

**FREEDOM OF EXPRESSION IN THE MODERN AGE: AN OBSCURE BLASPHEMY STATUTE
AND ITS EFFECT ON BUSINESS NAMING**

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I. Introduction

Choosing a corporate name is a process that requires a great deal of thought and creativity. The name of one's business can arguably be central to one's personality and very being. While some business names may be offensive or crude, they are nonetheless the product of the business owner's own creativity and thought processes. To deny a potential business owner the opportunity to carefully articulate a business name that best encapsulates his purpose and goals for his business would be a violation of First Amendment Freedom of Speech and Expression rights. However, when a business name is so profane that it borders on obscenity or blasphemy, it may go beyond the religious neutrality that the separation of church and state demands. This balancing act is never simple; rather, it reaches to the core of what American culture values and holds dear. The United States District Court for the Eastern District of Pennsylvania ("Eastern District") is currently weighing these factors in *Kalman v. Cortes*,² a case involving a business owner's attempt to include the word "hell" in the name of the company he is forming.³

The Eastern District will be forced to decide whether the statutory language which resulted in the denial of this business owner's application for a certificate of organization is in violation of the Establishment Clause and the Free Speech Clause of the First Amendment. This article will first examine the facts and procedural history that have led

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² *Kalman v. Cortes, et al.*, 2009 U.S. Dist. LEXIS 65330 (2009). This case was filed on February 18, 2009 in the Eastern District Court of Pennsylvania, and is currently working through jurisdictional motions relating to proper venue. The court has not yet reached the merits of the case. On July 28, 2009, the court ruled against the Defendant's Motions to Dismiss for Improper Venue and Transfer to the Middle District of Pennsylvania.

³ George Kalman desires to name his business, "I Choose Hell Productions." The Secretary of the Commonwealth of Pennsylvania, through the Corporation Bureau, denied George Kalman's application for a certificate of organization under 15 PA. CONS. STAT. § (1983) for his film production and distribution limited liability company based on §1303(c).

the case to where it is today. Next, this article will examine blasphemy statutes generally, in order to provide a broad framework regarding how other states and jurisdictions have dealt with statutes of this nature. Third, this article will analyze the nuances of Pennsylvania's blasphemy statute more specifically as it relates to corporate naming. Finally, this article will make predictions and recommendations for how this case can be decided to best protect not only the rights of individual business owners, but also the rights of society at large.

II. Statement of the Case and Procedural History

A. Facts

In the fall of 2007, George Kalman filled out the standard form for creating a limited liability company in Pennsylvania.⁴ He had already formed a corporation for his information-technology business and now wanted the same business status for his side business as a filmmaker.⁵ His chosen name for his filmmaking business was "I Choose Hell Productions, LLC."⁶ The name was inspired by Mr. Kalman's existentialist belief that, even if life was often a hellish experience, it is better than suicide.⁷ After he had mailed his application to the Department of State, he received a letter informing him that his corporate filing had been rejected.⁸ The letter explained that this was because a business name "may not contain words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name."⁹ Mr. Kalman then realized that Pennsylvania had a law against blasphemy, even though Pennsylvania had previously granted corporate designation to entities such as Devil Media, Vomit Noise Productions and Satanic Butt

⁴ Samuel G. Freedman, *A Man's Existentialism, Construed as Blasphemy*, NY.TIMES, Mar. 21, 2009, at 14.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 15 PA. CONS. STAT. §1303(c)(2)(ii).

Slayers.¹⁰

Mr. Kalman decided to re-file for incorporation as ICH Productions, LLC, for which his application was accepted.¹¹ He then placed a call to the state branch of the American Civil Liberties Union and challenged the state law for violations of the Freedom of Speech and Establishment Clauses of the First Amendment.¹² Mr. Kalman voiced his concerns by stating, “They’re actually imposing their religious beliefs on me . . . they’re saying that you either believe what we believe or we won’t let you live your life.”¹³ Interestingly, this litigation has brought to light that blasphemy laws, an uncommon and somewhat obscure remnant in American jurisprudence, still exist. Similar statutes remain in Massachusetts, Michigan, Oklahoma, South Carolina and Wyoming, in addition to Pennsylvania.¹⁴ Professor Sarah Barringer Gordon of the University of Pennsylvania School of Law, stated that while these laws are “arcane and rarely enforced, the laws provide the states with a symbolic power of moral condemnation, as well as the prospect of actual punishment.”¹⁵ Gordon cited Oklahoma as an example, and stated that Oklahoma’s statute authorized as much as one year in prison and a \$500 fine for anyone convicted of blasphemy.¹⁶

Opponents of blasphemy laws contend that they contradict the principles of the Establishment Clause, the Free Exercise Clause, and the Right to Free Speech that are expressed in the Constitution, and part of the social and political fabric of the United States. Blasphemy laws are particularly problematic because they are typically vague, with unlimited reach. Several of the state statutes explicitly outlaw verbal attacks on

¹⁰ Freedman, *supra* note 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

“God, Jesus Christ, the Holy Ghost, and Scripture.”¹⁷ Interestingly, Pennsylvania’s law is different from all other states’ blasphemy laws because it only covers the matter of corporate names and it was not enacted in the nineteenth century; rather, it was enacted in 1977. The statute is unclear on what actually constitutes profaning the Lord’s name. It also does not specify who will make that decision, or how it will be made.

According to Professor Gordon, subjectivity has been central to blasphemy laws for many years. During the nineteenth century, for example, the United States was considered to be a Christian nation, and when you insulted God or Jesus Christ, you insulted the people.¹⁸ During the twentieth century, however, separate laws emerged to deal with pornography, profanity and indecency. In *Burstyn v. Wilson*, the Supreme Court struck down New York’s ban on the Roberto Rossellini film, “The Miracle,” which had upset the Roman Catholic hierarchy because it had portrayed a peasant who thought she was the Virgin Mary.¹⁹ The Court stated that it is not the business of state governments to “suppress real or imagined attacks upon a particular religious doctrine.”²⁰ Interestingly, Mr. Kalman never intended to profane a “particular religious doctrine,” he believes that, “when you read the First Amendment, this is something you can be proud of. . . If you care about the human condition, then you care about the First Amendment.”²¹

B. Procedural History

Mr. Kalman, filed a civil rights action against the Secretary of the Commonwealth of Pennsylvania, challenging the constitutionality of 15 PA. CONS. STAT §1303(c)(2)(ii), and alleging that it violated the Establishment and Free Speech Clauses of the First Amendment. The Secretary filed a motion to dismiss under Federal Rules of

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Burstyn v. Wilson*, 343 U.S. 495, 498 (1952).

²⁰ *Id.*

Civil Procedure 12(b)(3) or alternatively, to transfer venue under 18 U.S.C.S. §1406(a).²² The Eastern District Court then denied the Secretary's motion to dismiss and the motion to transfer. The court ruled that the test for determining venue is not the defendant's contacts with a particular district, but rather the location of those events or omissions giving rise to the claim.²³ Because Kalman completed his application for a certificate of organization for his film production and distribution limited liability company in the Eastern District, that is where the dispute should be resolved.²⁴ Though the Secretary of the Commonwealth of Pennsylvania resides in Harrisburg, and though Kalman's applications were received in Harrisburg, he resides in the Eastern District and completed the relevant applications in that location.²⁵ The United States District Court for the Eastern District of Pennsylvania has not yet reached the merits of the case.

III. Analysis

A. Relevant First Amendment Jurisprudence

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . ." ²⁶ In this amendment, Congress seems to have conveyed a conflicting message about the role and importance of religion, namely in the Establishment Clause. While on one hand Congress exalted the function of religion in American democracy, on the other hand, it cautioned against its potential for disorder.²⁷ To this day, it remains difficult for the Court as well as individuals to interpret the purpose and meaning of the Establishment Clause. Though most agree that the

²¹ *Id.*

²² Kalman v. Cortes, 2009 U.S. Dist. LEXIS 65330, at *1 (E.D. Pa. July 28, 2009)

²³ *Id.* at *2.

²⁴ *Id.*

²⁵ *Id.* at *11.

²⁶ U.S. CONST. amend. 1.

Establishment Clause should be governed by neutrality, the scope of this mandated neutrality has compelled disagreement among scholars and judges alike.²⁸ Even more difficult is that the Constitution requires a definition for “religion.”²⁹ The Supreme Court has offered several definitions for religion, one of which is that the term religion has reference to one’s views “of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”³⁰

The Court has also stated that “the essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.”³¹ Lower courts have similarly attempted to define religion, yet due to the complexity of the term, they generally have remained unhelpful for solving legal disputes.³² Because of the complexity of the term “religion,” the Supreme Court has adopted a policy of deference when individuals assert religious belief.³³ As long as religious belief is articulated with sincerity, the Court must refrain from passing judgment on its validity.³⁴ In addition, all inquiries into the truth, validity, or reasonableness of religious beliefs are foreclosed to Government; religious beliefs do not have to be acceptable or logical to others in order to receive First Amendment protection.³⁵

Making the debate more difficult, recent scholarship has suggested that nothing is intrinsically secular. In fact, anything could be given religious meaning or purpose, even cooking, planting, war, medicine, commerce, and politics, for they are the “very ways in

²⁷ See Richard Albert, *Religion and the New Republic*, 67 LA. L. REV. 1, 8 (2006).

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ *Davis v. Beason*, 133 U.S. 333, 342 (1890), *overruled by Romer v. Evans*, 517 U.S. 620 (1996).

³¹ *United States v. McIntosh*, 283 U.S. 605, 633-34 (1931), *overruled in part by Girouard v. United States*, 328 U.S. 61 (1946).

³² Albert, *supra* note 27, at 10.

³³ *Id.*

³⁴ *United States v. Seeger*, 380 U.S. 163 (1965) (holding that the judiciary may not inquire into the reasonableness of a religion or religious belief).

³⁵ See *United States v. Ballard*, 322 U.S. 78, 87 (1944), *rev'd* 329 U.S. 187 (1946); see also *Thomas v. Rev. Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981).

which people make contact with powers which are beyond the ordinary.”³⁶ This is problematic for courts, especially because the Supreme Court has suggested that it is improper to deny individuals the right to practice their religion, whatever that religion may be. So, even if an individual’s choice of “religion” seems entirely contradictory to normal expressions of religion, it is not for the Court to say. The Court must practice deference and refrain from passing judgment of the validity of any one religion.³⁷ In addition, because of the creation of free speech jurisprudence and its power to arm individuals with a great amount of liberty and freedom, many laws restricting blasphemous speech were struck down for being in violation of the First Amendment.³⁸

B. Overview of Blasphemy Statutes

The crime of blasphemy is not a new concept; rather, it dates back to the seventeenth century.³⁹ Blasphemy was one of the four branches of common law criminal libel; the others were obscenity, sedition, and defamation.⁴⁰ Four branches were created to ensure that speech did not violate social norms for decency and propriety.⁴¹ At this time, courts as well as the general public came to an agreement that Christianity was central to the common law of England, and should be recognized as such.⁴² Any speech that was considered contrary to Christian values and beliefs was considered a criminal

³⁶ C. John Sommerville, *Defining Religion and the Present Supreme Court*, 6 U. FLA. J.L. & PUB. POL’Y 167, 169 (1994).

³⁷ *United States v. Seeger*, at 163.

³⁸ *Brenner*, at 281.

³⁹ *See, e.g.*, 4 William Blackstone, *Commentaries* *59 (noting that blasphemy was a crime of grave importance in the 17th century).

⁴⁰ Susan W. Brenner, *Complicit Publication: When Should the Dissemination of Ideas and Data be Criminalized?*, 13 ALB. L.J. SCI. & TECH. 273, 279 (2003). Professor Brenner describes the evolution of free speech in the United States, and details the origins of blasphemy laws from early English law through the present.

⁴¹ *Id.*; *see also*, Robert C. Post, *Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment*, 76 CAL. L. REV. 279, 305 (1988).

