

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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-OLG

PLAINTIFFS' COMBINED MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS AND REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION

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INTRODUCTION

Under S.B. 10's expansive statutory scheme, Texas public schools are required to impose on elementary and secondary school students—for nearly every hour they are in school, day in and day out—a state-adopted, Protestant version of the Ten Commandments. The displays are unavoidable, not only because they are pervasive and omnipresent, but also because they are required to be hung in a “conspicuous place,” be at least sixteen by twenty inches in dimension, and feature the Ten Commandments printed in a size and typeface that is legible from anywhere in the room. As if that were not enough to demand students' attention, to avoid any distraction from the displays' scriptural instruction, S.B. 10 also forbids extraneous content. In other words, the text of the Ten Commandments, and *only* the text of the Ten Commandments, may appear on the posters or framed copies displayed on classroom walls.

Pursuant to S.B. 10, nearly every School District Defendant in this case has posted the Ten Commandments in the classrooms of at least one minor-child Plaintiff. Thus, even under Defendants' own (legally incorrect) demand that the minor-child Plaintiffs encounter governmental biblical displays *before* they and their parents may sue, these Plaintiffs have standing to assert their First Amendment claims. Defendants concede as much in their brief. The minor-child Plaintiffs may switch classrooms, progress from elementary to middle to high school, and even transfer schools or school districts. But, due to S.B. 10, so long as they attend a Texas public school, they will not be able to escape the specific biblical scripture adopted and prescribed by the State, or the pressure to conform to the State's preferred religious doctrine.

The other Plaintiffs will suffer the same fate: The remaining School District Defendants have already received donated S.B. 10 displays and have indicated that they will soon post the displays in classrooms. As the Supreme Court reaffirmed in June, “when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit.”

Mahmoud v. Taylor, 145 S. Ct. 2332, 2358 (2025). Because Plaintiffs’ alleged harms are either ongoing or exigently imminent, they are more than sufficient to support Article III standing, and there are no other jurisdictional barriers to this Court ruling on the merits of Plaintiffs’ claims.

The issue before the Court, then, is whether the State may constitutionally mandate that the Ten Commandments be permanently displayed, consistent with the requirements of the Act, in every elementary and secondary public-school classroom. Just two months ago, this district court held that S.B. 10 is unconstitutional and likely violates the Establishment and Free Exercise Clauses of the First Amendment. *See Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 25-cv-00756, 2025 WL 2417589, at *28 (W.D. Tex. Aug. 20, 2025). While Defendants dismiss this decision by pointing to the *Nathan* Court’s reliance on the Fifth Circuit’s now-vacated opinion in *Roake v. Brumley*, they omit the fact that the ruling also relied on and reflected binding Supreme Court precedent, including *Stone v. Graham*, 449 U.S. 39 (1980), which struck down a similar Kentucky statute under the Establishment Clause.

Further, as the *Nathan* Court correctly held, even if *Stone* were no longer binding, the displays violate original First Amendment principles and conflict with longstanding precedents because the Act’s mandatory scriptural displays are religiously coercive and give preference to particular denominations. 2025 WL 2417589, at *26-28. And by imposing scripture on children for nearly every hour of their public education, in direct conflict with the religious beliefs and practices of Plaintiffs, the displays also “strip away the critical right of parents to guide the religious development of their children.” *See Mahmoud*, 145 S. Ct. at 2358. Accordingly, Plaintiffs

respectfully request that this Court deny Defendants’ motion to dismiss and grant a temporary restraining order and/or preliminary injunction.¹

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION.

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

As an initial matter, most of Defendants’ jurisdictional arguments are obviated by one key fact: The harm to Plaintiffs in this case is either *ongoing* or exigently imminent.³ Nearly every School District Defendant has posted the Ten Commandments in classrooms. Defendants acknowledge this. *See* Defs. Br. 12 (“Plaintiffs allege the Ten Commandments are currently being

¹ *See* Plfs. Mot. for Temp. Restraining Order and/or Preliminary Injunction (“Plfs. Mot.”), ECF No. 4; Defs. Mot. to Dismiss & Response in Opp. to Plfs. Mot. for Preliminary Injunction (“Defs. Br.”), ECF No. 42.

² In ruling on a motion to dismiss under Rule 12(b)(1), the Court may consider evidence outside of the Complaint. *See, e.g., Umphress v. Hall*, 133 F.4th 455, 462 (5th Cir. 2025) (“In reviewing the dismissal, we ‘must accept . . . as true’ the complaint’s factual allegations, and we ‘may consider’ (1) the complaint alone, (2) the complaint supported by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” (quoting *Carroll v. Abide*, 788 F.3d 502, 504 (5th Cir. 2015)); *Ramming*, 281 F.3d at 161 (“In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact which may be in dispute.”).

³ *See* Compl., ECF No. 1, ¶ 93–107; Decl. of Roxanne Cribbs Ringer, ECF No. 4-4, ¶ 5; Decl. of John Fuechsel, ECF No. 4-4, ¶ 5; Decl. of Amber Rainey, ECF No. 4-4, ¶ 5; Decl. of Lenee Bien-Willner, ECF No. 4-4, ¶ 5; Decl. of Jeremy Halland, ECF No. 4-4, ¶ 5; Decl. of Kimberly Inmon, ECF No. 4-4, ¶ 5; Decl. of Rev. Kristin Klade, ECF No. 4-4, ¶ 5; Decl. of Michelle Lewis, ECF No. 4-4, ¶ 5; Decl. of Nichole Manning, ECF No. 4-4, ¶ 5; Decl. of Michael Olson, ECF No. 4-4, ¶ 5; Decl. of Shannon Olson, ECF No. 4-4, ¶ 5; Decl. of Patricia Ruiz, ECF No. 4-4, ¶ 5; Decl. of Daniel Sullivan, ECF No. 4-4, ¶ 6; Decl. of Marneigh Urban, ECF No. 4-4, ¶ 5; Decl. of Maribel Villarreal, ECF No. 4-4, ¶ 5.

displayed in schools within Comal ISD, Flour Bluff ISD, McKinney ISD, Frisco ISD, Northwest ISD, Azle ISD, Conroe ISD and Lovejoy ISD.”).⁴ And, in each of these school districts, the S.B. 10 displays are imposed on one or more minor-child Plaintiffs.⁵

As for the remaining Plaintiffs, Defendants incorrectly assert that “[t]here is not any indication that any school has used district funds to purchase any posters nor any indication that posters meeting the requirements of S.B. 10 have been donated to these Defendants.” Defs. Br. 1; *see also id.* at 9 (“[T]here is no allegation that any Defendants, at least with respect to the districts that have yet to display the Ten Commandments, have taken any action to implement S.B. 10.”). In fact, donated Ten Commandments displays have been received by *all* School District Defendants in this case,⁶ and *all* have confirmed their intent to post them, or have already done so. For example, Plaintiffs’ Complaint alleges that “Defendant Fort Worth Independent School District recently informed its principals and administrators in a September 12, 2025, communication that ‘[t]he District has received a private donation of posters for FWISD campuses’ and that ‘[t]hese posters will be delivered to your campus next week.’” Compl. ¶ 98.

Similarly, the Complaint alleges that “[t]he Superintendent of Schools for Defendant Georgetown Independent School District, Dr. Devin Padavil, confirmed in a conversation with Plaintiff Amber Rainey that the district already has donors prepared to provide posters that conform to the requirements of S.B. 10” and “further confirmed that the district is merely waiting

⁴ Despite admitting this fact, Defendants’ motion repeatedly and falsely asserts in other instances—without any apparent limitation—that Plaintiffs have *not* been subjected to S.B. 10 displays, and/or that Defendants have *not* taken any steps to implement the Act. *See, e.g.*, Defs. Br. 6, 7, 9, 10, 11, 21.

⁵ *See* Compl., ECF No. 1, ¶¶ 94, 96–97, 100–03, 105; Pls. Not. of New Evidence, ECF No. 37.

⁶ Defendant Frisco ISD purchased and installed 4,805 Ten Commandments posters across 77 campuses. Compl. ¶ 101.

on the posters to arrive and will display the posters in every classroom once the district receives the anticipated donations.” *Id.* ¶ 95. As the Superintendent confirmed would happen, last week, Georgetown ISD “accepted an offer of donated posters, and plans were being made to hang them in GISD’s 1,500 classrooms.” Huffman Decl., Ex. 41.

Plaintiffs’ Complaint also alleges that “Defendant Rockwall Independent School District has accepted donated S.B. 10 posters” and that “Rockwall ISD’s Chief Student Services Officer, Dr. Kelvin Stroy, confirmed by email to Plaintiff Patricia Ruiz that ‘Rockwall ISD will comply with Senate Bill 10.’” *Id.* ¶ 104. Those donations were confirmed by a recent Facebook post by the donating organization. Huffman Decl., Ex. 40. Finally, the Complaint alleges that “Defendant Mansfield Independent School District confirmed on its official website that it has received donated posters and that staff members will begin installing them.” *Id.* ¶ 106.

Accordingly, *all* Plaintiff have standing to bring their First Amendment claims, and those claims are ripe. Each of Defendants’ arguments to the contrary has been properly rejected by federal courts.

