

FORGETTING THE LESSONS OF HISTORY: THE EVOLUTION OF CREATIONISM AND CURRENT TRENDS TO RESTRICT THE TEACHING OF EVOLUTION IN PUBLIC SCHOOLS

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I. INTRODUCTION

In August of 1999, the Kansas State Board of Education adopted the Kansas Science Education Standards (the "Standards").¹ Although the Standards

1. Kansas State Board of Education, *Kansas Science Education Standards* (adopted Aug. 11, 1999) <<http://www.ksbe.state.ks.us/outcomes/science81199.html>>, at 1 (accessed Sept. 13, 1999).

are explicitly not binding on local school boards as an official curriculum,² they are designed to assist in the development of local curriculum by presenting the "benchmarks" by which students will ultimately be evaluated on mandatory standardized tests.³ The Standards' most noteworthy aspect is that they do not compel the teaching of macroevolution.⁴ In boldface type, the Standards state "[T]he origin of the universe remains one of the greatest questions in science. . . . But standards regarding origins are not mandated."⁵

Although this statement clearly eschews the science community's treatment of evolution as a well-documented, irrefutable principle,⁶ the Standards make no mention of creationism nor of creation science within the formidable eighty-six pages of text.⁷ The Standards' treatment of evolution has galvanized activists on both sides of the political spectrum, drawing accolades from fundamentalists and harsh criticisms from liberals and the science community.⁸ In effect, the Standards represent a reaction by "people of faith to the fact that all legitimate expressions of that faith in their children's public schooling are blocked by the new secular ethos."⁹ Similarly, they also represent a resurgence in "Middle American obscuritanism,"¹⁰ rejecting the "central organizing principle of all biological science"¹¹ in lieu of confronting the politically-resilient religious right.

Even though it is unlikely most school districts in Kansas will significantly change the way they teach biology, the elimination of evolution from Kansas' standardized tests may force some teachers to rethink their approach. Unfortunately, in the era of educational accountability, teachers are increasingly pressured to make sure their students excel on, or at least perform adequately on, standardized tests.¹² This pressure has given rise to a phenomenon known as

2. *Id.* at 3. The glossary contained in Appendix 1 of the Standards states: "[T]he Kansas Science Education Standards do not constitute a state curriculum," which the Board defines as "[a] particular way that content is organized and presented in the classroom." *Id.* at 78.

3. *Id.* at 3.

4. *Id.* at 71.

5. *Id.*

6. See Stephen Jay Gould, *Dorothy, It's Really Oz: A Pro-Creationist Decision in Kansas Is More Than a Blow Against Darwin*, TIME, Aug. 23, 1999, at 59 (asserting that "evolution is as well documented as any phenomenon in science, as strongly as the earth's revolution around the sun rather than vice versa").

7. See Kansas State Board of Education, *supra* note 1.

8. Gould, *supra* note 6, at 59.

9. Charles Krauthammer, *The Real Message of Creationism: It Brings Religious Values into Schools by the Back Door. Why Not the Front?*, TIME, Nov. 22, 1999, at 120.

10. *Id.*

11. Gould, *supra* note 6, at 59.

12. Larry Whitham, *Evolution Takes a Hit in Kansas Schools 'Creation' View to Get Classroom Request*, WASH. TIMES, Aug. 12, 1999, at A1.

"teaching to the test."¹³ Teaching to the test entails focusing classroom instruction principally on the subjects that will appear on standardized tests because "[s]cores have become 'the only exchangeable currency . . . [to judge] whether schools are bad or good.'"¹⁴ In essence, "high scores—not high standards—have become the holy grail."¹⁵ In fact, the strain to achieve high scores on tests is so severe that in several states, including Maryland, Ohio, and New York, teachers stand accused of cheating in order to bolster their students' test scores, presumably as a result of the weighty consequences that may befall students, teachers, and districts alike if students do not achieve satisfactory scores.¹⁶ For students, these consequences range from forced summer school to an inability to graduate.¹⁷ For teachers, poor test results can be grounds for discharge.¹⁸ For school districts, poor scores may leave them facing state takeovers.¹⁹

The conjunction of this pressure to perform and local pressure to teach local, majoritarian orthodoxy has given rise to the third stage of the evolution controversy, which is best illustrated by Kansas' science standards. This Note examines the history of evolution and creationism in public schools as it relates to the Establishment Clause of the United States Constitution.²⁰ It then applies this background to the present and demonstrates that current trends, although couched in secular terms promoting free thought, represent nothing more than a backdoor approach to teaching creationism, or at least an effort to minimize the prevalence of evolutionary teaching in schools.

In the first stage of the development of the evolution-creationism controversy, the teaching of evolution was explicitly prohibited.²¹ In the second stage, teaching evolution was allowed only when accompanied by the presentation of the theory of creationism.²² The third and present stage attempts

13. *When Teachers Are Cheaters*, NEWSWEEK, June 19, 2000, at 49.

14. *Id.* at 48 (quoting Joseph Ranzulli, director of the National Center on the Gifted and Talented at the University of Connecticut).

15. *Id.*

16. *Id.*; see also Daniel McGinn, *The Big Score: High-Stakes Tests Are Rapidly Becoming a Rite of Passage in Districts Around the Country. But Do They Really Improve Learning?*, NEWSWEEK, Sept. 6, 1999, at 47-48.

17. McGinn, *supra* note 16, at 47.

18. *Id.*

19. *Id.*

20. See U.S. CONST. amend. I. The Establishment Clause states: "Congress shall make no law respecting an establishment of religion . . ." *Id.* The Establishment Clause became applicable to the states through the Fourteenth Amendment. *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947).

21. See Gould, *supra* note 6, at 59 (referring to the period when states simply forbade teaching evolution).

22. See *id.*

to make an end-run around the Supreme Court's clear pronouncement that creationism has no place in public school science classrooms by keeping Darwin out of the classroom.²³ It is a clever approach, but given the universal acceptance of evolution as a sound scientific theory, failure to teach such a unifying principle of science has no secular purpose and cannot withstand constitutional scrutiny.

