

TIGHTENING THE BIBLE BELT: TEACHING THE GOOD BOOK IN GEORGIA’S PUBLIC SCHOOLS

“The breach of neutrality that is today a trickling stream
may all too soon become a raging torrent.”¹

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I. INTRODUCTION

Growing up in the South, one learns very quickly that there are two things never to be discussed at the dinner table: politics and religion. So naturally, when the two come together, sparks tend to fly. It is for this very reason that our Constitution addresses the appropriate nature of the relationship between

1. Sch. Dist. v. Schempp, 374 U.S. 203, 225 (1963).

government and religion in its First Amendment.² Of course, that has not stopped endless litigation thrown before the courts of this land concerning that relationship, and it has not stopped the high courts of our great country from avoiding laying down clearly defined rules regarding that relationship. It would seem that the lesson of the dinner table has been heard loud and clear.

One of the latest debates concerning the relationship between government and religion is the constitutionality of Bible classes in public schools. Several states, including Georgia, have passed legislation authorizing and funding public school courses that teach about the Bible.³ Part II of this comment addresses the historical backdrop of religion in public schools, including an analysis of the legal standards used in evaluating complaints under the Establishment Clause. Part III offers an evaluation of the arguments for and against the inclusion of religious study, and in particular the study of the Bible, in American public schools. Parts IV and V examine Georgia's Bible courses and the possible constitutional issues surrounding them. Parts VI and VII conclude that the courses may be constitutionally suspect and present a recommendation as to how the State could alter the courses in order to avoid costly litigation.

II. HISTORY OF THE BIBLE IN PUBLIC SCHOOLS

The inclusion of religion in American public schools has been a source of controversy since the nineteenth century.⁴ In the early days of public schools, it was commonly accepted that Protestant values were "the sole authoritative moral font, to be incorporated wholesale into the educational program."⁵ As the American public school system evolved, a rift developed between Protestants and Catholics over the role of religion in the classroom.⁶ This early, internal clash amongst Christians

2. U.S. CONST. amend. I.

3. O.C.G.A. § 20-2-148 (2009).

4. *McCollum v. Bd. of Educ.*, 333 U.S. 203, 214-16 (1948) (Frankfurter, J., concurring).

5. Marc O. DeGirolami, *The Problem of Religious Learning*, 49 B.C. L. REV. 1213, 1216-17 (2008).

6. Caroline Elizabeth Branch, *Unexcused Absence: Why Public Schools in Religiously Plural Society Must Save a Seat for Religion in the Curriculum*, 56 EMORY L.J. 1431, 1435 (2007) ("Protestant and Catholic

would later grow to a more general resistance to any sectarian influence in public schools.⁷ Substantial growth in industrialization and immigration gave way to a new understanding of public schooling in America.⁸ The need for an ever-more educated citizenry, along with an increasingly diverse society, placed tremendous pressure on the young, public school system.⁹ As Justice Black stated in *McCullum v. Board of Education*:

The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public schools must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.¹⁰

Christianity disagreed fundamentally on the nature and content of Christian teachings, and Catholic discomfort with the Protestant aspects of common schooling concluded in Catholic withdrawal to privately funded parochial schools.”).

7. See *McCullum*, 333 U.S. at 215-31 (Frankfurter, J., concurring), for a detailed history of the development of the public school system and its relationship with religion.

8. *Id.* at 215-16 (“Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people.”).

9. *Id.*

10. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 216-17 (1948); see also *id.* at 231 (Frankfurter, J., concurring) (“The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the state is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.”).

By 1875, the notion that the public school system needed to be isolated from entanglements with the Church was so commonly accepted that President Grant addressed the issue in a speech to the Convention of the Army of the Tennessee.¹¹ In fact, “every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system ‘free from sectarian control.’”¹²

A. The Supreme Court’s Establishment Clause Jurisprudence

“The Court’s historic duty to expound the meaning of the Constitution has encountered few issues more intricate or more demanding than that of the relationship between religion and the public schools.”¹³ The complexity of the issue is only exacerbated by the ever-evolving nature of the public school system in America.¹⁴ It should be no surprise then that the Supreme Court of the United States has offered little clear guidance as to the appropriate line to draw between public schools and sectarian influence. Even so, the cases that have gone before the Court have often elicited substantial and illuminating opinions from various Justices, as evidenced by the discussion below.

It has long been settled that the mandates of the First Amendment were made applicable to the States by the Fourteenth Amendment.¹⁵ The Court in *Everson v. Board of*

11. *Id.* at 217-18.

12. *Id.* at 220.

13. *Sch. Dist. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring).

14. *Id.* at 238-39 (“[T]he structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an ‘establishment’ offer little aid to decision. Education, as the Framers knew it, was in the main confined to private schools more often than not under strict sectarian supervision. Only gradually did control of education pass largely to public officials. It would, therefore, hardly be significant if the fact was that the nearly universal devotional exercises in the schools of the young Republic did not provoke criticism.”).

15. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (“The fundamental concept of liberty embodied in that [Fourteenth] Amendment embraces the

*Education*¹⁶ invoked strong language in support of its notion that the “wall of separation” between religion and state must be kept high.¹⁷ Lest his separationist attitude be considered hostile to religion, Justice Black made it clear that this wall also served to protect religion from the government.¹⁸ Justice Jackson echoed this dual purpose in his dissent.¹⁹ Only a year later, in *McCullum*, Justice Black reasserted that “the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.”²⁰ The separationist language of *Everson* was “firmly maintained” in cases²¹ leading up to and including *School District v. Schempp*.²² But it was soon clear that the ideal of the strict wall, as hypothesized by the separationist movement, was too unworkable in practice to maintain a majority of the Justices on the Court. Good fences, as it were, did not always make good neighbors.

liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.”).

16. *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

17. *Id.* at 15-18 (“The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.”); *see also id.*, 330 U.S. at 31-32 (Jackson, J., dissenting) (“[The purpose of the Establishment Clause] was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.”).

18. *Id.* at 18 (“State power is no more to be used as to handicap religions, than it is to favor them.”).

19. *Id.* at 26-27 (“This freedom was first in the Bill of Rights because it was first in the forefathers’ minds; it was set forth in absolute terms, and its strength is its rigidity. *It was intended not only to keep the states’ hands out of religion, but to keep religion’s hands off the state*, and above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.”) (emphasis added).

20. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).

21. *See id.*; *see also Zorach v. Clauson*, 343 U.S. 306 (1952).

22. *Sch. Dist. v. Schempp*, 374 U.S. 203, 217 (1963) (noting that questions concerning separationist theory “seem entirely untenable and of value only as academic exercises”).

