

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,))	<u>Civil Action</u>
))	
Plaintiff,))	File No. 2:03-CV-0156-WCO
))	
v.))	
))	
BARROW COUNTY, GEORGIA; WALTER E. ELDER, in his official capacity as Chairman of the Barrow County Board of Commissioners and in his individual capacity,))	
))	
Defendants.))	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiffs hereby move this Court for a preliminary injunction ordering the Defendants to remove the Ten Commandments display and prohibiting Defendants, their successors, assigns, and all persons within the scope of Fed. R. Civ. P. 65, from making any further expenditures of public funds and taking any further action to maintain or display the Ten Commandments. The Defendants currently display a stand-alone framed copy of the Ten Commandments in their County Courthouse. This display violates the Establishment Clause of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment of the United States Constitution; Article I, section II, paragraph VII of the Georgia Constitution; and Article I, section I, paragraph 3 of the Georgia Constitution.

Factual Background

The Ten Commandments

The Ten Commandments are universally recognized as central to the Christian and Jewish faiths. According to the book of Exodus, the Ten Commandments set forth God's holy law and codify God's covenant with his "holy nation." Exodus 19:6. The Ten Commandments were "inscribed by the finger of God" and delivered by the prophet, Moses. Exodus 31:18. The Commandments are "undeniably a sacred text" and "do not confine themselves to arguably secular matters. . . ." Stone v. Graham, 449 U.S. 39, 41 (1980). Instead, the Commandments, compel worship of a single deity and respect for the Sabbath, and proscribe the taking of the name of the Lord in vain. V. Compl. at ¶ 14. Furthermore, the Ten Commandments cannot be described as the basis for American law, as "[t]he historical record fails to support claims of a direct relationship between the law and the Ten Commandments." Steven K. Green, The Font of Everything Just and Right? The Ten Commandments as a Source of American Law, 14 JLREL 525, 558 (1999-2000).

There is no one standard version of the Ten Commandments: different faiths utilize various renditions, translations, and numbering. See Glassroth v. Moore, 335 F. 3d 1282, 1285, 1285 n.1, 1299 n.3. Behind the differences in each rendition lie "deep theological disputes." Id. at 1299 n.3 (quoting Steven Lubet, The Ten

Commandments in Alabama, 15 Const. Comment, 471, 474-76 & n.18 (1998)).

The Barrow County Ten Commandments display

Currently, a framed poster of the Ten Commandments adorns the wall of the Barrow County Courthouse. V. Compl. ¶ 9. The stand-alone display is not obscured by surrounding items and the text of the poster is plainly visible to those who pass by. Id. Any person who stands in front of the framed display is easily able to read the text. Id.

The poster is located in an area near the Clerk of Court's Office, the Magistrate Judge's courtroom, the restrooms, and the elevators. Id. at ¶ 9. Indeed, if one were to enter the front door of the Courthouse and seek access to these locations, he or she would naturally pass by the display. Id. at ¶ 9; J. Doe Aff. at ¶ ?.¹ In order to conduct personal and government business citizens, including the Plaintiff, John Doe, must walk past the Ten Commandments display and are thus subject to exposure to the religious display. V. Compl. at ¶ 4.

The text of the Barrow County display reads as follows:

The Ten Commandments
And God spoke all these words, saying, I am the Lord thy God

¹The Plaintiff recognizes that it is unusual, although not unprecedented, to file a "John Doe" affidavit. But, in light of the threats that are articulated in the affidavit, the Plaintiff believes that an anonymous affidavit is appropriate. If the Court deems it more appropriate, the Plaintiffs will submit a motion for a protective order and file the affidavit in the name of the Plaintiff. See Doe v. Harlan County Sch. Dist., 96 F. Supp.2d 667, 670-71) (denying the defendants' motion to strike the affidavit of Sarah Doe on the basis of her anonymity).

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 Remember the sabbath day, to keep it holy
V Honour thy father and thy mother
VI Thou shalt not kill
VII Thou shalt not commit adultery
VIII Thou shalt not steal
IX Thou shalt not bear false witness against thy neighbor
X Thou shalt not covet
EXODUS XX .

