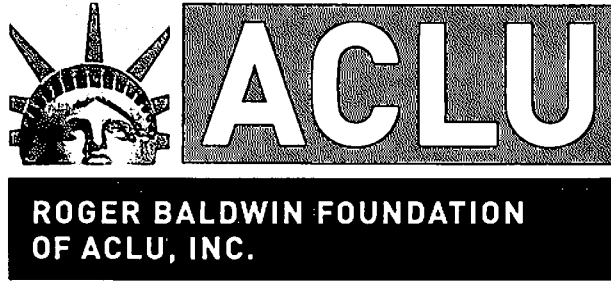


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May 4, 2012

BY U.S. MAIL AND FACSIMILE

Patrick Hermann
Bureau County State's Attorney
Bureau County Courthouse
700 South Main
Princeton, Illinois 61356
Fax: 815/872-7060

Re: Proposed Ten Commandments display

Dear State's Attorney Hermann:

On behalf of a Princeton resident, and the ACLU of Illinois and its 20,000 members and supporters, I write to oppose the pending proposal to place a Ten Commandments display on the lawn of the Bureau County Courthouse.

I. Facts

The following is my understanding of the facts. If you believe I am misinformed or uninformed in any particulars, please promptly advise me.

Bureau County Board Member Kristi Warren recently "presented a proposal from" the Rev. David Beck to install a Ten Commandments display on the lawn of the Bureau County Courthouse. The display would be made of granite, and would be three feet tall and three feet wide. See Donna Barker, *Thou shalt or shalt not?* Bureau County Republican, April 20, 2012, attached hereto as Exhibit 1.

The apparent purpose of the Warren/Beck proposal is to advance monotheistic religious belief in general, and Christianity in particular. Rev. Beck stated regarding the proposal: "mostly this monument would be a place for our citizens and our children to recognize and honor our heritage as a Christian nation." See Exh. 1. He also stated: "There is a growing lack of respect for God and decency in our land. This project will draw attention to those things we, in Bureau County, hold dear." *Id.*

The Ten Commandments are highly and inherently religious. According to the religious beliefs of Christians and Jews, God gave the Ten Commandments to Moses on Mount Sinai. Many of the commandments are purely religious and have no secular component, such as the ban on idol worship.

Some of Ten Commandments directly contradict the religious and other beliefs of millions of polytheistic and non-theistic Americans. *See, e.g.*, Amicus brief of the Hindu American Foundation in *Van Orden v. Perry*, No. 03-1500 (U.S.), filed Dec. 13, 2004, *available at* 2004 WL 2911176 (showing that several of the ten commandments contradict the religious beliefs of millions of Hindu, Jain, and Buddhist Americans).

Different Christian and Jewish denominations use different versions of the Ten Commandments, reflecting important theological differences. Thus, when the government erects a Ten Commandments display, it must take sides in a religious controversy, choosing one version of the Decalogue over all others. *See, e.g.*, Amicus brief of the American Jewish Congress and other Jewish organizations in *Van Orden v. Perry*, No. 03-1500 (U.S.), filed Dec. 13, 2004, *available at* 2004 WL 2915075.

The Bureau County Board has asked for your opinion regarding the proposed Ten Commandments display. *See* Exh. 1.

Several Bureau County residents have complained to the ACLU about this proposal.

II. Law

Government displays of objects like the Ten Commandments can violate the religious liberty guarantees of the U.S. and Illinois Constitutions in two different ways. First, such displays might have a religious *purpose*. Second, such displays might have the *effect* of endorsing religion in general or a specific religion in particular, marking non-adherents as second-class citizens. In either case, courts order the removal of such displays.

A. Religious purpose

In *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005), the Court struck down a government display of the Ten Commandments at a courthouse, because of the government's religious purpose. The Court's scrutiny of the government's purpose was robust. *Id.* at 867-73. The Court held that the purpose test is not "a pushover for any secular claim," and that a secular purpose cannot be "merely secondary to a religious objective." *Id.* at 864.

