



June 22, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

David Fuqua
Bloomfield City Manager
915 North First St.
Bloomfield, NM 87413
Fax: (505) 632-6310

RE: Public Records Request/Ten Commandments Display

Dear Mr. Fuqua:

This letter constitutes a request pursuant to the New Mexico Statute Authority Public Records Act ("Public Records Act") NMSA 1978, §§ 14-2-1 et. seq.

The American Civil Liberties Union of New Mexico (ACLU-NM) has learned that on June 13, 2011, the Bloomfield City Council approved a decision to move forward with the construction of a Ten Commandments monument in front of the Bloomfield City Hall. We are concerned as to whether this decision by the City Council violates the Establishment Clause of the First Amendment to the United States Constitution.

Under the Establishment Clause of the First Amendment, governments are prohibited from encouraging or promoting religion and must remain completely neutral on matters of religion. The United States Supreme Court has held that the Establishment Clause of the First Amendment applies to state and local government entities. See Everson v. Board of Education, 330 U.S. 1, 15 (1947). Also in accordance with the Establishment Clause, government action (1) must have a non-religious purpose as its primary purpose; (2) must not have the effect of advancing any set of religious beliefs; and (3) must not overly involve the government with religion. See Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

The Supreme Court has also frequently ruled on whether the display of religious symbols on public property action constitutes an impermissible "endorsement" of religion. See Van Orden v. Perry, 545 U.S. Ct. 677 (2005); McCreary County v. American Civil Liberties Union, 545 U.S. 844 (2005). Endorsement occurs when a "reasonably informed observer would perceive that the government was conveying a message that religion or a particular religious belief is favored or preferred." See Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 773, 779-80 (1995); see also County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 593-94 (1989). Applying this test, the Fourth Circuit Court of Appeals held unconstitutional a crèche display on the front lawn of a county office building. Smith v. Albemarle, 895 F.2d 953 (1990). The court found that such a display sends "the unmistakable message" that the government is endorsing a religion, *Id.* at 958, as "no viewer could reasonably think that [the crèche] occupies this location without the support and approval of the

government.” *Id.* (quoting County of Allegheny, 492 U.S. at 599). Just last year, the Tenth Circuit held that the display of memorial crosses on public roadsides had the effect of conveying to the reasonable observer that the state was endorsing Christianity in violation of the Establishment Clause. American Atheist Inc. v. Davenport, 673 F.3d 1095 (10th Cir. 2010).

On behalf of the ACLU-NM, I respectfully request copies of the following information in the custody or control of the City of Bloomfield or any agency or subdivision thereof:

1. All records that reflect the legislative history of the City of Bloomfield’s decision to move forward with the construction of a Ten Commandments monument between January 1, 2006 and the current date;
2. All documents that pertain to the plan to construct a Ten Commandments monument between January 1, 2006 and the current date. Include, but do not limit your response to, any memoranda, correspondence, including e-mail, policy statements, or notes that mention policies related to the construction of a Ten Commandments monument;
3. All records that explain the decision and/or rationale for constructing a Ten Commandments monument between January 1, 2006 and the current date. Include, but do not limit your response to, any memoranda, correspondence, including e-mail, policy statements, or notes that discuss the decision and/or rationale for constructing a Ten Commandments monument;
4. Any materials that were distributed to City Councilors at any time, including at any City Council meeting between January 1, 2006 and the current date, that pertain to the construction of a Ten Commandments monument;
5. Any materials that reflect speakers and/or presentations at any City Council meeting between January 1, 2006 and the current date. Including, but not limited to, copies of speeches, presentations, and/or memorandums;
6. Any correspondence dated between January 1, 2006 and the current date, including, but not limited to, e-mails or letters, between any City of Bloomfield employees and or public officials and any organization and/or any member of the public concerning the construction of a Ten Commandments monument;
7. Any documents that evidence complaints or concerns received by the City of Bloomfield, regarding the construction of a Ten Commandments between January 1, 2006 and the current date. Include in your response, but do not limit it to, any notes that may reflect such a complaint and e-mails or letters that accomplish the same; and
8. Any maps, diagrams, drawings, sketches, photographs and/or similar documents that reflect the 10 Commandments and/or the placement of a Ten Commandments monument. Such materials should reflect the placement of the proposed Ten Commandments monument in relation to any other existing or planned monument on the same site.

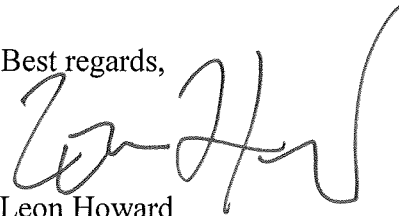
Please do not duplicate any records that you provided in your response, and please advise me if this request does not describe the requested documents with sufficient specificity for you to make a reasonable response and I will attempt to reformulate the request in a manner that meets your requirements. If your agency does not maintain these public records, please forward this request to the designated custodian of the requested records, and notify me of that action, including all information required by NMSA 1978, §14-2-8 (E).

If the request encompasses exempt information that the City of Bloomfield does not allow to be released, then please either separate or retain the exempt documents or redact that information from documents that are otherwise non-exempt. If documents are exempt please specify why the information falls under an exception.

I request that these documents be provided no later than 15 business days from the day this request is sent. Electronic documents are preferred and may be sent to lhoward@aclu-nm.org. If your agency has the capacity to produce only hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at 505.266.5915 extension 1004 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at lhoward@aclu-nm.org or by phone at 505.266.5915 extension 1004. Thank you in advance for your assistance in this matter.

Best regards,



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cc: Curtis R. Gurley, Bloomfield City Attorney, via Facsimile: (505) 632-6385