SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AMERICAN ATHEISTS, INC.;
DENNIS HORVITZ, an individual;
KENNETH BRONSTEIN, an individual;
MARK PANZARINO, an individual; and
JANE EVERHART, an individual

Plaintiffs,

FIRST AMENDED COMPLAINT

-against-

Index #11-108670

PORT AUTHORITY OF NEW YORK AND NEW JERSEY;
STATE OF NEW JERSEY;
GOVERNOR CHRIS CHRISTIE, in his official capacity;
SILVERSTEIN PROPERTIES, INC.;
LOWER MANHATTAN DEVELOPMENT CORPORATION;
WORLD TRADE CENTER MEMORIAL FOUNDATION/
NATIONAL SEPTEMBER 11 MEMORIAL AND MUSEUM;
WORLD TRADE CENTER PROPERTIES, LLC;
CHURCH OF THE HOLY NAME OF JESUS; and
BRIAN JORDAN, an individual.

Defendants.

Plaintiffs, American Atheists, Inc.; Dennis Horvitz; Kenneth Bronstein; Mark Panzarino; and Jane Everhart, by and through undersigned counsel, and for their Complaint and cause of action against the defendants herein, state as follows:

I. JURISDICTION AND VENUE

1. Plaintiffs seek declaratory and injunctive relief to require those responsible for the September 11 Memorial and Museum to remove a 20-foot cross from the Memorial and Museum or to provide equal space to memorials from other beliefs. Plaintiffs seek to redress the violation by Defendants, acting under color of state law, of Plaintiffs rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution, the Article One, Sections Three and Eleven of the New York Constitution, Article One, Sections Four and Five of the Constitution of the State of New York, New York's Civil Rights Act, and New Jersey's Civil Rights Act. As such, this action arises under the Constitution and laws of New York and New Jersey and the Constitution of the United States of America, and this Court has jurisdiction pursuant to NY Jud. Law § 140-B.

2. The causes of action alleged herein arose in the County of New York, City and State of New York. Four Plaintiffs reside in the City of New York. The City of New York is a Defendant. Venue is thus appropriate pursuant to CPLR §§ 503, 504.

II. INTRODUCTION

3. On July 23, 2011, Defendants placed a 20-foot cross ("the cross") on land owned by the Port Authority of New York and New Jersey and/or the City of New York. The cross, which has been altered to more closely

resemble a Latin cross and, upon information and belief, inscribed with "Jesus" on its vertical beam, was placed into the planned September 11 Memorial and Museum in a televised ceremony that included its reconsecration and/or blessing by Defendant Brian Jordan. The display of this religious icon on government land violates the United States Constitution, the Constitutions of the States of New York and New Jersey, New York's Civil Rights Act, and New Jersey's Civil Rights Act. Plaintiffs bring this action against the Defendants seeking, *inter alia*, an order from this Court enjoining Defendants from continuing to allow a religious display on government-owned land in violation of the Establishment Clauses of all three above-mentioned Constitutions.

III. PARTIES

4. Plaintiff American Atheists, Inc. (hereinafter "American Atheists") is a not-for-profit 501(c)(3) corporation, with its principal place of business in the State of New Jersey. American Atheists is a nationwide movement, having among its goals the defense of the civil liberties of Atheists and the total, absolute separation of government and religion. Many members of American Atheists are residents, citizens, and taxpayers of the United States and the State of New York. Many of American Atheists' members have seen the cross, either in person or on television, and are being subjected to and injured in consequence of having a religious tradition not their own imposed upon them through the power of the state. As such, each of these members has standing to sue in this case;

American Atheists therefore has standing to sue on their behalf. Moreover, the interests American Atheists seeks to protect in the instant Complaint are germane to its purpose as an organization committed to preventing the intrusion of government and church into each other.

5. Plaintiffs Jane Everhart, Dennis Horvitz, and Kenneth Bronstein, and Mark Panzarino (hereinafter "named plaintiffs") are each residents, citizens, and taxpayers of the United States and the State of New York, living in New York City. Named plaintiffs have seen the cross, either in person or on television, and are being subjected to, and injured in consequence of having, a religious tradition that is not their own imposed upon them through the power of the state, in violation of the First and Fourteenth Amendments to the Constitution of the United States, and in violation of Article One Sections 3 and 11 of the Constitution of the State of New York and Article One Sections Four and Five of the Constitution of the State of New Jersey.

6. Plaintiffs Dennis Horvitz and Kenneth Bronstein are members of American Atheists and are Atheists reared in the Jewish tradition. They find the use of the cross, a Christian symbol, to represent all victims of the 9/11 Attacks to be offensive and repugnant to their beliefs, culture, and traditions, and allege that the symbol marginalizes them as American citizens.

7. Plaintiff Jane Everhart is a member of American Atheists and is an Atheist with a Catholic background. She finds the use of governmental

action to place a cross within the September 11 Memorial and Museum, which was designed to memorialize all casualties of the World Trade Center, to be an insult to non-Christian survivors of that attack.

8. Plaintiff Mark Panzarino is a member of American Atheists. Plaintiff Mark Panzarino was brother to Frank Joseph Panzarino, an Honorably Discharged Army National Guardsman who assisted in the rescue work for two weeks after the September 11, 2001 terrorist attack on the World Trade Center (hereinafter the "9/11 attack"). Assisting in the rescues took its toll on his health, and Frank Joseph Panzarino succumbed to weakened lung syndrome in 2005. As a survivor of the 9/11 attack and family member of one of the brave responders to the 9/11 attack, Mark Panzarino is appalled that the state has permitted a symbol of Christianity to represent a tragedy that affected all Americans. Mark Panzarino does not wish for any religious symbol to represent his brother's commitment to the United States or his sacrifice; rather, he feels a non-denominational symbol should be used to commemorate the site of an American tragedy.

9. Defendant Port Authority of New York and New Jersey (hereinafter "Port Authority") is a bi-state port district established in 1921 pursuant to an interstate compact between New York and New Jersey. Upon information and belief, the Port Authority is headquartered in New York and owns the property upon which the World Trade Center Memorial is located. The

Port Authority is one of the entities actively developing and constructing the National September 11 Memorial and Museum.

10. Defendant State of New Jersey (hereinafter "New Jersey") is a state that since 1787, has been a part of the United States of America (hereinafter "United States") and is subject to the Constitution thereof. New Jersey established the Port Authority pursuant to an interstate compact with New Jersey and continues to maintain it as a bi-state port district.

11. Defendant Chris Christie is the Governor of New Jersey, with supervisory authority over the Port Authority. He is sued here in his official capacity.

12. Defendant Silverstein Properties, Inc. (hereinafter "Silverstein") is organized under the laws of the State of New York and has a principal place of business in New York. Silverstein holds the lease for the site of the National September 11 Memorial and Museum from the Port Authority and is one of the entities responsible for developing and constructing the National September 11 Memorial and Museum.

13. Defendant Lower Manhattan Development Corporation (hereinafter "LMDC") is a subsidiary of the Empire State Development Corporation, a New York State authority, and is organized under the laws of the State of New York. LMDC was founded in 2002 by then-Governor George Pataki and then-Mayor Rudolph Giuliani to plan the reconstruction of Lower Manhattan and distribute nearly $10 billion in federal funds aimed at rebuilding downtown Manhattan. The LMDC sponsored the competition that resulted in the design for the World Trade Center Memorial and is

one of the entities responsible for developing and constructing the National September 11 Memorial and Museum.

14. Defendant World Trade Center Memorial Foundation / National September 11 Memorial and Museum (hereinafter "WTC Memorial Foundation") is a 501(c)(3) corporation, with its principal place of business in the State of New York. The WTC Memorial Foundation is one of the entities responsible for developing and constructing the National September 11 Memorial and Museum.

15. Defendant World Trade Center Properties, LLC (hereinafter "WTC Properties") is a wholly owned affiliate of Silverstein, organized under the laws of the State of New York, with its principal place of business in New York. WTC Properties is one of the entities responsible for developing and constructing the National September 11 Memorial and Museum.

