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February 8, 2006

Glee Johnson, President
California State Board of Education
1430 N Street
Sacramento, CA 95814

Paul Seave, Chief Counsel
California State Board of Education
1430 N Street
Sacramento, CA 95814

RE: TEXTBOOK ADOPTION / SIXTH GRADE SOCIAL SCIENCE

Dear Ms. Johnson and Mr. Seave:

As you know from previous correspondence, this office represents the Hindu American Foundation in connection with the above-referenced textbook adoption process.¹ We were present at the January 13, 2006 Board meeting and submitted a letter for Board consideration at that time. We earlier submitted a letter commenting on the meeting held by Board members and others on January 6, 2006. We are also aware that at the Board meeting on January 13, 2006, it appointed a subcommittee of five members to consider various issues relating to adoption of these texts and, hopefully, to resolve the continuing controversy over these texts.

The action taken by the subcommittee over the next few weeks will be critical. The comments that follow are provided as part of our effort to assist the subcommittee as it determines how to proceed. In doing so, we make certain assumptions. First, we assume that all meetings of the subcommittee will be conducted in accordance with the provisions of the Bagley-Keene Open Meeting Law. Second, we assume that the charge to the subcommittee and its actions to implement that charge will be identified and communicated to those persons and organizations which have a recognized interest in the issues under review.

¹ Please note that the Hindu American Foundation is not the same as the Hindu Education Foundation or the Vedic Foundation. While the organizations may share some common interests, communicating with either of those groups should not be considered responsive to the requests being made in this letter on behalf of HAF.

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We are guided by several goals which we believe should be shared by the subcommittee: 1) to ensure that all actions taken are in compliance with the statutory and regulatory requirements, in particular, the requirements of Education Code section 60044; 2) to correct numerous procedural errors that have already occurred and avoid compounding those errors; 3) to assure all participants in this process that their views and, in many cases, unique perspectives, have been fairly considered; and 4) to conclude the process in a timely manner that allows the publishers to meet their own deadlines.

The December 2 Curriculum Commission Review

As expressed in our letters of January 6, 2006 and January 11, 2006, HAF is of the view that the edits recommended by the Ad Hoc Committee and approved by the Curriculum Commission at its December 2, 2006 meeting should be considered final and that the Commission's action was consistent with prior Board direction. We are, of course, aware that Prof. Michael Witzel contacted CDE/SBE staff in November, 2005 and that, without addressing specific edits, he was generally critical of the work of the Committee and its appointed expert, Prof. Bajpai. His letter appears to have had significant influence on subsequent actions of the Commission, the Board, and their staff. Further, we believe that Prof. Witzel's accusations – for which no opportunity to respond was provided – resulted in an agreement between the staff and key Board members to re-open and “review” the recommendations of the Ad Hoc Committee. While we have not been provided full details of these events, the information available to us suggests that the actions of Board members and staff violated the spirit, if not the letter, of the Bagley-Keene Open Meeting Act.

For example, the November 22, 2005 staff memorandum to the Curriculum Commission inaccurately and improperly identified Prof. Witzel and two others as “CRP [Content Review Panel] members” and characterized the views of Prof. Witzel as “CFIR/CRP Final Recommendations.” Prof. Witzel has, in fact, never been a member of the CRP and characterizing his views as those of the CRP and CFIR – when they were neither – was grossly unfair to other participants, the Commission, and the Board; it was completely at odds with any notions of procedural fairness and was inconsistent with the procedures set forth in statute and regulation. In spite of the mischaracterizations contained in the November 22 memorandum, after a public meeting and discussion, the Commission nonetheless voted very clearly on December 2 to adopt the vast majority of the Ad Hoc Committee's recommended edits as their own recommended edits.

This should have been the end of this chapter. In fact, we have been told that in the past, this would have ended the matter as to these edits and they would have been forwarded to the publishers without additional Board action. Notwithstanding the Commission's “final” action, it is our understanding that Prof. Witzel continued to have contact with staff throughout December and early January to privately subvert the public process that had been provided, culminating in

the meeting on January 6, 2006. At that meeting, which was characterized as a private staff meeting, Prof. Witzel was allowed to attend and fully participate in the meeting while advocates of other views were denied attendance and participation. It is our belief that this meeting, which involved three Board members and several Curriculum Commission members, also violated the Bagley-Keene Open Meeting Act. In fact, it was the January 6 meeting that was apparently the impetus for further discussions among Board members and formed the basis for the motion to appoint the subcommittee. That motion, which was not on the agenda for the January 6 meeting, suggests that actions taken by the Commission and staff to implement prior Board direction were considered and evaluated by those attending the January 6 meeting, including three Board members, and their evaluation was presented to the Board at its January 6 meeting with recommendations for action.

We believe that a final decision was made with respect to a large body of edits and that any further action at this time would be viewed by the courts as the product of inappropriate non-public communications and decision-making. If there are specific edits that members of the subcommittee believes do not “improve the factual accuracy of materials,” we urge the subcommittee to identify those specifically and immediately as well as the basis for any such claim so that members of the public, including interested academics, have an adequate opportunity to address the specific concerns raised. Again, we view any wholesale “re-examination” of the Commission’s December 2 decision as unwarranted and legally inappropriate.

The “Unaddressed” Edits

As we have also previously indicated, we believe that certain materials relevant to the textbook adoption have not yet been presented to the Curriculum Commission or Board for consideration. The Vedic Foundation comments were initially submitted to CDE on September 8, 2005. This submission was well in advance of the September 28 meeting. While these have been characterized as not properly “formatted,” we note that there is nothing in the CDE regulations or in the material available on-line that instructs the public about any restrictions on how comments should be submitted. In fact, Regulation § 9520, while it allows for specific statements of error or objections, also allows for “comments relating to any other factor of which the Curriculum Commission should be aware” and a “general objection” to the adoption of the materials.” The contention that these comments were not timely or that they were not submitted in the required format is therefore not supported by fact or law.

Moreover, if the Vedic Foundation had simply been timely apprised of what staff considered to be a formatting problem, it could have timely corrected it. In fact, it did reformat its comments in late October when it learned for the first time that a substantial number of its proposed edits had not been reviewed because staff required a different format. We specifically refer to the events of Friday, October 28 – when the staff memorandum became available. After

speaking with CDE staff, The Vedic Foundation quickly “re-formatted” its proposed edits and re-submitted them over the weekend so they could be considered at the October 31 Ad Hoc Committee meeting in the format required by staff.

There were several matters on the agenda for the October 31 Ad Hoc Committee meeting and the edits proposed by the Vedic Foundation were at the end. Since a large part of that meeting was consumed by “re-writing” passages of texts for Christian, Islamic, and Judaic groups, limited time was allocated for consideration of the Vedic edits. The remaining edits went undiscussed simply because the Committee ran out of time. It is apparent from the record that the time of the Ad Hoc Committee was unfairly allocated; it is patently unfair to the Vedic Foundation and the goals set by statute and regulation to guide the Committee actions, for its proposals to be rejected because the Committee mis-allocated its time rather than based on a consideration of their merits. In fact, the unfairness of such a result appears to have been recognized. It was stated publicly at the October 31 meeting that the remaining edits would be reviewed at a later time, and that additional time would be requested from the Board in which to do so. We also understand that Prof. Bajpai did, in fact, review the remaining proposed edits and submitted a report to CDE/SBE on November 4, 2005. To our knowledge, absolutely nothing has been done with that document. Representations to the Board at its November meeting that all edits had been fully considered was simply in error.

We urge the subcommittee to make Prof. Bajpai’s review of the remaining proposed edits available for public comment, and the review and comments be considered by the subcommittee as it formulates its recommendations to the Board. The failure to do so, particularly in light of the facts and assurances in the past that the contents would be considered on the merits at a future time, would be inexcusable and indefensible under the statutes and regulations that apply to these proceedings.

The Role of Prof. Michael Witzel

As the subcommittee decides how to proceed, it will have to address the role, if any, to be played by the various “experts.” We urge the subcommittee to treat Prof. Witzel as what he clearly is – an advocate for a particular point of view. In doing so, his evaluations and recommendations should be considered in light of his background and experience, as should the evaluations and recommendations of all who claim expertise. We strongly urge the subcommittee to refrain from relying on him as an “expert” on the matters at issue for the following reasons:

- First and foremost, he is not an expert on Hinduism or ancient India. He has demonstrated expertise in Sanskrit. Just as one would not view an expert in Latin as an expert in Christianity or Roman history, one should not rely on an expert in Sanskrit beyond that expertise. His analysis and recommendations, if permitted, must be

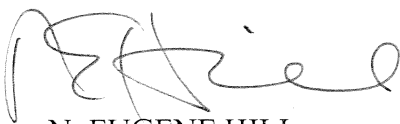
weighted, and burdened, by that limited focus. If the subcommittee feels that additional expertise is necessary, we suggest seeking out a “neutral” scholar – one who has not been involved in this controversy. HAF can submit names of persons with appropriate expertise.

- The Standards For Evaluating Instructional Materials contain several requirements that pertain here: Do portions of these texts hold up a particular religious belief to ridicule or portray it as inferior? Do they “equitably” portray cultural and racial diversity? Do they “tend to” demean, stereotype or patronize a particular group? Do they depict differences in customs or lifestyles as “undesirable or reflect adversely on such differences?” With respect to these important questions, HAF submits that the views of the Hindu community itself are most critical. Prof. Witzel simply does not and cannot reflect those views, and cannot claim any expertise with respect to them. Moreover, Prof. Witzel has made comments considered by many in the Hindu community to be disparaging of their religious beliefs, to the degree that some have characterized his views as anti-Hindu. For all of these reasons, any continuing role is likely to result in further antagonism and controversy which is likely to undermine Board efforts to bring closure to this issue.

We understand that his process must come to closure. While we certainly realize that bringing closure here is a tall order, we believe that it can be done if the subcommittee is very clear about what issues remain for decision and the standards for making those decisions. We believe that more transparency and candor in the coming weeks can offset some shortage of these qualities with respect to past decision-making. We look forward to working with the subcommittee in an effort to address and resolve all disputed aspects of these texts, and will actively participate in the process that remains available.

Very truly yours,

OLSON HAGEL & FISHBURN LLP



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cc: Marsha Bedwell, General Counsel, California Department of Education