STATE OF NORTH CAROLINA **WAKE COUNTY**	**IN THE GENERAL COURT OF JUSTICE** **SUPERIOR COURT DIVISION** **05 CVS 9872**
AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, INC., and SYIDAH MATTEEN, **Plaintiffs** **vs.** **STATE OF NORTH CAROLINA,** **Defendant**	**DECLARATORY JUDGMENT**

This declaratory judgment action has come before this court during the May 7, 2007 session of Civil Superior Court, Wake County, upon the motion of the Plaintiffs for Summary Judgment. The court, having considered the record proper and the arguments of counsel, enters the following declaratory judgment.

STATEMENT OF THE CASE

In this matter, the Plaintiffs challenge the practice by which oaths are administered in courtrooms throughout North Carolina. The facts are undisputed. Plaintiffs complain that the only religious text made available by the State to swear in witnesses and jurors in North Carolina courtrooms is the Christian Bible, namely the Old and New Testaments. Plaintiff American Civil Liberties Union of North Carolina, Inc. ("ACLU-NC") is an organization with approximately 8000 members throughout North Carolina, many of whom are of the Islamic or Jewish faith. Plaintiff Syidah Matteen is an individual of the Islamic faith. The ACLU-NC, on behalf of its non-Christian members and Plaintiff Matteen would prefer to be sworn on religious texts of their own religions rather than the Holy Bible. Plaintiffs seek only declaratory relief.

On December 9, 2005, the Honorable Donald L. Smith, Superior Court Judge, dismissed Plaintiffs' complaint for lack of jurisdiction. Upon appeal, the North Carolina Court of Appeals reversed the order of dismissal, and ruled that the case is justiciable and that that Plaintiffs are entitled to have court interpret the relevant law. *American Civil Liberties Union of North Carolina, Inc. et al. v. State of North Carolina*, COA06-62 (January 16, 2007).

North Carolina General Statute § 11-2 reads as follows:

> Judges and other persons who may be empowered to administer oaths, shall (except in the cases in this Chapter excepted) require the party to be sworn to lay his hand upon the Holy Scriptures, in token of his engagement to speak the truth and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of that holy book and made liable to that vengeance which he has imprecated on his own head.[1]

The law further provides, in § 11-3, that those who have "conscientious scruples" against taking a "book oath . . . shall be excused from laying hands upon, or touching the Holy Gospel" but rather, the oath shall be administered while the witness stands, "with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God".[2] Finally, § 11-4 provides that a person having "conscientious scruples" against taking the

[1] This statute is preceded by N.C. Gen. Stat. § 11-1, which states: "Whereas, lawful oaths for discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood, and whereas, lawful affirmations for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government, therefore, such oaths and affirmations ought to be taken and administered with the utmost solemnity."

[2] N.C. Gen. Stat. § 11-3 reads as follows: "When a person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he shall be excused from laying hands upon, or touching the Holy Gospel; and the oath required shall be administered in the following manner, namely: He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and also in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely: I, A.B., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known (etc., as the words of the oath may be.)."

oath as described in § 11-2 or § 11-3, shall be permitted to be affirmed. When a witness is affirmed, the prescribed oath substitutes the word "affirm" for the word "swear," and the words "so help me God" are deleted.[3]

Plaintiffs urge that the term "the Holy Scriptures" appearing in N.C. Gen. Stat. § 11-2 should be interpreted to include not just the Christian Bible, but other religious texts, including but not limited to the Quran, the Old Testament and the Bhagavad-Gita. In the alternative, if the term "the Holy Scriptures" is interpreted so as not to include all religious texts, then the Plaintiffs urge that the statute is unconstitutional because it violates the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution and Article 1, § 13 of the Constitution of North Carolina.

For the reasons set forth in detail below, this Court enters the following declaratory judgment:

1. The Court declines to declare that the term "Holy Scriptures" can be interpreted reasonably to mean any sacred text other than the Holy Bible; but

2. This Court does declare that, as a matter of common law of North Carolina and under the authority of clear precedent of the North Carolina Supreme Court, oaths are to be administered in a form, and upon such sacred texts, including texts other than the Holy Bible, that a witness or juror holds to be "most sacred and obligatory upon their conscience;" and

3. The Court declines to declare N.C. Gen. Stat. § 11-2 unconstitutional.

[3] N.C. Gen. Stat. § 11-4 reads as follows: "When a person to be sworn shall have conscientious scruples against taking an oath in the manner prescribed by G.S. 11-2, 11-3, or 11-7, he shall be permitted to be affirmed. In all cases the words of the affirmation shall be the same as the words of the prescribed oath, except that the word 'affirm' shall be substituted for the word 'swear' and the words 'so help me God' shall be deleted."

