UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROXANNE CRIBBS RINGER, on behalf of herself and on behalf of her minor child, E.R., et al., Plaintiffs, v. COMAL INDEPENDENT SCHOOL DISTRICT, et al., Defendants.	CIVIL ACTION NO. 5:25-cv-01181

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

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INTRODUCTION

Texas Senate Bill No. 10 ("S.B. 10" or "the Act"), which requires all public elementary and secondary schools to display the Ten Commandments in a "conspicuous place" in every classroom, is "'plainly unconstitutional.'" *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 25-cv-00756, 2025 WL 2417589, at *14, *23 (W.D. Tex. Aug. 20, 2025) (quoting *Roake v. Brumley*, 141 F. 4th 614, 645 (5th Cir. 2025)). The U.S. Court of Appeals for the Fifth Circuit reached the same conclusion in June regarding a similar Louisiana law. *See Roake*, 141 F. 4th at 645. These rulings reflected binding Supreme Court precedent, including *Stone v. Graham*, 449 U.S. 39 (1980); *Lee v. Weisman*, 505 U.S. 577 (1992); *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022); and most recently, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

Ignoring *Roake* and *Nathan*, and flouting their independent legal obligation to provide a public education that comports with the First Amendment, the Defendant School Districts in this case have either posted the Ten Commandments or have indicated their intention to display the posters imminently. Consistent with *Nathan*'s ruling that S.B. 10 displays likely violate the Establishment and Free Exercise Clauses of the First Amendment, 2025 WL 2417589, at *23–24, Plaintiffs—families with children enrolled in the Defendant School Districts—respectfully request that this Court issue a temporary restraining order and/or preliminary injunction enjoining Defendants from complying with S.B. 10 by displaying the Ten Commandments in classrooms and requiring Defendants to immediately remove any S.B. 10 displays currently posted.[1]

FACTUAL BACKGROUND

Under S.B. 10, which took effect on September 1, 2025, all public elementary and secondary schools in Texas must display a poster or framed copy of the Ten Commandments in a

[1] If the Court grants the requested temporary restraining order, Plaintiffs request that the order be converted to a preliminary injunction within fourteen days. *See* Fed. R. Civ. P. 65(b)(2).

"conspicuous place" in every classroom. Ex. 1, Tex. S.B. 10 § 1(a), 89th Leg. R.S. (2025). The displays must "include *only* the text of the Ten Commandments as provided by Subsection (c)," which must be printed "in a size and typeface that is legible to a person with average vision from anywhere in the classroom." *See id.* §§ 1(b), (c) (emphasis added). That text is a state-adopted, Protestant version of the Ten Commandments, drawn from the King James Bible. *See* Decl. of Steven K. Green, J.D., Ph.D., Ex. A (hereinafter, "Green Rep.") ¶¶ 52–58. Texas lawmakers repeatedly emphasized their hope that S.B. 10's mandatory displays would send a message of faith to students and inspire them to live by the Ten Commandments. *See* Compl. ¶¶ 79-87 (detailing lawmakers' comments); *Nathan*, 2025 WL 2417589, at *21–22.

After the *Nathan* ruling, plaintiffs' counsel in that case sent a letter to every superintendent in Texas (other than the superintendents of the defendant school districts in *Nathan*) to inform them of the decision. Ex. 2 (attaching letter). The letter explained that, although the districts may not technically be bound by the Court's ruling, they have an independent legal obligation to respect their students' constitutional rights. *Id.* The letter further informed the superintendents that, "[i]n light of the court's August 20 ruling that S.B. 10 is unconstitutional, any school district that implements S.B. 10 will be violating the First Amendment and could be inviting additional litigation." *Id.* Defendants were not deterred and have either posted displays in their schools or have indicated their intent to do so soon.[2]

Like the plaintiffs in *Nathan*, 2025 WL 2417589, at *15–21, 24, Plaintiffs here have

[2] *See* Compl. ¶¶ 90-107; Decl. of Roxanne Cribbs Ringer ¶ 5; Decl. of John Fuechsel ¶ 5; Decl. of Amber Rainey ¶ 5; Decl. of Lenee Bien-Willner ¶ 5; Decl. of Jeremy Halland ¶ 5; Decl. of Kimberly Inmon ¶ 5; Decl. of Rev. Kristin Klade ¶ 5; Decl. of Whitney Lawrence ¶ 5; Decl. of Michelle Lewis ¶ 5; Decl. of Nichole Manning ¶ 5; Decl. of Michael Olson ¶ 5; Decl. of Shannon Olson ¶ 5; Decl. of Patricia Ruiz ¶ 5; Decl. of Daniel Sullivan ¶ 6; Decl. of Marneigh Urban ¶ 5; Decl. of Maribel Villarreal ¶ 5.

