



**October 28, 2014 Comments of Legal Counsel, Natalie L. Decker,  
to Gilbert Public Schools Governing Board**

Arizona has strong interest in promoting childbirth and adoption over elective abortion. Arizona law is very clear on that.

Concerned with protecting that strong interest and Arizona schoolchildren, in 2012 the Arizona legislature passed Senate Bill 1009. That bill was signed by Governor Jan Brewer on April 12, 2012, and is codified as A.R.S. § 15-115. It is *the law* of the State of Arizona.

That law, which we have previously provided you each a copy of, unequivocally requires all schools to utilize only programs and materials that present childbirth and adoption as preferred options to elective abortions.

The law very clearly and unambiguously states:

1. “[N]o school... may endorse or provide financial or instructional program support to **any program** that does not present childbirth and adoption as preferred options to elective abortion.”
2. “[N]o School may allow any presentation during instructional time or furnish **any materials** to pupils **as part of any instruction** that does not give preference, encouragement and support to childbirth and adoption as preferred options to elective abortions.”

The law is clear and it is your responsibility, indeed your obligation, to follow it.

As you know, parents and members of the community brought to our attention the curriculum currently being used in Gilbert Public Schools, raising concerns regarding its legal compliance. Specifically, the textbook, *Campbell Biology: Concepts & Connections*, 7<sup>th</sup> ed., used in biology classes, was brought to us with concerns regarding its legal compliance. On pages 545 and 546, attached hereto, the text discusses sexual activity and contraception. These pages discuss “emergency contraception,” including the “morning after pills,” and mifepristone (also known as RU486). Specifically, students are advised: “If a pregnancy has already occurred, the drug mifepristone, or RU486, *can induce an abortion*, the termination of a pregnancy in progress.” (emphasis added). Students are told that the drug “may cause significant side effects,” when in reality this drug has led to several documented deaths.

It is our understanding that there are several other books that are being utilized in this district that also may not be legally compliant. It is our understanding that none of the books reference adoption at all. While some of the books do mention childbirth, there is certainly no “preference, encouragement and support” given to childbirth and adoption over elective abortions.

To be clear, this issue is about students being given accurate and legally compliant information.

The law forbids this district, and every other district in this state, from furnishing ANY materials, as a part of ANY instruction, that does not affirmatively give preference, support and encouragement to childbirth and adoption over elective abortions.

The law is not limited to “sex education” programs or “health” classes. It applies, by the plain language of the text. Any organizations that tell you this law is limited to certain types of instruction are wrong. It is not. One simply need to read the statute to see that there are no such limitations and **it applies anytime the issue of abortion is included in any program, materials or instruction provided to students.**

It is a basic legal principle, true here in Arizona and in most every state, that if the language of a statute is clear and unambiguous, courts must give effect to the language of the statute<sup>1</sup> and it is also presumed that the legislature means what it says<sup>2</sup> and courts called to weigh in on statutes will not read something into a statute which is not in the “express manifest intention of the Legislature.”<sup>3</sup>

This statute is clear and unambiguous. If the Legislature wanted to limit its application to sex education, they would have done so. The ACLU told you that the law “was meant to set policy in the area of sexual education, not science instruction or education in general.” As support for that position, ironically, the ACLU, in its letter to you, purported to quote Senator Nancy Barto, the sponsor of SB 1009. In doing so, they quoted some committee minutes which summarized the gist of statements made during the discussion of the bill and took one sentence of the summary of Sen. Barto’s comments out of context – misrepresenting both her position and the law. The actual summary specifically states that Sen. Barto said that “**this bill is not meant to address how sex education is taught; it is about whether or not abortion is promoted in the state in public schools.**” Thus even if the legislative debate and discussion were relevant, it is clear that it was not limited to sex education and is generally applicable. Sen. Barto is here tonight, and will be sharing more on her position about the law and its general applicability.

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<sup>1</sup> See *State v. Bustamante*, 2014 WL 5342724 (Ariz.App. Div. 1, October 21, 2014)

<sup>2</sup> See *Taylor v. Stillwell*, 2014 WL 4793477 (Ariz.App. Div. 2, September 25, 2014)

<sup>3</sup> See *Roberto F. v. Department of Child Safety*, 332 P.3d 614 (Ariz.App. Div. 1, August 14, 2014)

But regardless of what members of the legislature did and did not say, the law is the law and it is very clear: ***The law requires that any instructional programs or materials utilized in Arizona schools include an affirmative preference to childbirth and adoption as options to abortion.***

An affirmative preference, support and encouragement requires more than a mere mention.

The bottom line is that you have a law that the legislature implemented, which directly governs this issue, and you have to follow the law. Despite the representations of the ACLU, who did even show up tonight despite an invitation, nobody said that this law “mandate[s] students be deprived of information regarding abortion or contraception.” In fact, there are many ways that compliance could be achieved—whether that be removing materials, using different materials, supplementing materials—that’s up to you. All that is required is that if elective abortion is discussed, which it is by the plain language of the Campbell textbook itself, then the materials and instruction must give preference, support and encouragement to childbirth and adoption.

Every student – including those in Gilbert – deserves accurate information that complies with the legal requirements established by legislators who were elected by the citizens. All our clients are asking that this district follow the law and provide instruction and materials that are accurate and legally compliant.