



Nikolas Nartowicz  
State Policy Counsel

(202) 466-3234  
(202) 898-0955 (fax)  
americansunited@au.org

1310 L Street NW  
Suite 200  
Washington, DC 20005

February 26, 2019

The Honorable David Gregory  
Chair  
Judiciary Committee  
Missouri House of Representatives  
201 West Capitol Avenue  
Jefferson City, MO 65101

The Honorable Bruce DeGroot  
Vice-Chair  
Judiciary Committee  
Missouri House of Representatives  
201 West Capitol Avenue  
Jefferson City, MO 65101

**Re: Oppose HB 728 – Requiring Named Plaintiffs Encourages Constitutional Violations**

Dear Chair Gregory and Vice-Chair DeGroot:

On behalf of the Missouri chapter, members, and supporters of Americans United for Separation of Church and State, I write to express our opposition to HB 728, which would prohibit plaintiffs from filing lawsuits anonymously if the cases involve the separation of church and state. Although rare, plaintiffs sometimes ask judges for permission to use a pseudonym in these cases because they fear retaliation, ostracization, and even physical harm. This bill would tie the hands of Missouri state judges, who are elected by the people, and prohibit them from protecting plaintiffs who are merely trying to enforce their constitutionally protected rights. Because this bill would discourage lawsuits that seek to protect religious freedom and endanger plaintiffs, we urge you to oppose it.

Plaintiffs who file cases to protect the separation of church and state do so to uphold both the U.S. and the Missouri Constitutions. But these constitutional protections are meaningless if plaintiffs are afraid to go to court to enforce them. Indeed, the backlash against plaintiffs who seek to uphold the Constitution can be severe. Thus the best way to both ensure the Constitution's promise of religious freedom for all is upheld and protect plaintiffs is to allow them to file cases anonymously in certain circumstances.

When a plaintiff seeks anonymity, a trial court traditionally weighs the plaintiff's need for anonymity against the public's right to open judicial proceedings and the risk of unfairness to the defendant.<sup>1</sup> HB 728 would remove a trial court's ability to weigh these interests on a case-by-case basis, forcing all plaintiffs to be named, even when the fear of retribution is real. This will force plaintiffs to choose between their physical safety and their constitutionally protected rights.

---

<sup>1</sup> See *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981); see also *James v. Jacobson*, 6 F.3d 233, 238-9 (4th Cir. 1993).

Unfortunately, the fear of intimidation and physical harm are all too real for people who file lawsuits to protect the separation of church and state. For example:

- Vashti McCollum received more than a thousand threats in the mail after she challenged a school program that offered religious instruction.<sup>2</sup> She was fired from her job and pelted with rotten produce, and the family cat was lynched.<sup>3</sup>
- Joanne Bell's home was burned to the ground after she challenged school-sponsored prayers. She was also assaulted in the school parking lot, her son's prize goats were "slashed and mutilated with a knife,"<sup>4</sup> and callers threatened to physically assault her children and rape her.<sup>5</sup>
- After Madalyn Murray O'Hair challenged official prayer and Bible readings in public schools, her children were physically attacked.<sup>6</sup> Her home was firebombed, and the fire department took a "particularly circuitous route" that took them forty minutes to respond.<sup>7</sup>
- After Kay Staley challenged a Bible monument displayed in a courthouse, she received an envelope that contained a map with her home marked and a message that said, "We have your address. It should be an easy shot."<sup>8</sup> She also received repeated threats of graphic sexual violence.<sup>9</sup>
- Darla Wynne filed suit to stop the Town Council's practice of opening sessions with Christian prayer. Some of her cats were killed, and her dogs were beaten.<sup>10</sup> A month after the decision, someone broke into her home, beheaded her parrot, and left a note warning, "You're next!"<sup>11</sup>
- Jessica Ahlquist required a police escort to and from school after she challenged a prayer mural.<sup>12</sup> She was sent a tweet that noted her home address was posted online, called her a "f—ing worthless c—t," and hoped she would get "curb stomped."<sup>13</sup> Months after she won her case, Ahlquist received a letter that said the police would not watch her forever, people knew where her father worked and what cars they owned, and "WE WILL GET YOU—LOOK OUT!"<sup>14</sup>
- Tammy Kitzmiller received a death threat that told her to "watch out for a bullet" after she challenged the teaching of creationism in her children's public school.<sup>15</sup>

---

<sup>2</sup> Vashti McCollum, *One Woman's Fight* 98 (rev. ed. 1961).

<sup>3</sup> Douglas Martin, [Vashti McCollum, 93. Who Brought Landmark Church-State Suit, Is Dead](#), N.Y. Times, Aug. 26, 2006.

<sup>4</sup> Sandhya Bathija, [Hell in Little Axe: An Oklahoma Mom's Chilling Battle With Religious Bigotry](#), Wall of Separation, Nov. 25, 2008.

<sup>5</sup> See Robert S. Alley, *Without a Prayer: Religious Expression in Public Schools* 107-8 (1996).

<sup>6</sup> Katie Koch, [Bypassing the Bible](#), Harvard Gazette, Nov. 2, 2012.

<sup>7</sup> *Id.*

<sup>8</sup> [Bible Lawsuit Sparks Death Threats Against Texas Attorney](#), Church & State, Oct. 2004.

<sup>9</sup> See Brief for Appellee at 57, *Staley v. Harris County*, 461 F.3d 504 (5th Cir. 2006) (No. 04-20667).

<sup>10</sup> [S.C. Prayer Plaintiff Faces Wrath of Community Over Lawsuit](#), Church & State, Nov. 2004.

<sup>11</sup> *Id.*

<sup>12</sup> Elisabeth Harrison, [R.I. Student Draws Ire Over School Prayer Challenge](#), NPR, Feb. 14, 2012.

<sup>13</sup> JT Eberhard, [Law Enforcement Advice](#), Patheos, Jan. 12, 2012.

<sup>14</sup> Hemant Mehta, [Jessica Ahlquist Gets Nasty Hatemail](#), Friendly Atheist, Apr. 11, 2012.

<sup>15</sup> Ed Brayton, [Plaintiff Intimidation in Church/State Cases](#), Patheos, Jan. 17, 2007.

- Melinda Maddox, who challenged a two-ton Ten Commandments monument in the state judicial building, received death threats, her law practice was boycotted and vandalized, and the windows in her home were shot out.<sup>16</sup>
- Lisa Herdahl received bomb threats and harassing phone calls after she challenged school prayer.<sup>17</sup> She also faced extreme ostracization, as nearly every house and business posted signs opposing her suit.<sup>18</sup>

And finally, there are examples of what happens when plaintiffs are not allowed to proceed anonymously. In Texas, a high school student joined a suit challenging school prayer anonymously to avoid a pattern of harassment, threats, and intimidation.<sup>19</sup> But he later dropped his case to uphold the Constitution rather than be forced to reveal his identity.<sup>20</sup>

Passage of this bill could empower those who would burn down the homes and kill the pets of these plaintiffs. It would give those who seek to physically assault and threaten the plaintiffs in these cases the information they need to do so. Even if you disagree with plaintiffs' positions in church-state cases, you should not pass a law that invites this kind of intimidation and even physical harm.

Accordingly, we urge you to reject HB 728.

Sincerely,



Nikolas Nartowicz  
State Policy Counsel

cc: Members of the House Judiciary Committee

---

<sup>16</sup> Rob Boston, [Plucky Lindy](#), Church & State (Apr. 2004).

<sup>17</sup> Gary Borg, [Judge Strikes Down School's Prayers](#), Chi. Trib., June 4, 1996.

<sup>18</sup> Nadine Strossen, [How Much God in the Public Schools](#), 4 WM. & MARY BILL RTS. J. 607, 614 (1995).

<sup>19</sup> Guillermo Contreras, [Judge Won't Throw Out School-Prayer Lawsuit](#), San Antonio Express-News, Nov. 3, 2011.

<sup>20</sup> Guillermo Contreras, *Student Bails out of Prayer Case*, San Antonio Express-News, Dec. 7, 2011, available at 2011 WLNR 25326432.