Religious Freedom in Public Schools

CASE BRIEFS

UTAH 3Rs PROJECT

Rights. Responsibility. Respect.

The Ten Commandments in Public School Classrooms: The 3Rs Approach

Introduction

In our time of culture wars and political fracture, the Utah 3Rs Project advocates for the constitutional principles that protect religious freedom, especially in public schools. This brief examines the recent wave of ten commandments laws through the Utah 3Rs framework, exploring how these laws affect individual rights, our shared civic responsibilities, and the respect owed to people of all faiths and none.

Background

In 2024 and 2025, three states—Louisiana, Arkansas, and Texas—passed laws requiring the ten commandments to be posted in every public school classroom. Louisiana was first (HB 71, signed June 2024), followed by Arkansas (Act 573, signed April 2025), and Texas was last (Senate Bill 10, signed June 2025). And at least a dozen other states have legislators considering similar legislation. The courts have generally responded by overturning mandated ten commandments legislation, but a dramatic turn of events occurred in April 2026 when the United States Court of Appeals for the Fifth Circuit issued a 9-8 ruling upholding Texas' SB 10 in *Nathan v. Alamo Heights Independent School District*.

SB 10 required all public school classrooms to display a poster or framed copy of the ten commandments measuring at least 16 inches wide and 20 inches tall, placed conspicuously so it could be read from anywhere in the classroom. Schools could obtain the displays through private donations or purchase them using district funds. The King James Version of the Bible was the mandated text, and no religious instruction accompanied the displays.

Controversy

As the U.S. Supreme Court continues to redefine the boundaries between religion and public education, the constitutionality of these displays remains unsettled. The Supreme Court will likely hear a case regarding these displays and issue a definitive ruling on whether such mandates are consistent with the history-and-tradition framework established in *Kennedy v. Bremerton School District* (2022).

Constitutional Principles at Play

Interpreting the Effects of Recent Jurisprudence

The primary topic of debate in *Nathan v. Alamo* is how to interpret the effects of the official shift away from the Lemon Test that occurred in *Kennedy v. Bremerton School District* (2022), as seen in Justice Neil Gorsuch's majority declaration that "this Court long ago abandoned *Lemon* and its endorsement test offshoot."[1] The Lemon Test was a three-part standard used by courts for decades to determine whether a government action violated the Establishment Clause of the First Amendment. To pass the test, a law needed to have a secular purpose, neither advance nor inhibit religion, and avoid excessive government entanglement with religion. This is relevant to *Nathan v. Alamo* because the U.S. Supreme Court had previously relied on the Lemon Test in *Stone v. Graham* (1980) to rule that displaying the ten commandments in public schools was unconstitutional. The question now is whether *Stone* remains valid law after *Kennedy*, or whether it was overturned along with the Lemon Test. The Fifth Circuit Court of Appeals was divided on this question. The majority held that *Stone* could not survive without the Lemon Test, asserting that "with *Lemon* extracted, there is nothing left of *Stone*."[2] The dissent disagreed, arguing that though the Lemon Test has been abandoned moving forward, that does not mean all cases that relied on the Lemon Test are now invalid. Ramirez asserted that "no Supreme Court decision has overturned *Stone*," and that lower courts are bound to "adhere strictly to Supreme Court precedent" unless the Supreme Court itself explicitly says otherwise.[3]

Kennedy replaced the Lemon Test with the new standard to make "reference to historical practices and understandings."[4] Under this new standard, legislation only violates the First Amendment's religion clauses if it resembles an establishment of religion as understood during the founding era. The majority sought to apply this new standard by using the six hallmarks of an established religion from Stanford Law School scholar Michael McConnell, which were referred to in *Kennedy*. These six hallmarks include "(1) government control over religious doctrine, governance, and church personnel; (2) compulsory church attendance; (3) compelled financial support, especially in the form of land grants and religious taxes; (4) prohibitions on worship in dissenting churches; (5) use of church institutions for civil functions; and (6) restriction of political participation to members of the established church."[5]

Applying the new historical standard, the majority argues that S.B. 10 "looks nothing like" a founding-era establishment because it lacks the features described in McConnell's Hallmarks.[6] The Fifth Circuit Court of Appeals characterizes the posters as "passive" displays that do not constitute the type of legal compulsion practiced by 18th-century established churches. Therefore, the majority concludes that mere exposure to religious text does not violate the Establishment Clause as it was understood by the Founders.

The dissent addresses this argument by contending that, even under the new history-and-tradition standard established in *Kennedy*, SB 10 violates the Establishment Clause. While the majority applied *Kennedy*'s framework by asking whether the law resembled McConnell's six hallmarks of an unconstitutional religious establishment, the dissent argues that this list is not exhaustive. They point out that government coercion of religious belief or practice has always been considered a core Establishment Clause violation—in fact, preventing state coercion in matters of religion was one of the primary purposes the clause was designed to serve. On those grounds, the dissent argues that SB 10 is "problematically coercive" and that such legislation has historically been in direct conflict with the Establishment Clause regardless of which legal test is applied.

[1] *Kennedy v. Bremerton School District*, 597 U.S. 507, 538 (2022).
[2] *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. 25-50695, slip op. at 3 (5th Cir. Apr. 21, 2026).
[3] *Nathan*, slip op. at 67-69 (Ramirez, J., dissenting).
[4] *Kennedy*, 597 U.S. at 523 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).
[5] *Nathan*, slip op. at 35.
[6] *Nathan*, slip op. at 36.

Coercion and Captive Audience Doctrine

The majority opinion in *Nathan v. Alamo* acknowledges that coercion is unconstitutional, but finds SB 10 non-coercive. Duncan argues that the ten commandments displays do not fit the historical characteristics of coercion as outlined in *Kennedy*—namely, "forcing people to attend church or engage in a 'formal religious exercise."[7] Duncan points out that SB 10 does neither; instead, it only requires "that the Commandments be displayed on the classroom wall," and he argues that this passive nature of the displays is non-coercive. He acknowledges that if these displays were accompanied by more active components such as lectures, devotional reading, or recitations, it would violate jurisprudence, but such is not the case.

In her dissent, Fifth Circuit Court Judge Irma Carrillo Ramirez refers to the holding in *Lee v. Weisman* to describe why she finds SB 10 "problematically coercive." *Lee v. Weisman* (1992) struck down a non-denominational prayer offered at a middle school graduation in Rhode Island, relying on captive audience doctrine to establish that the prayer was coercive.[8]

Captive audience doctrine asks whether an unwilling audience could avoid exposure to a message; if not, this is often evidence of coercion. It draws a major distinction between the prayer in *Lee,* which was struck down, and the prayer in *Kennedy,* which was protected. The court ruled that the graduation environment in *Lee v. Weisman* constituted a captive audience where students could not avoid being present for the prayer and were even "peer pressured" to join in the prayer;[9] while in *Kennedy,* they found that the post-game and informal format of the prayer did not constitute a captive audience, although the dissent argued that similar "social pressure" was present.[10]

Ramirez applies captive audience doctrine to argue that SB 10 is unconstitutionally coercive. Because students are legally required to attend school, the public school classroom is by definition a captive audience environment. Ramirez asserts that the displays of the ten commandments will result in the students being "subjected to religious scripture *all day every day.*"[11] Ramirez argues that this makes the displays even more coercive than the prayer struck down in *Lee*, describing them as "inherently coercive, more so than the 'nonsectarian' invocations and benedictions in *Lee.*"[12] For Ramirez, captive audience doctrine is therefore not just relevant to this case but decisive.

Denominational Favoritism

The dissenting judges argue that S.B. 10 unconstitutionally promotes a "state-selected Protestant version" of the ten commandments, which differs significantly from the Jewish and Catholic versions.[13] By mandating the King James Version, the state forces children of varying backgrounds to engage with Protestant scripture on a daily basis. Ramirez points out that the opening words of the ten commandments, "Thou shalt have no other gods before me," can be especially exclusionary towards those of outside faiths. Judge Higginson builds on this point, claiming such words send a marginalizing message that non-protestants are "outsiders, [and] not full members of the political community."[14]

[7] *Nathan*, slip op. at 38 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022)).
[8] *Lee v. Weisman*, 505 U.S. 577 (1992).
[9] *Lee v. Weisman*, 593.
[10] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 555–56 (2022) (Sotomayor, J., dissenting).
[11] *Nathan*, slip op. at 81 (Ramirez, J., dissenting).
[12] *Nathan*, slip op. at 81 (Ramirez, J., dissenting).
[13] *Nathan*, slip op. at 83 n.21 (Ramirez, J., dissenting).
[14] *Nathan*, slip op. at 114 (Higginson, J., dissenting) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

The majority rejects these claims, asserting that the rule against denominational favoritism applies only to government benefits or burdens, not to the use of "religious language or symbolism," which is how they categorize the displays of the ten commandments.[15] As for addressing the various versions of the ten commandments, they conclude by saying, "Not being a court of ministers, bishops, or rabbis, we have no business opining on these matters and no competence to do so."[16] With these words, they close debate on a major point from the dissent.

Parental Rights to Guide Their Children's Religious Development

The right of parents to guide their children's religious development has become a key part of how the Supreme Court interprets the Free Exercise Clause, and the dissenting judges appeal to these rights to develop their argument against the holding in *Nathan v. Alamo*.

A recent development on this constitutional principle occurred in the case *Mahmoud v. Taylor* (2025). In this case, a school board introduced LGBTQ+-inclusive storybooks and accompanying teacher instruction into its elementary school curriculum with the intent to "disrupt children's thinking about sexuality and gender."[17] After initially offering an opt-out option, the school board reversed its policy and told parents it would neither notify them when the books would be used nor allow their children to opt out of such lessons. In a 6-3 decision written by Justice Alito, the U.S. Supreme Court held that the school must allow opt-outs, ruling that the Free Exercise Clause protects parents' right to raise their children according to their religious beliefs.

The circuit judges in *Nathan v. Alamo* argue extensively over how to apply *Mahmoud v. Taylor* to the ten commandments displays. Both sides of the court compare the displays to the controversial lessons in *Mahmoud*. The majority argues that the displays are less intrusive than the lessons in *Mahmoud* because the displays lack any accompanying instruction, while *Mahmoud* included controversial instruction taught to the children. Beyond the lack of instruction, the majority opinion also criticizes the plaintiffs' proposed remedy: the complete removal of the displays. Judge Duncan claims that this remedy would violate *Mahmoud,* as it would, using the words in *Mahmoud,* "micromanage the public school curriculum."[18] Judge Duncan argues that, unlike the limited opt-out remedy approved in *Mahmoud*, the plaintiffs seek a much more intrusive form of judicial intervention in the school's curriculum and educational decisions.

On the other hand, the dissenting opinions argue that the circumstances of the displays were more extreme and intrusive than those in *Mahmoud* because of captive audience doctrine as explained earlier. They point out that the displays will always be posted in the classroom, with no way for students to avoid them, arguing that this is more intrusive than the controversial lessons in *Mahmoud* because those lessons only occurred on specific and limited days and were able to be avoided altogether with the opt-out option.

[15] *Nathan*, slip op. at 42.
[16] *Nathan*, slip op. at 43.
[17] *Mahmoud v. Taylor*, No. 24-297, slip op. at 3-4 (U.S. June 27, 2025).
[18] *Nathan*, slip op. at 52 (quoting *Mahmoud v. Taylor*, 606 U.S. 522, 568 (2025)).

Utah 3Rs Project Perspective

Introduction

The Williamsburg Charter of 1988 marks the anniversary of the *Virginia Statute for Religious Freedom* of 1786, and brought together a diverse coalition of religious leaders to reaffirm its principles. It acknowledges the complicated nature of the First Amendment and reminds us why religious liberty matters. It says, *"Far from being settled by the interpretations of judges and historians, the last word on the First Amendment likely rests in a chapter yet to be written, documenting the unfolding drama of America. If religious liberty is neglected, all civil liberties will suffer. If it is guarded and sustained, the American experiment will be the more secure."*[19] The years following the Williamsburg Charter have lived up to this expectation that religious liberty would undergo "new chapters" in the "unfolding drama of America." *Nathan v. Alamo* is part of this constitutional story, and its importance cannot be overstated because of the foundational role of religious liberty to civil liberties and the American experiment.

The case of *Nathan v. Alamo Heights Independent School District* is clearly complicated, and there is a reason it was narrowly decided and is expected to be heard in the U.S. Supreme Court. The following sections highlight each of the three Rs and major principles behind the Utah 3Rs Project while considering how to apply them.

Rights

The first of the three Rs is Rights. Everyone is entitled to the rights of religious liberty included in the First Amendment. In *Finding Common Ground,* a foundational work for the 3Rs Project, Charles Haynes and Oliver Thomas write about the role of rights in public school: "Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right for all. Every effort should be made in public schools to protect the conscience of all students and parents."[20] Haynes and Thomas use "religious liberty" and "freedom of conscience" synonymously, and they succinctly outline the standard for the Utah 3Rs Project's approach to take "every effort" to protect them. The Utah 3Rs Project is devoted to protecting these rights.

Rights of Parents

Both jurisprudence and *Finding Common Ground* develop parents' rights to guide their children's religious development in public schools. Haynes and Thomas propose a list of principles to approach conflicts regarding public schools and religion. One of the principles states that parents have "the primary responsibility for the upbringing of their children," and the goal of public schools is "to ensure that public education supports the societal values of their community without undermining family values and convictions." To achieve this goal, Haynes and Thomas suggest working with community members before making legislation and giving "due consideration for the rights of those holding dissenting views."[21]

[19] The Williamsburg Charter Foundation, *The Williamsburg Charter* (Williamsburg, VA: Williamsburg Charter Foundation, 1988).
[20] Charles C. Haynes and Oliver Thomas, *Finding Common Ground: A Guide to Religious Liberty in Public Schools* (Nashville: First Amendment Center, 2007), 18.
[21] Haynes and Thomas, *Finding Common Ground*, 12.

With this in mind, the court opinions in *Nathan v. Alamo* are directly pertinent to the Utah 3Rs Project's values. Considering the circuit judges' interpretations of *Mahmoud,* options for parents to more closely direct their children's upbringing and interaction with religion are generally positive because they enable them to fulfill their primary responsibility to raise their children. The contrasting perspectives on how to compare the displays of the ten commandments and the controversial lessons in *Mahmoud* demonstrate the complexity and ambiguity in interpreting the First Amendment and forming consistent jurisprudence. The Utah 3Rs Project cannot determine which perspective is correct, but it does emphasize the importance of parents' rights in this case. Overall, it is crucial that parents' rights continue to be prioritized as done in *Mahmoud.* Clarifying decisions to build off of *Mahmoud* would be helpful to more clearly develop these rights, and if *Nathan v. Alamo* is heard by the U.S. Supreme Court, it is possible that it could do just that.

Right to Free Exercise

The right to the free exercise of religion has been emphasized in the U.S. Supreme Court in recent years. Generally, the Court has shifted from a strict interpretation of the Establishment Clause to an approach that places greater emphasis on protecting the free exercise of religion and preventing discrimination based on religion. *Kennedy v. Bremerton* (2022) is an example of this trend. In *Kennedy,* the Supreme Court ruled in favor of a high school football coach who had been suspended by his school district for offering prayers at the 50-yard line after games, which were often joined by students. The Court held that his prayers were protected under the Free Exercise Clause and did not constitute an unconstitutional establishment of religion because they were post-game and non-obligatory. This broader trend toward free exercise protection provides important context for understanding SB 10. It could be perceived that SB 10 and similar legislation are a response to the previous strict standard and follow suit with recent cases that have ruled in favor of protecting free exercise over appeals to avoid potential establishments of religion.

In line with this sentiment, the Utah 3Rs Project acknowledges that religion should not be completely removed from public education, but should be presented with an academic approach and not a devotional one. In *Abington v. Schempp* (1963), Supreme Court Justice J. Tom C. Clark articulated this principle, stating, "it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."[22] In alignment with Justice Tom Clark, the 3Rs approach acknowledges that there is a problem if religion is completely removed from education. The Utah 3Rs approach to religion in the classroom comes from Haynes and Thomas' description of religion's "academic" as opposed to "devotional" role in the classroom.[23] Through the academic approach, teaching about religion's role in history, politics, sociology, and other subjects is a vital part of education. Conversely, religion from a devotional approach, or teaching to further devotion, is not appropriate in public education.

[22] *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963).
[23] Haynes and Thomas, *Finding Common Ground*, 45.

It is difficult to apply these standards to *Nathan v. Alamo* because of the strong arguments from both sides. After all, religious liberty in America is a complicated balancing act between the two religion clauses of the First Amendment. Striving to be aligned with the religion clauses of the First Amendment, the 3Rs approach seeks to "protect student religious expression and include religious perspectives in the curriculum, while simultaneously rejecting government endorsement or promotion of religion."[24] Applying this standard, if the purpose of the ten commandments displays is to endorse or promote religion, they would fall into the category of devotional education, which is not constitutional in a public school setting and therefore not aligned with the 3Rs approach; however, if it can be concluded that the displays have historical and educational purposes, as argued in *Nathan v. Alamo,* then they could be a valuable part of education and serve an academic purpose by representing an important religious concept that has influenced the modern world in areas including law, government, and western ideas on morality. We will wait to see which interpretation the U.S. Supreme Court will adopt if it takes the case.

Responsibility

The 3Rs approach values more than rights alone. The next R is Responsibility—the responsibility to protect your rights and the rights of others.

As seen above, the ten commandments legislation can be perceived as an attempt to protect and exercise the right to religious freedom, but the second R of responsibility teaches that such attempts are always coupled with the responsibility to give consideration to the rights of others. This is why Charles Haynes and Oliver Thomas write that lawmakers should give "dissenting opinions due consideration"[25] as they craft legislation.

The plaintiff's concerns in *Nathan v. Alamo*—that people of minority faiths and no faith experience exclusion and coercion because of the language "thou shalt have no other Gods before me"[26] and the use of the Protestant version of the ten commandments while neglecting the other versions—raise genuine questions about whether SB 10 fulfills the constitutional responsibility to protect the rights of all people. The Utah 3Rs Project does not take a position on the outcome of this case, but it acknowledges the legitimacy of the plaintiff's concerns. With that in mind, there are a couple of possible remedies that would align with the Utah 3Rs Project. First, schools could retain the displays of the ten commandments but broaden the context by including other historical moral frameworks alongside them. For example, the Jewish and Catholic versions of the ten commandments, the Eightfold Path of Buddhism, and the Yamas and Niyamas of Hinduism. Including these texts would serve an academic purpose by promoting awareness of the moral foundations of diverse religious traditions and avoiding the appearance of elevating one tradition above others. Second, if the displays cannot be demonstrated to serve a clear academic purpose, removing them altogether would be a straightforward remedy that avoids the constitutional concerns entirely. Both approaches reflect the 3Rs principle that rights are not merely individual possessions but shared responsibilities—that protecting one's own religious liberty requires an equal commitment to protecting the religious liberty of others.

[24] Haynes and Thomas, *Finding Common Ground*, 6.
[25] Haynes and Thomas, *Finding Common Ground*, 12.
[26] *Nathan*, slip op. at 6.

Respectfully Engaging in Civil Dialogue

The third R is a prompt to respectfully engage in civil dialogue. Charles Haynes and Oliver Thomas' book *Finding Common Ground* describes this principle by explaining that "conflict and debate are vital to democracy." It may be counterintuitive, but the success of a democracy depends on the ability to live in relationship with others who are different from ourselves. This requires the ability to talk across those differences to live together in peace. This sort of dialogue is neither contentious nor malicious. It is civil dialogue in which there is mutual respect and a dedication to working towards positive outcomes for everyone. Haynes and Thomas remind us that if we are to "reflect the highest wisdom of the First Amendment and advance the best interest of the disputants and the nation, then *how* we debate, and not only *what* we debate, is critical."[27] Debate is not enough; respect is essential for conversation to be productive.

This last R is important to consider because it improves interfaith relationships in the community. Respectful civil dialogue is one of the most effective ways to understand the importance of First Amendment principles. Everyone benefits when there is a better understanding between them. Respectful civil dialogue with those of other faiths is "important if students are to value religious liberty," and it "promotes cross-cultural understanding essential to democracy and world peace."[28] When we engage in civil dialogue with those of other religious backgrounds and beliefs, we see their humanity, and it becomes much easier to understand why the First Amendment protects everyone's rights and why everyone shares the responsibility to protect others' rights.

Applying this last R to *Nathan v. Alamo*, respectful civil dialogue ideally takes place at every step of the legislative process—especially when crafting legislation on a foundational topic such as religion in public education—and all affected parties would ideally leave feeling acknowledged and included in the final legislation. Of course, this is difficult to achieve in practice; however, the Williamsburg Charter reminds us that the religious liberty clauses are not merely "articles of faith" but "articles of peace"[29]—a shared framework within which Americans of all beliefs can engage their many differences in a civil manner. Striving toward that standard is not a guarantee of agreement, but it is an essential foundation for the kind of pluralistic society the First Amendment was designed to protect.

Conclusion

The Fifth Circuit's holding in *Nathan v. Alamo Heights Independent School District* is a potential landmark decision in the ongoing debate over religion in public education. It arrives while the U.S. Supreme Court is actively reshaping the boundaries of the First Amendment's religion clauses, and its likely path to the U.S. Supreme Court means that it may grow more significant. The Utah 3Rs Project does not completely align with either side of the debate, but it offers a framework to guide the conversation: Rights, Responsibility, and Respect. Everyone has a right to religious liberty, everyone has a responsibility to protect the religious liberty of others, and respectful civil dialogue offers the path towards peace and improved communities. As the Williamsburg Charter reminds us, "if religious liberty is neglected, all civil liberties will suffer."[30] The stakes in cases like *Nathan v. Alamo* are therefore not limited to the question of whether a poster hangs on a classroom wall—they concern the deeper question of what religious liberty means in this country, and whether its institutions are capable of protecting the constitutional rights of every person within it.

[27] Haynes and Thomas, *Finding Common Ground*, 18.
[28] Haynes and Thomas, *Finding Common Ground*, 43.
[29] The Williamsburg Charter Foundation, *The Williamsburg Charter*.
[30] The Williamsburg Charter Foundation, *The Williamsburg Charter*.

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