

LOSING MY RELIGION: THE CONTROVERSY OVER BIBLE CLASSES IN
PUBLIC SCHOOLS

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I. INTRODUCTION

Religion has always been a personal, yet divisive issue in this country.¹ From our first days as a nation, Americans have struggled to find a balance between expression and oppression.² In recent years, this debate has taken place on a new battleground: public schools. A Gallup poll conducted in May and June of 2004 revealed that only eight percent of middle and high schools in the United States offer an elective class on the Bible, and as a result, a vast majority of teenagers lack the level of biblical knowledge considered by high school English teachers to be necessary to a good education.³ Teachers and university professors are realizing how detrimental a lack of knowledge regarding the Bible can be when it comes to understanding the themes found throughout literature, art, and music.⁴ For this reason, school boards across the nation have begun implementing courses on the Bible.⁵ Though some rural districts have had such courses

¹ See Robert T. Handy, *The American Tradition of Religious Freedom: An Historical Analysis*, 13 EMORY L.J., 247–66 & n.2, reprinted in CHARLES C. HAYNES, RELIGIOUS FREEDOM IN AMERICA 11–32 (1986).

² For further discussion of this issue throughout the history of our nation, *see id.*

³ MARIE WACHLIN, BIBLE LITERACY PROJECT, BIBLE LITERACY REPORT: WHAT DO AMERICAN TEENS NEED TO KNOW AND WHAT DO THEY KNOW? 6 (2005), available at <http://bibleliteracy.org/Secure/Documents/BibleLiteracyReport2005.pdf>.

⁴ *Id.* at 5–7.

⁵ See Sarah Childress, *See You in Bible Class*, NEWSWEEK, May 1, 2006, at 39, available at

for years, the recent interest has spread to cities and surrounding areas across all fifty states at a rapid rate.⁶ Naturally, this has sparked concern, and sometimes outrage, among the parents and citizens of these areas regarding the constitutional repercussions of such a venture.⁷

Given the delicate nature of this issue, it is easy to understand why many schools put off implementing these courses. On the one hand, it is important for students to be familiar with the Bible to understand the cultural, literary, and artistic references they encounter in everyday life. Americans have a culture imbued with religious iconography and literary imagery.⁸ Even ignoring, for a moment, the innumerable works of literature and art that hinge upon Biblical references, our language itself is saturated with such references.⁹ If you have ever called someone the “apple of your eye,” seen “the writing on the wall,” called someone “the salt of the earth,” or complained that you are not “your brother’s keeper,” then you have used a phrase that has its origin in the Bible.¹⁰ Even the opening of the TV show *Desperate Housewives* makes a reference to the story of Adam and Eve.¹¹

On the other hand, public schools are publicly funded, government-mandated institutions that students are required by law to attend. Public school curriculums are carefully monitored and controlled, not only to protect the students from forced indoctrination, but also to avoid any perception of government endorsement of religion. Over the years, numerous books, articles, and legal rulings have addressed the issue, but the American public is still sharply divided and confused as to which standard

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⁶See National Council on Bible Curriculum in Public Schools Where it is Implemented, <http://www.bibleinschools.net/sdm.asp?pg=implemented> (last visited Jan. 21, 2007) [hereinafter Where it is Implemented].

⁷See, e.g., Ralph Blumenthal & Barbra Novavitch, *Bible Course Becomes a Test for Public Schools in Texas*, N.Y. TIMES, Aug. 1, 2005, available at <http://www.nytimes.com/2005/08/01/education/01bible.html?ei=5088&en=889c612a8072328a&ex=1280548800&partner=rssnyt&emc=rs> (last visited Jan. 3, 2007) (“When the school board in Odessa [Texas] . . . voted unanimously . . . to add an elective Bible study course . . . some parents dropped to their knees in prayerful thanks . . . while others assailed it as an effort to instill religious training in the public schools.”).

⁸WACHLIN, *supra* note 3, at 9–10.

⁹See *id.* at 20.

¹⁰See *Deuteronomy* 32:10; *Daniel* 5:5; *Matthew* 5:13; *Genesis* 4:9.

¹¹Wikipedia, *Desperate Housewives*, http://en.wikipedia.org/wiki/Desperate_Housewives (as of Jan. 3, 2007, 16:00 GMT).

to use.

The National Council on Bible Curriculum in Public Schools (NCBCPS) is a conservative group that promulgates a Bible curriculum that uses the King James Bible as its textbook.¹² The group claims that it merely endeavors to bring biblical education back to the classroom so that American students can better understand history, art, and literature.¹³ However, since its development, many groups have voiced strong criticism of the curriculum, claiming it violates the Establishment Clause.¹⁴ This is particularly disturbing since the National Council claims that the curriculum is currently in broad use in thirty-seven states.¹⁵ In fact, on April 20, 2006, the Governor of Georgia signed a bill into law authorizing a local board of education to provide state funded high school elective courses in the Old and New Testament.¹⁶ What made the bill unique from other "Bible Bills" sweeping the country was the required use of the Bible as the textbook for the course.¹⁷ This bill was designed to favor the National Council's curriculum and expose a whole new crop of students across the state to its message.¹⁸

This Comment examines the current state of the law in regard to Bible classes in public schools and applies these standards to the NCBCPS curriculum, *The Bible in History and Literature*, which the group claims is in wide use throughout the United States. Part II of this Comment discusses the constitutional standards regarding religion and their purpose, including an important Supreme Court case that clarified these standards and redefined the role of Bible instruction in public schools, as well as the response of educators to that case. Part II will also introduce the NCBCPS and its new curriculum, as well as discuss reactions to a curriculum previously published by the group. Part III will introduce and explain three tests used by the Supreme Court to determine compliance with the

¹²See generally NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *THE BIBLE IN HISTORY AND LITERATURE* i (2005) [hereinafter NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS].

¹³*Id.* at 1.

¹⁴See generally Blumenthal & Novavitch, *supra* note 7.

¹⁵Where it is Implemented, *supra* note 6.

¹⁶Childress, *supra* note 5, at 39.

¹⁷S.B. 79 § 1 (b)(2), 2006 Gen. Assem., Reg. Sess. (Ga. 2006), available at http://www.legis.ga.gov/legis/2005_06/search/sb79.htm.

¹⁸Childress, *supra* note 5, at 39.

Establishment and Free Exercise clauses. Part IV is a critique of the NCBCPS curriculum using these three tests that asserts that the curriculum is unconstitutional, and therefore, unfit for use in public school classrooms. Finally, Part V analyzes a curriculum that is published by the Bible Literacy Project using the same three tests and asserts that this curriculum comports with constitutional standards, thus making it a viable alternative to the NCBCPS curriculum.

II. BACKGROUND

A. *The First Amendment*

The First Amendment of the Constitution protects the basic freedoms of the individual.¹⁹ In crafting it, the Founding Fathers included two religion clauses: the Establishment Clause and the Free Exercise Clause.²⁰ These were both included in order to balance one another, since the Founding Fathers recognized that one, without the other, would lead to an extreme tyrannical environment for one group or another. Since the two clauses are the first freedoms mentioned, this indicates that the Founding Fathers held these to be two most fundamental freedoms. The First Amendment reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”²¹ The Establishment clause was intended to restrict the government’s ability to mandate or endorse a particular religion, which would interfere with each individual’s choice of how or even whether to worship. As Justice Black later wrote, “Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion.”²²

Lest government leaders think that the Founding Fathers intended that no one express their religious views, they added the Free Exercise clause, which embraces one’s ability to freely express his religious beliefs, once chosen. In such a scheme, the “government is neutral, and, while protecting all, it prefers none, and it disparages none.”²³ Every American would,

¹⁹ See U.S. CONST. amend. I.

²⁰ *Id.*

²¹ *Id.*

²² *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

²³ *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 215 (1963) (quoting *Minor v. Bd. of Educ. (Super. Ct. of Cincinnati (Ohio) 1870*) (unpublished) (Taft, J., dissenting), *published*

therefore, be equal before the law, regardless of their choice of faith, something almost unheard of in the rest of the world when the Constitution was framed. These ideas were later applied to the states through the 14th Amendment, as recognized in *Cantwell v. Connecticut*²⁴ and *Everson v. Board of Education*.²⁵

B. Clarification by the Court: School District of Abington Township v. Schempp

Constitutional standards regarding religion, particularly within the context of the public school system, have always been a source of confusion. Many people focus on the Establishment clause, prohibiting state endorsement of religion, forgetting that the Free Exercise clause was intended to balance it by not allowing the government to interfere excessively with the right to express one's views on their faith. After cases such as *Everson v. Board of Education*,²⁶ *McCullum v. Board of Education*,²⁷ *Zorach v. Clauson*,²⁸ and *Engel v. Vitale*²⁹ were handed down by the Court over the years, many educators and school districts mistakenly believed that any mention of religion in the school system was a constitutional violation, so they systematically eliminated it from the schools.³⁰ Then, in 1963, the Court handed down its decision in *School District of Abington Township v. Schempp*.³¹ The case involved two instances of state action requiring Bible verses to be read at the beginning of each school day.³² Although the main body of the Court's decision held that mandatory Bible reading in public schools violated the Establishment

in *THE BIBLE IN THE COMMON SCHOOLS* (Robert Clarke & Co. 1870)); see also *Schempp*, 370 U.S. at 214–15 & n.7. Taft's dissent prevailed on appeal in *Board of Education v. Minor*, 23 Ohio St. 211, 253 (1872).

²⁴ 310 U.S. 296, 303 (1940).

²⁵ 330 U.S. 1, 13–15 (1947).

²⁶ See generally 330 U.S. 1 (1947).

²⁷ See generally 333 U.S. 203 (1948).

²⁸ See generally 343 U.S. 306 (1952).

²⁹ See generally 370 U.S. 421 (1962).

³⁰ See David L. Hudson Jr., *Teachers' Religious Liberties*, available at http://www.firstamendmentcenter.org/rel_liberty/publicschools/topic.aspx?topic=teachers_liberties (last visited Jan. 30, 2007) (pointing out that even today school districts limit teachers' religious expression in order to avoid violating the establishment clause).

³¹ See generally 374 U.S. 203 (1963).

³² *Id.* at 205.

Clause, a brief statement near the end of the opinion by Justice Clark, as dicta, revolutionized the view of religion in the public schools.³³ He added, near the end of the opinion, that:

In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. *Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.*³⁴

This simple statement, that Bible study is allowed and encouraged, has become the rallying point for conservatives and textbook authors across the nation.³⁵ In fact, in a statement on the NCBCPS website regarding the legality of Bible curriculums, the group relies heavily on the *Abington v. Schempp* case.³⁶ Groups such as the First Amendment Center, a non-partisan group that “works to preserve and protect First Amendment freedoms through information and education,”³⁷ also cite this case in response to the issue of Bible classes in public schools.³⁸

C. Response by Schools to the Court's Decision

Despite the clarity of the Court's opinion on the issue of secular Bible education, some educators and administrators continue to be hesitant regarding the actual implementation of such courses in their schools. Since

³³ *Id.* at 225.

³⁴ *Id.* (emphasis added).

³⁵ See *infra* text accompanying notes 36–38.

³⁶ National Council On Bible Curriculum in Public Schools, Legality, <http://www.bibleinschools.net/sdm.asp?pg=legality> (last visited Jan. 21, 2007).

³⁷ About the First Amendment Center, http://www.firstamendmentcenter.org/about.aspx?item=about_fac (last visited Jan. 21, 2007).

³⁸ The First Amendment Center, Bible in School, http://www.firstamendmentcenter.org/reli_berty/publicschools/topic_faqs.aspx?topic=bible_in_school (last visited Jan. 3, 2007). The First Amendment Center is a program of the Freedom Forum and is affiliated with Vanderbilt University and the Vanderbilt Institute for Public Policy Studies. About the First Amendment Center, *supra* note 37.

about the mid-eighties, educators and civil libertarians alike have called for action to “end the . . . curricular silence on religion.”³⁹ Ignorance on this issue is so pervasive that the First Amendment Center currently has eighteen publications that are available for educators and the general public regarding this issue.⁴⁰ Schools tend toward two extremes on religious issues: the “sacred public school,” in which one religion, typically Christianity, is given preferential treatment, or the “naked public school,” in which any and all religion is excluded from discussions and activities at the school.⁴¹ Both of these models violate the First Amendment.

In 2000, the Department of Education clarified any dispute regarding what *Abington v. Schempp* meant to the school systems by publishing and distributing a set of guidelines for student religious expression in public schools.⁴² Under the heading “Teaching about Religion,” the Department stated, “[p]ublic schools may not provide religious instruction, but they may teach *about* religion, including the Bible or other scripture,” leaving no doubt that classes teaching about the Bible are constitutional.⁴³

D. The National Council on Bible Curriculum in Public Schools

1. Who are They?

The National Council on Bible Curriculum in Public Schools (NCBCPS) is a non-profit organization that was founded in 1993 by Elizabeth Ridenour.⁴⁴ It is a conservative organization whose purpose is to “serve the public” by “[bringing] a state certified Bible course (elective)

³⁹ ASSOCIATION FOR SUPERVISION AND CURRICULUM DEVELOPMENT, RELIGION IN THE CURRICULUM: A REPORT FROM THE ASCD PANEL ON RELIGION IN THE CURRICULUM (1987), reprinted in CHARLES C. HAYNES, RELIGION IN AMERICAN HISTORY: WHAT TO TEACH AND HOW 172 (1990).

⁴⁰The First Amendment Center Publications, Bible in School, http://www.firstamendmentcenter.org/about.aspx?item=FAC_publications (last visited Jan. 21, 2007).

⁴¹Charles C. Haynes, *Religious Liberty in Public Schools*, available at http://www.firstamendmentcenter.org/rel_liberty/publicschools/overview.aspx (last visited Jan. 21, 2007).

⁴²See generally Charles C. Haynes & Oliver Thomas, FINDING COMMON GROUND: A GUIDE TO RELIGIOUS LIBERTY IN PUBLIC SCHOOLS 125 (2001), available at <http://www.firstamendmentcenter.org/pdf/FCGcomplete.pdf>.

⁴³*Id.* at 128.

⁴⁴Biographical Sketch of Elizabeth Ridenour, http://www.bibleinschools.net/img/eliz_bio.pdf (last visited Jan. 21, 2007).

into the public high schools nationwide.”⁴⁵ The NCBCPS claims that the curriculum has been accepted by 373 school districts in thirty-seven states, and that ninety-three percent of the school boards “that have been approached with [the curriculum]. . .have voted to implement it.”⁴⁶ The NCBCPS also claims that 190,000 students have already taken courses using the curriculum.⁴⁷ This information has not been verified, since the group has refused to release the names of the schools districts using the curriculum.⁴⁸

The group’s affiliations can be easily discerned by looking at a list of its Board of Directors and Advisory Board members. The group is comprised of a number of highly conservative individuals, politicians, clergy, and leaders of far-right organizations.⁴⁹ It is not surprising that a group that promulgates Bible curricula would have religious roots, but it is noteworthy that the group is headed and supported, almost without exception, by fundamentalist Protestants almost without exception.⁵⁰ The group is endorsed by numerous conservative Christian groups including the Center for Reclaiming America (a group formed to “inform, equip, motivate, and support Christians; enabling them to defend and implement the Biblical

⁴⁵National Council on Bible Curriculum in Public Schools—President’s Message, <http://www.bibleinschools.net/sdm.asp?pg=default> (last visited Jan. 21, 2007) [hereinafter President’s Message].

⁴⁶Where it is Implemented, *supra* note 6.

⁴⁷*Id.*

⁴⁸Blumenthal & Novavitch, *supra* note 7. The following school districts are known to have adopted the curriculum: Forsyth School District, Winston-Salem, NC; Smyth County Schools, Chilhowie, VA; North Marion High School, Farmington, WV; Brady School District, Brady, TX; Ector County Independent School District, Odessa, TX; and Claiborne Public Schools, Claiborne, LA. Wikipedia, National Council on Bible Curriculum in Public Schools, http://en.wikipedia.org/wiki/National_Council_on_Bible_Curriculum_in_Public_Schools (as of Jan. 3, 2007, 20:10 GMT) [hereinafter Wikipedia, National Council on Bible Curriculum in Public Schools].

⁴⁹National Council on Bible Curriculum in Public Schools Board of Directors, <http://www.bibleinschools.net/img/bod.pdf> (last visited Jan. 21, 2007) [hereinafter Board of Directors]. Some noteworthy members include David Barton, the founder and President of Wallbuilders, a group committed to removing the separation of Church and State, as well as Dr. Marshall Foster, the President of the Mayflower Institute, a group whose self-proclaimed mission is to “proclaim the untold story of America’s history, to prepare individuals and families to defend their Judeo-Christian heritage in all spheres of culture, and to inspire a new generation to rise up and restore America to ‘One Nation Under God.’” See Wallbuilders About Us, <http://www.wallbuilders.com/aboutus/index.htm> (last visited Jan. 21, 2007); Mayflower Institute Vision, www.mayflowerinstitute.com/vision.php (last visited Jan. 21, 2007).

⁵⁰See Board of Directors, *supra* note 49; see also National Council on Bible Curriculum in Public Schools Endorsements, <http://www.bibleinschools.net/sdm.asp?pg=endorsements> (last visited Jan. 21, 2007) [hereinafter Endorsements].

principles on which our country was founded”), Wallbuilders (an organization that argues against the separation of church and State), Concerned Women for America, and the Southern Baptist Convention.⁵¹

2. The New Curriculum

The NCBCPS has published a number of Bible curricula in the past, but currently only sells *The Bible in History and Literature*, which has received criticism since its release.⁵² One of the group’s most vocal critics appears to be the Texas Freedom Network (TFN), a non-partisan organization comprised of “religious and community leaders” dedicated to “advanc[ing] a mainstream agenda of religious freedom and individual liberties to counter the religious right.”⁵³ On August 1, 2005, the group released a report it had commissioned by Dr. Mark Chancey, a professor of biblical studies at Southern Methodist University, on the March 2005 revision of the NCBCPS curriculum.⁵⁴ The report, and its conclusion that the curriculum was “not appropriate for use in public school classrooms”, was later endorsed by 187 professors at universities across the country.⁵⁵ Despite decrying the report as “an attack by a radical humanist organization” and calling the TFN “a small group of far left, anti-religion extremists,” the NCBCPS recalled all copies of its curriculum and issued a revision (the second within seven months) on September 9, 2005.⁵⁶ The authorship of the curriculum is unknown and not available within the text itself or on the NCBCPS website; leaving critics to speculate as to how much influence the group’s endorsers have over the content and how much academic research went into the curriculum during development.⁵⁷

⁵¹Endorsements, *supra* note 50; see Center for Reclaiming America for Christ, Our Mission, <http://www.reclaimamerica.org/pages/aboutus.aspx> (last visited Jan. 21, 2007).

⁵²Blumenthal & Novavitch, *supra* note 7; Wikipedia, National Council on Bible Curriculum in Public Schools, *supra* note 48.

⁵³Texas Freedom Network, About Us, <http://www.tfn.org/aboutus/> (last visited Jan. 3, 2007).

⁵⁴Robert Marus, *Group Revises Bible Curriculum Following National Controversy*, ASSOCIATED BAPTIST PRESS Sept. 16, 2005, available at <http://www.abpnews.com/577.article>.

⁵⁵The Bible in Public Schools Academic Endorsements, <http://www.tfn.org/religiousfreedom/biblecurriculum/endorsements/> (last visited Jan. 21, 2007).

⁵⁶Marus, *supra* note 54. For the full text of the response, see also Press Release, National Council on Bible Curriculum in Public Schools, National Council on Bible Curriculum Responds to Attack by Anti-Religion Extremists (August 4, 2005), available at <http://bibleinschools.net/media%20day/8-4-5/Response%20to%20TFN.pdf> article [hereinafter Press Release].

⁵⁷See generally NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra*

3. Past Curriculum Problems

This is not the first time a NCBCPS curriculum has been under attack for constitutional violations. Although the NCBCPS claims that their curriculum has “never been legally challenged,”⁵⁸ that is not the whole truth. In 1998, the ACLU, along with several other organizations, effectively argued for an injunction against the NCBCPS and the Lee County School Board preventing them from implementing a NCBCPS curriculum.⁵⁹ The Old Testament lesson plan was a combination of NCBCPS’s curriculum and a curriculum used in another county, while the New Testament plan was the unaltered curriculum put out by the NCBCPS, which the district’s lawyers had counseled against using.⁶⁰ The Old Testament curriculum was not enjoined because the court found that the school board had satisfied the secular purpose requirement and any further complaint would have to be based on the method of classroom instruction, which had not yet occurred.⁶¹ The court did, however, grant the injunction against the NCBCPS curriculum, finding that the plaintiffs had a substantial likelihood of success on the merits of their claim that the main purpose of the curriculum was the advancement of Christianity.⁶² The court noted, as evidence that the defendants (who included the NCBCPS) were aware of wrongdoing, the fact that they were already working on a revised version at the time of trial.⁶³ The end result was that, after the court declared the curriculum unconstitutional, the school board chose to use another curriculum, rather than take the case to trial.⁶⁴

note 12, at i; Bible in Schools, www.bibleinschools.net (last visited Jan. 21, 2007).

⁵⁸ Press Release, *supra* note 56.

⁵⁹ See *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d 1426, 1435 (M.D. Fla. 1998).

⁶⁰ *Id.* at 1429, 1431.

⁶¹ *Id.* at 1433.

⁶² *Id.* at 1432, 1434.

⁶³ See *id.* at 1434.

⁶⁴ Maximilian Longley, *N.C. Group Urges Bible as Textbook*, CAROLINA JOURNAL, March 21, 2006, available at http://www.carolinajournal.com/exclusives/display_exclusive.html?id=3197.

III. TESTS USED BY THE SUPREME COURT TO DETERMINE FIRST AMENDMENT VIOLATIONS

A. *Lemon v. Kurtzman*

Over the years, the Court has established three primary tests for determining whether there is a violation of the Establishment or Free Exercise clauses of the Constitution. The first of these tests was established in *Lemon v. Kurtzman* in 1971.⁶⁵ In that case, the issue was whether state statutes granting aid to religiously affiliated schools in the form of reimbursement for textbooks and teachers' salaries violated the First Amendment.⁶⁶ In the absence of express constitutional prohibitions regarding this issue, the Court chose to identify "three main evils" that violate the Establishment clause: "sponsorship, financial support, and active involvement of the sovereign in religious activity."⁶⁷ In holding the state statutes to be unconstitutional, the Court clarified its ruling by creating a three-part test by which to identify infringing acts or legislation.⁶⁸ First, the statute or activity at issue "must have a secular legislative purpose."⁶⁹ Second, "its principal or primary effect must be one that neither advances nor inhibits religion."⁷⁰ Finally, the statute or activity "must not foster 'an excessive government entanglement with religion.'"⁷¹ This test is the most cited by courts in the United States even today.⁷²

B. *Endorsement*

The second test used by the Court is the endorsement test developed by Justice O'Connor in her concurring opinion in *Lynch v. Donnelly*.⁷³ In that case, the Court was asked to rule on the constitutionality of the inclusion of a nativity scene, or crèche, as part of the city's annual Christmas display.⁷⁴

⁶⁵ 403 U.S. 602, 612–13 (1971).

⁶⁶ *Id.* at 606–07.

⁶⁷ *Id.* at 612 (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970)).

⁶⁸ *Id.* at 612–13.

⁶⁹ *Id.* at 612.

⁷⁰ *Id.*

⁷¹ *Id.* at 613 (citing *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970)).

⁷² See generally *McCreary County v. ACLU of Ky.*, 545 U.S. 844 (2005).

⁷³ 465 U.S. 668, 689 (1984) (O'Connor, J., concurring).

⁷⁴ *Id.* at 670–71 (majority opinion).

