

No. 25-50695

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

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.

On Appeal from the United States District Court for the
Western District of Texas, No. 5:25-cv-00756-SFB
Hon. Samuel F. Biery, Jr., *United States District Judge*

**UNOPPOSED MOTION OF THE TEXAS FREEDOM NETWORK,
THE INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION,
STUDENTS ENGAGED IN ADVANCING TEXAS, PASTORS
FOR TEXAS CHILDREN, OUR SCHOOLS OUR DEMOCRACY, AND
EVERY TEXAN FOR LEAVE TO FILE BRIEF AS AMICI CURIAE
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CERTIFICATE OF INTERESTED PERSONS

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

Plaintiffs-Appellees	Former or present counsel
<ul style="list-style-type: none"> • Mara Nathan • Virginia Galaviz Eisenberg • Rob Eisenberg • Seth Ettinger • Sarah Ettinger • Elizabeth Lemaster • Carah Helwig • Alyssa Martin • Cody Barker • Lauren Erwin • Rebekah Lowe • Theodore Lowe • Marissa Norden • Wiley Norden • Joshua Fixler • Cynthia Mood • Cheryl Rebecca Smith • Arvind Chandrakantan • Allison Fitzpatrick • Mara Richards Bim • Minor Children M.N., R.E., K.L., L.L., J.P., T.P., H.B.M., M.E., E.R.L., E.M.L., E.N., A.N., D.F., 	<ul style="list-style-type: none"> American Civil Liberties Union Foundation • Heather L. Weaver • Daniel Mach • Arijeet Sensharma American Civil Liberties Union Foundation of Texas • Adriana Pinon • Thomas Buser-Clancy • Chloe Kempf • Sarah Corning Americans United for Separation of Church & State • Alex J. Luchenitser • Amy Tai Freedom From Religion Foundation • Patrick C. Elliot • Samuel T. Grover Simpson Thacher & Bartlett LLP • Jonathan K. Youngwood • Janet A. Gochman

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Defendants-Appellants	Former or present counsel
<ul style="list-style-type: none"> • Alamo Heights Independent School District • North East Independent School District • Lackland Independent School District • Northside Independent School District • Austin Independent School District • Lake Travis Independent School District • Dripping Springs Independent School District • Houston Independent School District • Fort Bend Independent School District • Cypress Fairbanks Independent School District • Plano Independent School District 	Office of the Texas Attorney General <ul style="list-style-type: none"> • William R. Peterson • William Francis Cole • Daniel Ortner • William Howard Farrell
Amici curiae	Former or present counsel
<ul style="list-style-type: none"> • Texas Freedom Network (“TFN”) • The Intercultural Development Research Association (“IDRA”) 	Skadden, Arps, Slate, Meagher & Flom LLP <ul style="list-style-type: none"> • Julia York • Thomas Gentry

<ul style="list-style-type: none"> • Students Engaged in Advancing Texas (“SEAT”) • Pastors for Texas Children (“PTC”) • Our Schools Our Democracy (“OSOD”) • Every Texan (“ET”) 	<ul style="list-style-type: none"> • Elizabeth Simon • Salvatore Minopoli • Benjamin Banker • Sandeep Stanley
<p>State of Tennessee State of Alaska State of Alabama State of Florida State of Arkansas State of Ohio State of Utah State of Kansas State of West Virginia Montana State State of Mississippi State of Iowa State of Indiana State of Idaho Commonwealth of Kentucky Missouri Nebraska South Carolina South Dakota</p>	<p>Office of the Kentucky Attorney General</p> <ul style="list-style-type: none"> • Matthew F. Kuhn • Caleb Childers
<p>46 Members of the United States Congress:</p> <p>Senators:</p> <ul style="list-style-type: none"> • Ted Cruz (TX) • Senator John Cornyn (TX) • Ted Budd (NC) • Mike Lee (UT) 	<p>Hacker Stephens LLP</p> <ul style="list-style-type: none"> • Heather Gebelin Hacker <p>First Liberty Institute</p> <ul style="list-style-type: none"> • Kelly Shackelford • Jeffrey C. Mateer • Hiram S. Sasser, III • David J. Hacker

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Members of the House of Representatives:

- Mike Johnson (LA-4)
- Chip Roy (TX-21)
- Brian Babin (TX-36)
- Andy Biggs (AZ-05)
- Sheri Biggs (SC-03)
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- Paul Gosar (AZ-09)
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Dated: December 29, 2025

/s/ Julia K. York
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Counsel for Amici Curiae

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Proposed Amici Curiae, by and through counsel, and pursuant to Federal Rule of Appellate Procedure 29(a)(3) and Fifth Circuit Rule 29, hereby move for leave to file the attached amici curiae brief in support of Plaintiffs-Appellees. Counsel for Amici Curiae conferred with counsel for Plaintiffs-Appellees and Defendants-Appellants regarding this Motion, and they do not oppose this Motion.

I. Interest of Amici Curiae

Amici curiae¹ have a substantial interest in the issues presented in this appeal. TFN, IDRA, SEAT, PTC, OSOD, and ET are non-profit organizations with the shared mission to promote and advocate for racial, ethnic, gender, and, as most relevant here, religious and non-religious equity in Texas public schools. Amici participate in policymaking, conduct research, provide educator and student support, and lead communities of interest to provide students and educators with equal educational opportunities.

¹ Pursuant to Rule 29(a)(4)(E), undersigned counsel affirms that (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

Public education is fundamental to a well-functioning society. Not only should public schools provide the youngest generation of students with an education, but they should strive to promote a tolerant citizenry by teaching respect for diversity and promoting equality. Public schools provide the unique opportunity of bringing people of diverse backgrounds, cultural identities, and experiences under a shared roof with a shared goal. Parents trust that when their child is sent to a public school, they will have equal opportunity to secure an education regardless of their identity, including their religious background.

Students and educators thrive when diversity and equal educational opportunities are put at the forefront of public school education. But Texas Senate Bill 10, 89 Leg., Reg. Sess. (2025) (“S.B. 10”) directly threatens student diversity and will have detrimental effects on the student body population. S.B. 10 promotes the superiority of certain religions over other religions and non-religious beliefs, a particular concern where, as here, the promotion comes from a position of authority to impressionable students. Furthermore, S.B. 10 risks hindering the educational development of students by creating a distracting and unproductive classroom setting. Additionally, S.B. 10 threatens to use vital public funding for religious promotions rather

than necessary educational expenses. Amici support Plaintiffs-Appellees and affirming the lower court's decision.

II. The Proposed Amicus Brief is Desirable and the Matters Asserted are Relevant to the Disposition of the Case.

Amici's proposed brief is desirable because it provides important context for the impact S.B. 10 will have on students and the educational system. The brief argues that education is a key pillar of American democracy, that religious freedom within public education has always been important, and that S.B. 10 will undermine the goals and effectiveness of education. S.B. 10 will influence students in ways contrary to the First Amendment and risks creating hostile educational environments, which Texas lawmakers specifically considered and consciously ignored. S.B. 10 will not advance public education — it will undermine it.

CONCLUSION

Amici respectfully request that the Court grant this Motion and direct the Clerk to file the attached Amici Curiae brief.

Dated: December 29, 2025

Respectfully submitted,

/s/ Julia K. York

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CERTIFICATE OF CONFERENCE

Counsel for Amici Curiae conferred by email with counsel for Plaintiffs-Appellees and Defendants-Appellants regarding this Motion. No party opposes the relief sought.

Dated: December 29, 2025

/s/ Julia K. York
Julia K. York

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, this Motion was served via CM/ECF on all registered counsel and electronically transmitted to the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit. I further certify that any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13.

Dated: December 29, 2025

/s/ Julia K. York
Julia K. York

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that (1) this motion complies with the type-volume limitations of Fifth Circuit Rule 27.4 and Federal Rule of Appellate Procedure 27(d)(2), because it contains 545 words, as calculated by Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2); and (2) this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Book Antiqua font.

Dated: December 29, 2025

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Julia K. York

Counsel for Amici Curiae

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Amici curiae Texas Freedom Network (“TFN”), Intercultural Development Research Association (“IDRA”), Students Engaged in Advancing Texas (“SEAT”), Pastors for Texas Children (“PTC”), Our Schools Our Democracy (“OSOD”), and Every Texan (“ET”) are non-profit organizations. There are no parent corporations or publicly held corporations that own 10% or more of their stock.

Dated: December 29, 2025

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Julia K. York

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE

Amici curiae¹ have a substantial interest in the issues presented in this appeal. TFN, IDRA, SEAT, PTC, OSOD, and ET are non-profit organizations with the shared mission to promote and advocate for equal educational opportunity and racial, ethnic, gender, and, as most relevant here, religious and non-religious equity in Texas public schools. Each Amici brings unique expertise and experience to the issues presented in this appeal.

TFN, for decades, has focused on expanding public education and religious freedom through advocacy and connecting policy-makers and community leaders. IDRA leads policy and legal initiatives with the goal of advancing equal educational opportunities for all children through strong public schools. SEAT strives to give students a voice in policymaking decisions and educational opportunities. PTC is an independent ministry that serves Texas public schools through prayer, service, and advocacy. It initiates school assistance programs with local congregations, promotes social

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), undersigned counsel affirms that (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief. Counsel for Amici contacted counsel for the parties who said they do not oppose Amici's submission.

justice for children, and advances legislation for Texas children, families, and communities. OSOD works to protect the fundamental right of all Texans to a free, quality public education through research, education, outreach, and advocacy. ET advocates for expanded access to education, healthcare, fiscal fairness, and equitable economic opportunity.

Public education is fundamental to a well-functioning society. Not only should public schools provide the youngest generation of students with an education, but they should strive to promote a tolerant citizenry by teaching respect for diversity and promoting equality. Public schools provide the unique opportunity of bringing people of diverse backgrounds, cultural identities, and experiences together under a shared roof with a shared goal. Parents trust that when their child is sent to a public school, they will have equal opportunity to secure an education regardless of their identity, including their religious background.

Texas Senate Bill 10, 89 Leg., Reg. Sess. (2025) (“S.B. 10”) aims to place a specific, Protestant version of the Ten Commandments in every public school classroom. The law undermines the mission and constitutional mandate of Texas public education and detrimentally affects students and school communities. S.B. 10 promotes the superiority of certain religions over other

religions and non-religious beliefs – a particular concern where, as here, the promotion comes from a position of authority to impressionable students. S.B. 10 further risks hindering the educational development of students by creating a distracting, hostile, and unproductive classroom environment. Amici file in support of Plaintiffs-Appellees and respectfully request affirmance of the lower court’s decision to grant a preliminary injunction.

ARGUMENT

I. American public schools are built on a history and tradition of educational and religious freedom that S.B. 10 needlessly restricts.

Our country’s Founders envisioned education as a key pillar of American democracy. In crafting the U.S. Constitution, James Madison described a popular government without “popular information” – referring to public education—as “but a prologue to a Farce or a Tragedy.” *See* Letter from James Madison to William T. Barry (Aug. 4, 1822), *reprinted by* Nat’l Archives: Founders Online, <https://founders.archives.gov/documents/Madison/04-02-02-0480>. Similarly, Benjamin Rush, one of the Founders, believed that “[t]o conform the principles, morals and manners of our citizens, to our republican forms of government, it is absolutely necessary that knowledge of every kind should

be disseminated through every part of the United States.” Benjamin Rush, *Address to the People of the United States*, Am. Mus. (Jan. 1787), http://archive.csac.history.wisc.edu/Benjamin_Rush.pdf. John Adams, too, recognized that “education of our youth” was critical to preservation of our liberty because “liberty cannot be preserved without a general knowledge among the people.” John Adams, V. “*A Dissertation on the Canon and the Feudal Law*,” No. 3, (Sept. 30, 1765), reprinted by Nat’l Archives: Founders Online, <https://founders.archives.gov/documents/Adams/06-01-02-0052-0006>.

Building on this foundation, the U.S. Supreme Court has emphatically recognized that “education is perhaps the most important function of state and local governments.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

Texas’s founders adopted a similar philosophy in crafting the Texas Constitution and establishing a free system of public schools. For example, in its 1836 Declaration of Independence, Texans boldly proclaimed that public schools are vital because “unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government.” Tex. Decl. of Indep. (1836). Acting on this declaration, delegates of the 1875 Texas Constitutional Convention adopted a Public Education Article to ensure that the means of a common school education “should, if

possible, be placed within the reach of every child in the State.” *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 395 (Tex. 1989). This vision is enshrined in the Texas Constitution, which states that “[a] general diffusion of knowledge [is] essential to the preservation of the liberties and rights of the people.” Tex. Const. art. 7 § 1.

The public education system is a medium through which learning and the values of a tolerant citizenry are fostered and brings together students of all walks of life in a common setting. As such, Americans have rejected segregation, discrimination, and other policies that serve to divide, rather than unite, students. *See Brown*, 347 U.S. at 495. As this Circuit has long recognized, “if the state does provide an educational system, it must do so in a non-discriminatory fashion.” *Debra P. v. Turlington*, 644 F.2d 397, 403 (5th Cir. 1981).

Accordingly, the practical realities of education naturally coincide with the principle of religious neutrality advocated for by the Founders and established by the First Amendment. From the inception of modern public schools, efforts to incorporate religious practices were met with much controversy and opposition. *See Supp. Decl. of Steven K. Green* ¶ 24, Dkt. No. 53-4, No. 25 Civ. 756 (W.D. Tex. Aug. 8, 2025) [hereinafter “Green Expert

Rebuttal Report”]; *see also* Decl. of Steven K. Green ¶¶ 40-41, Dkt. No. 4-24, No. 25 Civ. 756 (W.D. Tex. July 2, 2025) [hereinafter “Green Expert Report”]. Based upon this history, and the beliefs of the Founders, the Supreme Court has repeatedly reinforced the need for government neutrality among this country’s multitude of religions. *See Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 241 (2025) (stating “[t]he First Amendment mandates government neutrality between religions”). “The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools,” where students are “impressionable and their attendance is involuntary.” *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987). Such vigilance is important because families send their children to school with the understanding that “the classroom will not purposely be used to advance religious views that may conflict with the private beliefs” of the student or family. *Id.* at 584; *see also Engel v. Vitale*, 370 U.S. 421, 431-32 (1962) (discussing the place of religion in schools, noting the Founders’ belief that “religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate” (citation omitted)). These foundational considerations mandate that the state refrain from religious public education.

S.B. 10 contradicts America's history and traditions, evidence-based best practices in education, and well-established case law. The display of the Ten Commandments, specifically a Protestant version of the Ten Commandments, undermines the purposes of public education by the daily indication that there is a "right" religion and all others are "wrong," which serves no valid educational purpose. It detracts from religious liberty and religious diversity, plants the seeds of intolerance, and risks undermining students' learning, as research and experience have repeatedly shown. *See* Green Expert Report ¶¶ 40-41.

II. S.B. 10 will influence Texas's religiously diverse students by creating the hostile environment prohibited by the First Amendment.

S.B. 10 and similar laws create a classroom environment that impermissibly influences impressionable students of all ages by mandating the display of inherently religious content in a manner that cannot be ignored. Such a classroom environment stands in direct contrast with the Founders' educational and religious beliefs and with the First Amendment. Despite warnings, Texas lawmakers consciously ignored concerns that S.B. 10 would create exactly this unconstitutional and hostile environment.

A. Students, particularly minor students, are impressionable and subject to influence from public school authority figures.

Students are impressionable and subject to influence from school authority figures. *See Sch. Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 383 (1985) (discussing “the sensitive relationship between government and religion in the education of our children” and noting that “[t]he government’s activities in this area can have a magnified impact on impressionable young minds”), *overruled on other grounds by Agostini v. Felton*, 521 U.S. 203 (1997).

This influence extends to posters displayed on classroom walls: such posters “may foster sporadic, individual, incidental learning” and “catalyze conversation,” Michael Hubenthal et al., *Posters That Foster Cognition in the Classroom: Multimedia Theory Applied to Educational Posters*, 48 *Educ. Media Int’l* 193, 196 (2011), and/or result in “unconscious learning.” Justina O. Osa & Linda R. Musser, *The Role of Posters in Teacher Education Programs*, 27 *Educ. Libr.* 16, 17 (2004).

S.B. 10 is particularly concerning because the legislative history makes clear that the main objective behind placing posters of the Ten Commandments in classrooms is to influence and control students’ religious expression. According to the lead Senate sponsor and author of S.B. 10, “we

want every kid, [kindergarten] through twelve, every day, in every classroom they sit in to look on the wall and read . . . those words [] that God says because we want them to understand how important that those statements of God, those rules of God are that they see them in their classroom every single day of their public education.” *Nathan v. Alamo Heights Indep. Sch. Dist.*, 795 F. Supp. 3d 910, 940 (W.D. Tx. 2025) (alterations in original) (quoting Kimberly Watts, king audio 20250618toddstames, YouTube, at 3:40–4:14 (June 21, 2025), <https://www.youtube.com/watch?v=Kbll35APGTs>). By design, S.B. 10 would expose students to messaging that they have no ability to avoid or opt out of – the very concern raised by Thomas Jefferson when he cautioned against “putting the Bible and Testament into the hands of the children, at an age when their judgments are not sufficiently matured for religious enquiries.” Thomas Jefferson, *Notes on the State of Virginia*, 145 (Lilly & Waite eds., 1832) (1787), <https://tile.loc.gov/storage-services/service/gdc/lhbc/b/04902/04902.pdf>.

B. S.B. 10 seeks to inculcate the belief that one religion is superior, undermining culturally sustaining schools.

The Ten Commandments are plainly religious. *See, e.g., Van Orden v. Perry*, 545 U.S. 677, 700-01 (2005) (J. Breyer, concurring) (“[T]he [Ten]

Commandments’ text undeniably has a religious message, invoking, indeed emphasizing, the Deity”); *Stone v. Graham*, 449 U.S. 39, 41 (1980) (recognizing that “posting the Ten Commandments on schoolroom walls is plainly religious in nature. . . . [A]nd no legislative recitation of a supposed secular purpose can blind us to that fact”). The religious nature of Ten Commandments displays comes to the fore when they are displayed without context and where the government endorses a single translation. S.B. 10 facially disfavors the presentation of the Ten Commandments in a broader historical or comparative context by mandating that the poster or framed copy “include *only the text of the Ten Commandments as provided.*” Tex. Educ. Code Ann. § 1.0041(b)(1) (emphasis added).

Moreover, S.B. 10 limits the display to a single interpretation of the Ten Commandments, leaving no room for religious diversity or separate interpretation. S.B. 10 promotes a version of the Ten Commandments that reflects Protestant-Christian beliefs, but is not explicitly endorsed by any particular denomination. *See* Appellants’ Br. at 11 (stating the “text was developed by the ‘Fraternal Order of Eagles’” which “consult[ed] with a committee composed of members of several faiths in order to find a nonsectarian text” (alteration in original) (citations omitted)). But this genericization does not

make the Ten Commandments any less based in religion; it does not make the text universally applicable to students of all Christian or Jewish faiths; and it does not address the concerns of students who practice faiths that do not recognize the Ten Commandments. *See Engel*, 370 U.S. at 430 (stating “the fact that the [in-school] prayer may be denominationally neutral . . . can[not] serve to free it from the limitations of the Establishment Clause”).

Rather than promoting religious and cultural pluralism, as envisioned by our Nation’s founders, S.B. 10 deliberately undermines safe and supportive educational environments for all young people. *See supra* Section I; *see also* Altheria Caldera, *What the Term “Culturally Sustaining Practices” Means for Education in Today’s Classrooms*, Intercultural Dev. Rsch. Ass’n (May 2021), <https://www.idra.org/resource-center/what-the-term-culturally-sustaining-practices-means-for-education-in-todays-classrooms> (asserting that “educational practices in a democratic society should aim to cultivate cultural pluralism”).

C. Texas lawmakers specifically considered and consciously ignored S.B. 10’s hostile effects.

There is no question that S.B. 10 will expose students to religious messaging that elevates certain faith traditions to the exclusion of others, in

violation of the religious and educational principles central to the goals of the Texas education system and the First Amendment. The legislative history of S.B. 10 demonstrates that the Texas lawmakers were indifferent to, or outright ignored, the hostile environment S.B. 10 creates for non-Protestant public schoolchildren. For example, when asked about their minority-faith constituents' opinion on S.B. 10, a representative said, "I don't know. I haven't asked one." *Nathan*, 795 F. Supp. 3d at 942 (quoting S.B. 10 Hearing Before H. Comm. on Pub. Educ., 2025 Leg., 89th Reg. Sess. 6:40:31–6:40:44 (Tex. Apr. 29, 2025), <https://house.texas.gov/videos/21958>) ("S.B. 10 Hearing").

Some representatives even dispensed entirely with the pretense of "representing" all of their constituents. A primary author of S.B. 10 railed against perceived minority rule, declaring "Christians are the majority, pretty clearly [T]he majority needs to look out for the minority, I understand, and be careful not to trample them. But we've gone too far there." *Id.* at 941. This is directly contrary to settled Supreme Court precedent that "the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority," *Wallace v. Jaffree*, 472 U.S. 38, 52 (1985), and to the intentions of the Founders, who

envisioned the First Amendment as a shield against the tyranny of the majority. *See* Letter from Thomas Jefferson to James Madison (Mar. 15, 1789), *reprinted by* Nat'l Archives: Founders Online, <https://founders.archives.gov/documents/Jefferson/01-14-02-0410>.

III. The hostile educational environment created by S.B. 10 will adversely impact the quality of education available to Texas's students.

Consistent with the mandate that Texas's education system "must [be provided] in a non-discriminatory fashion," *Turlington*, 644 F.2d at 403, the Code of Ethics and Standard Practices for Texas Educators requires that teachers must not "intentionally, knowingly, or recklessly treat a student . . . in a manner that adversely affects or endangers [their] learning, . . . [or] mental health," which includes discriminatory treatment based on religion. 19 Tex. Admin. Code § 247.2(3)(B), (D). However, in enacting S.B. 10, Texas lawmakers hold themselves to a different standard than they apply to teachers. The hostile environment S.B. 10 creates will endanger student learning by promoting religious bullying and impeding student engagement. Texas legislators again considered and ignored these facts.

A. Religious bullying in classrooms persists and harms student development.

The right to be free from discrimination and harassment based on one's faith is one of the key founding principles of this country. *See* Thomas Jefferson, *A Bill for Establishing Religious Freedom* (1778), reprinted by Nat'l Archives: Founders Online, <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082> ("[O]ur civil rights have no dependance [sic] on our religious opinions . . ."). Indeed, the lower court correctly granted Appellees' preliminary injunction precisely because S.B. 10 is likely to engender discrimination and harassment grounded in religious beliefs. *See, e.g., Nathan*, 795 F. Supp. 3d at 948; *Roake v. Brumley*, 756 F. Supp. 3d 93, 193 (M.D. La. 2024) (holding that Appellees' children were substantially likely to feel pressure to conform to Protestant observance to avoid harassment from peers, teachers, and school officials), *vacated, rehearing en banc ordered*, 154 F.4th 329 (5th Cir. 2025). Chief Judge Fred Biery, a student of Methodist theology before his legal career, *see Nathan*, 795 F. Supp. 3d at 944, wrote in granting Appellees' request for an injunction that schools take on a special status, in part, because children are especially susceptible to peer pressure. *Id.* at 946-47. As Judge Biery noted,

“[c]hildren can be cruel to their classmates perceived to be ‘the other.’” *Id.* at 948.

This is not merely a historical concern. In schools across the country — including the schools under Appellants’ purview — students are subject to brutal attacks for expressing their beliefs. A Catholic student was forced to defend her faith in an argument with her teacher, earning herself an unbecoming nickname for the rest of the year. David Dupper et al., *Experiences of Religious Minorities in Public School Settings: Findings from Focus Groups Involving Muslim, Jewish, Catholic, and Unitarian Universalist Youths*, 37 *Children & Schs.* 37, 41 (2015). A Muslim student had her hijab ripped off before being berated as a “terrorist.” *Id.* at 42. And a Jewish student was taunted with calls of “get in the oven.” *Id.* Compared to appearance-based or academic-based bullying, studies suggest that ethnic and cultural bullying is often seen as less serious and authority figures are more likely to blame the victim. See Anke Goerzig et al., *Teachers’ Responses to Identity-Based Bullying: Social Inequality, Identity, and Diversity at Teacher and School Level*, *Int’l J. of Bullying Prevention* (2025), at 9, <https://doi.org/10.1007/s42380-024-00281-2>.

Decades of research also demonstrate the long-lasting negative effects on the students who are the bullies. When researchers placed religious

majority symbols on classroom walls, they observed that students of that religious majority were more likely to exclude students of minority faiths from social encounters. See Margareta Jelic et al., *If school walls could talk: A mixed-method study of physical space marking in promoting multiculturalism*, 41 *Current Psych.* 6063, 6073 (2022). Perhaps even more troubling was their conclusion that those majority-faith students developed negative perceptions about multiculturalism that persisted outside the classroom. *Id.* Such perceptions directly contravene the vital purposes of the educational system. Legislatures, including the Texas state legislature, ought not to be in the business of fostering and deepening these discriminatory divisions. See James Madison, *Memorial and Remonstrance* ¶ 8 (1785), reprinted by Bill of Rights Inst., <https://billofrightsinstitute.org/primary-sources/memorial-and-remonstrance>.

Bullying also has demonstrable and persistent effects on targeted students. Identity-based bullying, including religious bullying, has been strongly linked with higher levels of violent behavior and poorer physical health, social relationships, grades, and class attendance. See Maria Sapouna et al., *Bullying Victimization Due to Racial, Ethnic, Citizenship and/or Religious Status: A Systematic Review*, 8 *Adolescent Rsch. Rev.* 261, 287 (2023). A survey

of students who missed school because they felt unsafe revealed that nearly half were the target of bias-based bullying. *See* Laura Baams et al., *Economic Costs of Bias-Based Bullying*, 32 Sch. Psych. Q. 422, 428 (2017). And students who experience religious bullying are more likely to engage in bullying themselves, creating a vicious cycle. *See* Paige Duggins-Clay & Makiah Lyons, *Preventing and Addressing Identity-Based Bullying in Schools*, Intercultural Dev. Rsch. Ass'n (May 2024) at 10, <https://idrased.org/wp-content/uploads/2024/05/Identity-based-bullying-Model-Policy-Brief-IDRA-May-2024-1.pdf>.

B. Studies show the type of display required by S.B. 10 negatively impacts student engagement.

Introducing religion and religious symbols into classrooms directly causes students' self-esteem and academic performance to suffer. During religious celebrations in classrooms, students of other faiths have reported feeling "unloved," "excluded," and "unpopular." Nina Ribak-Rosenthal & Todd Russell, *Dealing with Religious Differences in December: a School Counselor's Role*, 28 Elementary Sch. Guidance & Counseling 295, 299 (1994). When a crucifix was placed in a classroom, students of minority faiths reported feeling less included, much less self-assured, and more hostile. Michael

Schmitt et al., *Identity Moderates the Effects of Christmas Displays on Mood, Self-Esteem, and Inclusion*, 46 J. of Experimental Soc. Psych. 1017, 1020-21 (2010). These effects are not restricted to students of minority faiths: even Christian students have noted feeling more guilty in the presence of a crucifix. *Id.* at 1020.

Additionally, classroom displays can prevent younger children from properly developing the ability to filter information. *See* Pedro Rodrigues & Josefa Pandeirada, *When Visual Stimulation of the Surrounding Environment Affects Children's Cognitive Performance*, 176 J. of Experimental Child Psych. 140, 141 (2018). Every source of information in their field of vision is a competing influence on their attention. *Id.* Students in high-visual load environments were observed to perform worse on tests, taking longer to provide less accurate answers than children in a low-load environment. *Id.* at 146.

C. S.B. 10 will burden public schools by potentially draining financial sources and contributing to teacher attrition.

Texas public schools already face “hard choices” due to funding shortages, including budget deficits, hiring uncertified teachers, and closing schools. Jaden Edison & Rob Reid, *Texas Officials' Claim that School Funding*

is at an All-Time High Ignores Inflation and Temporary Federal Money, Texas Tribune (Mar. 28, 2025, 5:00 AM), <https://www.texastribune.org/2025/03/28/texas-school-funding-explainer>. S.B. 10 does nothing to remedy this situation and, if anything, will only further drain public schools' scarce financial resources. Although there is no mandate requiring public funds for the displays, districts may be unwillingly pressured into diverting essential funds given S.B. 10's vague language and the Attorney General's enforcement threats. See Tex. Educ. Code Ann. § 1.0041(d)(1) (requiring schools to accept "any offer," of public funds, a term that is not defined); Ken Paxton, Att'y Gen. of Tex., *Advisory on School District Compliance with Senate Bill 10*, at 2 (Sept. 26, 2025), <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Advisory%20on%20Texas%20Law%20Upon%20Enactment%20of%20Senate%20Bill%2010.pdf> (stating "[a]ny school district not in compliance is subject to legal action taken by my office"). Just as worrying are the schools that have volunteered to allocate funds for such displays. See Jamie Stengle, *Beliefs Clash Among Students, Parents and Teachers as the Ten Commandments Go Up in Texas Classrooms*, Associated Press (Nov. 20, 2025, 9:14 PM), <https://apnews.com/article/ten-commandments-texas-schools-f16713552035212c4c5430e988dfcf82>

(reporting one district in Frisco “spent about \$1,800 to print . . . posters”). Ultimately, the result is allocating away funds that would otherwise be available for students’ secular education.

S.B. 10 further risks driving teacher attrition, an effect that demonstrably and negatively impacts the quality of education available to students and their ultimate educational outcomes. Teachers have left their positions specifically because of the hostile educational environment S.B. 10 creates; one such teacher who resigned because of S.B. 10 stated she “just was not going to be a part of forcing or imposing religious doctrine onto [her] students.” *Id.* Teacher attrition in Texas public schools has already been increasing in recent years,² and studies show that the “stop-gap” efforts being used in Texas to address this attrition—hiring non-certified and non-traditionally certified teachers—negatively impact students’ education and outcomes.³

² Texas school districts lost 12.2% of their teachers in 2023-2024, up from just 9.3% in 2020-2021. *See* Tex. Educ. Agency, *Teacher Employment, Attrition, and Hiring*, at 5 (Mar. 2024), <https://tea.texas.gov/texas-educators/superintendents/teacher-employment-attrition-and-hiring-march-2024.pdf> [hereinafter “Texas Education Agency”].

³ *See* Texas Education Agency at 8 (noting that “[n]on-certified individuals grew to 34% of newly hired teachers in 2024—a historic high”); *Policy Brief No. 4*, Tex. Tech Univ. Coll. of Educ. at 1-2 (Fall 2023), <https://ttu-ir.tdl.org/server/api/core/bitstreams/1557a17d-ee2a-4b69-908f-18d9962ff7ef/content>.

Accordingly, by bringing unconstitutional elements into the classroom that risk stoking behavioral and self-esteem issues in classrooms, and by further limiting the amount of money districts can allocate to students, S.B. 10 risks driving further teacher attrition and leaves Texas students without the resources they need to succeed.

D. Texas lawmakers specifically considered and consciously ignored these educational impacts, focusing on inculcating one specific religion rather than the quality of all students' education.

Texas lawmakers did not simply choose to ignore foundational educational and constitutional principles – they showed willful disregard for their students' quality of education. For example, when a legislator argued that placing the Ten Commandments in classrooms would exacerbate religious bullying reported by Jewish and Muslim students, another responded by stating, “then we really need the Ten Commandments in there [to show] how to treat others kindly.” *Nathan*, 795 F. Supp. 3d at 941 (quoting S.B. 10 Hearing at 6:41:41-6:41:45).

In fact, Texas legislators clearly indicated that their concern was not with the quality of all students' education, but with religious indoctrination. A primary author of S.B. 10 expressed concern with Texas students' eternal

salvation, stating that “[t]here is an afterlife,” and that “introducing [students] to Ten Commandments [and] prayer” gives them “a choice in their future.” *Id.* at 940-41 (quoting S.B. 10 Hearing Before S. Comm. On Educ. K-16, 2025 Leg., 89th Reg. Sess. 2:11:53-2:13:12 (Tex. Mar. 4, 2025), <https://senate.texas.gov/videoplayer.php?vid=21245&lang=en>) [hereinafter “S.B. 10 K-16 Hearing”]. Another primary author stated, “to realize only twenty-five percent of our kids in schools today have been in a church is absolutely horrific and something we all need to work on to address,” further stating “obviously, only the Lord can save us” *Id.* at 941 (quoting S.B. 10 K-16 Hearing, 2:02:23-2:02:50). The educational success of all students must be at the forefront of education lawmaking, but Texas legislators were more concerned with advocating for their religious beliefs.

The State of Texas promised to lift its public school system to “No. 1 in educating our children.” Press Release, Office of the Tex. Gov., *Governor Abbott Signs Record Public Education Funding, Teacher Pay Raise Into Law* (Jun. 4, 2025), <https://gov.texas.gov/news/post/governor-abbott-signs-record-public-education-funding-teacher-pay-raise-into-law>. To that end, the State should give its teachers and public school students — *all* of them — the most effective environment to succeed.

CONCLUSION

At its core, S.B. 10 is simply contrary to American tradition, history, and values. It is antithetical to the vision of this country's Founders, and ample research demonstrates the potential detrimental effects S.B. 10 can have on students. Not only are students of minority faiths or non-religious beliefs more likely to feel excluded and inferior (an effect flowing from S.B. 10 that the Texas legislature ignored), but even students of Protestant-Christian beliefs can draw the conclusion from such classroom displays that these other faiths are "wrong." The displays mandated by S.B. 10 are also likely to lead to increased classroom disruption and poorer academic outcomes. Amici respectfully ask the Court to affirm the lower court's grant of a preliminary injunction.

Dated: December 29, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that (1) this brief complies with the type-volume limitations of Fifth Circuit Rule 29.3 and Federal Rule of Appellate Procedure 29(a)(5), because it contains 4,413 words, as calculated by Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and (2) this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Book Antiqua font.

Dated: December 29, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, this Brief was served via CM/ECF on all registered counsel and electronically transmitted to the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit. I further certify that any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13.

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