
United States Court of Appeals

for the

Eighth Circuit

Case No. 26-1722

SAMANTHA STINSON, *et al.*,

Plaintiffs-Appellees,

– v. –

FAYETTEVILLE SCHOOL DISTRICT NO. 1, *et al.*,

Defendants,

– and –

STATE OF ARKANSAS *ex rel.* TIM GRIFFIN, ATTORNEY GENERAL,

Intervenor-Appellant.

STATE OF KENTUCKY, *et al.*,

Amici on Behalf of Intervenor-Appellant.

On Appeal from the United States District Court for the Western District of
Arkansas, No. 5:25-cv-05127 (Hon. Timothy L. Brooks)

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellees agree that oral argument is warranted and respectfully request 30 minutes.

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INTRODUCTION

“Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). Arkansas Act 573, which mandates the prominent and conspicuous display of a state-selected version of the Ten Commandments in every elementary and secondary public-school classroom and library in Arkansas, betrays that trust.

Absent an injunction, pursuant to Act 573, scripture would adorn the walls of Plaintiffs’ schools, pressuring the child-Plaintiffs to observe, read, meditate on, and even obey the Commandments’ religious directives and usurping the parent-Plaintiffs’ right to guide their children’s upbringing on matters of faith. The Act is unconstitutional under binding Supreme Court precedent, flouts the Establishment Clause’s prohibitions on state-mandated religious instruction, coercion, and denominational preference, and infringes Plaintiffs’ rights under the Free Exercise Clause.

Accordingly, the district court properly granted summary judgment in Plaintiffs' favor and issued a permanent injunction to protect Plaintiffs' religious-freedom rights. This Court should affirm.

STATEMENT OF THE ISSUES

1. Whether the district court correctly concluded that Plaintiffs' claims are justiciable.

Apposite Authority: *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Dep't of Com. v. New York*, 588 U.S. 752 (2019).

2. Whether Act 573 violates the Establishment Clause of the First Amendment.

Apposite Authority: *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Lee v. Weisman*, 505 U.S. 577 (1992); *Cath. Charities Bur., Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238 (2025).

3. Whether Act 573 violates the Free Exercise Clause of the First Amendment.

Apposite Authority: *Mahmoud*, 606 U.S. 522; *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

4. Whether the district court abused its discretion in issuing a district-wide permanent injunction.

Apposite Authority: *Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

The statutory requirements of Act 573, Ark. Code Ann. § 1-4-133 (2025) (the “Act”), which took effect on August 5, 2025, are undisputed. It requires all public-school districts in Arkansas to “prominently display” a poster or framed copy of the Ten Commandments in a “conspicuous place” in every classroom and library of every school. Ark. Code Ann. § 1-4-133. The posters must be at least sixteen by twenty inches, with their text printed in a “size and typeface that is legible to a person with average vision from anywhere in the room[.]” *Id.* § 1-4-133(a)(1)(B)(ii)(a). The “copies or posters authorized under [Act 573] shall either be donated or purchased solely with funds made available through voluntary contributions to the local school board[.]” *Id.* § 1-4-133(b). Absent an injunction, the child-Plaintiffs would be unable to avoid the Act’s scriptural displays because Arkansas law requires parents to send their children to school and to “ensure the attendance of the child,” Ark.

Code Ann. § 6-18-201(a) (2024), under the threat of various penalties intended “to impress upon the parents . . . the importance of . . . attendance[.]” *Id.* § 6-18-222(a)(7)(A) (2024).

The Act dictates the version of the Ten Commandments that must be displayed:

The Ten Commandments

I am the Lord thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven images.

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

Remember the Sabbath day, to keep it holy.

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

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against thy neighbor.

Thou shalt not covet thy neighbor’s house.

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

Ark. Code Ann. § 1-4-133(a)(1)(B)(iii). This version of the Ten Commandments is not denominationally neutral and is derived from the King James Bible. It is not observed by most adherents of Catholicism or Judaism, and the theological aspects of the Ten Commandments generally do not reflect the beliefs of agnostics, atheists, Hindus, Buddhists, and adherents of many other religions. App. 118-121; R. Doc. 8-12, at 28-31. Many faith traditions do not teach, recognize, or reference the Bible at all, and by declaring, “I am the Lord thy God,” and directing, “Thou shalt have no other gods before me,” the Ten Commandments conflict with the beliefs of anyone who does not subscribe to biblical monotheism.

The Act’s sponsors and advocates have made clear that the State’s aim in implementing Act 573 is to impose religious beliefs on public-school children. Act 573 co-sponsor Rep. Stephen Meeks lamented in a hearing that “there are a large number of students who don’t go to church,” and pointed to the Act as a solution: “[R]ather [than] them have zero exposure to this[,] . . . [they should] have it in their classroom so they can at least have some exposure[.]” App. 2172; R. Doc. 176-1, at 3. Criticizing a pastor who opposed Act 573, Rep. Jeremy Wooldridge later

added: “I think that anything we can do to try to increase access to or spread that gospel . . . would be something that I would want us to do as a person of faith.” App. 2174; R. Doc. 176-1, at 5.

II. PROCEDURAL BACKGROUND

Plaintiffs, who are Jewish, Christian, Unitarian Universalist, and nonreligious (hereinafter, “original-Plaintiffs”), filed suit on June 11, 2025, seeking to enjoin their school districts from displaying scripture as mandated by Act 573. R. Doc. 2, at 15-31; R. Doc. 8. They asserted that the Act’s requirements violate both the Establishment and Free Exercise Clauses of the First Amendment. R. Doc. 2, at 31-34.

The State of Arkansas (“Intervenor” or the “State”) intervened. R. Doc. 39, at 1; R. Docs. 39, 42. Defendants and Intervenor opposed Plaintiffs’ motion for preliminary injunction and moved to dismiss Plaintiffs’ Complaint for lack of jurisdiction. R. Docs. 51-53. Following an evidentiary hearing, which included live testimony of Plaintiffs’ expert, Dr. Steven K. Green, Plaintiffs’ testimony by declaration, and the submission of other evidence, the district court granted Plaintiffs’ motion and denied the motions to dismiss on August 4, 2025. App. 319-21; R. Doc. 68, at 4-6; P.I. Hr’g Tr. at 4-6; R. Doc. 71, at 34-35.

Plaintiffs supplemented their Complaint twice, adding three new Plaintiff families (hereinafter, “supplemental-Plaintiffs”) and two new school-district Defendants after they posted Act 573 displays in supplemental-Plaintiffs’ schools. R. Docs. 87, 131. The district court also preliminarily enjoined the additional Defendants from complying with Act 573. R. Docs. 111, 137.¹

The parties exchanged written and expert discovery before cross-moving for summary judgment. App. 1637; R. Doc. 168; App. 671; R. Doc. 164. Intervenor deposed all thirteen parent-Plaintiffs, and Plaintiffs deposed Intervenor’s expert, Professor Mark David Hall. *Id.* The district court granted Plaintiffs’ motion for summary judgment and issued a permanent injunction on March 16, 2026. Add. 1-27; App. 2426-52; R. Docs. 188, 189. Intervenor appealed. Defendants chose not to appeal.

¹ Intervenor previously filed three interlocutory appeals from the district court’s preliminary-injunction orders. *See* R. Doc. 78 (appeal docketed as No. 25-2713); R. Doc. 117 (appeal docketed as No. 25-2894); R. Doc. 153 (appeal docketed as No. 25-3311). This Court dismissed all three appeals as moot. *See* Judgment, *Stinson v. Arkansas*, No. 25-2713 (8th Cir. Apr. 23, 2026).

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo and the entry of a permanent injunction for abuse of discretion. *Roach v. Stouffer*, 560 F.3d 860, 863 (8th Cir. 2009). “A district court abuses its discretion when it bases its decision on a legal error or a clearly erroneous finding of fact.” *Id.* (quoting *Kennedy Bldg. Assocs. v. CBS Corp.*, 476 F.3d 530, 534 (8th Cir. 2007)).

SUMMARY OF THE ARGUMENT

Forty-five years ago, the Supreme Court held that a Kentucky statute materially indistinguishable from Act 573 violated the Establishment Clause because displays of the Ten Commandments in every public-school classroom would unconstitutionally “induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone v. Graham*, 449 U.S. 39, 42 (1980) (per curiam). So, too, here. Indeed, even if *Stone* did not exist, Plaintiffs would still prevail because Act 573 violates the Establishment Clause’s prohibitions on government-sponsored religious instruction, religious coercion, and denominational preference, as well as the Free Exercise Clause.

As an initial matter, the district court correctly held that Plaintiffs have standing to pursue their claims. Arkansas children, including the child-Plaintiffs, attend public school pursuant to state compulsory-education laws. Ark. Code Ann. § 6-18-201(a). Absent an injunction, Arkansas would subject these children to unavoidable displays of a state-prescribed version of the Ten Commandments for *nearly every hour of every school day of their public education*. Contrary to Intervenor’s argument, original-Plaintiffs were not required to delay suit until after the Ten Commandments were actually posted in their schools. The Supreme Court recently reaffirmed that, “when a deprivation of First Amendment rights is at stake,” a plaintiff need only show “a substantial risk that the [alleged] harm will occur” to bring a pre-enforcement challenge. *Mahmoud v. Taylor*, 606 U.S. 522, 559-60 (2025) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). Moreover, the Act’s scriptural displays *were* posted in supplemental-Plaintiffs’ public schools *before* they sued, rendering Intervenor’s standing arguments irrelevant; this Court has jurisdiction to consider the constitutionality of Act 573.

Intervenor’s merits arguments fare no better. As the district court recognized, Act 573 is irreconcilable with *Stone*. The en banc Fifth Circuit’s 9-8 ruling in *Nathan v. Alamo Heights Independent School District*, 173 F.4th 576 (5th Cir. 2026)—which unilaterally declared *Stone* abrogated—was wrongly decided and improperly contravened the black-letter rule vesting the Supreme Court alone with “the prerogative of overruling its own decisions.” See *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989). *Stone* should end this Court’s inquiry.

Nevertheless, Act 573 is also unconstitutional under the Supreme Court’s public-school precedents, which have long emphasized the “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). In *Kennedy v. Bremerton School District*, the Court reaffirmed that it remains “problematically coercive” for public schools to subject a “captive audience” of students to religious messages. 597 U.S. 507, 541-42 (2022). And last year, the Court again highlighted the “potentially coercive nature of classroom instruction[.]” *Mahmoud*, 606 U.S. at 554.

Intervenor’s claim that the displays are merely “passive,” and not religiously coercive, ignores the instructive and obligatory nature of the scripture that Arkansas has chosen for display. The Ten Commandments are, after all, *commandments*: They are religious directives, such as “I am the Lord thy God[;] Thou shalt have no other gods before me.” And they will “confront[] elementary school students every day.” *Van Orden v. Perry*, 545 U.S. 677, 691 (2005) (plurality opinion, discussing *Stone*).

Act 573 also runs afoul of the Supreme Court’s precedents prohibiting official denominational preferences. *See Cath. Charities Bur., Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 247 (2025). It mandates that public schools promulgate a religious text, drawn from the King James Bible, over versions of the Ten Commandments observed in Catholicism and Judaism, and instead of religious texts from non-biblical traditions, including Hinduism, Buddhism, and many other faiths. Intervenor does not contend with, or so much as cite, these precedents.

The Supreme Court’s authorities barring religious coercion of public-school students and denominational preferences are consistent with the historical inquiry set forth in *Kennedy* for Establishment Clause claims. By granting summary judgment on these claims, the district

court correctly assessed the historical record and found Act 573 to be contrary to the Founders’ concerns animating the Establishment Clause and inconsistent with the history and tradition of disestablishment in public education.

The district court’s ruling that the Act violates the Free Exercise Clause was also correct. The Act’s scriptural displays “will interfere with [the parent-Plaintiffs’] ability to provide religious instruction and will induce their children to suppress their own religious or non-religious beliefs”; and the Act cannot meet strict scrutiny. Add. 23; App. 2448; R. Doc. 188, at 23.

Finally, Intervenor’s attempt to narrow the injunction’s scope to the child-Plaintiffs’ classrooms is impracticable and would not fully address Plaintiffs’ injuries. *See Trump v. CASA, Inc.*, 606 U.S. 831, 852 n.12 (2025). Tellingly, the school-district Defendants did not appeal the district court’s decision or, at any point in this case, seek to narrow the injunction’s scope. This Court should affirm both the district court’s grant of summary judgment and the injunction.

ARGUMENT

I. THE DISTRICT COURT PROPERLY EXERCISED ITS JURISDICTION.

There is no jurisdictional barrier preventing this Court from proceeding to the merits of this case. Intervenor’s standing argument, which focuses solely on original-Plaintiffs’ lack of actual encounter with Act 573 displays,² *see* Appellant’s Br. 13-18, does not apply to the supplemental-Plaintiffs, who sued *after* their schools imposed the scriptural displays. Thus, regardless of original-Plaintiffs’ standing, this Court may assess Act 573’s constitutionality under the Religion Clauses. *See Biden v. Nebraska*, 600 U.S. 477, 489 (2023) (“If at least one plaintiff has standing, the suit may proceed.”).

Nonetheless, *all* Plaintiffs have standing to pursue both their Establishment Clause and Free Exercise Clause claims, as the district court correctly held. Add. 11; App. 2436; R. Doc. 188, at 11.³ At the time

² Even if this Court agreed that original-Plaintiffs lacked standing, the only practical effect it would have, as the State concedes, Appellant’s Br. 18, would be limiting the injunction to supplemental-Plaintiffs’ school districts.

³ Intervenor does not press its ripeness argument raised below on appeal; Plaintiffs’ claims are ripe for the reasons articulated by the district court. Add. 12-15; App. 2437-40; R. Doc. 188, at 12-15.

original-Plaintiffs filed their Complaint, there was a substantial risk that the harm they faced would occur. That is sufficient under a long line of precedents holding that a plaintiff need not “await the consummation of threatened injury to obtain preventive relief.” *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985) (citation omitted).

A. Supplemental-Plaintiffs Filed Suit *After* Encountering Act 573 Displays in Their Public Schools.

There is no dispute that supplemental-Plaintiffs properly alleged “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, 560-61 (1992)). Act 573 displays were imposed on supplemental-Plaintiffs *before* they filed suit. Add. 11; App. 2436; R. Doc. 188, at 11. Thus, under Intervenor’s own (incorrect) actual-encounter rule, they have standing. *See* Appellant’s Br. 14. Intervenor admits as much by limiting its standing arguments to original-Plaintiffs. *See* Appellant’s Br. 13-18.⁴

⁴ As in *Nathan*, Plaintiffs “allege direct harm because [Arkansas] requires their children to attend school in classrooms where the Ten Commandments will be posted, which Plaintiffs claim coerces religious observance[,]” and, for original-Plaintiffs, “[f]uture encounters between their children and the displays are thus ‘likely, if not certain.’” 173 F.4th at 587 (quoting *Lee*, 505 U.S. at 584). Thus, overruling this Court’s so-

Because supplemental-Plaintiffs have standing, this Court may reach the constitutionality of Act 573 under the Religion Clauses. *See Biden*, 600 U.S. at 489; *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006) (“[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement.”); *cf. S.D. Farm Bur., Inc. v. Hazeltine*, 340 F.3d 583, 592 (8th Cir. 2003) (declining, after finding standing for some plaintiffs, to “verify the independent standing of the other Plaintiffs, for they all raise similar arguments for affirmance”).

B. Act 573 Created a Substantial Risk of Harm to Original-Plaintiffs at the Time They Filed Suit.

Intervenor’s claim that original-Plaintiffs lack standing because “not a single display had been donated and accepted, much less posted” before the Complaint was filed, Appellant’s Br. 15, misapprehends standing law. A plaintiff is not required to actually “encounter” a governmental religious display, Appellant’s Br. 14, to demonstrate standing. On the contrary, case after case has held that standing is

called “offended-observer” precedents, Appellant’s Br. 13 n.1, would make no difference here, even if the argument were not seriously flawed. *See Nathan*, 173 F.4th at 587 n.2 (declining to address state’s argument that “offended-observer standing is no longer valid”).

properly based on allegations of *future, threatened* injuries. *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 435 (2021); *Dep’t of Com. v. New York*, 588 U.S. 752, 767 (2019).

Red River Freethinkers v. City of Fargo, 679 F.3d 1015 (8th Cir. 2012), cited in Appellant’s Br. 14, is not to the contrary.⁵ This Court ruled that “direct and unwelcome personal contact” was *sufficient* for standing but nowhere did it hold that past contact was *required* to establish standing for *preventive* relief. *Red River*, 679 F.3d at 1023-24 (citation omitted). In fact, *Red River* recognized that “actual or *imminent*” harm is adequate under Article III. *Id.* at 1023 (emphasis added) (citation omitted); *see also Iowa v. Wright*, 154 F.4th 918, 938 (8th Cir. 2025) (“Future injuries may satisfy the actual or imminent requirement for an injury in fact[.]” (citation modified)); *Minn. Chapter of Associated Builders & Contractors, Inc. v. Blissenbach*, 155 F.4th 1015, 1020 (8th Cir. 2025) (same).

⁵ Contrary to the State’s argument, Appellant’s Br. 14, *Barber v. Bryant* was not a religious-display case, and the ruling expressly noted that “[f]uture injuries can provide the basis for standing” if “certainly impending.” 860 F.3d 345, 357 (5th Cir. 2017) (citation omitted).

This rule is particularly important in the First Amendment context because the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mahmoud*, 606 U.S. at 569 (citation modified). To that end, the Supreme Court recently reaffirmed in *Mahmoud*, which also involved a pre-enforcement challenge, that “when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit.” *Id.* at 559-60 (citing *Susan B. Anthony*, 573 U.S. at 158). All that is required of plaintiff is to “show that ‘the threatened injury is certainly impending, or there is a *substantial risk* that the harm will occur.’” *Id.* at 560 (quoting *Susan B. Anthony*, 573 U.S. at 158) (emphasis added).

Notably, this jurisdictional standard does not require a plaintiff to “demonstrate that it is *literally certain* that the harms they identify will come about.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013) (emphasis added). It merely requires a plaintiff “who challenges a statute” to “demonstrate a realistic danger of sustaining a direct injury as a result of the statute’s operation or enforcement.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979).

Here, the “substantial risk” of injury to original-Plaintiffs materialized as soon as the Act was signed into law. By relying on private contributions and setting an effective date of August 5, 2025, the Act incentivized donations to public schools across the state before the new school year was set to begin. And by allowing for a paper poster, lawmakers ensured that cost would not be an issue for donors. As the school-district Defendants’ attorney later confirmed, Act 573 posters cost a de minimis \$1 to produce. App. 490-91; P.I. Hr’g Tr. at 175-76. Moreover, after passing Act 573, officials made sure the public was aware of it. Just a few weeks after signing the law, Governor Sarah Huckabee Sanders touted it at the Arkansas Observance of the National Day of Prayer and proclaimed that “we will always follow *the one true Creator*.” R. Doc. 169, at 5 ¶ 10 (emphasis added). Days later, the superintendent of an original school-district Defendant stated in an interview that her district would “follow the law” by posting the Ten Commandments when the district received donations. App. 134, ¶ 3.

In short, there can be no question that, by the time original-Plaintiffs filed suit in June 2025—only weeks before Act 573 was slated to take effect and the new school year set to begin—there was a high

likelihood that original-Plaintiffs' districts would receive donated posters and a substantial risk that the harm to original-Plaintiffs would occur, as the district court correctly found. *Cf. Nathan*, 173 F.4th at 586-87 (Plaintiffs had standing under Establishment and Free Exercise Clauses to bring pre-enforcement challenge to similar Texas statute requiring privately donated posters). In fact, the Act's lead legislative sponsor, confirmed in an interview published the same month that "[t]here [were] so many organizations working . . . to implement th[e] law as far as a project to help volunteer and pay for the displays in schools." App. 134, ¶ 4. And while the district court acknowledged that original-Plaintiffs' standing must be assessed at the time they filed their Complaint, Add. 10-11; App. 2435-36; R. Doc. 188, at 10-11, subsequent events proved that the substantial risk of harm faced by original-Plaintiffs when they filed suit was not imagined; the district court's "initial predictions were sound." Add. 10; App. 2435; R. Doc. 188, at 10 ("There was plenty of evidence before Act 573 went into effect that compliant poster donations were not only likely, but *highly* likely."). Even before the preliminary-injunction was issued, for instance, the four original Defendants combined received thousands of donated posters and "admitted that they

would have displayed the compliant posters they received—had they not been stopped by the preliminary injunction.” *Id.*

C. The Minimum, Mandatory Requirements for Act 573 Displays Will Injure Plaintiffs.

Plaintiffs’ asserted injuries are not dependent on every detail of each individual display. *Cf.* Appellant’s Br. 16 (asserting each detail is necessary to show injury). The threatened harm to Plaintiffs will occur because of Defendants’ implementation of the Act’s minimum requirements alone. The Act describes exactly how the Ten Commandments must appear and directs Defendants to post them “prominently” and “conspicuous[ly]” in every classroom and library, where they will be imposed on students for nearly every hour of their public education.⁶ Ark. Code Ann. § 1-4-133(a)(1)(B)(iii). Plaintiffs testified that displays posted in accordance with these requirements would inflict various injuries on their families. For example, Leah Bailey explained in her deposition that Act 573 posters would make her children

⁶ The Fifth Circuit’s decision in *Roake v. Brumley*, 170 F.4th 292 (5th Cir. 2026) (en banc), Appellant’s Br. 17, has no bearing on this fully adjudicated case. *Roake*’s “narrow holding” rested exclusively on ripeness grounds, 170 F.4th at 300, which Intervenor does not press here, *supra* n.3, and which was subsequently cabined in *Nathan* itself, where the majority reached the merits on Texas’s similar statute. 173 F.4th at 588.

“feel pressured and uncomfortable,” and feel like “those are rules that had to be followed and that Christianity is preferred” over what they “practice at home.” App. 944-45; R. Doc. 164-4, at 38-39 (Bailey Dep. 38:25-39:12). As another example, April Christine Berry testified that the implementation of the Act would impair her ability to guide her children’s religious instruction. App. 1274-1275; R. Doc. 164-9, at 32-33 (Berry Dep. 32:05-33:12).

II. ACT 573 VIOLATES THE ESTABLISHMENT CLAUSE.

The district court properly held Act 573 unconstitutional under the Establishment Clause. The Supreme Court’s ruling in *Stone*, which facially struck down a Kentucky law nearly identical to Act 573, controls this case. Intervenor’s reliance on the Fifth Circuit’s erroneous opinion in *Nathan*, which unilaterally and improperly declared *Stone* “abrogated,” is misguided. *Nathan*, 173 F.4th at 591. *Nathan* contravenes a core principle of the American judiciary: Only the Supreme Court may overrule its own precedents. This Court should reject Intervenor’s invitation to follow suit.

In addition, as the district court correctly held after reviewing the historical evidence, the Founders opposed governmental efforts to compel

religious observance or instruction as well as official conduct that takes sides on, or seeks to control, religious questions and doctrine. Add. 21-22; App. 2446-47; R. Doc. 188, at 21-22. The Supreme Court’s recent precedents make clear that these anti-coercion and denominational-neutrality principles at the heart of the Establishment Clause are just as vital today as they were at the Founding. Act 573 violates both.

A. Act 573 Violates the Establishment Clause Under *Stone*.

This Court’s analysis should begin and end with *Stone*. The district court rightly concluded that “[t]he facts in the case at bar are identical in all material respects to the law that was deemed unconstitutional by the Supreme Court in *Stone*.” Add. 16; App. 2441; R. Doc. 188, at 16. *Stone* remains good law notwithstanding the Supreme Court’s abrogation of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and—to the extent it is distinguishable at all—Act 573 is even more constitutionally egregious under the Establishment Clause.

1. *Stone* remains binding precedent.

Intervenor incorrectly insists that *Stone* is “no longer good law” because it relied on the now-abrogated *Lemon* test. Appellant’s Br. 19. While *Stone* considered *Lemon*, it also spoke to the coercive nature of Kentucky’s Ten Commandments law by holding that the mandatory

scriptural displays would “induce” children “to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone*, 449 U.S. at 42. For that reason, the Supreme Court later recognized that *Stone* “almost exclusive[ly] reli[ed] upon two [Supreme Court] school prayer cases” that pre-dated *Lemon*, and “was a consequence of the ‘particular concerns that arise in the context of public elementary and secondary schools.’” *Van Orden*, 545 U.S. at 690-91 (plurality opinion) (citing *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963), *Engel v. Vitale*, 370 U.S. 421 (1962), and *Edwards*, 482 U.S. at 585); *see also Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012) (en banc) (“[R]eligious displays in the classroom tend to promote religious beliefs, and students might feel pressure to adopt them. Such concern was front and center in *Stone*[.]”). Intervenor fails to address *Van Orden*’s discussion of *Stone*.

As for *Kennedy*, the Court did not even mention *Stone*, much less overrule it; nor did it question the vitality of *Schempp* or *Engel*, on which *Stone* relied. *See Jusino v. Fed’n of Cath. Tchrs., Inc.*, 54 F.4th 95, 102 (2d Cir. 2022) (holding that Supreme Court’s precedent “remains good law notwithstanding its reliance . . . on *Lemon*”); *see also Hilsenrath v.*

Sch. Dist. of the Chathams, 136 F.4th 484, 492-93 (3d Cir. 2025), (favorably citing *Stone*, and treating it as good law, in holding that two lessons on Islam—included as part of a year-long World Cultures and Geography class—were not coercive because they “w[ere] ‘integrated into the school curriculum’ as part of ‘an appropriate study of history, civilization,’ and ‘comparative religion.’” *Id.* (quoting *Stone*, 449 U.S. at 42)), *cert. denied sub nom. Hilsenrath v. Chathams Sch. Dist. Bd. of Educ.*, 146 S. Ct. 885 (2025).

The fact that *Lemon* was abrogated by *Kennedy* does not invalidate *Stone*. Like all Supreme Court precedents, *Stone* remains binding on lower courts until the Supreme Court itself “see[s] fit to reconsider [it].” *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (citation modified); *see also Agostini v. Felton*, 521 U.S. 203, 207 (1997) (noting that the Supreme Court “neither acknowledges nor holds that [lower courts] should ever conclude . . . more recent cases have, by implication, overruled an earlier precedent”); *accord United States v. Brown*, 653 F.3d 656, 660 (8th Cir. 2011) (refusing to speculate on the vitality of Supreme Court precedent and holding that “only the Supreme Court may overrule its controlling decisions”). The *Nathan* court was wrong in refusing to follow *Stone*;

lower courts may not arrogate to themselves the power to declare precedents abrogated, even if the precedent “rest[s] on reasons rejected in some other line of decisions.” *See Rodriguez*, 490 U.S. at 484; *see also State Oil Co. v. Khan*, 522 U.S. 3, 21-22 (1997) (holding that appellate court properly applied binding precedent even though subsequent rulings had “gravely weakened” its “conceptual foundations”). This Court should not make the same mistake as the Fifth Circuit.

Intervenor’s fallback argument—that post-*Stone* precedents involving religious displays *outside* of the school context somehow “narrowed *Stone*’s holding,” Appellant’s Br. 21—is belied by the cases themselves. *Van Orden* explicitly recognized “limits to the display of religious messages or symbols” in public schools, holding up *Stone* “as an example of the fact that we have been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools[.]” 545 U.S. at 690-91 (plurality opinion) (citation modified); *see also Lynch v. Donnelly*, 465 U.S. 668, 679 (1984) (acknowledging that, under *Stone* and *Schempp*, scripture may only be “used in an appropriate study of history, civilization, ethics, comparative religion, or the like,” or

“presented objectively as part of a secular program of education”).⁷ Similarly, this Court has observed the critical distinction between “the impermissible use of the text by the State of Kentucky . . . in public-school classrooms” and “the ‘passive use’ of the Ten Commandments” in *Van Orden. ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 776 (8th Cir. 2005) (en banc). These, and other post-*Stone* cases, reaffirm *Stone*’s viability in the public-school context.

2. Act 573 is more egregious than the statute struck down in *Stone*.

Stone is still good law, and Intervenor cannot circumvent *Stone* by distinguishing it on factual grounds. See Appellant’s Br. 25 (arguing that *Stone* “should not be extended to these new circumstances”). The two statutes are nearly identical. Add. 16; App. 2441; R. Doc. 188, at 16. Both require the display, with no curricular objective, of “a durable, permanent

⁷ Intervenor’s reliance on *Marsh v. Chambers*, 463 U.S. 783 (1983), and *American Legion v. American Humanist Association*, 588 U.S. 29 (2019), Appellant’s Br. 21-22, is also misplaced. Citing Justice Brennan’s concurrence in *Schempp*, *Marsh* explained that “the individual claiming injury by the practice is an adult, presumably not readily susceptible to religious indoctrination . . . or peer pressure.” 463 U.S. at 792 (citation modified). And *American Legion* held that “retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones.” 588 U.S. at 57.

copy of the Ten Commandments” in “each public elementary and secondary school classroom,” to be provided by private donations. *Stone*, 449 U.S. at 39 n.1; Ark. Code Ann. § 1-4-133(a)(1)(B).

If anything, Act 573 is even more egregious than the statute struck down in *Stone*. Unlike Kentucky’s law, the Act mandates that the posters be “prominently display[ed]” in a “conspicuous place” in each classroom *and* library. Ark. Code Ann. § 1-4-133(a)(1)-(2). The text of the poster must be “legible to a person with average vision from anywhere in the room,” and the Act permits poster sizes larger than those considered in *Stone*. *See id.* § 1-4-133 (a)(1)(B)(ii)(a)-(b). That Act 573 “set[s] forth the [specific] Ten Commandments text that must be included in the display,” Appellant’s Br. 23, renders it *more* plainly unconstitutional than the *Stone* statute, not less. *See infra* Section II.B.2 (discussing denominational preference).

Finally, Intervenor’s attempt to invoke legislative purpose to distinguish Act 573 from the statute in *Stone*, Appellant’s Br. 26, is not supported by the history of the Act’s passage or its text. To be clear, Intervenor—not Plaintiffs or the district court—has raised Act 573’s purpose to *defend* the Act; Plaintiffs’ refutation should not be interpreted

as suggesting that *Lemon* should be revived. However, the fact that the Act purports to require a “historical representation” of the Ten Commandments does not alter the legal analysis. The passage of the Act involved repeated comments by lawmakers evincing their intent for the displays to inculcate religious beliefs and behaviors in schoolchildren. *Supra* Section I; *see, e.g.*, R. Doc. 169, at 3-4 (Rep. Meeks asking whether students should have “zero exposure” to the Ten Commandments or have them in classrooms for “at least some exposure,” and stating that “ever since we took God out of the schools,” “problems and violence” have entered schools); R. Doc. 169, at 3 (Rep. Wooldridge supporting “anything we can do to try to increase access to or spread that gospel”); R. Doc. 169, at 4-5 (Sen. Hammer stating “the same God” authored the Ten Commandments and it was “good for our kids to see it visually”); R. Doc. 169, at 5 (Governor Sanders stating she was “proud to sign” legislation putting the Ten Commandments “up in every classroom” and that Arkansans would “always . . . follow the one true Creator”). Furthermore, the Act does not include a statement of legislative intent, a preamble, or any findings that set forth a clearly secular legislative intent.

B. Act 573 Violates the Establishment Clause Under *Kennedy*'s Historical Framework.

The district court correctly held that, even if *Stone* did not control, Act 573 would still violate the Establishment Clause under *Kennedy*, Add. 20-22; App. 2445-47; R. Doc. 188, at 20-22, which instructs courts to inquire whether the challenged governmental conduct “accord[s] with history and faithfully reflects the understanding of the Founding Fathers.” 597 U.S. at 536 (citation modified). Displaying the Ten Commandments in every public-school classroom simply cannot be reconciled with the Founders’ beliefs that governmental religious instruction, coercion, and official denominational preference constituted an establishment, or with the Supreme Court’s precedents rooted in these fundamental constitutional principles. Intervenor’s demand that this Court adopt a rigid and underinclusive test that recognizes only six hallmarks of establishment is not supported by the case law or accepted by any appellate court.

1. Act 573 mandates coercive religious instruction.

Stone was merely a reflection of longstanding Establishment Clause jurisprudence (1) constraining the government from engaging in religious instruction, and (2) protecting vulnerable captive-audience

schoolchildren from religious coercion. Both principles are firmly rooted in historical understandings of disestablishment and have been continuously reaffirmed, including in *Kennedy* itself.

As illustrated by the “Memorial and Remonstrance against Religious Assessments,” in which James Madison, the principal architect of the First Amendment, vehemently condemned a proposed (and ultimately failed) Virginia “Bill Establishing a Provision for Teachers of the Christian Religion,” the Founders generally understood government-sponsored religious instruction to be an establishment.⁸ App. 1667; R. Doc. 168-4, at 11. When such religious instruction is delivered by public schools, it fits within the Founders’ understanding of impermissible coercion, another—indeed, a “foremost”—indicia of “religious establishments the framers sought to prohibit when they adopted the First Amendment.” *See Kennedy*, 597 U.S. at 537. The risk of religious coercion is especially high in this setting because children are a captive audience, compelled to attend school by state law, and prone to

⁸ *See also* Christopher C. Lund, *Soft Establishment, Religious Education, and Stone v. Graham*, 64 J. Cath. Legal Stud., 51, 61-67 (2026) (discussing coercive and non-coercive historical establishments involving religious education, dating back to the Sixteenth Century).

“emulation of teachers as role models” and “susceptibility to peer pressure.” *Edwards*, 482 U.S. at 584; *accord Mahmoud*, 606 U.S. at 557 (“The government’s operation of the public schools . . . implicates direct, coercive interactions between the State and its young residents. The public school imposes rules and standards of conduct on its students and holds a limited power to discipline them for misconduct.”).

From the earliest days of the Supreme Court’s public-school jurisprudence, it has taken heed of these Founding concerns. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (under the Establishment Clause, the government may not “undertake religious instruction nor blend secular and sectarian education” or force anyone “to take religious instruction”); *Ill. ex rel. McCollum v. Bd. of Educ. of Sch. Dist. No. 71*, 333 U.S. 203, 211 (1948) (a state “cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals”).

More recently, in *Kennedy*, the Supreme Court confirmed that it is “problematically coercive” to subject a “captive audience” of students to religious messages and favorably cited *Lee* and *Santa Fe Independent*

School District v. Doe, 530 U.S. 290 (2000)—two cases that delve into the nuanced obligations of schools to safeguard public-school children from governmental religious coercion. 597 U.S. at 541-42. With *Kennedy*’s imprimatur, *Lee* and *Santa Fe* remain controlling and put it “beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Lee*, 505 U.S. at 587. *Lee* also clarified that, to fully protect this right in the public-school context, courts must understand that “pressure, though subtle and indirect, can be as real as any overt compulsion.” *Id.* at 593.

Intervenor’s argument that Act 573’s ubiquitous displays are not religiously coercive ignores the special constitutional considerations applicable to public-school children. Appellant’s Br. 36-39. The Ten Commandments are religious rules that students will be confronted with for nearly every hour of their school day for up to thirteen years of their public education, and Act 573’s displays will, by their very nature, “exert upon children a psychological ‘pressure to conform’ to their specific [overtly religious] viewpoints.” *Cf. Mahmoud*, 606 U.S. at 554 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 211 (1972)).

The uniquely coercive context of the public-school classroom compounds that pressure: Classroom rules—which are how the Commandments are presented—are requirements meant to be followed by children, and children tend to feel an obligation to do so to avoid getting in trouble or standing out amongst their peers. As supplemental-Plaintiff Julee Jaeger testified: “The posters are posted at the front of the [class]room . . . [My child] sees them . . . *going into* the room . . . [and] *going out* of the room. That’s at least 16 times a day where [my child] is seeing these things, being reminded of what they say[.]” App. 2894; R. Doc. 164-11, at 34 (Jaeger Dep. 34:3-13) (emphasis added). Noting that her child is “a rule follower,” Jaeger explained that, when “you do something 16 times a day and it becomes a daily practice, that’s a type of meditation that’s sort of being forced on [my child].” *Id.* These facts are sufficient to demonstrate coercion under the Establishment Clause. *See Lee*, 505 U.S. at 593.

Intervenor’s reliance on the *dissent* in *Lee* to distinguish “legal coercion” from so-called “psycho-coercion,” Appellant’s Br. 37 (citing 505 U.S. at 640-42 (Scalia, J., dissenting)), is irreconcilable with *Lee*’s

majority opinion, which *Kennedy* reaffirmed.⁹ Likewise, *Nathan*, on which Intervenor also heavily relies, contravenes the Supreme Court’s school-coercion precedents. The Fifth Circuit incorrectly concluded that Ten Commandments displays are not coercive because they “impose[] neither penalty nor sanction, formal or informal” on students. *See* Appellant’s Br. 29 (quoting *Nathan*, 173 F.4th at 601). However, compulsory-attendance laws create a legal “obligation” for parents “to send their children to public school unless they find an adequate substitute,” and families who would keep their children out of school to avoid state-sponsored religious instruction *do* face punishment, including by “fine or imprisonment.” *See Mahmoud*, 606 U.S. at 561.

Furthermore, no Supreme Court case has ever required “punishment” or legally forced worship, to demonstrate coercion in the public-school context. *See Nathan*, 173 F.4th at 642-43 (Higginson, J.,

⁹ Intervenor’s argument is also irreconcilable with the *Lee* dissent. Justice Scalia noted the stark contrast between graduation prayer, where attendance was technically voluntary, and a public-school classroom, which he characterized as “an inherently instructional setting” requiring mandatory attendance. *See Lee*, 505 U.S. at 643-44 (Scalia, J., dissenting) (“[W]e have made clear our understanding that school prayer occurs within a framework in which legal coercion to attend school (*i.e.*, coercion under threat of penalty) provides the ultimate backdrop.”).

dissenting). That makes sense because the Founders' coercion concerns were much broader. They took issue "not only with coercion sanctioned by 'fine & imprisonment' but also with governmental action that could result in 'some degree of proscription perhaps in public opinion.'" App. 1670; R. Doc. 168-4, at 14 (quoting Letter from Thomas Jefferson to Samuel Miller, Jan. 23, 1808). "[A] mere governmental 'recommendation' of religious practice, even without the backing of legal force, was no 'less a law of conduct for those to whom it is directed.'" *Id.*; *see also id.* (discussing Madison's similar understanding of coercion).

Nor has the Supreme Court ever held that its coercion concerns apply only to prayer. *Cf. Nathan*, 173 F.4th at 602 ("The mere fact that the displays use religious language does not convert them into a call to prayer."). On the contrary, the Court held over seventy years ago in *Zorach* that the government "may not . . . undertake religious *instruction*" or "coerce anyone to . . . take religious *instruction*." 343 U.S. at 314 (emphases added). And in *Schempp*, the Court ruled that school-directed readings of the Bible, when not "presented objectively as part of a secular program of education," constituted "religious exercise[.]" 374 U.S. at 225.

Such school-sponsored religious observance is no less coercive because it is induced by visual rather than auditory means. *See Stone*, 449 U.S. at 42 (holding that it was 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*”); *see also Van Orden*, 545 U.S. at 691 (plurality opinion) (distinguishing *Stone* displays, which “confronted elementary school students every day,” from the “far more passive use of those texts” on a lone monument); *Wallace v. Jaffree*, 472 U.S. 38, 60-61 (1985) (striking down silent-prayer-in-school law); *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 is especially true here because the Act is designed to ensure that the displays, through their permanent, “prominent,” and “conspicuous” placement in every classroom and library, and their large-text print, will not escape children’s visual perception.¹⁰ Indeed, these

¹⁰ Pointing to testimony that one parent was not aware of her child reading religious texts or attending church or religious community events because of the displays, R. Doc. 181, at 50, Intervenor argues that the displays are not coercive if a child has “not done anything differently because of an Act 573 poster.” Appellant’s Br. 40. But this ignores the

requirements ensure that children will read the Commandments, not just see them. As the district court concluded, “[c]hildren cannot [] avoid reading the Ten Commandments posted in their classrooms for thirteen years of compulsory schooling.” Add. 17; App. 2442; R. Doc. 188, at 17.¹¹

2. Act 573 imposes a governmental denominational preference in public schools.

Last year, the Supreme Court once again reaffirmed that “[t]he clearest command of the Establishment Clause’ is that the government may not ‘officially prefe[r]’ one religious denomination over another.” *Cath. Charities*, 605 U.S. at 247 (quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982)). The principle traces back to the Founders’ desire to avoid

“psychological pressure to conform,” *Mahmoud*, 606 U.S. at 554-55, even if “subtle and indirect,” *Lee*, 505 U.S. at 593, that stem from the Act’s permanent displays. The parent testified that her child “feels pressured to” practice and observe the Ten Commandments in ways that conflict with the parent’s religious teachings. App. 2894; R. Doc. 167-8, at 34.

¹¹ Intervenor attempts to make much of the court’s observation as to the role of history based on selective quoting of the district court’s opinion. Appellant’s Br. 9, 12, 30. However, the rest of the quotation omitted by Intervenor illustrates that the district court *did not* eschew a historical analysis. Quite the opposite: The court concluded that Act 573 is religiously “coercive,” Add. 17; App. 2442; R. Doc. 188, at 17, and as discussed above, *supra* Section II.B.1, coercion is a “foremost” hallmark of historical establishment. The district court then delved *further* into history and concluded that “there are no historical practices and understandings to support the posting of the Ten Commandments in the public-school context.” Add. 22; App. 2447; R. Doc. 188, at 22.

repeating the colonial experience: “Before the Revolution, religious establishments of differing denominations were common throughout the Colonies.” *Larson*, 456 U.S. at 244. The historical record shows, for instance, that Madison and Jefferson believed that the “[g]overnment should not take a position on any religious doctrine or promote any denomination or denominational belief or practice as favored or preferred.” App. 102; R. Doc. 8-12, at 12; R. Doc. 176-4, at 15-16. As Madison famously put it: “Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?” Add. 2; App. 2427; R. Doc. 188, at 2. Act 573 illustrates just how prescient Madison’s warning was. *See id.* (district court quoting Madison).

- a. Act 573 adopted a Protestant version of the Ten Commandments that is exclusionary of Jews and Catholics.

The scriptural text mandated by Act 573 is drawn from the King James Bible, as found by the district court and demonstrated by Dr. Green. App. 119-21; R. Doc. 8-12, at 29-31. It does not comport with the religious beliefs of many Jews, App. 119-20; R. Doc. 8-12, at 29-30, and

Catholics, App. 118-21; R. Doc. 8-12, at 28-31. For example, the Act's Commandment that "Thou shalt not make to thyself any graven images," overlooks the fact that Catholic translations typically omit that prohibition. Thus, Act 573's text could, "for some Catholics, call into question the faith's reliance on and adoration of various religious statues." App. 120-21; R. Doc. 8-12, at 30-31. As another example, "the Hebrew Ten Commandments, and English translations followed by most Jews, explicitly exalt God's delivery of the Israelites from slavery: 'I the LORD am your God who brought you out of the land of Egypt, the house of bondage.'" App. 119; R. Doc. 8-12, at 29. "This is a statement of faith that in itself is a Commandment" that is omitted from Act 573's version. *Id.* (citation modified).

Dr. Green's conclusions are further bolstered by the uncontroverted testimony from Jewish and Catholic Plaintiffs that the Act's text is not consistent with their faith tenets. *See, e.g.*, App. 118-121; R. Doc. 8-12, at 28-31; App. 655-56; R. Doc. 133-1, at 1-2; App. 54-56; R. Doc. 8-3, at 1-3. And Intervenor's own expert acknowledged that there *is* disagreement among Christian sects on this point: "[O]f course, by saying Christians here, I'll make a distinction between the Protestant version of the Ten

Commandments and the Catholic version.” App. 2212; R. Doc. 176-4, at 17 (citation modified).¹²

- b. Act 573’s prescribed scripture is exclusionary of adherents of non-biblical faiths.

Even if the Act’s version of the Ten Commandments were acceptable to all Protestants, Christians, and Jews (it is not), it still would not satisfy “the principle of denominational neutrality” under *Catholic Charities*. 605 U.S. at 247. It is undisputed that, for those faith traditions in which the Bible is not a holy text—for instance, Buddhism, Hinduism, Taoism, Jainism, and Sikhism—the Ten Commandments are sectarian. *See* App. 118; R. Doc. 8-12, at 28; App. 2213; R. Doc. 176-4, at 18 (Intervenor’s expert conceding that the Ten Commandments are “sectarian”). As Intervenor’s expert admitted, “there are religious traditions - of which the Ten Commandments are not a part” whose adherents “would not recognize the Ten Commandments in the same way that Jews and Protestants do[.]” App. 2212; R. Doc. 176-4, at 17.

¹² Despite this concession, Intervenor’s expert, Professor Hall (who also filed an amicus brief in the district court below) opined that the Act’s text is “nonsectarian” as to the Protestant, Catholic, and Jewish faiths. R. Doc. 121, at 38-39. The disagreement does not create a genuine dispute of material fact given his admission and the abundant record evidence in Plaintiffs’ favor.

- c. Act 573 impermissibly aids particular religions and interferes in the competition between religious sects.

Historically, “[r]eligious establishments [have] prioritize[d] the religious education of the young” because “[r]eligions do not perpetuate themselves automatically; their teachings must be learned.” Lund, *supra* n.8, at 61. By using the state’s compulsory-education power to disseminate and inculcate the religious doctrine of one faith in all its classrooms, however, Act 573 “‘aid[s]’ . . . particular religions” and creates an unconstitutional denominational preference. *See Cath. Charities*, 605 U.S. at 247-48 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968)). Instead of “let[ting] each [faith] flourish according to the zeal of its adherents and the appeal of its dogma,” *Zorach*, 343 U.S. at 313, Act 573 puts the government’s thumb on the scale of the “‘competition between sects,’” *Cath. Charities*, 605 U.S. at 248 (quoting *Zorach*, 343 U.S. at 314), where it matters most—in the struggle to attract and retain religious adherents among the next generation.¹³ *See also* App. 99-100; R. Doc. 8-12, at 9-10.

