



SB 2308 GUIDANCE: DISPLAY OF TEN COMMANDMENTS IN SCHOOLS

This past session, the North Dakota Legislature passed SB 2308, which authorizes school districts to display the ten commandments with a display of other historical documents in schools and in a classroom. The bill also included a provision that provides school districts, school boards, individual school board members, administrators, teachers, and any other school district employee with immunity from any liability for damages resulting from a school’s decision to display the ten commandments. While this bill may not seem problematic on its face, NDSBA has concerns with the display of the ten commandants in schools which are highlighted in this guidance.

The U.S. Supreme Court directly addressed the posting of the ten commandments in public schools in the 1980 case entitled *Stone v. Graham*. In that case, a Kentucky statute required the Ten Commandments to be posted in public school classrooms was challenged as violative of the Establishment Clause of the First Amendment. The statute required the postings to be supported by private contributions, to measure 16 inches by 20 inches, and to include language “in small print” indicating that “the secular purpose of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States.” Specifically rejecting the contention that the “small print” affirmed the postings’ secular purpose, the Court stated that the ten commandments is “undeniably a sacred text” that is not limited to secular matters. In its reasoning, the Court focused on the nature of the first of the commandments, which address humanity’s relationship with—and duties owed to—God. According to the Court, the pre-eminent purpose for the posting was plainly religious.

The issue most recently came before the U.S. Supreme Court in 2005 in *McCreary v. ACLU of Kentucky*. In that case, the Court analyzed the constitutionality of a gold-framed display of the ten commandments in county courthouses, which had been subsequently modified to include other documents, such as the Declaration of Independence, in smaller frames each having a religious theme or element. The Court found that the posting’s initial solo display especially compelling. While the Court recognized the ten commandments have indeed influenced civil law, it found that they nonetheless convey a religious statement when displayed alone, in the manner of the original courtroom postings. Only when challenged by legal action did the counties modify the displays, and the modifications themselves highlighted religious themes and included a resolution indicating that the new companion postings must feature Christian references. The Court re-emphasized the





need for governmental neutrality in religious matters and concluded that the predominantly religious purpose of the display did not pass constitutional muster.

SB 2308 authorizes schools to display the ten commandments *along with other historical documents*; however, as echoed by the Court in *McCreary*, simply displaying religious texts or materials with other historical documents does not necessarily make it immune from a successful constitutional challenge. In addition, the provision in SB 2308 that purports to provide immunity from liability to districts, board members and staff is likely going to prove ineffective. This is because any challenges to such displays would be asserted as a violation of the U.S. Constitution. State legislatures have no power to pass a law providing immunity for federal constitutional violations.

Based on the foregoing, school districts are encouraged to take pause before permitting religious documents or materials to be displayed in their buildings or classrooms. Districts that wish to explore such a display in their schools or classrooms should contact their district legal counsel for guidance before moving forward with the display. In addition, NDSBA has reviewed and updated our template policy ABBE (Displays of Religious Objects or Documents) to help school districts navigate these issues appropriately. Policy Services members may access template policy ABBE through the policy services website. If you are not a member, please contact NDSBA for information on how to join.

Should you have any questions regarding SB 2308 or requests to display religious objects or documents, please contact NDSBA or your school district legal counsel.

