



Reports

Charles J. Russo and Lydia Artz

Three states are challenging precedent against posting the Ten Commandments in public schools—cases that could land back at the Supreme Court

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International Institute
for Religious Freedom



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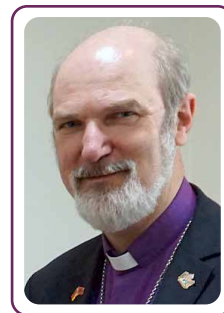
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Three states are challenging precedent against posting the Ten Commandments in public schools—cases that could land back at the Supreme Court

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Introduction

As disputes rage on over religion's place in public schools, the Ten Commandments have become a focal point. At least a dozen states¹ have considered proposals that would require the posting of the Ten Commandments in classrooms, with Texas,² Louisiana³ and Arkansas⁴ mandating their display in 2024 or 2025.

Challenges led to all three laws being at least partially blocked. Most recently, on Dec. 2, 2025, families in Texas filed a class-action lawsuit⁵ seeking to take down displays across the state. Federal trial court judges⁶ have already temporarily blocked the law⁷ in around two dozen districts. Ongoing appeals from the bills' supporters, though, seem aimed at overturning a 45-year-old U.S. Supreme Court precedent⁸ prohibiting such displays.

As religion and education law researchers,⁹ we believe this situation is especially noteworthy because of its timing. In 2022, the Supreme Court adopted a new standard¹⁰ to assess religious freedom cases, which may come into play – and its judgments on religion's role in public education are perhaps the most religion-friendly they have ever been.

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- ¹ Taheri, M. (2025, August 24). Map Shows States Pushing to Mandate Ten Commandments in Schools. *Newsweek*. <https://newsweek.com/map-shows-states-pushing-mandate-ten-commandments-schools-2118089>
 - ² King, et al. (2025). A Bill to Be Entitled an Act. *Texas Legislature Online*. <https://capitol.texas.gov/tlodocs/89R/billtext/html/SB00010H.htm>
 - ³ Russo, C. J. (2024, November 14). Federal judge rules that Louisiana shall not require public schools to post the Ten Commandments. *The Conversation*. <https://doi.org/10.64628/AAI.uhy6uy7rd>
 - ⁴ State of Arkansas. (2025). An Act Regarding the Display of the National Motto and the Ten Commandments; and for Other Purposes. *State of Arkansas, 95th General Assembly*. <https://npr.brightspotcdn.com/86/5b/f4e05f594a1f981d511d467b6789/sb433.pdf>
 - ⁵ Ashby v. Schertz-Cibolo-Universal City Independent School District. (2025, December 2). *Americans United for Separation of Church and State*. <https://www.au.org/wp-content/uploads/2025/12/Ashby-Complaint.pdf>
 - ⁶ Rabbi Nathan v. Alamo Heights Independent School District. (2025, August 20). *Americans United for Separation of Church and State*. https://www.au.org/wp-content/uploads/2025/08/78_Order_granting_PI_August_20_2025.pdf
 - ⁷ Garcia, E. & Harte, J. (2025, November 20). Federal judge orders Texas schools to defy state law requiring Ten Commandment displays. *Reuters*. <https://reuters.com/legal/government/federal-judge-orders-texas-schools-defy-state-law-requiring-ten-commandment-2025-11-19/>
 - ⁸ Stone v. Graham. (1980). *Oyez*. <https://www.oyez.org/cases/1980/80-321>
 - ⁹ Lydia Artz. <https://theconversation.com/profiles/lydia-artz-2469854>; Charles J. Russo. https://udayton.edu/directory/education/eda/russo_charles.php
 - ¹⁰ Supreme Court of the United States. (2022). Kennedy v. Bremerton School District. https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf

The Ten Commandments and the courts

Controversy over the commandments is not new. In more than a dozen early cases,¹¹ courts generally upheld¹² laws and policies mandating their recitation in schools. These enactments survived because the Supreme Court did not extend the First Amendment to state laws until 1940.¹³

Litigation over posting the Ten Commandments in schools first reached the Supreme Court in 1980. In *Stone v. Graham*,¹⁴ the justices invalidated a Kentucky statute requiring displays of the commandments in classrooms. The court reasoned that the law violated the First Amendment's establishment clause: "Congress shall make no law respecting an establishment of religion."¹⁵

At the time, the court applied the first of the three criteria it has since abandoned, known as the "Lemon test," to evaluate whether governmental action violates the establishment clause. Under this test—which developed from a 1971 Supreme Court decision¹⁶—governmental actions must have a secular legislative purpose, and their main effect may neither advance nor inhibit religion. In addition, they must avoid excessive entanglement with religion.

In *Stone*, the justices rejected Kentucky's argument that the displays served a secular educational purpose. The court disagreed that a small notation on posters describing the Ten Commandments as the "fundamental legal code of Western Civilization and the Common Law of the United States" was sufficient, noting that the posters were "plainly religious in nature."¹⁷

Twenty-five years later, in 2005, litigation over public displays of the Ten Commandments returned to the Supreme Court. This time, neither display was in a school.

The first dispute arose in Kentucky, where officials in two counties had erected courthouse displays including the Ten Commandments, the Magna Carta and

¹¹ Michigan Supreme Court. (1898, January 26). *Pfeiffer v. Board of Education*. <https://court-listener.com/opinion/7986700/pfeiffer-v-board-of-education/>

¹² Kentucky Court of Appeals. (1905, May 31). *Hackett v. Brooksville Graded School Dist.* *vLex*. <https://case-law.vlex.com/vid/hackett-v-brooksville-graded-902340986>

¹³ *Cantwell Et Al. V. State of Connecticut*. *Legal Information Institute*. <https://www.law.cornell.edu/supremecourt/text/310/296>

¹⁴ State of Connecticut. (1940). *Sydell STONE et al. v. James B. GRAHAM, Superintendent of Public Instruction of Kentucky*. *Legal Information Institute*. <https://law.cornell.edu/supremecourt/text/449/39>

¹⁵ U. S. Congress. (n.d.). Constitution of the United States. First Amendment. *Constitution Annotated*. <https://constitution.congress.gov/constitution/amendment-1/>

¹⁶ *Alton J. LEMON et al., Appellants, v. David H. KURTZMAN, as Superintendent as Public Instruction of the Commonwealth of Pennsylvania, et al. John R. EARLEY et al., Appellants, v. John DiCENSO et al. William P. ROBINSON, Jr., Commissioner of Education of the State of Rhode Island, et al., Appellants, v. John DiCENSO et al.* (1971). *Legal Information Institute*. <https://www.law.cornell.edu/supremecourt/text/403/602>

¹⁷ *Sydell STONE et al. v. James B. GRAHAM, Superintendent of Public Instruction of Kentucky*. (1980). *Legal Information Institute*. <https://www.law.cornell.edu/supremecourt/text/449/39>

the Declaration of Independence. The justices limited their order to one dispute, in *McCreary County*,¹⁸ invalidating the display for violating the establishment clause—largely because it lacked a secular legislative purpose.

On the same day, the Supreme Court reached the opposite result in another case, *Van Orden v. Perry*.¹⁹ The court permitted a display including the Ten Commandments to remain on the grounds of the Texas Capitol in Austin, where it was one of 17 monuments and 21 historical markers.

Unlike the fairly new displays in Kentucky, the long-standing one in Texas, with the first monument erected in 1891,²⁰ was built using private funds. The court left the Ten Commandments monument in place because it was a more passive display. The Capitol grounds are spread out over 22 acres, meaning the Ten Commandments were not as readily apparent as if they had been posted in classrooms.

‘Follow God’s law’

More recent controversy started in 2024. Louisiana mandated that the Ten Commandments be posted in public schools, and a federal trial court soon blocked the law.²¹ Undeterred, Arkansas and Texas passed similar legislation the following year.

Arkansas Act 573,²² signed into law in April 2025, obligated officials to display a “durable poster or framed copy”²³ of the Ten Commandments in all state and local government buildings, including public school and college classrooms.

Republican Rep. Alyssa Brown, one of the Arkansas bill’s sponsors, described it as an effort to educate students on how the United States was founded and how the founders framed the Constitution.

¹⁸ *McCREARY COUNTY, KENTUCKY, et al. v. AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY et al.* (2005). *Supreme Court of the United States*. <https://law.cornell.edu/supct/html/03-1693.ZS.html>

¹⁹ Supreme Court of the United States. (2005, June 27). *Thomas Van Orden, Petitioner V. Rick Perry, in His Official Capacity as Governor of Texas and Chairman, State Preservation Board, et al.* *Legal Information Institute*. <https://www.law.cornell.edu/supct/html/03-1500.ZO.html>

²⁰ United States Court of Appeals. (2003). *VAN ORDEN v. PERRY*. *FindLaw*. <https://caselaw.findlaw.com/court/us-5th-circuit/1170824.html>

²¹ Russo, C. J. (2024, November 14). Federal judge rules that Louisiana shall not require public schools to post the Ten Commandments. *The Conversation*. <https://theconversation.com/federal-judge-rules-that-louisiana-shall-not-require-public-schools-to-post-the-ten-commandments-243680>

²² State of Arkansas. (2025). An Act Regarding the Display of the National Motto and the Ten Commandments; and for Other Purposes. *nbr*. <https://npr.brightspotcdn.com/86/5b/f4e05f594a1f981d511d467b6789/sb433.pdf>

²³ *Ibid*.

“We’re not telling every student they have to believe in this God,” she told a legislative committee, “but we are upholding what those historical documents mean and that historical national motto.”²⁴

Texas, meanwhile, adopted a similar law in June 2025.²⁵

“It is incumbent on all of us to follow God’s law, and I think we would all be better off if we did,” the bill’s sponsor in the Texas House, Republican Rep. Candy Noble, said during debate.²⁶

Shift at SCOTUS

Supporters of these laws argue that they are constitutional²⁷ because of an important shift at the Supreme Court. In 2022, the court adopted a new “history and tradition test”²⁸ to assess religion in public places, including classrooms.

The “history and tradition test”²⁹ originated in 2022’s *Kennedy v. Bremerton School District*,³⁰ a case about a public high school football coach who prayed on the field at the end of games.³¹ The court ruled that school officials could not prevent the coach from praying because it was a personal religious observance protected by the First Amendment’s other religion clause:³² that the government shall not prohibit the “free exercise” of religion.

The *Kennedy* case charted a new course on religion’s place in public life. Acknowledging that it “long ago abandoned *Lemon* and its endorsement test

²⁴ Little Rock Public Radio. (2025, April 15). Bill requiring Ten Commandments display in Arkansas public buildings becomes law. *KUAF Public Radio*. <https://www.kuaf.com/show/ozarks-at-large/2025-04-15/bill-requiring-ten-commandments-display-in-arkansas-public-buildings-becomes-law>

²⁵ King, et al. (n.d.). A Bill to Be Entitled an Act Relating to the Display of the Ten Commandments in Public School Classrooms. *Texas Legislature Online*. <https://capitol.texas.gov/tlodocs/89R/billtext/html/SB00010H.htm>

²⁶ Kamal, S. (2025, May 24). Texas will require public school classrooms to display Ten Commandments under bill signed by governor. *The Texas Tribune*. <https://texastribune.org/?p=133944>

²⁷ Camp, K. (2025, April 30). House committee holds Ten Commandments bill hearing. Baptist Standard Publishing. <https://baptiststandard.com/news/texas/house-committee-holds-ten-commandments-bill-hearing/>

²⁸ Bazelon, E. (2024, April 29). How ‘History and Tradition’ Rulings Are Changing American Law. *The New York Times Magazine*. <https://www.nytimes.com/2024/04/29/magazine/history-tradition-law-conservative-judges.html>

²⁹ Bazelon, E. (2024, April 29). How ‘History and Tradition’ Rulings Are Changing American Law. *The New York Times Magazine*. <https://www.nytimes.com/2024/04/29/magazine/history-tradition-law-conservative-judges.html>

³⁰ Supreme Court of the United States. (2022). *Kennedy v. Bremerton School District*. *Legal Information Institute*. <https://www.law.cornell.edu/supremecourt/text/21-418>

³¹ Russo, C. J. (2022, June 28). Why the Supreme Court’s football decision is a game-changer on school prayer. *The Conversation*. <https://theconversation.com/why-the-supreme-courts-football-decision-is-a-game-changer-on-school-prayer-184619>

³² U. S. Congress. (n.d.). Constitution of the United States. First Amendment. *Constitution Annotated*. <https://constitution.congress.gov/constitution/amendment-1/>

offshoot,” the justices explained that “the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’”³³ It remains to be seen how this standard plays out.

Blocked – for now

In August 2025, a federal trial court temporarily barred officials in four school districts from enforcing Arkansas’ law.³⁴ The court found that the required display would have “forced [students] to engage with” the Ten Commandments, and “perhaps to venerate and obey” them. The court also applied the new historical practices and understandings test, holding that there was no evidence of a tradition to display the Ten Commandments in public schools permanently.

The same judge later prohibited two more Arkansas school boards from posting displays.³⁵

In Louisiana, too, a federal trial court blocked a state statute.³⁶ The 5th U.S. Circuit Court of Appeals initially affirmed that order.³⁷ However, an en banc panel of the 5th Circuit—meaning all the circuit’s active judges—will rehear the case on Jan. 20, 2026.

The Texas statute’s future is also up in the air. In August 2025, a federal trial court enjoined the law,³⁸ temporarily stopping it from going into effect in 11 districts. Acknowledging the cases from Arkansas and Louisiana, the judge held that Texas’ law likely violated the First Amendment. The full 5th Circuit will hear oral arguments in January, alongside the Louisiana case.³⁹

³³ Supreme Court of the United States. (2022). *Kennedy v. Bremerton School District*. *Legal Information Institute*. <https://www.law.cornell.edu/supremecourt/text/21-418>

³⁴ United States District Court Western District of Arkansas Fayetteville Division. (2025). *Stinson et. al. v. Fayetteville School District No. 1 et. al.* *Justia*. <https://docs.justia.com/cases/federal/district-courts/arkansas/arwdce/5:2025cv05127/74528/71>

³⁵ ACLU. (2025, October 24). Federal Court Blocks Lakeside School District from Posting Ten Commandments. *ACLU of Arkansas*. <https://www.acluarkansas.org/press-releases/federal-court-blocks-lakeside-school-district-from-posting-ten-commandments/>

³⁶ The Associated Press. (2024, November 12). Federal judge blocks Louisiana law that requires classrooms to display Ten Commandments. *npr*. <https://www.npr.org/2024/11/12/g-s1-33848/louisiana-ten-commandments-classroom-federal-judge-blocks>

³⁷ The Associated Press. (2025, June 21). Court blocks Louisiana law requiring schools to post Ten Commandments in classrooms. *npr*. <https://www.npr.org/2025/06/21/nx-s1-5441035/louisiana-ten-commandments-schools-court-blocks>

³⁸ United States District Court for the Western District of Texas San Antonio Division. (2025, August 20). *Rabbi Nathan v. Alamo Heights Independent School District*. *Americans United for Separation of Church and State*. https://www.au.org/wp-content/uploads/2025/08/78_Order_granting_PI_August_20_2025.pdf

³⁹ Walsh, M. (2025, October 29). Appeals Court Heightens Stakes Over Ten Commandments School Laws. *Education Week*. <https://www.edweek.org/policy-politics/appeals-court-heightens-stakes-over-ten-commandments-school-laws/2025/10>

On Nov. 18, a second federal trial court judge enjoined the Texas law in around a dozen new districts.⁴⁰

Religion's role

Controversy over the Ten Commandments continues to raise larger questions over the role of religion in public education, if any.

Supporters of such bills seemingly fail to recognize that they cannot impose their religious values in the public sphere.⁴¹ At the same time, some opponents – including Jewish, Christian, Unitarian Universalist, Hindu and nonreligious plaintiffs – do not necessarily wish to remove religion entirely from educational institutions.

These critics want to uphold the principle that, as the Supreme Court has affirmed, the government must demonstrate “neutrality between religion and religion, and between religion and nonreligion.”⁴² In other words, critics do not want one religion or religion generally to dominate.

Today's challenge is to find the balance in public life. We believe the courts and legislatures must avoid sending the message that religion has no place in a free and open society – just as they must not permit one set of values to dominate, as the bills in Arkansas, Louisiana and Texas seem to aspire to do.

How the courts and legislatures balance the rights of the majority and minority in these disputes over the place of the Ten Commandments in public life may go a long way toward shaping the future of religious freedom in American public education.

⁴⁰ Garcia, E. & Harte, J. (2025, November 20). Federal judge orders Texas schools to defy state law requiring Ten Commandment displays. *Reuters*. <https://www.reuters.com/legal/government/federal-judge-orders-texas-schools-defy-state-law-requiring-ten-commandment-2025-11-19/>

⁴¹ Bingamon, B. (2025, August 14). Starting in September, Every Texas Public Classroom Must Post Ten Commandments. *The Austin Chronicle*. <https://austinchronicle.com/?p=411089>

⁴² Supreme Court of the United States. (2005, June 27). *McCreary County, Kentucky, et al., Petitioners V. American Civil Liberties Union of Kentucky et al.* <https://law.cornell.edu/supct/html/03-1693.ZO.html>

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