UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RABBI MARA NATHAN, on behalf of herself and on behalf of her minor child, M.N., et al., Plaintiffs, v. ALAMO HEIGHTS INDEPENDENT SCHOOL DISTRICT, et al., Defendants.	CIVIL ACTION NO. 5:25-cv-00756

PLAINTIFFS' COMBINED MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Under S.B. 10's expansive statutory scheme, Texas public schools will impose on students a state-adopted, Protestant version of the Ten Commandments for nearly every hour students are in school, day in and day out, for the duration of their elementary and secondary education. The displays will be unavoidable, not only because they will be pervasive and omnipresent but also because they will be hung in a "conspicuous place," be at least sixteen by twenty inches in dimension, and feature the Commandments printed in a size and typeface that is legible from anywhere in the room. As if that were not enough to demand students' attention, to avoid any distraction from the main point of the displays—scriptural instruction—S.B. 10 also forbids extraneous content. In other words, the text of the Ten Commandments, *and only the text of the Ten Commandments*, will appear on the posters or framed copies that adorn classroom walls. None of this is constitutional.

Students may switch classrooms, progress from elementary to middle to high school, and even transfer schools or school districts—but, due to S.B. 10, so long as they attend a Texas public school, they will not be able to escape the specific biblical scripture adopted and prescribed by the State, or the pressure to conform to the State's preferred religious doctrine. And parents who object to these displays' interference with the religious education of their children will have no recourse other than to withdraw their children from public school altogether. That harm is more than sufficient to support Article III standing, and it is imminent. S.B. 10 takes effect on September 1, 2025, shortly after the school year begins, and extensive, high-profile fundraising campaigns are underway to ensure that every school district receives donated posters. As the Supreme Court reaffirmed in June, "when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2358 (2025) (cleaned up).

The issue before this Court is whether the state may constitutionally mandate that the Ten Commandments be permanently displayed, consistent with the requirements of the Act, in every elementary and secondary public-school classroom. *Stone v. Graham*, 449 U.S. 39 (1980), which struck down a similar Kentucky statute under the Establishment Clause, precludes it. As the U.S. Court of Appeals for the Fifth Circuit held in June (and a district court in Arkansas held just this week), *Stone* remains good law, binding on lower courts. And even if *Stone* were no longer binding, the displays violate original First Amendment principles and conflict with longstanding precedents because the Act's mandatory scriptural displays will be religiously coercive and will give preference to particular denominations. Finally, by imposing scripture on children for nearly every hour of their public education, in direct conflict with the religious beliefs and practices of Plaintiffs, the displays will "strip away the critical right of parents to guide the religious development of their children." *See Mahmoud*, 145 S. Ct. at 2358. Accordingly, Plaintiffs respectfully request that this Court deny Defendants' motion to dismiss and grant Plaintiffs' preliminary-injunction motion.[1]

ARGUMENT

I. THIS COURT HAS SUBJECT-MATTER JURISDICTION.

"[A] motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).[2] Plaintiffs

[1] *See* Plfs. Mot. for Preliminary Injunction ("Plfs. Mot."), ECF No. 3; Defs. Mot. to Dismiss & Response in Opp. to Plfs. Mot. for Preliminary Injunction ("Defs. Br."), ECF No. 46. Defendants Houston Independent School District and Austin Independent School District did not file a motion to dismiss or an opposition to Plaintiffs' preliminary-injunction motion. They have thus waived all arguments in opposition to this Court's entry of a preliminary injunction.

[2] In ruling on a motion to dismiss under Rule 12(b)(1), the Court may consider evidence outside of the Complaint. *See, e.g., Umphress v. Hall*, 133 F.4th 455, 462 (5th Cir. 2025) ("In

easily overcome this threshold.

Defendants' Rule 12(b)(1) motion argues that this Court lacks jurisdiction for three main reasons: (1) there is no "indication" that any Defendant School District has received any donated posters or used district funds to purchase any posters; (2) S.B. 10's displays have yet to be imposed on the minor-child Plaintiffs; and (3) Plaintiffs cannot assert harm based on any future displays because the complete content of each display is uncertain and has not been decided. Defs. Br. 1, 5–10. Each of Defendants' arguments has been properly rejected by federal courts.

A. The Ten Commandments Are Certain to Be Displayed in Defendants' Schools.

Defendants contend, as a factual matter, that "[t]here is not any indication that any school *has used* district funds to purchase any posters nor any indication that posters meeting the requirements of S.B. 10 *have been donated* to any Defendants." Defs. Br. 1 (emphasis added). But that is beside the point when it comes to the standing and ripeness analyses for pre-enforcement First Amendment challenges. Under these circumstances, a plaintiff is not required to suffer harm before filing suit if there is a "substantial risk" that the harm will occur. *Infra* pp. 10–13, 16–20. There are, it turns out, numerous "indication[s]" that the Defendant School Districts will receive donated posters of the Ten Commandments. As Sen. Phil King, S.B. 10's lead sponsor, explained in June: "[W]e're in the process of raising money through a bunch of different groups … They're raising money to get these printed up and get them put into those classrooms before school starts."[3]

Indeed, in the wake of S.B. 10's passage, a veritable cottage industry of organized

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reviewing the dismissal, we 'must accept . . . as true' the complaint's factual allegations, and we 'may consider' (1) the complaint alone, (2) the complaint supported by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" (quoting *Carroll v. Abide*, 788 F.3d 502, 504 (5th Cir. 2015)); *Ramming*, 281 F.3d at 161 ("In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact which may be in dispute.").

[3] Decl. of Jordan Krieger ("Krieger Decl.") ¶ 6, Ex. 4.

fundraising efforts has sprung up to purchase posters and deliver them to public schools. Million Voices and its partner organization, Restore American Schools, have already launched an expansive, statewide movement to ensure that posters are donated and displayed in all Texas classrooms.[4] The groups estimate that a $30 donation is sufficient to "bring the Ten Commandments to an *entire school*,"[5] at a cost of merely $1 *per classroom*.[6] Further underscoring the immediacy of S.B. 10's implementation, Restore American Schools has published a "Ten Commandments Rollout" tracker on its website, providing live, real-time updates on the number of schools, classrooms, and students impacted by the donations.[7] As of the date of filing, Restore American Schools reports that 2,311 schools are ready to receive donated posters as part of the campaign's rollout, with a total of 80,885 classrooms and 1,528,727 students impacted.[8]

Other fundraising efforts are also well underway across the state and have been so successful that posters have already been donated to many schools. For example, in Montgomery County, partnering with the Liberty Library Project and a group of local churches, the Love Heals Youth organization aims to have "10,000 posters ready for delivery by September 1, 2025"; as of July 17, 2025, the groups had ordered 5,000 posters thanks to community donations—including a donation from Rep. Steve Toth—and provided 20 posters to each school district in Montgomery County.[9] In Harrison County, meanwhile, the First Responder Prayer Force has started a campaign to "[make] sure all Harrison County schools are equipped to comply with the new law"; the organization recently ordered nearly 1,100 posters to deliver to the Harleton, Waskom, Hallsville,

[4] *Id.*¶ 4, Ex. 2.
[5] *Id.* ¶ 4, Ex. 2.
[6] *Id.* ¶ 3, Ex. 1.
[7] *Id.* ¶ 4, Ex. 2.
[8] *Id.*
[9] *Id.* ¶¶ 7–8, Exs. 5–6.

Karnack, Elysian Fields, and Marshall school districts, and has even enlisted the Harrison County Sheriff's Office to help deliver them.[10] Additional donation efforts are afoot.[11]

Given the myriad fundraising efforts and the *de minimis* cost of the posters ($1 per classroom), there is a substantial likelihood and risk that Defendants will receive donated posters. *See, e.g.*, *Stinson v. Fayetteville Pub. Sch.*, No. 5:25-cv-05127-TLB, 2025 WL 2231053, at *8–9 (W.D. Ark. Aug. 4, 2025) (noting, in challenge to Arkansas statute similar to S.B. 10, that fundraising efforts were in progress, and concluding that the funds for donations were "not only likely but *extremely likely* to be raised once Act 573 goes into effect"). Defendants' vague averments that there is no "indication" that donations have been made or that district funds will be used to purchase displays are not sufficient to overcome the wealth of proof offered by Plaintiffs. Indeed, because of the extensive fundraising campaigns across the state, Defendants cannot credibly claim that there is no substantial risk of harm to Plaintiffs, as *Stinson* illustrates: There—despite the Defendants' attestations before and during the preliminary-injunction hearing that they had not received donations—days before the Act was set to take effect one of the defendant school districts received hundreds of donated posters via the Restore American Schools campaign, which is also soliciting funds for donations to Texas schools, and a local church announced a separate fundraising campaign targeting schools in other defendant districts. *Id.* at *8–9.

Moreover, as in *Stinson*, Defendants here have failed to disavow any intent to put up the posters once donations are received. *See id.* at *8 n.7. In fact, they are *required* by state law to do so immediately, which will cause Plaintiffs irreparable harm. Plfs. Mot. 2–4, 19–20; *infra* pp. 13

[10] *Id.* ¶¶ 10–12, 20, Exs. 8–10, 18.

[11] For example, organizations such as Brightcross and Principle Posters are also raising funds and distributing posters. *See id.* ¶¶ 9, 14–15, Exs. 7, 12–13; *see also id.* ¶¶ 13, 16–21, 54–55, Exs. 11, 14–19, 52–53 (demonstrating additional fundraising efforts).

–15. Allowing Defendants to delay adjudication of this case until the posters are literally in the hands of school-district officials would contradict binding precedent that permits First Amendment challenges *before* harm occurs. *See* infra pp. 10–13, 16–20.

B. Plaintiffs Satisfy All Three Requirements for Article III Standing.

"To establish Article III standing, a plaintiff must show that it has suffered an 'injury in fact' that is 'fairly traceable' to the defendant's conduct and would likely be 'redressed by a favorable decision.'" *Collins v. Yellen*, 594 U.S. 220, 242 (2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–561 (1992)). Plaintiffs meet all three requirements.

1. *Plaintiffs' asserted injuries are sufficient to confer standing.*

Under longstanding Supreme Court and Fifth Circuit law, "school children and their parents, who are directly affected by the laws and practices against which their complaints are directed" have standing to sue under the Establishment Clause. *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224 n.9 (1963); *see also Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 283 n. 7 (5th Cir. 2001) ("Students and parents may challenge unconstitutional actions in the public schools that directly affect the students."); *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 292 (5th Cir. 2001) ("The case for standing is made stronger when the plaintiffs are students and parents of students attending public schools, who enjoy a cluster of rights vis-a-vis their schools, and thus are not merely 'concerned bystanders.' . . . [T]he Supreme Court has repeatedly recognized the right of children and their parents to receive public education that is compliant with the Establishment Clause."). Here, as in *Roake v. Brumley*, 141 F.4th 614 (5th Cir. 2025), which adjudicated a Louisiana law similar to S.B. 10, Plaintiffs will be "directly affected" by S.B. 10's mandatory, ubiquitous scriptural displays due to, among other harms, (1) the coercive injuries to children that are attendant to the "government's injurious religious message" in the public-school context, and (2) interference with the parent-Plaintiffs' "right to direct the religious training of

their children." *See* 141 F.4th at 633, 635; *see also Stinson*, 2025 WL 2231053, at * 10–11 (holding that plaintiffs had standing).[12]

These injuries are also adequate to confer standing under the Free Exercise Clause. "To have Article III standing to pursue an alleged violation of the Free Exercise Clause, a plaintiff must allege that his or her own 'particular religious freedoms are infringed.'" *Littlefield*, 268 F.3d at 292 n.25 (quoting *Schempp*, 374 U.S. at 224 n.9). Plaintiffs have done just that. The Free Exercise Clause guarantees the "right of every person to freely choose his own course [in matters of faith] . . . free of any compulsion from the state." *Schempp*, 374 U.S. at 222. Plaintiffs have alleged—and demonstrated through undisputed evidence—that the minor-child Plaintiffs' religious freedom will be infringed by S.B. 10's displays because the children will not be able to make their own decisions, free from state compulsion, as to which religious doctrine (if any) they observe, meditate on, venerate, and follow. Instead, they will be pressured to engage in a religious observance orchestrated by the State through an unyielding, pervasive scheme to impose religious scripture on them, violating or contradicting their own faith beliefs and practices; and they will be discouraged from expressing their own religious (or non-religious) beliefs at school because those beliefs do not comport with the State's favored scripture.[13] These injuries speak directly to the core protections of the Free Exercise Clause.

Additionally, as *Mahmoud* affirms, the parent-Plaintiffs have a free-exercise right to direct their children's religious education and training. *See* 145 S. Ct. at 2349–53 ; *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (affirming "the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children"); *Littlefield*,

[12] *See* Compl. ¶¶ 84-226; Plfs. Mot. 3–4 nn. 2–5 (describing Plaintiffs' injuries with declaration cites).

[13] *See* Plf. Mot. 4 n.4.

268 F.3d at 292 n.25 ("[O]ne aspect of the religious freedom of parents is the right to control the religious upbringing and training of their minor children[.]" (cleaned up)). Plaintiffs have alleged that S.B. 10's displays will infringe a "particular religious freedom," *id.*, by imposing on their children biblical scripture in a manner that violates or conflicts with the families' religious beliefs and practices.[14]

a. Plaintiffs' injuries are concrete and particularized.

In asserting that Plaintiffs have not demonstrated adequate injury, Defendants incorrectly argue that, because Plaintiffs have not observed any display required by S.B. 10, they "cannot even satisfy the requirements to qualify as an 'offended observer.'" Defs. Br. 7. In the first instance, Defendants are simply wrong that the "Fifth Circuit specifically requires 'an encounter with the offending item or action to confer standing' in 'cases involving religious displays.'" *See* Defs. Br. 2 (quoting *Barber v. Bryant*, 860 F.3d 345, 353 (5th Cir. 2017)); *see also id.* at 7 ('"[T]he question' to satisfy offended observer standing is whether Plaintiffs 'were exposed to, and may thus claim to have been injured by [S.B. 10].'" (quoting *Doe v. Tangipahoa Par. Sch. Bd.*, 494 F.3d 494, 497 (5th Cir. 2007) (en banc)). The claim is based on selective quotes from *Barber* and *Doe*. Despite Defendants' mischaracterization, both cases state that allegations of harm based on future encounters *suffice* for standing purposes.[15] For that very reason, the Fifth Circuit rejected this argument in *Roake*. 141 F.4th at 633–35 ("[A]llegations of future confrontations [with displays] satisfy the injury-in-fact element of standing. This is particularly true when a plaintiff seeks prospective relief.").

[14] *See* Plfs. Mot. 3–4 nn. 2–5.

[15] *Barber* expressly noted that "[f]uture injuries can provide the basis for standing, but they must be certainly impending to constitute injury in fact." 860 F.3d at 357 (cleaned up). And *Doe* likewise recognized that "[c]onstitutional standing requires that the plaintiff personally suffered some actual *or threatened* injury that can fairly be traced to the challenged action and is redressable by the courts." 494 F.3d at 496 (emphasis added).

Defendants are also wrong that the spiritual harm resulting from the minor-child Plaintiffs' direct, unwelcome contact with S.B. 10's displays would be insufficient for standing purposes.[16] No matter—their erroneous argument is irrelevant because Plaintiffs' claims do not depend on this form of standing. Rather, Plaintiffs' demonstrated injuries go far beyond the right of "observers" to be free from "offense." *See Roake*, 141 F.4th at 637 ("Plaintiffs are more than mere 'offended observers.'"). The Complaint alleges that the minor-child Plaintiffs will be subjected to a state-mandated, religiously preferential version of the Ten Commandments in every classroom, for up to 16,380 hours across thirteen academic years. Compl. ¶¶ 70–73. Due to Texas's compulsory-education laws and the pervasive nature of S.B. 10's displays, students will be a captive audience, and there will be no way to opt out of this harm. *Infra* pp. 26–28. Thus, as discussed above, *supra* pp. 6–8. Plaintiffs seek to prevent both the coercive injury that state-sponsored religious observance in public schools inflicts on students and the harm that such coerced observance causes parents by interfering with their right to guide the religious education and upbringing of their children.

These are the very sort of injuries that courts have repeatedly recognized as sufficiently concrete to confer standing. For example, in *Roake*, the Fifth Circuit ruled that the plaintiffs had "allege[d] more than 'offense alone'" because "[s]tudents will be subjected to unwelcome displays of the Ten Commandments for the entirety of their public school education" and "will be pressured to observe, meditate on, venerate, and follow this scripture and to suppress expression of their own religious beliefs and backgrounds at school." 141 F.4th at 636–37 (cleaned up); *accord Stinson*,

[16] *See, e.g.*, *Roake*, 141 F.4th at 635 (noting that an Establishment Clause "plaintiff can generally satisfy the injury-in-fact element of standing when he experiences—or certainly will experience—unwanted exposure to government-sponsored religious displays or exercises in the course of his regular activities"). *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), did not affect what Defendants refer to, by misnomer, as "offended observer" standing. *Compare* Defs. Br. 7 n.6 *with Roake*, 141 F.4th at 637. *Kennedy* did not address Establishment Clause standing at all because the petitioner there did not bring an Establishment Clause claim. *See id.*

2025 WL 2231053, at *10 ("Plaintiffs are not just bystanders to religious practice who fail to allege personal injury; their grievances are not of the 'generalized offense' variety.").[17] The Supreme Court has also held that students who are or will be subjected to allegedly coercive school-sponsored religious observance have standing to challenge it. *See Lee v. Weisman*, 505 U.S. 577, 584 (1992) (affirming standing to challenge future graduation invocations based on student's enrollment in high school and likelihood that her graduation would include a prayer); *cf. Stone*, 449 U.S. at 39 (adjudicating claims of parents who stood in the same position as Plaintiffs here vis-à-vis their facial challenge to a similar Kentucky statute). And, under the Court's recent ruling in *Mahmoud*, a cognizable injury to the "critical right of parents to guide the religious development of their children" occurs whenever a public school "requires them to submit their children to instruction that poses a very real threat of undermining the religious beliefs and practices that the parents wish to instill." 145 S. Ct. at 2342, 2358 (cleaned up).

b. Plaintiffs' future injuries are "certainly impending," or there is a "substantial risk" that the threatened harm will occur.

Defendants' insistence that Plaintiffs have no cognizable injury because the minor-child Plaintiffs have yet to encounter a Ten Commandments display under S.B. 10, and because there's no "indication" that the displays have been donated or that Defendants will use district funds to purchase them, Defs. Br. 1, 8, misconstrues basic standing principles. Standing doctrine *does not* require Plaintiffs to suffer the very harms they seek to prevent before they may sue. *See Roake*, 141 F.4th at 635–36 ("[A] plaintiff need not wait for actual implementation of a statute or an actual

[17] As Defendants acknowledge, Defs. Br. 6, Plaintiffs' claims here are nothing like those in *Barber*, 860 F.3d at 353, where the plaintiffs asserted a "stigmatic injury" based on a statute's endorsement of (what the plaintiffs contended) were religious beliefs about gender and marriage. The *Barber* statute had no effect on the plaintiffs beyond the fact that they knew about the alleged endorsement. *See id.* at 354–55. It did not require them to be personally confronted by religious displays or religious exercise, and it did not injure them through its "legal effect." *Id.* at 354–55.

violation of his rights to seek relief." (cleaned up)); *see also Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 277–78 (5th Cir. 1996) (rejecting state's argument that plaintiffs had no standing to mount pre-implementation challenge to school-prayer law and finding that plaintiffs had "alleged real and substantial injury which would result from the implementation"). Nor does standing doctrine require Plaintiffs to "demonstrate that it is literally certain that the harms they identify will come about." *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412–14 n.5 (2013).

The Supreme Court's recent ruling in *Mahmoud* could not be clearer on both points: '"[W]hen a deprivation of First Amendment rights is at stake, a plaintiff *need not wait* for the damage to occur before filing suit. . . . Instead, to pursue a pre-enforcement challenge, a plaintiff must show that 'the threatened injury is certainly impending, or there is a *substantial risk* that the harm will occur.'" 145 S. Ct. at 2358 (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (emphasis added)). *Mahmoud* reflects a long line of caselaw recognizing that standing may be based on an allegation of future, threatened injury.[18] As demonstrated above, *supra* pp. 3–6, there is a substantial risk, if not a virtual certainty, that Defendants will receive donated posters, which will implicate their legal obligations under S.B. 10 and cause Plaintiffs irreparable harm. The trivial financial burden associated with complying with the Act, combined with the evidence showing extensive, concerted efforts to ensure compliance, *see supra* pp. 3–6 , demonstrate that a violation of Plaintiffs' First Amendment rights is not only impending, but inevitable. This is more than enough to confer standing. *See Lee*, 505 U.S. at 584 (holding that "a live and justiciable

[18] *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 435, (2021) ("[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial."); *Dep't of Com. v. New York*, 588 U.S. 752, 766–67 (2019) (holding that states had standing to challenge the inclusion of a citizenship question in the decennial census in light of alleged "future injuries"); *Citizens for Clean Air v. U.S. Dep't of Transp.*, 98 F.4th 178, 187 (5th Cir. 2024) ("[A] threatened injury will satisfy the 'injury in fact' requirement for standing." (cleaned up)).

controversy is before us" as to prayers at "future graduations" because the plaintiff was "enrolled as a student at [the high school] and from the record it appear[ed] likely, if not certain, that an invocation and benediction will be conducted at her high school graduation"); *see also infra* pp. 16–20 (discussing ripeness).

As in *Roake*, Plaintiffs do not need to see the displays to demonstrate an Article III injury. See 141 F.4th at 635. Plaintiffs know and allege the following indisputable facts: (1) the Act requires that the Ten Commandments be placed in every public-school classroom as soon as posters are donated, and a school lacking compliant displays may use district funds to purchase the displays; (2) the Act does not limit the duration of the displays; they will be permanent and year-round; (3) the Act requires that a state-approved, denominational version of the Ten Commandments be used as the text of each display and forbids the poster from including *any other content*;[19] (4) the Act requires that this version of the Ten Commandments be displayed in a "conspicuous place" in each classroom; (5) the Act requires that the posters be at least sixteen by twenty inches with the text of the Commandments printed in a "size and typeface that is legible to a person with average vision from anywhere in the classroom"; and (6) because the Act has no exceptions, the displays will be placed in every public-school classroom, regardless of the instructional topics at hand or the age of students. Compl. ¶¶ 37–44; *see generally* Plfs. Mot., Ex. 1, Tex. S.B. 10 §§ (a)-(e).[20]

These statutory requirements, operating together, will injure the minor-child Plaintiffs and

[19] "[O]nly the text of the Ten Commandments," and nothing else, "may be on a display." Defs. Br. 11.

[20] *See Stinson*, 2025 WL 223105329, at *2 ("Students receiving instruction in algebra, physics, engineering, accounting, computer science, woodworking, fashion design, and German will do so in classrooms that prominently display (the King James version of) the Ten Commandments. Every day from kindergarten to twelfth grade, children will be confronted with these Commandments—or face civil penalties for missing school.").

their parents in the myriad ways set forth in the Complaint and Plaintiffs' declarations. Plfs. Mot. 3–4, nn. 2–5; *see Roake v. Brumley*, 756 F. Supp. 3d 93 (M.D. La. 2024) (finding that parents and children had standing to sue to prevent implementation of Louisiana law because the Plaintiffs "face an *imminent* infringement of their First Amendment rights . . . [which] will occur based on the minimum requirements" of the law alone); *see also Stinson*, 2025 WL 2231053, at *9 (holding that "possible added content and surrounding context of the displays is immaterial to the standing inquiry . . . because Plaintiffs' claimed injuries . . . depend only on the [Act's] *minimum* display requirements").[21] Neither Supreme Court nor Fifth Circuit precedents require Plaintiffs to sit on their hands until the posters are actually on display in their classrooms and their rights have already been violated.

2. *Plaintiffs' injuries are fairly traceable to Defendants.*

Plaintiffs' demonstrated injuries are directly traceable to Defendants through S.B. 10's statutory obligations, which require all "public elementary or secondary school[s]" to display the Ten Commandments in every classroom as soon as displays are available. Plfs. Mot., Ex. 1, S.B. 10 § 1(a). Under Texas law, public-school districts' "trustees as a body corporate have the *exclusive* power and duty to govern and oversee the management of the public schools of the district." Tex. Educ. Code Ann. § 11.151(b) (emphasis added). This body corporate may "sue and be sued," among other legal rights, "in the name of the district." *Id.* § 11.151(a). The Defendant

[21] Defendants argue that Plaintiffs' free-exercise injuries are also insufficiently concrete and imminent because "Plaintiffs do not know what, when, or even if there will actually be any displays or whether the Defendants may grant any requests for an opt-out." Defs. Br. 7. But S.B. 10 does not authorize opt-outs. It requires displays of the Ten Commandments in *every* classroom in *every* school, without exception. Lawmakers even went out of their way to spell out that "[n]otwithstanding any other law, a public elementary or secondary school is not exempt from this section." Plfs. Mot., Ex. 1, Tex. S.B. 10 § 1(f). Moreover, because of the ubiquitous nature of the displays, any opt-out option would be impracticable and only compound the religious-freedom harms suffered by Plaintiffs. *See infra* pp. 38–40.

School Districts will thus be the primary enforcers of S.B. 10 as to the Plaintiffs' schools,[22] and the "line of causation between the illegal conduct and injury," Defs. Br. 8 (cleaned up), is obvious.[23] This connection is established in the Complaint, which shows that Plaintiffs' threatened injuries will result from each Defendant's actions to "administer, implement, and enforce the Act." *See* Compl. ¶ 9 (Defendants' enforcement actions "*will necessarily occur* in large part within this district" (emphasis added)); *id.* ¶ 234 ("By implementing S.B. 10, Defendants . . . will unavoidably violate Plaintiffs' rights under the Establishment Clause[.]"); *id.* ¶ 243 ("By administering and implementing S.B. 10, Defendants . . . will unavoidably violate Plaintiffs' rights under the Free Exercise Clause[.]"). Notably, Defendants do not deny that they will carry out these duties.

Recycling their injury arguments, Defendants object that Plaintiffs have not alleged that "Defendants *have taken* any steps to implement S.B. 10" or that "any displays meeting the requirements of S.B. 10 *have been* privately donated or that any schools have decided to use district funds to purchase any displays." Defs. Br. 8 (emphases added). But this case is a pre-enforcement challenge, and Plaintiffs have adequately alleged and demonstrated a substantial threat that posters will be donated, and that Plaintiffs will suffer concrete and particularized injuries as a result of

[22] Even if Defendants were not the primary enforcers of S.B. 10, traceability merely requires some "causal connection between the plaintiff's injury and the defendant's challenged conduct." *Inclusive Cmtys. Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) (cleaned up). "It doesn't require a showing of proximate cause or that the defendant's actions are the very last step in the chain of causation." *Id.* (cleaned up).

[23] *See, e.g., Meese v. Keene*, 481 U.S. 465, 476 (1987) ("Because the alleged injury stems from the Department of Justice's enforcement of statute . . . we conclude that the risk of injury to appellee's reputation 'fairly can be traced' to the defendant [U.S. Attorney General's] conduct."); *Texas v. Yellen*, 105 F.4th 755, 763 (5th Cir. 2024) ("The States' alleged injuries . . . are directly traceable to the federal defendants who are responsible for enforcing [the challenged law]."); *Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304, 310 (5th Cir. 2023) (university officials' enforcement of out-of-state tuition law "cause[d] the students' harm and [would] continue to do so as more payments are collected," and was "enough to establish traceability").

Defendants' statutorily required enforcement of S.B. 10.[24] Nothing more is required under standing doctrine.[25]

3. *Plaintiffs' injuries will be redressed by injunctive and declaratory relief.*

Defendants do not offer any redressability argument beyond reiterating their injury-in-fact and traceability claims. Defs. Br. 9. The redressability prong for Article III standing is satisfied if it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Bennett v. Spear*, 520 U.S. 154, 167 (1997). "When establishing redressability, a plaintiff need only show that a favorable ruling could potentially lessen its injury; it need not definitively demonstrate that a victory would completely remedy the harm." *Sanchez v. R.G.L.*, 761 F.3d 495, 506 (5th Cir. 2014) (cleaned up).

Plaintiffs' asserted harms are redressable by the requested injunction. *See infra* pp. 38–40. "If the [School District Defendants] may no longer enforce [S.B. 10] . . . [t]hat erases the students' [and parents'] future harm." *See Young Conservatives*, 73 F.4th at 310. Specifically, an injunction blocking implementation of the law by Defendants will ensure that the minor-child Plaintiffs are not subjected to the unavoidable displays of the Ten Commandments mandated by the Act, preventing the religious coercion they would otherwise experience and shielding them from an officially sponsored religious message that they are less worthy in the eyes of the State because of

[24] *See Compl.* ¶ 41 ("Under the Act, the required displays will be donated to schools. A school lacking compliant displays in each classroom also 'may, but is not required to, purchase posters or copies . . . using district funds.'"); *id.* ¶¶ 10–25 (establishing traceability of each of the Plaintiffs' asserted injuries to one Defendant by identifying which school district each of the minor-child Plaintiffs attend); *supra* pp. 3–6.

[25] *See, e.g.*, *Am. Humanist Ass'n, Inc. v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1254 (10th Cir. 2017) (ruling that plaintiff's "unwelcome contact" with school officials' religious fundraising solicitations was "fairly traceable to the challenged action" of defendant school district and district employee); *Adland v. Russ*, 307 F.3d 471, 478 (6th Cir. 2002) (holding that plaintiffs' Establishment Clause "injury [was] plainly caused by the defendant's statutory directive to erect the Ten Commandments").

their own religious or non-religious beliefs. *See, e.g.*, *Adland*, 307 F.3d at 478 (injunction preventing the defendant from complying with a "statutory directive to erect the Ten Commandments" would redress the Plaintiffs' injuries"). It will also preserve the ability of the parent-Plaintiffs to direct their children's religious education and upbringing. *See, e.g.*, *Mahmoud*, 145 S. Ct. at 2350 (holding that issuance of preliminary injunction was warranted). An order declaring that the Act violates the Establishment Clause and Free Exercise Clause of the First Amendment will further alleviate Plaintiffs' injuries. *See Steffel v. Thompson*, 415 U.S. 452, 466–71 (1974) (noting that declaratory relief is "valuable to the plaintiff" as it has "the force and effect of a final judgment" (cleaned up)).

C. Plaintiffs' Claims Are Ripe.

"The standard for constitutional ripeness mirrors the injury-in-fact requirement for standing," and "[a]n allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Lowery v. Mills*, 690 F. Supp. 3d 692, 702 (W.D. Tex. 2023) (cleaned up). The two-prong analysis examines and balances "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Texas v. United States*, 497 F.3d 491, 498 (5th Cir. 2007). Both ripeness factors weigh in Plaintiffs' favor here.

1. *This case is fit for judicial decision.*

This case is fit for judicial decision for several reasons. First, Plaintiffs will suffer serious, irreparable injuries once S.B. 10 is implemented. *See* Plfs. Mot. 19–20, *infra* pp. 20–21. Second, as discussed above, that harm is not speculative or hypothetical: Plaintiffs' injuries will commence as soon as Defendants comply with the Act, which they are required to do on September 1, 2025, and as soon as donated posters are received (high-profile efforts are being made across the state now, and the threat is substantial). *See supra* pp. 3–6.

Again, *Mahmoud* makes clear that, in the context of a "pre-enforcement challenge" in which "a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit" if "the threatened injury is certainly impending, or there is a *substantial risk* that the harm will occur." 145 S. Ct. at 2358 (emphasis added) (cleaned up). Thus, in *Mahmoud*, teachers had a wide array of options for using the challenged storybooks: They could "incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud." *Id.* at 2344. "[T]he decision about which books to use and how they'd be used in an individual classroom [was] left to each teacher's discretion." *Mahmoud v. McKnight*, 102 F.4th 191, 198 (4th Cir. 2024). Even though the threatened harm alleged by the plaintiffs was contingent on how a teacher might, in the future, decide to use a "particular book . . . in a particular classroom on a particular day," and the plaintiffs could not "make specific allegations" as to those potential uses, the Court rejected the argument that the record was too "threadbare" to proceed. *Mahmoud*, 145 S. Ct. at 2358.

Mahmoud is consistent with other caselaw holding that, in some circumstances, the fact "[t]hat a contingency is involved is not fatal to ripeness." *See Sandell v. FAA*, 923 F.2d 661, 664 (9th Cir. 1990). For example, in declaratory-judgment actions, the threat of future litigation between the parties, even if contingent, may weigh in favor of finding ripeness: "[T]he fact that [such] future litigation may be contingent upon certain factors occurring does not necessarily defeat jurisdiction over a declaratory judgment action, but a district court must take into account the likelihood that these contingencies will occur. . . . [W]e have described the ripeness inquiry as focusing on whether an injury that has not yet occurred *is sufficiently likely* to happen to justify

judicial intervention." *Lower Colo. River Auth. v. Papalote Creek II, L.L.C.*, 858 F.3d 916, 924 (5th Cir. 2017) (emphasis added). In particular, "courts should focus on the practical likelihood that the contingencies will occur." *E.R. Squibb & Sons, Inc. v. Lloyd's & Cos.*, 241 F.3d 154, 177 (2d Cir. 2001) (cleaned up).[26] Courts should also consider whether "common sense indicates that review should be afforded even though the ultimate injury to the [plaintiffs] depends on the occurrence of further events." *Sandell*, 923 F.2d at 664 (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Devel. Comm'n*, 461 U.S. 190, 200–03 (1983)). For example, a utility company was not required to spend millions of dollars to formally apply for a license *before* challenging a moratorium on nuclear plants. *Pacific Gas*, 461 U.S. at 200–03. And a waste disposal business did not need to wait to sue over a state law mandating legislative approval of new hazardous waste-treatment facilities, even though it would have been at least five years before the statute could have been enforced against the business, and construction of the site at issue was contingent on legislative and regulatory approval. *Browning-Ferris Indus. v. Ala. Dep't of Env't Mgmt.*, 799 F.2d 1473, 1475, 1477, 1480 (11th Cir. 1986).

Here, Plaintiffs have shown that there is a substantial risk that the threatened injury will occur. *See supra* pp. 3–6, 10–13; *Stinson*, 2025 WL 2231053, at *9 ("The Court is satisfied that the private-donation requirement of Act 573 does not render this dispute unripe for judicial review."). Because there is a "realistic danger" that Plaintiffs will be harmed, they should not be forced to suffer those harms before this Court may exercise jurisdiction over their claims. *See Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979); *Mahmoud*, 145 S. Ct. at

[26] *Cf., e.g., 520 S. Mich. Ave. Assocs., Ltd. v. Devine*, 433 F.3d 961, 962 (7th Cir. 2006) ("Standing depends on the *probability* of harm, not its temporal proximity." (emphasis added)); *Mainstreet Org. of Realtors v. Calumet City*, 505 F.3d 742, 744 (7th Cir. 2007) (standing exists if "there is some nonnegligible, nontheoretical, probability of harm that the plaintiff's suit if successful would redress").

2358. Indeed, federal courts have adjudicated cases that involve *far greater* contingencies than any uncertainty that may arguably exist here.[27]

Finally, notwithstanding Defendants' mistaken view that Plaintiffs' injuries and claims are dependent on whatever else schools may put around the Ten Commandments posters, and that *Staley v. Harris County*, 485 F.3d 305 (5th Cir. 2007) (en banc), precludes a finding of ripeness, no further factual development is necessary here to determine whether the government's imposition of the Ten Commandments on the minor-child Plaintiffs, in accordance with S.B. 10's rigid requirements, violates the First Amendment. This case is a far cry from *Staley*. There, the challenged monument featuring a Bible was placed on the grounds of the Harris County courthouse in the 1950s and challenged in 2003. *Id.* at 307–08. Between the panel's initial decision and the en banc ruling, the courthouse was closed for "a few years" for renovations and the monument placed in storage. *Id.* at 307. Although the County said that it would display the monument after completing renovations, it stressed that "no decision ha[d] been made regarding when, where, or under what circumstances the monument will be displayed again in the future." *Id.* at 307–08. Based on that information, the Fifth Circuit ruled that any dispute "over a probable redisplay . . . is not ripe because . . . no decision has been made regarding *any aspect* of the future display of the monument." *Id.* at 309 (emphasis added).

Here by contrast, the Texas legislature has already made a number of decisions regarding

[27] *See, e.g.*, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19 (2007) (parents had standing to challenge school district's use of racial criteria to maintain diversity in certain high schools, even though their children might not have applied for admission to the affected high schools, or their chances of admission might have been *increased* by the challenged criteria); *Riva v. Massachusetts*, 61 F.3d 1003, 1006, 1010–11 (1st Cir. 1995) (retiree's challenge to law that would have reduced his disability-related benefits was ripe, although statute would not have affected him for at least seven more years, and potentially would not have affected him at all because he might have recovered from his disability or died, or the statute might have been repealed).

S.B. 10's mandatory, permanent displays, including *where* they will be posted (in every classroom of every public elementary and secondary school, without exception); *what* the content of the text will be (the State's preferred, denominational version of the Ten Commandments *and nothing else*); *how* they will be displayed in each classroom (in a "conspicuous place"); *their size* (no smaller than sixteen by twenty inches); and *even how legible the Commandments must be* (printed in a "size and typeface that is legible to a person with average vision from anywhere in the classroom"). *See generally* Plfs. Mot., Ex. 1, Tex. S.B. 10. As in *Roake*, S.B. 10 provides "sufficient information for a fact-intensive and context-specific analysis." *See Roake*, 141 F.4th at 630 ("Plaintiffs' claims are fit for judicial decision[.]"); *see also Karen B. v. Treen*, 653 F.2d 897, 902 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (holding Louisiana school-prayer statute unconstitutional, although the "the nature and extent of state involvement in religious activity is in some measure speculative at this time"), *aff'd*, 455 U.S. 913 (1982).

2. *The hardship to Plaintiffs in withholding a decision would be significant.*

The analysis of hardship under ripeness doctrine "principally tracks the Article III injury analysis." *Braidwood Mgmt. v. EEOC*, 70 F.4th 914, 931 (5th Cir. 2023) Absent judicial intervention, Defendants will implement S.B. 10 and "[s]tudents will be subjected to displays that accord with the statute's minimum display requirements, in every classroom during every school day." *See Roake*, 141 F.4th at 631. The Act "therefore inflicts significant practical harm on [the minor-child] Plaintiffs' First Amendment rights." *See id.* Moreover, the Act will inflict significant harm on the parent-Plaintiffs' rights to direct their children's religious upbringing. *See id; see also Mahmoud*, 145 S. Ct. at 2358. Because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," the hardship suffered by Plaintiffs will be significant. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *see also Roake*, 141 F.4th at 631 ("Plaintiffs have demonstrated that there is hardship in withholding

consideration sufficient to justify judicial intervention." (cleaned up)). In fact, as the displays will be permanent and present in every classroom, the injuries incurred by Plaintiffs will last far longer than a "minimal" period of time, casting a shadow over every hour and every day the children are in school. For these reasons, this Court should not delay reviewing Plaintiffs' claims.

II. PLAINTIFFS MEET ALL REQUIREMENTS FOR PRELIMINARY RELIEF.

Defendants' merits arguments fare no better than their jurisdictional objections. All four preliminary-injunction factors weigh decisively in Plaintiffs' favor. *See Allied Mktg. Grp., Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989) (reciting factors).[28]

Stone v. Graham is dispositive here: The Establishment Clause forbids states from mandating the indiscriminate display of the Ten Commandments in every elementary and secondary public-school classroom. *See Roake*, 141 F.4th at 645 ("*Stone v. Graham* is controlling. Under *Stone*, H.B. 71 is plainly unconstitutional."); *Stinson*, 2025 WL 2231053, at *1 (*Stone* "remains binding on this Court and renders Arkansas Act 573 plainly unconstitutional"). And for good reason—permanent displays of religious scripture in public-school classrooms would directly contravene the fundamental principles animating the First Amendment and would have been anathema to the Founders, who understood the perils of religious coercion and denominational preference. *See, e.g.*, Plfs. Mot. 12–13; Decl. of Steven K. Green, Ex. 1, Expert Rep. of Steven K. Green, J.D., Ph.D. ("Green Rep."), ECF No. 4-24, ¶¶ 18–26. In light of *Stone*, as well as other Establishment Clause precedent barring religious coercion of public-school students and denominationally preferential state action, Plaintiffs are likely to succeed on the

[28] Defendants also move to dismiss under Rule 12(b)(6). "To survive a 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." *Roake*, 141 F.4th at 639–40 (cleaned up). Because Plaintiffs have satisfied the higher bar of likelihood of success to obtain a preliminary injunction, Defendants' Rule 12(b)(6) motion should be denied.

merits of their Establishment Clause claim.

For the reasons detailed in their preliminary-injunction motion, Plfs. Mot. 15–19, Plaintiffs are also likely to succeed on the merits of their Free Exercise Clause claim. S.B. 10's blanket posting of religious scripture in every public-school classroom will, on a continuous basis, "impose upon children a set of values and beliefs that are hostile to their parents' religious [or non-religious] beliefs," and "exert upon children a psychological pressure to conform to [the government's] specific [religious] viewpoints." *See Mahmoud*, 145 S. Ct. at 2355 (cleaned up). The displays thus "present the same kind of objective danger to the free exercise of religion that [the Court] identified in [*Yoder*, 406 U.S at 218]." *See id.* (cleaned up).

A. Plaintiffs Are Likely to Succeed Under the Establishment Clause.

Defendants are wrong that *Stone* "cannot be considered good law." Defs. Br. 21. *Stone* remains binding Supreme Court precedent, and it controls this case. "If a precedent of the Supreme Court has direct application in a case . . . the [lower courts] should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decision." *Cardenas v. Dretke*, 405 F.3d 244, 253 (5th Cir. 2025) (quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989) (cleaned up)). Defendants offer no persuasive reason for this Court to depart from this ironclad rule. Since *Stone*, three federal courts, including the Fifth Circuit, have *specifically ruled* that statutes mandating displays of the Ten Commandments in every public-school classroom are unconstitutional under *Stone*. *See Roake*, 756 F. Supp. 3d at 116–17; *Roake*, 141 F.4th at 645; *Stinson*, 2025 WL 2231053, at *1, 7, 11.[29] And, more generally, *no federal court*

[29] *See also Ring v. Grand Forks Pub. Sch. Dist. No. 1*, 483 F. Supp. 272, 273 (D.N.D. 1980) (striking down, prior to *Stone* ruling, North Dakota law requiring "the ten commandments of the Christian religion to be displayed in a conspicuous place in every schoolroom, classroom, or other place where classes convene for instruction").

has upheld any public school's permanent display of the Ten Commandments.[30] Defendants' demand that this Court disregard *Stone*'s binding ruling, as well as the Fifth Circuit's holding that *Stone* remains good law, finds no support in precedent.

Stone should end the Court's inquiry. *See, e.g.*, *id.* at *11 ("This case begins and ends with *Stone*[.]"). But even if Defendants' assessment of *Stone* were correct, S.B. 10 does not pass constitutional muster under any Establishment Clause standard.

1. Stone *remains binding law.*

The Supreme Court has repeatedly held that it is the "Court's prerogative alone to overrule one of its precedents." *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (internal quotation marks omitted); *see also Rodriguez*, 490 U.S. at 484. This is true even where a party believes that subsequent Supreme Court jurisprudence has called into question the continuing validity of a prior ruling. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent."); *see also Nat'l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 550 (5th Cir. 2020) (affirming that lower courts do not have "license to disregard or overrule" Supreme Court precedent "even where subsequent decisions or factual developments may appear to have significantly undermined the rationale for the earlier holding" (cleaned up)).[31]

According to Defendants, "[b]y overruling *Lemon*, the Court has effectively overruled its

[30] *See, e.g.*, *Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 86 F. App'x 104 (6th Cir. 2004); *ACLU of Ky. v. McCreary Cnty.*, 354 F.3d 438 (6th Cir. 2003); *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 127 F. Supp. 3d 283, 318 (W.D. Pa. 2015); *Doe v. Harlan Cnty. Sch. Dist.*, 96 F. Supp. 2d 667, 675, 679 (E.D. Ky. 2000); *cf. Freedom from Religion Found., Inc. v. New Kensington-Arnold Sch. Dist.*, 919 F. Supp. 2d 648, 661 (W.D. Pa. 2013).

[31] *Accord Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (precedent remains binding even if "the lower court thinks the precedent is in tension with some other line of decisions" (cleaned up)); *State Oil Co. v. Khan*, 522 U.S. 3, 20–22 (1997) (holding that appellate court properly applied binding precedent even though subsequent Supreme Court rulings had "gravely weakened" the precedent's "conceptual foundations," leaving little "to salvage").

cases that relied on the *Lemon* test." Defs. Br. 21. Not so. *See Stinson*, 2025 WL 2231053, at *7 ("[T]here is no cause to believe that all Supreme Court precedent that relied on the *Lemon* test has been—or will be—overruled."). *Kennedy* "did not overrule any public-school Establishment Clause cases involving a state's or school district's imposition of religious doctrine or practices on public-school children." *Id.* at *11. On the contrary, *Kennedy* treated *Lee* and *Santa Fe* "as still-binding precedent," and therefore "it follows that . . . so are the other public-school Establishment Clause cases that struck down 'problematically' coercive" state laws—like *Stone*." *Id.* at *7.

Moreover, although *Stone* cites *Lemon*, it also relies on *Schempp* and *Engel v. Vitale*, 370 U.S. 421 (1962). The Supreme Court has explained that "*Stone's* almost exclusive reliance upon two of our school prayer cases . . . 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) (cleaned up). Thus, even as the *Van Orden* plurality rejected application of the *Lemon* test to Texas's Capitol grounds monument, upholding the display, it nevertheless explained: "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." *Id.* at 690-91 (cleaned up);[32] *cf. Roake*, 141 F.4th at 641–42 (discussing *Van Orden*'s rejection of the *Lemon* test and affirmance of *Stone*). And "*Kennedy* does not mention *Stone* or purport to overrule the decisions (other than *Lemon*) on which *Stone* relies, *i.e.*, *Schempp* or *Engel*." *Roake*, 141 F.4th at

[32] *See also Van Orden*, 545 U.S. at 703 (Breyer, J., concurring) ("The 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." (citing *Stone*, 449 U.S. 39, and *Lee*, 505 U.S. at 592)).

642.[33] Like *Stone*, the school-prayer cases bind lower courts unless overturned by the Supreme Court.

2. Stone *is directly applicable here.*

Defendants assert that, "even if *Stone* remains controlling law, *Van Orden* demonstrates that the validity of a Ten Commandments display depends on fact specific circumstances that cannot be assessed" here. Defs. Br. 22. But again, even as the Court undertook its analysis of the *Van Orden* monument, it expressly affirmed *Stone*'s holding. In any event, the direct parallels between the "specific circumstances" surrounding S.B. 10 and those surrounding the Kentucky law overturned in *Stone* show that *Stone* is applicable here and dispositive. *See Roake*, 756 F. Supp. 3d at 165 (holding that "*Stone* [] directly control[s] this case, as its facts and reasoning are on all fours" and enjoining statute similar to S.B. 10). As in *Stone*, 449 U.S. at 39, Plaintiffs assert a facial Establishment Clause challenge to a state law mandating permanent displays of the Ten Commandments in every elementary and secondary public-school classroom. Additionally, as in *Stone*, 449 U.S. at 41 & n.1, S.B. 10 mandates that the displays must be at least sixteen by twenty inches in size. Further still, neither the statute in *Stone* nor S.B. 10 requires that the Ten Commandments displays be integrated into a secular school curriculum. *Id.* at 42. And both statutes single out the Ten Commandments for display while declining to give equal treatment to core Founding documents like the Declaration of Independence, U.S. Constitution, and Bill of Rights. *Cf.* Green Rep. 6, ¶ 17 (discussing the "three primary founding documents establishing the

[33] *See also Jusino v. Fed'n of Catholic Teachers, Inc.*, 54 F.4th 95, 102 (2d Cir. 2022) (holding that the Supreme Court's ruling in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), "remains good law notwithstanding its reliance . . . on *Lemon*" because *Kennedy* "indisputably did not . . . overrule—or even mention—*Catholic Bishop*"); *Hilsenrath v. Sch. Dist. of the Chathams*, 136 F.4th 484, 492–93 (3d Cir. 2025) (citing *Stone* favorably in distinguishing between *Stone*'s classroom Ten Commandments displays and two lessons regarding Islam, included as part of a year-long World Cultures and Geography class).

American government and legal system").[34]

Given the direct parallels between the Kentucky and Texas statutes, *Stone* is plainly apposite and determinative here. If anything, S.B. 10 is more constitutionally egregious than the statute struck down in *Stone*. S.B. 10 expressly *forbids* posters from including anything other than the Ten Commandments. *Compare Stone*, 449 U.S. at 39 n.1, *with* S.B. 10 § (b)(1). Kentucky lawmakers, by contrast, required that the displays include a (pretextual) statement to discuss the Ten Commandments' purported relevance to U.S. law. *See Stone*, 449 U.S. at 39 n.1. Further, unlike S.B. 10, the Kentucky law did not mandate that the Ten Commandments be displayed in a "conspicuous place" in classrooms or require the use of a denominationally preferential, state-approved version of the Ten Commandments.

3. *The school displays mandated by S.B. 10 are unconstitutionally coercive.*

Even if *Stone* were not dispositive, S.B. 10's elementary and secondary public-school classroom displays are impermissibly coercive under the Supreme Court's school-coercion jurisprudence. Defendants all but eschew this longstanding caselaw in favor of the six "hallmarks of religious establishment" they claim now govern the Establishment Clause analysis under *Kennedy*. Defs. Br. 13–14. According to Defendants, the "hallmarks of religious establishments" enumerated in Justice Gorsuch's *concurring* opinion in *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022), somehow trump his *later majority opinion* in *Kennedy*, which expressly affirmed that it remains "problematically coercive" under the Establishment Clause for public schools to impose religious messages on a "captive audience" of students. 597 U.S. at 541–42 (citing *Lee*, 505 U.S.

[34] Any claim that the displays are necessary to teach students about the foundations of the U.S. legal system and history of the nation is belied by the fact that the "State has never mandated the display of *any* foundational secular documents of unquestionable importance to our Nation's heritage—such as the Declaration of Independence or the Constitution." *See Stinson*, 2025 WL 223105329, at *9 n.9.

at 580, 598, and *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 294, 311 (2000)). Defendants' understanding of *Kennedy* and *Shurtleff* is incorrect. *See infra* pp. 31–35.

Further, Defendants assert that "the passive display of the Ten Commandments in public spaces lacks any element of coercion" and that students will not be "forced to participate in a religious activity." Defs. Br. 19–20. But the Supreme Court has rejected that claim: In *Schempp*, the Court recognized that daily scriptural readings constituted "religious exercise," 374 U.S. at 224–25; 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. "After all, the State surely expects that the Commandments will actually be read by students." *Stinson*, 2025 WL 2231053, at *10. And school-promoted religious activity is no less unconstitutional merely because it is silent. *See Wallace v. Jaffree*, 472 U.S. 38, 60–61 (1985) (holding that state law improperly encouraged 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.").

That the Supreme Court's frieze includes allusions to the Ten Commandments,[35] and that "advocates are required to attend the court to present their case and answer question from the Justices at oral argument" is of no moment here. *Cf.* Defs. Br. 20–21. The Supreme Court is not a public school, and adult advocates are not children. *See infra* p. 36 (discussing the Court's

[35] *See ACLU of Ohio Found., Inc. v. Ashbrook*, 211 F. Supp. 2d 873, 884 n.9 (N.D. Ohio 2002) ("[A]llusions to the Ten Commandments . . . on the Supreme Court building are different in kind from, and appear in a different context than, the complete text of the Ten Commandments that appears in Courtroom Number One. . . . To the extent the text of the Ten Commandments appears at all in these representations, it appears in only one, is written in Hebrew, and is only partial[.]"), *aff'd*, 375 F.3d 484 (6th Cir. 2004).

distinction between adults and children in the coercion analysis in *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014)). The Court has repeatedly recognized that, because public-school students "are impressionable and their attendance is involuntary," *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987), "[t]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Lee*, 505 U.S. at 592. Indeed, in holding that "[t]he 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[,]" *Van Orden* expressly acknowledged the special context of public schools. *Van Orden*, 545 U.S. at 691 (plurality opinion); *cf. Stinson*, 2025 WL 2231053, at *6 ("The *Van Orden* Court took pains to distinguish the monument display at the Texas Capitol from the school poster display in *Stone*, which was decidedly not passive[.]"). And *Mahmoud* recently affirmed that possible coercion of public-school children remains of great concern. *See* 145 S. Ct. at 2355. As the U.S. Court of Appeals for 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." *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012) (en banc).

The Supreme Court's school-coercion jurisprudence leaves no doubt that imposing permanent, unavoidable scriptural displays on public-school students, as required under S.B. 10, is "problematically coercive." *See Kennedy*, 597 U.S. at 541–42. It is inevitable that the minor-child Plaintiffs, who will be acutely aware of the lengths to which the State has gone in ensuring that they encounter these displays in every classroom for nearly every minute of their school day, "will be forced 'in every practical sense,' through [Texas's] required 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." *See Roake*, 756 F. Supp. at 193 (emphasis added); *accord Stinson*, 2025 WL 2231053, at *14.

4. *S.B. 10 impermissibly takes sides on theological questions and is denominationally preferential.*

Defendants' assertion that "S.B. 10 actually adopts a non-sectarian version" of the Ten Commandments, Defs. Br. 2, is directly contradicted by the report of Dr. Steven K. Green,[36] Plaintiffs' expert in the case, whose conclusions were affirmed by the *Roake* district court. *See* Green Rep. ¶¶ 53–58; *see also Roake*, 756 F. Supp. 3d at 200 ("The Act requires the display of a specific Protestant version of the Decalogue."); *Cf. Stinson*, 2025 WL 2231053 at *13 & n.14 (crediting Dr. Green's conclusion that "[t]he King James version of the Ten Commandments in Act 573 differs from other Protestant, Catholic, and Jewish versions, and those differences have substantial theological implications"; and rejecting Defendants' argument that Act 573's version is "non-sectarian").[37] Defendants' expert report does not credibly counter Dr. Green's conclusions, for the reasons set forth in Dr. Green's rebuttal report. Supp. Decl. of Steven K. Green, J.D., Ph.D., Ex. 1 ("Green Reb. Rep."), ¶¶ 20–21, 27–30.

In addition, Plaintiffs have identified various ways in which the text mandated by S.B. 10 is distinctly Christian and in conflict with their beliefs. *Cf. Roake*, 756 F. Supp. 3d at 200 ("[T]his

[36] As in *Roake*, Plfs. Mot., 14–15, the *Stinson* court denied the State's motion to exclude Dr. Green's report and testimony and found his testimony to be "thorough" and "compelling." 2025 WL 2231053, at *12.

[37] Even assuming that those who originally crafted the text of the *Van Orden* and similar monuments sought, in good faith, to produce a "compromise" version of the Ten Commandments that would be "non-sectarian" and acceptable to adherents of different faiths, they were not successful, as Dr. Green's report and the Plaintiffs' declarations demonstrate. Green Reb. Rep. ¶¶ 20 (explaining that Jewish representative involved with the Fraternal Order of Eagles displays withdrew his support and evaluating the Protestant nature of S.B. 10's text); *id.* ¶¶ 21, 27–30.

required display conflicts with the religious views of Unitarian Universalists, agnostics, atheists, Presbyterians, and Reform Jewish parents[.]"); *Stinson*, 2025 WL 2231053, at *1 ("Plaintiffs who believe in the Ten Commandments have identified in their declarations various ways in which the text mandated by Act 573 is distinctly Christian and in conflict with their beliefs.").[38] Defendants have offered no evidence to rebut Plaintiffs' declarations. Nor could they. Doing so would only further evince the constitutional infirmity of Defendants' position, as it would unconstitutionally arrogate to the government the authority to wade into deeply private theological questions and declare that one version of scripture is authoritative, representative of (and unobjectionable to) all believers, and preferred over other versions. *See* Plfs. Mot. 10–12. The potential for this type of intrusion into religion is precisely why the Founders vehemently opposed official denominational preferences or the government declaring which religious doctrine is correct, Green Reb. Rep. ¶ 11; Green Rep. ¶¶ 21–26, and why even Justice Scalia recognized that "[t]he Establishment Clause would prohibit . . . governmental endorsement of a particular version of the Decalogue as authoritative." *McCreary Cnty v. ACLU of Ky.*, 545 U.S. 844, 894 n.4 (2005) (Scalia, J., dissenting).

Because the Act's facial adoption of a Protestant version of the Ten Commandments, and its mandate that this version—and only this version—be posted in thousands of classrooms across the state, violates "[t]he clearest command of the Establishment Clause,"[39] it is subject to strict

[38] *See, e.g.*, Decl. of Rabbi Mara Nathan, ECF No. 4-2, ¶¶ 5–10; Decl. of Virginia Eisenberg, ECF No. 4-3, ¶¶ 5–9; Decl. of Cantor Seth Ettinger, ECF No. 4-5, ¶¶ 5–12; Decl. of Lauren Erwin, ECF No. 4-11, ¶¶ 5–7; Decl. of Marissa Norden, ECF No. 4-16, ¶¶ 5–6; Decl. of Rabbi Joshua Fixler, ECF No. 4-18, ¶¶ 5–10.; Decl. of Arvind Chandrakantan, ECF No. 4-21, ¶¶ 6–12.

[39] Even if Defendants were correct that S.B. 10's version of the Ten Commandments is nonsectarian, 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

scrutiny. *See Catholic Charities Bureau, Inc. v. Wisc. Lab. & Indus. Rev. Comm'n*, 145 S. Ct. 1583, 1591 (2025) (cleaned up). Having made no argument to rebut Plaintiffs' claim that S.B. 10 fails both prongs of this demanding standard, Plfs. Mot. 16–19, Defendants have waived the point.

5. *Permanently displaying the Ten Commandments in every public-school classroom is not permissible under* Kennedy*'s "original meaning and history" test.*

Defendants' effort to reduce *Kennedy*'s "original meaning and history" test to the six hallmarks of establishment discussed by Justice Gorsuch's concurring opinion in *Shurtleff*, Defs. Br. 13, is not supported by *Kennedy* or the *Shurtleff* concurrence itself. While Justice Gorsuch's *Shurtleff* opinion may be useful with respect to assessing the validity of certain challenged practices under the Establishment Clause, it does not purport to set forth the entire universe of permitted or prohibited practices. Rather, the opinion identifies "*some* helpful hallmarks [of establishment] that localities and lower courts can rely on." 596 U.S at 285 (Gorsuch, J., concurring) (emphasis added). As Justice Gorsuch notes, "[b]eyond a formal declaration that a religious denomination was in fact the established church, . . . founding-era religious establishments *often* bore certain other telling traits" that "explain *many* of th[e] Court's Establishment Clause cases[.]" *Id.* at 285–86 (emphases added). He does not contend, however, that the six "hallmarks" discussed in his opinion are an exhaustive or definitive list.

Nor does *Kennedy*'s majority opinion, which was also penned by Justice Gorsuch, mandate Defendants' reductive reading of the "original meaning and history" inquiry. *See Roake*, 141 F. 4th at 645–46 ("*Kennedy* did not adopt these 'hallmarks' as the exclusive Establishment Clause test and the *Shurtleff* concurrence is nonbinding." (internal citation omitted)). Rather, *Kennedy*

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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."); *see also Engel*, 370 U.S. at 430 (holding that purportedly nondenominational nature of school-sponsored prayer did not render it permissible under the Establishment Clause).

instructs that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Id.* (quoting *Kennedy*, 597 U.S. at 535). "The line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers." *Id.* (cleaned up).

Kennedy and *Mahmoud*, as well as *Catholic Charities*,[40] make clear that 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. The Court's longstanding jurisprudence protecting both remains robust and binding. Because S.B. 10's scriptural displays will be religiously coercive and will give preference to particular denominations—violating original First Amendment principles—the law cannot pass constitutional muster under *Kennedy*'s historical test.

What is more, even if the historical record theoretically could redeem a statute that violates these fundamental prohibitions on religious coercion and denominational preference, Dr. Green's initial and rebuttal reports demonstrate that there is no longstanding, historical acceptance and practice of widespread, permanent displays of the Ten Commandments in public schools. Plfs. Mot. 14–15. In *Roake*, the district court agreed, crediting Dr. Green's testimony and 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; *see also Stinson*, 2025 WL 223105329, at *13 ("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

[40] Notwithstanding *Kennedy*, the Court did not mention *Kennedy* or conduct a historical analysis under the Establishment Clause in its recent *Catholic Charities* decision, where the challenged statute featured a denominational preference on its face. *See* 145 S. Ct. at 1591–94.

Commandments in public-school classrooms.").

To counter Dr. Green's conclusions, Defendants proffered the expert report of Professor Mark David Hall. *See* Defs. Br., Ex. A, ECF No. 46-1 ("Hall Rep."). As an initial matter, Hall's report does little more than advance legal conclusions cloaked in historical commentary. It is riddled with improper (and inaccurate) legal "analysis" and opinions on a variety of topics and, though Hall confesses that he is not an attorney, his report reads more like a legal advocacy brief than an independent expert report.

In any event, to the extent that Professor Hall's report includes opinions that do *not* constitute impermissible legal analysis, they are largely irrelevant or do not actually contradict Dr. Green's conclusions. For example, he asserts that "there is a long history and tradition of including religious images and language in public spaces." Hall Rep. 36; *see also id.* at 16 ("The historical understanding of the Establishment Clause does not require the sort of separation between church and state that requires religion to be scrubbed from the public square."). But even assuming he is correct, this case is not about "public spaces" or the "public square," or even government property and buildings generally.[41] It is about the very particular, unique context of public schools. *See, e.g.*, *Roake*, 141 F.4th at 648 n.27 ("[W]e have made clear . . . [that] the display of religious symbols in public classrooms is patently distinguishable from the display of religious imagery in government buildings."). Tellingly, Hall fails to mention that, of "the literally hundreds of examples of crosses, biblical language, Stars of David, and Ten Commandment monuments/displays on public property" he purportedly details in his expert report (for an entirely different case having nothing to do with schools), Hall Rep. 16, only one involves a public school,

[41] *See* Hall Rep. 16 ("[T]here is a long history and tradition of governments permitting religious images and language on public property.").

and his account for that school cannot even be verified. Green Reb. Rep. ¶ 22.

The question here is not whether there is a history of religious displays in public parks, in courthouses, or in other government buildings, but "whether the permanent posting of the Ten Commandments in public-school classrooms fits within, or is consistent with, a broader tradition of using the Ten Commandments in *public* education." *Roake*, 141 F.4th at 646 (emphasis added). Based on Dr. Green's testimony, both the *Roake* district court (with the Fifth Circuit affirming) and the *Stinson* district court found that it does not.[42] And Hall's report concedes as much:

> According to the complaint in this case, there "is no longstanding historical practice or tradition of prominently and permanently displaying any version of the Ten Commandments in public-school classrooms. Similarly Professor Green claims that "there is no longstanding, widespread history of permanently displaying the Ten Commandments in public school classrooms." These assertions may be correct; I write "may be" because I am unaware of any source that documents displays (religious or otherwise) in the Nation's public school classrooms over the last two hundred years.[43]

With respect to public schools, any actual evidence discussed in Hall's report is largely consistent with Dr. Green's conclusions. For example, he agrees with Dr. Green that public schools "did not really exist" at the Founding. Hall Rep. 22.[44] He references some early texts used in public schools that discuss the Ten Commandments, *id.* at 27, but does not dispute Dr. Green's conclusions—

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[42] *See Roake*, 756 F. Supp. 3d at 118 (finding that historical evidence showed only "scattered" uses of Ten Commandments in public education) (quoting *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 951, 957 (5th Cir. 2022)); *Stinson*, 2025 WL 223105329, at * 13.

[43] Hall Rep. 29. After effectively conceding Dr. Green's point, Hall goes on to offer yet another legal opinion as to the governing legal standard and to discuss irrelevant historical practices relating to governmental observance of Christmas. *Id.* at 29–30; *cf. Roake*, 141 F.4th at 648 n.27 (rejecting comparison of school Ten Commandments displays to "a proposed national seal featuring Moses" (*see* Hall Rep. 13) and other non-school practices, and explaining that "under *Mack*, a court should not construe the relevant tradition too broadly").

[44] Thus, Hall's discussion of religious instruction and textbooks used in *private* education *before* the formation of public schools, Hall Rep. 22–26, is inapposite here. *See Green Reb. Rep.* ¶ 24.

which are based on a comprehensive analysis of those texts—that the references were limited and decreased over time. *See* Green Rep. ¶¶ 43–47; Green Reb. Rep. ¶ 25.[45] Hall also concedes that the use of the Bible generally in public schools was highly contentious, even leading to violence, Hall Rep. 27–28, demonstrating that such practices have not "withstood the critical scrutiny of time and political change.'" *See* Defs. Br. 13 (quoting *Town of Greece* 572 U.S. at 577).[46] In sum, Professor Hall's report does not shield S.B. 10 from the same fate as the Kentucky statute struck down in *Stone*, Louisiana's H.B. 71, or Arkansas Act 573: They are all patently unconstitutional.[47]

B. Plaintiffs Are Likely to Succeed Under the Free Exercise Clause.

Like their other arguments, Defendants' objections to Plaintiffs' free-exercise claims fail to grapple with the problematic nature of the Act's statutory regime. The pervasive and

[45] Although Professor Hall states that "[t]he New England Primer included 40 questions about [the Ten Commandments] as late as its 1845 edition," Hall Rep. 27, he does not offer any evidence to counter Dr. Green's assessment that the New England Primer was not routinely used in public schools. *See* Green Rep. ¶ 44; *Roake*, 141 F.4th at 647 ("Dr. Green also testified . . . [that] [t]he New England Primer, whose initial publication predates the existence of the public school system . . . was primarily used in religious schools and private academies.").

[46] As to the purposes animating the Religion Clauses of the First Amendment, *see* Green Rep. ¶¶ 18–26, while Hall claims that "America's founders understood the Establishment Clause to prohibit the creation of a national church," he also concedes that the Founders understood it to prohibit "more generally, coercion in matters of faith." Hall Rep. 11. *Cf. Stinson*, 2025 WL 2231053, at *13 (crediting Dr. Green's conclusion that "[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").

[47] Defendants' suggestion that a decision by this Court vindicating Plaintiffs' Establishment Clause rights would "evince a hostility towards religion" and somehow *violate the Free Exercise Clause*, Defs. Br. 18, turns the First Amendment on its head. Preventing the religious coercion of students *advances* one of the core purposes animating both of the Religion Clauses. *See* Green Rep. ¶¶ 18–26; Plfs. Mot. 12–15. And the government's attempt to impose *new* religiously coercive and denominationally preferential scriptural displays on public-school students is poles apart from '"roam[ing] the land, tearing down monuments with religious symbolism and scrubbing away reference to the divine.'" *See* Defs. Br. 18–19 (quoting *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 56 (2019)). As the Supreme Court held in *American Legion*, "retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones." 588 U.S. at 57.

unavoidable displays will directly conflict with the Plaintiffs' religious and non-religious beliefs and practice, religiously coerce the children, and undermine the parents' right to direct their children's religious education—all in violation of the Free Exercise Clause. *See* Plfs. Mot. 3–4 nn. 2–5; *see also Stinson*, 2025 WL 223105329, at *14 ("Act 573 is likely to burden Plaintiffs' exercise of their sincere religious or nonreligious beliefs in substantial ways.").

Downplaying the Act's unremitting assault on students' conscience, Defendants turn to the Supreme Court's ruling in *Town of Greece*, 572 U.S. at 590. Def. Br. 23. However, the Court's assessment of coercion there was premised on the fact that the objectors were "mature adults" who voluntarily attended government meetings and were "free to enter and leave with little comment and for any number of reasons." *Town of Greece*, 572 U.S. at 590 (quoting *Lee*, 505 U.S. at 597). The minor-child Plaintiffs, by contrast, are students who are compelled by law to attend school and are under the thumb of State control while there—a distinction recognized by the Court itself in *Town of Greece*. *Id.* at 590–91 (citing *Lee*, 505 U.S. at 597). According to the Court, "[s]hould 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." *Id.* at 590. It is an entirely different story for children, who are "readily susceptible to religious indoctrination or peer pressure." *See id*. (internal quotation marks omitted).

Defendants' reliance on *Doe v. Beaumont Independent School District*, 240 F.3d 462, 470 (5th Cir. 2001) (en banc), in both their free-exercise and Establishment Clause arguments, Defs. Br. 20, 23, is also misplaced. *Beaumont*'s volunteer counselors, though clergy, provided "group counseling on *secular* issues including race, divorce, peer pressure, discipline, and drugs" and were required to refrain from promoting religious doctrine to students. *Id.* at 465 (emphasis added).

As a result, the counseling did "not constitute a religious exercise." *Id.* at 469–470 ("The volunteers are working in a secular setting with other volunteers who subscribe to different faiths. Thus, we presume that the volunteers will comply with the program's secular guidelines."). Here, by contrast the challenged conduct is the imposition of *scripture*, which is inherently and expressly religious, and will, due to S.B. 10's intractable, minimum requirements, coerce the minor-child Plaintiffs to "participate in a religious exercise: reading and considering a specific version of the Ten Commandments." *See Roake*, 756 F. Supp. at 193; *Stinson*, 2025 WL 223105329, at *10-11 (holding that "Ten Commandments Displays [Are] Not Merely 'Passive'").

Defendants are mistaken in asserting that "rational basis rather than strict scrutiny applies" to S.B. 10 under the Free Exercise Clause. Defs. Br. 24. First, they incorrectly argue that *Mahmoud* does not apply here because "S.B. 10 requires no instruction [and does not] otherwise require teachers to discuss or even acknowledge the displays." Defs. Br. 23. The arbitrary line drawn by Defendants is a distinction without difference for purposes of the constitutional analysis. *See supra* pp. 26–28. S.B. 10's posters are "instruction" in the most fundamental sense: They command, *i.e.*, instruct, students to follow numerous religious dictates. Indeed, S.B. 10's imposition of religiously objectionable content is *far more* egregious than in *Mahmoud* because the materials objected to here are *patently religious*, rather than secular, and are in use for nearly every hour of the school day, from kindergarten through senior year, rather than occasionally. Plfs. Mot. 17.

Thus, per *Mahmoud*, Defendants must demonstrate that S.B. 10 "advances interests of the highest order and is narrowly tailored to achieve those interests." 145 S. Ct. at 2361.[48] As with

[48] As set forth in Plaintiffs' motion, 16–17 n. 20, because S.B. 10 is not neutral with respect to religion, Plaintiffs also meet *Kennedy*'s threshold for applying strict scrutiny. *See Roake*, 756 F. Supp. at 199 ("The Court also easily rejects AG Defendants' argument that the Act is neutral."); *see also Stinson*, 2025 WL 2231053, at *14 ("Act 573 is not neutral with respect to religion. By

their response to Plaintiffs' Establishment Clause argument, Defendants do not rebut Plaintiffs' arguments, Plfs. Mot. 16–19, that S.B. 10 fails strict scrutiny and, therefore, have waived the point. *See Roake*, 756 F. Supp. 3d at 201 ("Even assuming that H.B. 71 advanced a compelling interest (*e.g.*, for educational or historical value), the Act is unquestionably not narrowly tailored in pursuit of those interests. There are any number of ways that the State could advance an alleged interest in educating students about the Ten Commandments that would be less burdensome on the First Amendment than the one required by the Act." (cleaned up)); *see also Stinson*, 2025 WL 2231053293, at *15 (holding that Act 573 fails strict scrutiny).

C. Plaintiffs Are Entitled to the Requested Preliminary Injunction.

For the reasons discussed in Plaintiffs' motion, each of the four preliminary-injunction factors weighs in their favor. *See* Plfs. Mot. 19–20. Defendants argue that denial of an injunction is necessary because an injunction will cause "the irreparable harm of denying the [State's] public interest in the enforcement of its laws." Defs. Br. 26. However, Defendants do not have "a genuine interest in enforcing a regulation that violates federal law," especially in the public-school context where students will be harmed. *See Roak*e, 141 F.4th at 649 (cleaned up).

Defendants also argue that, even if Plaintiffs are entitled to preliminary relief, any preliminary injunction should be limited. First, they appear to suggest that, across the board, "Plaintiffs should only be entitled to be notified in advance in the event an S.B. 10 compliant display is to be used in the classroom and allowed to have their children excused from that instruction." Defs. Br. 26–27 (cleaned up). A paragraph later, they argue that "[a]ny preliminary injunction regarding the Establishment Clause should not extend beyond the specific schools that

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design, and on its face, the statute mandates the display of expressly religious scripture in every public-school classroom and library. The Act also requires that a specific version of that scripture be used[.]").

Plaintiffs' children attend, and any injunction concerning the free exercise clause should not extend beyond allowing Plaintiffs' children to opt-out of viewing the displays." *Id.* at 27.

Defendants' demands ignore the realities of students' day-to-day life at school and the expansive nature of S.B. 10. Defendants do not explain how an opt-out could possibly work with respect to ubiquitous, unavoidable displays of scripture. The displays will be in every classroom. Thus, notifying students of the displays and excusing them "from that instruction" would necessarily mean that the minor-child Plaintiffs could not be present in *any* classroom for instruction throughout the day, for the entire school year, over the course of their public education.

Moreover, an order limited to the classrooms or schools in which the minor-child Plaintiffs are present would be impossible to administer and inadequate to protect Plaintiffs' rights. *See Stinson*, 2025 WL 223105329, at *15 (denying state's demand that "the Court . . . limit the injunction to Plaintiffs' specific classrooms and libraries"). Children regularly move between classrooms within schools, attend programs and activities in other schools within their district, and progress from elementary to middle to high school.[49] Every time an affected child changes classrooms or schools, including to visit other schools for District events and activities, they would have to make a new request for relief that the state-mandated displays be removed. This would put the minor-child Plaintiffs at risk of repeated, "accidental" impositions of the Act's scriptural displays due to the impracticalities of implementing such an injunction, and compound the

[49] Students attending the Defendant School Districts frequently attend events and activities that are held at other District schools. *See, e.g.*, Kreiger Decl., Ex. 29 (noting that "more than 1,900 third, fourth and fifth grade students from across the district" visited a District high school to participate in "Robotic Pet Vet project"); *id.* Ex. 30 (noting that fourth- and fifth- grade robotics teams "recently participated in an inter-school competition"); *id.* Ex. 37 (noting that high school volleyball team "took a special trip" to District elementary school for "reading and connecting with the next generation of students"); *id.*, Ex. 40 (noting that "[e]lementary students from across the district" gathered to spend the day meeting authors and illustrators). *See also id.* Exs. 20–51 (demonstrating additional inter-school events).

violation of their religious freedom by sending—day after day, year after year—an unlawful, exclusionary, and spiritually burdensome message to the children that they do not belong and are "outsiders, not full members of the [school] community," because they do not subscribe to the state-approved version of the Ten Commandments. *See Catholic Charities*, 145 S. Ct. at 1591 (quoting *Santa Fe*, 530 U.S. at 309); *see also Stinson*, 2025 WL 223105329, at *15.

"Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017). As in *Stinson*, "students who attend schools in the [Defendant] Districts must occasionally travel from school to school to participate in both mandatory and voluntary school-related activities." 2025 WL 223105329, at *15 n.16. Thus, "restricting the scope of a preliminary injunction to just the individual child-Plaintiffs' classrooms or schools is unlikely to avoid constitutional injury," and [t]he least restrictive remedy that protects Plaintiffs from unexpected constitutional injury is to grant relief District-wide." *Id.* Accordingly, the district-wide relief requested by Plaintiffs falls squarely within the Supreme Court's conception of "complete relief." *See Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2556-57 (2025).[50]

CONCLUSION

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

Date: August 8, 2025 Respectfully submitted,

[50] In *CASA*, the Court held that a *universal* injunction against an executive order, freezing enforcement across the country, exceeded the equitable authority that Congress granted to federal courts. 145 S. Ct. at 2548. Here, Plaintiffs' proposed relief is much more modest and would extend only within the district in which each minor-child Plaintiff attends school. That is appropriate because there is "no way 'to peel off just the portion of the [constitutional violation]'" that will harm each Plaintiff. *See id.* at 2557 (cleaned up).

By: /s/ *Jonathan K. Youngwood*

SIMPSON THACHER & BARTLETT LLP
Jonathan K. Youngwood
Janet A. Gochman (appearing *pro hac vice*)
Noah Gimbel (appearing *pro hac vice*)
Jordan T. Krieger (appearing *pro hac vice*)
Avia Gridi (appearing *pro hac vice*)
Kristen Crow (appearing *pro hac vice*)
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
jyoungwood@stblaw.com
jgochman@stblaw.com
noah.gimbel@stblaw.com
jordan.krieger@stblaw.com
avia.gridi@stblaw.com
kristen.crow@stblaw.com

AMERICAN CIVIL LIBERTIES UNION OF TEXAS FOUNDATION, INC.
Adriana Piñon
Chloe Kempf
Sarah Corning
Thomas Buser-Clancy
P.O. Box 8306
Houston, TX 77288
(713) 942-8146
apinon@aclutx.org
ckempf@aclutx.org
scorning@aclutx.org
tbuser-clancy@aclutx.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
Daniel Mach (appearing *pro hac vice*)
Heather L. Weaver (appearing *pro hac vice*)
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 (appearing *pro hac vice*)

Amy Tai (appearing *pro hac vice*)**
Jess Zalph (appearing *pro hac vice*)
Alexandra Zaretsky (appearing *pro hac vice*)**
1310 L Street NW, Suite 200
Washington, DC 20005
(202) 466-7306
luchenitser@au.org
tai@au.org
zalph@au.org
zaretsky@au.org

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

Counsel for Plaintiffs

** Admitted to practice in New York; not a member of the D.C. Bar.