

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

DOE 1, by Doe 1's next friend and parent,)
DOE 2, who also sues on Doe 2's own behalf,)
)
Plaintiffs,)
)
v.) Case No. _____
)
SCHOOL BOARD OF GILES COUNTY,)
)
Defendant.)
)
)
)
_____)

COMPLAINT

Introduction

1. For more than a decade, the Giles County School Board actively promoted and endorsed the Ten Commandments by hanging copies of the Decalogue in each of Giles County's public schools. After civil liberties organizations objected, the Board temporarily removed the displays. But, facing intense public pressure, the Board re-posted the Ten Commandments in Narrows High School, this time accompanied by a host of historical documents. In this action under 42 U.S.C. § 1983, the plaintiffs, a Narrows High School student and the student's parent, seek a declaration that the Board's policy and practice of posting the Ten Commandments in the school violates the Establishment Clause of the First Amendment to the United States Constitution, an injunction prohibiting the Board from further display of the Ten Commandments, nominal damages, and attorneys' fees and costs.

Jurisdiction

2. This action arises under the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to Article III of the United States Constitution and 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

Parties

3. Plaintiff Doe 1 is a student at Narrows High School in Giles County. Doe 1 sues pseudonymously pursuant to Fed. R. Civ. P. 5.2 and because Doe 1 reasonably fears being retaliated against and ostracized should Doe 1's true identity become known.¹ As a minor, Doe 1 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through Doe 1's next friend and parent, Doe 2.

4. Doe 2 is the parent of Doe 1. Doe 2 sues pseudonymously because Doe 2 reasonably fears that Doe 1 and Doe 2 will be retaliated against and ostracized should their true identities become known.

5. Defendant Giles County School Board is the governmental body vested with the supervision of the public schools in Giles County. By statute, it is a corporate body with capacity to sue and be sued. At all times relevant, defendant acted and continues to act under color of state law.

Factual Allegations

6. For over ten years, a copy of the Ten Commandments was prominently posted in each of the public schools of Giles County. Until earlier this year, the Decalogue was mounted in a single frame along with a copy of the United States Constitution. The Ten Commandments

¹ A Motion to Proceed Pseudonymously is filed concurrently.

displays were donated by a local pastor following the 1999 school shootings at Columbine High School in Colorado.

7. On December 8, 2010, the Freedom From Religion Foundation sent a letter on behalf of a local person to the Superintendent of Giles County Public Schools, Dr. Terry Arbogast, objecting to the display of the Ten Commandments at a Giles County elementary school. The letter stated the display was unconstitutional and requested that it be removed.

8. On December 17, 2010, Dr. Arbogast sent a letter to the Freedom From Religion Foundation stating that the Ten Commandments would be removed and replaced with a “historical document” before students returned from Christmas break.

9. Thereafter, the Ten Commandments were removed from all of the Giles County Public Schools and were replaced with a copy of the Declaration of Independence.

10. On January 11, 2011, more than 200 clergy and other residents attended the Giles County School Board meeting to express disapproval of the removal of the Ten Commandments. During public comments, citizens stressed the need to keep God in the schools. One speaker said, “We all know that America was founded on biblical beliefs Our forefathers came to America and fought others for their Christian beliefs (our Christian beliefs).” Another, Pastor Creger, said that “in the past, Christians have not stood up, they allowed Madalyn Murray O’Hair to take prayer out of schools. . . . It was never our forefathers’ idea for the Ten Commandments and for God to be taken out of the system.” Eric Gentry, the chair of the Giles County Board of Supervisors, said that he “grew up with prayer still in the schools We turned out all right I talked to all of my board members last night and today. Don’t remove [the Ten Commandments]. We are behind you.” Reverend Shahn Wilburn said that he had been responsible for giving the Ten Commandments displays to the school after the school shootings

at Columbine High School. He said, “I have pastored a church for over 30 years and I can tell you that God has never done us a disservice in this county and he’s blessed us with the beauty and all we have so we certainly want to honor him by posting his word in the eyes of our students and all that walk the halls.”

11. Following public comments, the Giles County School Board unanimously voted to re-hang the Ten Commandments in the schools.

12. Thereafter, the original display consisting of the Constitution and the Ten Commandments was again posted in each of the county’s public schools, including the Narrows High School. A photograph of the display is attached hereto as Exhibit A.

13. At Narrows High School, the display was located in the school library, just inside the doors, where it could be seen by anyone exiting the library. It hung alone with nothing else around it. Doe 1 was confronted by the display approximately once a week when Doe 1 visited the library to do research for various classes.

14. After it became public that some Giles County families were preparing to challenge the display in court, the Giles County School Board held a special meeting on February 22, 2011. At the meeting, the Superintendent reported that attorneys from Liberty Counsel (a Christian legal organization) had told him that it would not represent the school district if the Ten Commandments displays remained in place in their present form. The Board then unanimously voted to take down the displays.

