

January 6, 2025

Re: Louisiana Attorney General's misleading Ten Commandments guidance

Dear Superintendent:

We are writing to follow up on our December 19, 2024, letter notifying you that implementing House Bill No. 71, Act 676 (“H.B. 71”) in your school district by putting up displays of the Ten Commandments would violate the First Amendment rights of students and families. After we sent our letter, Louisiana Attorney General Liz Murrill released guidance encouraging school districts to proceed with implementation of the statute. That guidance is misleading and following it will open your district up to potential legal action by students and families.

As our recent letter explained, on November 12, 2024, a federal district court ruled in *Rev. Roake v. Brumley* that H.B. 71 “is facially unconstitutional and unconstitutional *in all applications*.”¹ This means that there is *no way* for school districts to implement the statute in a constitutionally permissible manner. The district court, therefore, enjoined the state defendants, the school-board defendants, and their agents from taking steps to implement or enforce the statute. Although the *Roake* defendants, who are represented by AG Murrill, appealed this decision, the U.S. Court of Appeals for the Fifth Circuit denied their request to suspend the district court’s injunction while the appeal proceeds. Accordingly, the district court’s injunction and order remain in full force and effect.

AG Murrill’s guidance attaches four posters that she urges schools to display in classrooms. However, three of the four posters are nearly identical to sample posters already included and *rejected* in the *Roake* litigation, and the fourth is similar in nature to other sample posters likewise rejected in *Roake*. As the district court explained, “regardless of what iterations of the displays AG Defendants are able to conjure up for purposes of their briefing, the fundamental requirements of the Act mandate that the displays occur in a specific time, place, and manner that contravene the First Amendment.”²

The AG’s guidance nevertheless claims that all school boards, except for the five school-board defendants in the *Roake* case, remain obligated to comply with H.B. 71. But as noted in our previous letter, even though your district is not a party to the ongoing lawsuit, and therefore is not technically subject to the district court’s injunction, *all* school districts have an independent obligation to respect students’ and families’ constitutional rights. Because the U.S. Constitution supersedes state law, and because a federal district court has held H.B. 71 to be facially unconstitutional under the First Amendment, public-school officials may not comply with it.

¹ *Rev. Roake v. Brumley*, ___ F. Supp. 3d ___, No. CV 24-517-JWD-SDJ, 2024 WL 4746342, at *90 (M.D. La. Nov. 12, 2024) (cleaned up) (emphasis added).

² *Id.* at *16.

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Finally, the AG’s guidance asserts that, if a school implements H.B. 71 in accordance with the guidance and is later sued, the AG’s office “will represent that school . . . as permitted by law.” That may be true, but school districts that are sued and ultimately lose in federal court could additionally be liable for the plaintiffs’ attorneys’ fees,³ which the State has not promised to pay.

Oral argument before the appellate court in the *Roake* case is scheduled for January 23, 2025, and a ruling on the defendants’ appeal will follow. In a recent radio interview, Attorney General Murrill acknowledged that some school districts that are not parties in *Roake* have already indicated that they will not post the Ten Commandments “until all legal proceedings are completed.”⁴ She further stated: “I don’t think there’s going to be consequences for a school board that waits to see what happens with the litigation.”⁵ Indeed, as she clarified, while the Louisiana Board of Elementary and Secondary Education (“BESE”) “has some authority to impose consequences on school boards that are not compliant with state law . . . BESE is enjoined” by the federal district court in *Roake* from doing so with respect to H.B. 71.⁶

We once again urge you to respect the First Amendment rights of Louisiana students and families by following the lead of other school districts and not implementing H.B. 71 at this time. It is the only sensible approach that will avoid violating the U.S. Constitution.

Sincerely,



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³ See, e.g., “*Intelligent design*” costs Dover over \$1,000,000, NCSE (Feb. 24, 2006), <https://ncse.ngo/intelligent-design-costs-dover-over-1000000> (reporting that the Pennsylvania school district paid \$1,000,000 in plaintiffs’ attorneys’ fees for violating Establishment Clause of the First Amendment).

⁴ See News Radio 710 KEEL (Jan. 2, 2025), <https://www.youtube.com/watch?v=reaXlNiDbqU>, at 18:23-18:39; see also *id.* at 25:36-25:42 (“Right now, I think a lot of folks are wanting to wait and see what the court does.”).

⁵ *Id.* at 26:09-26:14; see also *id.* at 18:24-19:10 (“Quite frankly there’s not any direct consequences to the superintendent if he doesn’t comply.”).

⁶ *Id.* at 17:59-18:25.