II. THE EVOLUTION-CREATIONISM CONTROVERSY: 1859-2000

The debate over the teaching of evolution entered the forefront of American law and society in 1925 when the ACLU represented John Scopes in the landmark Tennessee case that established the state's right to proscribe and criminalize the teaching of evolution.²⁴ However, the controversy had been brewing for decades.²⁵ Because the historical context of current attempts to limit the teaching of evolution is inherent to their constitutionality, Part II of this Note gives a brief overview of the evolution-creation controversy before describing present efforts to derail evolutionary teaching.

A. Origins of the Controversy: Darwin and Definitions

In 1859, Charles Darwin published his defining work on the theory of evolution, *The Origin of Species*.²⁶ Darwin's work has been described as "a watershed event in human history."²⁷ Although prior to his work scientists recognized the inconsistencies in the Biblical version of creation and the fossil record, most attempted to reconcile the two.²⁸ For example, Genesis speaks of a six day creation, whereas geologists demonstrated the earth developed over an extended period of time.²⁹ Seeking to harmonize Christianity and geology, scientists speculated the "days" in Genesis were not twenty-four hour periods,

23. See *id.*

24. See *Scopes v. State*, 289 S.W. 363 (Tenn. 1927) (upholding constitutionality of anti-evolution legislation).

25. Cf. DOROTHY NELKIN, *THE CREATION CONTROVERSY: SCIENCE OR SCRIPTURE IN THE SCHOOLS* 26-30 (1982) (describing the conflict between creationists' and evolutionists' theories regarding the origin of the human species).

26. *Id.* at 26-27; see also CHARLES DARWIN, *ON THE ORIGIN OF SPECIES* (1859).

27. Derek H. Davis, *Kansas Versus Darwin: Examining the History and Future of the Creationism-Evolution Controversy in American Schools*, 9 KAN. J.L. & PUB. POL'Y 205, 210 (1999).

28. George M. Marsden, *Understanding Fundamentalist Views of Science*, in *SCIENCE AND CREATIONISM* 95, 100-01 (Ashley Montagu ed. 1984); see also CHARLES COULSTON GILLISPIE, *GENESIS AND GEOLOGY: A STUDY IN THE RELATIONS OF SCIENTIFIC THOUGHT, NATURAL THEOLOGY, AND SOCIAL OPINION IN GREAT BRITAIN, 1790-1850* 1-40 (1951) (describing scientists' attempts to harmonize geology with the Biblical version of creation).

29. Marsden, *supra* note 28, at 100-01.

but rather were indefinitely long eras.³⁰ However, despite their resourcefulness in reconciling geology with Genesis, Darwin's work on evolution appeared to present unassailable proof of the fact of evolution.³¹

In its broadest sense, evolution is "the process by which through a series of changes or steps any living organism or group of organisms has acquired the morphological and physiological characters which distinguish it: The theory that the various types of animals and plants have their origin in other preexisting types. . . ."³² Creationism, on the other hand, "refers to the viewpoint that the literal Biblical account of creation is the correct explanation for the origin of the earth and its living forms."³³ For the most part, members of the scientific community quickly accepted Darwin's theory.³⁴ In fact, "[b]y 1880 the American scientific community so embraced these new concepts that the hostile Presbyterian *Observer* could identify only two working American naturalists who did not accept some form of evolution."³⁵

At the core of the evolution-creationism controversy is the origin of the human species.³⁶ In effect, "Darwinism shattered [the] conception . . . that humans are a distinct species, a special creation of God."³⁷ Evolution posits that "through the interplay of random variation, heredity, and the struggle for survival," humans descended from a lower order of species.³⁸ Therefore, if Darwin's theory of evolution is accepted as true, a literal interpretation that "God created man in his own image"³⁹ is untenable.⁴⁰ Consequently, in its broadest sense, "[t]he dispute is not really over biology or faith, but rather is essentially about *Biblical interpretation*. At issue here are the two irreconcilable viewpoints

30. *Id.* at 101. Because this Note does not attempt to illustrate all the inconsistencies between a literal interpretation of the Bible and the fossil record, for brevity's sake it will instead utilize one example of such an inconsistency—the problem the earth developed over an extended period of time as opposed to Genesis' six days. For a more detailed account of the clash between modern science and the Biblical version of creationism, see Charles Coulston Gillispie's seminal book, *Genesis and Geology: A Study in the Relations of Scientific Thought, Natural Theology, and Social Opinion in Great Britain, 1790-1850*.

31. See NELKIN, *supra* note 25, at 26-27.

32. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 789 (1981).

33. N. Patrick Murray & Neal D. Buffaloe, *Creationism and Evolution: The Real Issues*, in *EVOLUTION VERSUS CREATIONISM: THE PUBLIC EDUCATION CONTROVERSY* 454, 454 (J. Peter Zetterberg ed., 1983).

34. EDWARD J. LARSON, *TRIAL AND ERROR: THE AMERICAN CONTROVERSY OVER CREATION AND EVOLUTION* 8 (1985) (citation omitted).

35. *Id.* (citations omitted).

36. See Davis, *supra* note 27, at 210.

37. *Id.* at 210.

38. *Id.*; see also NELKIN, *supra* note 25, at 26 (suggesting "change occurred by sudden cataclysms that destroyed life and gave rise to new waves of increasingly complex living forms").

39. *Genesis* 1:27.

40. See NELKIN, *supra* note 25, at 28.

regarding the characteristics of Biblical literature, and more comprehensively the nature of Biblical authority."⁴¹

B. Stages in Creationists' Attempts to Eliminate or Minimize the Teaching of Evolution in Public Schools

After Darwin's theory of evolution gained wide-spread scientific acceptance, evolution quickly found its way into public schools, particularly into public high school science classes.⁴² Although the evolution-creationism controversy had existed since the late Nineteenth Century,⁴³ it did not attract the attention of the general populous until 1925 when the State of Tennessee convicted a young science teacher, John Scopes, of teaching evolution defined as a "theory that denied the story of the divine creation of man, as taught in the Bible"⁴⁴ The Kansas Standards, though not overtly anti-evolutionist, illustrate that this century-old conflict continues unabated.⁴⁵

1. Stage One: Anti-Evolution Legislation

In 1919, fundamentalists were fresh off the heels of their success in promoting the ratification of the Eighteenth Amendment, which outlawed the

41. Murray & Buffalo, *supra* note 33, at 454.

42. See generally LARSON, *supra* note 34, at 3-6 (discussing that the crusade against evolutionary teachings represented a response to the spread of secondary education, which was then carrying evolutionary concepts to the general public to an unprecedented extent).

43. This Note utilizes the publication date of Darwin's *On the Origin of Species* in 1859 as the starting point of the evolution-creationism controversy. See CHARLES DARWIN, *ON THE ORIGIN OF SPECIES* (1859).

44. See *Scopes v. State*, 289 S.W. 363, 363 (Tenn. 1927) (upholding anti-evolution statute).

45. See Kansas State Board of Education, *supra* note 1, at 71; see also CNN, *Report Finds One-Third of Schools Not Teaching Evolution* <<http://www.cnn.com/2000/fyi/teachers.ednews/09/27/classroom.evolution/>> (Sept. 27, 2000) (discussing study that rated states' science curriculums which found one-third of children attending public schools receive unsatisfactory science education). In 2000, Lawrence Lerner, a professor at California State University at Long Beach, evaluated each state's science curricula concerning its treatment of evolution. *Id.* Based on his findings, "10 states received an A grade for being 'superb models' in teaching evolution. Fourteen states got Bs, seven got Cs, six got Ds and 12 failed." *Id.* Kansas was the only state to receive an F-, a result of the state board of education's decision to minimize the influence of evolution in schools. *Id.* Lerner's study is important because it reflects the understanding that evolution is an integral component to having a meaningful grasp of science. Lerner wrote that "[w]ithout the insight of evolution, students inevitably come to see science as a heap of disconnected facts" *Id.* He concludes that "[t]he present state of scientific literacy among U.S. adults bears witness to the ubiquity of this kind of learning experience." *Id.*

sale of alcoholic beverages.⁴⁶ With prohibition safely embedded in the Constitution, conservative prohibitionists sought to embark on another crusade "to reform social and moral behavior."⁴⁷ Evolution opponents were drawn into the realm of high school public education because the teenage-years were viewed as a particularly dangerous time in adolescent development.⁴⁸ It was at this stage of development that children were perceived as most impressionable.⁴⁹ This view of vulnerability, coupled with the belief that "more than anything else, [evolutionary teaching] harmed the spiritual and moral development of students," made high school science classes an attractive target.⁵⁰ To counter the menace of Darwinism and its imagined harm on the nation's impressionable youth, anti-evolutionists sought to outlaw the teaching of evolution.⁵¹

As previously stated, the most famous test of the constitutionality of an anti-evolution statute was *Scopes v. State*.⁵² a case that is commonly referred to as the "Scopes monkey trial."⁵³ The Tennessee statute in question prohibited the teaching of evolution in all Tennessee public schools.⁵⁴ Further, drafters of the legislation defined evolution broadly as "any theory that denies the story of the divine creation of man as taught in the Bible [but instead posits] that man has descended from a lower order of animals."⁵⁵ Although the Tennessee Supreme Court explicitly recognized the statute's purpose was to promote the Biblical version of creation, it upheld the statute's constitutionality, ruling that Scopes' claims the statute violated the Tennessee and federal constitutions were without merit.⁵⁶

46. LARSON, *supra* note 34, at 35. The Eighteenth Amendment states: "[T]he manufacture, sale, or transportation of intoxicating liquors within . . . the United States . . . is hereby prohibited." U.S. CONST. amend. XVIII, § 1, *repealed by* U.S. CONST. amend. XXI.

47. LARSON, *supra* note 34, at 35; *see also* NELKIN, *supra* note 25, at 30-33.

48. LARSON, *supra* note 34, at 36-37.

49. *Id.*

50. *Id.* at 36. One anti-evolution crusader of this early period was T.T. Martin. *Id.* He echoed the concerns of his contemporaries when he stated that "[r]amming poison down the throats of our children is nothing compared with damning their souls with the teaching of evolution, that robs them of a revelation from God and a real Redeemer." *Id.* (quoting T.T. MARTIN, *HELL AND THE HIGH SCHOOLS: CHRIST OR EVOLUTION, WHICH?* 9 (1923)).

51. *Id.* at 36-37.

52. *Scopes v. State*, 289 S.W. 363 (Tenn. 1927).

53. *See* ACLU, *75 Years After Historic Scopes Trial, Religious Liberty Battles Continue* <<http://www.aclu.org/features/f070700a.htm>> (accessed Sept. 18, 2000) (discussing evolution education since *Scopes* trial in 1927).

54. *Scopes v. State*, 289 S.W. at 364.

55. *Id.*

56. *Id.* Interestingly, although Scopes challenged the statute as violative of a similar provision in Tennessee's state constitution, he did not adjudicate his claim under the federal constitution's Establishment Clause. *See id.* at 366-67 (setting forth relevant provision of the Tennessee Constitution as "no preference shall ever be given, by law, to any religious

After the *Scopes* trial ended, anti-evolutionist sentiment subsided, but the importance of its legacy cannot be understated.⁵⁷ In the 1920s, the majority of anti-evolutionists pursued other avenues aimed at social reform and the maintenance of their subculture, though ardent crusaders persisted, albeit in reduced numbers.⁵⁸ Fundamentalists' vigor in their anti-evolution campaign likely decreased for three main reasons.⁵⁹ First, in the post-*Scopes* years, fundamentalists established many new "Bible camps, colleges, seminaries, newspapers, and radio stations."⁶⁰ As a result of this shift in focus, their involvement in public schools was limited primarily to sex education and prayer.⁶¹ Second, the Depression resulted in difficult economic times for a large segment of the population.⁶² Fundamentalists, consequently, were more preoccupied with surviving the Depression than they were with promoting their religious viewpoints.⁶³ Finally, the fundamentalists' crowning achievement of this period had been the ratification of the Eighteenth Amendment.⁶⁴ However, in 1933 the Twenty-First Amendment repealed prohibition.⁶⁵ Thus, fundamentalists were forced to redouble their efforts to restrict the availability of alcoholic beverages, and in the process, the anti-evolution crusade faded into the backdrop.⁶⁶

The lack of attention paid to the anti-evolution movement, however, did almost nothing to curb the effects of fundamentalists' previous successes. The science text books and their treatment of evolution best illustrate the effectiveness of the movement.⁶⁷ For example:

A scholarly survey of the content of biology texts up to 1960 found the influence of antievolutionist sentiment to be persistent, if undramatic, and showed that the teaching of evolution actually declined after 1925. Textbooks published throughout the late 1920s ignored evolutionary

establishment or mode of worship.") (quoting TENN. CONST. art. I, § 3). Furthermore, even though the jury found *Scopes* guilty, it did not impose any fine, much less the minimum \$100 authorized by the statute. *Id.* at 367. The reviewing court suggested no fine ultimately be assessed to *Scopes* and that the conviction be reversed in the interest of "the peace and dignity of the state." *Id.*

57. See NELKIN, *supra* note 25, at 32-33.

58. *Id.*

59. See *id.*

60. *Id.* at 33.

61. *Id.*

62. *Id.* at 32.

63. *Id.*

64. LARSON, *supra* note 34, at 35; see also U.S. CONST. amend. XVIII.

65. U.S. CONST. amend. XXI.

66. See NELKIN, *supra* note 25, at 32.

67. See *id.* at 33.

biology, and new editions of older volumes deleted the word evolution and the name Darwin from their indexes. Some even added religious material.⁶⁸

However, the era of permissible anti-evolution legislation abruptly ended in 1968 when the United States Supreme Court ruled statutes forbidding the teaching of evolution in public schools violated the Establishment Clause of the First Amendment to the United States Constitution.⁶⁹

2. *Stage Two: Balanced Treatment Statutes*

The Cold War and the Soviet Union's launching of Sputnik in 1957 likely were catalysts to the reemergence of challenges to anti-evolution legislation in the 1960s.⁷⁰ "American schools . . . lagged behind their European counterparts, and textbooks hardly reflected the rapid development of modern scientific knowledge."⁷¹ Eager to solidify America's position in the new world order, concerned politicians and scientists were displeased with the stunting influence religion had on science curriculum.⁷² The federal government undertook several reform initiatives to respond to this concern.⁷³ One such federally funded effort was the Biological Sciences Curriculum Study (BSCS).⁷⁴ The BSCS found that biology education in America lagged behind biology research by at least twenty years.⁷⁵ Appalled by this fact, the BSCS scientists agreed not to shy away from controversial subjects, such as evolution.⁷⁶ This mentality guided them as they set out to write high school textbooks that would modernize biology education, boldly embracing the subject of evolution.⁷⁷ "Despite significant state and local opposition to their evolutionary content, the three tenth-grade BSCS texts quickly gained and held half the biology textbook market."⁷⁸ The appearance of the BSCS textbooks in the 1960s marked the end of the truce between evolutionists

68. *Id.*

69. *See Epperson v. Arkansas*, 393 U.S. 97, 113 (1968) (holding Arkansas anti-evolution statutes were an impermissible establishment of religion); *see also* U.S. CONST. amend. I. The Supreme Court's analysis of anti-evolution legislation and the *Epperson* case itself will be discussed more fully in Part III.A of this Note. Part II.B is mainly concerned with how creationists have advanced their viewpoint and not with the constitutionality of their methods.

70. *See NELKIN, supra* note 25, at 39.

71. *Id.* at 39-40.

72. *See id.*

73. *See id.* at 41-47.

74. *See generally NELKIN, supra* note 25, at 44-47 (discussing BSCS).

75. *Id.* at 44-45.

76. *Id.* at 45.

77. *See id.*

78. LARSON, *supra* note 34, at 95.

and creationists and gave rise to the litigation enveloping the anti-evolution issue.⁷⁹

Reeling from their defeat in 1968, creationists sought to conform their approach to the Supreme Court's mandate that the teaching of evolution could not be proscribed.⁸⁰ Faced with an inability to keep Darwinism out of the classroom, fundamentalists attempted to ensure creationism's place in the classroom.⁸¹ By this point in time, however, the fact of evolution was so well documented that creationists could not deny some form of evolution indeed had taken place.⁸² Moreover, creationists recognized appeals to faith alone were insufficient to advance their cause.⁸³ Consequently, fundamentalists sought to give their theory of creation credibility by incorporating scientific principles into their methodology, and thus arose "scientific creationism."⁸⁴ The fundamentalists who advocated creation science differed from their predecessors in that "creation science makes no mention of God."⁸⁵ The theory's basic tenets "stand independent of biblical reference."⁸⁶

Bolstered by the perceived credibility that accompanied the new nomenclature—creation science—fundamentalists renewed their efforts to teach creationism in schools by advocating "balanced treatment" statutes.⁸⁷ In general, balanced treatment acts forbade the teaching of evolution absent equal instruction of creationism.⁸⁸ Creationists contended that because "creationism and evolution both belong in the realm of science, both should be given balanced treatment in public elementary and secondary school instruction."⁸⁹

By 1981, balanced treatment acts had been proposed in approximately twenty-five state legislatures.⁹⁰ In addition, fundamentalists had prepared a

79. See NELKIN, *supra* note 25, at 44-47.

80. See *id.* at 17-18 (outlining the development of balanced treatment statutes).

81. See LARSON, *supra* note 34, at 149.

82. See *id.* at 147-49.

83. *Id.*

84. *Id.* Edward J. Larson, the author of *Trial and Error: The American Controversy over Creation and Evolution*, describes scientific creationism as a wolf in sheep's clothing. *Id.* at 147. The implication of this metaphor is that, although the rhetoric and nomenclature changed, at its core creationism remains a religious belief and is not founded on scientific principles.

85. Sherri Schaeffer, Note, *Edwards v. Aguillard: Creation Science and Evolution—The Fall of Balanced Treatment Acts in the Public Schools*, 25 SAN DIEGO L. REV. 829, 848 (1988).

86. *Id.* at 847.

87. See *id.* at 830.

88. *Id.*; see also *Edwards v. Aguillard*, 482 U.S. 578, 581 (1987) (striking down Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act and describing the Act's requirement that evolution could not be taught "unless accompanied by instruction in 'creation science'").

89. *Id.*

90. NELKIN, *supra* note 25, at 99.

similar bill for Congress.⁹¹ Given the intent behind these legislative initiatives, it was not surprising that this approach also failed to pass constitutional muster.⁹² In 1987, the Supreme Court relied heavily on the legislative history of a Louisiana balanced treatment statute when it ruled that the statute had no secular purpose and thus was an impermissible establishment of religion.⁹³ The Supreme Court's ruling effectively closed the second chapter of the evolution-creationism controversy. At each stage, courts have quashed fundamentalists' attempts to eliminate or restrict the teaching of evolution. But the question remains: Are the schoolhouse doors shut airtight, or did the Supreme Court leave the backdoor unlocked?

3. *Stage Three: Current Trends in the Evolution-Creationism Controversy from Coast to Coast*

Current trends to curtail Darwin's prevalence in public education range from removing evolution from mandatory standardized tests to requiring that teachers read disclaimers before teaching evolution.⁹⁴ No matter the form these efforts take, however, their purpose remains the same—to restrict the influence of Darwinism because it calls into question the Bible's authority as an historically accurate document.⁹⁵ The religious underpinnings of creationism, coupled with the zeal with which advocates and detractors alike struggle to advance their viewpoints, will ensure that the flurry of attempts to combat evolution's influence in public schools will continue to, in a word, evolve.

a. *The Kansas Science Education Standards.* The Kansas Standards delineate the skills that will be evaluated on standardized tests at various grade levels in Kansas, beginning in the spring of 2001.⁹⁶ The deletion of evolution

91. *Id.*

92. *See* *Edwards v. Aguillard*, 482 U.S. at 597 (striking down balanced treatment act as violative of the Establishment Clause).

93. *Id.* at 586-89.

94. *See* discussion *infra* Part II.B.3.a-II.B.3.b.

95. *See* NELKIN, *supra* note 25, at 26-29.

96. Kansas State Board of Education, *supra* note 1, at 3; *see also* Carl Manning, *Back-Door Approach*, TOPEKA CAP. J., Aug. 20, 1999, at 8A. It should also be noted at this point that in August of 2000, two incumbents who supported the state's science standards were defeated in the Republican primaries. ACLU, *Darwinism May Get Reprieve in Kansas Schools* <<http://www.aclu.org/news/2000/w080300a.htm>> (last modified Aug. 3, 2000). In addition, a third Republican candidate who also supported the Standards was defeated. *Id.* The Democrats and the prevailing moderate Republicans will face off in the November elections. *Id.* Whatever the ultimate outcome of the election, one thing is clear—the new guidelines are expected to be rejected when the Board begins its session in January of 2001. *Id.* Although the election results demonstrate the political process's concept of accountability is functioning properly, the Kansas science standards, even if abandoned, will continue to represent an important chapter in the evolution-creationism debate. Kansas is not alone in its attempt to strike a balance between

from the Standards gained national attention, but the process that led to the Standards' adoption failed to gain equivalent attention.⁹⁷ In 1999, the Kansas Board of Education empanelled a committee, which was comprised of twenty-seven science educators, to rewrite the state's science education standards.⁹⁸ Prior to the empanelling, however, the Board itself had become increasingly conservative, and a number of fundamentalists held positions on the Board.⁹⁹ When the committee finished its draft of the Standards and submitted the draft to the Board for recommendations, the controversy between evolutionists and creationists erupted anew.¹⁰⁰

According to one member of the drafting committee, Brad Williamson, "[t]he first three public hearings were hit very hard by very radical creationists Evolution was the only part of [the] work that [the Board] commented on."¹⁰¹ Although the committee was surprised by the public's interest in the draft, this interest was apparently generated by Steve Abrams, a Republican and social conservative and member of the Board.¹⁰² Abrams recruited religious fundamentalists and invited them to the hearings.¹⁰³ Unable to compromise with respect to evolution's place in the Standards, the Board met on its own and voted six to four to delete "[macro]evolution and references to geologic time."¹⁰⁴ The version of science standards ultimately adopted by the Kansas State Board of Education differed significantly from the draft submitted by the committee.¹⁰⁵ Abrams, with the help of the president of the Creation Science Association for Mid-America, Tom Willis, deleted nearly two full pages on evolution, omitting references to macroevolution, the "Big Bang" theory, and mention of the Earth's age.¹⁰⁶

Kansas' approach to keeping Darwinism out of the classroom is not entirely unique. In at least three other states, state or local boards of education contemplated or implemented similar plans before Kansas' widely-publicized

religion and science. *"Truth" and Consequences: Teaching Evolution in Kansas High Schools*, MOTHER JONES, Jan. 1, 2000, at 37 [hereinafter "*Truth*" and *Consequences*]. Across the nation, teaching evolution is under attack, and the Standards represent the battle being waged. See *id.* (describing several approaches to minimize the teaching of evolution).

97. David Miles, *Suit Looms over Science Teaching*, TOPEKA CAP. J., Aug. 11, 1999, at 1-A.

98. *"Truth" and Consequences*, *supra* note 96, at 36.

99. *Id.*

100. See *id.*

101. *Id.* (internal quotations omitted).

102. *Id.*

103. *Id.*

104. *Id.* at 35-36.

105. See *id.* at 36.

106. Miles, *supra* note 97, at 1-A; Witham, *supra* note 12, at A1.

Standards were adopted in 1999.¹⁰⁷ In Alabama and Kentucky, science standards either dropped the word "evolution" entirely or replaced it with less controversial phraseology, such as "change over time."¹⁰⁸ Similarly, in 1997, the newly redrafted Illinois science standards did not mention evolution, opting instead to "omit[] some content [for example, evolution, sex education, and multicultural studies] based on its controversial nature."¹⁰⁹ Taking an arguably even bolder and more direct step, Colorado bypassed the redrafting process and simply deleted questions regarding evolution from its standardized tests.¹¹⁰

b. *Disclaimers.* Creationists, apart from putting the issue of evolution into the hands of school districts and individual teachers by removing them from state-mandated standards, have also sought to restrict evolutionists' influence in public schools by disclaiming that evolution is a fact, thereby leaving the possibility of Biblical creation open.¹¹¹ Although the leading disclaimer case will be discussed more fully in Part III.B, the failure of disclaimers to pass constitutional muster is of particular import with respect to current trends in the evolution-creationism controversy because the use of disclaimers is a relatively popular tool that, like Kansas' Standards, denounce any predilection toward creationism.¹¹²

