

CHAPTER 96**(HJR 15)**

A JOINT RESOLUTION to return for permanent display on the New State Capitol grounds the granite Ten Commandments monument given to the Commonwealth of Kentucky in 1971 by the Fraternal Order of Eagles.

WHEREAS, in 1971, the Kentucky State Aerie of the Fraternal Order of Eagles donated to the Commonwealth of Kentucky a granite monument inscribed with the Ten Commandments; and

WHEREAS, it remained on permanent display on the New State Capitol grounds until the 1980s, when it was moved to storage due to a construction project; and

WHEREAS, the monument remained in storage until 2000, when a joint legislative resolution was signed into law that required it be returned to the New State Capitol grounds for permanent display near the floral clock; and

WHEREAS, in 2002, applying the test established by the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and its progeny, the United States Court of Appeals for the Sixth Circuit in *Adland v. Russ*, 307 F.3d 471 (6th Cir. 2002), affirmed a District Court order prohibiting the enforcement of the 2000 joint legislative resolution; and

WHEREAS, the monument was thereafter returned to the Fraternal Order of Eagles and given to the care of the organization's Hopkinsville, Kentucky, chapter, which has kept it to the present time; and

WHEREAS, in 2005, the United States Supreme Court in *Van Orden v. Perry*, 545 U.S. 677 (2005), upheld the exhibition of an essentially identical Fraternal Order of Eagles' Ten Commandments monument on permanent display on the state Capitol grounds in Austin, Texas. The Court held that *Lemon* was "not useful in dealing with the sort of passive monument that Texas has erected on its Capitol grounds," and instead focused on the "nature of the monument" and "our Nation's history." *Id.* at 686; and

WHEREAS, in 2014, the United States Supreme Court in *Town of Greece v. Galloway*, 572 U.S. 565, 575 (2014), upheld a town council's practice of beginning its public meetings with an invocation. The Court's majority opinion did not even mention *Lemon* and instead held "the Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 576; and

WHEREAS, in 2019, the United States Supreme Court in *The American Legion v. American Humanist Association*, 588 U.S. 29 (2019), upheld the display of a 32-foot tall Latin cross on state property erected as a World War I memorial. The Court expressly rejected *Lemon* and established a "presumption of constitutionality for longstanding monuments, symbols, and practices" that "use, for ceremonial, celebratory, or commemorative purposes, ... words or symbols with religious associations." *Id.* at 51, 52, and 57; and

WHEREAS, in 2022, the United States Supreme Court in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), upheld the right of a high school football coach to pray privately on the playing field after games. Citing *American Legion* and *Town of Greece*, the Court held that the "shortcomings" of *Lemon* had become "so apparent that this Court long ago abandoned *Lemon* and its endorsement test offshoot." *Id.* at 534. Formally replacing *Lemon*, the Court held "the Establishment Clause must be interpreted by reference to historical practices and understandings," and that the "line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers." *Id.* at 535-36; and

WHEREAS, the legal precedent under which the 2000 joint legislative resolution's mandate to return the monument to the New State Capitol grounds near the floral clock was enjoined, has been abandoned by the United States Supreme Court, and is no longer good law; and

WHEREAS, the Ten Commandments monument is "one of over a hundred largely identical monoliths . . . distributed [by the Fraternal Order of Eagles] to state and local governments throughout the Nation over the course of several decades," *Van Orden*, 545 U.S. at 713; and

WHEREAS, "[s]uch acknowledgments of the role played by the Ten Commandments in our Nation's heritage are common throughout America" and "throughout . . . our Nation's Capital," *Van Orden*, 545 U.S. at 688-89; and

WHEREAS, the United States Supreme Court's "opinions, like [its] building, have recognized the role the Decalogue plays in America's heritage," *Van Orden*, 545 U.S. at 689; and

WHEREAS, "Executive and Legislative Branches have also acknowledged the historical role of the Ten Commandments," which "have an undeniable historical meaning," *Van Orden*, 545 U.S. at 690; and

WHEREAS, "the Ten Commandments have had a significant impact on the development of the fundamental legal principles of Western Civilization," House Concurrent Resolution 31, 105th Congress (1997); and

WHEREAS, the Ten Commandments "have historical significance as one of the foundations of our legal system," *American Legion*, 588 U.S. at 53; and

WHEREAS, "for largely that reason, they are depicted in the marble frieze in [the United States Supreme Court's] courtroom and in other prominent public buildings in our Nation's capital," *American Legion*, 588 U.S. at 53; and

WHEREAS, the Ten Commandments have undeniable historical significance in the history and heritage of the Commonwealth of Kentucky and the nation; and

WHEREAS, it is the historical practice and understanding of the Commonwealth and the nation to acknowledge our history and heritage with permanent depictions and displays on government buildings and grounds, including the state Capitol and its grounds, and including displays of the Ten Commandments; and

WHEREAS, the Fraternal Order of Eagles has expressed its willingness to return the monument to the Commonwealth for permanent display on the New State Capitol grounds;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. The Historic Properties Advisory Commission shall:

(1) Retrieve from the Fraternal Order of Eagles, Aerie 3423, Hopkinsville, Kentucky, the Ten Commandments monument given to the Commonwealth of Kentucky in 1971 by the Kentucky State Aerie of the Fraternal Order of Eagles;

(2) Return the monument to the New State Capitol grounds and place it in the part of the New State Capitol grounds identified as Monument Park by the Finance and Administration Cabinet, Division of Historic Properties, within 180 days of the effective date of this Resolution; and

(3) Maintain the monument as a permanent display in Monument Park.

➔Section 2. If for any reason the Commonwealth is no longer able or permitted to exhibit the monument as a permanent display on the New State Capitol grounds after it has been placed in Monument Park under Section 1 of this Resolution, the Historic Properties Advisory Commission shall return the monument to the Fraternal Order of Eagles, Aerie 3423, Hopkinsville, Kentucky.

➔Section 3. The Fraternal Order of Eagles shall bear no costs for the monument's return to and display on the New State Capitol grounds or its subsequent return to and placement with the Fraternal Order of Eagles under Sections 1 and 2 of this Resolution.

Became law without Governor's signature March 27, 2025.