



April 2, 2007

Via fax and hand delivery

Hon. Rob Eissler
Public Education Committee
Texas House of Representatives
Room EXT E1.414
Austin, Texas 78768

Re: House Bill 1287

Dear Representative Eissler and Members of the Committee:

I am writing on behalf of People For the American Way and our more than 40,700 Texas members and activists in opposition to House Bill 1287, which would *require* every school district in the state to offer elective high school courses “on the Bible’s Old and New Testaments and their impact on the history and literature of western civilization.” While the Bible may be taught about in public schools, the particular courses as defined by this bill would be unconstitutional, and requiring local school districts to offer these courses would needlessly expose them to potentially significant legal and financial jeopardy. In addition, and putting aside the legal problems, the courses do not serve the best educational interests of Texas students being educated in our religiously diverse world. For all these reasons, we strongly urge you to reject HB 1287.

People For the American Way has long been a strong advocate of teaching our children about religion and about the role that religion and people of faith have played in the history of our country. Indeed, in 1986, our affiliated organization, People For the American Way Foundation, was among the first to criticize American history textbooks for such defects as describing the Pilgrims as “wandering people” and ignoring the issues of religious liberty so central to an understanding of who the Pilgrims were. But teaching about religion in a public school must be conducted within our constitutional framework that prohibits the government from endorsing or promoting religion. When it comes to the Bible, the Supreme Court has held that any teaching about the Bible in a public school must be “presented objectively, as part of a secular program of education.” *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963).

HB 1287 fails this critical test. First, rather than present the Bible objectively, it presents the Bible as though it were a history text, a record of the past. This is evident, for example, in the statement that one of the purposes of the courses is to “familiarize students with . . . the customs and cultures of the peoples and societies *recorded* in the Old or New

Testament.” While the Bible is a document that exists in history, and many believe it to be true as a matter of their religious faith, it is, as the federal courts have recognized, first and foremost a book of religious proclamation and teachings. As such, and as the courts have held, it cannot be taught in a public school as though it were a history text. *See, e.g., Gibson v. Lee County School Board*, 1 F. Supp. 2d 1426 (M.D. Fla. 1998); *Herdahl v. Pontotoc County School District*, 933 F. Supp. 582 (N.D. Miss. 1996).

Second, the bill also violates the constitutional requirement of objectivity by its sectarian approach to the Bible, evident in the bill’s repeated reference to “the Bible” as having “Old” and “New” Testaments. This is, however, a version of the Bible as Christians view it. Members of the Jewish faith who also consider “the Bible” to be scripture do not use those terms. In fact, the terms “Hebrew Scriptures” and “Hebrew Bible” are the ones commonly accepted by scholars for what this bill calls the “Old Testament.” Indeed, the bill’s reference to “the book or collection of books *commonly known as* the Old Testament” further betrays the impermissible sectarian perspective of this legislation and the mandated courses.

The constitutional deficiencies in the courses mandated by HB 1287 are underscored by a publication entitled *The Bible & Public Schools: A First Amendment Guide*.¹ This booklet was published in November 1999 by the Freedom Forum’s First Amendment Center and by the National Bible Association, and endorsed by a diverse group of religious liberty and religious and educational organizations. These organizations include the Christian Legal Society, the National Association of Evangelicals, the American Jewish Committee, the National School Boards Association, the American Association of School Administrators, the National Education Association, and People For the American Way Foundation. All of these organizations, some of which are often at odds over the subject of religion in public schools, joined together to help educators chart a constitutional course when it comes to teaching about the Bible.

As this publication makes clear (at 8), “the Bible may not be treated as a history textbook by public-school teachers,” yet that is plainly how HB 1287 treats it. The guidebook also highlights another problem with HB 1287: the requirement that the Bible itself be the textbook for the courses, coupled with the mandate that the “translation” to be used should be “chosen by the board of trustees” of each school district or by “the teacher,” and the leeway given to each student to use “a different translation” from that chosen by the board or the teacher. These provisions are quite problematic. As *The Bible & Public Schools* states (at 6), “*there is no single Bible*. There is a Jewish Bible (the Hebrew Scriptures, or *Tanakh*), and there are various Christian Bibles -- such as Catholic, Protestant, or Orthodox -- some with additional books, arranged in a different order. These differences are significant.” (Emphasis added.) For example, the King James Version of the Bible, which is a Protestant version, contains 66 books, while the Catholic Bible contains 73.

¹ A copy of the guide will be delivered with the original of this letter. The guide is also available on line at: <http://www.freedomforum.org/templates/document.asp?documentID=3978> (visited March 29, 2007).

Selecting the former as the course text would ignore parts of the Bible that Catholics consider to be canon. And authorizing local school boards or individual teachers to select one particular version of the Bible as the main course text would allow a religious judgment to be made in defining the course content and permit them to select a particular version of the Bible for the purpose of inculcating students in a specific faith.

As stated in *The Bible & Public Schools* (at 6), “[t]o adopt any particular Bible -- or translation -- is likely to suggest to students that it is normative, the best Bible. One solution is to use a biblical sourcebook that includes the key texts of each of the major Bibles or an anthology of various translations.” The contrary approach taken by HB 1287 is educationally unsound as well as constitutionally deficient for this reason as well.

Allowing an individual student to use a version of the Bible other than that chosen by the board or the teacher, as provided in this bill, does not solve the problem. To the contrary, allowing students to choose their own Bibles strongly suggests that the courses will be approached from a sectarian perspective and will permit the Bible to be studied for its religious messages. In a truly objective, academic, secular course, all students would be reading the same text.

Because the Bible is a sacred text for so many people, teaching about the Bible in a public school, even in a properly designed course, poses potential legal problems and requires properly trained teachers. As *The Bible & Public Schools* explains,

[t]eaching about the Bible, either in literature and history courses or in Bible electives, *requires considerable preparation*. School districts and universities should offer in-service workshops and summer institutes for teachers who are teaching about the Bible in literature and history courses.

When selecting teachers to teach Bible electives, school districts should look for teachers who have some background in the academic study of religion. Unless they have already received academic preparation, teachers selected to teach a course about the Bible should receive substantive in-service training from qualified scholars before being permitted to teach such courses. *Electives in biblical studies should only be offered if there are teachers academically competent to teach them.*

The Bible & Public Schools (at 6, emphasis added). HB 1287, however, would *require* that all school districts offer Bible courses *without* containing any requirement for teacher training, and without providing any funding for such training. This is a further recipe for educational and legal problems.

As an attorney who has served as co-counsel to the plaintiffs in both the *Gibson* and *Herdahl* cases cited above, I am very aware that the teaching of Bible courses such as those mandated by HB 1287 is likely to subject school districts in Texas to litigation as a result of the constitutional defects in the courses discussed in this letter. Such litigation would be divisive in local communities and would also require school districts to devote significant

financial and other resources to defending lawsuits, resources that would be far better spent on educating students.

Moreover, because federal law provides that prevailing plaintiffs in constitutional rights cases such as these are entitled to recover their own attorneys' fees and expenses from the losing defendants, school districts could find themselves required to pay significant sums of money in fees and costs to plaintiffs, in addition to the monies expended for their own counsel fees and costs. In the *Herdahl* case, for example, following a trial in which the plaintiff prevailed, the court ordered the defendant school district to pay attorneys' fees and expenses to the plaintiff in excess of \$144,000. This expense was in addition to the approximately \$200,000 that the school district reportedly spent on its own counsel fees.²

In the *Gibson* case, after the plaintiffs obtained a preliminary injunction prohibiting the defendant school board from teaching a high school "New Testament" Bible course, the board agreed to settle the lawsuit and to adopt constitutionally permissible Bible course curricula. The settlement agreement included the payment of \$95,000 for plaintiffs' attorneys' fees and costs. Had the board continued to litigate the matter and lost, the attorneys' fees it would likely have been required to pay the plaintiffs obviously would have been significantly higher (as would its own expenses).

We make these observations because it is critical that the Committee fully understand not only the legal problems associated with HB 1287, but also the potential financial and legal jeopardy to which the bill, if enacted, would subject local school districts. The state should not put school districts in this position.

Finally, whether or not HB 1287 presents a constitutional approach to teaching about the Bible, we urge the Committee not to adopt such limited courses, courses that focus exclusively on "the Bible" and that are not required to consider the religious documents of faith groups other than Christians and Jews. A more inclusive world religions or history of religion course not only would be on much firmer constitutional footing, it would better serve our students as they enter adulthood in a religiously diverse world of more than Christians and Jews. The fact that this bill states that it does not preclude local school districts -- presumably using their own funds -- from offering "an elective course based on the books of a religion or society other than one with Judeo-Christian traditions," is an insufficient and divisive solution, particularly since the bill appears to discourage such course offerings by linking them to "student and parent demand."

² While the *Herdahl* case involved unconstitutional conduct by the school district in addition to the teaching of unconstitutional Bible courses, much of the litigation effort by both sides, including motions practice and fact and expert witness testimony during discovery and at trial, concerned the Bible courses.

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There is a right way, and a wrong way, to teach about the Bible in public schools. HB 1287 is the wrong way, and we strongly urge you not to adopt it.

Sincerely,

A handwritten signature in blue ink, appearing to read "Judith E. Schaeffer", with a long horizontal flourish extending to the right.

Judith E. Schaeffer
Associate Legal Director

cc: All Members, House Public Education Committee