MEMORANDUM OF DECISION

I. CONSTRUCTION OF THE TERM "HOLY SCRIPTURES"

The Plaintiffs urge that the term "Holy Scriptures," as used in N.C. Gen. Stat. § 11-2, should be interpreted to mean not just the Holy Bible, but also religious texts of other faiths.

Our courts have repeatedly held that in the construction of a statute words are to be given their plain and ordinary meaning unless the context, or the history of the statute, requires otherwise.[4] This rule of construction rests on the principle that where the meaning of the words used in the statute is plain there is no room for construction and for the court to engage therein, so as to depart from the clear and ordinary meaning of the words used by the Legislature, is to engage in judicial legislation.[5] There is no authority known to this court that suggests that under a plain meaning, historical or contextual analysis, the term "Holy Scriptures," particularly when capitalized as in N.C. Gen. Stat. § 11-2, means anything other than the Holy Bible.[6] Therefore, this court declines to construe the term "Holy Scriptures" to mean anything other than the Holy Bible.

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[4] *State v. Wiggins*, 272 N.C. 147, 153 (1967), *citing Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E. 2d 433 (1951); *In re Nissen's Estate*, 345 F. 2d 230 (4th Cir. 1965).

[5] *State v. Frazier*, 278 N.C. 458, 466 (1971), *School Commissioners v. Aldermen*, 158 N.C. 191, 196, 73 S.E. 905; *Asbury v. Albemarle*, 162 N.C. 247, 250, 78 S.E. 146 (1913).

[6] *See, e.g.*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *Fourth Edition* ("The sacred writings of the Bible"); COMPACT OXFORD ENGLISH DICTIONARY ("the Bible").

II. NORTH CAROLINA COMMON LAW AND PRECEDENT; APPLICATION OF THE DOCTRINE OF *STARE DECISIS*

In 1777, the first General Assembly to convene in North Carolina[7] enacted the statutes at issue today and established that "judges . . . shall require the party sworn to lay his hand upon the Holy Evangelists of Almighty God, in token of his engagement to speak the truth. . .". About ten years later, in the 1788 debates concerning North Carolina's ratification of the United States Constitution, James Iredell[8] said:

> It has long been held that no oath could be administered but upon the New Testament, except to a Jew, who was allowed to swear upon the Old. According to this notion, none but Jews and Christians could take an oath; and heathens were altogether excluded. At length, by the operation of principles of toleration, these narrow notions were done away. Men at length considered that there were many virtuous men in the world who had not had an opportunity of being instructed in the Old or New Testament, who yet very sincerely believed in a Supreme Being, and in a future state of rewards and punishments. It is well known that many nations entertain this belief who do not believe either in Jewish or Christian religion. Indeed, there are few people so grossly ignorant or barbarous as to have no religion at all. And if none but Christians or Jews could be examined under oath, many innocent persons might suffer from want of testimony of others. In regard to the form of an oath, that ought to be governed by the religion of the person taking it.[9]

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[7] Prior to 1777, the people of the North Carolina colony elected Provincial Congresses. In 1776, the Provincial Congress approved the first constitution of North Carolina, which established the General Assembly consisting of a Senate and a House of Commons. The General Assembly met for the first time in April 1777. *See generally*, W. Powell, A NORTH CAROLINA HISTORY (UNC Press, 1977).

[8] Iredell was a North Carolina superior court judge, attorney general, and reviser and codifier of North Carolina statutes who was appointed by President George Washington as a justice of the United States Supreme Court.

[9] *Debate in North Carolina Ratifying Convention*, Elliot 4:191-200, 208-09 (July 30, 1788) (emphasis added).

Iredell went on to describe a case he recalled from his reading of English law where, around 1740, an East Indian of the Gentoo religion, who believed neither the Old nor New Testament, was allowed to swear in the form required by the Gentoo faith, which involved touching the foot of a priest.[10] He concluded his remarks by stating:

> Ever since this great case [*Omychund v. Barker*], it has been universally considered that, in administering an oath, it is only necessary to inquire if the person who is to take it, believes in a Supreme Being, and in a future state of rewards and punishments. If he does, the oath is to be administered according to that form which it is supposed will bind his conscience most.[11]

In 1856, the North Carolina Supreme Court, in *Shaw v. Moore*,[12] considered a matter where a witness to a last will and testament was objected to on account of his religious beliefs. Although the witnessed professed to be a Christian, he did not profess a belief in *eternal* punishment for swearing of false oaths or any other sin but, rather, believed only in God's temporal punishment for sin.[13]

Our supreme court began its analysis by stating that the law required two guaranties of the truth of what a witness is about to state: "he must be in the fear of punishment by the laws of man, and he must also be in the fear of punishment by the laws of God."[14] The court then considered the history and intent of the statutes pertaining to oaths.

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[10] Id. The case of the East Indian witness of the Gentoo faith is *Omychund v. Barker*, 1 Atk. 19, Willis' Report, 538 (1744).

[11] Id., *supra.* n. 9 (emphasis added).

[12] 4 Jones (NC) 25, 49 N.C. 25 (Pearson, J. (1856)).

[13] *Id.*

[14] *Id.*

The court observed that under early English common law, no infidel could be sworn as a witness in the courts of England. All infidels were "*perpetui inimici* [perpetual enemy]; for, between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility."[15] The court found this view to be "narrow-minded, illiberal, bigoted and unsound."[16]

The court continued its historical analysis by finding that notwithstanding the early view that heathens were to be considered *perpetui inimici*, Lord Hale[17] found "that a Jew is a competent witness, and may be sworn on the Old Testament, and such has ever since been taken to be the law."[18] The court further relied upon the same authority cited by James Iredell 70 years earlier, *Omychund v. Barker*, for the holding that "a Gentoo, who was an infidel, who did not believe in either the Old or New Testament . . . is, according to common law, a competent witness, and may be sworn in that form which is the most sacred and obligatory upon his religious sense."[19]

Next, the court considered the following issue: "It was insisted, in the argument, that although this may have been the rule of the common law, it is changed by our statutory provisions prescribing the forms of oaths, ch. 76 Rev. Code [currently codified as N.C. Gen. Stat. § 11-1 et seq., including § 11-2]." In other words, our supreme court considered the very question that is before us today: was the common law rule that

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[15] *Id.*, quoting Chief Justice of the King's Court Edward Coke (1552-1634) (7 Coke's Reports, Calvin's Case).

[16] *Id.*

[17] Lord Chief Justice of England Matthew Hale (1609-1676).

[18] *Id.*

[19] *Id.* (emphasis added).

witnesses are to be sworn in a form most sacred and obligatory upon their own religious senses abrogated by the enactment of N.C. Gen. Stat. § 11-2?

On this issue, the supreme court held the following: [w]e think it manifest, by a perusal of the Statute, that it was not intended to alter any rule of law, but the sole object was to prescribe forms, adapted to the religious belief of the general mass of the citizens, for the sake of convenience and uniformity." [20] The court continued:

> [T]he argument that it was also intended to change the law by prohibiting any one from being sworn except in one form or other of the prescribed forms, proves too much, for, it would exclude both Jews, and infidels who believe in God. We think it indecent to suppose that the Legislature intended in an indirect and covert manner to alter a well-settled and unquestioned rule of law, and, in despite of the progress of the age, to throw the country back upon the illiberal and intolerant rule which was supposed to be the law in the time of bigotry; for, it was every day's practice to swear Jews upon the Old Testament, and *Omchund v. Barker* had settled the rule that infidels are to be sworn according to the form which they hold to be most sacred and obligatory on their conscience.[21]

Finally, the North Carolina Supreme Court considered the constitutional dimensions of the argument before the court, and held that:

> if, . . . besides prescribing forms for general use, the Legislature had the purpose of altering the common law, so as to exclude Jews and infidels, who believe in a God, and Christians, who do not believe in future rewards and punishments, from the privilege of taking the oaths which are required to enable them to testify as witnesses, or to take any office or place of trust or profit, in other words, to degrade and persecute them for 'opinion's sake,' then it is clear, that the statute, so far as this purpose is involved is void and of no effect because it is in direct contravention of the 19 sec. of the Declaration of Rights: "That all men have a natural and

[20] *Id.* (emphasis added).

[21] *Id* .(emphasis added).

> unalienable right to worship Almighty God according to the dictates of their own consciences."[22]

The North Carolina Supreme Court's holding in *Shaw v. Moore* has not been overturned or overruled. To the contrary, it has been favorably cited in several later court rulings.[23] This precedent remains the binding law of North Carolina.