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

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

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

Under longstanding Supreme Court and Fifth Circuit law, “school children and their parents, who are directly affected by the laws and practices against which their complaints are directed” have standing to sue under the Establishment Clause. *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224 n.9 (1963); *see also Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d

275, 283 n. 7 (5th Cir. 2001) (“Students and parents may challenge unconstitutional actions in the public schools that directly affect the students.”); *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 292 (5th Cir. 2001) (“The case for standing is made stronger when the plaintiffs are students and parents of students attending public schools, who enjoy a cluster of rights vis-a-vis their schools, and thus are not merely concerned bystanders. . . . [T]he Supreme Court has repeatedly recognized the right of children and their parents to receive public education that is compliant with the Establishment Clause.” (cleaned up)). Here, as in *Nathan*, among other harms, S.B. 10’s mandatory ubiquitous scriptural displays: (1) impose the coercive injuries to children that are attendant to the government’s “exclusionary and spiritually burdensome message” in the public-school context, and (2) interfere with the fundamental right of the parent-Plaintiffs to “guide the religious future . . . of their children.” See 2025 WL 2417589, at *28 (cleaned up); see also *Stinson v. Fayetteville Sch. Dist. No. 1*, No. 5:25-CV-5127, 2025 WL 2231053 (W.D. Ark. Aug. 4, 2025), at *10–11 (holding that plaintiffs had standing).⁷

These injuries are also adequate to confer standing under the Free Exercise Clause. “To have Article III standing to pursue an alleged violation of the Free Exercise Clause, a plaintiff must allege that his or her own ‘particular religious freedoms are infringed.’” *Littlefield*, 268 F.3d at 292 n.25 (quoting *Schempp*, 374 U.S. at 224 n.9). Plaintiffs have done just that. The Free Exercise Clause guarantees the “right of every person to freely choose his own course [in matters of faith] . . . free of any compulsion from the state.” *Schempp*, 374 U.S. at 222. Plaintiffs have alleged—and demonstrated through undisputed evidence—that the minor-child Plaintiffs’ religious freedom will be infringed by S.B. 10’s displays because the children will not be able to make their own

⁷ See Compl. ¶¶ 108–222; Plfs. Mot. 3 n.3 (describing Plaintiffs’ injuries with declaration cites).

decisions, free from state compulsion, as to which religious doctrine (if any) they observe, meditate on, venerate, and follow. Instead, they will be pressured to engage in a religious observance orchestrated by the State through an unyielding, pervasive scheme to impose religious scripture on them, violating or contradicting their families’ faith beliefs and practices; and they will be discouraged from expressing their own religious (or non-religious) beliefs at school because those beliefs do not comport with the State’s favored scripture.⁸ These injuries speak directly to the core protections of the Free Exercise Clause.

Additionally, as *Mahmoud* affirmed, the parent-Plaintiffs have a free-exercise right to direct their children’s religious education and training. *See* 145 S. Ct. at 2349–53; *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (discussing “the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children”); *Littlefield*, 268 F.3d at 292 n.25 (“[O]ne aspect of the religious freedom of parents is the right to control the religious upbringing and training of their minor children[.]” (cleaned up)). Plaintiffs have alleged that S.B. 10’s displays will infringe a “particular religious freedom[.]” *id.*, by imposing biblical scripture on their children in a manner that violates or conflicts with the families’ religious beliefs and practices.⁹

a. Plaintiffs’ asserted injuries are ongoing or imminent.

Insisting that the minor-child Plaintiffs must “encounter” S.B. 10’s scriptural displays *before* they and their parents may assert any injury for purposes of standing, Defendants incorrectly argue that “Plaintiffs do not allege a concrete and imminent injury.” Defs. Br. 6-7. However, even if Defendants’ “actual encounter” rule were correct (it is not), most of the School District

⁸ *See* Plfs. Mot. 3 n.3.

⁹ *See id.*

Defendants *have* posted the Ten Commandments in the classrooms of one or more of the minor-child Plaintiffs. *Supra* p. 3. There is thus no jurisdictional barrier to adjudicating these Plaintiff-families' claims. Defendants concede as much, asserting only that the (purportedly) "required 'encounter' is missing . . . [for] the Plaintiffs within Georgetown ISD, Fort Worth ISD, Rockwall ISD or Mansfield ISD" who have not "encountered any display of the Ten Commandments under S.B. 10." *Id.* at 2; *see also id.* at 1 n.2.

Moreover, Defendants are simply wrong that the Fifth Circuit "specifically requires 'an encounter with the offending item or action to confer standing' in 'cases involving religious displays.'" *See id.* at 1 (quoting *Barber v. Bryant*, 860 F.3d 345, 353 (5th Cir. 2017)); *see also id.* at 7 (citing and quoting *Doe v. Tangipahoa Par. Sch. Bd.*, 494 F.3d 494, 497 (5th Cir. 2007) (en banc)). Their argument is based on selective quotes from *Barber* and *Doe*. Despite Defendants' mischaracterization, both cases *affirm* that allegations of harm based on future encounters *suffice* for standing purposes. *Barber* expressly noted that "[f]uture injuries can provide the basis for standing, but they must be *certainly impending* to constitute injury in fact." 860 F.3d at 357 (cleaned up) (emphasis in original). And *Doe* likewise recognized that "[c]onstitutional standing requires that the plaintiff personally suffered some actual *or threatened* injury that can fairly be traced to the challenged action and is redressable by the courts." 494 F.3d at 496 (emphasis added).

Indeed, courts have repeatedly rejected the argument that plaintiffs must suffer the very harms they seek to prevent before they may sue. *See, e.g., Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985) ("One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is *certainly impending*, that is enough." (cleaned up)); *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 278 (5th Cir. 1996) (rejecting argument that plaintiffs had no standing to mount pre-implementation challenge to state school-prayer law and

finding that plaintiffs had “alleged real and substantial injury which would result from the implementation”); *infra* pp.14–17. Nor does standing doctrine require Plaintiffs to “demonstrate that it is literally certain that the harms they identify will come about.” *See Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 412–14 n.5 (2013). This is especially true in the First Amendment context, as the Supreme Court’s recently explained in *Mahmoud*: “[W]hen a deprivation of First Amendment rights is at stake, a plaintiff *need not wait* for the damage to occur before filing suit . . . Instead, to pursue a pre-enforcement challenge, a plaintiff must show that ‘the threatened injury is certainly impending, or there is a *substantial risk* that the harm will occur.’” 145 S. Ct. at 2358 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (emphasis added)). *Mahmoud* reflects a long line of caselaw recognizing that standing may be based on an allegation of future, threatened injury.¹⁰

Here, most Defendants have *already hung* the Ten Commandments in classrooms and all other Defendants have *already received* donated Ten Commandments posters and have indicated that they will soon put the displays in classrooms, even if they have not done so yet. The risk of harm to the minor-child Plaintiffs and their parents is thus substantial and imminent and more than enough to confer standing. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 584 (1992) (holding that “a live and justiciable controversy is before us” as to prayers at “future graduations” because the plaintiff was “enrolled as a student at [the high school] and from the record it appear[ed] likely, if

¹⁰ *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 435 (2021) (“[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.”); *Dep’t of Com. v. New York*, 588 U.S. 752, 766–67 (2019) (holding that states had standing to challenge the inclusion of a citizenship question in the decennial census in light of alleged “future injuries”); *Citizens for Clean Air v. U.S. Dep’t of Transp.*, 98 F.4th 178, 187 (5th Cir. 2024) (“[A] threatened injury will satisfy the injury in fact requirement for standing.” (cleaned up)).

not certain, that an invocation and benediction will be conducted at her high school graduation”); *see also infra* pp. 14–17 (discussing ripeness).

b. Plaintiffs’ asserted injuries are concrete and particularized.

Defendants also wrongly suggest that the spiritual harm resulting from the minor-child Plaintiffs’ direct, unwelcome contact with S.B. 10’s displays, is insufficient for standing purposes.¹¹ No matter—their erroneous argument is irrelevant because Plaintiffs’ claims do not depend on this form of standing. Rather, Plaintiffs’ demonstrated injuries go far beyond the right of “observers” to be free from “offense.” The Complaint alleges that the minor-child Plaintiffs will be subjected to a state-mandated, religiously preferential version of the Ten Commandments in every classroom, for up to 16,380 hours across thirteen academic years. Compl. ¶¶ 75–76. Due to Texas’s compulsory-education laws and the pervasive nature of S.B. 10’s displays, students are a captive audience, and there will be no way to opt out of this harm. *See infra* pp. 24–26; Plfs. Mot. 6–9.

Plaintiffs thus seek to prevent both the coercive injury that state-sponsored religious observance in public schools inflicts on students and the harm that such coerced observance causes parents by interfering with their right to guide the religious education and upbringing of their children. *See supra* pp. 6–7. These harms flow from the rigid, extensive display requirements imposed by S.B. 10, and they are the very sort of injuries that courts have repeatedly recognized as sufficiently concrete to confer standing. *Supra* pp. 8–10; Plfs. Mot. 6–9. For example, the Supreme Court has

¹¹ *See, e.g., Murray v. City of Austin*, 947 F.2d 147, 151–52 (5th Cir. 1991) (recognizing that “allegations of direct, personal contact” with city insignia satisfied Article III injury requirement). *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), did not affect what Defendants refer to, by misnomer, as “offended observer” standing. Defs. Br. 7 n.5. *Kennedy* did not address Establishment Clause standing at all because the petitioner there did not bring an Establishment Clause claim. *See generally Kennedy*, 597 U.S. 507.

held that students who are or will be subjected to allegedly coercive school-sponsored religious observance have standing to challenge it. *See, e.g., Lee*, 505 U.S. at 584 (affirming standing to challenge future graduation invocations based on student’s enrollment in high school and likelihood that her graduation would include a prayer); *cf. Stone*, 449 U.S. at 39 (adjudicating claims of parents who stood in the same position as Plaintiffs here vis-à-vis their facial challenge to a similar Kentucky statute).