⁴² *Id.* at 279.

act, an overt violation of the law.⁴³ At this time, the law created an imposition of dominant views upon all people, rather than protecting the values of minority groups, and this imposition of majority views has occurred throughout history.⁴⁴ In fact, in *Roth v. United States*, the Supreme Court noted that all fourteen states that had ratified the Constitution by 1792 made “either blasphemy or profanity, or both” crimes.⁴⁵

Though the First Amendment was eventually enacted by Congress, the imposition of majority religious views continued into the nineteenth century.⁴⁶ In the 1824 case of *Updegraph v. Commonwealth*, blasphemy against the Christian religion was found to be both indictable and punishable as a criminal offense.⁴⁷ Where seditious libel was concerned with the defamation of the government, blasphemy was focused on the derision of God and the Christian religion.⁴⁸ Blasphemy was used as a method to prosecute individuals such as Thomas Paine for *The Age of Reason* and Percy Shelley for his poem, “Queen Mab.”⁴⁹ Because these literary works were viewed as threatening to religion and Christianity more specifically, they were viewed as subversive to the law.⁵⁰

Toward the end of the nineteenth century, this trend of dominance had begun to dissipate, most likely due to the increasing diversity within American culture.⁵¹ Because of the large number of immigrants coming to the United States in the nineteenth and early twentieth centuries, the Protestant majority began to fade, and America became a largely pluralist society where the former majority views were no longer an inherent part of the

⁴³ *Id.*

⁴⁴ Stuart Banner, *When Christianity was Part of the Common Law*, 16 LAW AND HIST. REV. 27, 30 (1998)(quoting *Rex v. Woolston*, 64 Eng. Rep. 655, 656 (1729)).

⁴⁵ *Roth v. United States*, 354 U.S. 476, 482 (1957).

⁴⁶ See Brenner, at 280 (quoting Steven B. Epstein, *Rethinking the Constitutionality of Constitutional Ceremonial Deism*, 96 COLUM. L. REV. 2083, 2099-2100 (1996)).

⁴⁷ *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394, 404 (Pa. 1824)(quoted in Brenner, *supra*, at 304).

⁴⁸ *Id.*

⁴⁹ Brenner, *supra*, at 304.

⁵⁰ *Id.*

⁵¹ See Brenner, *supra*, at 280.

law.⁵² Due to this cultural shift, restrictions on speech that centered on values was increasingly viewed as an infringement of liberty, and a body of free speech jurisprudence was developed.⁵³ Because of this new body of law, many of the old laws criminalizing speech, including blasphemy laws, were either struck down for their violation of the First Amendment or fell into obscurity.⁵⁴

The first reported case to hold that a blasphemy statute violated the First Amendment was decided in 1970 in *State v. West*.⁵⁵ The Maryland Court of Special Appeals held that Maryland's blasphemy statute violated the Establishment and Free Exercise Clauses of the First Amendment.⁵⁶ This court did not determine whether the statute violated the Freedom of Speech provision in the First Amendment because it had already found other violations of the First Amendment.⁵⁷ The Supreme Court has yet to rule on whether a state's blasphemy statute is unconstitutional, but there are two Supreme Court decisions that indicate that blasphemy statutes could not survive a free speech challenge.⁵⁸ In *Cantwell v. Connecticut*, Jesse Cantwell played a record in the street and was charged with inciting a breach of the peace because his record "attacked the religion and church of the two men" who heard his record in the street.⁵⁹ The Court reasoned that Cantwell's actions were protected by the Free Speech guarantee in the First Amendment and that the charge against him could not stand.⁶⁰

The Court articulated that in the realm of religious faith and political belief, many differences arise. The people of the United States have ordained that "in spite of the probability of excesses and abuses, these liberties are . . . essential to enlightened opinion

⁵² *Id.*

⁵³ *Id.* at 281.

⁵⁴ *Id.*

⁵⁵ *See Post, supra*, at 315 (citing *State v. West*, 263 A.2d 602 (Md. Ct. Spec. App. 1970)).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Cantwell v. Connecticut*, 310 U.S. 296 (1940)(cited in Brenner, *supra*, at 306).

and right conduct on the part of the citizens of a democracy.”⁶¹ In *Burstyn v. Wilson*, the constitutionality of a New York statute that permitted the banning of motion picture films that were sacrilegious was raised.⁶² The Court reasoned that banning a film based on a censor’s notion of what is sacrilegious is in direct violation of the First and Fourteenth Amendments.⁶³ The Court discussed that states have no legitimate interest in protecting religious views that they do not agree with, and it is not the business of government to suppress what could be constituted as an attack on a particular religion or religious doctrine, whether they appear in publications, speeches, or motion pictures.⁶⁴

Cantwell and *Wilson* indicate that blasphemy cannot be criminalized without violating the Constitution, for it is not the business of government to determine what religion is or how it should be practiced or expressed. It also is not the business of the government to promote one religion over the other, or rule on what should or should not be considered sacrilegious. The separation between church and state, of government and religion, can best be protected by government and religion retaining their separate, distinct spheres.

