



September 17, 2013

To the State Board of Education:

Barbara Cargill, Chair
Thomas Ratliff, Vice Chair
Mavis B. Knight, Secretary
Martha M. Dominguez
Ruben Cortez, Jr.
Marisa B. Perez
Lawrence A. Allen, Jr.
Ken Mercer

Donna Bahorich
David Bradley
Tom Maynard
Patricia Hardy
Geraldine Miller
Sue Melton-Malone
Marty Rowley

We submit these comments on behalf of the ACLU, the ACLU of Texas, and our thousands of members across the state. Our members care deeply about students' and parents' First Amendment right to worship according to their beliefs without interference from the government, and they do not want the State Board of Education to take any action that would undermine the educational future of Texas public school students. We urge the Board to reject the uninformed, anti-science critiques from some on the Textbook Review Committee and adopt science textbooks with accurate and comprehensive coverage of evolution.

Religious belief is a profoundly personal matter, and the spiritual guidance of students is best left to their families and faith leaders. To protect children's freedom to worship according to their own conscience, our public schools must stay neutral, neither promoting nor disparaging any belief system. As such, public schools may not use science classes to teach creationism, creation science, intelligent design, or any other religious belief about the origin of life. *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 586, 592 (1987) (striking down Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act as unconstitutional, holding that the Act "was not designed to further" the State's purported goal of "protecting[ing] academic freedom," and concluding that "[t]he preeminent purpose of the Louisiana Legislature was clearly to advance the religious viewpoint that a supernatural being created humankind"); *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 765-66 (M.D. 2005) (striking down school board policy promoting the teaching of intelligent design in biology class); *McLean v. Ark. Bd. of Educ.*, 529 F. Supp. 1255, 1274 (E.D. Ark. 1982) (enjoining statute authorizing teaching of creation-science in public schools and holding that "[n]o group, no matter how large or small, may use the organs of government, of which the public schools are the most conspicuous and influential, to foist its religious beliefs on others"). Accordingly, suggestions by some textbook reviewers to incorporate the "creation model" or "creation science" based on Biblical principles into every science textbook may not be implemented without violating students' and families' constitutional rights.

Indeed, efforts to inject anyone's personal religious beliefs regarding the origins of life into public school science curriculum are constitutionally impermissible no matter what form they may take. The State may not, for example, suppress the teaching of evolution or undermine evolution education by endorsing junk science that falsely purports to disprove evolution or question its validity. *See, e.g., Epperson v. Arkansas*, 393 U.S. 97, 108 (1968) (holding unconstitutional state law prohibiting the teaching of evolution in public schools on the grounds that Arkansas "sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man"); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 344-45 (5th Cir. 1999) (overturning requirement that teachers read classroom disclaimer questioning validity of evolution and promoting creationism because the "contested disclaimer does not further . . . freedom of belief or critical thinking by students . . . [but rather] furthers a contrary purpose, namely the protection and maintenance of a particular religious viewpoint"); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 975 F. Supp. 819, 829 (E.D. La. 1997) ("[T]his Court cannot glean any secular purpose to this disclaimer. While the School Board intelligently suggests that the purpose of the disclaimer is to urge students to exercise their critical thinking skills, there can be little doubt that students already had that right and are so urged in every class."), *aff'd*, 185 F.3d 337 (5th Cir. 1999); *Selman v. Cobb Cnty. Sch. Dist.*, 390 F. Supp. 2d 1286, 1306 (N.D. Ga. 2005) (striking down requirement to place sticker disclaiming evolution as theory, not fact, in all science textbooks because the sticker impermissibly "sends a message to those who oppose evolution for religious reasons that they are favored members of the political community, . . . [and] a message to those who believe in evolution that they are political outsiders"), *vacated and remanded on grounds of incomplete trial record*, 449 F.3d 1320 (11th Cir. 2006).

Many of the complaints offered by members of the Textbook Review Committee seek to do just that. For instance, one reviewer argues that the Glencoe/McGraw Hill textbook should tell students that the fossil record lacks transitional forms. The claim that there are no transitional fossils is a classic creationist argument that has been thoroughly debunked by scientists, who are able to identify many transitional fossils and predict where, geologically, new ones will be found. *See* National Academy of Sciences, *Science, Evolution, and Creationism* 38 (2008).

The State Board of Education must reject these religiously motivated, unconstitutional attacks on evolution. Your job is to ensure that Texas students have the best science education possible, which starts with a science textbook that is accurate and free of personal religious view points. If the Board fails to respect constitutional boundaries, Texas schools that select problematic textbooks from the approved list may be unwittingly exposing themselves to litigation. We ask that you avoid these unnecessary consequences by adopting textbooks that treat evolution as the established science it is.

Respectfully submitted,



Rebecca L. Robertson
Legal & Policy Director
ACLU of Texas



Heather L. Weaver
Senior Staff Attorney
ACLU Program on Freedom of Religion & Belief