District-court rulings in recent challenges to state laws mandating the display of the Ten Commandments in public-school classrooms have likewise recognized the coercive injuries asserted by plaintiffs. *See, e.g., Nathan*, 2025 WL 2417589, at *24 (holding that the plaintiffs had sufficiently alleged that S.B. 10’s scriptural displays would “religiously coerce their children by pressuring them to observe, meditate on, venerate, and follow the State’s favored religious text, and to suppress expression of their own religious beliefs and backgrounds at school”); *accord Stinson*, 2025 WL 2231053, at *10 (“Plaintiffs are not just bystanders to religious practice who fail to allege personal injury; their grievances are not of the ‘generalized offense’ variety.”); *Roake v. Brumley*, 756 F. Supp. 3d 93, 117–18 (M.D. La. 2024) (“Looking holistically at the Act, Louisiana law, and the facts as pled in the Complaint and as supported by Plaintiffs’ declarations, the Court finds that the Plaintiff parents and their minor children will suffer more than mere subjective offense; rather, they face a real and substantial likelihood of coercion, because in every practical sense, they will be compelled to attend and participate in a religious exercise.” (cleaned up, subsequent history omitted)). And, under *Mahmoud*, a cognizable injury to the “critical right of parents to guide the religious development of their children” occurs whenever a public school “requires them to submit their children to instruction that poses a very real threat of undermining

the religious beliefs and practices that the parents wish to instill.” *See* 145 S. Ct. at 2342, 2358–59 (cleaned up).¹²

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

Plaintiffs’ demonstrated injuries are directly traceable to Defendants through S.B. 10’s statutory obligations, which require all “public elementary or secondary school[s]” to display the Ten Commandments in every classroom as soon as displays are available. Plfs. Mot., Ex. 1, Tex. S.B. 10 § 1(a), 89th Leg. R.S. (2025). Under Texas law, public-school districts’ “trustees as a body corporate have the *exclusive* power and duty to govern and oversee the management of the public schools of the district.” Tex. Educ. Code Ann. § 11.151(b) (emphasis added). This body corporate may “sue and be sued,” among other legal rights, “in the name of the district.” *Id.* § 11.151(a). The Defendant School Districts are thus among the primary enforcers of S.B. 10 as to the Plaintiffs’ schools,¹³ and the “line of causation between the illegal conduct and injury,” Defs. Br. 8 (cleaned up) is obvious.¹⁴ This connection is established in the Complaint, which alleges the specific actions

¹² As Defendants acknowledge, Defs. Br. 6, Plaintiffs’ claims here are nothing like those in *Barber*, 860 F.3d at 353, where the plaintiffs asserted a “stigmatic injury” based on a statute’s endorsement of (what the plaintiffs contended) were religious beliefs about gender and marriage. The *Barber* statute had no effect on the plaintiffs beyond the fact that they knew about the alleged endorsement. *See id.* at 354–55. Unlike here, the challenged law did not require them to be personally confronted by religious displays or religious exercise, and it did not injure them through its “legal effect.” *Id.* at 354–55.

¹³ Traceability merely requires some “causal connection between the plaintiff’s injury and the defendant’s challenged conduct.” *Inclusive Cmtys. Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019). “It doesn’t require a showing of proximate cause or that the defendant’s actions are the very last step in the chain of causation.” *Id.* (cleaned up).

¹⁴ *See, e.g., Meese v. Keene*, 481 U.S. 465, 476 (1987) (“Because the alleged injury stems from the Department of Justice’s enforcement of statute . . . we conclude that the risk of injury to appellee’s reputation ‘fairly can be traced’ to the defendant [U.S. Attorney General’s] conduct.”); *Texas v. Yellen*, 105 F.4th 755, 763 (5th Cir. 2024) (“The States’ alleged injuries . . . are directly traceable to the federal defendants who are responsible for enforcing [the challenged law].”); *Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304, 310 (5th Cir. 2023) (university

each of the Defendants has already taken to administer, implement, and enforce S.B. 10, Compl. ¶¶ 11, 94–107; directly ties those actions to the Defendants’ ongoing or imminent imposition of S.B. 10 displays on the minor-Plaintiffs, *id.* ¶¶ 94–107; and makes clear that the Defendants’ actions and the imposition of S.B. 10 displays on Plaintiffs are the cause of Plaintiffs’ ongoing or imminent injuries and violate Plaintiffs’ First Amendment rights, *id.* ¶¶ 94–107; 108–22, 230, 239.

In short, Plaintiffs have adequately alleged and demonstrated that the Defendant School Districts either have *already* posted the Ten Commandments or have received donations and indicated their intention to display the posters imminently, and that Plaintiffs will suffer concrete and particularized injuries as a result of Defendants’ statutorily required enforcement of S.B. 10.¹⁵ Nothing more is required under standing doctrine.¹⁶

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

Defendants do not offer any redressability argument beyond reiterating their injury-in-fact and traceability claims. Defs. Br. 8–9. The redressability prong for Article III standing is satisfied if it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Bennett v. Spear*, 520 U.S. 154, 167 (1997). “When establishing redressability, a plaintiff need only show that a favorable ruling could potentially lessen its injury; it need not

officials’ enforcement of out-of-state tuition law “cause[d] the students’ harm and [would] continue to do so as more payments are collected,” and was “enough to establish traceability”).

¹⁵ See Compl. ¶ *id.* ¶¶ 94–107 (establishing traceability of each of the Plaintiffs’ asserted injuries to one Defendant by identifying which school district each of the minor-child Plaintiffs attend); *supra* pp. 3–4.

¹⁶ See, e.g., *Am. Humanist Ass’n, Inc. v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1254 (10th Cir. 2017) (ruling that plaintiff’s “unwelcome contact” with school officials’ religious fundraising solicitations was “fairly traceable to the challenged action” of defendant school district and district employee); *Adland v. Russ*, 307 F.3d 471, 478 (6th Cir. 2002) (holding that plaintiffs’ Establishment Clause “injury [was] plainly caused by the defendant’s statutory directive to erect the Ten Commandments”).

definitively demonstrate that a victory would completely remedy the harm.” *Sanchez v. R.G.L.*, 761 F.3d 495, 506 (5th Cir. 2014) (cleaned up).

Plaintiffs’ asserted harms are redressable by the requested injunction. *See infra* pp. 37–39. “If the [School District Defendants] may no longer enforce [S.B. 10] . . . [t]hat erases the students’ [and parents’] future harm.” *See Young Conservatives*, 73 F.4th at 310. Specifically, an injunction requiring Defendants to remove the posted displays and blocking them from further implementing the law will ensure that the minor-child Plaintiffs are not subjected to the unavoidable displays of the Ten Commandments mandated by the Act. This relief would prevent the religious coercion the minor-child Plaintiffs would otherwise experience and shield them from an officially sponsored religious message that they are less worthy in the eyes of the State because of their own religious or non-religious beliefs. *See, e.g., Adland*, 307 F.3d at 478 (injunction preventing the defendant from complying with a “statutory directive to erect the Ten Commandments” would redress the Plaintiffs’ injuries”). It will also preserve the ability of the parent-Plaintiffs to direct their children’s religious education and upbringing. *See, e.g., Mahmoud*, 145 S. Ct. at 2350 (holding that issuance of preliminary injunction was warranted). An order declaring that the Act violates the Establishment Clause and Free Exercise Clause of the First Amendment will further alleviate Plaintiffs’ injuries. *See Steffel v. Thompson*, 415 U.S. 452, 466–71 (1974) (noting that declaratory relief is “valuable to the plaintiff” as it has “the force and effect of a final judgment” (cleaned up)).

B. Plaintiffs’ Claims Are Ripe.

“The standard for constitutional ripeness mirrors the injury-in-fact requirement for standing,” and “[a]n allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” *Lowery v. Mills*, 690 F. Supp. 3d 692, 702 (W.D. Tex. 2023) (cleaned up). The two-prong analysis examines and balances “the fitness of the issues for judicial decision” and “the hardship to the parties of withholding court

consideration.” *Texas v. United States*, 497 F.3d 491, 498 (5th Cir. 2007). Both ripeness factors weigh in Plaintiffs’ favor here.

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

Defendants’ ripeness argument is largely based on a false premise: According to them, “Plaintiffs’ claims are not ripe because any hypothetical injury of Plaintiffs remains contingent on future events that may not ever occur[.]” and “it remains to be determined whether any displays will be donated to Defendants or whether any school will use district funds to purchase displays in compliance with S.B. 10[.]” Defs. Br. 9. This argument simply cannot be reconciled with Defendants’ own acknowledgement, elsewhere in their motion, that most Defendant School Districts have, in fact, posted Ten Commandments displays in classrooms. *Supra* p. 4. The claims asserted by Plaintiffs against those districts are plainly fit for judicial decision.

As with the standing inquiry, the fact a few School District Defendants have yet to hang their donated displays in classrooms does not deprive this Court of jurisdiction; these districts are in possession of donated posters and have indicated their intent to display them in accordance with S.B. 10. *Supra* p. 4. Nor is a finding of ripeness precluded by Defendants’ mistaken view that the injuries and claims of the Plaintiff-families who attend these school districts are uncertain and dependent on what, if anything, districts may put around the Ten Commandments posters. *See* Defs. Br. 2, 10–11 (citing *Staley v. Harris County*, 485 F.3d 305 (5th Cir. 2007) (en banc)). No further factual development is necessary here to determine whether the government’s ongoing or imminent imposition of the Ten Commandments on any of the minor-child Plaintiffs, in accordance with S.B. 10’s rigid requirements, violates the First Amendment.