Writing for the Court in *Schempp*, Justice Clark suggested that the study of the Bible “for its literary and historic qualities” may be constitutionally permissible so long as the material was presented as part of an objective and secular educational program.²³ In his *Schempp* concurrence that was joined by Justice Harlan, Justice Goldberg laid out the foundations for the accommodationist arguments to come:

It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.²⁴

Amidst this battle between separation and accommodation of religion in the public sphere, the Court developed the *Lemon*²⁵ test for evaluating Establishment Clause challenges to legislation. In the more recent case of *Edwards v. Aguillard*,²⁶ the Court summarized the test as:

[A] three-pronged test to determine whether legislation comports with the Establishment Clause. First, the legislature must have adopted the law with a secular purpose. Second, the statute’s principal or primary effect must be one that neither advances nor inhibits religion. Third, the statute must not result in an excessive entanglement of government with religion.²⁷

The *Edwards* Court specifically noted that the *Lemon* test was the appropriate test to use when evaluating legislation affecting public schools.²⁸ Although state and local school

23. *Id.* at 225.

24. *Id.* at 306 (Goldberg, J., concurring).

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

26. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

27. *Id.* at 583.

28. *Id.* at 583 n.4 (“The *Lemon* test has been applied in all cases since its adoption in 1971, except in *Marsh v. Chambers*, where the Court held that the Nebraska Legislature’s practice of opening a session with a prayer by a chaplain paid by the State did not violate the Establishment Clause. The

boards are generally granted broad discretion in formulating curriculums, their decisions must comport with the requirements of the First Amendment as laid out by the test.²⁹

Although the *Lemon* test represented a substantial leap forward in the Court's Establishment Clause jurisprudence, it was anything but a bright-line rule. Subsequent cases often required the Court to clarify its own language. "The purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion."³⁰ If a statute fails this first prong, no consideration of the additional prongs of the test is required.³¹ "While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham."³² Additionally, "[t]he religious purpose must predominate" in order to justify invalidation.³³

"The primary effect of a government action is somewhat entangled with the purpose analysis, since an impermissible primary effect may simply be the observer's perception of a state purpose to endorse religion."³⁴ Indeed the overlapping nature of the *Lemon* test's three prongs has prompted the use of alternative tests. Thus, in *Agostini v. Felton*,³⁵ Justice O'Connor offered a simpler, two-pronged "endorsement test" in which a statute would be overturned if either its purpose or effect was to advance or prohibit religion.³⁶ In *Lee v. Weisman*,³⁷ Justice Kennedy formulated a "coercion test," noting "the heightened concerns with protecting freedom of conscience from subtle

Court based its conclusion in that case on the historical acceptance of the practice. Such a historical approach is not useful in determining the proper roles of church and state in public schools, since free public education was virtually nonexistent at the time the Constitution was adopted.") (internal citations omitted).

29. *Id.* at 583.

30. *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring).

31. *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985).

32. *Edwards v. Aguillard*, 482 U.S. 578, 586-87 (1987).

33. *Id.* at 599.

34. Branch, *supra* note 6, at 1447.

35. *Agostini v. Felton*, 521 U.S. 203 (1997).

36. *Id.* at 231-32.

37. *Lee v. Weisman*, 505 U.S. 577 (1992).

coercive pressure in the elementary and secondary public schools.”³⁸ Regardless of the test used, it is clear from the following section that under modern Establishment Clause jurisprudence the analysis will be driven largely by the facts of each individual case.

B. Lower Court Interpretations of the Establishment Clause Tests

Between 1970 and 2002, nine cases involving the teaching of Bible courses were brought before federal courts.³⁹ Of those cases, the reviewing court struck down the classes as unconstitutional seven times.⁴⁰ In the remaining two cases, portions of the courses were approved while specific sections were struck down as unconstitutional.⁴¹ However, these opinions contain very little in the way of expounding upon the Supreme Court’s Establishment Clause jurisprudence. Rather, most of the analysis was driven by applying the specific facts to what little guidance the Court had given.⁴² But one of these courts did offer a helpful explanation of the effects prong of the endorsement test.⁴³ In his opinion, Chief Judge Edgar, citing a prior Sixth Circuit case, stated:

In determining the effect of governmental action under the endorsement test, the Court makes an objective determination about whether a reasonable observer would conclude that the government has endorsed religion. This determination has been recognized by the Sixth Circuit as a clarification of the second prong of the Lemon test, which

38. *Id.* at 592.

39. Frances R. A. Paterson, *Anatomy of a Bible Course Curriculum*, 32 J.L. & EDUC. 41, 46 (2003).

40. *Id.*

41. *Id.*

42. *See generally* Doe v. Porter, 188 F. Supp. 2d 904 (E.D. Tenn. 2002); Gibson v. Lee County Sch. Bd., 1 F. Supp. 2d 1426 (M.D. Fla. 1998); Herdahl v. Pontotoc County Sch. Dist., 933 F. Supp. 582 (N.D. Miss. 1996); Doe v. Human, 725 F. Supp. 1503 (W.D. Ark. 1989); Crockett v. Sorenson, 568 F. Supp. 1422 (W.D. Va. 1983); Wiley v. Franklin, 497 F. Supp. 390 (E.D. Tenn. 1980); Wiley v. Franklin, 474 F. Supp. 525 (E.D. Tenn. 1979); Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979); Vaughn v. Reed, 313 F. Supp. 431 (W.D. Va. 1970).

43. *Porter*, 188 F. Supp. 2d 904.

asks whether the principal or primary effect of the governmental action advances or inhibits religion.⁴⁴

While clarifying a portion of the *Lemon* test, the reasonable observer analysis only further emphasizes that factual analysis is what ultimately drives the discussion. A reviewing court may peruse statutory language, legislative histories, and even established curriculums, but it is inside the classroom itself where constitutionally-suspect behavior may or may not be taking place.

In evaluating the above decisions, Frances R. A. Paterson noted three primary factors surrounding the reviewing court's constitutional analysis of the courses under the Establishment Clause:

First, whether the teachers were regular school personnel (considerations included the required qualifications for Bible teachers and the question of who selected the teachers); second, the contemporaneous or historical sponsorship of the courses; and third, whether the classroom instruction was sufficiently secular and non-devotional in nature.⁴⁵

The first two of these factors offer what appears to be a bright, if perhaps a shade dim, line rule for school boards. It is clear that a reviewing court is likely to overturn a program with any sort of clear tie to a religious organization.⁴⁶

44. *Id.* at 910 (internal quotations and citations omitted).

45. Paterson, *supra* note 39, at 47.

46. *Porter*, 188 F. Supp. 2d at 912 (“In addition to the content of the BEM program, the wholesale delegation of the administration of the program to Bryan College, a decidedly religious institution, by itself results in an impermissible entanglement of government and religion.”); *Herdahl*, 933 F. Supp. at 593 (noting involvement of Protestant churches at program’s inception); *Doe*, 725 F. Supp. at 1503 (absence of sectarian sponsorship did not automatically validate program); *Crockett*, 568 F. Supp. at 1430 (“principal vice” of program lied in “the strong religious overlay that stems from the conception and management of the program by the sponsors”); *Wiley*, 468 F. Supp. at 151 (“The major Constitutionally impermissible problems here encountered relate to the action of the school boards in delegating to the Bible Study Committee, a private religiously identifiable and motivated body, not only the funding of the program, but also the full responsibility for all other aspects of the program.”); *Vaughn*, 313 F. Supp. at 434 (“The fact that state schools are being used by teachers, paid and controlled by a religious group, suggests that the state is aiding religion in violation of the Establishment Clause of the First Amendment”).

It should come as no surprise that the least tangible of Paterson's factors, the line between teaching and preaching, has dominated much of the discussion. "When instruction turns to proselyting [sic] and imparting knowledge becomes evangelism is, except in the crudest cases, a subtle inquiry."⁴⁷ In fact, one court made it clear that tapes and transcripts of the classes were the only way to make such a determination.⁴⁸ Such a frank admission garners comparison to Justice Stewart's famous remark concerning obscenity, "I know it when I see it."⁴⁹ Thus, when the question of constitutionality rests upon what takes place in the classroom, there remains little guidance for school districts as to where the line between teaching and preaching ultimately lies. It is left to the reviewing court to play the part of the reasonable observer, standing in the back of the classroom while the teacher conducts his or her lesson. The difficulty and cost of this endeavor only underscores the need to be cautious with how classes such as these are established and overseen.

C. Modern Attempts to Secularize the Teaching of the Bible in Public Schools

Currently, "two privately produced curriculums crafted specifically to pass church-state muster are competing for use in individual schools nationwide."⁵⁰ The first of these curriculums was introduced in 1993 by The National Council on Bible Curriculum in Public Schools ("NCBCPS").⁵¹ The NCBCPS curriculum provided much of the basis for Georgia's failed attempt to introduce Bible courses in 1999.⁵² This curriculum has received criticism for the inclusion of "literalist bias," including references to the possible dimensions of Noah's Ark

47. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 236 (1948).

48. *See Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d. 1426, 1434 (M.D. Fla. 1998); *see also Wiley v. Franklin*, 497 F. Supp. 390 (E.D. Tenn. 1980).

49. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J. concurring).

50. David Van Biema, *The Case for Teaching the Bible*, TIME MAGAZINE, Mar. 22, 2007, available at <http://www.time.com/time/magazine/article/0,9171,1601845,00.html>.

51. *Id.*

52. Paterson, *supra* note 39, at 43.

and the claim that the Earth is a mere 6,000 years old.⁵³ One religious scholar has suggested that “the materials favor Protestantism over Roman Catholicism.”⁵⁴ A cursory glance at the members and financial backers of the group shows that it “is headed and supported, almost without exception, by fundamentalist Protestants.”⁵⁵

The NCBCPS curriculums have not been well received by courts or religious scholars. In 1998, a Florida district court granted an injunction against a school district offering the NCBCPS’ New Testament curriculum in its entirety over constitutional concerns.⁵⁶ A subsequent NCBCPS curriculum was roundly criticized as inappropriate for public school classrooms in a report by the Texas Freedom Network, a non-profit organization run by a variety of religious leaders opposed to the religious right.⁵⁷ That report was ultimately endorsed by 187 professors from universities across the country.⁵⁸ While at first attempting to marginalize this criticism as coming from a fringe group of anti-religion leftists, the NCBCPS issued yet another revision to its curriculum just seven months later.⁵⁹ However, this newer curriculum has also faced heavy criticism for its reliance on partisan and minority viewpoints, discussion of accounts in the Bible as historical facts, and contributions by “scholars” with dubious academic records.⁶⁰

Concerned with the constitutionality of the NCBCPS curriculum, Charles Haynes, a senior scholar at the First

53. Van Biema, *supra* note 50; *see also* Paterson, *supra* note 39, at 42 (“[T]he NCBCPS curriculum presents the Bible as a factual historical document.”).

54. Paterson, *supra* note 39, at 42 (“The primary effect of this curriculum is the promotion of conservative, evangelical Protestantism.”).

55. Amanda Colleen Brown, *Losing My Religion: The Controversy Over Bible Classes in Public Schools*, 59 BAYLOR L. REV. 193, 201 (2007).

56. *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d. 1426, 1434 (M.D. Fla. 1998) (“This Court too finds it difficult to conceive how the accounts of the resurrection or of miracles could be taught as secular history.”).

57. Brown, *supra* note 55, at 202 (2007).

58. *Id.*

59. *Id.*

60. *See* Brown, *supra* note 55, for a full, detailed discussion of the NCBCPS’s current curriculum.

Amendment Center,⁶¹ set out to design an alternative curriculum to provide “bright-line standards on what the law allowed” while gathering as broad of a base of support as possible.⁶² His work, “The Bible and Public Schools: A First Amendment Guide,” provided the basis for “a secularly acceptable Bible textbook,” unveiled in late 2005 by Chuck Stetson.⁶³ “The Bible and Its Influence” was approved by several religious scholars, “including Jews, Protestants and a Roman Catholic bishop.”⁶⁴ The book was written to provide analysis of both theme and style of key passages throughout the Bible and included sidebars discussing important cultural and historical connections.⁶⁵ Though the textbook has received broad support, critics have noted that “the history sections are almost exclusively positive.”⁶⁶ They question the lack of analysis of relevant, darker historical periods such as the Inquisition and the Salem witch trials.⁶⁷ One Texas teacher, who leads a Bible class at a Texas public school, has described the textbook as “written as if I am a Protestant Christian teaching Protestant Christians.”⁶⁸ She uses the textbook as a starting point but has developed her own curriculum, which she believes is more objective in its presentation.⁶⁹

Along with these dueling curriculums, David Van Biema has offered several suggestions as to additional requirements for a constitutionally allowable Bible course in public schools. First, it is clear that any such course should be offered as an elective.⁷⁰

61. “The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, and the rights to assemble and to petition the government.” First Amendment Center Home Page, <http://www.firstamendmentcenter.org> (last visited Mar. 22, 2010).

62. Van Biema, *supra* note 50.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*; see also *Crockett v. Sorenson*, 568 F. Supp. 1422, 1431 (W.D. VA 1983) (“I am of the opinion, however, that from a strictly constitutional analysis, requiring a student to participate in a course of Bible study when it runs contrary to his personal religious beliefs would violate the Free Exercise

Even situations in which students were not forced to take a Bible class have, at times, received criticism from courts.⁷¹ Second, the elective courses should only be offered to upper-classmen, generally thought to mean juniors and seniors in high school.⁷² However, it is worth noting that not all courts have demonstrated an aversion to the inclusion of Bible courses in elementary education.⁷³ Third, the curriculum should address both the harmful and helpful influences the Bible has had on history.⁷⁴ Fourth, “the course should have a strong accompanying textbook on the model of *The Bible and Its Influence* but one that is willing to deal a bit more bluntly with the historical warts.”⁷⁵ Fifth, those selected to teach such courses must at least be given basic training in understanding the constitutional boundaries with respect to teaching and preaching.⁷⁶ Finally, the elective “should be twinned

Clause.”).

71. *Vaughn v. Reed*, 313 F. Supp. 431, 433 (W.D. Va. 1970) (“The children who do not take the program are separated from the other members of the class. Resulting pressures may have influenced some parents into allowing their children to take the classes.”).

72. *Id.*; see also DeGirolami, *supra* note 5, at 1265-66.

73. See, e.g., *Crockett*, 568 F. Supp. at 1430 (accepting defense experts’ opinions that constitutional teaching of the Bible represented “building block” for elementary students); *Wiley v. Franklin*, 474 F. Supp. 525, 531 (E.D. Tenn. 1979) (accepting constitutionality of several elementary school Bible lessons), *Wiley v. Franklin*, 468 F. Supp. 133, 150 (E.D. Tenn. 1979) (“That Bible study courses can be designed for use at all public school levels, from kindergarten to college graduate level, and can be designed to avoid violation of the First Amendment religious freedom strictures cannot be doubted.”).

74. See *Crockett*, 568 F. Supp. at 1430; see also DeGirolami, *supra* note 5, at 1222 (“The history of the Crusades, the slaughter of the Aztecs, and the rise of communism all form part of the history of religion, just as religion forms part of their histories. In treating these subjects, a textbook or a teacher may cast religion’s role in those histories in favorable or unfavorable hues.”).

75. *Crockett*, 568 F. Supp. at 1430.

76. See *Crockett v. Sorenson*, 568 F. Supp. 1422, 1430 (W.D. Va. 1983); see also DeGirolami, *supra* note 5, at 1222 (“The concerns about teacher competence and religious preference are also significant. On the issue of training, one might claim that teachers of a religious history, comparative religion, or upper-level ethics class should be certified by the state, just as teachers are for history, science, mathematics, and all other major disciplines. Certification in subjects such as history, the arts, and English or

mandatorily with a world religions course, even if that would mean just a semester of each.”⁷⁷ A comparative religion course, offered in conjunction with a Bible course, could alleviate some of the coercion and endorsement concerns that individual members of the Supreme Court have opined upon extensively in the seminal Establishment Clause cases.

III. THE CASES FOR AND AGAINST STUDYING “THE GOOD BOOK”⁷⁸ IN PUBLIC SCHOOLS

Debate over the inclusion of the Bible in public schooling can often be boiled down to two competing theories. Those in favor of including study of the Bible in public schooling claim that the process can be done without amounting to state-sponsored religion and that the instruction is necessary to develop citizens who fully appreciate the important role that Christianity has played in the development of the country.⁷⁹ Those opposed to such courses claim that neutral teaching of the Bible in public schools is impossible, that the classes are merely a Trojan Horse for Christian proselytizing in the classroom, and that the best place for children to learn about the Bible is via their parents, their church, or college.⁸⁰

In his *Schempp* concurrence, Justice Brennan anticipated the possibility of what he called “non-devotional use of the Bible in the public schools” and made sure to announce that the Court’s

reading could be refashioned to include religious learning as it might apply to particular disciplines. The state-mandated character of certification would certainly have the effect of standardizing the content of what could be constitutionally taught about religion both in a freestanding religious studies or ethics class and within other disciplines. Standardization would also offer guidance to teachers who will doubtless bring a variety of perspectives about religion to the classroom.”).

77. *Crockett*, 568 F. Supp. at 1430.

78. The sponsor of Georgia’s Senate Bill 79 has referred to the Bible as “not just ‘The Good Book’” but also “a good book.” The Associated Press, *Ga. Board Near to Approving Bible Classes for Public Schools*, ACCESSNORTHGA, Mar. 8, 2007, available at <http://www2.accessnorthga.com/detail.php?n=104486>.

79. See generally Branch, *supra* note 6; see also DeGirolami, *supra* note 5.

80. Bridget Gutierrez, *Bill for School Bible Classes Sent to Perdue*, ATLANTA J.-CONST., Mar. 28, 2006, at 1B.

ruling in no way foreclosed that use.⁸¹ He went on to define this use as “teaching about the Holy Scriptures or about the differences between religious sects in classes in literature and history.”⁸² Justice Goldberg also accepted the possibility of “teaching about religion, as distinguished from the teaching of religion, in the public schools.”⁸³

The Court in *Schempp* acknowledged that “religion has been closely identified with our history and government,”⁸⁴ claiming we need not look any further than to the founding documents of our nation, “from the Mayflower Compact to the Constitution itself,” for proof.⁸⁵ But the Court seems to have made a point of approaching the subject from a broad perspective,⁸⁶ only discussing the Bible, specifically, within the context of the case before it.⁸⁷ In his concurrence, Justice Goldberg took the claim one step further, stating “[n]either government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings.”⁸⁸

So too did Justice Jackson, in his *McCullum* concurrence, acknowledge the inability of schools to properly educate students without reference to religious ideals and stories.⁸⁹ Yet

81. *Sch. Dist. v. Schempp*, 374 U.S. 203, 300 (1963) (Brennan, J., concurring).

82. *Id.* One can only assume that this reference to literature and history is from where the official names for these courses came.

83. *Id.* at 306 (Goldberg, J., concurring).

84. *Id.* at 212.

85. *Id.* at 213.

86. *Id.* at 225 (“[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 civilization.”) (emphasis added).

87. *Schempp*, 374 U.S. at 225. (As the case was about the reading of Biblical passages over a school’s PA system, the Court noted “[i]t certainly may be said that the Bible is worthy of study for its literary and historic qualities.”).

88. *Id.* at 306 (Goldberg, J., concurring).

89. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 235-36 (1948) (Jackson, J., concurring) (“But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture without the cathedral, or painting without the scriptural themes would be eccentric and incomplete,

he was careful with his words, making sure to acknowledge the variety of religious beliefs that had influenced our culture.⁹⁰ He firmly 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 student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.⁹¹

The fact that most Justices seemed to have taken a more inclusive approach to the argument that religious teaching has a place in public schools has not dissuaded modern claims that the Bible, alone, is fit for study. Proponents of Bible courses often remind us that “[t]he Bible is the most influential book ever written.”⁹² William Shakespeare draws allusions to it some 1300 times, according to one estimate.⁹³ In describing American children’s illiteracy of the Bible, the sponsor of Georgia’s Bill, Tommie Williams, said, “[i]f we’re teaching a kid what the Good Samaritan law was about, they wouldn’t know.”⁹⁴ Such arguments may generate substantial head-nodding from Christians already in favor of Bible courses, but they do little to alleviate the fears of those worried about preaching in the classroom.

The notion that religious study is necessary to a complete education appears to have been roundly rejected by Justice

even from a secular point of view.”).

90. *Id.*

91. *Id.*

92. Van Biema, *supra* note 50. It is worth noting, however, that Van Biema insisted that any Bible course be offered in conjunction with a comparative religion course. *Id.*

93. *Id.*

94. Brenda Goodman, *Teaching the Bible in Georgia’s Public Schools*, N.Y. TIMES, Mar. 29, 2006, available at <http://www.nytimes.com/2006/03/29/education/29bible.html>. Christianity is not the only religion to feature a parable with the moral themes on display in the story of the Good Samaritan. For example, the Islamic Bukhari 4:538 includes a story of a prostitute blessed for stopping to assist an injured animal upon a road.

Jackson in his *Everson* dissent.⁹⁵ In fact, Justice Jackson felt that “after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion.”⁹⁶ Responding to the claim that the reading of Biblical scriptures and daily prayer instill necessary values, Justice Brennan noted that, while sectarian bias might have been absent, “the crucial fact is that [the activities] were nonetheless religious.”⁹⁷ While the activities at issue in *Schempp* are not necessarily analogous to those authorized by the Georgia Bill, Justice Brennan’s rejection of the values argument is still both relevant and noteworthy.

The claim that it is the responsibility of public schools to instill values by educating American schoolchildren about the Bible evokes fears expressed by the *Schempp* Court in the very first line of its analysis.⁹⁸ One must consider the circular nature of the argument that the Bible’s wide-ranging influence in our country necessitates that we use our public schools to perpetuate that very influence.⁹⁹ The underlying assumption from such thinking is that not only has the Bible had great influence on the fundamental values of this country but also that it should continue to have such great influence. While this assumption certainly is appealing to many devout Christians in this country, it seems in conflict with a nation that, from its inception, has

95. *Everson v. Bd. of Educ.*, 330 U.S. 1, 23-24 (1947) (“[The public school system] is organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion.”).

96. *Id.*

97. *Sch. Dist. v. Schempp*, 374 U.S. 203, 271 (1963) (Brennan, J., concurring).

98. *Id.* at 222 (“The wholesome ‘neutrality’ of which this Court’s cases speak thus stems from a recognition of the teachings of history *that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other* to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies.”) (emphasis added).

99. It is also worth noting the apparent hypocrisy amongst conservatives, who typically decry the “nanny state” in favor of individual and, more significantly, parental responsibility. Why should these classes be an appropriate function of government when so much else is not?

continued to grow more diverse with respect to religious and spiritual backgrounds.

The Supreme Court also has noted the dangers this dependency might create with respect to the Free Exercise Clause.¹⁰⁰ If the Bible is of such importance as to be taught in public schools, then what is to prevent the State from imposing regulations on how the Bible is taught to children in Sunday Schools across the country? As Justice Jackson noted in his dissent in *Everson*, “we cannot have it both ways.”¹⁰¹ He went on to note that the proposed “inadequacy of public or secular education” was the very reason the government showed great respect towards alternative, religious schooling.¹⁰²

100. See *Schempp*, 374 U.S. at 271, 222; see also *id.* at 286-87 (Brennan, J., concurring) (“[T]he notion of a ‘common core’ litany or supplication offends many deeply devout worshippers who do not find clearly sectarian practices objectionable.”). Indeed, while a Free Exercise Clause discussion is beyond the scope of this comment, there is a possibility that religious conservatives might disagree with the secular manner in which the Bible is being taught in Georgia public schools and, subsequently, raise a Free Exercise challenge in court.

101. *Everson v. Bd. of Educ.*, 330 U.S. 1, 28 (1947) (“Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe it directly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. If these principles seem harsh in prohibiting aid to Catholic education, it must not be forgotten that it is the same Constitution that alone assures Catholics the right to maintain these schools at all when predominant local sentiment would forbid them. Nor should I think that those who have done so well without this aid would want to see this separation between Church and State broken down. If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds only to find that it carried political controls with it. Indeed this Court has declared that ‘It is hardly lack of due process for the Government to regulate that which it subsidizes.’”) (internal citations omitted).

102. *Id.* at 46-47 (“Indeed the view is sincerely avowed by many of various faiths, that the basic purpose of all education is or should be religious, that the secular cannot be and should not be separated from the religious phase and emphasis. Hence, the inadequacy of public or secular education and the necessity for sending the child to a school where religion is taught. But whatever may be the philosophy or its justification, there is undeniably an admixture of religious with secular teaching in all such institutions. That is the very reason for their being. Certainly for purposes of constitutionality we cannot contradict the whole basis of the ethical and educational convictions of people who believe in religious schooling. Yet

Justice Jackson appears to have foreseen the debate taking place today, noting the constant drive “to introduce religious education and observances into the public schools.”¹⁰³ Early in his *Everson* opinion, Justice Black remarked:

[B]ut so far has the Nation moved toward [the goal of the First Amendment] that the expression ‘law respecting an establishment of religion,’ probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights.¹⁰⁴

Though written in 1947, his concern may be considered even more pertinent today.

While choosing their words carefully, those in favor of offering courses teaching the Bible in public schools seem driven by a fear that America’s youth are growing up lacking fundamental values.¹⁰⁵ The fact that religious courses are offered in public universities seems not enough to satisfy them. By then, the ability to create a significant impression is lost. But it is the impressionability of students in pre-college and university classrooms that creates such a problem under the Establishment Clause.

Lost amidst the jurisprudential and policy debates concerning the proper role, if any, of religion in the classroom is the simple fact that the public school system in America is already stretched for resources. “Public schools are under enormous strain to meet demanding national standards and must often devote substantial, if not exclusive, attention to reading and mathematics in order to survive within the current framework.”¹⁰⁶ At a time when our schools are “falling behind the rest of the world in math and science education,” it is reasonable to question burdening them with vague legislative

this very admixture is what was disestablished when the First Amendment forbade ‘an establishment of religion.’ Commingling the religious with the secular teaching does not divest the whole of its religious permeation and emphasis or make them of minor part, if proportion were material. Indeed, on any other view, *the constitutional prohibition always could be brought to naught by adding a modicum of the secular.*”) (emphasis added).

103. *Id.* at 63.

104. *Id.* at 9.

105. Goodman, *supra* note 94.

106. DeGirolami, *supra* note 5, at 1262.

requirements concerning Bible classes that may expose them to costly and time-consuming litigation.¹⁰⁷ “To expect so much of an institution that is struggling merely to keep children in school and out of the criminal justice system and to provide them with the barest literacy and numeracy is, some might object, unrealistic.”¹⁰⁸

IV. O.C.G.A. § 20-2-148

Proposals for legislation authorizing the teaching of the Bible in public schools are wrought with controversy. In 1999, two Georgia legislators proposed such a bill.¹⁰⁹ One of those legislators, Tommie Williams (R-Lyons), said that he hoped the courses “could change the hearts of children.”¹¹⁰ The proposed legislation failed amid a ruling from Attorney General Thurbert Baker, who claimed that the courses likely would not survive legal challenges.¹¹¹ Seven years later, Mr. Williams, as Senate Majority Leader, managed to pass a similar proposal, Senate Bill 79, with resounding support,¹¹² and the bill was subsequently signed into law.¹¹³ In discussing the courses, Mr. Williams clearly had learned a lesson from his past failure, dropping the moral language in favor of more neutral

107. Foon Rhea, *A Year After Election, Obama Focuses on Schools*, BOSTON GLOBE, Nov. 4, 2009, available at http://www.boston.com/news/politics/politicalintelligence/2009/11/a_year_after_el_1.html.

108. DeGirolami, *supra* note 5, at 1265. DeGirolami suggests that religious learning can be incorporated into the current curriculum, rather than by adding to it. However, it remains to be seen whether his proposal is even possible. Since Georgia chose to add courses to its curriculum, the author has limited discussion to this legislative method of introducing religious learning to the public school classroom.

109. Editorial, *Teaching vs. Preaching; Proposed Courses on Bible Run Risk of Unconstitutional Proselytizing*, ATLANTA J.-CONST., Nov. 24, 1999, at 16A.

110. *Id.*

111. *Id.*

112. Gutierrez, *supra* note 80.

113. Laura Diamond, *Whatever Happened to Public High School Bible Classes*, ATLANTA J.-CONST., Dec. 15, 2008, available at <http://www.ajc.com/services/content/printedition/2008/12/15/whatever.html>.

descriptions.¹¹⁴ In drafting his proposal, Williams used the NCBCPS curriculum as a guide.¹¹⁵

The legislative history of Senate Bill 79 is quite revealing. Three Democratic state senators originally proposed legislation to authorize and fund classes, but that Bill instructed the Georgia Department of Education to approve a textbook for the courses.¹¹⁶ The proposal was considered a bold move by state Democrats to reach out to religious voters.¹¹⁷ However, not to be outdone by his political counterparts, Williams introduced his Senate Bill 79 with the Bible as the core text of the classes.¹¹⁸ Williams cited concerns over the use of a textbook with a liberal interpretation of the Bible as reason for the alternative Bill.¹¹⁹ Doug Stoner, one of the Democratic senators behind the original Bill, had supported the use of “The Bible and Its Influence” for the courses.¹²⁰ He ultimately voted for the Republican-backed bill even though he had concerns over the constitutionality of Williams’ legislation.¹²¹

Senate Bill 79 offered to amend Georgia’s Quality Basic Education Act to give the State Board of Education the ability to adopt a curriculum, fund the courses, and establish guidelines for teachers (including how they were to be selected).¹²² Now

114. *Id.* (“This has nothing to do with proselytizing. My intention is for people to become literate of the Bible and its influence on society.”) (quoting Tommie Williams).

115. Sarah Childress, *See You in Bible Class*, NEWSWEEK, May 1, 2006, available at <http://www.newsweek.com/id/47608>.

116. Jennifer Siegel, *GOP Bible Bill Upsets Liberals, but Ga. Dems See Political Gains*, JEWISH DAILY FORWARD, Apr. 14, 2006, available at <http://www.yorkshire.forward.com/articles/1226/>.

117. *Id.*

118. *Id.*

119. *Id.* Williams’ concern is somewhat amusing considering the recent attempt by one conservative group to rewrite the Bible with a more conservative tone and without some key liberal passages. See Joseph Laycock & Thomas Fabisiak, *Conservatives are Rewriting the Bible to Free It from ‘Liberal Bias’*, RELIGION DISPATCHES, Oct. 27, 2009, available at http://www.alternet.org/story/143506/conservatives_are_rewriting_the_bible_to_free_it_from_%22liberal_bias%22.

120. *Id.*

121. *Id.*

122. S.B. 79, 148th Gen. Assem. 2d Reg. Sess. (Ga. 2006) (as passed), available at

codified as O.C.G.A. § 20-2-148, questions remain as to whether the demands of the statute have been suitably followed.¹²³ In January 2007, the Georgia Department of Education released its Performance Standards for the two courses.¹²⁴ The Performance Standards of both courses state that:

The purpose of the course shall be to accommodate the rights and desires of those teachers and students who wish to teach and study the [Old/New] Testament and to familiarize students with the contents of the [Old/New] Testament, the history recorded by the [Old/New] Testament, the literary style and structure of the [Old/New] Testament, the customs and cultures of the peoples and societies recorded in the [Old/New] Testament and the influence of the [Old/New] Testament upon law, history, government, literature, art, music, customs, morals, values, and culture.¹²⁵

The standards are fairly innocuous, describing the expectations of students participating in the class and granting

http://www.legis.state.ga.us/legis/2005_06/versions/sb79_AP_12.htm (“To amend Part 2 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to competencies and core curriculum for elementary and secondary students under the ‘Quality Basic Education Act,’ so as to provide for the offering of state funded high school courses in the History and Literature of the Old Testament Era and the History and Literature of the New Testament Era; to provide for the adoption of the curricula for such courses by the State Board of Education; to provide for reading materials, and methods of teaching in such courses; to provide for certain matters relating to the employment and assignment of teachers of such courses; to provide for the granting of academic credit for the successful completion of such courses; to provide for the monitoring of the content and teaching of such courses; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.”).

