

No. 07-665

IN THE
SUPREME COURT OF THE UNITED STATES

PLEASANT GROVE CITY, UT, *et al.*
Petitioners,

v.

SUMMUM

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Tenth
Circuit

Brief of *Amici Curiae*
American Humanist Association
The American Ethical Union
Atheist Alliance International
Institute for Humanist Studies
Secular Student Alliance
Society for Humanistic Judaism
Unitarian Universalist Association
In Support of Neither Party

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INTEREST OF AMICI CURIAE¹

This *amici curiae* brief is being filed on behalf of the American Humanist Association, The American Ethical Union, Atheist Alliance International, the Institute for Humanist Studies, the Secular Student Alliance, the Society for Humanistic Judaism and the Unitarian Universalist Association, a diverse array of secular and religious organizations, as advocates of religious liberty with a unique viewpoint concerning the history of religious freedom in the United States of America.

Amici feel that this case addresses core Humanist concerns about respect for differing views, religious egalitarianism and rational analysis. Many of *amici's* members who visit city, state and federal parks are especially concerned about the outcome of this case. *Amici* wish to bolster the principle of separation of government from religion in order to prevent their own disenfranchisement as well as to best preserve religious liberty in America.

¹ *Amici*, identified in Appendix I, file this brief with the consent of all parties (as the Petitioner and Respondent have filed general consents with the Court). Counsel for a party did not author this brief in whole or in part. No person or entity, other than *amici*, their members or their counsel made a monetary contribution specifically for the preparation or submission of this brief.

SUMMARY OF ARGUMENT

“Two wrongs make a right.” That would be the principle that this Court would establish should it affirm the central holdings of the court below.

Amici sympathize with Summum’s viewpoint discrimination claim. Summum has simply requested that Pleasant Grove act neutrally regarding the display of religious monuments in its park. This request left the City with two options: the City could either allow Summum to display its Seven Aphorisms monument, or the City could remove the Ten Commandments monument that is communicating the religious message that it favors. Because both of these options were apparently unbearable, the City chose a third option: litigation.

Establishment Clause jurisprudence is currently in disarray after the decisions of *Van Orden*² and *McCreary County*,³ as well as other decisions attributing sham secular purposes to inherently religious activities or icons. The holdings of the Tenth Circuit below are excellent illustrations of how confusion and disorder in one area of the law can quickly spread to other areas of law. In this case, the disorder in Establishment Clause jurisprudence has spread

² *Van Orden v. Perry*, 545 U.S. 677 (2005) (Rehnquist, C.J., plurality opinion) (holding that a government-sponsored display of the Ten Commandments at the Texas State Capitol in Austin did not violate the Establishment Clause).

³ *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005) (holding that a Ten Commandments display in the county courthouse was unconstitutional).

to the doctrines of public forum and government speech, mutating a simple Establishment Clause case into a convoluted free speech case.

The purpose of this brief by *amici* is twofold. First, *amici* wish to inform the Court that the Tenth Circuit erred both in holding that donated monuments remain the private speech of their donors and that public parks are public forums for donated permanent monuments. Second, *amici* are of the view that the proper interpretation of the Establishment Clause — that the government is prohibited from promoting or endorsing *any* religious viewpoint — compels the Court to clarify its jurisprudence, namely, that the Constitution prohibits government from displaying inherently religious monuments.

Accordingly, *amici* urge the Court to dismiss Sumnum’s free speech claims and remand the case for a determination of whether the display of the Decalogue by Pleasant Grove violates the Establishment Clause in light of any guidance the Court may provide.

ARGUMENT

I. Prior Ten Commandments cases of this Court and the Tenth Circuit led to the artificial framing of this case as a free speech case, when the principal issue here is actually the City’s violation of the Establishment Clause.

In this case, Pleasant Grove City (“Pleasant Grove” or “City”) has adopted the religious

message of the Fraternal Order of Eagles (“Eagles”) by accepting a Ten Commandments monument donated by the Eagles and displaying it in Pioneer Park (“the Park”), a public park. See (Defs.’ Mem. Supp. Mot. Summ. J. ¶¶ 24, 29.) The City then denied Summum’s requests to display a monument of its Seven Aphorisms in the same Park. (*Id.* at ¶ 32.) This would be a clear case of impermissible viewpoint discrimination if the Park was a public forum for the display of permanent monuments. See *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 829-30 (1995). But the Park is a nonpublic forum for the display of monuments despite the Tenth Circuit’s holding to the contrary.

The confusion in the Tenth Circuit regarding privately donated monuments has its origins in the 1973 case of *Anderson v. Salt Lake City*, 475 F.2d 29 (10th Cir. 1973), *cert. denied*, 414 U.S. 879 (1973). In *Anderson*, the Tenth Circuit ignored the First Amendment prohibition against governmental acts “respecting an establishment of religion”⁴ and held that the government’s purpose for maintaining an illuminated Ten Commandments monument on courthouse grounds was “primarily secular, and not religious in character.” *Id.* at 34.

⁴ The full text of the First Amendment reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

Seven years later, in *Stone v. Graham*, this Court rejected the argument that the Ten Commandments are “the fundamental legal code of Western Civilization and the Common Law of the United States” and held that the government did not have a secular purpose for their posting. 449 U.S. 39, 41 (1980). The Court declared, “The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact.” *Id.* After this decision, many jurisdictions looked for ways to circumvent the prohibition articulated in *Stone*. Perhaps the most ingenious subversion of *Stone* was invented by the Tenth Circuit. See *Summum v. Callaghan*, 130 F.3d 906 (10th Cir. 1997).

In *Callaghan*, the Tenth Circuit held that a Ten Commandments monument displayed on the front lawn of the county courthouse was the private speech of the donor, the Eagles, and not the speech of the government. *Id.* at 919 n.19. The court concluded that *Summum* sufficiently alleged that the government created a limited public forum by permitting the Ten Commandments to be displayed. *Id.* at 919. The Tenth Circuit reinforced the holding that a Ten Commandments monument remains the private speech of the donor in *Summum v. City of Ogden*, 297 F.3d 995 (10th Cir. 2002).