This case is a far cry from *Staley*, and Defendants’ reliance on it is misplaced. There, the challenged monument featuring a Bible was placed on the grounds of the Harris County courthouse in the 1950s and challenged in 2003. *Id.* at 307–08. Between the panel’s initial decision and the en

banc ruling, the courthouse was closed for “a few years” for renovations and the monument placed in storage. *Id.* at 307. Although the County said that it would display the monument after completing renovations, it stressed that “no decision ha[d] been made regarding when, where, or under what circumstances the monument will be displayed again in the future.” *Id.* at 307. Based on that information, the Fifth Circuit ruled that any dispute “over a probable redisplay . . . is not ripe because . . . no decision has been made regarding *any aspect* of the future display of the monument.” *Id.* at 309 (emphasis added).

Here, by contrast, the Texas legislature has already made numerous of decisions regarding S.B. 10’s mandatory, permanent displays, including *where* they will be posted (in every classroom of every public elementary and secondary school, without exception); *what* the content of the text will be (the State’s preferred, denominational version of the Ten Commandments *and nothing else*); *how* they will be displayed in each classroom (in a “conspicuous place”); *their size* (no smaller than sixteen by twenty inches); and *even how legible the Commandments must be* (printed in a “size and typeface that is legible to a person with average vision from anywhere in the classroom”). *See generally* Plfs. Mot., Ex. 1, § 1(a). Many of the Defendant School Districts have already carried out these rigid requirements, and, for those Defendants that will do so soon, “S.B. 10’s minimum requirements provide sufficient details about how the Ten Commandments must be displayed.” *Nathan*, 2025 WL 2417589, at *27; *accord Roake*, 756 F. Supp. 3d at 128 (“This issue is fit for judicial decision because it would not benefit from any further factual development[.]”); *Stinson*, 2025 WL 2231053, at *9–10 (noting that the “possible added content and surrounding context of the displays is immaterial to the standing inquiry [] because Plaintiffs’ claimed injuries . . . depend only on the *minimum* display requirements of Act 573”) (emphasis in original); *cf. Karen B. v. Treen*, 653 F.2d 897, 902 (5th Cir. 1981) (holding Louisiana school-prayer statute

unconstitutional, although the “the nature and extent of state involvement in religious activity is in some measure speculative at this time”), *aff’d*, 455 U.S. 913 (1982).

Mahmoud further illustrates the principles at play here and forecloses Defendants’ ripeness arguments. There, teachers had a wide array of options for using the challenged storybooks: They could “incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud.” 145 S. Ct. at 2344 (cleaned up). “[T]he decision about which books to use and how they’d be used in an individual classroom [was] left to each teacher’s discretion.” *Mahmoud v. McKnight*, 102 F.4th 191, 198 (4th Cir. 2024). Even though the threatened harm alleged by the plaintiffs was contingent on how a teacher might, in the future, decide to use a “particular book . . . in a particular classroom on a particular day,” and the plaintiffs could not “make specific allegations” as to those potential uses, the Court rejected the argument that the record was too “threadbare” to proceed. *Mahmoud*, 145 S. Ct. at 2358.

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

The analysis of hardship under ripeness doctrine “principally tracks the Article III injury analysis.” *Braidwood Mgmt. v. EEOC*, 70 F.4th 914, 931 (5th Cir. 2023). Absent judicial intervention, Defendants will continue to display the posters or will imminently do so. The minor-child Plaintiffs “will be subjected to a state-mandated, religiously preferential version of the Ten Commandments in every classroom for the remainder of their elementary and secondary public-school classroom.” *See Nathan*, 2025 WL 2417589, at *24. The Act will, therefore, inflict substantial and irreparable harm on Plaintiffs. *See id.* at *27; Plfs. Mot. 19.

Moreover, the Act will inflict significant harm on the parent-Plaintiffs by usurping their right to direct their children’s religious upbringing. *Id.* at *26; *see also Mahmoud*, 145 S. Ct. at

2358. Because the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” the hardship suffered by Plaintiffs will be significant. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *see also Roake*, 756 F. Supp. 3d at 115 (“Plaintiffs will endure considerable hardship if the Court delays a decision—specifically, a violation of their First Amendment rights.”). In fact, as the displays will be permanent and present in every classroom, the injuries incurred by Plaintiffs will last far longer than a “minimal” period of time, casting a shadow over every hour and every day the children are in school. For these reasons, this Court should not delay ruling on Plaintiffs’ claims.

II. PLAINTIFFS MEET ALL REQUIREMENTS FOR PRELIMINARY RELIEF.

Defendants’ merits arguments fare no better than their jurisdictional objections. All four preliminary-injunction factors weigh decisively in Plaintiffs’ favor. *See Allied Mktg. Grp., Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989) (reciting factors).¹⁷

Stone v. Graham is dispositive here: The Establishment Clause forbids states from mandating the display of the Ten Commandments in every elementary and secondary public-school classroom. And for good reason—permanent displays of religious scripture in public-school classrooms would directly contravene the fundamental principles animating the First Amendment and would have been anathema to the Founders, who understood the perils of religious coercion and denominational preference. *See, e.g.*, Plfs. Mot. 11–14; Decl. of Steven K. Green, Ex. 1, Expert Rep. of Steven K. Green, J.D., Ph.D. (“Green Rep.”), ECF No. 4-5, ¶¶ 18–26. In light of *Stone*, as well as other Establishment Clause precedent barring religious coercion of

¹⁷ Defendants also move to dismiss under Rule 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (cleaned up). Because Plaintiffs have satisfied the higher bar of likelihood of success on their claims to obtain a preliminary injunction, Defendants’ Rule 12(b)(6) motion should be denied.

public-school students and denominationally preferential state action, Plaintiffs are likely to succeed on the merits of their Establishment Clause claim.¹⁸

For the reasons detailed in their preliminary-injunction motion, Plfs. Mot. 15–18, Plaintiffs are also likely to succeed on the merits of their Free Exercise Clause claim. S.B. 10’s blanket posting of religious scripture in every public-school classroom will, on a continuous basis, “impose upon children a set of values and beliefs that are hostile to their parents’ religious [or non-religious] beliefs,” and “exert upon children a psychological pressure to conform to [the government’s] specific [religious] viewpoints.” *See Mahmoud*, 145 S. Ct. at 2355 (cleaned up). The displays thus “present the same kind of objective danger to the free exercise of religion that [the Court] identified in [*Yoder*, 406 U.S. at 218].” *See id.* (cleaned up).

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

Defendants are wrong that *Stone* “cannot be considered good law.” Defs. Br. 20. *Stone* remains binding Supreme Court precedent, and it controls this case. “If a precedent of the Supreme Court has direct application in a case . . . the [lower courts] should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decision.” *Cardenas v. Dretke*, 405 F.3d 244, 253 (5th Cir. 2025) (quoting *Rodriguez de Quijas v. Shearson/Am. Exp.*,

¹⁸ In an effort to avoid the clear consequence of *Stone*—that S.B. 10 is, like the Kentucky law struck down in *Stone*, facially unconstitutional—Defendants improperly seek to limit Plaintiffs’ claims against the School District Defendants that have already posted displays to an “as applied” challenge. Defs. Br. 11-13. But Plaintiffs here contend that S.B. 10’s strict and extensive requirements for displays, operating together and independent of any other factor or consideration, are unconstitutional under *Stone*, as well as under the Supreme Court’s First Amendment jurisprudence barring religious coercion and denominational preference by the government. This is the proper analysis here because, if S.B. 10 is facially unconstitutional, its application as to the individual Plaintiffs is necessarily unconstitutional as well. Indeed, in *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988), on which Defendants rely, the Supreme Court undertook an analysis of the plaintiffs’ as-applied claims only *after* conducting a facial inquiry into the constitutionality of the challenged statute.

Inc., 490 U.S. 477, 484 (1989) (cleaned up)). Defendants offer no persuasive reason for this Court to depart from this ironclad rule.¹⁹ Since *Stone*, three district courts, including this court, have *specifically ruled* that statutes mandating displays of the Ten Commandments in every public-school classroom are unconstitutional under *Stone*. See *Nathan*, 2025 WL 2417589, at *24, *Stinson*, 2025 WL 2231053, at *1, 7, 11; *Roake*, 756 F. Supp. 3d at 116–17.²⁰ And, more generally, *no federal court* has upheld any public school’s permanent display of the Ten Commandments.²¹

Defendants’ demand that this Court disregard *Stone* finds no support in precedent. *Stone* should end the Court’s inquiry. See *Stinson*, 2025 WL 2231053 at *11 (“This case begins and ends with *Stone*[.]”). But even if Defendants’ assessment of *Stone* were correct, S.B. 10 does not pass constitutional muster under any Establishment Clause standard.

1. *Stone remains binding law.*

The Supreme Court has repeatedly held that it is the “Court’s prerogative alone to overrule one of its precedents.” *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (cleaned up); see also *Rodriguez*,

¹⁹ Defendants suggest that “one of the reasons the Fifth Circuit vacated the *Roake* opinion” may be because “*Stone* is no longer good law.” Defs. Br. 1. This is pure speculation. Defendants have no way of knowing why the Court of Appeals granted en banc review because the Fifth Circuit’s Order does not say. *Roake v. Brumley*, No. 24-30706, ECF No. 250-2 (Oct. 6, 2025). The Fifth Circuit has repeatedly recognized its obligation to follow Supreme Court precedent unless and until the Supreme Court itself clearly overturns a case. See *infra* p. 21. Thus, whatever conclusion the en banc Court reaches in *Roake* will not—and cannot—disturb the applicability and binding nature of *Stone*.

²⁰ See also *Ring v. Grand Forks Pub. Sch. Dist. No. 1*, 483 F. Supp. 272, 273 (D.N.D. 1980) (striking down, prior to *Stone* ruling, North Dakota law requiring “the ten commandments of the Christian religion to be displayed in a conspicuous place in every schoolroom, classroom, or other place where classes convene for instruction”).

