

The Amicus Brief, Frank O'Bannon, Governor of Indiana v. Indiana Civil Liberties Union, et al., was joined by Clifton Kirkpatrick, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.). The brief was filed with the United States Court of Appeals for the Seventh Circuit on November 10, 2000.

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

No. 00-3011

---

FRANK O'BANNON, Governor of	)	APPEAL FROM THE UNITED STATES
Indiana,	)	DISTRICT COURT FOR THE
	)	SOUTHERN DISTRICT OF INDIANA
Appellant-Defendant)	)	INDIANAPOLIS DIVISION
	)	CASE NO. IP00-0811-C-B/S
v.	)	
	)	
INDIANA CIVIL LIBERTIES	)	
UNION, et al.,	)	
	)	HON. SARAH EVANS BARKER
Plaintiffs - Appellees	)	CHIEF DISTRICT JUDGE, PRESIDING

BRIEF OF AMICI CURIAE, REV. JILL S. HUDSON, EXECUTIVE PRESBYTER OF THE PRESBYTERY OF WHITEWATER VALLEY, REV. DR. KEITH W. GECKELER, ASSOCIATE EXECUTIVE PRESBYTER AND STATED CLERK OF THE PRESBYTERY OF WHITEWATER VALLEY, AND REV. CLIFTON KIRKPATRICK, STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.)

IN SUPPORT OF APPELLEE, INDIANA CIVIL LIBERTIES UNION, INC.  
AND AFFIRMANCE OF THE DISTRICT COURT

Judy L. Woods  
BOSE McKINNEY & EVANS LLP  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204  
(317) 684-5000

Counsel for Amici Curiae,

Rev. Jill S. Hudson, Executive  
Presbyter of the Presbytery of  
Whitewater Valley, Rev. Dr. Keith W.  
Geckeler, Associate Executive  
Presbyter and Stated Clerk of the  
Presbytery of Whitewater Valley, and  
Rev. Clifton Kirkpatrick, Stated Clerk  
of the General Assembly of the  
Presbyterian Church (U.S.A.)

November 10, 2000

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	i
STATEMENT OF INTEREST OF AMICI CURIAE . . . . .	1
SUMMARY OF ARGUMENT . . . . .	2
ARGUMENT . . . . .	2
I.    Fundamental Religious Liberty Rights Are Impaired by The Permanent Display of The Ten Commandments on The Lawn of The Indiana State Capitol Building . . . . .	2
II.   The Proposed Display of The Ten Commandments Attempts to Equate This Sacred Text With Profane Statements of Civil Law	5
CONCLUSION . . . . .	7

TABLE OF AUTHORITIES

CASES

Capital Sq. Rev. & Adv. Bd. v. Pinette, 515 U.S. 753 (1995)	3
-------------------------------------------------------------	---

County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter, 492 U.S. 57 (1989) . . . . .	3
Edwards v. Aguillard, 482 U.S. 578 (1987) . . . . .	3
Freedom from Religion Found., Inc. v. City of Marshfield, 203 F.3d 487 (7th Cir. 2000) . . . . .	3, 4
Indiana Civil Liberties Union, Inc. v. O'Bannon, 110 F. Supp. 2d 842 (S.D. Ind. 2000) . . . . .	3
Lemon v. Kurtzman, 403 U.S. 602 (1971) . . . . .	3
Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992)	
Stone v. Graham, 449 U.S. 39 (1980) . . . . .	3
West Va. Bd. of Ed. v. Barnett, 319 U.S. 624 (1943) . . . . .	5

CONSTITUTIONS

United States Constitution, First Amendment . . . . .	2-4
United States Constitution, Bill of Rights . . . . .	6
Indiana Constitution, Preamble . . . . .	6

PRESBYTERIAN CHURCH (U.S.A.) AUTHORITIES

Constitution of the PC(USA), Part II, Book of Order, Section G-1.0301 (2000) . . . . .	5
Minutes, PC(USA), 1988 . . . . .	2, 4

STATEMENT OF INTEREST OF AMICI CURIAE

The Rev. Jill S. Hudson is the Executive Presbyter and the Rev. Dr. Keith W. Geckeler is the Associate Executive Presbyter and Stated

Clerk of the Presbytery of Whitewater Valley. Rev. Hudson and Rev. Dr. Geckeler are the senior most continuing officers of the Presbytery of Whitewater Valley. The Presbytery of Whitewater Valley is located in central Indiana, covering approximately two-thirds of the State of Indiana, and includes within its boundaries 25,964 active members in 70 congregations of the Presbyterian Church (U.S.A.). The Presbytery of Whitewater Valley includes Indianapolis, and many more rural and suburban areas of the State of Indiana.

The Reverend Clifton Kirkpatrick, as Stated Clerk of the General Assembly, is the senior continuing officer of the highest governing body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) ("Presbyterian Church" or "PC(USA)") is the largest Presbyterian denomination in the United States, with approximately 2,700,000 active members in 11,500 congregations organized into 173 presbyteries under the jurisdiction of 16 synods.

The General Assembly does not claim to speak for all Presbyterians, nor are its deliverances and policy statements binding on the membership of the Presbyterian Church. However, the General Assembly is the highest legislative and interpretive body for the denomination, and it is the final point of decision in all disputes. As such, its statements are considered worthy of the respect and prayerful consideration of all the denomination's members. In 1988, the General Assembly took action opposing "the permanent or unattended display of religious symbols on public property as a violation of religious neutrality required of government." "God alone is the Lord of Conscience," Minutes, PC(USA), 1988.<sup>1</sup>

#### SUMMARY OF ARGUMENT

These Amici urge this Court to affirm the decision of the United States District Court for the Southern District of Indiana in upholding a permanent injunction against the display of the proposed monument of the Ten Commandments on the lawn of the Indiana State capitol building for two reasons: (1) the proposed monument impairs fundamental rights to religious freedom by endorsing particular religious beliefs to the exclusion of others, and (2) the proposed monument debases the divine expression of the laws of the one true God by equating it to more mundane human utterances of civil laws.

#### ARGUMENT

---

<sup>1</sup> This brief is being submitted in support of the Appellee, the Indiana Civil Liberties Union, and is submitted with the consent of the parties. Counsel for a party did not author this brief in whole or in part. No person or entity other than the Amici, members of the Presbyterian Church (U.S.A.), or counsel to the Amici, made a monetary contribution to the preparation and submission of this brief.

I. FUNDAMENTAL RELIGIOUS LIBERTY RIGHTS ARE IMPAIRED BY THE PERMANENT DISPLAY OF THE TEN COMMANDMENTS ON THE LAWN OF THE INDIANA STATE CAPITOL BUILDING.

Fundamental religious and personal liberty rights guaranteed by the First Amendment to the United States Constitution to all citizens, whatever their religious beliefs and even if they are non-believers, are impaired by the State's endorsement of particular religious views to the exclusion of others. The erection of a permanent tablet-shaped monument containing the text of the Ten Commandments on the lawn of the Indiana State capitol building is an endorsement of particular religious beliefs shared by Christians and Jews, but not by those of other faiths. The United States Supreme Court has recognized that the Ten Commandments is undeniably and unambiguously a sacred text. *Stone v. Graham*, 449 U.S. 39, 41, 101 S.Ct. 192 (1980). As the district court held, "[w]ith the unambiguous religious nature of the Ten Commandments as our starting point, the State is obligated to articulate a valid secular purpose for the display of the sacred text." *Indiana Civil Liberties Union, Inc. v. O'Bannon* (hereafter "ICLU"), 110 F. Supp. 2d 842 at 850 (S.D. Ind. 2000) (citations omitted).

Under *Lemon v. Kurtzman*, governmental action, such as the placing of the Ten Commandments monument on State property, is constitutional under the Establishment Clause of the First Amendment to the United States Constitution if (1) it has a valid secular purpose, (2) its principal or primary effect neither advances nor inhibits religion, and (3) it does not foster excessive government entanglement with religion. 403 U.S. 602, 611-612, 91 S.Ct. 2105 (1971). If the challenged governmental action fails to satisfy any one of these three prongs, it violates the Establishment Clause of the First Amendment. *Edwards v. Aguillard*, 482 U.S. 578, 583, 107 S.Ct. 2573 (1987).

In this case, only the first two prongs of the *Lemon* test, that is, the secular purpose and the effect of advancing or inhibiting religion, are at issue. In subsequent decisions, adhering to the general principles of *Lemon*, the Supreme Court has characterized these first two prongs as an "endorsement" test. *Capital Sq. Rev. & Adv. Bd. v. Pinette*, 515 U.S. 753, 115 S.Ct. 2440 (1995); *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 109 S.Ct. 3086 (1989). This Court has adhered to that analysis. *Freedom from Religion Found., Inc. v. City of Marshfield*, 203 F.3d 487, 493 (7th Cir. 2000). Under the endorsement test, "the effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval." *ICLU*, 110 F. Supp. 2d at 848 (quoting *Marshfield*, 203 F.3d at 493).

The district court correctly found that the proposed display of the Ten Commandments failed the endorsement test. *ICLU*, 110 F. Supp.

2d at 852. "The state's articulated purpose in erecting a monument depicting the Ten Commandments is not a valid secular purpose, but is, in fact, religious in nature." *Id.* Moreover, the district court found that the content, design, location, context and permanence of the proposed monument, further conveyed a message of endorsement. *Id.* at 856-57. The proposed monument conveys a message endorsing particular religious views, and thus violates the Establishment Clause. *Id.* at 857.

These Amici concur in the decision of the district court, and adopt the arguments of the Appellee, the ICLU, that the proposed monument has an inherently religious purpose and implies governmental endorsement of religion in clear violation of the First Amendment. Although Presbyterians hold the Ten Commandments to be a sacred religious text and urge believers to abide by them, these Amici recognize that, in another time or another place, the State might choose to endorse other religious beliefs contrary to, or to the exclusion of, these Christian tenets.

