

# FREEDOM FROM RELIGION *foundation*

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## M E M O R A N D U M

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TO: Kentucky Public Schools  
FROM: Andrew L. Seidel, Director of Strategic Response  
Constitutional Attorney, Freedom From Religion Foundation  
DATE: June 20, 2019  
RE: Kentucky's new elective high school bible class law

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I am writing on behalf of the Freedom From Religion Foundation to alert you to several serious issues with the recently passed Kentucky law that allows school districts to develop bible classes. FFRF is a national nonprofit organization with 31,000 members across the country, including members in Kentucky. FFRF protects the constitutional separation between state and church, and educates the public on nontheism.

The Kentucky General Assembly passed H.B. 128 which amends KRS 158.197 to allow public high schools to teach bible classes as an elective course. This law was lifted straight from the Project Blitz playbook. Project Blitz is a three-pronged Christian Nationalist strategy designed to flood legislatures with bills that use the machinery of the state to promote Christianity. Project Blitz's goal is to make Christians a favored class and all non-Christians second-class citizens. The Kentucky law is based on the Project Blitz model legislation called the "Bible Literacy Act." The new law requires:

1. That the course comply with both the Kentucky and United States Constitutions.
2. That the course be taught in an objective, nondevotional manner and may not indoctrinate, disparage, or encourage students to accept certain religious beliefs.

The law also allows schools to display religious artifacts, monuments, and symbols in conjunction with these elective courses.

Employees may teach, but not preach. The classes must educate, but not indoctrinate. In theory, such a class may be permissible, but courts have ruled that similar courses are unconstitutional. In FFRF's challenge to religious instruction in Rhea County, TN, the court said, "This is not a close case. Since 1948, it has been very clear that the First Amendment does not permit the State to use its public school system to 'aid any or all religious faiths or sects in the dissemination of their doctrines.'" *Doe v. Porter*, 188 F. Supp. 2d 904, 914 (E.D. Tenn. 2002), *affirmed*, 370 F.3d 558 (6th Cir. 2004) (quoting *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 211 (1948)). In a Mississippi case, the court found that "A Biblical History of the Middle East" class violated the Establishment Clause. *Herdahl v. Pontotoc Cty. Sch. Dist.*, 933 F. Supp. 582 (N.D. Miss. 1996). The court found it significant that the bible was the only text used in the course and that the tests were given based solely on the bible text.

It is difficult to teach the bible objectively and critically, as the First Amendment requires. For instance, few Christian parents want their public schools teaching that some bible translations claim that Jesus was born of a "virgin" because they mistranslated "young

woman.” This simple fact would have to be taught in unbiased classes and is recognized in more accurate bible translations.<sup>1</sup> Classes would have to include objective lessons like this—they cannot omit facts that contradict a pro-Christian narrative.

The larger problem is that time and again we see well-meaning courses—and given that this is part of Project Blitz, a Christian Nationalist push to invade our public schools, it cannot be called well-meaning—corrupted by teachers. In practice, bible classes are rarely taught in a legal manner. In 2007, Texas passed a law mandating bible classes. In 2013, Dr. Mark A. Chancey, a professor of religious studies at Southern Methodist University,<sup>2</sup> conducted a study of these classes and found that many “are blatantly and thoroughly sectarian, presenting religious views as fact and implicitly or explicitly encourage students to adopt those views.”<sup>3</sup> The study surveyed 57 public school districts with bible courses and found that course materials were of low academic quality, and that “many of [these materials] are written specifically for Christian audiences for the purpose of strengthening their faith.”<sup>4</sup>

The few course materials that were acceptable still posed serious problems, including possible legal problems. In one instance: “[T]he overall thrust of the book is that religion is largely a source of social progress, with correspondingly less attention to cases in which biblical passages have been used to justify oppression. Indeed, difficult and troubling biblical texts are often (though definitely not always) ignored, with the likely result that students encounter a somewhat sanitized Bible.”<sup>5</sup> This one-sided teaching is not objective and is unconstitutional.

The fact that a bible class is taught as an elective cannot save it from constitutional scrutiny. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See generally Lee v. Weisman*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003).

Bible courses must be carefully created to comport with constitutional standards. However, if the District is not careful in drafting course curricula and guidelines, teachers may cross

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<sup>1</sup> The Hebrew word *almah*, meaning “young woman,” not virgin, was mistranslated into Greek as *parthenos*, “virgin,” even though there is a different Hebrew word for virgin. For instance, see the New Revised Standard Version of Isaiah 7:14. For more, see Bart Ehrman, *How Jesus Became God: the Exaltation of a Jewish Preacher from Galilee* (2014, paperback ed.), 243; and Ehrman, *Jesus, Interrupted: Revealing the Hidden Contradictions in the Bible* (2009, paperback ed.), 74.

<sup>2</sup> Dr. Chancey has a Ph.D. from Duke in the New Testament and Early Judaism. He authored *The Myth of a Gentile Galilee* and *Greco-Roman Culture and the Galilee of Jesus*, and co-authored *Alexander to Constantine: Archaeology of the Land of the Bible with Yale University Press*. He’s been published in *Religion & Education*, *Journal of Church and State*, *Religion and American Culture*, and *Journal of the American Academy of Religion*. Chancey now serves on the editorial boards of *Religion & Education* and *Teaching the Bible*.

<sup>3</sup> Mark A. Chancey, Texas Freedom Network, *Reading, Writing & Religion II: Texas Public School Bible Courses in 2011–12* (2013), § viii–ix, available at [a.tfn.org/site/DocServer/TFNEF\\_ReadingWritingReligionII.pdf?docID=3481](http://a.tfn.org/site/DocServer/TFNEF_ReadingWritingReligionII.pdf?docID=3481).

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.* at 13–14.

the constitutional threshold and expose school districts to legal liability. Even if a course were taught within constitutional limitations, teachers would still risk imposing their religious beliefs on students. To avoid legal liability, and to respect students' pluralistic beliefs, the District's best interest is served by not offering any elective bible classes.

If the District decides to offer the course, it must draft the curriculum in a way that leaves no room for teachers to accidentally stray beyond constitutional confines. The course must be designed so that the only way a teacher could violate the Constitution would be to completely disregard the Department's carefully constructed guidelines. The District must also draft requirements and training for teachers who will have these classes, and the training must be stringent enough to overcome their personal religious perspective. Finally, the District must also draft disciplinary language and procedures to quickly and efficiently deal with teachers who violate the rules set forth in this letter and who abuse their position to promote a particular religious view.

Further, the District violates the Constitution when it allows its schools to display religious symbols or monuments pursuant to this new law. This opens schools to lawsuits on other grounds because courts have continually held that school districts may not display religious messages or iconography in public schools. *See, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York Cty.*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomington Pub. Schs.*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

Religion is a divisive force in public schools. The Supreme Court has repeatedly noted that "[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). This message is particularly impermissible when it is presented to such young and impressionable students.

The state must make certain that its schools will not under any circumstances unlawfully and inappropriately use a bible class to indoctrinate students in religious matters. Parents and taxpayers expect and desire a secular education. Not only is this constitutionally required, it reflects the increasingly pluralistic world we live in. Please inform us in writing at your earliest convenience of the steps the District is taking to address these concerns. If you would like further assistance or guidance in developing a bible curriculum that is constitutionally permissible and minimizes legal liability, we would be happy to consult. Thank you for your attention to this matter.