

COMMONWEALTH OF KENTUCKY
SUPREME COURT
NO. 2017-SC-00278

LEXINGTON-FAYETTE URBAN COUNTY
HUMAN RIGHTS COMMISSION

APPELLANT

vs.

HANDS ON ORIGINALS, INC.

APPELLEE

On Discretionary Review from
Court of Appeals, No. 2015-CA-00745
Fayette Circuit Court, No. 14-CI-04474

**BRIEF OF AMICI CURIAE ETHICS AND RELIGIOUS LIBERTY COMMISSION,
JEWS FOR RELIGIOUS LIBERTY, AND KENTUCKY BAPTIST CONVENTION
IN SUPPORT OF APPELLEE HANDS ON ORIGINALS**

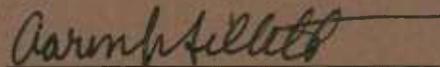
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2018, true and accurate copies of this brief were served by first-class U.S. Mail, postage prepaid, upon the Honorable James D. Ishmael, Jr., Fayette Circuit Court Judge, 120 North Limestone, Lexington, KY 40507; Clerk of Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601; Edward E. Dove, 201 W. Short St., Ste. 300, Lexington, KY 40507; Bryan H. Beauman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Ste. 1500, Lexington, KY 40507.



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INTRODUCTION

The United States includes millions of individuals in faith communities who believe in an afterlife and that our conduct matters toward eternal salvation. The government has never felt it necessary to deny such citizens the ability to exercise their beliefs or to force them to be complicit in what they consider to be sin. Yet that foundational principle of our pluralistic society is precisely what is at stake in this case.

Appellee Hands on Originals is a screen printer in Lexington, Kentucky, that expresses messages on clothing, clothing accessories, and other products. The service it offers is the promotion of pure speech. And because Hands on Originals is not a government entity or a public forum of any sort, it has the right to choose the messages it is willing to promote.

Hands on Originals' owners are Christians who operate their business consistent with what the Bible teaches. As a result, they regularly decline to print messages that conflict with those teachings, such as messages containing violence, or a message promoting a strip club. The company has never refused a customer simply because of who they are; such a refusal would itself be contrary to the owners' beliefs. And to make this distinction clear (serving all people, but declining to promote all messages), the company explains these policies on its website.

The whole purpose of this lawsuit by the Lexington-Fayette Urban County Human Rights Commission is to force Hands on Originals to print messages that conflict with the company's owners' beliefs and to compel the company's owners to attend "diversity training," so that the owners can be reeducated as to why their Christian beliefs are wrong. The Commission takes these positions even while acknowledging that Hands on Originals "acts as a speaker" when it "prints a promotional item" for customers, and that "this act of

speaking is constitutionally protected.” Comm’n Order at 13–14, 16. Both the trial court and the Court of Appeals rejected the Commission’s position, concluding that there is no evidence in the record that Hands on Originals declined to print messages based on the status of any individual customer, and holding that the government cannot compel a private business to promote messages with which it disagrees.

This Court should affirm. It used to be a common American value that everyone has the freedom to live out one’s faith without government coercion. But that value apparently does not extend to a person of faith who respectfully exercises her beliefs in the public square. Based on the Commission’s position, Hands on Originals’ owners would be forced to express the government’s message and be re-educated about their faith beliefs or shutter their business. That is a stunning result for the millions of business owners and workers who believe they have the responsibility to practice their faith in their business vocation by refraining from activities that violate their religious beliefs.

This *amici* brief will focus on the obligations of a person of faith to integrate his or her beliefs and business practices. It is these obligations—not any hostility or animus—that motivate individuals like Hands on Originals’ owners to follow Biblical teachings in the way they conduct their business. As a result, Hands on Originals will sometimes decline to promote certain messages. But the company will also serve its customers and its employees with love and a respect for the dignity of the human person that is often lacking in other businesses. Such faith-based business practices should be encouraged, not stifled, particularly by the government. Accordingly, this Court should affirm the well-reasoned decision of the Court of Appeals.

COUNTERSTATEMENT OF THE CASE

Hands on Originals “is in the business of promoting messages.” *Lexington Fayette Urban County Human Rights Commission v. Hands on Originals, Inc.*, 2017 WL 2211371, at *1 (Ky. App. 2017). In so doing, Hands on Originals treats all customers and employees with love and respect, but it will not agree to promote all messages. The Commission alleges that Hands on Originals violated a “fairness ordinance” by declining to print t-shirts for the Lexington Pride Festival 2012. *Id.* Despite the company’s clear distinction between individuals and messages, the Commission found that Hands on Originals had declined the order because it was discriminating based on sexual orientation. *Id.* at *3. The trial court reversed, holding that Hands on Originals had not violated the fairness ordinance, and even if it had, the ordinance was unconstitutional as applied. *Id.* at *3. The Court of Appeals affirmed, because “conveying a message in support of a cause or belief” is not conduct based on “protected status. It is a *point of view* and form of *speech* that could belong to any person, regardless of classification.” *Id.*

ARGUMENT

Individuals and religious organizations have never limited the way they express their faith to activities that take place in the home or a place of worship. To the contrary, one of the most fundamental ways to exercise religion is to live out one’s faith in the public square, including at work and while running a business. And courts have never conditioned an individual’s constitutional rights to free expression and free exercise on that person’s willingness to keep her faith beliefs under a bushel basket and not engage in commerce. And that condition is precisely what the Commission seeks to impose on Hands on Originals: promote messages that violate your faith and conscience, or else.

It cannot be the case that the government, over a religious objection, can force a Muslim grocer to serve pork, a Jewish website designer to develop a website for pornography, or a Christian screen printer to promote messages that conflict with the printer's owners' deeply-held religious beliefs. Yet that is the clear aim of the Commission's litigation here. This Court should use this case as an opportunity to recognize and reaffirm the fundamental role that faith plays in the workplace.

I. Exercising one's faith does not stop at the doorstep of one's home or place of worship.

The practice of faith does not end when a religious believer leaves her home or place of worship. Rather, she is called to live out her faith—including fundamental beliefs about sex, marriage, and the family—in every aspect of her life, including work. To do otherwise is hypocritical and risks eternal damnation. *E.g.*, Psalm 11:7 (NASB): “For the Lord is righteous, He loves righteousness. The upright will behold His face.”

Christian, Jewish, and Muslim teachers have all emphasized the instruction that one's faith beliefs should be fully integrated in every aspect of one's life. For example, the Catechism of the Catholic Church instructs that “[b]y reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will.” Catechism of the Catholic Church ¶ 898 (1997). Lay believers are called “to illuminate and order all temporal things with which they are closely associated” considering the Catholic faith. *Id.*

The Catholic Catechism's teaching on this point echoes a dominant theme of the Second Vatican Council of 1962-65. The Council's Pastoral Constitution of the Church in the Modern World instructed that “[t]he split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age. . . . The

Christian who neglects his temporal duties, neglects his duties toward his neighbor and even God, and jeopardizes his eternal salvation.” *Gaudium et Spes*, ¶ 43 (1965).¹ Catholics are called to bring their faith in Christ “to all their earthly activities and to their humane, domestic, professional, social and technical enterprises,” by “gathering them into one *vital synthesis* with religious values, under whose supreme direction all things are harmonized unto God’s glory.” *Id.* (emphasis added). The goal of this synthesis of religious values with work is to “contribute to the sanctification of the world by fulfilling their own particular duties” in personal and professional life. *Christifideles Laici*, ¶ 15 (1988).²

This synthesis is not limited to teachings regarding marriage and sexuality. The Catholic Church offers specific directives for how believers should act in the market with respect to advertising, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #36 (1991), fair wages, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #8 (1991), Catechism of the Catholic Church, ¶ 2434, employee ownership of companies, *e.g.*, Saint Pope John XXIII, *Mater et magistra*, #77 (1961), and workplace hours, *e.g.*, Saint Pope John XXIII, *Rerum novarum*, #42 (1891). See generally *A Catechism for Business: Tough Ethical Questions & Insights from Catholic Teaching* (Andrew V. Abela, Joseph E. Capizzi, ed. 2014).

Great teachers of the Protestant tradition agree. Martin Luther “often speaks about specific occupations, but the purpose in doing so is not to restrict vocation to occupation but to affirm that even the most mundane stations are places in which Christians ought to live out their faith.” Marc Kolden, *Luther on Vocation*, 3 *Word & World* 382 (Oct. 1, 2001).³ Thus, as The Lutheran Church-Missouri Synod summarizes Luther, “Vocations are

1 <https://goo.gl/k1zvkv>

2 <https://goo.gl/xsvKm7>

3 <https://goo.gl/oSQ1S9>

‘masks of God.’ On the surface, we see an ordinary human face – our mother, the doctor, the teacher, the waitress, our pastor – but, beneath the appearances, God is ministering to us through them. God is hidden in human vocations.” The Lutheran Church-Missouri Synod, *Life Library – Vocation*.⁴ “With the doctrine of vocation, everyday life is transfigured. We realize that the way to serve God is not by some extraordinary act of mystical devotion, but by serving our neighbors in the daily circumstances of life—in our families, our jobs, our church and our involvement in the community.” *Id.*

John Calvin likewise “regarded vocation as a calling into the everyday world. The idea of a calling or vocation is first and foremost about being called by God, to serve Him within his world.” Alister McGrath, *Calvin and the Christian Calling*, 1999 First Things 94 (July 1999).⁵ One’s daily occupations, including one’s work, are part of a fully integrated synthesis of one’s faith life: “Work was thus seen as an activity by which Christians could deepen their faith, leading it on to new qualities of commitment to God. Activity within the world, motivated, informed, and sanctioned by Christian faith, was the supreme means by which the believer could demonstrate his or her commitment and thankfulness to God.” *Id.*

Contemporary Protestant teachers continue to emphasize this doctrine. A prominent Baptist preacher aptly stated, “Our work, our jobs, our careers—those things are not just incidentals or necessary evils that we tack on to our spiritual lives. Our jobs are a massive arena in which God matures us as Christians and brings glory to himself.” Southern Baptist Convention, Ethics & Religious Liberty Commission, *The Gospel at Work: A Conversation*

4 <https://goo.gl/b7vx9r>

5 <https://goo.gl/aEaFft>

with Greg Gilbert and Sebastian Traeger (Jan. 15, 2014).⁶ Similarly, a former President of the ERLC stated: “As Southern Baptists, we believe God has endowed all people with the freedom to believe and express religious faith. . . . Americans should not have to check the freedom to exercise their faith at the door of their workplace.” Southern Baptist Convention, Ethics and Religious Liberty Commission, *SBC’s Richard Land Testifies in Support of Workplace Religious Freedom Act* (Nov. 10, 2005).⁷

The doctrine that one’s faith should be fully integrated into a believer’s daily life—including her job, occupation, and profession—has deep roots in non-Christian religions as well. For example, it is a central tenet of Judaism that, throughout one’s daily life, one should accept and act upon the great multitude of opportunities to improve one’s thoughts and behavior. Talmud, Makkos 23b; see also Rabbi Moshe Chaim Luzzato, *Derech Ha-Shem* §§ 1:2:1–5. These opportunities are “mitzvot,” or commandments, which constitute a complete set of civil and criminal laws that govern literally all aspects of Jewish life. The mitzvot apply as equally to commercial transactions as to a believer’s personal life:

- Because many Jews believe themselves prohibited from deriving any benefit from a cooked mixture of dairy and meat, such a Jewish store owner cannot sell a cheeseburger to any customer, Jewish or Gentile, and would not be allowed to profit from allowing one of his employees to cook meat and dairy together. *Why Not Milk and Meat*, Aish.com⁸; Exodus 23:19, 34:26, Deuteronomy 14:21, and Babylonian Talmud: Hullin 113b, 115b.
- Likewise, while a Jewish florist could contribute to a wedding between two Christians or two Muslims, or a Muslim and a Christian, many such florists would consider it inconsistent with their faith to contribute to an intermarriage between a Jew and a member of another religion. Deuteronomy 7:3; Babylonian Talmud: Yevamoth 23a.