When a matter has been settled by a higher court, the doctrine of *stare decisis* binds lower courts accordingly.[24] The operation of the doctrine of *stare decisis* is best

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[22] *Id.* (emphasis added). Section 19 of the Declaration of Rights is now N.C. Const. art. 1, § 13.

[23] In 1914, the North Carolina Supreme Court in *State v. Pitt* again stated that "[N.C. Gen. Stat. 11-2] as to the manner of swearing is, as Judge Pearson says, merely a form 'adapted to the religious belief of the general mass of citizens for the sake of convenience and uniformity.'" 166 N.C. 268, 272 (Clark, C.J.(1914)). In *Lanier v. Bryan*, the supreme court held that once the trial judge was satisfied that the witness understood his obligation to tell the truth, the "way in which they expressed their conception of such obligation was of secondary importance."184 N.C. 235, 238 (Adams, J. (1922)). In *State v. Boyles*, the court held that: "[t]he decision (*Shaw v. Moore*, 49 N.C. 25), approves the doctrine that the witness should have due appreciation of a moral duty to tell the truth, and conforms to the general rule that the judgment of the trial judge on the question of competency of a person who is offered as a witness is a matter of discretion and will not be disturbed on appeal."213 N.C. 432, 447 (Clarkson, J. (1938)).

Although not citing *Shaw v. Moore*, the 4th Circuit Court of Appeals, in a case arising out of the Western District of North Carolina, *U.S. v. Looper*, 419 F.2d 1405 (4th Cir. 1969), reached a similar result and held that:

> The common law . . . requires neither an appeal to God nor the raising of a hand as a prerequisite to a valid oath. All that the common law requires is a form or statement which impresses upon the mind and conscience of a witness the necessity for telling the truth. Thus, defendant's privilege to testify may not be denied him solely because he would not accede to a form of oath or affirmation not required by the common law. . . . All the district judge need do is to make inquiry as to what form of oath or affirmation would not offend defendant's religious beliefs but would give rise to a duty to speak the truth. The district judge could qualify defendant to testify in any form which stated or symbolized that defendant would tell the truth and which, under defendant's religious beliefs, purported to impress on him the necessity for so doing. *Id.* at 1407.

[24] The doctrine of *stare decisis* "compels courts to honor binding precedent absent extraordinary circumstances." *State v. Harris*, 360 N.C. 145, 155 (Newby, J. concurring (2005)). A primary goal of adjudicatory proceedings is the uniform application of law. In furtherance of this objective, courts generally consider themselves bound by prior precedent, i.e., the doctrine of *stare decisis*. *See, e.g., Payne v. Tennessee*, 501 U.S. 808, 827, 115 L. Ed. 2d 720, 111 S. Ct. 2597 (1991) ("Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."); *Bulova Watch Co. v. Brand Distribs*., 285 N.C. 467, 472, 206 S.E.2d 141, 145 (1974) (observing that *stare decisis* "promotes stability in the law and uniformity in its application"). *Bacon v.*

explained by reference to the translation of the Latin phrase; "*stare decisis*" literally means "to stand by decided matters." The phrase "*stare decisis*" is itself an abbreviation of the Latin phrase "*stare decisis et non quieta movere*" which translates as "to stand by decisions and not to disturb settled matters." In this case, this court finds that the North Carolina Supreme Court has ruled unequivocally (1) that N.C. Gen. Stat. § 11-2 is merely a form prescribed for general use, and is not intended to be the sole and exclusive means by which oaths are administered; (2) that the long-standing common law rule that witnesses may be sworn in a fashion that is most binding and obligatory upon the witness's conscience was not abrogated by the enactment of N.C. Gen. Stat. § 11-2; and (3) that the common law tradition of allowing non-Christians to swear on holy books other than the Holy Bible was likewise not abrogated by the enactment of N.C. Gen. Stat. § 11-2.

The application of the doctrine of *stare decisis* is not to be followed blindly, however, where prior holdings of the court are erroneous or lead to unjust results.[25] In this instance, as set forth below, this court is satisfied that the application of our supreme court's precedent is consistent with the primary purpose for the administration of oaths and further, is consistent with the sound administration of justice.

It is evident from a careful reading of the case law and history described above that as the purpose for the administration of oaths in courtrooms evolved the court has also allowed the form of the oath to follow. As courts recognized that witnesses other

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Lee, 353 N.C. 696, 713 (2001).

