



February 7, 2018

City of Hobbs
200 E. Broadway
Hobbs, NM 88240

Sam Cobb, Mayor
Marshall Newman, Commissioner
Cynthia Calderon, Commissioner
Patricia Taylor, Commissioner
Joseph Calderon, Commissioner
Garry Buie, Commissioner
Don Gerth, Commissioner
Mike Stone, City Attorney

Re: Ten Commandments Monument and Martin Luther King, Jr. Ceremony

Dear Mayor Cobb, Commissioners, and City Attorney Stone:

First Liberty Institute is the nation's largest legal organization dedicated to defending religious liberty for all Americans. We have successfully worked with states, counties, and cities on numerous religious liberty issues, including issues similar to those discussed below. Please direct all correspondence on this matter to me at the contact information provided below.

We were alerted to the fact that the City of Hobbs recently received a letter from the Freedom From Religion Foundation (FFRF): 1) demanding removal of a Ten Commandments monument located on city property, and 2) complaining regarding Hobbs' recent ceremony honoring the Reverend Dr. Martin Luther King, Jr. We write to encourage you to disregard both unfounded complaints of the FFRF. Our review of both issues reveals no First Amendment violation.

As an initial matter, FFRF's harassment because Hobbs commemorated Dr. King's birthday with gospel singers is both reprehensible and outrageous. Dr. King himself was a Christian minister and a member of his church choir. Observances of Dr. King's birthday nationwide routinely feature both the rich tradition of gospel choirs and the quotations of Dr. King and other civil rights leaders, many of which feature the deeply moving religious language routinely employed by Dr. King and others to explain and condemn racial inequality. We are aware of no court that has ever declared such a ceremony to be unlawful. The FFRF's complaint serves no purpose other than to tarnish the memory of a man who devoted his life to fighting injustice.

By FFRF's standards, a Constitutional violation would occur if Dr. King himself were invited to the observance of this important holiday in Hobbs. Indeed, had FFRF been present at the time, one wonders if the U.S. Department of the Interior would have received an angry, intolerant letter following Dr. King's rousing "I

have a dream” speech on the National Mall in Washington D.C.! For this reason alone, FFRF’s letter should be rejected as an intolerant display of anti-religious bigotry.

The FFRF’s attempt to justify its intimidation of Hobbs with legal threats is hollow and entirely unsupported by the law. Based on the information available, it appears the Ten Commandments monument at issue is consistent with those deemed constitutional by the Supreme Court of the United States and the United States Court of Appeals for the Tenth Circuit.

In *Van Orden v. Perry*, 545 U.S. 677 (2005), the U.S. Supreme Court upheld the constitutionality of a Ten Commandments monument on government property similar to the one in Hobbs. And in *Anderson v. Salt Lake City Corp.*, 475 F.2d 29 (10th Cir. 1973), the Tenth Circuit deemed constitutional a display featuring the Ten Commandments on government property. Notably, the *Anderson* court concluded that “[i]t does not seem reasonable to require removal of a passive monument, involving no compulsion, because its accepted precepts, as a foundation for law, reflect the religious nature of an ancient era.” The FFRF’s demand that Hobbs remove its Ten Commandments monument—another passive monument involving no compulsion—is similarly unreasonable.

Read in concert, *Van Orden* and *Anderson* make clear that displays of the Ten Commandments such as the one at issue in Hobbs not only fail to violate the Constitution, but are beneficial, civic displays consistent with the history and tradition of the United States. Banning or removing the Ten Commandments monument would serve no constitutional purpose and send a message to the citizens of Hobbs that the city is, in fact, hostile to such displays.

The City of Hobbs would be well advised to disregard the bigoted and intolerant letter sent by FFRF and follow the precedent established by the Supreme Court and the Tenth Circuit. I am available to answer any questions the City may have. Please do not hesitate to contact me at your convenience.

Sincerely,



Michael Berry
Deputy General Counsel