6 <https://goo.gl/n7SXtK>

7 <https://goo.gl/GMFwPG>

8 <https://goo.gl/ymSYnr>

- Many religious Jews would be unable to engage in work that would enhance a polytheistic festival. Babylonian Talmud: Avodah Zarah 6a; Code of Jewish Law: Yoreh De'ah 148:1.
- The Bible prohibits Jews from wearing garments made from mixtures of wool and linen. Jews who follow this commandment would require an accommodation exempting them from wearing a prison, school, or military uniform made from a mixture of these materials. And many Jewish tailors would find it religiously objectionable to create such a garment for a Jewish customer. *Shatnez-Free Clothing*, Chabad.org⁹; Leviticus 19:19; Deuteronomy 22:9-11.

Similarly, “Islam regards it as meaningless to live life without putting [one’s] faith into action and practice,” and proclaims that living the central tenets of the faith “weaves [believers’] everyday activities and their beliefs into a single cloth of religious devotion.” Oxford Islamic Information Centre, *Five Pillars of Islam*.¹⁰ Islam has strict rules forbidding the charging of interest, and an entire global industry (Islamic Finance) has been created to comply. See generally Muhammad Ayub, *Understanding Islamic Finance* (2007).

Indeed, some of the country’s largest businesses participate in the market yet still engage in religiously motivated practices, including closing on Sunday (Chick-fil-A, Inc.), printing Bible references on products (In-N-Out Burger), publishing Bibles and other Christian media (Tyndale House Publishers, Inc.), providing financial advice based on the Bible (Lampo Group, Inc.), producing and selling kosher foods (Empire Kosher), offering financial products consistent with Islamic teachings about usury (LARIBA American Finance House), placing Bibles and the Book of Mormon in all its hotel rooms (Marriott, Inc.), employing chaplains to provide spiritual counseling to employees (Tyson Foods, Inc.), and taking out full-page newspaper ads to evangelize (Hobby Lobby, Inc.).

⁹ goo.gl/RZRcSm

¹⁰ <https://goo.gl/6Ywi8J>

In sum, for millions of believers, “freedom to embrace religion as a way of life isn’t an optional extra added on to practicing that way of life; freedom to embrace and hold onto religion *is a constitutive component of a religion’s way of life* without which that very way of life is fundamentally compromised. For world religions, freedom of religion is a key substantive good.” Miroslav Volf, *Flourishing: Why We Need Religion in a Globalized World* 113 (2015) (emphasis added). And secular society benefits when it honors religious liberty and allows religious practices to flourish. See generally Angus J. L. Menuge, *The secular state’s interest in religious liberty*, in *Religious Liberty and the Law: Theistic and Non-Theistic Perspectives*, 89 (Angus J. L. Menuge ed., 2017).

II. The government should not be allowed to punish Hands on Originals for its owners’ faith beliefs here.

Turning to the present case, Hands on Originals’ respectful declination of the request to promote the 2012 Lexington Pride Festival reflected the company’s owners’ deeply held religious belief that God ordained marriage as a sacramental and spiritual union between one man and one woman. They are not alone in that belief. *E.g.*, Thomas Aquinas, *Summa Theologica II-II*, Q. 154, art. 12 (Tr. 1920)¹¹; *Summa Theologia* Suppl., Q. 41, art. 1 and Q. 44 art. 1 (Tr. 1920); Martin Luther, 3 *Luther’s Works* 255 (1961) (non-marital sexual relations “depart[] from the natural passion and longing of the male for the female, which is implanted into nature by God.”); Rabbi Tzvi Hersh Weinreb, *Orthodox Response to Same-Sex Marriage* (June 5, 2006)¹² (“Homosexual behavior between males or between females is absolutely forbidden by Jewish law,” as rooted in the procreative nature of male-female relations ordained in the Book of Genesis); Catechism of the Catholic Church

11 <https://goo.gl/igLDKñ>; <https://goo.gl/7AGBGr>

12 <https://goo.gl/u4zjbd>

¶ 2357 (“Basing itself on Sacred Scripture, . . . tradition has always declared that ‘homosexual acts are intrinsically disordered.’ They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from genuine affective and sexual complementarity.”); *Amoris Laetitia* (The Joy of Love), ¶ 52 (Mar. 19, 2016)¹³ (“absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family”); The Lutheran Church-Missouri Synod, *LCMS Views – Marriage/Human Sexuality* 10 (“*LCMS Views*”)¹⁴ (“[h]omosexual behavior is prohibited in the Old and New Testaments as contrary to God’s design,” and “on the basis of Scripture, marriage is the lifelong union of one man and one woman.”); National Association of Evangelicals, *God Defined Marriage* (June 26, 2015)¹⁵ (“As first described in Genesis and later affirmed by Jesus, marriage is a God-ordained, covenant relationship between a man and a woman. This lifelong, sexually exclusive relationship brings children into the world and thus sustains the stewardship of the earth.”); Church of Jesus Christ of Latter-day Saints, *The Divine Institution of Marriage*, Newsroom (Aug. 13, 2008)¹⁶ (reaffirming the Mormon Church’s declaration that marriage is the lawful union of a man and a woman”); *Islamic Perspective on Same-Sex Marriage* (July 7, 2015)¹⁷ (noting what Islamic commentators on The Qur’an have concluded is a clear prohibition on same-sex relations).

13 <https://goo.gl/qUvEsB>

14 <http://www.lcms.org/faqs/lcmsviews>

15 <https://goo.gl/zX43BB>

16 <https://goo.gl/FrW51s>

17 <https://goo.gl/UZjCTT>

And the Commission should not be allowed to punish Hands on Originals' owners for attempting to live their lives and run their business consistent with their faith beliefs. This does not require the Commission to endorse discrimination; the record is clear that Hands on Originals faithfully serves all customers and employees. But it does require the Commission to respect that Hands on Originals cannot promote certain messages that violate the owners' religious beliefs. And two principles counsel strongly in favor of granting that respect.

1. Plainly, the teachings of Judaism, Christianity, and Islam are not rooted in bigotry or animus. For example, describing "the attitude toward homosexual individuals prescribed by the Jewish tradition," Rabbi Weinreb directs that "tolerance for individuals who manifest homosexual tendencies is certainly a Jewish value." *Orthodox Response to Same-Sex Marriage, supra*. Likewise, Rabbi Dr. Nachum Amsel comments that "[w]e do not and cannot reject people as Jews and as individuals because of a particular sin." Rabbi Dr. Nachum Amsel, *Homosexuality in Orthodox Judaism* 5.¹⁸

Similarly, Christian teaching on marriage is founded on a divinely ordained understanding of human sexuality, and Christian churches condemn *any* rejection of individuals. The Catechism of the Catholic Church directs that all persons with homosexual inclinations "must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided." Catechism of the Catholic Church ¶ 2358. Pope Francis confirmed this instruction in *Amoris Laetitia*, stating that "[w]e would like before all else to reaffirm that every person, regardless of sexual orientation, ought to be respected in his or her dignity and treated with consideration. . . ." *Amoris Laetitia* ¶ 250.

¹⁸ <https://goo.gl/r2bvXR>

Protestant authorities emphasize the same point. The Lutheran Church-Missouri Synod instructs that “[t]he redeeming love of Christ, which rescues humanity from sin, death, and the power of Satan, is offered to all through repentance and faith in Christ, regardless of the nature of their sinfulness.” *LCMS Views*, at 11. The National Association of Evangelicals likewise emphasizes that “[a]s witnesses to the truth, evangelicals should be gracious and compassionate to those who do not share their views on marriage.” *God Defined Marriage, supra*.

All of these instructions reflect that the historic doctrine of marriage is not rooted in animus, but in the divinely ordained procreative potential of male-female unions. In 2015, dozens of prominent Catholic and Protestant theologians joined this statement: “Throughout history and across all cultures, marriage has been understood to be the union of male and female and is organized around the procreative potential of that union.” *Evangelicals and Catholics Together, The Two Shall Become One Flesh: Reclaiming Marriage*, First Things (March 2015).

Muslim scholars similarly instruct that Muslims are to treat homosexual persons, both Muslim and non-Muslim, with the same respect due to all other people. For example, the Islamic Shura Council of Southern California instructs that “[p]eople practicing something immoral according to Islamic values still deserve the basic respect and rights of any other human being. . . . Muslims should not discriminate and/or harass anyone.” *Islamic Perspective on Same-Sex Marriage, supra*.

2. While uniformly and consistently upholding marriage between a man and a woman as divinely ordained and while condemning prejudice or animus against any person, teachers in Judaism, Christianity, and Islam counsel against any public witness or

activity that would seem to celebrate, endorse, or condone same-sex weddings. In the wake of the recent creation of same-sex marriage, many Jewish, Christian, and Islamic leaders have called for believers to engage in respectful public witness supporting the historic understanding of marriage.

For example, the former chief Rabbi of Great Britain, Lord Rabbi Jonathan Sacks, has called for respectful and courteous public witness in support of the historic understanding of marriage. In a famous 2014 speech to a Vatican conference, Rabbi Sacks instructed that “our compassion for those who choose to live differently should not inhibit us from being advocates for the single most humanizing institution in history [*i.e.*, male-female marriage].” Lord Rabbi Jonathan Sacks, *Humanum Colloquium on Complementarity* (Nov. 17, 2014).¹⁹

Likewise, the President of the Southern Baptist Convention’s Ethics & Religious Liberty Commission has publicly stated that “[a]ll of us must stand together on conserving the truth of marriage as a complementary union of man and woman. . . . [T]here is a distinctively Christian urgency for why the Christian churches must bear witness to these things.” Rev. Dr. Russell D. Moore, *Man, Woman, and the Mystery of Christ: An Evangelical Protestant Perspective*, Touchstone (Nov. 18, 2014).²⁰ And the National Association of Evangelicals counsels that “[e]vangelicals and other followers of the Bible have a heightened opportunity to demonstrate the attractiveness of loving Christian marriages and families.” *God Defined Marriage, supra*.

19 <https://goo.gl/oKvhhH>

20 <https://goo.gl/BucZqn>

The Mormon Church has made a similar statement, urging its members as “responsible citizens” to publicly promote adherence to the historic understanding of marriage: “We call upon responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” *Divine Institution of Marriage, supra.*

In 2015, Catholics and Evangelicals agreed: “As Christians, it is our responsibility to bear witness to the truth about marriage as taught by both revelation and reason. . . . Christians have too often been silent about biblical teaching on sex, marriage, and family life. . . . If we are to remain faithful to the Scriptures and to the unanimous testimony of the Christian tradition, there can be no compromise on marriage.” Evangelicals and Catholics Together, *The Two Shall Become One Flesh, supra.*

Islamic authorities concur: “Sexual behavior within a society is not a purely private concern but rather affects all the people living in that society. Islam does not forcefully impose its teachings upon people of other faiths and persuasions. Nonetheless, it draws certain moral lines to make sure that the entire society is not affected negatively.” *Islamic Perspective on Same-Sex Marriage, supra.*

Many believers interpret these calls for positive public witness as necessarily meaning that believers should not publicly contradict their churches’ teachings on marriage, including by participating in the celebration of same-sex marriages. Thus, to be responsible public witnesses for their beliefs on marriage, there are many millions of faithful citizens who reasonably conclude that publicly witnessing to their belief in marriage as the union of man and woman requires refraining from participating in same-sex wedding ceremonies. Regardless of the circumstances, the government should never

force individuals—or the faith communities to which they belong—to choose between violating their deeply held beliefs or withdrawing from the public square entirely, *see Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), including the market for public accommodation.

To use government power and the courts to enforce such compulsion, as the Commission seeks to do, is to needlessly penalize people of faith, to wound the country’s long tradition of celebrating and protecting religious exercise, and to depress the fundamental pluralism that motivated our country’s founding. This Court should safeguard the right of all people to exercise their faith in the public square, including places of public accommodation.

CONCLUSION

For the foregoing reasons, this Court should affirm the well-reasoned decision of the Court of Appeals.

Respectfully submitted,



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