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Conservative Texas lawmakers and activists have long targeted the separation of church and state.[1] To a large extent, these efforts have been linked to the strong influence of Christian nationalism in Texas politics. Christian nationalism, also known as Christian Americanism, is an ideology that seeks to privilege conservative Christianity in education, law, and public policy.[2]

As far back as 2004, the Texas Republican Party declared the United States "a Christian nation … founded on fundamental Judeo-Christian principles based on the Holy Bible." It has also called church-state separation a "myth," a claim that has been echoed by Lt. Gov. Dan Patrick, among others.[3]

Such repudiation of church-state separation is more than mere rhetoric. In 2009 and 2010, Christian nationalists on the Texas State Board of Education shaped the public school social studies curriculum to promote their ideology, resulting in an overemphasis on Christianity and a pronounced imbalance in the coverage of other religions.[4] A 2013 study found that from 1995–2009, Texas passed a number of "religious inclusion" laws, legislation that enacts "a vision of church-state interaction that supports religion in various ways and leans toward conflation" of religion and government.[5]

This anti-separationist legislative effort has continued in subsequent years. In 2021, Republican lawmakers enacted a law requiring the posting of the phrase "In God We Trust" in public schools.[6] In an effort to appeal to conservative Christian opponents of same-sex marriage, they also enacted a law allowing child welfare providers to deny adoptions to same-sex couples on the grounds of the providers' "sincerely held religious beliefs."[7]

But the attempt to undermine church-state separation in Texas reached a crescendo of sorts in the 88th session of the Texas Legislature, which convened in January 2023 and continued through four special sessions. The 88th session was the first time that the state Legislature had met since the U.S. Supreme Court handed down several landmark rulings that overturned decades of precedent on church-state separation. Conservative Texas lawmakers appeared eager to test the boundaries of a newly anti-separationist judicial landscape and further weaken church-state separation in Texas, especially in public education.[8]

Several bills filed in the 88th session would arguably have further entangled government and religion, and in some cases, given preferential treatment to conservative Christianity. As scholar Noah Feldman observes, these Texas bills "mar[ked] the

Supreme Court's conservative judicial revolution in action. The justices have sent the message to the country that the establishment clause can now be violated at will."[9]

This paper examines how legislation advanced in the 88th session embodied that "conservative judicial revolution" by undermining separation of church and state.[10] It focuses on three high-profile bills: SB 1515, which would have required public schools to display the Ten Commandments in all classrooms; SB 763, which permits public school districts to hire unlicensed chaplains to assist with student counseling and other related duties and which has been passed into law; and SB 8, which would have allowed parents to use taxpayer funds to pay for education at private schools, including religious schools. The paper discusses how each of these bills works to undermine church-state separation.

Of these three bills, only the school chaplain bill has become law as of this writing. But regardless of their success, failure, or future, they demonstrate the nature and significance of the legislative threat to church-state separation in Texas.

Since these bills appear to take advantage of recent Supreme Court decisions that overturned previous decades of jurisprudence on church-state separation, this paper begins by examining those decisions and their implications for church-state separation. The paper will conclude with some observations about the vision of government-religion relations implied in that legislation, and the dangers that vision poses to democracy, religious liberty, and religion itself — including, ironically, the very conservative Christianity many Texas anti-separationists seek to privilege.

A Newly Anti-Separationist Supreme Court

In the year before Texas' 88th legislative session convened, the new conservative supermajority on the U.S. Supreme Court, led by Chief Justice John Roberts, issued a handful of landmark rulings that overturned longstanding court precedents. This was most vividly demonstrated in the 2022 Dobbs v. Jackson Women's Health Organization decision, which explicitly overruled Roe v. Wade (1973) and Planned Parenthood v. Casey (1992) and returned decisions about the legality of abortion to the states.[11]

The court's willingness to abandon precedent also extended to issues of church-state separation. Two decisions, both handed down in 2022, suggested the lay of the new judicial landscape regarding the First Amendment's religion clauses under the Roberts court: Kennedy v. Bremerton and Carson v. Makin. According to law professor Kimberly Wehle, these two rulings, along with the Dobbs decision, signaled "a serious step in an emerging legal campaign by religious conservatives on the Supreme Court to undermine the bedrock concept of separation of church and state and to promote Christianity as an intrinsic component of democratic government."[12] Similarly, Trinity College professor Mark Silk noted that the moves reflect "the apparent readiness of the conservative supermajority on the Supreme Court to knock down existing barriers to religion in public life by any jurisprudential means available."[13]

Church-State Separation Before the Roberts Court

The term “separation of church and state” summarizes the Constitution’s approach to religion and to religion-state relations, especially in the establishment and free exercise clauses of the First Amendment. The former prohibits government from passing laws “respecting an establishment of religion,” while the latter forbids government from “prohibiting the free exercise” of religion.[14] As professors Kenneth D. Wald and Allison Calhoun-Brown note, there have been two competing interpretations of the religion clauses: the *separationist* approach, which “takes a dim view of any government aid or support for religion,” and the *accommodationist* approach, which “believ[es] government may both recognize and extend benefits to religion in a non-discriminatory manner.”[15] Wald and Calhoun-Brown also note that the Supreme Court was strongly separationist from the 1940s through the 1970s but became much more accommodationist in the 1980s.[16]

Few religion cases came before the Supreme Court prior to the 1940s.[17] In a sense, the court’s jurisprudence on church-state separation begins with its 1947 ruling in Everson v. Board of Education.[18] Writing on behalf of the court, Justice Hugo Black appealed to the “wall of separation” metaphor initially used by Thomas Jefferson: “The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable.”[19]

Although the Everson decision was not wholly separationist, the “impregnable wall” doctrine set the tone for later decisions, such as Engel v. Vitale (1962), which prohibited official prayer in public schools, and Abington School District v. Schempp (1963), which barred school-sponsored Bible readings and the recitation of the Lord’s Prayer in public schools.[20] Beginning in the 1970s, the Supreme Court — still in its separationist phase — generally decided church-state cases by employing the “Lemon test,” from the 1971 case Lemon v. Kurtzman. Robert P. Jones, chief executive of the Public Religion Research Institute, summarizes this test as follows: “Any government conduct must meet three criteria: 1) It must have a clear secular purpose; 2) It must not have the primary effect of advancing or inhibiting religion; and 3) It must not create an excessive governmental entanglement with religion.”[21]

Even as the court moved into a more accommodationist phase in the 1980s, it did not dismantle the wall of separation. It instead adopted the “endorsement test,” a modification of the Lemon test offered by Justice Sandra Day O’Connor in Lynch v. Donnelly (1984). Jones writes that the endorsement test evaluated government conduct based on “whether ‘a reasonable, informed observer’ would perceive an act as a government endorsement of religion.”[22] In the Lynch decision, O’Connor explained the court’s rationale for opposing government endorsement or disapproval of religion: “Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the

opposite message."[23] In short, even as it grew more accommodationist, the Supreme Court retained the basic rationale of separation.

However, in the 2020s, with the accession of a conservative supermajority on the Roberts court, the Supreme Court moved decisively in a firmly *anti*-separationist direction, marked by the Kennedy and Carson rulings.

Kennedy v. Bremerton (2022)

At issue in this case was whether a public high school football coach, Joseph Kennedy, had the right to pray publicly on the 50-yard line after football games, in violation of his school district's policy.[24] The Roberts court ruled in favor of Kennedy on the grounds of free exercise of religion and freedom of speech.[25]

However, it also took the opportunity to overturn court precedent on the establishment clause. Writing for the majority in the Kennedy decision, Justice Neil Gorsuch replaced both the Lemon and endorsement tests with a new "history and tradition" test.[26] Gorsuch wrote that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings'" and via "[a]n analysis focused on original meaning and history," and "faithfully reflect[ing] the understanding of the Founding Fathers."[27] This approach, Gorsuch argued, is based on "a natural reading of the First Amendment," a reading in which the establishment and free exercise clauses "have 'complementary' purposes, not warring ones."[28]

In her dissent, Justice Sonia Sotomayor argued that the Kennedy ruling strikes no such balance. Citing court precedent since Engel v. Vitale, she wrote that the Supreme Court "consistently has recognized that school officials leading prayer is constitutionally impermissible. Official-led prayer strikes at the core of our constitutional protections for the religious liberty of students and their parents." Sotomayor contended that the Kennedy ruling overemphasizes the free exercise clause and gives "short shrift" to the establishment clause.[29]

Jones, another critic of the Kennedy decision, echoed and amplified Sotomayor's concerns. "By pegging establishment clause logic to 'historical practices and understandings,'" Jones wrote, "the court not only allows excessive entanglement of government and religion, but — because the dominant religion in the U.S. has historically been Christianity — it simultaneously privileges Christianity over other religions."[30]

Furthermore, Jones argued,

"This court is systematically erecting a new judicial standard based on an invocation of 'history and tradition' that is rooted in a vision of a mythical 1950s white Christian America … a land that mythically existed before the troubles of racial integration and equal rights for nonwhite Americas, women's liberation, LGBTQ equality, the exodus of

young people from traditional religious congregations and dramatic demographic change."[31]

While I cannot speak to the intent of the Supreme Court majority or what vision of U.S. history the conservative justices have in mind, Jones makes a valid point. The history and tradition test, with its strong originalist flavor, does risk making judicially normative a period in U.S. history when the nation was far less religiously diverse than it is today — a period when white Protestant Christianity was broadly normative.

Carson v. Makin (2022)

The other landmark decision affecting church-state separation — with a direct impact on the Texas Legislature's school voucher bill, SB 8 — was Carson v. Makin. At issue in Carson was the constitutionality of Maine's prohibition on the use of state funds to pay tuition for "sectarian" instruction at religious private schools.[32] As in Kennedy, the Court decided that the free exercise clause trumps the establishment clause.[33] The court ruled that states need not provide public funding for private schools, but if they choose to do so, they cannot deny such funding for "sectarian" instruction at religious private schools, as Maine had done.[34]

The ruling in Carson turns in large part on a distinction between religious "status" and religious "use": that is, whether a) the recipient of government aid is religious in nature or function (its "status"), or b) the aid is given to individuals who then elect to put it to a religious "use" (such as using publicly available school voucher funds to pay tuition at a religious school).

In a legal memorandum that, despite some instances of polemic, offers a helpful discussion of the history of the Supreme Court's approach to the establishment clause since the 1960s, Sarah Parshall Perry and Jonathan Butcher of the conservative Heritage Foundation argue that Carson clarifies the issue of status versus use.[35] They note that prior to the early 2000s, in establishment clause cases involving the use of public funds at religious schools, "the Court had previously considered only a school's religious nature or 'status' to determine its eligibility for participation in public programs and not the religious 'use' to which those funds might be put as a result of a student's attendance at the school."[36]

However, Parshall Perry and Butcher locate a decisive shift in status-use thinking in the 2002 Zelman v. Simmons-Harris decision, which was decided by the Supreme Court under Chief Justice William Rehnquist. The court ruled that an Ohio program allowing parents to apply state-funded vouchers to religious schools did not violate the establishment clause. "Writing for the majority," Parshall Perry and Butcher write, "Chief Justice Rehnquist noted that '[t]he incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual aid recipients, not the government, whose role ends with the disbursement of benefits.'" Parshall Perry and Butcher conclude, "Because the parents — as recipients —

were simply choosing where to use their children's scholarships, public officials could not be said to be directly advancing a religious interest. Ohio could subsidize religious education without running afoul of the Establishment Clause."[37]

The Zelman ruling does indeed appear to foreshadow the decision in Carson and in two earlier religion-related decisions made by the Roberts court, Trinity Lutheran v. Comer (2017) and Espinoza v. Montana Department of Revenue (2020).[38] As Roberts writes in his opinion in Carson, "In *Trinity Lutheran* and *Espinoza*, we held that the Free Exercise Clause forbids discrimination on the basis of religious status. But those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause."[39] And in Carson, the court ruled that "a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients [in other words, the recipients' use of those funds at a religious organization] does not offend the Establishment Clause."[40]

Though Roberts called the Carson decision unremarkable, contending that it essentially reaffirmed Trinity and Espinoza, Sotomayor and Justice Stephen Breyer noted in separate dissents that it marked a significant change in judicial thinking about church-state separation.[41] Sotomayor wrote that the court "continues to dismantle the wall of separation between church and state that the Framers fought to build."[42] "[T]he Court," she declared, "has upended constitutional doctrine, shifting from a rule that permits States to decline to fund religious organizations to one that requires States in many circumstances to subsidize religious indoctrination with taxpayer dollars."[43] Breyer similarly argued that Carson raises the prospect that "simply by operating public schools or by giving vouchers for use at charter schools," states "may now be required to provid[e] funds for religious schools."[44]

Public responses to Carson were predictably mixed. Joshua Houston, a spokesperson for the left-leaning interfaith activist organization Texas Impact, contended that Carson violated, rather than protected, individual religious liberty. He wrote,

The ruling *"extends greater constitutional protections to religious institutions than religious individuals. The religious schools in Maine actively exclude teachers and students that are of other faiths such as Jews, Muslims, or LGBTQ affirming Christians. Those taxpayers of other faiths are now denied access to the public benefit provided by the state. After Carson, the government now has the power to tax a Jewish family, give that money to an evangelical school, and the evangelical school has a constitutional right to refuse to admit a Jewish student."*[45]

By contrast, proponents of so-called "school choice" — that is, vouchers and voucher-like schemes that permit the use of taxpayer funds to pay for private and religious schooling — trumpeted Carson as a great victory. Kelly Shackelford, president and CEO of First Liberty Institute, one of the organizations that litigated Carson, called the ruling "a great day for religious liberty in America." He declared, "'Parents in Maine, and all over the country, can now choose the best education for their kids without fearing retribution from the government."[46] For their part, Parshall Perry and Butcher claim,

The Carson decision *"closes the book on religious discrimination within the context of school choice and affirms that the Constitution does not permit, let alone require, the government to discriminate against expressions of faith. In so doing, the Court has allowed all American parents the freedom to use their child's portion of K–12 education spending formulas to educate their children as they choose."*[47]

After Kennedy and Carson

Clearly delighted by these rulings, Christian nationalists and other anti-separationists argued that those seeking to undermine church-state separation should take full advantage of the Supreme Court's new thinking. At a Christian nationalist pastors' summit in Nashville in May 2023, Shackelford suggested that the way was now open to wider religious — and specifically Christian — expression in government settings: "It's now about the people taking back their country. … We've already won. … [E]very person needs to go in their own community and say, 'Why don't we have prayer at the school board meeting? Why don't we have a Nativity scene?'"[48] At the same gathering, prominent Texas-based Christian nationalist David Barton, an amateur historian who has long claimed that church-state separation is a myth, told attendees, "Now is the time for Christians to 'storm the castle."[49]

Other observers, however, sounded a note of caution. Education historian Jonathan Zimmerman acknowledged that some lawmakers in Texas see in the Kennedy decision "a signal that they can rethink the separation of church and state," but he warned that the impact of the decision on separation should not be exaggerated:

"There's an interesting point in that opinion where Gorsuch says the coach wasn't establishing Christianity even though he is a Christian, and that if there was an imam praying, the Court would have exactly the same view. …The idea that that case is overturning the separation of church and state or rejecting the Establishment Clause, it isn't at all."[50]

Steven Collis, director of both the First Amendment Center and the Law and Religion Clinic at the University of Texas School of Law, told the Texas Tribune, "Anyone who tells you that the law in this area [that is, church-state separation] is clear, or has ever been clear, is probably trying to sell you something."[51] Noting that the ruling in Kennedy relied in part on "the idea that the coach was not forcing players to pray with him, an important distinction to the court's majority," Collis said that laws where exposure to or participation in religion is not voluntary — such as displaying the Ten Commandments in a classroom — "would face court challenges in which opponents say that it amounts to a 'coercion of religion upon students.'"

Nonetheless, in the wake of these recent landmark cases, and as Texas' 88th legislative session got underway in 2023, Christian nationalist lawmakers and other conservative legislators pressed ahead with attempts to test the boundaries of the new landscape on

church-state separation. While they may not have exactly “stormed the castle,” they certainly took decisive legislative steps to undermine church-state separation. This move is illustrated in three bills: SB 1515, the Ten Commandments bill; SB 763, the school chaplain bill; and SB 8, the school voucher bill. These are examined below.

Senate Bill 1515: Ten Commandments in Public Schools

Of these three bills, the Ten Commandments bill most clearly reflects Christian nationalist efforts to privilege Christianity in public education. This bill would require a specific version of the Ten Commandments (also known as the Decalogue), a text deriving from the biblical scriptures shared by Jews and Christians, to be displayed in all Texas public school classrooms. In the regular session, the bill passed the Senate, then died in the House. It was then reintroduced (under different bill numbers) in the first, third, and fourth special sessions that year, but once again made little headway.[52]

Authored by state Sen. Phil King (R-Weatherford) with nine co-authors and co-sponsors — representing, all told, one-third of the 31-member Texas Senate — SB 1515 would have required every public school classroom to display “in a conspicuous place” a poster or framed copy of the Ten Commandments, “at least 16 inches wide and 20 inches tall.”[53]

This is not the first time legislation requiring the display of the Ten Commandments in public schools has been proposed in Texas. The late state Rep. Dan Flynn filed bills in several sessions between 2011 and 2019 that would have allowed the prominent posting of the Ten Commandments in classrooms. None of Flynn’s bills made it into law.[54]

Yet whereas Flynn’s bills would have *allowed* the display of the commandments, SB 1515 would have *required* such display. Furthermore, unlike Flynn’s earlier bills, SB 1515 also prescribes the exact text of the Decalogue to be displayed: a condensed version of the King James Version translation of Exodus 20:2–17, with some minor differences.[55]

Even within a Christian context, the mandated text is far from nonsectarian. It includes a prohibition on “graven images,” which is absent from both the Roman Catholic Traditional Catechetical Formula, listed in the Catechism of the Catholic Church, and from the Lutheran version of the Decalogue in the Small Catechism.[56] Moreover, as author and attorney Andrew L. Seidel notes, both intra-biblical and sectarian disparities make the notion of a single set of “Ten Commandments” problematic. Seidel notes that four different sets of Ten Commandments are spread across Exodus and Deuteronomy and that different Jewish and Christian denominations “have unique interpretations about which directive belongs to which commandment.”[57]

In a discussion of the Ten Commandments bill, King justified it explicitly on the grounds of the Supreme Court’s new approach to church-state separation. He wrote,

"[T]his legislation only became legally feasible with the United States Supreme Court's opinion … in Kennedy v. Bremerton School District … which overturned the Lemon test under the Establishment Clause … and instead provided a test of whether a governmental display of religious content comports with America's history and tradition."[58]

Indeed, King appeals to that new Supreme Court test, arguing that displaying the Decalogue in classrooms would "remin[d] students all across Texas of the importance of a fundamental foundation of American and Texas law — the Ten Commandments."[59]

David Barton, a supporter of the bill, also made an appeal to "history and tradition" in his invited testimony in a Senate committee hearing on the bill. "Waving a copy of the Ten Commandments and a 17th-century textbook, [Barton] argued that Christianity has always formed the basis of American morality and thus is essential to Texas classrooms," reported the Texas Tribune. "This is traditional, historical stuff," Barton told the Texas Senate Education Committee. "It's hard to say that anything is more traditional in American education than was the Ten Commandments."[60]

King also justified the bill on the grounds of religious liberty: "Religious liberty was a bedrock of America's founding. For the last several decades, expression of that liberty has been restricted. However, thanks to [the recent Kennedy opinion], those restrictions have been lifted. S.B. 1515 restores those liberties that were lost."[61]

But *whose* religious liberty is expressed in posting the Decalogue in public school classrooms? Clearly it cannot be that of the nonreligious or those outside the Jewish and Christian religious traditions, since the Decalogue (as a whole) does not express their own beliefs and religious traditions, and since SB 1515 does not require the posting of any scriptural texts from *their* traditions. It is difficult to escape the conclusion that the "liberty" being celebrated here is the ability of one religious community to tout its own beliefs in a taxpayer-funded space that is shared with other communities, to the exclusion of the beliefs of those others.

The bill also raises serious establishment issues. As Harvard University law professor Noah Feldman writes, in SB 1515 "the Texas Senate certainly is trying to establish religion under any ordinary-language use of the term." Prior to the Kennedy decision, he continues, the bill would have constituted "an obviously unconstitutional establishment of religion." SB 1515 would have violated the Lemon test, the Decalogue having "no primarily secular purpose."[62]

The truth of Feldman's point is borne out by the obviously religious language prescribed in the bill: "I AM the LORD thy God. / Thou shalt have no other gods before me. … Remember the Sabbath day, to keep it holy." Feldman also argues that the bill would fail O'Connor's (now-overturned) endorsement test, which

"*struck down any law that used religion to send the message to some people that they were insiders — favored members of the political community — or a message to others that they were outsiders. The Ten Commandments bill would obviously do just that,*

associating the Judeo-Christian commandments with the official stance of the state of Texas."[63]

No doubt many Muslim, Hindu, Buddhist, and nonreligious students and parents would feel that they were being treated as outsiders by the official display of another religious tradition's scripture — just as many Christian students and parents would surely feel alienated if classrooms were required to post, say, only the Muslim shahada or only the Buddhist Three Refuges.