Justice O'Connor agreed with the Court, holding that the practice was constitutional, but while the majority focused on the *Lemon v. Kurtzman* factors, Justice O'Connor focused on the question of whether the activity communicates a government endorsement.⁷⁵ Her test states that the crucial inquiry in any First Amendment religion case is whether the practice, intentionally or unintentionally, has "the effect of communicating a message of government endorsement or disapproval of religion."⁷⁶ She clarified, however, that the mere fact that a practice has the effect of advancement of religion is immaterial, provided that there is no relationship drawn to the government by the receiver of the message.⁷⁷

C. Coercion

Finally, the Court has used the coercion test, which it first introduced in *Lee v. Weisman* in 1992.⁷⁸ In *Weisman*, the Court was faced with the question of whether a non-sectarian prayer, in this case by a rabbi, can be included as part of a high school graduation ceremony.⁷⁹ The Court held that the prayer was unconstitutional because it violated the Establishment Clause by coercing students through peer pressure and the appearance of government sponsorship to participate in, or at least give the appearance of assent to, an overtly religious exercise.⁸⁰ The school defended its choice by claiming that students were free to choose not to attend, but the Court held that this "choice" did not excuse the inducement or coercion present in the ceremony.⁸¹ The test is based on the idea that the Establishment Clause "guarantees, at a minimum, that government may not coerce anyone to support or participate in religion or its exercise."⁸² The Court in this case upheld *Lemon*, but focused on the issue of governmental coercion, making it clear that the coercion test is intended to be used in addition to the *Lemon* test, rather than as a replacement.⁸³ Under this test, coercion by the

⁷⁵ *Id.* at 687–94 (O'Connor, J., concurring).

⁷⁶ *Id.* at 692.

⁷⁷ *Id.* at 691–92.

⁷⁸ 505 U.S. 577, 587 (1992).

⁷⁹ *Id.* at 580–81.

⁸⁰ *Id.* at 593, 599.

⁸¹ *Id.* at 594.

⁸² *Id.* at 587 (citing *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)).

⁸³ *See id.*

government is “not necessary to prove an Establishment Clause violation, [but] it is sufficient.”⁸⁴

The Court limited its holding to governmental coercion focused towards elementary through high school students, because “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in elementary and secondary public schools” and these exercises “carry a particular risk of indirect coercion,” in particular social or peer pressure.⁸⁵ This concern, the Court added, while not limited to public schools, is “most pronounced there.”⁸⁶

IV. ANALYSIS OF THE NCBCPS CURRICULUM USING THE THREE TESTS

The way to determine whether public schools can legally use the NCBCPS curriculum is by analyzing the curriculum according to each of the three tests provided by the Supreme Court. Since *Lemon v. Kurtzman* is the most commonly used standard, I will discuss it first.

A. *Lemon v. Kurtzman*

1. Does the Curriculum Have a Secular Purpose?

Under *Lemon v. Kurtzman*, the first prong is whether the curriculum has a secular purpose.⁸⁷ The NCBCPS publicizes itself predominantly through its website, where it lists endorsements, press releases, personal messages, and facts about the curriculum.⁸⁸ The main page of the website describes the curriculum in completely innocuous terms, leading one to believe that the goals of the NCBCPS are perfectly in line with constitutional standards.⁸⁹ The NCBCPS President’s message states:

The curriculum. . . convey[s] the content of the Bible as

⁸⁴ *Id.* at 604 (Blackmun, J., concurring).

⁸⁵ *Id.* at 592 (majority opinion).

⁸⁶ *See id.*

⁸⁷ 403 U.S. 602, 612 (1971).

⁸⁸ *See generally* National Council on Bible Curriculum in Public Schools, <http://www.bibleinpublicschools.net/> (last visited Jan. 21, 2007) [hereinafter National Council on Bible Curriculum in Public Schools].

⁸⁹ *See supra* notes 35, 36, and 46 and accompanying text.

compared to literature and history. The program is concerned with education rather than indoctrination of students. The central approach of the class is simply to study the Bible as a foundation document of society. . . in a comprehensive program of secular education.⁹⁰

The course objectives listed in the curriculum itself are also fairly standard.⁹¹ However, more than a cursory look at the group's message on the site shows that the NCBCPS has a much more faith-oriented goal than merely educating high school students in history and art.

The website, in numerous places, claims that the United States is in trouble and calls for citizens to take back the classrooms.⁹² On the main page, immediately following the above statements, the NCBCPS President goes on to write, "[t]he world is watching to see if we will be motivated to . . . deal with the moral crises in our society, and reclaim our families and

⁹⁰ President's Message, *supra* note 45.

⁹¹ The course objectives are:

- I. To equip the student with a fundamental understanding of the important literary forms contained in the Bible, as well as Biblical figures and symbols often referred to in literature, art, and music;
- II. To equip the student with a fundamental understanding of the influence of the Bible on history, law, American community life, and culture;
- III. To provide insight into the world views of America's Founding Fathers and consideration of how the Bible influenced their views on human rights;
- IV. To provide a greater knowledge of Middle-Eastern history, geography, religion, and politics; and
- V. To inform the student of the importance of religion in world and national history, without imposing the doctrine of any particular religious sect.

NATIONAL COUNCIL ON BIBLE CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12, at 1.

⁹² See, e.g., *infra* note 97 and accompanying text; THE NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, THE BIBLE IN HISTORY AND LITERATURE: A COMPARISON OF TWO PUBLIC SCHOOL CURRICULA 1, available at <http://www.bibleinschools.net/img/ncbcpsbrochure.pdf> (last visited Jan. 21, 2007) ("The National Council on Bible Curriculum in Public Schools (NCBCPS) is returning the Bible to its rightful place in America's schools and affirming its unparalleled impact upon our history & literature.").

children.”⁹³ Statements like this are not limited to the main page, either. The website is rife with references to a greater goal.⁹⁴ The organization has a number of endorsement messages on its website from well-known figures in the conservative community, such as Jesse Helms (considered by many to be the founder of the Religious Right movement) and Rabbi Daniel Lapin (who made headlines by actively supporting the film *The Passion of the Christ*, despite strong criticism from the Jewish community).⁹⁵ In his message, former Senator Helms supports “return[ing] the Bible to the schools” and hopes that “we will also see prayer restored to its proper place within the educational system”.⁹⁶ In addition to these print endorsements, the NCBCPS has also developed commercials in support of its message performed by celebrities such as Chuck Norris and Dean Jones.⁹⁷ The messages, like Chuck Norris,’ mention that “we can change the course of our country” and go on to state, “God knows we need it.”⁹⁸ It is difficult to imagine that the NCBCPS intends to change the course of our country only by helping young people better understand religious art, literature, and etymology.

The list of suggested resources to be used in addition to the curriculum also suggests a deeper agenda.⁹⁹ In response to criticism of these materials, the NCBCPS has responded that it uses a “vast array” of supplemental materials from a variety of viewpoints in order to “broaden perspectives.”¹⁰⁰ That, in and of itself, is a noble pursuit in the academic community. However, the list of sources seems heavily weighted toward the viewpoints

⁹³ President’s Message, *supra* note 45.

⁹⁴ See generally National Council on Bible Curriculum in Public Schools, *supra* note 88.

⁹⁵ Endorsements, *supra* note 50.

⁹⁶ Letter from Jesse Helms, former U.S. Senator, to Elizabeth Ridenour (Oct. 26, 1994) (on file with author), available at http://www.bibleinschools.net/edrs/jesse_helms.gif.

⁹⁷ National Council on Bible Curriculum in Public Schools Streaming Videos, <http://www.bibleinschools.net/sdm.asp?pg=video> (last visited Jan. 21, 2007).

⁹⁸ *Id.* Additional quotes from the Chuck Norris segment: “Our Forefathers founded this country on Biblical principles and they never intended the Bible to be removed from our schools. Here in America, religion forms the foundation of our way of life and the Bible is part of that religious foundation.” *Id.*

⁹⁹ See *infra* notes 100–06 and accompanying text.

¹⁰⁰ See generally News Release: National Council on Bible Curriculum Responds to Attack by Anti-Religion Extremists (Aug. 4, 2005), available at <http://bibleinschools.net/media%20day/8-4-5/Response%20to%20TFN.pdf>.

of fringe groups.¹⁰¹ All the “partisan” sources are from highly conservative groups.¹⁰² Furthermore, the viewpoints expressed in these books are typically controversial, minority viewpoints that lack support in the academic community.¹⁰³ It seems odd that the NCBCPS would include these sources in a curriculum, while excluding many majority viewpoints on a number of issues, if their purpose is only to educate and not indoctrinate. In addition, even if the majority viewpoints had been included, the inclusion of these minority viewpoint materials violates the Constitution if they do not have a secular reason for being there.¹⁰⁴ These are not innovative ideas from lesser-known academics, they are from partisan religious organizations that have agendas other than education, and therefore, have no place in a secular academic program.

David Barton, a member of the NCBCPS’s advisory board, is the author of a number of Additional Resource Books.¹⁰⁵ David Barton is not a scholar; he holds no degree beyond a Bachelor of Arts degree from Oral Roberts University.¹⁰⁶ He is, however, the President of Wallbuilders, an organization devoted to eliminating the separation between Church and State.¹⁰⁷ The curriculum introduction recommends a number of Wallbuilders resources, including the film *The Foundations of American Government*, six posters, a pocket booklet, and three books (two authored by David Barton).¹⁰⁸ So many sources from this group were listed, that

¹⁰¹ See MARK A. CHANCEY, READING, WRITING AND RELIGION: TEACHING THE BIBLE IN TEXAS PUBLIC SCHOOLS 61–63 (2006), available at <http://www.tfn.org/files/fck/TX%20Bible%20Report%20FINAL.pdf> (last visited Dec. 21, 2006) [hereinafter CHANCEY, READING, WRITING AND RELIGION]; NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 2–7.

¹⁰² See CHANCEY, READING, WRITING AND RELIGION, *supra* note 101, at 61–63.

¹⁰³ *Id.*

¹⁰⁴ See *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

¹⁰⁵ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 6; Board of Directors, *supra* note 49.

¹⁰⁶ Wallbuilders.com, David Barton Biography, <http://www.wallbuilders.com/aboutus/bio/index.htm> (last visited Jan. 21, 2007).

¹⁰⁷ *Id.*

¹⁰⁸ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 5–7. The film *The Foundations of American Government* has been greatly criticized since its release in 1993. Critics allege that the video, narrated by David Barton, argues that it was never the intent of the Founding Fathers for there to be a separation between church and state. Furthermore, critics allege that the video argues that America has descended into social chaos because school prayer

Wallbuilders has its own subheading in the resources section.¹⁰⁹ The NCBCPS does provide a disclaimer before the listing of supplemental books that “the NCBCPS does not necessarily endorse or express agreement with these works,” but merely provides them in order to “broaden [the] perspectives [of students and teachers] and stimulate discussion and thought.”¹¹⁰ However, since Wallbuilders is not a scholarly organization, but rather a special interest group, and David Barton is not a recognized historical authority, it seems odd that the NCBCPS would recommend their literature so heavily. Furthermore, the film *The Foundations of American Government* is the only film on the list produced by a political organization.¹¹¹ In addition, while the NCBCPS claims not to “express agreement” regarding the supplementary materials, David Barton’s book is also cited in the text of the curriculum in Chapter 17 (The Bible in History) as the only authority supporting a statement discussing what “some scholars” believe regarding the Bible’s role in the development of our form of government.¹¹² These are the views of the NCBCPS, and Barton’s book is cited in support of their assertions.¹¹³ Wallbuilder’s interests are clearly contrary to constitutional principles and the NCBCPS’s reliance on their materials should, at the very least, raise suspicions regarding its true intended purpose.

The curriculum also cites to Dr. Robert Cornuke and lists one of his films as an Additional Resource.¹¹⁴ Dr. Cornuke, who is also on the NCBCPS advisory board, is the president of the Bible Archaeology Search and Exploration Institute (B.A.S.E.), a group “dedicated to the quest for archaeological evidence to help validate to the world that the Bible is true, and that it represents an accurate, non-fictional account of God’s will to

and mandatory devotional Bible reading are no longer allowed. Mark A. Chancey, *The Revised Curriculum of the National Council on Bible Curriculum in Public Schools*, Oct. 2005, http://www.bibleinterp.com/articles/Chancey_Bible_Curr_Revised.htm.

¹⁰⁹ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 5.

¹¹⁰ *Id.* at 2.

¹¹¹ *Id.* at 4–5.

