

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

JAMES W. GREEN, an individual, and)
)
AMERICAN CIVIL LIBERTIES UNION)
OF OKLAHOMA, a non-profit corporation,)
)
)
Plaintiffs,)
)
v.)
)
BOARD OF COUNTY COMMISSIONERS)
OF THE COUNTY OF HASKELL, and)
)
SAM COLE, Haskell County Commissioner,)
Chairman, in his official capacity,)
)
Defendants.)
)

Case No.: _____

COMPLAINT

I. Preliminary Statement

1. This is a civil action pursuant to 42 U.S.C. § 1983 to vindicate Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs, James W. Green (“Jim Green”) and the American Civil Liberties Union of Oklahoma (“ACLU”), seek declaratory and prospective injunctive relief under 42 U.S.C. § 1983. Plaintiffs are challenging the monument of the Ten Commandments displayed on the Haskell County courthouse lawn. Plaintiffs contend that this display impermissibly establishes and endorses religion and that it endorses particular religious views (to the exclusion of others) in violation of the Establishment Clause of the First Amendment to the U.S. Constitution.

2. Plaintiffs seek prospective injunctive relief, requiring Defendants to remove the

large religious monument from the lawn of the Haskell County Courthouse. The most readily visible side of the monument contains one version of the Ten Commandments, the version displayed is accepted by only some Christian believers. The monument is intended to communicate Defendants' endorsement of religion. This purpose is no secret – Defendants have expressly proclaimed the monument's religious objectives, which have not only been well-publicized, but are also readily discernible by any reasonably informed observer. To observers such as Plaintiffs, the monument's celebration of the Ten Commandments as a religious text, suggests that adherence to a particular religious creed is a prerequisite or an advantage to those seeking justice in Haskell County, Oklahoma.

II. Jurisdiction and Venue

3. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. § 2201 and §2202 and Rule 57 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the Oklahoma Constitution, which are related to the claims in the action within the original jurisdiction of this Court.

4. Venue is proper in the Eastern District of Oklahoma, pursuant to 28 U.S.C. § 1391. Defendants are an individual in his official capacity and a local municipal corporation, residing within, doing business within, and located within the Eastern District of Oklahoma. The events complained of herein occurred within the Eastern District of Oklahoma.

III. Parties

5. Plaintiff Jim Green is an adult citizen of Oklahoma. He is a resident and taxpayer of Stigler, Haskell County, Oklahoma and has resided there for more than five years. Jim Green

must use his courthouse to transact civic business, such as voting, obtaining and renewing licenses, registering property, researching and investigating property records, and utilizing the judicial system. When transacting this civic business, he has occasion to view the Ten Commandments display on the courthouse lawn. He has visited the courthouse numerous times in the past for these reasons, and plans to visit the courthouse in the future for these same reasons. Additionally, Mr. Green travels on the road that is directly in front of the courthouse. Each time Mr. Green visits the courthouse or travels on the road directly in front of the courthouse he is subjected to unavoidable and unwelcome exposure to the Ten Commandments display. Jim Green objects to the display of the Ten Commandments because it is an unconstitutional establishment and endorsement and because it endorses some religious belief(s) to the exclusion of others and because the display trivializes religion.

6. Plaintiff, American Civil Liberties Union of Oklahoma (ACLU), is a non-profit corporation, and membership organization whose sole purpose is defending citizen's constitutional rights. The ACLU has members in 75 Oklahoma counties, including Haskell County. These members must use their courthouse to transact civic business, such as voting, obtaining and renewing licenses, registering property, paying local taxes and utilizing the judicial system. When transacting this civic business, they have had occasion to view the Ten Commandments display on their courthouse lawn. The ACLU appears as an organizational plaintiff to articulate and enforce the interests of each Haskell County ACLU member. On behalf of the members of the ACLU in Haskell County, the ACLU objects to the display of the Ten Commandments because it is an unconstitutional establishment and endorsement and because it endorses some religious beliefs to the exclusion of others and because the display trivializes religion.

7. Defendant Board of County Commissioners of the County of Haskell (Haskell County) is a local governmental entity organized under the laws of the State of Oklahoma. It owns, operates, controls, and creates policy concerning the use of county property, including the Haskell County Courthouse, which is located in Stigler, Haskell County, Oklahoma.

8. Defendant Sam Cole is the Chairman of the Board of County Commissioners of the County of Haskell. Sam Cole has the power to make administrative decisions for Haskell County and oversee the implementation of those decisions, including all matters regarding the use and maintenance of the Ten Commandments display in the County courthouse. Sam Cole is sued in his official capacity.

9. The Board has the administrative power to determine whether any group or individual would be allowed to place religious symbols or displays on government property belonging to the County. Collectively the members of the Board have the administrative power to permit or deny persons, groups or churches the right to place religious symbols or displays on government property belonging to the County.

