FIRST LIBERTY

June 10, 2026

Freedom from Religion Foundation
P.O. Box 750
Madison, WI 53701
Attn: Christopher Line, Legal Counsel
Via first class mail
and E-mail: [redacted]

Mr. Line,

First Liberty Institute represents the Rockwall County Commissioners Court (hereinafter, the "County"). We are in receipt of your demand letter to the County dated May 27, 2026 (the "Demand"). Please direct any future correspondence concerning the matters detailed in the Demand to the address and number provided below.

Turning to the Demand, you assert: "Installing new Ten Commandments displays on County property violates the First Amendment's Establishment Clause." You additionally demand that the County "cease displaying the Ten Commandments." As the basis for this Demand, you claim that U.S. Supreme Court precedent and respect for the Constitution necessitates the Ten Commandments monument erected outside of the County's courthouse "be removed immediately," and that these same considerations altogether prohibit *any* display of the Ten Commandments on government property "as a matter of policy."

The Letter's reasoning and its legal conclusions are tragically wrong. Crucially, the Letter omits the most recent binding precedents from the Supreme Court and the Fifth Circuit on this area of the law, instead, relying on outdated and extinguished tests. Likewise, it misapprehends the Decalogue's influence on our Nation's system of laws and governance as has been consistently acknowledged by Founding Fathers, judges, and representatives, and inexplicably ignores the extensive history of state-erected Ten Commandments displays across the country.

In short, the Establishment Clause of the First Amendment to the U.S. Constitution takes no issue with passive, religious displays like the County's Ten Commandments monument, which comport with "historical practices and understandings." *Nathan v. Alamo Heights Independent Sch. Dist.*, 173 F.4th 576, 593, 601 (5th Cir. 2026) (en banc) (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022)). The Ten Commandments' influence on Founding-era statesman and our system of governance is unmistakable, and accordingly, the instances of its memorialization on government property are innumerable. The County's Ten Commandments monument "fits within [a] tradition long followed," *Town of Greece*

v. Galloway, 572 U.S. 565, 577 (2014), and therefore, will remain at the Rockwall County Courthouse.

The Establishment Clause Must be Interpreted by Reference to History and Tradition Under *Kennedy*

The Demand relies on abrogated cases and ignores the most recent binding precedents concerning the Establishment Clause. To support the claim that Ten Commandments monuments are unconstitutional, the Demand cites to *McCreary County v. ACLU*, *Felix v. City of Bloomfield*, *Ohio Foundation v. Deweese*, and *Green v. Haskell County Board of Commissioners*. In each case cited, the applicable court deployed the analysis contrived in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, courts asked whether the government's actions lacked a secular purpose, appeared to advance or inhibit religion, and excessively tangled the government with religion. If yes, the court concluded that the action was in violation of the Establishment Clause. In practice, the test was detrimental to religious freedom and, for decades, was used to scrub public spaces of any and all religious references.

Our victory in *Kennedy v. Bremerton School District* restored the proper understanding of the Establishment Clause and confirmed what many courts already acknowledged as true: The *Lemon* test and its progeny are dead. *Nathan*, 173 F.4th at 590–91("[T]he Court did not merely overrule *Lemon*, but also its progeny and its offshoots.") (citation modified); *see also Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 954 n.20 (5th Cir. 2022) (the *Lemon* test's "long Night of the Living Dead . . . is now over."). Under *Kennedy*, the *Lemon* test has been replaced with an analysis based on history and tradition:

> In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings. . . . The line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers. . . . An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some exception within the Court's Establishment Clause jurisprudence.

Kennedy, 597 U.S. 535–36 (citation modified); *see also id.* at 546–47 (Sotomayor, J., dissenting) ("Today[] . . . [t]he Court overrules *Lemon* . . . and replaces the standard for reviewing such questions with a new 'history and tradition' test."). In a more recent victory for First Liberty, *Groff* confirmed *Lemon*'s demise by referring to *Lemon* as a "(now abrogated) decision." 600 U.S. at 460.

The historical analysis is not enigmatic or novel—rather, it proceeds from longstanding Establishment Clause jurisprudence. *See, e.g.*, *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022) (Gorsuch, J., concurring) ("[n]o one at the time of the founding is recorded as arguing that the use of religious symbols in public contexts was a form of religious establishment."); *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 588, 551–52 (2019) ("Together, these considerations counsel against efforts to evaluate such cases under *Lemon* and toward application of a presumption of constitutionality for longstanding monuments, symbols, and practices"); *Town of Greece*, 572 U.S. at 576 ("Any test the Court adopts must acknowledge a practice that was accepted by the Framers"); *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) ("[O]ur analysis is driven . . . by our Nation's history"); *Marsh v. Chambers*, 463 U.S. 783, 788–90 (1983) (looking to historical practice of the U.S. Legislature to uphold legislative prayer); *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 670 (1989) (Brennan, J., dissenting) ("*Marsh* stands for the proposition . . . that the meaning of the Clause is to be determined by reference to historical practices and understandings"); *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984) ("We have refused to construe the Religion Clauses with literalness that would undermine the ultimate constitutional objective as illuminated by history." (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 671 (1970))).