In 1988, the 200<sup>th</sup> General Assembly of the Presbyterian Church (U.S.A.) affirmed its long-standing and fundamental belief that every person should have an absolute right to make personal religious choices and that government should be absolutely neutral in matters of religion *Minutes, PC(USA), 1988, pp. 42-43, 46-47.* The Constitution of the Presbyterian Church declares and the Church has long affirmed that "God alone is the Lord of Conscience." "God alone is the Lord of the Conscience, and hath left it free from the doctrines and commandments of men, which are in anything contrary to his Word, or beside it, in matters of faith and worship. Therefore, we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time, be equal and common to all others." *Constitution of the PC(USA), Part II, Book of Order, Section G-1.0301 (2000).*

Although the proposed monument is one that conforms to the religious beliefs of Presbyterians, and one that most Presbyterians would approve, Presbyterians have steadfastly adhered to the belief that there should be separation of church and state. *Id.* The State's action in erecting the monument of the Ten Commandments violates this separation, usurps the role of the church, and permits the State to substitute its religious views for the freely chosen beliefs and views its citizens. The right to choose freely among religious beliefs, and whether to believe in any religion at all, belongs to the people, not the State. *West Va. Bd. of Ed. v. Barnett, 319 U.S. 624, 642 (1943);* see also *Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 851 (1992).* This Court should affirm the decision of the district

court and find that this public, permanent display of the Ten Commandments on the lawn of the Indiana State capitol building is a governmental endorsement of particular religious views and beliefs to the exclusion of others, and thus is unconstitutional.

II. THE PROPOSED DISPLAY OF THE TEN COMMANDMENTS ATTEMPTS TO EQUATE THIS SACRED TEXT WITH PROFANE STATEMENTS OF CIVIL LAW.

American citizens have the absolute right to choose their religious beliefs and practices independent from any governmental interference. Further, matters of church and state should be kept separate for another reason. The State's usurpation of religious symbols for its own purposes is demeaning and debasing. The Ten Commandments are a powerful and significant sacred text for Christians and Jews alike. By purporting to equate the Ten Commandments with the preamble to the Indiana Constitution, and even the Bill of Rights, the religious significance and power of the Ten Commandments is diminished.

The State's avowed purpose for the monument was to "venerate[ ] important documents that reflect the history and ideals animating American government." ICLU, 110 F. Supp. 2d at 850. The State argued to the district court that the inclusion of the Ten Commandments with other secular documents on the monument made the content of the monument predominately secular. Id. If so, the result has a purpose not to elevate and venerate the Ten Commandments, but to make them no greater than any of the many expressions of American's civil and common law that could have been included on the monument as "reminders of core values and ideals." Id. Although the Bill of Rights and the preamble to the Indiana Constitution have significance as historical texts with respect to the development of the secular legal system, those documents are not the equivalent of the Ten Commandments and the State's suggestion that they are negates the sacredness of the Ten Commandments. Virtually all Presbyterians believe the Ten Commandments to be a revelation from the God they worship. Amici do not wish to see the Ten Commandments treated as any other expression of civil law.

CONCLUSION

For all of the foregoing reasons and those asserted by the Appellee, ICLU, the judgment and decision of the United States District Court for the Southern District should be affirmed.

Respectfully submitted,

Judy L.

Woods

BOSE MCKINNEY & EVANS LLP  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204  
(317) 684-5000

Counsel for Amici Curiae,  
Rev. Jill S. Hudson, Executive  
Presbyter of the Presbytery of  
Whitewater Valley, Rev. Dr. Keith W.  
Geckeler, Associate Executive  
Presbyter and Stated Clerk of the  
Presbytery of Whitewater Valley, and  
Rev. Clifton Kirkpatrick, Stated Clerk  
of the General Assembly of the  
Presbyterian Church (U.S.A.)

307791

CERTIFICATE OF WORD AND CHARACTER COUNT

This document, exclusive of the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Word and Character Count, contains 1,759 words as determined by the word count of the word processing system used to prepare this brief, specifically Word Perfect 8.0 "File-Properties," which is within the word count permitted by Fed.R.App.P. 32(a)(7)(B) and Seventh Circuit Rule 32.

---

Judy L. Woods CERTIFICATE OF SERVICE

I hereby certify that two paper copies and one disk of the foregoing "Brief of Amici Curiae, Rev. Jill S. Hudson, Executive Presbyter of the Presbytery of Whitewater Valley, Rev. Dr. Keith W. Geckeler, Associate Executive Presbyter and Stated Clerk of the Presbytery of Whitewater Valley, and Rev. Clifton Kirkpatrick, Stated Clerk of the General Assembly, Presbyterian Church (U.S.A.)," has been served upon the following by United States mail, first class postage prepaid, this 10th day of November, 2000:  
Kenneth J. Falk

INDIANA CIVIL LIBERTIES UNION  
1031 E. Washington Street  
Indianapolis, IN 46202

John B. Laramore  
Jeffrey E. Slaughter  
OFFICE OF THE ATTORNEY GENERAL  
402 W. Washington Street  
Indiana Government Center South  
Indianapolis, IN 46204-2770

---

Judy L. Woods