

**Introduced by Senator Morrow**

March 27, 2006

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Senate Concurrent Resolution No. 108—Relative to the Ten Commandments.

LEGISLATIVE COUNSEL'S DIGEST

SCR 108, as introduced, Morrow. The Ten Commandments.

This measure would recognize and acknowledge that the Decalogue, also known as the Ten Commandments, ranks among the influential historical documents that have contributed significantly to the development of the secular governmental and legal principles and institutions of the United States of America and the State of California.

Fiscal committee: no.

1     WHEREAS, That portion of the Hebrew scriptures called the  
2 Decalogue, most popularly known as the Ten Commandments,  
3 has had an extraordinary secular influence on the civil and  
4 criminal laws of the United States and the State of California;  
5 and  
6     WHEREAS, The integral secular role played by the Decalogue  
7 in the legal history of Western civilization, from the time of  
8 England's King Alfred the Great, through the era of William  
9 Blackstone and the American framers, is made manifest in a  
10 multitude of executive and judicial references, both federal and  
11 state, to the Ten Commandments as a source and symbol of law,  
12 with routine popular invocation of them as a paradigm of rules,  
13 and frequent governmental depiction of them in public places,

1 especially places where laws are made and justice administered;  
2 and

3 WHEREAS, King Alfred the Great battled through precarious  
4 circumstances to establish in Anglo-Saxon England a society  
5 based on law in the face of barbarian violence and chaos— an  
6 achievement too little appreciated in modern times; King  
7 Alfred’s accomplishments include producing the first major book  
8 of English history, a 9th century collection of rules of  
9 Anglo-Saxon law, which begins with the full text of Exodus 20:  
10 1-17 of the Old Testament, containing the Ten Commandments;  
11 and

12 WHEREAS, The Biblical commandments were also  
13 considered to be authoritative in English law throughout the  
14 Roman Catholic period of England’s history (12th to early 16th  
15 centuries), as well as throughout the Tudor-Stuart period of royal  
16 supremacy over the Church of England (16th to 17th centuries);  
17 and

18 WHEREAS, Sir John Fortescue’s 15th century political and  
19 legal treatise, “In Praise of the Laws of England,” which was  
20 republished and annotated by John Selden in the 17th century,  
21 invoked Mosaic law in order to inspire the “Prince” to govern  
22 according to the rule of law; Fortescue’s treatise is presented as a  
23 dialogue between a “Prince” and a “Chancellor” who advises the  
24 Prince on English law and good governance; Fortescue’s  
25 Chancellor advises the Prince that Moses, that greatest of  
26 lawgivers, invites him to strive zealously in the study of the law;  
27 furthermore, Fortescue urges the Prince to study the Mosaic law  
28 of Deuteronomy all the days of his life; and

29 WHEREAS, Likewise, Sir Edward Coke considered natural  
30 law, which predated and underlay the laws of England, to have  
31 had its earliest written expression in Mosaic law; William  
32 Welwood’s 1636 commentary on maritime law twice cited  
33 precedents from Deuteronomy as authoritative, in the division of  
34 spoils and on letters of marque respectively; and

35 WHEREAS, Under the influence of Calvinism in the late 17th  
36 and early 18th centuries, an even stronger emphasis was placed  
37 on Mosaic law, including the Decalogue, and on the Biblical  
38 sources of English law; although Calvinism remained especially  
39 strong in the American colonies, it eventually had to compete  
40 with other forms of Protestantism and also with Deism; all these

1 belief systems shared, however, a strong belief both in the  
2 religious foundation of moral values and in the moral foundations  
3 of legal principles; and

4 WHEREAS, The founders of the American Republic, in  
5 carrying over to it many features of the English law inherited  
6 from the colonial period, were highly conscious of the historical  
7 sources of that law, including its source in Biblical law and  
8 morals; the founding fathers were entirely familiar with, strongly  
9 influenced by, and, indeed, largely learned their law from, the  
10 great treatise of William Blackstone entitled “Commentaries on  
11 the Laws of England,” published in 1765; as celebrated historian  
12 Daniel Boorstin, in his book, *The Mysterious Science of the Law*  
13 (1958), puts it, “In the history of American institutions, no other  
14 book— except the Bible— has played so great a role...”; and

15 WHEREAS, Blackstone wrote that there are two main sources  
16 of human law, namely, a law of nature, which “God has enabled  
17 human reason to discover,” and a divine law, “whose doctrines  
18 are to be found only in holy scripture;” Blackstone further wrote  
19 “Upon these two foundations depend all human laws; that is to  
20 say, no human laws should be suffered to contradict these;” and  
21 referring directly to the Ten Commandments, Blackstone stated  
22 that “murder ... is expressly forbidden by the divine, and  
23 demonstrably by the natural law; and from these prohibitions  
24 arises the true unlawfulness of this crime;” and

25 WHEREAS, Unlike the contemporary French Revolution of  
26 1789, which initially abolished the Biblical seven-day week in  
27 favor of a 10-day week, and unlike the Russian Revolution of  
28 October 1917, which initially abolished the Biblical seven-day  
29 week in favor of a numbered five-day work week with the sixth  
30 day off, the American Revolution preserved the Biblical  
31 seven-day week, dictated by the Ten Commandments, with a  
32 seventh day of rest; and

33 WHEREAS, The Ten Commandments have also played a  
34 decisive role in Western legal scholarship; Protestant legal  
35 scholars of the 16th century, starting with Martin Luther and  
36 Philip Melancthon, faced with the task of synthesizing for  
37 Protestant princes the preexisting separate systems of canon law,  
38 Roman law, royal law, feudal law, and mercantile law, turned to  
39 the last six of the commandments to identify “branches” or  
40 “fields” of law; they found the source of constitutional law

1 expressed in the commandment to honor one’s father and mother,  
2 which they interpreted as a command to respect higher authority;  
3 the source of criminal law in the commandment not to kill; the  
4 source of family law in the commandment not to commit  
5 adultery; the source of property law in the commandment not to  
6 steal; the source of contract law in the commandment not to bear  
7 false witness; and the source of the law of delict in the  
8 commandment not to covet, that is, not to seek to obtain what  
9 belongs to another; and

10 WHEREAS, These categories, which are still preserved in our  
11 legal science, cut across the diverse jurisdictions of the earlier  
12 period, each of which had been autonomous, but which, with the  
13 rise of Protestantism, came to be combined under the authority of  
14 the monarch; and, of particular importance legally was the  
15 separation, for the first time, of the category of property from the  
16 Roman law category of obligations; and

17 WHEREAS, Not only the authors of the United States  
18 Constitution, but also their successors who are authorized to  
19 interpret it, have preserved the historical dimension of American  
20 law; the continuity of its development over generations and  
21 centuries, which is reflected in the doctrine of precedent as well  
22 as in legal scholarship, is symbolized in the display of the Ten  
23 Commandments, which for centuries have been considered to be  
24 a historical source of universal legal obligations; and

25 WHEREAS, Members of the United States Supreme Court  
26 have noted the foundational role played by the Ten  
27 Commandments in the development of our legal system. For  
28 example, *McGowan v. Maryland*, 366 U.S. 420, 462 (1961)  
29 (Frankfurter, J.) (“Innumerable civil regulations enforce conduct  
30 which harmonizes with religious concerns. State prohibitions of  
31 murder, theft and adultery reinforce commands of the  
32 decalogue”); *Stone v. Graham*, 449 U.S. 39, 45 (1980)  
33 (Rehnquist, J. dissenting) (the Ten Commandments, undeniably,  
34 “have had a significant impact on the development of secular  
35 legal codes of the Western World”); *Edwards v. Aguillard*, 482  
36 U.S. 578, 593-94 (1987) (Brennan, J.) (the Ten Commandments  
37 have played both a secular and religious role in the history of  
38 Western Civilization); *County of Allegheny v. American Civil*  
39 *Liberties Union*, 492 U.S. 573 (1989) (Stevens, J., with whom  
40 Brennan, J., and Marshall, J., join concurring in part, dissenting

