

IN THE
United States Court of Appeals for the Eighth Circuit

SAMANTHA STINSON, et al.,

Plaintiffs–Appellees,

v.

STATE OF ARKANSAS,

Intervenor–Appellant,

(full caption on inside cover)

On Appeal from the United States District Court
for the Western District of Arkansas

No. 5:25-cv-05127

Hon. Timothy L. Brooks

**BRIEF OF BAPTIST JOINT COMMITTEE FOR RELIGIOUS
LIBERTY, EVANGELICAL LUTHERAN CHURCH IN AMERICA,
THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST,
REVEREND JIHYUN OH, THE MOST REVEREND SEAN W.
ROWE, AND MS. JULIA AYALA HARRIS AS *AMICI CURIAE*
SUPPORTING PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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v.

FAYETTEVILLE SCHOOL DISTRICT No. 1; SPRINGDALE SCHOOL DISTRICT, No. 50; BENTONVILLE SCHOOL DISTRICT, No. 6; SILOAM SPRINGS SCHOOL DISTRICT, No. 21; CONWAY SCHOOL DISTRICT, No. 1; LAKESIDE SCHOOL DISTRICT, No. 9,
Defendants,

STATE OF ARKANSAS,

Intervenor–Appellant.

CORPORATE DISCLOSURE STATEMENT

Stinson, et al. v. State of Arkansas, No. 26-1722

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(A), amici curiae Baptist Joint Committee for Religious Liberty, Evangelical Lutheran Church in America, and The General Synod of the United Church of Christ each state that they are nonprofit corporations with no parent corporations. No publicly held corporation owns 10 percent or more of their stock.

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INTEREST OF *AMICUS CURIAE*¹

Baptist Joint Committee for Religious Liberty (BJC)

BJC serves more than a dozen supporting organizations, including state and national Baptist conventions and conferences, and churches and individuals dedicated to the historic Baptist principle of religious freedom for all. It has vigorously supported both the free exercise of religion and freedom from religious establishments for all of its ninety years, including in numerous cases involving religion and the public schools.

Evangelical Lutheran Church In America (ELCA)

The ELCA is the largest Lutheran denomination in North America. It has over eight thousand-member congregations which, in turn, have approximately 3.5 million individual members.

The ELCA and its predecessor denominations have continually supported religious freedom. In 2017, the Church Council of the ELCA

¹ Pursuant to Federal Rule of Appellate Procedure 29(a), Amici certify that the parties to this appeal have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

adopted a social message on Human Rights, in which it states that the ELCA will “advocate for the U.S. government to protect and promote the equal rights of all people, as enshrined in the U.S. Constitution and Bill of Rights,” which include the First Amendment rights of freedom of religion and to be free from government favoritism of one religion over another.

The General Synod of the United Church of Christ

The General Synod of the United Church of Christ is the representative body of the national denomination of the United Church of Christ (UCC). The UCC was formed in 1957, by the union of the Evangelical and Reformed Church and The General Council of the Congregational Christian Churches of the United States, in order to express more fully the oneness in Christ of the churches composing it. The UCC has five thousand churches in the United States, with a membership of approximately 944,000.

The General Synod of the UCC, various local churches and regional bodies of the UCC, and its predecessor denominations, have a rich heritage of promoting religious freedom and tolerance. The UCC has long acknowledged its responsibility to protect the right of all to believe and

worship voluntarily as conscience dictates, and to oppose efforts to have government at any level support or promote the views of one faith community more than another. At its twentieth gathering, the General Synod continued this legacy by encouraging the involvement of the United Church of Christ in a national campaign to promote the principle of the separation of church and state and the proper role of religion in society.

Reverend Jihyun Oh

Reverend Jihyun Oh, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) (PCUSA), joins this brief as the senior ecclesiastical officer of the PCUSA. The PCUSA is a national Christian denomination with nearly 1.1 million members in over 8,500 congregations, organized into 166 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706.

The General Assembly opposes the permanent or unattended display of religious symbols on public property as a violation of the religious neutrality required of government. The General Assembly does

not claim to speak for all Presbyterians, nor are its policies binding on the membership of the Presbyterian Church. However, the General Assembly is the highest legislative and interpretive body for the denomination, and it is the final point of decision in all disputes. As such, its statements are considered worthy of the respect and prayerful consideration of all the denomination's members.

The Most Reverend Sean W. Rowe and Ms. Julia Ayala Harris

The Most Reverend Sean W. Rowe is the 28th Presiding Bishop of The Episcopal Church, a hierarchical religious denomination in the United States and 17 other countries. Under the Church's polity, the Presiding Bishop is charged with "speak[ing] God's words to the Church and to the world, as the representative of [the] Church."

Julia Ayala Harris is the elected President of the House of Deputies of The Episcopal Church. The House of Deputies, established in 1785, includes over 800 deputies and more than 400 alternates, consisting of clergy and lay representatives from every diocese of The Episcopal Church. As one of the two Houses that make up the General Convention—the Church's highest policymaking body—it is central to shaping the Church's laws, governance, and witness in the world.

The Episcopal Church has consistently supported religious freedom in a variety of contexts. In 1994, the Church urged State Legislatures considering “moment of silence” statutes for public schools to “assure Constitutional balance” in their treatment of the issue by “carefully considering the First Amendment’s Free Exercise clause as well as its Establishment clause.”

INTRODUCTION AND SUMMARY

If Arkansas were to mandate that every public-school teacher begin every class with an instruction that the Ten Commandments require worshipping the God of the Hebrew Bible and forbid worshipping any other god (or no god at all), there is little doubt that such a law would violate the First Amendment. For decades, the Supreme Court repeatedly has rejected various forms of such religious indoctrination in public school settings. *See e.g., Engel v. Vitale*, 370 U.S. 421 (1962); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Lee v. Weisman*, 505 U.S. 577 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000). The essential boundary between religious instruction and state activity in public schools protects not only nonbelievers but also religion, because “history showed that many people had lost their respect

for any religion that had relied upon the support for [sic] government to spread its faith.” *Engel*, 370 U.S. at 431. This case asks the narrow question of whether a breach of that boundary is permissible when the instruction is delivered not orally, but instead through printed materials that are prominently and permanently displayed throughout the nearly 14,000 hours that Arkansas children will spend in public schools.

Act 573 requires that the Ten Commandments permanently be displayed in every classroom and library of every public school in Arkansas. To Amici, the Ten Commandments represent the original law handed down by God to Moses, with explicitly religious instructions to, *inter alia*, worship God, forsake all other religions, and observe the Sabbath. Act 573’s posting requirement ensures that these religious instructions will be conveyed continuously, without exception, to every student in Arkansas’s public schools throughout their formative years. This compelled observance by children of religious tenets stated in the Ten Commandments violates the Establishment Clause. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022) (“[T]his Court has long held that government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make a religious

observance compulsory.”) (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)).

Additionally, Act 573 grants preferential treatment to a single version of the Ten Commandments. No single religion owns the Ten Commandments, nor can any single denomination claim authority over their proper translation or interpretation. There are multiple versions of the Commandments, and theological debate continues among (and even within) different denominations about the correct translation and interpretation of the Commandments. Through Act 573, the Arkansas legislature declares a victor in this debate by selecting a single “correct” version to be imposed on every child in the Arkansas public school system, regardless of their religious beliefs.

The Establishment Clause prohibits Appellant from selecting a preferred version of the Ten Commandments and compelling every student in every public school to receive religious instruction from that preferred version at every hour of every school day. Because Act 573 does exactly this, the District Court correctly held that Act 573 violates the Establishment Clause. That decision should be affirmed.

ARGUMENT

I. The Establishment Clause Prohibits Government From Promoting Religious Indoctrination In Public Schools.

The Establishment Clause exists not only to protect nonbelievers and believers in minority faiths from proselytization by the state, but also to protect religion from being undermined by state action. As the Supreme Court has recognized for decades, the “first and most immediate purpose” of the Establishment Clause “rested on the belief that a union of government and religion tends to destroy government *and to degrade religion*.” *Engel*, 370 U.S. at 431 (emphasis added). “[H]istory showed that many people lost their respect for any religion that had relied upon the support for [sic] government to spread its faith.” *Id.*; *see also Lee*, 505 U.S. at 589 (the Establishment Clause and Free Exercise Clause “exist to protect religion from government interference”); *Schempp*, 374 U.S. at 259 (Brennan, J., concurring) (“It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government.”).

Government sponsorship of religion can undermine true faith in many ways. It can bend religion to its own political or other purposes. Further, efforts to deny that the government is doing anything that might offend or exclude adherents of other faiths can cause it to secularize religious observance or misstate religious teachings because the government does not understand them or take them seriously. Such risks are present here, as demonstrated by Appellant’s apparent failure to appreciate the significance of the differences between various versions of the Ten Commandments. *See infra* Section V. The state posts the Ten Commandments for its own reasons, only one of which is religious indoctrination. The state’s reasons are often political or secularizing; Arkansas claims that it is posting the Commandments for their historical importance. If this were true, it would minimize or denigrate the Commandments’ religious importance.

One way in which the Establishment Clause protects both believers and nonbelievers is through the “long held” understanding that the “government may not . . . make a religious observance compulsory.”

Kennedy, 597 U.S. at 537.² In particular, the Supreme Court has for decades been particularly vigilant about keeping religious indoctrination out of the nation’s public schools. More than sixty years ago, the Court prevented New York from requiring each school day to begin with the following prayer: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.” *Engel*, 370 U.S. at 422, 424-25. Although the school district assured the Court that this language was “nondenominational” and “observance on the part of the students [was] voluntary,” the Court concluded that this practice was “wholly inconsistent with the Establishment Clause.” *Id.* at 424, 430. “It is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government.” *Id.* at 425.

² In *Kennedy*, the Supreme Court held that a private act of prayer by a football coach acting outside of his official duties, where no student was compelled to participate, was private speech. *Kennedy* bears no similarity to the present matter, where the practice at issue is a law requiring state officials to post religious indoctrination in every classroom and school library.

The following year, the Court struck down laws in a pair of cases that required portions of the Bible to be read without comment in public schools. *Schempp*, 374 U.S. at 223. Consistent with *Engel*, the Court concluded “that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners.” *Id.* at 224. The fact that “individual students may absent themselves upon parental requests” was irrelevant because it “furnishes no defense to a claim of unconstitutionality under the Establishment Clause.” *Id.* at 224-25.

The Supreme Court reiterated these principles in 1992, when it struck down a Rhode Island public school’s practice of inviting clergy to offer prayer at graduation ceremonies. *See Lee*, 505 U.S. 577. The Court observed that the Establishment Clause “at a minimum . . . guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a state religion or religious faith, or tends to do so.’” *Id.* at 587 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)). The Court found that a school official violated these “central principles” when he directed that a prayer should occur “as if a state statute decreed that the prayers must

occur” and then “directed and controlled the content of the prayers.” *Id.* at 587-88. Even though the invited clergy were asked to offer “non-sectarian” prayer, which the school characterized as a “good-faith attempt by the school to ensure that . . . sectarianism . . . be removed from the graduation ceremony,” the Supreme Court observed that “[t]he question is not the good faith of the school in attempting to make the prayer acceptable to most persons, but the legitimacy of its undertaking that enterprise at all when the object is to produce a prayer to be used in a formal religious exercise which students, for all practical purposes, are obliged to attend.” *Id.* at 588.

Eight years later, in *Santa Fe*, the Supreme Court again addressed school-based prayer, but this time the prayer occurred at extracurricular football games, where an elected student was invited to provide an invocation over the school’s public address system before each game. The school district sought to defend this policy, *inter alia*, “because attendance at an extracurricular event, unlike a graduation ceremony, is voluntary.” 530 U.S. at 310. The Court promptly disposed of this argument because attendance *was* mandatory for “some students . . . such as cheerleaders, members of the band, and, of course, the team members

themselves.” *Id.* at 311. But even for students who were not required to attend, the Court noted that “law reaches past formalism” and so it could not discount “the importance to many students of attending and participating in extracurricular activities as part of a complete educational experience.” *Id.* “[T]he choice between attending these games and avoiding personally offensive religious rituals” is not a choice that the State may force on students because “it is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Id.* at 312 (quoting *Lee* at 596).

These cases have a consistent throughline. Each time, state officials introduced policies requiring religious indoctrination in public schools and then sought to defend those policies on the grounds that the policies were nondenominational and each student had an opportunity to opt out. Yet the Supreme Court held each of those practices to be unconstitutional because imposing overt religious activity on students in a public school was a religious practice and any opportunity to “opt out” was illusory.

Appellant would have this Court believe that the grave constitutional concerns expressed in each of these cases could have been

avoided if the school officials had simply posted the religious messaging on the walls of the classrooms, rather than reading them aloud to the students. But none of these opinions suggest that the spoken nature of the attempted indoctrination was a relevant consideration, or that the outcome would have been any different with printed text. Instead, these cases reflect a clear and consistent understanding that there is no constitutionally valid way for the government to pursue or support religious indoctrination in public schools. As summarized in *Schempp*:

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard.

Schempp, 374 U.S. at 226.

II. Posting The Ten Commandments In Public Schools Creates Unavoidable State-Sponsored Religious Indoctrination.

The Ten Commandments are particularly significant Bible verses because they list a set of rules to be followed to live a holy life in the eyes of God. The Bible explains that God delivered these rules to Moses so that the people could be “taught” to follow them. *See Exodus* 24:12-13 (“And the Lord said unto Moses, ‘Come up to me into the mount, and be there;

and I will give thee tables of stone, and a law, and commandments which I have written; that thou mayest teach them.”).³ For Amici and other Christians, the Bible is holy and authoritative. References to its teachings provide direction for believers in daily life. Religious communities meet regularly to interpret and understand those religious teachings. It is not the province of the state to supplant that education.

To be sure, several of the rules stated in the Ten Commandments—such as the prohibition against killing—have analogues that have been codified in the laws of this and other nations. But it is equally certain that the following instructions from the first half of the Decalogue, mandated by Act 573, are *purely religious* in nature and have *never* been law in the United States:⁴

I am the Lord thy God.
Thou shalt have no other gods before me.
Thou shalt not make to thyself any graven images.
Thou shalt not take the Name of the Lord thy God in vain.
Remember the Sabbath day, to keep it holy.

³ All references to the Bible refer to the King James version.

⁴ Many states prohibited certain commercial activity on Sundays well into the twentieth century, but such laws did not prescribe religious activity and did not require that any citizen “keep” the day “holy.”

Ark. Code Ann. § 1-4-133(a)(1)(B)(iii). At a minimum, these instructions are *at least* as overtly religious in nature as the prayer in *Engel*, which could not constitutionally be read to students in New York’s public schools: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.” *Engel*, 370 U.S. at 422. Act 573 is a call to religious action, mandated by the state, that is precisely the type of “religious observance” in schools that the Establishment Clause prohibits.

III. Act 573 Imposes Religious Instruction On Captive Audiences In Public Classrooms.

Appellant insists that Act 573 does not implicate the “hallmarks of religious establishments,” as that term has historically been understood. Appellant’s Br. at 28 (quoting *Kennedy*, 597 U.S. at 537).⁵ But from the Founding, proponents of religious liberty have rejected laws that combine compulsory attendance with religious instruction, see Mark Storslee & Michael A. Helfand, *Government Religious Speech and the Establishment Clause*, 79 Vand. L. Rev. 417, 441-46, 482 (2026), including laws designed

⁵ Notably, the six specific “hallmarks” relied on by Appellant come from a two-justice concurrence, not controlling precedent. See Appellant’s Br. at 29 (citing *Shurtleff v. City of Boston*, 596 U.S. 243, 286 (2022) (Gorsuch, J., concurring in the judgment)).

to ensure that, once assembled by “coerced attendance,” the public would “‘see and read’ [the Ten Commandments],” *id.* at 443. And Act 573 does exactly that.

Act 573 mandates that public officials in Arkansas “prominently” and “conspicuous[ly]” display the State’s preferred version of the Ten Commandments, Ark. Code Ann. § 1-4-133(a)(1), in each “[p]ublic institution of higher education and elementary and secondary school library and classroom,” *id.* § 1-4-133(a)(2)(A). These posters must be “at least sixteen inches by twenty inches” in size, and the actual text of the Commandments must be large enough to be “legible to a person with average vision from anywhere in the room” in which a poster is displayed. *Id.* § 1-4-133(a)(1)(B)(ii). Compliant posters will be large and conspicuous in any classroom; in a gym, a library, or a large lecture hall, they will be enormous.

Arkansas law further requires that parents send their children to public or private school between the ages of 5 and 17, unless the child graduates early or enrolls in a postsecondary program. Ark. Code Ann. § 6-18-201(a). Failure to ensure the child’s attendance, without excessive unexcused absences, can result in financial penalties. *Id.* § 6-18-

222(a)(5)(A). Children must be in school for at least 178 days—or 1,068 instructional hours—in each of those thirteen years. Ark. Code Ann. § 6-17-2403(c).

So, in operation, Act 573 requires every Arkansas student to be reminded *continuously* of the religious imperatives stated in the Ten Commandments for a total of 13,884 hours. Many or most students will be in classrooms for additional hours for various extracurricular activities. The conspicuous religious instruction in these classrooms cannot be ignored or avoided. It is therefore unconstitutional. *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (emphasizing the Establishment Clause concerns associated with the “great . . . coercive power” exerted by “mandatory [school] attendance requirements”); *Warnock v. Archer*, 380 F.3d 1076, 1080 (8th Cir. 2004) (explaining that, “[i]n the context of compulsory education laws,” concerns regarding “the possibility of coercing the participation of students in state-sponsored religion” are “natural”).

The classroom setting for the instruction is a critical distinction from other instances where public displays of religious material have been upheld. The Supreme Court’s decisions that refer to passive displays

that were upheld as constitutional involve religious displays in open, outdoor, park-like settings that are encountered only in passing or at the will of those who *voluntarily* visit them. *See, e.g., Lynch*, 465 U.S. at 671 (nativity scene located in park in a public shopping district); *Van Orden v. Perry*, 545 U.S. 677, 681 (2005) (one of at least 38 displays on the “22 acres surrounding the Texas State Capitol”); *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 44 (2019) (cross located on a “traffic island . . . at the center of a busy intersection”). The same holds true in this Court’s caselaw. *See ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 776-77, 777 n.7 (8th Cir. 2005) (en banc) (monument located in “a relatively isolated corner” of a park). These cases do not involve captive audiences of children in public schools.

Appellant makes much of the fact that the Supreme Court upheld the display of the Ten Commandments on one of 17 monuments and 21 historical markers located on the Texas State Capitol Grounds in *Van Orden*, 545 U.S. at 678. *See, e.g.,* Appellant’s Br. at 3, 23-24. But Appellant fails to recognize that the *Van Orden* Court *expressly recognized that the capitol grounds were not analogous to a classroom setting*. The plurality opinion (joined by four of the nine justices) observes

that there are “of course, limits to the government’s display of religious messages or symbols” and reiterates that “posting of the Ten Commandments in every public schoolroom” was “unconstitutional.” *Van Orden*, 545 U.S. at 678 (citing *Stone v. Graham*, 449 U.S. 39 (1980)). The plurality opinion further elaborates that “Texas’ placement of the Commandments monument on its capitol grounds is a far more passive use of those texts than was the case in *Stone*, where the text confronted elementary school students every day.” *Id.* (emphasis added). Justice Breyer’s concurring opinion also suggests that he may have sided with the dissent (which would have invalidated the display) if Texas had attempted to place the Commandments in public school classrooms: “This case . . . is distinguishable from instances where the Court has found Ten Commandments displays impermissible. The display is not on the grounds of a public school, where, given the impressionability of the young, government must exercise particular care in separating church and state.” *Id.* at 703 (Breyer, J., concurring).

Similarly misplaced is Appellant’s reliance on this Court’s discussion of permissible displays of the Ten Commandments in *Plattsmouth*, 419 F.3d 772. For one thing, *Plattsmouth* explicitly

acknowledged the distinction *Van Orden* drew between certain acceptable depictions and “*impermissible*” displays in “public-school classrooms.” *See id.* at 776 (emphasis added). Moreover, the examples characterized by *Plattsmouth* as historically acceptable involve *purely symbolic* depictions of the Commandments. *See id.* at 777 (citing *Van Orden*, 545 U.S. at 688-90, and discussing, among others, symbolic displays at the National Archives, the Department of Justice, and the Supreme Court). These depictions *do not show the text* of the Ten Commandments, which provides the religious instruction at issue here. Indeed, the frieze on the southern wall of the Supreme Court was designed intentionally to show the text (in Hebrew) only of Commandments six through ten, thus *omitting* the purely religious instructions found in the first half of the Decalogue.⁶ The absence of the actual text that Act 573 imposes on children throughout the school year makes these symbols completely unlike the displays at issue here. As the Supreme Court explained:

⁶ Office of the Curator, Supreme Court of the United States, Courtroom Friezes: South and North Walls (May 8, 2003) <https://www.supremecourt.gov/about/northandsouthwalls.pdf>.

Displaying that text is . . . different from symbolic representation, like tablets with 10 roman numerals, which could be seen as alluding to a general notion of law, not a sectarian conception of faith. Where the text is set out, the insistence of the religious message is hard to avoid in the absence of a context plausibly suggesting a message going beyond an excuse to promote the religious point of view.

McCreary Cnty. v. ACLU, 545 U.S. 844, 847 (2005).

If Act 573 proponents had wanted to reference the Ten Commandments symbolically, they could have done so by depicting them without their text. Instead, they chose to provide *explicit religious instruction* by posting their preferred version of the text in every classroom and school library. This is not merely a display of a passive symbol that may be subject to multiple interpretations; it is indoctrination of a singular religious directive to worship a particular God and to forsake all other religions. That is what the text says, and Appellant does not offer *any* alternate interpretation for these instructions that it wishes to post in every classroom.

Nevertheless, Appellant attempts to defend Act 573's indoctrination by suggesting that students are not required to do anything with the Ten Commandments. *See* Appellant's Br. at 37-38. Of course, whether or not a student chooses to *follow* the posted instructions

is irrelevant. *See Engel*, 370 U.S. at 430 (“Voluntary” nature of religious “observance” will not “free it from the limitations of the Establishment Clause.”). In any event, Appellant’s argument that the posters can simply be ignored is the same argument that was rejected in *Engel*, *Schempp*, *Lee*, and *Santa Fe*; school prayer is not permissible simply because students could choose to ignore it. *See supra. Lee*, in particular, noted that there must be “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools” before rejecting the argument that students should be expected to simply ignore a religious practice. *Lee*, 505 U.S. at 592-93.

Moreover, the suggestion that no student will feel compelled to follow instructions posted on the walls of every classroom ignores reality. It is exceptionally rare for Arkansas to mandate that a set of instructions be posted on classroom walls. The few other examples include: (1) the Arkansas Fire Prevention Code’s requirement that the maximum occupancy of “the room or space [be] posted in a conspicuous place, near the main exit or exit access doorway from the room or space” in “an

approved legible permanent design”;⁷ and (2) a statutory provision requiring “that notice of what constitutes bullying, that bullying is prohibited, and that the consequences of engaging in bullying be conspicuously posted in every classroom,” among other locations, Ark. Code Ann. § 6-18-514(f)(2)(F). Both maximum occupancy limits and anti-bullying rules are posted on the walls of each classroom because they must be read, understood, *and followed*. Now, Arkansas schools must also post religious instruction on the same walls so they may similarly be read, understood, and followed.

In fact, Appellant essentially concedes that students *cannot* avoid engaging with these posters. Appellant suggests that it would be impractical to allow parents to opt students out of interacting with content posted on a classroom wall because such content does not represent a specific “educational requirement” or curriculum feature. Appellant’s Br. at 50. That is exactly the point. Students will be confronted with the State’s religious instruction every minute of every school day and cannot “opt out” from this pervasive messaging. They

⁷ Ark. Fire Prevention Code, Vol. 2, § 1004.9 (2021 ed.) (italics omitted), https://codes.iccsafe.org/content/ARFPCVIIB2021P1/chapter-10-means-of-egress#ARFPCVIIB2021P1_Ch10_Sec1004.9.

cannot avoid routinely seeing the Commandments, and they cannot realistically avoid routinely reading parts of the Commandments, even if they do not read all the way through. If anything, the fact that the Ten Commandment's religious instruction remains in full view at all hours of the school day makes it *more* pervasive than the limited amounts of prayer found unconstitutional in *Engel*, *Schempp*, *Lee*, and *Santa Fe*, each of which was over in a few minutes or less.

IV. Act 573 Contains No Safeguards Against Indoctrination.

“[T]o withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.” *Schempp*, 374 U.S. at 222. Appellant cites Act 573's “historical representation” requirement as evidence that the displays mandated by Act 573 are meant only to “acknowledge the historical significance of the Ten Commandments.” Appellant's Br. at 26. And yet, Appellant offers no credible explanation of how children as young as five years old might be expected to understand that purpose.

Evidently, then, Appellant believes young children can be instructed in every classroom to worship the God of the Hebrew Bible and “thou shalt have no other gods before me,” *without* interpreting those

explicit instructions to mean they should favor the Bible’s depiction of God over all other conceptions of God or religion. And the children will somehow reach this counter-textual conclusion on their own because, again, Act 573 does *not*—as Appellant itself stresses, *see* Appellant’s Br. at 49-50—provide *any* changes to the curriculum that might teach the students about history or otherwise explain the allegedly intended context to them.

That suggestion is a farce. To be sure, the Supreme Court recognized in *Stone v. Graham* that passages from the Bible “may constitutionally be used in appropriate study of history, civilization, ethics, comparative religion or the like” *when such use has been “integrated into the school curriculum.”* 449 U.S. 39, 42 (1980) (emphasis added). But absent such integration, the only effect that posting the Ten Commandments conceivably could have is “to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” *Id.*⁸ This makes sense. When *religious instruction* is

⁸ Although the Supreme Court has abrogated the legal test stated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which the *Stone* court relied upon to reach its holding, *Stone* has never been overturned and the Court’s observations about the role of the Ten Commandments in public classrooms exist independently from its *Lemon* analysis.

posted in every classroom—where students go to *receive educational instruction*—it is not credible to suggest that young students will be able to distinguish instruction from non-instruction, and obvious religious meaning from alleged but invisible secular meaning, when no effort is made to explain any of this to them.

V. Act 573 Favors Certain Faiths and Denominations Over Others By Selecting A Preferred Version Of The Ten Commandments.

In addition to violating the Establishment Clause’s prohibition on compelled religious observance, Act 573 also violates the Clause by preferring certain religious beliefs over others. *See, e.g., Town of Greece v. Galloway*, 572 U.S. 565, 581 (2014) (“Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.”); *McCreary Cnty.*, 545 U.S. at 876 (observing that the “Religion Clauses” “guard against the civic divisiveness that follows when the government weighs in on one side of religious debate”); *Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”).

There is no singular, universally accepted version of the Ten Commandments. Instead, “[t]here are at least four separate versions of the ordering of the Ten Commandments: Jewish, Catholic, Lutheran, and general Protestant. Furthermore, these faiths, as well as different denominations within these faiths, use different translations of the Commandments.” See Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 FORDHAM L. REV. 1477, 1482-83 (2005) (“Finkelman”). This is because the Ten Commandments are not numbered in any of the three passages in the Bible where they appear: Exodus 20, Exodus 34, and Deuteronomy 5. Further complicating the issue, these Bible verses actually contain *more* than ten instructions, which have led different faiths to reach different interpretations as to what the “ten” Commandments actually include. Finkleman at 1488 (“There are in fact at least thirteen separate admonitions in these verses to ‘do’ something, or ‘not do’ something . . . Different faiths divide these verses in different ways.”).

For example, consider the second Commandment identified in Act 573: “Thou shalt not make to thyself any graven images.” This is *not* a Commandment under the Catholic and Lutheran understanding of

scripture.⁹ These distinctions in translation, codification, and interpretation are neither minor nor insignificant. To the contrary, they have led to substantial differences in belief and practice, resulting in (sometimes violent) sectarian conflict. Because the Protestant version of the Commandments includes a prohibition on worshiping graven images, “[t]he Protestant reformation made it a point to destroy statues in Catholic churches and cathedrals, as the Reformationists turned those buildings into Protestant churches.” Finkelman at 1494. On the other hand, Catholics—who reject the worship of idols but do not treat religious art as a graven image—“retained statutes of saints, of the Virgin Mary, and of course of Jesus.” *Id.*

Additionally, the first Commandment in Act 573—“Thou shalt have no other gods before me”—has been the subject of *many* disagreements over the correct translation and interpretation. A review of various

⁹ See A.L. Barry, “What about . . . The Ten Commandments”, Faith Lutheran (2001), <https://www.faithlutherancorning.org/10-commandments> (Lutheran); Catholic Church, “Catechism of the Catholic Church: Revised in Accordance with the Official Latin Text Promulgated by Pope John Paul II”, 496-97 (United States Catholic Conference, 2nd ed. 2000) <https://www.usccb.org/sites/default/files/flipbooks/catechism/498/> (Catholic).

translations reveals at least nine alternate versions of this Commandment:

- “You shall not have other gods besides me.”
- “You shall have no gods except me.”
- “Thou shalt not have strange gods before me.”
- “You shall have no other gods besides me.”
- “You shall have no other god beside Me.”
- “You may worship no other god than me.”
- “You must never have any other gods against my face.”
- “You must not have any other gods except me.”
- “You shall have no other gods.”

See Finkelman at 1496 (summarizing text in Catholic *New American Bible*, Catholic *Jerusalem Bible*, Jewish Publication Society editions of the *Tanakh*, the Protestant *Living Bible*, the *International Children’s Bible*, *Luther’s Small Catechism*, and various other versions of the Bible).

Those differences may seem small on first impression, but each version carries different implications on the existence of other gods and the role they may (and may not) play in the lives of the faithful. For example, translations suggesting no “other god” may come “before” or

“beside” God appear to acknowledge (or at least allow for) the potential existence of other gods who may fall behind God, whereas the statement “you shall have no other gods” prohibits such a possibility. *Id.* Some Christians interpret this Commandment as the basis for an exclusivist understanding of religion, while others focus on the primacy of one’s duties to God, warning against temptations of greed, materialism, nationalism, and any other thing that may interfere with one’s relationship with the Divine.¹⁰

Further, consider the sixth Commandment in Act 573: “Thou shalt not kill.” Under Jewish tradition and interpretation, this Commandment is translated as “Thou shalt not murder.”¹¹ “Killing” and “murdering” are substantially different concepts that carry different legal and ethical implications. There also are substantial differences in the ways in which

¹⁰ See, e.g., Jason Valendy, “You Shall Have No Other Gods BEFORE Me?” <https://um-insight.net/in-the-church/practicing-faith/you-shall-have-no-other-gods-before-me/> (First Commandment could mean “abolishing any other god from our lives,” or it could mean “You can have other gods, but they shall not come first.”).

¹¹ “Judaism: The Ten Commandments,” Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/the-ten-commandments>.

different denominations have interpreted the Commandment against blasphemy. *See* Finkelman at 1496-97.

Act 573 wades into these theological debates and selects a single interpretation of the Ten Commandments as the “winner” to be posted in every public classroom and school library. The statute does not merely require that *some* version of the Ten Commandments be posted, it requires that a very specific version be posted, even specifying the exact text that should be included. This lack of nuance or appreciation for theological differences highlights the problem: the State may not express preferences for the beliefs of specific denominations in public schools. As James Madison warned shortly after the Founding of this Country, the suggestion that “the Civil Magistrate is a competent Judge of Religious Truth” is “an arrogant pretension, falsified by the contradictory opinions of Rulers in all ages, and throughout the world.” Madison, James, Memorial and Remonstrance (1785).¹²

¹² *Available at* <https://founders.archives.gov/documents/Madison/01-08-02-0163>.

CONCLUSION

The District Court correctly recognized that Act 573 violates the Establishment Clause. That decision should be affirmed.

Respectfully submitted,

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on July 6, 2026.

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