demonstrated that Defendants' S.B. 10 scriptural displays are already causing or will cause them multiple harms by: (1) forcibly subjecting the minor-child Plaintiffs to religious doctrine and beliefs in a manner that conflicts with their families' religious and non-religious beliefs and practices; (2) sending a marginalizing message to the minor-child Plaintiffs and their families that they do not belong in their own school community because they do not subscribe to the state's preferred religious text; (3) religiously coercing the minor-child Plaintiffs by pressuring them to observe, meditate on, venerate, and follow the state's favored religious text, and pressuring them to suppress expression of their own religious or nonreligious beliefs and backgrounds at school; and (4) substantially interfering with the religious development of the minor-child Plaintiffs and threatening to undermine the beliefs, practices, and values regarding matters of faith that the parent-Plaintiffs wish to instill in their children, thereby usurping the parents' authority to direct their children's religious education and religious or nonreligious upbringing.[3]

LEGAL STANDARD

The judicial analysis for temporary restraining orders is identical to the standard used in the preliminary-injunction analysis. *See, e.g.*, *Whole Woman's Health v. Paxton*, 264 F. Supp. 3d 813, 818 (W.D. Tex. 2017). For either form of relief, the moving party must establish: "(1) a substantial likelihood of success on the merits; (2) a substantial threat that failure to grant the injunction will result in irreparable injury; (3) that the threatened injury outweighs any damage that the injunction may cause the opposing party; and (4) that the injunction will not disserve the public

[3] *See* Cribbs Ringer Decl. ¶¶ 6-9, 11-12; Fuechsel Decl. ¶¶ 7-10, 12-13; Rainey Decl. ¶¶ 6-9, 11-12; Bien-Willner Decl. ¶¶ 7-14; Halland Decl. ¶¶ 6-9, 11-12; Inmon Decl. ¶¶ 6-9, 11-13; Rev. K. Klade Decl. ¶¶ 6-12; Decl. of John Klade ¶¶ 6-10, 12-13; Lawrence Decl. ¶¶ 7-11, 13-14; Lewis Decl. ¶¶ 7-12; Manning Decl. ¶¶ 7-10, 12-13; M. Olson Decl. ¶¶ 6-9, 11-12; S. Olson Decl. ¶¶ 6-9, 11-13; Ruiz Decl. ¶¶ 6-9, 11-12; D. Sullivan Decl. ¶¶ 7-10; Decl. of Sinjita. Sullivan ¶¶ 7-10; Urban Decl. ¶¶ 6-9, 11; Villarreal Decl. ¶¶ 7-10, 12-16.

interest." *Allied Mktg. Grp., Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989) . Plaintiffs here easily satisfy all four requirements. *See Nathan*, 2025 WL 2417589, at *28.

ARGUMENT

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

A. Permanently Displaying Scripture in Every Public-School Classroom Violates the Establishment Clause.

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

S.B. 10 is constitutionally forbidden under binding, directly applicable Supreme Court precedent. In *Stone*, the Court struck down, under the Establishment Clause, a Kentucky law that, like S.B. 10, required the display of "a durable, permanent copy of the Ten Commandments . . . on a wall in each public elementary and secondary school classroom in the Commonwealth." 449 U.S. at 39–40 n.1. *Stone* has been the law of the land for nearly half a century. Even in the one Establishment Clause case where the Supreme Court upheld a governmental display of the Ten Commandments, the Court emphasized that the public-school context in *Stone* set it apart from a relic placed decades ago among other monuments on the Texas Capitol grounds: "There are, of course, limits to the display of religious messages or symbols. For example, we held unconstitutional a Kentucky statute requiring the posting of the Ten Commandments in every public schoolroom. . . . [*Stone*] stands as an example of the fact that we have been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2005) (plurality opinion) (cleaned up).[4]

[4] *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; *Lee*, 505 U.S.at 592).

Accordingly, the Fifth Circuit, as well as three federal district courts (including the *Nathan* court), have *specifically ruled* that statutes mandating displays of the Ten Commandments in public-school classrooms are unconstitutional under *Stone*. *See Roake*, 141 F.4th at 645; *Nathan*, 2025 WL 2417589, at *23; *Stinson v. Fayetteville Sch. Dist. No. 1*, No. 5:25-cv-5127, 2025 WL 2231053, at *1, 7, 11 (W.D. Ark. Aug. 4, 2025); *Roake v. Brumley*, 756 F. Supp. 3d 93, 116–17 (M.D. La. 2024).[5] In reaching these holdings, the courts correctly rejected the argument that *Kennedy*'s abrogation of the "*Lemon* test" somehow overturned *Stone*. *See, e.g.*, *Nathan*, 2025 WL 2417589, at *21. As the Fifth Circuit explained in *Roake*:

> Although the Supreme Court set aside the *Lemon* test in *Kennedy*, . . . *Kennedy* did not overrule *Stone*. *Kennedy* does not mention *Stone* or purport to overrule the decisions (other than *Lemon*) on which *Stone* relies, *i.e.*, *Schempp* or *Engel*. *Stone* remains good law and therefore controls, if it directly applies. We conclude that it does.

Roake, 141 F. 4th at 642 ((cleaned up) (citing *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962))); *see also Stinson*, 2025 WL 2231053, at *7.

S.B. 10 is even more egregiously unconstitutional than the statute overturned in *Stone*. Unlike in *Stone*, Texas lawmakers took it upon themselves to select and approve an official version of the Ten Commandments—one aligned with Protestant beliefs. Further, the Texas legislature went to great lengths to ensure that students cannot avoid the displays: The Ten Commandments must be posted in a "conspicuous place" and printed in a "size and typeface that is legible to a person with average vision from anywhere in the classroom." Ex. 1, §§ 1(a)–(b)(1). And while the statute in *Stone* required the display to be sixteen inches wide by twenty inches high, 449 U.S. at 39–40 n.1, S.B. 10 allows displays to be even larger, providing only that they be "*at least* 16 inches

[5] *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*, North Dakota law requiring "the ten commandments of the Christian religion to be displayed in a conspicuous place in every schoolroom").

wide and 20 inches tall." Ex. 1, § 1(b)(2) (emphasis added). Finally, the statute in *Stone* required a context statement alongside the Ten Commandments, setting forth their purported historical relevance, *see Stone*, 449 U.S. at 39–40 n.1, but S.B. 10 lacks even this. As *Stone* is binding law, and directly applicable, this Court need look no further in its analysis. *See, e.g.*, *Nathan*, 2025 WL 2417589, at *23; *Roake*, 141 F. 4th at 643 (requirements in Louisiana statute were "materially identical" to those in *Stone*); *Stinson*, 2025 WL 2231053, at *11 (noting that the Kentucky statute in *Stone* was "almost identical" to the Arkansas statute).

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

Even if *Stone* were not directly applicable and binding law, S.B. 10's mandatory religious displays are unconstitutional under the Supreme Court's coercion jurisprudence, including *Kennedy*. *See Nathan*, 2025 WL 2417589, at *26–27. The Supreme Court has long recognized that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *See Lee*, 505 U.S. at 592. As an initial matter, mandatory attendance requirements create a legal obligation for parents "to send their children to public school unless they find an adequate substitute." *See Mahmoud*, 145 S. Ct. at 2359. "The State exerts great authority and coercive power through [these] mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). That is "why a religious practice may be deemed unconstitutional in the 'special context of the public elementary and secondary school system,' but deemed constitutional elsewhere." *Roake*, 141 F.4th at 641 (quoting *Edwards*, 482 U.S. at 583).[6] The Supreme Court recently emphasized that possible

[6] *Cf. Van Orden*, 545 U.S. at 691 (plurality opinion) ("The placement of the Ten Commandments monument on the Texas State Capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day.").

coercion of public-school children remains of great concern. *See Mahmoud*, 145 S. Ct. at 2355, 2357 ("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." (citations omitted)).

Like other states, Texas requires parents to send their minor children to school.[7] Once students are at school, staff control their movements and often their expression: Students may not move around freely to avoid official religious indoctrination or to contest it beyond certain limits. Students become a captive audience, especially in the classroom; and, as *Kennedy* reaffirmed, it is "problematically coercive" under the Establishment Clause for "public schools to impose religious messages on a 'captive audience' of students." *See Nathan*, 2025 WL 2417589, at *26 (quoting *Kennedy*, 597 U.S. at 541–42 (citing *Lee*, 505 U.S. at 580; *Santa Fe Indep. Sch. Dist. v Doe*, 530 U.S. 290, 311 (2000)));[8] *see also Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 279–80 (5th Cir. 1996) (striking down law permitting official prayers at school events because students are "a captive audience that cannot leave without being punished by the state or School Board for truancy

[7] Tex. Educ. Code § 25.093(a). Excessive unexcused absences will subject students and parents to various educational and legal penalties, including civil prosecution and fines. *See* Tex. Fam. Code § 65.003(b); Tex. Educ. Code §§ 25.0915(a), 25.093; *see also* Compl. ¶¶ 66-69. In such proceedings, if "a parent refuses to obey a court order . . . the court may punish the parent for contempt of court[.]" Tex. Educ. Code § 25.093(g) (citing Tex. Gov't Code § 21.002, which authorizes a fine or confinement in jail for contempt of court).

