

THE AM LAW LITIGATION DAILY

Litigators of the Week: Simpson Thacher and ACLU Team To Challenge Louisiana's Ten Commandments Law

With Jonathan Youngwood of Simpson Thacher and Heather Weaver of the ACLU arguing for plaintiffs, a federal judge in Baton Rouge blocked the law requiring the display of the Ten Commandments in public school classrooms.

By Ross Todd

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Our Litigators of the week are **Jonathan Youngwood**, global co-chair of the litigation department at **Simpson Thacher & Bartlett**, and **Heather Weaver**, a senior staff attorney with the **ACLU Program on Freedom of Religion and Belief**. They represent nine families with children in Louisiana public schools who are challenging a law requiring classrooms in the state to display a copy of the Ten Commandments starting next year.

After a hearing last month in Baton Rouge, U.S. District Judge John deGravelles issued a preliminary injunction finding the law violated the Establishment Clause and the Free Exercise Clause of the First Amendment.

The judge wrote that the law was “coercive to students” who have no practical way to “opt out of viewing the Ten Commandments when they are displayed in every classroom, every day of the year, every year of their education.” The judge added that there are “any number of ways” that would be less burdensome to advance the state’s purported interest in educating students about the Ten Commandments.



Courtesy photos

Jon Youngwood, co-chair of Simpson Thacher's litigation department, left, and Heather Weaver, senior staff attorney for the ACLU Program on Freedom of Religion and Belief, right.

Litigation Daily: Who were your clients and how would you describe what's at stake here?

Heather Weaver: We represent nine families with children in Louisiana’s public schools. The families practice various faiths, and some are not religious at all. Three of our parent-clients are ordained clergy. The fundamental

religious-freedom rights of our clients and their children are at stake. As the district court held, our children-clients face a real and substantial likelihood of coercion because in every practical sense, they will be compelled to attend and participate in a religious exercise—“reading and considering a specific version of the Ten Commandments, one posted in every single classroom, for the entire school year, regardless of the age of the student or subject matter of the course.” In and of itself, this is an alarming abuse of state power. Moreover, the statute interferes with our parent-clients’ right to decide which religious practices, if any, their children engage in and to decide whether and how they will inculcate their children’s beliefs with respect to expressly religious doctrine.

Jon, how did you and the firm get involved in this case?

Jon Youngwood: Simpson Thacher has a well-established pro bono platform, and we are fortunate to have developed a longstanding relationship with the ACLU. We’ve worked with the organization for decades, including on religious freedom cases. In 2021, we filed a case in Oxford, Mississippi, challenging the denial of zoning approval for a proposed mosque due to anti-Muslim bias, which, with the district court’s assistance, was quickly resolved in favor of our clients. The mosque is under construction now in Horn Lake. I and others that are part of the Louisiana Ten Commandments case worked with Heather on that case, and we kept in touch after it concluded.

Earlier this year, it became clear that legislation concerning the posting of the Ten Commandments in public schools in Louisiana might be enacted and there were numerous families in the state who didn’t want their children to be subject to such a law. Heather reached out to see if we might be interested in teaming up again. We worked together to track the legislation and prepare a potential case with our clients.

We also were fortunate to be joined by the other public interest firms on our legal team. When the legislation passed and our clients wanted to bring a case, we, the ACLU and our other partners were ready to move forward on behalf of our clients.

Who all is on the plaintiffs’ legal team? And how have you divided the work in the run-up to the preliminary injunction hearing?

Youngwood: As I noted above, it has been a collective effort. There are four public interest organizations with whom we have had the pleasure of working on this case. Heather and **Dan Mach** led the team from the national ACLU, **Andrew Perry** led the team from the **ACLU of Louisiana**, **Patrick Elliott** led the team from the **Freedom From Religion Foundation**, and **Alex Luchenitser** led the team from **Americans United for Separation of Church and State**. Working up to the October hearing, I was incredibly lucky to have the dedication of our outstanding Simpson Thacher team in both our New York and Washington, D.C. offices, which includes **Janet Gochman**, **Nicholas Prendergast**, **Jordan Krieger**, **Noah Gimbel** and **Lara Fishbane**.

All of the lawyers truly worked collaboratively in getting ready for the hearing, and in particular in preparing our expert witness, Dr. Steven Green, who is a professor of law, history and religious studies at Willamette University. As for oral argument preparation, we had two in-person moot court sessions in D.C. to prepare, where Heather and I participated in-person alongside several other lawyers from the team. It was also great to have guest professors and other attorneys who hadn’t previously been part of the day-to-day preparation participate as well. Overall, it was genuinely a joint effort to make sure we were as prepared as possible.

Tell me about the hearing before Judge deGravelles last month. You put on testimony from an expert witness and argued the competing motions, right? What were the highlights for

you, especially looking back with this decision in hand?

Youngwood: You could feel the attention and intensity throughout the courtroom in Baton Rouge, which was extraordinarily full. Many of the plaintiffs were in attendance, as well as members of the public and press. The energy in the courtroom was electric.

I had the privilege of examining our expert witness, which took most of the morning, as well as arguing portions of the many motions before the court. Heather argued other aspects of the motions. Judge deGravelles was clearly very prepared, and we appreciated his thorough consideration and many thoughtful questions throughout the hearing. It's always rewarding to work with an expert witness like Dr. Green, who is extremely knowledgeable, and I really appreciated the time and effort he displayed in ensuring he gave critical, accurate and complete testimony.

