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ALLOW DISPLAY OF TEN COMMANDMENTS

House Bill 4226 as introduced
First Analysis (5-24-01)

Sponsor: Rep. Ken Bradstreet
Committee: House Oversight and
Operations

THE APPARENT PROBLEM:

Legislation has been proposed in Congress and in several state legislatures to specifically allow the posting of the Ten Commandments in schools and other public buildings. Proponents of this movement cite a display of Moses the Lawgiver hanging in the chamber of the United States Supreme Court as evidence of the historical significance of these moral laws. According to the Christian Law Association, "the Ten Commandments are as much civic and historic treasures as they are religious. It was from these moral laws that American derived its first principles of common law." Reportedly, many citizens support the posting of the Ten Commandments in schools and other public places. Though no one would argue that displaying the Ten Commandments would solve all societal problems, many believe that this would be a positive step in helping to restore respect for a basic moral code and in helping to promote good citizenship.

The display of the Ten Commandments in public buildings has been challenged on constitutional grounds. In 1980, the U.S. Supreme Court ruled in *Stone v. Graham* that a Kentucky statute requiring the display of the Ten Commandments in public schools was unconstitutional because it served no secular purpose, and thus it violated the Establishment Clause of the First Amendment. ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.") However, the court cited a three-part test for determining whether a challenged state statute is permissible under the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally the statute must not foster 'an excessive government entanglement with religion.'"

Proponents of the displaying the Ten Commandments have argued that *Stone v. Graham* leaves room for a constitutionally sound display of the Ten

Commandments if it is done within the context of other historically significant items and if there is a secular purpose. Legislation has been proposed to specifically allow the display of the Ten Commandments on public property under certain conditions.

THE CONTENT OF THE BILL:

The bill would create a new act to allow the display, on public property, of a document or other object that contains the Ten Commandments, under certain conditions. Such a display would be allowable if:

- The document was displayed with other documents, public records, or objects of historical significance that have formed and influenced the legal or governmental system of the United States.
- The document was displayed in the same manner as other documents, public records, or objects that were displayed at the same time and location.
- The display did not focus more attention on the document than on other documents, public records, or other objects that were displayed at the same time and location.

Under the bill, "public property" is defined to mean a building or land owned, possessed, or leased by the state or by a county, city, township, village, school district, or other governmental unit.

BACKGROUND INFORMATION:

The "Hang Ten" movement. The Family Research Council (FRC) and other organizations have been promoting the posting of the biblical Ten Commandments in public places. Though controversial, the FRC's "Hang Ten" movement is believed to have gained momentum recently in response to school shootings in Oregon, Colorado,

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Florida and Michigan. The FRC distributes posters and book covers displaying the Ten Commandments, and supplies advocacy and legal materials to support individuals and groups who promote the posting of the Ten Commandments.

Legislation in other states. At least three states – Indiana, South Dakota, and North Dakota – have enacted laws allowing the display of the Ten Commandments on public property. The language of the Indiana statute is substantially similar to that proposed in House Bill 4226. The North Dakota law does not specifically mention the Ten Commandments, but instead refers to “a religious object or document of cultural, legal, or historical significance”. Both the North Dakota and South Dakota statutes apply specifically to school buildings. Reportedly, similar bills are being considered in Alabama, Maine, Mississippi, North Carolina, and Tennessee. In addition, Senate Bill 15, which is identical to House Bill 4226, has been introduced in the Michigan Senate.

The Ten Commandments. The Ten Commandments appear in three places in the Bible: in Exodus, Chapter 20; in Exodus, Chapter 34; and in Deuteronomy, Chapter 5. Although the Ten Commandments play a central role in several faith traditions, the text has been translated and divided in different ways by Jews, Protestants, and Catholics.

Perhaps the mostly widely used and recognized text of the Ten Commandments is an abridged version of the text found in Exodus, Chapter 20. The version printed and distributed by the Family Research Council in its “Hang Ten” movement is as follows:

- Thou shalt have no other Gods before me.
- Thou shalt not make unto thee any graven image.
- Thou shalt not take the name of the Lord thy God in vain.
- Remember the Sabbath day, to keep it holy.
- Honor thy father and thy mother.
- Thou shalt not kill.
- Thou shalt not commit adultery.
- Thou shalt not steal.
- Thou shalt not bear false witness against thy neighbor.

