



Texas Association of School Boards

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Teaching about Religion in Public Schools
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Perhaps no aspect of public school instruction has been subjected to more public and judicial scrutiny than instruction concerning religion. The following nine guidelines are drawn from court cases and other legal resources on teaching religion in the public schools.

1. Public school curriculum is a form of government speech.

Government speech: Under the First Amendment, public school curriculum, and the instruction that teachers offer based on the curriculum, must be analyzed as *government speech*, which the school district can control to a greater degree than private speech. In fact, when a public school employee teaches students, the school district must control the content of this government speech to ensure that the district does not advance or coerce students' belief in a particular religion, or religion over non-religion, in violation of the Establishment Clause. The U.S. Supreme Court has found that the government does not unconstitutionally discriminate on the basis of viewpoint when it chooses to advance permissible goals, even if advancing those goals necessarily discourages alternative goals. The government may exercise its freedom to advance its goals by delivering a government-controlled message. *See Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015) (holding that Texas specialty license plate designs were government speech, so state did not violate nonprofit organization's free speech rights by denying its application for design with Confederate flag).

2. The Establishment Clause of the First Amendment permits religious topics to be taught objectively as part of a secular education program.

Schools are not religion-free zones: In the past, courts reviewing Establishment Clause cases have applied various tests to determine whether the challenged action would be interpreted by an objective observer as a direct or indirect endorsement of religion. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971) (holding government action must have a secular purpose, not have the primary effect of advancing or inhibiting religion, and not foster an excessive government entanglement with religion); *Lee v. Weisman*, 505 U.S. 577 (1992) (applying *Lemon* to find a school district must not persuade or compel a student to participate in a religious exercise or endorse religion in the public schools). But in more recent years, the U.S. Supreme Court has moved away from this analysis to focus on explicit endorsements or coercion. The Establishment Clause does not "compel

the government to purge from the public sphere” anything an objective observer could reasonably infer endorses or “partakes of the religious.” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 243216 (June 27, 2022), citing *Van Orden v. Perry*, 545 U. S. 677, 699 (2005) (BREYER, J., concurring in judgment).

Secular purpose: Generally, the study of religious texts and concepts can be secular in purpose. *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963). For example, absent evidence of hidden bias or motive, public school curriculum about the Muslim world that was “designed to explore, among other things, formation of Middle Eastern empires including the basic concepts of the Islamic faith and how it along with politics, culture, economics, and geography contributed to the development of those empires” had an appropriate secular purpose. *Wood v. Arnold*, 321 F. Supp. 3d 565, 575 (D. Md. 2018) (mem); see also *Edwards v. Aguillard*, 482 U.S. 578 (1987) (finding that legislation requiring the teaching of creationism alongside evolution did not have a secular purpose).

No coercion: Teachers may include religious elements in instruction, as long as these elements would not be viewed by a reasonable person as coercing the practice of a particular religion. See, e.g., *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49 (2d Cir. 2001) (rejecting lower court’s findings that celebration of Earth Day taught earth worship).

No preference for one religion or for religion versus non-religion: The Establishment Clause prohibits public schools from tailoring teaching and learning to the principles or prohibitions of any particular religion. E.g., *Edwards v. Aguillard*, 482 U.S. 578 (1987) (holding unconstitutional a state statute requiring that creationism be taught alongside evolution); *Epperson v. Ark.*, 393 U.S. 97 (1968) (holding unconstitutional a state statute prohibiting teaching evolution).