16. The Church of the Holy Name of Jesus is a 501(c)(3) corporation, with its principal place of business in the State of New York. The Church of the Holy Name of Jesus is a Franciscan parish that was established on the Upper West Side of Manhattan. It, and its agents, are responsible for placing a religious symbol of Christianity on government-owned property in conjunction with a religious ceremony.

17. Brian Jordan is a Franciscan Friar who conducted a religious ceremony directed at placing a symbol of Christianity on government-owned property.

IV. FACTS

18. On September 11, 2001, the United States was attacked (the "9/11 Attack"), in an act of war, by religious fanatics in a faith-based initiative designed to "slay the pagans wherever ye find them" and because, as stated *inter alia* by those responsible for the attack, "You [Americans] separate religion from your policies, contradicting the pure nature which affirms Absolute Authority to the Lord and your Creator."

19. As a result of the 9/11 Attack, the World Trade Center in Manhattan, a site owned by the Port Authority and leased to Silverstein, was demolished.

20. Approximately two thousand seven hundred ninety-two individuals lost their lives to the 9/11 Attack.

21. Among the victims of the 9/11 Attack were, upon information and belief, 31 Muslim Americans, approximately 400-500 Jewish Americans, approximately 500 non-religious Americans, and an unknown number of Americans of other faiths.

22. Two days after the 9/11 Attack, exhausted and grief-stricken construction workers found a 2-ton, 20-foot high T-beam in the rubble of the World Trade Center. Christians among those construction workers regarded the cross as a supernatural artifact provided by a god. Shortly thereafter, they began worshipping it as a cross.

23. Defendant Jordan blessed the cross in October 2011, "after construction workers at the site told him they saw the cross as 'a sign that God never abandoned us at Ground Zero.'"[1]

24. Christian services were frequently held at the site of the cross until it was removed to St. Peter's Roman Catholic Church, 22 Barclay St., Manhattan.

25. In the wake of the 9/11 Attack, various entities, including the defendants, made plans to build the September 11 Memorial and Museum on the site of the tragedy.

26. Because of the government monies supporting the project, the federal provisions of the National Historic Preservation Act apply. To fulfill its obligations under Section 106 of the National Historic Preservation Act,[2] the Port Authority published a Memorandum of Agreement ("MOA") on March 22, 2005. The MOA called for the preservations of 84 columns from the north tower of the World Trade Center and 39 columns from the south tower. It also proposed to remove the cross from the World Trade Center site and store it with other artifacts of the World Trade Center.

27. Many individuals and entities, including Defendant Jordan, took offense at the idea of moving the cross. According to contemporaneous news sources, Defendant Jordan opposed moving the cross because (a) he learned of the plan through the newspaper rather than personal

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[1] Jonathan Allen, "Steel girders shaped like cross headed back to Ground Zero," Reuters, July 18, 2011.

[2] Section 106 requires federal agencies to account for the effects of their *federally funded* activities on historic sites. 16 U.S.C. § 470f.

notification; (b) the plan was announced in April 2006, which Jordan claimed ran afoul of Holy Week; and (c) the cross was "visual evidence that God never abandoned us at Ground Zero."[3]

28. As a result of the outcry, the cross was moved to St. Peter's Roman Catholic Church, where it was again blessed.

29. After the cross was moved, construction of the September 11 Memorial and Museum continued apace.

30. The September 11 Memorial and Museum will be on a site owned by the Port Authority. Thus, the Memorial and Museum and its exhibits are a government action.

31. The September 11 Memorial and Museum will be largely funded with money from the government. Accordingly, actions taken by the September 11 Memorial and Museum also constitute governmental action.

32. In 2009, the September 11 Memorial and Museum received $79,252,830 in unrestricted government funding. Total unrestricted funding for the September 11 Memorial and Museum for the year 2009 was $132,636,458. Accordingly, government funding accounted for 59.75% of the September 11 Memorial and Museum's unrestricted funds.

33. In 2010, the September 11 Memorial and Museum received $69,452,552 in unrestricted government funding. Total unrestricted funding for the September 11 Memorial and Museum for the year 2010 was

[3] Paul D. Colford, "Hand off 9-11 Cross. Outcry forces PA to ax beams plan," Daily News, April 12, 2006.