²¹ See, e.g., *Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 86 F. App’x 104 (6th Cir. 2004); *ACLU of Ky. v. McCreary Cnty.*, 354 F.3d 438 (6th Cir. 2003); *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 127 F. Supp. 3d 283, 318 (W.D. Pa. 2015); *Doe v. Harlan Cnty. Sch. Dist.*, 96 F. Supp. 2d 667, 675 (E.D. Ky. 2000); cf. *Freedom from Religion Found., Inc. v. New Kensington-Arnold Sch. Dist.*, 919 F. Supp. 2d 648, 661 (W.D. Pa. 2013).

490 U.S. at 484. This is true even where a party believes that subsequent Supreme Court jurisprudence has called into question the continuing validity of a prior ruling. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) (“We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent.”); *see also Nat’l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 550 (5th Cir. 2020) (affirming that lower courts do not have “license to disregard or overrule” Supreme Court precedent “even where subsequent decisions or factual developments may appear to have significantly undermined the rationale for the earlier holding” (cleaned up)).²²

According to Defendants, “[b]y overruling *Lemon*, the Court has effectively overruled its cases that relied on the *Lemon* test.” Defs. Br. 21. Not so. *See, e.g., Stinson*, 2025 WL 2231053, at *7 (“[T]here is no cause to believe that all Supreme Court precedent that relied on the *Lemon* test has been—or will be—overruled.”); *see also Consumers’ Rsch. v. Consumer Prod. Safety Comm’n*, 91 F.4th 342, 346–56 (5th Cir. 2024) (“As middle-management circuit judges, we must follow binding precedent, even if that precedent strikes us as out of step with prevailing Supreme Court sentiment. The logic of . . . [a Supreme Court precedent] may have been overtaken, but the decision has not been overruled—at least not yet.”) (cleaned up); *Johnson v. Lumpkin*, 74 F.4th 334, 339 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 829 (2024) (explaining that Fifth Circuit panel had “correctly refused” to ignore Supreme Court case law because “only the Supreme Court alone can overrule one of its precedents”).

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

Kennedy “did not overrule any public-school Establishment Clause cases involving a state’s or school district’s imposition of religious doctrine or practices on public-school children.” *Stinson*, 2025 WL 2231053, at *11. On the contrary, *Kennedy* treated *Lee* and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), “as still-binding precedent[,]” and therefore “it follows that . . . so are the other public-school Establishment Clause cases that struck down ‘problematically coercive’ state laws—like *Stone*.” *Id.* at *7. Moreover, although *Stone* cites *Lemon*, it also relies on *Schempp* and *Engel v. Vitale*, 370 U.S. 421 (1962). The Supreme Court has explained that “*Stone*’s almost exclusive reliance upon two of our school prayer cases . . . stands as an example of the fact that we have been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools[.]” *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2005) (plurality opinion) (cleaned up). Like *Stone*, the school-prayer cases bind lower courts unless overturned by the Supreme Court. Indeed, even as the *Van Orden* plurality rejected application of the *Lemon* test to Texas’s Capitol grounds monument, upholding the display, it nevertheless explained: “There are, of course, limits to the display of religious messages or symbols. For example, we held unconstitutional a Kentucky statute requiring the posting of the Ten Commandments in every public schoolroom.” *Id.* at 690 (cleaned up).²³ And because “*Kennedy* does not alter the reasoning and outcome of *Stone*—or even mention the case,” *Stone* “remains binding” and is directly applicable here. *See Stinson*, 2025 WL 2231053, at *1, 11.²⁴

²³ *See also Van Orden*, 545 U.S. at 703 (Breyer, J., concurring) (“The display is not on the grounds of a public school, where, given the impressionability of the young, government must exercise particular care in separating church and state.” (citing *Stone*, 449 U.S. 39, and *Lee*, 505 U.S. at 592)).

²⁴ *See also Jusino v. Fed’n of Catholic Teachers, Inc.*, 54 F.4th 95, 102 (2d Cir. 2022) (holding that the Supreme Court’s ruling in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), “remains good law notwithstanding its reliance . . . on *Lemon*” because *Kennedy* “indisputably did not . . . overrule—or even mention—*Catholic Bishop*”); *Hilsenrath v. Sch. Dist. of the Chathams*, 136 F.4th 484, 492–93 (3d Cir. 2025) (citing *Stone* favorably in distinguishing between *Stone*’s

Defendants assert that, “even if *Stone* remains controlling law, *Van Orden* demonstrates that the validity of a Ten Commandments display depends on fact specific circumstances that cannot be assessed” here. Defs. Br. 21. But again, even as the Court undertook its analysis of the *Van Orden* monument, it expressly affirmed *Stone*’s holding. In any event, the direct parallels between the “specific circumstances” surrounding S.B. 10 and those surrounding the Kentucky law overturned in *Stone* show that *Stone* is applicable here and dispositive. *See Roake*, 756 F. Supp. 3d at 165 (holding that “*Stone* [] directly control[s] this case, as its facts and reasoning are on all fours” and enjoining statute similar to S.B. 10). As in *Stone*, 449 U.S. at 39 n.1, Plaintiffs assert a facial Establishment Clause challenge to a state law mandating permanent displays of the Ten Commandments in every elementary and secondary public-school classroom. Additionally, as in *Stone*, *id.* at 41 & n.1, S.B. 10 mandates that the displays must be at least sixteen by twenty inches in size. Further still, neither the statute in *Stone* nor S.B. 10 requires that the Ten Commandments displays be integrated into a secular school curriculum. *See id.* at 42. And both statutes *single out* the Ten Commandments for display while declining to give equal treatment to core Founding documents like the Declaration of Independence, U.S. Constitution, and Bill of Rights. *Cf.* Green Rep. ¶ 17 (discussing the “three primary founding documents establishing the American government and legal system”).²⁵

Given the direct parallels between the Kentucky and Texas statutes, *Stone* is plainly apposite and determinative here. If anything, S.B. 10 is more constitutionally egregious than the

classroom Ten Commandments displays and two lessons regarding Islam, included as part of a year-long World Cultures and Geography class).

²⁵ Any claim that the displays are necessary to teach students about the foundations of the U.S. legal system and history of the nation is belied by the fact that the “State has never mandated the display of *any* foundational secular documents of unquestionable importance to our Nation’s heritage—such as the Declaration of Independence or the Constitution.” *See Stinson*, 2025 WL 2231053, at *9 n.9.

statute struck down in *Stone*. S.B. 10 expressly *forbids* posters from including anything other than the Ten Commandments. *Compare Stone*, 449 U.S. at 39 n.1, with Ex. 1, § 1(b)(1). Kentucky lawmakers, by contrast, required that the displays include a (pretextual) statement discussing the Ten Commandments’ purported relevance to U.S. law. *See Stone*, 449 U.S. at 39 n.1. Further, unlike S.B. 10, the Kentucky law did not mandate that the Ten Commandments be displayed in a “conspicuous place” in classrooms or require the use of a denominationally preferential, state-approved version of the Ten Commandments. *See id.*

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

Even if *Stone* were not dispositive, S.B. 10’s elementary and secondary public-school classroom displays are impermissibly coercive under the Supreme Court’s school-coercion jurisprudence. Defendants all but eschew this longstanding caselaw in favor of the six “hallmarks of religious establishment” they claim now govern the Establishment Clause analysis under *Kennedy*. Defs. Br. 13–14. According to Defendants, the “hallmarks of religious establishments” enumerated in Justice Gorsuch’s *concurring* opinion in *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022), somehow trump his *later majority opinion* in *Kennedy*, which expressly affirmed that it remains “problematically coercive” under the Establishment Clause for public schools to impose religious messages on a “captive audience” of students. 597 U.S. at 541–42 (citing *Lee*, 505 U.S. at 580, 598, and *Santa Fe*, 530 U.S. at 294, 311). Defendants’ understanding of *Kennedy* and *Shurtleff* is incorrect. *See infra* pp. 29–31.

Further, Defendants assert that the “display of the Ten Commandments in public spaces lacks any element of coercion” and that students will not be “forced to participate in a religious activity.” Defs. Br. 19. But the Supreme Court has rejected that claim: In *Schempp*, the Court recognized that daily scriptural readings constituted “religious exercise,” 374 U.S. at 224–25; and in *Stone*, the Court held that it is not “significant that the Bible verses involved in this case are

merely posted on the wall, rather than read aloud as in *Schempp* and *Engel*.” 449 U.S. at 42. “After all, the State surely expects that the Commandments will actually be read by students.” *Stinson*, 2025 WL 2231053, at *10. And as the *Nathan* court recognized, school-promoted religious activity is no less unconstitutional merely because it is silent. *See* 2025 WL 2417589, at *24; *see also* *Wallace v. Jaffree*, 472 U.S. 38, 60–61 (1985) (state could not encourage students to engage in silent prayer).

That the Supreme Court’s frieze includes allusions to the Ten Commandments,²⁶ and that “advocates are required to attend the court to present their case and answer question from the Justices at oral argument,” Defs. Br. 20, is of no moment here. The Supreme Court is not a public school, and adult advocates are not children. *See infra* pp. 34–35 (discussing the Court’s distinction between adults and children in the coercion analysis in *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014)). The Court has repeatedly recognized that, because public-school students “are impressionable and their attendance is involuntary,” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987), “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Lee*, 505 U.S. at 592. Indeed, in holding that “[t]he placement of the Ten Commandments monument on the Texas State Capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day[,]” *Van Orden* expressly acknowledged the special context of public schools. 545 U.S. at 691 (plurality opinion); *cf. Nathan*, 2025 WL 2417589, at *23

²⁶ *See ACLU of Ohio Found., Inc. v. Ashbrook*, 211 F. Supp. 2d 873, 884 n.9 (N.D. Ohio 2002) (“[A]llusions to the Ten Commandments . . . on the Supreme Court building are different in kind from, and appear in a different context than, the complete text of the Ten Commandments that appears in Courtroom Number One. . . . To the extent the text of the Ten Commandments appears at all in these representations, it appears in only one, is written in Hebrew, and is only partial[.]”), *aff’d*, 375 F.3d 484 (6th Cir. 2004); *see also* Supp. Decl. of Steven K. Green, J.D., Ph.D., Ex. 1 (“Green Reb. Rep.”), ¶ 23.

(noting that the *Van Orden* Court “explicitly distinguished its holding from that in *Stone*”); *Stinson*, 2025 WL 2231053, at *6 (“[T]he *Van Orden* Court took pains to distinguish the monument display at the Texas Capitol from the school poster display in *Stone*, which was decidedly *not passive*[.]” (emphasis in original)). Defendants repeatedly rely on and cite to *Van Orden* throughout their brief, but not once do they ever acknowledge that *Van Orden* makes this distinction or that the ruling *approved* of *Stone*.

Mahmoud recently affirmed that possible coercion of public-school children remains of great concern. See 145 S. Ct. at 2357 (“The government’s operation of the public schools . . . implicates direct, coercive interactions between the State and its young residents.”). As the U.S. Court of Appeals for Seventh Circuit has observed, “[d]isplaying religious iconography . . . may do more than provide public school students with knowledge of Christian tenets”; it “tend[s] to promote religious beliefs, and students might feel pressure to adopt them.” *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012) (en banc) (emphasis omitted).

The Supreme Court’s school-coercion jurisprudence leaves no doubt that imposing permanent, unavoidable scriptural displays on public-school students, as required under S.B. 10, is “problematically coercive.” See *Kennedy*, 597 U.S. at 541–42. It is inevitable that the minor-child Plaintiffs, who will be acutely aware of the lengths to which the State has gone in ensuring that they encounter these displays in every classroom for nearly every minute of their school day, “will be forced ‘in every practical sense,’ through [Texas’s] required attendance policy, to be a ‘captive audience’ and to participate in a *religious exercise*: reading and considering a specific version of the Ten Commandments, one posted in every single classroom, for the entire school year, regardless of the age of the student or subject matter of the course.” See *Roake*, 756 F. Supp.

at 193 (emphasis added); *accord Nathan*, 2025 WL 2417589, at *26; *Stinson*, 2025 WL 2231053, at*11, 14.

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

Defendants’ assertion that “S.B. 10 actually adopts a non-sectarian version” of the Ten Commandments, Defs. Br. 2 is directly contradicted by the report of Dr. Steven K. Green, Plaintiffs’ expert in the case. *See* Green Rep. ¶¶ 52–58; *see also Roake*, 756 F. Supp. 3d at 200 (“The Act requires the display of a specific Protestant version of the Decalogue.”); *cf. Stinson*, 2025 WL 2231053 at *13 n.14 (crediting Dr. Green’s conclusion that “[t]he King James version of the Ten Commandments in Act 573 differs from other Protestant, Catholic, and Jewish versions, and those differences have substantial theological implications”; and rejecting Defendants’ argument that Act 573’s version is “non-sectarian”); *Nathan*, 2025 WL 2417589, at *27 (“S.B. 10 also impermissibly takes sides on theological questions and officially favors Christian denominations over others.”).²⁷ Defendants’ expert report does not credibly counter Dr. Green’s conclusions, for the reasons set forth in Dr. Green’s rebuttal report. Green Reb. Rep. ¶¶ 20–21, 27–30.

In addition, Plaintiffs have identified various ways in which the text mandated by S.B. 10 is distinctly Christian and in conflict with their beliefs. *Cf. Roake*, 756 F. Supp. 3d at 200 (“[T]his required display conflicts with the religious views of Unitarian Universalists, agnostics, atheists,

²⁷ Even assuming that those who originally crafted the text of the *Van Orden* and similar monuments sought, in good faith, to produce a “compromise” version of the Ten Commandments that would be “non-sectarian” and acceptable to adherents of different faiths, they were not successful, as Dr. Green’s report and the Plaintiffs’ declarations demonstrate. *See* Green Rep. ¶¶ 52–58; Green Reb. Rep. ¶ 20 (explaining that Jewish representative involved with the Fraternal Order of Eagles displays withdrew his support and evaluating the Protestant nature of S.B. 10’s text); *id.* ¶¶ 21, 27–30.

Presbyterians, and Reform Jewish parents[.]”); *Stinson*, 2025 WL 2231053, at *13 n.14 (“Plaintiffs who believe in the Ten Commandments have identified in their declarations various ways in which the text mandated by Act 573 is distinctly Christian and in conflict with their beliefs.”).²⁸ Defendants have offered no evidence to rebut Plaintiffs’ declarations. Nor could they. Doing so would only further evince the constitutional infirmity of Defendants’ position, as it would unconstitutionally arrogate to the government the authority to wade into deeply private theological questions and declare that one version of scripture is authoritative, representative of (and unobjectionable to) all believers, and preferred over other versions. *See* Plfs. Mot. 9–11. The potential for this type of intrusion into religion is precisely why the Founders vehemently opposed official denominational preferences or the government declaring which religious doctrine is correct, Green Reb. Rep. ¶ 11; Green Rep. ¶¶ 21–26, and why even Justice Scalia recognized that “[t]he Establishment Clause would prohibit . . . governmental endorsement of a particular version of the Decalogue as authoritative.” *McCreary Cnty v. ACLU of Ky.*, 545 U.S. 844, 894 n.4 (2005) (Scalia, J., dissenting).

Because the Act’s facial adoption of a Protestant version of the Ten Commandments, and its mandate that this version—and only this version—be posted in thousands of classrooms across the state, violates “[t]he clearest command of the Establishment Clause,”²⁹ it is subject to strict scrutiny. *See Catholic Charities Bureau, Inc. v. Wisc. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238,

²⁸ *See, e.g.*, Lenée Bien-Willner Decl. ¶ 8; S. Sullivan Decl. ¶¶ 7–8; Inmon Decl. ¶¶ 6–7.

²⁹ Even if Defendants were correct that S.B. 10’s version of the Ten Commandments is “nonsectarian”, it would not negate the coercive effect of those displays in the school context. *See Lee*, 505 U.S. at 594 (“That the intrusion was in the course of promulgating religion that sought to be civic or nonsectarian rather than pertaining to one sect does not lessen the offense or isolation to the objectors. At best it narrows their number, at worst increases their sense of isolation and affront.”); *see also Engel*, 370 U.S. at 430 (holding that purportedly nondenominational nature of school-sponsored prayer did not render it permissible under the Establishment Clause).

241–242 (2025) (cleaned up). Having made no argument to rebut Plaintiffs’ claim that S.B. 10 fails both prongs of this demanding standard, Plfs. Mot. 16–18, Defendants have waived the point.

4. *Permanently displaying the Ten Commandments in every public-school classroom is not permissible under Kennedy’s “original meaning and history” analysis.*

Defendants’ effort to reduce *Kennedy*’s “original meaning and history” analysis to the six hallmarks of establishment discussed by Justice Gorsuch’s concurring opinion in *Shurtleff*, Defs. Br. 13-14 is not supported by *Kennedy* or the *Shurtleff* concurrence itself. While Justice Gorsuch’s *Shurtleff* opinion may be useful with respect to assessing the validity of certain challenged practices under the Establishment Clause, it does not purport to set forth the entire universe of permitted or prohibited practices. Rather, the opinion identifies “*some* helpful hallmarks [of establishment] that localities and lower courts can rely on.” *Shurtleff v. City of Boston*, 596 U.S. at 285 (Gorsuch, J., concurring) (emphasis added). As Justice Gorsuch notes, “[b]eyond a formal declaration that a religious denomination was in fact the established church, . . . founding-era religious establishments *often* bore certain other telling traits” that “explain *many* of th[e] Court’s Establishment Clause cases[.]” *Id.* at 285–86 (emphases added). He does not contend, however, that the six “hallmarks” discussed in his opinion are an exhaustive or definitive list.

Nor does *Kennedy*’s majority opinion, which was also penned by Justice Gorsuch, mandate Defendants’ reductive reading of the “original meaning and history” inquiry. *See Roake*, 756 F. Supp. 3d at 189 (“*Kennedy* did not limit Establishment Clause claims to Justice Gorsuch’s six hallmarks found in his *Shurtleff* concurrence . . . In *Kennedy*, Justice Gorsuch used language indicating that his *Shurtleff* hallmarks were not an exhaustive list adopted by the Court.”). Rather, *Kennedy* instructs that “the Establishment Clause must be interpreted by reference to historical practices and understandings.” *Kennedy*, 597 U.S. at 535 (cleaned up). “The line that courts and governments must draw between the permissible and the impermissible has to accor[d] with

history and faithfully reflec[t] the understanding of the Founders.” *Id.* at 535–36 (cleaned up). *Kennedy* and *Mahmoud*, as well as *Catholic Charities*,³⁰ make clear that the anti-coercion and denominational-neutrality principles at the heart of the Establishment Clause are just as vital today as they were at the Founding. The Court’s longstanding jurisprudence protecting both remains robust and binding. Because S.B. 10’s scriptural displays will be religiously coercive and will give preference to particular denominations—violating original First Amendment principles—the law cannot pass constitutional muster under *Kennedy*’s historical test.