Weaver: As Jon notes, one thing that stood out was how prepared and engaged the judge was. In addition, Jon's direct and redirect of our historian, Dr. Green, were a master class in how to put on an expert. It was enthralling to have a close-up view of that.

For my role, having dedicated my career to litigating these issues, it's always gratifying to stand up before our clients and the court to defend constitutional principles that go to the very core of democracy, especially because the separation of church and state has been under serious attack in recent years. And, of course, it's even more rewarding to know that those arguments were persuasive to the judge and translated to a favorable ruling.

The other thing that stood out is that the defendants conceded during the argument that *Stone v. Graham*, in which the Supreme Court struck down a materially indistinguishable statute, remains good law and is binding on lower courts. That's clearly correct, but it was nice to

see them finally acknowledge it, given that they argued otherwise in their briefing.

Speaking of this decision, it comes in at 177 pages. What are the key holdings for you and your clients? What's important here?

Weaver: If you read the entire opinion, it's clear that the judge systematically reviewed and considered all the briefing and arguments on both sides and then undertook a careful and thorough analysis. As a result, the opinion is balanced and persuasive.

There are several highlights. First, the court recognized that *Stone* is good law and binding on lower courts. That holding is unassailable. As noted above, even the defendants ended up conceding that point at oral argument. Second, after hearing all the evidence, the court found that the statute is not supported by historical practice and contravenes core First Amendment prohibitions on coercion and denominational discrimination. Third, the Attorney General tried to force Louisiana's families into a game of whack-a-mole where they have to challenge every individual display. But we knew that, if the judge looked at the statute as a whole, it would be quite easy to conclude that a facial challenge was appropriate here because the minimum requirements of the law are extreme. Finally, the court held that the statute also violates our clients' rights under the Free Exercise Clause, which is important because it shows that the Louisiana statute infringes religious freedom from all constitutional angles.

Heather, you are based in Washington, D.C., and Jonathan, you're based in New York. In a situation like this, where you're up against local officials represented by the state AG's office, do you worry at all about the optics of this looking like a case being handled by outsiders?

Youngwood: Simpson Thacher litigators appear in courts across the country, so being in a different jurisdiction is not unusual for me—but it is important to partner with local lawyers. One of the

amazing aspects of this nation is that we have a unified federal court system that follows the same rules and law—we trust our judges to uphold the Constitution fairly and consistently. In this case Andrew Perry and his colleagues at the ACLU of Louisiana were (and are) fantastic. We are deeply grateful to have their support and partnership.

The defendants have already filed a notice of appeal. The Fifth Circuit, which will hear the appeal, is widely regarded as the most conservative federal appellate court in the country. What makes you confident this injunction will stand up on appeal?

Weaver: Well, it's important to remember that these issues don't always shake out along so-called conservative or liberal lines. For example, in Oklahoma, the Republican Attorney General has been one of the staunchest opponents of the state's approval of a religious public charter school.

In any event, as the district court held, *Stone* is clear-cut, and our clients are entitled to relief under it. The Fifth Circuit has generally remained faithful to its duty to apply binding Supreme Court precedent. We're confident it will do so here. Furthermore, we're dealing not only with an Establishment Clause violation, but also a Free Exercise Clause violation. Both the Supreme Court and the Fifth Circuit have made clear in recent years that the First Amendment provides robust free-exercise protections.

Youngwood: I would echo Heather's response here. I first argued before the Fifth Circuit nearly 20 years ago and have appeared a number of times since then, including in front of the court sitting en banc. While each Circuit (and each panel) has its own makeup of individual judges, we think the law is extremely clear on this issue. We expected the case would not end in the district court, and we look forward to the issue being adjudicated by the Fifth Circuit.

What will you remember most about getting this result?

Weaver: I've been doing this work for 20 years, and the most memorable part of every case is always the clients. It took enormous courage to put themselves and their families in the public eye here and to stand up to the Governor, the Attorney General and other politicians who are dismissive of—and often downright hostile toward—anyone who doesn't share their particular brand of religion. It's a really hard thing to do, especially because matters of faith are so deeply personal. I can't emphasize enough how proud I am of our clients in this case and how much I admire them. It's a privilege to represent them, and I'm relieved we won this ruling on their behalf.

Youngwood: The energy of the packed courtroom and the intensity of the hearing obviously left an impression, but having the opportunity to work with so many fiercely dedicated, talented advocates was itself deeply gratifying. Although many of us had met in person in Washington, D.C. for the moot court preparations, the hearing in Louisiana was the first time many of us were able to get together in person as a full team. Having the opportunity to develop and deepen those relationships, to support one another in the trenches for this type of impact litigation, was unforgettable. This matter, and others like it, also remind me of how fortunate I am to have the support of all my partners and colleagues at Simpson Thacher, including our chief pro bono counsel **Harlene Katzman** and pro bono attorney **Nihara Choudhri**. Simpson Thacher has a long history of taking on pro bono cases that matter, including my first-ever pro bono case, which related to ensuring adequate funding for the New York City school system in the 1990s. In short, this case, and matters like it, enhance—in every way—our practice of law.