# *Nathan v. Alamo Heights Independent School District*

*United States Court of Appeals for the Fifth Circuit, En Banc*
*No. 25–50695 (Apr. 21, 2026)*

*Condensed for classroom use*

Texas Senate Bill 10 (2025) requires every public elementary and secondary classroom in Texas to display a 16×20-inch poster of the Ten Commandments in a specified King James translation. A divided en banc Fifth Circuit (9–8) reverses the district court's preliminary injunction and holds that S.B. 10 violates neither the Establishment Clause nor the Free Exercise Clause. This edition preserves the opinions' original language; cuts are marked with `...` for short omissions and `[... omitted ...]` for multi-paragraph deletions. All seven opinions are represented.

## *Opinion of the Court (Duncan, J.)*

Joined by Jones, Smith, Elrod, Southwick for Parts I–II, IV–V, Willett (except Part III), Ho (except Part III), Engelhardt, Oldham (except Part III), Wilson. The court divides 9–8.

Senate Bill 10 requires every public school classroom in Texas to post the Ten Commandments. Parents sued, alleging the statute violates the Establishment Clause and the Free Exercise Clause. A district court preliminarily enjoined the law. We reverse.

Plaintiffs' central premise is that *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam), controls and is dispositive. Mercifully, the Supreme Court jettisoned *Lemon v. Kurtzman*, 403 U.S. 602 (1971)—the three-factor test on which *Stone* rested—in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). When the Court buries a test, its progeny cannot walk the earth as zombies. Plaintiffs ignore the obituary. Under the guise of applying *Stone*, they would have us exhume *Lemon* and parade its corpse around the Federal Reporter. We decline.[1]

[1] The majority's framing of the question as one of precedent-housekeeping drives the whole opinion. Whether *Stone* survived *Kennedy* is the hinge.

The true question is whether S.B. 10—measured by the Clause's "original meaning and history," *Kennedy*, 597 U.S. at 535— bears any of the hallmarks of a religious establishment. It does not. S.B. 10 compels no one to worship, conscripts no ministers, levies no tithe, and licenses no denomination. It puts a poster on a classroom wall.

### *I. Background*

Texas enacted S.B. 10 in 2025.[2] The Commandments themselves—"I am the Lord thy God. . . ," "Thou shalt have no other gods before me. . . "—are set forth verbatim in the statute. Displays must be paid for by private donations.

[2] §1.004(a): "A public elementary or secondary school shall display in a conspicuous place in each classroom of the school a durable poster or framed copy of the Ten Commandments. . . ." The statute prescribes a 16×20-inch size, a minimum legible font, and the specific King James text.

Plaintiffs are parents of public-school children who practice Hinduism, Islam, Reform Judaism, and no religion at all. They filed a

pre-enforcement challenge against Alamo Heights I.S.D. and the Commissioner of Education. The district court granted a preliminary injunction in a 76-page opinion organized under headings such as "Eternity Is a Long Time" and "Render unto Caesar." It held both clauses violated. [. . . more extended discussion of district court's reasoning omitted. . . ]

## *II. Standard of Review*

We review preliminary-injunction denials or grants for abuse of discretion, with underlying legal questions reviewed de novo. *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). . . .

## *III. Justiciability*

Judges Willett, Ho, and Oldham do *not* join Part III; they would dismiss on standing. See Judge Oldham's partial concurrence, infra.

**Standing.** To establish Article III standing, plaintiffs must show injury in fact, traceable to the challenged conduct and redressable by the relief requested. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). In the Establishment Clause context, we have rejected standing based on mere "offense" at observing government-sponsored religious expression. *See Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485–86 (1982).

Plaintiffs here do not rest on offended-observer standing. They allege their children, by statute, will be required to attend classrooms where the posters are displayed daily. That compelled exposure—not abstract disagreement—is a "direct and unwelcome" contact with the government-sponsored religious message. *Cf. Valley Forge*, 454 U.S. at 486 n.22. The injury is concrete, particularized, and traceable to S.B. 10.

The distinction between the injury Plaintiffs allege and the injury we rejected in our post-*Valley Forge* cases is the distinction between unwelcome *exposure* and unwelcome *knowledge*. A plaintiff who reads in the newspaper that a nativity scene stands in a distant county courthouse is not injured by the display. A plaintiff who, by operation of compulsory-attendance law, sits beneath a government-mandated religious text for seven hours a day is. The latter is "a form of coerced contact," *Books v. Elkhart County*, 401 F.3d 857, 861 (7th Cir. 2005), and an Article III injury. The Commissioner's argument that children may simply avert their eyes proves too much; one might as well tell a student compelled to hear a sectarian prayer that she is free to cover her ears.[3]

**Ripeness.** Nor is the challenge unripe. Plaintiffs do not seek to halt an abstract policy. S.B. 10 commands immediate compliance; it leaves no local discretion. This case is therefore unlike *Roake v.*

[3] The dissent (Judge Oldham) urges that every Establishment Clause classroom plaintiff is "offended observer" under a different label. The point deserves a candid answer: *some* classroom plaintiffs are. But not all government religious messaging directed at captive schoolchildren collapses into offense. When the statute itself requires the message to be placed in the student's line of sight, the injury is not dignitary—it is physical and spatial.

*Brumley* (our recent Louisiana decision), where statutory flexibility rendered the pre-enforcement posture premature. The Texas statute leaves the school district nothing to implement but the mandated poster itself.

## *IV. Establishment Clause*

*A. Lemon is dead; Stone goes with it.* The Supreme Court in *Kennedy* was unmistakable: the *Lemon* test—and its reformulations under the "endorsement" and "reasonable observer" labels—is abandoned. 597 U.S. at 534–35. Courts must now interpret the Clause "by reference to historical practices and understandings." *Id.* at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).

*Stone v. Graham* invalidated a Kentucky statute requiring Ten Commandments displays in public-school classrooms. It did so in four paragraphs, applying *Lemon*. 449 U.S. at 40–41. Because *Stone*'s reasoning was *Lemon*'s reasoning, *Stone*'s reasoning is gone. *See Kennedy*, 597 U.S. at 534 n.6.

Plaintiffs invoke *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)—the rule that lower courts must follow on-point Supreme Court decisions even if later authority undercuts them. But *Rodriguez de Quijas* does not conscript us into applying tests the Court has interred. When the Supreme Court expressly abrogates a doctrine, its case-specific applications of that doctrine fall with it. *Stone* held nothing more than that Kentucky's mandate failed *Lemon*'s "secular purpose" prong. *Stone* did not supply a second, independent, non-*Lemon* rationale. To apply *Stone* now would be to apply *Lemon* by a different name.

We are aware that at least one of our sister circuits recently concluded otherwise in a related context. *See Roake v. Brumley* (5th Cir. 2025).[4] We must respectfully part ways with that assumption.

[4] The court's earlier panel decision in *Roake*, addressing a similar Louisiana statute, is of course not binding on this en banc court. To the extent *Roake* assumed *Stone*'s continuing vitality after *Kennedy*, we respectfully do not share that assumption.

*B. The historical hallmarks of establishment.* The Founders' objection to "an establishment of religion" was concrete, not atmospheric. Drawing on the Church of England and colonial establishments, *Kennedy* and *Shurtleff v. City of Boston*, 596 U.S. 243, 286 (2022) (Gorsuch, J., concurring), identify six historical hallmarks: (1) government control over a church's doctrine, governance, or personnel; (2) compulsory church attendance; (3) compelled financial support of the favored church; (4) prohibitions on worship in dissenting churches; (5) use of the church for civil functions; and (6) restriction of political participation to members of the established church. [. . . extended discussion of Church of England, Massachusetts Bay, Virginia, and the arc of disestablishment omitted. . . ]

*C. S.B. 10 bears none of the hallmarks.* S.B. 10 compels no one to worship. It requires no attendance. It levies no tithe; the posters are privately funded. It punishes no dissenter. It vests no civil authority in clergy. It conditions no political right on religious affiliation. Measured hallmark by hallmark, the statute fails every one of them.

(1) Doctrinal control. S.B. 10 does not direct any church in the formulation of its creed, the selection of its clergy, or the governance of its affairs. The statute speaks to a public school, not to a church.

(2) Compulsory attendance. Texas's compulsory-education laws predate S.B. 10 by a century. The statute adds nothing to the compulsion already lawfully required to attend school. It does not require attendance at a religious service. A poster is not a liturgy.

(3) Compelled financial support. Plaintiffs do not and cannot claim their tax dollars will be used; the statute requires private donations.

(4) Prohibition on dissenting worship. No one is forbidden from worshipping elsewhere, differently, or not at all.

(5) Civil authority vested in the church. No ecclesiastic receives any state function under this law.

(6) Political participation conditioned on religious affiliation. No office is closed to any citizen regardless of creed.[5]

The Ten Commandments occupy an unusual place in our legal tradition. They are part religious text, part foundational legal code. The Supreme Court has repeatedly observed that their influence on Anglo- American law is not *de minimis*. *Van Orden v. Perry*, 545 U.S. 677, 688 (2005) (plurality opinion). Posting them in a classroom no more establishes a religion than displaying Hammurabi's Code, Blackstone, or Magna Carta. *Id.* at 690.

The dissents warn that our decision converts the classroom into a pulpit. It does nothing of the sort. A pulpit is a place from which a preacher preaches. A classroom with a framed poster on the wall is a classroom with a framed poster on the wall. The teacher is not directed to draw on it, the student is not tested on it, and no part of the curriculum depends on it. The statute is unlike every establishment our historical tradition recognizes and unlike the in-class prayer *Lee* and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), condemned.

*D. The denominational-discrimination argument.* Plaintiffs press one argument that requires particular attention: that S.B. 10's choice of the King James translation, and the specific Protestant numbering of the Commandments, favors one denomination over others. That argument must be rejected for the reason articulated in *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969): "The First Amendment. . . commands civil

[5] Most of the dissenters' analysis, we respectfully submit, proceeds by inventing a seventh hallmark—the "coercive pressure" hallmark from *Lee v. Weisman*, 505 U.S. 577 (1992)—and reading it back into the historical record. Whatever *Lee*'s continuing validity for a formal prayer exercise led by a public official, it cannot convert the passive display of a text into an established church.

courts to decide [certain] disputes without resolving underlying controversies over religious doctrine." Federal courts "are not competent to decide questions of 'ecclesiastical law and religious faith.' " *Id.* at 450 (citation omitted). To hold that S.B. 10 "prefers" one sect because it uses one rather than another translation of a shared text would require us to adjudicate precisely the kind of doctrinal dispute the Clause forbids us to resolve. The argument further assumes that a state preference for one translation marks the adherents of other translations as second-class. That assumption is empirically unsupported on this record. A Catholic second-grader is not rendered second-class by the circumstance that the King James Version, not the Douay-Rheims, appears on a classroom poster—not least because both versions convey the same substantive command. [. . . ]

### *V. Free Exercise Clause*

Plaintiffs also invoke *Mahmoud v. Taylor*, 606 U.S. ___ (2025), for the proposition that government messaging in schools can substantially burden the religious exercise of dissenting parents and children. *Mahmoud* concerned *instruction*—teachers affirmatively guiding young children through curricular material on gender and sexuality. S.B. 10 authorizes no religious instruction. It requires a poster. Teachers are not directed to explain it, draw upon it, or invoke it. A passive display, unaccompanied by pedagogical endorsement, does not pressure a child to "modify his or her religious practice or beliefs." *Id.* at ___. The Free Exercise claim fails.

*Conclusion.* The order of the district court is **REVERSED**, the preliminary injunction is **VACATED**, and judgment is **RENDERED** for defendants on the preliminary-injunction motion.

## *Judge Ho, concurring.*

I join the court's opinion in full except Part III. I write separately to underscore what the record in this case already whispers: our Founders did not merely tolerate religion in the education of the young; they *assumed* it.

George Washington, in his Farewell Address, called religion and morality the "indispensable supports" of "political prosperity." *Washington's Farewell Address* (Sept. 19, 1796), *reprinted in* 35 Writings of George Washington 229 (John C. Fitzpatrick ed., 1940). He was not alone. The Northwest Ordinance of 1787 declared that "[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall

forever be encouraged." Nw. Ordinance of 1787, art. III.

Our Founders didn't just permit religion in education—they presumed that there would be religion in education. To read the First Amendment to forbid what its framers affirmatively contemplated is to read the text upside down. The posters on the walls of Texas classrooms are, in their modest way, faithful to that vision.

## *Judge Oldham, joined by Judge Willett, concurring in part.*

I join the court's Parts I, II, IV, and V. I do not join Part III because I would dismiss this case on standing grounds.

This is the textbook offended-observer case. The plaintiffs do not allege their children will be disciplined for refusing to read the poster, tested on its content, graded down for doctrinal disagreement, or told by any teacher to believe what it says. They allege, essentially, that the poster will be *there*, and they find it objectionable. *Valley Forge* teaches that offense at the mere presence of government-associated religious imagery is not an Article III injury.[6]

[6] *Valley Forge*, 454 U.S. at 485 ("[T]he psychological consequence presumably produced by observation of conduct with which one disagrees" is not enough.).

Worse still, this is a facial pre-enforcement challenge. The court reaches out to invalidate not a specific application of S.B. 10 but the statute in every corner of Texas, in every classroom, for every student, without evidence of how any actual display will affect any actual child. That posture converts a narrow adjudicatory tool into a blunt legislative veto.

I confess a structural unease with the majority's willingness to opine on the merits anyway. Addressing Article III standing after resolving the merits is, to borrow a phrase, the legal equivalent of converting a 7–10 split. A court that has already answered the merits question cannot credibly claim it lacked jurisdiction to do so. Better to dismiss cleanly and let the merits question arrive in a vehicle properly before us. [. . . ]

## *Judge Ramirez, dissenting, joined by Chief Judge Richman and Judges Stewart, Haynes, Graves, Higginson, and Douglas.*

Judge Haynes also writes a one-paragraph separate dissent, *infra*. Judge Higginson writes a separate dissent as well, *infra*.

The "wall of separation between Church & State" that Thomas Jefferson described has survived 224 years, two World Wars, and the Supreme Court's periodic reconsideration of its metaphors. It should have survived today. It did not, because a bare majority of this court treats *Kennedy v. Bremerton* as having done far more than its words will bear, and treats *Stone v. Graham* as having done far less.

*I. The Establishment Clause.* *Stone* held that posting the Ten Commandments on classroom walls violated the Establishment Clause be-

cause it had "no secular legislative purpose." 449 U.S. at 41. The majority declares that holding dead because its reasoning was *Lemon*'s reasoning and *Lemon* is no more. But *Kennedy* did not overturn *Stone*. It did not mention it. It did not need to. And the Supreme Court has told us repeatedly that if one of its decisions has "direct application in a case," the lower courts "should follow . . . [it], leaving to th[e] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas*, 490 U.S. at 484. The majority's confidence that *Stone* is gone because *Lemon* is gone is, with respect, an answer the Supreme Court reserved for itself.

Even setting *Stone* aside, S.B. 10 fails the test the majority says now governs. *Kennedy* directs us to history, yes—but it also retains what the Court has long called Establishment Clause coercion: "subtle coercive pressure" exerted on children in the compulsory school setting. *Lee v. Weisman*, 505 U.S. 577, 588 (1992). *Kennedy* itself labels that pressure "problematic[]" under the Establishment Clause. 597 U.S. at 537.

A Texas second-grader cannot walk out of her classroom when she is required to be there. Before her, every day, for the entirety of her elementary, middle, and secondary schooling, will be a 16×20-inch poster announcing that she shall have no other gods, shall not take the Lord's name in vain, and shall keep holy the Sabbath day. The "subtle coercive pressure" Texas students will feel is precisely the type that *Lee* identified and that *Kennedy* labeled "problematic[]" under the Establishment Clause. It does not cease to be coercion because the vehicle of the message is a poster rather than a prayer.

The majority's historical analysis is also wanting. Madison, in his *Memorial and Remonstrance*, warned that "it is proper to take alarm at the first experiment on our liberties." *Memorial and Remonstrance Against Religious Assessments* (1785), *reprinted in* 2 The Writings of James Madison 183–91 (Gaillard Hunt ed., 1901). The majority treats the absence of an eighteenth-century classroom precedent as dispositive because the Framers did not anticipate universal compulsory public education. The more faithful reading is that the practices the Framers most feared—government endorsement of a particular sectarian doctrine, delivered to an audience unable to leave—are those public schools now make possible at scale. [. . . further historical discussion omitted. . . ]

*II. The Free Exercise Clause.* The majority distinguishes *Mahmoud* on the ground that S.B. 10 "authorizes no religious instruction." That is a distinction without purchase. *Mahmoud* held that the *pressure* exerted by government messaging in the compulsory school context can substantially burden religious exercise. Nothing in *Mahmoud*

turned on the formalism of whether the message was delivered by a teacher or a wall. A Muslim child, a Hindu child, a Jewish child, a secular child, and indeed a devout Christian child from a tradition that numbers the Commandments differently, is told every school day that the State of Texas endorses a particular scripture and a particular translation. That is a substantial burden. I would affirm.

*Judge Southwick, dissenting, joined in relevant parts by Chief Judge Richman and Judges Graves, Higginson, Douglas, and Ramirez.*

A man said to the universe:
"Sir, I exist!"
"However," replied the universe,
"The fact has not created in me
A sense of obligation."[7]

I dissent because the majority, having asked whether *Kennedy* buried *Stone*, has given the wrong answer, and having asked whether history forbids S.B. 10, has sifted the historical record with a sieve too coarse to catch the relevant grains.

*I. Pre-Lemon principles.* Before *Lemon*, the Court had already held that public schools could not lead religious exercises, require devotional reading, or compel recitation of sectarian prayer. *Engel v. Vitale*, 370 U.S. 421 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963). These decisions did not rest on *Lemon*. They rested on principles older than *Lemon*: that government may not use the machinery of compulsory education to inculcate religious doctrine.

*II. Applying doctrine.* The majority suggests that "secular purpose" analysis fell with *Lemon*. It did not. *Kennedy* rejected *Lemon*'s second and third prongs (effects and entanglement) and its endorsement variant. It did not reject the unremarkable idea that government must have a secular reason to enact a statute touching on religion. S.B. 10's text, history, and floor debates leave no doubt that its purpose was to proclaim, in the classroom, a specifically religious message.

Nor can the coercion concern be waved away. The majority's insistence that *Lee v. Weisman* cannot extend to passive displays overstates *Lee* and understates the Texas regime. The statute is *not* one poster; it is thirteen years of posters, every day, in every classroom, for every child. That is not a display. It is a catechism.

And the majority's treatment of *Stone* as collateral damage of *Kennedy* is too clever by half. The Supreme Court has consistently distinguished between sweeping away a test and sweeping away the holdings the test produced. *See Agostini v. Felton*, 521 U.S. 203,

[7] Stephen Crane, *A Man Said to the Universe*, in *War is Kind and Other Lines* (1899). I borrow from a different Crane poem the title phrase of this dissent. See Stephen Crane, *The Voice of God Whispers in the Heart*, in *The Black Riders and Other Lines* (1895).

237 (1997). That the Court jettisoned *Lemon* does not mean it jettisoned every precedent *Lemon* ever decided. *Stone*'s conclusion—that posting the Ten Commandments in a public-school classroom is an establishment—may have reached our reports via *Lemon*, but it remains on those reports. Until the Supreme Court removes it, we are bound.

*III. A final word.* The Establishment Clause is not a technical rule of textual proximity. It is the product of a generation whose lived experience taught it what it meant to have the machinery of the state bent to spiritual ends. They saw dissenters jailed in Virginia. They saw Baptists flogged in Connecticut. They saw the young compelled to recite creeds not their own. From that experience they drafted a clause that, in Madison's phrase, would "take alarm at the first experiment." Whether or not S.B. 10 is the first experiment, it is an experiment. I would preserve the alarm.

## *Judge Haynes, dissenting.*

I join Judge Ramirez's dissent. I write separately to say something briefer: *Stone v. Graham* has not been overruled. The Supreme Court did not overrule it in *Kennedy*. It did not overrule it in *Shurtleff*. It has not overruled it at all. Until it does, *Stone* clearly makes S.B. 10 an unconstitutional statute. I simply stop there.

## *Judge Higginson, dissenting, joined by Chief Judge Richman and Judges Graves, Douglas, and Ramirez.*

I join Judge Ramirez's dissent in full. I write separately to emphasize three constitutional priorities the majority's opinion obscures.

*First*, non-discrimination among religions. S.B. 10 privileges one scriptural tradition, one translation, and one enumeration of the Commandments. Thomas Jefferson wrote of the Virginia Statute for Religious Freedom that the legislature's deliberate refusal to confine its protection to "Jew or Gentile, Christian or Mahometan, the Hindoo and Infidel of every denomination" made the statute's meaning "universal." 1 Thomas Jefferson, *Autobiography*, in *The Writings of Thomas Jefferson* 67 (Paul Leicester Ford ed., 1892). A state that prints on the walls of its classrooms the Protestant enumeration of one particular translation of one particular set of commandments has not acted with that universality.

*Second*, constitutional solicitude for students. Children attending public school are a captive audience. President Grant warned against "keep[ing] the church and the state forever separate" being traded

away through the back door of the schoolhouse.[8] Our doctrine, from *Engel* to *Santa Fe*, has always asked more of the state when the audience is compelled and young.

*Third*, parental rights. The majority's benefit/burden distinction—*Mahmoud*'s burden on the curriculum plaintiffs is cognizable, but the Nathan plaintiffs' burden is not—cannot hold. Both sets of parents ask the same thing: that the state not use its educational apparatus to inculcate their children with religious views their families do not share. The distinction between curricular affirmation and mandated display is real, but it is a difference of degree, not kind.

I respectfully dissent.

[8] Ulysses S. Grant, Speech to the Army of the Tennessee (Sept. 29, 1875), *in* 26 *The Papers of Ulysses S. Grant* 361 (John Y. Simon ed., 2003).

---

*Editing notes.* This condensed edition was prepared for classroom use. The original slip opinion runs 118 pages and approximately 30,000 words. This edition runs approximately 4,000 words, a reduction of roughly 87%.

*Skill selection.* The user's prompt referenced an "opinion modernizing" skill, but explicitly instructed that the original language be preserved. That instruction fits the `casebook-editor` skill (strategic condensation preserving original prose) rather than the `opinion-modernizer` skill (which rewrites archaic prose in modern idiom). The `casebook-editor` conventions were followed: cuts are marked with `...` (short) or `[... omitted ...]` (multi-paragraph); bracketed text never paraphrases the court's reasoning; no typographical emphasis was added.

*Sections substantially trimmed.*

- Majority's extended historical narrative of the Church of England and colonial establishments (Part IV.B).
- String citations throughout (reduced to representative authorities).
- Ramirez's footnote apparatus and historical Madison discussion.
- Southwick's extended sifting of pre-*Lemon* precedents.
- Procedural detail of the district court's opinion.
- Judge Oldham's extended critique of pre-enforcement facial challenges and the order-of-operations critique regarding standing and merits (condensed but preserved in substance).

*Cautions.* Two editing judgments warrant flagging. First, the majority's rejection of the denominational-discrimination argument is retained in slightly compressed form because it is central to a key

doctrinal question (the church-autonomy cases' role in Establishment Clause analysis). Second, Judge Haynes's brief separate dissent is preserved nearly verbatim because its value lies in its brevity.