

26-1829, 26-1897

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Donna Cave, *et al.* and Anne Orsi, *et al.*,
Plaintiffs-Appellees,

The Satanic Temple, *et al.*,
Intervenors-Appellees / Cross-Appellants,

vs.

Cole Jester, in his official capacity as the
Secretary of State of Arkansas,
Defendant-Appellant / Cross-Appellee.

On appeal from the Eastern District of Arkansas – Central Division
Case No. 4:18-cv-342
Hon. Kristine G. Baker, Chief District Judge, presiding

BRIEF FOR THE SATANIC TEMPLE, *ET AL.*



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SUMMARY OF THE CASE

Arkansas directed the emplacement of a Ten Commandments monument on State Capitol grounds, declaring that God ordained civil government and that the Commandments form the moral foundation of law. The monument's sponsor stated that it was intended to honor God and the Bible, and its installation immediately generated political controversy along religious lines.

The Satanic Temple (“**TST**”) proposed a Baphomet monument to rebut Arkansas's preference for Christianity and to promote pluralism. After TST's proposal advanced through administrative review, legislators enacted Act 274 specifically to halt that approval process. And it worked. That immediately stopped the process which would have otherwise culminated in the Secretary's assistance in seeking final legislative approval for TST's monument. The Display was thereby insulated from religious competition in the public sphere. Oral argument is proper, 20 minutes per side is sufficient.

CORPORATION DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, TST discloses its corporate status and ownership as follows.

1. The Satanic Temple, Inc. (fka “The Satanic Temple”) is a nonprofit religious corporation with no parent corporations and no publicly held corporation owns 10% or more of The Satanic Temple, Inc.’s stock.
2. As a nonprofit religious corporation, The Satanic Temple, Inc. has neither stock nor owners.

Respectfully submitted on October 6, 2026,

By: /s/ Matt Kezhaya



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TABLE OF CONTENTS

Summary of the Case	2
Corporation Disclosure Statement	3
Table of Contents.....	4
Table of Authorities	6
Jurisdictional Statement	13
Statement of Issues	14
Statement of the Case.....	16
Summary of the Argument	24
Argument	26
Standard of review	26
I. TST has standing.	26
Legal standard	27
A. The “direct and unwelcome contact” rule still controls... 28	
1. There is no doubt about the rule.	29
2. TST’s members had direct and unwelcome contact with the Display.....	36
3. Standing does not have a residency requirement.	37
B. The Secretary enforces Act 274 and has no sovereign immunity.	40
C. TST independently has Equal Protection standing.	42
II. The Display violates the Establishment Clause.....	43
A. The Display is anathema under the religious monuments cases.....	46
1. The Display is new, not longstanding.	47

2. The record establishes official religious preference for the Display.	50
3. The Display caused a religio-political controversy.	61
B. Coercion is not the touchstone of an Establishment Clause analysis.	70
III. Act 274 violates the Equal Protection Clause.	75
A. Government speech is limited by the Establishment Clause.	76
B. TST is a suspect class.	78
C. Act 274 insulated a preferred religious view from competition.	83
D. The Equal Protection claim requires an effective remedy.	91
Conclusion	92

TABLE OF AUTHORITIES

Cases

<i>Abington Sch. Dist. v. Schempp</i> , 374 U.S. 203 (1963)	68, 69
<i>ACLU Neb. Found. v. City of Plattsmouth, Neb.</i> , 358 F.3d 1020 (8th Cir. 2004)	27, 29
<i>Afr. v. Com. of Pa.</i> , 662 F.2d 1025 (3d Cir. 1981)	77
<i>Am. Legion v. Am. Humanist Ass’n</i> , 588 U.S. 29 (2019)	<i>passim</i>
<i>Americans United for Separation of Church & State v.</i> <i>Prison Fellowship Ministries, Inc.</i> , 509 F.3d 406 (8th Cir. 2007)	27
<i>Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet</i> , 512 U.S. 687 (1994)	71
<i>Bio Gen LLC v. Sanders</i> , 142 F.4th 591 (8th Cir. 2025)	38
<i>Braunfeld v. Brown</i> , 366 U.S. 599 (1961)	72
<i>Burlington N., Santa Fe Ry. Co. v. Lohman</i> , 193 F.3d 984 (8th Cir. 1999)	36
<i>Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n</i> , 605 U.S. 238 (2025)	<i>passim</i>

<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993)	49, 50, 65
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983)	26
<i>Cnty. of Allegheny v. Am. C.L. Union Greater Pittsburgh Chapter</i> , 492 U.S. 573 (1989)	68
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006)	24
<i>Everson v. Board of Education</i> , 330 U.S. 1 (1947)	44, 72, 73
<i>Ex parte Young</i> , 209 U.S. 123 (1908)	40
<i>FEC v. Cruz</i> , 596 U.S. 289 (2022)	37
<i>Felix v. City of Bloomfield</i> , 841 F.3d 848 (10th Cir. 2016)	30
<i>First Choice Women’s Res. Centers, Inc. v. Davenport</i> , ___ U.S. ___, 146 S. Ct. 1114 (2026)	24, 25, 36
<i>Freedom From Religion Found., Inc. v. Cnty. of Lehigh</i> , 933 F.3d 275 (3d Cir. 2019)	30
<i>Freedom from Religion Found., Inc. v. Lew</i> , 773 F.3d 815 (7th Cir. 2014)	30
<i>Heckler v. Mathews</i> , 465 U.S. 728 (1984)	89

<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985)	84
<i>Keevan v. Smith</i> , 100 F.3d 644 (8th Cir. 1996).	84
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	29
<i>Kondrat'yev v. City of Pensacola</i> , 949 F.3d 1319 (11th Cir. 2020)	30, 31
<i>Larson v. Valente</i> , 456 U.S. 228 (1982)	49, 80
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992)	42, 69
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971)	29
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	26, 29, 36, 38
<i>Malnak v. Yogi</i> , 592 F.2d 197 (3d Cir. 1979)	52, 77
<i>Marks v. United States</i> , 430 U.S. 188 (1977)	45
<i>Masterpiece Cakeshop v. Colorado C.R. Comm'n</i> , 584 U.S. 617 (2018)	43
<i>McCreary Cnty., Ky. v. Am. C.L. Union of Ky.</i> , 545 U.S. 844 (2005)	<i>passim</i>

<i>Miller v. Thurston</i> , 967 F.3d 727 (8th Cir. 2020)	25
<i>Nat’l Endowment for Arts v. Finley</i> , 524 U.S. 569 (1998)	75
<i>Ne. Fla. Chapter, Associated Gen. Contractors of Am. v. Jacksonville</i> , 508 U.S. 656 (1993)	41
<i>New Doe Child #1 v. United States</i> , 901 F.3d 1015 (8th Cir. 2018)	44
<i>Nikolao v. Lyon</i> , 875 F.3d 310 (6th Cir. 2017)	30
<i>Novartis Pharms. Corp. v. Hanaway</i> , 180 F.4th 1097 (8th Cir. 2026)	28, 34
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009)	30
<i>Pleasant Grove City, Utah v. Summum</i> , 555 U.S. 460 (2009)	54, 57, 74
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982)	80
<i>Prescott v. Okla. Capitol Pres. Comm’n</i> , 373 P.3d 1032 (Okla. 2015)	50
<i>Red River Freethinkers v. City of Fargo</i> , 679 F.3d 1015 (8th Cir. 2012)	<i>passim</i>
<i>Satanic Temple v. City of Scottsdale</i> , No. CV18-00621-PHX-DGC, 2020 WL 587882 (D. Ariz. Feb. 6, 2020)	79

<i>Satanic Temple, Inc. v. Saucon Valley Sch. Dist.</i> , 671 F. Supp. 3d 555 (E.D. Pa. 2023)	79
<i>Shurtleff v. City of Bos., Massachusetts</i> , 596 U.S. 243 (2022)	65, 72
<i>Sierra Club v. Morton</i> , 405 U.S. 727 (1972)	33
<i>Sierra Club v. U.S. Army Corps of Eng'rs</i> , 645 F.3d 978 (8th Cir. 2011)	35
<i>Stone v. Graham</i> , 449 U.S. 39 (1980)	51
<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488 (2009)	33
<i>Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.</i> , 450 U.S. 707 (1981)	76
<i>Torcaso v. Watkins</i> , 367 U.S. 488 (1961)	44, 60, 71
<i>Torgerson v. City of Rochester</i> , 643 F.3d 1031 (8th Cir. 2011)	24, 76
<i>Town of Greece v. Galloway</i> , 572 U.S. 565 (2014)	30, 42, 65
<i>U. S. Dep't of Agric. v. Moreno</i> , 413 U.S. 528 (1973)	88
<i>United States v. Seeger</i> , 380 U.S. 163 (1965)	77

<i>United States v. Steward</i> , 598 F.3d 960 (8th Cir. 2010)	28
<i>Valley Forge Christian Coll. v.</i> <i>Americans United for Separation of Church & State, Inc.</i> , 454 U.S. 464 (1982)	32, 37
<i>Van Orden v. Perry</i> , 545 U.S. 677 (2005)	<i>passim</i>
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	53, 54, 83, 84
<i>W. Virginia State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943)	75
<i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985)	72
<i>Walls v. Sanders</i> , 144 F.4th 995 (8th Cir. 2025)	28
<i>Weems v. Little Rock Police Dep't</i> , 453 F.3d 1010 (8th Cir. 2006)	76
<i>Wierman v. Casey's Gen. Stores</i> , 638 F.3d 984 (8th Cir. 2011)	44
<i>Zorach v. Clauson</i> , 343 U.S. 306 (1952)	60, 80
Statutes	
28 USC § 1291	11
42 USC § 1983	24, 37

Ark. Code Ann. § 22-3-1705	55
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Other Authorities

James Madison, et al., <i>Memorial and Remonstrance Against Religious Assessments</i> (reprinted in full at <i>Everson v. Bd. of Ed. of Ewing Twp.</i> , 330 U.S. 1, 64-72 (1947))	73
Micah Schwartzman <i>et. al.</i> , <i>The Structure of Religious Preference</i> , 139 Harv. L. Rev. 211 (2025)	61

JURISDICTIONAL STATEMENT

The District Court had jurisdiction under 28 USC § 1331 and entered a final judgment on March 31, 2026. (App. 4008); (R. Doc. 346). On April 29, 2026, Appellant timely noticed an appeal. (R. Doc. 349). On May 7, 2026, The Satanic Temple, *et al.*, timely noticed a cross-appeal. (R. Doc. 354). This Court therefore has appellate jurisdiction. 28 USC § 1291.

STATEMENT OF ISSUES

I. Is “direct and offensive” contact still an injury in fact?

The District Court held “yes.” (App. 3907-3911); (R. Doc. 345, at 48-52).

Apposite Authority: *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015 (8th Cir. 2012); *Novartis Pharms. Corp. v. Hanaway*, 180 F.4th 1097 (8th Cir. 2026).

II. Does the Secretary of State have the “mechanism of enforcement” of Act 274?

The District Court held “yes.” (App. 3860); (R. Doc. 345, at 1).

Apposite Authority: *Bio Gen LLC v. Sanders*, 142 F.4th 591 (8th Cir. 2025); *Ex parte Young*, 209 U.S. 123 (1908).

III. Does the Display Act violate the Establishment Clause?

The District Court held “yes.” (App. 3952, 3974); (R. Doc. 345, at 93, 115)

Apposite Authority: *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29 (2019); *Van Orden v. Perry*, 545 U.S. 677 (2005); *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844 (2005)

IV. Does Act 274 violate the Equal Protection Clause?

The District Court held “yes.” (App. 4005); (R. Doc. 345, at 146).

Apposite Authority: *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009); *Plyler v. Doe*, 457 U.S. 202 (1982);

STATEMENT OF THE CASE

In 2015, the Arkansas General Assembly enacted Act 1231 (the “**Display Act**”), which directed the placement of a Ten Commandments monument on the Arkansas State Capitol Grounds (the “**Display**”). (App. 684-685); (R. Doc. 260-2, at 2-3). The bill included “Legislative findings” that the Ten Commandments is the “moral foundation” of American and Arkansas law and which declare that “God has ordained civil government” and “endowed people with certain unalienable rights.” (App. 683-684); (R. Doc. 260-2, at 1-2).

Pursuant to the Display Act, the Arkansas Secretary of State and the Capitol Arts & Grounds Commission undertook the process necessary to install a Ten Commandments monument on Capitol Grounds. (App. 3758); (R. Doc. 286, at 14, ¶¶ 56-58). The Chief Deputy Secretary chaired the Commission as the Secretary’s designee. (App. 1158); (R. Doc. 260-24, at 8).

Agape Church and its Executive Administrator contributed most of the initial fundraising proceeds. (App. 3766-3767); (R. Doc. 286,

at 22-23); see also (App. 3881); (R. Doc. 345, at 22 nn. 51, 53). After the first iteration of the Display was promptly destroyed, PureFlix donated \$25,000 toward its reconstruction. (App. 3766–3767); (R. Doc. 286, at 22–23, ¶¶ 92–94). PureFlix presented that donation at the Capitol rotunda, using a podium bearing the State seal; Rapert and other legislators participated in the presentation. (App. 3767–3768); (R. Doc. 286, at 23–24, ¶¶ 96–99).

The proposal generated substantial public comment and discussion. (App. 3768-3769); (R. Doc. 286, at 24-25, ¶¶ 101-102). Supporters and opponents alike contacted the Secretary of State’s office concerning the monument, and members of the public appeared before the Arts & Grounds Commission to voice support and opposition. (App. 3768-3769); (R. Doc. 286, at 24-25, ¶¶ 101-102). Opponents criticized the monument as “unduly religious, archaic, and narrow” and objected that it sought to legitimize “a particular version of religious text as the basis for U.S. and Arkansas law.” (App. 1700); (R. Doc. 260-39, at 16); (App. 1731-1732); (R. Doc. 260-39, at 47-48).

At the same time, The Satanic Temple (“**TST**”) sought approval to place a monument depicting Baphomet on Capitol Grounds. TST proposed the monument as a response to governmental preference for Christianity and as an expression of religious pluralism. (App. 3797); (R. Doc. 288, at 2, ¶ 2); (App. 3987); (R. Doc. 345, at 128); (App. 3557-3558); (R. Doc. 269-1, at 235-236, ¶ 8). On January 25, 2017, the Arts & Grounds Commission Subcommittee deemed TST’s application sufficient to advance to the public-hearing phase. (App. 1639); (R. Doc. 260-36, at 11). That decision did not constitute final Commission approval or legislative authorization to install Baphomet.

One day after TST received approval to proceed, State Senator Jason Rapert publicly declared that it would be “a very cold, cold day in the pits of Hell” before a monument from The Satanic Temple appeared on Arkansas Capitol Grounds. (App. 3798-3799); (R. Doc. 288, at 3-4, ¶ 8); (App. 3892); (R. Doc. 345, at 33 n. 78). Senator Rapert and Representative Kim Hammer introduced

legislation that became Act 274 of 2017. (App. 3799); (R. Doc. 288, at 4, ¶ 9); (App. 3893); (R. Doc. 345, at 34).

Act 274 substantially altered the monument-approval process. Prior to Act 274, monument proposals proceeded through Arts & Grounds review and, if approved, were then presented by the Secretary of State to the General Assembly. (App. 1372); (R. Doc. 260-25, at 10). After enactment of Act 274, legislative approval became a prerequisite to further consideration. The statute's emergency clause therefore immediately halted TST's pending application and prevented the process from continuing. (App. 3995); (R. Doc. 345, at 136). Only TST's monument was adversely affected by Act 274. The other two proposed monuments already had known legislative sponsors. (App. 3576-3577); (R. Doc. 269-1, at 254-255); (App. 1214); (R. Doc. 260-24, at 64).

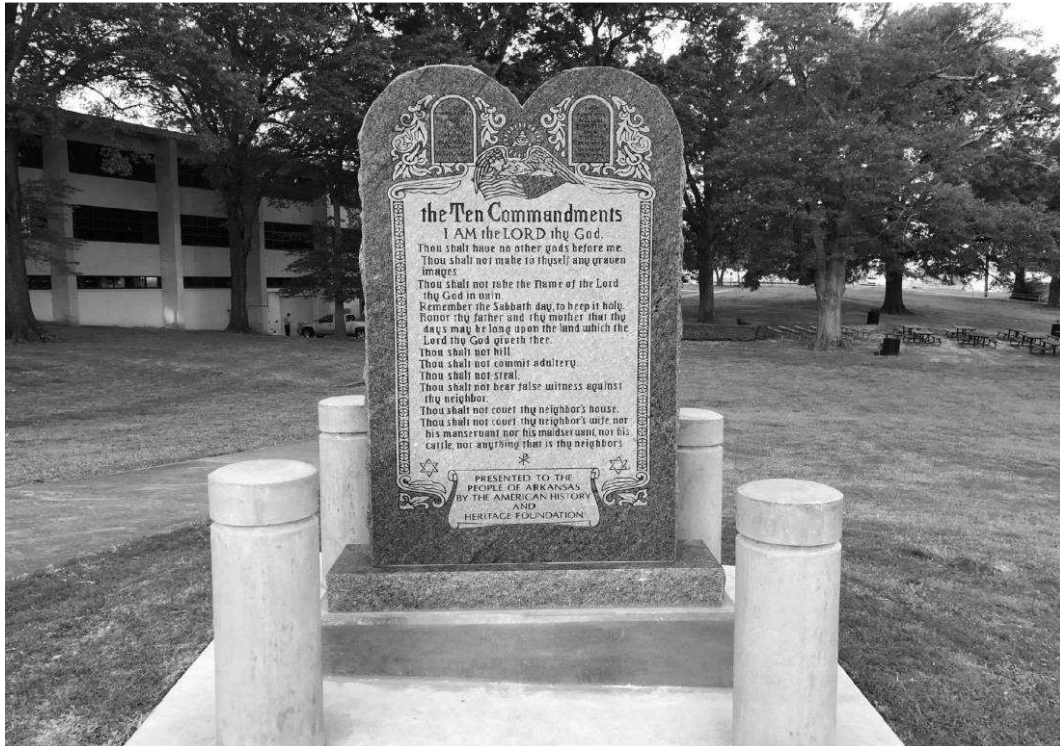
TST nevertheless sought legislative sponsorship. One representative responded, "Hell no! And you can quote me on that!" (App. 3383); (R. Doc 269-1, at 61). Another legislator, asked why he

declined sponsorship, replied, “I do not support satan.” (App. 3396); (R. Doc. 269-1, at 74).

The first iteration of the Display was installed in June 2017 and destroyed less than twenty-four hours later. (App. 3761-3762, 3770); (R. Doc. 286, at 17-18, 26, ¶¶ 70, 73, 105); (App. 3878); (R. Doc. 345, at 19). A replacement monument was subsequently erected in April 2018. (App. 3878-79); (R. Doc. 345, at 19-20). Witnesses attending the unveiling of the replacement monument testified that attendees shouted religious benedictions such as “Praise God,” “Praise Jesus,” and “Hallelujah.” (App. 3510-11); (R. Doc. 269-1, at 188-89); (App. 3562-63); (R. Doc. 269-1, at 240-41).

The Display stands alone; there are no contextualizing plaques or other signage to indicate a different purpose of the monument from the text on its face:

[intentionally left blank, photograph following]



(App. 3308); (R. Doc. 266-10).

Intervenor Erika Robbins is a Little Rock resident and TST member who regularly visited the Capitol grounds and personally viewed the replacement monument when it was installed. (App. 2390-2391, 2397); (R. Doc. 260-51, at 8-9, 15). She understood the Display as Arkansas's affiliation with Christianity and testified that it excluded people who did not believe in the version of God it proclaimed. (App. 2406); (R. Doc. 260-51, at 24). Another TST member and Little Rock resident, Mason Hargett, likewise viewed the

monument with other members and encountered it during bicycle rides on the Capitol grounds. (App. 2431-2433, 2445); (R. Doc. 260-52, at 3-5, 17). He described his offense at the monument as “white hot.” (App. 2447); (R. Doc. 260-52, at 19).

Separate *Cave* and *Orsi* actions were filed 27 days after the Display was erected, both challenging the Display Act and resulting monument under the Establishment Clause. The District Court consolidated them on June 25, 2018. (App. 16); (R. Doc. 14). TST, Erika Robbins, and Lucien Greaves (collectively, “**TST**”) moved to intervene on July 12, 2018. (App. 16); (R. Doc. 17). The Court granted the amended intervention motion, and the intervenors subsequently filed their amended and second amended complaints in intervention. (App. 17–18, 22); (R. Docs. 38, 40, 89).

Following extensive discovery and cross-motions for summary judgment, the District Court granted summary judgment to all Appellees on the Establishment Clause claim and to TST on the Equal Protection claim. (App. 4006–4007); (R. Doc. 345, at 147–148). It

declined to enjoin Act 274, selecting removal of the Ten Commandments monument as the appropriate Equal Protection remedy. (App. 4005); (R. Doc. 345, at 146). The judgment enjoined enforcement of the Display Act and ordered removal of the monument. Only the removal requirement—not the injunction against enforcing the Display Act—was stayed pending appeal. (App. 4008); (R. Doc. 346, at 1).

Appellant's appeal and TST's cross-appeal timely followed.

SUMMARY OF THE ARGUMENT

Appellant offers three grounds for reversal, none of which are availing. Appellant first contests standing. At issue is a religious monument case. Under binding precedent, standing lies where the plaintiff had “direct and offensive contact” with the monument. TST’s membership had such contact. The abrogation of the *Lemon* test does not undermine standing. *Lemon* only ever purported to give guidance on the merits, not standing. Appellant’s office administers the monument-review process, which Act 274 now requires legislative authorization before further consideration of TST’s application.

Next, Appellant contests the Establishment Clause findings. There is no genuine dispute of fact that this monument is the product of a contemporary effort to venerate a particular religion’s sacred text, and immediately caused a religio-political controversy. The absence of coercion does not save the Display. Coercion is not required, the issue is denominational preference.

Last, Appellant contests the Equal Protection Clause findings. The government-speech doctrine does not insulate Appellant from Equal Protection liability because that doctrine is limited by the Establishment Clause’s “central command” of denominational neutrality. The undisputed record clearly establishes that TST is a religion and a politically powerless minority, and that Act 274 was enacted specifically to halt the approval progress of TST’s Baphomet monument and deprive it of a fair opportunity to compete with Christianity in the public sphere.

For the foregoing reasons, the Court should affirm the District Court’s thorough and well-reasoned opinion in its entirety. If the Court sustains Equal Protection liability but reverses the removal remedy, the case should be remanded for an effective Equal Protection remedy.

ARGUMENT

Standard of review

This Court reviews a summary judgment de novo. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011). The underlying summary-judgment rulings are reviewed de novo; the equitable choice of permanent injunctive relief is reviewed for abuse of discretion. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

I. TST has standing.

At issue is a case brought under 42 USC § 1983, a statute Congress enacted “with the express goal of ensuring a federal forum to citizens who claim that state actors have violated their constitutional rights.” *First Choice Women’s Res. Centers, Inc. v. Davenport*, ___ U.S. ___, 146 S. Ct. 1114, 1126 (2026). Under Appellant’s framing, nobody would have standing to raise an Establishment Clause challenge over a public monument with a legislative purpose to “honor[] God and the Bible ... [and] send[] a signal to everyone in the

spiritual realm that Arkansas seeks to honor God.” (App. 3779); (R. Doc. 286, at 35). The Court long ago rejected Appellant’s argument by holding that standing lies where a litigant has “direct and unwelcome contact” with a religious monument. It was undisputed that TST’s membership had such contact. Therefore, TST’s members have direct standing and TST has associational standing.

Legal standard

Standing is a legal question which is reviewed de novo. *Miller v. Thurston*, 967 F.3d 727, 734 (8th Cir. 2020). When evaluating standing, a plaintiff’s success on the merits is presumed. *Id.* That is because the standing “in no way depends on the merits of the claim.” *Id.* (cleaned up). Stated differently, the standing issue does not ask whether Appellant deprived Appellees of their Establishment Clause right to a secular civil government, but “whether he has burdened those rights at all.” *First Choice*, 146 S. Ct. at 1129.

Standing determines whether the plaintiff has a “personal stake in the outcome,” one which “assures that concrete adverseness

which sharpens the presentation of issues necessary for the proper resolution of constitutional questions.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (internal quotes omitted). Standing is comprised of three elements: (1) an invasion of a legally protected interest which is both (a) “concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical;” (2) fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court;” and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up).

A. The “direct and unwelcome contact” rule still controls.

Appellant asks the Court to deviate from its own precedent. To support that request, Appellant needed at least one Supreme Court decision which casts into doubt on the prior precedent. But Appellant offers no *decisions*, only a slew of concurrences and dissents. The

Court should find that the “direct and unwelcome contact” rule still controls.

1. There is no doubt about the rule.

This Court has previously held that “direct and unwelcome personal contact” constitutes a concrete and particularized injury in a religious public monument case. *See ACLU Neb. Found. v. City of Plattsmouth, Neb.*, 358 F.3d 1020, 1029 (8th Cir. 2004), adopted en banc, 419 F.3d 772, 775 n. 4 (8th Cir.2005); *see also Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 419 (8th Cir. 2007) (“direct, offensive, and alienating contact” with a religious prison program vested inmates with standing). Not 15 years ago, this Court renewed that holding, specifically rejecting argument that a plaintiff should have to alter their behavior to avoid the religious display. *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1023-24 (8th Cir. 2012) (“**Red River I**”). Diligent research does not reveal any cases suggesting the Court has since reconsidered this approach.

Undeterred by binding precedent, Appellant suggests the Court should reconsider its prior holdings, offering only a self-serving allegation that the precedent has since been “cast into doubt.” Appellant offers two cases as grounds for his argument, both of which emphasize that doubt is only caused by a “decision” of the Supreme Court. *Walls v. Sanders*, 144 F.4th 995, 1004-05 (8th Cir. 2025); *United States v. Steward*, 598 F.3d 960, 961-62 (8th Cir. 2010).

But Appellant offers no “decision” of the Supreme Court, only a slew of concurrences and dissents—some not even from the Supreme Court—and one law review article. App. Br., at 36-37.¹ There being no “decision” of the Supreme Court which casts doubt on this Court’s prior holding, the request is nothing more than an invitation for one panel to overrule a prior panel. This Court does not follow that approach. *E.g.*, *Novartis Pharms. Corp. v. Hanaway*, 180 F.4th 1097, 1113 (8th Cir. 2026) (“It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel.”)

¹ Citations to Appellant’s Brief use PDF pagination.

Appellant contends that doubt is raised because the Supreme Court finally abrogated the *Lemon* test. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). But *Lemon* only ever addressed the merits of an Establishment Clause case, it never gave guidance on a plaintiff's standing to bring one. Standing presumes success on the merits, the question is whether the plaintiff can bring the challenge not if they will succeed. *Red River I*, 679 F.3d at 1023. Because *Lemon* only ever purported to address the merits, its abrogation says nothing about standing.

Tellingly, the *Red River I* Court's discussion on standing never even cited *Lemon*. *Red River I*, 679 F.3d at 1022-1027. The focus was instead on the familiar three-part standing test: injury, causation, redressability. E.g., *Lujan*, 504 U.S. at 560. Nor did the *Plattsmouth* Court discuss *Lemon* when assessing standing. *Plattsmouth*, 358 F.3d at 1026-1031.

More tellingly, no sister circuit since *Red River I* has hinted at any doubt about whether "direct and unwelcome contact" confers

standing. *Cf. Pearson v. Callahan*, 555 U.S. 223, 235 (2009) (it is a factor against reconsideration that a decision enjoys “consistent application by the lower courts.”) Since *Red River I*, the Third, Sixth, Seventh, Tenth, and Eleventh Circuits have all encountered religious display cases. See *Kondrat’yev v. City of Pensacola*, 949 F.3d 1319, 1323-25 (11th Cir. 2020); *Freedom From Religion Found., Inc. v. Cnty. of Lehigh*, 933 F.3d 275, 279-80 (3d Cir. 2019); *Nikolao v. Lyon*, 875 F.3d 310, 317 (6th Cir. 2017); *Felix v. City of Bloomfield*, 841 F.3d 848, 854 (10th Cir. 2016); *Freedom from Religion Found., Inc. v. Lew*, 773 F.3d 815, 820 (7th Cir. 2014). Each Circuit applied the “direct and unwelcome contact” rule. *Ibid.* Not one relied on *Lemon*. *Ibid.*

The Tenth Circuit in *Felix* specifically rejected argument that “‘being offended’ is not an injury-in-fact,” there based on the decision in *Town of Greece*,² because “the words ‘standing,’ ‘jurisdiction,’ or ‘Article III’ do not appear” in the case. *Felix*, 841 F.3d at 854. Likewise, the Eleventh Circuit rejected Appellant’s same argument,

² *Town of Greece v. Galloway*, 572 U.S. 565 (2014).

noting *American Legion* “doesn’t address standing one way or another.” *Kondrat’yev*, 949 F.3d at 1323. And no part of *Kennedy* addresses standing, either. *Cf. Kennedy*, 597 U.S. at 554 (Sotomayor, J., dissenting) (the word standing appears exactly once across all opinions: “Kennedy kneeled on the field alone with players *standing* nearby”) (emphasis added).

Appellant’s argument fundamentally rests on Justice Gorsuch’s two-Justice concurrence in *American Legion*. App. Br. 36 (citing *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 84 (2019) (Gorsuch, J., concurring)). That concurrence offers Appellant no support. There, Justice Gorsuch only explains that the lesson of the *American Legion* plurality is: “Whether a monument, symbol, or practice is old or new, apply *Town of Greece*, not *Lemon*.” *Am. Legion*, 588 U.S. at 86. In *Town of Greece*, the plaintiffs’ complaint was that they “attended town board meetings ... and they objected that the prayers violated their religious or philosophical beliefs.” *Town of Greece*, 572 U.S. at 572. Despite that the *Town of Greece* plaintiffs’ objection could be downplayed as “mere offense,” not one Justice raised a question

about their standing. The word “standing” does not appear once across all opinions.

Even if the Court were inclined to adopt the view advanced by Justice Gorsuch’s *American Legion* concurrence, the “direct and unwelcome contact” rule would still control. *See Am. Legion*, 588 U.S. at 87 (Gorsuch, J., concurring). Following that concurrence would lead courts to look for “a real controversy with real impact on real persons.” *Id.* That “real impact” refers to the ostracizing effect felt by non-adherents when they gaze upon the physical manifestation of a foreign religion receiving the imprimatur of State government.

The Establishment Clause question would still be whether those people “were subjected to unwelcome religious exercises *or* were forced to assume special burdens to avoid them.” *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 n. 22 (1982) (emphasis added). As alleged, the Display is a religious exercise, the cause of action accrued when Appellees suffered “direct and unwelcome contact” with it.

Indisputably, a purely aesthetic affront can serve as a concrete “invasion of a legally protected interest.” See *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972); accord. *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). So too is the affront experienced by viewing a physical manifestation of official governmental preference for a particular religion. *Red River I*, 679 F.3d at 1023-24; accord. *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 248 (2025) (“Government actions that favor certain religions ... convey to members of other faiths that they are outsiders, not full members of the political community”) (internal quotes omitted).

Nor does Appellant suggest a replacement for the workable rule he challenges. Religious governmental monuments are a recurring theme in Establishment Clause jurisprudence. See *Am. Legion*, 588 U.S. at 52 n. 16 (plurality op.). If “direct and unwelcome contact” with such monuments does not give rise to a challenge, what more should be required? Appellant’s silence is deafening.

The Court need not struggle with that question because there are no supervening Supreme Court decisions which raise doubt about the “direct and unwelcome contact” rule. The appropriate disposition is to follow the rule that “one panel is bound by the decision of a prior panel.” *Hanaway*, 180 F.4th at 1113. Until and unless the Court revisits the question en banc, the dispositive question in this case is simply whether any TST members had “direct and unwelcome contact” with the Display. *Red River I*, 679 F.3d at 1023.

2. TST’s members had direct and unwelcome contact with the Display.

TST’s members had “direct and unwelcome contact” with the Display. Appellee Erika Robbins testified she personally visited the Display, found it to be an effort of the State of Arkansas to affiliate itself with Christianity, and feels that it excludes “anybody that doesn’t believe in this version of God.” (App. 2391, 2406); (R. Doc. 260-51, at 9, 24). Another member, Mason Hargett, also testified he visited the Display and was “white hot offended at it.” (App. 2433, 2445, 2447); (R. Doc. 260-52, at 5, 17, 19). Although no part of *Red*

River I limits the “direct and unwelcome contact” rule to residents of the locality, both further testified that they were residents of Little Rock and regularly visited the State Capitol Grounds. (App. 2391, 2442); (R. Doc. 260-51, at 9); (R. Doc. 260-52, at 14)

Because TST has members with standing to sue in their own right, the District Court easily found that TST has associational standing. (App. 3920-3921); (R. Doc. 345, at 61-62); *see also Red River I*, 679 F.3d at 1023. Appellant does not contest these facts, so the Court could and should summarily affirm the District Court’s finding that Appellees have standing.

3. Standing does not have a residency requirement.

The Court should end its analysis upon finding a single plaintiff has standing. *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978, 986 (8th Cir. 2011) (“only one plaintiff need show standing to support our subject matter jurisdiction.”) Yet Appellant specifically challenges the standing of Lucien Greaves. App. Br. 37-39. Appellant argues that Greaves cannot bring an Establishment Clause

claim because he's from Massachusetts. But there is no residency requirement in an injury analysis. *See Lujan*, 504 U.S. at 563 (majority) and 579 (Kennedy, J., concurring) (noting that acquiring an airline ticket could have vested the plaintiff with standing).

Accepting Appellant's argument would require the Court to violate the omitted-case canon by injecting a qualification into permissible Section 1983 plaintiffs. *E.g., Burlington N., Santa Fe Ry. Co. v. Lohman*, 193 F.3d 984, 985 (8th Cir. 1999) (the omitted-case canon prohibits adding words when that would defeat the purpose of the statute). The purpose of Section 1983 is to provide a remedy for the redress of constitutional grievances under color of State law. *First Choice*, 146 S. Ct. at 1126. The statute entitles "*any* citizen of the United States" to recovery. 42 USC § 1983 (emphasis added). It does not further require that the citizen must also be a resident of the locality at which the deprivation occurred. The relevant distinction is between an abstract objection to governmental conduct—solely learned of by reading about it in the newspaper—and direct,

unwelcome personal contact with the challenged display. *Red River I*, 679 F.3d at 1023–1024.

Appellant alternatively argues that Greaves’s injury was self-inflicted, and doesn’t count, because he *purposefully* traveled to Arkansas to personally observe the State’s affiliation with a particular religion. App. Br. 38 (citing *FEC v. Cruz*, 596 U.S. 289, 297 (2022)). *Cruz* precludes Appellant’s argument. The *Cruz* Court held that an injury resulting from the application of an unlawful enactment “remains fairly traceable to such application, even if the injury could be described in some sense as willingly incurred.” *Cruz*, 596 U.S. at 297. For Appellant’s point to strike home, the Display would have had to be the result of Greaves’s actions.

Greaves did not cause the State of Arkansas to affiliate itself with Christianity. He did not trick Appellant’s predecessors into installing and maintaining that Display. And he did not simply read about the issue in a news release. *Contra. Valley Forge*, 454 U.S. at 469. He traveled to Ground Zero, personally observed the

construction of that unlawful affiliation between Church and State, heard the prayerful benedictions of its supporters, and was therefore entitled to bring this challenge. (App. 2238, 2245) (R. Doc. 260-50, at 54, 61); see also (App. 3562-63); (R. Doc. 269-1, at 240-41); *accord. Red River I*, 679 F.3d at 1024; *Lujan*, 504 U.S. at 579 (Kennedy, J., concurring).

B. The Secretary enforces Act 274 and has no sovereign immunity.

Next, Appellant asserts without a single citation to the record that his office does not enforce Act 274. Appellant has the “methods of enforcement” at his disposal because, but for Act 274, it was the duty of his office to make a legislative proposal for the Baphomet monument. *See Bio Gen LLC v. Sanders*, 142 F.4th 591, 604 (8th Cir. 2025). He is also the legal custodian of State Capitol Grounds: it is ultimately his charge to determine what monuments go up and whether they stay. (App. 3748); (R. Doc. 286, at 4). His office receives monument proposals and participates in the review process through which an approved proposal formerly could obtain

assistance in securing legislative authorization. (App. 1213–1216, 1372); (R. Doc. 260-24, at 63–66); (R. Doc. 260-25, at 10). Act 274 now prevents that process from continuing without prior legislative authorization, and the Secretary’s office explained that TST’s application was halted on that basis. (App. 1580); (R. Doc. 260-33, at 17).

Prior to Act 274, it was incumbent upon the Arkansas Secretary of State to seek enactment of a bill to direct the emplacement of a monument on State Capitol Grounds after the Arts & Grounds Commission approved of it. (App. 3434); (R. Doc. 269-1, at 112) (“*Secretary* presents proposal to the General Assembly”) (emphasis added). TST received Arts & Grounds approval on January 25, 2017. (App. 3970); (R. Doc. 345, at 111). Nearly ten years and three officeholders later, no such proposal has been made. That’s because of Act 274. (App. 1213-1216); (R. Doc. 260-24, at 63-66); (R. Doc. 260-24, at 63-65).

Because three separate officeholders have since failed to move TST's application forward, in reliance on the validity of Act 274, the District Court easily found that these officeholders have at least "some connection with the enforcement of" that Act. (App. 3860); (R. Doc. 345, at 1 n. 3) (quoting *Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 960 (8th Cir. 2015)). This case was therefore properly brought to enjoin the ongoing enforcement of an unconstitutional statute, to which there is no sovereign immunity defense. *Ex parte Young*, 209 U.S. 123, 160 (1908).

C. TST independently has Equal Protection standing.

TST's standing is based on more than its members' direct and unwelcome contact with the Display, it also includes an allegedly-discriminatory barrier imposed on the pending Baphomet application. An applicant challenging such a barrier need not prove that it would have obtained the ultimate benefit, the constitutional injury is a denial of an equal opportunity to compete. *Ne. Fla. Chapter*,

Associated Gen. Contractors of Am. v. Jacksonville, 508 U.S. 656, 666 (1993).

TST submitted a concrete proposal, advanced to the public-hearing phase, and then encountered a newly created, allegedly discriminatory prerequisite that stopped further consideration. (App. 1639, 1580); (R. Doc. 260-36, at 11); (R. Doc. 260-33, at 17). Its challenge therefore concerns a specific application, not a generalized desire that government adopt a different message. Whether the evidence supports the District Court's factual findings is addressed in Part III.

Because TST was deprived of a fair opportunity to present a competing display, TST—if nobody else—has standing to challenge the Display.

II. The Display violates the Establishment Clause.

Appellant's Establishment Clause theory challenges a through-line of cases which prohibit denominational preference. According to Appellant, so long as a government can invoke some loose

historical pedigree, it may privilege Christian expression to the exclusion of all others. But that misstates the law. As the District Court rightly noted, the historical-practices inquiry concerns the “specific practice” at issue, not some highly generalized abstraction. (App. 3948); (R. Doc. 345, at 89) (quoting *Town of Greece*, 572 U.S. at 577).

The *American Legion* Court did not depose one “grand unified theory” of the Establishment Clause only to immediately enthrone another. See *Am. Legion*, 588 U.S. at 60 (plurality op.); *id.*, at 73 (Kagan, J., concurring) (“Although I too look[] to history for guidance, I prefer at least for now to do so case-by-case”) (internal citation omitted). The historical-practices test was billed as a “more modest” approach, one that “focuses on the *particular* issue at hand” and asks whether the Founders actually countenanced it—because, we are led to presume, the Founders would not have enacted the Bill of Rights only to act in contravention of their own ideals. *Am. Legion*, at 61 (plurality op.) (emphasis added). But see, e.g., *Lee v. Weisman*, 505 U.S. 577, 623-25 (1992) (Souter, J., concurring) (criticizing James Madison for exactly that); *McCreary Cnty., Ky. v. Am. C.L. Union of*

Ky., 545 U.S. 844, 896 (2005) (Scalia, J., dissenting) (same for Thomas Jefferson); *Van Orden v. Perry*, 545 U.S. 677, 726 n. 27 (2005) (Stevens, J., dissenting) (collecting additional examples).

Appellant nowhere provides a centuries-long tradition of emplacing civic monuments venerating the Ten Commandments, the “particular issue at hand;” nor does he claim this is a “longstanding” monument. He instead attacks a straw man: irrelevant examples of generalized acknowledgments of religion. *Town of Greece, Am. Legion*, and *New Doe Child #1* all direct an evaluation of the *specific* practice before them (*this* Ten Commandments monument), not some abstraction made vague enough to predetermine the outcome. See *Masterpiece Cakeshop v. Colorado C.R. Comm’n*, 584 U.S. 617, 652 (2018) (Gorsuch, J., concurring) (“Such results-driven reasoning is improper.”)

The question of this case is whether a State can single out one religion’s sacred text for official commemoration while denying a competing religious viewpoint an equal opportunity to compete. As

more fully discussed below, the answer is clearly “no.” That is exactly the sort of official denominational preference the Establishment Clause was designed to prevent. *See Torcaso v. Watkins*, 367 U.S. 488, 491 (1961); *Everson v. Board of Education*, 330 U.S. 1, 15 (1947).

A. The Display is anathema under the religious monuments cases.

Appellant opens with lengthy argument that the District Court erred by applying, even with a caveat, the *Lemon* test. Presuming the Court will find it was error to even mention the *Lemon* test, caveat notwithstanding, this Court may affirm “for any reason supported in the record, even if that reason is different from the rationale of the district court” and “even if it committed legal error in reaching the correct result.” *E.g., Wierman v. Casey’s Gen. Stores*, 638 F.3d 984, 1002 (8th Cir. 2011).

When analyzing an Establishment Clause issue, this Court considers “the most analogous Supreme Court decision.” *New Doe Child #1 v. United States*, 901 F.3d 1015, 1021 (8th Cir. 2018). Here, the

relevant inquiry is whether the final judgment accords with the Supreme Court’s religious monument cases: *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29 (2019); *Van Orden v. Perry*, 545 U.S. 677 (2005); *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844 (2005).

The decisive question is therefore whether the monument represents a contemporary governmental effort to promote religion. *McCreary County*, 545 U.S. at 881; *Van Orden*, 545 U.S. at 702 (Breyer, J., concurring);³ *Am. Legion*, 588 U.S. at 52. That question is answered by examining the monument’s history, including (1) whether it is newly erected or longstanding; (2) whether the record reveals a religious motivation for its emplacement; and (3) whether it generated immediate sectarian controversy. *See ibid.*

1. The Display is new, not longstanding.

The first consideration is the age of the monument. Appellant reads *Van Orden* and *American Legion* as conferring blanket

³ Justice Breyer’s concurrence controls. *See Marks v. United States*, 430 U.S. 188, 193 (1977).

authorization for Ten Commandments monuments. They do not. The dispositive feature in both cases was that the challenged monuments were “longstanding” fixtures whose meaning had developed over decades. *Van Orden*, 545 U.S. at 702–03 (Breyer, J., concurring); *Am. Legion*, 588 U.S. at 53–54. By contrast, *McCreary County* teaches that when a government newly erects a religious display and its contemporary history reveals a religious purpose, the Establishment Clause is transgressed. *McCreary Cnty.*, 545 U.S. at 866–74.

Appellant never once cites, much less distinguishes, *McCreary County*. Instead, he argues that the age of the monument is constitutionally irrelevant, *i.e.*, that Justice Breyer “didn’t imply ... [that] a short amount of time between installment and challenge creates a presumption of unconstitutionality.” App. Br., at 49-50 (emphasis removed). Appellant’s position is irreconcilable with the text of Justice Breyer’s *Van Orden* concurrence:

a more contemporary state effort to focus attention upon a religious text is certainly likely to prove divisive in a way that this longstanding, pre-existing monument has not.

Van Orden, 545 U.S. at 703 (Breyer, J., concurring) (emphasis added). Appellant’s argument is also irreconcilable with Justice Breyer’s *American Legion* concurrence (which Appellant fails to cite or distinguish): “The case would be different, in my view, if ... the Cross had been erected only recently.” *Am. Legion*, 588 U.S. at 67.

Even the *American Legion* plurality limited the presumption of constitutionality to “*longstanding* monuments.” *Am. Legion*, 588 U.S. at 52 (plurality op.) (emphasis added). Hence a majority signed onto the statement that: “retaining established, religiously expressive monuments ... is quite different from erecting or adopting new ones.” *Am. Legion*, 588 U.S. at 57. Appellant mischaracterizes binding precedent by contending the age of a monument is irrelevant.

As explained by the *American Legion* majority, the monument’s age is relevant for practical reasons. The original purposes of an old monument is more difficult to discern than a contemporary one. *See Am. Legion*, 588 U.S. at 52. The message conveyed by the monument can also change over time. *Id.*, at 53. And the purposes for

retaining a monument may differ from originally emplacing it. *Id.*, at 54-55. As a result, removing decades-old monuments (which have acquired additional meaning beyond religion over time) would appear as hostility to religion itself. *Id.*, at 56-57.

None of this can be said for Arkansas's Ten Commandments display, of course, because exactly 27 days transpired between its emplacement and the resulting challenge. (App. 3861); (R. Doc. 345, at 2). Unlike as in *Van Orden* (a 40-year monument) and *American Legion* (a 90-year monument), there have been no intervening decades for the original purposes to get lost to time; nor additional meanings to be acquired; nor new and different purposes for retaining it. Its naked religious purpose remains unclothed by time.

2. The record establishes official religious preference for the Display.

The second consideration is to evaluate the purpose of the Display. The legislative purpose for this Display was not to merely “acknowledge” religion, as Appellant wishes were so, but to elevate a particular religious message above all others for public veneration.

Official preference for a particular religious viewpoint violates the “clearest command” of the Establishment Clause. *See Larson v. Valente*, 456 U.S. 228, 244 (1982). The individual’s fundamental freedom of conscience requires free competition between religions, but “such equality would be impossible in an atmosphere of official denominational preference.” *Id.*, at 245.

Legislative purpose is determined from all available direct and circumstantial evidence. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993) (citing *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring)). Appellant contrarily argues that the Court is bound by State-law doctrines of statutory interpretation. *E.g.*, App. Br. at 46. The religious neutrality inquiry is not so constrained. Whether the case arises under the Free Exercise Clause, the Establishment Clause, or even the Equal Protection Clause, the question of whether a law has a religiously charged purpose is answered by reviewing *all* available direct and circumstantial evidence. *Id.*; *see also McCreary Cnty.*, 545 U.S. at 862.

One of the factors for consideration is the “historical background of the decision under challenge.” *Ibid.* Discussion of the Arkansas Ten Commandments Monument Display Act is incomplete without considering the near-verbatim Oklahoma Ten Commandments Monument Display Act which immediately preceded it. The District Court found (and Appellant does not contest) that both statutes were the product of the same lobbying effort: both directed a copy of the one in *Van Orden v. Perry*, both prescribed the same monument text, and both designated Liberty Legal Institute to defend the monument against constitutional challenges. (App. 3892); (R. Doc. 345, at 33).

It was undisputed below that between 2013 and 2015, Oklahoma’s Ten Commandments Display Act and its ensuing monument generated sectarian controversy. See (App. 3890); (R. Doc. 345, at 31). The Oklahoma controversy culminated in an order to remove the monument because it violated Oklahoma’s constitutional prohibition on governmental support for religion. *Prescott v. Okla. Capitol Pres. Comm’n*, 373 P.3d 1032, 1034 (Okla. 2015). Just a

few months before entry of that order, the same lobbying effort had caused the enactment of the Arkansas Display Act. (App. 3331); (R. Doc. 269-1, at 9). It is indisputable that Arkansas deliberately recreated that same Oklahoma sectarian controversy as part of a broader contemporary effort to elevate and venerate a preferred religious view.

The Display does not generically venerate the Ten Commandments as a concept, it specifically venerates the sacred text. *See McCreary Cnty.*, 545 U.S. at 869; *Stone v. Graham*, 449 U.S. 39, 41 (1980). The opening commandment declares, “I AM the LORD thy God,” and directs viewers to worship that God alone. (App. 683-684); (R. Doc. 260-2, at 1-2). The Display issues prominent commandments about exclusively religious obligations: worship of a particular deity, rejection of competing gods, prohibition of graven images, avoidance of blasphemy, and observance of the Sabbath. *See McCreary Cnty.*, 545 U.S. at 869; *Stone*, 449 U.S. at 41-42. To the extent the Display also includes generally acceptable prohibitions against, *e.g.*, murder and theft, those are contextualized by the

preceding sacred duties and prohibitions. The Display therefore communicates more than a vague respect for morality, as Appellant would have it, but rather advertises a specific set of theological propositions all predicated on the sole divine authority of its speaker.

The General Assembly communicated that religious claim through the legislative findings. The Display Act identifies the Ten Commandments as “*the* moral foundation” of American and Arkansas law and declared that “God has ordained civil government” and “endowed people with certain unalienable rights.” (App. 683-684); (R. Doc. 260-2, at 1-2) (emphasis added). Those are inherently religious claims concerning the interrelationship among God, government, and an individual’s rights and obligations. *See Malnak v. Yogi*, 592 F.2d 197, 201 (3d Cir. 1979) (Adams, J., concurring) (noting an outdated definition of religion was “belief in a relation to God involving duties superior to those arising from any human relation.”)

Rapert, the monument's principal legislative sponsor and donor, communicated that same religious claim. Appellant complains that the District Court considered Rapert's statements, but "contemporary statements by members of the decisionmaking body" is a specific factor to be considered. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977). To deal with the District Court's citation to *Edwards v. Aguillard*, 482 U.S. 578 (1987), Appellant offers a distinction without a difference: the sponsor's statements there were made at the legislative hearings. App. Br., 46-47 n. 3. But the *Edwards* Court also rejected affidavits comprising "postenactment testimony of outside experts," not because of the timing of those affidavits but because "none of the persons making the affidavits ... participated in or contributed to the enactment of the law or its implementation." *Edwards*, 482 U.S. at 597. Who makes the statement matters, not just when the statement is made.

Before introducing the Display Act, Rapert publicly asserted that America was founded upon "Judeo-Christian values." (App. 3776-3777); (R. Doc. 286, at 32-33, ¶ 139); (App. 3963); (R. Doc. 345, at

104). He later stated that Arkansas and the Nation would be better off if people “honored, followed and adhered to the Ten Commandments given by God Himself to Moses on Mt. Sinai.” (App. 3777); (R. Doc. 286, at 33, ¶ 141); (App. 3888, 3966); (R. Doc. 345, at 29 n. 67, 107). Rapert likewise explained that enactment of the Display Act was an example of Arkansas taking “a stand for something that honors God and the Bible” and thereby sending “a signal to everyone in the spiritual realm that Arkansas seeks to honor God and invites his blessing.” (App. 3778-3779); (R. Doc. 286, at 34-35, ¶ 147). Rapert is not some history or civics buff, his purpose for introducing the Display Act and donating the Display was to venerate the Ten Commandments because of their religious nature. By accepting and maintaining that monument, Appellant communicates official agreement with that purpose. *E.g., Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 472 (2009).

Another factor is to consider whether the decision was a “departure[] from the normal procedural sequence.” *Arlington Heights*, 429 U.S. at 267. Typically, a proposed monument would be applied for,

first, and only after it underwent administrative scrutiny would the General Assembly consider whether the monument should be emplaced. (App. 1213-1214, 1372); (R. Doc. 260-24, at 63-64); (R. Doc. 260-25, at 10). The Display Act reversed that order of operations and specifically exempted the Display from otherwise-applicable regulations, including that administrative review. (App. 685); (R. Doc. 260-2, at 3) (exempting the monument from ACA §§ 22-3-301 *et seq.* which pertains to the Capitol Master Plan, and –501 *et seq.* which pertains to Arts & Grounds Commission review); *contra.*, *e.g.*, Ark. Code Ann. § 22-3-1705 (the Firefighter’s Monument was subject to Arts & Grounds review first).

The General Assembly did not merely “accept” the Display, they rammed it through. Rapert said as much during the Arts & Grounds Commission proceedings:

[Y]ou don’t have to decide whether you do put up this monument or not ... The debate has already been had. The bill has already been passed. ... [I]t is the law[.]

(App. 1762); (R. Doc. 260-39, at 78). The General Assembly took a special interest in this monument, and it is not coincidence that it is the only memorial on State Capitol Grounds that furthers a religious proposition. (App. 2972, 2979-2983); (R. Doc. 266-6, 33, 40-44).

Consider also the source of funding for the Display. *See Felix*, 841 F.3d at 858; *accord. Van Orden*, 545 U.S. at 701 (Breyer, J., concurring) (considering the donor’s intent). Most of the initial funding came from Agape Church in Little Rock (\$12,600; or roughly 69%), and a further \$25,000 came from PureFlix, which bills itself as a “Christian Movie Studio,” with the purpose “to influence the global culture for Christ through media.” (App. 3766-3767); (R. Doc. 286, at 22-23); see also (App. 3881); (R. Doc. 345, at 22 nn. 51, 53) (the District Court overruled Appellant’s objections, and Appellant’s Brief offers neither evidence nor argument why these facts were genuinely disputed).

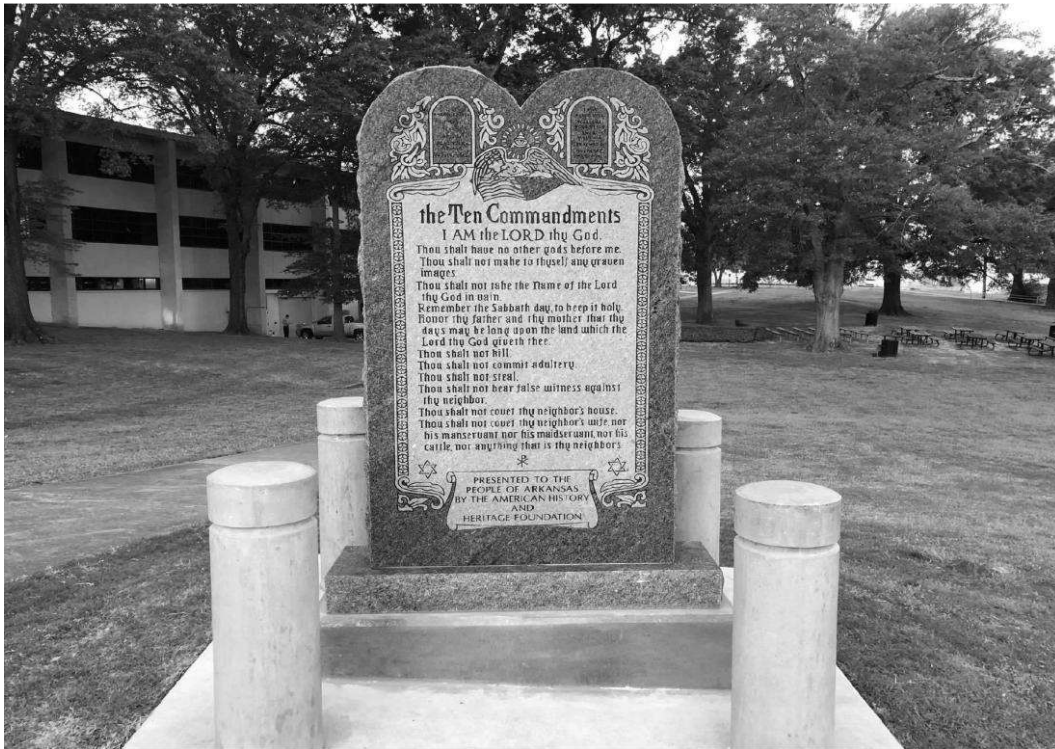
PureFlix presented its \$25,000 donation at the Capitol rotunda, using a podium bearing the State seal (supplied by Appellant’s

office), with Rapert and other legislators participating in the presentation. (App. 3766–3768); (R. Doc. 286, at 22–24). The contemporaneous news report attributed to PureFlix’s Troy Duhon a remark about the importance of Americans “honoring” the Ten Commandments. (App. 62–63); (R. Doc. 254-1, at 12–13).

Appellant will retort that *Summum* does not require courts to impute a donor’s religious purpose to the government merely because it accepts a gift. *Summum*, 555 U.S. at 476. But it also does not require courts to ignore the government’s own participation in that gift’s presentation. *See Felix*, 841 F.3d at 859. Here, the monument’s legislative sponsor publicly joined PureFlix representatives and fellow legislators in presenting the funds for the Display, under the auspices of State Government, with the State’s seal on full display, and emphasized the importance of observing their sacred duties, as such; not their incidental relationship to American law. These circumstances, considered together with the Display Act’s religious declarations and mandatory placement directive, support an

inference of shared religious purpose rather than the mere acceptance of a privately motivated donation.

Consider also the locale of the Display. Unlike in *Van Orden*, there are no other memorials or other non-religious context in sight:



(App. 3308); (R. Doc. 266-10); *contra. Van Orden*, 545 U.S. at 702 (Breyer, J., concurring); *cf. Sumnum*, 555 U.S. at 477 (“The message that a government entity conveys by allowing a monument to remain on its property may also be altered by the subsequent addition

of other monuments in the same vicinity.”) The only available meaning is apparent from the face of the monument: there are Ten matters, all religious, which viewers are Commanded to observe.

Appellant huffs that it is not his burden to prove that the Display Act and resulting display *is* constitutional, but that does not rebut the undisputed facts. The historical background, statutory text, departure from ordinary approval procedures, sponsor’s statements, religious funding, and physical setting all together establish an official purpose to venerate a particular religious text, not merely acknowledge its historical significance. Appellant’s Brief does not offer one genuine fact dispute or reasonable competing inference to defeat that showing. The District Court therefore correctly resolved the religious-purpose question on summary judgment.

3. The Display caused a religio-political controversy.

The last consideration is to evaluate the effect of the Display. One of the central purposes of the Establishment Clause was to prevent the sort of political controversy along religious lines that arise

when the government takes sides in religious disputes. *See* Micah Schwartzman *et. al.*, *The Structure of Religious Preference*, 139 Harv. L. Rev. 211, 251-53 and n. 336 (2025) (collecting authorities). Tensions among religious factions are inevitable in our pluralistic society. The Establishment Clause represents an armistice in which each faction is assured they can be left to their own devices without concern of governmental capture by one or more competing factions. Our pre-Constitutional experience is replete with warnings of what happens when that armistice is violated: even those who had just fled religious persecution were all too eager to turn the tools of oppression upon others. *E.g.*, *Torcaso*, 367 U.S. at 490; *Zorach v. Clauson*, 343 U.S. 306, 319 (1952) (Black, J., dissenting).

Sectarian political strife belongs to the present no less than the past. *See McCreary Cnty.*, 545 U.S. at 881. Hence the controlling opinion in *Van Orden* flagged as a constitutional concern political divisiveness being stirred by a contemporary effort to venerate a particular religion's text. *Van Orden*, 545 U.S. at 703 (Breyer, J., concurring). Indeed, it was the “stormy” history of the *McCreary County*

monument which partly distinguished the outcome in *Van Orden*. *Id.* Hence the fourth and fifth votes in *American Legion* found it noteworthy that the monument there posed “no controversy in the community.” *Am. Legion*, 588 U.S. at 67 (Breyer, J., concurring).

Of course, Appellant’s argument ignores the immediate sectarian controversy generated by the Display Act and resulting monument. Kelly Boyd testified that the monument was not “universally applauded,” that “people were strong both ways,” and that the Secretary’s office received significant correspondence concerning the monument, including opposition. (App. 1264-1265); (R. Doc. 260-24, at 114-115).

Proponents made the religious stakes explicit. Pastor Lonny Burks, representing pastors and people of several denominations, delivered more than 300 signed form comments to the Arts & Grounds Commission and described an ongoing effort to mobilize pastors and churchgoers in support of the monument. (App. 1693-1694); (R. Doc. 260-39, at 9-10). The form requested a monument

of “reverent and biblical and historical design,” one “befitting the greatness and eternal endurance of the declaration of God’s Law,” and sought to memorialize divine commands “to be obeyed in honor and expectation of God’s Son, the Prince of Peace, Jesus Christ, upon Whose shoulders all government shall ultimately rest.” (App. 1451); (R. Doc. 260-29, at 15).

Opponents appearing at the Arts & Grounds Commission described the Display as “unduly religious, archaic, and narrow.” (App. 1700); (R. Doc. 260-39, at 16). Another speaker noted its “divisive nature” and that it sought to “give legitimacy to a particular version of religious text as the basis for U.S. and Arkansas law.” (App. 1731-1732); (R. Doc. 260-39, at 47-48).

The religio-political controversy intensified when TST sought equal treatment for its Baphomet monument. Baphomet is a religious symbol that rejects the claimed supremacy of the God of Abraham, symbolizes harmonic balance, and responds to governmental preference for Christianity; TST offered the monument in hopes

that multiple religious displays would represent pluralism and religious freedom. (App. 1365-1366); (R. Doc. 260-25, at 3-4); see also (App. 3557-3558); (R. Doc. 269-1, at 235-236). The controversy surrounding Baphomet cannot be severed from the controversy surrounding the Display. TST proposed Baphomet specifically to “complement and contrast” the Ten Commandments monument and stated that it would withdraw the proposal if the Ten Commandments monument did not proceed. (App. 1490); (R. Doc. 260-31, at 38). The dispute over Baphomet was therefore not an unrelated controversy introduced into an otherwise settled setting. It was a direct response to Arkansas’s decision to confer official recognition on the Ten Commandments. The State’s resistance to that counter-display, in turn, exposed the religious lines along which the original Display divided the political community.

One day after TST received Arts & Grounds approval to proceed, Jason Rapert went on Facebook Live to declare it would be “a very cold, cold day in the pits of Hell” before a monument from The Satanic Temple would appear at the Arkansas Capitol. (App.

3798-3799); (R. Doc. 288, at 3-4, ¶ 8); (App. 3892); (R. Doc. 345, at 33 n. 78). Rapert introduced the bill that became Act 274. (App. 3799); (R. Doc. 288, at 4, ¶ 9); (App. 3893); (R. Doc. 345, at 34).

Public reaction tracked the religious divide. Appellant's office logged calls from members of the public, who voiced various opinions ranging from support for all religious monuments, for only specific ones, and for none at all. (App. 3340-3372, 3398); (R. Doc. 269-1, at 18-50, 76).

Members of the General Assembly joined the fray after Act 274 deprived TST of Appellant's legislative support to obtain a Baphomet bill.⁴ One legislator responded: "Hell no! And you can quote me on that!" (App. 3800); (R. Doc. 288, at 5, ¶ 11); (App. 3893); (R. Doc. 345, at 34 n. 84). Another explained, "we have to be selective about which monuments we believe the people of Arkansas want." (App. 3390); (R. Doc. 269-1, at 68). A third simply

⁴ The Equal Protection issue with insulating the Ten Commandments from competition by TST is addressed in Part III.

stated: “I do not support Satan.” (App. 3396); (R. Doc. 269-1, at 74). Without legislative authorization, further administrative consideration of Baphomet was immediately halted. (App. 1580); (R. Doc. 260-33, at 17).

The Baphomet aspect of this controversy does not show that TST merely “lost a political contest,” as Appellant would have it, but that Arkansas changed the rules to obstruct a religious dissenter’s participation. That is Hallmark # 4 of a merger between Church and State. *See Shurtleff v. City of Bos., Massachusetts*, 596 U.S. 243, 286 (2022) (Gorusch, J., concurring). In other words, this monopoly of religious expression on State Capitol Grounds is not an innocent incidence of an overwhelmingly Christian population, but rather the product of a stacked deck. *See Town of Greece*, 572 U.S. at 585. Act 274 revealed a “religious gerrymander,” which the First Amendment prevents. *Lukumi Babalu Aye*, 508 U.S. at 534.

The first monument survived less than one day before being destroyed. (App. 3878); (R. Doc. 345, at 19). At the second unveiling,

the crowd was notably religious with no notable presence by any historical societies; attendees shouted religious benedictions like “Praise God!” (App. 3562-63); (R. Doc. 269-1, at 240-41).

Since the Display was erected, Rapert (the principal legislative sponsor and donor of the monument) repeatedly stated that its purpose was to advocate public adherence to Ten Commandments. (App. 3568); (R. Doc. 269-1, at 246). He characterized this challenge as an attack on “God’s word.” (App. 3570); (R. Doc. 269-1, at 248). In a 2018 interview, he described enactment of the Display Act as Arkansas taking a stand that honored God and the Bible and that invited divine blessing. (App. 3778–3779); (R. Doc. 286, at 34–35, ¶ 147).

The religio-political controversy surrounding the Display was not incidental to its purpose but rather followed directly from the State’s decision to elevate one religious viewpoint over competing faiths. The specific controversy was whether Arkansas should

officially venerate a particular religious text, not some academic discourse about the theory of law or its philosophical origins.

Taken together, the undisputed facts distinguish this Display from the longstanding monuments upheld in *Van Orden* and *American Legion* and are in line with *McCreary*. The Display was challenged only 27 days after its dedication, its contemporary history reveals a governmental purpose to venerate a particular religion's sacred text, and its placement immediately stirred political conflict along religious lines. Appellant identifies no genuine dispute over those material facts and provides no reasonable competing inference sufficient to recast this particular Display as a secular historical commemoration. Nor does invoking the Ten Commandments' historical significance in the abstract answer the constitutional significance of this monument's age, purpose, and contentious history. The District Court therefore correctly concluded that the Display violates the Establishment Clause, and its judgment should be affirmed.

B. Coercion is not the touchstone of an Establishment Clause analysis.

Appellant contrarily frames this case as though the absence of coercion ends the inquiry. It does not. The Supreme Court has long recognized that the Establishment Clause reaches governmental favoritism toward religion and denominational preference, even where no one is compelled to participate in a religious exercise.

Justice O'Connor explained that "this Court has never relied on coercion alone as the touchstone of Establishment Clause analysis." *Cnty. of Allegheny v. Am. C.L. Union Greater Pittsburgh Chapter*, 492 U.S. 573, 627-28 (1989) (O'Connor, J., concurring in part and concurring in the judgment). The Court had already recognized that "proof of coercion might provide a basis for a claim under the Free Exercise Clause," but "is not a necessary element of any claim under the Establishment Clause." *Id.*, at 627 (quoting *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 786 (1973)). Indeed, if coercion were required for both clauses, "the Free Exercise Clause [would be] a redundancy." *Id.*, at 628; see also *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 223 (1963) ("The distinction between

the two clauses is apparent. A violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.”). The prayer policy at issue in *Schempp* was unconstitutional despite that “students may absent themselves upon parental request.” *Id.*, at 224-25.

Justice Souter made the same point in *Lee v. Weisman*, 505 U.S. at 618 (Souter, J., concurring). Rejecting any suggestion that coercion is the sole Establishment Clause concern, he noted that five Justices in *County of Allegheny* invalidated the public display of a nativity scene even though “the crèche coerced no one into accepting or supporting whatever message it proclaimed.” *Id.* Likewise, he observed that *Wallace v. Jaffree* invalidated a moment-of-silence statute not because students were compelled to pray, but because the enactment of the law “convey[ed] a message of state approval of prayer activities in the public schools.” *Id.*, at 618-19 (discussing *Wallace v. Jaffree*, 472 U.S. 38 (1985)).

The Supreme Court again rejected the coercion-is-required argument in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). There, a football-game prayer scheme was unconstitutional even though no student was literally forced to pray. The *Santa Fe* Court specifically rejected argument that it was constitutional because it was not coercive, explaining that the Establishment Clause is not concerned “only” with coercive worship but also with “other, yet equally important, constitutional injuries,” such as when government places its authority behind religious exercises and subjects inherently religious questions to majoritarian control. *Id.*, at 314.

Nor is this coercion-is-required theory consistent with the Supreme Court’s contemporary treatment. Less than two years ago, the Court unanimously invalidated a state law on Establishment Clause grounds in *Catholic Charities v. Wisconsin*, 605 U.S. 238. Again, the analysis turned not on coercion but on denominational preference. Reaffirming *Larson*, the Supreme Court reiterated that “[t]he clearest command of the Establishment Clause is that the government may not officially prefer one religious denomination over

another.” *Id.*, 605 U.S. at 247. And reaffirming *Santa Fe*, the Supreme Court reiterated the prohibition on official denominational preference and the constitutional significance of governmental action treating nonadherents as outsiders. *Id.* The outcome in *Catholic Charities* cannot be squared with a view that coercion is the *sine qua non* of an Establishment Clause claim.

This should not be surprising. Contrary to Appellant’s suggestion that a plaintiff must show an 18th-Century “establishment,” the Supreme Court has *repeatedly* explained that the Establishment Clause prohibits “more than classic, 18th-century establishments.” *E.g.*, *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 709 (1994); *see also Torcaso*, 367 U.S. at 493-94 (the Religion Clauses have “a secular reach far more penetrating in the conduct of Government than merely to forbid an ‘established church’”).

This interpretation of the Establishment Clause goes back to the First Congress, with Representative Daniel Carroll noting that “the rights of conscience are, in their nature, of peculiar delicacy, and

will little bear the gentlest touch of governmental hand.” *Braunfeld v. Brown*, 366 U.S. 599, 616 (1961). Hence the Religion Clauses prohibit “temporal institutions from religious interference ... [and] secured religious liberty from the invasions of the civil authority.” *Everson*, 330 U.S. at 15. As Madison famously put it, “it is proper to take alarm at the first experiment on our liberties.” James Madison, et al., *Memorial and Remonstrance Against Religious Assessments* (reprinted in full at *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 64-72 (1947)).

It is in not the American tradition to wait until the government “mandate[s] attendance” at church, for example, but rather to shut down the effort at the first breath of endorsement. *Compare Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring) (Hallmark #2 of a merger between Church and State is that “the government mandated attendance in the established church and punished people for failing to participate”) *with, e.g., Wallace v. Jaffree*, 472 U.S. 38, 60 (1985) (invalidating a daily moment of silence which was intended to promote prayer; no coercion required).

Appellant's reliance on the absence of coercion does not rebut the undisputed showing of an official denominational preference. The Establishment Clause prohibits government from preferring one religious denomination over another, whether anyone is compelled to participate in a religious exercise or not. *Everson*, 330 U.S. at 15; *Cath. Charities*, 605 U.S. at 247. Here, the constitutional injury lies not in compelled obedience to the Ten Commandments but in Arkansas's use of governmental authority to elevate a preferred sacred text while obstructing competing religious expression. Appellant's coercion-only theory supplies no answer to that independent constitutional prohibition and therefore provides no basis to disturb the Establishment Clause judgment.

III. Act 274 violates the Equal Protection Clause.

The Equal Protection claim raises the purposeful efforts to insulate the Display from religious competition, which is a distinct injury from propounding the Display's religious message itself. TST does not claim that Arkansas was required to accept the Baphomet

monument because it is religious, but rather that Arkansas cannot deliberately disadvantage its pending application because of disagreement with its competing religious message. Even reversal of the Establishment Clause judgment would therefore not resolve that Equal Protection claim. If the Court leaves Equal Protection liability intact while reversing the order to remove the Display Act, it should remand for reconsideration of the appropriate relief.

A. Government speech is limited by the Establishment Clause.

Appellant's principal defense against the Equal Protection claim is that permanent monuments are government speech, and that Arkansas was therefore free to reject TST's religious message. Appellant correctly observes that permanent monuments ordinarily constitute government speech. But that principle does not resolve this case, because government speech "must comport with the Establishment Clause." *Summum*, 555 U.S. at 468.

That limitation is dispositive. In ordinary matters of public policy, government may favor one viewpoint over another. It may

promote one economic theory, endorse one educational philosophy, or select one public policy among competing alternatives. As Justice Scalia rightly observed, “[i]t is the very business of government to favor and disfavor points of view.” *Nat’l Endowment for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring in the judgment). But religion is different. The Religion Clauses remove the subject of religion from the political realm. *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“One’s right to ... freedom of worship ... may not be submitted to vote; they depend on the outcome of no elections.”) As the Supreme Court just reaffirmed, “[t]he law knows no heresy, and is committed to the support of no dogma.” *Cath. Charities*, 605 U.S. at 249.

Appellant therefore errs when he treats religion as merely another topic on which Arkansas may choose favored messages and reject disfavored messages. Arkansas simply was not free to “disagree” with TST’s viewpoint. (R. Doc. 258, at 24). That’s not to say that Arkansas was constitutionally bound to accept the Baphomet monument just because it is religious. Only that Arkansas cannot

change the rules to prevent a fair applications process due to an official disfavor of TST's religious identity.

B. TST is a suspect class.

Religion is a suspect classification. *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1016 (8th Cir. 2006). The District Court provided five pages of discussion which fully explain why the undisputed material facts require a summary finding that TST is a "religion." (App. 3984-3989); (R. Doc. 345, at 125-130). Appellant purports to challenge that all in one footnoted discussion. App. Br. 58, at n. 10. The footnote amounts to two sentences. The first sentence offers nothing more than metaphysical doubt over TST's religiosity, which is insufficient to raise a genuine fact dispute. *E.g., Torgerson*, 643 F.3d at 1042. The second sentence offers an isolated perceived inconsistency in TST's self-description. Religious beliefs need not be "acceptable, logical, *consistent*, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

The record conclusively establishes TST's religiosity. The test is whether the set of beliefs are "religious" within the claimant's "own scheme of things." *United States v. Seeger*, 380 U.S. 163, 185 (1965). This Court has not adopted a more specific test, but the Third Circuit has. *Malnak*, 592 F.2d 197, 207-10 (Adams, J., concurring), adopted, *Afr. v. Com. of Pa.*, 662 F.2d 1025 (3d Cir. 1981). Relevant factors are whether the set of beliefs (1) address fundamental and ultimate questions; (2) offer a comprehensive belief system; and (3) manifests external signs of religion, like ceremony, clergy, structure and organization, efforts at propagation, and observation of holidays. *Id.*

TST introduced un rebutted evidence that its beliefs address fundamental questions. TST's religious ideology teaches that adherents are engaged in an ongoing struggle between enlightenment and tyranny and that principles such as self-determination, individual dignity, pluralism, democracy, and free expression provide guidance for navigating human existence. (App. 3555-56); (R. Doc. 269-1, at 233 ¶ 2). TST's co-founder likewise testified that Satan functions as

a symbolic figure through which adherents understand those ideals and their place in the world. (App. 2228-2229); (R. Doc. 260-50, at 44-45). Those principles informing TST members' moral and ethical decisionmaking. (App. 2403); (R. Doc. 260-51, at 21).

The record further demonstrated that TST possesses a coherent and comprehensive belief system rather than a collection of isolated political views, as Appellant's footnote suggests. TST's belief system is a unified religious worldview centered on a common set of principles and values. (App. 3555-3556); (R. Doc. 269-1, at 233-234 ¶ 2). Members share a common understanding of Satan as a metaphorical embodiment of enlightenment values rather than a literal supernatural being. (App. 2228-2229); (R. Doc. 260-50, at 44-45).

The record also demonstrated the existence of distinct religious iconography. Of significance here, TST regards Baphomet as a religious symbol. (App. 3557); (R. Doc. 269-1, at 235 ¶ 8). TST members explained that Baphomet serves as a symbolic representation of harmonic balance and a memorial to the victims of demonization,

both of which are principles embodied within the religion, and occupies a role comparable to religious symbolism employed by other faith traditions. (App. 3557); (R. Doc. 269-1, at 235 ¶ 8).

There was also evidence of ceremony, clergy, and congregation. TST maintains local congregations through which members gather for religious fellowship and practice. (App. 3557); (R. Doc. 269-1, at 235, ¶ 6); (App. 3989); (R. Doc. 345, at 130). Members participate in recurring community events and congregational fellowship. (App. 3562); (R. Doc. 269-1, at 240 ¶ 4).

Therefore, the IRS recognizes TST as a “church.” (App. 3406); (R. Doc. 269-1, at 84). And every court to confront an evidentiary question about TST’s religiosity has easily found its bona fides. *Satanic Temple v. City of Scottsdale*, No. CV18-00621-PHX-DGC, 2020 WL 587882, at *7 (D. Ariz. Feb. 6, 2020); *Satanic Temple, Inc. v. Saucon Valley Sch. Dist.*, 671 F. Supp. 3d 555, 575 (E.D. Pa. 2023); (App. 3986); (R. Doc. 345, at 127).

And TST is not just *a* religion, it is a politically powerless one. Since before the Founding, “zealous sectarians entrusted with governmental power” have been wont to “torture, maim, and kill those they branded ‘heretics,’ atheists’ or agnostics.” *Zorach*, 343 U.S. at 319 (Black, J., dissenting). TST’s membership falls within that category of historically oppressed people. The Supreme Court has long recognized that religion is a suspect classification because religious minorities cannot be expected to protect themselves through ordinary political processes. *See Larson*, 456 U.S. at 246 n. 23. Likewise, heightened scrutiny is appropriate where a group’s political powerlessness leaves it vulnerable to the “majoritarian political process.” *Plyler v. Doe*, 457 U.S. 202, 216 n. 14 (1982).

The record demonstrates precisely that concern. To Hargett’s awareness, TST’s Arkansas membership consisted of about twenty-five to thirty individuals. (App. 3497-98); (R. Doc. 269-1, at 175-76). When TST sought legislative sponsorship after enactment of Act 274 deprived it of Appellant’s political-insider support, legislators rebuffed the request with statements such as “Hell no! And you

can quote me on that!,” “we have to be selective about which monuments we believe the people of Arkansas want,” and “I do not support Satan.” (App. 3320, 3390, 3396); (R. Doc. 269-1, at 61, 68, 74). Rapert testified he finds TST’s organizational beliefs to be “vile,” “unnecessary,” and “an affront to every American citizen.” (R. Doc. 269-1, at 141). He testified it was not foreseeable that TST could ever get the General Assembly to “pass[] a bill to do anything just because most people probably feel the way I do.” (R. Doc. 269-1, at 141). These responses illustrate why the Constitution does not leave religious equality to the political process.

Appellant would have this Court reduce fundamental rights to a popularity contest, but both the First Amendment and the Equal Protection Clause both prohibit exactly that.

C. Act 274 insulated a preferred religious view from competition.

Appellant’s argument that both monuments required legislative approval misses the relevant distinction. Legislative authorization was always necessary, true, but before Act 274 an applicant would

complete administrative review before seeking that authorization through a political insider. If the Commission approved the proposal, Appellant's office would prepare the bill and seek the legislative sponsor. (App. 1213-1215, 1372); (R. Doc. 260-24, at 63-65); (R. Doc. 260-25, at 10). Act 274 changed the order of operations to require legislative authorization, first, which immediately stopped TST's pending application and withdrew Appellant's office as a means of lobbying support. (App. 1215-1216); (R. Doc. 260-24, at 65-66); (App. 1580); (R. Doc. 260-33, at 17).

The injury was a fair opportunity to compete. Requiring TST to secure legislative approval without first completing the process that could produce such approval was therefore a substantive disadvantage, not merely a change in administrative process.

Appellant contends that Act 274 only establishes an approval process and does not facially discriminate along religious lines. App. Br. 66, 70–71. But facial neutrality does not answer the evidence that religious discrimination motivated the disadvantage

imposed on TST, and TST alone. When a facially neutral law produces an adverse impact, the question is whether discriminatory purpose was a “motivating factor” in its enactment. *Arlington Heights*, 429 U.S. at 265–268. That inquiry considers all direct and circumstantial evidence of intent, including the historical background, sequence of events, departures from ordinary procedures, and contemporary statements of decisionmakers. *Id.*

And the record does not rest solely on one legislator’s motivation, as Appellant would have it. Rapert’s statements are part of a larger record: as TST’s application was advancing through administrative review; Act 274 immediately interrupted that progress; the favored monument already possessed legislative authorization; and legislators’ responses to TST’s requests included expressly religious objections. These circumstances must be considered together. Appellant’s objection to relying on Rapert alone does not answer the combined evidence of discriminatory purpose and effect.

The District Court specifically found that the purpose of Act 274 was to deprive TST of an opportunity to compete with Christianity in the public sphere. (App. 3936); (R. Doc. 345, at 77). And that purpose was accomplished by: (1) immediately halting the process to advance the Baphomet monument; and (2) depriving TST from Appellant’s (a political insider’s) presentation of the Baphomet proposal to the General Assembly. (App. 3998); (R. Doc. 345, at 139). As a result of Act 274, it was “politically improbable that TST would ever get its monument placed.” (Id.)

The District Court’s findings both prongs of an Equal Protection claim. *Keevan v. Smith*, 100 F.3d 644, 650 (8th Cir. 1996). The burden was therefore on Appellant to establish that the same law would have been enacted without the impermissible purpose. *Arlington Heights*, 429 U.S. at 270 n.21; *Hunter v. Underwood*, 471 U.S. 222, 228 (1985). That burden is not met merely by identifying efficiency as a conceivable legitimate interest, Appellant needed to answer the evidence that discriminatory purpose motivated this enactment and establish that the same decision would have resulted without it.

That showing was absent. The District Court correctly noted that absence of any evidence “that the General Assembly would have enacted Act 274 but for the fact that, in January 2017, a subcommittee of the State Capitol Arts and Grounds Commission gave TST approval to move on to the next phase of the monument approval process.” (App. 4000); (R. Doc. 345, at 141). And, as the District Court correctly noted, “Nothing in the language of Act 274 ... indicates that it was enacted to improve efficiency.” (Id.)

TST, on the other hand, provided ample evidence of the but-for causation. On January 25, 2017, the Arts & Grounds Commission Subcommittee reviewed TST’s Baphomet proposal, found it "sufficient" for advancement, and approved it to proceed to the next phase of the monument-review process. (App. 1630, 1639-1640); (R. Doc. 260-36, at 2, 11-12). The next step in the approval process was to schedule and hold a public comment period. (App. 1372); (R. Doc. 260-25, at 10). But the very next day, before that public comment period was scheduled, Rapert publicly declared that it would be “a very cold, cold day in the pits of Hell” before a monument

from TST would appear on State Capitol grounds. (App. 3319-20); (R. Doc. 269-1, at 127, 142, 165). Rapert introduced the bill that became Act 274. (App. 3379); (R. Doc. 269-1, at 57).

While Act 274 was winding its way through the General Assembly, a public comments period was set for May 11, 2017. (App. 3377); (R. Doc. 269-1, at 55). But Act 274 was enacted on February 22, 2017; less than one month after TST received approval to proceed toward a public comment period. (App. 3374); (R. Doc. 269-1, at 52). According to the General Assembly, the possibility that Baphomet could get so much as a public comments period was an “emergency” requiring immediate legislative intervention and oversight. (Id.) Because of Act 274, the approval process stopped completely. (App. 1580); (R. Doc. 260-33, at 17). Act 274 only ever detrimentally affected TST. See (App. 3414); (R. Doc. 269-1, at 92). The Gold Star Family monument had no trouble getting passed, but that doesn’t present an alternative religious viewpoint to Christianity and had preexisting legislative support. (Id.)

Appellant downplays TST's efforts to obtain a legislative sponsor without confronting the point that Act 274 deprived TST of a presentation by a political insider. See (App. 1372); (R. Doc. 260-25, at 10) ("*Secretary* presents proposal to the General Assembly") (emphasis added). Prior to Act 274, Appellant's office would "write a bill and find us a sponsor and ask that sponsor" for support. (App. 1214); (R. Doc. 260-24, at 64). Act 274 took that away from TST. (App. 1215-1216); (R. Doc. 260-24, at 65-66).

Appellant invokes the Gold Star monument and disputes the inference of discriminatory purpose. App. Br. 68–70. The Gold Star monument had preexisting legislative approval, so Act 274 was never going to detriment its chances. Regardless, another monument's ability to secure legislative authorization does not diminish that TST was deprived of an opportunity to complete its pending administrative review which would have provided assistance in obtaining legislative approval. The relevant question is whether the disadvantage imposed on TST was motivated by animus against

TST's religious identity, not whether Act 274 prohibited every other monument from success.

Even if rational-basis review applies, the Equal Protection claim does not fail merely because administrative efficiency is a legitimate interest in the abstract. TST does not contend that Arkansas may never change its monument-approval process to require legislative approval. But Arkansas cannot use that power specifically to disadvantage a religious minority. A bare governmental desire to harm a politically unpopular group is not a legitimate interest. *U. S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). The combined evidence of religious hostility, immediate interruption of TST's pending application, and preservation of the favored monument's position supports that conclusion here.

Because Appellant raises no genuine issue of material fact to undermine either of the District Court's salient findings on purpose and effect, the Court must affirm the Equal Protection Clause judgment.

D. The Equal Protection claim requires an effective remedy.

The District Court declined to enjoin Act 274 because it selected removal of the Ten Commandments monument as the remedy for the unequal treatment. (App. 4005); (R. Doc. 345, at 146). That relief is fair and proper, and the Court should affirm it. *See Heckler v. Mathews*, 465 U.S. 728, 740 (1984).

But if this Court reverses the order to remove the Display, it cannot leave the independently established violation without an effective remedy. In that event, the Court should remand for reconsideration of appropriate declaratory and injunctive relief, including relief directed to the discriminatory procedural barrier. That request does not presume entitlement to permanent installation of Baphomet, it just asks that the District Court should determine how to remedy the surviving violation in light of this Court's disposition in the first instance.

CONCLUSION

WHEREFORE the Court should affirm the judgment and injunction. Alternatively, if the Court sustains Equal Protection liability but reverses the removal remedy, it should remand for reconsideration of appropriate relief on the surviving Equal Protection claim.

Respectfully submitted on October 6, 2026,

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CERTIFICATE OF SERVICE

NOTICE IS GIVEN that I, Matt Kezhaya, efiled the foregoing document by uploading it to the Court's efilings system on October 6, 2026, which sends service to registered users, including all other counsel of record in this cause. Paper copies to follow based on the Clerk's instructions. *s/ Matt Kezhaya*

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