$117,853,126. Accordingly, government funding accounted for 58.93% of the September 11 Memorial and Museum's unrestricted funds.

34. In August 2010, Congress passed Public Law 111-221, ordering the National Mint to strike September 11 Commemorative Medals for purposes of sale to the public. Ten dollars from the sale of each medal are to be donated from the federal government to the September 11 Memorial and Museum.

35. Congress has, therefore, utilized its taxing and spending power to support the September 11 Memorial and Museum.

36. It is estimated that over 5,000,000 individuals will visit the September 11 Memorial and Museum every year. These individuals will include Muslim Americans, Jewish Americans, Hindu Americans, Buddhist Americans, agnostic Americans, and atheist Americans. Many of these individuals have already lost a loved one to the 9/11 Attack or the subsequent wars in the Middle East.

37. Beginning in 2002, various groups proposed including the cross blessed by Defendant Jordan in the September 11 Memorial and Museum.

38. Plaintiff American Atheists opposed inclusion of a cross on the grounds that other religious groups were not given the opportunity for a similar faith-based memorial at the site of an American tragedy.

39. On multiple occasions, plaintiff American Atheists publicly offered to provide a memorial for the September 11 Memorial and Museum, at its

own cost, to represent the approximately 500 non-religious victims of the attack on the World Trade Center.

40. Plaintiff American Atheists never received a response.

41. As of approximately July 15, 2011, widespread news coverage indicated that the defendants intended to move the cross blessed by Defendant Jordan in 2001 to the September 11 Memorial and Museum.

42. On July 22, 2011, plaintiff American Atheists again offered to place a memorial to the non-religious victims of the 9/11 attack in the September 11 Memorial and Museum, at its own expense.

43. As of the date of filing this amended complaint, Plaintiff American Atheists' offer has not been accepted.

44. On July 23, 2011, in a religious ceremony during which the cross was blessed again by Defendant Jordan, the cross was installed at the September 11 Memorial and Museum.

45. Contemporary photos show that the cross has been altered to look more like a Latin cross since being found in 2001. Specifically, on information and belief, the upright I-beam of the cross has been cut and squared off and etched with "Jesus." The horizontal beam of the cross was cleaned, debris was removed, and new metal "debris," shaped to cloak part of the horizontal beam, was added.

46. This clear alteration, which is not present in other salvaged beams from the World Trade Center ruins, is, upon information and belief, the reason the cross was selected for display.

47. No other religious or non-religious group has been permitted a memorial.

First Cause of Action:
Violations of the United States Constitution

48. Plaintiffs incorporate herein by reference paragraphs 1 through 47.

49. The installation of the cross at the September 11 Memorial and Museum is facially violative of the First Amendment to the Constitution of the United States of America, which mandates:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

50. The installation of the cross at the September 11 Memorial and Museum is facially violative of Section One of the Fourteenth Amendment to the Constitution of the United States of America, which mandates:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

51. The challenged cross constitutes an unlawful attempt to promote a specific religion on governmental land, diminishing the civil rights, privileges or capacities of Atheist Americans, Agnostic Americans, Jewish Americans, Muslim Americans, and all others who are not Christian

Americans. Because the challenged cross promotes Christianity over all other religions, it also denies non-Christian American equal protection under the laws of the land. As such, the challenged cross is repugnant to the Constitution of the United States.

52. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

53. As a direct and proximate result of the unconstitutional existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who also were victims of the 9/11 attack, is unconstitutional. American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11 attack be placed within the September 11 Memorial and Museum near the cross. Named

plaintiffs also seek injunctive relieve against the inclusion of the cross, together with nominal damages, costs, and attorney fees.

