

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2008-SC-00285-TG

FILED
MAY 15 2009
SUPREME COURT CLERK

VERNIE McGAHA, et al.

APPELLANTS

v.

BRIEF FOR APPELLEE
UNIVERSITY OF THE CUMBERLANDS

REV. ALBERT M. PENNYBACKER, et al.,

APPELLEES

STEVEN L. BESHEAR

APPELLEE

and

UNIVERSITY OF THE CUMBERLANDS

APPELLEE

ON APPEAL FROM THE FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN
CIVIL ACTION NO. 06-CI-00554
[COURT OF APPEALS CASE NO. 2008-CA-000643-MR]

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(Certificate of Service on Reverse)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on May 15, 2009, by United States Postal Service, First Class Mail, postage prepaid, upon: David Tachau and Jasper Ward, Tachau Meek PLC, 2400 National City Tower, 101 South Fifth Street, Louisville, Kentucky 40202-3115; Ellen M. Heslen, General Counsel, Office of the Governor, 101 Capitol Building, 700 Capital Avenue, Frankfort, Kentucky 40601; Bryan H. Beauman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1400, Lexington, Kentucky 40507; Brian W. Raum and Glen Lavy, Alliance Defense Fund, 15100 North 90th Street, Scottsdale, Arizona 85260; R. Daniel Beale, Jessica C. Abrahams, Donna M. Donlon, Christopher W. Baker, David M. Irvine, Alanna G. Clair, McKenna Long & Aldridge, LLP, 1900 K. Street, NW, Washington, DC 20009; Mark A. Wohlander, Wallingford Law, PSC, Suite 302, 3141 Beaumont Centre Circle, Lexington, Kentucky 40513; Lori H. Windham, The Becket Fund for Religious Liberty, Suite 605, 1350 Connecticut Avenue, NW, Washington, DC 20036; William E. Sharp, David A. Friedman, ACLU of Kentucky, Suite 300, 315 Guthrie Street, Louisville, Kentucky 40202; Ayesha N. Khan, Richard B. Katskee, Americans United for Separation of Church and State, 518 C Street, NE, Washington, DC 20002; Daniel Mach, ACLU Program on Freedom of Religion and Belief, 915 15th Street, NW, Washington, DC 20005; Mary W. Ruble, Kentucky Education Association, 401 Capital Avenue, Frankfort, Kentucky 40601; and the Honorable Roger Crittenden, Franklin County Courthouse, P.O. Box 678, Frankfort, Kentucky, 40602. The undersigned also certifies the record on appeal was not checked out.



Mark R. Overstreet

INTRODUCTION

This is a companion case to *University of the Cumberlands v. Pennybacker*, 08-SC-00253-TG, in which the University of the Cumberlands is the appellant and is seeking reversal of the Judgment and Order of the Franklin Circuit Court holding that legislation enacted by the General Assembly in connection with the University's proposed pharmacy school is unconstitutional. The University of the Cumberlands files this brief in support of the position taken by the appellant legislators in their separate appeal.

STATEMENT CONCERNING ORAL ARGUMENT

Appellee University of the Cumberlands desires oral argument. This case presents the important question of whether the Kentucky Constitution disqualifies the University from being used by the General Assembly as a means for addressing the Commonwealth's shortage of pharmacists simply because the University is religiously-affiliated and seeks to instill Christian values in its students. Because the case involves significant and unsettled questions of Kentucky constitutional law, the University believes oral argument would be helpful to the Court.

STATEMENT OF POINTS AND AUTHORITIES

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ARGUMENT.....1

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STATEMENT OF THE CASE

University of the Cumberland accepts the Appellant legislators' Statement of the Case.

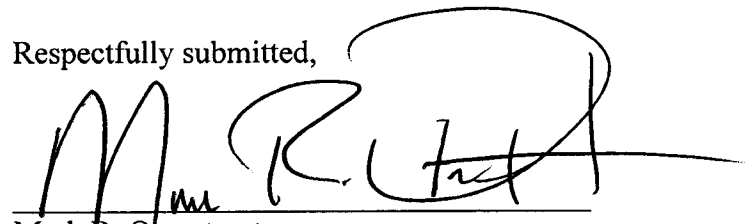
ARGUMENT

University of the Cumberland accepts the Appellant legislators' Argument.

CONCLUSION

For the foregoing reasons, University of the Cumberland respectfully requests that this Court reverse the Circuit Court, grant its motion for summary judgment, and deny the Appellees' cross-motion for summary judgment.

Respectfully submitted,



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