

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

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

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

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

13 WHEREAS, in 2002, applying the test established by the United States
14 Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and its progeny, the
15 United States Court of Appeals for the Sixth Circuit in *Adland v. Russ*, 307 F.3d
16 471 (6th Cir. 2002), affirmed a District Court order prohibiting the enforcement of
17 the 2000 joint legislative resolution; and

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

21 WHEREAS, in 2005, the United States Supreme Court in *Van Orden v. Perry*,
22 545 U.S. 677 (2005), upheld the exhibition of an essentially identical Fraternal
23 Order of Eagles' Ten Commandments monument on permanent display on the
24 state Capitol grounds in Austin, Texas. The Court held that *Lemon* was "not useful
25 in dealing with the sort of passive monument that Texas has erected on its Capitol
26 grounds," and instead focused on the "nature of the monument" and "our Nation's
27 history." *Id.* at 686; and

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

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

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

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

27 WHEREAS, the Ten Commandments monument is "one of over a hundred

1 largely identical monoliths . . . distributed [by the Fraternal Order of Eagles] to
2 state and local governments throughout the Nation over the course of several
3 decades," *Van Orden*, 545 U.S. at 713; and

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

7 WHEREAS, the United States Supreme Court's "opinions, like [its] building,
8 have recognized the role the Decalogue plays in America's heritage," *Van Orden*,
9 545 U.S. at 689; and

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

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

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

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

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

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

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

4 NOW, THEREFORE,

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

6 ➔Section 1. The Historic Properties Advisory Commission shall:

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

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

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

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

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