¹¹² *Id.* at 232. The curriculum cites to Barton’s *Original Intent* for the statement, “Some scholars note that the Bible influenced the very form of government selected by the Founders (i.e. a *republic*, or ‘rule by law,’ as opposed to a pure *democracy*, which is ‘rule by direct majority vote’ or ‘rule by feeling’”). *Id.*

¹¹³ *Id.*

¹¹⁴ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 7.

bring the people of this world back into relationship with Him.”¹¹⁵ His website proclaims that in instances in which a literal reading of the Bible contradicts other views of the locations of landmarks and archaeological sites, “the Bible must take absolute priority over tradition and scholarship.”¹¹⁶ It is safe to say that Cornuke’s views are not typical and are a minority viewpoint at best. Thus, it is strange that the curriculum presents only his viewpoint in regard to when the Exodus occurred, a hotly debated issue among historians.¹¹⁷

In Unit Four of the curriculum, the NCBCPS states that “[s]ome scholars believe that the Bible provides a specific date for the Exodus,” but disregards all other viewpoints, including the majority view among biblical historians.¹¹⁸ The curriculum goes on to say that “[t]hese scholars suggest. . .it is easy to. . .assign the specific date of 1446 B.C.,” even though this is an issue that most scholars believe cannot and will not ever be confirmed.¹¹⁹ This is why most history texts list a range of years in which the Exodus could have occurred.¹²⁰ At the bottom of this page in the curriculum, a note suggests, “[f]or further insight see the writings of historian Robert Cornuke, Ph.D., among other scholars and Egyptologists.”¹²¹ Although the NCBCPS attempts to portray Cornuke as an expert in this field, his doctorate is from an unaccredited university and his own website states that “[he] does not claim to be an academic, a scholar, or even a scholarly trained biblical exegete.”¹²²

In addition to presenting only Dr. Cornuke’s views on the Exodus, the

¹¹⁵ B.A.S.E. Institute, <http://baseinstitute.org/> (last visited Jan. 21, 2007).

¹¹⁶ B.A.S.E. Institute, Where Can We Find the Best Answers for These Issues, Highlights, <http://www.baseinstitute.org/answers.html> (last visited Jan. 21, 2007).

¹¹⁷ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 88.

¹¹⁸ *Id.* at 88; *see also* MARK A. CHANCEY, THE BIBLE AND PUBLIC SCHOOLS: REPORT ON THE NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS 11 (2005), *available at* <http://www.tfn.org/files/fck/BibleCirReportOnline.8.3.05.pdf> (last visited Dec. 21, 2006) [hereinafter CHANCEY, THE BIBLE AND PUBLIC SCHOOLS].

¹¹⁹ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 88; *see also* CHANCEY, THE BIBLE AND PUBLIC SCHOOLS, *supra* note 118, at 11.

¹²⁰ *See* CHANCEY, THE BIBLE AND PUBLIC SCHOOLS, *supra* note 118, at 11.

¹²¹ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 88 n.*.

¹²² B.A.S.E. Institute, Who is Qualified to Search for Biblical Sites and Evidence 2 (2002), <http://www.baseinstitute.org/faqs/qualified.pdf>; *see also* CHANCEY, THE BIBLE AND PUBLIC SCHOOLS, *supra* note 118, at 25.

NCBCPS curriculum presents only a minority viewpoint on other academic issues.¹²³ The minority viewpoints expressed are always Protestant Christian.¹²⁴ The most egregious example of these accidental omissions involves the discussion in the curriculum of the Dead Sea Scrolls and weighs heavily against the NCBCPS having a secular purpose.¹²⁵ The previous edition of the curriculum (before the revision) stated that the “scrolls contain definite references to the New Testament and, more importantly, to Jesus of Nazareth,” even though scholars have, almost without exception, rejected this view.¹²⁶ This discussion, then, would have little, if any, academic value to students studying a secular curriculum, which the NCBCPS claims to have created. In the revised edition of the curriculum, the NCBCPS chose to remove these quotes.¹²⁷ However, it appears that the group was reluctant to do so, because the revised edition devotes an entire paragraph to a discussion that alludes to this very view.¹²⁸ This is noteworthy, since the entire discussion of the Scrolls, a vast archeological find, is less than three pages.¹²⁹ In this paragraph, the curriculum describes the feelings among some Christian scholars upon discovery of the scrolls:

[M]any Christian scholars naturally wondered if they might contain evidence about the newer faith of Christianity. . . . For almost half a century, [their] hopes. . . were frustrated by the decision of the small group of original scroll scholars to withhold publication and release of a significant number of these precious documents. Some scholars speculated publicly that there might contain some evidence to support belief in the divinity of Jesus in the unpublished scrolls, but the original scroll scholars vehemently denied these claims.¹³⁰

¹²³ See *infra* notes 124–32 and accompanying text.

¹²⁴ CHANCEY, *THE BIBLE AND PUBLIC SCHOOLS*, *supra* note 118, at 2.

¹²⁵ See *id.* at 13–14.

¹²⁶ *Id.* at 13.

¹²⁷ NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 161–65.

¹²⁸ See *id.* at 164–65.

¹²⁹ See *id.* at 163–65.

¹³⁰ *Id.* at 164.

The paragraph goes on to say that since their discovery, only twenty-percent of the scrolls have been published.¹³¹ This section appears to be a thinly-veiled attempt to include the minority viewpoint from the earlier curriculum. Even though the NCBCPS has put a new coat of paint on it, it is presenting the same theory and this is a clear indication that the NCBCPS does not have a “secular purpose” in mind.¹³² If their goal is merely to teach, this discussion not only adds nothing to one’s understanding of history, art, or literature, but is also an example of poor academic scholarship and research. Its only purpose can be to further a fundamentalist Protestant viewpoint.

2. Will the Curriculum Have the Primary Effect of Advancing or Inhibiting Religion?

The second prong of the *Lemon* test requires that the “principal or primary effect must be one that neither advances nor inhibits religion.”¹³³ Since the NCBCPS refuses to publish a list of schools that use this curriculum, it is difficult to say for certain without interviewing students who have used it, exactly what the primary effect is of the current use of the curriculum.¹³⁴ However, the curriculum is full of remarks that, in addition to not being academically sound, clearly promote the truth of the beliefs contained within the Bible. One could easily infer from these statements that the curriculum has the primary effect of advancing religion. Many of these examples appear in the curriculum as apparent afterthoughts. Their inclusion makes no sense when viewed in context and usually has, at best, some tenuous connection to the discussion. However, they all promote belief in Christianity, particularly the fundamentalist Protestant viewpoint.¹³⁵

For instance, in Unit Six (“Hebrew Law”) in a section entitled “The Historic Influence of the Hebrew Laws,” which is only slightly longer than a page, the curriculum devotes two long paragraphs to quotes from

¹³¹ *Id.* at 165.

¹³² Any doubts about the reason for including this discussion are removed by looking at the written objective of the same unit. It states that “[t]he student will determine suggested evidence from the Scrolls that may demonstrate a link between Judaism and Christianity.” *Id.* at 161.

¹³³ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

¹³⁴ Blumenthal & Novovitch, *supra* note 7.

¹³⁵ CHANCEY, THE BIBLE AND PUBLIC SCHOOLS, *supra* note 118, at 2.

important political figures that tout belief in God as a virtue above all others.¹³⁶ There is absolutely no mention at all of Hebrew Law in these paragraphs.¹³⁷ Another example is a discussion in the same unit about what “some believe” (the authors cite no source for these beliefs) regarding the physical tablets of the Ten Commandments.¹³⁸ It discusses that it is debated whether God himself wrote the Commandments, directed angels to write them, or merely dictated them to Moses.¹³⁹ In addition, the curriculum continues, “some believe” that Commandments 1–4 were written on one tablet and 5–10 were on another, while “others” think that there were two identical tablets containing all ten.¹⁴⁰ This discussion adds nothing to the unit in terms of academic knowledge; however, it presumes the existence of God, the existence of the tablets, and the historical accuracy of what is written in Exodus. This impliedly tells the student that it is accepted that these beliefs are true and proven. In fact, many students might assume from such an inclusion that there is historical proof that the exchange between God and Moses happened. This clearly advances religion, because it promotes belief in God and the Bible in regard to issues of faith.

The curriculum attempts to depict the Bible as a history book in another section as well. In Unit Eleven (“The Dead Sea Scrolls”), the curriculum states that “[the Bible] has long been recognized as an important and indispensable source of ancient history, alongside other ancient literary documents such as the classical writings of Josephus, Philo, Herodotus, Pliny, Berosus, Livy, Tacitus, Virgil, and Suetonius, to name but a few.”¹⁴¹ Such assertions are dangerous, because portraying a religious text as a historical document leads people to believe that everything within it is true, accurate, and verifiable. This obviously advances the religion that uses that

¹³⁶ See, e.g., NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 101 (“Among [Thomas Jefferson’s] most famous statements is the quote, ‘. . . And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God?’”); *id.* at 101 (Quoting John Adams, it states, “[God] ordered the Jews to preserve and propagate to all mankind the doctrine of a supreme, intelligent, wise, almighty sovereign of the universe . . . [which is] to be the greatest essential principle of morality, and consequently all civilization.”).

¹³⁷ See *id.* at 100–01.

¹³⁸ See *id.* at 99.

¹³⁹ *Id.*

¹⁴⁰ See *id.*

¹⁴¹ *Id.* at 163.

text, because it gives it credibility. Suddenly, it is no longer an issue of faith, but of fact.

Another example of turning faith beliefs into fact occurs in Unit Twelve (“The Intertestamental Years”). In a section explaining the history of a particular period, the curriculum mentions that a leader at the time commissioned some scholars to translate the Jewish Scriptures into Greek.¹⁴² At the end of this discussion, the author adds, “Many believe the account that the scholars each worked in solitary confinement, and yet produced identical translations.”¹⁴³ A mere urban legend is dressed up as scholarly fact to promote the idea that the Bible (or at least the Hebrew portion) is Divine Truth. There is no citation for this belief that “many” hold and it is impossible to guess whom the authors are referencing, but it is clear that it is a belief based in faith, not fact.¹⁴⁴ Mentioning it in this context, once again, advances religion, in particular belief in the God of the Bible. Although there are many examples in the text of these presumptions and afterthoughts that have the effect of advancing religion, the examples provided illustrate their pervasive nature and make it clear that this curriculum likely has the effect of advancing religion.

3. Does the Curriculum Foster an Excessive Government Entanglement with Religion?

Finally, under the third prong of the *Lemon* test, the curriculum “must not foster ‘an excessive governmental entanglement with religion.’”¹⁴⁵ This is one of the biggest problems of the NCBCPS curriculum. As one scholar put it, the curriculum “seems to Americanize the Bible and Christianize American symbols.”¹⁴⁶ The text and outside cover are littered with thinly (and not-so-thinly) veiled references to a national religious character. The front cover of the curriculum has the words “The *Bible* in History and Literature” scrolled across a background comprised solely of the American flag and the Declaration of Independence.¹⁴⁷ The text of the word “Bible”

¹⁴² *Id.* at 172.

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971) (quoting *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970)).

¹⁴⁶ CHANCEY, *THE BIBLE AND PUBLIC SCHOOLS*, *supra* note 118, at 18.

¹⁴⁷ *See generally* NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra*

covers about one-fourth of the page, while the rest of the print is considerably smaller.¹⁴⁸ Inside the book, the connections drawn between the Bible and the American government are even more overt.¹⁴⁹

In Unit Six (“Hebrew Law”), in a section titled “An Example for Comparison: The Ten Commandments and the Civil and Criminal Laws of the State of Kentucky,” the curriculum goes through each of the Ten Commandments and attempts to illustrate that lawmakers draw inspiration for modern laws from them and have incorporated all ten in some form or another.¹⁵⁰ Many of the examples are a stretch at best, while some of the relationships drawn are pure fiction or just downright illogical. As an example of incorporation of the fifth Commandment (“Honor thy father and thy mother”), the curriculum points out that Kentucky requires parental consent for any minor seeking an abortion.¹⁵¹ For an example of the first Commandment (“Thou shalt have no other gods before me”), the curriculum claims that merely because the Kentucky Constitution mentions in the preamble that they are “grateful to Almighty God”, this means that Kentucky “encourages the public recognition of God.”¹⁵² Strangely, the curriculum lists conspiracy statutes as examples of the tenth Commandment (“Thou shalt not covet thy neighbor’s house”) and the criminalization of perjury as an example of comportment with the third Commandment (“Thou shalt not take the name of the Lord thy God in vain”).¹⁵³ While some of the conclusions the authors draw seem laughable, the fact remains that promoting the idea that our laws come strictly from the Ten Commandments creates a government entanglement with religion. The NCBCPS’s attempt to create this connection becomes even more apparent through the action statement at the beginning of this section. It says that students will “consider how American law may have been influenced by Hebrew law.”¹⁵⁴ Further down the page, it says that students will “[d]iscuss what effect there might be on our American way of life if legislators

note 12.

