

RUTGERS JOURNAL OF LAW & RELIGION

-NOTE-

ACCOMMODATING DIVERSITY: TEACHING ABOUT RELIGION IN PUBLIC SCHOOLS

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I. INTRODUCTION

The Supreme Court of the United States has long recognized the important role that education plays in helping our nation's children become intelligent members of society and active participants in our political system.¹ The Court has acknowledged that education "prepares individuals to be self-reliant and self-sufficient participants of our society."² In one of the most important decisions of this century, *Brown v. Board of Education*, the Court stated:

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities . . . It is the very foundation of good citizenship. Today it is a principle instrument in awakening the child to cultural values, in preparing him

¹ See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534 (1925). In *Pierce*, the Court unequivocally stated:

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

Pierce, 268 U.S. at 534. The Court in *Pierce* clearly recognized the importance of all children receiving an education and the right of the state to mandate that all children receive an education. However, it held that the Oregon Compulsory Attendance law under consideration was unconstitutional because it required all students to attend *public school*. *Id.* This violated not only the rights of private schools, but the constitutional right of parents to determine the type of education their children would receive. *Id.*

² *Yoder*, 406 U.S. at 221.

for later professional training, and in helping him to adjust normally to his environment.³

As *Brown* and other Supreme Court opinions reflect, education plays a crucial role in shaping not only our country's youth, but also, through them, the very core of our society. The important role that education plays leaves little doubt that the government has an interest in monitoring and regulating the education of its citizens. Specifically, the government has an interest in ensuring that each child enrolled in the public school system experiences a curriculum that includes all subjects essential to a complete education.

The United States' population has historically increased every year,⁴ and as the school-age population continues to increase, so too does school enrollment.⁵ Total public school enrollment is projected to set new enrollment records each year from 2009 through 2018, reaching an estimated high of 53.9 million students in 2018.⁶ It is estimated that in 2018, 38.2 million students will be enrolled in pre-kindergarten through grade eight and 15.8 million students will be enrolled in grades nine through twelve.⁷ As the school-age population continues to grow, it also continues to become more diverse, with the

³ 347 U.S. 483, 493 (1954). The Court further stated that, "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Id.* Given the importance of education, the Court rejected the "separate but equal" doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1896), and declared that separate educational facilities are inherently unequal. *Brown*, 347 U.S. at 495.

⁴ See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, at 8 (2011), available at <http://www.census.gov/prod/2011pubs/11statab/pop.pdf>.

⁵ NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION 2009, at iii (2009), available at <http://nces.ed.gov/pubs2009/2009081.pdf>.

⁶ *Id.* at 10.

⁷ *Id.*

combined enrollment of Black, Hispanic, Asian/Pacific Islander, and American Indian/Native Alaska students generally having increased as a percentage of the total enrollment in all regions between 1987 and 2007.⁸ As the public schools experience an increase in ethnic and cultural diversity, they are witnessing a corresponding increase in the religious diversity among students as well.

Every day, millions of children from diverse religious backgrounds look to the teachers in our nation's public schools for the education they need and deserve. Today, the United States is the most religiously diverse society in the world,⁹ with almost eighty percent of Americans saying that religion is an important part of their lives.¹⁰ Given the important role that religion plays both in our nation, and in every nation around the world, one would expect religion to play an important role in the education of our nation's youth. However, religion is rarely seen in public school curricula.¹¹ As the public school population continues to grow and diversify, schools and teachers must begin to question school curricula that exclude religion and fail to recognize our society's religious diversity.

⁸ *Id.* at 16.

⁹ CHARLES C. HAYNES & OLIVER THOMAS, *FINDING COMMON GROUND: A GUIDE TO RELIGIOUS LIBERTY IN PUBLIC SCHOOLS* 3 (2001).

¹⁰ WARREN A. NORD & CHARLES C. HAYNES, *TAKING RELIGION SERIOUSLY ACROSS THE CURRICULUM* 1 (1998).

¹¹ See PAUL GAGNON, *DEMOCRACY'S UNTOLD STORY: WHAT THE WORLD HISTORY TEXTBOOKS NEGLECT* 59-63 (1987); Paul C. Vitz, *Religion and Traditional Values in Public School Textbooks*, 84 *Pub. Int.* 79 (1986). While it is still true that religion is given little attention in public school curricula, the past decade has seen some positive changes in that regard. See Charles C. Haynes, *Religion Hasn't Been 'Kicked Out' of Schools: Inside the First Amendment* (May 23, 2004), <http://www.firstamendmentcenter.org/commentary.aspx?id=13377> (explaining that recently developed social studies standards are "fairly generous to the study of religion," and that "[t]he latest generation of textbooks includes significantly more about the various world religions and the role of religion in U.S. history than previous editions").

Given the current state of education throughout the United States, it is time to reconsider and reform the core curriculum that our nation's schools are expected to cover. This Note will examine the need to incorporate religion into public school curricula. Part II will present the Supreme Court precedent to date that has considered the relationship between religion and public schools. Part III will consider how the states have responded to that Supreme Court precedent and will examine the approaches that some states have taken in an attempt to bring religion into their school curriculum. Part IV will look at textbook adoption laws and how such laws continue to impact the way that religion is taught in public schools. Finally, Part V will consider the best arguments for and against incorporating religion into public school curricula, and will conclude with the argument that public schools should be required to incorporate study about religion into their school curriculum. Further, it will suggest a cohesive and standard plan that would guide schools in their efforts to do so.

II. SUPREME COURT PRECEDENT

Since the Supreme Court's decision in *Everson v. Board of Education* in 1947,¹² more cases have been decided by the Court concerning the religion clauses of the First Amendment than any other subject in education law.¹³ The Court has stated, "Government in our

¹² 330 U.S. 1 (1947).

¹³ CHARLES J. RUSSO, REUTTER'S THE LAW OF PUBLIC EDUCATION 29 (7th ed. 2009). Similarly, between 1947 and 1996, more cases concerning the Establishment Clause of the First Amendment have been in the context of education than in any other field of law. John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 MICH. L. REV. 279, 287 (2001).

democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice . . . The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”¹⁴ Within the context of public education, the Court has held to its traditional view that the government, and thus our public schools, must remain “neutral” toward religion.¹⁵ This standard of neutrality applies to issues involving public school curricula. It is therefore important to understand the Supreme Court’s stance toward religion in public schools in order to establish a standard of incorporating religion into the curriculum that would survive a constitutional challenge.¹⁶

With regard to religion in public schools, the Supreme Court has alternatively followed two different approaches to defining neutrality: a separationist approach and an accommodationist approach.¹⁷ On the one hand, the separationists have sought a “wall of separation” between church and state, requiring schools to avoid all things concerning religion.¹⁸ Accommodationists, on the other hand, would interpret neutrality not as requiring schools to ignore religion, but to treat all religions equally and to treat religion exactly the same

¹⁴ *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968).

¹⁵ *Id.*

¹⁶ References to “religion in public schools” must be distinguished from references to “religion in the curriculum.” The latter refers strictly to teaching and teaching about religion. The former refers more broadly to all religious issues that arise in the educational context. This can refer to a wide array of issues, including prayer in public schools, religion-oriented student groups, use of public school space by religious groups, and state aid to students who attend religiously affiliated private schools.

¹⁷ RUSSO, *supra* note 13, at 29.

¹⁸ *Id.*

as non-religion.¹⁹ The approach the Court chooses to follow in any given case appears to depend on the particular issue presented. While the Court has had only limited opportunity to consider issues relating to religion in public school curricula, a number of its opinions indicate that incorporating religion into the curriculum would be permitted. As set forth more fully below, this Note will argue that the Court should adopt the accommodationist approach when the issue involves teaching about religion in public schools.

A. The Separationist Argument

The first standard of neutrality proposed by the Supreme Court requires schools to avoid all issues involving religion. The First Amendment has been implicated in two broad categories of school-related cases: (1) those where state aid is given to students in religiously affiliated private schools and (2) those where prayer and other religious activities occur in public schools or on public school property.²⁰ In the 1970s and 1980s, the Court applied the separationist

¹⁹ *Id.* Proponents of both interpretive approaches find footing in *Everson v. Board of Education*, which used strong language to support a separationist theory, but which reached an ultimate holding in line with the accommodationist approach. For further discussion of the contradictory, and confusing, standards established in *Everson*, see John T. Valauri, *The Concept of Neutrality in Establishment Clause Doctrine*, 48 U. PITT. L. REV. 83 (1986). While *Everson* could therefore be classified as either a separationist case or an accommodationist case, this Note has chosen to organize cases by their ultimate holdings in an attempt to demonstrate which approach the Court will generally follow with regard to the different issues that may be presented. Thus, this Note will present *Everson* as supporting an accommodationist standard, at least with regard to the issue before the Court. Conversely, the Court's decision in *School District of Abington Township v. Schempp*, 374 U.S. 203, 222 (1963), has been classified as supporting a separationist standard despite the opinion's strong language supporting of an accommodationist approach.

²⁰ RUSSO, *supra* note 13, at 29.

standard to strike down a number of statutes from both categories. While the Court has since evidenced a reluctance to apply the separationist approach in cases involving state aid to private school students or allowing religious student groups and religious organizations to use public school property,²¹ the Court has consistently applied a separationist analysis in cases involving school-sponsored prayer.²² Through application of the separationist standard of analysis, the Court has had an essentially unbroken line of cases prohibiting school-sponsored prayer in public schools.²³

In *School District of Abington Township v. Schempp*, the Court established a standard of neutrality forbidding any law, the “purpose and primary effect” of which amounts to “the advancement or inhibition of religion.”²⁴ The Court consolidated two cases which each involved challenges to state laws that required schools to begin each day with readings from the Bible.²⁵ The Court found both laws unconstitutional under the Establishment Clause, finding that the

²¹ See *infra* Part II.B.

²² *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000) (holding that the policy of permitting student-led prayers prior to the start of high school football games violated the Establishment Clause); *Lee v. Weisman*, 505 U.S. 577, 599 (1992) (affirming that school-sponsored prayer at graduation ceremony was unconstitutional under the First Amendment); *Engel v. Vitale*, 370 U.S. 421, 424 (1962) (ruling that practice of reciting prayer at the beginning of each school day was a religious activity inconsistent with the Establishment Clause).

²³ RUSSO, *supra* note 13, at 51.

²⁴ 374 U.S. at 222.

²⁵ The first case involved a challenge to a Pennsylvania statute that required at least ten verses from the Bible to be read at the beginning of each school day, but provided that any child could be excused from the reading after a written request by a parent. *Id.* at 205. The second case involved a challenge to a Baltimore rule which provided for every public school in the city to open with a reading from the Bible followed by the Lord’s Prayer. *Id.* at 211.

required Bible reading had the effect of advancing religion despite the fact that individual students could be excused.²⁶

In *Lemon v. Kurtzman*, the Supreme Court further developed the *Schempp* test by setting forth a three-prong test for Establishment Clause violations.²⁷ This test requires that a particular law (1) have a secular purpose, (2) have a primary effect which “neither advances nor inhibits religion,” and (3) does not lead to excessive entanglement between government and religion.²⁸ The Court in *Lemon* rejected both a Rhode Island statute and a Pennsylvania statute, which both gave state aid to church-related educational institutions, under the third prong of this test.²⁹ The majority concluded that “the cumulative impact of the entire relationship arising under the statutes in each State involve[d] excessive entanglement between government and religion.”³⁰ While the Court was clear that it could not expect separation “in an absolute sense,” it still expressed a clear desire to keep religion as separate as possible, stating that, “[t]he Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice.”³¹ The Supreme Court applied the *Lemon* test frequently over the next decade to support a

²⁶ *Id.* at 224-25.

²⁷ 403 U.S. 602, 612-13 (1971).

²⁸ *Id.*

²⁹ *Id.* at 616, 620-21. Rhode Island had adopted a statute under which the State paid directly to teachers in nonpublic elementary schools a supplement of fifteen percent of their annual salary. *Id.* at 606. Pennsylvania had adopted a statutory program that provided financial support to non-public elementary and secondary schools by way of reimbursement for the costs of teachers’ salaries, textbooks, and instructional materials in specified secular subjects. *Id.*

³⁰ *Id.* at 614.

³¹ *Id.* at 625. The Court explained that the Religious Clauses of the First Amendment exist because, “Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government.” *Id.*

strict separationist view and to strike down many laws that indicated any entanglement of the schools with religious activities.³²

B. The Accommodationist Argument

When the issue has involved government aid in the context of public education, the Court has favored equal treatment, rather than separation. This accommodationist view of the government's role with regard to religion proposes equal treatment for all religions and religious organizations.³³ This means, essentially, that the neutral position is the one that does not discriminate on the basis of religious denomination or distinguish religion from non-religion.³⁴ This position tries to make sure that government benefits are distributed equally

³² See *Aguilar v. Felton*, 473 U.S. 402, 402 (1985) (striking down a New York statute permitting public school teachers to provide remedial instruction for educationally disadvantaged children on-site in their religiously affiliated schools based solely on the fear that the monitoring system might have created excessive entanglement); *Sch. Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 397 (1985) (invalidating a community education after school program in which teachers from religious schools worked part-time for the local public school board instructing participating students in their own buildings); *Wallace v. Jaffree*, 472 U.S. 38, 59-60 (1985) (finding an endorsement of religion and a violation of the Establishment Clause where an Alabama statute authorized public schools to perform a period of silence each day for meditation or voluntary prayer); *Meek v. Pittenger*, 421 U.S. 349, 349-50 (1975) (striking down provisions of a Pennsylvania law that would loan instructional materials to religiously affiliated non-public schools on the basis that the statute would have a primary effect of advancing religion due to the predominantly religious character of participating schools); *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 794 (1973) (finding grants that went to parents for school tuition unconstitutional because the law failed to separate secular from religious uses and thus the effect of the aid unmistakably would have provided financial support for non-public schools); *Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 413 U.S. 472, 480-81 (1973) (invalidating a statute under which the state reimbursed non-public schools for expenses incurred while administering and reporting test results because the aid had the primary effect of advancing religious education).

³³ RUSSO, *supra* note 13, at 31.

³⁴ *Id.*

regardless of the institution's religious or secular nature.³⁵ The Court has predominantly followed this approach in cases involving state aid to private school students,³⁶ use of public school property by religion-oriented student groups or religious organizations,³⁷ and tax benefits for both individuals and religious private schools.³⁸

Everson v. Board of Education was the first Supreme Court case on the merits of the Establishment Clause and education.³⁹ A closely divided Supreme Court affirmed the constitutionality of a New Jersey statute under which a local school board authorized reimbursement to parents for money spent on bus fares sending their

³⁵ *Id.*

³⁶ *See, e.g.,* *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 3 (1993) (discussed below); *Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481, 489 (1986) (holding that the extension of a general vocational rehabilitation assistance program to a blind man studying to become a clergyman at a Christian college was not precluded by the First Amendment); *Comm. for Pub. Educ. & Religious Liberty v. Regan*, 444 U.S. 646, 648, 654 (1980) (permitting state to reimburse private schools for costs of performing state testing because the statute was designed to provide quality educational opportunities to the state's citizens); *Bd. of Educ. V. Allen*, 392 U.S. 236, 238 (1968) (allowing states to loan secular textbooks to all school children within the state, regardless of the possibly religious nature of their schools); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) (discussed below).

³⁷ *See, e.g.,* *Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 840 (1995) (holding that if a state university provides financial support for non-religious student publications, it must also provide financial support for religious student publications); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393-94 (1993) (ruling that, where a school board creates a limited open forum, it violates the free speech rights of a religious group by refusing to rent them the facility based on the religious perspective of their intended film series); *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (applying the Equal Access Act to find that allowing a religious club to function in school does not imply the endorsement of religion); *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (determining that a state university that made its facilities generally available for activities of registered student groups could not close them to other such groups based on the religious content of their speech).

³⁸ *See, e.g.,* *Mueller v. Allen*, 463 U.S. 388, 390-91 (1983) (discussed below); *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 673-74 (1970) (upholding New York state's practice of providing state property tax exemptions for church property that is used in worship services).

³⁹ 330 U.S. 1 (1947).

children to Catholic schools.⁴⁰ The Court established that the First Amendment does not prohibit states from extending general benefits to all citizens without regard to their religious beliefs,⁴¹ and placed student transportation in the same category as other public services such as police, fire, and health protection.⁴² In holding this, the Court established the Child Benefit Test, which permits government aid on the basis that it assists children rather than their religiously affiliated non-public schools.⁴³ With this test, the Court promoted a standard that accommodated the religious views of each individual, allowing the state to remain neutral by treating everyone equally.⁴⁴

Although *Everson* sets out an accommodationist standard, the Supreme Court predominantly followed the separationist argument set out in *Abington Township v. Schempp* until the Court's decision in *Mueller v. Allen*.⁴⁵ In *Mueller*, the Court upheld the constitutionality of a Minnesota statute that allowed taxpayers to deduct from their state income taxes certain expenses incurred in providing for the education of their children.⁴⁶ The Court focused on the fact that the deduction was available to all parents, whether their children attended public or

⁴⁰ *Id.* at 3, 18.

⁴¹ *Id.* at 16.

⁴² *Id.* at 17.

⁴³ *Id.* See also *Bd. of Educ. v. Allen*, 392 U.S. 236, 238 (1968).

⁴⁴ *But see supra* note 19. While the Court's decision reflects an interpretation of neutrality as equal treatment, the decision is also the basis of the separationist view that neutrality means complete separation. The Court declared that no government may aid one religion or all religions, and that no tax may be levied to support any religious activity or institution. *Everson*, 330 U.S. at 15-16. Further, the Court wrote, "[T]he clause against establishment of religion by law was intended to erect a 'wall of separation between Church and State.'" *Id.* at 16. This is the very view professed by those who hold the separationist view of neutrality.

⁴⁵ 463 U.S. 388 (1983).

⁴⁶ *Id.* at 390-91. The statute allowed parents with children in any elementary or secondary school to deduct from their gross income the actual expenses for "tuition, textbooks and transportation." *Id.* at 391.

private school,⁴⁷ and concluded that “a program, like [the Minnesota statute], that neutrally provides state assistance to a broad spectrum of citizens is not readily subject to challenge under the Establishment Clause.”⁴⁸ In focusing on the broad application of the financial benefit,⁴⁹ the Court evidenced a shift towards a view of neutrality as equal treatment and a belief that an act will advance religion only if it provides more for specific religious institutions than for public schools and other non-religious institutions.

Zobrest v. Catalina Foothills School District confirmed that shift in the Supreme Court’s Establishment Clause jurisprudence.⁵⁰ At issue was a school board’s refusal to provide a sign-language interpreter, as required by the Individuals with Disabilities Education Act,⁵¹ to a deaf student who transferred to a Catholic high school.⁵² Adopting the child benefit analysis used in *Everson*, the Court found that an interpreter provided neutral aid to the student without offering financial benefits to his parent or school.⁵³

⁴⁷ *Id.* at 397. The Court also found it significant that the tax deduction was “only one among many deductions” available under Minnesota tax law and that, because the financial assistance was given to individual parents and thus any benefit to parochial schools was the result of parental choice, no state approval was conferred on any particular religion, or on religion generally. *Id.* at 396, 399.

⁴⁸ *Id.* at 398-99.

⁴⁹ A point the Court emphasized by contrasting this decision with its decision in *Sloan v. Lemon*, 413 U.S. 825, 832 (1973) (holding that a Pennsylvania statute that provided for reimbursement of tuition paid by parents who sent their kids to non-public school violated the First Amendment because “the State [had] singled out a class of its citizens for a special economic benefit”).

⁵⁰ 509 U.S. 1 (1993).

⁵¹ 20 U.S.C. §§ 1400-1409 (2010).

⁵² *Zobrest*, 509 U.S. at 4.

⁵³ *Id.* at 13-14. The Court further reasoned that there was no governmental participation in the instruction because the interpreter was only a conduit to effectuate the child’s communications, and would not actually participate in the religious instruction. *Id.*

The Court continued with the new method of analysis in *Agostini v. Felton*, where it held that a “federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause.”⁵⁴ In *Agostini*, the Court acknowledged the drastic shift in its Establishment Clause jurisprudence, and expressly overruled prior case law that had applied a separationist analysis to invalidate state statutes providing assistance to private school students.⁵⁵ The most significant development in *Agostini* was that the Court modified the *Lemon* test by reviewing only its first two parts, purpose and effect, while recasting entanglement as one criterion relevant to a statute’s effect.⁵⁶

In *Mitchell v. Helms*, the Supreme Court expanded the boundaries of permissible aid to religiously affiliated non-public schools.⁵⁷ A plurality upheld the constitutionality of a federal law that permit loans of instructional materials, including library books, computers, television sets, tape recorders, and maps to non-public schools.⁵⁸ Since the purpose part of the test was not challenged, the plurality believed it necessary only to consider the statute’s effect.⁵⁹ The Court concluded that the statute did not foster impermissible

⁵⁴ 521 U.S. 203, 234 (1997).

⁵⁵ Specifically, the Court expressly abandoned its decisions in *Aguilar v. Felton*, 473 U.S. 402 (1985), and *School District of Grand Rapids v. Ball*, 473 U.S. 373 (1985), “to the extent those decisions are inconsistent with [the Court’s] current understanding of the Establishment Clause.” *Agostini*, 521 U.S. at 236.

⁵⁶ 521 U.S. at 233.

⁵⁷ 530 U.S. 793 (2000).

⁵⁸ *Id.* In reaching this decision, the Court relied on the fact that *Agostini v. Felton* modified the *Lemon* test by reviewing only the first two parts while recasting entanglement as one criterion in evaluating a statute’s effect. *Id.* at 794.

⁵⁹ *Id.*

indoctrination because aid was allocated pursuant to neutral, secular criteria that neither favored nor disfavored religion and was available to all schools based on secular, nondiscriminatory grounds.⁶⁰ In so holding, the Court explicitly reversed past decisions that were inconsistent with its analysis on loans of instructional materials.⁶¹ After this recent line of cases, it is clear that the while the Court will follow a strictly separationist standard when it comes to prayer in public schools, the accommodationist approach is the predominant standard that will be applied in the broad majority of cases.

C. Neutrality and Public School Curricula

When it comes to public school curricula, the courts will usually show deference to the state legislatures, meaning that state legislatures normally have wide discretion in setting the curriculum for their own schools.⁶² The result is that there are very few cases that deal directly with religion in public school curricula. The few Supreme Court cases that have dealt with this issue have been in the context of the mandated teaching of creationism in science courses. While these

⁶⁰ *Id.*

⁶¹ The Court expressly overruled *Meek v. Pettinger*, 421 U.S. 349 (1975), and *Wolman v. Walter*, 433 U.S. 229 (1977), to the extent that they conflicted with the Court's holding. *Mitchell*, 530 U.S. at 835.

⁶² *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 300 (1963) ("To what extent, and at what points in the curriculum, religious materials should be cited are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not."); *cf. Epperson v. Arkansas*, 393 U.S. 97, 105 (1968) ("By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.").

cases appear to rely on a separationist theory of neutrality, other decisions reflect the Court's view that religion need not be completely excluded from public school curricula.

In *Epperson v. Arkansas*, the Supreme Court invalidated a state law that prohibited the teaching of evolution in public schools because the law had a religious purpose.⁶³ Rather than supporting a separationist theory of neutrality, this case simply prohibits states from requiring schools to teach only a religious theory in its science courses, which would essentially promote that religious viewpoint. Twenty years later, the Court in *Edwards v. Aguillard* rejected a state statute, the Balanced Treatment Act, that forbid the teaching of evolution in public schools unless students were also instructed in the theory of "creation science."⁶⁴ The Court determined that the clear purpose of the Balanced Treatment Act was to promote a particular religious belief.⁶⁵ The *Aguillard* decision could be read as refusing to allow the religious theory of human origins to be taught concurrently with the theory of evolution, and thus as a rejection of the accommodationist view of neutrality, at least as it concerns incorporating religion into public school curricula.⁶⁶ On the other hand, the case does not expressly say that schools cannot teach about religion as part of a well-rounded curriculum. Rather, the case simply

⁶³ 393 U.S. at 106-07.

⁶⁴ 482 U.S. 578, 581 (1987).

⁶⁵ *Id.*

⁶⁶ *See id.* at 616-18 (Scalia, J., dissenting). Justice Scalia wrote that the Court has "held that in some circumstances States must accommodate the beliefs of religious citizens" and, in other circumstances, "ha[s] implied that voluntary governmental accommodation of religion is not only permissible, but desirable." *Id.* at 617-18. He then concluded that the majority opinion in the case failed to abide by the Court's past analysis of issues concerning religion in public schools. *Id.* at 618.

says that states cannot promote a particular religious theory by requiring it to be taught alongside a legitimate scientific theory.

While it is possible that the Court will follow a strictly separationist theory when it comes to teaching about creationism in public school science courses, the Court has never considered a case about religion in public school curricula outside that context. In fact, other cases indicate that religion may, and probably should, be incorporated into public school curricula. For instance, in *Abington Township v. Schempp*, the Court expressly stated that “the holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed . . . it would be impossible to teach meaningfully many subjects . . . without some mention of religion.”⁶⁷ Nonetheless, courts have reached mixed results with regard to the place of religion in public school curricula, and they have yet to devise a test for evaluating the balance between teaching religion and teaching *about* religion in public schools.⁶⁸

After the Court’s decision in *Abington Township v. Schempp*, controversies continue over the place, if any, of the Bible in public school curricula.⁶⁹ While the Court in *Schempp* stated that “[i]t certainly may be said that the Bible is worthy of study for its literary and historic qualities,”⁷⁰ it failed to set out any parameters to guide schools or courts on what methods of teaching about the Bible would be permitted. For instance, the Fifth Circuit recognized that “study of

⁶⁷ *Schempp*, 374 U.S. at 300.

⁶⁸ RUSSO, *supra* note 13, at 81.

⁶⁹ *Id.* at 53.

⁷⁰ *Schempp*, 374 U.S. at 225.

the Bible in public schools is not per se unconstitutional,” but disapproved a Bible Literature course after concluding that “the primary effect was the advancement of religion” because the course was taught from a Christian perspective.⁷¹ Other courts have suggested guidelines under which the Bible may be studied in public schools, including establishing minimum standards for selection of teachers, employing only fully certified teachers, training and supervising teachers to ensure objectivity, vesting complete control of the curriculum and teaching materials in the school board, and offering the course only as an elective with an alternative for students who choose not to take the course.⁷²

Similarly, there is continued debate with regard to other supplemental religious materials. The Ninth Circuit recently affirmed the dismissal of a challenge from parents who questioned the use of curricular materials on Islam.⁷³ The materials included a simulation unit on Islamic culture in a social studies course that, among other things, required students to wear identification tags displaying their new Islamic names, memorize and recite the Fatiha,⁷⁴ as well as other verses from the Koran, dress as Muslims, and complete the Five Pillars of Faith, which included fasting and engaging in acts of self denial.⁷⁵ Without addressing the merits of the claims, the court

⁷¹ Hall v. Bd. of Sch. Comm'rs of Conecuh County, 656 F.2d 999, 1002-03 (5th Cir. 1981).

⁷² Wiley v. Franklin, 468 F. Supp. 133, 152 (E.D. Tenn. 1979); Crockett v. Sorenson, 568 F. Supp. 1422, 1431 (W.D.Va. 1983).

⁷³ Eklund v. Byron Union Sch. Dist., 154 Fed. App'x 648, 648 (9th Cir. 2005).

⁷⁴ The Fatiha, the opening chapter of the Koran, is an Islamic prayer with a status similar to that of the Lord's Prayer in Christianity. Plaintiff/Appellant's Opening Brief on Appeal at 11, *Eklund*, 154 Fed. App'x 648 (No. 04-15032). The Lord's Prayer is the prayer that Jesus Christ taught to his disciples. *Matthew* 6:9-13.

⁷⁵ Plaintiff/Appellant's Opening Brief on Appeal, *supra* note 74, at 8-23.

determined that the activities “were not . . . ‘overt religious exercises’ that raised Establishment Clause concerns.”⁷⁶ However, other courts have been reluctant to allow teachers to use supplemental materials with religious content.⁷⁷ A federal district court in California largely rejected the claims of an elementary school teacher that officials had violated his rights by prohibiting him from using religious materials in class and talking about religion with his students.⁷⁸ This continued debate leaves open the possibility for public schools to incorporate objective courses about religion into the school curriculum, an approach that may even solve the evolution/creationism debate by allowing creationism to be taught within the subject of religious theories.

III. STATE ATTEMPTS TO BRING RELIGION INTO THEIR PUBLIC SCHOOLS

Without specific guidance from Congress or the Supreme Court, the states have been left to determine the extent to which religion should be incorporated into their public school curricula, if at all. Most states have declined the opportunity to teach about religion in their public schools. Their primary reason for doing so, which will be discussed further in Part V, is a fear of legal ramifications. On the

⁷⁶ *Eklund*, 154 Fed. App’x at 648.

⁷⁷ *RUSO*, *supra* note 13, at 82.

⁷⁸ *Williams v. Vidmar*, 367 F. Supp. 2d 1265, 1267 (N.D. Cal. 2005). Williams, a teacher at Stevens Creek Elementary School, provided students with a handout containing the history of the National Day of Prayer on one side of the page, and President Bush’s proclamation of a Day of Prayer on the other. *Id.* at 1268. Principal Vidmar directed Williams not to send out materials of a religious nature and to obtain approval from her before he sent any other materials home. *Id.*

other hand, some states have decided to teach public school students about religion. Unfortunately, those that have done so have largely failed to develop comprehensive plans to assist the schools with incorporating religion into the curriculum, and have thereby risked suffering the legal ramifications that they could otherwise avoid. It is important to look at some of the things states have done that do not work before attempting to establish a standard that will work.

Texas is the prime example of a failed attempt to bring religion into the public school system. Under a new state law, Texas public schools are required to teach Bible literacy as part of the school curriculum.⁷⁹ The law declares that high schools may offer elective courses on both the Old Testament and the New Testament, and describes the purpose of the course as familiarizing students with the contents, history, literary style, and influence of the books of the Bible.⁸⁰ The statute refers to “course[s] required by this section,”⁸¹ and

⁷⁹ TEX. EDUC. CODE ANN. § 28.011 (2009).

⁸⁰ § 28.011. Specifically, the statute begins:

- (a) A school district may offer to students in grade nine or above:
 - (1) an elective course on the Hebrew Scriptures (Old Testament) and its impact and an elective course on the New Testament and its impact; or
 - (2) an elective course that combines the courses described by Subdivision (1).
- (b) The purpose of a course under this section is to:
 - (1) teach students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding contemporary society and culture, including literature, art, music, mores, oratory, and public policy; and
 - (2) familiarize students with, as applicable:
 - (A) the contents of the Hebrew Scriptures or New Testament;
 - (B) the history of the Hebrew Scriptures or New Testament;
 - (C) the literary style and structure of the Hebrew Scriptures or New Testament; and

thus indicates that all Texas public schools are required to establish a course on the books of the Bible. The law, however, offers no clear guidance for schools or teachers, and provides no funding for necessities such as classroom materials and teacher training.⁸² Thus, “high schools are left scrambling to figure out what to teach and how to teach it.”⁸³

Under the new law, a number of Texas public schools are now offering elective classes on the Bible, while other schools have chosen to incorporate study of the Bible into already existing courses.⁸⁴ Unfortunately, the lack of guidance has led to a great deal of controversy surrounding these courses, and a number of individuals have questioned the statute’s actual purpose.⁸⁵ The broad parameters of this statute “leave one of the most controversial topics in public schools virtually unregulated.”⁸⁶ School administrators attempting to implement the law “warn that the nebulous law may have thwarted its

(D) the influence of the Hebrew Scriptures or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.

§ 28.011(a)-(b). As an accommodation for students, the statute also provides that “student[s] may not be required to use a specific translation of the sole text of the Hebrew Scriptures or New Testament” § 28.011(c).

⁸¹ § 28.011(h) (“If, for a particular semester, fewer than 15 students at a school district campus register to enroll in a course required by this section, the district is not to required to offer the course at that campus for that semester.”).

⁸² Jessica Meyers, *State Tells Schools to Teach Bible Literacy But Not How*, THE DALLAS MORNING NEWS, Sept. 6, 2009, available at http://www.dentonrc.com/sharedcontent/dws/dn/lat_estnews/stories/090609dnmetbibleteach.3ff862f.html.

⁸³ *Id.*

⁸⁴ Jonathan Turley, *Constitutional Illiteracy: Texas Orders All Schools to Teach “Bible Literacy”*, Sept. 8, 2009, <http://jonathanturley.org/2009/09/08/constitutional-illiteracy-texas-orders-all-schools-to-teach-bible-literacy>.

⁸⁵ *Id.*; Meyers, *supra* note 81.

⁸⁶ Meyers, *supra* note 81.

purpose – to examine the Bible’s influence in history and literature.”⁸⁷ As one professor explained it, “[a]sking a school district to teach a course or include material in a course without providing them any guidance or resources is like sending a teacher into a minefield without a map.”⁸⁸

Texas legislators attempted to avoid any constitutional concerns by requiring all courses to maintain "religious neutrality."⁸⁹ They attempted to ensure neutrality by setting out hiring guidelines and mandating teacher training,⁹⁰ and by requiring state-approval of all

⁸⁷ *Id.*

⁸⁸ *Id.* (quoting Mark Chancey, an associate professor of religious studies at Southern Methodist University and author of the report "Teaching the Bible in Texas Public Schools").

⁸⁹ TEX. EDUC. CODE ANN. § 28.011(d) (2009):

(d) A course offered under this section shall follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in their school district. A course under this section shall not endorse, favor, or promote, or disfavor or show hostility toward, any particular religion or nonreligious faith or religious perspective. Nothing in this statute is intended to violate any provision of the United States Constitution or federal law, the Texas Constitution or any state law, or any rules or guidelines provided by the United States Department of Education or the Texas Education Agency.

⁹⁰ § 28.011(f):

(f) A teacher of a course offered under this section must hold a minimum of a High School Composite Certification in language arts, social studies, or history with, where practical, a minor in religion or biblical studies. A teacher selected to teach a course under this section shall successfully complete staff development training outlined in Section 21.459. A course under this section may only be taught by a teacher who has successfully completed training under Section 21.459.

course content and materials.⁹¹ However, the statute does not adequately address what that training entails and does not provide funding that would enable schools to offer that training.⁹² Nor does it establish curriculum guidelines or provide funding for classroom materials.⁹³ Thus while the statute may not “intend[] to violate any provision of the United States Constitution or federal law,”⁹⁴ some have questioned the constitutionality of a statute that requires only courses on the Bible,⁹⁵ which the statute specifically identifies as a Christian text.⁹⁶ While the statute explains that it does not prohibit schools from offering courses on religious books other than the Bible,⁹⁷ some believe that “[i]t is highly questionable from a

⁹¹ § 28.011(e):

(e) Before adopting rules identifying the essential knowledge and skills of a course offered under this section, the State Board of Education shall submit the proposed essential knowledge and skills to the attorney general. The attorney general shall review the proposed essential knowledge and skills to ensure that the course complies with the First Amendment to the United States Constitution, and the board may not adopt rules identifying the essential knowledge and skills of a course offered under this section without the attorney general's approval under this subsection.

⁹² Meyers, *supra* note 81.

⁹³ *Id.*

⁹⁴ TEX. EDUC. CODE ANN. § 28.011(d). The lack of specific guidance in the statute may perhaps be attributed to an attempt to limit possible challenges to the statute. That aim is supported by making the course optional to students. Turley, *supra* note 84.

⁹⁵ See Turley, *supra* note 84 (“This is made all the more difficult, or course, by the separation of Church and State. The legislators did not order literacy on the Qu’ran or Torah.”); Meyers, *supra* note 81.

⁹⁶ TEX. EDUC. CODE ANN. § 28.011(i) (“This section does not prohibit the board of trustees of a school district from offering an elective course based on the books of a religion other than Christianity.”).

⁹⁷ *Id.* That provision of the statute continues: “In determining whether to offer such a course, the board may consider various factors, including student and parent demand for such a course and the impact such books have had on history and culture.” *Id.*

constitutional standpoint to have a legislature order the teaching of a single religious text in an act of sectarian favoritism.”⁹⁸

The Supreme Court has expressed that courses on the Bible are permissible.⁹⁹ However, Texas invited controversy by requiring schools to offer courses on the Bible without providing any guidance, support, or supervision. Other states have faced a similar struggle between incorporating religion into the curriculum and a desire to avoid the extensive controversy that frequently results. Nonetheless, it is important for schools to teach about religion, and it is worth recognizing that Texas has taken a step in the right direction. In order to avoid the controversy seen in Texas, it is important for states to adopt educational standards that provide clear and complete guidance to schools.

For example, California has developed a fairly comprehensive plan that provides detailed guidance for state educators.¹⁰⁰ Each State Department of Education has created educational curriculum standards that set out the content to be covered in each topic area and performance standards that define the level of education each student is expected to master within those topic areas.¹⁰¹ California’s approach

⁹⁸ Turley, *supra* note 84.

⁹⁹ *See* Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 225 (1963).

¹⁰⁰ This Note will argue for an approach similar to that of the state of California, except rather than incorporating religion into preexisting subject areas, it will recommend creating an education standard that deals solely with religion. This standard will be presented in Part V. Additionally, this Note will recommend developing a standard at the national level, thus ensuring that all states will provide students with this essential aspect of their education and teachers with the guidance they need (guidance that was lacking in the statute recently implemented in the state of Texas).

¹⁰¹ Topic areas will vary from state to state, but typically include such subjects as social studies, mathematics, science, health and physical education, language arts,

to allow for the teaching about religion in public schools was to incorporate religion into the state's educational content standard for history and social sciences.¹⁰² Within the broad framework of the social sciences, California's content standards have three goals: (1) knowledge and cultural understanding, (2) democratic understanding and civic values, and (3) skills attainment and social participation.¹⁰³ Under each of these goals are various "strands" that require competency in different subject areas which, taken together, are believed to help students reach those goals.¹⁰⁴ California has incorporated religion into the different subject areas where relevant.¹⁰⁵ By setting these specific goals and defining where teachers are expected to cover the concept of religion, California provides clear guidance for teachers in public schools throughout the state.

IV. TEXTBOOK ADOPTION LAWS

Textbooks are considered the most influential educational tools used by school teachers.¹⁰⁶ Therefore, textbook adoption laws have a

fine arts, and foreign languages. See Education World, State Standards, <http://www.educationworld.com/standards/state/toc/index.shtml> (last visited Feb. 3, 2011).

¹⁰² California Department of Education, *History-Social Science Framework for California Public Schools: Kindergarten through Grade Twelve 2007-11* (2005), available at <http://www.cde.ca.gov/ci/cr/cf/documents/histsocsciframe.pdf>.

¹⁰³ *Id.* at 26.

¹⁰⁴ *Id.* For example, to reach the goal of "Knowledge and Cultural Understanding," students are expected to achieve historical, ethical, cultural, geographic, economic, and sociopolitical literacy. *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ WARREN A. NORD, RELIGION & AMERICAN EDUCATION: RETHINKING A NATIONAL DILEMMA 138 (1995). Seventy-five percent of school class work and ninety percent of homework focuses on textbooks. *Id.* Today's textbooks are

clear impact on the way that religion is taught in public schools. Through the textbook adoption process, committees review textbooks according to state guidelines and either determine which specific books schools must use or establish lists of approved textbooks from which schools must choose.¹⁰⁷ While adoption of instructional materials can occur at either the state or local level, twenty-two states have textbook adoption laws at the state level,¹⁰⁸ including California, Texas, and Florida.¹⁰⁹ This is significant because the influence of these few states, on both textbook publication and textbook adoption in other states, is extensive.¹¹⁰ Thus, the textbooks adopted for use in California and Texas are largely the same or similar to the textbooks used in schools throughout the country. Unfortunately, because the textbook publishers are influenced by the selection committees and because the selection committees are influenced by the political

“comprehensive instructional programs . . . aligned to stated instructional standards” and are “essential components of every school’s curriculum.” Ass’n of Am. Publishers: School Division, Instructional Materials, <http://www.aapschool.org/materials.html> (last visited Feb. 3, 2011).

¹⁰⁷ THE THOMAS B. FORDHAM INST., *THE MAD, MAD WORLD OF TEXTBOOK ADOPTION*, at i (2004).

¹⁰⁸ Ass’n of Am. Publishers: School Division, Instructional Materials Adoption, http://www.aapschool.org/vp_adoption.html (last visited Feb. 3, 2011). Under these adoption laws, states select instructional programs which usually include textbooks, study guides, workbooks, online homework helps, websites, teacher editions, and a number of other instructional materials used by teachers in public schools. *Id.*

¹⁰⁹ Jay Mathews, *Why Don’t We Fix Our Textbooks?*, WASHINGTON POST, Mar. 22, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A56501-2005Mar22.html>.

¹¹⁰ *Id.* Mathews wrote, “The scrubbing and sanitizing that is imposed to satisfy the big states has affected all the commercially produced textbooks. This means that even states without adoption laws end up using the same books as the ones written to please California and Texas.” *Id.* See also Vitz, *supra* note 11, at 79. Vitz focused his study of public school textbooks largely on books adopted by California and Texas “because of their large school-age populations and because many other states look to their adoption lists for guidance in selecting their own texts.” *Id.* In describing his study, Vitz commented that “[o]ne of the characteristics of public school textbooks is how similar most of them are.” *Id.*

organizations that created them, there are problems with both the textbook adoption process and the books that are ultimately selected for use in public schools.

The textbook industry has become “highly competitive.”¹¹¹ With the biggest states adopting textbooks at the state level, the textbook publishing companies design textbooks to satisfy the members of the adoption committee, rather than to satisfy the educational requirements of the schools and the students.¹¹² Because the textbook publishers are aiming to satisfy the committee members, there is a problem with “precensorship.”¹¹³ Precensorship is where textbook publishers, wanting their textbooks to be adopted for statewide use, allow textbook adoption committee members to exercise their influence over the content and organization of textbooks before the books are published.¹¹⁴ The selection committees have the ability to pressure textbook publishers into deleting or altering passages that are, in their opinion, objectionable before the textbooks are adopted and placed on the state approved list.¹¹⁵ What counts as objectionable in the opinion of the committee members will unavoidably depend on each member’s own political and religious views.

¹¹¹ Ass’n of Am. Publishers, *supra* note 108.

¹¹² Mathews, *supra* note 109. “Today’s most marketable textbooks are often not the work of committed scholars who want to explain the intricacies of their subject in the most engaging way. Instead . . . [p]ublishers are preoccupied with scrubbing textbooks of any references that adoption panels in California and Texas might object to.” *Id.*

¹¹³ M. David Bieber, *Textbook Adoption Laws, Precensorship, and the First Amendment: The Case Against Statewide Selection of Classroom Materials*, 17 J. MARSHALL L. REV. 167, 171 (1984).

¹¹⁴ *Id.* at 171.

¹¹⁵ *Id.* at 170.

While often able to exert influence in the textbook publication process, textbook selection committees are themselves concerned about offending “any politically connected group.”¹¹⁶ Thus, in an attempt to render textbooks inoffensive to every possible ethnic, religious, and political constituency, many committees choose to adopt textbooks that either ignore religion, or inadequately address religious issues.¹¹⁷ For example, textbooks used by numerous high schools across the country neglect important events such as “the great colonial revivals, the struggles of minority faiths, the religious motivations of immigrants, the contributions of religious groups to many social movements, major episodes of religious intolerance, and many other significant events of history.”¹¹⁸ Where textbooks do attempt to include religious people or events, they will often only include references to religion when the reference is to a historically distant event, or to a minority religious group, like the Amish.¹¹⁹

As a result of these influences, most widely used textbooks largely ignore the important position of religion in the United States and the world,¹²⁰ and it has become clear that reform with regard to

¹¹⁶ Mathews, *supra* note 109.

¹¹⁷ THE THOMAS B. FORDHAM INST., *supra* note 107, at i.

¹¹⁸ HAYNES & THOMAS, *supra* note 9, at 91.

¹¹⁹ Symposium, *The First Amendment, Secular Humanism and the Teaching of Values in the Public Schools*, Office of Legal Servs. of the N.Y. City Bd. of Educ. (1987); see also Vitz, *supra* note 11, at 80 (“[N]one of the books has a single *text* reference to a primary religious activity occurring in contemporary American life. The closest any book comes is a descriptive reference to the life of the Amish . . .”).

¹²⁰ HAYNES & THOMAS, *supra* note 9, at 91; see also Vitz, *supra* note 11, at 79, 90 (examining ten sets of textbooks, a sample accounting for an estimated seventy to seventy-five percent of texts used in the country, and finding “a systematic denial of the history, heritage, beliefs, and values of a very large segment of the American people”).

textbook adoption is long overdue.¹²¹ According to the Association of American Publishers, the adoption process requires instructional materials to be developed according to very specific state criteria and in accordance with state academic standards.¹²² Specifically, in determining the broad content of instructional materials, including textbooks, publishers use state and local curriculum standards for every subject.¹²³ This Note is not concerned with the desirability of statewide adoption of textbooks through the use of textbook adoption committees; it is concerned with the adequacy of state curriculum content standards. A significant step toward addressing the issues presented by the neglect of religion in public school textbooks is to develop a standard that allows public schools, and adoption committees, to recognize the extent to which religion must be incorporated into the curriculum and the extent to which religion may be incorporated into the curriculum. This standard will be discussed in Part V.

V. INCORPORATING RELIGION INTO PUBLIC SCHOOL CURRICULA

As discussed in the Introduction, education plays an absolutely crucial role in the lives and development of our nation's children. From the approximate ages of five to eighteen, our nation's youth spend about seven hours each day at school, 180 days per year.¹²⁴

¹²¹ See THE THOMAS B. FORDHAM INST., *supra* note 107; Mathews, *supra* note 109.

¹²² Ass'n of Am. Publishers, *supra* note 108.

¹²³ *Id.*

¹²⁴ Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., Average Length of School Year and Average Length of School Day, by Selected Characteristics: United States,

They are provided with a comprehensive education that is said to incorporate everything they need to know about the world outside of the classroom. However, that comprehensive education frequently does not include study of the world religions. For that reason, reform of public school curricula is essential if our nation's youth are to receive the education they deserve.

Our country and our schools continue to grow more diverse racially, ethnically, culturally, and religiously. This Note focuses on that continued growth of religious diversity, and argues that such diversity should be recognized and celebrated in public school curricula. After considering, and discounting, the arguments relied on by those opposed to such a scheme, Subpart A will advance the numerous arguments in favor of incorporating religion into public school curricula. Having determined that religion should be incorporated into public school curricula, Subpart B will propose a standard method for incorporating religion into curricula that states and schools may look to for guidance when attempting to achieve that goal while still remaining within the boundaries of the Constitution. Finally, Subpart C will evaluate the weight to be given arguments that might be advanced against that proposed method.

A. Should Religion be Incorporated into Public School Curricula?

There are arguments both for and against bringing religion into public school curricula. On the one hand, some education boards and

2003-04, http://nces.ed.gov/surveys/pss/tables/table_2004_06.asp (last visited Feb. 3, 2011).

school officials fear bringing religion into the curriculum because of the challenges and disputes that will inevitably result. They fear this will disrupt the educational process and believe that the harms of incorporating religion into the curriculum far outweigh any potential benefits. On the other hand, many, including members of the Supreme Court, believe that our nation's youth cannot receive a complete education unless that education includes instruction about the vast impact religion has, not only in our nation, but in every nation around the world.¹²⁵ This section will explore the arguments both for and against incorporating religion into public school curricula. Furthermore, it will explain why the arguments for incorporating religion into the curricula, and the benefits that will result from doing so, far outweigh any arguments that might be raised against incorporating religion into public school curricula.

1. Arguments Against Bringing Religion Into the Curriculum

There are two main arguments why religion should not be incorporated into public school curricula. The first is derived primarily from the Constitution. There are some educators who firmly believe that the First Amendment requires schools to exclude religion from the curriculum.¹²⁶ Those educators have adopted the Supreme Court's strict separationist interpretation that there must be a complete separation between the schools and all things concerning religion. The

¹²⁵ See, e.g., *McCullum v. Bd. of Educ.*, 333 U.S. 203, 235-36 (1948) (Jackson, J. concurring).

¹²⁶ NORD & HAYNES, *supra* note 10, at 5-6.

second argument is that religion is far too controversial a subject to be brought into public schools.¹²⁷ There is a potential that any attempt to bring religion into the curriculum will result in significant controversy and possible legal challenges. For that reason, many educators refuse to bring religion into the curriculum in an attempt to avoid the backlash that will inevitably result.¹²⁸ School boards do not want to defend their curriculum standards to teachers, parents, or students who may object to the teaching about religion, and so they choose to leave religion out of the curriculum. Similarly, textbook publishers exclude religion from their textbooks because they fear that including religion will result in many states declining to approve their textbooks for use in public schools or many schools discontinuing their use of those textbooks.¹²⁹

Ultimately, each of these arguments must fail. First, while the Constitution does prohibit the practice of religion in public schools and the indoctrination of public school students, it does not prohibit schools from teaching students about religion.¹³⁰ The Supreme Court explained in *Abington Township v. Schempp* that “the holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history.”¹³¹ School boards and educators who argue that the First Amendment requires complete exclusion of religion from public school curricula have failed to consider the Supreme Court’s accommodationist standard that has been applied in an increasing

¹²⁷ *Id.* at 6; NORD, *supra* note 106, at 231-32.

¹²⁸ NORD & HAYNES, *supra* note 10, at 6.

¹²⁹ THE THOMAS FORDHAM INST., *supra* note 107, at i.

¹³⁰ HAYNES & THOMAS, *supra* note 9, at 89; NORD & HAYNES, *supra* note 10, at 6.

¹³¹ 374 U.S. 203, 300 (1963).

number of cases. Under that standard, the Constitution requires schools to treat the issue of religion the same way it treats every other issue.

Second, while this certainly is a controversial subject and there will probably always be debate regarding the appropriate place of religion in public school curricula, a fear of controversy does not justify excluding religion from the curriculum.¹³² In a diverse and free society like the United States, there will always be debate. That debate has not stopped schools from including a number of other controversial topics in textbooks and in the curriculum. For instance, when schools initially introduced the concept of evolution in public schools classrooms, there was significant protest from those who fundamentally disagreed with the truth of that theory.¹³³ That did not stop evolution from claiming the spot in school curricula that it holds today. The risk of discontent often exists regardless of the subject matter being taught. For that reason, school boards are not required to adjust the curriculum in line with complaints from either parents or students.¹³⁴ School boards and school officials must incorporate important areas of study into their curricula regardless of the potential

¹³² NORD, *supra* note 106, at 231-32.

¹³³ NORD & HAYNES, *supra* note 10, at 6. Other controversial areas of study that are taught in most schools are sex education, multiculturalism, and feminism. *Id.*

¹³⁴ *See, e.g.,* *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1070 (6th Cir. 1987). The case arose when parents sought to have their children placed in a core reading program other than the one used in the local school system. *Id.* at 1060. The program, which was coordinated with other subjects, contained books with ideas that the parents objected to largely on religious grounds. *Id.* The court decided that students and their parents lacked a right not to be exposed to ideas in public schools as long as the positions they objected to were not promoted and children were neither obligated to affirm nor disaffirm their agreement with the ideas. *Id.* at 1062-64.

for controversy.¹³⁵ In fact, studies have shown that religion is not quite as controversial as many school boards fear and that “there is now widespread agreement . . . about the role of religion in the curriculum among representatives of most major religious and educational organizations at the national level.”¹³⁶ Thus, those responsible for school curricula cannot legitimately say they cannot incorporate religion into the curricula. School officials’ fears that they may have to defend themselves against legal challenges are far outweighed by the numerous reasons, developed in the following subsection, that support a standard method of incorporating religion into the curriculum.

2. Why Religion Should be Incorporated into the Curriculum

The United States is proud to be a nation of many peoples and many faiths. This fact is reflected in the country’s dedication to religious liberty and memorialized in the words of the First Amendment.¹³⁷ The fact that religion is largely excluded from public school curricula fails to recognize the diverse nature of our society. Our schools should foster that diversity within the sphere of education.

¹³⁵ In some ways, the controversial nature of religion makes it even more important to incorporate it into the curriculum. As will be discussed in Part V.A.2, students will eventually graduate from school, and should be prepared to live in a world where they will have to deal with that controversy on an almost daily basis. Public school education cannot prepare students to deal with that controversy in the real world if it refuses to deal with that controversy in the school curriculum.

¹³⁶ NORD & HAYNES, *supra* note 10, at 6; *see also* NORD, *supra* note 106, at 232 (citing a 1986 Gallup Poll for the proposition that “the great majority of Americans approve of teaching about the major religions of the world (79 percent) and using the Bible in literature, history, and social studies classes (75 percent) in public schools”).

¹³⁷ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I.

That begins with recognizing the importance of incorporating religion into public school curricula.

First, religion plays a vastly important role in our world today. To begin with, the United States is a religious nation. Approximately ninety percent of Americans claim to believe in God, and almost eighty percent say that religion is an important part of their lives.¹³⁸ It is clear that, “for a great many Americans, religion makes a profound difference in how they live their lives and how they think about the world.”¹³⁹ For this reason, religion should be brought into the public schools. It is important for students to understand the impact that religion has, if not in their own lives, then in the lives of their fellow citizens. It is difficult to believe that children who attend our nation’s public schools receive a full and complete education when they are not exposed to what eighty percent of Americans have declared important in their lives. Religion, such an important part of our lives and our culture, should be an important part of our education as well.

Furthermore, as members of the world community, it is important for students to understand the people they will interact with throughout their lives. Every day, “students encounter and learn from others who have backgrounds and characteristics very different from their own.”¹⁴⁰ Understanding others creates tolerance and respect. It allows for cooperation and commitment to making the world a more peaceful place. Religion is so controversial that educators would

¹³⁸ NORD & HAYNES, *supra* note 10, at 1. Further, seventy percent of Americans say that they pray and forty percent say they attend religious services and read the Bible each week. *Id.*

¹³⁹ *Id.* at 1-2.

¹⁴⁰ Ass’n of Am. Univs., *Statement on the Importance of Diversity in University Admissions 2* (1997), available at <http://www.aau.edu/policy/Diversity.aspx?id=7208>.

exclude the subject entirely from public schools. But it is that controversial nature that requires the incorporation of religion into public school curricula. Public schools, by failing to recognize and teach about the value of religious diversity, promote an intolerance of differing religious view points. People often hate, or fear, things they do not understand. This is true in the area of religion as well. As one author put it, “Knowledge of the roles of religion in the past and present promotes cross-cultural understanding essential to democracy and world peace.”¹⁴¹ If the approach to teaching about religion is objective, it can foster among students an understanding and mutual respect within the local community and beyond that into the larger world community.

Second, religion has played an essential role not just in the development of our nation, but in the path of numerous important events throughout history. As one scholar wrote, “[b]ecause religion plays a significant role in history and society, study about religion is essential to understanding both the nation and the world.”¹⁴² In his concurrence in *McCullum v. Board of Education*, Justice Jackson stated:

The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity – both Catholic and Protestant – and other faiths accepted by a large part of the world’s peoples. One can hardly respect a system of education that would leave the

¹⁴¹ HAYNES & THOMAS, *supra* note 9, at 90.

¹⁴² CHARLES C. HAYNES, FIRST AMENDMENT CENTER, A TEACHER’S GUIDE TO RELIGION IN THE PUBLIC SCHOOLS 2 (1999).

student wholly ignorant of the currents of religious thought.¹⁴³

Religion has had a profound impact on the development of this country, and continues to have a profound impact on our country today. It is important for students to understand religion in a historical context in order to understand the origins and development of our nation. While religion could easily be taught in a historical context without favoring one religion over another, many school officials still fear to teach it in such a manner because they do not want to create the appearance of religious preference. They would rather eliminate the controversial topic from the curriculum than include important historical events that should not be ignored. They fail to acknowledge that religion really cannot be separated from many of the major events throughout history. Failure to understand even the basic symbols, practices, and concepts of the various religions makes much of history, literature, art, and contemporary life unintelligible.¹⁴⁴ Events such as the Holocaust or the Spanish Inquisition cannot be understood without also understanding the religious motivations of those involved. If religion is not included in the school curriculum, our students will not be receiving the education they deserve.

Finally, public authorities may neither advance nor inhibit religion,¹⁴⁵ and completely removing religion from the public school curriculum serves to inhibit religion. An absolute exclusion of religion from the curriculum portrays the idea to students that religion is

¹⁴³ 333 U.S. 203, 236 (1948).

¹⁴⁴ NORD & HAYNES, *supra* note 10, at 36.

¹⁴⁵ Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 222 (1963).

unimportant.¹⁴⁶ As recognized by Justice Stewart in his dissent to *Abington Township v. Schempp*, “[A] compulsory state educational system so structures a child’s life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage.”¹⁴⁷ Saying nothing about a particular topic can have the implied effect of saying something negative about the same topic. Take, for example, the omission of blacks and women from textbooks – an omission that affected the self-esteem of those groups and thereby prompted immediate steps to correct the omissions.¹⁴⁸ Here, we have textbooks that omit the vitality of religion in American history and modern society.¹⁴⁹ Rather than teaching students to think religion unimportant and to take their rights for granted, the study of religion is important if students are to value their religious liberty.¹⁵⁰

According to one study, eighty-two percent of the American participants believed that “neutral religious education should be *required* in public schools.”¹⁵¹ Public school curricula must include study about religion as an important part of a complete education.¹⁵² As the Supreme Court once stated: “[I]t 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

¹⁴⁶ HAYNES & THOMAS, *supra* note 9, at 90.

¹⁴⁷ 374 U.S. at 313 (Stewart, J., dissenting).

¹⁴⁸ Office of Legal Servs. of the N.Y. City Bd. of Educ. Symposium, *supra* note 115, at 42.

¹⁴⁹ *Id.*

¹⁵⁰ HAYNES & THOMAS, *supra* note 9, at 90.

¹⁵¹ NORD, *supra* note 106, at 232.

¹⁵² HAYNES & THOMAS, *supra* note 9, at 6.

civilization.”¹⁵³ Reform of public school curricula is essential. Religion must be brought into public school curricula if students are our country’s public schools are to receive a complete education that adequately prepares them to be intelligent and active participants in our society.

B. A Standard Method for Incorporating Religion into the Curriculum

Religion must be incorporated into public school curricula.¹⁵⁴ Under existing Supreme Court precedent, it is clear that religion may be incorporated into public school curricula. However, schools do have to be careful not to overstep the bounds of the Constitution. The best way to do that is to create a standard plan designed to provide schools and teachers with specific guidance as to what is expected and permitted in courses dealing with religious issues. Development of a standard plan will “allow school districts to avoid contentious disputes by developing a common understanding among students, teachers, parents and the broader community”¹⁵⁵

One uniform requirement of any proposal to bring religion into the curriculum is that religion must be presented in an objective

¹⁵³ *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963).

¹⁵⁴ A number of proposals have been made recommending various ways in which schools might go about incorporating religion into the curriculum. One persuasive proposal is that made by Warrant A. Nord and Charles C. Haynes, who argued that religion may be incorporated into the public school curriculum without violating the Constitution so long as religion is treated in an objective manner and all religions are treated fairly and equally. NORD & HAYNES, *supra* note 11, at 46. Nord and Haynes suggested seven principles for guidance in implementing religion into public school curricula. For further discussion of those principles, see *id.*

¹⁵⁵ Richard W. Riley, U.S. Dep’t of Educ., Secretary’s Statement on Religion in Public Schools, *available at* <http://www2.ed.gov/Speeches/08-1995/religion.html>.

manner. As the Supreme Court has explained, “The study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment’s prohibition.”¹⁵⁶ Accordingly, in incorporating religion into the school curriculum, teaching religion must be distinguished from teaching about religion.¹⁵⁷ The Supreme Court has consistently distinguished educational activities “designed to inculcate religious sentiments and values” from activities designed to teach students about religion, “which [are] both constitutionally permissible and educationally appropriate.”¹⁵⁸ In other words, a distinction is drawn between school-sponsored practice of religion on the one hand and the academic study of religion on the other.¹⁵⁹ The

¹⁵⁶ *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968). For a public school class to study the Bible without violating constitutional limits, the class would have to include critical rather than devotional readings and allow open inquiry into the history and content of biblical passages. THE PEW FORUM ON RELIGION & PUBLIC LIFE, RELIGION IN THE PUBLIC SCHOOLS 8 (2007), available at <http://pewforum.org/Church-State-Law/Religion-in-the-Public-Schools.aspx>.

¹⁵⁷ See *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 306 (1963) (Goldberg, J., concurring) (“[I]t seems clear to me . . . that the Court would recognize the propriety of . . . teaching about religion, as distinguished from the teaching of religion, in the public schools.”).

¹⁵⁸ PEW FORUM ON RELIGION & PUBLIC LIFE, *supra* note 156, at 7.

¹⁵⁹ In 1988, seventeen religious and educational organizations developed a number of guidelines to distinguish teaching about religion from religious indoctrination. They included:

- The school's approach to religion is *academic*, not *devotional*.
- The school strives for student awareness of religions, but does not press for student *acceptance* of any one religion.
- The school sponsors *study* about religion, not the *practice* of religion.
- The school *exposes* students to a diversity of religious views; it does not *impose* any particular view.
- The school *educates* about all religions; it does not *promote* or *denigrate* any religion.
- The school *informs* students about various beliefs; it does not seek to *conform* students to any particular belief.

academic study of religion may include “consideration of the beliefs and practices of religions” from an objective view point, as well as “the role of religion in history and contemporary society, and religious themes in music, art and literature.”¹⁶⁰

The public schools may therefore include courses of study *about* religion, while being careful to follow certain guidelines designed to ensure constitutional validity. First, as mentioned, religion must be taught in an objective manner. Teachers must not “teach that particular religious propositions are true or false,” and they must not “say what is the correct understanding of a particular religion, when that is debated.”¹⁶¹ Additionally, schools must ensure that any course on religion addresses a wide array of religions and religious perspectives.¹⁶² With those specific restrictions in mind, it is important to develop a comprehensive standard that addresses the subject of religion in public school curricula.

Similar to approach taken by California, this Note proposes incorporating religion into the educational content standards. However, while California has chosen to incorporate religion into

The First Amendment Center, Teaching About Religion, http://www.firstamendmentcenter.org/rel_liberty/publicschools/topic.aspx?topic=teaching_about_religion (last visited Feb. 3, 2011).

¹⁶⁰ HAYNES & THOMAS, *supra* note 9, at 89 n.1.

¹⁶¹ Kent Greenawalt, *Teaching About Religion in the Public Schools*, 18 J.L. & POL. 329, 331 (2002).

¹⁶² *Id.* at 360-61. This Note recognizes that not every religion and religious theory can be covered during the short time periods provided for each subject students study. Given the time restraints, choices must be made in every subject in school about what should or should not be included in the course, and just as certain parts of history and science must be left out, certain religions and religious concepts would necessarily be left out as well. The important part is that the course cover a variety of religious ideas and provide students with some perspective and information about ideas that are important to people and culture.

subject areas already existing in the curriculum, this Note proposes establishing religion as a separate subject area of study.¹⁶³ A number of national education organizations have taken on the task of creating educational standards at the national level.¹⁶⁴ The best way to approach religion is by creating, at the national level, a set of standards that details the content that should be covered at each educational level and the comprehension that should be achieved by each student after completion of each grade level. The standards should also articulate the methods that teachers should use in accomplishing those goals and some of the activities that will help teachers ensure that all students are receiving the proper level of education.

Consider, for example, the New Jersey Core Curriculum Content Standards.¹⁶⁵ Those standards detail the knowledge students should gain throughout their public school education, and the education level students should achieve by the time they graduate.¹⁶⁶ In that way, they provide schools and teachers with “clear and specific benchmarks for student achievement.”¹⁶⁷ The New Jersey Curriculum Standard address nine content areas: visual and performing arts, comprehensive health and physical education, science, social studies,

¹⁶³ As one author recognized: “In the foreseeable future, the primary focus for teaching students about diverse religious perspectives is likely to be courses in world history; but . . . a course about religions holds out the best hope for presenting religious understandings that compete with or supplement other perspectives.” *Id.* at 360.

¹⁶⁴ Education World, National Standards, <http://www.educationworld.com/standards/national/index.shtml> (last visited Feb. 3, 2011).

¹⁶⁵ See N.J. Dep’t of Educ., N.J. Core Curriculum Content Standards, <http://www.state.nj.us/education/cccs/> (last visited Feb. 3, 2011).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

world languages, technology, Twenty-First Century life and careers, mathematics, and language arts literature.¹⁶⁸ The Content Standards for social studies are a good example:

- At the **Preschool** level, students participate in interdisciplinary activities that promote cultural awareness, sensitivity to individual differences, and respect for diversity.
- In grades **K-4**, students learn fundamental concepts about government, citizenship, geography, economics, and history. The focus of instruction is on developing an understanding of core democratic values, the rights and responsibilities of American citizens, and how key people and events contributed to the development of the American heritage.
- In grades **5-8**, students build upon K-4 foundational content. Through instruction in U.S. History and World History/Global Studies, they begin to analyze the implications of government structures and economic policies for individuals, communities, nations, and global relationships. The study of migratory patterns and belief systems that in the past led to cooperation and conflict among groups of people enable students to realize the significance of cultural transmission in today's global society.
- In grades **9-12**, students continue to study U.S. History and World History/Global Studies. They consider historical viewpoints in order to analyze the role of the individual in society and the significance of fundamental documents to basic human rights. By the end of grade 12, students have a heightened understanding of the cause-and-effect relationship between past and present events, recognize patterns of

¹⁶⁸ N.J. Dep't of Educ., N.J. World Class Standards, <https://www13.state.nj.us/NJCCCS/Worldclasstandards.aspx> (last visited Feb. 3, 2011).

interactions, and understand the impact of events in an interconnected world.¹⁶⁹

Every state has a set of educational standards similar to New Jersey's.¹⁷⁰ Additionally, a number of organizations have continued to promote the development of educational content standards at the national level. If religion is to be truly incorporated into public school curricula, a content standard should be developed that addresses only the topic of religion. While national content standards would be the most effective way to incorporate religion into public school curricula across the country, until national standards are developed and considered by all states, the best way to incorporate religion into the curricula is for each state to add an additional content standard that deals with the topic of religion.¹⁷¹

The first level of educational development is the pre-school level. This content standard in the area of religion will very closely parallel the social studies content standard. In pre-school, students should participate in activities that promote cultural awareness, and that develop an understanding that different cultures practice different religions. The main goal of education at the pre-school level is to prepare the students for the education that they will receive when they move up to elementary school.

¹⁶⁹ N.J. Dep't of Educ., 2009 Core Curriculum Content Standards, *available at* <http://www.state.nj.us/education/cccs/2009/final.htm> (follow link for Standard 6: Social Studies).

¹⁷⁰ See Education World, *supra* note 101.

¹⁷¹ This note does not claim to develop a complete and determinate standard. Rather, what it hopes to do is simply demonstrate the way such a standard should be developed. Were such an approach actually to be undertaken, it would need to be developed by groups or committees of educators and school boards who fully understand the schools, the teachers, and most importantly, the students.

The second level of educational development in New Jersey is from Kindergarten to grade four. Instruction at this level should continue to focus on laying the groundwork for future education. Students at this level should learn what the guiding religious texts are for the various religions, and should begin to learn about the stories and characters from those texts. This will prepare the students for future education about the world's prominent religions.¹⁷² This is also the stage at which teachers should feel comfortable addressing the various religious holidays, such as Christmas or Rosh Hashanah.¹⁷³ It has been recognized that “[r]eligious holidays offer excellent opportunities to teach about religion in the elementary and secondary schools.”¹⁷⁴ Discussion of various religious holidays should focus on the “origin, history and generally agreed upon meaning of the observances.”¹⁷⁵ Teachers should explain to students that it is important to be aware of and understand the different religions, but that this does not mean that the students must accept the different religious doctrines as truth.

The third level of educational development spans grades five through eight. At this stage, students will begin to learn about the core

¹⁷² See *Crockett v. Sorenson*, 568 F. Supp. 1422, 1430 (W.D. Va. 1983) (accepting the view that “Bible teaching is a ‘building block’ type course and that elementary students should be taught the stories and characters of the Bible so that they can better understand their courses in literature and history at the high school level”).

¹⁷³ Christmas-themed music programs have raised constitutional challenges as a result of some students feeling coerced to participate in the programs. THE PEW FORUM ON RELIGION & PUBLIC LIFE, *supra* note 156, at 9. For a holiday music program to survive such a constitutional challenge, some circuits have held that the schools must ensure “the predominance of secular considerations, such as the program’s educational value or the musical qualities of the pieces.” *Id.* (citing *Bauchman v. West High Sch.*, 132 F.3d 542 (10th Cir. 1997); *Doe v. Duncanville Independent Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995)).

¹⁷⁴ HAYNES & THOMAS, *supra* note 9, at 92.

¹⁷⁵ *Id.*

concepts and most important doctrines of the world's most widely practiced religions. They should focus on the major ideas and themes of each religion, and of religion in general, and should attempt to identify how those themes are apparent in other areas of study, such as social studies, literature, and the arts. Students should also gain some understanding of the dominant religions in the United States and how those religions influenced the development of the nation. As in the New Jersey social studies standard, students should begin to analyze the implications of religion throughout history and throughout modern societies. They should examine how religion impacts the relationships between people and between countries.

The final level of education is grades nine through twelve. Students should continue to study the role that religion plays in the various aspects of our lives. They should look to history and gain some understanding of how religion has shaped the world around us. They should also study the relationship between the various religions and how the members of different religions interact with each other. Teachers should challenge students with assignments that require them to look at the different religions from an objective viewpoint and to develop different concepts of how the members of different religions can work together to make the world a better place. By the time students graduate, they should have a comprehensive understanding of where religion comes from, what it means, and how it will continue to influence the events of the world in the future.

By creating a religious studies standard that parallels New Jersey's social studies standard, states can develop a standard that brings religion into their public school curriculum, while also

informing schools and teachers how to appropriately teach that subject. In this way, the states will avoid the issues that arise from statutes like the one passed by Texas, which requires public schools to teach Bible literacy, but provides them no guidance on how to implement that provision. Unlike Texas' statute, which provides no guidance for the schools, this method of creating an educational content standard for religion provides the schools with the guidance necessary to prevent schools from overstepping constitutional boundaries.

C. Possible Problems and Criticisms of this Proposed Standard

It has been suggested that, while religion probably should be incorporated into public school curricula, "the most desirable program may depend on the makeup of the local community."¹⁷⁶ One problem is that religion plays a more prominent role in some localities than it does in others, and that in such localities, there may be an increased likelihood of bias with regard to which religions are discussed in the classroom. In other localities, there may be a more religiously diverse community. This increases the possibility of open discussion and true understanding of the different faiths practiced by the students. However, it may also lead to a greater level of controversy and hostility when teachers attempt to discuss religion with their students. This concern may be addressed by allowing for flexibility in the adoption of the educational standard. A national standard should be set that will provide guidance for state and local school boards, but should

¹⁷⁶ Greenawalt, *supra* note 161, at 330.

allow for adjustments by local school officials who understand the unique characteristics of the students in their school districts.

There is the additional critique that the effectiveness of any program “rests heavily on the competence of teachers.”¹⁷⁷ Well-trained teachers will be able to approach teaching about religion in a way that some other teachers may not. Many teachers may “lack a deep understanding of religion or of how it should be taught to public school students,”¹⁷⁸ and that lack of understanding will have a negative impact on the education of the students. For many teachers, it may be impossible to separate their religious beliefs from the discussions that they have with their students in class. This may lead to the unfortunate result of those teachers, consciously or unconsciously, acting to sway students on what the proper belief system is. This problem can be overcome with adequate training for public school teachers. Properly trained educators can offer exceptional lessons on the world religions without evidencing any bias. They can encourage their students to understand the diversities and uniformities of the religions of their peers without allowing their lesson plans to be influenced by their own viewpoints. Incorporating religion into public school curricula “will require a commitment by schools and boards of education to give teachers more exposure to the study of religious influences and appropriate resources for teaching about these influences in the public school setting.”¹⁷⁹

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ HAYNES & THOMAS, *supra* note 9, at 93.

It has also been argued that the objective teaching of religion has negative implications for the various religions and for religion in general.¹⁸⁰ The problem was set out as follows:

Offering a particular religious doctrine objectively, as it turns out, requires that it be presented without any reference to truth. But truth is arguably the most fundamental element of almost all religions, especially Christianity, by which our nation's founding and subsequent culture has been largely influenced. A religion that is presented without any reference to a claim of truth effectively dilutes it into an undignified form.¹⁸¹

The conclusion is that, because the accommodationist view of neutrality “can in fact have the effect of neutralizing religious values,”¹⁸² that approach to neutrality should be rejected when the issue involves religion in public school curricula.¹⁸³ This fear of diluting religion is made in support of the wrong side of the debate. Rather than denying respect to religion, a course that teaches about religious theories recognizes the important place of religion in our society. Such a course, by helping students understand the different religions and the role religion plays in our society, would teach students to respect those differing religious viewpoints. Conversely, neglecting religion

¹⁸⁰ Matthew D. Donovan, Note, *Religion, Neutrality, and the Public School Curriculum: Equal Treatment or Separation?*, 43 CATH. LAW 187, 188 (2004).

¹⁸¹ *Id.* at 188-89 (citation omitted).

¹⁸² *Id.* at 220.

¹⁸³ *Id.* at 189, 221. Specifically, Donovan concluded: “Perhaps for the sake of religion, then, equal treatment in the public school curriculum is not a position the Court ought to embrace because neutrality in this context tends to denigrate rather than elevate religion. In fact . . . equal treatment in the form of an objective presentation of religion--dilutes religion from its essential character and runs the risk of flattening the soul of the religious child.” *Id.* at 221-22.

implies that the numerous religious beliefs that are different from our own are not worth learning about. If students are to respect the diverse beliefs of the people of the world, religion must be given a place in the curriculum. The standard schools may follow in order to create that place for religion may be developed under the Supreme Court's accommodationist interpretation of neutrality as equal treatment.

VI. CONCLUSION

Debate continues over the appropriate place of religion in public schools. While the Supreme Court has made clear that school-sponsored prayer will not be tolerated, its decisions also reflect that religion need not be completely removed from public school classrooms. Religion may be incorporated into public school education as a part of a complete and well-rounded curriculum. While education boards and school officials may fear the backlash of teaching about religion in their public schools and continue to tiptoe around controversial religious subjects, their failure to incorporate religion into the curriculum is inexcusable. Excluding religion from the public school curriculum diminishes the vital role of religion in our society and fosters the intolerance between different cultures that has led to so much hate and unnecessary violence. Not only will teaching about religion help people to better understand and overcome their differences, but it will help public schools, which play such an important role in the development of our nation's youth, teach students about the value of protecting their religious freedom.

Despite the fear of judicial repercussions, it is essential that our public schools begin to incorporate religion into public school curricula. While it has been difficult for states to develop standards that are both constitutional and comprehensive, the standard proposed here is one that can be understood and accomplished by school boards across the nation. Development of a new educational content standard for the subject of religion, particularly one at the national level, will provide schools and teachers with the guidance they need in order to ensure both that religion is incorporated into the curriculum and that they do not overstep the restraints of the Constitution. Recognition of the value of education, and of the culturally and religiously diverse nature of the people in this country, requires adopting the Supreme Court's accommodationist standard of neutrality as equal treatment and the development of an educational standard that incorporates religion into public school curricula.