Thus, before this Court handed down the decisions in *Van Orden*, 545 U.S. at 691-92, and *McCreary County*, 545 U.S. at 881, the idea quickly gained momentum that the requirements

of the Establishment Clause could be avoided through public forum doctrine:

Ten Commandments monuments that have been donated to government by private parties may survive an Establishment Clause challenge if they can be characterized as private religious speech in the public square.

...

[T]he increasingly visible doctrine of forum analysis may provide an opportunity for Ten Commandments proponents to finally go on the offensive and assert their Free Speech and Free Exercise rights in the public square.

Bradley M. Cowan. *The Decalogue in the Public Forum: Do Public Displays of the Ten Commandments Violate the Establishment Clause?*, 2 Ave Maria L. Rev. 183, 203 (2004).

Furthermore, there is evidence that a desire to display its own monument on government property is not Summum's *primary* motive. In an earlier case, Summum first sent a letter to a city requesting that the Ten Commandments monument be removed because it violated the Establishment Clause. *Summum v. City of Ogden*, 297 F.3d 995, 998 (10th Cir. 2002). It was only after this request was rejected that Summum then requested that its monument be displayed as well. *Id.*

II. The government's acceptance and display of a permanent monument constitutes government speech because these actions are an *implicit* adoption of the monument's message.

When, as here, the government accepts ownership of a privately donated monument and controls the manner of its display, the government crosses the line between a mere “regulator/manager” of a forum and becomes the “speaker” for purposes of free speech analysis. See *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 671 (1998) (noting that “selection and presentation” of a third-party message by the government is “speech activity”). The government cannot turn a blind eye to the fact that, when it displays a monument, a reasonable observer would assume that the government agrees with the content of the monument. See *Capitol Square v. Pinette*, 515 U.S. 753, 786 (1995) (Souter, J., dissenting). Therefore, when the government accepts and displays a monument, it must be held to know that these actions convey an implicit message of adoption. A reasonable observer would not view a stone monument in the same way that it would view more temporary forms of speech on public property:

When an individual speaks in a public forum, it is reasonable for an observer to attribute the speech, first and foremost, to the speaker, *while an unattended display (and any message it conveys) can naturally be viewed as belonging to the owner of the land on which it stands.*

Id. (emphasis added). Campaign signs, organized protests or public speeches are examples of forms of temporary speech that people know the government is required to permit in parks, regardless of whether the government agrees with the message. However, because a monument like the Ten Commandments is presumed to be a permanent structure, a reasonable observer would know that the monument is only in the Park because the government allows it to be there. *Id.* at 803

This Court analyzed an identical monument donated by the Eagles within the framework of government speech in *Van Orden*, 545 U.S. at 683-93. In ruling on an Establishment Clause challenge to a Ten Commandments monument on the grounds of the Texas State Capitol, none of the Justices of this Court indicated in *Van Orden*, *id.*, that the display was private speech, despite the fact that a finding of private speech would have foreclosed the Establishment Clause inquiry for at least four of these Justices. See *Pinette*, 515 U.S. at 764.

In *Pinette*, Justices Scalia, Kennedy, Thomas and Chief Justice Rehnquist maintained that the Establishment Clause only applies to “expression *by the government itself*, or else government action alleged to *discriminate in favor* of private religious expression or activity.” *Id.* Therefore, if these same Justices believed in *Van Orden* that the Decalogue was not government speech, but instead remained the private speech of the Eagles, then they would have simply said that the Establishment Clause did not apply to this

monument. Because every member of the Court engaged in *some form* of Establishment Clause analysis in *Van Orden*, it is likely they each accepted that the Ten Commandments monument was not private speech.

The conclusion that the Ten Commandments monument here constitutes government speech is further supported by a statement inscribed onto the monument's face: "Presented to the City of Pleasant Grove and Utah County, Utah by Utah State Aerie Fraternal Order of Eagles." The Decalogue at issue in *Van Orden* was nearly identical except for the inscribed name of the recipient. The *Van Orden* inscription garnered this commentary:

[T]he inscription implies, clearly and correctly, that it is the state which owns the monument. These Ten Commandments are, literally and constitutionally, the state's own words.

Erwin Chemerinsky, *Why Justice Breyer was Wrong in Van Orden v. Perry*, 14 Wm. & Mary Bill Rts. J. 1, 7 (2005).

Accordingly, the Tenth Circuit's holding that the display of a permanent monument in a public park remains the private speech of the donor should be reversed.

III. City parks are nonpublic forums for the display of permanent monuments.

A. The identity of the forum here is “permanent monuments in a city park” because identifying the forum as simply “a city park” does not account for the type of access sought by Summum.

The Tenth Circuit correctly *identified* the forum at issue in this case as “permanent monuments in the city park,” but subsequently erred in *classifying the nature* of the forum as “public.” *Summum v. Pleasant Grove City*, 483 F.3d 1044, 1050 (10th Cir. 2007). This error arose because the Tenth Circuit lost focus on the type of access sought by Summum: installation of a permanent monument. This Court has explained that “forum analysis is not complete merely by identifying the government property at issue. Rather, in defining the forum [this Court has] focused on the access sought by the speaker.” *Cornelius v. NAACP Legal Defense Fund, Inc.*, 473 U.S. 788, 801 (1985). Therefore, there are two necessary steps to forum analysis: (1) *identifying* the forum in terms of both the property at issue (e.g., a public library) as well as the type of access sought by the speaker (e.g., distributing leaflets or an organized demonstration), and (2) *classifying* the nature of the forum (traditional public forum, designated public forum, limited public forum, nonpublic forum or no forum). *See id.*

This Court has been quite specific when identifying the relevant forum in its free speech

cases. See *id.* at 790, 800-01 (rejecting a general identification of the forum as “the federal workplace” in favor of the more specific identification of “the Combined Federal Campaign [...] a charity drive aimed at federal employees”); *Perry Education Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 47 (1983) (identifying the forum as the “school’s internal mail system”); *United States v. Kokinda*, 497 U.S. 720, 727 (1990) (identifying the forum as a “*postal* sidewalk” and distinguishing it from the “*municipal* sidewalk” across the street) (emphasis added); *United States v. American Library Ass’n*, 539 U.S. 194, 206 (2003) (identifying the forum as “*internet access in a public library*”) (emphasis added).

Although the Tenth Circuit claimed to identify the relevant forum here as “permanent monuments in the city park,” when classifying the forum, the court stated only that, “*the city park* is, however, a traditional public forum.” *Pleasant Grove City*, 483 F.3d at 1050. (emphasis added). Thus, the analysis of the Tenth Circuit merely identified the property and ignored the type of access sought by Summum. *Id.* In failing to “focus[] on the access sought” in the forum analysis for this case, *Cornelius*, 473 U.S. at 801, the Tenth Circuit arrived at the strikingly counterintuitive result that private parties may install permanent monuments in public parks subject only to the limited restrictions permissible in a public forum, *Pleasant Grove City*, 483 F.3d at 1052.

In her response to those dissenting from the

denial of a rehearing of the Tenth Circuit en banc, Chief Judge Tacha said, “[T]he Supreme Court has never distinguished between transitory and permanent expression for purposes of forum analysis. [...] The type of speech does not, and should not determine the nature of the forum.” *Sumnum v. Pleasant Grove City*, 499 F.3d 1170, 1178 (10th Cir. 2007). Judge Tacha is correct that the type of speech (which is another way of saying the “type of access sought”) does not determine the *nature* of the forum; however, the type of speech determines the *identity* of the forum, and a correct identification of the forum is critical for proper classification of the forum’s public or nonpublic nature. *Cornelius*, 473 U.S. at 789. In directing lower courts to “focus[] on the access sought by the speaker,” this Court has implicitly mandated that distinguishing between transitory and permanent expression be an indispensable step of forum analysis. *Id.*

B. Once the forum is appropriately identified as “permanent monuments in a city park,” it is clear that the nature of the forum is neither a traditional nor a designated public forum.

1. There is no tradition in this country of private parties installing permanent monuments in public parks without government approval.

Pioneer Park is not a traditional public forum for the display of permanent monuments because public parks have *not* “immemorially been held in

trust for the use of *the public* . . . for purposes of” the display of permanent monuments. See *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939) (emphasis added). An aspect of government property, even if it “is a forum more in a metaphysical than a spatial or geographical sense,” *Rosenberger*, 515 U.S. at 830, exists as a traditional public forum by virtue of its “long tradition” of use by the public for “assembly and debate,” *Perry Education Assn.*, 460 U.S. at 45. Although this Court has stated unequivocally that “streets and parks” are traditional public forums for “assembly and debate,” *id.*, a common-sense interpretation of “assembly and debate,” supports the conclusion that the right of private speech in public parks traditionally extends only to non-permanent modes of communication.

It is instructive that this Court has never had to confront a case similar to the case at bar despite the fact that the tradition of displaying monuments on public property is older than the First Amendment itself. This is *not* a case where a private party has displayed an unattended structure for a temporary period. See *Pinette*, 515 U.S. at 758 (permitting the KKK to display an unattended cross in a public park for 18 days in December). This is *not* a case where some new mode of communication has been invented (e.g., electronic megaphones) and is being challenged on the ground that it does not have a long history of use. This also is *not* a case where a new category of government property has come into existence relatively recently (e.g., airports). See *International Society for Krishna Consciousness*,

Inc. v. Lee, 505 U.S. 672 (1992).⁵ Instead, this is a case where both the mode of communication (permanent monuments) and the government property at issue (a public park) have existed “time out of mind.” *See id.* Because this Court “has rejected the view that traditional public forum status extends beyond its historic confines,” *Forbes*, 523 U.S. at 678, and there is no history of persons installing permanent monuments in city parks without authority derived from the government, this case does not involve a traditional public forum.

2. The fact that the City Council retained the right to accept or reject monuments that met the necessary criteria for acceptance shows that the City never intended to convert the Park into a public forum.

Pioneer Park is not a designated public forum for the display of permanent monuments because the City did not “intentionally open[] a nontraditional forum for public discourse.” *Cornelius*, 473 U.S. at 802. The existence of criteria used by the City Council to decide whether to accept and display a monument does not create a public forum for private parties who qualify because the City Council makes the

⁵ The Court stated, “given the lateness with which the modern air terminal has made its appearance, it hardly qualifies for the description of having ‘immemorially ... time out of mind’ been held in the public trust and used for purposes of expressive activity.” *Id.* at 680 (quoting *Hague*, 307 U.S. at 515).

ultimate decision whether to accept a monument. The “selective access” resulting from the government’s use of acceptance criteria to guide its ultimate determination, which is “unsupported by evidence of a purposeful designation for public use, does not create a public forum.” *Id.* at 804-05.

The fact that Pleasant Grove has produced no evidence of using its acceptance criteria (other than the rejection of the Seven Aphorisms) is not fatal to its claim that the Park was a nonpublic forum for the display of permanent monuments.⁶ *See id.* at 805. In *Cornelius*, a case where the NAACP contested its exclusion from a charity drive aimed at federal employees, this Court stated, “Although the record does not show how many organizations have been denied permission throughout the 24-year history of the [charity drive], there is no evidence suggesting that the granting of the requisite permission is merely ministerial.” *Id.* at 805. The fact that the government in *Cornelius* could not point to any other parties that had been rejected because of failure to meet the admission criteria did not demonstrate the existence of a public forum.

As in *Cornelius*, there is no evidence here to suggest that granting permission to install a monument that meets the stated criteria is a “merely ministerial” act of the Pleasant Grove City Council. *See also Forbes*, 523 U.S. at 680, 692 (Stevens, J., dissenting) (noting that the Court

⁶ However, this is strong evidence for Establishment Clause violations detailed in Section IV.

found that a televised debate was a nonpublic forum despite the fact that “No written criteria cabined the discretion of the AETC staff”). Because the forum here is nonpublic, the City has the right to deny private parties permission to install permanent monuments in the Park so long as the City acts in a reasonable and viewpoint-neutral manner. *Cornelius*, 473 U.S. at 806.

Accordingly, the Tenth Circuit’s holding that public parks are public forums for the permanent display of privately donated monuments should be reversed.

