

## The Ten Commandments Case

**Case Name:** [Felix v. City of Bloomfield](#)

**Cert Petition (request for review) filed at U.S. Supreme Court:** 7/6/17

**U.S. Supreme Court Docket No.:** TBD

**Hashtag:** #TenCommandments 



**Background:** In 2007, the city of Bloomfield, New Mexico, passed a written policy creating a limited public forum on its City Hall lawn giving private citizens the opportunity to pay for and erect monuments that would “acknowledge and commemorate the history and heritage of its law and government.” Over time, a variety of privately funded monuments were erected, including monuments honoring the Declaration of Independence, the Gettysburg Address, the Bill of Rights, and the Ten Commandments. Each monument includes the name of the donors and highlights the document’s significance in American history. In 2012, two Bloomfield residents, citing their polytheistic, Wiccan beliefs, claimed to be offended by the Ten Commandments monument and sued the city, arguing the display violated the Establishment Clause of the First Amendment. For example, one of the litigants sees the Ten Commandments monument while driving by, but she cannot read the monument’s text from her car, and she is not offended by the other references to monotheism on the City Hall lawn, such as “under God” in the Gettysburg Address or the phrases “Nature’s God,” “endowed by their Creator,” and “the protection of divine Providence” in the Declaration of Independence. While the other litigant also sees the monument when he drives by, he has never read any text on the monument. Despite these objections, the federal district court allowed the two litigants to challenge the Ten Commandments monument and ruled against the city. The U.S. Court of Appeals for the 10th Circuit affirmed the lower court’s decision. On July 6, 2017, Alliance Defending Freedom attorneys and co-counsel with Wilmar Cutler Pickering Hale & Dorr LLP asked the U.S. Supreme Court to take up the case.

**Circuit Split:** In the United States federal court system, a circuit split occurs when two or more different circuit (appellate) courts provide conflicting rulings on the same legal issue. The existence of a circuit split is one of the factors the U.S. Supreme Court considers when deciding whether to take up a case. Here, the circuit conflict on the proper standard to evaluate Establishment Clause challenges to passive monuments like the one at issue is widely acknowledged. This circuit split became more pronounced after 2005 when the U.S. Supreme Court, in *McCreary County v. American Civil Liberties Union*, found a Ten Commandments display that was part of a historical document exhibit in a courthouse to be unconstitutional. That same day, in *Van Orden v. Perry*, the U.S. Supreme Court found a Ten Commandments monument on the grounds of the Texas State Capitol to be constitutional. Both cases were Establishment Clause challenges. As a result of these two conflicting decisions, circuit courts have widely varied in their analysis of this issue, leading to inconsistent results.

### **What Justice (then Judge) Neil Gorsuch said about this issue when he was on the 10th Circuit:**

“[I]f an inclusive display where the Decalogue makes an appearance was acceptable to the Supreme Court in *Van Orden*, similar displays should be acceptable” to the lower courts. *Green v. Haskell Cty. Bd. of Comm’rs*, 574 F.3d 1235, 1249 (10th Cir. 2009) (Gorsuch, J., dissenting from the denial of rehearing en banc).

### **What’s at Stake**

- Americans shouldn’t be forced to censor or whitewash religion’s role in history simply to appease the emotional response of offended individuals with a political agenda.
- A Ten Commandments monument nestled among many other monuments honoring significant documents in American history should not be attacked simply because two people say they are offended by it.
- The U.S. Supreme Court has ruled that a passive monument like a Ten Commandments display, accompanied by other displays acknowledging our nation’s religious heritage, cannot be interpreted as an establishment of religion.

**The Bottom Line:** The lower courts need direction from the U.S. Supreme Court. As Justice Clarence Thomas recognized six years ago, it is “difficult to imagine an area of the law more in need of clarity” than the constitutionality of displays of religious imagery on government property. *Utah Highway Patrol Ass’n v. Am. Atheists, Inc.*, 132 S. Ct. 12, 22 (2011) (Thomas, J., dissenting from denial of certiorari).