C. Exposing the Nuances of the Pennsylvania Blasphemy Statute

The Pennsylvania statute provides that in reference to corporate naming, the corporate name “shall not contain . . . words that constitute blasphemy, profane cursing or swearing or that profane the Lord’s name.”⁶⁵ Interestingly, this particular statute was not enacted in response to television, films, radio, or speech; rather, it was designed to ensure that individuals seeking incorporation would choose proper names for their businesses.

⁶⁰ *Id.*

⁶¹ *Id.* at 310.

⁶² *Burstyn v. Wilson*, 343 U.S. 495 (1952).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 15 PA. CONS. STAT §1303(c)(2)(ii).

The statute deals with the duplicate use of corporate names, required approvals or conditions, other rights unaffected, and remedies for violations of the statute.⁶⁶ According to the bill's history, Rep. Thomas Gannon (R-Delaware) wanted to know if passing the bill would make Pennsylvania more competitive with other states.⁶⁷ William Clark, Jr., of Drinker Biddle & Reath LLP replied that the bill was designed to do just that and was based on a successful model from the State of Delaware and, with passage, would give Pennsylvania better laws than Delaware.⁶⁸

Clark also indicated that the bill would provide for a modern and up-to-date corporation law.⁶⁹ Elizabeth Stevens Duane, Senior Counsel, PPL Services Corporation, stated that she supported the bill because it would help maintain a competitive business climate and it was necessary to attract new companies and retain existing companies in the Pennsylvania.⁷⁰ Nothing in the bill's history indicates any discussion on (c)(2)(ii), which details what the corporate name shall not contain. A Democratic legislator, Emil Mrkonic, wrote the bill in 1977 after a mail-order fire-arms dealer filed incorporation papers for the "God Damn Gun Shop."⁷¹ The statute is resoundingly unclear on what the definition of profaning the Lord's name is.⁷² Also unclear is who will make the decision about what constitutes blasphemy and how the decision will be made. The statute is also silent regarding how the corporate naming restrictions fit in with the larger scheme of statute.

Two Pennsylvania cases of note have dealt with nuances of blasphemy. In *Commonwealth v. Perry*, the defendant was arrested on charges of blasphemy.⁷³ He was

⁶⁶ *Id.*

⁶⁷ Leg. Bill Hist. S.B. 215 (Pa. 2001).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Freedman, *supra*, note 4.

⁷² *Id.*

⁷³ *Commonwealth v. Perry*, 42 Pa. D. & C.2d 264 (1966).

charged for using blasphemous language in the plaintiff's home where his wife and children were at the time. Blasphemy was a crime under the Penal Code of Pennsylvania, sec. 523. The court reasoned that the information charged the defendant with nothing because there were no facts in the information from which any court could possibly find the defendant guilty.⁷⁴ The court also found that there was no blasphemy present for while the language of the defendant may have violated the Ten Commandments articulated in Exodus 20:7, it was not blasphemy, and was not a violation of the Penal Code.⁷⁵ In *Commonwealth v. Gordon et al.*, the defendants were booksellers who were accused of selling blasphemous books.⁷⁶ The court found that after reading the books with thoughtful care, they were neither obscene nor blasphemous.⁷⁷

Though several Pennsylvania cases have dealt with the topic of blasphemy, there is no case law dealing with the relevant statutory provision. Perhaps this is because the provision is tucked between provisions related to language regarding education and engineering in corporate names, and has therefore generally gone unnoticed. Nonetheless, it is curious that this provision has not been the subject of litigation prior to this point. The statute not only prohibits general blasphemy in corporate naming; it prohibits corporate names that blaspheme the name of the Lord.⁷⁸ Such specificity is fascinating, especially when considering the limited amount of case law referencing blasphemy statutes.

D. Predictions and Recommendations

The Supreme Court has yet to rule on whether a state's blasphemy statute is unconstitutional, but the two Supreme Court decisions that indicate that blasphemy

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Commonwealth v. Gordon et al.*, 66 Pa. D. & C. 101 (1949).

⁷⁷ *Id.*

statutes could not survive a free speech challenge, *Cantwell* and *Burstyn*, establish clear precedent that blasphemy statutes will not survive First Amendment challenges.⁷⁹ If the Freedom of Speech and Establishment Clauses protect an individual playing a record in the street that seemingly attacks another's religion, and also protect motion pictures that are allegedly "sacrilegious," they will most likely protect Mr. Kalman in his plight as well. Mr. Kalman himself indicated that he created this title for his business, "I Choose Hell" because he was experiencing a bout of Existentialism, and decided that it is best to live on earth, even though the experience may be hellish, than to commit suicide, a dastardly alternative.⁸⁰ Interestingly, Mr. Kalman's intent was not even blasphemous, because it was not designed to insult any particular religion, though the Pennsylvania Department of State determined otherwise. There is a reason why the Supreme Court most recently decided issues of blasphemy in 1952; blasphemy statutes simply do not exist on a grand scale.

The obscure nature of Pennsylvania's blasphemy law tucked between provisions in a corporate naming statute is also unique among traditional blasphemy laws. It simply provides for methodology in corporate naming, and nothing else. There is no case law referencing section (c)(2)(ii) of the Pennsylvania corporate naming statute, making it appear all the more obscure. What may have provoked the Department of State to cite this statutory provision is also unclear, especially when considering the type of blasphemy being prohibited, and the allowance of other seemingly as offensive business names. The statute does not prohibit "sacrilegious" motion pictures, lewd fiction books, or blasphemous rhetoric in the streets. It looks and feels different than most blasphemy laws, making it all the more problematic. However, it will be difficult for the

⁷⁸ 15 PA. CONS. STAT §1303 (c)(2)(ii).

⁷⁹ *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Burstyn v. Wilson*, 343 U.S. 495 (1952).

⁸⁰ Freedman, *supra*, note 4.

Pennsylvania Department of State to overcome Mr. Kalman's First Amendment injuries in light of relevant Supreme Court case law. Even Mr. Kalman's home state of Pennsylvania has ruled against blasphemy statutes, making the statute at hand all the more problematic. Because the Supreme Court has valued individuals' First Amendment rights over blasphemy laws, it only makes sense that Mr. Kalman's First Amendment rights will be protected as well.

In addition, in our modern age, it must be said that the United States is no longer exclusively a Christian nation. There are many religions expressed in American culture, ranging from Pantheistic to New Age traditions. Because the American conception of religion has changed and evolved over time, blasphemy statutes pertaining only to traditionally Christian conceptions of God and the Lord's fly in the face of the Establishment Clause, and the nature of our pluralistic society.

IV. Conclusion

In the marketplace of ideas, creativity reigns supreme. Choosing a corporate name for a business is central to the creative process, and should not be subject to archaic statutory schemes. In order to protect creativity and individual rights as well as religion, there must be nothing that hinders individual rights, and nothing that outrightly harms or promotes religion. Mr. Kalman, in choosing a name for his business, did not promote or harm religion; rather, he was merely seeking to express his creativity and current thought processes. This balancing act is never simple and often brings into conflict what individuals hold most dear, freedoms of speech and expression, and also freedom to enjoy and practice one's religion. This Pennsylvania statute has promoted religion in its attempt to constrain business owners from crafting certain names for their businesses. By stating that business names shall not "profane the Lord's name," the statute has not only

promoted religion in general, but has promoted the Christian religion over all others.⁸¹ This is in direct violation of Mr. Kalman's First Amendment rights. Because blasphemy statutes have been consistently and continually struck down by the Supreme Court, the Eastern District Court will also likely hold that this statutory provision is unconstitutional on its face.

⁸¹ 15 PA. CONS. STAT §1303 (c)(2)(ii).