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**NCAC PARTICIPATING ORGANIZATIONS**

Actors' Equity Association  
American Association of School Administrators  
American Association of University Professors  
American Association of University Women  
American Booksellers Foundation for Free Expression  
American Civil Liberties Union  
American Ethical Union  
American Federation of Teachers  
American Jewish Committee  
American Library Association  
American Literary Translators Association  
American Orthopsychiatric Association  
American Society of Journalists & Authors  
Americans United for Separation of Church & State  
Association of American Publishers  
Authors Guild  
Catholics for Choice  
Children's Literature Association  
College Art Association  
Comic Book Legal Defense Fund  
The Creative Coalition  
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PEN American Center  
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Project Censored  
SAG-AFTRA  
Sexuality Information & Education Council of the U.S.  
Society of Children's Book Writers & Illustrators  
Student Press Law Center  
Union for Reform Judaism  
Union of Democratic Intellectuals  
Unitarian Universalist Association  
United Church of Christ  
Office of Communication  
United Methodist Church  
United Methodist Communications  
Women's American ORT  
Woodhull Sexual Freedom Alliance  
Writers Guild of America, East  
Writers Guild of America, West

**BY ELECTRONIC MAIL**

October 1, 2014

Ken Witt, President  
Members of the Board of Education  
Jefferson County Public Schools  
1829 Denver W Dr.  
Lakewood, CO 80401

Dear President Witt and Members of the Board:

As organizations concerned with the freedom to read, the integrity of the public education system, and the application of First Amendment law and principles in public institutions, we have been following the controversy in Jefferson County over proposals for board review of the curriculum framework for Advanced Placement U. S. History. (See <http://media.collegeboard.com/digitalServices/pdf/ap/ap-course-exam-descriptions/ap-us-history-course-and-exam-description.pdf>.) We write in the hope that we can assist you in understanding certain legal and policy issues that may be implicated by such proposals.

We are particularly concerned about two aspects of the current proposals. The first has to do with identifying materials in the revised framework that “may reasonably be deemed” to be “objectionable.” The second is the proposal to consider whether instructional materials “promote citizenship, patriotism, essentials and benefits of the free enterprise system, respect for authority and respect for individual rights” and whether they “encourage or condone civil disorder, social strife or disregard of the law.”

Both proposals are deeply problematic. First, highlighting content that is “objectionable” plainly invites the exclusion of such material; the term itself is inherently vague and subjective and would predictably result in complaints based on personal, political, moral, or religious grounds. Terms like citizenship and patriotism are similarly subject to multiple interpretations, as evidenced, for example, by the public debate about whether civil disobedience can be an act of patriotism. Indeed, it would be nearly impossible to teach US history without reference to “civil disorder,” which is appropriately discussed in connection with the American revolution, the labor movement, civil rights and gay rights activism, US entry into World War I, voting rights protests, public demonstrations against the war in Vietnam, opposition to abortion, government surveillance, and countless other significant events in US history. Telling schools that they cannot use materials that “encourage or condone civil disorder” in addressing these and other historical events is tantamount to telling them to abandon the teaching of history.

As public responses to the pending board proposals indicate, Jefferson County is home to a diversity of opinions on political, moral and religious questions. The board's attempt to monitor school curricula to promote certain viewpoints means privileging the beliefs of some individuals over others. It is precisely this form of viewpoint discrimination by government that our constitutional system is designed to prevent.

The First Amendment "protects the citizen against the State itself and all of its creatures — Boards of Education not excepted." *West Virginia Board of Education v. Barnette* (1943). As a result, school officials are bound by a constitutional duty not to suppress unpopular, controversial, or even "objectionable" ideas. The "bedrock principle underlying the First Amendment ... is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson* (1989). See also *Board of Education, Island Trees Union Free School District No. 26 v. Pico* (1982) ("local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books ...")

