

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

STEVEN HEWETT,

*Plaintiff,*

v.

CITY OF KING,

*Defendant.*

Case No. 1:12-CV-1179

**COMPLAINT**

1. Steven Hewett is a former police officer and veteran of the United States Army. He served his country in Afghanistan, where he received both the Combat Action Badge and the Bronze Star. In so doing, Mr. Hewett sought to defend his country's most important liberties, including the freedom of religion. And he served alongside Americans from a variety of religious traditions—including Jews, Christians, Muslims, and Sikhs—as well as those who do not practice any religion at all.

2. The City of King, North Carolina, where Mr. Hewett resides, has not shown the same commitment to the freedom of religion. Instead, the City has exploited the memory of American soldiers for the purpose of promoting Christianity. When the City built a Veterans' Memorial in the City's Central

Park, it included a Christian flag; no other religions were represented in the Memorial. When Mr. Hewett objected, the City Manager warned that Mr. Hewett would “answer to God and Jesus Christ”; the Mayor stated—at a City Council meeting, no less—that Mr. Hewett “needs us to pray for him.”

3. After its lawyer warned that its conduct was unconstitutional, the City purported to remove the flag; but it immediately established a sham “limited public forum” as a “plan for returning the Christian flag to the Veteran’s Memorial.” True to plan, under the so-called public forum, the very same Christian flag has flown at the Veterans’ Memorial all but a few weeks of every year.

4. Flying the Christian flag is not the only way that the City promotes Christianity at the Veterans Memorial. Next to the Christian flag, the City built a statue of a soldier kneeling before a cross (“the Cross Statue”). Official, City-sponsored events to commemorate Veterans’ Day, Memorial Day, and September 11 have consistently featured multiple Christian prayers delivered by City officials and invited clergy. And a variety of other practices have reinforced the City’s commitment to promoting Christianity and ostracizing anyone with different religious beliefs.

5. Whether Jews or Hindus, Muslims or Buddhists, Atheists or Agnostics, American soldiers of diverse religious backgrounds and beliefs

have fought, bled, and died for their country. The Constitution prohibits the City from exploiting their sacrifice to promote Christian worship.

### Jurisdiction and Venue

6. The Court has subject matter jurisdiction over Mr. Hewett's federal claims under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over his state claims under 28 U.S.C. § 1367. Venue is proper in this Court under 28 U.S.C. § 1391(b).

7. The Court may grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

### Parties

8. Plaintiff Steven Hewett has resided in the City of King, North Carolina, since 1999. He is offended by the City's promotion of religion generally and Christianity specifically: these practices demean and exclude his religious beliefs, coercively expose him to publicly sponsored religious displays and exercises, and pressure him to participate in religious exercises.

9. Since he returned from his military service in Afghanistan in 2004, Mr. Hewett has seen the Christian flag from the road nearly every day while driving (except for during the brief period in fall 2010 when the City temporarily removed the Christian flag from the Veterans' Memorial). Mr.

Hewett continues to see the Christian flag nearly every day while driving in the City.

10. Mr. Hewett first encountered the Cross Statue in or around July 2010. Since then, he has seen the Cross Statue, in addition to the Christian flag, every time he has visited the Memorial for events to commemorate Veterans' Day, Memorial Day, and September 11. Since returning from Afghanistan in 2004, Mr. Hewett has attended virtually all of the City's annual events to commemorate Veterans' Day and Memorial Day, and he intends to continue attending these events in the future; he also attended virtually all of the City's September 11 services, the most recent of which took place in 2009. In addition, when attending these City-sponsored events, Mr. Hewett has witnessed a number of prayers, including Christian prayers and other religious content delivered by City officials and invited clergy.

11. Mr. Hewett has also been exposed to the Christian flag and Cross Statue when visiting the Memorial to reflect on the memory of deceased friends. Except to attend the memorial ceremonies described above, Mr. Hewett no longer visits the Veterans' Memorial to reflect on deceased friends because he is offended by the City's display of the Christian flag and Cross Statue. Mr. Hewett would resume visiting the Memorial more often, however, if the Christian Flag and Cross Statue were removed.

12. Defendant City of King is a corporate body located in North Carolina and amenable to suit under North Carolina law. *See* N.C. Gen. Stat. § 160A-11. The City has “all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever,” *id.*, and these powers are “exercised by the city council.” *Id.* § 160A-12.

### General Allegations

13. The City of King has exploited memorial monuments and ceremonies to promote Christianity in several ways. Among other things, the City has (1) displayed a Christian flag at the City’s Veterans’ Memorial, (2) added the Cross Statue to the Veterans’ Memorial, and (3) infused annual memorial ceremonies and services with official prayers, including Christian prayers.

#### *A. The City Adopts The Christian Flag Display.*

14. In 2003, the City began planning to build a Veterans’ Memorial in Central Park. The Memorial, completed in 2004, consists of three platforms: (1) a large stone pentagonal platform, (2) a smaller black granite pentagonal platform atop the stone platform, and (3) an even smaller black granite platform atop the other two platforms.

15. Each of the two larger platforms contains a flagpole on each of its five corners, and the smallest platform contains a flagpole at its center—for a total of eleven flags. The area surrounding the platforms is covered with pavers, some of which bear the names of veterans whose families or friends have paid to purchase them. See *Recreation Areas*, City of King, [http://www.ci.king.nc.us/index.asp?Type=B\\_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D}](http://www.ci.king.nc.us/index.asp?Type=B_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D})



Photo of Veterans' Memorial. *Recreation Areas*, City of King, [http://www.ci.king.nc.us/index.asp?Type=B\\_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D}](http://www.ci.king.nc.us/index.asp?Type=B_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D})

[king.nc.us/index.asp?Type=B\\_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D}](http://www.ci.king.nc.us/index.asp?Type=B_BASIC&SEC={8A8050BD-C1AF-4DFE-9367-D92C6FDED14D}) (all websites last visited Oct. 31, 2012).

16. Originally, the Memorial displayed the flags of the five military services (the Army, Navy, Air Force, Marine Corps, and Coast Guard), the North Carolina State flag, the American Legion flag, the POW/MIA Flag, the City of King flag, and the American flag. The eleventh flag was the Christian flag—“a white flag with a blue canton and a red cross in it.” *The Christian Flag*, Flagspot.net, <http://flagspot.net/flags/rel-chr.html>.

17. The Christian flag was designed by Protestants in the early



Christian flag at City of King Veterans' Memorial. See Scott Burdick, *In God We Trust?*, YouTube (Dec. 31, 2011), [http://www.youtube.com/watch?feature=player\\_embedded&v=8ucVDpmFz-E](http://www.youtube.com/watch?feature=player_embedded&v=8ucVDpmFz-E).

Twentieth Century and continues to be displayed in Protestant churches throughout the country. It features a Latin cross—the most significant symbol of Christianity. Moreover, each of the flag's colors

represents a different aspect of Christianity: blue refers to ritual baptism in water, white to Biblical conceptions of purity, and red to the crucifixion of Jesus Christ.

*B. Mr. Hewett Objects to the Christian Flag Display.*

18. Mr. Hewett first objected to the Christian Flag Display in July 2010, because he believed that the City's display of the Christian flag excluded and demeaned his religious beliefs and those of other veterans. He spoke with King City Manager John Cater, the City's Chief Executive Officer whose "responsibility is to plan, organize and direct all city employees and operations." *Administration*, City of King, <http://www.ci.king.nc.us/index.asp?>

Type=B\_BASIC&SEC={26344BCF-DE47-418A-B0BC-2672F1909466}. City Manager Cater agreed that the Constitution prohibited the City from displaying the Christian flag, but he warned Mr. Hewett that he would have to answer for his complaint “to God and Jesus Christ upon [his] death.”

19. Later in the phone conversation, Mr. Hewett asked City Manager Cater how he would react if “the City Council was all Muslim and they put up Muslim mosques everywhere but said that the Christians couldn’t have a church in town?” The City Manager responded, “if they were all Muslims and ... put the Muslim flag out by the Veteran’s Memorial, I would say that they were making a serious mistake that one day they were going to have to pay for.” He added that since Muslims “[chose] a God that happens not to be the Real God, then they will pay for that.”

20. On August 2, 2010, the City Council held a meeting to discuss Mr. Hewett’s complaints about the Christian flag, which at that point he had made anonymously. One citizen asked the Council “[w]hat are we going to do about these people? They’re unbelievers.” Leslie Bray Evans, *King City Council Takes a Stand-A Unanimous Vote to Keep the Christian Flag at Veterans Memorial*, Stokes News, Aug. 4, 2010, [http://www.thestokesnews.com/view/full\\_story/8988434/article-King-City-Council-takes-a-stand-A-unanimous-vote-to-keep-the-Christian-flag-at-Veterans-Memorial](http://www.thestokesnews.com/view/full_story/8988434/article-King-City-Council-takes-a-stand-A-unanimous-vote-to-keep-the-Christian-flag-at-Veterans-Memorial). As for Mr.

Hewett's decision to remain anonymous, Mayor Pro Tem Burnette (himself a member of the King City Council) said that it "shows how cowardly these people are .... They don't have the backbone ... I don't a [sic] lot of faith in what they want." *Id.* The Mayor Pro Tem added that Mr. Hewett's request "is a slap in the face to every veteran" and "advised people who don't like the Christian flag flying there to simply not look at it." *Id.*

21. The Mayor Pro Tem was not the only City government official to disparage religious minorities. City Manager Cater informed the Council that he opposed the separation of church and state. He also stated, "I don't like a minority telling a majority of people in King what we will do," and called for "a constitutional amendment that would allow local governments to have the authority to raise whatever flags elected leaders there chose to fly." *Id.* Mayor Warren added that "[y]ou gotta make a stand" and advised that Mr. Hewett "needs us to pray for him." *Id.*

22. Despite their dismissal of Mr. Hewett's concerns, the City knew that its display of the Christian flag violated the Constitution. City Manager Cater advised the Council that "the highest courts have now set a clear precedent in how they interpret the Constitution" and, as a result, "he would have to recommend removing the flag from the Memorial." *Id.* The City

Attorney agreed, *id.*, and Councilman Carter warned, “I don’t think there’s any doubt we’d lose in court.” *Id.*

23. Despite agreement by City officials and attorneys that the Constitution prohibited the City from displaying the Christian flag, the City Council voted unanimously to leave the Christian flag in place. One meeting attendee added, “I’ll march up and down there with a placard [if the flag is removed]”; Mayor Warren promised, “I’ll be right there with you.” *Id.*

*C. The City Temporarily Removes the Christian Flag, But Actively Supports Its Return.*

24. After receiving letters from both Plaintiff’s counsel and the ACLU of North Carolina, the City Council changed its mind—briefly. In September 2010, the City Council voted to remove the Christian flag from the Veterans’ Memorial. *See* John Hinton, *King Surrenders to Complaints Over a Christian Banner in Park*, *Winston-Salem Journal*, Sept. 17, 2010.

25. The community’s response was swift. King residents displayed the Christian flag throughout the city: the Christian flag was “[f]lying in front of barbecue joints and hair salons, stuck to the bumpers of trucks, hanging in windows and emblazoned on T-shirts.” Tom Breen, *Vets Stand Guard Over Christian Flag in N.C. Town*, *Wash. Times*, Oct. 21, 2010, <http://www.washingtontimes.com/news/2010/oct/21/vets-stand-guard-over-christian-flag->

in-nc-town/print/. Local business owners flew the Christian flag on their storefronts—often on pain of boycott from local residents and churches. See Meghan Baker, *Private Protests Held in N.C. City Over Removal of Christian Flag From War Memorial*, Foxnews.com, Oct. 7, 2010, <http://www.foxnews.com/us/2010/10/07/aclu-threatens-lawsuit-nc-town-does-remove-christian-flag-war-memorial/>.

26. On September 23, a group of local residents staged a protest and placed a freestanding Christian flag on the paved area of the Memorial directly in front of the platforms on which the other flagpoles stand. At around the same time, an unknown individual placed in the Memorial's



Protest leader with makeshift Christian flag at Memorial. See *North Carolina City Votes to Allow Christian Flag to Fly Again*, Foxnews.com, Nov. 2, 2010, <http://www.foxnews.com/us/2010/11/02/north-carolina-city-votes-allow-christian-flag-fly/>.

garden a sign depicting a Christian flag alongside the phrase “We the People Say Fight!”

27. The City did not remove either of these Christian displays from the Veterans’ Memorial. See Leslie Bray, *Peaceful Activity Escalating at King*

*Central Park—A Freestanding Christian Flag is Being Guarded There*, Stokes News, [http://www.thestokesnews.com/view/full\\_story/9662522/article-Peaceful-activity-escalating-at-King-Central-Park-A-freestanding-Christian-flag-is-being-guarded-there?instance=home\\_news\\_lead#ixzz1xbA1h2Bu](http://www.thestokesnews.com/view/full_story/9662522/article-Peaceful-activity-escalating-at-King-Central-Park-A-freestanding-Christian-flag-is-being-guarded-there?instance=home_news_lead#ixzz1xbA1h2Bu).

Moreover, although the protesters' presence in Central Park after hours was unlawful, the City permitted them to remain; the vigil also continued for weeks after its permit had expired, again with no intervention by the City.

See Caroline Blair, *Christian Flag Flying Again at King Veterans' Memorial*, News 14, Jan. 3, 2011, [http://triad.news14.com/content/top\\_stories/634888/christian-flag-flying-again-at-king-veterans--memorial?r=2997795699](http://triad.news14.com/content/top_stories/634888/christian-flag-flying-again-at-king-veterans--memorial?r=2997795699).

28. Far from enforcing the law and removing pro-Christian material from the Veterans' Memorial, the City reiterated its support for the protesters and their efforts to display the Christian flag. For instance, the City Manager stated, “[I]f others wish to leave the comfort of their homes, keep a 24/7 watch over the Veterans Memorial for several weeks, sleep on the ground, endure the bugs, all for the purpose of honoring those who have given all so that the rest of us can live free, then they can fly the flag of their religion also.” *Id.* As for those with different religious beliefs, the City Manager advised that “[t]hose who are atheists or agnostics need not fly a flag.” *Id.*

29. On October 11, 2010, the King City Council again discussed its plans for the Christian flag. The leader of the pro-Christian vigil at the Veterans' Memorial warned the Council, "Don't let go of that cross, don't put our soldiers down for that and don't let go of that flag." Other attendees read from scripture, declared that King was a Christian community, and asked the Council whether they "believe in the crucifixion and resurrection of our Christ." Yet others "[e]ncouraged and challenged the Council and the Mayor ... to lead this community ... and to do whatever it takes to get the Christian flag back up on the pole." Attendees also praised the Mayor for "publicly acknowledg[ing] that King is a Christian community." Exhibit A (King City Council, Minutes of October 11, 2010 meeting) at 2, 4.

30. On October 23, 2010, approximately 5,000 people rallied to urge the City Council to return the Christian flag to the Veterans' Memorial. David Gibbs of the Christian Law Association stated, "We need to protect our heritage. ... How many believe it's time for America to quit pretending we're not Christian? And if there's people in King, North Carolina who don't like that, there's lots of places you can move to!" Gibbs also urged the public to intimidate anyone considering taking legal action against the display of the Christian flag: "[I]f you know who they are, encourage them to move! There's no lawsuit against King, North Carolina unless a citizen is willing to bring it

and how many believe no citizen should bring that kind of lawsuit.” Scott Burdick, *In God We Trust?*, YouTube (Dec. 31, 2011), [http://www.youtube.com/watch?feature=player\\_embedded&v=8ucVDpmFz-E](http://www.youtube.com/watch?feature=player_embedded&v=8ucVDpmFz-E).

31. Despite such tactics from supporters of the Christian flag, City law-enforcement officials singled out the flag’s opponents. For instance, during the pro-flag rally, a few King residents stood at the entrance to Central Park with signs opposing the City’s display of the Christian flag. City of King police officials informed the flag’s opponents—rather than the much larger, more hostile crowds protesting in support of the Christian flag—that they would be arrested in the event of any disturbances at the rally.

*D. The City Adopts A New Policy Intended To Return the Christian Flag to the Veterans’ Memorial.*

32. By November, the City formalized its efforts to return the Christian flag to the Veterans’ Memorial. On November 1, 2010, the City Council voted to institute a new policy to govern the display of religious flags. *See* Exhibit B (City of King—Veterans Memorial (Limited Public Forum Policy)) (“Flag Policy”). The Flag Policy purports to designate one of the Memorial’s eleven flagpoles as a “limited public forum for the purpose of flying, on a rotating basis ... flags which represent the faith traditions of men and women who have served in the U.S. military.” Flag Policy ¶ 2.

33. The City adopted the Flag Policy knowing and intending that the Christian flag would dominate the so-called “limited public forum.” Indeed, the City’s counsel admitted that the Flag Policy was “the city’s plan for returning the Christian flag to the Veteran’s Memorial.” John Hinton, *Council’s Compromise Called ‘Reasonable’*, Winston-Salem Journal, Nov. 6, 2010. The Flag Policy, moreover, was prepared with the assistance of lawyers from Alliance Defending Freedom (known at the time as Alliance Defense Fund), “a servant ministry building an alliance to keep the door open for the spread of the Gospel by transforming the legal system and advocating for religious liberty.” *Alliance Defending Freedom: For Faith. For Justice.*, Alliance Defending Freedom, <http://www.alliancedefendingfreedom.org/about>.

