AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

(202) 466-3234
(202) 898-0955 (fax)
www.au.org

1901 L Street, NW
Suite 400
Washington, DC 20036

August 28, 2015

Via e-mail and U.S. mail

Earl Taylor, Jr., Principal
Heritage Academy
32 South Center
Mesa, AZ 85210
etaylor@heritageacademyaz.com

Re: *Religious instruction in senior Government / U.S. Constitution class*

Dear Principal Taylor:

We represent a parent of a Heritage Academy student. On December 4, 2013 and June 24, 2014, we wrote to you about Heritage Academy's unconstitutional use in its twelfth-grade government curriculum of two textbooks that promote religion, *The 5,000 Year Leap* and *The Making of America*. You denied any constitutional violation. We have now received confirmation that Heritage Academy's Honors Government / U.S. Constitution class — which is mandatory for seniors in the school — is taught in a manner that substantially promotes religion. We now make a final request on behalf of our client that you remove all religiously infused materials from the class curriculum and all promotion of religion from class instruction. Please be advised that we are prepared to file suit on behalf of our client if you do not do so.

Background

In our two prior letters, attached as Exhibits A and B, we explained the clear federal constitutional prohibitions against promoting religion in public schools or using course materials that do so. We also brought to your attention a state constitutional provision that expressly prohibits religious instruction in public schools. We pointed out numerous passages in *The 5,000 Year Leap* and *The Making of America* that ran afoul of these principles. We asked you to remove the two books in question from Heritage Academy's curriculum, and to refrain from promoting religion in Heritage Academy's government and history classes in any other manner.

In a response letter sent to the Arizona State Board for Charter Schools, you asserted that Heritage Academy does not "endorse . . . any religion or

denomination" and does not "teach sectarian or denominational doctrine." *See* Ex. C at 2–3. You also indicated to the media that you would no longer include the entirety of *The 5,000 Year Leap* and *The Making of America* in the school's government curriculum. *See* Cathryn Creno, *Mesa charter school teaches religion*, The Republic (Arizona) (July 14, 2014), http://www.azcentral.com/story/news/local/mesa/2014/07/14/mesa-charter-school-religion/12615041/.

We have since received reports from our client about how the class is actually taught. This information confirms — in three ways — that the class is taught in a manner that plainly violates the U.S. and Arizona Constitutions.

First, the principal textbook for the class is *Proclaim Liberty Throughout all the Land*, which is essentially a condensed version of *The 5,000 Year Leap* and *The Making of America* that incorporates those books' religious teachings. Second, oral class instruction includes substantial promotion of religion. Third, students are required to memorize, take tests on, and complete written assignments about the religious principles that are taught in the class.

The Main Textbook for the Class is Filled with Religious Teachings

Our client reports that the principal textbook for the Honors Government / U.S. Constitution class now is a "discussion guide" called *Proclaim Liberty Throughout all the Land*. Like *The 5,000 Year Leap* and *The Making of America*, *Proclaim Liberty* is published by the National Center for Constitutional Studies — an organization which asserts "that America and its Constitution were established by the hand of God." National Center for Constitutional Studies, *Proclaim Liberty Throughout all the Land* 3 (2013). According to the National Center,

> Proclaim Liberty pulls from two of our main books, *The 5000 Year Leap* and *The Making of America* to create an impressive discussion guide that can stand on its own. It is long enough to cover the important points from these two books, yet short enough to be a manageable study for people who don't have a lot of spare time.

Proclaim Liberty (A Discussion Guide), National Center for Constitutional Studies, http://www.nccs.net/products/study-aids/proclaim-liberty.php (last visited Aug. 27, 2015). In adapting *The 5,000 Year Leap* and *The Making of America*, *Proclaim Liberty* incorporates numerous passages that promote religion.

Proclaim Liberty teaches students the same twenty-eight Principles of Liberty that are presented in *The 5,000 Year Leap*. *Compare Proclaim Liberty* at 15

with Ex. B at 2–6. Among these are four principles that expressly promote religious beliefs on their face:

- "4. Without religion the government of a free people cannot be maintained."

- "5. All things were created by God, therefore upon Him all mankind are equally dependent, and to Him they are equally responsible."

- "9. To protect men's rights, God has revealed certain principles of divine law."

- "10. The God-given right to govern is vested in the sovereign authority of the whole people."

Proclaim Liberty at 15. Like *The 5,000 Year Leap* (*see* Ex. B at 2–6), *Proclaim Liberty* teaches religion when discussing not only these principles, but also some of the twenty-eight principles that are not expressly religious on their face.

For instance, the "First Principle" discussed in the book, "[t]he only reliable basis for sound government and just human relations is Natural Law," attributes the "basis" of American "government, justice, and human relations" to "the laws which the Supreme Creator has . . . established." *Proclaim Liberty* at 18. This section goes on to assert that "the Founders looked upon God as the supreme, intelligent Being who created the [cosmic] universe and everything within it," and concludes by implying that it is the student's civic responsibility to likewise "appreciate the order and reasonableness of the Creator's natural law." *Id.* at 19.

In discussing the "Fourth Principle," "[w]ithout religion the government of a free people cannot be maintained," *Proclaim Liberty* advocates a "universal religion" allegedly ordained by the Founding Fathers. *Id.* at 22–23. Students are informed that their status as "free people" depends on acceptance of the five tenets of this "universal religion," which were ostensibly "expressed or implied" in a letter written by Ben Franklin. *Id.* The book advises students that they can "honestly subscribe" to these religious tenets "whether they belong to any particular church or not." *Id.* at 22. According to *Proclaim Liberty*, these "five points of fundamental religious belief" are:

1. There exists a [Creator] who made all things, and mankind should recognize and worship Him.

2. The Creator has revealed a moral [code] of behavior for happy living which distinguishes right from wrong.

3. The Creator holds mankind responsible for the way they [treat] each other.

4. All mankind [live] beyond this life.

5. In the next life mankind is [judged] for its conduct in this one.

Id. at 23. The message to students is that it is their duty as Americans to accept these "universal" and "fundamental" beliefs; should students hold contrary beliefs — for example, beliefs common to Hinduism, Buddhism, Humanism, or atheism — *Proclaim Liberty* strongly implies that they will erode the "foundation for liberty" upon which the Founders constructed the United States. *See id*. at 22–23.

Proclaim Liberty also endeavors to instruct students as to the precise nature of God in discussing the "Fifth Principle," "[a]ll things were created by God, therefore upon Him all mankind are equally dependent, and to Him they are equally responsible." *See id*. at 24–25. The book first posits that John Locke "demonstrat[ed] the certainty of God's existence." *Id*. at 24. Not content to teach simply that God exists, however, *Proclaim Liberty* then explains that the Founders "did not look upon God as some mysterious teleological force operating automatically and indifferently in nature," but rather believed "that their Creator was both intelligent and benevolent and therefore anxious and capable of responding to" prayer. *Id*. at 24. The text asserts that George Washington "acknowledged that he would have suffered disaster had not the hand of God intervened" during the American Revolution. *Id*. at 25.

Much like it purports to reveal the "five points of fundamental religious belief," *Proclaim Liberty* enumerates "God's code of Divine Law" in discussing "The Ninth Principle," "[t]o protect man's rights, God has revealed certain principles of divine law." *Id*. at 30–31. God's "divine pattern of law for human happiness" is, according to the text, an elaborate paraphrasing of the Ten Commandments:

1. A recognition of God's [supremacy] over all things;

2. That man is specifically forbidden to attribute God's power to [false] gods;

3. The name of God is to be held in reverence and every [oath] taken in the name of God is to be carried out with the utmost fidelity lest the name of God be taken in vain;

4. That there is also a requirement that one day each week be set aside for the [study] of God's law; that it is also to be a day of worship and the personal renewing of one's commitment to obey God's law for happy living;

5. That there are also requirements to strengthen [family] ties by children honoring parents and;

6. Parents maintaining the sanctity of their marriage and not committing [adultery] after marriage;

7. That human [life] is also to be kept sacred; that he who willfully and wantonly takes the life of another must forfeit his own;

8. That a person shall not [lie];

9. That a person shall not [steal];

10. That every person must be willing to work for the things he desires from life and not [covet] and scheme to get the things which belong to his neighbor.

Id. at 30–31. After acknowledging that these principles are "the famous [Ten] Commandments," the book refers students to the Bible for additional information about them. *Id.* at 31.

Similar religious teachings are presented in many other sections of *Proclaim Liberty*. For example, the book posits that "the basic rights of mankind . . . came directly and exclusively from God" (*id.* at 28), and that "the people are divinely endowed with the sovereign power to govern" (*id.* at 32 (emphasis omitted)). *Proclaim Liberty* also makes the blanket assertion that "[w]hen the Founders used the word 'morality' they usually had reference to the Ten Commandments, the Golden Rule, and the principles enunciated in the Sermon on the Mount." *Id.* at 52. And the text claims that "universal religious beliefs" allegedly held by the Founders are "an extremely important part of the American system of [government]." *See id.* at 170.

Oral Class Instruction Substantially Promotes Religion

Students are not merely given religious materials to read. Our client has confirmed that religious teachings are regularly presented and promoted in the

Government / U.S. Constitution class orally by the class instructor (who happens to be you, Principal Taylor).

For example, we have learned that you have orally taught in the class that:

● A person must be religious to be a true patriot.

● People who do not believe in God are irrational.

● A person must be religious to be a trustworthy witness in court, because someone who does not believe in a divine creator cannot be trusted.

● Religion is necessary for morality.

● Monotheistic religious beliefs should be taught in schools.

● God sank a foreign navy in response to people's fasting and prayers.

We further understand that you have advocated for the doctrine of Intelligent Design — i.e., divine creation of living beings — in the class.

Students are Required to Memorize, Take Tests on, and Complete Written Assignments about Religious Teachings

What is more, our client reports that students must complete homework and tests on the religious principles taught to them in the Government / U.S. Constitution class. Each student is given a card setting forth the twenty-eight "Principles of Liberty" taught in *Proclaim Liberty*. As discussed above, four of these principles expressly promote religious beliefs.

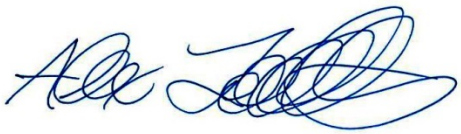
Students are required to memorize all twenty-eight principles — including the four expressly religious ones — and must be prepared to recite them in class. Students are given daily quizzes on the materials taught to them. They must also complete a notebook in which they are required to devote two pages to each of the twenty-eight principles, including writing down the principle and completing an assignment about it. Recitation of the twenty-eight principles, answering the quizzes, and completion of the notebook each account for 15 percent of a student's grade.

* * * * *

In sum, we have confirmed that Heritage Academy's mandatory government class for seniors teaches and promotes religion — through written material, oral instruction, and assignments students must complete — in plain violation of the U.S. and Arizona Constitutions. We accordingly request that you (1) completely remove *Proclaim Liberty Throughout all the Land*, *The 5,000 Year Leap*, *The Making of America*, and any other materials that contain religious references similar to ones in those texts from Heritage Academy's curriculum; (2) cease advocating, promoting, or teaching religion in oral instruction in any Heritage Academy class, including the Government / U.S. Constitution class; (3) cease giving students any assignments that involve memorizing, being tested on, or writing about religious teachings or principles; (4) remove from the calculation of all student grades any such assignments that have already been given this semester; and (5) ensure that the government class, as well as each other Heritage Academy class, does not teach or promote religion in any other way.

Please be advised that this letter represents our final effort to resolve this matter without proceeding to litigation. We are prepared to file suit on behalf of our client if Heritage Academy does not stop promoting religion in its government class. We ask that you respond to this letter no later than September 11, 2015. Please do not hesitate to contact us if you would like to discuss this matter.

Sincerely,



Alex J. Luchenitser, Associate Legal Director
Natacha Lam, Madison Fellow*
* Admitted in New York only. Supervised by Alex J. Luchenitser, a member of the D.C. Bar.
Charles Gokey, Steven Gey Fellow

cc: Whitney Chapa
Executive Director
Arizona State Board for Charter Schools
P.O. Box 18328
Phoenix, AZ 85009
whitney.chapa@asbcs.az.gov

Diane Douglas
State Superintendent of Public Instruction
Arizona Department of Education
1535 W. Jefferson
Phoenix, AZ 85007
adeinbox@azed.gov

Enclosures:
Dec. 4, 2013 letter from Americans United to ASBCS and Heritage Academy (Ex. A)
June 24, 2014 letter from Americans United to ASBCS & Heritage Academy (Ex. B)
Dec. 9, 2013 letter from Heritage Academy to ASBCS (Ex. C)

Exhibit A

AMERICANS UNITED
for Separation of Church and State

1301 K Street NW

Suite 850, East Tower

Washington, DC 20005

(202) 466-3234 phone

(202) 466-3353 fax

americansunited@au.org

www.au.org

December 4, 2013

Via U.S. Mail and Email
DeAnna Rowe, Executive Director
Arizona State Board for Charter Schools
1616 West Adams Street, Suite 170
Phoenix, AZ 85009
Deanna.Rowe@asbcs.az.gov

Earl Taylor, Jr., Principal
Heritage Academy
32 South Center
Mesa, AZ 85210
admin@heritageacademyaz.com

Re: Required Reading of Religious Text at Heritage Academy

Dear Ms. Rowe and Mr. Taylor:

We have received a complaint regarding Heritage Academy's use of a book entitled "The 5000 Year Leap," by W. Cleon Skousen, in its History curriculum. Heritage requires senior students to read the book, which argues that the United States was founded and should be governed based upon religious teachings and laws. Example chapter titles include: "Without religion the government of a free people cannot be maintained"; "All things were created by God, therefore upon him all mankind are equally dependent, and to him they are equally responsible"; "To protect human rights, God has revealed a code of divine law"; and "The United States has a manifest destiny to eventually become a glorious example of God's law under a restored Constitution that will inspire the entire human race." *See* National Center for Constitutional Studies, *The 5000 Year Leap - A Miracle that Changed the World*, at http://www.nccsstore.com/5000-Year-Leap/productinfo/5000YL (last visited Nov. 21, 2013). Moreover, the book's text extensively quotes the Bible as truth. The endorsement and promotion of religious views and ideologies in a public-school classroom violates both the Establishment Clause of the First Amendment to the U.S. Constitution and Article XI, § 7 of the Arizona Constitution. We therefore ask that you remove this book from the curriculum.

The cardinal rule of the Establishment Clause is that governmental entities are forbidden to take any action that "has the purpose or effect of 'endorsing' religion" (*County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989)), for doing so "violates the central Establishment Clause value of official religious neutrality" (*McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 860 (2005)). Courts are especially diligent in ensuring that public elementary and secondary schools comply with the strict requirements of the Establishment Clause, because when children are

involved there are "heightened concerns with protecting freedom of conscience from subtle coercive pressure." *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

The federal courts have consistently held that the Establishment Clause prohibits religious instruction or the inculcation of religious beliefs in the public schools. *See, e.g.*, *Edwards v. Aguillard*, 482 U.S. 578, 591 (1987) (striking down law requiring public schools to teach creationism alongside evolution); *Sch. Dist. v. Schempp*, 374 U.S. 203, 222-26 (1963) (striking down Bible readings at beginning of school day); *Marchi v. Bd. of Coop. Educ. Servs.*, 173 F.3d 469, 477 (2d Cir. 1999) (holding that "[a] school risks violation of the Establishment Clause if any of its teachers' activities gives the impression that the school endorses religion," even if references to religion are "slight"); *Helland v. South Bend Cmty. Sch. Corp.*, 93 F.3d 327, 329-30 (7th Cir. 1996) (holding that teacher was properly removed from list of eligible substitute teachers for, among other things, reading Bible aloud to middle- and high-school students and distributing biblical pamphlets, because "public schools must make certain that 'subsidized teachers do not inculcate religion'" (citation omitted)); *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (public school properly prevented teacher from discussing religious beliefs with students because of "[t]he school district's interest in avoiding an Establishment Clause violation"); *Roberts v. Madigan*, 921 F.2d 1047, 1058 (10th Cir. 1990) (holding that elementary-school principal properly required teacher to keep Bible out of sight and to refrain from reading it silently during school hours because teacher would otherwise have violated Establishment Clause).

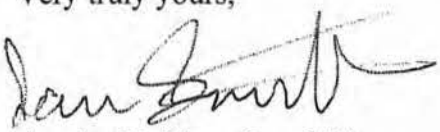
The prohibition against religious instruction in the public schools extends to teaching the Bible or religious doctrine as truth, and to using course materials that do so. *See, e.g.*, *Doe v. Porter*, 370 F.3d 558, 563 (6th Cir. 2004) (striking down public-school Bible course that presented Bible as truth); *Hall v. Bd. of Sch. Comm'rs*, 656 F.2d 999, 1002-03 (5th Cir. 1981) (striking down Bible-study class employing course materials written from Christian perspective); *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d 1426, 1434-35 (M.D. Fla. 1998) (preliminarily enjoining high-school New Testament course because of difficulty teaching about the resurrection from a secular perspective); *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 593-97 (N.D. Miss. 1996) (striking down Bible-study course that, among other things, endorsed biblical account of history); *Doe v. Human*, 725 F. Supp. 1503, 1506-07 (W.D. Ark. 1989) (striking down Bible-study course that used texts depicting biblical events as fact and failed to offer critical perspective), *aff'd mem.*, 923 F.2d 857 (8th Cir. 1990); *see also Breen v. Runkel*, 614 F. Supp. 355, 359-60 (W.D. Mich. 1985) (holding it unconstitutional for teachers to read from Bible to their students or to tell stories that have a Biblical basis). This book's extensive use of Biblical quotations and its central argument that the United States is a religious nation that should be governed by divine law cannot be squared with these decisions.

The Arizona Constitution contains a prohibition on religious instruction in the public schools that is stronger even than that of the federal Establishment Clause. Article XI, Section 7 of the Arizona Constitution provides, in relevant part, that "[n]o sectarian instruction shall be imparted in any school or State educational institution that may be established under this

Constitution." The use of "The 5000 Year Leap" in an Arizona public school cannot stand under the plain language of the Arizona Constitution.

For these reasons, we ask you to remove "The 5000 Year Leap" from Heritage Academy's curriculum. We would appreciate a response to this letter within thirty days. You may contact Ian Smith at (202) 466-3234 or *ismith@au.org* if you have any questions about this matter.

Very truly yours,



Ayesha N. Khan, Legal Director
Alex J. Luchenitser, Associate Legal Director
Ian Smith, Staff Attorney

AMERICANS UNITED

Exhibit B

AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

(202) 466-3234
(202) 898-0955 (fax)
www.au.org

1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005

June 24, 2014

Via U.S. Mail and Email
Arizona State Board for Charter Schools
DeAnna Rowe, Executive Director (Deanna.Rowe@asbcs.az.gov)
Johanna Medina, Director of School Quality (Johanna.Medina@asbcs.az.gov)
Hugh Thompson, Education Program Specialist (Hugh.Thompson@asbcs.az.gov)
Lisa Weisberg, Education Program Specialist (Lisa.Weisberg@asbcs.az.gov)
Bianca Ulibarri, Constituent Services Specialist (Bianca.Ulibarri@asbcs.az.gov)
Janna Day, President / Public Member (jday@bhfs.com)
Kathy Senseman, Vice President / Public Member
(ksenseman@policydevelopmentgroup.com)
Mark Anderson, Business Community Member
Michael Bailey, Public Member
Peter Bezanson, Charter School Operator (Peter.Bezanson@GreatHeartsTX.org)
Tim Eyerman, Charter School Teacher (tim.eyerman@basisphoenixcentral.org)
Royce Jenkins, Reservation Resident Member (royce@roycejenkins.com)
Todd Juhl, Public Member (info@jenniferjuhlcpa.com)
Cassandra Larsen, Public Member (Larsen@phoenixphilanthropy.com)
Jake Logan, Business Community Member
Stacey Morley, Superintendent's Designee (Stacey.Morley@azed.gov)
1616 West Adams Street, Suite 170
Phoenix, AZ 85009

Earl Taylor, Jr., Principal
Heritage Academy
32 South Center
Mesa, AZ 85210
admin@heritageacademyaz.com

Re: Use of Religious Textbooks at Heritage Academy

Dear Board Members and Staff of the Arizona State Board for Charter Schools and Mr. Taylor:

On December 4, 2013, we sent the enclosed letter to Executive Director Rowe and Principal Taylor. Our letter explained that Heritage Academy, a charter school in Arizona, requires its students to read a book that promotes particular religious teachings, The 5,000 Year Leap, by W. Cleon Skousen. We explained in our letter that use of such a book in a charter school's curriculum violates the Establishment

Clause of the U.S. Constitution and Article XI, Section 7 of the Arizona Constitution. The State Board forwarded a copy of our letter to Heritage Academy and asked for a response. In the December 19, 2013 enclosed letter, Heritage Academy admitted that the The 5,000 Year Leap is used as a textbook in its required Government class for seniors, but asserted that the book does not teach religion, and instead only teaches about religious influences in the nation's founding. On April 3, 2014, we received the enclosed letter from State Board Constituent Services Specialist Bianca Ulibarri, accepting Heritage Academy's characterization of the book and rejecting our complaint. It did not appear from Ms. Ulibarri's letter that the Board or its staff had undertaken any independent review of The 5,000 Year Leap.

As we explain in detail below, The 5,000 Year Leap does in fact teach and promote particular religious beliefs. In addition, it has come to our attention that, along with The 5,000 Year Leap, Heritage Academy requires its senior students to read another book that promotes specific religious views, The Making of America by W. Cleon Skousen. See Required Classical Reading at Heritage Academy, Heritage Academy, http://www.heritageacademyaz.com/index.cfm/academics/required-reading/. The two books also promote sexist, racist, and anti-Semitic views. In case the detailed quotes and descriptions of these books set forth below are insufficient to convince you of these facts, we are sending Executive Director Rowe hard copies of the two books so that the State Board can review the books itself. We would like to avoid litigation if possible, so we request that the two books be removed from Heritage Academy's curriculum and required reading list, or that Heritage Academy's charter be revoked.

The 5,000 Year Leap Promotes and Endorses Religious Views and Ideologies

Reading the text of The 5,000 Year Leap easily demonstrates that the book does not merely acknowledge the influence of religion in the nation's founding, but actively promotes and endorses specific religious views and ideologies. For example, the fifth of twenty-eight principles taught by the book is that "All Things Were Created by God, Therefore upon Him All Mankind are Equally Dependent, and to Him They are Equally Responsible." W. Cleon Skousen, The 5,000 Year Leap: A Miracle that Changed the World, 95 (18th prtg. 2010). The first five sections of the chapter concerning this principle similarly endorse and promote religious doctrine. The first section, "The Reality of a Divine Creator," uses quotes from John Locke to disparage atheists as being "irrational" and "out of touch with reality." *Id.* at 95-96. Second, in a section entitled, "How Can One Know There Is a God?," Skousen walks the reader through a step-by-step explanation of how to know there is a divine Creator. *Id.* at 96. Attributes of God are listed in the third section, "Getting to Know God," including that "the divine Creator has a sense of compassion and love," "a fine sense of right and wrong, and also a sense of indignation or even anger with those who violate the laws of 'right' action." *Id.* at 97. The third section also notes that

"any thoughtful person can gain an appreciation and conviction of these many attributes of the Creator." *Id.* at 97. The fourth and fifth section titles within this chapter are equally religious: "Concerning God's Revealed Law Distinguishing Right from Wrong" and "The Nearness of God." *Id.* at 98-99. These passages clearly promote and endorse religious views.

Indeed, promotion and endorsement of religious ideology permeates the book. The book begins with a discussion of how the Founders decided to structure the government. In discussing how the Founders studied Ancient Israel as a source of inspiration, the author repeatedly cites biblical sources as historical truth. *Id.* at 15-18 (citing Leviticus 25:10; Jeremiah 34:17; Exodus 18:13-26, 19:8; Numbers 35:31; 2 Samuel 2:4; 1 Chr. 29:22; and 2 Chr. 10:16).

The first of the book's twenty-eight principles asserts that "The Only Reliable Basis for Sound Government and Just Human Relations is Natural Law," which is defined as "[t]he Creator's order of things." *Id.* at 37, 39. Natural Law presupposes that "man's reasoning power is a special dispensation of the Creator and is closely akin to the rational or reasoning power of the Creator himself." *Id.* at 39. Under the subheading "Natural Law is Eternal and Universal," Skousen writes,

> The Law of Nature or Nature's God is eternal in its basic goodness; it is universal in its application. It is a code of "right reason" from the Creator himself. It cannot be altered. It cannot be repealed. It cannot be abandoned by legislators or the people themselves, even though they may pretend to do so. In Natural Law we are dealing with factors of absolute reality. It is basic in its principles, comprehensible to the human mind, and totally correct and morally right in its general operation.

Id. at 39-40. Additional subheadings within the first chapter include the statements that "All Mankind Can Be Taught God's Law or Virtue," "Legislation in Violation of God's Natural Law Is a Scourge to Humanity," and "All Law Should Be Measured Against God's Law." *Id.* at 43-45. Skousen defines "wisdom" as the understanding of God's law and "justice" as the application of God's law by government. *Id.* at 42.

While the chapter is structured around the writings of Marcus Tullius Cicero, Skousen's commentary nonetheless promotes religious ideology. For example, Skousen praises Cicero for comprehending "the magnificence of the first great commandment to love, respect, and obey the all-wise Creator." *Id.* at 42. Skousen also praises Cicero for "comprehend[ing] the beauty and felicity of what Jesus had identified as the second great commandment." *Id.* at 43. To illustrate these commandments, Skousen repeats a biblical story:

> It will be recalled that a lawyer tried to discredit Jesus by asking him, "Master, which is the great commandment in the Law?" Of course, there were hundreds of commandments, and the question was designed as a clever stratagem to embarrass Jesus. But Jesus was not embarrassed. He simply replied: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment."
>
> The lawyer was amazed by this astute and ready response from the Galilean carpenter. But Jesus was not through. He added: "And the second is like unto it. Thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets." (Matthew 22:36-40).
>
> The astonished lawyer simply replied: "Well, Master, thou hast said the truth!"
>
> Jesus had picked out what he considered to be the foremost commandment from Deuteronomy 6:4-5, and then selected what he considered to be the second most important commandment clear over in Leviticus 19:18.

Id. at 42-43.

The 5,000 Year Leap's second chapter is based on the principle "A Free People Cannot Survive Under a Republican Constitution Unless They Remain Virtuous and Morally Strong." *Id.* at 49. Skousen teaches that morality requires following the Ten Commandments and "obedience to the Creator's mandate for 'right conduct.'" *Id.* at 50. Closely related to this discussion is the third principle: "The Most Promising Method of Securing a Virtuous and Morally Stable People is to Elect Virtuous Leaders." *Id.* at 59. The discussion begins with a quote from Exodus 18:21, which states, "...thou shalt provide out of all the people able men, such as fear God, men of truth, hating covetousness [unjust gain]; and place such over them, to be rulers..." *Id.* at 58. Skousen also quotes Proverbs 29:2 in support of this principle: "When the righteous are in authority, the people rejoice; but when the wicked beareth rule, the people mourn." *Id.* at 60. Skousen concludes the section by commenting on the Founders' beliefs, which he claims were "based on empirical evidence and the light of careful reasoning." *Id.* at 73. Skousen writes, "Even their acceptance of things which are not seen—the existence of the Creator, for example—were based on observable phenomena and precise reasoning." *Id.* These passages clearly assert that God exists and that to be "virtuous and moral[ ]," one must believe in God.

The fourth chapter presents the principle that "Without Religion the Government of a Free People Cannot be Maintained." *Id.* at 75. Based on a letter written by Benjamin Franklin, Skousen lists "the Five Fundamentals of 'All Sound Religion'":

1. There exists a Creator who made all things, and mankind should recognize and worship Him.
2. The Creator has revealed a moral code of behavior for happy living which distinguishes right from wrong.
3. The Creator holds mankind responsible for the way they treat each other.
4. All mankind live beyond this life.
5. In the next life mankind are judged for their conduct in this one.

Id. at 78. The chapter challenges the "Wall" between church and state, asserting that the metaphor has been used by the Supreme Court as "an excuse for meddling in the religious issues arising within the various states." *Id.* at 89. The chapter concludes with a section titled "Religious Principles Undergird Good Government," which claims that "religious precepts turned out to be the heart and soul of the entire American political philosophy." *Id.* at 92.

Discussing the sixth principle that "All Men are Created Equal," Skousen writes that men are not equal, they can "only be TREATED as equals in the sight of God." *Id.* at 103. He continues, "It is the task of society, as it is with God, to accept people in all their vast array of individual differences..." *Id.* at 104. In this chapter, Skousen tells the story of Eldridge Cleaver, who had been an atheist before spending eight years in exile. *Id.* at 109-10. Skousen writes that Cleaver had a "long and strenuous intellectual struggle with his Marxist atheism before he recognized its fraudulent fallacies," and that in dialogues with university students, Cleaver assured them that "a persistent pursuit of the truth would bring them to the threshold of reality, where the Creator could be recognized and thereafter have a place in their lives." *Id.* at 111. Skousen sums up this story as "the account of a prodigal American who found himself and returned home," implicitly disparaging atheists. *Id.*

In a discussion on the seventh principle, which addresses equality, Skousen writes that "it is a mandate of God to help the poor and underprivileged." *Id.* at 120. The eighth principle states that "Men are Endowed by Their Creator with Certain Unalienable Rights." *Id.* at 123. Skousen explains that "unalienable rights" may be forfeited but "no one else can TAKE those rights from us without being subject to God's justice. This is what makes certain rights UNALIENABLE." *Id.* at 124.

The ninth principle is also inherently religious—"To Protect Man's Rights, God has Revealed Certain Principles of Divine Law." *Id.* at 131. This chapter begins with an illustration of Moses receiving the Ten Commandments. *Id.* at 130. Skousen then explains that "[r]ights, though endowed by God as unalienable prerogatives, could not remain unalienable unless they were protected as enforceable rights under a code of divinely proclaimed law." *Id.* at 131. The first subsection heading

instructs the reader that "Sound Principles of Law [are] All Based on God's Law." *Id.* at 132. In this subsection, Skousen asserts that

> human happiness requires a recognition of God's supremacy over all things; that man is specifically forbidden to attribute God's power to false gods; that the name of God is to be held in reverence, and every oath taken in the name of God is to be carried out with the utmost fidelity, otherwise the name of God would be taken in vain; that there is also a requirement that one day each week be set aside for the study of God's law; that it is also to be a day of worship and the personal renewing of one's commitment to obey God's law for happy living; that there are also requirements to strengthen family ties by children honoring parents and parents maintaining the sanctity of their marriage and not committing adultery after marriage; that human life is also to be kept sacred; that he who willfully and wantonly takes the life of another must forfeit his own; that a person shall not lie; that a person shall not steal; that every person must be willing to work for the things he desires from life and not covet and scheme to get the things which belong to his neighbor.

Id. at 132-33. In other words, Skousen tells the reader that "human happiness" requires acceptance of the Ten Commandments. Skousen also lists "some of the more important responsibilities which the Creator has imposed on every human being of normal mental capacity," which include "[t]he duty to honor the supremacy of the Creator and his laws" and the duty "to honorably perform contracts and covenants both with God and man." *Id.* at 134-35. The chapter also teaches that "[t]he Creator revealed a divine law of criminal justice which is far superior to any kind being generally followed in the world today." *Id.* at 135.

The fourteenth principle begins its discussion of the importance of property rights with Psalm 115:16, which states that the earth was a gift from God to man. *Id.* at 169. Skousen asserts that property rights are necessary to fulfill "the Creator's command to multiply and replenish the earth and subdue it and bring it under dominion." *Id.* at 170.

In a chapter on the importance of education (the twenty-third principle), Skousen calls it "a serious mistake" to have forbidden Bible reading in public schools. *Id.* at 256. He argues that "the Bible ... provided root strength to [the people's] moral standards and behavioral patterns." *Id.* at 255.

The foregoing passages demonstrate that contrary to Heritage Academy's claim, The 5,000 Year Leap actively promotes and teaches specific religious views and ideologies.

The Making of America Promotes and Endorses Religious Views and Ideologies

A second book by the same author, The Making of America, which is also required reading for seniors at Heritage Academy, similarly promotes religion. In Part One: The Making of the Constitution, Skousen claims that the Founders were "careful students of the Bible, especially the Old Testament, and even though some were not active in any Christian denomination, the teachings of Jesus were held in universal respect and admiration by them." W. Cleon Skousen, The Making of America: The Substance and Meaning of the Constitution, 11 (3d ed. 2009). Skousen refers to the Bible as a historical source valued by the Founders. *Id.* at 61. As in The 5,000 Year Leap, Skousen includes an analysis of the Founders' "fascinat[ion]" with Ancient Israel and tells the story of Exodus as if it is fact, citing heavily to the Bible. *Id.* at 48-54. He also repeats his claim that "the soundest system of government will be the one that is built on the principles of natural law and Nature's God." *Id.* at 195. Finally, he notes that "the Founders recognized that it is a mandate of God to help the poor and underprivileged." *Id.* at 219.

Skousen's religious beliefs are also embedded in the rest of the text. For instance, in the introduction to a chapter on the legislative process, Skousen claims that the Founders believed laws were "inherently null and void" if they violate "the laws of nature and of nature's God." *Id.* at 354 (quoting Jefferson). In an "Editorial Summary" on national defense, Skousen argues that according to the Founders' philosophy, "the kind hand of Providence had been everywhere present in allowing the United States to come forth as the first free people in modern times." *Id.* at 383. Using statements by Samuel Adams, Skousen asserts that there is "A Duty to the Creator to Preserve Freedom and Our Unalienable Rights." *Id.* at 386. Additionally, in discussing the Indian Removal Act of 1830, Skousen claims it was "a matter of providential justice" that Indians were relocated to mineral-rich land. *Id.* at 410.

In his discussion on the First Amendment, Skousen repeats the "five points of fundamental religious belief which are to be found in all of the principal religions of the world" that were introduced in The 5,000 Year Leap. *Id.* at 677. He asserts that there is a need for a constitutional amendment in order to allow these ideals to be taught in public schools. *Id.* at 687. He concludes the discussion by suggesting that given today's "accelerating rates of crimes of violence, narcotics addiction, billion-dollar pornography sales, hedonistic sexual aberrations, high divorce rates, and deteriorating family life" Americans should recall the "stirring words" of Daniel Webster:

> If we and they shall live always in the fear of God, and shall respect his commandments ... we may have the highest hopes of the future fortunes of our country.... It will have no decline and fall. It will go on prospering.... But if we and our posterity reject religious instruction and authority, violate the rules of eternal justice, trifle with the

> injunctions of morality, and recklessly destroy the political constitution which holds us together, no man can tell how sudden a catastrophe may overwhelm us, that shall bury all our glory in profound obscurity.

Id. at 687-88 (quoting Daniel Webster's speech to the New York Historical Society, February 22, 1852).

Both Books Also Contain Sexist, Racist, and Anti-Semitic Statements

The books also promote sexist views based on the author's religious beliefs. For example, in a subsection of The 5,000 Year Leap addressing the "Equality of Men and Women Under God's Law," Skousen promotes "differential" equality:

> The husband and wife each have their specific rights appropriate to their role in life, and otherwise share all rights in common. The role of the man is "to protect and provide." The women's role is to strengthen the family solidarity in the home and provide a wholesome environment for her husband and children. For the purpose of order, the man was given the decision-making responsibilities for the family; and therefore when he voted in political elections, he not only cast a ballot for himself, but also for his wife and children.

The 5,000 Year Leap at 282. Skousen continues, "[i]n theory, God's law made man first in governing his family, but as between himself and his wife he was merely first among equals." *Id.* at 282-83.

Skousen also promotes the "trilateral construction of the family," which consists of "father, mother, and children." *Id.* at 285. He claims that "any action by the government to debilitate or cause dislocation in the normal trilateral structure of the family becomes, not merely a threat to the family involved, but a menace to the very foundations of society itself." *Id.* at 288.

Similarly, the books present racist and anti-Semitic beliefs. For example, in The 5,000 Year Leap, Skousen suggests that the world would be "happier, more peaceful, and more prosperous" had the United States not intervened in the Holocaust. *Id.* at 278. And in The Making of America, Skousen reprints an essay by Fred Albert Shannon, which, according to Skousen, "tells the story of slavery in America." The Making of America at 729. The essay appears to paint slavery in a positive light. According to the essay, slave "gangs in transit were usually a cheerful lot." *Id.* at 731. Indeed, Shannon claims,

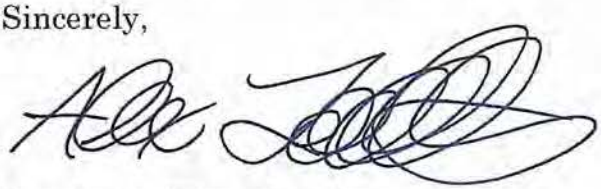
> If [negro children] ran naked it was generally from choice, and when the white boys had to put on shoes and go away to school they were likely to envy the freedom of their colored playmates.

Id. at 733 (alteration in original). Shannon further asserts that "the slave owners were the worst victims of the system." *Id.* at 734. Shannon claims that if marriages between slaves "were of a rather impermanent nature, that fact was frequently considered as 'one of the blessings of slavery.'" *Id.* According to Shannon, running away "was an especially heinous offense" both because of the loss of the slave and because of the moral effect on others. *Id.* at 734-35. He notes, "even for this offense" whipping was usually limited by law to 100 lashes, which "surely was a sufficient number." *Id.* at 735. Shannon ends his essay by questioning the utility of the Civil War. He argues that by 1860 economic forces were making slavery impractical, a solution to slavery by which "the Negro might have escaped the revulsion of feeling against him that resulted from forcible emancipation and the carpetbag regime." *Id.* at 737.

