



May 15, 2014

VIA CM, RRR # 7009 2820 0002 0784 8658

The Honorable General Joe Weber
Texas Department of Transportation
125 E. 11th Street
Dewitt C. Greer State Highway Building
Austin, Texas 78701-2483

SUBJECT: Sign #7615, Sabine County, "Ten Commandments" Sign

Dear General Weber:

Mrs. Jeanette Golden retained Liberty Institute to represent her in this matter. Accordingly, please copy me on all pertinent correspondence. My contact information is provided below.

This letter is official notice that the Texas Department of Transportation's (TXDOT) total ban on Mrs. Golden's Ten Commandments sign violates the Texas Religious Freedom Restoration Act (TRFRA), Tex. Civ. Prac & Rem. Code § 110.001 *et seq.*; the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*; and the First Amendment to the United States Constitution, as well as Article I, Section 6 of the Texas Constitution. Moreover, TXDOT's erroneous application of Texas Transportation Code (Tex. Transp. Code) §391 to Mrs. Golden's sign violates TRFRA because it substantially burdens Mrs. Golden's free exercise of religion. TXDOT's application of Tex. Transp. Code §391 also violates RLUIPA, which prohibits governmental entities from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person." 42 U.S.C. § 2000cc(a)(1). Tex. Transp. Code §391 fails to demonstrate a compelling governmental interest that is advanced by the least restrictive means, which is required under both TRFRA and RLUIPA.

Mrs. Golden is called by God to a ministry of placing the Ten Commandments on her private property in full view of the public for purposes of advancing her religious calling and this action is advancing her sincerely held religious belief in this specific God called mission to share the Ten Commandments in this manner with as many people seeing the display as possible.

In August of 2013, motivated by her religious beliefs and calling, Mrs. Golden acquired a sign of approximately 6 feet x 12 feet in size depicting the Ten Commandments from the organization God's Ten (www.Gods10.com). Mrs. Golden placed the sign on her private property, located on State Highway 21, near Hemphill, Texas, in Sabine County.

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On February 20, 2014, TXDOT issued a Removal Order for Mrs. Golden's sign. TXDOT stated that Mrs. Golden's sign is an "outdoor advertising sign," and that her sign did not conform to Texas law for such signs. TXDOT gave Mrs. Golden forty-five days to remove her sign at no cost to the State.

In a subsequent conversation, TXDOT informed Mrs. Golden that because her sign "advertised a business,"—which it clearly does not—the sign would require either a permit or removal. Mrs. Golden agreed to remove the reference to www.Gods10.com from the sign such that her sign would no longer "advertise" even though Gods10 is a religious ministry. On March 26, 2014, Mrs. Golden promptly notified TXDOT of this action, and considered the matter resolved.

On April 7, 2014, however, TXDOT contacted Mrs. Golden and informed her that it still considered her sign "outdoor advertising" and needed a permit. But, before Mrs. Golden could obtain a permit, TXDOT explained that because her property is located outside of the Hemphill city limits, in order to be eligible for a permit, the sign had to meet certain criteria such as: (1) being located within 800 feet of two Certified Industrial Activities, as defined in Texas Administrative Code; and (2) verification that the sign meets size and spacing restrictions found in the Texas Administrative Code.

TXDOT also required Mrs. Golden to obtain an Outdoor Advertising License, at a fee of \$125.00 and an annual renewal fee of \$75.00. TXDOT also required Mrs. Golden to obtain a minimum \$2500.00 surety bond. According to TXDOT, once Mrs. Golden obtained an Outdoor Advertising License and surety bond, she could apply for a permit. But in order to obtain a sign permit, TXDOT stated that Mrs. Golden must first complete a permit application, which must be notarized and supplied with information from the City Planner (although TXDOT stated the sign is located outside city limits, the particular City Planner was not specified). The permit application fee is \$100.00, with an annual renewal fee of \$75.00. Under Tex. Transp. Code §391.061, any sign-owner that erects a sign without an Outdoor Advertising License may be fined between \$500 and \$1000 per offense, per day. Additionally, under Tex. Transp. Code §391.067, any licensed sign-owner that erects a sign without a permit may be fined between \$500 and \$1000 per offense, per day.

On April 17, 2014, while Mrs. Golden was considering her options, the TXDOT Associate General Counsel opined that the sign is situated near a road that is "statutorily prohibited from having signage at all and thus the sign cannot be permitted." Later the same day, the TXDOT Associate General Counsel stated he "kn[ew] of nothing that would change our position that it is on a road that cannot have signage." In other words, the TXDOT Associate General Counsel instituted a total ban on signs along the section of road where Mrs. Golden's sign is located.

This total ban on signs is unconstitutional, and it violates TRFRA, the federal RLUIPA, the U.S. Constitution, and the Texas Constitution. Such a total ban on Mrs.

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Golden having a sign or imposing additional restrictions is a substantial burden on her religious calling and mission of displaying the Ten Commandments in the manner she was called to do on her private property and the State has no compelling interests to support such a total ban or additional restrictions and certainly a total ban and such restrictions are not the least restrictive means of advancing the non-existent state interests.

Even in the absence of a total ban, TXDOT's application of Tex. Transp. Code §391 violates TRFRA, federal RLUIPA, the First Amendment to the United States Constitution and Article I, Section 6 of the Texas Constitution because Mrs. Golden's sign is not "advertising." Any argument to the contrary would result in an overbroad statute that purports to regulate "advertising" while also regulating an endless variety of non-commercial protected speech, including religious speech.

Finally, it also appears that TXDOT unevenly enforces Tex. Transp. Code §391. There are other signs that are permitted on the same section of road as Mrs. Golden's sign. (See enclosed photograph). This uneven enforcement whereby non-religious signs are permitted but a religious sign is not is unconstitutional viewpoint discrimination.

This is a request that TXDOT immediately rescind its removal order, its total ban on signs, and allow Mrs. Golden to erect and maintain her sign without the requirements of a license, surety bond, or permit. Pursuant to §110.006 of TRFRA, please respond within sixty days of your receipt of this letter.

Sincerely,



Michael Berry

Senior Counsel & Director of Military Affairs

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