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CLERK SUPREME COURT
LOS ANGELES

Honorable Ronald M. George, Chief Justice and the Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783
USA

11 November 2002

Dear Chief Justice

Supreme Court Case No. S110916
Court of Appeal Case: Second Appellate District, Division Five, No. B150017
JEROLD DANIEL FRIEDMAN, v. SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP et al.

1. Mr Friedman has invited the British Humanist Association (BHA) in the capacity of *amicus curiae* to make a submission to you in relation to his case (above).
2. The BHA is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is committed to human rights and democracy, and has a long history of active engagement in work for an open and inclusive society.
3. The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers' Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.
4. The BHA is deeply committed to support for an open society, with individual freedoms including those of belief and speech, in which the government and official bodies maintain a disinterested impartiality towards the many groups within society so long as they conform to the minimum conventions of the society. While therefore we seek to promote the Humanist lifestance as an alternative to (among others) religious beliefs, we do not seek any privilege in doing so but rely on the persuasiveness of our arguments and the attractiveness of our position. Correspondingly, while we recognise and respect the deep commitment of other people to religious and other non-Humanist views, we reject any claims they may make to privileged positions by virtue of their beliefs.
5. It is our - widely shared - perception that traditional religious belief and observance are in steep decline in this country and elsewhere but that this trend has been offset by a growth in

President: Claire Rayner CBE. Vice Presidents: Sir Hermann Bondi FRS, Baroness Blackstone, Professor Richard Dawkins FRS, Lord Dormand of Easington, Dr James Hemming, Lord Hughes of Woodside, Dr Harry Stopes-Roe, Baroness Turner of Camden, Jane Wynne Willson, Professor Lewis Wolpert CBE FRS

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commitment to morally serious non-theistic lifestyles that fulfil for their adherents most of the same functions as a religion does for its believers.

6. We have therefore welcomed current developments in UK law, derived in the main from the European Convention on Human Rights (itself strongly based on the Universal Declaration of Human Rights), whereby the concept of "religion" is being replaced by a broader concept of "religion or belief".

7. Article 9 of the European Convention, incorporated in UK law by the Human Rights Act 1998, reads as follows:

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

8. Following the Convention, a European Union directive¹ has been adopted the purpose of which is

to lay down a general framework for combatting discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

9. In draft regulations² intended to implement this Directive just published by the UK Government, "religion or belief" is defined as "any religion, religious belief, or similar philosophical belief", and the Explanatory Notes gloss this by saying "The courts and tribunals may consider a number of factors when deciding what is a 'religion or belief' (e.g. collective worship, clear belief system, profound belief affecting way of life or view of the world)".

10. Several European court cases have established that 'religion or belief' must be interpreted conjunctively rather than disjunctively, being treated as a single entity. (It is clear for example that Humanism and other non-theistic lifestyles are no less 'religions or beliefs' than any traditional religion.)

(a) In a 1994 case the European Court of Human Rights said: "As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

² Draft Employment Equality (Religion or Belief) Regulations 2003

of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned." - Kokkinakis v Greece: (1994) 17 EHRR 397, para 31.

(b) "The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - Manoussakis v Greece: (1996), EHRR 387, para 47.

(c) Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - McFeeley v UK: (1981), 3 EHRR 161.

(d) "The term "beliefs"...denotes a certain level of cogency seriousness cohesion and importance" - Campbell and Cosans v. UK: (1982), 4 EHRR 293 para 36 - this statement related to Article 2 (right to education).

11. We draw support also from Article 18 of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice or teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. ...

12. In 1993 the UN Human Rights Committee in commenting on Article 18 said:-

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The term belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.

13. It is not for us to comment on U.S. law or jurisprudence, but we do wish, having drawn attention to these European and international considerations, to express strongly the view that laws that embody privileges for theistic beliefs above the many other ultimate beliefs or lifestyles now to be found in our communities cannot be justified. It is not for the state in a democratic open society to judge and discriminate between its citizens on the basis of their beliefs and commitments in what has been called the *forum internum*.

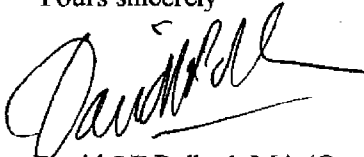
14. These issues are to the fore in the case brought by Mr Friedman. We note that parts of the Court of Appeal's judgement in his case are expressed in terms of an opposition between the

secular and the religious. We find this disturbing, since it appears to build in a prejudice against non-theistic lifestyles. We hold strongly - and with clear support in European and UK law and opinion - that value judgements and legal privilege based on whether or not a person adheres to a theistic belief rather than a non-theistic one, to a religion rather than some non-religious lifestyle, are a relic of past thinking when traditional religious belief was near-universal. Such thinking - and jurisprudence - needs to be adjusted (as is manifestly happening in many US cases no less than in Europe) to take account of changes in the nature of people's ultimate beliefs, lifestyles and conscientious commitments.

15. The language needed to describe these concepts is no less than the concepts themselves still at a formative stage, and it is clear that boundaries have to be drawn to prevent a descent to triviality. In our view, however, the definition of the boundary should not be based on similarity to theistic beliefs but on the function of the belief(s) for the individual concerned. The European approach, which does not attempt to stretch the definition of "religion" beyond its natural meaning but recognises the existence of non-religious beliefs with a similar profundity, significance and function for the individual is, we would suggest, a helpful way of approaching this comparatively new situation.

16. We very much hope that the California Supreme Court will agree to hear Mr Friedman's case and will find reasons to reverse the finding of the Court of Appeal.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David J F Pollock', with a long horizontal flourish extending to the right.

David J F Pollock MA (Oxon)

Trustee

on behalf of the British Humanist Association

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

[Los Angeles]

State of California.

I am employed in the county of

I am over the age of 18 and not a party to the within action; my business address is: 11040 Santa Monica Blvd., Ste. 320, Los Angeles, CA 90025

On, November 12, 2002 I served the foregoing document described as AMICUS CURIAE LETTER IN SUPPORT OF GRANTING REVIEW

on the interested parties in this action

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(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

SCOTT D. MYER, ESQ.

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