FREEDOM FROM RELIGION *foundation*

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January 22, 2016

SENT VIA MAIL & EMAIL:
rockcastlejudge@windstream.net

Mr. Doug Bishop
Rockcastle County Judge Executive
P.O. Box 755
Mt. Vernon, KY 40456

Re: Unconstitutional Ten Commandments Display

Dear Judge-Executive Bishop:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding an unconstitutional Ten Commandments display in a Rockcastle County building. FFRF is a national nonprofit organization with 23,o00 members, including members in Kentucky. Our purpose is to protect the constitutional principle of separation between government and religion.

It is our understanding that the County displays a framed Ten Commandments posting in the Rockcastle County Courthouse. We understand that the Ten Commandments display is prominently placed and is located near other postings informing County residents about obtaining property records. Please see the enclosed photo.

The Ten Commandments display violates the Establishment Clause of the First Amendment. In *McCreary Cnty. v. ACLU,* 545 U.S. 844 (2005), the Supreme Court ruled that a modern display of the Ten Commandments in two Kentucky courthouses violated the Constitution. 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 religious message of the Ten Commandments is obvious. As the Supreme Court said of the Ten Commandments in *McCreary:*

> 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. The Court went on to say:

> The point is simply that the original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction. **When the government initiates an effort to place this statement alone in public view, a religious object is unmistakable.**

Id. at 869 (emphasis added).

The Sixth Circuit Court of Appeals upheld a permanent injunction against those displays in 2010, finding that the counties acted with an impermissible religious purpose. *ACLU of Ky. v. McCreary County,* 607 F.3d 439 (6th Cir. 2010), *cert. denied,* 131 S.Ct. 1474. There are a number of other modern Ten Commandments displays that have been struck down by federal courts. *See, e.g., ACLU of Ohio Foundation v. Deweese,* 633 F.3d 424 (6th Cir. 2011), *cert. denied,* 131 S.Ct. 368; *Green v. Haskell Cnty. Bd. of Com'rs,* 568 F.3d 784 (10th Cir. 2009), *cert. denied,* 130 S.Ct. 1687.

Our complainant reports that the Ten Commandments are not included as part of a larger comprehensive display. Given the content of the display, and that fact that it originally appeared as a lone display, a reasonable observer would view it as an endorsement of religion by the County. By placing this display directly inside the County's governmental offices, the County is unmistakably sending the message that it gives the display its stamp of approval.

This display is unlike the one in *Van Orden v. Perry* that was allowed to stand. *See Van Orden v. Perry*, 545 U.S. 677 (2005). From the outset in *Van Orden*, Justice Breyer, who was the deciding vote, called the display a "borderline case." *Id.* at 700. Given the particular context, he found it did not violate the Establishment Clause. He explained that a modern installation would not receive the same validation:

> And, in today's world, in a Nation of so many different religious and comparable nonreligious fundamental beliefs, a more contemporary state effort to focus attention upon a religious text is certainly likely to prove divisive in a way that this longstanding, pre-existing monument has not.

Id. at 703.

Also, as a matter of policy, the County should not host a religious display. 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. There are ample private and church grounds where this religious display may be freely placed. Once the government enters into the religion business, conferring 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.

On behalf of our complainant, we request that you remove the Ten Commandments display. Please inform us in writing of the actions you are taking on this matter. We look forward to a reply at your earliest convenience.

Sincerely,

Patrick C. Elliott
Staff Attorney

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