

The Exemption They Cannot Reach: Mandated Scripture, *Mahmoud v. Taylor*, and the Self-Defeating Logic of the Academic Defense

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Abstract

Texas will require more than five million public school students to read biblical scripture in every grade beginning in 2030. This Article argues that the mandate violates the Establishment Clause, and, more pointedly, that the State's only viable defense is self-defeating. To escape the Clause, Texas must characterize the curriculum as academic rather than devotional. That characterization, however, simultaneously dissolves any justification for compelling the study of a single faith's scripture and removes any ground for denying religious families the very opt-out the Supreme Court recognized in *Mahmoud v. Taylor*. A curriculum cannot be academic enough to survive establishment scrutiny and sectarian enough to warrant a single-faith mandate at the same time. The Article situates the mandate within the denominational-preference rule of *Larson v. Valente* and the school-scripture line from *Engel* through *Santa Fe*, treats the State's predictable refusal of an evenhanded comparative curriculum as probative of religious purpose, and concedes the realistic risk that a results-driven Court could retreat to the literary-and-historic carve-out of *Abington v. Schempp*, explaining why that retreat fails on the record. The argument is confined to a specific political project, the legislative program of Christian nationalism, and not to religious belief, religious practice, or the academic study of religion, each of which the Constitution protects.¹

Keywords: Establishment Clause; *Mahmoud v. Taylor*; *Larson v. Valente*; *Abington v. Schempp*; denominational preference; religious opt-out; public school curriculum; Christian nationalism.

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1. Case citations in this Article have been verified for existence and reporter pagination against the CourtListener database. The two keystone pin cites are confirmed against the published reports: *Larson v. Valente*, 456 U.S. 228, 244 (1982), and *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963). Remaining authorities are cited to the reporter volume and first page, or to the standard pinpoint for the proposition stated, and the bound-volume pagination of *Mahmoud v. Taylor*, which remains subject to formal revision before publication in the United States Reports, should be confirmed against the official source before submission.

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I. Introduction

In June 2025, the Supreme Court held in *Mahmoud v. Taylor* that public schools burden the free exercise of religion when they require a child to participate in instruction that conflicts with the family's faith, and that affected parents are entitled to notice and an opportunity to opt the child out.² One year later, the Texas State Board of Education moved to require more than five million public school students to read biblical scripture as part of the standard English language arts curriculum in every grade, with passages drawn from, among other sources, the Sermon on the Mount, the Book of Genesis, and the Gospel narratives, to take full effect in 2030.³ The juxtaposition is not rhetorical. It is doctrinal, and it is fatal.

This Article makes two claims. The first is conventional: a state mandate that singles out the scripture of one religion and assigns it to schoolchildren as required reading violates the Establishment Clause. The second is the one that matters, because it forecloses the State's escape. To survive the Establishment Clause, Texas must insist that the curriculum is academic and not devotional, that it teaches *about* the Bible as literature and history rather than teaching the Bible as truth.⁴ But the academic characterization is not free. It is load bearing in two directions at once, and it cannot bear the weight in both. If the curriculum is genuinely academic, there is no justification for confining the required scripture to one religion rather than surveying many, and the single-faith mandate fails for want of a secular reason. If the curriculum is devotional enough to be worth mandating as the moral formation of five million children, it is an establishment of

2. *Mahmoud v. Taylor*, 606 U.S. 522 (2025) (No. 24-297). The instruction at issue was a set of elementary storybooks featuring lesbian, gay, bisexual, and transgender characters and themes, which the school district declined to treat as religious in nature. The Court held, six to three, that requiring participation over the family's religious objection burdened the parents' free exercise and entitled them to notice and an opt-out, applying strict scrutiny on the authority of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and reversing the United States Court of Appeals for the Fourth Circuit.

3. The required reading list followed an earlier, optional state curriculum, "Bluebonnet Learning," approved in late 2024, which districts could adopt in exchange for a per-student subsidy. The required list removes the local choice the optional program preserved.

4. The Texas Education Agency has already taken precisely this position, stating that the materials contain no religious instruction and that biblical references appear only for their literary and historical value. That representation is examined in Part V.

religion, and it fails on its own terms. Academic enough to be constitutional and sectarian enough to be worth doing cannot both be true.

Mahmoud sharpens the contradiction rather than relieving it. The same movement that secured a constitutional opt-out for religious objectors to secular instruction now asks the State to compel religious instruction from which objectors cannot escape. Part IV shows that the opt-out recognized in *Mahmoud* applies to mandated scripture *a fortiori*, and that the only parents for whom the opt-out is a poor fit, those who object not from a competing faith but from no faith, hold a stronger weapon still, because they may challenge the mandate itself rather than merely exempt their child from it.

A word at the threshold on what this Article does not argue. It does not argue that the Bible has no place in a public school, that religion may not be studied, or that religious citizens may not bring their convictions into public life. The academic study of religion is constitutionally protected and pedagogically valuable.⁵ The target here is narrow and specific: a legislative program, associated with the political movement of Christian nationalism, that uses the machinery of the state to install the scripture of one faith in the compulsory curriculum. That program is distinct from Christianity, most of whose adherents neither seek nor endorse it, and the distinction is not a courtesy. It is the analytic core of the Article, because the unconstitutionality lies precisely in the preference, the singling out, and the compulsion, none of which religious belief requires and none of which the academic study of religion entails.

II. The Texas Regime

A. From an Optional Curriculum to a Mandatory Reading List

The current mandate is the second step of a two-step program, and the sequence is itself significant. In late 2024, the State Board of Education approved an optional state-developed

5. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963), expressly distinguished devotional exercises, which it forbade, from the objective study of the Bible for its literary and historic qualities within a secular program of education, which it permitted.

curriculum for kindergarten through fifth grade, marketed as “Bluebonnet Learning,” whose reading and language arts units drew heavily on biblical material, including extended passages from the Sermon on the Mount and Genesis.⁶ Adoption was voluntary, and districts declined it in large numbers; a small fraction of districts, and a still smaller fraction of the largest districts, took the materials, with many others adopting the secular phonics components and discarding the religious units.⁷ Having offered the content and seen it refused, the State moved to remove the choice. The required reading list now under challenge applies to every grade and to all of the State’s more than five million public school students, and it is not optional.

B. The Ten Commandments Statute and Its Injunction

The reading mandate does not stand alone. A separate Texas statute enacted in 2025 requires every public school classroom to display the Ten Commandments. A federal district court entered a preliminary injunction against enforcement, and the matter remains in litigation while the State’s chief legal officer has directed schools to comply notwithstanding the injunction.⁸ The two measures share a structure and a purpose, and the constitutional analysis of the reading mandate borrows directly from the settled treatment of the display.

6. The curriculum was developed and promoted by the Texas Education Agency itself, at a reported cost in the range of one hundred million dollars, with additional expenditure to correct a large volume of errors identified after approval. Districts that adopted the program received a per-student subsidy.

7. The pattern of refusal is relevant to the secular-purpose inquiry in Part V.D and to the characterization question in Part V.B, because it shows that the local bodies closest to the affected children, exercising the latitude the State gave them, did not regard the religious content as necessary to literacy instruction.

8. The Ten Commandments display is governed directly by *Stone v. Graham*, 449 U.S. 39, 41 (1980) (per curiam), which struck down a materially identical Kentucky statute requiring the posting of the Decalogue in public school classrooms, holding that the requirement had no secular legislative purpose and that its pre-eminent purpose was plainly religious. The directive to comply notwithstanding a preliminary injunction is noted here only for its bearing on the State’s posture toward governing law, examined in Part VI.

III. The Establishment Clause Framework

A. The Denominational-Preference Rule

The most important principle for this case is also among the most settled. The clearest command of the Establishment Clause is that the government may not officially prefer one religious denomination over another, and a law that draws an explicit denominational preference is subject to strict scrutiny.⁹ A curriculum that mandates the scripture of one faith, and no other, is a preference of exactly the kind *Larson* addresses. It is not neutral among religions; it selects one and assigns it. Whatever latitude the modern Court has given to ceremonial or historically rooted acknowledgments of religion in general, the rule against preferring a particular sect has not been disturbed, and a single-faith reading mandate runs into it directly. This point does much of the work in Part V, because the comparative-religion cure that would satisfy *Larson* is the very thing the State will not accept.

