murder.

Same-sex marriage will destroy Kansas. If this Court requires Kansas officials to treat what God has called abominable as something to be respected, revered, and blessed with the seal-of-approval of the government, that will cross a final line with God. The harm that will befall this state, when the condign destructive wrath of God pours out on Kansans is the ultimate harm to the health, welfare and safety of the people. Kansas voters, in some recognition of the harm that would befall a people who would so flagrantly disobey God voted against same sex marriage. What a horrible disservice to the citizens to ignore that vote

²³ Berg, Colby, Esbeck & Garnett, “Religious Freedom, Church-State Separation, and the Ministerial Exception,” 106 *Nw. U. L. Rev. Colloquy* 175 (2011), available Online at <http://bit.ly/XF4X2C>.

and impose sin on the people to their great harm. What interest could be more compelling for the government than to seek the blessings of God on this nation, by obeying His commandments and following His standards?

13. Specifically the Kansas Attorney General has not, and likely will not assert WBC's constitutional rights to be free from association with same sex marriage; from restrictions on its right to decline to perform same sex marriages or otherwise have any of WBC's property or offices used by force in any manner to support same sex marriage; from restrictions on its right to avidly and adamantly publicly oppose same sex marriages; and from its right to not have the force of its state government behind same sex marriage licenses.

14. Specifically the Kansas Attorney General has not, and likely will not assert WBC members' property rights in their marriages. We recognize that this Court noted in its order of October 24, 2014 (denying the Unruhs' motion to intervene), that it "doubts whether plaintiffs can show that their marriage constitutes a protectable property interest under the Fifth and Fourteenth Amendments of the United States Constitution or that this case's disposition will impair their ability to protect that interest" citing *Kitchen v. Herbert, supra, 755 F.3d at 1223*, where the Tenth Circuit rejected Utah's argument that "state recognition of love and commitment between same-sex couples will alter the most intimate and personal decisions of opposite-sex couples," Memorandum and Order, p. 2. However, we respectfully submit that this should not be the final conclusion of the Court on this issue, particularly in light of the great emphasis placed in plaintiffs'

Complaint on their desire to have same sex marriage licenses because of the dignity, respect and societal acceptance it reflects concerning their union. If a marriage license equates to a seal-of-approval of society, certainly that seal-of-approval is tarnished when it is given to an unholy and unscriptural union. Those persons who have married properly in God's sight are entitled to place worth on the government's licensing of that proper marriage. Every time an improper marriage is given the same license – the government seal of approval – it tarnishes the worth of that license for those who are properly married. It will not do for the Court to evade the question of what is a proper marriage; and indeed that is at the core of this case. If the Good Housekeeping Seal is placed on a defective and unworthy product, it diminishes the value of that seal when it is put on a wholesome product. The same principle applies. This issue is one that has not been resolved, and we ask that the Court consider the claim, and recognize it is not one that will be asserted by the Attorney General.

15. WBC incorporates its full Answer attached hereto into this motion, as though set out verbatim herein.

WHEREFORE, based on the foregoing, WBC respectfully requests that the Court permit it to intervene herein as a defendant; to file its attached Answer; and to fully participate in these proceedings to protect its unique interests and rights raised by the plaintiffs' claims, which cannot and will not be protected by the other defendants, represented by the Kansas Attorney General.

Respectfully submitted,

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ATTORNEYS FOR MOVANT INTERVENOR
WESTBORO BAPTIST CHURCH, INC.

Certificate of Service

I hereby certify that a copy of the foregoing motion was served through the Court's CM/ECF system on October 26, 2014, on all counsel of record herein.

/s/ Margie J. Phelps

Margie J. Phelps

Addendum 1

For instance, these sample passages reflect what a serious and sober matter it is with God that His creatures engage only in a proper marriage:

Ephesians 5:

28 So ought men to love their wives as their own bodies. He that loveth his wife loveth himself.

29 For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church:

30 For we are members of his body, of his flesh, and of his bones.

31 For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh.

32 This is a great mystery: but I speak concerning Christ and the church.

Mark 10:

11 And he saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her.

12 And if a woman shall put away her husband, and be married to another, she committeth adultery.

Malachi 2:

13 And this have ye done again, covering the altar of the LORD with tears, with weeping, and with crying out, insomuch that he regardeth not the offering any more, or receiveth it with good will at your hand.

14 Yet ye say, Wherefore? Because the LORD hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously: yet is she thy companion, and the wife of thy covenant.

15 And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth.

16 For the LORD, the God of Israel, saith that he hateth putting away: for one covereth violence with his garment, saith the LORD of hosts: therefore take heed to your spirit, that ye deal not treacherously.

Addendum 2

Historical account of the destruction of Sodom from Genesis 19:

1 ¶ And there came two angels to Sodom at even; and Lot sat in the gate of Sodom: and Lot seeing them rose up to meet them; and he bowed himself with his face toward the ground;

2 And he said, Behold now, my lords, turn in, I pray you, into your servant's house, and tarry all night, and wash your feet, and ye shall rise up early, and go on your ways. And they said, Nay; but we will abide in the street all night.