¹⁴⁸ *Id.*

¹⁴⁹ *See infra* notes 150–68 and accompanying text.

¹⁵⁰ *See* NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12, at 103–04.

¹⁵¹ *Id.* at 103.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 97.

adopted the Mosaic Civil and Moral laws.”¹⁵⁵ This clearly fosters an entanglement between the government and religion.

Most of the references that imply government support of religion occur in Unit Seventeen (“The Bible in History”). Near the beginning of the unit, in a four-page section entitled “A Source of Revolutionary Ideas,” more than a page is devoted to quotes that claim to support the idea that “[t]he writings and speeches of many leading American political figures are rife with biblical references.”¹⁵⁶ The title implies an interesting discussion on how biblical language peppers common speech, but in fact, none of the six quotes offered as examples actually quote the Bible, they merely opine on the virtues of reading it daily and the fact that it has formed the basis of our laws.¹⁵⁷

Later in the section, the NCBCPS, apparently abandoning any attempt to correlate the quotes to any pure educational purpose, devotes ten pages to a “Sampling of Famous Quotations: *Regarding the Bible, Religion, & America’s Judeo-Christian Heritage*.”¹⁵⁸ Not one of the quotes contained within these pages actually includes biblical language.¹⁵⁹ Instead, every one of the quotes, all of which are by famous political or public figures, supports the Bible or the Christian way of life as the way (usually the only one) to a successful life.¹⁶⁰ In addition, the quotes also support the idea that America is a Christian nation and seem to imply that the Founding Fathers never intended for there to be a separation between Church and State.¹⁶¹ To drive this idea home, the quotes are printed on pages emblazoned with images of American flags and soldiers.¹⁶² It is very clear that this sampling was chosen with an agenda in mind, particularly since there are no quotations from famous figures advocating for the Establishment Clause. Some of the quotes include:

“It cannot be emphasized too strongly or too often that this

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 233.

¹⁵⁷ *Id.* at 233–34.

¹⁵⁸ *Id.* at 240–50.

¹⁵⁹ *See id.*

¹⁶⁰ *See generally id.* The one exception is a quote by Albert Einstein for which there seems no real purpose. “God Almighty does not throw dice.” *Id.* at 248.

¹⁶¹ *See id.* at 240–50.

¹⁶² *Id.*

great nation was founded, not by religionists, but by Christians . . . not on religions, but on the Gospel of Jesus Christ.” – Patrick Henry

“The Bible is our only safe guide. The Bible fits man for life and prepares him for death.” – Daniel Webster

“To the distinguished character of patriot, it should be our highest glory to add the more distinguished character of Christian.” – George Washington

“It is impossible rightly to govern the world without God and the Bible” – George Washington

“The whole inspiration of our civilization springs from the teachings of Christ and the lessons of the prophets. To read the Bible for these fundamentals is a necessity of American life.” – Herbert Hoover¹⁶³

Once again, the mere inclusion of this section is puzzling, as it seems to serve no real purpose, at least not an academic one. However, regardless of whether the NCBCPS’ intent was to proselytize, the fact remains that this section results in an excessive government entanglement with religion. The whole section is devoted to depicting a strong relationship between our country’s leaders and Christianity.

Unit Seventeen is rife with other examples of attempts by the author to tear down the wall between government and religion. In a section titled “Symbols of a Nation,” the authors claim there is a special reason the Liberty Bell was rung the first time the Declaration of Independence was read.¹⁶⁴ They claim the bell particularly symbolizes freedom because of a verse from Leviticus on its side.¹⁶⁵ In addition, a large portion of Unit Seventeen is devoted to a section entitled “Observations of the U.S.

¹⁶³ *Id.* at 241, 243, 249.

¹⁶⁴ *Id.* at 236.

¹⁶⁵ *Id.* (the text of the curriculum reads: “How does this bell symbolize freedom? The answer lies in the Biblical inscription emblazoned on its side. It reads: ‘Proclaim liberty throughout the land unto all the inhabitants thereof. Leviticus 25:10’”).

Supreme Court.”¹⁶⁶ Once again, the authors seem more concerned with promoting the idea that the government is fully in support of Christianity than in educating students in the ways that the Bible has shaped our culture, which is what the unit purports to do. The section contains excerpts from a Supreme Court case discussing the constitutionality of a city nativity scene, as well as discussions of what the NCBCPS claims are clear government endorsements of religion, such as “In God We Trust” emblazoned on our money and the proclamation of certain religious observances as national holidays.¹⁶⁷ It even makes the claim that providing federal funding for the military and congressional chaplains as well as for art galleries that display religious paintings “predominantly inspired by one religious faith” constitutes “the Government’s acknowledgement of our religious heritage and governmental sponsorship of graphic manifestations of that heritage.”¹⁶⁸ This section is nothing more than a blatant promotion for the idea that the government is fully in support of Christianity. The inclusion of this section creates an excessive entanglement of government and religion, but when viewed in combination with the other attempts by the NCBCPS throughout the curriculum, it is more than enough to fail the third prong of the *Lemon* test.¹⁶⁹

The NCBCPS clearly had an agenda for promoting and developing this curriculum. Additionally, because of the curriculum’s biased interpretation and presentation of certain material, it would obviously have the effect of advancing religion. Finally, through the NCBCPS’ convenient quotation of political leaders and analysis of government action as an endorsement of religion, the curriculum fosters an excessive entanglement with religion. Having failed each prong of the *Lemon* test, the curriculum does not comport with the constitutional standards laid out by the Court, and thus, cannot legally be used in the public school system.¹⁷⁰

B. Endorsement

The endorsement test, developed by Justice O’Connor, focuses on the issue of government involvement; whether the activity, intentionally or

¹⁶⁶ *Id.* at 237–39.

¹⁶⁷ *Id.* at 238.

¹⁶⁸ *Id.* at 238–39.

¹⁶⁹ *See Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

¹⁷⁰ *See generally id.*

unintentionally, “ha[s] the effect of communicating a message of government endorsement or disapproval of religion.”¹⁷¹ Based on the examples enumerated in the above section, it is clear that adoption of this text by school boards would have the effect of communicating government endorsement of religion.¹⁷²

Throughout the text, sometimes in a subtle manner, sometimes not, the curriculum presents a viewpoint that is clearly biased in favor of fundamentalist Protestant ideas.¹⁷³ It does this by presenting only favorable minority viewpoints on history or archaeological finds, most of which are not accepted in any academic communities, as well as by using phraseology that presumes the absolute truth of the events contained within the Bible.¹⁷⁴

The NCBCPS also makes strong attempts throughout the text to associate the beliefs contained within the curriculum with the government.¹⁷⁵ The outside cover is emblazoned with the American flag and the Declaration of Independence with the word Bible in a huge font across these images.¹⁷⁶ In addition, there are quotes throughout from the Founding Fathers and other political leaders that seem to support the separation of Church and State and other agendas the NCBCPS pushes.¹⁷⁷ Finally, the curriculum ends with a discussion implying that the Supreme Court and all of our government leaders fully support Christianity, and by implication, everything contained within the curriculum.¹⁷⁸

It is also important to mention that the curriculum has no textbook other than the King James Bible.¹⁷⁹ This is problematic for a number of reasons. First, school districts and officials choosing a particular translation might

¹⁷¹ *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984).

¹⁷² *See supra* Part IV.A.3.

¹⁷³ For more information on this, see generally Mark A. Chancey, *The Revised Curriculum of the National Council on Bible Curriculum in Public Schools*, Oct. 2005, http://www.bibleinterp.com/articles/Chancey_Bible_Curr_Revised.htm.

¹⁷⁴ *See supra* Parts IV.A.1, IV.A.2.

¹⁷⁵ *See supra* Part IV.A.3.

¹⁷⁶ *See generally* NATIONAL COUNCIL ON BIBLE CURRICULUM IN PUBLIC SCHOOLS, *supra* note 12.

¹⁷⁷ *Id.* at 237–50.

¹⁷⁸ *See id.*

¹⁷⁹ *Id.* at 2. The revised curriculum points out that while the curriculum was prepared using the King James because of its “widespread use . . . and literary qualities,” school districts may use any version or may permit students to use a version of their choosing. *Id.* at i.

seem to be endorsing that particular translation. As civil libertarians have pointed out, “[t]o adopt any particular Bible—or translation—is likely to suggest to students that it is normative, the best Bible.”¹⁸⁰ Furthermore, the fact that the curriculum solely cites to the King James’ version is evidence of the fact that it promotes a sectarian viewpoint: that of fundamentalist Protestant Christianity. Secondly, using only the Bible makes compliance with the Constitution and regulating the classroom instruction much more difficult. If there is a text to follow, then the majority of what will be discussed in class can be scrutinized and approved or disapproved. It also provides a guide by implication for teachers as to the tone and content of course lessons. Using only the Bible makes inadvertent or intentional Constitutional violations much more likely, since the class content is predominantly comprised of lectures by the teacher. Given that the curriculum has a sectarian nature and promotes religious viewpoints, the fact that the Bible serves as the only text makes the effect of the advancement of religion even more likely. It is possible, as well, that the NCBCPS intentionally chose not to develop a text, in order to give the teachers more freedom to control the content of the course toward the views expressed by the NCBCPS in the curriculum.

The average American has a more limited understanding of constitutional standards than do political leaders. For that reason, they put their trust in organizations like school boards to make decisions that involve those standards, believing that the school boards know how to follow these rules and desire to do so. By adopting this curriculum, the school board, representing the government at large by implication, basically rubber stamps the ideas contained within as having been evaluated and endorsed by the government. Since this curriculum contains overtly religious ideas, the adoption of it would be viewed as a government endorsement of religion.¹⁸¹ Therefore, this curriculum fails the endorsement test proffered by Justice O’Connor and should not be implemented in any school district.¹⁸²

¹⁸⁰ First Amendment Center Religious Liberty in Public Schools, Bible in School, FAQs, http://www.firstamendmentcenter.org/rel_liberty/publicschools/topic_faqs.aspx?topic=bible_in_school (last visited Jan. 21, 2007).

¹⁸¹ See *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).

¹⁸² See *id.* at 692.

C. Coercion

In *Lee v. Weisman*, the Court made it clear that schools cannot compel student participation in religious exercises, either directly or through indirect persuasion.¹⁸³ Applying this test, it is clear that adoption of this curriculum would achieve exactly that. Proponents of the curriculum have argued that it would be adopted strictly as an elective.¹⁸⁴ It would seem, therefore, that there is no coercive effect, since every student would be there voluntarily. However, in *Lee v. Weisman*, this same argument failed to persuade the Supreme Court.¹⁸⁵

In that case, it was argued that the graduation ceremony in which a non-sectarian prayer would be offered was strictly voluntary.¹⁸⁶ However, the Court recognized that not attending would require “forfeiture of those intangible benefits” the student had worked hard to earn.¹⁸⁷ In the same way, every student is deserving of an opportunity to study the Bible in a secular atmosphere in order to gain the benefit of that education. It is well-recognized by academics across the spectrum of beliefs that an understanding of the Bible is essential in order to fully understand many works of literature, art, and music, as well as cultural references.¹⁸⁸ The fact also remains that the students registering for this course would expect to study a secular survey of the material, especially since that is what the NCBCPS claims to provide.¹⁸⁹ These students would then be involuntarily compelled to engage in a faith-based, sectarian study of the Bible, due to the nature of the NCBCPS curriculum. Therefore, as in *Lee v. Weisman*, the fact that attendance is voluntary does not preclude a finding of unconstitutionality.¹⁹⁰

The Court explained in *Lee* that there is a higher level of scrutiny in cases involving elementary through high school students, because they are at a unique age that makes them particularly susceptible to peer pressure,

¹⁸³ 505 U.S. 577, 599 (1992).

¹⁸⁴ President’s Message, *supra* note 45.

¹⁸⁵ 505 U.S. at 595.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ WACHLIN, *supra* note 3, at 6–7.

¹⁸⁹ See President’s Message, *supra* note 45.

¹⁹⁰ See 505 U.S. at 595.

which coerces or compels conformity.¹⁹¹ The Court points out that, while it is common for students to be forced to attend classes that expose them to ideas they do not agree with, it is a different issue when religion is involved.¹⁹²

In issues involving free speech, for example, protection is achieved by allowing full expression, even in cases of government involvement, particularly since much of the speech is usually intended to persuade government action.¹⁹³ Government involvement in religious expression is restrained, however, because “what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce” and our religious freedom is “the sole assurance that religious faith is real, not imposed.”¹⁹⁴ Furthermore, because of their youth and inexperience, it is not acceptable to force students to choose between participation and protest, as in the case of adult dissenters.¹⁹⁵ Even if students studying the curriculum are experienced and educated enough to discern the subtle religious indoctrination, they should not be forced to openly object in front of their peers in order to avoid the appearance of assent, and the court has said they do not have to.¹⁹⁶ Since it is clear that the curriculum advances a pervasive religious viewpoint even in regard to historical facts, there is no possible way that any method of teaching would avoid students being confronted with these viewpoints. Students who dissent inwardly would necessarily either feel ostracized or coerced to assent to views with which they do not agree.

Furthermore, school officials like school board members, principals, and teachers are state actors, and therefore, their actions are attributable to the government.¹⁹⁷ The Court has made it clear that the involvement of school officials has the effect of inducing student participation in situations in

¹⁹¹ *Id.* at 593.

¹⁹² *Id.* at 591–92.

¹⁹³ *Id.* at 591.

¹⁹⁴ *Id.* at 591–92.

¹⁹⁵ *Id.* at 593.

¹⁹⁶ *See id.* at 593–94. The Court explains that merely standing or remaining silent during a prayer can, in our culture, signify adherence with the views being expressed, and it is reasonable to expect that a student who disagreed with those views would view their participation in this way. For this reason, merely putting the student in that position was considered coercive. *Id.* at 593.

¹⁹⁷ *Id.* at 587.

which they would not normally comply.¹⁹⁸ Therefore, using this curriculum, which does not comport with constitutional standards, would create an environment of government coercion, which the Supreme Court has said is not permissible in the school environment.

V. BIBLE LITERACY PROJECT

Although the NCBCPS curriculum does not comply with the constitutional standards supplied by the Supreme Court, this does not mean that all Bible classes are unconstitutional. One alternative is the curriculum released on September 22, 2005 by the Bible Literacy Project.¹⁹⁹

A. *What is the Bible Literacy Project?*

The Bible Literacy Project (BLP) is a “non-partisan, non-profit organization dedicated to research and public education on the academic study of the Bible in public and private schools.”²⁰⁰ In 1999, the BLP co-authored *The Bible and Public Schools: A First Amendment Guide*, which was designed to educate schools regarding how to teach about the Bible in a constitutionally sound way and was endorsed by twenty-one national groups across the political spectrum.²⁰¹ In 2005, the BLP released a curriculum designed to provide basic Bible literacy to students, which the group felt was not being provided in most public schools, despite being a “deeply important part of a good education.”²⁰² As of October 2006, this curriculum has been implemented in twenty-nine states, as well as in Canada and Taiwan.²⁰³ The BLP’s curriculum, *The Bible and Its Influence*, has a number of academic advantages over the NCBCPS’s, but its value to public schools must be weighed by the three tests provided by the Supreme Court.

¹⁹⁸ *Id.* at 590.

¹⁹⁹ The Bible Literacy Project Frequently Asked Questions, <http://www.bibleliteracy.org/Site/Case/index.htm> (last visited Jan. 21, 2007) [hereinafter Bible Literacy Frequently Asked Questions].

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ The Bible Literacy Project Textbook Use to Date, <http://www.bibleliteracy.org/Site/Curriculum/index.htm> (last visited Jan. 21, 2007).

B. Lemon v. Kurtzman

1. Does the Curriculum Have a Secular Purpose?

Under *Lemon v. Kurtzman*, the first prong is whether the curriculum has a secular purpose.²⁰⁴ The curriculum development for *The Bible and Its Influence* was a long, complicated process. The BLP first created an outline of the content to be covered, then hired the content contributors to write the actual text.²⁰⁵ This draft was reviewed by lawyers who are especially knowledgeable on First Amendment issues as well as by forty other reviewers, who include college professors of English, Comparative Literature, History, Theology, and Law, as well as high school teachers, church leaders, and authors.²⁰⁶ The reviewers who were chosen for their biblical knowledge represent a wide range of faiths including Roman Catholic, various Protestant denominations, Jewish, and even Unitarian.²⁰⁷ However, as mentioned above, a large number of these reviewers were chosen strictly for their academic perspective.²⁰⁸ Following these reviews, Cullen Schippe, the general editor, incorporated the reviewers' feedback into the text.²⁰⁹ This process clearly indicates the intent to develop a curriculum that is not only academically accurate, but also constitutionally compliant, which would satisfy a secular purpose.

In addition to incorporating the viewpoints of a diverse group of educators and experts in developing this curriculum, the BLP has indicated its intent to develop a constitutional curriculum in other ways. As mentioned earlier, the BLP, together with the First Amendment Center, published *The Bible and Public Schools: A First Amendment Guide*, which was a consensus on how to teach the Bible in a way that conforms to constitutional principles.²¹⁰ *The Bible and Its Influence* was specifically developed to fulfill the standards set forth in that publication.²¹¹ In

²⁰⁴ 403 U.S. 602, 612 (1971).

²⁰⁵ Bible Literacy Frequently Asked Questions, *supra* note 199.

²⁰⁶ *Id.*

²⁰⁷ See generally THE BIBLE LITERACY PROJECT, THE BIBLE AND ITS INFLUENCE (Cullen Schippe & Chuck Stetson eds., 2006) [hereinafter THE BIBLE LITERACY PROJECT].

²⁰⁸ *Id.*

²⁰⁹ Bible Literacy Frequently Asked Questions, *supra* note 199.

²¹⁰ *Id.*

²¹¹ Ann Rodgers, *Textbook Aims to Teach Bible with No Religion*, Pittsburgh Post Gazette

addition, to ensure teacher compliance with these standards, the BLP requires teachers to take an online training course through Concordia University on how to teach the Bible as literature in public schools.²¹² All of these additional efforts indicate a strong intent to comply with the Constitution.

Another major difference between the BLP's curriculum and the NCBCPS' is the fact that its authorship is not a mystery. Not only are the editors listed, but the names of the content contributors, the textbook reviewers and consultants, as well as those of the BLP's Board of Directors and Board of Advisors are all available inside the cover of the text.²¹³ The four content contributors have diverse backgrounds, in regard to both their faith, as well as their literary experience. Although one critic has opined that "[n]one of the actual authors . . . appears to be a biblical scholar by profession," the content contributors, if not clearly evident from their work on this text, each have backgrounds that have prepared them well for this task.²¹⁴ Marc Stern is a lawyer who serves as general counsel for the American Jewish Congress and is considered "one of the country's foremost experts on the law of church and state."²¹⁵ He has written a number of articles on issues relating to that topic.²¹⁶ Joanne McPortland is a Catholic writer, who authored *The Roots of the Mass*, a history of the Catholic mass.²¹⁷ Marjorie Haney Schafer, Ph.D., has experience teaching English and Religious Studies at the college level and currently works as a freelance writer.²¹⁸ Finally, Eve Tushnet is a freelance writer who has

Oct. 24, 2005, available at <http://www.post-gazette.com/pg/05297/593949.stm>.

²¹²*Id.*; see also Bible Literacy Project, Eight Unique Features of the Bible Literacy Project's Textbook, <http://www.bibleliteracy.org/Site/PressRoom/Press20050922/Press050922Distinctives.htm> (last visited Jan. 21, 2007) [hereinafter Bible Literacy Unique Features].

²¹³See BIBLE LITERACY PROJECT, *supra* note 207 at iii-iv.

²¹⁴Steven L. McKenzie, *Review of the Bible and Its Influence*, SOCIETY OF BIBLICAL LITERATURE FORUM, <http://www.sbl-site.org/Article.aspx?ArticleId=465> (last visited Jan. 21, 2007).

²¹⁵The Leonard E. Greenberg Center for the Study of Religion in Public Life, Introduction to Marc Stern's Lecture at Trinity College: Is Religion Compatible with Liberal Democracy? (March 17, 1999), available at <http://www.trincoll.edu/depts/csrpl/Religion%20and%20Liberal%20Democracy/stern.htm>.

²¹⁶*Id.*

²¹⁷<http://www.amazon.com> (search "Books" for "Joanne McPortland") (last visited Jan. 21, 2007).

²¹⁸Marjorie Haney Schafer, *Beginning at Jerusalem: Five Reflections on the History of the*

several regular columns and has written articles for the New York Post, the National Catholic Register, and the Washington City Paper.²¹⁹ In addition to the four content contributors, there are two editors of the curriculum, Cullen Schippe and Chuck Stetson.²²⁰ Chuck Stetson is the founder of the Bible Literacy Project and serves as Chairman of the Board of Directors for the BLP, while Cullen Schippe is a former Vice-President and publisher for Music, Religion, and Social Studies at Macmillan/McGraw-Hill.²²¹

The diversity of the BLP's Board of Directors and Board of Advisors lends further support to the proposition that the curriculum's purpose is purely academic in nature. The Board of Advisors includes: the Secretary of the Colorado Board of Education; an assistant principal; a Professor of Religious Ethics and the Social Sciences; an editor of the Jewish Publication Society; a Professor of Social and Political Ethics; a rabbi; the founder of a faith-based humanitarian organization; the founding chairman of a public charity whose purpose is to discover, test and encourage the application of new approaches to social problems; and a Harvard Law Professor.²²²

The Board of Directors is equally diverse. It includes a senior VP of finance and administration of a corporation, the CEO of a children's furniture and clothing store, and the managing director of an investment firm.²²³ One critic has stated that the Advisory Board has a "distinctly rightward tilt" because of the affiliations of two of its members: David Blankenhorn and Kevin Seamus Hasson.²²⁴ However, upon closer

Church, SPIRITUAL LIFE, Summer 2005 available at http://www.findarticles.com/p/articles/mi_qa3885/is_200507/ai_n14685590/pg_2.

²¹⁹Eve Tushnet, Other People Paid Me to Write This, <http://evesjournalismandstuff.blogspot.com/> (June 3, 2006, 21:20 GMT).

²²⁰BIBLE LITERACY PROJECT, *supra* note 207, at i.

²²¹Bible Literacy Project, About the Bible Literacy Project, <http://www.bibleliteracy.org/Site/Board/index.htm> (last visited Jan. 21, 2007) [hereinafter About the Bible Literacy Project]; Bible Literacy Project Frequently Asked Questions, *supra* note 199.

²²²About the Bible Literacy Project, *supra* note 221; BIBLE LITERACY PROJECT, *supra* note 207, at iv; John M. Perkins Foundation, Who We Are, <http://www.jmpf.org/whowere.html> (last visited Jan. 21, 2007); Diane Winston, *A Measure of Faith: George Gallup, Jr.*, JOURNAL OF CHRISTIAN ETHICS TODAY, Vol. 17, at 7 (Aug. 3, 1998) available at <http://www.beeville.net/CETArt/index.cfm?fuseaction=Articles.main&ArtID=23>.

²²³See BIBLE LITERACY PROJECT, *supra* note 207, at iv.