What your Letter characterizes as "pretext" is in fact the very legal standard a court will employ to determine whether a violation of the Establishment Clause exists: history. *See Kennedy*, 597 U.S. at 535–536; *see also Nathan*, 173 F.4th at 593 ("The analysis looks to the historical "hallmarks of religious establishments . . . .") (citation modified). And not just any history, or the particular history of Rockwall County. Rather, the Court made clear that the Establishment Clause must be interpreted by reference to "the understanding of the Founding Fathers." *Kennedy*, 597 U.S. at 535; *accord Nathan*, 173 F.4th at 600–01. Conversely, *Lemon*'s inquiries such as whether the display possesses a "neutral" purpose or appears to endorse or "promote" religion—theories regurgitated in the Demand—hold no weight, and case law leaning on the same is not good law. *See Mack*, 49 F.4th at 954 n.20 ("History—not endorsement—matters." (citing *Kennedy*, 597 U.S. at 534–35)); *see also Firewalker-Fields v. Lee*, 58 F.4th 104, 121 n.5 (4th Cir. 2023) ("[I]t is now clear that *Lemon* and its ilk are not good law."). *Compare McCreary Cnty. v. ACLU*, 545 U.S. 844, 864, 881 (2005) ("*Lemon* said that government action must have 'a secular . . . purpose'"), *with Nathan*, 173 F.4th at 591–592 ("[T]he Court did not merely overrule *Lemon*, but also its progeny and its offshoots") (citation modified).

Therefore, under *Kennedy* and its antecedents, to ascertain whether a Ten Commandments display abides by the Establishment Clause, courts must look to whether the practice "fits within the tradition long followed" by governing bodies, *see Town of Greece*, 572 U.S. at 622, and "accord[s] with history and faithfully reflect[s] the understanding of the Founding Fathers." *Kennedy*, 597 U.S. at 536 (citation modified); *cf. Van Orden*, 545 U.S. at 685–86 (rejecting *Lemon* and opting to apply an analysis "driven . . . by our Nation's history). And it certainly does.

The County's Ten Commandments Monument "Fits Within the Tradition Long Followed" by Federal, State, and Local Governments

Supported by an extensive record of Ten Commandments displays erected on government property across time and place, as well as the written proclamations admiring the Decalogue's impact on our system of governance, the County's monument "fits within the tradition long followed" by the three branches of government at the national, state, and municipal levels, *see Town of Greece*, 572 U.S. at 622, and "accord[s] with history and faithfully reflect[s] the understanding of the Founding Fathers." *Kennedy*, 597 U.S. at 536 (citation modified).

Your Letter contends that any claim about the Decalogue's influence on our Nation's legal system is "historically flawed." The Supreme Court disagrees:

> For believing Jews and Christians, the Ten Commandments are the word of God handed down to Moses on Mount Sinai, but the image of the Ten Commandments has also been used to convey other meanings. They have historical significance as one of the foundations of our legal system, and for largely that reason, they are depicted in the marble frieze in our courtroom and in other prominent public buildings in our Nation's capital.

Am. Legion, 588 U.S. at 51–53; *accord Van Orden*, 545 U.S. at 690 ("[T]he Ten Commandments have an undeniable historical meaning . . . .").

From our Republic's founding, statesmen have esteemed the Ten Commandments as the model for a superior and transcendent law, endowed with sanctity, that restrains the impetuous passions of men—functioning as an archetype of our Constitution and the roots from which our respect for the rule of law has grown. The Ten Commandments and the story of the Israelites were on the minds of the men that wrote the Declaration of Independence and the Constitution as they contemplated a divided and accountable government that addressed man's fallibility and selfish will. Benjamin Franklin, the rationalist and Deist that he was, drew a parallel between the Colonies and the Israelites, stating:

> The Supreme Being . . . having rescued them from bondage by many miracles performed by his servant Moses, he personally delivered to that chosen servant, in presence of the whole nation, a constitution and code of laws for their observance.