The Court's searching application of the purpose test in *McCreary County* was no anomaly. On four other occasions, the Court found that the government had acted with a religious purpose, and on that basis struck down the government's actions. *Stone v. Graham*, 449 U.S. 39 (1980) (statute requiring display of the Ten Commandments in public school classrooms); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (statute authorizing a moment of silent prayer in public schools); *Edwards v. Aguillard*, 482 U.S. 578 (1987) (statute requiring the teaching of creationism along

with evolution in public schools); *Santa Fe Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (public school policy allowing prayer before football games).

Finally, “[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact.” *Stone*, 449 U.S. at 41.

B. Religious effect and endorsement

A government display violates religious liberty guarantees where its “principal or primary effect” is to advance or inhibit religion. *Allegheny County v. ACLU*, 492 U.S. 573, 592 (1989). A government display has this forbidden religious effect when it “endorses” religion by “conveying . . . a message that religion or a particular religious belief is favored or preferred.” *Id.* at 593. See also *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (O’Connor, J., concurring) (explaining that government endorsements of religion improperly “make religion relevant, in reality or public perception, to status in the political community”). A forbidden endorsement occurs when “an objective observer, acquainted with the text, . . . history, and implementation of the [government action], would perceive it as a state endorsement of [religion].” *Santa Fe Sch. Dist.*, 530 U.S. at 308.

Courts repeatedly have held that various government displays of the Ten Commandments comprise unlawful endorsements of religion. See, e.g., *ACLU of Ohio v. DeWeese*, 633 F.3d 424 (6th Cir. 2011); *Green v. Haskell County*, 568 F.3d 784 (10th Cir. 2009); *ACLU of Florida v. Dixie County*, 797 F. Supp. 2d 1280 (N.D. Fla. 2011) (appeal pending).

Likewise, courts have struck down many other kinds of government endorsements of religion. See, e.g., *ACLU v. City of St. Charles*, 622 F. Supp. 1542 (N.D. Ill. 1985) (display of Latin Cross on the roof of a government building); *Doe v. Village of Crestwood*, 917 F.2d 1476 (7th Cir. 1990) (city sponsorship of a Catholic mass at a city festival); *Doe v. Montgomery County*, 915 F. Supp. 32 (C.D. Ill. 1996) (display of statement “the world needs God” above the entrance of a county courthouse); *Appelheimer v. School Bd. of Washington Comm. High Sch.*, 2001 WL 1885834 (C.D. Ill. May 24, 2001) (prayer at high school graduation ceremony).

C. The significance of *Van Orden*

In *Van Orden v. Perry*, 545 U.S. 677 (2005), the Court upheld a Ten Commandments display next to a state capitol. Justice Breyer wrote the controlling opinion in *Van Orden*: his concurrence in the judgment provided the necessary fifth vote to uphold the display, and his opinion provided the narrowest basis for the Court’s judgment. Justice Breyer identified the following factors in support of the display: the private group that donated the display had a secular purpose; the physical setting of the display was a park containing dozens of secular monuments; some 40 years had passed from the time the display was erected until the time it was legally challenged; and there was no record that the government had a religious purpose. *Id.* at 702-04.

III. Application of law to fact

As noted above, the Warren/Beck proposal has a religious purpose. Therefore, the proposed display would fail the “purpose test.”

Moreover, an objective observer familiar with the text, setting, and history of the proposed display would conclude that it comprises an endorsement of monotheistic religion in general, and Christianity in particular. Therefore, the proposed display would fail the “effects test.”

Not the contrary is *Van Orden*, given the factors identified in Justice Breyer’s controlling opinion. The private donor of the proposed display on the Bureau County Courthouse lawn plainly has a religious purpose. That lawn does not already host a broad array of secular monuments. And the display has drawn religious liberty objections even before its erection.

IV. Next steps

For all the reasons above, the ACLU urges you and other government officials in Bureau County not to install a Ten Commandments display on the lawn of the Bureau County Courthouse.

By May 18, please advise me of your position regarding the foregoing. If you have any questions, please do not hesitate to call me at (312) 201-9740, extension 316.

Sincerely,



Adam Schwartz
Senior Staff Counsel

cc: Dale Anderson, Bureau County Board Chair
Kami Hieronymus, Bureau County Clerk and Recorder
All Bureau County Board Members

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Thou shalt or shalt not ?