IV. The permanent display of a religious monument on public property violates the Establishment Clause.

A. The First Amendment must be interpreted in light of the values it was intended to serve and the experiences gained from America’s rapidly evolving religious identity.

The principle of separation of church and state is firmly established in this country as the meaning of the Religion Clauses of the First Amendment. *See Van Orden*, 545 U.S. at 683.⁷ The phrase “respecting an establishment of religion” was the product of a political compromise made during a House-Senate

⁷ The Plurality stated, “One face [of the Court’s Establishment Clause jurisprudence] looks to the past in acknowledgment of our Nation’s heritage, while the other looks to the present in demanding a *separation between church and state*.” *Id.* (emphasis added).

conference committee of the First Congress. See Philip B. Kurland, *The Origins of the Religion Clauses of the Constitution*, 27 Wm. & Mary L. Rev. 839, 855-56 (1987). Because there is no contemporaneous record of the committee explaining its meaning, *id.*, debate over the proper interpretation of the Establishment Clause has focused on statements of those who were involved in its formulation, as well as the American experience prior to and immediately after its ratification.

The first significant explanation of the Religion Clauses, which expressly equates them with the principle of separation of church and state, comes from President Thomas Jefferson in a letter to the Danbury Baptist Association:

Believing with you that religion is a matter which lies solely between man and his God . . . I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and State.⁸

Not only did this Court explicitly adopt the position that the First Amendment created a wall of separation between church and state, but the “wall” described in *Everson v. Board of Education* appeared to exceed the wall described by

⁸ Letter from Thomas Jefferson, U.S. President, to Danbury Baptist Association (Jan. 1, 1802), *available at* <http://www.loc.gov/loc/lcib/9806/danpre.html>.

Jefferson: “That wall must be kept high and impregnable. We could not approve the slightest breach.” 330 U.S. 1, 18 (1947). Despite the unequivocal affirmation of the wall of separation in *Everson*, the Court has retreated from this idea in recent years, partially in response to revisionist histories.

The view that the Religion Clauses require, at the very minimum, the government to act *neutrally* toward religion gained broad acceptance with this Court in the last half of the twentieth century. Although the principle of neutrality is an alternative way of understanding the requirements of the Religion Clauses, this approach often compels the same outcome as would the wall of separation. However, application of the neutrality requirement has resulted in the government conferring benefits to religious groups in situations where a wall of separation would prevent conferring these benefits. *See, e.g., Rosenberger*, 515 U.S. at 845-46 (holding that the neutrality principle required a university to give a student newspaper with a religious viewpoint access to printing funds available to other student groups).

Although less stringent interpretations view the Religion Clauses as only preventing coercion or indoctrination, *Lee v. Weisman*, 505 U.S. 577, 591-92 (1992), the weakest role envisioned for the Establishment Clause was recently articulated by the dissenters in *McCreary County*, 545 U.S. at 899-903 (Scalia, J., dissenting). According to this interpretation, the government may act in a way that favors religion over non-religion, *id.* at 889,

and even monotheism over all other belief systems, *id.* at 899-900. Advocates of this interpretation highlight actions by the federal government occurring immediately after ratification of the Constitution and Bill of Rights favoring Judeo-Christian beliefs, such as references to “God” in Thanksgiving Proclamations, Inaugural Addresses and legislative prayer. See *McCreary County*, 545 U.S. at 896-97 (Scalia, J., dissenting).

Though the historical analyses conducted by advocates of these various approaches are not all created equal, the fact that each advocate finds support for his or her view in certain words and actions of the Framers demonstrates the error of interpreting the Religion Clauses solely by reference to their “original intent.” See Kurland, *Origins of the Religion Clauses*, *supra*, at 841-42; see also *Lee*, 505 U.S. at 626 (Souter, J., concurring) (noting that “the Framers . . . like other politicians, could raise constitutional ideals one day and turn their backs on them the next”). The shifts⁹ in this Court’s understanding of the Religion Clauses over the last sixty years reveal that a method of constitutional interpretation

⁹ For evidence of the Court’s shift in interpretation of the Religion Clauses, compare *Everson*, 330 U.S. at 18 (“The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.”), and *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (“The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”), with *Van Orden*, 545 U.S. at 684 (“we have not, and do not, adhere to the principle that the Establishment Clause bars any and all governmental preference for religion over irreligion.”).

grounded in “original intent” is usually as subjective as any other interpretive method, though lacking in the intellectual honesty to acknowledge its subjectivity. Furthermore, interpretation of the Religion Clauses solely by reference to the actions and attitudes of the Framers fails to adequately address the significant changes in religious identity that have occurred, and continue to occur, in this country.

Although the Ten Commandments are viewed as “revealed truth” by most Judeo-Christian denominations, the first *Ten Amendments* to the Constitution have always been viewed as a triumph of human reason — no more and no less. The Religion Clauses of the First Amendment resulted from lessons learned from the experience of hundreds of years of established religion. The Constitution created a government that derived its authority from “the People,” in sharp contrast to the divine right claimed by the king from whom they had declared independence a decade earlier. U.S. Const. pmb1.¹⁰ There is no mention of God in the document, and the sole provision in the original Constitution relating to religion states: “[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” U.S. Const. art. VI, cl. 3.¹¹

¹⁰ The full Preamble to the Constitution reads as follows: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” *Id.*

¹¹ The full text of Article VI, Clause Three, reads as follows: “The Senators and Representatives before mentioned, and

The Constitution and the purely secular government it created were produced by the application of human reason to human problems. Though the Constitution remains an incredible accomplishment by any measure, human reason did not dry up with the ink on its parchment. “We the People of the United States” are now confronted with problems that were clearly inconceivable to the authors of the Constitution, but we have an additional two hundred years of experience from which to draw guidance. U.S. Const. pmbl.

Neither the creation of a wall of separation nor the maintenance of government neutrality toward religion is an end goal in itself. The requirements arising from both of these approaches are simply means to ensure that the Religion Clauses safeguard the values of religious liberty: freedom of conscience and government non-involvement in religion. See Noah Feldman, *The Intellectual Origins of the Establishment Clause*, 77 N.Y.U. L. Rev. 346, 351 (2002). Although the First Amendment does not explicitly announce these values, they are revealed by an examination of the needs of the new government. See Kurland, *Origins of the Religion Clauses*, *supra*, at 856. The United States desperately needed a unified, national government, and the Framers understood that a nation fractured along religious

the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” *Id.*

lines could not perform effectively. Because of the religious heterogeneity between sections of the country, religious minorities and persons professing no religion needed protection from the actions of those in the majority.¹² The Religion Clauses were included in the Bill of Rights to provide this protection.

An additional purpose of the Establishment Clause was to ensure not only that religion not corrupt government but also that government not corrupt religion. See James Madison, *Memorial and Remonstrance Against Religious Assessments* (1786), reprinted in *THE SEPARATION OF CHURCH AND STATE: WRITINGS ON A FUNDAMENTAL FREEDOM BY AMERICA'S FOUNDERS*, at 56 (Forrest Church ed., Beacon Press 2004).¹³

¹² The Framers also understood that the “majority” frequently shifts depending not only upon how political boundaries are drawn (e.g., location of county or state borders) and how representation is determined in legislative bodies (e.g., number of representatives per state in the House of Representatives), but also “depend[ing] on a prior determination of how to define and categorize religious groups.” Thomas C. Berg, *Minority Religions and the Religion Clauses*, 82 Wash. U. L.Q. 919, 948 (2004); see also *Regents of the University of California v. Bakke*, 438 U.S. 265, 295 (1978) (“The concepts of ‘majority’ and ‘minority’ necessarily reflect temporary arrangements and political judgments.”).

¹³ Madison’s view of the corrupting influence of government on religion is reflected in paragraph seven: “Because experience witnesses that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and

This Court should retain the wall of separation approach because it provides the best protection for the values embodied in the Religion Clauses. This approach is supported by both history and precedent. But because no interpretation of the Religion Clauses can ever be “correct” to the exclusion of all others, the most persuasive reason to protect the wall of separation from degradation is that hundreds of years of collective human experience in matters of church and state interaction have demonstrated the efficacy of this approach. The rapidly evolving religious attitudes in this country make the wall of separation a necessity for all Americans, not simply a luxury for those whose beliefs are currently in the minority.

B. A fundamental purpose of the First Amendment was to protect the religious liberty of those with minority beliefs.

The counter-majoritarian nature of the Establishment Clause — and the Bill of Rights as a whole — is self-evident: “By definition, any enforcement of the Establishment Clause involves the Court striking down a government practice that the majority wants.” Chemerinsky, *Why Justice Breyer was Wrong in Van Orden v. Perry*, *supra*, at 3. This Court explained the essential role played by the Bill of Rights in protecting minorities from the unrestrained will of the majority in *Barnette*, 319 U.S. at 638:

servility in the laity; in both, superstition, bigotry, and persecution.” *Id.* at 65.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Compared to other nations at the time, the founding-era United States had remarkable religious diversity. See Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1421 (1990) (“in 1789 . . . the American states had already experienced 150 years of a higher degree of religious diversity than had existed anywhere else in the world.”). Although the religious differences of that era may seem trivial when compared to the plurality of beliefs held by Americans today, the members of the First Congress were conscious of the urgent need for institutions that would serve all citizens equally, regardless of religious allegiance. See Thomas C. Berg, *Minority Religions and the Religion Clauses*, 82 Wash. U. L.Q. 919, 939-40 (2004). The fact that the early United States did not have significant populations of Hindus, Buddhists, Muslims, or Pagans does not change the fact that the Framers intended for the Religion Clauses to extend to the adherents of *every religion in the country*. *Id.*

Furthermore, because many members of the First Congress were Deists, there is a strong likelihood that at least these individuals intended for the constitutional protections to extend to the nonreligious. Although Deism acknowledged the existence of a “Creator” or “First Cause,” Deists were often derided as atheists because they believed in the primacy of human reason and rejected the idea of divine revelation. Frank Lambert, *The Founding Fathers and the Place of Religion in America* 161, 176-77 (Princeton University Press 2003). Because a significant portion of the population regarded Deists as atheists, many of the Framers likely valued the protection of nontheistic beliefs, even if only out of an instinct for political self-preservation.

In 2007, over sixteen percent of people in the United States were religiously “unaffiliated.”¹⁴ The fact that the number of Americans with no religious affiliation is greater than the number of African Americans¹⁵ in this country demonstrates the significance of this segment of the population. However, nonreligious persons are often consciously overlooked in discussions about the

¹⁴ The Pew Forum on Religion & Public Life, *The US Religious Landscape Survey* (Fed. 25, 2008), available at <http://religions.pewforum.org/affiliations>. The Pew Forum surveyed 35,556 cases from May 8, 2007, to August 13 2007. The “Unaffiliated” 16.1% is comprised of “Atheist” 1.6%, “Agnostic” 2.4% and “Nothing in particular” 12.1%.

¹⁵ An estimated 38,342,549 Americans (approximately 12.7% of the population) considered themselves “Black or African American” in 2006. U.S. Census Bureau, General Demographic Characteristics: July 2006 (2006), available at http://factfinder.census.gov/home/en/official_estimates.html.

role of religion in government. The dissenting opinion in *McCreary County* justified the display of the Ten Commandments using this tactic: “The three most popular religions in the United States, Christianity, Judaism, and Islam — which combined account for 97.7% of all believers — are monotheistic.” 545 U.S. at 894. By only accounting for Americans who are “believers,” those who do not revere the Ten Commandments were portrayed as a significantly smaller minority than is actually the case. Furthermore, the *McCreary County* dissent demonstrated a fundamental misunderstanding of the protection the First Amendment provides for minorities:

[N]umerous provisions of our laws and numerous continuing practices of our people demonstrate that the government's invocation of God (and hence the government's invocation of the Ten Commandments) is unobjectionable — including a statute enacted by Congress almost unanimously less than three years ago, stating that “under God” in the Pledge of Allegiance is constitutional.

545 U.S. at 899. Simply because actions are unobjectionable to a majority does not make them unobjectionable to the Constitution. This statement only highlights the critical necessity of the Religion Clauses for the protection of the rights of the minority in matters of religion and conscience.