This principle applies equally to the expression of ideas that may be deemed "unpatriotic." The seminal case limiting the power of school officials to compel expressions of patriotism is *West Virginia Board of Education v. Barnette*, in which the Supreme Court struck down a requirement that students salute the flag and recite the pledge of allegiance, holding that

...the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

Whether couched in terms of objectionable content or efforts to instill patriotism, the Constitution prohibits the "effort to coerce uniformity of sentiment ... Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing." *Id.*

Educational considerations likewise require official neutrality in matters of politics and belief, since the effort "to eliminate everything that is objectionable ... will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result." *McCollum v. Board of Education* (1948) (Jackson, J., concurring.)

Thus, the obligation of public schools is to make decisions based on educational grounds, rather than the views of any individual or group, and to "administer school curricula responsive to the overall educational needs of the community and its children." *Leebaert v. Harrington* (2d Cir. 2003). In fact, removal of educationally valuable material in response to a complaint from some that it is objectionable, unpatriotic or disrespectful may itself violate the rights of others. See *Monteiro v. Tempe Union High School District* (9th Cir. 1998) (recognizing the First Amendment right of students to read books selected for their "legitimate educational value" even if offensive to some parents and students), *Pratt v. Independent School Dist. No. 831* (8th Cir. 1982) and *Case v. Unified School Dist. No. 233* (D. Kan. 1995) (First Amendment violated by removing materials because of hostility to content and message).

There can be little doubt about the educational value of the curriculum framework under discussion. It was developed by eminent historians and experienced educators to "help students acquire a strong command of historical facts and then to be able to understand, formulate, and critique different interpretations of the past and of its meaning for today. Studies of college faculty and department chairs, AP teachers, and experts in history teaching and assessment have confirmed that our approach meets the rigors of college-level history while also being balanced, teachable, and engaging for students." This will also insure that students will "continue to be rewarded with college credit and placement."

<http://www.edweek.org/media/letter-us-history.pdf>.

The American Historical Association, in a statement issued on August 20, 2014, affirms that the curriculum framework will enable students to “understand and learn from key events [and help schools] create actively thinking and engaged citizens” by offering “guidance for teachers on how to connect just about any historical content to the skills that students will need for the AP exam, for college, and for citizenship. The curriculum content remains the province of the teacher, the school district, and the state.” <http://historians.org/Documents/AHA%20Letters/APUSH-Framework.pdf>.

Similarly, the National Council for the Social Studies emphasizes that the “design of a new history course framework was led by those who know the subject — and the students — best: AP U.S. history teachers and college-level U.S. history professors,” and that it provides “teachers with an opportunity to focus on the things that matter most for college and career readiness. This is a framework, not a full curriculum, so it allows teachers to design their course in a way that meets local and state standards and priorities.” <http://tribtalk.org/2014/09/01/putting-politics-ahead-of-facts-on-ap-us-history/>.

Students are entitled to an education that will provide them with a solid foundation in the particular discipline, as broadly understood by educators and experts in relevant fields, and as taught to students nationwide. Failure to expose students to the ideas and instructional materials widely available to their peers around the country will unfairly disadvantage them in college and beyond.

Decisions about instructional materials should be based on sound educational grounds, not because some people do or do not agree with the message, ideas, or content of a particular book or lesson. We strongly urge you to adopt policies and procedures that focus, not on molding patriots or citizens in a particular image, but on educating students to be informed, knowledgeable, thoughtful, and engaged participants in their communities.

If you have any questions, or if we can be of assistance in resolving this matter, please do not hesitate to contact us.

Sincerely,

Joan Bertin, Executive Director  
National Coalition Against Censorship

Susan Griffin, Executive Director  
National Council for the Social Studies

Millie Davis, Senior Developer  
Affiliate Groups and Public Outreach  
National Council of Teachers of English

Charles Brownstein, Executive Director  
Comic Book Legal Defense Fund

Nathan Woodliff-Stanley, Executive Director  
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Susanna Reich, Chair  
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PEN American Center

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