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HINDU AMERICAN FOUNDATION, et al., v. CALIFORNIA STATE BOARD OF EDUCATION, et al., Case No. 06 CS 00386:

The following shall constitute the Court's tentative ruling on the petition for writ of mandate, set for hearing in Department 19 on Friday, September 1, 2006. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Preliminary Procedural and Evidentiary Issues

The Application of Ambedkar Center for Justice and Peace, et al., for leave to file brief as Amici Curiae in support of respondent's opposition to petition for writ of mandate, filed August 16, 2006, is denied. The parties filing the application have not demonstrated that their proposed briefing will assist the Court in deciding the matter, particularly in light of the fact that the issues in this case have been briefed thoroughly and competently by counsel for the parties. Moreover, the proposed amicus brief is accompanied by several declarations and a Request for Judicial Notice, through which the parties submitting the application seek to place additional evidence before the Court. No authority has been cited that permits a party appearing as an *amicus curiae* to submit evidence or otherwise act as a party to the case. The evidence accompanying the application therefore has not been considered by the Court for any purpose.

Petitioners' Request for Judicial Notice filed July 5, 2006 (with attached Exhibits 1-34), and Respondent's Request for Judicial Notice filed August 7, 2006 (with attached Exhibits A-N), are granted. No objections have been asserted to any of the materials of which the Court has been asked to take notice, and such materials appear either to be proper subjects for judicial notice under Evidence Code section 452 or otherwise properly before the Court as part of the record of the administrative action under review in this proceeding.

Petitioners' objections to the Declarations of Dr. James Heitzman and to the declarations of publishers submitted by respondent are overruled. Respondent's objections to the declarations submitted by petitioners (specifically, the declarations of Dr. Shiva Bajpai, Arumugan Katir, Vasudha Narayanan, Nathan Katz, Kartikeya Katir, Dr. Ramdas Lamb, Suhag Shukla, and Dr. Jeffrey D. Long) are overruled. The matters contained in the declarations are generally relevant to the subject matter of this action, and appear to be based upon the declarants' personal experience, observation, perception and/or education and training. The declarations are therefore generally admissible for various purposes in this proceeding, such as to provide factual context regarding the course of the challenged administrative procedure and to explain and provide context for the contentions of the parties regarding the content of the challenged textbooks, and have been considered on that basis. Where the declarations state opinion testimony on legal issues, however, such as whether the content of the textbooks complies with applicable standards, the Court has not relied upon such testimony in making its ruling.

Introduction and Summary of Petitioners' Claims

This proceeding involves a petition for writ of mandate under Code of Civil Procedure section 1085 in which petitioners seek to overturn respondent's approval of certain sixth grade history-social science textbooks. Petitioners allege that respondent abused its discretion by not proceeding in the manner required by law in two respects. First, petitioners allege that the procedure through which respondent reviewed and approved the textbooks was not conducted under regulations formally promulgated under

the Administrative Procedures Act as required by law. Second, petitioners argue that respondent violated the Bagley-Keene Open Meeting Act at certain steps of the process by taking action in meetings that were not open to the public, or properly noticed or agendized. In addition to these procedural challenges, petitioners contend that respondents' approval of the textbooks violated the law because the textbooks are not in compliance with substantive legal standards applicable to their content.

Administrative Procedures Act Claim

Petitioners allege that the entire process through which respondent reviewed and adopted the sixth grade history-social science textbooks was invalid because it was carried out under regulations that were not promulgated under the Administrative Procedures Act ("APA") as required by law.

This claim has merit. Education Code section 60005 specifically and unequivocally states that the policies and procedures of the State Board of Education concerning the adoption of instructional materials shall be adopted as formal written regulations pursuant to the APA after public notice, comment by the public, and review by the Office of Administrative Law. Respondent, however, has not promulgated any regulations pursuant to the APA.

Respondent has promulgated a set of published regulations governing the adoption of instructional materials, found in Title 5 of the California Code of Regulations, sections 9510, et seq. The sixth grade textbooks at issue in this case were adopted pursuant to these regulations. It is undisputed that these regulations were not adopted pursuant to the APA as required by Education Code section 60005.

Respondent argues that its published regulations are valid because they were promulgated prior to the enactment of Education Code section 60005, under the authority of an earlier and now-repealed statute, Education Code section 60004. That statute provided that the selection and adoption of instructional materials "shall not be subject"

to the APA. Respondent argues that any regulations promulgated while section 60004 was in effect remain valid notwithstanding the subsequent enactment of section 60005.

Respondent's argument is unpersuasive in light of the judicial and legislative history of this issue. In 1991, the Third District Court of Appeal held that the State Board of Education was required to comply with the APA when adopting governing procedures and criteria it develops for the purpose of selecting textbooks. (*Engelmann v. State Board of Education* (1991) 2 Cal. App. 4th 47.) Under the principles set forth in *Armistead v. State Personnel Board* (1978) 22 Cal. 3d 198, the effect of this holding was to render all of respondent's existing policies and procedures invalid to the extent that those policies and procedures amounted to "regulations", as defined in the APA.

In 1992, in the wake of the *Engelmann* holding, the Legislature enacted section 60004, exempting respondent from compliance with the APA. This exemption, however, was to be temporary, and only for the purpose of permitting respondent to come into compliance with the APA without undue disruption to schools and students. By its own terms, section 60004 was to be repealed on January 1, 1995, unless extended by the Legislature, which it was not. Moreover, the enacting legislation stated that the intent of the Legislature in enacting section 60004 was "...to allow the state board the time necessary to conform, where appropriate, its procedures with [the APA] without disrupting local educational programs and services." (Stats. 1992, c. 58 (S.B. 1859), subsection (b); See, Historical and Statutory Notes to section 60004.)

Section 6004 therefore should be seen as a transitional measure permitting respondent to keep its pre-*Engelmann* procedures in effect for a limited time while enacting a new regulatory framework under the APA. Section 60004 cannot reasonably be seen in the manner respondent urges, which is, in effect, as an authorization to promulgate regulations during that limited transition period without complying with the APA, and thereafter as a "safe harbor" immunizing those regulations from challenge under the APA or section 60005. Moreover, section 60005 does not contain any language suggesting that the Legislature intended to exempt from its scope any

regulations respondent might have enacted prior to its effective date. The statute operates prospectively by requiring respondent, from its effective date forward, to enact its textbook approval rules under the APA.

The regulations under which respondent adopted the sixth grade textbooks at issue here (Title 5, California Code of Regulations, sections 9510, et seq.) fall within the APA's definition of regulations in that they consist of rules, regulations, orders or standards of general application adopted by a state agency to implement, interpret or make specific the law enforced or administered by it, or to govern its procedure. (Government Code section 11342.600.) The regulations also fall squarely within the terms of Education Code section 60005, in that they consist, among other things, of Board policies that define statutory terms (see, e.g., section 9515), Board policies that prescribe the membership of committees (see, e.g., section 9516), and procedures that regulate public participation in the adoption of instructional materials (see, e.g., sections 9520-9523). As noted above, it is undisputed that none of the regulations was adopted pursuant to the APA.

Moreover, petitioners have demonstrated that respondent utilizes other policies and procedures that amount to what the *Engelmann* court described as "underground regulations", in that they fall within the statutory definition of a "regulation" set forth in Government Code section 11342.600, but were not promulgated pursuant to the APA. For example, the document entitled "Instructional Materials and Framework Adoption: Policies and Procedures" (Petitioner's Request for Judicial Notice, Exhibit 4), contains detailed provisions regarding the procedure governing appeals during the Legal and Social Compliance Review process that are not contained within the existing published regulations, and were not adopted pursuant to the APA. Respondent's argument that these policies relate to purely internal management matters is not persuasive, given that the policies governing appeals define and limit the rights of persons outside the agency when challenging administrative action.

The Court therefore finds that respondent has failed to comply with a specific statutory mandate that it formally enact its policies and procedures for the adoption of instructional materials pursuant to the APA, and thus at all times relevant to this matter has been conducting its textbook approval process under invalid “underground regulations”. The petition for writ of mandate is granted on this ground.

Open Meeting Act Claim

Petitioners further allege that respondent violated the Bagley-Keene Open Meeting Act (Government Code sections 11120-11132) by taking substantive actions on several occasions during the textbook adoption process without doing so in a meeting that was open to the public, or without providing a notice and distributing an agenda for such meeting as required by the Act. In this claim, petitioners seek to have the adoption of the sixth grade textbooks declared null and void pursuant to Government Code section 11130.

In light of the ruling on petitioner’s APA claim, above, the Court finds it unnecessary to address this issue. The specific actions challenged in this claim were part of the overall textbook adoption process that the Court has found to be invalid because respondent was applying regulations that were not properly promulgated under the APA. Any relief that would be granted on this claim would thus merely duplicate, or be subsumed within, relief already granted. Moreover, as was the case in *Morning Star Co. v. State Board of Equalization* (2006) 38 Cal. 4th 324, 342, APA rulemaking may lead to changes in the regulatory system; therefore, addressing additional contentions of invalidity in that system on the merits at this time would lead to a merely advisory opinion.

Issues Regarding Remedy

Petitioners argue that a decision in their favor on either the APA or the Open Meeting Act claim should result in a ruling rescinding the approval of the challenged

sixth grade textbooks regardless of whether the books actually violate the applicable legal standards governing their content. Respondent contends that a more limited remedy is appropriate under the guidelines laid down by the Supreme Court in *Morning Star Co. v. State Board of Equalization* (2006) 38 Cal. 4th 324, 342.

In *Morningside*, the Court explained that, in cases declaring regulations invalid for failure to comply with the APA, the court's inherent power to issue orders preserving the status quo permits it to fashion relief that addresses the violation of the APA without interfering with other important interests. Thus, where the challenged administrative action is of critical importance to significant numbers of people who bear no responsibility for the legal deficiencies in such action, and any disruption of the administrative action would have serious consequences, the court may fashion relief so as to permit the agency a reasonable opportunity to correct the deficiencies in the regulatory framework while maintaining the current system in the interim.

Although the *Morning Star Co.* case dealt specifically with violations of the APA, the Court finds that the principles explained therein would also permit it to fashion a limited remedy for violations of the Open Meeting Act as alleged by petitioners, if the Court had found it necessary and appropriate to reach that issue.

The Court finds that the present case is an appropriate one in which to fashion relief in a limited manner as suggested by the Supreme Court in *Morning Star Co.* This court's ruling that respondent has been conducting its textbook approval process under an invalid regulatory framework has serious consequences, in that it potentially calls into question the validity of decisions adopting many more textbooks than merely the few sixth-grade texts at issue here, even though the substance of those other texts was not challenged here. Vast numbers of educators and students thus could be affected by the Court's ruling. Even if the effect of this ruling were limited to merely the sixth-grade textbooks challenged here, a significant number of persons still would be affected. The parties to this action no doubt would agree that having textbooks available for the coming school year (which in some districts may already have commenced) is a matter of critical

importance to those persons, and would further agree that those persons bear no evident responsibility for the deficiencies in respondent's regulatory framework. Exactly the same could be said if the basis of the Court's ruling herein had been based upon demonstrated violations of the Open Meeting Act.

The Court therefore determines, as was done in the *Morning Star Co.* case, that respondent should be permitted a reasonable opportunity to correct the deficiencies in its regulatory framework governing the textbook approval process by subjecting that framework to APA procedures, while maintaining the current system in the interim. As the Supreme Court noted in its opinion, it is the task of this court to determine the life span and precise terms of any such order, based upon its consideration of facts regarding the time necessary for respondent to come into APA compliance and what measures are necessary to maintain the status quo in the interim. The Court therefore directs counsel for the parties to meet and confer and establish a schedule for briefing and argument regarding the final form of the order, judgment and writ in this matter.

The Court further determines, based on the foregoing discussion of the significant interests involved, that respondent's approval of the sixth-grade textbooks at issue in this matter should not be declared invalid on the basis of the demonstrated APA violation alone (or on the basis of any possible violation of the Open Meeting Act alone or in connection with the APA violation), but should be declared invalid only if petitioners have established that the content of the textbooks violates applicable legal standards. The Court now turns to that issue.

Does the Content of the Textbooks Conform to Applicable Legal Standards?

The parties have not clearly articulated the standard of review the Court is to apply to this critical issue. From its review of the record and the arguments of the parties, it appears to the Court that its substantive review of the textbook content involves issues of both fact and law. The factual issues, which are relatively minor in context, involve determining what the content of the challenged textbooks actually is. The content of the

textbooks is set forth in the materials of which the Court has been asked to take judicial notice. Such content is largely not disputed, although there are a number of issues revealed by the briefing over whether, for example, certain claimed errors in the texts have been corrected in the final versions. The legal issues involve determining whether respondent properly applied the relevant law in approving the textbooks.

These two distinct types of issues give rise to two distinct standards of review. With regard to issues of fact regarding the actual content of the textbooks, the Court has applied the standard of review generally applicable to administrative determinations that do not involve vested rights such as professional licenses, i.e., the Court has reviewed the record to determine whether respondent's decision is supported by substantial evidence. With regard to issues of law, on the other hand, such as the application of specific statutory and regulatory standards to the content of the textbooks, the Court has applied the standard of review generally applicable to administrative rulings of law, i.e., it has exercised its independent judgment.

Petitioners' claims in this action center on how the challenged texts portray the Hindu religion in their discussion of the history, culture and religious tradition of ancient India, not only on its own terms but also in comparison to other religious traditions such as Buddhism, Judaism and Christianity. In essence, petitioners claim that the depiction of the Hindu religion in the texts contains factual inaccuracies and generally is not neutral, but portrays the religion in a negative light.

The legal standards petitioners rely on here as applicable to the textbook approval process are set forth in statutes, regulations and in other documents issued by respondent. Those requirements may be summarized as follows.

The applicable statutory requirements derive from the Education Code. Under section 60200(c) of that Code, respondent is required to apply the criteria set forth in several other statutes of the Code. The relevant statute for purposes of this case is Education Code section 60044, which states that no instructional materials shall be

adopted for use by any governing board [of any school district] which contain any matter reflecting adversely upon persons because of their creed, or which contain any sectarian or denominational doctrine or propaganda contrary to law.

The applicable regulatory requirements derive from a document issued by respondent entitled Guidelines for Social Content. The Guidelines are mentioned in passing in a statute, Education Code section 60200, but the content of the Guidelines is set forth in a document that was issued as part of respondent's regulatory framework, specifically, under Title 5, California Code of Regulations, section 9511. (The document itself is not contained within the published regulations, but the cited regulation incorporates it into the regulations by reference.)

The portions of the Guidelines upon which petitioners principally rely may be summarized as follows. When ethnic or cultural groups are portrayed, portrayals must not depict differences in customs or lifestyles as undesirable and must not reflect adversely on such differences. No religious belief or practice may be held up to ridicule and no religious group may be portrayed as inferior. Any explanation or description of a religious belief or practice should be presented in a manner that does not encourage or discourage belief or indoctrinate the student in any particular religious belief. And descriptions, depictions, labels or rejoinders that tend to demean, stereotype or patronize minority groups are prohibited.

Other applicable standards petitioners rely upon appear to have been set forth in a document issued by respondent entitled "Criteria for Evaluating Instructional Materials". This document does not appear to have been issued as a regulation, but instead as some kind of interpretive guide for textbook reviewers.

The criteria upon which petitioners principally rely may be summarized as follows. Materials on religious subject matter must remain neutral, must not advocate one religion over another, and must not include derogatory language about a religion or use examples from sacred texts or other religious literature that are derogatory,

accusatory or instill prejudice against other religions or those who believe in other religions. Also, "gross inaccuracies", i.e., those that would require changes in the text, will result in disqualification of the textbook.

Before turning to the substance of petitioners' challenge, the Court notes that their successful challenge to respondent's regulatory framework, discussed above, renders the continued legal applicability of the regulatory Guidelines and non-regulatory Criteria uncertain. In light of the Court's finding regarding the proper remedy in this case, however, i.e., that the current system should remain in effect while respondent develops a proper regulatory framework under the APA, the Court will apply the legal standards set forth in the Guidelines and Criteria to this case.

The Court has reviewed the content of the challenged textbooks by reading in their entirety the excerpts of the texts that the parties have submitted in their requests for judicial notice. On the basis of that review, the Court finds that the challenged texts comply with the applicable legal standards as set forth above.

Petitioners claim that there are a number of significant inaccuracies in the challenged texts, such as the listing of the "Major Hindu Deities", the identification of a particular Hindu deity in a picture caption, and the translation of certain words, among others. (Petitioners' description of the claimed inaccuracies is found in their opening brief at page 38:10-39:20.) The Court finds that petitioners have not demonstrated that respondent's approval of the challenged texts should be invalidated on this basis. A review of the evidence submitted by respondent in its request for judicial notice and supporting declarations demonstrates that there is substantial evidence to show that where actual errors were involved (for example, in the description of how the Hindi language is written, or in the statement that a person with bad karma may be reborn as an insect), the inaccuracies have been corrected in the final versions of the texts. In other cases, such as the list of major Hindu deities, the description of a certain text as the "most sacred" in the Hindu tradition, or the translation of the word "namaste", there is not any gross inaccuracy, but at most a difference of emphasis or opinion. And in some cases,

such as the claimed failure to describe the overlap between Hindu and Buddhist teachings, the textbooks in general appear to acknowledge this overlap sufficiently to prevent any gross inaccuracy from being found.

More generally, petitioners argue that the texts are inaccurate in their description of Hindu theology. The argument focuses on the use in some of the texts of the terminology "gods and goddesses" instead of terms such as the actual Hindu terms "devi" and "devata" or even "various forms of the Divine", which petitioners contend is a more accurate way to describe Hindu religious belief. Beyond that, petitioners charge that some of the texts do not adequately state that a significant current of Hindu belief sees all deities as manifestations of a single absolute divinity, or recognize that there are many forms of Hindu belief. Petitioners' contentions on this point are not persuasive. At most, they have demonstrated that there may be differing English words that could be used to describe the manifestations of the divine in Hindu religious belief, but not that the words chosen in any particular textbook are grossly inaccurate. On the remaining points, petitioners similarly have not demonstrated that the textbooks' description of Hindu theology are grossly inaccurate. Indeed, a review of the content of the books demonstrates that several of the books explicitly acknowledge that most Hindus see the various deities as manifestations of the absolute divinity, and recognize the diversity of belief in the Hindu religious tradition. It is true that the books do not explore these topics in great scholarly detail, but there is no legal requirement that such a level of detail be contained in grade-school school textbooks. In the Court's view, the books broadly and accurately describe the outlines of Hindu religious belief, which is all the law requires.

Petitioners also argue that the books are inaccurate in their treatment of the so-called "Aryan invasion" or "Aryan migration" theories, which are cited in the descriptions of the history of civilization in India, and, in particular, in the description of the origins of Hindu culture and religion. Petitioners argue that the Aryan invasion or migration theories are the subject of debate among scholars in the field, and that such debate should be acknowledged explicitly in the books. This argument is not persuasive, at least not in terms of demonstrating that the textbooks are grossly inaccurate on this point. First, it

appears from the evidence submitted by respondent that the publishers of the challenged textbooks have in fact been directed to recognize the ultimate uncertainty of these theories, at least in general terms.

