

**THOU SHALT HAVE NO GOD BEFORE US:
HOW CHIEF JUSTICE ROY MOORE BROKE
THE FIRST COMMANDMENT OF JUDICIAL TYRANTS**
by Benjamin D. DuPré

The Supreme Judge of the World

In 1776, the American people, “with a firm Reliance on the Protection of Divine Providence,” rejected the “absolute Tyranny” of King George III’s monarchy.¹ “A Prince,” we said, “whose Character is thus marked by every act which may define a Tyrant, is unfit to be the Ruler of a free people.”² In declaring our independence of Great Britain, we relied upon the truth that “Governments are instituted” to secure “certain unalienable rights”—rights with which “all Men . . . are endowed by their Creator.”³ When oppressed by the tyrannical commands of a ruler, America in 1776 appealed to “the Supreme Judge of the World for the Rectitude of our Intentions.”⁴ In modern America, our judicial “rulers” decree that we may no longer publicly appeal to God as sovereign over man or government—there is no “Supreme Judge of the World” to which these judges are accountable. This was the “new commandment” given to the American people by a federal judge in the Alabama Ten Commandments trial of 2002, and I was there.

Into the Judicial Building

My first job out of law school was a law clerk position with the Alabama Supreme Court’s Chief Justice, who had become well-known (and Chief Justice) because of his heroic defense of a small, wooden rendition of the Ten Commandments that he refused to take off his county courthouse wall in Gadsden, Alabama. On July 31, 2001, I packed my 1989 Pontiac Bonneville to the roof and drove toward Alabama, excited about the prospects of working with a judge who understood natural law, Constitutional law, and the limited role of the judiciary. I had no idea just how much I would come to better understand the significance of such things in my new job and through the example of my new boss. That very evening, while I was on the road to Alabama and the start of my legal career, Chief Justice Roy Moore was installing a granite monument—with the Ten Commandments on top and historical references to God on the sides—in the Alabama Judicial Building, sparking a national debate about the proper role of God and religion in government. The “Ten Commandments Judge,” it seemed, was still practicing what he preached.

The Trial

“*God save the United States and this Honorable Court.*” With those preliminary words acknowledging God, the federal court came to order in the October 2002 trial to determine whether Chief Justice Moore could acknowledge God through his Ten Commandments monument. Those of us on Chief Justice Moore’s side of the courtroom hoped the preliminary invocation for Divine blessing was sincere and not a mere ceremonial formality. (We also did not fail to note the ironic monument prominently featured outside this federal courthouse: a golden bust of a Greek goddess of justice named Themis, situated between two waterfall “scales

of justice.”) The Chief Justice had been brought before federal judge Myron Thompson because he actually believed that a state official had the right to acknowledge Almighty God (as opposed to false Greek gods), and that God really could “save the United States,” including Alabama, from the moral depths to which it had plummeted. To that end, Chief Justice Moore had placed the Ten Commandments monument in the rotunda of the Alabama Judicial Building to acknowledge God as the moral foundation of our country’s laws and justice systems.

The case encompassed more than just the issue of whether the Ten Commandments could be displayed in a government building, and it featured more than just the American Civil Liberties Union & Co. versus Chief Justice Moore. Those of us who were a part of the trial—including Judge Thompson—understood that much more was at stake: the meaning and authority of the Constitution, the proper role and limited power of civil government, and the right of a state and its officials to acknowledge Almighty God and His sovereignty. Chief Justice Moore, by acknowledging the sovereignty of *God* over men and governments (including judges), had gone too far. Judge Thompson would have none of it because, as any good tyrant knows, a competitor for sovereign power must not be tolerated—especially One of a Divine Nature.

In opening statements, Judge Thompson was told that Chief Justice Moore’s purpose in “placing the Ten Commandments monument in the Supreme Court of Alabama” was “to acknowledge God’s law and God’s sovereignty.”⁵ But those words were first argued, not by Chief Justice Moore’s attorneys, but by the lead attorney for the *plaintiffs*: Morris Dees, head of the so-called Southern Poverty Law Center, which had brought the lawsuit together with the ACLU and Americans United for Separation of Church and State. Dees’s intent, of course, was to paint Chief Justice Moore’s actions as unconstitutional and even as extremist. But at least he got the whole point of the monument and correctly explained it to the judge.

Herb Titus, in his opening statement on behalf of Chief Justice Moore, eloquently explained what was at stake in the case.

