

No. 08-56320

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, et al.,

Plaintiffs-Appellants,

v.

ROMAN STEARNS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Central District of California (D. Ct. No. CV05-06242 SJO (MANx))

BRIEF OF AMICI CURIAE
THE AMERICAN HISTORICAL ASSOCIATION AND THE
ORGANIZATION OF AMERICAN HISTORIANS IN SUPPORT
OF AFFIRMANCE OF THE JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA (HON. S. JAMES OTERO)

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FRAP RULE 26.1 DISCLOSURE STATEMENT

Amicus curiae, the American Historical Association, does not have any parent corporation and there is no publicly held corporation that owns 10% or more of the stock of the American Historical Association.

Amicus curiae, the Organization of American Historians, does not have any parent corporation and there is no publicly held corporation that owns 10% or more of the stock of the American Historical Association.

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INTEREST OF AMICI

The American Historical Association is the oldest and largest professional historical organization in the United States, bringing together nearly 5,000 institutions and more than 15,000 individuals, including K-12 teachers, college and university faculty, public historians, independent scholars, archivists, librarians, and secondary school teachers. Organized in 1884 and chartered by the United States Congress in 1884, its establishment coincided with the professionalization of history as a discipline in the United States. AHA publishes the *American Historical Review*, founded in 1894, and *Perspectives on History: The Newsmagazine of the American Historical Association*.

The AHA has a long and profound interest in the integrity of history as an academic discipline and in the sound teaching of history in both secondary schools and universities. The AHA plays an important public role as a leader and public advocate for the field and is frequently called upon to set ethical and professional standards. The AHA has also developed a series of best practices for excellence in professional behavior, research and teaching.

The Organization of American Historians (OAH) is the largest learned society devoted to the study of American history. Founded in 1907, the OAH has more than 9,300 members in the United States and abroad, including college and university professors, students, precollegiate teachers, archivists, museum curators

and other public historians and scholars employed in government and the private sector. The OAH publishes the *Journal of American History*, which for decades has been the leading scholarly journal in the field, as well as the *OAH Newsletter* and the *Magazine of History*, which is an important classroom tool for teachers.

The OAH seeks to advance the teaching and practice of American history at all levels and in all settings through meetings, publications, advocacy and other programs. The OAH also sponsors or co-sponsors major scholarly awards and prizes and offers information and guidance to the public and profession on historical matters.

I. SUMMARY OF ARGUMENT.

Amici curiae the American Historical Association (AHA) and the Organization of American Historians (OAH) submit this brief in support of the Appellees' position, as affirmed by the District Court and set forth in the report of expert Professor Gary B. Nash dated May 7, 2007, that the content and pedagogy of the textbook *United States History for Christian Schools* (Greenville, S.C., Bob Jones University Press, 2001) by Timothy Keese and Mark Sidwell ("BJU History Textbook") are inconsistent with generally accepted historical methodology, scholarship and pedagogy.

History is the process whereby "[h]istorians strive constantly to improve our collective understanding of the past through a complex process of critical dialogue

with each other, with the wider public, and with the historical record--in which [historians] explore former lives and worlds in search of answers to the most compelling questions of our own time and place." *Statement on Standards of Professional Conduct* (adopted by the AHA on January 6, 2005) ("*AHA Statement on Standards*") available at <http://www.historians.org/PUBS/Free/ProfessionalStandards.cfm>. Critical to the process of writing and teaching history are certain established standards that are shared and accepted in the profession, including honoring the integrity of the historical record and submitting that record to ongoing critical scrutiny. *Id.* Although practicing history with integrity "does not mean being neutral or having no point of view," it does require an understanding "that all knowledge is situated in time and place, that all interpretations express a point of view, and that no mortal mind can ever aspire to omniscience. Because the record of the past is so fragmentary, absolute historical knowledge is denied us." *Id.*

The teaching of history, which is generally accepted to be an important educational function, seeks to develop "historical thinking" in students, as well as factual knowledge. Such historical thinking includes developing a critical approach to historical sources, a "sophisticated examination of how causation relates to continuity and change," an understanding of "historical debate and controversy" and of "bias and points of view," and "determination of the

significance of different kinds of historical change." *Benchmarks for Professional Development in Teaching of History as a Discipline*, (last updated by the AHA on July 7, 2008), available at <http://www.historians.org/teaching/policy/benchmarks.htm> ("AHA Benchmarks").

The BJU History Textbook does not conform to established core values and benchmarks for practicing and teaching history. The textbook at issue does not evidence a respect for historical sources, historical research and varying interpretations of the past. Moreover, it does not encourage students to examine and understand the complex causation of historical events. Indeed, the textbook discourages students' examination and discussion of causation of certain historical events by citing "providence" or "divine intervention" as the overriding force causing those events. This is evidenced by the statement of Mark Sidwell, one of the co-authors of the textbook, that "[t]he Christian always takes his stand on the Word of God in dealing with the issue of providence and not on the results of historical research." *Providentialism and the Teaching of History*, available at <http://www.bjupress.com/resources/articles/balance/providentialism-and-teaching-of-history.php>. This approach to history, which is also embodied in the BJU History Textbook, is contrary to established standards for the practice and teaching of history, including the standards adopted and promulgated by *amici curiae*.

II. ARGUMENT.

A. The BJU History Textbook Is Contrary To The Established Standards of the History Profession.

History is the study of the past. As Professor Peter Stearns states in *Why Study History*, "history must serve, however imperfectly, as our laboratory, and data from the past must serve as our most vital evidence in the unavoidable quest to figure out why our complex species behaves as it does in societal settings. . . . [History] offers the only extensive evidential base for the contemplation and analysis of how societies function, and people need to have some sense of how societies function simply to run their own lives." Peter Stearns, *Why Study History?*, available at <http://www.historians.org/pubs/free/WhyStudyHistory.htm>.

The study of history helps students become better citizens by developing an ability to assess evidence and conflicting interpretations of the past. *Id.* As Professor Stearns writes:

Learning history means gaining some skill in sorting through diverse, often conflicting interpretations. Understanding how societies work--the central goal of historical study--is inherently imprecise, and the same certainly holds for understanding what is going on in the present day. Learning how to identify and evaluate conflicting interpretations is an

essential citizenship skill for which history, as an often-contested laboratory of human experience, provides training.

Id.

Professional historians are "defined by self-conscious identification with a community of historians who are collectively engaged in investigating and interpreting the past as a matter of disciplined learned practice." *AHA Statement on Standards*. Although professional historians work in a wide variety of settings, including universities, schools, museums, and government organizations, they share "certain core values that guide their activities and inform their judgments as they seek to enrich our collective understanding of the past." *Id.*

Essential to the development of an understanding of the past is historians' "complex process of *critical dialogue* with each other, with the wider public, and with the historical record." *Id.* (emphasis in original). This ongoing dialogue requires rigorous respect for and critical analysis of the ever increasing historical sources that provide evidence that informs our understanding of past events. *Id.* Respect for the integrity of historical sources and the acknowledgment that history is an ongoing process not given to absolutes means that historians may disagree regarding interpretations of the past. Indeed, "[m]ultiple, conflicting perspectives are among the truths of history. No single objective or universal account could ever put an end to this endless creative dialogue within and between the past and

the present." *Id.* Given the wide scope of past events and the immense variety of sources for those events, the critical dialogue that underlies the practice of history is active and robust.

Historians' views and experiences necessarily impact this critical dialogue. Indeed, historians recognize that their experiences and interests "cannot help but affect the questions they ask of the past and the answers they wish to know." *Id.* Nonetheless, the practice of history as a profession requires historians to treat historical sources with integrity and with the recognition that "[m]ultiple, conflicting perspectives are among the truths of history." *Id.*

For an historian to claim omniscience or appeal to absolutes or unascertainable sources is contrary to the profession's standards and goals. *Id.* The practice of history acknowledges both the imperfection of human knowledge *and* the existence of multiple perspectives and interpretations of historical events. *Id.* Nonetheless, whatever an historian's background or interests, the practice of history requires "*awareness of one's own biases and a readiness to follow sound method and analysis wherever they may lead.*" *Id.* (emphasis added).

The BJU History Textbook is inconsistent with these established standards for practicing history because it appeals to "providence" or "divine intervention" as an absolute cause of certain historical events which supersedes other possible causes and respect for historical sources. Rather than following "sound method

and analysis wherever they may lead," as required by established standards for practicing history, the textbook discourages inquiry and critical dialogue regarding certain historical events. This is clearly reflected in Dr. Sidwell's statement that "the Christian always takes his stand on the Word of God in dealing with the issue of providence and *not on the results of historical research.*" *"Providentialism" and the Teaching of History (emphasis added).*

Moreover, the BJU History Textbook is also inconsistent with the standard of encouraging inquiry and critical dialogue regarding historical events because of its frequent incorporation of absolute statements not based on historical sources regarding the motivations and beliefs of certain historical figures. For example, the BJU History Textbook states that the reformers of the Progressive Era (1890-1920) "had a faulty view of the nature of man," that they "mistakenly believed in the inevitability of progress," and that they "proposed false solutions to man's problems." BJU History Textbook, pp. 441-42.¹ This statement ignores the complexity of reformers' thinking based on numerous relevant historical sources, including their letters, diaries, public statements and newspaper accounts.

¹ The BJU History Textbook also states of the progressives that "[t]hey believed that through education, improving living conditions, and providing more equal political and economic opportunity, they could solve man's difficulties. Such a position ignores the Biblical teaching that man's basic problem is not his ignorance or his environment; it is his sin--a problem which can be remedied only through forgiveness and cleansing by God through the death and resurrection of Christ." BJU History Textbook, p. 442.

Similarly, the BJU History Textbook's section headed "Unorthodox Religion" says that Unitarians, Transcendentalists, Shakers and Mormons belonged to "movements [that] denied Scriptural truth and promoted error." The BJU History Textbook thus does not subject historical sources to critical or analytical methods, as required by professional standards, but instead uses them as a "resource" for "illustrating the principles of God's word." *"Providentialism" and the Teaching of History*.

As Professor Nash correctly states, the approach espoused by the BJU History Textbook makes "historical research . . . secondary to divine causation," which means that "the student will have difficulty understanding history as a discipline as it has been practiced since Herodotus and Thucydides - a never-ending quest to reconstruct the past based on new evidence and informed by new questions posed about the functioning of past societies." Nash Report, p. 8.

Because the textbook at issue is fundamentally inconsistent with the established standards of history as a profession, a history course that used the BJU History Textbook as a primary text would not adequately prepare students for study at an institution such as the University of California. *Amici curiae* respectfully submit that this Court should therefore affirm the District Court's holding that it was reasonable for the University of California to deny credit

toward guaranteed admission for courses relying primarily on the BJU History Textbook.

B. The Pedagogy of the BJU History Textbook Is Contrary To Established Benchmarks For Teaching History.

The pedagogy espoused by the BJU History Textbook is also out of step with well-established benchmarks for teaching history as a discipline.

Teaching history is generally accepted as a key educational function because it helps students understand change and the context of current and past events. The perspective afforded students by the study of history should help "develop[] research skills and sharpen[] student analytical thinking." *Benchmarks*. By exposing them to a wide variety of historical sources, methods and perspectives, students are encouraged to develop "historical thinking," *i.e.*, a critical and analytical approach to the past and the role of change in society. *Id.*

History teachers help students develop historical thinking skills by following certain established pedagogical benchmarks. One example is the AHA's *Benchmarks for Professional Development in Teaching of History as a Discipline*, which include

- Analysis of primary and secondary sources;
- An understanding of historical debate and controversy;

- Appreciation of recent historiography through an examination of how historians develop differing interpretations of the past;
- Analysis of how historians use evidence;
- An understanding of bias and points of view in the practice of history;
- Formulation of questions regarding historical works and events and determining the relative importance of such questions;
- Determination of the significance of different kinds of historical change;
- Sophisticated examination of how causation relates to continuity and change;
- Understanding of the interrelationship among themes, regions, and periodization; and
- Understanding that although the past tends to be viewed in terms of present values, a proper perception of the past requires a serious examination of values of that time.

Id.

The "Historical Thinking Skills" included in the National History Standards cited by Professor Nash, which were developed from 1991 to 1996, contain similar pedagogical benchmarks for developing historical thinking. As Professor Nash

notes in his expert report, the "[r]eal historical understanding" that is a goal of the National History Standards, many State standards, and similar benchmarks "requires students to think through cause-and-effect relationships, to reach sound historical interpretations, and to conduct historical inquiries and research leading to the knowledge on which informed decisions in contemporary life can be based." Nash Report, p. 6 (quoting *National Standards for United States History: Exploring the American Experience* (Los Angeles: National Center for History in the Schools, 1994), p.7, available at <http://nchs.ucla.edu/standards/dev-5-12g.html>).

The History Framework of the History Academic Advisory Committee of the College Board² is another example of established pedagogical benchmarks for teaching history. As do the others cited, the College Board's benchmarks encourage development of "historical thinking skills" in students through "a rigorous and fair-minded analysis of documents and other sources of information," and "respect [of] all relevant historical evidence and reasoning--not just those elements that support a preferred or preconceived position." *College Board History Framework*, available at http://www.collegeboard.com/prod_downloads/about/association/academic/History_Framework.pdf.

² The College Board, which was founded in 1900, is a not-for-profit organization that develops programs and services for college admission, financial aid, teaching and learning, including the well-known SAT® and Advanced Placement® programs. See <http://www.collegeboard.com/about>.

The BJU History Textbook does not conform to these generally accepted pedagogical principles or benchmarks for teaching history and developing historical thinking skills. Indeed, the textbook embodies an uncritical approach to certain historical interpretations that reflects a preconceived position on the part of the authors that is inconsistent with pedagogical benchmarks for teaching history.

For example, the textbook's discussion of the educational reformer Horace Mann, which focuses on Mann's alleged "faulty reasons" and spiritual errors, not only discourages critical thinking and analysis but also posits a single view of this reformer that is placed beyond discussion or analysis. BJU History Textbook, pp. 225-26. A similarly limited approach is seen in the textbook's views regarding "big government" and the alleged spiritual errors of certain reformers, including the progressives and religious groups such as Deists, Unitarians, Shakers and Mormons, who are described as being in "spiritual darkness" because they "denied Scriptural truth and promoted error." *Id.*, pp. 236-37, 437, 439, 441-42.

Although history textbooks contain a wide variety of emphases and content, the BJU History Textbook does not encompass the range of materials needed to understand current historical debates and controversies. The failure of the textbook to contain an adequate discussion of certain important groups in American society, including women and ethnic, racial and religious minority

groups, places the textbook outside this aspect of the benchmarks of historical pedagogy.

The BJU History Textbook similarly hampers students' development of historical thinking by discouraging "[s]ophisticated examination of how causation relates to continuity and change." *Benchmarks*. The authors cite providence, "divine evidence," or the alleged spiritual errors of certain individuals or groups instead of analyzing the causes of historical events through historical sources.

Amici curiae concur in Appellees' conclusion that the pedagogy embodied in the BJU History Textbook is inconsistent with established benchmarks for encouraging historical thinking among students and would not adequately prepare students for study at the University of California. *Amici curiae* respectfully submit that this Court should therefore affirm the District Court's holding that the University of California's decisions with regard to courses using the BJU History Textbook as the primary textbook were reasonable.

III. CONCLUSION

For the reasons set forth above, *amici curiae* respectfully submit that this Court should affirm the District Court's holding that the University of California's decision not to afford credit towards guaranteed admission for courses relying primarily on the BJU History Textbook was reasonable.

Respectfully submitted,

DATED: April 10, 2009

HUNTON & WILLIAMS LLP

By: /s/Timothy J. Toohey

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CERTIFICATE OF WORD COUNT

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned certifies that the brief submitted by *amici curiae* the American Historical Association and the Organization of American Historians In Support Of Affirmance Of The Judgment Of The United States District Court For The Central District Of California, has a typeface of 14 points and contains 2,861 words, calculated by the Microsoft Office Word 2003 word processing program.

DATED: April 10, 2009

HUNTON & WILLIAMS LLP

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