June 28, 2005

Mr. Ralph A. Walker
Director
Administrative Office of the Courts
Justice Building
P.O. Box 2448
Raleigh, North Carolina 27602

Dear Mr. Walker,

The ACLU of North Carolina Legal Foundation (ACLU-NC LF) writes to request that the Administrative Office of the Courts (AOC) adopt a policy to enable members of different faiths to be sworn in on the religious text honored by their faith if they choose. It is the understanding of the ACLU-NC LF that the AOC has, at this time, deferred the consideration of such a policy.

According to reports in the media, this issue first arose in Guilford County when a woman of the Islamic faith sought to be sworn in on the Quran when she was a witness in a court proceeding in the Guilford County courts. After the Al Ummil Ummat Islamic Center offered to donate a number of copies of the Quran to the Guilford County court system, the AOC did initially support an individual's right to be sworn in on the Quran. We urge the AOC to adopt such a policy in accordance with long-standing precedent from our highest state court.

There are three statutes governing the administration of oaths in North Carolina courts. *See* N.C. Gen. Stat. §§11-2 through 11-4. First, N.C. Gen. Stat. §11-2 (Administration of Oaths) provides that the "party to be sworn [is] 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 upon his head." Second, N.C. Gen. Stat. §11-3 provides that an individual who does not wish to lay his hand upon the Holy Gospel may take an oath "with uplifted hand." Finally, N.C. Gen. Stat. §11-4 grants an individual the right to take a secular oath such that the word "affirm" replaces the word "swear" and the words "so help me God" are deleted.

Decisions of the North Carolina Supreme Court demonstrate that the form of administering oaths was not limited to the three statutes now codified as N.C. Gen. Stat. §§11-2

through 11-4. In *Shaw v. Moore*, 49 N.C. 25, 1856 WL 1637 (1856), Justice Pearson addressed the specific question of whether an individual who believed in the existence of a Supreme Being but did not believe that he would be punished in the afterlife for violating his oath (as opposed to being punished in this life) was a competent witness. The Court made clear that the statutes above did not supplant the common law, which for years had allowed Jews (who do not believe in punishment in an afterlife) to testify, and *in fact had been sworn in on the Old Testament for many years*.

As the Court stated in *Shaw v. Moore*, the statutes governing the administration of oaths were "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." *Shaw*, 1856 WL 1637, at *3. Indeed, the Court noted the argument that the statutes were to change the common law "by prohibiting any one from being sworn except in one or other of the prescribed form, proves too much; for, it would exclude both Jews, and infidels who believe in a God." Thus, the Court clearly recognized that the oath statutes were not to be considered limiting in that fashion.

The Court further recognized that it had been the practice to "swear Jews upon the Old Testament" and affirmed that "infidels are to be sworn according to the form which they hold to be most sacred and obligatory on their consciences." *Shaw*, 1856 N.C. at *3. In light of this clear precedent from our highest court, it is evident that our North Carolina Supreme Court recognized that individuals of faiths other than Christianity were to be permitted to be sworn according to their faith. To limit the statutes as such would "throw the country back upon the illiberal and intolerant rule which was supposed to be the law in the time of bigotry." *See id.*

The ACLU-NC LF suggests that even the legislative history of these statutes supports that the Christian Bible is not the only religious text which can be used in a swearing in ceremony. These three statues, N.C. Gen. Stat. §§11-2 through 11-4, were first passed in 1777. Prior to 1985,§11-2 was titled "Administration of oath upon the Gospels" and stated that the individual to be sworn was to "lay his hands upon the Holy Evangelists of Almighty God." Then, in 1985, the term "Gospels" was eliminated from the section and the terms "Holy Evangelists of Almighty God" was changed to "Holy Scriptures." The message sent by the Legislature was clear: no longer would the Christian Bible be the only religious text which could be used in a swearing in ceremony. Stated differently, the term "Holy Scriptures" is broad enough to include the Quran.

Finally, if a court declined to interpret the term "Holy Scriptures" as encompassing the Quran, then N.C. Gen. Stat. §11-2 would violate the Establishment Clause of the First Amendment to the United States Constitution, which clearly prohibits such denominational preference. To limit the applicability of N.C. Gen. Stat. §11-2 to those individuals who desire to be sworn in on the Christian Bible (both Old and New Testaments) would violate the Establishment Clause under the framework set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The government cannot favor one religion over another. Allowing such preference to Christianity in the courts of our State to the exclusion of all other religions is unconstitutional.