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BRIEF TO U.S. SUPREME COURT: STOP USURPING STATE POWER

***Coalition urges Supreme Court Justices to honor their oaths before God
and allow the States to decide whether or not to post the Ten Commandments***

WASHINGTON, D.C., December 8, 2004 — A coalition of eight conservative and Christian organizations today called on the U.S. Supreme Court to overturn a federal appeals court ruling that public displays of the Ten Commandments in Kentucky courthouses are unconstitutional. The case, McCreary County v. ACLU of Kentucky (No. 03-1693), is the first case addressing public displays of the Ten Commandments that the High Court has agreed to review in 25 years.

Herbert W. Titus, counsel of record for the brief (who also has represented former Alabama Supreme Court Chief Justice Roy Moore), noted that the coalition's *amicus curiae* brief is unique in urging the Supreme Court not only to recognize the right of state and local governments to acknowledge God but also to do so by overruling mistaken precedents claiming to vest the Court with the authority to apply to the states constitutional provisions written exclusively to restrict Congress.

"More and more Americans are beginning to realize that their constitutional rights are defined not by the Constitution, but by five to four votes of nine justices on the Supreme Court," Titus said. "The 'right to abortion,' the 'right to sodomy,' and the 'right not to be offended by a manger at the town hall' — all of these so-called 'rights' and more, even though none are found anywhere in the Constitution, have been imposed upon the people by activist judges in flagrant disregard of their oaths of office before God."

"Our uncompromising brief challenges the Court to honor its oath to support the Constitution, by overruling its unconstitutional 'incorporationist' doctrine whereby it has imposed the Establishment Clause on the States, counties and cities, when in truth that Clause applies only to the federal government," Titus said.

"By disregarding the Constitution, and their oath to obey it, federal judges have fostered moral chaos and political irresponsibility in our state and local communities," he added. "Our brief," he concluded, "urges the Court to have the moral courage to change course, and return to the constitutional principles of the Nation's founders."

— more —

William J. Olson, co-counsel for the brief, agreed: “The U.S. Constitution prohibits only ‘*Congress*’ from making any ‘law respecting the establishment of religion.’ The Supreme Court recognized this for nearly 160 years. In 1947, however, the Court, without any justification whatsoever, ignored the clear language of the Constitution, and thereafter, through a series of twisted decisions, has ruled again and again that state and local government officials may not acknowledge God — in complete disregard that our nation was established upon the foundation of God’s Law and Divine Providence.” “With this case,” Olson continued, “the Court has a fresh opportunity to correct its mistakes, and return power to the States and the people as guaranteed by the Tenth Amendment.”

The brief is **direct in its rhetoric**: “This Court has largely forgotten this fundamental principle of textual restraint and has misused the power of judicial review to replace the federal system of government established by the express words of the Constitution with a unitary system expressly contrary to the Constitutional text.” (Brief, p. 7.)

The brief explains the **anti-Catholic bias** that scholars have demonstrated underlies certain of the Court’s key Establishment Clause holdings. (Brief, pp. 21-23.)

The brief is unusual in that it quotes from and provides references to **The Holy Bible**. (Brief, pp. 27-30.)

The sponsors of the coalition brief, a copy of which may be found at www.lawandfreedom.com, are the Conservative Legal Defense and Education Fund, Joyce Meyer Ministries, Committee to Protect the Family Foundation, Lincoln Institute for Research and Education, American Heritage Party, Public Advocate of the United States, Radio Liberty, and Spiritual Counterfeits Project, Inc.

The U.S. Supreme Court will review the coalition brief and other briefs submitted in the case before holding oral arguments, expected in February or March, and issuing its decision, expected in June 2005.

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The **Conservative Legal Defense and Education Fund** is a non-profit educational foundation. Since 1985 it has promoted Constitutional interpretation based on fidelity to the actual text of the Constitution.

Herbert W. Titus, former Dean of Regent Law School, has taught constitutional law for 30 years at five law schools throughout the U.S. A prolific writer, he is author of *God, Man & Law*, an acclaimed text on American common law.

William J. Olson is the author of numerous public policy reports, including studies on executive usurpation of legislative authority. He has authored or co-authored more than 25 U.S. Supreme Court briefs.

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