

March 5, 2025

The Hon. Mike Morath
Commissioner
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701

Sent via email

Re: It is constitutional for public schools to study the Bible references in Bluebonnet Learning.

Commissioner Morath:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We write to respond to a disturbing letter falsely claiming that Bluebonnet Learning's inclusion of biblical references renders the material unconstitutional.

Recently, a coalition led by the American Civil Liberties Union wrote a letter ("ACLU Letter") to all Texas school districts claiming that Bluebonnet Learning is unconstitutional and threatened the schools that they may face legal action for using the state-created materials. But the ACLU Letter ignores relevant precedent, and indeed it must do so, to support the position that Bluebonnet Learning is unconstitutional.

Far from mandating its removal, the First Amendment to the U.S. Constitution supports Bluebonnet Learning because of the vital, unique role the Bible, not to mention Christianity itself, plays in American history. The Establishment Clause does not allow the government to reject Bluebonnet Learning because of its religious references. The ACLU's demands foster hostility toward religion forbidden by our Constitution.

Bluebonnet Learning Background

Bluebonnet Learning complies with Texas law.

Texas created Bluebonnet Learning to comply with House Bill (HB) 1605 (88th Regular Session), which directed the Texas Education Agency to develop instructional materials for statewide use, subject to approval by the State Board of Education (SBOE). The legislature directed the Texas Education Agency to create Bluebonnet Learning as an optional resource for Texas school districts.¹

¹ Press Release, Texas Education Agency Releases Updated Bluebonnet Learning Instructional Materials, (Oct. 16, 2024), <https://tea.texas.gov/about-tea/news-and-multimedia/news-releases/news-2024/texas-education-agency-releases-updated-bluebonnet-learning-instructional-materials>.

The Texas Informed American Patriotism Act requires all public-school students to closely study the founding documents of the United States and Texas. Texas Educ. Code § 4.001 (2023). The Bluebonnet Curriculum covers 100% of all state standards, known as the Texas Essential Knowledge and Skills (TEKS). Section 28.002 expressly requires students to receive instruction in “religious literature, including Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature.” To address these requirements, Bluebonnet Learning includes religious content, including biblical references, to contextualize historical content.

Recently amended sections of the Texas Education Code also require schools to provide accurate and balanced civics lessons which address critical race theory-related instructional materials that contain inaccurate information. *See* Texas Educ. Code §§ 4.001, 21.4555 (2023). For example, section 21.4555 requires schools to use primary sources, rather than biased secondary sources. Religious materials such as the Bible are the primary sources for civics lessons that satisfy section 21.4555. By contrast, the ACLU’s position would require schools to censor religious materials which is a violation of section 21.4555.

Because these statutes are relatively new, many school districts are likely using materials that violate these provisions. Through its use of primary materials and religious texts, Bluebonnet Learning allows schools to immediately come into compliance with these statutes.

Bluebonnet Learning’s Biblical references are necessary.

Bluebonnet Learning uses Biblical texts as primary sources to ensure students receive a comprehensive education that complies with Texas law. In one lesson, students read the story of the Good Samaritan from the New Testament. The story teaches students that it is important to look out for others even when it’s not popular to do so. The lesson uses this story to help students develop context for the Good Samaritan laws around the country, including Texas.² This lesson includes a table listing other faith traditions that also recognize the golden rule.³

When studying Dr. Martin Luther King’s Letter from Birmingham Jail, students analyze the Old Testament book of Daniel and the story of Shadrach, Meshach, and Abednego’s trial by fire. King discusses this story in his letter because he too was persecuted because he believed God compelled him to act.⁴ Given King’s influence over the passage of the Civil Rights Act of 1964, it is imperative that students learn about King and his motivations.

As another example, when studying the Liberty Bell, students learn that it is inscribed with Leviticus 25:10 NIV (“Consecrate the fiftieth year and proclaim liberty throughout the land to all its inhabitants. It shall be a jubilee for you; each of you

² Bluebonnet Learning, Grade K, Unit 7.

³ Bluebonnet Learning, Grade K, Unit 7.

⁴ Bluebonnet Learning, Grade 5, Unit 9.

is to return to your family property and to your own clan.”). By explaining this scripture, Bluebonnet provides a comprehensive education for students to understand the bell and its place in history.⁵

The Constitution permits public schools to study the Bible.

Studying the Bible in public schools is a historical practice that is protected under the Establishment Clause.

The ACLU Letter claims, “Bluebonnet Learning promotes Christianity, prioritizes it over other religions, and proselytizes students.” ACLU Letter, 4. But the ACLU Letter cites outdated, nonbinding, and overruled law to support its position.

Not only does the Constitution allow Bluebonnet Learning to reference the Bible, but the Constitution also allows public schools to teach directly from the book. In 1963, the Supreme Court said:

[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. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

School District of Abington Twp., Pa. v. Schempp, 374 U.S. 203, 225 (1963) *see also* *Vidal v. Girard’s Ex’rs*, 43 U.S. 127, 200 (1844) (“Are not these truths all taught by Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety, and industry, so powerfully and irresistibly inculcated as in the sacred volume?”).

These words, recognizing and approving the value of teaching the Bible in America’s public schools, come from the strictest correction of religion in public schools, in which the U.S. Supreme Court struck down a law requiring schools to begin each day reading Bible passages. *See id.* at 205; *see also* *Wallace v. Jaffree*, 472 U.S. 38, 61 (1985) (striking down a 1-minute period of silence in all public schools “for meditation or voluntary prayer” because it “endorsed religion”). Such cases led to evaluating the Establishment Clause under the now overruled *Lemon* test—a ghoulish legal test which, for decades, wrongly directed courts to examine the purposes and effects of a challenged government action, along with any entanglement with religion that it might entail. *See Lemon v. Kurtzman*, 403 U.S. 602, 612–613 (1972).

⁵ Bluebonnet Learning, Grade K, Unit 10.

But the “shortcomings associated with” the “ambitious, abstract, and ahistorical” *Lemon* test became so apparent that the U.S. Supreme Court eventually “abandoned *Lemon* and its endorsement test offshoot.” *Kennedy v. Bremerton School District*, 597 U.S. 507, 534 (2022) (internal quotations removed); *see also American Legion v. American Humanist Association*, 588 U.S. 29, 49 (2019) (“As Establishment Clause cases involving a great array of laws and practices came to the Court, it became more and more apparent that the *Lemon* test could not resolve them.”). Instead, the Supreme Court clarified that “[t]he Establishment Clause must be interpreted by reference to historical practices and understandings.” *Kennedy*, 597 U.S. at 535. *See also American Legion*, 588 U.S. at 29, 30 (plurality opinion). Thus, *Lemon v. Kurtzman* is no longer good law and may not be relied upon.

Public schools have studied the Bible since the nation’s founding. And while the *Lemon* line of cases formerly restricted public schools from leading prayer or requiring a moment of silence, even then the Court acknowledged the Bible’s educational benefits. *See, e.g., Schempp*, 374 U.S. at 225. Throughout history public schools have taught religious content, including the national motto (“In God We Trust”) and the reason we celebrate Christmas. *See Lynch v. Donnelly*, 465 U.S. 668, 676 (1984) (recognizing that “In God We Trust” is recited as part of the Pledge of Allegiance in public schools); *id.* at 686 (observing that people “tak[e] note of the season with Christmas hymns and carols in public schools and other public places”). The Ten Commandments are hanging at the U.S. Supreme Court and in many government buildings. *See Van Orden*, 545 U.S. 677, 681 (2005).

Ultimately, the Bible has unique, historical value to American history the importance of which our country has recognized since our nation’s founding.⁶ Regarding the Bible as worthy of study by our nation’s students has, in fact, become such a well-ingrained traditional practice that those seeking to oppose its teaching must overcome a presumption of constitutionality. *American Legion v. American Humanist Association*, 588 U.S. at 57 (“The passage of time gives rise to a strong presumption of constitutionality.”).

The Establishment Clause does not permit the government to reject Bluebonnet Learning because of its religious references.

The Bible has a unique place in American history and its educational value must be considered respectfully and equally by public schools. The U.S. Supreme Court has made clear that the Establishment Clause requires the government to respect the role of religion in American public life, including within the educational setting. *See American Legion*, 588 U.S. at 63. Contrary to the assertion of the ACLU, the Establishment Clause does not “compel the government to purge from the public sphere” anything one could claim endorses or “partakes of the religious.” *Kennedy*, 597 U.S. at 535 (quoting *Van Orden*, 545 U.S. at 699 (Breyer, J., concurring in judgment)).

⁶ John Eidsmoe, *Christianity and the Constitution: The Faith of Our Founding Fathers*, 21 (Baker Academic 1987).