What is more, even if the historical record theoretically could redeem a statute that violates these fundamental prohibitions on religious coercion and denominational preference, Dr. Green’s initial and rebuttal reports demonstrate that “the evidence for a longstanding historical practice and acceptance of widespread use of the Ten Commandments [in public education], let alone its permanent display in public-school classrooms does not exist.” *See* Green Rep. ¶ 43; *see also* Green Rep. ¶ 51 (“[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.”) (emphasis in original); Green Reb. Rep. ¶¶ 24–26. To counter Dr. Green’s conclusions, Defendants proffer the expert report of Professor Mark David Hall, who also provided testimony in *Nathan*. *See* Defs. Br., Ex. A, ECF No. 42-1 (“Hall Rep.”). However, Hall’s report does little more than advance legal conclusions cloaked in historical commentary. It is riddled with improper (and inaccurate) legal “analysis” and opinions on a variety of topics and, though Hall

³⁰ Notwithstanding *Kennedy*, the Supreme Court did not mention *Kennedy* or conduct a historical analysis under the Establishment Clause in its recent *Catholic Charities* decision, where the challenged statute featured a denominational preference on its face. *See* 605 U.S. at 247–49.

confesses that he is not an attorney, his report reads more like a legal advocacy brief than an independent expert report.

In any event, to the extent that Professor Hall’s report includes opinions that do *not* constitute impermissible legal analysis, they are largely irrelevant or do not actually contradict Dr. Green’s conclusions. For example, Hall asserts that “there is a long history and tradition of including religious images and language in public spaces.” *Id.* at 36; *see also id.* at 16 (“The historical understanding of the Establishment Clause does not require the sort of separation between church and state that requires religion to be scrubbed from the public square.”). But even assuming he is correct, this case is not about “public spaces” or the “public square,” or even government property and buildings generally.³¹ It is about the very particular, unique context of public schools. *See, e.g., Nathan*, 2025 WL 2417589, at *25 (“[W]e are talking about public schools, not the public square.”). Tellingly, Hall fails to mention that, of “the literally hundreds of examples of crosses, biblical language, Stars of David, and Ten Commandment monuments/displays on public property” he purportedly details in his expert report (for an entirely different case having nothing to do with schools), Hall Rep. 16, only one involves a public school, and his account for that school cannot even be verified. Green Reb. Rep. ¶ 22.

The question here is not whether there is a history of religious displays in public parks, courthouses, or other government buildings, but whether “the practice at issue (permanently displaying the Ten Commandments in public-school classrooms) . . . ‘fit[s] within’ and is . . . ‘consistent with a broader tradition’ of using the [The Ten Commandments] in public-school education[.]” *Roake*, 756 F. Supp. 3d at 209 (quoting *Freedom from Religion Found., Inc. v. Mack*,

³¹ *See* Hall Rep. 16 (“[T]here is a long history and tradition of governments permitting religious images and language on public property.”).

49 F.4th 941, 951 (5th Cir. 2022)).³² Based on Dr. Green’s testimony, the *Nathan, Roake, and Stinson* district courts found that it does not.³³ And Hall’s report concedes as much:

According to the complaint in this case, there “is no longstanding historical practice or tradition of prominently and permanently displaying any version of the Ten Commandments in public-school classrooms. Similarly Professor Green claims that “there is no longstanding, widespread history of permanently displaying the Ten Commandments in public school classrooms.” These assertions may be correct; I write “may be” because I am unaware of any source that documents displays (religious or otherwise) in the Nation’s public school classrooms over the last two hundred years.³⁴

With respect to public schools, any actual evidence discussed in Hall’s report is largely consistent with Dr. Green’s conclusions. For example, he agrees with Dr. Green that public schools “did not really exist” at the Founding. Hall Rep. 22.³⁵ He references some early texts used in public schools that discuss the Ten Commandments, *id.* at 27, but does not dispute Dr. Green’s conclusions—which are based on a comprehensive analysis of those texts—that the references

³² “[T]he Court must not construe the tradition too broadly (e.g., as the Ten Commandments in all of public life at the time of the Founding or Incorporation[.]” *See Roake*, 756 F. Supp. 3d 93 at 189. Seeking to improperly broaden out the tradition analysis, both Defendants and Hall misleadingly quote Dr. Green’s article on the Ten Commandments. *See* Hall Rep. 16; Defs. Br. 17. They cherry-pick a mere twenty-eight words from his article, omitting intervening text that provides critical context, and they fail to acknowledge his ultimate conclusions in the piece, which directly support the expert opinions rendered in his report here. Green Reb. Rep. ¶ 17.

³³ *See Nathan*, 2025 WL 2417589, at *26 (finding 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”); *Stinson*, 2025 WL 2231053, at *12-13 (same); *Roake*, 756 F. Supp. 3d at 118, 204-10 (finding that historical evidence showed only scattered uses of Ten Commandments in public education) (citing *Mack*, 49 F.4th at 951, 957).

³⁴ Hall Rep. 29. After effectively conceding Dr. Green’s point, Hall goes on to improperly offer yet another legal opinion as to the governing legal standard and to discuss irrelevant historical practices relating to governmental observance of Christmas. *Id.* at 29–30.

³⁵ Thus, Hall’s discussion of religious instruction and textbooks used in *private* education *before* the formation of public schools, Hall Rep. 22–26, is inapposite here. *See* Green Reb. Rep. ¶ 24.

were limited and decreased over time. *See* Green Rep. ¶¶ 43–51; Green Reb. Rep. ¶ 25.³⁶ Hall also concedes that the use of the Bible generally in public schools was highly contentious, even leading to violence, Hall Rep. 27–28, demonstrating that such practices have not “withstood the critical scrutiny of time and political change.” *See* Defs. Br. 13 (quoting *Town of Greece* 572 U.S. at 577).³⁷ In sum, Professor Hall’s report does not shield S.B. 10 from the same fate as the Kentucky statute struck down in *Stone*, La. R.S. § 17:2124 (2024) (“H.B. 71”), or Ark. Act. No. 573 (2025): They are all patently unconstitutional.³⁸ Indeed, after hearing live testimony, subject to cross-

³⁶ Although Professor Hall states that “[t]he New England Primer included 40 questions about [the Ten Commandments] as late as its 1845 edition,” Hall Rep. 27, he does not offer any evidence to counter Dr. Green’s assessment that the New England Primer was not routinely used in public schools. *See* Green Rep. ¶ 44. Similarly, Hall and Defendants rely on quotations regarding the Ten Commandments and schools from Jenna Weismann Joselit’s book. Hall Rep. 28, Defs. Br. 16. But Joselit does not “provide a citation for her claims or state that they even involved *public* education.” Green Reb. Rep. ¶ 26 n.41. And Joselit’s “book is a history about popular culture, not legal or educational history.” *Id.* Indeed, the book discusses the “failed attempts to post the Ten Commandments in public schools,” and the overall theme of the book is that “Americans’ growing identification of the Ten Commandments was primarily a *twentieth century* phenomena, fueled in no small part by Cecil B. DeMille’s two movies (1923 and 1956) about the Ten Commandments.” *Id.*

³⁷ As to the purposes animating the Religion Clauses of the First Amendment, *see* Green Rep. ¶¶ 18–26, while Hall claims that “America’s founders understood the Establishment Clause to prohibit the creation of a national church,” he also concedes that the Founders understood it to prohibit “more generally, coercion in matters of faith.” Hall Rep. 11. *Cf. Stinson*, 2025 WL 2231053, at *13 (crediting Dr. Green’s conclusion that “[t]he Founders were deeply committed to the principle that government must not compel religious observance or endorse religious doctrine, and that commitment is reflected in multiple foundational texts”).

³⁸ Defendants’ suggestion that a decision by this Court vindicating Plaintiffs’ Establishment Clause rights would “evinced a hostility towards religion” and somehow *violate the Free Exercise Clause*, Defs. Br. 18, turns the First Amendment on its head. Preventing the religious coercion of students *advances* one of the core purposes animating both of the Religion Clauses. *See* Green Rep. ¶¶ 18–26; Plfs. Mot. 11–14. And the government’s attempt to impose *new* religiously coercive and denominationally preferential scriptural displays on public-school students is poles apart from “‘roam[ing] the land, tearing down monuments with religious symbolism and scrubbing away reference to the divine.’” *See* Defs. Br. 18 (quoting *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 56 (2019)). As the Supreme Court held in *American Legion*, “retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting *new* ones.” 588 U.S. at 57 (emphasis added).

examination, from both Dr. Green and Professor Hall, the *Nathan* Court found Dr. Green’s opinions “more persuasive.” 2025 WL 2417589, at *25, 28.

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

Like their other arguments, Defendants’ objections to Plaintiffs’ free-exercise claims fail to grapple with the problematic nature of the Act’s statutory regime. The pervasive and unavoidable displays will directly conflict with the Plaintiffs’ religious and non-religious beliefs and practice, religiously coerce the children, and undermine the parents’ right to direct their children’s religious education—all in violation of the Free Exercise Clause. *See* Plfs. Mot. 2–3; *see also Nathan*, 2025 WL 2417589, at *28 (holding that S.B. 10 “is likely to burden Plaintiffs’ exercise of their sincere religious or nonreligious beliefs in substantial ways”); *Stinson*, 2025 WL 2231053, at *14 (same).