34. The terms of the Flag Policy underscore the City’s intent to return the Christian flag to the Veterans’ Memorial. It reserves the flagpole for certain approved religious flags, which “display[] the emblems of belief recognized by the U.S. Department of Veterans Affairs.” Flag Policy ¶ 10(b). And the Policy ensures that the religious flags’ religious messages are undiluted: flags “may only contain the permitted emblems of belief against a white, colored or multi-colored background and shall not contain any additional words or lettering not already incorporated in the recognized emblem.” *Id.* ¶ 10(c).

35. In addition to permitting only certain, religious flags, the City took other steps to ensure that the Christian flag dominated the forum. Access is reserved for King residents, along with nonresidents honoring veterans whose names were “inscribed on a quarry tile at the Memorial [or] ... on the Memorial itself”—“provided such inscription occurred on or before November 30, 2010 or by the date of this policy, whichever comes first.” *Id.* ¶ 7(d). When a nonresident asked the City why the Flag Policy prohibited most nonresidents from participating, City Clerk Tammy Hatley replied that the restrictions were designed to minimize the number of applicants seeking to display anything other than the Christian flag.

36. The City’s pro-Christian motivation was highlighted by Pastor Kevin Broyhill of Calvary Baptist Church—one of the leaders of the protests designed to return the Christian flag to the Veterans’ Memorial. On information and belief, Pastor Broyhill helped the City Council devise the Flag Policy, which he acknowledged “restricts who can participate which will eliminate outsiders from taking over the pole. The idea is for Christians to fill up the reservation list and tie up the pole for years to come. This will ensure that the Christian flag keeps flying.” Kara L. Kraemer, *Keep Veteran’s Memorial Flag: Christians Plot to Defeat ACLU At Their Own Game*, Yakima Conservative Examiner, Nov. 11, 2010, <http://www.examiner.com/article/>

keep-veteran-s-memorial-flag-christians-plot-to-defeat-aclu-at-their-own-game. Pastor Broyhill also promised that his church would “buy several Christian Flags for people to use so that everyone doesn’t have to buy their own flag. We’ll even put it up for you!” *Id.*

*E. The Christian Flag Returns to the Veterans’ Memorial.*

37. After adopting the Flag Policy, the City received over seventy applications to display a flag: as the City anticipated and intended, virtually all applicants sought to display the Christian flag. Non-Christians expressed fear that if they submitted an application for any other flag, they would be shunned and their businesses boycotted. Indeed, King business-owners who had previously articulated support for Mr. Hewett were threatened with boycotts; another resident who protested against the return of the Christian flag was driven out of business.

38. Similar pressure came from State Representative Bryan Holloway, who represents the City of King. Asked about the possibility that someone would fly a flag to honor a Muslim veteran, Representative Holloway asserted, “That’s a veterans’ memorial. We were not fighting to protect the Muslim faith.” As for the chances that someone would fly an atheist flag, Representative Holloway responded, “That would be sad, very sad and I’d hate to see that memorial desecrated that way.” Burdick, *supra*.

39. The City conducted a lottery and selected 52 applications to display a flag at the Veterans' Memorial—one for each week of 2011. By early January 2011, the Christian flag had returned. Councilman Allen joined those who put up the Christian flag during the first week; he was thanked at the next Council meeting “for being present when the first flag went up at the Limited Public Forum.” Exhibit C (King City Council, Minutes of January 3, 2011 meeting) at 2. Ultimately, the Christian flag flew on the Veterans' Memorial for 47 of the 52 weeks in 2011, and will fly for 47 of the 52 weeks in 2012.

40. Mr. Hewett submitted five applications, one each on behalf of several family members who had served in the military. Initially, Mr. Hewett listed the Christian flag for each application because he feared that City officials would reject his application if he sought to fly anything else. After four of his applications were selected in the lottery, Mr. Hewett sought and received permission from the City to display no flag at all during each of his four weeks in 2011.

41. But even in the few weeks when the Christian flag was not scheduled to fly, the City has allowed local crowds to force Christianity back into the Veterans' Memorial. For instance, the applicant selected for the week of June 6, 2011, planned to fly no flag; in response, a King resident informed the City Council that he and others would “put up and sit with a temporary Christian

flag.” *Id.* at 2. That week, Christian-flag supporters placed a makeshift Christian flagpole on the Memorial and metal crosses inside its display case—just as they had promised to the City Council.

