

United States District Court
Northern District of California

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

CALIFORNIA PARENTS FOR THE
EQUALIZATION OF EDUCATIONAL
MATERIALS, ET AL.,

Plaintiffs,

v.

TOM TORLAKSON, et al.,

Defendants.

Case No. [17-cv-00635-CRB](#)

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

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. 606, 612–13 (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

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

1 Judgment (hereinafter “D. MSJ”) (dkt. 163) and DENIES Plaintiffs’ Cross-Motion for
2 Summary Judgment (hereinafter “P. MSJ”) (dkt. 215).²

3 **I. BACKGROUND**

4 Individual school districts decide precisely what is taught in California public
5 school classrooms. See Cal. Educ. Code § 60000(b) (West 2019) (“there is a need to
6 establish broad minimum standards and general educational guidelines for the selection of
7 instructional materials for the public schools, but . . . because of economic, geographic,
8 physical, political, educational, and social diversity, specific choices about instructional
9 materials need to be made at the local level”); see also id. § 60210(a) (local educational
10 agency may use materials aligned with content standards); id. § 60618(b) (school districts
11 may use model standard in developing district standards); see also D. MSJ Ex. 1 (dkt. 165-
12 1) (“Standards”) at 0005 (“The standards serve as the basis for statewide assessments,
13 curriculum frameworks, and instructional materials, but methods of instructional delivery
14 remain the responsibility of local educators.”). But state-wide materials provide the
15 general content standards upon which the individual school districts rely. Two such state-
16 wide materials are at issue in this case: the Standards and the Framework.

17 **A. Standards**

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

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26 members of the California State Board of Education; Michael Kirst; Ilene Straus; Sue Burr; Bruce
27 Holaday; Feliza I. Ortiz-Licon; Patricia Ann Rucker; Nicolasa Sandoval; Ting L. Sun; and Trish
28 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).

1. Standards Adoption Process

1 Notably, Plaintiffs did not include in their complaint any allegations about the
 2 standards adoption process, nor do they list the standards adoption process as a basis for
 3 their Establishment Clause claim. See Compl. ¶¶ 27–42 (factual allegations about
 4 Standards, addressing only their content); id. ¶¶ 144–46 (Establishment Clause claim based
 5 on content of Standards, process of adopting Framework, and content of Framework).
 6 This is presumably because a claim based on the 1998 standards adoption process would
 7 be time-barred. However, Plaintiffs do refer to the “[d]isfavored treatment of Hinduism in
 8 the development of the Standards” in their summary judgment motion. See P. MSJ at 3.
 9 They assert that, in drafting the Standards, “[n]o apparent effort was made to obtain input
 10 from a person affiliated with a Hindu organization,” unlike persons from other religious
 11 organizations, and that an Islamic group alerted the Standards Commission to language
 12 about religion “developing,” yet the Commission did not apply that advice to Hinduism.
 13 Id. at 4–5.

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

26 Plaintiffs make clear in their reply brief that the standards adoption process is still
 27 not a standalone basis for their claim. They explain: “The Standards are the violation.
 28

1 Standards Commission actions from the past are evidence of the violation—not the
 2 violation itself.” P. Reply re MSJ (dkt. 227) at 3. Further, they rightly quote the Ninth
 3 Circuit as observing that “reasonable observers have reasonable memories, and [the
 4 Court’s] precedents sensibly forbid an observer to ‘turn a blind eye to the context in which
 5 [the] policy arose.’” See id. at 4 (quoting Trunk v. City of San Diego, 629 F.3d 1099,
 6 1118 (9th Cir. 2011)); see also Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S.
 7 753, 780 (1995) (O’Connor, J., concurring in part and concurring in the judgment) (“[T]he
 8 reasonable observer in the endorsement inquiry must be deemed aware of the history and
 9 context of the community and forum in which the religious display appears.”).
 10 Accordingly, the Court will consider Plaintiffs’ evidence and arguments about the
 11 standards adoption process for that purpose.

12 **2. Standards Content**

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

21 **B. Framework**

22 The legislature directed the SBE to adopt model curriculum frameworks to serve as
 23 guidelines for local districts, filling in some of the historical material that corresponds to
 24 each of the Standards. See Cal. Educ. Code §§ 60000, 60001, 60005, 60200(c); Standards
 25 at 0006 (“The standards do not exist in isolation. The History-Social Science Framework
 26 will be revised to align with the standards. . . . Teachers should use these documents
 27 together.”). The SBE adopted the History-Social Science Framework at issue in this case
 28 in 2016, see D. MSJ Ex. 2 (dkt. 165-2), and that process is part of this case, see Compl.

1 ¶¶ 144–46.

2 1. Framework Adoption Process

3 The Framework adoption process began in 2008, when the SBE approved a plan to
4 update the existing framework. D. MSJ Ex. 37–38 (dkt. 165-5); McDonald Decl. (dkt.
5 163-1) ¶ 2. From late March to September 2008, the California Department of Education
6 (CDE) and SBE solicited applications for membership on a Curriculum Framework and
7 Evaluation Criteria Committee (CFCC). McDonald Decl. ¶¶ 2–3; see also 5 C.C.R. § 9511
8 (allowing establishment of CFCC, setting forth composition and membership
9 qualifications for CFCC members). The SBE received 81 applications, and, in November
10 2008, appointed twenty individuals to a CFCC. McDonald Decl. ¶¶ 3–5. The CFCC met
11 for five separate two-day sessions, which were publicly noticed, open to the public, and
12 included a period for public comment. Id. ¶ 6. It produced a draft updated framework,
13 which the Instructional Quality Commission (IQC) voted to release to a 60-day public
14 review and comment period. Id. ¶ 7. In July of 2009, however, citing fiscal troubles, the
15 Governor essentially suspended all work related to the curriculum frameworks. Id.

16 The SBE resumed work on the framework in September of 2014, releasing a revised
17 timeline. Id. ¶ 8. Later that month, the IQC voted to release for a 60-day public review
18 and comment period the existing draft framework with certain CDE proposed edits. Id.
19 During the first 60-day review period, CDE received more than 700 public comments from
20 over 480 different commenters. Id. ¶ 9. In February 2015, Executive Director Tom
21 Adams stated in a IQC meeting that “if funding is provided[,] CDE will contract with
22 experts to review the proposed edits to the course description chapters as well as a
23 professional writer to prepare new drafts.” D. MSJ Ex. 62 at 1730. In August of 2015,
24 Tom Adams emailed a member of CAPEEM, stating “the decision of whether experts are
25 needed will be decided after the October 8–9 meeting.” Kumar Decl. Ex. E (dkt. 215-1) at
26 PLS00153.

27 For two days in October 2015, the IQC’s History-Science Subject Matter
28 Committee (HSS SMC) considered and heard public comment on a revised framework

1 draft that incorporated proposed revisions based on public comments, and forwarded it to
 2 the full IQC with additional edits discussed at the meeting. D. MSJ Exs. 65–67; Gregson
 3 Decl. ¶¶ 8–9. The HSS SMC also decided at that time not to recommend that the SBE
 4 solicit applications for content review experts to opine on the draft. D. MSJ Ex. 67 at
 5 1774. In November 2015, a group of history professors identifying themselves as the
 6 “South Asia Faculty Group” (“SAFG”) submitted a report on the draft framework, with
 7 proposed edits. Order re MTD at 3, 18; D. MSJ Ex. 18 (November 18, 2015 SAFG
 8 submission). The SAFG later submitted additional feedback. See D. MSJ Ex. 19
 9 (February 24, 2016 letter with “extended corrections”); id. Ex. 20 (March 23, 2016 letter
 10 “to clarify some of our rejected edits”); id. Ex. 21 (May 17, 2016 letter “to register our
 11 acceptance in the main of the last round of edits”). Plaintiffs assert that Tom Adams
 12 secretly recruited the SAFG to provide feedback on Hinduism in the Framework,³ without
 13 publicly acknowledging that he had handpicked the group to obtain a desired (anti-Hindu)
 14 viewpoint. See P. Opp’n to D. MSJ at 5–6.

15 After hearing public comment and accepting certain proposed edits at its November
 16 2015 meeting, the IQC voted to recommend the resulting framework draft to the SBE,
 17 triggering another 60-day public review and comment period, between December 17, 2015
 18 and February 29, 2016. Id. ¶ 10; Gregson Decl. (dkt. 163-3) ¶ 11 (attaching November
 19 2015 meeting minutes), D. MSJ Ex. 68 (dkt. 165-5) at 1777–79, 1783–84. During that
 20 period, the CDE received over 10,000 e-mailed comments and thousands of additional
 21 printed comments. McDonald Decl. ¶ 10. At the March 2016 HSS SCM meeting, the
 22 committee reviewed the public comments received during the last comment period and
 23 summarized recommendations, then heard public comment from 90 individuals, and voted
 24 to recommend additional edits to the Framework. Gregson Decl. ¶¶ 12–14; D. MSJ Exs.

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 27 ³ Plaintiffs point to an email by an SAFG member, which states, “. . . I spoke with Tom Adams on
 28 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. 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).

1 69–71 (dkt. 165-5). At its May 2016 meeting, the IQC, after discussion and public
2 comment, approved a majority of those edits, and made additional changes such as
3 rejecting edits that would have replaced references to ancient India with “South Asia.”
4 Gregson Decl. ¶ 15; D. MSJ Ex. 72 (IQC minutes of May 19–20, 2016 meeting) at 1801;
5 id. Ex. 73 (July 2016 CBE agenda summarizing process) at 1809; Cos Decl. ¶ 11.

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

8 2. Framework Content

9 The Framework describes itself as having “a focus on student inquiry,” D. MSJ Ex.
10 2 (dkt. 165-1) (“Framework”) at 0074, as encouraging students to “grapple with multiple
11 and often competing pieces of information,” and as emphasizing “history as a constructed
12 narrative that is continually being reshaped,” “rich with controversies and dynamic
13 personalities,” id. at 0085. Although the Framework itself is over 800 pages, Framework
14 at 0070–0923, Plaintiffs are primarily concerned with a six-page portion of the Grade Six
15 Framework entitled “The Early Civilizations of India,” see P. Opp’n to D. MSJ at 5; P.
16 MSJ at 16–18; Framework at 0242–47.

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

1 religions but may not promote or denigrate any religion.” Id. at 0866. It also provides that
 2 “Classroom methodologies must not include religious role-playing activities or simulations
 3 or rituals or devotional acts.” Id. at 0867.

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

5 **C. Procedural History**

6 Plaintiffs brought suit in this Court in February 2017, alleging pursuant to 42 U.S.C.
 7 § 1983 (1) denial of substantive due process by interference with the liberty interest of
 8 parents to direct the education of their children; (2) violation of the Establishment Clause
 9 of the First Amendment; (3) violation of the Free Exercise Clause of the First Amendment;
 10 and (4) violation of the Equal Protection Clause of the Fourteenth Amendment. See
 11 generally Compl. Defendants moved to dismiss all claims pursuant to Federal Rule of
 12 Civil Procedure 12(b)(6). MTD (dkt. 88). The Court dismissed with prejudice Plaintiffs’
 13 substantive due process claim, Free Exercise claim, and Equal Protection claim. See Order
 14 re MTD at 21. As to Plaintiffs’ Establishment Clause claim, the Court recognized that
 15 Plaintiffs could state a claim by meeting any of the three prongs of the Lemon test, but
 16 held that they failed to do so as to either the first or the third prong. See id. at 10–13. The
 17 Court held that Plaintiffs had stated a claim as to the second prong of the Lemon test,
 18 which asks whether the government action has the principal or primary effect of enhancing
 19 or inhibiting religion. Id. at 13–16. After discussing a letter quoted in the Complaint from
 20 a Hindu student who felt humiliated by a role-playing exercise about caste, the Court held:

21 In light of the Supreme Court’s admonition that courts should
 22 be “particularly vigilant in monitoring compliance with the
 23 Establishment Clause in elementary and secondary schools,”
 24 Edwards, 482 U.S. at 583–84, the Court will infer at this point
 25 that this sixth grader is reasonable, or that a reasonable sixth
 26 grader would perceive the same message [that the primary
 message from the curriculum is that Hinduism is cruel and
 unjust], 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).

27 Id. at 15–16. In so ruling, the Court distinguished California Parents for the Equalization
 28 of Educational Materials v. Noonan, 600 F. Supp. 2d 1088 (E.D. Cal. 2009), a very similar

1 case in which CAPEEM alleged that the 2005-2006 history-social science textbook
 2 adoption process discriminated against Hinduism, explaining that “Noonan adjudicated a
 3 motion for summary judgment, which involves a different standard than a motion to
 4 dismiss.”⁴

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

11 **II. LEGAL STANDARD**

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

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

25 _____
 26 ⁴ The textbooks at issue in that case were required to be aligned with the same Standards
 27 challenged here, and the Framework that directly preceded the version challenged here. See
 28 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. (dkt. 230). The Court only reaches those objections necessary to this
 decision.

1 Once the moving party meets its initial burden, the nonmoving party must go
 2 beyond the pleadings and show that there is a genuine issue for trial. Anderson, 477 U.S.
 3 at 250. The nonmoving party does this by citing to specific parts of the materials in the
 4 record or by showing that the materials cited by the moving party do not compel a
 5 judgment in the moving party’s favor. Fed. R. Civ. P. 56(c). Because the court has no
 6 obligation to “scour the record in search of a genuine issue of triable fact,” the nonmoving
 7 party must “identify with reasonable particularity the evidence that precludes summary
 8 judgment.” Kennan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). If the nonmoving party
 9 fails to raise a genuine issue as to any material fact, the moving party is entitled to
 10 judgment as a matter of law. Anderson, 477 U.S. at 250. In determining whether there is a
 11 genuine issue for trial, the court does not weigh the evidence, assess the credibility of
 12 witnesses, or resolve issues of fact. Id. at 249.

13 **III. DISCUSSION**

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

18 **A. Establishment Clause Jurisprudence**

19 “The clearest command of the Establishment Clause is that one religious
 20 denomination cannot be officially preferred over another.” Larson v. Valente, 456 U.S.
 21 228, 244 (1982). In Lemon, 403 U.S. at 612–13, the Supreme Court explained that
 22 governmental action is permissible under the Establishment Clause if (1) it has a secular
 23 purpose, (2) the “principal or primary effect” neither advances nor inhibits religion, and (3)
 24 it does not foster “excessive state entanglement” with religion. At issue in this case is the
 25 second, primary effect, prong. That prong asks “whether it would be objectively
 26 reasonable for the government action to be construed as sending primarily a message of
 27 either endorsement or disapproval of religion.” Vernon v. City of Los Angeles, 27 F.3d
 28 1385, 1398 (9th Cir. 1994). “A government practice has the effect of impermissibly

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

5 Courts are to assess a government action’s primary effect using a “reasonable
6 observer standard.” Id. at 1378. “‘This hypothetical observer is informed as well as
7 reasonable; we assume that he or she is familiar with the history of the government
8 practice at issue.’” Id. (quoting Kreisner v. City of San Diego, 1 F.3d 775, 784 (9th Cir.
9 1993, cert. denied, 510 U.S. 1044 (1994)). Because the standard is objective, a particular
10 observer’s lay or expert opinion is irrelevant. See Noonan, 600 F. Supp. 2d at 1118
11 (rejecting use of experts in favor of hypothetical observer); Brown, 27 F.3d at 1382 (expert
12 testimony irrelevant to primary effect test); Alvarado v. City of San Jose, 94 F.3d 1223,
13 1232 (9th Cir. 1996) (“reasonable observer is not an expert on esoteric [matters], nor can
14 he or she be turned into one by any publicity generated by plaintiffs’ lawsuit.”). The Ninth
15 Circuit has explained that “[i]f an Establishment Clause violation arose each time a student
16 believed that a school practice either advanced or disapproved of a religion, school
17 curricula would be reduced to the lowest common denominator, permitting each student to
18 become a ‘curriculum review committee’ unto himself.” Brown, 27 F.3d at 1379. A
19 reasonable observer is also not aware of undisclosed intent. See McCreary Cty. v. ACLU,
20 545 U.S. 844, 863 (2005) (“If someone in the government hides religious motive so well
21 that the ‘objective observer, acquainted with the text, legislative history, and
22 implementation of the statute,’ cannot see it, then without something more the government
23 does not make a divisive announcement that in itself amounts to taking religious sides.”).

24 The Ninth Circuit has recognized that when the challenged government action
25 arises in elementary school instruction, the “reasonable observer” test should take into
26 account the more impressionable and vulnerable nature of school-age children. Brown, 27
27 F.3d at 1378–79. Courts are to be “particularly vigilant in monitoring compliance with the
28 Establishment Clause in elementary and secondary schools.” Edwards v. Aguillard, 482

1 U.S. 578, 583–84 (1987). This is because younger children are more vulnerable to the
 2 “subtle coercive pressure in the elementary and secondary public schools.” Lee v.
 3 Weisman, 505 U.S. 577, 592 (1992).⁶ Balanced against this guidance is “the broad
 4 discretion of the school board to select its public school curriculum.” See Noonan, 600 F.
 5 Supp. 2d at 1116. The Supreme Court “has long recognized that local school boards have
 6 broad discretion in the management of school affairs” and that public education “is
 7 committed to the control of state and local authorities.” Bd. of Educ. v. Pico, 457 U.S.
 8 853, 863 (1982). “Judicial interposition in the operation of the public school system of the
 9 Nation raises problems requiring care and restraint,” and courts should only intervene if
 10 “basic constitutional values” are “directly and sharply implicate[d].” Epperson v.
 11 Arkansas, 393 U.S. 97, 104 (1968).

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

25 In Good News Club, the issue was whether the government’s rejection of an organization’s
 26 request to hold weekly afterschool meetings in a school cafeteria violated the Establishment
 27 Clause. 533 U.S. at 102–03. The Court held that the relevant community was the parents who
 28 would choose whether their children would attend the meetings, not the children themselves, id. at
 115, 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. 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.

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 (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 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

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.

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

1 2–3 (objecting to the word “developed”).⁹ But the Standards and Framework also
 2 acknowledge the role of humans in the development of other religions. See, e.g.,
 3 Standards at 31 (“Discuss how Judaism survived and developed”); id. at 36 (“Trace the
 4 development of distinctive forms of Japanese Buddhism”); id. at 38 (“List the causes for
 5 the internal turmoil in and weakening of the Catholic church”); Framework at 236
 6 (“Judaism was heavily influenced by the environment, the history of the Israelites, and
 7 their interactions with other societies.”); id. at 271 (“As it became a state religion,
 8 Christianity changed. . . . The teacher points out that all religions change over time.”); id.
 9 at 274–75 (“How did the religion of Christianity develop and change over time?”). Such
 10 language is consistent with the curriculum’s secular purpose of teaching human history.¹⁰

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

21
 22 Joshi’s expert report. See D. Reply at 5–7. The report is unsworn, but more importantly, it is not
 23 relevant to the “primary effect” question. See Fed. R. Evid. 702 (requiring testimony to be
 24 relevant to task at hand); Brown, 27 F.3d at 1382 (rejecting expert testimony as irrelevant to
 25 whether a school practice appears to endorse religion); Noonan, 600 F. Supp. 2d at 1118 (same);
 26 Alvarado, 94 F.3d at 1232 (reasonable observer not an expert). The Court further agrees with
 27 Defendants about the failure of the Joshi Reply Declaration (dkt. 227-3) to cure the problems with
 28 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.

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.”).

1 teachings were transmitted orally at first, and then later in written texts, the Upanishads
2 and later, the Bhagavad Gita.” Id.

3 Plaintiffs complain that Defendants treat the Bhagavad Gita as mere secular
4 literature, pointing to a line in the Standards. See P. MSJ at 14 (asserting that “sacred
5 Hindu scripture, the Bhagavad Gita, is not described as what Hindus believe to be the word
6 of God, but as ‘important aesthetic and intellectual traditions’ and ‘literature.’”) (citing
7 Standards at 32 (“Discuss important aesthetic and intellectual traditions (e.g., Sanskrit
8 literature, including the Bhagavad Gita; medicine; metallurgy; and mathematics, including
9 Hindu-Arabic numerals and the zero).”). Presumably the Standards do not explain the
10 divine significance of the Bhagavad Gita because there are but seven bullet points covering
11 all of ancient India. See Standards at 32. The Standards are to be read in conjunction with
12 the Framework, see Standards at 0006, and the Framework provides a bit more context
13 about the role the Bhagavad Gita played, see Framework at 244 (“These teachings were
14 transmitted orally at first, and then later in written texts, the Upanishads and, later, the
15 Bhagavad Gita.”). However, it is unsurprising that the Framework treats the Bhagavad
16 Gita in a secular way in the context of a history curriculum—it does the same with other
17 religions’ sacred texts, listing it along with the Torah, Hebrew Bible, Qur’an, and Christian
18 Bible as “classical texts” to study when one is focused on “the human experience and
19 [exploring] the various ways in which human beings affect and express their relationship
20 to their physical, intellectual, social, and political environments.” See Framework at 385.
21 In addition, though Plaintiffs object to the Framework’s treatment of another sacred book,
22 the Ramayana, as a “story,” P. MSJ at 18, the Framework states that that book, “the story
23 of Rama, an incarnation or avatar of Vishnu,” is a “text that Hindus rely on for solutions to
24 moral dilemmas” and “one of ancient India’s most important literary and religious texts.”
25 See Framework at 246. It does not use the word “story” in a dismissive sense, but calls the
26 book “important.” See id.

27 2. Caste System

28 Another of Plaintiffs’ primary complaints about the Standards and Framework is

1 their over-emphasis on the caste system. See P. MSJ at 16 (“the Framework’s enormous
2 focus on caste within its coverage of Hinduism is itself contemptuous and unlike the
3 treatment of any other faith.”). The Standards include, under the heading “Students
4 analyze the geographic, political, economic, religious, and social structures of the early
5 civilizations of India,” the bullet point “Outline the social structure of the caste system,”
6 Standards at 32, and the Framework expressly connects the caste system to Hinduism,
7 stating, “Teachers should make clear to students that [the caste system] was a social and
8 cultural structure as well as a religious belief,” Framework at 246. Plaintiffs do not
9 maintain that it is historically inaccurate to link the caste system to Hinduism; rather, they
10 argue that the curriculum’s spotlight on caste gives students an unfairly negative view of
11 Hinduism.¹¹ See Compl. ¶ 82 (“Many would argue that caste was not and is not a Hindu
12 belief. But irrespective of the accuracy of the language, it is certainly derogatory and
13 inconsistent with . . . the treatment of other religions in the Framework.”); see also P.
14 Reply at 7 (“highly debatable” whether “caste is a Hindu religious belief”). Plaintiffs also
15 contend that the Framework “fails to note that the caste system has existed in India among
16 Sikhs, Christians, Muslims and Buddhists, but not among Hindus of Indonesia and Fiji.”
17 P. MSJ at 18 (citing what appears to be an inadmissible article about the caste system).

18 While it is true that the Framework does not contain the mitigating language
19 Plaintiffs seek, it contains other mitigating language, which makes clear that the caste
20 system existed in a historical context and was not unique to ancient India. See, e.g.,
21

22 ¹¹ Plaintiffs assert that “By word count, 47 percent of the Framework’s discussion in sixth grade of
23 Hinduism supporting individuals, rulers and societies is on caste.” See P. MSJ at 16, n.21 (citing
24 to dkt. 172-4, a color coded version of the Framework purporting to depict negative, neutral and
25 positive treatment of Hinduism); see also id. at 16 (“71 percent is negative by word count, while
26 only 6 percent is positive”). Defendants rightly note that Plaintiffs rely on this word counting
27 system without any explanation of its methodology or creator. See D. Reply at 2. The document
28 Plaintiffs point to, an attachment to a proposed amended complaint that the Court disallowed, see
29 dkt. 172-1 ¶ 158, is incredibly subjective and of no use to the Court on summary judgment. For
30 example, Plaintiffs have inexplicably highlighted in red, indicating a negative portrayal of Hindus,
31 the sentences “Ancient India experienced a Vedic period (ca. 1500–500 BCE), named for the
32 Vedas, which were composed in Sanskrit,” dkt. 172-4 at 162, and “Later in the Vedic period, new
33 royal and commercial towns arose along the Ganges (aka Ganga), India’s second great river
34 system,” id. at 163.

1 Framework at 245 (“As in all early civilizations, Indian society witnessed the development
2 of a system of social classes.”); id. (“This system, often termed caste, provided social
3 stability and gave an identity to each community.”); id. (“Over the centuries, the Indian
4 social structure became more rigid, though perhaps not more inflexible than the class
5 divisions in other ancient civilizations.”); id. at 246 (“Today many Hindus, in India and in
6 the United States, do not identify themselves as belonging to a caste.”);¹² id. (“As in
7 Mesopotamia and Egypt, priests, rulers, and other elites used religion to justify the social
8 hierarchy.”). This language goes a long way to contextualize and soften the subject of
9 caste.

10 Plaintiffs point next to a textbook entitled Discovery Education, Discovery
11 Education Social Science Techbook, Grades Six Through Eight, which Plaintiffs assert
12 includes an exercise for role playing the caste system. See P. Opp’n to D. MSJ at 3–4
13 (citing Kumar Decl. (dkt. 215-1) at PLS00184–87). Plaintiffs add that the book includes a
14 lesson objective directing teachers to “Connect the beliefs of Hinduism to the caste system
15 and other elements of ancient Indian life.” Id. at 4 (citing Kumar Decl. (dkt. 215-1) at
16 PLS00201). This evidence is misleading. First, Discovery Education appears to have been
17 adopted as part of the November 2017 instructional materials adoption, see Pl. Admin.
18 Mot. (dkt. 196) Ex. 5 (“2017 History-Social Science Adoption Report”)—a process that
19 Plaintiffs do not challenge in their complaint, and which involves a different regulatory
20 process than those pertaining to framework adoption. See D. Reply at 11 (citing 5 C.C.R.
21 §§ 9511–9526). While the book is slightly relevant in that it demonstrates a local district’s
22 interpretation of the Standards and Framework, it is not Defendants’ creation. More
23 importantly, the role playing exercise is aimed at teachers, not students, and it does not
24 mention Hinduism or even the caste system. See Kumar Decl. at PLS00186–87
25 (“Announce to the class that society in ancient India gave different people different levels
26 of opportunity, much like this activity.”; “Next, post the Essential Question: What effects

27 _____
28 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.”).

1 did power and social class have on the lives of the ancient Indian people?"; "Encourage
2 them to think about the impact that money and power may have had on their social
3 standing, or position, within Indian society."). The "Lesson Overview" that Plaintiffs tout
4 as linking "the beliefs of Hinduism to the caste system and other elements of ancient
5 Indian life" actually relates to another lesson (lesson 6.3), not the lesson containing the role
6 playing exercise (lesson 6.2). See id. at PLS00201.

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

17 Finally, on the subject of role-playing, this Court's order at the motion to dismiss
18 phase discussed an allegation in the Complaint that the "Commission was made acutely
19 aware of the pain and humiliation the curriculum's portrayal of Hinduism inflicts on Hindu
20 students," through the letter of a sixth grade student about a caste role-playing exercise in
21 her classroom two years earlier. See Order re MTD at 15–16; Compl. ¶ 85. Although one
22 individual's opinion is not controlling given the objective nature of the reasonable observer
23 test, see Brown, 27 F.3d at 1379, the Court stated that, because it was adjudicating a
24 motion to dismiss, it would "infer at this point that this sixth grader is reasonable, or that a
25 reasonable sixth grader would perceive the same message." Order re MTD at 16.

26
27
28 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.

1 Defendants accurately note, however, that (1) the exercise apparently took place two years
 2 before the Framework at issue was adopted,¹⁴ see Compl. ¶ 85 (“two years prior” to
 3 adoption process); (2) the specific instructional method described was employed at the
 4 local level and was not required by the Framework; and (3) the exercise was arguably
 5 contrary to the guidance in the (subsequently adopted) Framework, see Framework
 6 Appendix F (“Classroom methodologies must not include religious role-playing
 7 activities”). See D. MSJ at 3.¹⁵

8 3. Aryan Invasion

9 Plaintiffs also object to the Standards and Framework’s treatment of the Aryan
 10 Invasion Theory, which Plaintiffs claim, citing the expert report that the Court has rejected
 11 herein, is a “long-ago debunked, Orientalist theory” that “present-day India and Pakistan
 12 were invaded, in approximately 1500 BCE, by the ‘Aryans,’ a tribe of European origin,
 13 and that the Aryans . . . became the creators of Hindu civilization.” P. MSJ at 15 (citing
 14 Joshi Report at 4). The Standards do state “Discuss the significance of the Aryan
 15 invasions,” see Standards at 32, but they must be read together with the Framework, see
 16 Cal. Educ. Code §§ 60000, 60001, 60005, 60200(c); Standards at 0006. The Framework
 17 does not use the term “Aryan Invasion.” It states that, in the Vedic period (between 1500
 18 and 500 BCE), “according to many scholars, people speaking Indic languages, which are
 19 part of the larger Indo-European family of languages, entered South Asia, probably by way
 20 of Iran.” Framework at 243–44. It continues, “Gradually, Indic languages, including
 21 Sanskrit, spread across northern India.” Id. at 244. After another couple of sentences
 22

23 ¹⁴ Plaintiffs’ argument that “the offensive language of the current Framework proclaiming that
 24 caste is a religious belief . . . is virtually identical to the 2005 version of the Framework that was in
 25 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.

26 ¹⁵ The Court does not rely on Defendants’ additional argument that Plaintiffs are making a facial
 27 challenge and so the law presumes that local districts will implement the curriculum legally, see
 28 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.”).

1 about language, the Framework states: “Another point of view suggests that the language
2 was indigenous to India and spread northward.” Id.

3 This discussion about how different languages developed and spread in ancient
4 India is simply not, as Plaintiffs assert, an assertion that “The origin of Hinduism . . . is the
5 Aryan Invasion Theory.” See P. Opp’n to D. MSJ at 5; see also P. MSJ at 17 (“The origins
6 of all other religions included in the Framework are explained from the perspective of the
7 believer. . . . Only for the origin of Hinduism does the Framework use a discredited
8 theory.”). It takes an expert opinion, not relevant to this Court’s inquiry, to make it so.
9 See P. MSJ at 15 (citing Joshi Report at 4); Alvarado, 94 F.3d at 1232 (reasonable
10 observer not an expert). As to Hinduism’s origin, the Framework actually discusses
11 archeological finds from the earlier Harappan civilization (about 2600 to 1900 BCE), as
12 containing artifacts that “show features that are all present in modern Hinduism, such as a
13 male figure that resembles the Hindu God Shiva in a meditating posture, as well as small
14 clay figures in the posture of the traditional Hindu greeting namaste.” See Framework at
15 243.

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

24 ¹⁶ In fact, in a recently-adopted textbook submitted as an exhibit in connection with an earlier
25 motion, the Aryan migration is treated thusly: “According to many historians, around 1500 B.C,
26 waves of new people began crossing the Hindu Kush into India. The migrants were a collection of
27 tribes called Aryans, meaning ‘noble ones.’ They belonged to the Indo-European people who had
28 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

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

6 **4. Treatment of Women**

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

12 The relevant language in the Framework is about ancient India, not Hinduism. It
 13 states, “Although ancient India was a patriarchy, women had a right to their personal
 14 wealth, especially jewelry, gold, and silvery, but little property rights when compared to
 15 men, akin to other ancient kingdoms and societies.” Framework at 246. It continues,
 16 “They participated in religious ceremonies and festival celebrations, though not as equals.
 17 Hinduism is the only major religion in which God is worshipped in female as well as male
 18 form.” Id. About Judaism, the Framework states: “Judaism, in its ancient form, was
 19 largely a patriarchy. It was rare for women to own property, but Jewish law offered
 20 women some important rights and protections.” Id. at 236. About Christianity, it
 21 provides: “Although ancient Christianity was a patriarchy and all the apostles were men,
 22 several women were prominent, especially Mary, mother of Jesus. Until modern times,
 23

24 that a different regulatory process governs the instructional materials adoption process than the
 25 curriculum framework adoptions. See 5 C.C.R. §§ 9511–26. However, the recently-adopted
 26 textbooks are slightly relevant to the Court’s assessment of the Standards and Framework, as they
 27 demonstrate that someone has determined that those books are aligned with the Standards and
 28 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.

1 Christian women had few property rights and were subordinate to men.” Id. at 270; see
 2 also id. at 240 (about ancient Athens: “women, foreigners, and slaves were excluded from
 3 all political participation.”); id. at 231 (“Mesopotamia was a patriarchy and men had more
 4 power than women.”).

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

16 **5. Additional Negative and Positive Treatment of Religion**

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

1 The Framework also uses positive language about Hinduism and ancient India. It
 2 describes the Harappan civilization (about 2600 to 1900 BCE) as “well planned” and “[a]
 3 flourishing urban civilization.” Id. at 243. It describes the Vedic period as “build[ing] up
 4 a rich body of spiritual and moral teachings that form a key foundation of Hinduism as it is
 5 practiced today.” Id. at 244. It describes “the central practices of Hinduism today” as
 6 including “above all, a profound acceptance of religious diversity.” Id. at 245. And it ends
 7 by discussing the Ramayana as an “epic work.” Id. at 246. It contains positive language
 8 about the Gupta Dynasty (280 to 550 CE), as “a rich period of religious, socioeconomic,
 9 educational, literary, and scientific development,” and discusses the “[e]nduring
 10 contributions from the cultures of which is now modern India and other parts of South
 11 Asia.” Id. at 283. It addresses the Chola Empire, which was “associated with significant
 12 artistic achievement,” and states that “Hinduism continued to evolve with the Bhakti
 13 movement,” which “emphasized” “social and religious equality and a personal expression
 14 of devotion to God.” Id. at 284.

15 6. The SAFG

16 Finally, Plaintiffs vociferously object to the role of the SAFG, the group of
 17 academics that they claim Tom Adams secretly recruited to provide anti-Hindu input on
 18 the Framework. See P. MSJ at 9–11 (“... presented the feedback to the public without
 19 acknowledging that Adams handpicked the professors ... to obtain the viewpoint he
 20 sought.”); P. Opp’n to D. MSJ at 5–6 (same); P. Reply at 3 (“Defendants gave special
 21 consideration to the [SAFG] solicited by the [CDE] officials”).¹⁷ Although the SAFG
 22 participated “outside of the expert appointment process,” see P. MSJ at 9; see also Compl.
 23 ¶¶ 48–51 (alleging that Defendants “chose to ignore completely the process for consulting
 24 experts contemplated by the Department of Education’s regulations”), Tom Adams stated
 25 that it was undecided “whether experts are needed,” see Kumar Decl. Ex. E at PLS00153,
 26

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

1 a CFCC with Content Review Experts had already been formed in 2008, see McDonald
2 Decl. ¶¶ 2–5; 5 C.C.R. § 9511, and it is not clear that the regulations would have permitted
3 a second CFCC. As previously noted, the email Plaintiffs rely on to establish that Tom
4 Adams was directing the SAFG contributions is hearsay. See P. MSJ at 9–10. But
5 assuming that the CDE indeed solicited the SAFG’s input, there is no evidence that it did
6 so pursuant to official state policy, see Dougherty v. City of Covina, 654 F.3d 892, 900
7 (9th Cir. 2011), or that a reasonable observer would be cognizant of the academics’
8 internal correspondence, see Viswewaran Decl. ¶ 15 (dkt. 151-2) (third party
9 communications have always been private, and no one else had access to them); see also
10 McCreary, 545 U.S. at 863 (reasonable observer not aware of hidden religious motive).

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

27 As a second example of SAFG correspondence taken out of context, Plaintiffs quote
28 an email that they assert shows that SAFG members “understood that they were to use

1 ‘smoke and mirrors’ to manipulate the Framework adoption process.” See P. MSJ at 23
 2 (quoting Katon Decl. at KEN00016); P. Opp’n to D. MSJ at 14 (same). But that email
 3 simply stated that the group was not going to respond directly to a particular Hindu
 4 organization (Hindu American Foundation),

5 . . . but we need to describe what we take to be the
 6 social/scientific/scholarly current consensus on these issues,
 7 and then state whether we think the framework is consistent
 8 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.

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

12 Equally important, the SAFG made their positions known via public comment,
 13 which Defendants made available for public review. See McDonald Decl. ¶¶ 9, 11.
 14 Although Plaintiffs object to the CDE’s failure to disclose Adams’s role, they do
 15 acknowledge CDE’s open use of the SAFG recommendations. See P. MSJ at 10
 16 (“Although Adams’ recruitment of the handpicked SAFG was never made public,
 17 McTygue, who led the drafting of the Framework, did state publicly for the first time at the
 18 final History-Social Science Subcommittee meeting in March 24, 2016 that the
 19 subcommittee had been receiving reports from the SAFG.”). Moreover, the CDE rejected
 20 a number of the SAFG’s recommendations. Of the six examples the Complaint identifies
 21 of the SAFG’s allegedly anti-Hindu recommendations, the Court has already noted that
 22 “[t]he SBE actually rejected four.” See Order re MTD at 19 (dismissing Equal Protection
 23 claim based on Framework Adoption process). In addition, Defendants submit evidence
 24 that there was significant support for SAFG’s positions.¹⁸

25 _____
 26 ¹⁸ See, e.g., D. MSJ at 16–18 (citing, among other things, Appendix (dkt. 165) Ex. 22 (letter
 27 signed by 153 individuals, mostly American professors, expressing “support for the
 28 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 . . .

1 As to edits generally, the Court previously rejected Plaintiffs’ arguments that
 2 Defendants favored other religions over Hinduism in accepting and rejecting feedback on
 3 the Framework. See id. at 20–21 (“The problem here is not process. The SBE invited
 4 public comments on the draft Framework, but it is not obligated to accept every suggested
 5 edit—nor could it, when faced with conflicting input. The public school system could not
 6 function if every rejected public comment on the content of the curriculum carried
 7 potential liability. . . . Plaintiffs have not pled and cannot adequately plead that the
 8 Defendants treated Hinduism unfavorably as compared to other religions in the Framework
 9 adoption process.”). It now rejects Plaintiffs’ strained argument that a reasonable observer
 10 would recognize that Defendants’ handling of edits selectively violated California law.
 11 See P. MSJ at 21–23. The reasonable observer is not a legal expert, nor, given these facts,
 12 would he or she reach the conclusion Plaintiffs urge. The CDE received over 10,000
 13 emailed comments, and thousands of additional printed comments in just one phase of the
 14 Framework adoption process. See McDonald Decl. ¶ 10. It is no wonder that the
 15 “Supreme Court has warned that courts should not be in the position of analyzing the
 16 minutia of textbook edits and curriculum decisions.” See Noonan, 600 F. Supp. 2d at
 17 1121.

18 C. Primary Effect

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

21
 22 was advocated as the ideal in texts as old as Rig Vega . . .”); Appendix Ex. 24 (submission from
 23 South Asian Histories for All, stating among other things that “Caste as determined by birth has
 24 been religiously sanctioned and a lived reality in India for thousands of years. Erasing the
 25 religious underpinnings of caste also negates the religious dissent that produced the Buddhist,
 26 Ravidassia, and Sikh religions.”); Appendix Ex. 25 (letter from Council on American-Islamic
 27 Relations urging SBE to accept the SAFG’s edits and expressing concern about proposed edits
 28 “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 opposed 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 “improperly 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

1 consultation,” and that such disapproval could “possibly [be] due to the particular religious
2 beliefs underlying such consultation.” Id. at 1398. The circuit explained, however, that
3 “[n]otwithstanding the fact that one may infer possible city disapproval of Vernon’s
4 religious beliefs from the direction of the investigation, this cannot objectively be
5 construed as the primary focus or effect of the investigation.” Id. at 1398–99. The
6 primary purpose of the investigation was to investigate whether the officer was engaging
7 in improper or illegal conduct, and the investigation could not “reasonably be construed to
8 send as its primary message the disapproval of [the officer’s] religious beliefs.” Id. at
9 1399. The circuit noted, too, that there were “prominent disclaimers” in the course of the
10 investigation about the officer’s entitlement to his personal religious views. Id.

11 Similarly, in American Family Association v. City and County of San Francisco,
12 277 F.3d 1114, 1122 (9th Cir. 2002), where the San Francisco Board of Supervisors sent a
13 letter and adopted resolutions denouncing discrimination and violence against members of
14 the LGBTQ community, the Ninth Circuit held that two of the “documents contain certain
15 statements from which it may be inferred that the Defendants are hostile towards the
16 religious view that homosexuality is sinful or immoral.” “Nonetheless,” the circuit
17 continued, “we believe the district court properly concluded that this was not the principal
18 effect of Defendants’ actions.” Id. It explained: “The documents, read in context as a
19 whole, are primarily geared toward promoting equality for gays and discouraging violence
20 against them.” Id. Even though the two documents “may contain over-generalizations
21 about the Religious Right,” or “misconstrue the Plaintiffs’ message,” “a reasonable,
22 objective observer would view the primary effect of these documents as encouraging equal
23 rights for gays and discouraging hate crimes, and any statements from which disapproval
24 can be inferred only incidental and ancillary.” Id. at 1122–23.

25 Here, as in Vernon and American Family, even if a reasonable observer could infer
26 some disapproval of historical aspects of Hinduism, the Standards and Framework by no
27 means primarily communicate disapproval of Hinduism. Just as the primary effect of the
28 investigation in Vernon was to investigate possible illegal conduct, and the primary effect

1 of the Board of Supervisors’ actions in American Family was to encourage equal rights
 2 and denounce hate crimes, the primary effect of the Standards and Framework is to
 3 establish a curriculum on ancient history and social sciences. See Standards at 0006
 4 (requiring “students not only to acquire core knowledge in history and social science, but
 5 also to develop the critical thinking skills that historians and social scientists employ to
 6 study the past and its relationship to the present.”); Framework at 0074 (ensuring “that all
 7 California students are prepared for college, twenty-first century careers, and
 8 citizenship.”). In addition, here, as in Vernon, there are disclaimers. The Framework’s
 9 Appendix quotes from the First Amendment, explains that “public schools may not
 10 promote or inhibit religion,” and directs that “religion and religious convictions, as well as
 11 nonbelief” be “treated with respect.” Framework at 0865. And, as discussed above, the
 12 body of the Framework specifically makes positive references to ancient India and
 13 Hinduism, along with negative references to other civilizations and religions.

14 While Plaintiffs concede that they must demonstrate that the government’s action
 15 sends “primarily a message of . . . disapproval,” P. Opp’n to D. MSJ at 7 (quoting Vernon,
 16 27 F.3d at 1398), they quote Brown, 27 F.3d at 1378, for the proposition that the “concept
 17 of a ‘primary’ effect encompasses even nominally ‘secondary’ effects of government
 18 action that directly and immediately advance, or disapprove of, religion,” P. Opp’n to D.
 19 MSJ at 8. They also cite to Vasquez v. Los Angeles Cty., 487 F.3d 1246, 1256 (9th Cir.
 20 2007) (quoting Brown, 27 F.3d at 1378), which held that “Governmental action has the
 21 primary effect of advancing or disapproving religion if it is ‘sufficiently likely to be
 22 perceived by adherents of the controlling denominations as an endorsement, and by the
 23 nonadherents as a disapproval, of their individual religious choices.” Id. They argue that
 24 “[a]pplying the correct standard,” they would prevail, because “it is sufficiently likely that
 25 a reasonable observer would perceive” that the Standards and Framework “disapprove of
 26 Hinduism.” Id.

27 But Brown, which this Court relies on extensively, pre-dates Vernon and American
 28 Family. Moreover, Vasquez actually stated that “The most instructive cases in our circuit

1 are Vernon and American Family,” 487 F.3d at 1256, and its application of the second
 2 Lemon prong is consistent with those cases, see id. at 1257 (“a ‘reasonable observer’
 3 familiar with the history and controversy . . . would not perceive the primary effect of
 4 Defendants’ action as one of hostility towards religion.”). Indeed, while Plaintiffs
 5 accurately quote Vasquez, Vasquez inaccurately cites to Brown—the quoted language
 6 from Brown was defining the word “effect,” not the concept of “primary effect.” Compare
 7 Brown, 27 F.3d at 1378 (“A government practice has the effect . . . if it is ‘sufficiently
 8 likely to be perceived’) with Vasquez, 487 F.3d at 1256 (“Government action has the
 9 primary effect . . . if it is ‘sufficiently likely to be perceived’”).

10 Plaintiffs’ interpretation would read the word “primary” out of the primary effect
 11 test and render any conceivable disapproval a constitutional violation. That is not the law.
 12 Certainly courts cannot ignore “nominally ‘secondary’ effects of government action that
 13 directly and immediately advance, or disapprove of, religion.” See Brown, 27 F.3d at
 14 1378. But Plaintiffs must still show that disapproval of Hinduism is the primary effect of
 15 the Standards and Framework, and they have not done so.

16 2. The Context of School Curriculums

17 It was not enough in Vernon and American Family that there was some disapproval
 18 of religion: the context of the government action was essential in assessing the primary
 19 effect. Context is also essential to the Ninth Circuit’s treatment of school curriculum
 20 cases. Courts are to “consider the . . . curriculum as a whole to determine whether the
 21 primary effect is to endorse or inhibit religion.” Noonan, 600 F. Supp. 2d at 1118 (quoting
 22 Grove v. Mead Sch. Dist. No. 354, 753 F.2d 1528, 1540 (9th Cir. 1985) (Canby, J.,
 23 concurring) (“Objectivity in education need not inhere in each individual item studied; if
 24 that were the requirement, precious little would be left to read.”)); cf. Fleischfresser v.
 25 Dir. of Sch. Dist. 200, 15 F.3d 680, 689 (7th Cir. 1994) (courts are to “focus on the entire
 26 series, not simply the passages the parents find offensive because to ‘[f]ocus exclusively
 27 on the religious component of any activity would invariably lead to its invalidation.”).
 28 Disparagement of Hinduism is not the primary effect of the Standards and Framework as a

1 whole. A couple of school curriculum cases are particularly helpful in demonstrating this.

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

18 Likewise, in Brown, 27 F.3d at 1377, parents objected to a district’s use of
19 Impressions, an elementary school teaching aid that consisted of “approximately 10,000
20 literary selections and suggested classroom activities,” covering “a broad range of North
21 American cultures and traditions.” Id. The plaintiffs challenged 32 of the selections,
22 which directed students to discuss witches, create poetic chants, and pretend that they were
23 witches or sorcerers. Id. They alleged that the selections promoted the religion of Wicca
24 and the practice of witchcraft. Id. The Ninth Circuit explained that “[t]o the extent that
25 the Challenged Selections involve no more than merely reading, discussing or
26 contemplating witches, their behavior, or witchcraft, they fall squarely within the holding
27 of Grove.” Id. at 1380. The circuit also rejected the plaintiffs’ role-playing arguments,
28 concluding that this was not “student participation in school-sponsored religious ritual” but

1 “coincidental resemblance . . . to witchcraft ritual.” Id. at 1380–81. It continued, “As in
2 Grove, the Challenged Selections are only a very small part of an otherwise clearly
3 nonreligious program. It thus is unlikely that . . . an objective observer would perceive the
4 inclusion of the selections in Impressions as an endorsement of or disapproval of religion.”
5 Id. at 1381. The court reiterated: “The context in which the Challenged Selections exist is
6 relevant to determining whether children will have such a perception.” Id. The plaintiffs
7 therefore failed to meet the second Lemon prong. Id. at 1383.

8 Much like The Learning Tree was only one book “included in a group of religiously
9 neutral books in a review of English literature,” see Grove, 753 F.2d at 1534, and the
10 witchcraft selections were only 32 of 10,000 literary selections, see Brown, 27 F.3d at
11 1377, the language Plaintiffs object to in the Standards and the Framework are only a small
12 part of an expansive history and social sciences curriculum, ranging from kindergarten to
13 twelfth grade and from ancient history to economics and principles of American
14 democracy. See Framework at 72–73; see also Noonan, 600 F. Supp. 2d at 1119
15 (challenged materials “are only a small portion of otherwise clearly nonreligious texts. . .
16 which are part of a clearly[] nonreligious history-social sciences program.”).

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

27 Ultimately, “the State of California has determined that students should study the
28 importance of religion . . . to gain a better understanding of different cultures and

1 conflicts.” Noonan, 600 F. Supp. 2d at 1117; Framework Appendix F at 0864 (“much of
2 history, art, music, literature, and contemporary life are unintelligible without an
3 understanding of the major religious ideas and influences that have shaped the world’s
4 cultures and events.”). “Not all mention of religion is prohibited in public schools.”
5 Grove, 753 F.2d at 1534; see also Stone v. Graham, 449 U.S. 39, 42 (1980) (“the Bible
6 may constitutionally be used in an appropriate study of history, civilization, ethics,
7 comparative religion, or the like”); Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203,
8 225 (1963) (“it might well be said that one’s education is not complete without a study of .
9 . . the history of religion and its relationship to the advancement of civilization.”). As in
10 Grove and Brown, the challenged material here is not school-sponsored religious ritual.
11 See Grove, 753 F.2d at 1534; Brown, 27 F.3d at 1380–81. It is a discussion of ancient
12 India that includes a discussion of early Hinduism from an historical perspective. See also
13 Noonan, 600 F. Supp. 2d at 1121 (material does not “serve as a religious primer.”). This is
14 constitutionally permissible, as “[t]he Establishment Clause is not violated when
15 government teaches about the historical role of religion.” See Books, 401 F.3d at 868.

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

22 **IV. CONCLUSION**

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

25 **IT IS SO ORDERED.**

26 Dated: February 28, 2019



27 CHARLES R. BREYER
28 United States District Judge