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**TO:** Conference Committee Members

**FROM:** American Civil Liberties Union of North Carolina

**RE:** Constitutionality of SB1078

**DATE:** July 5, 1995

### Introduction

SB1078 would authorize local school boards to post, in designated classrooms or places of information, religious and philosophic "tenets, principles, or teachings" to educate students about "moral, ethical, and virtuous principles." The bill suggests as examples of posted material the Ten Commandments and the Torah, as well as the tenets or basic principles of the Christian, Jewish, Islamic, Hindu, Buddhist, or other major religions and philosophies. The materials must include principles from several religions and philosophies.

### Why SB1078 is Unconstitutional

The First Amendment prohibits laws "respecting an establishment of religion." Courts analyze any use of religious material in school for compatibility with the Establishment Clause under a three part test; a statute (1) must have a secular legislative purpose, (2) its primary effect must neither advance nor inhibit religion, and (3) the statute must not create an excessive entanglement between government and religion. Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971). *SB1078 fails all three parts of this test and constitutes a direct violation of the Establishment Clause.*

***SB1078 would not create a secular program of education.*** "[I]t might well be said," the Supreme Court maintains "that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization." Therefore, the study of religion is constitutionally permissible as part of a "secular program of education." Abington School Dist. v. Schempp, 374 U.S. 203, 225 (1962). Yet, the Supreme Court also concludes that the "[p]osting of religious texts on the wall serves no such educational function." Stone v. Graham, 449 U.S. 39, 42 (1980). Addressing the posting of the Ten Commandments on public school walls, the court stated that "[i]f the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, and perhaps to venerate and obey, the Commandments. . . [This] is not a permissible state objective under the Establishment Clause." *Id.* As its professed secular purpose, SB1078 would direct North Carolina children to read and learn ethics and morality from state selected religious texts. The state simply cannot do this.

OVER



**SB1078 would strip the state of neutrality towards religion.** Under the Constitution, government must be *neutral* concerning religious matters - while protecting all religious belief, government may not prefer one religion over another religion or religious over "non-religious" belief. Although SB1078 does not favor one "major" religion over another, the principle of neutrality is violated here by a bill which would place government approval on particular religious views or practices. Although there may be a "universal morality" which can be obtained from the scriptures of several religions, it is not the government's role to "undertake that task for itself." Lee v. Weisman, 112 S.Ct. 2649, 2656 (1992). "The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." *Id.*

**SB1078 would involve the state excessively in religious matters.** Impermissible intent and advancement of religion aside, SB1078 would involve the local school boards in religious decision-making over which officials will find they would rather not have responsibility. SB1078 raises many troubling questions without offering guidance. For example, what is a "major" religion? What is a "religious" text and what is a "philosophic" text? Which selections from religious texts should a local school board select for posting? What text adequately conveys morality and ethics without asking the reader to subscribe to the religious belief behind the teaching? SB1078 raises the questions that the Establishment Clause prohibits the State from addressing. Matters of religious guidance were meant to be left to the church of *each individual's own choosing*.

**Adding philosophic texts to religious materials will not make SB1078 constitutional.** The U.S. Supreme Court has only *once* held a religious display constitutional because secular components were added, where the court addressed public Christmas displays which include nativity scenes. In Lynch v. Donnelly, 465 U.S. 668 (1984), the Court clearly distinguished such displays from the use of religious materials proposed in SB1078. First, the purpose for the annual Christmas display was "not promotion of the religious content of the [nativity scene] but celebration of the public holiday through its traditional symbols." *Id.* at 691 (O'Connor concurring). By contrast, SB1078 directly seeks to promote religious content by posting state selected excerpts from "major" religious texts. Second, the court found that the nativity scene was constitutional only "in the context of the Christmas season." *Id.* at 679. Daily viewing of religious texts is a much greater imposition of religion on young children. Furthermore, the Supreme Court recognizes that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary schools." Lee v. Weisman, 112 S.Ct. 2649, 2658 (1992).

### **The Conclusion: Vote Down SB1078.**

As shown, not only will passage of SB1078 guarantee a plethora of litigation, but the chances of SB1078's survival in the courts is minimal at best. The bill clearly violates the Establishment Clause. More importantly, any implementation of SB1078 by local school boards would not give religion the respect it deserves. "[R]eligion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." Engel v. Vitale, 370 U.S. 421, 432 (1961). Prevent costly litigation and maintain respect for religious liberty by rejecting SB1078.