42. A City resident involved in this effort explained that these Christian materials were added because “this is a Christian flagpole,” and he warned Jennifer Burks, a friend of the June 6 applicant, that “if you take [the crosses] out, I’ll break your arm.” Yet when Ms. Burks called the King police, the police questioned witnesses to determine whether she had made any threats, and refused to investigate the threat against Ms. Burks on the ground that it was “conditional.”

\* \* \*

43. In sum, the City has tried at every turn to ensure that the Veterans’ Memorial is used to promote Christianity. First, it flew the Christian flag itself, and sought to silence those, such as Mr. Hewett, who objected. Second, after acknowledging that the Constitution prohibited its display of the Christian flag, the City created a sham public forum for religious flags—knowing and intending that the Christian flag would dominate the forum, and looking the other way as King residents intimidated anyone who sought to display anything else. Little, then, has changed, since 2004: a City-owned

Veterans' Memorial is home to the Christian flag all but a few weeks every year.

*F. The City Adds a Cross Statue to the Veterans' Memorial.*

44. The City has intensified its promotion of Christianity by building and displaying a Christian-themed statue at the Veterans' Memorial. On or around April 2010, the City erected the Cross Statue—a statue of a soldier kneeling and praying before a cross. *See King City Council Votes to Remove Christian Flag*, WXII, Sept. 17, 2010, <http://news.yahoo.com/video/politics-15749652/king-city-council-votes-to-remove-christian-flag-21956264.html>.

45. The Cross Statue is located only a few feet from the Christian flag, and was paid for by the City of King. *See Exhibit D* (King City Council, Minutes of April 5, 2010 meeting) at 3–4; *Exhibit E* (King Community Appearance Advisory Commission, Minutes of March 18, 2010 meeting) at 1 (describing the planned “yard shadow figure of a praying soldier”).



46. As with the Christian flag, Mr. Hewett objected to the City's display of the Cross Statue. But the City has kept the Cross Statue in place, and it remains at the Veterans' Memorial to this day.

*G. The City Promotes Christianity at Official Memorial Events.*

47. The City has also sponsored prayer-filled services to commemorate Memorial Day, Veterans' Day, and September 11. These services have taken place at the Veterans' Memorial—in the shadow of the Christian flag and Cross Statue—and have served as another opportunity for the City to exploit military sacrifice for religious gain.

i. The City Promotes Christianity At Memorial Day Ceremonies

48. For several years, the City has organized and sponsored an annual Memorial Day Service at the Veterans' Memorial. The service—which the City advertises as the “City of King Memorial Day Service”—features extensive participation from the Mayor, who offers remarks and places a wreath at the Memorial as part of the official ceremony. Mr. Hewett attended all or nearly all of these services since returning from Afghanistan in 2004.

49. Each service since at least 2004 has begun and ended with a prayer, denominated as an “invocation” or “benediction.” Many of these prayers were delivered by City officials—including the City Chaplain, Assistant Chaplain, and Fire Chief—including at least the 2007, 2008, 2009, and 2012

invocations, and the 2007 and 2012 benedictions. Most if not all of the remaining prayers were delivered by City-invited speakers, such as the American Legion Chaplain.

50. Many if not most of these Memorial Day prayers, moreover, have been overtly Christian. For instance, the 2010 invocation was delivered “in Your Son’s sweet name”; the benediction asked the audience to “bow once again in prayer”—“in Christ’s name.” Both the invocation and benediction in 2012 were delivered “in Jesus’ name.” On information and belief, at least one prayer at every Memorial Day ceremony since 2004 has been overtly Christian.

ii. The City Promotes Christianity at Veterans’ Day Ceremonies

51. The City also sponsors an annual official Veterans’ Day event—called the “City of King Veteran’s Day Celebration/Dedication Service”—at which the Mayor delivers opening remarks and lays a wreath at the Veterans’ Memorial, and at which students from the City’s public schools attend and perform music.

