



2. At its core, the Establishment Clause of the First Amendment mandates religious neutrality. It prevents the government from favoring some religions over others, and religion over nonreligion. The Supreme Court has twice ruled that the government display of the Ten Commandments violates the Establishment Clause. *McCreary Cty. v. ACLU*, 545 U.S. 844 (2005); *Stone v. Graham*, 449 U.S. 39, 41 (1980) (“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.”). *See also Cty. of Allegheny v. ACLU*, 492 U.S. 573 (1989); *American Humanist Association v. Baxter County*, 143 F.Supp.3d 816 (W.D. Ark. 2015). When, as here, the government places “an instrument of religion” on its property, and specifically the Ten Commandments, its purpose can “presumptively be understood as meant to advance religion.” *McCreary*, 545 U.S. at 867. Seeking to protect and vindicate their civil liberties and constitutional rights, including their right to frequent government spaces free of state-sanctioned religious symbols, the above-captioned Plaintiffs state as their complaint against the above-captioned Defendant the following

3. This action challenges the constitutionality of Defendant’s maintenance and prominent display on government property of a massive Ten Commandments monument (“Ten Commandments Monument” or “Monument”)

The Monument violates the Establishment Clause of the First Amendment of the United States Constitution, as applied to Arkansas by the Fourteenth Amendment.

4. This is a civil action for declaratory relief and prospective injunctive relief to redress and prevent violation of civil rights protected by the Constitutions of the United States of America and the State of Arkansas.

5. Plaintiffs seek declaratory relief as to the unconstitutionality of Defendant's conduct. Plaintiffs seek injunctive relief prohibiting defendant from continuing their misconduct and engaging in similar conduct in the future.

Plaintiffs seek attorneys' fees and court costs pursuant to 42 U.S.C. § 1083 and § 1988.

### **JURISDICTION AND VENUE**

6. Jurisdiction is based on 28 U.S.C. § 1343 and 42 U.S.C. § 1983 for claims arising under the United States Constitution.

7. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure.

8. Injunctive relief is authorized under Rule 65 of the Federal Rules of Civil Procedure.

9. This Court has supplemental or pendent jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the Arkansas Constitution which arise out of the same set of facts.

10. All of the conduct complained of has occurred, is occurring, and will occur in this District.

11. This action seeks to redress the deprivation of rights secured by the Constitution of the United States of America and the Constitution of the State of Arkansas.

12. In 2016, the Arkansas General Assembly enacted Act 1231, the Ten Commandments Monument Display Act. The purpose of the Act was to permit the placing of a monument to the Ten Commandments on the grounds of the Arkansas State Capitol. The exact text of such a monument was prescribed by the General Assembly. The text is adapted from the scriptures of the Jewish and Christian faiths and is clearly and unmistakably religious in nature.

13. The Ten Commandments monument says:

“The Ten Commandments  
I AM the LORD thy God.  
Thou shalt have no other gods before me.  
Thou shalt not make to thyself any graven images.  
Thou shalt not take the Name of the Lord thy God in vain.  
Remember the Sabbath day, to keep it holy.  
Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.  
Thou shalt not kill.  
Thou shalt not commit adultery.  
Thou shalt not steal.  
Thou shalt not bear false witness against thy neighbor.  
Thou shalt not covet thy neighbor’s house.  
Thou shalt not covet thy neighbor’s wife, nor his manservant, nor his

maidservant, nor his cattle, nor anything that is thy neighbor's.”

14. Objections to the placement of the Ten Commandments monument were voiced at public hearings by certain Christians, Jews, and other persons of faith, as well as by secularists and non-believers. Persons making comments explained clearly why the proposed display favored particular religious beliefs and as a result violated the Constitutions of the United States of America and the State of Arkansas. Notwithstanding those objections and comments, state actors went forward with their plan to erect a Ten Commandments monument on the State Capitol Grounds.

15. A monument was originally placed on the State Capitol Grounds on or about June 27, 2017. That monument was destroyed within twenty-four hours.

16. On April 26, 2018, a second monument was placed, this time with barriers to prevent intentional destruction.

## **PARTIES**

17. Plaintiffs, and their interest in this matter, are as follows:

a. Anne Orsi is an individual resident and taxpayer in Little Rock, Pulaski County, Arkansas. Ms. Orsi asserts her rights under the Constitution of the United States of America and the State of Arkansas in that the Constitution of the United States provides that the state may not establish a religion and that the Constitution of the State of Arkansas provides that no

preference shall ever be given by law to any religious establishment, denomination, or mode of worship above any other. Plaintiff visits the Capitol Grounds for many reasons and cannot avoid seeing the monument when she visits the Capitol Grounds. Anne Orsi is a genealogist, writer, and amateur historian who visits the State Archives to research Arkansas history. Her family has lived in Arkansas since the 1850s. She also attends rallies, protests, and other events on the state capitol ground. She is an attorney who has business at the Arkansas Justice Building, where the offices of the Arkansas Supreme Court and Court of Appeals, as well as the Clerk of the Arkansas Supreme Court and Court of Appeals are located. She is a member and current president of the Arkansas Society of Freethinkers, a central mission of which is to safeguard the legal separation of church and state. She is also a member of the American Humanist Association and the Freedom from Religion Foundation, mentioned below.

b. Joan Dietz is an individual resident and taxpayer in Little Rock, Pulaski County, Arkansas. She is an active member of an Episcopal church. She objects to the monument because it selects one version of a religion, and one religion, for preference above all others. It misrepresents her Christian faith because it appears to send the message that Christians feel superior to others, which is contrary to the teachings of her Christian faith.

c. Gale Stewart is an individual resident of Little Rock, Pulaski County, Arkansas. She is a baptized, practicing New Testament Christian who follows the two commandments set down in Mark 12:28-33. She objects to the monument because it singles out one version of religion for preference over all others.

d. Teresa Grider is a non-Christian member of the Arkansas Society of Freethinkers. She is a practicing Solitary Wiccan Pagan and Buddhist. She ascribes to religions that are not commonly found in Arkansas, but which have the same three rules which the monument actually shares with the laws of the State of Arkansas with respect to murder, theft, and lying under oath. The monument disturbs her because so many of its “commandments” tell her which god she should worship and how she should worship that god. While she recognizes that there are many gods, she definitely does not accept the god mentioned by the monument as the supreme one nor does she worship that god as directed by the monument. She is disturbed that the State of Arkansas would direct her religion and her worship.

e. Rabbi Eugene Levy is Jewish. He spoke at public forums opposing the monument. He adopts and incorporates by reference his statements at the public forums. He objects to the characterization of the

text on the monument as The Ten Commandments and to the selection of some Commandments to the exclusion of other Commandments, especially since there are other commandments that are mentioned more often in scripture. He objects to the characterization of the monument as secular, as they are plainly religious. He objects to the monument as it trivializes sacred scripture. He objects to the use of a particular English translation in preference to the original, sacred Hebrew. He objects to the imagery on the monument as confusing and misleading. He also opposes the state giving preference to one version of religion over all others.

f. Rev. Victor H. Nixon is a minister in the United Methodist Church. He objects to the monument in that he opposes state endorsement of a particular religion, even if that religion is perceived to be his own. He objects to the singling out of one religious tradition over all others for acknowledgement by the state

g. Walter Riddick is an individual resident and citizen of the State of Arkansas. He self-identifies as an agnostic. He objects to the monument as it establishes a particular version of Christianity as the preferred religion of the State of Arkansas.

h. The American Humanist Association (“AHA”) is an association with an interest in the subject matter of this Complaint on behalf of itself and



its members. AHA has at least one member within Arkansas who has come into contact with the Ten Commandments monument and other members who will come into contact with the monument during visits to the State Capitol.

i. The Freedom from Religion Foundation, Inc. (“FFRF”) is a non-profit membership organization that advocates for the separation of state and church and educates on matters of nontheism. FFRF has at least one member within Arkansas who has come into contact with the Ten Commandments monument and other members who will come into contact with the monument during visits to the State Capitol.

j. The Arkansas Society of Freethinkers is an organization of secular individuals whose goals are to build a supportive and active community, support public acceptance of nonbelievers, and defend the separation of church and state. At least one member of the Arkansas Society of Freethinkers has come into contact with the Ten Commandments monument and other members will come into contact with the monument during visits to the State Capitol.

18. All Plaintiffs reasonably view the monument as an endorsement of religion by the State of Arkansas. All Plaintiffs also reasonably believe that the monument suggests to all who view it that adherence to a particular religion or

creed is preferred by the State of Arkansas. These messages are offensive to the Plaintiffs as they are contrary to the Constitution and the law of the United States of America and the State of Arkansas.

19. The Defendant Mark Martin is the Secretary of State of the State of Arkansas. In that capacity he has certain duties, including arranging for the monument to be designed, constructed, and placed on the State Capitol Grounds, approving the design and site selection for the monument, and arranging a suitable time for its placement.

### **FACTS**

20. The Defendant proceeded as directed under Act 1231 and placed a “Ten Commandments Monument” on the State Capitol grounds on April 26, 2018.

21. The monument is located on the State Capitol grounds on the South side of the Capitol Grounds near the Justice Building.

22. Plaintiff Anne Orsi saw the monument while on the State Capitol grounds on April 26, 2018 and was one of the protestors when the monument was unveiled. She identifies as an atheist and is a member of the American Humanist Association and the Freedom from Religion Foundation. She objects to the display of the Ten Commandments monument as it constitutes an establishment of religion by the State of Arkansas and therefore violates her rights under the First and Fourteenth Amendments to the Constitution of the United States of America as

well as the Constitution of the State of Arkansas. She spoke against the monument at public forums and testified against the bill creating the monument in committee hearings, and the grounds for her objection were stated in more detail in those proceedings.

23. Plaintiffs object to and are to varying degrees offended by the State's display of the Ten Commandments monument.

24. Plaintiffs perceive the prominent display of the Ten Commandments monument as an endorsement by the State of the religious principles set forth on the monument. Such a perception is reasonable given the history of the monument.

25. It is general public knowledge that the monument was proposed and promoted by Senator Jason Rapert, a minister and a member of the Arkansas General Assembly who is frequently vocal about his version of the Christian faith.

26. It is general public knowledge that the construction of both the original and the replacement monument was financed through a Go Fund Me page.

27. The motivations of the donors are available to anyone who looks at the Go Fund Me page, <https://www.gofundme.com/TenCommandmentsAR>. On that page, many of the donors stated that they donated for religious reasons and many made statements acknowledging the religious motivation behind funding the monument.

28. Donors also made unfavorable comments about other religious and non-religious traditions.

29. Senator Rapert himself made an unfavorable reference to the Islamic faith on the Go Fund Me webpage.

30. No reasonable observer could view the webpage dedicated to the funding of the monument and not conclude that the motivation was to support preference of the Christian religion over the Islamic religion or the non-religious.

31. Plaintiffs are aware that members of faith communities that are not Christian or Jewish, as well as those of no faith at all, have sought to have their faith honored by the presence of a statue reflecting their faith and the role that their faith has played in history, but that their petitions have been denied. The denial of equal representation to all traditions is offensive to the Plaintiffs.

32. The preference of one religious tradition over all others has the detrimental effect of:

- a. Endorsing the religious principles of one tradition over all others.
- b. Endorsing one religious tradition to the exclusion of all others.
- c. Sending the message to citizens of the State of Arkansas and others that if they do not adhere to the tradition represented by the monument they are outsiders and not fully a part of the community

d. Placing coercive pressure on citizens, including Plaintiffs and others, to adopt the State's preferred religion.

e. Favoring religion over non-religion.

33. By erecting, displaying, and maintaining the Ten Commandments monument, the Defendant has deprived the Plaintiffs of rights secured by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

34. The State's practice of erecting, maintaining, and continuing to display the Ten Commandments monument lacks any secular purpose.

35. The pre-eminent purpose for posting the Ten Commandments on the State Capitol Grounds is plainly religious in nature.

36. As noted *supra*, Senator Jason Rapert was the primary sponsor of Act 1231. He is also the President of the American History and Heritage Foundation which exists primarily to provide funding for the Ten Commandments monument. Senator Rapert speaks for the foundation and collects money for the foundation at a post office box used by him for other purposes.

37. Senator Rapert's publicly stated opinions would impact how a reasonable observer would perceive the monument.

38. The religious motivation is obvious from public statements made in support of the monument at the various hearings, as well as some of the public

statements of the primary sponsor of the legislation to place the monument on the State Capitol Grounds, Senator Rapert, as well as the statements of donors on the Go Fund Me page of Senator Rapert used to raise money for the erection of the monument.