“This is a case about freedom versus censorship. This case is part of a movement underway across the nation to misuse the Establishment Clause as a sword to sensor the historic relationship between God and our government by prohibiting the open and public acknowledgement of God by our elected government officials. While those who lead this movement claim that God must be censored from the public square in order to protect religious liberty, the opposite is the case. For the public acknowledgement of God as the source of our liberties is absolutely essential if we are to preserve those liberties. As the Declaration of Independence attests, if the source of individual rights is not God, then our rights are not inalienable, and if you take God out of the equation, then the all-powerful state is unchecked by any higher law.”⁶

Amazingly, Judge Thompson interrupted Mr. Titus shortly after he had begun his opening statement, something that trial judges *rarely* do. “Am I to understand, then,” Judge Thompson interjected, “that the essence of the argument is the monument was placed in the Supreme Court building *so that God would be a check on the actions of the state?*”⁷ From the outset, Judge Thompson realized that the message of this Ten Commandments monument and the beliefs of

the Chief Justice that installed it were threatening the scope of his power as a federal judge by recognizing an Authority higher than his own, by actually acknowledging God as *God*.

Morris Dees was also concerned about the message of the monument. When Chief Justice Moore took the witness stand, Dees interrogated him:

“Q. Do you agree that the monument, the Ten Commandments monument, reflects the sovereignty of God over the affairs of men?

“A. Yes.

“Q. And the monument is also intended to acknowledge God's overruling power over the affairs of men, would that be correct?

“A. It reflects those concepts, the laws of nature and of nature's God. . . .Yes.”⁸

Chief Justice Moore's testimony was thorough and educational. (It should be required reading for every law student.) He reiterated many of the same themes that he had touched upon when he unveiled the monument (and in speeches thereafter): that there was a moral foundation to our law that was being eroded, especially in the courts of our land; that the law of God provided that moral standard for our law; that America and her several states historically and presently acknowledged God and His sovereignty throughout our governmental institutions and practices; and that our sense of, and right to, liberty and justice will be lost if we cease to acknowledge that we are “one nation under God” because the government will have assumed the role of ultimate sovereign. He explained at trial:

“I put the monument in the building for the purpose of restoring the moral foundation of law. And to do that, one must recognize the source of those moral laws, which is God. And when you recognize the source of those moral laws, it returns the knowledge of God to the land, the source of your life, liberty, property. And so the purpose was to restore the moral foundation.”⁹

By acknowledging God, Chief Justice Moore argued, he was following similar, constitutionally-sound examples throughout our country, such as the Declaration of Independence, the Pledge of Allegiance, our national motto, and even the prayer at the beginning of court (even Judge Thompson's court). Likewise, the same Alabama Constitution that granted him authority as Chief Justice established the state's justice system (of which he was the head) “invoking the favor and guidance of Almighty God.” He simply had to acknowledge that God upon Whom the Alabama justice system was based or else he would not be faithful to his oath to Alabama's Constitution. The Ten Commandments monument similarly acknowledged God; it was not a “law respecting an establishment of religion,” which the “Establishment Clause” of the First Amendment prohibits.

Chief Justice Moore's team reminded Judge Thompson that he was also under the Constitution, the “supreme Law of the Land.” The Establishment Clause of the First Amendment states that “Congress shall make no law respecting an establishment of religion.”

This is the law that the plaintiffs accused Chief Justice Moore of violating. Chief Justice Moore and his attorneys argued that an acknowledgment of God (like the monument) does not violate the Establishment Clause because it is not, of course, a “law” and it is not “respecting an establishment of religion,” under the proper and traditional definition of the word “religion.” James Madison and the Virginia Constitution (even to this day) defined “religion” as “the duties we owe to our Creator and the manner of discharging them.”¹⁰ Thus, religion encompasses duties that we fulfill and methods of fulfilling those duties, not simply acknowledging God as sovereign. Under any reading of the words of the First Amendment, therefore, the Ten Commandments monument did not violate it.

The primary concern we had was whether Judge Thompson would actually understand the argument that a state and its officials have the right to acknowledge God, His sovereignty, and His laws as the moral foundation of our own—or that Judge Thompson would at least recognize that as the main issue in this case. Morris Dees and the plaintiffs seemed to understand what was at stake. Moreover, Chief Justice Moore had testified extensively about the right to acknowledge God. Our answer came in closing arguments.

Judge Thompson stated in closing arguments, “And so the monument itself, then, if I'm understanding you correctly, is this acknowledgement of God and in itself serves, then, as a check on the state and what the state can and cannot do?”¹¹ Steve Melchior, one of the Chief Justice’s attorneys, agreed. Shortly thereafter, Judge Thompson said to Melchior, “I think we can all agree that the monument acknowledges God.”¹²

Just to make sure there was no misunderstanding, Melchior laid the issue bare before Judge Thompson: “so right now sitting square before this District Court, no games or anything like that, is: can the state acknowledge God?”¹³ Judge Thompson’s response was encouraging:

“I think that is basically it. You know, I would almost think I would have to start my opinion that way. The issue is, can the state acknowledge God? I think you said it. And I think perhaps in many ways I doubt the plaintiffs will disagree with you on that.”¹⁴

That evening and in the days thereafter, Chief Justice Moore would often exclaim, “You know, Judge Thompson understands the issue! He really got it!” We were encouraged and a bit amazed that the judge was able to see clearly that the acknowledgment of God and His sovereignty over man was at stake in this case. Some of us even held out hope that his decision would be in our favor.

Rex Lex

When Judge Thompson issued his decision that the monument was unconstitutional, we were sorely disappointed. When we actually read the opinion, we were stunned. The monument was not unconstitutional, Thompson held, simply because the Ten Commandments were on it; what made it unconstitutional was that Chief Justice Moore placed the monument in the Alabama Judicial Building “with the specific purpose and effect, as the court finds from the evidence, of acknowledging the Judeo-Christian God as the moral foundation of our laws.”¹⁵ Judge

Thompson certainly understood what Chief Justice Moore had done, and he did not like one bit of it.

“[T]he court disagrees . . . that, *as a matter of American law*, the Judeo-Christian God must be recognized as sovereign over the state, or even that *the state* may adopt that view. This is an opinion about the structure of American government, rather than a matter of religious conscience, that the court feels fully comfortable refusing to accept.”¹⁶

Judge Thompson felt “fully comfortable” rejecting the sovereignty of God over the state, and he dismissed any such notions as the Chief Justice’s own subjective religious beliefs:

“[W]hile the Chief Justice is free to keep whatever religious beliefs he chooses, *the state* may not acknowledge the sovereignty of the Judeo-Christian God and attribute to that God our religious freedoms.”¹⁷

Judge Thompson could not recognize that God was sovereign over him—no tyrant would—and through the guise of the United States Constitution, he made sure Chief Justice Moore would not get away with publicly acknowledging God either. Chief Justice Moore simply could have surrounded the Ten Commandments with other historical documents and portrayed it as a stale “secular” museum display that would not have threatened Judge Thompson’s reign. Instead, Chief Justice Moore had given God’s law a prominent position on top of the monument, all by itself, as a clear acknowledgment of God’s superiority. At the end of his opinion, Judge Thompson made just that point, reiterating that the problem with the monument was not the presence of the Ten Commandments, but that through it Chief Justice Moore recognized God as sovereign over man:

“If all Chief Justice Moore had done were to emphasize the Ten Commandments’ historical and educational importance (for the evidence shows that they have been one of the sources of our secular laws) or their importance as a model code for good citizenship (for we all want our children to honor their parents, not to kill, not to steal, and so forth), this court would have a much different case before it. But the Chief Justice did not limit himself to this; he went far, far beyond. He installed [the monument] with the specific purpose and effect of establishing a permanent recognition of the “sovereignty of God,” the Judeo-Christian God, over all citizens in this country. . . . To this, the Establishment Clause says no.”¹⁸

Judge Thompson’s misuse of the Establishment Clause to effect the removal of the monument was as stunning as his removal of God as sovereign. Judge Thompson refused to define the word “religion” in the First Amendment, but nevertheless concluded that Chief Justice Moore had violated the First Amendment. He said it would be “unwise, and even dangerous” to define the word “religion.”¹⁹ In other words, he could not define religion, but Chief Justice Moore had established it! By his own admission, he was not applying the law in the case, but his own judicial power.

Chief Justice Moore argued in vain that Judge Thompson had no authority under the First and Tenth Amendments to order him to remove the monument, and that Chief Justice Moore would violate his own oath to the Alabama and United States constitutions if he removed the granite acknowledgment of God. But a judge who has denied the sovereignty of God is hardly inclined to subject himself to the law. Judge Thompson ordered the monument removed and intimidated other state officials to remove the monument he deemed “impermissible” because it acknowledged the sovereignty of God.

Arbitrary Power

“Tyranny” was defined by the English philosopher John Locke as “the exercise of power beyond right, which no body has a right to.”²⁰ Locke, whose 17th-Century writings heavily influenced the Founding Fathers, rightly observed that “wherever the power, that is put in any hands for the government of the people, and the preservation of their properties, is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those who have it; there it presently becomes tyranny, whether those that thus use it are one or many.”²¹ Whether as “one or many,” whenever judges interfere with the inalienable right to acknowledge God and His sovereignty, they “exercise power beyond right” and, like our last and former king, establish a regime of tyranny over the people and civil servants of this country.