V. Compl. at ¶11 & Exhibit A.

This depiction of the Ten Commandments resembles what is commonly referred to as the Protestant version of the Ten Commandments and conflicts with the versions commonly associated with the Catholic, Lutheran, and Jewish faiths. See Glassroth v. Moore, 335 F. 3d 1282, 1285, 1285 n.1, 1299 n.3 (explaining that there are different versions of the Ten Commandments and that the Defendant in that case posted the Protestant version, which is nearly identical to the version posted in Barrow County).

The display, although erected by a Barrow County citizen, was posted with the consent, approval, and authorization of Mr. Elder, the Chairman of the Barrow County Board of Commissioners. Id. at ¶ 12; see also Allison Floyd, “ACLU Challenges Courthouse Ten Commandments Display” Athens Banner Herald, Sat., June 28, 2003, <http://www.onlineathens.com/cgi-bin/printme.pl>. (“A citizen hung

them on a wall near the main entrance to the historic courthouse about a year ago, according to Commissioner Chairman Eddie Elder, who declined to identify the citizen. 'I said I would not allow my people to put them up, but that if they appeared there, I wouldn't take them down until I was forced to do so,' Elder said.").² Then, on June 30, 2003, the Board of Commissioners formally approved and authorized the display of the Ten Commandments when "the Board of Commissioners voted unanimously not to remove the display." See V. Compl. at ¶ ?; Letter from Currie Mingledorff, attorney for Barrow County, to Maggie Garrett of the ACLU of Georgia); V. Compl. at ¶ 28.

The display, just as all other items in the courthouse must be maintained by the County.

The Plaintiff

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"[A]t the preliminary injunction stage, the procedures in the district court are less formal, and the district court may rely on otherwise inadmissible evidence, including hearsay evidence." Sierra Club, Lone Star Chapter v. Federal Deposit Insurance Corp., 992 F.2d 545, (5th Cir. 1993); see also Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984) ("[A] preliminary injunction necessitates a prompt determination . . . the trial court may give even inadmissible evidence some weight."); 11A Charles Alan Wright et al., Federal Practice and Procedure § 2949, at 216-17 (explaining that inadmissible evidence, including hearsay evidence maybe submitted on a preliminary injunction motion). This is justified because of "the haste that is often necessary if these positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than a trial on the merits.... A party is thus not required to prove his case in full at a preliminary injunction hearing." University of Texas v. Camenisch, 451 U.S. 390, 395 (1981).

John Doe is a Barrow County resident who regularly visits the Courthouse to conduct County business. Id. at ¶ 19. Some of his County business includes, picking up absentee ballots for most elections, and picking up voter registration information so that he can help others register to vote. Id. at ¶ 4. He has visited the Courthouse on numerous occasions in the past for this business, and plans to visit the Courthouse in the future for these same reasons. Id. Once, Mr. Doe attempted to obtain an absentee ballot through the mail, but the ballot never arrived. Aff. at ¶ . To protect his voting rights, therefore, Mr. Doe believes it is essential to obtain his absentee ballot in person from the Courthouse. Id.

John Doe objects to the display of the Ten Commandments because it is an unconstitutional endorsement of religion and because the display trivializes religion. Id. at ¶5. Furthermore, the display make him feel like an outsider in the community an unwelcome in his own county courthouse. Yet, each time he conducts business at the County Courthouse, he is affronted by the Defendants' overtly religious display and subject to the unavoidable and unwelcome religious message sponsored by the County.³ Id. at ¶ 19.

³The Plaintiff in this case has standing to object to the Ten Commandments display. In ACLU v. Rabun County Chamber of Commerce, 698 F.2d 1098, 1107-08 (11th Cir. 1983), the plaintiffs were found to have standing where the “underlying motivations of the plaintiffs . . . can be described as either a spiritual belief or a commitment to separation of church and state” and where they are also “subjected to unwelcome religious exercise or were forced to assume special burdens to avoid them.”. Thus, in Rabun County, one plaintiff was held to have standing where he “suffer[ed] spiritual harm” from being forced to view “unwanted

