Exhibit 6

In the Matter Of:

INDIANA CIVIL LIBERTIES UNION, ET AL.

-v-

MIKE BRAUN

Steven K. Green, J.D., Ph.D.

September 08, 2026

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA CIVIL LIBERTIES UNION, et al.	)	
Plaintiffs,	)	
-v-	)	No. 1:00-cv-00811-SEB-VSS
MIKE BRAUN,	)	
Defendant.	)	

The deposition upon oral examination of STEVEN K. GREEN, J.D., Ph.D., a witness produced, and sworn by me, Sandra Marchky, RMR, CRR, Notary Public, in and for the County of Marion, State of Indiana, taken remotely, on behalf of the Defendant, on September 8, 2026, at 11:02 a.m. Eastern, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

(All participants appeared via Zoom videoconference)

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COURT REPORTER: Today is September 8, 2026. The time is 11:02 a.m. Eastern. My name is Sandy Marchky, in association with Stewart Richardson, Indianapolis, Indiana. This is the remote deposition of Steven Green.

Will counsel please identify themselves for the record and any persons present with you.

MR. DAVIS: Joseph Davis, counsel for defendant, Governor Braun. I'm here with my colleague, Eric Rassbach.

MR. BLEISCH: And Joshua Bleisch here for the plaintiff and the deponent here, joined by my colleague, Ken Falk.

COURT REPORTER: Does counsel agree that I may swear the witness remotely?

MR. DAVIS: Yes.

MR. BLEISCH: Yes.

STEVEN K. GREEN, J.D., Ph.D.

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION

BY MR. DAVIS:

Q. Good morning, Professor Green.

A. Good morning.

Q. So, I'm going to be asking you a few

questions this morning. I know you have been in depositions before. So while I am going to do the preliminary matters, I'll make it quick.

So, as you know, the court reporter here is trying to make a written record of your answers. So you'll need to give verbal answers, yes or no, instead of nodding or uh-huh or huh-uh.

Does that make sense?

A. Yes.

Q. And then you and I will need to speak slowly. That will be a problem for me at some point, I assume. And we'll try not to talk over each other. Sound good?

A. Sounds fine.

Q. Great. And then I don't expect to keep you too long today. But if we get to the hour mark, we'll take a break then. And then if you need to take a break at any other point before then or after then, you know, just say so and we'll finish up whatever question is pending and then we can take a break.

A. Sounds good. I'm still going through my morning coffee. So I most likely will need a break.

Q. No problem. And then you understand that you are legally obligated to tell the truth today?

A. Yes.

Q. And is there anything that you can think of that would make is difficult for you to do that this morning?

A. No.

Q. All right. Mr. Green, I alluded to this a moment ago. But you've testified in a deposition before; is that right?

A. Yes, I have.

Q. And what matter or matters was that in?

A. Let's put it this way, the most recent one is the Wilberforce Academy lawsuit in Tennessee dealing with religious charter schools. That was about three weeks ago.

We did not have any depositions in the Ten Commandments classroom cases from what I recall.

Before that, it's been a long, long time.

Q. Okay. So the recent one and then you alluded to Ten Commandments cases.

Did you testify in court for those cases?

A. I testified in court in three of the cases. The fourth one the judge decided the last minute he didn't need live testimony, he would just go on the reports. And we never got to the fifth one because of the appeal in the Fifth Circuit.

Q. Okay. And are all of these experiences, these are listed in your report, aren't they?

A. Yes, they are.

Q. All right. How did you prepare for your deposition today?

A. I went over my report again. I went over the reports of the state's experts.

Q. All right. Did you meet with anybody?

A. I had discussion with Ken Falk on Sunday. Just he kind of gave me an idea of what possibly to expect.

Q. And about how long did that meeting with Ken Falk last?

A. Under an hour.

Q. And that's the only meeting with plaintiffs' attorneys?

A. With respect to the deposition, yes.

Q. Okay. And did you talk to anybody other than the plaintiffs' counsel in preparing for today's deposition?

A. No, I did not.

Q. Okay. And then you mentioned you reviewed your report and then the reports of the defendant's experts.

Did you review any other documents in

preparation for your testimony today?

A. I did not.

Q. All right.

A. Actually, I did look at the -- I looked at the amended complaint.

Q. Okay. Thank you. And then besides the amended complaint, nothing else?

A. I believe that's it, yeah.

Q. Okay. Do you have any documents or notes with you as you're testifying today?

A. I have what I just described to you, my report, the reports of the state's experts, and then the amended complaint.

Q. Okay. All right. Professor Green, you're an attorney; is that right?

A. I -- yes, I'm an attorney.

Q. Okay. And do you still practice?

A. I do not practice in the sense of representing any clients. I'm on inactive or retired status. I -- you know, I participate on amicus briefs. I consider that somewhat of a practice. But besides that, no.

Q. Participate on, does that mean you draft them or you service a client on amicus briefs or both?

A. They're various levels. I have drafted some where I'm one of the write drafters or the lead drafter. The other ones where it's more of a collaborative effort where we exchange. And then there are ones we just sign on, make some final comments at the very end. So it's kind of like three different stages of participation. I've been involved in all of those kinds of stages.

Q. Okay. So still today you are involved in representing clients for amicus briefs, drafting them and --

A. I'm trying to think if I have been counsel of record recently in any amicus briefs. It's been a while. Normally, I'm just listed as one of the, you know, professors signing on to an amicus brief.

Q. Okay. Have you worked on amicus briefs either in a sign-on capacity or in the more involved capacities that you mentioned in Establishment Clause cases?

A. Yes, I have.

Q. Are there any that come to mind?

A. I would assume you know all this. I have probably participated in amicus briefs in about 30, 40 cases over my career.

Q. Okay. And some of those cases -- did any

of those cases involve challenges to government monuments or displays that were alleged to have religious content?

A. I filed -- I wrote an amicus brief in the companion cases in 2005 in the McCreary and Van Orden cases. I wrote -- collaborated but was one of the authors on amicus brief in the American Legion case. I think those are the only two recent religious display cases in the Supreme Court.

Q. Okay. In McCreary and Van Orden, were you supporting the side that was opposed to the Ten Commandments display of their monument?

A. I was supporting the challenges to the Ten Commandments.

Q. Okay. And then in American Legion, were you supporting the challenger to the cross?

A. I was supporting the American Humanist Association.

Q. Which was the party challenging the cross?

A. Party challenging the cross.

Q. Have you ever written an amicus brief or joined an amicus brief that was supporting the constitutionality of a government monument or display alleged to have religious content?

A. Well, as I said, those are the only two at

the Supreme Court. I have joined on some lower court ones, I believe. To the best of my recollection, no.

Q. All right. But so you're in inactive capacity as an attorney these days. But previously did you practice?

A. I believe most of that information's on my report. Yes, I -- how much detail do you want me to give?

After I clerked, I worked for a couple years for Alaska Legal Services. I was a magistrate court judge in the state court system in Alaska. I then went to graduate school. I then taught at Vermont Law School. Then for ten years, I served, as the title changed over the course, but generally as a legal director for Americans United for Separation of Church and State.

Q. And I think you list the title on your report as legal director and special counsel; is that correct?

A. That was the most recent one, yeah.

Q. Okay.

A. Yeah, I mean, it was -- my responsibilities expanded, as often happens when you're in a job. And so, consequently, the initial

title no longer fit and so the titles kind of evolved.

Q. Okay. And what is it that Americans United for Separation of Church and State does?

A. It is a organization that defends the separation of church and state in litigation, amicus primarily, but also through just public information.

Q. And does it sometimes, as part of that mission, challenge government monuments or displays that are alleged to have religious content?

A. Yes, it has. It still does, I assume.

Q. Okay. And would it be fair to say that Americans United opposes government monuments or displays that include religious content?

A. I can't say categorically if it would oppose every single, whatever, display of multiple items necessarily. But certainly I think they would oppose singular displays like we're talking about here.

Q. Okay. Are you aware of a case in which Americans United defended the constitutionality of a religious monument or display?

A. I'm not aware either way.

Q. Did they do that while you were there?

A. You're asking me to go back here now. I

don't believe so. I can't recall there being that many of those cases when I was legal director.

Q. So not a particular one comes to mind --

A. No.

Q. -- in that category? Sorry, I spoke over you.

Was Americans United, was it originally known as Protestants and Other Americans United for Separation of Church and State?

A. That was the official original name of the organization for about 20 years.

Q. Okay. So from its founding, for about the next 20 years?

A. From its founding in 1948, for the next -- it dropped the Protestants and others in the early '60s, even though that was still I think the legal name of the organization up until the late '60s.

Q. Okay. Do you know why it had Protestants in the name?

A. It was an attempt to try to bring together a coalition of Protestant and civil rights organizations to defend separation of church and state.

Q. Did it try to bring together other types of religious organizations, non-Protestants?

A. Well, that was one of the reasons, from what I understand, that it dropped the Protestants and others to try to -- to try to be more inclusive.

I actually have a chapter -- a couple chapters in my third disestablishment book about the founding of it.

Q. Okay. I'll take a look there then. We can leave this line of questioning. Well, actually, one more question I guess about the founding.

Would it be fair to say that Americans United got its start or maybe made its name opposing the extension of government funding to private religious schools?

A. Yes, that was one of its main -- main goals.

Q. Okay. And were those private religious schools, at least at the time, were those typically Catholic schools?

A. Back then and I'd probably think today predominantly Catholic. You really didn't have the rise of kind of the Christian Fundamentalist private academies until you had the civil rights movement and anti-communism of the 1950s. So back in the '40s, the prominent number of private religious schools would have been Catholic, Lutheran,

Episcopalian, Seventh-day Adventist.

Q. All right. In the -- we mentioned a couple of cases before where you testified as an expert -- where you've testified as an expert recently, the Tennessee case and then the Ten Commandments cases that you mentioned.

In those cases, were the parties that you supported, were they represented by Americans United?

A. Yes.

Q. Okay. In all the cases?

A. Americans United is one of the -- is one of the organizations in the challenges to the state education Ten Commandments cases. They are also one of the attorneys in the Wilberforce Academy case.

Q. Okay.

A. They're not the sole organization by any stretch.

Q. Okay. So, but today you're not here to testify as a lawyer; is that right?

A. That is correct.

Q. Right. So would you agree that it would be inappropriate for you to give an expert legal opinion rather than an expert historical opinion?

A. I will do my best.

Q. And so if you do give any testimony, you know, either in your report or here at your deposition today that is really a legal argument or legal conclusion, would you agree that testimony ought to be set aside by the court?

A. That is not the status that I am testifying in.

Q. Okay. Are you a member of the ACLU of Indiana?

A. No, I am not.

Q. All right.

A. I have no connection to Indiana.

Q. Okay. But you understand that this case, which is in Indiana, it concerns a monument that contains the text of the Ten Commandments on one side; is that right?

A. That's correct.

Q. All right. Have you ever seen that monument?

A. I've seen photographs of it --

Q. Okay.

A. -- or a photograph of it.

Q. I'm sorry. Restate that.

A. I said a photograph of it.

Q. Okay. Are you a member of the ACLU

anywhere?

A. No.

Q. Okay. Back to the monument, do you know where the monument is intended to be placed?

A. I don't know exactly. I just know it's on the Statehouse lawn.

Q. Okay. Have you ever been to the Indiana Statehouse?

A. Yes, I have. I have actually -- I had a conference, Liberty Fund, in Indianapolis several years ago. And I walked -- nice downtown -- and walked around the Capitol, actually went into the Capitol now that I remember.

Q. Okay. Do you remember any of the monuments that were on the lawn?

A. Not at all.

(Thereupon, Exhibit No. 1 was marked for identification.)

BY MR. DAVIS:

Q. All right. I'm going have a few questions for you about your report which I understand that you have a copy of before you. We're going to mark this as Exhibit 1 to this deposition.

And your report says that you -- in preparing it, you reviewed the sources that you cite in the

report.

Did you talk to anybody while you were preparing this report about this report?

A. None other than just the initial conversations I had with Indiana ACLU about preparing a report.

Q. Okay. So nobody besides counsel for the plaintiffs?

A. Nobody besides them, no.

Q. Okay. All right. I want to start by directing your attention to section 2 of the report which I think begins on page 6. And it's titled relevant historical methodology?

A. Yes.

Q. Now, what methodology are you talking about there?

A. Well, you mean my methodological -- okay, you said section 2 which I'm talking about -- it's kind of a summary. So you're talking about --

Q. Pardon me. Pardon me. Section 3. I apologize.

A. Okay. Section 3? Okay. Well, I was giving some background just on what the court has said about the approach to considering historical data.

Q. So the methodology you're discussing there is how the Supreme Court approaches historical data?

A. It's at least my understanding of how the Supreme Court has talked about approaching historical data.

Q. Okay. So you're not talking about the methodology for doing history as such? And by that, I mean, you know, figuring out what happened in the past. That's not what this section of the report is about?

A. It's a combination.

Q. Okay. But I thought you said -- well, I understood you to say that this section of the report is primarily about how the Supreme Court has approached historical data or applied historical data to modern controversies.

Would that be an accurate summary of the report?

A. Not inaccurate. I mean, that's paragraphs 18 and 19. Whereas, paragraphs 16 and 17 is talking more or less about, you know, how historians see history.

Q. Okay. And I see paragraph 16, the Supreme Court has relied on historical evidence to assist its understanding and so on.

So that paragraph is about what the Supreme Court has done, right?

A. It's just a statement that the Supreme Court looks to history.

Q. Okay. And I guess what I'm trying to get at is, would you agree that history is primarily about determining what happened in the past? Is that what's going on when an historian does history? I know that's an overgeneralization. But is that the --

A. If I had said that in a history class, I would've been kicked out of the classroom, I think.

Q. Okay. So tell me what you would say.

A. Well, it's interpreted. It is looking at the history and seeing what the context is, seeing how the -- really kind of seeing how the historical story has been told.

Historians are really concerned a whole lot about kind of methodology and about historiography and trying to figure out why our impressions of history we have today, how they relate to historical facts with the understanding of the -- of the problems with the historical record, they're always present, and then trying to see what kind of interpretive -- I guess I would say messages, but

whatever, we can derive from what those facts are.

Q. Okay. So trying to figure out what the facts were and then interpreting them in context and taking into account gaps in the history, etc.?

A. Yeah, and problems with the historical record, yeah.

Q. Okay. And I'm just trying to get at this I think.

I mean, would you agree that that process, as you described it, that's a different thing than the process of then applying the findings of that historical analysis to a modern controversy, for example, to figure out whether some practice is constitutional or not? Would you agree those are two different processes?

A. Well, I think the court thinks they're more interrelated than they are. But, yes, you're right, they're two processes -- separate processes.

You know, history can provide guidance and background and context. It can't answer modern controversies.

Q. But it might serve as part of the data that helps the court answer a modern controversy, right?

A. If it's used the correct way.

Q. Okay. And then but figuring out how much weight to give it, what the legal rule ought to be, that's a different analysis than the historical analysis as such, right?

A. That certainly is a legal determination. That doesn't mean it's not fair game for historians to weigh in and talk about when they see history being kind of oversimplified, taken out of context.

Q. Right. Historians can criticize, you know, what the historical data that's being offered in the case is, right?

A. They can criticize the historical data. And they can -- they can criticize, you know, the processes. They can criticize the -- you know, the simplification that often occurs when courts use data.

Q. Okay. And I guess my question would be, much of this section of your report seems to me to be about how courts apply the historical data or how courts should apply the historical data or how the Supreme Court has applied the historical data in recent precedent and less about the process of figuring out what that historical data is; would you agree with that?

A. To an extent, yeah.

Q. And I'm just looking at paragraph 17, for example. And you say there that the fact that one religious practice has been deemed constitutional does not mean that a completely different manifestation must also be constitutional because both involved government religious speech.

Do you see that?

A. Yes, I do.

Q. Okay.

A. And I think most historians would agree with that.

Q. Okay. But your testimony there is about the rule that courts should apply to determine whether a given practice is constitutional, correct?

A. From the standpoint of an historian, yes.

Q. Okay. And what does that mean from the standpoint of an historian?

A. Well, it means historians -- you know, everyone gets a little territorial, I guess you could say, right. Historians do not own the historical record without a doubt. It's fair game. But at the same time, historians I think generally become troubled when they see oversimplification -- I'm going to use that word a lot -- oversimplification of the historical record,

assumptions about the historical record that seem to just not fit with the historical record. I mean, one of the things that -- the history and traditions or if you want to call it originalism or whatever believes is that, generally speaking, you can go identify kind of a consensus during the founding era or whatever era is, you know, appropriate, and can draw some consensus meaning from that.

I think most historians would say that's just impossible because of the variety of voices that inform our past. And so, consequently, it's very difficult to basically say this is what history proves.

Q. Yeah, I appreciate that. And but I do want to focus on paragraph 17 here and just try to understand what you're saying there.

So, I mean, you can have a legal rule, right, that says that if there was some kind of government religious speech in the past, then all government religious speech now is constitutional, right. You can have that rule. I'm not saying it's a good rule.

But that would be a legal rule, wouldn't it?

A. Yeah, if the court wants to say at any time, at any place that any of whoever the founders

or whoever we look at and we think are important said anything religious, that, therefore, becomes a rule that everything else that follows is constitutional. The court could say that.

So if Benjamin Franklin who was a Deist said God bless you when someone sneezed, let's go back and prove now that every single statement by any of the framers that mentions God is now grandfathered, sure, the court could do that.

I think most historians would tear up their Ph.D. diploma. But the court could do that.

Q. Yeah. And my point is not to say that that's a good rule or that that is the rule. I'm just trying to get at I think what we just agreed on which is that would be a legal rule, it would be a choice by the court to adopt a particular legal rule. And that's not a rule that can be disproved or proved or criticized or approved by historians, is it?

A. Well, you know, as a historian and as a lawyer, but as a historian, I've read a lot of Supreme Court decisions. And I think members of the Supreme Court want to get history right. I don't think they want to abuse the historical record. And so I think the Supreme Court wants to know how

historians would say what is relevant information but also how you go about using relevant information.

Q. Okay. And so --

A. I --

Q. I'm sorry. Go ahead.

A. No, go ahead. I was just going to say, you know, that's not, you know, try to direct how the Supreme Court -- well, let me retract that. It's trying to -- historians, if they want to be of value to adjudication, they want to provide a relatively accurate way of looking at historical record. But at the same time, I think they also want to provide some accurate guidance on how you use the historical record. That's fair game.

Q. Okay. So historians should be able to guide the Supreme Court on the practice of determining whether something is constitutional or not?

A. The constitution is a historical document. Just because the court interprets the constitution doesn't mean historians cannot make any commentary about constitution and what it means. That is a historical enterprise.

Q. Okay. So historians --

A. Just like historians don't own the history, the court doesn't own the constitution. Okay?

Q. Yeah. So just to go back to your prior example, you know, if there was a rule where -- if Benjamin Franklin said God bless you, then anything the government does today is constitutional. And you would say historians can weigh in on the historical question whether Benjamin Franklin ever said God bless you, but then they can also weigh in on the question of whether that's a good rule for the Supreme Court to adopt to interpret the First Amendment?

A. They can weigh in on saying whether that's a good way to use history.

Q. Okay. And how would that be a bad way to use history?

A. Because it would be drawing assumptions without recognizing the context, without recognizing the importance of a statement. You know, it's -- you know, to quote Chief Justice Rehnquist, it would just be bad history.

Q. Well, what if they're not -- I mean, what if they're not doing history at all, right, they're saying if Benjamin Franklin said God bless you, then

that makes this current practice constitutional because our legal rule is we understand the First Amendment to mean that any government speech, you know, touching on religion at the founding makes all other government speech today lawful, that's just a legal determination, it's not an historical determination, right?

A. That would be a legal determination if that's the way they want to use history. But historians I think still have the privilege of basically saying that's a bad use of history.

Q. Okay. I want to look at paragraph 20 of your report where you describe how you believe courts should, "Determine the constitutionality of Ten Commandments monuments consistent with the methodological approach endorsed by the Supreme Court".

Is that an accurate quote?

A. Yes, uh-huh.

Q. So you testified there about how a court should decide whether this monument is constitutional, correct?

A. Basically saying how the court should decide the history in deciding whether the monument is constitutional.

Q. Okay. Well, but you're not testifying about the history of Ten Commandments monuments in this section, are you?

A. I don't get specifically into the history of Ten Commandment monuments, no.

Q. Okay. You're testifying about the methodology of the Supreme Court?

A. Well, yeah, I'm citing from what Justice Kennedy said in the Greece case about looking at, you know, longstanding practices, history and traditions, you know. It talks about looking for a specific practice, you know.

Q. So you're looking at Town of Greece and other Supreme Court precedence and you're offering your reading of the methodology of those cases not --

A. I'm saying that is consistent with the historical methodological approach in some respects.

Q. You're saying what the court did in Town of Greece is consistent with an historical methodological approach?

A. What the court said in some respects, yeah.

Q. Okay.

A. Longstanding, you know, practices and

traditions.

Q. So what they said in that case as a method of resolving the constitutionality question, you're saying is consistent with how historians would approach what question, consistent with what historical methodological approach?

A. Well, it would the historians would say, you know, relevant historical data that can help inform a better understanding of who we are, how we got here, that type of thing, right; that we would not look for one-offs; we would not look for inconsistencies; we would not look for, you know, whatever, non-relevant data; we would not basically look to say, if someone said X, that therefore means Y. That's the way historians would basically say the relevant historical data, and at least what Justice Kennedy claimed he was saying in the Town of Greece case was that's what the court should look to, longstanding historical practices and traditions, look for narrow applications.

Q. And but the relevance to what? Like what -- in this scenario you're discussing, what are historians trying to figure out?

A. It depends on whatever the topic is that the historians are, you know, approaching. I mean,

historians are trying to provide just kind of information about the relevance of the past, why, you know, the past looks like it does, why the present looks like it does; and so, you know, why do we have, in my mind, the highest degree of religious freedom of any nation in the world, right. If you want to ask that question, that's a historical question. It can be a legal question too, but a historical question. Then I think it would go back and try to explain the issue about disestablishment, the growth of religious freedom, the growth of religious diversity, pluralism in this country, and then acceptance of diverse religious faith. I mean, that's the question you're trying to get to. And so, consequently, what historians would do is they'd try to find what facts and data are relevant and support that, right.

Q. So you're saying, if an historian were asked to determine the constitutionality of a practice, the methodology that the Supreme Court engaged in the Town of Greece would be the methodology that an historian would engage in to answer for that question?

A. Oh, I don't want get in a trap here.

If an historian is trying to determine the

constitutionality of a current practice, I think historians will basically say is there a historical basis for this practice, how do we kind of understand how people may have approached this practice or a similar practice at this particular point in time. Again, is there a tradition that supports this practice over this period of time. All of that is relevant for just the basic question. And it may be relevant legally for the constitutional question.

Q. Okay. But the constitutional question is itself a legal question, right?

A. The ultimate constitutional question is for the court.

Q. Okay. Looking at paragraph 18, since we were talking about Town of Greece, and it looks to me like the first sentence of that paragraph says that, in two recent decisions members of Supreme Court have addressed the proper methodology to be applied to historical data.

Do you see that?

A. Uh-huh.

Q. And the two cases that you cite -- well, two of the cases that you cite there in that paragraph are Town of Greece, which we were

discussing a moment ago, and you go on -- sorry, in paragraph 19 to say American Legion as well; is that right?

A. I say this -- yeah, more recently, the court has talked about historical methodology.

Q. Okay. And do you believe that those two cases, Town of Greece and American Legion, applied the proper methodology?

A. You're asking me now for a legal opinion.

Q. No. Paragraph -- well, I mean, if you think that's a legal opinion, then, sure, that can be your testimony.

I'm just -- in paragraph 18, you say they've discussed the proper methodology. And so it sounds to me like you're saying that that is the proper methodology. But you think that would be a legal opinion?

A. Well, I think what Justice Kennedy talked about in Town of Greece, again, he talked about longstanding traditions has kind of withstood 200 and some odd years, right. It's been carried forward. And also looking for a very specific practice, where history shows the specific practice is permitted, that's going to carry more weight, right. In American Legion, Justice Alito kind of

talked about that. But the whole point was, is that it was more difficult to apply in the American Legion case.

Q. Okay. Well, I appreciate that. But I guess that's about the substance of what the court said in those two cases. And I was trying to get at this proper methodology language.

But is it your testimony that the proper methodology for applying history to resolve the constitutionality of a particular practice, that's a legal question that you can't really opine on?

A. What I'm trying to say in these paragraphs is that articulation comes closest to the ways that historians would say that has some validity, okay. Does the court always follow that articulation? Probably not.

Q. But whether that articulation is the correct one, as a matter of the First Amendment, that's a legal question, right?

A. Ultimately, yes.

Q. Okay. Did you file amicus briefs -- well, I think you did. We discussed this earlier.

But you filed amicus briefs in Town of Greece and American legion; is that right?

A. Yes, I did.

Q. Okay. Did you support the side that prevailed in those cases or the side that lost in those cases?

A. I love your articulation of that. But, no, I supported the side of those who were challenging the practices.

Q. Okay. And have you changed your mind about the results in those cases or do you think those cases were wrongly decided?

A. I think that -- well, you are asking a legal opinion now. I think that Town of Greece is closer because you did have a pretty close analog going on. You know, you tell me or we can bring Eric into this, right. You know, we've been involved in this journey for a long time.

American Legion is a kind confusing case in that Justice Alito gives us these kind of like all these different ways of thinking about these practices, that the message changes over time, you know, whatever. He goes into all these different approaches. So it's kind of hard to know exactly what the ultimate rationale for the American Legion case is.

Q. All right. Just a couple more questions about this section. So in paragraph 20, you

identify what you would say is salient evidence for determining the constitutionality of Ten Commandments monuments.

Do you see that?

A. Yes.

Q. Okay. Have you ever written before that -- and this is a quote -- "the notion that there is any objective, consensus and pellucid interpretation of any historical event is ridiculous"?

A. Is that a quote from something I wrote?

Q. It is, yeah. Does that sound familiar to you? I'm happy to pull it up if that would be helpful.

A. Sure, if you'd just show me because I've written --

Q. Of course.

A. -- close to 60 of these articles. And so it's hard to --

Q. Yeah, no problem. I don't think I'll need to mark these, but I'll just pull it up.

All right. I'm going to share my screen. Let's see. All right. I think you can see my screen now; is that right?

A. Uh-huh.

Q. We are looking at an article entitled The Legal Ramifications of Christian Nationalism by you?

A. Yes.

Q. Okay. I'll just scroll down here to what I think is the right page. So I'm looking here at page 488. And I think I'm quoting you accurately here, the notion -- "This notion that there is an objective, consensus and pellucid interpretation of any historical event is ridiculous."

Are those your words?

A. Yes, they are.

Q. And I'll stop sharing now.

So I guess my question is, whatever history can tell us about resolving constitutional controversies, you don't think it can tell us anything objective or pellucid, right?

A. From what I recall from that article, this was -- I was going through basic problems with, you know, historical methodology. You find sometimes that the court -- assumptions made when we're talking about originalism. And so it was in response to claims that, once again, there are kind of clearly identifiable facts that can be extracted from the past and basically placed into the present and say, aha, we have now found this objective,

clear fact without understanding that all history's interpretive, all historical facts are selected, right, on what we emphasize, what we don't emphasize. And so, consequently, we also have to understand kind of the context that is going on. And what we often see in legal writing is taking facts, drawing them out of context, not necessarily appreciating the language, the idioms, the rhetoric that were associated with that, and then basically saying we can now determine an objective fact that is here. Historians understand that history is always going to have an interpretive quality to it. And many times there's not a consensus in the past.

Q. And you put facts in quotes there as you were talking. And I think you've written before that, similarly, that objective facts or historical truths do not exist.

Is that your belief?

A. There are -- yeah, I'm making a statement there that -- I'm trying to make a point. There are some historical facts, at least we think there are some historical facts, okay. And I think I said that -- maybe I said in that article or another article, I don't remember which one, I've used this example a couple of times, okay. George Washington

was the first president. I think that is a historical fact, right, right. George Washington owned slaves. That's a historical fact, right. But if you just say that second one, he owns slaves, without trying to kind of unpack and try to understand what the milieu was in that particular period of time and the way that George Washington approached being a slave owner, right, that all becomes interpretive. We all kind of can try to understand that period in time, the context.

And so historians are more concerned about trying to understand the context of a particular practice without just extracting it and then placing it into a current controversy.

Q. But even when you're doing that, that interpretive process -- I mean, I think your quote was, "The notion that there is any objective and pellucid interpretation of any historical event is ridiculous".

So there is no objective way to do that interpretive process, correct?

A. Historians are always aware that, as much as we all try to be objective, that there is always going to be again some -- you know, a level of subjectivity that is interesting to any enterprise,

right. That's just kind of an accepted fact of historical practice, history methodology, right.

Q. So, yes, you still agree that there's no objective or pellucid interpretation of any historical event?

A. In a sense, yes, I do agree with that because it depends on how it is being used, that our interpretations of the past many times change by each generation.

Q. I'm just going to give you another quote and maybe this is retreading the same ground. But I think you phrase it slightly differently. You have a piece called bad history --

A. Uh-huh.

Q. -- it's a short title, it appears in your report -- where you say, "Objective facts or historical truths do not exist".

Does that sound familiar? I'm happy again to pull it up if that would be helpful.

A. No, I think I can remember that.

Q. Okay. And is it still your belief that objective facts and historical truths do not exist?

A. Again, there can be some limited objective facts. George Washington was president, right, okay. What it's talking about in that article is

the way that many lawyers and jurists assume that there are these free-floating facts in history that we can again extract and claim we truly understand this without going back and looking at the context, going back and looking at, you know -- well, context is the best way of saying it, right; and that historians again recognize that even though we know George Washington was president, that just starts the interpretive process on what that means.

Q. So maybe that prior statement's a little overbroad. Some objective facts do exist.

But what you mean to say is that there are no objective interpretations of historical facts?

A. In a sense, there are no -- yeah, I mean, no fully objective interpretations, nor are there necessarily any set interpretations because again each generation will take a new approach. I mean, people used to think separate but equal was fine.

Q. And so the interpretation of the historical facts that you are offering in this report, it's an interpretation, but it's not necessarily an objective or a pellucid interpretation because those don't exist?

A. The -- say that again, please. I'm trying to understand what you're saying.

Q. Yeah, sure. So you're offering an interpretation of history at certain points in this report; is that accurate?

A. That's correct.

Q. And that interpretation necessarily is not an objective or a pellucid one because your view is that objective and pellucid interpretation of historical facts do not exist, correct?

A. I'm trying to provide a helpful interpretation of what the historical record seems to say. And so, consequently, I -- you know, am I trying to be as objective as I can? Yes, I'm trying to be as objective as I can.

Q. But it's not ultimately objective, right?

A. I think we always have to be aware that there can be things that will enter into the mix, right.

Q. Right. So not objective, not pellucid, but you're trying to be helpful?

A. History informs, right. History provides background.

Q. All right. Let's move down to paragraph 21, if you don't mind. And you say there that, although courts occasionally opine on the historical understanding of church-state separation, it is not

necessary for this court to engage in this debate to decide the instant controversy.

Do you see that?

A. Yes.

Q. Does your historical expertise enable you to say -- you know, tell a court what inquiries are necessary to resolve a case and what inquiries are not necessary?

A. I mean, I can understand where you're going. I mean, sure, if the court wants to say that something else is completely necessary for resolving this case, they can. I'm just saying, from a historical perspective, we want to know about is there a history and traditions of Ten Commandments monuments. We don't have to answer the ultimate question about the wall of separation of church and state, as Professor Hall seems to go on and on in his report about.

Q. But you agree that when a court decides what's necessary for it to determine -- what the necessary data is for its legal decision, that is itself a legal question, correct?

A. Ultimately, it's up to the court to decide. I'm trying to advise the court, as a historian, what I think is the best way to view the

history, historical record.

Q. I'm looking for a yes or no. I mean, it's up to the court because it's a legal question, correct?

A. If the court ultimately wants to get it wrong, it's their decision.

Q. And my question is about whether you think the methodology would be right or wrong. It's a yes or no question.

Is the question of what data is necessary to determine the constitutionality of a particular practice, is that itself a legal question, yes or no?

A. Ultimately, the final conclusion is -- the ultimate decision is, yes, this is a legal question.

Q. So, yes?

A. Yes.

Q. Look at -- we'll go a few more minutes before our break, I see we're getting close, if that's all right. I'll just finish this line of questioning?

A. Sure.

Q. So if you look at paragraph 23, you say there that contemporaries understood the significance of comparing Great Britain to ancient

Egypt and the American colonists to the fleeing children of Israel.

Is that accurate?

A. It was one of the more popular metaphors that was used, yes.

Q. So it was common around the time of the founding for Americans to analogize America to the biblical Israel?

A. We see it more commonly in sermons. But certainly some politicians saw it as a very convincing vehicle for creating patriotism.

Q. Okay. And so as part of that same metaphor, was it also common to analogize independence from Britain to the escape from captivity in Egypt by the biblical Israel?

A. Yes, that was used.

Q. Okay. And that's the Exodus story in the Bible, right?

A. Yes, it is.

Q. All right. And that's also where the Ten Commandments are found, in the Exodus story?

A. It depends on what part of -- depending what you look at. There's a -- you know, whether Moses gave the Ten Commandments to the children of Israel in Sinai immediately or the end of the 40

years, the Bible is unclear about that. Okay. And so whether you want to say it's immediately part of the Exodus story or it's at the end of the Exodus story -- and the exodus story goes all the way till when, you know, the nation of Israel settled what becomes Israel -- you know, it's neither here nor there. Okay.

Q. Fair enough. But it is in the Book of Exodus, correct?

A. Book of Exodus and Deuteronomy, yeah.

Q. Okay. And it's either part of the Exodus story or maybe the immediate sequel to the Exodus story, depending on how you look at it, right?

A. I guess you could call it a sequel.

Q. Yeah. All right. Now, in paragraph 24, you state that, in 1776, nine of the thirteen colonies maintained religious establishments, meaning the forced taxation to support houses of worship and the imposition of civil disabilities on the basis of religious affiliation.

Did I quote that accurately?

A. Yes.

Q. So would you agree that at the time of the founding, this is basically what people meant by an establishment of religion, forced taxation for

houses of worship, civil disabilities on dissenters?

A. Those were some of the indicia.

Q. Okay. Is that a fair shorthand in your view for an establishment of religion?

A. It's not the sum total. Those were some of the major concerns.

Q. Core concerns?

A. Sure.

Q. And your report doesn't --

A. If your house is being seized for not paying for the religious assessment or your cattle is being seized, that's probably your primary concern.

Q. And your report doesn't name any of the other indicia or concerns that might be part of the mix, does it?

A. Not in that paragraph or that part of the discussion, no.

Q. Okay. And in general, your report is not purporting to be or trying to be some sort of detailed explication about the meaning of religious establishment at the time of the founding, right?

A. No, it is not.

Q. Okay. That's what Professor Hall was up to that you mentioned a moment ago?

A. Uh-huh.
Q. Okay. Is that a yes?
MR. BLEISCH: Is that a yes?
BY MR. DAVIS:
Q. Sorry. You just said uh-huh. So was that a yes?
A. Oh, yes.
Q. Okay.
A. Sorry.
MR. DAVIS: Okay. Why don't we take five minutes, if that's all right, since we're at the hour mark. Does that work for you, Professor Green?
THE WITNESS: That's fine.
(Recess taken)
BY MR. DAVIS:
Q. Professor Green, so beginning with paragraph 25 of your report, it looks like you have several paragraphs there on James Madison's views about religious freedom; is that right?
A. That's correct.
Q. Earlier in the report, don't you say that history can't tell us what the founders may have thought about future church-state conflicts; is that an accurate quote?
A. Specific state-church conflicts, yeah,

most likely not.

Q. Okay. So you don't think that history can tell us what Madison would've thought about Ten Commandments monuments, right?

A. History can provide certainly the context and his opinion about what a Ten Commandments monument probably would have -- you know, the values that it would have, whatever, implicated.

Q. So you think the history can tell us what the founders may have thought about future church-state conflicts?

A. The history can tell us about again a value that is implicated by a contemporary conflict. It can't necessarily tell us, you know, the ultimate conclusion.

Q. Okay.

A. Hold on a second. I'm getting something weird. There you go.

Q. So you still agree with your statement that history cannot tell us what the founders may have thought about future church-state conflicts, right?

A. History cannot provide a definitive answer. It can provide what their views may have been, once again, of the implications of something

like Ten Commandments monuments.

Q. Okay. So history cannot give us a definitive answer on what Madison would've thought about Ten Commandments monuments, correct?

A. History can tell us how James Madison would have seen the implications of what values were at stake.

Q. Okay. And I am just -- I think I'm just using your words. And I am just looking for a yes or no.

I mean, you said that history cannot tell us -- cannot give us definitive conclusions about what the founders would've thought about church-state conflicts.

And so I'm just asking -- you know, Madison's a founder, we have a church-state conflict here with the Ten Commandments monuments -- do you agree that history cannot give us a definitive conclusion about what Madison would've thought about Ten Commandments monuments?

A. Well, no, I'm not going to give you a yes or no because we have no evidence at all there were Ten Commandments monuments that coincided with the founders, that they were putting up Ten Commandments monuments outside courthouses, right. And so,

consequently, that was not a specific event, so far as I know, that James Madison ever encountered. And I wrote a book about him just a couple years ago. So I think I would've come across it, right.

So, in that sense, did James Madison ever envision, gee, wow, let me think of a specific conflict that may occur in a state that is yet to be created called Indiana where they want to put a Ten Commandments monument outside their Statehouse Capitol? No, he would not have thought of that. Did James Madison speak in terms that talks about the values that he sees the Establishment Clause is trying to protect and the types of things that would challenge those values? Yeah, he talked about that.

Q. Did he talk about monuments on government property with alleged religious content?

A. He didn't talk about spaceships either.

Q. Okay. So, no?

A. Get my point? My point is --

Q. Yeah. But the answer is no, right?

A. No, he didn't talk about Ten Commandments monuments because, so far as we can tell, they weren't putting up Ten Commandments monuments at the time.

Q. And so what about monuments at all, any

monuments with religious content, did Madison talk about those?

A. No, not to the best of my knowledge.

Q. Okay. Did Madison himself, while he was president, call for days of thanksgiving and prayer?

A. He called for four. He -- during the War of 1812, on the request of Congress, and he classified them as recommendations, you can do it if you want to do it.

Q. Okay. Paragraph 28, you discuss the Memorial and Remonstrance; is that right?

A. Yeah.

Q. Okay. And do you recall, does the Memorial and Remonstrance conclude with a prayer to the supreme lawgiver of the universe that those to whom it is addressed may turn their councils away from every act which would affront this holy prerogative? Do you remember that?

A. I don't remember that off the top of my head because I haven't looked at the memorial for a couple of years.

Q. Okay. But you're not saying it's not there, right?

A. I'm not saying it's not there, no.

Q. Okay. All right. The next paragraph,

paragraph 29, we're starting a different section here, in there, you quote Justice Alito for the proposition that the Ten Commandments have historical significance as one of the foundations of our legal system.

Do you see that?

A. Wait. I was looking at the wrong one. Sorry. Yes, I do see that.

Q. Okay. And then you go on to say that this statement lacks a historical basis; is that right?

A. Generally, yes, it lacks a historical basis, yeah.

Q. So you disagree with that quote from Justice Alito?

A. I believe the quote is overstated radically, yeah.

Q. So, yes, you do disagree with it?

A. Yes.

Q. Are you aware that that quote was written by Justice Alito, of course, but it was part of a Supreme Court opinion that was joined by a majority of the court, correct?

A. I'll take you at your word. Yes, that part of it was.

Q. So it was written by Alito, it was joined

by Justices Kagan and Breyer and then Chief Justice Roberts and Kavanaugh.

Does that sound basically right?

A. If that's what the composition was. I trust what you say.

Q. All right. So you don't only disagree with the Supreme Court -- excuse me, you don't only disagree with Justice Alito on this, you disagree with the Supreme Court about this quote?

A. He wrote the majority opinion. So, yes, I disagree with the Supreme Court about the quote.

Q. Okay. Your report also cites a different case called Van Orden v. Perry.

Do you remember that?

A. I remember the case. And I'm pretty sure I cited to it.

Q. Okay. And do you recall that in that case there's an opinion by Chief Justice Rehnquist and it states, our opinions, like our building, have recognized the role the Decalogue plays in America's heritage.

Does that sound familiar?

A. It does sound familiar.

Q. Do you disagree with that statement as well?

A. That's more of a general statement. I mean, certainly -- no, I -- let me back up. No, I agree the Supreme Court has said that and agree that the Supreme Court has identified images. So, sure.

Q. So you don't disagree that the Supreme Court's building has recognized the role that the Decalogue plays in America's heritage?

A. I don't know how buildings have a personality to recognize. I mean, that's kind of a strange statement. Are there depictions, images of Moses on the Supreme Court Building? There are about 105 figures who are depicted on the Supreme Court Building. Four of them are of Moses in one respect or the other.

Q. And what was actually the issue of Van Orden wasn't the building, of course, the Supreme Court Building, but a monument of the Ten Commandments on a state capitol lawn; is that right?

A. Yes. It was on the Texas State Capitol lawn located between the Capitol Building and the Supreme Court Building.

Q. Okay. And the court upheld that monument?

A. The court upheld that monument, 5-4 decision.

Q. Have you ever written about Van Orden

that -- and this is a quote -- "As Christian nationalists are apt to do, Rehnquist was happy to draw from generalities to reach a specific conclusion"?

A. I assume that's from one of my -- from the Roger Williams Law Review. So I'll agree I wrote it.

Q. And were you calling Chief Justice Rehnquist a Christian nationalist?

A. Not Chief Justice Rehnquist, no.

Q. Okay.

A. I mean, that's a complete taking out of context of what I was saying.

Q. Okay. So help me understand the context. As Christian nationalists are apt to do, Rehnquist was happy to draw from generalities to reach a specific conclusion.

You're saying that he was happy to do something that Christian nationalists are apt to do?

A. No, I'm saying Christian nationalists are happy to draw generalities.

Q. I think you said Rehnquist was happy to draw it. I can pull the quote up.

Would that be helpful?

A. Sure.

Q. All right. Let's see. You're right, it's the Roger Williams article.

Are you able to see my screen?

A. Uh-huh.

Q. And this is your Roger Williams Law Review article you were discussing earlier, correct?

A. Yeah. Okay.

Q. And I'm just looking at this sentence. As Christian nationalists are apt to do, Rehnquist was happy to draw from generalities to reach a specific conclusion.

A. Yes, I'm saying that -- I'm not calling Chief Justice Rehnquist a Christian nationalist. I'm saying Christian nationalists do this and Chief Justice Rehnquist did this --

Q. Okay.

A. -- in the same context -- I mean in the same --

Q. No relationship between those two statements?

A. Huh?

Q. But you're not suggesting any relationship between those two statements?

A. Okay. I love how you're trying to twist this. I'm not saying that Chief Justice Rehnquist

was a Christian nationalists. But he is employing a technique that Christian nationalists do too.

Q. Okay. All right. Do you think that the Van Orden monument is constitutional?

A. Well, it's constitutional because the court has said it's constitutional.

Q. Do you think that was a correct conclusion?

MR. BLEISCH: Object just to the extent that it calls for a legal conclusion.

BY MR. DAVIS:

Q. You can answer.

A. Do I think that Ten Commandments monuments should be consistent with the Establishment clause? No, I don't.

Q. Okay. And then also that on your understanding of the proper historical methodology to be applied in these cases, would the Van Orden monument be consistent with historical practices and understandings?

A. No.

Q. Okay. Could any Ten Commandments monument on public property be consistent with historical practices and understandings?

A. Since they did not exist until the 1950s,

no.

Q. Okay. So because the specific type of monument was not around at the time of the founding, they cannot be consistent with historical practices and understandings?

A. Yes. It's not just because they were not around at the time of the founding, but also that I believe they are inconsistent with the values of the non-establishment principle.

Q. What about a cross on public land, could that be consistent with historical practices and understandings?

A. Depends on the context. It it's part -- on a cemetery to honor particular fallen soldiers, I think that's completely appropriate.

Q. Okay. What about in a traffic circle in Bladensburg, Maryland?

A. I think that's inappropriate. It's on government property, maintained by the government.

Q. So the court got the historical methodology wrong or the historical question wrong in American Legion and also in Van Orden?

A. Yes, I believe they did.

Q. How about -- you mentioned the Moses -- the Moseses I should say at the Supreme Court

Building. How about those, are those consistent with historical practices and understandings?

A. In a sense, yes, they're consistent with practices that have gone on for the last 60, 70, 80 years.

Are you asking me whether I find or think that they are unconstitutional, violation of the Establishment Clause, in the way that they're used; is that what you're asking me?

Q. I mean, maybe. What I'm asking you to do is to apply the historical methodology that you think is appropriate with respect to the Ten Commandments monument at issue here and that your report discusses --

A. Sure.

Q. -- and apply that to the Moses depictions at the Supreme Court.

A. Sure. I think they're apples and oranges. Okay. I think that you can adorn some buildings -- government buildings with images of historical figures within a particular context. That just kind of -- that's what government buildings like to do. They like to do that. It gives them some validity, I guess. That, in my mind, is quite different from a freestanding Ten Commandments monument that

actually has the actual language of God's commandments.

Q. And, well, the comparison is -- I appreciate that. But I was asking just about the Moses statues.

I mean, the Supreme Court Building was built in the '30s?

A. Yes.

Q. Okay. So were there depictions of Moses on public buildings at the time of the founding?

A. Not to my knowledge.

Q. Okay. So why is it that depictions of Moses at the Supreme Court Building are consistent with historical practices and understandings?

A. I'm sorry. Why is it that they are consistent with historical practices and understandings?

Q. I think that's what you said. I think you said that, on your view, that they would be okay from an historical perspective. And I'm trying to --

A. I'm just saying they -- you know, no one was really complaining about those practices on the Supreme Court Building, you know. I mean, you have to understand that the -- you know, according to the

curator of the Supreme Court, the architect of the Supreme Court Building in the 1930s, he basically handed over to the sculptor just full reign, you can kind of do what you want to do. Was there any vote by members of Congress saying we think this is good, we think this is bad? Was there any decision by any courts, we think this is correct, this is not correct? It just happened, right. That's why they're on the building . It's just what the architect allowed the sculptor to decide for himself what he wanted to put up on the frieze in the Supreme Court courtroom or the other locations.

Q. So if the government just accepts a monument that somebody else has created, that might make it more likely to be consistent with historical practices and understandings?

A. It doesn't have the validity of a constitutional weight behind it. It's just done.

Q. Sorry. So are you saying that just accepting a monument that somebody else has produced, does that make it more likely to be okay under your methodology or not more likely to be okay? I just didn't understand your answer.

A. Okay. What I'm saying is the constitutional question was not raised at that time.

And at this point, I don't know of any lawsuit currently challenging the depictions of Moses on the Supreme Court Building, you know. It's a practice that has been there since the 1930s. That's a practice. That's all I can say.

Q. So the 1930s might be old enough, but not the 1950s? This is what you said before about the Ten Commandments monuments.

A. No. I'm saying they're different things. When you have Moses on a frieze with 17 other lawgivers, however want to do that, right, where he's holding a part of a tablet and the part of the tablet that you can see is the second table of the Ten Commandments, not the first table of the Ten Commandments, and it's not the language, it's just numerals, right, that's a very different context from a freestanding Ten Commandments monument that actually has the language of the Ten Commandments on it.

Q. And I'm trying to understand how this is relevant to your point about historical practices and understandings though because I think you agreed that -- or you testified that there were no depictions of Moses at the time of the founding, just like there were no freestanding Ten Commandment

monuments at the time of the founding.

So how does it play into that, that there are other things around Moses at the Supreme Court Building specifically to the historical point that you were making earlier?

A. I don't know how to answer your question. I mean, the historical practices and traditions is a term that is used on whether you are going to find something constitutional or not, right. And so, consequently, if there is -- we keep going back to the Supreme Court Building -- if there are representations of literally hundreds of different historical figures, a couple of whom happen to be religious or come from scripture, right, yeah, that wasn't done historically at the time of the founding. But the question of historical practice and traditions comes into context or importance when you have a constitutional question.

I mean, you've been to the national gallery, I assume, right. And there are gobs and gobs of paintings in the national gallery, many of which depict religious -- you know, people's beliefs about what was a religious event, right, within that context, right. Did we have a national gallery at the time of the founding of the country? No, we did

not have a national gallery. Okay. So you can't necessarily say the national gallery today is consistent with historical practice and traditions when you did not have that historical practice at that particular point in time. Why are we even asking this question if there's no constitutional question about paintings in the national gallery.

Q. So maybe that's what we're getting across -- getting crosswise here because I'm trying to introduce -- imagine there is a constitutional question. Somebody challenges the national gallery or maybe we'll stick to the Moses depictions at the Supreme Court. And so there is this question, are they constitutional or not.

And I'm asking you, if you were asked to come into that case and render your historical opinion, would you say that the depictions of Moses are consistent with historical practices and understandings?

A. I would say that test really doesn't apply.

Q. Why doesn't the test apply?

A. Because you did not have buildings putting up these types of imagery back at the time of the founding.

Q. But so too, according to your testimony, would the Ten Commandments monuments, right? So they didn't exist at the time of founding so the historical practices and understandings test just doesn't apply?

A. There is no historical practice of putting up Ten Commandments monuments until the 1950s. I mean, I guess you can say that's historical that long ago. I was born in the 1950s. So I don't want to think that I'm a historical relic. That's recent. Okay.

Q. And so but your report here is about how the historical practices and understandings methodology applies to Ten Commandments monuments, right?

A. My report is trying to demonstrate that there is, one, no historical practice of erecting Ten Commandment monuments. And so I guess we're all kind of talking about, you know, whatever, counterfactual history. What would have, if it had been there, would they have thought at this particular point in time, right. So to try to grandfather the Ten Commandment monuments as being consistent with historical practices and traditions, it's not there. You can't grandfather them that

way.

Q. Right. I mean, according to your testimony just a few moments ago, can you say the exact same thing about the Moses depictions on the frieze, right? There's no historical practice of depicting Moses at a public building. And so why is it that you say that the Moses depictions might be okay, but the Ten Commandments monuments, you know, are not okay?

A. Because you're trying to impose a legal test on basically everything the government does. And then you're basically saying, if the government never provided Social Security before a certain period of time, they didn't do the founding, period. You know, then we apply historical practices and methodologies. Sometimes it just doesn't apply.

Q. So whether a practice was going on at the time of the founding is not always the dispositive question in Establishment Clause cases, right?

A. Whether a specific practice, yeah, sometimes it's not. But you still look at the values.

Q. All right. I want to circle back to the quote from Justice Alito and the Supreme Court that you disagreed with about the Ten Commandments having

historical significance as one of the foundations of our legal system.

And I guess because you disagree with it, your view would be that the Ten Commandments do not have historical significance as one of the foundations of our legal system; is that right?

A. That is a completely overstated belief, yes. I have looked -- I mean, it's in my report, right. You look at the notes on the Constitutional Convention. You look at the various other records that go around the same time period, Elliot's debates, Farrand's reports, etc. You don't see the Ten Commandments coming up. No one's talking about the Ten Commandments as being the basis of American law or government.

Q. Have you previously written -- and this is a quote -- "It is axiomatic that many of the principles contained in the Ten Commandments are fundamental to the Western Legal Tradition"?

A. Many -- and love how -- I mean, this is now about the seventh or eighth time somebody has taken that quote out of context. But, yes, principles about killing, about stealing, those are found in the Ten Commandments. Those are found in almost all legal codes. And so just because they

appear in the Ten Commandments and they appear in our current legal codes doesn't necessarily mean that's where they came from.

Q. But you continue to agree with that sentence that you wrote, right, it is axiomatic that many of the principles contained in the Ten Commandments are fundamental to the Western Legal Tradition?

A. That are found in the Ten Commandments? Yeah. Are they original to the Ten Commandments? No. The Code of Hammurabi which predates the Ten Commandments by a couple hundred years has many of those same principles. So, yes, they are found in the Ten Commandments. They're found in multiple other codes in other contexts. And so just because they have parallels to the Ten Commandments doesn't mean that the Ten Commandments foundational for the American legal system.

Q. Is the -- the American legal system, that is part of the Western Legal Tradition, right?

A. Sure.

Q. So you would agree that many of the principles contained in the Ten Commandments are fundamental to our legal tradition, right?

A. Many of the principles that are contained

are fundamental to the American and other legal traditions, yes.

Q. Okay. Now, your report refers to Blackstone's Commentaries a bit. And it describes the Commentaries I think as a highly influential source for late colonial and early American law; is that right?

A. Yes.

Q. And you acknowledge in the report that in the Commentaries, Blackstone states -- I'm looking at page 32 of your report -- that the ultimate authority for the law was divine law as revealed in the scriptures; is that right?

A. Yes.

Q. Okay. And I took a look at Blackstone and it looks to me like he also states that -- and this is a quote I think I got right -- the law of revelation is one of the two foundations for all of human laws, and the other foundation was the law of nature.

Does that sound familiar to you from Blackstone?

A. Sure.

Q. Okay. Are the Ten Commandments part of what Blackstone would've understood as the divine

law revealed in the scriptures?

A. It may have been part. He didn't -- he didn't talk about the Ten Commandments.

Q. Okay. But for him, the scriptures, you agree that's a reference to the Bible, correct?

A. Yes.

Q. Okay. And do you agree that the Ten Commandments are part of the divine law according to the Bible, right?

A. Yes.

Q. Okay. So if we -- if we assume that both those things are true, isn't Blackstone just saying the same thing that Justice Alito said, the Ten Commandments are one of the foundations of our legal system?

A. Well, I think we're overemphasizing the Ten Commandments as having some type of special significance, right. I mean, that's the only thing that's being put up, right.

Q. Did he say anything about --

A. It's a claim that the Ten Commandments have some extra special significance. What Blackstone is just talking about, he's talking about this idea of higher law which is the ultimate type of law that exists, right. And if you look at

Blackstone closely, you see that he says the vast majority of the law deals with what he calls municipal law, common law, which don't have any direct religious aspect to it. That is the primary source of the law. And so to take the Ten Commandments and say, aha, this is it, this is foundational, without looking at the broad swath of what really is the foundation for the American legal system, is inaccurate.

Q. But you agree the Ten Commandments are in there, right? The Ten Commandments are part of what Blackstone would've understood to be the divine law revealed in the scriptures, you just think it's an overemphasis to emphasize the Ten Commandments at the expense of other divine law revealed in the scriptures; would that be right?

A. I guess you could say the Psalm of Solomon is part of the basis of American law too, right. But he didn't say that.

Q. Yeah, that's interesting. Would you say that's law?

A. It's part of the Bible.

Q. Yeah. But is it law in the Bible?

A. Is it law on the Bible?

Q. I'm asking you.

A. Psalm of Solomon is in there to try to give direction on how you should conduct your life.

Q. Okay. Does Blackstone mention the Code of Hammurabi anywhere?

A. Not to my knowledge. I'd have to go back and check.

Q. Okay. But you don't think that he would've viewed the Code of Hammurabi as being part of the divine law revealed in the scriptures, right?

A. I don't think he would've. He wouldn't have seen it as divine.

Q. Okay. All right. Your report also refers to what you call a widely read book, A Course of Legal Study by David Hoffman.

Do you remember that?

A. Yes.

Q. All right. And I'm looking at paragraph 36. You quote -- you testify that that book states that the morals of the Bible are the foundation of the common law of every Christian nation; is that right?

A. Yes.

Q. All right. Are the morals of the Bible set out at least in part in the Ten Commandments?

A. Some of them are, yeah.

Q. Okay. And, I mean, would it be fair to say that the Ten Commandments are, I guess, often thought as a primary expression of the morals of the Bible or the law of the Bible?

A. Some people might say so. He didn't say so.

Q. Okay. Do you think that Hoffman would've understood the United States as among the Christian nations that he was referring to in that quote?

A. I think he would. I mean, I've written a lot about what it means to be a Christian nation. And so it kind of depends on how you define that, whether it's just by demographics, whether it's by some, you know, religious influences. You know, it was debated a lot during the 19th century as to what that means. Hoffman was religious. And he saw that the Bible was kind of part of our traditions.

Q. Right. So, I mean, if we assume that the Ten Commandments are part of the morals of the Bible, set out the morals of the Bible, at least in part, isn't Hoffman there just saying that the Ten Commandments are part of the foundation of the common law of the United States?

A. I mean, depends on how deep you want to dig, right. I guess my point is, is let's kind of

look at it what it seems to suggest instead of what you're suggesting it suggests; that if Blackstone, if story, if Hoffman, and then you want to go later into the 19th century, if Thomas Cooley had seen any special significance of the Ten Commandments, seems like they would've said it. It would be somewhere in there, right. And to the best of my knowledge, none of them did. I went back and looked at a couple of editions of Cooley, right. You look at when they're talking about Sabbath law. You're looking at when they talk about blasphemy, right. You could find direct parallels in either of those to specific commandments of the Ten Commandments. And you know what? They don't mention the Ten Commandments at all.

Q. So they talk about the divine law and the scriptures, they talk about the morals of the Bible, but you're saying they don't specifically invoke the Ten Commandments?

A. Don't invoke the Ten Commandments.

Q. Do they talk at all about the Code of Hammurabi or any other ancient legal source?

A. They don't talk about that either.

Q. Okay. But they do talk about the Bible and the divine law as set out in the Bible, right?

A. Hoffman more than anyone. I mean, at this point, you -- and this is another problem with this whole discussion, is at what point in time do you kind of say, aha, this is the point in time that's important. In other words, you look at a transition in the law, right, a secularization that occurs in the law throughout the 19th century, right. If you want to think about history and traditions, that's the tradition, is the secularization of the law, right. And so later in the 19th century, you don't have -- except some religious figures -- talking about the divine basis of the law. You have Blackstone a hundred years earlier. But, of course, Britain had an established church. And he was very supportive of the established church. So he saw the relationship between canon law, ecclesiastical law and the common law in a way that we do not in the United States. And so this idea of the Bible being a basis of the law certainly has its common law origins. But once you get to American law and get into the 19th century, that basically disappears.

Q. Well, the 19th century, I mean, that's Hoffman, right, he's 19th century?

A. Yeah, he's 19th century. So is Story. So, yeah.

Q. Was that book, I mean, was that an influential book, A Course of Legal Study?

A. It was -- to my understanding, it was, you know, rather widely read at the time.

Q. Okay.

A. I don't know how much it influenced people's attitudes. You know, widely read.

Q. Widely read, okay. Let's go back a little earlier than the 19th century then. And I want to look at paragraph 33 of your report. And you say there that the early legal codes of the New England colonies cited to scriptural authorities for several offenses and behavioral rules.

Do you see that?

A. Uh-huh.

Q. All right. And then you say that, even in those colonies, reliance on the Ten Commandments, as opposed to reliance on biblical law as a whole, was proportionately insignificant; is that right?

A. Yes.

Q. All right. So you agree that in those colonies, the legal codes had at least some reliance on the Ten Commandments, correct?

A. Yes, and the Bible just generally.

Q. Right. But, I mean, with respect to the

Ten Commandments specifically, at least some reliance, but proportionately insignificant compared to the Bible as a whole, right?

A. Yes.

Q. Okay. That's a that judgment of degree, right, proportionately insignificant, right?

A. I guess. I'm not sure what you're asking.

Q. Yeah. I guess -- I guess -- I mean, you're not saying yes or no, no Ten Commandments in there at all, you're saying just as a matter of degree insignificant in your view, right?

A. Compared to the rest of the Bible. I mean, you know, the Puritans wanted to have a biblical commonwealth. They were Protestants. So they emphasized the New Testament more than the Old Testament.

Q. And I guess what I'm getting is, I mean, is that a fair way to describe your views on the influence of the Ten Commandments on American law as a general matter? I mean, I've read your report obviously. I've read your article, The Fount of Everything Right and Just. And it seems to me like you agree, correct me if I'm wrong, that there's been at least some influence of the Ten Commandments on American law, but your belief is that that

influence is, you know, maybe overstated, overemphasized, it's not significant enough to justify some of the claims that are made about the Ten Commandments by the Supreme Court; is that right?

A. I'm saying you're trying to extrapolate from the Puritan commonwealth which went through several phases of trying to develop legal systems, realizing the difficulty about basing it on biblical principles over time and deemphasizing that as the 17th century went along. And then you have this little thing called the Glorious Revolution. You have the takeover of the Puritan colonies. And their religiously based legal system is supplanted by the common law. So it was influential for, whatever, 60 years. And that was just within Puritan New England.

Q. So, actually, I was trying to get away from the Puritans a little bit and just go to your views.

A. You brought up the paragraph.

Q. Fair point. I'm thinking about your sort of report as a whole and then your law review piece about -- you know, The Founts of Everything Right and Just. So I'm just trying to understand your

view about the Ten Commandments. And, you know, we had the axiomatic quote that we discussed earlier. There's another quote from the end of the piece where you say, "It has always been a non-controversial fact that the Ten Commandments have influenced legal notions of right and wrong".

And so I'm just looking at this and I'm trying to understand your views. And it sounds like you agree there's been at least some influence of the Ten Commandments on our legal systems, on our understandings of right and wrong, but you just think that it puts a disproportionate emphasis on the Ten Commandments to call them a foundation of American law; is that fair?

A. Let me correct some of what you say. The Puritan legal codes are not our legal system. The Puritan legal codes were rejected, okay, after 60 years. Okay. So to the extent of which you can say those had some big influence on the development of American law a hundred years later, I think is a false assumption. Okay. So do the Ten Commandments talk about right and wrong? Yes, they do. Has the Ten Commandments had concepts of right or wrong that are found in the Ten Commandments influenced the development of Western law? Yes, they have. There

are parallels. That's what I'm saying.

Q. Okay. Why don't I just pull up the article you wrote. I want to ask you one more specific question about a quote. So give me one moment.

Can you see my screen, Professor Green?

A. Yes.

Q. And this is an article that you wrote entitled The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law.

Is that right?

A. Yes.

Q. And I'm looking here at this paragraph and it begins with the axiomatic quote that we discussed earlier.

A. Uh-huh.

Q. But now I want to ask you about this sentence. Few people, if any, would dispute that the Ten Commandments, and its parallels from other ancient cultures, as well as other directives contained in the Pentateuch of the Hebrew and Christian Scriptures, inform our notions of right and wrong and, as such, have influenced the development of Western law of which the American legal system is part.

Did I read that accurately?

A. Yes, you did.

Q. All right. Do you continue to agree with that statement?

A. I agree with that statement. I don't think it's inconsistent with anything I said in my report.

Q. Okay. All right. I'll stop the screen share here.

Your report also discusses the Magna Carta a little bit, correct?

A. Yes.

Q. All right. And you say the Magna Carta is important to our legal system?

A. In a very distant sense, yes.

Q. Okay. Do you recall that the Supreme Court invoked the Magna Carta in its decision in the Hosanna-Tabor case?

A. I don't recall that per se.

Q. Okay. Well, I'll just -- we can pull up a piece that you wrote about this topic here in a moment. But I'll just represent to you that the court there invoked the Magna Carta and it was part of its effort to support its recognition of what it called the ministerial exception doctrine.

Are you familiar with that doctrine of the First Amendment?

A. Yes.

Q. Okay. Does that ring a bell, that the court said the Magna Carta supported recognition of a ministerial exception?

A. I'm sorry, it doesn't at this point.

Q. Okay. All right. So do you recall writing a piece called The Mixed Legacy of Magna Carta for American Religious Freedom?

A. Yes, I do remember. I wrote it.

Q. Okay. And but you don't recall in that article criticizing the Supreme Court for its use of the Magna Carta in Hosanna-Tabor?

A. I don't recall. I'm sorry. It's been a long time since I wrote that article.

Q. Sure. I'll just pull the piece up here. Are you able to see my screen?

A. Can you enlarge it a little bit?

Q. Sure.

A. Okay. Thank you.

Q. Of course. So is this the piece, The Mixed Legacy of Magna Carta for American Religious Freedom?

A. Uh-huh, yes.

Q. All right. So I'll just scroll down to what I'm looking at here. Here we go. I'm just looking at this quote. Maybe start it here.

So as for the specific principle of free selection of clergy -- that's the ministerial exception issue that was going on in Hosanna-Tabor; is that right?

A. Yes.

Q. -- Magna Carta's legacy is even more tenuous. And when it comes to the idea of religious freedom writ large, particularly for the religious liberty interests of individuals, Magna Carta's legacy becomes troublesome. Aside from its historical error, the Hosanna-Tabor court's reliance on Magna Carta for the principle of a constitutional ministerial exception is unfortunate as it sets up a hierarchy of interests.

Do you see that?

A. Yes.

Q. Are you saying there that the Hosanna-Tabor court -- to the extent that you recall, that the Hosanna-Tabor court made an historical error in relying on the Magna Carta to recognize the ministerial exception?

MR. BLEISCH: I'm going to object. I know

you said historical error. But just object to the extent that it calls for a legal conclusion about the Supreme Court's analysis here.

BY MR. DAVIS:

Q. Okay. And I'm asking are you -- you can answer, Professor Green.

A. Okay. I wrote this article 10, 11 years ago. I have not read it since. So I kind of don't know how I can necessarily answer your question. If I recall, I think what I was getting at is notwithstanding what Magna Carta says, the church shall be free, is the legacy of the Church of England. The fact that clergy were selected according to certain criteria that parliament implemented, that that principle really wasn't followed.

Q. And so it would have been an historical error to say that Magna Carta supports a ministerial exception?

A. I think that's what I was getting at, yeah.

Q. Okay.

A. It was -- the practice just didn't happen.

Q. Okay. So is it fair to say that your views on both the Ten Commandments and apparently

the Magna Carta are contrary to those of the Supreme Court?

A. On that specific question, yeah, I think the historical record doesn't necessarily support.

Q. Let's set aside for one moment just the question of the -- you know, how much influence the Ten Commandments have had on American law. And I just want to ask you a different question.

Would you think it's fair to conceive of the Ten Commandments as sort of a symbol of law or the rule of law or written law as a general matter?

A. Is it a symbol? Yes, it can be a symbol. It's primarily a religious statement. That's how it originated and that's its purpose.

Q. But it also could symbolize written law as a general matter?

A. Written religious law? These are God's commandments, yeah.

Q. Well, I'm thinking -- I was actually inspired to ask this question by a quote from Sir Edward Coke that I think you're familiar with. I saw in your Founts of Everything Right and Just piece.

A. Uh-huh.

Q. And he wrote in a 1610 decision that God's

moral law had been written with the finger of God in the heart of man a long time before the law was written by Moses who was the first reporter or writer in the world.

Do you recognize that quote? Excuse me --

A. From Calvin's Case.

Q. -- writer of law in the world. I mangled the quote.

A. Yeah, it's from Calvin's Case.

Q. Okay. And, I mean, it strikes me that what he's saying there is that, you know, Moses in scribing the Ten Commandments or having the Ten Commandments inscribed can be viewed as the first writer of law in the world. And so if you set aside the historical accuracy of that quote, isn't he saying that the Ten Commandments are sort of a symbol of written law as a general matter?

A. That was what he was opining for himself, yeah.

Q. Okay. And we were talking earlier about the American Legion case; do you recall that?

A. Yes.

Q. All right. And in that case, at the oral argument, one of the attorneys for the party challenging the cross told the Supreme Court that

the Ten Commandments can have -- and this is a quote -- "some sort of dual secular meaning" in that they are "basically shorthand for law itself".

Do you think that's a fair position to take about the Ten Commandments?

MR. BLEISCH: And sorry, I -- if I'm understanding -- I just want to -- it sounds like you are asking about his knowledge about like symbolism. And that seems to be outside of his expertise as it relates here to his report and history of religious -- religion and the Ten Commandments. So I'm going to object to the extent that this line of questioning goes into like symbolism and what that kind of -- what that can mean.

MR. DAVIS: All right. Well, if the witness wants to say it's outside of his expertise, that's fine.

BY MR. DAVIS:

Q. But if you do know the answer, Professor Green, or have an opinion on it, my question is, is it fair to think of the Ten Commandments as having a dual secular meaning as being basically shorthand for law itself?

A. Certainly many people have seen it as a

symbol of a legal code as well as a religious code. Does it deserve the extra special significance it's being -- trying to be done in Ten Commandments monuments and plaques in schoolhouse classrooms? No, it doesn't.

MR. DAVIS: Well, we're at the next hour mark. I'm going to try my best to finish this in the next hour. But why don't we take one more break her, if that's okay with you all.

THE WITNESS: Okay.

MR. BLEISCH: Thanks.

(Recess taken)

BY MR. DAVIS:

Q. Professor Green, I'd like to direct your attention to paragraph 40 of your report. And you say there that any historical pedigree that might exist with the public display of other religious symbols does not apply to Ten Commandments monuments.

Do you see that?

A. Yes.

Q. So just to be clear, you're not opining here on whether there is an historical pedigree for other religious symbols besides the Ten Commandments, right?

A. For the purposes of this report, I'm not -- don't read this as I'm signing off on all other religious symbols have constitutional pedigree. I'm just saying for the purposes of this question about Ten Commandments monuments.

Q. Right. You're just not opining on those other symbols at all, right?

A. No, I'm not.

Q. In the last sentence of this paragraph, you say, that because there's a lack of historical pedigree for erecting Ten Commandments monuments, the Ten Commandments Monument Display Act would appear to run counter to the court's directive.

What is the Ten Commandments Monument Display Act?

A. I believe that -- am I incorrect as charactering it as that? Wasn't that what was originally for the erection of the Ten Commandments monument for the Indiana Statehouse?

Q. Okay. So you're not referring to some other statute, you're referring to the Indiana monument in --

A. Yeah.

Q. -- what it says?

Was any of the language in this report taken

from prior expert reports that you've prepared in Ten Commandments cases?

A. No.

Q. Okay. In the first sentence of this paragraph, you say that, Ten Commandments monuments were chiefly an invention of the mid 20th century.

Do you see that?

A. Yes.

Q. And is the basis for that claim the court decisions that you then go on to cite in this paragraph?

A. All of these court decisions cite to the Fraternal Order of Eagles' efforts came up in the 1950s to do this. Couple of those are based upon affidavits by the Minnesota judge who was instrumental in doing it. So it's part of the legal record.

Q. And so when you say chiefly there, does that mean that, as far as you know, there might have been Ten Commandments displays before the mid 20th century?

A. I don't know of any. Probably I shouldn't have used that modifier. It's just -- you know, it appears to be that these are all just mid 20th century inventions.

Q. But you're not taking a firm position on that one way or the other, right? You're not testifying that there are no displays of the Ten Commandments on public property from before the 1950s, are you?

A. I have not found any record to indicate those. You never know. I mean, there could be some obscure place the middle of nowhere where someone may have put up a Ten Commandments monument that was never recorded, never challenged or whatever. But so far as what is represented in most of the Fraternal Order of Eagles monuments, which are the dominant ones, which I know this is not an exact FOE monument we're talking about in this context, but it's taken from the same language, that these were all of recent vintage.

Q. Do you recall that the -- was the monument in Van Orden an exact FOE monument?

A. I believe it was.

Q. Okay. And the court upheld that as constitutional, right?

A. Yes, it did.

Q. Okay. I'll move down to the next section of your report. We're moving a bit more quickly now. So down to paragraph 43. And you state there

that there's a lack of consensus among the various branches of Islam as to the authority of the Ten Commandments.

Is that accurate?

A. That's my understanding, yes.

Q. Okay. Are you an expert in Islam?

A. No, I'm not. This is relying on secondary sources.

Q. Okay. And on your reading of the secondary sources, when you say a lack of consensus, does that suggest that there are some branches of Islam that do view the Ten Commandments as authoritative?

A. To the best of my knowledge and looking at the Koran, there is no verbatim Ten Commandments. The Koran mentions commandments here and there. Some of them are parallels. Some of them are not, right. But at least to see a depiction of the Ten Commandments as is done in this case is not something that would be seen as being consistent with Islam from what I understand just because you just don't have that. Does Islam recognize parts of the biblical Judeo tradition? Yeah, they do. So it's kind of hard to say exactly how most Muslims would approach it.

Q. And so but if some Muslims did view the Ten Commandments as authoritative, that wouldn't surprise you or be inconsistent with your testimony here, correct?

A. I guess some Muslims could see it as authoritative like -- I don't know. But at least it's not part of the clear Islamic tradition in the same way it is with Judeo-Christian tradition. Let's put it that way.

Q. As you understand it as a non-expert in Islam, right?

A. As a non-expert in Islam, yes.

Q. Okay. And you go on in this section of your report to state that you believe that the language of the Ten Commandments at issue here on this monument was derived from the King James version of the Bible; is that correct?

A. Yes.

Q. All right. Was the King James version a widely read version of the Bible in early America?

A. Without a doubt.

Q. Was it the most widely read version?

A. For Protestants, it was the most widely used version until you start into the latter part of the 19th century, early 20th century.

Q. And were -- was most of the country Protestant in early America, 17th century, 18th century?

A. Yes.

Q. And so when you say it's the most widely read version for Protestants, it was the most widely read version in the country, right?

A. Since the majority of the country was Protestant, yes.

Q. Okay. And was it also a widely read version in 18th century England?

A. The King James Bible? Not just widely read, it was the only one.

Q. The only version of 19th century?

A. Yes.

Q. The authorized version?

A. Yes.

Q. And so when Blackstone -- we were talking about him earlier -- when he referred to the divine law as revealed in the scriptures, when he says the scriptures there, he's thinking about the King James version, right?

A. I would assume he is. I can't recall him actually identifying the source. But I assume he means it's the authorized official King James

version.

Q. Okay. And elsewhere in Blackstone, if he quotes from the Bible -- are you aware that he quotes from the Bible elsewhere in the Commentaries?

A. He makes some -- you know, here and there, yeah.

Q. Okay. And those quotes are from the King James version, right?

A. I assume they are. I have not done any kind of check on that.

Q. Okay. But it wouldn't surprise you if it were true, right?

A. I would be completely surprised if he quoted from some other version of the Bible.

Q. Are you aware of President Lincoln ever quoting from the Bible in his speeches?

A. Lincoln quoted a fair amount from the Bible.

Q. And do you know what version he quoted from?

A. I assume it was the King James Bible.

Q. Okay. Why do you assume that?

A. Because, once again, that was the common Bible for most Protestants was the King James Bible.

Q. And most Americans also, right?

A. Since most Americans were Protestant, yes. Increasingly not, but yes.

Q. Okay. Now, your report identifies what it calls a conflict between the text of the Ten Commandments on the monument here and "Jewish beliefs about the commandments".

Do you recall that?

A. Yes.

Q. All right. Are you an expert in Judaism?

A. No, I'm not.

Q. Have you reviewed -- I think the answer's yes because of your testimony earlier.

Have you reviewed the expert report of Rabbi Dr. Stuart Halpern that was submitted in support of the government in this case?

A. Yes, I did read it.

Q. All right. And Rabbi Halpern in that report says that the translation numbering and presentation of the Ten Commandments at issue in this particular case is not problematic from a Jewish perspective.

Do you remember that from his report?

A. I do remember that from his report, yes.

Q. All right. And do you disagree with Rabbi Halpern about that?

A. I think that's Rabbi Halpern's opinion. I quote from Marc Brettler, a prominent scholar at Duke University, who disagrees with him. I think if you would go back and look, I would assume -- maybe I should check this before I say this -- but in the five Ten Commandments cases challenging the public school erection of Ten Commandments, I believe in each of those cases some of the plaintiffs are Jewish. And so they would disagree with that statement. In fact, the case pending before the U.S. Supreme Court right now for cert is Rabbi Nathan. So she would disagree with that statement.

Q. So, but you're not rendering an opinion from a Jewish perspective, are you?

A. I'm not Jewish.

Q. And so just to be clear, are you testifying that Rabbi Halpern is wrong about the Jewish perspective on this monument or just that some Jews agree -- some Jews might agree and some Jews might disagree?

A. I can't give you the percentage of Jews that would agree or disagree. But the Jewish plaintiffs in the Ten Commandments litigation in the schools all offer declarations declaring that the version of the Ten Commandments used in Louisiana,

Arkansas and Texas were not consistent with their beliefs of the Ten Commandments -- or their versions of the Ten Commandments.

Q. So you're testifying just that there are multiple Jewish perspectives on this version of the Ten Commandments?

A. I'm not testifying on behalf of your expert witness.

Q. Are you testifying on behalf of those plaintiffs in the other cases?

A. I'm not testifying on behalf -- I'm just relating that it's my understanding that many Jews disagree with this posting of the Ten Commandments.

Q. Okay. So just that there are different Jewish perspectives on the posting of the Ten Commandments on the particular version?

A. I don't know what percentage your expert represents. My understanding is the majority of the Jewish community and the various Jewish groups have come out in opposition to the posting of the Ten Commandments.

Q. And to be clear here, my questions are not so much about the posting but about the version, which I took to be the content of your -- you know, the substance of your report.

A. I think it's a combination. I don't know if you can separate the two.

Q. Okay. Fair enough. How do you know about the majority? You understand the majority of Jewish groups oppose this posting. Have you -- do you have a percentage or have you done sort of a survey on that?

A. I don't have a percentage. But I'm certainly aware -- it's in the public domain -- of the amicus briefs by various groups in the various Ten Commandments cases recently. And many of those amicus briefs -- not many -- some of those amicus briefs are from Jewish organizations on behalf of the plaintiffs.

Q. But you don't actually know if it's a majority or not, right?

A. Yeah, I don't know -- yeah, I don't know how you assess majority. All I'm saying is, is that it appears that many Jews disagree with the posting of the Ten Commandments coming from the King James Bible.

Q. Well, you said a majority earlier. That's all I'm asking about.

So you don't actually -- you're not actually testifying the majority, right, because you can't

assess that?

A. Well, no, I can assess it. Many, many. I don't know if it's the majority or not.

Q. Okay. And are you disputing that Rabbi Halpern's view is a legitimate Jewish perspective?

A. No, I'm not. I don't know if it's just his own or if it's shared by a larger number.

Q. So you're not disputing that it is a legitimate Jewish perspective?

A. It's -- yeah, I mean, it's a -- I am not going to contest anybody's statement of what their religious beliefs are that may differ from whoever is in charge of that religious denomination. I think, you know, they can be sincere.

Q. Do you think his views differ from those in charge of his denomination? I mean, he is a rabbi.

A. He is a rabbi, yes.

Q. Okay. And you're not aware of anybody in charge of his denomination, to use your terms, who disagrees with him, right?

A. I can't remember what version of Judaism he is.

Q. So, no, you're not aware of it?

A. Well, I can look at it, if you want to let

me look at it. He's at Yeshiva University. That doesn't necessarily mean he's Orthodox. So I'm not sure exactly what tradition he's claiming to represent. Reform may have a different version. Conservatives may have a different version. Reconstructionists may have a different -- not version -- a different opinion.

Q. So different Jewish traditions might have different perspectives on this version of the Ten Commandments and the posting of them?

A. I -- yeah, that's possible.

Q. Okay. Now, you state in paragraph 47 of your report that the Jewish version of the Ten Commandments says you shall not murder rather than you shall not kill; is that right?

A. That's the predominant one, yes.

Q. Okay. And so that's basically my question.

What is the Jewish version that you're referring to there?

A. Well, I cite some of the sources.

Q. Okay. Is it your view that there is one Jewish version of the Ten Commandments in English?

A. No.

Q. So you're aware that there's a number of

different Jewish translations of the Ten Commandments in English?

A. Yeah, depending on which translation, I mean, how recent the translation is, how old the translation is, who's using it, yeah.

Q. Right. So there are multiple translations.

And are you aware that some of those multiple translations do, in fact, translate the commandment as kill and not murder?

A. I know that there are some. My understanding is, from what my research indicated, that that's a minority.

Q. Okay. But when you said the Jewish version in your report, would you need to amend that to say that one Jewish version or some Jewish versions use murder instead of kill?

A. Let me see how I said it. Well, I don't necessarily read it the way that you're reading it. But if you're trying -- if the only way you can read my declaration, say, I'm speaking for every single Jewish interpretation of the Ten Commandments, then I don't think I can say that. I'm going on the scholarship that I reviewed.

Q. And you're citing actually -- to the

sentence I'm talking about, you're citing to the Oxford -- the Oxford Companion.

Was that the Oxford Companion to Religion?

A. I believe so. I think that's what it's called.

Q. Okay. So you're not citing to a particular Jewish translation at all there, right?

A. I cited to that. Then I relied on again Professor Brettler's work.

Q. Okay. So you didn't purport and prepare in this report to review different Jewish translations of the Ten Commandments and render a report about what those Jewish translations say, right?

A. I did not review every Jewish translation, no.

Q. Did you review any Jewish translations?

A. I reviewed excerpts of Jewish translations, yes.

Q. Okay. Are you aware that there are some Christian traditions that also understand this commandment to prescribe murder rather than all killing?

A. I'm sorry. Say that again. There's some who understand it to prescribe murder?

Q. Some Christians, yes, to describe --
A. Yes, I think that's the way it's been written.
Q. Right. And sometimes translated too, right?
A. I think, yeah, there are some that have changed the translation.
Q. Okay.
A. I mean, you know, unless you're a member of one of the pacifist, you know, Protestant traditions, right. I think there's an acceptance among most Protestants, as with Catholics, etc., that there are times when killing is justified. It's not --
Q. Most --
A. -- a pacifist commandment. Huh?
Q. Right. So most -- I mean, most Christians understand it to be murder and not all killing, right?
A. Most would understand probably that to be the directive, even though that's not the way it's worded in Exodus 20.
Q. Okay. So this isn't a distinction between all Christians and all Jews, is it? I mean, there's Christians and Jews on the same side of the question

and Christians and Jews on the other side too, on the murder-kill distinction?

A. You know, I couldn't give you a percentage. I mean, you're really kind of getting out of my, you know, expertise when you're wanting me to kind of give that kind of statement.

You know, what I was trying to show is that the version of the Ten Commandments pretty well tracks the Protestant King James version.

Q. It tracks it because it uses kill instead of murder, right?

A. That's one of many things.

Q. Okay. And but we just agreed that some Jewish translations also use murder, right -- excuse me -- that some Jewish translations also use kill?

A. Yes. That is my understanding. The majority don't.

Q. And we also agreed that some Christian translations use murder but not kill, correct?

A. I cannot speak for every single new, you know, Protestant translation of the Bible. I mean, you almost get a different one every year. So I have not reviewed all of those. Some may have changed the language.

Q. Are you familiar with the New Revised

Standard Version?

A. I have a copy of it. I haven't looked at it for a while.

Q. Okay. Is that a prominent translation of the Bible, as far as you can tell?

A. Yeah.

Q. Do you know how it translates this word, whether it --

A. Not offhand.

Q. I'm sorry. We spoke over each other. What did you say?

A. I said not offhand.

Q. Okay. And if I told you that it says murder and not kill, would that surprise you?

A. It wouldn't surprise me at all.

Q. Okay. So even some prominent Christian versions of the Bible -- Christian translations of the Bible could use murder instead of kill?

A. I think we're doing some real wordsmithing here. I mean, the point is, is that even though many Protestants have read in the prohibition as being limited to murder as opposed to killing, generally speaking, we're talking about again a Ten Commandments -- rendition of the Ten Commandments that tracks the King James Bible which uses a

particular word.

Q. Yeah, I understand that's the opinion that you're trying to advance here. But I was asking sort of different questions. But I think we've covered all the ground we need to cover.

And to be clear, I didn't mean to suggest that the New Revised Standard Version is only a Christian translation. But you would agree that it is a translation that is sometimes used by Christians, correct?

A. Oh, most definitely.

Q. Okay. All right. So you also say that what you call the Protestant version of the commandments on the monument is at odds with the version followed by many Catholics; is that right?

