

July 23, 2010

**SENT VIA U.S. MAIL AND FAX  
(423) 272-1867**

Hawkins County Commissioners and  
The Honorable Crockett Lee  
Hawkins County Mayor  
150 East Washington Street  
Suite 2  
Rogersville TN 37857

Re: Unconstitutional Religious Display

Dear Commissioners and Mayor Lee:

I am writing on behalf of concerned Hawkins County taxpayers and other members of the Freedom From Religion Foundation (FFRF) to alert you to serious violations of the Constitution by Hawkins County. FFRF is a national nonprofit organization with more than 16,000 supporters across the country including more than 175 in Tennessee. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that the Hawkins County Commission's Building Committee approved a "Foundations of American Law and Government" display for the Justice Center. We understand that Juvenile Court Judge James Taylor requested the display. Judge Taylor claims the display would include the Mayflower Compact, Declaration of Independence, Magna Carta, Star Spangled Banner, national motto, preamble to the Tennessee Constitution, Bill of Rights, picture of Lady Justice, Benjamin Franklin's epitaph, George Washington's inaugural address and prayer at Valley Forge, National Pledge, Tennessee House Resolution 0815, Tennessee Senate Resolution 0158 and an explanatory text. It appears that several of the actual pieces of the display are different than as described by Judge Taylor.

It is our additional understanding that Judge Taylor promotes the display on his official website, <http://judgejamestaylor.com>. That site includes information about the "Foundations Display" and includes pictures of many of the proposed items for the display.

### **The Proposed Display is Primarily Religious**

Before discussing the legal implications, I will first address several key components of the display. It is apparent that Judge Taylor and the Commission selected the items in the display because of their references to God. The display has a predominant religious

theme and incorporates items that are historically inaccurate and items with little historical significance to the foundation of American law or “citizens heritage.”

### *Ten Commandments*

We understand that a Ten Commandments plaque will be included in the display. The plaque reads exactly:

#### *EXODUS 20:1-17*

- I THOU SHALL HAVE NO OTHER GODS BEFORE ME*
- II THOU SHALL NOT MAKE ANY GRAVEN IMAGES*
- III THOU SHALL NOT TAKE THE NAME OF THE LORD GOD IN VAIN*
- IV REMEMBER THE SABBATH DAY, AND KEEP IT HOLY*
- V HONOR THY FATHER AND MOTHER*
- VI THOU SHALT NOT KILL*
- VII THOU SHALT NOT STEAL*
- XI THOU SHALT NOT BEAR FALSE WITNESS*
- X THOU SHALT NOT COVET*

First, the Ten Commandments have no relation to the “civic heritage” of the United States. Our entirely secular Constitution makes no reference to them. Our leaders wisely shaped the laws of the United States on fundamental principles of democracy and not on religious dogma.

As noted in *ACLU of Ky v. Grayson County*, 591 F.3d 837, 849 n.6 (6th Cir. 2010), the claim that the Ten Commandments provided the foundation of American law is not historically accurate. *See, e.g.,* 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.”).

Second, the Ten Commandments have significant religious meaning to many Christian and Jewish citizens in your community. For some, the edits and deletions from Exodus 20:1-17 in the display would contradict their beliefs and cause offense. Additionally, how can Hawkins County 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 also interesting to exclusively refer to Exodus 20:1-17 as the “Ten Commandments.” The Ten Commandments referred to in Exodus 34 (which Moses chiseled on tablets) differ from Exodus 20:1-17. The Exodus 34 commandments, which are in fact 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).

Third, the proposed Ten Commandments plaque is likely to cause divisiveness in that the order selected does not appear to be in conformance with any denomination's version of the Decalogue. For instance, the plaque omits the commandment prohibiting adultery (typically noted as the seventh or sixth Commandment). The plaque also states that bearing false witness is the eleventh Commandment.

### *Benjamin Franklin's Epitaph*

Strangely, the display purports to include Benjamin Franklin's Epitaph. The epitaph has absolutely no relation to the foundation of the United States or "civic heritage." Why was this document selected, as it has no historical significance to the foundations of American law? It only becomes clear why the epitaph was selected in looking at what it says. From the pictures on Judge Taylor's website, it appears that the epitaph is not the actual epitaph of Benjamin Franklin. Franklin's gravestone reads, "Benjamin and Deborah Franklin 1790." Conversely, the epitaph that is to be used in the foundations display is a mock epitaph written by Benjamin Franklin over 60 years prior to his death. It uses the metaphor of a book to explain that Franklin will go to Heaven and reappear "In a new and more elegant edition, revised and corrected, by the Author."

The display of a religious metaphor that has no relation to the "civic heritage" of the United States is not an appropriate civic display. The selection of this item evidences a religious, rather than secular purpose for the display.

### *George Washington's Prayer at Valley Forge*

It is our understanding that the display also includes an image of the painting, "George Washington's Prayer at Valley Forge" by Henry Brueckner. In the painting, George Washington is depicted on one knee with his hands folded together.

First, the painting is historically inaccurate. Historians have debunked this myth. The myth originates from a dubious source. As one author put it, "Notwithstanding all the pictures that show Washington kneeling at prayer in the deep snow at Valley Forge...there's no evidence he ever did so. Artists got the story from Parson Weems, the same Parson Weems who invented the cherry tree story" (Shenkman, Richard. Legends, Lies, and Cherished Myths of American History. New York: Harper & Row, 1988.). Any historical displays by Hawkins County should at least be based on history. Just as it would be inappropriate to display the cherry tree myth, the display of Washington in prayer at Valley Forge furthers a historic falsehood.

Second, the selection of a painting of Washington in prayer demonstrates the religious purpose for the display. Hawkins County could display any number of depictions of General or President Washington. Yet, the County selected one that fits with the religious theme of the overall display.

### *George Washington's Inaugural Address*

We understand that Hawkins County has approved a display of Washington's inaugural address. Based on the photo of this display on Judge Taylor's website, it appears that only a small portion of the inaugural address would be depicted. Given the other items on display, we assume that the excerpt from Washington's address is a portion of the address that discusses a "divine blessing."

### *Pledge of Allegiance*

Judge Taylor's website also includes a picture of a Pledge of Allegiance plaque. The plaque includes the pledge but the words "Under God" are in lettering that is more than twice the size of the rest of the words in the pledge. The Pledge of Allegiance is an oath to our flag and to the United States. The emphasis in the Hawkins County pledge on "Under God" is offensive and turns a patriotic oath into a religious statement.

### *National Motto*

The proposed plaque has the words "In God We Trust" in large lettering. It is also noteworthy that none of the pieces of the display mentions the original secular motto of the United States, which was selected by Thomas Jefferson, John Adams and Benjamin Franklin: *E pluribus unum* ("out of many, one").

### *Other Display Items*

From what we can tell, the only display items that do not reference God are the Bill of Rights and the picture of Lady Justice. Coincidentally, those are representative of the ideals and means with which our organization and others like it have challenged government endorsements of religion.

### **The Proposed Display is Unconstitutional**

The proposed display in the Justice Center courtroom lobby violates the Establishment Clause. Given the context, the selection of documents, and Judge Taylor's promotion of the display, it cannot withstand scrutiny under the *Lemon* and endorsement tests.

"American Foundations" displays that include the Ten Commandments have been the subject of several lawsuits. Two Kentucky counties, McCreary and Pulaski, were parties in litigation that began in 1999 regarding the posting of the Ten Commandments and "American Foundations" displays in county courthouses. In June of this year, the Sixth Circuit Court of Appeals ruled against those counties, granting a permanent injunction against a display that included the Ten Commandments, entire Star Spangled Banner, Declaration of Independence, Mayflower Compact, Bill of Rights, preamble to the Kentucky Constitution, Lady Justice and a explanatory document called "The

Foundations of American Law and Government Display.” *ACLU of Ky. v. McCreary Co., Ky.*, 607 F.3d 439 (6<sup>th</sup> Cir. 2010).

