

1979 S.C. Op. Atty. Gen. 179 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-126, 1979 WL 29128

Office of the Attorney General

State of South Carolina

Opinion No. 79-126

November 8, 1979

**\*1 Subject: Education, Religion**

The proposed bill, 'Balanced Treatment for Scientific Creationism and Evolution Act' appears to promote religion, and therefore, the teaching of 'scientific creationism' in public schools pursuant to such proposed bill would most likely violate the First Amendment to the Constitution of the United States.

TO: Member  
South Carolina House of Representatives

**Questions Presented:**

Is the proposed bill, 'Balanced Treatment for Scientific Creationism and Evolution Act' contrary to either South Carolina's general statutes or State and Federal Constitutions?

**Statutes and Cases:**

§ 59-29-10, Code of Laws of South Carolina (1976)

Cantwell v. Connecticut, 310 U.S., 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940)

Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 7 L. Ed. 2d 677 (1963)

Committee for Public Education v. Nyquist, 413 U.S. 756, 93 S. Ct., 2955, 37 L. Ed. 2d 948 (1973)

Keyishian v. Board of Regents of New York, 385 U.S. 589, 87 S. Ct., 675, 17 L. Ed. 2d 629 (1967)

Malnak v. Yogi, 592 F. 2d 197 (3rd Cir. 1979)

Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979)

Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 638 (1890)

Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962)

Torcaso v. Watkins, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961)

United States v. Seeger, 380 U.S. 163, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965)

Epperson v. Arkansas, 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968)

Daniel v. Waters, 515 F. 2d 485 (6th Cir. 1975)

Hendren v. Campbell, No. 5577-0139 (Super. Ct. Indiana April 14, 1979)

Abington School District v. Schempp, 374 U.S. 203, 83 S. Ct., 1560, 10 L. Ed. 2d 844 (1963)

Wright v. Houston Independent School District, 366 F. Supp. 1208 (S.D. Tex. 1972) aff'd 486 F. 2d 137 (5th Cir. 1973)

Burstyn v. Wilson, 373 U.S. 495, 505 U2 S. Ct. 777, 96 L. Ed. 1098 (1952)

Crowley v. Smithsonian Institution, 462 F. Supp. 726 (D.C. D.C. 1978)

Everson v. Board of Education, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1946)

Harmon v. Dreher, 17 S.C. eq. (Speers) 87, 120

Discussion:

At the request of several members of the General Assembly, the Office of the Attorney General has reviewed proposed legislation, referred to as the 'Balanced Treatment for Scientific Creationism and Evolution Act' (hereinafter the Bill). The author herein is not informed whether the Bill has, in fact, been filed as a bill in the General Assembly. The purpose of the requested review is to determine whether any portion of the Bill conflicts with the general statutes of South Carolina or contravenes either the State or Federal Constitution. A copy of the Bill is attached hereto as Appendix A.

The Bill in question proposes to do many things, from protecting academic freedom to ensuring freedom of religious exercise, as specified in its Title; however, the major function of the Bill is to statutorily authorize, and in certain situations require, the inclusion of 'scientific creationism' in the curricula of South Carolina's public schools. 'Scientific creationism' is defined in the Bill, which states in part:

\*2 (a) The 'theory of scientific creationism' means the scientific evidences for creation and inferences from those scientific evidences. The concept of 'creation' includes belief in: (1) special creation of the universe and life. . . . (Emphasis added).

The Bill deviates in its own definition of 'scientific creationism' to define the 'concept of 'creation''; moreover, nowhere in the Bill is the term 'special creation' defined or explained. While the Bill contains its own definitions, reference to standard dictionaries brings the terms 'scientific creationism', 'concept of creation', and 'special creation' more clearly into focus. Two such definitions are as follows:

Creationism. A system or theory of creation: spec. a. The theory that God immediately creates a soul for every human being born (opposed to traducianism); b. The theory which attributes the original matter, the different species of animals and plants, etc., to 'special creation' (opposed to evolutionism).

The Oxford English Dictionary, (Oxford, at the Clarendon Press 1961) Vol. II.

Creationism. 1: A doctrine or theory of creation holding that matter, the various forms of life; and the world were created by a transcendent God out of nothing—compare EVOLUTIONISM 2: The Theological doctrine that the human soul is separately created in each individual born—compare INFUSIONISM, TRADUCIANISM.

Webster's Third New International Dictionary, G. & C. Merriam Company, (Springfield, Mass., U.S.A. 1976).

Against this backdrop, the Opinion will proceed to scrutinize the Bill in light of constitutional, statutory, and case law. A review of the South Carolina Code of Laws, 1976, as amended, fails to reveal any statute directly prohibiting or conflicting with the Bill; moreover, the Bill itself at Section 11 provides for the repeal of all laws in conflict with the Bill. No opinion is rendered as to the efficacy of such provision.<sup>1</sup>

The central inquiry of this opinion, then, will consider the affect, if any, of the First Amendment to the Constitution of the United States and Article I, Section 2 of the Constitution of South Carolina, 1895, as revised. These provisions, as they relate to religion, are virtually identical; therefore, hereinafter, references to the First Amendment to the United States Constitution will generally include the aforementioned South Carolina provision.<sup>2</sup> The First Amendment states: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Thus, the issue here is whether the Bill, if enacted, would either foster the establishment of a religion or deny the free exercise of religion.

The United States Supreme Court in Committee for Public Education v. Nyquist, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed. 2d 948 (1973), laid down the current standard under the First Amendment's Establishment Clause against which the Bill must be reviewed, stating:

\*3 Taken together, these decisions dictate that to pass muster under the Establishment Clause the law in question, first, must reflect a clearly secular legislative purpose, second, must have a primary effect that neither advances nor inhibits religion, and third, must avoid excessive government entanglement with religion. (Citations omitted).

First, does the Bill reflect a clearly secular legislature purpose? Section 3 of the Bill states:

Treatment of either the theory of evolution or the theory of scientific creationism shall be limited to scientific evidences for that theory and inferences from those scientific evidences, and must not include religious instruction.

Section 6, captioned 'Clarifications', declares, 'This Act does not require or permit instruction in any religious doctrine or materials.'<sup>3</sup> Finally, Section 8 contains yet another disclaimer to the effect that the Bill does not cause instruction in or establishment of religion. Intention and effect, of course, may very well follow divergent paths, as noted in relevant federal court decisions. The Court in Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979) at p. 146, stated the proposition as follows:

The fact that a course of instruction sponsored or permitted with a public school is nonsectarian, nondoctrinal, nondenominational or otherwise religiously neutral does not prevent its being held to be in violation of the First Amendment Establishment Clause if in fact it is a course in religious instruction

