



STONE v GRAHAM

SUPREME COURT OF THE UNITED STATES

449 U.S. 39

November 17, 1980

[6 - 3]

THE TEN COMMANDMENTS (ROUND ONE)

OPINION: Per Curiam...A Kentucky statute requires the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public classroom in the State. Petitioners, claiming that this statute violates the Establishment and Free Exercise Clauses of the 1st Amendment, sought an injunction against its enforcement. The state trial court upheld the statute, finding that its "avowed purpose" was "secular and not religious," and that the statute would "neither advance nor inhibit any religion or religious group" nor involve the State excessively in religious matters. The Supreme Court of the Commonwealth of Kentucky affirmed...We reverse.

This Court has announced a three-part test for determining whether a challenged state statute is permissible under the Establishment Clause of the United States Constitution:

- First... The statute must have a secular legislative purpose;
 - Second... its principal or primary effect must be one that neither advances nor inhibits religion...;
 - Third... the statute must not foster an excessive government entanglement with religion. *Lemon v. Kurtzman* [Case 1A-R-042 on this website].
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If a statute violates any of these three principles, it must be struck down under the Establishment Clause. **We conclude that Kentucky's statute requiring the posting of the Ten Commandments in public school rooms has no secular legislative purpose, and is therefore unconstitutional.**

[Kentucky] insists that the statute in question serves a secular legislative purpose, observing that the legislature required the following notation in small print at the bottom of each display of the Ten Commandments: "The secular application of the Ten Commandments is clearly seen in its adoption as **the fundamental legal code** of Western Civilization and the Common Law of the United States."

The trial court found the "avowed" purpose of the statute to be secular, even as it labeled the statutory declaration "self-serving." Under this Court's rulings, however, such an "avowed" secular purpose is not sufficient to avoid conflict with the 1st Amendment. In *Abington School District v. Schempp* [Case 1A-R-034 on this website], this Court held unconstitutional the daily reading of Bible verses and the Lord's Prayer in the public schools, despite the school district's assertion of such secular purposes as "the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature."

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. 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.

This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like. *Abington School District v. Schempp*. Posting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the school-children to read, meditate upon, perhaps to venerate and obey, the Commandments. **However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.**

It does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions, for the mere posting of the copies under the auspices of the legislature provides the "official support of the State...Government" that the Establishment Clause prohibits. *Engel v. Vitale* [Case 1A-R-033 on this website.] Nor is it significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud as in *Schempp* and *Engel*, for "it is no defense to urge that the religious practices here may be relatively minor encroachments on the 1st Amendment." We conclude that [the Kentucky statute] violates the first

part of the *Lemon v. Kurtzman* test, and thus the Establishment Clause of the Constitution...[T]he judgment below is reversed.

DISSENT: Justice Rehnquist...The Court's summary rejection of a secular purpose articulated by the legislature and confirmed by the state court is without precedent in Establishment Clause jurisprudence. This Court regularly looks to legislative articulations of a statute's purpose in Establishment Clause cases and accords such pronouncements the deference they are due...**The fact that the asserted secular purpose may overlap with what some may see as a religious objective does not render it unconstitutional. As this Court stated in *McGowan v. Maryland* [Case 1A-R-028 on this website], in upholding the validity of Sunday closing laws, "the present purpose and effect of most of these laws is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the state from achieving its secular goals."**

...The Court rejects the secular purpose articulated by the State because the Decalogue is "undeniably a sacred text." It is equally undeniable, however, as the elected representatives of Kentucky determined, that the Ten Commandments have had a significant impact on the development of secular legal codes of the Western World. The trial court concluded that evidence submitted substantiated this determination...Certainly the State was permitted to conclude that a document with such secular significance should be placed before its students, with an appropriate statement of the document's secular import. ("**It does not seem reasonable to require removal of a passive monument, involving no compulsion, because its accepted precepts, as a foundation for law, reflect the religious nature of an ancient era**")...

The Establishment Clause does not require that the public sector be insulated from all things which may have a religious significance or origin. This Court has recognized that "religion has been closely identified with our history and government" and that "the history of man is inseparable from the history of religion." Kentucky has decided to make students aware of this fact by demonstrating the secular impact of the Ten Commandments. The words of Justice Jackson, concurring in *McCollum v. Board of Education* [Case 1A-R-023 on this website], merit quotation at length:

"I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view...I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from

paganism, Judaism, Christianity -- both Catholic and Protestant -- and other faiths accepted by a large part of the world's peoples. One can hardly respect the system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared."...

Let us not forget that in this case we are dealing with the concept of potential coercion of children practically compelled to attend public schools.