[8] In *Kennedy*, the Court upheld the right of a public-school football coach to engage in a quiet and private act of prayer after games, noting that the prayers looked "very different" from those in *Lee* and *Santa Fe*. 597 U.S. at 541–542. The coach's prayers were purely private and not attributable to the school, did not involve students, and were not imposed on a captive audience. *See id.* at 525, 529–531, 542.

or excessive absences").[9]

Viewed through the lens of this special concern for captive-audience public-school students, S.B. 10's mandatory classroom displays of the Ten Commandments are religiously coercive. The Ten Commandments "come from religious texts and include commandments that have clear religious import, such as requiring worship of one God and keeping the Sabbath holy." *Roake*, 141 F. 4th at 632; *accord Stone*, 449 U.S. at 41–42 ("The Commandments do not confine themselves to arguably secular matters . . . Rather, the first part of the Commandments concerns the religious duties of believers[.]"); *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 869 (2005) ("[T]he original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction."). Posting these religious directives pursuant to S.B. 10 serves "no . . . educational function." *See Stone*, 449 U.S. at 42; *accord Nathan*, 2025 WL 2417589 at *28 (noting that "students could be taught any relevant history of the Ten Commandments without the state selecting an official version of scripture, approving it in state law, and then displaying it in every classroom on a permanent basis"). The statute does not require that the Ten Commandments be integrated into a curriculum of study. On the contrary, S.B. 10 mandates that the posters must be indiscriminately displayed in every Texas public-school classroom, regardless of subject matter or other lessons taught. *Nathan*, 2025 WL 2417589, at *14. What is more, to further ensure that the displays are unavoidable and that students perceive them as authoritative rules that must be followed, the state went out of its way to draw students' attention to them. *See supra* pp. 1-2, 5-6.

[9] *See also, e.g.*, *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957 (9th Cir. 2011) (students in mathematics classroom were "captive" to teacher's proselytizing his view on the "role of God in our Nation's history"); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1167 (7th Cir. 1993) (enjoining Bible distributions in public-school classrooms because "children are a captive audience" and "they are most assuredly not free to get up and leave").

Capitalizing on the direct and indirect coercive forces unique to the public-school context, S.B. 10's minimum requirements for the displays pressure students, including the minor-child Plaintiffs, to engage in religious exercise. *See, e.g.*, *Nathan*, 2025 WL 2417589, at *24 (finding that the Ten Commandments displays '"are not passive because students in public schools are forced to engage with them and cannot look away'") (quoting *Stinson*, 2025 WL 2231053, at *11)); *Schempp*, 374 U.S. at 224–25 (holding that school-directed reading of Bible passages constitutes "religious exercise" where, as here, it is not "presented objectively as part of a secular program of education").[10] The minor-child Plaintiffs are being or 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. 3d at 193 (cleaned up); *accord Nathan*, 2025 WL 2417589, at *23–24; *Stinson*, 2025 WL 2231053, at *14.

3. *S.B. 10 unconstitutionally takes sides on theological questions and favors one religious denomination over others.*

In addition to holding that S.B. 10 is unconstitutionally coercive, the *Nathan* Court also determined that the statute "impermissibly takes sides on theological questions and officially favors Christian denominations over others." 2025 WL 2417589, at *27; *see also* Green Rep. ¶¶ 53–58 (discussing denominational nature of S.B. 10's scriptural text); *Roake*, 756 F. Supp. 3d at 200 ("The Act requires the display of a specific Protestant version of the Decalogue."); *Stinson*, 2025 WL 2231053, at *13, n.14 ("The King James version of the Ten Commandments in Act 573

[10] As the *Nathan* Court recognized, the constitutional prohibition against government coercion of religious exercise includes vocal and silent activities. *See* 2025 WL 2417589, at *24; *see also Stone*, 449 U.S. at 42 ("Nor is it significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud as in *Schempp* and *Enge*l[.]"); *Wallace v. Jaffree*, 472 U.S. 38, 60–61 (1985) (state could not encourage students to engage in silent prayer).

differs from other Protestant, Catholic, and Jewish versions, and those differences have substantial theological implications[.]").[11] Specifically, S.B. 10 violates the Establishment Clause's '"clearest command'": The '"government may not 'officially prefer' one religious denomination over another.'" *Nathan*, 2025 WL 2417589, at *27 (quoting *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 145 S. Ct. 1583, 1594 (2025) (quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982))). This principle of denominational neutrality dates back to the Founding, *see Larson*, 456 U.S. at 244-45, and '"bars States from passing laws that aid or oppose particular religions . . . or interfere in the 'competition between sects.'" *Nathan*, 2025 WL 2417589, at *27 (quoting *Cath. Charities*, 145 S. Ct. at 1591 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968))). And earlier this year, the Supreme Court unanimously reaffirmed this Founding principle. *See Cath. Charities* 145 S. Ct. at 1594.