Because the two books clearly promote and endorse specific religious views and ideologies, we ask you to remove The 5,000 Year Leap and The Making of America from Heritage Academy's curriculum. We further request that you ensure that Heritage Academy's history and government classes not be taught in a manner that is similar to the instruction in the two books or that otherwise promotes or endorses religion. We ask the State Board to revoke Heritage Academy's charter if the school will not comply with this request.

We would like to resolve this matter without litigation if possible. We accordingly request a response to this letter within thirty days. We have also included a public records request with this letter. You may contact Alex Luchenitser at (202) 466-3234 or *luchenitser@au.org* if you have any questions about this matter.

Sincerely,



Ayesha N. Khan, Legal Director
Alex J. Luchenitser, Associate Legal Director
Yael Bortnick, Legal Fellow*

**Admitted in Maryland only. Supervised by Ayesha N. Khan, a member of the D.C. Bar.*

Exhibit C

HERITAGE ACADEMY
"Building America's Heroes"
32 S. Center, Mesa, AZ 85210

December 19, 2013

DeAnna Rowe, Executive Director
Arizona State Board for Charter Schools
1616 West Adams Street, Suite 170
Phoenix, Arizona 85009

Dear DeAnna,

In reply to the complaint filed with you, dated December 4, 2013, by the "Americans United" organization, I submit the following.

Our Government class, which is required of all seniors, conforms to the following State of Arizona requirements/laws/declarations:

From the Constitution of the State of Arizona:

> Preamble: "We, the people of the State of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution."
>
> Article 2, Section 1: "A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government."
>
> Article 11, Section 7: "No sectarian instruction shall be imparted in any school or state educational institution that may be established under this Constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the state, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the state, or with the rights of others.

From the Arizona Revised Statutes:

> ARS 15-710 "Instruction in state and federal constitutions, American institutions and history of Arizona
> All schools shall give instruction in the essentials, sources and history of the Constitutions of the United States…."
>
> ARS 15-717 "American history and heritage
> A teacher or administrator in any school in this state may read or post in any school building copies or excerpts of the following materials:

1. The national motto.
2. The national anthem.
3. The pledge of allegiance.
4. The preamble to the constitution of this state.
5. The declaration of independence.
6. The Mayflower compact.
7. Writings, speeches, documents and proclamations of the founding fathers and the presidents of the United States.
8. Published decisions of the United States Supreme Court.
9. Acts of the United States Congress."

Arizona State Board of Education rule for high school graduation:

> R7-2-302.02 (1) (b) (iii). One-half credit of American government, including Arizona government;

The Five Thousand Year Leap is a book used in our class on Government and the Constitution which identifies twenty-eight principles or concepts that are found in or reflected in the writings of America's Founders and which form the basis of the Declaration of Independence and the Constitution. Numerous quotations from America's Founders are included in the book to show the source of their ideas.

The complainant correctly cited three of the twenty-eight chapter titles as having to do with the moral and religious basis for a free society, which is reflected in numerous quotes of the Founders contained in the book. The complainant incorrectly gave another chapter title as "The United States has a manifest destiny to eventually become a glorious example of God's Law under a restored Constitution that will inspire the entire human race", seemingly to bolster the allegation that we are inappropriately teaching religion. The correct title of the chapter in the book reads, "The United States has a Manifest Destiny to be an example and a Blessing to the Entire Human Race." The Founders quotes in this chapter reflect this concept.

Any honest student/teacher of American History must acknowledge the influence of religion in the history of the American nation. Even some organizations which reject and attempt to minimize any religious influence in society today admit that one cannot properly teach the history of America without teaching the influence of religion.

The complainant has listed a number of court cases relative to the teaching of religion, implying that Heritage Academy is participating in such prohibited activities. Please know that we intend to follow the law which allows and even requires the proper teaching of history and also has certain prohibitions. These legal requirements are reflected in our policies, which include:

1. We do not endorse or require students to embrace any religion or denomination.
2. We respect the right of all students to believe or not believe according to their own conscience.
3. We have had students enrolled and/or graduated who held many differing religious views (Christian, Jewish, Muslim, Buddhist, etc.) or with no religious belief at all.

4. We do not forbid any student from expressing his or her religious belief.
5. We do not teach "creationism" in our science classes.
6. We do not teach sectarian or denominational doctrine in any class. We do not require the reading of the Bible or any other religious text at this school.
7. We do not require prayer at this school.
8. We do teach the influence of religion in America's founding, using the words of the Founders themselves.
9. We do not require that students believe what the Founders believed, but we do require that students know what the Founders believed that made them act the way they did in founding this country, thus fulfilling state law which requires a "frequent recurrence to fundamental principles" and the "instruction in the essentials, sources, and history of the Constitutions of the United States."

It is interesting to note that of the twenty-eight principles of government outlined in *The Five Thousand Year Leap*, those referred to by the complainant are only three or four that specifically mention religion. There are many more principles, such as the separation of powers, checks and balances, limited and delegated powers, strong local self-government, avoiding entangling alliances, etc., making a total of twenty-eight.

No other book outlines so clearly the ingredients which the Founders incorporated into their formula for freedom as does *The Five Thousand Year Leap*. It is the simplest and clearest explanation of what the Founders believed, supported by their own words, as they built the first free people in modern times. It is not associated with any sect or denomination. It is one of the best books written to help our students fulfill our school's mission statement to understand the ideals and values of those who founded the American nation.

Sincerely,

Earl Taylor, Jr.
Principal