



Written by [Dave Bohon](#) on February 17, 2013

## Federal Courts Rule Against ACLU in Ten Commandments Cases

A federal judge has given a victory to free speech and religious expression, dismissing a six-year-old lawsuit filed by the ACLU against a [Ten Commandments display](#) in Dixie County, Florida. The 12,000-pound monument was erected at the Dixie County courthouse in 2006 by local resident Joe Anderson, who was given permission by the county and who maintained the display at his own expense. In addition to the Decalogue, the display included the simple admonition, “Love God and keep His Commandments.”



In 2007 a visitor to the county was offended by the display and contacted the ACLU in an attempt to force the monument’s removal. The plaintiff in the case, referred to as “John Doe,” claimed that the monument was a major factor in his decision against purchasing property in the county. While a U.S. district court [ordered the removal](#) of the Ten Commandments display in 2011, ruling that it violated the First Amendment’s establishment clause, in August 2012 the U.S. Circuit Court of Appeals for the 11th District ruled that the display could temporarily remain while the case was returned to the lower court for reconsideration. In granting a temporary stay, the appeals court explained that it was concerned over the plaintiff’s confusing explanation over why he had decided against purchasing property in Dixie County.

“Mr. Doe” originally testified in the case that there were several things about the county that he found objectionable, including a cartoon taped to a county employee’s desk, a website in the county for an entity called “Patriot Properties,” as well as the Ten Commandments monument. But after the county asked the court to dismiss the case on grounds that the plaintiff lacked standing to sue, Doe insisted that it was only the Ten Commandments monument that had caused him to decide against purchasing property in the county.

In its 2012 ruling the appeals court said it was troubled by the differing versions of the plaintiff’s objections. “Doe’s affidavit — which is suspect, given that it seems designed to strengthen Doe’s standing claim — is inconsistent with his deposition,” the court wrote, concluding that it was improper for the lower court to decide against the county based on Doe’s changing testimony.

In sending the case back to the lower court for resolution, the appeals court ruled that because of the the plaintiff’s conflicting testimony, “it is uncertain whether foregoing his real estate search constitutes an ‘injury’ of the type that satisfies standing requirements and whether the monument was the real cause of that alleged ‘injury.’ The existence of alternative or additional reasons for Doe’s abandonment of his search for property in the County could render Doe’s injury speculative — more ‘hypothetical’ than ‘actual.’”

Added the appeals court: “Because this conflicting evidence must be resolved in order to determine whether Doe has standing, we vacate the district court’s grant of summary judgment on the merits and remand to the district court to hold an evidentiary hearing and determine what testimony to credit.”



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Matt Staver of [Liberty Counsel](#), the conservative legal advocacy group that represented Dixie County in the case, argued that Dixie County “should be applauded, not sued, for fostering open and robust speech in a public forum.” But “rather than take advantage of the forum, the ACLU prefers to censor speech with which it disagrees.” Staver noted that the Ten Commandments has long been recognized universally as a symbol of the law upon which America was founded, and can be found at courthouses and public squares across America, as well as in the nation’s very judicial center. “There are more than 50 depictions of the Ten Commandments at the U.S. Supreme Court, and there have been thousands of displays throughout the country for many years,” he said.

In explaining his motive in paying to erect and maintain the monument, Joe Anderson said that “the Ten Commandments are a very important part of this country’s founding history and are important to the future of this country.”

Back at the district court where the case was returned, Liberty Counsel sought to depose the Doe plaintiff to make an accounting of his inconsistent testimony, a move the ACLU vigorously opposed. When the court ruled in favor of the county, ordering Doe to be deposed for testimony, the ACLU threw in the towel, admitting that the plaintiff did not really plan to purchase property in Dixie County, and so did not have standing to sue, prompting the court to dismiss the case and order the ACLU to pay court costs.

The Ten Commandments monument, which has garnered overwhelming support from the community over the past six years of the case, will also maintain its place of honor in front of the Dixie County court house.

Liberty Counsel senior litigation attorney Harry Mihet observed that the ACLU “got caught with its hands in the constitutional cookie jar. Its prolonged campaign against the good citizens of Dixie County has come to a screeching halt. In getting kicked out of court, the ACLU has learned that it cannot impose its San Francisco values upon a small town in Florida.”

Liberty Counsel’s Matt Staver called the dismissal “a great victory” for religious freedom. “What it says about the bully tactics by the ACLU is that if you resist them, you can win.... The usual way they win is by intimidation or default, when government officials cave in under the threat of a lawsuit.”

In related news, on January 23 a federal court dismissed a similar ACLU lawsuit targeting a Ten Commandments display at the courthouse in Mercer County, Kentucky. In his judgment in favor of the monument, U.S. District Court Judge Karl S. Forester rejected the argument that the display represented a religiously motivated viewpoint by the county, ruling that the monument “clearly has a legitimate secular purpose of, including but not limited to, acknowledging the historical influence of the Commandments on the development of this country’s laws.” He said that “the record is devoid of any evidence indicating a religious purpose by the government.”

Francis Manion of the [American Center for Law and Justice](#), which represented the county in the case, noted that the court was clear that the Ten Commandments display “does not violate the Constitution and merely acknowledges the role that the Ten Commandments has played in the formation of our nation’s heritage and history. This decision is an important victory underscoring the fact that such a display is an acknowledgement of history, not an endorsement of religion.”

*Photo of Ten Commandments display in front of Dixie County Courthouse: AP Images*



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