religious symbolism.” Id.; see also Saladin v. City of Milledgeville, 812 F.2d 687, 692-93 (11th Cir. 1987) (finding standing where the plaintiffs' were offended by receiving stationary that had a seal with the words “Christianity on it, even though the word was not legible on the documents because they had "direct contact with the offensive conduct.""). Similarly, in Harvey, 811 F. Supp. at 675, the Eleventh Circuit affirmed that a plaintiff who asserted only that his job as an attorney, “on occasion” required him to enter the State Courthouse had standing to challenge a Ten Commandments display. See also Books v. Elkhart, 235 F.3d 292 (7th Cir. 2000) (plaintiff who had been to the Courthouse to pay a parking ticket, attend council meetings, talk to the City Council Clerk, and have his deposition taken by the City Attorney in the case had standing); Suhre v. Haywood County, 131 F.2d 1083 (4th Cir. 1997) (plaintiff who had been in the courtroom five times and had attended four meetings at the courthouse had standing); Washegesic v. Bloomington Pub. Schs., 33 F.3d 679 (6th Cir. 1994) (plaintiff who enters the school building for events open to the public had standing); Doe v. County of Montgomery, Ill, 41 F.3d 1156 (7th Cir. 1994) (plaintiffs who used the courthouse to attend council meetings; get absentee ballots; to serve jury duty; and litigate lawsuits had standing); Hawley v. City of Cleveland, 773 F.2d 736 (6th Cir. 1985) (plaintiffs who “regularly use” the airport have standing). John Doe goes to the Barrow County Courthouse more than just “on occasion.” He goes to the Courthouse before each election and also periodically to obtain voting registration information. V. Compl. at —. These activities bring him into direct contact with the religious display, which is unwelcome and offensive to John Doe. Id.

John Doe is proceeding anonymously because his “religion[] is perhaps the most quintessentially private matter,” and because he fears “public reaction and retaliation” that may result in “extensive harassment-and perhaps even violent reprisals.” V. Compl. at ¶ 6 (internal citations omitted). This fear was confirmed at the June 30, 2003 Barrow County Commission meeting, where the only citizen who spoke against maintaining the display was “booed,” told to “shut up and sit down,” to “go home,” and that “[y]ou ain’t welcome [here] no more.” V. Compl. at ¶ 25; audio CD of meeting.

The Barrow County Commission

In response to the ACLU’s letter urging the removal of the Ten Commandments display in the County Courthouse, the Commissioners held a special meeting on June 30, 2003, where it voted unanimously to maintain the display. See Minutes; Letter; Audio CD of meeting. The discussion began with Mr. Elder, the Chairman of the Board of Commissioners, inviting just the “pastors in the audience” to speak on the issue. V. Compl. at ¶24; Audio CD of meeting. He assured the audience that they could also speak if, after the pastors had spoken: “you feel like there is something that hadn’t been said or something that needs to be said that hasn’t already been said then we’ll allow a little it more time.” V. Compl. at ¶24; Audio CD of meeting. Before the Chairman opened the floor to non-pastors, he asked: “Is there any other pastor that would like to come forward at this time?” V. Compl. at ¶24; Audio CD of meeting.

Near the end of the meeting Commissioner Norma Jean Brown asked the preachers in the audience to join the Commissioners at the close of the meeting to pray over a letter that the Commissioners planned to draft concerning the Ten Commandments. The Commissioner stated: “Last night someone sang a hymn [in church], ‘I Won’t Walk Without Jesus and I Won’t Talk Without Jesus.’ After this is over with, what Billy Brown just read will be drafted into a letter. I ask [the] Bishop . . . of my church and all preachers in the name of God after this meeting’s over with to pray over this letter because the power of prayer is more than anything. So please stay after the meeting and pray together with us.” V. Compl. at ¶26: Audio CD of meeting.

The Chairman of the Commission ended the meeting, declaring “‘I hope there’s one thing that we have sent a message [about] . . . Don’t come to Barrow County and mess with our families or mess with our God.” V. Compl. at ¶27: Audio CD of meeting.

A few months after this meeting, the Barrow County Board of Commissioners issued a press release concerning the Ten Commandments display. V. Compl. at ¶26 and Ex. B. In the release, Mr. Elder “challenge[d] every citizen to burn these Commandments into their minds, memories, and hearts,” and “urge[d] every resident and business owner to display the Commandments prominently in their homes and places of business. . . .” Id. The Commissioners also used the press

release to announce to the citizens of Barrow County that “area churches” were organizing a rally to support the government display of the Ten Commandments.

Id.

The entire Board attended the rally that was sponsored by the “area churches.” See photographs. The Board sat behind the speaker and came forward to the podium, where Mr. Elder spoke on the Boards’ behalf. See photographs.

Since the ACLU first contacted the Board of Commissioners about the Ten Commandments display, the Commissioners have made additional comments regarding their understanding that the Ten Commandments are a religious document. Mr. Elder stated: “I think it should be up in every courtroom. I don’t think that it will be terrorism that takes us down; it will be our lack of belief in God.” Joe Johnson, “Commandments display draws suit from ACLU,” Augusta Chronicle, Tuesday, September 16, 2003 at <http://ww.augustachronicle.com/stories/091603/met-082-1455.001.html>. Commissioner William J. Brown describes the Ten Commandments as “the 10 Christian principles our nation was founded upon.” Thou Shalt Not: Will County Buck Demand of ACLU’s letter to remove 10 Commandments framed and displayed at Barrow County Courthouse?” The Barrow County News, Sun., June 29, 2003 at 1A.

ARGUMENT AND AUTHORITY

A preliminary injunction is appropriate when the movant establishes: (1) a substantial likelihood of success on the merits; (2) a threat of irreparable injury; (3)

that Plaintiff's injury outweighs any harm an injunction may cause Defendants; and (4) that granting the injunction would not disserve the public interest. Teper v. Miller, 82 F.3d 989, 992 n.3 (11th Cir. 1996). Plaintiffs satisfy each of these requirements.

I. The Plaintiff is Substantially Likely to Prevail on the Merits.

A stand-alone display of the Ten Commandments hung in a government building with the authorization and approval of County officials is a clear violation of the United States Constitution even with a disclaimer purporting a secular purpose. Stone v. Graham, 449 U.S. 39 (1980); see also Glassroth v. Moore, 335 F.3d 1282 (11th Cir. 2003). Indeed, the vast majority of Courts have found that Ten Commandments displays are unconstitutional, even where the creed has been displayed with other documents,⁴ where the government asserts a secular purpose,⁵

⁴ Moore, 335 F.3d 1282; Adland v. Russ, 307 F.3d 471 (6th Cir. 2002), cert. denied, 123 S.Ct. 1909 (2003); Books v. City of Elkhart, 235 F.3d 292 (7th Cir. 2000), cert. denied, 532 U.S. 1058 (2001); Mercier v. City of LaCrosse, 276 F. Supp.2d 961 (W.D. Wis. 2003); ACLU v. Pulaski County, 96 F. Supp.2d 691 (E.D. Ky. 2000); ACLU v. McCreary County, 96 F. Supp.2d 679 (E.D. Ky. 2000); ACLU v. City of Plattsmouth, 186 F. Supp.2d 1024 (D. Neb. 2002); Doe v. Harlan County, 96 F. Supp.2d 667 (E.D. Ky. 2000); Kimbley v. Lawrence, 119 F. Supp. 2d 856 (S.D. Ind. 2000); Harvey, 811 F. Supp. 669.

⁵ Moore, 335 F.3d 1282 (setting out the "moral foundation of law" not secular purpose); Adland, 307 F.3d 471 (reminding citizens of Biblical foundations of the law of the commonwealth not secular); O'Bannon, 259 F.3d 766 (reminding of nation's core values not secular purpose); Books, 235 F.3d 292, 302 (guiding troubled youths not a secular purpose); Hamilton County, 202 F. Supp. 2d 757 (concluding, based on text of the Ten Commandments alone, that placing plaques in courthouses not secular); City of Plattsmouth, 186 F. Supp. 2d 1024 (urging citizens to embrace its moral code not secular); McCreary County, 145 F. Supp.2d 845 (proclaiming the Ten Commandments' foundational value for American law and government not secular); Kimbley, 119 F. Supp. 2d

or where the display was donated.⁶

856 (displaying values common to community not secular); Pulaski County, 96 F. Supp. 2d 691 (teaching residents of American religious history and foundations not secular); Harlan County Sch. Dist., 96 F. Supp. 2d 667 (teaching residents of American religious history and foundations not secular); Harvey, 811 F. Supp. 669 (recognizing the Ten Commandments as a historical, jurisprudential cornerstone in American law not secular); Ring, 483 F. Supp. 272 (instilling in students the basic mores of civilization and the principles of common law not secular).

⁶Moore, 335 F.3d 1282; O'Bannon, 259 F.3d 766; Books v. City of Elkhart, 235 F.3d 292 (7th Cir. 2000); Mercier v. City of LaCrosse, 276 F. Supp.2d 961 (W.D. Wis. 2003); Kimbley v. Lawrence, 119 F. Supp. 2d 856 (S.D. Ind. 2000); Harvey, 811 F. Supp. 669.

