

Attorney General to Defend Ten Commandments Monument at High Court



The national debate over displaying the Ten Commandments came to Texas two years ago when Thomas Van Orden filed suit, contending that a 44-year-

old granite monument on the Capitol grounds was an unconstitutional establishment of religion. The lower courts have ruled that the Ten Commandments monument can stay where it is.

Now, the U.S. Supreme Court has agreed to take up the case, as it should. Clarity is needed because federal appeals courts are deeply divided on whether Ten Commandments displays are permissible.

I look forward to defending the Texas monument when I argue the case to the Court, and I hope the Court will apply the U.S. Constitution as it has in the past -- and as the Constitution was intended.

The First Amendment was never intended to remove all religious expression from the public realm. "Such hostility toward religion is not only not required; it is proscribed," the court of appeals noted in its decision upholding the monument.

If the Supreme Court allows the

Ten Commandments monument to remain on the Capitol grounds, then it will reaffirm the longstanding position that it is entirely permissible for government to acknowledge God in the public square. Removing the monument, however, would rip an important page from the story of Texas and would send the troubling message that government must remove every reference to religion from the public domain.

The U.S. Supreme Court has never embraced such a radical view of the Constitution, and it has repeatedly upheld government displays that contain religious elements, so long as the entire display -- in context -- does not constitute an official endorsement of religion.

Indeed, the Court has long upheld Christmas Nativity displays on government property and even the traditional practice of government chaplains opening legislative sessions with prayer. The standard is the Supreme Court's "endorsement" test, and every federal judge to have considered the matter -- the district court judge and all three judges on the court of appeals -- has agreed the Texas monument satisfies that test.

The Ten Commandments are undeniably a sacred religious text, but they are equally undeniably a foundational document in the development of Western legal codes and civilization. The

Legislature recognized this fact when it accepted the monument from the Fraternal Order of Eagles, which donated the monument in 1961 as a way to combat juvenile delinquency and promote a personal code of conduct for youths, resulting in "liberty, peace and justice."

Indeed, the legislative record shows that lawmakers accepted the Ten Commandments monument to commend the Eagles' efforts in fighting juvenile delinquency -- a constitutionally secular reason in the eyes of both courts that have ruled on the issue. As such, the monument deserves a place on the Capitol grounds among the other 16 statues and memorials to the people, ideals and events that have shaped Texas' diversity, history and culture.

Appropriately, the U.S. Supreme Court itself recognizes the historical importance of the Ten Commandments. Visitors to the U.S. Supreme Court can find an image of Moses holding the Ten Commandments carved into wall of the courtroom and on the outside of the Court building. Depictions of the Ten Commandments also appear on gates and the courtroom door inside the building.

These sculptures and the Texas monument are all constitutional, and I hope the Supreme Court will make that clear when it rules next year.

Information on this and other topics is available on the Attorney General's Web site at www.oag.state.tx.us.