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October 14, 2014

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Gilbert Public Schools Governing Board
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Re: Campbell Biology textbooks

Superintendent Christina M. Kishimoto and Gilbert School Board Members:

The American Civil Liberties Union of Arizona (“ACLU”) writes to offer guidance in the wake of increased efforts by Alliance Defending Freedom (“ADF”) to pressure Gilbert Public Schools to censor educational materials that mention abortion and contraception.

Based on public reports the ACLU learned that on August 5, 2014, Dr. Kishimoto received a letter from ADF alleging that a textbook used in Gilbert Public Schools (“GPS”), *Campbell Biology: Concepts & Connections*, 7th ed., violates A.R.S. § 15-115. We agree with the conclusion reached by the District’s curriculum team, the “Honors Biology textbook does not violate State statute.” A.R.S. § 15-115 does not require each individual educational material used in a classroom to give preference, encouragement and support to childbirth and adoption. Rather, A.R.S. § 15-115 requires the totality of sexual education instruction to give preference to childbirth and adoption. Additionally, the removal or censorship of the biology textbook by Gilbert Public Schools would violate GPS student’s rights under the First Amendment of the U.S. Constitution. The board should reject ADF’s call to censor textbooks and continue to provide students with the comprehensive education they are entitled to receive.

A.R.S. § 15-115 does not prohibit discussion of or use of materials that address contraception or abortion. The Fact Sheet for Senate Bill 1009 from April 15, 2012 notes, “SB 1009 prohibits school districts and charter schools from promoting elective abortion over childbirth and adoption.”¹ The law does not mandate students be deprived of information regarding abortion or contraception. The Senate floor debate² demonstrates that A.R.S. § 15-115 was meant to set policy in the area of sexual education, not science

¹ http://www.azleg.gov/legtext/50leg/2r/summary/h.sb1009_04-16-12_astransmittedtogovernor.pdf

² Arizona House Committee Minutes, 3/12/2012

instruction or education in general: “When asked how the bill will be implemented and used by school boards, [Senator Nancy] Barto, [the sponsor of SB 1009,] said it will give school boards guidance when representatives are invited to speak to *health classes or special sex education classes* and ensure that what is being taught will not be done in a way that promotes abortions.”³

The *Campbell Biology* textbook is not utilized in the context of sexual education or health. Instead, the textbook is a comprehensive guide to biology used by teachers in a classroom setting guided by state curriculum standards. Only one page of the entire book discusses contraception and abortion. The textbook’s discussion of contraception provides scientific facts related to different methods of contraception. The page of the book included in the letter to the Board from ADF notes “complete abstinence (avoiding intercourse) is the only totally effective method of birth control.” The book was not written to address complex ethical or moral issues or provide students guidance in the area of family planning.

If the textbook should ignite a larger classroom discussion of the moral and ethical implications faced by unwanted pregnancy, nothing “limits the teachers’ use of supplemental materials or the scope of classroom dialogue.” *Johnson v. Stuart*, 702 F.2d 193, 195 (9th Cir. 1983). A teacher may choose to instruct students utilizing any number of methodologies including but not limited to textbooks, presentations, worksheets, guest speakers, field trips, small group or classroom discussion, peer evaluations, cooperative learning, illustrations, and anecdotes to communicate knowledge.

School districts have broad authority under the First Amendment to choose course materials and thus cannot be compelled by parents or outside organizations to adopt policies or curriculum that deprive students of information the school district has determined has educational value. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1028 (9th Cir. 1998). A school’s textbook selection is closely tied to their First Amendment right to expression. *Asociacion de Educacion Privada de Puerto Rico, Inc. v. Garcia-Padilla*, 490 F.3d 1, 12 (1st Cir. 2007). “Certainly when a school board identifies information that it believes to be a useful part of a student’s education, that student has the right to receive the information” *Monteiro* at 1028.

Conversely, if GPS removes or censors the biology textbook because school board members disagree with a particular viewpoint expressed, GPS would violate students’ rights under the First Amendment of the U.S. Constitution. The Ninth Circuit Court of Appeals has firmly stated “we have no hesitation in concluding ... that a student’s First Amendment rights are infringed when books that have been determined by the school district to have legitimate educational value are removed from a mandatory reading list because of threats of damages, lawsuits, or other forms of retaliation.” *Monteiro* at 1029.

“Notwithstanding the power and discretion accorded them, school boards do not have an absolute right to remove materials from the curriculum.” *Pratt v. Independent Sch. Dist. No. 831*, 670 F.2d 771, 776 (8th Cir. 1982). “At the very least, the First Amendment precludes local authorities from imposing a ‘pall of orthodoxy’ on classroom instruction which implicates the state in the propagation of a particular religious or ideological viewpoint.” *Id.* Where a “school book screening system restricts [students’]

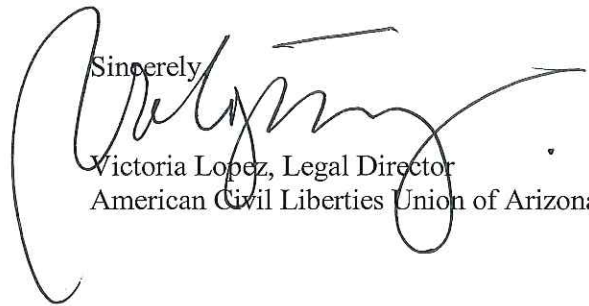
³ Arizona House Committee Minutes, 3/12/2012

first amendment right of free access to information” the screening system is impermissible. *Johnson* at 195.

Gilbert Public Schools students have a First Amendment right to be free from censorship intended to suppress facts and ideas that some community members find disagreeable. “There has been a flurry of cases recently in which the federal courts have considered First Amendment challenges to the removal of books from school libraries. Those courts have generally concluded that a cognizable First Amendment claim exists if the book was excluded to suppress an ideological or religious viewpoint with which the local authorities disagreed.” *Pratt* at 776.

We urge the Gilbert School Board to reject ADF’s attempts to censor educational materials. Any restriction on free access to information is inconsistent with the educational mission of Gilbert Public Schools and the First Amendment. The Gilbert School Board should reject any attempts to censor *Campbell Biology: Concepts & Connections*.

AMERICAN CIVIL
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OF ARIZONA

Sincerely,

Victoria Lopez, Legal Director
American Civil Liberties Union of Arizona