[25] The doctrine of *stare decisis* will not be applied in any event to preserve and perpetuate error and grievous wrong." *State v. Ballance*, 229 N.C. 764 (Ervin, J. (1949)).

than Christians ought to be allowed to testify in court, [26] courts also recognized that oaths administered to Jews on the Torah were appropriate, and witnesses from lands with no Judeo-Christian tradition were allowed oaths in a form sacred to their religious traditions. In other words, oaths have not historically been "form over substance," but rather, the form of the oath was subservient to the judicial purpose of the oath.

Today, oaths no longer serve as a litmus test of the spiritual competency of the witness, and "heathens and infidels" are no longer prohibited from testifying merely because they will not imprecate themselves with the wrath of God for giving false oaths.[27] This function for the administration of oaths has been eroded through court precedent,[28] the enactment of perjury statutes[29] and, eventually, was decisively abolished in 1985 when the North Carolina General Assembly enacted N.C. Gen. Stat. § 11-4, which allows an affirmation in lieu of oath. Now an atheist with no regard for God or divine retribution can be sworn and is competent to testify.

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[26] See, *supra*, note 15 and discussion of *perpetui inimici* [perpetual enemies of the law] *citing Shaw v. Moore*, 4 Jones (NC) 25 (1856). See further: *State v. Levy*, 187 N.C. 581 (1924) with respect to the disqualification of potential jurors: "If he be an atheist, or deny the existence of Almighty God, he is presumed to be insensible to the obligations of an oath" citing the then current version of the North Carolina Constitution, Art. VI, § 8."

[27] *See generally*, Kaufman, Note: *Disbelieving Nonbelievers: Atheism, Competence, and Credibility in the Turn of the Century American Courtroom*, 15 YALE J.L & HUMAN. 395 at fn. 133-137 (Summer 2003); Fisher, *The Jury's Rise as a Lie Detector*, 107 YALE L.J. 575 at fn. 104 (1997).

[28] As discussed previously, in *Shaw v. Moore*, 4 Jones (NC) 25 (1856), the Supreme Court allowed testimony of a Christian who professed belief in God and Jesus Christ, but who believed that sinners would be punished in this world rather than after death. In *State v. Pitt*, 166 N.C. 268 (1914), the court considered a challenge to the competency of an 11 year old boy who testified that when he kissed the Holy Bible, it meant that he would tell the truth, but when asked what would happen to him if he lied, he replied that he would go to jail, but did not know what else would happen to him. His testimony was challenged as being ignorant of God's punishment. The court held that one who is honestly ignorant of what will happen to him in another world is not rendered incompetent to testify. *Id.* at 272.

[29] In early trials, there was no criminal penalty for perjury. Perjury, being viewed as the sin of false witness and contempt of God, was an ecclesiastical matter and punishment, as alluded to in the imprecation clause of oaths, was divine. *See generally*, Fisher, *supra* n. 27, 107 YALE L.J. at n. 106. Perjury statutes, which emerged in the late 18th century (the North Carolina perjury statute, N.C. Gen. Stat. § 14-209, dates from 1791), provided a criminal sanction for false oaths in addition to the divine retribution.

In today's courtrooms, the primary purpose for the administration of oaths is to impress upon the witness the obligation to tell the truth and the solemnity of the occasion.[30] Indeed, this is the mandate of the North Carolina General Assembly which, in 1983, enacted Rule 603 of the North Carolina Rules of Evidence. Rule 603 says: "before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress upon his mind his duty to do so."[31] The Official Commentary to Rule 603 notes that this rule is "designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required."[32]

The highest aim of every legal contest is the search for the truth.[33] To require pious and faithful practitioners of religions other than Christianity to swear oaths in a form other than the form most meaningful to them would thwart the search for the truth. It would elevate form over substance. It would deprive the courts in this state of the tools needed to best comply with the mandate of Rule 603 to administer an oath designed to "awaken the conscience" of the witness. Finally, and perhaps most importantly, it would deny parties in civil and criminal actions the right to have testimony from witnesses who are thoroughly impressed with their duty to testify truthfully.

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[30] *See e.g.* N.C. Gen. Stat. § 11-1, set out in full at fn. 1, *supra*.: "the discovery of truth and establishing right are necessary and highly conducive to the important ends of good government, therefore, such oaths and affirmations ought to be taken and administered with the utmost solemnity."