The Eleventh Circuit has twice found Ten Commandments displays unconstitutional. In Harvey v. Cobb, 15 F.3d 1097 (11th Cir. 1994) (table), the Eleventh Circuit upheld a district court decision that a stand-alone, donated display of the Ten Commandments in the Cobb County Courthouse violated the United States Constitution. Recently, the Eleventh Circuit reiterated this holding when, in Glassroth v. Moore, it ordered the removal of a Ten Commandments display from the Alabama State Judicial Building that contained the Commandments as well as numerous quotations. ⁷

⁷But see King v. Richmond County, 331 F.3d 1271 (11th Cir. 2003) (finding a seal that depicts two small tablets with Roman numerals constitutional because it had been in use for one hundred thirty years, there was a valid secular purpose, and there was no text); Freethought Sc'y v. Chester County, 334 F.3d 247 (3d. Cir. 2003) (finding that the plaque was constitutional because it had been there for more than eighty years and the text plaque is not visible to those who pass

A. The Display Violates the United States Constitution.

The Establishment Clause of the First Amendment of the United States Constitution states that “Congress shall make no law respecting an establishment of religion.” U.S. Const. Amend. I. This “prohibition against the establishment of religion applies to the states through the Fourteenth Amendment.” King v. Richmond County, 331 F.3d 1271 (11th Cir. 2003) (citing Cantwell v. Connecticut, 310 U.S. 296 (1940)); see also Everson v. Board of Educ., 330 U.S. 1, 15 (1947).

For a religious display to survive Establishment Clause scrutiny, it must meet

by); Anderson v. Salt Lake City Corp., 475 F.2d 29 (10th Cir. 1973) (decided before Stone and in doubt after Sumnum v. Callaghan, 130 F.3d 906, 910 n.2) ACLU v. Mercer County, 240 F. Supp.2d 623 (E.D. Ky. 2003) (upholding the display because the plaintiffs failed to rebut the defendants summary judgment motion: the case turns on the fact that the Plaintiff incorrectly believed that the proceedings were stayed and, thus had not yet conducted discovery); Suhre v. Haywood County, 55 F. Supp.2d 384, 396-96 (W.D.N.C. 1999) (upholding a display where the Ten Commandments was the “smallest part of the display” of numerous secular documents and removal of them would destroy the sculpture). In Glassroth v. Moore, 335 F.3d at 12998-1300, the Eleventh Circuit easily distinguished King and Chester County, from other Ten Commandments display cases.

all three prongs of the Lemon test. Glassroth v. Moore, 335 F.3d 1282, 1295 (11th Cir. 2003) (holding a Ten Commandments display unconstitutional under Lemon and rejecting the Defendants' argument that the Marsh test applied). Under the Lemon test "the challenged practice must have a valid secular purpose, not have the effect of advancing or inhibiting religion, and not foster excessive government entanglement with religion." Id. The Barrow County display violates the first two of the three Lemon test prongs and is thus unconstitutional.

1. The Commissioners Lack a Secular Purpose For Displaying the Ten Commandments.

In Moore, the Eleventh Circuit concluded that the Defendant had a religious purpose in displaying the Ten Commandments after it examined his "own words, . . . the monument itself, and . . . the physical context in which [the monument] appears." Id. at 1296.

An examination of the display itself demonstrates the Defendants' religious purpose behind the display. The Ten Commandments are an "undeniably religious text." Stone v. Graham, 449 U.S. at 42; Moore, 335 F.3d at 1297.⁸ As explained by

⁸ See also Indiana Civil Liberties Union v. O'Bannon, 259 F.3d 766, 770-71 (7th Cir. 2001), cert. denied, U.S. 1162 (2002); Books v. City of Elkhart, 235 F.3d 292, 302 (7th Cir. 2000), cert. denied, 121 S.Ct. 2209 (2001); ACLU of Kentucky v. McCreary County, 145 F. Supp.2d 845, 848 (E.D. Ky. 2001); ACLU of Kentucky v. Pulaski County, 96 F. Supp.2d 691, 698 (E.D. Ky. 2000); Kimbley v. Lawrence County, 199 F. Supp.2d 856, 867 (S.D. Ind. 2000); DiLoreto v. Board of Educ., 74 Cal. App.4th 267, 276 (1999); Harvey v. Cobb County, 811 F. Supp. 669, 671 (N.D. Ga. 1993), aff'd, 15 F.3d 1097 (11th Cir. 1994) (table); Ring v. Grand Forks Pub. Sch. Dist., 483 F. Supp. 272, 274 (D. N.D. 1980); .

the United States Supreme Court in Stone, a stand-alone display of this religious text, by the government, has no secular purpose:

The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. See Exodus 20: 12-17; Deuteronomy 5: 16-21. Rather, the first part of the Commandments concerns the religious duties of believers: worshiping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day. See Exodus 20: 1-11; Deuteronomy 5: 6-15.