123. O.C.G.A. § 20-2-148(b)(1) (2006) (“No later than February 1, 2007, the State Board of Education shall adopt a curriculum for each course, including objectives, reading materials, and lesson plans, which has been prepared in accordance with the requirements of this subsection.”).

124. GA. DEP’T OF EDUC., GA. PERFORMANCE STANDARDS FOR LITERATURE AND HISTORY OF THE OLD TESTAMENT ERA, (2007), <https://www.georgiastandards.org/Standards/Georgia%20Performance%20Standards/Literature-and-History-of-Old-Testament-Course.pdf>.

125. *Id.*

local school boards discretion with respect to lesson plans.¹²⁶ Both standards state that each respective Testament of the Bible “shall be the basic text” for the courses.¹²⁷ The electives may be offered to any student in high school, regardless of grade level.¹²⁸ However, these standards are ultimately little more than class objectives with a mandate that the Bible be the core text. To this date, no curriculum, including additional materials and lessons to be used, has been adopted by the State Board of Education.¹²⁹

Despite the lack of a state-wide curriculum, Columbia County, Georgia created its own curriculums for the classes in its school districts, which was submitted for approval by its local Board of Education at the time of this writing.¹³⁰ Each curriculum is but a little over two pages, contains no guidelines as to supplementary materials or lesson plans, and merely traces the primary events of each Testament in chronological order.¹³¹ The lack of detail and guidance for teachers is somewhat astonishing, and one is left to conclude that the courses will be little more than a plain study of the events in each Testament. The topics of analysis include the creation of the Earth in seven days, the “One Family” of Adam and Eve, Sodom and Gomorrah, the life and parables of Jesus, the epistles, and the apocalyptic visions of John as written in Revelations.¹³²

126. *Id.*

127. *Id.*

128. *Id.*

129. E-mail from Mary Stout, Program Manager, Ga. Dept. of Educ., to Greg Frayser, Executive Articles Editor, John Marshall Law Journal (Feb. 15, 2010, 12:41 p.m. EST) (on file with author). Ms. Stout advised that Columbia County has a proposed curriculum in place. Whether this lack of a defined state-wide curriculum is indeed a violation of the statute itself is beyond the scope of this article.

130. E-mail from Rosalie Carraway, Director of Student Learning (9-12), Columbia County Schools, to Greg Frayser, Executive Articles Editor, John Marshall Law Journal (Feb. 16, 2010, 9:18 a.m. EST) (on file with author).

131. COLUMBIA COUNTY SCHOOLS, LANGUAGE ARTS CURRICULUM STANDARDS AND BENCHMARKS, SUBJECT: ELA CLASSICS AND COMPARATIVE LITERATURE: LITERATURE AND HISTORY OF THE OLD TESTAMENT ERA & LITERATURE AND HISTORY OF THE NEW TESTAMENT ERA (on file with author).

132. *Id.* The inclusion of topics such as Adam and Eve as “one family” along with Sodom and Gomorrah begs the question as to whether these

Without further detail, it is difficult to speculate on what could actually take place in a Columbia County classroom should this particular curriculum be approved, and therein lies the problem. Georgia not only has rejected previously vetted, national curriculums but has also failed to provide a state-wide curriculum that might be easily analyzed. Considering that we are dealing with questions of constitutionality, this act seems grossly haphazard and irresponsible. Future litigation over the classes seems almost inevitable under the current statute.

V. CONSTITUTIONAL QUESTIONS

The Supreme Court's jurisprudential dichotomy with respect to the Establishment Clause makes any constitutional analysis of Georgia's statute difficult, at best, and near-impossible, at worst. While the Court has acknowledged the possibility of allowing secular Bible classes in public schools, it has also made clear that the influential nature of public schools calls for a thorough analysis of any possible sectarian influence.¹³³

The Bill's requirement that the Bible be the core text of both courses could create constitutional problems. As the *Schempp* Court noted, "[s]urely the place of the Bible as an instrument of religion cannot be" denied.¹³⁴ But in his opinion in *Edwards*, Justice Brennan acknowledged that use of the Bible may be constitutional in several contexts.¹³⁵ While the Supreme Court has yet to rule one way or the other on the requirement of the use of the Bible as the core text in a course, lower courts have emphasized the difficulty in offering a constitutionally permissible public school course with the Bible as the core text.¹³⁶ Vetted curriculums, such as the one based on "The

courses are instructing students as to the morality of homosexuality and same-sex marriage. *Id.* Are these the "values" to which proponents like Tommie Williams were referring?

133. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 227-28 (1948) (Frankfurter, J., concurring).

134. *Sch. Dist. v. Schempp*, 374 U.S. 203, 224 (1963).

135. *Edwards v. Aguillard*, 482 U.S. 578, 608 (1987).

136. *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 595 (N.D. Miss. 1996) (citing expert testimony of the extreme difficulty in constructing "a secular course dealing with history and literature with the Bible as the subject and the only text in the course" as a reason for invalidating program); *Wiley v. Franklin*, 468 F. Supp. 133, 151 (E.D. Tenn. 1979) (noting the

Bible and Its Influence,” help to prevent even the most subtle constitutional infractions within the classroom. Tommie Williams himself offered an example of such an infraction when he stated, “[w]e simply have to teach ‘This is what happened—make your own judgments.’”¹³⁷ Williams undoubtedly felt that to be a fairly innocuous statement, but the teaching of the Bible as history puts a teacher on constitutionally thin ice.¹³⁸

The focus of the courses solely on the Bible may also raise constitutional concerns, particularly from an endorsement perspective. While several Justices have noted the role of religion in the development of our country and the potential constitutionality of public school religion courses, the Court has also made clear that placing particular faiths on a pedestal, even in light of a supposed secular purpose, is grounds for invalidation.¹³⁹ Thus, the lack of any accompanying comparative religion course may be seen as an attempt to place a greater emphasis on the role of the Bible and Judeo-Christian values than other, equally relevant philosophies. As Wendy Kaminer, a lawyer and author put it, “[i]f you teach the Bible outside of close conjunction with other religions, then it becomes a kind of promotion of the majority faith. It becomes too hard for most folks to draw the line between teaching and preaching.”¹⁴⁰ Considering the care Justices have shown in using inclusive language when suggesting points at which religion might intermingle with public schools, the exclusivity of Georgia’s course might be considered undesirable.