²²⁴See Joseph L. Conn, Americans United for Separation of Church and State, *The Bible Literacy Project: Chuck Stetson's Trojan Horse?*, Jan. 2006, <http://au.convio.net/site/News2?page>

inspection of their respective organizations, there does not appear to be any particular agenda that would influence their roles with the BLP. Kevin Seamus Hasson is the founder and president of the Becket Fund for Religious Liberty, which describes itself as a “bipartisan, interfaith public-interest law firm that protects the free expressions of all religious traditions.”²²⁵ He has represented nearly every faith, including Muslims, Jews, Christians, Buddhists, Sikhs, Hindus, Native Americans, Unitarians, and Zoroastrians.²²⁶ It is true that his firm works to protect the religious freedoms of all religions, which perhaps could be viewed by some as a right-wing agenda, but this firm appears to do so within the constraints of the Constitution.²²⁷ Thus, it would seem that, if the goal of the BLP is to honor both the Establishment clause and the Free Exercise clause, as it should, his experience as a lawyer in these areas would be invaluable to the organization. David Blankenhorn is the President of the Institute for American Values, which is a “private, nonprofit, nonpartisan organization that contributes intellectually to strengthening families and civil society in the U.S. and the world.”²²⁸ Perhaps the critic views this organization as right-wing because of its interest in families and marriage, but surely these are not strictly conservative interests. Looking at the organization’s studies, it appears that the organization is predominantly focused on sociology and psychology.²²⁹ There are no overtly religious themes in these studies, which include the effects of divorce on children and families, issues relating to the challenges of parenting, feelings of lack of connectedness by

=NewsArticle&id=7762&abbr=cs_ (last visited Jan. 21, 2007). It should be noted that in conducting my research, I found very few critics of this new curriculum. Of the handful of individual criticisms I did find, one had only a few minor reservations regarding the curriculum that are unrelated to its constitutionality, while the others presented arguments that I address in this Comment and indicated in their critiques a bias against the idea of Bible classes in general. See Steven L. McKenzie, *Review of the Bible and Its Influence*, SOCIETY OF BIBLICAL LITERATURE FORUM, <http://www.sbl-site.org/Article.aspx?ArticleId=465> (last visited Jan. 21, 2007).

²²⁵The Becket Fund, *Who We Are*, <http://www.becketfund.org/index.php/person/3.html> (last visited Jan. 21, 2007).

²²⁶*Id.*

²²⁷See generally *The Becket Fund*, <http://www.becketfund.org/index.php> (last visited Jan. 21, 2007).

²²⁸Institute for American Values at a Glance, http://www.americanvalues.org/html/institute_at_a_glance.html (last visited Jan. 21, 2007).

²²⁹Institute for American Values, <http://www.americanvalues.org> (last visited Jan. 21, 2007).

individuals in society, immaturity in children, and the legal and social implications of new reproductive technology.²³⁰ Nothing in either of these organizations suggests a dangerous bias that might implicate a non-secular purpose for the development of this curriculum.

Clearly, the BLP has made a considerable effort to ensure compliance of its curriculum with constitutional standards. Based on its authorship of the constitutional guide for public schools, it is clearly aware of the applicable standards. All of the authors of the curriculum and related individuals from the BLP come from diverse backgrounds of faith and experience and, if that were not enough, the curriculum underwent a review process incorporating changes and suggestions from forty relevant Bible scholars, academics, and lawyers.²³¹ The fact that the BLP went to such great lengths to help ensure this curriculum would not violate the First Amendment and would be academically sound indicates that their purpose was to create a text that would be an effective tool for education, not indoctrination. Therefore, the curriculum has a secular purpose and satisfies the first prong of the *Lemon* test.

2. Will the Curriculum Have the Primary Effect of Advancing or Inhibiting Religion?

The second prong of the *Lemon* test requires that the “principal or primary effect must be one that neither advances nor inhibits religion.”²³² From a reading of the full text, it is patently obvious that the focus of the BLP’s curriculum is on educating students so that they can better understand the biblical themes encountered in art, literature, and music, not on indoctrinating them to become new believers in the Christian or Jewish faith.²³³ Just by glancing at the BLP curriculum, one can see vast differences from the NCBCPS curriculum. While the NCBCPS curriculum included only a few paragraphs or at most a couple of pages of additional information for each unit, *The Bible and Its Influence* has 373 pages full of printed text that offer information on each book of the Old and New Testaments, including the Apocrypha.²³⁴ The NCBCPS only studied the

²³⁰ *Id.*

²³¹ See generally BIBLE LITERACY PROJECT, *supra* note 207.

²³² *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

²³³ See generally BIBLE LITERACY PROJECT, *supra* note 207.

²³⁴ See generally BIBLE LITERACY PROJECT, *supra* note 207; NATIONAL COUNCIL ON BIBLE

books contained in the Protestant Bible, which does not include the Apocrypha.²³⁵ The pages of the BLP curriculum are littered with prints of artwork showing the interpretations of biblical themes by artists from cultures spanning the globe.²³⁶ It also includes illustrations from famous novels that incorporate biblical themes or allusions, pictures of modern day Middle Eastern cities mentioned in the Bible, as well as historically significant images of people and places, such Dr. Martin Luther King, Abraham Lincoln, and the Civil Rights Memorial in Alabama.²³⁷

The text is supplemented not only by pictures, but with short segments contained in boxes that provide additional information about the particular book being discussed.²³⁸ One section, “The Bible in Literature” offers either information about the literary structure of the book being studied or provides excerpts of famous authors’ works that include biblical themes, such as *A Tale of Two Cities*, *Moby Dick*, *Hamlet*, and perhaps somewhat lesser known works, such as the poetry of Countee Cullen or Elizabeth Barrett Browning.²³⁹ The “Cultural Connections” sections provide information on the impact of the Bible on individuals, social movements, architecture, and even music and movies.²⁴⁰ There are also marginal inserts titled “Everyday Language,” which provide definitions of words from each book of the Bible that are in common usage.²⁴¹ These inserts explain both the literary and colloquial meanings of each word.²⁴² The curriculum also includes sections entitled “Historical Connections” or “The Bible in History,” which provide additional historical context or background for each unit of study, such as information on the history of Roman slavery or on the Great Schism of 1054.²⁴³ In addition, at the end of each of the fourteen units, there is a Unit Feature that offers more extensive

CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12.

²³⁵ *See generally* NATIONAL COUNCIL ON BIBLE CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12.

²³⁶ *See generally* BIBLE LITERACY PROJECT, *supra* note 207.

²³⁷ *E.g., id.* at 10–11, 129, 186, 322.

²³⁸ *E.g., id.* at 54–55, 142–43, 320–21.

²³⁹ *E.g., id.* at 84, 116, 161–62.

²⁴⁰ *E.g., id.* at 163, 187, 246–47.

²⁴¹ *E.g., id.* at 42, 158, 238.

²⁴² *See, e.g., id.*

²⁴³ *See id.* at 297, 306.

information on the topic covered.²⁴⁴ These features mainly consist of more in-depth explanations of literary themes or specific texts that include biblical allusions.²⁴⁵ Unit Features include, for example, Dante's *Purgatorio*, Milton and the Bible, and the Bible and Shakespeare.²⁴⁶ Some of the Unit Features focus on the lives of important authors or figures in history, such as Saint Augustine, Eli Wiesel, and Cesar Chavez.²⁴⁷ All of these inserts are in addition to the vast amount of literary information provided in the main body of the text.

Throughout the 373 pages of text, the curriculum includes forty-four inserts on "The Bible in Literature," thirty-five on "Cultural Connections," thirty-three on "Everyday Language," six historical inserts, fourteen Unit Features, and ten additional inserts that relate to one or more of these topics.²⁴⁸ Thus, on every page, there is a separate discussion of the Bible that relates to its academic, rather than spiritual worth.

In addition to the curriculum's focus on the Bible's literary and cultural significance, the approach of the text is important as well. The BLP's curriculum, unlike the NCBCPS' curriculum, never attempts to treat the Bible as historical truth. In fact, in its introduction to the New Testament, the curriculum devotes several paragraphs to clarifying this issue.²⁴⁹ It explains that the gospels "describe the life and teaching of Jesus as seen through the eyes of faith—as the life and teachings had come to be understood in the community," and that, as such, "[t]he gospels are not histories."²⁵⁰ It further states that "[f]or Christians, each of the gospels. . . provide a faith-filled look at Jesus and the salvation and the kingdom he taught about. You are not picking up a newspaper account, an eyewitness report, or even a memoir."²⁵¹ In addition to explanations like this, the text frequently reminds the reader that the curriculum is not opining on the truth of the biblical text through statements, such as "[a]ccording to the text," "according to the Jewish/Christian tradition," or "the account says."²⁵²

²⁴⁴ *E.g., id.* at 24, 88.

²⁴⁵ *See, e.g., id.*

²⁴⁶ *Id.* at 360, 44, 188.

²⁴⁷ *Id.* at 132–33, 312–313.

²⁴⁸ *See generally id.*

²⁴⁹ *Id.* at 211–12.

²⁵⁰ *Id.* at 211.

²⁵¹ *Id.*

²⁵² *E.g., id.* at 37, 42, 51, 256.

Students are also frequently reminded of the literary nature of this study through the explanations in each chapter of the literary devices used by the book's authors and discussions of the authors' uses of various forms and genres, as well as by specific examples contained in the text itself of literature and poetry that incorporate ideas from the book of the Bible being discussed.²⁵³

Another strength of the curriculum is that it does not appear to favor any one religion or denomination in its treatment of the text, which is probably a reflection of its authors' diverse faiths. Unlike the NCBCPS curriculum, which uses only the King James Bible, the BLP curriculum uses three different translations when quoting the Bible: The King James Version; the New Revised Standard Version; and the Jewish Bible, the Tanakh, for all the Hebrew portions.²⁵⁴ In addition, where scholars differ on issues, such as dates, authorship, or interpretation, the text gives equal treatment to each interpretation.²⁵⁵ This is in marked contrast to the NCBCPS curriculum which boldly declares disputed dates as certain and never discusses authorship.²⁵⁶ The authors of *The Bible and Its Influence* also make a point of distinguishing how Jews and Christians differ in their use and interpretation of particular biblical stories, verses, or books.²⁵⁷

In addition to the particular academic aspects of this curriculum, the very fact that the program uses a textbook in addition to the Bible helps protect against the use of these elective classes to advance or inhibit religion. While the NCBCPS curriculum only uses the King James Bible as its text, *The Bible and Its Influence* is intended to be used by the students in addition to reading assignments from the Bible.²⁵⁸ With the textbook as a

²⁵³ See e.g., *id.* at 126, 145, 358, 206, 358.

²⁵⁴ Compare *id.* at ii, and NATIONAL COUNCIL ON BIBLE CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12, at i.

²⁵⁵ For example, the text discusses the disagreement among the various faiths as to the authorship of the Book of Isaiah. BIBLE LITERACY PROJECT, *supra* note 207, at 116–17.

²⁵⁶ See NATIONAL COUNCIL ON BIBLE CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12, at 88.

²⁵⁷ The curriculum explains how Jews and Christians differ on their views of the Hebrew Scriptures, on the idea of original sin, and on their interpretation of stories, such as the sacrifice/binding of Isaac. See BIBLE LITERACY PROJECT, *supra* note 207, at 19, 38, 194.

²⁵⁸ NATIONAL COUNCIL ON BIBLE CURRICULUM FOR PUBLIC SCHOOLS, *supra* note 12, at i; Bible Literacy Project, Frequently Asked Questions, <http://www.bibleliteracy.org/Site/Case/index.htm> (last visited Jan. 21, 2007).

guide, it is less likely that a teacher will inadvertently, or even intentionally, lead the class into discussions that violate the Constitution. This danger is further reduced by the fact that, as mentioned above, the BLP provides teacher training on how to properly conduct a Bible as literature class.²⁵⁹

All of the information provided in the text by the authors highlighting important art and literature, as well as the way the information is presented makes it clear that this is not a religious study of the Bible, but rather an academic one. This curriculum manages not only to educate on the Bible without promoting the beliefs contained within, but is also respectful of those who do base their faith in these religious texts. While it is impossible to predict the future, the likelihood that this curriculum would have the primary effect of advancing or inhibiting religion seems a near impossibility. It is this Author's opinion that the primary effect of this curriculum will be to expose students to literature, art, and music they are not familiar with and expand their understanding of those with which they are familiar.

3. Does the Curriculum Foster an Excessive Government Entanglement with Religion?

Finally, under the third prong of the *Lemon* test, the curriculum "must not foster 'an excessive government entanglement with religion.'"²⁶⁰ This was one of the major problems with the NCBCPS curriculum.²⁶¹ However, the BLP curriculum does not make any overt attempts to connect the Bible or Christianity with the United States. The pages of the text are not covered with national symbols like the flag or the Declaration of Independence.²⁶² On the contrary, the cover has three works of art depicting biblical scenes by artists from China, Russia, and North America.²⁶³ The pages separating each unit are fittingly decorated with images of columns and arches of varying colors, rather than with soldiers or flags.²⁶⁴ In fact, the BLP curriculum seems to have a much broader focus in general than the

²⁵⁹Bible Literacy Project Eight Unique Features, *supra* note 212.

²⁶⁰*Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970)).

²⁶¹See *supra* Part IV.A.3.

²⁶²See generally BIBLE LITERACY PROJECT, *supra* note 207.

²⁶³*Id.* at i.

²⁶⁴See, e.g., *id.* at 190–91.

NCBCPS' focus. When discussing the Bible's influence on art, music, and literature, the BLP's curriculum offers examples from around the world, both current and historical. It has pictures of paintings and sculptures from Asia, Europe, and Africa, in addition to art from the Americas.²⁶⁵ The curriculum discusses the music of famous composers such as Verdi, Bach, Beethoven, Menotti, Taverner, and even Andrew Lloyd Webber, in addition to Busta Rhymes and Rage Against the Machine.²⁶⁶ When it comes to literature, authors from all nations are discussed, including Milton, Bonhoeffer, Keats, Hemingway, C.S. Lewis, Shusaku Endo, and Harriet Beecher Stowe.²⁶⁷ It is hard to imagine how the curriculum could be construed as fostering any kind of relationship between religion and the government. The focus of the text is clearly academic and the scope is far too broad to draw such a narrow conclusion.

In addition, such a construction of the text would be completely misguided given that *The Bible and Its Influence* only mentions the government four times in the entire 373-page text.²⁶⁸ The first instance occurs in the Introductory Unit under the heading The Bible in American Life. It states:

From the very beginning, the Bible has been part of the fabric of the United States. Biblical thought can be found in the writings and speeches of the leaders and heroes who formed the Republic and guided its development. It is used in public debate and political campaigning even today. *It is important to note, however, that the Bible was not the only or principal source for the aspirations of the Founders.* Thomas Jefferson, James Madison, and others found inspiration in the philosophies of the day, such as the Enlightenment. They acknowledged God as the Creator, but they often looked to writers like John Locke and David Hume to form their beliefs in "unalienable rights" and other principles of democracy.²⁶⁹

²⁶⁵ See generally *id.*

²⁶⁶ See e.g., *id.* at 358.

²⁶⁷ See *id.* at 12, 29, 169, 298, 310, 326, 342.

²⁶⁸ See generally *id.*

²⁶⁹ *Id.* at 10 (emphasis added).

Then, as an example, it quotes George Washington's first inaugural address in which he gives homage to "that Almighty Being," "the Great Author of every public and private good" amid his hopes for the nation.²⁷⁰

The second example is on the very next page, under a heading entitled Bible Literacy and Citizenship.²⁷¹ Half a page is devoted to examples of biblical references used by Abraham Lincoln in his speeches, such as his "House Divided Speech," which was based on a phrase from Luke 11:17, "Every kingdom divided against itself becomes a desert, and house falls on house."²⁷² All of the examples given are actual references in his speeches to biblical verses or ideas, as opposed to random quotes reflecting on the merits of being a Christian, as found in the NCBCPS curriculum.²⁷³ One short paragraph after this section further clarifies the purpose behind these examples by explaining that "[l]ittle of America's historic public speeches or its great reform movements or the pilgrim wanderings that led to America's founding is completely intelligible without at least a working knowledge of the Bible."²⁷⁴

Neither one of these references appears to foster an excessive government entanglement with religion. First of all, when viewed in context, these references do nothing more than make a case for academic study of the Bible, because they demonstrate that biblical references are widespread and, without understanding their background, one cannot fully appreciate the meaning being conveyed. Second, it would be a complete fabrication to pretend that the Bible was not among the writings that influenced the Founding Fathers. The mere mentioning of that fact is not unconstitutional, particularly in view of the fact that the curriculum gives fair weight to its influence by clarifying that it was not the only influence on government leaders at the time. Furthermore, these two examples amount to less than two pages out of 373 total devoted to the study of the Bible. Since these references, when viewed in context, are not making overly broad claims about the Bible's influence and amount to such a small amount of the text, it cannot be said that these references foster an excessive government entanglement with religion.

²⁷⁰ *Id.*

²⁷¹ *See id.* at 10–11.

²⁷² *Id.* at 11.

²⁷³ *See id.* at 10–11; *see also supra* notes 149–56 and accompanying text.

²⁷⁴ BIBLE LITERACY PROJECT, *supra* note 207, at 11.

The third reference is in one of the “Cultural Connections” boxes.²⁷⁵ It is titled American History and is a tenuous reference at best.²⁷⁶ It explains how the Pilgrims were familiar with the idea of a covenant because of their faith.²⁷⁷ “The language of covenant is an integral part of American legal and governmental tradition, partly because English Pilgrims and Puritans identified themselves with Abraham, who was called to set out on a long journey searching for a land of promise.”²⁷⁸ The text goes on to quote the Mayflower Compact where it states, “[w]e whose names are underwritten. . . . [h]aving undertaken a voyage to plant the first colony. . . . do by these presents solemnly and mutually in the presence of God, and of one another, Covenant and Combine our selves [sic] together into a civil body politic.”²⁷⁹ Once again, there is no way this could be construed as fostering an excessive entanglement with religion. This insert merely explains that one of the various influences that led the Pilgrims to covenant was their familiarity with Abraham. Given that they were Puritans, this seems highly likely and nothing in the text promotes Christianity or any other religion, so there is no chance of a government entanglement with religion.

The final reference is the last Unit Feature of the book, entitled “Freedom and Faith in America.”²⁸⁰ Most of this section discusses how America is a pluralistic society and freedom of religion has been important to Americans since the earliest settlers, eventually leading to the creation of the First Amendment.²⁸¹ While most of the quotes included in this section are just general positive statements about religious freedom, a few are questionable.²⁸² One quote is from the Northwest Ordinance, which was enacted by Congress in 1787.²⁸³ It states, “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged.”²⁸⁴ A few paragraphs later, there is a quote from Alexis de

²⁷⁵ *See id.* at 50.

²⁷⁶ *See id.*

²⁷⁷ *Id.* at 50.

²⁷⁸ *Id.*

²⁷⁹ *Id.* (omissions in original).

²⁸⁰ *Id.* at 372–73.

²⁸¹ *See id.*

²⁸² *See id.*

²⁸³ *Id.* at 372.

²⁸⁴ *Id.*

Tocqueville, in which he remarks on the role of religion in America.²⁸⁵ Two of the paragraphs in the quote are from his book, *Democracy in America*, and are merely commentary on the fact that religion plays a role in American society.²⁸⁶ The last paragraph, however, goes a step farther. The author of this article was unable to find the last paragraph from the quote within the text of *Democracy in America*, to which it is attributed. This paragraph is frequently attributed to de Tocqueville, so the mistake is not surprising. The quote essentially attributes America's "genius and power" to "the churches of America."²⁸⁷ Although it would be a very weak basis, some might construe these quotes as an attempt to implicate government support of religion, or more likely, as the promotion of religion in general.

Finally, the last quote in this section is from a book by David Aikman, in which he quotes a professor from China commenting on America.²⁸⁸ He states:

One of the things we were asked to look into was what accounted for the . . . pre-eminence of the West over all the world. . . we have realized that the heart of your culture is your religion: Christianity. The moral foundation of social and cultural life was what made possible the emergence of capitalism and then the successful transition to democratic politics.²⁸⁹

This quote clearly promotes the idea that Christianity is the foundation of our country. While it does not directly implicate the idea of government sponsorship of religion, it implies that democracy is related to religion. Furthermore, its attribution of America's success to Christianity is an impermissible promotion of religion.

In context, these quotes appear to be included only to show that religion has played a role in American history and continues to be a large part of our pluralistic society. However, some of these quotes could be construed as promoting religion. It is true that, with the exception of the last one, they do not promote any particular religion; at best they appear to promote

²⁸⁵ *Id.* at 373.

²⁸⁶ *See id.*

²⁸⁷ *See id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

religion in general, but in this area, that can be sufficient.

Many of the quotes within this section are not objectionable. In fact, the majority of the two-page Unit Feature is not even questionable; only the three quotes mentioned. For that reason, this should not be construed as an argument that this curriculum fosters an excessive entanglement with religion. These three quotes comprise less than one page out of a 373-page curriculum that is otherwise above reproach. When read in context, only the last quote seems particularly troublesome and when read with regard to the entirety of the curriculum, none of these quotes should lead students to the impression that this text is promoting religion or implying a connection between religion and the government.

Overall, *The Bible and Its Influence* does not foster an excessive government entanglement with religion. It is apparent from each page of the curriculum that the focus is on the academic study of the Bible and the biblical themes present in art, literature, and music from around the world. There were three quotes at the very end of the book that might be considered objectionable, but even if found to be promoting the idea of a connection between the government and religion, three quotes in such a vast curriculum, which otherwise is completely compliant with constitutional standards, does not constitute an excessive entanglement. The fact that the curriculum only mentions the government four times in almost 400 pages makes it clear that it was not the focus or intent of the Bible Literacy Project to imply a connection between the government and religion, and anyone reading this curriculum could not come away with that impression. Since the focus of this curriculum is clearly academic, it does not foster an excessive government entanglement with religion and, thus, the curriculum passes the third and final prong of the *Lemon* test.

B. Endorsement

The endorsement test concerns whether the activity, intentionally or unintentionally, has “the effect of communicating a message of government endorsement or disapproval of religion.”²⁹⁰ This curriculum is clearly focused on the academic study of the Bible. Every page of the text is filled with descriptions of literary forms and devices used, prints of paintings or pictures of sculptures that relate to the subject matter being covered, and

²⁹⁰Lynch v. Donnelly, 465 U.S. 668, 692 (1984).

supplemental information on history, music, or specific works of literature that are relevant.²⁹¹ The writers continually remind the reader that the opinions reflected in each book of the Bible are those of the biblical author, not those of the curriculum writers.²⁹² Also, using several different translations of the biblical text and explaining differing viewpoints and interpretations makes it clear that no one religion or viewpoint is being favored. No one religion is being favored, and religion in general is not being favored, because of the clearly academic focus of this curriculum. The fact that the Bible itself is not the textbook also helps alleviate any perception of government endorsement of religion. Finally, to further dispel any possibility of endorsement of religion by the teachers on behalf of the State, the teachers must take courses on how to teach the Bible neutrally and they have the textbook to guide their discussions and lessons.²⁹³ Therefore, since the curriculum does not endorse or disapprove of religion, and precautions have been taken with regard to the teaching of this material, adoption of this curriculum could not possibly be considered an endorsement or disapproval of religion attributable to the government.

C. Coercion

The Supreme Court created the coercion test in *Lee v. Weisman*, in which it stated that schools cannot compel student participation in religious exercises, either directly or through indirect persuasion.²⁹⁴ The Bible Literacy Project's curriculum poses no such threat of coercion, because the curriculum has been carefully crafted to be strictly an academic exercise. This curriculum is intended to be an elective course, so each student would be there voluntarily. Additionally, because the curriculum promotes Bible literacy for literary and artistic purposes and not religion, there is no danger of a coercive effect. Coercion only becomes a danger when students would feel compelled to assent to views they do not agree with or face ostracism.²⁹⁵ This curriculum does not express agreement or disagreement with the biblical text being studied, thus neither Christians nor non-Christians would face pressure to assent to contrary viewpoints, so there is

²⁹¹ See generally BIBLE LITERACY PROJECT, *supra* note 207.

²⁹² See generally *id.*

²⁹³ Rodgers, *supra* note 211; Bible Literacy Project Unique Features, *supra* note 212.

²⁹⁴ 505 U.S. 577, 599 (1992).

²⁹⁵ *Id.* at 593.

no danger of coercion.

VI. CONCLUSION

The Supreme Court has made it clear, and the Author of this Comment agrees, that Bible classes are not only constitutional, but should be encouraged as part of a broad-based secular education. Nothing in this Comment should be construed to indicate otherwise. However, application of the Supreme Court tests makes it clear that the NCBCPS curriculum does not comply with these standards, and should, therefore, be removed from use in public schools. This Author would encourage school districts to explore other options, such as the Bible Literacy Project's curriculum, *The Bible and Its Influence*, which clearly conforms to constitutional standards, keeping in mind that, while instruction in the Bible is important, the purpose of these courses is to educate, not indoctrinate. Our Founding Fathers had good reason to abhor the entanglement of government with religion. Continued use of the NCBCPS curriculum in schools will only serve to degrade both the religious beliefs being promoted as well as the value of such an education.