[31] N.C. Gen. Stat. § 8C-1, Rule 603 (emphasis added).

[32] *Id*., Official Commentary.

[33] North Carolina Patterned Jury Instruction 101.36.

In view of the historic tradition of the court in tailoring the form of oaths to the substantive purposes for the oath, and the inclusiveness of the General Assembly's language in Rule 603, this court is satisfied that the North Carolina Supreme Court's longstanding precedent that N.C. Gen. Stat. § 11-2 is "merely a form prescribed for general use, and is not intended to be the sole and exclusive means by which oaths are administered" is a sound and well-conceived precedent, is not erroneous or unjust, and ought to be followed under the doctrine of *stare decisis*.

III. CONSTITUTIONALITY OF N.C. GEN. STAT. § 11-2

The Plaintiffs also seek, in the alternative, to have N.C. Gen. Stat. § 11-2 declared unconstitutional. Given the holding set out above, which fashions a less drastic remedy than declaring an act of the North Carolina General Assembly to be unconstitutional, this court need not address in depth the constitutionality of the statute at issue. However, the court is satisfied that the statute, particularly as interpreted by the North Carolina Supreme Court precedent of *Shaw v. Moore*, is facially constitutional.

The critical issue to be determined in considering whether N.C. Gen. Stat. § 11-2, as interpreted above, violates the Establishment Clause of the United States Constitution and Article I, § 13 of the North Carolina Constitution is whether the State has endorsed Christianity by its enactment of a statute referencing the Holy Scriptures and its use of the Holy Bible in the courtroom.[34] To answer this issue, the court considers two sub-

[34] This test of constitutionality, known as the Endorsement Test, was first proposed by J. O'Connor in her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668, 680, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984). The endorsement test is, to some extent, a variation of the *Lemon* Test, which was set out in *Lemon v. Kurtzman*, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971). The Supreme Court has relied on both

issues: first, the "purpose prong," whether the government's actual purpose is to endorse or disapprove of religion by its enactment and application of § 11-2, and second, the "effects prong," whether, irrespective of the government's purpose, the practice under review in fact conveys a message of endorsement or disapproval.[35]

With respect to the purpose prong, the United States Supreme Court has said that the First Amendment's religion clauses do not forbid all governmental acknowledgments, preferences, or accommodations of religion.[36] In the same vein, the Court has said "[w]e are a religious people whose institutions presuppose a Supreme Being" and [37]"it is unsurprising that a Nation founded by religious refugees and dedicated to religious freedom should find references to divinity in its symbols, songs, mottoes, and oaths."[38] Hence, merely because the language of § 11-2 references the Christian deity and the Holy Scriptures does not necessarily imply that its purpose is to endorse the Christian religion.

Rather, as detailed above, the prevailing purpose of § 11-2 was, and continues to be, to aid in the discovery of truth in the courtroom. The oath statutes of North Carolina collectively accomplish this secular purpose by seeking to "awaken the conscience of the witness and impressing upon the witness the duty to tell the truth."[39] For some

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the *Lemon* Test and the Endorsement Test, although in recent years, the Court has in many instances not applied the *Lemon* test. *See*, *Van Orden v. Perry*, 545 U.S. 677, 685-86 (Rehnquist, C.J., 2005). The Endorsement Test is frequently applied where the government is involved in expressive activities, such as religious signs on government property, graduation prayers and religion in public school curriculum.

[35] *Lynch v. Donnelly*, 465 U.S. 668, 690, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (O'Connor, J., concurring, 1984).

[36] *Van Orden v. Perry*, 545 U.S. 677, 684 (2005).

[37] *Zorach v. Clauson*, 343 U.S. 306, 313, 96 L. Ed. 954, 72 S. Ct. 679 (1952).

[38] *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 35-36, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004) (O'Connor, J., concurring in judgment).

[39] N.C. Rule of Evidence 603. See *supra*. at n. 31.

witnesses, the court's administration of an oath to God with one's hand on the Holy Bible is the most effective way of impressing an obligation to tell the truth. For those whose conscience is best awakened without reference to God or the Holy Scriptures, N.C. Gen. Stat. § 11-4 serves the same purpose by providing a secular affirmation. The common law of North Carolina and the Supreme Court opinion in *Shaw v. Moore* provide for a means of awakening the conscience of non-Christians in a form, and upon such holy texts, as may be sacred to them. As such, the purpose of North Carolina's oath statutes has very little, if anything, to do with the endorsement of a particular religion.