The application of Stone, Moore, and Harvey to this case, therefore, must result in a finding that the Barrow County stand-alone display of the Ten Commandments is unconstitutional.

The words of the Commissioners reinforce this religious purpose. See ACLU of Tennessee v. Rutherford County, 209 F. Supp. 2d 799, 806 (M.D. Tenn. 2002) (finding a religious purpose after “reviewing the history of this litigation, particularly the videotapes of the Commissioner meetings,” at which “both the Commission’s discussion and the public comment period was exclusively on the Ten Commandments”). At the June 30, 2003 Barrow County Board of Commissioners meeting at which the Board determined the fate of the Ten Commandments display, the Commissioners treated the Ten Commandments issue as a religious issue. V. Compl. at ¶¶ 24, 26; Audio CD of meeting. First, the Board gave Christian clergy

special treatment in the debate by inviting only “pastors in the audience to speak” during the public comment period. V. Compl. at ¶¶ 24, 26; Audio CD of meeting. Not only did this demonstrate the Commissioners religious purpose, it also put non-Christians and non-clergy at a disadvantage in the discussion, as the Board invited non-pastors to speak only after all pastors were given the opportunity to address the Board and after it was determined that “there is something that hadn’t been said or something that needs to be said that hasn’t already been said.” V. Compl. at ¶¶ 24, 26; Audio CD of meeting. In fact, before opening the floor to others, the Chair actually checked to make sure that all the pastors who sought to speak, already spoke: “Is there any other pastor that would like to come forward at this time?” V. Compl. at ¶¶ 24, 26; Audio CD of meeting.

Commissioner Norma Jean Brown called upon the pastors again at the end of the meeting. First, she referenced the church hymn, “I Won’t Walk Without Jesus and I Won’t Talk Without Jesus.” She admired the “power of prayer” asked the pastors in the audience to join the Commissioners as they, “in the name of God,” “pray[ed] over” a letter that the Commission planned to send to potential legal counsel because “the power of prayer is more than anything.” V. Compl. at ¶ 26; Audio CD of meeting.

Indeed, the message that the Commissioners intended to send to the citizens of Barrow County at the meeting was religious: “I hope there’s one thing that we have sent a message [about] . . . Don’t come to Barrow Count and mess with our

families or mess with our God.” V. Compl. at ¶ 25; Audio CD of meeting. The Commissioners further emphasized their religious purpose in their September 10, 2003 Press Release. In addition to “challeng[ing] every citizen to burn these Commandments into their minds, memories, and hearts,” and “urg[ing] every resident and business owner to display the Commandments prominently in their homes and places of business . . . ,” the Commissioners invited Barrow County residents to the rally being held by “area churches.” Such public behavior by the Commissioners at both at official meetings and in press releases makes their religious purpose unquestionable, thus violating the first prong of the Lemon test.

Furthermore, the context of the display demonstrates the Commissioners’ religious purpose. In Harvey v. Cobb County, 811 F. Supp. 667, 678 (N.D. Ga. 1993), aff’d, 15 F.3d 1097 (11th Cir. 1994) (table), the Court noted that the display was unconstitutional in part because it “stands alone in the alcove, and there are no countervailing secular passages or symbols.” Here too, the Ten Commandments is a stand-alone display, and no secular meaning could be construed from the display. See Doe v. Harlan County, 96 F. Supp. 2d 667, 674 (E.D. Ky. 2000) (“In their original form, the Ten Commandments displays, consisting of only the Ten Commandments unaccompanied by any other documents, lack any secular purpose.”); Kimbley v. Lawrence County, 119 F. Supp. 2d 856, 866 (S.D. Ind. 2002) (stating that in Stone there was no attempt to “mitigate the religious nature of the Ten Commandments). Thus, the County’s religious purpose is apparent from the display itself any claim

that the Ten Commandments display serves any non-religious purpose is thwarted.