1 in part) (the carving of Moses with the Ten Commandments on  
2 the wall of the Supreme Court’s courtroom alongside famous  
3 secular lawgivers is a fitting message for a courtroom); *City of*  
4 *Elkhart v. Books*, 532 U.S. 1058 (2001) (Rehnquist, C. J., with  
5 whom Scalia, J. and Thomas, J., join, dissenting from denial of  
6 certiorari) (“Undeniably, however, the Commandments have  
7 secular significance as well, because they have made a  
8 substantial contribution to our secular legal codes”); and

9 WHEREAS, There also is abundant similar recognition by the  
10 supreme courts and lesser courts of the sovereign states; for  
11 example, there are more than 100 references to the Ten  
12 Commandments in the reported decisions of the state supreme  
13 courts; each case contains some statement acknowledging the  
14 foundational role of the Decalogue in Anglo-American  
15 jurisprudence or a reference to the Ten Commandments as an  
16 archetype of law in general. The following examples are  
17 illustrative of the tenor of this recurrent theme of American  
18 jurisprudence:

19 • *Bertera’s Hopewell Foodland, Inc. v. Masters* (236 A.2d 197,  
20 200-201 (Pa. 1967)) (“This Act of 1794 [Pennsylvania Sunday  
21 Closing Law] itself traces an ancestry back to the Ten  
22 Commandments fulminated from the smoking top of Mt. Sinai ...  
23 This divine pronouncement became part of the Common Law  
24 inherited by the thirteen American colonies and by the sovereign  
25 States of the American union.”).

26 • *Moore v. Strickling* (33 S.E. 274, 277 (W. Va. 1899)) (“[I]t is  
27 said that the illustrious King Alfred adopted the Ten  
28 Commandments as the foundation of the early laws of England,  
29 contained in his Doom Book. These commandments ... appeal to  
30 us as coming from a superhuman or divine source, and no  
31 conscientious or reasonable man has yet been able to find a flaw  
32 in them. Absolutely flawless, negative in terms, but positive in  
33 meaning, they easily stand at the head of our whole moral  
34 system, and no nation or people can long continue a happy  
35 existence in open violation of them.”).

36 • *State v. Gamble Skogmo, Inc.* (144 N.W.2d 749, 768 (N.D.  
37 1966)) (quoting *McGowan v. Maryland*, *supra*, at p. 442) (“Thus,  
38 for temporal purposes, murder is illegal. And the fact that this  
39 agrees with the dictates of the Judeo-Christian religions while it  
40 may disagree with others does not invalidate the regulation. So

1 too with the questions of adultery and polygamy ... The same  
2 could be said of theft, fraud, etc., because those offenses were  
3 also proscribed in the Decalogue.”).

4 • *Commissioners of Johnson County v. Lacy* (93 S.E. 482, 487  
5 (N.C. 1917)) (Walker, J., concurring) (“[O]ur laws are founded  
6 upon the Decalogue; not that every case can be exactly decided  
7 according to what is there enjoined, but we can never safely  
8 depart from this short but great declaration of moral principles  
9 without founding the law upon the sand, instead of upon the  
10 eternal rock of justice and equity.”).

11 • *State v. O’Rourke* (53 N.W. 591, 592 (Neb. 1892)) (“Free  
12 discussion, however, is the outgrowth of free government. All  
13 free government is based on the divine law. God gave the ten  
14 commandments to Moses, which contain rules designed to apply  
15 to the whole race. Although given to the Israelites, they were  
16 designed for all humanity.”).

17 • *Anderson v. Maddox* (65 So.2d 299, 301-302 (Fla. 1953))  
18 (“‘Thou shalt not steal’ and ‘thou shalt not bear false witness’ are  
19 just as new as they were when Moses brought them down from  
20 the Mountain.”).

