

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

AUG 19 2013

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Dr. BRUCE PRESCOTT,)
JAMES HUFF, DONALD CHABOT,)
CHERYL FRANKLIN,)
Plaintiffs,)

vs.)

Case No:

CV-2013-1768

OKLAHOMA CAPITOL)
PRESERVATION COMMISSION)
Defendant.)

Assigned Judge:

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, Bruce Prescott, James Huff, Donald Chabot, and Cheryl Franklin, Plaintiffs herein, by and through their attorneys of record, Brady R. Henderson and Ryan Kiesel of the American Civil Liberties Union of Oklahoma Foundation, and hereby petition this Honorable Court to temporarily and permanently enjoin the Oklahoma Capitol Preservation Commission from continuing to permit the placement and maintenance of the display of the Ten Commandments placed upon public property on the grounds of the Oklahoma State Capitol. In support of said Petition, Plaintiffs allege and state:

I. PARTIES, JURISDICTION, and VENUE

1. Plaintiff Bruce Prescott is an ordained Baptist minister and constituent citizen and taxpayer of the State of Oklahoma. Reverend Prescott resides within the bounds of the city of Norman, within Cleveland County and the State of Oklahoma.

2. Plaintiff James Huff is a constituent citizen and taxpayer of Oklahoma. A former educator and current public servant, he now resides within Oklahoma County, Oklahoma.
3. Plaintiff Donald Chabot, a retired landscaper and businessman, is a constituent citizen of Oklahoma and taxpayer who resides in Oklahoma City, within the confines of Oklahoma County and the State of Oklahoma.
4. Plaintiff Cheryl Franklin is a constituent citizen of Oklahoma and taxpayer. A former educator, she is now retired, with her principal place of residence within Garfield County, Oklahoma, in the city of Enid.
5. Defendant Capitol Preservation Commission (hereinafter "the Commission") is a public body created and operated under the laws of the State of Oklahoma. It is charged with permitting and overseeing the display, creation, alteration, and usage of art and architecture for both the interior and exterior spaces of the Oklahoma State Capitol.
6. Jurisdiction and venue are proper in this court due to the location of the Defendant's office within the bounds of Oklahoma County, as well as the monument and other public property placed at issue herein being located entirely within the bounds of Oklahoma County. In addition, two of the four Plaintiffs herein maintain their principal residences in Oklahoma County.

II. STATEMENT OF FACTS

7. The Oklahoma State Capitol (hereinafter "Capitol"), located in Oklahoma City, Oklahoma, has been established as the seat of government for the State of Oklahoma under 73 O.S. §1.
8. The Capitol is used daily for transaction of all manner of public business, by all three branches of state government, and by both public officials and private citizens alike. It is a distinctive and dignified structure, designed and maintained in such a manner as to have cultural and political significance to the populace that goes far beyond its utilitarian functions.

9. While most aspects of the operation and maintenance of the Capitol building and grounds are under the control of the Oklahoma Office of Management and Enterprise Services, as provided by 73 O.S. §15, Defendant Oklahoma Capitol Preservation Commission is charged specifically with duties concerning the planning and display of "art objects" within both the interior and exterior spaces of the Capitol. 74 O.S. §4102.
10. On or about November 1, 2009, the Capitol Preservation Commission was authorized by the Oklahoma Legislature, "to permit and arrange for the placement on the State Capitol grounds of a suitable monument displaying the Ten Commandments." 74 O.S. §4110(B).
11. The Capitol Preservation Commission was further authorized, "to assist private entities in selecting a location for the monument and arranging a suitable time for its placement." 74 O.S. §4110(B). The Legislature did not appropriate public funds to create the monument, instead relying on the monument being donated to the State following its creation at private expense.
12. The Defendant subsequently arranged for the placement of such a monument, donated by Dr. Mike Ritze and his family. Dr. Ritze is a member of the Oklahoma House of Representatives from Broken Arrow, Oklahoma.
13. The Defendant subsequently decided on the placement of the Ten Commandments Monument (hereinafter "the Monument") on its current site on the north side of the Capitol building.
14. This siting and design process required expenditure of public funds including, but not necessarily limited to, the publicly funded work of the Capitol Architect and Curator, who holds a contracted position with the State of Oklahoma performing public duties for which he is compensated with public funds through the Office of Management and Enterprise Services, pursuant to 74 O.S. §4105.

15. Following the siting process, on or about November 15, 2012, the Monument was erected on the Capitol grounds per the direction and permission of the Defendant and continues to reside there.
16. The current display of the Monument differs from its appearance upon placement in two ways: First, ornamental or upgraded tile has been installed on top of the concrete slab at its base. Second, three spelling errors have been corrected in the engraving of the Monument's text.
17. The Monument itself physically consists of a large vertical slab of cut and polished granite, with an aesthetic appearance common to that of tombstones or commemorative memorials or displays. The slab is essentially rectangular but for its top, which consists of two adjacent arched or semi-circular shapes.
18. The Monument stands approximately six feet and four inches tall, three feet and eight inches wide, and four inches thick. The Monument is placed approximately ten feet from the northeast corner of the Capitol's north transept, with the broad sides facing to the North and South, respectively.
19. The north face of the Monument is blank, while the south face, exposed directly to the Capitol building and viewable through numerous windows on the north side of the Capitol's East Wing, contains the entirety of the Monument's text and iconography.
20. The Monument stands alone, with no other monuments or memorials in the immediate vicinity.
21. The Monument's location places it on the raised foundation platform, or dais, on which the Capitol building is built. This dais runs all around the Capitol building, broken only by a few service entrances and ADA-compliant public entrances into the Capitol's first floor or basement, which bypass the several grand staircases that are the only other means of public access to the platform or Capitol building upon it from ground level.

22. The dais, by its raised stature and grand entrances, gives a dignified and solemn appearance to whatever is placed upon it. The Ten Commandments Monument is the only monument, memorial, or artistic display of any kind visible anywhere on this dais, which otherwise is occupied only by the Capitol building itself, its concomitant ornamentation, and sidewalks following the Capitol building's perimeter.
23. The Monument itself is designed around a clear and conspicuous religious message, making emphatic and explicit references to God in divine terms.
24. The Monument includes the following principal text (as corrected), presented here in like capitalization, alignment, and indentation to that on the Monument:

the Ten Commandments
I AM the LORD thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven
images.

Thou shalt not take the Name of the Lord thy God in vain.

Remember the Sabbath day, to keep it holy.

Honor thy father and thy mother that thy
days may be long upon the land which the
Lord thy God giveth thee.

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against
thy neighbor.

Thou shalt not covet thy neighbor's house.

Thou shalt not covet thy neighbor's wife, nor
his manservant, nor his maidservant, nor his
cattle, nor anything that is thy neighbor's.

25. This textual choice is identical to that on the Ten Commandments Monument placed upon the grounds of the Texas State Capitol by the Fraternal Order of Eagles in 1961, one of many placed with the support of Hollywood film director Cecil B. DeMille as he promoted his famous 1956 film *The Ten Commandments*, starring Charlton Heston and Yul Brynner.
26. The actual text of the Ten Commandments, also known as the Decalogue, has been translated in numerous different ways since its origination in ancient Hebrew. As such, there is no universally agreed-upon definitive version.
27. This particular text represents an English translation of the Ten Commandments inconsistent with those officially adopted by the Catholic Church and within Orthodox Judaism, generally conforming more closely to particular Protestant interpretations of the text.
28. The principal text is entirely in the same font and size, but for the first two lines. The title, "the Ten Commandments," is in the largest font. Centered below it, set apart from the other commandment text, is the phrase, "I AM the LORD thy God." In addition to being centered, it is engraved in a substantially larger font than the remainder of the text.
29. The text's display of "I AM" and "LORD" in all capital letters is consistent with common practice in most, if not all versions of the Christian Bible and the writings of Christian theologians and clergy. It carries with it an emphasis on the Biblical tenets that God's existence transcends the temporal and secular world and that God is the final and ultimate authority over all things.
30. Above the principal text, the Monument features engraved images of two tablets with faux ancient text, appearing to symbolize one or both of the two sets of two stone tablets on which, according to Biblical tradition, Moses twice delivered the original Ten Commandments to the people of Israel after they were written by God atop Mount Sinai, the first set being smashed in anger over the peoples' corruption in worshiping an idol in Moses's absence, and the second set being placed in the Ark of the Covenant.

31. Between the images of the two tablets, the Monument displays a further engraved image of a symbol most commonly known as an "Eye of Providence" or "All-seeing Eye of God." This symbol consists of an image of an open human eye in the center of an equilateral triangle. Surrounding the triangle are radial lines emanating in all directions, symbolizing the endless and ubiquitous power, sight, and/or glory of God.
32. The depiction found on the Monument is facially similar to, but distinct from, the version of the Eye of Providence found on the obverse of the United States One Dollar bill. This latter version is used more commonly within Freemason tradition, differing from that used in the Monument by placing the eye atop an unfinished pyramid, rather than in the center of an equilateral triangle or trinity. The centered version used in the Monument is more consistent with emphatically Christian religious iconography, found within the stonework and stained glass of numerous cathedrals and churches in Europe and the United States.
33. Immediately below the All-seeing Eye of God, the Monument depicts its lone non-religious iconography, an image of a bald eagle straddling and clutching a partially unfurled American flag. It is unknown to the Plaintiffs whether the upside-down orientation of the flag is simply incident to the apparent unfurling action of the eagle or independently symbolic of distress, as is normally the case when a national flag is displayed upside down.
34. Below the principal text, the Monument features two six-pointed stars, in the shape of geometric hexagrams made by joining opposed equilateral triangles, known commonly as Stars of David when utilized as symbols of Judaism. This symbol is found on the contemporary flag of the state of Israel, and is found in ancient and modern history referencing both Jewish and Christian iconography.
35. Centered between these Stars of David, the Monument displays an engraved symbol known as a "chi-rho," a form of Christogram in which the first two letters of the Greek word for "Christ" (Chi and rho) are superimposed in such a

manner as to aesthetically reference the cross on which, according to Christian Biblical tradition, Jesus was crucified before being resurrected from the dead.

