

IN THE
Supreme Court of the United States

CADE BRUMLEY, SUPERINTENDENT,
LOUISIANA STATE EDUCATION, *et al.*,
Petitioners,

v.

DARCY ROAKE, REVEREND, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILDREN,
REAL PARTIES IN INTEREST A. V. AND S. V., *et al.*,
Respondents.

ON CONDITIONAL PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

DANIEL MACH
HEATHER L. WEAVER
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street, NW,
Suite 600
Washington, D.C. 20005

CECILLIA D. WANG
EVELYN R. DANFORTH-SCOTT
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
425 California Street,
Suite 700
San Francisco, CA 94104

JONATHAN K. YOUNGWOOD
Counsel of Record
JANET A. GOCHMAN
GRISELDA CABRERA
NOAH M. HUFFMAN
SIMPSON THACHER
& BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
jyoungwood@stblaw.com

V. NOAH GIMBEL
JORDAN T. KRIEGER
SIMPSON THACHER
& BARTLETT LLP
900 G Street, NW
Washington, D.C. 20001

Additional Counsel Listed On Inside Cover

LOUISE MELLING
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street,
18th Floor
New York, NY 10004

NORA AHMED
CHARLES ANDREW PERRY
AMERICAN CIVIL LIBERTIES
UNION OF LOUISIANA
P.O. Box 56157
New Orleans, LA 70156

PATRICK C. ELLIOTT
SAMUEL T. GROVER
NANCY A. NOET
FREEDOM FROM
RELIGION FOUNDATION
P.O. Box 750
Madison, WI 53701

REBECCA S. MARKERT
ALEX J. LUCHENITSER
AMY TAI
SAMANTHA NAGLER
AMERICANS UNITED FOR
SEPARATION OF CHURCH
& STATE
1310 L Street, NW,
Suite 200
Washington, D.C. 20005

QUESTION PRESENTED

Louisiana’s H.B. 71 requires every public school to display a state-selected version of the Ten Commandments in every classroom. La. Stat. Ann. § 17:2124(B)(1)–(2) (2024).

In its decision below, the en banc Fifth Circuit vacated the district court’s preliminary injunction enjoining implementation of H.B. 71 in a “narrow holding” that did not decide “whether H.B. 71 is constitutional, but [only] whether that issue is fit for judicial resolution[.]” Pet. App. 4a, 11a. Thus, the question presented for this Court is:

Whether Respondents’ pre-enforcement challenge to H.B. 71 was ripe.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE	3
I. H.B. 71’S REQUIREMENTS	3
II. H.B. 71’S ENACTMENT	5
III. RESPONDENTS’ CHALLENGE	6
A. Respondents’ Religious Beliefs and Objections to H.B. 71	6
B. Proceedings Below	7
ARGUMENT	10
I. LOUISIANA DOES NOT SUGGEST THE RIPENESS ISSUE WARRANTS THIS COURT’S REVIEW.	11
II. THIS PETITION PRESENTS AN EXCEEDINGLY POOR VEHICLE TO CONSIDER THE MERITS.	13
A. The court of appeals did not reach the merits below.	15
B. Petitioners have virtually nothing to gain from merits review.	17

C.	Petitioners' merits claims are not collateral to the judgment below.....	19
III.	AT MOST, THE COURT SHOULD HOLD THE CONDITIONAL PETITION AND OTHERS RAISING SIMILAR ISSUES PENDING <i>NATHAN</i>	22
	CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bunting v. Mellen</i> , 541 U.S. 1019 (2004)	14
<i>California v. Rooney</i> , 483 U.S. 307 (1987) (per curiam)	14
<i>Camreta v. Greene</i> , 563 U.S. 692 (2011)	10, 14, 18, 19, 20, 21
<i>Chatrie v. United States</i> , 146 S. Ct. 2193 (2026)	15
<i>Cribbs Ringer v. Comal Indep. Sch. Dist.</i> , 2026 WL 2566183 (5th Cir. May 29, 2026) 9, 16, 23	
<i>Davis v. Passman</i> , 442 U.S. 228 (1979)	16
<i>Deposit Guar. Nat’l Bank v. Roper</i> , 445 U.S. 326 (1980)	14, 19, 20, 21
<i>Dier v. Landry</i> , 2026 WL 1090768 (E.D. La. Apr. 22, 2026).....	22
<i>Dier v. Landry</i> , 2026 WL 2545871 (5th Cir. July 10, 2026).....	22
<i>Elec. Fittings Corp. v. Thomas & Betts Co.</i> , 307 U.S. 241 (1939)	20
<i>Forney v. Apfel</i> , 524 U.S. 266 (1998)	18, 19
<i>Freedom From Religion Found., Inc. v. Mack</i> , 49 F.4th 941 (5th Cir. 2022).....	8

<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	8, 16
<i>Learning Resources, Inc. v. Trump</i> , 607 U.S. 229 (2026)	21
<i>Limelight Networks, Inc. v. Akamai Techs., Inc.</i> , 572 U.S. 915 (2014)	16
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	2, 12, 16
<i>Nathan v. Alamo Heights Indep. Sch. Dist.</i> , 157 F.4th 713 (5th Cir. 2025)	8
<i>Nathan v. Alamo Heights Indep. Sch. Dist.</i> , 173 F.4th 576 (5th Cir. 2026)	2, 8–9, 13, 15–16, 23
<i>Roake v. Brumley</i> , 154 F.4th 329 (5th Cir. 2025)	8
<i>Stone v. Graham</i> , 449 U.S. 39 (1980) (per curiam)	2, 7, 8, 16, 23
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)	12
<i>United States v. Lanier</i> , 520 U.S. 259 (1997)	16
Constitutional Provisions	
U.S. Const. amend. I	1, 2, 7, 8, 9, 11–13, 15, 16, 23
U.S. Const. art. III, § 2	15, 18, 19, 20
Statutes and Rules	
28 U.S.C. § 1254	14
La. Stat. Ann. § 17:221 (2024)	6

La. Stat. Ann. § 17:2124 (2024)	i, 3–5
Fed. R. App. P. 27.....	18
Fed. R. App. P. 40.....	18
Fed. R. Civ. P. 12.....	18
Sup. Ct. R. 10	19
Sup. Ct. R. 37	10

Other Authorities

<i>Dier v. Landry</i> , No. 26-256 (U.S. filed Aug. 25, 2026).....	2, 22–23
<i>Nathan v. Alamo Heights Indep. Sch. Dist.</i> , No. 26-257 (U.S. filed Aug. 17, 2026).....	1–3, 9–11, 13, 15–16, 18, 22
<i>Roake v. Brumley</i> , No. 24-30706, Appellees’ Supp. Br. for Reh’g En Banc, ECF No. 345-2, at 20–24 (5th Cir. Dec. 5, 2025).....	11
<i>Roake v. Brumley</i> , No. 24-30706, ECF No. 270 (5th Cir. Oct. 31, 2025).....	17

INTRODUCTION

This Court has a pending petition that cleanly presents the constitutionality of a state law that requires the posting of religious scripture, a Protestant version of the Ten Commandments, in public school classrooms. The Conditional Petition here is not it.

Petitioners in this case, Louisiana education officials and school boards, seek to ride the coattails of that clean vehicle, *Nathan v. Alamo Heights Independent School District*, No. 26-257 (U.S. filed Aug. 17, 2026), which concerns another Ten Commandments statute (S.B. 10) enacted by Texas. Petitioners ask this Court to grant their petition if the Court grants certiorari in *Nathan*.

Despite winning this case before the en banc Fifth Circuit on ripeness grounds, Petitioners demand that the Court take up that threshold jurisdictional issue, even though they never argue that it is certworthy. They also ask the Court to decide whether Louisiana's H.B. 71 violates the First Amendment. In short, they would forfeit their victory on ripeness grounds in the Fifth Circuit in a bid to litigate the constitutional merits of H.B. 71 should the Court grant review of the Texas law.

The Court should decline Petitioners' request based on this Court's settled prudential rule against prevailing-party petitions. The controlling en banc Fifth Circuit decision below did not reach the merits, and this is a court of review, not of first view.

Petitioners also seek review based only on a sliver of a difference between the relief they say they want—dismissal of Respondents’ complaint—and the relief they received on ripeness grounds below—vacatur of the district court’s order enjoining H.B. 71. Any claim of harm or prejudice resulting from the Fifth Circuit’s failure to order dismissal, however, is belied by the Conditional Petition itself: Petitioners are perfectly content to accept the relief awarded below, with no correction or supplement by this Court, so long as the Court declines to take up *Nathan*. Moreover, despite the Fifth Circuit’s subsequent ruling in *Nathan*, Petitioners did not seek dismissal in the district court or request an amended judgment in the court of appeals. These complications are absent from the pending petition in *Nathan*.

This Court should certainly take up the Establishment Clause and Free Exercise Clause issues raised by a state statute that requires the display of the Ten Commandments in every public-school classroom. But it should not do so in this case or in another petition out of Louisiana, *Dier v. Landry*, No. 26-256 (U.S. filed Aug. 25, 2026), because both cases were decided below solely on ripeness grounds. Instead, the Court should grant review in *Nathan*, where the en banc court of appeals upheld the Texas Ten Commandments law on the merits and thereby contravened this Court’s binding precedents in *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam) and *Mahmoud v. Taylor*, 606 U.S. 522 (2025). Granting review in *Nathan* will

restore doctrinal clarity where the Fifth Circuit has introduced confusion.

The Conditional Petition here should be denied or, at most, held pending a grant and merits ruling in *Nathan*.

STATEMENT OF THE CASE

I. H.B. 71’S REQUIREMENTS

In June 2024, Louisiana Governor Jeff Landry signed H.B. 71 into law. The Act requires that “[n]o later than January 1, 2025, each public school governing authority shall display the Ten Commandments in each classroom in each school under its jurisdiction.” La. Stat. Ann. § 17:2124(B)(1) (2024). Detailing how schools are to implement the new law, the Act imposes a “minimum requirement that the Ten Commandments shall be displayed on a poster or framed document that is at least eleven inches by fourteen inches.” *Id.* Further, “[t]he text of the Ten Commandments shall be the central focus of the poster or framed document and shall be printed in a large, easily readable font.” *Id.* The Act specifies the exact version of the Ten Commandments that public schools must use:

The Ten Commandments

I AM the LORD thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven images.

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

Remember the Sabbath day, to keep it holy.

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

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against thy neigh-
bor.

Thou shalt not covet thy neighbor's house.

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

Id. § 17:2124(B)(2).

The Act further requires each display to include a
three-paragraph “context statement,” purporting to
describe the history of the Ten Commandments in
public education. *Id.* § 17:2124(B)(3). Public schools
may, but need not, display the Mayflower Compact,

the Declaration of Independence, and the Northwest Ordinance alongside the Ten Commandments. *Id.* § 17:2124(B)(4).

H.B. 71 also requires the Louisiana Department of Education to “identify appropriate resources to comply” with the law and the Louisiana Board of Elementary and Secondary Education to “adopt rules and regulations . . . to ensure the proper implementation” of the statute by local school boards. *Id.* § 17:2124(B)(6)(a)–(b).

II. H.B. 71’S ENACTMENT

The passage of the Act involved repeated comments by lawmakers explaining that the displays would inculcate religious beliefs and behaviors in schoolchildren. For example, Representative Dodie Horton, the primary author and sponsor of H.B. 71, stated: “It is so important that our children learn what God says is right and what He says is wrong and to allow [the Ten Commandments] to be displayed in our classrooms as a visual aid, I believe, especially in this day and time is so important.” Pet. App. 330a–31a; *see also id.* (Representative Horton: “I’m not concerned with an atheist. I’m not concerned with a Muslim. I’m concerned with our children looking and seeing what God’s law is.”). Representative Sylvia Taylor similarly asserted: “I really believe that we are lacking in direction. A lot of people, their children, are not attending churches or whatever. . . . So what I’m saying is, we need to do something in the schools to

bring people back to where they need to be.” *Id.* Representative Roger Wilder, another co-author and co-sponsor, put it more bluntly by calling any opposition to H.B. 71 an “attack on Christianity[.]” Pet. App. 254a–55a.

III. RESPONDENTS’ CHALLENGE

A. Respondents’ Religious Beliefs and Objections to H.B. 71

Respondents are Louisiana parents and their minor children who attend public schools, pursuant to state law. *See* La. Stat. Ann. § 17:221(A) (2024) (“[T]he parent or legal guardian of a child who is age seven through eighteen and residing within the state of Louisiana shall send the child to a public or non-public school.”). They include Christian, Jewish, Unitarian Universalist, and nonreligious families, and several of the parents are ordained clergy. CA5.ROA.278–329 (Respondents’ declarations).¹

Respondents object to H.B. 71’s mandatory displays because they will subject their children, for nearly every hour of every school day, to a state-selected version of the Ten Commandments that conflicts with the beliefs their families seek to instill. Respondents contend that the ubiquitous displays

¹ As of the filing of this Opposition, Respondents Christy Alkire, Rev. Darcy Roake, and Adrian Van Young no longer have children enrolled in Louisiana public schools.

will pressure their children to observe, venerate, and adopt the State’s preferred scripture and to suppress their own beliefs, and will usurp parents’ rights to direct their children’s religious upbringing. *Id.*

B. Proceedings Below

Shortly after H.B. 71 became law, Respondents filed suit challenging the statute under the Establishment and Free Exercise Clauses. They moved to preliminarily enjoin enforcement of the Act, and Petitioners moved to dismiss. Based on briefing, argument, and historical evidence presented by the parties, the district court granted the preliminary injunction and denied the motion to dismiss. The court held that Respondents’ claims were ripe, that Respondents had standing, and that Respondents were likely to succeed on the merits under both the Establishment Clause and the Free Exercise Clause. Pet. App. 375a–76a.

A unanimous panel of the Fifth Circuit affirmed, holding that Respondents had standing, that their claims were ripe, and that they were likely to prevail on the merits of their Establishment Clause claim, making a preliminary injunction appropriate. Pet. App. 61a–125a. The panel first held that *Stone*, which struck down a similar Kentucky law, controls and renders H.B. 71 unconstitutional under the Establishment Clause because “[a]n H.B. 71 display that meets the statute’s minimum requirements is materially identical to the displays challenged in *Stone*.” Pet.

App. 102a–03a. The panel also held that, “even if *Stone* were overturned tomorrow, H.B. 71 violates the Establishment Clause under *Kennedy*” because permanently displaying the Ten Commandments in public schools is not “‘consistent with a broader tradition’ at the time of the Founding or incorporation.” *Id.* at 108a–11a (quoting *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 951 (5th Cir. 2022); citing *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022)).

The Fifth Circuit granted rehearing en banc, vacating the panel opinion. *Roake v. Brumley*, 154 F.4th 329, 332 (5th Cir. 2025) (en banc). The court heard oral argument in this case alongside oral argument in *Nathan*, a challenge to a Texas statute mandating that public schools display the Ten Commandments in every classroom. *See id.*; *Nathan v. Alamo Heights Indep. Sch. Dist.*, 157 F.4th 713, 714 (5th Cir. 2025) (en banc) (granting initial hearing en banc).

After argument, the en banc court vacated the preliminary injunction issued in *Roake* based on a single threshold ground: lack of ripeness. In a per curiam opinion, with seven judges dissenting, the court held that, because H.B. 71 had not yet gone into effect, the “parents’ challenge turns on unresolved factual and contextual questions,” making “equitable relief . . . premature.” Pet. App. 4a. The court described its decision as a “narrow holding” based on specific provisions of the statute that the court construed as conferring discretion on local school boards to

determine the “nature” of the displays. *Id.* at 5a, 11a. The court emphasized that “nothing in [its decision] prevents future as-applied challenges once the statute is implemented and a concrete factual record exists.” *Id.* at 11a. In light of its ripeness holding, the court did not decide whether H.B. 71 violates the Establishment Clause or the Free Exercise Clause. Judge Ho wrote a separate concurring opinion, which no other member of the en banc court joined. *Id.* at 12a. Four judges wrote dissenting opinions, all agreeing that the majority’s ripeness decision was erroneous. *Id.* at 22a.

Two months later, in *Nathan*, the en banc court of appeals held that, unlike in *Roake*, the Texas plaintiffs’ claims were ripe. The court also held that the plaintiffs had standing. Reaching the merits of the plaintiffs’ Establishment Clause and Free Exercise Clause claims, the court held that Texas S.B. 10 was constitutional under both Religion Clauses. *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576 (5th Cir. 2026) (en banc); *see also* Pet. App. 377a (reproducing the opinion). The court then summarily reversed, in a per curiam order, a different district court judge’s preliminary injunction against the same Texas statute in *Cribbs Ringer v. Comal Independent School District*, No. 25-51045, 2026 WL 2566183, at *1 (5th Cir. May 29, 2026). The *Nathan* and *Cribbs Ringer* plaintiffs subsequently filed a joint petition for certiorari with this Court, which remains pending. *See* Pet. for Writ of Cert., *Nathan v. Alamo Heights*

Indep. Sch. Dist., No. 26-257 (U.S. filed Aug. 17, 2026).

ARGUMENT

The Conditional Petition is full of contradictions. Petitioners, who *won* below, seek this Court’s review on one question (the ripeness holding) that they never suggest is certworthy, and on another (the merits) that was not reached or discussed by the en banc majority. Yet they offer no real reason why this Court should deviate from its standard practice of refusing to entertain prevailing-party petitions. *See Camreta v. Greene*, 563 U.S. 692, 703–04 (2011). Even more bizarrely, their demand for certiorari evidently evaporates if this Court denies the *Nathan* petition—an outcome they urge.

Petitioners say these unusual positions are animated by Louisiana’s desire to “defend[] its own law . . . on its own terms.” Pet. 34. But Louisiana has already had the chance to defend H.B. 71 on its own terms, and it prevailed on ripeness grounds. If Louisiana has something to say about the merits of *Nathan*, it may do so in the same way as any other nonparty: through an amicus brief. *See* Sup. Ct. R. 37.

In short, there is no reason to make this one of the small handful of prevailing-party petitions the Court has granted in recent memory. Petitioners themselves contend that their first question presented is not worthy of review. And the second question

presented is riddled with vehicle problems because of the Conditional Petition’s unorthodox posture.

I. LOUISIANA DOES NOT SUGGEST THE RIPENESS ISSUE WARRANTS THIS COURT’S REVIEW.

The Conditional Petition primarily asks this Court to grant certiorari here if it grants the pending petition in *Nathan* so this Court may decide whether H.B. 71 violates the Establishment Clause, the Free Exercise Clause, or both. Pet. i. Yet, stymied by the failure of the court of appeals to reach the merits of those claims—an outcome Petitioners sought below—Petitioners also added the ripeness issue to their questions presented. They otherwise make no effort, however, to argue that this Court should grant certiorari on that threshold jurisdictional issue.

Respondents vigorously disagreed with the State’s ripeness argument below. *See Roake v. Brumley*, No. 24-30706, Appellees’ Supp. Br. for Reh’g En Banc, ECF No. 345-2, at 20–24 (5th Cir. Dec. 5, 2025). Nevertheless, while the Fifth Circuit’s ripeness ruling was wrong, Petitioners themselves repeatedly take the position that review of their first question presented is unwarranted.² *See* Pet. 20 (arguing that

² The Fifth Circuit’s ripeness ruling was erroneous. As Respondents explained below, their claims were ripe because this Court has long recognized that a plaintiff asserting a pre-enforcement challenge need only show that “the threatened injury is certainly

“[t]he Fifth Circuit correctly held that the *Roake* case does not get off the ground because it is not ripe”); *id.* (“there is no need for this Court’s review”). And they make no other attempt to suggest that the first question satisfies the Court’s traditional criteria for certiorari. They deny that any split on the ripeness question has developed among the circuits. *Id.* They do not claim it has national significance or conflicts

impending, or there is a substantial risk that the harm will occur.” *Mahmoud v. Taylor*, 606 U.S. 522, 560 (2025) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). In particular, “when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit.” *Id.* at 559–60 (citing *Driehaus*, 573 U.S. at 158). According to the en banc Fifth Circuit, Respondents’ claims were not ripe because the court could not “evaluate ‘how the [Ten Commandments] text is used,’ . . . because we do not yet know—and cannot yet know—how the text will be used.” Pet. App. 6a (citation omitted). But this Court held just the opposite in *Mahmoud*. The Court was not troubled there by the fact that the parent-petitioners could not “make specific allegations describing how the books ‘are actually being used in classrooms,’” explaining, “We do not need to ‘wait and see’ how a particular book is used in a particular classroom on a particular day before evaluating the parents’ First Amendment claims.” *Mahmoud*, 606 U.S. at 559–60. As in *Mahmoud*, the challenged conduct here was subject to “clear and undisputed instructions.” *Cf. id.* at 560. And no matter how else schools may try to dress up the scriptural displays, the baseline statutory requirements—from which schools could not lawfully deviate—posed a “substantial risk” that Respondents would suffer harm to their First Amendment rights. *Id.* at 559–60.

with existing Supreme Court caselaw. Nor, for obvious reasons, do they seek error correction from a ruling that simply adopted their own position.

At this early juncture, it is not even clear whether the Fifth Circuit’s ripeness ruling will have broader consequences within the circuit, since the court of appeals itself described its holding as “narrow.” Pet. App. 11a. In the Fifth Circuit’s telling, the “dispositive” factors in its ripeness conclusion were provisions specific to H.B. 71 that the court construed as conferring unique discretion on local school boards to determine the “nature” of the displays. *Id.* at 5a–7a, 10a–11a. And two months later, in *Nathan*, the Fifth Circuit distinguished H.B. 71 from Texas’s S.B. 10, correctly holding that a pre-enforcement challenge to Texas’s S.B. 10 *was* ripe and proceeding to consider the merits of the plaintiffs’ First Amendment claims. In short, the ripeness analysis below hinged on what the Fifth Circuit viewed as distinctive elements of Louisiana’s law. Its significance for other First Amendment challenges to other statutes is entirely conjectural at this point. And Louisiana makes no other effort to suggest the question deserves review.

II. THIS PETITION PRESENTS AN EXCEEDINGLY POOR VEHICLE TO CONSIDER THE MERITS.

Petitioners’ ripeness victory below also thwarts their “conditional” effort to tack review of the merits of the Louisiana statute onto the *Nathan* case.

Although 28 U.S.C. § 1254(1) technically permits a petition by “any party,” “[a]s a matter of practice and prudence,” this Court has “generally declined to consider cases at the request of a prevailing party.” *Camreta*, 563 U.S. at 703–04; *cf. California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam). This presumption has been overcome only in rare circumstances—namely, for petitions seeking review of “adverse ruling[s] collateral to the judgment on the merits,” *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 334 (1980), when the Court satisfies itself that there is some “policy reaso[n]” of “sufficient importance to allow an appeal” by the party prevailing below, *id.* at 336 n.7. Ultimately, those limitations mean “suitable candidates” for prevailing-party review will “seldom present themselves.” *Bunting v. Mellen*, 541 U.S. 1019, 1024 (2004) (Scalia, J., dissenting from denial of certiorari); *see also Camreta*, 563 U.S. at 702 (“Indeed, we have twice before allowed a party for whom judgment was entered to challenge an unfavorable lower court ruling.” (citations omitted)).

Here, Petitioners offer no explanation for how their petition fits within the extremely narrow circumstances in which this Court has permitted prevailing-party review. In fact, their quest to reach the merits makes scant mention of the presumption against prevailing-party petitions at all.

If anything, prudential considerations cut decisively against review in this posture. First, because

Louisiana prevailed on a threshold question, the en banc Fifth Circuit never addressed whether H.B. 71 violates the First Amendment. Second, the asserted basis for Article III standing turns on a demand for relief (outright dismissal) that the Conditional Petition walks away from as long as this Court denies the *Nathan* petition, and that Petitioners failed to seek from either the district court or the court of appeals after the Fifth Circuit’s decision in *Nathan*. Finally, this Court’s review of prevailing-party claims has generally involved issues that are collateral to the judgment below—a situation that Louisiana’s second question does not present.

A. The court of appeals did not reach the merits below.

To reiterate, the en banc Fifth Circuit held only that, “[b]ecause the parents’ challenge turns on unresolved factual and contextual questions, equitable relief was premature.” Pet. App. 4a. It did not decide whether H.B. 71 violates the Establishment Clause or the Free Exercise Clause, and it expressly preserved future challenges once “the statute is implemented and a concrete factual record exists.” Pet. App. 11a.

Because this is a “court of review, not of first view,” *Chatrie v. United States*, 146 S. Ct. 2193, 2216 (2026) (internal quotation marks and citation omitted), reaching the merits here when the binding appellate opinion did not would be a sharp break from ordinary practice. Rather, where a court of appeals reaches an

issue “only in the original panel opinion, subsequently vacated” and then “d[oes] not reach the question in the en banc decision under review,” this Court has “le[ft] its consideration in the first instance to the Court of Appeals on remand.” *United States v. Lanier*, 520 U.S. 259, 264 n.2 (1997); *see also, e.g., Limelight Networks, Inc. v. Akamai Techs., Inc.*, 572 U.S. 915, 926 (2014) (similar); *Davis v. Passman*, 442 U.S. 228, 235 n.11 (1979) (similar).

The Fifth Circuit elected to resolve merits issues similar to Petitioners’ second question presented in a different case, *Nathan*. There, the en banc court held the *Nathan* plaintiffs’ claims justiciable, resolved the Establishment Clause and Free Exercise Clause challenges to the Texas statute in full, and rendered judgment dismissing those claims. Pet. App. 388a, 397a–444a. The Fifth Circuit then summarily reversed a similar ruling in *Cribbs Ringer*.

Both Texas cases are now pending before this Court in a joint petition for certiorari. That petition presents a complete appellate record and merits decision addressing the core First Amendment questions—teeing up a clean vehicle for this Court to assess the vitality of *Stone*, the reach of *Kennedy*, and the scope of *Mahmoud*. The operative opinion here, which stopped at ripeness, does not.

Perhaps recognizing this problem, Petitioners posit that this case should be heard alongside *Nathan* because the cases were “joined at the hip” in

“consolidated proceedings.” Pet. 2–3, 36. But that is not what happened. The cases were “consolidated” only for purposes of the en banc argument, where Texas and Louisiana were represented by separate counsel during separate portions of the argument. *See Roake v. Brumley*, No. 24-30706, ECF No. 270 (5th Cir. Oct. 31, 2025); Pet. App. 55a (Ramirez, J., dissenting) (“[T]he Texas statute—Senate Bill 10 (S.B. 10)—is being challenged in a separate appeal, which we consolidated with this case for purposes of en banc oral argument only.”). The cases otherwise were separately litigated: They were briefed independently, on different schedules, and resulted in two distinct opinions and mandates issued months apart.

Petitioners’ suggestion that the cases were “joined at the hip,” Pet. 3, therefore mischaracterizes the proceedings below. But even if it were true, it should not supersede this Court’s presumption against prevailing-party certiorari petitions. Steps the Fifth Circuit took for its own administrative convenience do not justify permitting Petitioners to piggyback on a separate petition from a separate merits decision in a separate case, about a different law in a different state, to obtain review of merits issues the Fifth Circuit never reached in their case.

B. Petitioners have virtually nothing to gain from merits review.

As the prevailing parties, Petitioners also must establish that they have some remaining “personal

stake in the suit,” such that they continue to satisfy Article III’s case-or-controversy requirement despite obtaining a judgment in their favor below. *Camreta*, 563 U.S. at 701 (internal quotation marks and citation omitted). The Conditional Petition tries to establish such an ongoing stake by grasping at the narrow difference between the relief Petitioners requested (complete dismissal) and the relief they received (vacatur of the injunction). But in practical terms, the Fifth Circuit’s failure to dismiss the case has had no prejudicial impact on Petitioners. The preliminary injunction is no longer in effect, and Petitioners are permitted to implement H.B. 71 in Respondents’ schools (and have already done so, in some instances). And having failed, after the Fifth Circuit’s ruling below, to seek dismissal in the district court or to ask the court of appeals to amend its judgment, *see* Fed. R. Civ. P. 12(b)(1); Fed. R. App. P. 27, 40, Petitioners offer no good reason why *this Court* should be the court to step in and close that slim remedial gap. Indeed, Petitioners’ demand that this Court fix their purported “half a loaf” of relief is so lacking in import that it apparently vanishes if this Court denies the *Nathan* petition.³

³ *Forney v. Apfel*, 524 U.S. 266 (1998), does not help Petitioners. They invoke *Forney* for the proposition that a party who is dealt only “half a loaf”—here, vacatur of the injunction on ripeness grounds but not dismissal—may seek the remainder of its requested relief on appeal. But *Forney* concerned “the legal right

C. Petitioners’ merits claims are not collateral to the judgment below.

Finally, this Court has granted prevailing-party review only in rare circumstances, typically involving issues “collateral” to the judgment entered in the petitioner’s favor by a lower court. *See, e.g., Deposit Guar.*, 445 U.S. at 334. That constraint makes good sense: In effect, it cabins the scope of such review to questions that would not necessarily jeopardize the petitioner’s victory below. This safeguards the Article III principles undergirding “[t]he rule against hearing appeals or accepting petitions for certiorari by prevailing parties,” *Camreta*, 563 U.S. at 717 (Kennedy, J., dissenting). Louisiana’s petition flouts that rule in seeking review of the merits of Respondents’ constitutional claims, which are not collateral to its ripeness victory below because any decision on the merits would require sacrificing its win.

This Court does not grant prevailing-party petitions in these circumstances. Rather, the Court has generally done so where there is “an adverse ruling collateral to the judgment”—that is, an issue for

to appeal from the District Court’s judgment” to the court of appeals—and neither party disputed the right to appeal. *Id.* at 268–69 (“We now agree with Forney and the Solicitor General that the Court of Appeals should have heard Forney’s appeal.”). *Forney* was about an appeal *as of right* to the court of appeals, not this Court’s review on a writ of certiorari, which is a matter “of judicial discretion,” Sup. Ct. R. 10. It is inapposite.

which further appellate consideration would not require disturbing the petitioner’s victory below. *Deposit Guar.*, 445 U.S. at 334 (allowing the apparent victors in a consumer-lending suit to challenge the denial of class certification). For example, in *Electrical Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241, 241–42 (1939), the district court entered judgment for defendants in a patent-infringement suit after making two determinations: first, that the plaintiffs’ patent was valid, and second, that the defendants had not infringed it. Although that judgment absolved the defendants of liability, this Court nevertheless permitted them to pursue appellate review of the patent-validity holding. *Id.* at 242. The defendants retained an Article III stake in that dispute because it adversely constrained their future conduct. And because its resolution posed no risk of impugning their victory in the litigation at hand, it qualified as collateral to the judgment in their favor.

More recently, in *Camreta*, the petitioners defeated a Section 1983 suit on qualified-immunity grounds, but the court of appeals additionally held that their conduct had been substantively unconstitutional. *Camreta*, 563 U.S. at 697–98. Because of their qualified-immunity victory, this Court explained that the petitioners were “without doubt, prevailing parties.” *Id.* at 700. Nevertheless, it permitted them to petition for certiorari on the bare constitutional question—a question that was analytically distinct from

and did not necessarily require unsettling the lower court’s judgment absolving them of liability.⁴

Here, by contrast, Petitioners’ demand for review of the merits is not collateral to their ripeness victory below. Quite the opposite: Because Louisiana won on threshold jurisdictional grounds, reaching the core constitutional issues it presses would first require wiping away the lower court judgment for Petitioners, which hinged on the Fifth Circuit’s determination that the case’s pre-enforcement posture precludes applying this Court’s “context-sensitive standard” to “facts not yet developed.” Pet. App. 9a. In effect, Louisiana is risking its victory below just so it can defend H.B. 71 on the merits here. This Court should not countenance that kind of gamesmanship, particularly

⁴ After *Camreta*, this Court also granted a prevailing-party petition in *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026), alongside a more traditional petition addressing the same federal tariff policy. But nothing from the opinion in that case—which was ultimately dismissed for lack of subject-matter jurisdiction while its companion proceeded to the merits—purports to displace *Deposit Guaranty*’s typical collateral-to-the-judgment consideration. Moreover, the petitioners in *Learning Resources* sought certiorari before judgment, a posture that is arguably different for purposes of prevailing-party review. In that context, the petitioners effectively asked this Court to stand in for the court of appeals on inevitable appellate review of their district court victory because the stakes of the case were distinctly suited to resolution by this Court. Here, however, as-of-right appellate review has already occurred—and Petitioners won.

when no such obstacles to merits review exist in the *Nathan* petition.

III. AT MOST, THE COURT SHOULD HOLD THE CONDITIONAL PETITION AND OTHERS RAISING SIMILAR ISSUES PENDING *NATHAN*.

The most straightforward disposition would simply be to deny this unusual prevailing-party petition. However, if the Court does not deny it outright, at most, it should hold the Conditional Petition pending the disposition of the *Nathan* petition and any merits ruling there. That course preserves Louisiana’s stated interest while keeping merits review focused on judgments that actually decided the merits.

The same is true of another pending petition concerning Louisiana’s H.B. 71, *Dier v. Landry*, No. 26-256, which suffers from the same vehicle defects as this petition and more. Like *Roake*, *Dier* does not present a merits decision for this Court to review. The district court dismissed *Dier*’s claims on ripeness alone, invoking the Fifth Circuit’s en banc decision in *Roake*. *Dier v. Landry*, No. 2:24-CV-2306, 2026 WL 1090768, at *8 (E.D. La. Apr. 22, 2026). The Fifth Circuit also did not reach the merits. *Dier v. Landry*, No. 26-30243, 2026 WL 2545871, at *1 (5th Cir. July 10, 2026) (summarily affirming district court). Instead, it granted *Dier*’s motion for summary affirmance, predicated on his assessment that *Roake*’s ripeness determination “bound every panel of the court of appeals.”

Pet. for Writ of Cert., *Dier v. Landry*, No. 26-256, at 3 (U.S. filed Aug. 25, 2026).

More substantively, *Dier* is a poor vehicle because it presents legal issues that have not been considered by the court of appeals—or any lower court, for that matter. The plaintiff-petitioner is a teacher, while *Roake*, like *Nathan* (and *Cribbs Ringer*), was brought by schoolchildren and their parents and thus fits squarely within this Court’s long line of public-school and anti-coercion jurisprudence under the Religion Clauses of the First Amendment. *Dier*’s petition does not even cite *Stone*, the precedent most directly applicable to any challenge to H.B. 71 (or the Texas law at issue in *Nathan*, for that matter). Given that distinction, *Dier* is even less appropriate than *Roake* as a vehicle for considering the rights of public-school families vis-à-vis religious displays.

* * *

Neither this petition nor *Dier* provides a proper vehicle for this Court to decide whether Louisiana’s H.B. 71 is constitutional, a question the Fifth Circuit has not reached. Louisiana also does not argue that the court of appeals’ ripeness ruling merits certiorari or explain why this Court should depart from its standard presumption against prevailing-party petitions.

CONCLUSION

The Conditional Petition for a writ of certiorari should be denied.

Respectfully submitted,

Daniel Mach
Heather L. Weaver
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
915 15th Street, NW,
Suite 600
Washington, D.C. 20005

Cecillia D. Wang
Evelyn R. Danforth-Scott
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
425 California Street,
Suite 700
San Francisco, CA 94104

Louise Melling
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 Broad Street,
18th Floor
New York, NY 10004

Nora Ahmed
Charles Andrew Perry

Jonathan K. Youngwood
Counsel of Record
Janet A. Gochman
Griselda Cabrera
Noah M. Huffman
SIMPSON THACHER &
BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
jyoungwood@stblaw.com

V. Noah Gimbel
Jordan T. Krieger
SIMPSON THACHER &
BARTLETT LLP
900 G Street, NW
Washington, D.C. 20001

Patrick C. Elliott
Samuel T. Grover
Nancy A. Noet
FREEDOM FROM
RELIGION FOUNDATION
P.O. Box 750
Madison, WI 53701

Rebecca S. Markert

AMERICAN CIVIL
LIBERTIES UNION
OF LOUISIANA
P.O. Box 56157
New Orleans, LA 70156

Alex J. Luchenitser
Amy Tai
Samantha Nagler
AMERICANS UNITED
FOR SEPARATION OF
CHURCH & STATE
1310 L Street, NW,
Suite 200
Washington, D.C. 20005

Counsel for Respondents

DATED: October 19, 2026