The requirement that government maintain neutrality between religious denominations precludes government action that takes sides in "controversies over religious doctrine and practice." *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) .[12] Indeed, even Justice Scalia recognized that the Establishment Clause prohibits "governmental endorsement of a particular version of the Decalogue as authoritative." *McCreary Cnty.*, 545 U.S. at 894 n.4 (Scalia, J., dissenting). Here, in violation of these longstanding fundamental principles,

[11] The Louisiana statute enjoined in *Roake* and the Arkansas statute enjoined in *Stinson* mandate a version of the Ten Commandments that is nearly identical to the version adopted in S.B. 10. *See* La. Act No. 676 (2024); Ark. Act. No. 573 (2025).

[12] *See also Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 20 (1989) (plurality opinion) ("[T]here exists an overriding interest in keeping the government—whether it be the legislature or the courts—out of the business of evaluating the relative merits of differing religious claims[.]" (cleaned up)); *Schempp*, 374 U.S. at 243 (Douglas, J., concurring) (the First Amendment requires "on the part of all organs of government a strict neutrality toward theological questions").

Texas has chosen sides on religious controversies of the utmost importance, announcing an official position on perhaps the greatest theological question of all: Which religion (and which religious texts) should public-school students and families believe in and follow? The state's explicit preference for a particular version of biblical scripture not only conflicts with the beliefs of many Jews and Catholics, but it also rules out any number of faiths in which the Ten Commandments are generally not recognized as part of the religious tradition.[13]

When "a state law establishes a denominational preference, courts must treat the law as suspect and apply strict scrutiny in adjudging its constitutionality." *Cath. Charities*, 145 S. Ct. at 1591 (cleaned up). Texas's decision to adopt, by statute,[14] this particular version of the Ten Commandments and promulgate it via mandatory displays in public-school classrooms cannot be reconciled with the Establishment Clause's requirement that the government maintain a strict neutrality toward theological questions, or its command that one religious denomination cannot be preferred over another. And S.B. 10 does not overcome strict scrutiny. *See infra* pp. 16-18.

4. *S.B. 10's permanent classroom displays do not fit within any historical tradition.*

Under *Kennedy*'s "historical practices and understandings" analysis, "[t]he 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." *Roake*, 141 F. 4th at 645 (quoting *Kennedy*, 597 U.S. at 536–37). To that end, this Court must look to the purposes

[13] *See* Green Rep. ¶ 52.

[14] Unlike in *Van Orden*, 545 U.S. at 712–13, where the challenged monument was not erected due to any law requiring such displays, and the Fraternal Order of Eagles (not the government) selected the text of the Commandments inscribed on the monument, here the state went out of its way to require public-school displays of the Commandments and to select, vote on, and officially approve the specific text to be used. Intentionally choosing, in this manner, "which version of the Ten Commandments to display" communicates official denominational preference. *See Glassroth v. Moore*, 335 F.3d 1282, 1299 n.3 (11th Cir. 2003).

animating the Establishment Clause at the Founding.

In drafting and enacting the First Amendment, at least two concerns stood out at the time. First, religious coercion "was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 597 U.S. at 537. Thus, James Madison and Thomas Jefferson, who were instrumental in the creation of the First Amendment and whose writings the Supreme Court has repeatedly referenced in construing the Establishment Clause,[15] were adamant that "[g]overnment should not coerce or promote religious fealty or any religious belief." *See* Green Rep. ¶¶ 25–26. They each took a broad view of what constitutes impermissible religious coercion by the government. *Id.* ¶ 26. Second, the Founders were all too aware of the religious persecution and religious discord engendered by colonial governments' official preferences for some denominations over others. *See id.* ¶¶ 18–25. Madison and Jefferson believed that "[g]overnment should not take a position on any religious doctrine or promote any denomination or denominational belief or practice as favored or preferred." *Id.* ¶ 25.

As *Kennedy* and *Catholic Charities* make clear, the anti-coercion and denominational-neutrality principles at the heart of the Establishment Clause are just as vital today as they were at the Founding. Because S.B. 10's displays are religiously coercive and give preference to particular denominations—violating original First Amendment principles—the law cannot pass constitutional muster under *Kennedy*'s historical analysis. *See, e.g.*, *Stinson*, 2025 WL 2231053, at *13–14 (finding that the challenged Ten Commandments displays are "incompatible with the Founding Fathers' conception of religious liberty" because "impos[ing] religious messages on a

[15] *See Schempp*, 374 U.S. at 214; *see also, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 162–63 (1878); *Everson v. Bd. of Educ.*, 330 U.S. 1, 11–13 (1947); *Engel*, 370 U.S. at 425, 436; *Larson*, 456 U.S. at 245; *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 770 n.28 (1973); *McCreary Cnty.*, 545 U.S. at 878; *see also Nathan*, 2025 WL 2417589, at *8–9, 26.

'captive audience' of students" is religiously coercive). But even if the historical record theoretically could redeem a statute that violates the Establishment Clause prohibitions on religious coercion and denominational preference (it cannot),[16] it does not do so here.

In *Roake*, the Fifth Circuit examined "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" and affirmed the district court's finding of a "substantial likelihood that there is insufficient evidence of a broader tradition in place at the time of the founding, or within the history of public education, so as to justify [the Louisiana statute]." 141 F. 4th at 646, 648 (applying *Kennedy* and *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941 (5th Cir. 2022)). Plaintiffs' expert evidence here—submitted by Dr. Steven K. Green, who also served as an expert in *Nathan*, *Roake*, and *Stinson*—points to the same conclusion.

As an initial matter, the American public education system, as we know it today, did not come into existence until the early 1800s. Green Rep. ¶¶ 38–39; *see also Nathan*, 2025 WL 2417589, at *25 (noting that the defendants' expert agreed "with Dr. Green that the public school system did not exist at the Founding"). To the extent that religious practices generally occurred in those early common schools, especially practices that were denominationally preferential, and thus discriminatory, they were extremely contentious, sparking lawsuits, protests, and even violent riots. Green Rep. ¶¶ 40–41. Moreover, with regard to the Ten Commandments specifically, while some early textbooks included lessons referring to the Ten Commandments, those lessons were sporadic at best; they were not significant aspects of the texts, and they were largely eliminated over time. *Id.* ¶¶ 43–47; *see also Roake*, 756 F. 3d at 209 (finding that "the historical records show

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

only 'scattered instances' [of use of the Ten Commandments in public education] that are 'too little evidence too thinly spread to conclude that [the practice] occurred regularly.'" (quoting *Mack*, 49 F.4th at 957)); *cf. Town of Greece v. Galloway*, 572 U.S. 565, 576–77 (2014) (upholding legislative prayers that enjoyed "unambiguous and unbroken history" of widespread acceptance, including by the Founders, and have "withstood the critical scrutiny of time and political change").

As Dr. Green, an expert in the history of the First Amendment's Religion Clauses, as well as the intersection of religion and public schools, has concluded: "[T]he Ten Commandments were not a prominent part of American public education . . . Nor more specifically, . . . is there evidence of a longstanding, let alone unbroken, historical acceptance and practice of widespread, permanent displays of the Ten Commandments in public schools." Green Rep. ¶ 51. After hearing extensive expert testimony, the *Nathan* Court agreed with Dr. Green's conclusions and correctly ruled that there is "insufficient evidence of a broader tradition of using the Ten Commandments in public education, and there is no tradition of permanently displaying the Ten Commandments in public-school classrooms." 2025 WL 2417589, at *26 (citing *Stinson*, 2025 WL 2231053, at *13); *accord Roake*, 756 F. Supp. 3d at 204–10. The Court should make the same finding here. *See Nathan*, 2025 WL 2417589, at *25, 28 (finding Dr. Green's testimony "more persuasive" than the testimony proffered by defendants' expert).

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

Given that the Establishment and Free Exercise Clauses have complementary purposes, *Kennedy*, 597 U.S. at 533, it is not surprising that S.B. 10 also violates the Free Exercise Clause. Mandating displays of the Ten Commandments in every public-school classroom infringes Plaintiffs' right to "choose [their] own course [in matters of faith] . . . free of any compulsion from the state," *see Schempp*, 374 U.S. at 222, as well as the parent-Plaintiffs' fundamental right, "as

contrasted with that of the State, to guide the religious future . . . of their children." *See Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

1. *S.B. 10's permanent displays of the Ten Commandments are unconstitutionally coercive under the Free Exercise Clause.*

The right to free exercise necessarily includes the right *not* to be pressured into government-sponsored religious observance that violates one's conscience, as well as the right not to be coerced by the government to suppress one's own religious beliefs and practices. *See Carson v. Makin*, 596 U.S. 767, 778 (2022) (reiterating that the Free Exercise Clause bars "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions" (cleaned up)); *see also Mahmoud*, 145 S. Ct. at 2357 (rejecting notion that the Free Exercise Clause provides "nothing more than protection against compulsion or coercion to renounce or abandon one's religion").

As discussed above, under S.B. 10, students are and will be subjected to the Ten Commandments for nearly every hour they are in school, in every classroom. There are no exceptions. *See* Ex. 1, § 1(f) ("Notwithstanding any other law, a public elementary or secondary school is not exempt from this section."). Thus, "[t]he displays are likely to pressure the child-Plaintiffs into religious observance, meditation on, veneration, and adoption of the State's favored religious scripture, and into suppressing expression of their own religious or nonreligious backgrounds and beliefs while at school." *Nathan*, 2025 WL 2417589, at *28. Short of withdrawing from public school, there is no ability to opt out of these displays, and the state's official religious doctrine will be unavoidable throughout students' public-school careers. But "[p]ublic education is a public benefit, and the government cannot condition its availability on [Plaintiffs'] willingness to accept [an unconstitutional] burden on their religious exercise." *See Mahmoud*, 145 S. Ct. at 2359 (cleaned up).

2. *S.B. 10's mandatory displays will violate the parent-Plaintiffs' free-exercise rights.*

Generally speaking, government conduct is subject to strict scrutiny where a plaintiff shows "that a government entity has burdened his sincere religious practice pursuant to a policy that is not neutral or generally applicable." *Kennedy*, 597 U.S. at 525 (cleaned up). The Supreme Court clarified recently, however, that courts "need not [even] ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny" where the government "requires [parents] 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." *Mahmoud*, 145 S. Ct. at 2342, 2361 (quoting *Yoder*, 406 U.S. at 218). The displays mandated by S.B. 10 will do just that.[17] They are "instruction" in the most fundamental sense: They command, *i.e.*, instruct, students to follow numerous religious dictates.

This imposition of religiously objectionable content on the minor-Plaintiffs is *far more* egregious here than in *Mahmoud* because the materials objected to here are *patently religious*—biblical scripture, no less—and will directly conflict with the parent-Plaintiffs' religious beliefs and their own teachings to their children about matters of faith. *See supra* n.3; *cf. Mahmoud*, 145 S. Ct. at 2344–45. Moreover, the materials at issue here are in use and confront students for nearly every hour of the school day, from kindergarten through senior year, rather than occasionally. *Cf. Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 297 (D. Md. 2023). Indeed, S.B. 10's displays are

[17] Plaintiffs also meet *Kennedy*'s threshold for strict scrutiny. 597 U.S. at 525. The *Nathan* Court held that "S.B. 10 is not neutral with respect to religion," explaining: "By design, and on its face, the law mandates the display of expressly religious scripture in every public school classroom." 2025 WL 2417589, at *27; *accord Roake*, 756 F. Supp. 3d at 200 (Louisiana's H.B. 71 was "not neutral toward religion" because it "require[d] the display of a specific Protestant version of the Decalogue" and the legislative history further confirmed the departure from neutrality). And because S.B. 10 will coerce the minor-child Plaintiffs, *supra* [**], and usurp the parent-Plaintiffs' rights, *infra* pp. 16-18, it "is likely to burden Plaintiffs' exercise of their sincere religious or nonreligious beliefs in substantial ways." *Nathan*, 2025 WL 2417589, at *28.

designed to attract students' attention and are given a "conspicuous" place of honor on classroom walls. *Supra* pp. 1–2, 5–6. They will "impose upon children a set of [religious] values and beliefs that are 'hostile' to their parents' religious beliefs," and "exert upon children a psychological 'pressure to conform' to the[se] specific [religious] viewpoints." *See Mahmoud*, 145 S. Ct. at 2355 (quoting *Yoder*, 406 U.S. at 211, 218);[18] *see also Nathan*, 2025 WL 2417589, at *28 (holding that classroom displays of the Ten Commandments "are likely to interfere with and usurp" parents' rights to guide their children's religious education). Thus, per *Mahmoud*, Defendants must demonstrate that S.B. 10 "advances interests of the highest order and is narrowly tailored to achieve those interests." *See* 145 S. Ct. at 2361 (cleaned up); *see also Cath. Charities*, 145 S. Ct. at 1591 (government bears the burden under strict scrutiny).

Defendants simply cannot overcome strict scrutiny. *Nathan*, 2025 WL 2417589, at *28. S.B. 10's requirement that public schools post an official, state-approved version of the Ten Commandments in every classroom does not further any compelling governmental interest. It "serves no . . . educational function." *Stone*, 449 U.S. at 42. Indeed, even if it were true that the Ten Commandments had played an important role in American public education or the formation of the nation's principal Founding documents, singling out this one religious text—a denominationally preferential version—over every other historical or foundational text for mandatory, permanent display does not serve a compelling interest.

Finally, even if Defendants were to somehow meet their heavy burden under the first prong of the strict-scrutiny standard, they would nevertheless fail the "narrowly tailored" prong. *See*

[18] *See Cath. Charities*, 145 S. Ct. at 1591 ("The Establishment Clause's prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause, too. . . . because the fullest realization of true religious liberty requires that government refrain from favoritism among sects." (cleaned up)).

Nathan, 2025 WL 2417589, at *28. "There are many ways in which students could be taught the relevant history of the Ten Commandments without the State approving an official version of scripture and then displaying it to students in every classroom on a permanent, daily basis." *Stinson*, 2025 WL 2231053, at *15. Most obviously, the matter could be broached "objectively as part of a secular program of education," *Schempp*, 374 U.S. at 225, through "an appropriate study of history, civilization, ethics, comparative religion, or the like." *Stone*, 449 U.S. at 42.[19] In fact, Texas's current academic standards purport to do so, providing that high school world history students will study the "impact of political and legal ideas contained in the . . . Hammurabi's Code, the Jewish Ten Commandments, Justinian's Code of Laws, Magna Carta, the English Bill of Rights, the Declaration of Independence, the U.S. Constitution, and the Declaration of the Rights of Man and of the Citizen."[20] These standards are an implicit acknowledgement by Texas officials that permanently posting the Ten Commandments in every public-school classroom, in accordance with the minimum requirements of S.B. 10, is not narrowly tailored to any proper governmental interest. *See Nathan*, 2025 WL 2417589, at *28 (holding that S.B. 10 fails strict scrutiny); *cf. Stinson*, 2025 WL 2231053, at *15.

[19] Nor is S.B. 10 narrowly tailored to any state-asserted interest in instilling ethical or moral values in students. Government "cannot employ a religious means to serve otherwise legitimate secular interests." *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982); *see also Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1283 (11th Cir. 2004) (teacher's in-class prayer was not a permissible way to teach compassion because religious exercise "is not within the range of [pedagogical] tools among which teachers are empowered to select").

[20] Tex. Essential Knowledge & Skills for Social Studies ("TEKS") (Aug. 2024), Tex. Educ. Agency, Chapter 113, Subchapter C (High School) at 20, https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/sboe-tac-currently-in-effect/ch113c.pdf. TEKS provide many opportunities for children of all ages to learn about religion. *See, e.g.*, *id.*, Subchapter A (Elementary School), at 22, 25, https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/sboe-tac-currently-in-effect/ch113a.pdf; *id.*, Subchapter B (Middle School) at 18, https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/sboe-tac-currently-in-effect/ch113b.pdf.

II. PLAINTIFFS SATISFY THE REMAINING EMERGENCY-RELIEF FACTORS.

Plaintiffs '"have shown that th[e] [Act's] displays will cause an irreparable deprivation of their First Amendment rights.'" *Nathan*, 2025 WL 2417589, at *27 (quoting *Roake*, 141 F.4th at 648–649). That harm is *ongoing* or *exigently imminent* for the Plaintiffs here: Their school districts have pressed forward with *actually posting* S.B. 10 displays, or have confirmed they will do so shortly, despite the *Nathan* Court's decision holding S.B. 10 unconstitutional, and despite a warning from plaintiffs' counsel in *Nathan* that school districts have an independent legal obligation to comply with that ruling and avoid violating children's and parents' First Amendment rights. *Supra* p 2. The U.S. Supreme Court and Fifth Circuit have repeatedly held that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud*, 145 S. Ct. at 2364 (cleaned up). The harm here is especially egregious because it involves the unrelenting imposition of scripture on children for hours every day.

The public interest and the balance of potential harms to the parties also weigh in Plaintiffs' favor. There will be no harm to the public interest, or to Defendants specifically, because a temporary restraining order and/or preliminary injunction will merely maintain the status quo or return the parties to the last uncontested status quo pending the outcome of this litigation. *See, e.g.*, *Canal Auth. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974) (holding that, where "the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury" by "returning to the last uncontested status quo between the parties"). Moreover, Defendants do "not have a genuine interest in enforcing a regulation that violates federal law." *Nathan*, 2025 WL 2417589, at *27 (quoting *Roake*, 141 F.4th at 649). On the contrary, the Fifth Circuit explained in *Roake* that "injunctions protecting First Amendment freedoms are always in the public interest . . . and, courts must be particularly vigilant in

monitoring compliance with the Establishment Clause in elementary and secondary schools." *Id.* at *27 (cleaned up).

CONCLUSION

In accordance with Federal Rule of Civil Procedure 65 and Local Rule CV-7(C),[21] Plaintiffs respectfully request that this Court issue a temporary restraining order and/or preliminary injunction immediately enjoining all Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them, from complying with S.B. 10 by displaying the Ten Commandments in public classrooms and requiring all Defendants to immediately remove any S.B. 10 displays currently posted. If the Court grants a temporary restraining order, Plaintiffs further request that the Court set a schedule for any additional briefing or hearing that may be necessary to convert the temporary restraining order to a preliminary injunction within the fourteen days. *See* Fed. R. Civ. P. 65(b)(2).

Date: September 23, 2025

Respectfully submitted,

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[21] The Federal Rule of Civil Procedure 65(c) security bond requirement should be waived. This is a non-commercial case that involves only non-monetary injunctive relief and serves a public interest to protect constitutional rights. There is no likelihood of harm or probable loss should the injunction be granted. *See, e.g.*, *Tex. Trib. v. Caldwell Cnty.*, No. 23-CV-910, 2024 WL 420160, at *8 (W.D. Tex. Feb. 5, 2024) (waiving Rule 65 bond); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (Rule 65(c) security requirement is discretionary).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents will be personally served on each Defendant pursuant to the Federal Rules of Civil Procedure, along with the Summonses and Complaint in this action, immediately following the issuance of the Summons documents by the Western District of Texas Clerk's Office.

Dated: September 23, 2025

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