15. The decision sparked outrage in the community, prompting various public declarations of support for the display. Many supporters made clear that they viewed the Ten Commandments displays as expressing approval for their religious beliefs and, therefore, did not want them removed from the schools. For example, some supporters of the displays posted signs

with the Ten Commandments, some with the motto “THE TEN COMMANDMENTS, OUR NATION'S MORAL FOUNDATION”; others attached magnets with the Ten Commandments on their automobiles; two tractor trailers were emblazoned with the Ten Commandments and the slogan “In GOD We Trust,” and a local billboard displayed the Ten Commandments with the slogan, “THE TEN COMMANDMENTS, AND THE RIGHT TO SEE THEM.”

16. On March 7, 2011, approximately 200 Giles High School students walked out of class in support of community efforts to restore the displays to the schools. A local radio host led the students in prayers. One student protester said, "God went through so much for us, so we are going through just this little bit today." Another student said, "This is Giles County and Christ is a big, big, big part of Giles County. For those who don't like it, go somewhere else."

17. At a Board meeting on March 15, 2011, Bobby Lilly, a local attorney and parent of a Giles County Public Schools student, proposed that the Ten Commandments be re-hung with a number of other historical documents

18. At a May 19, 2011 Giles County School Board meeting, Mr. Lilly formally presented his proposal to the school board. Approximately 100 citizens were present at the meeting to express support for the proposal, many of them wearing Ten Commandments t-shirts or carrying Ten Commandments posters, and many bused to the meeting by a local church.

19. On May 20, 2011, citizens held a “Ten Commandments rally” to demand the posting of the Ten Commandments in the Giles County Public Schools. One demonstrator said, “We are strong Christians and are not going to back down...we just want people to know we really need the Ten Commandments in our school system.”

20. The School Board met again on June 7, 2011. At that meeting, the Board voted 3 to 2 to restore the Ten Commandments displays to Giles County schools. Adopting Mr. Lilly’s

proposal, the Board authorized displays that would include the Ten Commandments along with a picture of Lady Justice, the Star-Spangled Banner, the Bill of Rights to the United States Constitution, the Virginia Statute for Religious Freedom, the Declaration of Independence, the Virginia Declaration of Rights, the Mayflower Compact, and the Magna Carta.

21. Board members Drema McMahon and J. Lewis Webb voted against the display. Webb explained, "This issue creates a great conflict between what is in my heart as opposed to my mind. I took an oath to uphold the Constitution of this great country. ... Personally, I feel this issue violates the Constitution."

22. The display containing the Ten Commandments is now posted in a main hallway near the trophy case in Narrows High School, where Doe 1 must encounter it every day. The display can also be seen by visitors who attend school events, such as parents and younger students. A photograph of the display is attached as Exhibit B.

23. Doe 1 objects to and is offended by Defendant's policy and practice of displaying the Ten Commandments because the display promotes a particular faith to which Doe 1 does not subscribe. Doe 1 understands the current display to be merely a continuation of the Board's longstanding policy, practice, and custom of promoting the Ten Commandments in the school. Doe 1 perceives the display as an endorsement by the school of the religious principles set forth in the Ten Commandments and the Bible and a rejection of other religions. The display sends a message to Doe 1 that he is an outsider and not a full participant in the school community. It also places coercive pressure on Doe 1 to suppress Doe 1's personal beliefs and adopt the Board's favored religious views.

24. Doe 2 also objects to the display of the Ten Commandments in Doe 1's school. Doe 2 feels that Doe 1's religious upbringing is Doe 2's responsibility, not the school's, and that

the display of the Ten Commandments usurps Doe 2's parental authority over the religious education of Doe 1.

Cause of Action

25. Plaintiffs reallege and reincorporate by reference all of the preceding paragraphs of this Complaint.

26. The defendant's longstanding custom, policy, and practice of displaying the Ten Commandments in the Giles County Public Schools lacks any secular purpose.

27. As the Supreme Court has recognized: "The pre-eminent purpose for posting the Ten Commandments on school[] 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. See Exodus 20: 12-17; Deuteronomy 5: 16-21. Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day. See Exodus 20: 1-11; Deuteronomy 5: 6-15." *Stone v. Graham*, 449 U.S. 39, 41-42 (1980).

28. Given the history of the School Board's Ten Commandments displays, any alleged secular purpose for the current displays are, and will be perceived as, a sham. The displays were erected with the primary aim of advancing religion.

29. The displays have the primary effect of advancing religion generally, and the tenets of a specific faith in particular.

30. A reasonable, objective observer, aware of the purpose, history, and context of the displays would perceive them as an endorsement of religion by the defendant.

31. The displays of the Ten Commandments in the Giles County Public Schools also impermissibly coerce students to suppress their personal religious beliefs and adopt the School Board's favored views.

32. Therefore, by displaying the Ten Commandments in the Giles County Public Schools, the defendant, under color of state law, has violated and continues to violate the plaintiffs' rights under the Establishment Clause of the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

Request for Relief

The plaintiffs respectfully request the following relief:

- A. A declaration that the defendant's custom, policy, and practice of displaying the Ten Commandments in Giles County Public Schools is unconstitutional;
- B. A permanent injunction prohibiting the defendant from enforcing or carrying out its custom, policy, and practice of displaying the Ten Commandments in the Giles County Public Schools;
- C. Nominal damages to compensate the plaintiffs for the injury to their constitutional rights;
- D. Reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- E. Such other relief as the Court deems just and proper.

Respectfully submitted,

