

No. 24-30706

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Darcy Roake, Reverend, on behalf of themselves
and on behalf of their minor children, real party in interest A.V., real party in
interest S.V.; Adrian Van Young, on behalf of themselves and on behalf of their
minor children, real party in interest A.V., real party in interest S.V.; Mamie
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child, real party in interest N.W.; Richard Williams, Reverend, on behalf of
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behalf of their minor child, real party in interest A.O.; David Hawley, on behalf
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real party in interest L.H.; Erin Hawley, on behalf of themselves and on behalf
of their minor children, real party in interest A.H., real party in interest L.H.;
Dustin McCrory, on behalf of themselves and on behalf of his minor children,
real party in interest E.M.; real party in interest P.M., real party in interest
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child, real party in interest T.S.; Molly Pulda, on behalf of themselves and on
behalf of their minor child, real party in interest T.S.; Christy Alkire, on behalf
of herself and on behalf of her minor child, real party in interest L.A.; Joshua
Herlands, on behalf of himself and on behalf of his minor children, real party in
interest E.H., real party in interest J.H.,

Plaintiffs-Appellees,

v.

Cade Brumley, in His Official Capacity as the Louisiana State Superintendent of
Education, Conrad Appel, in his official capacity as a member of the Louisiana
State Board of Elementary and Secondary Education (LSBESE); Judy
Armstrong, in her official capacity as a member of the LSBESE; Kevin Berken,
in his official capacity as a member of the LSBESE; Preston Castille, in his
official capacity as a member of the LSBESE; Simone Champagne, in her

official capacity as a member of the LSBESE; Sharon Latten-Clark, in her official capacity as a member of the LSBESE; Lance Harris, in his official capacity as a member of the LSBESE; Paul Hollis, in his official capacity as a member of the LSBESE; Sandy Holloway, in her official capacity as a member of the LSBESE; Stacey Melerine, in her official capacity as a member of the LSBESE; Ronnie Morris, in his official capacity as a member of the LSBESE; East Baton Rouge Parish School Board; Livingstone Parish School Board; Vernon Parish School Board; St. Tammany Parish School Board,
Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Louisiana

**SUPPLEMENTAL BRIEF *AMICI CURIAE* OF
AMERICA'S FUTURE,
RESTORING LIBERTY ACTION COMMITTEE,
LONANG INSTITUTE, AND
CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND
IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL**

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Case No. 24-30706

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DARCY ROAKE, *et al.*,

Plaintiffs-Appellees,

v.

CADE BRUMLEY, *et al.*,

Defendants-Appellants,

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Darcy Roake, *et al.*, Plaintiffs-Appellees.

Cade Brumley, Louisiana State Superintendent of Education, *et al.*,
Defendants-Appellants.

America's Future, Restoring Liberty Action Committee, LONANG Institute, and Conservative Legal Defense and Education Fund, *Amici Curiae*.

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Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), and 5th Circuit Rule 28.2.1, it is hereby certified that *amici curiae* America's Future, Restoring Liberty Action Committee, LONANG Institute, and Conservative Legal Defense and Education Fund are non-stock, nonprofit entities, have no parent companies, and no person or entity owns them or any part of them.

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INTEREST OF THE *AMICI CURIAE*¹

Amici curiae America's Future and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Restoring Liberty Action Committee and LONANG Institute are educational organizations. All *amici* participate actively in the public policy process, and have filed numerous *amicus curiae* briefs in federal and state courts defending U.S. citizens' rights against government overreach. Some of these *amici* have filed three *amicus* briefs in the U.S. Supreme Court and one in the Ninth Circuit in cases involving Establishment Clause issues.²

¹ It is hereby certified that all parties consented to or did not object to the filing of this brief *amicus curiae*; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

² See *McCreary County, Kentucky v. ACLU of Kentucky*, No. 03-1693, [Brief Amicus Curiae of Conservative Legal Defense and Education Fund, et al.](#) (Dec. 8, 2004); *Mount Soledad Memorial Association v. Trunk*, No. 13-1061, [Brief Amicus Curiae of U.S. Justice Foundation, et al.](#) (June 4, 2014), and in the Ninth Circuit, *Trunk v. United States of America*, Nos. 13-57126 & 14-55231, [Brief Amicus Curiae of U.S. Justice Foundation, et al.](#) (Oct. 22, 2014); *The American Legion v. American Humanist Association*, No. 17-1717, [Brief Amicus Curiae of Citizens United, et al.](#) (July 27, 2018) and [Brief Amicus Curiae of Public Advocate of the United States, et al.](#) (Dec. 21, 2018).

STATEMENT OF THE CASE

A Louisiana law, HB 71, requires the posting of the Ten Commandments in each Louisiana public school classroom. *Roake v. Brumley*, 756 F. Supp. 3d 93, 113 (M.D. La. 2024) (“*Roake I*”). The law requires that the Commandments be “displayed with a context statement” that states, “[t]he Ten Commandments were a prominent part of American public education for almost three centuries.” *Id.* Before the law was to go into effect on January 1, 2025, a group of parents, on their own behalf and on that of their public school children, obtained an injunction from the U.S. District Court for the Middle District of Louisiana.

On the Establishment Clause claim, the district court believed the case was controlled by *Stone v. Graham*, 449 U.S. 39 (1980) even after *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), which rejected the test in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), because the Supreme Court in *Kennedy* did not expressly address *Stone*. *Roake I* at 164-65.

The district court found that Plaintiffs are likely to prevail on the merits, relying heavily on the testimony of Plaintiffs’ former employee and now expert, Dr. Stephen Green, that the selection of a particular version of the Ten Commandments was discriminatory, and there was no “longstanding ...

historical acceptance and practice of widespread, permanent displays of the Ten Commandments in public schools.” *Id.* at 206.

On appeal, a vacated Fifth Circuit panel upheld the district court’s decision on standing and the injunction. *Roake v. Brumley*, 141 F.4th 614, 630 (5th Cir. 2025) (“*Roake II*”). On the Establishment Clause issue, the panel rejected Louisiana’s proffered secular purpose to “ensure that the students in our public schools may understand and appreciate the foundational documents of our state and national government,” finding it a “sham.” *Id.* at 644.

ARGUMENT

I. “OFFENDED-OBSERVER” STANDING HAS NO BASIS NOW THAT *LEMON* HAS BEEN ABROGATED.

In evaluating both standing and ripeness, the district court concluded that the Plaintiffs had demonstrated injury-in-fact based on the threat that in the future they would see the Ten Commandments posted on the wall of a public school classroom. The district court relied on a 2017 decision of this Court which had stated that “[a] plaintiff has standing to challenge a religious display where his **stigmatic injury** results from a ‘**personal[] confront[ation]**’ with the display.” *Roake I* at 131 (emphasis added) (quoting *Barber v. Bryant*, 860 F.3d 345, 353-54 (5th Cir. 2017)). This Court in *Barber* found the plaintiffs there did not have

standing, but the district court here adopted the *Barber* court’s theory that a “stigmatic injury” could occur based on a “personal confrontation” with a poster. *Roake I* at 131. The district court discussed neither what a “stigmatic injury” was, nor how one could have a “personal confrontation” with a poster.

The vacated panel decision accepted Appellees’ argument that “offended observer” standing, as found by the district court, established standing. *Roake II* at 637. Instead, the panel changed the issue to assert that “Plaintiffs are more than mere ‘offended observers.’ Students and Parents will be ‘directly affected’ by H.B. 71; this is sufficient to confer standing.” *Id.* However, the vacated panel opinion tells us nothing about how its “directly affected” test works or how that standard had been met by Plaintiffs.

Offended-observer standing was based on the Supreme Court’s *Lemon* test, from which developed a heavily criticized line of Establishment Clause jurisprudence under which, if a reasonable observer was offended by viewing any type of government action as an endorsement of religion, then it violated the Establishment Clause. As Appellants explain, “*Lemon* ... led lower courts to ‘deduce such a [reasonable] observer must be able to sue.’” Appellants’ Supplemental En Banc Brief at 28. And as Justice Gorsuch explained, “Lower courts invented offended-observer standing for Establishment Clause cases in the

1970s in response to [the Supreme] Court’s decision in *Lemon*.” *American Legion v. American Humanist Ass’n*, 588 U.S. 29, 84 (2019) (Gorsuch, J., concurring).

Offended-observer standing violates the Article III requirement of a case or controversy. This type of standing was propped up by the lower courts using the *Lemon* test in order to have jurisdiction over plaintiffs who otherwise would not have any injury that Article III requires.

In *Kennedy*, the Supreme Court directed the lower courts to abandon the three *Lemon* tests — purpose, effect, and entanglement. Rather, it directed the lower courts to use only a traditional judicial search for the meaning of the text — “the Establishment Clause must be interpreted by reference to historical practices and understandings.” *Kennedy* at 535 (internal quotations omitted). There is no historical analogue for “offended observer” standing. As Justice Gorsuch explained in *American Legion*:

This “offended observer” theory of standing has no basis in law. Federal courts may decide only those cases and controversies that the Constitution and Congress have authorized them to hear. And to establish standing to sue consistent with the Constitution, a plaintiff must show: (1) injury-in-fact, (2) causation, and (3) redressability. The injury-in-fact test requires a plaintiff to prove “an invasion of a legally protected interest which is (a) concrete and particularized ... and (b) actual or imminent, not conjectural or hypothetical.” [*Id.* at 80 (Gorsuch, J., concurring).]

Justice Gorsuch continued, stating that the Supreme Court has “rejected the notion that offense alone qualifies as a ‘concrete and particularized’ injury sufficient to confer standing.... Offended observer standing cannot be squared with this Court’s longstanding teachings about the limits of Article III.”

American Legion at 80, 83 (Gorsuch, J., concurring).

Although neither *American Legion* nor *Kennedy* expressly repudiated offended-observer standing, it is clear that, without *Lemon*, lower-court-created doctrine has no current Supreme Court foundation. Justices Thomas and Gorsuch have already expressed a willingness to stop the lower courts in this false doctrine: “with the demise of *Lemon*’s reasonable observer test, ‘little excuse’ now remains ‘for the anomaly of offended observer standing.’” *City of Ocala v. Rojas*, 143 S. Ct. 764, 765 (2023) (Gorsuch, J., concurring). Justice Thomas went even farther and would have granted certiorari in *Ocala* in order to reverse this erroneous doctrine: “Offended observer standing appears to warp the very essence of the judicial power vested by the Constitution. Under Article III, federal courts are authorized ‘to adjudge the legal rights of litigants in actual controversies,’ not hurt feelings.” *Ocala* at 767 (Thomas, J., dissenting). Justice Thomas concluded, “This Court’s intervention has become increasingly necessary, as time has demonstrated that this problem is not going away by itself.

Even those Courts of Appeals that recognize the apparent illegitimacy of offended observer standing now find themselves bound by Circuit precedent to apply it.” *Id.* at 768.

Although the panel herein acknowledged the *Kennedy* decision and the abrogation of *Lemon*, it claimed that *Kennedy* was “not an intervening change in relevant law.” *Roake II* at 637. Thus, the panel claimed it was bound to follow circuit precedent and concluded that Plaintiffs have standing.

With this Court now having granted rehearing *en banc*, it presents this Court the opportunity to reject this aberrant doctrine for this Circuit.

II. THE DISTRICT COURT ERRONEOUSLY GROUNDED ITS DECISION ON THE UNRELIABLE *STONE V. GRAHAM* CASE AND ITS MISREADING OF *KENNEDY V. BREMERTON SCHOOL DISTRICT*.

A. The Establishment Clause Was Not Designed to Constrain the States.

Plaintiffs-Appellees’ effort to have this court deem that the passive posting of the Ten Commandments on a classroom wall constitutes an “establishment of religion” should be analyzed in view of the fact that the Establishment Clause was written to prevent the federal government giving preference for any one denomination which could override established churches existing in most of the states. At the time of ratification of the First Amendment, nine of the 13 original

colonies had established state religions, and the Establishment Clause was never designed to undo that practice. Justice Thomas has repeatedly stated that “the text and history of the [Establishment] Clause ‘resis[t] incorporation’ against the States.” *Town of Greece v. Galloway*, 572 U.S. 565, 604 (2014) (Thomas, J., concurring). Although this court will not be able to undo the damage done to states from the Establishment Clause as a result of its incorporation in *Everson v. Board of Education*, 330 U.S. 1 (1947), it can avoid compounding that error by refusing to deem the posting of the Ten Commandments an establishment of a religion.

B. The District Court Erroneously Based Its Decision on *Stone v. Graham*.

The district court asserted that “H.B. 71 is impermissible under *Stone v. Graham*,” even after admitting that *Stone* was based on the test established in *Lemon*, which has since been abrogated by the Supreme Court. The district court believed it remained “bound to follow *Stone* until the Supreme Court overrules it.” *Roake I* at 116. Thus, the district court asserted that *Stone* directly controlled this case. *Id.* The entire foundation of *Stone* was undermined when *Lemon* was overruled, but the court did not make clear how *Stone* continued to stand.

In *Kennedy*, Justice Gorsuch acknowledged that the Supreme Court had “long ago abandoned *Lemon* and its endorsement test offshoot,” citing *American Legion* and *Town of Greece*. *Kennedy* at 534. Justice Gorsuch noted that the Supreme Court had for two decades “often criticized or ignored *Lemon* and its endorsement test variation,” which has been described as an “‘ahistorical, atextual’ approach to discerning ‘Establishment Clause violations.’” *Id.* at 523, 535 n.4. He explained that *American Legion* and *Town of Greece* had replaced “*Lemon* and the endorsement test,” and “instructed [the courts] that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Id.* at 535. If any question remained thereafter, Justice Gorsuch earlier this year explained that “In *Kennedy*, this Court put to rest any question about *Lemon*’s vitality. We held that claims alleging an establishment of religion must be measured against the Constitution’s original and historical meaning, not the sensitivities of a hypothetical reasonable observer.” *Ocala* at 765 (Gorsuch, J., concurring in the denial of certiorari). Likewise, Justice Thomas referred to *Kennedy* as “our express abandonment of *Lemon*.” *Id.* at 766 (Thomas, J., dissenting from denial of certiorari).

Making the change in the direction of the Supreme Court even more clear was the fact that *Kennedy* was decided June 27, 2022, only four days after the

June 23, 2022 decision in another landmark case ordering lower courts to use that same method to interpret a different constitutional provision. In *N.Y. State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court ruled that the Second Amendment was to be understood according to the text, history, and tradition of that Amendment. The *Lemon* tests as well as any notion of interest balancing were out — the Constitution is now to be interpreted according to the scope as understood by the Framers and the Ratifiers.

C. The District Court Erroneously Based Its Decision under *Kennedy* on the State Legislature Having Chosen a Particular Version of the Ten Commandments for Posting.

As a second justification for its decision, the district court asserted that “even if *Stone* did not control, H.B. 71 would be unconstitutional under *Kennedy*....” Its reasoning is not entirely clear, but it appeared to assert that even if “posting the Ten Commandments in public-school classrooms — did fit within a broader tradition during those eras” that historical tradition would be irrelevant, because the statute specified the King James Bible’s version of the Ten Commandments would be used in classrooms. *Roake I* at 113, 117. The district court did not explain why it would have been “better” had the legislature not specified a particular version of the Ten Commandments. Would the posting

of the Ten Commandments be allowed if the decision as to the version to be used was left to the local school board, or to a principal, or to a teacher?

The premise of the district court’s argument is that different translations of the Hebrew text of the Ten Commandments were significantly different, and those differences reflected sectarian differences. Neither is true. The district court relied heavily, if not exclusively, on the Green Report (Doc. 47-2), and the testimony of “Dr. Steven K. Green which the Court heard at the hearing on October 21, 2024.” *Roake I* at 204. The district court asserted that Green’s “extensive testimony [established that] the Ten Commandments as adopted by H.B. 71 are Protestant and **religiously exclusive ... inconsistent in various ways** with the Jewish and Catholic versions,” to support the court’s declaration that “H.B. 71 is not neutral but is in fact coercive and discriminatory.” *Id.* at 210, n.22 (emphasis added).

To be sure, various versions of the decalogue are “inconsistent in various ways,” but none is meaningful. There are numbering and stylistic differences between various versions, but the substance is unchanged.³ The district court

³ See P. Oben, “[The Bible’s Fascinating Journey: Why Chapters and Verses?](#)” *Christian History Institute* (May 26, 2023) (“The first major division of the Bible into chapters came [when] Stephen Langton ... later Archbishop of Canterbury ... in the early 1200s ... divided the Old and New Testaments into chapters.... Jewish scholars had already begun dividing the Hebrew text into verses to assist with the reading and interpreting the Torah....

disregarded the fact that Green “worked for over a decade for Plaintiff’s counsel Americans United for Separation of Church and State (AUSCS)” and that demonstrated a “potential for bias.”⁴ The district court’s blind acceptance of Dr. Green’s nit-picking distinctions as the grounds to strike down a duly-enacted law brings to mind Jesus Christ’s condemnation of the “scribes and Pharisees” of his day, which he described as “blind guides, which strain at a gnat, and swallow a camel.” *Matthew* 23:24.

Dr. Green’s premise is undermined by a comparison of *Exodus* 20:1-17 of the King James Bible with the Jewish and Catholic versions, taken from the same authority cited by Green.

TEN COMMANDMENTS COMPARISON⁵

Jewish	King James Version	Roman Catholic
“I am the Lord....”	“I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage.”	“I, the LORD, am your God, who brought you out of the land of Egypt, that place of slavery.”

The first Bible to feature both chapter and verse divisions as we know them today was the Geneva Bible, published in 1560.”).

⁴ Defendants’ Supplemental Brief Regarding Expert Report and Motion to Exclude Putative Expert Testimony, Doc. 53-1 at 6.

⁵ *Adapted from* P. Finkelman, “The Ten Commandments on Courthouse Lawn and Everywhere,” 73 *FORDHAM L. REV.* 1477, 1488-92 (2005).

“You shall have no other gods beside Me.”	“Thou shalt have no other gods before me.”	“You shall not have other gods besides me.”
“You shall not make for yourself a sculptured image....”	“Thou shalt not make unto thee any graven image....”	“You shall not carve idols for yourselves in the shape of anything in the sky above or on the earth below or in the waters beneath the earth; you shall not bow down before them or worship them....”
“You shall not swear falsely....”	“Thou shalt not take the name of the LORD thy God in vain;...”	“You shall not take the name of the LORD, your God, in vain....”
“Remember the sabbath day....”	“Remember the sabbath day....”	“Remember to keep holy the sabbath day.”
“Honor your father and your mother”	“Honour thy father and thy mother....”	“ Honor your father and your mother....”
“You shall not murder”	“Thou shalt not kill.”	“You shall not kill.”
“You shall not commit adultery”	“Thou shalt not commit adultery.”	“You shall not commit adultery.”
“You shall not steal”	“Thou shalt not steal.”	“You shall not steal.”
“You shall not bear false witness....”	“Thou shalt not bear false witness against thy neighbour.”	“You shall not bear false witness against your neighbor.”

“You shall not covet....”	“Thou shalt not covet....”	“You shall not covet your neighbor’s house. You shall not covet your neighbor’s wife, nor his male or female slave, nor his ox or ass,... You shall not covet ... anything else that belongs to him.”
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Although there is an occasional word here and there translated from the original Hebrew (and subsequent Latin and Greek) into English differently (*e.g.*, “kill” versus “murder”), a comparison demonstrates the absurdity of the theory underlying the district court’s decision, which came from the testimony of an “expert” with a recognized potential for bias. These *amici* agree fully with the Defendants-Appellants that “Green’s proposed testimony is not reliable [due to his] failure to identify any external standard validating his methodology ... attempts to overrule the Supreme Court on historical questions it has already definitively asked and answered [and his] background as an advocate — including a decade as counsel for one of the impact-litigation law firms representing Plaintiffs — means his proffered opinions are not truly independent and are thus unreliable.”⁶ The district court erred, and the error it committed is obvious.

⁶ Defendants’ Supplemental Brief Regarding Expert Report and Motion to Exclude Putative Expert Testimony, Doc. 53-1 at 1.

III. COERCION IS AN ELEMENT OF ALL PUBLIC SCHOOL EDUCATION.

A. The District Court Viewed Posting the Ten Commandments as Coercive, while Ignoring the Coercive Nature of Public Schools.

The district court viewed the centerpiece of the Establishment Clause claim as alleged by Plaintiffs to be “coercion.” It states: “Most critically though, the Act’s **mandatory** practice is **coercive**. As Plaintiffs highlight, by law, parents **must** send their minor children to school and **ensure** attendance during regular school hours at least 177 days per year.” *Roake I* at 117 (emphasis added). The district court then quotes from the Complaint as follows:

Permanently posting the Ten Commandments in every Louisiana public-school classroom — rendering them **unavoidable** — unconstitutionally **pressures students into religious observance**, veneration, and adoption of the state’s favored religious scripture. It also sends the harmful and **religiously divisive** message that students who do not subscribe to the Ten Commandments — or, more precisely, to the specific version of the Ten Commandments that H.B. 71 requires schools to display — do not belong in their own school community and should refrain from expressing any faith practices or beliefs that are not aligned with the **state’s religious preferences**. And it **substantially interferes with and burdens the right of parents** to direct their children’s religious education and upbringing. [*Roake I* at 117 (emphasis added).]

Based on these allegations, the district court concludes that “‘in every practical sense,’ [plaintiffs] will be ‘compelled [to] attend[] and participat[e] in a religious

exercise’.... For these additional reasons, the Court finds that the Act violates the Establishment Clause.” *Id.*

Neither the Plaintiffs-Appellees nor the district court seem to recognize that the allegations in the Complaint against the Ten Commandments also apply to much of what occurs in government-mandated and -controlled education in public schools. All government schools routinely teach secular humanism⁷ — which most certainly is a religion — and often in an inherently coercive manner. Thus, what the district court seems to object to is neither coercion by requiring attendance at government schools, nor religious indoctrination at those schools in the form of secular humanism, but the district court objects to having a Christian perspective introduced to counter the secular humanism which dominates government schools.

B. Public Schools Were Designed for the Propagation of the Religion of “Secular” Humanism.

Indeed, beginning around 1840, those most prominent in developing the public school model did so for the very purpose of shifting the nation away from the God of the Bible. That shift has been so successful, that the very posting of

⁷ See *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961), discussed *infra*.

the Ten Commandments on a classroom wall can be considered to be out of place.

Massachusetts educator Horace Mann has been described as “the first great American advocate of public education.” To Mann, the salvation of the human race was achieved not through doctrinal religious means, but academic ones. “Our public schools are the Ark of the American Covenant,” Mann stated. “Education is our only political safety. Outside of this ark, all is deluge.”⁸ In an 1840 lecture, Mann — wittingly or not — explained the inherently societally coercive nature of his compulsory education model. “We, then, who are engaged in the sacred cause of education, are **entitled to look upon all parents as having given hostages to our cause**,” he said (emphasis added).⁹ Thus, coercion to which the district court objects has always been at the core of the public school movement, but it was designed to undermine, not to promote, the God of the Bible.

Mann’s still-moralistic secularism was quickly succeeded by the militantly secular humanism of John Dewey, perhaps the seminal figure in American public

⁸ 59 [Ohio Education Monthly](#) 650 (O.T. Corson: 1910).

⁹ H. Mann, II, Life and Works of Horace Mann at 210, M. Mann, ed. (Lee and Shepherd Publishers: 1891).

education to this day. According to Dewey biographer Henry Edmondson, “Dewey’s unrelenting attack on religion and traditional education is a conspicuous feature of his educational philosophy.” H. Edmondson, John Dewey and the Decline of American Education at 19 (ISI: 2014).

[W]ith reference to the notorious statement generally attributed to Marx, Dewey asserts that “religion is the opium of the people.” Dewey makes little attempt to veil his **hostility to Christianity** in particular.... [*Id.* (emphasis added).]

Edmondson notes that “Dewey not only rejects conventional religion, he seeks to create a kind of **alternative faith** ... nothing more than a kind of shared democratic faith guided by science.” *Id.* at 21 (emphasis added). Dewey conceived of the educator in surprisingly religious terms as something of a missionary, using the classroom as a pulpit, to replace the Christian religion with materialistic humanism. As Edmondson writes, “[g]iven these views, it is no surprise that Dewey signed the famous ‘Humanist Manifesto’ in 1933, a secularist call to arms that emphatically rejects religious faith.” *Id.* at 20.

Dewey’s good friend Charles Francis Potter, author of Humanism: A New Religion and co-signer with Dewey of the Humanist Manifesto, was still clearer in stating his intent that the public schools should actively proselytize his “new religion.” Potter wrote, “[e]ducation is thus a most powerful ally of Humanism,

and every American public school is a school of Humanism. What can the theistic Sunday school, meeting for an hour once a week, and teaching only a fraction of the children, do to stem the tide of a five-day program of humanistic teachings?”¹⁰

Modern humanists echo this great purpose of public schools as being a tool to undermine Christianity. In a 1983 article in *The Humanist* magazine, John J. Dunphy wrote:

[T]he battle for humankind’s future must be waged and won in the **public school** classroom by **teachers** who correctly perceive their role as the **proselytizers of a new faith: a religion of humanity....** These teachers must embody the same selfless dedication as the most rabid fundamentalist preachers, ... utilizing a classroom instead of a pulpit to convey humanists values in whatever subject they teach.... **The classroom must and will become an arena of conflict between ... the rotting corpse of Christianity ... and the new faith of humanism....**¹¹

The development of secular humanism as a distinctly anti-Christian religion has not escaped the attention of this Court, as 63 years ago it recognized: “Among **religions** in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical

¹⁰ D. Noebel, J. Baldwin, and K. Bywater, Clergy in the Classroom: The Religion of Secular Humanism at 40 (Summit Press: 2007) (emphasis added).

¹¹ J. Dunphy, “[A Religion For A New Age](#),” *The Humanist* 43:1 (Jan.-Feb. 1983) (emphasis added).

Culture, **Secular Humanism** and others.” *Torcaso* at 495 n.11 (emphasis added).

The district court operates from the unstated assumption that there is no problem with coercion, so long as the students are being coerced to embrace secularism and not exposed to the God of the Bible. The district court appears to be oblivious to the dominant public school religion of Secular Humanism, while displaying complete intolerance to even a passive display of Biblical truth, ruling as if the Establishment Clause’s purpose is to keep God out of the classroom, lest there be a challenge to the state educational establishment’s preferred religion of Secular Humanism.

C. Public School Teachers Routinely Teach Anti-Biblical Doctrine.

While being compelled to attend government schools, students are routinely exposed to anti-Biblical content that directly opposes the teachings of the Ten Commandments, but this is not considered coercive by the district court. Consider the following recent stories appearing in the press from different states.

New Jersey. “The New Jersey Education Association (NJEA) – the union representing 200,000 New Jersey educators – will host an event titled ‘**Drag** is

not a Crime: The Past, Present and Future of **Drag**' in its upcoming NJEA Consortium. This Consortium is set to take place November 6-7, 2025."¹²

California. A third grade class in Cupertino was forced to rate themselves on a scale of "oppression." "The teacher explained to students that they live in a 'dominant culture' of 'white, middle class, cisgender, educated, able-bodied, **Christian**, English speaker[s],' who, according to the lesson, 'created and maintained' this culture in order 'to hold power and stay in power.' Students were then asked to deconstruct their own intersectional identities and 'circle the identities that hold power and privilege' on their identity maps, ranking their traits based on the hierarchy the teacher had just explained to them. In a related assignment, students were asked to write short essays about the aspects of their identities that 'hold power and privilege,' and which do not. The students were expected to produce 'at least one full page of writing.' The presentation included a short paragraph about **transgenderism and non-binary sexuality**."¹³

¹² "[New Jersey Education Association hosting 'Drag is Not a Crime: The Past, Present, and Future of Drag' in upcoming Consortium; says 'Drag is what education is all about,'](#)" *Defending Education* (Oct. 28, 2025) (emphasis added).

¹³ "[3rd graders in Cupertino forced to deconstruct their racial identities, create identity maps and rank themselves according to their 'power and privilege,'](#)" *Defending Education* (Mar. 24, 2021) (emphasis added).

Maryland. Charles County public schools “compelled [students] to memorize and recite the **five pillars of Islam**, and write out faith statements of the religion in worksheets and quizzes. The Maryland district requires that students write out and confess the **Shahada**, the Islamic profession of faith, which states, ‘There is no god but **Allah**, and **Muhammad** is the messenger of Allah.’” The school district “does not require students to recite the 10 Commandments, the Beatitudes or *John* 3:16. The district, in fact, mandates teachers spend only one day teaching Christianity, while devoting two weeks to promoting Islam.”¹⁴ Charles County Public Schools also teach: “‘Most Muslim’s [sic] faith is stronger than the average **Christian** [sic].’ ‘**Islam**, at heart, is a peaceful religion.’ ‘**Allah** is the same God that is worshiped in **Christianity** and **Judaism**...’ ‘Muhammad (was) a businessman and trader’ who ‘forgave’ people who opposed him.’ ‘Allah is the source of authority.’ ... ‘(Muslims) acted kindly to those they conquered.’” *Id.* (emphasis added).

In *Mahmoud v. Taylor*, the Supreme Court began to show some balance in empowering parents to protect their children. The Court acknowledged that “these books impose upon children a set of values and beliefs that are ‘hostile’ to

¹⁴ “[Shariah Is Creeping Into Public School Classrooms](#),” *Investor’s Business Daily* (Feb. 3, 2016) (emphasis added).

their parents’ religious beliefs.... And the books exert upon children a psychological ‘pressure to conform’ to their specific viewpoints.” *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2339 (2025). The Court recognized that “the storybooks unmistakably convey a particular viewpoint about same-sex marriage and gender. And the Board has specifically encouraged teachers to reinforce this viewpoint and to reprimand any children who disagree.” *Id.* at 2356. The Court ruled that “the Board cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another. A classroom environment that is welcoming to all students is something to be commended, but such an environment cannot be achieved through hostility toward the religious beliefs of students and their parents.” *Id.* at 2363. However, even after the Supreme Court’s ruling in *Mahmoud* allowing some parental control, these same secular principles are taught to all students, except for those who opt out.

D. Establishment Clause Jurisprudence which Allows Public Schools to Be Intolerant of Christianity Is Deeply Flawed.

Whether intentionally or not, for 75 years, the Supreme Court has been deciding cases involving government schools, not to prevent an establishment of all religion, but rather to root out every vestige of God and the Bible from government schools. Under a long line of cases since the Establishment Clause

was incorporated in *Everson* in 1947, compulsory public schools routinely affirm some religious beliefs while disparaging others.

- In *McCollum v. Board of Education*, 333 U.S. 203 (1948), the Supreme Court stated that compulsory, tax-supported public schools could not enable sectarian groups to give religious instruction to public school students in public school buildings.
- In *Engel v. Vitale*, 370 U.S. 421 (1962), the Supreme Court ruled that students in government schools could not be required to recite an official state prayer, even if students may remain silent or be excused, and the prayer was denominationally neutral.¹⁵
- In *Abington School District v. Schempp*, 374 U.S. 203 (1963), the Supreme Court ruled that school boards may not require passages from the Bible be read or the Lord's Prayer be recited, even if students may be excused from attending or participating.¹⁶
- In *Stone v. Graham*, 449 U.S. 39 (1980), based on the since-abrogated *Lemon* test, the Supreme Court prohibited posting a copy of the Ten Commandments purchased with private contributions on the wall of school classrooms.¹⁷

¹⁵ “Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause,” the Court ruled. *Engel* at 430. “[I]t is no ... business of government to compose official prayers for any group of the American people to recite.” *Id.* at 425.

¹⁶ “Any child shall be excused from such Bible reading ... upon the written request of his parent or guardian.” *Abington* at 205. “The fact that some pupils ... might be excused ... does not mitigate the obligatory nature of the ceremony for [the state law] unequivocally requires the exercises to be held every school day.” *Id.* at 210-211.

¹⁷ “If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.... [T]his ... is not a permissible state objective under the Establishment Clause.” *Stone* at 42. “It does not matter that ... the Ten Commandments are financed by

- In *Wallace v. Jaffree*, 472 U.S. 38 (1985), the Supreme Court struck down a state law authorizing a one-minute period of silence in public schools for meditation and voluntary prayer.
- In *Edwards v. Aguillard*, 482 U.S. 578 (1987), the Supreme Court struck down a Louisiana law requiring public schools that taught the theory of evolution to also teach the theory of creation.¹⁸
- In *Lee v. Weisman*, 505 U.S. 577 (1992), a school including clergy to offer prayers at a public school graduation ceremony was found to violate the Establishment Clause.
- In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the Supreme Court struck down a policy permitting student-initiated, student-led prayer at graduations and football games, although the prayers were required to be “nonsectarian” and “non-proselytizing.”

CONCLUSION

For the foregoing reasons, this Court should reverse the district court judgment, vacate its injunction, and dismiss the case for lack of standing.

voluntary private contributions, for the mere posting of the copies ... provides the ‘official support of the State ... Government’ that the Establishment Clause prohibits....” *Id.* at 42.

¹⁸ The Court ruled that “the Act ... has the ... purpose of discrediting evolution by counterbalancing its teaching ... with the teaching of creationism.” *Id.* at 589. The Court declared that the purpose of the Establishment Clause is to ensure that “Government not intentionally endorse religion or a religious practice.” *Id.* at 587.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief *Amici Curiae* of America's Future, *et al.* in Support of Defendants-Appellants and Reversal, was made, this 12th day of November, 2025, by the Court's Case Management/ Electronic Case Files system upon the attorneys for the parties.

/s/ William J. Olson

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

IT IS HEREBY CERTIFIED:

1. That the foregoing Brief *Amici Curiae* of America's Future, *et al.* in Support of Defendants-Appellants and Reversal complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 5,626 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), as well as Circuit Rule 32.1, because this brief has been prepared in a proportionally spaced typeface using WordPerfect version 21.0.0.194 in 14-point CG Times.

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Dated: November 12, 2025