

FILED

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U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY SW  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

AMANDA MORENO, et al.

v.

CASE NO. MO-07-CV-039

ECTOR COUNTY INDEPENDENT SCHOOL  
DISTRICT; ECTOR COUNTY  
INDEPENDENT SCHOOL DISTRICT  
BOARD OF TRUSTEES, et al.

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**DEFENDANTS' ORIGINAL ANSWER**

COME NOW Defendants Ector County Independent School District ("ECISD"), Ector County Independent School District Board of Trustees, Ray Beaty, Renda Berryhill, L. V. Foreman III, Carol Gregg, Randy Rives, Donna C. Smith and Doyle W. Woodall, in their official capacities as members of the Ector County Independent School District Board of Trustees; and Wendell Sollis, in his official capacity as Superintendent of Schools for the Ector County Independent School District (all of said parties hereinafter "Defendants") and file this their Original Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint"). With respect to the numbered paragraphs of the Complaint, Defendants respond as follows:

1. With respect to the allegations of Paragraph 1 of the Complaint, Defendants admit that the United States Supreme Court has declared that public schools may constitutionally offer courses about the Bible "when presented objectively as part of a secular program of education." *School Dist. Of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963). In that regard, the ECISD has adopted a policy that allows for the instruction of students "in the study of comparative religion or the history of religion and its relationship to the advancement of civilization" and in

“the study of the Bible or of religion for its literary and historic qualities” when the course is “presented objectively as part of a secular program of education” consistent with the First Amendment. In keeping with that policy and the authorization of the U. S. Supreme Court and relevant case law, Defendants admit that the ECISD is now offering and teaching in Odessa High School and Permian High School an elective course of instruction on the Bible (the “Bible Course”). Defendants deny the remaining allegations of Paragraph 1 of the Complaint and deny that Plaintiffs are entitled to declaratory and/or injunctive relief pursuant to 42 U.S.C. §1983.

2. Defendants admit that venue is proper pursuant to 28 U.S.C. § 1391(b), but deny the remaining allegations of Paragraph 2 of the Complaint.

3. With respect to the allegations of Paragraph 3 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

4. With respect to the allegations of Paragraph 4 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

5. With respect to the allegations of Paragraph 5 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

6. With respect to the allegations of Paragraph 6 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

7. With respect to the allegations of Paragraph 7 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

8. With respect to the allegations of Paragraph 8 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

9. With respect to the allegations of Paragraph 9 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

10. With respect to the allegations of Paragraph 10 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of such allegations and, therefore, such allegations are denied as a matter of law.

11. Defendants admit the allegations of Paragraph 11 of the Complaint.

12. Defendants admit the allegations of Paragraph 12 of the Complaint, insofar as the Board does vote on policies for the District, and those policies are in the Board Policy Manual. The Board also approves textbooks and curricula to ensure compliance with educational standards, such as the Texas Essential Knowledge and Skills ("TEKS"), which are tested by the TAKS test. However, any textbook or curricula approved by the Board is subject to the policies in the Board Policy Manual and adopted policy controls. Defendants deny that the Board has a separate legal existence or is subject to suit.

13. Defendants admit the allegations of Paragraph 13 of the Complaint, but deny that the individual Defendants are subject to suit in their official capacities.

14. Defendants admit the allegations of Paragraph 14 of the Complaint, but deny that Defendant Sollis is subject to suit in his official capacity.

15. With respect to the allegations of Paragraph 15 of the Complaint, Defendants admit only that the Ector County School Board voted on or about December 20, 2005 to approve a Bible course curriculum created by a private organization called the National Council on Bible Curriculum in Public Schools ("NCBCPS"). Defendants specifically deny that the NCBCPS curriculum is the sole resource for the Bible Course, and Defendants deny that the entirety of the NCBCPS curriculum has been taught as a part of the Bible Course as offered by ECISD public schools. Since the NCBCPS Curriculum is a teacher's guide and not a student textbook, Defendants deny that the text of the Curriculum was conveyed in its entirety as part of the Bible Course. Defendants further admit that the ECISD Bible Course was implemented by Defendants in two ECISD high schools during the 2006-2007 school year. Defendants deny the remaining allegations of Paragraph 15 of the Complaint.

