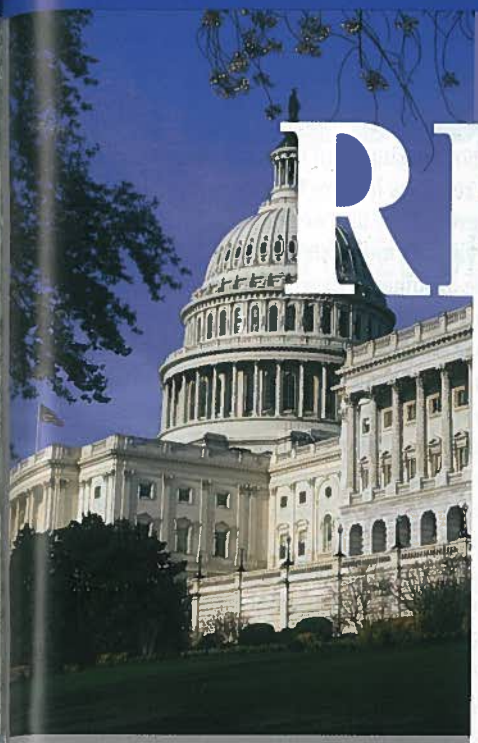

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INSIDE:

Religion harmed, not helped, by Ten Commandments display

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For all the demonstrating, legal maneuvering and political grandstanding it provoked, the decision of Chief Justice Roy Moore to install a huge Ten Commandments monument in the Alabama State Judicial Building resulted in a rather ordinary legal opinion. While drawing lines in church-state cases is often difficult, this case was not even close. Two federal courts (in one of the more conservative federal circuits) found the monument clearly violated the Establishment Clause. Yet, many religious people supported the display.

Many in the crowds outside the courthouse failed to appreciate the robust protections for religion provided by the First Amendment. While the religion clauses provide a separation between the institutions of church and state, they do not and should not eliminate the many religious influences on our history, culture and political debates. It is understandable that some religious individuals want concrete (no pun intended) reminders that religion is important in our society. What is harder to understand is why so many people of faith believe that Chief Justice Moore's monument is good for religion.

RNS photo

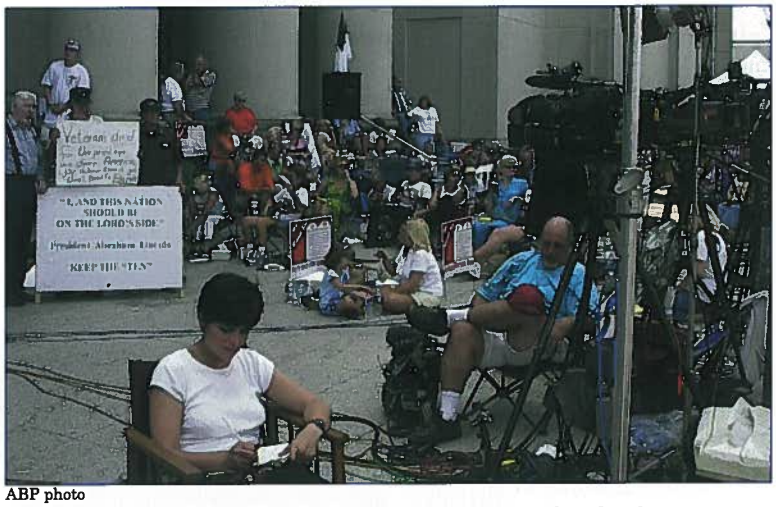
The 5,280-pound granite monument of the Ten Commandments was prominently displayed in the Alabama Judicial Building.

The facts of the case were largely undisputed. In the summer of 2001, Moore, who was elected after campaigning as "the Ten Commandments Judge," installed a two-and-one-half ton monument of the Ten Commandments in the rotunda of the State Judicial Building. The monument stands alone. It is not part of any artistic tribute to lawgivers, like the representation of Moses in the U.S. Supreme Court frieze. The top of the monument shows two tablets sloped to give the appearance of an open Bible resting on a lectern. The tablets contain excerpts from Exodus 20:2-17. The central placement ensured that all who entered the building would see it. Moore installed the monument as the administrative head of the Alabama judicial system. He did so after the close of business, without the knowledge of the court's other eight justices. The monument, he asserted, served to remind all who entered the building of his belief in the sovereignty of the Judeo-Christian God over both the state and the church.