IV. Factual Allegations

10. At all relevant times, each Defendant acted under color of state law and with the power and authority granted to them by the laws of the state of Oklahoma.

11. Haskell County owns, operates, and controls Haskell County property, including the Haskell County courthouse, which is located in Stigler, Haskell County, Oklahoma. The Board of County Commissioners of the County of Haskell is the entity by and through which Haskell County conducts its business.

12. The Board of County Commissioners of the County of Haskell has no policies and procedures that govern the placement or the decision to place a monument on any County property.

13. On or about September 27, 2004, the County Commissioners unanimously approved the placement of a permanent monument of the Ten Commandments on the courthouse lawn. The Commissioners agreed to allow Mike Bush, a lay minister, pay for the expenses that would be incurred in making such a monument. Mike Bush raised the funds to make the monument with the help of religious leaders and church youth groups, all of the Christian faith.

14. On or about Sunday, November 7, 2004, a ground-breaking ceremony was held on the courthouse lawn to unveil and dedicate the monument. Several hundred people and approximately seventeen (17) churches were in attendance for the ceremony.

15. Commissioners Sam Cole, Henry Few, and Kenny Short made repeated statements to the press, indicating that the predominant and principal purpose of the monument is religious in nature.

16. Commissioners Sam Cole, Henry Few, and Kenny Short made repeated statements to the press, indicating that there is no secular purpose for the monument.

17. Examples of the statements that the Commissioners made, concerning the monument and its placement on County property include, but not limited to, are:

- a. “That’s what we’re trying to live by, that right there, [referring to the monument]. The good Lord died for me. I can stand for him. . . . I’m a Christian and I believe in this. I think it’s a benefit for this community.”
- b. “In fact, I think there needs to be more of them [monuments with the Ten Commandments inscribed] so people can read them. We should put them

in front of all of the courthouses and school houses and federal buildings. If we did, we probably wouldn't have a lot of the bad stuff happening today.”

- c. Referring to the County jail and the detainees located therein, Sam Cole stated that “maybe if those guys [in the jail] would have read [the Ten Commandments], they might not be here.”
- d. “I believe the good Lord put [the monument with the Ten Commandments inscribed] up here.”
- e. The decision to allow the monument “came down to siding with a majority of Christians who too often have let the minority tell them what to do. My concern is that if we're not careful, Christians will sit here and not voice our opinion. . . . I'm a long way from being a preacher, and I don't go to church as much as I should, but I know the Ten Commandments has straightened my head up and put God in my heart.”
- f. “We're also Christians, and believe in God, and the Ten Commandments are our path to heaven... we're just trying to do something to get young people in our town to realize...there are other ways than being a thief or a dope head... To me, if you go by the Ten Commandments, you've got it made.”

18. The monument at issue in this action is located in a highly visible and prominent place at the forefront of the Haskell County courthouse lawn and next to the sidewalk that leads to the entrance of the courthouse. The monument is approximately eight feet tall and three feet wide and made out of stone. It is planted firmly and permanently into the ground. One side of

the monument is inscribed with one particular version of the Ten Commandments; the other side is inscribed with the Mayflower Compact. The monument does not include any secular imagery or language.

19. The side of the monument that is inscribed with the Ten Commandments faces the main thoroughfare through town, which is also a state highway. The Ten Commandments are readily visible to all persons traveling on the highway through or within Stigler.

20. The following is the text that is etched into the front of the stone monument:

The Ten Commandments

- I. Thou shalt have no other gods before me.
- II. Thou shalt not make unto thee any graven image.
- III. Thou shalt not take the name of the Lord thy God in vain.
- IV. Thou shalt remember the sabbath day and keep it holy.
- V. Thou shalt honor thy father and mother.
- VI. Thou shalt not kill.
- VII. Thou shalt not commit adultery. [*sic*]
- VIII. Thou shalt not steal.
- IX. Thou shalt not bear false witness against thy neighbor.
- X. Thou shalt not covet thy neighbor's house.

Exodus 20

21. The version of the Ten Commandments inscribed on the monument is a uniquely Christian version; its text differs from the literal translation of the Hebrew. The Ten Commandments are a profoundly religious document.

22. The version of the Ten Commandments etched into the monument contains expressly sectarian and religious commands, such as observing the Sabbath, not worshiping idols, believing in a deity, and not taking the deity's name in vain and thus is religious in nature.

23. On the reverse side of the monument is the text of the Mayflower Compact, which is not visible from the street. The Mayflower Compact alludes favorably to God, Christianity

and refers to the fundamental nature of “religious obligation,” which further highlights the religious nature of the Ten Commandments.

24. The monument is not otherwise part of any larger historical or educational displays and contains no other secular or religious moral or legal codes.