C. Because the Ten Commandments are not “foundational” to American law and government, and because they have enormous religious significance to the Judeo-Christian faiths, the government lacks a secular purpose for their display on public property.

1. The Ten Commandments are not “foundational” to American law and government.

Although the claim that the Ten Commandments are foundational to American law and government has been debated for decades in courts, historians have overwhelmingly rejected this claim. *See, e.g.,* Steven K. Green, *The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law*, 14 J.L. & Religion 525, 558 (1999-2000) (“The historical record fails to support claims of a direct relationship between the law and the Ten Commandments.”); Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 Fordham L. Rev. 1477, 1516 (2005) (“Monuments to the Ten Commandments thus do not reflect an objective or accurate representation of the historical development of American law. . . . Rather than reflecting our legal heritage, to a great extent the Ten Commandments fly in the face of the evolution of American law, which has been towards secular freedoms and liberties and towards greater religious diversity.”); David A. Friedman, *Why Governmental Decalogue Displays Endorse Religion*, 23 T.M. Cooley L. Rev. 109, 109 (2006)

(“claims that the Ten Commandments ‘significantly influenced’ the development of American law or the American governmental system lack historical support.”).

Perhaps the best evidence that the Ten Commandments did not play a significant role in American law and government is that this Court has never attempted to define that role. The Court has been far more vague on this subject than the already-vague, “foundational” role claimed by Texas in *Van Orden*, 545 U.S. at 712 n.9 (Stevens, J., dissenting), and Kentucky in *McCreary County*, 545 U.S. at 844. The Plurality in *Van Orden* stated, “Such acknowledgments of the role played by the Ten Commandments in our Nation's heritage are common throughout America.” 545 U.S. at 688. The phrase “Nation’s heritage” potentially implies a much broader conception of both the time frame and type of influence that are relevant for finding a Ten Commandments display constitutional. *Id.*

Unfortunately, because of the ambiguity of the language used by the Plurality in *Van Orden*, *id.*, even if all parties accepted as conclusively proven the fact that the Ten Commandments were not “foundational to American law and government,” this might not be enough to defeat sham secular purposes under the Court’s current Establishment Clause jurisprudence. The inherent vagueness of the concepts of “mere acknowledgment” and “Nation’s heritage” in *Van Orden* has created more problems than it has solved. *Id.* Because of the high probability of sham secular purposes that this vagueness

engenders, this Court should review Establishment Clause challenges to the display of the Ten Commandments on public property with “a strong presumption against” their constitutionality. *Van Orden*, 545 U.S. at 708 (Stevens, J., dissenting) (“The Establishment Clause should be construed to create a strong presumption against the installation of unattended religious symbols on public property.”).

2. Those who advocate the display of the Ten Commandments on public property do so for religious, not secular, purposes.

Most people in this country who support the display of the Ten Commandments on public property admit unapologetically that the display is for religious purposes. See Chemerinsky, *Why Justice Breyer was Wrong in Van Orden v. Perry*, *supra*, at 7. However, government officials know that rulings of this Court require that they make some effort to articulate a secular purpose for their actions, regardless of their personal opinion of the importance of the Establishment Clause. Justices of this Court, however, are able to discuss their understanding of Establishment Clause requirements with far more candor:

[A]t oral argument in *Van Orden*, Justice Scalia left no room for doubt that he believes that Ten Commandments monuments are constitutional despite the fact that they convey a religious, rather than a secular, message:

It's not a secular message. I mean, if you're watering it down to say that the only reason it's okay is it sends nothing but a secular message, I can't agree with you. I think the message [that the Ten Commandments monument] sends is that law is—and our institutions come from God. And if you don't think it conveys that message, I just think you're kidding yourself.

Thomas B. Colby. *A Constitutional Hierarchy of Religions? Justice Scalia, the Ten Commandments, and the Future of the Establishment Clause*, 100 Nw. U. L. Rev. 1097, 1107 (2006) (citing Transcript of Oral Argument at 29, *Van Orden v. Perry*, 545 U.S. 677 (2005)).

Although supporters of Ten Commandments displays on public property may win legal victories by articulating sham secular purposes, these victories do not come without a cost to their own beliefs:

The irony is that those who favor the Ten Commandments on government property, such as between the Texas State Capitol and the Texas Supreme Court, do so precisely because of the religious content of the Ten Commandments and the importance of the Decalogue as a religious symbol. Yet, supporters of Ten Commandments monuments are forced to defend them as secular, as Justice Breyer did. This denigrates religion by denying the

essential and profoundly religious nature of the Ten Commandments.

Chemerinsky, *Why Justice Breyer was Wrong in Van Orden v. Perry, supra*, at 7. A greater irony is that a central purpose of the Establishment Clause was to avoid exactly what is happening all over the country regarding Ten Commandments displays: the cheapening (corruption) of religion by government involvement. In the words of Justice Blackmun, “The city has its victory—but it is a Pyrrhic one indeed.” *Lynch v. Donnelly*, 465 U.S. 668, 727 (1984) (dissenting from the Court’s finding of a secular purpose for a crèche on public property).

D. Display of religious monuments on public property is unconstitutional because the effect of the government’s display is the endorsement of religion.

The display of religious monuments on public property violates the Establishment Clause because “it sends the ancillary message to . . . nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 310 (2000) (internal quotation marks omitted) (citing *Lynch*, 465 U.S. at 688 (O’Connor, J., concurring)). More specifically, the display of the Ten Commandments sends the message to nonadherents of Judeo-Christian religions that they are not full members of the political community.

1. A reasonable observer would view a Ten Commandments monument in a public park as government endorsement of religion.

By itself, the text of the Ten Commandments sends an overwhelmingly religious message. Although there are many contexts — such as a museum exhibit — in which governmental display of a Ten Commandments monument can be appropriate, the text alone is sufficient to create a “strong presumption against” the constitutionality of its display in a public park. *Van Orden*, 545 U.S. at 708 (Stevens, J., dissenting). Far from rebutting this presumption, the context in which the Decalogue is displayed in Pioneer Park only heightens the effect of endorsement.

One of the first things that a reasonable observer would likely notice on any Ten Commandments display is the phrase “I AM the LORD thy GOD.”¹⁶ Although the monument might be “passive” in the sense that the stone itself is not going to move, there is nothing passive about the inscribed text. *Cf. Van Orden*, 545 U.S. at 686, 691 (describing the Ten Commandments monument at issue as “passive”). The Commandments address not simply secular matters, but also — and most importantly for those who revere the Decalogue — they mandate what one must believe. “Thou shalt have no other Gods before me” is an unequivocal proclamation

¹⁶ This phrase appears in large letters on the Pleasant Grove and Texas State Capitol Decalogues immediately below the phrase “the Ten Commandments.”

that all other systems of belief are wrong. Furthermore, because the first four of the Commandments deal with purely religious matters, they would clearly be unconstitutional if enacted into law in the United States.

The design of the Ten Commandments monument in Pioneer Park accentuates the religious nature of the text and its link to civil government. The text of the most religiously significant part of the Ten Commandments — the statement "I AM the LORD thy GOD" — is larger, and set apart from, the text of the other commandments. The probability that an observer would see this monument as anything other than an endorsement of religion is further diminished by the presence of Jewish and Christian symbols: two Stars of David and the Greek letters "Chi" and "Rho," symbolizing or abbreviating "Christ." The monument also has a depiction of an American eagle holding an American flag centered above the text of the Commandments. In a case involving a nearly identical monument on government property, the Seventh Circuit found that this symbol strengthened the appearance of government endorsement:

[T]he placement of the American eagle gripping the national colors at the top of the monument hardly detracts from the message of endorsement; rather, it specifically links religion, or more specifically these two religions, and civil government.

Books v. City of Elkhart, 235 F.3d 292, 307 (7th

Cir. 2000).

A reasonable observer would also see the location and context of the Ten Commandments monument in Pioneer Park as an endorsement of religion. As an initial matter, a reasonable observer would know that a permanent monument would not be on public property if the government did not want it to be there. Of the approximately fourteen monuments or permanent structures displayed in the Park, the Ten Commandments monument is the only item with any religious significance. See (Defs.' Mem. Supp. Mot. Summ. J. ¶¶ 11-27.)¹⁷ Although the City claims that the monuments in the Park are unified by the theme of Pleasant Grove's pioneer history, (Defs.' Mem. Supp. Mot. Summ. J. ¶¶ 6-8), the presence of the "September 11 Monument" demonstrates the falsity of this claim (Defs.' Mem. Supp. Mot. Summ. J. ¶ 20). The fact that the Ten Commandments were displayed near other secular monuments only highlights the fact that this is the religious message that the government endorses.

There has been a long-running debate in this Court over the degree of knowledge to attribute to the "reasonable observer" for purposes of

¹⁷ The monuments and/or permanent structures in Pioneer Park are as follows: the Ten Commandments monument at issue; a September 11 monument; a log cabin; "Old Bell School;" a water well; a granary; a flour mill stone; the "Nauvoo Temple Stone;" the original Pleasant Grove Town Hall; the original fire department's hose cart house and plaque; the original Pleasant Grove train station sign; the winter corral; a rose garden; a gazebo; and benches, trees and plaques. *Id.*

determining the effect of a display for Establishment Clause analysis. *See, e.g., Pinette*, 515 U.S. at 799-84, 800-08. To hold that a reasonable observer would perceive a Ten Commandments monument displayed on public property as simply the government's acknowledgment of the supposedly foundational role of the Ten Commandments on American law and government — and not as an endorsement of religion — presupposes an unrealistic degree of historical knowledge on the part of the observer. Ironically, however, it also presupposes an inaccurate knowledge of history.

2. Even if a religious monument is considered private speech in a public forum, its display violates the Establishment Clause if the effect is government endorsement.

The mere fact that a religious monument on public property is characterized as “private speech” will not immunize the government from an Establishment Clause challenge. A government action — such as the City's acceptance and display of the Decalogue — will violate the Establishment Clause if it has the effect of endorsing religion, regardless of the identity of the speaker. *See Santa Fe Independent School Dist.*, 530 U.S. at 303 (“A conclusion that the District had created a public forum would help shed light on whether the resulting speech is public or private, but we also note that we have never held the mere creation of a public forum shields the government entity from scrutiny under the Establishment Clause.”); *see also*

Pinette, 515 U.S. at 772 (O'Connor, J., concurring) (“the endorsement test asks the right question about governmental practices challenged on Establishment Clause grounds, including challenged practices involving the display of religious symbols, even where a neutral state policy toward private religious speech in a public forum is at issue.”); *County of Allegheny v. ACLU*, 492 U.S. 573, 600 (1989) (holding that the display of a crèche on a courthouse staircase violated the Establishment Clause even though the crèche itself was privately owned and a sign disclosed its private ownership).

E. The requirement of government neutrality with respect to religion prohibits the display of permanent religious monuments on public property.

Although the principle of government neutrality toward religion has been embraced by Justices of this Court from every ideological camp, the actual requirements of neutrality have been disputed. Until recently, it was understood that “[t]he First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *Epperson*, 393 U.S. at 104; *Everson v. Board of Ed. of Ewing*, 330 U.S. at 15-16; *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985). Various Justices have worried that government “neutrality toward religion” will be viewed as “hostility to religion.” *Van Orden*, 545 U.S. at 684. However, the perception of government hostility is, for the most part, subjective. It is natural for those who support government policies favoring their

religious beliefs to interpret Establishment Clause challenges as hostility toward these beliefs. And because “any enforcement of the Establishment Clause involves the Court striking down a government practice that the majority wants”, it is very likely that the *majority* may interpret this as hostility. Chemerinsky, *Why Justice Breyer was Wrong in Van Orden v. Perry*, *supra*, at 3.

The goal of government neutrality toward religion can only be achieved with equal regard for majority and minority beliefs by ensuring that the wall separating church and state is “kept high and impregnable.” *Everson*, 330 U.S. at 18. The desire to prevent the appearance of hostility toward the beliefs of the majority simply legitimates the long history of hostility toward minority beliefs. The majority of those who favor display of the Ten Commandments *intend* for it to evince their hostility toward minority beliefs. Furthermore, the choice to “acknowledge” the role played by one religion, while not “acknowledge[ing]” the role played by another religion, is a violation of religious neutrality. *Cf. Van Orden*, 545 U.S. at 683. As demonstrated by the spurious use of history in Ten Commandments cases across this country, there is no principled or neutral way to decide which religious beliefs are deserving of the government’s “acknowledgment” and which are not.

