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## Ten Commandments marker to stay in Phoenix

**By Howard Fischer**  
CAPITOL MEDIA SERVICES

PHOENIX - A 6-foot-tall monument of the Ten Commandments will remain in a public park across from the Arizona state Capitol.

The decision Monday by Tim Nelson, chief legal adviser to Gov. Janet Napolitano, followed a ruling earlier in the day by the U.S. Supreme Court allowing a virtually identical monument to remain on the grounds of the state Capitol in Texas.

The high court said in a 5-4 ruling that such monuments are simply "acknowledgements of the role played by the Ten Commandments in our nation's heritage." Taking that side were William Rehnquist, Antonin Scalia, Anthony Kennedy, Clarence Thomas and Stephen Breyer.

"Our situation is very analogous to the case in Texas," said Nelson. "The monument here does not constitute the establishment of a religion by the state."

The American Civil Liberties Union of Arizona mounted a challenge two years ago, trying to force removal of the monument in Phoenix. Eleanor Eisenberg, the group's director, said she has not yet studied Monday's high court ruling but that it appears to undermine the ACLU's quest.

That ruling actually was one of two issued Monday by the court on the Ten Commandments and the separation of church and state.

In a separate 5-4 decision, the court said Ten Commandments displays in two Kentucky courthouses had to go because they promoted a religious message. On that side were Justices David Souter, John Paul Stevens, Sandra Day O'Connor, Ruth Bader Ginsburg and Breyer.

But the justices - who have a frieze of Moses holding the Commandments on the wall of their own courtroom - said these questions need to be decided case by case.

Souter, who wrote the majority decision in the Kentucky case, said the First Amendment "mandates government neutrality between religion and religion, and between religion and non-religion." He said the Kentucky displays fell on the side of the line where government was advancing religion.

By contrast, Chief Justice Rehnquist, who wrote the majority decision in the Texas case, said the display there - and in Arizona - is different. The court also noted the Texas display is one of 21 historical markers and 17 monuments.

### LOCAL ANGLE

Tucson impact unlikely

### ARIZONA DAILY STAR

The U.S. Supreme Court's mixed feelings on the Ten Commandments probably won't affect the display of three plaques at the Pima County Superior Courthouse in Tucson.

The plaques were installed in 1975.

One has a legend identifying it as "Moses receiving the Ten Commandments from the hand of God" and refers to their evolution into the tenets of Jewish law. The other two include depictions of ancient Egyptian gods.

"We have not reviewed the Supreme Court decision in its entirety, but based on news reports, we don't anticipate any changes," Pima County Superior Court spokesman David S. Ricker said Monday.

- Kim Smith

### StarNet online extras:

View the text of the Supreme Court rulings in the 10 commandments cases, plus related opinions: McCreary County v. ACLU opinion, written by Justice David Souter Dissenting opinion by Justice Antonin Scalia Concurring opinion by Justice Sandra Day O'Connor Van Orden v. Perry opinion, written by Chief Justice William Rehnquist Van Orden v. Perry dissenting opinion, written

"Texas has treated her Capitol grounds monuments as representing the several strands in the state's political and legal history," Rehnquist wrote. "The inclusion of the Ten Commandments monument in this group has a dual significance, partaking of both religion and government."

That's exactly the situation in Phoenix, where the monument, located in Wesley Bolin Park, stands with various others. These include one to Armenians who the display says were martyred in Turkey early in the last century, and another to Jewish war veterans.

Stevens, in his dissent in the Texas case, said his colleagues are ignoring both the wording on the monuments and how they ended up placed at various state capitols.

He said the first Commandment, larger than the others, says "I AM the LORD thy God" in letters larger than the rest on the Texas monument. The same language and typefaces exist on the Arizona monument.

"It commands present worship of Him and no other deity," Stevens wrote. "It directs us to be guided by His teaching in the current and future conduct of all of our affairs."

Stevens also noted that all the monuments were produced by the Fraternal Order of Eagles in conjunction with Cecil B. DeMille, who at the time was producing his movie "The Ten Commandments."

The two rulings drew mixed reaction from the Center for Arizona Policy, which had filed its own brief in January urging the high court to let the Phoenix monument remain.

Peter Gentala, the organization's legal counsel, said he was pleased with that ruling. But Gentala said the Kentucky decision continues the situation where courts will have to divine whether such displays are designed to promote religion rather than simply acknowledge the Ten Commandments as a part of national heritage.

Gentala's legal brief was supported by a spectrum of politicians, including Democrat Napolitano, Republican Secretary of State Jan Brewer and 38 of Arizona's 90 legislators.

Monday's rulings were the court's first major statement on the Ten Commandments since 1980, when the justices barred their display in public schools.

Legal experts said the rulings will bring additional litigation as displays are challenged by both sides case by case.

Thousands of Ten Commandment displays around the nation will be validated if their primary purpose is to honor the nation's legal, rather than religious, traditions, legal experts said. Location also will be considered, with wide-open lots more acceptable than schools.

"What the rulings say is when a government overtly endorses a particular religious viewpoint of tradition, it's unconstitutional," said Marci Hamilton, a church-state expert at Cardozo School of Law. "Displays are OK if you don't have an in-your-face declaration that the government stands behind Christian tradition."

- *This story includes information from The Associated Press.*
- *Ruling complicates matters. Editorial, **Page B4***
- *Court refuses to hear case on Maricopa County jail webcam. **Page A3***

Perry dissenting opinion, written by Justice David Souter Van Orden v. Perry dissenting opinion, written by Justice Sandra Day O'Connor Van Orden v. Perry dissenting opinion, written by Justice John Paul Stevens Van Orden v. Perry concurring opinion, written by Justice Stephen G. Breyer Van Orden v. Perry concurring opinion, written by Justice Clarence Thomas Van Orden v. Perry concurring opinion, written by Justice Antonin Scalia

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