

No. 24-30706

In the United States Court of Appeals for the Fifth Circuit

DARCY ROAKE, REVEREND, ON BEHALF THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN, ET AL.,

Plaintiffs-Appellees,

v.

CADE BRUMLEY, IN HIS OFFICIAL CAPACITY AS THE LOUISIANA STATE 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, Hon. John W. deGravelles

***EN BANC AMICUS* BRIEF OF THE ROBERSTON CENTER
FOR CONSTITUTIONAL LAW IN SUPPORT OF
DEFENDANTS-APPELLANTS AND REVERSAL**

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

No. 24-30706

Roake, et al. v. Brumley, et al.

Pursuant to 5th Cir. R. 29.2, the undersigned counsel of record hereby certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those listed in the briefs of the parties, 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.

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In accordance with Federal Rule of Appellate Procedure 26.1, *amicus curiae* Robertson Center for Constitutional Law states that it is not publicly traded and has no parent corporations. No publicly traded corporation owns 10% or more of *amicus*.

/s/ Laura B. Hernandez

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IDENTITY AND INTEREST OF AMICUS CURIAE¹

The Robertson Center for Constitutional Law (Center) is an academic center within the Regent University School of Law. Established in 2020, the Center pairs scholarship and advocacy to advance first principles in constitutional law, including limited government, separation of powers, religious liberty, and the rule of law. The Center regularly represents organizations of various faith traditions that support religious freedom, conscience rights, and the sanctity of human life.

This brief explains that Louisiana’s law, H.B. 71, which requires every public-school classroom to display the Ten Commandments in large, legible font as the “central focus” of a framed poster, is constitutional under a two-step framework grounded in *Kennedy v. Bremerton School District*, 597 U.S. 507, 535 (2022) and its predecessor cases.

INTRODUCTION

In *Kennedy v. Bremerton School District*, the Supreme Court formally abandoned the *Lemon v. Kurtzman*, 403 U.S. 602 (1971), framework and instructed that the Establishment Clause must be interpreted by “reference to historical practices and understandings.” 597 U.S. 507, 535 (2022). This approach was not newly minted in *Kennedy* but a reaffirmation of a trajectory that had been developing

¹ The parties have consented in writing to the Center’s brief. No counsel for a party in this case authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

for nearly four decades. *See Marsh v. Chambers*, 463 U.S. 783, 787–88 (1983); *Van Orden v. Perry*, 545 U.S. 677, 689–90 (2005) (plurality); *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014); *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 60–63 (2019).

Yet the panel and district court gave little more than lip service to that mandate. Rather than analyzing whether H.B. 71 aligns with the nation’s historical practices concerning religious displays, the panel and district court relied primarily on *Stone v. Graham*, 449 U.S. 39 (1980), a summary disposition firmly rooted in *Lemon*’s now-abandoned reasoning. *See Roake v. Brumley*, 141 F.4th 614 (5th Cir. 2025); 756 F. Supp. 3d 93, 115 (M.D. La. 2024). These decisions reflect a fundamental misunderstanding of current Establishment Clause doctrine.

Foremost among the courts’ errors is continued reliance on *Stone v. Graham*. *Kennedy* was unequivocal: *Lemon*-based cases are no longer good law. *See Kennedy*, 597 U.S. at 510, 534–36. The Court rebuked the Ninth Circuit for following a *Lemon*-era school-prayer case, *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), which held that student-led prayer at football games violated the “endorsement” test. *Id.* at 541–42. The Supreme Court criticized the Ninth Circuit for “overlook[ing]” what was “apparent”: that *Lemon* and its “offshoot” endorsement test had been “abandoned long ago.” *Id.* at 534, 536 (quoting *Am. Legion*, 588 U.S. at 49). As the *Kennedy* dissent acknowledged, the decision

“overrul[ed] *Lemon* entirely and in all contexts.” *Id.* at 572 (Sotomayor, J., dissenting). By relying on *Stone*, the panel and district court perpetuated the very error *Kennedy* sought to correct.

The courts’ missteps did not end there. Both courts conducted a superficial and incomplete historical inquiry. The panel made no independent effort to evaluate H.B. 71 under the historical-practice approach, instead “find[ing] no error” in the district court’s reasoning, which merely quoted pre-*Kennedy* cases without connecting them to the required historical analysis. *See Roake*, 141 F.4th at 646. They also disregarded Justice Gorsuch’s guidance in *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022), which outlined how courts should identify the “historical hallmarks of an establishment of religion.”

The finger-pointing, however, cannot rest solely on the panel and district court. *Kennedy* offered only a broad directive to consider “historical practices and understandings,” without detailing how that analysis should unfold. *See Kennedy*, 597 U.S. at 535–36. This brief attempts to fill in the gaps by offering a two-step framework for applying *Kennedy*’s command. Step One asks whether the challenged practice implicates any of the traditional hallmarks of an established religion identified in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022).² If none are present,

² In this respect, the Center agrees with the State that the *Shurtleff* hallmarks are an indispensable component of the proper *Kennedy* analysis.

the practice is presumed constitutional. Step Two tests that presumption against history using the “relevantly similar” standard articulated in *United States v. Rahimi*, 602 U.S. 680 (2024). When no hallmarks are implicated, courts should uphold practices that are *relevantly similar* to founding-era traditions; when hallmarks are present, the government must identify a much closer historical analogue to justify the practice.

Applying this proposed framework confirms that H.B. 71 is constitutional. The law implicates none of the six hallmarks of an establishment: it coerces no one, punishes no one, provides no financial support to religion, and delegates no civil power to any church. The display is passive, government-authored, and imposes no burden on dissenters. Moreover, founding-era practices confirm that public acknowledgments of religious texts as a source of moral and civic education were common and uncontroversial. Under *Kennedy*, that tradition affirms—rather than undermines—the constitutionality of H.B. 71. This Court should therefore reject *Stone*’s outdated reasoning and hold that Louisiana’s law comports with the original meaning and historical understanding of the Establishment Clause.

ARGUMENT

I. THE PANEL AND DISTRICT COURT NODDED AT *KENNEDY* AND REVIVIFIED *LEMON*.

Following the “Janus-like”³ character of the Supreme Court’s Establishment Clause jurisprudence before *Kennedy*, the panel and district court analyzed this case primarily under the defunct *Lemon* secular-purpose test and only superficially under the controlling *Kennedy* historical practices and understandings test. *See Roake v. Brumley*, 141 F.4th 614, 639–46 (5th Cir. 2025); 756 F. Supp. 3d 93, 116–18 (M.D. La. 2024). In short, the panel and district court misunderstood the post-*Kennedy* landscape by clinging to *Stone*’s *Lemon*-era framework instead of conducting an independent historical analysis.

A. The Panel’s and District Court’s Erroneous Reliance on *Stone*

The most aggressive application of *Lemon* came in *Stone v. Graham*, a short per curiam opinion that struck down a Kentucky statute requiring the posting of the Ten Commandments in every public-school classroom. 449 U.S. 39, 42–43 (1980) (per curiam). Dispensing with oral argument and any real examination of legislative context, the *Stone* Court declared the law unconstitutional under *Lemon*’s purpose prong. *See id.* at 47 (Rehnquist, J., dissenting). The majority dismissed the legislature’s stated secular justification—that the Commandments were part of the

³ *See Van Orden v. Perry*, 545 U.S. 677, 683 (2005) (plurality) (noting that, like the two-faced Roman god, Janus, the Court’s Establishment Clause cases pointed in opposite directions).

nation’s cultural and legal heritage—even though the display was privately funded and accompanied by an explanatory note. For critics, *Stone* exemplifies *Lemon*’s tendency to invalidate religious references on the most minimal record. Yet *Stone*’s deficiencies extend beyond its superficial application of *Lemon*.

As a preliminary matter, the panel and district court ignored that *Stone* was decided without briefing or oral argument and is therefore of questionable precedential value, even apart from its reliance on *Lemon*. See, e.g., *Hohn v. United States*, 524 U.S. 236, 251 (1998) (noting that the Court is “less constrained to follow precedent” rendered without full briefing or argument); *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 180–81 (1979) (summary dispositions have “considerably less precedential value” than merits decisions).

Despite recognizing that *Kennedy* “set aside” *Lemon*, the panel and district court sought to justify their reliance on *Stone* by invoking *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989). See *Roake*, 141 F.4th at 642; 756 F. Supp. 3d at 165. *Rodriguez* held that when one of the Supreme Court’s precedents “has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls.” *Rodriguez de Quijas*, 490 U.S. at 484. *Santa Fe*, an Establishment Clause case about prayer at school football games, would certainly qualify as a case “of direct application” to *Kennedy*. See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290

(2000). Yet, in chiding the Ninth Circuit for following the *Lemon*-based precedent of *Santa Fe*, the *Kennedy* Court unambiguously directed lower courts not to apply *Lemon* in any context, even when a *Lemon*-based precedent appears to have direct application in a case. 597 U.S. at 535–36, 572.

The lesson is clear: when the doctrinal foundation of a case has been expressly and unambiguously abandoned, lower courts are to treat it as not controlling. To do otherwise elevates form over substance.⁴

B. The Panel and District Court Punted on the Application of *Kennedy*

Relying almost exclusively on *Stone*, the panel and district court treated their obligation under *Kennedy* as mere a formality. *Roake*, 141 F.4th at 645; 756 F. Supp. 3d at 165. The panel and district court dismissed the guidance of Justice Gorsuch, the author of *Kennedy*, offered in *Shurtleff v. City of Boston*, 596 U.S. 243, 285–86 (2022) (Gorsuch, J., concurring). In *Shurtleff*, Justice Gorsuch recommended that the historical practices and understandings approach begin with a focus on the “historical hallmarks of an establishment of religion.” *Id.* at 285; *see supra* p. 3. Rather than engaging with those historically grounded criteria, the panel and district court focused on what *Kennedy* *did not* explicitly say, instead of applying what it

⁴ When the Supreme Court wishes to preserve the precedential force of earlier cases after adopting a new analytical framework, it knows how to do so. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411–12 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), but expressly leaving untouched its prior cases relying on *Chevron* and stating that such decisions were still subject to “statutory stare decisis”).

unmistakably held. *See Roake*, 141 F.4th at 646 (explaining that *Kennedy* did not expressly adopt the *Shurtleff* factors); 756 F. Supp. 3d at 189 (“*Kennedy* did not limit Establishment Clause claims to Justice Gorsuch’s six hallmarks found in his *Shurtleff* concurrence.”). These statements do not justify a complete disregard of what is clearly authoritative guidance on the application of the history practice approach.

Reflecting this misunderstanding, the panel made no independent effort to evaluate the constitutionality of H.B. 71. Instead, it simply “found no error” in the district court’s reasoning, which consisted of quotes from various pre-*Kennedy* cases, with no explanation of how those quotes related to the historical practices and understandings analysis. *See, e.g.*, 756 F. Supp. 3d at 190 (asserting that “sectarian” practices, i.e., those that “denigrat[ed] nonbelievers, threaten[ed] damnation, or preach[ed] conversion,” fell outside tradition) (quoting *Town of Greece*, 572 U.S. at 583); *id.* at 191 (emphasizing that religious expression in public schools demands “special caution” because of “the compulsory nature of attendance” and “the impressionability of the young”) (quoting *Van Orden*, 545 U.S. at 703 (Breyer, J., concurring)).

The district court went even further, deeming H.B. 71 inherently coercive simply because it applied in public school classrooms and involved young, impressionable students. *Id.* at 193. Rather than pointing to any actual compulsion,

the district court cited legislators’ statements expressing hope that students might reflect on and adopt the values conveyed by the Ten Commandments. *Id.*

At bottom, the panel’s and district court’s half-hearted historical inquiry was little more than a rebranded version of *Lemon*’s purpose-and-effect analysis, which served primarily to rationalize following *Stone*. It is thus clear that both the court below and the panel evaded *Kennedy*’s directive. The following section provides a proposed framework for how to implement *Kennedy* faithfully when analyzing a law like H.B. 71.

II. A TWO-STEP ANALYTICAL FRAMEWORK GROUNDED IN *KENNEDY*.⁵

Kennedy directs courts to conduct an individualized historical inquiry. Properly understood, that inquiry proceeds in two steps: (1) identify the hallmarks of an establishment as outlined in *Shurtleff*, 596 U.S. 243, 285–86 (2022); and (2) situate the challenged practice within its historical context. *See* Christian B. Edmonds, *Supplication and Separation: The Establishment Clause After Kennedy*, 94 Geo. Wash. L. Rev. Arguendo 21, 27–31 (2025).

⁵ The following sections are derived from two law review articles: Christian B. Edmonds, *Chipping Away at Stone: Rethinking the Establishment Clauses After Kennedy*, 46 Pace L. Rev. (forthcoming 2026) and Christian B. Edmonds, *Supplication and Separation: The Establishment Clause After Kennedy*, 94 Geo. Wash. L. Rev. Arguendo 21 (2025).

A. Step One: Hallmarks as Presumptive Guideposts

The *Shurtleff* factors provide a concrete baseline for determining when government action crosses the line into establishing religion. The hallmarks of an establishment include government actions, such as: (1) controlling church doctrine and leadership; (2) mandating church attendance under threat of punishment; (3) punishing dissenting churches or individual religious practices; (4) restricting political participation by religious dissenters; (5) providing financial support to one church over others; and (6) assigning civil functions to a church, often by granting it a monopoly over certain duties. *Shurtleff*, 596 U.S. at 285–86. The first four hallmarks reflect forms of direct coercion, such as forced religious observance or punishment for dissent. *Id.* The last two involve preferential financial support or the delegation of civil authority to religious bodies. *Id.* Together, they identify the core features that historically defined an established church.

If any one of these hallmarks are present, the government action should be presumed to violate the Establishment Clause. If none are present, the action should be presumed constitutional. Edmonds, *Supplication and Separation*, *supra*, at 28. But the analysis cannot end there. The Court’s repeated focus on history and tradition does not invite judges to treat *Shurtleff*’s list as a mere checklist. Accordingly, Step Two tests those presumptions against historical practice.

B. Step Two: Historical Analogues and Relevantly Similar Practices

When a government action is presumed constitutional, the supporting historical evidence must be “relevantly similar” to the current practice, not necessarily a precise match. This standard is drawn from *United States v. Rahimi*, 602 U.S. 680, 692 (2024). There, the Court evaluated a statute, 18 U.S.C. § 922(g)(8), prohibiting individuals subject to certain domestic violence restraining orders from possessing firearms. *Id.* at 684–86. Writing for the majority, Chief Justice Roberts rejected the notion that modern laws must have a precise “historical twin.” *Id.* at 692. He reasoned that such a rigid requirement would absurdly confine the Second Amendment to muskets and sabers—an interpretation clearly at odds with its intended scope. *Id.* at 691–92. Instead, Chief Justice Roberts emphasized that contemporary regulations must reflect the underlying *principles* of the Second Amendment. *Id.* at 692. Put differently, courts must ask whether the *how* (the burden imposed) and the *why* (the justification for it) are similar:

For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, “it still may be analogous enough to pass constitutional muster.”

Id. (quoting *Bruen*, 597 U.S. at 30).

The Court held § 922(g)(8) fit comfortably within a longstanding tradition of laws designed to prevent dangerous individuals from misusing firearms. *Id.* at 700. Historical surety laws—restrictions on carrying weapons to terrorize the public—and other measures aimed at preserving the King’s peace exemplified this tradition. *Id.* at 693–98. Crucially, both the *how* and *why* of the historical practices aligned with § 922(g)(8). The measures imposed only temporary restrictions tied to a specific threat, rather than indefinite disarmament. *Id.* at 699. And the justification was to disarm those who pose a credible danger to others. *Id.* at 698. This context, the Chief Justice concluded, affirmed the government’s authority to regulate firearm possession in service of physical safety. *Id.* at 698–99.

This framework translates naturally into the Establishment Clause. This Court should ask whether H.B. 71’s requirement is “relevantly similar” to founding-era traditions in both its reason and means. The reason inquiry considers *why* the government adopted the practice. Was the purpose to promote civic virtue, to foster moral formation, or to acknowledge the formative role of religion in the nation’s legal and cultural heritage? These were common justifications in the founding era for religious imagery in public spaces. *See infra* Section II.D. The means inquiry considers *how* the government pursued that purpose. Did it employ passive displays, symbolic acknowledgments, or educational references—mechanisms that teach but

never coerce? Or did it adopt measures resembling mandatory indoctrination or sectarian control?⁶

This analogy-based method does not apply if the government action resembles one of the *Shurtleff* hallmarks. In that setting, courts should presume that the law is unconstitutional. Edmonds, *Supplication and Separation*, *supra* at 30. To overcome that presumption, the government must present strong historical evidence showing the practice falls within a well-established and accepted tradition. *Id.* In these situations, the historical analogue must be especially similar—more of a “twin” than a “cousin.” See *Rahimi*, 602 U.S. at 739 (Barrett, J., concurring). This approach mirrors broader First Amendment principles when a law affects the fundamental rights of religion or speech. See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993) (“A law failing to satisfy [the neutrality and general applicability] requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.”); *Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004) (“To guard against that threat the Constitution demands

⁶ The Court’s recent decision in *Mahmoud v. Taylor* illustrates the importance of this distinction. 145 S. Ct. 2332 (2025). There, the Court struck down a public-school curriculum requiring children to read LGBTQ+ inclusive storybooks without parental opt-out rights. *Id.* at 2341–42. The books, the Court noted, were “unmistakably normative” and “designed to present certain values and beliefs as things to be celebrated, and certain contrary values and beliefs as things to be rejected.” *Id.* at 2353. Thus, the program violated parents’ Free Exercise rights because it was *coercive indoctrination*, not neutral education. See *id.* at 2355–56.

By contrast, most modern religious imagery in public settings is not intended to garner religious adherents but to serve as a passive acknowledgment of the texts and traditions that have long shaped Anglo-American law and civic virtue. See *Van Orden v. Perry*, 545 U.S. 677, 689–90 (2005) (citing acknowledgements by all three branches of the federal government of “the role the Decalogue plays in America’s heritage”) In this sense, they are “relevantly similar” to the founding-era practice of using religious texts for civic formation, but without coercion or indoctrination.

that content-based restrictions on speech be presumed invalid, and that the Government bear the burden of showing their constitutionality.”) (citation omitted); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535–36 (2022) (“The line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers.”) (citations omitted). Thus, when government action touches any of the *Shurtleff* hallmarks, courts should presume unconstitutionality and demand the most exacting historical justification before sustaining the practice.

The above framework provides a principled method for distinguishing coercive establishments from non-coercive acknowledgments. Step One screens out practices that replicate the hallmarks of religious establishment. Step Two ensures modern practices align in both purpose and method with founding-era analogues. Together, these steps make *Kennedy*’s call for history-and-tradition analysis administrable. When applied to H.B. 71, they demonstrate that the statute comports with the Establishment Clause.

C. Under Step One, H.B. 71 Implicates None of the *Shurtleff* Factors and Is Therefore Presumptively Constitutional.

Because none of the *Shurtleff* hallmarks are implicated, H.B. 71 is presumptively constitutional. That presumption is only strengthened when viewed

against the backdrop of early American traditions of public religious expression, especially in the context of moral and civic education.

Regarding the first four hallmarks, there is no indication of coercive pressure in the record. Neither the panel nor the district court ever explained how a passive wall display could amount to compulsion. No student was compelled to read, recite, or otherwise engage with the displays, and teachers were not directed to incorporate them into instruction. No penalties were imposed for dissent or refusal to conform. At most, students would be exposed to a religious text presented as part of a broader educational display. This is a far cry from the governmental domination the Framers feared—laws mandating attendance at state churches, punishing dissenters, or privileging one sect over another. In the absence of mandated conduct or penalty for nonparticipation, the district court’s holding fails to satisfy *Kennedy*’s requirement of proof of objective coercion. *See* 597 U.S. at 539 (rejecting school district’s argument that because Mr. Kennedy “wielded enormous authority and influence over the students,” exposure to Coach Kennedy’s prayers at football games was inherently coercive).

The fifth and six hallmarks are equally inapplicable. Hallmark five concerns financial support: “The ‘financial support’ that amounted to an establishment ‘took very specific forms: government land grants to the established church, direct grants from the public treasury, and compulsory taxes or “tithes” for the support of

churches and ministers.”” Erin Hawley, *A Mandate to Discriminate?: Why the Establishment Clause Does Not Justify the Exclusion of Religious Charter Schools*, Harv. J.L. & Pub. Pol’y: Per Curiam, Apr. 25, 2025, at 1, 11–12 (quoting Hannah C. Smith & Daniel Benson, *When a Pastor’s House Is A Church Home: Why the Parsonage Allowance Is Desirable Under the Establishment Clause*, 18 Federalist Soc’y Rev. 100, 102 (2017)). Here, Louisiana funded the production of the posters, but no funds were directed to a religious organization. 141 F.4th at 641 n.18. The posters were instead government-produced and displayed on government property.

Finally, H.B. 71 does not delegate civil authority or decision-making power to any church or religious institution. Hallmark six involves the “[d]elegation of government’s coercive authority to churches, especially in matters of taxation and financial contribution.” Vincent Phillip Muñoz, *What Is an Establishment of Religion? And What Does Disestablishment Require?*, 38 Const. Comment. 219, 260 (2023), perma.cc/MS4Q-8MKN; *see also Shurtleff*, 596 U.S. at 286 (“[T]he government used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function.”). H.B. 71—which allows the government to use its money to print posters and place them in government buildings—does not enable any religious institution to do anything.

Because none of the *Shurtleff* hallmarks are implicated, H.B. 71 is presumptively constitutional under *Kennedy*.

D. Applying Step Two: There Is Ample Historical Support for Religious Displays in Public Education.

Given H.B. 71’s presumptive constitutionality, this Court should then inquire whether any historical analogues exist. As noted, an exact match to a founding-era practice is not necessary; rather, this Court must identify analogues that are “relevantly similar” in both their purpose and means. *See Rahimi*, 602 U.S. at 692.

Both Louisiana and its amici presented the panel with the historical record of traditions involving religious and moral content in early public education. *See, e.g.*, Appellants’ Opening Br. at 45–49; Br. for Amici Curiae Director for the Conscience Project and Professor Mark David Hall in Support of Appellants at 20–22. The panel disregarded this evidence, a striking omission given that the founding generation itself viewed such instruction as essential to cultivating civic virtue and moral formation.

The idea of public education in America was conceived in the Christian tradition. In 1790, Samuel Adams wrote to his cousin, outlining a vision of the new Republic rooted in virtue and self-governance. 20 *Papers of John Adams (Digital Edition)* 417–19 (1790). That vision, he explained, required “impressing the Minds of Men with the importance of educating their *little Boys*, and *Girls* . . . [by] the Study, and Practice of the exalted Virtues of the Christian system.” *Id.* at 419. The Ten Commandments plainly reflect those virtues.

Adams's ideas were not theoretical (or original); they were memorialized in the laws of the early Republic. Massachusetts, like Adams, recognized that religion and self-government are inextricably linked as a foundation for civic virtue. The Massachusetts Constitution stated:

As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

Mass. Const. pt. I, art. III (amended 1833) (ratified in 1780).

New Hampshire followed suit, recognizing that civic knowledge “is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion.” N.H. Const. pt. I, art. VI (amended 1968) (ratified in 1784). Pennsylvania and Vermont embraced comparable provisions establishing that moral formation, reinforced through public acknowledgment of religion, was essential to preparing citizens for self-government. Penn. Const. of 1776, Frame of Government, § 45 (“Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in

force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed, under the laws and former constitution of this state.”); Vt. Const. ch. II, § 68 (ratified as § XLI in 1777) (same language as Pennsylvania).

Colonial and state education laws exemplified these principles in practice. For example, Connecticut required parents not only to teach their children to read, but also to instruct them in the “capital lawes . . . [and to] catechise theire children . . . in the grounds and principles of religion.” *The Code of 1650*, at 39 (Hartford, Silas Andrus 1822). Children were expected to be prepared to answer religious questions from adults. *Id.* Parents who failed to provide such instruction faced immense consequences, such as losing their children. *Id.* Massachusetts Bay imposed similar requirements, directing parents to teach their children to read and to understand the “Capital laws.” Mark David Hall & Andrea Picciotti-Bayer, *Ten Commandments in the Public Square and Public Schools*, William & Mary Bill of Rights J. (forthcoming 2025) (manuscript at 38), [file:///C:/Users/Dell/Downloads/ssrn-5182625%20\(3\).pdf](file:///C:/Users/Dell/Downloads/ssrn-5182625%20(3).pdf). These statutes functioned as an educational program in civic morality: the laws themselves paralleled much of the Ten Commandments, but with

explicit civil sanctions for the goal of cultivating moral literacy and discipline among the rising generation. Other colonies followed suit, embedding religion into education as a tool for moral formation. *Id.* at 40 n.229 (stating that Virginia punished blasphemy and Sabbath violations and Pennsylvania criminalized profane speech against God, Christ, the Holy Spirit, or scripture).

The connections between civic virtue, education, and religion also appeared in federal law. For example, the Northwest Ordinance of 1787—enacted by the First Congress and signed by President Washington—declared that “religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” Northwest Ordinance, art. III, 1 Stat. 50, 52 n.(a) (1787). This was not mere rhetoric; early American educational practices reflected the assumption that moral and religious formation was an indispensable part of learning. Indeed, school curricula in the early Republic routinely incorporated religious and moral instruction.

For example, in 1647 the Massachusetts Bay Colony passed the Old Deluder Satan Act, declaring that “learning may not be buried in the grave of our forefathers.” Samuel J. Smith, *New England Primer*, Faculty Publications and Presentations (Sept. 2008), https://digitalcommons.liberty.edu/educ_fac_pubs/100/. The statute required every town with at least fifty families to provide a teacher, and towns with

one hundred families to establish a school. *Id.* These classrooms relied heavily on the Bible and textbooks that aligned with the prevailing religious outlook. *Id.*

Similar provisions were adopted in the states. Massachusetts Constitution of 1780: “Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; . . . it shall be the duty of legislatures and magistrates . . . to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns” Mass. Const. pt. II, ch. V, § II. New Hampshire Constitution of 1784: “Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates . . . to cherish the interest of literature and the sciences, and all seminaries and public schools” N.H. Const. art. LXXXIII (amended 1877 and 1903). Vermont Constitution of 1777: “Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth” Vt. Const. ch. II, § 68 (ratified as § XLI in 1777).

One of the earliest and most influential examples of such textbooks was The New England Primer, first published in 1690 and still widely used in the early 1800s. *See* Hall & Picciotti-Bayer, *supra*, at 40 (“Teachers or tutors often utilized editions of The New England Primer that included the Ten Commandments.”). This textbook was used throughout the United States, with more than two million copies printed in the eighteenth century alone. *See* Hall & Picciotti-Bayer, *supra*, at 41; Charles F. Heartman, *The New England Primer Printed in America Prior to 1830: A Bibliographical Checklist* 11 (1915) (estimating that about 6.5 million copies of the Primer were printed between 1680 and 1830). Its lessons relied heavily on biblical teachings, including the Ten Commandments. Hall & Picciotti-Bayer, *supra*, at 40; Stephanie Schnorbus, *Calvin and Locke: Dueling Epistemologies in The New England Primer, 1720–1790*, 8 Early Am. Stud. 250, 287 (2010) (arguing that the New England Primer “remained secure in Calvinist orthodoxy” through 1790). For instance, the 1727, 1777, and 1845 editions of the Primer included the entire Westminster Shorter Catechism, which devotes forty questions to the Ten Commandments. Hall & Picciotti-Bayer, *supra*, at 40–41.

Later, McGuffey’s Readers would follow this path, combining moral instruction with the basics of reading and comprehension. McGuffey’s Readers were introduced in American classrooms in the 1800s and continued to be used into the 20th century. *McGuffey Readers*, Britannica (last visited Nov. 10, 2025),

<https://www.britannica.com/topic/McGuffey-Readers>; *accord* Hall & Picciotti-Bayer, *supra*, at 43.

Taken together, these enactments and educational materials reveal a consistent pattern of integrating religion into civic education. Within that enduring tradition, H.B. 71 stands as a restrained continuation, not a departure. As such, H.B. 71 easily satisfies the *Kennedy* framework, as delineated in the two-step analysis proposed above. Both the purpose and the method of the law fall squarely within the nation's historical tradition. The purpose, reinforcing civic virtue and moral formation, H.B. 71, La. R.S. § 17:2124(A), matches the justification repeatedly invoked by early state constitutions, statutes, and educational practices. The method, a passive classroom display, *id.* § 17:2124(B), reflects the historical practice of using religious texts as educational references rather than coercive exercises of worship. In fact, compared to the robust religious instruction mandated at the founding, such as daily catechisms, compulsory Bible use, and fines for parents who failed to teach their children, the display required by H.B. 71 is small beer, to say the least. It represents a restrained continuation of a much deeper tradition of integrating religion into civic education. Religious content in education—including the Ten Commandments—was not merely tolerated but promoted by early American governments.

CONCLUSION

Amicus respectfully requests that this Court reverse the district court.

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November 12, 2025

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