

**McCreary County v. American Civil Liberties  
Union of Kentucky**

545 U.S. 844 (2005)

Souter, J.

Executives of two counties posted a version of the Ten Commandments on the walls of their courthouses. After suits were filed charging violations of the Establishment Clause, the legislative body of each county adopted a resolution calling for a more extensive exhibit meant to show that the Commandments are Kentucky's "precedent legal code." The result in each instance was a modified display of the Commandments surrounded by texts containing religious references as their sole common element. [T]he counties revised the exhibits again by eliminating some documents, expanding the text set out in another, and adding some new ones.

In the summer of 1999, petitioners McCreary County and Pulaski County, Kentucky put up in their respective courthouses large, gold-framed copies of an abridged text of the King James version of the Ten Commandments, including a citation to the Book of Exodus. In McCreary County, the placement of the Commandments responded to an order of the county legislative body requiring "the display [to] be posted in 'a very high traffic area' of the courthouse." In Pulaski County, amidst reported controversy over the propriety of the display, the Commandments were hung in a ceremony presided over by the county Judge-Executive, who called them "good rules to live by" and who recounted the story of an astronaut who became convinced "there must be a divine God" after viewing the Earth from the moon. The Judge-Executive was accompanied by the pastor of his church, who called the Commandments "a creed of ethics" and told the press after the ceremony that displaying the Commandments was "one of the greatest things the judge could have done to close out the millennium."

[After a lawsuit and a District Court ruling that the displays must be removed, the Counties twice] installed another display in each courthouse. The [third] posting consists of nine framed documents of equal size, one of them setting out the Ten Commandments and quoted at greater length than before.

Assembled with the Commandments are framed copies of 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. The collection is entitled "The Foundations of American Law and Government Display."

*Lemon* said that government action must have "a secular . . . purpose," and after a host of cases it is fair to add that although a legislature's stated reasons will generally get deference, the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective.

Given the ample support for the District Court's finding of a predominantly religious purpose behind the Counties' third display, we affirm the Sixth Circuit in upholding the preliminary injunction.

### Van Orden v. Perry

545 U.S. 677 (2005)

Rehnquist, C.J.

The question here is whether the Establishment Clause of the First Amendment allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. We hold that it does.

The 22 acres surrounding the Texas State Capitol contain 17 monuments and 21 historical markers commemorating the "people, ideals, and events that compose Texan identity." The monolith challenged here stands 6-feet high and 3 1/2-feet wide. It is located to the north of the Capitol building, between the Capitol and the Supreme Court building. Its primary content is the text of the Ten Commandments. An eagle grasping the American flag, an eye inside of a pyramid, and two small tablets with what appears to be an ancient script are carved above the text of the Ten Commandments. Below the text are two Stars of David and the superimposed Greek letters Chi and Rho, which represent Christ.

The legislative record surrounding the State's acceptance of the monument from the Eagles — a national social, civic, and patriotic organization — is limited to legislative journal entries. After the monument was accepted, the State selected a site for the monument based on the recommendation of the state organization responsible for maintaining the Capitol grounds. The Eagles paid the cost of erecting the monument, the dedication of which was presided over by two state legislators.

Whatever may be the fate of the *Lemon* test in the larger scheme of Establishment Clause jurisprudence, we think it not useful in dealing with the sort of passive monument that Texas has erected on its Capitol grounds. Instead, our analysis is driven both by the nature of the monument and by our Nation's history.

As we explained in *Lynch v. Donnelly*, 465 U. S. 668 (1984): "There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."

Of course, the Ten Commandments are religious — they were so viewed at their inception and so remain. But Moses was a lawgiver as well as a religious leader. And the Ten Commandments have an undeniable historical meaning. Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.

There are, of course, limits to the display of religious messages or symbols. For example, we held unconstitutional a Kentucky statute requiring the posting of

the Ten Commandments in every public schoolroom. *Stone v. Graham*, 449 U. S. 39 (1980). In the classroom context, we found that the Kentucky statute had an improper and plainly religious purpose.

The placement of the Ten Commandments monument on the Texas State Capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day. Texas has treated her Capitol grounds monuments as representing the several strands in the State's political and legal history. The inclusion of the Ten Commandments monument in this group has a dual significance, partaking of both religion and government. We cannot say that Texas' display of this monument violates the Establishment Clause of the First Amendment.

Breyer, J., concurring

Here the tablets have been used as part of a display that communicates not simply a religious message, but a secular message as well. The circumstances surrounding the display's placement on the capitol grounds and its physical setting suggest that the State itself intended the latter, nonreligious aspects of the tablets' message to predominate.

The tablets, as displayed on the monument, prominently acknowledge that the Eagles donated the display, a factor which, though not sufficient, thereby further distances the State itself from the religious aspect of the Commandments' message.

The physical setting of the monument, moreover, suggests little or nothing of the sacred. The monument sits in a large park containing 17 monuments and 21 historical markers, all designed to illustrate the "ideals" of those who settled in Texas and of those who have lived there since that time.

This case also differs from *McCreary County*, where the short (and stormy) history of the courthouse Commandments' displays demonstrates the substantially religious objectives of those who mounted them, and the effect of this readily apparent objective upon those who view them.

This display has stood apparently uncontested for nearly two generations. That experience helps us understand that as a practical matter of degree this display is unlikely to prove divisive. And this matter of degree is, I believe, critical in a borderline case such as this one.

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In recent years, the Supreme Court has not always directly invoked the *Lemon* test. In *Kennedy v. Bremerton School District*, 142 U.S. 2407 (2022), Justice Gorsuch, writing for the majority of six justices, said "this Court long ago abandoned *Lemon*." He explained his reasons for so thinking in a concurring opinion in another case from the same term.