

FREEDOM FROM RELIGION *foundation*

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The Honorable Edna DeVries
Mayor
Matanuska-Susitna Borough
350 E. Dahlia Ave.
Palmer, AK 99645

Re: Unconstitutional and divisive Ten Commandments display

Dear Mayor DeVries and Assembly members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding an unconstitutional and divisive plan to display the Ten Commandments in a lobby outside the Matanuska-Susitna Borough Assembly chambers. FFRF is a national nonprofit organization with 40,000 members across the country, including members in Alaska. 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 area resident has reported that the Matanuska-Susitna Borough Assembly recently passed a resolution to permanently display the Ten Commandments and six historical documents in a lobby outside the Matanuska-Susitna Borough Assembly chambers. It is our understanding that the display was inspired by a Louisiana law requiring the Ten Commandments in classrooms, and that the resolution's sponsor, Assembly member Ron Bernier, has admitted that the purpose of this resolution is to display the Ten Commandments and that other documents were only included to obfuscate the religious intention behind the display.¹ "I wanted to find a way to put the Ten Commandments in there legally," he said in an interview.²

We write to inform the Assembly that it cannot display the Ten Commandments on public property with the intent to promote religion. Displaying the Ten Commandments in the Assembly chambers in this manner is not only an unconstitutional display of favoritism towards religion, it needlessly alienates and excludes borough residents who do not share the religious beliefs that the Ten Commandments embody and represent.

A Ten Commandments display in a government building posted to promote religion 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

¹ <https://ffrf.us/3UiONwH>.

² <https://ffrf.us/3Y8AUmK>.

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*:

[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 its assembly chambers, and plainly states that any other documents posted alongside it are only there to attempt to hide the religious intent of the display, it demonstrates an 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. Dewese*, 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 the borough assembly 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.

The assembly cannot erase the admission that the display on the whole is intended only to promote the Ten Commandments. As the Supreme Court stated in *McCreary*, “the world is not made brand new every morning.” 545 U.S. at 866. “[R]easonable observers have reasonable memories, and [Supreme Court] precedents sensibly forbid an observer ‘to turn a blind eye to the context in which [the] policy arose.’” *Id.* (citing *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000)).

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 Borough 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. Thirty-seven percent of the American population is non-Christian, including the almost 30 percent³ who are nonreligious. At least a third of Generation Z (those born after 1996) have no religion⁴, with a recent survey revealing almost half of Gen Z qualify as "nones" (religiously unaffiliated).⁵

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

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

³ Gregory A. Smith, *Religious 'Nones' in America: Who They Are and What They Believe*, Pew Research Center, Jan. 24, 2024, <https://ffrf.us/3YaUcZ1>.

⁴ Samuel J. Abrams, *Perspective: Why even secular people should worry about Gen Z's lack of faith*, Deseret News (Mar. 4, 2023), www.deseret.com/2023/3/4/23617175/gen-z-faith-religious-nones-civic-life-volunteers-charity.

⁵ 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge, www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.