36. The chi-rho is a symbol widely used in Christian iconography for approximately 1,700 years. The version displayed on the monument is the simplest form of the chi-rho. More complex versions commonly feature the Greek letters alpha and omega to each side and/or a surrounding wreath symbolizing Christ's resurrection and eternal life.
37. At the very bottom, below the chi-rho, the Monument displays its lone non-religious text, where it reads: "Presented to the people of Oklahoma by Dr. Mike and Connie Ritze and Children Amity, Heidi and Jamey."
38. In the intervening months since the Monument was placed on the Capitol grounds, Plaintiffs know of no other monuments, memorials, or displays placed or planned for the vicinity of the Monument.

III. CAUSE OF ACTION

39. The Oklahoma Constitution mandates:

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

Okla. Const., art. 2, §5.

40. The Monument is the chattel property of the State of Oklahoma, having been donated to the people of the State of Oklahoma and placed upon public land on the grounds of the Oklahoma State Capitol, the State's primary seat of government. Despite the private source of funding for its creation and acquisition, it is no longer private property, but incontrovertibly public property.

41. This piece of public property, placed upon public property, conveys an explicit religious message that supports and endorses the faiths and creeds of some churches and sects.
42. The message conveyed is self-evidently exclusive, explicitly urging those viewing the Monument to worship or believe in no other forms of divinity but the one endorsed. By definition, this works to the derogation of faiths inconsistent with the exclusive vision of God portrayed by the text and accompanying religious iconography.
43. The Monument's positioning, in a setting in which no other monuments or memorials are similarly situated or intermixed, further lends to the Monument's effect of conveying state endorsement and support of its explicitly religious message.
44. This prohibition on use of public property for sectarian or religious benefit is violated by the placement and continued display of the Ten Commandments Monument.
45. The Plaintiffs herein, as citizens of the State of Oklahoma, and taxpayers with a constituent interest in the appropriate disposition of public property, have suffered and continue to suffer injury as a result of the illegal use of the Monument and the property on which it is placed to support and endorse specific and exclusive faith traditions.
46. This endorsement, and its converse coercive effect on those with faith traditions inconsistent with those supported by the Monument, force Plaintiffs to endure a continuing violation of the peoples' liberty of conscience, committed in their names as citizens of Oklahoma.
47. Plaintiffs Prescott and Huff object to the use and display of the Monument due to its co-option of their religious traditions, resulting in a cheapening and degradation of their shared faith. Both Prescott and Huff conduct ongoing

business at the State Capitol with some frequency so as to face direct confrontation and challenge from the Monument's message.

48. Plaintiffs Chabot and Franklin object to the use and display of the Monument based on similar sincerely held religious beliefs, finding the Monument's statement of official state religion inconsistent with the dictates of their own faiths. Neither Chabot nor Franklin has frequent business at the Capitol Building.

49. As constituent citizens and taxpayers of the State of Oklahoma, all Plaintiffs herein retain an interest in the Monument itself, the land on which it is placed, and any and all public funds expended in its placement or maintenance.

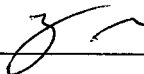
50. The aforementioned injuries are continuing and repeated each day the Monument is used in violation of the Oklahoma Constitution.

51. An actual controversy exists as to the right of the Defendant to permit the placement, use, and display of the Monument, and as to the legal status of the Monument. These controversies are justiciable pursuant to Oklahoma's statutes on declaratory judgments, as provided in 12 O.S. §§1651-1657.

52. The aforementioned injuries are capable of judicial remedy and redress through an injunction barring the continued use and display of the Monument, as authorized in 12 O.S. §§1381-1397.

WHEREFORE, Plaintiffs request this Court declare the placement of the Ten Commandments Monument to be in violation of the Oklahoma Constitution, and as such, an illegal appropriation of public property in support of religion. Plaintiffs further request that following said declaration, this Court issue a permanent injunction barring further use or display of the Ten Commandments Monument. Plaintiffs also request costs and attorney fees, if warranted by law, and for further relief as this Honorable Court deems just and proper. The Plaintiffs reserve the right to further plead as necessary.

Respectfully submitted,



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