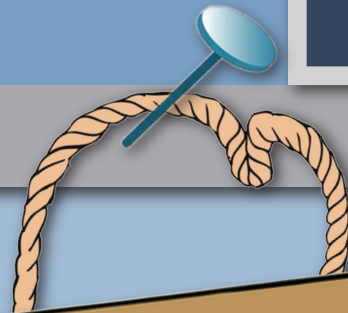


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The Texas State Board of Education:

A Case of Abuse of Power

May 13, 2010



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The Texas State Board of Education, the body charged with determining Texas public school curriculum standards for Texas' 4.7 million public school children, is scheduled to vote on the adoption of new Social Studies curriculum standards on May 21, 2010. If the current proposal is adopted, Texas' schoolchildren will soon be subjected to an unbalanced and ideologically driven curriculum that risks leaving them unprepared for basic college level work. In addition, this curriculum may also negatively impact Texas' already poor high school graduation rate, as the proposed curriculum's narrow viewpoint is unlikely to engage those Texas public school students most at risk of dropping out.

The Board has a long track-record of abusing the discretion and power granted to it by the Texas Legislature and the people. From approving a health textbook that provides medically inaccurate information, to injecting religion into public school science classes, to ignoring their statutorily mandated duties, the Board has repeatedly shown that it places personal priorities above the needs of Texas' schoolchildren. Unfortunately, the Board's actions have gone from bad to worse.

The Board's long-running ability to engage in these actions stems from the almost complete power over the creation of academic requirements and materials granted to it by the Texas Legislature. While the Board's existence is mandated by the Texas Constitution, the Legislature retains control over establishing the duties, if any, of the Board in all areas except for control over aspects of the Permanent School Fund and textbook funding issues. Under the Texas Education Code, the Board is charged with "identifying the essential knowledge and skills of each subject of the required curriculum

that all students should be able to demonstrate and that will be used in evaluating textbooks ... and addressed on the assessment instruments" When granting the Board this power, the Legislature was clear that it intended the Board to craft the required curriculum, textbooks, and assessment instruments in a way that would "prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings."

However, the Legislature provided minimal statutory guidance or oversight to govern the Board's work. With a few minor exceptions, the Legislature left the substantive development and adoption of the curriculum solely in the hands of the Board. The Legislature's failure to limit the Board's power has enabled an ongoing abuse of process and power.

The proposed revisions to the Social Studies curriculum represent the most systemic abuse of discretion to date. By relying on unqualified "experts" and abusing its amendment power, the Board has manipulated the Social Studies curriculum to endorse a single historical narrative and a specific, limited philosophy toward the role of government in protecting constitutional rights and civil liberties that coincides with the ideological outlook of some of its members.

If adopted, this curriculum will allow a governmental entity to transform its subjective views into objective facts. As a result, students will be taught a one-sided history that will negatively impact their ability to engage and develop their analytical skills. Almost 4 in 10 Texas public school students fail to graduate from high school, and this curriculum may exacerbate Texas' dropout problem by failing to engage students. Texas can't afford to allow the Board to continue its abuses.

EXECUTIVE SUMMARY

RECOMMENDATIONS:

A. The Board should immediately stop or delay the current Social Studies TEKS review process and start over with new review of the Social Studies TEKS that prioritizes education over ideology.

B. During the forthcoming 82nd Legislative Session, the Texas Legislature must establish parameters on the Board's power, mandate that Board Members prioritize education over ideology, and implement a statutory system of checks and balances to prevent future abuse.

- 1.** Establish minimum qualifications for all persons involved in determining the substance of the TEKS.
- 2.** Remove the Board's authority over the development and adoption of the TEKS.
We recommend that the Legislature take up one of the following three options:
 - a.** Limit the Board's authority to only those duties required by the Texas Constitution. Create a new body charged with the development and adoption of the TEKS, and its related concerns including textbook adoption and assessment standards.
 - b.** Limit the Board's role to non-substantive matters in the development and adoption of the TEKS, and their related concerns including textbook adoption and assessment standards.
 - c.** Limit the Board to non-binding recommendations related to the development and adoption of the TEKS, and its related concerns including textbook adoption and assessment standards. Persons charged with the substantive development and adoption of the TEKS must retain complete authority over the TEKS.
- 3.** Create checks and balances in the appointment process for all persons involved in the substantive development and adoption of the TEKS.



A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.¹

— THE TEXAS CONSTITUTION, ARTICLE 7, SECTION 1

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.²

— Brown v. Board of Education (1954)

Public education is the bedrock of our democracy. Our state's continued political, cultural, and economic progress is directly tied to our success in preparing our children to lead us into the future. Indeed, as the Texas Legislature has observed, Texas' public education system is "essential for the welfare of this state ..."³ Absent an adequate educational foundation, the next generation of Texans will be unprepared to fully engage in the civic and political affairs of their communities,⁴ exercise the rights and freedoms guaranteed to them as Texans and Americans,⁵ or compete in a global economy.⁶ Education, quite literally, is serious business.⁷ In fact, Texas' troubled public education system is part of the reason for Texas' poor showing on Forbes Magazine's state "Quality of Life" rankings: Texas was 39th in the nation.⁸

Accordingly, ensuring our school children receive an optimal education is in the interest of every

resident of this great state. Yet the state body charged with determining public school curriculum standards for Texas' 4.7 million public school children,⁹ the State Board of Education (Board), has recently reduced Texas' already challenged public education system to a national "laughingstock."¹⁰ The Board, which is the policy-making body of the Texas Education Agency, has become nationally infamous for its recent work developing new social studies curriculum standards (Texas Essential Knowledge and Skills, or "TEKS") based on personal beliefs, biases, and prejudices.¹¹

While the Board is no stranger to controversy, its latest attempt to inject ideologically driven subjective content into public school classrooms has shown that it continues to abuse the power granted to it by the Legislature. If adopted, the new Social Studies TEKS, which cover the teaching of history, government, economics, sociology, psychology, and world geography to kindergarteners through high school seniors, will create a curriculum that projects an aggressively ideological viewpoint, stifles debate, and risks leaving Texas' schoolchildren unprepared for college level coursework. Or, in the words of Patty Quinzi of the Texas American Federation of Teachers, the proposed TEKS are "substandard standards."¹²

As set forth in greater detail below, the Board's ability to so routinely abuse the power and trust it holds stems from the broad discretion granted to the Board by the Texas Legislature. Although the elected members of the Board are ultimately responsible for the TEKS they approve, this process is and will remain vulnerable to continued abuse until the Legislature intervenes. The legislature has the power to create safeguards and minimum standards to guarantee that educational, not ideological, priorities govern the curriculum review process. For the sake of our children and our future, Texas cannot afford to wait.

II. THE VULNERABILITY OF THE “TEXAS ESSENTIAL KNOWLEDGE AND SKILLS” (TEKS) REVIEW PROCESS

The state of public education in Texas presents serious challenges. Our dropout rate is shockingly high, with only 61.3% of public high school students graduating - placing Texas 43rd in the nation in graduation rates.¹³ To make matters worse, the Texas Legislature will face difficult choices related to education funding with an estimated \$11-15 billion budget shortfall.¹⁴ Given the crises in resource allocation and graduation rates, the State Board’s focus on battling culture wars through the curriculum process is inexplicable and indefensible. Far from remedying Texas’ unacceptable dropout rate, the Board’s actions may exacerbate it. As Rod Paige, Secretary of Education under George W. Bush (2001-2005), told the Texas Education Agency, curriculum must be relevant to students if we hope to curb student dropout rates.¹⁵ Following this logic, Rita Haecker, President of the Texas State Teachers Association, warned that

“[t]hese social studies TEKS are not relevant to Hispanics and African Americans. Unless changed, this irrelevant set of TEKS will help worsen the state’s already serious dropout problem..”¹⁶

Determining how to get the State Board of Education back on track requires an understanding of where it went off the rails, and what laws, regulations, and policies exist or are needed to assure that the Board fulfills its mandate to create a policy that promotes, rather than diminishes, our children’s preparation for the future.

