

## **Testimony of the American Civil Liberties Union**

ALABAMA STATE TEXTBOOK COMMITTEE  
Public Hearing, September 9, 2008

Thank you for having me here this morning. I am Daniel Mach, Director of Litigation for the ACLU Program on Freedom of Religion and Belief. The ACLU is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the preservation and defense of constitutional rights and civil liberties. The ACLU's Program on Freedom of Religion and Belief specializes in religious liberty issues and works to help ensure that governmental laws and practices neither promote religion nor interfere with its free exercise. The ACLU has about 2,000 members here in Alabama, where we devote substantial effort to public education, policy work, and litigation in support of religious liberty.

I am here today to address the general legal rules governing Bible courses in public schools, and, more specifically, to urge this body not to approve the textbook materials created by the National Council on Bible Curriculum in Public Schools (NCBCPS).

At the outset, I want to emphasize that it is constitutional for public schools to teach courses on the Bible, other religious texts, or religion – if done objectively, and not from a devotional perspective. Indeed, this standard of objectivity has been the constitutional requirement in the United States for more than forty years,<sup>1</sup> and is widely accepted by civil liberties and religious groups across the political and ideological spectrum. Many groups from diverse perspectives have even joined together to issue guidance on how religion or the Bible

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<sup>1</sup> See *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963) (noting that public schools can constitutionally teach courses on religion or the Bible “when presented objectively as part of a secular program of education”).

may be taught in accordance with the First Amendment.<sup>2</sup> As those groups – and the courts – agree, public school Bible courses cannot promote or disparage any particular religious viewpoint, encourage acceptance of any faith, or strive to conform students to any specific religious belief. In short, a public school course covering these subjects – whether mandatory or elective – must be academic and objective, and should be designed to give students an understanding of religion, rather than endorsing or promoting any particular religious (or anti-religious) viewpoint.

It is not surprising that some people would like to use public schools as means of promoting their particular religious beliefs. Their goal is not to have students learn *about* religion in a constitutionally permissible way, or to further legitimate academic studies, but to use public schools to persuade – perhaps “indoctrinate” is a more accurate word – children to accept and believe in their particular religious views.

One of the more egregious examples of this problem is the NCBCPS, whose curricular texts are now under consideration by this Committee. The NCBCPS Bible curriculum is devotional and doctrinaire, not objective, and is designed to promote a particular version of Protestant Christianity. While the theological viewpoints expressed in the NCBCPS curriculum are constitutionally protected when taught in *Sunday* schools, they are not appropriate to be taught in *public* schools. Not only is the NCBCPS not published by any reputable or recognized publisher of textbooks, its previous editions have been replete with factual errors and attempts to

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<sup>2</sup> See, e.g., “The Bible & Public Schools: A First Amendment Guide,” a summary of the applicable law prepared by the First Amendment Center and the Bible Literacy Project (available online at [http://www.freedomforum.org/publications/first/BibleAndPublicSchools/bibleguide\\_reprint.pdf](http://www.freedomforum.org/publications/first/BibleAndPublicSchools/bibleguide_reprint.pdf)). Although the ACLU has taken no formal position with respect to this summary document, the guide has been endorsed by a diverse collection of national organizations, including, among others: the Christian Legal Society, the National Association of Evangelicals, the Baptist Joint Committee on Public Affairs, the Anti-Defamation League, the National Education Association, and the National School Boards Association.

proselytize. Scholarly reviews of the NCBCPS have been sharply critical.<sup>3</sup> We are aware of no favorable review whatever in any recognized scholarly source. Indeed, the advocates of the NCBCPS are better known for their political and religious opinions than for any scholarly expertise on the Bible.

The NCBCPS curriculum is deeply flawed and constitutionally deficient. The errors in the curriculum inhere in its very structure and methodology, and flow not just from what the curriculum includes but also from the information, analysis, sources, and references the curriculum omits. Because the legally objectionable features of the NCBCPS are far too numerous and pervasive to describe exhaustively here, I will describe only a few examples of those problems.

Among other things, the NCBCPS curriculum presents the Bible from the perspective of Christianity in general, and a particular interpretation of Protestant Christianity specifically. For example, the curricular materials frequently instruct students that the New Testament fulfills prophecies contained in the Hebrew Bible (what the curriculum typically refers to by the Christian term “Old Testament”) – as when the materials depict a letter in the Hebrew alphabet as the crucifixion, or describe Isaiah as foretelling the coming Jesus.

The NCBCPS curriculum teaches the Bible as literal, historical truth, contrary not only to a variety of Catholic, Orthodox Christian, and Jewish interpretations, but also to many – perhaps most – other Protestant interpretations. Students are asked, for instance, to answer true/false questions such as “Jesus was resurrected on a Sunday,” study dated chronologies of Biblical

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<sup>3</sup> See, e.g., Brennan Breed & Kent Harold Richards, “Review of *The Bible in History and Literature*,” *Religion and Education*, Vol. 34, No. 3, at 94-102 (Fall 2007); Mark A. Chancey, “A Textbook Example of the Christian Right: The National Council on Bible Curriculum in Public Schools,” *Journal of the American Academy of Religion*, Vol. 75, No. 3, at 554-581 (Sept. 2007).

events, and examine maps plotting locations such as the Garden of Eden and the Tower of Babel. In another example, the NCBCPS materials assume the literal truth of the creation account in Genesis, asking students, “If all living things had been created in a different order, how would it affect our world today?”

The curriculum also shows no serious familiarity with scholarly debate over the dating and authorship of the Bible. Despite centuries of scholarship regarding the actual authorship of various books of the Bible – known to scholars as “source criticism” – students are not told in any meaningful way that such scholarship exists. Rather, they are expected simply to accept unquestionably Biblical claims of authorship – particularly with respect to the Gospels and to “Moses, author of the Torah” – and then to search for the proclaimed author’s meaning in the text. While an objective course does not need to endorse source criticism as the dominant form of interpretation, the NCBCPS shows virtually no familiarity with it and offers no meaningful discussion of this established method. Rather than presenting students with an objective sampling of the many different interpretations that scholars and theologians have made, it presents as self-evident one particular viewpoint that assumes that the Bible is literally true and inerrant.

In addition, the NCBCPS curriculum uses the Bible to inculcate religious life lessons. For example, the curriculum recommends that students read Paul’s admonitions and then discuss what implications this message has for Christians; the NCBCPS’s prescribed “answer” explains that for hundreds of years there have been three ways of understanding how Christians believe “we” are to interact with the state. Similarly, the curriculum recommends the use of supplemental materials such as *Halley’s Bible Handbook*, lauded on its back cover as a book that

“in one edition after another, has aided the sincere Bible student to find his way more deeply into the blessed and saving knowledge of our Lord and Savior, Jesus Christ.”

Finally, the NCBCPS course instructs students in American history from a sectarian and academically indefensible point of view to promote a particular religious interpretation of American history that is not part of objective historical scholarship. The religious diversity of the Founding Fathers is well known, as is the favoritism of many prominent Founders towards Deism. The NCBCPS curriculum, however, handpicks quotations – few of which are actually sourced, most of which are taken out of context, and many of which are entirely spurious – to present not an objective view of American history, or indeed even an acknowledgement of multiple interpretations, but instead to provide an inaccurate, monolithic view of the Founders, including Thomas Jefferson, as champions of a Protestant Christian nation. The NCBCPS materials suggest starting the course by showing students a WallBuilders video, “Foundations of American Government,” which teaches that only religion can promote morality (a federal district court in Mississippi enjoined a school district from showing a similar WallBuilders video, “America’s Godly Heritage,” in history classes<sup>4</sup>); the NCBCPS then concludes with an assignment asking students to “[d]escribe why a constitutional republic is a form of civil government that complies, in its design, with Biblical notions such as personal liberty and the role of civil authorities.” Alternate interpretations are not provided, let alone presented objectively; and the absence of democratic governments in Biblical times, among other things, is never mentioned.

Given the myriad, pervasive constitutional flaws in the NCBCPS curriculum, its use in public schools has not withstood legal scrutiny. Last May, the ACLU and a coalition of allies

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<sup>4</sup> *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 528, 599 (N.D. Miss. 1996).

filed a federal lawsuit on behalf of eight parents in Odessa, Texas, challenging the NCBCPS curriculum as a violation of their religious liberty under the First Amendment.<sup>5</sup> Our suit did *not* concern the school district's threshold decision to offer a Bible course, but rather was filed to stop the district from using the NCBCPS curriculum to teach the Bible in an unconstitutional manner. After nine months of litigation, the school district settled the suit by abandoning the NCBCPS curriculum. One condition of the settlement was that the district may *never again* teach an NCBCPS-based curriculum. The school district may continue to offer a Bible course, but only with a new curriculum developed under strict procedures designed to minimize Establishment Clause violations.

Contrary to NCBCPS's claims, Odessa is not the only place where its curriculum has been removed. A federal court in Lee County, Florida enjoined as unconstitutional an earlier version of the NCBCPS New Testament curriculum in 1998.<sup>6</sup> After that decision, Florida adopted new, more objective standards to guide school districts offering a Bible course. And though NCBCPS revised the curriculum slightly to protect its disingenuous claim that it has never successfully been challenged in court, our subsequent suit in Texas illustrates that such revisions did not amount to a newfound respect for religious liberty.

Any school district that teaches a Bible course using the NCBCPS curriculum runs the considerable risk of lengthy, expensive, and ultimately unsuccessful litigation. The potential costs of using these dubious textbooks are substantial, both in terms of school districts' legal expenses and Alabama students' and parents' religious liberty. It would be far better for Alabama schools to spend limited taxpayer resources offering legitimate, constitutionally

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<sup>5</sup> See *Moreno, et al. v. ECISD*, No. 07-cv-0039 (W.D. Tex., filed May 16, 2007) (available at [http://www.aclu.org/pdfs/religion/odessa\\_complaint.pdf](http://www.aclu.org/pdfs/religion/odessa_complaint.pdf)).

<sup>6</sup> See *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d 1426 (M.D. Fla. 1998).

acceptable courses, than to pay lawyers to defend unconstitutional efforts to promote particular religious doctrines.

Accordingly, the ACLU urges this Committee to reject the NCBCPS curriculum materials now under consideration.