52. These official Veterans’ Day ceremonies have featured at least two prayers each year, in the form of an invocation and benediction. Many of these prayers are delivered by the City Chaplain or Assistant Chaplain, including the 2007–2011 invocations; invited speakers, including the

American Legion Chaplain, delivered the benediction in 2007–2011. In addition, an invited speaker at the 2010 ceremony “reminded the hearers of the Christian faith of the founding fathers who framed the Constitution, a document that he said was ‘put together by God-fearing men.’” Leslie Bray, *Honoring America’s Veterans: Stokes County Has Two Veterans Day Services*, Stokes News, [http://thestokesnews.com/view/full\\_story/10277925/article-Honoring-America%E2%80%99s-veterans--Stokes-County-has-two-Veterans-Day-services](http://thestokesnews.com/view/full_story/10277925/article-Honoring-America%E2%80%99s-veterans--Stokes-County-has-two-Veterans-Day-services).

iii. The City Promotes Christianity at September 11 Ceremonies

53. Mr. Hewett began attending the City’s September 11 memorial services after returning from Afghanistan in 2004. He has attended all or nearly all of these events since then. Each year, the event has featured prayers delivered by City officials and invited speakers—many of them invoking Jesus Christ—as well a rendition of the song “American Christian” featuring the refrain, “I’m an American Christian.”

54. The most recent ceremony, held in 2009, was “the scene of rousing patriotic and religious music, stirring speeches and fervent prayers.” Leslie Bray Evans, *Remembering 9/11: City of King Holds Memorial Service*, Stokes News, Sept. 17, 2009, [http://thestokesnews.com/view/full\\_story/3617117/article-Remembering-9-11--City-of-King-holds-memorial-service-](http://thestokesnews.com/view/full_story/3617117/article-Remembering-9-11--City-of-King-holds-memorial-service-). Throughout

that ceremony, “church leaders expressed their gratitude to God for the opportunity to gather and pray as a city.” *Id.* The service featured at least five prayers delivered by pastors and church leaders, including one thanking God “for a leader who allows us to gather and pray,” and another “thank[ing] God for a city that’s not afraid to stand in the middle of the day and give God praise” and “for a mayor who’s a born again Christian.” *Id.* The Mayor, who also delivered the keynote speech, closed the service with a benediction, stating, “May your passenger be the Lord Jesus Christ.” *Id.*

55. The 2009 service also featured a number of religious songs. Mike Owens sang “American Christian” and “turned to smile and point at the city leaders onstage as he sang the words, ‘I thank God for my city where I can worship and pray.’” *Id.* A member of the high-school chorus sang “You Were There,” which described “Jesus being there for His people.” *Id.*

#### *H. The City Promotes Christianity in Other Settings.*

56. Mr. Hewett has directly encountered the City promoting religion and Christianity in several other contexts. For at least the past several years, the King City Council opened each of its meetings with an invocation, delivered by the Mayor, a City Chaplain, or invited Christian clergy. Until at least early 2012, these prayers regularly invoked Jesus Christ and never any other religion.

57. In May 2011, the City sponsored a National Day of Prayer Service and promoted it at City Hall and on the City’s website. The mayor introduced the ceremony, read a proclamation about prayer, and introduced the pastor of the church that was hosting the ceremony. The police chief, who appeared at the event in uniform, played the piano during one or more of the religious songs; one of the prayer-givers stated “it’s good that our police chief could play the piano so well” and prayed “that we might see a revival . . . of people turning to you and the gospel of Jesus Christ.” This City-sponsored event also featured a sermon by the pastor and multiple Christian prayers.

58. From at least November 1999 until approximately 2010, the City displayed a Ten Commandments plaque in the lobby of the King Police Department, located in City Hall.

59. For several months in early 2012, the King Police Department’s official Facebook page listed as its “favorite quotations” two quotes from the Bible (Galatians 6:9 and Proverbs 28:1). This page also provided a link to the “Christian Bible” and promoted King’s Calvary Baptist Church, Calvary Christian School, Calvary Baptist college, and several other local Christian churches.

60. These practices reinforced the message already conveyed by the City’s display of the Christian flag, its building of the Cross Statue, and its

inclusion of Christian prayers at memorial events: the City's government treats only Christians as patriotic Americans, and treats others—including decorated veterans like Mr. Hewett—as second-class citizens.

### Claims for Relief

#### *First Claim for Relief: Violation of First Amendment Establishment Clause*

61. Paragraphs 1 through 60 above are incorporated as if fully set forth here.

62. The Establishment Clause of the First Amendment of the United States Constitution provides that “Congress shall make no law respecting an establishment of religion.” This provision applies fully to the acts of local government officials through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

63. The City of King has violated and continues to violate Mr. Hewett's rights under the Establishment Clause in several ways. It has displayed and continues to display the Christian flag at its Veterans' Memorial. It built and continues to display the Cross Statue at the same memorial. And it features Christian prayer at annual City memorial events, held at the Veterans' Memorial.

