No. 25-1360

In the Supreme Court of the United States

CADE BRUMLEY, ET AL.,
Petitioners,

v.

DARCY ROAKE, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY IN SUPPORT OF CONDITIONAL PETITION FOR WRIT OF CERTIORARI

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November 4, 2026

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REPLY

The machinations across the brief in opposition in this case and the petition for writ of certiorari in *Nathan v. Alamo Heights Independent School District*, No. 26-257 (U.S. filed Aug. 17, 2026)—authored by the same counsel raising the same arguments on behalf of different parties—are precisely why Louisiana filed the conditional petition for writ of certiorari in this case and why, if the Court were inclined to grant review in *Nathan*, it should grant review in this case, too.

Opposing counsel lost *Nathan* on the merits for reasons that equally require the dismissal of this challenge to Louisiana's Ten Commandments law—a result Louisiana sought below but did not receive. And opposing counsel have offered a two-page footnote (BIO.11–12 n.2) arguing that the Fifth Circuit majority below violated this Court's precedents in declining to decide this case on the merits.

Why, then, are counsel seeking to thwart the Court's review of this case, including by abandoning the dissenting judges below and declining to file a petition for writ of certiorari? *See* Pet.2 (predicting that counsel might "seek review in only one case, giving the Court a blinkered view of the consolidated proceedings below"). The only apparent explanation is that they believe Louisiana's law stands on arguably better constitutional footing than Texas's does. So, they have picked what they view as the weakest opponent (the Texas law). And if they prevail, they will then try to extend the resulting decision against Louisiana in subsequent proceedings. The Court should not tolerate that gamesmanship. If the Court were inclined to

take up this issue, it should definitively resolve the issue by considering the constitutionality of Texas's and Louisiana's laws together, just as the Fifth Circuit did below at oral argument.

To be clear, Louisiana's principal position remains that this Court should decline review in *Nathan* and this case. That position is confirmed by an underwhelming petition in *Nathan*—which leads with odd requests for summary reversal or a GVR—and the fact that dozens of plaintiffs-side *amici* below have declined to support certiorari in *Nathan*. That position is further confirmed by intervening developments on the ground in Texas: The Attorney General-elect of Texas has pledged not to defend the law at issue in *Nathan*, further complicating this Court's consideration, potentially defeating adversity, and undermining that case's suitability as a vehicle.[1]

But, as Louisiana has made clear, if the Court were inclined to grant review in *Nathan*, it should grant review in this case as well because both cases "concern[] the same issues" (App.432a n.52) and Louisiana would fully defend the *Nathan* ruling, which, for all practical purposes, is a ruling for Louisiana as well. The Court should consider Louisiana's conditional petition alongside *Nathan* (to be distributed for either the December 11 or January 8 conferences) and deny both, or (if it were to grant *Nathan*) grant both together.

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[1] *See* Jack Fink, *Democratic candidates for Texas AG call state's school choice program, Ten Commandments law unconstitutional*, CBS News (Apr. 20, 2026), perma.cc/LZ3U-RNZP ("I will not defend the legislature's passage of a requirement that schools place the Ten Commandments in classrooms ....").

I. IF THE COURT WERE INCLINED TO REVIEW *NATHAN*, IT SHOULD REVIEW THIS CASE, TOO.

While Louisiana vehemently opposes certiorari in both this case and *Nathan*, it must account for opposing counsel's concerted efforts to decouple the two cases, which "concern[] the same issues." App.432a n.52. Those efforts to prevent the Court's consideration of this case appear intended to prejudice Louisiana—hence Louisiana's protective posture here.

1. To appreciate Louisiana's predicament, recall the history of *Roake* and *Nathan*.

Respondents' counsel filed *Nathan* just days after the Fifth Circuit *Roake* panel in this case struck down Louisiana's Ten Commandments law. Counsel thus immediately sought to leverage Louisiana's loss against Texas, citing the *Roake* panel decision on virtually every page of their *Nathan* preliminary-injunction motion and reply. *See, e.g.*, Pls.' Mot. for Prelim. Inj. at 1, 6, 7, 9, 10, 12, 13, 14, 19, 20, *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 5:25-cv-756 (W.D. Tex. July 2, 2025), ECF 3; Pls.' Combined Mem. of Law in Opp'n to Defs.' Mot. to Dismiss and Reply in Support of Pls.' Mot. for Prelim. Inj. at 6, 8, 9, 10, 12, 20, 21, 22, 24, 31, 33, 34, 35, 38, *Nathan*, No. 5:25-cv-756 (W.D. Tex. Aug. 8, 2025), ECF 53. As part of that strategy, counsel told the *Nathan* district court that all of their arguments were the same "[a]s in *Roake*," *e.g.*, ECF 53 at 6, 9, 12, 20, 29 n.36, and that "the Fifth Circuit" *Roake* panel already rejected Louisiana's (and thus Texas's) arguments otherwise, *e.g.*, *id.* at 2, 8, 9, 22, 23, 34. Counsel also argued before the Fifth Circuit

that "the *Roake* panel correctly [found the controversies in these cases ripe] in light of the extensive minimum requirements for all displays, as set forth in each statute." Resp. to Defs.' Pet. for Initial Hearing En Banc at 12 n.5, *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 25-50695 (5th Cir. Sept. 12, 2025), ECF 42.

Small wonder, then, that the Fifth Circuit consolidated this case and *Nathan* for en banc oral argument. App.387a; *see* App.432a (*Nathan* majority stating that *Roake* "was argued with this case and concerns the same issues"). Small wonder also that Texas's "first remarks during oral argument ... stated: 'Like Louisiana's statute, Texas's S.B.10 violates neither the Establishment Clause nor the Free Exercise Clause.'" App.54a–55a (Ramirez, J., dissenting). And small wonder that 8 of 17 Fifth Circuit judges would have disposed of this case on the merits, just as the en banc Fifth Circuit did in *Nathan*. *See* App.12a (Ho, J., concurring in the judgment); App.22a–23a (Dennis, J., dissenting); App.29a (Haynes, J., dissenting); App.30a (Higginson, J., dissenting); App.38a (Ramirez, J., dissenting). Instead, a Fifth Circuit en banc majority vacated the district court's preliminary injunction solely on ripeness grounds, declining to dismiss the suit entirely as Louisiana requested. *See* Pet.35.

So long as *Nathan* remains on the books, Louisiana will win this suit on the merits (by simply citing *Nathan*) notwithstanding that further litigation is required in the district court. But Louisiana's predicament arises from respondents' counsel's attempt to unsettle *Nathan*. That is a collateral attack on Louisiana's law itself. For, if (as respondents' counsel hope) this Court were to reverse *Nathan*, counsel would then

seek to leverage that decision against Louisiana in this very suit—precisely as counsel originally leveraged Louisiana's *Roake* panel loss against Texas.

2. All this begs the question why counsel are seeking to bar the Court's review of this case, abandoning the dissenting Fifth Circuit judges, declining to seek certiorari, and now opposing certiorari. The only apparent explanation is that they believe Louisiana's law stands on arguably better constitutional footing than Texas's does. So, they have picked what they view as the weakest opponent (the Texas law). And if they prevail, they will then try to extend the resulting decision against Louisiana in subsequent proceedings. The Court should not tolerate that gamesmanship for three reasons.

First, it is inconsistent with everything respondents' counsel told the lower courts. They represented that all the issues and arguments in *Nathan* were the same "as in" this case—and the dissenting judges below emphasized that the Louisiana and Texas laws are "no different" from each other. App.54a–55a (Ramirez, J., dissenting). Respondents thus cannot reverse course by trying to decouple the cases in this Court.

Second, respondents' counsel's apparent belief that their odds against the Texas law are better than their odds against the Louisiana law is a reason *to* consider both cases together, not deconsolidate them. It would make no sense to expend this Court's time and resources on a case that a petitioner believes is easy while ignoring a companion case "concern[ing] the same issues" (App.432a) that the petitioner believes is

hard. *Cf.* Tr. of Oral Arg. at 48–49, *Salazar v. Paramount Global*, No. 25-459 (U.S. Oct. 14, 2026) (Chief Justice Roberts: "I don't know why we should focus just on the easy hypotheticals.... I would think your job is to focus on the hard ones[.]"). If the Court were inclined to confront the First Amendment issues in these cases, it should consider both so that the Court may offer a complete pronouncement covering easy cases and hard cases alike.

That is especially so because, although Texas's law is just as lawful as Louisiana's is, Louisiana's law does have unique features that render it unquestionably constitutional. Unlike the Texas statute, Louisiana's requires a specific context statement. Pet.5. Unlike the Texas statute, Louisiana's permits school authorities to contextualize the Ten Commandments with other displays and images. *Id.* Unlike the Texas statute, Louisiana's does not require the Ten Commandments to be displayed in "a conspicuous place." App.384a (citation omitted). And unlike the Texas record, only the Louisiana record includes actual displays intended to contextualize the Ten Commandments (Pet.12–14)—and these contextualized displays, in fact, have been hanging in Louisiana public schools since August. *See, e.g.*, Patrick Wall et al., *Ten Commandments Now Up in Louisiana Classrooms As School Year Begins. Students, Educators React.*, NOLA.com (Aug. 16, 2026), perma.cc/7T64-N7VJ (including pictures); Haley Miller, *How Louisiana's Law Requiring Ten Commandments Displays Is Unfolding on College Campuses*, NOLA.com (Aug. 18, 2026), perma.cc/5XYN-WBHF (including pictures). Those displays and that real-world implementation starkly

illustrate that respondents have no viable facial challenges in these cases.

Third, respondents' counsel's attempt to thwart the Court's review of this case would serve no purpose other than to prejudice Louisiana. As discussed above, so long as *Nathan* remains on the books in the Fifth Circuit, Louisiana's Ten Commandments law is plainly constitutional—and Louisiana will eventually win this case on the merits by simply citing *Nathan*. That is why Louisiana's "demand for certiorari evidently evaporates if this Court denies the *Nathan* petition." BIO.10. But, if this Court were to grant *Nathan* and reverse, then respondents' counsel would restart district court litigation anew *in this case*, claiming that this Court's (hypothetical) *Nathan* decision compels a Louisiana loss, too. There is no good reason to force the lower courts and the parties through that waste of time and resources when the exact same issues and arguments are already presented before the Court today.

* * *

Louisiana reiterates its opposition to this Court's review in *Nathan* and this case. The Fifth Circuit's exhaustive decisions correctly reject respondents' effort to resurrect the *Lemon* test by other means; there is no split; and the issues are actively percolating, as further underscored by the recent Eighth Circuit oral argument in the challenge to Arkansas's Ten Commandments law. *Stinson v. Arkansas*, No. 26-1722 (8th Cir.) (argument held September 22, 2026); *see* Pet.20–33. Indeed, *Nathan*'s suitability (if any) as vehicle appears

to have collapsed entirely, given that the incoming Attorney General of Texas has pledged to abandon Texas's defense of the duly enacted and fully constitutional *Nathan* law. *Supra* n.1. If the Court were inclined to grant review, however, it should grant review in both cases.

II. THERE IS NO BAR TO MERITS REVIEW.

There is nothing to respondents' puzzling (and unsuccessful) attempts to find a procedural bar to the Court's merits review in this case.

First, respondents complain (BIO.15–17) that the Fifth Circuit did not decide the First Amendment merits issues in this case. In the same breath, however, they admit that the Fifth Circuit *did* address the merits in *Nathan*, *see id.*—and they do not dispute that the merits analysis in *Nathan* (which substantially tracked Louisiana's own briefing, while expressly negating Louisiana's own loss before the *Roake* panel) equally controls the outcome of this case.

Second, respondents suggest (BIO.21) that Louisiana's "ripeness victory" in the Fifth Circuit could thwart this Court's merits review. Setting aside respondents' and seven dissenting judges' view that the Fifth Circuit's ripeness determination was wrong, BIO.11–12 n.2; *supra* p.4, this Court may answer a merits question over a jurisdictional question in an appeal arising from a preliminary injunction. *See Munaf v. Geren*, 553 U.S. 674, 691 (2008); *accord Mullin v. Doe*, 609 U.S. 324, 345–46 (2026) (majority reaching constitutional merits question, with plurality explaining that "courts need not always start with the jurisdictional ground if the claim for interim relief would

also fail on the merits"). Indeed, that is the route for which Judge Ho advocated below: "[I]n this appeal of a preliminary injunction, there is no order of operations—we may vacate on the merits, without ruling on jurisdiction at all." App.12a (Ho, J., concurring in the judgment). And this would—as Louisiana has requested—"'terminate the litigation' entirely." App.13a (Ho, J., concurring in the judgment).[2]

Finally, respondents attempt to characterize Louisiana's conditional petition as a "prevailing party" petition that is appropriate "only in rare circumstances." BIO.14. But respondents admit (BIO.18) that this is inaccurate because the Fifth Circuit's judgment did not deliver Louisiana complete relief. As just explained, Judge Ho made this point expressly in arguing that, as in *Nathan*, the Fifth Circuit should have "terminat[ed] the litigation entirely" on the merits. App.13a (quotation marks omitted); *accord* App.20a (Ho, J.) ("[W]e can 'terminate the litigation now.' No further facts are needed to uphold the Louisiana Ten Commandments law against Plaintiffs' constitutional attacks." (citation omitted)).

That the Fifth Circuit did not grant Louisiana complete relief matters for two reasons. One, it illustrates that this is not a "prevailing party" case like *Camreta*

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[2] This answers respondents' incoherent argument that the Fifth Circuit's ripeness determination both (a) does not "warrant[] this Court's review," BIO.11, and (b) is "erroneous" because it squarely violates this Court's precedents, *id.* n.2. Whether that issue warrants the Court's review or not, the Court independently may assess the merits, especially because it is possible to construe the identified ripeness issues as "go[ing] to the merits of Plaintiffs' claims." App.56a (Ramirez, J., dissenting).

v. Greene, 563 U.S. 692 (2011), because Louisiana has not "won final judgment." *Id.* at 700. It *asked* for that but did not receive it—indeed, that is Louisiana's point. Pet.1, 17, 35. Two, it illustrates that Louisiana has the requisite "personal stake" to appeal, *Camreta*, 563 U.S. at 702—namely, the State's request for the outright dismissal of this suit on the merits—even if the State could be considered a "prevailing party."

Respondents question (BIO.18) "why *this Court*" should remedy Louisiana's injury; Louisiana just explained why, *see supra* Section I. Respondents also relegate this Court's decision in *Forney v. Apfel*, 524 U.S. 266 (1998), to a footnote (BIO.18–19 n.3) because it concerned appeals as of right, not discretionary appeals. But Louisiana's point is not that the Court *must* grant review; it is that the Court *may* grant review because, as in cases like *Forney* (and even *Camreta*), this Court can award Louisiana meaningful relief.

The extraordinary lengths to which respondents' counsel have gone to cover the Court's eyes to this case should tell the Court all it needs to know about this case and *Nathan*. That maneuvering alone warrants a certiorari denial across the board. But, if not, the Court at least should ensure that it has the full range of available issues and arguments before it by granting review in both cases.

CONCLUSION

The Court should grant Louisiana's petition only if it is inclined to grant review in *Nathan*.

Respectfully submitted,

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