

Supreme Court to hear commandments case

Texas challenge is among those that may affect displays nationally

PATTY REINERT and POLLY ROSS HUGHES, Copyright 2004 Houston Chronicle

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WASHINGTON - The U.S. Supreme Court will use cases from Texas and Kentucky to decide whether displaying the Ten Commandments on government property violates the constitutional ban on government endorsement of religion.

The cases, to be argued in February and decided by July, will mark the first time the court has wrestled with the issue in 25 years. The court, whose chamber is decorated with images of the commandments, announced its acceptance of the cases Tuesday.

In 1980, the justices used another Kentucky case to ban displays in public school classrooms. The court refused to hear subsequent Ten Commandments cases.

Last week, the court rejected an appeal in a high-profile case involving a monument that former Alabama Chief Justice Roy Moore placed in the rotunda of the Alabama Judicial Building. Moore lost his job for defying a federal court order to remove the granite display, and the justices refused to help him get it back.

But lower courts across the country have issued conflicting rulings about Ten Commandments displays in courthouses and statehouses and on public lands. The Supreme Court can settle the conflicts.

In the Texas case, Thomas Van Orden, a homeless former attorney from Austin who sued Gov. Rick Perry in 2002 to remove a Ten Commandments granite monument on the grounds of the Texas State Capitol in Austin, said he felt validated that the high court took his case seriously.

"I thought about the last three years and what I accomplished with nothing, just a pencil and a piece of paper," he said from the Texas Supreme Court law library, where he conducted research and prepared legal briefs. "I just looked back and thought, 'You did it with nothing, by yourself.' "

Abbott eager to argue

Texas Attorney General Greg Abbott, who will lead the state's effort to uphold the constitutionality of the monument, said he's looking forward to arguing his first case before the high court.

"It is my opinion, and I hope and believe the United States Supreme Court will agree, that the placement of this monument on the Capitol grounds here in the state of Texas is perfectly constitutional," said Abbott, a Republican and former Houston judge.

Perry and other supporters of Ten Commandments displays on public property argue that the commandments, which the Bible says were a gift from God, are allowed because they show what were essentially the first written laws against killing, stealing and adultery, among other things.

Randall Kallinen, a Houston lawyer who successfully argued to remove a Bible display at the county Civil Courts Building this year, said the high court's decisions in the Ten Commandments cases could affect his case, which is on appeal.

The question before the high court centers on the First Amendment, which prohibits government from interfering with the "free exercise" of religion and bars the government from establishing, as in favoring, a particular faith. The Kentucky cases involve courthouse displays.

In the case from Texas, the court will consider the constitutionality of a 6-foot-tall red-granite monument on the grounds of the Texas State Capitol, between the state Supreme Court and Capitol buildings.

Eagles donated display

The monument was given to the state in 1961 by the Fraternal Order of Eagles, which donated hundreds of similar monuments to courthouses, statehouses and schools across the country in hopes of instilling good morals in the nation's youth.

The monument also shows an eagle clutching an American flag and a cross and a Star of David, symbols of Christianity and Judaism, respectively.

Van Orden argues that the display on public grounds indicates the government's endorsement of Judeo-Christian beliefs, excluding Texans who are Muslims, Hindus, Buddhists or atheists. Acting as his own lawyer, he lost in lower courts and at the U.S. 5th Circuit Court of Appeals in New Orleans.

Duke University law professor Erwin Chemerinsky, an expert in church-state separation issues, will argue Van Orden's case to the Supreme Court.

Chemerinsky said Tuesday he wasn't surprised the court agreed to hear the case because a decision could settle challenges to similar monuments across the United States.

"The Ten Commandments, as they are displayed in Austin, are inherently religious," he said. "They begin, 'I am the Lord thy God.' There is nothing secular about this."

The high court could make clear that the constitutionality of such displays could depend on how they are presented, he said.

Moses in high court

The Supreme Court chamber is adorned with several depictions of the commandments, including a substantial carving above the high court bench showing Moses carrying two stone tablets on which the commandments are written.

Besides Moses, the frieze depicts other historical and religious figures as contributors to the development of law.

That display, Chemerinsky said, is allowable because it is presented in the context of the evolution of law. The Austin display is inappropriate because its context promotes the Judeo-Christian religion, he said.

Kelly Shackelford, chief counsel of the Dallas-based Liberty Legal Institute, which argues for keeping the display, said he is confident the high court will uphold the 5th Circuit's decision.

"There is no constitutional right to censor religious history or artifacts because a citizen feels offended," he said. "... Sandblasting our religious history off our monuments and founding documents is not what the Constitution requires."

Polly Ross Hughes contributed to this report from Austin; Chronicle reporter Bill Murphy contributed from Houston.

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