



May 23, 2013

Sent via facsimile and U.S. certified mail

Kelly Kohls, Board President
Springboro Community Schools
1685 South Main Street
Springboro, OH 45066

Re: "Controversial Issues" and "Religious/ Patriotic Ceremonies and Observances" in Springboro Community Schools

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org



Dear Mrs. Kohls:

It has recently come to our attention that Springboro Community Schools has proposed several new policies that if enacted would violate the Establishment Clause of the First Amendment.¹ The ACLU of Ohio is strongly committed to the right of religious freedom for all individuals. Only two years ago, we sent Springboro Community Schools a letter detailing that teaching "creationism" violates students' First Amendment rights. We strongly believe that the religious education of children ought to be directed by parents, families, and religious communities, not by public schools, and we are deeply concerned that these newly proposed policies infringe upon students' civil liberties.

Our concern focuses on three new provisions currently under advisement by the board of education which appear to: 1) restrict constitutional education material sources to solely Christian organizations; 2) add the discussion of religion outside the historical or factual realm to the curriculum; and 3) erode students' First Amendment rights to practice their personal religious beliefs by restricting student religious activities to non-instructional periods, such as lunch.

First, the "Religious/Patriotic Ceremonies and Observances" policy regarding Constitution Day permits the sources of constitutional education materials to include organizations with religious affiliations including "NCCS, the Institute for the Constitution, and the Hillsdale College." Courts have repeatedly held that sectarian religious displays in schools violate the Establishment Clause of the First Amendment and the use of religiously derived materials directly in education is equally troubling.²

¹ Springboro Board of Education Policies 8800 and 2240.

² See generally, *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994); *Stone v. Graham*, 449 U.S. 39 (1980); *Baker v. Adams County/Ohio Valley School Bd.*, 310 F.3d 927 (6th Cir. 2002).

We are deeply concerned that the approved education materials are strongly linked to the promotion of Christian beliefs. For example, NCCS, the National Center for Constitutional Studies, teaches that the Constitution comes from "creator-endowed rights."³ The Institute on the Constitution, part of "theamericanview.com," espouses similar views. Their website's main banner states, "There is a God, the God of the Bible. Our rights come from Him. The purpose of civil government is to secure those rights."⁴ Moreover, Hillsdale College is a Christian college that includes the "Center for Constitutional Studies and Citizenship." Their instructional materials, the Constitution Reader, emphasize the role of religion, including statements like, "America's Founders constructed an institutional separation between church and state. This separation does not entail the separation of religion and politics. In misapplying Jefferson's 'wall of separation' metaphor, the Supreme Court in the twentieth century turned the First Amendment's bar against congressional action on church-state matters into a mandate for national action by the Court."⁵

To limit the teaching of federally mandated instruction to religion-based organizations that incorporate religion into its education materials is not only troubling, but also blatantly unconstitutional. It is well established that government action may not promote religion. The pertinent inquiry is whether an objective observer in the position of a student would perceive official school support for the religious activity in question.⁶ Here, a student of Springboro Community Schools could reasonably perceive the district's approval of only religion-based education materials as an advancement of religion because it "symbolically places the government's seal of approval on one religious view - the Christian view."⁷

Additionally, we are concerned that the "Controversial Issues" policy unconstitutionally promotes religion. This policy states that only controversial issues which are specified in the course of study or approved by the principle may be taught. The range of pre-approved topics include several with religious connotations, including mentions of abortion, contraception, evolution, environmental sustainability and even religion itself outside of the permissible secular historical and factual references. The policy also instructs teachers to present all sides of each question equally.

This policy appears to explicitly permit the teaching of creationism because "evolution" is on the "controversial issues" list and equal facts for the opposing viewpoint means classroom time spent on the religious theory of intelligent design (or creation science). It has been firmly established that this practice is unconstitutional, in violation of the Establishment Clause.

The Supreme Court of the United States has unequivocally held that so-called "balanced treatment" laws and policies which gave equal class time to evolution and creationism were unconstitutional because they served no secular purpose and instead had a primary purpose of advancing a particular religious viewpoint.⁸ In *Edwards*, the Court was faced with the State of Louisiana's Creationism Act, which prohibited the teaching of the theory of evolution in Louisiana Schools unless it was accompanied by the teaching of "creation science" as an

³ National Center for Constitutional Studies, <http://www.nccsstore.com/The-5000-Year-Leap-A-Miracle-that-Changed-the-World/productinfo/5000YL/>

⁴ Institute on the Constitution, <http://www.theamericanview.com/>

⁵ Constitution 101: The Meaning and history of the Constitution, Hillsdale College, <https://online.hillsdale.edu/page.aspx?pid=1278>

⁶ *Kitzmiller v. Dover*, 400 F.Supp.2d 707, 715 (M.D. Pa. 2005).

⁷ *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679, 683 (6th Cir. 1994).

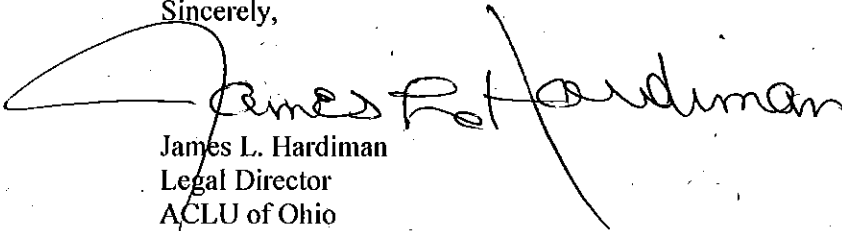
⁸ *Edwards v. Aguillard*, 482 U.S. 578 (1987).

alternative.⁹ Although the proffered purpose behind the Act was the protection of academic freedom, the Court found that the true purpose behind the Act was the advancement of a particular religious doctrine, i.e., that a "supernatural being created humankind." There cannot exist a secular purpose behind the teaching of creationism as a criticism of the theory of evolution because creationism inherently constitutes a particular religious doctrine which stems from the Christian tradition. Like in *Edwards*, requiring Springboro Community Schools teachers to devote equal time to evolution's opposing viewpoint, intelligent design (or creation science), would violate the Establishment Clause.¹⁰

Lastly, the proposed policy on "Religious/Patriotic Ceremonies and Observances" unconstitutionally restricts students' religious freedom by prohibiting their voluntary, free and individual expression of religious beliefs to non-instructional time such as the lunch period. Nothing in the Constitution prohibits any public school student from voluntarily praying at any time before, during, or after the school day.¹¹ Indeed, it has been well established that private engagement in religious practice is protected by the First Amendment's Free Exercise Clause. Students "must be allowed to pray silently," "discuss their religious beliefs quietly with others," and publicly give a prayer not sponsored or coerced by the school.¹² Thus, schools cannot prevent a student from praying or student religious groups from accessing school property in the same ways as other groups.¹³

The proposed regulations certainly have the effect, if not the purpose, of teaching religion in Springboro Community Schools in clear violation of the Constitution, while at the same time restricting individual students' free exercise rights. We urge you to reconsider these policies as they will result in infringement of students' First Amendment rights.¹⁴ Please do not hesitate to contact me if you have any questions regarding these matters. However, I am requesting that you please respond to this letter prior to a final vote on these policies.

Sincerely,



James L. Hardiman
Legal Director
ACLU of Ohio
Ph: (216) 472-2220
E: jhardiman@acluohio.org

cc: Todd Petrey, Superintendent, Springboro Community Schools
Debe Terhar, President, State of Ohio Board of Education
Richard Ross, Superintendent, State of Ohio Department of Education

⁹ *Id.*

¹⁰ See also *Kitzmiller v. Dover*, 400 F.Supp.2d 707 (M.D. Pa. 2005) (holding that teaching intelligent design was in fact teaching religion because "ID [Intelligent Design] cannot uncouple itself from its creationist, and thus religious, antecedents.")

¹¹ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000).

¹² *Id.* at 1317.

¹³ *Widmar v. Vincent*, 454 U.S. 263, 272 (1981).

¹⁴ *Leinon v. Kurtzman*, 403 U.S. 602, 612 (1971). See also *ACLU of Ohio v. Deweese*, 633 F.3d 424, 431 (6th Cir. 2011).