By Donna Barker - donna@bcrnews.com
Created: Friday, April 20, 2012 6:58 p.m. CDT
Updated: Friday, April 20, 2012 7:12 p.m. CDT

Comments (13 comments) | Recommend (11) | Tweet (0) | Text Size: Aa Aa Aa Aa Aa

PRINCETON — The Bureau County Board could be dealing with God at its next meeting, or at least with His Ten Commandments.

At this week's county board meeting, Buildings and Grounds Committee Chairman Kristi Warren presented a proposal from retired minister David Beck of Malden, who along with a group of sponsors, wants to install a Ten Commandments monument on the lawn of the Bureau County Courthouse. The Ten Commandments refer to the set of Biblical principles on how people should live.

Warren said Beck came to the April 11 Buildings and Grounds Committee meeting to make his proposal to install the 3-foot-by-3-foot-by-3-foot granite monument, which he said would honor the country and state and would remind children of the country's history. Committee members had a lot of questions about the proposal and referred the request to Bureau County State's Attorney Patrick Herrmann for his opinion, Warren said.

At Tuesday's county board meeting, Herrmann referred to two cases dealing with the placement of religious monuments on government property. In the Van Orden v. Perry case in Texas, the Supreme Court ruled a Ten Commandments monument could be placed on the state capitol grounds where other monuments and displays were already in place. In a McCreary County v. ACLU of Kentucky case, the Supreme Court denied the request, ruling a Ten Commandments display inside the county courthouse was a violation of the Establishment Clause of the First Amendment.

Herrmann said he would review both cases, which are each 50 pages in length, and summarize them for the board prior to next month's meeting.

"I think the board should be apprised of the factual situations on those cases to decide what you want to do with regard to this," Herrmann said. "I think it's going to be right in between those two cases, where the county would stand."

According to Beck's written proposal to the Buildings and Grounds Committee, the purchase, installation and upkeep costs of the Ten Commandments monument would be covered through private funds, with no cost to county taxpayers. The cost to build and install the monument was estimated by Beck at \$25,000 to \$30,000.

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eagle8710 wrote on April 26, 2012 10:07 a.m. ...

I'm Christian, but this is ridiculous. Why do we need this? This is nothing more than a group of stuffy conservatives with their heads too far up their rear ends to see how things actually work. This only serves as a screw you to those who would oppose it and circle you know what for those that approve. It accomplishes nothing other than creating animosity. If anything, we need a monument to the bill of rights on the court house lawn to remind us all that this country was built on liberty for any to hold whatever view they want.

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Thou shalt or shalt not ?

By Donna Berke - dberke@bcrnews.com
Created: Friday, April 20, 2012 6:58 p.m. CDT
Updated: Friday, April 20, 2012 7:12 p.m. CDT

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In giving his proposal, Beck said he had made several trips to Bureau County through the years since his wife is a Bureau County native. In seeing that Bureau County was filled with "God-fearing and conservative residents," with years of that heritage, he and his wife decided to move to Bureau County after his retirement. The proposed Ten Commandments monument would reflect those values, he said.

"I know that you are aware of the tremendous moral crisis in our country and in Illinois," Beck said. "There is a growing lack of respect for God and decency in our land. This project will draw attention to those things we, in Bureau County, hold dear."

According to Beck, there are already 10 or more such monuments in other counties and states, but Beck's proposed monument, if approved, would be the first in Illinois. The proposed monument would also include quotes from Illinois natives Abraham Lincoln, Ronald Reagan and Owen Lovejoy.

"In today's climate, I know you might be concerned about legal issues concerning such a project," Beck said. "Let me assure you there are no legal issues to worry about. This has already gone to the Supreme Court and was found to be on solid ground."

Also, if there was ever a suit filed against the Bureau County monument, he already has lawyers who have promised to defend the project, pro bono, Beck said.

In addition to the moral stand which the monument would represent, the monument would also be a "wonderful tourist attraction," Beck said.

"But mostly this monument would be a place for our citizens and our children to recognize and honor our heritage as a Christian nation," Beck said. "We plan on placing two or three benches around the monument for people to stop and reflect or eat their lunches."

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