16. With regard to the allegations of Paragraph 16 of the Complaint, Defendants admit only that the NCBCPS has published a version of its Bible curriculum entitled "The Bible In History and Literature" (hereafter the "NCBCPS Curriculum") that has been utilized in part by teachers within two high schools of the ECISD as part of the Bible Course. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 16, and the allegations are, therefore, denied as a matter of law.

17. With respect to the allegations of Paragraph 17 of the Complaint, Defendants admit only that a King James translation of the Bible was used as one resource in conjunction with the implementation of the Bible Course, but that other Bibles including the Torah, the New American Standard Bible, and various other translations of and commentaries on the Bible were used as resource materials in connection with the Bible Course. Defendants admit that the NCBCPS Curriculum guide was prepared using the King James Version Bible, but that the Curriculum also expressly states that "school districts are free to use whichever Bible translation they choose, or they may allow each student to use the translation of his or her choice. Sometimes students can benefit from comparing different translations in and out of class." Defendants deny the remaining allegations of Paragraph 17 of the Complaint.

18. With respect to the allegations of Paragraph 18 of the Complaint, Defendants admit only that the NCBCPS did communicate to the ECISD that its curriculum was neutral, academically sound, and constitutionally valid. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 18 of the Complaint, and said allegations are, therefore, denied as a matter of law.

19. With respect to the allegations of Paragraph 19 of the Complaint, Defendants admit only that NCBCPS representatives approached ECISD in 2005 regarding the potential use by the ECISD of the NCBCPS Curriculum as a part of the Bible Course. Defendants deny the remaining allegations of Paragraph 19 of the Complaint.

20. With respect to the allegations of Paragraph 20 of the Complaint, Defendants admit only that on or about March 29, 2005, Mike Johnson, who held himself out as an NCBCPS Board Member and Senior Legal Counsel for the Alliance Defense Fund, appeared at a Board

meeting and spoke in favor of the Board implementing a Bible Course in the ECISD public schools. Defendants further admit that many residents of Ector County presented the Board with a petition supporting adoption of a course teaching the Bible in public schools. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 of the Complaint, and said allegations are, therefore, denied as a matter of law.

21. With respect to the allegations of Paragraph 21 of the Complaint, Defendant admit only that Defendants Foreman and Woodall did speak to representatives of the media concerning the Bible Course. Defendants Foreman and Woodall do not recall the exact words they used in such interviews, and Defendants are, therefore, without knowledge or information sufficient to admit or deny the quotes attributed to them, and the allegations are, therefore, denied as a matter of law.

22. With respect to the allegations of Paragraph 22 of the Complaint, Defendants admit only that the ECISD followed lawful procedures to authorize a new elective Bible Course in the ECISD public schools and that the ECISD authorized the use of the NCBCPS Curriculum as a part of the Bible Course. Defendants deny the remaining allegations of Paragraph 22 of the Complaint.

23. With respect to the allegations of Paragraph 23 of the Complaint, Defendants admit only that Superintendent Sollis recommended, and the Board of Trustees subsequently approved, the creation of a Bible Curriculum Committee (the "Committee") to review materials for potential use in the ECISD Bible Course. Defendants deny the remaining allegations of Paragraph 23 of the Complaint.

24. With respect to the allegations of Paragraph 24 of the Complaint, Defendants admit only that the Committee considered a number of curricular options for the ECISD Bible Course and that after considering the various options and receiving public comment, the Committee ultimately recommended two potential curricula as options for use in the ECISD public schools – the Bible Literacy Project's, *The Bible and Its Influence*, and the NCBCPS Curriculum. Defendants deny the remaining allegations of Paragraph 24 of the Complaint.

25. With respect to the allegations of Paragraph 25 of the Complaint, Defendants admit only that Sollis requested that the Committee make recommendations to the Board of the two best curricular options for the ECISD Bible Course. The Committee recommended both the NCBCPS Curriculum and the Bible Literacy Project curriculum to the Board, and Defendant Sollis recommended that the Board approve the NCBCPS Curriculum. Both curricular were presented to the Board for final vote. Except as expressly admitted above, the other allegations of Paragraph 25 are denied.

26. With respect to the allegations of Paragraph 26 of the Complaint, Defendants admit only that on or about December 20, 2005, the Board voted to approve the use of the NCBCPS Curriculum, by a 4 to 2 vote. Defendants are without knowledge or information to support a belief as to the allegations of what one person purportedly told the Board as reported in Paragraph 26 of the Complaint, and Defendants deny the remaining allegations of Paragraph 26 of the Complaint.

27. With respect to the allegations of Paragraph 27 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint and said allegations are, therefore, denied as a matter of law.

28. With respect to the allegations of Paragraph 28 of the Complaint, Defendants admit that they have offered the Bible Course in two ECISD high schools, Odessa High School and Permian High School, throughout the 2006-2007 school year and that Defendants intend to offer the Bible Course during the 2007-2008 school year at both high schools.

29. With respect to the allegations of Paragraph 29 of the Complaint, Defendants deny that they have denied public access to the Bible Course classes. Parents of students have been invited to attend the Bible Course classes. Defendants admit that the media has not been invited to attend the Bible Course classes because such attendance would be disruptive to the class. Defendants further admit that they have formally complied with all legal requirements to produce materials related to the ECISD Bible Course and they have responded appropriately and legally to all legal Freedom of Information Act record requests pertaining to the Bible Course. Except as expressly admitted, the remaining allegations of Paragraph 29 are denied.

30. Defendants deny the allegations of Paragraph 30 of the Complaint.

31. Defendants deny the allegations of Paragraph 31 of the Complaint.

32. With respect to the allegations of Paragraph 32 of the Complaint, Defendants admit only that in connection with the Bible Course, students are made aware of the contents of the Bible as expressed in various translations and from various viewpoints. Defendants deny that students are instructed in the Bible Course that the Bible's statements are in fact true. Students are taught the content of what the Bible contains, and the Bible Course does not teach the students from a particular Christian or theological perspective. Defendants deny that they specifically used *Hebrew Word Pictures – How Does the Hebrew Alphabet Reveal Prophetic Truths*, by Dr. Frank T. Seekins, as part of the Bible Course. Defendants admit that the NCBCPS



Curriculum references Dr. Seekins' book, along with numerous other books, with the following noted reservation: "The NCBCPS recommends that students and teachers be exposed to these and other works to broaden their perspectives and stimulate discussion and thought, but the NCBCPS does not necessarily endorse or express agreement with these works. This curriculum and all outside materials must be presented objectively as part of the secular program of public education." The remaining allegations of Paragraph 32 of the Complaint are vague and ambiguous as to the entire context in which the alleged quotes or statements were made, and Defendants are without knowledge or information sufficient to form a belief as to such allegations, and such allegations are, therefore, denied as a matter of law.

33. With respect to the allegations of Paragraph 33 of the Complaint, Defendants deny that the Bible Course takes sides in longstanding theological debates, but rather the Bible Course informs the student as to the various sides taken in theological debates. Defendants deny that the Bible Course advances a viewpoint typically associated with Protestantism or that it dismisses the so-called "Apocryphal" (Deuterocanonical) books of the Bible. The Bible Course expressly included review of Catholic versions and interpretations of the Bible and the "Apocryphal" books of the Bible. Defendants deny that the Bible Course characterized Roman Catholic beliefs in the transformation of communion bread and wine as "warped" thinking brought on by "mysticism." Defendants further deny that the NCBCPS Curriculum requires that students use John Fox's *Book of Martyrs* and deny that said book was used as specific resource material in connection with the Bible Course, although a copy of a picture from Fox's *Book of Martyrs* appears in the NCBCPS Curriculum. The remaining allegations of Paragraph 33 are vague and ambiguous as to the entire context in which the alleged quotes or statements were

made, and Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations and said allegations are, therefore, denied as a matter of law.

34. Defendants deny the allegations of Paragraph 34 of the Complaint.

35. With respect to the allegations of Paragraph 35 of the Complaint, Defendants admit only that the King James Version of the Bible is a historical document and that such Bible has been used in the Bible Course, but that other versions of the Bible, including other Protestant and Catholic interpretations, alternative translations, and the Hebrew Bible are also utilized as part of the Bible Course materials. Defendants deny that the Bible Course teaches as literal historic truth the story of creation, the life of Noah and his ark, the lives of Abraham, Sarah, Joseph and Moses, but the Bible Course does inform students what the Bible says about such subjects and characters. With respect to Bible Course exams, Defendants admit only that students in the Bible Course are sometimes asked to state as true or false what the Bible's text purports to say about its contents, but such exam questions are stated in the context of what the reading material contains, not with an attempt to convey a belief that the written materials are literally true. The NCBCPS Curriculum expressly caveats in its instructions on tests that students are to answer "according to what the Bible text says," eliminating any implication that the test is designed to convey the contents of the Bible as literal truth. For example, just as a literary student might be quizzed as to the contents of a book being studied, so the Bible Course tests students over the text of the Bible without teaching that the Biblical text should be taken as literal truth. Defendants deny that the Bible Course teaches as a historical fact that books of the Bible were written by authors identified with them, but rather teaches from various viewpoints scholarly information about who wrote the books of the Bible. The remaining allegations of Paragraph 35 of the Complaint are vague and ambiguous about the full content and context of the

statements alleged, and Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations and said allegations are, therefore, denied as a matter of law.

36. Defendants deny the allegations of Paragraph 36 of the Complaint.

37. With respect to the allegations of Paragraph 37 of the Complaint, Defendants deny that the Bible Course implementing the NCBCPS Curriculum advocates a particular religious viewpoint to guide the lives of the students. The remaining allegations of Paragraph 37 of the Complaint are vague and ambiguous as to the full content and context in which the statements are allegedly made, and Defendants are without knowledge or information sufficient to form a belief as to said allegations and said allegations are, therefore, denied as a matter of law.

38. With respect to the allegations of Paragraph 38 of the Complaint, Defendants admit only that students electing to take the Bible Course at Permian High School were asked to memorize the passage at Psalm 1:1-6 in the King James Version, but Defendants deny the remaining allegations of Paragraph 38 of the Complaint.

39. With respect to the allegations of Paragraph 39 of the Complaint, Defendants admit only that in the NCBCPS Curriculum, Halley's Bible Hardbook is identified as a supplemental resource book that could be referred to in the Bible Course with the following express reservation and admonition: "The NCBCPS recommends that students and teachers be exposed to these and other works to broaden their perspectives and stimulate discussion and thought, but the NCBCPS does not necessarily endorse or express agreement with these works. This curriculum and all outside materials must be presented objectively as part of the secular

program of public education.” Although a version of Halley’s Bible Handbook was available as a resource material in the Bible class taught at Permian High School, Defendants deny that the edition used contained the quote referenced in Paragraph 39 of the Complaint. Defendants deny the remaining allegations of Paragraph 39.

40. Defendants deny the allegations of Paragraph 40 of the Complaint.

41. With respect to the allegations of Paragraph 41 of the Complaint, Defendants admit only that in conjunction with the Bible Course taught at Permian High School in 2006-2007, some resources from WallBuilders were used as a part of the Bible Course. Defendants deny that any use of materials from WallBuilders was used “to promote a specific religious interpretation of American history,” but rather was used in the context of other materials and instruction to provide balanced information of various historical viewpoints. Defendants do not dispute that the case cited as *Herdahl v. Pontotoc County Sch. Dist.*, 933 F.Supp. 582, 599 (N.D. Miss 1996) exists. Defendants state the content of the case speaks for itself, and this Court is empowered to decide the precedential value, if any, of the case. Defendants specifically deny that the *Herdahl* case dealt with the limited DVD from WallBuilders that was used in the Bible class at Permian. The remaining allegations in Paragraph 41 of the Complaint are vague and ambiguous as to the full content and context in which the statements are allegedly made, and Defendants are without knowledge or information sufficient to form a belief as to such allegations and such allegations are, therefore, denied as a matter of law.

