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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**VAN ORDEN v. PERRY, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF TEXAS AND CHAIRMAN, STATE
PRESERVATION BOARD, ET AL.**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 03–1500. Argued March 2, 2005—Decided June 27, 2005

Among the 21 historical markers and 17 monuments surrounding the Texas State Capitol is a 6-foot-high monolith inscribed with the Ten Commandments. The legislative record illustrates that, after accepting the monument from the Fraternal Order of Eagles—a national social, civic, and patriotic organization—the State selected a site for it based on the recommendation of the state organization that maintains the capitol grounds. Petitioner, an Austin resident who encounters the monument during his frequent visits to those grounds, brought this 42 U. S. C. §1983 suit seeking a declaration that the monument’s placement violates the First Amendment’s Establishment Clause and an injunction requiring its removal. Holding that the monument did not contravene the Clause, the District Court found that the State had a valid secular purpose in recognizing and commending the Eagles for their efforts to reduce juvenile delinquency, and that a reasonable observer, mindful of history, purpose, and context, would not conclude that this passive monument conveyed the message that the State endorsed religion. The Fifth Circuit affirmed.

Held: The judgment is affirmed.

351 F. 3d 173, affirmed.

THE CHIEF JUSTICE, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE THOMAS, concluded that the Establishment Clause allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. Reconciling the strong role played by religion and religious traditions throughout our Nation’s history, see *School Dist. of Abington Township v. Schempp*, 374

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U. S. 203, 212–213, with the principle that governmental intervention in religious matters can itself endanger religious freedom requires that the Court neither abdicate its responsibility to maintain a division between church and state nor evince a hostility to religion, *e.g.*, *Zorach v. Clauson*, 343 U. S. 306, 313–314. While the Court has sometimes pointed to *Lemon v. Kurtzman*, 403 U. S. 602, for the governing test, *Lemon* is not useful in dealing with the sort of passive monument that Texas has erected on its capitol grounds. Instead, the analysis should be driven by both the monument’s nature and the Nation’s history. From at least 1789, there has been an unbroken history of official acknowledgment by all three branches of government of religion’s role in American life. *Lynch v. Donnelly*, 465 U. S. 668, 674. Texas’ display of the Commandments on government property is typical of such acknowledgments. Representations of the Commandments appear throughout this Court and its grounds, as well as the Nation’s Capital. Moreover, the Court’s opinions, like its building, have recognized the role the Decalogue plays in America’s heritage. See, *e.g.*, *McGowan v. Maryland*, 366 U. S. 420, 442, 462. While the Commandments are religious, they have an undeniable historical meaning. Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause. See, *e.g.*, *Lynch v. Donnelly*, *supra*, at 680, 687. There are, of course, limits to the government’s display of religious messages or symbols. For example, this Court held unconstitutional a Kentucky statute requiring the posting of the Ten Commandments in every public schoolroom. *Stone v. Graham*, 449 U. S. 39, 41–42. However, neither *Stone* itself nor subsequent opinions have indicated that *Stone*’s holding would extend beyond the context of public schools to a legislative chamber, see *Marsh v. Chambers*, 463 U. S. 783, or to capitol grounds. Texas’ placement of the Commandments monument on its capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day. Indeed, petitioner here apparently walked by the monument for years before bringing this suit. *Schempp*, *supra*, and *Lee v. Weisman*, 505 U. S. 577, distinguished. Texas has treated her capitol grounds monuments as representing several strands in the State’s political and legal history. The inclusion of the Commandments monument in this group has a dual significance, partaking of both religion and government, that cannot be said to violate the Establishment Clause. Pp. 3–12.

JUSTICE BREYER concluded that this is a difficult borderline case where none of the Court’s various tests for evaluating Establishment Clause questions can substitute for the exercise of legal judgment. See, *e.g.*, *School Dist. of Abington Township v. Schempp*, 374 U. S. 203,

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305 (Goldberg, J., concurring). That judgment is not a personal judgment. Rather, as in all constitutional cases, it must reflect and remain faithful to the underlying purposes of the First Amendment's Religion Clauses—to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the religious divisiveness that promotes social conflict, and to maintain the separation of church and state. No exact formula can dictate a resolution to fact-intensive cases such as this. Despite the Commandments' religious message, an inquiry into the context in which the text of the Commandments is used demonstrates that the Commandments also convey a secular moral message about proper standards of social conduct and a message about the historic relation between those standards and the law. The circumstances surrounding the monument's placement on the capitol grounds and its physical setting provide a strong, but not conclusive, indication that the Commandments' text as used on this monument conveys a predominantly secular message. The determinative factor here, however, is that 40 years passed in which the monument's presence, legally speaking, went unchallenged (until the single legal objection raised by petitioner). Those 40 years suggest more strongly than can any set of formulaic tests that few individuals, whatever their belief systems, are likely to have understood the monument as amounting, in any significantly detrimental way, to a government effort to establish religion. See *ibid.* The public visiting the capitol grounds is more likely to have considered the religious aspect of the tablets' message as part of what is a broader moral and historical message reflective of a cultural heritage. For these reasons, the Texas display falls on the permissible side of the constitutional line. Pp. 1–8.

REHNQUIST, C. J., announced the judgment of the Court and delivered an opinion, in which SCALIA, KENNEDY, and THOMAS, JJ., joined. SCALIA, J., and THOMAS, J., filed concurring opinions. BREYER, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined. O'CONNOR, J., filed a dissenting opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined.