

No. 25-50695

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**In the United States Court of Appeals for the  
Fifth Circuit**

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MARA NATHAN, RABBI, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, M.N.; VIRGINIA GALAVIZ EISENBERG, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, R.E.; RON EISENBERG, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILD, R.E.; SETH ETTINGER, CANTOR, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILD, R.E.; SARAH ETTINGER, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, R.E.; ELIZABETH LEMASTER, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, K.L. & L.L.; CARAH HELWIG, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, J.P. & T.P.; ALYSSA MARTIN, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, H.B.M.; CODY BARKER, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILD, H.B.M.; LAUREN ERWIN, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, M.E.; REBEKAH LOWE, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, E.R.L. & E.M.L.; THEODORE LOWE, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILDREN, E.R.L. & E.M.L.; MARISSA NORDEN, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, E.N. & A.N.; WILEY NORDEN, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILDREN, E.N. & A.N.; JOSHUA FIXLER, RABBI, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILDREN, D.F., E.F., & F.F.; CYNTHIA MOOD, REVEREND, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, L.M. & C.M.; CHERYL REBECCA SMITH, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, L.P.J.; ARVIND CHANDRAKANTAN, ON BEHALF OF HIMSELF AND ON BEHALF OF HIS MINOR CHILDREN, V.C., M.C. & A.C.; ALLISON FITZPATRICK, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILDREN, C.F. & H.F.; MARA RICHARDS BIM, ON BEHALF OF HERSELF AND ON BEHALF OF HER MINOR CHILD, H.B.,

*Plaintiffs-Appellees*

*V.*

ALAMO HEIGHTS INDEPENDENT SCHOOL DISTRICT; NORTH EAST INDEPENDENT SCHOOL DISTRICT; LACKLAND INDEPENDENT SCHOOL DISTRICT; NORTHSIDE INDEPENDENT SCHOOL DISTRICT; LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT; DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT; FORT BEND

INDEPENDENT SCHOOL DISTRICT; CYPRESS FAIRBANKS INDEPENDENT SCHOOL DISTRICT; PLANO INDEPENDENT SCHOOL DISTRICT,

*Defendants-Appellants*

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On Appeal from the United States  
District Court for the Western  
District of Texas  
No. 5:25-CV-756

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**BRIEF OF TEXAS VALUES, STATE SENATOR PHIL KING AND STATE REPRESENTATIVE  
CANDY NOBLE AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS**

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### **INTEREST OF AMICI CURIAE**

Texas Values is a statewide Judeo-Christian nonprofit law and policy organization that promotes research, education, and legislative advocacy to encourage, strengthen, and protect Texas families. Texas Values has over 200,000 supporters statewide, and supporters in each of the 254 counties in the State of Texas. Texas Values provides its members legal and legislative representation and support on issues of faith, family, and freedom and is the leading organization in Texas on issues affecting constitutionally protected religious freedom, free speech, and parental rights.

Texas State Senator Phil King and Texas State Representative Candy Noble are members of the Texas Legislature serving Texas State Senate District 10 and Texas House District 89, respectively, and are each chamber's primary author or sponsor of the Texas Ten Commandments Law. Senator King and Representative Noble seek to advance an interpretation of the Establishment Clause consistent with its text, and to challenge precedents that inhibit the ability of Texas government to acknowledge the Judeo-Christian heritage of our country in a non-coercive manner that is consistent with the First Amendment.

## SUMMARY OF ARGUMENT

For more than two centuries, governments have publicly acknowledged the historical role of the Ten Commandments in shaping the Nation's legal and civic traditions. Those acknowledgments appear throughout our most prominent public institutions: in courthouses, legislative chambers, and monuments that reflect the sources of Western law. Such acknowledgments of the historical role of the Ten Commandments have long been understood not as religious instruction or compulsion, but as historical recognition of ideas that influenced the development of American law. That tradition has endured across political branches and generations without being thought to establish religion or coerce belief.

Texas Senate Bill (S.B.) 10 fits squarely within that historical practice and as such is constitutional. The statute authorizes a passive classroom display of the Ten Commandments only. No student is required to read, recite, study, or engage with the Ten Commandments display in any way. This law does not mandate devotional exercise, does not direct teachers to promote religious doctrine, and does not impose penalties on students or educators based on belief. In short, S.B. 10 reflects a legislative effort to acknowledge the history and tradition of our great country.

The district court's contrary conclusion rests on a fundamental mischaracterization of how S.B. 10 operates and how it has been implemented. Rather than evaluating the statute as a limited, passive acknowledgment of legal history, the district court treated it as if it coerced religious devotion, a false assumption found nowhere in the statute's text or its actual implementation. By collapsing the distinction between historical acknowledgment and religious coercion, the district court imposed a sweeping injunction that extends far beyond any concrete injury alleged by the plaintiffs, effectively allowing subjective offense to operate as a heckler's veto over constitutionally permissible public acknowledgments.

#### **ARGUMENT**

### **I. The Ten Commandments Have Long Been Acknowledged as Part of America's Legal and Educational Tradition**

The Supreme Court's Establishment Clause jurisprudence has consistently recognized that not all references to religion are constitutionally equivalent. In evaluating passive acknowledgments of religious texts, the Court has emphasized history, context, and function, particularly whether a reference or display serves an instructional purpose which leans coercive, or instead reflects the Nation's history and tradition.

**A. The Ten Commandments Have Historically Been Recognized as Legal and Moral Foundations, Not as Objects of Religious Coercion**

The Supreme Court has repeatedly recognized that the Ten Commandments occupy a distinctive place in the Nation’s legal and civic tradition, one that is not reducible to religious instruction. In *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2005) (plurality op.) the Court emphasized that the Decalogue has long been understood as a source of moral and legal principles that informed the development of Western law and American institutions, even while retaining religious significance. That dual character, moral, legal, and historical rather than instructional or devotional, has been central to the Court’s treatment of passive acknowledgments of the Ten Commandments in public spaces.

More recently, *American Legion v. American Humanist Association*, 588 U.S. 29, 53–54 (2019) reaffirmed that longstanding religious references embedded in civic life carry a strong presumption of constitutionality, particularly where they function as acknowledgments of history rather than instruments of religious exercise. The Court cautioned against reading such acknowledgments through a lens of abstraction divorced from historical practice, noting that religious references have “coexisted with the Establishment Clause” since the Founding. *See id.* at 55. That understanding

predates modern Establishment Clause doctrine. Public recognition of the Ten Commandments as a bedrock of legal norms, respect for life, property, truth, and social order, has long appeared in our courthouses, legislative chambers, National Archives, architecture, and educational materials without being treated as religious instruction. Numerous Founding Fathers specifically invoked Moses the Lawgiver in their writings. Such signers included John Adams<sup>1</sup>, Benjamin Franklin<sup>2</sup>, John Witherspoon<sup>3</sup>, Elias Boudinot<sup>4</sup>, and many others.

The Ten Commandments are also deeply interwoven with American entertainment and culture. As a result of Cecil B. DeMille's 1956 American epic biblical drama film, *The Ten Commandments*, the Fraternal Order of Eagles gifted over 180 granite Ten Commandments monuments to sites across the country, including, in 1961, the monument currently erected on the Texas State Capitol grounds.<sup>5</sup>

## **B. Public Education Has Historically Included Moral and Historical References Without Establishment Clause Violation**

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<sup>1</sup> John Adams to Abigail Adams, August 14, 1776, *Letters of John Adams, Addressed to His Wife*, ed. Charles Francis Adams (Boston: Charles C. Little and James Brown, 1841) - URL: [www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#\\_edn6](http://www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#_edn6)

<sup>2</sup> John Adams to Abigail Adams, August 14, 1776, *Letters of John Adams*, ed. Adams (1841) – URL: [www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#\\_edn11](http://www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#_edn11)

<sup>3</sup> John Witherspoon, “Seasonable Advice to Young Persons,” February 21, 1762, *The Works of the Rev. John Witherspoon* (Philadelphia: William W. Woodward, 1802) ) - URL: [www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#\\_edn8](http://www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#_edn8)

<sup>4</sup> Elias Boudinot to Samuel Mather, September 30, 1783, *Letters of Delegates*, ed. Smith (1979) - URL: [www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#\\_edn15](http://www.wallbuilders.com/resource/barton-telling-the-truth-about-moses#_edn15)

<sup>5</sup> <https://www.texasmonthly.com/news-politics/take-two-tablets/>

Public education in the early Republic and throughout much of American history regularly incorporated moral instruction and historical references rooted in religious texts, including the Bible and the Ten Commandments, without triggering constitutional concern. These references went significantly further than passive wall displays requiring no engagement. For example, the McGuffey Readers, widely used by American classrooms in the 19<sup>th</sup> century reference the Ten Commandments and its specific admonitions.

McGuffey's Fourth Eclectic Reader specifically references the Ten Commandments in a section about not bearing false witness under oath.<sup>6</sup> Another example of this is Noah Webster's American Spelling Book, a ubiquitous public school textbook in the early Republic, which incorporated moral lessons grounded in biblical commandments as part of ethical and civic instruction.<sup>7</sup> Even under modern Establishment Clause doctrine, this historical practice confirms that S.B. 10's passive classroom displays fall well within the range of constitutionally permissible acknowledgments of religion. The Supreme Court has distinguished between coercive religious exercise or doctrinal instruction and non-compulsory references to religion used for moral, historical, or civic purposes. *See Abington Sch. Dist. v. Schempp*, 374

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<sup>6</sup> The Project Gutenberg Ebook of McGuffey's Fourth Eclectic Reader [www.gutenberg.org/files/14880/14880-pdf](http://www.gutenberg.org/files/14880/14880-pdf) pg. 209

<sup>7</sup> . *See* Noah Webster, *The American Spelling Book* 73 (1824 ed.). [http://www.donpotter.net/pdf/websters\\_spelling\\_book\\_1824.pdf](http://www.donpotter.net/pdf/websters_spelling_book_1824.pdf)

U.S. 203, 225 (1963) (recognizing that the Bible may be studied objectively as part of a secular educational program. Even in *Stone v. Graham*, 449 U.S. 39 (1980) the court emphasized that “[t]his is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.” *Id.* at 42.

That distinction is critical here. The Ten Commandments were once incorporated directly into classroom texts and moral instruction—far beyond the passive wall displays at issue—yet such use was not understood to compel religious observance or establish religion.

### **C. The Legislature Designed S.B. 10 to Avoid Religious Coercion**

As legislators who participated in the enactment of S.B. 10, *amici* are aware firsthand of the specific attention given to avoiding Establishment Clause violations and to aligning Texas law with the Supreme Court’s modern, coercion-focused jurisprudence. The Legislature acted to restore constitutionally permissible acknowledgments of religion while deliberately avoiding features that the Court has identified as coercive or unconstitutional. That intent was expressly stated by the bill’s main author and main sponsor. During testimony in front of Texas Senate Committee on Education K-16,

Texas State Senator Phil King explained that S.B. 10 was enacted “to bring back the historical tradition of recognizing our national heritage” and to move beyond “out-of-date legal thinking still living in 1970s Establishment Clause jurisprudence,” emphasizing that the statute “restores those liberties that were lost” and reminds students of “a fundamental foundation of American and Texas law – the Ten Commandments.”<sup>8</sup> On the House floor, Texas State Representative Candy Noble likewise described the bill as “about honoring our historical, educational, and judicial heritage with the displaying of the Ten Commandments.”<sup>9</sup> In its attempt to show that the Texas Legislature had a primarily religious objective in enacting S.B. 10, the District Court provided 12 direct quotes from primary legislative authors during public legislative hearings and floor activity. But none of those statements, individually or collectively, alters the constitutional analysis. For example, the District Court included the following primary author quote: “Christians have been intimidated ... it’s important that we’re able to have the freedom to express our faith ... through the Ten Commandments.” This statement does not evidence a legislative purpose to coerce religious belief or impose religious exercise in public schools. At most, it reflects a legislator’s view that religious

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<sup>8</sup> Texas Senate Video Archive: [senate.texas.gov/av-archive.php](https://senate.texas.gov/av-archive.php). 03/04/25

<sup>9</sup> KXAN News Youtube Channel: <https://www.youtube.com/watch?v=peqzHceiXGU>

expression has been unduly restricted in public life. The Supreme Court has repeatedly held that such generalized motivations, even when religiously informed, do not render a statute unconstitutional where the law itself neither mandates religious observance nor pressures participation. See *Van Orden v. Perry*, 545 U.S. 677, 690–92 (2005) (plurality op.) (recognizing that acknowledgment of religion’s historical role does not become unconstitutional merely because some legislators view religion favorably). Another quote used exclaims, “Oh, then we really need the Ten Commandments in there on how to treat others kindly.” Read in context, this remark reflects the commonly recognized moral dimension of the Ten Commandments, not an intent to impose religious instruction. This rhetorical shorthand linking the Commandments to moral norms is exactly the dual moral-historical function recognized in *Van Orden* and *American Legion* and upheld by the U.S. Supreme Court. Some quotes express personal religious beliefs which are constitutionally irrelevant absent coercive participation mechanisms – which is not the case here. And so goes the analysis on each of the 12 quotes.

The Texas Legislature intentionally designed S.B. 10 as a passive display and declined to mandate religious instruction, student participation, or curricular integration. Those omissions track longstanding Supreme Court

distinctions between permissible acknowledgments and impermissible religious exercises. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537-39 (2022) (Establishment Clause violated by coercion, not mere exposure); *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (constitutional concern arises from pressure to participate in religious activity); *Van Orden v. Perry*, 545 U.S. 677, 700–01 (2005) (Breyer, J., concurring) (emphasizing the significance of passive presentation and absence of religious instruction); *American Legion v. American Humanist Ass’n*, 588 U.S. 29, 53–55 (2019) (recognizing constitutionality of longstanding, non-coercive religious acknowledgments).

S.B. 10 does not direct teachers to explain or endorse the text, require students to engage with it, or incorporate it into classroom instruction. By consciously avoiding those features, the Legislature sought to ensure that the statute acknowledges historical influence without compelling belief, participation, or conformity. The district court’s analysis treating the statute as if it imposed religious instruction or observance, failed to account for these deliberate safeguards and the Legislature’s expressed understanding of the governing constitutional framework.

## **II. The District Court Mischaracterized S.B. 10 as an Immediate, Uniform Display Regime**

The district court's analysis rested on a foundational error: it adjudicated S.B. 10 as if it imposed an immediate, uniform, mandate requiring every defendant school district to display the Ten Commandments in every classroom from the date of enactment. That is not how the statute operates.

### **A. S.B. 10 Does Not Compel Immediate or Uniform Classroom Displays**

S.B. 10 is not a command that every classroom display the Ten Commandments on a fixed timetable. It is a donation-based statute whose implementation necessarily depends on contingencies external to the State, most notably, the existence of qualifying donated displays and the practical realities of local administration. The statute does not specify when a display must be installed, where within a classroom it must be placed beyond a general requirement of conspicuousness, or how quickly districts must move from acceptance to installation. Nor does it ensure that any particular student will encounter a display at any particular time.

The Supreme Court has repeatedly cautioned that courts must evaluate statutes based on actual or threatened enforcement, not abstract authorization divorced from implementation. In *California v. Texas*, 593 U.S. 659, 670–71

(2021) the Court held that a statute’s mere existence does not confer jurisdiction absent concrete enforcement producing injury. Similarly, in *Clapper v. Amnesty International USA*, 568 U.S. 398, 409–14 (2013) the Court rejected standing theories that depend on speculative chains of future events rather than certainly impending harm. By treating S.B. 10 as if it necessarily results in immediate, universal classroom exposure, the district court assumed the very facts it was required to examine. This mischaracterization also obscures the role of private choice in the statute’s operation. Where the presence of religious content depends on private actors rather than direct state placement, the Establishment Clause analysis is materially different. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002). S.B. 10’s effects arise only after intervening steps—donation, administrative processing, and local placement, none of which the statute mandates in immediate or coercive terms.

## **B. Day-to-Day Implementation Context Matters for Establishment Clause Analysis**

Even where districts receive qualifying displays, S.B. 10 leaves critical implementation details to local discretion by design. The statute imposes no deadline for posting, prescribes no specific placement within a classroom other than general conspicuousness, and does not assign students to

classrooms or guarantee exposure for any particular plaintiff. These contextual variables matter. Establishment Clause analysis has long turned on setting, presentation, and practical operation, not on hypothetical uniformity. *See Van Orden v. Perry*, 545 U.S. 677, 700–01 (2005) (Breyer, J., concurring).

By assuming an immediate display regime across districts and classrooms, the district court bypassed these realities and treated S.B. 10 as a far more coercive and comprehensive law than the Legislature enacted. Courts must adjudicate statutes as written and implemented, not as hypothesized.

### CONCLUSION

Senate Bill 10 does not compel religious belief, mandate instruction, or coerce student participation. It authorizes a passive acknowledgment of the historical foundations of American law, an approach long recognized as constitutionally permissible. This Court should restore the constitutional distinction between acknowledgment and coercion and reject the psychological offense veto being used as a weapon against lawful government action.

The district court's preliminary injunction should be vacated.

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I certify that on December 23, 2025 this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon all counsel of record in this case.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 29(a)(5) and Rule 32(a)(7)(B), I certify that this brief complies with the applicable type-volume limitation.

This brief contains 2,774 words, excluding the parts of the brief exempted by Rule 32(f). The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font, with margins that comply with Rule 32(a).

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