February 13, 2018

The Honorable Kenny Mann
Chair
Committee on Education
West Virginia Senate
Room 417M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Robert Karnes
Vice Chair
Committee on Education
West Virginia Senate
Room 417M, Building 1
State Capitol Complex
Charleston, WV 25305

Re: Oppose SB 252 – Bible Classes Often Fail To Meet Constitutional Requirements

Dear Chair Mann and Vice Chair Karnes:

On behalf of the West Virginia chapters, members, and supporters of Americans United for Separation of Church and State, I write to express our opposition to SB 252, which calls for the creation of “elective courses of instruction on the Bible” in public schools. The Constitution places strict requirements on the teaching of Bible courses in public schools that schools repeatedly have difficulty meeting. Furthermore, discussion surrounding the bill demonstrates the real purpose of the bill is to teach religion in public schools. Accordingly, we urge you to reject this bill.

SB 252 Fails to Meet Constitutional Requirements

Offering Bible courses is unwise, even if they are not per se unconstitutional. The Bible has significance in Western literature, art, and history, so teaching about it can be appropriate. But a long line of court decisions makes clear that it is difficult—and public schools often fail—to meet the constitutional requirement that Bible courses be taught from a secular, objective perspective.1 Public school Bible courses often end up more like a Sunday school class than a secular course about the Bible.

Courts have enumerated provisions that would ensure courses will be taught in accordance with constitutional requirements for curriculum and teacher selection. The law must be clear that the any Bible course:

- Must be taught in a nondevotional manner, with no attempt made to indoctrinate students as to either the truth or falsity of biblical materials;

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1 See, e.g., Doe v. Porter, 370 F.3d 558, 562 (6th Cir. 2004) (prohibiting school district from offering a class “teach[ing] the Bible as religious truth”); Herdahl v. Pontotoc Cnty. Sch. Dist., 933 F. Supp. 582, 596–97 (N.D. Miss. 1996) (prohibiting school district from offering classes teaching “the Bible not as a work of fiction, but as a historic record, i.e., as a record of what actually occurred in the past”); Doe v. Human, 725 F. Supp. 1503, 1506 (W.D. Ark. 1989) (prohibiting school district from offering Bible classes that are “predominantly religious and devotional in nature”—even if other parts of the course are “predominantly secular”), aff’d mem., 923 F.2d 857 (8th Cir. 1990).
• Must not include the teaching of religious doctrine or sectarian interpretation of the Bible;
• Must not teach the Bible as a true and literal historic record; and
• Should expose students to critical perspectives on the Bible and a diversity of biblical interpretations.\(^2\)

Further, Bible course teachers must be selected in the same manner as all other teachers, based upon their academic qualifications, rather than their religious beliefs or lack thereof.\(^3\)

SB 252 does require that courses “follow applicable law and all federal and state guidelines in maintaining religious neutrality” and that they “may not endorse, favor, or promote” any particular religion. These provisions, however, do not rise to the level required by the U.S. Constitution, and the bill makes the schools responsible for figuring out how to comply with the Constitution.

In fact, SB 252 is essentially identical to a bill, HB 128, that passed in Kentucky last year. The classes offered in Kentucky, however, have clearly been used to proselytize to students. An examination of classes across Kentucky showed students were required to watch religious videos promoting Christianity and that classroom materials come from Sunday school websites.\(^4\) Kentucky’s experience should serve as a warning, not a guide.

**Proponents Have Revealed Their Real Intent Is to Teach Religion in Public Schools**

The Establishment Clause of the U.S. Constitution requires that legislation have a “secular legislative purpose.”\(^5\) This requirement is fundamental to the ideal of religious freedom that each person gets to decide what religion means – or doesn’t mean – for themselves.

Statements from the bill’s sponsor, however, make it clear that the bill does in fact have a religious purpose.

In a hearing on February 1, 2018, the bill sponsor, Senator Azinger, said, “We live in an age of confusion in a lot of areas...This is a humanistic era where truth is relative...One thing that the Bible does is it brings moral clarity.” He also said that after “removing” the Bible from public schools in the 1960s, “there has been a dramatic cause and effect in social ills.” These statements make clear that Senator Azinger’s true aim is to bring ‘moral clarity,’ that is to say religious morals, into public schools, despite his insistence that these classes are intended to be historical.

A Bible class teacher could view Senator Azinger’s statements as an endorsement to use a Bible class to teach religion, which would surely violate the religious freedom of students and their parents to decide for themselves what religion means.

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\(^3\) See Herdahl, 933 F.Supp. at 593-94; see also Wiley, 468 F.Supp. at 150.
\(^4\) Deborah Yettor, 'Bible literacy' courses in some Kentucky schools are breaking the law, ACLU says, Louisville Courier Journal, Jan. 9, 2018.
\(^5\) Lemon v. Kurtzman, 403 U.S. 602, 612. See also Stone v. Graham, 449 U.S. 39 (holding that an "avowed" secular purpose is not sufficient to avoid conflict with the First Amendment).
**Conclusion**

Ensuring that a Bible course is taught objectively and on a secular basis is not an easy task, for a Board of Education or teachers. Teachers are not, nor should we expect them to be, constitutional scholars, which is why many Bible classes end up violating the Constitution. That is why we strongly urge you to reject SB 252 and dissuade schools from offering courses that focus only on the Bible.

Sincerely,

Nikolas Nartowicz  
State Legislative Counsel

cc: Members of the Senate Committee on Education