With respect to the second prong of the Endorsement Test, namely the "effects prong," this court finds that N.C. Gen. Stat. § 11-2 conveys no more of a message of endorsement or disapproval of religion than, in the words of Justice O'Connor:

> such government "acknowledgments" of religion as legislative prayers of the type approved in *Marsh v. Chambers*, government declaration of Thanksgiving as a public holiday, printing of "In God We Trust" on coins, and opening court sessions with "God save the United States and this honorable court." Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying governmental approval of particular religious beliefs.[40]

For these reasons, the court declines to declare N.C. Gen. Stat. § 11-2, as interpreted by *Shaw v. Moore*, to be facially unconstitutional.

[40] *Lynch v. Donnelly*, 465 U.S. 668, 692-93 (O'Connor, J., concurring, 1984).

IV. INHERENT JUDICIAL AUTHORITY

The State, in opposing the Plaintiffs' action, has urged that administrative and practical difficulties will arise if oaths are allowed to be administered on sacred texts other than the Holy Bible because courts may then be required to maintain a library of numerous sacred texts. Moreover, the State suggests that witnesses may wish to be sworn on noxious texts, such as Hitler's *Mein Kampf*, under some strained claim of religious preference. This court is of the opinion, however, that the courts of this State have the inherent powers to insure that these practical and administrative difficulties are minimized.

Through its inherent powers, a court has the "authority to do all things that are reasonably necessary for the proper administration of justice."[41] The court's inherent powers are those powers essential to the existence, dignity, and functions of the court, and for an orderly, efficient and effective administration of justice.[42] A court uses its inherent power when constitutional provisions, statutes, or court rules fail to supply answers to problems or when courts find themselves compelled to provide solutions that enable the litigative process to proceed smoothly.[43]

Merely because the law of North Carolina allows witnesses to be sworn upon texts other than the Holy Bible does not compel courts to tolerate interruptions of the business of the court in order to accommodate each witness's preference. The purpose of the court is to administer justice. Where an individual's preference regarding their

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[41] *State v. Buckner*, 351 N.C. 401, 412 (2000).

[42] *Id.*, citing *In re Alamance County Ct. Facils.*, 329 N.C. 84, 93, 405 S.E.2d 125, 129 (1991); c.f. *Beard v. N.C. State Bar*, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987); *Eash v. Riggins Trucking, Inc.*, 757 F.2d 557, 562-63 (3d. Cir. 1985).

[43] *Id.*, citing Felix F. Stumpf, INHERENT POWERS OF THE COURTS, 37-38 (1994).

oath interferes with the administration of justice by delaying or distracting the court or jury, the court may exercise its inherent power to deny the witness his or her preference.

For example, as a matter of general policy, a court may require anyone who wishes to be sworn on a sacred text other than the Holy Bible to bring their personal copy to the courtroom. If witnesses fail to bring their own sacred texts, or the text chosen interferes with the dignity of the court, the court may choose to disregard the preference of the witness. Ultimately, regardless of the preference of the witness, the administration of justice in the courtroom requires only that the court be satisfied that the oath or affirmation administered is of a form calculated to awaken the witness's conscience and impress upon the witness's mind his or her duty to tell the truth.

V. CONCLUSIONS

Based upon the foregoing, the court enters the following judgment pursuant to N.C. Gen. Stat. § 1-254 and Rule 56 of the North Carolina Rules of Civil Procedure:

1. The relief sought by the Plaintiffs that the court declare that the term Holy Scriptures, as set out in N.C. Gen. Stat. § 11-2, includes not only the Christian Bible, but other religious texts, including but not limited to, the Quran, the Old Testament and the Bhagavad-Gita is DENIED.
2. The relief sought by the Plaintiffs that the court declare that N.C. Gen. Stat. § 11-2 is unconstitutional under the United States Constitution or the North Carolina Constitution is DENIED.

3. The court declares, however, that based upon the common law of North Carolina and the well-established precedent of the North Carolina Supreme Court, oaths are to be administered in a form, and upon such sacred texts, including texts other than the Holy Bible, that witnesses or jurors hold to be "most sacred and obligatory upon their conscience."

4. The court further orders that each party is to bear its own costs, including attorneys' fees.

This the 24th day of May, 2007.

/s/ Paul C. Ridgeway
Paul C. Ridgeway, Superior Court Judge