UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA CIVIL LIBERTIES UNION INC., *et al.*, Plaintiffs, v. MIKE BRAUN, in his official capacity as Governor of the State of Indiana, Defendant.	)	Case No. 1:00-cv-00811-SEB

MEMORANDUM IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The Ten Commandments have "historical significance as one of the foundations of our legal system." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 53 (2019). For that reason, Indiana has long welcomed monuments depicting the Ten Commandments for display on its Statehouse lawn. From 1958 to 1991, such a monument stood in the southwest corner of the Statehouse grounds—until one of the original plaintiffs here destroyed it. Then in 2000, Indiana sought to accept a replacement. But again Plaintiffs stopped it, this time wielding the tool of iconoclasm then approved by the Supreme Court: the *Lemon* test.

As this Court recently recognized, however, the *Lemon* test is no more. And without *Lemon*, the Establishment Clause permits Indiana to resume displaying this foundational text of the State's and the Nation's history and culture, alongside the numerous other historical displays on the Statehouse grounds. Summary judgment in the Governor's favor is warranted.

That is so for three principal reasons. First, under current law, this Court lacks jurisdiction over this suit. The Supreme Court has recently confirmed that a passerby's "offense, disagreement, or distaste" at observing an objectionable structure on government property does not constitute an injury in fact sufficient to support a federal lawsuit. *Nat'l Park Serv. v. Nat'l Tr. for Historic Pres.*, 609 U.S. —, 2026 WL 2564318, at *2 (U.S. Aug. 31, 2026) (per curiam) ("*NPS*"). Although some prior lower-court decisions held differently in religious-display cases, those decisions—besides being fatally undermined by *NPS*—were creatures of *Lemon*, which has now been abrogated. And even if Plaintiffs had standing to sue, their claims would be barred by sovereign immunity.

Second, on the merits, the Supreme Court has replaced *Lemon* with an analysis focused on "original meaning and history." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022). And the Court has identified how to perform this analysis—by focusing on the "hallmarks of religious

establishments the framers sought to prohibit when they adopted the First Amendment." *Id.* at 537. As both Supreme Court precedent and unrebutted expert testimony here show, those hallmarks included things like mandatory church attendance, penalties for religious dissenters, and preferential government funding to religious organizations. A passive display of the Ten Commandments does not remotely resemble these hallmarks, and Plaintiffs don't even attempt to argue otherwise.

Third, the monument is independently constitutional under post-*Lemon* precedent because it "fits within a long national tradition" of monuments acknowledging religious influences on history and culture, like the Ten Commandments. *Woodring v. Jackson County*, 986 F.3d 979, 996 (7th Cir. 2021). Indeed, in the time since the 2002 preliminary injunction in this case, the Supreme Court has upheld another Ten Commandments monument displayed on a state's capitol grounds, explaining that "[s]uch acknowledgments of the role played by the Ten Commandments in our Nation's heritage are common throughout America" and fit within the "unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Van Orden v. Perry*, 545 U.S. 677, 686–92 (2005) (plurality). As with the nativity scene upheld in *Woodring*, then, Supreme Court precedent makes the historical analysis here "straightforward." 986 F.3d at 995.

* * *

In rejecting the *Lemon* test, the Supreme Court has "made plain" that there is no longer a "modified heckler's veto" under the Establishment Clause that allows plaintiffs to "'purge from the public sphere' anything an objective observer could reasonably infer ... 'partakes of the religious.'" *Kennedy*, 597 U.S. at 534–35 (quoting *Van Orden*, 545 U.S. at 699 (Breyer, J., concurring)). There ought be no vandal's veto, either. The Court should grant summary judgment.

BACKGROUND

This case began twenty-six years ago. In 2000, Indiana sought to replace a prior monument featuring the Ten Commandments—which had been destroyed by a plaintiff, Steven Schroeder—with the monument at issue here. Before the monument was placed, however, Plaintiffs sued and sought a preliminary injunction, asserting that displaying the monument on the Statehouse lawn would constitute an unconstitutional establishment of religion. Dkt. 1; Dkt. 9.

Applying the three-part test from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), this Court enjoined the State from displaying the monument. Order Granting Prelim. Inj., Dkt. 123-1. On appeal, a divided panel affirmed under *Lemon*. *See Ind. Civ. Liberties Union v. O'Bannon*, 259 F.3d 766, 768, 770, 772–73 (7th Cir. 2001). In dissent, Judge Coffey agreed that the Seventh Circuit was "bound to apply *Lemon*" but opined that the State had a valid secular purpose and that the monument's primary effect would not be to endorse religion. *Id.* at 775–79. The Supreme Court denied certiorari.

In light of the Seventh Circuit's decision, the parties stipulated on remand that "current governing precedent" prevented the State from erecting the monument. Stipulation to Enter Final Judgment ¶¶ 4–5, Dkt. 123-2. But while agreeing to make the preliminary injunction permanent, then-Governor O'Bannon "reserve[d] the right to file a motion under Rule 60" should the law change. *Id.* ¶ 5. In 2002, the Court entered a final judgment permanently enjoining the State from erecting the monument on the Statehouse grounds. Final Judgment, Dkt. 123-3.

Shortly after taking office in January 2025, Defendant Governor Mike Braun asked this Court to vacate the permanent injunction in light of the Supreme Court's abrogation of *Lemon*. Dkt. 60; *see Kennedy*, 597 U.S. at 534. This Court granted the Governor's motion. Dkt. 92. The Court explained that there is "no dispute that *Lemon*, which served as the primary legal

underpinning for the judgment, no longer provides the applicable legal test for assessing an Establishment Clause claim in this context." *Id.* at 8. And because "the continued prospective enforcement of the permanent injunction … was supported entirely by precedent that has now been abrogated," the injunction was "not equitable." *Id.* But the Court held that it could not yet address the monument's constitutionality under *Kennedy*'s "historical inquiry." *Id.* at 8–9. Accordingly, the Court temporarily stayed the lifting of the permanent injunction and authorized Plaintiffs to file an amended complaint. *Id.* at 8, 10–11.

In June 2026, several Plaintiffs—the ACLU, on behalf of its "members," and three individuals—filed a motion to amend their complaint. Dkt. 93.[1] Discovery ensued, and on September 25, 2026, Plaintiffs filed their motion for summary judgment. Dkt. 114.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. "America's founders were well acquainted with religious establishments," since England had an established church and several colonies had religious establishments at the time of the founding. Hall Report 4, Dkt. 123-4.

2. Religious establishments in early America and at the time of the founding could be identified by certain legal practices engaged in by the government. Hall Report 4–16, 54, Dkt. 123-4; *see also* Green Report ¶ 24, Dkt. 123-5 (identifying certain practices as shorthand for "religious

[1] The Court gave all Plaintiffs "time … to determine whether they wish to proceed with this litigation by filing an amended complaint … and/or whether … the complaint as originally filed remains a justiciable case or controversy under the current legal landscape." Dkt. 92 at 10–11. Several Plaintiffs accepted the Court's invitation and sought leave to file an amended complaint within the 45-day window. Dkt. 93. But other former Plaintiffs—including Mr. Schroeder, the Plaintiff who vandalized the original monument—did neither. *See* Dkt. 122 ("Mr. Schroeder is not included as a plaintiff in the Amended Complaint and … has not otherwise been granted permission by the Court to participate as a party in this litigation."). Given those Plaintiffs' decision not to proceed as instructed, their claims should be deemed abandoned and dismissed. *Cf. Murphy v. Walker*, 51 F.3d 714, 717 n.3 (7th Cir. 1995) (holding that plaintiff's failure to timely file an amended complaint resulted in a dismissal without prejudice becoming final).

establishments" in "1776"); Green Dep. Tr. 46:15–48:7, Dkt. 123-6.

3. The basic hallmarks of an established religion in early America and at the founding were: "1. government control over the doctrines, structure, and personnel of the established church; 2. mandatory attendance at religious worship service in the established church; 3. government financial support of the established church; 4. restrictions on worship by dissenters; 5. use of the state church for civil functions; 6. restrictions on political participation by dissenters." Hall Report 4–5, Dkt. 123-4 (citing Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105 (2003)) (footnotes omitted).

4. No one at the time of the founding would have understood a religious monument or display on public property to constitute an establishment of religion. Hall Report 54, Dkt. 123-4.

5. Shortly after the founding, religious imagery and language were included on government seals, in officials' speeches, and throughout public prayers. *See* Hall Report 17–24, Dkt. 123-4.

6. Numerous public buildings also contained, and still contain, biblical and religious inscriptions and symbols. Hall Report 24–31, Dkt. 123-4 (collecting examples); Shubow Report 7–26, Dkt. 123-7 (collecting examples).

7. "[T]here are more than a hundred representations of Moses and/or the Ten Commandments on public property in Washington, DC and throughout the nation." Hall Report 25, Dkt. 123-4; *see* Hall Report 31–46, Dkt. 123-4; Shubow Report 10–11, 15–16, Dkt. 123-7 (same).

8. "Numerous scholars, civic leaders, and jurists have recognized that the Commandments are a source of Western and American law." Hall Report 31, Dkt. 123-4; *see* Hall Report 31–34,

Dkt. 123-4.

9. In the mid-twentieth century, a Minnesota judge, seeking to "expose[ ]" "troubled youths" "to one of mankind's earliest and long-lasting codes of conduct," partnered with Cecil B. DeMille and the Fraternal Order of Eagles to help place granite monuments inscribed with the Ten Commandments throughout the United States. Hall Report 34, Dkt. 123-4. The Fraternal Order of Eagles eventually started a donation campaign for monuments including that version of the Ten Commandments. Hall Report 34, Dkt. 123-4.

10. The donated monuments were erected between 1956 and 1983. Hall Report 34, Dkt. 123-4. As of 2003, approximately 140-150 were still standing across the nation. *See* Hall Report 34–44, Dkt. 123-4 (listing monuments).

11. In 1958, Indiana received and displayed one such donated monument depicting the Ten Commandments on its Statehouse lawn. Stipulations of Fact ¶ 24, Dkt. 123-8.

12. The donated monument joined at least 19 other monuments, historical markers and other displays, which remain on the Statehouse grounds today and commemorate various aspects of Indiana's and the Nation's history and culture. *See* Second Decl. of Matthew Broadwell ¶¶ 4–56, Dkt. 123-9; Stipulations of Fact Ex. 2, Dkt. 123-8. Additional displays at the Statehouse include artwork inside the Capitol, such as the "Spirit of Indiana" mural, which depicts Indiana as a woman surrounded by Greco-Roman gods and goddesses. Jack Averitt, *Statehouse Mural Draws Praise, With Reservations*, The Indianapolis News, May 15, 1963, https://perma.cc/E64G-P96T; *see also* Schroeder Dep. Tr. 63:17–64:11, Dkt. 123-10 (discussing "apotheosis" of Indiana). Other displays at the Statehouse also include numerous monuments on the Statehouse lawn, such as a statue of George Washington including an inscription about "[r]eligion and morality enjoin[ing] … conduct." Broadwell Decl. ¶¶ 20–27, Dkt. 123-9.

13. In 1991, plaintiff Stephen Schroeder repeatedly vandalized and ultimately destroyed the original Ten Commandments monument. Schroeder first graffitied the words "mene mene tekel upharsin," an Aramaic phrase about God's judgment, in paint on the monument. Schroeder Dep. Tr. 23:15–24:17, Dkt. 123-10. Then Schroeder returned to "knock [the monument] down." *Id.* 25:8–26:6. After Indiana "set [the monument] back up" and installed cameras, Schroeder returned "in broad daylight," "pushed it over," and "broke" it. *Id.* 26:5–19. Schroeder was convicted of criminal mischief. *Id.* 21:11–22, 33:17–34:2; Stipulations of Fact ¶ 26, Dkt. 123-8.

14. The Eagles initially moved the original monument to one of their lodges in Anderson, Indiana. Dkt. 21 at 6. It was eventually moved to a church in Bedford, Indiana. Tanford Dep. Tr. 27:25–28:10, Dkt. 124.

15. In 2000, a state representative arranged to place a new monument "near the site of the former monument" on the Statehouse lawn. Stipulations of Fact ¶¶ 24, 26–28, Dkt. 123-8.

16. One side of the monument depicts the Ten Commandments, and other sides depict the Bill of Rights and the Preamble to the Indiana Constitution. Stipulations of Fact ¶¶ 11, 14, 19, Dkt. 123-8. The remaining side explains it was a "Gift of the Indiana Limestone Industry – 2000 A.D.," and that "[t]his monument replaces one donated by the Aeries and Auxiliaries of the Indiana Fraternal Order of the Eagles on October 25, 1958." Stipulations of Fact ¶ 17, Dkt. 123-8.

17. The text of the Ten Commandments on the monument was intended to mirror the text on the original monument. Stipulations of Fact ¶ 27, Dkt. 123-8.

18. The monument was intended to be placed near the site of the prior monument, on the southwest portion of the Statehouse lawn. Stipulations of Fact ¶ 28, Dkt. 123-8.

19. In a press release, then-Governor Frank O'Bannon noted that the Ten Commandments would soon "stand alongside the abiding principles of our form of government, especially its

protections of individual rights." Stipulations of Fact Ex. 1, Dkt. 123-8. The monument was planned to be "an integral part of the Statehouse setting, which honors the history of our state and our nation." Stipulations of Fact Ex. 1, Dkt. 123-8.

20. Because of this Court's and the Seventh Circuit's decisions concluding that *Lemon* barred the State from displaying the Ten Commandments, the monument was never placed on the Statehouse lawn. Dkt. 92 at 2.

21. Plaintiffs claim that, if the monument is on the Statehouse lawn, they will be offended by seeing it. *See* Dkt. 101 ¶¶ 50, 54, 58; Tanford Dep. Tr. 34:2–18, Dkt. 124.

22. Plaintiffs also claim that, even if they never see the monument, they will be offended by its existence on public property. *See* Dkt. 101 ¶¶ 50, 54, 58; Tanford Dep. Tr. 34:2–18, Dkt. 124; Armstrong Dep. Tr. 46:14–47:14, Dkt. 124-1; Abdullah Dep. Tr. 22:16–19, Dkt. 124-2.

23. Plaintiffs characterize their injuries as "psychological," "psychosocial," "emotional," "religious," and rooted in "offense." Tanford Dep. Tr. 35:14–37:2, Dkt. 124; Abduallah Dep. Tr. 34:1–11, Dkt. 124-2; Schroeder Dep. Tr. 65:17–66:17, Dkt. 123-10; Armstrong Dep. Tr. 21:22–22:14, Dkt. 124-1; Lesesne Dep. Tr. 35:2–36:14, Dkt. 124-3; Drake Dep. Tr. 17:20–18:16, Dkt. 124-4; Conrad Dep. Tr. 14:25–15:6, Dkt. 124-5.

24. Plaintiffs do not claim any monetary injury. *See* Dkt. 101 ¶¶ 50, 54, 58; Tanford Dep. Tr. 35:14–17, Dkt. 124; Armstrong Dep. Tr. 21:22–22:4, Dkt. 124-1.

25. Plaintiffs do not claim any physical injury. *See* Dkt. 101 ¶¶ 50, 54, 58; Tanford Dep. Tr. 35:18–19, Dkt. 124; Armstrong Dep. Tr. 22:3–4, Dkt. 124-1.

26. Plaintiffs do not claim that the Governor will impose liability or penalties if they do not follow the Ten Commandments as set forth on the monument. *See* Dkt. 101 ¶¶ 50, 54, 58; Tanford Dep. Tr. 40:5–41:3, Dkt. 124.

27. Some Plaintiffs claim the Ten Commandments are offensive only if displayed on public property. Tanford Dep. Tr. 42:11–44:18, Dkt. 124; Armstrong Dep. Tr. 22:23–23:12, Dkt. 124-1; Schroeder Dep. Tr. 66:24–67:13, Dkt. 123-10. Another claims they are offensive even if displayed on private property. Abduallah Dep. Tr. 23:5–24:11, Dkt. 124-2.

28. The ACLU asserts only associational standing, relying on the asserted standing of four "members." Dkt. 115 at 17–20; 30(b)(6) Dep. Tr. 21:12–17, 65:16–66:24, 74:6, Dkt. 124-6.

29. Three of those members claim offense-based injuries only. Tanford Dep. Tr. 34:2–37:2, Dkt. 124; Drake Dep. Tr. 17:20–18:16, Dkt. 124-4; Conrad Dep. Tr. 14:20–15:6, 17:4–23, Dkt. 124-5.

30. The remaining member—Reverend William Lesesne—claims that, if the monument is moved to the Statehouse, he "would feel internally compelled" to expend additional pastoral and teaching efforts to correct what he perceives to be a public misrepresentation of a text central to his ministry. Lesesne Dep. Tr. 37:9–25, 45:21–47:12, Dkt. 124-3; *accord* Dkt. 115 at 18. The State would not be doing anything to "force or compel [Reverend Lesesne] to discuss" the Ten Commandments, Lesesne Dep. Tr. 45:21–46:23, Dkt. 124-3, and Reverend Lesesne is unaware of any direct interference with his predecessors' ministry in the 33 years of the prior monument's existence, *id.* 50:9–25, Dkt. 124-3.

STATEMENT OF MATERIAL FACTS IN DISPUTE

The Governor's position is that the material facts are those above; that those facts are not disputed and mandate summary judgment for the Governor; and that the additional facts in Plaintiffs' motion are immaterial. Per S.D. Ind. L.R. 56-1(b), however, the Governor notes that the following facts from Plaintiffs' motion (while not material) are disputed.

It is disputed whether the "Ten Commandments are not traditionally a part of Islamic

teaching." Dkt. 115 at 6 n.3; *see* Kimes Report ¶ 24, Dkt. 124-7. It is disputed whether the claimed "theological differences" in Ten Commandments translations fall along "Jewish, Catholic, and Protestant" lines. Dkt. 115 at 7; *see* Kimes Report ¶¶ 5–7, 37–41, Dkt. 124-7; Halpern Report ¶¶ 84–85, Dkt. 124-8. No admissible evidence supports the conclusion that the monument's text is "taken from the King James Bible's Version's [*sic*] translation." Dkt. 115 at 7. The Governor disputes that the monument "misrepresents Jewish belief" about "the 603 other commandments," *id.*, as the monument says nothing about the total number or relative status of biblical commandments, *see* First Decl. of Matthew Broadwell ¶ 5, Dkt. 125. It is disputed whether the Ten Commandments "make sense as a coherent document only as a statement given by God," Dkt. 115 at 8, since, *e.g.*, the Ten Commandments also are "a commonplace societal symbol, representing the rule of law generally," Halpern Report ¶ 6, Dkt. 124-8.

The Governor disputes that "[t]here is no evidence that the Ten Commandments directly influenced English common law" or "American law," Dkt. 115 at 8–9, since, as Plaintiffs' own expert has written, "[f]ew people, if any, would dispute that the Ten Commandments ... 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," Green Dep. Tr. 81:18–82:7, Dkt. 123-6. The Governor disputes that "there are no references to God" or the "Ten Commandments" in the "Constitution," since the Constitution is dated "the Year of our Lord" 1787 and excepts Sundays from the time for the President to veto bills. U.S. Const. art. I, § 7; *id.* attestation; Hall Report 53, Dkt. 123-4.

The Governor disputes that "[t]he practice of placing Ten Commandments monuments with the complete text of the Decalogue on the exterior of courthouses and government buildings in the United States originated ... in the mid-1950s" as incomplete since Plaintiffs' own expert identified interior-of-courthouse examples going back to 1918 and 1920, Chancey Dep. Tr. 45:13–

17, Dkt. 125-1. The Governor disputes the Fraternal Order of Eagles' claimed "religious purpose," Dkt. 115 at 13, since "[t]he Eagles, 'while interested in the religious aspect of the Ten Commandments, sought to highlight the Commandments' role in shaping civic morality.'" *Am. Legion*, 588 U.S. at 53 (quoting *Van Orden*, 545 U.S. at 701 (Breyer, J., concurring)).

The Governor disputes that one is "not ... able to avoid seeing the monument" when using the Statehouse's west entrance, Dkt. 115 at 19, since it will be a seven-foot-tall monument on a 1.93-acre lawn, Dkt. 102 ¶¶ 16, 24. The Governor would further dispute characterizations of the monument in Plaintiffs' summaries of their deposition testimony, Dkt. 115 at 13–20, but understands them merely to be recounting what Plaintiffs testified, rather than asserting "facts."

STANDARD OF REVIEW

Summary judgment is appropriate if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). At summary judgment, a court "construe[s] facts in the light most favorable to [the nonmovant]" and "draw[s] all reasonable interferences in [its] favor." *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572 (7th Cir. 2021); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The movant has the burden of demonstrating the absence of a factual dispute. *See Lewis v. Wilkie*, 909 F.3d 858, 866 (7th Cir. 2018). Only if carried, the burden shifts to the nonmovant to produce evidence creating a dispute for trial. *See id.*

ARGUMENT

I. The Court Lacks Jurisdiction to Reach the Merits of the Establishment Clause Claim

Before reaching the merits of Plaintiffs' Establishment Clause claim, the Court must confirm that it has jurisdiction over the dispute. *See Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 729 (7th Cir. 2020). The Court lacks jurisdiction for two independent reasons. First,

Plaintiffs will not suffer any cognizable injury, meaning they lack standing to sue. And second, even if Plaintiffs had standing, their suit would be barred by sovereign immunity.

A. Plaintiffs lack standing to challenge Indiana's display of the Ten Commandments

1. Plaintiffs have no cognizable injury

Plaintiffs lack standing to challenge Indiana's proposed monument because they cannot establish a "concrete and particularized" injury in fact. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Supreme Court and Seventh Circuit have recently and "repeatedly held that mere offense, disagreement, or distaste does not qualify as a concrete and particularized injury under Article III." *NPS*, 2026 WL 2564318, at *2; *accord Freedom From Religion Found. v. Obama*, 641 F.3d 803, 808 (7th Cir. 2011) ("But unless all limits on standing are to be abandoned, a feeling of alienation cannot suffice as injury in fact."). Rather, "to secure standing a plaintiff must identify some concrete and particularized injury 'other than the psychological consequence presumably produced by observation of conduct with which one disagrees.'" *NPS*, 2026 WL 2564318, at *2 (quoting *Valley Forge Christian Coll. v. Am. United for Separation of Church & State*, 454 U.S. 464, 485 (1982)). Plaintiffs' claimed injuries fail to meet that standard.

Here, each individual plaintiff expressly disclaimed any type of injury beyond an "emotional, psychological" injury from seeing something "offensive." Tanford Dep. Tr. 35:14–37:2, Dkt. 124; *see also* Abduallah Dep. Tr. 34:9–11, Dkt. 124-2 ("Q. But it's that sense of offense that you're claiming as your injury? A. Yeah."); Armstrong Dep. Tr. 21:22–22:7, Dkt. 124-1 ("Q. Has it caused you any sort of emotional or mental injury? A. I find it offensive."). Their claim is that they sometimes walk, drive, or jog by the Statehouse lawn; that in doing so they may glimpse the monument; and that the monument is "offensive on a religious," "personal," and "moral" level, Tanford Dep. Tr. 36:20–37:2, Dkt. 124, because it is "inappropriate ... on the grounds of the

Statehouse," Armstrong Dep. Tr. 20:25–21:21, 22:12–14, Dkt. 124-1; *see also* Tanford Dep. Tr. 36:25–37:2, Dkt. 124 ("I think that is bad law, bad politics and bad – and unconstitutional.").

That is on its face nothing more than the "psychological consequence presumably produced by observation of conduct with which one disagrees." *NPS*, 2026 WL 2564318, at *2. Indeed, the injury is if anything even more nebulous than that—Plaintiffs say merely "having knowledge" that the monument exists on government property itself causes their harm. Armstrong Dep. Tr. 46:14–47:14, Dkt. 124-1; *see also, e.g.*, Tanford Dep. Tr. 34:2–18, Dkt. 124 ("not just seeing it that would bother" but also "know[ing] that it was there"). Plaintiffs are of course free to disapprove of the monument, but they cannot repackage an ideological and legal objection as an injury in fact. The individual plaintiffs have thus failed to show any cognizable injury.

NPS demonstrates the point. There, one of the plaintiff organization's members claimed an injury to challenge a construction project at the White House based on the facts that she "live[d] in Washington, D.C.," she "expect[ed] to visit the neighborhood around the White House 'about once a month,'" and "having to view the finished ballroom the government [was] constructing would cause her to suffer 'injuries' to her 'aesthetic, cultural, and historical interests.'" 2026 WL 2564318, at *2. But the Supreme Court rejected this theory, because "distress at or disagreement with the activities of others is not a basis under Article III for a plaintiff to bring a federal lawsuit." *Id.* (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 390 n.3 (2024)). The same goes here. "Perhaps nearly any government action or project offends someone's sensibilities," *NPS*, 2026 WL 2564318, at *2; and the place to air those views is the political process, not a federal lawsuit.

For its part, the ACLU relies on associational standing. *See* Dkt. 115 at 17–20. An association has standing to sue on behalf of its members only when (1) its members would otherwise independently have standing, (2) the interests the association seeks to protect are

"germane to its purpose," and (3) "neither the claim asserted nor the relief requested requires the participation of its individual members." *Satanic Temple, Inc. v. Rokita*, 163 F.4th 1061, 1068 (7th Cir. 2026). The ACLU therefore must "identify a member who has standing … in her own right" to press its claims. *Id.* But it can't. The ACLU identified four members it relies on for standing: Alex Tanford, Danielle Drake, McKenzie Conrad, and Plaintiffs' expert witness Reverend William Lesesne. *See* Dkt. 115 at 17–20; 30(b)(6) Dep. Tr. 21:14–17, 65:16–66:24, 74:6, Dkt. 124-6. Drake and Conrad each asserted only that they would suffer offense from viewing the monument. Drake Dep. Tr. 17:20–18:16, Dkt. 124-4; Conrad Dep. Tr. 14:20–15:6, Dkt. 124-5. They would thus lack standing for the same reason as each of the individual Plaintiffs.

The only individual that the ACLU identified with a distinct (though still inadequate) theory of injury is Reverend Lesesne. Reverend Lesesne suggests that he will in the future be injured by the expenditure of his additional pastoral and teaching effort to correct what he perceives to be the monument's public misrepresentation of a text central to his ministry. Lesesne Dep. Tr. 35:2–37:25, Dkt. 124-3; Dkt. 115 at 18. Because Reverend Lesesne is not asserting any loss of personal monetary resources, this purported injury relates only to the congregational resources Reverend Lesesne claims he would need to expend to counteract a display of the Ten Commandments—i.e., his time *as pastor* that might be spent on other things. That theory cannot support the ACLU's standing for at least two reasons.

First, the Supreme Court has specifically rejected the argument that a plaintiff can "manufacture its own standing" merely by choosing to "divert[ ] its resources in response to a defendant's actions." *All. for Hippocratic Med.*, 602 U.S. at 394–95. Indeed, as the Seventh Circuit recently explained, "[a]n organization does not have standing when a government entity frustrates its 'abstract social interests' without a cognizable Article III injury." *Wis. Voter All. v. Millis*, 166

F.4th 627, 637 (7th Cir. 2026). Unless there has been a "direct interference" with the organization's "core business activities," there is no cognizable injury. *Id.* (cleaned up). Indiana's monument does not directly interfere with Reverend Lesesne's ability to practice his faith, lead his congregation, or teach his doctrine. On the contrary, Reverend Lesesne testified that he already teaches about the Ten Commandments regardless of what is posted on the Statehouse lawn; he agreed that Indiana isn't doing anything to "force or compel [him] to discuss" the Ten Commandments; and he acknowledged that his parishioners in any event already had resources available to them setting out his Church's teachings on the Ten Commandments that could resolve any confusion. Lesesne Dep. Tr. 38:12–20, 45:21–46:1, 46:19–23, 49:9–50:8, Dkt. 124-3. Likewise, he could not describe any direct interference with his predecessors' ministry in the 33 years in which the prior monument stood on the Statehouse lawn. *Id.* 50:9–25. Thus, Reverend Lesesne cannot identify a concrete injury on which to base his own standing.

Second, even if Reverend Lesesne could establish his own standing, the use of *his congregation*'s resources is not "germane" to *the ACLU*'s purpose. *Rokita*, 163 F.4th at 1068. The ACLU is not a part of the Episcopal Church. It has no stake in what Reverend Lesesne preaches or what he uses his pastoral time to accomplish. It therefore cannot piggyback off of Reverend Lesesne's supposed expenditure of congregational resources. And because none of the ACLU's other members could assert standing, "it follows that [the ACLU] lacks associational standing." *Freedom From Religion Found. v. Lew*, 773 F.3d 815, 821 n.2 (7th Cir. 2014).

2. The Seventh Circuit's prior offended observer precedents do not create standing

Some Seventh Circuit cases have found standing when plaintiffs have "come into direct and unwelcome contact with a religious display." *Woodring*, 986 F.3d at 985. But those decisions are fatally undermined by more recent Supreme Court precedent holding that offense does not

constitute a cognizable injury for Article III standing. As *Woodring* explains, lower courts follow precedential opinions "unless and until they have been overruled *or undermined* by the decisions of a higher court." *Id.* at 993. *NPS*—decided weeks ago—is irreconcilable with, and thus undermines, any decision allowing an offended observer to challenge a display on government property simply because he has direct contact with it. *Supra* pp. 12–13.

Offended observer standing was on poor footing even before *NPS*. Decades ago, the Supreme Court held that "a plaintiff cannot establish standing based solely on being offended by the government's alleged violation of the Establishment Clause." *Lew*, 773 F.3d at 819 (citing *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464 (1982)). Some lower courts later cabined *Valley Forge*, reasoning that since the plaintiffs there had learned of the challenged conduct from afar, *id.* at 469, plaintiffs could still challenge religious displays they had directly encountered. But this approach nonetheless "treats observation *simpliciter* as the injury," and thus is "inconsistent with *Valley Forge*," *Books v. Elkhart County*, 401 F.3d 857, 871 (7th Cir. 2005) (Easterbrook, J., dissenting), as well as *Elk Grove Unified School District v. Newdow*, 452 U.S. 1 (2004), and similar decisions. In any event, any attempt to cabin *Valley Forge* certainly cannot survive *NPS*—where it was undisputed that the offended individual *would* directly and regularly encounter the challenged structure. *Supra* p. 13.

Moreover, the reason some lower courts felt inclined to cabin *Valley Forge* to find standing in cases like this—the *Lemon* test—no longer exists. Because *Lemon* "suggested that 'the Establishment Clause forbids anything a reasonable observer would view as an endorsement of religion,'" "lower courts deduced[ ] 'such an observer must be able to sue.'" *City of Ocala v. Rojas*, 143 S. Ct. 764, 764–65 (2023) (statement of Gorsuch, J.). So they "invented" offended observer standing as an Article III carve out applied exclusively in the Establishment Clause context. *Am.*

Legion, 588 U.S. at 84 (Gorsuch, J., concurring) (collecting cases).

The Supreme Court has never endorsed offended observer standing. Instead, two Justices and many circuit judges have criticized the lower courts' creation as having "no basis in law," *id.* at 80; (Gorsuch, J.); turning political disputes into legal questions, *City of Ocala*, 143 S. Ct. at 765 (Gorsuch, J.); and "appear[ing] to warp the very essence of the judicial power vested by the Constitution," *id.* at 767 (Thomas, J., dissenting from the denial of certiorari); *see also, e.g.*, *Kondrat'yev v. City of Pensacola*, 949 F.3d 1319, 1336 (11th Cir. 2020) (Newsom, J., concurring) (permitting cases based on this "sort of squishy 'psychological' injury" "open[s] the Judiciary to an arguable charge of providing 'government by injunction'"); *Books*, 401 F.3d at 871 (Easterbrook, J., dissenting) (offended observer standing "fails to" "separate injured from ideological plaintiffs"). And the Supreme Court has now "abandoned" *Lemon*, *Kennedy*, 597 U.S. at 534—so courts can provide no justification (if they ever could) for disregarding Article III.

"With the demise of *Lemon*'s reasonable observer test, 'little excuse' now remains 'for the anomaly of offended observer standing.'" *City of Ocala*, 143 S. Ct. at 765 (Gorsuch, J.). And *NPS* clarifies that *Valley Forge*'s principle applies not only to alleged violations that one simply knows about, but also to those that one will actually encounter. Thus, after *NPS*, the baselessness of offended observer standing is even clearer. So even if Plaintiffs could establish a cognizable injury under prior circuit precedent, they cannot assert offended observer standing after *NPS*.

B. Sovereign immunity bars Plaintiffs' suit

Even if Plaintiffs had standing to sue, their claims would still be barred by sovereign immunity. Generally, sovereign immunity prohibits suit against States or state officers acting in their official capacities. *See Sherman v. Cmty. Consol. Sch. Dist. 21*, 980 F.2d 437, 440–41 (7th Cir. 1992); *Meadows v. Indiana*, 854 F.2d 1068, 1069 (7th Cir. 1988). Under *Ex parte Young*,

courts recognize an exception to sovereign immunity for suits that seek "to enjoin the enforcement" of an allegedly unconstitutional state statute by "naming a state official who has 'some connection with the enforcement'" of that statute. *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018). But that exception is "narrow." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996); *see Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1415 (6th Cir. 1996). It does not apply "in every case where prospective declaratory and injunctive relief is sought against an officer." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997). Rather, *Ex parte Young* applies where a "state officer[ ]" has "threaten[ed] and [is] about to commence" an enforcement action against the plaintiff. *Ex parte Young*, 209 U.S. 123, 156–57 (1908).

This application reflects *Ex parte Young*'s roots. As the Supreme Court recently explained, *Ex Parte Young* derives from cases authorizing "an antisuit injunction," *Trump v. CASA, Inc.*, 606 U.S. 831, 846 n.9 (2025)—an equitable device that allows a party to preemptively assert what would otherwise be a potential defense against a lawsuit by a state officer, *see Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 906 (6th Cir. 2014). That is how courts understood *Ex parte Young* in the "decades after it was decided" as well. *Charlton-Perkins v. Univ. of Cincinnati*, 185 F.4th 626, 643 (6th Cir. 2026). The decision, they understood, stands for "the proposition that sovereign immunity d[oes] not bar lawsuits … in which a potential defendant in an enforcement action sought an injunction against that action." *Id.* (quoting John Harrison, *Ex Parte Young*, 60 Stan. L. Rev. 989, 1008 (2008)). It does not authorize "prospective injunctive relief in general." *Id.* (quoting Harrison, *supra*, at 1008). Thus, to avoid sovereign immunity, plaintiffs must seek relief "sufficiently analogous" to an antisuit injunction or similar relief available "against a State at the Founding." *Id.* at 640.

Plaintiffs have not made that showing. The Governor is not about to enforce a law against

Plaintiffs, nor are Plaintiffs seeking to raise their Establishment Clause claim as a preemptive defense to that lawsuit. Any suggestion along those lines would be "fanciful." *United States v. Abbott*, 85 F.4th 328, 335 (5th Cir. 2023) (holding plaintiff could not use *Ex parte Young* to challenge a governor's executive order to state agencies). Rather, Plaintiffs are seeking to prevent the Governor from managing property donated to the State in a way that offends their sensibilities. *Ex parte Young* does not authorize that type of relief, and Plaintiffs have not identified any other relief available against a State at the Founding analogous to their suit. Sovereign immunity therefore bars this suit. *See Charlton-Perkins*, 185 F.4th at 643.

II. Plaintiffs' Establishment Clause Claim Fails

If the Court reaches the merits, the Governor is still entitled to summary judgment. That is so for two separate reasons: (1) a passive monument like this one does not resemble a founding-era "hallmark[ ] of [a] religious establishment[ ]," *Kennedy*, 597 U.S. at 537; and (2) even if it did, the monument is nonetheless constitutional because it "fits within" a "longstanding tradition" of governments passively acknowledging religious influences on state and national history on public property, *Woodring*, 986 F.3d at 995. Plaintiffs' claim therefore fails as a matter of law.

A. Indiana's display of the Ten Commandments will not resemble a founding-era religious establishment

For decades, lower courts were "bound by *Lemon*" rather than "the text and original understanding of the Establishment Clause." *Books v. City of Elkhart*, 235 F.3d 292, 326–27 (7th Cir. 2000) (Manion, J., concurring in part and dissenting in part). Not anymore. In *Kennedy*, the Supreme Court "abrogated" the *Lemon* test. *Groff v. DeJoy*, 600 U.S. 447, 460 & n.7 (2023) (citing *Kennedy*, 597 U.S. at 534). In its place, *Kennedy* emphasized "that the Establishment Clause must be interpreted by reference to historical practices and understandings." 597 U.S. at 535.

But the Court did not stop there. *Kennedy* also described what those key practices and

understandings *are*—namely, the "hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Id.* at 537. This analysis focuses where constitutional analysis "always" should—on "the precise text of the Constitution." *All. for Hippocratic Med.*, 502 U.S. at 378. And for those "who wrote the Religion Clauses of the First Amendment," that text's key phrase—establishment of religion—"connoted" a legal arrangement with certain defined characteristics. *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 668 (1970).

"[A]mong the foremost hallmarks" of a religious establishment was "coercion" "to engage in 'a formal religious exercise'"—like compulsory prayer or being forced "to attend church." *Kennedy*, 597 U.S. at 537. But there were also "certain other historical hallmarks of an established religion." *Id.* at 537 n.5 (citing *Shurtleff v. City of Boston*, 596 U.S. 243, 285–86 (2022) (Gorsuch, J.)). These included the government "exert[ing] control over the doctrine and personnel of the established church," "punish[ing] dissenting churches and individuals," "restrict[ing] political participation by dissenters," providing "financial support for the established church," and "us[ing] the established church to carry out certain civil functions." *Shurtleff*, 596 U.S. at 286 (Gorsuch, J.).

That these are indeed the core "indicia" of a founding-era establishment is noncontroversial. *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 601 (5th Cir. 2026) (en banc) ("scholars have drawn similar conclusions ... , and Supreme Court decisions have relied on such indicia to define an establishment"). And it is not disputed here. Professor Hall's expert testimony identifies these as "the basic hallmarks of an established religion in early America and at the time of the founding." Hall Report 4–16, 54, Dkt. 123-4. And even *Plaintiffs'* historical expert uses these hallmarks as shorthand for "religious establishments" in "1776"—saying the term meant "forced taxation to support houses of worship and the imposition of civil disabilities

on the basis of religious affiliation." Green Report ¶ 24, Dkt. 123-5; *see also* Green Dep. Tr. 46:15–48:7, Dkt. 123-6.

Kennedy requires "that a challenged law must be measured against the standard of founding-era religious establishments." *Nathan*, 173 F.4th at 601. Under *Kennedy*, then, "to prevail on [an] Establishment Clause claim, [the plaintiff] must show that the [defendant's action] resembles one of these hallmarks of religious establishment." *Hilsenrath ex rel. C.H. v. Sch. Dist. of Chathams*, 136 F.4th 484, 491 (3d Cir. 2025), *cert. denied* 146 S. Ct. 885. If the government's action "does not bear any of the hallmarks of religious establishment," the claim fails. *Id.* at 494; *see also, e.g.*, *Gaylor v. Mnuchin*, 919 F.3d 420, 436 (7th Cir. 2019) (rejecting Establishment Clause claim because plaintiff "offers no evidence that provisions like [the challenged law] were historically viewed as an establishment of religion").

Plaintiffs have not made that showing here. Nor could they. A passive monument on the Statehouse grounds doesn't coerce anyone to do anything, much less to "engage in 'a formal religious exercise.'" *Kennedy*, 597 U.S. at 537. Plaintiffs "may venerate, disdain, or curse the [monument] as they please, without reward for the first or reprisal for the last." *Am. Jewish Cong. v. City of Chicago*, 827 F.2d 120, 129 (7th Cir. 1987) (Easterbrook, J., dissenting). Plaintiffs don't even *claim* the monument would coerce them to engage in any religious exercise. Instead they admit that their injury is "offense," not a "direct requirement that one must believe in" (or do anything else with) the Ten Commandments. Tanford Dep. Tr. 40:25–41:3, Dkt. 124; *see also, e.g.*, Kerber Dep. Tr. 34:1–6, Dkt. 125-2 (no "punishment for breaking the Ten Commandments ... as a result of this monument").

Nor does the monument resemble any other hallmark of a founding-era establishment. It does not "punish[ ] dissenters"; it does not "regulate what any religious institution t[eaches], how

it worship[s], or whom it employ[s]"; it "does not compel financial support for religious institutions"; and it does not entrust any religious institution with government functions. *Nathan*, 173 F.4th at 601–02 & n.25 Again, Plaintiffs do not contend otherwise.

The hallmarks analysis here, then, is straightforward. And unsurprisingly so. While applying the Establishment Clause's "original meaning" can sometimes "pose its challenges," the task is simpler in this context, because "*[n]o one* at the time of the founding is recorded as arguing that the use of religious symbols in public contexts was a form of religious establishment." *Shurtleff*, 596 U.S. at 287 (Gorsuch, J., concurring) (emphasis added); *see also* Hall Report 54, Dkt. 123-4 (same). And here, the claimed religious symbol stands alongside undeniably secular texts, displayed together to commemorate their unified historical and legal significance. *See* Stipulations of Fact ¶¶ 11, 14, 19, Dkt. 123-8; *id.* Ex. 1. Because Plaintiffs have failed to carry their "burden" of "proving that th[e] facts align with a historically disfavored establishmentarian practice," *Firewalker-Fields v. Lee*, 58 F.4th 104, 122 n.7 (4th Cir. 2023), summary judgment is required.

Rather than attempt to satisfy the hallmarks, Plaintiffs fight the test, claiming the "original understanding of ... the meaning of the Establishment Clause" is irrelevant. Dkt. 115 at 27. Instead, according to Plaintiffs, under *Woodring*, the historical approach to the Establishment Clause means that the challenged practice is constitutional *only if* "the specific" practice is "itself longstanding or fit[s] into a longstanding historical tradition." *Id.* at 23.

But *Woodring* predated *Kennedy*, so it can't illustrate the test *Kennedy* requires. Moreover, *Kennedy* and *Woodring* should not be pitted against one another—they are *both* ways of determining whether a challenged practice complies with the Establishment Clause. That is, Plaintiffs are correct that if a government practice challenged under the Establishment Clause fits

into longstanding tradition, it is therefore constitutional—as *Woodring* demonstrates (and as is in fact true of the monument here, *see infra* pp. 24–30). But that doesn't mean a challenged practice *must* satisfy this test to be constitutional under the Establishment Clause, since even a *new* practice would plainly be constitutional if it does not implicate what the First Amendment means by an "establishment of religion" in the first place. As *Kennedy*'s author previously explained, what ultimately "matters when it comes to assessing a monument, symbol, or practice isn't its age but its compliance with ageless principles." *Am. Legion*, 588 U.S. at 86–87 (Gorsuch, J., concurring).

Kennedy itself demonstrates the point. In upholding a public high school football coach's post-game prayers there, the Court did not consider whether the prayer practice was itself longstanding (it had only begun in 2008) or fit into a longstanding historical tradition—perhaps a difficult question given that there were no public high schools playing football at the founding. Instead, the Court held that the school district's "Establishment Clause concerns" were unavailing because the coach's prayers did not "cross[] any line" implicating the "hallmarks of religious establishments." *Kennedy*, 597 U.S. at 536–37. That is the analysis Plaintiffs resist here.

Woodring itself supports that these analyses are compatible with one another. *Woodring* observed that "it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted." 986 F.3d at 988 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014)). That is a far cry from holding that history showing the specific practice is permitted is the *only* way for the Establishment Clause to be satisfied. *See Nathan*, 173 F.4th at 606–08 ("No precedent supports that bizarre view."). Indeed, *Woodring* was explicit that it was not articulating a "single test" to "govern[] all Establishment Clause challenges." 986 F.3d at 988. So *Woodring* plainly does not rule out *Kennedy*'s hallmarks test—which of course *Woodring* didn't engage with at all, since *Kennedy* hadn't yet been decided.

Under *Kennedy*, it is precisely the "original understanding of ... the meaning of the Establishment Clause" that counts. *Contra* Dkt. 115 at 27; *see Kennedy*, 597 U.S. at 535 n.25 (analysis must "faithfully reflect the understanding of the Founding Fathers"). Under that original understanding, Indiana's planned display is constitutional.

B. Indiana's Ten Commandments display is also supported by longstanding tradition

Although Indiana's monument need not fit within a longstanding practice to comport with the Establishment Clause, *see supra* pp. 22–24, the Supreme Court and Seventh Circuit have held that a display complies with the Establishment Clause where it either (1) fits within a "longstanding tradition," or (2) is itself a longstanding display. *Woodring*, 986 F.3d at 994–95 (collecting cases). Within this historical framework, *Van Orden* dictates the outcome in this case. The *Van Orden* plurality concluded that the Ten Commandments monument on Texas's state capitol grounds fit within a broader historical tradition. And Justice Breyer's concurrence reasoned that Texas's monument was itself sufficiently longstanding to satisfy the Establishment Clause. Indiana's monument is virtually indistinguishable from Texas's and thus satisfies either historical rubric.

1. Indiana's monument fits within a longstanding tradition of similar displays

This Nation's historical tradition of publicly displaying religious symbols—and representations of the Ten Commandments in particular—independently establishes the monument's constitutionality. *See Town of Greece*, 572 U.S. at 578–80; *Woodring*, 986 F.3d at 988, 995. In *Woodring*, the Seventh Circuit applied this test to uphold a nativity scene at a county courthouse in Indiana, finding it "constitutional because it fits within a long national tradition of using the nativity scene in broader holiday displays to celebrate the origins of Christmas—a public holiday." 986 F.3d at 981. The court explained that "applying a historical approach to analyze the constitutionality" of that display was "straightforward because the Supreme Court laid the

historical groundwork" in *Lynch v. Donnelly*. *Id.* at 995.

Applying the historical approach is straightforward here, too, because the Supreme Court laid the historical groundwork in *Van Orden*. There, the Supreme Court upheld a Ten Commandments monument on the Texas State Capitol grounds that was very similar to Indiana's. *Van Orden*, 545 U.S. at 681 (plurality). The plurality concluded that the Ten Commandments monument fit well within the "unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Id.* at 686 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 674 (1984)). Among many other things, that history includes resolutions passed by both houses "in 1789 asking President George Washington to issue a Thanksgiving Day Proclamation to 'recommend to the people of the United States a day of public thanksgiving and prayer, to be observed, by acknowledging, with grateful hearts, the many and signal favors of Almighty God.'" *Id.* It includes President Washington's "proclamation directly attributed to the Supreme Being the foundations and successes of our young Nation." *Id.* at 687. And it includes many judicial pronouncements recognizing the centrality of religion to American society. *See id.* at 687–88 (collecting cases).

The plurality further recognized that "acknowledgments of the role played by the Ten Commandments in our Nation's heritage are common throughout America," and have been throughout this country's history. *Van Orden*, 545 U.S. at 688. For example, a large statue of Moses holding the Ten Commandments "has overlooked the rotunda of the Library of Congress' Jefferson building since 1897." *Id.* at 689. Plaques bearing the text of the Ten Commandments have hung in two courthouses in Pennsylvania since 1918 and 1920 respectively. *See Modrovich v. Allegheny County*, 385 F.3d 397, 399 (3d Cir. 2004). The Supreme Court's own building has contained multiple depictions of Moses and the Ten Commandments since 1935. *See Van Orden*,

545 U.S. at 688 (plurality). And well over 100 monuments containing the text of the Ten Commandments—including the monument that used to stand on the Indiana statehouse lawn—have adorned public spaces across the country since the 1950s. *See* Hall Report 34–44, Dkt. 123-4 (collecting examples); *see also Am. Legion*, 588 U.S. at 53 (recounting history). Even this Court's ceremonial courtroom depicts the Ten Commandments, next to the seal of the State of Indiana. Additionally, both the "Executive and Legislative Branches" have repeatedly "acknowledged the historical role of the Ten Commandments" in American society. *Van Orden*, 545 U.S. at 690 (plurality) (collecting examples).

Plaintiffs cast this history aside and argue that Indiana's monument is not part of any longstanding tradition. *See* Dkt. 115 at 25. To make that argument, Plaintiffs must insist that the relevant history and tradition is limited to stone monuments containing an English translation of the Ten Commandments. *See id.* at 25–26. Not so, for at least two reasons.

First, when assessing a practice's historical pedigree, courts do not take a myopic view of what traditions may be relevant. *See, e.g.*, *Gaylor*, 919 F.3d at 436 (rejecting district court's efforts to "distinguish[ ]" a historical practice as "too fine a distinction"); *Hunter v. Dep't of Educ.*, 115 F.4th 955, 965 (9th Cir. 2024) (considering broader history of tax exemptions where there was a "dearth of historical equivalents" to challenged practice); *New Doe Child #1 v. United States*, 901 F.3d 1015, 1021–22 (8th Cir. 2018) ("[T]he specific practice of placing 'In God We Trust' on U.S. money did not begin until 1864 and was not uniform across all currency until almost a century later. But the practice comports with early understandings of the Establishment Clause" and the "unbroken history of official acknowledgment" of religion by the government.); *Perrier-Bilbo v. United States*, 954 F.3d 413, 425 (1st Cir. 2020) (holding naturalization oath's language "so help me God," which first appeared in 1929, was part of broader "history of invocations of God in

public oaths and statements"). Rather, "the historical approach focuses on 'categories of monuments, symbols, and practices with a longstanding history,'" and asks whether the challenged conduct fits within such a category. *Woodring*, 986 F.3d at 995.

Woodring shows how this analysis functions. There, the Seventh Circuit looked to the historical analysis conducted in *Lynch v. Donnelly*—which did *not* focus exclusively on the history of nativity scenes. *See id.* at 996–97. Instead, both *Woodring* and *Lynch* looked to the same "unbroken history of official acknowledgement" of religion just discussed and concluded that a nativity scene fits within that broader tradition. *Id.* at 996 (quoting *Lynch*, 465 U.S. at 674).

Similarly, in *Van Orden*, the plurality considered not only the history of stone monuments bearing an English text of the Ten Commandments, but also the same broader history of religious acknowledgments invoked by *Lynch*. 545 U.S. at 686–87 (plurality). Regarding the Ten Commandments specifically, the plurality considered both text-based displays as well as the many displays representing the Ten Commandments that contained no text and that took a multitude of forms. *Id.* at 688–89. And the plurality looked at the repeated acknowledgements of "the role the Decalogue plays in America's heritage" from all three branches of government. *Id.* at 688–90. *American Legion* followed suit—treating monuments with the English text of the Ten Commandments (like the one in *Van Orden*) as part of the same tradition as depictions of the Ten Commandments "in the marble frieze in our courtroom." 588 U.S. at 53 (considering history and tradition of "the *image* of the Ten Commandments" (emphasis added)).

Of course, like a display depicting the birth of Jesus Christ, "the Ten Commandments are religious" in some respects. *Van Orden*, 545 U.S. at 690. But "the Ten Commandments have an undeniable historical meaning," as well. *Id.* Indeed, the Supreme Court and Seventh Circuit have repeatedly recognized that the Ten Commandments "have historical significance as one of the

foundations of our legal system." *Am. Legion*, 588 U.S. at 53; *accord Books*, 401 F.3d at 864 ("[T]he text of the Ten Commandments no doubt has played a role in the secular development of our society and no doubt can be presented by the government as playing such a role in our civic order."). And, as the Governor's expert Dr. Rabbi Stuart Halpern explains, "the Ten Commandments have served as a commonplace societal symbol, representing the rule of law generally," throughout America's history. Halpern Report ¶ 6, Dkt. 124-8.

Indiana's monument comfortably aligns with the longstanding tradition of recognizing the impact of the Ten Commandments on American law and society. Indeed, that the monument here is depicting the Ten Commandments as a historical foundation of our legal system is indicated by the monument *itself*, which *also* includes the text of the Bill of Rights and the Preamble to the Indiana Constitution. Stipulations of Fact ¶¶ 11, 14, 19, Dkt. 123-8; *see id.* Ex. 1 (Ten Commandments would "stand alongside the abiding principles of our form of government, especially its protections of individual rights"). Thus, while Plaintiffs grasp at minutiae to distinguish *Van Orden*, *see* Dkt. 115 at 24 n.12 (asserting that Texas's statehouse grounds were more "populated" by monuments), this case is if anything even easier than that one, *cf. Van Orden*, 545 U.S. at 736 (no other legal texts inscribed on monument other than Ten Commandments). If a monument depicting *only* the Ten Commandments could be displayed while *Lemon* was still intact, surely a monument that depicts them as part of a broader display of historically and legally significant texts can be displayed now.

Second, even if the Court were to accept Plaintiffs' narrow definition of the relevant tradition, there *is* a sufficient history and tradition of Ten Commandments monuments to survive constitutional scrutiny. Ten Commandments monuments have stood on public property across the country for over seventy years. Hall Report 34–44, Dkt. 123-4 (collecting examples). That history

aligns with other notable recognitions of religion in society, such as "the Pledge of Allegiance's reference to God" and other "Deity references [that] find their roots in … the 1950's." *Books*, 235 F.3d at 324 (Manion, J., concurring in part). Just as those practices have been upheld under a historical analysis, *see, e.g.*, *New Doe Child #1*, 901 F.3d at 1021; *Perrier-Bilbo*, 954 F.3d at 425, Indiana's monument is also "justified based on our country's early and more recent history" as an appropriate civic symbol, *Books*, 235 F.3d at 325 (Manion, J., concurring in part).

2. Indiana's monument is itself sufficiently longstanding

Even if this monument did not fit into a broader tradition, this Court should still uphold the monument because it is *itself* longstanding. Where "a specific monument, symbol, or practice" is "'longstanding' or 'established,'" it carries a "presumption of constitutionality." *Woodring*, 986 F.3d at 994; *accord Am. Legion*, 588 U.S. at 57. This comports with the analysis conducted by Justice Breyer's concurring opinion in *Van Orden*. Justice Breyer upheld the monument because it "s[at] in a large park containing" numerous other "monuments" and "historical markers" illustrating the "historical 'ideals' of Texans" and had a "40-year history on the Texas state grounds." *Van Orden*, 545 U.S. at 701–02 (Breyer, J., concurring).

That same analysis applies to Indiana's monument. Similar to *Van Orden*, Indiana's monument sits alongside other monuments representing the "historical 'ideals'" of Indianans, including text from the Federal and State constitutions which are inscribed on the monument's other sides. *See supra* p. 7 (describing the monument and its surroundings). What's more, the original monument in this case was placed on the statehouse lawn in 1958—nearly seventy years ago, and three years *before* the monument in *Van Orden* was erected. Stipulations of Fact ¶ 24, Dkt. 123-8. And Indiana's original monument stood on the statehouse lawn for over thirty years—roughly the same amount of time Plaintiffs concede was sufficient in *Van Orden*. *See* Dkt. 115 at

24. If forty years sufficed for the monument in *Van Orden*, then seventy years is more than enough for Indiana's monument. Indeed, other courts have held that symbols of a similar age were entitled to a presumption of constitutionality under *American Legion*. *See, e.g.*, *Freedom From Religion Found. v. County of Lehigh*, 933 F.3d 275, 282 (3d Cir. 2019) (75-year-old symbol entitled to strong presumption of constitutionality); *Kondrat'yev*, 949 F.3d at 1331 (monument originally erected 75 years prior, replaced 50 years prior).

Plaintiffs insist the history of Indiana's monument shouldn't count because this specific monument is new. Dkt. 115 at 24–25. But it is only new because Schroeder destroyed the original. *See* Schroeder Dep. Tr. 25:8–26:25, Dkt. 123-10. But for Schroeder's vandalism and Plaintiffs' subsequent efforts to prevent Indiana from replacing the original, Indiana would have had a Ten Commandments monument on the statehouse lawn for seventy years at this point. Although the new monument differs slightly from the old one, it was intended to be identical, *see* Stipulations of Fact ¶ 27, Dkt. 123-8, and should still be afforded a "strong presumption of constitutionality" as part of Indiana's longstanding display of a Ten Commandment monument that was cut short only by Schroeder's vandalism and Plaintiffs' subsequent lawsuit to challenge the replacement display, *Am. Legion*, 588 U.S. at 57. To hold otherwise would grant individuals everywhere a vandal's veto over any longstanding religious monument. *Cf. Shondel v. McDermott*, 775 F.2d 859, 868–69 (7th Cir. 1985) (courts may "withhold an equitable remedy that would encourage, or reward (and thereby encourage), illegal activity" under the doctrine of "unclean hands," which is not "without possible application to First Amendment cases").

CONCLUSION

The Court should grant Defendants' motion for summary judgment.

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CERTIFICATE OF COMPLIANCE

This memorandum complies with the page limit of Local Rule 7-1(e)(1) because it does not exceed 30 pages.

/s/ James A. Barta
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CERTIFICATE OF SERVICE

I certify that this document, filed through the Court's ECF system on October 19, 2026, will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ James A. Barta
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