25. Plaintiffs reasonably view the monument as an impermissible establishment of religion and an endorsement of some religious messages to the exclusion of others by Haskell County. Plaintiffs also reasonably believe that the monument suggests to all who view it that adherence to a particular religion’s creed is a prerequisite or an advantage to those seeking justice in Haskell County. As a citizen of Haskell County, these messages are deeply offensive to the plaintiffs.

26. Defendants’ purpose in erecting the monument is impermissibly to establish religion and to advance some religious messages to the exclusion of others. In addition, the display of the monument on the Haskell County courthouse lawn has the primary effect of establishing and advancing religion and of advancing a particular religious message to the exclusion of others.

27. The installation and maintenance of the monument on the courthouse lawn creates an excessive entanglement of government with religion.

28. The presence of the Ten Commandments monument on the lawn of the Haskell County Courthouse described above has caused harm to Plaintiffs for which they are entitled to declaratory and injunctive and any other appropriate relief. Plaintiffs have suffered and will continue to suffer harm as a result of Defendants’ conduct. Plaintiffs have had and continue to have frequent, direct, personal and unwelcome contact with the monument. The visual impact of seeing the monument as part of an officially sanctioned county display has and continues to

result in unavoidable and unwelcome contact with the religious display because of their right and/or duty to attend the county courthouse where the monument is located. The presence of the monument on the courthouse lawn has impaired Plaintiffs use and enjoyment of that public facility. Plaintiffs' constitutional rights have been violated by the actions of Defendants as set forth above. Each sighting of the monument – however brief – is an affront to Plaintiffs.

29. Plaintiffs have suffered and will continue to suffer harm as a result of Defendants' conduct. Plaintiffs' constitutional rights have been violated by the actions of Defendants as set forth above.

30. Plaintiffs believe that religious freedom can best be preserved if government remains strictly neutral towards religion, neither favoring nor disfavoring religion or any religious sect. Plaintiffs therefore believe that the government veers from its proper limited role when it favors or endorses particular religious views, even if Plaintiffs share those views. Specifically, Plaintiffs believe that government has no business supporting or opposing religious views about a deity, Sabbath observance or idolatry.

31. For these reasons, Plaintiffs oppose the specific display of the Ten Commandments that have been posted in the Haskell County courthouse.

32. Plaintiffs perceive the Ten Commandments display as a violation of the Constitution, inconsistent with the American form of democracy, and as assaults on religious freedom. Plaintiffs therefore are offended by the display and by having to view these displays when transacting civic business in the courthouse or when driving down the main street in town. The unwelcome exposure to the government's religious message diminishes Plaintiffs' enjoyment of the courthouse.

33. Due to Defendants' unlawful establishment of religion, Plaintiffs have suffered and will continue to suffer irreparable harm to their constitutional rights as citizens and as taxpayers of the United States and Haskell County.

V. CAUSES OF ACTION

Count One **Violation of the Establishment Clause** **of the First Amendment to the United States Constitution**

34. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs numbered 1-33, as if fully set forth herein.

35. Defendants' display and maintenance of the Ten Commandments monument were and continue to be taken under color of state law as defined in 42 U.S.C. § 1983.

36. Defendants' acts, practices, and policies constitute an impermissible endorsement of, and favoritism toward, religion and specific to some Christian beliefs in particular.

37. The display of the Ten Commandments monument creates an excessive entanglement of government with religion and thereby violates the Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution.

38. Defendants therefore have deprived and continue to deprive Plaintiffs' rights secured by the Establishment Clause of the First Amendment, as applied to the states through the Fourteenth Amendment to the U.S. Constitution.

39. The violation of Plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. § 1983.

Count Two **Violation of Article 2, Section 5 of the Constitution of the State of Oklahoma**

40. Plaintiffs re-allege and incorporate by reference the allegations set forth in

paragraphs numbered 1-39, as if fully set forth herein.

41. Article II, Section 5, of the Constitution of the State of Oklahoma provides:

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

42. The display of the Ten Commandments monument required and continues to require direct use of County property for the use and benefit of particular religious teachings to the exclusion of others.

43. Defendants have violated and continue to violate Article II, Section 5, of the Constitution of the State of Oklahoma.

44. As a result of the Defendants' actions described above, Plaintiffs have suffered injury and have been caused irreparable harm for which there is no adequate remedy of law.

VI. Claim for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare unconstitutional Defendants' Ten Commandments display;
2. Issue permanent injunction against the continuation of Defendants' display and require Defendants to remove the monument from the Haskell County courthouse lawn;
3. Award Plaintiffs costs and reasonable attorney's fees, pursuant to 42 U.S.C. § 1988; and
4. Grant Plaintiffs such other relief as the Court deems necessary and just.

Respectfully Submitted,

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OF OKLAHOMA FOUNDATION

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