Benjamin Franklin, To the Editor of the Federal Gazette (1788), *reprinted in* The Works of Benjamin Franklin, including the Private as well as the Official and Scientific Correspondence, together with the Unmutilated and Correct Version of the Autobiography, Vol. XI Letters and Misc. Writings 1784-1788 (John Bigelow ed.,

1904). Additionally, "when designing a seal for the new Nation in 1776, Benjamin Franklin and Thomas Jefferson proposed a familiar Biblical scene—Moses leading the Israelites across the Red Sea." *Shurtleff*, 596 U.S. at 287 n. 11 (Gorsuch, J., concurring).

The Ten Commandents, and the history of civilizations, beckoned the Founders to consider human nature and its need for moral constraint; a reminder that no empire or leader, however powerful and wealthy, will be able to—nor should attempt to—achieve a Utopia on this earth. As Thomas Jefferson elucidates, "let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution." Thomas Jefferson, Fair Copy (c. 1798), reprinted by Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Jefferson/01-30-02-0370-0003; *see also* The Federalist No. 51, at 319 (James Madison) (Clinton Rossiter ed., 1961) ("It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary."). Reflecting on the Ten Commandments, John Quincy Adams, the Sixth President of the United States, affirmed:

> The Law given from Sinai was a civil and municipal as well as a moral and religious Code—It contained many statutes adapted only to that time . . . But many others were of universal application—Laws essential to the existence of men in Society, and most of which have been enacted by every Nation which ever professed any Code of Law.

Letters of John Quincy Adams, to His Son, on the Bible and Its Teachings 61 (Alden ed., 1850).

Additionally, William Blackstone—arguably the most widely-read and relied on legal authority in the Colonies, and largely attributed as the bridge by which English common law was facilitated to and preserved in the States—opined that: "This law of nature," being deposited in part by the Decalogue, "is binding over all the globe, and all countries, and at all times." 1 William Blackstone, *Commentaries on the Laws of England* *41 (1765); *see also Books v. City of Elkhart*, 235 F.3d 292, 312 (7th Cir. 2000) (observing that the Ten Commandments "served as a foundation for the formation of both English Common Law and the Napoleonic Code, which together laid the foundation for American Jurisprudence.").

Accordingly, it is no surprise that over the decades, thousands of monuments and displays depicting the Ten Commandments have been erected across the country at city halls, state capitols, and courthouses. In the great State of Texas, alone, there are monuments at the Texas State Capitol in Austin, Texas, the Nueces County Courthouse in Corpus Christi, Texas, the Texas State Fair Park in Dallas, Texas, and now the Rockwall County Courthouse in Fort Worth, Texas. There is a plaque

containing the full text of the Ten Commandments in Alabama's State Capitol, a framed copy of the Ten Commandments in Georgia's State Capitol, a mural of Moses receiving the Ten Commandments in the Capitol Courtroom in Saint Paul, Minnesota, and a mural of Moses carving the Ten Commandments at the State Supreme Court building in Harrisburg, Pennsylvania. This is nowhere near an exhaustive list.

When the Supreme Court upheld the constitutionality of the monument at the Texas State Capitol—virtually identical to the monument erected by the County, here—the Court observed that "acknowledgements of the role played by the Ten Commandments in our Nation's heritage are common throughout America." *Van Orden*, 545 U.S. at 688. Elaborating further:

> We need only look within our own Courtroom. Since 1935, Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as well as the doors leading into the Courtroom. Moses also sits on the exterior east façade of the building holding the Ten Commandments tablets. Similar acknowledgements can be seen throughout a visitor's tour of our Nation's Capital. For example, a large statue of Moses holding the Ten Commandments, alongside a statue of the Apostle Paul, has overlooked the rotunda of the Library of Congress' Jefferson Building since 1897. And the Jefferson Building's Great Reading Room contains a sculpture of a woman beside the Ten Commandments with a quote above her from the Old Testament (Micah 6:8). A medallion with two tablets depicting the Ten Commandments decorates the floor of the National Archives. Inside the Department of Justice, a statue entitled "The Spirit of Law" has two tablets representing the Ten Commandments lying at its feet. In front of the Ronald Reagan Building is another sculpture that includes a depiction of the Ten Commandments. So too a 24-foot-tall sculpture, depicting, among other things, the Ten Commandments and a cross, stands outside the federal courthouse that houses both the Court of Appeals and the District Court for the District of Columbia. Moses is also prominently featured in the Chamber of the United States House of Representatives. Our opinions, like our building, have recognized the role the Decalogue plays in America's heritage.

Id. at 688–689; *see also Lynch*, 465 U.S. at 674, 677 ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . . The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments.").

Moreover, in recognition of, and in continuity with, the historical reverence given the Decalogue, the House of Representatives proclaimed in 1997 that "the Ten Commandments have had a significant impact on the development of the fundamental legal principles of Western Civilization" and "the Ten Commandments set forth a code of moral conduct, observance of which is universally acknowledged to promote respect for our system of laws and the good society." H.R. Con. Res. 31, 105th Cong. (1997). As such, the House resolved that: "(1) the Ten Commandments are a declaration of fundamental principles that are the cornerstones of a fair and just society; and (2) the public display, including display in government offices and courthouses, of the Ten Commandments should be permitted." *Id.*

In summary, a cursory examination of past and current precedent is sufficient to determine that the exhibition of the Ten Commandments fits within our government's "historical practices." *Kennedy*, 597 U.S. at 535. It is outrageous and irresponsible to intentionally dismiss or outright deny the admiration given to the Decalogue by founding era statesman and those that succeeded them. Being "deeply embedded in the history and tradition of this country," *Marsh*, 463 U.S. at 786, the County's erection of the Decalogue in front of its courthouse comports with the "original meaning" and a "historically sensitive understanding of the Establishment Clause," *Kennedy*, 597 U.S. at 536–37, and thus suffers no constitutional defect.

The Government Display of the Ten Commandments Was Upheld by the United States Court of Appeals for the Fifth Circuit

While the County's proposed monument is constitutionally defensible under *Kennedy* and its antecedents in the Supreme Court, the United States Court of Appeals for the Fifth Circuit—having jurisdiction over federal cases arising in Texas—recently upheld the government display of the Ten Commandments, providing further protection for the anticipated monument. *Nathan*, 173 F.4th at 608.

In *Nathan*, the full bench of the Fifth Circuit had the chance to opine on the constitutionality of government exhibited Ten Commandments, reviewing a Texas law that required the Decalogue to be posted in every public school classroom. Adopting *Kennedy* and *Van Orden*'s Establishment Clause analysis driven by "original meaning" and "our Nation's history," the court inquired into whether the law "shares the 'hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment,'" *id.* at 607 (quoting *Kennedy*, 597 U.S. at 537), to which the majority answered: It does not.

> Plaintiffs have not identified a shred of founding-era evidence equating the government's use of religious text, displays, or symbols with an establishment of religion. To the contrary, it appears that no one ever claimed at the founding that the display of religious symbols was a form of religious establishment. . . . Indeed, it would be a shock to discover that the Establishment Clause is implicated merely by the government's

> use of religious language, imagery, or symbols. . . . In our country, religious placements dot the landscape and religious mottos, symbols, and flags adorn countless public buildings.

Nathan, 173 F.4th at 602; *cf. Van Orden*, 545 U.S. at 688 ("[I]t would be incongruous to interpret the Establishment Clause as imposing more stringent First Amendment limits on the states than the draftsmen imposed on the Federal Government.")

So, the County's Ten Commandments monument benefits from the firm support of both the Fifth Circuit and the United States Supreme Court, and enjoys the full protection of the First Amendment to the U.S. Constitution. It would be incongruous to interpret the Establishment Clause to prohibit these displays when their admiration and elevation is so well documented in our Nation's historical record. In fact, efforts to remove or alter religious displays like the County's Ten Commandments would not be a neutral act; rather, it would have the opposite effect—evidencing an impermissible hostility to religion. *See id.* at 704 (Breyer, J., concurring) (To remove the Ten Commandments "based primarily on the religious nature of the tablets' text would, I fear, lead the law to exhibit hostility toward religion that has no place in our Establishment Clause traditions."); *see also Am. Legion*, 588 U.S. at 60.

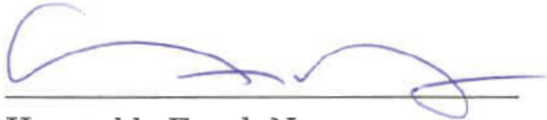
In another of First Liberty's Supreme Court wins—*The American Legion v. American Humanist Association*, 588 U.S. 29 (2019)—the Court upheld the government display of a 32 feet tall Latin cross erected on the median of a busy public highway. In so doing, the Court provided a dire warning:

> A government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion. Militantly secular regimes have carried out such projects in the past, and for those with a knowledge of history, the image of monuments being taken down will be evocative, disturbing, and divisive.

Id. at 56. Certainly, this is the effort of FFRF. But equally certain, the Constitution will not tolerate such efforts. If the FFRF and similar organizations wish to see these Ten Commandments removed, we echo the words of our Texas Forefathers to Col. Ugartechea in 1835. Come and Take It.

Sincerely,

William G. Bell
Associate Counsel
First Liberty Institute



Honorable Frank New,
County Judge, Rockwall County

Bobby Gallana,
Commissioner, Precinct 1

Dana Macalik,
Commissioner, Precinct 2

Lorne Liechty,
Commissioner, Precinct 3

John Stacy,
Commissioner, Precinct 4