Posting Decalogue OK—sometimes: A split Supreme Court decision

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Advocates for church-state separation generally gave a collective sigh of relief last month when the Supreme Court ruled that the posting of the Ten Commandments inside two Kentucky courthouses is unconstitutional. But at the same time the court, closely divided over displays of the Decalogue on government property, said a monument listing the “shalt nots” outside the state capitol building in Texas is permissible.

“We won more than we lost,” said Barry Lynn, executive director of Americans United for Separation of Church and State. “And I think that many displays, including any that take place in our government-funded schools, will now be clearly forbidden.”

At the Baptist Joint Committee office, general counsel K. Hollyn Hollman said that the two decisions uphold “the neutrality principle” of government toward religions. Activists who favor religious displays on public grounds “should know they are on shaky ground,” she said.

The wall of separation, for now, is intact but it is “no longer secure in the present environment,” cautioned C. Welton Gaddy, president of the Interfaith Alliance, who said he was troubled by the ruling in the Texas case.

Disappointment was voiced by the Christian right. Tony Perkins, president of the Family Research Council, said the decisions made public on June 27 “solve nothing.” He predicted that the high court justices would continue to pick and choose “which displays offend them and which they deem worthy.”

James Dobson, founder of Focus on the Family, issued a strongly worded condemnation, saying a “religious witch hunt . . . has infected virtually every level of our government.”

A Pew Forum poll in August found that 72 percent of Americans said it is proper to display the Ten Commandments on public property. Even among self-described “nonevangelical white Protestants,” 75 percent found it proper.

Justice David Souter, writing for a 5-4 majority in the Kentucky case, found “no legitimizing secular purpose” for the courthouse displays. Chief Justice William Rehnquist, writing for a 5-4 majority in the Texas case, said the capitol monument is “far more passive” than are the commandments on schoolhouse walls, which were struck down by the high court in 1980.

Taken together, the decisions indicate the justices’ determination that there are instances—taken on a case-by-base basis—in which the biblical laws may be placed in a government context.

In their separate opinions, Souter and Rehnquist both pointed out the frieze in their courtroom that depicts lawgivers, including Moses holding a tablet with the Ten Commandments. “Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause,” wrote Rehnquist.

The closely watched cases ended with “the perfect compromise,” said Michael Barkun, professor of political science at Syracuse University. “Context was essential,” Barkun told Religion News Service. “Clearly, the text has a quite different significance inside a courtroom—in the presence of the judges, litigants and attorneys—than it might on the lawn.”

After legal challenges were filed against the Kentucky displays, officials who had installed them in the courthouses added other documents, such as the Declaration of Independence, to bolster their claim that these were not religious displays but rather an affirmation of the documents’ role in shaping national history.

In the Texas case, the high court considered the appropriateness of a six-foot granite monument placed outside the capitol in 1961 that declares “I am the Lord Thy God” in large letters. The monument is placed alongside other markers to Texas history as part of a 22-acre campus.