A federal district court ordered the monument's removal, and the 11th U.S. Circuit Court of Appeals affirmed. Justice Moore continued to crusade for his monument until forced by the unanimous decision of his colleagues on the bench to comply with the federal order.

Both courts simply applied well-settled legal principles – including those requiring government actions to have a secular purpose and to avoid advancement of religion. The evidence overwhelmingly demonstrated that the monument had no secular purpose. While the inquiry could have ended there, the courts also concluded that the monument had the primary effect of advancing religion.

The appeals court also respectfully addressed, but ultimately rejected, two rather creative arguments that illustrate the radical nature of Moore's claims. First, his attorneys boldly contended that because the display did not command or prohibit conduct, its installation in the courthouse was not covered by the First Amendment's ban on an establishment of religion. In other words, Moore claimed the right to post an even more



ABP photo

explicit and exclusive religious message than he chose.

Second, the court rejected Moore's argument that the display was similar to ceremonial legislative prayers, upheld as constitutional under a 1983 Supreme Court decision. The problem, of course, is that there is no historical tradition of governmental displays of the Ten Commandments analogous to that of legislative prayers. The court stated: "That there were some government acknowledgments of God at the time of this country's founding and indeed are some today, however, does not justify under the Establishment Clause a 5,280-pound granite monument placed in the central place of honor in a state's judicial building."

Like the district court, the appeals court specifically distinguished this case from those where representations of the Ten Commandments have been upheld. The court noted it had earlier rejected a challenge to a 130-year-old County Superior Court seal that included a depiction of a Ten Commandments tablet that was one inch in diameter and appeared alongside a sword, as a symbol of the legal system. In that case, there was no evidence showing a religious purpose or effect. The court's well-articulated distinction makes a mockery of the claim that the federal courts are out to eliminate all evidence of religion in government.

While the legal outcome was not remarkable, the attention it received certainly was. What was often missing from the countless media reports, however, were religious voices who disagree with Moore.

But they were not missing from the case. More than 40 Alabama clergy and religious leaders filed an *amicus* brief demonstrating that even if the law were no obstacle, there are many reasons that religious individuals should oppose the monument. Some of these arguments fit well within the legal analysis and even find their way into judicial opinions. For instance, it is one of the clearest commands of the religion clauses that the government cannot prefer one religious perspective over another. To do so would trample on the rights of religious minorities. While many in Alabama may share Moore's religious views, they should not seek to impose their beliefs on others through government action. Moore has made his religious views clear, and his actions send a message of exclusion to those who do not share the Judeo-Christian tradition.

Another purpose of our constitutional separation between religion and government is to avoid social conflict and strife based upon religious differences. Allowing officials to use their government authority to endorse certain religious beliefs would create divisiveness and competition for state approval in the religious community.

More troublesome to people of faith, however, is the simple fact that religious displays sponsored by government degrade religion. This happens in a variety of ways. First, in a country where our religious differences are so numerous and so obvious, it makes no sense to let a government official be the arbiter of which version of the Ten Commandments to commemorate. While differences between alternative versions of the commandments may seem rather trivial, they often reflect deep theological differences. Seventh Day Adventists, for example, may rightly object to Moore's selective and incomplete rendering of the Sabbath commandment. Short of advocating for a theocracy, supporters of the monument offer no reasons why the state, rather than private individuals or faith communities, should be given authority to shape religious practices and messages.

Second, the role of religion is likely to be compromised by the quest for political power. Moore provides a clear example of someone using faith to promote political ambitions. When religion aligns itself too closely with a particular political leader or partisan view, it risks being tainted. Some of those who supported Moore because they liked the way he promoted religion found themselves on the defensive when he asserted, astonishingly, that his views put him above the law.

Third, even if we could find a leader more pure in his religious motives, more tolerant in his beliefs and more accepting of our religious diversity, it remains offensive to act as if God needs the government's endorsement. Do the Ten Commandments need Justice Roy Moore or the stamp of approval of the Alabama Supreme Court? Some of Moore's supporters suggested that removing the monument meant taking God out of the court. Such support for a graven image illustrates the danger of making idols of religious symbols at the expense of real religion. For valid religious reasons — not just because the First Amendment says so — religious leaders and laypersons should actively oppose demagoguery that demeans religion by using the power of government to promote it.

Our religious liberty depends on it.