64. Both individually and together, the primary purpose of these practices has been, and continues to be, to promote and advance religion; the City's

course of conduct has had and continues to have the effect of advancing and endorsing religion; to the extent that the City's conduct involves City officials in the construction, display, or selection of religious monuments, the City's conduct excessively entangles government with religion; and the City's conduct coerces participation in religious activity.

65. In light of these violations, Mr. Hewett is entitled to remedies under 42 U.S.C. § 1983. Through the conduct described above, which arises from official City policy and/or custom, Defendant has harmed Mr. Hewett, is continuing to harm him, and will otherwise inflict future harm upon him, entitling the him to the remedies set forth in the Prayer for Relief below.

*Second Claim for Relief: Violation of North Carolina Constitution*

66. Paragraphs 1 through 60 above are incorporated as if fully set forth here.

67. Article I, Section 13 of the Constitution of North Carolina provides that “[a]ll persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.” And Article I, Section 19, states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of ... religion.” These provisions are read

in tandem to codify a “principle of separation of church and state.” *Heritage Village Church & Missionary Fellowship, Inc. v. State*, 263 S.E. 2d 726, 730 (N.C. 1980). Although “the religion clauses of the state and federal Constitutions are not identical, they secure similar rights and demand the same neutrality on the part of the State.” *Appeal of Springmoor, Inc.*, 498 S.E. 2d 177, 180 (N.C. 1998).

68. The City of King has violated and continues to violate Mr. Hewett’s rights under the North Carolina Constitution in several ways. It has displayed and continues to display the Christian flag at its Veterans’ Memorial. It built and continues to display the Cross Statue at the same memorial. And it features Christian prayer at annual City memorial events, held at the Veterans’ Memorial.

69. Both individually and together, the primary purpose of these practices has been, and continues to be, to promote and advance religion; the City’s course of conduct has had and continues to have the effect of advancing and endorsing religion; to the extent that the City’s conduct involves City officials in the construction, display, or selection of religious monuments, the City’s conduct excessively entangles government with religion; and the City’s conduct coerces participation in religious activity.

70. Through the conduct described above, which arises from official City policy and/or custom, Defendant has harmed Mr. Hewett, is continuing to harm him, and will otherwise inflict future harm upon him, entitling him to the remedies set forth in the Prayer for Relief below.

Prayer for Relief

71. Paragraphs 1 through 70 above are incorporated as if fully set forth here.

*A. Declaratory Judgment*

72. An actual controversy exists between the parties as to whether Defendant's conduct has violated and continues to violate the United States and North Carolina Constitutions. Accordingly, Mr. Hewett respectfully requests a declaratory judgment that the City's practices of displaying the Christian flag and the Cross Statue, and sponsoring prayers and religious activities at official City events, are unconstitutional and that the City has violated, and is continuing to violate, the United States and North Carolina Constitutions by engaging in the course of conduct described above.

*B. Permanent Injunction*

73. Mr. Hewett has no adequate remedy at law. The City's violations of the Establishment Clause of the First Amendment to the United States

Constitution and the North Carolina Constitution have inflicted, and will continue to inflict, irreparable harm upon Mr. Hewett.

74. Mr. Hewett therefore respectfully requests a permanent injunction barring the City from displaying or allowing the display of the Christian flag at the Veterans' Memorial, from displaying the Cross Statue at the Veterans' Memorial, and from sponsoring, directing, or otherwise facilitating prayers and other religious activities at City memorial events.

*C. Nominal Damages*

75. Mr. Hewett requests nominal damages of one dollar against the Defendant for the harm that he has suffered due to the City's past violations of the First Amendment and the violations that continue or occur after the filing of this Complaint.

*D. Attorneys' Fees and Costs*

76. Mr. Hewett requests an order awarding him the costs of this action, including attorneys' fees, under 42 U.S.C. § 1988 and 28 U.S.C. § 2412.

*E. Other Relief*

77. Mr. Hewett requests any other relief that the Court deems just and proper.

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

/s/ John M. Moye

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John M. Moye (NC Bar No. 35463)  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
(919) 420-1821  
JMoye@kilpatricktownsend.com

Of Counsel

Ayesha N. Khan (khan@au.org)  
Gregory M. Lipper (lipper@au.org)  
Benjamin N. Hazelwood (hazelwood@au.org)  
AMERICANS UNITED FOR SEPARATION OF  
CHURCH AND STATE  
1301 K Street NW, Suite 850  
Washington, DC 20005  
(202) 466-3234

*Counsel for Plaintiff*

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