¹³ Intervenor’s reliance on *Town of Greece v. Galloway*, 572 U.S. 565 (2014) to justify this denominational preference turns the decision on its head. *See* Appellant’s Br. 24 n.4. There, pointing to a longstanding

Intervenor denies any denominational preferences on the ground that monuments featuring “nearly identical” text were upheld in the *Van Orden* and *Plattsmouth* cases. Appellant’s Br. 23-24. But these cases did not give states carte blanche to adopt the same text in official form. They involved monuments donated decades ago by the Fraternal Order of Eagles (“FOE”), to be placed outside (on the Texas Capitol grounds amidst numerous other monuments and plaques, and in a local park, respectively). *Van Orden*, 545 U.S. at 682; *Plattsmouth*, 419 F.3d at 773. The FOE, not the government, determined the text,¹⁴ and, unlike here,

tradition of legislative prayer, the Supreme Court held that denominational references were permissible in the town council’s opening invocations, delivered by outside clergy, precisely because the government should not be in the business of “prescribing” religious doctrine. *Id.* at 581; *infra* Section II.B.3.b. Justice Thomas’s concurring opinion in *American Legion*, 588 U.S. at 73, is not controlling and, as with *Town of Greece*, the case did not involve the special context of public schools.

¹⁴ See *Van Orden*, 545 U.S. at 681-82; *Plattsmouth*, 419 F.3d at 773. Both monuments were also inscribed with various symbols, including the Star of David and Chi Rho, a Christian symbol recognized by Catholics, and “prominently acknowledge[d] that the Eagles donated the display[s].” *Van Orden*, 545 U.S. at 701 (Breyer, J., concurring); *Plattsmouth*, 419 F.3d at 773. Arkansas chose not to include such symbols or notation. Further, notwithstanding the fact that the FOE may have *tried* to develop a “nonsectarian” text, Appellant’s Br. 3, 24-25, the record below shows that this endeavor failed. See App. 2156-59; R. Doc. 172-1 at 10-13.

neither case involved the government orchestrating a statutory framework for the displays, formally embedding the selected text in law, and mandating that it be posted in public schools statewide. As Justice Scalia recognized, “[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).

3. *Kennedy*’s historical analysis is not limited to six “hallmarks” of establishment.
 - a. No court of appeals has adopted Intervenor’s proposed test.

Intervenor demands that this Court confine its historical analysis to six “hallmarks” of establishment discussed in Justice Gorsuch’s non-binding concurrence in *Shurtleff v. City of Boston*, 596 U.S. 243, 286 (2022), later cited in a footnote in *Kennedy*. Appellant’s Br. 29. No court of appeals has construed *Kennedy* to require this. Even the Fifth Circuit rejected the argument in *Nathan*. 173 F.4th at 600-01 (“To be sure, these elements are only helpful analytical signposts” in determining whether the challenged law fit within “our Nation’s historical practices.”); *see also Hilsenrath*, 136 F.4th at 491 n.54 (agreeing that Justice Gorsuch’s concurring *Shurtleff* opinion “did not enumerate an exhaustive list of

practices that violate the Establishment Clause under a historical approach”).

Justice Gorsuch’s concurring opinion makes clear that the hallmarks he enumerated were illustrative, not exhaustive. He identified only “*some* helpful hallmarks [of establishment] that localities and lower courts *can* rely on.” *Shurtleff*, 596 U.S. at 285 (Gorsuch, J., concurring in the judgment) (emphasis added). *Kennedy* briefly refers to this in a footnote and explains in a parenthetical that the opinion “discuss[es] coercion and *certain other historical hallmarks* of an established religion.” 597 U.S. at 537 n.5 (emphasis added). *Kennedy*’s discussion of coercion as “among the foremost hallmarks” of religious establishment, 597 U.S. at 537, which was also authored by Justice Gorsuch, further confirms that his enumeration of six hallmarks in *Shurtleff* is not a definitive list that limits courts’ historical inquiry.

Intervenor’s extreme interpretation of *Shurtleff* and *Kennedy* runs counter to what Professor Michael W. McConnell has written about Founding-era establishments. McConnell, on whose scholarship Justice Gorsuch’s *Shurtleff* “hallmarks” discussion is based, *Shurtleff*, 596 U.S. at 286-87, has acknowledged that “the laws constituting the

establishment were ad hoc and unsystematic[.]” Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2131 (2003). And, notwithstanding his summary of these historical laws into six categories, he offers up an understanding of establishment that is much richer than the analysis proposed by Intervenor, explaining that “[a]n establishment is the promotion and inculcation of a common set of beliefs through governmental authority.” *Id.*¹⁵

Act 573 bears several historical indicia of an establishment, already discussed above, that align with this Founding perspective. It mandates government-sponsored religious instruction that is coercive, *supra* Section II.B.1, and denominationally preferential, *supra* Section II.B.2.

- b. Under the State’s erroneous hallmarks analysis, Act 573 constitutes a religious establishment.

Even assuming the six enumerated hallmarks from the (nonbinding) *Shurtleff* concurrence are exclusive, Act 573 resembles a

¹⁵ *Firewalker-Fields v. Lee*, 58 F.4th 104 (4th Cir. 2023), does not advance Intervenor’s argument. The Fourth Circuit did not cite *Shurtleff*, reference the “hallmarks,” or conduct an Establishment Clause analysis under *Kennedy*, but instead remanded the case for further factual development. *Id.* at 111.

number of them. *See N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28, 30 (2022) (“[T]he Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated. . . . [A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.”).

First, “it is a matter of history that . . . establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America.” *Engel*, 370 U.S. at 425. It follows that government is “prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.” *See Town of Greece*, 572 U.S. at 581. Here, the State has taken up the closely related task of “prescribing” scripture, implicating the first hallmark discussed by Justice Gorsuch: that “the government exerted control over the doctrine and personnel of the established church.” *Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring in judgment).

Second, the combination of mandatory displays and compulsory school-attendance laws invokes the second and third

Shurtleff hallmarks: the government “mandated attendance in the established church and punished people for failing to participate” and “punished dissenting churches and individuals for their religious exercise.” *Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring in judgment). Arkansas law requires parents to send their children to school and to “ensure the attendance of the child,” *see* Ark. Code Ann. §§ 6-18-201(a), 6-18-222, under the threat of various penalties intended “to impress upon the parents . . . the importance of . . . attendance.” *Id.* § 6-18-222(a)(7)(A). With the ubiquitous and unavoidable displays of scripture mandated by Act 573, Arkansas has effectively transformed every public-school classroom into a state-established site for coercive religious instruction. *See supra* Section II.B.1 (discussing coercion).

As Professor Nathan Chapman, on whose scholarship Intervenor also relies, Appellant’s Br. 32, recently explained:

There is no question that students are compelled to attend public school; that schools ordinarily put instructional materials on the wall of public school classrooms; that the Ten Commandments, without a contextual framework that effectively objectifies them, instructs people in a particular form of religious piety; that one of the chief activities in Founding-era churches (as now) was instruction in religious piety; that the Ten Commandments were frequently posted on the wall of Founding-era churches—for the purpose of pious instruction. It does not take a logical guru to conclude that the

law enjoins compulsory instruction in religious piety akin to the compulsory church attendance and religious exercise plainly forbidden by the original understanding of the Establishment Clause.

Nathan Chapman, *Guest Post: Chapman on Indoctrinating Thy Neighbor*, *Divided Argument* (Apr. 22, 2022),

<https://blog.dividedargument.com/p/guest-post-chapman-on->

[indoctrinating](https://blog.dividedargument.com/p/guest-post-chapman-on-); *see also Nathan*, 173 F.4th at 626 & n.18 (Ramirez, J., dissenting) (because “parent-Plaintiffs will be forced to incur the costs of sending their children to private school, or avoid school altogether and risk fines and prosecution under Texas’s compulsory attendance laws,” Texas S.B. 10 “implicates the *Shurtleff* hallmarks by ‘punish[ing] dissent[ers]’”).

Finally, Act 573 co-opts the civil function of public education to promulgate religious doctrine, evoking the sixth hallmark: the government’s use of “the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function.” *Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring). Act 573 inverts this “telling trait” of establishment, *see id.* at 286; rather than delegating a civil function to a church, the State has transformed a

quintessentially civil function (public education) into a vehicle for religious proselytization and instruction.

4. Act 573 Does Not Fit Within Any Historical Tradition.

Nothing in the historical record rebuts the conclusion that the Act's scriptural displays constitute the sort of "religious establishments the framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 597 U.S. at 537. As the district court found, both parties' experts *agree* that "there is no longstanding, widespread history of permanently displaying the Ten Commandments in public-school classrooms." Add. 22; App. 2447; R. Doc. 188, at 22. Intervenor's expert even conceded that he could not confirm the existence of *any* permanent classroom displays of the Ten Commandments, R. Doc. 168-16, at 141:2-5, and acknowledged the "obvious differences" between "a monument on public grounds" and "inside of a public-school classroom," R. Doc. 168-16, at 110:17-22.