There is nothing neutral about a Ten Commandments monument of this sort. Such monuments favor religion over nonreligion, monotheistic religions over polytheistic and nontheistic religions, Abrahamic religions over

non-Abrahamic religions,¹⁸ Judeo-Christianity over Islam,¹⁹ Christianity over Judaism,²⁰ Protestantism over Catholicism,²¹ and Evangelical Protestantism over Non-evangelical Protestantism. The Religion Clauses forbid this favoritism. Although neutrality and separation are not incompatible, an interpretation of neutrality that would permit government favoritism is incompatible with separation and with the values enshrined in the Religion Clauses.²²

¹⁸ This assumes that the Ten Commandments have religious significance for Christians, Jews and Muslims.

¹⁹ The Ten Commandments do not have the same significance in Islam as they do in Christianity or Judaism. Friedman, *Why Governmental Decalogue Displays Endorse Religion*, *supra*, at 124.

²⁰ “God” is not a neutral term. See Frederick Mark Gedicks & Roger Hendrix, *Uncivil Religion: Judeo-Christianity and the Ten Commandments*, 110 W. Va. L. Rev. 275, 296-97 (2007) (“many Christians would find it problematic if ‘Jehovah’ or ‘Allah’ were substituted in place of the ubiquitous and purportedly inclusive ‘God’ of Judeo-Christianity. Whether one pledges allegiance to the United States, for example, as nation under ‘Jehovah,’ ‘Allah,’ or ‘God,’ is not a matter of indifference to American Christians, just as we expect that it is not a matter of indifference to Jews, Muslims, or adherents to other theistic faiths.”)

²¹ The King James translation on the monument is not accepted as authoritative by Catholics.

²² See Douglas Laycock, *The Underlying Unity of Separation and Neutrality*, 46 Emory L.J. 43, 45 (1997) (“In the Court’s view, separation is and always has been a means of maximizing religious liberty, of minimizing government interference with religion, and thus, of implementing neutrality among faiths and between faith and disbelief.”).

The fact that the first President, the First Congress and the first Supreme Court favored Judeo-Christianity does not render the favoring of Judeo-Christianity constitutional today. This Court has said, “[h]istory cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed.” *County of Allegheny*, 492 U.S. at 603; *see also Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664, 678 (1970) (“[N]o one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.”).

Establishment Clause jurisprudence is currently in disarray because courts continue to justify clear constitutional violations on the ground that certain actions have violated the Establishment Clause for so long that these violations no longer matter. In order to remedy the confusion resulting from the seemingly inconsistent holdings of *Van Orden*, 545 U.S. at 691-92, and *McCreary County*, 545 U.S. at 881, this Court must to put a stop to the growing practice of ascribing nonexistent secular purposes to the Ten Commandments, reaffirm the principle of separation of church and state, and confirm that the requirement of complete government neutrality extends to all systems of belief.

CONCLUSION

Judgment of the court below should be reversed and the case remanded to the circuit court with instruction that the parties brief and argue the question of whether the display of the Ten Commandments monument in Pioneer Park violates the Establishment Clause of the First Amendment.

Respectfully submitted,

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APPENDIX

APPENDIX

IDENTIFICATION OF *AMICI CURIAE*

The American Humanist Association advocates for the rights and viewpoints of Humanists. Founded in 1941 and headquartered in Washington, D.C., its work is extended through more than 100 local chapters and affiliates across America. Humanism is a progressive philosophy of life that, without theism and other supernatural beliefs, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The Mission of the American Humanist Association is to promote the spread of Humanism, raise public awareness and acceptance of Humanism and encourage the continued refinement of the Humanist philosophy.

The American Ethical Union is a federation of Ethical Culture/Ethical Humanist societies and circles throughout the United States. Ethical Culture is a Humanistic religious and educational movement inspired by the ideal that the supreme aim of human life is working to create a more humane society. The American Ethical Union has participated in a number of amicus curiae briefs in defense of religious freedom and church-state separation.

Atheist Alliance International is an organization of independent religion-free groups and individuals in the United States and around the world. Its primary goals are to help

democratic, atheistic societies become established and work in coalition with like-minded groups to advance rational thinking through educational processes. Through the Alliance, members share information and cooperate in activities with a national or international scope.

The Institute for Humanist Studies is a think tank based in Albany, New York, whose mission is to promote greater public awareness, understanding and support for Humanism. The Institute specializes in pioneering new technology for the advancement of Humanism and also engages in grassroots and legislative advocacy in order to further the rights and interests of the nonreligious. Founded in 1999, the Institute for Humanist Studies provides accessible and authoritative information about humanism to academia, the media and the general public, while providing financial grants to other nonreligious groups in its efforts to bring the Humanist movement into a more cooperative relationship.

The Secular Student Alliance is a network of over 130 atheist, agnostic, Humanist and skeptic groups on high school and college campuses. Although it has a handful of international affiliates, the organization is based in the United States. The vast majority of the affiliates are at high schools and colleges in the U.S. The mission of the Secular Student Alliance is to organize, unite, educate and serve students and student communities that promote the ideals of scientific and critical inquiry, democracy, secularism and human-based ethics.

The Society for Humanistic Judaism mobilizes people to celebrate Jewish identity and culture, consistent with Humanistic ethics and a nontheistic philosophy of life. Humanistic Jews believe each person has a responsibility for their own behavior, and for the state of the world, independent of any supernatural authority. The SHJ is concerned with protecting religious freedom for all, and especially for religious, ethnic and cultural minorities such as Jews, and most especially for Humanistic Jews, who do not espouse a traditional religious belief. The Society for Humanistic Judaism members want to ensure that they, as well as people of all faiths and viewpoints, will continue to feel comfortable in America's parks.

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States and North America. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. The Association has adopted numerous resolutions affirming the principles of separation of church and state and personal religious freedom. In particular, the Association's resolutions call for religious neutrality in government actions.