

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, ET AL.,

Plaintiffs-Appellees,

v.

CADE BRUMLEY, IN HIS OFFICIAL CAPACITY AS THE LOUISIANA
SUPERINTENDENT OF EDUCATION, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court for the
Middle District of Louisiana, No. 3:24-cv-517 (deGravelles, J.)

**MOTION FOR LEAVE TO FILE BRIEF OF LOUISIANA STATE
LEGISLATORS AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

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November 12, 2025

Counsel for Amici Curiae

Amici Speaker Pro Tempore of the Louisiana House of Representatives Mike Johnson, Representative Dodie Horton, and Senator Adam Bass request leave to file a brief as *amici curiae* in support of Appellants, according to this Court’s practice for en banc proceedings.

In 2024, the Louisiana Legislature enacted a law requiring public schools to display the Ten Commandments in each classroom. *See* La. R.S. §17:2124 (2024). Each jurisdiction has wide discretion to determine “[t]he nature of the display.” §§17:2124(B)(1), (B)(4). But each display must include a “context statement” about the history of the Ten Commandments in American public education, §17:2124(B)(3), and H.B. 71 encourages schools to consider displaying other foundational documents such as “the Mayflower Compact, the Declaration of Independence, and the Northwest Ordinance” as well. §§17:2124(B)(1), (B)(4).

Less than a week after Governor Landry signed H.B. 71 into law, a group of parents and their minor children sued, alleging that the law violated the Free Exercise and Establishment Clauses. The district court held that H.B. 71 was unconstitutional on its face and preliminarily enjoined the law.

Rather than acknowledging that the law served to “educate and inform the public as to the history and background of American and Louisiana law,” the court held that H.B. 71 violated the Establishment Clause because the law’s real purpose was “overtly religious.” *Roake v. Brumley*, 756 F. Supp. 3d 93, 206 n.20, 170 (M.D. La. 2024). In doing so, the district court wrongly focused on cherry-picked statements by a handful of

individual legislators to infer a religious purpose. And although the Supreme Court has recognized secular purposes for the Ten Commandments, including their “historical significance as one of the foundations of our legal system” and their role in teaching “civic morality,” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 53 (2019); *Van Orden v. Perry*, 545 U.S. 677, 701 (2005), the district court concluded that “any purported secular purpose” of H.B. 71 was “not sincere” and “a sham.” *Roake*, 756 F. Supp. 3d at 170.

Amici are members of the Louisiana Legislature who passed H.B. 71. They believe that the Ten Commandments are an important part of our nation’s history and tradition and that displaying them in Louisiana schools fosters civic education and engagement. *Amici* thus have an important interest in this case.

Appellants have consented to the filing of this motion. As of filing, Appellees have not responded to *Amici*’s request.

For these reasons, *Amici* request that the Court grant the motion for leave to file the attached brief in support of Appellants.

Respectfully submitted,

/s/ Tiffany H. Bates

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Dated: November 12, 2025

CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27 because it contains 421 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word in 14-point Garamond font.

Dated: November 12, 2025

/s/ Tiffany H. Bates

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

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/s/ Tiffany H. Bates

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CERTIFICATE OF INTERESTED PERSONS

Counsel certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

1. Michael Johnson, *Amicus Curiae*
2. Dodie Horton, *Amicus Curiae*
3. Adam Bass, *Amicus Curiae*
4. Thomas R. McCarthy, Counsel for *Amicus Curiae*
5. Tiffany H. Bates, Counsel for *Amicus Curiae*
6. Consovoy McCarthy PLLC, Counsel for *Amicus Curiae*
7. Antonin Scalia Law School Supreme Court Clinic, Counsel for *Amicus Curiae*

Dated: November 12, 2025

/s/ Tiffany H. Bates

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INTEREST OF *AMICI CURIAE*¹

Amici are Speaker Pro Tempore of the Louisiana House of Representatives Mike Johnson, Representative Dodie Horton, and Senator Adam Bass—members of the Louisiana Legislature who passed H.B. 71. *Amici* believe that the Ten Commandments are an important part of our nation’s history and tradition and that displaying them in Louisiana schools fosters civic education and engagement. *Amici* thus have an important interest in this case.

¹ Counsel for *amici* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2024, the Louisiana Legislature enacted a law requiring public schools to display the Ten Commandments in each classroom. *See* La. R.S. §17:2124 (2024). Each jurisdiction has wide discretion to determine “[t]he nature of the display.” §§17:2124(B)(1), (B)(4). But each display must include a “context statement” about the history of the Ten Commandments in American public education, §17:2124(B)(3), and H.B. 71 encourages schools to consider displaying other foundational documents such as “the Mayflower Compact, the Declaration of Independence, and the Northwest Ordinance” as well. §§17:2124(B)(1), (B)(4).

Less than a week after Governor Landry signed H.B. 71 into law, a group of parents and their minor children sued, alleging that the law violated the Free Exercise and Establishment Clauses. The district court held that H.B. 71 was unconstitutional on its face and preliminarily enjoined the law.

Rather than acknowledging that the law served to “educate and inform the public as to the history and background of American and Louisiana law,” the court held that H.B. 71 violated the Establishment Clause because the law’s real purpose was “overtly religious.” *Roake v. Brumley*, 756 F. Supp. 3d 93, 206 n.20, 170 (M.D. La. 2024). In doing so, the district court wrongly focused on cherry-picked statements by a handful of individual legislators to infer a religious purpose. And although the Supreme Court has recognized secular purposes for the Ten Commandments, including their “historical significance as one of the foundations of our legal system” and their role in teaching

“civic morality,” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 53 (2019); *Van Orden v. Perry*, 545 U.S. 677, 701 (2005), the district court concluded that “any purported secular purpose” of H.B. 71 was “not sincere” and “a sham.” *Roake*, 756 F. Supp. 3d at 170.

Amici write separately to highlight why the district court’s selective parsing of the legislative history is misplaced and to explain that H.B. 1 was enacted to foster civil education. The en banc Court should reverse the decision below.

ARGUMENT

I. The district court’s selective parsing of the legislative history is misplaced.

The Establishment Clause ensures that the government does not “‘make a religious observance compulsory.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022) (citation omitted). “Government ‘may not coerce anyone to attend church,’ nor may it force citizens to engage in ‘a formal religious exercise.’” *Id.* (citations omitted). But the Establishment Clause does not “compel the government to purge from the public sphere all that in any way partakes of the religious.” *Van Orden*, 545 U.S. at 699 (Breyer, J., concurring in the judgment). For decades, the Supreme Court said that determining an Establishment Clause violation required “an examination of a law’s purposes, effects, and potential for entanglement with religion.” *Kennedy*, 597 U.S. at 534. But rather than “bring order and predictability to Establishment Clause decisionmaking,” *Am. Legion*, 588 U.S. at 48, this doctrine (the *Lemon* test) “‘invited chaos’ in lower courts, led to ‘differing results’ in materially identical cases, and created a ‘minefield’ for legislators,” *Kennedy*, 597 U.S. at 534 (citation omitted). Thus three years ago, in *Kennedy v. Bremerton*,

the Supreme Court officially abandoned *Lemon* and its purpose prong. *See* 597 U.S. at 534 (explaining that “this Court long ago abandoned *Lemon*”); *see also Groff v. DeJoy*, 600 U.S. 447, 460 (2023) (noting that *Lemon* has been “abrogated”).

Yet the district court tried to resurrect *Lemon*’s purpose test here. Relying on *Stone v. Graham*, 449 U.S. 39 (1980), the court held that H.B. 71 violated the Establishment Clause because the “pre-eminent purpose” of “posting the Ten Commandments on schoolroom walls” was—in the court’s view—“plainly religious.” *Roake*, 756 F. Supp. 3d at 161-69. In doing so, the district court wrongly focused on cherry-picked statements by a handful of individual legislators to infer a religious purpose—even though the bill passed 82-19 in the House and 30-8 in the Senate. And even though the Supreme Court has recognized secular purposes for the Ten Commandments, including their “historical significance as one of the foundations of our legal system” and their role in teaching “civic morality.” *Am. Legion*, 588 U.S. at 53; *Van Orden*, 545 U.S. at 701.

But the Supreme Court abandoned *Lemon* for a reason. From the start, *Lemon*’s purpose prong had “no basis in the history” of the Establishment Clause, was “difficult to apply,” and “yield[ed] unprincipled results.” *Wallace v. Jaffree*, 472 U.S. 38, 112 (1985) (Rehnquist, J., dissenting). The purpose prong is particularly unworkable for “words or symbols with religious associations,” where “identifying their original purpose” is “especially difficult” and judges draw “different inferences” from the same evidence. *Am. Legion*, 588 U.S. at 51-52. And it is “almost always an impossible task” to “discer[n] the subjective motivation” of individual legislators. *Edwards v. Aguillard*, 482 U.S. 578, 636-

40 (1987) (Scalia, J., dissenting). After all, “[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.” *United States v. O’Brien*, 391 U.S. 367, 384 (1968). Thus to consider the “motives of the legislators who supported” the law is “a perilous enterprise.” *Edwards*, 482 U.S. at 612, 638 (Scalia, J., dissenting).

This case exemplifies the problem with deriving a law’s “purpose” from individual legislators’ statements. Rather than consider that H.B. 71 on its face simply makes the Ten Commandments—a foundational document of American law—available to Louisiana students, the district court selectively parsed the legislative history looking for a “religious purpose.” But the legislative record as a whole shows that the Legislature enacted H.B. 71 to promote civic education.

To start, Representative Horton (the bill’s primary sponsor) explained that requiring a Ten Commandments display “is not preaching a Christian religion, it’s not preaching any religion.” House Education Committee Hearing (Apr. 4, 2024) at 14:34. Instead, it aims “to recognize the importance of the Ten Commandments in American history and its development of western philosophical jurisprudence,” describing the Commandments as “one of the earliest written expressions of law to be incorporated in the American legal system.” *Id.* at 3:41, 4:31. Ronald Hackenberg, a witness called by co-sponsor Senator Bass, emphasized that such displays would enable youth “to know where they originated” and teach “the moral authority of our American system.” *Id.* at 8:54. Likewise, Representative Carlson appealed to the Commandments’ “historical

nature” and the “immense role it played in the foundation of our nation.” *Id.* at 21:32. And Representative Edmonston clarified the bill concerns “morality and the history of our nation,” not “religion.” *Id.* at 27:01; *id.* at 26:50 (“If a child is looking around and they see, do not murder, do not steal, I mean how could that be harmful? It really doesn’t have a lot to do, to me, with religion, as much as it has to do with morality and the history of our nation.”).

Even the bill’s critics acknowledged the Ten Commandments’ legal significance in American law. Representative Freiberg admitted that “maybe five or six” of the Commandments form the basis of American law. *Id.* at 13:14. But H.B. 71’s opponents seemed more concerned with offending non-Christian students, rather than seriously suggesting that the bill might violate the Establishment Clause. For example, Representative Freiburg suggested that the statement “Thou shall not make to thyself any graven images” might offend Buddhist students. *Id.* at 19:30. But the Supreme Court has rejected such concerns. Although some may “take offense to certain forms of speech or prayer they are sure to encounter in a society where those activities enjoy such robust constitutional protection,” offense “does not equate to coercion.” *Kennedy*, 597 U.S. at 538-39 (citation omitted). Indeed, the Establishment Clause “does not include anything like a ‘modified heckler’s veto, in which ... religious activity can be proscribed’ based on ‘perceptions’ or ‘discomfort.’” *Id.* at 534.

The district court wrongly relied on certain out-of-context statements. It homed in on Representative Horton’s comment that children need to learn “what God says is

right and what He says is wrong.” *Roake*, 756 F. Supp. 3d at 169. But immediately preceding that remark, Representative Horton tied the Ten Commandments to the Declaration of Independence’s reference to the “laws of nature and nature of God,”—a historic reference that reflects our nation’s founding principles. *See* House Education Committee Hearing (Apr. 4, 2024) at 4:40. And while the district court called the Legislature “intolerant,” quoting Representative Horton as saying “I’m not concerned with an atheist. I’m not concerned with a Muslim,” *Roake*, 756 F. Supp. 3d at 200, it took that quote completely out of context. Representative Horton was responding to a hypothetical about atheist or Muslim *teachers* being asked by students to *explain* the Ten Commandments to students. House Education Committee Hearing (Apr. 4, 2024) at 19:42. Her answer was that the bill was “not concerned” with those scenarios because H.B. 71 imposes no teaching requirements, only passive displays. *See* House Reg. Sess. (Apr. 10, 2024), at 44:59-48:18. Indeed, H.B. 71 does not require teachers to teach the Ten Commandments, and it has nothing at all to say about teacher responses to any questions.

Representative Taylor’s comments were also mischaracterized as promoting worship when she remarked: “I really believe that we are lacking in direction. A lot of people, their children, are not attending churches or whatever ... So, what I’m saying is, we need to do something in the schools to bring people back to where they need to be.” *Roake*, 756 F. Supp. 3d at 169. But Representative Taylor continued by making it clear that the bill’s sponsors were “not trying to make [H.B. 71] partial to any one

religion,” and that she “[didn’t] want to impose [her beliefs] on anyone else.” House Education Committee Hearing (Apr. 4, 2024) at 15:29. Read fairly, Representative Taylor’s concern that society “lack[ed] direction” referenced the need for increased civic morality.

At bottom, both H.B. 71 on its face and the weight of the legislative history show that the Legislature acted to “highlight the [Ten] Commandments’ role in shaping civic morality.” *See Am. Legion*, 588 U.S. at 53 (citation omitted). The district court’s selective parsing of the legislative record is misplaced.

II. Displaying the Ten Commandments in public schools is consistent with the Establishment Clause.

H.B. 71 is not an establishment of religion. Long past are the days when a court simply asks itself if it “*feels*” that a display “‘endorses’ religion.” *Shurtleff v. City of Boston*, 596 U.S. 243, 279 (2022) (Gorsuch, J., concurring in the judgment). Instead, the line “between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.” *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 294 (1963). To determine an Establishment Clause violation, courts must look to “historical practices and understandings.” *Kennedy*, 597 U.S. at 510 (citation omitted). This historical inquiry is objective, relying on “a body of evidence susceptible of reasoned analysis,” although it requires “nuanced judgements about which evidence to consult and how to interpret it.” *McDonald v. City of Chicago*, 561 U.S. 742, 803-04 (2010) (Scalia, J., concurring).

To determine whether a particular government practice is “compulsory,” courts look to the following six “hallmarks” of government “coerc[ion]”: (1) control over church doctrine; (2) mandated church attendance; (3) punishment of “dissenting churches and individuals”; (4) restriction of political participation by dissenters; (5) financial support for an “established church”; and (6) use of a church for civil functions, often via monopoly. *See Shurtleff*, 596 U.S. at 285-86 (Gorsuch, J., concurring in the judgment). “[T]o prevail on [an] Establishment Clause claim, [the plaintiff] must show that the [defendant’s action] resembles one of these hallmarks of religious establishment.” *Hilsenrath ex rel. C.H. v. Sch. Dist. of Chathams*, 136 F.4th 484, 491 (3d Cir. 2025).

H.B. 71 implicates no hallmarks of an establishment. It exerts no control over church doctrine, mandates no church attendance, punishes no dissenters, restricts no political participation, supports no established church, and grants no church monopoly over civil functions. It simply makes the Ten Commandments—a document the Supreme Court has recognized as “one of the foundations of our legal system,” *Am. Legion*, 588 U.S. at 53—available to Louisiana students. As the State has explained, students may “engage with or ignore” the display “as they wish.” Supp. App. Br. at 48.

In fact, H.B. 71 falls squarely within our nation’s history and tradition by promoting civic engagement. “[W]ithout exception,” our nation’s Framers believed that the “only legitimate purpose of government” was “to secure rights whose origin is antecedent to all charters of human or positive laws.” Harry Jaffa, *Original Intent and the Framers of the Constitution: A Disputed Question* 34-35 (1994). These rights are “not

simply made up by humans but rather part of an objective moral order, present in the universe and accessible to human reason.” David M. Adams, *Philosophical Problems in the Law* 19 (2d ed. 1996). The Declaration of Independence acknowledged the “self-evident” truth that human beings are “endowed by their Creator with certain unalienable rights” that governments “are instituted among men” to protect. Declaration of Independence ¶2 (U.S. 1776); *see also* John Locke, *The Second Treatise on Civil Government* §63 (1689).

But for our nation to endure, the Founders knew that an informed citizenry was required. As Thomas Jefferson wrote in his *Notes on the State of Virginia*, “Every government degenerates when trusted to the rulers [] alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree.” Thomas Jefferson, *Notes on the State of Virginia* (Boston, Lilly & Wait 1832). Jefferson thus urged states to “preach ... a crusade against ignorance” by teaching our founding principles. Thomas Jefferson to George Wythe, Aug. 13, 1786, in *The Papers of Thomas Jefferson*, vol. 10, 243-45 (Julian P. Boyd ed., Princeton Univ. Press 1954).

Requiring schools to display the Ten Commandments operates squarely within this tradition. Far from establishing or favoring a religion, it presents a historical document whose core prohibitions against murder, theft, and false witness mirror the qualities necessary for civil society to flourish. Although the Ten Commandments were originally associated with Christianity and Judaism, their principles are affirmed across

many faith traditions, and “secular motivations [came to] play[] a part in the proliferation of Ten Commandments” displays across the United States. *Am. Legion*, 588 U.S. at 53-54. H.B. 71 fits comfortably within this tradition. It educates the youth about the moral foundations of liberty and reinforces the principles that sustain a free society. The en banc court should thus reverse the decision below.

CONCLUSION

For these reasons, the Court should reverse the district court’s judgment.

Respectfully submitted,

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Dated: November 12, 2025

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/s/ Tiffany H. Bates

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