The Bill need not be weighed on Constitutional scales solely on the language contained therein; in fact, the proponents of the Bill apparently do not themselves intend such a result. Various copies of the Bill supplied to this Office contain one or more attachments, which clearly attempt to qualify or justify the Bill. The first such attachment is captioned 'Summary of Scientific Evidence for Creation' and is attached hereto as Appendix B. This 'Summary' is more a diatribe against the theory of evolution than a document of facts supportive of 'scientific creationism.' The 'Summary' point blank declares 'an act of creation', and similarly to the Bill, 'special creation' is not at all distinguished from creationism *per se*. See definitions of creationism, *supra*. A second attachment to the Bill is attached hereto as Appendix C. The headline to Appendix C states, 'There is a sharp difference between Scientific Creationism and Religious Creationism.' This attachment proceeds to differentiate between the two by basing the 'Biblical Creation Model' on 'God' and the

book of 'Genesis, while basing the 'scientific Creation Model' on 'Special creation . . . (by a Creator) . . .' Appendix C does not identify or define the 'Creator' in question. Finally, attached hereto as Appendix D is a pamphlet, entitled, 'The Religion of Evolutionary Humanism and the Public Schools', authored by Henry M. Morris, Ph.D., Institute for Creation Research, (San Diego, Cal. September, 1977). Dr. Morris will, of course, be recognized as the source of the statements contained in Appendix B, 'Summary of Scientific Evidence for Creation.' This hypercritical rebuke of the 'theory of evolution' demonstrates the zeal of the proponents of 'scientific creationism'; moreover, the tract contains clues as to the true essence of 'scientific creationism', as noted in the following quotations:

\*4 The fact is, however, that creationists are not attempting to oust evolutionary humanism from the public schools, but only to obtain a fair hearing for theistic creationism as an alternative. Both concepts involve faith and neither is scientifically testable in the ultimate sense. (Emphasis added).

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. . . all the known facts of science (as well as the facts of human experience) correlate with belief in special creation and a personal Creator much better than belief in evolution and humanism correlate with those facts . . . (Emphasis added).

Based upon the foregoing discussion, no opinion can be stated unequivocally that the Bill reflects a clearly secular legislative purpose. So, the Bill must be considered with the final two standards enunciated in Nyquist, supra, in mind. This is an appropriate point to delineate the scope of review of the Bill, which will be followed in this opinion, and by the courts as well. The appropriate scope was well stated in Wiley v. Franklin, supra, at p. 150:

That Bible study courses can be designed for use at all public school levels, from kindergarten to college graduate level, and can be designed to avoid violation of the First Amendment religious freedom strictures cannot be doubted. That the methodology of such teaching would vary according to grade level and that there may be differences, even strong differences among school administrators and academicians as to the more appropriate methodology to be followed at any particular grade level is a matter that addresses itself solely to appropriate school authorities and is not within the province of this Court, the Court being concerned only with the Constitutionality of that which is taught.

Thus the Constitutional issue presented in teaching the Bible study courses in the public schools is not the Bible itself, but rather the selectivity, emphasis, objectivity, and interpretative manner, or lack thereof, with which the Bible is taught. The religious freedom clauses of the First Amendment are not intended as vehicles for banning books, including the Bible, from the public schools. Nor are those clauses intended to make official censors of public school teachers and administrators. Rather, they were intended to require of them only that they refrain from religious teachings as well as that they refrain from interference with the religious beliefs of their students and patrons.

In order to proceed with this review, consideration must be given to the meaning and scope of the term 'religion', as used in the First Amendment. Early definitions of that term related it to a belief in 'God'. Malnak v. Yogi, 440 F. Supp. 1284 (D. N.J. 1977). The Court in Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890), declared its view, stating, '[t]he term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.' Since the opinion in Davis, the definition of 'religion' has evolved to remain abreast of the everchanging thoughts and beliefs of the American citizenry.

\*5 Characterization of an activity as religious need not depend upon derivation from a societally recognized religious sect. Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L.Ed. 2d 601 (1962). The court in Torcaso v. Watkins, 367 U.S. 488, 81 S. Ct. 1880, 6 L.Ed. 2d 982 (1961), striking down a provision of the Maryland Constitution requiring appointees to state offices to declare a belief in the existence of 'God', stated:

We repeat and reaffirm that neither a State nor the Federal Government can constitutionally force a person to profess a belief or disbelief in any religion. Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

The Supreme Court has had many occasions to address the question of defining 'religion' in the Selective Service cases. One of the most enlightening of such cases is United States v. Seeger, 380 U.S. 163, 85 S.Ct. 850, 13 L. Ed. 2d 733 (1965), in which the court considered the scope of § 6(j) of the Universal Military Training and Service Act, 50 U.S.C.S. Appx. § 456(j), which states in pertinent part:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

The court clearly and forcefully laid to rest the proposition that 'religion' is always synonymous with a belief in 'God', declaring:

We have concluded that Congress, in using the expression 'Supreme Being' rather than the designation 'God', was merely clarifying the meaning of religious training or belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views. We believe that under this construction, the test of belief 'in a relation to a Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption.

The court proceeded to examine statements of various theologians and church councils to demonstrate the utter lack of unanimity in defining 'God' and 'religion'. As one example, the court quoted Dr. David Saville Muzzey, from his book, Ethics As a Religion (1951), in which Dr. Muzzey attempted to answer the question, '... Do you believe in God?', as follows:

Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavors to cultivate the best in their fellow men. What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose.

\*6 Thus, the 'God' that we love is not the figure on the great white throne, but the perfect pattern, envisioned by faith, of humanity as it should be, purged of the evil elements which retard its progress toward 'the knowledge, love and practice of the right.'

Obviously, 'religion' is not dependent upon any standard, historical, or organized dogma or denomination. Further support for this view is found in the concurring opinion of Mr. Justice Douglas. Mr. Justice Douglas outlines the extent of sects within the United States, including Buddhists, Confucianists, Hindus, and Taoists, to which the terms 'God' and 'Supreme Being' are not entirely compatible with orthodox Christian precepts. The difficulty in standardizing a definition of 'religion' is obvious in Mr. Justice Douglas' following statement, 'Long before the birth of our Judeo-Christian civilization the idea of God had taken hold in many forms. Mention of only two—Hinduism and Buddhism—illustrates the fluidity and evanescent scope of the concept.'

So, 'religion' is no longer defined in simple narrow terms, as demonstrated in the following:

It seem unavoidable, from Seeger, Welch, and Torcaso, that the Theistic formulation presumed to be applicable in the late nineteenth century cases is no longer sustainable. Under the modern view, 'religion' is not confined to the relationship of man with his Creator, either as a matter of law or as a matter of theology. Even theologians of traditionally recognized faiths have moved away from a strictly Theistic approach in explaining their own religions. Such movement, when coupled with the growth in the United States, of many Eastern and non-traditional belief systems, suggests that the older, limited definition would deny 'religious' identification to faiths now adhered to by millions of Americans. The Court's more recent cases reject such a result.

Malnak v. Yogi, 592 F. 2d, at p. 207. <sup>4</sup>

The 'theory of scientific creationism' is most probably a religious doctrine for two basic reasons. First, the circumstances under which the Bill is proposed evidence an intent by its authors to advance a religious interest through its enactment and implementation. If a religious interest will be enhanced by the teaching of 'scientific creationism', such strongly suggests that 'scientific creationism' has religious content. Second, 'scientific creationism' so closely parallels established Judeo-Christian doctrine and teaching of the origin of the Universe and life on Earth that mere labeling as scientific theory is not sufficient to overcome a resulting presumption that it is a religious doctrine.

The manner in which the circumstances surrounding proposed legislation may evidence an intent to further religion is described in Epperson v. Arkansas, 393 U.S. 98, 89 S. Ct. 266, 21 L.Ed. 2d 228 (1968). In Epperson the Supreme Court struck down an Arkansas anti-evolution statute, which prohibited the teaching in public schools of the Darwinian theory of man's evolution from other species of life. The Court reasoned that the Arkansas lawmaker's selection, from the entire body of existing scientific knowledge, a theory in conflict with an established religion to ban from school classrooms, raised a presumption that the lawmakers did so to further religion. The Arkansas statute did not require the teaching of Biblical creation, but the court concluded that the statute had been enacted, based upon religious consideration for certain fundamentalist sectarian convictions. Should the General Assembly now choose, from the entire body of present scientific knowledge, to require instruction in a theory which closely coincides with established religion, that too would likely raise the presumption that they did so to further religion. See also, Daniel v. Waters, 515 F. 2d 485 (6th Cir. 1975).

\*7 Not only does a presumption that 'scientific creationism' is a religious doctrine arise from the circumstances under which the Bill is proposed, such presumption also arises from 'scientific creationism's' obvious compatibility with Biblical creation in the Book of Genesis. 'Scientific creationism' and Biblical creation do not appear to conflict with one another in a significant manner on principles of creation. What differences appear are superficial at most. Such concepts as 'divine creation', 'the flood', and 'God' in the Biblical creationist model are supplanted by 'special creation', 'the deluge', and the 'Creator' in the scientific creationist model. See Appendix C. This word play is simply insufficient to purge 'scientific creationism' of its religious overtones. The following from Malnak v. Yogi, 592 F. 2d 197 (3rd Cir. 1979), is apropos: While the characterization of proponents is properly admissible evidence, proponents cannot propagate concepts which society recognizes as religious in nature merely because the proponents view the concepts as secular.

In Malnak v. Yogi, supra, the Court enjoined teaching of the 'Science of Creative Intelligence/Transcendental Meditation' in new Jersey's public schools, finding the 'science' to be violative of the Establishment Clause. The Court reasoned that transcendental meditation, although practiced in the United States mainly in an effort to reduce stress, had the ultimate goal of placing the meditator '... into contact with the field of pure creative intelligence.' This goal was held to parallel the characteristics attributable to a supreme being in other religions. In finding the parallel, the Court stated, '... although the precise conceptions or definitions of the ultimate reality or supreme being will differ from religion to religion the religious nature of the concept is incontrovertible.' The concept of 'special creation' by a 'Creator', which is

a central principle of 'scientific creationism', certainly parallels the concept of a supreme being found in other religions. What more religious a definition of 'supreme being' could possibly exist than he who is responsible for the creation of all else that exists? Finally, the Court in Malnak v. Yogi, 440 F. Supp., at p. 1322, footnote 23, had the following to say in attempting to define religion:

A philosophy well may posit the existence of a supreme being without functioning as a religion in the sense of having clergy and houses of worship. For purposes of the first amendment, these philosophies are the functional equivalents of religions. Surely the prohibition of the establishment clause could not be avoided by governmental aid to the inculcation of a belief in a supreme being through philosophical instruction instead of through conventionally recognized religious instruction.

Given the obvious parallels between 'scientific creationism' and the Book of Genesis, a Court would almost certainly classify 'scientific creationism' as a religion, presenting itself as a science. That 'scientific creationism' is not a recognized religious sect is irrelevant, for as noted in Malnak, 'An activity may be religious even though it is neither a part of nor derived from a societally recognized religious sect.'

**\*8** Additional evidence of the true character of 'scientific creationism' can be found with reference to textbook treatment of the subject. One such textbook, entitled Biology, A Search for Order in Complexity (rev. ed. J.N. Moore & H. Slusher eds. Zondervan Pub. House 1974), was on trial in Hendren v. Campbell, No. 5577-0139 (Super. Ct. Indiana April 14, 1979), excerpted in 46 U.S.L.W. 2530 (May 17, 1977). In Hendren, an Indiana Superior Court ruled that the Indiana Textbook Commission abused its discretion in adopting the aforementioned textbook on grounds that use of the book in the public schools violated the First Amendment.<sup>5</sup> The following are excerpts from the Indiana opinion:

As to the creation model, the preface [to the textbook] relates at page XX and XXI:

'That there was a period of special creation in the past, during which the world was brought into existence out of nothing but the power of the Creator. . . 'The features of the creation model are confirmed by most or all of the actual observed phenomena of nature, thus demonstrating validity of the creation model as being scientifically sound. . . 'Similarly, the second law (increasing eutrophy [sic]) is essentially a confirmation of the universal law of decay and death postulated in accordance with the biblical version of the creation model.'

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In this case we do not have that situation of an obvious statutory attempt to impose religious doctrine on the citizens of Indiana. On the contrary, we face a textbook which, on its face, appears to present a balanced view of evolution and Biblical Creation. The record and the text itself do not support this assertion of fairness. Since the Scopes controversy over fifty years ago, the courts of this country have faced repeated attempts by groups of every conceivable persuasion to impose particular standards, whether religious or ethical, on the populace as a whole. We may note that with each new decision of the courts religious proponents have attempted to modify or tailor their approach to active lobbying in state legislature and agencies. Softening positions and amending languages, these groups have, time and again, forced the courts to reassert and redefine the prohibitions of the First Amendment. Despite new and continued attempts by such groups, however, the courts are bound to determine, if possible, the purpose of the approach.

Clearly, the purpose of A Search for Order in Complexity is the promotion and inclusion of fundamentalist Christian doctrine in the public schools. The publishers, themselves, admit that this text is designed to find its way into the public schools to stress Biblical Creationism. The court takes no position as to validity of either evolution or Biblical Creationism. That is not the issue. The question is whether a text obviously designed to present only the view of Biblical Creationism in a favorable light is constitutionally acceptable in the public schools of Indiana. Two hundred years of

constitutional government demand that the answer be no. The asserted object of the text to present a balanced or neutral argument is a sham that breaches that 'wall of separation' between church and state voiced by Thomas Jefferson.

**\*9** Another example of 'creationist' textbooks touches closer to home. At the November 10, 1978, meeting of the South Carolina State Board of Education, the textbook, Origins: Two Models, Evolution, Creation, Creation-Life Publishers, Inc. (San Diego, Cal. 1978), by Richard B. Bliss was rejected for formal adoption. The State Board's minutes reflect that the book was rejected, after consultation with this Office, on First Amendment grounds, as noted in part, 'Dr. Busbee said it was concluded that this material was in violation of a judicial interpretation of the law pertaining to the particular subject of religion in the schools.' Origins, Two Models, Evolution, Creation, along with its 'Teacher's Guide', are replete with references to 'faith belief', 'supernatural God', 'God of creation', and 'religious feelings'. That such matters as these are encompassed by the cloak of the First Amendment is beyond argument.<sup>6</sup>

The above analysis suggests that enactment of the Bill would constitute an establishment of religion in violation of the First Amendment. The obvious argument of proponents would be that failure to enact the Bill would result in continued exclusive public school teaching in the 'theory of evolution' to the exclusion of other theories of origin, which result the proponents would likely argue is violative of both the free exercise and establishment clauses.<sup>7</sup> Just such argument was rejected in Wright v. Houston Independent School District, 366 F. Supp. 1208 (S.D. Tex. 1972), aff'd, 486 F.2d 137 (5th Cir. 1973), wherein the court held that the teaching of evolution in public schools, even to the exclusion of all other theories of origin, did not contravene either the religious freedom or establishment clauses of the First Amendment. The Plaintiffs in Wright sought to remedy the exclusive teaching of evolution by requesting the court to require equal instructional time in other theories of origin. Unlike the 'theory of scientific creation' as perceived in the Opinion herein, the Court in Wright distinguished the singular teaching of evolution:

In the case at bar, the offending material is peripheral to the matter of religion. Science and religion necessarily deal with many of the same questions, and they may frequently provide conflicting answers. But, as the Supreme Court wrote twenty years ago, it is not the business of government of suppress real or imagined attacks upon a particular religious doctrine. Burstin v. Wilson, 343 U.S. 495, 505 72 S. Ct. 777, 96 L.Ed. 1098 (1952). Teachers of science in the public schools should not be expected to avoid the discussion of every scientific issue on which some religion claims expertise.

In rejecting Plaintiff's plea for 'equal time' the Court concluded, 'To insist upon the presentation of all theories of human origins is . . . to prescribe a remedy that is impractical, unworkable and ineffective.' See also, Crowley v. Smithsonian Institution, 462 F. Supp. 725 (D.C. D.C. 1978).

**\*10** Finally, no Opinion in this emotion-charged long continuing battle involving religion and schools would be complete without reference to Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L. Ed. 711 (1946). While the issue before the Supreme Court concerned the constitutionality of New Jersey statutes providing transportation for students attending Catholic parochial schools, the real significance of Everson is its comprehensive historical review of the First Amendment, both in the majority opinion of Mr. Justice Black and the dissenting opinions of Mr. Justice Jackson and Mr. Justice Rutledge. Mr. Justice Black explained, in part, the First Amendment, citing as authority early South Carolina case law,<sup>8</sup> as follows:

The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom. There is every reason to give the same application and broad interpretation to the 'establishment of religion' clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina, quoted with approval by this Court in Watson v. Jones, 13 Wall. (US) 679, 730, 20 L ed 666, 677: 'The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority.'

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'

This quotation clearly and plainly delineates the 'wall of separation between Church and State.'

The dissenting opinion of Mr. Justice Rutledge is of particular note. Even though his dissent does not constitute the law of the case; it provides a thorough and enlightening discourse on the intent of the First Amendment, as reflected in the following excerpts:

\*11 'Religion' has the same broad significance in the twin prohibitions concerning 'an establishment.' The Amendment was not duplicitous. 'Religion' and 'establishment' were not used in any formal or technical sense. The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree.

91 L. Ed., at p. 732.

With Jefferson, Madison believed that to tolerate any fragment of establishment would be by so much to perpetuate restraint upon that freedom [religion]. Hence he sought to tear out the institution not partially but root and branch, and to bar its return forever.

91 L. Ed., at p. 736.

The dual prohibition [of the First Amendment] makes that function [religious activity] altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison's Remonstrance, as it is of the Amendment itself.

It is not because religious teaching does not promote the public or the individual's welfare, but because neither is furthered when the state promotes religious education, that the Constitution forbids it to do so. Both legislatures and courts are bound by that distinction. In failure to observe it lies the fallacy of the 'public function'—'social legislation' argument, or fallacy facilitated by easy transference of the argument's basing from due process unrelated to any religious aspect to the First Amendment.

91 L. Ed., at p. 742.

Observing the First Amendment from a broad historical perspective, no doubt exists that a literal and liberal application of the free exercise and establishment clauses was contemplated by the drafters of the amendment and continues through extensive judicial interpretation. Madison's 'Memorial and Remonstrance against Religious Assessments' was instrumental in defeating a proposed Virginia statute to collect taxes for religion in 1784–1785, and led the way to adoption in 1785 of 'Jefferson's Bill for Establishing Religious Freedom' in Virginia. This, in turn, paved the way for the Bill of Rights, which included, of course, the First Amendment. Madison's 'Remonstrance' provides an excellent base for understanding the First Amendment and is attached hereto as Appendix E, taken from the Appendix to Everson, including references to the Declaration of Independence.

Conclusion:

The conclusion in this Opinion of necessity hinges upon the answers to several questions. The first question concerns the definition of religion, and as pointed out herein, religion is not a rigid concept dependent upon the orthodox Christian concepts that probably prevail in this country. Secondly, does the Bill evince religion or a religious purpose? While this Opinion does not hold that 'creationism' is devoid of scientific aspects or that the 'theory of scientific creationism' cannot possibly be taught in public schools absent religious entanglement, the Bill in question, along with supporting documentation, support a religious purpose. In essence that purpose is the propagation of the literal Biblical view of creation, which purpose neither the State of South Carolina nor any of its political subdivisions may undertake. Therefore, the Opinion of this Office is that the proposed 'Balanced Treatment for Scientific Creationism and Evolution Act', weighed against the constitutional standards outlined herein, most probably would violate the First Amendment of the Constitution of the United States, if enacted.

\*12 Paul S. League  
Assistant Attorney General

## APPENDIX A

### A BILL FOR

\*13 An Act to require balanced treatment of scientific creationism and evolution in public schools; to protect academic freedom by providing student choice; to ensure freedom of religious exercise; to guarantee freedom of speech and belief; to prevent establishment of religion; to prohibit religious instruction concerning origins; to bar discrimination on the basis of creationist or evolutionist belief; to provide definitions; to provide clarifications; to set forth an effective date; to declare the legislative purpose; to state legislative findings of fact; to provide for severability of provisions; and to provide for repeal of contrary laws.

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. Short Title. This Act shall be known as the 'Balanced Treatment for Scientific Creationism and Evolution Act.'

Section 2. Requirement for Balanced Treatment. Public schools within this State shall give balanced treatment to the theory of scientific creationism and the theory of evolution. Balanced treatment to these two theories shall be given in classroom lectures taken as a whole for each course, in textbook materials taken as a whole for each course, in library materials taken as a whole for any field of the sciences or humanities, and in other educational programs, to the extent that such lectures, textbooks, library materials, or educational programs deal in any way with the subject of the origin of man, life, the earth, or the universe.

Section 3. Prohibition against Religious Instruction. Treatment of either the theory of evolution or the theory of scientific creationism shall be limited to scientific evidences for that theory and inferences from those scientific evidences, and must not include religious instruction.

Section 4. Requirement for Nondiscrimination. Public schools within this State, or their personnel, shall not discriminate, by reducing a grade or by singling out and criticizing publicly, against any student who demonstrates a satisfactory understanding of both the theory of evolution and the theory of scientific creationism and who also accepts or rejects either theory in whole or part.

Section 5. Definitions. As used in this Act:

(a) The theory of scientific creationism' means the scientific evidences for creation and inferences from those scientific evidences. The concept of 'creation' includes belief in: (1) special creation of the universe and life; (2) the insufficiency of mutation and natural selection in bringing progressive evolution; (3) fixity of originally created kinds of plants and animals; (4) distinct ancestry for man and apes; (5) explanation of the earth's geology by catastrophism including the

occurrence of a world-wide flood; and (6) a relatively recent inception of the earth and living kinds. The 'scientific evidences' for creation include, but are not necessarily limited to: (1) a sudden appearance of complex living forms in the fossil record; (2) the harmful nature of most or all mutations, the tautologous nature of natural selection, the application of the eutropy law to prevent development from lesser order to greater order, and the mathematical improbability of evolution of complex living forms; (3) the systematic absence of transitional forms between kinds in the evolutionary chain; (4) the reasons for identification of presumed missing links as the same as either modern men or modern apes; (5) the occurrence of geologic layers with fossils of a presumably earlier or later geologic age, and the past occurrence of catastrophic events in causing mass extinctions and ending the world-wide temperate climate; and (6) identification of the assumptions of radiometric dating methods that support an ancient age for the earth and life, and description of alternate dating methods that support a younger age.

\*14 (b) The 'theory of evolution' means the scientific evidences for evolution and inferences from those scientific evidences. The concept of 'evolution' includes belief in (1) evolution by naturalistic processes of the universe from disordered matter and of life from nonlife; (2) the sufficiency of mutation and natural selection to produce progressive evolution; (3) evolution by mutation and natural selection of present living kinds from simple earlier kinds; (4) evolution of man from a common ancestor with apes; (5) explanation of the earth's geology and the evolutionary sequence by uniformitarianism; and (6) an inception several billion years ago of the earth and life. The 'scientific evidences' for evolution, being more widely known, are for brevity not listed.

(c) 'Public schools' mean public secondary and elementary schools.

Section 6. Clarifications. This Act does not require or permit instruction in any religious doctrine or materials. This Act does not require any instruction in the subject of origins, but simply requires instruction in both scientific theories (of evolution and scientific creationism) if public schools choose to teach either. This Act does not require each individual textbook or library book to give balanced treatment to the theories of evolution and scientific creationism; it does not require any school books to be discarded. This Act does not require each individual classroom lecture in a course to give such balanced treatment, but simply requires the lectures as a whole to give balanced treatment; it permits one unit to present the theory of evolution and a separate unit to present the theory of scientific creationism. This Act does not affect university level instruction, but simply applies to public secondary and elementary schools.

Section 7. Effective Date. The requirements of the Act shall be met by and may be met before the beginning of next school year if that is more than six months from the date of enactment, or otherwise one year after the beginning of the next school year, and in all subsequent school years.

Section 8. Legislative Declaration of Purpose. This Legislature enacts this Act for public schools with the purposes of protecting academic freedom for students' differing values and beliefs; ensuring neutrality toward students' diverse religious convictions; ensuring freedom of religious exercise for students and their parents; guaranteeing freedom of speech and belief for students; preventing establishment of nontheistic or humanistic religion; preventing discrimination against any student on the basis of his personal beliefs concerning creation and evolution; and assisting students in their search for truth. This Legislature does not have the purpose of causing instruction in religious concepts or making an establishment of religion.

Section 9. Legislative Findings of Fact. This Legislature finds that:

(a) The subject of the origin of the universe, earth, life, and man is treated within many public school courses, such as biology, life science, anthropology, sociology, and often also in physics, chemistry, world history, philosophy, and social studies.

**\*15 (b)** Only the theory of evolution is presented to students in virtually all courses that discuss the subject of origins, and no alternative theory of origins is presented.

(c) The theory of evolution is not an unquestionable fact of science, because evolution cannot be experimentally observed or fully verified or logically falsified, and because the theory of evolution is not accepted by some scientists.

(d) The theory of evolution is contrary to the religious convictions or moral convictions of many students and parents, including individuals of many different religious faiths and with diverse philosophic beliefs.

(e) Public school presentation of only the theory of evolution without any alternative theory of origins abridges the Constitution's protection of freedom of religious exercise for students and parents, because it undermines their religious convictions, violates their separatist practices, compels their unconscionable statements, and hinders religious training by parents.

(f) Public school instruction in only the theory of evolution also abridges the Constitution's protection of freedom of speech and belief for students and parents, because it violates their moral and civic values.

(g) Public school presentation of only that theory furthermore abridges the Constitution's prohibition against establishment of religion, because it produces hostility toward many theistic religions and brings preference to religious Liberalism and Humanism.

(h) Public school instruction in only the theory of evolution also violates the principle of academic freedom, because it denies students a choice between scientific theories and instead indoctrinates them in the evolutionary theory alone.

(i) Presentation of only one theory rather than alternative theories of origins is not required by any compelling interest of the State and exemption of such students from a course or class presenting only the theory of evolution does not provide an adequate remedy because of teacher influence and student pressure.

(j) Attendance of those students who are at public schools is compelled by law, and school taxes from their parents and other citizens are mandated by law.

(k) The theory of scientific creationism is an alternative model of origins at least as satisfactory as the theory of evolution, and that theory can be presented from a strictly scientific standpoint without religious doctrine, because many scientists accept the theory of scientific creationism and scientific evidences have been presented for the theory of scientific creationism.

(l) Public school presentation of both the theory of evolution and the theory of scientific creationism would not violate the Constitution's prohibition against establishment of religion, because it would involve presentation of the scientific evidences for each theory rather than any religious instruction.

(m) Most citizens, whether they personally believe in evolution or creation, favor balanced treatment in public schools of alternative scientific theories of origins for better guiding students in their search for truth, and favor a neutral approach toward subjects affecting the religious and moral convictions of students.

**\*16 (n)** School districts in at least seven states are currently teaching both theories of origins or are implementing instruction in both theories.

Section 10. Severability of Provisions. If any provision of this Act is held invalid, that invalidity shall not affect other provisions that can be applied without the invalidated provisions, and the provisions of this Act are declared to be severable.

Section 11. Repeal of Contrary Laws. All laws or parts of laws in conflict with this Act are hereby repealed.

## APPENDIX B

### SUMMARY OF SCIENTIFIC EVIDENCE FOR CREATION

#### Scientific Creationism proposes:

#### Evolution proposes:

##### I. Special creation of the universe and earth.

##### Naturalistic origin of the universe and earth.

The first law of thermodynamics says matter cannot create itself, so there must have been an act of creation.

The cosmological theories of past evolutionists have been disproved, such as Hoyle's steady-state theory, Chamberlin's planetesimal hypothesis, Swedenborg's nebular hypothesis, and Laplace's gaseous cloud theory, so there is reason for doubting the big-bang theory of present evolutionists.

##### II. Special creation of life.

##### Naturalistic evolution of life from nonlife.

Life appears suddenly in the fossil record in complex forms, and gaps appear regularly in the fossil record between animal or plant kinds, so animal or plant kinds must have been specially created in a short period of time.

The second law of thermodynamics says things generally go from order to disorder, so nonliving protein could not have evolved into the first living form.

Laboratory experiments have not created life, and all experiments have depended on unrealistic laboratory conditions, so evolutionists have not proved that life evolved from nonlife.

##### III. Insufficiency of random mutation and natural selection for progressive evolution.

##### Sufficiency of random mutation and natural selection for evolution.

Nearly all if not all mutations are harmful in the natural environment, so the occurrence of beneficial mutations is rare if not impossible.

The concept of natural selection is tautologous, because it simply requires the fittest organisms to leave the most offspring and at the same time identifies the fittest organisms as those that leave the most offspring, so natural selection is not sufficient for favoring beneficial mutations.

The mathematical chance of random mutation and natural selection producing one kind from another is vanishingly small, so mutation and selection could not have produced progressive evolution.

The second law of thermodynamics says things generally go from order to disorder, so simple living kinds could not have evolved by mutation and selection into complex living kinds.

#### **IV. Fixity of original plant and animal kinds.**

##### **Evolution of present living kinds from a simple first living kind.**

Systematic gaps between kinds occur in the fossil record, so present kinds of plants and animals must have been specially created.

\*17 No fossil links have been found between protozoa and invertebrates, or invertebrates and vertebrates, or vertebrate fish and amphibians, or amphibians and reptiles, or reptiles and mammals, or mammals and primates, so evolutionists have not proved that present living kinds evolved from simple ancient life.

#### **V. Distinct ancestry of man and apes.**

##### **Evolution of man from a common ancestor with apes.**

No missing links have been found between apes and man, and the existing fossils are either the same as modern man (such as Neanderthal and Cro-Magnon Men) or the same as modern apes (such as Ramapithecus, Australopithecus, and Homo Erectus), so man and apes must have been specially created.

Many fraudulent links have been accepted by evolutionist scientists (such as Nebraska Man and Piltdown Man), so there is reason for cautiously examining alleged links.

#### **IV. Explanation of the earth's geology by a world-wide flood.**

##### **Explanation of the earth's geology and the evolutionary sequence by uniformitarianism.**

Catastrophic events are the explanation for mountain formation in the past, the end of the world-wide temperate climate, the occurrence of the glacier age, widespread volcanic activity in the past, mass extinctions of dinosaurs and other animals, igneous rock formation in the past, and oil and coal deposition in the past, so catastrophic events rather than uniform natural processes explain geology.

Many geologic layers often contain fossils of a presumably earlier or later 'geologic age,' and no regular geologic layers exist worldwide, so a world-wide flood that rapidly deposited fossils and sediments best explains the earth's 'geologic column.'

#### **VII. Relatively recent inception of the earth and living kinds.**

##### **Multibillion year inception of the earth and life.**

Radiometric dating (such as the uranium-lead method) depends on the assumptions that no decay product was present initially, that no decay product was added through the years, and that the decay rate was constant, and these assumptions are not valid, so the earth and life are not nearly as old as evolutionists assume from these dating methods.

Other dating methods such as the rate of addition of helium to the atmosphere from uranium decay, or the rate of deposit of meteor dust to the earth from space, or the rate of decay of the earth's magnetic field, give a young age for the earth and life, so the earth and life were created at a relatively recent date.

Documentation from scientific writings for this summary of scientific evidences can be found in Scientific Creationism (Pub. Sch. Ed.), edited by Dr. Henry M. Morris, published by Creation-Life Publishers.

### APPENDIX C

#### **THERE IS A SHARP DIFFERENCE BETWEEN SCIENTIFIC CREATIONISM AND RELIGIOUS CREATIONISM**

##### **Scientific creation Model:**

- I. Special creation of the universe and earth (by a Creator), on the basis of scientific evidence.
- II. Application of the eutropy law to produce deterioration in the earth and life on the basis of scientific evidence
- \*18 III. Special creation of life (by a Creator), on the basis of scientific evidence.
- IV. Fixity of original plant and animal kinds, on the basis of scientific evidence.
- V. Distinct ancestry of man and apes on the basis of scientific evidence.
- VI. Explanation of much of the earth's geology by a world wide deluge, on the basis of scientific evidence
- VII. Relatively recent origin of the earth and living kinds (in comparison with several billion years), on the basis of scientific evidence.

##### **Siblical Crantion Model:**

- I. Divine creation of the heaven stars, and earth by God, on the basis of Genesis.
- II. Application of the curse, pronounced by God after Adam's fall, to produce detenoration in the earth and life, on the basis of Genesis.
- III. Divine creation of plant and animal life, Adam the first man, and Eve from Adam's side by God, on the basis of Genesis.
- IV. Fixity of original plant and animal kinds, determined by God, on the basis of Genesis.
- V. Distinct ancestry of Adam and apes, on the basis of Genesis.
- VI. Explanation of the earth's geology by a world-wide flood in which only Noah, his family, and animal pairs were preserved in an ark, on the basis of Genesis.
- VII. Approximately six thousand year time span since creation of the earth, life, and Adam, on the basis of Genesis ??

We are not trying to bring the Bible or Genesis (or religious creationism) into public schoos. We are not trying to exclude evolution from public schools, unless creation is also excluded. We are asking public schools to be neutral between theories of the origin of the world, life, and man. We are asking public schools to present the scientific evidences for creation (or scientific creationism) along with the scientific evidences for evolution.

## APPENDIX D

### No. 51 The Religion of Evolutionary Humanism and the Public Schools

By Henry M. Morris, Ph.D.

The modern creationist movement and the resistance of secular educators to this movement have brought into clear focus one very important fact. Our American public schools and secular universities are controlled by the religious philosophy of evolutionary humanism. Furthermore, through its pervasive influence on the graduate schools and the textbook publishers this powerful concept has had significant impact even on most Christian schools.

Resistance to the proposed teaching of theistic creationism as an alternative to evolutionism commonly masquerades under the supposed authority of 'science'. The recent anti-creationist manifesto of the American Humanist Association proclaims the following:

'There are no alternatives to the principle of evolution, with its 'tree of life' pattern, that any competent biologist of today takes seriously . . . Evolution is therefore the only view that should be expounded in public-school courses on science.'<sup>1</sup>

That evolution is *not* science, however, has not only been clearly demonstrated by the many modern publications of creationist scientists<sup>2</sup> but also is frequently recognized even by evolutionist scientists. For example, Loren Eisely says:

\*19 'With the failure of these many efforts, science was left in the somewhat embarrassing position of having to postulate theories of living origins which it could not demonstrate. After having chided the theologian for his reliance on myth and miracle, science found itself in the unenviable position of having to create a mythology of its own: namely, the assumption that what, after long effort could not be proved to take place today had, in truth, taken place in the primeval past.'<sup>3</sup>

In fact there are now many evolutionists who recognize that the 'theory of evolution' is really a tautology, with no predictive value.

'I argue that the theory of evolution does not make predictions, so far as ecology is concerned, but is instead a logical formula which can be used only to classify empiricism and to show the relationships which such a classification implies. . . . these theories are actually tautologies and, as such, cannot make empirically testable predictions. *They are not scientific theories at all.*'<sup>4</sup>

Even the writer of the Foreword of the 1971 edition of Darwin's *Origin of the Species*, himself a distinguished evolutionary biologist, has frankly recognized that evolution is simply a belief.

'[The theory of evolutionary forms a satisfactory faith on which to base our interpretation of nature.'<sup>5</sup>

Evolution is thus admittedly not scientifically testable, even though it is taught very dogmatically in most public schools. However, educators insist that creationism and theism must be excluded from education on the ground that they are not scientific!

This rejection is often emphatic and even slanderous. Dr. Preston Cloud of the University of California at Santa Barbara, for example, becomes quite melodramatic.

'Religious bigotry is abroad again in the land. . . . Although the creationists may be irrational, . . . they have proven themselves to be skillful tacticians, good organizers and uncompromising adversaries. . . . And anyone who has studied

their benign manner in public debate, their tortured logic and their often scurrilous expression in books and tracts for the faithful, has little difficulty in visualizing creationist polemicists, given the opportunity, in the role of Pius V himself.<sup>6</sup>

This is not the language of objective science, of course, but of religious emotion. Dr. Cloud failed to mention that he had himself participated in such a debate on his own campus, before an audience composed mainly of university students, the large majority of whom had voted after the debate that the creationists had a better *scientific* case than the evolutionists. As a matter of fact, a common complaint at the debate was that the evolutionists had not presented a consistent scientific case at all, while the creationists had dealt *only* with science.

If creationists are, as Cloud declares, 'bigots,' he should recognize that there are other bigots also. One of the nation's top scientists has charged:

\*20 'One of the most astonishing characteristics of scientists is that some of them are plain, old-fashioned bigots. Their zeal has a fanatical, egocentric quality characterized by disdain and intolerance for anyone or any value not associated with a special area of intellectual activity.'<sup>7</sup>

The fact is, however, that creationists are not attempting to oust evolutionary humanism from the public schools, but only to obtain a fair hearing for theistic ?? ?? an alternative. Both concepts involve faith and neither is scientifically testable in the ultimate sense.

'A hypothesis is empirical or scientific only if it can be tested by experience. . . . A hypothesis or theory which cannot be, at least in principle, falsified by empirical observations and experiments does not belong to the realm of science.'<sup>8</sup>

Although the author of the above statement is a leading evolutionary biologist, it is obvious that his definition would exclude evolution, no less than creation, from the realm of science. In fact, a creationist might legitimately argue that evolution actually has been tested, *and disproved*, since it has never been observed in action and since it contradicts the scientific law of increasing entropy or disorder. One must, therefore, not only believe in evolution without evidence, but in spite of the evidence. Evolutionists walk by faith, not by sight!

Furthermore, not only is evolution taught in the schools as a scientific dogma; but as basic in all the social sciences and humanities as well. It is, in fact, a complete world-view, purporting to explain the origin, development and meaning of all things.

'The place of biological evolution in human thought was, according to Dobzhansky, best expressed in a passage that he often quoted from Pierre Teilhard de Chardin: [Evolution] is a general postulate to which all theories, all hypotheses, all systems must henceforward bow and which they must satisfy in order to be thinkable and true, Evolution is a light which illuminates all facts, a trajectory which all lines of thought must follow.'<sup>9</sup>

Theodosius Dobzhansky, the subject of the eulogy from which the above quotation was taken, was a church member and claimed to be a creationist, but he meant by this that the wonderful process of natural selection had 'created' all things! 'Dobzhansky was a religious man, although he apparently rejected fundamental beliefs of traditional religion, such as the existence of a personal God and of life beyond physical death. . . . Dobzhansky held that, in man, biological evolution had transcended itself into the realm of self-awareness and culture. He believed that mankind would eventually evolve into higher levels of harmony and creativity. He was a metaphysical optimist.'<sup>10</sup>

Until his death, Dobzhansky had been probably the world's leading spokesman for evolution.

'From today's perspective, Dobzhansky appears as perhaps the most eminent evolutionist of the twentieth century.'<sup>11</sup>

**\*21** His influence on the nation's schools has been profound, to say the least, and he is typical of practically all leaders of evolutionary thought.

Evolution as a complete system of life and meaning has, in fact, dominated intellectual thought and the teachings in the colleges since at least the last quarter of the nineteenth century.

'... after a generation of argument, educated Americans in general came to accept the fact of evolution and went on to make whatever intellectual adjustments they thought necessary.'<sup>12</sup>

Once it came to be accepted by the intellectuals, the religious liberals quickly, and typically, followed along. The most influential of these was the famous Henry Ward Beecher.

'Darwinian evolutionary science presented little or no challenge to Beecher's doctrinal was already far removed from Biblical was already far removed from Biblical literalism into a vague poetic emotional realm of edifying thoughts, elevated feelings and joyful noises unto the Lord.'<sup>13</sup>

Beecher published his *Evolution and Religion* in 1883, and its arguments are still being repeated almost verbatim by theistic evolutionists today. Very quickly after that, evolution began to dominate the public schools.

'In a nation that was undergoing a tremendous urban, industrial and technological revolution, the evolutionary concept presented itself to intellectuals as the key to knowledge. And beyond that, the technical needs of industry called for a revolution in higher education away from the traditional classical and moral orientation and toward the sciences . . . which were reclassifying man and society in evolutionary terms. In general the concept of education from kindergarten to graduate school was reoriented from the teaching of a fixed body of knowledge to the teaching of methods of inquiry to be applied to the continually changing facts of existence.'<sup>14</sup>

This trend, of course, was tremendously accelerated under the influence of John Dewey and his disciples in the first half of the twentieth century, leading finally to the complete dominance of the public schools by naturalistic evolutionism and secular humanism at the present time.<sup>15</sup>

It was not always thus in our country or in our public schools, however, and it is certainly in conformity with American constitutionalism to seek to return the schools to their intended character and purpose.

'The American nation had been founded by intellectuals who had accepted a world view that was based upon Biblical authority as well as Newtonian science. They had assumed that God created the earth and all life upon it at the time of creation and had continued without change thereafter. Adam and Eve were God's final creations, and all of mankind was descended from them. When Jefferson, in his old age, was confronted with the newly developing science of geology, he rejected the evolutionary concept of the creation of the earth on the grounds that no all-wise and all-powerful Creator would have gone about the job in such a slow and inefficient way.'<sup>16</sup>

**\*22** Jefferson's argument, of course, is perfectly valid today. The 'god' of evolution (in the rationale of de Chardin and the other leaders of theistic evolutionary thought) is certainly not the God of the Bible, the omnipotent and omniscient God of orthodox Judaism and Biblical Christianity. Evolutionary humanism in our schools is not only a religion, but is a religion which opposes Judaism. Christianity and the Bible in no uncertain terms.

'In cultures such as ours, religion is very often an alien form of life to intellectuals. Living as we do in a post-Enlightenment era, it is difficult for us to take religion seriously. The very concepts seem fantastic to us . . . . That people in our age can believe that they have had a personal encounter with God, that they could believe that they have experienced conversion through a 'mystical experience of God,' so that they are born again in the Holy Spirit, is something that attests to human irrationality and lack of sense of reality.'<sup>17</sup>

With this type of attitude dominating the thinking of modern leaders in education, it is not surprising that there is so much resistance to allowing creationism to be returned to the schools. Neither is it surprising that a humanistic and atheistic religious philosophy in the schools has generated an amoralistic attitude in society, increasing in influence with each emerging generation. A remarkable testimony has been published by Aldous Huxley, one of the most influential writers and philosophers of our day, grandson of evolutionist Thomas Huxley, brother of evolutionist Julian Huxley, and one of the early advocates of a 'drug culture' and sexual permissiveness.

'I had motives for not wanting the world to have meaning; consequently assumed it had none, and was able without any difficulty to find satisfying reasons for this assumption . . . . The philosopher who finds no meaning in the world is not concerned exclusively with a problem in pure metaphysics; he is also concerned to prove there is no valid reason why he personally should not do as he wants to do. . . . For myself, as no doubt for most of my contemporaries, the philosophy of meaninglessness was essentially an instrument of liberation. The liberation we desired was simultaneously liberation from a certain political and economic system and liberation from a certain system of morality. We objected to the morality because it interfered with our sexual freedom.'<sup>18</sup>

The following conclusions are clearly justified by the facts at hand: (1) A system of evolutionary humanism dominates our public schools and this system has produced devastating results in the moral and social realms; (2) neither the philosophy of humanism nor the evolutionary philosophy on which it is based is 'scientific', in any proper sense of the term, though both are materialistic and essentially atheistic; (3) the system of evolutionary humanism is, therefore, merely a religious philosophy, a 'non-theistic religion,' as claimed by the American Humanist Association itself; (4) all the known facts of science (as well as the facts of human experience) correlate with belief in special creation and a personal Creator much better than belief in evolution and humanism correlate with those facts; (5) consequently, the 'creation model,' and its implications in all fields, should be taught equally and fairly with the 'evolution model' in the public schools. All serious-minded and fair-minded parents, teachers and school administrators are urged to work diligently to that end.

## APPENDIX E

### Memorial and Remonstrance against Religious Assessments

**\*23 TO THE HONORABLE THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA. A MEMORIAL AND REMONSTRANCE.**

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled 'A Bill establishing a provision for Teachers of the Christian Religion,' and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill.

1. Because we hold it for a fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence.'<sup>1</sup> The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending

only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

\*24 3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freedmen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If 'all men are by nature equally free and independent,'<sup>2</sup> all men are to be considered as entering into Society on equal conditions: as relinquishing no more, and therefore retaining no less, one than another, if their natural rights. Above all are they to be considered as retaining an 'equal title to the free exercise of Religion according to the dictates of conscience.'<sup>3</sup> Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet preeminence over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

\*25 7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

\*26 10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To supersede a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this

system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that 'Christian forbearance, love and charity,' which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defense, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. 'The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly.' But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

\*27 15. Because, finally, 'the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience' is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the 'basis and foundation of Government,'<sup>5</sup> it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly: or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme, Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re] bound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

II Madison, 183–191.

## Footnotes

- 1 While no state statute apparently conflicts with the Bill, reference to § 59–29–10, et seq., is of interest. These code sections specify that certain courses of instruction be taught in the public schools. With the limited exception of courses dealing with alcohol and narcotics, the General Assembly has not heretofore seen the necessity to legislate the specific content of any area of instruction. While this author is aware of no prohibition against such enactments by the General Assembly, enactment of the Bill would rather obviously conflict with its own terms. Section 8 of the Bill declares the legislative purpose in part as follows, ‘The Legislature enacts this act for public schools with the purposes of protecting academic freedom for students’ differing values and belief . . .’ The statutory freezing of the definitions and subject matter content of the ‘theory of scientific creationism’ and the ‘theory of evolution’ would seem to be the ultimate antithesis of academic freedom, See Kevisian v. Board of Regents of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L.Ed. 2d 629 (1967).
- 2 Although the plain language of the First Amendment restricts its application to Congress, the Amendment has been held applicable to the various States, via the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940), and Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680, 9 L.Ed. 2d 697 (1963).
- 3 Section 6 of the Bill also contains a provision that it, ‘. . . does not affect university level instruction . . .’ This restriction in no way affects the findings in this opinion, yet no basis is stated for this curious limitation.
- 4 For a comprehensive review and analysis of the term ‘religion’ in its First Amendment context, see 91 Harv. L. Rev. 1056 (1978), ‘Toward a Constitutional Definition of Religion.’
- 5 Strong exception to the holding in Hendren v. Campbell is taken in a recent law review article. Bird, ‘Freedom of Religion and Science Instruction in Public School’, 87 Yale L.J., 515, 559. Apparently, the article’s author refuses to concede what the textbook’s editors candidly admit, as noted in the above excerpts. The Yale L.J. article, in some fifty-five pages, builds a fairly convincing case for the religious neutrality of ‘scientific creationism’; however, Bird’s conclusions are premised, at least in part, upon the assumption that a theory of origins can be founded upon a ‘creator’ in a religiously neutral fashion. This view, unfortunately, does not take into account religious views which may oppose the concept of a ‘creator.’ See Malnak v. Yogi, supra. Also, Bird’s characterization of the ‘theory of evolution’ as constituting a religion of ‘secular humanism’ or ‘humanistic atheism’ finds no direct support in the extensive First Amendment case law.
- 6 This opinion does not hold that biology or other textbooks are incapable of presenting alternative theories of origins in a strictly scientific manner. The textbooks discussed herein were the only books reviewed. See Abington School Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L.Ed. 2d 844 (1963).
- 7 Neither state statute nor rules, regulations or the Defined Minimum Program of the State Board of Education require instruction in the ‘theory of evolution’ in South Carolina’s public schools.
- 8 Harmon v. Dreher, 17 S.C. Eq. (Speers) 87, 120 (1843).
- 1 American Humanist Association, ‘A Statement Affirming Evolution as a Principle of Science.’ *The Humanist*, January-February 1977, Vol. XXXVII, p. 4. This manifesto was prepared by a committee composed of Bette Chambers (A.H.A. president), Isaac Asimov, Hudson Hoagland, Chauncy Lenke, Linus Pauling and George Gaylord Simpson, and signed by 163 others, most of whom are prominent humanistic educators—including psychologists Carl Rogers and B.F. Skinner, left-wing philosopher Corliss Lamont, anthropologist Sol Tax, and others.
- 2 For example, see *Scientific Creationism* (Ed. by Henry M. Morris; San Diego, Creation-Life Publishers, 1974, 277 pp.) Also note that the Creation Research Society has approximately 550 members, all with graduate degrees in science from accredited universities.
- 3 Loren Eisely, *The Immense Journey* (New York: Random House, 1957), p. 199.
- 4 R.H. Peters, ‘Tautology in Evolution and Ecology,’ *American Naturalist*, Vol. 110, No. 1, 1976, p. 1. Emphasis his.
- 5 L. Harrison Matthews, ‘Introduction to *Origin of Species*’ (London, J.M. Dent, 1977), p. xii.
- 6 Preston Cloud, ‘Scientific Creationism—A New Inquisition,’ *The Humanist* Vol. XXXVII, Jan.–Feb., 1977, p. 67.
- 7 Philip H. Abelson, ‘Bigotry in Science,’ *Science*, Vol. 144, April 24, 1964, p. 373.
- 8 Francisco J. Ayala, ‘Biological Evolution: Natural Selection or Random Walk?’ *American Scientist*, Vol. 62, Nov.–Dec., 1974, p. 700.
- 9 Francisco Ayala, ‘Nothing in Biology Makes Sense Except in the Light of Evolution,’ Theodosius Dobzhansky, 1900–1975,’ *Journal of Heredity*, Vol. 68, No. 3, 1977, p. 3.
- 10 *Ibid.*, p. 9.
- 11 *Ibid.* p. 6.
- 12 Gilman M. Ostrander, *The Evolutionary Outlook 1875–1900*, (Clio, Michigan, Marston Press, 1971), p. 2.

- 13 *Ibid.*, p. 39.
- 14 *Ibid.*, p. 2.
- 15 See the writer's new book, *Education for the Real World* (San Diego: Creation-Life Publishers, 1977, pp. 47–105) for further documentation on the capture and current domination of the public schools by these systems.
- 16 Gilman M. Ostrander, *op cit*, p. 1.
- 17 Kai Nielsen, 'Religiosity and Powerlessness: Part III of 'The Resurgence of Fundamentalism',' *The Humanist*, Vol. XXXVII, May–June, 1977, p. 46.
- 18 Aldous Huxley, 'Confessions of a Professed Atheist,' *Report: Perspective on the News*, Vol. 3, June, 1966, p. 19.
- 1 Decl. Rights, Art: 16. [Note in the original.]
- 2 Decl. Rights, Art. 1. [Note in the original.]
- 3 Art: 16. [Note in the original.]
- 4 Art. 16. [Note in the original.]
- 5 Decl. Rights-title. [Note in the original.]

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