There is also negligible evidence to support Intervenor's claim that the Ten Commandments were used more broadly in public education. Although Intervenor's expert repeatedly cites colonial *private*-education

practices,¹⁶ it is undisputed that free and universal public education did not exist when the Constitution and First Amendment were ratified, R. Doc. 169, ¶ 37, so none of these education practices are relevant to the history of *public* schooling, which began around 1820. While Intervenor’s expert identifies a handful of early textbooks—only some of which included the Ten Commandments and were used in some early public schools, R. Doc. 169, ¶¶ 39-40—these materials do not reflect an “unambiguous and unbroken history” of use that would alter the historical analysis and countermand Plaintiffs’ evidence that the Act does not accord with the Founders’ understanding of establishment. *Cf. Town of Greece*, 572 U.S. at 576-77. For example, the *New England Primer* was “used chiefly, if not exclusively, in *religiously* run schools, and, importantly, it fell into disuse during the early decades of the nineteenth century, before the rise of public education.” App. 112-13; R. Doc. 8-12, ¶ 44. The *Primer* thus “offer[s] little insight into the history of

¹⁶ See, e.g., App. 693-94; R. Doc. 164-1, at 19-20 (citing 1706 pamphlet promoting instruction of the Ten Commandments to “Negro-servants”); App. 695; R. Doc. 164-1, at 21 (citing 1737 sermon of Reverend John Barnard encouraging *parents* to teach children “the Way of God in Truth” and scripture including the Ten Commandments (citation omitted)); App. 108-109; R. Doc. 8-12, ¶¶ 38-39; App. 691; R. Doc. 164-1, at 17.

public education and the Ten Commandments.” App. 109; R. Doc. 8-12, ¶ 38. *McGuffey’s Readers*, also cited by Intervenor’s expert, referenced the Ten Commandments “only sporadic[ally]” in earlier editions; such references were “minimal when compared to the numerous lessons included in each book”; and they “were largely eliminated in later versions of the *Readers*.” App. 1682-83; R. Doc. 168-4, ¶¶ 46-47. Any “reliance on [the *Readers*] tapered [in the early twentieth century] as public schools turned to other available options.” App. 1683-84; R. Doc. 168-4, ¶ 47. Intervenor’s expert does not dispute Dr. Green’s textual analysis of the *Readers* and agrees with Dr. Green that their “religious content falls off as we get into the 19th century,” and their “references to a commandment are minimal when compared to the numerous lessons included in each book.” App. 2208; R. Doc. 176-4, at 77:14-25, 76:1-2.

The scant historical evidence supporting Act 573 is not surprising. Use of the Bible more generally, to the extent it occurred in early common schools, was extremely contentious (especially between Protestants and Catholics) sparking lawsuits, protests, and violent riots. App. 110-11; R. Doc. 8-12, at 20-21. These practices violated the religious conscience of adherents of excluded faiths, and, as with all “[g]overnment actions that

favor certain religions[.]” conveyed that “they are outsiders, not full members of the political community.” *Cath. Charities*, 605 U.S. at 248 (quoting *Santa Fe*, 530 U.S. at 309).

III. ACT 573 VIOLATES THE FREE EXERCISE CLAUSE.

Plaintiffs’ free-exercise claims provide independent grounds to affirm the district court’s ruling. “The First Amendment guarantees the right to the free exercise of religion, and if that provision means anything, it prohibits a State from enforcing its own preferred interpretation of Holy Scripture.” *Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1, 1 (2022) (Alito, J., dissenting from denial of certiorari). Yet that is exactly what Arkansas has done here.

The Free Exercise Clause protects parents’ prerogative to “direct the religious upbringing of their children[.]” *Mahmoud*, 606 U.S. at 543 (quoting *Yoder*, 406 U.S. 205, 218 (1972)). It also protects public-school children’s right “to freely choose [their] own course” in matters of faith “free of any compulsion from the state.” *Schempp*, 374 U.S. at 222. Act 573 violates both rights.

A. Act 573 Substantially Interferes with Parent-Plaintiffs’ Ability to Direct the Religious Development of Their Children.

“[F]or many Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S. at 547. “A government burdens the religious exercise of parents when it 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.” *Id.* at 530 (quoting *Yoder*, 406 U.S. at 218). Parent-Plaintiffs testified to the myriad ways Act 573 substantially “undermine[s] [their] efforts to raise [their] children in accordance with’ their religious faith.” *See id.* at 542 (citation omitted); *see also* Add. 4-8; App. 2429-33; R. Doc. 188, at 4-8. That testimony is undisputed, and the State must, therefore, satisfy strict scrutiny.

1. Act 573’s Burdens on Parent-Plaintiffs’ Free-Exercise Rights Exceed Those in *Mahmoud*.

In *Mahmoud*, the Supreme Court held that the sporadic use of secular LGBTQ+ storybooks in the English curriculum “substantially interfer[ed] with the religious development’ of [the plaintiffs’] children” because the books, purportedly, were “unmistakably normative” and

“impose[d] upon children a set of values and beliefs that are ‘hostile’ to their parents’ religious beliefs.” 606 U.S. at 524, 550, 554 (quoting *Yoder*, 406 U.S. at 218). Act 573’s mandated scripture is not only “unmistakably normative,” it is explicitly prescriptive. *Id.* at 550. The Commandments direct students to accept a specific deity and reject putting “other gods before” that deity. Act 573 displays are imposed upon every public-school child, regardless of age, and with far greater frequency than the periodic instruction in *Mahmoud*. Unlike storybooks, the Commandments are prominently and conspicuously displayed for every hour of every day, in every classroom, “induc[ing] . . . schoolchildren “to read, meditate upon, perhaps to venerate and obey” the government’s preferred scripture. *Stone*, 449 U.S. at 42. If Act 573 stands, the only way for a child to avoid the State’s religious imposition is to forgo public education altogether. But “[p]ublic education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept a burden on their religious exercise.” *Mahmoud*, 606 U.S. at 561.

Intervenor contends that this case is distinguishable from *Mahmoud* because “Act 573 does not require students to submit to instruction.” Appellant’s Br. 49-50 (“There is ‘[n]o religious curriculum,

no theistic lesson plans”; “[a]ll the law requires is a poster on a classroom wall.” (quoting *Nathan*, 173 F.4th at 609)). This erroneous argument fails to account for the expressly religious, instructive content of the Ten Commandments and the all-encompassing nature of Act 573’s statutory scheme.¹⁷

The Act need not include a theistic lesson plan to carry out its mandatory religious instruction: The Commandments are overtly and unmistakably religious in and of themselves, and through their very “prominent” and “conspicuous” presence on the walls of every classroom, they will exhort and instruct students to obey specific, Protestant religious directives, including, “Thou shalt have no other gods before me” and “Thou shalt not take the Name of the Lord thy God in vain.” More than that, because the Commandments are presented as the authoritative religious rules to be followed, the displays will convey to every student who does not adhere to this scripture that the religious beliefs and practices instilled by their parents are not merely wrong but

¹⁷ Even if the Act’s scriptural displays do not qualify as “instruction,” the Supreme Court’s interim ruling in *Mirabelli v. Bonta* clarifies that *Mahmoud* extends beyond “uniquely coercive ‘curricular requirements.’” 607 U.S. 492, 495 (2026) (per curiam) (citation omitted).

sinful, “explicitly contradict[ing] their parents’ religious views.” Appellant’s Br. 49-50 (quoting *Mahmoud*, 606 U.S. at 555); *see also Mahmoud*, 606 U.S. at 537 (noting parent’s belief that challenged policy “impl[ied] to [children] that their religion, their belief system, and their family tradition is actually wrong”).

2. Strict scrutiny applies.

Because Act 573 “imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.” *Mahmoud*, 606 U.S. at 565. Parent-Plaintiffs have made conscious decisions regarding the religious education and upbringing of their children. R. Doc. 169, ¶¶ 45-139. Their uncontradicted testimony below—through depositions, declarations, and written discovery—proves that the displays will substantially interfere with and “override . . . [this] control of the[ir] child[ren’s] religious upbringing.” Appellant’s Br. 49. Plaintiff Carol Vella, for instance, testified that she is raising her two children in the Jewish faith. App. 1172-74; R. Doc. 164-8, at 11-13. She and her children are active at their local temple, where she previously directed the religious school. App. 1174-75; R. Doc. 164-8, at 13-14. Vella testified that Act 573 displays would undermine

her parental role in guiding her children’s religious instruction and development because the displays would send the message that the State-selected version is the “correct or authoritative version of scripture,” even though it is “not [her] version.” App. 1216; R. Doc. 164-8, at 55. Similarly, another parent-Plaintiff testified that Act 573 communicates that “a place of authority like [the] school” “command[s]” children through the displays and “make[s] kids . . . feel like they have to believe in [the religion] our government is sponsoring [] in their classroom.” App. 1137-39; R. Doc. 164-7, at 25-27.

Unable to contradict this evidence, Intervenor resorts to mischaracterizing parent-Plaintiffs’ free-exercise burden as an objection to their children’s “[m]ere exposure to different religious ideas.” Appellant’s Br. 44 (citation modified). As discussed elsewhere, *supra* Section II.B.1, *infra* Section III.B, Act 573’s displays go well beyond passive “exposure” to religious beliefs. Regardless, “[w]hether or not a requirement or curriculum could be characterized as ‘exposure’ is not the touchstone for determining” whether Act 573’s displays “would substantially interfer[e] with the religious development of the child or pose a very real threat of undermining the religious beliefs and practices

the parent wishes to instill in the child.” *See Mahmoud*, 606 U.S. at 556 (citation modified). The State’s compulsory-education regime, combined with the unavoidable religious instruction mandated by Act 573, creates such a threat because it places the child-Plaintiffs in “an environment hostile to [their] beliefs” with pressure to conform to the State’s approved Protestant scripture. *Id.* at 549.