21 Without listing or citing the scores of references to the  
22 Decalogue in the decisions of the lower federal and state courts,  
23 the foregoing sampling must suffice to demonstrate the point;  
24 namely, the judicial branch of our government has historically,  
25 unhesitatingly made the connection between the Ten  
26 Commandments and our legal system; and

27 WHEREAS, The executive branch of government, too, has  
28 extended recognition to the Ten Commandments’ role in our  
29 legal system and culture; besides frequent references to the  
30 general concept of civic order being based on divine law, several  
31 United States presidents have made specific reference to the  
32 foundational role of the Decalogue; and

33 WHEREAS, John Quincy Adams, the nation’s sixth president,  
34 wrote: “The law given from Sinai was a civil and municipal as  
35 well as a moral and religious code; it contained ... laws essential  
36 to the existence of men in society, and most of which have been  
37 enacted by every nation which ever professed any code of laws”;  
38 and

39 WHEREAS, Theodore Roosevelt, recounting his crusade  
40 against government corruption wrought by public officials

1 operating without moral compasses, wrote: “Some years ago  
2 another public man enunciated much the same doctrine in the  
3 phrase, ‘The Decalogue and the Golden Rule have no part in  
4 political life;’ and such statements, openly made, imply a belief  
5 that the public conscience is dull; and where the men who make  
6 them continue to be political leaders, the public has itself to  
7 thank for all shortcomings in public life ...”; and

8 WHEREAS, In his characteristically terse fashion, Harry S.  
9 Truman said: “The fundamental basis of this nation’s laws was  
10 given to Moses on the Mount ...”; and

11 WHEREAS, Because, as Justice Frankfurter observed in  
12 *McGowan v. Maryland*, 366 U.S. 420, 462 (1961), innumerable  
13 civil regulations reinforce commands of the Decalogue, it should  
14 come as no surprise to find that, historically, the foundational  
15 role of the Ten Commandments has found expression in  
16 legislation; it is no exaggeration to say that the Ten  
17 Commandments, literally, have been part of our legal system for  
18 over a millennium; and

19 WHEREAS, Thomas Jefferson, whose recourse on important  
20 official occasions to the imagery of Moses and the Israelites  
21 apparently was second nature; his original design for the Great  
22 Seal of the United States was of Moses leading the people of  
23 Israel through the Red Sea while Pharaoh and his army drowned,  
24 with the following motto: “Rebellion to Tyrants is Obedience to  
25 God”; Jefferson’s Second Inaugural, also evokes Exodus:

26 “I shall need, too, the favor of that Being in whose hands we  
27 are, who led our forefathers, as Israel of old, from their native  
28 land and planted them in a country flowing with all the  
29 necessities of life ...”; and

30 WHEREAS, As previously noted, Sir William Blackstone  
31 identified King Alfred as the founder of the English common law  
32 (*Blackstone’s Commentaries*, Book I, Sec. 2), noting that the  
33 laws of King Alfred— the very first written compilation of  
34 Anglo-American laws— start with the Ten Commandments; and

35 WHEREAS, The ubiquity of the Ten Commandments in our  
36 history also manifests itself in the legal codes of the 13 original  
37 colonies; it may fairly be said that all of the colonies incorporated  
38 the Decalogue— in whole or in part— in their legal codes; and

39 WHEREAS, After independence, the Ten Commandments  
40 continued to exert an obvious and strong influence on legislation,

1 even legislation drafted by ardently anti-establishment  
2 lawmakers such as Jefferson and Madison; Jefferson, along with  
3 Madison, when revising Virginia’s code in 1785, included “Bill  
4 Number 84: Bill for Punishing Disturbers of Religious Worship  
5 and Sabbath Breakers”; and

6 WHEREAS, As indicated above, the Ten Commandments  
7 have been deemed to have broad secular application by the  
8 United States Supreme Court. The commandment against “using  
9 the Lord’s name in vain” is applied in daily secular life,  
10 especially in law and politics, where witnesses and government  
11 officials still swear to tell the truth or uphold the law “so help me  
12 God”; and

13 WHEREAS, The commandment against worshipping idols,  
14 paradoxically, has had arguably the broadest secular application  
15 of all: It was referred to by the pamphleteers of the revolutionary  
16 era as one of the reasons for overturning monarchy with its  
17 pretensions of “divine right”; Thomas Paine, deist though he may  
18 have been, made the connection that he knew would resonate  
19 with the readers of his best-selling work, *Common Sense*: “And  
20 when a man seriously reflects on the idolatrous homage which is  
21 paid to the persons of kings, he need not wonder that the  
22 Almighty, ever jealous of his honor, should disapprove a form of  
23 government which so impiously invades the prerogative of  
24 heaven ...”; and

