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March 23, 2016

Governor Butch C.L. Otter  
Office of the Governor  
State Capitol  
P.O. Box 83720  
Boise, ID 83720

Dear Governor Otter:

I write to let you know that the ACLU of Idaho remains strongly opposed to SB 1342a and we respectfully urge you to veto this bill. SB 1342a runs afoul of both the U.S. and Idaho Constitutions and will have the unintended effect of exposing public school districts to the risk of costly litigation.

SB 1342a expressly permits the use of religious texts, and specifically the Bible, in public schools for any purpose based on a teacher's personal belief that the understanding of the religious texts, and specifically the Bible, might be "useful or relevant." As originally drafted the bill only promoted the exclusive use of the Bible but was amended to add an additional reference to "religious texts." Despite amending the bill to add allowance for the use of other "religious texts," the legislation continues to single out and emphasize the Bible, endorsing the religious text of only a few religions, a clear violation of basic First Amendment principles that the government may not favor some faiths over others.

SB 1342a doesn't simply raise First Amendment concerns. It runs afoul of the Idaho Constitution, specifically art. IX, sec. 6 which states in part:

...No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

As Idaho's own Attorney General opined on the original version of the bill, not only does the focus on the Bible raise a religious preference issue under art. I, sec. 4, more importantly the use of religious books is "specifically prohibited by art. IX, sec. 6 of the Idaho Constitution" and would be invalidated by the courts. The inclusion of "religious texts" in the amendments does not change the AG's analysis that under art. IX, sec. 6 the use of any religious texts in our public schools is impermissible under our state constitution.

Moreover, as originally drafted, this bill expressly authorized the use of the Bible in science classes, even though the courts have been unequivocally clear that efforts to inject religious beliefs regarding the origin of life into public-school science curricula are constitutionally impermissible no matter what form

they may take.<sup>1</sup> That intent cannot be avoided through the amendments to the bill removing specific reference to science classes such as astronomy, biology, and geology. Indeed, tellingly, the amended version, still allows the use of the Bible for “other topics of study where an understanding of religious texts, including the Bible, may be useful or relevant.” In other words, this bill purports to give cover to any teacher who thinks the Bible may “be useful or relevant” in science class even without explicitly mentioning astronomy, biology, and geology.

By encouraging teachers and school districts to use the Bible or any religious text in any and every class they personally believe it will be either useful or relevant, this legislation will foster blatant violations of the Idaho Constitution and virtually guarantee that religious texts will be used in a manner that is also impermissible under the Establishment Clause of the U.S. Constitution. The risk of potential litigation presented by SB 1342a will remain an ongoing liability for teachers, schools, and school districts across the state that should be utilizing their limited resources for educational purposes—not defending constitutionally questionable legislation.

Idaho’s public schools have a rich tradition of peaceful pluralism and religious diversity. We urge you to preserve that tradition and protect Idaho’s teachers and schools from the dangers created by this bill and respectfully request that you veto SB 1342a. Please do not hesitate to be in touch if we can be of any further assistance.

Sincerely,

Leo Morales  
Executive Director  
208-344-9750 x 1203

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<sup>1</sup> As provided in our original testimony in both the Senate and House State Affairs Committees, there is significant case law over the past 30 years, including the recent cases of: *Kitzmiller v. Dover*, 400 F. Supp.2d 707, 765-66 (M.D. Pa. 2005) (striking down school board policy promoting the teaching of intelligent design in biology class) and *McLean v. Ark. Bd. of Educ.*, 529 F. Supp. 1255, 1274 (E.D. Ark. 1982) (enjoining statute authorizing teaching of creation-science in public schools and holding that “[n]o group, no matter how large or small, may use the organs of government, of which the public schools are the most conspicuous and influential, to foist its religious beliefs on others”).