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FREEDOM FROM RELIGION FOUNDATION

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June 1, 2011

Via Electronic Mail

School Board
Giles County Public Schools
151 School Road
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Dear School Board members:

We understand that on June 7, 2011, the School Board will be voting on a display for posting on public school walls containing the Ten Commandments, the Bill of Rights, the Virginia Statute for Religious Freedom, the Declaration of Independence, the Virginia Declaration of Rights, the Mayflower Compact, the Magna Carta, Lady Justice, and the National Anthem. We urge you to reject this display, as it would be unconstitutional and would lead to litigation.

The history of the Ten Commandments controversy in Giles County makes evident that the proposed array of documents would be posted for the impermissible religious purpose of endorsing the Ten Commandments. First, the Ten Commandments were hung on public school walls along with the United States Constitution, in a display with an unquestionably religious purpose.¹ Following a complaint, the Ten Commandments were removed, but were re-hung after approximately 200 clergy and other citizens crowded a School Board meeting to demand the restoration of the Commandments. On advice of counsel, the School Board again removed the Ten Commandments, but immediately began considering other ways to hang the Ten Commandments. On March 7, approximately 200 Giles High School students walked out of class in support of community efforts to put the Ten Commandments back in school. At the May 19, 2011 meeting, when the current proposal was presented to the Board, approximately 100 citizens were present to express support for the proposal, many of them wearing Ten Commandments t-shirts or carrying Ten Commandments posters, and many bused to the meeting by a local church. Finally, on May 21, citizens held a "Ten Commandments rally" to demand the posting of the Ten Commandments in the schools.

The Supreme Court has made clear that a government display of the Ten Commandments is unconstitutional when the history of the display demonstrates a religious purpose. In

¹ See *ACLU of Ohio v. Ashbrook*, 375 F.3d 484, 493 (6th Cir. 2004) (noting that when the Ten Commandments are displayed with a patriotic or political document, a reasonable observer "will understand that the [government actor] promote[s] that one religious code as being on a par with our nation's most cherished secular symbols and documents. This is endorsement [of religion]. . . .")

McCreary County v. ACLU of Kentucky, 545 U.S. 844 (2005), the Court struck down a courthouse display remarkably similar to the one under consideration in Giles County, because the history of the display evinced the government's religious purpose. There, the County had started with a display of the Ten Commandments alone, then posted a display of the Ten Commandments with historical documents that contained religious references, and ended up with a display including the Ten Commandments, the Magna Carta, the Declaration of Independence, the Bill of Rights, the lyrics of the Star Spangled Banner, the Mayflower Compact, the National Motto, the Preamble to the Kentucky Constitution, and a picture of Lady Justice. In evaluating the constitutionality of the third display, the Court noted that "[n]o reasonable observer could swallow the claim that the Counties had cast off the [religious] objective so unmistakable in the earlier displays." Regarding the array of historic documents posted with the Ten Commandments, the Court said, "[i]f the observer had not thrown up his hands, he would probably 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."

The same is true in this case. The Giles County School Board cannot hide the religious purpose behind this display simply by arranging other documents around the Ten Commandments.

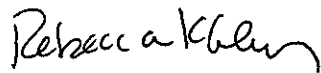
Supporters of the display have pointed to two Sixth Circuit cases that upheld courthouse displays similar to the one in *McCreary* and the proposed one in Giles County. *ACLU of Kentucky v. Grayson County*, 591 F.3d 837 (6th Cir. 2010); *ACLU of Kentucky v. Mercer County*, 432 F.3d 624 (6th Cir. 2005). However, those cases are different from the situation here. The courts in both *Grayson* and *Mercer* pointed out that in neither case did the government have the same history of posting the Ten Commandments for religious purposes as did the government in *McCreary*. As detailed above, the present proposal has just such a history. (The Sixth Circuit reaffirmed the importance of history in the most recent iteration of the *McCreary* case. The court again struck down the document displays as violating the Establishment Clause. *ACLU of Kentucky v. McCreary County*, 607 F.3d 439 (6th Cir. 2010) *rehearing and rehearing en banc denied* (2010), *cert denied*, 131 S.Ct. 1474 (2011).

The principle that displays are unconstitutional if there is a religious purpose is especially important in the public school context. As our previous letters cited, *Stone v. Graham* is the prevailing precedent that bars Ten Commandments displays in public schools. Courts are "particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Van Orden v. Perry*, 545 U.S. 677, 691 (2005) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987)). "Families entrust public schools with the education of their children" with the "understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards*, 482 U.S. at 584. Moreover, "[t]he State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Id.* See also *Lee v. Weisman*, 505 U.S. 577, 592 (1992) (noting that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary schools").

Religious education is a matter for the home and the church, not for the public schools. Students, of course, have every right to express their religious views through speech, wearing t-shirts, forming clubs, and other means. The public schools best protect religious liberty when they allow students' religious speech, but refrain from taking a religious position themselves.

For all of these reasons, we urge you to uphold the Establishment Clause and protect student freedom of conscience by rejecting the Ten Commandments display currently before you. If this display is posted in public schools, the ACLU of Virginia and the Freedom From Religion Foundation remain prepared to file suit against the School Board on behalf of aggrieved families.

Sincerely,



Rebecca K. Glenberg
Legal Director
ACLU of Virginia



Patrick Elliott
Staff Attorney
Freedom From Religion Foundation