In *McCreary County v. ACLU*, 545 U.S. 844 (2005), the Supreme Court upheld a preliminary injunction against those counties, finding that their “foundations display” violated the Establishment Clause because the counties lacked a secular purpose. 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))

The religious message of the Ten Commandments is obvious. A stand-alone Ten Commandments display is clearly unconstitutional. 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.

While the Hawkins County display includes documents and depictions other than the Ten Commandments, those items do not render the display constitutional in this instance. The selection of religious-themed documents for the display by Hawkins County points to a religious rather than secular purpose for the display. In the recent Sixth Circuit *McCreary* ruling, the Court addressed the content of those displays:

The Supreme Court found the content of the Foundation Displays, in conjunction the evolution of evidence, to reveal Defendants' religious purpose in posting the displays. According to the Court, the puzzling choices that the counties made concerning which documents to include in the displays and which documents to omit would probably lead an objective observer to “suspect that the Counties were simply reaching for any way to keep a religious document on the walls of courthouses constitutionally required to embody religious neutrality.”

607 F.3d 439, 446 (quoting *McCreary IV*, 545 U.S. at 873). The selected documents that will be placed in conjunction with the Ten Commandments in Hawkins County are even more problematic than those in *McCreary*. The Hawkins County display will include: a religious metaphor from a mock epitaph of Benjamin Franklin, a historically inaccurate painting of George Washington in prayer at Valley Forge, an excerpt of religious content from George Washington's inaugural address, a plaque with large "Under God" lettering, a plaque with large "In God We Trust" lettering, and two Tennessee resolutions acknowledging God. Other documents with questionable relation to the foundation of American government, such as the Star Spangled Banner and the Magna Carta will also be on exhibit. See *McCreary IV*, 545 U.S. at 872-873.

We understand that Judge Taylor has stated the Hawkins County display is constitutional based on the case *ACLU of Ky v. Grayson County*, 591 F.3d 837 (6th Cir. 2010). It is true that a "Foundations Display" was upheld in that case. However, as with all Establishment Clause cases, "context is critical." *Id.* at 848, 854.

In Hawkins County, the display contains many elements with a religious message that were not included in the Grayson County display and have not been the subject of judicial scrutiny. Even if the displays were identical, the Sixth Circuit has said, "[W]e must be alert to distinguishing facts, as an objective assessment of the purpose behind identical displays may differ based on the different histories of the displays." *Id.* at 848 (citing *McCreary IV*, 545 U.S. at 866 n.14).

A significant difference between the *Grayson* case and Hawkins County is the role of government officials in creating the display. In *Grayson*, the court did not find relevant the motivations of a private individual that sponsored the Foundations Display. The Court said, "[T]here was little official involvement in the display. It was proposed, funded, and hung by a private individual." *Id.* at 849. In Hawkins County, Judge Taylor has been greatly involved in sponsoring and creating a religious-themed display for the Justice Center. This confers inappropriate governmental endorsement.

We also understand that the proposed location for the display is near the front entrance of the circuit courtroom. The placement of the display and surrounding context are relevant to an inquiry whether an objective observer would find the display as an endorsement of religion. In *Grayson*, the Court said,

The Grayson County Foundations Display was placed in a low-traffic area on the second floor of the courthouse. Though it is in a courthouse, it is not in the "main" and "most beautiful part" of the building. Across from the display is a display honoring veterans that includes two quilts and a photograph. The display itself contains nine documents having historical meaning and a tenth document that explains the historical relevance of each document. There is nothing about the setting of the display that would be viewed as encouraging or lending itself to prayer, meditation or other religious activity.

*Id.* at 854. The unique pieces of the Hawkins County display and the proposed prominent location would amount to unconstitutional endorsement of religion.

The Hawkins County Commission must take immediate steps to ensure that no individual is permitted to misuse the Justice Center to promote a religious-themed display. The proposed display is neither appropriate nor constitutional. 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