2. The Ten Commandments display has the effect of advancing or inhibiting religion.

The effect prong of the Lemon test asks whether “the ‘principal or primary effect’ of a challenged law or conduct is to ‘advance or inhibit religion.’” See King v. Richmond County, 331 F.3d 1271, 1278 (11th Cir. 2003). According to the Eleventh Circuit, application of this prong requires the court to apply the endorsement test: “The effects prong asks whether . . . the practice under review in fact would convey a message of endorsement or disapproval to an informed reasonable observer.” Moore, 335 F.2d at 1297. Factors the Court may consider when determining the effect on a reasonable observer include: the appearance of the display itself, the location and setting of the display, the statements made by those who authorized the display. Id. Because the County has displayed a religious document in the halls of its judicial building, and the Commissioners have emphasized the religious aspects of the monument, a reasonable observer would find that the monument endorses religion. Id.

The display in Harvey, is nearly identical to the display in the case at bar. In Harvey the Court found that a stand-alone Ten Commandments display endorsed religion:

“Nothing in the context of the display detracts from the [panel’s] religious message.” Moreover, the display is located in the Cobb County State Court Building, a seat of judicial authority in the county. Although the panel is not located in the most prominent part of the

building, it is, nonetheless, located high on the wall, above a marble bench, near the Clerk's Office and the Traffic Court courtrooms. "No viewer could reasonably think that it occupies this location without the support and approval of the government."

811 F. Supp. at 678 (internal citations omitted).

Similarly, the Barrow display stands alone in the judicial seat of the county, and there are no secular symbols or messages to countervail the "undeniably sacred text" of the Ten Commandments. Stone, 449 U.S. at 41. The appearance of the display itself, therefore, endorses religion.

Barrow County's endorsement of religion is further enhanced by the fact that it has chosen to display a uniquely Protestant representation of the Ten Commandments. See Moore, 335 F. 3d at 1285, 1285 n.1, 1299 n.3. Because the display employs a Christian-specific image, it implicates core Establishment Clause concerns. City of St. Charles, 794 F.2d at 271 ("[T]he more sectarian the display, the closer it is to the original targets of the [Establishment] Clause, so the more strictly is the clause applied").

The Commissioners' religious statements also add to the endorsing effect of the display. See Moore, 335 F.3d at 1297 (finding that a reasonable observer would be aware of Judge's Moore's speeches). As explained above, the Commissioners emphasized the religious aspects of the Ten Commandments in their meetings and public statements. See infra, I, A. 1.

"The display violates two of Lemon's three prongs. It violates the

Establishment Clause.” Moore, 335 F.3d at 1297.

B. The display violates Article I, section II, paragraph VII of the Georgia Constitution.

Article I, section II, Paragraph VII of the Georgia Constitution states: “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.” Although the County asserts that it did not purchase the display, it must now maintain the display. **V. Compl. at ¶ –**. This would require regular cleaning and dusting by a county employee, just as all other decorations in the courthouse would. Because the Constitution mandates that “No money” may “directly or indirectly” aid religion, the use of county employee resources to maintain the Protestant version of the Ten Commandments display violates the Constitution. See Moore, 335 F.3d at 1285 n.1, 1299 n.3; V. Compl. at ¶ 11.

C. The display violates Article I, section I, paragraph 3 of the Georgia Constitution.

The Georgia Constitution also provides that “[e]ach person has the natural and inalienable right to worship God, each according to the dictates of that person's own conscience; and no human authority should, in any case, control or interfere with such right of conscience.” Ga Const. Art. I, § I, ¶ 3. The Ten Commandments display serves as government approval and promotion of a certain way to worship God (i.e. acknowledging one God, observing the Sabbath, honoring your parents, etc.) and as a disapproval of other ways of worship. By explicitly offering approval

to one way of worship, the government causes John Doe to feel as though his choice of whether and how to worship is not free. The government is forcing John Doe to venerate on the unwelcome religious display each time he enters the Courthouse to perform civic duties , controlling and interfering with his right to decide whether or not to honor and revere the religious code. Furthermore, it makes John Doe feel as though failure to believe as the County apparently prefers he would believe, makes him a lesser member of the County and that his rights in the Courthouse may suffer unless he adheres to the government's beliefs. This, again, interferes with his freedom to control his own conscience.