Downplaying the Act’s unrelenting assault on students’ conscience, Defendants turn to the Supreme Court’s ruling in *Town of Greece*, 572 U.S. at 590. Def. Br. 22. However, the Court’s assessment of coercion there was premised on the fact that the objectors were “mature adults” who voluntarily attended government meetings and were “free to enter and leave with little comment and for any number of reasons.” *Town of Greece*, 572 U.S. at 590 (quoting *Lee*, 505 U.S. at 597). The minor-child Plaintiffs, by contrast, are students who are compelled by law to attend school and are under the thumb of State control while there—a distinction recognized by the Court itself in *Town of Greece*. *Id.* at 590 (citing *Lee*, 505 U.S. at 597). According to the Court, “[s]hould nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy[,]” and “should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed.” *Id.* It is an entirely different story for children, who are “readily susceptible to religious indoctrination or peer pressure.” *See id.* (cleaned up); *see also Stinson*, 2025 WL 2231053, at *6

(explaining that concerns about coercion “*would have been* justified, according to the *Town of Greece* Court, if the [challenged] prayer practice had been imposed in the public schools, where students have no meaningful opportunity to ‘free[ly] . . . enter and leave’” (quoting *Town of Greece*, 572 U.S. at 590) (emphasis in original).

Defendants’ reliance on *Doe v. Beaumont Independent School District*, 240 F.3d 462, 470 (5th Cir. 2001) (en banc), in both their free-exercise and Establishment Clause arguments, Defs. Br. 20, 22, is also misplaced. *Beaumont*’s volunteer counselors, though clergy, provided “group counseling on *secular* issues including race, divorce, peer pressure, discipline, and drugs” and were required to refrain from promoting religious doctrine to students. *Id.* at 465 (emphasis added). As a result, the counseling did “not constitute a religious exercise.” *Id.* at 469–470 (“The volunteers are working in a secular setting with other volunteers who subscribe to different faiths. Thus, we presume that the volunteers will comply with the program’s secular guidelines.”). Here, by contrast the challenged conduct is the imposition of *scripture*, which is inherently and expressly religious, and will, due to S.B. 10’s intractable, minimum requirements, coerce the minor-child Plaintiffs to “participate in a religious exercise: reading and considering a specific version of the Ten Commandments.” See *Roake*, 756 F. Supp. at 193; see also *Nathan*, 2025 WL 2417589, at *28 (noting that the 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”); *Stinson*, 2025 WL 2231053, at *10-11 (holding that “Ten Commandments Displays [Are] Not Merely ‘Passive’”).

Defendants are mistaken in asserting that “rational basis rather than strict scrutiny applies” to S.B. 10 under the Free Exercise Clause. Defs. Br. 24. First, they incorrectly argue that *Mahmoud*

does not apply here because “S.B. 10 requires no instruction [and does not] otherwise require teachers to discuss or even acknowledge the displays[.]” Defs. Br. 23. The arbitrary line drawn by Defendants is a distinction without difference for purposes of the constitutional analysis. *See supra* p. 24–27. S.B. 10’s posters are “instruction” in the most fundamental sense: They command, *i.e.*, instruct, students to follow numerous religious dictates. Indeed, S.B. 10’s imposition of religiously objectionable content is *far more* egregious than in *Mahmoud* because the materials objected to here are *patently religious*, rather than secular, and are in use for nearly every hour of the school day, from kindergarten through senior year, rather than occasionally. Plfs. Mot. 16.

Thus, per *Mahmoud*, Defendants must demonstrate that S.B. 10 “advances interests of the highest order and is narrowly tailored to achieve those interests.” 145 S. Ct. at 2361 (cleaned up).³⁹ As with their response to Plaintiffs’ Establishment Clause argument, Defendants do not rebut Plaintiffs’ arguments, Plfs. Mot. 17–18, that S.B. 10 fails strict scrutiny and, therefore, have waived the point. *See Nathan*, 2025 WL 2417589, at *28 (holding that S.B. 10 “cannot be sustained under strict scrutiny”); *Stinson*, 2025 WL 2231053, at *15 (holding that Act 573 fails strict scrutiny); *Roake*, 756 F. Supp. 3d at 201 (“Even assuming that H.B. 71 advanced a compelling interest (*e.g.*, for educational or historical value), the Act is unquestionably not narrowly tailored in pursuit of those interests ... There are any number of ways that the State could advance an

³⁹ Because S.B. 10 “is not neutral with respect to religion,” Plaintiffs also meet *Kennedy*’s threshold for applying strict scrutiny. *See Nathan*, 2025 WL 2417589, at *27; *see also* Plf. Mot. 16–17 n.20. As the *Nathan* Court held, “[b]y 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); *Stinson*, 2025 WL 2231053, at *14 (“Act 573 is not neutral with respect to religion. By design, and on its face, the statute mandates the display of expressly religious scripture in every public-school classroom and library. The Act also requires that a specific version of that scripture be used[.]”).

alleged interest in educating students about the Ten Commandments that would be less burdensome on the First Amendment than the one required by the Act.” (cleaned up)).

C. Plaintiffs Are Entitled to the Requested Temporary Restraining Order and/or Preliminary Injunction.

For the reasons discussed in Plaintiffs’ motion, each of the remaining emergency-relief factors weighs in their favor. *See* Plfs. Mot. 19–20. Defendants argue that denial of an injunction is necessary because an injunction will cause “the irreparable harm of denying the [State’s] public interest in the enforcement of its laws.” Defs. Br. 26. However, Defendants do not have a genuine “interest in enforcing a regulation that violates federal law,” *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024), especially in the public-school context where students will be harmed. *See Nathan*, 2025 WL 2417589, at *27.

Defendants also argue that, even if Plaintiffs are entitled to preliminary relief, any preliminary injunction should be limited. First, they appear to suggest that, across the board, “Plaintiffs should only be entitled to be notified in advance in the event an S.B. 10 compliant display is to be used in the classroom and allowed to have their children excused from that instruction.” Defs. Br. 26 (cleaned up). A paragraph later, they argue that “[a]ny preliminary injunction regarding the Establishment Clause should not extend beyond the specific schools that Plaintiffs’ children attend, and any injunction concerning the free exercise clause should not extend beyond allowing Plaintiffs’ children to opt-out of viewing the displays.” *Id.* at 27.

Defendants’ demands ignore the realities of students’ day-to-day life at school and the expansive nature of S.B. 10. Defendants do not explain how an opt-out could possibly work with respect to ubiquitous, unavoidable displays of scripture. The displays will be in every classroom. Thus, notifying students of the displays and excusing them “from that instruction” would

necessarily mean that the minor-child Plaintiffs could not be present in *any* classroom for instruction throughout the day, for the entire school year, over the course of their public education.

Moreover, an order limited to the classrooms or schools in which the minor-child Plaintiffs are present would be impossible to administer and inadequate to protect Plaintiffs’ rights. *See Stinson*, 2025 WL 2231053, at *15 (denying state’s demand that “the Court . . . limit the injunction to Plaintiffs’ specific classrooms and libraries”). Children regularly move between classrooms within schools, attend programs and activities in other schools within their district, and progress from elementary to middle to high school.⁴⁰ Every time an affected child changes classrooms or schools, including to visit other schools for district events and activities, they would have to make a new request for relief that the state-mandated displays be removed. This would put the minor-child Plaintiffs at risk of repeated, “accidental” impositions of the Act’s scriptural displays due to the impracticalities of implementing such an injunction, and compound the violation of their religious freedom by sending—day after day, year after year—an unlawful, exclusionary, and spiritually burdensome message to the children that they do not belong and are “outsiders, not full members of the [school] community,” because they do not subscribe to the state-approved version of the Ten Commandments. *See Catholic Charities*, 605 U.S. at 248 (quoting *Santa Fe*, 530 U.S. at 309); *see also Stinson*, 2025 WL 2231053, at *15.

“Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.”

⁴⁰ Each of the Defendant School Districts holds various inter-school events and activities throughout the school year during which children visit a district school other than their own. *See generally* Huffman Decl., Exs. 1–41. Thus, the minor-child Plaintiffs are also likely to be subjected to displays while attending activities at other schools within their districts. *See, e.g.,* Manning Decl. ¶ 6; D. Sullivan Decl. ¶ 5; Lewis Decl. ¶ 6; Lawrence Decl. ¶ 6; Bien-Willner Decl. ¶ 6; Villarreal Decl. ¶ 6; Fuechsel Decl. ¶ 6.

Trump v. Int’l Refugee Assistance Project, 582 U.S. 571, 579 (2017). As in *Nathan and Stinson*, “students who attend schools in the [Defendant] Districts must occasionally travel from school to school to participate in both mandatory and voluntary school-related activities.” See *Stinson*, 2025 WL 2231053, at *15 n.16. Thus, “restricting the scope of a preliminary injunction to just the individual child-Plaintiffs’ classrooms or schools is unlikely to avoid constitutional injury,” and [t]he least restrictive remedy that protects Plaintiffs from unexpected constitutional injury is to grant relief District-wide.” *Id.* Accordingly, the district-wide relief requested by Plaintiffs falls squarely within the Supreme Court’s conception of “complete relief.” See *Trump v. CASA, Inc.*, 606 U.S. 831, 850 (2025).⁴¹

CONCLUSION

For the reasons set forth above, this Court should issue the requested temporary restraining order and/or preliminary injunction, as outlined in Plaintiffs’ Motion for Temporary Restraining Order and/or Preliminary Injunction.

⁴¹ In *CASA*, the Court held that a *universal* injunction against an executive order, freezing enforcement across the country, exceeded the equitable authority that Congress granted to federal courts. 606 U.S. at 835. Here, Plaintiffs’ proposed relief is much more modest and would extend only within the district in which each minor-child Plaintiff attends school. That is appropriate because there is “no way ‘to peel off just the portion of the [constitutional violation]’” that will harm each Plaintiff. See *id.* at 852 (cleaned up).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

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