Written by **Bob Adelmann** on August 11, 2014

Judge: New Mexico 10 Commandments Monument Unconstitutional

James Parker, Senior District Court Judge for New Mexico, ruled last Thursday that the five-foot-tall, 3,000-pound monument inscribed with the 10 Commandments (shown) placed on the lawn in front of the Bloomfield, New Mexico, City Hall is unconstitutional. He ordered it to be removed by September 10.

Parker also expressed reservations about his decision, calling the case "a difficult endeavor" and "borderline," which with "a tweak of the facts … could [have resulted] in a different conclusion."

Back in April 2007, Kevin Mauzy, a Bloomfield city councilman, proposed that the council allow citizens to erect such a monument, and the council unanimously agreed. In July of that year the council adopted a policy governing the placement of such monuments on the City Hall's front lawn. That generated a petition, signed by 47 of the town's 8,000 inhabitants, complaining that it violated the so-called separation of church and state mandated by the First Amendment, to wit: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Nothing happened for four years.

In June 2011, Mauzy, by then a former councilman, once again requested permission to install the monument. The council, according to Parker's investigation into the background of the lawsuit, "acknowledged" his request, whereupon Mauzy, using money raised from several local churches, placed the monument.

This upset a couple of local witches who, with the help of the American Civil Liberties Union (ACLU), brought suit against the city in 2012. Parker ruled that the two witches had standing to sue as they came into "direct, regular and unwelcome contact" with the monument during the week.

In his 32-page opinion, Parker discarded every argument supporting the council's decision, ruling that allowing Mauzy to build his monument reflected the council's religious convictions and was therefore unconstitutional. "Because the City Hall embodies the fulfillment of Mr. Mauzy's plan, the City, has, in effect, created not a public forum for all citizens, but a platform for Mr. Mauzy alone," the judge declared, adding,

> Under the facts of this case, the Court is more than comfortable saying that Defendant [the city council] is sufficiently connected with the Ten Commandments monument that it must be analyzed as government speech subject to the strictures of the Establishment Clause.

Parker noted in passing that without the Fourteenth Amendment, he would never have seen this lawsuit. The First Amendment, originally intended to apply its "strictures" exclusively to the national government, now "applies to the States and their political subdivisions" as well, according to Parker.

In his opinion, Parker noted the Pandora's Box that such application has opened, so that even the Supreme Court has "struggled mightily" to formulate clear guidelines about which actions "are and are not permissible" under that clause. Consequently, "In performing the role of this [disinterested] observer, the Court is thrust into a realm of pretend and make-believe, guided only by confusing jurisprudence and its own imagination."

Parker made short shrift of two recent conflicting Supreme Court cases — *Van Orden v. Perry* and *McCreary County v. American Civil Liberties Union* — which were heard in the spring of 2005 and decided on June 27 of that year, with exactly opposite conclusions.

In *Van Orden* the court ruled that a 10 Commandments monument erected on the Texas state capitol grounds back in 1961 was constitutional, in a 5-4 decision.

In *McCreary*, however, the same court, on the very same day, ruled that similar displays in front of the McCreary County courthouse and the Pulaski County courthouse in Kentucky were unconstitutional. The swing vote in both cases was Justice Stephen Breyer.

Breyer's concurring opinion for the majority in *Van Orden* is revealing:

> The case before us is a borderline case. It concerns a large granite monument bearing the text of the Ten Commandments located on the grounds of the Texas State Capitol. On the one hand, the Commandments' text undeniably as a religious message, invoking, indeed emphasizing, the Deity.
>
> On the other hand, focusing on the text of the Commandments alone cannot conclusively resolve this case … we must determine how the text is used … [and] to consider the context of the display.

In other words, it's up to the court justices on just how to interpret the "context" of the display in order to determine if it's constitutional or not. It could go either way, and it often does.

A for the New Mexico case, Parker punted. Rather than wind his way through the *Van Orden* and *McCreary* rulings, extracting what he could from them, he instead pointed to a 10th Circuit decision, *Green v. Haskell County Board of Commissioners*, decided in 2009 on a nearly identical set of facts as *Bloomfield*. That court ruled against the city council in Haskell County, Oklahoma, forcing the removal of the offending monument. It was moved to the lawn of the American Legion, only a few feet away from the court house lawn.

What tipped Parker's decision in this "difficult" and "borderline" case was Mauzy's proclamation back on July 4, 2007 when the monument was unveiled. Said Mauzy,

> Some would believe that this monument is a new thing. They have been so busy trying to remove God from every aspect of our lives that they have overlooked our history.
>
> Well, I've got news for you, it's been here all along….
>
> You and I are average citizens who believe just like most of our fellow Americans. We want the government to leave us alone and to keep … their hands off our money, our religion, our Ten Commandments, our guns, our private property and our lives.

For Parker, this was the last straw. There is, he wrote, a "fine line" between acknowledging the secular significance of the Ten Commandments, and its religious ramifications. Wrote Parker,

> The first is permissible under the Establishment Clause which the second is not.…
>
> To the extent that Mr. Mauzy's message can be attributed to the City of Bloomfield, it is clear that

> he — and therefore the Defendant City — crossed the line.

Therefore, using his imagination in this "world of make-believe," Parker concluded "that the primary effect of the City's conduct has been to impermissibly endorse Mr. Mauzy's message about the religious significance of the Ten Commandments to the Bloomfield community."

As mentioned earlier, he concluded that his decision was "very close" and, given a slightly different set of facts on which to base his decision, he could have ruled for the defendants:

> For example, had the Ten Commandments monument been established last in the series of monuments, after the placement of the Declaration of Independence, the Gettysburg Address and the Bill of Rights monuments, the First Amendment may not have been offended.
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> Had the Ten Commandments monument been arranged at the rear of the north lawn near the municipal building complex, with the other three monuments … in front of it, the Ten Commandments monument may have passed muster.
>
> Had the Ten Commandments monument been installed in a dedication event or with a ceremony absent religious overtones, the ultimate conclusion may have differed.
>
> Had the City of Bloomfield adopted the amended policy permitting monuments first, with language clearly allowing only temporary resident of a monument, the result might have changed.

What Parker failed to mention is this: Had the Fourteenth Amendment never been applied to the states, this case would never have seen his courtroom.

The city is considering an appeal. An appeal would go to the 10th Circuit Court, which ruled in the *Green* case against the Ten Commandments monument in Haskell County, Oklahoma.

Photo of Ten Commandments monument at City Hall in Bloomfield, New Mexico: AP Images

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.*