Second Cause of Action:
Violations of the Constitution of the State of New York

54. Plaintiffs incorporate herein by reference paragraphs 1 through 53.

55. The installation of the cross at the September 11 Memorial and Museum is facially violative of Article One, Section Three to the Constitution of the State of New York, which mandates:

> The free exercise and enjoyment of religion profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

56. The installation of the cross at the September 11 Memorial and Museum is facially violative of Article One Section Eleven of the Constitution of the State of New York, which mandates:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed, or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

57. The challenged cross constitutes an unlawful attempt to promote a specific religion on governmental land, diminishing the civil rights, privileges or capacities of atheist Americans, agnostic Americans, Jewish

Americans, Muslim Americans, and all others who are not Christian Americans. Because the challenged cross promotes Christianity over all other religions, it also constitutes discrimination against non-Christians by the defendants, who include firms, corporations, and agencies and/or subdivisions of the state. As such, the challenged cross is grossly and outrageously at variance with the Constitution of the State of New York.

58. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

59. As a direct and proximate result of the unconstitutional existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who also were victims of the 9/11 attack, is repugnant to the Constitution of the State of New York. American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11

attack be placed within the September 11 Memorial and Museum near the cross. Named plaintiffs also seek injunctive relieve against the inclusion of the cross, together with nominal damages, costs, and attorney fees.

Third Cause of Action:
Violations of Article 4 Section 40 of New York's Civil Rights Act

60. Plaintiffs incorporate herein by reference paragraphs 1 through 59.

61. The installation of the cross at the September 11 Memorial and Museum is violative of Article 4 Section 40 of New York's Civil Rights Act, which mandates, *inter alia*:

> All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons.

62. The September 11 Memorial and Museum is included within Article 4 Section 40 of New York's Civil Rights Law, which specifically includes "any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility, supported in whole or in part by public funds or by contributions solicited from the general public."

63. One of the advantages and/or privileges of the September 11 Memorial and Museum is the placement of and opportunity to view a memorial to the victims of the 9/11 attack.

64. In placing an item revered specifically as a symbol that "God never abandoned us at Ground Zero"[4] in the September 11 Memorial and Museum, the defendants have afforded Christian Americans the privilege of a faith-based memorial.

65. In ignoring other faiths' and non-religious based groups' attempts to place a similar memorial in the September 11 Memorial and Museum, the defendants have denied non-Christian Americans full and equal privileges within the museum, in violation of Article 4 Section 40 of New York's Civil Rights Act.

66. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

67. As a direct and proximate result of the existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who

[4] *Id.*

also were victims of the 9/11 attack, violates Article 4 Section 40-c of New York's Civil Rights Act. American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11 attack be placed within the September 11 Memorial and Museum near the cross. Named plaintiffs also seek injunctive relieve against the inclusion of the cross, together with nominal damages, costs, and attorney fees.

Fourth Cause of Action:
Violations of Article 4 Section 40-c(2) of New York's Civil Rights Act

68. Plaintiffs incorporate herein by reference paragraphs 1 through 67.

69. The installation of the cross at the September 11 Memorial and Museum is violative of Article 4 Section 40-c(2) of New York's Civil Rights Act, which mandates:

> No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

70. In placing an item revered specifically as a symbol that "God never abandoned us at Ground Zero"[5] in the September 11 Memorial and Museum, the defendants have afforded Christian Americans the privilege of a faith-based memorial.

[5] *Id.*

71. In ignoring other faiths' and non-religious based groups' attempts to place a similar memorial in the September 11 Memorial and Museum, the defendants have discriminated against non-Christian Americans' civil rights.

72. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

73. As a direct and proximate result of the existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who also were victims of the 9/11 attack, violates Article 4 Section 40-c(2) of New York's Civil Rights Act. American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11 attack be placed within the September 11 Memorial and Museum near the cross. Named

plaintiffs also seek injunctive relieve against the inclusion of the cross, together with nominal damages, costs, and attorney fees.

Fifth Cause of Action:
Violations of the Constitution of the State of New Jersey

74. Plaintiffs incorporate herein by reference paragraphs 1 through 73.

75. The installation of the cross at the September 11 Memorial and Museum is facially violative of Article One, Section Four to the Constitution of the State of New Jersey, which mandates:

> There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

76. The installation of the cross at the September 11 Memorial and Museum is facially violative of Article One Section Five of the Constitution of the State of New York, which mandates:

> No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

77. The challenged cross constitutes an unlawful attempt to promote a specific religion on governmental land owned, at least in part, by an entity overseen by the State of New Jersey. The challenged cross therefore diminishes the civil rights, privileges or capacities of atheist Americans, agnostic Americans, Jewish Americans, Muslim Americans, and all others who are not Christian Americans. Because the challenged cross promotes Christianity over all other religions, it also constitutes

discrimination against non-Christians by the defendants, who include firms, corporations, and agencies and/or subdivisions of the state. As such, the challenged cross is grossly and outrageously at variance with the Constitution of the State of New Jersey.

78. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

79. As a direct and proximate result of the unconstitutional existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who also were victims of the 9/11 attack, is repugnant to the Constitution of the State of New Jersey. American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11 attack be placed within the September 11 Memorial and Museum near the cross. Named plaintiffs also seek injunctive relieve against the

inclusion of the cross, together with nominal damages, costs, and attorney fees.

Sixth Cause of Action: Violations of New Jersey Statute 10:1-3

80. Plaintiffs incorporate herein by reference paragraphs 1 through 79.

81. The installation of the cross at the September 11 Memorial and Museum is violative of New Jersey Statute 10:1-3, which mandates, *inter alia*:

> No owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from, or deny to, any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post, or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from, or denied to, any person on account of race, creed, color, national origin, ancestry, marital status or sex, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color, national origin, ancestry, marital status or sex, is unwelcome, objectionable or not acceptable, desired or solicited.

82. The September 11 Memorial and Museum is included within New Jersey Statute 10:1-3 because the Port Authority is governed in part by the State of New Jersey. As such, its employees cannot act in violation of New Jersey law.

83. One of the advantages and/or privileges of the September 11 Memorial and Museum is the placement of and opportunity to view a memorial to the victims of the 9/11 attack.

84. In placing an item revered specifically as a symbol that "God never abandoned us at Ground Zero"[6] in the September 11 Memorial and Museum, the defendants have afforded Christian Americans the privilege of a faith-based memorial.

85. In ignoring other faiths' and non-religious based groups' attempts to place a similar memorial in the September 11 Memorial and Museum, the Port Authority has denied non-Christian Americans full and equal privileges within the museum, in violation of New Jersey Statute 10:1-3.

86. The plaintiffs, and each of them, have suffered, are suffering, and will continue to suffer damages, both physical and emotional, from the existence of the challenged cross. Named plaintiffs have suffered, *inter alia*, symptoms of depression, headaches, anxiety, and mental pain and anguish from the knowledge that they are made to feel officially excluded from the ranks of citizens who were directly injured by the 9/11 attack and the lack of acknowledgement of the more than 1,000 non-Christian individuals who were killed at the World Trade Center.

87. As a direct and proximate result of the existence of the cross, plaintiffs have suffered, and will continue to suffer, damages for which they have no clear, speedy, or adequate remedy at law. Plaintiffs seek a declaration that the inclusion of a cross at the September 11 Memorial and Museum, in the absence of equal acknowledgment of those non-Christians who also were victims of the 9/11 attack, violates New Jersey Statute 10:1-3.

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[6] *Id.*

American Atheists seek injunctive relieve against inclusion of the cross and/or an order that a memorial to the non-religious Americans who fell victim to the 9/11 attack be placed within the September 11 Memorial and Museum near the cross. Named plaintiffs also seek injunctive relieve against the inclusion of the cross, together with nominal damages, costs, and attorney fees.

WHEREFORE, plaintiffs pray and demand:

A. For a judgment, finding, and declaration by the Court that the placement of the cross, without affording equal space to non-Christian Americans for similar memorials, violates the Constitution of the United States, the Constitution of the State of New York, and Article 4 Sections 40 and 40-c of New York's Civil Rights Law;

B. For an injunction against continued display of the cross in the September 11 Memorial and Museum until such time as equal space is granted to non-Christian Americans for similar memorials;

C. For such damages as may appear to be appropriate;

D. For the costs of this action, together with reasonable attorney fees; and

E. For any and all other relief, both legal and equitable, to which plaintiffs may appear to be entitled.

Dated this 12th day of August, 2011.

Respectfully submitted:

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*Petition for *Pro Hac Vice* status pending.