

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL: cshive@tharringtonsmith.com

Mr. Colin Shive
Tharrington Smith, LLP
P.O. Box 1151
Raleigh, NC 27602

Re: Proposed Ten Commandments Displays (Cleveland County School District)

Dear Mr. Shive:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation being considered by the Cleveland County School Board. It is my understanding that you represent the District and that we have worked with you to resolve constitutional issues in the past. I hope we can resolve this matter as well.

Multiple concerned local residents have reported that the Cleveland County School Board is considering requiring all of its schools to display the Ten Commandments from the bible in a prominent location at or near their main entrances. It is our understanding that the board member who proposed this religious display requirement did so pursuant to a North Carolina law and that they believe that “[the district] cannot be sued for following the law of the state of North Carolina.”¹

As you are aware, the District can be sued for violating the Establishment Clause even if it is following North Carolina law. It would be a flagrant violation of the Establishment Clause for the Board to require all of its schools to display the Ten Commandments. The Supreme Court has ruled on Ten Commandments displays in public schools, finding that they violate the Establishment Clause. *Stone v. Graham*, 449 U.S. 39 (1980). In *Stone*, the Supreme Court definitively said, “The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature . . . The Commandments do not confine themselves to arguably secular matters . . . rather, the first part of the Commandments concerns the religious duties of believers.” *Id.* at 41.

The religious message of the Ten Commandments is incontrovertible. As the Supreme Court said in *McCreary Cty. v. ACLU of Ky.*:

They proclaim the existence of a monotheistic god (no other gods). They regulate details of religious obligation (no graven images, no Sabbath breaking, no vain oath swearing). And they unmistakably rest even the universally accepted prohibitions (as against murder, theft, and the like) on the sanction of the divinity proclaimed at the beginning of the text.

545 U.S. 844, 868 (2005).

¹ <https://www.shelbystar.com/story/news/2021/01/06/board-discuss-ten-commandments-schools/4015743001/>

No court has upheld the display of the Ten Commandments in a public school, even when the Ten Commandments were among other displays. *See Baker v. Adams Cty. v. Ohio Valley Sch. Bd.*, 86 Fed. Appx. 104, 2004 WL 68523 (6th Cir. 2004) (striking down stone monuments of Ten Commandments in front of school building placed with historical excerpts); *ACLU of Ky. v. McCreary Cty.*, 354 F.3d 438 (6th Cir. 2003) (granting preliminary injunction against Harlan County, Ky., school display of Ten Commandments placed with “historical documents”).

Although the Supreme Court allowed a long-standing Ten Commandments monument on government property in one unique context, the Court made clear that such displays in public schools are unconstitutional. The Court distinguished that case from the school context. Justice Breyer wrote, “This case, moreover, is distinguishable from instances where the Court has found Ten Commandments displays impermissible. The display is not on the grounds of a public school, where, given the impressionability of the young, government must exercise particular care in separating church and state.” *Van Orden v. Perry*, 545 U.S. 677, 703 (2005) (concurring) (citations omitted). The Court said that *Stone v. Graham* “stands as an example of the fact that we have ‘been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.’” *Van Orden*, 545 U.S. at 691 (citing *Edwards v. Aguillard*, 482 U.S. 578, 583-584 (1987)).

Any student will view a Ten Commandments display in school as being endorsed by the school. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). The District’s promotion of the bible and religion over non-religion impermissibly turns any non-Christian or non-believing student, parent, or staff member into an outsider. Schoolchildren already feel significant pressure to conform from their peers. They must not be subjected to similar pressure from their school, especially on religious questions.

FFRF is committed to defending parental and student constitutional rights. In September 2012, FFRF and several families filed federal lawsuits against two school districts in Pennsylvania for refusing to remove unconstitutional Ten Commandments monuments. Both of those monuments have been removed.

We request that the Cleveland County School District honor the Constitution and safeguard the freedom of conscience of school children and the rights of parents to direct the religious upbringing of their children. Not only is this required by the Establishment Clause, it is sound policy, as any challenges to the displays could be costly. We ask for a response in writing outlining the actions that the Board will take.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation