

# The Exemption They Cannot Reach

*Mandated Scripture, Mahmoud v. Taylor, and the Self-Defeating Logic of the Academic Defense*

Texas cannot call its curriculum academic enough to survive the Establishment Clause and sectarian enough to justify a single-faith mandate at the same time. The defense dissolves the warrant for the program.

# A required reading list of biblical scripture for every grade, every student, taking full effect in 2030.

The mandate follows an optional curriculum, "Bluebonnet Learning," that districts were largely declining. Having offered the content and seen it refused, the State removed the choice. The sequence is not incidental; it is the structure of the program.

## 5M+

public school students in Texas  
subject to the mandate.

The mandate is accompanied by a separate statute requiring the Ten Commandments to be posted in every classroom, currently under injunction.

THE CENTRAL ARGUMENT

# The Self-Defeating Defense

*Academic enough to survive the Establishment Clause. Sectarian enough to warrant a single-faith mandate. Those two positions cannot both be true.*

The academic characterization is load-bearing in two directions at once. Whatever relieves the Establishment Clause problem destroys the justification for the mandate, and vice versa.

## IF THE CURRICULUM IS ACADEMIC

**There is no secular reason to confine the required reading to one faith's scripture.**

A neutral academic program would survey many traditions: the Bible alongside the Quran, the Torah, the Bhagavad Gita. The single-faith selection is explicable only on grounds the State disavows.

**Result: the mandate fails for want of a secular justification.**

## IF THE CURRICULUM IS DEVOTIONAL

**It is an establishment of religion on its own terms.**

Presenting the Gospel as literal historical fact, or requiring a non-adherent teacher to read scripture as instruction, establishes devotional character on the record and collapses the academic framing.

**Result: the mandate fails on its own characterization.**

*"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."*

Larson v. Valente, 456 U.S. 228, 244 (1982)

A curriculum that mandates one faith's scripture, and no other, runs directly into this rule. Whatever latitude modern jurisprudence gives to ceremonial acknowledgments of religion in general, the rule against preferring a particular sect has not been disturbed, and the single-faith reading mandate presents exactly the preference it prohibits.

The comparative-religion cure that would satisfy Larson is the thing the State will not accept, and that predictable refusal is itself legally probative of religious purpose.

State-sponsored prayer

Unconstitutional in public school classrooms.

*Engel v. Vitale (1962)*

Mandatory devotional Bible reading

Unconstitutional even where students may be excused on request.

*Abington v. Schempp (1963)*

Ten Commandments displayed

Unconstitutional for want of a secular purpose.

*Stone v. Graham (1980)*

Moment of silence for prayer

Unconstitutional when enacted to return prayer to schools.

*Wallace v. Jaffree (1985)*

Clergy-led graduation prayer

Unconstitutional due to the setting's coercive pressure on students.

*Lee v. Weisman (1992)*

Student-led football prayer

Unconstitutional under school sponsorship.

*Santa Fe ISD v. Doe (2000)*

THE INVERSION

# The Mahmoud Inversion

*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.*

The principle secured in Mahmoud applies to the Texas mandate, and applies more strongly, because the material is scripture, not storybooks.

# Public schools burden free exercise when they require a child to participate in instruction that conflicts with the family's religious convictions.

The holding was a significant victory for a coalition that includes the Texas mandate's proponents. The legal principle they secured is now available to those the mandate would compel.

## IN MAHMOUD

The material was storybooks the school did not even treat as religious. An opt-out right was recognized.

## APPLIED TO THE MANDATE

If a parent may opt a child out of a storybook, a parent may surely opt a child out of the assigned reading of the Sermon on the Mount. The mandate presents the stronger case on every dimension.

# The clause boundary distributes litigants between two doors. There is no door that leaves the State standing.

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## Religious objectors

Jewish, Muslim, Hindu, and other families whose faith is burdened by the State teaching Christian scripture as truth pass through Mahmoud and obtain an opt-out for one child from one lesson.

Remedy: exemption

## Secular objectors

Parents who object from no faith, who simply do not want the State teaching their child a religion, anchor their claim in the Establishment Clause. The clause needs no profession of belief to invoke, and the remedy sought is invalidation of the program itself.

Remedy: injunction against the entire program

THREE STRUCTURAL FAILURES

# The Opt-Out, the Defense, the Cure



Three independent lines of argument each lead to the same conclusion. The mandate fails on its own terms, under settled doctrine, and at the point where its defenders will not accept the cure that would save it.

## Texas built the exemption for objectors to secular content, then designed this curriculum so the exemption cannot be exercised against religious content.

**First.** Schempp already held that an excusal option does not cure a devotional exercise. The constitutional defect is the state sponsorship of religious instruction, not the absence of a physical exit.

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**Second.** A parent cannot exempt a child from an entire semester of English language arts. The scripture has been woven through the required reading rather than confined to a severable unit. There is no discrete lesson to decline. An opt-out that cannot be reached is not an opt-out.

**There is a constitutional version of what Texas claims to want. The movement behind the mandate will not accept it.**

A public school may offer an honest comparative course in the world's religions, with the Bible studied alongside other traditions, none taught as true. Schempp explicitly contemplated this and distinguished it from devotional exercises. That course satisfies Larson and does not violate the Establishment Clause.

#### THE LEGAL SIGNIFICANCE OF REFUSAL

When the constitutional cure is available and is rejected, the rejection is evidence that the purpose was never the secular one the State asserts. The State's unwillingness to teach about all religions is the best evidence that the program was designed to teach one.

— A CANDID CAVEAT

The doctrinal strength of an argument does not guarantee the outcome before a Court willing to reach results first and remake governing tests afterward.

The State's most plausible escape is the Schempp literary-and-historic carve-out. That escape fails on the factual record: 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 require a non-adherent teacher to read scripture to a class as instruction. The Texas curriculum crosses from study into devotion, and the record shows it lesson by lesson.

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**AUTHORITIES** Kennedy v. Bremerton School District, 597 U.S. 507 (2022); Abington v. Schempp, 374 U.S. 203, 225 (1963); Gilly, The Exemption They Cannot Reach (2026), sec. VI.

## — CONCLUSION

# 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.

### The structural contradiction

Academic enough to survive the Establishment Clause and sectarian enough to warrant a single-faith mandate are positions that cannot both be held.

### The Mahmoud inversion

The opt-out principle the movement secured applies to mandated scripture with greater force than to the storybooks in which it was recognized.

### The cure refused

The predictable refusal of a comparative-religion curriculum is the best evidence that the purpose was never the secular one asserted.

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**AUTHORITIES** Gilly, *The Exemption They Cannot Reach* (2026), sec. VII.

Gilly, T. (2026). *The Exemption They Cannot Reach: Mandated Scripture, Mahmoud v. Taylor, and the Self-Defeating Logic of the Academic Defense*. Real Safety AI Foundation, working draft (v3).

CASES

Abington School District v. Schempp, 374 U.S. 203 (1963).  
Engel v. Vitale, 370 U.S. 421 (1962).  
Everson v. Board of Education, 330 U.S. 1 (1947).  
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CASES (CONTINUED)

Mahmoud v. Taylor, 606 U.S. 522 (2025).  
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Torcaso v. Watkins, 367 U.S. 488 (1961).  
Wallace v. Jaffree, 472 U.S. 38 (1985).  
Wisconsin v. Yoder, 406 U.S. 205 (1972).

GOVERNMENT DOCUMENTS

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