3 And he pressed upon them greatly; and they turned in unto him, and entered into his house; and he made them a feast, and did bake unleavened bread, and they did eat.

4 ¶ But before they lay down, the men of the city, even the men of Sodom, compassed the house round, both old and young, all the people from every quarter:

5 And they called unto Lot, and said unto him, Where are the men which came in to thee this night? bring them out unto us, that we may know them.

6 And Lot went out at the door unto them, and shut the door after him,

7 And said, I pray you, brethren, do not so wickedly.

8 Behold now, I have two daughters which have not known man; let me, I pray you, bring them out unto you, and do ye to them as is good in your eyes: only unto these men do nothing; for therefore came they under the shadow of my roof.

9 And they said, Stand back. And they said again, This one fellow came in to sojourn, and he will needs be a judge: now will we deal worse with thee, than with them. And they pressed sore upon the man, even Lot, and came near to break the door.

10 But the men put forth their hand, and pulled Lot into the house to them, and shut to the door.

11 And they smote the men that were at the door of the house with blindness, both small and great: so that they wearied themselves to find the door.

12 ¶ And the men said unto Lot, Hast thou here any besides? son in law, and thy sons, and thy daughters, and whatsoever thou hast in the city, bring them out of this place:

13 For we will destroy this place, because the cry of them is waxen great before the face of the LORD; and the LORD hath sent us to destroy it.

14 And Lot went out, and spake unto his sons in law, which married his daughters, and said, Up, get you out of this place; for the LORD will destroy this city. But he seemed as one that mocked unto his sons in law.

15 ¶ And when the morning arose, then the angels hastened Lot, saying, Arise, take thy wife, and thy two daughters, which are here; lest thou be consumed in the iniquity of the city.

16 And while he lingered, the men laid hold upon his hand, and upon the hand of his wife, and upon the hand of his two daughters; the LORD being merciful unto him: and they brought him forth, and set him without the city.

17 And it came to pass, when they had brought them forth abroad, that he said, Escape for thy life; look not behind thee, neither stay thou in all the plain; escape to the mountain, lest thou be consumed.

18 And Lot said unto them, Oh, not so, my Lord:

19 Behold now, thy servant hath found grace in thy sight, and thou hast magnified thy mercy, which thou hast shewed unto me in saving my life; and I cannot escape to the mountain, lest some evil take me, and I die:

20 Behold now, this city is near to flee unto, and it is a little one: Oh, let me escape thither, (is it not a little one?) and my soul shall live.

21 And he said unto him, See, I have accepted thee concerning this thing also, that I will not overthrow this city, for the which thou hast spoken.

22 Haste thee, escape thither; for I cannot do any thing till thou be come thither. Therefore the name of the city was called Zoar.

23 The sun was risen upon the earth when Lot entered into Zoar.

24 ¶ Then the LORD rained upon Sodom and upon Gomorrah brimstone and fire from the LORD out of heaven;

25 And he overthrew those cities, and all the plain, and all the inhabitants of the cities, and that which grew upon the ground.

26 ¶ But his wife looked back from behind him, and she became a pillar of salt.

27 ¶ And Abraham gat up early in the morning to the place where he stood before the LORD:

28 And he looked toward Sodom and Gomorrah, and toward all the land of the plain, and beheld, and, lo, the smoke of the country went up as the smoke of a furnace.

29 And it came to pass, when God destroyed the cities of the plain, that God remembered Abraham, and sent Lot out of the midst of the overthrow, when he overthrew the cities in the which Lot dwelt.

Addendum 3

Historical account of the destruction of mankind from by the Flood, from Genesis 7:

11 ¶ In the six hundredth year of Noah's life, in the second month, the seventeenth day of the month, the same day were all the fountains of the great deep broken up, and the windows of heaven were opened.

12 And the rain was upon the earth forty days and forty nights.

13 ¶ In the selfsame day entered Noah, and Shem, and Ham, and Japheth, the sons of Noah, and Noah's wife, and the three wives of his sons with them, into the ark;

14 They, and every beast after his kind, and all the cattle after their kind, and every creeping thing that creepeth upon the earth after his kind, and every fowl after his kind, every bird of every sort.

15 And they went in unto Noah into the ark, two and two of all flesh, wherein is the breath of life.

16 And they that went in, went in male and female of all flesh, as God had commanded him: and the LORD shut him in.

17 ¶ And the flood was forty days upon the earth; and the waters increased, and bare up the ark, and it was lift up above the earth.

18 And the waters prevailed, and were increased greatly upon the earth; and the ark went upon the face of the waters.

19 And the waters prevailed exceedingly upon the earth; and all the high hills, that were under the whole heaven, were covered.

20 Fifteen cubits upward did the waters prevail; and the mountains were covered.

21 ¶ And all flesh died that moved upon the earth, both of fowl, and of cattle, and of beast, and of every creeping thing that creepeth upon the earth, and every man:

22 All in whose nostrils was the breath of life, of all that was in the dry land, died.

23 And every living substance was destroyed which was upon the face of the ground, both man, and cattle, and the creeping things, and the fowl of the heaven; and they were destroyed from the earth: and Noah only remained alive, and they that were with him in the ark.

24 And the waters prevailed upon the earth an hundred and fifty days.