

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-15607

CALIFORNIA PARENTS FOR THE EQUALIZATION OF
EDUCATIONAL MATERIALS; ARVIND RAGHAVAN,
individually and as parent and next friend of M.R.
and N.R.; VISHNUKUMAR THUMATI, individually and
as parent and next friend of P.T. and N.T.; SHAILESH
SHILWANT, individually and as parent and next friend
of P.S. and P.S.S.,

Plaintiffs-Appellants,

v.

TOM TORLAKSON, in his official capacity as State
Superintendent of Public Instruction and Director of
Education for the California Department of
Education; TOM ADAMS, in his official capacity as
Deputy Superintendent of the Instruction and
Learning Support Branch of the California
Department of Education; STEPHANIE GREGSON, in
her official capacity as Director of the Curriculum
Frameworks and Instructional Resources Division of
the California Department of Education; MICHAEL
KIRST; ILENE STRAUS; SUE BURR; BRUCE HOLADAY;
FELIZA I. ORTIZ-LICON; PATRICIA ANN RUCKER;
NICOLASA SANDOVAL; TING L. SUN; TRISH BOYD
WILLIAMS, each in their official capacity as a member
of the California State Board of Education; MYONG
LEIGH, in his official capacity as Interim
Superintendent of the San Francisco Unified School
District; SHAMANN WALTON; HYDRA MENDOZA-
MCDONNELL; STEVON COOK; MATT HANEY; EMILY M.
MURASE; RACHEL NORTON; MARK SANCHEZ, each in

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their official capacity as a member of the San Francisco Unified School District; RICK SCHMITT, in his official capacity as Superintendent of the San Ramon Valley Unified School District; MARK JEWETT; KEN MINTZ; RACHEL HURD; DENISE JENNISON; GREG MARVEL, each in their official capacity as a member of the San Ramon Valley Unified School District Board of Education; WENDY GUDALEWICZ, in her official capacity as Superintendent of the Cupertino Union School District; ANJALI KAUSAR; LIANG CHAO; KRISTEN LYN; SOMA MCCANDLESS; PHYLLIS VOGEL, each in their official capacity as a member of the Cupertino Union School District Board of Education; CHERYL JORDAN, in her official capacity as Superintendent of the Milpitas Unified School District; DANIEL BOBAY; DANNY LAU; CHRIS NORWOOD; HON LIEN; ROBERT JUNG, each in their official capacity as a member of the Milpitas Unified School District Board of Education,

Defendants-Appellees,

REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Intervenor.

Appeal from the United States District Court
for the Northern District of California
D.C. No. 3:17-cv-00635-CRB,
Charles R. Breyer, District Judge, Presiding

Argued and Submitted July 14, 2020
San Francisco, California
Filed September 3, 2020

Before: Sidney R. Thomas, Chief Judge, and Mary M.
Schroeder and Daniel A. Bress, Circuit Judges.

OPINION

SCHROEDER, Circuit Judge:

Parents of Hindu children in the California public schools filed suit against the State Department of Education and State Board of Education claiming discrimination against the Hindu religion in the content of the History-Social Science Standards and Framework for sixth and seventh graders. Appellants are individual parents and the organization California Parents for the Equalization of Educational Materials (CAPEEM). They alleged violations of several constitutional provisions including Due Process, Equal Protection, and the Establishment and Free Exercise clauses of the First Amendment.

Their complaint focuses on a handful of provisions in the 1998 Standards and the 2016 Framework and alleges these curriculum materials carry a hostile and denigrating message about the origins of Hinduism when compared with similar provisions relating to other religions of the world. Of particular concern is the passage in the Standards concerning the role of invaders, and their effect on the origins of Hinduism. Plaintiffs allege that this theory has been discredited and disparages their religion.

The district court dismissed all but one of the claims and then granted summary judgment in favor of Appellees on the remaining Establishment clause claim, holding that the Standards and Framework do not communicate disapproval of Hinduism. The court also excluded an expert report offered by Appellants to explain how, from the perspective of a person knowledgeable in the field of religious history, the Standards and Framework express a negative view of Hinduism. The court ruled that the question was how

curriculum materials would be understood by a reasonable observer, not how an expert would interpret them. We affirm.

I. BACKGROUND

A. California Content Standards, The Curriculum Framework, And Their Relevant Provisions

The California State Board of Education (State Board) develops model curriculum outlines to provide standardized guidance to individual school districts. These outlines, known as Content Standards and Curriculum Frameworks, are used by individual school districts to design more tailored course curricula. *See* Cal. Educ. Code § 60000(b). The State Board first issues Content Standards, which are broad guidelines for each major subject area, such as history and math. *See* Cal. Educ. Code §§ 60602.5(a)(1), 60605, 60618. The State Board then issues Curriculum Frameworks which fill in more detail lacking in each of the Standards. *See* Cal. Educ. Code §§ 60000, 60005, 60200(c). The local school districts in California decide the precise contours of what is taught in their public school classrooms, and can supplement the materials or omit content contained in them. *See* Cal. Educ. Code § 60000(b).

The State Board, in 1998, adopted the Content Standards for history and social science that Appellants challenge in this lawsuit. In just a few pages, the Content Standards outline the history of the world's first major civilizations and religions, and invite sixth grade students to engage in critical analysis of the "geographic, political, economic, religious, and social structures" of each civilization, including Ancient India.

The State Board then adopted the Curriculum Framework for history and social science in 2016 af-

ter a lengthy comment process that solicited feedback from the public. Like the Content Standards, the Curriculum Framework calls for students to analyze ancient civilizations from a social science perspective, with materials to include, among other subject matter, “the birth and spread of religious and philosophical systems.” The Curriculum Framework provides the additional detail and context lacking in the Content Standards.

B. Plaintiffs And Challenged Provisions

Appellants here are a non-profit organization, CAPEEM, and three parents on behalf of themselves and their children enrolled in California’s public school system. CAPEEM is a membership organization that exists to promote fair and accurate depictions of Hinduism in the public school system.

This is not the first time that CAPEEM has challenged the constitutionality of information about Hinduism provided to public school students. In 2006, CAPEEM filed a lawsuit claiming that California’s recently adopted text books had content that was anti-Hindu, and that the use of such text books violated the Establishment clause. The district court in that case determined that the text books did not contain any information that disparaged Hinduism, and granted summary judgment to the state. *Cal. Parents for Equalization of Educ. Materials v. Noonan*, 600 F. Supp. 2d 1088, 1119 (E.D. Cal. 2009). CAPEEM did not appeal. In this case, Appellants, instead of challenging text books, challenge certain aspects of the descriptions of Hinduism in the 1998 Standards and 2016 Framework.

Appellants first assert that the Standards and Framework do not describe the divine origins of Hinduism or discuss the sacred texts of their religion,

while, at the same time, describing the divine origins of the other major religions. As an example, they point to language in the Standards that describes Hinduism as consisting of “beliefs and practices,” and they point as well to a characterization of one of Hinduism’s sacred texts, the Bhagavad Gita, as an important piece of literature in Ancient India. Appellants additionally highlight a phrase in the Framework that describes Hinduism as a “culture that emerged as a belief system.” They argue that these are secular descriptions of Hinduism that are disparaging when read alongside the descriptions of other religions covered by the education materials.

Appellants object as well to the Standards’ instruction directing the students to “[d]iscuss the significance of the Aryan Invasions.” Appellants assert that this instruction references a now-debunked theory that invaders from the north entered ancient India, leading to the creation of Hinduism.

Also causing Appellants concern is the Framework’s description of the caste system in Ancient India; in particular, Appellants object to the description of caste as a religious belief. Appellants point to a passage in the Framework, which says that “Teachers should make clear to students that [caste] was a social and cultural structure as well as a religious belief.” Appellants argue that the association with the caste system singles out Hinduism for negative treatment when compared with the other religions discussed in the Standards and Framework.

These three objections form the basis of most of Appellants’ constitutional claims.

C. The Complaint

Appellants filed their complaint in 2017. It alleges that the content of the Standards and Framework,

and the process leading up to the Framework's adoption, violate several provisions of the constitution.

The complaint includes two Equal Protection claims. The first is that the content of the Standards and Framework describes Hinduism in derogatory terms and from the perspective of a skeptic, whereas the same material describes other religions with respect. Appellants also allege that the Department of Education violated their Equal Protection rights when it refused to accept all of CAPEEM's proposed edits to the Framework, while at the same time, accepting edits from other religious groups during the notice and comment process.

With respect to the Free Exercise clause, the complaint alleges that the content of the challenged provisions of the Standards and Framework denigrates Hinduism and is therefore not neutral with respect to religion and violative of their rights to free exercise. As with their Equal Protection claims, Appellants also assert that occurrences in the process leading up to the Framework's adoption violated their Free Exercise rights.

Bias against Hinduism in the content of the Standards and Framework is the basis for the alleged substantive due process violation as well. The complaint alleges that the Standards and Framework "indoctrinate children with beliefs biased deeply against Hinduism and in favor of the Abrahamic religions," and thereby interfere with the liberty interests of the parent Appellants to control the upbringing and education of their children.

Finally, the complaint contains two Establishment clause claims. It alleges that the content of the Standards and Framework unconstitutionally endorse Judaism, Christianity, and Islam, because the

content calls for the teaching of religious events, significant to those religions, as historical fact. The complaint then alleges in the second Establishment clause claim that the content of the challenged materials has the primary effect of disparaging or denigrating Hinduism.

All of Appellants' constitutional claims thus relate to the particular passages in the Standards and Framework that they find objectionable. None challenge the Department of Education's overall policy of providing students with an introduction to the major world religions and none relate to material students actually see in the classroom.

D. The District Court's Decisions

The district court in a published opinion in 2017 dismissed all of Appellants' claims, with the exception of the Establishment clause claim relating to disparagement of Hinduism. *Cal. Parents for Equalization of Educ. Materials v. Torlakson*, 267 F. Supp. 3d 1218 (N.D. Cal. 2017). The district court later, also in a published opinion, granted summary judgment to the State Board on that claim. *See Cal. Parents for Equalization of Educational Materials v. Torlakson*, 370 F. Supp. 3d 1057, 1067–1083 (N.D. Cal. 2019).

In its first opinion dismissing most of CAPEEM's claims, including the Equal Protection claims, the district court extensively examined our circuit's leading case on Equal Protection challenges to educational materials, *Monteiro v. Tempe Union School District*, 158 F.3d 1022 (9th Cir. 1998). In that case, Kathy Monteiro brought suit on behalf of her daughter, and argued that the curriculum's inclusion of literary works containing racially derogatory terms, such as *The Adventures of Huckleberry Finn* and *A Rose For Emily*, violated their Equal Protection

rights. *Id.* at 1024–25. Our opinion in *Monteiro* held that objections to curriculum assignments cannot form the basis of a viable Equal Protection claim, because curriculum decisions must remain the province of school authorities. Absent an allegation of an underlying racist policy, plaintiffs cannot challenge “the assignment of material deemed to have educational value by school authorities.” *Id.* 1031–32.

We explained that permitting such Equal Protection challenges would infringe on other students’ First Amendment interests in reading the contested materials. *Id.* at 1028. We saw the role of the school district in selecting curricula to be equally important. Permitting such challenges would “significantly interfere with the [school district]’s discretion to determine the composition of its curriculum.” *Id.* at 1029. We observed that the desire to avoid such lawsuits could “lead many school districts to ‘buy their peace’ by avoiding the books or other materials that express messages . . . that could be argued to cause harm to a group of students.” *Id.* In other words, permitting Equal Protection claims seeking removal of works from curriculum would have a significant chilling effect on the types of materials assigned by our public schools. *Id.* This would, in turn, damage the quality of public education offered to students. “[T]he function of . . . education itself is to stimulate thought, to explore ideas, to engender intellectual exchanges. Bad ideas should be countered with good ones, not banned by the courts.” *Id.* at 1032. We therefore held that the Equal Protection clause is not a vehicle for challenging curriculum content choices.

The district court in this case concluded that the reasoning of *Monteiro* with respect to curricula applied equally to the materials challenged here that provide the general outlines for curriculum content.

Following *Monteiro*, the district court ruled that Appellants' objections to the content of the Standards and Framework did not state a plausible Equal Protection claim. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1232; *see also Noonan*, 600 F. Supp. 2d at 1111 (holding that CAPEEM's challenges to public school text books were barred by *Monteiro*). The court also concluded that Appellants' indirect challenge to the content, through allegations of differential treatment in the Framework adoption process, was necessarily barred. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1234–35. Those allegations faulted the State Board's rejection of Appellants' proposed amendments to the Framework during the comment process, and acceptance of suggested edits of another group Appellants deemed hostile to Hinduism. The district court reasoned that it would render our decision in *Monteiro* meaningless if plaintiffs could make out an Equal Protection claim when a state official refuses to adopt plaintiffs' content preferences during the comment process. *Id.* Constitutional challenges to the content of curricula on religious grounds must be adjudicated under the religion clauses of the First Amendment, not Equal Protection. *Id.* at 1235.

The district court also ruled that Appellants had failed to allege a plausible Free Exercise claim, because our case law requires Appellants to allege a substantial burden on their religious practice or exercise. *Id.* at 1226–27 (citing and discussing *Am. Fam. Ass'n Inc. v. City & Cnty. of S.F.*, 277 F.3d 1114, 1123–24 (9th Cir. 2002)). In *American Family*, we rejected the argument that the Supreme Court had eliminated the need for plaintiffs to allege a substantial burden on their religious exercise where, as here, no law or other regulatory government conduct is in-

volved. *Am. Fam. Ass'n Inc.*, 277 F.3d at 1123–24. Dismissal of the complaint in *American Family* was appropriate because “the complaint did not . . . allege any specific religious conduct that was affected by the Defendants’ actions.” *Id.* Finding no such allegation in this case, the district court dismissed Appellants’ Free Exercise clause claims. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1227.

The district court additionally held that under our decision in *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005), it was required to dismiss Plaintiffs’ substantive due process claims. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1224. In *Fields*, we explained that, under cases going back to *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), once parents select a school for their child, parents cannot “compel public schools to follow their own idiosyncratic views as to what information the schools may dispense.” *Fields*, 427 F.3d at 1206. Parents have only a limited substantive due process right “to be free from state interference with their choice of the educational forum itself.” *Fields*, 427 F.3d at 1197, 1207. The district court concluded that the parents did not allege they were unable to send their children to the school of the parents’ choosing, and therefore did not state a plausible substantive due process claim. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1224–25.

The district court dismissed one of Appellants’ Establishment clause claims, concluding that an objective reading of the curriculum materials revealed no unconstitutional endorsement of Christianity, Judaism, or Islam. *Id.* at 1228. The materials permissibly called for students to learn about the major events

and figures of various world religions. The district court did not, at the same time, dismiss Appellants' other Establishment clause claim, that the curriculum materials had the primary effect of disparaging Hinduism, but later ruled against Appellants on that claim at summary judgment. *See Cal. Parents for Equalization of Educ. Materials*, 370 F. Supp. 3d at 1067–1083.

In that later opinion, the district court concluded that neither the allegations of the complaint, nor any additional materials adduced on summary judgment, reflected content that disparaged Hinduism. First, the district court explained that, contrary to Appellants' contentions, the Standards and Framework do in fact describe the divine origins of Hinduism and the divine significance of the Bhagavad Gita and other sacred texts. *Id.* at 1070. Although Appellants had asserted that the Standards and Framework promote an outdated theory that Hinduism was the result of an Aryan invasion, the district court explained that the Standards and Framework, read together, refer to a migration of people speaking Indic languages southward into the region. *Id.* at 1074–75. The materials also acknowledge a competing theory that the language spread northward. Neither theory suggests a connection between invasions and the development of Hinduism. *Id.* at 1075. The theories refer to historical events. As the district court summed it up, “[w]hether or not there was an influx of Aryans into South Asia in 1500 BCE is appropriately the subject of a history and social science curriculum, and not actually a positive or negative statement about Hinduism.” *Id.*

The district court also dealt specifically with Appellants' argument that the material contains a description of the caste system as a Hindu religious belief

and that the description has the primary effect of disparaging Hinduism. *Id.* at 1071–73. The court pointed out that the Framework expressly acknowledges that all early civilizations had social class systems. The Hindu religion was thus not singled out for criticism of its caste or class system. The district court, after examining the Standards and Framework, concluded that an objective, reasonable observer would not conclude that the materials have the primary effect of disparaging Hinduism. *Id.* at 1079.

At summary judgment, Appellants offered an expert report to explain the significance of certain terms from the perspective of an academic religious scholar. The district court declined to consider the expert report. *Id.* at 1070 n.8. The court explained that the report was not relevant to the court’s analysis of the critical issue. *Id.* The question was whether the materials primarily communicate a message of disparagement from the perspective of a reasonable observer, and not from the perspective of an expert. The court cited *Brown v. Woodland Joint School District*, where we held that expert testimony was irrelevant to the effect of challenged material on a child. *Id.*

II. CONTENTIONS ON APPEAL

A. Equal Protection

The district court held that because Appellants’ Equal Protection claim was based on objections to course content, it was “squarely foreclosed” by *Monteiro*’s holding such challenges are barred. *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1232. Appellants argue that *Monteiro* does not control because they allege a discriminatory policy exempted from *Monteiro*’s holding. There is no such allegation.

Appellants' brief recites the allegations of the complaint that the Standards and Framework discriminate against Hinduism by treating it less favorably than other religions. The allegations contain no reference to State Board policy, nor do the allegations describe any materials used in the classroom from which such a policy could be inferred. As the district court emphasized, the Standards and Framework are never seen by the students. *See Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1222 ("Notably, students do not read either the Standards or the Framework."). The district court correctly characterized Appellants' claims as an indirect attack on curricula. Plaintiffs are the parents of students, and the underlying harm Appellants are complaining of is alleged discrimination in the educational materials the students receive. Yet *Monteiro* holds that, at least absent evidence of unlawful intentional discrimination, parents are not entitled to bring Equal Protection claims challenging curriculum content. *Monteiro*, 158 F.3d at 1031–32. *Monteiro* thus bars Appellants' principal Equal Protection claim. *See id.*; *see also Noonan*, 600 F. Supp. 2d at 1111.

Appellants separately challenge the process leading up to the adoption of the Framework as discriminatory against Hindus. Again, no discriminatory policy is described or articulated, only examples of what Appellants assert to be discriminatory treatment in the development of the content of the Framework. Appellants' claim is that the State Board failed to incorporate their requested edits, and solicited and accepted some suggestions from a group of historical scholars that they regard as hostile to Hinduism. We agree with the State Board that Appellants may not like the edits made to the Framework, but that a dislike

of challenged content does not constitute a constitutional violation of Equal Protection, absent a plausible allegation of discriminatory policy or intent. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1166–67 (9th Cir. 2005); *Monteiro*, 158 F.3d at 1026 (explaining that, to plead a successful Equal Protection claim, plaintiffs must “plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent.”). We therefore conclude that the district court properly dismissed both Equal Protection claims.

B. Free Exercise

The district court also dismissed Appellants’ Free Exercise clause claim because the court found Appellants failed to allege any burden on their religious exercise or practice. Appellants do not challenge that conclusion here. Pleading such a burden is required by our decisions in *American Family Association*, 277 F.3d at 1124 and *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1393 (9th Cir. 1994). Appellants’ only argument is that the district court failed adequately to take into account three recent Supreme Court decisions, and that these decisions have eliminated the requirement that plaintiffs plead a burden on their religious exercise.

The three recent Supreme Court cases are *Trinity Lutheran Church v. Comer*, — U.S. —, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017), *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, — U.S. —, 138 S.Ct. 1719, 201 L.Ed.2d 35 (2018), and *Espinoza v. Montana Department of Revenue*, — U.S. —, 140 S.Ct. 2246, 2252, 207 L.Ed.2d 67 (2020). *Trinity Lutheran* and *Espinoza* both involved state programs that excluded religious entities. *See Trinity Lutheran*, 137 S.Ct. at 2017; *Espinoza*, 140 S.Ct. at 2252. *Trinity Lutheran* concerned exclusion of religious institu-

tions from a state program providing assistance to schools. 137 S.Ct. at 2017. *Espinoza* dealt with a program granting tax credits for contributions to schools, but exempted contributions to religious schools. 140 S.Ct. at 2252. In both cases, the Supreme Court held that the exclusion of religious institutions from the programs violated the First Amendment's Free Exercise clause. The Court ruled that the exclusion of religious institutions from beneficial programs amounted to a financial penalty, and that the Free Exercise clause prohibits such "indirect coercion or penalties on the free exercise of religion." *Trinity Lutheran*, 137 S.Ct. at 2022; *Espinoza*, 140 S.Ct. at 2256.

Although the district court did not have the opportunity to analyze these cases in its opinion dismissing Appellants' Free Exercise clause claims, these cases do not alter the district court's analysis in this case. We are not dealing with a state program that provides financial or other similar benefits. The state has not carved out any exclusion for religious education in the curriculum materials. Appellants allege no penalty or coerced conduct. As the district court said, Appellants failed to allege "any specific religious conduct that was affected by the Defendants' actions." *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1226 (citing and quoting *Am. Fam. Ass'n*, 277 F.3d at 1124). The complaint has not alleged interference with Appellants' exercise of their religion under our Constitution as required for a viable Free Exercise claim under *Trinity Lutheran* and *Espinoza*.

In the third recent case that Appellants cite, *Masterpiece Cakeshop*, the Supreme Court dealt with overt expressions of hostility on the part of officials adjudicating claims under a state's civil rights law. 138 S.Ct. at 1729–31. One official expressed deep and

open skepticism as to whether the claimants' religious beliefs were sincerely held. *Id.* at 1729 (“Freedom of religion . . . has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust . . . it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.”). The Court there held that such an expression of “clear and impermissible hostility toward the sincere religious beliefs that motivated his objection” interfered with the claimant’s Free Exercise rights during that adjudicatory process. *Id.* at 1729. We have no expressions of hostility here.

Appellants allegations suggest at most that portions of the Standards and Framework contain material Appellants find offensive to their religious beliefs. As the district court said, “[a]t its core, Plaintiffs’ Free Exercise clause argument seems to be that the public school curriculum conflicts with their religious beliefs.” *Cal. Parents for Equalization of Educ. Materials*, 267 F. Supp. 3d at 1226. Offensive content that does not penalize, interfere with, or otherwise burden religious exercise does not violate Free Exercise rights. *See Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1533–34 (9th Cir. 1985); *see also id.* at 1543 (Canby, J., concurring) (“[G]overnmental actions that merely offend . . . religious beliefs do not on that account violate free exercise”; an “actual burden on the profession or exercise of religion is required.”).

C. Substantive Due Process

The Fourteenth Amendment guarantee of due process has a substantive component that includes a parent’s right to make decisions regarding the “care, custody and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 69, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Appellants recognize, however, that with re-

spect to education, parents have the right to choose the educational forum, but not what takes place inside the school. As we said in *Fields*, the substantive due process right “does not extend beyond the threshold of the school door.” 427 F.3d at 1207. Parents therefore do not have a due process right to interfere with the curriculum, discipline, hours of instruction, or the nature of any other curricular or extracurricular activities. We reiterated this principle recently in *McNeil v. Sherwood Sch. Dist. 88J*, 918 F.3d 700 (9th Cir. 2019) (per curiam). We there repeated our statement in *Fields* that once the choice of school is made, parental rights are “substantially diminished.” *Id.* at 711 (citing and quoting *Fields*, 427 F.3d at 1206).

In this appeal, Appellants argue that by recognizing a “diminished” substantive due process right in *McNeil* and *Fields*, we somehow, and without saying so, preserved their ability to raise religious objections to the Standards and Framework. Citing a law review article, Appellants observe that the Supreme Court has used the due process clause to “further equality concerns . . . relating to . . . religious minorities.” Kenji Yoshino, *The New Equal Protection*, 124 Harv. L. Rev. 747, 749–50 (2011). They rely on this backdrop to support their argument for a broad due process right to challenge materials that they view as religiously bigoted. *McNeil* represents a refutation of Appellants’ position. In *McNeil*, the parents complained about their child’s expulsion for creating a hit list. 918 F.3d at 704. There, we said that once parents select a school, they “accept[] [that school’s] curriculum, school policies, and reasonable disciplinary measures.” *Id.* at 711. Our law has recognized no exceptions.

D. Establishment Clause

Appellants argue that the district court mishandled their Establishment clause claims in several respects.

Without directly responding to the district court's careful refutation of their characterizations of the Standards and Framework, Appellants argue that an objective reading of those materials reveals an impermissible endorsement of Judaism, Christianity, and Islam and that the court incorrectly granted the State Board summary judgment on Appellants' claim that those materials disparage Hinduism. They also argue that the district court should not have excluded their expert report produced at summary judgment. We address each of these arguments in turn.

Before addressing the merits of Appellants' Establishment clause claims, however, we first address the evidentiary argument they raise. At summary judgment, Appellants produced an expert report in support of their claim that the Standards and Framework have the primary effect of disparaging Hinduism. That expert report concluded that the 1998 Standards contained outdated, offensive, and disparaging information about Hinduism. Appellants now argue that the district court improperly excluded that report because, without it, the offensiveness of certain terms is not obvious by reading the text of the Standards and Framework alone.

But that absence of facially apparent disparagement is the reason why the district court excluded the expert report from its consideration, and also why Appellants' claim that the Standards and Framework primarily communicate a message of disapproval of Hinduism fails. An expert's understanding of the terms is irrelevant. We must evaluate the Standards and Framework from the perspective of an objective, reasonable observer, and not that of an academic who is an expert in the field. *See e.g. Lee v. Weisman*, 505 U.S. 577, 593, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992); *Newdow v. Rio Linda Union Sch. Dist.*, 597

F.3d 1007, 1037–38 (9th Cir. 2010); *see also Brown*, 27 F.3d at 1382 (agreeing with that district court that the expert opinion was not relevant to primary effect test). We therefore cannot conclude that the district court abused its discretion by refusing to consider Appellants’ expert report in its analysis. *See id*; *Noonan*, 600 F. Supp. 2d at 1118 (rejecting “various expert opinions” offered by both parties).

Turning now to the merits of Appellants’ Establishment clause claims, we conclude, as did the district court, that the Standards and Framework do not call for the teaching of biblical events or figures as historical fact, thereby implicitly endorsing Judaism, Christianity, and Islam. The materials do not take a position on the historical accuracy of the stories or figures, and the Supreme Court has told us that mere inclusion of passages from the Bible in course materials does not violate the Constitution. *See Grove*, 753 F.2d at 1539–40 (1985) (Canby, J. concurring) (citing *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 225, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963)).

We also conclude, as did the district court, that none of Appellants’ characterizations of the Hinduism materials as disparaging is supported by an objective reading of those materials. The Framework acknowledges the divine origins of Hinduism, and describes how these sacred beliefs were written down in texts like the Bhagavad Gita. *See Cal. Parents for Equalization of Educ. Materials*, 370 F. Supp. 3d at 1071. The Standards and Framework reference an invasion, but do not call for teaching students that an invasion from the north caused the development of Hinduism in ancient India. From an objective perspective, none of the challenged material, alone or considered together, has the effect of disparaging Hinduism.

We do not doubt the sincerity of Appellants' challenge to the Standards and Framework. The courts are called upon to view the passages objectively and from the perspective of the reasonable person. *See Brown*, 27 F.3d at 1378–79. As the district court noted, an “objective, reasonable observer would find much of the challenged material entirely unobjectionable.” *Cal. Parents for Equalization of Educ. Materials*, 370 F. Supp. 3d at 1079. But even if isolated passages could be read as implying some hostility toward religion—which they do not—they would not violate the Establishment clause unless that were the “principal or primary effect.” *C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 985–86 (9th Cir. 2011) (citing *Am. Fam. Ass’n*, 277 F.3d at 1121). The Standards and Framework reflect careful crafting by the State Board to achieve a balanced portrayal of different world religions.

III. CONCLUSION

The district court ably sorted through Appellants' allegations in this case to describe the deficiencies of their arguments in light of contemporary constitutional principles. We agree with the district court that the challenged content of the Standards and Framework, and process leading up to the Framework's adoption, did not disparage or otherwise express hostility to Hinduism in violation of the Constitution.

AFFIRMED.

BRESS, Circuit Judge, concurring:

The majority opinion correctly holds that there is no basis in this record to conclude that the defendants discriminated against Hinduism, expressed a hostility toward it, or burdened the practice of that religion. The majority opinion also properly rejects

the plaintiffs' Establishment Clause challenge. The Establishment Clause certainly does not prevent California from educating students about world religions and their role in human civilizations. *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 679–80, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984). Plaintiffs' efforts to wring an Establishment Clause violation from subtle differences that they perceive in the curricular treatment of various religions does not withstand scrutiny, and, if accepted, would paralyze educators in their lawful objective of treating religion as a topic relevant to world history.

I note that some portions of the majority opinion discussing plaintiffs' Establishment Clause claim draw upon Ninth Circuit precedent that is based on *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). The list of situations in which the Supreme Court has effectively repudiated the *Lemon* test, either by “expressly declin[ing] to apply the test or [] simply ignor[ing] it,” has grown quite long. *American Legion v. American Humanist Ass'n*, — U.S. —, 139 S. Ct. 2067, 2080, 204 L.Ed.2d 452 (2019) (plurality op.). But to my understanding, the circuit precedent on which the majority opinion relies remains binding on this panel in this case. Regardless, whether under a *Lemon*-based test or an Establishment Clause analysis more appropriately grounded in the history and traditions of this country, *id.* at 2089–90; *id.* at 2092–94 (Kavanaugh, J., concurring); *id.* at 2096 (Thomas, J., concurring in the judgment), there was no establishment of religion here.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 17-cv-00635-CRB

CALIFORNIA PARENTS FOR THE EQUALIZATION OF
EDUCATIONAL MATERIALS, et al.,
Plaintiffs,

v.

TOM TORLAKSON, et al.,
Defendants.

Signed 02/28/2019

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, DENYING PLAINTIFFS'
CROSS-MOTION FOR SUMMARY JUDGMENT

CHARLES R. BREYER, United States District Judge

In this case, Plaintiffs, the organization California Parents for the Equalization of Educational Materials ("CAPEEM") and several Hindu parents, allege that the California public school curriculum discriminates against Hindus. *See generally* Compl. (dkt. 1). The sole remaining claim in the case is whether the History-Social Science Content Standards for California Public Schools, Kindergarten Through Grade Twelve (the "Standards"), adopted in 1998, and the History-Social Science Framework (the "Framework"), adopted in 2016, violate the Establishment Clause of the Constitution. *See Order re MTD* (dkt. 119) at 9–16, 21. In light of the Court's earlier rulings, in order to

prevail, Plaintiffs need to demonstrate that the complained-of government action has the principal or primary effect of advancing or inhibiting religion. *See Lemon v. Kurtzman*, 403 U.S. 602, 612–13, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971); Order re MTD at 10–13 (rejecting Plaintiffs’ arguments under other two *Lemon* prongs). The evidence does not support such a ruling. Accordingly, as explained below, the Court GRANTS Defendants’¹ Motion for Summary Judgment (hereinafter “D. MSJ”) (dkt. 163) and DENIES Plaintiffs’ Cross-Motion for Summary Judgment (hereinafter “P. MSJ”) (dkt. 215).²

I. BACKGROUND

Individual school districts decide precisely what is taught in California public school classrooms. *See* Cal. Educ. Code § 60000(b) (West 2019) (“there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but . . . because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level”); *see also id.* § 60210(a) (local educational agency may use materials aligned with content standards); *id.* § 60618(b) (school districts may use

¹ Defendants are Tom Torlakson (State Superintendent and Director of Education), Tom Adams (Deputy Superintendent), Stephanie Gregson (Director of the Curriculum Frameworks) and members of the California State Board of Education; Michael Kirst; Ilene Straus; Sue Burr; Bruce Holaday; Feliza I. Ortiz-Licon; Patricia Ann Rucker; Nicolasa Sandoval; Ting L. Sun; and Trish Boyd Williams, each sued in their official capacities.

² Because the Court finds this matter suitable for resolution without oral argument, it vacated the hearings on this motion. *See* Civil Local Rule 7-1(b).

model standard in developing district standards); *see also* D. MSJ Ex. 1 (dkt. 165-1) (“Standards”) at 0005 (“The standards serve as the basis for statewide assessments, curriculum frameworks, and instructional materials, but methods of instructional delivery remain the responsibility of local educators.”). But state-wide materials provide the general content standards upon which the individual school districts rely. Two such state-wide materials are at issue in this case: the Standards and the Framework.

A. Standards

The California legislature required the State Board of Education (SBE) to adopt model content standards in major subject areas, including history and social science. Cal. Educ. Code §§ 60602.5(a)(1), 60605, 60618. These Standards outline the topics and content that California public school students need to acquire at each grade level. *See* Standards at 0004. The SBE created the Standards in 1998, *see* Standards at 0002, and they have not changed since.

1. Standards Adoption Process

Notably, Plaintiffs did not include in their complaint any allegations about the standards adoption process, nor do they list the standards adoption process as a basis for their Establishment Clause claim. *See* Compl. ¶¶ 27–42 (factual allegations about Standards, addressing only their content); *id.* ¶¶ 144–46 (Establishment Clause claim based on content of Standards, process of adopting Framework, and content of Framework). This is presumably because a claim based on the 1998 standards adoption process would be time-barred. However, Plaintiffs do refer to the “[d]isfavored treatment of Hinduism in the development of the Standards” in their summary judgment motion. *See* P. MSJ at 3. They assert that,

in drafting the Standards, “[n]o apparent effort was made to obtain input from a person affiliated with a Hindu organization,” unlike persons from other religious organizations, and that an Islamic group alerted the Standards Commission to language about religion “developing,” yet the Commission did not apply that advice to Hinduism. *Id.* at 4–5.

On the first point, Plaintiffs rely on an unsworn article about the standards adoption process, by someone without apparent personal knowledge of the facts, which they submit for the truth of the matter, and which is therefore inadmissible hearsay. *See id.* (citing Katon Decl. (dkt. 231-2) Ex. B (Fogo article)). On the second point, Plaintiffs rely on a selection of documents a CAPEEM board member copied from the California State Archives, representing some proposed edits to the 1998 standards. *See id.* (citing Kumar Decl. Ex. A (archives excerpts)). Although Defendants object that these archive materials lack foundation and are hearsay, *see* D. Opp’n to P. MSJ (dkt. 225) at 4, the declarant sets out in his declaration the circumstances under which he copied them, *see* Kumar Decl. ¶ 9, and Plaintiffs do not truly offer them for the truth of any particular edit. Moreover, it seems an uncontroversial proposition that these represent some fraction of the feedback the Commission received about the Standards.

Plaintiffs make clear in their reply brief that the standards adoption process is still *not* a standalone basis for their claim. They explain: “The Standards are the violation. Standards Commission actions from the past are *evidence* of the violation—not the violation itself.” P. Reply re MSJ (dkt. 227) at 3. Further, they rightly quote the Ninth Circuit as observing that “reasonable observers have reasonable memories, and [the Court’s] precedents sensibly forbid an observer to

‘turn a blind eye to the context in which [the] policy arose.’” *See id.* at 4 (quoting *Trunk v. City of San Diego*, 629 F.3d 1099, 1118 (9th Cir. 2011)); *see also Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995) (O’Connor, J., concurring in part and concurring in the judgment) (“[T]he reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious display appears.”). Accordingly, the Court will consider Plaintiffs’ evidence and arguments about the standards adoption process for that purpose.

2. Standards Content

The Standards purportedly “require students not only to acquire core knowledge in history and social science, but also to develop the critical thinking skills that historians and social scientists employ to study the past and its relationship to the present.” *Id.* at 0006. Plaintiffs are primarily concerned with a portion of the “Grade Six World History and Geography: Ancient Civilizations” section of the Standards, which, on half of a page, lists seven topics under the heading of “Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of India.” *See* P. Opp’n to D. MSJ (dkt. 216-1) at 9; P. MSJ at 13; Standards at 0032.

B. Framework

The legislature directed the SBE to adopt model curriculum frameworks to serve as guidelines for local districts, filling in some of the historical material that corresponds to each of the Standards. *See* Cal. Educ. Code §§ 60000, 60001, 60005, 60200(c); Standards at 0006 (“The standards do not exist in isolation. The *History-Social Science Framework* will be revised

to align with the standards Teachers should use these documents together.”). The SBE adopted the History-Social Science Framework at issue in this case in 2016, *see* D. MSJ Ex. 2 (dkt. 165-2), and that process is part of this case, *see* Compl. ¶¶ 144–46.

1. Framework Adoption Process

The Framework adoption process began in 2008, when the SBE approved a plan to update the existing framework. D. MSJ Ex. 37–38 (dkt. 165-5); McDonald Decl. (dkt. 163-1) ¶ 2. From late March to September 2008, the California Department of Education (CDE) and SBE solicited applications for membership on a Curriculum Framework and Evaluation Criteria Committee (CFCC). McDonald Decl. ¶¶ 2–3; *see also* 5 C.C.R. § 9511 (allowing establishment of CFCC, setting forth composition and membership qualifications for CFCC members). The SBE received 81 applications, and, in November 2008, appointed twenty individuals to a CFCC. McDonald Decl. ¶¶ 3–5. The CFCC met for five separate two-day sessions, which were publicly noticed, open to the public, and included a period for public comment. *Id.* ¶ 6. It produced a draft updated framework, which the Instructional Quality Commission (IQC) voted to release to a 60-day public review and comment period. *Id.* ¶ 7. In July of 2009, however, citing fiscal troubles, the Governor essentially suspended all work related to the curriculum frameworks. *Id.*

The SBE resumed work on the framework in September of 2014, releasing a revised timeline. *Id.* ¶ 8. Later that month, the IQC voted to release for a 60-day public review and comment period the existing draft framework with certain CDE proposed edits. *Id.* During the first 60-day review period, CDE received more than 700 public comments from over 480 different commenters. *Id.* ¶ 9. In February 2015, Executive

Director Tom Adams stated in a IQC meeting that “if funding is provided[,] CDE will contract with experts to review the proposed edits to the course description chapters as well as a professional writer to prepare new drafts.” D. MSJ Ex. 62 at 1730. In August of 2015, Tom Adams emailed a member of CAPEEM, stating “the decision of whether experts are needed will be decided after the October 8–9 meeting.” Kumar Decl. Ex. E (dkt. 215-1) at PLS00153.

For two days in October 2015, the IQC’s History-Science Subject Matter Committee (HSS SMC) considered and heard public comment on a revised framework draft that incorporated proposed revisions based on public comments, and forwarded it to the full IQC with additional edits discussed at the meeting. D. MSJ Exs. 65–67; Gregson Decl. ¶¶ 8–9. The HSS SMC also decided at that time not to recommend that the SBE solicit applications for content review experts to opine on the draft. D. MSJ Ex. 67 at 1774. In November 2015, a group of history professors identifying themselves as the “South Asia Faculty Group” (“SAFG”) submitted a report on the draft framework, with proposed edits. Order re MTD at 3, 18; D. MSJ Ex. 18 (November 18, 2015 SAFG submission). The SAFG later submitted additional feedback. *See* D. MSJ Ex. 19 (February 24, 2016 letter with “extended corrections”); *id.* Ex. 20 (March 23, 2016 letter “to clarify some of our rejected edits”); *id.* Ex. 21 (May 17, 2016 letter “to register our acceptance in the main of the last round of edits”). Plaintiffs assert that Tom Adams secretly recruited the SAFG to provide feedback on Hinduism in the Framework,³ without pub-

³ Plaintiffs point to an email by an SAFG member, which states, “. . . I spoke with Tom Adams on Friday. We are asked to submit a short, concise report” *See* P. MSJ at 9–10. This email appears to be hearsay. *See* Fed. R. Evid. 801(c); *Orr v.*

licly acknowledging that he had handpicked the group to obtain a desired (anti-Hindu) viewpoint. *See* P. Opp'n to D. MSJ at 5–6.

After hearing public comment and accepting certain proposed edits at its November 2015 meeting, the IQC voted to recommend the resulting framework draft to the SBE, triggering another 60-day public review and comment period, between December 17, 2015 and February 29, 2016. *Id.* ¶ 10; Gregson Decl. (dkt. 163-3) ¶ 11 (attaching November 2015 meeting minutes), D. MSJ Ex. 68 (dkt. 165-5) at 1777–79, 1783–84. During that period, the CDE received over 10,000 e-mailed comments and thousands of additional printed comments. McDonald Decl. ¶ 10. At the March 2016 HSS SCM meeting, the committee reviewed the public comments received during the last comment period and summarized recommendations, then heard public comment from 90 individuals, and voted to recommend additional edits to the Framework. Gregson Decl. ¶¶ 12–14; D. MSJ Exs. 69–71 (dkt. 165-5). At its May 2016 meeting, the IQC, after discussion and public comment, approved a majority of those edits, and made additional changes such as rejecting edits that would have replaced references to ancient India with “South Asia.” Gregson Decl. ¶ 15; D. MSJ Ex. 72 (IQC minutes of May 19–20, 2016 meeting) at 1801; *id.* Ex. 73 (July 2016 CBE agenda summarizing process) at 1809; Cos Decl. ¶ 11.

On July 14, 2016, the SBE voted unanimously to adopt the current Framework. *See* Cos Decl. ¶ 13; D. MSJ Ex. 75 at 1891–95.

Bank of America, NT & SA, 285 F.3d 764, 783 (9th Cir. 2002) (to defeat summary judgment, opponent “must respond with more than mere hearsay and legal conclusions.”) (internal quotation marks omitted).

2. Framework Content

The Framework describes itself as having “a focus on student inquiry,” D. MSJ Ex. 2 (dkt. 165-1) (“Framework”) at 0074, as encouraging students to “grapple with multiple and often competing pieces of information,” and as emphasizing “history as a constructed narrative that is continually being reshaped,” “rich with controversies and dynamic personalities,” *id.* at 0085. Although the Framework itself is over 800 pages, Framework at 0070–0923, Plaintiffs are primarily concerned with a six-page portion of the Grade Six Framework entitled “The Early Civilizations of India,” *see* P. Opp’n to D. MSJ at 5; P. MSJ at 16–18; Framework at 0242–47.

Both the Standards and the Framework address the role of several major world religions in shaping history. *See generally* Standards; Framework; *see also* Framework Appendix F at 0864 (“much of history, art, music, literature, and contemporary life are unintelligible without an understanding of the major religious ideas and influences that have shaped the world’s cultures and events.”). The Framework includes an Appendix addressing the challenging role of religion in teaching history and social science—it quotes from the First Amendment as “the hallmark of every social studies classroom,” explains that “public schools may not promote or inhibit religion,” and directs that “religion and religious convictions, as well as nonbelief” be “treated with respect.” *Id.* at 0865. It states that “[t]he school’s approach to religion is academic, not devotional,” that “[t]he school may include study about religion as part of the history-social science curriculum, but it may not sponsor the practice of religion,” and that “[t]he school may educate about all religions but may not promote or denigrate any religion.” *Id.* at 0866. It also provides that “Classroom

methodologies must not include religious role-playing activities or simulations or rituals or devotional acts.” *Id.* at 0867.

Students do not read either the Standards or the Framework. Order re MTD at 2.

C. Procedural History

Plaintiffs brought suit in this Court in February 2017, alleging pursuant to 42 U.S.C. § 1983 (1) denial of substantive due process by interference with the liberty interest of parents to direct the education of their children; (2) violation of the Establishment Clause of the First Amendment; (3) violation of the Free Exercise Clause of the First Amendment; and (4) violation of the Equal Protection Clause of the Fourteenth Amendment. *See generally* Compl. Defendants moved to dismiss all claims pursuant to Federal Rule of Civil Procedure 12(b)(6). MTD (dkt. 88). The Court dismissed with prejudice Plaintiffs’ substantive due process claim, Free Exercise claim, and Equal Protection claim. *See* Order re MTD at 21. As to Plaintiffs’ Establishment Clause claim, the Court recognized that Plaintiffs could state a claim by meeting any of the three prongs of the *Lemon* test, but held that they failed to do so as to either the first or the third prong. *See id.* at 10–13. The Court held that Plaintiffs had stated a claim as to the second prong of the *Lemon* test, which asks whether the government action has the principal or primary effect of enhancing or inhibiting religion. *Id.* at 13–16. After discussing a letter quoted in the Complaint from a Hindu student who felt humiliated by a role-playing exercise about caste, the Court held:

In light of the Supreme Court’s admonition that courts should be “particularly vigilant in monitoring compliance with the Establishment Clause in

elementary and secondary schools,” *Edwards*, 482 U.S. at 583–84 [107 S.Ct. 2573], the Court will infer at this point that this sixth grader is reasonable, or that a reasonable sixth grader would perceive the same message [that the primary message from the curriculum is that Hinduism is cruel and unjust], see *Usher [v. City of Los Angeles]*, 828 F.2d [556] at 561 [(9th Cir. 1987)] (in evaluating a motion to dismiss, a court must draw all reasonable inferences in favor of the plaintiff).

Id. at 15–16. In so ruling, the Court distinguished *California Parents for the Equalization of Educational Materials v. Noonan*, 600 F.Supp.2d 1088 (E.D. Cal. 2009), a very similar case in which CAPEEM alleged that the 2005-2006 history-social science textbook adoption process discriminated against Hinduism, explaining that “*Noonan* adjudicated a motion for summary judgment, which involves a different standard than a motion to dismiss.”⁴

Defendants now move for summary judgment, arguing that the Standards and Framework do not primarily communicate disapproval of Hinduism. See D. MSJ. Plaintiffs oppose Defendants’ motion, and file their own cross-motion for summary judgment, arguing that the “Standards and Framework violate the Establishment Clause by denigrating Hinduism” under the second *Lemon* prong. See P. MSJ at 12; P. Opp’n to D. MSJ at 7.⁵

⁴ The textbooks at issue in that case were required to be aligned with the same Standards challenged here, and the Framework that directly preceded the version challenged here. See *Noonan*, 600 F.Supp.2d at 1097.

⁵ Defendants also object extensively to Plaintiffs’ evidence. See, e.g., D. Opp’n to P. MSJ at 15–19; D. Obj. to P. Reply Ev.

II. LEGAL STANDARD

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if it could affect the outcome of the case under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute of material fact is genuine if the evidence, viewed in the light most favorable to the nonmoving party, “is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). On an issue on which it will have the burden of proof at trial, the moving party must affirmatively show that no reasonable jury could find other than in the moving party’s favor. *Id.* at 331, 106 S.Ct. 2548 (Brennan, J., dissenting).

Once the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505. The nonmoving party does this by citing to specific parts of the materials in the record or by showing that the materials cited by the moving party do not compel a judgment in the moving party’s favor. Fed. R. Civ. P. 56(c). Because the court has no obligation to “scour the record in search of a genuine issue of triable fact,” the nonmoving party must “identify with reasonable particularity

(dkt. 230). The Court only reaches those objections necessary to this decision.

the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). If the nonmoving party fails to raise a genuine issue as to any material fact, the moving party is entitled to judgment as a matter of law. *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505. In determining whether there is a genuine issue for trial, the court does not weigh the evidence, assess the credibility of witnesses, or resolve issues of fact. *Id.* at 249, 106 S.Ct. 2505.

III. DISCUSSION

This Order first discusses the fundamentals of Establishment Clause jurisprudence, and then the evidence in the Standards and Framework that bears on Plaintiffs’ Establishment Clause claim. It applies the facts of this case to the law, and concludes that the challenged materials do not have the primary effect of denigrating Hinduism.

A. Establishment Clause Jurisprudence

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). In *Lemon*, 403 U.S. at 612–13, 91 S.Ct. 2105, the Supreme Court explained that governmental action is permissible under the Establishment Clause if (1) it has a secular purpose, (2) the “principal or primary effect” neither advances nor inhibits religion, and (3) it does not foster “excessive state entanglement” with religion. At issue in this case is the second, primary effect, prong. That prong asks “whether it would be objectively reasonable for the government action to be construed as sending primarily a message of either endorsement or disapproval of religion.” *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1398 (9th Cir. 1994). “A government practice has the

effect of impermissibly advancing or disapproving of religion if it is ‘sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by nonadherents as a disapproval, or their individual religious choices.’” *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378 (9th Cir. 1994).

Courts are to assess a government action’s primary effect using a “reasonable observer standard.” *Id.* at 1378. “This hypothetical observer is informed as well as reasonable; we assume that he or she is familiar with the history of the government practice at issue.” *Id.* (quoting *Kreisner v. City of San Diego*, 1 F.3d 775, 784 (9th Cir. 1993), *cert. denied*, 510 U.S. 1044, 114 S.Ct. 690, 126 L.Ed.2d 657 (1994)). Because the standard is objective, a particular observer’s lay or expert opinion is irrelevant. *See Noonan*, 600 F.Supp.2d at 1118 (rejecting use of experts in favor of hypothetical observer); *Brown*, 27 F.3d at 1382 (expert testimony irrelevant to primary effect test); *Alvarado v. City of San Jose*, 94 F.3d 1223, 1232 (9th Cir. 1996) (“reasonable observer is not an expert on esoteric [matters], nor can he or she be turned into one by any publicity generated by plaintiffs’ lawsuit.”). The Ninth Circuit has explained that “[i]f an Establishment Clause violation arose each time a student believed that a school practice either advanced or disapproved of a religion, school curricula would be reduced to the lowest common denominator, permitting each student to become a ‘curriculum review committee’ unto himself.” *Brown*, 27 F.3d at 1379. A reasonable observer is also not aware of undisclosed intent. *See McCreary Cty. v. ACLU*, 545 U.S. 844, 863, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005) (“If someone in the government hides religious motive so well that the ‘objective observer, acquainted with

the text, legislative history, and implementation of the statute,' cannot see it, then without something more the government does not make a divisive announcement that in itself amounts to taking religious sides.”).

The Ninth Circuit has recognized that when the challenged government action arises in elementary school instruction, the “reasonable observer” test should take into account the more impressionable and vulnerable nature of school-age children. *Brown*, 27 F.3d at 1378–79. Courts are to be “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Edwards v. Aguillard*, 482 U.S. 578, 583–84, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987). This is because younger children are more vulnerable to the “subtle coercive pressure in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992).⁶ Bal-

⁶ In fact, *Brown* held that the primary effect prong of the *Lemon* test asks whether an “objective observer in the position of an elementary school student would perceive a message of . . . disapproval [of religion].” *Brown*, 27 F.3d at 1379. Based on *Brown* and *Noonan*, see 600 F.Supp.2d at 1119 (“CAPEEM must show that an objective sixth grade student . . .”), the Court previously held that the reasonable observer in this case is the reasonable sixth grader. See Order re MTD at 14. Defendants argue that there is some authority suggesting that the Court should view the reasonable observer as an adult. See D. Reply (dkt. 223) (citing *Good News Club v. Milford Sch.*, 533 U.S. 98, 119, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) (“We decline to employ Establishment Clause jurisprudence using a modified heckler’s veto, in which a group’s religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive”); *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1037–38 (9th Cir. 2010) (“a child’s understanding cannot be the basis for our constitutional analysis.”)).

anced against this guidance is “the broad discretion of the school board to select its public school curriculum.” *See Noonan*, 600 F.Supp.2d at 1116. The Supreme Court “has long recognized that local school boards have broad discretion in the management of school affairs” and that public education “is committed to the control of state and local authorities.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 863, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982). “Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint,” and courts

In *Good News Club*, the issue was whether the government’s rejection of an organization’s request to hold weekly afterschool meetings in a school cafeteria violated the Establishment Clause. 533 U.S. at 102–03, 121 S.Ct. 2093. The Court held that the relevant community was the parents who would choose whether their children would attend the meetings, not the children themselves, *id.* at 115, 121 S.Ct. 2093, and that its cases about the impressionability of school children were irrelevant because “when individuals who are not schoolteachers are giving lessons after school to children permitted to attend only with parental consent, the concerns expressed in [such cases are] not present,” *id.* at 117, 121 S.Ct. 2093. *Good News Club* is therefore distinguishable, because the material at issue here is the curriculum intended to be taught by public schoolteachers to schoolchildren. In *Newdow*, the Ninth Circuit was applying the “endorsement test,” not at issue here, and it relied on *Good News Club* in rejecting “what a child reciting [the Pledge of Allegiance] may or may not understand about the historical significance of the words being recited.” *See* 597 F.3d at 1037–38. The circuit explained that “some school children who are unaware of its history may perceive the phrase ‘under God’ in the Pledge to refer exclusively to a monotheistic God of a particular religion,” but that “a reasonable observer” who was “aware of this history and origins of the words” would not. *Id.* at 1038.

This Court agrees that a reasonable observer would be familiar with the history of the government’s practice. *See Brown*, 27 F.3d at 1378. Its analysis here does not depend on a child’s misunderstanding, nor does it depend on whether the reasonable observer is a reasonable sixth grader or a reasonable adult.

should only intervene if “basic constitutional values” are “directly and sharply implicate[d].” *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

B. Evidence in the Standards and Framework

Plaintiffs identify numerous elements of the Standards and Framework that they argue demonstrate hostility toward Hinduism.⁷ But even considering the evidence in the light most favorable to Plaintiffs, many of the interpretations urged by Plaintiffs are either inaccurate or incomplete. *See Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007) (court on summary judgment need not adopt party’s story when it is contradicted by the record such that no reasonable jury could believe it); *T.W. Elec. Serv. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 631–32 (9th Cir. 1987) (court need not draw unreasonable inferences).

1. Secular Treatment

One of Plaintiffs’ chief complaints is that the Standards and Framework treat other religions as having divine origins, but discuss only the Hindu religion from a secular perspective. *See* P. MSJ at 16–17 (Framework “strips the Hindu belief system of any divine origins—it depicts the religion simply as a social construct.”). The Court addressed a related argument at the motion to dismiss phase. Then, Plaintiffs argued that the Standards and Framework teach other religions as if they are historically accurate, and therefore endorse those religions to the exclusion

⁷ This section discusses what the Court understands to be the most significant of Plaintiffs’ concerns with the Standards and Framework. The Court necessarily holds that the other concerns not addressed here do not rise to the level of Establishment Clause violations.

of Hinduism. *See* Compl. ¶¶ 33, 42, 108; Opp’n to MTD (dkt. 100) at 20. The Court disagreed, holding that “the text does not support” that assertion, MTD at 10, and that “[t]he curriculum teaches the development of Judaism, not the historical accuracy of biblical stories,” *id.* at 11. So too with Christianity. *Id.* The Court concluded that Defendants’ purpose in enacting the challenged curriculum was “teaching the history of ancient civilizations.” *Id.*

As evidence of Hinduism’s unfairly secular treatment, Plaintiffs point to language in the Framework about Hinduism evolving or developing. *See* P. MSJ at 13–14 (discussing lesson that Brahmanism⁸ evolved into early Hinduism); P. Opp’n to D. MSJ at 2–3 (objecting to the word “developed”).⁹ But the Standards and Framework also acknowledge the role of humans in the development of other religions. *See, e.g.,* Standards at 31 (“Discuss how Judaism survived and developed”); *id.* at 36 (“Trace the development of distinctive forms of Japanese Buddhism”); *id.* at 38

⁸ Plaintiffs rely on an expert, Dr. Khyati Y. Joshi, to opine about the significance of Brahmanism, and many other subjects. *See* P. Opp’n to D. MSJ at 9. The Court grants Defendants’ objection to Joshi’s expert report. *See* D. Reply at 5–7. The report is unsworn, but more importantly, it is not relevant to the “primary effect” question. *See* Fed. R. Evid. 702 (requiring testimony to be relevant to task at hand); *Brown*, 27 F.3d at 1382 (rejecting expert testimony as irrelevant to whether a school practice appears to endorse religion); *Noonan*, 600 F.Supp.2d at 1118 (same); *Alvarado*, 94 F.3d at 1232 (reasonable observer not an expert). The Court further agrees with Defendants about the failure of the Joshi Reply Declaration (dkt. 227-3) to cure the problems with the Joshi Report. *See* State Defendants’ Objections to Plaintiffs’ Reply Evidence (dkt. 230).

⁹ In their reply brief, Plaintiffs argue that what they object to is the suggestion “that human beliefs and practices evolved into the religion of Hinduism.” *See* P. Reply at 6–7. The Court views this as a difference of degree and not kind.

(“List the causes for the internal turmoil in and weakening of the Catholic church”); Framework at 236 (“Judaism was heavily influenced by the environment, the history of the Israelites, and their interactions with other societies.”); *id.* at 271 (“As it became a state religion, Christianity changed The teacher points out that all religions change over time.”); *id.* at 274–75 (“How did the religion of Christianity develop and change over time?”). Such language is consistent with the curriculum’s secular purpose of teaching human history.¹⁰

Plaintiffs likewise contend that the Standards and Framework fail to focus on Hindus’ belief in their religion’s divine origins. *See* P. MSJ at 14–15. But the Framework does talk about the divine in Hinduism, even if it does not preface that discussion as Plaintiffs would prefer, by saying “According to Hindu tradition, _____.” *See* P. MSJ at 17–18. The Framework states that “Ancient Hindu sages” revealed the concept “of Brahman as the divine principle of being,” and as an “all-pervading divine supreme reality” that “may be manifested in many ways, including incarnation in the form of Deities.” Framework at 244. It continues: “These Deities are worshipped as distinct personal Gods or Goddesses, such as Vishnu who preserves the world, Shiva who transforms it, and Sarasvati, the Goddess of learning.” *Id.* It then describes how “[t]hese teachings were transmitted orally at first, and then later in written texts, the *Upanishads* and later, the *Bhagavad Gita*.” *Id.*

¹⁰ Moreover, the curriculum describes positive change in Hinduism, undermining the notion that an inflexible social hierarchy is a central Hindu belief. *See* Framework at 284 (“Hinduism continued to evolve with the Bhakti movement,” which “emphasized” “social and religious equality and a personal expression of devotion to God in the popular vernacular languages.”).

Plaintiffs complain that Defendants treat the *Bhagavad Gita* as mere secular literature, pointing to a line in the Standards. See P. MSJ at 14 (asserting that “sacred Hindu scripture, the *Bhagavad Gita*, is not described as what Hindus believe to be the word of God, but as ‘important aesthetic and intellectual traditions’ and ‘literature.’”) (citing Standards at 32 (“Discuss important aesthetic and intellectual traditions (e.g., Sanskrit literature, including the *Bhagavad Gita*; medicine; metallurgy; and mathematics, including Hindu-Arabic numerals and the zero.”)). Presumably the Standards do not explain the divine significance of the *Bhagavad Gita* because there are but seven bullet points covering all of ancient India. See Standards at 32. The Standards are to be read in conjunction with the Framework, see Standards at 0006, and the Framework provides a bit more context about the role the *Bhagavad Gita* played, see Framework at 244 (“These teachings were transmitted orally at first, and then later in written texts, the *Upanishads* and, later, the *Bhagavad Gita*.”). However, it is unsurprising that the Framework treats the *Bhagavad Gita* in a secular way in the context of a history curriculum—it does the same with other religions’ sacred texts, listing it along with the Torah, Hebrew Bible, Qur’an, and Christian Bible as “classical texts” to study when one is focused on “the human experience and [exploring] the various ways in which human beings affect and express their relationship to their physical, intellectual, social, and political environments.” See Framework at 385. In addition, though Plaintiffs object to the Framework’s treatment of another sacred book, the *Ramayana*, as a “story,” P. MSJ at 18, the Framework states that that book, “the story of Rama, an incarnation or avatar of Vishnu,” is a “text that Hindus rely on for solutions to moral dilemmas” and “one of ancient India’s most

important literary and religious texts.” *See* Framework at 246. It does not use the word “story” in a dismissive sense, but calls the book “important.” *See id.*

2. Caste System

Another of Plaintiffs’ primary complaints about the Standards and Framework is their over-emphasis on the caste system. *See* P. MSJ at 16 (“the Framework’s enormous focus on caste within its coverage of Hinduism is itself contemptuous and unlike the treatment of any other faith.”). The Standards include, under the heading “Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of India,” the bullet point “Outline the social structure of the caste system,” Standards at 32, and the Framework expressly connects the caste system to Hinduism, stating, “Teachers should make clear to students that [the caste system] was a social and cultural structure as well as a religious belief,” Framework at 246. Plaintiffs do not maintain that it is historically inaccurate to link the caste system to Hinduism; rather, they argue that the curriculum’s spotlight on caste gives students an unfairly negative view of Hinduism.¹¹ *See* Compl. ¶ 82 (“Many would

¹¹ Plaintiffs assert that “By word count, 47 percent of the Framework’s discussion in sixth grade of Hinduism supporting individuals, rulers and societies is on caste.” *See* P. MSJ at 16, n.21 (citing to dkt. 172-4, a color coded version of the Framework purporting to depict negative, neutral and positive treatment of Hinduism); *see also id.* at 16 (“71 percent is negative by word count, while only 6 percent is positive”). Defendants rightly note that Plaintiffs rely on this word counting system without any explanation of its methodology or creator. *See* D. Reply at 2. The document Plaintiffs point to, an attachment to a proposed amended complaint that the Court disallowed, *see* dkt. 172-1 ¶ 158, is incredibly subjective and of no use to the Court on summary judgment. For example, Plaintiffs have inexplicably

argue that caste was not and is not a Hindu belief. But irrespective of the accuracy of the language, it is certainly derogatory and inconsistent with . . . the treatment of other religions in the Framework.”); *see also* P. Reply at 7 (“highly debatable” whether “caste is a Hindu religious belief”). Plaintiffs also contend that the Framework “fails to note that the caste system has existed in India among Sikhs, Christians, Muslims and Buddhists, but not among Hindus of Indonesia and Fiji.” P. MSJ at 18 (citing what appears to be an inadmissible article about the caste system).

While it is true that the Framework does not contain the mitigating language Plaintiffs seek, it contains other mitigating language, which makes clear that the caste system existed in a historical context and was not unique to ancient India. *See, e.g.*, Framework at 245 (“As in all early civilizations, Indian society witnessed the development of a system of social classes.”); *id.* (“This system, often termed caste, provided social stability and gave an identity to each community.”); *id.* (“Over the centuries, the Indian social structure became more rigid, though perhaps not more inflexible than the class divisions in other ancient civilizations.”); *id.* at 246 (“Today many Hindus, in India and in the United States, do not identify themselves as belonging to a caste.”);¹² *id.* (“As in Mesopotamia and Egypt, priests, rulers, and other elites used religion to justify the social hierarchy.”).

highlighted in red, indicating a negative portrayal of Hindus, the sentences “Ancient India experienced a Vedic period (ca. 1500–500 BCE), named for the *Vedas*, which were composed in Sanskrit,” dkt. 172-4 at 162, and “Later in the Vedic period, new royal and commercial towns arose along the Ganges (aka Ganga), India’s second great river system,” *id.* at 163.

¹² *But see* P. Opp’n to D. MSJ at 13 (opining that this sentence “is patronizing and implies that the caste system is inherently Hindu.”).

This language goes a long way to contextualize and soften the subject of caste.

Plaintiffs point next to a textbook entitled *Discovery Education, Discovery Education Social Science Techbook, Grades Six Through Eight*, which Plaintiffs assert includes an exercise for role playing the caste system. See P. Opp'n to D. MSJ at 3–4 (citing Kumar Decl. (dkt. 215-1) at PLS00184–87). Plaintiffs add that the book includes a lesson objective directing teachers to “Connect the beliefs of Hinduism to the caste system and other elements of ancient Indian life.” *Id.* at 4 (citing Kumar Decl. (dkt. 215-1) at PLS00201). This evidence is misleading. First, *Discovery Education* appears to have been adopted as part of the November 2017 instructional materials adoption, see Pl. Admin. Mot. (dkt. 196) Ex. 5 (“2017 History-Social Science Adoption Report”)—a process that Plaintiffs do not challenge in their complaint, and which involves a different regulatory process than those pertaining to framework adoption. See D. Reply at 11 (citing 5 C.C.R. §§ 9511–9526). While the book is slightly relevant in that it demonstrates a local district’s interpretation of the Standards and Framework, it is not Defendants’ creation. More importantly, the role playing exercise is aimed at teachers, not students, and *it does not mention Hinduism* or even the caste system. See Kumar Decl. at PLS00186–87 (“Announce to the class that society in ancient India gave different people different levels of opportunity, much like this activity.”; “Next, post the Essential Question: What effects did power and social class have on the lives of the ancient Indian people?”; “Encourage them to think about the impact that money and power may have had on their social standing, or position, within Indian society.”). The “Lesson Overview” that Plaintiffs tout as linking “the beliefs

of Hinduism to the caste system and other elements of ancient Indian life” actually relates to another lesson (lesson 6.3), not the lesson containing the role playing exercise (lesson 6.2). *See id.* at PLS00201.

Moreover, even if the book was a part of this case and even if it explicitly directed students to participate in a caste system role playing exercise, that is not the kind of role playing that the Framework itself forbids and that courts view with great suspicion. It does not involve the role playing of a devotional act, like taking communion, but rather of a historical social system. *See* Framework Appendix F at 867 (“Classroom methodologies must not include religious role-playing activities or simulations of rituals or devotional acts.”); *Brown*, 27 F.3d at 1380 (“active participation in ‘ritual’ poses a greater risk of violating the Establishment Clause than does merely reading, discussing or thinking about religious texts”); *but see id.* n.6 (“a reenactment of the Last Supper or a Passover dinner might be permissible if presented for historical or cultural purposes.”).¹³

Finally, on the subject of role-playing, this Court’s order at the motion to dismiss phase discussed an allegation in the Complaint that the “Commission was made acutely aware of the pain and humiliation the curriculum’s portrayal of Hinduism inflicts on Hindu students,” through the letter of a sixth grade student about a caste role-playing exercise in her classroom two years earlier. *See* Order re MTD at 15–16; Compl. ¶ 85. Although one individual’s opinion is not controlling given the objective nature of the reasonable ob-

¹³ Because the Court rejects Plaintiffs’ interpretation of the “intricate role-playing exercise of the caste system,” the Court also rejects Plaintiffs’ argument that a reasonable observer would recognize that that exercise selectively violated California law. *See* P. MSJ at 20–23.

server test, *see Brown*, 27 F.3d at 1379, the Court stated that, because it was adjudicating a motion to dismiss, it would “infer at this point that this sixth grader is reasonable, or that a reasonable sixth grader would perceive the same message.” Order re MTD at 16. Defendants accurately note, however, that (1) the exercise apparently took place two years before the Framework at issue was adopted,¹⁴ *see* Compl. ¶ 85 (“two years prior” to adoption process); (2) the specific instructional method described was employed at the local level and was not required by the Framework; and (3) the exercise was arguably contrary to the guidance in the (subsequently adopted) Framework, *see* Framework Appendix F (“Classroom methodologies must not include religious role-playing activities”). *See* D. MSJ at 3.¹⁵

3. Aryan Invasion

Plaintiffs also object to the Standards and Framework’s treatment of the Aryan Invasion Theory,

¹⁴ Plaintiffs’ argument that “the offensive language of the current Framework proclaiming that caste is a religious belief . . . is virtually identical to the 2005 version of the Framework that was in force when the student was treated so cruelly,” P. Opp’n to D. MSJ at 18, fails to note that the 2005 version of the Framework was in effect when Defendants adopted the instructional materials upheld in *Noonan*, *see Noonan*, 600 F.Supp.2d at 1097.

¹⁵ The Court does not rely on Defendants’ additional argument that Plaintiffs are making a facial challenge and so the law presumes that local districts will implement the curriculum legally, *see id.*, as Plaintiffs contest this point, *see* P. Opp’n to D. MSJ at 19 (“Although the Standards and Framework violate the Establishment Clause on their face, Plaintiffs never limited their claim to a facial challenge”); *but see, e.g.*, Stipulation (dkt. 90) ¶ 1 (Plaintiffs stipulating that individual school districts “are not necessary parties in the determination of the constitutional claims in the action.”).

which Plaintiffs claim, citing the expert report that the Court has rejected herein, is a “long-ago debunked, Orientalist theory” that “present-day India and Pakistan were invaded, in approximately 1500 BCE, by the ‘Aryans,’ a tribe of European origin, and that the Aryans . . . became the creators of Hindu civilization.” P. MSJ at 15 (citing Joshi Report at 4). The Standards do state “Discuss the significance of the Aryan invasions,” *see* Standards at 32, but they must be read together with the Framework, *see* Cal. Educ. Code §§ 60000, 60001, 60005, 60200(c); Standards at 0006. The Framework does not use the term “Aryan Invasion.” It states that, in the Vedic period (between 1500 and 500 BCE), “according to many scholars, people speaking Indic languages, which are part of the larger Indo-European family of languages, entered South Asia, probably by way of Iran.” Framework at 243–44. It continues, “Gradually, Indic languages, including Sanskrit, spread across northern India.” *Id.* at 244. After another couple of sentences about language, the Framework states: “Another point of view suggests that the language was indigenous to India and spread northward.” *Id.*

This discussion about how different languages developed and spread in ancient India is simply not, as Plaintiffs assert, an assertion that “The origin of Hinduism . . . is the Aryan Invasion Theory.” *See* P. Opp’n to D. MSJ at 5; *see also* P. MSJ at 17 (“The origins of all other religions included in the Framework are explained from the perspective of the believer Only for the origin of Hinduism does the Framework use a discredited theory.”). It takes an expert opinion, not relevant to this Court’s inquiry, to make it so. *See* P. MSJ at 15 (citing Joshi Report at 4); *Alvarado*, 94 F.3d at 1232 (reasonable observer not an expert). As to Hinduism’s origin, the Frame-

work actually discusses archeological finds from the earlier Harappan civilization (about 2600 to 1900 BCE), as containing artifacts that “show features that are all present in modern Hinduism, such as a male figure that resembles the Hindu God Shiva in a meditating posture, as well as small clay figures in the posture of the traditional Hindu greeting *namaste*.” See Framework at 243.

Having set aside the unfounded contention that the Framework teaches the Aryan Invasion as the origin of Hinduism, what is left is the language itself about migration and language. It is not clear whether Plaintiffs are disputing that in the Vedic period, people who spoke Indic languages entered South Asia. See P. Reply at 7 (“The Framework Reference to ‘Indic speakers’ . . . is synonymous with the . . . *discredited Aryan Invasion Theory*.”). Even if that is their contention, the Framework alerts students to a competing historical theory. See *id.* at 244 (“Another point of view suggests . . .”).¹⁶ The Court is no author-

¹⁶ In fact, in a recently-adopted textbook submitted as an exhibit in connection with an earlier motion, the Aryan migration is treated thusly: “According to many historians, around 1500 B.C, waves of new people began crossing the Hindu Kush into India. The migrants were a collection of tribes called *Aryans*, meaning ‘noble ones.’ They belonged to the Indo-European people who had populated central Asia. (Some scholars have begun to dispute this theory, however. They believe that the Aryans were descendants of earlier Indus civilizations and there was no invasion or migration at all.)” See Prouty Decl. Ex. A (dkt. 183-2) at 148.

One note about the textbook excerpts submitted in this case. As discussed above, Plaintiffs’ complaint does not challenge the recently-adopted textbooks or the 2017 instructional materials adoption process of November 2017. See *generally* Compl. And the Court recognizes that a different regulatory process governs the instructional materials adoption process than the curriculum framework adoptions. See 5 C.C.R. §§ 9511–26. However,

ity on ancient Indian history and in no position to declare one version true and the other false. This language deals with history—contested history, but history all the same. Whether or not there was an influx of Aryans into South Asia in 1500 BCE is appropriately the subject of a history and social science curriculum, and not actually a positive or negative statement about Hinduism.

4. Treatment of Women

Plaintiffs also object to the Framework’s description of Hinduism as contributing to the unequal status of women. *See* P. MSJ at 19–20. They assert that it deliberately treats Hinduism “as a contributor to patriarchy while not making the same acknowledgment for other religions.” *Id.* at 19. Not so. The Framework reflects that patriarchy was not unique to ancient India or Hinduism.

The relevant language in the Framework is about ancient India, not Hinduism. It states, “Although ancient India was a patriarchy, women had a right to their personal wealth, especially jewelry, gold, and silvery, but little property rights when compared to men, akin to other ancient kingdoms and societies.” Framework at 246. It continues, “They participated

the recently-adopted textbooks are slightly relevant to the Court’s assessment of the Standards and Framework, as they demonstrate that someone has determined that those books are aligned with the Standards and Framework at issue in this case. On the other hand, excerpts of *old* instructional materials were aligned with a different Framework. Thus, the pages attached to the Nair Declaration (dkt. 215-7), purporting to be assignments given to the declarant’s daughter by local educators during the 2016–17 school year, and which would not have been aligned with the 2016 Framework or the 2017 instructional materials adoption, are essentially irrelevant. They also lack foundation. The Court therefore sustains Defendants’ objection as to that evidence. *See* D. Opp’n to P. MSJ at 17.

in religious ceremonies and festival celebrations, though not as equals. Hinduism is the only major religion in which God is worshipped in female as well as male form.” *Id.* About Judaism, the Framework states: “Judaism, in its ancient form, was largely a patriarchy. It was rare for women to own property, but Jewish law offered women some important rights and protections.” *Id.* at 236. About Christianity, it provides: “Although ancient Christianity was a patriarchy and all the apostles were men, several women were prominent, especially Mary, mother of Jesus. Until modern times, Christian women had few property rights and were subordinate to men.” *Id.* at 270; *see also id.* at 240 (about ancient Athens: “women, foreigners, and slaves were excluded from all political participation.”); *id.* at 231 (“Mesopotamia was a patriarchy and men had more power than women.”).

Plaintiffs’ contrary reading of the Framework is misleading. *Compare* P. MSJ at 19 (“For Christianity, the Framework even provides that ‘male clergy, both Catholic and Protestant,’ generally agreed that ‘men and women are equal in the sight of God.’”) *with* Framework at 313 (“In a few radical Protestant sects, women sometimes became leaders in church organizations and propagation. However, male clergy, both Catholic and Protestant, generally agreed that even though men and women are equal in the sight of God, women should bow to the will of their fathers and husbands in religious and intellectual matters.”). While the Framework does not include Plaintiffs’ desired “interpretations of the Bible that would give women a status inferior to men,” *see* P. MSJ at 19, it certainly blames Christian leaders for some historical gender inequality, *see* Framework at 313.

5. Additional Negative and Positive Treatment of Religion

Beyond the language already discussed herein, the Framework frequently acknowledges negative aspects of other religions' histories. For example, the Framework states that Muslim leaders conquered new land and forced some non-Muslims to convert. *Id.* at 278. It mentions that "Christians and Muslims enslaved captives who did not belong to their own religions." *Id.* at 310. It notes "extensive" criticism of the Catholic Church over the selling of indulgences and corruption by the clergy. *Id.* at 312. It explains that "Protestantism added more fuel to the already growing religious persecution in Spain, which had expelled the Jews in 1492. Between 1500 and 1614, Spain expelled all Muslims and persecuted converts and dissenters in the Spanish Inquisition." *Id.* It notes that Galileo Galilei "was charged with heresy by the Catholic Church for his public support of Copernicus' theory that the earth revolved around the sun" and "spent his final days under house arrest." *Id.* at 316.

The Framework also uses positive language about Hinduism and ancient India. It describes the Harappan civilization (about 2600 to 1900 BCE) as "well planned" and "[a] flourishing urban civilization." *Id.* at 243. It describes the Vedic period as "build[ing] up a rich body of spiritual and moral teachings that form a key foundation of Hinduism as it is practiced today." *Id.* at 244. It describes "the central practices of Hinduism today" as including "above all, a profound acceptance of religious diversity." *Id.* at 245. And it ends by discussing the *Ramayana* as an "epic work." *Id.* at 246. It contains positive language about the Gupta Dynasty (280 to 550 CE), as "a rich period of religious, socioeconomic, educational, literary, and

scientific development,” and discusses the “[e]nduring contributions from the cultures of which is now modern India and other parts of South Asia.” *Id.* at 283. It addresses the Chola Empire, which was “associated with significant artistic achievement,” and states that “Hinduism continued to evolve with the Bhakti movement,” which “emphasized” “social and religious equality and a personal expression of devotion to God.” *Id.* at 284.

6. The SAFG

Finally, Plaintiffs vociferously object to the role of the SAFG, the group of academics that they claim Tom Adams secretly recruited to provide anti-Hindu input on the Framework. *See* P. MSJ at 9–11 (“... presented the feedback to the public without acknowledging that Adams handpicked the professors . . . to obtain the viewpoint he sought.”); P. Opp’n to D. MSJ at 5–6 (same); P. Reply at 3 (“Defendants gave special consideration to the [SAFG] solicited by the [CDE] officials”).¹⁷ Although the SAFG participated “outside of the expert appointment process,” *see* P. MSJ at 9; *see also* Compl. ¶¶ 48–51 (alleging that Defendants “chose to ignore completely the process for consulting experts contemplated by the Department of Education’s regulations”), Tom Adams stated that it was undecided “whether experts are needed,” *see* Kumar Decl. Ex. E at PLS00153, a CFCC with Content Review Experts had already been formed in 2008, *see* McDonald Decl. ¶¶ 2–5; 5 C.C.R. § 9511, and it is not clear that the regulations would have permitted a second CFCC. As previously noted, the

¹⁷ Plaintiffs also complain that two members of the SAFG were actually authors of the Framework. *See* P. Reply at 6. But this fact makes it even less objectionable for the CDE to consult them.

email Plaintiffs rely on to establish that Tom Adams was directing the SAFG contributions is hearsay. *See* P. MSJ at 9–10. But assuming that the CDE indeed solicited the SAFG’s input, there is no evidence that it did so pursuant to official state policy, *see Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011), or that a reasonable observer would be cognizant of the academics’ internal correspondence, *see* Viswewaran Decl. ¶ 15 (dkt. 151-2) (third party communications have always been private, and no one else had access to them); *see also McCreary*, 545 U.S. at 863, 125 S.Ct. 2722 (reasonable observer not aware of hidden religious motive).

Moreover, it is not at all clear that the nefarious gloss that Plaintiffs urge on the SAFG’s correspondence is borne out. *See* Corley Order (dkt. 171) at 12–13 (description of correspondence as partisan and anti-Hindu “is contradicted by the context and overall content of the messages.”). As one example of this, Plaintiffs highlight a single line in an email from an SAFG member, stating “readers of our report can imagine that it is meant to undermine the legitimacy of Hinduism as a religion (and Hinduism uniquely among religions, at that.)” *See* P. Opp’n to D. MSJ at 14 (quoting Katon Decl. Ex. D at KEN00047). A review of the complete document reveals that the author of that line was objecting to mention of an academic debate that the author felt was too complicated and subject to misinterpretation. *See* Katon Decl. at KEN00047. The author continued, “Our critics should not be able to say that we show animus against Hinduism, or against religion generally and so dismiss our suggestions as partisan. We should acknowledge that Hinduism will of course play a major role in textbooks on Indian civilization, but not at the expense of acknowledging other religions and the mul-

tiplicity within Hinduism itself.” *Id.* The email as a whole does not suggest that the author is seeking to undermine the legitimacy of Hinduism, and the single line that Plaintiffs quote is misleading.

As a second example of SAFG correspondence taken out of context, Plaintiffs quote an email that they assert shows that SAFG members “understood that they were to use ‘smoke and mirrors’ to manipulate the Framework adoption process.” *See* P. MSJ at 23 (quoting Katon Decl. at KEN00016); P. Opp’n to D. MSJ at 14 (same). But that email simply stated that the group was not going to respond directly to a particular Hindu organization (Hindu American Foundation),

... but we need to describe what we take to be the social/scientific/scholarly current consensus on these issues, and then state whether we think the framework is consistent with that scholarly consensus. So that is our mission: to clearly state what is accepted scholarship, and if there is no legitimate debate on an issue, to state this unambiguously.

See Katon Decl. at KEN00016. Far from revealing that the author/group intended to surreptitiously insert into the curriculum either false or anti-Hindu materials, the email shows that the author/group’s stated intention was to make the Framework more accurate.

Equally important, the SAFG made their positions known via public comment, which Defendants made available for public review. *See* McDonald Decl. ¶¶ 9, 11. Although Plaintiffs object to the CDE’s failure to disclose Adams’s role, they do acknowledge CDE’s open use of the SAFG recommendations. *See* P. MSJ at 10 (“Although Adams’ recruitment of the hand-

picked SAFG was never made public, McTygue, who led the drafting of the Framework, did state publicly for the first time at the final History-Social Science Subcommittee meeting in March 24, 2016 that the subcommittee had been receiving reports from the SAFG.”). Moreover, the CDE rejected a number of the SAFG’s recommendations. Of the six examples the Complaint identifies of the SAFG’s allegedly anti-Hindu recommendations, the Court has already noted that “[t]he SBE actually rejected four.” *See* Order re MTD at 19 (dismissing Equal Protection claim based on Framework Adoption process). In addition, Defendants submit evidence that there was significant support for SAFG’s positions.¹⁸

¹⁸ *See, e.g.*, D. MSJ at 16–18 (citing, among other things, Appendix (dkt. 165) Ex. 22 (letter signed by 153 individuals, mostly American professors, expressing “support for the recommendations of the South Asia Faculty Group,” including recommendations concerned with “sanitization of the connection of caste to Hinduism”); Appendix Ex. 23 (letter submitted by Dalit Bahujan Faculty Group, 21 scholars in United States and India, that “broadly supported SAFG’s proposed edits,” and asserted “consensus among historians, that a society divided into caste . . . was advocated as the ideal in texts as old as *Rig Vega* . . .”); Appendix Ex. 24 (submission from South Asian Histories for All, stating among other things that “Caste as determined by birth has been religiously sanctioned and a lived reality in India for thousands of years. Erasing the religious underpinnings of caste also negates the religious dissent that produced the Buddhist, Ravidassia, and Sikh religions.”); Appendix Ex. 25 (letter from Council on American-Islamic Relations urging SBE to accept the SAFG’s edits and expressing concern about proposed edits “that seek to deny the reality of the [caste] system”); Appendix Ex. 27 (letter from Society for Advancing the History of South Asia, affiliate organization of the American Historical Association, supporting the “SAFG mission of including mention of caste . . . as concept[] for understanding the history of society and culture in ancient India, and the history of Hinduism itself.”)). The Court also understands, of course, that Plaintiffs and others op-

As to edits generally, the Court previously rejected Plaintiffs' arguments that Defendants favored other religions over Hinduism in accepting and rejecting feedback on the Framework. *See id.* at 20–21 (“The problem here is not process. The SBE invited public comments on the draft Framework, but it is not obligated to accept every suggested edit—nor could it, when faced with conflicting input. The public school system could not function if every rejected public comment on the content of the curriculum carried potential liability Plaintiffs have not pled and cannot adequately plead that the Defendants treated Hinduism unfavorably as compared to other religions in the Framework adoption *process*.”). It now rejects Plaintiffs' strained argument that a reasonable observer would recognize that Defendants' handling of edits selectively violated California law. *See P. MSJ* at 21–23. The reasonable observer is not a legal expert, nor, given these facts, would he or she reach the conclusion Plaintiffs urge. The CDE received over 10,000 emailed comments, and thousands of additional printed comments in just one phase of the Framework adoption process. *See McDonald Decl.* ¶ 10. It is no wonder that the “Supreme Court has warned that courts should not be in the position of analyzing the minutia of textbook edits and curriculum decisions.” *See Noonan*, 600 F.Supp.2d at 1121.

C. Primary Effect

A reasonable observer would not view the Standards and Framework as primarily denigrating Hinduism.

posed SAFG's positions. *See, e.g.*, P. Opp'n to D. MSJ at 22 n.24 (quoting from Hindu American Foundation and Hindu Education Foundation press releases).

1. Disapproval of Religion

As discussed above, many of the examples Plaintiffs give of disparagement are not that. The Framework discusses other religions' development as a result of human influence; it includes mitigating language about caste, stating that there was a system of social classes in all early civilizations; it recognizes a competing theory to the theory that Indic speakers entered South Asia in the Vedic period; and it states that patriarchy was not unique to ancient India. An objective, reasonable observer would find much of the challenged material entirely unobjectionable. *See Alvarado*, 94 F.3d at 1232 (“reasonable observer is not an expert on esoteric [matters]”); *Books v. Elkhart County, Indiana*, 401 F.3d 857, 867 (7th Cir. 2005) (effect “is evaluated against an objective, reasonable person standard, not from the standpoint of the hypersensitive or easily offended.”).

But even if there is some evidence by which a reasonable person could infer a disapproval of Hindu religious beliefs—an excessive discussion of caste, for example, or a failure to be fully transparent about coordination with SAFG—that is not enough to conclude that the *primary* message of the Standards and Framework is disparagement. *See C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 985–86 (9th Cir. 2011) (“Even statements exhibiting some hostility to religion do not violate the Establishment Clause if the government conduct at issue,” in addition to meeting the other two *Lemon* prongs, “does not have as its principal or primary effect inhibiting religion.”). Two cases about state disapproval of religion illustrate this point.

In *Vernon*, 27 F.3d at 1388–89, the City of Los Angeles conducted an investigation into whether an Assistant Chief of Police's religious beliefs were “im-

properly shaping the operations and policies” of the police department. The officer sued the City, alleging, among other things, an Establishment Clause violation. *Id.* at 1390. Although the district court held that there was “no evidence in the record from which a reasonable person could infer any disapproval by the city,” the circuit observed that the city’s having “expressly included within the scope of its investigation inquiries concerning ‘consultation with religious elders on issues of public policy’ suggests that the city disapproved of such consultation,” and that such disapproval could “possibly [be] due to the particular religious beliefs underlying such consultation.” *Id.* at 1398. The circuit explained, however, that “[n]otwithstanding the fact that one may infer possible city disapproval of Vernon’s religious beliefs from the direction of the investigation, this cannot objectively be construed as the primary focus or effect of the investigation.” *Id.* at 1398–99. The primary purpose of the investigation was to investigate whether the officer was engaging in improper or illegal conduct, and the investigation could not “reasonably be construed to send as its *primary* message the disapproval of [the officer’s] religious beliefs.” *Id.* at 1399. The circuit noted, too, that there were “prominent disclaimers” in the course of the investigation about the officer’s entitlement to his personal religious views. *Id.*

Similarly, in *American Family Association v. City and County of San Francisco*, 277 F.3d 1114, 1122 (9th Cir. 2002), where the San Francisco Board of Supervisors sent a letter and adopted resolutions denouncing discrimination and violence against members of the LGBTQ community, the Ninth Circuit held that two of the “documents contain certain statements from which it may be inferred that the Defendants are hostile towards the religious view

that homosexuality is sinful or immoral.” “Nonetheless,” the circuit continued, “we believe the district court properly concluded that this was not the principal effect of Defendants’ actions.” *Id.* It explained: “The documents, read in context as a whole, are primarily geared toward promoting equality for gays and discouraging violence against them.” *Id.* Even though the two documents “may contain over-generalizations about the Religious Right,” or “misconstrue the Plaintiffs’ message,” “a reasonable, objective observer would view the primary effect of these documents as encouraging equal rights for gays and discouraging hate crimes, and any statements from which disapproval can be inferred only incidental and ancillary.” *Id.* at 1122–23.

Here, as in *Vernon* and *American Family*, even if a reasonable observer could infer some disapproval of historical aspects of Hinduism, the Standards and Framework by no means *primarily* communicate disapproval of Hinduism. Just as the primary effect of the investigation in *Vernon* was to investigate possible illegal conduct, and the primary effect of the Board of Supervisors’ actions in *American Family* was to encourage equal rights and denounce hate crimes, the primary effect of the Standards and Framework is to establish a curriculum on ancient history and social sciences. *See* Standards at 0006 (requiring “students not only to acquire core knowledge in history and social science, but also to develop the critical thinking skills that historians and social scientists employ to study the past and its relationship to the present.”); Framework at 0074 (ensuring “that all California students are prepared for college, twenty-first century careers, and citizenship.”). In addition, here, as in *Vernon*, there are disclaimers. The Framework’s Appendix quotes from the

First Amendment, explains that “public schools may not promote or inhibit religion,” and directs that “religion and religious convictions, as well as nonbelief” be “treated with respect.” Framework at 0865. And, as discussed above, the body of the Framework specifically makes positive references to ancient India and Hinduism, along with negative references to other civilizations and religions.

While Plaintiffs concede that they must demonstrate that the government’s action sends “primarily a message of . . . disapproval,” P. Opp’n to D. MSJ at 7 (quoting *Vernon*, 27 F.3d at 1398), they quote *Brown*, 27 F.3d at 1378, for the proposition that the “concept of a ‘primary’ effect encompasses even nominally ‘secondary’ effects of government action that directly and immediately advance, or disapprove of, religion,” P. Opp’n to D. MSJ at 8. They also cite to *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1256 (9th Cir. 2007) (quoting *Brown*, 27 F.3d at 1378), which held that “Governmental action has the primary effect of advancing or disapproving religion if it is ‘sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.’” *Id.* They argue that “[a]pplying the correct standard,” they would prevail, because “it is sufficiently likely that a reasonable observer would perceive” that the Standards and Framework “disapprove of Hinduism.” *Id.*

But *Brown*, which this Court relies on extensively, pre-dates *Vernon* and *American Family*. Moreover, *Vasquez* actually stated that “The most instructive cases in our circuit are *Vernon* and *American Family*,” 487 F.3d at 1256, and its application of the second *Lemon* prong is consistent with those cases, *see id.* at 1257 (“a ‘reasonable observer’ familiar with the histo-

ry and controversy . . . would not perceive the primary effect of Defendants’ action as one of hostility towards religion.”). Indeed, while Plaintiffs accurately quote *Vasquez*, *Vasquez* inaccurately cites to *Brown*—the quoted language from *Brown* was defining the word “effect,” not the concept of “primary effect.” Compare *Brown*, 27 F.3d at 1378 (“A government practice has the effect . . . if it is ‘sufficiently likely to be perceived’”) with *Vasquez*, 487 F.3d at 1256 (“Government action has the primary effect . . . if it is ‘sufficiently likely to be perceived’”).

Plaintiffs’ interpretation would read the word “primary” out of the primary effect test and render any conceivable disapproval a constitutional violation. That is not the law. Certainly courts cannot ignore “nominally ‘secondary’ effects of government action that directly and immediately advance, or disapprove of, religion.” See *Brown*, 27 F.3d at 1378. But Plaintiffs must still show that disapproval of Hinduism is the primary effect of the Standards and Framework, and they have not done so.

2. The Context of School Curriculums

It was not enough in *Vernon* and *American Family* that there was some disapproval of religion: the context of the government action was essential in assessing the primary effect. Context is also essential to the Ninth Circuit’s treatment of school curriculum cases. Courts are to “consider the . . . curriculum as a whole to determine whether the primary effect is to endorse or inhibit religion.” *Noonan*, 600 F.Supp.2d at 1118 (quoting *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1540 (9th Cir. 1985) (Canby, J., concurring) (“Objectivity in education need not inhere in each individual item studied; if that were the requirement, precious little would be left to read.”)); cf. *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680,

689 (7th Cir. 1994) (courts are to “focus on the entire series, not simply the passages the parents find offensive because to ‘[f]ocus exclusively on the religious component of any activity would invariably lead to its invalidation.’”). Disparagement of Hinduism is not the primary effect of the Standards and Framework as a whole. A couple of school curriculum cases are particularly helpful in demonstrating this.

In *Grove*, 753 F.2d at 1531, parents brought suit over a school board’s refusal to remove a book called *The Learning Tree* from their daughter’s sophomore English literature curriculum. The parents argued that *The Learning Tree* “has a primary effect of inhibiting their religion, fundamentalist Christianity, and advancing the religion of secular humanism.” *Id.* at 1534. The Ninth Circuit disagreed, explaining that while the Establishment Clause prohibits “daily readings from the Bible,” “recitation of the Lord’s Prayer,” “posting the Ten Commandments in every classroom,” “beginning school assemblies with prayer,” and including in a meditation course “a ceremony involving offerings to a deity,” the “literary or historic study of the Bible is *not* a prohibited religious activity” and “[n]ot all mention of religion is prohibited in public schools.” *Id.* Reading *The Learning Tree* was “not a ritual” but an exploration of the “expectations and orientations of Black Americans.” *Id.* Moreover, the book “was included in a group of religiously neutral books in a review of English literature, as a comment on an American subculture.” *Id.*; *see also id.* at 1540 (Canby, J., concurring) (“It is one book, only tangentially ‘religious,’ thematically grouped with others in the sophomore literature curriculum.”). Accordingly, the school board did not violate the Establishment Clause.

Likewise, in *Brown*, 27 F.3d at 1377, parents objected to a district's use of *Impressions*, an elementary school teaching aid that consisted of "approximately 10,000 literary selections and suggested classroom activities," covering "a broad range of North American cultures and traditions." *Id.* The plaintiffs challenged 32 of the selections, which directed students to discuss witches, create poetic chants, and pretend that they were witches or sorcerers. *Id.* They alleged that the selections promoted the religion of Wicca and the practice of witchcraft. *Id.* The Ninth Circuit explained that "[t]o the extent that the Challenged Selections involve no more than merely reading, discussing or contemplating witches, their behavior, or witchcraft, they fall squarely within the holding of *Grove*." *Id.* at 1380. The circuit also rejected the plaintiffs' role-playing arguments, concluding that this was not "student participation in school-sponsored religious ritual" but "coincidental resemblance . . . to witchcraft ritual." *Id.* at 1380–81. It continued, "As in *Grove*, the Challenged Selections are only a very small part of an otherwise clearly nonreligious program. It thus is unlikely that . . . an objective observer would perceive the inclusion of the selections in *Impressions* as an endorsement of or disapproval of religion." *Id.* at 1381. The court reiterated: "The context in which the Challenged Selections exist is relevant to determining whether children will have such a perception." *Id.* The plaintiffs therefore failed to meet the second *Lemon* prong. *Id.* at 1383.

Much like *The Learning Tree* was only one book "included in a group of religiously neutral books in a review of English literature," see *Grove*, 753 F.2d at 1534, and the witchcraft selections were only 32 of 10,000 literary selections, see *Brown*, 27 F.3d at 1377, the language Plaintiffs object to in the Standards and

the Framework are only a small part of an expansive history and social sciences curriculum, ranging from kindergarten to twelfth grade and from ancient history to economics and principles of American democracy. *See* Framework at 72–73; *see also Noonan*, 600 F.Supp.2d at 1119 (challenged materials “are only a small portion of otherwise clearly nonreligious texts . . . which are part of a clearly[] nonreligious history-social sciences program.”).

This is not to say that truly derogatory language accounting for only a small percentage of words in a larger text would never qualify as a “nominally ‘secondary’ effect[] of government action that directly and immediately advance[d], or disapprove[d] of, religion.” *See Brown*, 27 F.3d at 1378. The Court holds only that, as discussed above, the materials Plaintiffs challenge in this case do not so qualify. Relatedly, although Plaintiffs object to perceived bias in the Standards and Framework development process—particularly in connection with the role of the SAFG, *see* P. MSJ at 9–11—that process involved public review, public comment, and public meetings, and the curriculum that resulted from that process *does not primarily disparage Hinduism*. In context, the process does not alone satisfy the second *Lemon* prong.

Ultimately, “the State of California has determined that students should study the importance of religion . . . to gain a better understanding of different cultures and conflicts.” *Noonan*, 600 F.Supp.2d at 1117; Framework Appendix F at 0864 (“much of history, art, music, literature, and contemporary life are unintelligible without an understanding of the major religious ideas and influences that have shaped the world’s cultures and events.”). “Not all mention of religion is prohibited in public schools.” *Grove*, 753 F.2d at 1534; *see also Stone v. Graham*, 449 U.S. 39, 42,

101 S.Ct. 192, 66 L.Ed.2d 199 (1980) (“the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like”); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963) (“it might well be said that one’s education is not complete without a study of . . . the history of religion and its relationship to the advancement of civilization.”). As in *Grove* and *Brown*, the challenged material here is not school-sponsored religious ritual. See *Grove*, 753 F.2d at 1534; *Brown*, 27 F.3d at 1380-81. It is a discussion of ancient India that includes a discussion of early Hinduism from an historical perspective. See also *Noonan*, 600 F.Supp.2d at 1121 (material does not “serve as a religious primer.”). This is constitutionally permissible, as “[t]he Establishment Clause is not violated when government teaches about the historical role of religion.” See *Books*, 401 F.3d at 868.

Given the substance and context of the challenged materials, a reasonable observer would not conclude that the primary effect of the Standards and Framework is the disparagement of Hinduism. A reasonable observer would conclude that their primary effect is to establish a curriculum on ancient history and social sciences. Accordingly, Plaintiffs’ challenge fails the second prong of the *Lemon* test. Defendants’ actions did not violate the Establishment Clause.

IV. CONCLUSION

For the forgoing reasons, the Court GRANTS Defendants’ Motion for Summary Judgment and DENIES Plaintiffs’ Cross-Motion for Summary Judgment.

IT IS SO ORDERED.

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 17-00635-CRB

CALIFORNIA PARENTS FOR THE EQUALIZATION OF
EDUCATIONAL MATERIALS, et al.,
Plaintiffs,

v.

TOM TORLAKSON, et al.,
Defendants.

Signed 07/13/2017

ORDER GRANTING IN PART AND DENYING IN
PART DEFENDANTS' MOTION TO DISMISS

CHARLES R. BREYER, United States District Judge

Plaintiffs are California Parents for the Equalization of Educational Materials (“CAPEEM”), an organization formed to promote an accurate portrayal of the Hindu religion in California public schools, as well as several Hindu parents, individually and on behalf of their school-age children. *See generally* Compl. (dkt. 1). They have brought suit against several officials at the California Department of Education and members of the State Board of Education (collectively, “the State Defendants”),¹ as well as four

¹ The State Defendants are Tom Torlakson (State Superintendent and Director of Education), Tom Adams (Deputy Superintendent), Stephanie Gregson (Director of the Curriculum

California School Districts,² alleging discrimination against Hinduism in the California public school curriculum. *Id.* The State Defendants move to dismiss. *See generally* MTD (dkt. 88). The Court hereby GRANTS the motion in part, and DENIES it in part.

I. BACKGROUND

The California State Board of Education (“SBE”) drafts and oversees the policies implemented by the California Department of Education (“CDE”). Compl. ¶ 25. The SBE is responsible for approving and overseeing statewide curriculum content, creating the curriculum framework for kindergarten through twelfth grade, and adopting instructional materials for kindergarten through eighth grade. *Id.*

In 1998, the SBE adopted the History–Social Science Content Standards for California Public Schools, Kindergarten Through Grade Twelve (“Standards”), which provide an outline of the topics and content that California public school students need to acquire at each grade level. *Id.* ¶ 27. In 2016, the SBE adopted the 2016 History–Social Science Framework (“Framework”). *Id.* ¶ 43. The Framework guides teachers, administrators, and publishers in the teaching of history and social science, providing an overview of the historical material corresponding to each of the Standards. *Id.* ¶ 45. Notably, students do not read either the Standards or the Framework. *See id.*

Frameworks) and members of the California State Board of Education: Michael Kirst, Ilene Straus, Sue Burr, Bruce Holaday, Feliza I. Ortiz–Licon, Patricia Ann Rucker, Nicolasa Sandoval, Ting L. Sun, and Trish Boyd Williams. Each is sued in his or her official capacity.

² The parties have stipulated that each of the School District Defendants will not file a responsive pleading to the complaint or oppose Plaintiffs’ claims at this time. *See* Stipulations (dkt. 91, 97, 99); Orders granting stipulations (dkt. 90, 96, 98).

But textbooks adopted by school districts across California must be aligned with both. *Id.* ¶ 31.

Plaintiffs allege discrimination against the Hindu religion—and endorsement of the Abrahamic faiths³—in the Framework adoption process and in the content of both the Standards and the Framework. *Id.* ¶¶ 32–42, 47, 93.

Plaintiffs’ claim of discrimination in the Framework adoption process is based on the State’s alleged reliance on an anti-Hindu report and proposed edits, secret expert consultation with respect to Hinduism but not other religions, and disparate treatment in the State’s handling of edits proposed by various religious groups. Compl. ¶¶ 48–60, 61–74, 75–90. The Framework adoption process included several public hearings, opportunities for public comments, and consideration of proposed edits submitted in writing by organizations, academics, and members of the public. *Id.* ¶ 43. During the public comment portion of the adoption process, a group of history professors under the name “South Asia Faculty Group” (SAFG) submitted a report on the draft Framework, which included recommended edits. *Id.* ¶ 48. Plaintiffs allege that members of the SAFG have anti-Hindu bias and that SAFG’s report was “patently anti-Hindu,” as it recommended edits that were disparaging to Hindus and Hinduism. *Id.* ¶¶ 52–60, 80–83. Plaintiffs further claim that the SBE gave “exalted treatment” to the SAFG report. *Id.* ¶ 73.

Plaintiffs also allege discrimination against Hindus in the content of the Standards. *Id.* ¶¶ 32–42. They claim, among other things, that unlike its treatment of other religions, the Standards do not describe Hin-

³ The Abrahamic faiths are Judaism, Christianity, and Islam.

duism as virtuous, and make no mention of Hinduism’s divine origins and central figures. *Id.*

Finally, Plaintiffs allege discrimination in the content of the Framework. *Id.* ¶ 93. This claim is based on the Framework “unfairly attribut[ing] the caste system to Hinduism” by teaching that it “was a social and cultural structure *as well as* a religious belief.” *Id.* ¶ 99 (emphasis added). Plaintiffs do not argue that this statement is necessarily false—rather, they claim that it is a subject of scholarly debate, and assert that “irrespective of the accuracy of the language, it is certainly derogatory and inconsistent with . . . the treatment of other religions in the Framework.” *Id.* ¶ 82; *see also id.* ¶ 102 (alleging that the Framework “describes Hinduism as a negative influence on then-existing societal norms while describing other religions as a positive influence on negative aspects of society”). Plaintiffs further allege that the Framework depicts Hinduism as a mere social construct, “strip[ping] the Hindu belief system of any divine origins,” while “endorsing Old and New Testament religious doctrine [by] depicting biblical stories as history.” *Id.* ¶¶ 95, 104.

Plaintiffs brought suit in this Court in February 2017, alleging pursuant to 42 U.S.C. § 1983 (1) denial of substantive Due Process by interference with the liberty interest of parents to direct the education of their children; (2) violation of the Establishment Clause of the First Amendment; (3) violation of the Free Exercise Clause of the First Amendment; and (4) violation of the Equal Protection Clause of the Fourteenth Amendment. *See generally* Compl. Plaintiffs seek declaratory and injunctive relief. *See id.*

State Defendants move to dismiss all claims pursuant to Federal Rule of Civil Procedure 12(b)(6). MTD. Plaintiffs oppose the motion, Opp’n (dkt. 100), and

the State Defendants replied in support of their motion, Reply (dkt. 109). Defendants also requested that the Court take judicial notice of the complete text of the Standards and Framework, RJN (dks. 88–1, 110), and Plaintiffs agree that the Court may do so.⁴ Response to RJN (dkt. 100–4). The Court held a motion hearing on June 16, 2017. *See* Minutes (dkt. 116).

II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asserts that the complaint fails to state a claim upon which relief may be granted. Dismissal may be based on either “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). For purposes of evaluating a motion to dismiss, a court “must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party.” *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). A complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). “Threadbare recitals of the elements of a

⁴ Courts may take judicial notice of undisputed matters of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001). Courts may also consider documents incorporated by reference in the complaint. *See Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). The Court takes judicial notice of the Standards and Framework.

cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

III. DISCUSSION

The State Defendant have filed a motion to dismiss each of the four constitutional claims in the complaint for failure to state a claim. As discussed below, the Court grants the motion to dismiss with prejudice as to (A) the substantive due process claim, and (B) the Free Exercise claim. The Court denies the motion as to (C) the Establishment Clause claim. Finally, the Court grants the motion to dismiss with prejudice as to (D) the Equal Protection claim.

A. Substantive due process claim

Plaintiffs claim that the Standards and Framework violate their substantive due process right under the Fourteenth Amendment by “interfering unreasonably with the liberty interests of parents to direct the upbringing and education of their children[.]” Compl. ¶ 152. At the hearing, Plaintiffs admitted that their claims fit most squarely under the Equal Protection and Establishment Clauses, not substantive due process, which they included “as a catch-all” to preserve the claim.

State Defendants correctly argue that the Ninth Circuit foreclosed the substantive due process claim in *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005), *amended by* 447 F.3d 1187 (9th Cir. 2006). *See* MTD at 7. The court held in affirming dismissal of a substantive due process claim that “the constitution does not vest parents with the authority to interfere with a public school’s decision as to how it will provide information to its students or what information it will provide.” *Fields* at 1206. Parents’ substantive due process right to direct the education of their children allows them to choose whether to

send their children to public or private school, but does not allow them to “dictate the curriculum” in public schools. *Fields* at 1205–06.⁵

Plaintiffs argue that the holding in *Fields* is narrow, only applying to sex education in public schools. *See* Opp’n at 24. Plaintiffs are incorrect. *See Fields*, 427 F.3d at 1206 (“there is no constitutional reason to distinguish [concerns regarding sex education] from any of the countless moral, religious, or philosophical objections that parents might have to other decisions of the School District.”). In the amended *Fields* opinion, the court made clear that “the central holding of [its] opinion” is that parents “do not have a fundamental due process right generally to direct how a public school teaches their child” or “to restrict the flow of information in the public schools.” *Fields*, 447 F.3d at 1190 (citations omitted). The holding in *Fields* therefore applies to school curricula generally, not simply curricula regarding sex education.

Plaintiffs also argue that the amended opinion in *Fields* allows a claim where the State’s violation of the First Amendment infringes the due process right of plaintiff parents.⁶ *See* Opp’n at 25. In fact, the

⁵ Other circuits are in accord. *See, e.g., Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 533 (1st Cir. 1995) (parents have no constitutional right to “dictate the curriculum” in a public school); *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395 (6th Cir. 2005) (parents “do not have a fundamental right generally to direct how a public school teaches their child.”); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (same)

⁶ If Plaintiffs are suggesting a “hybrid-rights” claim here, the argument fails. In *Smith*, the Supreme Court coined the phrase “hybrid-rights” in suggesting that government action could face heightened scrutiny if it involved “the Free Exercise Clause in conjunction with other constitutional protections.” *Employment Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 881, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). Here there is no substantive due

court noted that because the parties made no First Amendment arguments on appeal, the “holding does not . . . consider the limitations that the First Amendment imposes upon the actions of all government agencies, including school boards.” *Fields*, 447 F.3d at 1189–90. That statement simply acknowledged that a parent’s inability to mount a substantive due process challenge to public school curricula does not preclude a separate challenge on First Amendment grounds. Indeed, Plaintiffs have raised two such First Amendment claims here.

Because binding Ninth Circuit law establishes that Plaintiffs do not have the substantive due process right they claim here, the Court GRANTS the motion to dismiss this claim, with prejudice.

B. Free Exercise claim

Plaintiffs claim that the Standards and Framework violate the Free Exercise Clause because they are derogatory towards Hinduism, and students must learn this derogatory depiction. Compl. ¶¶ 147–49. Defendants argue that Plaintiffs fail to state a claim because Plaintiffs have not pled and cannot plead a burden on any religious practice, which is a threshold requirement for a Free Exercise claim. MTD at 8. At the hearing, Plaintiffs admitted that their claims fit most squarely under the Equal Protection and Establishment Clauses, not the Free Exercise Clause, which they included “as a catch-all” to preserve the claim.

The Free Exercise Clause of the First Amendment bars laws “prohibiting the free exercise [of religion.]” U.S. Const. amend. I. Courts traditionally analyzed Free exercise claims under the balancing test established in *Sherbert v. Verner*, 374 U.S. 398, 402–03, 83

process right to challenge the curriculum in public schools, thus there is no hybrid-rights claim.

S.Ct. 1790, 10 L.Ed.2d 965 (1963) (holding that government action which substantially burdens a religious practice must be both justified by a substantial government interest and narrowly tailored to serve that interest). The Court modified the *Sherbert* test in *Employment Division, Oregon Dep't of Human Resources v. Smith*, holding that the test did not apply in challenges to laws that are neutral and generally applicable. 494 U.S. 872, 885, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), *superseded on other grounds by statute*. Such laws face rational basis review rather than strict scrutiny. *Id.* at 879, 110 S.Ct. 1595.

“Under the Free Exercise Clause, a law that *burdens religious practice* need not be justified by a compelling governmental interest if it is neutral and of general applicability.” *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citing *Smith*, 494 U.S. 872, 110 S.Ct. 1595) (emphasis added). *Smith* did not remove the preliminary requirement that there be a burden on some religious practice. *See id.*; *accord Parker v. Hurley*, 514 F.3d 87, 99 (1st Cir. 2008) (*Smith* “did not alter the standard constitutional threshold question” of “whether the plaintiff’s Free Exercise is interfered with at all.”).

The Ninth Circuit has explicitly rejected the argument that after *Smith*, plaintiffs are not required to demonstrate a substantial burden on their exercise of religion. *See Am. Family Ass’n, Inc. v. City & Cty. of S.F.*, 277 F.3d 1114, 1123–24 (9th Cir. 2002). In *American Family Association*, the plaintiff religious group sponsored an advertising campaign espousing the view that homosexuality is a sin, and brought suit when San Francisco adopted a resolution formally denouncing the campaign. *Id.* at 1118–19. The group alleged that the city’s disapproval of its mes-

sage had a chilling effect on its free exercise of religion. *Id.* at 1124. The Ninth Circuit affirmed dismissal for failure to state a claim because “a subjective chilling effect on free exercise rights is not sufficient to constitute a substantial burden” and the “complaint d[id] not otherwise allege any specific religious conduct that was affected by the Defendants’ actions.” *Id.*

Plaintiffs claim that the Standards and Framework violate the Free Exercise Clause because they are neither neutral nor generally applicable (and, presumably, do not withstand strict scrutiny). *See* Compl. ¶ 147. However, Plaintiffs fail to satisfy the threshold requirement—pleading a burden on their Free Exercise. Plaintiffs acknowledge that a Free Exercise claim must be based on regulatory or compulsory government action, Opp’n at 23, but they do not “allege any specific religious conduct that was affected by the Defendants’ actions,” *see American Family*, 277 F.3d at 1124. Plaintiffs acknowledged at the hearing that they had not pled a burden on religious exercise “in the sense of worship.” Rather, Plaintiffs argue that public school students are required to learn the information described in the Standards and Framework, and that compelling student Plaintiffs to study and be tested on material that is “not neutral on religion and conflicts with their fundamental religious beliefs” violates the Free Exercise Clause. Opp’n at 23–24. But the complaint does not allege that students ever read or even see the Framework. *See* Compl. ¶ 45 (teachers and textbook developers, not students, are not the Framework’s primary audience). Nor are there allegations that student Plaintiffs are prevented from practicing their faith, or that parent Plaintiffs are in any way barred from instructing their children on religion at home.

At its core, Plaintiffs’ Free Exercise argument seems to be that the public school curriculum conflicts with their religious beliefs. The Ninth Circuit has held that this alone does not violate the Free Exercise Clause. See *American Family*, 277 F.3d at 1124; *Grove v. Mead Sch. Dist.*, 753 F.2d 1528, 1534 (9th Cir. 1985)⁷ (affirming summary judgment on a Free Exercise claim based on a Plaintiff’s objection to an assigned book that offended her religion); *accord Parker*, 514 F.3d at 99 (affirming dismissal of a Free Exercise claim against a school district, finding no burden on religious exercise when students read a book plaintiffs found religiously offensive). The Ninth Circuit noted that “distinctions must be drawn between those governmental actions that actually interfere with the exercise of religion, and those that merely require or result in exposure to attitudes and outlooks at odds with perspective prompted by religion.” *Grove*, 753 F.2d at 1543 (Canby, J., concurring). “[G]overnmental actions that merely offend . . . religious beliefs do not on that account violate free exercise,” and an “actual burden on the profession or exercise of religion is required.” *Id.*

Plaintiffs have not and cannot demonstrate a substantial burden on their religious exercise as required.⁸ The Court hereby GRANTS the motion to dismiss this claim with prejudice.

⁷ Plaintiffs argue that the balancing test described in *Grove* is no longer good law following *Smith*, 494 U.S. 872, 110 S.Ct. 1595, see Opp’n at 22, but *Grove*’s key holding addresses the threshold question of whether there is any burden on the exercise of religion, which *Smith* did not change.

⁸ Plaintiffs filed a Statement of Recent Decision (dkt. 118) to notify the Court of the Supreme Court’s recent decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 198 U.S. 551, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017). In that case, a church-

C. Establishment Clause claim

Plaintiffs allege that the Standards and Framework violate the Establishment Clause because they denigrate Hinduism and endorse Abrahamic faiths. Compl. ¶ 144.

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). Governmental action is permissible under the Establishment Clause if (1) it has a secular purpose, (2) the “principle or primary effect” neither advances nor inhibits religion, and (3) it does not foster “excessive state entanglement” with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). If any of the three prongs of this “*Lemon* test” is not met, the government action violates the First Amendment. *Edwards v. Aguillard*, 482 U.S. 578, 583, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987).

The Supreme Court “has long recognized that local school boards have broad discretion in the management of school affairs.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 863, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982). “Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint,” and courts should only intervene if basic constitutional values are “directly and sharp-

operated preschool brought a Free Exercise claim because it was disqualified from a public benefit solely because of its religious character. *Id.* at 2016–17. The Supreme Court rejected arguments that there was no burden on the plaintiff’s religious exercise, holding that the penalty of disqualification constitutes a burden. *Id.* at 2021–23. There is no such penalty in this case. The Supreme Court’s holding does not change this Court’s analysis.

ly implicate[d].” *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968). Balanced against this call for restraint is the Supreme Court’s instruction that courts be “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Edwards*, 482 U.S. at 583–84, 107 S.Ct. 2573. This is because younger children are more vulnerable to the “subtle coercive pressure in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992); *Edwards*, 482 U.S. at 584, 107 S.Ct. 2573 (stating that the sources of this coercive power are “mandatory attendance, . . . students’ emulation of teachers as role models, and the children’s susceptibility to peer pressure”).

The Court evaluates each prong of the *Lemon* test with this balance in mind.

1. *Lemon* Prongs 1 and 3: secular purpose and excessive entanglement

“The purpose prong of the *Lemon* test asks whether [the] government’s actual purpose is to endorse or disapprove of religion.” *Lynch v. Donnelly*, 465 U.S. 668, 690, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O’Connor, J., concurring). “A reviewing court must be ‘reluctant to attribute unconstitutional motives’ to government actors in the face of a plausible secular purpose.” *Kreisner v. City of San Diego*, 1 F.3d 775, 782 (9th Cir. 1993) (quoting *Mueller v. Allen*, 463 U.S. 388, 394–95, 103 S.Ct. 3062, 77 L.Ed.2d 721 (1983)). The Supreme Court has long acknowledged that the “study of the Bible or of religion [for its literary and historic qualities], when presented objectively as part of a secular program of education,” is consistent with the First Amendment. *Sch. Dist. of Abington Twp. v.*

Schempp, 374 U.S. 203, 225, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

Plaintiffs allege that the Standards and Framework endorse the Abrahamic faiths by requiring the teaching of biblical stories as history, Compl. ¶¶ 33, 42, 107, and that “[t]here can be no secular purpose to teaching ahistorical events from scripture as history, which violates the first prong” of the *Lemon* test, Opp’n at 20. But Plaintiff’s claim of a non-secular purpose is implausible, because the text does not support Plaintiffs’ allegation that the Standards and Framework teach biblical stories as history. See *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000) (the court need not accept as true allegations contradicted by judicially noticeable facts). For example, Plaintiffs argue that the Standards “describe the Exodus as an historical event,” and that the Framework “assigns dates to Exodus and the characters from the Old Testament, ensuring they are considered actual history.” *Id.* The curriculum does not teach the parting of the Red Sea as fact. Rather, it acknowledges the “movement [of Hebrew peoples] to and from Egypt,” and notes the “significance to Jewish law and belief” of the Exodus story. See Standards (dkt. 88–3) at 11. The Standards further direct that students be able to “[e]xplain the significance of” figures described in the Old Testament “in the development of the Jewish religion.” *Id.* at 11. Explaining the significance of these figures is not equivalent to “teach[ing] religious mythology as history” as Plaintiffs allege. See Compl. ¶ 41. The curriculum teaches the development of Judaism, not the historical accuracy of biblical stories.

Similarly, the Standards and Framework discuss the historical origins of Christianity, including the life and following of Jesus, without endorsing the

Christian belief that Jesus is a divine figure. *See* Framework (dkt. 88–4) at 74; Standards at 13. Plaintiffs complain that the Framework teaches that Mary was the mother of Jesus “as though it were a historical fact,” Compl. ¶ 109. But the Framework makes no reference to the Christian belief in the immaculate conception; it merely states that “[a]lthough ancient Christianity was a patriarchy and all the apostles were men, several women were prominent, especially Mary, mother of Jesus.” Framework at 74. This is not a plausible “endorse[ment of] Christian religious doctrine” as Plaintiffs allege. *See* Compl. ¶ 109.

Nothing before the Court suggests that the State had anything other than a secular purpose—teaching the history of ancient civilizations—in enacting the challenged curriculum. The portions of the text that Plaintiffs cite do not plausibly support any inference of a non-secular purpose, as the Standards and Framework do not teach scripture as fact. *See Twombly*, 550 U.S. at 570, 127 S.Ct. 1955 (allegations in the complaint must be plausible to survive a motion to dismiss). Plaintiffs have not adequately pled a violation of the first prong of the *Lemon* test.

The third prong of the *Lemon* test prohibits excessive entanglement with religion. *Lemon*, 403 U.S. at 612–13, 91 S.Ct. 2105. “Cases in which the Supreme Court has found excessive . . . entanglement often involve state aid to organizations or groups affiliated with religious sects, such as parochial schools.” *Cammack v. Waihee*, 932 F.2d 765, 781 (9th Cir. 1991) (citing cases). For this prong, “the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement.” *Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 675, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970).

The Ninth Circuit held in *Brown v. Woodland Joint Unified School District* that the adoption and use of curriculum materials in public education is insufficient to constitute excessive entanglement. 27 F.3d 1373, 1383–84 (9th Cir. 1994) (noting that no future monitoring would be necessary). In *California Parents for the Equalization of Educational Materials v. Noonan*, the same Plaintiff organization currently before this Court challenged textbooks approved by the California State Board of Education as denigrating and discriminatory towards Hinduism.⁹ 600 F.Supp.2d 1088, 1095 (E.D. Cal. 2009). *Noonan* followed *Brown* in rejecting CAPEEM’s claim that defendants’ use of the challenged textbooks fostered an excessive entanglement with religion. 600 F.Supp.2d at 1122.

Plaintiffs do not and cannot argue that the State’s involvement with religion is “excessive” and “continu[ous],” such that it “call[s] for official and continuing surveillance leading to an impermissible degree of entanglement.” See *Walz*, 397 U.S. at 675, 90 S.Ct. 1409; *Brown*, 27 F.3d at 1383–84. They instead argue that the Framework violates the third prong of the *Lemon* test “by requiring teachers to make clear that the caste system was a Hindu religious belief,” as “[s]uch unqualified language is tantamount to a seemingly authoritative interpretation of religious doctrine.” Opp’n at 21. Plaintiffs rely on *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415 (2d Cir. 2002), a Second Circuit case. Opp’n at 21–22. *Commack* found excessive entanglement where a food labeling statute required New York to take an official

⁹ The textbooks at issue in that case were required to be aligned with the same Standards challenged here, and the Framework that directly preceded the version challenged in this case. See *Noonan*, 600 F.Supp.2d at 1097.

position on how the term “kosher” should be defined, because the state endorsed the interpretation of one branch of Judaism and rejected that of other branches. 294 F.3d at 425–426.

Unlike in *Commack*, the challenged curriculum in this case does not “require the State to take an official position on religious doctrine” or “take sides in a religious matter” that is subject to ongoing dispute by different branches within a religion. *Id.* at 425. The Framework addresses ancient history, not current religious principles. It states that although “[t]oday many Hindus, in India and in the United States, do not identify themselves as belonging to a caste[,]” the caste system was a “social and cultural structure as well as a religious belief” in Ancient India. Compl. ¶ 81. Plaintiffs have not pled that, as in *Commack*, there are competing interpretations of religious scripture on this issue, nor that the Framework’s language requires California to “take sides” in any such debate. *See Commack*, 294 F.3d at 425. Plaintiffs merely pled that “[m]any would argue that caste was not and is not a Hindu belief.” Compl. ¶ 82. This is a question of historical fact, not a matter of religious doctrinal interpretation.

The challenged language here is problematic, as discussed below, but not because it gives an authoritative interpretation of present-day religious doctrine. If there is any entanglement with religion at all, it is not the “excessive and enduring” kind forbidden by *Lemon*. *See* 403 U.S. at 619, 91 S.Ct. 2105. Plaintiff’s claim of excessive entanglement with religion is not “plausible on its face,” *see Twombly*, 550 U.S. at 570, 127 S.Ct. 1955, and so Plaintiffs have not adequately pled a violation of the third prong of the *Lemon* test.

2. *Lemon* Prong 2: Primary effect

The second prong of the *Lemon* test asks whether the government action has the principal or primary effect of advancing or inhibiting religion. *Lemon*, 403 U.S. at 612, 91 S.Ct. 2105. For challenges to public school education, courts must consider the primary effect of the challenged material within the context of the larger curriculum. *Brown*, 27 F.3d at 1381. Courts must analyze the primary effect from the perspective of an observer who is both informed and reasonable. *Kreisner*, 1 F.3d at 784.

The Ninth Circuit has recognized that when the challenged government action arises in elementary school instruction, the “reasonable observer” test should take into account the more impressionable and vulnerable nature of school-age children. *Brown*, 27 F.3d at 1378–79. The court rejected arguments for a subjective test, reasoning that “[i]f an Establishment Clause violation arose each time a student believed that a school practice either advanced or disapproved of a religion, school curricula would be reduced to the lowest common denominator, permitting each student to become a ‘curriculum review committee’ unto himself.” *Id.* Rather, the primary effect prong of the *Lemon* test asks whether an “objective observer *in the position of an elementary school student* would perceive a message of . . . disapproval [of religion].” *Brown*, 27 F.3d at 1379 (emphasis added). Here, the content Plaintiffs challenge governs the sixth grade curriculum. Compl. ¶ 29. Thus, the Court analyzes the second *Lemon* prong from the perspective of a reasonable sixth grader.¹⁰ *See Brown*, 27 F.3d at 1379.

¹⁰ Plaintiffs argue that applying the *Lemon* test from the perspective of an adult is also appropriate, because the Framework

Defendants argue that a reasonable sixth grader would consider the primary effect of the Standards and Framework to be teaching the history of ancient civilizations, not the disapproval of Hinduism. MTD at 11. Defendants rely on *Noonan*, which held that even “accepting plaintiff’s position that the texts, in part, inaccurately and negatively depict Hinduism while simultaneously providing a more favorable depiction of Abrahamic religions,” the textbooks, when viewed as a whole and as part of the overall curriculum, did not convey a message of government endorsement or disapproval of a particular religion. *Id.* (citing *Noonan*, 600 F.Supp.2d at 1119).

But *Noonan* adjudicated a motion for summary judgment, which involves a different standard than a motion to dismiss. *See Usher*, 828 F.2d at 561 (on a motion to dismiss, a court “must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party”). Here, the Court must determine whether the allegations support a reasonable inference that a reasonable and informed sixth grader would consider the content of the Standards and the Framework to have a primary effect of conveying a message of disapproval of Hinduism. At this stage of the litigation, the Court concludes that they do.

In support of their claim that Hindu students experience pain and humiliation at the curriculum’s portrayal of Hinduism, Plaintiffs quote a letter from a Hindu student that was submitted during the public comment portion of the Framework adoption process, describing her experience learning about Hinduism in the sixth grade. Compl. ¶ 85. The student’s class en-

is directed at adults. The Court disagrees. *See Brown*, 27 F.3d at 1379.

gaged in a simulation where the students were divided into “castes,” with higher caste students allowed to cheat off of students in a lower caste. *Id.* “By the end of the period, a majority of the class was complaining of how unfair this is, and how cruel this Hindu system was.” *Id.* The student says, “my class was not helped to become aware and accepting of my heritage nor was I allowed to remain secure in my belief.” *Id.* She wrote: “I do not want my friends to look down upon me and my culture and religion[.]” *Id.*

The primary message that sixth grade student received was that her teacher and classmates considered Hinduism “cruel,” “primitive and unjust,” and that Hinduism had not been treated with “fairness and dignity.” *Id.* The student formed this impression based in large part on the Framework’s content, which emphasized that the caste system was a part of Hinduism. *See* Framework at 42. The Framework specifically instructs teachers to “make clear to students that [the caste system] was a social and cultural structure *as well as a religious belief.*” Compl. ¶ 81 (emphasis added). The original draft of the Framework said that the caste system was a “social and cultural structure rather than a religious belief,” but the SBE changed it, allegedly at the suggestion of the SAFG. *Id.* ¶¶ 80–81. Plaintiffs allege that even if this revised statement is historically accurate, the heightened focus on the caste system in connection with Hinduism is “derogatory and inconsistent with . . . the treatment of other religions in the Framework.” *Id.* ¶ 82. In the same vein, the student asks in her letter, “[w]e know that social hierarchies have existed in all societies, so why is Hinduism singled out with such [a] negative portrayal?” *Id.* ¶ 85.

The sixth grader who wrote this letter observed that the curriculum portrayed Hinduism, but not

other religions, in a negative light—to her, the curriculum primarily communicated disapproval of Hinduism. *See Brown*, 27 F.3d at 1379. In light of the Supreme Court’s admonition that courts should be “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools,” *Edwards*, 482 U.S. at 583–84, 107 S.Ct. 2573, the Court will infer at this point that this sixth grader is reasonable, or that a reasonable sixth grader would perceive the same message, *see Usher*, 828 F.2d at 561 (in evaluating a motion to dismiss, a court must draw all reasonable inferences in favor of the plaintiff). Plaintiffs have therefore stated a claim that the Standards and Framework violate the second prong of the *Lemon* test. Accordingly, the Court DENIES the motion to dismiss the Establishment Clause claim.

D. Equal Protection claim

Finally, Plaintiffs allege discrimination against the Hindu religion in both (1) the content of the Standards and Framework, and (2) the Framework adoption process. Defendants argue that Plaintiffs have failed to state a claim as to both.¹¹

¹¹ Defendants also argue that Plaintiffs cannot establish an Equal Protection violation because the complaint did not plead facts establishing the State’s “municipal liability” for the alleged discrimination against Hinduism by employees of the CDE and members of the SBE. MTD at 16. This argument fails because the State Defendants are not a municipality, and Plaintiffs do not allege municipal liability. *Monell* concluded that “Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Its holding was “limited to local government units which are not considered part of the State for Eleventh Amendment purposes.” *Id.* at 690 n.54, 98 S.Ct. 2018.

1. Discrimination in the *Content* of the Standards and Framework

Defendants correctly argue that Ninth Circuit law forecloses an Equal Protection claim based on the content of the public school curriculum. *See* MTD at 12–13.

The Ninth Circuit has held that the Equal Protection Clause is not a means for challenging curriculum content decisions in public schools. *See Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1028 (9th Cir. 1998). In *Monteiro*, plaintiff appealed dismissal of an Equal Protection claim alleging that a school district intentionally discriminated against African–American students by requiring students to read two books that repeatedly referred to African–Americans using a profane, racially derogatory term. *Id.* at 1024. The Ninth Circuit “consider[ed] whether the assignment of material deemed to have educational value by school authorities may in itself serve as the basis for an injunction,” and held that the Equal Protection Clause will not support a challenge to the curriculum “even when the works are accused of being racist in whole or in part.” *Id.* at 1028. The court explained that its holding does not preclude

In addition, suits against state officials in their official capacities are treated as suits against the State. *Hafer v. Melo*, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). A plaintiff seeking injunctive relief against the State is not required to allege a named official’s personal involvement in the acts or omissions constituting the alleged constitutional violation. *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1126–27 (9th Cir. 2013). Rather, a plaintiff need only identify the law or policy challenged as a constitutional violation and name the official within the entity who can appropriately respond to injunctive relief. *See Hafer*, 502 U.S. at 25, 112 S.Ct. 358. The Framework and Standards are the challenged official state policy here. *See generally* Compl.

challenges to curriculum content decisions under the Religion Clauses of the First Amendment. *Monteiro*, 158 F.3d at 1028 n.6. Similarly, in *Noonan*, the previous lawsuit CAPEEM brought against the SBE, the court held that CAPEEM's Equal Protection claims failed "because the State has the discretion to determine the content of its curriculum, and the Equal Protection Clause does not provide a basis to challenge such curriculum decisions." *Noonan*, 600 F.Supp.2d at 1111 (citing *Monteiro*, 158 F.3d 1022).

Plaintiffs argue that *Monteiro* is distinguishable because it considered the teaching of books written by third party authors, rather than state-drafted curriculum. Opp'n at 13. Not so. *Monteiro* addressed not only literary works written by non-state actors, but "the assignment of material deemed to have educational value by school authorities[.]" See 158 F.3d at 1028. In *Monteiro*, as here, school authorities made a decision to include the material in the required curriculum. See *id.*

Plaintiffs' Equal Protection claim based on the curriculum's content is "squarely foreclose[d]" by *Monteiro*. See *Noonan*, 600 F.Supp.2d at 1111. No amendment to the complaint can cure this deficiency. Accordingly, the Court GRANTS the motion to dismiss with prejudice the portion of the Equal Protection claim as to the *content* of the Standards and Framework.

2. Discrimination in the Framework Adoption Process

A closer question is the Equal Protection claim as to process. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. 14. This is "es-

sentially a direction that all similarly situated persons should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). In an Equal Protection claim, the plaintiffs must (a) show that they were treated unfavorably compared to a similarly situated group, and (b) show that the difference in treatment was based on an “impermissible motive.” *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995). Both parties have advanced arguments regarding the impermissible motive prong, but because Plaintiffs have not adequately pled the disparate treatment prong, the Court does not reach the question of motive.

Plaintiffs allege that all other religions in the Framework are treated more favorably than Hinduism, and specifically that the Abrahamic religions receive special positive treatment and endorsement. Compl. ¶¶ 75–83, 86–90. Plaintiffs claim that the Framework endorses Abrahamic religions by teaching biblical events as fact. *Id.* ¶ 104. As discussed in regards to the Establishment Clause claim above, this claim is implausible in light of the actual text of the Framework, which does not teach that any miraculous biblical stories are fact. *See, e.g.*, Framework at 74 (describing the historical origins of Christianity, including the life of Jesus, without endorsing the belief that Jesus was actually a divine figure). Thus, Plaintiffs’ discrimination claim as to the Framework adoption process must survive dismissal based on Hinduism being treated unfavorably, rather than Abrahamic religions being endorsed as true.

Plaintiffs plead first that the SBE disfavored Hinduism in the Framework adoption process by consulting the anti-Hindu SAFG in secret, and giving “exalted treatment” to its anti-Hindu report. Compl. ¶¶ 61,

73. These claims strain credulity. The SBE has the ability to, but is not required to, retain experts in the Framework drafting process. *Id.* ¶ 72. It did not retain any experts here, and announced this decision weeks before receiving any reports from the SAFG. *See id.* ¶¶ 48, 72. The SAFG submitted a report and suggested edits as public comments, not as an expert report. *See id.* ¶ 48.

Plaintiffs allege that “[u]pon information and belief, the [SBE] went to elaborate lengths to hide its consultations with secret experts only with respect to Hinduism and did not do so for its depiction of other religions.” *Id.* ¶ 61. This conclusory statement is supported only by allegations that one of the Defendants “evaded questions” from Hindu parents about the expert hiring process. *Id.* ¶ 65. But Plaintiffs do not plausibly plead that the SAFG was ever given special expert status or deference. They merely note that a member of the Framework drafting commission suggested “defer[ring] to the scholars,” including SAFG and its suggested edits. *Id.* ¶ 74. The SBE actually rejected four of the six examples that Plaintiffs provided of SAFG’s proposed anti-Hindu edits. *Compare* Compl. ¶¶ 55, 57–60, *with* Framework at 40–43, 142. The Court finds it implausible that the SAFG report was given secret expert and “exalted treatment” as Plaintiffs have pled.

Next, Plaintiffs plead disparate treatment in the SBE’s handling of suggested edits received from various religious groups. Plaintiffs cite the States’ Criteria for Evaluating Instructional Materials, which directs the SBE not to include language in the curriculum that is derogatory of a religion, or “examples from sacred texts or other religious literature that are derogatory, accusatory, or instill prejudice against other religions.” *Id.* ¶¶ 78, 91. Plaintiffs allege that

the SBE followed these guidelines and honored requests to remove derogatory language for other religions, but not for Hinduism. *Id.* ¶¶ 75–83. For example, a Jewish group requested that the state remove reference to the Good Samaritan parable in the Framework’s section on Christianity, because the story “describes Jews as biased and heartless.” *Id.* ¶ 78. The SBE made the requested change. *Id.* ¶ 79.

Plaintiffs allege that in contrast, the SBE denied similar requests from Hindu groups. *Id.* ¶¶ 75–83. The strongest example that Plaintiffs cite is that the SBE denied their request to remove language describing the caste system as a Hindu religious belief.¹² *Id.* Plaintiffs acknowledge that this challenged statement might be historically accurate, *id.* ¶ 82, but contend that it puts a disproportionate emphasis on the caste system. Plaintiffs allege that a large portion of what students learn about Hinduism “relates to an unfair societal structure that the Framework has told them is part of that religion.” *Id.* ¶ 100. “For no other religion besides Hinduism does the Framework describe supposed negative beliefs of followers based upon the [SBE’s] interpretation of religious text.” *Id.* ¶ 101.

Plaintiffs attempt to frame the SBE’s handling of suggested edits from different religious groups as a matter of process, but really what Plaintiffs object to is the curriculum decisions that allowed allegedly derogatory content into the final Framework. Such a claim is barred by *Monteiro*, “because the State has the discretion to determine the content of its curricu-

¹² Plaintiffs’ other examples of rejected edits are less persuasive. The SBE rejected Plaintiffs’ proposal to insert flattering mention of Hinduism in the sections regarding other religions. Compl. ¶ 90. This does not demonstrate that the Framework is derogatory towards Hinduism.

lum, and the Equal Protection Clause does not provide a basis to challenge such curriculum decisions.” *Noonan*, 600 F.Supp.2d at 1111 (citing *Monteiro*, 158 F.3d at 1032). In *Noonan*, CAPEEM’s Equal Protection claims as to the SBE’s textbook adoption *process* survived a motion to dismiss and summary judgment, 600 F.Supp.2d at 1113, but the process claims in *Noonan* were based on “certain procedural irregularities that only affected Hindu groups,” such as formatting requirements and arbitrary deadlines for the public comments imposed only on Hindu groups, *id.* at 1111. In addition, the SBE “fully vetted Dr. Bajpai, [an expert] who supported [CAPEEM’s] edits, but they did not do the same for the experts they hired who opposed the edits, and defendants imposed special requirements only on Dr. Bajpai and not on the experts opposing the edits.” *Id.* at 1112. In the present case, there are no such allegations, just content challenges masquerading as process challenges.

The problem here is not process. The SBE invited public comments on the draft Framework, but it is not obligated to accept every suggested edit—nor could it, when faced with conflicting input. The public school system could not function if every rejected public comment on the content of curriculum carried potential liability. The Ninth Circuit recognized this when it held that the Equal Protection Clause is not a means for challenging the curriculum content decisions in public schools. *See Monteiro*, 158 F.3d at 1028–30. Every piece of content in the California curriculum is the result of some process. It would render the holding of *Monteiro* meaningless for the Court to recognize an Equal Protection *process* claim every time a Plaintiff pointed to objectionable *content*. The Court does not conclude that the content editing decisions made by the SBE in this case were either fair or

unfair—only that, as the Ninth Circuit held in *Monteiro*, these issues are properly resolved under the Religion Clauses of the First Amendment. *See id.* at 1027 n.6. Indeed, Plaintiffs’ Establishment Clause claim is based on the same allegedly derogatory Framework language instructing that the caste system was a Hindu religious belief. *See* Compl. ¶¶ 80–82, 85, 144. The Court is allowing that claim to proceed.

But Plaintiffs have not pled and cannot adequately plead that the Defendants treated Hinduism unfavorably as compared to other religions in the Framework adoption *process*. Their allegations that the SBE gave “exalted” and secret expert treatment to the SAFG are conclusory and implausible. *See Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. Their allegations regarding editing decisions go to the Framework’s content, rather than the adoption process itself, and thus fail under *Monteiro*. *See* 158 F.3d at 1032. Accordingly, Defendants’ motion to dismiss Plaintiffs’ Equal Protection claim is GRANTED with prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court hereby:

1. GRANTS WITH PREJUDICE the motion to dismiss the substantive Due Process claim;
2. GRANTS WITH PREJUDICE the motion to dismiss the Free Exercise claim;
3. DENIES the motion to dismiss the Establishment Clause claim; and
4. GRANTS WITH PREJUDICE the motion to dismiss the Equal Protection claim.

IT IS SO ORDERED.

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APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-15607

CALIFORNIA PARENTS FOR THE EQUALIZATION OF
EDUCATIONAL MATERIALS; ARVIND RAGHAVAN,
individually and as parent and next friend of M.R.
and N.R.; VISHNUKUMAR THUMATI, individually and
as parent and next friend of P.T. and N.T.; SHAILESH
SHILWANT, individually and as parent and next friend
of P.S. and P.S.S.,

Plaintiffs-Appellants,

v.

TOM TORLAKSON, in his official capacity as State
Superintendent of Public Instruction and Director of
Education for the California Department of
Education; TOM ADAMS, in his official capacity as
Deputy Superintendent of the Instruction and
Learning Support Branch of the California
Department of Education; STEPHANIE GREGSON, in
her official capacity as Director of the Curriculum
Frameworks and Instructional Resources Division of
the California Department of Education; MICHAEL
KIRST; ILENE STRAUS; SUE BURR; BRUCE HOLADAY;
FELIZA I. ORTIZ-LICON; PATRICIA ANN RUCKER;
NICOLASA SANDOVAL; TING L. SUN; TRISH BOYD
WILLIAMS, each in their official capacity as a member
of the California State Board of Education; MYONG
LEIGH, in his official capacity as Interim
Superintendent of the San Francisco Unified School
District; SHAMANN WALTON; HYDRA MENDOZA-
MCDONNELL; STEVON COOK; MATT HANEY; EMILY M.
MURASE; RACHEL NORTON; MARK SANCHEZ, each in

their official capacity as a member of the San Francisco Unified School District; RICK SCHMITT, in his official capacity as Superintendent of the San Ramon Valley Unified School District; MARK JEWETT; KEN MINTZ; RACHEL HURD; DENISE JENNISON; GREG MARVEL, each in their official capacity as a member of the San Ramon Valley Unified School District Board of Education; WENDY GUDALEWICZ, in her official capacity as Superintendent of the Cupertino Union School District; ANJALI KAUSAR; LIANG CHAO; KRISTEN LYN; SOMA MCCANDLESS; PHYLLIS VOGEL, each in their official capacity as a member of the Cupertino Union School District Board of Education; CHERYL JORDAN, in her official capacity as Superintendent of the Milpitas Unified School District; DANIEL BOBAY; DANNY LAU; CHRIS NORWOOD; HON LIEN; ROBERT JUNG, each in their official capacity as a member of the Milpitas Unified School District Board of Education,

Defendants-Appellees,

REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Intervenor.

D.C. No. 3:17-cv-00635-CRB
Northern District of California,
San Francisco

Filed September 23, 2020

Before: THOMAS, Chief Judge, and
SCHROEDER and BRESS, Circuit Judges.

ORDER

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The panel has voted to deny Appellants' Petition for Panel Rehearing.

Appellants' Petition for Panel Rehearing, Docket No. 55, is DENIED.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 17-cv-00635-CRB

CALIFORNIA PARENTS FOR THE EQUALIZATION OF
EDUCATIONAL MATERIALS, et al.,
Plaintiffs,

v.

TOM TORLAKSON, et al.,
Defendants.

ORDER DENYING MOTION TO AMEND,
GRANTING IN PART MOTION TO DEFER,
SETTING BRIEFING SCHEDULE ON SUMMARY
JUDGMENT; AND VACATING TRIAL DATES

The Court hereby DENIES Plaintiff's Motion to Amend Complaint. *See* Mot. to Amend (dkt. 172). The Court rejects Plaintiffs' arguments about the new factual allegations and rejects Plaintiffs' interpretation of *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) and *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018). *See id.* at 4–7. Accordingly, amendment would be futile. *See Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

The Court further GRANTS IN PART Plaintiffs' Motion to Defer Consideration of Motion for Summary Judgment (dkt. 174). In light of Plaintiffs' assertions in connection with Federal Rule of Civil Procedure 56(d), Mot. to Defer at 4–5, and the ongoing

discovery disputes between the parties, the Court ORDERS as follows: Defendants' summary judgment motion on the sole remaining claim in this case is due sixty (60) days from this Order;¹ Plaintiffs' opposition to that motion is due two weeks thereafter; Defendants' reply is due one week thereafter. The Court will then schedule a motion hearing if necessary.

The Court VACATES all trial-related dates in this case.

IT IS SO ORDERED.

Dated: October 26, 2018

/s/ Charles R. Breyer
CHARLES R. BREYER
United States District Judge

¹ Defendants may either (1) withdraw the previously filed motion (dkt. 163) and file a new motion, or (2) notify the Court of their wish to proceed with the previously filed motion.

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APPENDIX F

CHALLENGED CONTENT STANDARDS

History–Social Science Content Standards
for California Public Schools
Kindergarten Through Grade Twelve

Adopted by the
California State Board of Education
October, 1998

California Department of Education
Created May 18, 2000

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Grade Six

**World History and Geography:
Ancient Civilizations**

Students in grade six expand their understanding of history by studying the people and events that ushered in the dawn of the major Western and non-Western ancient civilizations. Geography is of special significance in the development of the human story. Continued emphasis is placed on the everyday lives, problems, and accomplishments of people, their role in developing social, economic, and political structures, as well as in establishing and spreading ideas that helped transform the world forever. Students develop higher levels of critical thinking by considering why civilizations developed where and when they did, why they became dominant, and why they declined. Students analyze the interactions among the various cultures, emphasizing their enduring contri-

butions and the link, despite time, between the contemporary and ancient worlds.

6.1 Students describe what is known through archaeological studies of the early physical and cultural development of humankind from the Paleolithic era to the agricultural revolution.

1. Describe the hunter-gatherer societies, including the development of tools and the use of fire.
2. Identify the locations of human communities that populated the major regions of the world and describe how humans adapted to a variety of environments.
3. Discuss the climatic changes and human modifications of the physical environment that gave rise to the domestication of plants and animals and new sources of clothing and shelter.

6.2 Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of Mesopotamia, Egypt, and Kush.

1. Locate and describe the major river systems and discuss the physical settings that supported permanent settlement and early civilizations.
2. Trace the development of agricultural techniques that permitted the production of economic surplus and the emergence of cities as centers of culture and power.

3. Understand the relationship between religion and the social and political order in Mesopotamia and Egypt.
4. Know the significance of Hammurabi's Code.
5. Discuss the main features of Egyptian art and architecture.
6. Describe the role of Egyptian trade in the eastern Mediterranean and Nile valley.
7. Understand the significance of Queen Hatshepsut and Ramses the Great.
8. Identify the location of the Kush civilization and describe its political, commercial, and cultural relations with Egypt.
9. Trace the evolution of language and its written forms.

6.3 Students analyze the geographic, political, economic, religious, and social structures of the Ancient Hebrews.

1. Describe the origins and significance of Judaism as the first monotheistic religion based on the concept of one God who sets down moral laws for humanity.
2. Identify the sources of the ethical teachings and central beliefs of Judaism (the Hebrew Bible, the Commentaries): belief in God, observance of law, practice of the concepts of righteousness and justice, and importance of study; and describe how the ideas of the Hebrew traditions are reflected in the moral and ethical traditions of Western civilization.
3. Explain the significance of Abraham, Moses, Naomi, Ruth, David, and Yohanan ben Zaccai in the development of the Jewish religion.

4. Discuss the locations of the settlements and movements of Hebrew peoples, including the Exodus and their movement to and from Egypt, and outline the significance of the Exodus to the Jewish and other people.
5. Discuss how Judaism survived and developed despite the continuing dispersion of much of the Jewish population from Jerusalem and the rest of Israel after the destruction of the second Temple in A.D. 70.

6.4 Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of Ancient Greece.

1. Discuss the connections between geography and the development of city-states in the region of the Aegean Sea, including patterns of trade and commerce among Greek city-states and within the wider Mediterranean region.
2. Trace the transition from tyranny and oligarchy to early democratic forms of government and back to dictatorship in ancient Greece, including the significance of the invention of the idea of citizenship (e.g., from *Pericles' Funeral Oration*).
3. State the key differences between Athenian, or direct, democracy and representative democracy.
4. Explain the significance of Greek mythology to the everyday life of people in the region and how Greek literature continues to permeate our literature and language today, drawing from Greek mythology and epics, such as Homer's *Iliad* and *Odyssey*, and from *Aesop's Fables*.

5. Outline the founding, expansion, and political organization of the Persian Empire.
6. Compare and contrast life in Athens and Sparta, with emphasis on their roles in the Persian and Peloponnesian Wars.
7. Trace the rise of Alexander the Great and the spread of Greek culture eastward and into Egypt.
8. Describe the enduring contributions of important Greek figures in the arts and sciences (e.g., Hypatia, Socrates, Plato, Aristotle, Euclid, Thucydides).

6.5 Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of India.

1. Locate and describe the major river system and discuss the physical setting that supported the rise of this civilization.
2. Discuss the significance of the Aryan invasions.
3. Explain the major beliefs and practices of Brahmanism in India and how they evolved into early Hinduism.
4. Outline the social structure of the caste system.
5. Know the life and moral teachings of Buddha and how Buddhism spread in India, Ceylon, and Central Asia.
6. Describe the growth of the Maurya empire and the political and moral achievements of the emperor Asoka.

7. Discuss important aesthetic and intellectual traditions (e.g., Sanskrit literature, including the *Bhagavad Gita*; medicine; metallurgy; and mathematics, including Hindu-Arabic numerals and the zero).

6.6 Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of China.

1. Locate and describe the origins of Chinese civilization in the Huang-He Valley during the Shang Dynasty.
2. Explain the geographic features of China that made governance and the spread of ideas and goods difficult and served to isolate the country from the rest of the world.
3. Know about the life of Confucius and the fundamental teachings of Confucianism and Taoism.
4. Identify the political and cultural problems prevalent in the time of Confucius and how he sought to solve them.
5. List the policies and achievements of the emperor Shi Huangdi in unifying northern China under the Qin Dynasty.
6. Detail the political contributions of the Han Dynasty to the development of the imperial bureaucratic state and the expansion of the empire.
7. Cite the significance of the trans-Eurasian “silk roads” in the period of the Han Dynasty and Roman Empire and their locations.
8. Describe the diffusion of Buddhism northward to China during the Han Dynasty.

6.7 Students analyze the geographic, political, economic, religious, and social structures during the development of Rome.

1. Identify the location and describe the rise of the Roman Republic, including the importance of such mythical and historical figures as Aeneas, Romulus and Remus, Cincinnatus, Julius Caesar, and Cicero.
2. Describe the government of the Roman Republic and its significance (e.g., written constitution and tripartite government, checks and balances, civic duty).
3. Identify the location of and the political and geographic reasons for the growth of Roman territories and expansion of the empire, including how the empire fostered economic growth through the use of currency and trade routes.
4. Discuss the influence of Julius Caesar and Augustus in Rome's transition from republic to empire.
5. Trace the migration of Jews around the Mediterranean region and the effects of their conflict with the Romans, including the Romans' restrictions on their right to live in Jerusalem.
6. Note the origins of Christianity in the Jewish Messianic prophecies, the life and teachings of Jesus of Nazareth as described in the New Testament, and the contribution of St. Paul the Apostle to the definition and spread of Christian beliefs (e.g., belief in the Trinity, resurrection, salvation).

7. Describe the circumstances that led to the spread of Christianity in Europe and other Roman territories.
8. Discuss the legacies of Roman art and architecture, technology and science, literature, language, and law.

Grade Seven

World History and Geography: Medieval and Early Modern Times

Students in grade seven study the social, cultural, and technological changes that occurred in Europe, Africa, and Asia in the years A.D. 500–1789. After reviewing the ancient world and the ways in which archaeologists and historians uncover the past, students study the history and geography of great civilizations that were developing concurrently throughout the world during medieval and early modern times. They examine the growing economic interaction among civilizations as well as the exchange of ideas, beliefs, technologies, and commodities. They learn about the resulting growth of Enlightenment philosophy and the new examination of the concepts of reason and authority, the natural rights of human beings and the divine right of kings, experimentalism in science, and the dogma of belief. Finally, students assess the political forces let loose by the Enlightenment, particularly the rise of democratic ideas, and they learn about the continuing influence of these ideas in the world today.

7.1 Students analyze the causes and effects of the vast expansion and ultimate disintegration of the Roman Empire.

1. Study the early strengths and lasting contributions of Rome (e.g., significance of Roman

citizenship; rights under Roman law; Roman art, architecture, engineering, and philosophy; preservation and transmission of Christianity) and its ultimate internal weaknesses (e.g., rise of autonomous military powers within the empire, undermining of citizenship by the growth of corruption and slavery, lack of education, and distribution of news).

2. Discuss the geographic borders of the empire at its height and the factors that threatened its territorial cohesion.
3. Describe the establishment by Constantine of the new capital in Constantinople and the development of the Byzantine Empire, with an emphasis on the consequences of the development of two distinct European civilizations, Eastern Orthodox and Roman Catholic, and their two distinct views on church-state relations.

7.2 Students analyze the geographic, political, economic, religious, and social structures of the civilizations of Islam in the Middle Ages.

1. Identify the physical features and describe the climate of the Arabian peninsula, its relationship to surrounding bodies of land and water, and nomadic and sedentary ways of life.
2. Trace the origins of Islam and the life and teachings of Muhammad, including Islamic teachings on the connection with Judaism and Christianity.
3. Explain the significance of the Qur'an and the Sunnah as the primary sources of Islamic

beliefs, practice, and law, and their influence in Muslims' daily life.

4. Discuss the expansion of Muslim rule through military conquests and treaties, emphasizing the cultural blending within Muslim civilization and the spread and acceptance of Islam and the Arabic language.
5. Describe the growth of cities and the establishment of trade routes among Asia, Africa, and Europe, the products and inventions that traveled along these routes (e.g., spices, textiles, paper, steel, new crops), and the role of merchants in Arab society.
6. Understand the intellectual exchanges among Muslim scholars of Eurasia and Africa and the contributions Muslim scholars made to later civilizations in the areas of science, geography, mathematics, philosophy, medicine, art, and literature.

7.3 Students analyze the geographic, political, economic, religious, and social structures of the civilizations of China in the Middle Ages.

1. Describe the reunification of China under the Tang Dynasty and reasons for the spread of Buddhism in Tang China, Korea, and Japan.
2. Describe agricultural, technological, and commercial developments during the Tang and Sung periods.
3. Analyze the influences of Confucianism and changes in Confucian thought during the Sung and Mongol periods.

4. Understand the importance of both overland trade and maritime expeditions between China and other civilizations in the Mongol Ascendancy and Ming Dynasty.
5. Trace the historic influence of such discoveries as tea, the manufacture of paper, woodblock printing, the compass, and gunpowder.
6. Describe the development of the imperial state and the scholar-official class.

7.4 Students analyze the geographic, political, economic, religious, and social structures of the sub-Saharan civilizations of Ghana and Mali in Medieval Africa.

1. Study the Niger River and the relationship of vegetation zones of forest, savannah, and desert to trade in gold, salt, food, and slaves; and the growth of the Ghana and Mali empires.
2. Analyze the importance of family, labor specialization, and regional commerce in the development of states and cities in West Africa.
3. Describe the role of the trans-Saharan caravan trade in the changing religious and cultural characteristics of West Africa and the influence of Islamic beliefs, ethics, and law.
4. Trace the growth of the Arabic language in government, trade, and Islamic scholarship in West Africa.
5. Describe the importance of written and oral traditions in the transmission of African history and culture.

7.5 Students analyze the geographic, political, economic, religious, and social structures of the civilizations of Medieval Japan.

1. Describe the significance of Japan's proximity to China and Korea and the intellectual, linguistic, religious, and philosophical influence of those countries on Japan.
2. Discuss the reign of Prince Shotoku of Japan and the characteristics of Japanese society and family life during his reign.
3. Describe the values, social customs, and traditions prescribed by the lord-vassal system consisting of *shogun*, *daimyo*, and *samurai* and the lasting influence of the warrior code in the twentieth century.
4. Trace the development of distinctive forms of Japanese Buddhism.
5. Study the ninth and tenth centuries' golden age of literature, art, and drama and its lasting effects on culture today, including Murasaki Shikibu's *Tale of Genji*.
6. Analyze the rise of a military society in the late twelfth century and the role of the samurai in that society.

7.6 Students analyze the geographic, political, economic, religious, and social structures of the civilizations of Medieval Europe.

1. Study the geography of the Europe and the Eurasian land mass, including its location, topography, waterways, vegetation, and climate and their relationship to ways of life in Medieval Europe.

2. Describe the spread of Christianity north of the Alps and the roles played by the early church and by monasteries in its diffusion after the fall of the western half of the Roman Empire.
3. Understand the development of feudalism, its role in the medieval European economy, the way in which it was influenced by physical geography (the role of the manor and the growth of towns), and how feudal relationships provided the foundation of political order.
4. Demonstrate an understanding of the conflict and cooperation between the Papacy and European monarchs (e.g., Charlemagne, Gregory VII, Emperor Henry IV).
5. Know the significance of developments in medieval English legal and constitutional practices and their importance in the rise of modern democratic thought and representative institutions (e.g., Magna Carta, parliament, development of habeas corpus, an independent judiciary in England).
6. Discuss the causes and course of the religious Crusades and their effects on the Christian, Muslim, and Jewish populations in Europe, with emphasis on the increasing contact by Europeans with cultures of the Eastern Mediterranean world.
7. Map the spread of the bubonic plague from Central Asia to China, the Middle East, and Europe and describe its impact on global population.

8. Understand the importance of the Catholic church as a political, intellectual, and aesthetic institution (e.g., founding of universities, political and spiritual roles of the clergy, creation of monastic and mendicant religious orders, preservation of the Latin language and religious texts, St. Thomas Aquinas's synthesis of classical philosophy with Christian theology, and the concept of "natural law").
9. Know the history of the decline of Muslim rule in the Iberian Peninsula that culminated in the Reconquista and the rise of Spanish and Portuguese kingdoms.

7.7 Students compare and contrast the geographic, political, economic, religious, and social structures of the Meso-American and Andean civilizations.

1. Study the locations, landforms, and climates of Mexico, Central America, and South America and their effects on Mayan, Aztec, and Incan economies, trade, and development of urban societies.
2. Study the roles of people in each society, including class structures, family life, warfare, religious beliefs and practices, and slavery.
3. Explain how and where each empire arose and how the Aztec and Incan empires were defeated by the Spanish.
4. Describe the artistic and oral traditions and architecture in the three civilizations.
5. Describe the Meso-American achievements in astronomy and mathematics, including the development of the calendar and the Meso-

American knowledge of seasonal changes to the civilizations' agricultural systems.

7.8 Students analyze the origins, accomplishments, and geographic diffusion of the Renaissance.

1. Describe the way in which the revival of classical learning and the arts fostered a new interest in humanism (i.e., a balance between intellect and religious faith).
2. Explain the importance of Florence in the early stages of the Renaissance and the growth of independent trading cities (e.g., Venice), with emphasis on the cities' importance in the spread of Renaissance ideas.
3. Understand the effects of the reopening of the ancient "Silk Road" between Europe and China, including Marco Polo's travels and the location of his routes.
4. Describe the growth and effects of new ways of disseminating information (e.g., the ability to manufacture paper, translation of the Bible into the vernacular, printing).
5. Detail advances made in literature, the arts, science, mathematics, cartography, engineering, and the understanding of human anatomy and astronomy (e.g., by Dante Alighieri, Leonardo da Vinci, Michelangelo di Buonarroti Simoni, Johann Gutenberg, William Shakespeare).

7.9 Students analyze the historical developments of the Reformation.

1. List the causes for the internal turmoil in and weakening of the Catholic church (e.g., tax policies, selling of indulgences).
2. Describe the theological, political, and economic ideas of the major figures during the Reformation (e.g., Desiderius Erasmus, Martin Luther, John Calvin, William Tyndale).
3. Explain Protestants' new practices of church self-government and the influence of those practices on the development of democratic practices and ideas of federalism.
4. Identify and locate the European regions that remained Catholic and those that became Protestant and explain how the division affected the distribution of religions in the New World.
5. Analyze how the Counter-Reformation revitalized the Catholic church and the forces that fostered the movement (e.g., St. Ignatius of Loyola and the Jesuits, the Council of Trent).
6. Understand the institution and impact of missionaries on Christianity and the diffusion of Christianity from Europe to other parts of the world in the medieval and early modern periods; locate missions on a world map.
7. Describe the Golden Age of cooperation between Jews and Muslims in medieval Spain that promoted creativity in art, literature, and science, including how that cooperation was terminated by the religious persecution

of individuals and groups (e.g., the Spanish Inquisition and the expulsion of Jews and Muslims from Spain in 1492).

7.10 Students analyze the historical developments of the Scientific Revolution and its lasting effect on religious, political, and cultural institutions.

1. Discuss the roots of the Scientific Revolution (e.g., Greek rationalism; Jewish, Christian, and Muslim science; Renaissance humanism; new knowledge from global exploration).
2. Understand the significance of the new scientific theories (e.g., those of Copernicus, Galileo, Kepler, Newton) and the significance of new inventions (e.g., the telescope, microscope, thermometer, barometer).
3. Understand the scientific method advanced by Bacon and Descartes, the influence of new scientific rationalism on the growth of democratic ideas, and the coexistence of science with traditional religious beliefs.

7.11 Students analyze political and economic change in the sixteenth, seventeenth, and eighteenth centuries (the Age of Exploration, the Enlightenment, and the Age of Reason).

1. Know the great voyages of discovery, the locations of the routes, and the influence of cartography in the development of a new European worldview.
2. Discuss the exchanges of plants, animals, technology, culture, and ideas among Europe, Africa, Asia, and the Americas in the fifteenth and sixteenth centuries and the ma-

major economic and social effects on each continent.

3. Examine the origins of modern capitalism; the influence of mercantilism and cottage industry; the elements and importance of a market economy in seventeenth-century Europe; the changing international trading and marketing patterns, including their locations on a world map; and the influence of explorers and map makers.
4. Explain how the main ideas of the Enlightenment can be traced back to such movements as the Renaissance, the Reformation, and the Scientific Revolution and to the Greeks, Romans, and Christianity.
5. Describe how democratic thought and institutions were influenced by Enlightenment thinkers (e.g., John Locke, Charles-Louis Montesquieu, American founders).
6. Discuss how the principles in the Magna Carta were embodied in such documents as the English Bill of Rights and the American Declaration of Independence.

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APPENDIX G

CHALLENGED FRAMEWORK

**HISTORY SOCIAL SCIENCE FRAMEWORK
FOR CALIFORNIA PUBLIC SCHOOLS**
Kindergarten Through Grade Twelve

Adopted by the California State Board of Education
July 2016

*Published by the California Department of Education
Sacramento, 2017*

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Grade Six

CHAPTER 10

**World History and Geography:
Ancient Civilizations**

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The Early Civilizations of India

- How did the environment influence the emergence and decline of the Indus civilization?
- How did religions of Ancient India, including, but not limited to early Hinduism, support individuals, rulers, and societies?
- How did the religion of Buddhism support individuals, rulers, and societies?
- During the Indus civilization, the Vedic period, and the Maurya Empire, how did the connections between the Indian subcontinent and other regions of Afroeurasia increase?

In this unit, students learn about societies of ancient India. The region of Ancient India is today sometimes called “South Asia” and encompasses the modern states of Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan, and Sri Lanka. Students begin with the environment: **How did the environment influence the emergence and decline of the Indus civilization?** The earliest civilization, known as Harappan civilization after one of its cities, was centered in the Indus River valley, though its cultural style spread widely from present-day Afghanistan to the upper Ganga plain (Ganges River). The Indus River and its tributaries flow from the Himalaya mountains southward across the plain now called the Punjab, fan out into a delta, and pour into the Arabian Sea. The river valley was much larger than either Mesopotamia or Egypt, and its soil was very rich.

In lessons two and four of the California EEI curriculum unit 6.5.1, “The Rivers and Ancient Empires of China and India,” students locate and describe the physical features of the Indus and Ganges river systems in the Indian subcontinent. Investigating regional seasonal cycles, especially the summer monsoons, students provide examples of how these cycles benefited the permanent settlement of early Indian civilization, helping them to recognize that humans depend on, benefit from, and can alter the cycles that occur in the natural systems where they live.

Arising in the third millennium BCE, the Harappan civilization attained its zenith between about 2600 and 1900 BCE. It was discovered by archaeologists in the 1920s. Digs have revealed that many Harappan cities, including Harappa and Mohenjo-daro, were well planned, with streets laid out in grids and well-engineered sewers. Artifacts include pottery, seals, statues, jewelry, tools, and toys. The seals con-

tain writing that has not yet been deciphered. Some of the statues and figurines, as well as images on the seals, show features that are all present in modern Hinduism, such as a male figure that resembles the Hindu God Shiva in a meditating posture, as well as small clay figures in the posture of the traditional Hindu greeting *namaste*.

Evidence reveals active commerce between the cities of the Harappan civilization as well as foreign trade with Mesopotamia by sea. A flourishing urban civilization developed in India from as early as 3300 BCE along the Indus River. Archaeologists believe this civilization had its greatest stage of expansion from 2600 to 1700 BCE. The economic basis of the civilization was surplus agriculture, though the cities of Mohenjo-daro and Harappa carried on extensive trade. The Harappan civilization steadily declined after 1900 BCE, perhaps because of ecological factors such as seismic events, deforestation, salt buildup in the soil, and persistent drought, including the drying up of the Sarasvati River around 2000 BCE.

Ancient India experienced a Vedic period (ca. 1500–500 BCE), named for the *Vedas* which were composed in Sanskrit. While Sanskrit texts, both religious and secular, continued to be produced in subsequent centuries, texts in Old Tamil also began to appear around 300 BCE, and Tamil literary production flourished during the Sangam period in South India in following centuries. Sanskrit and Tamil texts passed on for generations through a complex oral tradition. In that period, according to many scholars, people speaking Indic languages, which are part of the larger Indo-European family of languages, entered South Asia, probably by way of Iran. Gradually, Indic languages, including Sanskrit, spread across northern India. They included the ancestors of such modern

languages as Hindi, Urdu, and Bengali. The early Indic speakers were most likely animal herders. They may have arrived in India in scattered bands, later intermarrying with populations perhaps ancestral to those who speak Dravidian languages, such as Tamil and Telugu, in southern India and Sri Lanka today. In the same era, nomads who spoke Indo-Iranian languages moved into Persia. Indic, Iranian, and most European languages are related. Another point of view suggests that the language was indigenous to India and spread northward, but it is a minority position.

Later in the Vedic period, new royal and commercial towns arose along the Ganges (aka Ganga), India's second great river system. In this era, Vedic culture emerged as a belief system that combined the beliefs of Indic speakers with those of older populations. Teachers focus students on the question: **How did religions of Ancient India, including, but not limited to early Hinduism, support individuals, rulers, and societies?** *Brahmins*, that is, priestly families, assumed authority over complex devotional rituals, but many important sages, such as Valmiki and Vyasa, were not brahmins.

Ancient Hindu sages (brahmins and others) expounded the idea of the oneness of all living things and of Brahman as the divine principle of being. The Hindu tradition is thus monistic, the idea of reality being a unitary whole. Brahman, an all-pervading divine supreme reality, may be manifested in many ways, including incarnation in the form of Deities.

These Deities are worshiped as distinct personal Gods or Goddesses, such as Vishnu who preserves the world, Shiva who transforms it, and Sarasvati, the Goddess of learning. Students may read a few hymns from the "Bhumi Sukta" excerpted from the Vedas to discover the nature of Vedic hymns. Vedic teachings

gradually built up a rich body of spiritual and moral teachings that form a key foundation of Hinduism as it is practiced today.

These teachings were transmitted orally at first, and then later in written texts, the *Upanishads* and, later, the *Bhagavad Gita*. Performance of duties and ceremonies, along with devotion and meditation, became dimensions of the supreme quest to achieve oneness with God. That fulfillment, however, demands obedience to the moral law of the universe, called *dharma*, which also refers to performance of social duties. Fulfilling *dharma* is one of the four primary goals of human life, along with *kama* (love), *artha* (wealth) and *moksha* (oneness with God). Success or failure at existing in harmony with *dharma* determines how many times an individual might be subject to reincarnation, or repeated death and rebirth at either lower or higher positions of moral and ritual purity. Progress toward spiritual realization is governed by *karma*, the principle of cause-and-effect by which human actions, good and bad, affect this and future lives. Many of the central practices of Hinduism today, including home and temple worship, yoga and meditation, rites of passage (*samskaras*), festivals, pilgrimage, respect for saints and gurus, and, above all, a profound acceptance of religious diversity, developed over time.

As in all early civilizations, Indian society witnessed the development of a system of social classes. Ancient Indian society formed into groups, *jatis*, that emphasized birth as the defining criteria. *Jatis* initially shared the same occupation and married only within the group. This system, often termed *caste*, provided social stability and gave an identity to each community. The *Vedas* also describe four main social categories, known as *varnas*: Brahmins (priests),

Kshatriyas (kings and warriors), *Vaishyas* (merchants, artisans, and farmers), and *Sudras* (peasants and laborers). A person belonged to a particular varna not just by professional excellence and good conduct, but primarily by birth. In addition, by 500 CE or earlier, there existed certain communities outside the *jati* system, the *Dalits* (sometimes known as “Untouchables”), who did the most unclean work, such as cremation, disposal of dead animals, and sanitation.

Relations between classes came to be expressed in terms of ritual purity or impurity, higher classes being purer than lower ones. This class system became distinctive over the centuries for being especially complex and formal, involving numerous customs and prohibitions on eating together and intermarrying that kept social and occupational groups distinct from one another in daily life. Over the centuries, the Indian social structure became more rigid, though perhaps not more inflexible than the class divisions in other ancient civilizations.

When Europeans began to visit India in modern times, they used the word “caste” to characterize the social system because of the sharp separation they perceived between groups who did not intermarry and thus did not mix with each other. Caste, however, is a term that social scientists use to describe unbending social structure.

Today many Hindus, in India and in the United States, do not identify themselves as belonging to a caste. Teachers should make clear to students that this was a social and cultural structure as well as a religious belief. As in Mesopotamia and Egypt, priests, rulers, and other elites used religion to justify the social hierarchy. Although ancient India was a patriarchy, women had a right to their personal wealth (especially jewelry, gold, and silver) but little

property rights when compared with men, akin to the other ancient kingdoms and societies. They participated in religious ceremonies and festival celebrations, though not as equals. Hinduism is the only major religion in which God is worshipped in female as well as male form.

One text that Hindus rely on for solutions to moral dilemmas is the *Ramayana*, the story of Rama, an incarnation or *avatar* of Vishnu, who goes through many struggles and adventures as he is exiled from his father's kingdom and has to fight a demonic enemy, Ravana. Rama, his wife Sita, and some other characters are challenged by critical moral decisions in this epic work. The teacher may select the scene in which Rama accepts his exile, or the crisis over the broken promise of Sugriva, the monkey king, and then ask students **What is the moral dilemma here? What is the character's *dharma*?** In this way, students can deepen their understanding of Hinduism as they are immersed in one of ancient India's most important literary and religious texts.

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Grade Seven

CHAPTER 11

World History and Geography: Medieval and Early Modern Times

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Rome and Christendom, 300 CE–1200

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At this point, the teacher shifts to the development of Christianity. In the early years of the Roman Empire, Christianity began as a sect of Judaism in Judea, a province of the Roman Empire. The teacher fo-

cuses on the following questions: **How did the religion of Christianity develop and change over time? How did Christianity spread through the empire and to other cultures?** Through selections from Biblical literature, students will learn about those teachings of Jesus that advocate compassion, justice, and love for others. He taught that God loved all his creation, regardless of status or circumstance, and that humans should reflect that love in relations with one another. Jesus shared the Jewish belief in one God, but he added the promise of eternal salvation to those who believe in him as their savior. The Roman authorities in Judea executed Jesus. But under the leadership of his early followers, notably Paul, a Jewish scholar from Anatolia, Christians took advantage of Roman roads and sea-lanes to travel widely, preaching to both Jews and others.

As missionaries spread Christianity beyond the Jewish community, they abandoned some Jewish customs, such as dietary laws, to make the new religion more accessible to non-Jews. Christian communities multiplied around the Mediterranean, through Persia, and into Central Asia. The church communities welcomed new converts without consideration of their political or social standing, including the urban poor and women. Although ancient Christianity was a patriarchy and all the apostles were men, several women were prominent, especially Mary, mother of Jesus. Until modern times, Christian women had few property rights and were subordinate to men. Upper-class and influential Romans who converted appear to have been predominantly women, and some of them assumed leadership positions. Many Jews did not convert to Christianity, and Judaism and Christianity split into two separate religions.

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