

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

FILED AUG 25 '03 PM 12:31 USDORLS

KELLY McGINLEY and RICHARD C.
DORLEY,
Plaintiffs,

vs.

GORMAN HOUSTON, Senior
Associate Justice of the Alabama
Supreme Court, HAROLD SEE,
Associate Justice of the Alabama
Supreme Court, CHAMP LYONS,
Associate Justice of the Alabama
Supreme Court, JEAN BROWN,
Associate Justice of the Alabama
Supreme Court, BERNARD
HARWOOD, Associate Justice of the
Alabama Supreme Court, THOMAS WOODALL,
Associate Justice of the Alabama Supreme
Court, LYN STUART, Associate Justice of the
Alabama Supreme Court, and DOUGLASS
JOHNSTONE, Associate Justice of the
Alabama Supreme Court,
Defendants.

Case No.: 03-0563-WS-M

COMPLAINT

COMPLAINT

NATURE OF THE CASE

1. This is a civil action pursuant to 42 U.S.C. Section 1983 to vindicate the plaintiffs rights under the First and Fourteenth Amendments to the United States Constitution. The plaintiffs, a Mobile Alabama resident and Christian, and the other plaintiff, a pastor and resident of Tallassee, Alabama, seek injunctive relief to require the defendants, the Associate Justices of the Alabama Supreme Court, to allow a large

religious Monument to remain in the rotunda of the Alabama State Judicial Building. The top of the monument contains the Ten Commandments, a sacred text of Judeo-Christian faith; the four sides contain a variety of quotes, generally proclaiming the primacy of the law of God over the law of the citizenry. The monument is intended to proclaim the Ten Commandments as the cornerstone of the judicial foundation of this nation and country. It is interesting to note, however, that unless one is informed of the religious connotations of the monument itself, the language on the monument is duplicative of language that has been borrowed from over the years by state legislatures and the federal government when forming, drafting, and enumerating state and federal penal code sections. It is, however, more interesting to note that the Supreme Court of the United States has an almost identical monument to the Ten Commandments in the United States Supreme Court Building in Washington, DC, only that particular monument is chiseled into a marble wall within the court building. To observers such as the plaintiffs, the monument's celebration of the Ten Commandments—both as a religious text and as the root of and the primary authority for Alabama State Law, signifies an endorsement of the laws that the State of Alabama and this nation has been founded upon, and cherished throughout the years by our founding fathers and their ancestry.

In a similar case out of the Middle District of Alabama, Case number CV-01-B-1268-N, captioned *Stephen R. Glassroth v. Roy S. Moore*, 229 F.Supp. 2d 1290 (M.D. Ala. 2002), the district court has ordered the removal of the Ten Commandments Monument from the Alabama State Judicial Building on the grounds that the monument violates the Establishment Clause of the First Amendment to the United States

Constitution by placing said monument in the rotunda of the Alabama Supreme Court Building. The purpose of removing the Ten Commandments Monument is no secret-the removal of God, or mention thereof, from the Alabama Supreme Court. But in doing so as ordered, the defendants, either knowingly or not, are, in fact, establishing a religion in violation of the Establishment Clause of the First Amendment to the United States Constitution- the religion of nontheistic beliefs. By so doing, the belief of one individual is more sacred than that of another and therefore, the quandary, discrimination and denial of the plaintiffs' rights under the First and Fourteenth Amendments.

JURISDICTION AND VENUE

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983. Jurisdiction is invoked pursuant to 28 U.S.C. Sections 1331 and 1343.

3. Because one of the Plaintiffs resides in Mobile, Alabama, and because the subject of this action is located in the Alabama State Judicial Building, the highest Court in the State of Alabama, and affects all citizens in the State of Alabama, venue is proper in the United States District Court for the Southern District of Alabama pursuant to 28 U.S.C. Section 1391. Venue is also proper in this district in that the other plaintiff, a pastor from Tallassee, Alabama, who regularly visits the Alabama State Judicial Building, and at times for the express purpose of visiting the Ten Commandments Monument, joins in this action with the Mobile, Alabama plaintiff

PARTIES

4. Plaintiff Kelly McGinley, is a resident of Mobile, Alabama, and a Christian and holds firm the belief that Jesus Christ is Lord and Savior of all. Ms.

McGinley's believes that the Lord God is the creator of all living things and that the foundation of the United States of America was founded upon Jesus Christ. The plaintiff points to the proclamations of the founding fathers as to their belief in One Creator, and to the belief that all men were created equal. The removal of the Ten Commandments Monument from the Alabama State Judicial Building is offensive to the plaintiff in that the removal is but one more attempt to remove any mention of God in any setting or place in the State of Alabama and in this nation. By so doing, the religion of nontheistic beliefs is being favored over any other religion.

5. Plaintiff Pastor Richard C. Dorley, is a resident of Tallassee, Alabama, and a Christian and holds firm the belief that Jesus Christ is Lord and Savior of all. Pastor Dorley believes that the Lord God is the creator of all living things and that the foundation of the United States of America was founded upon Jesus Christ. The plaintiff points to the proclamations of the founding fathers as to their belief in One Creator, and to the belief that all men were created equal. The removal of the Ten Commandments Monument from the Alabama State Judicial Building is offensive to the plaintiff in that the removal is but one more attempt to remove any mention of God in any setting or place in the State of Alabama and in this nation. By so doing, the religion of nontheistic beliefs is being favored over any other religion.

6. Defendants are sued in their official capacity as the Associate Justices of the Alabama Supreme Court. The Associate Justices, and more specifically, Senior Associate Justice Gorman Houston, now the acting justice while the Chief Justice suffers through his suspension, said suspension of the Chief Justice of the Alabama Supreme Court having taken effect on August 22, 2003, has control and authority over the

Alabama State Judicial Building. The Associate Justices have already noted their clear intention to remove the at-issue monument as soon as practical.

STATEMENT OF FACTS

7. The Alabama State Judicial Building is located in Montgomery, Alabama. It houses the Alabama Supreme Court, the Court of Criminal Appeals, The Court of Civil Appeals, the State Law Library, and the Alabama Administrative Office of the Courts.

8. The at-issue monument in this action is located in a prominent place at the edge of the rotunda on the first floor (the main entrance) of the Judicial Building. It is a four-sided block composed of solid granite, resting upon a base. The top surface of the block is craved into two tablets, which are angled up and forward to facilitate viewing from the front of the monument. The top edges of the tablets are rounded arcs, a form typically used in depictions of the stone tablets written by the finger of God and delivered by the Creator to Moses while the Israelites traveled through the desert for forty years. The monument stands approximately four feet in height and weighs about 5,281 pounds.

9. The following version of the Ten Commandments is etched into the tablets:

I AM THE LORD THY GOD
THOU SHALT HAVE NO OTHER GODS BEFORE ME
THOU SHALT NOT MAKE UNTO THEE ANY GRAVEN IMAGES
THOU SHALT NOT TAKE THE NAME OF THE LORD IN VAIN
REMEMBER THE SABBATH DAY, TO KEEP IT HOLY
HONOR THY FATHER AND THY MOTHER
THOU SHALT NOT KILL
THOU SHALT NOT COMMIT ADULTERY
THOU SHALT NOT STEAL
THOU SHALT NOT BEAR FALSE WITNESS
THOU SHALT NOT COVET

10. The four sides of the monument are inscribed with selected quotations from a variety of sources. The quotations are intended to support the belief that the law of God is the foundation of the law and institutions of the citizenry, and that God is necessary to the administration of justice. Thirteen of the fifteen quotations refer to God, one refers to the primacy of “divine” law, and the last refers to the fundamental nature of “religious obligation.” The full text of the monument is contained in the attachment to this complaint, and is hereby incorporated by reference.

11. The monument and the immediate area around the Ten Commandments Monument is roped off from the public.

12. On or about August of 2001, the Chief Justice of the Alabama Supreme Court installed the monument in the rotunda of the Judicial Building.

13. During that time and approximate thereto, the Chief Justice of the Alabama Supreme Court unveiled the monument.

14. The Chief Justice of the Alabama Supreme Court has stated that the purpose of the monument is to “remind the appellate courts and judges of the circuit and district courts of this state and members of the bar who appear before them as well as the **people of the State of Alabama who visit the Alabama Judicial Building of the truth stated in the preamble of the Alabama Constitution that in order to establish justice we must invoke the favor and guidance of Almighty God.**

15. As citizens of the State of Alabama and as visitors to the Alabama State Judicial Building on numerous occasions, the plaintiffs are aware of the Ten Commandments Monument.

16. The plaintiffs have read the full text of the monument.

17. The plaintiffs reasonable view the monument as a reminder that the laws of the State of Alabama and this great nation were promulgated in reverence to God. The plaintiffs do not view the monument as an endorsement of religion by the judiciary, but rather sees it as a cornerstone of justice and fairness by the courts. Most importantly, plaintiffs believe that the monument stands for the proposition that all men are created equal and by compliance with the stated laws of God will live and prosper. To remove the Ten Commandments Monument from the Alabama State Judicial Building is highly offensive to the plaintiffs in that God, and mention thereof, is being eradicated from the State of Alabama and this country in deference to the religion of nontheistic beliefs.

18. The plaintiffs believe that any attempt to remove the Ten Commandments Monument is an affront to their religious freedom and an attack on their Christian beliefs.

19. The purpose of the monument is not to advance one religion over another, but simply stands for the proposition that justice and the rule of law shall prevail. It is the rule of law that is at the cornerstone of jurisprudence in the State of Alabama. The removal of the Ten Commandments Monument as advocated by the defendants sends a clear message that the religion of nontheistic beliefs is preferred and advocated by the Alabama Supreme Court and thereby creates an excessive entanglement of government with the religion of nontheistic beliefs.

20. The defendants have clearly stated their intention to remove the Ten Commandments Monument from the Alabama State Judicial Building as soon as is practical. This intention of the defendants implies and clearly suggests that adherence to the religion of nontheistic beliefs is a prerequisite or an advantage to those seeking justice in Alabama.

CAUSES OF ACTION

I.

21. The removal of the Ten Commandments Monument constitutes an impermissible endorsement of the religion of nontheistic beliefs by the state and thereby violates the plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

22. The violation of the plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. Section 1983.

23. The removal of the Ten Commandments Monument creates an excessive entanglement of government with the religion of nontheistic beliefs and thereby violates the plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

24. The display of the Ten Commandments Monument in the Alabama State Judicial Building does not create an excessive entanglement of government with religion. The Supreme Court of the United States openly displays in full public view the Ten Commandments chiseled into a marble wall within the United States Supreme Court Building.

25. The violation of the plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. Section 1983.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray this Honorable Court grant the following relief:

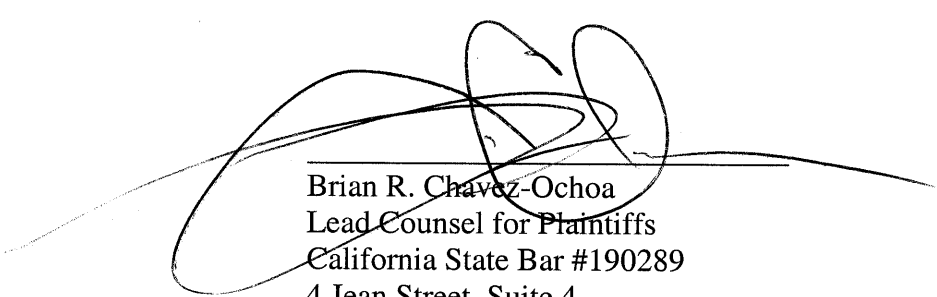
1. Enter a permanent injunction requiring the defendants, their agents, employees, and all persons acting in concert with defendants to refrain from and ease any

efforts to remove the Ten Commandments Monument from the Alabama State Judicial Building;

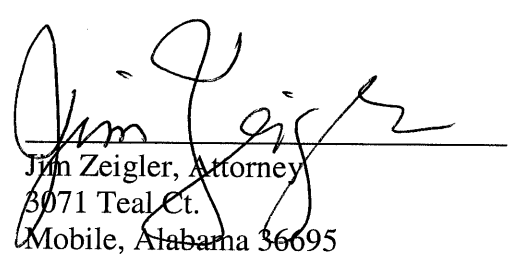
2. Award the plaintiff reasonable costs and attorneys' fees; and
3. Grant the plaintiff such other relief as the Court deems necessary and proper.

Dated: August 23, 2003.

Respectfully submitted,



Brian R. Chavez-Ochoa
Lead Counsel for Plaintiffs
California State Bar #190289
4 Jean Street, Suite 4
Valley Springs, California 95252
(209) 772-3013



Jim Zeigler, Attorney
3071 Teal Ct.
Mobile, Alabama 36695
(251) 660-2060
#ZEI004

ATTACHMENT

For the convenience of the Court, this attachment includes the full text of the Ten Commandments Monument in the main rotunda of the Alabama State Judicial Building.

The top surface of the monument reads:

I AM THE LORD THY GOD
THOU SHALT HAVE NO OTHER GODS BEFORE ME
THOU SHALT NOT MAKE UNTO THEE ANY GRAVEN IMAGES
THOU SHALT NOT TAKE THE NAME OF THE LORD IN VAIN
REMEMBER THE SABBATH DAY, TO KEEP IT HOLY
HONOR THY FATHER AND THY MOTHER
THOU SHALT NOT KILL
THOU SHALT NOT COMMIT ADULTERY
THOU SHALT NOT STEAL
THOU SHALT NOT BEAR FALSE WITNESS
THOU SHALT NOT COVET

On each of the monument's four sides, one quotation is centered, highlighted, and inscribed in particular large lettering. The featured quotation on each side of the monument is indicated below with bold text. On the front side of the monument, the quotations are as follows:

**"THE LAW OF NATURE ARE THE LAWS OF GOD; WHOSE
AUTHORITY CAN BE SUPERCEDED BY NO POWER ON EARTH."**
-George Mason

"LAWS OF NATURE AND OF NATURE'S GOD."

-Declaration of Independence

**"THE TRANSCENDENT LAWS OF NATURE AND NATURE'S GOD,
WHICH DECLARES THAT THE SAFETY AND HAPPINESS OF
SOCIETY ARE THE OBJECTS AT WHICH ALL POLITICAL
INSTITUTIONS AIM, AND TO WHICH ALL SUCH INSTITUTIONS
MUST BE SACRIFICED."**

-James Madison

"THIS LAW OF NATURE, BEING CO-EVAL [SIC] WITH MANKIND

AND DICTATED BY GOD HIMSELF, IS OF COURSE SUPERIOR IN OBLIGATION TO ANY OTHER. IT IS BINDING OVER ALL THE GLOBE, IN ALL COUNTRIES, AND AT ALL TIMES: NO HUMAN LAWS ARE OF ANY VALIDITY, IF CONTRARY TO THIS;... UPON THESE TWO FOUNDATIONS, THE LAW OF NATURE AND THE LAW OF REVELATION, DEPEND ALL HUMAN LAWS; THAT IS TO SAY, NO HUMAN LAWS SHOULD BE SUFFERED TO CONTRADICT THESE.”

-William Blackstone

The quotations on the left side of the monument are as follows:

“THE INCLUSION OF GOD IN OUR PLEDGE THEREFORE WOULD FURTHER ACKNOWLEDGE THE DEPENDENCE OF OUR PEOPLE AND OUR GOVERNMENT UPON THE MORAL DIRECTIONS OF THE CREATOR.”

-Legislative History [sic]

“ONE NATION UNDER GOD, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL.”

-Pledge of Allegiance 1954

“HUMAN LAW MUST REST ITS AUTHORITY ULTIMATELY UPON THE AUTHORITY OF THAT LAW WHICH IS DIVINE.”

-James Wilson

“AND CAN THE LIBERTIES OF A NATION BE THOUGHT SECURE WHEN WE HAVE REMOVED THEIR ONLY FIRM BASIS, A CONVICTION IN THE MINDS OF THE PEOPLE THAT THESE LIBERTIES ARE OF THE GIFT OF GOD? THAT THEY ARE NOT TO BE VIOLATED BUT WITH HIS WRATH?”

-Thomas Jefferson

The quotations on the back of the monument are as follows:

“LET IT SIMPLY BE ASKED, WHERE IS THE SECURITY FOR PROPERTY, FOR REPUTATION FOR LIFE, IF THE SENSE OF RELIGIOUS OBLIGATION DESERT THE OATHS WHICH ARE THE INSTRUMENTS OF INVESTIGATION IN COURTS OF JUSTICE?”

-George Washington

“SO HELP ME GOD.”

-Judiciary Act of 1789

“THE GREATER PART OF EVIDENCE WILL ALWAYS CONSIST OF THE TESTIMONY OF WITNESSES-THIS TESTIMONY IS GIVEN UNDER SOLEMN OBLIGATIONS WHICH AN APPEAL TO THE GOD OF TRUTH IMPOSE THOSE [SIC?]; AND IF OATHS SHOULD CEASE TO BE HELD SACRED, OUR DEAREST AND MOST VALUABLE RIGHTS WOULD BECOME INSECURE.”

-John Jay

The quotations on the right side of the monument are as follows:

“WE, THE PEOPLE OF THE STATE OF ALABAMA, IN ORDER TO ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, INVOKING THE FAVOR AND GUIDANCE OF ALMIGHTY GOD, DO ORDAIN AND ESTABLISH THE FOLLOWING CONSTITUTION AND FORM OF GOVERNMENT FOR THE STATE OF ALABAMA.”

-Constitution of Alabama

“IN GOD WE TRUST.”

-National Motto 1956

“O THUS BE IT EVER WHEN FREEMEN SHALL STAND BETWEEN THEIR LOV'D HOME AND THE WAR'S DESOLATION! BLEST WITH VICT'Y AND PEACE MAY THE HEAV'N RESCUED LAND PRAISE THE POWER THAT HATH MADE AND PRESERV'D US A NATION!
THEN CONQUER WE MUST, WHEN OUR CAUSE IS JUST, AND THIS BE OUR MOTTO-‘IN GOD WE TRUST,’
AND THE STAR-SPANGLED BANNER IN TRIUMPH SHALL WAIVE O'ER THE LAND OF THE FREE AND THE HOME OF THE BRAVE.”

-National Anthem

Copyright information is inscribed below the quotations on the back of the monument, as follows:

2001 R.S. MOORE
D.S. MELCHIOR
R.C. HAHNEMANN