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May 10, 2018

The Honorable Mary Fallin
Office of the Governor
State of Oklahoma
2300 N. Lincoln Blvd.
Room 212
Oklahoma City, OK 73105

Re: Veto HB 2177 – Ten Commandments Displays Are Constitutionally Suspect

Dear Governor Fallin:

On behalf of the Oklahoma chapter, members, and supporters of Americans United for Separation of Church and State, I urge you to veto HB 2177. This bill would allow government displays of the Ten Commandments on public property and in public schools. The Oklahoma Supreme Court recently held that the Oklahoma Constitution prohibits such displays, and the people of Oklahoma overwhelmingly voted to maintain that constitutional protection. In addition to violating the Constitution, placing a religious text, such as the Ten Commandments, in public schools and other government buildings is divisive and unwise.

The Oklahoma and U.S. Constitutions Prohibit Placement of the Ten Commandments

The Oklahoma Supreme Court recently struck down a privately financed Ten Commandments display on the State Capitol grounds because it violated Article 2, Section 5 of the Oklahoma Constitution.¹ This provision, which has been a part of the Oklahoma Constitution since the state's founding in 1907, prevents public money or property from being used to support any religion or religious institution. In *Prescott v. Oklahoma Capitol Preservation Com'n*, the Supreme Court explained that this state constitutional provision prohibits "State Government, its officials, and its subdivisions from using public money or property for the benefit of any religious purpose."² Because the Ten Commandments are "obviously religious in nature" as "an integral part of the Jewish and Christian faiths," the

¹ This bill authorizes displays of the Ten Commandments that would also violate the United States Constitution. See *Stone v. Graham*, 449 U.S. 39, 42 (1980) (striking down public school display because school displays serve no educational function and are plainly religious); *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 868 (2005) (striking down display erected with a clearly religious purpose); *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 490-94 (6th Cir. 2004) (striking down display based on "lack of any analytical connection between the Ten Commandments" and other items in courtroom, notwithstanding that Commandments were displayed opposite, and in format matching, display of Bill of Rights). Compare *Van Orden v. Perry*, 545 U.S. 677 (2005) (controlling concurring opinion of Breyer, J.) (upholding display as part of a secular message and part of a historic display with a forty-year history).

² 373 P.3d 1032, at 1033 (Okla. 2015).

Court concluded that government displays of this religious code violate the state constitution.³

Some lawmakers are attempting to distinguish the display in *Prescott* from the displays allowed by HB 2177 because the bill also authorizes the hanging of historical documents. But that does not change the state constitutional analysis. First, the bill still authorizes lone displays of the Ten Commandments. Second, the Court in *Prescott* rejected arguments that a Ten Commandments display on government property could be permissible if justified as an historical display.⁴ The inherently religious nature of the Ten Commandments is the only relevant issue under the Oklahoma Constitution.⁵

Voters Overwhelmingly Rejected Efforts to Allow Ten Commandment Displays

In 2016, the voters of Oklahoma overwhelmingly rejected efforts to strip Article 2, Section 5 from the state constitution to allow government-sponsored Ten Commandments displays.⁶ Supporters of the ballot initiative advocated that a “yes” vote would overturn *Prescott* and allow the posting of the Ten Commandments on government property.⁷ The ballot language even stated that the section of the constitution up for removal had “been interpreted by the Oklahoma courts as requiring the removal of a Ten Commandments monument from the grounds of the State Capitol” but mentions no other potential consequences.⁸ Fifty-seven percent of voters rejected the proposed amendment and, consequently, made clear that they do not support government displays of the Ten Commandments.⁹

Authorizing Placement of the Ten Commandments Would Be Divisive and Unwise

The Ten Commandments are “a central point of reference in the religious and moral history of Jews and Christians” and “unmistakably rest . . . on the sanction of . . . divinity.”¹⁰ But many Oklahomans practice religions that do not adhere to the Ten Commandments or adhere to no religion at all. Everyone who uses government buildings, whether by attending a public school, attending a court hearing, or using the public library, should feel welcome and part of the community. These buildings should not just welcome those who follow a religion that reveres the Ten Commandments. By authorizing the display of this particular religious text in public schools and on public property, however, the state would send a message that those who don’t share those beliefs “are outsiders, not full members of the . . . community, and an accompanying message to [only certain] adherents that they are insiders, favored members of the . . . community.”¹¹

³ *Id.* at 1034.

⁴ *Id.* at 1033-4.

⁵ *Id.* at 1033

⁶ Oklahoma Secretary of State, [State Question 790](#), 12 (last accessed May 9, 2018).

⁷ Nadia Enchassi, [House Approves Ten Commandments Constitutional Amendment](#), KFOR TV, Apr. 21, 2016.

⁸ *Supra* note 6.

⁹ *Id.*

¹⁰ *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 868 (2005).

¹¹ *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)).

Even adherents to the Ten Commandments have significant disagreements about their text and meaning. The disagreements lie not only among Jews and Christians, but also among Catholics, Lutherans, and other Protestants. Thus, picking any version of the text to display necessarily means the government takes a position on a theological debate and chooses which religious beliefs are preferred by the government. Authorizing the government display of this religious text, therefore, would be unnecessarily divisive.

Government Displays of the Ten Commandments Trivialize and Harm Religion

Although some may try to claim that posting the Ten Commandments on public property and in schools honors religion, it actually harms religion. The Ten Commandments are a revered religious code. Jews and Christians believe that Ten Commandments were “inscribed by the finger of God” and represent a covenant between God and his people. Describing and treating the creed as a secular code demeans and trivializes the Commandments.

Conclusion

Posting the Ten Commandments on public property and in public schools violates the Oklahoma Constitution, has been rejected by Oklahoma voters, is divisive, and is harmful to religion. For all these reasons, I urge you to protect religious freedom for all Oklahomans by vetoing HB 2177.

Sincerely,



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