Intervenor also contends that Act 573 does not burden parent-Plaintiffs’ religious exercise because the Act does not “force[] a person to act, or refrain from acting, in violation of his or her religious beliefs, by threatening sanctions, punishment, or denial of an important benefit.” Appellant’s Br. 42 (quoting *New Doe Child #1 v. United States*, 901 F.3d 1015, 1026 (8th Cir. 2018)). But the Free Exercise Clause does not require that “parents who send their children to public school must endure any instruction that falls short of direct compulsion or coercion and must try to counteract that teaching at home.” *Mahmoud*, 606 U.S. at 563. Besides, considering the State’s compulsory-attendance laws, the Act *does* force parent-Plaintiffs, under threat of sanctions, to violate their religious principles by sending their children to schools wherein the government inculcates Christian scripture through its purportedly civic

educational authority.

Finally, Intervenor argues that parent-Plaintiffs will not suffer substantial interference with their ability to guide their children's religious development because many of them "already expose their children to the Ten Commandments, including through active instruction[.]" Appellant's Br. 52. The State's argument misses the point of the Free Exercise Clause: Parents have the right to control how, when, and in what context their children receive religious instruction. *See Mahmoud*, 606 U.S. at 546; *Yoder*, 406 U.S. at 232-33. Some parent-Plaintiffs teach their children the family's version of the Ten Commandments at home, in church or temple, or in summer camp. *See* App. 2479-80; R. Doc. 167-1, at 27:24-28:13; App. 2474-76; R. Doc. 167-1, at 22:3-9, 23:18-24:4. These same parents wish to continue that instruction *without* government interference.¹⁸

¹⁸ Contrary to Intervenor's suggestion, parent-Plaintiffs do not seek to compel the government to *advance* their faith, Appellant's Br. 44 (citing *Bowen v. Roy*, 476 U.S. 693, 699 (1986)), they seek to prevent the government from *imposing* its preferred faith on their children.

3. Act 573 Cannot Survive Strict Scrutiny.

Intervenor has not even attempted to satisfy strict scrutiny; nor could it. “To survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests.” *Mahmoud*, 606 U.S. at 565 (citation modified).

Intervenor has identified *no* interest of *any* order, let alone one of “the highest order,” served by Act 573. The Act’s sponsors made plain that its object is to promulgate religious doctrine to inspire religious belief and practice. *See, e.g.*, App. 598 (Rep. Wooldridge stating: “[A]nything we can do to try to increase access to or spread that gospel, I guess, would be something that I would want us to do as a person of faith.”). A governmental interest in inculcating religious doctrine is not compelling; it is unlawful. *See, e.g., Stone*, 449 U.S. at 41-42.

Even assuming Intervenor could prove a compelling interest in teaching the Ten Commandments’ historical significance, Act 573 is not narrowly tailored to that end. Intervenor’s own expert “stated he would ‘find it hard to imagine’ any educational purpose for hanging the Ten Commandments in, say, a math or science classroom.” Add. 22; App. 2447; R. Doc. 188, at 22 n.5. Act 573 fails the narrow-tailoring inquiry

because it mandates the permanent, ubiquitous display of scripture in every classroom, regardless of subject matter, grade level, or relevance to any curriculum. Arkansas cannot “escape its obligations under the Free Exercise Clause” simply because it has made opt-outs impossible. *Mahmoud*, 606 U.S. at 567. “There is no *de maximis* exception to the Free Exercise Clause.” *Id.*

B. Act 573 Violates the Child-Plaintiffs’ Free-Exercise Rights.

This Court should affirm the district court’s holding that Act 573 violates the child-Plaintiffs’ free-exercise rights because it is religiously coercive. Add. 22-23; App. 2447-48; R. Doc. 188, at 22-23 (“[T]he State does not materially dispute [Plaintiffs’] contention that exposing their children to the State’s mandated displays of the Ten Commandments will . . . induce their children to suppress their own religious or non-religious beliefs.”). That students are purportedly “not forced to read [scripture] nor penalized for not reading it,” Appellant’s Br. 44, even if true, would not render Act 573 permissible under the Free Exercise Clause, which “protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Carson v. Makin*, 596 U.S. 767, 778 (2022) (citation modified).

For the reasons discussed, *supra* Section II.B.1, in the context of a public-school classroom, the displays “exert upon children a psychological pressure to conform to [their] specific [religious] viewpoints,” *Mahmoud*, 606 U.S. at 554 (citation modified). That pressure, “though subtle and indirect, can be as real as any overt compulsion.” *Lee*, 505 U.S. at 593. Supplemental-parent-Plaintiffs’ testimony shows just that, providing “vivid details about the deleterious effects both they *and* their children experienced when Ten Commandments displays were hung in their classrooms.” Add. 23; App. 2448; R. Doc. 188, at 23 (emphasis added).

The authorities cited by Intervenor only underscore Act 573’s violation of the child-Plaintiffs’ free-exercise rights. *New Doe Child* is simply inapposite: The conspicuous posting of scripture in every classroom is not comparable to the small inscription of the national motto on the backside of currency. Appellant’s Br. 44-45 (citing *New Doe Child*, 901 F.3d at 1025-26). *Bauchman v. West High School*, 132 F.3d 542, 557 (10th Cir. 1997), Appellant’s Br. 44-45, in which a choir member’s free-exercise claim failed because she had a “choice whether or not to sing” in certain optional-attendance performances—is irrelevant here, where students must confront Act 573 displays for nearly every hour of every

school day across years. And *Perrier-Bilbo v. United States* involved an *adult* plaintiff's challenge to a *one-time* naturalization oath, not children daily confronted with scripture in mandatory-attendance classrooms. 954 F.3d 413, 430 (1st Cir. 2020). The record is clear: absent an injunction, Act 573 would pressure child-Plaintiffs to suppress their own religious or non-religious beliefs to avoid judgment from school officials and peers. *See* R. Doc. 169, ¶¶ 54, 83, 84, 94, 117, 138.

IV. THE INJUNCTION WAS WARRANTED.

Having found Act 573 unconstitutional, the district court properly concluded that Plaintiffs demonstrated irreparable harm, that the equities tip decisively in Plaintiffs' favor, and that the public interest favors protecting religious liberty through a permanent injunction. Add. 25; App. 2450; R. Doc. 188, at 25; *see also Mahmoud*, 606 U.S. at 569. Intervenor's failure to contest any of these injunction factors further evinces that the district court's ruling was correct.

The injunction entered by the district court was well within its "considerable" discretion when it comes to "fashioning suitable relief and defining the terms of an injunction." *Washington v. Trump*, 145 F.4th 1013, 1037-38 (9th Cir. 2025). Such relief may be reviewed by appellate

courts only for an abuse of discretion. *Roach*, 560 F.3d at 863. Intervenor has not demonstrated such abuse here.

The district-court injunction covering the whole of Plaintiffs' schools and school districts is proper because it is no "broader than necessary to provide complete relief to each plaintiff with standing to sue." *CASA*, 606 U.S. at 861. Intervenor asserts that "an injunction could easily [have] be[en] written to prohibit Act 573 displays in the specific locations that Plaintiffs have identified where their students will likely go." Appellant's Br. 54. But Intervenor's proposal would require school districts to construct scripture-free bubbles around child-Plaintiffs, which, as the district court correctly held, would be unacceptable because it "would put child-Plaintiffs at risk of repeated, accidental impositions of the Act's scriptural displays." R. Doc. 71, at 34.

Indeed, it is telling that none of the school-district Defendants sought to narrow the injunction's scope either below or on appeal. That is no doubt because it would be "impracticable, if not impossible, to carve out an injunction that is distinctly limited to the named plaintiffs" without depriving child-Plaintiffs of "the opportunity to interact with and learn from their fellow students at schools" across the district. *See*

Jackson Fed’n of Tchrs. v. Fitch, 799 F. Supp. 3d 571, 585 (S.D. Miss. 2025). Arkansas conceded as much below. App. 594; R. Doc. 68, at 279; P.I. Hr’g Tr. at 279 (Judge Brooks “thank[ing] [Intervenor’s counsel] for conceding that” Intervenor’s proposed injunction “does not seem the most administratively feasible”). Plaintiffs move between classrooms within their schools, and between schools within their districts, for extracurricular activities, school events, field trips, and other activities. See App. 1919, 1935, 1941, 1947, 1954; R. Docs. 168-10, at 8, 168-12, at 13, 168-13, at 11, 168-14, at 8, 168-15, at 10; see also App. 2083-84; R. Doc. 168-26, at 4-5. It follows that “[o]nly district-wide relief—across all Defendant school districts—will satisfy the Supreme Court’s definition of ‘complete relief.’” Add. 25; App. 2450; R. Doc. 188, at 25.

The injunction is not improper simply because it affects nonparties: “There is no rule . . . that nonparties must remain unaffected by the court’s order.” *L.A. Press Club v. Noem*, 171 F.4th 1179, 1191 (9th Cir. 2026) (citation modified); see also *CASA*, 606 U.S. at 852 n.12 (noting that, for some injuries, it may be “all but impossible for courts to craft relief that is complete *and* benefits only the named plaintiffs”). The relief granted falls squarely within *CASA*’s framework because it is tailored to

afford each Plaintiff the opportunity to fully participate in school activities without being subjected to state-sponsored religious instruction in the form of scriptural displays. The First Amendment demands no less.

CONCLUSION

For the foregoing reasons, the Court should affirm.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On June 25, 2026, this document was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court.

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CERTIFICATE OF COMPLIANCE

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