Orden v. Perry and McCreary County v. ACLU of Kentucky: An Analysis of the Ten Commandments Cases (Program)

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The Institute of Bill of Rights Law: Student Division
Annual Spring Symposium and
Bushrod Moot Court Tournament Final Round

the Ten Commandments
I AM the LORD thy God.
Thou shalt have no other gods before me.
Thou shalt not make unto thee any graven image.
Thou shalt not take the name of the LORD thy God in vain.
Remember the Sabbath day, to keep it holy.

Orden v. Perry

and

McCreary County v. ACLU of Kentucky:
AN ANALYSIS OF THE
TEN COMMANDMENTS CASES

Monday, February 21, 2005
3:30 pm - 6:00 pm
PRESENTED TO THE PEOPLE AND YOUTH OF TEXAS BY THE
TRADITIONAL ORDER OF SAGES OF TEXAS
1965
Orden v. Perry
and
McCreary County v. ACLU of Kentucky:
AN ANALYSIS OF THE TEN COMMANDMENTS CASES

Program Schedule:

3:30 p.m. Moot Court
Advocates: Polly Sandness
Matt Gaetz
Bushrod Tournament finalists will present arguments on whether the First Amendment permits a town to place an engraving of the Ten Commandments outside its courthouse.

4:30 pm Panel Discussion
Panelists will address the role of religious symbols in American society and the Supreme Court's interpretation of First Amendment establishment clause issues.
CASE SUMMARY  Orden v. Perry

PROCEDURAL POSTURE: Plaintiff citizen asked the federal courts to order the State of Texas to remove from the grounds of the state capitol a granite monument in which the Ten Commandments are etched. Following a bench trial, the United States District Court for the Western District of Texas rejected the claim of First Amendment violations and entered judgment for the state. The judgment was affirmed by the Fifth Circuit Court of Appeals.

OVERVIEW: The Ten Commandments monument was part of a wide array of monuments, plaques, and seals depicting both the secular and religious history of Texas on the capitol grounds. It was a gift from a fraternal organization. The district court found that the purpose of the legislature in accepting the gift was to recognize and commend the private organization for its efforts to reduce juvenile delinquency. The circuit court found that there was nothing in either the legislative record or the events attending the monument's installation to contradict the secular reasons laid out in the legislative record and that Texas has a record of honoring the contributions of donors and those they represent. It also concluded that a reasonable viewer would not see the display either as a state endorsement of a religious message or as excluding those who would not subscribe to its religious statements. The circuit court was not persuaded that a reasonable viewer touring the capitol and its grounds, informed of its history and its placement, would conclude that the state was endorsing the religious rather than the secular message of the decalogue.

CASE SUMMARY  McCreary County v. ACLU of Ky, 2005 U.S.

PROCEDURAL POSTURE: Defendants, two counties and a county school district, appealed from an order of the United States District Court for the Eastern District of Kentucky at London granting plaintiffs a supplemental preliminary injunction prohibiting defendants from displaying the Ten Commandments in three separate displays (two in courthouses, one in a school) and finding a strong likelihood that the displays violated the First Amendment Establishment Clause. The district court's order was affirmed by the Sixth Circuit Court of Appeals.

OVERVIEW: The court of appeals agreed with the district court's ultimate conclusion that the predominant purpose of the displays was religious as the undisputed evidence concerning the content and context of the displays demonstrated that upon application of the Lemon Test, defendants' actual purposes for presenting the displays were religious. Notably, the court of appeals agreed that the courthouse displays demonstrated that defendants intended to convey the bald assertion that the Ten Commandments formed the foundation of American legal tradition, but that such an "avowed" secular purpose was not sufficient to avoid conflict with the First Amendment when no effort has been made to integrate the Ten Commandments with a discussion or display of a secular subject matter. Further, the court of appeals found that the Ten Commandments was undeniably a sacred text in the Jewish and Christian faiths, and that the displays conveyed a message of religious endorsement because of the complete lack of any analytical connection between the Ten Commandments and the other patriotic documents and symbols (including the Star Spangled Banner, Bill of Rights, and Magna Carta) in the displays.
Who's Who on the Panel

Nadine Strossen: President of the ACLU since 1991 and professor of law at New York University. Strossen has been twice named one of “The 100 Most Influential Lawyers in America” by the National Law Journal. Strossen has written two books, Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights and Speech of Rage, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties.

Jay Sekulow: Chief Counsel of the American Center for Law and Justice. Sekulow has served as lead counsel and presented oral arguments in several cases before the Supreme Court. Sekulow has been twice named one of “The 100 Most Influential Lawyers in America” by the National Law Journal and has most recently been named one of “The 25 Most Influential Evangelicals in America” by Time Magazine. Sekulow also has a syndicated weekly talk radio show called “Jay Sekulow Live.”

Hon. Arlin Adams: Judge on the United States Court of Appeals for the Third Circuit from 1980 until his retirement in 1987. Judge Adams is currently an attorney at Schnader, Harrison, Segal and Lewis in Philadelphia, Pennsylvania and is former President of the American Philosophical Society. He has also taught at the University of Pennsylvania School of Law. Judge Adams has written a book on the historical development of the First Amendment called A Nation Dedicated to Religious Liberty: The Constitutional Heritage of the Religion Clauses.

Congressman Bobby Scott: Representative for Virginia's 3rd Congressional District in the U.S. House of Representatives since 1992. Before becoming a member of Congress, Scott served 15 years in the Virginia General Assembly. He has been given several awards by the NAACP and has been awarded the “Champion of Church and State Separation” by the Virginia Chapter of Americans for Separation of Church and State.

William Van Alstyne: Lee Professor at the William and Mary School of Law. From 1974-2004, Van Alstyne was the William R. and Thomas S. Perkins Professor of Law at Duke Law School. He teaches First Amendment law and is the author of a First Amendment casebook. Van Alstyne has been named as one of the most qualified persons for appointment to the Supreme Court by the New York Law Journal and the American Lawyer. He is a former member of the Board of Directors for the ACLU and former president of the American Association of University Professors.

Neal Devins is the Director of the Institute of Bill of Rights Law, Goodrich Professor of Law, and Professor of Government at the College of William and Mary. He is the author of several books and articles on constitutional law and government lawyering, including Interpreting Constitutional Values (Johns Hopkins, 1996), Political Dynamics of Constitutional Law (West, 3d ed. 2001) (co-authored with Louis Fisher), Redefining Equality (Oxford, 1998) (co-edited with Davison Douglas), A Year at the Supreme Court (Duke, 2004) (co-edited with Davison Douglas), and The Democratic Constitution (Oxford, 2004) (with Louis Fisher). Devins has testified before both the House and Senate and has spoken to numerous groups about constitutional law, government lawyering, and other issues.
The symposium chair would like to thank the following people for their help and support in organizing this special event:

Professor Neal Devins
Melody Nichols
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Stephanie Spicer
Casey Ewart
Jordan Gillman
Svetlana Khvalina
Luke Whitemore

The Moot Court Team