UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

SAMANTHA STINSON and JONATHAN STINSON, on behalf of themselves and on behalf of their minor children, A.R.S. and A.W.S.; STEPHEN CALDWELL, on behalf of himself and on behalf of his minor child, W.C.; JOSEPH ARMENDARIZ, on behalf of himself and on behalf his minor children, M.A. and W.A.; TALARA TAYLOR and SHANE TAYLOR, on behalf of themselves and on behalf of their minor children, K.T. and M.T.; CAROL VELLA, on behalf of herself and on behalf of her minor children, E.M.V. and N.M.V.; DANIEL RIX, on behalf of himself and on behalf of his minor children, A.R., J.R., and W.R.; and LEAH BAILEY, on behalf of herself and on behalf her minor children, C.T. and D.T., Plaintiffs, v. FAYETTEVILLE SCHOOL DISTRICT NO. 1; SPRINGDALE SCHOOL DISTRICT NO. 50; BENTONVILLE SCHOOL DISTRICT NO. 6; and SILOAM SPRINGS SCHOOL DISTRICT NO. 21, Defendants.	CIVIL ACTION NO. 5:25-cv-05127-TLB

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Forty-five years ago, in *Stone v. Graham*, 449 U.S. 39 (1980), the U.S. Supreme Court held that the Establishment Clause of the First Amendment prohibits the government from permanently posting the Ten Commandments in public-school classrooms. Flouting this longstanding precedent, Arkansas lawmakers recently passed Act 573 of 2025 ("Act 573" or the "Act"), which not only requires *every* elementary and secondary public school in the state to "prominently display" the Ten Commandments in *every* classroom and library, but also mandates that these displays use an official version of the Ten Commandments that promotes Protestant beliefs and conflicts with versions used by Jews and Catholics. Moreover, each display must be at least sixteen by twenty inches, with the text printed in a size and typeface legible to a person with average vision from anywhere in the room. And to further elevate the importance of the state's chosen scripture, all displays must be hung in a "conspicuous place."

As a result of these minimum requirements of the Act, students across Arkansas, including the minor-child Plaintiffs, will be subjected—for nearly every hour they are in school—to unavoidable, permanently displayed religious directives such as "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."; and "Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee." Students may switch classrooms between courses, progress from elementary to middle to high school, or even transfer school districts, but so long as they attend an Arkansas public school, they will not be able to escape the specific biblical scripture adopted and prescribed by the state.

Because Act 573's mandatory school displays cannot be reconciled with *Stone's* binding precedent, this Court's constitutional analysis can begin and end there. However, the Act is also

unconstitutional under other First Amendment jurisprudence, which makes clear that the Establishment and Free Exercise Clauses bar governmental religious coercion and favoritism in matters of faith. Accordingly, Plaintiffs are entitled to a preliminary injunction: They are likely to succeed on the merits of their First Amendment claims, and the other factors supporting preliminary relief weigh in their favor.

FACTUAL BACKGROUND

On April 14, 2025, Arkansas Governor Sarah Huckabee Sanders signed Act 573 into law, requiring all public-school districts in Arkansas to "prominently display" a poster or framed copy of the Ten Commandments in a "conspicuous place" in every classroom and library of every school. Ex. 1, Act 573 §§ (a)(1)–(2).[1] The law will become effective on August 5, 2025.[2]

On May 1, 2025, speaking at the Arkansas Observance of the National Day of Prayer, Governor Sanders stated that she was "proud to sign legislation this session putting the Ten Commandments up in every classroom[.]" Gov. Sanders, *Governor Sanders delivers remarks at the National Day of Prayer Arkansas Observance*, at 38:17–38:22 (YouTube, May 1, 2025), https://www.youtube.com/live/_tPMdrkTUas?si=d6nLRyDJRxgplenO. She went on to decry what she claimed were efforts to misrepresent the law and implored: "[T]oday I ask that we come together, and we send a clear message: 'Here we are from every corner of our state, every background, every denomination united in one God to say, in one prayer, in one voice, that we will always stand and we will always follow the one true Creator.'" *Id.* 38:57–39:24.

[1] Act 573 also mandates the display of the state-sanctioned version of the Ten Commandments in every classroom and library of each public institution of higher education and in every public building or facility "that is maintained or operated by taxpayer funds." Ex. 1, Act 573 §§ (a)(2)(A)–(B). The Act amends Section 1-4-133 of the Arkansas Code, which provides for displays of the national motto in public schools and government buildings. Plaintiffs' facial challenge here is limited to Act 573's provisions that apply to the display of the Ten Commandments in public elementary and secondary schools.

[2] *See* Ark. Att'y Gen. Op. No. 2025–032 (May 12, 2025), *available online at* https://ag-opinions.s3.amazonaws.com/uploads/2025-032.pdf.

Under section (a)(1)(B)(iii) of the Act, the mandatory classroom and library displays must use the state's officially approved version of the Commandments:

"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."

This version of the Ten Commandments is not denominationally neutral and is principally associated with Protestant beliefs and sects. *See* Ex. 12, Expert Rep. of Steven K. Green, J.D., Ph.D. (hereinafter, "Green Rep."), ¶¶ 52–58. Its ordering system and content are derived from the King James Version of the Bible. *Id.* ¶¶ 53–54. And this version differs in meaningful ways from versions used by other denominations and faiths that recognize the Ten Commandments as part of their theology, including Judaism and Catholicism. *See id.* ¶¶ 53–57. And for many religions,

including Hinduism, Buddhism, Taoism, and other non-western faiths, the Ten Commandments are not considered part of their theology. *See id.* ¶ 52.

As noted above, the Act requires this Protestant version of the Ten Commandments to be "prominently displayed" in a "conspicuous place" in each classroom and library on a poster or framed copy that is, at a minimum, sixteen by twenty inches. Ex. 1, Act 573 §§ (a)(1)–(2). In addition, the text of the Commandments must be in a "size and typeface that is legible to a person with average vision from anywhere in the room." *Id.* § (a)(1)(B)(ii)(a). These posters must be displayed permanently year-round, as the Act does not provide for a time limit on them. *See generally id.* The Act requires the displays to be placed in every classroom, regardless of the subject matter taught. For example, under the Act, the state-approved version of the Ten Commandments must be posted in math and science classrooms. For younger children, who may remain in the same classroom for much the day, the displays will be visible at all times, no matter the topic or instruction at hand. *See generally id*.

In debating the proposed Act, legislators repeatedly emphasized their hope that it would return religion to schools and inspire students to live by the Ten Commandments. For example, Act 573 co-sponsor Rep. Stephen Meeks proclaimed: "[W]hat we've been pushing here in America is atheism. And atheism is a religion and ever since we took God out of the schools, we see all the problems that have come in. You look at the statistics. You know, when the Supreme Court took God out of the schools, all the problems and violence started flooding into our school systems."[3] Rep. Howard Beaty echoed the sentiment: "[W]hat I find hypocritical is that . . . some of the folks [who] have spoken against the posting of the Ten Commandments on the wall of our

[3] *House State Agencies: Hearing on S.B. 433 Before the H. Gov. Affs. Comm.*, 2025 Leg., 95th Gen. Assemb., Reg. Sess. 1:01:51–1:02:09 (Ark. State Leg., Apr. 2, 2025), https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20250402/-1/30975?mediaStartTime=20250402115154 (statement of Rep. Meeks, Member, H. Comm. on Gov. Affs.).

schools are the same individuals that fault and take issue with some of the filth and trash that we have available that our children can access in our school libraries. So that's hypocritical to me. I'd much rather have the Ten Commandments on the walls that those children can read and see good moral lessons that are there and virtues and qualities that we should all aspire to as Christians or just as common citizens."[4]

And when an Arkansas reverend testified in opposition to the bill, Rep. Meeks responded: "You had stated that the, you know, Ten Commandments should be taught in church and all that. . . . But there are a large number of students who don't go to church. They're not involved in any religious activities. And so would you rather them have zero exposure to this or have it in their classroom so they can at least have some exposure?"[5] Rep. Jeremy Wooldridge added: "I think that anything we can do to try to increase access to or spread that gospel, I guess would be something that I would want us to do as a person of faith. I guess I'm a little bit shocked that you, as a pastor, would not have that same view[.]"[6]

Arkansas lawmakers passed Act 573 knowing that Arkansas law requires parents to send their minor children, ages five to seventeen, to school and to "ensure the attendance of the child" Ark. Code Ann. § 6-18-201(a). Excessive unexcused absences may lead to educational punishments, including "denial of course credit, promotion, or graduation," *id.* § 6-18-222(a)(1)(A)(i), and the student's parents "shall be subject to a civil penalty" of up to $500 in circuit court, plus court costs and fees. *Id.* § 6-18-222(a)(5)(A). The purpose of the penalty is "to

[4] *Id.* at 1:03:51–1:04:26 (statement of Rep. Beaty, Member, H. Comm. on Gov. Affs.).
[5] *Id.* at 12:39:28–12:39:54 (statement of Rep. Meeks, Member, H. Comm. on Gov. Affs.).
[6] *Id.* at 12:41:16–12:41:30 (statement of Rep. Wooldridge, Member, H. Comm. on Gov. Affs.); *see also Senate Fl. Sess.: S.B. 433*, 2025 Leg., 95th Gen. Assemb., Reg. Sess., 3:37:15–3:37:25 (Ark. State Leg., Mar. 19, 2025), https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/2025-03-19/-1/30906?mediaStartTime=20250319153629 (Sen. Matt McKee, speaking in support of the measure, to lead sponsor of Act 573, Sen. Jim Dotson: "Senator Dotson, do you think it would be a valuable thing for everyone if we were reminded once a day that there is a God and we're not him." Sen. Dotson replied, "Yes.").

impress upon the parents . . . the importance of school . . . attendance." *Id.* § 6-18-222(a)(7)(A).[7] Because Arkansas public schools must be in session for at least 1,068 instructional hours or 178 days each year, Ark. Code Ann. § 6-17-2403 (c), for students entering the Arkansas public-school system in kindergarten, Act 573 will subject them to the state's preferred religious dogma for a minimum of 13,884 hours across thirteen academic years.

Plaintiffs—who are Jewish, Unitarian Universalist, or nonreligious—filed their Complaint on June 11, 2025, asserting that Act 573's provisions requiring displays of the Ten Commandments in every public elementary- and secondary-school classroom and library violate both the Establishment Clause and the Free Exercise Clause of the First Amendment. Compl., ECF No. 2 ¶¶ 137–54. Suing on behalf of themselves and their combined fourteen minor children, who are enrolled in public schools operated by the Defendant school districts, the nine parent-Plaintiffs have asserted a variety of objections to Act 573 and have identified numerous harms that they and their children will suffer as a result of the statute. Specifically, as set forth in the Plaintiffs' declarations accompanying this motion, the displays will: (1) substantially burden the parent-Plaintiffs' religious exercise by usurping their parental authority to direct their children's religious education and religious or nonreligious upbringing,[8] (2) forcibly subject their children to religious doctrine and beliefs in a manner that conflicts with the families' own religious beliefs and

[7] Students who are "[h]abitually and without justification absent from school while subject to compulsory school attendance" also may be reported to the circuit court through a "Family in Need of Services" Petition. FINS FAQ, Wash. Cnty. Juvenile Ct., Wash. Cnty., Ark., https://www.washingtoncountyar.gov/government/departments-a-e/circuit-courts/circuit-court-division-3-juvenile/fins-faq#q1 (last visited June 9, 2025). Once proceedings commence, "[t]he family is now under the supervision of the court and will be expected to follow all court orders," including orders for the student to attend school or orders for parents to attend school with their children. *See id.* A "[f]ailure to comply with the court orders may result in essay assignments, community service, fines of up to $500, and ultimately jail" for parents or incarceration of the student in a Juvenile Detention Center. *Id.*

[8] *See, e.g.*, Ex. 2, Decl. of Samantha Stinson, ¶ 16; Ex. 3, Decl. of Jonathan Stinson, ¶ 14; Ex. 4, Decl. of Stephen Caldwell, ¶ 10; Ex. 5, Decl. of Joseph Armendariz, ¶ 15; Ex. 6, Decl. of Talara Taylor, ¶ 11; Ex. 7, Decl. of Shane Taylor, ¶ 11; Ex. 8, Decl. of Carol Vella, ¶ 13; Ex. 9, Decl. of Daniel Rix, ¶ 12; Ex. 10, Decl. of Leah Bailey, ¶ 8.

practices,[9] (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 text,[10] and (4) religiously coerce their children by pressuring them to observe, meditate on, venerate, and follow the state's favored religious text,[11] and by pressuring the children to suppress expression of their own religious beliefs and backgrounds at school.[12] Plaintiffs' Complaint seeks preliminary and permanent injunctive relief to prevent Defendants from implementing Act 573 and causing these irreparable harms, as well as an order declaring unconstitutional the Act's provisions mandating the display of the Ten Commandments in public elementary and secondary schools. ECF No. 2. at pp. 34–35.

ARGUMENT

In deciding whether to grant a preliminary injunction, a district court must weigh whether a movant has established: "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). "While no single factor is determinative, the probability of success factor is the most significant." *Carson v. Simon*,

[9] *See, e.g.*, Ex. 2, Decl. of Samantha Stinson, ¶¶ 3–5, 7–14; Ex. 3, Decl. of Jonathan Stinson, ¶¶ 5–13; Ex. 4, Decl. of Stephen Caldwell, ¶ 3–4, 6; Ex. 5, Decl. of Joseph Armendariz, ¶¶ 3–7, 9–13; Ex. 6, Decl. of Talara Taylor ¶ 3–5, 7; Ex. 7, Decl. of Shane Taylor, ¶¶ 3–5, 7; Ex. 8, Decl. of Carol Vella, ¶¶ 7–14; Ex. 9, Decl. of Daniel Rix, ¶¶ 3–5, 7; Ex. 10, Leah Bailey, ¶¶ 3–4, 6.

[10] *See, e.g.*, Ex. 2, Decl. of Samantha Stinson, ¶ 14; Ex. 3, Decl. of Jonathan Stinson, ¶ 12; Ex. 4, Decl. of Stephen Caldwell, ¶ 7; Ex. 5, Decl. of Joseph Armendariz, ¶ 13; Ex. 6, Decl. of Talara Taylor, ¶ 8; Ex. 7, Decl. of Shane Taylor, ¶ 8; Ex. 8, Decl. of Carol Vella, ¶¶ 10–12; Ex. 9, Decl. of Daniel Rix, ¶ 8; Ex. 10, Decl. of Leah Bailey, ¶ 7.

[11] *See, e.g.*, Ex. 2, Decl. of Samantha Stinson, ¶ 15; Ex. 3, Decl. of Jonathan Stinson, ¶ 13; Ex. 4, Decl. of Stephen Caldwell, ¶ 7; Ex. 5, Decl. of Joseph Armendariz, ¶ 14; Ex. 6, Decl. of Talara Taylor, ¶ 8; Ex. 7, Decl. of Shane Taylor, ¶ 8; Ex. 8, Decl. of Carol Vella, ¶ 10; Ex. 9, Decl. of Daniel Rix, ¶ 8; Ex. 10, Decl. of Leah Bailey, ¶ 7.

[12] *See, e.g.*, Ex. 2, Decl. of Samantha Stinson, ¶ 15; Ex. 3, Decl. of Jonathan Stinson, ¶ 13; Ex. 4, Decl. of Stephen Caldwell, ¶ 7; Ex. 5, Decl. of Joseph Armendariz, ¶ 14; Ex. 6, Decl. of Talara Taylor, ¶¶ 9–10; Ex. 7, Decl. of Shane Taylor, ¶¶ 9–10; Ex. 8, Decl. of Carol Vella, ¶ 12; Ex. 9, Decl. of Daniel Rix, ¶ 10; Ex. 10, Decl. of Leah Bailey, ¶ 7.

978 F.3d 1051, 1059 (8th Cir. 2020) (internal quotation marks omitted). Here, all four factors weigh decisively in favor of Plaintiffs.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR FIRST AMENDMENT CLAIMS.

A. Permanently Displaying a Preferential Version of Scripture in Every Public-School Classroom Violates the Establishment Clause.

1. *The Supreme Court's binding precedent in Stone prohibits permanent displays of the Ten Commandments in public-school classrooms.*

Act 573 is constitutionally forbidden under directly applicable, binding Supreme Court precedent. *Stone v. Graham* considered whether a Kentucky law that required the display of "a durable, permanent copy of the Ten Commandments . . . on a wall in each public elementary and secondary school classroom in the Commonwealth" was permissible under the Establishment Clause. 449 U.S. at 39–40 n.1. In striking down the statute, the Court held that "posting the Ten Commandments on schoolroom walls is plainly religious in nature" and "serves no . . . educational function." *Id.* at 41–42. Rather, the mandatory displays would unconstitutionally "induce . . . schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments." *Id.* at 42.

Stone has been the law of the land for nearly half a century. Even in the one Establishment Clause case where the Supreme Court upheld a governmental display of the Ten Commandments, the Court emphasized that the public-school context in *Stone* set it apart from a passive relic placed decades ago among other monuments on the Texas Capitol grounds: "There are, of course, limits to the display of religious messages or symbols. For example, we held unconstitutional a Kentucky statute requiring the posting of the Ten Commandments in every public schoolroom. . . . [*Stone*] stands as an example of the fact that we have been particularly vigilant in monitoring compliance

with the Establishment Clause in elementary and secondary schools." *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2005) (plurality opinion) (internal citations and quotation marks omitted).[13]

Accordingly, when Louisiana lawmakers unlawfully sought to post the Ten Commandments in every public-school classroom last year, a federal district court unsurprisingly held that the court was bound by *Stone*, despite the defendants' (erroneous) claim that *Stone* was no longer good law because *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), "undermined" its "doctrinal foundation," the *Lemon* test.[14] *Roake v. Brumley*, 756 F. Supp. 3d 93, 165 (M.D. La. 2024). As the district court explained,[15] it is the Supreme Court's '"prerogative alone to overrule one of its precedents'" and the Court's '"decisions remain binding precedent until [it] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.'" *Id.* (alterations in original) (quoting *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016)); *accord Jusino v. Fed'n of Catholic Teachers, Inc.*, 54 F.4th 95, 102 (2d Cir. 2022), *cert. denied*, 143 S. Ct. 1056 (2023) (holding that Supreme Court's ruling in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) "remain[ed] good law" and "binding" on the court, "notwithstanding its reliance" on *Lemon*, because *Kennedy* "indisputably did not . . . overrule – or even mention" the case).

[13] In his controlling concurrence, Justice Breyer similarly explained that "[t]he display is 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." *Van Orden*, 545 U.S. at 703 (Breyer, J., concurring) (citing *Stone*, 449 U.S. 39; *Lee v. Weisman*, 505 U.S. 577, 592 (1992)).

[14] Although *Stone* relied in part on the three-prong test set forth in *Lemon v. Kurtzman*, 403 U. S. 602, 612–13 (1971)—now "abandoned" under *Kennedy*, 597 U.S. at 534—the Supreme Court has characterized *Stone* as "almost exclusive[ly] rel[ying] upon two of our school prayer cases." *Van Orden*, 545 U.S. at 690–91 (plurality opinion) (citing *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962)).

[15] In *Roake*, an interfaith group of parents, individually and on behalf of their minor children, sued to enjoin enforcement of a Louisiana law similar to the school-display provisions of Act 573. The district court held that the law was "unconstitutional on its face and in all applications" under both *Stone* and *Kennedy*. *Id.* at 116–18. Defendants appealed the decision and sought a stay of the district court's injunction and filed a petition for initial review en banc. The Fifth Circuit denied both the stay, *Roake v. Brumley*, Order, No. 3:24-CV-517, Doc. 68-2 (5th Cir. Nov. 20, 2024), and the request for initial hearing en banc, *Roake v. Brumley*, 132 F.4th 748, 750 (5th Cir. 2024). .

Act 573 is even more egregiously unconstitutional than the statute overturned in *Stone*. Unlike in *Stone*, Arkansas lawmakers took it upon themselves to select and approve an official version of the Ten Commandments—one aligned with Protestant beliefs—and then mandate that this specific text be posted in every classroom and library. Further, the Arkansas legislature went to great lengths to ensure that students cannot avoid the displays: The Ten Commandments must be posted "prominently" in a "conspicuous place" and printed in a "size and typeface that is legible to a person with average vision from anywhere in the room." Ex. 1, Act 573 §§ (a)(1), (a)(1)(B)(ii)(a). Finally, while the Kentucky statute required a "context statement" alongside the Ten Commandments, setting forth their purported historical relevance, *see Stone*, 449 U.S. at 40 n.1, Act 573 lacks even this.[16] As *Stone* is binding law, the Court need look no further in its analysis.[17]

2. *Permanently displaying an official version of the Ten Commandments in every public-school classroom is unconstitutionally coercive.*

Even if *Stone* were not directly applicable and binding law, Act 573's elementary- and secondary-school requirements are plainly unconstitutional under the Supreme Court's coercion jurisprudence. "It is beyond dispute that, at a minimum, the Constitution guarantees that

[16] To be sure, a context statement would not make the Act constitutional. As in *Stone*, any context statement would be nothing more than an "implausible disclaimer." *See McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 869 (2005) (discussing *Stone*); *see also Roake*, 756 F. Supp. 3d at 207 (finding that Plaintiffs' expert historian, Dr. Steven Green, "systematically dismantled" the "purported historical evidence" set forth in context statement required to accompany classroom displays of the Ten Commandments).

[17] Since *Stone*, no federal court has upheld a public school's Ten Commandments display, regardless of the context. *See, e.g.*, *Roake*, 756 F. Supp. 3d at 219 (preliminary enjoining school districts' display of Ten Commandments in every classroom); *Baker v. Adams County/Ohio Valley Sch. Bd.*, 86 F. App'x 104 (6th Cir. 2004) (school display of the Ten Commandments alongside the Constitution, Declaration of Independence, and the Magna Carta was unconstitutional); *ACLU of Ky. v. McCreary Cnty.*, 354 F.3d 438, 462 (6th Cir. 2003) (affirming district court order to remove school's display of the Ten Commandments alongside "historical documents"); *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 127 F. Supp. 3d 283, 318 (W.D. Pa. 2015) (Ten Commandments monument on outdoor grounds of junior high school violated the Establishment Clause); *Doe v. Harlan Cnty. Sch. Dist.*, 96 F. Supp. 2d 667, 675, 679 (E.D. Ky. 2000) (granting preliminary injunction against school's display of the Ten Commandments alongside other documents because the "overriding theme of each individual document as presented in the displays and of the displays as a whole is one of religion and more specifically of Christianity"); *cf. Freedom from Religion Found., Inc. v. New Kensington-Arnold Sch. Dist.*, 919 F. Supp. 2d 648, 661 (W.D. Pa. 2013) (denying motion to dismiss challenge to Ten Commandments monument at front entrance of high school).

government may not coerce anyone to support or participate in religion or its exercise[.]" *Lee v. Weisman*, 505 U.S. 577, 587 (1992). "It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952).

a. The public-school context presents unique coercion concerns.

These constitutional prohibitions are at their zenith in the public-school context because students are at unusual risk of religious coercion. "The State exerts great authority and coercive power through mandatory attendance requirements." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). "In the context of compulsory education laws, such a concern with coercion is natural" because students are obliged to attend school (and their parents legally required to send them) under penalty of truancy. *Warnock v. Archer*, 380 F.3d 1076, 1080 (8th Cir. 2004); *see also, e.g.*, *Lee*, 505 U.S. at 640, 643 (Scalia, J., dissenting) ("[W]e have made clear our understanding that school prayer occurs within a framework in which legal coercion to attend school (*i.e.*, coercion under threat of penalty) provides the ultimate backdrop."). Once students are at school, staff control their movements and often their expression: They are not able to move around freely to avoid official religious indoctrination or to contest it beyond certain limits. *Cf. Town of Greece v. Galloway*, 572 U.S. 565, 590 (2014) (plurality opinion) (holding that legislative prayers at town council meeting were not religiously coercive where "[n]othing in the record suggests that members of the public are dissuaded from leaving the meeting room during the prayer, arriving late, or . . . making a later protest"). Students are, therefore, "a captive audience" for the state's religious messages and the "coercive potential" is extraordinary. *See Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 855 (7th Cir. 2012) (en banc); *see also Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279–80 (5th Cir. 1996) (striking down state statute authorizing official prayers

at school events because students are "a captive audience that cannot leave without being punished by the state or School Board for truancy or excessive absences").

Moreover, students' "emulation of teachers as role models and children's susceptibility to peer pressure" renders them particularly vulnerable to religious indoctrination in school. *Edwards*, 482 U.S. at 584. When schools impose scripture on students, the students are captive not only to the state's religious message but also to the immediate impressions and judgments of their teachers and classmates. The pressure to fit in and follow the favored religion is enormous: "The law of imitation operates, and non-conformity is not an outstanding characteristic of children." *Goodwin v. Cross Cnty. Sch. Dist. No. 7*, 394 F. Supp. 417, 425–26 (E.D. Ark. 1973). Thus, the Supreme Court has repeatedly recognized that "there are heightened concerns with protecting freedom of conscience from [these] subtle coercive pressure[s]." *Lee*, 505 U.S. at 592. And the Court recently reaffirmed that it remains "problematically coercive" for public schools to impose religious messages on students who are part of a "captive audience." *See Kennedy*, 597 U.S. at 541–42 (citing *Lee*, 505 U.S. at 580; *Santa Fe Indep. Sch. Dist. v Doe*, 530 U.S. 290, 311 (2000)).[18]

b. Act 573's mandatory displays will pressure students into observance, veneration, and adoption of the Ten Commandments.

Viewed through the lens of this special concern for captive-audience public-school students, Act 573's mandatory displays of the Ten Commandments will be unconstitutionally coercive. The Ten Commandments are undeniably biblical scripture with overtly religious dictates that "do not confine themselves to arguably secular matters." *Stone*, 449 U.S. at 41. "[T]he first part of the Commandments concerns the religious duties of believers: worshipping the Lord God

[18] In *Kennedy*, the Court upheld the right of a public-school football coach to engage in a quiet and private act of prayer after games, noting that the prayers looked "very different" from those at issue in *Lee* and *Santa Fe*. *Kennedy*, 597 U.S. at 54. The coach's prayers did not involve students and were not imposed on a captive audience. *See id.* at 525, 542.

alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day." *Id.* at 41–42; *accord McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 869 (2005) ("[T]he original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction.").

The Act's mandatory displays of this religious scripture will serve "no . . . educational function." *See Stone*, 449 U.S. at 42. The displays will not, for example, be "integrated into the school curriculum . . . in an appropriate study of history, civilization, ethics, comparative religion, or the like." *See id.* On the contrary, they will be hung in every classroom without regard to the subject being taught. The only possible function served by such permanent and pervasive displays is "to induce . . . schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments." *Id.* Many years after *Stone*, Justice Rehnquist acknowledged this, even as he criticized the Court's denial of certiorari in a challenge to a forty-year-old Ten Commandments monument on the lawn of a city's municipal building. *City of Elkhart v. Books*, 532 U.S. 1058, 1061 (2001) (Rehnquist, C.J., dissenting from denial of certiorari). With Justices Scalia and Thomas joining, Rehnquist distinguished *Stone* from the facts at bar, writing: "In *Stone*, the posting effectively induced schoolchildren to meditate upon the Commandments during the school-day." *Id.* Arkansas legislators' comments make clear that this is their desired end: to "return" religion to schools and inspire students to meditate on, and indeed live by, the displays' scriptural directives. *See supra*, pp. 4–5.

Act 573's minimum requirements capitalize on the direct and indirect coercive pressures unique to the public-school context to force students to engage in religious exercise. *See, e.g.*, *Schempp*, 374 U.S. 203, 210, 225 (holding that school-directed reading of Bible passages constitutes "religious exercise" where, as here, it is not "presented objectively as part of a secular

program of education").[19] First, the State has mandated the *permanent* display of the Ten Commandments in *every* classroom and library, rendering them unavoidable by students. The displays are, therefore, not comparable to religious displays outside of the school context. *Cf. Van Orden*, 545 U.S. at 691 (plurality opinion) ("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."); *accord ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 776 (8th Cir. 2005) (en banc) (noting that *Van Orden* "distinguished" between "the 'passive use' of the Ten Commandments text by the State of Texas from the impermissible use of the text [in schools] by the State of Kentucky").

Second, the State has required that each display be "prominently" hung in a "conspicuous place," be no smaller than sixteen by twenty inches, and feature the Commandments "in a size and typeface that is legible to a person with average vision from anywhere in the room." Ex. 1, Act 573 § (B)(ii)(a)–(b). The point is to ensure that students' attention will be drawn to the Commandments and that students will perceive them as authoritative rules that must be followed. *See supra* pp. 4–5 (discussing legislators' comments).

Third, in selecting and approving an official version of the Ten Commandments that does not reflect the religious beliefs of countless Arkansan students,[20] the state will engender a

[19] The constitutional prohibition against state coercion of religious exercise includes vocal and silent activities. *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 as in *Schempp* and *Engel*[.]"); *Wallace v. Jaffree*, 472 U.S. 38, 60–61 (1985) (holding that state could not encourage students to engage in silent prayer); *cf. Jackson v. Nixon*, 747 F.3d 537, 542–43 (8th Cir. 2014) ("Even if the state had allowed [Plaintiff prisoner] to sit quietly during the prayers and other religious components . . . the state's action may still amount to coercion.").

[20] *See* Ex. 12, Green Rep. ¶¶ 52–57. It is "impossible to have a theologically neutral version" of the Ten Commandments. *See* Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 Fordham l. Rev. 1477, 1492 (2005). Where, as here, the state selects, approves, and mandates the specific text of the commandments, "[i]n addition to being religious in the most obvious sense of the term, any display . . . will inevitably

classroom environment that is unwelcoming and potentially hostile toward those students, including the minor-child Plaintiffs, *supra* nn. 9-12, increasing the pressure on them to conform to the state's preferred scripture. "This pressure, though subtle and indirect, can be as real as any overt compulsion." *Lee*, 505 U.S. at 593. As the Seventh Circuit has observed, "[d]isplaying religious iconography . . . may do more than provide public school students with knowledge of Christian tenets"; it "tend[s] to promote religious beliefs," and "students might feel pressure to adopt them"—a concern that "was front and center in *Stone*." *Elmbrook*, 687 F.3d at 851.

In holding Louisiana's similar statute unconstitutional, the *Roake* court described the religious coercion that would result from permanent, ubiquitous displays of the Ten Commandments in every classroom: "Plaintiffs' minor children will be forced 'in every practical sense,' through Louisiana's required [school] attendance policy, to be a 'captive audience' and to participate in a religious exercise: reading and considering a specific version of the Ten Commandments, one posted in every single classroom, for the entire school year, regardless of the age of the student or subject matter of the course." 756 F. Supp. 3d at 193; *id.* ("Plaintiffs have shown a real and substantial likelihood of coercion, . . . particularly given the fact that, in the school context, coercion has been found where 'the school has in every practical sense compelled attendance and participation in a religious exercise.'" (internal citation omitted; quoting *Kennedy*, 597 U.S. at 541–42)). As in *Roake*, the minimum requirements of Act 573's elementary- and secondary-school provisions, operating together, will make the minor-child Plaintiffs a captive audience to state-sponsored religious indoctrination. *Id.* at 166. "[C]oercion along these lines was

favor one faith or one denomination over all others . . . because any ordering of the Commandments or translation of the original Hebrew text will reflect the position of one or more faiths and exclude that of other faiths." *Id.* at 1478, 1483. But even if it were possible to adopt a religiously neutral version of the Ten Commandments, it would not negate the coercive effect of those displays in the school context. *See Lee*, 505. U.S. at 594 ("That the intrusion was in the course of promulgating religion that sought to be civic or nonsectarian rather than pertaining to one sect does not lessen the offense or isolation to the objectors. At best it narrows their number, at worst increases their sense of isolation and affront.").

among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 597 U.S. at 537.

3. *Act 573 impermissibly takes sides on theological questions and officially favors one religious denomination over others.*

As the Supreme Court unanimously affirmed earlier this month, the Establishment Clause demands that the "government maintain 'neutrality between religion and religion.'" *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, No. 24-154, 2025 WL 1583299, at *9 (U.S. June 5, 2025) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). The Court explained: '"The 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 *5 (internal citations omitted; quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Epperson*, 393 U.S. at 106).

The Court has thus repeatedly warned against government action that takes sides in "controversies over religious doctrine and practice." *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188–89 (2012) (noting that the Establishment Clause "prohibits government involvement in . . . ecclesiastical decisions"); *Schempp*, 374 U.S. at 243 (Douglas, J., concurring) (the First Amendment requires "on the part of all organs of government a strict neutrality toward theological questions"). Indeed, "[t]here exists an overriding interest in keeping the government—whether it be the legislature or the courts—out of the business of evaluating the relative merits of differing religious claims" because "[t]he risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude."

Tex. Monthly, Inc. v. Bullock, 489 U.S. 1, 20 (1989) (plurality opinion) (internal quotation marks and alterations omitted) (holding state tax-exemption law unconstitutional, in part, because it increased prospect of state "embroilment in controversies over religious doctrine"); Ex. 12, Green Rep. ¶¶ 18–26 (discussing Founders' opposition to government declaring the "correct" religious doctrine or otherwise indicating denominational preferences).

Here, in violation of these fundamental, longstanding principles, Arkansas has chosen sides on religious controversies of the utmost importance, announcing an official position on perhaps the greatest theological question of all: Which religion (and which religious texts) should public-school students and families believe in and follow? The state's explicit preference for biblical scripture rules out any number of faiths in which the Ten Commandments are generally not recognized as part of the religious tradition, including Buddhism, Hinduism, Taoism, Jainism, Sikhism, certain Native American religions, Paganism, Wicca, and Humanism.[21] Similarly excluded are religious denominations, such as Jehovah's Witnesses,[22] that reject the proposition that any version of the Ten Commandments is authoritative or binding.

But legislators did not stop there. By hand-picking the specific text of the Ten Commandments, and mandating its display in public-school classrooms statewide, they dove even deeper into core theological questions and controversies surrounding the correct content and meaning of the Ten Commandments for those *who do* consider the Commandments important or binding. Arkansas's official version of the Ten Commandments is Protestant in structure and content. Ex. 12, Green Rep. ¶¶ 53–58; *accord Roake*, 756 F. Supp. 3d at 200 ("The Act requires

[21] *See* Ex. 12, Green Rep. ¶ 52; *Felix v. City of Bloomfield*, 841 F.3d 848, 854 & n.2 (10th Cir. 2016) (noting that "Plaintiffs are polytheistic Wiccans" and that the first commandment to "have no other gods before me" is "a particularly disconcerting command for polytheists"); Decl. of Shane Taylor, ¶¶ 3–9; Decl. of Talara Taylor, ¶¶ 3–9; The displays also, of course, reject the beliefs of atheists and other nonreligious people. *See, e.g.*, Ex. 4, Decl. of Stephen Caldwell, ¶¶ 3–7; Ex. 9, Decl. of Daniel Rix, ¶¶ 3–8; Ex. 10, Decl. of Leah Bailey, ¶¶ 3–7.

[22] *See* Ex. 12, Green Rep. ¶ 52.

the display of a specific Protestant version of the Decalogue. Again, this required display conflicts with the religious views of Unitarian Universalists, agnostics, atheists, Presbyterians, and Reform Jewish parents, particularly about proselytizing, the Ten Commandments (both generally and this version), and the role of the secular authorities.").[23] It does not match translations found in the Jewish tradition, altering or omitting key language and context that is included in the Torah. Ex. 12, Green Rep. ¶¶ 54–56. For example, accepted Jewish translations of the Commandments typically begin by recounting God's delivery of the Jewish people from slavery: "I the LORD am your God who brought you out of the land of Egypt, the house of bondage." *See id.* ¶ 55 (internal quotation marks omitted). This is "a statement of faith that in itself is a Commandment." *Id.* (internal quotation marks omitted). But Arkansas's official version of the Ten Commandments erases this Jewish aspect of the text, rendering it Christian-centric.

Arkansas's official version of the Ten Commandments is also inconsistent with Jewish theology when it comes to the specific language mandated by Act 573. For instance, "the Hebrew translation of the Sixth Commandment prohibits only murder, not all killings as the King James Version does." *Glassroth v. Moore*, 335 F.3d 1282, 1299 n.3 (11th Cir. 2003); *see also* Ex. 12, Green Rep. ¶ 56. The text set forth in the Act, however, instructs students to avoid the latter. This "difference in translation is significant" and represents a continuing controversy between faith systems. *See id.* ¶ 56 (internal quotation marks omitted). "In some cases the differences among . . . [versions of the Ten Commandments] might seem trivial or semantic, but lurking behind the disparate accounts are deep theological disputes." *Glassroth*, 335 F.3d at 1299 n.3 (internal quotation marks omitted).

[23] The Louisiana statute considered in *Roake* mandates a version of the Ten Commandments that is identical to the version adopted in Act 573, except for the capitalization of the word "AM" in the first commandment. *See* La. House Bill No. 71, Act No. 676 (2024).

Nor does the state's official version of the Ten Commandments conform to the version followed by many Catholics. For example, Catholic translations typically do not prohibit "graven images" because such a "broad prohibition . . . could, for some Catholics, call into question the faith's reliance on and adoration of various religious statues." *See* Ex. 12, Green Rep. ¶ 57. Moreover, the ordering of Protestant and Catholic versions of the Ten Commandments is different. *Id.*

These are just a few ways in which the principally Protestant version of scripture approved and adopted by Act 573 differs from and rejects translations and faith tenets associated with Judaism and Catholicism, among other denominations.[24] Arkansas's decision to adopt, by statute,[25] this particular version of the Ten Commandments and promulgate it via mandatory displays in public-school classrooms and libraries cannot be reconciled with the Establishment Clause's requirement that the government maintain "a strict neutrality toward theological questions," or its command that one religious denomination cannot be preferred over another. *See supra* pp. 16–17. Indeed, Justice Scalia, joined by Justices Rehnquist and Thomas, recognized as much in his *McCreary* dissent, acknowledging that some displays of the Ten Commandments could be impermissible: "The Establishment Clause would prohibit, for example, governmental

[24] *See* Ex. 12, Green Rep. ¶¶ 52–57; *see also* Ex. 8, Decl. of Carol Vella, ¶¶ 6–10; Ex. 3, Decl. of Jonathan Stinson, ¶¶ 6–11; Ex. 2, Decl. of Samantha Stinson, ¶¶ 7–13.

[25] Unlike in *Van Orden*, 545 U.S. at 712–13, where the challenged monument was not erected due to any law requiring such displays, and the Fraternal Order of Eagles (not the government) selected the text and particular version of the Commandments inscribed on the monument, here the state went out of its way to require public-school displays of the Commandments and to select, vote on, and officially approve the specific text to be used. Intentionally choosing, in this manner, "which version of the Ten Commandments to display" communicates denominational preference. *See Glassroth*, 335 F.3d at 1299 n.3; *see also Harlan Cnty. Sch. Dist.*, 96 F. Supp. at 677 ("Notably, the defendants did not post a Hebrew version of the Ten Commandments and in selecting a version of the Ten Commandments had to choose among several differing translations, some favored by particular Christian sects over others."); *cf. Town of Greece*, 572 U.S. at 581 ("Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.").

endorsement of a particular version of the Decalogue as authoritative." *McCreary Cnty.*, 545 U.S. at 894 n.4.

Where, as here, "a state law establishes a denominational preference, courts must 'treat the law as suspect' and apply 'strict scrutiny in adjudging its constitutionality.' . . . The government bears the burden to show that the relevant law, or application thereof, is 'closely fitted to further a compelling governmental interest.'" *See Catholic Charities Bureau*, No. 24-154, 2025 WL 1583299, at *6 (quoting *Larson*, 456 U.S. at 246, 251). As discussed below, *infra* pp. 27–29 Defendants cannot come close to meeting either prong of this "demanding standard." *See id.*

4. *Act 573's mandatory school displays do not fit within any historical tradition.*

Kennedy's "historical practices and understandings" test requires courts to draw a line "between the permissible and the impermissible" that accords "with history and faithfully reflect[s] the understanding of the Founding Fathers." 597 U.S. at 535–36 (cleaned up). To that end, this Court must look to the purposes animating the Establishment Clause during the Founding era. Specifically, it is "the views of [James] Madison and [Thomas] Jefferson," among other Founders, on which the Supreme Court has focused in construing the Establishment Clause. *See Schempp*, 374 U.S. at 214.[26] Both were instrumental in the creation of the First Amendment. *See* Ex. 12, Green Rep. ¶¶ 21–26.

a. <u>The First Amendment was rooted in the Founders' concerns about government coercion and favoritism in matters of faith.</u>

In drafting and enacting the First Amendment, at least two concerns stood out at the time. First, religious coercion "was among the foremost hallmarks of religious establishments the

[26] *See also, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 162–63 (1878); *Everson v. Bd. of Educ.*, 330 U.S. 1, 11–13 (1947); *Engel*, 370 U.S. at 425, 436; *Larson*, 456 U.S. at 245; *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 770 n.28 (1973); *McCreary Cnty.*, 545 U.S. at 878.

framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 597 U.S. at 537. Indeed, Madison and Jefferson were adamant that "[g]overnment should not coerce or promote religious fealty or any religious belief." *See* Ex. 12, Green Rep. ¶¶ 25–26. They each took a broad view of what constitutes impermissible religious coercion by the government. As Jefferson noted in 1808, he was concerned not only with religious coercion enforced by "fine & imprisonment," but also with governmental action that could result in '"some degree of proscription perhaps in public opinion.'" *Id*. ¶ 26 (quoting Letter from Jefferson to S. Miller, Jan. 23, 1808). In his view, a "mere governmental 'recommendation' of religious practice, even without the backing of legal force, was no 'less a law of conduct for those to whom it is directed.'" *Id.* (quoting letter to Miller). Madison believed the same. *Id.*

Second, the Founders were all too aware of the religious persecution and religious discord engendered by colonial governments' official preferences for some denominations over others.[27] *See id*. ¶¶ 18–25. Madison and Jefferson believed that "[g]overnment should not take a position on any religious doctrine or promote any denomination or denominational belief or practice as favored or preferred." *Id*. ¶ 25. Such interference with theological matters would "raise serious concerns about state entanglement with religion and denominational favoritism." *See Carson v. Makin*, 596 U.S. 767, 787 (2022) (citing *Larson*, 456 U.S. at 244.).

[27] *See also McCreary Cnty.*, 545 U.S. at 876 (noting that the Establishment Clause was intended "not only to protect the integrity of individual conscience in religious matters, . . . but to guard against the civic divisiveness that follows when the government weighs in on one side of religious debate" because "nothing does a better job of roiling society, a point that needed no explanation to the descendants of English Puritans and Cavaliers (or Massachusetts Puritans and Baptists)"); *Larson*, 456 U.S. at 244–45 ("Before the Revolution, religious establishments of differing denominations were common throughout the Colonies. But the Revolutionary generation emphatically disclaimed that European legacy, and applied the logic of secular liberty to the condition of religion and the churches. If Parliament had lacked the authority to tax unrepresented colonists, then by the same token the newly independent States should be powerless to tax their citizens for the support of a denomination to which they did not belong. The force of this reasoning led to the abolition of most denominational establishments at the state level by the 1780's and led ultimately to the inclusion of the Establishment Clause in the First Amendment in 1791. This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause." (internal citations and quotation marks omitted)).

As *Kennedy* itself affirms, 597 U.S. at 541–42, and the Supreme Court's recent ruling in *Catholic Charities Bureau* makes clear, No. 24-154, 2025 WL 1583299, at *5, the anti-coercion and denominational-neutrality principles at the heart of the Establishment Clause are just as vital today as they were at the Founding. Because Act 573's displays will be religiously coercive and will give preference to particular denominations—violating original First Amendment principles—the law's provisions pertaining to elementary and secondary schools cannot pass constitutional muster under *Kennedy*'s historical test.

b. The historical record demonstrates that there is no longstanding, widespread tradition of permanently displaying the Ten Commandments in public-school classrooms.

Even if the historical record theoretically could redeem a statute that violates the Establishment Clause's fundamental prohibitions on religious coercion and denominational preference (it cannot),[28] it does not do so here because Defendants cannot proffer evidence of any longstanding or widespread, accepted historical practice or tradition of permanently displaying the Ten Commandments in public schools. As an initial matter, the American public education system, as we know it today, did not come into existence until the early 1800s. Ex. 12, Green Rep. ¶¶ 38–39. To the extent that religious practices generally occurred in those early common schools, especially practices that were denominationally preferential, and thus discriminatory, they were extremely contentious, sparking lawsuits, protests, and even violent riots. *Id.* ¶¶ 40–41. Moreover, with regard to the Ten Commandments specifically, while some early textbooks included lessons referring to the Ten Commandments, those lessons were sporadic at best; they were not significant aspects of the texts, and they were largely eliminated over time. *Id.* ¶¶ 43–47. *Cf. Town of Greece,*

[28] *See, e.g.*, *Roake*, 756 F. Supp. 3d at 210 (holding that "even if there was sufficient evidence to show that this practice fit within a broader tradition of using the Ten Commandments in public schools, . . . [the] Act is inconsistent with any historical tradition by being discriminatory and coercive").

572 U.S. at 577 (upholding legislative prayers, which enjoyed "unambiguous and unbroken history" of widespread acceptance, including by the Founders, and have "withstood the critical scrutiny of time and political change").[29]

As Dr. Steven K. Green, an expert in the history of the First Amendment's Religion Clauses, as well as the intersection of religion and public schools, has concluded: "[T]he Ten Commandments were not a prominent part of American public education . . . Nor more specifically, in my expert opinion, is there evidence of a longstanding, let alone unbroken, historical acceptance and practice of widespread, permanent displays of the Ten Commandments in public schools." Ex. 12, Green Rep. ¶ 51. Relying on similar testimony presented by Dr. Green in an expert report and at a live hearing,[30] the *Roake* district court agreed, finding that "there is insufficient evidence of such a broader tradition [of use of the Ten Commandments in public education] to justify [the Louisiana law]" and that the defendants' evidence did not "reflect any sort of tradition of permanently displaying the Decalogue in public-school classrooms at the time of the Founding or of incorporation." 756 F. Supp. 3d at 204. This Court should reach the same conclusion.

[29] Unlike the displays mandated by Act 573, the legislative invocations challenged in *Town of Greece* were not coercive, in part, because they were directed at adults, not children. *See* 572 U.S. at 590. ("Should nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy. And should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed. Neither choice represents an unconstitutional imposition as to mature adults, who presumably are not readily susceptible to religious indoctrination or peer pressure." (internal quotation marks omitted) (distinguishing *Lee*, 505 U.S. at 592–94 & *Santa Fe*, 530 U.S. at 312.)) Nor did the invocations, unlike Act 573's displays, occur pursuant to "an official policy or practice" that facially "discriminat[ed] against minority faiths." *Id.* at 573.

[30] "The Court found Dr. Green to be highly qualified and concluded that he utilized an adequate and standard methodology used by historians. . . . The Court had the opportunity to judge his demeanor and f[ound] that [he]was credible and his testimony on this issue was well supported and persuasive." *Roake*, 756 F. Supp. 3d at 204–05.

B. Plaintiffs Are Likely to Succeed on the Merits of Their Free Exercise Clause Claim.

Given that the Establishment and Free Exercise Clauses have complementary purposes, *Kennedy*, 597 U.S.at 533, it is not surprising that Act 573, through its coercive effect on the minor-child Plaintiffs and its discriminatory denominational preference,[31] also violates the Free Exercise Clause. The Act's provisions mandating displays of the Ten Commandments in every classroom and library of every elementary and secondary school infringe the right the minor-child Plaintiffs and their families to "choose [their] own course [in matters of faith] . . . free of any compulsion from the state," *Schempp*, 374 U.S. at 222, as well as the right of the parent-Plaintiffs to have their "children educated in public schools that do not impose or permit [official] religious practices." *Steele v. Van Buren Pub. Sch. Dist*., 845 F.2d 1492, 1495 (8th Cir. 1988).

1. *Act 573's permanent displays of the Ten Commandments are unconstitutionally coercive under the Free Exercise Clause.*

The right to free exercise necessarily includes the right *not* to be pressured into government-sponsored religious observance that violates one's conscience, as well as the right not to be coerced by the government to suppress one's own religious beliefs and practices. *See Carson*, 596 U.S. at 778 (reiterating that the Free Exercise Clause bars "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions" (cleaned up)). As discussed above, Act 573's mandatory displays will religiously coerce students, who will be subjected to the Ten Commandments for nearly every hour they are in school, in every classroom, with no exceptions

[31] *See Catholic Charities Bureau*, No. 24-154, 2025 WL 1583299, at *5 ("The Establishment Clause's 'prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause,' too. . . .That is because the 'fullest realization of true religious liberty requires that government' refrain from 'favoritism among sects.'" (internal citations omitted; quoting *Larson*, 456 U.S. at 245–46)); *see also Mbonyunkiza v. Beasley*, 956 F.3d 1048, 1052–53 (8th Cir. 2020) ("The Free Exercise Clause prohibits government from enacting laws, promulgating regulations, or adopting policies that 'compel affirmation of religious belief […] or lend its power to one or the other side in controversies over religious authority or dogma.'"(quoting *Emp. Div. v. Smith*, 494 U.S. 872, 877 (1990)).

and without regard to the subject matter being taught. In short, the state's official religious doctrine will be unavoidable and the pressure to submit to it unbearable. *See supra* pp. 13-16. The Act, therefore, likewise strikes at the heart of the Free Exercise Clause, which "embrace[s] a freedom of conscience and worship." *Lee*, 505 U.S. at 591.

By subjecting students, including the minor-child Plaintiffs, to prominent, pervasive Ten Commandments displays, Act 573 pressures them to observe, meditate on, venerate, and adopt or obey the state's preferred religious doctrine. *See supra* n.11. In addition, students, including the minor-child Plaintiffs, will be pressured to suppress their own religious or non-religious backgrounds and beliefs at school to avoid the potential disfavor, reproach, and/or disapproval of school officials and/or their peers. *See supra* n.12.

Standing alone, these coercive pressures will violate the minor-child Plaintiffs' free-exercise rights. Arkansas may not condition students' attendance of its public schools on families' surrender of their religious freedom: "[It] is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017).[32] What is more, as discussed above, the coercion is direct here: Plaintiffs' refusal to submit to the state's religiously indoctrinating displays would render the minor-child Plaintiffs truant. State law provides that they and their parents will be hauled into the circuit court, where a civil fine "shall be" imposed on the parents, and where, if they are referred to the court as a "Family In Need of Services," both children and parents may ultimately be imprisoned if they fail to follow the court's order to remedy the truancy. *See supra* pp. 5–6, n.7.

[32] *See also* Ex. 12, Green Rep.¶ 25 ("These historical events and writings evince that the fundamental concerns and principles animating the Religion Clauses include that . . . [n]o person's access to public benefits should be contingent upon affirming any article of faith.").

2. *Act 573 and its mandatory displays are not religiously neutral and violate Plaintiffs' free-exercise rights because they do not satisfy strict scrutiny.*

"[A] plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not neutral or generally applicable." *Kennedy*, 597 U.S. at 525 (internal citations and quotation marks omitted). Where a plaintiff makes this showing, courts must "find a First Amendment violation unless the government can satisfy strict scrutiny by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.*

Act 573 is not neutral with respect to religion. By design, and on its face, the statute mandates the display of expressly religious scripture, the Ten Commandments, in every public-school classroom and library. The Act also requires that a specific version of that scripture be used, one that is associated with Protestantism and is exclusionary of other faiths. *See supra*, pp. 4, 16–20. Legislators' own comments,[33] *supra* pp. 4–5, further confirm what is already apparent: The statute was designed to advance certain Christian beliefs, and the legislature '"proceed[ed] in a manner intolerant of [contrary] religious beliefs.'" *See Roake*, 756 F. Supp. 3d at 200 (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)) (holding that Louisiana's H.B. 71 was "not neutral toward religion" because the "Act requires the display of a specific Protestant version of the Decalogue" and the legislative history further confirmed the departure from neutrality). "The government may not favor one religion over another, or religion over irreligion, religious choice

[33] *See Masterpiece Cakeshop v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617, 639 (2018) ("Factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." (internal quotation marks omitted)).

being the prerogative of individuals under the Free Exercise Clause." *McCreary Cnty.*, 545 U.S. at 875–76. Act 573 runs roughshod over both neutrality requirements.

In so doing, it will burden Plaintiffs' exercise of their sincere religious or nonreligious beliefs in substantial ways. *See Roake*, 756 F. Supp. 3d at 199 ("Plaintiffs have established a burden on their sincerely held religious beliefs."). The displays will 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." *See Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). *See supra* n.8. The displays will also send an exclusionary and spiritually burdensome message to the Plaintiffs—who do not subscribe to the state-approved version of the Ten Commandments—that they are outsiders who do not belong in their own school community. *See supra* n.10; *see also Catholic Charities Bureau*, No. 24-154, 2025 WL 1583299, at *5 ("Government actions that favor certain religions, the Court has warned, convey to members of other faiths that 'they are outsiders, not full members of the political community.'" (quoting *Santa Fe*, 530 U.S. at 309)). And the displays will pressure the minor-child Plaintiffs into religious observance, meditation on, veneration, and adoption of the state's favored religious scripture, and into suppressing expression, while at school, of their own religious or nonreligious backgrounds and beliefs. *See supra* nn. 11–12.

These impositions on Plaintiffs' religious beliefs and practices cannot be sustained under the Free Exercise Clause's strict-scrutiny standard. It is the government's burden to demonstrate that its attacks on Plaintiffs' "protected rights serve a compelling interest and are narrowly tailored to that end." *See Kennedy*, 597 U.S. at 532. Defendants cannot meet this burden.

The state's mandate that public schools post an official state-approved version of the Ten Commandments in every classroom and library does not further any compelling governmental

interest. It "serves no . . . educational function." *Stone*, 449 U.S. at 42. Indeed, the Act is not even part of the state's education code, and the state's *current* curricular standards governing social studies from K-12 do not mention the Ten Commandments at all.[34] Rather, they identify the "historical documents and events that set the ideological foundations for the U.S. Constitution" as the Magna Carta, Mayflower Compact, English Bill of Rights of 1689, Declaration of Independence, Articles of Confederation, and Constitutional Convention.[35] Thus, even if it were true, though it is not, that the Ten Commandments had played an important role in American public education or the formation of the nation's principal Founding documents, singling out this one religious text over every other historical or foundational text identified in the curricular standards for mandatory, permanent display does not serve a compelling interest.[36]

Finally, even if Defendants were to somehow meet their heavy burden under the first prong of the strict-scrutiny standard, they would nevertheless fail the "narrowly tailored" prong. There are many ways in which students could be taught any relevant history of the Ten Commandments without the state approving an official version of scripture and then subjecting students to it in every classroom on a permanent, daily basis. Most obviously, the matter could be broached "objectively as part of a secular program of education," *Schempp*, 374 U.S. at 225, through "an appropriate study of history, civilization, ethics, comparative religion, or the like." *Stone*, 449 U.S. at 42. In fact, that is the exact approach that Act 478 of 2025 ("Act 478") purports to take. Act 478 requires the State Board of Education, beginning with the 2026-2027 school year, to "embed into existing social studies standards and courses for grades six through twelve (6-12) information that

[34] *See generally* Ark. Dep't of Educ. Social Studies Standards & Courses (Rev. 2022), https://dese.ade.arkansas.gov/Offices/learning-services/curriculum-support/social-studies-standards-and-courses.

[35] Ark. Dep't of Educ. Civics Social Studies Academic Standards, https://dese.ade.arkansas.gov/Files/AR_Civics_Standards_2022_LS.pdf.

[36] Nor does selecting, approving, and mandating the display of one particular, denominational version of the commandments serve a compelling interest. *Cf. McCreary Cnty.*, 545 U.S. at 894 n.4 (Scalia, J., dissenting) (government's adoption of "a particular version of the Decalogue as authoritative" is not permissible).

addresses the founding of the United States, including the founding fathers and their religious and moral beliefs and how their religious and moral beliefs influenced the founding documents of the United States." Act 478 § (a). Among the topics to be addressed in the standards are "[t]o what extent the founding fathers recognized historical events and texts, such as the Ten Commandments, the Mosaic Law, the New Testament, and the experiences of the ancient Hebrews, Greeks, and Romans, and these teachings as a basis for American law and public policy"; and "[t]o what extent the founding fathers recognized the English Common Law, the Magna Carta, and the English Bill of Rights as a basis for American law and public policy." *Id.* §§ b(3)(G), (H).

Given the state's effort to religiously indoctrinate students through Act 573, it remains to be seen whether the standards developed under Act 478 will accurately reflect history or will be unconstitutional either on their face or as applied. But the statute itself is an implicit acknowledgement by Arkansas lawmakers that permanently posting the Ten Commandments in every public-school classroom and library, in accordance with the minimum requirements of Act 573, is not narrowly tailored to any proper governmental interest.[37]

II. THE REMAINING PRELIMINARY-INJUNCTION FACTORS WEIGH HEAVILY IN PLAINTIFFS' FAVOR.

Plaintiffs are highly likely to succeed on the merits of their First Amendment claims for the reasons discussed above. As a general matter, where First Amendment plaintiffs have demonstrated that they are likely to succeed on the merits of their claim, the remaining preliminary-injunction factors are typically presumed to weigh in their favor as well. *See, e.g.*, *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1004 (8th

[37] Act 573 is also not narrowly tailored to any state-asserted interest in instilling ethical or moral values in students. The government "cannot employ a religious means to serve otherwise legitimate secular interests." *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982); *see also Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1283 (11th Cir. 2004) (rejecting teacher's claim that in-class prayer was a permissible way to teach compassion in connection with character-education instruction because religious exercise "is not within the range of tools among which teachers are empowered to select in furtherance of their pedagogical duties").

Cir. 2012) (holding that the district court abused its discretion in denying preliminary injunction because "[t]he likely First Amendment violation further means that the public interest and the balance of harms (including irreparable harm to [Plaintiff]) favor granting the injunction"). This proves true here.

Plaintiffs are likely to suffer irreparable harm because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 1000 (citation omitted) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). And Plaintiffs can demonstrate that they have a high likelihood of success on the merits of their First Amendment claims, which is enough, standing alone, to establish irreparable harm. The harm here is especially egregious because it will involve the unrelenting imposition of state-approved scripture on children for hours each day.

Moreover, the public interest and balance of potential harms to the parties also weigh in Plaintiffs' favor. There will no harm to the public interest, or to Defendants specifically, because a preliminary injunction will merely maintain the status quo pending this litigation's outcome. On the contrary, the public interest would be well served by an injunction because "it is always in the public interest to prevent the violation of a party's constitutional rights." *Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022) (citations omitted).

CONCLUSION

For the reasons set forth above, this Court should issue the requested preliminary injunction, as outlined in Plaintiffs' Motion for Preliminary Injunction.

Date: June 12, 2025

Respectfully submitted,

By: /s/ John C. Williams
ARKANSAS CIVIL LIBERTIES UNION FOUNDATION, INC.
John C. Williams (ABN 2013233)
Shelby H. Shroff (ABN 2019234)
904 W. 2nd St.
Little Rock, AR 72201
(501) 374-2842
john@acluarkansas.org
shelby@acluarkansas.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Daniel Mach*
Heather L. Weaver*
915 15th Street, NW, Suite 600
Washington, DC 20005
(202) 675-2330
dmach@aclu.org
hweaver@aclu.org

AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE
Alex J. Luchenitser*
Amy Tai*
Jess Zalph*
1310 L Street NW, Suite 200
Washington, DC 20005
(202) 466-7306
luchenitser@au.org
tai@au.org
zalph@au.org

FREEDOM FROM RELIGION FOUNDATION
Patrick C. Elliott*
Samuel T. Grover*
Nancy A. Noet*
PO Box 750
Madison, WI 53701
(608) 256-8900
patrick@ffrf.org
sgrover@ffrf.org
noetn@ffrf.org

SIMPSON THACHER & BARTLETT LLP
Jonathan K. Youngwood*
Janet A. Gochman*
Noah Gimbel*
Jordan T. Krieger*
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
jyoungwood@stblaw.com
jgochman@stblaw.com
noah.gimbel@stblaw.com
jordan.krieger@stblaw.com

Counsel for Plaintiffs

* Motion for *Pro Hac Vice* Admission Forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2025, I served the foregoing upon Defendants Fayetteville School District No. 1, Springdale School District No. 50, Bentonville School District No. 6, and Siloam Springs School District No. 21 by serving a copy with the Complaint and Summons.

Dated: June 12, 2025

By: */s/* John C. Williams

John C. Williams (ABN 2013233)
ARKANSAS CIVIL LIBERTIES UNION FOUNDATION, INC.
904 W. 2nd St.
Little Rock, AR 72201
(501) 374-2842
john@acluarkansas.org

Counsel for Plaintiffs