No. 26-257

IN THE

Supreme Court of the United States

RABBI MARA NATHAN, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, M.N., *et al.*,
Petitioners,

v.

ALAMO HEIGHTS INDEPENDENT SCHOOL DISTRICT, *et al.*,
Respondents.

ROXANNE CRIBBS RINGER, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, E.R., *et al.*,
Petitioners,

v.

COMAL INDEPENDENT SCHOOL DISTRICT, *et al.*,
Respondents.

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

REPLY BRIEF

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INTRODUCTION

Respondents effectively concede the primary reason this Court should intervene: The Fifth Circuit refused to follow *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam), a binding precedent. Indeed, Respondents acknowledge as much by asking this Court to "expressly overrule" *Stone* if review is granted. BIO.18. The Fifth Circuit's violation of vertical *stare decisis* alone warrants summary reversal, or a grant, vacatur, and remand with instructions to apply *Stone*—if not plenary review.

Nor do Respondents dispute the exceptional importance of these cases. Instead, they urge the Court to permit further percolation. But the fact that only the Fifth Circuit has gone out on a limb is no reason to deny review. Additional percolation will cause millions of public-school families to suffer continued violations of their First Amendment rights, deepen confusion among the lower courts, and leave them to grapple with similar state laws without the benefit of further guidance from this Court.

Granting review now makes all the more sense because this is an ideal vehicle. The full Fifth Circuit extensively considered both questions presented from multiple angles. And Texas's cut-and-dried statutory requirements cleanly tee up these important constitutional questions. Any impact the recent election may have on the future of this litigation is speculative at

best, particularly since Respondents are individual school districts, not the Attorney General.

On the merits of the Establishment Clause question, Respondents rely heavily on *Van Orden v. Perry*, 545 U.S. 677 (2005). But these cases are not about a monument in the "public square"; rather, they concern state-selected scripture continually and unavoidably imposed on public-school children. That school setting, which even *Van Orden* distinguished, is determinative here. This Court's precedents—which predate and operate independently of the *Lemon* test—have repeatedly emphasized the special vulnerability of captive-audience students. Those concerns do not disappear merely because S.B. 10's imposition of biblical scripture occurs through sight rather than sound. Indeed, under Respondents' theory, *no* religious display in a public-school classroom could ever violate the Establishment Clause. That cannot be the law.

On the free-exercise claim, Respondents insist that subjecting children to the State's preferred scripture for nearly every hour of the school day places *no burden* on parents' right to direct their children's religious upbringing despite a clear record that it does. They attempt to distinguish *Mahmoud v. Taylor*, 606 U.S. 522 (2025), on the ground that all the law requires is "a poster of the Ten Commandments on a public-school classroom wall." BIO.2. But this Court has already rejected Respondents' proposal to limit

Mahmoud to "a narrow decision focused on uniquely coercive curricular requirements." *Mirabelli v. Bonta*, 607 U.S. 492, 495 (2026) (per curiam) (citation modified). Here, too, this Court should grant review to protect public-school families' religious freedom.

I. THE OPINION BELOW VIOLATED VERTICAL *STARE DECISIS* ON AN ISSUE THAT AFFECTS MILLIONS OF FAMILIES, WARRANTING IMMEDIATE INTERVENTION BY THIS COURT.

A. The Fifth Circuit's Unilateral Overruling of *Stone* is Reason Enough to Step in.

Failing to grapple with the strong reasons for review here, Respondents focus on the merits, insisting that "*Stone* was abandoned along with *Lemon*," BIO.2,13-16 (discussing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). But only this Court may overrule its precedents, even if (unlike here) they "appear[] to rest on reasons rejected in some other line of decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Respondents' request that this Court "expressly overrule *Stone*," BIO.18, makes Petitioners' point: *Stone* remains the law, and the Fifth Circuit's ruling is contrary to *Stone*.

Respondents' attempt to carve out an exception to the rule of vertical *stare decisis* fails. They insist that the Fifth Circuit "follow[ed] this Court's guidance by asking whether the Texas statute is 'consistent with [this Court's] First Amendment precedents.'" BIO.17

(quoting *Thompson v. Hebdon*, 589 U.S. 1, 6 (2019) (per curiam)). But *Thompson* cuts the other way. This Court granted certiorari, vacated the judgment, and remanded after the Ninth Circuit deemed a governing precedent of this Court "not binding" and failed to apply it. 589 U.S. at 2-6; *Thompson v. Hebdon*, 909 F.3d 1027, 1037 n.5 (9th Cir. 2018), *vacated*, 589 U.S. 1. That is exactly the relief Petitioners seek here.[1]

Respondents are also wrong about *Rodriguez de Quijas*. *Cf.* BIO.16-17. That case is not limited to statutory precedents; it governs constitutional holdings with equal force. *See, e.g.*, *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (applying the principle in a due process case). *Stone lives* among this Court's "First Amendment precedents," BIO.17, and the Fifth Circuit was wrong to cast it aside.[2]

Finally, following *Stone* would not require the court of appeals to "resurrect" *Lemon* or its purpose prong. BIO.16-18. This Court's precedents make clear

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[1] As of the filing of this Reply, Petitioners Alyssa Martin and Cody Barker no longer have children enrolled in Texas public schools.

[2] Nor does *United States v. Salerno*, 481 U.S. 739 (1987), help Respondents. BIO.16. This Court has continued to cite *Stone* approvingly since *Salerno* was decided in 1987. *Van Orden*, 545 U.S. at 690-91 (plurality opinion); *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 867 (2005). Petitioners' facial challenge is appropriate because there is no way to implement S.B. 10 constitutionally.

that *Stone* is not *Lemon*. For instance, while declining to apply *Lemon* to a Ten Commandments monument, this Court described *Stone* as resting "almost exclusive[ly]" on *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963), and *Engel v. Vitale*, 370 U.S. 421 (1962), which were pre-*Lemon* and animated by "the particular concerns that arise in the context of public elementary and secondary schools." *Van Orden*, 545 U.S. at 690-91 (plurality opinion) (citation modified). Reflecting those concerns, *Stone* rejected the distinction Respondents and the Fifth Circuit have drawn between "silent" scriptural displays imposed on captive-audience schoolchildren, like those mandated by S.B. 10, and spoken religious exercises—because it is not "significant that the Bible verses . . . are merely posted on the wall, rather than read aloud as in *Schempp* and *Engel*." *Stone*, 449 U.S. at 42. The displays still "induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments." *Id.*; *see also Van Orden*, 545 U.S. at 691 (plurality opinion) (distinguishing *Stone*, "where the text confronted elementary school students every day").

B. Further Percolation Is Unnecessary on This Nationally Important Question.

Respondents further downplay the Fifth Circuit's impermissible abandonment of on-point precedent by suggesting that the extreme nature of the opinion below weighs *in favor* of permitting further percolation

in the lower courts. BIO.27-29. But it would be perverse to insulate the decision below from review merely because the Fifth Circuit is the only court, thus far, to flout this Court's controlling precedents in this area.

Percolation helps to tee up open questions on which the circuits are still developing their reasoning. There is no need to await percolation where the court below indisputably refused to apply binding precedent. And, in any event, if the Court were disinclined to grant plenary merits review at this time, granting, vacating, and remanding the opinion below with instructions to apply *Stone would* permit further percolation of the fundamental constitutional questions presented.

Respondents' dismissive characterization of the Petition as a request for "error correction," BIO.3,13,27, similarly misses the mark. This Court *should* step in to correct errors of this magnitude and significance. *See, e.g.*, *Thompson*, 589 U.S. at 6. S.B. 10 reaches more than 5.5 million students in over 1,200 districts. Every day the opinion below stands is a day those students are subjected to unconstitutional religious directives by their public schools in contravention of existing precedent. Moreover, the proliferation of similar laws in other states, Pet.38-39, shows that the issue is recurring and urgent, not premature.

What's more, there is already evidence that the lower courts are struggling with how to assess

Establishment Clause claims more generally in the wake of *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). *See* Pet.25. The Fifth Circuit's decision here will only deepen that confusion unless this Court intervenes.

II. THESE CASES ARE AN IDEAL VEHICLE FOR RESOLVING THE QUESTIONS PRESENTED.

These cases present a clean opportunity to address the vitally important questions presented. Both were squarely addressed in a precedential opinion by the en banc Fifth Circuit, which produced over a hundred pages of competing analysis by a narrowly divided court. Plus, the facts presented here are particularly well-suited to Supreme Court review: Because S.B. 10 mandates a display in every public-school classroom in the State and spells out the details of the required display, these cases present the issues in a simple and specific form. And they give the Court an opportunity to provide clear guidance for any lower courts confronting similar questions in the future.

Relatedly, these cases do not present complicated justiciability questions. The en banc court correctly recognized that Petitioners' claims are ripe because S.B. 10 leaves no discretion as to the display's content. Pet.App.33a-37a; *cf. Roake v. Brumley*, 170 F.4th 292, 300 (5th Cir. 2026) (en banc) (reaching the opposite ripeness conclusion for a Ten Commandments statute that purportedly leaves districts with discretion).

Respondents' so-called "offended observer" theory, meanwhile, ignores the nature of Petitioners' injuries, which arise from the State's coercion of captive-audience schoolchildren and interference with parents' direction of their children's religious upbringing, Pet.10—not speculation about teachers and classmates, *cf.* BIO.30-31. As this Court has held, "school children and their parents, who are directly affected by the laws and practices against which their complaints are directed," have "standing to complain." *Schempp*, 374 U.S. at 224 n.9. Petitioners "need not wait for the damage to occur before filing suit." *Mahmoud*, 606 U.S. at 559-60.

Finally, the impact of the recent election on this litigation is speculative at best. BIO.3,29,32-33. The Attorney General-elect has not taken office, and how he decides to approach already-ongoing litigation over S.B. 10 remains an open question. His future actions in office, not his statements as a candidate, are what matter for the purpose of ensuring adversity. *Accord* BIO.3 n.1.

Regardless, the named Defendants in these cases are school districts, not the Attorney General. Nothing forbids districts from retaining their own counsel, which, as Respondents acknowledge, several districts have done at earlier stages of the litigation. BIO.10 n.3. Indeed, if all else fails, this Court may also appoint an amicus. *See United States v. Sineneng-Smith*, 590 U.S. 371, 382 (2020) (collecting cases). But

to reiterate, each of those contingencies remains just that—contingent—and could not justify allowing the State to trample millions of public-school families' First Amendment rights based on an opinion below that directly flouts this Court's precedent.

III. THE OPINION BELOW IS WRONG.

Even if *Stone* did not control the outcome of these cases, S.B. 10 still violates the First Amendment. Respondents' arguments to the contrary are wrong.

A. The Decision Below Permits State-Imposed Religious Indoctrination in Public Schools, Contrary to History and Precedent.

In defending the Fifth Circuit's Establishment Clause ruling, Respondents assert a drastically narrow view of how the First Amendment protects public-school students that cannot be reconciled with this Court's long line of public-school caselaw. It is thus not surprising that Respondents barely engage with that precedent.

Instead, they repeatedly invoke *Van Orden* and other cases that do not involve schools, even dubbing S.B. 10's mandatory text the "*Van Orden* version" and the "*Van Orden* text." BIO.1,6-8,21. But the monument upheld in *Van Orden* was placed in a setting that did not involve "the special context of the public elementary and secondary school system." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). That monument

did not, therefore, raise the same constitutional concerns as S.B. 10. Tellingly, Respondents fail to mention the aspects of this Court's ruling in *Van Orden* that are directly relevant here: its recognition that there are "limits to the display of religious messages or symbols" and its acknowledgment that the *Stone* displays were entirely distinguishable because of the public-school context. 545 U.S. at 690-91 (plurality opinion); *accord id.* at 704 (Breyer, J., concurring in the judgment). The sweeping implications of Respondents' position and the decision below further illustrate why this Court's review is critical.

1. Putting aside their claim that the Fifth Circuit properly refused to apply *Stone*, Respondents grossly misrepresent this Court's other public-school Establishment Clause guidance. According to Respondents, this Court's school-coercion jurisprudence is limited to state imposition of "formal religious exercise." BIO.11,19-20. Not so.

Even if reading and meditating on scripture were not "formal religious exercise," this Court's precedents correctly recognize that, like prayer and other religious activities, school-sponsored religious instruction also implicates serious coercion concerns. *See, e.g., Edwards*, 482 U.S. at 584; *Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 227 (1948) (opinion of Frankfurter, J.); *cf. Mahmoud*, 606 U.S. at 554-55. Respondents echo the Fifth Circuit's conclusion that "[t]here is no 'instruction' associated with

the Ten Commandments—they are simply displayed as a passive poster on classroom walls." BIO.20. But that is contrary to Respondents' own justification for S.B. 10, which points to various purported educational functions. *See* BIO.9. And it ignores the fundamental nature of the Ten Commandments, which are literal commands that students believe in only one God, refrain from taking that God's name in vain, avoid making graven religious images, and observe the Sabbath, among other religious instructions.

Respondents also argue, quoting amici, that any student can "ignor[e]" the displays without "penalty." BIO.20. Not true. Texas's compulsory-education laws require parents "to send their children to public school unless they find an adequate substitute." *See Mahmoud*, 606 U.S. at 561. And this Court's school-coercion concerns have never been limited to school-sponsored religious instruction and activities backed by penalty, given the "heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Lee v. Weisman*, 505 U.S. 577, 592 (1992) (citing *Schempp*, 374 U.S. at 307 (Goldberg, J., concurring)); *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 314 (2000); *McCollum*, 333 U.S. at 227 (opinion of Frankfurter, J.).

2. Even if S.B. 10's displays were not religiously coercive, they would still violate the Establishment Clause under *Kennedy*. *See, e.g.*, *Engel,* 370 U.S. at

430-31 (explaining that coercion is not required under the Establishment Clause). In any context, "[a] State's imposition of its own mandatory interpretation of scripture is a shocking development that calls out for review." *Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1, 2 (2022) (Alito, J., dissenting from denial of stay); *see also Engel*, 370 U.S. at 425-29 (discussing Founders' contempt for "governmentally composed prayers"). But when that interpretation is imposed in public schools, it "interfere[s] in the 'competition between sects'" where it matters most—attracting youthful adherents to sustain faith systems—and violates the First Amendment's ban on denominational preference. *See Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247-48 (2025) (citations omitted).

Indeed, Petitioners presented evidence below demonstrating that the Founders—in particular, James Madison, the principal architect of the First Amendment—vehemently opposed government support for religious instruction. And scholars have noted that "[r]eligious education was a central feature of religious establishment." Christopher C. Lund, *Soft Establishment, Religious Education, and* Stone v. Graham, 64 J. Cath. Legal Stud. 51, 54 (2026). While some of those practices were coercive, "[r]eligious establishments [did] not need to coerce every dissenter; for a better plan to secure religious uniformity is by controlling the background conditions of belief." *Id.*; *see also* Pet.28-29.

Respondents dismiss this history as a "new" argument, BIO.18-19, but the expert testimony Petitioners presented below, which the district court credited, supports it, Pet.App.238a-242a, 248a. Regardless, Respondents acknowledge that only "claims, not arguments," require preservation. BIO.19.

On the other side of the ledger, Respondents' own historical material and examples—including this Court's frieze, BIO.4; a U.S. House resolution celebrating Judge Roy Moore's unconstitutional Ten Commandments courthouse monument, BIO.5-6; a law review article's untested "emerging evidence" compiled by a non-historian; the Northwest Ordinance's general encouragement of "[r]eligion, morality and knowledge" before the advent of public schools; and the Reconstruction-era Freedmen's Bureau clergy-run schools, BIO.22-23—likewise say nothing about state-mandated scripture displayed in every classroom of compulsory public schools.

B. The Decision Below Also Flouts *Mahmoud*.

As for the Free Exercise Clause, Respondents argue that *Mahmoud*'s reach is limited to "direct instruction." BIO.24. But S.B. 10's scriptural displays amount to direct instruction. *See supra* p. 11. Moreover, *Mahmoud* recognized broader "limits on the government's ability to interfere with a student's religious upbringing in a public school setting," 606 U.S. at 547, and this Court has since applied those

limits to school conduct beyond instruction, *see Mirabelli*, 607 U.S. at 495. Lawmakers' and Respondents' own characterizations of S.B. 10 make clear that the displays are designed to use scripture to "shape children's beliefs or subvert their parents' teaching," BIO.25 (quoting Pet.App. 84a), by leading students to adopt and obey the Commandments as their personal religious tenets. *See* Pet.7-9; BIO.9.

In refusing to recognize *any* free-exercise burden suffered by Petitioners, the Fifth Circuit construed *Mahmoud* far too narrowly. Indeed, if the permanent, unavoidable imposition of biblical scripture in public-school classrooms does not interfere with, or threaten to undermine, parents' ability to direct their children's religious education, *see Mahmoud*, 606 U.S. at 556, what would?

Respondents' remaining objection goes to the difference between the remedy sought here and the one in *Mahmoud*. The reason for the discrepancy is obvious: An opt-out was possible in *Mahmoud*, but not here. If that makes Petitioners' free-exercise claim "unprecedented," BIO.26, it is a problem of the State's own making: "There is no *de maximis* exception to the Free Exercise Clause." *Mahmoud*, 606 U.S. at 567.

CONCLUSION

This Court should summarily reverse the judgments below or grant the Petition, vacate the judgments below, and remand. Alternatively, this Court should grant plenary review.

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