

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA MAIL & EMAIL**

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Mr. Mark Martin  
Arkansas Secretary of State  
State Capitol, Suite 256  
500 Woodlane Street  
Little Rock, AR 72201

Re: Unconstitutional Ten Commandments Monument

Dear Secretary Martin:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to request that you abide by constitutional requirements and refrain from placing a Ten Commandments monument on the grounds of the State Capitol. FFRF is a nationwide nonprofit organization with over 22,000 members across the country, including many Arkansas members. Our purpose is to protect the constitutional principle of separation between state and church.

Arkansas citizens have contacted us to say that they do not want the State of Arkansas to endorse a religious monument, much less to host a Decalogue at the seat of state government. Nearly 20% of the U.S. population identifies as non-religious, including 1 in 3 adults under age 30.<sup>1</sup> We have heard from a number of citizens who object to the proposed monument. Ten Commandments displays like that approved under Act 1231 continue to cause divisiveness and are being challenged around the country.

We understand that “The Ten Commandments Monument Display Act,” Act 1231 assigns you the reprehensible and unconstitutional task of placing a Ten Commandments monument at the State Capitol. This law and any resulting Ten Commandments monument violate the Establishment Clause of the First Amendment.

**Violation of Establishment Clause**

The religious message of the Ten Commandments is incontrovertible. As the Supreme Court has said:

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.

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<sup>1</sup> Pew Research Center, *Nones on the Rise: One-in-Five Adults Have No Religious Affiliation*, The Pew Forum on Religion & Public Life (October 9, 2012),

*McCreary Co. v. ACLU*, 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.

Act 1231 includes bizarre legislative findings that seek to secularize a law with an obvious religious purpose. The findings falsely claim, “The courts of the United States of America and of various states frequently cite the Ten Commandments in published decisions.” This is verifiably false. American judges understand that it is their duty to uphold our secular and godless Constitution and laws rather than any religious text.

The law, absurdly, and in error, attributes the deistic writings of Thomas Jefferson in the Declaration of Independence to the bible and the Ten Commandments.<sup>2</sup> The Ten Commandments and the Old Testament do not even contemplate civil government. The Declaration of Independence was a profoundly unbiblical declaration, proposing the radical concept of consent of the governed, whereas the Ten Commandments promotes an uncivil government giving Moses and Aaron total autocratic control.

This law is a new scheme to endorse religion via government. It is not an effort to retain a decades-old monument, which distinguishes it from the actions by the State of Texas in *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, but said 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. This is precisely what the State of Arkansas has done. Act 1231 divisively calls for the placement of a monument on the grounds of the Arkansas State Capitol for the express purpose that people view the Ten Commandments. This action, undertaken in 2015, cannot withstand judicial scrutiny, particularly with its stated unconstitutional purposes.

### **Violation of Rights of Conscience and Religious Liberty**

The First Commandment alone is a direct violation of citizens’ rights of conscience. It is not the business of the State of Arkansas to tell citizens which gods to have, how many gods to have, or whether to have any gods at all. Ironically, the legislative findings of Act 1231 talk of the limited

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<sup>2</sup> See Steven K. Green, “*Bad History*”: *The Lure of History in Establishment Clause Adjudication*, 81 NOTRE DAME L.REV. 1717, 1746 (2006) (“There is no evidence that early political and legal figures saw the Decalogue as singularly (or even significantly) important or influential to American law.”)

authority of civil government. Government encroachment into private religious matters is the epitome of government overreach.

In addition, Arkansas legislators who have sought to promote the Ten Commandments through civil government have done a disservice to those who view the Ten Commandments as religious obligations. The Ten Commandments have significant religious meaning to many Christians and Jews. For some, the edits and deletions from biblical renditions of the “Ten Commandments” that would be used in the display would contradict their beliefs and cause offense. Jewish, Catholic, Lutheran, and different Protestant denominations do not even agree on the wording and numbering of the Ten Commandments. Act 1231 selects and endorses a traditionally Lutheran rendition of the Ten Commandments.<sup>3</sup> The placement of a set of religious rules from one “holy book” at the State Capitol sends a message to nonadherents “that they are outsiders, not full members of the political community and 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)).

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. FFRF is probably but one of many organizations prepared to go to court over this unconstitutional law.

Please safeguard the state treasury and stand by your oath of office to support the Constitution of the United States and the Constitution of the State of Arkansas. Please do not abuse your office to advance the preferred religious beliefs endorsed by legislators by placing a Ten Commandments monument on the Arkansas State Capitol grounds. May we hear from you at your earliest convenience about how you will handle this matter?

Very truly,



Annie Laurie Gaylor  
Co-President

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<sup>3</sup> See Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 *Fordham L. Rev.* 1477, 1486 (2005)