Appeals to the Establishment Clause to purge religion from public life or programs distort the First Amendment’s Religion Clauses, which are meant to “have ‘complementary’ purposes, not warring ones.” *Kennedy*, 597 U.S. at 510. Indeed, the U.S. Supreme Court has been unmistakably clear that the “Religion Clauses of the Constitution aim to foster a society in which people of all beliefs can live together harmoniously” and the use of the Bible to teach important lessons is “fully consistent with that aim.” *American Legion*, 588 U.S. at 38. Thus, efforts to pit the Establishment Clause against any other constitutional provision (especially within the First Amendment itself) is misplaced. Continued reliance upon *Lemon*, or any precedent derived from *Lemon*, is illegitimate and incorrect. See *Kennedy*, 597 U.S. at 534; see also *id.* at 546 (Sotomayor, J., dissenting) (“The Court overrules *Lemon v. Kurtzman*.”) and *American Legion*, 588 U.S. at 69 (Kavanaugh, J., concurring) (“this Court no longer applies the old test articulated in *Lemon v. Kurtzman*.”).

Further, catering to the ACLU’s demands to exclude the study of the Bible from public programs merely because it is religious is “odious to our Constitution.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017). Moreover, it flatly ignores the repeated instructions of the U.S. Supreme Court to treat religion, religious organizations, and religious institutions seeking to participate in public programs on the same footing as those who are non-religious. See *id.* at 449 (confirming that the government cannot penalize religious identity); see also *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 474 (2020) (stating that it does not offend the Establishment Clause to include religion in government educational programs); *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 781 (2022) (same).

The ACLU Letter asserts a “neutrality” that lacks grounding in the Constitution: that, to be neutral, Bluebonnet Learning must mention every type of religion. ACLU Letter, 4. Rather, the Constitution requires that the state refrain from acts of hostility toward religion, recognizing that its role under the Establishment Clause is to “work in tandem” with the Free Exercise Clause, respecting the free exercise of those who are religious, even as it refrains from mandating a particular religious practice. *Kennedy*, 597 U.S. at 523. Merely acknowledging the role a particular religion has played in the life of the country does nothing to violate the Constitution. See *Van Orden*, 545 U.S. at 678 (“Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.”).

Christianity is enmeshed in the fabric of our country in a way that other religions are not and recognizing this fact of history does no damage to the Constitution. Regardless, the learning materials *do* refer to other religions such as Buddhism, Hinduism, and Sikhism.⁷ But it is important to acknowledge that these other religions were not the basis for America’s founding. Thus, these religions do not have the same educational value to American students as Christianity. While they may be welcome to participate in the educational life of Americans, efforts—as with the ACLU here—in the

⁷ Bluebonnet Learning, Grade K, Unit 7.

name of “neutrality” to scrub “away any reference” to Christianity and the Bible “will strike many as aggressively hostile to religion” and should be refused. *American Legion*, 588 U.S. at 56.

To be sure, not all of America’s founders were Christians, but they all were educated in the Bible.⁸ The founders believed the Bible’s warning about what happens when one person has too much power. This belief, coupled with the reasons for the American Revolution, served as the basis for America’s separation of powers doctrine. Facts like these are crucial to understanding the wisdom behind our government.

The ACLU Letter is also incorrect that the curriculum doesn’t acknowledge other interpretations of the Bible. As the material points out: “As is true with any religious texts, there have been different interpretations of the Hebrew Bible.”⁹

The ACLU Letter overlooks the importance of the Bible in American history. The Bible is the world’s best-selling book of all time,¹⁰ and it would be remiss of public schools to ignore its educational value.

Conclusion

Bluebonnet Learning’s biblical references are constitutional, and public schools should embrace the comprehensive curriculum. Bluebonnet Learning was created through a public process and the State Board of Education was open and transparent about the project and considered all views. Ultimately, views like the ACLU’s were rejected and schools should not consider these opinions. The ACLU Letter demonstrates that the critics are biased and hostile towards Christianity and its place in American history.

You are welcome to discuss this matter with me any time.

Sincerely,



Keisha T. Russell
Senior Counsel
First Liberty Institute

CC: All Texas School Board Members
The Honorable Ken Paxton, Attorney General of Texas

⁸ Eidsmoe, *supra* note 6.

⁹ Bluebonnet Learning, Grade 3, Unit 4.

¹⁰ Guinness Book of World Records, Best-selling book, <https://www.guinnessworldrecords.com/world-records/best-selling-book-of-non-fiction> (last accessed Feb. 15, 2025).