25 WHEREAS, Paine’s equating of the British regime with  
26 idolatry was a common rhetorical tool used by advocates of  
27 American independence in colonial times; Paine was, in fact,  
28 merely echoing sentiments widely voiced among his countrymen:  
29 “Not only did Parliament’s claims represent tyranny, they also  
30 represented idolatry. For colonists to honor these claims would  
31 be tantamount to forsaking God and abdicating their national  
32 covenant pledge to ‘have no other gods’ before them”; and

33 WHEREAS, James Otis, in his 1764 work, *The Rights of the*  
34 *British Colonies Asserted and Proved*, said: “It is the greatest  
35 idolatry, begotten by flattery, on the body of pride, that could  
36 induce one to think that a single mortal should be able to hold so  
37 great a power. The power of GOD almighty is the only power  
38 that can properly and strictly be called supreme and absolute”;  
39 and

1 WHEREAS, Thus, even the First Commandment, the one most  
2 readily dismissed in this context as having no discernible secular  
3 application, is shown to have had direct secular, political  
4 application in the creation of the American polity itself; it is  
5 beyond serious question, therefore, that the Ten  
6 Commandments— all 10 of them— have exerted an enormous  
7 influence both on the general framework of our legal system as  
8 well as the specifics of our legal codes; and

9 WHEREAS, The Decalogue’s impact on secular public life  
10 has been documented through many and varied depictions of the  
11 Ten Commandments on public property; more than once,  
12 members of the United States Supreme Court have pointed to the  
13 depiction of Moses and the Ten Commandments in the Court’s  
14 own courtroom to illustrate acceptable accommodation by  
15 government of a religious practice or display; in fact, the  
16 Supreme Court building has no fewer than three depictions of  
17 Moses or the Ten Commandments: (1) as part of the courtroom  
18 frieze, (2) as part of a depiction of John Marshall on the west  
19 pediment, and (3) dominating the east pediment which shows  
20 Moses holding the tables of the law flanked by Solon of Athens  
21 and Confucius; and further, the United States House chamber  
22 features 23 marble relief portraits of historical figures noted for  
23 their work in establishing the principles that underlie American  
24 law and the 11 profiles in the eastern half of the chamber face left  
25 and the 11 profiles in the western half of the chamber face right,  
26 so that all look towards the full-face relief of Moses in the center  
27 of the north wall; and

28 WHEREAS, Courthouses and other public buildings across the  
29 nation abound with depictions of Moses and the Ten  
30 Commandments and the following is a nonexhaustive list of  
31 examples:

32 • U.S. Courthouse/Federal Building in Cleveland, Ohio. The  
33 main courtroom is dominated by Edwin Blashfield’s “The Law,”  
34 the center of which depicts two angels pointing at a stone on  
35 which are inscribed the Ten Commandments.

36 • U.S. Courthouse in Indianapolis, Indiana. The ceremonial  
37 courtroom features W. B. Van Ingen’s “Appeal to Justice”  
38 surmounted by two winged figures, one of whom holds the  
39 tablets of the Decalogue. The painting is located above the  
40 bench.