42. With respect to the allegations of Paragraph 42 of the Complaint, Defendants deny that the Bible Course repeatedly advocates a one-sided or unchallenged view of the role of

religion in America. Defendants deny the remaining allegations of Paragraph 42 of the Complaint.

**RESPONSE TO CAUSE OF ACTION**

43. With respect to the allegations of Paragraph 43 of the Complaint, Defendants reincorporate by reference their response set forth in Paragraphs 1 through 42 above.

44. With respect to the allegations of Paragraph 44 of the Complaint, Defendants admit only that the ECISD has adopted and is currently offering the Bible Course which complies with all legal and constitutional requirements. Defendants deny that the Bible Course is being offered with a manifest, predominate purpose of advancing religion generally or a particular interpretation or one form of Protestant Christianity specifically.

45. Defendants deny the allegations of Paragraph 45 of the Complaint.

46. Defendants deny the allegations of Paragraph 46 of the Complaint.

47. Defendants deny the allegations of Paragraph 47 of the Complaint.

48. Defendants deny the allegations of Paragraph 48 of the Complaint

49. The allegations of Paragraph 49 of the Complaint are too vague and ambiguous in identifying the relevant acts and relevant times intended so as to allow Defendants to formulate a response and said allegations are, therefore, denied as a matter of law.

50. Defendants deny the allegations of Paragraph 50 of the Complaint.

51. Defendants deny that Plaintiffs are entitled to the relief requested on Page 17 of the Complaint including Sub-paragraphs (a) – (e) thereof.

**AFFIRMATIVE DEFENSES**

52. Some or all of Plaintiffs' claims are barred as being moot. Without limitation, many of the allegations of the Complaint allege or refer to materials or instruction not used in the Bible Course and complaints regarding such materials or instruction are moot.

53. Individual Defendants Ray Beaty, Renda Berryhill, L. V. Foreman III, Carol Gregg, Randy Rives, Donna C. Smith, Doyle W. Woodall and Wendell Sollis are not proper parties to the case.

54. The Defendant identified as Ector County Independent School District Board of Trustees is not a separate legal entity subject to suit and is, therefore, not a property party to the case.

55. Plaintiffs' claims are barred because the Bible Course as taught in ECISD is an elective course only.

56. Plaintiffs' claims are barred, in whole or in part, because such claims are not ripe for judicial review. Some of the content of the Curriculum that is the subject of Plaintiffs' complaint is simply not used in the Bible Course. Plaintiffs bear the burden of proving there is a case or controversy concerning the Bible Course and Plaintiffs have provided no evidence that any particular portion of the Curriculum Plaintiffs complain of is either used in the Bible Course or used in a way that is not objective and neutral.

57. Plaintiffs' equitable claims are barred, in whole or in part, because Plaintiffs' own inequitable conduct and/or unclean hands.

58. Plaintiffs' claims are barred, in whole or in part, by Defendants' sovereign, governmental and /or statutory immunity.

**DEMAND FOR TRIAL BY JURY**

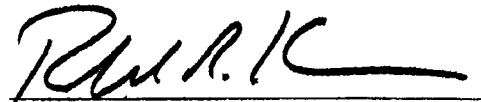
Defendants hereby make demand for a jury trial on all issues subject to jury trial.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiffs be denied all relief, that Defendants recover their costs and fees, and that Defendants be granted such other relief to which they may be entitled.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

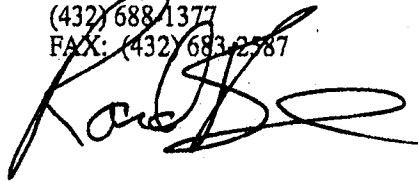
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of July, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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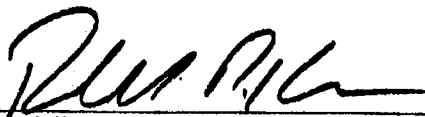
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and I hereby further certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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