

***Roake v. Brumley:***

Judicial Delay Undermines Religious Freedom

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### Abstract

Louisiana's House Bill 71, enacted as Act No. 676, requires every public-school classroom to display a state-selected version of the Ten Commandments, transforming a sacred text into a daily, unavoidable fixture of public education. This paper contends that the Fifth Circuit erred in *Roake v. Brumley* by treating the law's injury as speculative and postponing judicial review, even though the constitutional violation is immediate: students are compelled to sit beneath a government-selected religious code in a setting defined by legal authority and lack of meaningful choice. Supreme Court precedents, including *Lee v. Weisman*, make clear that even passive religious expression in schools can exert coercive pressure because of students' particular vulnerability and the authority of school officials. By postponing review through ripeness doctrine, courts shift the burden of unconstitutional experimentation onto children and families, forcing them either to endure state-directed religious messaging or to pursue further litigation for relief. The constitutional defect lies in the statute's structure and communicative purpose, not in future implementation details. Ripeness doctrine should not be used to shield such a structural Establishment Clause violation from timely judicial scrutiny.<sup>1</sup>

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<sup>1</sup> *Roake v. Brumley*, No. 24-30706, slip op. (5th Cir. Feb. 20, 2026).

## **Roake v. Brumley: Judicial Delay Undermines Religious Freedom**

Every school day, children across America walk into classrooms they did not choose, sit where they are told, and spend hours under rules they did not create. They cannot get up and leave when they disagree with what is on the wall or what authority has placed before them. That reality makes the public school classroom constitutionally different from almost any other public setting. What might seem harmless in a park or outside a courthouse means something different in a classroom, where students cannot just get up and leave. Louisiana’s House Bill 71, enacted as Act 676, tests that distinction by requiring the Ten Commandments to be posted in every public school classroom statewide.<sup>2</sup>

Louisiana and its supporters defend the law as recognition of the Ten Commandments’ historical role in shaping American law and civic life. Public officials have framed the statute as a recovery of moral and legal heritage, and that argument carries particular force in a state where Christianity remains the majority faith.<sup>3 4</sup> Critics argue that placing religious scripture on a classroom wall amounts to state-sponsored religious messaging rather than historical acknowledgment.<sup>5</sup> In *Roake v. Brumley*, the Fifth Circuit, sitting en banc, did not uphold the statute on the merits. Instead, it vacated the district court’s preliminary injunction because, in the majority’s view, too much still depended on factual and contextual questions that had not yet been resolved. The distinction matters because the ruling did not decide whether Act 676 is constitutional. It allowed the law to take effect while postponing a decision on the merits until implementation became more concrete.<sup>6</sup>

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<sup>2</sup> Louisiana Legislature, House Bill 71, enacted as Act No. 676, 2024 Reg. Sess. (La. 2024).

<sup>3</sup> Sara Cline, “Louisiana’s Public Classrooms Now Have to Display the Ten Commandments,” *Associated Press*, June 19, 2024.

<sup>4</sup> Pew Research Center, “Religious Landscape Study: Louisiana,” accessed April 15, 2026.

<sup>5</sup> *Stone v. Graham*, 449 U.S. 39 (1980); *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>6</sup> *Roake v. Brumley*, No. 24-30706, slip op. (5th Cir. Feb. 20, 2026).

*Roake*, therefore, turns on a basic constitutional mistake. Under established doctrine, a claim is ripe when a law imposes present injury and creates concrete legal obligations for those subject to it. As the Court explained in *Abbott Laboratories v. Gardner*, judicial review is appropriate when the challenged statute is already operative and its effects are not contingent on future events. The en banc court treated Act 676's classroom mandate as a future injury rather than a present one.<sup>7</sup> In public schools, however, exposure to a state-selected religious text already constitutes a constitutional injury.<sup>8</sup> By reframing that injury as a timing problem, the court shifted the burden of delay onto the students and families the First Amendment is meant to protect.<sup>9</sup>

## Background

*Roake v. Brumley* does not turn on ripeness alone. It also turns on a familiar constitutional framework. The Establishment Clause bars the government from endorsing or advancing religion. At the same time, the Free Exercise Clause protects the right of individuals and communities to practice their faith without unjustified state interference. These protections are not in tension. Together, they require the state to remain neutral in matters of religion. The government cannot punish religious exercise, nor can it use public authority to place one religious tradition in a favored position.<sup>10</sup>

Those constitutional protections emerged from a longer history of resistance to religious establishment and state-backed belief. European governments often tied political power to religious conformity, and several early colonies carried parts of that model into American life.<sup>11</sup>

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<sup>7</sup> *Roake v. Brumley*, No. 24-30706, slip op. (5th Cir. Feb. 20, 2026).

<sup>8</sup> *Stone v. Graham*, 449 U.S. 39 (1980); *Lee v. Weisman*, 505 U.S. 577 (1992)

<sup>9</sup> *Roake v. Brumley*, No. 24-30706, slip op. (5th Cir. Feb. 20, 2026); *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>10</sup> U.S. Const. amend. I.

<sup>11</sup> U.S. Department of Justice, Civil Rights Division, last modified August 5, 2015, <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>.

The American turn toward disestablishment rejected that pattern by separating civil authority from religious obligation and by limiting the government's power to privilege one faith over others. That shift became clearer in the late eighteenth century through Jefferson's Virginia Statute for Religious Freedom and, ultimately, the First Amendment itself.<sup>12</sup> The Establishment Clause grew out of that history and was designed to prevent government from using public authority to elevate one religious tradition over others.

Elder Robert D. Hales tied religious freedom directly to moral agency, insisting that "the faithful use of our agency depends upon our having religious freedom."<sup>13</sup> President Dallin H. Oaks, in turn, described freedom of religion as having a "pre-eminent place" in the First Amendment and as "a cornerstone of American democracy."<sup>14</sup> On that view, liberty of conscience is not an optional policy preference. It is a structural limit on state power and a precondition for meaningful choice.

Public schools sharpen those constitutional limits because students are not voluntary observers.<sup>15</sup> They are required to be there, remain under institutional authority, and move through a setting shaped by rules they did not choose. The Supreme Court has therefore treated religious expression in schools differently from religious references in more voluntary public spaces. In *Engel v. Vitale*, the Court struck down a state-composed school prayer, making clear that the constitutional problem arose from the state's involvement in religious exercise, not merely from whether students were forced to speak. In *Lee v. Weisman*, the Court extended that concern by recognizing that school settings place subtle but real pressure on students to conform,

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<sup>12</sup> Library of Congress, "America as a Religious Refuge: The Seventeenth Century, Part 1."

<sup>13</sup> Elder Robert D. Hales, "Preserving Agency, Protecting Religious Freedom," *Ensign or Liahona*, May 2015.

<sup>14</sup> Dallin H. Oaks, "Transcript of Elder Dallin H. Oaks Speech on Religious Freedom," *Church Newsroom*, October 13, 2009.

<sup>15</sup> *Engel v. Vitale*, 370 U.S. 421 (1962); *Lee v. Weisman*, 505 U.S. 577 (1992); *Stone v. Graham*, 449 U.S. 39 (1980).

even when participation appears voluntary. Those school cases establish the baseline for this dispute: in public schools, an Establishment Clause violation does not require overt compulsion or formal punishment. The state does not have to force students to speak or participate for a religious message to become coercive. In a setting shaped by authority, routine, and legal obligation, the message itself can carry pressure.<sup>16</sup>

The Fifth Circuit's procedural ruling is difficult to defend because the Supreme Court has already addressed the classroom-display question directly. In *Stone v. Graham*, the Court examined a Kentucky law requiring the Ten Commandments to be posted in every public-school classroom, even though the statute described the text as a foundational part of Western legal history.<sup>17</sup> The Court rejected that framing, holding that the Commandments are inherently religious and that a secular disclaimer does not alter their character or purpose. The opinion was brief, and the constitutional problem was clear.<sup>18</sup>

More recent Establishment Clause cases have changed the broader doctrinal landscape without displacing *Stone*.<sup>19</sup> In *American Legion v. American Humanist Association* and *Kennedy v. Bremerton School District*, the Supreme Court moved away from the *Lemon* test and toward a framework that asks whether a challenged practice fits the nation's historical understanding of the Establishment Clause.<sup>20</sup> In *Van Orden v. Perry*, Justice Breyer cast the deciding vote to uphold a Ten Commandments monument on the grounds of the Texas State Capitol because it had stood peacefully in a civic setting for decades without functioning as a devotional imposition.<sup>21</sup> Louisiana relies on that line of cases to argue that the Commandments' long

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<sup>16</sup> *Engel v. Vitale*, 370 U.S. 421; *Lee v. Weisman*, 505 U.S. 577.

<sup>17</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>18</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>19</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>20</sup> *American Legion v. American Humanist Ass'n*, 588 U.S. 29 (2019); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

<sup>21</sup> *Van Orden v. Perry*, 545 U.S. 677 (2005).

presence in American public life gives them a historical meaning the current Court has said must be taken seriously. Even so, those cases do not control here. A monument adults pass in a public park does not raise the same constitutional question as a law that applies to every classroom, where children are legally required to sit. *Stone* still governs the classroom-display question, and nothing in the Court's later history and tradition cases has overruled it.<sup>22</sup>

## Application

The problem with House Bill 71 is not only that the Ten Commandments are on the wall. It is that students are required to sit beneath that message in a classroom where they cannot simply walk away from. In public schools, children do not encounter state messaging as independent observers. They encounter it in a setting structured by authority, routine, and compulsory presence. *Engel v. Vitale*, *Lee v. Weisman*, and *Stone v. Graham* frame the constitutional problem. Each recognizes that school-sponsored religious expression carries constitutional weight because dissent in a school setting brings social and institutional pressure.<sup>23</sup> In *Lee*, the problem was the social cost imposed on a student who declined to participate in a religious exercise.<sup>24</sup> In *Stone*, it was the state's decision to place a religious text on the classroom wall.<sup>25</sup> Both cases rest on the same recognition: the classroom is defined by state authority, and students do not control the terms of their presence there. A classroom posting required by law functions as an authoritative state message delivered through the ordinary conditions of schooling.

Act No. 676 crosses that constitutional line. It selects a particular scriptural code, with specific wording and numbering, and mandates that the text remain a permanent fixture in every

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<sup>22</sup> *American Legion v. American Humanist Ass'n*, 588 U.S. 29 (2019); *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>23</sup> *Engel v. Vitale*, 370 U.S. 421 (1962); *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>24</sup> *Lee v. Weisman*, 505 U.S. 577, 592–93 (1992).

<sup>25</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

classroom.<sup>26</sup> The Pledge contains a brief reference to God, whereas the Commandments outline a detailed series of religious obligations, including commands about worship, images, and Sabbath observance. Students cannot opt out of the display. Here, the state is not merely acknowledging that many citizens believe in God. It is elevating one religious tradition's sacred text to a position of authority in the classroom. That structural choice places Act No. 676 on the *Stone*, on the side of the Establishment Clause, rather than alongside civic rituals courts have treated as constitutionally permissible.<sup>27</sup>

Once the law is viewed in those terms, its broader institutional consequences come into focus. Public trust in government neutrality depends on students experiencing school as a space that belongs equally to everyone, regardless of background. When the state posts a specific religious text in every classroom, it does more than decorate a wall. It signals which tradition the state treats as foundational. In a state where Christians form a substantial majority, that signal reinforces existing religious and cultural hierarchies rather than creating a neutral civic space. Catholic students who number the Commandments differently, Jewish students whose version of the text differs, and students with no religious affiliation all receive that message before any teacher says a word.

These consequences extend beyond constitutional doctrine into religious and moral concerns. Elder Quentin L. Cook has urged that “all religions join together to defend faith and religious freedom in a manner that protects people of diverse faith as well as those of no faith,” and that “people of faith must be at the forefront in protecting religious freedom, which is a freedom from which many other essential freedoms emanate.”<sup>28</sup> That standard cuts against a

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<sup>26</sup> Louisiana Legislature, *House Bill 71*, Act No. 676, 2024 Reg. Sess. (La. 2024).

<sup>27</sup> *Lee v. Weisman*, 505 U.S. 577, 592–93 (1992); *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>28</sup> Quentin L. Cook, “Elder Cook Calls for Global Effort to Protect Faith and Religious Freedom,” May 27, 2015.

statute that elevates one sacred tradition as the daily backdrop of public education, because the law protects the comfort of the majority while students from other backgrounds live each day under a state-selected religious code they did not choose.

When courts delay review on ripeness grounds, they do not leave the question open in any neutral sense. They allow the state's message to settle into classroom life while legal review remains unresolved. The families who filed suit in *Roake* bear the immediate cost of that delay. Their children sit in classrooms the court has refused to examine, under a law it has declined to evaluate. Ripeness doctrine has legitimate uses.<sup>29</sup> Applying it to a law that is already operative, already mandatory, and already shaping the daily lives of students who cannot leave is not one of them.

Louisiana still has a serious constitutional defense, and it should be stated fairly before it is rejected. The state and its supporters argue that the Ten Commandments are being presented here not as a devotional text, but as a document with deep roots in Western legal and civic history. In that view, the Commandments belong beside texts such as the Mayflower Compact and the Declaration of Independence: culturally significant documents introduced to students as part of a broader civic tradition. Supporters also point to recent Supreme Court decisions that give that position some force outside the school context.<sup>30</sup>

Louisiana's defense also hinges on how House Bill 71 presents the display. The statute does not require teachers to instruct students on the Commandments or assign them religious significance. It requires a poster. The accompanying context statement presents the display as educational, and schools may place it alongside other civic documents. By that logic, the

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<sup>29</sup> *Roake v. Brumley*, No. 24-30706, slip op. (5th Cir. Feb. 20, 2026).

<sup>30</sup> Louisiana Legislature, House Bill 71, Act No. 676, 2024 Reg. Sess. (La. 2024).

Commandments function like the Bill of Rights or the Gettysburg Address: culturally significant texts presented to students as part of a broader civic education.<sup>31</sup>

A harder question remains: would Act No. 676 be analyzed differently if it permitted classroom displays rather than required them? The distinction matters. A permissive law leaves room for local judgment and avoids the coercive uniformity that makes the current statute so difficult to defend. Act No. 676 does the opposite. It is a statute, and the state deliberately removed that option. Catholic students whose tradition numbers the Commandments differently, Jewish students whose texts differ in content, and nonreligious students with no religious affiliation all face the same reality: none of them can opt out. That structural reality sets this case apart from those in which courts have allowed religious displays and shows why the historical framing argument does not work here, however persuasive it may be in other settings.

A related defense attempts to normalize the state directive by comparing it to familiar civic language about God. Some argue that public schools already use religious language in practices such as the Pledge of Allegiance and ask why a Ten Commandments poster should be treated differently from the words “under God” recited in many classrooms. The difference lies in both content and context. The Pledge is a patriotic affirmation centered on loyalty to the nation. Its brief reference to God functions as part of a civic ritual, not as a detailed statement of religious doctrine. Courts have generally treated that language as ceremonial acknowledgment rather than an endorsement of a specific creed.

In his General Conference address *Preserving Agency, Protecting Religious Freedom*, Elder Dallin H. Oaks ties religious liberty directly to moral agency, arguing that legal or social pressures that punish religious conviction undermine “the fundamental freedom of religion that is

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<sup>31</sup> Louisiana Legislature, House Bill 71, Act No. 676, 2024 Reg. Sess. (La. 2024).

essential to our agency.”<sup>32</sup> For that reason, governments cross a doctrinal line when they compel outward conformity to a preferred religious message or place steady pressure on citizens to adopt it. That framework parallels the Court’s concern about coercion in mandatory settings: both ask whether state power has limited the meaningful religious options available to everyday people.<sup>33</sup>

## Conclusion

Act No. 676 is unconstitutional because the state has taken a sacred text, chosen its wording, and installed it as a permanent feature of classrooms students are legally required to attend. The constitutional violation is built into the law itself. It does not depend on a teacher turning the poster into a lesson or on a district enforcing the law in some especially aggressive way. The injury arises when the state fixes a religious message in the classroom and makes it part of the ordinary conditions of public education. That is why the Fifth Circuit’s ripeness ruling is so difficult to defend. By calling the case unripe, the court turns a real and immediate constitutional conflict into a hypothetical problem, and the burden of that move falls squarely on students.<sup>34</sup>

The broader history of religious freedom points in the same direction. American protections for religious liberty developed in response to systems that joined public authority to preferred religious belief. The Establishment Clause was designed to prevent that alignment, not merely to correct its most extreme abuses after the fact. The Court’s school cases reflect that history with unusual clarity. *Engel*, *Lee*, and *Stone* all recognize that the classroom is not a neutral public forum where students encounter ideas as free and independent observers. It is a space defined by authority, routine, and legal compulsion. For that reason, a permanent

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<sup>32</sup> Dallin H. Oaks, “Preserving Agency, Protecting Religious Freedom,” *Ensign* or *Liahona*, April 2015.

<sup>33</sup> *Stone v. Graham*, 449 U.S. 39 (1980); *Lee v. Weisman*, 505 U.S. 577, 592–93 (1992).

<sup>34</sup> Louisiana Legislature, House Bill 71, Act No. 676, 2024 Reg. Sess. (La. 2024); *Roake v. Brumley*, No. 24-30706 (5th Cir. 2024); *Lee v. Weisman*, 505 U.S. 577 (1992).

classroom posting of the Ten Commandments cannot be treated as equivalent to a monument in a park, a symbol on a courthouse lawn, or a passing civic reference to God. Nor does the law become harmless because Louisiana calls it educational. The state has still chosen a sacred text, given its privileged placement, and required children of every background to sit beneath it.<sup>35</sup>

The historical-framing defense fails here for a simple reason. Cases such as *Van Orden* and *American Legion* concern longstanding symbols in voluntary civic settings. House Bill 71 concerns children, classrooms, and a statewide mandate. The distinction is not minor. It is the whole case. Religious liberty protects moral agency, and agency loses its meaning when the state uses ordinary public authority to shape the conditions under which belief is encountered. Courts do not preserve neutrality by postponing review of a law like this. They allow the state's preferred religious message to become part of the daily structure of public education while families bear the burden of delay. The injury is already present. The constitutional line has already been crossed. Review is not premature. It is overdue.<sup>36</sup>

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<sup>35</sup> Elder Lance B. Wickman, "The Crucible: The Atonement, Moral Agency, and the Law"; L. Whitney Clayton, "In the Marrow of Their Bones': The Latter-day Saint Experience of Religion as Identity," 2018 Religious Freedom Annual Review, Brigham Young University.

<sup>36</sup> *American Legion v. American Humanist Association*, 588 U.S. 29 (2019); *Van Orden v. Perry*, 545 U.S. 677 (2005); *Stone v. Graham*, 449 U.S. 39 (1980); *Roake v. Brumley*, No. 24-30706 (5th Cir. 2024).

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