

The Ten Commandments in the Public Square: Religiously Divisive & Constitutionally Unsound

INTRODUCTION

The Anti-Defamation League believes that calls by private citizens and public officials for the government to post the Ten Commandments in schools, government buildings, courts and other public places — while often well-intentioned — are bad policy and often unconstitutional.

Governmental posting of the Ten Commandments can lead to the kind of religious divisions within otherwise harmonious communities that our founding fathers sought to avoid by constitutionally mandating the separation of church and state.

Proposals to post the Ten Commandments often create wide divisions in communities that are already struggling with other profound problems. Opponents of these initiatives — many of whom are deeply religious themselves — are portrayed as being anti-religious freedom or even anti-God. Local elections and politics have become battlegrounds over religion, taking the focus away from such urgent concerns as juvenile crime, education, and poverty.

Before embracing a Ten Commandments display as a response to some of society's most intractable problems, communities should consider its consequences for one of America's most precious traditions: religious tolerance.

PROHIBITIONS ON DISPLAY OF THE TEN COMMANDMENTS

The U.S. Supreme Court has long held that the government may not take any action that endorses a specific religious belief. All of the Court's decisions banning government support for religious activity have rested on the First Amendment's requirement of separation of church and state. Over the years, this precept has led the high court to prohibit such government practices as organized prayer in public schools, the inclusion of creationism in public school science classes and the sponsorship of nativity scenes by government agencies.

The Supreme Court has extended this prohibition in the majority of cases considering official posting of the Ten Commandments. In its landmark 1980 decision in *Stone v. Graham* striking down a Kentucky law requiring that a copy of the Ten Commandments be posted in every public school classroom, the Court said:

"The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. Rather, the first part of the Commandments concerns the

religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day."

In 2005, the Supreme Court issued two decisions concerning official display of the Ten Commandments with differing results. In *McCreary v. ACLU of Kentucky*, the Court considered county courthouse displays of the Ten Commandments in Kentucky. Echoing the *Stone* decision, it again recognized that the Ten Commandments is "an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction." The Court ultimately decided that the displays were unconstitutional because their history and context demonstrated a clear religious purpose and intent on the part of county officials.

In *Van Orden v. Perry*, the Court considered a 40-year-old granite Ten Commandments monument on the Texas capitol grounds — one of 17 monuments on the broad plaza. Reaching an opposite result, the Court decided that this display was constitutionally permissible. However, Justice Breyer, who cast the deciding vote in the case, characterized the display as "borderline" and found that it served "a mixed but primarily nonreligious purpose." Significantly, as with the *McCreary* decision, a majority of the Justices indicated that displays in public schools likely will be unconstitutional. In other situations, a display or posting's location, history and context will be critical in determining its constitutionality.

These decisions mean that — outside the school context — there is no bright-line test for Ten Commandments cases. Rather, the legality of these displays will be decided on a case-by-case basis. Undoubtedly, some displays will be found unconstitutional, and others will not.

Of course, the First Amendment protects the right of any citizen to post the Ten Commandments on private property and to engage in other kinds of private religious expression. There are many places in this country where the Ten Commandments would be welcome and appropriate — houses of worship, private schools and universities, and private parks. Those supporters of Ten Commandments initiatives who are willing to engage in lengthy, costly and divisive legal battles would be wise to heed Justice O'Connor's memorable warning in the *McCreary* case that:

"Allowing government to be a potential mouthpiece for competing religious ideas risks the sort of division that might easily spill over into suppression of rival beliefs. Tying secular and religious authority together poses risks to both."

True religious liberty means freedom from having the government impose the religion of the majority on all citizens. It is precisely this point that advocates of posting the Ten Commandments are missing.

DAMAGE TO RELIGIOUS TOLERANCE

Even if posting of the Ten Commandments in public schools, courthouses and other government property was uniformly constitutional, it would still undermine religious tolerance in America. Advocates of such proposals assert that these Biblical injunctions are values universally accepted by all Americans. These proponents fail, though, to take into account two crucial facts. First, not all Americans subscribe to religions that follow the Bible or the Ten Commandments. Millions of Muslims, Hindus and Buddhists (among others) in America adhere to religious, ethical and moral traditions that draw from a variety of texts other than the Bible. Second, those religions that do adhere to the Ten Commandments follow different versions

of them. The language in the ancient Hebrew text followed by Jews is not the same as the language found in the King James Bible version accepted by some Protestant churches in America today. Further, Catholics and Lutherans follow yet another text altogether. The assumption that government-ordered posting of the Ten Commandments in public places would honor the beliefs of all Americans is not only factually inaccurate, but is itself an act of religious intolerance.

ARGUMENT FOR POSTING BASED ON FALSE PREMISES

Naturally, in times of crisis, people look to religion for answers. In the wake of the tragedies such as at Columbine High School or the more recent Aurora, Colorado shootings, for example, there are often outcries across the country calling for a return to the moral values embodied in our nation's great religions. Commentators suggest that such violent crimes take place because our nation no longer values the teachings that so many of our religions share: a belief in God, a dedication to prayer and knowledge of the Bible. They argue that if public schools taught these universal values, and if the government affirmed them through legislation, such horrific acts would be less likely.

Many of those promoting government advocacy of religious values have focused their efforts on state-sponsored posting of the Ten Commandments in public places. Georgia, Indiana, Louisiana, Mississippi, Oklahoma, Tennessee, and South Dakota are among the states with laws allowing the official display of the Ten Commandments. And more states have introduced legislation that would allow — or even require — the Ten Commandments to be posted in public schools, courts, government buildings or other public places. Supporters of government-sponsored posting of the Ten Commandments often base their arguments on false premises. First, they claim that, because of separation of church and state, "it is illegal to pray in schools" and God is not allowed in the public schools. While the First Amendment prohibits organized or coercive prayer in public schools, it protects the right of every student to engage in private personal prayer while on campus. Further, to suggest that God or religion is somehow banned from the lives of public school students and teachers is both logically and theologically nonsensical.

Second, many critics of separation of church and state maintain that Americans no longer take religion as seriously as they used to. In fact, there is little evidence to suggest that religious observance is on the decline in the United States. Indeed, many studies suggest that America is one of the most religious western countries in the world.

CONCLUSION

Opposition to state-sponsored posting of the Ten Commandments does not arise out of hostility to the timeless values conveyed in Exodus 20:1-17. Rather, it arises out of a profound respect for the diversity of religions in America today — those that embrace Biblical law and those that derive their ethics and values from other texts. By adhering to the principle and spirit of separation of church and state we best fulfill the Constitution's legacy of religious liberty for all Americans.

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