Strict focus on the Bible without the inclusion of other religions may also create problems under a coercion analysis. Fear over pressures of conformity may be greatest in those very districts where, due to heavily conservative Christian demographics, the classes are most likely to be offered. Students with minority beliefs in such districts, if limited in what other electives they may take, could be ostracized from

permissibility of using the Bible as core text but only “with proper selectivity, interpretation, objectivity and emphasis”).

137. Childress, *supra* note 115.

138. See Gibson v. Lee County Sch. Bd., 1 F. Supp. 2d. 1426, 1434 (M.D. Fla. 1998) (“This Court too finds it difficult to conceive how the accounts of the resurrection or of miracles could be taught as secular history.”).

139. Stone v. Graham, 449 U.S. 39, 41 (1980).

140. Van Biema, *supra* note 50.

their classmates for not choosing the Bible courses. As Justice Frankfurter stated:

These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.¹⁴¹

While the fact that the courses are electives may negate some of the concern with respect to the influential nature of public schools, that fact alone would not save the legislation. Justice Douglas, in his concurrence in *Schempp*, stated that the Establishment Clause “also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have relying on its members alone.”¹⁴² Similarly, in his concurrence, Justice Brennan stated that “the availability of excusal or exemption simply has no relevance to the establishment question, if it is once found that these practices are essentially religious exercises designed at least in part to achieve religious aims through the use of public school facilities.”¹⁴³

Finally, the link between Williams’ proposal and the NCBCPS curriculum must be examined thoroughly. That organization’s repeated failures suggest that it is not interested in any secular purpose, as the Constitution requires, but in the indoctrination of public school students. In his endorsement on

141. *McCollum v. Bd. of Educ.*, 333 U.S. 203, 228 (1948); *see also* *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (“The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary.”).

142. *Sch. Dist. v. Schempp*, 374 U.S. 203, 229 (1963) (Douglas, J., concurring). Justice Douglas surrounded this statement with references to the Clause forbidding the promotion of “religious exercises.” *Id.* Thus, while his statement may be read as increasing the scope of the Clause’s prohibitions to those exercises with coercive or endorsing effects, it is unclear as to whether that was his actual point.

143. *Id.* at 288 (Brennan, J., concurring).

the group's website, Jesse Helms not only states his support for the teaching of the Bible in public schools but also expresses his hope that "we will also see prayer restored to its proper place within the educational system."¹⁴⁴ The group's website is filled with other endorsements and language that suggest a purpose far beyond merely teaching the historical, literary, and artistic value of the Bible, evoking strong values language similar to the type Williams used in his first attempt to pass his legislation.¹⁴⁵ One has to wonder how members of the organization would respond if any other religious or non-religious group was so blatant in its goal of changing the values of America's schoolchildren. Regardless, language such as this might prove damning to claims of a secular purpose under constitutional scrutiny.

The above constitutional analysis provides several reasons as to why Georgia's courses may be unconstitutional. It at least suggests that these courses, in their current form, are inviting litigation. An ultimate determination on the constitutionality of the courses will likely be impossible without an order from a reviewing court that the classes be taped and transcribed. However, without a clear, vetted curriculum employed by the state, it is the author's opinion that localized, constitutional infractions are inevitable.

VI. RECOMMENDATION

The Georgia legislature should strongly consider amending O.C.G.A. § 20-2-148 to place its Bible elective courses better in line with the U.S. Constitution. The Bible should not be used as the core text of the class unless the Georgia Department of Education is prepared to provide a comprehensive curriculum, vetted by an appropriate number of religious and legal scholars, to guide teachers in using the Bible as a text. Considering this was the exact same process done by the people behind "The Bible and Its Influence," the legislature should strongly consider adopting it as the core text of the courses. Additionally, the

144. Letter from Jesse Helms, Former U.S. Senator, to Elizabeth Ridenour, Oct. 26, 1994, *available at* http://www.bibleinschools.net/images/stories/jesse_helms.jpg.

145. *See generally* National Council on Bible Curriculum in Public Schools, <http://www.bibleinschools.net> (last visited Mar. 22, 2010).

legislature would be wise to combine the two courses into a one semester course accompanied by an additional comparative religion course in the following semester. The inclusion of a comparative religion course would better comport with the more inclusive language used by Justices when offering guidance on religious instruction in public schools. It may also be preferential to restrict the courses to juniors and seniors, students who should be mature enough to handle the subject matter without fears of coercion. Grade restrictions such as this have been regularly used in other subjects. These changes would relieve many of the worries of local school districts and likely increase the number of districts offering such courses.

VII. CONCLUSION

Uncertainty in Establishment Clause jurisprudence has left legislatures to interpret the Constitution on their own. The evolving comments of Tommie Williams illustrate the worry that many people have when it comes to Bible classes in public schools. How does one reconcile wanting to “change the hearts of children” with a secular teaching of the Bible? Perhaps Mr. Williams simply misspoke back in 1999. Perhaps he learned that successful legislation required that he hide his true motives, to bring Sunday school classes to public schools. Or perhaps it is possible to have an agenda of instilling moral values in schoolchildren without preaching religion. But if so, it is an endeavor that should not be embarked upon haphazardly.

It is troubling that, in rejecting a widely accepted and scholarly vetted curriculum for Bible classes in public schools in favor of an unprecedented course of action, Mr. Williams invoked partisan political language. It is also worth noting, as mentioned above, that the supposedly liberal curriculum Mr. Williams rejected received criticism¹⁴⁶ *from the left*. It is a small step to take in order to suggest that, in refusing one curriculum for being too liberal, Mr. Williams chose a path that is too conservative. It is possibly time to consider whether we have come full circle in the debate over the Bible in public schools. But rather than come to a happy, constitutional medium, it appears as if Mr. Williams, and Georgia, may have overreached.

146. See *supra*, notes 66-69 and accompanying text.

Ultimately, the losers in this situation are public school boards, who are left with little guidance as to how to teach these courses and the constant fear of a lawsuit if they do. This fear, in part, explains why these courses have yet to take off throughout Georgia school districts, with “only 37 of the state’s nearly 440 high schools” offering the classes the first year they were available.¹⁴⁷ However, in what ultimately might be a fitting end to the entire controversy, many schools are not offering the courses, not because of a fear of lawsuits, but because of a lack of interest on the part of their students.¹⁴⁸ But regardless of the popularity of these courses amongst Georgia high school students, it appears likely that this issue will have its day in court sooner or later unless the Georgia legislature chooses to take preemptive action.

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147. Diamond, *supra* note 113.

148. *Id.*

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