- 1 • Pennsylvania Supreme Court in Harrisburg, Pennsylvania.  
2 The Supreme Court courtroom contains a painting entitled “The  
3 Decalogue— Hebrew Idea of Revealed Law.”
- 4 • Cuyahoga County Courthouse in Cleveland, Ohio. The  
5 County Courthouse has an 11 foot high marble statue of Moses  
6 holding the Ten Commandments. The statue is above the  
7 courthouse’s main entrance.
- 8 • Minnesota Supreme Court in St. Paul, Minnesota. The court  
9 features a painting of Moses receiving the Ten Commandments  
10 on Mt. Sinai.
- 11 • U.S. District Courthouse in Washington, D.C. The  
12 ceremonial courtroom displays statues of Moses, Hammurabi,  
13 Solon, and Justinian.
- 14 • Chester County Courthouse, West Chester, Pennsylvania. A  
15 plaque containing the text of the Ten Commandments is affixed  
16 to the outside wall of the courthouse. A constitutional challenge  
17 was rejected by the Third Circuit Court of Appeals in  
18 *Freethought Society v. Chester County*, 334 F.3d 247 (3d Cir.  
19 2003.).
- 20 • Michigan Supreme Court, Lansing, Michigan. The Decalogue  
21 is included in a display of “Cornerstones of Law.”
- 22 • Allegheny County Courthouse, Pittsburgh, Pennsylvania. A  
23 plaque containing the text of the Decalogue is located on the  
24 outside of the courthouse. A constitutional challenge was rejected  
25 by the Third Circuit Court of Appeals in *Modrovich v. Allegheny*  
26 *County*, 385 F.3d 397 (3d Cir. 2004).
- 27 • Tennessee Supreme Court, Knoxville, Tennessee. A  
28 courtroom frieze contains a depiction of tablets of the Ten  
29 Commandments.
- 30 • New York State Appellate Court, Brooklyn, New York. A  
31 bas-relief of Moses with the Decalogue is on the façade of the  
32 courthouse.
- 33 • Boston Public Library, Boston, Massachusetts. A John S.  
34 Sargent mural of Moses with the Ten Commandments in Hebrew  
35 script is a central panel of the north wall.
- 36 • Ronald Reagan Building, Washington, D.C. The “Liberty of  
37 Worship” statue is resting on the Ten Commandments outside the  
38 building.
- 39 • National Archives, Washington, D.C. A Ten Commandments  
40 depiction is embedded in the floor.

1 • Library of Congress, Washington, D.C. A statue of Moses  
2 holding the Decalogue overlooks the main reading room.

3 • Nebraska State Capitol, Lincoln, Nebraska. A statue of Moses  
4 the Lawgiver is on the outside of the building.

5 • Allen County Courthouse, Fort Wayne, Indiana. The Circuit  
6 Courtroom has a mural of Moses and Justinian presenting their  
7 laws to their people. In addition, the Decalogue has been  
8 displayed for decades in courthouses and other public buildings  
9 and spaces in Elkhart, Indiana; and

10 WHEREAS, The ubiquity of the Ten Commandments as a  
11 universally recognizable symbol of law is thus seen in the  
12 incorporation of the Decalogue into the artwork and architecture  
13 of our public buildings where our laws are made, interpreted, and  
14 executed; indeed, the Ten Commandments have become a part of  
15 the fabric of our society; and

16 WHEREAS, It is also significant to note that the Ten  
17 Commandments have become part of secular and popular culture  
18 and discourse; this not only distinguishes the Commandments’  
19 use as a symbol from more quintessentially religious symbols  
20 such as crucifixes and crèches, but also underscores the fact that,  
21 for a reasonable observer, no message of religious disapproval or  
22 disenfranchisement automatically follows from a governmental  
23 display of the Decalogue; the cultural ubiquity of the Decalogue  
24 is perhaps best illustrated by the frequency with which many lists  
25 of important concepts are called “The Ten Commandments of  
26 ...”; and

27 WHEREAS, As Justice Goldberg put it: “[n]either government  
28 nor this Court can or should ignore the significance of the fact  
29 that many of our legal, political and personal values derive  
30 historically from religious teachings.” (Abington School Dist. v.  
31 Schempp, 374 U.S. 203, 306 (1963) (Goldberg, J., with whom  
32 Harlan, J. joins, concurring)); now, therefore, be it

33 *Resolved by the Senate of the State of California, the Assembly*  
34 *thereof concurring,* The Legislature of California hereby  
35 recognizes and acknowledges that the Decalogue, also known as  
36 the Ten Commandments, ranks among the influential historical  
37 documents, which have contributed significantly to the  
38 development of the secular governmental and legal principles  
39 and institutions of the United States of America and the State of  
40 California; and be it further

- 1 *Resolved*, That the Secretary of the Senate transmit copies of
- 2 this resolution to the author for appropriate distribution.

O