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especially scripture phrased as “commandments”—is inherently coercive to children who are required by law to attend school. While we do not doubt the sincerity of Plaintiffs’ objections to the displays, we disagree that merely displaying religious text in a classroom coerces students in the way that founding-era establishments coerced dissenters. The two are worlds apart.⁴⁶

Kennedy explained that the “coercion” characteristic of establishments consisted of forcing people to “attend church” or “engage in ‘a formal religious exercise.’” 597 U.S. at 537 (quoting *Lee*, 505 U.S. at 589); *see also ibid.* (“[T]his Court has long held that government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make religious observance compulsory.’” (quoting *Zorach*, 343 U.S. at 314)). Today, the state would erect something like an establishment if, for example, it mandated schoolchildren recite scripted prayers or join in corporate worship. *See Hilsenrath*, 136 F.4th at 492-93 (explaining “[h]istory and precedent . . . make clear that schools may not ‘force [students] to engage in a formal religious exercise’” (quoting *Kennedy*, 597 U.S. at 537)).

The problem for Plaintiffs’ coercion argument, however, is that S.B. 10 does not compel any student to engage in formal religious exercise. The law does not require students to “recite the Ten Commandments as an act of worship,” or to affirm them at all. *Hilsenrath*,

46. In a separate section below, we address the analytically distinct argument that the displays coerce schoolchildren in violation of the Free Exercise Clause. *See infra* Part V.

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136 F.4th at 492. Nor does it mandate students pray, adopt any faith, or engage in any other “unmistakably religious exercises” like “devotional reading and recitation of the Holy Bible.” *Abington*, 374 U.S. at 307 (Goldberg, J., concurring). The law requires only that the Commandments be displayed on the classroom wall. The mere fact that the displays use religious language does not convert them into a call to prayer. “[N]ot all school activities touching on religion amount to ‘formal religious exercise.’” *Hilsenrath*, 136 F.4th at 492 (quoting *Kennedy*, 597 U.S. at 537).

Moreover, Plaintiffs have not identified a shred of founding-era evidence equating the government’s use of religious text, displays, or symbols with an establishment of religion. To the contrary, it appears that no one “ever claimed at the founding that the display of religious symbols was a form of religious establishment.” CHAPMAN & MCCONNELL, AGREEING TO DISAGREE, *supra* note 21, at 159.⁴⁷ Indeed, it would be a shock to discover that the Establishment Clause is implicated merely by the government’s use of religious language, imagery, or symbols.

In our country, religious placenames dot the landscape and religious mottos, symbols, and flags adorn countless public buildings.⁴⁸ Our national anthem contains the

47. See also Barclay, *Original Meaning*, *supra* note 15, at 509-10 (finding no evidence that “government display of religious symbols” was a concern with respect to founding-era establishments).

48. One study found over 800 cities with biblical placenames. John Leighly, *Biblical Place-Names in the United States*, 27 NAMES: A J. ON ONOMASTICS 46, 47 (1979). A more recent article counted

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line, “In God is our trust,” a version of which is our national motto and appears on our currency.⁴⁹ The Ten Commandments themselves feature in displays in the Supreme Court, the Capitol, the Jefferson Building, the National Archives, the Department of Justice, the Ronald Reagan Building, the House of Representatives, and the courthouse housing the D.C. Circuit and the District Court for the District of Columbia. *Van Orden*, 545 U.S. at 688 (REHNQUIST, C.J.) (plurality opinion). The fanciful notion that these uses of public religious language or symbolism have anything to do with a founding-era establishment cannot be taken seriously.⁵⁰

over 1,000. Rafael Medoff, *Why American Towns Take Biblical Names*, JEWISH NEWS SYNDICATE (Feb. 20, 2023), <https://www.jns.org/why-american-towns-take-biblical-names/> [<https://perma.cc/GJ8C-RJE5>]. Moreover, six state seals and seven state flags include religious sayings or imagery. *See* Seals, STATE SYMBOLS USA, <https://statesymbolsusa.org/categories/state-seal> [<https://perma.cc/PL8H-SHLJ>] (Arizona, Colorado, Connecticut, Florida, Mississippi, South Dakota); Flags, STATE SYMBOLS USA, <https://statesymbolsusa.org/categories/state-flag> [<https://perma.cc/3JK4-ST5F>] (Alabama, Connecticut, Florida, Georgia, Maryland, Mississippi, South Dakota).

49. *See* 36 U.S.C. § 301 (making “the Star-Spangled Banner . . . the national anthem”); *id.* § 302 (“‘In God We Trust’ is the national motto.”); 31 U.S.C. § 5112(d)(1) (requiring coins to have the inscriptions “In God We Trust” and “E Pluribus Unum”); An Act To Provide for the Safe-Keeping of the Acts, Records, and Seal of the United States, and for Other Purposes, ch. 14, § 2, 1 Stat. 68, 68 (1789) (conveying to State Department right to use the Great Seal—featuring the phrase “Annuit Coeptis” or “God Favors Our Undertakings”—which appears on passports and the one-dollar bill).

50. *See, e.g.*, 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION § 1874 (1833) (“An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation.”).

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Plaintiffs bore the burden of showing that the S.B. 10 displays would have been understood as a founding-era establishment. *See Hilsenrath*, 136 F.4th at 491 & n.54 (citing *Firewalker-Fields*, 58 F.4th at 122 n.7). They failed to do so. Plaintiffs’ doubtlessly sincere objections to the displays do not equate to the “coercion” characteristic of historic religious establishments. While they contain religious text, the displays do not pressure anyone to engage in religious exercise or observance.

3. S.B. 10 does not commit “denominational discrimination.”

Alternatively, Plaintiffs argue that S.B. 10 violates the Establishment Clause because it engages in “denominational discrimination” by adopting what they call the “Protestant version” of the Ten Commandments. We reject this argument for several reasons.

To begin with, S.B. 10 adopts the same text of the Ten Commandments as in *Van Orden*. Compare TEX. EDUC. CODE ANN. § 1.0041(c) (West 2025), with *Van Orden*, 545 U.S. at 707, 736 (STEVENS, J., dissenting) (text of Commandments). As discussed, *Van Orden* upheld the constitutionality of a Ten Commandments monument outside the Texas Capitol. *See id.* at 698-705 (BREYER, J., concurring). In fact, the *Van Orden* challengers made precisely the same argument as today’s Plaintiffs: namely, that the Texas monument “adopt[ed] the Protestant version of the Ten Commandments.” Petitioner’s Reply Brief at 8-10, *Van Orden*, 545 U.S. 677, 125 S. Ct. 2854, 162 L. Ed. 2d 607, 2005 WL 429975, at *8-10. Yet this argument had no impact on the decision, and a majority of the Court did not even mention it.

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The four-Justice plurality referred only to “the Ten Commandments,” taking no note of which version appeared on the monument. *See Van Orden*, 545 U.S. at 681, 688-91 (REHNQUIST, C.J.) (plurality opinion). Justice Breyer’s controlling opinion described the version only as a “nonsectarian text” created after “consultation with a committee composed of members of several faiths.” *Id.* at 701 (BREYER, J., concurring). Plaintiffs dismiss this as dicta that does not analyze the monument’s text. Dicta or not, it shows that neither the plurality nor the controlling opinion took up the same argument Plaintiffs make here.

Ironically, only JUSTICE STEVENS’S dissent (joined by JUSTICE GINSBURG) accepted the denominational argument. Noting the “many distinctive versions of the Decalogue” whose “differences may be of enormous religious significance,” he argued that, “[i]n choosing to display this version . . . Texas tells the observer that the State supports this side of the doctrinal religious debate.” *Id.* at 717-18 (STEVENS, J., dissenting). So, when Plaintiffs’ argument was last proposed to the Supreme Court regarding the identical text of the Ten Commandments, only two dissenting Justices referenced it; the other seven ignored it.

Second, Plaintiffs misunderstand the line of decisions that forbid the government from “officially prefer[ring] one religious denomination over another.” *Cath. Charities Bureau Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 247, 145 S. Ct. 1583, 221 L. Ed. 2d 881 (2025) (quoting *Larson v. Valente*, 456 U.S. 228, 244, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)). Under those cases, the government cannot privilege certain religions over others

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when imposing burdens or granting benefits. *See id.* at 248-49 (discussing doctrine). The principle comes into play when, for instance, the government allows Catholics and Protestants, but not Jehovah's Witnesses, to worship in a park. *See Fowler v. Rhode Island*, 345 U.S. 67, 69, 73 S. Ct. 526, 97 L. Ed. 828 (1953). Or when a state grants a charitable tax exemption to some religious groups, but not others, based on theological criteria. *See Cath. Charities*, 605 U.S. at 249 (invalidating exemption available only to religious groups that "engaged in proselytization or limited their services to fellow [co-religionists]").

But this principle has no application to government use of religious language or symbolism. *See Lynch*, 465 U.S. at 687 n.13 (declining to apply denominational preference cases to city crèche). Nor could it. Consider the cities of Corpus Christi, San Francisco, Los Angeles, San Diego, Santa Fe, San Jose, St. Augustine, and Sacramento, to name just a few. Do those names represent "denominational discrimination"? Or take our national motto. *See* 36 U.S.C. § 302 ("In God We Trust"). Does it show "favoritism" for monotheism over polytheism?

You get the point. If the rule against "denominational favoritism" applies in this area, all religious language and symbolism will have to be scoured from public life. While some constitutions have achieved this feat, ours is not one of them.⁵¹

51. *Compare* CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS art. 124 (1936) ("In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom

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Finally, Plaintiffs' argument would require us to make a theological judgment wholly unsuited to a federal court. The parties and their *amici* make detailed scriptural arguments for why S.B. 10's version of the Commandments aligns better with Protestant, Catholic, or Jewish traditions. Not being a court of ministers, bishops, or rabbis, we have no business opining on these matters and no competence to do so.

For instance, Plaintiffs assert "S.B. 10's rendition of scripture . . . conflicts with Jewish and Catholic articulations of the Decalogue." One *amicus* argues the text omits a "critical and recurring theme in Judaism" concerning the "Jewish understanding of the Commandments as God's Covenant with the Israelites." Br. of National Council of Jewish Women at 17. These differences, they claim, also affect Christian debates because S.B. 10's version "would prohibit the veneration

of religious worship and freedom of anti-religious propaganda is recognized for all citizens."), *and* CONSTITUTION OF OCTOBER 4, 1958 art. 1 (Fr.) ("France shall be an indivisible, secular, democratic and social Republic."), *with* Letter from John Adams to the Officers of the First Brigade of the Third Division of the Militia of Massachusetts (Oct. 11, 1798), *in* 9 THE WORKS OF JOHN ADAMS 228, 229 (Charles Francis Adams ed., Boston, Little, Brown & Co. 1854) ("Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."), *and* Abraham Lincoln, Address at the Dedication of the Gettysburg National Cemetery (Nov. 19, 1863), *in* 9 COMPLETE WORKS OF ABRAHAM LINCOLN 209, 209 (John G. Nicolay & John Hay eds., Francis D. Tandy Co. 1905) (1894) ("[T]hat this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth.").

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of icons, a practice which is common in Catholic and Eastern Orthodox traditions.” *Id.* at 18. For their part, Defendants draw different theological lessons from the text. They cite Catholic and Jewish translations to show that S.B. 10’s alleged “reliance on the King James Bible is demonstrably false.” And they argue any icon-veneration conflict is illusory because the Catholic Douay-Rheims translation “contains the same prohibition on making a graven image” as the King James.⁵²

These matters of theology and scriptural interpretation lie beyond our ken. Federal courts are not competent to decide questions of “ecclesiastical law and religious faith,” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729, 20 L. Ed. 666 (1871), nor to settle “controversies over religious doctrine,” *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hall Mem’l Presbyterian Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969); *see also McRaney v. N. Am. Mission Bd.*, 157 F.4th 627, 638 (5th Cir. 2025) (“[C]ourts must take care to avoid resolving underlying controversies over religious doctrine.”) (quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 751 n.10, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020)) (quotation omitted). Nor can courts act as “arbiters of scriptural interpretation.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981).

52. Similarly, one *amicus* in *Roake* (which was argued with this case and concerns the same issues) argues S.B. 10’s text is not a Protestant version because “there is little disagreement among Jewish and Christian traditions as to the overall substance of the Ten Commandments” despite differences in the “placement of textual pauses and thought-breaks.” Br. for Director for the Conscience Project and Professor Mark David Hall at 13.

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Yet that is the role Plaintiffs would have us assume here—adjudicating the theological *bona fides* of S.B. 10’s version of the Commandments. We would have to decide, for example, whether the text wrongly omits Jewish understandings of God’s covenant or picks a side in the Catholic and Protestant debate over icons. While this case does not present an internal dispute over religious matters, *cf. McRaney*, 157 F.4th at 647-54, resolving the disagreement would strand us in the same dangerous waters. If we were so foolish as to accept this invitation, our very decision would ironically violate the Establishment Clause by presuming to decide a religious question.⁵³ Plaintiffs, in other words, have made us an offer we can only refuse.

In sum, we reject Plaintiffs’ argument that S.B. 10 engages in “denominational discrimination” in violation of the Establishment Clause.

4. Plaintiffs’ “tradition” argument is meritless.

Finally, Plaintiffs offer their own historical argument. They contend S.B. 10 violates the Establishment Clause because there is insufficient evidence of a tradition of

53. See *Presbyterian Church in U.S.*, 393 U.S. at 449 (“First Amendment values are plainly jeopardized” if courts decide “controversies over religious doctrine and practice”); *Our Lady of Guadalupe*, 591 U.S. at 737 (explaining that the First Amendment allows religious adherents “to decide for themselves, free from state interference, matters of . . . faith and doctrine”); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) (explaining that “religious controversies are not the proper subject of civil court inquiry”).

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public schools using the Ten Commandments or displaying them in a classroom. In support, they largely rely on the conclusions of their “expert” witness. We reject this argument.

Plaintiffs derive this tradition argument from cases about “legislative prayer”—*i.e.*, prayers by chaplains or ministers before government bodies. *See Marsh v. Chambers*, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983); *Town of Greece*, 572 U.S. 565. As those cases explain, such prayer “has long been understood as compatible with the Establishment Clause” because it was “practiced by Congress since the framing of the Constitution.” *Town of Greece*, 572 U.S. at 575 (citing *Marsh*, 463 U.S. 783). If a modern prayer “fits within” that venerable tradition, it does not violate the Clause. *Id.* at 577.

From those cases, Plaintiffs would distill a broad test: if a practice does not fit within some historical tradition, it violates the Establishment Clause. That does not follow. The legislative prayer cases teach only that the Establishment Clause cannot be read to sweep away a longstanding religious practice publicly approved by those who wrote the First Amendment. *See id.* at 576 (observing “the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment”).⁵⁴ They do not stand

54. *See also Town of Greece*, 572 U.S. at 577 (“*Marsh* stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted.”); *id.* at 602 (ALITO, J., concurring) (explaining

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for the *opposite* proposition—namely, that any modern practice *not* supported by a founding-era tradition *does* violate the Establishment Clause. No precedent supports that bizarre view.

The correct analysis, as the Supreme Court has explained, is to ask whether a challenged law shares the “hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Kennedy*, 597 U.S. at 537; *see also* *Hilsenrath*, 136 F.4th at 491 n.54 (asking whether plaintiffs have “prov[en] a set of facts that would have historically been understood as an establishment of religion”). That analysis—in sharp contrast to Plaintiffs’ vague appeal to “tradition”—involves sifting the historical record to discern the original public meaning of “an establishment of religion.” That is what we have done here.

One final note. In resolving this claim, the district court engaged in a practice one seldom sees in constitutional adjudication. It allowed “experts” in religion and legal history to opine whether there was a tradition of using the Commandments in American schools. The *Roake* district court did the same, and the now-vacated *Roake* panel approved the practice, affirming as “not clearly erroneous” the “findings” based on “expert” testimony. *Roake Panel*, 141 F.4th at 648 & n.26.

“[t]his Court has often noted that actions taken by the First Congress are presumptively consistent with the Bill of Rights, and this principle has special force when it comes to the interpretation of the Establishment Clause” (citation omitted)).

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This practice is mistaken. “[A]n expert may never render conclusions of law.” *Goodman v. Harris County*, 571 F.3d 388, 399 (5th Cir. 2009). Yet that appears to be what the district court let happen here. Those experts are law professors who write books and law-review articles.⁵⁵ But so do other law professors. As judges, we read their work and may find it helpful. We also review the historical sources ourselves. What we cannot do, however, is outsource to “experts” our Article III duty to decide questions of law. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803).⁵⁶

55. *See, e.g.*, STEVEN K. GREEN, *INVENTING A CHRISTIAN AMERICA: THE MYTH OF THE RELIGIOUS FOUNDING* (Oxford Univ. Press 2015); Steven K. Green, *The Supreme Court’s Ahistorical Religion Clause Historicism*, 73 Baylor L. Rev. 505 (2021); *THE FORGOTTEN FOUNDERS ON RELIGION AND PUBLIC LIFE* (Daniel L. Driesbach, Mark David Hall & Jeffrey H. Morrison eds., 2009); Mark David Hall, *America’s Founders, Religious Liberty, and the Common Good*, 15 U. ST. THOMAS L.J. 642 (2019); Mark David Hall & Andrea Picciotti-Bayer, *Ten Commandments in the Public Square and Public Schools*, 34 WM. & MARY BILL RTS. J. 175 (2025).

56. Plaintiffs’ expert, Dr. Steven Green, provides an example of the risk of appointing someone as an expert in “legal history,” as opposed to simply assessing his scholarly work on its own merits. For instance, in *Roake*, Dr. Green asserted in an affidavit that the “historical record” contradicts the claim that “the Ten Commandments ‘have historical significance as one of the foundations of our legal system.’” Yet, years earlier, he wrote in a law journal that “[i]t is axiomatic that many of the principles contained in the Ten Commandments are fundamental to the Western legal tradition.” Steven Green, *The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law*, 14 J.L. & RELIGION 525, 525 (2000).

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What the founding generation understood as an establishment of religion is a legal question to be decided by a court, not a “fact” question to be decided by experts, no matter how credentialed. To be sure, courts must make a determined effort to grasp the relevant history bearing on that legal question. *Hilsenrath*, 136 F.4th at 491 (“This kind of historical inquiry requires serious work.” (citation omitted)); *McDonald v. City of Chicago*, 561 U.S. 742, 803, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (THOMAS, J., concurring) (noting “[h]istorical analysis can be difficult”). See generally *Heller*, 554 U.S. at 592-95, 600-03, 605-19. They do so by consulting articles, books, and historical sources and bringing their own independent judgment to bear on them—not by appointing an “expert,” whose “findings” are insulated by clear-error review on appeal.⁵⁷

57. Plaintiffs would rely on this practice to resolve “fact issues” about the Ten Commandments’ role in American history. But they confuse the kind of facts experts can help determine (so-called “adjudicative facts”) from facts that are decided by courts (so-called “legislative facts”). See, e.g., *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (distinguishing “legislative facts,” which . . . bear on the justification for legislation, as distinct from facts concerning the conduct of parties in a particular case (“adjudicative facts”)) (citing FED. R. EVID. 201(a)). As Judge Posner has explained, “Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of [a challenged law].” *Ibid.* See also *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 25 n.6, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) (“The job of judges is not to resolve historical questions in the abstract; it is to resolve *legal* questions presented in particular cases or controversies.”); *United States v. Skrmetti*, 605 U.S. 495, 530-31, 145 S. Ct. 1816, 222 L. Ed. 2d 136 (2025) (THOMAS, J., concurring) (“The views of self-proclaimed experts do not ‘shed light on the meaning of the Constitution.’” (quoting *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 272-73, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022))).

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* * *

In sum, we conclude that S.B. 10 bears none of the hallmarks of a founding-era establishment of religion and therefore does not facially violate the Establishment Clause.

V. FREE EXERCISE

We turn to the district court’s ruling that S.B. 10 facially violates the Free Exercise Clause. *See Nathan*, 795 F. Supp. 3d at 943, 947-48.

Defending that ruling, Plaintiffs contend the Ten Commandments displays coerce students to venerate “state-imposed and state-selected scripture” and undermine parents’ rights to form their children’s religious views. Defendants take the opposite view. They contend the displays do not coerce students to do or believe anything and do not authorize teachers to subvert their parents’ religious teaching.

The right to freely exercise religion is not “shed . . . at the schoolhouse gate.” *Mahmoud*, 606 U.S. at 545 (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)). A public school may violate that right by “plac[ing] unconstitutional burdens on [a student’s] religious exercise,” *ibid.*, or by “substantially interfer[ing] with the [student’s] religious development,” *id.* at 546 (quoting *Yoder*, 406 U.S. at 218). The question before us is whether S.B. 10 represents such an imposition on the consciences of Texas students or parents. The answer is no.

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The parties agree that a key precedent is the recent decision in *Mahmoud v. Taylor*. In that case, a school district introduced into elementary curricula “‘LGBTQ+-inclusive’ storybooks . . . designed to ‘disrupt’ children’s thinking about sexuality and gender.” *Id.* at 528-29. The books taught, for instance, that “same-sex marriage should be accepted by all as a cause for celebration,” *id.* at 551, and “encourage[d] children” to abandon the view that “sex and gender are inseparable,” *id.* at 552. To think otherwise, students were warned, would be “hurtful, perhaps even hateful.” *Id.* at 553.

Nor did the books sit silently on school shelves. Teachers “incorporate[d] the new texts into the curriculum” and led “classroom discussion[s]” about them. *Id.* at 535. Teachers were also trained to respond to student questions. If asked about same-sex unions, they were to say: “Two men who love each other can decide they want to get married.” *Id.* at 536. If students expressed views linking sex to biology, teachers were to respond: “That comment is hurtful.” *Ibid.* If students asked about “transgenderism,” teachers were to explain: “When we’re born, people make a guess about our gender and label us boy or girl based on our body parts. Sometimes they’re right and sometimes they’re wrong.” *Ibid.* (internal quotations omitted). Parents objecting to these lessons could not opt their children out. *Id.* at 543.

The Supreme Court held the curriculum violated parents’ Free Exercise rights because it was designed to subvert children’s religiously formed beliefs about sexuality and gender. *Id.* at 529-30. The lessons were coercive, the Court explained, because they “correct[ed]”

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children against “their parents’ religious views” while also accusing “them of being ‘hurtful’ when they express[ed] a degree of religious confusion.” *Id.* at 555. “Such instruction ‘carrie[d] with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent.” *Ibid.* (quoting *Yoder*, 406 U.S. at 218).

Measured against *Mahmoud*, S.B. 10 falls far short of transgressing the Free Exercise Clause. The Texas law creates no religious curriculum designed to shape children’s beliefs or subvert their parents’ teaching. Teachers are not required or encouraged to offer religious reflections on the Ten Commandments. Nor are they told to proselytize students who ask about the displays or disagree with the Commandments. Nor are they given lesson plans instructing that certain students (say, atheist, nontheist, polytheist, or agnostic students) are to be told their beliefs are “hurtful” or “hateful.” *Id.* at 553.

This means the core of a free-exercise violation—a substantial burden on religious belief or practice—is missing. *See, e.g., Fulton v. City of Philadelphia*, 593 U.S. 522, 555-58, 141 S. Ct. 1868, 210 L. Ed. 2d 137 (2021) (Alito, J., concurring in the judgment) (surveying history of free-exercise jurisprudence). In *Mahmoud*, that burden was glaring: “instruction” challenging religiously formed beliefs about sex was “presented to young children by authority figures in elementary school classrooms.” 606 U.S. at 554. S.B. 10 does nothing like that. No religious curriculum, no theistic lesson plans. All the law requires is a poster on a classroom wall. To be sure, Plaintiffs

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disagree with the poster’s content, but that disagreement alone does not transform S.B. 10 into religious coercion—and certainly not into the compulsory sex re-education program invalidated in *Mahmoud*.

Plaintiffs nonetheless insist S.B. 10 is *worse* than the regime in *Mahmoud* because it supposedly subjects children to “scripture nearly every hour they are in school.” We disagree. Plaintiffs’ hyperbolic argument ignores *Mahmoud*. The Court emphasized that the indoctrination there went “far beyond mere ‘exposure’” to objectionable ideas—the school board “specifically encouraged teachers to reinforce th[e] [books’] viewpoint and to reprimand any children who disagree.” *Id.* at 556. Again, we have nothing like that here. S.B. 10 neither requires nor authorizes the correction of anyone’s beliefs.

Plaintiffs’ premise appears to be that any “religious” or “scriptural” content in the display is, by definition, coercive for free exercise purposes. That is not the law. The proper inquiry is whether the display religiously coerces a child or undermines parental rights to direct a child’s religious upbringing. *See id.* at 546-47; *see also Yoder*, 406 U.S. at 218; *Barnette*, 319 U.S. at 626-33; *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 532-36, 45 S. Ct. 571, 69 L. Ed. 1070 (1925). But no case suggests that the mere presence of religious language in a school display is *ipso facto* religious coercion.

At oral argument, Plaintiffs’ counsel seemed to retreat from the implications of that position. When asked whether a public school could display the Declaration

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of Independence—with its appeals to “Nature’s God,” “Creator,” the “Supreme Judge of the world,” and “divine Providence”—counsel agreed it could. O.A. Rec. at 48:35-49:25. Counsel gave the same answer as to Lincoln’s Second Inaugural, whose overtly religious conclusion quotes Psalm 19. O.A. Rec. at 49:25-50:19. *See* Abraham Lincoln, *Second Inaugural Address*, NATIONAL CONSTITUTION CENTER (Mar. 4, 1865), <https://constitutioncenter.org/the-constitution/historic-document-library/detail/abraham-lincoln-second-inaugural-address-1865> [<https://perma.cc/X746-85BF>] (“[A]s was said three thousand years ago, so still it must be said ‘the judgments of the Lord are true and righteous altogether’” (quoting *Psalm* 19:9 (King James))).

But Plaintiffs’ counsel avoided taking a position on perhaps the most dramatic consequence of their argument: its impact on the Pledge of Allegiance. Countless public schools—including Texas’s—open the day with students’ reciting the Pledge. O.A. Rec. at 51:50-52:10; *see* TEX. EDUC. CODE ANN. § 25.082(b)(1)-(2) (West 2017). On Plaintiffs’ view, though, how could the Pledge continue? If students are coerced merely by seeing scripture in a classroom poster, as Plaintiffs claim, what about witnessing their classmates daily recite, “one Nation, under God”? To be sure, no student can be made to recite the Pledge. *See Barnette*, 319 U.S. at 642. But Plaintiffs’ view would plainly require abolishing the Pledge for everyone. In response to this, counsel could only say, “that’s obviously not this case.” O.A. Rec. 52:10-22; *see also id.* 53:39-53:46 (“I don’t think deciding this case consistent with *Stone* controls that result.”).

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That leads us to the final anomaly of Plaintiffs’ free exercise argument—the remedy. Plaintiffs want the displays removed altogether. *Mahmoud* did not do that, however. Parents were permitted only to opt their children out of the lessons. To abolish the lessons altogether, the Court underscored, would be to “micromanage the public school curriculum.” *Mahmoud*, 606 U.S. at 568. The same was true for the Court’s famous *Barnette* ruling: students were allowed to opt out of the flag salute, but the Court did not order West Virginia to strip all classrooms of the American flag. *See* 319 U.S. at 642.

Plaintiffs here ask us to go beyond *Mahmoud* and *Barnette*. They seek the “right to micromanage” what Texas schools hang on classroom walls. But neither *Mahmood* nor *Barnette* supports, let alone compels, that remedy, and Plaintiffs point to no other support.

In sum, Plaintiffs have failed to show that S.B. 10 imposes a substantial burden on their free exercise rights.

CONCLUSION

We REVERSE the district court’s judgment, VACATE the preliminary injunction, and RENDER judgment dismissing Plaintiffs’ Establishment and Free Exercise claims.

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JAMES C. HO, *Circuit Judge*, concurring:

I join in all but Part III, for the reasons stated earlier this year in *Roake v. Brumley*, 170 F.4th 292, 300 (5th Cir. 2026) (en banc) (Ho, J., concurring in the judgment). In sum, we can vacate the preliminary injunction on the merits—and uphold Ten Commandments displays in public schools under the Constitution—without addressing Plaintiffs’ theory of standing or requiring any factual context to affirm the displays. No challenge to either Texas or Louisiana law could possibly succeed, because neither law comes close to imposing either an establishment of religion or a prohibition on the free exercise thereof, as originally understood by the Founders or articulated by any governing Supreme Court precedent.

Our Founders didn’t just permit religion in education—they presumed that there would be religion in education. Indeed, they firmly believed that our Constitution wouldn’t work without a religious people. *See, e.g., id.* at 303-4 (collecting quotes). As President George Washington observed in his farewell address to the nation:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. . . . Let it simply be asked: Where

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is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

George Washington, *Farewell Address*, Sep. 17, 1796, in 1 MESSAGES AND PAPERS OF THE PRESIDENTS 205, 212 (1897).

I'm pleased that the court today upholds Texas law and delighted to concur in all but Part III.

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ANDREW S. OLDHAM, *Circuit Judge*, joined by WILLETT, *Circuit Judge*, concurring in part:

I agree with the majority that the district court’s injunction must be reversed. I further agree that, if the case is justiciable, Texas’s Ten Commandments law does not violate the Constitution. Fourteen members of the court find that the case is justiciable, so the merits are before the en banc court. On the merits, I agree with the majority opinion in full.

I nevertheless write separately to express my reservations about justiciability. It is not obvious to me that these plaintiffs have standing. Their claims hinge on the mistaken premise that individuals can sue because they are offended—a proposition that is wrong as a matter of constitutional structure and Supreme Court precedent. What’s more, the plaintiffs chose to bring a facial, pre-enforcement challenge against Texas’s law. That’s the hardest challenge to make out. And plaintiffs fell far short of carrying their burden here.

I

This case is a textbook offended-observer case. The plaintiffs’ complaint objects to the fact that “the Act [is] designed to, and will, ensure that students are more likely to **observe**, absorb, accept, follow, and live by the religious directives in the Ten Commandments.” ROA.78 (emphasis added). It alleges the displays will “send a marginalizing message” and pressure school children to “**observe**, mediate on, venerate, and follow the

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state's favored religious text." ROA.82 (emphasis added). Various plaintiffs call the text "deeply **offensive**." ROA.86 (emphasis added); ROA.89 (same). From top to bottom, the idea is that the plaintiffs (1) worry that they will one day see a poster; (2) worry that they might find that poster offensive; so (3) they invoke federal jurisdiction for protection from potential, hypothetical future offenses.

That is wrong. Article III limits the "judicial Power" to the resolution of "Cases" and "Controversies." U.S. CONST. ART. III. This power is a limited one. Article III authorizes courts only to "adjudge the legal rights of litigants in actual controversies." *Liverpool, N.Y. & P.S.S. Co. v. Emigration Comm'rs*, 113 U.S. 33, 39, 5 S. Ct. 352, 28 L. Ed. 899 (1885). A court may not offer freestanding proclamations about the Constitution, principles of law, or the rights of parties not before the court. Instead, courts may only answer questions of law "as a necessity in the determination of [a] real, earnest and vital controversy." *Chicago & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345, 12 S. Ct. 400, 36 L. Ed. 176 (1892). If a court does anything else, it is exercising a power that "is not judicial . . . in the sense in which judicial power is granted by the Constitution to the courts of the United States." *United States v. Ferreira*, 54 U.S. (13 How.) 40, 48, 14 L. Ed. 42 (1851). Thus, the judicial power is limited to actual disputes between parties.

An actual dispute means plaintiffs must have a "personal stake" in an underlying case. *Raines v. Byrd*, 521 U.S. 811, 819, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997). This personal stake means plaintiff must have a concrete,

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particularized, and actual or imminent injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). That requirement, the Court has explained, protects the separation of powers in our constitutional system. *Id.* at 559-60.

The plaintiffs in this suit lack that personal stake. For one, Article III requires that courts assess whether the alleged injury to the plaintiff has a “close relationship” to a harm traditionally recognized as providing a basis for suit in American courts. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). And there is no historical comparator to offended-observer standing. *See American Legion v. American Humanists Ass’n*, 588 U.S. 29, 139 S. Ct. 2067, 204 L. Ed. 2d 452 (2019) (GORSUCH, J., concurring in the judgment); *TransUnion*, 594 U.S. at 425 (listing historic harms). Indeed, the opposite is true: “[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art[icle] III’s requirements.” *Diamond v. Charles*, 476 U.S. 54, 62, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986).

What’s more, offended-observer standing cannot be reconciled with the separation of powers. Legislatures take action when citizens are offended; courts do not. Legislatures respond to social trends and political campaigns; courts do not. Courts, by contrast, are limited by the case-or-controversy requirement. *See Lujan*, 504 U.S. at 560-61. And “Article III standing . . . enforces the Constitution’s case-or-controversy requirement.” *Elk*

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Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11, 124 S. Ct. 2301, 159 L. Ed. 2d 98 (2004). Without standing, “courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions.” *Warth v. Seldin*, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

Precedent also forecloses the plaintiffs’ claims. The only Supreme Court case considering a similar claim found that there was no standing. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 485-86, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982). In *Valley Forge*, the plaintiffs protested the government’s decision to transfer property to a religious college. *Id.* at 468. So they sued, based on information they obtained through a news release. *Id.* at 469. But the Court rejected that claim, reasoning that “the psychological consequence presumably produced by observation of conduct with which one disagrees” is not an injury-in-fact sufficient to confer standing. *Id.* at 485.

Thus, it is little surprise that a chorus of judges from across the country have rejected offended-observer standing. See *American Legion*, 588 U.S. at 80-83 (GORSUCH, J., concurring in the judgment) (noting that the doctrine “has no basis in law,” and is “deeply inconsistent . . . with many longstanding principles and precedents”); *City of Ocala v. Rojas*, 143 S. Ct. 764, 766, 215 L. Ed. 2d 143 (2023) (THOMAS, J., dissenting from denial of certiorari); *Kondrat’yev v. City of Pensacola*, 949 F.3d 1319, 1335 (11th Cir. 2020) (NEWSOM, J., concurring); *Kondrat’yev v. City of*

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Pensacola, 903 F.3d 1169, 1175 (11th Cir. 2018) (NEWSOM, J., concurring), *cert. granted, judgment vacated*, 588 U.S. 917, 139 S. Ct. 2772, 204 L. Ed. 2d 1153 (2019); *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 949 (5th Cir. 2022) (Smith, J.); *Freedom From Religion Found., Inc. v. Obama*, 641 F.3d 803, 807 (7th Cir. 2011) (EASTERBROOK, C.J.); *Barnes-Wallace v. San Diego*, 530 F.3d 776, 795 (9th Cir. 2008) (KLEINFELD, J., dissenting); *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 497 (6th Cir. 2004) (BATCHELDER, J., dissenting); *Penkoski v. Bowser*, 486 F. Supp. 3d 219, 231 (D.D.C. 2020) (MCFADDEN, J.). These judges recognize that the Supreme Court has never blessed the theory of standing that the plaintiffs today present.

*

At bottom, offended-observer standing contravenes our constitutional structure, Supreme Court precedent, and common sense.

II

But that is not the only problem with the plaintiffs' claims. Plaintiffs sought facial, pre-enforcement relief. Achieving success in that posture is the legal equivalent of converting a 7-10 split.¹

1. For those affected by the decline of civic activities like bowling, *cf.* ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000), a 7-10 split is the hardest spare to make.

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Facial challenges are an uphill battle. They require a plaintiff to show that there is no set of circumstances under which a law can be validly applied. *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). That is a difficult task, since a “statute may be invalid as applied to one state of facts and yet valid as applied to another.” *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006) (quotation omitted). That’s one reason why the Supreme Court has instructed that facial challenges are “disfavored.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008); *see also United States v. Texas*, 97 F.4th 268, 313-14 (5th Cir. 2024) (OLDHAM, J., dissenting) (making the same point).

One reason facial challenges are disfavored is that they require courts to engage in a guessing game about possible valid applications, which is a tricky task. *United States v. Raines*, 362 U.S. 17, 22, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960). A court could mistakenly “strike down” duly-enacted legislation just because a judge could not think of every hypothetical scenario to which the statute could apply. *See ibid.*; *but see* Jonathan F. Mitchell, *The Writ of Erasure Fallacy*, 104 Va. L. Rev. 933, 935-36 (2018) (explaining federal courts cannot “strike down” statutes as unconstitutional). And adjudicating hypothetical cases can be tough to reconcile with both the prohibition on hypothetical jurisdiction, *see Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998), and also the prohibition on advisory opinions, *see Correspondence of the Justices, in* WILLIAM BAUDE,

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ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 67-69 (8th ed. 2025). These problems explain the Supreme Court's caution that facial challenges "carr[y] too much promise of premature interpretatio[n] of statutes on the basis of factually barebones records." *Sabri v. United States*, 541 U.S. 600, 608-09, 124 S. Ct. 1941, 158 L. Ed. 2d 891 (2004) (citation modified).

But the plaintiffs here add to the difficulty because they bring a pre-enforcement challenge. Historically, that was also hard to do. It was not until *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967), that pre-enforcement challenges became something other than the exception, STEPHEN G. BREYER & RICHARD B. STEWART, ADMINISTRATIVE LAW AND REGULATORY POLICY 1136-37 (2d ed. 1985). But even in more recent years, the Court has made it difficult to bring a challenge before States have even attempted to enforce the law. See *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 497-504, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982) (disallowing a pre-enforcement facial challenge because there was insufficient evidence about how the challenged law would be enforced). That's because adjudicating these hypothetical situations "run[s] the risk of embroiling the federal courts in the adjudication of an abstract controversy with untold numbers of hypothetical and unforeseen permutations." *Texas*, 97 F.4th at 314 (OLDHAM, J., dissenting). So, any plaintiff's pre-enforcement challenge faces a hard road.

These plaintiffs ask us to *combine* a facial and pre-enforcement challenge. Doing so requires us to consider

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whether these plaintiffs with a hypothetical injury about a hypothetical sign might ever face a hypothetical situation where the law is constitutional.² As that string of hypotheticals suggests, that claim is bound to fail.³

Plaintiffs have no basis to invoke the federal judicial power merely because they are offended by a holy text that is a cornerstone of Western civilization. Fourteen members of the en banc court disagree with my justiciability concerns, however. And if we have jurisdiction as my

2. True, Texas’s law describes what the displays look like, how big they are, and where they must sit. TEX. EDUC. CODE ANN. § 1.0041(a)-(c). And true, the displays have gone into effect in non-enjoined districts. *See* Press Release, Attorney General of Texas, Attorney General Ken Paxton Instructs Texas Schools to Display the Ten Commandments in Accordance with Texas Law (Aug. 25, 2025), <https://perma.cc/WR7C-5P96>. But none of that changes the fact that the plaintiffs in this suit challenged what were then non-existent, hypothetical displays. The record before this court is devoid of information about the signs that will purportedly injure the plaintiffs—unsurprising given that no such signs exist. That dearth of information shows why courts have rarely countenanced and upheld facial, pre-enforcement challenges like this one.

3. Such issues bleed into a third potential problem with the plaintiff’s claims: ripeness. We recently explained that a challenge to a similar law in Louisiana was unripe. *See Roake v. Brumley*, 170 F.4th 292, 297 (5th Cir. 2026) (en banc) (per curiam). Ripeness “focuses on whether an injury that has not yet occurred is sufficiently likely to happen to justify judicial intervention.” *Chevron U.S.A., Inc. v. Traillour Oil Co.*, 987 F.2d 1138, 1153 (5th Cir. 1993). If offended observers are not really injured in the first place, we need not intervene to protect their rights. *Ibid.* And if these plaintiffs have never even seen the signs they hope to challenge, there is every indication their claims are not ripe, either. *See Roake*, 170 F.4th at 297.

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esteemed colleagues find, then I agree wholeheartedly with Judge Duncan on the merits and join all but Part III of the majority opinion. Perhaps one day the Supreme Court will clarify that offended observer standing has no place in our constitutional order. But until that day, I suppose there is some solace in the fact that parents and students of *all* stripes can invoke the powers of federal courts to combat ideological indoctrination in schools. *Cf. Mahmoud v. Taylor*, 606 U.S. 522, 544, 145 S. Ct. 2332, 222 L. Ed. 2d 695 (2025).

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IRMA CARRILLO RAMIREZ, *Circuit Judge*, joined by STEWART, RICHMAN, HAYNES, GRAVES, HIGGINSON, AND DOUGLAS, *Circuit Judges*, dissenting:*

The Supreme Court long ago held that a statute nearly identical to S.B. 10 violates the Establishment Clause. But apart from that established precedent, which only it can overrule, the Supreme Court has long emphasized “the heightened concerns with protecting freedom of conscience from subtle coercive pressure” in public schools, where classroom requirements that threaten to coerce students “to support or participate in religion” implicate a “foremost hallmark of religious establishment.” It has also held that the Free Exercise Clause protects against classroom requirements that threaten to “impose upon children a set of values and beliefs that are hostile to their parents’ religious beliefs” and “pressure” children to “conform.” Because legislation requiring the permanent fixture of religious rules in public-school classrooms, with no “educational function,” violates these most basic First Amendment principles, I respectfully dissent.

I. THE ESTABLISHMENT CLAUSE

The Establishment Clause “was intended to erect ‘a wall of separation between Church and State.’” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 16, 67 S. Ct. 504, 91 L. Ed. 711 (1947) (quoting *Reynolds v. United States*, 98 U.S. 145, 164, 25 L. Ed. 244 (1878)). It ordains that

* JUDGE RICHMAN joins Part I of this opinion with the exception of footnote 6 and Part I.B.2. JUDGE HAYNES joins Part I.A of this opinion.

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no federal or state government “can pass laws which aid one religion, aid all religions, or prefer one religion over another.” *Id.* at 15.

The Supreme Court “has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Edwards v. Aguillard*, 482 U.S. 578, 583-84, 107 S. Ct. 2573, 96 L. Ed. 2d 510 (1987). That vigilance must be exercised with prescribed “care and restraint” because public education is primarily in the hands of the States. *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968); *see also Wisconsin v. Yoder*, 406 U.S. 205, 213, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972) (“Providing public schools ranks at the very apex of the function of a State.”). Still, “a State’s interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by . . . the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children.” *Yoder*, 406 U.S. at 214.

The protections afforded to schoolchildren by the Establishment Clause unquestionably “implicate basic constitutional values.” *Epperson*, 393 U.S. at 104. As the Supreme Court has previously explained:

Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in

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such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure. Furthermore, "[t]he public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools"

Edwards, 482 U.S. at 584 (citation modified) (alterations in original) (quoting *Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 231, 68 S. Ct. 461, 92 L. Ed. 649 (1948)). That is why a religious practice may be deemed unconstitutional in the "special context of the public elementary and secondary school system," but deemed constitutional elsewhere. *See id.* at 583.

A. *Stone v. Graham* directly controls.

The Supreme Court's decision in *Stone v. Graham*, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980), is a model of its "vigilan[ce] in monitoring compliance with the Establishment Clause in [public] schools." *See id.* at 583-84. In *Stone*, the Court struck down a Kentucky statute that required all "public elementary and secondary school[s]" to post "durable, permanent cop[ies] of the Ten Commandments," measuring "sixteen (16) inches wide by twenty (20) inches high," in every classroom. 449 U.S. at 39-40, 39 n.1 (quoting KY. REV. STAT. § 158.178(1))

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(1980)). The statute also required each display to feature “a notation concerning” its purportedly secular purpose. *Id.* at 39 n.1 (quoting KY. REV. STAT. § 158.178(2) (1980)).

In evaluating the plaintiffs’ Establishment Clause challenge to the statute, the Supreme Court looked to the then-applicable test derived from *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). *Id.* at 40. Under the *Lemon* test, (1) the challenged statute “must have a secular legislative purpose,” (2) the statute’s “principal or primary effect must be one that neither advances nor inhibits religion,” and (3) “the statute must not foster an excessive government entanglement with religion.” *Id.* (citation modified) (quoting *Lemon*, 403 U.S. at 612-613).

The Supreme Court held that, under *Lemon*’s first prong, the secular purpose described in the Kentucky statute was “not sufficient to avoid conflict with the First Amendment.” *Id.* at 41.

The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding

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idolatry, not using the Lord's name in vain, and observing the Sabbath Day.

Id. at 41-42 (emphasis added). The Court also emphasized the Kentucky statute's coercive effect:

This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like. Posting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments *are to have any effect at all*, it will be *to induce* the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.

Id. at 42 (citation modified) (emphasis added).

It was not “significant that the Bible verses involved in [*Stone* were] merely posted on the wall, rather than read aloud.” *Id.* (distinguishing *Abington School District v. Schempp*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963), and *Engel v. Vitale*, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962), both of which held that policies requiring prayer readings in public schools violated the Establishment Clause). Nor did it “matter that the posted copies of the Ten Commandments [were] financed by voluntary private contributions,” because “the mere posting” of the Ten Commandments “under the auspices of the legislature provides the ‘official support of the State

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... Government’ that the Establishment Clause prohibits.” *Id.* (quoting *Schempp*, 374 U.S. at 222). As a result, the Supreme Court “conclude[d] that [the Kentucky statute] violate[d] the first part of the *Lemon* . . . test, and thus the Establishment Clause.” *Id.* at 42-43.

The Kentucky statute in *Stone* and S.B. 10 are substantively identical. Both require that the Ten Commandments be permanently displayed in every public elementary and secondary school classroom in the state using comparable minimum size requirements, and that the displays be financed by private donations. Compare TEX. EDUC. CODE § 1.0041, with KY. REV. STAT. § 158.178 (1980). Although, unlike the Kentucky statute, S.B. 10 does not require any accompanying notation about the display’s purpose, this is not significant to the analysis under *Stone*. It held the Kentucky statute violated the Establishment Clause *despite* the notation—not *because* of it. See *Stone*, 449 U.S. at 42. And, as with the Kentucky statute, S.B. 10 does not require that the Ten Commandments be “integrated into the school curriculum.” See *id.* *Stone* is on all fours with this case, and under *Stone*, S.B. 10 violates the Establishment Clause.

1. The Supreme Court has not overruled *Stone*.

No Supreme Court decision has overturned *Stone*. It is well-established that it is the “[Supreme] Court’s prerogative alone to overrule one of its precedents.” *Bosse v. Oklahoma*, 580 U.S. 1, 3, 137 S. Ct. 1, 196 L. Ed. 2d 1 (2016) (citation modified); see also *Lefebure v. D’Aquila*, 15 F.4th 650, 660 (5th Cir. 2021) (“[T]he only

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court that can overturn a Supreme Court precedent is the Supreme Court itself.”). It “does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.” *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2000). Rather, “the Supreme Court abrogates its cases with a bang.” *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 405-06 (5th Cir. 2020) (“Because *McDonald* has direct application in this case, the Court of Appeals should follow it, leaving to the High Court the prerogative of overruling its own decisions.” (citation modified)).

“If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls” *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989). Inferior courts also “should [not] conclude [the Supreme Court’s] more recent cases have, by implication, overruled an earlier precedent.” *Agostini v. Felton*, 521 U.S. 203, 237, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997); *see also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023) (criticizing a lower court for treating a Supreme Court decision as being “implicitly overruled,” as lower courts should follow controlling precedent even if it “is in tension with some other line of decisions” (citation modified)).

This court regularly abides by these principles. *See, e.g., United States v. Hernandez*, 159 F.4th 425, 427 n.1 (5th Cir. 2025) (*per curiam*) (“[W]e lack the authority to

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recognize ‘implicit’ overruling by the [Supreme] Court of its precedent.”); *Cochran v. U.S. SEC & Exch. Comm’n*, 20 F.4th 194, 206 n.11 (5th Cir. 2021) (en banc) (“[E]ven if . . . we could confidently predict *Free Enterprise Fund*’s impending demise, we would still have to follow it . . .”); *Nat’l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 549-50 (5th Cir. 2020) (per curiam) (“[T]he factual underpinning of the controlling Supreme Court decision has changed, but that does not grant a court of appeals license to disregard or overrule that precedent.”).¹ Even when governing Supreme Court cases “heavily rel[y] on cases” that have since been “overruled” or had “their reasoning” “seriously called . . . into question,” those governing cases “remain controlling law.” *Boudreaux v. La. State Bar Ass’n*, 3 F.4th 748, 755 (5th Cir. 2021). Put simply, “[o]ur job, as an inferior court, is to adhere strictly to Supreme Court precedent, whether or not we think a precedent’s best days are behind it.” *United States v. Vargas*, 74 F.4th 673, 683 (5th Cir. 2023).

Without any case demonstrating that the Supreme Court has exercised its lone “prerogative” to overturn *Stone, Bosse*, 580 U.S. at 3, this court continues to be bound by that case even if it “is in tension with some other

1. See also *United States v. Cannon*, 750 F.3d 492, 505 (5th Cir. 2014) (noting that this court “may not blaze a new constitutional trail simply” because certain “authorities impliedly undermine” binding Supreme Court authority (citation modified)); *Doe v. Beaumont Indep. Sch. Dist.*, 240 F.3d 462, 474 n.2 (5th Cir. 2001) (Jolly, J., dissenting on the question of standing) (observing that, under *Rodriguez de Quijas*, “we cannot blithely assume . . . the [Supreme] Court[‘s] inten[t]”).

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line of decisions,” *Mallory*, 600 U.S. at 136, and even if, as Defendants argue, “more recent cases” may appear to “overrule” *Stone* “by implication.” See *Agostini*, 521 U.S. at 237.

2. The Supreme Court has continued to recognize *Stone*’s viability even while sidestepping *Lemon*.

Following *Stone*, the Supreme Court applied *Lemon* variably in Establishment Clause cases. Compare *McCreary Cnty. v. ACLU*, 545 U.S. 844, 881, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005) (applying *Lemon* and finding an Establishment Clause violation where the Ten Commandments were displayed in Kentucky courthouses), with *Van Orden v. Perry*, 545 U.S. 677, 692, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005) (plurality opinion) (declining to apply *Lemon* and finding no Establishment Clause violation where the Ten Commandments were displayed at the Texas State Capitol). In *Van Orden*, a plurality of the Court cast doubt on *Lemon*. See 545 U.S. at 685-86 (“Whatever may be the fate of the *Lemon* test in the larger scheme of Establishment Clause jurisprudence, we think it not useful in dealing with the sort of passive monument that Texas has erected on its Capitol grounds.”). It opted to instead apply an analysis “driven . . . by our Nation’s history.” See *id.*²

2. JUSTICE BREYER took a similar approach in his controlling concurring opinion. *Van Orden*, 545 U.S. at 700 (BREYER, J., concurring in the judgment). Rather than apply *Lemon*, he concluded the display was constitutional based on “consideration of the basic purposes of the First Amendment’s Religion Clauses themselves.” *Id.* at 703-04.

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In *Van Orden*, despite applying a historical approach instead of *Lemon*, the plurality cited *Stone* as a “limit[] to the display of religious messages or symbols” and “an example” of the Court’s “vigilan[ce] in monitoring compliance with the Establishment Clause in . . . schools.” *Id.* at 690-91.³ “The placement of the Ten Commandments monument on the Texas State Capitol grounds,” *Van Orden* explained, is “*a far more passive use of those texts* than was the case in *Stone*.” *Id.* at 691 (emphasis added). This is because “[t]he display [was] not on the grounds of a public school, where, given the impressionability of the young, government must exercise particular care in separating church and state.” *Id.* at 703 (BREYER, J., concurring in the judgment) (citing *Lee v. Weisman*, 505 U.S. 577, 592, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992); *Stone*, 449 U.S. 39). And, unlike in *Van Orden*, “the text” of the Ten Commandments in *Stone* “confronted elementary school students *every day*.” *Id.* at 691 (plurality opinion) (emphasis added).

3. Members of the Supreme Court have often observed the distinct operation of the Establishment Clause in the *Stone* context. See, e.g., *McCreary*, 545 U.S. at 908 (SCALIA, J., dissenting) (“If, as discussed above, the Commandments have a proper place in our civic history, even placing them by themselves can be civically motivated—especially when they are placed, *not in a school* (as they were in the *Stone* case upon which the Court places such reliance), but in a courthouse.” (emphasis added)); *City of Elkhart v. Books*, 532 U.S. 1058, 1060-61, 121 S. Ct. 2209, 149 L. Ed. 2d 1036, (2001) (REHNQUIST, C.J., dissenting) (“We have been particularly vigilant in monitoring compliance with the Establishment Clause in [the *Stone*] context, where the State exerts great authority and coercive power over students through mandatory attendance requirements.” (citation modified)).

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Van Orden recognized *Stone*'s viability, notwithstanding *Lemon*, given the special "concerns that arise in the context of public elementary and secondary schools." *Id.* (quoting *Edwards*, 482 U.S. at 585).⁴

3. *Kennedy v. Bremerton School District* did not overturn *Stone*.

Despite the fact that no Supreme Court decision has expressly overturned *Stone*, Defendants assert that it is no longer good law because *Kennedy v. Bremerton School District*, 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022), "abandoned" *Lemon*.

In *Kennedy*, a high school football coach "lost his job . . . because he knelt at midfield after games to offer a quiet prayer of thanks." 597 U.S. at 512-13. The coach argued that the school district's actions violated the First Amendment's Free Speech and Free Exercise Clauses. *Id.* at 520.

The Supreme Court initially concluded that the coach's speech was protected under the First Amendment. *Id.* at 524-31. The burden therefore shifted to the school district to show that its actions were nevertheless warranted. *Id.* at

4. See also Ira C. Lupu & Robert W. Tuttle, *The Ten Commandments in Louisiana Public Schools: A Study in the Survival of Establishment Norms*, 100 Chi.-Kent L. Rev. 601, 615 (2025) (observing that, "[s]ignificantly, the *Van Orden* plurality distinguished *Stone v. Graham* on grounds that speak directly to the" context of state legislation requiring Ten Commandments displays in classrooms).

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531-32. To meet its burden, the school district maintained that “its suspension of Mr. Kennedy was essential to avoid a violation of the Establishment Clause” because, under “*Lemon* and its progeny,” a “reasonable observer could conclude that the government ha[d] endorsed religion.” *Id.* at 532-34 (citation modified). The Supreme Court disagreed, explaining that it “long ago abandoned *Lemon* and its endorsement test offshoot.” *Id.* at 534. As in *Van Orden*, it instead applied a history-based approach to the Establishment Clause:

In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by “reference to historical practices and understandings.” “[T]he line” that courts and governments “must draw between the permissible and the impermissible” has to “accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.” An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some “exception” within the “Court’s Establishment Clause jurisprudence.”

Id. at 535-36 (citation modified) (alterations in original) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 575-77, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)).

Applying this framework, the Court explained that the “government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make a religious observance compulsory.’” *Id.* at 537

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(quoting *Zorach v. Clauson*, 343 U.S. 306, 314, 72 S. Ct. 679, 96 L. Ed. 954 (1952)). Nor may it “coerce anyone to attend church,” *id.* (citation modified), or “force citizens to engage in ‘a formal religious exercise.’” *Id.* (quoting *Lee*, 505 U.S. at 589). The Court also held that “*coercion along these lines* was among the *foremost hallmarks of religious establishments* the framers sought to prohibit when they adopted the First Amendment.” *Id.* (emphasis added). Because the coach’s actions in *Kennedy* did not involve this kind of “problematic[] coerci[on],” the Court concluded the Establishment Clause was not implicated. *Id.* at 539-42.

Although *Kennedy* “abandoned *Lemon* and its endorsement test offshoot,” it did not cite, much less purport to “abandon” or overturn, *Stone*—despite the opportunity to do so. *See id.* at 534.⁵ This court must follow Supreme Court precedent even if that “precedent . . . appears to rest on reasons rejected in some other line of decisions.” *Rodriguez de Quijas*, 490 U.S. at 484. As a result, this court is bound by *Stone* regardless of whether it applied *Lemon*—i.e., “appears to rest on

5. The Court has spoken with clarity in other contexts. *Compare Kennedy*, 597 U.S. at 534 (stating only that the Supreme Court had “long ago abandoned *Lemon*”), *with W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (“The decision of this Court in *Minersville School District v. Gobitis* and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled . . .”), and *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 350 n.8, 93 S. Ct. 1571, 36 L. Ed. 2d 294 (1973) (“Insofar as former decisions . . . may indicate a narrower reading of the custody requirement, they may no longer be deemed controlling.”).

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reasons rejected in” *Kennedy*—because *Stone* “has direct application in” this case. *See id.* ⁶

Nor did *Kennedy* purport to overturn the full extent of *Lemon*’s “progeny.”⁷ In fact, *Kennedy* itself relied on *Lemon*’s progeny. *See id.* at 541-42. It distinguished the factual circumstances in *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000). *Id.* *Santa Fe* held, in accordance with *Lemon*, that a school policy of prayer before football games violated the Establishment Clause because “the simple enactment of this policy, with the *purpose* and *perception of school endorsement* of student prayer, was a constitutional violation.” 530 U.S. at 314-16 (emphasis added). *Kennedy* also distinguished *Lee v. Weisman*, in which the Court explicitly rejected the invitation to “reconsider” *Lemon*. *Lee*, 505 U.S. at 587. Similar to

6. Notably, *Stone* also relied on *Schempp* and *Engel*, two cases that pre-dated *Lemon* by several years. *See Stone*, 449 U.S. at 41-42. And as Judge Dennis has explained, *Schempp*’s “foundational principle”—that “a law must have a secular legislative purpose to withstand the strictures of the Establishment Clause”—continues to “bind[] us” because *Kennedy* did not address *Schempp* or “the secular-purpose requirement.” *Roake v. Brumley*, 170 F.4th 292, 307 (5th Cir. 2026) (DENNIS, J., dissenting); *see also* Lupu & Tuttle, *supra* note 4, at 619-20 (observing *Stone*’s continued vitality because, among other things, the “requirements pertaining to purpose and effects do not originate with *Lemon*”).

7. The only direct reference to *Lemon*’s “progeny” in *Kennedy* is its recognition that that the school district and Ninth Circuit had “relied on *Lemon* and its progeny.” 597 U.S. at 534. *Groff v. DeJoy* also did not speak to *Lemon*’s progeny—it simply acknowledged that *Lemon* had been “abrogated.” 600 U.S. 447, 460, 143 S. Ct. 2279, 216 L. Ed. 2d 1041 (2023).

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Santa Fe, Lee held that a school policy that permitted clergy members to recite prayers at school graduations was unconstitutional. *Id.* at 586-87.

Although *Kennedy* characterized *Santa Fe* and *Lee* as cases where the Supreme Court found state action “to be problematically coercive,” it did not purport to provide an exhaustive list of *Lemon*-era cases that fall under that category. See *Kennedy*, 597 U.S. at 541. Notably, *Stone* too rested on problematic coercion: it held that “[i]f the posted copies of the Ten Commandments are to have any effect at all, it will be to *induce* the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.”⁸ *Stone*, 449 U.S. at 42 (emphasis added); see also *Lupu & Tuttle*, *supra* note 4, at 620 (noting that *Stone*, like the school prayer cases, “hinged to a concern about state-sponsored religious indoctrination of young, impressionable, and captive audiences”). *Kennedy* did not directly overrule *Stone*, and “we lack the authority to recognize [an] ‘implicit’ overruling” of all of *Lemon*’s “progeny,” especially where the Supreme Court itself continues to rely on those cases. See *Hernandez*, 159 F.4th at 427 n.1; see also *Pizza Hut L.L.C. v. Pandya*, 79 F.4th 535, 542 (5th Cir. 2023) (“[T]he Supreme Court has been careful to instruct lower courts not to read new pronouncements as overruling any related precedent.”).

Even accepting Defendants’ position that *Kennedy*’s critique of *Lemon* indicates *Stone*’s eventual downfall, they essentially invite this court to “get ahead of the

8. To “induce” is “to move by persuasion or influence.” *Induce*, MERRIAM-WEBSTER DICTIONARY, <https://perma.cc/QEX7-7QGJ>.