More fundamentally, even if such direction had not been given, the texts would not be invalid for that reason. While some scholars may question the Aryan invasion or migration theories, there is no showing that such theories are not widely or even generally accepted at this point, such that presenting them without significant qualification would be grossly inaccurate. The law does not appear to require sixth-grade textbooks to include disclaimers or outline the scope of scholarly debate on historical issues. Moreover, as respondents have pointed out, the History-Social Science Content Standards for California Public Schools specifically require sixth-grade students to study and recognize the significance of the Aryan invasions of India. Those standards are not challenged in this action. At some point, the state of historical research and the scholarly consensus in the field may change to the point where it would no longer be accurate to refer to a viable Aryan invasion or migration theory in a discussion of ancient Indian culture. Petitioners have not demonstrated that such a condition exists now. The Court therefore does not find that the references to Aryan invasions or migrations make the textbooks grossly inaccurate or otherwise in violation of law.

Going beyond areas of alleged inaccuracy in the texts, petitioners argue that the texts violate legal requirements because their descriptions and depictions of the Hindu religion are not neutral, but tend to portray the Hindu religion in a negative light or even as inferior to other religions. This argument is based on several different charges, for example, that many of the texts unfairly or even improperly highlight certain features of Hindu religious belief, such as the belief in numerous deities; or that the texts give undue emphasis to features of ancient Indian social structure, such as the caste system and the status of women relative to men; or that the texts do not utilize illustrative material such as pictures or selections from texts in as positive a manner for the Hindu religion as they do for other religions. In this area, petitioners' argument is not based on alleged inaccuracies in specific facts, but on the overall "read" of the passages regarding the

Hindu religion, evaluated in their entire context by themselves and in comparison with those on other religions.

As noted above, the applicable standard states that materials on religious subject matter must remain neutral, must not advocate one religion over another, and must not include derogatory language about a religion or use examples from sacred texts or other religious literature that are derogatory, accusatory or instill prejudice against other religions or those who believe in other religions. Having reviewed all of the selections from the challenged textbooks that have been put before it by the parties, the Court finds that the manner in which the books treat the Hindu religion does not violate this standard. The various texts appear to the Court on their face to be dispassionate and neutral with regard to religion, objectively describing the features of the Hindu religion and others without overtly or covertly "taking sides" with one over another. Moreover, the Court finds nothing in the way of derogatory language or examples from sacred texts or other religious literature that could be classified as derogatory, accusatory or that would instill prejudice against the Hindu religion or its faithful.

It is true, of course, that the texts do include significant discussion of the caste system. Such discussion does not, however, by itself cause any of the texts to violate the law. The caste system is a historical reality, and indisputably was a significant feature of ancient Indian society. Nothing in the applicable standards requires textbook writers to ignore a historical reality of such significant dimension, even if studying it might engender certain negative reactions in students. Indeed, it appears to the Court that to omit treatment of the caste system from the teaching of ancient Indian history would itself be grossly inaccurate.

The real issue, therefore, is whether the caste system is presented as such a central or essential feature of Hindu religious belief, or in some way as the creation of Hindu religious belief, such that the texts become, in effect, derogatory or even accusatory, or instill prejudice against Hindu religion and believers. The Court finds that none of the challenged texts have descended to such a level. While the texts do state, in one way or

