

# **Bond Case Briefs**

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## **MUNICIPAL GOVERNANCE - NEW MEXICO**

### **Felix v. City of Bloomfield**

**United States Court of Appeals, Tenth Circuit - November 9, 2016 - F.3d - 2016 WL 6634870**

City residents brought action against city, alleging that it violated First Amendment by allowing placement of Ten Commandments monument on lawn in front of municipal building complex.

The United States District Court for the District of New Mexico entered judgment in favor of residents. City appealed.

The Court of Appeals held that:

- Residents had Article III standing;
- Monument was government speech regulated by Establishment Clause; and
- City's conduct in authorizing continued display of Ten Commandments monument endorsed religion, in violation of the Establishment Clause.

City residents' unwelcome encounters with Ten Commandments monument satisfied injury-in-fact requirement for Article III standing to bring Establishment Clause challenge to placement of that monument on lawn in front of municipal building complex. Residents had direct contact with the monument, as it sat outside main entrance of building, which included department where residents paid utilities bills, and monument was visible from major roadway, residents were polytheistic Wiccans who testified that they were offended and felt excluded by the Ten Commandments, and residents testified that they avoided the building, but still saw it from the roadway several times per week.

Display of granite Ten Commandments monument on front lawn of municipal building complex was government speech regulated by Establishment Clause, not private speech. Even though monument was funded by private donations, monument was permanent object located on government property, as it was 3400 pounds, with a foundation of steel, concrete, and wood embedded 14 inches in the ground.

City's conduct in authorizing continued display of Ten Commandments monument on lawn in front of municipal building complex had primary or principal effect of endorsing religion, and thus, violated Establishment Clause. Text of Ten Commandments was unmistakably religious, the monument was located directly in front of principal municipal building, and was clearly visible to onlookers or persons driving by on roadway, funding for monument was initially sought exclusively through local churches, dedication of monument began with invocation by deacon of local church, other parts of dedication contained religious references, city residents brought action challenging monument only seven months after it was erected, and city's curative efforts, such as including disclaimer on monument and later adding secular items to the display, were insufficient to negate city's religious endorsement.

