

SUPREME COURT OF KENTUCKY  
2008-SC-0839-DG

FILED

JUL 24 2009

CLERK  
SUPREME COURT

COMMONWEALTH OF KENTUCKY,  
EX REL. JACK CONWAY,  
ATTORNEY GENERAL

APPELLANT

V. APPEAL FROM THE COURT OF APPEALS  
Case No. 2007-CA-000661-MR  
(Franklin Circuit Court Case No. 02-CI-00837)

E. JOHN REINHOLD, D/B/A AMERICAN  
EVANGELISTIC ASSOCIATION, ET AL.

APPELLEES

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APPELLANT'S REPLY BRIEF

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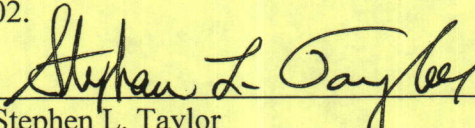
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Respectfully submitted,  
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CERTIFICATE OF SERVICE

I hereby certify that the original and ten (10) copies along with a CD\_ROM of this Appellant's Reply Brief were filed with the Susan Stokley Clary, Clerk of the Supreme Court, 700 Capitol Avenue, Room 235, Frankfort, Kentucky 40601-3415. I also certify that copies of this brief were mailed this 24th day of July, 2009, to the following: Hon. Thomas D. Wingate, Judge, Franklin Circuit Court, Division 2, Franklin County Courthouse, Frankfort, Kentucky 40601; Hon. Samuel Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. Richard L. Masters, 1012 S. Fourth Street, Louisville, Kentucky, 40203; Hon. Brent L. Caldwell, 201 E. Main Street, Suite 1000, Lexington, Kentucky 40501; Hon. Kevin C. Burke, 125 South Seventh Street, Louisville, Kentucky 40202; and Hon. H. Philip Grossman, 401 West Main Street, Suite 1810, Louisville, Kentucky 40202.

  
Stephen L. Taylor

Section III of Appellee's Argument (Brief for Appellee, pp. 25-28) asserts that Appellant's regulation of Appellee would unconstitutionally deprive individuals of their religious liberties. Appellee has waived review of this issue by the Court. Neither lower court ruled on the constitutional grounds Appellee now raises. Appellee did not make a cross motion for discretionary review of that issue and has failed to preserve the issue for consideration by the Court now. CR 76.21(1). *Steel Technologies, Inc. v. Congleton*, 234S.W.3d 920 (Ky., 2007); *Commonwealth Transportation Cabinet, Dept. of Highways v. Taub*, 766 S.W.2d 49 (Ky., 1988).

Were the matter not waived, though, Appellee's argument would fail because of the compelling public interest of the Commonwealth of Kentucky in protecting consumers in the financially volatile and very often unreasonably parsimonious world of health insurance. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Kentucky State Board for Elementary and Secondary Education v. Rudasill*, 589 S.W.2d 877 (Ky., 1979); *Cabinet for Human Resources, Kentucky Health Facilities v. Provincial Convent of Good Shepherd, Inc.*, 701 S.W.2d 137 (Ky. App., 1986). Appellee conducts himself in a commercial enterprise---each year the MediShare program generates millions of dollars in income beyond the amount of money the program pays out in claims (Video Record 10-25-06, 10:42:00; and 10-25-06, 2:21:41)---in an industry whose members, even when operating with the best of intentions, can fail in the blink of an eye and with disastrous results.

Respectfully submitted,

JACK CONWAY,  
ATTORNEY GENERAL

A handwritten signature in cursive script that reads "Stephen L. Taylor". The signature is written in black ink and is positioned above the printed name.

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