

FREEDOM FROM RELIGION *foundation*

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November 12, 2010

SENT VIA MAIL, FAX AND E-MAIL
(239) 574-0429

Mayor John Sullivan and
Members of the City Council
PO Box 150027
Cape Coral FL 33915

Re: Unconstitutional Proposed Ten Commandments Display

Dear Mayor Sullivan and Members of the City Council:

I am writing on behalf of Cape Coral residents, taxpayers and Cape Coral members of the Freedom From Religion Foundation (FFRF) to express concern over the constitutionality of the proposed Ten Commandments display. FFRF is a national nonprofit organization with 16,000 members across the country including more than 700 members in Florida. Our purpose is to protect the constitutional principle of separation between state and church.

We were contacted by several Cape Coral FFRF members who oppose placing religious text in government buildings and who seek to preserve a separation of religion and government. It is our understanding that Mayor John Sullivan has proposed placing the Ten Commandments in City Hall. *The News Press* reports, "Cape Coral Mayor John Sullivan believes the moral character of the country is deteriorating, so he wants to put the Ten Commandments inside a government building as a reminder to straighten up." Mayor Sullivan said, "Our laws were built on the Ten Commandments. It's getting back to our core values."

It is a violation of the Establishment Clause for the City of Cape Coral to post the Ten Commandments in the City Hall or any other government buildings. In *McCreary County v. ACLU*, 545 U.S. 844 (2005), the Supreme Court ruled that the display of the Ten Commandments in two county courthouses violated the Constitution and upheld an injunction against the counties. 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); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)).

As there is an express religious purpose for the display, the City of Cape Coral's posting the Ten Commandments would violate the Establishment Clause. The Supreme Court ruled that the *McCreary* Ten Commandments display violated the Establishment Clause because the counties

lacked a secular purpose. The Cape Coral display also would constitute government endorsement of religion.

Mayor Sullivan supports the display based on an impermissible non-secular purpose. Dick Kalfus, who initiated the request for the display, has said, "These are commandments that any good and whole person wants to hang their hats on." Dick Kalfus and Mayor Sullivan's support for the Ten Commandments display are expressly for religious reasons. Placing the Ten Commandments on public property for the purpose of teaching the community "good morals," will not withstand court scrutiny. The religious message of the Ten Commandments is obvious. As the Supreme Court said 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. Likewise, in the Court's earlier ruling in *Stone v. Graham*, the 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: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day.

449 U.S. 39, 41 (1980).

The First Commandment alone makes it obvious why the Ten Commandments may not be posted by government bodies. The government of Cape Coral 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.

Additionally, the Ten Commandments have significant religious meaning to many Christian and Jewish citizens in your community. For some, any edits and deletions from Exodus 20:1-17 in the display would contradict their beliefs and cause offense. How can the Mayor or City Council determine what denomination's version of the Ten Commandments will be used? Jewish, Catholic and Lutheran, and Protestant denominations do not agree on the wording and order of the Ten Commandments.

It is interesting that many Ten Commandment displays refer to Exodus 20:1-17 as the "Ten Commandments." The Ten Commandments referred to in Exodus 34, differ from Exodus 20:1-17. The Exodus 34 commandments, which are the only set in the bible called the "Ten

Commandments" (see Exodus 34:28), conclude with the final commandment, "Do not cook a young goat in its mother's milk" (Exodus 34:26). Should the City Council vote to include this commandment in government buildings?

Further, we would like to respond to some of the false factual claims made by Mayor Sullivan and Dick Kalfus.

Dick Kalfus has claimed that, "When you go to the Supreme Court, the United States Supreme Court, you will see inscribed on the doors and on the walls the Ten Commandments." Nowhere in the Supreme Court building is the text of the Ten Commandments inscribed. There are many symbols and artwork in the Supreme Court building, including tablets that contain roman numerals located near the bottom of the courtroom doors. *See this website for photos and more information <http://candst.tripod.com/tnppage/arg8a.htm>.*

Mayor Sullivan claims, "Every law in this country, just about every law, is based on the Ten Commandments." This is not reality. The laws passed daily around the country are not "based on the Ten Commandments." More importantly, our entirely secular Constitution makes no reference to any religious text or dogma. Scholars have debunked similar claims. *See* Steven K. Green, "Bad History": *The Lure of History in Establishment Clause Adjudication*, 81 NOTRE DAME L.REV. 1717, 1746 (2006) ("[R]egardless of the popularity of this belief of a unique status, it lacks historical support. There is no evidence that early political and legal figures saw the Decalogue as singularly (or even significantly) important or influential to American law."); Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 FORDHAM L.REV. 1477, 1500-16 (2005)("[T]he claim that the Ten Commandments ... are the moral foundation of American law, does not stand up to careful scrutiny.").

The proposed display would be unconstitutional because it has a religious purpose and constitutes an endorsement of religion. On behalf of our Cape Coral membership, we request that the Council protect the Constitution by voting down any Ten Commandment display proposals. Please respond in writing at your earliest convenience.

Sincerely,



Patrick C. Elliott
Staff Attorney