A. Yes.

Q. Okay. Are you an expert on Catholicism?

A. Not on Catholic theology, no. I've studied Catholic doctrine in my historical research over the years.

Q. All right. Have you -- I think the answer's yes. Have you reviewed the expert declaration of Monsignor John Paul Kimes that was submitted --

A. Yes, I did, yes.

Q. And Monsignor Kimes testifies there that the notion that there's a meaningful dichotomy between Protestant and Catholic versions of the Ten Commandments is ahistorical and at least for the Catholic Church theologically inaccurate.

Do you remember him saying that?

A. Yes.

Q. Do you disagree with Monsignor Kimes in this point?

A. My understanding that's his opinion about the Ten Commandments.

Q. Well, I think he's saying the Catholic -- you know, the Catholic perspective on the Ten Commandments.

And so I'm asking you, do you disagree with his understanding of the Catholic version of the -- perspective on the Ten Commandments?

A. I don't know if he represents the Catholic version -- or the Catholic approach. Again, I was going on, you know, the change in ordering, the omission of some words, etc., which again it tracks the Protestant version.

Q. So did you --

A. Whether some Catholics are bothered by that or not, I couldn't speak for all Catholics.

Obviously, he's not bothered by it.

Q. Well, what he's saying, though I think is a little bit different. I think you're right that he's saying he's not bothered by it. But he's saying that they're -- he's rejecting the whole notion of a distinction between Protestant and Catholic numberings of the Ten Commandments, and he's saying that that is theologically inaccurate from the Catholic Church's perspective.

My question for you is, do you disagree with him on that?

A. I guess on that point, yes, I do disagree with him. Because, I mean, if you look at the -- you know, the sequence, the -- these don't have numbers -- that it tracks the Protestant King James Bible. Your own expert, Professor Hall, says it's the Protestant version.

Q. Are you -- are you rendering an opinion from the Catholic perspective?

A. I'm not rendering an opinion from Catholic perspective. Some Catholics may not be bothered by it. All I'm saying is it tracks -- how many times am I going to say this? It tracks the Protestant King James Bible.

Q. And Monsignor Kimes' point is that the

King James Bible in turn tracks an earlier numbering that goes back many centuries before the Protestant Reformation. And so I understand his point to be that, to call it a Protestant version is anachronistic, ahistorical.

Do you have an opinion on that?

A. I guess I'm going back to the source. And the source is the Protestant King James Bible.

Q. And then you say --

A. Again, I mean, you asked me questions about, you know, the dominance of Protestantism throughout the 19th century. The implication of that being is, is it surprising that they would track the Protestant version of the Ten Commandments? No, it's not, right.

Q. I'm not --

A. Again, your own expert, Mark Hall, says it's a Protestant version. I don't know why we're going round and round on this.

Q. Well, I mean, I'm not arguing with you, Professor. I asked you --

A. Okay. I think the point's been made then.

Q. So you still haven't answered my question. It's fair if you're going to say that you just don't have a view on it or don't have an opinion on it or

don't have expertise in it.

But the question is -- you know, you said I'm going back to the source. And I'm saying what Monsignor Kimes says actually that's not the source, that the source for this numbering of the commandments goes back a long time before the King James version existed, before the Protestant Reformation existed.

Do you have a view on that point or is that outside of your expertise?

A. That's outside. I don't have a view on that point.

Q. Just a couple more questions about this.

Monsignor Kimes points out that the current Catechism of the Catholic Church uses the phrase graven image when it's talking about the Ten Commandments.

Do you recall him saying that?

A. Yeah, I guess I do. I mean, I don't recall. But I trust what you said.

Q. Okay. And do you disagree with him that the current Catechism of the Catholic Church refers to the prohibition on graven images?

A. I would not disagree with him on that because I would not know.

Q. Okay. Your report talks about a different Catholic Catechism called the Baltimore Catechism; is that right?

A. Yes.

Q. Why didn't you discuss the current Catechism of the Catholic Church?

A. Because my understanding is the Baltimore Catechism was the one that predominated throughout most of the 20th century which would've been at the time that the royal order -- Fraternal Order of Eagles, excuse me, came up with these versions.

Q. Okay. Is it your understanding that the Catechisms of the Catholic Church is now the primary version within Catholicism and has sort of displaced the Baltimore Catechism in some respects?

A. I can't answer that. I'm not sure.

Q. Okay. In paragraph 48, you state that a broad prohibition on graven images could, for some Catholics, call into question the faith's reliance on and adoration of various religious statues.

Do you remember that?

A. Yes.

Q. How did you arrive at that conclusion?

A. Just based on the source material that I was relying on.

Q. Okay. Did you ask any Catholics about that?

A. Personally, no.

Q. Okay. So who are the some Catholics that you're referring to there?

A. Well, I cite to Michael Coogan.

Q. And Michael Coogan said that, for him, a broad prohibition on graven images would call into question his faith's reliance, on adoration of religious statues?

A. Something in relation to that, yeah.

Q. Okay. Anybody else besides Michael Coogan?

A. I can't remember right now.

Q. Okay. So that would be one Catholic that you know has expressed that view; is that right?

A. Yeah, a Catholic who's an historian and has written about the Ten Commandments. So possibly knows more than the average Catholic.

Q. Okay. But you don't have any independent knowledge on that point besides what's in Michael Coogan's book?

A. I can't recall.

Q. Okay. Do you believe that Catholics make graven images in violation of the Ten Commandments?

A. No, I'm not saying that.

Q. In paragraph 49, you state that it is impossible to have a theologically neutral version of the Ten Commandments.

Is that an accurate quote?

A. Yes.

Q. So is it your view that it's never permissible for a state to display the Ten Commandments on its state capitol grounds?

MR. BLEISCH: Object, calls for a legal conclusion.

BY MR. DAVIS:

Q. You can answer.

A. It's my position -- it's my position, belief that any version of the Ten Commandments has got to at some point be selective. And that selectivity is always going to end up favoring one religious tradition over the other. And the bottom line is, at best, it's always going to reflect some form of Judeo-Christianity to the exclusion of all other religious faiths that exist in this country.

Q. So in your understanding of the proper historical methodology, any display of the Ten Commandments on state capitol grounds that includes the text of the commandments, would be contrary to

historical practices and understandings?

A. Let me give you an example. Let's assume that in the founding period that, whoever, someone decided they want to put up a monument outside a state capitol with the Nicene Creed. Now, what would that be? That would be the government putting its imprimatur on some type of religious doctrine, the government using religious doctrine for its own purposes. Would members of the founding generation probably be bothered by that? Yeah, I think they would, when you have the government basically using religious doctrine for its own purposes.

We'd like to grandfather the Ten Commandments as somehow being different. But the Ten Commandments is a religious declaration found in the Bible. And so the values that I believe that the founders were affirming, that the government should not be misusing religious doctrine for its own purposes, right, I think that's consistent.

Q. So, yes, any display of the Ten Commandments on state capitol grounds that includes their text would, in your view, be contrary to the values of the founders?

A. I'm trying to think of a context where possibly I could see -- you know, yeah, if you are

talking about a state capitol, you're talking about freestanding the text, yes, I think that's inconsistent with the values.

MR. DAVIS: I don't think I have anything more. But let me take -- can we take one more five-minute break and I'll just confirm that and then --

MR. BLEISCH: Sounds great, yeah. Let's make it maybe like a little bit more. Assuming you don't have anything, I'll just make sure that I'm all set.

MR. DAVIS: Sure, sounds good. So we'll jump back on --

MR. BLEISCH: Like seven minutes-ish or whatever.

MR. DAVIS: 1:55?

MR. BLEISCH: Yep.

(Recess taken)

MR. DAVIS: Nothing further from me. Thanks, Professor Green.

THE WITNESS: Thank you.

EXAMINATION

BY MR. BLEISCH:

Q. All right. So, Dr. Green, was the report that you submitted here that we've been talking

about, was this based on other reports in similar cases involving Ten Commandments?

A. Yes. I relied on some of the material from some of the other reports that I have written.

Q. Okay. And you were asked about your paragraph 40 where you mention the Ten Commandments Display Act.

Having had some time to recall, do you remember what that might be a reference to?

A. I think that's a reference to a different case. I was meaning to say the governor's, you know, whatever. I can't remember exactly what the governor did, if it was just an executive order or whatever, but whatever created the authorization for that act, for the Ten Commandments in Indiana.

Q. All right. It was a confusion of --

A. Yeah, I was just confused.

Q. -- what government action is?

A. Yeah.

Q. Okay. You were also asked about agreeing or disagreeing with various Supreme Court cases.

When you gave your answer, were you giving your answer as a historian or as a lawyer?

A. As an historian, I disagree with the way that they, you know, sometimes approach and use

historical date.

Q. Similarly, you were asked about a quote from Justice Alito in, I believe, American Humanist Association. And you said you disagreed with his quote there.

Was that as a historian as well?

A. Yes, it was.

Q. You were -- you were also asked about the Ten Commandments having a secular meaning.

Do you remember that line of questioning?

A. Yes.

Q. Do you think the Ten Commandments is a secular document?

A. No, it's not. It's a religious document. It is -- it is found in the Bible. Our laws, prohibition on murder, you know, theft, whatever, would all be there regardless of the Ten Commandments. The Ten Commandments is a religious document.

Q. Then let's see. I think I'm almost done.

You were also asked and spoke pretty at length about historians and their job. And you indicated that some facts are facts despite objective -- or subjective, I should say, considerations, like George Washington was the first president.

Do you recall that?

A. Yes.

Q. And as I understand and I just want to make sure this is clear here in the record, as I understand, your job as a historian is to take those disparate facts in context and create a reliable narrative based on those?

A. Yes, a reliable and usable narrative based upon those -- based upon those facts.

Q. Okay. And then just because I want to make sure it's extra clear on the record, the portion in paragraph 40, is it possible that that came from another report, the portion that -- the outline, the --

A. It's possible that the quotation could come from, you know, a different report.

Q. Okay. Did you review every part of your report before submitting?

A. Yes, I did. Like I said, I missed that part. But, yes.

MR. BLEISCH: Can we take just a one-minute break, please?

MR. DAVIS: Sure.

(Pause)

BY MR. BLEISCH:

Q. Dr. Green, is it true that part of your report was taken from other reports in similar cases?

A. Yes.

Q. Okay. But you went through and reviewed all the language in this report to make sure that it applied to this current case?

A. Yes.

MR. BLEISCH: Okay. That's all I have.

MR. DAVIS: Nothing further here.

MR. BLEISCH: Thanks so much. Thanks for bearing with me.

MR. DAVIS: Thanks for your time, Professor Green. Appreciate it.

THE WITNESS: All right.

MR. DAVIS: Sandy, we will order a copy.

MR. BLEISCH: And we'll take signature. Thank you.

(Deposition concluded at 2:06 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA CIVIL LIBERTIES UNION, et al.	)	
Plaintiffs,	)	
-v-	)	No. 1:00-cv-00811-SEB-VSS
MIKE BRAUN,	)	
Defendant.	)	

Job No. 209984

I, STEVEN K. GREEN, J.D., Ph.D., state that I have read the foregoing transcript of the testimony given by me at my deposition on September 8, 2026, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheets provided herein.

_____
STEVEN K. GREEN, J.D., Ph.D.

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, Sandra Marchky, a Notary Public in and for the county and state, do hereby certify that the deponent herein was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

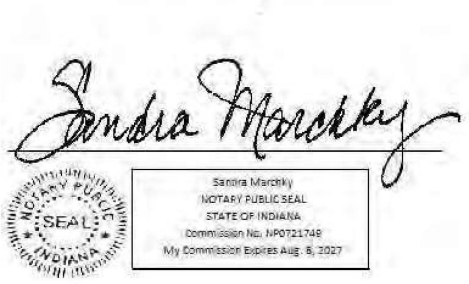
That the foregoing deposition was taken on behalf of the Defendant; that said deposition was taken at the time and place heretofore mentioned between 11:02 a.m. and 2:06 p.m.;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the testimony given by said deponent;

And thereafter presented to said witness for signature; that this certificate does not purport to acknowledge or verify the signature hereto of the deponent.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorney for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 14th day of September, 2026.



My Commission Expires:
August 8, 2027

Job No. 209984

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