

A Report to the **Texas Education Agency** on

movements. I answer those critics by saying that it is difficult to understand the arguments of twentieth-century civil rights activists without understanding basic claims of the Declaration of American Independence (such as “all men are created equal” and “that they are endowed by their creator with certain unalienable rights”) and fundamental constitutional principles (such as “equal protection” and “due process of law”). In short, a civics education without a firm grasp of fundamental, organic law is like erecting a house without a foundation. It is not enough to insert words like “documents” and “rich material” to identify one of the source a f/MCID 9gawwat9 wvy one of t.3 Td

This language should also be incorporated into appropriate sections in the TEKS dealing with different sources, including

- §113.22. Social Studies, Grade 6 [b] [21] [A];
- §113.23. Social Studies, Grade 7 [b] [21] [A];
- §113.24. Social Studies, Grade 8 [b] [30] [A];
- §113.32. United States History Studies [c] [27] [A]; and
- §113.33. World History Studies [d] [25] [C]).

A comprehension of key constitutional documents in American history is important for developing not only a basic literacy in American history and civil government but also basic skills of historical research. In order to develop these skills and to provide students with evidence in support of claims about American history and culture, I recommend that greater attention be given to primary source documents, especially state papers.

Students must be taught how to read, evaluate, and use documentary sources. In terms of constitutional and legal interpretation, not all sources and evidence are afforded the same weight. A legislative debate or a constitutional framer's musings in a private missive are not given the same weight as the actual text of a constitutional document or law that has been duly adopted and ratified. Students must learn how to weigh and evaluate these different types of evidence. When confronted with a document, students should ask, *inter alia*, who wrote this, what authority is behind this, when was it written, for whom was it written, why was it written, and how has this documented been interpreted and used? Students should learn how to distinguish between primary source documents and secondary sources (a brief reference is made to this skill, starting in §113.6. Social Studies, Grade 4 [c] [22] [A] and continuing through later grades, but in my opinion it merits much more attention). I recommend that, in §113.24. Social Studies,

Grade 8 (a) (2) and (b) (30); §113.35. United States Government (b) (2) and (d) (20) (D); and §113.38. Special Topics in Social Studies (d) (2) (B), students learn how to define, make appropriate use of, and distinguish between and among private papers and state papers; fundamental law and regular law; constitutional laws, treaties, statutory laws, judicial rulings, administrative rulings and regulations, and executive orders. Students should also consider what each has to contribute to one's political and legal system.

2. Republican / Representative Government

In the introduction to most grade-level sections of the text (often [a] [4]) the following language or a slight variation thereof appears:

(4) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code, §28.002(h).

This language is taken in substantial part from Texas Education Code, §28.002(h). In recognition of the fact that the governments of both the State of Texas and the United States of America are republics (see U.S. Const., Art. IV, § 4), I recommend that wherever this section appears in the TEKS that the following clause be added to the second sentence: “understand the design and operation of a republican, representative government.” All students must understand the theory and design of republican, representative government, the constitutional requirement

Rights. See R. Carter Pittman, Book Review, *Virginia Magazine of History and Biography* 68 (1960): 110-111.

§113.33. World History Studies (d) (23). The revisions to this section lack explanation or rationale. What is the advantage in excluding “children and families” from this section? What is lost by excluding “children and families”? Would there be something to gain by adding “men” to this section? Are women more representative of “children and families” than men? In the absence of a compelling rationale, I recommend that these revisions be dropped and the previous version be restored. If, in fact, the goal is to identify representatives of “children and families,” as is suggested by comment A102, then I suggest that “men” be added alongside “women” in this text.

§113.35. United States Government (b) (2). Explicit reference should be made to the U.S. Declaration of Independence as one of the primary documents used.

§113.35. United States Government (d) (1) (B). Among the influential sources that should be added to this list, and that students must be exposed to, are the Bible and William Blackstone. As currently written, this section of the TEKS excludes the most cited authority in the political literature of the founding era. See

Century American Political Thought,” *American Political Science Review* 78 (March 1984): 193. In federal and state cases between 1789 and 1828, Blackstone’s *Commentaries on the Laws of England* (1765-1769) were cited in approximately 6.6% of cases, “more frequently than any other text” or legal treatise. Dennis R. Nolan, “Sir William Blackstone and the New American Republic: A Study of Intellectual Impact,” *New York University Law Review* 51 (Nov. 1976): 753.

§113.35. United States Government (d) (1) (C). Students must be exposed to a more expansive company of founding figures who contributed to the American political founding. This company includes John Dickinson, John Jay, George Mason, Gouverneur Morris, Roger Sherman, James Wilson, and John Witherspoon. See Gary L. Gregg II and Mark David Hall, ed., *America’s Forgotten Founders* (Louisville, Kent.: Butler Books; The McConnell Center, University of Louisville, 2008).

§113.35. United States Government (d) (7) (F). This section needs to identify at least some of the specific “American beliefs and principles reflected in the Declaration of Independence and U.S. Constitution.”

§113.35. United States Government (d) (3) (F). The revision to this section (as indicated by comment A44) reflects a misunderstanding of the subsection as originally written. The incorporation doctrine had a profound impact on federalism and some aspects of majority rule. The section, as originally written, quite correctly identified this as essential knowledge that students must understand. The revisors have misconstrued the section as suggesting that federalism and majority rule were incorporated. The failure to understand this basic feature of constitutional law underscores why an understanding of the incorporation doctrine’s impact on federalism must be included.

§113.32. United States History Studies Since Reconstruction (c) (4) (B). I propose changing “including” to “such as” before “Upton Sinclair.” The options are sufficiently broad that I see no need to limit teachers unnecessarily.

§113.32. United States History Studies Since Reconstruction (c) (10) (B). This subsection expects students to “identify conservative advocacy organizations and individuals, such as Newt Gingrich, Phyllis Schlafly, and the Moral Majority.” This section is problematic on many levels. First, it singles out “conservatives” for identification. Moreover, it is oddly placed among subsections focused on “war,” “global war on terrorism,” and “domestic terrorism.” Second, I suspect self-identified conservatives would debate whether the individuals and group identified by name are representative examples of the current conservative movement. The accompanying notes report that some members recommended another subsection identif

a third problem. What is the definition of “conservative” and what would be the definition of “liberal,” and who decides whether individuals and groups are conservative or liberal? Would it be appropriate to call a group “conservative” if that group rejects the label? For example, libertarian organizations, such as the Cato Institute, are often misidentified in the media as conservative. Fourth, adding a section on “liberal” groups would compound the problem by creating a false dichotomy. Political advocacy is not represented by just “conservative” and