- Thou shalt not covet.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact. (4-24-01)

ARGUMENTS:

For:

The bill would set forth circumstances under which it would be lawful and permissible to post the Ten Commandments in public buildings, including schools. According to the Family Research Council, the Ten Commandments “generally have provided the organizing principles for life, family, education, law, government, and economics in the majority of Western nations. The North American colonies that became the United States of America ordered their societies and education systems according to these principles.” As Justice Rehnquist said in his dissenting opinion in *Stone v. Graham*: though, as the majority stated, the Decalogue is ‘undeniably a sacred text’, it is equally undeniable that the Ten Commandments have had a significant impact on the development of secular legal codes of the Western World. Justice Rehnquist went on to argue that “the Establishment Clause does not require that the public sector be insulated from all things which may have a religious significance or origin. This Court has recognized that ‘religion has been closely identified with our history and government,’ . . . and that ‘the history of man in inseparable from the history of religion’”.

Many people believe that judicial interpretations of the Establishment Clause as requiring a strict “wall of separation” between church and state have been overreaching, fundamentally misinterpreting the intent of the Founding Fathers of this country. They argue that the origins of the governing principles of the United States were clearly influenced by religious principles, and that it is historically inaccurate, as well as damaging, to bar any mention of religious faith and principles from schools and public places. Many see a connection between this “separation” of church and state and decreased respect for public institutions and civil, law-abiding conduct. Some cite recent school shootings, an increased culture of violence, sexual immorality, and other societal ills as examples of the type of conduct that stems from removing religious influences from public life.

Proponents of posting the Ten Commandments in public places believe that doing so would cause no

harm, and would, in all likelihood, have a positive influence on behavior by helping to inculcate young people and adults alike with basic moral rules for living. Moreover, they believe that such a posting, done according to the conditions set forth in House Bill 4226, would withstand constitutional challenge because it would include the Ten Commandments as part of a display of other historical documents that have positively influenced the development of U.S. society and its legal system. Though the U.S. Supreme Court, in *Stone v. Graham*, struck down the Kentucky statute in question, its per curiam decision cited a three-part test for determining whether a statute is permissible under the Establishment Clause. House Bill 4226 has been strictly drafted to meet that test.

Against:

A number of objections to the bill have been raised:

- Opponents argue that enacting such a bill would indeed violate the Establishment Clause, as it would place the state legislature in the position of endorsing a specific religious text, a clear example of government promoting religion. The Ten Commandments are not a “secular” moral code that everyone can agree on. The first portion of the commandments are specifically religious in nature. The nature of the Ten Commandments – that they are ‘undeniably a sacred text’ – cannot be disguised or changed by placing them in a display with other documents. In addition to the U.S. Supreme Court’s ruling in *Stone v. Graham*, which involved school buildings, lower federal courts have struck down the display of the Ten Commandments in government buildings. Public schools and governmental units that post the Ten Commandments are inviting a lawsuit that they are almost certain to lose.

- Some people of faith, who hold the Ten Commandments to be a sacred covenant between people and God, are offended at government efforts to interfere in what they view as a private exercise of religious faith.

- While the Ten Commandments are understood to be fundamental to many religions, many other denominations revere other sacred texts. America is religiously diverse, as is Michigan. The state government has no business in choosing to endorse and promote the Ten Commandments over any other type of religious moral code. Such religious favoritism to some equates to religious discrimination for others. This is precisely why the constitution provides for a separation between church and state, to preserve the religious liberty of all citizens.

- Even if one accepts the merit of posting the Ten Commandments as a document of great *historical* significance, the question arises: which version of the Decalogue should be posted? There is no “standard version” of the Ten Commandments. Different religions and denominations list the commandments in different order and use different language. Again, there is the very significant potential for religious discrimination against the minority view.

- The movement to pressure schools and governments to post the Ten Commandments appears to be based on a simplistic view that this can somehow solve all of society’s ills. This trivializes the very significant social problems that exist, ignores their complex causes, and distracts attention away from the difficult work needed to address them.

POSITIONS:

Citizens for Traditional Values supports the bill. (4-25-01)

The Thomas More Center for Law and Justice submitted written testimony in support of the constitutionality of the bill. (4-25-01)

A representative of the Foundation for Traditional Values testified in support of the bill. (5-9-01)

The ACLU of Michigan opposes the bill. (4-25-01)

The Michigan Chapter of Americans United for Separation of Church and State opposes the bill. (4-25-01)

A representative of the Michigan Jewish Conference testified in opposition to the bill. (5-9-01)

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.