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Supreme Court and read tea leaves to predict where it might end up.” See *United States v. Mecham*, 950 F.3d 257, 265 (5th Cir. 2020). But we are to “follow [the Supreme Court’s] precedents even when,” as Defendants suggest, “we don’t expect the Court itself to do so.” *United States v. Cockerham*, 162 F.4th 500, 510 (5th Cir. 2025) (Ho, J., concurring).⁹

Whatever the fate of *Stone* may be, “as an inferior court,” we must “adhere strictly to” it until the Supreme Court says otherwise. See *Vargas*, 74 F.4th at 683. And under *Stone*, S.B. 10 is unconstitutional.¹⁰

9. Defendants argue that, even if *Stone* remains good law, it does not control the outcome of this case because, unlike *Stone*, the “legislative history demonstrates that the Texas Legislature had numerous secular purposes in passing S.B.10.” This court need not delve into the purpose behind S.B. 10. The Supreme Court has already held that “[t]he *preeminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature*. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and *no legislative recitation of a supposed secular purpose can blind us to that fact*.” *Stone*, 449 U.S. at 41 (emphasis added). Defendants also assert that holding that S.B. 10 violates the Establishment Clause results in a rule of law that disfavors religion and religious expression. As the Supreme Court has explained, “[n]othing . . . could be more wrong.” *Engel*, 370 U.S. at 433-35. “It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.” *Id.* at 435.

10. In addition to the district court in this case, every other district court to independently consider whether statutes requiring the permanent display of the Ten Commandments in public schools

*Appendix C***B. S.B. 10 is also unconstitutional under *Kennedy*'s history-based approach.**

Stone is dispositive. But even if it was not, S.B. 10 independently violates the Establishment Clause under *Kennedy*.

1. *Kennedy* reaffirmed that the Establishment Clause prohibits religious coercion.

Defendants assert that, under *Kennedy*, there “are six identified ‘hallmarks’ of religious establishments that the Establishment Clause was adopted to prohibit,” and if a challenged practice does not “resemble” one of these hallmarks, there is no constitutional violation. Plaintiffs assert that *Kennedy* only held that the Establishment Clause prohibits religious coercion, and that it did not adopt six particular hallmarks.

Kennedy made clear that “the Establishment Clause must be interpreted by ‘reference to historical practices

are constitutional has concluded that *Stone* remains binding and dispositive. *See Stinson v. Fayetteville Sch. Dist. No. 1*, No. 5:25-Cv-5127, 2026 U.S. Dist. LEXIS 53207, 2026 WL 736964, at *7 (W.D. Ark. Mar. 16, 2026) (permanently enjoining enforcement of an Arkansas statute similar to S.B. 10); *Ringer v. Comal Indep. Sch. Dist.*, 809 F. Supp. 3d 672, 681 (W.D. Tex. 2025) (preliminarily enjoining enforcement of S.B. 10 as to numerous Texas school districts); *Roake v. Brumley*, 756 F. Supp. 3d 93, 116-17 (M.D. La. 2024) (preliminarily enjoining enforcement of a Louisiana statute similar to S.B. 10), *aff'd*, 141 F.4th 614 (5th Cir. 2025), *rev'd en banc*, 170 F.4th 292 (5th Cir. 2026) (concluding only that the dispute was not ripe).

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and understandings” and that the analysis must “focus[] on original meaning and history.” 597 U.S. at 535-36 (quoting *Galloway*, 572 U.S. at 576). Under that history-based approach, the Court held “*coercion* . . . was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Id.* at 537 (emphasis added).

Kennedy specifically placed “coercion along the[] lines” of that found in *Lee* among those “foremost hallmarks.” See *Kennedy*, 597 U.S. at 537. *Lee*, which undisputedly remains binding, concerned an Establishment Clause challenge to a school district policy that “permitted” principals to “invite” clergy members to recite prayers at graduations. 505 U.S. at 580. Attendance at graduation was “voluntary” and not “a condition for receipt of [a] diploma.” *Id.* at 583, 586. Participation in the “prayer” was also a “choice” for attendees. *Id.* at 591. In the context of a school graduation—which the Court found is “analogous to the classroom setting” and carries a “heightened” risk of “subtle coercive pressure”—*Lee* concluded the policy inflicted “public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the [prayers].” *Id.* at 592-93, 596. “This pressure, though subtle and indirect, [could] be as real as any overt compulsion.” *Id.* The policy, therefore, “put school-age children who objected” to the prayers “in an untenable position.” *Id.* at 590. They were placed “in the dilemma of participating [in the prayers], with all that implies, or protesting.” *Id.* at 593. *Lee* held “the State may not, consistent with the Establishment Clause, place primary and secondary school children in

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this position,” because the “government may not coerce anyone to support or participate in religion or its exercise.” *Id.* at 587, 593.

Kennedy and *Lee* are consistent with a long line of cases that have “observed” the “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *See id.* at 592 (collecting cases); *see also Galloway*, 572 U.S. at 590 (distinguishing cases arising in the public-school context from cases concerning “mature adults”); *Mahmoud v. Taylor*, 606 U.S. 522, 554–55, 145 S. Ct. 2332, 222 L. Ed. 2d 695 (2025) (“[W]e have recognized the potentially coercive nature of classroom instruction of this kind. . . . Young children . . . are often impressionable and implicitly trust their teachers.” (citation modified)); *Edwards*, 482 U.S. at 583–84 (“The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. . . . Students in such institutions are impressionable and their attendance is involuntary.”). The threat of “indirect coercion,” the Court has explained, “may not be limited to the context of schools, *but it is most pronounced there.*” *Lee*, 505 U.S. at 592 (emphasis added). “What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.” *Id.* This is because, in the public-school context, the “State exerts great authority and *coercive power* through mandatory attendance requirements, and because of the

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students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Edwards*, 482 U.S. at 584 (emphasis added).

The Supreme Court has focused on these precise features, which are unique to the “classroom context,” *Van Orden*, 545 U.S. at 690 (plurality opinion), to distinguish the display of the Ten Commandments on public grounds from their display “on the grounds of a public school.” *See id.* at 703 (BREYER, J., concurring in the judgment). It has likewise highlighted the “[i]nherent differences between the public school system and a session of a state legislature”—the “influence and force” in the school context is “far greater.” *Lee*, 505 U.S. at 596-97. In short, the Supreme Court’s “decisions . . . require [this court] to distinguish the public school context” when evaluating Establishment Clause claims. *Id.* at 597.¹¹

2. *Kennedy* did not cabin the Establishment Clause to six exclusive “hallmarks.”

Defendants assert that *Kennedy* adopted an exclusive “hallmarks” test based on JUSTICE GORSUCH’s concurrence in *Shurtleff v. City of Boston*, 596 U.S. 243, 142 S. Ct. 1583, 212 L. Ed. 2d 621 (2022), and that S.B. 10 is constitutional because it does not implicate any of these specific hallmarks.

11. Unlike other government buildings where the Ten Commandments are displayed, like the Supreme Court and National Archives, school is an “inherently . . . instructional setting,” where “students’ emulation of teachers as role models and . . . susceptibility to peer pressure . . . raise[s] special concerns regarding state interference.” *See Lee*, 505 U.S. at 643 (SCALIA, J., dissenting).

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In a footnote, *Kennedy* cited, among other opinions and authorities, a portion of Justice Gorsuch’s *Shurtleff* concurrence “discussing coercion and certain other historical hallmarks of an established religion.” *Kennedy*, 597 U.S. at 537 n.5 (citing *Shurtleff*, 596 U.S. at 285-86 (GORSUCH, J., concurring in the judgment)). The hallmarks discussed by JUSTICE GORSUCH are: the government (1) “exerted control over the doctrine and personnel of the established church”; (2) “mandated attendance in the established church and punished people for failing to participate”; (3) “punished dissenting churches and individuals for their religious exercise”; (4) “restricted political participation by dissenters”; (5) “provided financial support for the established church, often in a way that preferred the established denomination over other churches”; and (6) “used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function.” *Shurtleff*, 596 U.S. at 286 (GORSUCH, J., concurring in the judgment).¹²

The Supreme Court, however, did not directly quote or apply the six specific hallmarks outlined in the non-binding *Shurtleff* opinion, much less adopt them as the exclusive Establishment Clause test.¹³ Instead, the Court

12. Notably, JUSTICE GORSUCH emphasized that “[m]ost of these hallmarks reflect forms of ‘coerc[ion]’ regarding ‘religion or its exercise.’” *Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring in the judgment) (alterations in original) (quoting *Lee*, 505 U.S. at 587).

13. No other circuit has held that the hallmarks from Justice Gorsuch’s *Shurtleff* concurrence represent the exclusive Establishment Clause test. In *Firewalker-Fields v. Lee*, the Fourth Circuit declined to undertake the Establishment Clause analysis

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cited the *Shurtleff* concurrence only to help illustrate that “coercion . . . was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Kennedy*, 597 U.S. at 537 (emphasis added).¹⁴

3. S.B. 10 is “problematically coercive.”

Here, S.B. 10 requires the permanent display of the Ten Commandments in all public-school classrooms.

in the first place, instead remanding the issue so that the district court could “take the first pass at addressing the new [*Kennedy*] framework.” 58 F.4th 104, 121-22 (4th Cir. 2023). And although the Third Circuit in *Hilsenrath on behalf of C.H. v. School District of Chathams* evaluated an Establishment Clause claim by referencing the hallmarks, it also acknowledged that “*Shurtleff* did not enumerate an exhaustive list” of Establishment Clause violations. 136 F.4th 484, 491 & n.54 (3d Cir. 2025). Notably, consistent with *Kennedy*, its analysis largely focused on *coercion*. See *id.* at 491-92.

14. As one scholar put it, under *Kennedy*, “[c]ourts reviewing state Ten Commandments mandates should . . . ask whether the challenged law shares the coercive structure of historical religious establishments,” such as whether the practice “confront[s] a captive audience,” compels those with sincere religious beliefs “to respond in a manner that reveals those beliefs,” and “occur[s] in a setting where social consequences might attach to dissent.” Paul E. McGreal, *Ten Commandments Cases: Learning from Reformation Coercion*, 124 MICH. L. REV. ONLINE 69, 83 (2026); see also NATHAN S. CHAPMAN & MICHAEL W. MCCONNELL, AGREEING TO DISAGREE: HOW THE ESTABLISHMENT CLAUSE PROTECTS RELIGIOUS DIVERSITY AND FREEDOM OF CONSCIENCE 156 (2023) [hereinafter CHAPMAN & MCCONNELL, AGREEING TO DISAGREE] (noting *Kennedy* “did not greenlight acts that have coercive effect, and it left in full force the principles of [the school prayer cases]”).

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These displays—required to be visible to students “from anywhere in the classroom”—are not passive. *See* TEX. EDUC. CODE § 1.0041(b)(1). The Supreme Court has already explained that if they “are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone*, 449 U.S. at 42. To argue otherwise ignores the unique context of placing religious scripture in public-school classrooms where, “given the impressionability of the young, government must exercise particular care in separating church and state.” *See Van Orden*, 545 U.S. at 703 (Breyer, J., concurring in the judgment); *see also Lee*, 505 U.S. at 597 (“Our decisions . . . require us to distinguish the public school context.”); CHAPMAN & MCCONNELL, AGREEING TO DISAGREE, *supra* note 14, at 145 (“Schools are an inherently coercive environment. Attendance is compulsory, alternatives are costly, and the atmosphere is one of obedience.”). It also ignores the self-evident nature of the Ten Commandments: they “command” the reader to follow certain directives. Those directives are largely religious in nature.¹⁵ “[I]mpressionable” schoolchildren, who are subject to the State of Texas’s “great authority and coercive power” and who often “emulate[e] [their] teachers as role models,” *Edwards*, 482 U.S. at 584, will undoubtedly read these Commandments and feel—at the least—“subtle coercive pressure” to venerate or obey them. *See Lee*, 505 U.S. at 592.

15. For example, the version of the Ten Commandments required by S.B. 10 states: “Thou shalt have no other gods before me”; “Thou shalt not make to thyself any graven images”; “Thou shalt not take the Name of the Lord thy God in vain”; and “Remember the Sabbath day, to keep it holy.” TEX. EDUC. CODE § 1.0041(c).

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The “subtle coercive pressure” Texas students will feel is precisely the type that *Lee* identified and that *Kennedy* labeled “problematic[]” under the Establishment Clause. *See Kennedy*, 597 U.S. at 541. And S.B. 10 implicates a far greater risk of putting students “who object[]” to the Ten Commandments “in an untenable position.” *See Lee*, 505 U.S. at 590. Unlike *Lee*, which concerned prayer only at a graduation ceremony that students were not required to attend or participate in, students’ attendance at school is mandatory, and they will be subjected to religious scripture *all day every day*—with no educational function. As “commandments,” that religious scripture is also inherently coercive, more so than the “nonsectarian” invocations and benedictions in *Lee* that focused on “inclusiveness and sensitivity.” *See id.* at 581-82 (citation modified).¹⁶

“[T]he State may not, consistent with the Establishment Clause, place primary and secondary school children

16. Requiring the permanent fixture of the Ten Commandments in classrooms is also far different, and far more coercive, than requiring students to recite the Pledge of Allegiance, which includes the phrase “under God.” To begin, Texas students are permitted to opt out of reciting the Pledge—uttered only once per day, *see* TEX. EDUC. CODE § 25.082(c), whereas S.B. 10 does not allow students to opt out of confronting the Ten Commandments—day in and day out. And, as this court has described it, the Pledge is “nonsectarian” and “patriotic,” with a “minimal” “religious component.” *See Croft v. Perry*, 624 F.3d 157, 164-66, 170 (5th Cir. 2010) (concerning the Pledge to the Texas flag, which includes a reference to “God” that “was designed to mirror the [one] found in the [P]ledge of [A]llegiance to the United States flag”). S.B. 10’s Protestant—i.e., sectarian—version of the Ten Commandments, by contrast, is plainly religious scripture untethered to educational or patriotic function.

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in [the] position” of reading and venerating the Ten Commandments, “with all that implies,” or “protesting.” *See id.* at 593.¹⁷ To avoid this “dilemma,” *id.*, parent-Plaintiffs will be forced to incur the costs of sending their children to private school, or avoid school altogether and risk fines and prosecution under Texas’s compulsory attendance laws. *See* TEX. EDUC. CODE §§ 25.085, 25.093.¹⁸ But “[p]ublic education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept a burden on their [First Amendment rights].” *Mahmoud*, 606 U.S. at 530 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462, 137 S. Ct. 2012, 198 L. Ed. 2d 551 (2017)). If the graduation prayer in *Lee* is “problematically coercive,” it cannot follow that the permanent fixture of the Ten *Commandments* in all public-school classrooms is not. *See Kennedy*, 597 U.S. at 541.

The coercive impact of S.B. 10 is also in no way mitigated by the fact that Texas students will *read* the scripture rather than *hear* it. *See Stone*, 449 U.S. at 42 (“Nor is it significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud . . .”). To argue otherwise is to suggest

17. For example, “a Catholic student viewing the Protestant version of the Ten Commandments faces the . . . dilemma” of “acquiesc[ing] to” what they sincerely believe is “theological error or speak[ing] up and mark[ing] themselves as different.” McGreal, *supra* note 14, at 78.

18. In this way, S.B. 10 also implicates the *Shurtleff* hallmarks by “punish[ing] dissent[ers].” *See Shurtleff*, 596 U.S. at 286 (GORSUCH, J., concurring in the judgment).

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that the students in *Schempp* and *Lee* could simply cover their ears during the prayer recitations to avoid a constitutional issue. But just as *Schempp* held that a school-prayer statute violated the Establishment Clause notwithstanding students' ability to "absent" themselves, 374 U.S. at 207, and just as *Lee* acknowledged that, despite the *appearance* of voluntariness, "participation in the state-sponsored religious activity [was] in a fair and real sense obligatory," 505 U.S. at 586, S.B. 10 is not absolved of coercive effect simply because the displays are silent and students can supposedly look away.¹⁹ Importantly, forced recitation of religious scripture is not the mark of an Establishment Clause violation. *See, e.g., id.* at 591 (finding an Establishment Clause violation even where students' participation in prayer was a "choice").²⁰ It is whether the challenged state action carries the "risk" of "coerc[ing] anyone to support or participate in religion or its exercise." *See id.* at 587, 592; *see also Shurtleff*, 596 U.S. at 286 (GORSUCH, J., concurring in the judgment) (observing that "coercion regarding religion or its exercise" encompasses "founding-era religious establishments" (citation modified)). It does not matter whether this threatened

19. *See* McGreal, *supra* note 14, at 79-80 (observing that, because students objecting to the Ten Commandments based on sincerely held religious beliefs "view the display as communicating religious error," to "suggest[] students merely 'look away' asks them to affirm a false teaching that the government has presented as religious truth").

20. *See also* Lupu & Tuttle, *supra* note 4, at 636 ("A legal requirement that students recite the Ten Commandments is unnecessary to show a violation. Repetitive and conspicuous exposure to a sacred text, at the state's insistence, is enough.").

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coercion is “overt.” *Lee*, 505 U.S. at 593. Especially in the distinct public-school context, “subtle and indirect” pressure “can be as real as any overt compulsion.” *Id.* ²¹

* * *

Because Plaintiffs “will be . . . induce[d] . . . to read, meditate upon, [and] perhaps to venerate and obey, the Commandments,” *Stone*, 449 U.S. at 42, which implicates a “foremost hallmark[] of religious establishment,” *Kennedy*, 597 U.S. at 537, S.B. 10 facially violates the Establishment Clause.²²

21. Because S.B. 10 violates the Establishment Clause under *Stone* and *Kennedy*, whether the statute also implicates unconstitutional denominational preference is not substantively addressed here. But, as JUDGE HIGGINSON explained in his dissenting opinion in *Roake*, and as expanded upon in his dissenting opinion in this case, “the Supreme Court has been especially vigilant against denominational discrimination inside the schoolhouse gate.” *Roake*, 170 F.4th at 309 (HIGGINSON, J., dissenting). And legislation requiring the permanent fixture of a state-selected Protestant version of the Ten Commandments in all public schools “risks pitting religions against each other—an evil the Framers sought to protect against when they wrote into the original Constitution the No Religious Test Clause disestablishment imperative.” *Id.* at 310-11, 311 n.10 (explaining that “the No Religious Test Clause’s fundamental purpose was to put all sects on the same footing” (citation modified)).

22. Nor does “history show” that requiring the Ten Commandments to be posted in all public-school classrooms “is permitted” under the Establishment Clause, or that this practice “could coexist with the principles of disestablishment and religious freedom.” See *Galloway*, 572 U.S. at 577-78 (citation modified); cf. *Yoder*, 406 U.S. at 232 (observing instead that “[t]he history and culture of Western civilization reflect a strong tradition of *parental*

*Appendix C***II. THE FREE EXERCISE CLAUSE**

“The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice” *Hernandez v. C.I.R.*, 490 U.S. 680, 699, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989). The Supreme Court has also “long recognized

concern for the nurture and [religious] upbringing of their children,” which is “established beyond debate as an enduring American tradition” (emphasis added)). After all, “[p]ublic education was virtually nonexistent at the time the Constitution was adopted.” *Edwards*, 482 U.S. at 583 n.4; *see also Schempp*, 374 U.S. at 238 (Brennan, J., concurring) (“[T]he structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an ‘establishment’ offer little aid to decision.”); *Morse v. Frederick*, 551 U.S. 393, 411, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007) (Thomas, J., concurring) (noting “public education” did not “proliferate[]” until “the early 1800’s” (citing WILLIAM J. REESE, *AMERICA’S PUBLIC SCHOOLS: FROM THE COMMON SCHOOL TO “NO CHILD LEFT BEHIND”* 11-12 (2005))). And, as Plaintiffs allege and the record evidence supports, there is no longstanding tradition of permanently displaying the Ten Commandments in public-school classrooms, nor were they otherwise a historically prominent part of early American public education. *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 25 n.6, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) (“Courts are . . . entitled to decide a case based on the historical record compiled by the parties.”); *Yoder*, 406 U.S. at 209 (relying on expert testimony by “scholars on religion and education” in a religious liberty case). Because—in addition to being problematically coercive under *Kennedy*—the permanent posting of the Ten Commandments in public-school classrooms does not fit within a broader founding-era tradition, S.B. 10 violates the Establishment Clause.

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the rights of parents to direct the religious upbringing of their children,” which—under the Free Exercise Clause—is “violated by government policies that substantially interfere with the religious development of children.” *Mahmoud*, 660 U.S. at 546 (citation modified).

The government, however, “is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable.” *Id.* at 564. Where a “burden on religious exercise is found,” courts generally ask two questions. *Id.* First, is “the burdensome policy . . . neutral and generally applicable[?]” *Id.* Second, if the policy is not neutral, can the policy survive strict scrutiny? *Id.* Notably, courts can bypass the first question and proceed directly to the strict scrutiny analysis where the policies “substantially interfer[e] with the religious development’ of the parents’ children” and “pose ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill in their children.” *See id.* at 564-65 (alteration in original) (quoting *Yoder*, 406 U.S. at 218).

In *Mahmoud*, a school board approved five “‘LGBTQ+-inclusive’ texts for use in the . . . curriculum” for elementary school students. 606 U.S. at 533. The board did not permit students to opt out, causing several parents to challenge the “no-opt-out policy” under the Free Exercise Clause. *Id.* at 537-39, 543. The Supreme Court held that the policy “substantially interfere[d] with the religious development of [the plaintiffs’] children” because the books were “clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs

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as things to be rejected.” *Id.* at 550. According to the Court, the books’ contents “impose[d] upon children a set of values and beliefs that [were] ‘hostile’ to their parents’ religious beliefs” and pressured children to conform. *Id.* at 554 (quoting *Yoder*, 406 U.S. at 211). The “danger to the free exercise of religion” presented by the books was “exacerbated by the fact that [they would] be presented to young children by authority figures in elementary school classrooms.” *Id.* at 554 (citation modified).

Given the “character” of the burden, *Mahmoud* proceeded directly to the strict scrutiny inquiry—bypassing the question of whether the board’s policy was neutral and generally applicable. *Id.* at 565. Although the Court credited the board’s assertion of a compelling interest—avoiding classroom disruptions—it found that the “no-opt-out policy” was not “necessary to serve that interest.” *Id.* at 566. Because the policy could not survive strict scrutiny, the Supreme Court granted a preliminary injunction requiring the board to allow opt-outs. *Id.* at 569.

A. S.B. 10 substantially burdens Plaintiffs’ religious exercise.

S.B. 10 requires the permanent display of religious scripture in every classroom. The displays implore specific *religious* directives—e.g., “[t]hou shalt have no other gods before me”—that, as in *Mahmoud*, are “clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected.” *See id.* at 550. The displays also “carry with them a very real threat of undermining the

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religious beliefs that the parents wish to instill in their children” because they “impose upon children a set of values and beliefs that are hostile to their parents’.” *See id.* at 553-54 (citation modified). And, as *commandments*, the displays clearly “exert upon children a psychological pressure to conform to [the displays’] specific viewpoints.” *See id.* at 554 (citation modified). As a result, the displays mandated by S.B. 10 substantially burden Plaintiffs’ religious exercise because they “interfere with [the] student[s’] religious upbringing[s].” *See id.* at 547.

This burden is not diminished simply because S.B. 10 does not require the Ten Commandments to be integrated into the curriculum. Significantly, the books in *Mahmoud* were not overtly religious—they were about “sexuality and gender.” *See id.* at 529. As a result, their mere presence on a shelf *could not* reasonably conflict with the plaintiffs’ sincerely held religious beliefs—the issue was necessarily how the books were integrated into instruction. By contrast, the Ten Commandments are plainly religious, and their contents are—by their very nature—plainly instructive. As the Supreme Court put it, “[i]f the posted copies of the Ten Commandments are to have *any effect at all*, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone*, 449 U.S. at 42 (emphasis added). “Only by air-brushing the record can [Defendants] claim that the [Commandments] . . . are just about exposure . . .” *See Mahmoud*, 660 U.S. at 556. In any event, “[w]hether or not a requirement or curriculum could be characterized as ‘exposure’ is not the touchstone for determining whether” a Free Exercise Clause violation has occurred. *See id.*

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“The question . . . is whether the educational requirement or curriculum at issue would substantially interfere with the religious development of the child or pose a very real threat of undermining the religious beliefs and practices the parent wishes to instill in the child.” *Id.* (citation modified). As discussed, S.B. 10’s requirements clear that threshold.

Nor is it significant that Plaintiffs are not only seeking to “opt out” of a particular educational requirement. *Mahmoud* does not limit the Free Exercise Clause to that kind of relief. And importantly, S.B. 10 provides no practicable means for students to opt out. The Ten Commandments are required to be posted in every classroom of every public school during every hour of every day of the school year. The scripture will either be posted (in accordance with S.B. 10) or not (in violation of S.B. 10). As a result, there is no meaningful way for a student to opt out, as there was in *Mahmoud*, other than to “forgo” the “public benefit” of public school or face consequences under compulsory attendance laws. *See id.* at 561. But, as discussed, “the government cannot condition” the “availability” of public school “on parents’ willingness to accept a burden on their religious exercise.” *Id.* (citation modified).

B. Defendants have not satisfied strict scrutiny.

Because the “character” of the burden that S.B. 10 imposes is “of the same character as that imposed in” *Mahmoud*, the next step is to apply strict scrutiny

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regardless of whether the statute is neutral and generally applicable. *See id.* at 564. Under strict scrutiny, “the government must demonstrate that ‘its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest.’” *Id.* (quoting *Kennedy*, 597 U.S. at 525).

Defendants do not even attempt to articulate a compelling government interest to satisfy strict scrutiny. But even if they had advanced a compelling interest, such as education or history, Defendants would fail strict scrutiny under the narrow tailoring prong. As the Supreme Court has already found, “[p]osting of religious texts on the wall serves no such educational function.” *Stone*, 449 U.S. at 42. And “[t]his is not a case” where, for instance, “the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.” *See id.* (citing *Schempp*, 374 U.S. at 225).

* * *

The displays required by S.B. 10 threaten to “undermin[e] the religious beliefs that parents wish to instill in their children” and “pressure” students “to conform,” and Defendants have not satisfied strict scrutiny. *See Mahmoud*, 660 U.S. at 553-54 (citation modified). As a result, Plaintiffs have established a Free Exercise Clause violation.

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III. CONCLUSION

Because S.B. 10 is facially unconstitutional under the Establishment and Free Exercise Clauses, I would affirm the district court's entry of a preliminary injunction and denial of Defendants' motion to dismiss. I respectfully dissent.

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LESLIE H. SOUTHWICK, *Circuit Judge*, joined by Richman, GRAVES, HIGGINSON, DOUGLAS AND RAMIREZ, *Circuit Judges*, dissenting:*

Despite the thoroughness and erudition of the majority opinion, I disagree with it. The dissents by my colleagues, Judges Higginson and Ramirez, also deserve commendation, but I find myself unable to join either in full. Thus, I write separately to explain my reasons for dissenting.

What is not part of my dissent is a rejection of the importance of searching for faith. Religion, though, is a matter of the mind and the heart. Faith cannot flourish when it is forced. A poem voices my concern and, I humbly offer, that of the First Amendment:

The livid lightnings flashed in the clouds;
 The leaden thunders crashed.
 A worshipper raised his arm.
 “Hearken! hearken! The voice of God!”
 “Not so,” said a man.
 “The voice of God whispers in the heart
 So softly
 That the soul pauses,
 Making no noise,
 And strives for these melodies,
 Distant, sighing, like faintest breath,
 And all the being is still to hear.”

* Judges HIGGINSON, DOUGLAS, and RAMIREZ join Parts I and II of this opinion. JUDGES RICHMAN and GRAVES join Part II B.

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Stephen Crane, *The Black Riders and Other Lines*, Lines xxxix (1895), *reprinted in* THE COLLECTED POEMS OF STEPHEN CRANE 41, 41 (Wilson Follett ed., 1930). Like any effective poetry, these lines can give different meaning to different readers at different times. In this opinion, they capture for me that government promotion of religion in every classroom is simulated lightning and thunder, compulsorily seen and heard.

Despite my opening commentary, I have not forgotten that this is a judicial opinion. Poems and sentiments about faith do not control. Precedents and constitutional text do. My principal objection to the majority opinion is that it finds a recent Supreme Court precedent to be more sweeping in its discard of prior precedent than I do, that precedent being *Kennedy v. Bremerton School District*, 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022). The *Kennedy* opinion made clear that we no longer apply a test from one earlier precedent, the appropriately named *Lemon* test that I will discuss momentarily. The difficulty is that the *Lemon* test was a fusion of First Amendment caselaw, binding together the holdings of several lines of cases to create a definitive test for Establishment Clause cases. In my view, the test was disassembled, and one part discarded — but other parts of what had been fused remain usable.

My objective here is to sift through the Establishment Clause jurisprudence left by *Kennedy* and determine what still applies. The sifting leads me to conclude that, under still-binding Supreme Court precedent, the Texas statute here is violative of the Establishment Clause. The

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Supreme Court may change the law further, but it has not done so yet. This inferior-court judge concludes we are doing so. That is not our role.

I. Pre-*Lemon* Principles of the Establishment Clause

One source of ambiguity is that the Supreme Court did not clearly and in one decision formally bury *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). It was more like a death by a thousand — or at least numerous — slowly administered cuts. Finally, the Supreme Court declared that it “long ago abandoned *Lemon* and its endorsement test offshoot.” *Kennedy*, 142 S. Ct. at 2427 (citing *American Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 80, 139 S. Ct. 2067, 2079-81, 204 L. Ed. 2d 452 (2019) (plurality opinion)). The Court did reaffirm the precedents that had “instructed that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Id.* at 2428 (quotation marks omitted) (first quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014); and then citing *American Legion*, 139 S. Ct. at 2079-81 (plurality opinion)). Other than requiring the use of history, *Kennedy* did not specify how it left the law after abrogating *Lemon*. In my view, the best reading of the case is that it abandoned *Lemon*’s “grand unified theory” and overruled the endorsement test, but it left standing the rest of the Court’s Establishment Clause caselaw and the command to let history guide the inquiry. *See id.* at 2427-28 (quoting *American Legion*, 139 S. Ct. at 2101 (Gorsuch, J., concurring in judgment)).

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Of importance in understanding what remains from prior caselaw, the Court portrayed its holding in *Kennedy* as consistent with its recent (and some not so recent) opinions, recognizing its gradual overruling of the good-intentions-gone-astray *Lemon* precedent. *Kennedy*, 142 S. Ct. at 2428 n.4 (“In the last two decades, this Court has often criticized or ignored *Lemon* and its endorsement test variation.”). In this sense, the Court did not create a new test but insisted it was formally abandoning a derelict precedent for the test that had functionally replaced it in the last few decades.

Now, a close look at *Lemon*. That opinion is best understood as the glue that bound together several different principles in a failed experiment to form one test for Establishment Clause cases. See *Lemon*, 403 U.S. at 612-13; see *Kennedy*, 142 S. Ct. at 2427. *Kennedy*, though, dissolved that glue and replaced *Lemon* with history as one lodestar, but it never discarded the principles that *Lemon* bound together. See *Kennedy*, 142 S. Ct. at 2427-29 (explicitly abolishing only the endorsement test). Certainly, *Kennedy* overruled *Lemon* and any progeny that rested on the unified *Lemon* test. My disagreement with the majority comes from the fact that a directly-on-point precedent about the Ten Commandments did not principally rely on *Lemon*’s uniform-test progeny, but on its progenitors. See *Stone v. Graham*, 449 U.S. 39, 41-43, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980). *Kennedy* said nothing about the cases that predated *Lemon*, and I find no indication in *Kennedy* that the Court was discarding the entirety of its Establishment Clause law when it said that one opinion and its offspring had been “long ago abandoned.” *Kennedy*, 142 S. Ct. at 2427.

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The school prayer cases — which I see as largely resolving the case before us and on which *Stone* primarily relied — are still good law. The *Kennedy* majority cites *American Legion* for the proposition that *Lemon* has been abandoned over time. *Id.* The majority here recognizes *American Legion* as good law but fails to mention that *American Legion* did not cast doubt on the secular purpose requirement that stems from the school prayer cases. In its opinion, the *American Legion* Court engaged with the facts on terms of secular purpose. *American Legion*, 139 S. Ct. at 2080-85. It held that a 32-foot-tall Latin cross in Bladensburg, Maryland, constructed in 1925 to honor local service-members who had died in what was then known as the Great War, had accrued a sufficiently secular meaning over the years to defeat an Establishment Clause challenge. *Id.* at 2077, 2080-85. The Court distinguished between “established” displays and “new” displays, reasoning that established displays become more secular in purpose the more embedded they are in a community, whereas new displays retain their religious character. *See id.* at 2085. Importantly, the majority sought to show that the Bladensburg Cross did not violate the Establishment Clause because that specific cross had gained substantial secular meaning, not that it was defensible *as* a religious symbol. *Id.* at 2082-85.

Further, the Court in *American Legion* divided its Establishment Clause cases into six categories; the majority’s reasoning was largely confined to the category of “religious references or imagery in public monuments.” *Id.* at 2081 n.16. For the fourth, and much different, category, “religious expression in public schools,” the Court cited two of the school prayer cases as paradigmatic

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examples. *Id.* (first citing *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); and then citing *Lee v. Weisman*, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992)). *Schempp* is the quintessential secular purpose case. *Schempp*, 374 U.S. at 222. The Court did not engage with the school prayer cases other than according them a place in its taxonomy, recognizing a secular purpose case's continuing status as good law. See *American Legion*, 139 S. Ct. at 2080. The Court's engaging in a sort of "secular purpose" reasoning, citing to *Schempp*, and leaving the school prayer cases otherwise alone all show that the Supreme Court did not mean to dismantle all its other Establishment Clause precedents even while it deposed *Lemon*. *Id.* at 2080-81 & n.16.

In the other case the *Kennedy* majority cites as an exemplar of its historical approach, the Court held that any legitimate Establishment Clause test "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Town of Greece*, 572 U.S. at 577. The Court relied heavily on prior precedent holding that Nebraska's longstanding and unbroken practice of opening legislative sessions with a religious invocation did not run afoul of the Establishment Clause. *Id.* at 575-85 (discussing *Marsh v. Chambers*, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983)). The Court in its *Town of Greece* opinion held that the brief prayer at issue had a "permissible ceremonial purpose," as its "purpose and effect [were] to acknowledge religious leaders and the institutions they represent rather than to exclude or coerce nonbelievers."

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Id. at 591 (plurality opinion). The “principal audience” of the invocations was the “lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing.” *Id.* at 587.

The historical pedigree of legislative prayer was certainly the focus of *Town of Greece*, but the Court nonetheless observed that a showing of “a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose” could potentially “establish a constitutional violation” in a legislative prayer case. *Id.* at 585 (majority). The Court thus examined the purpose of the town’s policy and found it to be an acceptable one, demonstrating that conduct with its origin in religion can find a place in public life and even further the community’s civic values. *See id.* at 591 (plurality opinion).

Aside from one cursory reference, the *Kennedy* Court did not refer to the principles contained within *Lemon*. *See Kennedy*, 142 S. Ct. at 2427. This is easy to explain. There was simply no occasion to engage with them. The Court determined that Kennedy was a private citizen performing a private prayer, so there was scant need to contend with any threat of excessive entanglement with religion. *Id.* at 2429. Similarly, a non-secular purpose is perfectly proper for a private citizen, and there was no need to determine whether a primary effect of the prayer was to further religion because, again, Kennedy’s prayers were silent and private. *See id.*

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I will summarize. *Kennedy* stated that *Lemon*’s “ambitiou[s],’ abstract, and ahistorical approach to the Establishment Clause” had been abandoned by the Court long ago, with *Kennedy* being the first time a majority of the Court declared abandonment in one opinion. *Id.* at 2427-28 (quoting *American Legion*, 139 S. Ct. at 2080 (plurality opinion)). *Kennedy* relied on prior Supreme Court cases in determining whether the school district’s permitting *Kennedy*’s conduct was constitutional under the Establishment Clause. *See id.* at 2430-32. Those cases that discarded *Lemon*, then, acknowledged and left alive the secular purpose requirement — indeed, they reinforced its vitality.

My understanding of this caselaw is that the Supreme Court has not overruled decades of precedent predating *Lemon*, but rather has dictated that *both* our history of religious expression and the Court’s precedents matter. Here, the historical evidence is, at best, inconclusive about these types of religious displays in public schools. There is hardly the same quantum or quality of evidence here as there was in *Marsh*, *Town of Greece*, or *American Legion*. This dearth of historical evidence does not allow us to ignore still-effective Supreme Court precedent and construct a new jurisprudence of the Establishment Clause from the ground up based on what we see as the best understanding of what an establishment of religion meant historically.¹

1. When considering historical evidence helpful to interpreting the Second Amendment, the Supreme Court mentioned scholarly uncertainty as to whether the relevant history was from the Founding era when the amendment was written and ratified or

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I now explain what I find remains of prior precedent after the Supreme Court disassembled the unitary *Lemon* approach.

II. Applying the Doctrine

a. Secular Purpose

The requirement that laws have a secular purpose is deeply embedded in Establishment Clause precedent. *See Schempp*, 374 U.S. at 222; *see also Town of Greece*, 572 U.S. at 585 (suggesting that, without actions that “betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation”); *id.* at 587, 590-91 (plurality opinion) (explaining that remarks possessed a “permissible ceremonial purpose” of setting lawmakers’ mind[s] to a higher purpose,” which “thereby eases the task of governing,” at least when the audience is composed of “mature adults”); *American Legion*, 139 S. Ct. at 2082-85 (explaining the purpose and meaning of the Bladensburg Cross monument had become sufficiently secular over time).

In essence, the school prayer cases established that state action with the purpose of “the advancement or

from the Reconstruction era when the Fourteenth Amendment was written and ratified. *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 2138, 213 L. Ed. 2d 387 (2022). The Court found no need to resolve the question in light of the similarity of the evidence from both periods. *Id.* In my analysis, the specific time period here is also irrelevant but for different reasons.

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inhibition of religion . . . exceeds the scope of legislative power as circumscribed by the Constitution.” *Schempp*, 374 U.S. at 222. This does not mean, though, that religious motivation may not be part of the reason for a governmental decision if a secular purpose dominates. *Wallace v. Jaffree*, 472 U.S. 38, 56, 105 S. Ct. 2479, 86 L. Ed. 2d 29 (1985). The Supreme Court has instructed us to be “particularly vigilant in monitoring compliance with the Establishment Clause” in the primary and secondary school context. *Van Orden v. Perry*, 545 U.S. 677, 691, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005) (plurality opinion) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583-84, 107 S. Ct. 2573, 96 L. Ed. 2d 510 (1987)). This is because of the considerable influence schools exert over impressionable young minds and the “involuntary[ness]” of their attendance. *Aguillard*, 482 U.S. at 584.

The precedent most clearly on point is *Stone v. Graham*, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980). In *Stone*, Kentucky passed a materially similar law to the one before us, though one that had a stronger claim to a secular purpose, requiring that every public school classroom contain a Ten Commandments display above a context statement that invoked the Commandments’ “secular application” as the “fundamental legal code of Western Civilization and the Common Law of the United States.” *See id.* at 39 n.1 (citation omitted). Texas’s law, by contrast, forbids any context statement, and it requires that the Commandments be “legible to a person with average vision from anywhere in the classroom.” TEX. EDUC. CODE § 1.0041(b)(1).

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Texas contends that *Kennedy* overruled *Stone* by overruling *Lemon*. Even though *Stone* cited *Lemon*, the question of *Stone*'s validity turns on whether it depended on *Lemon* for its holding or if it applied the secular purpose principle despite its references to *Lemon*. See *Stone*, 449 U.S. at 40, 43 (citing *Lemon*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971)). Outside of quoting the *Lemon* test — the then-operative “grand unified theory” of Establishment Clause law, *Kennedy*, 142 S. Ct. at 2427 (citation omitted) — the *Stone* majority opinion's sole reference to *Lemon* clarified that the Kentucky statute “violate[d] the first part of the *Lemon* . . . test,” *i.e.*, the secular purpose requirement. *Stone*, 449 U.S. at 43. Texas makes no persuasive argument that this is an application of the abandoned *Lemon* test in its own right, nor can it. As I explain above, the individual pieces of the Supreme Court's Establishment Clause jurisprudence have not been discarded, only the endorsement test and the *Lemon* test's aggregation of principles. The mere fact that the Court cited the broader test to apply the narrower principle does not doom *Stone*. The Court's citation to *Lemon* was rote — the reasoning for *why* the Kentucky law violated the Establishment Clause rested entirely on *Schempp* and *Engel v. Vitale*, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962). *Stone*, 449 U.S. at 41-42; see *Van Orden*, 545 U.S. at 690-91 (plurality opinion) (describing *Stone*'s “almost exclusive reliance upon two . . . school prayer cases”). Because *Stone* rested on good law, it was not abrogated along with *Lemon*.

Since I believe *Stone* has outlived *Lemon*, I apply it here. The Supreme Court has twice held violative of the

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Establishment Clause “a text of the Commandments as distinct from any traditionally symbolic representation, [standing] alone.” *McCreary County v. Am. C.L. Union of Ky.*, 545 U.S. 844, 868, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005). If the displays in *Stone* and *McCreary* were not even “arguably secular,” Texas cannot support a secular purpose here. *See id.* The displays, by Texas’s own admission, are not a part of an educational program, nor will they serve any specific curricular purpose. *See Schempp*, 374 U.S. at 225. Texas’s only evidence of a secular purpose comes from several statements from individual legislators. The Court in *Stone*, however, did not hold that the displays violated the secular purpose requirement because legislators had made comments that revealed the religious motivations behind the statute; rather, the Court emphasized that the “pre-eminent purpose for posting the Ten Commandments on schoolroom walls is,” on its face, “plainly religious in nature.” *Stone*, 449 U.S. at 41. In fact, the Court stated that “no legislative recitation of a supposed secular purpose c[ould] blind [it] to that fact,” given the imperative and distinctly religious nature of the prefatory phrase and the first four Commandments in particular. *Id.* at 41-42; *McCreary*, 545 U.S. at 869 (holding that a “religious object is unmistakable” when the text comprises of a “religious statement dealing with religious obligations and morality subject to religious sanction”).

This led the Court to the conclusion that, if “the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone*, 449 U.S. at 42. Under binding Supreme Court precedent, that purpose is not

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“a permissible state objective under the Establishment Clause.” *Id.* Absent an abandonment not just of *Lemon* but also of the secular purpose standard that predated it, I would hold that *Stone* by itself or other precedents that insist on a secular purpose dispose of this case.

b. Coercion similar to school prayer

The following is an alternative but related reason to find S.B. 10 unconstitutional. The Supreme Court has held that public-school-sponsored prayers, or prayers at events where attendance is mandatory or quasi-mandatory, violate the Establishment Clause.² Of course, posting the Ten Commandments on classroom walls is not identical to prayer, but the same analysis applies if similar coercion results both from the display and from a school-sponsored prayer.

The school prayer cases not only establish that “there must be a secular legislative purpose” for our laws, but also that “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.” *Schempp*, 374 U.S. at 221-22 (quoting *Engel v. Vitale*, 370 U.S. 421, 431, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962)).

2. *Engel v. Vitale*, 370 U.S. 421, 430-31, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962); *Schempp*, 374 U.S. at 222-23; *Lee v. Weisman*, 505 U.S. 577, 586-87, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311-313, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000).

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There certainly is “disagree[ment] on what exactly qualifies as impermissible coercion in light of the original meaning of the Establishment Clause” in the Supreme Court’s caselaw. *Kennedy*, 142 S. Ct. at 2429. As the majority in the present case states, there is no question that the Supreme Court left untouched two of its more recent school prayer cases. Because these cases have not been overruled or abandoned, we are obligated to determine whether posting the Ten Commandments involves more or less coercion than in those — we are not free to disregard the type of coercion the Court has viewed as problematic in favor of a narrower understanding of coercion. *See Lee*, 505 U.S. at 593; *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311-13, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000).

The *Kennedy* Court’s coercion analysis did not undermine, but indeed reinforced, the longstanding view of coercion: The Court held that there was no coercion because *Kennedy*’s prayers were private and silent, unlike in *Lee* and *Santa Fe*, where student participation was mandatory or practically so, and students were a “captive audience.”³ *Kennedy*, 142 S. Ct. at 2431-32.

3. The *Town of Greece* Court engaged in a similar coercion analysis. *Town of Greece*, 572 U.S. at 586-90 (plurality opinion). A plurality distinguished two school prayer cases, *Lee* and *Santa Fe*, emphasizing that those cases require a close reading of the facts and paying attention to the fact that the town board meetings largely involved “mature adults, who ‘presumably’ are ‘not readily susceptible to religious indoctrination or peer pressure.’” *Id.* at 590 (quoting *Marsh*, 463 U.S. at 792).

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I apply the guidance from this caselaw to determine whether this schoolroom display is coercive. A variety of factors have been identified for this fact-sensitive inquiry. The “State exerts great authority and coercive power through mandatory attendance requirements,” amplified by “children’s susceptibility to peer pressure” in the school environment and their perception of school figures as role models. *Aguillard*, 482 U.S. at 584; *Santa Fe*, 530 U.S. at 311-12. In the school context, the state may not exert “coercive pressure” on students to conform with state-approved religious views, even if that pressure is “subtle and indirect.” *Lee*, 505 U.S. at 592-93. Both “public pressure” and “peer pressure” are considered, as the “government may no more use social pressure to enforce orthodoxy than it may use more direct means.” *Id.* at 592-94 (citing school prayer cases).

Here, there is coercion in the sense described by the school prayer cases. States are selective with the instructions they require to be posted in classrooms — they do so only when the state wants those instructions followed. Brief for Baptist Joint Committee for Religious Liberty et al. as Amici Curiae in Support of Plaintiffs-Appellees at 22, *Roake v. Brumley*, 170 F.4th 292, 2026 WL 482555 (2026). One *amicus* argues students “will be confronted with the State’s religious instruction every minute of every day and cannot ‘opt out’ from this pervasive messaging,” which is “*more* pervasive than the limited amounts of prayer found unconstitutional” in the school prayer cases, lasting “a few minutes or less.” *Id.* at 23. Maybe not continuously “confronted,” but students will have the display visible all day in every classroom. The

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Lee Court recognized that requiring students to stand and be silent at a graduation worked a “subtle and indirect” coercion, that was “as real as any overt compulsion.” *Lee*, 505 U.S. at 593. What the Texas statute requires here is at least as coercive.

Texas argues that, to be improper, the coercion must pressure students to engage in a “formal religious exercise,” and here there is no compulsion of this sort. Texas’s understanding of the coercion test, though, overlooks the *Kennedy* Court’s nod to *Santa Fe*, in which there was no coercion actually to pray, just a prayer broadcast “‘over the public address system’ before each football game.”⁴ *Kennedy*, 142 S. Ct. at 2431-32 (quoting *Santa Fe*, 530 U.S. at 294). A broadcast prayer for which no active participation is required is comparable on the coercion axis from posted religious commandments.⁵

4. In *Santa Fe*, the Court observed that there was coercion in being seen as participating in group prayer, an “act of religious worship.” 530 U.S. at 312. Yet, the reason why that specific “act of religious worship” was unconstitutional is because it attempted to “exact religious conformity” and “enforce a religious orthodoxy” using the “machinery of the State.” *Id.* (alteration in original) (quoting *Lee*, 505 U.S. at 592). In this sense, the fact that a formal religious exercise was involved was just the means by which “orthodoxy” was enforced in that case.

5. A useful contrast is to one of this court’s opinions analyzing a pledge of allegiance. See *Croft v. Perry*, 624 F.3d 157, 170 (5th Cir. 2010). In that case, Judge E. Grady Jolly for the court wrote that adding “under God” to the Texas pledge of allegiance did not result in coercion because a pledge of allegiance is not a “prototypical religious activity” — rather, “the pledge’s effect remain[ed]” essentially “patriotic,” as its “religious component [was] minimal and, when contextualized, clearly understandable as an

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Indeed, the Court in *Santa Fe* urged that “[l]aw reaches past formalism,” finding a coercive effect for students whose presence was not formally compelled and who would merely be forced to listen to, and be seen to respect, a prayer from the public announcement system. *Santa Fe*, 530 U.S. at 310-312 (quoting *Lee*, 505 U.S. at 595).

These principles, the Supreme Court’s command to be alert to coercion in the public-school setting, and the Court’s acknowledgement of the existence of coercion when a religious display in the classroom “confront[s] elementary school students every day,” all convince me that coercion arises from the posted Ten Commandments in every classroom. *Van Orden*, 545 U.S. at 691 (plurality opinion). Chief Justice Rehnquist, in the *Van Orden* plurality opinion, had no difficulty distinguishing the schoolroom setting from the grounds of a state capitol. *Id.* at 691-92. That passive use outdoors, adjacent to a state capitol, did not require anyone to view the Biblical Commandments other than fleetingly, much different than requiring school children every school day in every classroom to view them.

acknowledgement of the state’s religious heritage.” *Id.* The reading of the Commandments, though, is such a “prototypical religious activity.” The Commandments come from scripture and are without question — and indeed, much more forceful and significant because they are — religious in character. Posting the Commandments on the classroom wall does not have a patriotic effect in the same way that an “acknowledgement of the state’s religious heritage” in a pledge does. *Id.* The Commandments’ effect, rather, will be “to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone v. Graham*, 449 U.S. 39, 42, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980).

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To my eyes and ears, if a prayer heard but ignored can be coercive, then the posting of explicitly religious text in a place where it can be seen in every classroom is more coercive. *See* Tex. Educ. Code § 1.0041(b)(1). Indeed, the Court has rejected the argument that merely ignoring religious expression is a sufficient cure for an Establishment Clause violation. *Lee*, 505 U.S. at 592-93. Because we are bound by Supreme Court precedent until further indication, and S.B. 10 bears the same degree of coercive effect as the school prayer cases, I would hold that the school prayer cases resolve this case on coercion grounds.

Lastly, the majority invokes *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943), asserting that S.B. 10 requires no compulsion or forced act rising to a violation of the First Amendment, only the passive presence of the display in the classroom. The majority elides the crystalline core of *Barnette*: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *Barnette*, 319 U.S. at 642. When Texas places a copy of the Ten Commandments in prime position in every public classroom across the state, it edges precariously close to creating a religious orthodoxy in the classroom.

The particular need for enforcing the Establishment Clause in the school context is that “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the

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classroom will not purposely be used to advance religious views that may conflict” with the parents’ or children’s religious beliefs. *Aguillard*, 482 U.S. at 584. By placing the “power, prestige[,] and financial support of the government . . . behind a particular religious belief,” Texas exerts an “indirect coercive pressure” on students to conform and not to stray. *Engel*, 370 U.S. at 430-31. Regardless of whether “to most believers” this “may seem nothing more than a reasonable request,” it is nevertheless improper for Texas “to employ the machinery of the State to enforce a religious orthodoxy.” *Lee*, 505 U.S. at 592.

I would hold that, under current caselaw, the displays are improperly coercive in violation of the Establishment Clause. I respectfully dissent.

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HAYNES, *Circuit Judge*, dissenting:

I dissent from the majority opinion. I agree with Judge Ramirez's dissent section 1.A that addresses the Establishment Clause via the case of *Stone v. Graham*, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980) (per curiam). Because that case clearly makes S.B. 10 an unconstitutional statute, I simply stop there. We must follow the Supreme Court, and that is what the opinion *Stone* shows.

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STEPHEN A. HIGGINSON, *Circuit Judge*, joined by RICHMAN, GRAVES, DOUGLAS, and RAMIREZ, *Circuit Judges*, dissenting:

The Framers intended disestablishment of religion, above all to prevent large religious sects from using political power to impose their religion on others. Yet Texas, like Louisiana, seeks to do just that, legislating that specific, politically chosen scripture be installed in every public-school classroom. Our court accommodates their unconstitutional request, supplanting decades of Supreme Court precedent merely because of a single decision the majority deems outdated. In doing so, the majority defies foundational First Amendment concepts, ignores the harms students will face, and usurps parents' rights to determine the religious beliefs they wish to instill in their own children.

I wrote earlier, in the companion case from Louisiana, that the Constitution prohibits religious orthodoxy in public schools. *See Roake v. Brumley*, 170 F.4th 292, 307-11 (5th Cir. 2026) (HIGGINSON, J., dissenting). My opposition to a state taking on the role of faith leader applies with the same force for Texas. I write today to respond further and to emphasize three constitutional priorities: non-discrimination among religions, the Supreme Court's constitutional solicitude for students, and, above all, the right of parents to control the faith guidance of their children.¹

1. I gratefully join the principal dissent by JUDGE RAMIREZ, as well as the aligning dissent by JUDGE SOUTHWICK. Both make fundamental points against religious coercion in classrooms,

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* * *

As I understand our country's history, many forebears fled government religious persecution. *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 214, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963) ("Nothing but the most telling of personal experiences in religious persecution suffered by our forebears could have planted our belief in liberty of religious opinion any more deeply in our heritage." (citation omitted)). In turn, the Framers prohibited political religious commands, both in the original Constitution through the No Religious Test Clause, and then doubly in the Bill of Rights through the First Amendment, mandating non-establishment and equal treatment for different faiths. The Supreme Court has guarded this First Amendment genius, fostering religious liberty and freedom of conscience for centuries, without societal discord, because of our collective understanding that public schools cannot indoctrinate children with religious views that a political majority favors. *See Stone v. Graham*, 449 U.S. 39, 42, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980) ("If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.").

Nonetheless, according to the majority, Texas's open promotion of one religion must stand because courts do not issue "theological judgment[s]." That is true but courts

prohibited by Supreme Court precedent we should, and indeed must, respect.

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do issue constitutional ones.² Because the Constitution prohibits any branch of government, state or federal, from issuing a theological judgment, a court’s function is to adjudicate that violation of our founding principles. When a political branch overreaches to establish religion and constrain liberty of conscience, courts have the power—and, more importantly, the duty—to say no.

On the majority’s theory, state legislatures may make their own theological decisions—commanding reverence to biblical scripture they select—without any guardrails because courts are disempowered from discharging our constitutional duty to protect individuals from governmental intrusion into religion. The majority reasons that the Establishment Clause only prohibits a government “burden” or “benefit” to a chosen faith but does not extend to government selection of preferred religious “language or symbolism.”³ Thus, according to

2. In fact, this was the Supreme Court’s reminder, just last year. In *Mahmoud v. Taylor*, the Court said that we should not “confuse our country with those in which laws enacted by a parliament or another legislative body cannot be challenged in court. . . . Here, the Bill of Rights and the doctrine of judicial review protect individuals who cannot obtain legislative change. The First Amendment protects the parents’ religious liberty, and they had every right to file suit to protect that right.” 606 U.S. 522, 563, 145 S. Ct. 2332, 222 L. Ed. 2d 695 (2025).

3. The majority crafts this benefit/burden distinction to avoid recent, unanimous, and binding caselaw. See *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 145 S. Ct. 1583, 221 L. Ed. 2d 881 (2025). In doing so, the majority necessarily ignores the obvious benefit that Texas confers on religions that adhere to the King James Version of the Ten Commandments, now displayed in every classroom across Texas.

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the majority, when the government speaks or displays, but avoids a benefit or burden, it apparently may inculcate. *Contra Schempp*, 374 U.S. at 221-22 (discussing the “wholesome neutrality” of government sentiment towards religion that the Establishment Clause demands, which forbids the government from “all[ying] itself with one particular form of religion”).

“The clearest command of the Establishment Clause is that the government may not officially prefer one religious denomination over another.” *Cath. Charities*, 605 U.S. at 247 (internal quotation marks omitted and alteration adopted) (quoting *Larson v. Valente*, 456 U.S. 228, 244, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)). The majority’s reduced Establishment Clause would allow state governments to evangelize by affixing a crucifix—or a mezuzah, or a statue of Buddha, etcetera, to the exclusion of other symbols—purchased with state funds, in every classroom. This proposition runs counter to history and precedent. For example, in *Illinois ex rel. McCollum v. Board of Education*, the Supreme Court explained that the division between church and state as applied to school funding has been long and widely understood, as “strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system ‘free from sectarian control.’” 333 U.S. 203, 220, 68 S. Ct. 461, 92 L. Ed. 649 (1948) (opinion of FRANKFURTER, J.) (citation omitted).

And with political “language” exempt, public officials and teachers apparently may proselytize so that non-

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adherents—like Jewish children, Muslim children, Hindu children, Buddhist children, or Native American children with different belief systems, or non-believers altogether⁴—receive Protestant scripture, the very fear that inter-faith groups, in amici consensus, have cogently voiced. *See* En Banc Br. of Nat’l Council of Jewish Women et al. as Amici Curiae, at 5-7, 13-22 (No. 25-50695). The Framers shared Plaintiffs’ and amici’s fear of government elevating a single denomination. As Thomas Jefferson wrote, “[t]he bill for establishing religious freedom” was meant to provide “universal” protection for people of all faiths, as evidenced by an attempt to insert a reference to Jesus Christ that “was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the M[uslim], the H[indu], and [the non-believer] of every denomination.” Thomas Jefferson, *Autobiography* (1821), in 5 THE FOUNDERS’ CONSTITUTION 85, 85 (Philip B. Kurland & Ralph Lerner eds., 1987) (terms updated but denominations maintained from original). Throughout our history, the Supreme Court has consistently enforced the First Amendment’s “prohibition on denominational preferences” because “the fullest realization of true religious liberty requires that government refrain from favoritism among sects.” *Cath. Charities*, 605 U.S. at 248 (internal quotation marks omitted) (quoting *Larson*, 456 U.S. at 245-46); *see also McCollum*, 333 U.S. at 212 (opinion of the Court) (“For the First Amendment rests upon the premise that both religion and government can

4. This list is clearly not exhaustive, and my concerns extend to any parent and child who do not venerate the King James Version of the Ten Commandments.

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best work to achieve their lofty aims if each is left free from the other within its respective sphere.”).

These concerns have special prominence in the public-school context. The Supreme Court has guarded against the discriminatory and coercive effects that result from government-authorized religion most strictly when it enters the schoolhouse door. Despite the majority’s characterization, *Lemon* and *Stone* were neither the beginning nor the end of Supreme Court law against government attempts to infuse religion in our nation’s classrooms.

For example, in 1948, the Supreme Court held that the First and Fourteenth Amendments prohibit states from “utiliz[ing] its tax-supported public school system in aid of religious instruction.” *McCullum*, 333 U.S. at 204-05. In a concurring opinion, four Justices specifically recognized the threat that Establishment Clause violations pose to the sanctity of schools, because “[t]he modern public school derived from a philosophy of freedom reflected in the First Amendment.”⁵ *Id.* at 214 (opinion of FRANKFURTER, J.). The Justices further articulated a principle that is as true today as it was then: “The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny.” *Id.* at 231. Accordingly, there is “no activity of the State” in which it is “more vital to keep out divisive forces than in its schools, to

5. See also *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (“Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction.”).

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avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *Id.* Thus, the Supreme Court saw in 1948 what the Framers saw at our country’s founding; society writ large, and schools most especially, cannot foster a democratic society without respecting its “heterogenous” makeup. *Id.* at 216. In observing that public schools’ secular education reflected “a recognition of the need of a democratic society to educate its children . . . in an atmosphere free from pressures,” the concurring Justices also honored schools as “the most powerful agency for promoting cohesion among a heterogeneous democratic people,” making it all the more important to keep “entanglement in the strife of sects” away. *Id.* at 216-17; *see also Lee v. Weisman*, 505 U.S. 577, 592, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992) (“One timeless lesson is that if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.”).

In the decades that followed, the Supreme Court time and again has explicitly affirmed what the majority seeks to deny: schools are places where coercion permeates easily, and, as such, there are “heightened concerns” for protecting students’ “freedom of conscience from subtle coercive pressure.” *Lee*, 505 U.S. at 592; *see also Edwards v. Aguillard*, 482 U.S. 578, 584, 107 S. Ct. 2573, 96 L. Ed. 2d 510 (1987) (“The State exerts great authority and coercive power through” public schools “because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.”). Last year, in *Mahmoud v. Taylor*, the Court again reiterated this truth.

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Schools, and the educators within them, are entrusted with a most special duty, one that is dissimilar from other governmental operations, because schools “implicate[] direct, coercive interactions between the State and its young residents.” *Mahmoud*, 606 U.S. at 557.

The majority denies the inherently coercive pressure of posting Texas’s chosen scripture in every classroom. With no answer to this government interference with students’ and parents’ First Amendment rights, the majority diverts to examples that are utterly dissimilar. For one, it is baffling that the “[m]ost dramatic” consequence, to the majority, is what would happen to the pledge of allegiance should Plaintiffs prevail. To me, the most serious consequences are the harm to students made to feel different or pressured to venerate scripture they do not believe in and the infringement on their parents’ rights to direct their faith upbringing. I am happy to reassure the majority that the pledge is not imperiled. The pledge is not a set of biblical commandments. The pledge is not said in every minute of every day of every class. A nondenominational reference to God in the pledge is more similar to the mention of God in the Declaration of Independence. It is at once an expression of humility and a reflection of hope that mankind fulfills a higher purpose.⁶ Moving from the sublime to the ridiculous, the

6. See *Engel v. Vitale*, 370 U.S. 421, 435 n.21, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962) (“There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer’s professions

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majority also seems fearful that “religious placenames” that dot our country, like St. Louis, might be in jeopardy. Twenty years ago, Chief Justice Rehnquist recognized that elementary school students cannot be “confronted” by the Ten Commandments every day, whereas a monument of the Commandments on government property “is a far more passive use of the text.” *Van Orden v. Perry*, 545 U.S. 677, 691, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005) (plurality opinion). Schools are unique, and we are fortunate that the Supreme Court gives them distinctive First Amendment protection, forbidding any denominational preferences that intrude on students’ and parents’ rights.

* * *

The compulsory public-school setting magnifies the harm of a government choosing, elevating, and even empowering one religion over others. Texas’s installment of the King James Version of the Ten Commandments in every classroom harms impressionable students and deprives parents of their fundamental right to govern their children’s religious upbringing.

First, with the injection of religion at every turn in their learning environment, students will face real consequences. The majority has no answer to the distress children will face, as expressed by Plaintiffs and amici alike. *See, e.g., En Banc Br. of Tex. Freedom Network et al. as Amici Curiae*, at 13-18 (25-50695). Instead, the

of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State [] has sponsored in this instance.”).

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majority declares no fewer than six times, but never with supporting caselaw, that there must be punishment for there to be a First Amendment violation. *Contra Schempp*, 374 U.S. at 225 (“The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, ‘it is proper to take alarm at the first experiment on our liberties.’” (quoting James Madison, *Memorial and Remonstrance Against Religious Assessments*, as quoted in *Everson v. Bd. of Educ.*, 330 U.S. 1, 65, 67 S. Ct. 504, 91 L. Ed. 711 (1947))). Thankfully, the Supreme Court, unlike our court, recognizes the consequences that lie waiting when students of all backgrounds, and all religions, are confronted with the reminder that they are different—so different that they are not included in the sole religion their school and government celebrate. *See Engel*, 370 U.S. at 431 (“When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.”); *Edwards*, 482 U.S. at 584 (“Students in such institutions are impressionable and their attendance is involuntary.”); *Lee*, 505 U.S. at 592 (“What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.”); *id.* at 593 (“Research in psychology supports the common assumption that adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention.”).

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Thus, similar to the harm from school prayers, students in Texas will be reminded that the “conspicuous”⁷ religious text following them from math class to theater class is different from religious sentiments they hear at home or in a sacred place of worship.⁸ See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10, 120 S. Ct. 2266, 147 L. Ed. 2d 295 (2000) (“School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984) (O’Connor, J., concurring))).⁹

7. TEX. EDUC. CODE ANN. § 1.0041(a) (West 2025).

8. Scholars often make points with more background and eloquence than I do. Relating to this issue, Professor Paul McGreal has observed, “When a student sincerely objects to a Ten Commandments display, they are not simply objecting to an aesthetically displeasing poster or a problematic political message. Instead, they confront a government message that endorses particular religious teachings as worthy of permanent display. Every day they enter the schoolhouse, they must choose between their religious conscience and full participation in the classroom.” Paul E. McGreal, *Ten Commandments Cases: Learning from Reformation Coercion*, 124 MICH. L. REV. Online 69, 80 (2026).

9. JUSTICE GORSUCH has been perceptively protective too, recognizing the weight and consequence of making students feel they are outsiders. In *Haaland v. Brackeen*, he discussed the historical example of governmental support of “Indian boarding schools,” which targeted “destroying tribal identity and assimilating Indians into broader society,” and “prohibited children from . . . engaging in

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Second, the school environment amplifies state action. The majority deflects from binding Supreme Court precedent by claiming students are not being “taught to adopt” the Ten Commandments. Yet, it simultaneously offers no imagination of what Texas is doing by imposing a religious text in classrooms. The obvious truth, which we know as well as students do, is that the purpose of public schools is education. School materials, including displays, are intentionally placed in school for their enrichment value, meant to shape our nation’s youth.

The Supreme Court has emphasized that not all challenges related to school classrooms are created equal, and that courts must “consider the specific context in which the instruction or materials at issue are presented.” *Mahmoud*, 606 U.S. at 550. Here, there is no curricular context to explain the posting of this chosen scripture.¹⁰ One logical question then follows: what is the purpose

customary cultural or religious practices.” 599 U.S. 255, 298-300, 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023) (GORSUCH, J., concurring).

10. Notably, as JUDGE HARDIMAN wrote, in a decision favorably citing *Stone*, an introductory lesson on Islam in a world cultures course was permissible because it was “presented in an academic rather than devotional context.” *Hilsenrath ex rel. C.H. v. Sch. Dist. of Chatham*, 136 F.4th 484, 493 (3d Cir.), *cert. denied*, 146 S. Ct. 885, 223 L. Ed. 2d 274 (2025). Here, the Ten Commandments is not being presented in the context of a social studies class “to introduce students to the fundamental tenets of a major world religion.” *Id.* at 492 (citing *Stone*, 449 U.S. at 42). Instead, Texas’s chosen religious text, representative of only a narrow group of religious sects’ beliefs, will confront students with its scriptural force in every classroom from chemistry to yearbook, and in every grade, for as long as students are under Texas’s instruction.

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of mandating that every public-school classroom across Texas display Protestant scripture? School materials—whether on the walls or on the bookshelves—convey a message. *See, e.g., Mahmoud*, 606 U.S. at 550 (“Like many books targeted at young children, the books are unmistakably normative. They are clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected.”). A religious text “confront[ing] [] school students every day,” *Van Orden*, 545 U.S. at 691, is an even more obvious religious infringement than the books *Mahmoud* considered. The materials at issue in *Mahmoud* were “‘LGBTQ+-inclusive’ storybooks,” which did not directly convey a religious message, but instead included messages that contradicted parents’ asserted religious views. *Mahmoud*, 606 U.S. at 533. The purpose of placing the King James Version of the Ten Commandments in every classroom is its religious directive, irreconcilable with the First Amendment.¹¹

Classrooms are critical places of learning and enrichment. If placed in every classroom, the scripture becomes part of that learning, as intended by Texas’s

11. Regardless, the Supreme Court has prohibited similar pervasive use of biblical text in schools because “the place of the Bible as an instrument of religion cannot be gainsaid.” *Schempp*, 374 U.S. at 224; *see also* Ira C. Lupu & Robert W. Tuttle, *The Ten Commandments in Louisiana Public Schools: A Study in the Survival of Establishment Norms*, 100 CHI.-KENT L. REV. 601, 620 (2025) (“[T]he character of the Commandments, combined with the prominence of the text in the posting, puts a far greater burden on the state to undo the obvious inference that they are being displayed for religious reasons.”).

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government.¹² Texas children will naturally examine these posters and be left to reflect on the fact that one religion—different from the one they observe in their home, their synagogue, their mosque, or other place of worship—was selected to be in their school as a representation of what? An expectation of a model student? A good citizen? A properly devout person? The majority insists that students will not be “catechized,” but forgets their curiosity. Surrounded by the Ten Commandments displays, students will wonder about “the LORD”; they will wonder about “other gods”; they will wonder about “graven images”; they will wonder about “kill[ing]”; they will wonder about “adultery”; they will wonder about “covet[ing]” a neighbor’s wife. TEX. EDUC. CODE ANN. § 1.0041(c); *Exodus* 20:2-17 (King James). Teachers inevitably will be asked to answer these questions, but Texas parents did not entrust public-school teachers with the spiritual education of their children. It is a parent’s right to have these conversations—not inside the classroom, absent their input, but with their children, present at home.

* * *

Texas’s defiance of the First Amendment displaces parents. Parents, not politicians, have the right to lead

12. See, e.g., *En Banc Br. of Tex. Freedom Network et al.*, at 11-13, 21-22 (quoting legislators discussing S.B. 10); *En Banc Br. of Nat’l Council of Jewish Women et al.*, at 26-28 (same).

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their children’s religious development.¹³ Yet the majority now gives Texas that choice and command. Here again, the Supreme Court understands what our court does not. It is “the liberty of parents and guardians to direct the upbringing and education of children under their control”—“rights guaranteed by the Constitution.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534-35, 45 S. Ct. 571, 69 L. Ed. 1070 (1925); *see also Wisconsin v. Yoder*, 406 U.S. 205, 218, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972) (explaining that government-authorized religious infringements pose “a very real threat of undermining” the religious beliefs that parents hope to instill in their children and, likewise, of undermining parents’ rights); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 753-54, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020) (“[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.”).

In my opinion, there is irony in the majority’s contention that Plaintiffs here ask our court to go beyond *Mahmoud*, when in fact, it is the majority today that goes beyond. In *Mahmoud*, the school materials at issue were non-religious books that parents deemed contradictory to their values; here, the material is the exact text of the King James Version of the Ten Commandments. 606 U.S. at 533-35. In *Mahmoud*, the disputed books were,

13. As President Grant said, “Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions.” *The President’s Speech at Des Moines*, 22 CATH. WORLD 433, 435 (1876).

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at most, to be referenced in a classroom lesson; here, the Ten Commandments are to be conspicuously displayed in every classroom, every hour of the school day. *Id.* at 535-36. Most striking, in *Mahmoud*, the Supreme Court still allowed parents to pull their children out of the lesson; yet, here, our court offers no relief at all—parents must simply abide. *Id.* at 569. Texas’s new law requires the compulsory observance the Supreme Court prohibits. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536-37, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022) (“To be sure, this Court has long held that government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make a religious observance compulsory.’” (quoting *Zorach v. Claiborn*, 343 U.S. 306, 314, 72 S. Ct. 679, 96 L. Ed. 954 (1952))); *Lee*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”).

Many parents “have no choice but to send their children to a public school.” *Morse v. Frederick*, 551 U.S. 393, 424, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007) (Alito, J., concurring). Until today, this reality never meant that parents also have no choice but to accept government-chosen religious scripture that will surround their children. Stated simply, “the right of parents ‘to direct the religious upbringing of their’ children would be an empty promise if it did not follow those children into the public school classroom.” *Mahmoud*, 505 U.S. at 547. If schools across Texas must display this scripture, then today our court ordains that empty promise.

**APPENDIX D — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF TEXAS, SAN ANTONIO DIVISION,
FILED AUGUST 20, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. SA-25-cv-00756-FB

RABBI MARA NATHAN, ON BEHALF OF
HERSELF AND HER MINOR CHILD, M.N.;
VIRGINIA GALVIZ EISENBERG, ON BEHALF
OF HERSELF AND HER MINOR CHILD, R.E.;
RON EISENBERG, ON BEHALF OF HIMSELF
AND HIS MINOR CHILD, R.E.; CANTOR SETH
ETTINGER, ON BEHALF OF HIMSELF AND HIS
MINOR CHILD, R.E.; SARAH ETTINGER, ON
BEHALF OF HERSELF AND HER MINOR CHILD,
R.E.; ELIZABETH LEMASTER, ON BEHALF OF
HERSELF AND HER MINOR CHILDREN, K.L. &
L.L.; CARAH HELWIG, ON BEHALF OF HERSELF
AND HER MINOR CHILDREN, J.P. & T.P.; ALYSSA
MARTIN, ON BEHALF OF HERSELF AND ON
BEHALF OF HER MINOR CHILD, H.B.M.; CODY
BARKER, ON BEHALF OF HIMSELF AND HIS
MINOR CHILD, H.B.M.; LAUREN ERWIN, ON
BEHALF OF HERSELF AND HER MINOR CHILD,
M.E.; PASTOR JAMES GRIFFIN MARTIN, ON
BEHALF OF HIMSELF HIS MINOR CHILDREN,
J.M. & B.M.; ABIGAL MARTIN, ON BEHALF
OF HERSELF AND HER MINOR CHILDREN,

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J.M. & B.M.; REBEKAH LOWE, ON BEHALF OF
HERSELF AND HER MINOR CHILDREN, E.R.L.
& E.M.L.; THEODORE LOWE, ON BEHALF OF
HIMSELF AND HIS MINOR CHILDREN, E.R.L.
& E.M.L.; MARISSA NORDEN, ON BEHALF OF
HERSELF AND HER MINOR CHILDREN, E.N. &
A.N.; WILEY NORDEN, ON BEHALF OF HIMSELF
AND HIS MINOR CHILDREN, E.N. & A.N.; RABBI
JOSHUA FIXLER, ON BEHALF OF HIMSELF
AND HIS MINOR CHILDREN, D.F., E.F. & F.F.;
REVEREND CYNTHIA MOOD, ON BEHALF OF
HERSELF AND HER MINOR CHILDREN, L.M. &
C.M.; CHERYL REBECCA SMITH, ON BEHALF
OF HERSELF AND HER MINOR CHILD, L.P.J.;
ARVIND CHANDRAKANTAN, ON ON BEHALF
OF HIMSELF AND HIS MINOR CHILDREN, V.C.,
M.C. & A.C.; ALLISON FITZPATRICK, ON BEHALF
OF HERSELF AND HER MINOR CHILDREN, C.F.
& H.F.; AND MARA RICHARDS BIM, ON BEHALF
OF HERSELF AND HER MINOR CHILD, H.B.,

Plaintiffs,

v.

ALAMO HEIGHTS INDEPENDENT, SCHOOL
DISTRICT, NORTH EAST INDEPENDENT
SCHOOL DISTRICT, LACKLAND INDEPENDENT
SCHOOL DISTRICT, NORTHSIDE INDEPENDENT
SCHOOL DISTRICT, AUSTIN INDEPENDENT
SCHOOL DISTRICT, LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT,

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DRIPPING SPRINGS INDEPENDENT SCHOOL
DISTRICT, HOUSTON INDEPENDENT SCHOOL
DISTRICT, FORT BEND INDEPENDENT
SCHOOL DISTRICT, CYPRESS FAIRBANKS
INDEPENDENT SCHOOL DISTRICT, AND
PLANO INDEPENDENT SCHOOL DISTRICT,

Defendants.

Filed August 20, 2025

**ORDER CONCERNING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION AND
DEFENDANTS' MOTION TO DISMISS**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. U.S. Const. amend. I. State legislatures are also bound pursuant to the Fourteenth Amendment. *Everson v. Board of Ed.*, 330 U.S. 1, 8, 67 S.Ct. 504, 91 L.Ed. 711 (1947).

**I.
In The Beginning. . .¹**

Rabbi Mara Nathan and other Plaintiffs request the Court to preliminarily enjoin the implementation of SB 10, a Texas statute requiring the posting of the allegedly

1. Genesis 1:1.

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Protestant version of the Ten Commandments in Texas public schools, arguing that the statute violates the higher law of the United States Constitution. The Government schools and the Attorney General of Texas say the statute is constitutional and that the preliminary injunction should be denied. The Government schools and the Attorney General of Texas also move to dismiss Plaintiffs' complaint for lack of subject matter jurisdiction and failure to state a claim.

Presumably, Rabbi Nathan and Baptist Reverend Vickrey both try to follow their religions and to inculcate those values to their congregants and their own children. But they come from the different faith backgrounds of their childhood. Indeed, forty years ago a Methodist preacher told a then much younger judge, "Fred, if you had been born in Tibet, you would be a Buddhist."

By filing this case, Rabbi Nathan and Reverend Vickrey, through the latter's published statements, agree these matters of individual conscience and the soul should be free of government interference and coercion.

Historically, Baptists were early advocates for church-state separation and religious freedom because of their experience of persecution. The American principle protected dissenters like themselves and had the additional benefits of protecting all religious minorities, including the non-religious. . . . The separation of church and state protects our spiritual integrity and keeps

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our democracy intact. . . . Real religious freedom
frees us from hatred and levels out hierarchies.²

Imagine the consternation and legal firestorm were
the following fictional story to become reality:

Hamtramck, Michigan: Being a majority Muslim
community, the Hamtramck city council and school board
have decreed that, beginning September 1, 2025, the
following teachings of the Quran, Surah Al-An'am 6:151
and Surah Al-Isra 17:23, shall be posted in all public
buildings and public schools:

Say, O Prophet, come! Let me recite to you
what your Lord has forbidden to you: Do not
associate others with Him in worship. Do not
fail to honour your parents. Do not kill your
children for fear of poverty. Do not come near
indecencies, openly or secretly. Do not take a
human life, except with legal right. This is what
He has commanded . . .

For your Lord has decreed that you worship
none but Him. And honour your parents. If one
or both of them reach old age in your care, never
yell at them. Rather, address them respectfully.

While "We the people" rule by a majority, the Bill of
Rights protects the minority Christians in Hamtramck

2. Reverend Cameron Vickrey, *In Defense of Separation of
Church and State* (San Antonio Express News, April 6, 2025).

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and those 33 percent of Texans who do not adhere to any of the Christian denominations.³

It can be argued that the genesis of this controversy was about 4,000 years ago when Abraham “separated” from the “government” of his family history and traditions of many gods to proclaim the monotheistic belief in “the one true God.” Abraham begat his descendants Moses, Jesus of Nazareth and Muhammad, who form the triad of the “desert religions” and the “peoples of the Book”: Torah, Christian Bible and the Quran. On other parts of the Earth, different groups of humans developed their own spiritual, philosophical and religious belief systems, many of which have come to exist in the American experience and experiment of democracy and self-government.

In European culture, there was another “separation” from the “government” of the Vatican in Rome. It was the “protest” of Martin Luther, giving birth to numerous branches and versions of the Protestant Christian denominations.

3. Pew Research statistics regarding population and religious composition. Religious Landscape Study 2023-2024.

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**II.
Eternity is a Long Time**

**Diversity of Homo Sapiens Religious and
Life After Death Beliefs**

Though most of the eight billion Homo sapiens⁴ have no knowledge they are traveling 66,000 miles per hour around the sun,⁵ they have evolved over several million years to be the only species which knows it will die.

Not wanting their existence to end, Homo sapiens developed a multitude of theories and hopes, encompassed in thousands of religions,⁶ of how they can avoid returning to the Earth from whence they and other species came. Or, as the country western song says: “Everybody wanna

4. United Nations Population Prospects: The 2024 Revision.

5. EDUMOND LEDGER, *THE SUN: ITS PLANETS AND THEIR SATELLITES* 57 (Hazell, Watson and Viney 1882).

6. LEWIS M. HOPFE AND MARK R. WOODWARD, *RELIGIONS OF THE WORLD II* (Prentice Hall, 7th ed. 1998) (“In the long period of human life on earth, there have been thousands of religions.”); *ENCYCLOPEDIA OF AMERICAN RELIGIONS* (J. Gordon Melton, ed. 7th ed. 2002) (presenting coverage of more than 2,500 North American religious groups in the U.S. and Canada); *Adherents, com: National & World Religion Statistics-Church Statistics-World Religions*, www.adherents.com) (collecting “statistics for over 4,200 religions, churches, denominations, religious bodies, faith groups, tribes, cultures, movements, ultimate concerns, etc.”).

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go to heaven, but nobody wanna go now.”⁷ In the past 10,000 years of human societal development, those belief systems have included the multiple gods of the ancient Romans, Greeks and Egyptians, the monotheism of the Abrahamic religions of Judaism, Christianity and Islam, the reincarnation beliefs of Buddhism, and the various religious beliefs and practices of the Shintoists, Hindus, Mayans, Aztecs and Incas, to name but a few.

Some monopolistically believe theirs is the one and only true religion and path to eternal life. On the other hand, some *Homo sapiens*, known as Atheists, believe they know the only truth: That there is nothingness after physical death.⁸ Still others postulate a parallel universe.⁹ And those called Agnostics do not

7. KENNY CHESNEY, EVERYBODY WANTS TO GO TO HEAVEN (BNA Records 2008).

8. Stephen Hawking, British physicist and author, dismisses belief in God and an afterlife. Ian Sample, Stephen Hawking: “*There is no Heaven: It’s a Fairy Story*,” THE GUARDIAN (May 15, 2011) (“I regard the brain as a computer which will stop working when its components fail. There is no heaven or afterlife for broken down computers; that is a fairy story for people afraid of the dark.”). Some Atheists do, however, believe in an afterlife. David Staume, THE ATHEIST AFTERLIFE: THE ODDS OF AN AFTERLIFE: REASONABLE. THE ODDS OF MEETING GOD THERE: NIL 159-60 (Agio 2009) (“being an atheist or rationalist does not prohibit belief in the possibility of an afterlife. . . . [A]n afterlife can be removed from its religious context and examined on its own merit”).

9. MICHAEL B. MENSKY, CONSCIOUSNESS AND QUANTUM MECHANICS: LIFE IN PARALLEL WORLDS 179-80 (World Scientific Publishing Co. 2010) (“when the consciousness of man being turned-off, his soul obtains access to parallel worlds”).

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claim to know what happens after the final breath is expelled.¹⁰

Grace and Torture

While religious institutions bestow many blessings and try to alleviate suffering, those acts of Grace are neutralized by religious Homo sapiens who exhibit an historical and continuing pernicious and pervasive tendency to kill other humans and confiscate the property of those, sometimes even within the same religion, who do not believe as they do. Christians slaughtered other Christians.¹¹ In Europe, the blood of Irish Protestants

10. See ANTHONY KENNY, *THE UNKNOWN GOD* 9 (Continuum 2004).

11. See generally CROSS, CROWN & COMMUNITY: RELIGION, GOVERNMENT AND CULTURE IN EARLY MODERN ENGLAND 1400-1800 (David J.B. Trim & Peter J. Balderstone, eds. 2004); PERSECUTION AND PLURALISM: CALVINISTS AND RELIGIOUS MINORITIES IN EARLY MODERN EUROPE 155-1700 (Richard Bomey & David J. B. Trim, eds. 2006). See also David J.B. Trim, *The Christian Persecutory Impulse: Part One in a Series*, LIBERTY, January/February 2011 (exploring history of persecution of Christians by Christians); David J.B. Trim, *The Christian Persecutory Impulse: The Medieval Not Quite Reformed: Part Two in a Series*, LIBERTY, March/April 2011; David J.B. Trim, *The Christian Persecutory Impulse: Tough Love: Part Three in a Series*, LIBERTY, May/June 2011; David J.B. Trim, *The Christian Persecutory Impulse: The Emergence of Toleration: Part Four in a Series*, LIBERTY, July/August 2011; David J.B. Trim, *The Christian Persecutory Impulse: Reformation, Tolerance, and Persecution, Part Five in a Series*, LIBERTY, November/December 2011.

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and Catholics flowed freely.¹² Similar conflict between Protestants and Catholics existed in the United States as well.¹³ In colonial Salem, Massachusetts, Christians savagely punished women accused of being witches.¹⁴

12. MARTIN N. MARGER, *RACE AND ETHNIC RELATIONS: AMERICAN AND GLOBAL PERSPECTIVES* 477-78 (Wadsworth, 9th ed. 2011) (describing incidents of sectarian violence between Catholics and Protestants in Ireland in the 1970s and 1980s); RICHARD ENGLISH, *IRISH FREEDOM: THE HISTORY OF NATIONALISM IN IRELAND* (Macmillan 2008) (“Political violence between Protestant and Catholic abounded in early and mid-seventeenth century Europe, [including] . . . the massacres of Irish Protestants by Irish Catholics in 1641 . . . [and] slaughter of thousands of Protestants by Catholics in Magdeburg in 1631.”).

13. JAY P. DOLAN, *THE IRISH AMERICANS: A HISTORY* 61 (Bloomsbury Press 2008) (describing outbreaks of riots and mob violence against Catholics in Boston, New York, and Philadelphia in the 1830’s and 1840’s).

14. The role of religion in the Salem witch trials has been described as follows:

[W]ithout religion these charges would never have been filed, much less acted on. Without a belief in the devil as a genuine corrupting force, no one would have believed in witches. Religion also influenced the trials in that the judges looked to the ministers for guidance, since the judges had no previous experience with witchcraft. . . . [The trials became] one of the largest outbreaks of religiously related legal prosecution in American history, with nearly a score executed, five score jailed, and another ten score accused.

SCOTT A. MERRIMAN, *RELIGION AND THE LAW IN AMERICA: AN ENCYCLOPEDIA OF PERSONAL BELIEF AND PUBLIC POLICY* 448 (ABC-CLIO, Inc. 2007).

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Other Christians rejected the Church of Jesus Christ of Latter-Day Saints as cultists, using brute force against them.¹⁵ Radical Islamic Sunni and Shiites create chaos within their culture.¹⁶ Christians attempted to exterminate Jews.¹⁷ Some Muslims view non-Muslims as

15. Richard L. Bushman, *Mormon Persecutions in Missouri*, 1883, 3 *BYU STUDIES* 11(1961) (describing mob violence against Mormons in Missouri). *See also* RICHARD ABANES, *INSIDE TODAY'S MORMONISM* 253 (Harvest House 2004) ("Most mainstream Christian denominations . . . are united in their outright rejection of Mormonism."); RICHARD LYMAN BUSHMAN, *MORMONISM: A VERY SHORT INTRODUCTION* 2 (Oxford Univ. Press 2008) ("Frequently Mormonism is labeled a cult rather than a church. Some say it is not Christian.").

16. PETER LYON, *ISLAM IN CONFLICT BETWEEN INDIA AND PAKISTAN*; *AN ENCYCLOPEDIA* 86 (ABC-CLIO, Inc. 2008) (describing bloody conflict between extremist Sunni and Shia Muslim groups).

17. ROBERT MICHAEL, *HOLY HATRED: CHRISTIANITY, ANTISEMITISM, AND THE HOLOCAUST* 3 (Palgrave MacMillan, 1st ed. 2006) ("During the Holocaust, . . . most Christian Churches and most Christians . . . stood by in silence, or collaborated, when Jews were taken away by other Christians to be tortured and murdered."); WILLIAM NICHOLLS, *CHRISTIAN ANTISEMITISM: A HISTORY OF HATE* (Rowman & Littlefield Publishers 1993) (In the Middle Ages, "Jews were massacred and tortured, and soon whole Jewish populations were expelled from countries where they had long resided.").

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infidels.¹⁸ Christians crusaded against Muslims.¹⁹ Conflict between Orthodox Jews and secular Jews in Israel begets harsh and uncivil acts.²⁰ “And you shall hear of wars and

18. PATRICIA CRONE, *GOD’S RULE: GOVERNMENT AND ISLAM: SIX CENTURIES OF MEDIEVAL ISLAMIC POLITICAL THOUGHT* 358 (Columbia Univ. Press 2004) (“Humans were divided in Muslims and infidels. . . . A Muslim was someone who surrendered to God and lived as His servant in a society based on His law. Infidels were rebels against God whose societies could never be more than the robbers’ nests with which St. Augustine had compared kingdoms devoid of justice.”); RONALD A. PACHENCE, *INFIDELS: AN INTRODUCTORY DICTIONARY OF THEOLOGY AND RELIGIOUS STUDIES* 630 (Orlando O. Espin and James B. Nickoloff, eds. 2007) (“Today, some Muslim extremists apply the term infidel to all non-Muslims, especially those living in the Western world.”).

19. KAREN ARMSTRONG, *ISLAM: A SHORT HISTORY* 93-95 (Modem Library 2000) (“[I]n July 1099, .. the Christian Crusaders from western Europe attacked Jerusalem, . . . [and] massacred its inhabitants. . . . The Crusades were disgraceful . . . [and] devastating for the Muslims of the Near East.”).

20. OREN YIFTACHEL, *ETHNOCRACY: LAND AND IDENTITY POLITICS IN ISRAEL/PALESTINE* 118 (Univ. of Pennsylvania Press, 2006) (“During the 1990s, greater tensions surfaced between Orthodox and secular Jews [in Israel]. [F]or most Orthodox individuals, the Jewish nature of the state is clearly superior to its Western or democratic orientation [and] Orthodox parties support the increasing imposition of religious (Halacha) rule in Israel.”). *See also* Joel Greenberg, *Religious Limits on Women Spur Controversy in Israel*, WASH. POST (December 27, 2011), www.washingtonpost.com. (“A community of 86,000 . . . Beit Shemesh has a growing ultra-Orthodox population. The town has become a cauldron of tension . . . [because of] Israeli media reports about ultra-Orthodox Jews in the town who hounded local religious schoolgirls, spitting and hurling abuse at them for what they deemed insufficiently modest dress.”).

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rumors of wars.” *See Matthew 24:6*. Truly a prescient prediction from 2,000 years ago.

Even poor old Abraham was shunned by his own family for believing in one God and rejecting the multiple gods of his fathers.²¹ His descendants, the cousins Moses, Jesus and Mohammed, would be perplexed by the blood spilled by their followers against each other. “Jesus wept.” *See John 11:35*.

That violent history gives rise to the question: “Haven’t we evolved?” Other than size and longevity, the answer clearly is: “Of course not.” “The Beat Goes On.”²²

21. *Quran* 19: 43-48 (“He (the father) said: ‘Do you reject my gods, O Abraham? If you stop not (this), I will indeed stone you. So get away from me safely before I punish you.’ Abraham said: ‘Peace be on you! I will ask Forgiveness of my Lord for you. Verily! He is unto me, Ever Most Gracious. And I shall turn away from you and from those whom you invoke besides Allah.’”). Abraham’s parents “were likely to have been worshipers of the moon-god Sin and his daughter Inanna, the patron deities of the city of Ur. . . . [T]he family names show a fairly standard homage to the Akkadian/Sumerian pantheon . . . [including] the goddess Ningal [and] Sin’s daughter Malkatu.” SUSAN WISE BAUER, *THE HISTORY OF THE ANCIENT WORLD: FROM THE EARLIEST ACCOUNTS TO THE FALL OF ROME* 128 (W. W. Norton & Company 2007).

22. Sonny & Cher, *The Beat Goes On* (ATCO Records, 1975).

*Appendix D***The American Colonial Religious Experience**

Those who immigrated to Texas were neither the first nor the last group to come to America in search of freedom from government-controlled religion.²³ Before them came the Pilgrims persecuted by the government-controlled Church of England,²⁴ the French Protestant Huguenots persecuted by the French Catholic government of Louis XIV,²⁵ and the European Jews

23. LEWIS M. HOPPE AND MARK R. WOODWARD, *RELIGIONS OF THE WORLD II* (Prentice Hall, 7th ed. 1998).

24. BERKIN ET AL., *MAKING AMERICA: A HISTORY OF THE UNITED STATES Volume I: to 1877* 62 (Wadsworth, 6th ed. 2011) (describing Pilgrim voyage to America in search of religious freedom); SMITH & BURNHAM, *OUR BEGINNINGS IN EUROPE AND AMERICA: HOW CIVILIZATION GREW IN THE OLD WORLD AND CAME TO THE NEW* 293-94 (John C. Winston Co. 1936) (explaining Pilgrims who became the first settlers in New England were Separatists driven to America by the persecution of the English government based on the Separatists' refusal to join the Church of England).

25. JACKSON J. SPIEL VOGEL, *WESTERN CIVILIZATION SINCE 1300* 456 (Wadsworth, 8th ed. 2011) ("In October 1685, Louis issued the Edict of Fontainebleau, . . . provid[ing] for the destruction of Huguenot churches and the closing of Protestant schools. It is estimated that 200,000 Huguenots defied the prohibition against their leaving France and sought asylum in England, the United Provinces, and the German states."). *See also* Bertrand Van Ruymbeke, *From Ethnicity to Assimilation: The Huguenots and the American Immigration History Paradigm*, in *FROM STRANGERS TO CITIZENS: THE INTEGRATION OF IMMIGRANT COMMUNITIES IN BRITAIN, IRELAND AND COLONIAL AMERICA 1550-1750* 332 (Randolph Vigne and Charles Littleton, eds. 2001).

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persecuted by European Christian governments.²⁶ And, “[s]o it goes.”²⁷

They voted with their feet for separation of church and state by coming to the new world. But old practices die hard, and the American colonists themselves established official government religions.²⁸ For instance, the Rhode Island Charter of 1663 promised to “preserve unto [its inhabitants] that liberty in the true Christian faith and worship of God,”²⁹ notwithstanding President George

26. ANTI-IMMIGRATION IN THE UNITED STATES: AN HISTORICAL ENCYCLOPEDIA 295 (Kathleen Arnold, ed. 2011) (“The history of Jewish immigration to the United States highlights America’s legacy as a safe haven for the oppressed from around the world. . . . Jews were among the earliest European settlers to arrive in North America during the 17th century.”); JAMES S. OLSON AND HEATHER OLSON BEAL, THE ETHNIC DIMENSION IN AMERICAN HISTORY (Wiley Blackwell, 4th ed. 2010) (“Toward the end of the seventeenth century, groups of persecuted Ashkenazi Jews immigrated from central and eastern Europe. . . . Some came to America, and by 1776 nearly 3,000 Jews resided in the colonies.”).

27. KURT VONNEGUT, JR., SLAUGHTERHOUSE-FIVE (Delacorte 1969).

28. See RUSSELL FREEDMAN, IN DEFENSE OF LIBERTY: THE STORY OF AMERICA’S BILL OF RIGHTS 26 (Holiday House 2003) (“Many [early Americans] sailed to the New World to escape religious persecution in the Old. . . . And yet [m]ost of the early colonies established official government-sponsored churches, which all residents were required by law to support and attend.”).

29. SHELDON J. GODFREY AND JUDITH C. GODFREY, SEARCH OUT THE LAND: THE JEWS AND THE GROWTH OF EQUALITY IN BRITISH COLONIAL AMERICA 1740-186747 (McGill Queens Univ. Press 1995) (“[t]he Rhode Island charter of 1663 . . . made the colony undeniably Christian.”).

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Washington's support of the Hebrew communities.³⁰ Other Rhode Island laws restricted admission to the colony to those professing the Christian religion.³¹ Similar laws existed in Massachusetts³² and New York.³³ In Virginia in 1776, although it was declared "all men are equally entitled to the free exercise of religion, according to the dictates of conscience," it was also declared that "it is the mutual duty of all to practice Christian forbearance,

30. "All possess alike, liberty of conscience and immunities of citizenship. . . . The Government of the United States which gives to bigotry no sanction to persecution no assistance. . . . May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants, while everyone shall sit in safety under his own vine and fig tree and there shall be none to make him afraid." George Washington's letter to the Hebrew Congregation of Newport Rhode island 1790.

31. *Id.*

32. The 1780 Massachusetts Constitution required certain public officeholders to recite an oath "declar[ing] [they] believe the Christian religion, and have a firm persuasion of its truth." FRANCIS NEWTON THORPE, THE FEDERAL AND THE STATE CONSTITUTIONS, COLONIAL CHAPTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 1908 (Washington Government Printing 1909).

33. The 1777 New York State Constitution guaranteed free exercise of religion, but its laws required an oath for government office that excluded Roman Catholics. CONSTITUTIONAL DEBATES ON FREEDOM OF RELIGION 30 (John J. Patrick and Gerald P. Long, eds. 1999).

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love, and charity towards each other,”³⁴ In Maryland, which was originally settled as a safe haven for Catholics, a Protestant majority became dominant and persecuted and marginalized Catholic residents.³⁵ Seventh-Day Adventists were similarly persecuted by the majority for their beliefs.³⁶

Recognizing the danger of the integration of church and state, Reverend Isaac Backus wrote in 1773:

[W]here [church and state] and the weapons which belong to them are well distinguished and improved according to the true nature and end of their institutions, the effects are happy, and they do not at all interfere with each other. But where they have been confounded together no

34. THE FOUNDING FATHERS AND THE DEBATE OVER RELIGION IN REVOLUTIONARY AMERICA: A HISTORY IN DOCUMENTS 60 (Matthew L. Harris and Thomas S. Kidd, eds. 2012) (citing the Virginia Declaration of Rights of 1776).

35. “The colonial history of Maryland is one of religious unrest between Catholics and Protestants. While the colony was settled as a safe haven for English Catholics, Protestants made up a large number of the initial settlers and soon were a majority.” ENCYCLOPEDIA OF RELIGION IN AMERICAN POLITICS 155 (Jeffrey D. Schultz, et al., eds. 1999). When Protestants “took control of the colony, [they] disenfranchised Catholics.” *Id.* See also THE ENDURING VISION: A HISTORY OF THE AMERICAN PEOPLE Volume 1: to 1877 55 (Boyer et al., eds. 2011).

36. Ronald Lawson, *Tensions, Religious Freedom, and the Courts: The Seventh-day Adventist Experience*, in RELIGION AND SOCIAL POLICY 73 (Paula D. Nesbitt, ed. 2001).

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tongue nor pen can fully describe the mischiefs that have ensued of which the Holy Ghost gave early and plain warnings.³⁷

Government and Religion Joining Hands

One picture from the modern era speaks silently and poignantly of the danger of majoritarian government and religion joining hands.³⁸



37. Rev. Isaac Backus, *An Appeal to the Public for Religious Liberty*, 1773, in READINGS IN BAPTIST HISTORY: FOUR CENTURIES OF SELECTED DOCUMENTS 19 (Joseph Early, Jr., ed. 2008).

38. David J.B. Trim, *The Christian Persecutory Impulse: Reformation, Tolerance, and Persecution*, LIBERTY, November/December 2011 (citing BPK Art Resources New York) (depicting Hitler greeting Reich Bishop Ludwig Müller and Abbott Albanus Schachleitner as honorary guests at the “Reich Party Rally for Unity and Strength” in 1934).

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If government-run public schools also joined hands with religion and had the power to impose religious views, questions arise: Which holy books and prayers would be preferred? The Torah? The Book of Mormon? The Catholic Bible? The New Testament? The Bible as edited by Thomas Jefferson?³⁹ The Quran? Would Christians be required to face Mecca or observe Hebrew prayer? Would Jews and Muslims be obligated to stand and recite the Lord's Prayer?

One need only look at the states of Israel and Iran to see the conflicts which arise when government and religion become closely intertwined.⁴⁰

The Debate Continues Through American History

“Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contribution. Keep the church and state forever separate.”

–President Ulysses S. Grant⁴¹

39. THOMAS JEFFERSON, *THE JEFFERSON BIBLE: THE LIFE AND MORALS OF JESUS OF NAZARETH: EXTRACTED TEXTUALLY FROM THE GOSPELS, TOGETHER WITH A COMPARISON OF HIS DOCTRINES WITH THOSE OF OTHERS* (N.D. Thompson Publishing Co. 1902).

40. See generally S.I. Strong, *Law and Religion in Israel and Iran: How the Integration of Secular and Spiritual Laws Affects Human Rights and the Potential for Violence*, 19 MICH. J. INT'L LAW 109 (1997).

41. PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* 322 (Harvard Univ. Press 2004) (quoting President Ulysses S. Grant's

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“80 percent of the American people want Bible readings and prayer in the schools. . . . Why should the majority be so severely penalized by the protests of a handful?”

–Reverend Billy Graham⁴²

[With all due respect to Reverend Graham, it is the 20 percent who are protected by the Bill of Rights.]

“Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?”

–Supreme Court Justice Sandra Day O’Connor⁴³

“God and the Ten Commandments and school prayer have all been expelled from the public schools. Pass a constitutional amendment to allow voluntary prayer.”

1875 speech given “to rally his troops for the coming election [and warn] of the danger of a second civil war”).

42. *Billy Graham Voices Shock Over Decision*, N.Y. Times June 18, 1963, at 17.

43. *McCreary Cnty. v. American Civil Liberties Union*, 545 U.S. 844, 882, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005) (O’Connor, J., concurring).

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–Presidential Candidate Pat Buchanan⁴⁴

“I’m a Catholic and I hope a devout one, but I think that the public school classroom is no place for me to try and impose my world formula for prayer on children who don’t share it, and for that very reason, I don’t want my children in a public school classroom to be exposed to someone else’s religion or formula.”

–Senator Philip A. Hart (D-Michigan)⁴⁵

“We can change education in America if you put Christian principles in and Christian pedagogy in.”

–Reverend Pat Robertson⁴⁶

“When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs. A government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some.”

44. Pat Buchanan, Remarks at Bob Jones University (Sept. 18, 2000), available at Pat Buchanan on Education, http://www.issues2000.org/Celeb/Pat_Buchanan_Education.htm.

45. R. MURRAY THOMAS, *GOD IN THE CLASSROOM: RELIGION AND AMERICA’S PUBLIC SCHOOLS* 125 (Praeger Publishers 2007) (quoting Senator Phillip A. Hart).

46. JAMES W. FRASER, *BETWEEN CHURCH AND STATE: RELIGION AND PUBLIC EDUCATION IN MULTICULTURAL AMERICA* 187 (Palgrave MacMillan 2000) (quoting Pat Robertson on The 700 Club).

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–Supreme Court Justice Harry Blackman⁴⁷

“As many of you know, I strongly support an amendment that will permit our children to hold prayer in our schools. The amendment would allow communities to determine for themselves whether voluntary prayer should be permitted in their public schools.”

–President Ronald Reagan⁴⁸

**The United States Has No King:
The People Are Sovereign**

The Constitution invokes, and is based upon, the people as having ultimate sovereignty and power over the three branches of government through the electoral and amendment processes vested in them. That power, for example, has been exercised to allow women to vote, to prohibit, and then allow, liquor and to limit the President of the United States to two terms.⁴⁹

47. *Lee v. Weisman*, 505 U.S. 577, 606-07, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) (Blackmun, J., concurring).

48. Ronald Reagan, Radio Address to the Nation on Domestic Social Issues (Jan. 22, 1983), available at Ronald Reagan Presidential Library Archives, [Http://www.reagan.utexas.edu/archives/speeches/1983/12283a.htm](http://www.reagan.utexas.edu/archives/speeches/1983/12283a.htm).

49. U.S. CONST. amend. XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”); *id.* at amend. XVIII (prohibiting “manufacture, sale, or transportation of intoxicating liquors”); *id.* at amend. XXI (repealing amend. XVIII); *id.* at amend. XXII (setting term limits for persons elected to the office of the President).

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The people could exercise that same power to amend the Constitution to favor a particular religion, to turn the United States into a religious theocracy such as Israel or Iran or to suppress religion as in the Soviet Union,⁵⁰ China⁵¹ or Cambodia under the Khmer Rouge.⁵²

Thus far, that power has not been exercised in such a manner, and this Court's obligation is to follow the Constitution as written, as intended by the Framers and as interpreted by the Supreme Court of the United States.

50. *See generally* CHRISTOPHER MARSH, *RELIGION AND THE STATE IN RUSSIA AND CHINA: SUPPRESSION, SURVIVAL AND REVIVAL* (Continuum Int'l Publishing 2011). *See also* RELIGIOUS POLICY IN THE SOVIET UNION 4 (Sabrina Petra Ramet, ed. 1993) ("A fundamental tenet of Marxism-Leninism is that religion will ultimately disappear. If it began to seem unlikely to do so, the authorities would naturally adopt measures to promote its disappearance, since its continued presence was a rebuke to the claims of the ideology.").

51. FENNANG, YANG, *RELIGION IN CHINA: SURVIVAL & REVIVAL UNDER COMMUNIST RULE* 6 (Oxford Univ. Press 2011) ("China went even further, experimenting with a ban on all religions for more than a decade. Despite the best efforts of the Party-state, religion survived. The Chinese government has also failed to keep religion at a reduced level during the reform era since 1979. All kinds of religions are thriving in China today.").

52. Jeffrey Haynes, *Conflict, Conflict Resolution and Peace-Building: The Role of Religion in Mozambique, Nigeria and Cambodia*, Vol. 47, No. 1 COMMONWEALTH AND COMP. POL. 52, 68 (2009) (explaining how the Khmer Rouge regime of the 1970's "tried energetically to exterminate religion in the country . . . while killing millions of Cambodians as a central facet of state policy.").

*Appendix D***Original Intent of the Framers of the United States
Constitution History and Tradition**

Reasonable minds differ on the Constitution as a living, evolving document or one to be interpreted strictly as the Framers originally intended.⁵³ Some issues not foreseen by the leaders of an agrarian slave holding nation do not lend themselves to providing insight into the intent of those authors.

Religion though and its relationship to government was one on which the Founders did speak clearly and is a part of the history and tradition of our constitutional republic. Having witnessed and learned from the bloodshed and persecution of European church-state partnerships the Founders wrote:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁵⁴

Known as the Father of the Constitution, James Madison expressed his intent this way:

53. *Considering the Role of Judges Under the Constitution of the United States: Hearing Before the Sen. Comm. on the Judiciary*, 112th Cong. 20-21(2011) (statements of Supreme Court Justices Scalia and Breyer).

54. U.S. CONST. amend. I.

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Whilst we assert for ourselves a freedom to embrace, to profess, and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man.⁵⁵

In an 1802 letter to members of the Danbury Baptist Association, Thomas Jefferson wrote:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all

55. James Madison, *Memorial and Remonstrance Against Religious Assessments*, in *THE AMERICAN CONSTITUTIONAL EXPERIENCE: SELECTED READINGS & SUPREME COURT* 151 (Curry et al., eds. 2000).

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his natural rights, convinced he has no natural right in opposition to his social duties.⁵⁶

Mr. Jefferson reaffirmed his intent in an 1822 letter: “And a strong proof of the solidity of the primitive faith, is its restoration, as soon as a nation arises which vindicates to itself the freedom of religious opinion, and its external divorce from the civil authority.”⁵⁷

Similarly, in 1817, John Adams wrote to Thomas Jefferson, warning of the dangers of state religion:

Oh! Lord! Do you think a Protestant Popedom is annihilated in America? Do you recollect, or have you ever attended to the ecclesiastical strifes in Maryland Pennsylvania, New York, and every part of New England? What a mercy it is that these People cannot whip and crop, and pillory and roast, as yet in the U.S.! If they could they would. . . . Quakers, Anabaptists, Moravians, Swedenborgians, Methodists, Unitarians, Nothingarians in all Europe are employing underhand means to propagate their sectarian Systems in these States.

56. THE WRITINGS OF THOMAS JEFFERSON: BEING HIS AUTOBIOGRAPHY, CORRESPONDENCE, REPORTS, MESSAGES, ADDRESSES, AND OTHER WRITINGS, OFFICIAL AND PRIVATE Vol. VIII113 (H.A. Washington, ed. 1854).

57. THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 703 (Adrienne Koch & William Peden, eds. 1972).

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The multitude and diversity of them, you will say, is our security against them all. God grant it. But if we consider that the Presbyterians and Methodists are far more numerous and the most likely to unite; let a George Whitefield arise, with a military cast, like Mahomet, or Loyola, and what will become of all the other Sects who can never unite?⁵⁸

Benjamin Franklin also expressed a desire for Separation of church and state, writing in 1780:

When a Religion is good, I conceive that it will support itself; and, when it cannot support itself and God does not take care to support, so that its Professors are oblig'd to call for the help of the Civil Power, it is a sign, I apprehend, of its being a bad one. But I shall be out of my Depth, if I wade any deeper in Theology.⁵⁹

Thomas Paine likewise called for this separation, explaining “To God, and not to man, are all men accountable on the score of religion.”⁶⁰ To Paine, “[p]ersecution is not

58. THE WRITINGS OF THOMAS JEFFERSON: BEING HIS AUTOBIOGRAPHY, CORRESPONDENCE, REPORTS, MESSAGES, ADDRESSES, AND OTHER WRITINGS, OFFICIAL AND PRIVATE Vol. VII 69 (H.A. Washington, ed. 1854).

59. THE PAPERS OF BENJAMIN FRANKLIN 389-90 (Barbara Oberg, ed. 1997).

60. ALFRED OWEN ALDRIDGE, THOMAS PAINE’S AMERICAN IDEOLOGY 87 (Associated Univ. Press 1984) (describing Thomas

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an original feature in any religion; but it is always the strongly-marked feature of all law-religions, or religions established by law.”⁶¹

The Framers’ own religious beliefs were quite diverse. According to Arthur Schlesinger, Jr.:

George Washington was a nominal Anglican who rarely stayed for Communion. John Adams was a Unitarian, which Trinitarians abhorred as heresy. Thomas Jefferson, denounced as an [A]theist, was actually a [D]eist who detested organized religion and who produced an expurgated version of the New Testament with the miracles eliminated. Jefferson and James Madison, a nominal Episcopalian, were the architects of the Virginia Statute of Religious Freedom. James Monroe was another Virginia Episcopalian. John Quincy Adams was another Massachusetts Unitarian.⁶²

Paine’s address as “a fundamental statement on the doctrine of the separation of church and state”).

61. THOMAS PAINE, *RIGHTS OF MAN: BEING AN ANSWER TO MR. BURKE’S ATTACK ON THE FRENCH REVOLUTION* Vol. 181 (J.S. Jordan, ed. 1791).

62. JAMES LARUE, *THE NEW INQUISITION: UNDERSTANDING AND MANAGING INTELLECTUAL FREEDOM CHALLENGES* 9 (Libraries Unlimited 2007) (citing Arthur Schlesinger, Jr.). See also *Separation of Church and State*, http://www.theocracywatch.org/separationchurch_state2.htm.

*Appendix D***American Legal History**

The United States Supreme Court recently surveyed significant historical events relevant to the development of First Amendment jurisprudence in our country, noting that “[c]ontroversy between church and state . . . is hardly new.”⁶³ Indeed, legal controversy concerning the promotion and support of a particular religious viewpoint in public schools dates back to as early as 1890, when the Wisconsin Supreme Court grappled with the issue of whether public school teachers should be permitted to read to students from the Bible as a textbook. *State ex rel. Weiss v. District Bd.*, 76 Wis. 177, 44 N.W. 967 (1890). In concluding that such reading of the Bible was prohibited, the court wrote:

The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and, above all, by parents in the home circle. There, these truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental conscience. The constitution does not interfere

63. See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 182, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012) (describing religious controversy pertaining to the Magna Carta, the English monarchy, the escape of Puritans to New England, religious establishment in the colonies, and the drafting of the First Amendment).

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with such teaching and culture. It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble. Religion teaches obedience to law, and flourishes best where good government prevails. The constitutional prohibition was adopted in the interests of good government; and it argues but little faith in the vitality and power of religion to predict disaster to its progress because a constitutional provision, enacted for such a purpose, is faithfully executed.

Id. at 976.

Though the court's holding in *Weiss* was based on the Wisconsin state constitution, the underlying principles espoused in that early decision remained relevant in later federal cases challenging religious practices in public schools. The early 1960's brought two landmark Establishment Clause decisions by the Supreme Court of the United States. First, in 1962, the Court held a public school district's practice of daily classroom invocation of God's blessings as prescribed in a prayer promulgated by its Board of Regents was an impermissible use of the public school system inconsistent with the Establishment Clause. *Engel v. Vitale*, 370 U.S. 421, 424-425, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962). Then, in 1963, when parents

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like Madalyn Murray O’Hair⁶⁴ objected to a public school’s practice of requiring Bible reading at the opening of the school day and recitation of the Lord’s Prayer by the students in unison, the Court held such practices violated the Establishment Clause. *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 223, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

In the half century that has passed since these important decisions, the Supreme Court of the United States and the Court of Appeals for the Fifth Circuit have attempted to more clearly define the contours of the Establishment Clause as it relates to prayer in public schools, and more specifically, as it relates to prayer at graduation. In *Lee v. Weisman*, 505 U.S. 577, 587, 112 S.Ct. 2649, 120 L.Ed.2d 467, (1992), the Court granted permanent injunctive relief to prevent the inclusion of clergy-led invocations in the form of prayer in graduation ceremonies of city public schools. That same year, the Court of Appeals for the Fifth Circuit held student-led prayer that was approved by a vote of the students and was non-sectarian and non-proselytizing was permissible

64. Madalyn Murray O’Hair was the leader of the American Atheist movement. JAMES S. OLSON, *HISTORICAL DICTIONARY OF THE 1960s* 349 (Greenwood Publishing 1999). She opposed the practice of mandatory prayers in public schools, and in the 1962 case of *Engel v. Vitale*, “the Supreme Court essentially agreed with O’H[air]’s position”; *Id.* The “decision . . . made Madalyn Murray [O’Hair], in the words of one journalist, [t]he most hated woman in America.” *Id.* See also BRYAN F. LE BEAU, *THE ATHEIST: MADALYN MURRAY O’HAIR* 2 (N.Y.U. Press 2003) (“O’Hair became American [A]theism’s leading proponent, educator, spokesperson, and symbol.”).

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at high school graduation ceremonies. *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 969 (5th Cir. 1992). Other Fifth Circuit cases relied on *Jones* for similar holdings. See *Ingebretsen on Behalf of Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996). However, in *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 310-12, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000), the Supreme Court granted injunctive relief to prevent the inclusion of student-led prayer invocations before football games at Texas public schools. *Sante Fe* has been interpreted as implicitly overruling the Fifth Circuit's *Jones* decision to the extent that it approves a majoritarian election on prayer. See *Doe 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 747-50 (W.D. Tex. 2007).

Courts outside of the Fifth Circuit have provided further guidance. See *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983-85 (9th Cir. 2003) (ruling that school could not constitutionally allow student who was selected as graduation speaker based on his academic standing to give proselytizing religious speech at graduation); *Deveney v. Board of Educ.*, 231 F. Supp. 2d 483, 485-88 (S.D. W. Va. 2002) (issuing TRO against offering of prayer by student at graduation pursuant to vote of student class officers); *Skarin v. Woodbine Cmty. Sch.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (issuing injunction prohibiting school choir from singing Lord's Prayer at graduation ceremony); *Appenheimer v. School Bd.*, No. 01-1226, 2001 WL 1885834, at *6-9 (C.D. Ill. May 24, 2001) (issuing TRO against offering of prayer by student at graduation pursuant to vote of senior class student board); *Cole v. Oroville Union High Sch. Dist.*, 228

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F.3d 1092, 1101-03 (9th Cir. 2000) (ruling that sectarian and proselytizing valedictory speech at graduation would violate the Establishment Clause); *ACLU v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1488 (3d Cir. 1996) (en banc) (invalidating school policy under which prayers could be given at graduations if approved by student vote).

III.**The Current Case Before the Court and Recent Developments in Church-State Law**

The Court finds the issues before it can be distilled as follows:

1. Exposure v. coercion.
2. Is *Roake v. Brumley*, 756 F. Supp. 3d 93, 119 (M.D. La. 2024), *aff'd* 141 F.4th 614 (5th Cir. 2025), *motion for rehearing en banc* filed on June 27, 2025, binding on this Court?

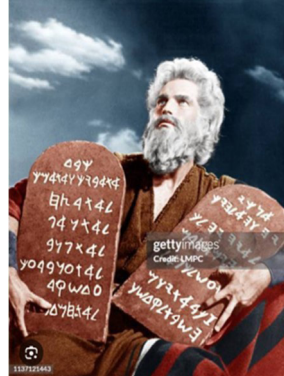
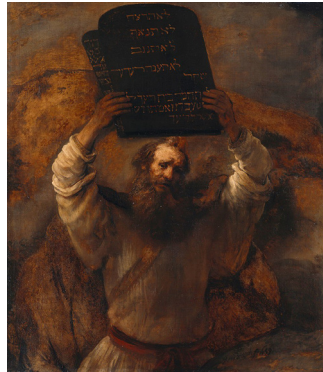
The document at the center of this dispute is popularized in the imagination by Rembrandt Harmenszoon von Rijn,⁶⁵ Cecil B. DeMille,⁶⁶ and Charlton Heston:

65. (1606-1669).

66. (1881-1959) The Ten Commandments is an epic American religious drama film produced, directed and narrated by Cecil B. DeMille and released by Paramount Pictures on November 8, 1956. <https://www.cecilbdemille.com>.

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Parents and religious leaders, individually and on behalf of their minor children, bring this action against certain school districts in Texas asserting facial challenges under the Establishment Clause and the Free Exercise Clause to Senate Bill No. 10 (“S.B. 10” or the “Act”), the Texas statute requiring the display of a specific version of the Ten Commandments in public school classrooms.

Plaintiffs filed a motion for preliminary injunction to enjoin enforcement of the statute and displays of the Ten Commandments in the classrooms. School districts represented by the Texas Attorney General’s Office (“the Government schools”) move to dismiss Plaintiffs’ complaint for lack of subject matter jurisdiction and failure to state a claim. The Court held a hearing on August 15, 2025, and August 18, 2025.

Before turning to the posting of Ten Commandments displays in school classrooms, the Court notes that jurisprudential themes can be gleaned from the Supreme

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Court in early school prayer decisions. As discussed above, the Supreme Court struck the recitation of the Regents' Prayer in public schools in 1962. *Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962). And, the Supreme Court struck down Bible reading and the recitation of the Protestant version of the Lord's Prayer in public schools in 1963. *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

Additionally, the Supreme Court has held that the posting of the biblical Ten Commandments on a public school wall is unconstitutional. The Supreme Court in *Stone v. Graham*, 449 U.S. 39, 101 S.Ct. 192, 66 L.Ed.2d 199 (1980), held that a Kentucky statute requiring such posting violated the Establishment Clause of the First Amendment because the law had no secular legislative purpose. The statute also provided that each of the required 16 by 20 inch copies of the Ten Commandments was to bear a notation in small print stating that the secular application of the Ten Commandments could be clearly seen in its adoption as the fundamental legal code of western civilization and the common law of the United States. *Stone v. Graham*, 599 S.W.2d 157, 159 &n.1 (Ky. 1980). The statute further provided that the posted copies were to be purchased with private voluntary contributions. *Id.*

The Supreme Court concluded that the statute was unconstitutional, notwithstanding the requirement of the notation concerning secular application of the Commandments and the provision for voluntary private financing. *Stone*, 449 U.S. at 41, 101 S.Ct. 192. The

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preeminent purpose for posting the Ten Commandments on schoolroom walls, said the Court, was plainly religious in nature. *Id.* The Court reasoned that the Ten Commandments were undeniably a sacred text in the Jewish and Christian faith, and that no legislative recitation of a supposed secular purpose could blind the Court to that fact. *Id.* The Commandments, observed the Court, did not confine themselves to arguably secular matters, such as killing or murder, since the first few Commandments concerned the religious duties of believers: worshiping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath day. *Id.* at 41-42, 101 S.Ct. 192 (citing portions of the Bible). The Court explained that this was not a case in which the Ten Commandments were integrated into the school curriculum, or where the Bible could constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion or the like. *Id.* at 43, 101 S.Ct. 192. The Court also concluded that it was not significant that the Bible verses involved in this case were merely posted on the wall, rather than read aloud, and that it was no defense to urge that the religious practices here might be relatively minor encroachments on the First Amendment. *Id.*

Recently, in *Brumley*, 141 F.4th at 614, the Fifth Circuit struck down a Louisiana statute requiring public schools to display a specific Protestant version of Ten Commandments in public school classrooms, along with a context statement. The Plaintiffs, parents and minor public school children, alleged: (1) there was no broader tradition of using the Ten Commandments in public school

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education at time of the Founding or incorporation of the First Amendment, (2) the statute was discriminatory because it failed to select a version of Ten Commandments without regard for belief, and (3) the display requirement was coercive because the parents by law were required to send their minor children to school and ensure their regular attendance. *Id.*

There, as here, Plaintiffs filed a motion for preliminary injunction and Defendants filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6). *Brumley*, 756 F. Supp. 3d at 112, 148. The district court in *Brumley* held that Plaintiffs' facial constitutional challenges were fit for judicial decision, as an element for ripeness, though no students had yet seen the Ten Commandments displays; Plaintiffs stated a claim that the statute violated the Establishment Clause, as being inconsistent with broader historical tradition; and Plaintiffs sufficiently alleged a lack of narrow tailoring as an element for stating a claim for violation of the Free Exercise Clause. *Id.* at 171, 176, 188-91, 208-09, 211, 214. The motion to dismiss was denied, and the motion for preliminary injunction was granted. *Id.* at 219.

The Fifth Circuit affirmed the district court. *Brumley*, 141 F.4th at 626. Specifically, the Fifth Circuit found that Plaintiffs' claims were ripe, the Ten Commandments display required by the Louisiana statute qualified as a religious display, Plaintiffs had Article III standing, Plaintiffs stated a claim for violation of the Establishment Clause under *Stone* and the standard in *Kennedy v. Bremerton School District*, 597 U.S. 507, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022). *Id.* In affirming the denial of

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defendants’ motion to dismiss, the Fifth Circuit also held that Louisiana’s Ten Commandments statute was coercive and facially violated the Establishment Clause as being inconsistent with broader historical tradition. *Id.* The Fifth Circuit also found that Plaintiffs had a substantial likelihood of success on the merits of their Establishment Clause claims which favored a preliminary injunction. *See id.* at 649.

Because this Court must follow *Brumley*,⁶⁷ and given that this case is in the same procedural posture as was *Brumley*, the Court begins with a comparison between the Louisiana statute (sometimes “H.B. 71”) and the Texas statute, S.B. 10. The Court then turns to the motions to dismiss and for preliminary injunction.

Moreover, a federal district court in Arkansas recently issued a preliminary injunction prohibiting the school district defendants from implementing a state law requiring all public schools to permanently display the Ten Commandments in every classroom and library. *Stinson v. Fayetteville Sch. Dist. No. 1*, Case No. 5:25-CV-5127, 2025 WL 2231053 (W.D. Ark. Aug. 4, 2025). The analysis in *Stinson* is also instructive.

The Texas and Louisiana Ten Commandments Statutes

The Texas and Louisiana statutes require the display of the same specific version of the Ten Commandments in public school classrooms. The text shall read:

67. *United States v. Vega*, 960 F.3d 669, 675 (5th Cir. 2020).

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The Ten Commandments

I AM the LORD thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven images.

Thou shalt not take the Name of the Lord thy God in vain.

Remember the Sabbath day, to keep it holy.

Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against thy neighbor.

Thou shalt not covet thy neighbor's house.

Thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor's.

Brumley, 141 F.4th at 626-27; (S.B. 10 [docket no. 14-1] at page 2).

Both statutes provide that the Ten Commandments displays must be posted in each classroom in each public school, on a poster or framed document, in a conspicuous place, in a large, easily readable font.

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Both statutes also provide that school districts are not required to pay for the displays, but they may elect to do so, or instead accept donated displays.

Yet, there are differences. The Louisiana statute required that the Ten Commandments displays be a minimum of 11 by 14 inches, while the Texas displays must be at least 16 by 20 inches.

The Louisiana law also tasked each governing authority with adopting rules and regulations to ensure the statute's proper implementation. *Brumley*, 141 F.4th at 627. Texas has no such requirement.

The Louisiana statute further required that the Ten Commandments be displayed with an accompanying context statement that purported to explain the historical relevance and use of the Ten Commandments. *Brumley*, 756 F. Supp. 3d 93, 113 (M.D. La. 2024). S.B. 10 does not include a similar provision.

Finally, the Texas statute provides that “[t]he attorney general shall defend a public elementary or secondary school in a cause of action relating to any claims arising out of a school’s compliance” with the Act. (PI Appx. [docket no. 4-1] at page 4). “In a cause of action defended by the attorney general under this subsection, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation.” (*Id.*). The Louisiana statute had no such provision.

*Appendix D***Motion to Dismiss for Lack of Subject Matter Jurisdiction**

The Government schools move to dismiss under Rule 12(b)(1), contending this Court lacks subject matter jurisdiction. Plaintiffs, “as the party asserting jurisdiction,” bear the burden of proof. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

The Government schools argue Plaintiffs cannot satisfy standing and ripeness because none of the Plaintiffs currently have any information, nor have they alleged any, regarding how, when or even if the Ten Commandments may be displayed. The Fifth Circuit rejected these arguments in *Brumley*, 141 F.4th at 629-38: *see also id.* at 649-53 (Dennis, J., concurring).

The Government schools suggest this Court should reach a different result because, unlike the Ten Commandments display law at issue in *Brumley*, S.B. 10 does not state that it will be displayed for historical reasons. They imply the absence of this evidence is fatal to subject matter jurisdiction because the Court cannot answer why the Ten Commandments are to be displayed.

Like *Brumley*, Plaintiffs’ suit targets the state statute’s “minimum requirements, which reflect ‘when, where, or under what circumstance[s]’ the Ten Commandments are to be displayed.” 141 F.4th at 630; *see also* (PI Motion [docket no. 3] at page 6) (challenging minimum requirements of S.B. 10). S.B. 10 provides:

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- * *What will be displayed?* “The text of the Ten Commandments”-the exact version of which is provided by the statute;
- * *How will it be displayed?* As a “poster or framed document” that is at least 16 by 20 inches and printed in a size and typeface that is legible to every person with average vision;
- * *When will it be displayed?* No later than September 1, 2025, and for the duration of the entire school year; and
- * *Where will it be displayed?* In every Texas public school classroom, regardless of class subject matter, student age, or student grade, in a “conspicuous place” where it can be seen by every person in the classroom.

Although S.B. 10 does not state why the Ten Commandments will be displayed, the text of the Act provides sufficient information “for a fact-intensive and context-specific analysis” regarding several aspects of the displays. *See Brumley*, 141 F.4th at 630. “This case is not like *Staley* where ‘no decision ha[d] been made regarding *any* aspect of the future display of the [stored] monument.’” *Id.* (quoting *Staley v. Harris County*, 485 F.3d 305, 307 (5th Cir. 2007)). Plaintiffs’ claims are therefore “fit for judicial decision.” *Id.* For these and the reasons set forth in *Brumley*, the Government schools’ motion to dismiss for lack of subject matter jurisdiction is denied.

*Appendix D***Plaintiffs' Allegations**

Plaintiffs subscribe to a wide range of religious and non-religious views including Unitarian Universalism, Judaism, Reform Judaism, Presbyterian Christianity, atheism, non-religiousness and agnostic atheism. They allege that the version of the Ten Commandments set out in Texas' Ten Commandments law differs from the version observed by some Protestant faiths, and most adherents of the Catholic and Jewish faiths. Plaintiffs further assert that many other religions do not regard the Ten Commandments as part of their belief systems at all.

Plaintiffs bring this suit alleging that S.B. 10's Ten Commandments displays violate the Establishment Clause and the Free Exercise Clauses of the First Amendment. (Compl. [docket no. 1] at ¶¶ 227-44). Suing on behalf of themselves and their minor children, who are enrolled in public schools operated by the Defendant school districts, the parent-Plaintiffs assert objections to S.B. 10 and identify harms that they and their children allegedly will suffer as a result of the statute. Plaintiffs assert the displays will: (1) forcibly subject the minor-child Plaintiffs to religious doctrine and beliefs in a manner that conflicts with their families' religious and non-religious beliefs and practices; (2) send a marginalizing message to the minor-child Plaintiffs and their families that they do not belong in their own school community because they do not subscribe to the state's preferred religious text; (3) religiously coerce the minor-child Plaintiffs by pressuring them to observe, meditate on, venerate, and follow the state's favored religious text, and by pressuring them to

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suppress expression of their own religious or nonreligious beliefs and backgrounds at school; and (4) substantially interfere with the religious development of the minor-child Plaintiffs and threaten to undermine the beliefs, practices, and values regarding matters of faith the parents wish to instill in their children, thereby usurping the parents' authority to direct their children's religious education and religious or nonreligious upbringing.

Plaintiff Mara Nathan is Jewish. She is a rabbi at a San Antonio temple. Rabbi Nathan and her husband are raising their minor child, M.N., in the Jewish faith. On behalf of herself and on behalf of M.N., Rabbi Nathan objects to the school displays mandated by S.B. 10 because the displays will promote and forcibly impose on M.N. a specific version of the Ten Commandments to which the family does not subscribe, in a manner that is contrary to Jewish teachings and the family's faith. She alleges the version of the Ten Commandments does not align with her family's Jewish belief and tradition because:

- * The text required under S.B. 10 is not found in any Jewish tradition;
- * By directing, "I AM the LORD thy God," the first Commandment set forth in S.B. 10 also conflicts with the family's Jewish belief that God has no gender;
- * By summarizing some Commandments instead of including the text as found in the Torah in its entirety, S.B. 10's displays present a truncated,

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decontextualized, and inaccurate version of scripture; and

- * The displays mandated by S.B. 10 conflict with Jewish teachings that oppose proselytizing.

(Compl. [docket no. 1] at ¶¶ 86-91).

Plaintiffs Virginia Galaviz Eisenberg and Ron Eisenberg are Jewish and are raising their minor child, R.E., in the Jewish faith tradition. They are members of a local temple, where R.E. has attended religious school and participates in various other religious educational events and activities. On behalf of themselves and R.E., the Eisenbergs object to the school displays mandated by S.B. 10. The minimum requirements set forth in S.B. 10 for the displays will render the displays unavoidable for R.E., ensuring that R.E. will be subjected to the Ten Commandments every day, in every classroom, throughout R.E.'s public-school education. The displays will impose on R.E. a Christian version of the Ten Commandments in which the family does not believe. Specifically, the Eisenbergs allege:

- * The displays' first Commandment, "I AM the LORD thy God," eliminates an important part of the Hebrew text, which acknowledges God freeing the Israelites from slavery and the Commandments as a covenant between God and the Jewish people. This covenant is core to Jewish practice, and deleting it is deeply offensive to the Eisenbergs because it erases the Commandments' Jewish significance;

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- * S.B. 10's Commandment pertaining to the Sabbath leaves out Torah text that, the Eisenbergs believe, compels Jews to observe the Sabbath (Shabbat) from Friday evening through Saturday evening. This is a central Commandment for the family, and the version required by S.B. 10 misrepresents it; and
- * Jewish faith tenets that oppose proselytizing are especially important for Jews, who have suffered persecution under governments that endorsed a dominant religion.

(Compl. [docket no. 1] at ¶¶ 96-100).

Plaintiffs Seth and Sarah Ettinger are Jewish and are raising their minor child, R.E., in the Jewish faith tradition. Mr. Ettinger is the cantor at a synagogue in San Antonio. On behalf of themselves and R.E., the Ettingers object to the school displays mandated by S.B. 10 because the displays will promote and forcibly impose on R.E. a specific version of the Ten Commandments to which their family does not subscribe, in a manner that is contrary to Jewish teachings and the family's faith. The Ettingers allege:

- * S.B. 10's mandatory version of the Ten Commandments directs: "Thou shalt have no other gods before me." From a Jewish perspective, the use of the word "before" in this Commandment is highly problematic. In the Hebrew Bible, the translated text directs followers to "Have no other

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god but me.” The Christian interpretation of this Commandment recited in S.B. 10 suggests that all gods recognized before Christianity’s recognition of the Christian God—including the Jewish God of the Torah—are invalid;

- * Another theologically significant example of differences in wording between the Torah’s and S.B. 10’s versions of the Ten Commandments can be found in S.B. 10’s directive that “Thou shalt not kill.” In Jewish doctrine, this Commandment centers on the concept of “murder,” not killing. The Ettingers believe that the former speaks to intent and is a more nuanced understanding of what it means to cause a death in a manner that is religiously forbidden;
- * By using Old English terminology, such as “manservant” and “maidservant,” S.B. 10’s version of the Ten Commandments conflicts with the egalitarian Jewish values that the Ettingers follow and teach R.E. This language suggests an endorsement of slavery, while the text’s prohibition on coveting “thy neighbor’s wife” and its demand that students “honor thy mother and father” buy into discriminatory gender roles and exclude families that may have same-sex parents. It is precisely because outdated language and provisions in any version or translation of scripture could be misunderstood to convey messages antithetical to the present-day religious community that the Ettingers believe (and their religious practice

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requires) that R.E.'s religious education should occur at home and in their faith community, where they can contextualize and ground scriptural instruction in their core Jewish values.

(*Id.* at ¶¶ 107-112).

Plaintiff Elizabeth Lemaster is Christian and is raising her minor children, K.L. and L.L., in a Christian household and tradition. Ms. Lemaster and her children regularly attend church, and K.L. and L.L. attend Sunday School classes. In addition, Ms. Lemaster and her husband provide K.L. and L.L. with religious education at home. On behalf of herself and on behalf of K.L. and L.L., Ms. Lemaster objects to the school displays mandated by S.B. 10 because the displays will forcibly subject K.L. and L.L. to religious instruction that she believes she and her husband should oversee and guide.

Ms. Lemaster worries about how the Ten Commandments displays will be interpreted and explained to K.L. and L.L., and she is concerned about the appropriateness of the displays for her young children.

- * The displays will include references to “adultery” and “coveting” a neighbor’s “manservant” or “maidservant.” Ms. Lemaster believes that K.L. and L.L. are too young to understand what these references mean, and she does not want her children to be forcibly exposed to, or instructed on, these concepts at school. Rather, Ms. Lemaster and her husband want to teach K.L. and L.L. about these

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concepts according to their faith and when they believe the children are ready;

- * The displays' references to "manservants" and "maidservants" convey that people can be treated as property, which Ms. Lemaster and her husband strongly disagree with as a matter of faith. Ms. Lemaster believes, and is teaching K.L. and L.L., that all people are equal and should be treated as such. Ms. Lemaster does not want K.L. and L.L. subjected to contrary messaging or instruction in school; and
- * Putting up the version of the Ten Commandments required by S.B. 10 will send a discriminatory and exclusionary message to students, including K.L. and L.L., who do not believe in the religious dictates that will be featured in the displays. The displays will signal to K.L. and L.L. that they are "bad" if they do not believe in and comply with the promoted religious beliefs. This, in turn, could lead to peer-to-peer harassment and proselytization of K.L. and L.L. because they hold different religious beliefs from the ones preferred by the state.

(*Id.* at ¶¶ 118-23).

Plaintiff Carah Helwig is agnostic and is raising her minor children, J.P. and T.P., with the space and autonomy to develop their own beliefs and views about religion. Ms. Helwig and her husband discuss religion generally if J.P. and T.P. ask questions, but the family does not consistently

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observe or adhere to any religious text, practice, or ritual. On behalf of herself and on behalf of J.P. and T.P., Ms. Helwig objects to S.B. 10 because the required displays will promote and forcibly subject J.P. and T.P. to religious scripture that the family does not believe in and that Ms. Helwig does not teach her children. (Compl. [docket no. 1] at ¶¶ 124-28).

Plaintiffs Alyssa Martin and Cody Barker are atheists and are raising their minor child, H.B.M., in a nonreligious household and tradition. Ms. Martin and Mr. Barker allow H.B.M. to independently develop decisions on religious matters and do not want H.B.M.'s public school to interfere with those decisions. On behalf of themselves and on behalf of H.B.M., Ms. Martin and Mr. Barker object to S.B. 10 because the required displays will promote and forcibly subject H.B.M. to religious scripture that their family does not subscribe to. Specifically, Ms. Martin and Mr. Barker believe that the displays will impose one set of religious values and beliefs on H.B.M. over their family's values, which include the importance of personal freedom in matters of religion. (*Id.* at ¶¶ 130-35).

Plaintiff Lauren Erwin is Reform Jewish and is raising her minor child, M.E., in the same tradition. They are members and attenders of a local temple, where M.E. receives religious education. On behalf of herself and on behalf of M.E., Ms. Erwin objects to the school displays mandated by S.B. 10 because the displays will promote and forcibly impose on M.E. a Christian version of the Ten Commandments that does not align with the Jewish teachings and values she seeks to instill in M.E. She alleges:

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- * The text of the Ten Commandments set forth in S.B. 10 does not match the text in the Torah. By tearing the Ten Commandments out of their original Jewish context, the displays will, from Ms. Erwin's perspective as a Jewish person, present an inaccurate and incomplete version of scripture. The version of the Commandments required by S.B. 10 also intentionally eliminates specifically Jewish beliefs.

(*Id.* at 136-37).

Plaintiffs James Griffin Martin and Abigail Martin are Baptists and are raising their minor children, J.M. and B.M., in the Baptist tradition. Reverend Martin is Senior Pastor at a local Baptist church. J.M. and B.M.'s religious education in Christianity has occurred primarily through the Martins, and through their church and faith community. J.M. and B.M. attend church weekly and attend youth camps through their church. On behalf of themselves, and on behalf of J.M. and B.M., the Martins object to the school displays mandated by S.B. 10 because the displays will: promote and will forcibly subject their children to religious doctrine in a manner that violates the family's religious beliefs and practices; usurp the Martins' parental role in directing their children's religious education, religious values, and religious upbringing; send an improper message to the Martins, their children, and their community that people of some religious denominations or faith systems are superior to others; and pressure their children to doubt and suppress their own religious beliefs. The Martins allege:

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- * While the Ten Commandments are a sacred text in the Baptist faith, the version required by S.B. 10 does not align with the Baptist values the Martins are teaching J.M. and B.M. The text in the Act is antiquated, treats some people as property, and includes patriarchal and gendered language—all of which conflict with the Martins’ Baptist beliefs, which value equality and respect for all people;
- * Furthermore, the Ten Commandments on their own do not sum up the Martins’ Baptist faith, and having them posted in a public school undermines what they are teaching their children about Christianity. The Martins believe that scripture, including the Ten Commandments, must be taught—especially to children—within the context of a family’s church and particular faith tradition. Learning about and navigating scripture within the context of their faith is critical to ensuring that the children’s understanding of religious texts aligns with the Martins’ Baptist teachings, religious beliefs, and values;
- * One may think that the Commandment not to take the Lord’s name in vain means to not say “God damn it.” However, Pastor Martin’s interpretation—and how he teaches this Commandment to his congregation—is that it is about living a life that is centered on the values of God, such as welcoming the stranger, caring for the needy, feeding the hungry, healing the sick, sheltering the unhoused, sharing resources, and loving all; and

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- * Baptist faith tenets oppose the imposition of religious doctrine in schools and counsel instead that it be taught at church and within the family. Indeed, separation of church and state is a core Baptist principle and one of the Four Fragile Freedoms of the Baptist tradition.

(Compl. [docket no. 1] at ¶¶ 144-47).

Plaintiffs Rebekah and Theodore Lowe are an interfaith couple who are raising their minor children, E.R.L. and E.M.L., with a combination of Christian beliefs and Jewish cultural traditions. Ms. Lowe was raised in multiple Christian traditions and is now affiliated with the Presbyterian Church U.S.A., while Mr. Lowe is religiously agnostic and culturally Jewish. E.R.L. and E.M.L. identify as both Christian and Jewish. Ms. Lowe oversees curriculum development for a church-resource organization that sells Sunday School curricula, liturgy writing, and other materials used by faith leaders. As part of this work, Ms. Lowe creates resources focused on empowering Christian faith leaders to be inclusive, so that people who traditionally have been excluded and harmed by Christian practices can find belonging. Ms. Lowe's background in religious education informs how she and her husband teach and guide their children on religious matters. On their own behalf and on behalf of E.R.L. and E.M.L., the Lowes object to the displays required by S.B. 10 because the displays will promote and forcibly subject E.R.L. and E.M.L. to overtly religious classroom content in a manner that violates the Lowes' religious, spiritual, and moral beliefs and practices. In religious discussions

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with E.R.L. and E.M.L, Ms. Lowe uses “The Inclusive Bible: First Egalitarian Translation,” which refrains from using gendered language to discuss God and highlights the role of women in the Bible. It is important to Ms. Lowe that the children are taught an expansive image of God and the divine, one that includes everyone. (*Id.* at ¶¶ 152-55).

Plaintiff Marissa Norden is Jewish and Plaintiff Wiley Norden is nonreligious. They are raising their minor children, A.N. and E.N., in the Jewish faith. On behalf of themselves and on behalf of A.N. and E.N., the Nordens object to the school displays mandated by S.B. 10 because the displays will promote and forcibly impose on A.N. and E.N. a specific version of the Ten Commandments to which their family does not subscribe, in a manner that is contrary to the children’s Jewish teachings. The Nordens allege the version of the Ten Commandments required by S.B. 10 does not reflect their beliefs, Jewish principles more generally, or the religious beliefs they are teaching A.N. and E.N. Rather, they assert that it is a Christian interpretation of the Commandments that is exclusionary of nonChristians, including Jews who believe in the Ten Commandments. (*Id.* at ¶¶ 165-67).

Plaintiff Joshua Fixler is Jewish and raising his minor children, D.F., E.F., and F.F in the Jewish faith tradition. Mr. Fixler is the rabbi at a temple in Houston. D.F., E.F., and F.F.’s religious education in Judaism has occurred primarily through Rabbi Fixler’s family, his synagogue, and his faith community, On behalf of himself, and on behalf of D.F., E.F., and F.F., Rabbi Fixler objects to the school displays mandated by S.B. 10 because the displays

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will promote and forcibly impose on D.F., E.F., and F.F. a specific version of the Ten Commandments to which the family does not subscribe, in a manner that is contrary to Jewish teachings and the family's Jewish faith. The version of the Ten Commandments required by S.B. 10 does not align with Rabbi Fixler's beliefs or with Jewish belief and tradition more generally. He alleges:

- * The rabbinic understanding is that "thou shall not kill" does not pertain to killing in contexts like self-defense or capital punishment;
- * Early debate over the Ten Commandments involved Christian scholars who argued that all the legislation in the Hebrew Bible could be reduced to the Ten Commandments. However, Jewish scholars interpret these commandments as being ten important obligations among the 613 commandments in the Hebrew Bible. For example, "Love your neighbor as yourself" is one of the most important commandments in Judaism, but it will not be represented in the school displays; and
- * Even within the Hebrew Bible, there are at least two versions of the Ten Commandments, and the wording differs between them. Displaying a single version of the Ten Commandments will suggest to D.F., E.F., and F.F. that the Commandments are clear and unambiguous, whereas Rabbi Fixler believes they are not.

(Compl. [docket no. 1] at ¶¶ 174-79).

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Plaintiff Cynthia Mood is Presbyterian and is raising her minor children, C.M. and L.M., in the Christian faith. She is an ordained pastor at a Presbyterian Church. As a matter of faith, it is important to Reverend Mood that C.M. and L.M. be exposed to multiple denominations and faith traditions so that her children understand that there is not one dominant religion or belief system. As such, C.M. and L.M. attend worship services, Bible study, and other religious programming at multiple churches of various denominations on a weekly basis. On her own behalf, and on behalf of C.M. and L.M., Reverend Mood objects to the school displays mandated by S.B. 10 because the displays will promote and forcibly subject C.M. and L.M. to overtly religious doctrine in a manner that violates Reverend Mood's religious beliefs and practices. Pastor Mood asserts:

- * S.B. 10 elevates one Christian value system over other belief systems;
- * The version of the Ten Commandments in the Act undermines what Pastor Mood is teaching her children about respecting other people's beliefs and their lived experiences; and
- * The version of the Ten Commandments in S.B. 10 repeatedly uses "thou shalt not," focusing on what not to do. When Reverend Mood teaches religious scripture to her children, she focuses on an individual's strength-what one can do, not what they cannot do. Reverend Mood believes that focusing on positive actions, rather than what a child cannot do,

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encourages expression of feelings and connection with community, both of which are important values rooted in her Presbyterian faith that she is trying to instill in C.M. and L.M.

(Compl. [docket no. 1] at ¶¶ 181-89).

Plaintiff Arvind Chandrakantan is a lifelong Hindu and is raising his minor children, A.C., M.C., and V.C., as Hindu. Because the children are fourth-generation Americans, it is very important to Dr. Chandrakantan that they are raised in the Hindu tradition and that they stay connected to their Indian heritage. On behalf of himself, and on behalf of his children, Dr. Chandrakantan objects to the school displays mandated by S.B. 10 because the displays will promote and forcibly impose on A.C., M.C., and V.C. religious scripture that contradicts the family's religious beliefs. The Chandrakantan family does not subscribe to the religious dictates of the Ten Commandments. In particular, they object to the first four commandments-stating that there is only one God, prohibiting idol worship, prohibiting use of the Lord's name in vain, and requiring observing the Sabbath-because they are at odds with Hindu teachings. (*Id.* at ¶¶ 189-93).

Plaintiff Cheryl Rebecca Smith is a member of a Unitarian Universalist church and is raising her minor child, L.P.J., in the Christian faith. Ms. Smith and L.P.J. regularly attend services at the church and L.P.J. attends Presbyterian summer camp. On behalf of herself and on behalf of L.P.J., Ms. Smith objects to the school displays

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mandated by S.B. 10 because the displays elevate one belief system over others in violation of the Unitarian Universalist tradition. Ms. Smith further objects to the displays mandated by S.B. 10 because the displays allegedly will promote and forcibly impose on L.P.J. a version of the Ten Commandments that the family does not follow. For example, Ms. Smith finds the reference to “manservants” and “maidservants” in the displays morally troubling and contrary to her faith and the faith values she teaches L.P.J. about equality and humanity. (Compl. [docket no. 1] at ¶¶ 201-03).

Plaintiff Allison Fitzpatrick is spiritual but does not identify with or support any organized religion. Along with her husband, who is an atheist, Ms. Fitzpatrick is raising her minor children, C.F. and H.F., in a household and tradition that seeks to provide the children with autonomy to develop their own beliefs about religion. The Fitzpatrick family does not subscribe to the religious dictates of the Ten Commandments generally or the specific version that S.B. 10 mandates. On behalf of herself, and on behalf of C.F. and H.F., Ms. Fitzpatrick objects to the displays mandated by S.B. 10 because they will promote and forcibly subject C.F. and H.F. to religious scripture that Ms. Fitzpatrick does not believe in and does not teach her children. (*Id.* at ¶¶ 208-09).

Finally, Plaintiff Mara Richards Bim is a faith leader in an Alliance of Baptists Church and is set to be ordained as a minister in the fall of 2025. She is raising her minor child, H.B., in the Baptist faith. H.B.’s religious education has primarily occurred through Ms. Bim’s instruction and

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through Ms. Bim's church, faith community, and family. H.B. attends Sunday School and is attending a vacation Bible school at their Baptist church. In any given week, H.B. receives some form of Christian education six out of seven days. On behalf of herself and on behalf of H.B., Ms. Bim objects to the displays mandated by S.B. 10 because they will promote and forcibly subject H.B. to overtly religious doctrine in a manner that violates the family's religious beliefs and practices. Specifically, Ms. Bim's family and her Baptist church do not emphasize the Ten Commandments to children at H.B.'s stage in life and instead emphasize the Commands of Jesus: to love God and to love our neighbors just as we love ourselves. While the Ten Commandments are part of the text that Baptists hold sacred, they are not the central focus of the Baptist faith. Ms. Bim believes the displays required by S.B. 10 will emphasize the Ten Commandments as a pillar of faith and American citizenship, in a way that conflicts with her family's faith. (Compl. [docket no. 1] at ¶¶ 215-19).

As noted, all Plaintiffs allege that, by mandating that a state-sanctioned version of the Ten Commandments be displayed in every public elementary and secondary school classroom in Texas, S.B. 10 impermissibly prefers a set of distinct religious beliefs and dictates and will impose those preferred religious beliefs and dictates on Texas's public-school children, including the minor-child Plaintiffs. They also allege that as a result of the Ten Commandments displays mandated by S.B. 10, Texas students, including the minor-child Plaintiffs, will be unconstitutionally coerced into religious observance, meditation on, veneration, and adoption of the state's

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avored religious scripture, and they will be pressured to suppress expression of their personal religious and nonreligious beliefs and practices, especially in school, to avoid the potential disfavor, reproach, and/or disapproval of school officials and/or their peers. In addition, Plaintiffs assert that, by mandating that a specific version of the Ten Commandments be displayed in every public elementary and secondary school classroom and prescribing an official religious text for schoolchildren to venerate, S.B. 10 adopts an official position on religious matters in violation of the Establishment Clause and the Free Exercise Clause.

Motion to Dismiss for Failure to State a Claim

The Government schools next move to dismiss Plaintiffs' Establishment Clause and Free Exercise claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure. "To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). The parties agree that Plaintiffs have asserted a facial challenge to S.B. 10. "To successfully mount a facial challenge, the plaintiffs must show that there is no set of circumstances under which [S.B. 10] is constitutional." *Croft v. Perry*, 624 F.3d 157, 164 (5th Cir. 2010).

In moving to dismiss, the Government schools argue the Ten Commandments displays do not: (1) violate

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the Establishment Clause, (2) bear any of the historic hallmarks of an establishment, (3) implicate any coercion, and (4) *Stone v. Graham*, 449 U.S. 39, 101 S.Ct. 192, 66 L.Ed.2d 199 (1980), cannot be considered good law. The Fifth Circuit rejected each of these arguments in *Roake v. Brumley*, 141 F.4th 614, 640-46 (5th Cir. 2025). The Fifth Circuit also found that, even if *Stone* were overruled today, there was a substantial likelihood of insufficient evidence of a broad tradition in place at the time of the Founding, or within the history of public education, to justify the statute requiring the display of the Ten Commandments in public school classrooms. *Brumley*, 141 F.4th at 645-47.

In *Brumley*, the Government schools moved to dismiss under Rule 12(b)(6), arguing the Louisiana Legislature allegedly had a valid “secular and historical and educational purpose” for displaying the Ten Commandments in classrooms, which was reflected in the statute. *Id.* at 643. The Fifth Circuit, however, looked behind the articulated purpose of the Act and declined to dismiss because the “legislative history reveal[ed] signs of a ‘sham’ legislative purpose.” *Id.* (quoting *Wallace v. Jaffree*, 472 U.S. 38, 64, 105 S.Ct. 2479, 86 L.Ed.2d 29 (1985) (Powell, J, concurring)). Here, there is no stated legislative purpose of S.B. 10, so there can be no sham legislative purpose.

However, while the Act shies away from addressing the religious purpose of S.B. 10, Texas’ legislators did not:

* In support of S.B. 10, the Lieutenant Governor stated: “In every classroom in Texas, [students]

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are going to see the Ten Commandments, and they are going to know about God.” (Compl. [docket no. 1] at ¶ 73 &n.3) (quoting interview of Lt. Gov. Dan Patrick on Washington Watch with Tony Perkins, Tony Perkins, at 11:05-11:10 (May 27, 2025), <https://www.tonyDerkins.com/get.cfm?i=LR25E20#gsc.tab=0>).

- * S.B. 10’s lead Senate sponsor and author said: “[W]e want every kid, [kindergarten] through twelve, every day, in every classroom they sit in to look on the wall and read . . . those words [] that God says because we want them to understand how important that those statements of God, those rules of God are that they see them in their classroom every single day of their public education.” (*Id.* at ¶ 74 & n.4) (citing Kimberly Watts, king audio 20250618toddstames, YouTube, at 3:40-4:14 (June 21, 2025), <https://www.youtube.com/watch?v=Kbll35APGTs> (video directly linked from Sen. King’s official website in Action on Iran; New Laws for Securing Borders, <https://www.philking.com/2025/06/23/action-on-iran-new-laws-for-securing-borderstexas-land-our-citizens-and-elections/> (June 23, 2025)).

- * The lead House sponsor and author said: “It is incumbent on all of us to follow God’s law. and I think that we would be better off if we did.” (*Id.* at ¶ 75 &n. 5) (quoting S.B. 10 H. Floor Debate, 2025 Leg., 89th Reg. Sess. 5:06:43-5:06:49 (May 24, 2025), <https://house.texas.gov/videos/22257>).

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- * This representative went on to praise “some amazing teachers out there that are showing an awful lot of Christian behavior and love and concern to their students.” (*Id.* at n.6) (citing *id.* at 5:07:15-5:07:37).
- * Thanking the House sponsor for introducing S.B. 10, another representative stated: I appreciate her bringing this to us because I think, again, to teach our children to better their behavior and that there is something in all of us that God has placed in each and every one of us. And the only way to get that out is to follow His commands. And His commands, the Ten Commandments set that out. And the best way to teach children is to find a means in which they are willing to learn. (*Id.* at ¶ 76) (citing *id.* at 5:56:28-5:56:57).
- * A primary author of S.B. 10 explained: “God tells us in Joshua 1:9 to be strong and courageous. Don’t be afraid. Don’t be discouraged, because the Lord, thy God is with us throughout our life. There is an afterlife. There is eternal life. And if we don’t expose-or introduce is a better word-our children and others to that, when they die, they had one birth, two deaths, because they will know nothing about the afterlife, the eternity with God. But exposing them or introducing them to Ten Commandments [and] prayer, it asks other questions, and they then have a choice in their future. Two births, and one death. And this is what we’re doing. Prayer gives us our faith. The Ten Commandments, while they

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are laws, actually expand our freedoms. That's what we're about." (*Id.* at ¶ 77) (quoting S.B. 10 Hearing Before S. Comm. on Educ. K-16, 2025 Leg., 89th Reg. Sess. 2:11:53-2:13:12 (Mar. 4, 2025), <https://www.senate.texas.gov/videoplayer.php?vid=21245&lang=en>).

- * During the same hearing, another senator addressed a Baptist reverend who testified against a separate bill that would authorize public schools to institute official periods of prayer. She said: "Perhaps the nationally accredited chaplaincy provides you the foundation for your beliefs in your testimony here, but the Baptist doctrine is Christ-centered. Its purpose is not to go around trying to defend this or that. It is to be a disciple and a witness for Christ. That includes the Ten Commandments, that's prayer in schools. It is not a fight for separation between church and state." (Compl. [docket no. 1] at ¶ 78 & n.9) (quoting *id.* at 2:47:00-2:47:27).
- * Reacting to testimony supporting S.B. 10 and the school-prayer bill, a primary author of S.B. 10 revealed: "I'm in shock . . . that only twenty-five percent of our kids today in schools have been in a church. That should make everybody listening absolutely scared to death. I mean, obviously, only the Lord can save us, and we need to engage in prayer. But to realize only twenty-five percent of our kids in schools today have been in a church is absolutely horrific and something we all need to

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work on to address.” (*Id.* at ¶ 79 & n. 10) (quoting *id.* at 2:02:23-2:02:50).

- * Dismissing concerns that S.B. 10 would spiritually burden non-Christian students, a primary author of the Act explained: “Christians have been intimidated and afraid to talk about or express their faith at work and in school in this country. Christians are the majority, pretty clearly. We, with our faith, but more importantly in this context as Texans, the majority needs to look out for the minority, I understand, and be careful not to trample them. But we’ve gone too far there . . . So, I think it’s important that we’re able to have the freedom to express our faith . . . through the Ten Commandments.” (*Id.* at ¶ 80 & n. 11) (quoting <https://www.tonyperkins.com/get.cfm?i=LR25E20#gsc.tab=0>).
- * After one legislator pointed to “Muslim students that are being bullied in Texas public schools” and “Jewish students being bullied” as a reason to avoid imposing Christian scripture in classrooms, another representative stated: “Oh, then we really need the Ten Commandments in there on how to treat others kindly.” (Comp. [docket no. 1] at ¶ 81 & n. 12) (quoting S.B. 10 Hearing Before H. Comm. on Pub. Educ., 2025 Leg., 89th Reg. Sess. 6:41:41-6:41:45 (Apr. 29, 2025) <https://house.texas.gov/videos/21958>).
- * After being advised that Texas public “schools also serve students of other faith backgrounds,”

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including “Muslim students, Hindu students, Buddhist students, Sikh students, [and] atheist students”-and asked how it will make “a Hindu student feel to have a poster in every classroom that says, ‘thou shalt not worship any God before me?’”-a representative replied: “I don’t know. I haven’t asked one. Have you?” (Compl. [docket no. 1] at ¶ 81 &n. 13) (quoting 6:40:31-6:40:44).

- * This representative went on to say: “I assume they’re Americans now? I think that they would find it interesting to see what was important and foundational to our forefathers that made this nation a place that they wanted to come and live and raise a family and be part of it.” (*Id.* at n. 14) (quoting *id.* at 6:40:51-6:41:05).

These statements “support a commonsense conclusion that a religious objective permeated the government’s action.” *Brumley*, 141 F.4th at 644 (internal quotation omitted); *see also Edwards v. Aguillard*, 482 U.S. 578, 591-92, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987) (concluding that the “preeminent purpose of the [state legislature] was clearly to advance [a] religious viewpoint” based on statements by legislators and testimony presented during legislative hearings). Because “[t]his is not a permissible state objective under the Establishment Clause, . . . [S.B. 10] is plainly unconstitutional” under *Stone*. *Brumley*, 141 F.4th at 645.

The Fifth Circuit alternatively found that, even if *Stone* were overturned tomorrow, Plaintiffs had

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sufficiently alleged the Ten Commandments statute violates the Establishment Clause under *Kennedy v. Bremerton School District*, 597 U.S. 507, 535, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022). The Government schools argue otherwise. However, as in *Brumley*, Plaintiffs allege the permanent posting of the Ten Commandments in public school classrooms does not fit within and is not consistent with a broader tradition of using the Ten Commandments in public education. Compare *Brumley*, 141 F.4th at 646 with Compl. [docket no. 1] at ¶¶ 46, 233. Accepting these allegations as true, Plaintiffs have adequately pleaded an Establishment Clause violation under *Kennedy*. See *Brumley*, 141 F.4th at 646.

The Government schools contend the Ten Commandments displays are merely passive based on the Supreme Court’s decision in *Van Orden v. Perry*, 545 U.S. 677, 691, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005), which found that a stone monument of the Ten Commandments on the grounds of the Texas State Capitol was a “passive” display. The Supreme Court in *Van Orden*, however, explicitly distinguished its holding from that in *Stone*, the public school Ten Commandments case. *Id.* (“The placement of the Ten commandments monument on the Texas State Capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day.”). The Supreme Court in *Van Orden* also explained that a stone monument on the grounds of the Texas Capitol “is . . . also quite different from the prayers involved in *Schempp* and *Lee*.” both of which involved the public school context. *Id.*

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Contrary to the Government schools' contention, "the Ten Commandments are not passive because students in public schools are forced to engage with them and cannot look away." *Stinson v. Fayetteville Sch. Dist. No.* Case No. 5:25-CV-5127, 2025 WL 2231053, at *11 (W.D. Ark. Aug. 4, 2025). As the Supreme Court recently stated in *Mahmoud*, "[t]he government's operation of the public schools . . . implicates direct, coercive interactions between the State and its young residents" which means "[t]he public school imposes rules and standards of conduct on its students and holds a limited power to discipline them for misconduct." *Mahmoud v. Taylor*, 606 U.S. 522, 145 S. Ct. 2332, 2357, 222 L.Ed.2d 695 (2025).

Moreover, the Supreme Court has rejected the Government schools' argument that exposure is not religious activity. In *Schempp*, the Court recognized that daily scriptural readings constituted "religious exercise," 374 U.S. at 224-25, 83 S.Ct. 1560, and in *Stone*, the Court held that it is not "significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud as in *Schempp* and *Engel*." 449 U.S. at 42, 101 S.Ct. 192. Government school promoted religious activity is no less unconstitutional merely because it is silent. *See Wallace v. Jaffree*, 472 U.S. 38, 60-61, 105 S.Ct. 2479, 86 L.Ed.2d 29 (1985) (holding that state law improperly encouraged students to engage in silent prayer).

The Government schools agree that the Ten Commandments is a religious document based on Judeo-Christian scripture and that some of the Commandments concern the religious duties of believers, rather than merely

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secular matters. Plaintiffs affirm in their declarations that they will suffer personal spiritual offense as a result of the posting of the Ten Commandments mandated by S.B. 10. The student-Plaintiffs allege they will be subjected to a state-mandated, religiously preferential version of the Ten Commandments in every classroom for the remainder of their elementary and secondary public-school education. According to the complaint, which the Court must accept as true at this stage of the litigation, the displays will: (1) substantially burden the parent-Plaintiffs' religious exercise by usurping their parental authority to direct their children's religious upbringing and education; (2) forcibly subject their children to religious doctrine and beliefs in a manner that conflicts with the families' own religious beliefs and practices; (3) send a message to their children that they do not belong in their own school community because they do not subscribe to the State's preferred religious doctrine; and (4) religiously coerce their children by pressuring them to observe, meditate on, venerate, and follow the State's favored religious text, and to suppress expression of their own religious beliefs and backgrounds at school. For these and the reasons stated in *Brumley*, the Court finds Plaintiffs have sufficiently stated their Establishment Clause and Free Exercise claims. The Government schools' Rule 12(b)(6) motion to dismiss is denied.

Preliminary Injunction

A preliminary injunction is proper if Plaintiffs can show "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable harm absent

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the injunction, (3) that the harm [Plaintiffs] will suffer without the injunction outweighs the cost to comply with the injunction, and (4) that the injunction is in the public interest.” *Harrison v. Young*, 48 F.4th 331, 339 (5th Cir. 2022).

The Government schools argue Plaintiffs are unlikely to succeed on the merits of their Establishment Clause claims for the same reasons asserted in their motion to dismiss: lack of subject matter jurisdiction and because S.B. 10 is constitutional under *Kennedy*. In light of guidance provided by *Brumley*, this Court has found that Plaintiffs’ claims are ripe, Plaintiffs have shown standing to bring their Establishment Clause claims, and Plaintiffs have sufficiently alleged that S.B. 10 violates the Establishment Clause under *Stone*, which remains good law and controlling in this case.

As discussed above, to succeed on the merits under *Kennedy*, Plaintiffs must show that the practice at issue-permanently displaying the Ten Commandments in public school classrooms-does not “fit within” and is not “consistent with” a broader tradition existing at the time of the founding. *Brumley*, 141 F.4th at 647 (quoting *Kennedy*, 597 U.S. at 535, 142 S.Ct. 2407).

The Court heard from and is very appreciative of the testimony of Dr. Steven Green and Dr. Mark Hall, which was an extensive augmentation of the Court’s 20 years of Methodist Sunday School and theology, political philosophy and constitutional history courses at Texas Lutheran University. The Court finds Dr. Green’s opinions

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concerning the intent of the Founders regarding the First Amendment to be more persuasive than Dr. Hall's testimony.

In *Brumley*, and in this case, the Government schools argue historical practices and understandings justify the Act's existence. In both cases, in support of their motion for a preliminary injunction. Plaintiffs presented the expert testimony of Dr. Steven Green, a religious and constitutional legal historian. Dr. Green testified that the public school system did not exist at the founding; rather, public education originated sometime around the late 1820s. Dr. Green also found no evidence that the Ten Commandments were permanently displayed in early American public schools. He testified that no state enacted a law allowing the display of the Ten Commandments in public schools until North Dakota did so in 1927, and that court later struck down the statute. See *Ring v. Grand Forks Pub. Sch. Dist. No. 1*, 483 F. Supp. 272 (D.N.D. 1980).

Based on Dr. Green's testimony, the district court in *Brumley* "found a substantial likelihood that there is insufficient evidence of a broader tradition in place at the time of the founding, or within the history of public education, so as to justify H.B. 71." 141 F.4th at 647-48. The Fifth Circuit affirmed, finding that the district court "did not err in finding that Plaintiffs showed a substantial likelihood of success on the merits of their Establishment Clause claims." *Id.* at 648. But, Louisiana did not present any expert testimony in *Brumley*. *Id.*

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Here, the Government schools present the expert testimony of Dr. Hall, also a religious and constitutional legal scholar. (Motion [docket no. 46-1] (Report of Mark David Hall) (hereinafter Hall Report). Dr. Hall reviewed Dr. Green's report, and reached some of his own independent conclusions. *Id.* Dr. Hall found virtually no evidence that the Founders understood the Establishment Clause to require the strict separation of church and state. *Id.* He agrees with Dr. Green that the public school system did not exist at the founding, but testified that children have always been instructed on capital laws and scriptures, which overlap with the Ten Commandments. *Id.* Dr. Hall also reports that the Ten Commandments are often displayed in and around public buildings. *Id.*

With respect to the first part of the historical practices and understandings test, Dr. Hall testified at the hearing that S.B. 10's mandate is compatible with the Founding Fathers' conception of religious liberty. He also testified that "in no way, shape or form, can an original understanding of the First Amendment say that this Amendment was intended to remove religion from the public square." Here, however, we are talking about public schools, not the public square.

Moreover, the district court in *Stinson* granted Plaintiffs' request for a preliminary injunction in their case challenging Arkansas' newly-enacted law requiring that the Ten Commandments be displayed in every public school classroom in the state. *Stinson*, 2025 WL 2231053, at *14. Although the school district defendants did not present the expert testimony of Dr. Hall, the district court

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indirectly addressed Dr. Hall's conclusions concerning the Founding Fathers' understanding of the separation of church and state in issuing its preliminary injunction. *Id.* As the Arkansas court noted, "[t]he Founders were deeply committed to the principle that government must not compel religious observance or endorse religious doctrine, and that commitment is reflected in multiple foundational texts, such as the Declaration of Independence and the Virginia Statute for Religious Freedom, both of which were authored by Thomas Jefferson." *Id.* at *13 (citing Report of Steven Green) (hereinafter Green Report). "Indeed, Jefferson and the Enlightenment writers on whom he relied made a point of differentiating between natural law and Old Testament law; the Declaration itself proclaims that "Governments are instituted among Men, deriving their just Powers from the Consent of the Governed." *Id.* (citing Green Report). Moreover, James Madison's Memorial and Remonstrance Against Religious Assessments, which he wrote in 1785, expressed his vehement opposition to government support for religious instruction. *See id.* "Madison wrote: 'The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.'" *Id.* (quoting Memorial and Remonstrance Against Religious Assessments).

There is also insufficient evidence of a broader tradition of using the Ten Commandments in public education, and there is no tradition of permanently displaying the Ten Commandments in public-school classrooms. *See Stinson*, 2025 WL 2231053, at *13. In the instant case, Dr. Hall

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agrees with Dr. Green that public schools did not exist at the time of the Founding, (Hall Report at page 5), but does not dispute that, back then, education occurred in private academies or through tutors, and it generally incorporated a strong religious component because tutors were mostly composed of local clergy. (Green Report at ¶ 38). And, “[a]s the nineteenth century drew to a close, fewer and fewer public schools were engaging in any religious practices.” *Stinson*, 2025 WL 2231053, at *13 (citing Green Report). Moreover, the first state law permitting public schools to hang the Ten Commandments was not passed until 1927 and immediately struck down. *Id.* (citing Green Report) (citing *Ring v. Grand Forks Pub. Sch. Dist.*, 483 F. Supp. 272 (D. N.D. 1980)).

The second part of the historical practices and understandings test asks whether evidence suggests that displaying the Ten Commandments in the manner mandated by S.B. 10 will be religiously coercive. In *Kennedy*, the majority affirmed that it remains “problematically coercive” for public schools to impose religious messages on a “captive audience” of students. 597 U.S. at 541-42, 142 S.Ct. 2407 (citing *Lee v. Weisman*, 505 U.S. 577, 580, 598, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 294, 311, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000)); *see also Mahmoud*, 145 S. Ct. at 2355 (recognizing “the potentially coercive nature” of public school classrooms). “Coercion is rife in such an environment ‘because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Stinson*, 2025 WL 2231053, at *14 (quoting *Edwards v. Aguillard*, 482

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U.S. 578, 584, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987)). In addition, mandatory attendance requirements create a legal obligation for parents “to send their children to public school unless they find an adequate substitute.” *Mahmoud*, 145 S. Ct. at 2359 (discussing Maryland’s compulsory-education laws). As a result, “[t]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Id.* at 2355 (quoting *Lee*, 505 U.S. at 592, 112 S.Ct. 2649). Indeed, “[t]hat is why a religious practice may be deemed unconstitutional in the ‘special context of the public elementary and secondary school system,’ but deemed constitutional elsewhere.” *Brumley*, 141 F.4th at 641 (quoting *Edwards*, 482 U.S. at 583, 107 S.Ct. 2573).

To the extent Dr. Hall relies on public displays to justify displaying the Ten Commandments in classrooms, the Fifth Circuit explained in *Brumley* that the public school classroom implicates certain protections that other contexts, like the Texas State Capital grounds, does not. 141 F.4th at 640-42. “The Supreme Court said as much in *Van Orden* [*v. Perry*, 545 U.S. 677, 690-91, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (plurality opinion)] (‘There are, of course, limits to the display of religious messages or symbols. . . . *Stone* . . . was a consequence of the particular concerns that arise in the context of public elementary and secondary schools. . . . The placement of the Ten Commandments monument on the Texas State Capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day.’” *Id.* at 642. As the Court in *Stinson* summarized:

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Once students are at school, staff control their movements and often their expression. Students may not move around freely to avoid official religious indoctrination or to contest it beyond certain limits. This is especially true in the classroom context.

2025 WL 2231053, at *14. Therefore, notwithstanding Dr. Hall's testimony, this Court finds there is insufficient evidence of a broad tradition in place at the time of the Founding, and within the history of public education, to justify S.B. 10.

As to the second element, a substantial threat of irreparable harm absent the injunction, the Government schools argue that Plaintiffs cannot show any harm because they do not know what the posters will look like and therefore cannot know whether any poster will violate the First Amendment. This argument fails for the same reasons Texas' ripeness argument fails. S.B. 10's minimum requirements provide sufficient details about how the Ten Commandments must be displayed. As in *Brumley*, "Plaintiffs have shown that those displays will cause an irreparable deprivation of their First Amendment rights." 141 F.4th at 648-49; *see also Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

The third element is whether the harm that Plaintiffs will suffer absent the injunction "outweighs the cost to comply with the injunction. *Harrison*, 48 F.4th at 339. Texas will "suffer[] the irreparable harm of denying the

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public interest in the enforcement of its laws.” (Motion [docket no. 46] at page 36). “But it does not have a genuine ‘interest in enforcing a regulation that violates federal law.’” *Brumley*, 141 F.4th at 649 (quoting *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024)). Instead, “[i]njuncts protecting First Amendment freedoms are always in the public interest.” *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 298 (5th Cir. 2012) (brackets and citation omitted). And, “courts must be ‘particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.’” *Brumley*, 141 F.4th at 649 (quoting *Edwards*, 482 U.S. at 583-84, 107 S.Ct. 2573).

S.B. 10 also impermissibly takes sides on theological questions and officially favors Christian denominations over others. The Supreme Court recently reaffirmed that the Establishment clause requires that the “government maintain ‘neutrality between religion and religion.’” *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 254, 145 S.Ct. 1583, 221 L.Ed.2d 881 (2025) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968)). The “[t]he clearest command of the Establishment Clause” is that the government may not “officially prefe[r] one religious denomination over another. . . . This principle of denominational neutrality bars States from passing laws that ‘aid or oppose’ particular religions . . . or interfere in the ‘competition between sects.’” *Id.* at 247-48, 145 S.Ct. 1583 (quoting *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982); *Epperson*, 393 U.S. at 106, 89 S.Ct. 266).

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With regard to the Free Exercise Clause, S.B. 10 is not neutral with respect to religion. By design, and on its face, the statute mandates the display of expressly religious scripture in every public school classroom. The Act also requires that a Judeo-Christian version of that scripture be used, that is exclusionary of other faiths. “[T]he government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause.” *McCreary Cnty v. American Civil Liberties Union*, 545 U.S. 844, 875-76, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005).

And, the Act is likely to burden Plaintiffs’ exercise of their sincere religious or nonreligious beliefs in substantial ways. The displays are likely to interfere with and usurp the fundamental rights of the parent-Plaintiffs “as contrasted with that of the State, to guide the religious future . . . of their children.” *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). The displays are likely to send an exclusionary and spiritually burdensome message to the child-Plaintiffs—who do not subscribe to the approved version of the Ten Commandments—that they “are outsiders who do not belong in their own school community.” *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 309, 120 S.Ct. 2266 (observing that school sponsorship of a religious message causes members of other faiths to feel “that they are outsiders, not full members of the political community”) (citation modified)). Moreover, the displays are likely to pressure the child-Plaintiffs into religious observance, meditation on, veneration, and adoption of the State’s favored religious

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scripture, and into suppressing expression of their own religious or nonreligious backgrounds and beliefs while at school. *See Stinson*, 2025 WL 2231053 at *14; *Brumley*, 756 F. Supp. 3d at 204. And, these impositions on Plaintiffs' religious beliefs and practices cannot be sustained under strict scrutiny. The Government schools have not established that burdening Plaintiffs' Free Exercise rights "serve[s] a compelling interest and [is] narrowly tailored to that end." *See Kennedy*, 597 U.S. at 532, 142 S.Ct. 2407; *see also Stinson*, 2025 WL 2231053, at *15; *Brumley*, 756 F. Supp. 3d at 202.

Even if the Government schools were to meet their burden of showing a compelling interest, it would fail the "narrowly tailored" prong. There are ways in which students could be taught any relevant history of the Ten Commandments without the state selecting an official version of scripture, approving it in state law, and then displaying it in every classroom on a permanent basis. "For example, the Ten Commandments might be taught 'objectively as part of a secular program of education,' *Schempp*, 374 U.S. at 225, 83 S.Ct. 1560, through 'an appropriate study of history, civilization, ethics, comparative religion, or the like,' *Stone*, 449 U.S. at 42, 101 S.Ct. 192." *Stinson*, 2025 WL 2231053 at *14. The Government schools have "made no effort to do this, nor have they attempted to limit the Ten Commandments' use to relevant course curricula, such as civics or world religious studies." *Id.* Accordingly, the Court concludes that Plaintiffs have satisfied the preliminary injunction elements. The motion is granted.

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In sum, the Court finds:

1. Children can be cruel to their classmates perceived to be “the other.”
2. The testimony of Dr. Green is more persuasive.
3. S.B. 10 crosses the line from exposure to coercion.
4. *Brumley* is binding on this Court.

**IV.
Conclusion**

Ultimately, in matters of conscience, faith, beliefs and the soul, most people are Garbo-esque.⁶⁸ They just want to be left alone, neither proselytized nor ostracized, including what occurs to their children in government run schools.

Even though the Ten Commandments would not be affirmatively taught, the captive audience of students likely would have questions, which teachers would feel compelled to answer. That is what they do. Teenage boys, being the curious hormonally driven creatures they are, might ask: “Mrs. Walker, I know about lying and I love my parents, but how do I do adultery?” Truly an awkward moment for overworked and underpaid educators, who already have to deal with sex education issues, *Mahmoud*, 145 S. Ct. at 2355, and a classic example of the law of unintended consequences in legislative edicts.

68. Greta Garbo is attributed as saying “I want to be alone” in the movie *Grand Hotel*, directed by Edmund Goulding. (Metro-Goldwyn-Mayer 1932).

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Notwithstanding the sausage making process⁶⁹ of legislation, to avoid religious rancor and legal wrangling the Texas Legislature alternatively could require the posting of:

1. Multiple versions of lessons of behavior from many cultures melded into the American motto of “E pluribus unum,” a concept currently in decline. For example, the Five Moral Precepts of Buddhism: abstain from killing, stealing, engaging in sexual misconduct, lying and intoxicants⁷⁰; or
2. Do unto others as you would have them do unto you. Be kind. Be respectful.; or
3. **All I Really Need to Know I Learned in Kindergarten:** “Share everything. Play Fair. Don’t hit people. . . . Clean up your own mess. Don’t take things that aren’t yours. Say you’re sorry when you hurt somebody. . . . Live a balanced life. . . . When you go out into the world, . . . hold hands, and stick together.”⁷¹

69. The phrase “Laws are like sausages, its better not to see them being made” is often attributed to Otto von Bismarck.

70. <https://buddho.org/buddhism-and-morality-the-five-precepts>.

71. Robert Fulghum, a Unitarian Universalist minister, published his first book, *All I Really Need to Know I Learned in Kindergarten*, in 1986. <https://www.robertleefulghum.com>.

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Appendix D

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss (contained within docket no. 46) is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Preliminary Injunction (docket no. 3) is GRANTED such that Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them, are PRELIMINARILY ENJOINED from displaying the Ten Commandments pursuant to S.B. 10. The Federal Rule of Civil Procedure 65(c) security bond requirement is waived.

It is so ORDERED.

For those who disagree with the Court's decision and who would do so with threats, vulgarities and violence, Grace and Peace unto you. May humankind of all faiths, beliefs and non-beliefs be reconciled one to another.

Amen.

SIGNED this 20th day of August, 2025.

s/ Fred Biery
Fred Biery
United States District Judge

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APPENDIX E — PROVISIONS INVOLVED

S.B. No. 10

AN ACT

relating to the display of the Ten Commandments in public school classrooms.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Education Code, is amended by adding Section 1.0041 to read as follows:

Sec. 1.0041. DISPLAY OF TEN COMMANDMENTS.

(a) Subject to Subsection (e), a public elementary or secondary school shall display in a conspicuous place in each classroom of the school a durable poster or framed copy of the Ten Commandments that meets the requirements of Subsection (b).

(b) A poster or framed copy of the Ten Commandments described by Subsection (a) must:

(1) include only the text of the Ten Commandments as provided by Subsection (c) in a size and typeface that is legible to a person with average vision from anywhere in the classroom in which the poster or framed copy is displayed; and

(2) be at least 16 inches wide and 20 inches tall.

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(c) The text of the poster or framed copy of the Ten Commandments described by Subsection (a) must read as follows:

“The Ten Commandments

I AM the LORD thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven images.

Thou shalt not take the Name of the Lord thy God in vain. Remember the Sabbath day, to keep it holy.

Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against thy neighbor.

Thou shalt not covet thy neighbor’s house.

Thou shalt not covet thy neighbor’s wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor’s.”

(d) A public elementary or secondary school in which each classroom does not include a poster or framed copy of the Ten Commandments as required by Subsection (a) must:

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(1) accept any offer of a privately donated poster or framed copy of the Ten Commandments provided that the poster or copy:

(A) meets the requirements of Subsection (b) ;
and

(B) does not contain any additional content; and

(2) display the poster or framed copy as specified in Subsection (a).

(e) A public elementary or secondary school in which each classroom does not include a poster or framed copy of the Ten Commandments as required by Subsection (a) may, but is not required to, purchase posters or copies that meet the requirements of Subsection (b) using district funds.

(f) Notwithstanding any other law, a public elementary or secondary school is not exempt from this section.

(g) The attorney general shall defend a public elementary or secondary school in a cause of action relating to any claims arising out of a school's compliance with this section. In a cause of action defended by the attorney general under this subsection, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. The attorney general may settle or compromise any and all claims under this subsection.

Appendix E

SECTION 2. This Act applies beginning with the 2025-2026 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 10 passed the Senate on March 19, 2025, by the following vote: Yeas 20, Nays 11; and that the Senate concurred in House amendment on May 28, 2025, by the following vote: Yeas 21, Nays 10.

Speaker of the Senate

I hereby certify that S.B. No. 10 passed the House, with amendment, on May 25, 2025, by the following vote: Yeas 82, Nays 46, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor