

FREEDOM FROM RELIGION *foundation*

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January 31, 2023

SENT VIA EMAIL & U.S. MAIL: rick.mattson@co.kanabec.mn.us

Rickey Mattson
Chairperson
317 E Maple Ave
Mora, MN 55051

Re: Unconstitutional and divisive Ten Commandments display

Dear Chairperson Mattson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding an unconstitutional and divisive plan to display the Ten Commandments in the county courthouse. FFRF is a national nonprofit organization with over 39,000 members across the country, including more than 800 members and a local chapter in Minnesota. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned complainant reported that on December 20, 2022, the Kanabec County Board of Commissioners (“the Board”) voted to display a copy of the Ten Commandments, a religious text, in the Kanabec County Courthouse lobby.¹

We write to inform the Board that it cannot display the Ten Commandments on public property. Displaying the Ten Commandments in the county courthouse is not only an unconstitutional display of favoritism towards religion, it needlessly alienates and excludes county residents who do not share the religious beliefs that the Ten Commandments embody and represent.

A Ten Commandments display in a county courthouse violates the Establishment Clause of the First Amendment. In *McCreary Cty. v. ACLU*, 545 U.S. 844 (2005), the Supreme Court ruled that displays 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 Educ. 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 explained in *McCreary*:

¹ https://cms5.revize.com/revize/kanabecounty/document_center/Departments/Coordinator/Minutes/2022/December%202020.pdf

[The Ten Commandments] 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.

Id. at 869. When a government body takes the initiative to display a religious text in the lobby of the county's courthouse, it demonstrates a plain and undeniable preference for religion over nonreligion, and for those religions which subscribe to the Ten Commandments above all other faiths.

Other modern Ten Commandments displays have been struck down by federal courts. *See, e.g., Felix v. City of Bloomfield*, 841 F.3d 848 (10th Cir. 2016), *cert. denied*, 138 S.Ct. 357; *ACLU of Ohio Found. v. Deweese*, 633 F.3d 424 (6th Cir. 2011), *cert. denied*, 131 S.Ct. 368; *Green v. Haskell Cty. Bd. of Com'rs*, 568 F.3d 784 (10th Cir. 2009), *cert. denied*, 130 S.Ct. 1687.

Any display created by a county board would not be like the one in *Van Orden v. Perry* that was allowed to stand. 545 U.S. 677 (2005). From the outset in *Van Orden*, Justice Breyer, whose opinion is controlling, 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.

When municipalities unsuccessfully defend unconstitutional displays, they are on the hook for the plaintiffs' costs and attorneys fees. In Establishment Clause challenges to Ten Commandments displays, these can be significant. *See Felix v. City of Bloomfield*, 1:12-cv-00125, Doc. 159 (N.M. D.C. Judgment for Attorneys' Fees and Costs, Dec. 5, 2017) (**Ordering payment of \$700,000**); *FFRF v. New Kensington-Arnold Sch. Dist.*, No. 2:12-cv-01319 (*W.D. Pa* 2017) (Settled in February 2017 with the removal of the Ten Commandments monument and **payment of \$163,500** for costs and attorney fees).

Finally, as a matter of policy, the County should not host a religious display. The First Commandment alone makes it obvious why the Ten Commandments should 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.

Out of respect for the Constitution and the rights of conscience of the County's residents, the Board should not display the Ten Commandments in the county courthouse. Please inform us in writing of the steps the Board is taking to address this matter so that we may inform our complainant.

Sincerely,



Patrick Elliott
Senior Counsel
Freedom From Religion Foundation



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