

# FREEDOM FROM RELIGION *foundation*

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April 5, 2013

SENT VIA MAIL & FAX  
(606) 666-9464

Mr. Larry Hammond  
Breathitt County Schools  
PO Box 750  
Jackson, KY 41339

Re: Unconstitutional Ten Commandments Displays

Dear Mr. Hammond:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) over allegations we received by a concerned county resident that Breathitt County Schools contain multiple illegal Ten Commandments displays. FFRF is a national nonprofit organization with 19,000 members across the country, including many in Kentucky. Our purpose is to protect the constitutional principle of separation between state and church.

It was reported to us that Breathitt County Schools displays the Ten Commandments in most rooms in the high school and middle school, as well as in some elementary school rooms. We are told that the Ten Commandments have been displayed throughout the schools for many years. We were also informed that the Ten Commandments are prominently on placed in many areas, including the front office and conference rooms. I have enclosed a photo of one expensively framed display.

These Ten Commandments displays are a flagrant violation of the Establishment Clause of First Amendment. The Supreme Court has specifically ruled on Ten Commandments displays in Kentucky classrooms, finding that they violate the Establishment Clause. *See Stone v. Graham*, 449 U.S. 39 (1980). The Sixth Circuit Court of Appeals, which has jurisdiction over Kentucky, has also struck down religious displays in public schools. *Washegesic v. Bloomingdale Public Schools*, 813 F. Supp. 559 (W.D. Mich. 1993), *aff’d*, 33 F. 3d 679 (6th Cir. 1994)(ruling that a picture of Jesus may not be displayed in a public school).

In *Stone v. Graham*, 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: worshipping the Lord God alone, avoiding idolatry, not using the Lord’s name in vain, and observing the Sabbath Day. 449 U.S. at 41.

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

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).

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. When the government initiates an effort to place this statement alone in public view, a religious object is unmistakable. *Id* at 869.

No court has upheld the display of the Ten Commandments in a public school, even when the Ten Commandments were among other displays. *See ACLU of Ky. v. McCreary County*, 354 F.3d 438 (6th Cir. 2003) (granting preliminary injunction against Harlan County, Ky., school display of Ten Commandments placed with “historical documents”); *Baker v. Adams County/Ohio Valley School Board*, 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); *Doe I v. School Board of Giles County*, No. 7:11-cv-00435-MFU (W.D. Va. Order July 3, 2012)(Approving settlement whereby Ten Commandments text was removed from school document display).

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. 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 (U.S. 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 v. Perry*, 545 U.S. 677, 691(citing *Edwards v. Aguillard*, 482 U.S. 578, 583-584, 96 L. Ed. 2d 510, 107 S. Ct. 2573 (1987)).

Any student will view a Ten Commandments display in school as being endorsed by the school. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community and 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 (2001). Breathitt County Schools promotion of the Judeo-Christian bible and religion over non-religion impermissibly turns any non-Christian or non-believing student, parent, or staff member into an outsider.

It is unfortunate that past school leadership sought to instruct other people's children on religious edicts. FFRF is committed to defending parental and student constitutional rights. In September, FFRF and several families filed suit against two school districts in the U.S District Court for the Western District of Pennsylvania for refusing to remove unconstitutional Ten Commandments monuments. Attorneys for the ACLU of Virginia and I settled a Ten Commandments display case last summer when a Virginia school agreed to remove a Ten Commandments display. FFRF and the ACLU of Ohio are currently litigating an unconstitutional posting of a Jesus portrait, which was removed from the school this week. We consider such violations of conscience in public schools as requiring speedy resolution.

If the facts are as presented to us, and the Ten Commandments are on display throughout Breathitt County Schools, the displays must be removed immediately. It is incumbent upon your office to issue a statement to all school principals directing that they immediately remove all Ten Commandments displays, that they make no statements which send a message of support for religion in public schools, and that they ensure that children are learning in a secular environment. Please inform us at your earliest convenience about the steps you are taking to rectify this egregious situation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick C. Elliott".

Patrick C. Elliott  
Staff Attorney