Guidelines for Applying the Provisions of Idaho Constitution Article IX, § 6, Regarding Sectarian, Religious or Denominational Teaching or Materials

Prepared Under the Direction of the Idaho Public Charter School Commission and Approved by the Commission on February 11, 2010

Article IX, § 6, of the Idaho Constitution provides:

> **Section 6. *Religious* test and *teaching* in school prohibited. —** No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No ***sectarian*** or ***religious tenets*** or ***doctrines*** shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, ***sectarian*** or ***denominational*** character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article. [Emphasis added.]

Legal Effect of the Guidelines. These Guidelines provide working guidance to public charter schools on how to apply Article IX, § 6, to decide what books, papers, tracts or documents are religious, sectarian or denominational. These Guidelines do not have the force and effect of law. They are agency guidance documents under Idaho Code § 67-5250(2).

These Guidelines divide books, papers, tracts, and documents into three categories that illustrate what materials can or cannot be "used or introduced" in public charter schools: sacred texts, other sectarian or denominational materials, and materials discussing or addressing religion that are not religious, sectarian or denominational.

What Are Sacred Texts? A sacred text is the most easily defined category of sectarian, religious or denominational "books, papers, tracts or documents." To give some examples, the various Christian Bibles,[1] the Torah, the Koran, the Book of Mormon, the Shruti (Hindu), and various Nikayas or Sutras (Buddhist) are sacred texts because they are considered by some or all adherents to the religions that subscribe to them to be divinely inspired or revealed, and/or to prescribe doctrines or tenets of religious belief or practice, and/or to otherwise convey or pre-

[1] There are at least four canons of the Christian Bible: The Protestant Old Testament contains 39 books; the Roman Catholic Old Testament contains additional books called the Apocrypha for a total of 46; the Greek Orthodox Old Testament contains up to 53 books (not all 53 books are used by all Greek Orthodox churches); and the Slavonic Old Testament also contains up to 53 books. In addition, books that have one name in one canon (*e.g.*, the Protestant canon's 1st and 2nd Samuel and 1st and 2nd Kings) have other names in a different canon (*e.g.*, the Roman Catholic canon's 1st, 2nd, 3rd and 4th Kings). None of the four Christian canons' Old Testament exactly coincides with the Tanakh, which is the English transliteration of the Hebrew acronym for the Torah ("Teaching", or the Five Books of Moses), Nevi'im ("Prophets") and Ketuvim ("Writings"), from which the Christian Old Testament is derived.

scribe a religious viewpoint essential or central to the adherents' religious belief. All of these books are therefore denominational or sectarian because they embody the religious "tenets" or "doctrines" of existing religions.

In General, What Are Sectarian or Denominational Materials, and What Are Not? The broad category of sectarian or denominational materials includes sacred texts, but is larger. This category includes additional materials—*e.g.*, a hypothetical book called "Why Religion A Is Right and Religion B is Wrong" would be sectarian[2] or denominational[3] because it would promote or oppose a particular religious viewpoint. This hypothetical book is a useful tool for discussion not because charter public schools are likely to use such a book, but because such a book is springboard for discussion of books that may actually be encountered. The subtler issue is whether there are books that implicitly do the same thing as the hypothetical.

In an article titled "Review of the *Bible in History and Literature*," 34 Religion and Education No. 3 (Fall 2007), pages 94-102, University of Northern Iowa, Brennan Breed and Kent Harold Richards explain how *The Bible in History and Literature* ("TBHL") is not, in their view, merely a survey of the Bible from an historical or literary perspective, but a book that implicitly weighs in on many theological issues: For example, one of the main differences between the Protestant canon and other Christian canons is the Apocrypha, which is not in the Protestant canon, but is in the others. Rather than explaining the differing views on the Apocrypha, or explaining how and why Protestants excised the Apocrypha from what other Christians included in the canon, TBHL says that Christians typically paid little heed to the Apocrypha, a statement that elevates Protestant theology over Roman Catholic, Orthodox and Slavonic theologies. Another example is the treatment of Moses—TBHL accepts the King James Bible's stories of Moses as historical fact without discussing the different but similar Moses stories in the Koran (does TBHL thus imply that King James is right and the Koran is wrong?) or even discussing differing perspectives on whether Moses was or was not an historical figure. Another example is describing William Tyndale, whose translations were incorporated into portions of the King James Bible, as "the greatest translator of Scripture into English who ever lived." This statement implies that the works that Mr. Tyndale translated were indeed "Scripture" and that his choices of words in translation were superior to others' translations, a topic of some theological debate.

Messrs. Breed and Richards's examples of implicitly sectarian or denominational materials identify constitutional shortcomings that might be found in some "books, papers, tracts or documents." The examples do not, however, yield a working "yardstick" for determining which "books, papers, tracts or documents" are "sectarian or denominational [in] character." Nonetheless, there is academic writing that describes what is permissible teaching about religion and what is impermissible religious teaching that can guide public charter schools concerning what "books, papers, tracts or documents" are or are not "sectarian or denominational [in] character."

The Bible & Public Schools: A First Amendment Guide, published jointly by The Bible

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[2] "Sectarian" mean: "adjective 1. Of, relating to, or characteristic of a sect 2. Adhering or confined to the dogmatic limits of a sect or denomination; partisan 3. Narrow-minded; parochial." American Heritage® Dictionary of the English Language, Third Edition (1992) (electronic version).

[3] "Denomination" means: "noun 1. A large group of religious congregations united under a common faith and name and organized under a single administrative and legal hierarchy." *Id.*

Literacy Project, the First Amendment Center, and the Society of Biblical Literature, is endorsed by a spectrum of religious and lay organizations.[4] Chico State University's "*A Teacher's Guide to Religion in the Public Schools*" ("*Teacher's Guide*") and "*Religion in the Public School Curriculum*" ("*RITPSC*") are similarly endorsed.[5] Substituting the word "book" (as a shorthand for the words "books, papers, tracts or documents") for the words "instruction", "teaching", "schools" or similar words in materials prepared by these organizations gives the following practical tests for distinguishing between "books, papers, tracts or documents" that are "sectarian or denominational [in] character" and those that are not.

- Books "should neither promote nor disparage religion" or particular religions, nor should they explicitly or implicitly adopt "a particular sectarian point of view." From the *Bible & Public Schools*.

- Books that discuss "divine action" described in sacred texts should not implicitly or explicitly view them "as historical fact." *Id*.

- Books "may strive for student awareness of religion, but should not press for student acceptance of any [particular] religion." *Id*.

- Books "may expose students to a diversity of religious view, but may not impose, discourage, or encourage any particular view." Books "may inform the student about various beliefs, should not seek to conform him or her to any particular belief." *Id*.

- Books that "adopt any particular Bible – or translation – [are] likely to suggest to students that is normative, the best Bible. One solution is to use … an anthology of … trans-

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[4] *The Bible & Public Schools: A First Amendment Guide*, is endorsed by: American Association of School Administrators; American Federation of Teachers; American Jewish Committee; American Jewish Congress; Anti-Defamations League; Association for Supervision and Curriculum Development; Baptist Joint Committee on Public Affairs; Christian Educators Association International; Christian Legal Society; Council on Islamic Education; National Association of Evangelicals; National Association of Secondary School Principals; National Council of Churches of Christ in the U.S.A.; National Council for the Social Studies; National Education Association; National School Boards Association; People for the American Way Foundation; Society of Biblical Literature; and Union of American Hebrew Congregations.

[5] The Chico State publications are endorsed by: American Academy of Religion (*RITPSC*); American Association of School Administrators (both); American Federation of Teachers (both); American Jewish Committee (*Teacher's Guide*); American Jewish Congress (both); Americans United Research Foundation (*RITPSC*); Anti-Defamation League (*Teacher's Guide*); Association for Supervision and Curriculum Development (both); Baptist Joint Committee on Public Affairs (both); Catholic League for Religious and Civil Rights (*Teacher's Guide*); Christian Educators Association International (*Teacher's Guide*); Christian Legal Society (both); Church of Jesus Christ of Latter-day Saints (*RITPSC*); Council on Islamic Education (*Teacher's Guide*); First Amendment Center (both); National Association of Elementary School Principals (*Teacher's Guide*); National Association of Evangelicals (both); National Association of Secondary School Principals (*Teacher's Guide*); National Conference of Community and Justice (*RITPSC*); National Council of Churches of Christ in the U.S.A. (both); National Council for the Social Studies (both); National Educational Association (both); National PTA (*Teacher's Guide*); National Education Association (*RITPSC*); National School Boards Association (both); Union of Hebrew Congregations (*Teacher's Guide*); and Union of Orthodox Jewish Congregations of America (*Teacher's Guide*).

lations." *Id*.

- A book must contain an "approach to religion that is *academic*, not *devotional*"; must "strive[] for student *awareness* of religions," not "student *acceptance* of any [particular] religion"; must "*expose* students to a diversity of religious views," but not "*impose* any particular view"; must "*educate[]* about all religions" and "not *promote* or *denigrate* religion"; and must "*inform[]* students about various beliefs" but not "seek to *conform* students to any particular belief." *Teacher's Guide*, pages 75-76. See similar materials in *RITPSC*, page 90.

- Books about religion must be "free of advocacy" regarding particular religious viewpoints. They may often contain descriptive modifiers like "most [adherent of Religion A] believe" or "according [Hebrew, Christian, Muslim, Hindu, etc.] scriptures." *Id.*, p. 76.

Photocopies from sacred texts and Internet downloads of sacred texts cannot easily satisfy these guidelines because there is no context surrounding them. There are many English translations of the Psalms that might be used to study poetry, but photocopying one of them from among many available translations and five available Christian and Jewish canons and presenting it without any context elevates that translation and that canon in the way that Breed and Richards earlier described. On the other hand, an anthology that includes a Shakespearean sonnet and a King James translation of a Psalm and presents them as examples from the two most influential bodies of work in Early Modern English would give a context to the Psalm that neither supposes nor opposes the King James translation's religious validity or primacy.[6]

The previous discussions leave open the question: On which side of the line is a given book in a given public charter school's proposed curriculum? The Public Charter School Commission does not have the resources to review every book. It is the responsibility of each public charter school not to use or introduce any "books, paper, tracts or documents" of a "sectarian or denominational character"; otherwise, Article IX, § 6 provides "nor shall [it] receive any of the public school moneys [if] the schools have not been taught in accordance with this article."

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[6] Although such an anthology in and of itself likely would not violate Idaho Constitution, Article IX, § 6, the Breed and Richards article, the pamphlet *The Bible & Public Schools: A First Amendment Guide* and the Chico State University materials explain that improper use of an otherwise allowable text could violate the First Amendment.

For example, let us say an otherwise neutral anthology contained the King James Bible's translation of the 23rd Psalm and a Shakespearean sonnet as examples of the poetic potential of writing in Early Modern English, but a class was asked to memorize and then recite the 23rd Psalm at the start of every day. A court would almost certainly find that use of the anthology for such purposes was devotional rather than educational and would run afoul of the First Amendment. Similarly, a court would almost certainly find that an exercise in which a religious quotation in a neutral anthology were selected for an exercise in setting poetry to music was so close to one contemporary method of religious worship that it would violate the First Amendment. And one can hypothesize similar examples—asking students to write a poem in contemporary English that expressed the same sentiments as the Psalm, asking students to write a short story that captured the lessons of the Psalm—would almost certainly be found to be religious instruction that would violate the First Amendment. One's imagination would be the only limit on possible misuse of an otherwise allowable anthology.

Sacred texts are *per se* sectarian or denominational. As for the rest, the discussions on pages 2-4 of these Guidelines offer practical descriptions of books, paper, tracts or documents that satisfy or do not satisfy the Idaho Constitution. It is no answer that a public charter school may desire to select a "balance" of sectarian or denominational materials; the Constitution does not forbid "unbalanced" selections of sectarian or denominational materials; it forbids the sectarian or denominational materials themselves. Thus, a theological work by Thomas Aquinas cannot be "balanced" against a theological work by Maimonides and another by the Dalai Lama. However, an anthology that surveyed the ideas of these and other religious philosophers and that provided context for the quotations or excerpts from their works would likely contain the necessary explanation to neither implicitly or explicitly promote or disparage their views. But, the public charter school would need to review the anthology to make sure that the anthology itself was not structured in a manner to promote or disparage any particular religious views.

Finally, a public charter school has a safe harbor—using curricular materials approved pursuant to Idaho Code §§ 33-118 and 33-118A. The Commission will not entertain Article IX, § 6 challenges to books approved under those statutes because they have already been vetted by a procedure authorized by statute. Any challenge to such books would have to go back to the bodies that approved them.