A. TEKS STANDARDS - WHAT THEY ARE AND WHY THEY MATTER

The TEKS are the state curriculum requirements set forth in the Texas Administrative

Code and are the basis for everything students will learn through their primary and secondary careers. These curriculum requirements are the knowledge and skills students must demonstrate mastery of to progress in school. The required curriculum includes: English language arts; mathematics; science; social studies, including Texas, United States, and world history, government, sociology, psychology, and geography; languages other than English; health, with emphasis on the importance of proper nutrition and exercise; physical education; fine arts; economics, with emphasis on the free enterprise system and its benefits; career and technology education; technology applications; and religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature.¹⁷ The TEKS are also the criteria used for evaluating public school textbooks.¹⁸ The TEKS, in effect, will govern the information learned by public school students in Texas.

The sheer number of textbooks Texas purchases means curriculum decisions here affect the content of textbooks used in other states. In addition to being the second largest market for K-12 textbooks in the nation, Texas’ centralized curriculum standards provide a huge incentive for textbook manufacturers to follow Texas’ standards.¹⁹ In the next few years, Texas’ influence will be even greater following the announcement that California would not purchase new textbooks until 2014, at the earliest, due to budget shortfalls.²⁰ According to Jim Kracht, Associate Dean and Professor in the College of Education and Human Development at Texas A&M University, when it comes to the content of textbooks

“Texas governs 46 or 47 states.”²¹

B. THE BOARD'S TEKS MANDATE

The Texas Constitution establishes the State Board of Education and specifically requires that it control aspects of the Permanent School Fund and textbook funding issues.²² The Constitution grants the Texas Legislature the power to determine whether Board members are elected or appointed and the power to determine the additional duties, if any, of the Board.²³ The Legislature codifies its decisions in the Texas Education Code (Education Code).

Much of the structure of the Board is set out in the Education Code. Currently, the Education Code provides that the Board comprises 15 members elected from single-member districts.²⁴ Members of the Board are elected to four-year terms,²⁵ except for the general election following a redistricting. During these elections, all Board seats are up for election, with seven members elected for two-year terms and eight members elected for four-year terms.²⁶ The Board is required to meet four times per year in Austin.²⁷ The Chair of the Board is selected by the Governor, with the advice and consent of the Senate.²⁸ Additional Board Officers, including the Vice Chair and Secretary, are elected by Board vote.²⁹

The Texas Education Code mandates that the Board “develop and update a long-range plan for public education” in Texas.³⁰ To fulfill this mission, the Board has the authority to set the curriculum and graduation requirements, review and adopt textbooks, determine student assessment standards, create rules to develop the curriculum, establish guidelines for academic credit testing, and approve the creation of charter schools.³¹ Specifically, the Education Code charges the Board with the important task of developing the TEKS:

The State Board of Education, with the direct participation of educators, parents, business and industry representatives, and employers shall by

*rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks ... and addressed on the assessment instruments*³²

In issuing this mandate, the Legislature made clear that it has high expectations for the resulting curricular standards:

*It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require all students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.*³³

Yet despite these lofty aims, the Legislature left the Board with almost complete discretion over the formulation of standards. The Legislature provided little statutory guidance or oversight to govern the process for determining the TEKS or to evaluate the Board's success in developing TEKS, leaving the Board with almost complete discretion over the formulation of the standards' content. While Education Code §28.002(c) permits the Board to appoint advisory committees to assist with the TEKS review process, for example, these committees are not required and there are no legislative provisions regulating the specifics of their formation and make-up. Moreover, though the Education Code also grants the Texas Commissioners of Education and Higher Education the power to “develop and recommend” to the Board the TEKS for specific college preparatory courses,³⁴ the Board need not accept these recommendations.³⁵ The few exceptions to the Board's discretion include a statutory requirement that the Board emphasize the “free enterprise system and its benefits,”³⁶ as well as a broad

CURRICULUM REVIEW PROCESS

- 1 The Social Studies TEKS review began with a public notification of the review process by the Texas Education Association (TEA).
- 2 The Board nominated individuals for a TEKS Review Committee.
- 3 Committee appointees were notified of their appointment to a Committee by the TEA.
- 4 The Board appointed six experts.
- 5 The TEA sent the experts copies of the current Social Studies TEKS. The experts were charged with providing their “initial feedback and recommendations” to the Board.
- 6 Following the experts’ first review, the Committees were tasked with providing a draft recommendation for the new TEKS using the experts’ recommendations as the basis for their review.
- 7 Committee members worked together to complete their charge.
- 8 Following the completion of the Committees’ first draft recommendations, the TEA posted the recommendations online for “informal feedback.”
- 9 The experts provided a new set of recommendations based on the Committees’ first draft.
- 10 After the experts provided their new recommendations, the Board heard testimony from the experts and one committee member from each Committee.

requirement that the Board remember that “[a] primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.”³⁷ No appeal process exists to ensure the TEKS meet the state goals of the Texas Constitution and the state legislature.

The Texas Administrative Code, in which the current TEKS are set forth, and the Board’s Operating Rules likewise provide minimal guidance and oversight for the TEKS review process. The only substantive mandate related to the Social Studies TEKS is a requirement that all public school social studies courses for grades 3-12 include a “Celebrate Freedom Week.” Moreover, from a procedural standpoint the only rules governing the amendment of the TEKS are those that apply to the Board’s alteration of any section of the Administrative Code. The process for altering the Administrative Code is established under the Board’s Operating Rules. This process requires that proposed rules first appear on the Board’s meeting agenda for discussion and then on the agendas of two later Board meetings for a First and Second Reading. However, the Board may vote to ignore this formal process. After the First Reading, the Board may have the proposed rule published in the Texas Register (a prerequisite to Board action on the item). At the Second Reading, and following a mandatory 30-day public comment period, the Board may vote to adopt the proposed rule as final, unless a Board committee decides to consider a “substantial revision” of the material.³⁸

As the following sections will show, the lack of clear guidelines and minimum standards for preparing the state’s high school graduates for college or a career has allowed some members of the Board to manipulate and abuse the process.

Such legislative safeguards are critical because neither the Education Code nor the Administrative Code, nor the Board's Operating Rules, present any opportunity for appeal of final TEKS decisions.

C. THE BOARD ESTABLISHES AND MANIPULATES ITS OPERATING PROCESS

On November 20, 2009, the Board approved a 20-step process for the adoption of the Social Studies TEKS.³⁹ With minor exceptions, this is the same process that the Board followed for contentious adoption of the Science TEKS last year. The Board is free to divert from the process at its discretion.

On paper, this process appears to encourage a collaborative TEKS adoption process in which experts assist the Board in creating the best possible curriculum for our schoolchildren. In practice, Board Members have abused this process to achieve their ideologically driven goals.

1. Review Committees

As required by the Education Code, the Board selects educators, parents, business leaders, and employers to review the TEKS as part of the TEKS Review Committee (Committee), and each substantive section of the Social Studies TEKS has its own Committee. But, there are no formal requirements or minimum qualifications governing the Board's selection process for Committee members.⁴¹ This disregard for relevant qualifications has enabled some Board members to nominate Committee members whose ideological missions trump their commitment to quality education. The problematic results of these Committees will become clear during the review of the proposed TEKS.



11 After the Board meeting, TEA staff received new informal feedback.

12 TEA staff forwarded this information, along with the experts' new recommendations, to the Board.

13 The Committees reconvened to make revisions to their initial recommended TEKS.

14 The Board discussed the Committees' and experts' comments and directed TEA staff to prepare draft rule text with any requested revisions/edits.

15 The Board held a public hearing and completed the first reading and filing authorization, which includes the 30 day official public comment period.

16 The Board scheduled a second public hearing prior to the end of the 30 day public comment period.

17 After the 30 day public comment period, TEA summarized the public comments and provided summaries to the Board before the second reading and final adoption.

18 Board members reviewed comments and worked on proposed amendments.

19 Board members shared proposed amendments before the second reading and adoption.

20 Following the completion of the public comment period, the Board scheduled a second reading to adopt the TEKS along with a specific TEKS implementation date.⁴⁰



Under the review process established by the Board, the Committee is charged with recommending new TEKS standards.⁴² To do so, Committee members should:

- Use the current TEKS as the foundation document;
- Consider the general course of study, not what might be covered in an Advanced Placement course;
- Consider college readiness standards when revising the TEKS;
- Ensure revisions are in compliance with all related statutes;
- Provide justification for all suggested revisions;
- Track all revisions to show what has been changed;
- Base decision on Expert Review Panel recommendations; and
- Provide invited testimony at a Board meeting.⁴³

2. Expert Reviewers

In addition, the Board is permitted to appoint advisory committees to assist with the TEKS review process.⁴⁴ Similar to the Review Committees, there are no formal requirements vis-à-vis the appointment of TEKS Expert Reviewers (experts) by the Board. Under the Board established TEKS review process, the Board may appoint a maximum of seven experts.⁴⁵ To be considered, a potential expert must be nominated by a minimum of two Board members, and each Board member may nominate only one expert.⁴⁶ In addition, the Board may not reject proposed experts who receive two or more nominations.⁴⁷

The experts provide feedback and recommendations to the Board.⁴⁸ But the lack of statutorily established minimum standards for experts has provided the Board with an opportunity to hijack a process meant to help ensure accurate and high quality curricular standards for our teachers to follow. While many well-qualified individuals with relevant academic training have been appointed as experts, some Board members have used the opportunity to select appointees with no relevant qualifications or academic background but who share their desire to place ideology above education. These Board members are abusing the expert process to provide “expert” cover for their personal agendas.

For example, two of the Board’s selected Social Studies “experts” are religious ideologues who have no experience in the arena of education and social studies, or indeed, any qualifications that would render them educational specialists. Upon being selected, both openly and explicitly said that their goal is to insert Christianity into Texas’ public school curriculum.⁴⁹ Thus, some Board Members have taken it upon themselves

to insert their personal beliefs in place of those of parents, ministers, or other leadership figures in the direct lives of Texas' school-children. That the Board saw fit to employ the services of these two "experts" illustrates the dire need for binding legislative guidance throughout the TEKS process generally, and more specifically, minimum, baseline appointment qualifications for experts.

Both federal and state law, including Texas' Religious Freedom Restoration Act, assure that Texans have the freedom to worship as they choose. Putting public school curriculum decisions in the hands of religious ideologues represents an impermissible delegation of state power to unqualified, sectarian community members. The state of Texas, including the Legislature, cannot leave decisions impacting the future of Texas to unqualified individuals operating from their own personal agendas.

3. Amendment Process

Even with the Board's unfettered discretion in dictating both the process for, and people charged with, TEKS review, some Board members have still found it necessary to further inject their personal beliefs into the curriculum via their amendment power. This power was approved by the Board in its TEKS review process.⁵⁰ The abuse of the amendment power by these Board members is evident by their actions: they have clearly chosen to insert ideologically driven, subjective content as fact and ignored viewpoints that conflict with their ideological worldview. These amendments have included requirements that students "understand the poor record of collectivist, non-free market economic systems to deliver improved economic development over numerous contemporary and historical societies."⁵¹ This requirement projects a predetermined belief that "collectivist" and/or

"non-free market" economic systems have a "poor record." In another amendment, the Board approved a requirement in the "U.S. History Since 1877" section focused on the "impact of political, economic, and social factors in the U.S. role in the world from the 1970s through the 1990s" that students "describe the causes, and key organizations and individuals of the conservative resurgence of the 1980s and 1990s, including Phyllis Schlafly, the Contract with America, the Heritage Foundation, the Moral Majority, and the National Rifle Association."⁵² In addition to elevating specific intellectuals, non-governmental organizations, and think tanks to the level of "key organizations and individuals," this amendment focuses solely on one narrow viewpoint without discussing those with competing ideas anywhere in this requirement. Instead of deferring to educational or subject matter experts, the Board members who offered and/or approved arbitrary and subjective amendments such as these confirmed their inability to handle the great power bestowed upon them.

Board members' reliance on subjective rationales for their amendments was even questioned by their own colleagues. For example, Mavis Knight, a Board member from District 13, warned,

*"[A]s a State Board of Education I think we need to give more solid kinds of rationales why things should be included or deleted as opposed to the subjective, personal, 'I like,' 'I don't like,' 'my favorite,' those kinds of issues."*⁵³

As this process makes clear, some Board members have prioritized their ideological beliefs over a curriculum that creates well-informed students. In doing so, the Board provided additional evidence that the discretion granted to it is not compatible with the Legislature's intent for the Board.

III. EXPLOITING POWER, SERVING IDEOLOGICAL INTERESTS

The controversy surrounding the adoption of the Social Studies TEKS is just the latest episode of Board abuse. As articulated above, the process for the adoption of TEKS suffers from a lack of statutory safeguards to protect against the Board's abuse of the discretion conferred by the Legislature. The Board's abuse of process becomes an abuse of power when looking at the substantive result of the Board's Social Studies TEKS review process. Yet, while the Board's proposed Social Studies TEKS provide ample ammunition on their own for legislative efforts to curb the Board's authority over setting curriculum standards, its abuse is far from a novel revelation.

A. THE BOARD'S HISTORY OF SACRIFICING EDUCATION TO IDEOLOGY

Beginning in the late 1980s, a concerted effort was launched to stack the Board with members whose goals were to inject their ideological agendas into classrooms across Texas.⁵⁴ By the mid- 1990s, these activists began to realize their goal, and thus began the Board's now long-running abuse of power.

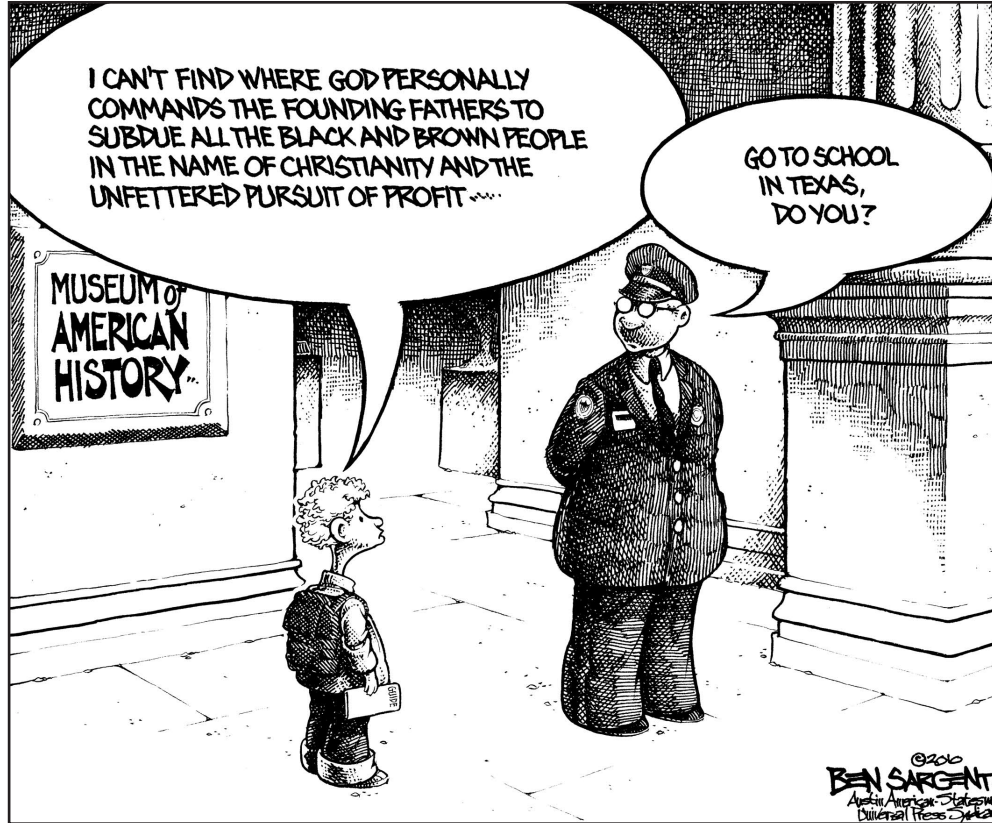
For example, during its consideration of health textbooks in 1994, the Board had a breast self-exam illustration removed. The illustration,

TEEN PREGNANCY RATES IN THE UNITED STATES

Teen Pregnancy Rates per 1,000 Girls Aged 15-19

STATE RANK	STATE	RATE	STATE RANK	STATE	RATE	STATE RANK	STATE	RATE
1	New Mexico	93	18	Louisiana	70	35	Connecticut	57
2	Nevada	90	19	Colorado	69	36	Oregon	57
3	Arizona	89	20	New Jersey	68	37	Montana	56
4	Texas	88	21	Illinois	67	38	Idaho	55
5	Mississippi	85	22	Kentucky	66	39	Pennsylvania	53
6	Delaware	83	23	Maryland	65	40	Iowa	51
7	Arkansas	80	24	Wyoming	65	41	South Dakota	51
8	Georgia	80	25	Missouri	63	42	Nebraska	50
9	South Carolina	79	26	Indiana	62	43	Massachusetts	49
10	Tennessee	79	27	Ohio	62	44	Utah	47
11	Florida	77	28	Rhode Island	62	45	Wisconsin	47
12	New York	77	29	West Virginia	62	46	North Dakota	45
13	North Carolina	76	30	Alaska	61	47	Maine	43
14	Oklahoma	76	31	Virginia	61	48	Minnesota	43
15	California	75	32	Kansas	60	49	Vermont	40
16	Alabama	73	33	Michigan	60	50	New Hampshire	33
17	Hawaii	71	34	Washington	59			

Source: U.S. TEENAGE PREGNANCIES, BIRTHS AND ABORTIONS: NATIONAL AND STATE TRENDS AND TRENDS BY RACE AND ETHNICITY, GUTTMACHER INSTITUTE 15 (Jan. 2010) available at <http://www.guttmacher.org/sections/index.php?page=reports>.



the purpose of which was to teach students how to properly conduct a breast exam, was found by some Board members to be “embarrassing” and “objectionable.”⁵⁵ Furthermore, as the Texas Freedom Network documented in its report, *Just Say Don’t Know*, the Board approved a health textbook that provides medically inaccurate information with regard to the use of condoms.⁵⁶ Thus, some Board Members have clearly demonstrated that the need to achieve their agenda overrides students’ health and the need to combat teen pregnancy. In addition to undermining the well-being of Texas’ children, individual Board members used their leverage with a textbook publisher to force removal of a picture of a woman carrying a briefcase because the Board felt that the photo undermined the proper role of women.⁵⁷

In addition to abusing its authority to approve

textbooks, the Board has also ignored its statutorily required duty to establish constitutionally permissible TEKS for public school Bible classes. On June 15, 2007, HB 1287 was enacted into law. The law states that public schools may offer an elective course on the Bible. The law states, “[b]efore adopting rules identifying the essential knowledge and skills of a course offered under this section the State Board of Education shall submit the proposed essential knowledge and skills to the attorney general. The attorney general shall review the proposed essential knowledge and skills to ensure that the course complies with ... the United States Constitution ... ”⁵⁸ Unfortunately, the Board chose to ignore this mandate and simply applied the general TEKS for Special Topics in Social Studies or for Independent Study in English.⁵⁹ In doing so, the Board effectively left local school


districts to determine the standards and content for these courses, making it more likely that such classes will be taught in a manner that violates the Establishment Clause rights of students and parents. This process has led to concerns that unconstitutional curricula will pop up across Texas leaving local districts liable to civil liberties lawsuits, simply because the Board refused to comply with its statutory obligation.⁶⁰

Last year, the Board revised Texas' Science TEKS.⁶¹ The Committee charged with reviewing and recommending changes to the curriculum suggested that the requirement that students study the “strengths and weaknesses” of scientific theories be replaced with a requirement that students “analyze and evaluate scientific explanations using empirical evidence.”⁶² While a requirement to study the “strengths and weaknesses” of scientific theories appears, on its face, to encourage serious academic debate, in reality this language was inserted to appease religious ideologues.⁶³ As Kevin Fisher, a past president of the Science Teachers Association of Texas, stated: “[i]t’s an attempt to bring false weaknesses into the classroom in an attempt to get students to reject evolution.”⁶⁴ While ultimately unable to retain the “strengths and weaknesses” language in the Science TEKS, the anti-evolution wing of the Board was able to push through amendments that will serve a similar purpose, including requirements that students critically evaluate, among other well-established scientific principles, the Big Bang theory⁶⁵ and cell formation^{66, 67}. A review of statements made by then-Board Chair Don McLeroy,⁶⁸ and the concerns by scientists⁶⁹ and academics,⁷⁰ makes clear that this language is a continuation of the Board’s attempt to inject religion into public school science classes.

B. GOING FROM BAD TO WORSE—THE BOARD’S CURRENT REVIEW OF THE SOCIAL STUDIES CURRICULUM

As currently constructed, the Social Studies TEKS will continue the Board’s record of undermining the educational future of Texas’ public school students by impeding their preparation for college-level work, both substantively and analytically. This conclusion is echoed in a letter signed by approximately 800⁷¹ college history professors from Texas and around the nation. In this letter, the professors concluded that the proposed TEKS “do not meet student needs.”

The ideologically driven nature of this content was recognized by Texas’ largest public school system, the Houston Independent School District (HISD). In a resolution passed by HISD that criticizes the Board’s proposed Social Studies TEKS, the HISD Board stated that the TEKS



“must reflect accurate historical content, sound scholarship, ... and consist of standards that are balanced, coherent and free from political biases⁷² ... ”

Unfortunately, the Board’s proposed TEKS fails this basic test.

As a review of the TEKS clearly establishes, there are a number of troubling interrelated thematic trends. First, the Board has narrowed history to a specific ideologically based historical narrative throughout the curriculum. Second, the Board pushed the perspective that the government is a neutral actor relating to social issues. These trends, if adopted, will enable the Board, a governmental entity, to transform its subjective views into objective facts. Thus, students will be taught a one-sided narrative and their ability to

develop analytical skills will be inhibited. In the end, both students and the state will suffer for the Board's abuses.

1. Dictating History

Reading the proposed Social Studies TEKS, a specific historical narrative for global and U.S. history becomes clear. In this narrative, the U.S., its allies, and societies historically tied to the U.S. have consistently acted with benevolent intentions nationally and internationally. The historical events and policies that conflict with certain Board members' preconceived notion of the role of government are ignored or minimized. Favored leaders, organizations, and policies are discussed in strictly positive ways, while disliked leaders, organizations, and policies are thoroughly analyzed for their pros and cons. And finally, the impact of social movements and historical events unfavorable to some Board members' ideological views are minimized and/or revised. Whether you agree with this historical framework, the curriculum risks leaving Texas' 4.7 million school children underprepared for college level work that requires a certain base knowledge of history along with the analytical tools gained through a well-rounded educational curriculum.⁷³

The Board's abuse becomes more troubling when looking to the future. As the nation and world become increasingly interconnected, future U.S. political and business leaders will need a comprehensive understanding of our past, the good parts and the bad, as well as the history of nations that are ever shifting from allies to adversaries and back again.⁷⁴ While people can disagree about the need for or reasoning behind discrete historical events, we cannot ignore the event's existence. As Winston Churchill warned, "those that fail to learn from history, are doomed to repeat it." A comprehensive historical education will better enable future leaders to avoid past mistakes.

a. Presenting an Ideologically Driven Historical Narrative

Along with inserting its own conclusions about history into the TEKS, the Board has pushed through a proposal that successfully shifted formative historical events and/or policies off the page. The Board has replaced an accepted academic term for a euphemistic term: "expansion" rather than "imperialism" to describe U.S. actions abroad.⁷⁵ Students of "U.S. History Since 1877" will be required to "explain the significance of the following years as turning points: 1898 (Spanish-American War), 1914-1918 (World War I), 1929 (the Great Depression begins), 1939-1945 (World War II), 1957 (Sputnik launch ignites U.S.-Soviet space race), 1968-1969 (Martin Luther King Jr. assassination and U.S. lands on the moon), 1991 (Cold War ends), 2001 (terrorist attacks on World Trade Center and the Pentagon), and 2008 (election of first black president)."⁷⁶ This timeline omits a number of important events, including the Korean War, the Vietnam War, the Progressive Era, the New Deal, and the Civil Rights Era. While these issues are covered in later requirements, none according to the Review Committee or the Board merit a place among the "turning points" of post 1877 U.S. history. To some, the proposed list makes sense, to others it omits some of the greatest triumphs and tragedies of this period. Especially in light of the need to make the TEKS relevant to students, this requirement highlights the need for substantive experts to oversee the TEKS adoption process.

It is clear that all of this is part of a plan to ensure a particular view of history emerges. During the discussion of the McCarthy Era, students must "describe how McCarthyism, the House Un-American Activities Committee (HUAC), the arms race, and the space race increased Cold War tensions and how the later release of the Venona Papers confirmed suspicions of communist infiltration in U.S. government."⁷⁷ Although this

standard includes a review of Cold War issues, hidden in the text lurks another purpose. By adding the Venona Papers to this requirement, the Board has attempted to, according to one Board member, “vindicate[]” Senator Joseph McCarthy’s un-American actions.⁷⁸

Attempts to vindicate one of the most controversial and divisive American figures of at least the 20th century was only the beginning. The Board amended the TEKS to require students to describe the “leadership” of President Reagan with regard to foreign and domestic policy, whereas the originally proposed requirement asked students to describe Regan’s policies.⁷⁹ Thus, the Board took it upon itself to shift and elevate the focus from Reagan’s policies to that of his “leadership.” Again, while many may agree with the Board’s viewpoint, such claims are contentious.⁸⁰ This serves as an additional example of the need for expert control over the TEKS process. Finally, but by no means exhaustively, students must “understand[] the concept of American exceptionalism[, including] how American values are different and unique from those of other nations.”⁸¹ As with the above requirements, this requirement will spoon-feed the conclusion to students without allowing them to analyze history on their own. This curriculum could also alienate students whose historical outlook differs from the Board’s often narrow interpretation of history, and in doing so could lead Texas’ vastly sub-par high school graduation rate in the wrong direction.

Yet, predetermined conclusions are not a part of all TEKS. When looking into issues or policies that conflict with the stated viewpoints of many Board members, we find variations of some Board members’ approach toward evolution: “strengths and weaknesses.” Students are required to “compare the New Deal policies and its opponents’ approaches to resolving the economic effects of the Great Depression”⁸²

In addition, Students are required to “evaluate the pros and cons of U.S. participation in international organizations and treaties.”⁸³ While the requirement to study an issue from multiple perspectives is a welcome addition to social science curriculum, its use should be deployed in a uniform manner, and not just when the policy at issue conflicts with some Board members’ ideological outlook.

b. Stigmatizing Muslims

Students in World History will be required to “understand[] the development of radical Islamic fundamentalism and the subsequent use of terrorism by some of its adherents[, including] the development and impact of radical Islamic fundamentalism on events in the second half of the 20th century, including Palestinian terrorism and the growth of al Qaeda”⁸⁴ This single requirement, recommended by the Review Committee and modified by the Board, suffers from a number of intellectually dishonest and/or inaccurate claims. Throughout the entire proposed Social Studies TEKS, the only national group specifically linked with “terrorism” is the Palestinians, a subjective claim that uses a loaded term to single out a specific group for criticism.⁸⁵ In addition, this claim inaccurately implies that all Palestinians are Muslim, thus furthering the notion of an implied religious conflict.⁸⁶ Furthermore, the only religion specifically linked with “terrorism” and “fundamentalism” throughout the TEKS is Islam. This requirement singles out one religion for acts and doctrinal beliefs that occur and exist in many of the world’s great religions.⁸⁷ In addition, as with the discussion of the Palestinians, the use of the word “terrorism” in this requirement is subjective.⁸⁸ If adopted, these requirements will project a narrative of conflict between monolithic civilizations. With estimates of the Texas Muslim population ranging from 120,000 to 400,000,⁸⁹ such

“education” could not only exacerbate artificial international divisions, but also misinform our students, make a sizeable portion of our population feel unwelcome, and harm the state’s image as a welcoming international business destination.

c. Deviance and the Criminal Justice System

Students enrolled in Texas’ sociology courses will investigate “deviance” through the lens of the criminal justice system. The Review Committee inserted, and the Board approved, a requirement that students “explain the nature and social function of deviance[, including by] ... interpret[ing] differences in crime and arrest rates by social categories such as ethnicity, gender, socioeconomic status, and age ... and analyz[ing] the criminal justice system in the United States in relation to deviant behavior.”⁹⁰ As numerous studies have shown, African Americans and other minorities in the U.S. face arrest and conviction rates that are vastly disproportionate to their relative proportion of the population and the fairly uniform frequency of criminal behavior across ethnic or racial lines. This disparity is clear when looking at the rate of drug use by race compared with the rate of arrests for drug use by race. In 2008, the U.S. Department of Health and Human Services found that 10.1% of African Americans and 8.2% of whites used illicit drugs.⁹¹ Yet, while the rate of drug use between whites and African Americans is relatively equal, their arrest rates for drug use are vastly disproportionate. While African Americans make up only 11.9% of Texas’ population,⁹² they made up 31% of persons arrested for drug possession, almost three times their percentage of the population.⁹³ At the same time, white persons made up 82.4% of Texas population⁹⁴ and comprised 69% of those arrested for drug possession, a percentage greatly below their percentage of the

population.⁹⁵ And, such disparities do not end at the level of arrest. As the Brennan Center for Justice found: “Racial disparities have been documented at every stage of the criminal justice system. African Americans and other racial and ethnic minorities are more likely to be arrested than white citizens, more likely to be charged once arrested, and more likely to be convicted and imprisoned once charged.”⁹⁶ Thus, by basing their analysis on inherently flawed statistics, students who simply follow the curriculum will be subjected to vastly misleading picture of “deviance” in the U.S. that conforms to stereotypes about drug use and crime in the African American community.

2. Lack of government accountability to the people

Throughout the proposed TEKS, the requirements consistently address the obligations of the people to the state, but fail to address any corresponding state obligation to the people. In fact, the TEKS imply that protecting rights requires minimal government intervention, as the TEKS require students to “understand the roles of limited government and the rule of law in the protection of individual rights.”⁹⁷ On the other hand, students are told to “understand the responsibilities, duties, and obligations of citizenship, such as being well informed about civic affairs, serving in the military, voting, serving on a jury, observing the laws, paying taxes, and serving the public good.”⁹⁸ These requirements paint an incomplete picture of the relationship between the government and the people. From providing Medicare and Social Security to our elderly, to ensuring our national security, to responding to natural and manmade disasters, the government plays a major role in ensuring public safety and the realization of basic rights.

Perhaps most troublesome is the way in which the TEKS cover government actions designed to

achieve equality in fact. When such actions are discussed, the requirements are formulated in a manner that calls the government actions into question. For example, when covering the “economic effects of World War II and the Cold War ...,” students are required to



*identify actions of government and the private sector such as the Great Society, affirmative action, and Title IX to create economic opportunities for citizens and analyze the unintended consequences of each ...*⁹⁹

.....

This requirement fails to include a discussion of the reason for these programs. Any sound analysis of the Great Society, affirmative action, or Title IX must look at the barriers to employment and education that women and people of color face without these policies in effect.¹⁰⁰ Students should be encouraged to analyze these policies critically, but in doing so, they should engage in a full exploration of the societal conditions that necessitated the creation of these policies. Students should also evaluate the pros and cons of whether the policies were effective,

and not solely “the unintended consequence of each.” To negatively frame these policies insinuates that these programs have only had negative results, whereas many historians and analysts would argue that these policies played a critical role in allowing women and people of color equal opportunity to advance in society, as well as enabling our society to better advance as a whole.¹⁰¹

As the above proposed curriculum makes clear, the Board mixed up its understanding of fact versus opinion. When reviewing the Science TEKS last year, some Board members sought to insert language implying serious debate vis-à-vis valid scientific theories, such as evolution, even if no such serious debate existed within the scientific community. And this year, when reviewing the Social Studies TEKS, the Board, in many instances, has proposed language that implies universal agreement on contentious historical issues, ignores or revises historical events and limits the obligation of the government to the people. Instead of formulating a curriculum that furthers the interests of Texas’ school children, the Board has again shown that it is incapable of acting in the best interests of its most important constituents: our children.

IV. ABSENT LEGISLATIVE INTERVENTION, TEXAS' FUTURE IS AT RISK

A. THE FINANCIAL AND SOCIAL COSTS OF STUDENT DROPOUT

The importance of a relevant curriculum to curbing minority high school dropout is well established.¹⁰² As a 2007 report looking at the Latino male dropout crisis found, “[t]he articulation of a history and culture that is familiar and personal to the Latina/o student has, historically, proved to anchor the student in the educational setting.”¹⁰³ In addition to potentially under-preparing high school graduates for college, the curriculum’s narrow and ideologically driven focus could increase Texas’ already unacceptable high school dropout rate. With approximately 4 out of 10 students already not graduating, Texas cannot afford to exacerbate this crisis.

Drop-out rates are correlated to unemployment and low earnings. In a recent Northeastern University report, the authors found that “[s]lightly less than 46 percent of the nation’s young high school dropouts were employed on average during 2008.”¹⁰⁴ This unemployment rate is “22 percentage points below that of high school graduates.”¹⁰⁵ In terms of earnings, this high unemployment rate for dropouts translated to a mean annual earning of just \$8,358 in 2007, versus \$14,600 for high school graduates with no post-secondary schooling and \$24,800 for those with a bachelors degree.¹⁰⁶

Dropping out of high school is a significant risk factor for adult incarceration. In addition to their minimal contribution to the economy, high school dropouts also face a substantially higher rate of institutionalization. As the Northeastern University report found: “Nearly 1 of every 10 young male high school dropouts was institutionalized on a given day in 2006-2007 versus fewer than 1 of 33 high school graduates, 1 of 100 of those out-of-school young men who completed 1-3 years of post-secondary schooling, and only 1 of 500 men who held a bachelor’s

or higher degree.”¹⁰⁷ When factoring in the combination of poor economic contributions for persons not institutionalized coupled with the average incarceration cost of \$49.40 per inmate per day (in 2008) the economic losses add up quickly.¹⁰⁸ In fact, a recent study from the Texas A&M Bush School of Government and Public Service estimated that “[t]he total of the predicted cost [to Texas] of dropouts from the cohort of the senior class of 2012 is between \$6.0 billion and \$10.7 billion” over their lifetimes.¹⁰⁹

The Board’s choice, in the face of Texas’ dropout statistics, to endorse a one-dimensional view of history illustrates its members’ indifference to the challenges Texas public school teachers and administrators face in engaging and retaining at-risk students.

B. IMPACT ON BUSINESS DEVELOPMENT

The Board’s undermining of the public education system not only harms our children, but also the state’s ability to recruit and retain businesses and the viability of our economy. As the state’s economy relies increasingly on globalized industries, the need for Texas businesses to attract a highly educated workforce will increase. Such necessary recruitment of a highly educated workforce will be negatively affected if these potential workers view the Texas public school system as unable to provide their children with a high quality educational foundation. This, in turn, could thwart Texas’ efforts to attract new businesses, as such businesses will be concerned if the public education system harms their efforts to attract and retain top-notch employees. Such concerns over the quality of public education in Texas have already come to light, and this is before the added concerns that will be realized if the Board’s proposed Social Studies TEKS are adopted. As *The New York Times* reported during the Science TEKS debate, “[b]usiness leaders ... [have]

said Texas would have trouble attracting highly educated workers and their families if the state's science programs were seen as a laughingstock among biologists.”¹¹⁰ Unfortunately for the state's economy, the Board succeeded in undermining the science curriculum. With the Board again in the global spotlight for the wrong reasons, it is logical to assume that Texas' business climate could suffer because the Board insists on placing personal priorities above the need to construct a second-to-none public education system.

Thus, by providing Texas' 4.7 million school-children with an insufficient education, Board members are setting the state up for a less-than-promising economic future. As Dr. Jason L. Saving, a senior economist at the Federal Reserve Bank of Dallas, wrote,

“[e]ducation improves human capital and makes people more productive, which pays dividends in the form of higher gross domestic product (GDP).”¹¹¹

C. PAST ATTEMPTS BY THE TEXAS LEGISLATURE TO STOP BOARD ABUSE HAVE FAILED

As this report makes clear, the problems with the Board are nothing new. And neither are attempts to fix these problems. Prior to 1995, the Board enjoyed both the unchecked power to establish the TEKS, as well as the unchecked power to approve or deny proposed public school textbooks. But, after the Board's abuse of their textbook approval power became too much for the Legislature, lawmakers passed Senate Bill 1.¹¹² Since 1995, the Board's power to reject textbooks has been limited to three narrow categories. To be rejected, a textbook must:

- » Fail to meet Board approved physical specifications;
- » Contain material covering less than half of the elements of the TEKS of the subject and grade level in both the student and teacher version of the textbook; and
- » Contain factual errors.¹¹³

The goal of this legislation was to rein in the Board's consistent abuse of its authority by rejecting proposed textbooks simply because the content conflicted with members' personal beliefs. But this fix with regard to the textbooks approval process is far from perfect, as Board members have simply begun to frame ideological disagreements in terms of “factual” disagreements.¹¹⁴

While the Board members' abuse of the textbook approval process has been addressed on paper, and partially in reality, Board members continue to flaunt their unchecked power to construct TEKS as they see fit. Fortunately, a number of legislators have recognized this ongoing threat. During the 2009 Legislative Session, a number of bills were introduced to remedy the problem. These bills included proposals to:

- » Transfer the authority for textbooks adoptions and curriculum approval to the TEA;
- » Transfer the authority for adopting curriculum standards and textbooks to the Commissioner; and
- » Transfer the authority for adopting textbooks and approving curriculum standards to a new Legislative Education Board.¹¹⁵

The start of the 82nd Legislative Session is just few months away. The Texas Legislature must complete the reforms it began back in 1995. It is time for Texas to reverse the nation's image of the state as an educational wasteland and reclaim its proper place as the model for what a superior public education system should look like.

V. RECOMMENDATIONS

“The curriculum of almost five million school children shouldn’t be decided on the political beliefs of eight people on the State Board of Education. We must develop a system that takes the politics out of the curriculum setting process and bases the education of students on best thinking of our best teachers and scholars, not the political muscle of a small group of people.”¹¹⁶

— RITA HAECKER, PRESIDENT,
TEXAS STATE TEACHERS ASSOCIATION

A. THE BOARD SHOULD IMMEDIATELY STOP THE CURRENT SOCIAL STUDIES TEKS REVIEW AND START OVER WITH A COMMITMENT TO PRIORITIZE EDUCATION OVER IDEOLOGY

B. THE TEXAS LEGISLATURE SHOULD INTERVENE DURING THE FORTHCOMING 82ND LEGISLATIVE SESSION TO ESTABLISH STATUTORY PARAMETERS ON THE BOARD’S AUTHORITY

1. Under current law, persons charged with the development and adoption of TEKS are not required to possess any academic or teaching qualifications. To remedy this deficiency, the Legislature must create minimum qualifications for all persons involved in determining the substance of the TEKS. Such minimum qualifications could include:

- a. A doctorate in a relevant field; or
- b. A certified teacher with ten plus years of relevant public school teaching experience.

2. As this report clarifies, the Board has abused its power to develop and adopt the TEKS. This abuse necessitates that the Legislature act to remove the Board’s authority over the development and adoption of the TEKS. We recommend that the Legislature take up one of the following three options:

- a. Limit the Board’s authority to only those duties required by the Texas Constitution.

Create a new body charged with the development and adoption of the TEKS and their related concerns including textbook adoption and assessment standards.

- b. Amend the Board’s role in the development and adoption of the TEKS, and its related concerns including textbook adoption and assessment standards, to include authority over non-substantive matters only. These matters could include:

- i. Ensuring that persons charged with the development and adoption of the TEKS have the resources necessary to carry out their function; or
- ii. Ensuring that textbooks meet minimum physical requirements.

- c. Limit the Board’s authority over the development and adoption of the TEKS, and its related concerns including textbook adoption and assessment standards, to providing non-binding recommendations only. Persons charged with the substantive development and adoption of the TEKS must retain complete authority over the TEKS.

3. The appointment process for all persons involved in the substantive development and adoption of the TEKS must include a system of checks and balances. For instance:

- a. The Board may nominate persons to develop and adopt the TEKS but all nominees must first receive the consent of a special committee of the Legislature; or

b. The Commissioners for Education and Higher Education may nominate persons to develop and adopt the TEKS but the House Public Education and Senate Education Committees must approve all appointees.

VI. ENDNOTES

1. T.X. Const. art 7, §1.
2. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).
3. TEX. EDUC. CODE §4.001(a).
4. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).
5. T.X. Const. art 7, §1.
6. WILLIAM SCHWEKE, SMART MONEY: EDUCATION AND ECONOMIC DEVELOPMENT (2004); see also Jason L. Saving, Keys to Economic Growth: What Drives Texas?, SOUTHWEST ECONOMY, First Quarter 2009, available at <http://www.dallasfed.org/research/swe/2009/swe0901c.cfm> (last visited on Apr. 22, 2010).
7. Forbes Magazine lists education as a top factor in determining its annual list of the “The Best Places For Business And Careers.” Kurt Badenhausen, The Best Places For Business And Careers, FORBES, Apr. 14, 2010 available at <http://www.forbes.com/2010/04/13/forbes-best-places-for-business-washington-best-places-for-business.html>.
8. Kurt Badenhausen, The Best States For Business, FORBES, Oct. 23, 2009 available at http://www.forbes.com/2009/09/23/best-states-for-business-beltway-best-states_table.html.
9. Texas Education Agency, SBOE History and Duties, available at <http://www.tea.state.tx.us/index4.aspx?id=4214> (last visited April 19, 2010).
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11. See, e.g. Russell Shorto, How Christian Were the Founders? NEW YORK TIMES, February 11, 2010 <http://www.nytimes.com/2010/02/14/magazine/14texbooks-t.html>.
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13. LEGISLATIVE BUDGET BOARD, 2010 TEXAS FACT BOOK 19 (2010) available at www.lbb.state.tx.us/Fact_Book/Texas_FactBook_2010.pdf.
14. Texas budget shortfall predicted to be \$11B, ASSOCIATED PRESS, Mar. 8, 2010 available at <http://www.reporternews.com/news/2010/mar/08/budget-shortfall-predicted-to-be-11b/>.
15. Rita Haecker, President, Texas State Teachers Association, Statement to the Mexican American Legislative Caucus (Apr. 28, 2010) available at <http://www.tsta.org/news/current/#Haecker>.
16. Id.
17. TEX. EDUC. CODE §28.002(a).
18. Id. §28.002(c).
19. Mariah Blake, Revisionaries: How a group of Texas conservatives is rewriting your kids’ textbooks, WASH. MONTHLY, Jan./Feb. 2010, available at <http://www.washingtonmonthly.com/features/2010/1001.blake.html>.
20. Id.
21. Shorto, supra note 11.
22. T.X. Const. art 7, §§3(b)&5(f)
23. Id. §8.
24. Id. §7.101.
25. Id. §7.104(b).
26. Id. §7.104(c).

