

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**DAVID WILLIAMSON, CHASE
HANSEL, KEITH BECHER,
RONALD GORDON, JEFFERY
KOEBERL, CENTRAL FLORIDA
FREETHOUGHT COMMUNITY,
SPACE COAST FREETHOUGHT
ASSOCIATION, and HUMANIST
COMMUNITY OF THE SPACE
COAST,**

Plaintiffs,

v.

BREVARD COUNTY,

Case No. 6:15-cv-1098-Orl-28DCI

Defendant.

SETTLEMENT AGREEMENT

All parties to the above-captioned action hereby agree to settle this action on the substantive terms set forth in the Proposed Consent Amended Final Judgment attached hereto as Exhibit A. The Proposed Consent Amended Final Judgment is hereby incorporated into this Settlement Agreement. The parties further agree to the following procedural terms:

1. Once this Settlement Agreement is approved by the plaintiffs listed in the caption above (“Plaintiffs”), Plaintiffs’ counsel shall sign the agreement. Once this Settlement Agreement is approved by those officials of Brevard County (“the County”) and of its insurance trust whose approval is necessary for the Settlement Agreement to be presented to

the Brevard County Board of County Commissioners (“the Board”) for final approval, counsel for the County shall sign the agreement.

2. As soon as possible after both Plaintiffs’ counsel and the County’s counsel sign the agreement, and in any event within three (3) business days thereof, Plaintiffs shall file the Joint Status Report attached hereto as Exhibit B in the U.S. District Court for the Middle District of Florida and the Joint Status Report attached hereto as Exhibit C in the U.S. Court of Appeals for the Eleventh Circuit. These documents shall advise the respective courts that the parties have reached a settlement agreement that is contingent on final approval by the Board and shall ask the courts to continue to refrain from taking any further actions in this case until the Board either approves the Settlement Agreement or fails to timely approve it.

3. This Settlement Agreement is contingent on final approval by the Board, in accordance with Chapter 286 of the Florida Statutes, within sixty (60) days after it has been signed by both counsel for Plaintiffs and counsel for the County. If the Board rejects the Settlement Agreement, or fails to act on it within sixty (60) days and the approval deadline is not extended by mutual agreement of the parties, this Settlement Agreement shall be deemed void and of no further effect.

4. Within seven days of the Board’s approval of this Settlement Agreement, the County Manager of Brevard County or a designee thereof shall sign the Settlement Agreement, and counsel for the County shall provide the signed Settlement Agreement to Plaintiffs’ counsel.

5. Within seven (7) days of the date that counsel for the County provides Plaintiffs’ counsel with a copy of the Settlement Agreement that has been signed by the County

Manager or his designee to confirm the Board's approval of the Settlement Agreement, Plaintiffs shall file with the District Court the Joint Motion by All Parties for Approval and Entry of Consent Amended Final Judgment attached hereto as Exhibit D, together with the Proposed Consent Amended Final Judgment attached hereto as Exhibit A.

6. If the District Court declines to enter the Proposed Consent Amended Final Judgment, the parties shall attempt in good faith to agree on any modifications to the Proposed Consent Amended Final Judgment that may be necessary to secure the District Court's approval. But if the parties are ultimately unable to secure approval of the Proposed Consent Amended Final Judgment by modifying it or through an appeal of a denial of approval, this Settlement Agreement shall be deemed void and of no further effect.

7. Within seven (7) days of the District Court's entry of the Proposed Consent Amended Final Judgment, Plaintiffs shall file with the Eleventh Circuit Exhibit E hereto, a Joint Motion to Withdraw as Moot Plaintiffs-Appellees' Motion for Appellate Attorney's Fees and Litigation Expenses.

8. The signing by counsel for the County of this Settlement Agreement shall be deemed to authorize Plaintiffs' counsel to electronically sign Exhibits B, C, D, and E hereto on behalf of counsel for the County.

9. Prior to the filing with the District Court of the Proposed Consent Amended Final Judgment and the Joint Motion by All Parties for Approval and Entry of Consent Amended Final Judgment, no party or employee, insurer, agent, or affiliate thereof shall disclose the amount set forth in paragraph 5 of the Proposed Consent Amended Final Judgment to anyone

other than the parties themselves or employees or agents of the parties, of their attorneys, of their insurers, or of the organizations' that employ the parties' attorneys.

IT IS SO AGREED AND STIPULATED ON BEHALF OF PLAINTIFFS

By:  Date: 1/17/2020
Alex J. Luchenitser (Trial Counsel for Plaintiffs)

Alex J. Luchenitser (Trial Counsel)*
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*Appearing *pro hac vice*.

IT IS SO AGREED AND STIPULATED ON BEHALF OF DEFENDANT BREVARD COUNTY, CONTINGENT UPON APPROVAL BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS.

By: _____
Frank M. Mari
(Counsel for defendant Brevard County)

Date: _____

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IT IS HEREBY CONFIRMED THAT THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS HAS APPROVED THIS SETTLEMENT AGREEMENT.

By: _____
Brevard County Manager or designee thereof

Date: _____

Print name and title: _____

EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**DAVID WILLIAMSON, CHASE
HANSEL, KEITH BECHER,
RONALD GORDON, JEFFERY
KOEBERL, CENTRAL FLORIDA
FREETHOUGHT COMMUNITY,
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Plaintiffs,

v.

BREVARD COUNTY,

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Defendant.

PROPOSED CONSENT AMENDED FINAL JUDGMENT

In accordance with an agreement by all parties to this case, the Court hereby ORDERS and ADJUDGES as follows:

1. Pursuant to 28 U.S.C. § 2201, the Court hereby issues a declaratory judgment that the invocation-speaker-selection practices and procedures of Brevard County (“the County”), as explained by the Brevard County Commissioners (“the Commissioners”) in their testimony taken in this action and as embodied in Brevard County Board of County Commissioners (“the Board”) Resolution 2015-101, violated the Establishment Clause of the First Amendment to the United States Constitution by discriminating in favor of certain monotheistic religions.

2. The Court vacates entirely the permanent injunction contained in its original Final Judgment (Doc. 115 ¶ 6, filed November 29, 2017). The Court hereby permanently enjoins the County from continuing the invocation-speaker-selection practices and procedures as explained by the Commissioners in their testimony taken in this action and as embodied in Resolution 2015-101, insofar as such practices and procedures resulted in discrimination in favor of certain monotheistic religions.

3. Consistent with the Opinion of the United States Court of Appeals for the Eleventh Circuit issued on July 8, 2019, nothing in this Consent Judgment shall be construed as resolving or having preclusive effect with respect to the issue of whether the County must permit nontheists to deliver opening invocations.

4. The Court hereby incorporates into this Consent Judgment the parties' Mediation Partial Settlement Agreement dated April 6, 2016 and filed November 13, 2017 (Doc. 112-2) and specifically orders as follows:

a. The County shall pay the plaintiffs listed in the caption above ("Plaintiffs") as compensatory damages the total sum of \$60,000.00, to be divided among Plaintiffs in accordance with an agreement among them.

b. The \$60,000 payment plus any accruable post-judgment interest shall be made by or on behalf of the County to Plaintiffs' counsel ACLU Foundation of Florida, Inc., via a lump-sum check, certified check, cashier's check, or wire transfer, within thirty (30) days of entry of this Consent Judgment.

c. The \$60,000 payment shall fully resolve all claims for damages that Plaintiffs made against the County in this action, as well as any other claims for damages that Plaintiffs could have brought relating to invocations at Board

meetings against the County, its past or present boards, commissioners, agents, employees, or attorneys, Preferred Government Insured Trust, Preferred Governmental Claims Solutions, or PGCS Claim Services.

5. In satisfaction of Plaintiffs' claims for attorney's fees, expenses, and costs, the County shall pay or cause to be paid \$430,000.00 to Plaintiffs' counsel Americans United for Separation of Church and State. Further:

a. The \$430,000.00 payment shall be made by or on behalf of the County to Americans United for Separation of Church and State, via a lump-sum check, certified check, cashier's check, or wire transfer, within thirty (30) days of entry of this Consent Judgment.

b. The \$430,000.00 payment shall fully resolve all claims for attorney's fees, expenses, and costs that Plaintiffs or Plaintiffs' counsel made against the County in this action, as well as any other claims for attorney's fees, expenses, and costs that Plaintiffs or Plaintiffs' counsel could have brought relating to invocations at Board meetings against the County, its past or present boards, commissioners, agents, employees, or attorneys, Preferred Government Insured Trust, Preferred Governmental Claims Solutions, or PGCS Claim Services.

6. On or before twenty-one (21) days after the date that Brevard County pays all monetary relief ordered in this Consent Judgment, counsel for Plaintiffs shall file a Satisfaction of Judgment in this action.

7. The Court retains jurisdiction to enforce (if necessary) this Consent Judgment.

IT IS SO ORDERED AND ADJUDGED.

By: _____
John Antoon, II
United States District Judge

Date: _____