No. 17-60

IN THE

Supreme Court of the United States

CITY OF BLOOMFIELD,

Petitioner,

v.

JANE FELIX AND B.N. COONE,

Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

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September 8, 2017

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QUESTIONS PRESENTED

Whether the Tenth Circuit properly refused to abandon the contextual analysis long applied by this Court to religious displays in Establishment Clause cases, in favor of a blanket rule insulating virtually all governmental displays of Ten Commandments monuments from constitutional review?

Whether a person who regularly visits government land on which a sectarian religious symbol is displayed near the seat of local government, and who thus comes into direct and unwelcome contact with that symbol, has Article III standing to bring an Establishment Clause challenge to the governmental display?

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STATEMENT OF THE CASE

Petitioner provides a truncated version of the facts and focuses on the Bloomfield City Hall lawn as it looks today rather than as it appeared when the Ten Commandments monument was authorized and erected or when this suit was filed. Pet. 1. Petitioner's incomplete and inaccurate summary of the pertinent facts – and the treatment accorded those facts by the courts below – deprives this Court of the context essential for consideration of the petition for certiorari.[1]

A. Factual Record

1. *The installation of a stand-alone Ten Commandments monument on the Bloomfield City Hall lawn.* On July 1, 2011, Petitioner erected a Ten Commandments monument on the front lawn of the Bloomfield City Hall. Pet. App. 90a. Carved from granite, the monument was over five feet tall, weighed over 3,400 pounds, boasted a foundation of concrete and rebar embedded fourteen inches into the ground,

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[1] Petitioner relies heavily on pleadings, trial testimony and exhibits from its Appendix rather than on the district court's extensive findings of fact. Petitioner never argued in the Tenth Circuit that any of the trial court's findings were clearly erroneous, and the appellate court did not set aside any of these factual findings. Given this procedural posture, the Court should follow its "usual practice . . . [and] accord great weight to [the] finding[s] of fact which [have] been made by the district court and approved by the court of appeals." *NCAA v. Bd. of Regents*, 468 U.S. 85, 98 n.15 (1984)*; see Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949) ("A court of law, such as this Court is, rather than a court of correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of very obvious and exceptional showing of error.").

and was anchored into the City Hall lawn with steel dowels. *Id.* 96a, 105a.

The monument stood alone, next to the sidewalk leading to the seat of City government, *id.* 93a, 94a, and close to the flagpole flying the American flag. *Id.* 95a. It faced a major thoroughfare and was visible from the roadway. *Id.* 93a. At the time it was installed, no other monuments were displayed on the City Hall lawn. *Id.* 90a. [2]

2. *The religious dedication ceremony*. On July 4, 2011, a dedication ceremony was held on the City Hall lawn for the Ten Commandments monument. The ceremony included several religious components.

The ceremony began with an invocation delivered by George Riley, a deacon at the Bloomfield First Baptist Church. Pet. App. 100a. Deacon Riley intoned:

> Let us pray. God, we – we acknowledge this morning, we reflect that – that you give us government, God, and it was your command. And – and even our – our monetary system, Lord, the things that we buy and purchase, each coin, each dollar is inscripted with in God we trust. We acknowledge that this morning, Lord. God, we dedicate this stone today, Lord, to the morals of government, Lord, the – the statements we will not commit adultery. We shall not steal. We shall not lie. Those are things that, uhhh, each

[2] Before the installation of the Ten Commandments monument, the only other item on the lawn was a tree memorializing a former mayor. The tree died and had been removed from the lawn. Pet. App. 90a-91a.

> community, each city council, no matter how small or large needs to reflect upon, Lord.
>
> That's – that's our morals of this nation. And we're here today, Lord, to honor you with those things, God. Lord, we pray that our hearts are penetrated. We – we hear the words of the patriotic songs that are sung today. And mostly, Lord, I – I ask your blessings upon the people that are present, the people of Bloomfield, the people of this great nation, Lord. Just keep watch over us, Lord. And all the people responded by saying –
>
> SOME IN THE CROWD: Amen.

Id. 101a (incorporating the ceremony transcript).

The dedication also included a folding ceremony for the United States flag. During that ceremony, conducted by a Veterans of Foreign Wars member wearing a hat that said "Post Chaplain," *id.*, the speaker explained:

> The second fold is a symbol of our belief in eternal life.
>
> * * *
>
> The fourth fold represents our weaker nature, for as American citizens trusting in God, it is to him that we turn in times of peace as well as in times of war for His divine guidance.
>
> * * *
>
> The eighth fold is a tribute to the one who entered in to the valley of the shadow of death, that we might see the light of day, and to honor mother, for whom it flies on Mother's Day.

* * *

> The eleventh fold, in the eyes of a Hebrew citizen, represents the lower portion of the Seal of King David and King Solomon, and glorifies, in their eyes, the God of Abraham, Isaac, and Jacob.
>
> The twelfth fold represents an emblem of God and glorified in Christian eyes, God the Father, the Son and the Holy Spirit.

See id. 66a, 101a (incorporating the ceremony transcript).

Kevin Mauzy – the former City Councilor who had played a key role in proposing and approving the Decalogue during his time on the Council, *infra* 5-6, also spoke at the dedication ceremony. Rather than mention the manner in which the Ten Commandments related to American history, "Mr. Mauzy's comments emphasized his belief in the value of Christian precepts to American people today and celebrated the vitality of the Christian religion." *Id.* 66a. Mr. Mauzy also highlighted the divisive nature of the Ten Commandments monument by stating that "like most of our fellow Americans . . . [w]e want our government to leave us alone and to keep its hands off our money, our religion, our Ten Commandments, our guns, our private property, and our lives." *See id.* 67a, 101a (incorporating the ceremony transcript). He also declared "God and his Ten Commandments continue to protect us from our evil." *Id*. 67a.

3. *City officials' extensive involvement in approving, funding and erecting the Bloomfield Decalogue.* The Ten Commandments monument was erected at City Hall as a result of the concerted efforts of numerous City officials:

- Kevin Mauzy, a City Councilor, proposed the monument in 2007. Pet. App. 85a. Councilor Mauzy believed that the Ten Commandments are "an important part of God's moral law." *Id.* 83a.
- The City Council unanimously approved Councilor Mauzy's proposal in April 2007. *Id.* 86a.
- During his tenure on the Council, Councilor Mauzy ordered the Ten Commandments monument from a local business, *id.* 86a-87a, and began soliciting money for the monument. To raise the roughly $3,900 needed for the monument, he initially coordinated fundraising efforts through two local churches, Jacob's Well and the First Baptist Church. *Id.* 87a, 102a. Councilor Mauzy told a news reporter: "We want everyone to be able to be a part of it. We've set up a fund through Jacob's Well for people to make donations privately or through their church." *Id.* 102a. As the district court found, "[f]rom the beginning, Mr. Mauzy signaled to the public the connection in his mind between the Ten Commandments monument project and the Christian community by fundraising through local churches exclusively." *Id.* 65a-66a.
- Two City Council members, Lynne Raner and Lamar Morin (a pastor at the First Baptist Church), donated to the project through their respective churches. *Id.* 103a, 107a.
- Even after Councilor Mauzy left the Council in 2008, City officials continued to accord great deference to their former colleague with respect to the Ten Commandments monument. For

example, in the Spring of 2011, the Council approved a final plan to install the monument which Mauzy had designed. The City Manager met with Mr. Mauzy to select the site for the Ten Commandments monument, and the City Council approved the monument's installation at the front of the City Hall lawn at Mr. Mauzy's request. *Id.* 88a–90a. The City Manager also approved Mr. Mauzy's request to plan and hold a dedication ceremony for the monument without inquiring whether there would be an invocation, religious speakers, or other religious demonstrations at the ceremony. *Id.* 100a.

- Both the Mayor and the City Manager, two of the highest ranking City officials, were present at the installation of the Ten Commandments monument. *Id.* 90a.

4. *Community reaction to the monument: "If you don't like living here, you can go somewhere else."* The proposed Ten Commandments monument immediately gave rise to divisiveness within the community. At the April 2007 City Council meeting where Councilor Mauzy initially proposed the Ten Commandments monument, some members of the community objected to it. Pet. App. 106a. After that meeting, a number of citizens presented a petition to the City Council opposing placement of the monument on City property. *Id.* Other citizens wrote letters to the Bloomfield City Council and local newspapers opposing the proposed display. *Id.* After being confronted by a person objecting to the Ten Commandments monument at a 2007 City Council meeting, Councilor Mauzy told the objector, "[i]f you don't like living here, you can go somewhere else, sir." *Id.* 108a.

5. *Lack of a public forum.* At the time the City Council approved Councilor Mauzy's 2007 request to place a Ten Commandments monument on the City Hall's front lawn, no monuments were displayed there. In fact, the City had no written policy governing the placement of monuments and had not taken any affirmative steps to designate the City Hall front lawn as a forum for public expression. Pet. App. 86a. Instead, "the City had complete discretion to accept or reject Mr. Mauzy's request." *Id.* 63a, 86a. In approving the request, the City did not condition its approval on the future adoption of a public forum policy.

On July 9, 2007, several months after approving Councilor Mauzy's Ten Commandments proposal, the City Council enacted Resolution #2007-12. Pet. App. 86a-87a, 263a. Although the policy allowed private individuals to propose the placement of permanent monuments on the City Hall lawn, the City Council retained "absolute discretion to reject a monument proposal." *Id.* 97a. The policy provided that "the Council shall make the final determination as to whether the item shall be accepted and where the item shall be placed." *Id.* 267a.

On July 25, 2011 – several weeks after the Ten Commandments monument was installed and dedicated – Petitioner amended the 2007 policy by approving Resolution #2011-15. *Id.* 91a, 268a. The policies differ in two respects. First, the City's initial policy expressly governed the placement of "permanent" structures. *Id.* 98a. The amended policy removed that word. *Id.* Second, the amended policy contained a new provision authorizing an approved monument "to be displayed in the place designated by the Council for a period of up to ten (10) years." *Id.* 272a. After that time, the donor may submit another request to extend

the display time for another ten years. *Id.* There is no limit on the number of times the City Council may extend the ten-year periods. *Id.* 98a. Like the 2007 policy, under the 2011 policy the City has ultimate control over the appearance and layout of the City Hall lawn and "make[s] the final determination as to whether the item shall be accepted and where the item shall be placed." *Id.* 272a

6. *The belated addition of other monuments.* In October 2011, four months after the dedication of the Ten Commandments monument, the City Council approved a new proposal by Mr. Mauzy to erect a monument featuring the Declaration of Independence on the City Hall lawn. Pet. App. 91a. That monument was installed in November 2011. In 2013, the City Council approved another proposal by Mr. Mauzy to erect a Gettysburg Address monument in the same location; that monument was erected in July 2013. *Id.* 92a. And in 2014, more than two years after this litigation began, the City Council approved a fourth proposal by Mr. Mauzy to install a Bill of Rights monument on the City Hall lawn; that monument was erected in July 2014. *Id.* 110a.

Unlike the religious dedication ceremony for the Ten Commandments, there is no indication that the dedication ceremonies for the other monuments featured any religious components. *See id.* 91a-92a, 110a. And, in sharp contrast to Councilor Mauzy's use of local churches to raise funds for the Ten Commandments monument, he "never resumed using local churches to collect donations for any other monument." *Id.* 93a.

7. *Deficient efforts to distance the City from the religious message of the Decalogue.* Engraved on the bottom of the Ten Commandments monument is a

statement that it was "presented to the people of San Juan County by private citizens recognizing the significance of these laws in our nation's history." Pet. App. 96a. Despite this reference to history, "[n]either Kevin Mauzy nor the City of Bloomfield, through its officials, has ever made any attempt to articulate the exact historical significance of the [Ten Commandments monument]." *Id.* 108a. Nor has the City ever disseminated any literature explaining the monuments on the City Hall lawn or attempting to assert their common historical significance. *Id.* 99a.

Two disclaimers also purport to distance the monument from City government. A disclaimer on the monument says that "any message hereon is of the donors and not the City of Bloomfield." *Id.* 96a. Somewhat inconsistently, a free-standing sign on the City Hall lawn designed, purchased, and erected solely by Mr. Mauzy after he had left the City Council says that "[a]ny message contained on a monument does not necessarily reflect the opinions of the City, but are statements from private citizens." *Id.* 94a-95a, 98a-99a. Neither the 2007 monuments policy nor the 2011 amended policy required the City to erect a disclaimer sign separate and distinct from the proposed monuments. *Id.* 98a.

8. *The religious justifications for continuing the display of the Decalogue.* Despite the immediate and continued objections from the community, the City steadfastly has defended its decision to place the Ten Commandments on the City Hall lawn in religious terms. At trial, Mr. Mauzy testified that he views the present lawsuit challenging the Ten Commandments monument as an attack on his religious freedom. *Id.* 108a. The district court concluded that this statement

"reaffirm[ed] the impression that the Ten Commandments monument was meant to communicate a religious message." *Id.* 68a n.12.

Current City officials continue to espouse this same sentiment. In a City-published article in the May 31, 2017 *Bits & Pieces*, the City Manager addressed questions about the current litigation. The City Manager explained that the City "is . . . standing up for the religious heritage upon which the community was formed and which guides many of the decisions of its local government and its residents today." Br. Opp. App. 2a-3a.[3]

9. *Respondents.* Respondents are polytheistic Wiccans who reside in Bloomfield and have frequent, personal, and unwanted contact with the Ten Commandments monument. Jane Felix personally has observed the inscription on the monument, but in order to avoid seeing the monument close up, no longer pays her water bills in person at City Hall. Pet App. 82a. B.N. Coone sees the monument each month when he goes to City Hall to pay the water bill for his family residence. *Id.* 82a-83a. Both Felix and Coone see the monument several times each week when they drive past City Hall. *Id.* Both believe that the Ten Commandments are tenets of a religion to which they do not subscribe, and the display of the Ten Commandments monument on the City Hall lawn causes them to feel like outsiders. *Id.* 81a.

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[3] The Court may take judicial notice of this document prepared and published by the City of Bloomfield. *See* Fed. R. Evid. 201; 801(d)(2).

B. Procedural History

Respondents filed this action in the U.S. District Court for the District of New Mexico seven months after the Ten Commandments monument was erected. Seeking a declaratory judgment and prospective injunctive relief pursuant to 42 U.S.C. § 1983, Respondents alleged that the City's Ten Commandments display violates the Establishment Clause of the First Amendment to the U.S. Constitution. Pet. App. 132a-135a. The district court denied the parties' cross-motions for summary judgment and held a three-day bench trial in March 2014.

Before issuing its final ruling, the court, along with counsel for the parties, drove to Bloomfield to inspect the Ten Commandments monument and the other monuments on the City Hall lawn. On June 5, 2014, the district court issued its findings of fact. Although the parties submitted a set of stipulated facts before trial, those were not dispositive of the trial court's final decision. To the contrary, the district court explained that "[t]he parties have agreed that the Court should make factual findings based on the parties' stipulated facts and the evidence presented at trial." *Id*. 80a. The district court entered over 150 findings of fact. *Id.* 80a–111a.

Two months after making its factual findings, the district court issued an opinion finding in favor of Respondents. *Id.* 37a. The court held that Respondents had standing to assert their claims. The court further found that the City had not created a public forum and that the Ten Commandments monument was government speech regulated by the Establishment Clause. After examining the context, history, and purpose of the monument, the court held that "the City of Bloomfield has violated the Establishment

Clause because its conduct in authorizing the continued display of the monument on City property has had the primary or principal effect of endorsing religion." *Id.* 78a.

The City appealed to the U.S. Court of Appeals for the Tenth Circuit. After oral argument, a panel of the Tenth Circuit unanimously affirmed the district court's ruling. The court held that both Respondents had standing to pursue their claims. The court further determined that the Ten Commandments display was a permanent monument on government property in light of its dimensions and the explicit language of the City's forum policy in place at the time the monument was dedicated, which used the word "permanent" to describe the types of monuments that the City would allow. *Id.* 12a–13a.

In concluding that the Ten Commandments monument violated the Establishment Clause, the Tenth Circuit conducted a detailed analysis of the context and circumstances surrounding the display to determine whether the City improperly conveyed the impression that it was promoting religion. Among other factors, the court of appeals examined "the text of the Monument, its placement on the lawn, the circumstances of its financing and installation and the timing of this litigation." Pet. App. 17a. The court also considered several potentially mitigating circumstances, including whether the religious message is fairly attributable to the City, the effectiveness of the disclaimers, the City's forum policies, and the subsequent addition of other monuments to the City Hall lawn. The court repeatedly emphasized that its narrow decision was the result of the particular combination of circumstances related to the purpose, context, location, and history of this particular display. *See Id*.

4a, 14a, 17a, 27a n.7, 33a. Indeed, had the Tenth Circuit been presented with a factual context different from the circumstances here, it might have reached a different result given its recognition that "there are some circumstances in which the government's display of the Ten Commandments runs afoul of the Establishment Clause, and other times when the display passes constitutional muster." *Id.* 3a.

The Tenth Circuit denied the City's petition for rehearing *en banc* on February 6, 2017. Pet. App. 115a. The court noted that "[t]he Honorable Neil M. Gorsuch considered the petition and response upon circulation, but did not participate in the final issuance of this order." *Id.*

REASONS FOR DENYING THE PETITION

I. THE TENTH CIRCUIT'S CONTEXTUAL APPROACH IS CONSISTENT WITH THIS COURT'S RELIGIOUS-DISPLAY JURISPRUDENCE AND THE FACT-SENSITIVE STANDARD APPLIED BY THE OTHER CIRCUIT COURTS.

Petitioner mistakes the divergent outcomes in several circuit courts' religious-display decisions for a conflict in legal principle. But the fact that courts reach different results on different facts is not a conflict. The court below faithfully applied the central demand of modern Establishment Clause jurisprudence: contextual analysis to assess whether the government has promoted a religious viewpoint. Whether grounded in the tripartite analysis set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the so-called endorsement or coercion tests, or a combination of these legal standards, this Court's opinions repeatedly have recognized that, "under the Establishment

Clause, detail is key." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 867 (2005); *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000) ("We refuse to turn a blind eye to the context in which this policy arose . . . ."); *Lee v. Weisman*, 505 U.S. 577, 597 (1992) ("Our Establishment Clause jurisprudence remains a delicate and fact-sensitive one.").

Context has been particularly central to the Court's analysis of religious displays because, in those cases, the constitutional inquiry ultimately focuses on whether the government's speech conveys a religious message – a determination that is inextricably linked to the specific history, facts, and circumstances surrounding the challenged display. *See McCreary*, 545 U.S. at 868 ("Where the text [of the Ten Commandments] is set out, the insistence of the religious message is hard to avoid in the absence of a context plausibly suggesting a message going beyond an excuse to promote the religious point of view."); *County of Allegheny v. ACLU*, 492 U.S. 573, 597 (1989) ("[T]he government's use of religious symbolism is unconstitutional if it has the effect of endorsing religious beliefs, and the effect of the government's use of religious symbolism depends upon its context"); *Lynch v. Donnelly*, 465 U.S. 668, 679 (1984) ("[T]he focus of our inquiry must be on the crèche in the context of the Christmas season"). The Tenth Circuit and other courts of appeals have faithfully heeded this fact-sensitive approach. Although Petitioner may not like the result it produced in this case, Petitioner's disagreement with the outcome is not grounds for review by this Court.

A. *Van Orden* Did Not Abandon the Court's Contextual Focus.

Petitioner's unspoken, but unmistakable, premise is that any analysis that does not produce the same result reached in *Van Orden v. Perry*, 545 U.S. 677 (2005), is a sign of "widespread confusion" Pet. 1, and "disparate outcomes." *Id.* 14.

But in *Van Orden*, and its companion case, *McCreary*, the Court contemplated that a contextual approach would produce different results on different facts and made clear that it would not abandon this approach in favor of a blanket rule that all religious displays on government property comply with the Establishment Clause.

Thus, in his controlling concurrence,[4] Justice Breyer reaffirmed a contextual standard, noting that "no exact formula can dictate a resolution to such fact-intensive cases." *Van Orden*, 545 U.S. at 700 (Breyer, J., concurring). Justice Breyer's inquiry into the "message that the [monument] here conveys," accordingly, took account of a wide range of contextual factors. *See id.* at 700-05. And although Justice Breyer voted to uphold the Texas display, it follows from his characterization of the monument as a "borderline case," *id.* at 700, that any change in circumstance easily could have prompted the opposite result. *Cf. McCreary*, 545 U.S. at 881 (holding display of Ten Commandments unconstitutional in same-day companion opinion).

While more circumscribed than Justice Breyer's expansive fact-sensitive analysis, the *Van Orden*

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[4] Because *Van Orden* was decided by a plurality, the separate, narrower concurring opinion of Justice Breyer, who supplied the decisive fifth vote, controls. *Marks v. United States*, 430 U.S. 188 (1977).

plurality opinion likewise used a contextual approach, explaining, "our analysis is driven by the nature of the monument and by our Nation's history." *Van Orden*, 545 U.S. at 686 (plurality opinion). In upholding the monument, the plurality took note of the monument's physical location (contrasting the Capitol grounds with a public-school classroom); the reaction of those confronted with the monument (noting that Van Orden had "apparently walked by the monument for a number of years before bringing this lawsuit"); the monument's fit within the State's well-established theme for the Capitol grounds (citing the State's past treatment of the grounds "as representing the several strands in the State's political and legal history"); and the purpose with which the monument was erected (concluding that "it is clear from the record that there is no evidence of such a [religious] purpose in this case"). *See id.* at 691-92 & n.11.

This Court's decision in *McCreary* similarly employed a contextual approach to determine whether an objective observer would understand the display of the Ten Commandments in a county courthouse to have a primary secular purpose. 545 U.S. at 862-64. The Court explained that this observer is "presumed to be familiar with the history of the government's actions and competent to learn what history has to show," *id.* at 866, and does not "turn a blind eye to the context in which the policy arose." *Id.* (quoting *Santa Fe*, 530 U.S. at 315).

To that end, the *McCreary* Court examined the text of the Commandments (finding that "[w]here the text is set out, the insistence of the religious message is hard to avoid"); the location and installation of the display (noting that "[w]hen the government initiates an effort to place this statement alone in public view,

a religious object is unmistakable"); and the counties' repeated attempts to create a more acceptable display (rejecting such efforts because "[n]o reasonable observer could swallow the claim that the Counties had cast off the objective so unmistakable in the earlier displays"). *See id.* at 868-69, 873 & n.14. As the Court noted, "purpose needs to be taken seriously under the Establishment Clause and needs to be understood in light of context." *Id.* at 874.

Although they reached opposite conclusions on their respective facts, *Van Orden* and *McCreary* nonetheless left intact the prevailing constitutional landscape grounded on an objective assessment of the government's conduct. And *Van Orden* surely did not, as Petitioner appears to suggest, authorize courts to dispense with the fact-sensitive and nuanced analysis this Court has long applied to religious displays in favor of a categorical imperative permitting any display that shares some similarities with the Texas monument.

B. The Differing Results in the Circuit Courts' Religious-Display Cases Stem From Their Factual Differences, Not a Split in Legal Principle.

Consistent with this Court's steadfast emphasis on context, the Tenth Circuit conducted a careful and balanced analysis of the particular facts and circumstances surrounding the City of Bloomfield's monument to determine whether it conveys an impermissible religious message. Like this Court in both *Van Orden* and *McCreary*, the Tenth Circuit "examine[d] the text of the Monument, its placement on the lawn, the circumstances of its financing and installation, and the timing of this litigation." Pet. App. 17a. The court further considered several

possible mitigating circumstances, including whether the religious message is fairly attributable to private parties rather than the City, the effectiveness of the disclaimers, the City's purported forum policies, and the subsequent addition of other monuments to the City Hall lawn. *Id.* 22a. The court considered these facts "from the perspective of an objective observer who is aware of the purpose, context, and history of the symbol." *Id.* 15a (quoting *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 (10th Cir. 2008)).[5]

The Tenth Circuit's fact-intensive study does not conflict with the inquiry into the surrounding circumstances used by other courts in reviewing other Decalogue displays. Each of the other courts of appeals to consider a Ten Commandments display since *Van Orden* and *McCreary* likewise has adopted a contextual approach, considering a range of factors to determine whether the challenged monument improperly conveyed a religious message. *See ACLU of Ky. v. Mercer County*, 432 F.3d 624, 639 (6th Cir. 2005) ("Although treating the subject matter categorically would make our review eminently simpler, we are called upon to examine Mercer County's actions in light of context."); *ACLU of Ohio v. DeWeese*, 633 F.3d 424, 434 (6th Cir. 2011) ("[C]ourts have consistently found the history and context of the action significant."); *ACLU of Ky. v. Grayson County*, 591 F.3d 837, 854 (6th Cir. 2010) ("Context is critical"); *ACLU Neb.*

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[5] *See also, e.g.*, Pet. App. 4a ("In light of the context and apparent motivation of the Ten Commandments' placement on the lawn, we conclude the City's conduct had the effect of endorsing religion in violation of the Establishment Clause."); *id.* 14a-15a ("Particularly in light of the circumstances surrounding the original installation of the Ten Commandments monument, we find Bloomfield impermissibly gave the impression to reasonable observers that the City was endorsing religion.").

Found. v. City of Plattsmouth, 419 F.3d 772, 776 (8th Cir. 2005) (en banc) ("[C]onsideration must be given to the context in which the Ten Commandments' text is used."); *Card v. City of Everett*, 520 F.3d 1009, 1019 (9th Cir. 2008) (noting that Justice Breyer examined "'the message that the text . . . conveys . . . [in] the context of the display'") (quoting *Van Orden*, 545 U.S. at 700-01 (Breyer, J., concurring)).[6]

In light of the fact-specific, contextual approach taken by both this Court and the courts of appeals, it is hardly remarkable that the Tenth Circuit in this case held the City of Bloomfield's display unconstitutional, while the Sixth, Eighth, and Ninth Circuits approved of different displays of the Ten Commandments monuments in different circumstances. The latter displays featured constitutionally significant and operative facts not shared by Bloomfield's monument. Unlike the Bloomfield monument, for example, the *Card* and *Plattsmouth* Decalogues each were (1) erected more than 50 years ago; (2) donated

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[6] Courts of appeals have engaged in similar contextual analyses in resolving Establishment Clause challenges to other religious displays. *See, e.g., Am. Atheists v. Port Auth. of NY*, 760 F.3d 228, 242 (2nd Cir. 2014) (cross at Ground Zero) (the question for measuring *Lemon*'s "effect" prong is "[w]ould a reasonable observer of the display in its particular context perceive a message of governmental endorsement or sponsorship of religion?") (internal quotation marks & citation omitted); *Trunk v. City of San Diego*, 629 F.3d 1099, 1117 (9th Cir. 2011) (Latin cross at veterans' memorial) ("[W]e must gauge the overall impact of the Memorial in the context of history and its setting."); *Staley v. Harris Co.*, 461 F.3d 504, 515 (5th Cir.) (county courthouse monument containing an open Bible) ("[F]ocusing on the viewpoint of the objective observer, a person who is familiar with the history of the government's actions and the context in which those actions arose"), *reh'g granted*, 470 F.3d 1086 (5th Cir. 2006), *dismissed on mootness*, 485 F.3d 305 (5th Cir. 2007) (en banc).

by a civic group to achieve a primarily secular goal; (3) engraved with a more inclusive version of the Ten Commandments; (4) accepted and displayed by the city without clear evidence of an expressly religious aim; and (5) displayed for decades without complaint. *Compare Card*, 520 F.3d at 1010-13, 1020-22, *with Plattsmouth*, 419 F.3d at 773-74. The courts in both *Card* and *Plattsmouth* concluded that the long-standing displays at issue in those cases were similar to the Texas monument upheld in *Van Orden*. *See Card*, 520 F.3d at 1021; *Plattsmouth*, 419 F.3d at 773-74.

In *Plattsmouth*, the Eighth Circuit followed *Van Orden* because it could not "conclude that Plattsmouth's display of a Ten Commandments monument is different in any constitutionally significant way from Texas' display of a similar monument in *Van Orden*." *Plattsmouth*, 419 F.3d at 778. That conclusion was based on the court's analysis of the monument's appearance, history, and location, along with the number of years the monument had stood without objection. *Id.* at 773-74, 777-78 n.7. The court also noted, however, that "were we to apply the *Lemon* test, we would conclude . . . that the City's display of the monument passes that test." *Id.* at 778 n.8.

Likewise, the context and circumstances surrounding the Ten Commandments display upheld by the Sixth Circuit in *Mercer* are readily distinguishable from the monument at issue here. The posting of the Ten Commandments in the Mercer County Courthouse was initiated by a private citizen and lacked any "sectarian pedigree." *Mercer*, 423 F.3d at 631. It was part of a unified "Foundations of American Law and Government" exhibit created and maintained "to recognize American legal traditions," without any additional indication of an express religious message.

Id. at 631-32, 637-38. In contrast, the Bloomfield monument was initiated by government officials, and both the Tenth Circuit and the district court noted that "[t]he City has never explicitly said this Monument was not for religious purposes, nor that it was exhibited only for its historical significance." Pet. App. 31a; *see also id.* 99a (City never disseminated any literature explaining the monuments on the City Hall lawn or attempting to show their common historical significance). To the contrary, after proposing that the Ten Commandments monument be erected, a City official raised funds from churches to finance it; the dedication ceremony for the monument – authorized by the City and planned by a former City Councilor who had proposed the Decalogue while in office – was overtly Christian in nature, and City officials have defended the monument in religious terms.

The Sixth Circuit employed a similar analysis in assessing a judge's display in his courtroom of a poster featuring the Ten Commandments and comments linking religion and civil government. In *ACLU of Ohio v. DeWeese*, 633 F.3d 424 (6th Cir. 2011), the court took note of the contents of the poster, the judge's "history of Establishment Clause violations," and the poster's "overt religious messages and religious endorsements." *Id.* at 433-35. Reviewing the totality of the circumstances surrounding the display, the court found that the poster stood in stark contrast to the Ten Commandments displays upheld in *Van Orden* and *Mercer*. *Id.* at 434.

As these cases illustrate, differing outcomes on different facts do not demonstrate a conflict in legal principle, especially where, as here, the outcomes depend so heavily on the particular context of each challenged action. Whatever confusion may exist, if

any truly does, rests more with the circuit courts' disagreement over the appropriate nomenclature for this contextual analysis than the actual substance of the analytical process itself.[7]

C. Petitioner's Disagreement With the Result of the Tenth Circuit's Contextual Analysis Does Not Warrant Review by This Court.

Petitioner ultimately does not take issue with the Tenth Circuit's contextual approach. Indeed, in suggesting (wrongly) that the *Van Orden* and City of Bloomfield monuments are all but identical, Petitioner explicitly compares the contextual circumstances surrounding both displays. *See, e.g.*, Pet. 23-24. Petitioner's objection, instead, is one of application of law to facts. Put simply, Petitioner contends that the Tenth Circuit weighed the facts incorrectly. It argues that the Tenth Circuit gave too much weight to some contextual factors and not enough weight to others, thereby reaching the wrong result. Were it conducting the contextual analysis, Petitioner would place great emphasis on the facts cited in its petition while discounting a litany of other factors that the courts

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[7] This Court has had multiple opportunities to address the supposedly "mature, entrenched, and widely acknowledged" circuit conflict Petitioner seeks to portray. Pet. 19. The Court has denied review on each of those occasions. *See ACLU of Ohio v. DeWeese*, 633 F.3d 424 (6th Cir.) *cert. denied*, 565 U.S. 930 (2011); *Trunk v. City of San Diego*, 629 F.3d 1099 (9th Cir. 2011), *cert. denied*, 567 U.S. 944 (2012); *Am. Atheists, Inc. v. Davenport*, 637 F.3d 1095 (10th Cir. 2010), *cert. denied*, 565 U.S. 994 (2011); *Green v. Haskell County Board of Comm'rs*, 568 F.3d 784 (10th Cir. 2009), *cert. denied*, 559 U.S. 970 (2010); *O'Connor v. Washburn Univ.*, 416 F.3d 1216 (10th Cir. 2005), *cert. denied*, 547 U.S. 1003 (2006). Petitioner has failed to show why the Court's disposition should be any different in the present case.

below found (1) distinguish this case from *Van Orden* and other cases upholding Decalogue displays, and (2) counsel strongly in favor of a determination that Petitioner's display conveys a religious message. *See* Pet. 24-25. Petitioner argues that "the Tenth Circuit misapplied" this Court's precedents. *Id.* 24. This assertion, however, is not an adequate basis for review by this Court,[8] even if it were not clear, as here, that the court of appeals reached the correct result.

II. THE COURT OF APPEALS REACHED THE CORRECT RESULT IN THIS CASE.

The myriad facts distinguishing Bloomfield's monument from the displays upheld in *Van Orden*, *Card*, *Plattsmouth*, and *Mercer* did not escape the Tenth Circuit's attention. Conducting a nuanced review of the monument's context, the court issued a narrow decision that turned on the "specific context of the Ten Commandments display" in this case. Pet. App. 17a. The court carefully weighed both the circumstances manifesting endorsement and the purportedly "mitigating circumstances" that Petitioner "argue[d] cut the other way." *Id.* 22a. Rather than analyze the monument through the tainted eyes of a "hostile reasonable observer," Pet. 24, the court filtered each of the various factors and circumstances through the lens of the "objective observer" in reaching its conclusion.[9] This factor-by-factor consideration led to

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[8] *See* Sup. Ct. R. 10 (2013) ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

[9] *See, e.g.*, Pet. App. 18a n.5 ("We do not assess the endorsement effect [of the monument] from Plaintiffs' perspective, but rather from the view of an imaginary objective observer."); *id.* 18a ("An objective observer going to pay his water

the court's conclusion that "Bloomfield impermissibly gave the impression to reasonable observers that the City was endorsing religion." Pet. App. 15a.

Indeed, even if the Tenth Circuit solely "use[d] *Van Orden*, as its guide," Pet. 23, as Petitioner insists, Bloomfield's Ten Commandments monument still would not have passed constitutional muster because of the significant, material distinctions between this display and the monument in *Van Orden*.

In *Van Orden*, Justice Breyer emphasized that the Fraternal Order of the Eagles (which donated the monument), "while interested in the religious aspect of the Ten Commandments, sought to highlight the Commandments' role in shaping civic morality as part of that organization's efforts to combat juvenile delinquency." *Van Orden*, 545 U.S. at 701 (Breyer, J., concurring). "The Eagles' consultation with a committee composed of members of several faiths in order to find a nonsectarian text underscores the group's ethics-based motives." *Id.* By contrast, Councilor Mauzy views the Ten Commandments as "God's moral law" and the installation of the monument as an exercise of his religion. *See supra* 9 (testifying that he

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bill, or merely driving by in his car, would associate the Monument with the government, and accordingly glean a message of endorsement."); *id.* 19a & 20a (noting that "[a]ny reasonable and objective observer would glean an apparent religious motivation from . . . the circumstances of the approval, fundraising, and installation" of the display); *id.* 20a ("The timing of this lawsuit sheds light on whether a reasonable observer perceived Bloomfield's conduct as endorsing religion."); *id.* 25a (concluding that "an objective observer" would find the language of the second disclaimer "too equivocal to communicate a message of non-endorsement"); *id.* 33a ("[T]he City would have to do more than merely add a few secular monuments in order to signal to objective observers a 'principal or primary' message of neutrality.").

views the legal challenge to the monument as an attack on his religious freedom). Consistent with his religious motivation for erecting the monument, Mr. Mauzy, a devout Christian, chose the text of the Ten Commandments found in the King James Bible. Pet. App. 107a, 88a. Mr. Mauzy made no effort to seek out members of other faiths to find a more inclusive version of the Commandments. The absence of any evidence that the City sought to highlight the Commandments' secular message strongly indicates to the reasonable viewer that the text on the face of the monument was intended to convey a religious one. *See McCreary*, 545 U.S. at 868 ("Where the text is set out, the insistence of the religious message is hard to avoid.").

In *Van Orden*, the Eagles, a "civic (and primarily secular) organization," paid the entire cost for the monument. *Van Orden*, 545 U.S. at 701 (Breyer, J., concurring). In contrast, Councilor Mauzy "reached out to two local churches for donations to fund its construction. Two active city council members, Lynne Raner and Lamar Morin (a pastor at one of the churches), donated to the project through their respective churches." Pet. App. 5a.

In addition, unlike in *Van Orden*, "the dedication ceremony here was decidedly religious." Pet. App. 19a. *Compare id.* 7a, *with Van Orden v. Perry*, 351 F.3d 173, 179-80 (5th Cir. 2003) ("There is no evidence of any religious invocations or that any minister, rabbi, or priest were even present."), *aff'd*, 545 U.S. 677 (2005).

Furthermore, at Councilor Mauzy's request, the City Council exercised its discretion and chose to place the Ten Commandments monument at the front of the Bloomfield City Hall lawn. Pet. App. 86a; *see id.* 5a,

20a. At the time it was erected, it was the first and only monument located on the City Hall lawn. *Id.* 90a. The fact that the Ten Commandments monument stood alone on the City Hall lawn is in stark contrast to the monument challenged in *Van Orden*, which sat "in a large park containing 17 monuments and 21 historical markers." 545 U.S. at 702 (Breyer, J., concurring).

Finally, unlike in *Van Orden*, Petitioner's monument incited community discord almost immediately after it was proposed. While the Texas monument stood for forty years without challenge, the City's approval of the display and its eventual installation prompted contemporaneous objection and litigation within months of its unveiling. *Compare Van Orden*, 545 U.S. at 702 (Breyer, J., concurring), *with* Pet. App. 106a. This fact is noteworthy under *Van Orden* not because the age of a monument or the length of time it goes unchallenged is dispositive, in and of itself,[10] but because these factors provide insight into what message the community has "understood the monument" to convey. *Van Orden*, 545 U.S. at 702 (Breyer, J., concurring). Here, Councilor Mauzy, other members of the City Council, and even the present City

[10] According to Justice Breyer, the length of time before a monument is legally challenged can be a "determinative" factor. *Van Orden*, 545 U.S. at 702 (Breyer, J., concurring). Although the Tenth Circuit recognized the importance of this one fact, consistent with its analysis of all of the pertinent surrounding circumstances, it characterized the timing of the lawsuit as "significant," Pet. App. 21a, and concluded only that "the timing factor weighs in Plaintiffs' favor." *Id.* 22a. This more measured approach is consistent with Justice Breyer's view that the likely "divisive" nature of a "more contemporary state effort to focus attention upon a religious text" should be factored into the contextual analysis. *Van Orden*, 545 U.S. at 703 (Breyer, J., concurring).

Manager have vigorously defended the monument in staunchly religious terms to this day, understanding it to be an affirmation of the community's faith and the majority's religious beliefs. This discordant posture supports the conclusion that the display conveys an impermissible "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." *See Santa Fe*, 530 U.S. at 309-10 (internal quotation marks omitted). Any doubt that this was the monument's intended message was erased when Councilor Mauzy, responding to objections about the display, admonished, "If you don't like living here, you can go somewhere else, sir." Pet. App. 108a.

If "we should all be able to agree at least that cases like *Van Orden* should come out like *Van Orden*," *Green v. Haskell Cty. Bd. of Comm'rs*, 574 F.3d 1235, 1249 (10th Cir. 2009) (Gorsuch, J., dissenting from denial of rehearing en banc), then conversely, cases that are demonstrably dissimilar from *Van Orden* should come out differently. As a review of the full panoply of facts reveals, this case can hardly be characterized as similar to *Van Orden*. *See* Pet. 23. This conclusion renders any dispute over the precise articulation of the governing analytical framework irrelevant to the outcome of this case. Accordingly, because resolution of the circuit split posited by Petitioner, even if it existed, would have no bearing on the ultimate result here, this Court should deny certiorari. *See* Stephen M. Shapiro, *et al.*, *Supreme Court Practice* 249 (10th ed. 2013) (where the "resolution of a clear conflict is irrelevant to the ultimate outcome of the case before the Court, certiorari may be denied") (citing *Sommerville v. United States*, 376 U.S. 909 (1964)).

Apart from its Establishment Clause argument, Petitioner asserts that the Tenth Circuit misapplied this Court's rulings on public forums, stating that the court "never gave forum analysis a chance." Pet. 26. This argument also fails.

Before the City Council approved the placement of the Ten Commandments monument on the City Hall lawn, Petitioner had never opened that space to serve as a public forum: There were no monuments in that location, and the City Hall lawn had never been used for any kind of ceremony. And at the time the City Council considered and approved the placement of the Decalogue on the City Hall lawn, the City had no policy governing the placement of monuments in that area; instead, it had total discretion whether to accept Councilor Mauzy's request. From these facts, it is clear that the City did not "evince either 'by policy or by practice' any intent to open" the front lawn of its City Hall before it approved the placement of the Ten Commandments monument. *Santa Fe*, 530 U.S. at 303 (*quoting Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270 (1988)). Even after passing two policies on this issue, the lawn could not have been considered a true forum for private expression, as the City retained "absolute discretion" to reject any proposed display. Pet. App. 97a-98a.

Contrary to Petitioner's assertion, the Tenth Circuit did not "create[] a categorical rule that 'permanent monuments' are 'government speech.'" Pet. 26. That holding originated with this Court in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009). There the Court repeatedly stated that "placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause." *Id.* at 464; *see*

id. at 470 ("Permanent monuments displayed on public property typically represent government speech."). In this regard, Petitioner never addresses two key points. First, both the district court, Pet. App. 105a, and Tenth Circuit, *id.* 12a-13a, found that the Ten Commandments display is permanent. Petitioner does not contend otherwise. Second, Petitioner fails to acknowledge this Court's recent ruling in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015). *Walker* broadened the concept of government speech to include non-permanent specialty license plates issued under a state statute. The Tenth Circuit's holding that the Ten Commandments monument is government speech is in full accord with the analysis and result reached by the Court in *Walker* and *Summum*.

III. THE TENTH CIRCUIT'S STANDING DETERMINATION IS UNEXCEPTIONAL AND CONSISTENT WITH TIME-HONORED ESTABLISHMENT CLAUSE STANDING JURISPRUDENCE.

Petitioner seeks to rewrite well-established law on Article III standing in Establishment Clause cases by mischaracterizing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982). This Court has never adopted the interpretation Petitioner proposes, and the federal courts of appeals have uniformly rejected it.

This Court has repeatedly recognized that persons who suffer noneconomic injuries may have Article III standing in Establishment Clause cases. *See Lee v. Weisman*, 505 U.S. 577, 584 (1992) (student had standing to challenge religious invocation at public school graduation that she planned to attend); *Sch. Dist. of Abington Tp. v. Schempp*, 374 U.S. 203, 225

n.9 (1963) ("[S]chool children and their parents . . . directly affected by the laws and practices . . . against which their complaints are directed" have standing). In such cases, the touchstone of Article III standing is unwelcome personal contact with government action that is alleged to be impermissibly religious in nature. *Schempp*, 374 U.S. at 225 n.9; *accord Valley Forge* 454 U.S. at 486 n.22 ("The Plaintiffs in *Schempp* had standing . . . because impressionable schoolchildren were subjected to unwelcome religious exercises or were forced to assume special burdens to avoid them."). Thus, a person who suffers spiritual or noneconomic harm caused by unwelcome personal contact with a religious symbol located on government property has Article III standing.

The Court continues to adhere to this principle, as shown in cases decided since *Valley Forge*. For example, in both *Van Orden* and *McCreary*, the Court did not question the standing of plaintiffs who objected to the presence on government property of Ten Commandments displays to which they were personally exposed.[11] Moreover, all of the federal appellate courts that have considered the issue have adopted this standard for cases challenging religious displays. *See*, *e.g.*, *Freedom from Religion Found., Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476, 480 (3d Cir. 2016); *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1023-24 (8th Cir. 2012); *DeWeese*, 633 F.3d at 430; *Cooper v. United States Postal Serv.*, 577 F.3d 479, 491 (2d Cir. 2009); *Weinbaum*, 541 F.3d at 1028-29; *Vasquez v. Los Angeles County*, 487 F.3d

[11] *See Sprint Comm. Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 283-84 (2008) (citing cases in which standing was unaddressed, and thus assumed, as support for the proposition that persons bringing analogous suits have standing).

1246, 1249-50 (9th Cir. 2007); *Books v. Elkhart County*, 401 F.3d 857, 862 (7th Cir. 2005); *Suhre v. Haywood County*, 131 F.3d 1083, 1085 (4th Cir. 1997).

Under this doctrine, the Tenth Circuit's ruling that Respondents had Article III standing to challenge the presence of the Ten Commandments monument on the City Hall lawn is unexceptional. Respondents – long-term residents of Bloomfield and polytheistic Wiccans – had unwelcome personal contact with the Ten Commandments monument that deeply and personally affected them. Pet App. 81a-83a.

Petitioner seeks to rewrite the doctrine of Establishment Clause standing, arguing that under *Valley Forge*, "a 'psychological consequence' based on mere disagreement with something one has observed cannot establish a cognizable Article III injury." Pet. 30-31. Petitioner's thesis is flawed for two reasons.

First, Petitioner's reliance on the "psychological consequences" phrase wrenches it from its context in *Valley Forge*. In *Valley Forge*, shortly after using this phrase, the Court noted that the plaintiffs were objecting to government action concerning property located in Pennsylvania, although they lived in Maryland and Virginia; their headquarters were in Washington, D.C.; and they learned of the action only from reading about it in a news release. *Valley Forge*, 454 U.S. at 486-87. The Court then contrasted the circumstances of the *Schempp* plaintiffs: They had standing because they were enrolled in public schools that conducted religious exercises to which they objected, and thus were "*directly affected* by the [actions] . . . against which their complaints are directed." *Id.* at 486 n.22 (quoting *Schempp*, 374 U.S. at 224 n.9) (emphasis added). Thus, *Valley Forge* drew a distinction between abstract, generalized objections,

which are insufficient for Article III standing, and concrete objections resulting from *personal contact* with the challenged display or practice, which are sufficient.

Second, Petitioner's interpretation of *Valley Forge* differs from the reading given to that case by the federal appellate courts that have cited it in religious display cases. *See, e.g., Freedom from Religion Found.*, 832 F.3d at 476, 479 (under *Valley Forge* "a community member . . . may establish standing by showing direct, unwelcome contact with the allegedly offending object or event, regardless of whether such contact is infrequent or she does not alter her behavior to avoid it"); *Red River Freethinkers*, 679 F.3d at 1024 (distinguishing *Valley Forge* and holding plaintiff had standing where it "d[id] not seek to assert the injury of out-of-towners who have read about [the town's] display and 'disagree' with it"); *O'Connor*, 416 F.3d at 1222-23 (10th Cir. 2005) ("Allegations of personal contact with a state-sponsored image suffice to demonstrate" the kind of direct injury required by *Valley Forge*); *Glassroth v. Moore*, 335 F.3d 1282, 1292 (11th Cir. 2003) (plaintiffs who considered Ten Commandments monument "offensive" and altered their behavior to avoid seeing it as a consequence suffered injury in fact sufficient for standing purposes); *Suhre*, 131 F.3d at 1087 (plaintiff who had regular contact with Ten Commandments display in county courthouse and was offended by it had standing, in contrast to plaintiffs in *Valley Forge* who "were denied standing . . . because they had absolutely no personal contact with the alleged establishment of religion"). The Court should not accept Petitioner's invitation to adopt an interpretation of Article III standing that runs contrary to well-established precedent.

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Respectfully submitted,

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September 8, 2017

APPENDIX

APPENDIX

[CITY OF BLOOMFIELD LOGO]
City of Bloomfield
Bits & Pieces
May 31, 2017, Issue 2

From the Desk of Eric Strahl, City Manager

(This is the second in a series of questions and answers with Bloomfield City Manager Eric Strahl. The series will appear in each month's Bits & Pieces.)

The City continues to deal with two other major issues – the Ten Commandments and the Electric Utility. What progress has been made on both and when are those issues expected to be resolved? Also, there is concern from residents that tax dollars have been spent on legal fees for both issues. Is that factual?

Ten Commandments: The City has not prevailed in this case at the district court or the appeals court levels, and now the City has filed for a hearing before the U.S. Supreme Court. If four of the current U.S. Supreme Court justices vote to hear the case, and if Judge Gorsuch's appointment to the court is confirmed, this conservative majority on the court could allow the City to prevail.

If the U.S. Supreme Court declines to hear the case, it would be resolved in the near future, with the lower court's ruling (against the City) being upheld. If the U.S. Supreme Court hears the case, it will take longer for the matter to be resolved.

The City is being represented in this case at no cost by the Alliance for Freedom Foundation, so the City has expended no funds for its defense. If the ACLU prevails in this case, the City could very well be liable for the ACLU's costs, which are estimated to be

approximately $300,000. This determination would be made by the court. If the City is liable for the ACLU's costs, an agreement will likely need to be negotiated that allows the City to repay these costs over time.

Electric Utility: The most recent court hearing occurred on April 10 in San Juan County District Court, when attorneys for both sides presented oral arguments in support of their respective motions for summary judgement. The next hearing was held on May 10, when each attorney responded to the other's motion for summary judgement and the judge heard arguments from the City of Farmington in regard to excluding certain testimony contained in depositions submitted by the City of Bloomfield.

The judge must rule on these motions for summary judgement before the need for a trial can be determined. If he denies these motions, a trial will be held. This trial was initially scheduled for May 10-12, but it would doubtlessly be rescheduled as a result of the need to first rule on the motions indicated above.

Not knowing the thoughts of the parties involved in terms of the future actions that they might take makes it difficult to say when this litigation would actually be resolved.

Tax dollars have been spent by the City on this issue. Costs have involved legal fees, engineering costs, court filing fees, costs for depositions, and the cost to set up and maintain the website that provides individuals with information on the litigation. To date this has involved several hundred thousand dollars of expenditures.

These costs, however, must be compared with the potential gains should the City prevail: Controlling its own electric system would allow the City to better

chart its economic development future, to have a much larger say in the rates that its residents pay, and to eventually generate excess money, as Farmington does, that could be used to of life, amenities to its residents.

While both of these cases involve costs, there are also several other issues at play. First of all, the City is standing up for its right to operate its own electric utility and to reap the benefits that it can provide. It is also standing up for the religious heritage upon which the community was formed and which guides many of the decisions of its local government and its residents today.

(Eric Strahl may be reached at 505-632-6300 or at estrahl@bloomfieldnm.com.)

Bloomfield Senior Citizens Center
124 West Ash, Bloomfield
505-632-8351

June Menu:

June 1	Baked Chicken
June 2	Beef Stew
June 5	Chili Beans
June 6	Chicken & Noodles
June 7	Spaghetti
June 8	Green Chili Pork Stew
June 9	Sloppy Joe
June 12	Chicken ala King
June 13	Frito Pie
June 14	Roast Pork
June 15	Salisbury Steak
June 16	Chicken Tacos

The Annual Rafting Trip in Durango will take place June 28. We have limited space for the trip so please call the center if you would like to get in on this fun excursion. Depending on river levels and speed, the June 28 date is tentative so please call the center to find out more information. This trip is entirely paid for (including lunch) by the Bloomfield Seniors so no money is required to attend. 632-8351.

Encore Classes continue through the month of June. Call or come by the senior center to see what classes you might be interested in.

Bloomfield C.A.R.E. Coalition (Community Awareness Reaching Everyone) is a group of Bloomfield city personnel, business professionals, school representatives, and citizens who are interested in helping to make Bloomfield a better place to live, work, and play. Meetings are held the 2nd Tuesday of each month at 8:30AM at the Bloomfield Senior Center. The public is welcome and encouraged to attend. Please call the Senior Center and speak to Jessica for more information about the coalition, 6328351.

Knitting and Handwork Classes take place on Fridays from 9:30-11:30AM. If you want to learn to knit, crochet, needlepoint, whatever, come over and join us!! Open to the public.

The Helmets for Homeless program is located at the Bloomfield Senior Center. We take bicycles in good working order and gift them to folks who may need them for transportation purposes. We take child and adult bikes as well as helmets, safety clothing, bike locks, etc. Bicycles must be ready to ride. If you would like to donate your bicycle and/or bicycling articles, please contact Jessica at 632-8351. We can also come and pick them up. The Helmets for Homeless Program

is part of the Committee for Health Equity. Receipts for donated bikes may be given out for tax purposes.

The Summer Craft Fair is taking place in early July at the Bloomfield Cultural Center. Contact Donna Johnson at 505-947-7577 if you would like a booth or more information.

The Bloomfield Police Athletic League (PAL) will have a 5/10K run on Saturday, June 3, 2017, at the Riverwalk. Check-in begins at 6 a.m. and the run begins at 7a.m. The entry fee is $20 for individuals or $50 for households of three or more. For additional information, call 505-632-6311.

Sharing Bloomfield's History

Annick Rouleau, whose great-grandfather, Frederic Leclerc, lived in Bloomfield, is from Paris, France, and is anxious to visit with Bloomfield residents about the history of our community and memories of her great-grandfather. Mr. LeClerc and two members of his family are buried in the Bloomfield Cemetery. Annick will be available for a "meet and greet" from 5-6:30 p.m., June 13, in the Council Chambers at Bloomfield City Hall.

Anyone and everyone who would like to meet Annick and share memories and information about the City of Bloomfield is invited and encouraged to attend!

Fifth of July Fireworks Display

Would you like to make a donation to help pay for the Fifth of July Fireworks Display? With the down-turn in the economy, donations for this most popular family event are down as well. If you'd like to donate $5 or $10 or more, please send your tax deductible contributions lot to Fifth of July Fireworks c/o

Bloomfield City Hall, 915 N. First Street, Bloomfield, NM 87413.

The Fifth of July Fireworks Display has been touted as the best display in the Four Corners. We appreciate your help!

Thank you to SunRay Park and Casino, Patty Bowers, Alpha Omega Accounting PC, Halo Services, Dorothy Brown; and Julia and Jerrold Crockford for their generous donations to our Fifth of July Fireworks Display!

[*Upcoming City Council Meetings* – June 12 and June 26, 2017, at 6 p.m. in the Council Chambers at Bloomfield City Hall, 915 N. 1st Street. Agendas for meetings are available at bloomfieldnm.com.]

915 N First Street
Bloomfield, NM 87413
505-632-6300
Visit us at bloomfieldnm.com