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## Town braces for legal battle over Ten Commandments

### Court ruling widely ignored in Harlan

BY SUSAN VELA  
The Cincinnati Enquirer



Jack Miniard of the Harlan school board displays the Ten Commandments at James A. Cawood High.  
(Patrick Reddy photo)  
| ZOOM |

**HARLAN, Ky.** — In this mostly poor, coal-mining pocket of Eastern Kentucky, Kendra Merrill, 10, sits in a classroom with the Ten Commandments posted above her head.

She reasons the commandments have a right to be there because "this whole place is the congregation of God."

Just about everybody in this county of 36,000-plus feels the same.

The fact that the ACLU disagrees and recently sued to have the commandments removed from Harlan County school buildings and Pulaski and McCreary county courthouses, also in Eastern Kentucky, has reignited debate in Kentucky and nationwide.

"It just rubbed me the wrong way ... for somebody to come here and tell us what to do in the mountains of Kentucky," said Don Musselman, superintendent of this rural district of 14 schools and 5,400 students.

Kentucky's General Assembly will wrestle with the Ten Commandments issue when it convenes in January. While there is a push for Ten Commandment postings in Kentucky schools, the Kentucky School Boards Association recently said local school boards must finance their own legal costs if they are sued for posting them.

In Harlan County, the issue has always been clear. Despite a 1980 U.S. Supreme Court ruling declaring it unconstitutional, the Ten Commandments have never come

off school walls here.

That shouldn't surprise those who know Harlan, where the only controversy over the Ten Commandments happens beyond the mountains. Rural and isolated, residents here struggle more with the changing face of the coal-mining industry.

This is a community where Mr. Musselman rides with the Ten Commandments in parades, high school students carry Bibles to school, religious music can be found with any flick of the radio dial and some teens have been tattooed with crucifixes.

The Ten Commandments have been posted throughout the Harlan County school system at least since the 1940s. They remain in school lobbies, offices and classrooms despite the federal ACLU suit filed last month.

It was filed on behalf of an unidentified middle school student. The lawsuit claimed violations because of the First Amendment's establishment clause, which states, "Congress shall make no law respecting the establishment of religion."

"We really need to go through with it to see what the courts feel now," Mr. Musselman said. "I have faith we can rely on (the community) to raise the money all the way to the Supreme Court. I've never known a Kentuckian to run from a good fight. We're a test case for the whole nation."

### **Battle brews**

Many Harlan County residents point to the deep religious nature of the nation's Founding Fathers. The Ten Commandments is another rich, historical document on par with the Declaration of Independence and Bill of Rights, they say.

When a 1980 U.S. Supreme Court ruling — *Stone vs. Graham* — said posting the Ten Commandments in schools was unconstitutional, Harlan schools kept them up.

About 400 copies were added to school lobbies, offices and classes this fall.

These most recent postings sparked the ACLU's federal lawsuit.

The ACLU is "a bunch of mixed-up people that don't realize what they're doing. The people who agree with them, ... they're mixed up, too. They just don't understand the Constitution of the United States and the Bible," said 69-year-old Steve Senters, standing outside his small, ranch-style home halfway up a mountain and overseeing Harlan proper.

Wallins Elementary School teacher Judy Hensley doesn't understand the Ten Commandments debate, because no one would object to words of wisdom from Confucius or Shakespeare appearing in her fourth-grade class. The Ten Commandments are posted on her walls. There are no quotes from philosophers or playwrights in sight.

"I don't see how it's illegal or breaking any law," she said.

A recent rally drew thousands of supporters to Harlan. Organizers sold T-shirts that portrayed, on the front, the Ten Commandments written on two stone slabs, and, on the back, "ACLU, You Can't Touch This." T-shirt sales generated about \$3,000, which will be used for the school district's legal fees.

State Rep. Johnnie Turner, a Harlan attorney, is representing the district.

"It's obvious they're making it a test case," said Mr. Turner, R-Harlan. He expects to favor legislation permitting the posting of the Ten Commandments when the General Assembly reconvenes in January.

Drafted legislation would let school-based councils decide whether the commandments should be posted. Another proposed bill would allow a public vote on the commandments, as long as they are taught in conjunction with a social studies curriculum.

### Emotions aside

ACLU attorney David Friedman concedes the Ten Commandments offer some good advice and have every right to be posted on private yard signs and bumper stickers and in religious buildings. But they shouldn't be allowed in public schools, he said.

He questions the precedent Harlan County Schools is setting for its youth by refusing to take them down.

"They're taking the law into their own hands when they disagree," he said. "That's the whole point. They have to remain neutral."

The *Stone vs. Graham* ruling stemmed from a 1978 Kentucky law requiring a copy of the Ten Commandments, purchased with private contributions, to be posted in every classroom. The Kentucky Legislature tried to bypass the First Amendment's establishment clause by requiring each copy to state that "the secular application of the Ten Commandments is clearly seen in its adoption as the

fundamental legal code of Western civilization and the common law of the United States."

A group of parents filed a lawsuit to prevent the law's enforcement. The Kentucky Supreme Court dismissed the lawsuit and upheld the 1978 law because of its "secular and not religious" purpose.

The U.S. Supreme Court disagreed in its 5-4 ruling of 1980, saying that an "an "avowed' secular purpose is not sufficient to avoid conflict with the First Amendment" and "the pre-eminent purpose of posting the Ten Commandments ... is plainly religious in nature and the posting serves no constitutional educational function."

"It's an old case, but I don't think it's a controversial case or ... is on the verge of being overruled or changed. It fits very neatly in a long line of cases," said Paul Salamanca, who teaches First Amendment law at the University of Kentucky.

Pam Baker, 18, a senior at James A. Cawood High School, opens a morning prayer group. She and several others carry Bibles with them throughout the day. She spends her Friday nights playing bass guitar for a gospel music group.

She doesn't understand why the ACLU filed a lawsuit against the school district, especially when she and her fellow students saw the Ten Commandments in their elementary classrooms.

She said the nation, if it wants to side with the ACLU and avoid hypocrisy, should consider a lawsuit against those responsible for placing "In God We Trust" on \$1 bills.

Her classmate, 17-year-old David Nolan, points out that people swear on the Bible before giving courtroom testimony.

"It's interesting that (the ACLU) would go to bat for the Ku Klux Klan in Middlesboro then criticize us for trying to get the Ten Commandments for our children," said the Rev. Ernest Boggs, who helped raise money for the newly posted Ten Commandments and organized the recent rally.

Sidney Fee and Jack Miniard, the school board members who pushed for getting the Ten Commandments posted in the schools, also are vocal.

"Why should anyone come in and say you should not post the Ten Commandments if the whole community wants it?" Mr. Miniard asks.

"We're just doing what we think is right," Mr. Fee said. "I'm going to tell you what. For the record, the ACLU is going to lose this one. We have done nothing wrong. They jumped the gun this time. We're gonna let 'em have it."

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