

The Burger Court Opinion Writing Database

Stone v. Graham

449 U.S. 39 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 14, 1980

RE: 80-321 - Stone v. Graham

Dear Harry:

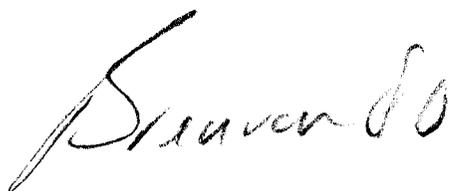
I join you.

Regards,



Mr. Justice Blackmun

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Curtis
11/10/80

1st DRAFT

SUPREME COURT OF THE UNITED STATES

**SYDELL STONE ET AL. v. JAMES B. GRAHAM, SUPER-
INTENDENT OF PUBLIC INSTRUCTION
OF KENTUCKY**

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF KENTUCKY

No. 80-321. Decided November —, 1980

PER CURIAM.

A Kentucky statute requires the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public classroom in the State.¹ Petitioners, claiming that this statute violates the Establishment and Free Exercise Clause of the First Amendment,² sought an injunction against its enforcement. The state trial court

¹ The statute provides in its entirety:

"(1) It shall be the duty of the superintendent of public instruction, provided sufficient funds are available as provided in subsection (3) of this Section, to ensure that a durable, permanent copy of the Ten Commandments shall be displayed on a wall in each public elementary and secondary school classroom in the Commonwealth. The copy shall be sixteen (16) inches wide by twenty (20) inches high.

"(2) In small print below the last commandment shall appear a notation concerning the purpose of the display, as follows: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States."

"(3) The copies required by this Act shall be purchased with funds made available through voluntary contributions made to the state treasurer for the purposes of this Act."

Enact. Acts 1978, ch. 436, § 1 (effective June 17, 1978); K. R. S. 158.178 (1980).

² The First Amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U. S. Const., amdt. 1. This prohibition is applicable to the States through the Fourteenth Amendment. *School District of Abington Township v. Schempp*, 374 U. S. 203, 215-216 (1963).

Brennan Jd

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See p. 4

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Brennan
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: NOV 14 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

**SYDELL STONE ET AL. v. JAMES B. GRAHAM, SUPER-
INTENDENT OF PUBLIC INSTRUCTION
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Brewer 86

Not on list - send with copy of this case

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 10, 1980

Re: No. 80-321, Stone v. Graham

Dear Bill,

Please add the following at the foot of your
per curiam:

Justice Stewart dissents from this summary
reversal of the courts of Kentucky, which,
so far as appears, applied wholly correct
constitutional criteria in reaching their
decisions.

Sincerely yours,

Justice Brennan

Copies to the Conference

P.S.

Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 10, 1980

Re: 80-321 - Stone v. Graham

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 10, 1980

Re: No. 80-321 - Stone v. Graham

Dear Bill:

I agree with your Per Curiam.

Sincerely,

J.M.

T.M.

Mr. Justice Brennan

cc: The Conference

Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 12, 1980

Re: No. 80-321 - Stone v. Graham

Dear Bill:

At the foot of your per curiam, would you please add the following:

"MR. JUSTICE BLACKMUN dissents. He would grant certiorari and give this case plenary consideration."

Sincerely,

Harry
—

Mr. Justice Brennan

cc: The Conference

Brennan fo.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 13, 1980

80-321 Stone v. Graham

Dear Bill:

I agree with your Per Curiam in the above case.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 11, 1980

Re: No. 80-321 Stone v. Graham

Dear Bill:

I will be circulating a dissent to your proposed summary reversal in due course.

Sincerely,



Mr. Justice Brennan

Copies to the Conference



To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 12 NOV 1981

Recirculated: _____

Re: Stone v. Graham, No. 80-321

MR. JUSTICE REHNQUIST, dissenting

With no support beyond its own ipse dixit, the Court

concludes that the Kentucky statute involved in this case "has no secular legislative purpose," ante at 2 (emphasis supplied) and that "[t]he pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature," ante at 3. This even though, as the trial court found, "[t]he General Assembly thought the statute had a secular legislative purpose and specifically said so." Pet. App. at 37. The Court's summary rejection of a secular purpose articulated by the legislature and confirmed by the state court is without precedent in Establishment Clause jurisprudence. This Court regularly looks to legislative articulations of a statute's purpose in Establishment Clause cases and accords such pronouncements the deference they are due. See, e.g., Committee for Public Education v. Nyquist, 413 U.S. 756, 773 (1973) ("we need touch only briefly on the requirement of a 'secular legislative

Brennan DC

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 12, 1980

Re: 80-321 - Stone v. Graham

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference

