



May 20, 2026

Rob T. Hardy, County Judge  
Llano County  
801 Ford Street, Room 101  
Llano, Texas 78643

Peter R. Jones, Commissioner  
Llano County, Precinct 1  
P.O. Box 8759  
Horseshoe Bay, Texas 78657

Linda Raschke, Commissioner  
Llano County, Precinct 2  
8347 RR 1431  
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Brent Richards, Commissioner  
Llano County, Precinct 3  
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Llano County, Precinct 4  
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Dwain K. Rogers, County Attorney  
Llano County  
801 Ford Street, Suite 111  
Llano, Texas 78643

**Re: Proposed Resolution to Accept and Display Ten Commandments Monument on County Property**

Dear Judge Hardy, Mr. Rogers, and the Llano County Commissioners Court:

We have been made aware that the Llano County Commissioners Court (the “County”) is contemplating a resolution that, if approved, would (i) accept the private donation of a Ten Commandments monument, and (ii) allow for such monument to be installed and permanently displayed on County-owned property. First Liberty Institute is confident that the proposed monument enjoys the utmost support and protection from the United States Constitution. We write to encourage the County in this endeavor, as well as offer the County our legal expertise, at no charge.

First Liberty Institute has had great success in defending religious freedom. We are dedicated exclusively to defending and restoring religious liberty for all Americans. In the last couple years alone, we have won four religious freedom cases at the U.S. Supreme Court: *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022); *Carson v. Makin*, 596 U.S. 767 (2022); *Groff v. DeJoy*, 600 U.S. 447 (2023); and *Olivier v. City of Brandon*, No. 24-993, 2026 U.S. LEXIS 1272 (2026). Another of our Supreme Court victories—*The American Legion v. American Humanist Association*, 588 U.S. 29 (2019)—upheld the government display of a 32 feet tall Latin cross erected as a WWI memorial on the median of a busy public highway. Consequently, we have been entrusted by governments across the nation to help

defend Ten Commandment displays on their property, including recently erected monuments in Amarillo and Tarrant County, Texas.

No matter where in the country the Ten Commandments arise, the Constitution's decree is the same. The Establishment Clause of the First Amendment to the U.S. Constitution takes no issue with passive, religious displays like the County's proposed Ten Commandments monument, which comport with "historical practices and understandings." *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). The public acknowledgment of the Decalogue by government bodies "fits within [a] tradition long followed," *Town of Greece*, 572 U.S. at 577, and therefore, is a constitutionally defensible practice, see *Van Orden v. Perry*, 545 U.S. 677 (2005) (preserving the Ten Commandments monument on grounds of Texas State Capitol); see also *Nathan v. Alamo Heights Independent Sch. Dist.*, No. 25-50695, 2026 U.S. App. LEXIS 11415 (5th Cir. Apr. 21, 2026) (en banc) (upholding Texas law mandating display of Ten Commandments in public school classrooms).

### **The Establishment Clause Must be Interpreted by Reference to History and Tradition**

For decades, courts analyzed government actions triggering the Establishment Clause, including displays of religious imagery, using a test established by *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, courts asked whether the government's actions lacked a secular purpose, appeared to advance or inhibit religion, and excessively entangled the government with religion. If so, the action was struck down. In practice, the test was detrimental to religious freedom and used to scrub public spaces of any and all religious references.

Thankfully, our victory in *Kennedy v. Bremerton School District* restored the proper understanding of the Establishment Clause and confirmed what many courts already acknowledged as true: the *Lemon* test and its progeny are dead. *Nathan*, 2026 U.S. App. LEXIS 11415, at \*21; see also *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 954 n.20 (5th Cir. 2022) (the *Lemon* test's "long Night of the Living Dead . . . is now over."); *Firewalker-Fields v. Lee*, 58 F.4th 104, 121 n.5 (4th Cir. 2023) ("[I]t is now clear that *Lemon* and its ilk are not good law."). Under *Kennedy*, the *Lemon* test has been replaced with an analysis based on history and tradition:

In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings. . . . The line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers. . . . An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather

than some exception within the Court's Establishment Clause jurisprudence.

*Kennedy*, 597 U.S. 535–36 (citation modified); *see also id.* at 546-47 (Sotomayor, J., dissenting) (“Today[] . . . [t]he Court overrules *Lemon* . . . and replaces the standard for reviewing such questions with a new ‘history and tradition’ test.”); *Nathan*, 2026 U.S. App. LEXIS 11415, at \*28 (“The analysis looks to the historical hallmarks of religious establishments . . . .”) (citation modified).

Therefore, to ascertain whether a Ten Commandments display abides by the Establishment Clause, courts must now look to whether the practice “fits within the tradition long followed” by governing bodies, *see Town of Greece*, 572 U.S. at 622, and “accord[s] with history and faithfully reflect[s] the understanding of the Founding Fathers.” *Kennedy*, 597 U.S. at 536 (citation modified); *cf. Van Orden*, 545 U.S. at 685–86 (rejecting *Lemon* and opting to apply an analysis “driven . . . by our Nation’s history). And it certainly does.

### **The County’s Ten Commandments Monument “Fits Within the Tradition Long Followed” by Federal, State, and Local Governments**

Supported by an extensive record of Ten Commandments displays erected on government property across time and place, as well as the written proclamations admiring the Decalogue’s impact on our system of governance, the County’s proposed monument “fits within the tradition long followed” by the three branches of government at the national, state, and municipal levels, *see Town of Greece*, 572 U.S. at 622, and “accord[s] with history and faithfully reflect[s] the understanding of the Founding Fathers.” *Kennedy*, 597 U.S. at 536 (citation modified).

The United States Supreme Court has stated:

For believing Jews and Christians, the Ten Commandments are the word of God handed down to Moses on Mount Sinai, but the image of the Ten Commandments has also been used to convey other meanings. They have historical significance as one of the foundations of our legal system, and for largely that reason, they are depicted in the marble frieze in our courtroom and in other prominent public buildings in our Nation’s capital.

*Am. Legion*, 588 U.S. at 51–53; *accord Van Orden*, 545 U.S. at 690 (“[T]he Ten Commandments have an undeniable historical meaning . . . .”). Accordingly, it is no surprise that over the decades, thousands of monuments and displays depicting the Ten Commandments have been erected across the country at city halls, state capitols, and courthouses. In the great State of Texas, alone, there are monuments at the Texas State Capitol in Austin, Texas, the Nueces County Courthouse in Corpus

Christi, Texas, the Texas State Fair Park in Dallas, Texas, and the Tarrant County Courthouse in Fort Worth, Texas.

When the Supreme Court upheld the constitutionality of the monument at the Texas State Capitol, the Court observed that “acknowledgements of the role played by the Ten Commandments in our Nation’s heritage are common throughout America.” *Id.* at 688. Elaborating further:

We need only look within our own Courtroom. Since 1935, Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as well as the doors leading into the Courtroom. Moses also sits on the exterior east façade of the building holding the Ten Commandments tablets. Similar acknowledgements can be seen throughout a visitor’s tour of our Nation’s Capital. For example, a large statue of Moses holding the Ten Commandments, alongside a statue of the Apostle Paul, has overlooked the rotunda of the Library of Congress’ Jefferson Building since 1897. And the Jefferson Building’s Great Reading Room contains a sculpture of a woman beside the Ten Commandments with a quote above her from the Old Testament (Micah 6:8). A medallion with two tablets depicting the Ten Commandments decorates the floor of the National Archives. Inside the Department of Justice, a statue entitled “The Spirit of Law” has two tablets representing the Ten Commandments lying at its feet. In front of the Ronald Reagan Building is another sculpture that includes a depiction of the Ten Commandments. So too a 24-foot-tall sculpture, depicting, among other things, the Ten Commandments and a cross, stands outside the federal courthouse that houses both the Court of Appeals and the District Court for the District of Columbia. Moses is also prominently featured in the Chamber of the United States House of Representatives. Our opinions, like our building, have recognized the role the Decalogue plays in America’s heritage.

*Id.* at 688–689; *see also Lynch v. Donnelly*, 465 U.S. 668, 674, 677 (1984) (“There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . . The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments.”).

In summary, a cursory examination of past and current precedent is sufficient to determine that the exhibition of the Ten Commandments fits within our government’s “historical practices.” *Kennedy*, 597 U.S. at 535. Being “deeply

embedded in the history and tradition of this country,” *Marsh v. Chambers*, 463 U.S. 783, 786 (1983), the County’s proposed erection of the Decalogue comports with the “original meaning” and a “historically sensitive understanding of the Establishment Clause,” *Kennedy*, 597 U.S. at 536–37, and thus suffers no constitutional defect.

### **The United States Court of Appeals for the Fifth Circuit Upheld the Government Display of the Ten Commandments**

While the County’s proposed monument is constitutionally defensible under *Kennedy* and its antecedents in the Supreme Court, the United States Court of Appeals for the Fifth Circuit—having jurisdiction over federal cases arising in Texas—recently upheld the government display of the Ten Commandments, providing further protection for the anticipated monument. *Nathan*, 2026 U.S. App. LEXIS 11415, at \*55.

In *Nathan*, the full bench of the Fifth Circuit had the chance to opine on the constitutionality of government exhibited Ten Commandments, reviewing a Texas law that required the Decalogue to be posted in every public school classroom. Adopting *Kennedy* and *Van Orden*’s Establishment Clause analysis driven by “original meaning” and “our Nation’s history,” the court inquired into whether the law “shares the ‘hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment,’” *id.* at \*53 (quoting *Kennedy*, 597 U.S. at 537, to which the majority answered: It does not.

Plaintiffs have not identified a shred of founding-era evidence equating the government’s use of religious text, displays, or symbols with an establishment of religion. To the contrary, it appears that no one ever claimed at the founding that the display of religious symbols was a form of religious establishment. . . . Indeed, it would be a shock to discover that the Establishment Clause is implicated merely by the government’s use of religious language, imagery, or symbols. . . . In our country, religious placements dot the landscape and religious mottos, symbols, and flags adorn countless public buildings.

*Nathan*, 2026 U.S. App. LEXIS 11415, at \*45–46.

So, the County can be assured that the decision to install and permanently display the Ten Commandments on County property benefits from the firm support of both the Fifth Circuit and the United States Supreme Court, and enjoys the full protection of the First Amendment to the U.S. Constitution.

### **Available Legal Representation at No Charge**

Should the resolution be approved, we would be pleased to work with you and your County Attorney, at no charge, to protect the Ten Commandments monument

from legal challenge. In doing so, we can discuss the foregoing and other developments in the law in more detail to help clarify your rights and obligations in this effort.

Please do not hesitate to call on us if we can be of assistance with this matter or future religious freedom issues that you encounter. You may reach me at (469) 440-7581 or by email, [gbell@firstliberty.org](mailto:gbell@firstliberty.org).

Sincerely yours,



William G. Bell  
Associate Counsel  
First Liberty Institute