II. The Plaintiff will suffer irreparable harm if the Commandments are not removed.

The second factor for the Court to determine is whether the Plaintiff will suffer irreparable harm absent a preliminary injunction. The answer is simple: "The loss of First amendment freedoms for even minimal periods of time [] unquestionably constitutes irreparable injury. Elrod v. Burns, 427 U.S. 347, 373-74 (1976). This is true for both free speech and establishment clause violations. Rutherford County, 209 F. Supp. 2d at 813 (applying this concept to a Ten Commandments display dispute); Kimbley, 119 F. Supp. 2d at 873-74 (same); Indiana ACLU v. O'Bannon, 110 F. Supp. 2d 854, 858 (S.D. Ind. 200) (same) ; Doe v. Harlan, 96 F. Supp. 2d at 678 (same); ACLU v. Pulaski County, 96 F. Supp. 2d 691, 701 (E.D. Ky. 2001) (same).

III. Granting the Injunction Will Not Cause Substantial Harm to Others.

An injunction ordering the removal of the display will simply require the Defendants to remove the framed poster from the courthouse. “This will require little expense. Should the Defendants be successful at trial on the merits, they may reconstruct the displays again at little expense.” Doe v. Harlan County, 96 F. Supp. 2d at 678; see also Rutherford County, 209 F. Supp. at 812. The injunction should be granted because “compared to the effects of the possible First Amendment violation that will be incurred by the Plaintiff if we fail to enter an injunction, the County’s harm is clearly inconsequential.” Kimbley, 199 F. Supp. 2d at 875; Pulaski County, 96 F. Supp. 2d at 701-02.

IV. Removal of the Display is in the Public’s Interest.

“The protection of First Amendment rights and vindication of constitutional violations is always in the public’s interest.” Rutherford County, 209 F. Supp. at 812; O’Bannon, 110 F. Supp. 2d at 858-59; Harlan County, 96 F. Supp. 2d at 679; Pulaski County, 96 F. Supp. 2d at 701-02.

CONCLUSION

For the foregoing reasons, a preliminary injunction should be entered against the Defendants as set forth in Plaintiffs’ Motion for a Preliminary Injunction.

This the ___ day of October, 2003.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,)
) Civil Action
)
 Plaintiff,) File No. 2:03-CV-0156-WCO
)
 v.)
)
 BARROW COUNTY, GEORGIA;)
 WALTER E. ELDER, in his official)
 capacity as Chairman of the Barrow)
 County Board of Commissioners and)
 in his individual capacity,)
)
 Defendants.)

Certificate of Service

I hereby certify that I have, on this date, served a copy of the foregoing n
Plaintiffs' Memorandum of Law in Support of Motion For a Preliminary Injunction on
the following party by U.S. Mail:

This _____ day of _____ 2003.

Margaret F. Garrett

American Civil Liberties Union of Georgia
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Atlanta, GA 30303

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,))	<u>Civil Action</u>
))	
Plaintiff,))	File No. 2:03-CV-0156-WCO
))	
v.))	
))	
BARROW COUNTY, GEORGIA;))	
WALTER E. ELDER, in his official))	
capacity as Chairman of the Barrow))	
County Board of Commissioners and))	
in his individual capacity,))	
))	
Defendants.))	

Certificate of Compliance with Type/Style Limits

This brief is filed in Book Antigua 13 point type and complies with LR 7.1(D).

This the ___ day of October, 2003

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,))	<u>Civil Action</u>
Plaintiff,			File No. 2:03-CV-0156-WCO
v.			
BARROW COUNTY, GEORGIA;			
WALTER E. ELDER, in his official			
capacity as Chairman of the Barrow			
County Board of Commissioners and			
in his individual capacity,			
Defendants.)		

MOTION FOR A PRELIMINARY INJUNCTION

Come now, Plaintiff, John Doe, files this Motion for a Preliminary Injunction for a preliminary injunction ordering the Defendants to remove the Ten Commandments display and prohibiting Defendants, their successors, assigns, and all persons within the scope of Fed. R. Civ. P. 65, from making any further expenditures of public funds and taking any further action to maintain or display the Ten Commandments.

The Plaintiff believes that the case law and evidence is sufficiently clear that no argument is necessary. However, Plaintiff would welcome the opportunity for a short oral argument if the Court deems such helpful.

This the ____ day of October, 2003

Respectfully submitted,

Gerald R. Weber
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