



## Some Background on Religion and Law in the U.S.

*Michael Manasco*

Recently, the state of Alabama came under the scrutiny of the national media eye regarding events surrounding a two-and-one-half ton monument of the Ten Commandments. Although the legal issues surrounding the monument are not new ones, there still remain controversies over the relationship between religious expression and U.S. law. While wishing to avoid supporting either of the sides in this debate, the goal of this article is to examine the legal background that is relevant in deciding cases like this.

According to Alabama Constitutional law (Amendment 328, section 6.10), “the Chief Justice, as administrative head of the Alabama judicial system ... has final authority over the decoration of the rotunda and whether to put any displays in the building.” The monument in question was installed as the centerpiece of the rotunda in the Alabama State Judicial building. Judge Moore noted that his intent was to remind all Alabama citizens of the sovereignty of God over the affairs of both state and church. However, three attorneys that work in the Judicial Building filed official lawsuits to have the monument removed because, in their view, it violated the Establishment Clause of the U.S. Constitution. The courts found in their favor; however, Judge Moore appealed this decision, claiming that his actions did not conflict with the Constitution.

The Establishment Clause of the U.S. Constitution’s First Amendment states that “government shall make no law respecting an establishment of religion”; to interpret and apply this clause in specific cases, the court uses a general set of guidelines devised in 1971 by the Chief Justice appointee of the Nixon administration, Warren Burger. His three-part test came to be known as the Lemon Test, since it was developed in deciding the case of *Lemon vs. Kurtzman*. In that case, religiously-based private schools in Rhode Island and Pennsylvania were also teaching secular subjects and the question revolved around whether the state could fund the teachers’ salaries. The Lemon Test’s three criteria are: the activity must have a secular purpose; its principal effect must be one that neither advances nor inhibits religion; and it must not foster excessive government entanglement with religion (*Lemon vs. Kurtzman* 403 U.S. 602, 612-13). Using these standards, the programs in question were found to be in violation of the Establishment Clause, since they were ruled in conflict with the third part of the Lemon Test. The court ruled that the potential for fostering religion was present.

Since then, the Lemon Test has helped the court to maintain a consistent approach to religion-sensitive issues. Applied to the case of the Ten Commandments monument, the court first had to determine whether or not the monument had a primarily secular purpose. Stephen Glassroth, an attorney who filed one of the initial lawsuits, pointed out that Judge Moore’s central platform in his campaign when he was running for the office of Chief Justice in 2000 was “to restore the moral foundation of the law.” Upon election, he installed the Ten Commandments monument, a symbol of what he affirms to be the law’s moral foundation. The two tablets carved into the top of the monument contain passages from Exodus 20:2-17, from the King James translation of the Holy Bible; along with the Commandments, there are several smaller quotations from various other legal, historical documents, but these quotations were placed below the Scripture, since they were thought not to be “on the same plane as the Word of God.” Upon the commemoration of the monument, the Chief Justice explained that the location of it was appropriate because it would remind all those who appear before the court of the one God who founded our laws.

With all this in mind, the lawsuits against this monument argued that, in conflict with the Lemon Test, its primary purpose was to promote a specific religion. The court asked Judge Moore to testify what his purpose was by answering questions presented by the plaintiffs. He affirmed that he put the monument in the rotunda to acknowledge God’s law and sovereignty, that the Ten Commandments represented God’s rule over the affairs of men, and that the God he was referring to was God of the Holy Scriptures in the Judeo-Christian tradition. Agreeing with the plaintiffs, the court ruled that his actions were in violation of the Establishment Clause because the monument primarily promoted religion.

In response, Judge Moore stated that, as defined in law, religion is “the duty which we owe to our Creator, and the manner of discharging it.” He argued that his monument does not involve duties that individuals owe to the Creator; rather, it represents moral foundations of secular duties we owe to society. The U.S. Supreme Court, however, has established a different definition of religion, an understanding that all faiths, even those not attributing any belief toward a Judeo-Christian understanding of God, fall under the protection of the First Amendment, which is therefore interpreted by the court to mean equality and freedom of religious expression for all, or the lack thereof. Because this freedom also applies to atheists, Judge Moore’s definition was inadequate because it presupposed a belief in God.

Because the intentions behind the monument were determined to include displaying it as more than simply the historical foundations of secular law, it was ruled by the court to violate the First Amendment. By ordering its removal, the court exercised its duty to maintain neutrality on the issue of religious endorsement, since the Establishment Clause prohibits them from acting in a manner that will either advance or inhibit religious practices. For, according to the statutes set forth in our Constitution, the courts must provide a neutral setting in which legal matters can be decided in an equal fashion.