No. 26-256

In the Supreme Court of the United States

CHRISTOPHER DIER,
Petitioner,

v.

JEFF LANDRY, GOVERNOR OF LOUISIANA, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

ERIC C. RASSBACH
JOSEPH C. DAVIS
AMANDA L. SALZ
BENJAMIN A. FLESHMAN
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 PENNSYLVANIA AVE. NW, SUITE 400
WASHINGTON, D.C. 20006

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
ZACHARY FAIRCLOTH
Principal Deputy Solicitor General
CAITLIN A. HUETTEMANN
Assistant Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

November 10, 2026

QUESTIONS PRESENTED

1. Whether petitioner's challenge to H.B. 71 is non-justiciable.

2. Whether H.B. 71 is facially unconstitutional under the Establishment Clause.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

BRIEF IN OPPOSITION 1

STATEMENT 1

ARGUMENT 4

I. THIS COURT'S REVIEW IS UNWARRANTED 4

II. LOUISIANA CONDITIONALLY ACQUIESCES SHOULD THIS COURT GRANT IN *NATHAN* 7

CONCLUSION 7

TABLE OF AUTHORITIES

Cases **Page(s)**

Am. Legion v. Am. Humanist Ass'n,
588 U.S. 29 (2019) 5

Brumley v. Roake,
No. 25-1360..... 1, 2, 3, 4, 5, 6, 7

Kennedy v. Bremerton School District,
597 U.S. 507 (2022) 5

Nathan v. Alamo Heights Indep. Sch. Dist.,
No. 26-257..... 1, 2, 3, 4, 5, 6, 7

Roake v. Brumley,
170 F.4th 292 (5th Cir. 2026) (en banc)..... 1, 2

Van Orden v. Perry,
545 U.S. 677 (2005) 5

Statutes

La. R.S. § 17:2124 (2024)..... 2

Other Authorities

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 4

BRIEF IN OPPOSITION

The petition is one of three relating to the Fifth Circuit's consolidated en banc proceedings rejecting facial challenges to Louisiana's and Texas's laws providing for the display of the Ten Commandments in public school classrooms. *See Brumley v. Roake*, No. 25-1360; *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 26-257. For the reasons Louisiana already gave in *Roake*, this Court should deny review in each case.

Louisiana's conditional petition in *Roake* seeks certiorari only in the event the Court grants certiorari in *Nathan*. But the Court should not grant certiorari in *Nathan*, because the Fifth Circuit's decision was correct; there is no split; the issues involved are actively percolating in the circuits; and Texas's incoming Attorney General appears poised to abandon Texas's defense of its fully constitutional law, presenting intractable vehicle problems. Conditional Pet. for Writ of Certiorari 20–33, *Roake* (May 21, 2026) ("*Roake* Pet."); Reply in Supp. of Conditional Pet. 2 & n.1, *Roake* (Nov. 4, 2026) ("*Roake* Reply"). The decision below here is a summary affirmance turning entirely on *Roake*, so Louisiana's position is the same here as there: The Court should deny certiorari, unless it were to grant *Nathan*, in which case Louisiana would acquiesce in certiorari so that its law can be considered alongside Texas's.

STATEMENT

1. In 2024, Louisiana enacted H.B. 71, which requires public schools (including public colleges and universities) to display the Ten Commandments in

each classroom. La. R.S. § 17:2124 (2024). The *Roake* petition and reply describe H.B. 71 in detail, including the discretion it delegates to school governing authorities to determine the nature and context of the displays and examples of displays school authorities have in fact considered and posted. *Roake* Pet. 4–6, 8–14; *Roake* Reply 6.

2. Dier is a public school teacher. Three months after the *Roake* plaintiffs sued, Dier filed this case in the Eastern District of Louisiana, claiming that H.B. 71 was facially unconstitutional under the First Amendment's Establishment, Free Speech, and Free Exercise Clauses. Pet. App. 30a. Louisiana moved to dismiss, explaining, among other things, that the case was unripe because no H.B. 71 display had been posted in his classroom and neither he nor anyone else knew the nature and context of the displays the relevant school authority would choose. Dist. Ct. ECF No. 41-1.

While the motion to dismiss was pending, *Roake* went before the en banc Fifth Circuit, where it was consolidated for argument with *Nathan*. In February 2026, the en banc Fifth Circuit vacated the preliminary injunction in *Roake* on ripeness grounds. *Roake v. Brumley*, 170 F.4th 292 (5th Cir. 2026) (en banc).

Following the en banc *Roake* decision, the district court in *Dier* ordered supplemental briefing. Dist. Ct. ECF No. 83. Louisiana explained that *Roake* by its terms compelled dismissal of this case. Dist. Ct. ECF No. 84. Dier, by contrast, insisted that his claims were "materially different" and "arise in a distinct posture," so "*Roake* does not control" and "all of Mr. Dier's

claims are ripe." Dist. Ct. ECF No. 85 at 1–3. The district court sided with Louisiana and dismissed the case. Pet. App. 3a.

Anxious to catch up with *Roake* and *Nathan* at this Court, Dier appealed and switched positions. Dier filed an expedited motion for summary affirmance, now telling the Fifth Circuit that *Roake was* "controlling" and that indeed that there was "'no substantial question'" that *Roake* and *Nathan* "foreclose[d] his claims." C.A. Dkt. No. 36 at 1–2. Louisiana did not oppose affirmance but planned to file a response pointing out Dier's irreconcilable representations before his two different judicial audiences. *See id.* at 7 (Louisiana "intends to file a response"). Before it could do so, the Fifth Circuit granted the unopposed motion. Pet. App. 2a.

3. H.B. 71 displays have now been up in many Louisiana classrooms for months. Here is one example of how a school governing authority has appropriately exercised its discretion to display the Ten Commandments in compliance with H.B. 71—a modestly-sized, context-filled poster, surrounded by other posters and displays, in a corner of the classroom:



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; *see also id.* ("After attracting national media coverage and stoking a debate over religious liberty and church-state separation, the posters went up in most Louisiana classrooms without incident, according to school district officials and teachers.").

ARGUMENT

I. THIS COURT'S REVIEW IS UNWARRANTED.

1. The Court should deny the petitions—in *Nathan*, in *Roake*, and here—for the reasons Louisiana already explained in *Roake*. *Roake* Pet. 20–33; *Roake* Reply 1–2 & n.1, 7–8.

2. Dier's eleven-page petition has little to add to the discussion. He claims (Pet. 9) that the "Fifth Circuit's ripeness and merits rulings are wrong" but fails to cite a single case from this Court or any other cutting against them. (Indeed, the only cases he cites *at all* are

Roake and *Nathan* themselves, as well as this Court's decisions in *Van Orden v. Perry*, 545 U.S. 677 (2005), upholding a Ten Commandments display on a state capitol lawn, and *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), upholding prayer by a coach on public school premises.) Nor does he even attempt to identify a split in need of this Court's resolution, or to explain why this Court should not wait to see if one develops in the various other cases now percolating in the lower courts.

Instead, he relies on overheated rhetoric, claiming that "the instructional environment of an entire State" is being "defined by" H.B. 71, Pet. 7, and adverting to a (deplorable) 19th-century story of a schoolchild being "beaten" in Massachusetts for refusing to read the Ten Commandments, Pet. 10. But none of this has anything to do with a case about passive displays that students and teachers are free to "ignore" as they wish. *Nathan*, 173 F.4th at 601. And the notion that the Ten Commandments are merely an "official religious text" (Pet. 10) flies in the face both of this Court's precedent and of the actual displays contemplated by H.B. 71, which recognize the Ten Commandments' "undeniable historical meaning" and "the role the Decalogue plays in America's heritage." *Van Orden*, 545 U.S. at 689–90 (plurality); *see also id.* at 690 ("Moses was a lawgiver as well as a religious leader."); *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 53 (2019) (observing that the Commandments have "historical significance as one of the foundations of our legal system").

3. Dier's excuse for filing such a scanty petition appears to be his claim that "Louisiana has already asked this Court to take up these mandates" in *Roake*.

Pet. 8. That is incorrect. Louisiana's position in *Roake* is that this Court should grant certiorari *if and only if* it decides to grant in *Nathan*—which Louisiana spends many pages explaining why the Court need not and should not do. Louisiana's *Roake* papers reiterate the point again and again: "There is no need for this Court's intervention" (*Roake* Pet. 1); "This Court should deny any petition to review the Fifth Circuit's decisions in *Roake* and *Nathan*" (*Roake* Pet. 3); "All that goes to show why there is no need for this Court's intervention—and, if the various plaintiffs elect to file cert petitions, the Court should deny them" (*Roake* Pet. 33); "Louisiana cannot overstate its opposition to any request for this Court's review" (*Roake* Pet. 36); "Louisiana vehemently opposes certiorari in both this case and *Nathan*" (*Roake* Reply 3); "Louisiana reiterates its opposition to this Court's review in *Nathan* and this case" (*Roake* Reply 7).

Compare all this to Dier's misleading claims here—that Louisiana "come[s] to this Court seeking ... a definitive answer" and has "done everything within [its] power to speed the question to this Court." Pet. 8, 10–11. Dier's petition thus only strengthens the basis for denying review in these cases. Gamesmanship like Dier's—both in his mischaracterization of Louisiana's position and in his contradictory positions below, *supra* pp.2–3—should not be tolerated. As Louisiana has explained, similar gamesmanship by the *Roake* and *Nathan* plaintiffs is likewise on display given their effort to hide what they perceive to be the harder case (the Louisiana *Roake* case) from this Court's view, while fronting what they perceive to be the easier one

(the Texas *Nathan* case). *Roake* Reply 3–7. The Court could deny these petitions for that reason alone.

II. LOUISIANA CONDITIONALLY ACQUIESCES SHOULD THIS COURT GRANT IN *NATHAN*.

Louisiana reiterates its opposition to certiorari—here, in *Roake*, and in *Nathan*. Should this Court nonetheless decide to grant certiorari in *Nathan*, however, Louisiana takes the same position here that it has taken in *Roake*—the Court should also grant certiorari in a Louisiana case, so that the Court "has the full range of available issues and arguments before it" (*Roake* Reply 3–7, 10) and Louisiana can vindicate its "significant interest in defending its own law ... on its own terms" (*Roake* Pet. 33–36). Louisiana would thus acquiesce to certiorari here only if this Court grants certiorari in *Nathan*.

CONCLUSION

The Court should deny certiorari. Should the Court decide to grant certiorari in *Nathan*, Louisiana conditionally acquiesces.

Respectfully submitted,

ERIC C. RASSBACH
JOSEPH C. DAVIS
AMANDA L. SALZ
BENJAMIN A. FLESHMAN
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 PENNSYLVANIA AVE NW, SUITE 400
WASHINGTON, D.C. 20006

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
ZACHARY FAIRCLOTH
Principal Deputy Solicitor General
CAITLIN A. HUETTEMANN
Assistant Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov