

In the Supreme Court of the United States

Mara Nathan, Individually and on Behalf of Her Minor
Child, M. N., et al.,

Petitioners,

v.

Alamo Heights Independent School District, et al.,

Respondents.

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

**BRIEF OF PROFESSORS MARK STORSLEE, JOHN
MEISER, DOUGLAS LAYCOCK, NATHAN CHAPMAN,
THOMAS BERG, CHRISTOPHER LUND, MICHAEL
HELFAND, STEVEN COLLIS, MEREDITH KESSLER,
CARL ESBECK, JOHN INAZU, ASMA UDDIN,
CHRISTOPHER HAMPSON, AND KATHLEEN BRADY
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

Mark Storslee
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-5106
storslee@unc.edu

John A. Meiser
Counsel of Record
Meredith H. Kessler
LINDSAY & MATT MOROUN
RELIGIOUS LIBERTY CLINIC
Notre Dame Law School
1338 Biolchini Hall of Law
Notre Dame, IN 46556
(574) 631-3880
jmeiser@nd.edu

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Amici are legal scholars who have published extensively on religious liberty. *Amici* write to illuminate the important constitutional issues in this case and urge this Court to vindicate religious freedom for all people. *Amici*'s titles and affiliations (listed for identification purposes only) appear in Appendix A.

¹ No person other than *amici* or their counsel authored any part of this brief or contributed money for its preparation or submission. Counsel for all parties received notice of *amici*'s intention to file this brief at least ten days before the deadline.

SUMMARY OF ARGUMENT

For more than seventy years, this Court has made clear that a state “may not coerce anyone ... to take religious instruction” or use public schools to “force ... religion on any person.” *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). For good reason. Doing so advances one of the “true evil[s] of religious establishment” that Founding-era Americans rejected: “the use of government power” to foster “uniformity of religious thought.” Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 10 (2023). And in rejecting that goal, Founding-era Americans rejected the idea that government possesses the power to engage in compulsory religious instruction.

Texas’s S.B. 10 furthers those evils. Unabashedly, the law forces state-sponsored religious instruction on children assembled through coercion, requiring displays of the Ten Commandments in every public-school classroom to teach religious truth. That effort to control religious opinion through state-mandated religious teaching strikes at the heart of the Constitution’s protections and defies this Court’s precedents.

The decision below demands review. The Fifth Circuit did not deny that Texas coercively assembles and controls schoolchildren. Nor did it deny that the function of S.B. 10’s displays is to present the Commandments as religious truth, not to teach *about* religion in some other way. Yet after a lengthy but superficial historical analysis, the court upheld S.B. 10 because it does not exactly duplicate laws from Founding-era establishments. Worse still, it read the

Establishment Clause to offer *no* constraints on state-imposed religious instruction, so long as the government avoids requiring a “formal religious exercise.” Pet.App.69a.

That arresting judgment misstates the history underpinning the First Amendment, defies this Court’s cases, and imperils religious freedom. This Court should intervene to restore the Constitution’s most basic protections.

I. The lower court misapplied its charge to interpret the Establishment Clause in light of history, offering a dangerous template for others. The days of *Lemon v. Kurtzman* are gone, and “the Establishment Clause must be interpreted by reference to historical practices and understandings,” through an “analysis focused on original meaning.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (quotation omitted). But the lower court engaged that inquiry woodenly, insisting on a historical twin to S.B. 10—the same error this Court admonished the Fifth Circuit against in *United States v. Rahimi*, 602 U.S. 680, 692, 701 (2024).

The decision below overlooked bedrock convictions underlying the Constitution. On the best reading of the historical evidence, the Establishment Clause prohibits government from coercing attendance at religious instruction whether spoken or written, not just coercing prayer or ritual observances. Denying that principle has massive consequences. Under the Fifth Circuit’s logic, the Establishment Clause poses no barrier to posting the Thirty-Nine Articles in all classrooms, writing “Jesus is Lord” on every wall and locker, or even compelling adults to assemble and view the government’s preferred religious messages for

hours, so long as officials don't mandate "act[s] of worship." Pet.App.69a (quotation omitted). That conclusion was wrong and presents a shocking roadmap for undermining religious liberty. It demands correction.

II. The decision below also flouted this Court's precedents. The lower court openly defied *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam), ostensibly because *Stone* "depended entirely on *Lemon*." Pet.App.43a. But as this Court itself described, *Stone* depended on the basic insight that government cannot leverage the coercive power of public schools to "induce the schoolchildren to read, meditate upon, [and] perhaps to venerate and obey" the government's preferred religious teaching. *Stone*, 449 U.S. at 42; see *Van Orden v. Perry*, 545 U.S. 677, 691 (2005) (plurality op.); *id.* at 703 (Breyer, J., concurring in the judgment). That is a rule required by Founding-era understandings of religious establishments, not an aberrant offshoot of *Lemon*.

The decision below also trampled other precedents, further endangering religious liberty. It subverted this Court's longstanding rule against coerced religious instruction in *Zorach*, 343 U.S. at 314. It undermined this Court's rule against government proselytization, *Town of Greece v. Galloway*, 572 U.S. 565, 583 (2014), suggesting instead that the Establishment Clause places no limits on government-sponsored "religious language, imagery, or symbols." Pet.App.70a. And it even eviscerated *Mahmoud v. Taylor*, 606 U.S. 522 (2025), insisting the decision applies only to spoken "curriculum" that is "designed to" oppress. Pet.App.84a (quotation omitted). All of that was wrong, and all of it justifies review.

III. This case provides an ideal vehicle. Texas’s law is one in a series of similar Ten Commandments laws cropping up across the country. This case presents the core issue cleanly and in its simplest form. Unlike some other laws, S.B. 10 applies only to K-12 public schools and does not even purport to post the Commandments in service of any legitimate educational goal. This case offers an important opportunity to address the basic issue, leaving questions about college students or displays with alleged curricular functions to one side. By contrast, denying certiorari would greenlight the Fifth Circuit’s stunning ruling, validating its attack on this Court’s precedents and inviting others to follow suit.

* * *

The signatories of this brief disagree about many First Amendment questions. But we agree as to Texas’s law and what it portends. The Court’s renewed focus on history requires a different approach than many courts took in the past. But it does not justify defying this Court’s precedents or engaging in shallow historical analysis. And it certainly does not countenance eliminating the Constitution’s longstanding safeguards against government-mandated religious instruction.

This Court must intervene to confirm the First Amendment’s enduring promise of religious freedom for all.

ARGUMENT

I. The Decision Below Contradicts Deeply Rooted Principles of the Establishment Clause.

The decision below misinterpreted the Establishment Clause, allowing state-coerced religious instruction so long as government does not compel “formal religious exercise.” Pet.App.69a. That conclusion defies the First Amendment, misunderstands the task of interpreting the Constitution consistent with historical understanding, and offers a destructive model to other courts. It requires correction.

A. The Establishment Clause Rejected Efforts to Foster Religious Uniformity Through Forced Religious Instruction.

1. At the Founding, a core feature of religious establishment involved “the promotion and inculcation of a common set of beliefs through governmental authority.” Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2131 (2003). Founding-era sources “frequently recognized the connection between religious establishment and efforts to foster religious conformity” and “unify religious opinion.” Mark Storslee & Michael Helfand, *Government Religious Speech and the Establishment Clause*, 79 Vand. L. Rev. 417, 435 (2026).

For instance, Baptist leader John Leland described establishments as efforts to “produce uniformity in religion” by having people “stretch their consciences to believe” the “established creed.” John Leland, *The*

Rights of Conscience Inalienable, and Therefore, Religious Opinions Not Cognizable by Law, in *The Writings of the Late Elder John Leland* 179, 182-84 (L.F. Greene ed., 1845). Thomas Jefferson described establishments as reflecting “impious” efforts to “assume[] dominion over the faith of others.” Thomas Jefferson, *A Bill for Establishing Religious Freedom* (June 18, 1779).

Historic establishments employed various legal devices to foster that uniformity. The very titles of early English laws betray the goal—imposing “Uniformity Acts” or “An Acte Abolishing Diversity in Opynions.” First Act of Uniformity 1549, 2 & 3 Edw. 6 c. 1 (Eng.); Act of Uniformity 1662, 14 Car. 2 c. 4 (Eng.); An Acte Abolishing Diversity in Opynions 1539, 31 Hen. 8 c. 14 (Eng.). By the American Founding, quintessential “hallmarks” of religious establishments included a variety of laws oriented to similar ends. *See Shurtleff v. City of Boston*, 596 U.S. 243, 286-87 (2022) (Gorsuch, J., concurring) (noting several categories of such laws). These laws “were ad hoc and unsystematic.” McConnell, *supra*, at 2131. They had multiple purposes. But they all worked to “bring about religious uniformity” in some way. Chapman & McConnell, *supra*, at 10.

2. Compelling attendance at religious instruction was one important way that historic establishments sought to control religious opinion.

Church-attendance laws were one of the tell-tale “legal devices” of establishments. Chapman & McConnell, *supra*, at 10, 145; Mark Storslee, *History and the School Prayer Cases*, 110 Va. L. Rev. 1619, 1641-50 (2024) (tracing these laws). These laws did more than compel acts of worship. They also coerced

attendance to impart religious teaching—sermons, preaching, or instruction approved by state officials. “[T]he focus was on inculcating the government’s preferred religious ideas, not only on formal participation in worship.” Storslee & Helfand, *supra*, at 444.

Examples saturate the historical record. England’s first church-attendance law expressed concern over the King’s subjects living “without knowledge or due fear of God.” Second Act of Uniformity of Edward VI 1552, 5 & 6 Edw. 6 c. 1, § 2. Accordingly, it required “every person” to “resort to their parish church or chapel” for “preaching” as well as “common prayer.” *Id.* Likewise, when Parliament increased penalties for noncompliance, it expressed “discomforte” among “Professoures of the Truth” over the populace’s errant beliefs. An Acte for the Uniformitie of Common Prayoure and Dyvyne Service in the Churche, and the Administration of the Sacramentes 1558-59, 1 Eliz. c. 2 (Eng.). Accordingly, the law required subjects to abide “orderlye and soberly” during not just prayer but also “[p]reachinges.” *Id.*

The pattern continued in colonial America. In Virginia, the General Assembly’s first church-attendance law required inhabitants to “frequente ... sermons” as well as “divine service” or suffer fines. 1 Journals of the House of Burgesses of Virginia, 1619-58/59, at 14 (Aug. 4, 1619) (H. R. McIlwaine ed., 1915). South Carolina likewise enforced the “duties of piety and true religion” by coercing attendance during both “prayer and preaching.” An Act for the Better Observation of the Lord’s Day, Commonly Called Sunday, § I (1712), *reprinted in* 2 The Statutes at Large of South Carolina 396, 396 (Thomas Cooper ed.,

1837). And the Massachusetts Constitution allowed government to “enjoin upon all the subjects an attendance upon the instruction of the public [Protestant] teachers [of religion].” Mass. Const. of 1780, art. III; see Storslee, *supra*, at 1642-43, 1657.

Nor was the project limited to spoken sermons. Religious establishments also “us[ed] church buildings themselves as tools of compulsory religious instruction” by displaying the Ten Commandments. Storslee & Helfand, *supra*, at 443. Elizabeth I directed that the Commandments be “hung up in the east end of the chauncell”—the focal point of every established church—for the people’s “edification.” Letter from Elizabeth I to Matthew Parker, Archbishop of Canterbury (Jan. 22, 1561). Likewise, the Canons of 1604 required that “the Ten Commandments be set up on the East end of every Church and Chapel, where the people may best see and read the same.” Canon 82, in *The English Church Canons of 1604*, at 79 (C.H. Davis ed., 1869). Established Anglican churches in the colonies followed suit. See Dell Upton, *Holy Things and Profane: Anglican Parish Churches in Colonial Virginia 120-21* (1997); Paul Porwoll, *Against All Odds: History of Saint Andrew’s Parish Church, Charleston, 1706–2013*, at 85 (2014) (“Tablets containing the [Commandments] ... served as a basic instructional tool.”); Samuel L. Bray, et al., *Prescribing Religion: The Ten Commandments on Classroom Walls*, 22-26 (rev. Aug. 27, 2026), <https://bit.ly/3T1S5Hf>.

Religious establishments also employed the Ten Commandments to instruct children. In 1559, the monarch directed that, having gathered “all the youth of the parish,” “[e]very parson, vicar, and curate”

should “instruct [them] ... in the Ten Commandments” and “Articles of Belief.” Royal Injunction of 1559 XLIV, *reprinted in* Documents Illustrative of English Church History 417, 434 (New York 1896); Christopher C. Lund, *Soft Establishment, Religious Education, and Stone v. Graham*, 64 J. Catholic Legal Studs. 51, 63 (2026). This wasn’t optional. By 1604, officials ordered “all fathers, mothers, masters, and mistresses” to “cause their children, servants, and apprentices which have not learned their Catechism, to come to the Church ... until they have learned the same” on pain of excommunication. Canon 59, Canons of 1604, *supra*, at 59.

3. Founding-era supporters of religious liberty condemned these efforts to compel religious instruction. They did not deny that religion was an important source of public virtue. But they maintained that the government could not foster such virtue by “compel[ling] the performance of religious duties,” Chapman & McConnell, *supra*, at 145, including the duty to “read” and “study” Scripture to discern what “God commands,” *The Whole Duty of Man* 32 (London, J. Beecroft 1774).

Arguments like these appear repeatedly in Founding-era materials. Opposing Massachusetts’s church-attendance law, for instance, a prominent writer known as Philanthropos observed that “attendance on the instructions of the teachers of religion ... is not a duty which the subject owes to the State; rather it is a duty which he owes to God and himself.” Philanthropos, Number IV, *Indep. Chron. & Universal Advertiser* (Bos.), Apr. 6, 1780. Consequently, “the civil magistrate can have no right to enjoin it.” *Id.* Well-known Baptist minister Isaac

Backus insisted that requiring attendance at prayer or religious instruction exceeded the government's authority—it “assumed a legislative and executive power, in soul affairs, which the bible never gave them, and their constituents never had to give.” Isaac Backus, *Bos. Gazette & Country J.*, Dec. 14, 1778.

The same logic prevailed in Virginia. Patrick Henry proposed his general assessment bill in part to “aid[] the churches in their task of religious training.” Carl H. Esbeck, *Protestant Dissent and the Virginia Disestablishment, 1776-1786*, 7 *Geo. J.L. & Pub. Pol’y* 51, 76 (2009); see Patrick Henry, *A Bill Establishing A Provision for Teachers of the Christian Religion* (Jan. 7, 1784). Madison opposed the bill, stressing freedom of religious *opinion*, not just freedom of (or from) ritual worship. According to Madison, because “the opinions of men ... cannot follow the dictates of other men,” each person possessed a right to discern “the duty which we owe to our Creator” free of government interference. James Madison, *A Memorial and Remonstrance Against Religious Assessments* (1785), reprinted in *Select Writings of James Madison* 21, 22 (Ralph Ketcham ed., 2006). John Leland likewise insisted that “the religious opinions of men [are] not ... the objects of civil government, nor in any way under its control.” Leland, *supra*, at 181. Proponents of religious liberty elsewhere agreed. See Storslee, *supra*, at 1653-73. And ultimately, every state abandoned church-attendance laws and the compulsory religious instruction accompanying them. *Id.*

In sum, coerced religious instruction functioned as a core feature of religious establishment. It was an element of establishment that the First Amendment forbade to the federal government, and that the

Fourteenth Amendment ultimately forbade to the states. Historically understood, the Constitution prohibits coercing people to receive religious teaching.

B. Texas’s Law Advances Evils Rejected at the Founding.

S.B. 10 transgresses the historic conviction that government may not foster religious uniformity through coerced religious instruction. But the Fifth Circuit ignored that truth, insisting that S.B. 10 does not implicate the Establishment Clause because it is not a carbon copy of Founding-era laws. *See* Pet.App.26a, 68a-69a. That conclusion defies this Court’s approach to historical interpretation and undermines the Constitution’s protections in ways that demand review.

1. Constitutional Interpretation Is Not a Rigid Search for Historical Duplicates.

The decision below employed a superficial approach to history that this Court has rejected. Texas’s law is not identical to Founding-era church-attendance laws. But on any sensible understanding, “it does not need to be.” *Rahimi*, 602 U.S. at 698.

As this Court has made clear in other contexts, interpreting the Constitution historically is not a search for a “historical twin” or “dead ringer.” *Id.* at 692 (quotation omitted). Instead, “the appropriate analysis involves considering whether [a] challenged regulation is consistent with the principles that underpin our regulatory tradition.” *United States v. Hemani*, 608 U.S. 772, 780 (2026) (quoting *Rahimi*, 602 U.S. at 692). Discerning those Founding-era convictions involves examining the “how” and “why” of past regulations, *id.*, and the “the laws, practices, and

understandings” of Founding-era Americans generally, *Rahimi*, 602 U.S. at 717 (Kavanaugh, J., concurring). Even when a law “does not precisely match its historical precursors,” it can still be “analogous enough” when judged against the principles enshrined in the Constitution’s text. *Id.* at 692 (maj. op.) (quotation omitted).

Across numerous areas, this Court applies historic principles without demanding modern duplicates. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 50-53 (2004) (analyzing the “principal evil at which the Confrontation Clause was [historically] directed”); *United States v. Jones*, 565 U.S. 400, 406 n.3 (2012) (“[O]ur task ... is to decide whether [new investigative methods] would have constituted a ‘search’ within the original meaning of the Fourth Amendment.”). In these instances and others, “[h]istorical regulations reveal a principle, not a mold.” *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring).

A similar approach applies here. Like other constitutional provisions, the Establishment Clause was “designed to prevent the recurrence of historic abuses.” Douglas Laycock, “Noncoercive” *Support for Religion: Another False Claim about the Establishment Clause*, 26 Val. U. L. Rev. 37, 48 (1991). But interpreting the Clause is not a search for historical doppelgängers. It is a “search for coherent principle[s]” that “center[] on the core problem[s] the text was intended to resolve.” *Id.* at 50. Identifying those principles involves examining concrete practices associated with historic establishments. *Shurtleff*, 596 U.S. at 286-87 (Gorsuch, J., concurring). It also involves considering the reasons Founding-era Americans articulated for rejecting those evils and

applying that historical understanding to modern problems and altered circumstances.

Under this Court's precedents, that was the proper analysis. And contrary to the decision below, conducting that analysis yields the conclusion that the Establishment Clause prohibits compulsory religious instruction, not just compulsory religious observances.

2. A Sensible Reading of History Forecloses Texas's Effort to Mandate Religious Instruction.

S.B. 10 defies the Founding-era conviction that government may not use its coercive powers to inculcate religious teaching. Although modern in form, S.B. 10 employs the same means (compulsory attendance) toward the same ends (devotional religious instruction) that the Founders rejected.

First, compulsory attendance. S.B. 10 focuses on schools, not church buildings. But as with church-attendance laws, it unquestionably involves an audience maintained through coercion. In Texas, children ages six and older must attend school, a requirement enforced through criminal penalties. Tex. Educ. Code §§ 25.085(b), 25.093; Pet.7. For many families, non-public schooling options are either unavailable, prohibitively expensive, or both. But government-provided education is free and easily accessible. That combination makes public-schooling an unavoidable coercive reality for many families. *Mahmoud*, 606 U.S. at 561-63.

The lower court tried to deny this, suggesting that even if students must attend public school, they can simply “ignore” these displays. Pet.App.68a. Texas's law itself refutes that logic. By requiring the

Commandments to be posted in every classroom, Texas guarantees that students must encounter the state's religious teaching everywhere they go—in classes on art, algebra, music, even woodshop. Students encounter these displays six hours a day, five days a week, nine months a year, for thirteen years. Tex. Educ. Code. § 25.085(b). And Texas requires the displays be “conspicuous” and “legible ... from anywhere in the classroom.” *Id.* § 1.0041(a), (b)(1). As the Fifth Circuit recognized elsewhere, the point is ensuring that the Commandments will “be easily read.” Pet.App.37a. This is not an instance where students can simply walk away. They are a “captive audience” in every relevant sense. *Cf. Kennedy*, 597 U.S. at 541-42; Pet.29.

Second, devotional religious instruction. S.B. 10 does not involve sermons at a church service. But there is no doubt that, having coercively assembled students, the function of Texas's displays is to teach government-approved religious truth, just as Ten Commandments displays in established churches did.

Transparently, Texas's displays do more than “expos[e] children to religious language.” Pet.App.27a. Posted with no defined curricular role in every classroom no matter the subject, their obvious function is to teach religion *as* religion—to present the Ten Commandments as divine injunctions and “induce the schoolchildren to read, meditate upon, perhaps to venerate and obey” their teaching. *Stone*, 449 U.S. at 42. The Commandments are an explicitly confessional—and explicitly *directive*—religious text. They present divine commands in starkly instructive terms: “I AM the LORD thy God. Thou shalt have no other gods before me.” Pet.App.252a. And S.B. 10

prohibits including additional content on the mandated displays. Tex. Educ. Code §§ 1.0041(b)(1), (d)(1)(B). By posting the Commandments without a defined curricular role and in a context reflecting that role, S.B. 10 presents their directives as straightforward messages of religious orthodoxy.

The specially instructive nature of public-school classrooms is crucial here. A classroom is not a generic public space. It is not City Hall, a public park, or another civic location where people come and go, and a court might conclude the Commandments serve merely as a “symbol for law.” *Green v. Haskell Cnty. Bd. of Comm’rs*, 574 F.3d 1235, 1249 (10th Cir. 2009) (Gorsuch, J., dissenting from denial of rehearing en banc). In a unique way, public-school classrooms exist to “inculcat[e]” certain “habits” and “values” by way of governmental authority. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 681 (1986). And besides, public schools possess unique “coercive power” because of “students’ emulation of teachers ... and the children’s susceptibility to peer pressure.” *Mahmoud*, 606 U.S. at 554-55 (cleaned up). Unlike displays in other settings, S.B. 10’s displays “confront[] elementary school students every day” in a highly coercive, uniquely instructional environment. *Van Orden*, 545 U.S. at 691 (plurality op.).

Nor does it matter that the religious instruction is written rather than said aloud. *Contra* Pet.App.26a, 84a. In public-school classrooms, state-mandated displays no less than spoken lessons frequently present instructional messages. *Cajune v. Indep. Sch. Dist. 194*, 105 F.4th 1070, 1079 (8th Cir. 2024) (schools “control[] and communicate[] messages on posters”). And here, the displays do the talking, commanding

students to “Remember the Sabbath” and not to “take the Name of the Lord thy God in vain.” Pet.App.252a. These are not exit signs or student artwork. As in established churches, their function is to shape the religious opinions of impressionable children by ensuring that they will “see and read” the Commandments and learn what God requires. Canon 82, *supra* at 79.

If anything, Texas’s failure to require teachers to say anything about the Commandments just highlights the problem. S.B. 10 does not require posting the Commandments in service of a curriculum covering “history, civilization, ethics, comparative religion, or the like.” *Stone*, 449 U.S. at 42. And with no wider educational context defined in advance, teachers can easily end up “catechiz[ing]” children when confronted with questions about “the LORD,” “the Sabbath,” and idolatry. Pet.App.166a (Higginson, J., dissenting).²

Added up, S.B. 10 transgresses “the principles that underpin” Founding-era objections to religious establishment. *Rahimi*, 602 U.S. at 692. On the best reading of Founding-era evidence, religious opinion must flow from private judgment, not government dictate. By employing the Ten Commandments as tools of compulsory religious instruction, S.B. 10 exerts government power over religious thought in a way the Constitution forbids.

² Nothing in the Establishment Clause holding below prohibits teachers from expounding on the Commandments’ devotional meaning. In fact, the decision *invites* that step, so long as officials don’t require “formal religious exercise[s].” Pet.App.69a. On the lower court’s logic, if any limit exists, it involves individual opt-outs only. *See* Pet.App.84a, 87a.

**C. The Constitution Embraces Religious
Freedom in Public Schools, Not State-
Imposed Religious Orthodoxy.**

S.B. 10 violates the simple rule that government may not engage in compulsory religious instruction, especially of children. That rule does not threaten the myriad ways that governments may recognize the “important role that religion plays in the lives of many Americans.” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 63 (2019).

1. Contrary to the Fifth Circuit’s suggestions (Pet.App.70a-71a), striking down S.B. 10 would not imperil religious city-names, flags, or monuments in other settings. Public displays like these don’t involve audiences assembled through coercion, much less captive audiences of children. And even if they did, the Court has found that these displays typically function to preserve “embedded features of a community’s landscape,” not to proselytize or indoctrinate. *Am. Legion*, 588 U.S. at 54-55. A similar logic applies to settings where the Commandments sit alongside other texts to symbolize their legal significance, like the frieze at this Court. It is indoctrination and coerced religious instruction that the Constitution prohibits, not the “mere presence of religious language.” Pet.App.85a.

The same is true in public schools. Schools may incorporate the Ten Commandments or other religious content into the classroom, provided they do so through set policies designed in good faith to teach *about* religion or other topics.

Permissible uses abound. Schools can use religious texts to teach comparative religion or world cultures.

Cf. Hilsenrath v. Sch. Dist. of Chathams, 136 F.4th 484, 492 (3d Cir. 2025) (Hardiman, J.) (upholding Five-Pillars-of-Islam display in world-religions class). They can display the Declaration of Independence to teach history or law, mentions of “Nature’s God” and all. *See* Pet.App.85a-86a. They can invite students to recite the Pledge of Allegiance, including the phrase “under God.” *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1037 (9th Cir. 2010) (Bea, J.); Thomas C. Berg, *The Pledge of Allegiance and the Limited State*, 8 Tex. Rev. L. & Pol. 41 (2003). And governments must allow students and teachers to bring their whole selves into public schools, including by exercising their religion in ways that do not coerce others. Steven T. Collis, *Public Employees as a Reflection of a Religiously Diverse Culture*, 99 Notre Dame L. Rev. Reflection 229 (2024).

This case is not about those commonplace features of public education or civic life. It is about the misuse of government power to impose religious instruction on millions of children, so long as no one forces them to ‘pray.’ Pet.38.

2. Nor is it any answer to claim that the Founders “presumed that there would be religion in education.” Pet.App.88a (Ho, J., concurring). At the Founding, there were no public schools or compulsory attendance laws. Education was an *ad hoc*, private, and voluntary affair organized by parents or churches. *See* Michael W. McConnell, *Scalia and the Secret History of School Choice*, in *Scalia’s Constitution* 72-73 (Peterson & McConnell eds., 2018). In that setting, incorporating religious formation into education stood *against* governmental efforts to instill religious uniformity.

The situation today is different. Modern public schools are sites of profound government power, with discipline administered by low-level officials, curriculum defined by government fiat, and attendance enforced through coercion and selective funding. Public schools give government forceful means to shape belief. Indeed, the birth of public schools gave rise to ugly efforts to wield this new power to suppress religious minorities. See Nicole Stelle Garnett & John A. Meiser, *Preserving the Exit Option: State Public Education Mandates and Parental Rights in Education*, 100 Notre Dame L. Rev. 1709, 1729 (2026) (discussing “severe animosity toward Catholic immigrants” in 19th-century public schools and use of Protestant practices to ensure “their children would be molded ... by the state, rather than their parents”). Those efforts reflected the same religious prejudices that fueled the long-discredited Blaine amendment movement, see *id.* at 1714-15, and thus “hardly evince a tradition that should inform our understanding of” the First Amendment. *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 482 (2020).

Respect for the Founders’ views counsels a different course. Rather than authorizing coerced religious instruction, a proper understanding “validates the right of *parents* to instruct children in religion as they see fit,” including through “private choice and equal funding.” Storslee & Helfand, *supra*, at 486-87 (citing *Mahmoud*, 606 U.S. at 530; *Carson v. Makin*, 596 U.S. 767, 785 (2022)). Using compulsory religious instruction to advance religious uniformity was a tell-tale feature of establishments at the Founding. This Court must confirm it still is today.

II. The Decision Below Defies This Court's Precedents.

The decision below also contradicts a host of this Court's cases. This Court should stem that attack on its precedents.

A. The Decision Wrongly Discarded *Stone v. Graham*.

The decision below cannot be reconciled with *Stone*. The Fifth Circuit did not deny that *Stone* directly applies. Yet it insisted that *Stone* is no longer “good law,” Pet.App.44a, because *Stone* “depended entirely on *Lemon*” and thus “is part of *Lemon*’s ‘progeny’” that this Court supposedly “abandoned” in *Kennedy*. Pet.App.43a, 45a (quotation omitted). That was mistaken twice over.

First, *Stone* did not ‘depend entirely’ on *Lemon*. *Stone* depended on the common-sense conclusion that government may not use its coercive power to “induce [public] schoolchildren to read, meditate upon, [and] perhaps to venerate and obey” the government’s preferred religious teaching. *Stone*, 449 U.S. at 42. As a plurality of this Court later described it in *Van Orden*, *Stone* relied “almost exclusive[ly]” on *Engel* and *Schempp*, which held—eight years before *Lemon*—that government-led prayer and devotional Bible reading in public schools violate the Establishment Clause. 545 U.S. at 690-91 (plurality op.). In the words of *Van Orden*, *Stone* thus rested on the fact that “the text confronted elementary school students every day” and “the particular concerns that arise” in the school context. *Id.* at 691; *see id.* at 703 (Breyer, J., concurring in the judgment) (similar).

Second, even apart from this Court’s observations in *Van Orden*, *Stone* is not some bygone relic of the *Lemon* era. As detailed above, the rule against government-mandated religious instruction flows from a proper reading of the Founding-era record. *Kennedy* declared an end to *Lemon*’s “abstract[] and ahistorical approach” in favor of one focused on “historical practices and understandings.” 597 U.S. at 534-35 (quotation omitted). Here, a correct application of that historical approach just confirms *Stone*’s continuing vitality.

B. The Decision Drew Arbitrary Lines That Contradict Other Establishment Clause Precedents.

Beyond *Stone*, the decision below offered an unduly narrow view of the Establishment Clause that defies other precedents.

1. This Court has long made clear that the Establishment Clause forbids government from “coerc[ing] anyone ... to take religious instruction” and from “us[ing] [its] institutions to force one or some religion on any person.” *Zorach*, 343 U.S. at 314. Yet the decision below ignored *Zorach* and—cherry-picking a passing line from *Kennedy*—held that S.B. 10 poses no problem because it does not involve “forcing people to ‘attend church’ or ‘engage in a formal religious exercise.’” Pet. App.69a (quoting *Kennedy*, 597 U.S. at 537). That assertion misunderstands Founding-era history, *supra* Part I, and is nowhere to be found in *Kennedy*.

Kennedy discussed compulsory “religious observance” to address the claim that students had been coerced to pray with their coach. 597 U.S. at 537 (quoting *Zorach*, 343 U.S. at 314). The Court’s

rejection of that claim was not tacit permission for governments to engage in *other* kinds of religious coercion instead.

The lower court's artificially narrow view of religious coercion undermines religious liberty. Under the lower court's logic, the government could post the Thirty-Nine Articles in every classroom, cover every wall with scriptural declarations that "Jesus Christ is Lord," Philippians 2:11, or even compel children to attend state-operated Sunday schools, so long as it avoids mandating "formal religious exercise." Pet.App.69a. Founding-era establishments did not do these things. But that does not give government license to do them now. The decision below flouted *Zorach's* rule against coerced religious instruction, stifling religious freedom.

2. The lower court's treatment of government religious messages reflects the same hostility to precedent. According to the decision below, "it would be a shock to discover" that the Establishment Clause is *ever* implicated by "the government's use of religious language, imagery, or symbols." Pet.App.70a. That conclusion runs roughshod over a host of cases.

As a plurality of this Court cautioned when upholding a Ten Commandments display at the Texas State Capitol, "[t]here are, of course, limits to the [government's] display of religious messages or symbols." *Van Orden*, 545 U.S. at 690 (plurality op.). Indeed, this Court has repeatedly emphasized that although religious monuments or messages are often acceptable, they cannot be "exploited to proselytize." *Town of Greece*, 572 U.S. at 583 (quoting *Marsh v. Chambers*, 463 U.S. 783, 794-95 (1983)); *see also Am. Legion*, 588 U.S. at 63 (monuments must represent an

“honest endeavor to achieve inclusivity and nondiscrimination”).

None of these precedents relied on *Lemon*. But the decision below brushed them aside, erasing this Court’s condemnation of proselytizing under the Establishment Clause. Pet.App.70a-71a; see Pet.App.84a, 87a (suggesting proselytization is forbidden only where it burdens free exercise, yielding an individual opt-out). Here too, disregard for this Court’s cases is plain.

C. The Decision Rendered *Mahmoud v. Taylor* a Nullity.

Perhaps worst of all, the decision below effectively nullified this Court’s precedents protecting parents’ right to control the religious upbringing of their children.

Mahmoud v. Taylor held that the Free Exercise Clause protects children in public schools and their parents from “educational requirement[s],” “instruction,” or “materials” that “pose[] ‘a very real threat of undermining’ the religious beliefs and practices that parents wish to instill.” 606 U.S. at 530, 550 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). The decision below gutted those protections. According to the lower court, *Mahmoud* protects only against acts specifically “designed to subvert” a child’s religious beliefs. Pet.App.27a, 84a. Even worse, the court suggested that *Mahmoud* covers only “curriculum” or “lesson plans,” not instruction delivered through messages on “a classroom wall.” Pet.App.84a.

Nothing in *Mahmoud* supports that stingy view of free exercise. Plainly, *Mahmoud*’s protection extends beyond overt religious targeting. This Court was

explicit on that point. *Mahmoud* focused on the believer, asking whether public-school practices “substantially interfere” with the child’s parent-directed religious development. 606 U.S. at 556 (cleaned up). When a law “imposes a burden of [that] character” the government must alleviate the burden or satisfy strict scrutiny “regardless of whether the law is neutral or generally applicable.” *Id.* at 565. The point was protecting children’s religious formation, not policing intentional persecution. The decision below demolished that protection.

The lower court’s suggestion that *Mahmoud* does not apply to displays on a classroom wall is even less defensible. Beyond doubt, displaying messages where students are forced to sit for hours can undermine their religious formation no less than forcing them to hear certain words. It blinks reality to suggest that *Mahmoud* authorized officials to burden religion provided they do so through written posters rather than spoken lessons. No wonder then that this Court has held that *Mahmoud*’s protections extend beyond “uniquely coercive curricular requirements.” *Mirabelli v. Bonta*, 607 U.S. 492, 495 (2026) (quotation omitted). The lower court’s disregard for precedent undermines religious liberty and demands review.

III. This Case Presents a Clean Vehicle to Address These Critical Issues.

S.B. 10 is one of many new Ten Commandments laws around the country. Pet.38-39. Indeed, there are other pending petitions regarding similar laws (Nos. 25-1360, 26-256). This Court’s guidance is needed, and this case offers a uniquely clean vehicle to provide it.

This case does not share the complications of some others. S.B. 10 covers only K-12 public schools. It does not even *purport* to display the Commandments in service of legitimate pedagogical goals. And the decision below rests on a clean merits ruling, not a jurisdictional one. Pet.App.37a. This case provides an opportunity to offer urgently needed guidance about the vitality of *Stone* and the meaning of the Establishment Clause, leaving questions about college students or displays with alleged curricular functions for further percolation.

This Court will need to address the core constitutional issue eventually. It should do so now, rather than wait for more harm to come.

CONCLUSION

The petition should be granted.

Respectfully submitted,

Mark Storslee
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-5106
storslee@unc.edu

John A. Meiser
Counsel of Record
Meredith H. Kessler
LINDSAY & MATT MOROUN
RELIGIOUS LIBERTY CLINIC
Notre Dame Law School
1338 Biolchini Hall of Law
Notre Dame, IN 46556
(574) 631-3880
jmeiser@nd.edu

Counsel for Amici Curiae

September 28, 2026

APPENDIX

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List of *Amici Curiae**

Thomas C. Berg
James L. Oberstar Professor Law & Public Policy
University of St. Thomas School of Law

Kathleen A. Brady
Senior Fellow and McDonald Distinguished Fellow
Center for the Study of Law and Religion
Emory University

Nathan S. Chapman
Associate Dean for Faculty Development
A. Gus Cleveland Distinguished Chair of Law
University of Georgia School of Law

Steven T. Collis
Professor of Law, First Amendment Jurisprudence,
and Civic Leadership (by courtesy)
Director, Bech-Loughlin First Amendment Center
and Law & Religion Clinic
University of Texas at Austin

Carl H. Esbeck
R.B. Price Professor of Law Emeritus
University of Missouri School of Law

Christopher D. Hampson
Associate Professor
University of Florida Levin College of Law

* Titles and affiliations appear for identification purposes only.

Michael A. Helfand
Brenden Mann Foundation Chair
Co-Director, Nootbaar Institute for Law, Religion,
and Ethics
Pepperdine Caruso School of Law

John Inazu
Sally D. Danforth Distinguished Professor of Law &
Religion
Washington University School of Law

Meredith H. Kessler
Term Teaching Professor
Managing Attorney, Lindsay and Matt Moroun
Religious Liberty Clinic
Notre Dame Law School

Douglas Laycock
Robert E. Scott Distinguished Professor
of Law Emeritus, University of Virginia
Alice McKean Young Regents Chair in Law
Emeritus, University of Texas at Austin

Christopher C. Lund
Professor of Law
Wayne State University Law School

John A. Meiser
Associate Clinical Professor of Law
Director, Lindsay and Matt Moroun Religious
Liberty Clinic
Notre Dame Law School

Mark Storslee
Associate Professor
C. Boyden Gray Distinguished Scholar
University of North Carolina School of Law

Asma T. Uddin
Assistant Professor of Law
Michigan State University College of Law