another, that Hindu religion generally accepted the caste system (a claim that petitioner have not demonstrated to be grossly inaccurate, even if it was not true for all Hindu people at all times), the texts also seem to take pains to describe the origins of the caste system in terms of a social construct that developed as the result of the Aryan invasions or migrations, rather than as primarily a Hindu religious belief *per se*. Indeed, passages can be found within the texts that attempt to present a measured, balanced view of the caste system, some going so far as to suggest that it may have had certain benefits at certain times. Even in the passages that imply criticism of the caste system (such as the passage in the MacMillan McGraw/Hill text in which the girl reflects on the “unfairness of it all”), the focus is not overtly on the Hindu religion as bearing the responsibility for the caste system, but on the effects of that system on the people of India, which even petitioners apparently would concede were not generally positive, especially for those in less-favored castes. Just as the regulation does not require textbooks to ignore unpleasant historical realities, it does not require them to present such realities in an unnaturally positive light. Moreover, nothing in the challenged texts uses the discussion of the caste system as a take-off point for comparing Hinduism unfavorably with other religions, or for advocating other religions over Hinduism. In this respect, the texts therefore have satisfied the requirement of neutrality.

The Court reaches a similar conclusion with regard to the texts' discussion of the status of women in ancient Indian society, and their description of Hindu religious belief in numerous deities as multiple aspects of the absolute divinity. These discussions appear on their face to be neutral, objective, dispassionate, factually accurate, not derogatory or accusatory in their tone, and not such as would instill prejudice against the Hindu religion or believers. Such passages are descriptive and do not advocate certain religions over others. On all of these points, the possibility, or even probability, that some students might react negatively, based on their own religious, political or social beliefs, to what they read in these books does not make the books legally invalid. The law does not insure against negative reactions or prejudices, it merely requires that the textbooks not instill them. The challenged books meet that requirement.

Petitioners' contention that the textbooks have the effect of comparing the Hindu religion unfavorably to other religions is also unpersuasive. Where the books describe the development of Buddhism, for example, as in part a reaction against certain Hindu beliefs and practices, they do so in an objective and dispassionate manner that has not been demonstrated to be historically inaccurate. Moreover, the books also appear to accept the idea that Buddhist teachings reflected and accepted many Hindu ideas. Nothing in this discussion appears to the Court to violate the applicable standard discussed above. Similarly, petitioners have not persuaded the Court that the textbooks tend to favor religions such as Christianity or Judaism over Hinduism based on the content of the texts themselves, or on the choice of illustrative materials such as pictures and selections from sacred writings. The fact that the discussion of Christianity and Judaism is longer than that of Hinduism, or that one religion or another is illustrated by more pictures (or, allegedly, more attractive pictures) or by an allegedly more appealing choice of textual excerpts, by itself does not establish a violation of the applicable legal standards. As noted above, the essential inquiry is whether the texts appear to be neutral. In this case, the Court finds that they are, and thus do not violate the applicable standards.

Based on the foregoing, the Court finds that petitioners have not demonstrated that the challenged textbooks violate applicable legal standards. The relief that will be granted in this matter therefore shall not include an order that a writ of mandate issue requiring respondent to rescind its approval of the challenged texts or take steps to remove them from use.

Conclusion

The Court grants the petition for writ of mandate based upon its finding that respondent has not complied with a specific statutory mandate that it enact regulations governing its textbook approval process as formal regulations pursuant to the Administrative Procedures Act. A writ of mandate shall issue to require respondent to comply with that statutory mandate within a time certain, such time to be established by the Court, along with any other terms required to preserve the status quo in the interim, to

be established after further briefing by the parties as set forth above. Since the ruling on the APA issue addresses the validity of the entire existing textbook adoption process, the Court declines to address the violations of the Open Meeting Act that petitioners allege took place during that process. Finally, because the Court has not found that the content of the textbooks challenged in this action violates applicable legal standards, the writ shall not include any provision requiring respondent to rescind its approval of those textbooks or otherwise take steps to remove them from use.

In the event that this tentative ruling becomes the final ruling of the Court, counsel for petitioner is directed to prepare the order, judgment and writ of mandate in conformity with this ruling, according to the procedure set forth in Rule of Court 391.