Whenever those in government cease to acknowledge the sovereignty of God or his moral law, man becomes the ultimate sovereign and government is accountable to no one and no higher law. If the 20th Century has taught us anything, it is that atheistic, communist regimes produce the cruelest acts and most tyrannical of governments, denying the sovereignty of God and the dignity of every man. In the 1950’s, America responded to last century’s tyrannical atheism with the affirmation that we are “one nation under God” and that our national motto is “In God We Trust.”²² Will we halt the judicial erosion of references to God and His sovereignty or, as the late President Ronald Reagan once warned, will we become simply a nation “gone under”?²³

By his own admission, Judge Thompson banished the Ten Commandments monument because it acknowledged a power higher than his own. Having rid himself of any accountability to the Highest Authority, therefore, it was an easy task for Judge Thompson to reject the authority of the highest human institution over him—the Constitution. But Judge Thompson was hardly forging new ground; rather he was following the lead of the United States Supreme Court and much of the federal judiciary. In a 1958 case called *Cooper v. Aaron*, the Supreme Court held that its own interpretations of the Constitution—not the Constitution itself—were the “supreme law of the land.” Despite their oaths to the Constitution—not other judges—most federal judges elevate the opinions of judges above the words of the Constitution itself. Judge Thompson was merely enforcing the orthodoxy of supremacy that most federal judges hold to. They are jealous sovereigns, and they tolerate no God before them. “Where-ever law ends,” warned John Locke, “tyranny begins.”²⁴

Tyranny will continue unchecked only so long as the people oppressed by it do not recognize it as tyranny. I have witnessed arbitrary judicial action in our land, and I will not

shrink from calling it what the Founding Fathers would have called it: tyranny. In one sweeping case, a federal judge in Alabama rejected both the “Supreme Judge” and the “Supreme Law” of the land. As in 1776, such acts rightly “define a Tyrant” and one “unfit to be the Ruler of a free people.”

In God We Trust

Those concerned about judicial tyranny can easily become disheartened in the midst of repeated apparent defeats. After all, Chief Justice Moore lost his federal case, refused to remove the acknowledgment of God, and was himself removed from office for such a stand. But the big picture is that God never relinquishes His sovereignty, and man will always be tempted to “be as gods.”²⁵ The crucial question is not whether God, in fact, *is* sovereign, but whether men and governments instituted among them will rightly *acknowledge* Him as sovereign (*i.e.*, as God). Our first President, George Washington, reminded America of a self-evident truth, that “it is the duty of all nations to acknowledge the Providence of Almighty God, to obey His will, to be grateful for His benefits and humbly to implore His protection and favor.”²⁶ In God we *must* trust.

Endnotes

¹ *Declaration of Independence* (1776).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Trial Transcript for *Glassroth v. Moore*, 229 F. Supp. 2d 1290 (M.D. Ala. 2002), Vol. I, p. 4.

⁶ *Ibid.* at p. 11.

⁷ *Ibid.* at 11-12.

⁸ Trial Transcript, *supra* at note 5, Vol. III, p. 34.

⁹ *Ibid.* at 38.

¹⁰ J. Madison, *Memorial and Remonstrance* (1785). *Constitution of Virginia, Bill of Rights* (June 12, 1776), reprinted in *Sources of Our Liberties* 313 (Perry rev. ed., Amer. Bar Found. ed. 1978).

¹¹ Trial Transcript, *supra* at note 5, Vol. VII, p. 62.

¹² *Ibid.* at 63.

¹³ *Ibid.* at 73.

¹⁴ *Ibid.*

¹⁵ *Glassroth v. Moore*, 229 F. Supp. 2d 1290, 1293 (M.D. Ala. 2002).

¹⁶ *Ibid.* at 1310 (emphasis in original).

¹⁷ *Ibid.* at 1312 (emphasis in original).

¹⁸ *Ibid.* at 1318.

¹⁹ *Ibid.* at 1313, fn. 5.

²⁰ J. Locke, *Second Treatise of Civil Government*, Chap. XVIII, Sec. 199.

²¹ *Ibid.* at Sec. 201.

²² 4 United States Code Sec. 4, and annotations thereto, codifying that the Pledge of Allegiance to the flag would include the phrase “one nation under God.” 36 United States Code Sec. 302, codifying “In God We Trust” as the National Motto of the United States.

²³ W. Federer, *America’s God and Country, Encyclopedia of Quotations* 530 (1996), quoting President Ronald Reagan at an Ecumenical Prayer Breakfast in Dallas, Texas, on the occasion of the enactment of the Equal Access Act of 1984.

²⁴ J. Locke, *supra* at note 20, at Sec. 202.

²⁵ See Genesis 3:5 (KJV).

²⁶ Federer, *supra* at note 23, at 654, quoting George Washington’s October 3, 1789 *National Day of Thanksgiving Proclamation*.