B. Scripture and Prayer in the Public School

The Court's public school line is long and consistent. State-sponsored prayer in public school classrooms is unconstitutional.¹⁰ Mandatory devotional Bible reading in public schools is unconstitutional, even where students may be excused on request.¹¹ A statute requiring the posting of the Ten Commandments in classrooms is unconstitutional for want of a secular purpose.¹² A moment-of-silence statute enacted to return prayer to the schools is unconstitutional.¹³ Clergy-led prayer at a public school graduation is unconstitutional because

9. *Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). *Larson* invalidated a Minnesota charitable-solicitation statute that distinguished among religious organizations, holding that a denominational preference must be invalidated unless justified by a compelling governmental interest and closely fitted to that interest.

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

11. *Schempp*, 374 U.S. 203. The presence of an excusal option did not save the practice, a point with direct bearing on Texas's reliance on its statutory exemption, addressed in Part V.A.

12. *Stone*, 449 U.S. 39, 41.

13. *Wallace v. Jaffree*, 472 U.S. 38 (1985).

of the subtle coercive pressure the setting places on students.¹⁴ Student-led prayer broadcast at a public school football game, conducted under school sponsorship, is unconstitutional.¹⁵ The through line is the special solicitude the Court has shown for the public school, a setting in which children are young, impressionable, and compelled by law to be present, and in which the state's endorsement of religion carries unusual force. A required Bible reading in every grade sits at the center of that concern, not at its periphery.

C. The Protection of Nonbelief

The Establishment Clause protects not only minority faiths but the absence of faith. The state may not aid those religions based on a belief in God against those founded on different premises, nor may it favor religion over nonreligion.¹⁶ This matters for the structure of the standing and remedy analysis in Part IV.C, because the secular objector's claim, though sometimes thought weaker because it does not sound in the exercise of a competing faith, is in fact anchored in the Establishment Clause itself, which needs no profession of belief to invoke.

D. The History-and-Tradition Turn

In 2022, the Court discarded the test it had used for decades to evaluate Establishment Clause claims and directed that such claims be assessed by reference to historical practices and understandings.¹⁷ This Article does not assume that the turn to history rescues the Texas mandate, and Part VI addresses the risk that a sympathetic court could deploy it to do so. The point for now is narrower. Whatever *Bremerton* did to the framework for ceremonial and accommodationist practices, it did not license a denominational preference, did not overrule *Schempp* or *Stone*, and supplies no historical tradition of compelling the scripture of one faith

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

15. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

16. *Torcaso v. Watkins*, 367 U.S. 488 (1961) (invalidating a religious test for public office and recognizing that the government may not aid believers against nonbelievers); *see also* *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947) (the state may not pass laws that aid one religion, aid all religions, or prefer one religion over another).

17. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022) (abandoning the *Lemon* test, *see Lemon v. Kurtzman*, 403 U.S. 602 (1971), in favor of an analysis grounded in history and tradition).

as required reading for all public school children. The earliest and most consistent tradition in this domain runs the other way, against established religion and against the state's compelled instruction in a particular creed.

IV. The Free Exercise Inversion: *Mahmoud v. Taylor*

A. The Holding and Its Reach

Mahmoud recognized that when a public school compels a child to participate in instruction that conflicts with the religious convictions in which the family is raising the child, the school burdens the family's free exercise of religion, and the family is constitutionally entitled to notice and an opportunity to opt the child out.¹⁸ The decision was a significant victory for a coalition that had long advocated parental control over the content of public education, and opt-out rights of this kind have been championed principally by religious conservatives, including organizations that support the Texas Bible curriculum.¹⁹

The principle has not waited for the Texas reading mandate to find application against compelled religious content. Within months of the decision, a court invoked *Mahmoud* in support of the conclusion that a state law forcing the display of the Ten Commandments in public school classrooms is coercive.²⁰ That early use cuts against any suggestion that the reasoning is confined to the storybook setting in which it arose. It reaches compelled scriptural content of exactly the kind the Texas reading mandate imposes, and it does so in the companion domain, the Ten Commandments display, that Texas has paired with the reading list.

18. *Mahmoud*, 606 U.S. 522. The instruction was secular in the school's own description; the storybooks were not taught as religious doctrine. The Court grounded the burden in *Yoder*'s recognition that the government may not substantially interfere with the religious development of a child, and held that interference of that character triggers strict scrutiny without regard to the neutrality or general applicability of the measure. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972).

19. The point is not *ad hominem*. It is that the legal principle the movement secured is now available to those the movement seeks to compel, which is the inversion this Part develops.

20. *See* Cong. Rsch. Serv., LSB11360, Free Exercise of Religion at School: The Supreme Court's *Mahmoud v. Taylor* Ruling (2025) (noting that at least one court has cited *Mahmoud* to support the coercive nature of a state law mandating the display of the Ten Commandments in public school classrooms).

B. A Fortiori Application to Mandated Scripture

If a parent may opt a child out of a storybook that the school does not even treat as religious, a parent may surely opt a child out of the assigned reading of the Sermon on the Mount. The Texas mandate presents the stronger case along every dimension that mattered in *Mahmoud*. The material is not arguably religious; it is scripture. It is not incidentally encountered; it is required. It is not presented as one perspective among many; on the Establishment challengers' account, and on the face of certain lessons, it is presented as true.²¹ By the rule the movement itself secured, a Jewish parent, a Muslim parent, a Hindu parent, or any parent whose faith is burdened by the state teaching Christian scripture as truth holds a constitutional right to remove the child from the lesson.

C. The Clause Boundary: Religious and Secular Objectors

Mahmoud rests on the Free Exercise Clause, which protects the exercise of religion. The parent who objects from a competing faith fits the holding cleanly. The parent who objects from no faith, who simply does not want the state teaching the child a religion, fits less cleanly, because declining a religion is not, in the most literal reading, exercising one.²² The boundary is real, but it does not protect the State, because it directs the secular objector to a more powerful claim. The religious objector exempts a single child from a single lesson. The secular objector challenges the mandate itself as an establishment of religion and seeks to enjoin the program, a remedy that requires no profession of belief and that reaches every child, not one. The clause boundary thus distributes the litigants between two doors. Religious objectors pass through *Mahmoud* to an exemption; everyone else passes through the Establishment Clause to invalidation. There is no door that leaves the State standing.

21. Critics have identified lessons that present the Gospel accounts as literal historical record, a characterization examined in Part V.B. If accurate, that presentation removes the academic framing on which the State's defense depends and strengthens the *Mahmoud* claim simultaneously, an interaction developed in Part V.

22. Nonbelief receives constitutional protection, *see Torcaso*, 367 U.S. 488, but the *Mahmoud* remedy is framed in free-exercise terms, and a state defending the mandate may argue that the remedy is limited to religious objectors. The argument is mistaken as applied to the secular parent's true claim, for the reason that follows.

V. The Self-Defeating Defense

A. The Interwoven Curriculum and the Unreachable Exemption

Texas will answer the *Mahmoud* problem by pointing to its statutory exemption, which has since the 1990s permitted families to remove a child from instruction that conflicts with the family's religious or moral beliefs. The answer fails for two reasons. First, *Schempp* already held that an excusal option does not cure a devotional exercise; the constitutional defect is the state sponsorship, not the absence of an exit.²³ Second, and independently, the exemption is engineered to be unreachable. A parent cannot exempt a child from an entire semester of English language arts, and the State has woven the scripture through the required reading rather than confining it to a severable unit. There is no discrete lesson to decline. The State built the exemption for the benefit of religious objectors to secular content and then designed this curriculum so that the exemption cannot be exercised against religious content. An opt-out that cannot be reached is not an opt-out.

B. Academic or Devotional: The State Cannot Have Both

The State's central defense is that the curriculum is academic, that it teaches about the Bible for its literary and historical value and does not teach the Bible as truth.²⁴ Assume the State means it. The characterization then does fatal work in the other direction. If the curriculum is genuinely an academic study of influential texts, there is no secular reason to confine the required reading to the scripture of one religion. A neutral academic program in the literature and history of religion would survey many traditions; it would place the Bible alongside the Quran, the Torah, the Bhagavad Gita, and others, each studied for the same literary and historical reasons. The decision to mandate one faith's scripture, and only one, is not explicable on academic grounds. It is explicable only on the ground the State disavows, that this scripture, and not the others,

23. *Schempp*, 374 U.S. 203. The excusal available there did not save mandatory Bible reading.

24. This is the position the Texas Education Agency has asserted publicly, that the materials contain no religious instruction.

is the one the State wishes its children to absorb. The single-faith selection is therefore either unjustified, if the program is academic, or unconstitutional, if it is devotional. The contradiction is not a matter of framing; it is structural, and there is no third position. Conversely, if certain lessons present the Gospel accounts as literal historical fact, or require a teacher who does not share the faith to read scripture aloud as instruction, the devotional character is established and the academic defense collapses on the record.

C. The Comparative-Religion Cure and Refusal as Evidence of Purpose

There is a constitutional version of what Texas claims to want. A public school may offer an honest comparative course in the world's religions, in which each major tradition is presented academically and none is taught as true, and in which the Bible is studied for its literature and history alongside the sacred texts of other faiths. *Schempp* itself contemplated exactly this.²⁵ The comparative course satisfies *Larson*, because it prefers no denomination, and it satisfies *Schempp*, because it is genuinely academic. It is also the one thing the movement behind this mandate will not accept. A curriculum that gave Islam, Judaism, Hinduism, and the rest equal standing with Christianity would be opposed by its present proponents, and the prediction is not cynical; it follows from the stated and evident aim of elevating one faith in particular. That predictable refusal is not merely politically revealing. It is legally probative. Where the constitutional cure is available and is rejected, the rejection is evidence that the purpose was never the secular one the State asserts, but the religious one the secular-purpose requirement forbids. The State's unwillingness to teach about all religions is the best evidence that the program was designed to teach one.

VI. The Captured-Court Caveat

Intellectual honesty requires acknowledging that the doctrinal strength of an argument does not guarantee the outcome before a Court that has shown willingness to reach results and to remake

25. *Schempp*, 374 U.S. 203, 225 (permitting study of the Bible for its literary and historic qualities within a secular program of education).

the governing tests to reach them.²⁶ The State's most plausible escape is not a new doctrine but an old line. *Schempp* permitted the Bible to be studied for its literary and historic value within a secular program, and a sympathetic court could seize that language, accept the State's academic characterization at face value, and uphold the mandate as objective study.²⁷ The escape fails on the facts rather than the law. Objective study does not present the Gospel as literal history, does not assign one faith's scripture to the exclusion of all others, and does not place a non-adherent teacher in the position of reading scripture to a class as instruction. Whether the Texas curriculum crosses from study into devotion is a question the record answers against the State, lesson by lesson. The litigation risk is therefore real but contained, and it counsels a particular framing of the argument. The strongest claim is not that no court could rule for the State, because a determined court might. The strongest claim is that the State has placed itself in a contradiction that no faithful application of the law can resolve in its favor: it cannot call the curriculum academic to escape the Establishment Clause and sectarian to justify the single-faith mandate, and it cannot grant a comparative cure without abandoning the project. That contradiction is visible to any honest reader, on or off the bench.

VII. Conclusion

The Texas mandate fails because it tries to occupy two positions that cannot be held at once. To survive the Establishment Clause it must be academic; to be worth doing it must be devotional; and to be either lawfully it must treat all faiths alike, which would defeat its purpose. *Mahmoud v. Taylor* did not supply the movement with cover. It armed the religious families the mandate burdens with a ready exemption, and it left the secular families a stronger remedy still, the invalidation of the program itself. The State engineered an opt-out that cannot be reached and a defense that cannot be sustained. A faithful court will enjoin the mandate. A candid public does

26. The abandonment of *Lemon* in *Bremerton*, 597 U.S. 507, 534, is the proximate example.

27. *Schempp*, 374 U.S. 203, 225.

not need to wait for one to see that the architects of this curriculum secured for their own children a right to leave the room, and then nailed the doors shut behind everyone else's.