27. Id. §7.106.
28. Id. §7.107(a).
29. Id. §7.107(b).
30. Id. §7.102(c)(1).
31. Id. §7.102(c)(4),(5),(9),(11),(12).
32. Id. §28.002(c).
33. Id. §28.001.
34. Id. §28.014(a).
35. Under the Education Code, the Texas Commissioners of Education and Higher Education are charged with forming Vertical Teams of public school and higher education faculty to “ensure that students are able to perform college-level course work at institutions of higher education.” See, TEX. EDUC. CODE §28.008(a). In doing so, the Vertical Teams evaluate the TEKS and determine if they are suitable to prepare students to succeed in college level coursework, and recommend how TEKS standards could be amended to meet this goal. See, Id. §28.008(b)(2)(3). In addition, the Vertical Teams are tasked with incorporating college readiness standards, which have been approved by the Commissioner for Education and the Texas Higher Education Coordinating Board, into the TEKS. See, Id. §28.008(d). Furthermore, beginning with the 2008-2009 school year, the Board is charged with incorporating college readiness standards into all foundation curriculum standards. See, Id. §28.008(d-1). Unfortunately, the Board has the discretion to ignore Vertical Team recommendations. See, Id. §28.008(e) (“Notwithstanding any other provision of this section, the State Board of Education retains its authority ... concerning the required curriculum.”).
36. Id. §28.002(a)(2)(E).
37. Id. §28.002(h).
38. STATE BOARD OF EDUCATION OPERATING RULES §5.2(a)&(c)(1)(2) (Amended Nov. 20, 2009).
39. Texas State Board of Education, Process for Review and Revision of Texas Essential Knowledge and Skills (TEKS), November 2009 (approved on November 20, 2009).
40. Id.
41. Id.
42. Id.
43. Id.
44. STATE BOARD OF EDUCATION OPERATING RULES §6.1(a) (Amended Nov. 20, 2009) & TEX. EDUC. CODE §28.002(c).
45. Texas State Board of Education, Process for Review and Revision of Texas Essential Knowledge and Skills (TEKS), November 2009 (approved on November 20, 2009).
46. Id.
47. Id.
48. Id.
49. Rev. Peter Marshall, whose “life and ministry is dedicated to helping to restore America to its Bible-based foundations.” See, Peter Marshall Ministries, <http://petermarshallministries.com> (last visited on Apr. 20, 2010). When interviewed about his role as an Expert, he was quite straightforward regarding his concern with the current Social Studies curriculum. Rev. Marshall stated that “[t]he guidelines in Texas were seriously deficient in bringing out the role of the Christian faith in the founding of America.” See, e.g., Shorto, *supra* note 11. In the same interview, Rev. Marshall “proposed

that children be taught that the separation-of-powers notion is ‘rooted in the Founding Fathers’ clear understanding of the sinfulness of man.’” See, e.g., Shorto, *supra* note 11. See also David Barton, the Founder and President of Wallbuilders, an organization dedicated to “educating the nation concerning the Godly foundation of our country ...” See, Wallbuilders, Overview, <http://www.wallbuilders.com/ABTOverview.asp> (last visited on Apr. 20, 2010). In his first review of the proposed Social Studies TEKS, Mr. Barton wrote that “[t]he principles set forth [in the Declaration of Independence] and subsequently secured in the Constitution and Bill of Rights include: 1. There is a fixed moral law derived from God and nature; 2. There is a Creator; 3. The Creator gives to man certain unalienable rights; 4. Government exists primarily to protect God-given rights to every individual; 5. Below God-given rights and moral law, government is directed by the consent of the governed.” See, David Barton, President, WallBuilders, Review of First Draft Social Studies TEKS, Social Studies experts, available at <http://www.tea.state.tx.us/index2.aspx?id=6184>. Mr. Barton’s Expert recommendations continued, “[s]tudents must also understand the Framers’ very explicit (and very frequent) definition of inalienable rights as being those rights given by God to every individual ...” See, *Id.*

50. Texas State Board of Education, Process for Review and Revision of Texas Essential Knowledge and Skills (TEKS), November 2009 (approved on November 20, 2009).

51. TEX. EDUC. CODE §113.18(b)(9)(D) (color coded version).

52. Texas State Board of Education, Committee of the Full Board, Report of the State Board of Education, Jan. 15, 2010, available at http://ritter.tea.state.tx.us/sboe/minutes_all/2010/january/cofb_01_15_10.pdf (last visited on Apr. 21, 2010).

53. Mavis Knight, Member, Texas State Board of Education, TEA Committee of the Full Board, Mar. 10, 2010, available at http://www.texasadmin.com/cgi-bin/agenda.cgi?location=tea&savefile=TEA_FB031010.

54. Shorto, *supra* note 11; see also TEXAS FREEDOM NETWORK, THE STATE BOARD OF EDUCATION: DRAGGING TEXAS SCHOOLS INTO THE CULTURE WARS 22 (2008), available at <http://www.tfn.org/site/PageServer?pagename=rrreportarchive#SORR2008>.

55. Texas Freedom Network, *Id.* at 32-35; see also Evan Smith, The Texas Curriculum Massacre, NEWSWEEK, Apr 16, 2010, available at <http://www.newsweek.com/id/236585>.

56. TEXAS FREEDOM NETWORK, JUST SAY DON’T KNOW: SEXUALITY EDUCATION IN TEXAS PUBLIC SCHOOLS 9 (2009), available at <http://www.tfn.org/site/PageServer?pagename=SexEdReportIndexPage>.

57. Texas Freedom Network, *supra* note 54, at 35; see also Kris Axtman, Texas wrangles over bias in school textbooks, THE CHRISTIAN SCIENCE MONITOR, July 22, 2002 available at <http://www.csmonitor.com/2002/0722/p03s01-ussc.html>.

58. TEX. EDUC. CODE §28.011(e).

59. 19 TEX. ADMIN. CODE §74.36(d).

60. Terrence Stutz, Texas State Board of Education approves Bible course for high schools, THE DALLAS MORNING NEWS, July 19, 2008, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/071908dntexbibleclass.6a4f4f07.html>.

61. 19 TEX. ADMIN. CODE §112.

62. James C. McKinley, In Texas, a Line in the Curriculum Revives Evolution Debate, NY TIMES, Jan. 21, 2009, available at http://www.nytimes.com/2009/01/22/education/22texas.html?_r=2&scp=1&sq=Texas%20State%20Board%20of%20Education&st=cse.

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65. 19 TEX. ADMIN. CODE §112.36 (c)(4)(A).
66. Id. §112.34 (c)(7)(G).
67. Michael Brick, Defeat and Some Success for Texas Evolution Foes, NY TIMES, Mar. 26, 2009, available at <http://www.nytimes.com/2009/03/27/education/27texas.html>.
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72. Houston Independent School District, Resolution, To Encourage the State Board of Education to Adopt Fair and Accurate Social Studies TEKS, Apr. 22, 2010.
73. An Open Letter From Historians to the Texas State Board of Education, Apr. 12, 2010, available at <http://sensiblehistory.blogspot.com/p/letter.html> (last visited on Apr. 21, 2010).
74. Peter N. Stearns, Why Study History?, AMERICAN HISTORICAL ASSOCIATION, available at <http://www.historians.org/pubs/free/whystudyhistory.htm> (last visited on Apr. 29, 2010).
75. For e.g., see 19 TEX. ADMIN. CODE § 113.41(c)(4)(A)(B).
76. 19 TEX. ADMIN. CODE §113.41(c)(2)(D).
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