Teaching through attribution: Courts have rejected constitutional challenges to instruction that requires students to learn about the beliefs of cultural or religious groups. Learning about the tenets of a religion, for example, is different from being asked to adhere to the tenets. Generally, teachers are on safe ground when they teach religious tenets through attribution (e.g., “Christians believe Jesus was the son of God.”). For example, in *Mozert v. Hawkins City Board of Education*, the Sixth Circuit found no constitutional violation when public schools required reading of a basic reader series that parents found offensive to their religious beliefs. The Court noted, “[i]f the schools had required the plaintiff students either to believe or say they believe that ‘all religions are merely different roads to God,’ this would be a different case.” *Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058, 1069 (6th Cir. 1987); see also *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 187 (3d Cir. 2005) (“[W]hile a public educational institution may not demand that a student profess beliefs or views with which the student does not agree, a school may in some circumstances require a student to state

the arguments that could be made in support of such beliefs or views.”) and *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338 (5th Cir. 2017) (en banc) (requiring a student to recite the Mexican pledge of allegiance in Spanish class was not an attempt to compel the speaker’s affirmative belief).

3. Neither the Free Exercise Clause of the First Amendment nor parental rights protected by the Fourteenth Amendment require schools to tailor instruction to the religious faith of individual students or parents.

Parental objections: A number of lawsuits have been filed by parents who were concerned that instructional elements of particular courses were teaching students to adhere to certain religious beliefs. For example, a Georgia student objected to passages in her biology textbook that acknowledged disputes about the origin of life. *Moeller v. Schrenko*, 554 S.E.2d 198 (Ga. Ct. App. 2001). Illinois parents complained about the use of a reading series that included fantasy elements such as references to witchcraft and monsters. *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680 (7th Cir. 1994). Florida students and a parent claimed that Halloween festivities, including a display depicting witches, endorsed the Wicca religion. *Guyer v. Sch. Bd. of Alachua Cnty., Fla.*, 634 So. 2d 806 (Fla. Dist. Ct. App. 1994). In California, parents complained about a reading series that suggested learning activities in which students would pretend to be witches and sorcerers. *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373 (9th Cir. 1994). In general, schools have responded that the activities or materials were offered for a secular, pedagogical purpose. Courts have typically concluded that reasonable observers would not interpret the challenged instructional elements as endorsing or coercing religious beliefs.

Exposure to ideas is not coercion: Merely exposing students to ideas they or their parents find objectionable does not place an unconstitutional burden on students’ free exercise of religion when students are not being compelled to affirm or deny a religious belief, nor to perform or not perform a religious exercise. See *Leebaert v. Harrington*, 332 F.3d 134 (2nd Cir. 2003) (upholding district action after school refused to excuse student from mandatory health education course, concluding that parent did not have a fundamental parental right to direct his child’s education at public school); *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525 (1st Cir. 1995) (upholding district action to require attendance at an AIDS awareness program); *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987) (upholding required reading assignments, even if textbooks contained material students found objectionable, so long as students were not required to change their beliefs based on the reading).

4. Schools should accommodate students’ freedom of expression to the extent individual religious expression is compatible with the school district’s instructional purposes.

Student work: Students are permitted to express religious beliefs in their schoolwork, and teachers may not reward or penalize students based solely on their choice to include religious themes or content. A teacher should grade schoolwork with religious

content on the same basis as other schoolwork. *See, e.g., Settle v. Dickson Cnty. Sch. Bd.*, 53 F.3d 152 (6th Cir. 1995) (concluding that a teacher did not violate a ninth grader's free speech rights by awarding a grade of zero on her research paper on the life of Jesus Christ because the student failed to follow instructions by seeking advance approval of the topic). Moreover, the Texas Religious Viewpoint Antidiscrimination Act (RVAA) specifically provides that students may express religious beliefs in homework, artwork, and other written or oral assignments and be free from discrimination based on the religious content of their submissions. Tex. Educ. Code § 25.153.

Editorial control: When student expression takes place as part of the school's curriculum, educators may exercise editorial control over the style and content of student speech as long as their actions are reasonably related to legitimate pedagogical concerns. *Hazelwood Sch. Dist. v Kuhlmeier*, 484 U.S. 260 (1988). At the same time, however, educators must be viewpoint neutral in exercising their editorial control. See TASB Legal Services' [Student Religious Expression](#).

No compelled speech: Requiring students to learn and repeat facts about religion is not the equivalent of compelled speech in violation of the First Amendment. *Wood v. Arnold*, 321 F. Supp. 3d 565 (D. Md. 2018) (mem.) (concluding that instructional materials, including a fill-in-the blank assignment containing the Five Pillars of Islam, was not compelled speech in light of the instructional setting). Courts have identified a difference between a requirement that students speak or write on a particular topic and a requirement that students profess beliefs or views contrary to the student's own beliefs. *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159 (3d Cir. 2005). For example, a teacher does not risk personal liability by assigning students viewpoints to articulate in a classroom debate. *Brown v. Li*, 308 F.3d 939 (9th Cir. 2002). Similarly, a school district does not offend the First Amendment when it compels, for legitimate pedagogical reasons, a student to recite lines of a play even if the student believes the recitation would be contrary to her religious convictions. *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004). As a result, it is clearly established that a school may compel some speech. Otherwise, a teacher could not penalize a student who refuses to respond in class or fails to complete homework. *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338 (5th Cir. 2017) (en banc).

5. When public school teachers are providing instruction, they are speaking as representatives of the school district.

Official capacity: Teachers' statements in their official capacity are attributed to the school district, and consequently, teachers are not at liberty to carry out their official duties in a way that violates the constitutional prohibition on an establishment of religion. In *Doe ex rel. v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995), the Fifth Circuit Court of Appeals held that teachers could neither participate in student-initiated prayer nor supervise students in prayer, because participation would improperly

entangle the district in religion and serve as a signal of endorsement that would violate the Establishment Clause. In 2022, the U.S. Supreme Court rejected the endorsement test in a case involving an assistant high school football coach who knelt to pray on the 50-yard line after football games. According to the Court in *Kennedy*, even though the coach was still on duty, his midfield prayers were private, personal acts of observance because they “were not publicly broadcast or recited to a captive audience,” students “were not required or expected to participate,” and, “in fact, none of Mr. Kennedy’s students did participate in any of the three October 2015 prayers that resulted in Mr. Kennedy’s discipline.” In contrast to a coach after a football game, a teacher providing instruction to a class is likely to be considered as speaking on behalf of the district. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2432 (June 27, 2022).

Must convey required content: Regardless of a teacher’s personal religious beliefs, a teacher can be required to teach the state-mandated curriculum. *See, e.g., Palmer v. Bd. of Educ. of the City of Chicago*, 603 F.2d 1271 (7th Cir. 1979) (holding that the state’s compelling interest in imparting the prescribed curriculum outweighed the interests of a Jehovah’s Witness teacher who was fired for refusing to lead the Pledge of Allegiance, sing patriotic songs, and celebrate national holidays).

Perfection is not required: Teachers frequently express anxiety that they will make a mistake in responding to a student’s classroom inquiry or fail to moderate a class discussion in a way that could lead to an accusation of religious bias. Teachers should be assured that as long as the overall purpose and message of classroom instruction is based on the school’s curriculum, with no ulterior motive to promote a religious viewpoint, a stray statement will not cause a constitutional violation. *See, e.g., Wood v. Arnold*, 321 F. Supp. 3d 565, 571 (D. Md. 2018) (mem.) (concluding teacher’s PowerPoint statement that “Most Muslim’s [sic] faith is stronger than the average Christian [sic]” may have been “inartful or, to some, offensive,” but was not offered for the purpose of advancing Islamic faith).

6. **Guest speakers may be invited to convey concepts consistent with curricular purposes.**

Religious speech by guest speakers: School officials cannot avoid an establishment of religion by inviting a guest speaker to deliver a religious message that the school district itself could not give. For example, the U.S. Supreme Court held that it was not constitutional for a public school to sponsor prayer by inviting a member of the clergy to deliver an invocation during a graduation ceremony. *Lee v. Weisman*, 505 U.S. 577 (1992).

Guests with religious affiliation: A school district may, however, invite guest speakers who are affiliated with religious organizations to speak on a school campus about either (1) matters other than religion; or (2) religion from a secular perspective, such as a discussion of world religions. The Fifth Circuit Court of Appeals has observed that the advancement by a school district of values that “merely happen [] to coincide or

harmonize with the tenets of some or all religions” is permissible, and “[i]t has long been established [. . .] that the State may send a cleric, indeed even a clerical order, to perform a wholly secular task.” *Doe ex rel. Doe v. Beaumont Indep. Sch. Dist.*, 173 F.3d 274, 306 (5th Cir. 1999) (considering the constitutionality of a member of the clergy in a school’s counseling program).

Whether guest speakers can use their secular school presentations as an opportunity to invite attendees to a religious event or distribute flyers that promote their websites or non-school events is less certain. School officials should focus on treating all guest speakers the same, regardless of viewpoint. For instance, if visiting authors are allowed to promote their websites and book signing events, school officials should arguably allow groups with religious affiliations to promote their materials and events, as long as all materials distributed or highlighted at school-sponsored events are secular.

Same pedagogical standards: Typically, guest speakers are invited by school personnel and have undergone some level of screening to confirm the relevance and appropriateness of their presentation. Like teachers, a district can require guest speakers to conform to pedagogical standards. For example, a parent sued a school district claiming the district violated the parent’s free speech rights by prohibiting her from reading the Bible aloud during an elementary class activity in which parents were invited to read from their child’s favorite book. The Third Circuit Court of Appeals concluded that, in furtherance of the school’s legitimate pedagogical goals, it was reasonable for school officials to distinguish between parents sharing cultural references during the holidays and leading what the school perceived to be a proselytizing Bible lesson. *Busch ex rel. Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89 (3d Cir. 2009).

7. State law permits students to opt out of aspects of instruction.

Temporary absences: Parents may temporarily remove their children from classes or school activities that conflict with their religious or moral beliefs by providing the teacher with a written statement to that effect; however, the removal may not be to avoid a test or for an entire semester, and the exemption from instruction does not exempt the child from grade level and graduation requirements. Tex. Educ. Code § 26.010.

Homeschool and private school transfer students: Schools may apply placement and credit requirements for students transferring from non-accredited schools, including religious private schools and homeschools. For example, a high school student entering public school after completing courses at a non-accredited private religious school brought suit to challenge the school district’s policy of requiring proficiency exams at the student’s expense in order to receive credit for courses taken at non-accredited schools. The court concluded that, even if a free exercise claim had been articulated, it would have failed because the school’s rule was neutral and generally applied. No

constitutional claim was presented that would require heightened scrutiny, and the challenged policy was rationally related to a legitimate state interest in setting uniform graduation requirements. *Hubbard ex rel. Hubbard v. Buffalo Indep. Sch. Dist.*, 20 F. Supp. 2d 1012 (W.D. Tex. 1998) (mem.).

8. Religious music and art may be included in arts curriculum and school-sponsored performances.

Religious elements allowed as broader program: A school district may include religious literature, music, drama, and arts in its curriculum and in school activities when the material is intrinsic to the learning experience and is presented objectively. E.g., *Bauchman ex rel. Bauchman v. W. High Sch.*, 132 F.3d 542 (10th Cir. 1997) (finding no Establishment Clause violation when a school choir performed a mix of religious and secular music and performed occasionally, but not exclusively, in churches); *Doe ex rel. v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (singing religious music in choir class did not establish or endorse religion when it was not performed as religious exercise); *Florey ex rel. Florey v. Sioux Falls Sch. Dist. 49-5*, 619 F.2d 1311 (8th Cir. 1980) (upholding a Christmas program that included both religious and secular elements).

Cannot serve primarily religious purpose: Religious elements may be included for instructional, but not devotional, purposes. Consequently, when a school board directed a music director to add “The Lord’s Prayer” to the program for a high school graduation ceremony, the board violated the Establishment Clause. The board’s decision was not saved by the fact that the majority of students and parents wanted “The Lord’s Prayer” to be a part of the program; constitutional protections are not governed by majority rule. Nor was the decision saved by the fact that students could opt out of rehearsals and performances and still earn class credit in an alternative way. Under the Establishment Clause, a school district cannot force a student to choose between attending and participating in school functions and not attending to avoid personally offensive religious rituals. *Skarin v. Woodbine Cmty. Sch. Dist.*, 204 F. Supp. 2d 1195 (S.D. Iowa 2002).

Programs must avoid coercing or explicitly promoting religion: For example, for 45 years, Concord High School in Elkhart, Indiana, held an annual “Christmas Spectacular.” The second half of the show included a 20-minute segment consisting of religious songs, a narrator reading passages from the New Testament, and student actors portraying a nativity scene. In response to a lawsuit, the district made changes in 2015. Thereafter, the second half began with five minutes of songs and narration about Hanukkah and Kwanzaa. For the remaining 20 minutes, students performed religious Christmas songs. During one of the songs, a nativity scene with mannequins appeared on stage for two minutes, and there were no New Testament readings. The plaintiffs in the original lawsuit alleged that the revised version was also unconstitutional. In looking at whether the revised program coerced participation in religion, the Seventh Circuit Court of Appeals found the fact that students could opt out of the Christmas Spectacular was

irrelevant because the show was a significant portion of the school's performing arts curriculum. Nonetheless, the second half of the show did not require the audience or students to participate in any religious activity. Therefore, the court upheld the finding that the show did not coerce individuals to support a religious belief. The court also looked at whether the revised program had a religious *purpose*. The district had stated three secular aims for the Christmas Spectacular: to provide a cultural education about winter holidays; to entertain the audience; and to provide a learning opportunity for students in the performing arts. The district's explicitly stated goals were adequate to show that religious purpose was not the primary motivation behind the show. The court therefore concluded that the revised show did not violate the Establishment Clause. *Freedom from Religion Found., Inc. v. Concord Cmty. Schs.*, Nos. 17-1683 & 17-1591, 2018 WL 1417549 (7th Cir. Mar. 21, 2018).

No right to require inclusion of religious content: If school officials decide to sidestep Establishment Clause concerns by excluding religious content from school-sponsored programs, students and parents do not have a free speech or free exercise right to insist that religious elements be included. For example, a high school senior who planned to play "Ave Maria" with his wind ensemble at the graduation ceremony sued his school district and superintendent when they declined to permit the performance based on the instrumental music's religious content. Because the school officials' decision to exclude "Ave Maria" was based on a decision to keep religion out of graduation as a whole, not to discriminate against a specific religious sect or creed, the Ninth Circuit Court of Appeals determined it was not impermissible viewpoint discrimination. *Nurre v. Whitehead*, 520 F. Supp. 2d 1222 (W.D. Wash. 2007), *aff'd*, 580 F.3d 1087 (9th Cir. 2009). Remember, however, the result could be different to the extent a school district has opened a forum for personal expression within the school setting. *Morgan v. Plano Indep. Sch. Dist.*, 589 F.3d 740 (5th Cir. 2009) (establishing that school district created limited public forum for personal expression by inviting students to exchange holiday greeting cards).

9. The Bible may be taught as part of a secular course of education, and religious literature is part of the Texas curriculum.

Secular purpose: The U.S. Supreme Court has observed that studying religion and its relationship to civilization is an essential part of a complete education. "Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 225 (1963). The Bible may not be taught for devotional purposes, however. E.g., *Hall v. Bd. of Sch. Comm'rs of Conecuh County*, 656 F.2d 999 (5th Cir. 1981), *modified on other grounds*, 707 F.2d 464 (11th Cir. 1983) (holding that a public school's Bible literature

course was unconstitutional because its primary purpose was to advance Christianity when the course consisted entirely of a Christian religious perspective; suggested a strong religious motivation, as opposed to literary study; was taught by an ordained minister; and had the primary effect of advancing religion).

Not for devotion: Because all school districts must include religious literature as part of the required curriculum, whether through a special elective course or as part of existing courses, all districts need to understand the appropriate boundaries for classroom instruction on religion. TASB model policies include the following language: “The inclusion of religion in the study of history, culture, literature, music, drama, and art is essential to a full and fair presentation of the curriculum The District’s approach to teaching about religion shall be academic, not devotional Such studies shall not foster any particular religious tenet nor demean any religious beliefs, but shall attempt to develop mutual respect among students and advance their knowledge and appreciation of the role that religious heritage plays in the social, cultural, and historic development of civilization.” See TASB Policies EMI(LEGAL) and (LOCAL).

Bible instruction required: Texas Education Code section 28.002 requires that the study of religious literature and its impact on history and literature be included as part of the required curriculum. Tex. Educ. Code § 28.002(a)(2)(G). The subject matter might be offered in other ways, such as including it in an existing course—English or social studies, for example—in the foundation or enrichment curriculum. The attorney general observed that Section 28.002(a) sets out the overall subject matter to be offered by school districts, but the State Board of Education (SBOE) and Texas Education Agency (TEA) decide when and how curriculum subject matter will be offered to students at the various grade levels. Tex. Att’y Gen. Op. No. GA-0657 (2008). TEA has provided some helpful guidance in a Frequently Asked Questions document that states that the Texas Essential Knowledge and Skills (TEKS) for the Bible literacy course may be found in Texas Administrative Code section 74.36 and that there are no state-adopted instructional materials available for the course. [Bible Literacy Frequently Asked Questions](#) (Nov. 2011). **Error! Hyperlink reference not valid.** TEA also explains which Public Education Information Management System (PEIMS) number districts should use when reporting the class.

Optional elective course: Texas Education Code section 28.011 authorizes school districts to offer an elective course on the content, history, literary style, and influence of the Old and New Testaments. If fewer than 15 students at a campus enroll, a campus is not required to offer the class. In fact, offering the course is optional, even if 15 or more students request that it be offered. Tex. Att’y Gen. Op. No. GA-0657 (2008). Section 28.011 further provides that a course under the section must comply with applicable law. Tex. Educ. Code § 28.011(d). To that end, the statute required the SBOE to submit its proposed TEKS to the Texas attorney general for legal review. The attorney general has approved the TEKS submitted by the SBOE in Texas Administrative Code section 74.36. The TEKS require that the course follow the TEKS either for independent

study in English or for a special topic in social studies. 19 Tex. Admin. Code § 74.36(d). The English and social studies TEKS emphasize developing critical thinking and reading skills, as well as writing and organizational skills. Teachers teaching the Bible course must hold a certificate in history, social studies, or language arts that qualifies the teacher to teach at the grade level in which the Bible course is offered, with a minor in religion or biblical studies “where practical.” Tex. Educ. Code § 28.011(f). Teachers who teach the course must also complete required staff development, including instruction on how to teach the class in accordance with federal law. Tex. Educ. Code § 28.011; 19 Tex. Admin. Code § 74.36.

Course materials: Section 28.011 provides that students may not be required to use a specific translation as the sole text of the Bible, and may use as the basic instructional material a translation different from that chosen by the school district or instructor. Tex. Educ. Code § 28.011(c). The selection of course materials should be considered carefully by the school board in consultation with the community and legal counsel.

Conclusion

The issue of teaching religion in public school is controversial and monitored by interested parties on all sides of the issue. As districts are constantly reminded by their students, parents, employees, and community members, people often have strong opinions regarding religion and its place in Texas public schools. School officials are wise to keep this in mind when making decisions about curriculum, arts programs, and more. School boards should ensure that teachers are adequately trained and that course offerings are appropriate.

This document is continually updated at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/Religion-in-the-Public-Schools/documents/teaching-about-religion-in-public-schools.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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