

THE WRITING ON THE WALL: TEN COMMANDMENTS IN TEXAS CLASSROOMS AFTER *NATHAN V. ALAMO HEIGHTS*

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I. INTRODUCTION

“Congress shall make no law respecting an establishment of religion.”¹ For decades, this Clause stood as an unwavering barrier between the government and schools. In 1980, the Supreme Court applied that barrier in *Stone v. Graham*, striking a Kentucky law which required the Ten Commandments to be posted in public-school classrooms.² The Court held that a state-mandated religious display in a public-school classroom violates the First Amendment’s Establishment Clause.³ Yet forty-six years later, the United States Court of Appeals for the Fifth Circuit declared *Stone* effectively dead, upholding Senate Bill 10, a nearly identical Texas law requiring the Ten Commandments to be displayed in every public-school classroom.⁴ In upholding this law, the court relied on *Kennedy v. Bremerton*, where the Court abandoned the test created in *Lemon v. Kurtzman*.⁵ The court reasoned that Senate Bill 10 was constitutional, because *Stone* depended entirely on the *Lemon* test.⁶ However, the Fifth Circuit’s reasoning undermines the authority of the Supreme Court. The Supreme Court has never overruled *Stone*, and *Kennedy* involved a coach’s personal, voluntary prayer, not a religious state

¹ U.S. CONST. amend. I.

² *Stone v. Graham*, 449 U.S. 39, 42–43 (1980) (per curiam).

³ *Id.*

⁴ *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 593 (5th Cir. 2026).

⁵ *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 538 (2022); *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

⁶ *Lemon*, 403 U.S. at 612–13; *Kennedy*, 597 U.S. at 523; *Stone*, 449 U.S. at 40.

mandate imposed on public-school classrooms.⁷

This Note argues that the Supreme Court will likely reverse *Nathan v. Alamo Heights Indep. Sch. Dist.* because the Fifth Circuit declared *Stone* dead without explicit Supreme Court precedent.⁸ This decision leaves Texas schoolchildren unprotected from state-mandated religious display, the very harm the First Amendment was designed to prevent.⁹

This Note will proceed in five parts. Part II provides background on the development of Establishment Clause jurisprudence in public schools. Part III examines the facts and procedural posture of *Nathan*. Part IV analyzes the Fifth Circuit's reasoning in *Nathan*, explaining why the court's abrogation of *Stone* exceeded its authority and misapplied the historical practices test. Part V predicts the Supreme Court will grant certiorari and reverse, explaining why they have grounds to do so without reinstating *Lemon*.

II. BACKGROUND OF PRIOR LAW

The Supreme Court first addressed religion in public schools in 1962 with *Engel v. Vitale*.¹⁰ In *Engel*, the New York State Board of Regents authorized public schools to open each day with a voluntary, “nondenominational” prayer.¹¹ A group of parents challenged the practice, arguing it violated the First Amendment’s Establishment Clause.¹² The Supreme Court held that school-sponsored prayer in public schools was unconstitutional.¹³ The Court reasoned that it was not the government’s role to compose official prayers for citizens to recite as part of a government-mandated program.¹⁴

In 1971, the Supreme Court established a framework for Establishment Clause challenges in *Lemon*.¹⁵ Under the *Lemon* test, a law survives an Establishment Clause challenge only if it had “a secular legislative purpose, . . . its principal or primary effect . . . neither advances nor inhibits religion, . . . [and] the statute must not foster an excessive government entanglement with religion.”¹⁶ Failure to satisfy any prong rendered the law unconstitutional.¹⁷ The *Lemon* test became the framework for evaluating Establishment Clause

⁷ *Nathan*, 173 F.4th at 617 (Ramirez, J., dissenting); *Kennedy*, 597 U.S. at 512–15.

⁸ *Nathan*, 173 F.4th at 591; *Stone*, 449 U.S. at 41.

⁹ U.S. CONST. amend. I; see *Nathan*, 173 F.4th at 616 (Ramirez, J., dissenting) (explaining how the Establishment Clause implicates constitutional protections given to schoolchildren).

¹⁰ *Engel v. Vitale*, 370 U.S. 421, 436 (1962).

¹¹ *Id.* at 422–23.

¹² *Id.* at 423–25.

¹³ *Id.* at 436.

¹⁴ *Id.* at 425.

¹⁵ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

¹⁶ *Id.*

¹⁷ *Lemon*, 403 U.S. at 612–13; *Stone v. Graham*, 449 U.S. 39, 40–41 (1980) (per curiam).

challenges, including religious displays in public buildings and government-sponsored religious activities in schools.¹⁸

Subsequently, the Court used the *Lemon* test to decide *Stone* in 1980.¹⁹ In *Stone*, Kentucky enacted a statute requiring a copy of the Ten Commandments to be placed in every public-school classroom.²⁰ The copies were purchased with private donations.²¹ Additionally, the statute included a notation on each display explaining the nonreligious purpose for posting the Commandments.²² The Court held that posting the Ten Commandments in schools was religious in nature.²³ The Court reasoned that government mandates for religious material to be posted are enough to show no secular purpose.²⁴ Thus, *Stone* stood as the Supreme Court's clearest articulation of the principle that mandatory religious displays in public-school classrooms violated the First Amendment.²⁵

Further, in 1992, the Supreme Court introduced an independent Establishment Clause test in *Lee v. Weisman*.²⁶ In *Lee*, a public-school principal invited a rabbi to deliver a prayer at a middle school graduation ceremony.²⁷ The Court held the practice unconstitutional under a distinct coercion theory.²⁸ The Court reasoned the school environment created a substantial psychological pressure on students to conform to state-sponsored religious activity.²⁹ Critically, *Lee* established the Establishment Clause's protection in public schools rested on grounds entirely independent of the *Lemon* test.³⁰

The Establishment Clause jurisprudence continued to develop in 2005 when the Supreme Court reaffirmed the continuing vitality of *Stone* in *McCreary County v. ACLU*.³¹ In *McCreary*, two Kentucky counties displayed framed copies of the Ten Commandments in their courthouses.³² Later they attempted to cure the constitutional defect by surrounding the displays with other historical documents.³³ The Court struck down the entire display, holding that the Establishment Clause does not permit state action aimed at

¹⁸ See *Lemon*, 403 U.S. at 613 (explaining the test that it created and outlining all three prongs of that test).

¹⁹ *Stone*, 449 U.S. at 40.

²⁰ *Id.* at 39–41.

²¹ *Id.* at 42.

²² *Id.* at 41.

²³ *Id.*

²⁴ *Id.* at 42.

²⁵ *Id.* at 40–42.

²⁶ *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

²⁷ *Id.* at 580.

²⁸ *Id.* at 587.

²⁹ *Id.* at 592.

³⁰ *Id.*

³¹ *McCreary Cnty. v. ACLU*, 545 U.S. 844, 857–59 (2005).

³² *Id.* at 850.

³³ *Id.* at 853–56.

furthering the interests of a religious group.³⁴ Notably, the Court stated that *Stone* remained valid law and added that Ten Commandments displays in public-school classrooms required stricter scrutiny than displays in other government buildings.³⁵

Establishment Clause jurisprudence shifted in 2022 when the Supreme Court decided *Kennedy*. In *Kennedy*, a public high school terminated the football coach after he knelt at midfield to offer a personal prayer.³⁶ The Court held that the coach's personal religious expression was protected by both the Free Exercise and Free Speech Clauses of the First Amendment.³⁷ In doing so, the Court announced it had abandoned the *Lemon* test, recognizing its limitations, and instead adopting a historical practices and understandings test.³⁸

III. FACTS AND PROCEDURAL POSTURE OF *NATHAN V. ALAMO HEIGHTS*

In 2025, the Texas Legislature enacted Senate Bill 10, requiring every public-school classroom to display a poster or framed copy of the Ten Commandments.³⁹ The legislation mandated compliance by all public elementary and secondary schools and directed that the displays be funded through donations.⁴⁰ The legislature justified this decision saying that the Ten Commandments represent a foundational document of American law and civic tradition.⁴¹

A group of Texas parents and religious leaders filed suit in federal district court, arguing that Senate Bill 10 functioned identically to the statute in *Stone* and therefore unconstitutional under the Establishment Clause.⁴² The district court agreed and enjoined enforcement of the law.⁴³ The State appealed to the Fifth Circuit, which initially affirmed.⁴⁴ Texas then petitioned for rehearing *en banc*, arguing that *Kennedy* had abrogated *Stone* by abandoning the *Lemon* test.⁴⁵ The Fifth Circuit granted rehearing and reversed, holding that without *Lemon*, *Stone* had no independent legal

³⁴ *Id.* at 881.

³⁵ *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2025).

³⁶ *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 512–14 (2022).

³⁷ *Id.* at 544.

³⁸ *Id.* at 535.

³⁹ Act of May 28, 2025, 89th Leg., R.S., ch. 966, § 1, 2025 TEX. GEN. LAWS (codified at TEX. EDUC. CODE § 1.0041).

⁴⁰ TEX. EDUC. CODE § 1.0041(a).

⁴¹ See generally Caroline Mala Corbin, *New Judicial Federalism and the Establishment Clause: Classroom Ten Commandments as a Case Study in State Constitutional Protection*, 104 TEX. L. REV. 1, 61–62 (2025) (discussing the proposed purpose of the Ten Commandments in schools).

⁴² TEX. EDUC. CODE § 1.0041; *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 585 (5th Cir. 2026).

⁴³ *Nathan*, 173 F.4th at 585.

⁴⁴ *Id.* at 585–86.

⁴⁵ *Id.* at 583.

foundation.⁴⁶ Eight judges dissented, arguing that the majority had exceeded its authority by declaring a Supreme Court precedent dead by implication.⁴⁷

IV. ANALYSIS OF THE *NATHAN* DECISION

The Fifth Circuit's decision in *Nathan* rests on a flawed premise: that the Supreme Court's abandonment of the *Lemon* test in *Kennedy* necessarily carried *Stone* with it.⁴⁸ It did not. The Fifth Circuit inserted its own judgment, declaring a binding precedent abrogated by implication, and dismantled decades of constitutional protection designed to protect children in public-school classrooms.⁴⁹

A. *The Fifth Circuit Overreached by Declaring Stone Abrogated*

The Supreme Court never overruled *Stone*.⁵⁰ This alone should have ended the Fifth Circuit's inquiry. Lower courts do not have the authority to declare Supreme Court precedent dead simply because the doctrinal framework underlying it has shifted. In fact, the Supreme Court reaffirmed *Stone* as recently as 2005 in *McCreary County*, explicitly stating that the context of the Ten Commandments displays in public-school classrooms demanded heightened scrutiny compared to displays in other government spaces.⁵¹ If the Supreme Court intended to overrule *Stone*, it has had the opportunity to do so and has declined every time.⁵²

The majority's reasoning that *Stone* was purely a *Lemon* case and therefore collapsed alongside it oversimplifies both decisions.⁵³ While *Stone* applied the *Lemon* test, its holding was driven by a straightforward factual conclusion: that posting the Ten Commandments on public-school classroom walls is religious in nature and serves no constitutional educational function.⁵⁴ That conclusion does not depend on *Lemon*. It depends on the unbroken line of Supreme Court precedent holding that public-school classrooms are uniquely protected spaces where the government has no business promoting religion.⁵⁵ Stripping away *Lemon* does not strip away this long-standing principle.

⁴⁶ *Id.*

⁴⁷ *Id.* at 617–18 (Ramirez, J., dissenting).

⁴⁸ *Id.* at 583.

⁴⁹ *Id.* at 640 (Higginson, J., dissenting).

⁵⁰ *Id.* at 617–18 (Ramirez, J., dissenting).

⁵¹ *McCreary Cnty. v. ACLU*, 545 U.S. 844, 857–59 (2005); *Van Orden v. Perry*, 545 U.S. 677, 690–91 (2025).

⁵² *McCreary County*, 545 U.S. at 857; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 538 (2022); *Van Orden*, 545 U.S. at 686.

⁵³ *Nathan*, 173 F.4th at 583.

⁵⁴ *Stone v. Graham*, 449 U.S. 39, 41 (1980) (per curiam) (“The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature.”).

⁵⁵ *Id.* at 41; see also *Engel v. Vitale*, 370 U.S. 421, 424 (1962) (holding that government may not compose official prayers for public schools).

Furthermore, the Fifth Circuit's reliance on *Kennedy* to fill the void left by *Lemon* misinterprets the decision. *Kennedy* involved a single employee's brief, personal, and voluntary prayer conducted when school employees were free to engage in any personal activity.⁵⁶ The Supreme Court was careful to emphasize the personal and private nature of Coach Kennedy's religious expression.⁵⁷ Senate Bill 10 is categorically different. It is a state legislature commanding a religious text to hang on the wall of every public-school classroom in Texas, with no opt-out provision for students who must sit beneath it every day.⁵⁸ Applying *Kennedy*'s historical practices framework to a mandatory, government-imposed religious display stretches that decision well beyond its intended scope.

B. Senate Bill 10 Fails Under Both the Lemon Test and the Kennedy Frameworks

Setting aside the question of *Stone*'s continued validity, Senate Bill 10 cannot survive Establishment Clause scrutiny under either analytical framework.

Under the *Lemon* test, Senate Bill 10 fails at every step. First, the law lacks any secular legislative purpose.⁵⁹ Texas, like Kentucky, attempts to dress a religious mandate in secular clothing.⁶⁰ Second, the law's primary effect advances religion by placing a religious text on the wall of every public-school classroom at the direction of the legislature.⁶¹ Third, the law fosters excessive entanglement between government and religion by making the state the enforcer of religious displays in its own schools.⁶²

The result is no different under *Kennedy*'s historical practices framework.⁶³ The relevant question is whether there is a historical tradition of state governments mandating religious displays in public-school classrooms.⁶⁴ The historical tradition in public schools runs firmly in the opposite direction, consistently holding that the government has no place composing, directing, or mandating religious activity in the classroom.⁶⁵ A historical practices test applied to the specific context of mandatory religious displays in public schools does not save Senate Bill 10; it condemns it.

⁵⁶ *Kennedy*, 597 U.S. at 518.

⁵⁷ *Id.* at 525.

⁵⁸ Compare *id.* at 525 (emphasizing the private and voluntary nature of personal prayer), with TEX. EDUC. CODE § 1.0041 (mandating daily classroom displays of religious text).

⁵⁹ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

⁶⁰ See TEX. EDUC. CODE § 1.0041; see also *Lemon*, 403 U.S. at 612; *Stone*, 449 U.S. at 41.

⁶¹ TEX. EDUC. CODE § 1.0041; *Lemon*, 403 U.S. at 612.

⁶² TEX. EDUC. CODE § 1.0041; *Lemon*, 403 U.S. at 612.

⁶³ *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 538 (2022).

⁶⁴ *Id.* at 538.

⁶⁵ Alan E. Brownstein, *Harmonizing the Heavenly and Earthly Spheres: The Fragmentation and Synthesis of Religion, Equality, and Speech in the Constitution*, 51 OHIO ST. L.J. 89, 91–92 (1990) (discussing history of religion in schools).

Finally, even if the majority's framework were accepted, Senate Bill 10 would still fall under the independent coercion doctrine established in *Lee v. Weisman*.⁶⁶ Children in public-school classrooms cannot avoid a display hanging on the wall above them. They are captive audiences, compelled by law to attend school, compelled by Senate Bill 10 to sit beneath a state-endorsed religious text every day.⁶⁷ The substantial psychological pressure that *Lee* recognized in the context of graduation prayer is far more acute when the religious message is unavoidable.⁶⁸ The coercion doctrine requires no *Lemon* test, no historical practices test, and no debate about *Stone*'s continued validity; it stands on its own, and independently renders Senate Bill 10 unconstitutional.⁶⁹

V. THE SUPREME COURT'S POTENTIAL DISPOSITION REGARDING *NATHAN*

Without a doubt, the Fifth Circuit's decision in *Nathan* is a clear indication that the Supreme Court must act. If left unaddressed, the court's willingness to declare binding Supreme Court precedent abrogated by implication will create an unequal application of the Establishment Clause and erode constitutional protections. The most viable path forward is for the Supreme Court to grant certiorari and reverse, reaffirming that *Stone* remains good law and that public-school classrooms are uniquely protected spaces where the government has no authority to mandate a religious display.⁷⁰

The Supreme Court need not reinstate *Lemon* to reach the correct result. Similar legislation is already expanding to other states, and without clear guidance, the Establishment Clause's protection in public schools will mean something different depending on where a child happens to live.⁷¹ The First Amendment does not differ based on where a person lives, and the Supreme Court must reaffirm this.⁷²

VI. CONCLUSION

The Fifth Circuit recognizes that *Kennedy* altered the Establishment Clause landscape. However, the court ignores the clear boundaries of that

⁶⁶ *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

⁶⁷ See TEX. EDUC. CODE § 25.085 (compulsory attendance requirement); *id.* § 1.0041 *cf.* *Leham v. City of Shaker Heights*, 418 U.S. 298, 302 (1974) (plurality opinion) (recognizing heightened constitutional sensitivity when the state imposes a message upon a "captive audience" that cannot easily avoid exposure).

⁶⁸ *Lee*, 505 U.S. at 592.

⁶⁹ *Id.*

⁷⁰ *Stone v. Graham*, 449 U.S. 39, 41 (1980) (per curiam); *Engel v. Vitale*, 370 U.S. 421, 424 (1962).

⁷¹ LA. STAT. ANN. § 17:2124 (2024); see also *Roake v. Brumley*, 170 F.4th 292, 297 (5th Cir. 2026).

⁷² U.S. CONST. amend. I.

decision and has left a void in the law that its aggressive abrogation of *Stone* filled. Although *Nathan* attempted to follow *Kennedy*, it misapplies that decision and strips public-school students of decades of constitutional protection. Such overreach suggests that the Supreme Court must reaffirm the boundaries of *Kennedy* and clarify that *Stone* remains controlling precedent in the context of mandatory religious displays in public-school classrooms.