

Texas Ten Commandments Monument Stands



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The question of whether the Ten Commandments should be allowed on public property has for years been the subject of debate and litigation. At least six of the nation's 13 federal courts of appeal have now ruled on the issue, and more than a dozen states have either dealt with the topic or are facing it now.

Last year, the debate came to Texas when a red granite Ten Commandments monument on the Capitol grounds was challenged as an unconstitutional establishment of religion. The plaintiff in this case, Thomas Van Orden, argued that the monument's continued display would cause him "irreparable injury" because of its placement along his regular walking path through the northwest quadrant of the grounds. He lost his case at federal district court and he lost again at the 5th U.S. Circuit Court of Appeals in November, when the judges agreed with the State of Texas that the decalogue should stay where it is.

"History matters here," wrote Judge Patrick Higginbotham in the 5th Circuit's ruling, noting that the Ten Commandments monument stood for more than 40 years before anyone filed a legal complaint. But the fact that someone finally did indicates that time has faded the

public's memory of why those stone tablets were first memorialized.

In 1961, the Fraternal Order of Eagles donated the six-foot monument to the state as a way to combat juvenile delinquency and promote a personal code of conduct for youths, resulting in "liberty, peace and justice." The group gave similar monuments for the same reason to other states during the 1950s and '60s. In Texas, donations of monuments must be accepted by the Legislature before being placed on the Capitol grounds. Plaintiff Van Orden argued that by accepting such a gift, the state directly endorsed a religion favoring the Jewish and Christian faiths and thumbed its nose at all others. Though the legislative record is brief, it suggests that lawmakers accepted the Ten Commandments monument to commend the Eagles for their efforts in fighting juvenile delinquency -- a constitutionally secular reason in the court's eyes.

The Ten Commandments are undoubtedly a sacred religious text, but they are also a foundational document in the development of Western legal codes and culture. As such, they deserve a place on the Capitol grounds among the other 16 statues and memorials to the people, ideals and events that have shaped Texas' history. The monument certainly isn't hidden from visitors to the Capitol, but neither is it a requisite stop along the way. The main entrance to the Capitol is on the south side; the Ten Commandments sit on the northwest side of the building.

The Establishment Clause of the First Amendment was never intended to remove religious expression from the public realm. As the court noted, "Such hostility toward religion is not only not required; it is proscribed."

Interestingly, the monument isn't the only one with a religious depiction or theme. For example, the seal of the Republic of Mexico, which hangs over both north and south entrances to the Capitol and is in the floor of the Rotunda, contains an eagle holding a serpent in its mouth, perched on a cactus which grows from a rock surrounded by water. A representation of Aztec mythology, this religious display is neither Jewish nor Christian, but is an acknowledgment of the historical and cultural contributions made by people of differing faiths.

Given the conflicting court rulings across the country on the question of the Ten Commandments, I would not be surprised if the U.S. Supreme Court eventually takes up the issue. It would be an appropriate setting for the debate, for the court's own chambers contain a frieze of Moses holding the Ten Commandments.

It remains to be seen whether the Texas ruling will be appealed to that level, but if it is, I will be there to again defend the monument's display.