

FREEDOM FROM RELIGION *foundation*

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December 5, 2024

SENT VIA EMAIL & U.S. MAIL: kcboe@kern.org

Daniel R. Giordano
President
Kern County Board of Education
1300 17th Street City Centre
Bakersfield, CA 93301

Re: Proposed Ten Commandments Displays in Classrooms

Dear President Giordano and Members of the Board:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding an upcoming proposal to violate the constitutional rights of Kern County students and parents by displaying the Ten Commandments in every school classroom. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 5,100 members and two local chapters in California. 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 District parent has reported that on December 17, 2024, the Board will be entertaining a proposal to put the Ten Commandments in every classroom in the county. We understand that the board will hear two presentations, one about the historical basis for displaying the Ten Commandments and another about the legal grounds for doing so.

We write to urge you to reject this divisive and unconstitutional proposal. Displaying the Ten Commandments—a religious code central to Jewish and Christian beliefs—excludes students who adhere to different faiths or no faith at all, and violates the U.S. and California Constitutions.

It would be a flagrant violation of the Establishment Clause for the Board to require all of its schools to display the Ten Commandments. The Supreme Court has ruled on Ten Commandments displays in public schools, finding that they violate the Establishment Clause. *Stone v. Graham*, 449 U.S. 39 (1980). In *Stone*, the Supreme 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.” *Id.* at 41.

The religious message of the Ten Commandments is incontrovertible. As the Supreme Court said in *McCreary Cty. v. ACLU of Ky.*:

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 (2005).

No court has upheld the display of the Ten Commandments in a public school, even when the Ten Commandments were among other displays. *See Baker v. Adams Cty. v. Ohio Valley Sch. Bd.*, 86 Fed. Appx. 104, 2004 WL 68523 (6th Cir. 2004) (striking down stone monuments of Ten Commandments in front of school building placed with historical excerpts); *ACLU of Ky. v. McCreary Cty.*, 354 F.3d 438 (6th Cir. 2003) (granting preliminary injunction against Harlan County, Ky., school display of Ten Commandments placed with “historical documents”).

Although the Supreme Court allowed a long-standing Ten Commandments monument on government property in one unique context, the Court made clear that such displays in public schools are unconstitutional. The Court distinguished that case from the school context. In his controlling opinion, Justice Breyer wrote, “This case, moreover, is distinguishable from instances where the Court has found Ten Commandments displays impermissible. The display is not on the grounds of a public school, where, given the impressionability of the young, government must exercise particular care in separating church and state.” *Van Orden v. Perry*, 545 U.S. 677, 703 (2005) (concurring) (citations omitted). The Court said that *Stone v. Graham* “stands as an example of the fact that we have ‘been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.’” *Van Orden*, 545 U.S. at 691 (citing *Edwards v. Aguillard*, 482 U.S. 578, 583-584 (1987)).

Any student will view a Ten Commandments display in school as favoring one particular set of religious beliefs. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). The District’s promotion of the bible and religion over non-religion impermissibly turns any non-Christian or non-believing student, parent, or staff member into an outsider. Schoolchildren already feel significant pressure to conform from their peers. They must not be subjected to similar pressure from their school, especially on religious questions. At least a third of Generation Z (those born after 1996) have no religion¹, with a recent survey revealing almost half of Gen Z qualify as “nones” (religiously unaffiliated).²

¹ 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.

² 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/.

California's Constitution similarly protects students and parents from this violation of their religious liberty rights: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed...The Legislature shall make no law respecting an establishment of religion." Cal. Const. art. I, § 4

FFRF is committed to defending parental and student constitutional rights. FFRF and several families filed federal lawsuits against two school districts in Pennsylvania for refusing to remove unconstitutional Ten Commandments displays. *Freedom from Religion Found., Inc. v. New Kensington-Arnold Sch. Dist.*, 118 F. Supp. 3d 821 (W.D. Pa. 2015); *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 127 F. Supp 3d 283 (W.D. Pa. 2015). In both of these cases, the school districts were required to remove the displays and pay FFRF's attorneys' fees. FFRF is also currently involved in a lawsuit over a law requiring all public elementary and secondary schools to display the Ten Commandments in every classroom in Louisiana.³ The law is currently enjoined, after the judge determined that it violates the First Amendment and longstanding Supreme Court precedent.⁴

If the Board decides to move forward with violating the rights of its students, it could subject the District to unnecessary liability and potential financial strain. When FFRF secured a court order in our *Chino Valley* case regarding school board prayers, the court ordered the district to pay more than \$200,000 in the plaintiffs' attorney fees and costs. *Freedom From Religion Found. v. Chino Valley Unified Sch. Dist.*, No. 5:14-cv-02336-JGB-DTB (C.D. Cal. Feb. 18, 2016).⁵ After appeal, the court ordered the district to pay an additional \$75,000 for plaintiffs' attorney fees and costs associated with the appeal for a total of more than a quarter million dollars.

We request that you honor the Constitution and safeguard the freedom of conscience of school children and the rights of parents to direct the religious upbringing of their children. Not only is this required by the U.S. and California Constitutions, it is sound policy, as any challenges to the displays could be costly.

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
Legal Counsel
Freedom From Religion Foundation

³ <https://ffrf.us/3VC0bDE>.

⁴ <https://ffrf.org/news/releases/court-blocks-la-law-requiring-ten-commandments-in-public-schools/>.

⁵ https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf.