
United States Court of Appeals
for the
Eighth Circuit

Case Nos. 25-2713, 25-2894, 25-3311

SAMANTHA STINSON, *et al.*,

Plaintiffs-Appellees,

JULEE JAEGER, *et al.*,

Plaintiffs-Appellees,

– and –

CHRISTINE BENSON,

Plaintiff-Appellee,

– v. –

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

Defendants,

(For Continuation of Caption See Inside Cover)

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 20 minutes.

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INTRODUCTION

Act 573 mandates the “prominent,” “conspicuous” display of state-selected scripture—a Protestant version of the Ten Commandments—in every public elementary and secondary school classroom and library in the state of Arkansas. No matter what grade-level or subject-matter, scripture will adorn public-school walls statewide. Act 573 will thereby force schoolchildren to observe, read, and meditate on the Ten Commandments’ directives while in their classrooms, where each child-Plaintiff is legally required to be, for every hour of each school day of their public-school education. Parent-Plaintiffs’ undisputed testimony illustrates the coercive power that these posters will have on their children and how it will burden the parent-Plaintiffs’ right to guide their children’s religious or nonreligious upbringing.

The Act is unconstitutional under binding Supreme Court precedent, flouts the Establishment Clause’s prohibition on religious coercion and denominational preference, and infringes Plaintiffs’ rights under the Free Exercise Clause. The preliminary injunction was properly issued and this Court should affirm.

STATEMENT OF THE ISSUES

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

Apposite Authority: *United States v. Iowa*, 126 F.4th 1334 (8th Cir. 2025)

2. Whether the district court correctly held that this case is controlled by *Stone v. Graham* and that the Act is facially unconstitutional under *Stone*.

Apposite Authority: *Stone v. Graham*, 449 U.S. 39 (1980)

3. Whether the district court correctly concluded that Act 573's minimum requirements would coerce public-school students into religious observance and would reflect governmental denominational preference in facial violation of the Establishment Clause.

Apposite Authority: *Stone*, 449 U.S. 39; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022)

4. Whether the district court clearly erred in its factual finding that there is no history and tradition of the government permanently displaying or otherwise proliferating the Ten Commandments in public schools.

Apposite Authority: *Stone*, 449 U.S. 39; *Kennedy*, 597 U.S. 507

5. Whether the district court correctly concluded that permanently displaying the Ten Commandments in every public-school classroom burdens schoolchildren’s religious freedom and interferes with parent-Plaintiffs’ free-exercise right to direct their children’s spiritual development.

Apposite Authority: *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Stone*, 449 U.S. 39

6. Whether the district court abused its discretion in granting preliminary injunctive relief.

Apposite Authority: *Cigna Corp. v. Bricker*, 103 F.4th 1336 (8th Cir. 2024)

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

The statutory requirements of Act 573, Ark. Act 573, Ark. Code § 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.

Id. § (a)(1). The posters must be at least sixteen by twenty inches, with text printed in a “size and typeface that is legible to a person with average vision from anywhere in the room.” *Id.* § (a)(1)(B)(ii)(a). 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.* § (b). Children will be unable to avoid the Act’s Ten Commandments 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).

The Act dictates the State’s officially approved 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.

This version of the Ten Commandments is not denominationally neutral and is principally associated with Protestant beliefs and sects, having been derived from the Protestant King James Bible. It is not observed by most adherents of Catholicism and Judaism. App. 156; R. Doc. 8-12, at 29. And the theological aspects of the Ten Commandments generally do not reflect the beliefs of atheists, agnostics, Hindus, Buddhists, and others. App. 155-158; R. Doc. 8-12, at 28-31. Indeed, by stating "I am the Lord thy God" and mandating that "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 abundantly clear that the State’s aim in enacting and implementing Act 573 is to impose specific religious beliefs on public-school children. Responding to an Arkansas reverend’s testimony against the proposed law, Act 573 co-sponsor Rep. Stephen Meeks asserted: “You had stated that...the Ten Commandments should be taught in church and all that. And I don’t disagree with that. I’m a fellow Christian. But there are a large number of students who don’t go to church....[W]ould you rather them have zero exposure to this or have it in their classroom so they can at least have some exposure?” App. 53; R. Doc. 2, at 13. After the reverend testified that she did not “believe the public schools should be the ones providing that access,” Rep. Jeremy Woolridge proclaimed: “I think that anything we can do to try to increase access to or spread that gospel, I guess, would be something that I would want us to do as a person of faith. I guess I’m a little bit shocked that you, as a pastor, would not have that same view.”

Id.

II. PROCEDURAL BACKGROUND

Plaintiffs filed suit on June 11, 2025. Plaintiffs are Jewish, Unitarian Universalist, Catholic, and nonreligious. App. 55-71; R. Doc. 2,

at 15-31. Plaintiffs assert that the Act's requirements violate both the Establishment Clause and the Free Exercise Clause of the First Amendment. App. 71-74; R. Doc. 2, at 31-34. Plaintiffs moved for a preliminary injunction to enjoin Defendants from displaying posters mandated by Act 573. App. 77; R. Doc. 8, at 1.

The State of Arkansas (the "State") intervened. App. 30; R. Doc. 39, at 1; R. Doc. 42, at 1. Defendants and the State each opposed Plaintiffs' motion for preliminary injunction and moved to dismiss Plaintiffs' suit for lack of jurisdiction. App. 170-72; R. Doc. 52, at 1-2. Following an evidentiary hearing, which included live testimony of Plaintiffs' expert, Dr. Steven K. Green, the admission of Plaintiffs' testimony by declaration, and the submission of exhibits into evidence, the district court granted Plaintiffs' motion and denied the motions to dismiss on August 4, 2025. Add. 34-35; App. 417-18, 615-17; P.I. Hr'g Tr. at 4-6; R. Doc. 71, at 34-35. The State noticed its appeal on August 22, 2025. App. 32; R. Doc. 78, at 1.

Meanwhile, even after the issuance of the district court's order, multiple Arkansas school districts implemented Act 573 and posted the Ten Commandments in classrooms. Accordingly, Plaintiffs supplemented

their complaint twice to add additional Plaintiffs and name as Defendants the school districts that posted the displays. App. 425-27; R. Doc. 86, at 1-3; App. 530-31; R. Doc. 130, at 1-2. The district court issued preliminary injunctions against those additional Defendants, which the State likewise appealed, and which are consolidated now for this Court’s review. Add. 36-38, 39-40; App. 520-22; R. Doc. 111, at 1-3; App. 610-11; R. Doc. 149, at 1-2.

STANDARD OF REVIEW

“When a party appeals a district court’s preliminary injunction,” this Court’s standard of review is “layered.” *Bricker*, 103 F.4th at 1342 (citation omitted). This Court reviews “the district court’s conclusions of law de novo, its findings of fact for clear error, and its application of the law to the facts for abuse of discretion.” *Id.* at 1343.

SUMMARY OF THE ARGUMENT

Forty-five years ago, the Supreme Court held facially unconstitutional a Kentucky statute materially indistinguishable from Act 573, recognizing that posting 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*, 449 U.S. at 39. The same is true here.

Arkansas children attend public school pursuant to compulsory-education laws. Ark. Code Ann. § 6-18-201(a). Absent an injunction, Arkansas will subject those children to unavoidable displays of a state-prescribed, Protestant version of the Ten Commandments for *nearly every hour of every school day of their public education*. The State's insistence that Act 573 displays are merely "passive" thus rings hollow. The Ten Commandments are, after all, commandments, and are labeled as commandments under the Act. They comprise religious directives like "I am the Lord thy God[;] Thou shalt have no other gods before me." Those religious dictates, backed up by the implicit threat of eternal punishment, will "confront[] elementary school students every day." See *Van Orden v. Perry*, 545 U.S. 677, 691 (2005) (plurality opinion, describing *Stone*). Act 573 is thus irreconcilable with *Stone*, which remains binding on lower courts. The State's assertion that "*Stone* is effectively dead" is untenable under the black-letter rule vesting the Supreme Court alone with the prerogative to overrule its precedents.

Stone should end the inquiry. But Act 573 is also unconstitutional under broader Establishment Clause jurisprudence prohibiting the government from religiously coercing public-school students and from

enacting denominationally preferential laws. Decades after *Stone*, and notwithstanding its abandonment of the *Lemon v. Kurtzman* test, 403 U.S. 602 (1971), the Supreme Court continues to recognize the long line of First Amendment cases finding prayer and scripture at mandatory-attendance public-school events “problematically coercive.” See *Kennedy*, 597 U.S. at 541-42 (citing *Lee v. Weisman*, 505 U.S. 577 (1992) and *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)). Faithfully applying this precedent, the district court concluded that Act 573 coerces religious observance.

The State eschews the vast body of precedent under which Act 573 violates the Establishment Clause by seeking to narrowly apply its interpretation of a proposed new legal standard derived from Justice Gorsuch’s concurrence in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), which *Kennedy* in turn cited in a footnote. Neither source supports the standard the State invites this Court to apply. Moreover, the district court correctly assessed the historical record and rightly found no evidence of any tradition consistent with the Act. The State does not argue that the court’s factual historical findings are clearly erroneous, as would be required for this Court to disregard those findings. Instead, the

State marshals irrelevant historical practices of generically referencing religion in government speeches, generic allusions to religion in national and state mottos like “In God We Trust,” and displaying the Ten Commandments in other public spaces. The State ignores the Supreme Court’s repeated warnings about heightened Establishment Clause vigilance in the public-school context, as well as the fact that religious instruction in American schools conspicuously waned along with the disestablishment of official state religions and the adoption of secular public education.

The State also ignores the district court’s ruling that Act 573 unlawfully takes sides on matters of religion by favoring Protestant Christianity over non-religion, over non-Biblical religious traditions like Hinduism, Buddhism, or other non-monotheistic faiths, and Catholicism and Judaism, which observe different versions of the Decalogue. The State’s defense that the Act is “nonsectarian” because it adopted the same version of the Ten Commandments that was upheld in *Van Orden* fails. *Van Orden*, which did not concern a school, did not involve state-selected, state-promoted scripture, and indeed did not even find as a matter of fact or law that the selected version of the Commandments was nonsectarian.

The district court's ruling on denominational preference alone provides a sufficient basis for this Court to affirm.

So, too, does the district court's ruling that the Act violates the Free Exercise Clause because it burdens Plaintiffs' religious freedom and usurps parent-Plaintiffs' rights to guide their children's spiritual development. Add. 31-32; App. 414-15; R. Doc. 71, at 31-32. To rebut this conclusion, the State distorts *Mahmoud*, which reinforces the Supreme Court's concerns about indoctrination in public schools, and which plainly weighs in Plaintiffs' favor.

Attempting to sidestep the merits, the State argues that Plaintiffs lack standing because they had not had an "actual encounter" with any Act 573 displays at the time this suit commenced during the summer of 2025 before the Act took effect. But that argument, which would preclude any pre-enforcement First Amendment challenge to an unconstitutional statute, is not consistent with the law. It is well-settled that, "exposed to a risk of future harm[.]" Plaintiffs "may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 435 (2021). And "when a deprivation of

First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit.” *Mahmoud*, 606 U.S. at 559-60. The Act’s minimum requirements describe exactly how Act 573 posters must appear and direct Defendants to post them prominently on classroom walls, and so Plaintiffs’ constitutional injuries became imminent the moment the Act was signed into law.

Throughout its Brief, the State insists that the Act’s vague allusion to “historical representation,” or that uncertainty over the “surrounding context” placed next to Act 573 displays, shield the Act against litigation and protect against the Act’s constitutional infirmities. However, as the district court correctly found, this case is not about the content of any individual display, but the aggregate coercive effect of the Act’s ubiquitous insertion of scripture into schools. Whatever else may be included in or around any particular display, the minimum requirements of the Act will impose the State’s preferred scripture on every student, in every classroom, every day of their education.

ARGUMENT

I. THE DISTRICT COURT PROPERLY EXERCISED ITS JURISDICTION.

As the district court found, Plaintiffs have standing to pursue both their Establishment and Free Exercise Clause claims.¹ To establish Article III standing, plaintiffs must show that they have suffered or imminently will suffer “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)). The district court correctly held that Plaintiffs have standing. Add. 24; App. 407; R. Doc. 71, at 24. The State’s arguments to the contrary, which exclusively focus on the injury-in-fact prong of standing, fail as a matter of law.

Plaintiffs easily meet the standard reiterated in *Mahmoud* for pre-enforcement challenges like this one:

[W]hen a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit....Instead, to pursue a pre-enforcement

¹ The State does not press its ripeness argument raised below on appeal. Plaintiffs’ claims are ripe for the reasons articulated by the district court, and the standard for constitutional ripeness mirrors the injury-in-fact requirement for standing. See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014)

challenge, a plaintiff must show that the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.

606 U.S. 522 at 559-60 (citing *Driehaus*, 573 U.S. at 158). In sharp contrast, the State’s proposed approach would force all First Amendment plaintiffs to suffer violations of their rights before bringing suit. Standing doctrine does not require a plaintiff “to await the consummation of threatened injury to obtain preventive relief.” *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). This Court should reject the State’s invitation to change the law.

A. Act 573 Will Imminently Violate Plaintiffs’ Rights Absent an Injunction.

This Court recently reaffirmed, in the context of a pre-enforcement challenge to a state law, that “[f]uture injuries may satisfy the ‘actual or imminent’ requirement for an injury in fact ‘if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.’” *Iowa*, 126 F.4th at 1343 (quoting *Dep’t of Com. v. New York*, 588 U.S. 752, 767 (2019)). Absent injunction, Defendant school districts will implement Act 573, post the Ten Commandments in every classroom, and violate Plaintiffs’ First Amendment rights. The imminent harms

Plaintiffs would thereby suffer satisfy Article III’s injury-in-fact requirement. *See Driehaus*, 573 U.S. at 158.

The State argues Plaintiffs lack standing because “they had not encountered any Act 573 display” before suing. Appellant Br. 14. In support, the State cites *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015 (8th Cir. 2012), for the proposition that plaintiffs challenging a Ten Commandments display must first demonstrate a “direct and unwelcome personal contact” before accruing standing. Appellant Br. 14 (quoting 679 F.3d at 1023). But *Red River Freethinkers* did not concern the timing of the plaintiff’s injury at all; it involved a challenge against a monument that had stood on city property for forty years, 679 F.3d at 1017, and the thrust of its standing holding was to reject the notion that plaintiffs needed to show some “altered [] behavior to avoid the allegedly unconstitutional display,” since “actual *or imminent*” “direct and unwelcome personal contact” was sufficient, *id.* at 1023 (emphasis added) (citation omitted). Nothing in *Red River Freethinkers* or any other case the State cites suggests that a plaintiff lacks standing to bring a pre-enforcement First Amendment challenge to an unconstitutional statute

for want of an actual encounter. “Substantial risk” is the standard, and Plaintiffs satisfy it.

The factual record leaves little doubt that Defendants will implement the Act absent an injunction, notwithstanding the Act’s requirement that displays (or funds to purchase them) come from private donors. Like in *Stone*, “[i]t does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions.” 449 U.S. at 42. The district court reviewed the same evidence the State cites here and found that, considering the “de minimis amount” it would cost to supply every classroom in Defendant school districts with an Act 573 poster, it “is not only likely but *extremely* likely” that sufficient donations will be available “once Act 573 goes into effect.” Add. 19; App. 402; R. Doc. 71, at 19. At the July 18, 2025 hearing, the State’s counsel acknowledged that districts would post Act 573 displays as soon as they received donations, stating, “[t]he statute does say ‘shall,’ so if they receive donations, it instructs them to place them in the classrooms,” conceding that “there is a presumption that government actors follow the law.” App. 808; P.I. Hr’g Tr. at 197. The fact that “Defendants submitted declarations attesting that they had not received any donations” prior to

their July 2, 2025 motion to dismiss, and therefore could not *yet* post any Act 573 displays, Appellant Br. 15, is irrelevant when other extrinsic factual evidence made clear that they would receive donations after that date. The State does not argue that the district court’s factual findings on this score were clearly erroneous (they were not), as would be necessary for this Court to disturb them.

The State attempts to shift the goalposts by suggesting—without citing any apposite authority—that the district court should not have considered any evidence post-dating “the time the suit commenced, particularly related to other Defendants.” Appellant Br. 15 n.3.² But again, this wishes away the forward-looking nature of the standing inquiry in a pre-enforcement challenge. The evidence at the time the original Complaint was filed—including the statutory directive that schools implement Act 573, and the “de minimis” cost of doing so—made clear that there was an imminent risk of First Amendment harm that

² *Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013), does not support the State’s position. See Appellant Br. 16. There, the Court listed at least five hypothetical, still-uncorroborated links in a “speculative chain of possibilities” necessary for the plaintiff’s alleged injuries to materialize. 568 U.S. at 410. Here, no speculation is required: Plaintiffs’ injuries were certainly impending when they filed suit, and have since materialized.

Plaintiffs “need not wait” to endure before filing suit. And the imminence of Plaintiffs’ injuries was *proved* by subsequent events that have transpired during the course of this litigation. For example, even before the district court issued the injunction on August 4, Fayetteville School District received hundreds of donated Ten Commandments posters, App. 366-68; R. Doc. 69, at 1-3, and after the injunction issued, additional Defendants violated Plaintiffs’ rights by displaying Act 573 posters. Plaintiffs have had standing since the inception of this suit, and intervening events have only borne out that the threat was imminent at the time the Complaint was filed.

B. The Surrounding Context of Act 573 Displays Cannot Defeat Standing.

The State hedges against the baselessness of its proposed “actual encounter” rule by arguing that “it was speculative that a display and its context would burden free-exercise rights.” Appellant Br. 15. This argument likewise fails. Whether voluntary contextual accoutrements could cure the constitutional defects of Act 573 (they cannot), “is a question for the merits,” not a standing question. *See Iowa*, 126 F.4th at 1343. This Court has warned against conflating merits challenges with standing arguments to exclude cases from being heard. *See, e.g., Braden*

v. Wal-Mart Stores, Inc., 588 F.3d 585, 592 (8th Cir. 2009) (“The district court erred by conflating the issue of Braden’s Article III standing with his potential personal causes of action[.]”).

Moreover, the Act’s minimum requirements describe exactly how the displays must appear and direct Defendants to post them “conspicuous[ly]” on classroom walls, obviating the relevance of any surrounding context. The State “offers no specifics” about any potentially curative context, rendering “speculation” about *how* context could undo Act 573’s religiously coercive impact “pointless.” *See* Add. 19-20; App. 402-403; R. Doc. 71, at 19-20.

C. The State’s Arguments Regarding So-Called “Offended-Observer Standing” Are Misleading.

The State mischaracterizes both Plaintiffs’ claimed injuries and standing jurisprudence to argue that this Court should “decline to extend offended-observer standing to a new context—hypothetical future offense.” Appellant Br. 17. Plaintiffs’ injuries resulting from the coercive effects of Act 573 surpass “general legal, moral, ideological, or policy objection” to the Act. *See* Appellant Br. 17. And in any event, spiritual harm from government-sponsored religious imagery or practices does constitute injury-in-fact under firmly established Eighth Circuit law.

Unrebutted sworn testimony demonstrates that Plaintiffs seek to prevent (1) the coercive injury that state-sponsored religious observance in public schools inflicts on child-Plaintiffs and (2) the harm that such coerced observance causes parent-Plaintiffs by interfering with their right to direct their children’s religious education. *See* App. 86-123; R. Docs. 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-10. Where, as here, government policies forcibly subject children to school-sponsored religious observance, the First Amendment interests of “children and their parents, who are directly affected by the laws and practices against which their complaints are directed...suffice to give the parties standing to complain.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224 n.9 (1963); *accord Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 486 n.22 (1982) (finding standing where “impressionable schoolchildren were subjected to unwelcome religious exercises or were forced to assume special burdens to avoid them”). The State overlooks these religion-in-school cases and wrongly conflates

Plaintiffs' claims with those directed against "abstract" injuries. Appellant Br. 17.³

Arkansas's compulsory education laws and the pervasive nature of the displays render students a captive audience. Plaintiffs will be forcibly exposed not only to one Act 573 display, but to countless displays, in every classroom, every day, for the entirety of their public-school education. Among other harmful effects, the Act will thereby "send the message...that the school, as an institution of authority, favors Christianity over other religious beliefs and nonbelief" and "will dictate to students...what their religion is or should be." App. 110; R. Doc. 8-7, at 3. This and other record testimony belie the State's dismissive depiction of Plaintiffs' claimed injuries as mere "disagree[ment] with a perceived message on a classroom poster." Appellant Br. 44. Plaintiffs seek to prevent state action that would mandate "an unwelcome religious [inscription on] school [walls] and therefore

³ *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), is inapposite. There, pro-life doctors seeking "to challenge FDA's regulation of others" lacked standing because they could not show "that the government action has caused or likely will cause injury in fact" to them. *Id.* at 385. Here, Act 573 directly exposes child-Plaintiffs to its ubiquitous displays, directly usurping parent-Plaintiffs' free-exercise rights.

have standing to challenge the action.” *See Doe v. Sch. Dist. of Norfolk*, 340 F.3d 605, 609 (8th Cir. 2003).

In any event, it is settled law that spiritual offense resulting from direct contact with an unwelcome display or practice is a sufficient basis for standing. The en banc Eighth Circuit explicitly “affirm[ed]” and “adopt[ed]” a panel decision of this Court that found standing based on offense at encountering a Ten Commandments monument after “stud[ying] the question.” *ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 775 n.4 (8th Cir. 2005) (en banc); *accord Red River Freethinkers*, 679 F.3d at 1023-24 (finding “encounter[.]” with Ten Commandments monument sufficient to confer standing). Many other federal appellate courts agree. *See Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476-77 (3d Cir. 2016) (collecting cases).⁴

⁴ The State does not specify which of “this Court’s offended-observer standing precedent should be overruled,” nor *why*, except by vague citation to a pair of non-binding Supreme Court concurrences. *See* Appellant Br. 14 n.2.

1. The filing of a Notice of Appeal does not categorically divest the district court of jurisdiction.

The “pendency of an interlocutory appeal from an order granting or denying a preliminary injunction does not wholly divest the District Court of jurisdiction over the entire case.” *West Pub. Co. v. Mead Data Cent., Inc.*, 799 F.2d 1219, 1229 (8th Cir. 1986). Rather, the district court loses jurisdiction over only those aspects of the case “involved in the appeal.” *Janousek v. Doyle*, 313 F.2d 916, 920 (8th Cir. 1963). “[T]he district court may not reexamine or supplement the order being appealed,” *State ex rel. Nixon v. Cœur D’Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999), but it otherwise retains jurisdiction to act. *Janousek*, 313 F.2d at 920.

The district court properly allowed supplementation to add Plaintiffs in school districts that posted Act 573 displays after the complaint was filed. *See Griffin v. Cnty. Sch. Bd.*, 377 U.S. 218, 227 (1964) (“Rule 15(d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit, and it follows, of course, that persons participating in these new events may be

added if necessary.”). Both of the State’s two arguments that the district court lacked jurisdiction to allow supplementation are meritless.

The State fails to explain how the supplements could have “potentially impacted the standing issue” before this Court. Appellant Br. 18. The State’s contention that amendment cannot remedy original lack of standing is irreconcilable to its argument that the supplements changed the standing argument in the initial appeal.⁵ As for the State’s second argument, “altered briefing deadlines” arising from the district court’s two additional preliminary-injunction orders did not change the *substance* of the issues the initial appeal raised. *Id.* at 19. Such timing matters do not, to cite a case the State relies on, “significantly change[] the status of the appeals.” *Wooten v. Roach*, 964 F.3d 395, 403 (5th Cir. 2020) (quoting *Dayton Indep. Sch. Dist. v. U.S. Minerals Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir. 1990)). There, facts asserted in an amended complaint could have “affect[ed] whether [defendant] is entitled to prosecutorial immunity.” *Id.* at 403 n.6. Here, new Plaintiffs’ standing

⁵ Regardless, original-Plaintiffs had standing from day one. The new Plaintiffs joined to vindicate their First Amendment rights—not “remedy lack of jurisdiction at [the] suit’s commencement.” Appellant Br. 19.

vis-à-vis new Defendants had nothing to do with original Plaintiffs' standing vis-à-vis original Defendants—so the supplements did not affect the first appeal. Supplementation involved the precise claims at issue in the original complaint and simply extended relief to new parties rather than altering the original injunction.

II. ACT 573 FACIALLY VIOLATES THE ESTABLISHMENT CLAUSE.

The district court properly held Act 573 facially unconstitutional. Based on the Act's minimum requirements, there is "no set of circumstances...under which the [Act] would be valid." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). *Stone*, which facially struck down a practically identical statute to Act 573, controls the outcome of this case, and the State's attempts to distinguish *Stone* fail. The State's remaining Establishment Clause arguments cannot be reconciled with the Supreme Court's long-established (and recently reaffirmed) sensitivity to schoolchildren's susceptibility to religious coercion. And the State entirely ignores the Act's violation of the Establishment Clause's prohibition on denominational preference.

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

This Court’s analysis should begin and end with *Stone*. As the district court noted, *Stone* “renders [Act 573] plainly unconstitutional.” Add. 4; App. 387; R. Doc. 71, at 4. *Stone* remains good law notwithstanding the Supreme Court’s abandonment of the Establishment Clause test set forth in *Lemon*, and—to the extent it is distinguishable at all—Act 573 is even more blatantly inconsistent with the Establishment Clause because Act 573 prescribes the specific version of the Ten Commandments to be used in the required displays.

1. *Stone* is good law.

Stone is not “effectively dead,” just because it found that “requiring the posting of the Ten Commandments in public schoolrooms had no secular legislative purpose.” Appellant Br. 21 (quoting *Stone*, 449 U.S. at 41). On its own terms, *Stone*’s holding did not rest on the Kentucky legislature’s religious purpose alone: It also found as a practical matter that the Kentucky law would “induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” 449 U.S. at 42. Indeed, the Supreme Court has recognized that *Stone* “almost exclusive[ly] reli[ed] upon two [Supreme Court] school prayer cases.” *Van Orden*, 545 U.S. at 690-91 (plurality opinion) (citing *Schempp*, 374 U.S.

203, and *Engel v. Vitale*, 370 U.S. 421 (1962)). The State’s suggestion that *Stone* cannot survive *Kennedy*’s repudiation of *Lemon* ignores this fact, along with the bright-line rule vesting the Supreme Court with the exclusive authority to overrule its own precedents.

Kennedy did not even mention *Stone*, let alone question the continuing vitality of *Schempp* or *Engel*, on which *Stone* was based. Those cases—like *Stone*—remain binding unless and until the Supreme Court “see[s] fit to reconsider them.” *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quotation omitted); *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (“[I]f a precedent of this Court...appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”); *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”) (citation omitted).

The State’s argument that post-*Stone* cases involving religious displays outside the school context somehow “narrowed *Stone*’s holding,” Appellant Br. 22, is meritless. Concerns regarding religious coercion of

schoolchildren, which the State entirely ignores, continue to animate First Amendment law. As *Mahmoud* reiterated, the “State exerts great authority and coercive power through’ public schools ‘because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” 606 U.S. at 554-55 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987)).

Even the cases the State cites to support its attack on *Stone*’s vitality recognize “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.” *Van Orden*, 545 U.S. at 690-91 (plurality opinion) (quotation omitted); *see also Lynch v. Donnelly*, 465 U.S. 668, 681 (1984) (discussing *Stone* and *Schempp* exceptions for scripture that “may constitutionally 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”). These and other post-*Stone* cases reaffirm—not undermine—*Stone*’s viability in the public-school context.

2. *Stone* controls.

The State cannot sidestep *Stone* by distinguishing it on factual grounds. Appellant Br. 27 (arguing *Stone* “should not be extended to different circumstances as the district court did here”). As the district court found, the two statutes are “almost identical.” Add. 25; App. 408; R. Doc. 71, at 25. Both laws require the permanent display of “a durable, permanent copy of the Ten Commandments” on “each public elementary and secondary school classroom,” to be provided by private donations. 449 U.S. at 39; Act 573 § (a)(2)(A). No additional context is necessary, and the Act’s minimum requirements indicate exactly “what the displays...[will] look like.” See Appellant Br. 30. The Act requires the posting of scripture in all public-school classrooms all the time, untethered to any meaningful course of study. Under *Stone*, that cannot stand.

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” displayed and “legible to a person with average vision from anywhere in the room,” requires posters to be displayed in libraries as well as classrooms, and permits poster sizes larger than those considered in *Stone*. Act 573 § (a)(1)(B)(ii)(b). The State attempts to

distinguish *Stone* because Act 573 “set[s] forth the specific Ten Commandments text that must be included in the display.” Appellant Br. 27. But again, this fact renders Act 573, if anything, *more* plainly unconstitutional, not less. By selecting scripture for display here, the State is unconstitutionally taking sides among the various sectarian versions of the Ten Commandments. The State’s reliance on *Van Orden* and *Plattsmouth* in arguing to the contrary is misplaced.

First, while the State’s selection of an official version of the Ten Commandments does not distinguish this case from *Stone*, it does distinguish it from *Van Orden*—unfavorably. There, the fact that the text was *not* state-selected, combined with the challenged monument’s “prominent[] acknowledge[ment] that the Eagles donated the display” was found to “distance[] the State itself from the religious aspect of the Commandments’ message.” 545 U.S. at 701. Meanwhile, nothing in *Stone* attaches any significance to the Kentucky legislature’s choice not to prescribe a particular version of the Decalogue, and the State does not

identify anything in *Stone* to lend substance to its manufactured distinction on this point.⁶

Second, the Act’s chosen version of the Ten Commandments is *not* “nonsectarian.” Appellant Br. 27. The district court found as a matter of fact that “the opposite is true,” as “Dr. Green established through reference to the historical record,” contrasted with the State’s failure to “cit[e] to any factual support.” Add. 28; App. 411; R. Doc. 71, at 28. The State does not argue that this finding was clearly erroneous (it was not), instead advancing a legal argument that Act 573 passes constitutional muster because public-square monuments containing “nearly identical” text were upheld in *Van Orden* and *Plattsmouth*. But neither *Van Orden* nor any other case cited by the State textually analyzes this version of

⁶ Comparing the version of the Decalogue that appeared on the Kentucky posters deemed unconstitutional in *Stone* to Act 573 displays shows that Act 573’s recitation of the Commandments is, if anything, more religiously explicit. For example, the Kentucky posters just say “Honor thy father and thy mother,” while Act 573 adds, “that thy days may be long upon the land which the Lord thy God giveth thee.” Similarly, the Kentucky poster states, “Thou shalt not covet,” without Act 573’s references to “thy neighbor’s wife, nor his manservant, nor his maidservant,” which implicitly treat human beings as property in a way that is contrary to the religious teachings that certain Plaintiffs raise their children in. *See, e.g.*, App. 61-62.

the Ten Commandments for sectarian preference, much less with the benefit of expert testimony like Dr. Green's. The scriptural text in Act 573 "differs from other Protestant, Catholic, and Jewish versions," and "conflict[s] with [Plaintiffs' attested] beliefs" and those of "atheists, agnostics, and...various other [non-Judeo-Christian] religious traditions." Add. 28; App. 411; R. Doc. 71, at 28.

Justice Breyer's concurrence in *Van Orden* pointed to a *process* by the Fraternal Order of Eagles' "to find a nonsectarian text," 545 U.S. at 701, but nowhere states that this process was successful. Justice Breyer's characterization of the Eagles' "process" only cites the Respondents' Brief as a source. *Id.* That brief, in turn, cites two cases—*State v. Freedom from Religion Found.*, 898 P.2d 1013 (Colo. 1995), and *Books v. City of Elkhart*, 235 F.3d 292 (7th Cir. 2000)—neither of which concludes or reviews any evidence that the text was actually nonsectarian. Br. for Respondents, *Van Orden v. Perry*, Civ. No. 03-1500, 5-6 & n.9. *Plattsmouth's* dicta that the same version of the Ten Commandments is nonsectarian likewise only cites *Books* for support; *Plattsmouth* does not independently analyze the text. *See* 419 F.3d at 773 & n.2 (citing *Books*, 235 F.3d at 294-95).

To the extent there could even be a non-sectarian version of the Ten Commandments (there cannot), neither *Van Orden* nor *Plattsmouth* stands for the proposition that such a version could be indiscriminately plastered on public-school walls without violating the Establishment Clause. *Van Orden* expressly forecloses such an argument, distinguishing “*Stone*, where the [Ten Commandments] confronted elementary school students every day,” from their “far more passive use” on a lone monument on the Texas Capitol Grounds. 545 U.S. at 691 (plurality opinion). *Plattsmouth* quoted and relied on *Van Orden*’s discussion distinguishing *Stone*, as this Court followed *Van Orden* in permitting a lone Ten Commandments monument to stand “in a corner of Plattsmouth’s forty-five-acre Memorial Park, ten blocks distant from Plattsmouth City Hall,” where it would not forcibly confront schoolchildren in places of learning. 419 F.3d at 774.

Finally, the State’s attempt to distinguish *Stone* by insisting the Act has a “secular purpose,” Appellant Br. 29, fares no better.⁷ As in

⁷ The State—not Plaintiffs, and not the district court—raises Act 573’s legislative purpose to *defend* the Act; Plaintiffs’ refutation of its argument should not be interpreted as invoking *Lemon* to argue that Act 573’s religious purpose alone renders it unconstitutional.

Stone, “[t]he pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature[,]...and no legislative recitation of a supposed secular purpose can blind [the Court] to that fact.” 449 U.S. at 41.

The fact that Act 573 purports to require a “historical representation” of the Ten Commandments does not evince a legislative goal “to acknowledge the Ten Commandments’ historical importance,” nor render the Act “secular.” Appellant Br. 29. By the State’s own admission, the “historical representation” language in the statute is not defined, and the State’s counsel stated “it would be inappropriate to look at legislative testimony to define a term.” App. 865; P.I. Hr’g Tr. at 254. What the State’s counsel offered to explain—concerning how including the words “historical representation” in the Act lends it a secular purpose—was “speculation” and “the State’s belief” that “the historical representation is reflected in the nonsectarian text [the legislature] chose because it was trying to honor the historical significance of that.” App. 866; P.I. Hr’g Tr. at 255. None of the legislators’ statements that the State quotes support the State’s speculation. *See* Appellant Br. 30 n.8. The Act does not include a statement of legislative intent, a preamble, or any

findings. It does not even include a context statement like the one found inadequate in *Stone*, which required posters themselves to state: “The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States.” *See* 449 U.S. at 41.

The Act’s statutory text, legislative purpose, and practical impacts are substantively indistinguishable from *Stone*. Both statutes are unconstitutional because of their tendency to “induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Id.* at 42.

B. Act 573 Violates the Establishment Clause Prohibition on Religious Coercion.

Although *Stone* provides a controlling basis for this Court to affirm the decision below, it does not stand alone. Rather, it reflects longstanding coercion doctrine, which has since been affirmed in *Kennedy* and other Establishment Clause cases. *Kennedy* called religious coercion “among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” 597 U.S. at 537. The district court correctly held that “[e]ven if *Stone* did not control, Act 573 would still violate the Establishment Clause under *Kennedy*’s

historical practices and understandings test” because it is “impermissibly coercive.” Add. 26; App. 409; R. Doc. 71, at 26.

The special religious-coercion concerns applicable to schoolchildren continue to animate First Amendment jurisprudence, and the State continuously ignores this fundamental legal principle by insisting the ubiquitous displays mandated by the Act are “passive.” The State’s citation to *Town of Greece v. Galloway*, 572 U.S. 565 (2014), comparing Act 573 to “legislative bodies [that] do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear,” Appellant Br. 39 (quoting 572 U.S. at 590), fails for the same reason its repeated citation to public-monuments cases fails: Public schools are constitutionally unique. This Court has followed the Supreme Court in extending special solicitude to public-school students who are captive to school-sponsored religious messages. *See, e.g., Roark v. S. Iron R-1 Sch. Dist.*, 573 F.3d 556, 564 (8th Cir. 2009) (affirming injunction against distribution of Bibles in public schools).

Considering these principles, Act 573 is plainly unconstitutional. There can be no dispute that *Kennedy affirmed* the proposition that public schools may not religiously coerce students. *See* 597 U.S. at 537;

accord Lee, 505 U.S. at 587 (“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise[.]”). *Kennedy* explicitly distinguished Coach Kennedy’s postgame “private religious exercise” from the “problematically coercive” religious observances challenged in *Lee* and *Santa Fe*, which were officially sponsored by the school and delivered to “captive audiences” at school events students were either required or expected to attend. 597 U.S. at 537-41. *Lee* and *Santa Fe*, therefore, remain controlling with respect to religious-coercion claims asserted by public-school students. And, for its part, *Lee* made clear that religious “pressure” arising from state-sponsored religious observance, “though subtle and indirect, can be as real as any overt compulsion.” 505 U.S. at 593. Considering *Kennedy*’s favorable citation to *Lee*, it is absurd for the State to suggest that judicial vigilance to protect schoolchildren from religious coercion died with *Lemon*. Appellant Br. 40.

The law is equally clear that school-sponsored religious observance is no less coercive because it is induced by visual rather than auditory means. In *Stone*, the Court found 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*.” 449 U.S. at 42; *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); *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*.”). At bottom, children’s “susceptibility to coercion from government and peers is [not] limited to situations involving religious exercises,” but can encompass “any action of the state which, either directly or indirectly, conveys that religion, or a particular type of religion, is more accepted, respected, or tolerated than another value system.” *Washegesic v. Bloomingdale Pub. Sch.*, 813 F. Supp. 559, 564 (W.D. Mich. 1993), *aff’d*, 33 F.3d 679 (6th Cir. 1994). And that is precisely the message that Act 573 conveys.

Although aurally silent, the Act’s displays cannot escape children’s visual perception. Children continuously absorb their visual surroundings both consciously and unconsciously, rendering Act 573

displays coercive as a matter of common sense. The Ten Commandments are, after all, *commandments*—rules and instructions to be followed. And they are explicitly *religious*: “I am the Lord thy God,” “Thou shalt have no other gods before me,” “Thou shalt not take the Name of the Lord thy God in vain,” “Remember the Sabbath day, to keep it holy.” Act 573 displays will be everywhere. Besides tables, desks, and chairs, Act 573 displays will be the only element common to every classroom and library students enter. By the State’s logic, the Constitution places no limits on the dissemination of religious messaging through “silent” posters on classroom walls—a state could, for example, mandate posters in every classroom containing the Christian Lord’s Prayer, the Jewish Sh’ma, or the Muslim Shahada. Or posters could point out the state’s perceived disagreements with non-preferred religions, mock minority faiths through demeaning depictions of their sacred symbols, or offer instructions on how to proselytize nonbelievers.

The State cites no caselaw suggesting that posting scripture throughout schools is less coercive than reading it aloud, or otherwise undermining the district court’s holding that “the Ten Commandments are not passive because students in public schools are forced to engage

with them and cannot look away.” Add. 24; App. 407; R. Doc. 71, at 24.⁸ Indeed, the U.S. Congress has recognized that a silent “display” carries the potential “to...coerce.” *See Boos v. Barry*, 485 U.S. 312, 316 (1988) (quoting and invalidating D.C. Code § 22-1115, which barred, *inter alia*, “display[ing] any flag, banner, sign, placard, or device...for the purpose of...coercing, threatening, or harassing any foreign official”). In addition to the coercive nature of the displays themselves, the coercive effects of peer pressure, the heightened risk of teacher-led proselytization, and the other isolating, stigmatizing harms alleged in Plaintiffs’ uncontested declarations cannot be hand-waved away. App. 86-123; R. Docs. 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-10.

⁸ The State’s analogy between posting the Ten Commandments in public-school classrooms statewide and inscribing “In God We Trust” on currency fails. Appellant Br.41. Whereas “In God We Trust” is a “general reference[] to God,” *New Doe Child #1 v. United States*, 901 F.3d 1015, 1022 (8th Cir. 2018), the text required by Act 573 is drawn directly from scripture, specifically refers to the God of the Bible, and issues religious commandments to readers directing them to worship and obey that God. Obviously, none of the coercive pressures the Supreme Court has discussed in the public-school context apply to a four-word motto that children may or may not observe if and when they use physical currency.

C. The State’s Interpretation of the Proposed “Hallmarks” Test Has No Basis in Law.

The State spends a substantial portion of its brief erecting an incorrect legal standard for evaluating Establishment Clause claims. The State’s doctrinal argument that the “relevant question” is whether “Act 573 implicates the ‘hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment’”—defined, according to the State, exclusively by the specific six practices referenced in Justice Gorsuch’s *Shurtleff* concurrence—is incorrect. Appellant Br. 31.

1. Neither *Kennedy* nor *Shurtleff* purported to constrain the Establishment Clause to six exclusive “hallmarks.”

Kennedy cites the list of hallmarks set forth in the *Shurtleff* concurrence in a footnote, does not enumerate them, and refers to the *Shurtleff* concurrence only parenthetically, in passing, as “discussing coercion and *certain other historical hallmarks* of an established religion.” 597 U.S. at 537 n.5 (emphasis added). If the Supreme Court intended to lay down a definitive, comprehensive new Establishment Clause test where the *Lemon* test once stood, it would not do so through a passing parenthetical reference in a footnote. Besides, as discussed

above, *Kennedy* revolved around religious coercion, which the Court located “among the foremost hallmarks of religious establishment[]”—nothing in *Kennedy* indicates any intent by the Court to confine actionable religious coercion to six hypothetical ways in which such coercion may be effectuated. 597 U.S. at 537.

The *Shurtleff* concurrence underscores this point. In it, Justice Gorsuch simply identifies “*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). In arguing to the contrary, the State ignores the actual language of the cases on which it relies.

The State nevertheless doubles down on its doctrinal gambit by selectively quoting language from out-of-circuit caselaw. The Third Circuit’s ruling in *Hilsenrath v. School District of the Chathams*, 136 F.4th 484 (3d Cir. 2025)—like *Kennedy* and the prior rulings in this case—hinged on its coercion analysis. Unsurprisingly, the State avoids *Hilsenrath*’s acknowledgement that “coercion was one of the ‘foremost hallmarks of religious establishments’ at the founding[.]” *Id.* at 492; *see also id.* at 493 (discussing *Lee* and *Santa Fe*). It also omits that

Hilsenrath cited *Stone* in distinguishing the challenged lessons regarding Islam from classroom Ten Commandments displays like the Act's, finding that the two Islam lessons—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.* at 492-93 (quoting *Stone*, 449 U.S. at 42).

The Fourth Circuit's ruling in *Firewalker-Fields v. Lee*, 58 F.4th 104 (4th Cir. 2023), is entirely inapposite to, much less in conflict with, the district court's decision. It does not cite *Shurtleff* or even reference the “hallmarks.” Nor does it conduct an Establishment Clause analysis under *Kennedy*, instead remanding the case for further factual development. *Firewalker-Fields*, 58 F.4th at 111. Granting relief on Plaintiffs' Establishment Clause claim here is *consistent* with the Fourth Circuit's suggestion, *id.* at 122 n.7, that a plaintiff bears the evidentiary burden to show that the challenged practice resembles one or more hallmarks of establishment under *Kennedy*. Plaintiffs did so by showing Act 573 will give rise to one of the “foremost hallmarks” of them all—religious coercion.

Finally, the notion that the *Shurtleff* “hallmarks” are exhaustive and exclusive is belied by *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025). There, the Court did not cite *Shurtleff* or *Kennedy*, or mention *Shurtleff*’s suggested list of “hallmarks,” while it reaffirmed “the Establishment Clause’s ‘prohibition of denominational preferences.’” *Id.* at 247 (quoting *Larson v. Valente*, 456 U.S. 228, 245 (1982)).⁹

2. Act 573 does not fit within any historical tradition.

Nothing in the historical record rebuts the conclusion that the Act’s religious displays constitute the sort of “religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Kennedy*, 597 U.S. at 537. This is not a case where “historical practices and understandings,” *Town of Greece*, 572 U.S. at 576, demonstrate that the challenged law “could coexist with the principles of disestablishment and religious freedom.” *Id.* at 578 (cleaned up). Act 573 cannot.

⁹ Even if the six “hallmarks” were exclusive (they are not), the outcome would be the same. Act 573 effectively transforms schools into “established church[es]”—to which truancy laws “mandat[e] attendance”—by inscribing their walls with state-prescribed scripture.” See *Shurtleff*, 596 U.S. at 286.

The historical evidence marshaled by Dr. Green supports the district court's factual conclusions that "Act 573's mandate is incompatible with the Founding Fathers' conception of religious liberty," and that there is no "broader tradition of using the Ten Commandments in public education" or "permanently displaying the Ten Commandments in public-school classrooms." Add. 27-29; App. 410-12; R. Doc. 71, at 27-29. The district court credited as "thorough, compelling, and uncontroverted" Dr. Green's conclusion that there is "no evidence of a longstanding, historical practice of widespread, permanent displays of the Ten Commandments in public-school classrooms," recounting the wealth of evidence on which he relied, including early texts, the distinction between private and public education in early America (the latter of which did not exist), and that once public schools proliferated, they did not incorporate the Ten Commandments into their curriculum. *Id.*

The State's description of the historical record willfully distorts the facts. The State erroneously declares, for example, that "[s]chools are not an exception to this history" of "official acknowledgement...of the role of religion in American life." Appellant Br. 33-34. The State would thus

have this Court approve Act 573 based on the mere “official acknowledgment by all three branches of government of the role of religion in American life from at least 1789,” which the State contends includes Ten Commandments displays. Appellant Br. 33-34 (citations omitted). This is incorrect. *Schempp*, *Engel*, *Lee*, and other Establishment Clause cases have long forbidden officially sponsored prayer in public schools. The State’s position is thus flatly inconsistent with *Kennedy*, which favorably cited those cases to distinguish their unconstitutional governmental religious coercion from Coach Kennedy’s private observance.

The State conflates the history of *private religious* education with the history of *public* education in an unsuccessful attempt to manufacture a historical basis for the Ten Commandments displays. For as long as *public* schools have existed, they have been “non-sectarian,” and religious practices in those schools were “deeply controversial and not universally accepted.” App. 147; R. Doc. 8-12, at 20. For its part, the State provides no evidence that the Ten Commandments were actually taught in *public* schools besides their appearance in certain reading and

spelling lessons. And the State's characterization of Dr. Green's testimony on this point is misleading.

For one, the State omits Dr. Green's evidence-based conclusion that the "Bible readings" the State cites in its defense "quickly drew the opposition of Catholics and Jews," as well as oppositional litigation and even riots. *Id.* And as Dr. Green thoroughly explains, the "references to the Ten Commandments" in some early textbooks, first adopted in colonial and private religious schools, "were not a significant aspect of the texts, and the extent to which common-school teachers may have relied on those particular readings and spelling lessons, as opposed to the dozens of others available in the same book, cannot be verified." App. 152; R. Doc. 8-12, at 25. The fact that "the further back in time...the more religious the schools and textbooks were," Appellant Br. 35, does not help the State at all. Instead, it reflects the gradual effectuation of disestablishment through the states, which were not formally subject to the First Amendment until 1925. *See Gitlow v. New York*, 268 U.S. 652 (1925).

Historical understandings of the Establishment Clause do not support Act 573. It is undisputed that the Founders understood the

Establishment Clause to prohibit the creation of a national church and coercion in matters of faith, and that preventing denominational preferences and coercion were central to the Founders' intent. App. 133-140; R. Doc. 8-12, at 6-13. And there is no evidence of a longstanding tradition of using, much less posting, the Ten Commandments in public schools. App. 154; R. Doc. 8-12, at 27. As explained above, public schools did not exist at the Founding and religious practices in early schools were highly controversial.

D. Act 573 Violates the Establishment Clause Prohibition on Denominational Preference.

“The 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*, 456 U.S. at 244). Not only does this command preclude government favoritism *among* religions, it requires states to remain “neutral in [their] relations with groups of religious believers and non-believers” alike. *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947). And 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*, 605 U.S. at 248 (cleaned up). Nothing in *Kennedy* abrogated this

principle. Indeed, *Catholic Charities* reaffirmed this rule after *Kennedy* was decided. See 605 U.S. at 248; see also *Carson v. Makin*, 596 U.S. 767, 787 (2022) (noting concern for “denominational favoritism” and citing *Larson*, 456 U.S. at 244, one week before *Kennedy* ruling). Act 573 impermissibly favors one religion over another and religion over irreligion.

Through the Act, the State of Arkansas officially adopts a Protestant version of the Ten Commandments, which conflicts with Jewish and Catholic articulations of the decalogue, and with the beliefs of atheists, Muslims, Hindus, Sikhs, Buddhists, and other adherents to non-Judeo-Christian faiths. The record contains abundant evidence of Act 573’s Protestant orientation, including uncontroverted testimony from Plaintiffs who are Jewish and Catholic. See, e.g., App. 155-58; R. Doc. 8-12, at 28-31; App. 595-96; R. Doc. 133-1, at 1-2. It thus runs directly afoul of the Supreme Court’s admonitions that “[o]ur Government is prohibited from prescribing [scripture] to be [presented] in our public institutions in order to promote a preferred system of belief or code of moral behavior,” *Town of Greece*, 572 U.S. at 581, and that the

government “may not favor one religion over another, or religion over irreligion.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 875 (2005).

The State does not meaningfully dispute that the Act is exclusionary to non-Biblical faiths or non-religious belief systems, and its argument that the Act is not denominationally preferential as between Judeo-Christian denominations is belied by the record. Professor Green’s report sets forth a deep textual analysis showing that the Protestant scripture adopted in Act 573 does not comport with the religious beliefs of many Jews, App. 156-57; R. Doc. 8-12, at 29-30, and Catholics, App. 155-58; R. Doc. 8-12, at 28-31. For example, Act 573’s admonition that “Thou shalt not make thyself any graven images” overlooks that Catholic translations omit that prohibition and “could, for some Catholics, call into question the faith’s reliance on and adoration of various religious statues.” App. 157-58; 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.’ This is a statement of faith that in itself is a Commandment” omitted from Act 573. App. 156; R. Doc. 8-12, at 29. The State’s reference

to legislative testimony from “a pastor” who characterized the Act’s Decalogue as “cobbled together” does nothing to undermine Act 573’s unconstitutional denominational preference. Appellant Br. 29.

Ultimately, even if the Decalogue specified by the Act were acceptable to all Christians and Jews (it is not), that would not save it under *Catholic Charities*. After crediting Dr. Green’s report and Plaintiffs’ declarations, the district court correctly found that “[e]ven if it were possible to create a completely non-sectarian version of scripture that all Christians and Jews could agree on, it would still be Judeo-Christian scripture, which atheists, agnostics, and those of various other religious traditions do not believe.” Add. 28; App. 411; R. Doc. 71, at 28. The State’s failure to meaningfully contest Plaintiffs’ argument on this score supplies an independent ground to affirm the decision below.

E. There Is No Set of Circumstances Under Which Implementation of Act 573 Satisfies the Establishment Clause.

The State argues that Plaintiffs’ facial challenge fails because Plaintiffs “did not show that there are [sic] ‘no set of circumstances’ under which Act 573 could be constitutionally implemented...nor that there would be a ‘lopsided ratio’ of unconstitutional applications to

constitutional ones[.]” Appellant Br. 54 (citations omitted). In support, the State emphasizes that the Act “can undoubtedly by [sic] constitutionally applied.” *Id.* It cannot.

The State’s argument largely rests on the premise that certain displays *could* potentially meet *Stone*’s exception for curricular integration of scripture. But the mere possibility that teachers or administrators may (but are not required to) display secular documents or other materials alongside the Commandments does not render the statute constitutional under any circumstances. As the district court held, Act 573’s “minimum display requirements” provide sufficient details about how the Ten Commandments must be displayed, and the Act’s overall effect cannot be so granularly disaggregated as the State suggests. Add. 19-20; App. 402-03; R. Doc. 71, at 19-20.

Stone is again instructive. Nothing in Kentucky’s law required that the Ten Commandments be displayed standing alone, or otherwise spoke to surrounding context around the displays. *See Stone*, 449 U.S. at 39 n.1. And the statute’s required context statement of its “secular application” did not save it from being facially unconstitutional. *Id.* at 42-43.

The State’s decision to include in its brief a photograph of a Ten Commandments display *from a school in Texas*—ostensibly to demonstrate that the documents surrounding that display rendered it constitutional in that particular classroom—bespeaks the weakness of its position. Appellant Br. 55. Tellingly, the State has not proffered any examples from Arkansas, and regardless, the surrounding context of any given poster cannot undo the coercive harm caused by Act 573’s ubiquitous displays in the aggregate. Inscribing all learning spaces with scripture will transform public schools into religious spaces and coerce students into religious observance. That coercive harm was enjoined in *Stone*, which binds this Court, *see supra* § II.A., and commands a ruling affirming Plaintiffs’ facial challenge.

III. ACT 573 VIOLATES THE FREE EXERCISE CLAUSE.

Plaintiffs’ free-exercise claims provide this Court with another independent ground to uphold the district court’s decision.

The Free Exercise Clause guarantees that individuals and families, not the government, can make their own decisions about what—if any—religious beliefs and traditions to hold and practice. That necessarily includes the right *not* to be pressured into government-sponsored

religious observance that violates one’s conscience, as well as the right to exercise one’s own religion without being coerced by the government to suppress one’s beliefs. *See Mahmoud*, 606 U.S. at 558 (rejecting notion that Free Exercise Clause provides “nothing more than protection against compulsion or coercion to renounce or abandon one’s religion”). The Free Exercise Clause protects against governmental burdens on one’s sincerely held religious beliefs, including through (1) “indirect coercion or penalties on the free exercise of religion,” *Carson*, 596 U.S. at 778 (cleaned up), or (2) usurpation of parents’ prerogative “to guide the religious future...of their children,” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Act 573 does both and does not survive the strict scrutiny that is triggered as a result.

A. *Mahmoud* Underscores Plaintiffs’ Right to Relief Under the Free Exercise Clause.

Mahmoud held that “[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* 606 U.S. at 561 (cleaned up). Accordingly, *Mahmoud* commands lower courts to apply strict scrutiny when an “educational requirement or curriculum” in public schools “substantially interfer[es] with the

religious development’ of [a] child[]” or “pose[s] ‘a very real threat of undermining’ the religious beliefs and practices the parent wishes to instill in the child”—regardless of “whether [it] is neutral or generally applicable.” *Id.* at 556, 565 (quoting *Yoder*, 406 U.S. at 218).

The Act easily clears this threshold. It orders schools to display the Ten Commandments in every classroom without exception. Children—subject to compulsory-attendance laws—will thus be subjected to scripture nearly every hour they are in school, K-12. As discussed above, the displays’ unavoidable, constant omnipresence in child-Plaintiffs’ public-school experience will coercively “induce [them] to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Stone*, 449 U.S. at 42.¹⁰

Plaintiffs’ testimony details precisely how Act 573 violates the free-exercise rights of both child-Plaintiffs and their parents. *See, e.g.*, App. 90; R. Doc. 8-2, at 5 (Act 573 “displays will...pressure [children] to

¹⁰ The State’s standing-style argument that “original-Plaintiffs do not know what the displays and surrounding context will be in their classrooms [sic],” Appellant Br. 44, cannot withstand *Mahmoud’s* clear ruling that “a plaintiff need not wait for the damage to occur before filing suit,” 606 U.S. at 560.

suppress their Jewish faith while in school to avoid being perceived as different by their peers and school staff”); App. 111; R. Doc. 8-7, at 4 (“Imposing permanent, prominently placed displays of religious directives for nearly every hour that my children are in school...will directly interfere with...and undermine my ability to raise my children in a nonreligious tradition.”); App. 115; R. Doc. 8-8, at 4 (Act 573 will “usurp my parental role in guiding my children’s religious education...including the text and meaning of Jewish beliefs surrounding the Ten Commandments”); App. 597; R. Doc. 133-1, at 3 (“As a lifelong practicing Catholic who has developed a strong and firm belief system, I do not want B.B.’s school imposing biblical doctrine through Act 573’s Ten Commandments displays because it contradicts and undermines our family’s faith.”). The district court dedicated substantial attention in its opinion to Plaintiffs’ specific religious or nonreligious belief systems, Add. 8-10; App. 391-93; R. Doc. 71, at 8-10, and, after considering the record evidence as a whole, held that “Act 573 is likely to burden Plaintiffs’ exercise of their sincere religious or nonreligious beliefs in substantial ways.” Add. 32; App. 415; R. Doc. 71, at 32. The State does not argue that

this factual finding was clearly erroneous, and its suggestion that the district court’s analysis was “conclusory” is belied by the opinion below.

The State does not even attempt to satisfy strict scrutiny by articulating a compelling state interest in implementing Act 573, or explaining how the Act is narrowly tailored to advance such an interest. Nor could it. “Posting of religious texts on the wall serves no [] educational function.” *Stone*, 449 U.S. at 42. “Even if the State were to meet its burden of showing a compelling interest”—it cannot—“[t]here 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.” Add. 32-33; App. 415-16; R. Doc. 71, at 32-33.

To evade its inevitable failure under strict scrutiny, the State insists strict scrutiny does not apply 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 Br. 43 (quoting *New Doe Child*, 901 F.3d at 1026). But the Free Exercise Clause protects against “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.”

Carson, 596 U.S. at 778. The Act engages in such coercion even if the type of “punishment” it threatens is not governmental but divine, surrounding child-Plaintiffs with *Commandments* instructing that the monotheistic deity described in the Bible is “the Lord thy God,” and that they must not “have [any] other gods before” that deity, “make...any graven images,” “take the Name of the Lord thy God in vain,” or fail to observe “the Sabbath day.” That “students are not forced to read it or penalized for not reading it,” Appellant Br. 45, is irrelevant when students cannot avoid Act 573’s scriptural instructions—posted everywhere in their schools, all day, every day.

The State’s argument against applying strict scrutiny, and the inapposite cases it cites in support, ignores *Mahmoud*’s express vindication of parental free-exercise rights vis-à-vis public-school instruction. 606 U.S. at 556. Indeed, the Act works a far more burdensome intrusion on Plaintiffs’ religious rights than the secular materials at issue in *Mahmoud*. First, Act 573 displays are *patently religious* scripture and directly conflict with parent-Plaintiffs’ religious beliefs and teachings to their children about matters of faith. *See id.* at 563. Second, *Mahmoud* involved the introduction of just five storybooks,

which would be used only periodically, spending the majority of the schoolyear on a shelf, out of sight. Here, Act 573 displays will adorn the walls of every classroom, K-12, regardless of subject matter, for all to see, every day. The State’s dismissal of the imminent harms involved here as “general legal, moral, ideological, or policy objection[s],” Appellant Br. 52 (quoting *FDA*, 602 U.S. at 381), again mischaracterizes the impacts of Act 573 and ignores the real constitutional injuries at issue.¹¹

The State’s attempt to distinguish *Mahmoud* by casting Act 573 as categorically distinct from an “educational requirement or curriculum” also fails. For one, the State omits *Mahmoud*’s clear application to laws whereby 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.” 606 U.S. at 530

¹¹ *FDA* was not a free-exercise case at all; it dealt with standing, and is wholly inapposite here. Likewise meritless are the State’s unsubstantiated, inaccurate assertions that Plaintiffs’ claims ask the government to “further [their] spiritual development,” Appellant Br. 44-45 (quoting *Bowen v. Roy*, 476 U.S. 693, 699 (1986)); attempt to “micromanage the public school curriculum,” *id.* (quoting *Mahmoud*, 606 U.S. at 568); or seek “veto power over the decision of the public schools,” *id.* (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 32 (2004) (Thomas, J., concurring)).

(quoting *Yoder*, 406 U.S. at 218). Arkansas requires every child to attend school, and under Act 573, public-school children must attend school in classrooms that are all required to have the Ten Commandments “prominently display[ed]” in a “conspicuous place,” and in a “size and typeface that is legible to a person with average vision from anywhere in the room.” This certainly “submit[s]” child-Plaintiffs “to instruction” from the unavoidable displays of the Ten Commandments posted pursuant to the Act. The State’s *ipse dixit* that coercive religious displays are not subject to *Mahmoud*’s analytical framework is unsupported by law.¹²

The State’s citation to the out-of-circuit *Doe No. 1 v. Bethel Local School District Board of Education*, 2025 WL 2453836 (6th Cir. Aug. 26, 2025), is inapposite. The *Bethel* court found that *Mahmoud*’s framework did not apply to a school policy *permitting* transgender students to use communal bathrooms of the gender with which they identify because it “was not an educational requirement or curricular feature, and the policy *did not require* students to use the communal restrooms.” *Id.* at *7

¹² The same goes for the State’s baseless attempt to distinguish *Mahmoud* on the grounds that *Mahmoud* involved an opt-out remedy rather than a preclusive injunction. No authority supports that argument.

(emphasis added). In contrast, the Act imposes a clear “educational requirement”: Child-Plaintiffs’ education is compulsory, as, naturally, is their presence in their classrooms; and the Act mandates that children be presented with specific written religious content during every classroom lesson. Unlike the policy in *Bethel*, the Act’s statutory scheme requires child-Plaintiffs to attend classes where the “prominent display” of religious instructions clearly “implicates direct, coercive interactions between the State and its young residents.” *Mahmoud*, 606 U.S. at 557.

B. Act 573 Violates the Free Exercise Clause’s Prohibition on Denominational Preference.

Strict scrutiny applies under the *Yoder/Mahmoud* framework applicable to public-school children and parents, but even absent that framework strict scrutiny would apply because the Act is not neutral. “The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 584 U.S. 617, 638 (2019) (citation omitted). “The government may not favor one religion over another, or religion over irreligion, religious choices being the prerogative of individuals under the Free Exercise Clause.” *McCreary Cnty.*, 545 U.S. at 875-76.

As already explained, *see supra* § II.D, Act 573 favors religion over non-religion by requiring the Ten Commandments in every classroom and library, and further imposes a denominational preference by dictating the exact language of the Decalogue that must be posted. And the record is replete with evidence regarding the constitutional harms caused by the imposition of the Ten Commandments posters. For example, Plaintiff Carol Vella gave sworn testimony that there are just “a few Jewish students in [her children’s] classes” rendering her family “outsiders in [their] community,” and “leading [her] children to feel ‘othered’ because they do not subscribe to the state’s preferred version of the Ten Commandments.” App. 114-15; R. Doc. 8-8, at 3-4. Ms. Vella’s children “have already been treated differently at school because of their Jewish faith,” and “students have asked [her children] why they are not Christian, do not attend church, or believe in Jesus Christ as their savior.” *Id.* Act 573’s message “that the state-selected, Christian version of the Ten Commandments is the ‘correct’ or authoritative version of scripture” will compound their marginalization. *Id.*

Moreover, “[c]ontemporaneous statements made by members of the decisionmaking body” further show Act 573 is not neutral. *Masterpiece*

Cakeshop, Ltd., 584 U.S. at 639 (citation omitted). The statements made by the Act’s sponsors and supporters illustrate this departure from neutrality. Arkansas lawmakers were motivated to pass Act 573 to advance Christianity, making it clear that Act 573’s purpose is religious indoctrination, which is not even a legitimate governmental purpose, much less compelling, and is thus unlawful under strict scrutiny. App. 445-47; R. Doc. 87, at 14-16.

IV. THE DISTRICT COURT PROPERLY APPLIED THE PRELIMINARY INJUNCTION STANDARD.

The district court did not abuse its discretion in finding that Plaintiffs have satisfied the preliminary-injunction factors. *See Dixon v. City of St. Louis*, 950 F.3d 1052, 1055 (8th Cir. 2020) (appellate courts review injunctions for “abuse of discretion”). While the State argues “likelihood of success is only one factor,” Appellant Br. 56, where First Amendment plaintiffs show success on the merits as the district court determined here, Add. 33; App. 416; R. Doc. 71, at 33, the remaining factors weigh in their favor. *See, e.g., Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 598 (8th Cir. 2022). The State’s assertion that Plaintiffs will not suffer irreparable harm absent an injunction rests on the incorrect assumption that Plaintiffs will not prevail on the merits of

their claims. But Plaintiffs demonstrated that they would suffer irreparable harm because “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1000 (8th Cir. 2012). Additionally, “the Districts and State have failed to demonstrate they will suffer any harm if the preliminary injunction is granted.” Add. 33; App. 416; R. Doc. 71, at 33. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022). And “neither [the state] nor the public has any interest in enforcing a [statute] that violates federal law,” much less the Constitution. *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024).

V. THE SCOPE OF THE PRELIMINARY INJUNCTION WAS APPROPRIATE.

The district court properly exercised its discretion in issuing a district-wide preliminary injunction barring Defendants from posting Act 573 displays in schools under their jurisdiction. *See Dixon* 950 F.3d at 1055 (appellate courts review injunctions for “abuse of discretion”).

Act 573 violates Plaintiffs’ rights under both the Establishment and Free Exercise Clauses. Even if the Court were to affirm only under the

Free Exercise Clause, the injunction should not be narrowed as the State suggests. Appellant Br. 57-58. The Act’s statutory minimum requirements would make the Ten Commandments ubiquitous in classrooms across Arkansas. There is no way for children to opt out of Act 573’s forced religious observance short of staying home from school, and that is simply not an option given mandatory attendance requirements. See Ark. Code. Ann. § 6-18-201(a). As long as they are in school, children will be literally surrounded by scripture. The relief granted by the district court falls squarely within the Supreme Court’s conception of “complete relief.” *Trump v. CASA, Inc.*, 606 U.S. 831, 850 (2025).

The State baldly asserts that “[a]n injunction could easily have been written to prohibit Act 573 displays in the specific locations that Plaintiffs have identified where their students will likely go.” Appellant Br. 58 (citation omitted). But narrowing the injunction would render relief incomplete. As the district court noted, “[t]here is evidence in the record that children regularly move between classrooms within schools, attend programs and activities in other schools within their district, and progress from elementary, to middle, to high school.” Add. 34; App. 417; R. Doc. 71, at 34. The State’s proposal would require districts to construct

Act 573-free bubbles around child-Plaintiffs, requiring schools to take down and re-hang posters whenever a Plaintiff entered or exited a classroom. Such a “bubble” injunction would be completely unworkable. As the district court held, it “would put child-Plaintiffs at risk of repeated, accidental impositions of the Act’s scriptural displays due to the impracticalities of implementing such an injunction.” *Id.* Plaintiffs would thereby remain permanently at imminent risk of irreparable constitutional harm. *See Mahmoud*, 606 U.S. at 569.

Courts have considered and rejected similar “bubble” suggestions advanced by other defendants in First Amendment cases. *See, e.g., Cribbs Ringer v. Comal Indep. Sch. Dist.*, 2025 WL 3227708, at *7 (W.D. Tex. Nov. 18, 2025) (holding “it is impracticable, if not impossible, to prevent Plaintiffs from being subjected to unwelcome religious displays without enjoining” implementation of the challenged statute). Similarly, the district court was correct to conclude that “restricting the scope of a preliminary injunction to just the individual child-Plaintiffs’ classrooms or schools is unlikely to avoid constitutional injury.” Add. 34; App. 417; R. Doc. 71, at 34. The State’s arguments to the contrary cite no authority and lack any merit. Appellant Br. 58.

CONCLUSION

For the foregoing reasons, the Court should affirm.

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Respectfully submitted,

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On February 17, 2026, this document was served via CM/ECF
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