

# FREEDOM FROM RELIGION *foundation*

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April 9, 2013

SENT VIA MAIL & EMAIL

The Honorable Matthew Spencer and City Councilors  
City of Somersworth  
One Government Way  
Somersworth, NH 03878

Re: Move Ten Commandments Monument

Dear Mayor Spencer and Councilors:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to urge the City of Somersworth to remove the Ten Commandments monument in front of City Hall. We were contacted by several area residents who object to the monument's placement on public property. FFRF is a national nonprofit organization with 19,000 members across the country including members in Somersworth. Our purpose is to educate about nontheism and protect the constitutional principle of separation between state and church.

It is our understanding that the City hosts a large Ten Commandments monument on a small triangular piece of land near City Hall. Over the last year, we have heard from several area residents who object to the monument and its placement on government property. We understand that the City has received prior complaints about the monument but has decided against taking action to resolve those concerns.

Both as a matter of sound policy and to ensure that the City is in compliance with the Constitution, we request that the City move the monument from public property. The City should not be in the business of displaying the edicts of any religion, no matter how long the violation has been allowed to occur.

The First Commandment alone makes it obvious why the Ten Commandments may not be posted on government property. The government has no business telling citizens which god they must have, how many gods they must have, or that they must have any god at all. It is grossly inappropriate to insinuate that the Ten Commandments are associated with City government. There are ample private and church grounds where religious displays may be freely placed. Once the government confers endorsement and preference for some religions over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship.

Religious traditions cannot even agree on which are the “true Ten Commandments” and it is unwise, impermissible, and unconstitutional for the City of Somersworth to weigh in on this matter. The monument embodies an unconstitutional preference for one religion, indeed one branch of one religion, over others.

The religious message of the Ten Commandments is obvious. As the Supreme Court said in *McCreary County v. ACLU*:

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).

The Court discussed at length the requirement of government neutrality on matters of religion. The Court said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *Id.* at 860 quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); see also *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947), *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985).

The fact that the display was donated by the Fraternal Order of the Eagles does not absolve the City. “Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land.” *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 470-471 (2009). The monument here is distinguishable from one in *Van Orden v. Perry*, 545 U.S. 677 (2005), that was allowed to stand. As with all instances of displays subject to the Establishment Clause, the particular context is key. In *Van Orden*, Justice Breyer was the deciding vote and his concurring opinion is instructive. From the outset, Justice Breyer called the display a “borderline case.” Given the particular context, he found it did not violate the Establishment Clause as it was part of “a broader moral and historical message.” Breyer wrote, “The monument sits in a large park containing 17 monuments and 21 historical markers, all designed to illustrate the ‘ideals’ of those who settled in Texas and of those who have lived there since that time.” *Id.* at 702.

The Somersworth Ten Commandments monument stands alone and is placed in a high traffic area facing a busy road. A reasonable observer would view the monument as an endorsement of religion by the City.

Ten Commandments displays continue to be challenged around the country. These violations have caused distress and divisiveness. The best approach is to remedy this liability now by moving the monument, rather than to continue to let it stand in perpetuity. Other similar monuments have been moved at the request of local citizens.

Citizens in your community have contacted us to say they do not want the City to display the tenets of one religion. They are offended by the continued display of the Ten Commandments.

The display is especially problematic given the number of nonreligious residents in your community. New Hampshire has the highest percentage of nonreligious citizens in the United States, with 29% of adults identifying as nonreligious. (American Religious Identification Survey 2008).

Please inform us of the actions you are taking on this matter. The monument, of course, may be accepted by a church or by private individuals for their display. However, the current placement and display of the Ten Commandments monument is inappropriate and unconstitutional. We look forward to a reply at your earliest convenience.

Sincerely,



Patrick C. Elliott  
Staff Attorney