



April 11, 2016

The Honorable Bill Haslam  
Governor of Tennessee  
Office of Governor Bill Haslam  
1st Floor, State Capitol  
Nashville, TN 37243

Dear Governor Haslam,

I am writing on behalf of thousands of American Civil Liberties Union supporters across the state to urge you to veto SB 1108/HB 615, the measure that would make the Holy Bible the official book of the state of Tennessee. As you know, opposition to this legislation has come from Christians and non-Christians alike, as well as from legislators from across the political spectrum, garnering national media attention. State symbols should bring all Tennesseans together—not cause controversy and division, or offend people's core religious beliefs.

**This legislation plainly violates both the Establishment Clause of the First Amendment of the U.S. Constitution and Article I, § 3 of the Tennessee Constitution, which make it clear that government cannot favor one religion over another.**

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion." The United States Supreme Court has long interpreted this to mean that the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion."<sup>1</sup> In other words, the government cannot favor one religion over another, nor can it favor religion over non-religion. If the government endorses one religion over another, this principle of neutrality may be violated.<sup>2</sup>

In the 1971 case of *Lemon v. Kurtzman*, the U.S. Supreme Court established a three-prong test for determining whether government involvement in religion is constitutional. The *Lemon* test says that a statute "must have a secular legislative purpose," that "its principal or primary effect must be one that neither advances nor inhibits religion," and that it must not "foster an excessive government entanglement with religion."<sup>3</sup> SB 1108/HB 615 fails the *Lemon* test.

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<sup>1</sup> *Everson v. Board of Ed. Of Ewing*, 330 U.S. 1, 15-16 (1947).

<sup>2</sup> *Lynch v. Donnelly*, 465 U.S. 668, 687-88 (1984) (O'Connor, J., concurring).

<sup>3</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971).

The purpose prong of the *Lemon* test asks whether the government's actual goal with a given activity is to endorse religion. The purpose test requires not only that government activity have a secular purpose, but that, to the eye of an "objective observer," the secular purpose be primary, serious and plausible, and its articulation sincere.<sup>4</sup> The intent of the purpose prong is to keep government neutral with regards to religion, and to stop it from advancing a specific point of view about religion.

The effect prong of the *Lemon* test is also intended to keep government neutral with regards to religion. This test prohibits government actions from effectively communicating a message of government endorsement of religion, whether such an effect is intentional or not, and whether it is a real effect or only in the public perception.<sup>5</sup>

SB 1108/HB 615 is unconstitutional, failing both the purpose test and the effect test.

The U.S. Supreme Court, in *Stone v. Graham*, struck down displays of the Ten Commandments in public schools because they are "undeniably a sacred text in the Jewish and Christian faiths," thus violating the First Amendment's prohibition of government establishment of religion.<sup>6</sup> Though the government articulated a secular, general educational purpose for posting the Ten Commandments in *Stone*, the Court found that the Ten Commandments' importance as "an instrument of religion" could lead to the presumption that their display was intended to promote religion.<sup>7</sup>

The Holy Bible contains texts sacred to adherents of Judaism and Christianity—as many legislators have themselves proclaimed during committee and floor debates on this bill. Items that are designated as state symbols "inherently carry the imprimatur and endorsement of the government."<sup>8</sup> Identifying the Holy Bible as the official state book of Tennessee would indicate to any impartial, reasonable observer that the state of Tennessee has an underlying religious objective in its selection of the state book, despite legislative efforts to claim otherwise. The designation of the Holy Bible in particular reveals a purpose or effect of promoting a particular religion. The Holy Bible indicates a particular set of texts considered canonical to certain Christian churches. Catholicism and the Greek Orthodox Church, among other denominations of Christianity, include different books in their holy scriptures. Singling out a particular set of religious texts within Christianity has the effect of not only endorsing Christianity generally, but in proclaiming particular Christian dominations as preferred by the state.

Article I § 3 of the Tennessee Constitution is even stronger than the Establishment Clause in its protection of religious freedom, stating that "no preference shall ever be given, by law, to any religious establishment or mode of worship" (emphasis added). SB 1108/HB 615 fails to pass the *Lemon* test and it is even less able to meet the standard of government neutrality toward religion articulated in Article I § 3 of the Tennessee Constitution.

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<sup>4</sup> *McCreary County v. ACLU*, 545 U.S. 844, 862, 864 (2005).

<sup>5</sup> *Lynch v. Donnelly*, 465 U.S. 668, 687-88, 690 (1984) (O'Connor, J., concurring).

<sup>6</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>7</sup> *Id.*, at 41, n. 3.

<sup>8</sup> Tennessee Attorney General Herbert H. Slatery III, Opinion No. 15-34, "Constitutionality of Legislation Designating The Holy Bible as the Official State Book." April 13, 2015.

The ACLU has long defended individuals' right to practice religion, if they so choose, and to freely express their religious beliefs. But the First Amendment and the Tennessee Constitution make it abundantly clear that government cannot favor one religion over another.

Religion flourishes when it is left in the hands of families and faith communities, not subject to government overreach. Please veto SB 1108/HB 615.

Thank you for supporting religious freedom for all Tennesseans.

Sincerely,

A handwritten signature in blue ink that reads "Hedy Weinberg". The signature is written in a cursive, flowing style.

Hedy Weinberg  
Executive Director