



James Milton Gavel to Gavel on OK Supreme Court 10 Commandments Ruling

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When the Oklahoma Supreme Court denied rehearing in the Ten Commandments case on July 27, the justices issued four concurring opinions and one dissenting opinion. These five opinions should be required reading for Oklahomans.

In his dissent, Justice Combs noted that Oklahoma's constitutional framers invoked the Almighty's guidance and viewed liberty as a blessing. Indeed, Oklahoma's constitution is part of a legal system that secures our liberty. Our constitution provides a framework for legislation and judicial review. It also imposes constraints on government action.

In his concurring opinion, Justice Edmondson urged that the Ten Commandments monument had no "embracing historical and secular context" that would allow it to remain on Capitol grounds. This is an important point. As noted in Justice Gurich's concurrence, the legislature specifically described the Ten Commandments as "an important component" in our legal system.

Gurich acknowledged that the Ten Commandments surely had some impact on our legal system. But both Gurich and Justice Taylor, in a separate concurring opinion, explained that the Ten Commandments are not cited in the Federalist Papers, the Constitution, or the Declaration of Independence.

The Ten Commandments monument could be viewed as favoring a system of "natural law." Some scholars argue that natural law emanates from nature or from divine provenance. Stated simply, proponents of a natural law system believe that the law always is what it is, and that we must strive to find out what that is.

Natural law is viewed to be the opposite of a positive legal system. Legal positivists urge that law

should be derived from legislation or case law. While the Oklahoma Supreme Court rarely delves into these issues, it can be viewed as favoring legal positivism. Most recently, in 2001, the Court noted its preference for establishing "a positive legal order that minimizes the frictions among different interests."

With rehearing no denied, the case will return to the district court. This process can take some time. Soon, the Supreme Court will issue its "mandate," which tells the district court that it can proceed. It is possible that the parties will engage in further legal wrangling at the trial court. The Attorney General may even file an appeal with the U.S. Supreme Court. But in the end, our system of government will remain intact. We can expect that the Capital Preservation Commission eventually will follow the Supreme Court's decision and remove the monument.

Attorneys

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