Indeed, Zimmerman contends that the Ten Commandments bill would not survive a constitutionality test, even after the Kennedy decision:

"The Ten Commandments measure is almost surely unconstitutional. It would be astonishing to me if it survives a court challenge. … The basic principle of the Establishment Clause is the state can't give its recognition to a single religion. The idea that these aren't Judeo-Christian principles but have somehow become American ones — that's ridiculous since the first commandment is, I'm the only God. You have to worship me. … What [the Texas Senate is] doing with the Ten Commandments is they're making it explicit. They're saying, 'This is the religion of the state.' You can't do that."[64]

Nonetheless, in passing the bill, Texas state senators signaled their belief that they can do that. Of the three bills discussed in this paper, the Ten Commandments bill constitutes the clearest challenge to church-state separation.

Senate Bill 763: Chaplains in Public Schools

Unlike the Ten Commandments bill, SB 763, or the school chaplain bill, does not explicitly privilege Christianity or any particular religious community. However, it arguably shares the Ten Commandments bill's effect of undermining church-state separation in public education.

The bill, which passed both chambers in the 88th regular session and was signed into law by Gov. Greg Abbott, allows public school districts to employ chaplains to provide counseling, mental and behavioral health services, and suicide prevention services.[65] While the bill does not define "chaplain," the term generally denotes a member of the religious clergy with special ministerial duties.[66] The bill's author, state Sen. Mayes Middleton (R-Galveston), justified the legislation as meeting a need on the part of public schools for "additional qualified individuals to counsel their students."[67]

Opposition to the school chaplain bill centered around two main concerns. First, the bill sets no professional requirements for school chaplains. By contrast, public school counselors must be certified, which entails meeting a number of stringent education and training requirements, including a master's degree in counseling and two years of classroom teaching experience.[68] SB 763 requires no such certification or training for school chaplains. The only requirement is that they not have a criminal record or be

required to register as a sex offender.[69] Although the House tried to amend the bill to require school chaplains to have accreditation similar to that required of prison and U.S. military chaplains, the Senate rejected that amendment in conference committee.[70]

The second main concern goes directly to the question of church-state separation: the possibility of school chaplains using their position to proselytize students. Mark Silk notes that nothing in the bill "prevent[s] a Texas school district from hiring an array of Baptist ministers to serve as chaplains in each of its schools, and nothing [prevents] said chaplains from urging any and all students who come for help to become Baptists."[71]

Interestingly, state Rep. Cole Hefner (R-Mt. Pleasant), the bill's House sponsor, "conceded that districts could, eventually, replace all counselors with chaplains."[72] Democratic state Rep. James Talarico (D-Round Rock) told the Religion News Service that he worried SB 763 "will lead to Christian nationalists infiltrating our public schools and indoctrinating our students."[73] Carisa Lopez of the left-leaning Texas Freedom Network argued that the bill would violate "children's religious freedom" because it would not prevent chaplains from imposing their religious beliefs on students.[74]

Talarico offered an amendment that would bar chaplains from "proselytizing or imposing [their] values and beliefs on a student, a student's parent or guardian, or other public school employees."[75] Speaking in opposition to the amendment, Hefner said that regulations on school chaplains should be left to local school districts.[76] The Talarico amendment failed on a largely party-line vote.[77]

Concerns about proselytization appear warranted. The Religion News Service reports that Middleton (who is also a co-author of the Ten Commandments bill) "has … articulated support for Christian nationalist ideas, such as insisting that the separation of church and state is 'not a real doctrine' during debate over the chaplains bill. And in a recent interview with The Washington Post, he declared 'there is absolutely no separation of God and government, and that's what these bills are about,'" referring to the school chaplain and Ten Commandments bills.[78]

Opponents also raised concerns about a key supporter of the bill, the National School Chaplain Association (NSCA), which reportedly provided input on the legislation.[79] According to its website, the NSCA is a subsidiary of the religious nonprofit Mission Generation, Inc.[80] According to press reports, both groups are headed by evangelist Rocky Malloy.[81]

Malloy, testifying in support of the school chaplain bill before the Senate Education Committee, assured the committee that school chaplains "are not working to convert people to religion."[82] However, as the Texas Tribune reported, "What Malloy didn't mention was that, for decades, he has led another group that promotes school chaplains as a tool for evangelism. Malloy is the founder of Mission Generation, which had been open about its desire to proselytize in schools across the world until recently,

when its website was changed to redirect to the school chaplain association's home page."[83]

The Religion News Service noted that an archived version of the Mission Generation website from 2022 declared the group's desire to "influence those in education until the saving grace of Jesus becomes well-known, and students develop a personal relationship with Him."[84] Both Mission Generation and the NSCA appear to portray themselves in similar ways, contradicting Malloy's assurances that school chaplains will not proselytize. According to the Better Business Bureau's Wise Giving Alliance website, Mission Generation's stated purpose is "to enhance His [presumably God's] presence by infiltrating the system and supporting Christians functioning and operating inside the school systems."[85]

While suspicions about the intentions of proponents of the school chaplain bill appear legitimate, it remains to be seen whether school chaplains will in fact use their positions to spread their own beliefs now that the bill has taken effect. Nevertheless, the bill clearly works to undermine church-state separation in public education in Texas.

Putting clergy on the public school district payroll and allowing them to act in an official capacity as school counselors — with no certification requirements and without any prohibition on proselytizing — constitutes at least a *prima facie* threat to church-state separation, since having clergy serve in such roles can be perceived as an endorsement of religion. This appearance can become a reality — and can become a violation of students' and parents' religious liberty — if school chaplains are permitted to give counsel based on their own religious beliefs and the teachings of their religious tradition.

The threat is particularly severe with regard to impressionable primary school children, who likely have not yet developed an awareness of religious diversity or a strong sense of their own personal religious beliefs. Perhaps not surprisingly, the American Civil Liberties Union (ACLU) of Texas said it was considering a legal challenge. A spokesperson for the organization called the school chaplain bill "a real-time experiment on our children," one that could end up "eroding our fundamental freedom of religion and belief."[86] However, as of this writing, the ACLU of Texas has not lodged a legal challenge against the law.

Senate Bill 8: School Vouchers

Like the school chaplain bill, and unlike the Ten Commandments bill, the school voucher bill does not explicitly privilege any one religious community. Yet it arguably shares with both bills the effect of undermining church-state separation in public education. SB 8 would establish a system of voucher-like education savings accounts (ESAs) that would allow parents to use taxpayer dollars to pay to send their children to private schools, including religious schools. As with the Ten Commandments bill, SB 8 passed the Senate in the regular session but failed in the House. Versions of the school voucher bill

(renumbered SB 1) were introduced in the third and fourth special sessions, but each of these stalled in the House.[87]

Under the slogan "school choice," the use of taxpayer funds for private education in voucher or voucher-like programs has long been a goal of the Texas Republican Party.[88] However, previous legislative attempts to institute a voucher system in Texas — most recently in 2017 — were unsuccessful.[89] Despite this dismal record, advocates of voucher programs likely saw the 2023 legislative session as an opportune moment to resurrect school choice.

In addition to the recent Carson ruling, which affirmed that it was constitutional for individuals to use publicly available taxpayer funds to pay for religious instruction, 2021 and 2022 witnessed a concerted campaign to undermine confidence in Texas public schools. There were widespread charges — often with little or no evidence — that public schools were exposing children to sexually inappropriate materials, and "indoctrinating" children with "critical race theory" and "woke" ideologies.[90] Conservative scholar Corey DeAngelis, a senior fellow at the school privatization group American Federation for Children, claimed in a Wall Street Journal op-ed that the 2022 midterm elections had revealed "a nationwide school-choice wave."[91] All this dovetailed with longer-term efforts by Christian nationalists in Texas to inject evangelical Christian teaching into primary and secondary education.

NBC News reported that the school choice push in 2022 was funded in large part by Defend Texas Liberty, "a Christian nationalist-aligned" political action committee (PAC). The PAC is largely funded by West Texas billionaires and Christian nationalists Tim Dunn and Farris Wilks, who "have expressed the view that Texas state government should be guided by Biblical values and run exclusively by evangelical Christians."[92]

In the lead-up to the 88th regular session of the Texas Legislature, both Abbott and Lt. Gov. Dan Patrick declared school choice among their top legislative priorities.[93] In spring 2023, Abbott embarked on a statewide "Parent Empowerment" tour of private schools — mostly Protestant Christian schools — to tout school choice.[94] On the tour, he claimed "that Texas public schools are pushing 'woke' ideologies on students, and that families should have the ability to send their children elsewhere."[95]

Abbott's rhetoric of "empowering parents" echoed other school choice advocates. For instance, in a piece published by the right-wing Texas Public Policy Foundation (TPPF), Texas Tech economics professor Alexander Salter contended that "School choice takes a family empowerment approach to education policy. … Instead of having their education dollars siphoned off to underperforming schools and districts, families get direct control over spending. As a result, they'll be able to afford effective schooling."[96]

As the 88th regular session got underway, SB 8 quickly became the primary vehicle for school choice advocacy. Authored by Senate Education Chair Brandon Creighton (R-Conroe), it was effectively two education-related bills in one. Article 1 of SB 8 addressed a wide range of "parental rights," which had become a hot issue in conservative circles

(and, in fact, formed part of Abbott's policy platform for his reelection campaign in 2022).[97]

Article 2, however, is the main concern for the present discussion. It would have established a system of ESAs by which parents of eligible children would receive $8,000 per year (or, for those in low-enrollment districts, $10,000 per year) to pay private school tuition, fees, and related expenses.[98] In the version initially introduced in the Senate, eligibility was restricted to students who were either enrolled in public school in the current school year or who had attended public school for at least 90% of the prior school year.[99] In the version finally passed by the Senate, SB 8 expanded eligibility to include children of poor households already attending private schools.[100]

The bill also explicitly prohibited government entities from interfering with private education providers' ability to determine educational content and methods, and, importantly, providers' ability to exercise their "religious or institutional values."[101] Private and religious schools receiving ESA funds would not have to meet several requirements that apply to public schools: 1) take all students that apply, 2) comply with nondiscrimination regulations, 3) teach according to state curriculum standards (the Texas Essential Knowledge and Skills, or TEKS), or 4) assess student performance by the State of Texas Assessment of Academic Readiness, the state standardized test known as STAAR.

While SB 8 passed out of the Senate along roughly party lines, it faced strong opposition from Democrats and rural Republicans in the House, as well as stiff criticism from public education advocates. In an attempt to formulate a compromise that could pass the House, House Education Committee Chair Brad Buckley (R-Killeen) proposed a substantially reduced substitute that limited eligibility to children with disabilities and those attending public schools that had received a failing grade from the state.[102]

Abbott strongly criticized the House version as doing "little to provide meaningful school choice" and promised to veto it if it reached his desk.[103] But even Buckley's watered-down version failed to pass muster in the House. In a last-ditch effort to force passage of ESA legislation, the Senate added what was essentially the text of the Senate bill on school vouchers to HB 100, the omnibus education bill.[104] That proved to be a poison pill: The modified omnibus bill, too, died in the House when the regular session ended.[105]

As SB 8 worked its way through the Legislature, public criticism largely focused on three charges: 1) It would divert much-needed funding from the already cash-strapped public school system, 2) private schools would not be subject to the same accountability and testing standards that apply to public schools, and 3) unlike public schools, private schools would not be required to take any and all students, meaning that school choice would not actually be available to all children.[106]

While those are important concerns, the legislation's potential threat to church-state separation received far less attention. That threat lay in the fact that taxpayer dollars

could be used to pay for religious instruction at religious schools. Though in its Carson decision, the Roberts court ruled that individual use of public funds to pay for religious instruction does not violate the establishment clause, I disagree. As I have written elsewhere, Texas' school voucher bill "effectively gets the government into the business of funding religious instruction — using tax dollars to propagate religious beliefs and viewpoints."[107] True, under SB 8 that funding is indirect — a matter of religious "use" rather than religious "status." Yet the *effect* of the bill is the same as if the state directly funded religious schools. In both cases, taxpayer dollars pay for religious instruction.

While religious private schools also teach academic subjects like math, their instruction often includes a strong religious component. For example, two Dallas-Fort Worth-area Christian schools chosen more or less at random offer "Biblical worldview education" or endeavor to impart a "Distinctively Christian Worldview."[108] Indeed, for some parents, that religious component is part of the attraction of religious schools. Under SB 8 (and the Carson decision), all taxpayers end up footing the bill — even if indirectly — for such obviously religious instruction.

Moreover, as the resolutely pro-separationist Baptist Joint Committee points out, vouchers and voucher-like schemes violate basic religious liberty. Such schemes "ask taxpayers to support indoctrination into religious views they may not agree with. … We should not be required to support others' religious views."[109]

Long-Term Consequences

As of this writing, only one of these bills — the school chaplain bill, or SB 763 — has become law. The fate of the Ten Commandments bill remains uncertain. After school choice failed in the regular and special sessions, Abbott has, as of this writing, not yet indicated whether he will continue his voucher push in another special session. However, he strongly targeted GOP voucher opponents in the 2024 primaries.[110]

Nevertheless, all three bills clearly indicate a desire on the part of leading Texas lawmakers to undermine Jefferson's wall of separation, which was in place from the 1947 Everson decision until the advent of the Roberts court. These bills also suggest the vision those lawmakers have for church-state relations in Texas: a vision in which one religious tradition's scripture has sole pride of place on public school classroom walls, where unlicensed clergy can serve on the public payroll and perhaps proselytize students, and where tax dollars fund religious instruction.

While this vision will no doubt strongly appeal to Christian nationalists and many on the broader Christian right, its longer-term consequences should be worrying to Americans of all political and religious stripes for at least three reasons: 1) It furthers the goals of the essentially antidemocratic ideology of Christian nationalism, 2) it discriminates against religious minorities and the nonreligious, and 3) it could have negative consequences for religion generally, including conservative Christianity, which proponents of these bills seek to privilege. These points are expanded on below.

1. How the Anti-Separationist Vision Supports the Christian Nationalist Agenda

Reporting and commentary during the regular session (including one piece for which I served as a source) linked these and similar bills to Christian nationalism.[111] It is reasonable to postulate such a link, given that Christian nationalism has been an important factor in Texas politics for at least the past two decades.[112] Though only one of the three bills under discussion here is clearly Christian nationalist, all three further the overall goals of the movement, and accordingly should be viewed with concern.

Christian nationalism has been variously defined.[113] I describe it as a religiopolitical ideology that seeks to give the Judeo-Christian tradition — a conservative version of Christianity far less inclusive than the term “Judeo-Christian” suggests — a privileged position in U.S. law and public policy.[114] In its fullest form, the ideology contends that the founders intended to create a nation based on and governed by Christian beliefs, that the nation subsequently departed from the founders’ intent, and that law and public policy today should once again be governed by Christian teaching.

Since church-state separation presents an obvious obstacle to Christian nationalist aspirations, rejection of that doctrine is a hallmark of the ideology’s rhetoric and activism, and is a common (though not a sufficient) indicator of Christian nationalist adherence.[115] For instance, amateur historian Barton, one of the most influential proponents of Christian nationalism, claims that separation of church and state is a myth contrary to the founders’ intent (a claim which is itself contrary to the findings of major academic scholars).[116]

Similarly, Robert Jeffress, senior pastor at First Baptist Dallas and former religious adviser to former President Donald Trump, also calls church-state separation a myth. In Jeffress’ account, the founders were mainly devout Christians, and they founded the U.S. as a Christian nation. In the establishment clause, Jeffress claims, the founders meant only to prohibit a single state-sponsored Christian *denomination* rather than neutrality toward religion.[117]

There is evidence of Christian nationalist involvement in all three bills discussed here. State Sen. Mayes Middleton, in referencing the school chaplain and Ten Commandments bills, echoed a common Christian nationalist trope when he claimed there to be “absolutely no separation of God and government.”[118] Further, in an April 2023 press release concerning another of his bills, Middleton declared that the founders “never intended separation of God from government or schools,” despite what he calls the left’s “attempts to mislead people.” “Our schools are not God-free zones,” the release read.[119]

Patrick, who often repeats Christian nationalist talking points, said in support of the Ten Commandments bill, “I believe that you cannot change the culture of the country until

you change the culture of mankind. … Bringing the Ten Commandments and prayer back to our public schools will enable our students to become better Texans."[120]

There was also a strong Christian nationalist presence in the school choice campaign that culminated in SB 8, the school voucher bill. Abbott, who made school choice a major legislative priority for the session, has, like Patrick, voiced Christian nationalist sentiments.[121] In addition to the aforementioned involvement of the Defend Texas Liberty political action committee, the Christian nationalist U.S. Pastor Council has enthusiastically backed the use of taxpayer money for private schools.[122]

Strictly speaking, of the three bills considered here, only the Ten Commandments bill can be characterized as Christian nationalist. It clearly promotes the preferential treatment of the so-called Judeo-Christian tradition, which Christian nationalists have long advocated. By contrast, the other two bills do not explicitly privilege that religious tradition or any other. Theoretically, clergy from any religious community may serve as school chaplains, and parents may use ESA funds for private schools from any religious tradition, as well as nonsectarian private schools.

Nevertheless, all three bills dovetail with the overall Christian nationalist goal of weakening or dismantling the wall of separation. Achieving that overall goal is a necessary step toward establishing (or reestablishing, as Christian nationalists would say) conservative Christianity as the privileged religion in law and public policy. By weakening the separation of religion and state, these bills pave the way for the further privileging of conservative Christianity in education, law, and public policy — a privileging of the sort exhibited by the Ten Commandments bill.

This is a cause for serious concern. Christian nationalism, in its efforts to privilege one religious community over others, is essentially antidemocratic. Philosopher Mark Weldon Whitten writes that Christian nationalism entails the "maintenance or pursuit of a socially and governmentally preferred and privileged position within society of (some fundamentalist/evangelical) Christianity over other religions and nonreligious citizens."[123] Consequently, as I argue elsewhere, the ideology "poses a clear challenge to … the rights of minorities (religious and secular), who could become second-class citizens in the nation that Christian [nationalists] envision."[124] Scholars Andrew L. Whitehead and Samuel L. Perry echo these concerns: Insofar as strong support for Christian nationalism entails viewing nonreligious and non-Christian Americans as "fundamentally deficient," never "*truly American*," it is "without a doubt … a threat to a pluralistic democratic society," since it "ultimately desires the silencing and exclusion of its opponents in the public sphere."[125]

2. How the Anti-Separationist Vision Discriminates Against Religious Minorities and the Nonreligious

Whatever their relationship to Christian nationalism, the three bills explored here are themselves discriminatory in that all three privilege one group of Americans over others. As previously noted, by requiring the posting of a particular, sectarian version of a biblical text in public school classrooms, the Ten Commandments bill obviously privileges one religious tradition over others in a taxpayer-funded space. The school chaplain bill is less explicitly discriminatory against non-Christians, since it is theoretically possible for school districts to hire non-Christian chaplains. Yet hiring clergy from certain religious traditions gives at least the appearance that the district endorses *those* religious traditions and *not* other religious traditions or the nonreligious. Moreover, the legislature's refusal to prohibit proselytization by school chaplains raises the disturbing possibility of adult authority figures using their special status within the school environment to promote their own beliefs, to the exclusion of those of other religious communities and the nonreligious.

Much as with the school chaplain bill, the school voucher bill might appear nondiscriminatory at first glance, since parents would be able to use ESA funds for private schools from any religious tradition as well as nonsectarian private schools. However, it is discriminatory in *effect*.

For one thing, it establishes a double standard of pedagogy and accountability for public and private/religious schools. Private and religious schools are not required to teach according to the state curriculum standards — TEKS — which public school teachers are required to follow in their instruction.[126] While the TEKS curriculum standards are by no means perfect — and indeed have often been modified to promote the political agendas of members of the State Board of Education — they must take into consideration input from "educators, parents, business and industry representatives, and employers" and are the subject of often lengthy public hearings.[127]

Curriculum standards used by private and religious schools, meanwhile, do not need to satisfy any such measure of public accountability. Consequently, private/religious school students may finish their primary and secondary education with a very different — and perhaps deficient — set of skills compared to those expected of public school students. For instance, while the TEKS curriculum standards require biology students in public schools to have at least a basic knowledge of the theory of evolution, it is conceivable that students at conservative Christian schools may complete their secondary education either without such understanding or with training only in creationism or intelligent design, making those students less ready for college as a result.[128]

Furthermore, there is a religious liberty issue involved in the school voucher bill's mandate that taxpayers pay for students to receive religious instruction. True, the Supreme Court moved the jurisprudential goalposts when it shifted consideration from religious "status" to religious "use," claiming that it is not a violation of the establishment clause to allow parents to use publicly available state funds for religious instruction. However, as noted earlier, the effect of such use amounts to requiring taxpayers to fund the teaching of religious beliefs they do not share. Moreover, it would

allow taxpayer money to go toward a religious school that can refuse admission to members of those taxpayers' own religious community. This is deeply unfair, and a direct violation of any commonsense notion of religious liberty.

3. The Unintended Consequences of the Anti-Separationist Vision

Opponents of church-state separation often justify their position on the grounds of restoring religious faith in an increasingly secular nation. For instance, Barton links America's "return to being a nation of morality and Godliness" to the restoration of the nation's institutions to what he claims is their "original foundation — the principles expressed through the Bible."[129] Similarly, in testimony supporting the Ten Commandments bill, former state Rep. Matt Krause advocated "a restoration of faith in America," and said "getting Ten Commandments on [classroom] walls … is a great way to do that.'"[130]

However, undermining church-state separation may well have negative consequences for religion generally, including the conservative Christianity that drives the current anti-separationist campaign. The U.S. has been, and remains, a notable outlier among affluent nations in the persistent vitality of religion among its citizens. Political scientists Kenneth D. Wald and Allison Calhoun-Brown note that in general, the higher a nation's per capita gross income (GNI), the lower the percentage of that nation's citizens who consider religion "very important." The United States, however, is a "conspicuous exception," remaining very religious despite having one of the highest per capita GNIs.[131] This seems to be borne out by Pew Research Center findings from 2018 that although the religious makeup of the U.S. is broadly similar to that of many Western European nations, 68% of Americans rated religion "very important" while only a median of 14% of Western Europeans rated it the same.[132]

While acknowledging that other cultural and social factors may be at play, Wald and Calhoun-Brown credit church-state separation with ensuring the continuing vitality of religion in the U.S.[133] For one thing, they argue, separation has promoted religious diversity. For another, the absence of an official state religion creates an open religious "marketplace" in which various religious groups compete for members, encouraging those groups to adapt and innovate as society changes. "This environment," they argue, "makes American religion more vibrant and open than a system that favors certain religions."[134]

Their conclusion is supported by research conducted by Charles M. North and Carl R. Gwin on how religiosity in 59 countries is affected by "both the legal protection of religious freedom and the establishment of an official religion or other restrictions on religious practices."[135] They found that establishing an official religion reduces a country's religious attendance by 15%–17%.[136]

North and Gwin admit their research is "too blunt an instrument to answer the finely honed church-state questions raised under the First Amendment." However, they argue

that their findings yield insight into the possible unintended consequences of allowing people of religious faith, in seeking to strengthen American religion, to reinsert mandatory prayer and other sectarian teaching and behavioral requirements into public schools, gain approval of sectarian displays on government property, or garner additional government funds for faith-based groups that explicitly seek to proselytize while delivering social services — in short, the very issues raised in the three Texas bills considered here.[137] "If these religious groups are successful in obtaining governmental favor for their particular brands of religion," North and Gwin warn, "they may be inadvertently sowing the seeds of their own destruction."[138]

A Case for Restoring the Wall of Separation

It is a fact of history that not all revolutions are created equal. While some advance human liberation, others bring only damage and further oppression. The U.S. Supreme Court's "conservative judicial revolution" in church-state relations appears to have the latter character, at least as it is manifested in these three pieces of legislation from Texas. By working to weaken church-state separation, the Ten Commandments, school chaplain, and school voucher bills undermine democracy, discriminate against religious minorities and the nonreligious, and negatively impact religion generally, including the conservative Christianity that proponents of these bills seek to privilege.

What is needed at this moment is not a revolution, but a restoration of the wall of separation between church and state — a restoration grounded both in a clear-eyed awareness of contemporary American society and an understanding of what the founders' own thought can bring to the present moment.

As Wald and Calhoun-Brown note, the founders' decision to implement church-state separation was rooted in part in an awareness of the religious diversity of the nascent republic. "With so many different religious groups in the colonies, each offering its own distinct version of the truth," Wald and Calhoun-Brown write, "any national establishment would certainly offend citizens of different faiths. Under these circumstances, a law commanding support for an established church could not realistically be enforced."[139] However, the founders' decision also raised the specter of factionalism, which could tear the young nation apart. This was particularly worrisome for James Madison, as professor Joseph Loconte observes. Loconte notes that Madison listed "a zeal for different opinions concerning religion" as a prime cause of social conflict, alongside unequal distribution of property.[140] Madison's solution was a free-market approach to faith, one in which a "multiplicity of competing sects within the commonwealth keeps any sect from winning a monopoly."[141] In short: separation of church and state. This, Madison wrote, was "the best and only security for religious liberty in any society."[142] Indeed, Madison made sure religious liberty was "the centerpiece of all democratic liberties."[143]

In Madison's day, religious diversity was mainly a diversity of Protestant Christian denominations. If the privileging of a particular religious tradition, or of religion

generally, was unenforceable and perhaps fatally divisive in his day, it is much more so today, when the religious landscape is far more diverse. In recent years, both the overall white Christian and white evangelical Christian shares of the population have suffered steep declines. Protestantism has splintered into hundreds of denominations and "nondenominational" congregations, while Catholics make up around 22% of the population. Other religions make up around 6%. Most significantly, the share of the religiously unaffiliated has risen to just over a quarter of the population (26.8%).[144]

A robust wall of separation is a better fit for the religiously diverse nation that we have become, a nation composed wholly of religious minorities. This wall protects all religious groups as well as the now-substantial percentage of the population who are nonreligious, and thus benefits freedom of conscience generally. And given the decline in the conservative Christian share of the population, that community may soon need the very protections many of its adherents seek to deny others.

Regrettably, the chances for a separationist restoration appear slim. Both the Supreme Court supermajority and Texas GOP lawmakers seem bent on pursuing an anti-separationist agenda. Yet political and judicial winds do shift, sometimes quite dramatically, as the recent Dobbs*,* Kennedy, and Carson rulings demonstrate. Ongoing changes in the religious landscapes of Texas and the nation as a whole may well trigger a shift of those winds in a more separationist direction. For now, however, anti-separationists have made clear their vision for Texas and the United States. It is up to all of us to decide whether such a vision will, in the words of the Constitution, "secure the Blessings of Liberty to ourselves and our Posterity."[145]

Notes

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[1] I understand "separation of church and state" to be a constitutional principle summarizing the Constitution's approach to religion and to religion-state relations, especially as embodied in the "no religious test" clause of Article VI as well as the establishment and free exercise clauses of the First Amendment. As my late Texas Christian University colleague Ron Flowers noted in a 2004 article, separation of church and state means that "the government has no say in what a religion teaches or how it is practiced, with the proviso that religious practice may not harm the public welfare." It also means that "every person in this country is free to practice his or her religion … [but] that one may not use the state as an instrument to practice that religion. And that means that all Americans … are entitled to not have the government or any agent of government impose religion upon them" (Ron Flowers, "Church-State Separation — It's Nothing to Sneeze At," *Church & State* 57, no. 5 [2004]: 18–20). I recognize, however, that the term is an essentially contested one. In her entry on separation of church and state in *The Oxford Companion to American Politics*, Melissa Rogers writes that the phrase "is most commonly used to refer to the religion clauses of the First Amendment to the United States Constitution: the Establishment Clause and the Free Exercise Clause. Thomas Jefferson coined the phrase in 1802, and the US Supreme Court subsequently adopted it." She goes on to note that church-state separation "is a well-

known phrase with a rich history in American public life. Part of that history, however, has been a vigorous debate about the meaning of the phrase" (Melissa Rogers, "Church and State, Separation of," in *The Oxford Companion to American Politics* 2, edited by David Coates [New York: Oxford University Press, 2012]).

[2] For a discussion of the influence of Christian nationalism (also known as Christian Americanism) on education policy in Texas, see David R. Brockman, "Religious Imbalance in the Texas Social Studies Curriculum: Analysis and Recommendations" (Houston: Rice University's Baker Institute for Public Policy, October 21, 2016), http://www.bakerinstitute.org/research/religious-imbalance-texas-social-studies-curriculum/. For an examination of the ideology in Texas politics generally, see Brockman, "Christian Americanism and Texas Politics Since 2008" (Houston: Rice University's Baker Institute for Public Policy, March 5, 2020), https://doi.org/10.25613/0ssp-2x65.

[3] Republican Party of Texas, "2004 State Republican Party Platform," 2004, P-8, http://www.fogal.org/rptplatform2004.pdf. In 2013, before he became Lieutenant Governor, then-state Senator Dan Patrick told a Baptist congregation in Conroe that "there is no such thing as separation of church and state" (Forrest Wilder, "God's Man in the Texas Senate," *Texas Observer*, September 4, 2013, http://www.texasobserver.org/gods-man-senate/).

[4] Brockman, "Religious Imbalance."

[5] Keith Gunnar Bentele et al., "Breaking Down the Wall between Church and State," *Journal of Church and State* 56, no. 3 (June 2014): 503–33, 532, https://doi.org/10.1093/jcs/css145.

[6] S.B. 797, 87th Leg., Reg. Sess. (Tx. 2021), https://legiscan.com/TX/bill/SB797/2021.

[7] Marissa Evans, "Abbott OKs Religious Refusal of Adoptions in Texas," *Texas Tribune*, June 15, 2017, https://www.texastribune.org/2017/06/15/abbott-signs-religious-protections-child-welfare-agencies/.

[8] Discussing Texas bills like SB 1515, historian of education Jonathan Zimmerman told Vox that in recent Supreme Court decisions like Kennedy, "The lawmakers see a signal that they can rethink the separation of church and state, the long-standing idea embedded in the First Amendment of the US Constitution, which states that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof'" (Fabiola Cineas, "The Ten Commandments Could be In Every Texas Classroom Next Fall," *Vox*, April 28, 2023, https://www.vox.com/policy/2023/4/28/23699277/ten-commandments-texas-school-prayer-religion).

[9] Noah Feldman, "Can Texas Really Put the Ten Commandments in Public Schools?" *Twin Cities Pioneer Press*, May 19, 2023, https://www.twincities.com/2023/04/30/noah-feldman-can-texas-really-put-the-ten-commandments-in-public-schools/.

[10] Several journalists also noted the threat to church-state separation in legislation offered during the 88th legislative session. These included: Robert Downen, "Conservative Christians Want More Religion in Public Life. Texas Lawmakers are Listening," *The Texas Tribune*, May 4, 2023, https://www.texastribune.org/2023/05/04/texas-legislature-church-state-separation/; Michelle Boorstein, "Texas Pushes Church Into State With Bills on School Chaplains, Ten Commandments," *Washington Post*, May 24, 2023,

https://www.washingtonpost.com/religion/2023/05/23/texas-commandments-chaplains-christianity/; Jack Jenkins, "In Texas, Republicans Push Bills Aimed at Enhancing Faith's Role in School," *Religion News Service*, April 24, 2023, https://religionnews.com/2023/04/24/in-texas-republicans-push-bills-aimed-at-enhancing-faiths-role-in-school/; and Talia Richman and Allie Morris, "Texas Plan to Put Chaplains in Public Schools is Latest Move to Inject Christianity," *Dallas Morning News*, May 10, 2023, https://www.dallasnews.com/news/education/2023/05/10/texas-plan-to-put-chaplains-in-public-schools-is-latest-move-to-inject-christianity/.

[11] Dobbs v. Jackson Women's Health Organization, 597 U.S.___ (2022), https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html.

[12] Kimberly Wehle, "The Supreme Court Wants to End the Separation of Church and State," *Politico*, August 10, 2022, https://www.politico.com/news/magazine/2022/08/10/supreme-court-separation-of-church-and-state-00050571.

[13] Mark Silk, "Chaplains in the Texas Public Schools. Really," *Religion News Service*, May 30, 2023, https://religionnews.com/2023/05/30/chaplains-in-the-texas-public-schools-really/.

[14] The language in these clauses explicitly references Congress — i.e., the federal government — but in two 20th-century cases, Everson v. Board of Education (1947) and Cantwell v. Connecticut (1940), the Supreme Court ruled that they applied equally to the states via the Fourteenth Amendment, under the so-called "incorporation" doctrine. U.S. Const. amend I, https://constitution.congress.gov/constitution/amendment-1/.

[15] Kenneth D. Wald and Allison Calhoun-Brown, *Religion and Politics in the United States*, 8th ed. (Lanham, MD: Rowman & Littlefield, 2018), 75–6.

[16] Wald and Calhoun-Brown, 78.

[17] For a brief discussion, see Wald and Calhoun-Brown, 74–5.

[18] "Surprisingly, not until 1947 did the Supreme Court decide its first Establishment Clause case, some 156 years after ratification of the First Amendment" (Peter Irons, "Curing a Monumental Error: The Presumptive Unconstitutionality of Ten Commandments Displays," *Oklahoma Law Review* 63, no. 1 [Fall 2010]: 3, https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1138&context=olr).

[19] Everson v. Board of Education, 330 U.S. 1 (1947), https://supreme.justia.com/cases/federal/us/330/1/. Thomas Jefferson's phrase appears in his 1802 "Letter to the Danbury Baptists," https://www.loc.gov/loc/lcib/9806/danpre.html.

[20] The court ruled that New Jersey could use taxpayer dollars to compensate parents of children for transportation to and from private schools. Wald and Calhoun-Brown, 79; Engel v. Vitale, 370 U.S. 421 (1962), https://supreme.justia.com/cases/federal/us/370/421/; and Abington School District v. Schempp, 374 U.S. 203 (1963), https://supreme.justia.com/cases/federal/us/374/203/.

[21] Robert P. Jones, "This Supreme Court's Dangerous Vision of 'History and Tradition,'" *Religion News Service*, July 4, 2022, https://religionnews.com/2022/07/04/this-supreme-courts-dangerous-vision-of-history-and-tradition/.

[22] Jones. In his opinion in Kennedy v. Bremerton, Roberts summarizes the previous Lemon and endorsement tests as follows: "The *Lemon* approach called for an examination of a law's purposes, effects, and potential for entanglement with religion"

(Lemon v. Kurtzman, 403 U. S., at 612–3). In time, that approach also came to involve estimations about whether a "reasonable observer" would consider the government's challenged action an "endorsement" of religion" (Kennedy v. Bremerton School District, 142 S. Ct. 2407 [2022], 4, https://caselaw.findlaw.com/court/us-supreme-court/21-418.html). For more on the endorsement test, see "Endorsement Test," in *Encyclopedia of Religion and the Law in America*, ed. Grey House Publishing, 2nd ed. (Amenia, New York: Grey House Publishing, 2009).

[23] Lynch v. Donnelly, 465 U.S. 668 (1984), https://caselaw.findlaw.com/court/us-supreme-court/465/668.html.

[24] *Kennedy*, 142 S. Ct. For further discussion of this case, see Amy Howe, "Justices Side With High School Football Coach who Prayed on the Field With Students," *SCOTUSblog*, June 27, 2022, https://www.scotusblog.com/2022/06/justices-side-with-high-school-football-coach-who-prayed-on-the-field-with-students/.

[25] "The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression" (*Kennedy*, 142 S. Ct. at 1). In the majority opinion, Justice Gorsuch also included a jibe against those who argue on the basis of protecting a religiously pluralistic society: "The District suggests that *any* visible religious conduct by a teacher or coach should be deemed — without more and as a matter of law — impermissibly coercive on students. A rule that the only acceptable government role models for students are those who eschew any visible religious expression would undermine a long constitutional tradition in which learning how to tolerate diverse expressive activities has always been 'part of learning how to live in a pluralistic society.'" (*Kennedy*, 142 S. Ct. at 4–5).

[26] "In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by 'reference to historical practices and understandings'" (*Kennedy*, 142 S. Ct. at 4). Gorsuch cited "the apparent 'shortcomings' associated with *Lemon*'s 'ambitiou[s],' abstract, and ahistorical approach to the Establishment Clause" (*Kennedy*, 142 S. Ct. at 4).

[27] *Kennedy*, 142 S. Ct. at 4, 23.

[28] *Kennedy*, 142 S. Ct. at 4.

[29] *Kennedy*, 142 S. Ct., Sotomayor dissent at 1.

[30] Jones. Jones adds, "If the Christian coach Kennedy had been Hindu coach Patel, it is highly unlikely that this case would have been filed or even granted certiorari by this court. Ultimately, the new standard doesn't protect religious liberty; it privileges Christian religious expressions over others."

[31] Jones.

[32] Ira C. Lupu and Robert W. Tuttle, "Carson v. Makin and the Dwindling Twilight of the Establishment Clause," *George Washington Law Review* (July 1, 2022): 2, https://www.gwlr.org/carson-v-makin-and-the-dwindling-twilight-of-the-establishment-clause/.

[33] "In June, a 6-3 majority in Carson v. Makin buried the establishment clause under the free exercise clause" (Wehle). Similarly, Lupu and Tuttle write that, in his majority opinion, Chief Justice Roberts "confirmed that the Court has firmly embraced the

supremacy of free exercise interests over concerns about non-establishment of religion" (Lupu and Tuttle, 2–3).
[34] Carson v. Makin, 596 U.S.___ (2022), https://www.supremecourt.gov/opinions/21pdf/20-1088_dbfi.pdf.
[35] For instance, the authors claim that "modern American public education continues to succumb to the influence of critical race and gender theory, and the influence of politicized teachers' unions" (Sarah Parshall Perry and Jonathan Butcher, "With Carson v. Makin, the Supreme Court Closed the Book on Religious Discrimination in School Choice," The Heritage Foundation, September 2, 2022, https://www.heritage.org/education/report/carson-v-makin-the-supreme-court-closed-the-book-religious-discrimination-school).
[36] Parshall Perry and Butcher.
[37] Parshall Perry and Butcher.
[38] Trinity Lutheran Church of Columbia, Inc. v. Comer, Director, Missouri Department of Natural Resources, 582 U.S.___ (2017), https://caselaw.findlaw.com/court/us-supreme-court/15-577.html; Espinoza et al. v. Montana Department of Revenue et al., 591 U.S.___(2020), https://caselaw.findlaw.com/court/us-supreme-court/18-1195.html.
[39] *Carson,* 596 U.S. at 16.
[40] *Carson,* 596 U.S. at 2 (Syllabus).
[41] "Roberts suggested that the court's decision was an 'unremarkable' application of prior decisions in two other recent cases (both of which Roberts wrote): *Trinity Lutheran Church v. Comer*, in which the justices ruled that Missouri could not exclude a church from a program to provide grants to non-profits to install playgrounds made from recycled tires, and *Espinoza v. Montana Department of Revenue*, holding that if states opt to subsidize private education, they cannot exclude private schools from receiving those funds simply because they are religious" (Howe, "Court Strikes Down Maine's Ban on Using Public Funds at Religious Schools," *SCOTUSblog*, June 21, 2022, https://www.scotusblog.com/2022/06/court-strikes-down-maines-ban-on-using-public-funds-at-religious-schools/).
[42] *Carson*, 596 U.S., Sotomayor dissent at 1.
[43] *Carson*, 596 U.S., Sotomayor dissent at 3.
[44] Howe, "Court Strikes Down Maine's Ban." Interestingly, Lupu and Tuttle contend that both Sotomayor and Breyer "missed the radical, revolutionary character" of the Carson decision. Lupu and Tuttle, 5.
[45] Joshua Houston, "Carson v Makin: From 'No Aid' to 'No Holds Barred,'" *Texas Impact*, June 27, 2022, https://texasimpact.org/2022/06/carson-v-makin/.
[46] Howe, "Court Strikes Down Maine's Ban."
[47] Parshall Perry and Butcher.
[48] Kyle Mantyla, "Christian Nationalists Seek to 'Go On Offense' to Take Advantage of the Far-Right Supreme Court," *Right Wing Watch*, June 6, 2023, https://www.rightwingwatch.org/post/christian-nationalists-seek-to-go-on-offense-to-take-advantage-of-the-far-right-supreme-court/.
[49] Mantyla. I profile David Barton in Brockman, "Christian Americanism."
[50] Cineas.
[51] Downen, "Conservative Christians."

[52] S.B. 9, 88th Leg., 1st Spec. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/881/billtext/html/SB00009I.htm; S.B. 22, 88th Leg., 3d Spec. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/883/billtext/html/SB00022I.htm; and S.B. 20, 88th Leg., 4th Spec. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/884/billtext/html/SB00020I.htm.

[53] S.B. 1515, 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/billtext/html/SB01515E.htm.

[54] Brockman, "Christian Americanism," 40–1; H.B. 79, 82nd Leg., Reg. Sess. (Tx. 2011), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=HB79; H.B. 62, 82nd Leg., 1st Spec. Sess. (Tx. 2011), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=821&Bill=HB62; H.B. 51, 83rd Leg., Reg. Sess. (Tx. 2013), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=83R&Bill=HB51; H.B. 138, 84th Leg., Reg. Sess. (Tx. 2015), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=84R&Bill=HB138; and H.B. 307, 86th Leg., Reg. Sess. (Tx. 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB307.

[55] The required text is as follows: "The Ten Commandments / I AM the LORD thy God. / Thou shalt have no other gods before me. / Thou shalt not make to thyself any graven images. / Thou shalt not take the Name of the Lord thy God in vain. / Remember the Sabbath day, to keep it holy. / Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee. / Thou shalt not kill. / Thou shalt not commit adultery. / Thou shalt not steal. / Thou shalt not bear false witness against thy neighbor. / Thou shalt not covet thy neighbor's house. / Thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor's" (S.B. 1515, 88th Leg., Reg. Sess. [Tx. 2023], https://capitol.texas.gov/tlodocs/88R/billtext/html/SB01515E.htm). "The bill even dictates the wording of the Ten Commandments — an abbreviated version of Exodus 20:2–17 from the Kings James Version of the Bible, essentially following the Protestant approach to the Decalogue. Jews, Catholics and Protestants number the commandments differently, and the way they are worded varies" (Ken Camp, "Texas Senate Wants Ten Commandments in Classrooms," *Baptist Standard*, April 24, 2023, https://www.baptiststandard.com/news/texas/texas-senate-wants-ten-commandments-in-classrooms/). There are slight differences in capitalization and in wording: "graven images" (SB 1515) versus "graven image" (KJV); "nor his cattle" (SB 1515) versus "nor his ox, nor his ass" (KJV) (Exodus 20:2–17, King James Version, BibleGateway, https://www.biblegateway.com/passage/?search=Exodus%2020%3A2-17&version=KJV). The text in SB 1515 is identical to that on the Ten Commandments monument on the Texas capitol grounds (Texas State Preservation Board, "Ten Commandments Monument," 2023, https://tspb.texas.gov/prop/tcg/tcg-monuments/08-ten-commandments/index.html). This monument was the subject of a legal dispute, Van Orden v. Perry, which reached the Supreme Court in 2006, with the majority ruling that the monument was constitutional (Frank S. Ravitch, "*Van Orden v. Perry* (2005)," *The First Amendment Encyclopedia*, https://www.mtsu.edu/first-amendment/article/697/van-orden-v-perry).

[56] *Catechism of the Catholic Church*, English translation, United States Conference of Catholic Bishops, 1994, 496–7, https://www.usccb.org/sites/default/files/flipbooks/catechism/498/. The explanation for the Catholic position on "graven images" is given on pp. 516–7; "The Ten Commandments," *Luther's Small Catechism*, Concordia Publishing House, 2019, https://catechism.cph.org/en/10-commandments.html.
[57] Seidel identifies these as Exodus 20:2–17, Exodus 34:11–28, Deuteronomy 5:6–21, and Deuteronomy 27:1–2 and 15–26. Andrew L. Seidel, *The Founding Myth: Why Christian Nationalism Is Un-American* (New York: Sterling, 2019), 163–5,167–8.
[58] Texas Senate Research Center, "Bill Analysis: S.B. 1515," 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/analysis/html/SB01515I.htm.
[59] Texas Senate Research Center, "Bill Analysis: S.B. 1515."
[60] Downen, "Conservative Christians." "Weatherford Republican [state] Sen. Phil King brought forth Barton — an 'esteemed' witness — to support King's bill to post the Ten Commandments in public school classrooms."
[61] Texas Senate Research Center, "Bill Analysis: S.B. 1515."
[62] Feldman.
[63] Feldman. Steven Collis, director of both the First Amendment Center and the Law and Religion Clinic at the University of Texas at Austin, told the *Texas Tribune*, "There has been a long tradition in the United States of saying, whatever government is doing, it has to do neutrally between religions — it can't treat one religion differently than another. And certainly, it can't favor one religion over another. … One of the challenges with having something like the Ten Commandments up in a public school — or really any religious texts up on the wall in a public school — is you immediately have to ask the question, whose religion is it going to be?" (Downen, "Conservative Christians").
[64] Cineas.
[65] The bill also allows districts to accept unlicensed chaplains as volunteers (S.B. 763, 88th Leg., Reg. Sess. [Tx. 2023], https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00763F.htm).
[66] The *Encylopaedia Britannica* defines "chaplain" as "an ordained member of the clergy who is assigned to a special ministry" ("Chaplain," *Encyclopedia Britannica*, March 31, 2023, https://www.britannica.com/topic/chaplain). The online *Merriam Webster* dictionary defines "chaplain" as "a clergyman officially attached to a branch of the military, to an institution, or to a family or court" ("Chaplain," *Merriam Webster*, accessed June 10, 2023, https://www.merriam-webster.com/dictionary/chaplain).
[67] Texas Senate Research Center, "Bill Analysis: S.B. 763," 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00763I.htm. The House sponsor of the bill, state Representative Cole Hefner (R-Mt. Pleasant), contends the bill "would simply provide an avenue for those with proven skills in advice and mediation — chaplains — to serve at a Texas public school without needing to be recertified by the state" ("88th Legislature, Regular Session," *House Journal*, May 8, 2023, 3308, https://journals.house.texas.gov/hjrnl/88r/pdf/88RDAY58FINAL.PDF).
[68] Cheryl Hoover, "Counseling in Texas Public Schools," Texas Association of School Boards Human Resources Exchange (HRX), June 10, 2021, https://www.tasb.org/services/hr-services/hrx/recruiting-and-hiring/counseling-in-texas-public-schools.aspx.

[69] S.B. 763, 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00763F.htm.
[70] "Conference Committee Report, 3rd Printing," S.B. 763, 2023, http://lrl.texas.gov/scanned/88ccrs/sb0763.pdf#navpanes=0. See also Downen, "Unlicensed Religious Chaplains May Counsel Students in Texas' Public Schools After lawmakers OK Proposal," *Texas Tribune*, May 24, 2023, https://www.texastribune.org/2023/05/24/texas-legislature-chaplains-schools/.
[71] Silk.
[72] Richman and Morris, "Texas Plan."
[73] Jack Jenkins, "Meet the Activists who Spearheaded the Texas Chaplains Bill," *Religion News Service*, May 24, 2023, https://religionnews.com/2023/05/24/meet-the-activists-who-spearheaded-the-texas-chaplains-bill/.
[74] Downen, "Unlicensed Religious Chaplains."
[75] "88th Legislature, Regular Session," *House Journal*, 3311.
[76] "88th Legislature, Regular Session," *House Journal*, 3313.
[77] "88th Legislature, Regular Session," *House Journal*, 3315.
[78] Jenkins, "Meet the Activists."
[79] Jenkins, "Meet the Activists."
[80] National School Chaplain Association, https://nationalschoolchaplainassociation.org/.
[81] Downen and Brian Lopez, "Key Supporter of Texas School Chaplain Bill has Pushed for Evangelism in Schools," *Texas Tribune*, May 19, 2023, https://www.texastribune.org/2023/05/19/legislature-chaplain-bill-rocky-malloy/.
[82] Jenkins, "Meet the Activists."
[83] Downen and Lopez.
[84] Jenkins, "Meet the Activists."
[85] "Mission Generation," BBB Wise Giving Alliance, February 2022, https://give.org/charity-reviews/national/Religious/Mission-Generation-in-Norman-ok-52490.
[86] Jenkins, "Meet the Activists."
[87] These versions are as follows: S.B. 8, 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00008E.htm; S.B. 1, 88th Leg., 3d Spec. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/883/billtext/html/SB00001E.htm; and S.B. 1, 88th Leg., 4th Spec. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/884/billtext/html/SB00001E.htm. The Texas House also introduced versions of an education savings account bill in the third and fourth special sessions, none of which passed.
[88] For instance, the 2012 Texas GOP platform included the following school choice plank: "We encourage the Governor and the Texas Legislature to enact child-centered school funding options which fund the student, not schools or districts, to allow maximum freedom of choice in public, private, or parochial education for all children" (Republican Party of Texas, "Report of Platform Committee," 2012, 13 http://www.senatedistrict10.com/2012RPTPlatformFINAL.pdf).

[89] "Will Voucher Defeat Hurt Texas School Finance Fix?" *CBS News Texas*, April 17, 2017, https://www.cbsnews.com/texas/news/will-voucher-defeat-hurt-texas-school-finance-fix/.

[90] For instance, the right-wing Texas Public Policy Foundation (TPPF) warned of "the significant threat posed by so-called 'woke' and radical gender ideology permeating every corner of Texas' education system – not matter how small or large the community." TPPF staffer Mandy Drogin opined, "Radical indoctrination and the prevalence of extremely inappropriate material in schools is not just a big city problem. It's everywhere. … And if parents weren't shocked enough by the graphic sexual material being made available to their children, the pushback from school boards, administrators, and radicalized teachers has been truly unbelievable. Schools should be a place of rigorous academic learning, not political propaganda, graphic sexual material, and divisive hurtful classroom activities" (Texas Public Policy Foundation, "Video: 'Never Imagine These Things are Happening' in Texas Schools," March 15, 2023, https://www.texaspolicy.com/press/video-never-imagine-these-things-are-happening-in-texas-schools).

[91] Corey DeAngelis, "The School-Choice Election Wave," *Wall Street Journal,* November 10, 2022, https://www.wsj.com/articles/the-school-choice-wave-midterm-2022-florida-desantis-education-freedom-parents-teachers-unions-illinois-pennsylvania-11668090033.

[92] "Brandon Rottinghaus, a political scientist at the University of Houston, said big spending by groups like Defend Texas Liberty and local fights over the way schools address racism, history and LGBTQ identities have 'softened the ground' for school privatization — in Texas and nationally" (Mike Hixenbaugh and Kate Martin, "Texas Politicians Rake in Millions From Far-Right Christian Megadonors Pushing Private School Vouchers," *NBC News*, November 6, 2022, https://www.nbcnews.com/news/us-news/texas-politicians-far-right-christian-megadonors-rcna55546).

[93] Patrick Svitek, "Gov. Greg Abbott Calls for Legislative Action on School Choice, Property Taxes and Fentanyl in State of the State," *Texas Tribune*, February 16, 2023, https://www.texastribune.org/2023/02/16/greg-abbott-state-of-the-state-texas/. See also Office of the Texas Governor, "Governor Abbott Touts Legislative Priorities at Texas Policy Summit," press release, March 1, 2023, https://gov.texas.gov/news/post/governor-abbott-touts-legislative-priorities-at-texas-policy-summit; and Office of Lieutenant Governor Dan Patrick, "Lt. Gov. Dan Patrick Announces Top 30 Priorities for the 2023 Legislative Session," press release, February 13, 2023, https://www.ltgov.texas.gov/2023/02/13/lt-gov-dan-patrick-announces-top-30-priorities-for-the-2023-legislative-session/.

[94] "Of the seven schools the governor has visited on his 'Parent Empowerment Tour,' not a single one has been a public school or a secular private school or a religious school affiliated with Catholicism, Islam, or Judaism" (Wilder, "Preaching to the Choir: Greg Abbott Tours Private Christian Schools [Exclusively] to Make the Case for Vouchers," *Texas Monthly*, March 16, 2023, https://www.texasmonthly.com/news-politics/greg-abbott-school-vouchers-tour/).

[95] Lopez and Alex Nguyen, "Texas House's Version of the Senate's Voucher Bill Would Change Eligibility to the Program and Replace the STAAR Test," *Texas Tribune*, May 9,

2023, https://www.texastribune.org/2023/05/09/texas-house-education-savings-account/.

[96] Alexander Salter, “Empower Texas Families with School Choice,” Texas Public Policy Foundation, January 11, 2022, https://www.texaspolicy.com/empower-texas-families-with-school-choice/.

[97] This section of SB 8 would have given parents substantial decision-making control over a wide range of areas relating to their children’s education, including the right to review instructional materials and to exempt their children from library and health educational materials, instruction concerning sexual orientation and gender identity, and immunizations. S.B. 8, Art. 1, Sec. 1.006 (instructional materials review), Sec. 1.005 (right to withhold consent), 88th Leg., Reg. Sess. (Tx. 2023), https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00008I.htm; Lopez, “Gov. Greg Abbott Taps Into Parent Anger to Fuel Reelection Campaign,” *Texas Tribune*, January 26, 2022, https://www.texastribune.org/2022/01/26/greg-abbott-parental-bill-of-rights/.

[98] S.B. 8, Introduced version, Art. 2, Sec. 29.361 (annual payment), Sec. 29.359 (eligible expenses), 88th Leg., Reg. Sess. (Tx. 2023). Low-enrollment districts are those with enrollment under 20,000.

[99] S.B. 8, Introduced version, Art. 2, Sec. 29.355, 88th Leg., Reg. Sess. (Tx. 2023).

[100] S.B. 8, Introduced version, Art. 2, Sec. 29.355, 88th Leg., Reg. Sess. (Tx. 2023).

[101] Eligibility was added for children who “attended private school on a full-time basis for the preceding school year” and are members “of a household with a total annual income that is at or below 200 percent of the federal poverty guidelines” (S.B. 8, Engrossed version, Art. 2, Sec. 29.355, 88th Leg., Reg. Sess., [Tx. 2023], https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00008E.htm).

[102] This committee substitute version of S.B. 8 is available at https://www.texasaft.org/wp-content/uploads/2023/05/CSSB-8.pdf. See also Lopez, “Time Runs Out for Taxpayer-Funded Private School Tuition Bill as Special Session Looms,” *Texas Tribune*, May 20, 2023, https://www.texastribune.org/2023/05/20/texas-house-private-school-tuition-greg-abbott/.

[103] Office of the Texas Governor, “Governor Abbott Statement On Critical School Choice Legislation,” press release, May 14, 2023, https://gov.texas.gov/news/post/governor-abbott-statement-on-critical-school-choice-legislation.

[104] Morris and Richman, “Bill Tying School Choice to Teacher Pay Advances in Texas Senate. Its Fate in House Grim,” *Dallas Morning News*, May 24, 2023, https://www.dallasnews.com/news/education/2023/05/24/bill-tying-school-choice-to-teacher-pay-advances-in-texas-senate-its-fate-in-house-grim/.

[105] Lopez, “No Teacher Raises, No Vouchers: Lawmakers Fail to Reach Compromise on School Funding Bill,” *Texas Tribune*, May 27, 2023, https://www.texastribune.org/2023/05/27/texas-school-funding-vouchers/.

[106] See, for instance, Raise Your Hand Texas, “Here is Where We Stand on School Vouchers,” https://www.raiseyourhandtexas.org/policy/where-we-stand-on-school-vouchers/; Texas AFT, “Landslide Rejection: Rural Texas House Districts Soundly Oppose Texas Voucher Schemes, Reveals Latest Polling,” May 22, 2023, https://www.texasaft.org/releases/landslide-rejection-rural-texas-house-districts-soundly-oppose-texas-voucher-schemes-reveals-latest-polling/; and Texans for Strong

Public Schools, "Public Schools, Not Vouchers, Offer the Most School Choice," 2023, https://www.texansforstrongpublicschools.org/txedinsights/school-choice.aspx.
[107] Brockman, "'School Choice' Is Just a Ploy to Defund Public Ed," *Texas Observer*, April 10, 2023, https://www.texasobserver.org/school-choice-is-just-a-ploy-to-defund-public-ed/.
[108] Temple Christian School, "Vision, Mission, Core Values & Doctrine," https://www.tcseagles.org/who-we-are/mission-doctrine.cfm; Covenant Christian Academy Colleyville, "Mission and Vision," 2023, https://www.covenantchristian.net/mission-and-vision.
[109] Don Byrd, "Three Reasons Why School Vouchers are No Friend of Religious Liberty," Baptist Joint Committee, January 24, 2018, https://bjconline.org/three-reasons-why-school-vouchers-are-no-friend-of-religious-liberty-012418/.
[110] Svitek and Renzo Downey, "Abbott Mum on Another Special Session as He Charges Into Voucher Opponents' Primary Battles," *Texas Tribune*, December 6, 2023, https://www.texastribune.org/2023/12/06/greg-abbott-vouchers-primary-special-session/.
[111] Downen, "Conservative Christians"; Jenkins, "In Texas, Republicans Push Bills"; Paul Waldman, "Opinion: The Texas Legislature Explores New Frontiers of Christian Nationalism," *Washington Post*, May 9, 2023, https://www.washingtonpost.com/opinions/2023/05/09/texas-legislature-christian-nationalism-ten-commandments/.
[112] Brockman, "Christian Americanism."
[113] For Andrew L. Whitehead and Samuel L. Perry, "Christian nationalism contends that America has been and should always be 'Christian,'" where "Christian" is more than merely religious, and "includes assumptions of nativism, white supremacy, patriarchy, and heteronormativity, along with divine sanction for authoritarian control and militarism" (*Taking America Back For God: Christian Nationalism in the United States* [New York: Oxford University Press, 2020], 10). A recent report on Christian nationalism by the Public Religion Research Institute (PRRI) measures adherence to the ideology according to levels of agreement with five statements: "The U.S. government should declare America a Christian nation"; "U.S. laws should be based on Christian values"; "If the U.S. moves away from our Christian foundations, we will not have a country anymore"; "Being Christian is an important part of being truly American"; and "God has called Christians to exercise dominion over all areas of American society" (Public Religion Research Institute [PRRI] staff, "A Christian Nation? Understanding the Threat of Christian Nationalism to American Democracy and Culture," February 8, 2023, https://www.prri.org/research/a-christian-nation-understanding-the-threat-of-christian-nationalism-to-american-democracy-and-culture/).
[114] As Andrew Preston writes, when the term "Judeo-Christian" first came into widespread use in the 1930s, mainly among leftists and centrists, it referred to those beliefs and values shared by Jews and Christians; however, by the 1980s it had been taken over by the Christian right as a political code word for conservative Christian. Preston notes that the phrase "went from being a unifying term — a centrist nod to religious tolerance — to a badge of identity for Christian conservatives who wanted to chip away at the wall of separation between church and state" ("A Very Young Judeo-Christian Tradition," *Boston Globe*, July 1, 2012,

http://www.bostonglobe.com/ideas/2012/06/30/very-young-judeo-christian-tradition/smZoWrkrSLeMZpLou1ZGNL/story.html).
[115] Whitehead and Perry found that the strongest supporters of Christian nationalism (which they label "Ambassadors" for the ideology) are "largely unified in their opinion that the First Amendment was intended *solely* to keep the state out of the church's business, not to keep religion from influencing politics" (*Taking America Back*, 37).
[116] For Barton's "myth" argument, see *The Myth of Separation* (Aledo, TX: WallBuilder Press, 1992). As for major academic scholars, see, for instance, Steven K. Green, *Inventing a Christian America: The Myth of the Religious Founding* (New York: Oxford University Press, 2015); and Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York: W. W. Norton & Company, 1997).
[117] Robert Jeffress, *Outrageous Truth: 7 Absolutes You Can Still Believe* (Colorado Springs, CO: WaterBrook Press, 2008), 170–80.
[118] Boorstein.
[119] Mayes Middleton (@mayes_middleton), "Our schools are not God free zones," Twitter, April 21, 2023, https://twitter.com/mayes_middleton/status/1649502809547571200.
[120] Lopez, "Public Schools Would Have to Display Ten Commandments Under Bill Passed by Texas Senate," *Texas Tribune*, April 20, 2023, https://www.texastribune.org/2023/04/20/texas-senate-passes-ten-commandments-bill/.
[121] This is documented in Brockman, "Christian Americanism," 32–4.
[122] U.S. Pastor Council, "Texas Pastors' Declaration for Empowering Parents in Education," 2023, https://web.archive.org/web/20230417165321/https://www.uspastorcouncil.org/church-resources/2023-texas-school-choice-resources.html.
[123] Mark Weldon Whitten, *The Myth of "Christian America": What You Need to Know about the Separation of Church and State* (Macon, GA: Smyth & Helwys Publishing, Inc., 1999), 35.
[124] Brockman, "Christian Americanism," 10.
[125] Whitehead and Perry, *Taking America Back*, 161–2.
[126] For more information about the TEKS, see Texas Education Agency, "Texas Essential Knowledge and Skills," 2022, https://tea.texas.gov/academics/curriculum-standards/teks-review/texas-essential-knowledge-and-skills.
[127] 2 Tex. Educ. Code, § 28.002(c) (2021). For my discussion and critique of the TEKS and the process by which they are formulated, see Brockman, "Religious Imbalance."
[128] 19 Tex. Admin. Code, §112.34(c)(7) (2023).
[129] Barton, *The Myth of Separation*, 260–1.
[130] Downen, "Conservative Christians."
[131] Indeed, they write, "With each $10,000 increment in per capital income, the percentage of people who deem religion 'very important' drops by about 10 percent" (Wald and Calhoun-Brown, 9).
[132] Jonathan Evans, "U.S. Adults are More Religious Than Western Europeans," Pew Research Center, September 5, 2018, https://www.pewresearch.org/short-reads/2018/09/05/u-s-adults-are-more-religious-than-western-europeans/. Another

recent Pew Research Center study, this one comparing per capita GDP to the percentage of those tying belief in God to morality, gives similar results. Of 27 nations studied, the United States had the highest 2019 GDP per capita, but a higher percentage of those stressing belief in God than the UK and major EU nations (Pew Templeton Global Religious Futures Project, "Key Findings From the Global Religious Futures Project," Pew Research Center, December 21, 2022, https://www.pewresearch.org/religion/2022/12/21/key-findings-from-the-global-religious-futures-project/).

[133] Wald and Calhoun-Brown, 17.

[134] Wald and Calhoun-Brown, 18.

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