39. Senator Rapert has publicly stated, “I am guilty as charged for supporting the Ten Commandments and write today to take full responsibility for being so bold as to believe that our state and our nation would be better off if people simply honored, followed and adhered to the Ten Commandments given by God Himself to Moses on Mt. Sinai.”

<http://www.arkansasonline.com/news/2017/jan/08/arkansas-democrat-gazette-condemns-ten-commandment/> Accessed May 1, 2017.

40. This statement by the primary proponent of Act 1231 is tantamount to a confession of a sectarian, religious motive for the erection of the monument, and would contribute to the perception by a reasonable observer that the monument is religious in nature.

41. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can overcome that fact.

42. Jews, Catholics, and various Protestant denominations do not adhere to the same wording and number scheme when referencing the “Ten Commandments.”

43. The wording and order of the commandments on the monument is selected by the General Assembly and is inconsistent with the enumeration of the Ten Commandments observed by many faith traditions. It therefore grants preference to and tends to establish any version of Christianity that observes the particular enumeration and statement of the Ten Commandments set out on the monument.

44. The Commandments do not confine themselves to arguably secular matters, but also govern 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. The State of Arkansas may not, consistent with the Constitutions of the United States and the State of Arkansas, instruct its citizens which God to worship, forbid its citizens to use a particular deity's name in vain, or require sabbath observances for religious purposes.

45. The display of the Ten Commandments by the State has the primary effect of both advancing religion generally and advancing the tenets of a specific faith in particular, and a particular version of the tenets of that faith.

46. The display of the Ten Commandments also impermissibly coerces Citizens to suppress their personal religious and non-religious beliefs and adopt the favored religious views of the State.

47. The display of the Ten Commandments Monument constitutes an endorsement of religion by the State. The State prescribed the language to appear on the monument.

48. The display of the Ten Commandments Monument violates the Establishment Clause of the First Amendment to the United States Constitution made applicable to the State of Arkansas by the Fourteenth Amendment.

49. The display of the Ten Commandments Monument also violates the Constitution of the State of Arkansas, which provides that “no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship above any other.” Ark. Const. Art II, Sec. 24.

50. Any reasonable person would know that the erection of this monument violates clearly established constitutional rights of citizens, particularly in light of the public debate and the statements made in public hearings regarding the monument.

51. The Defendant did not place the monument contemporaneously with the placement of secular displays on the State Capitol grounds. Act 1231 singled



out the Ten Commandments for special recognition and display at the State Capitol.

52. In coordination with other state actors, the Defendant sought to highlight and draw special attention to the Ten Commandments via the monument.

53. Since the passage of Act 1231, the proposed monument fostered divisiveness within the state on the basis of religion. Both the proponents and the opponents of the monument understand it as amounting to government effort to favor a particular religious sect and to promote religion over non-religion. Public hearings were held at which the proponents often referred to religious reasons for supporting the monument. Opponents likewise recognized the monument as fundamentally religious in nature.

54. The monument was opposed on many fronts from many disparate groups and individuals. In addition, some groups demanded equal representation for an alternative religious point of view (Satanism) and for a non-religious point of view (secularism). These disputes were well-covered in the media.

55. Following requests for additional religious and non-religious monuments at the State Capitol, the state legislature adopted H.B. 1237, 91<sup>st</sup> Gen. Assemb., Reg. Sess. (Ar. 2017), emergency legislation that required new monuments to first be approved by the legislature prior to consideration by the Capitol Arts and Grounds Commission. See Ark. Code Ann. § 22-3-503.

Any reasonable observer of the circumstances surrounding the installation of this monument would conclude that the purpose of promoting and preferring a particular mode of worship was paramount.

56. The violation of the Plaintiffs' rights as set forth above may be remedied pursuant to 42 U.S.C. § 1983.

57. The Ten Commandments Monument also violates the Constitution of the State of Arkansas.

WHEREFORE, Plaintiffs respectfully request the following relief from this Honorable Court:

A. A declaration that the Defendant's maintenance and display of the Ten Commandments monument on the State Capitol grounds is unconstitutional;

B. A permanent injunction directing the Defendant to remove the Ten Commandments monument from state property;

C. Reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

D. Such other relief as this Honorable Court deems just and proper.

RESPECTFULLY SUBMITTED

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