



August 26, 2025

**Re: The Ten Commandments Bear a Presumption of Constitutionality**

Dear Superintendent:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We have won multiple religious freedom cases at the Supreme Court of the United States, including *American Legion v. American Humanist Association*<sup>1</sup> and *Kennedy v. Bremerton School District*.<sup>2</sup> *Kennedy* overturned the legal framework on which *Stone v. Graham* was decided. We write to countermand a letter you may have received from groups opposed to S.B. 10 and the posting of documents that have long been a part of our nation's history and tradition.<sup>3</sup>

Last week, a single federal district court judge relied upon caselaw derived from precedent recently invalidated by the Supreme Court of the United States to require eleven Texas school districts to remove copies of the Ten Commandments posted pursuant to the recently enacted S.B. 10.<sup>4</sup> Unless ordered by a court of competent jurisdiction, you should not voluntarily remove Ten Commandments posters lawfully posted pursuant to Texas law.

You should have full confidence in the posting of the Ten Commandments pursuant to S.B. 10. Not only has the Texas Legislature provided such an opportunity in S.B. 10, the Attorney General of Texas has instructed you to "abide by S.B. 10 and display the Ten Commandments."<sup>5</sup> And, should additional legal challenges mount, the Attorney

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<sup>1</sup> 588 U.S. 29 (2019).

<sup>2</sup> 597 U.S. 507 (2022).

<sup>3</sup> This letter does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at [FirstLiberty.org](https://firstliberty.org).

<sup>4</sup> The court's decision last week in *Rabbi Mara Nathan v. Alamo Heights Indep. Sch. Dist.*, Case No. 5:25-cv-00756-FB (W.D. Tex. Aug. 20, 2025) relied upon *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam). The unauthored opinion of the Court in *Stone* granting the writ of certiorari and reversing the decision below without plenary consideration evaluated the challenged statute by reference to *Lemon v. Kurtzman*, 403 U.S. 602 (1971). *Lemon* is no longer good law and courts should not rely upon it nor any progeny, like *Stone*, derived from it. See *Groff v. DeJoy*, 600 U.S. 447, 460 (2023) ("The Supreme Court has clearly and unanimously held that *Lemon* and its progeny are now 'now abrogated.'"); see also *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022) ("[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot."); *id.* at 546 (Sotomayor, J., dissenting) (stating that *Kennedy* overruled *Lemon*); and see *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 954 n.20 (5th Cir. 2022) (The Fifth Circuit recognized *Lemon*'s abrogation and held that "[h]istory—not endorsement—matters.").

<sup>5</sup> Attorney General Ken Paxton, "Attorney General Ken Paxton Instructs Texas Schools to Display the Ten Commandments in Accordance with Texas Law," August 25, 2025, <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-instructs-texas-schools-display-ten-commandments-accordance-texas-law>.

General of Texas has reaffirmed his statutory commitment to defend your school district against such legal attacks.<sup>6</sup>

The Texas Attorney General’s confidence no doubt stems from the U.S. Supreme Court’s rejection of outdated, now unconstitutional precedent that purged religion from public display and, instead, directed its lower courts to apply “a presumption of constitutionality” toward such displays.<sup>7</sup> That presumption follows the “practice begun by the First Congress . . . an example of respect and tolerance for differing views, an honest endeavor to achieve inclusivity and nondiscrimination, and a recognition of the important role that religion plays in the lives of many Americans.”<sup>8</sup> And where, as here, “categories of monuments, symbols, and practices with a longstanding history follow in that tradition, they are likewise constitutional.”<sup>9</sup>

Should you choose voluntarily tear down lawfully posted displays of the Ten Commandments, you would evince “a hostility toward religion that has no place in our Establishment Clause traditions” for “the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious.”<sup>10</sup> Rather than promote tolerance of various viewpoints and show respect for the traditions of our nation, such “absolutism is not only inconsistent with our national traditions, but would also tend to promote the kind of social conflict the Establishment Clause seeks to avoid.”<sup>11</sup>

The mere fact that some accord the Ten Commandments as having a religious purpose provides no basis to require all such displays be forcibly removed from display in public buildings. “Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.”<sup>12</sup> Indeed, if that were the case, the very court charged with determining the constitutionality of such displays would have to chisel Moses and his two tablets from the edifice of its building and sandblast the same from the frieze inside its own courtroom.<sup>13</sup>

But even if the Ten Commandments have been “infused with religion, the passage of time may obscure that sentiment. As our society becomes more and more religiously diverse, a community may preserve such monuments, symbols, and practices for the sake of their historical significance or their place in a common cultural heritage.”<sup>14</sup> And “when

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<sup>6</sup> *Id.*

<sup>7</sup> *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 52 (2019).

<sup>8</sup> *Id.* at 63.

<sup>9</sup> *Id.*

<sup>10</sup> *Van Orden v. Perry*, 545 U.S. 677, 704, 699 (2005) (Breyer, J., concurring in judgment).

<sup>11</sup> *Id.* at 699.

<sup>12</sup> *Id.* at 690. (Rehnquist, J., plurality opinion).

<sup>13</sup> See “Supreme Court of the United States Self-Guide to the Building’s Exterior Architecture,” accessed August 25, 2025 at pp. 16-17, [https://www.supremecourt.gov/visiting/Exterior\\_Brochure\\_Web\\_FINAL\\_January\\_2024.pdf](https://www.supremecourt.gov/visiting/Exterior_Brochure_Web_FINAL_January_2024.pdf), and “Supreme Court of the United States Self-Guide to the Building’s Interior Architecture,” accessed August 25, 2025, at p. 16, [https://www.supremecourt.gov/visiting/Interior\\_Brochure\\_Nov\\_2023\\_web.pdf](https://www.supremecourt.gov/visiting/Interior_Brochure_Nov_2023_web.pdf).

<sup>14</sup> *American Legion*, 588 U.S. at 54; see also *Van Orden*, 545 U.S. at 692 (Scalia, J., concurring) (“[T]here is nothing unconstitutional in a State’s favoring religion generally, honoring God through public prayer and acknowledgment, or, in a nonproselytizing manner, venerating the Ten Commandments.”).

time's passage imbues a religiously expressive monument, symbol, or practice with this kind of familiarity and historical significance, removing it may no longer appear neutral, especially to the local community for which it has taken on particular meaning.”<sup>15</sup>

Thus, the informed decision of the Texas Legislature in passing S.B. 10 clearly intends to rest on the side of respecting our nation's historical tradition and retain its familiarity as important to the civic life of its students and the state itself. The alternative now confronts eleven of its school districts now under judicial directive: a “government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine [which] will strike many as aggressively hostile to religion.”<sup>16</sup>

Posters of the Ten Commandments displayed according to S.B. 10 bear a presumption of Constitutionality and should remain. You should resist calls to tear down such posters, lest you demonstrate a hostility toward religion at odds with our nation's historical commitments, state law, Supreme Court precedent, and the Constitution itself.

Sincerely,

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<sup>15</sup> *Id.* at 56.

<sup>16</sup> *Id.*