Just two days after Kansas adopted its new science standards, the Fifth Circuit affirmed a lower court's holding that mandating the reading of a disclaimer before teaching evolution ran afoul of the Establishment Clause.¹¹³ The disclaimer at issue read:

It is hereby recognized [by the Tangipahoa Board of Education] that the lesson to be presented, regarding the origin of life and matter, is known as the Scientific Theory of Evolution and should be presented to inform students of the scientific concept and not intended to influence or dissuade the Biblical version of Creation or any other concept. It is further recognized . . . that it is the basic right and privilege of each student to form his/her own opinion and maintain beliefs taught by parents on this very important matter of the origin of life and matter. Students are urged to

107. Michael Martinez & Jennifer Peltz, *State Skirts Evolution Dispute: Illinois Standards Dodged Issue Long Before Kansas Flop*, CHI. TRIB., Oct. 24, 1999, at 1; Anjetta McQueen, *Science Debate Causes Confusion*, Oct. 12, 1999, available at <<http://www.freerepublic.com/forum/a38038a7a48ae.htm>> (accessed Oct. 23, 2000).

108. McQueen, *supra* note 107.

109. Martinez & Peltz, *supra* note 107, at 1.

110. McQueen, *supra* note 107.

111. "Truth" and Consequences, *supra* note 96, at 35.

112. See Elaine Albenda, *Let's Teach the Truth*, THE DIAMONDBACK, Mar. 8, 2000, at 4 (discussing disclaimers adopted in Oklahoma, Alabama, and Rochester, New York).

113. See *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 342 (5th Cir. 1999), cert. denied, 120 S. Ct. 2706 (2000).

exercise critical thinking and gather all information possible and closely examine each alternative toward forming an opinion.¹¹⁴

Similarly, in Oklahoma a disclaimer is required to appear in all new biology textbooks.¹¹⁵ The Oklahoma disclaimer refers to evolution as "a controversial theory" and continues to define evolution as an "unproven belief that random, undirected forces produced a world of living things."¹¹⁶ Alabama not only removed evolution from its state-wide standards, it also followed Oklahoma's lead and adopted a comparable disclaimer.¹¹⁷

c. *Evidence Against Evolution.* Another common tactic that is gaining momentum in the evolution controversy is often described as teaching evidence against evolution.¹¹⁸ The primary problem with this method lies in the fact there is no credible evidence disproving the evolutionary process.¹¹⁹ Stephen Jay Gould of Harvard University, a leading paleontologist, states that "[s]erious scientists do not doubt that evolution occurred."¹²⁰ Furthermore, in response to whether teaching evidence against evolution is a sound educational theory, Gould replied:

There are things we don't understand about the mechanisms of evolution, so if . . . the creationist folks are saying there are holes, there are certain holes in our explanatory mechanisms, but if the holes are supposed to be substantial doubt that the process happened at all, then there are no such holes.¹²¹

In Faribault, Minnesota, a small, blue-collar town fifty miles south of Minneapolis, Rodney LeVake is presently challenging a school board decision to move him from teaching high school biology to junior high school general science.¹²² The move resulted from LeVake's resolve to teach evidence against evolution.¹²³ LeVake's case has attracted the attention of Christian Coalition founder, Pat Robertson's, legal group, American Center for Law and Justice—which is representing LeVake in his appeal of the school board's decision—as well as Eugenie Scott, the executive director of the National Center for Science

114. *Id.* at 341.

115. Albenda, *supra* note 112.

116. *Id.* (internal quotations omitted).

117. *Id.*; see also discussion *supra* Part II.B.3.a.

118. See CNN, *In the Beginning* (CNN television broadcast, Mar. 12, 2000), available at <<http://cnn.com/TRANSCRIPTS/0003/12/imp.00.html>> (last updated Mar. 12, 2000).

119. *Id.*

120. *Id.*

121. *Id.*

122. Josh Tyrangiel, *The Science of Dissent: A Teacher Is Stirring up Trouble About Darwin—in a Very Minnesota Way*, TIME, July 10, 2000, at 60.

123. *Id.*; see also CNN, *supra* note 118.

Education.¹²⁴ LeVake is a devout Christian but insists he is not attempting to teach creationism.¹²⁵ Instead, he points to “the amazing lack of transitional forms in the fossil record” to draw into question the process of macroevolution.¹²⁶ However, Scott responds that “[t]he evidence against evolution is just a repackaging of creation science. If you ask people, ‘Well, what exactly would you teach as evidence against evolution?’ what you get is the same old stuff that five years ago they called creation science.”¹²⁷

d. *Intelligent Design*. Like evidence against evolution, intelligent design proponents refuse to acquiesce and accept evolution’s hypothesis that the random interplay of genetics is responsible for life on Earth in its various forms.¹²⁸ Instead, “[i]ntelligent design assumes the work is too complex to be anything but the plan of an intelligent agent.”¹²⁹ However, intelligent design practitioners do not conclude who the “intelligent designer” is, thus arguably not implying the existence of a *religious* figure.¹³⁰ Because no one witnessed the process of evolution, intelligent design defenders assert that their belief is equally as plausible as evolution and that their theory is merely a different interpretation of the same data evolutionists use to support Darwinism.¹³¹

For instance, Roger DeHart, a science teacher in northwest Washington state, is an intelligent design advocate.¹³² He introduced intelligent design concepts into his classroom instruction in 1988, the school year immediately following the Supreme Court’s invalidation of balanced treatment acts.¹³³ Requiring students to take sides on the evolution versus intelligent design debate, DeHart taught biology this way for ten years.¹³⁴ The school board did not flinch until the ACLU caught wind of his antics and threatened to sue.¹³⁵ However, DeHart is confident that intelligent design is not a violation of the Establishment

124. *Id.*

125. *Id.*

126. *Id.* (quoting Mr. LeVake).

127. CNN, *supra* note 118.

128. John Gibeaut, *Evolution of a Controversy: Almost 75 Years After the Scopes Trial, a New Species of the Old Darwin vs. Creation Debate Has Come to Life in a Suburban Seattle Community*, A.B.A. J. Nov. 1999, at 50, 52.

129. *Id.* at 50.

130. *See id.*

131. *Id.* at 52.

132. *Id.* at 50.

133. *Id.* at 52; *see also* *Edwards v. Aguillard*, 482 U.S. 578, 597 (1987) (striking down a balanced treatment act as a violation of the Establishment Clause).

134. Gibeaut, *supra* note 128, at 53-54.

135. *Id.*

Clause, pointing to his denial of religious motivation.¹³⁶ Thus, DeHart continues to teach intelligent design in virtually the same fashion as he did in 1988.¹³⁷

III. EVOLUTION CASES AND SUPREME COURT ESTABLISHMENT CLAUSE JURISPRUDENCE

Although the evolution-creationism controversy has persisted for over a century, there are surprisingly few reported cases on the subject. The Supreme Court has addressed the question twice and recently declined a third offer to revisit the issue.¹³⁸ This Part does not attempt to return to the specific issues presented in the cases discussed. Instead, the significance of these cases rests in the analyses. Unlike most controversial issues that find their way into courtrooms, the evolution-creationism debate is burdened by an inescapable history of religious fundamentalism. This history, commonly surfacing in the form of legislative intent, is decisive in the outcomes of evolution-creationism cases.¹³⁹

A. Supreme Court Precedent

1. *Anti-Evolution Legislation: Epperson v. Arkansas*¹⁴⁰

The Supreme Court first delved into the murky waters of the evolution-creationism debate in 1968.¹⁴¹ Ms. Epperson, a young tenth-grade biology teacher, sought a declaratory judgment that Arkansas' anti-evolution statute was facially invalid as violative of the Establishment Clause.¹⁴² The statute proscribed the teaching of any "theory or doctrine that mankind ascended or descended from a lower order of animals."¹⁴³

In ruling the legislation violated the First Amendment, the Court emphasized the relevance of the statute's predecessor, the Tennessee anti-

136. *Id.* at 54.

137. *Id.* at 53-54. Although DeHart's practice of teaching intelligent design was challenged by a student and the school board prohibited DeHart from teaching the theory, it does allow him to discuss a similar topic, "the concept of irreducible complexities." *Id.*

138. See *Edwards v. Aguillard*, 482 U.S. 578 (1987) (striking down balanced treatment act); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (invalidating anti-evolution legislation); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337 (5th Cir. 1999) (declaring school district's disclaimer of the endorsement of evolution unconstitutional by violating the second prong of *Lemon* test and endorsement test), *cert. denied*, 120 S. Ct. 2706 (2000).

139. See, e.g., *Edwards v. Aguillard*, 482 U.S. at 591-93 (stating the legislature's intent was to advance the viewpoint a supernatural being created humankind).

140. *Epperson v. Arkansas*, 393 U.S. 97 (1968).

141. See *id.*

142. *Id.* at 100.

143. *Id.* at 99 (internal quotations omitted).

evolution law upheld in *Scopes v. State*.¹⁴⁴ The Court further recognized the protection of constitutional guarantees was of particular importance in schools and opined that "the First Amendment 'does not tolerate laws that cast a pall of orthodoxy over the classroom.'"¹⁴⁵ As such, the Court was strained to find a legitimate basis of the legislation that did not cast a pall of orthodoxy.¹⁴⁶ Because the First Amendment "forbids alike the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular dogma,"¹⁴⁷ the Court viewed legislative intent as dispositive.¹⁴⁸ To be valid, the legislation could not have been based on an illegitimate purpose, and this purpose was most easily gleaned by simply asking: Why does the law exist?¹⁴⁹ The answer was clear—"fundamentalist sectarian conviction was and is the law's reason for existence."¹⁵⁰ Because the statute's purpose was to promote a religious theory, it violated the government's role of neutrality.¹⁵¹ Therefore, the Court struck the statute down as an impermissible establishment of religion.¹⁵²

2. *Balanced Treatment Acts: Edwards v. Aguillard*¹⁵³

The Supreme Court confronted the evolution debate once again in 1987 when it struck down Louisiana's balanced treatment act.¹⁵⁴ Justice Brennan delivered the opinion of the Court and held that the statute was facially invalid, primarily as a result of the inferred legislative intent.¹⁵⁵ While recognizing schools are afforded considerable discretion in implementing education and "the Court is normally deferential to a State's articulation of a secular purpose," the majority asked why the statute existed and was unable to enunciate a proper, secular purpose.¹⁵⁶ The State defended its legislation on the ground it promoted academic freedom, but the Court was unwilling to allow the State to circumvent the mandates of the First Amendment by cleverly drafting its laws to include a stated secular purpose.¹⁵⁷

144. *Id.* at 98.

145. *Id.* at 104-05 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).

146. *See id.* at 104-09.

147. *Id.* at 106-07; *see also* U.S. CONST. amend. I.

148. *See id.* at 106-09.

149. *See id.* at 108.

150. *Id.*

151. *Id.* at 109.

152. *Id.*

153. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

154. *Id.* at 596.

155. *See id.*

156. *Id.* at 586.

157. *Id.*

Instead, the Court distinguished between stated versus actual purpose.¹⁵⁸ The actual purpose, furthermore, was adjudged in the context of "the historic and contemporaneous link between the teachings of certain religious denominations and the teaching of evolution."¹⁵⁹ Although the Louisiana legislature was careful not to mention the Christian God, the advancement of any "supernatural being" was sufficient to find a religious intent.¹⁶⁰ Moreover, the statute demonstrated its sectarian purpose by singling out evolution, the very theory that directly conflicts with the Biblical version of creation and that has historically been opposed by Christian fundamentalists.¹⁶¹

However, the *Aguillard* decision was not without its dissenters.¹⁶² Chief Justice Rehnquist joined Justice Scalia's vigorous dissent.¹⁶³ The dissent disagreed with the majority on two main points.¹⁶⁴ First, the dissent did not support either the majority opinion or Justice O'Connor's concurrence, which contended motivation alone was sufficient to invalidate a statute.¹⁶⁵ The dissent would pursue the analysis beyond the purpose of the law to the effects.¹⁶⁶ Second, the dissent was much more deferential to the state legislature than was the majority.¹⁶⁷ As long as the articulated purpose was legitimate, the dissent would defer to the State.¹⁶⁸ The dissent in *Aguillard* is important because the Chief Justice and Justice Scalia are current members of the Court—a Court that is much more conservative than it was in 1987 when Justice Brennan wrote the majority opinion in *Aguillard*.¹⁶⁹

B. Lower Court Treatment of the Evolution-Creationism Controversy

*Freiler v. Tangipahoa Parish Board of Education*¹⁷⁰ is the country's most recent treatment of the evolution debate. In *Freiler*, the school district defended its disclaimer on the ground it promoted critical thinking and encouraged

158. *Id.*

159. *Id.* at 590.

160. *See id.* at 591.

161. *Id.* at 593.

162. *See id.* at 610 (Scalia, J., dissenting).

163. *See id.* (Scalia, J., dissenting).

164. *Id.* at 610-11. (Scalia, J., dissenting).

165. *Id.* (Scalia, J., dissenting).

166. *Id.* (Scalia, J., dissenting).

167. *See id.* (Scalia, J., dissenting).

168. *Id.* (Scalia, J., dissenting).

169. *See generally* DAVID G. SAVAGE, TURNING RIGHT: THE MAKING OF THE REHNQUIST SUPREME COURT 453-56 (1992) (discussing the changes in membership in the Court and the shift to conservatism).

170. *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337 (5th Cir. 1999), *cert. denied*, 120 S. Ct. 2706 (2000).

students to gather information concerning the origins of life.¹⁷¹ The Fifth Circuit utilized Aguillard's "sham" inquiry to distinguish between stated versus articulated purpose.¹⁷² Looking at the disclaimer as a whole, the court found it served to "protect[] and maintain[] a particular religious viewpoint."¹⁷³

Other lower courts that have addressed issues relating to evolution have generally reached similar conclusions under the "sham" inquiry.¹⁷⁴ However, one of the reasons for the lack of reported case law on this topic is surely because fundamentalists have been particularly successful in avoiding legislative action.¹⁷⁵ Employing pressure from the community in election campaigns has served fundamentalists well.¹⁷⁶ Further, because the Supreme Court has effectively proscribed the most obvious means of restricting evolutionary teachings, local political pressure, which does not by itself result in litigation, appears to be the future of the creationist movement.¹⁷⁷ Kansas is instructive on this point. Namely, the Kansas Science Education Standards would not have been adopted were it not for the conservative take-over by religious fundamentalists of the state's board of education.¹⁷⁸

IV. CONCLUSION: CAN RECENT ATTEMPTS SURVIVE CONSTITUTIONAL SCRUTINY?

Although much can be said about the continued viability of the infamous *Lemon* test, suffice it to say that to a large extent, the Court reaffirmed *Lemon*'s validity during the 1999 October Term.¹⁷⁹ In *Mitchell v. Helms*,¹⁸⁰ the Court

171. *Id.* at 342. The disclaimer is quoted in its entirety in Part II.B.3.

172. *Id.* at 344 (citing *Edwards v. Aguillard*, 482 U.S. at 586-87).

173. *Id.* at 344-45.

174. *See, e.g.,* *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994) (upholding the school district's ability to require the teaching of evolution as a legitimate state interest); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d at 344 (utilizing sham inquiry to strike down disclaimer).

175. *See "Truth" and Consequences*, *supra* note 96, at 36 (discussing religious fundamentalists' success in electing conservative members to the Kansas Board of Education).

176. *See id.* (connecting 6-4 vote to adopt Kansas science standards to the religious fundamentalists' campaign to gain control of the Kansas Board of Education).

177. *See id.* (demonstrating fundamentalists' success in gaining control of Kansas legislature). Compare *Edwards v. Aguillard*, 482 U.S. at 578 (ruling balanced treatment of evolution and creationism unconstitutional and holding creation science is religion), with *Epperson v. Arkansas*, 393 U.S. 97 (1968) (ruling anti-evolution legislation violated Establishment Clause).

178. *See "Truth" and Consequences*, *supra* note 96, at 36.

179. *See Mitchell v. Helms*, 120 S. Ct. 2530 (2000) (modifying, yet reaffirming, the basic tenets of the *Lemon* test); *see also Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). The *Lemon* test, as modified, requires that the challenged statute: (1) have a secular purpose; and (2) have a primary effect that neither advances nor inhibits religion. *Mitchell v. Helms*, 120 S. Ct. at 2540. For an excellent discussion of the confused state of Establishment Clause jurisprudence before

modified the *Lemon* test to include two, as opposed to three, prongs.¹⁸¹ Under the test, a governmental action must have a secular purpose, and its effect must neither advance nor inhibit religion.¹⁸² It is clear, however, from the Supreme Court's treatment of evolution and creationism in *Epperson* and *Aguillard* that the legislative purpose is the primary test against which attempts to restrict the teaching of evolution will be adjudged.¹⁸³

In March of 2000, People for the American Way Foundation, an independent polling organization, released the results of a national poll.¹⁸⁴ The poll results indicated that "83 percent of Americans generally support the teaching of evolution in public school."¹⁸⁵ Furthermore, nearly half of the people polled believed evolution was "far from being proven scientifically."¹⁸⁶ Given the neo-creationists' present strategy of targeting local governmental entities and pressuring them to yield to their demands, popular support of creationism is key.¹⁸⁷ In *Lynch v. Donnelly*,¹⁸⁸ the Court stated that determining whether a particular government activity violated the Establishment Clause was "in large part a legal question to be answered on the basis of judicial interpretation of social facts. . . . Every government practice must be judged in its unique circumstances."¹⁸⁹ The unique circumstances of the evolution-creationism controversy are a tightly woven juxtaposition of strong support for creationism and a muddled history of attempts to silence and restrict evolutionary teaching in public schools despite its nearly universal acceptance in the scientific community.

Paring down the inquiry and asking, as the Supreme Court did in *Epperson*, what the reason is for the action's existence is sufficient to conclude

Mitchell v. Helms was decided in 2000, see Robert Stelle's article in the Southern Illinois University Law Journal. Robert C. Stelle, Comment, *Religious Freedom in the Twenty-First Century: Life Without Lemon*, 23 S. ILL. U. L.J. 657 (1999). A discussion of the *Lemon* test is beyond the scope of this Note but is a relevant subject that would enhance the reader's understanding of Establishment Clause analyses. See *Lemon v. Kurtzman*, 403 U.S. at 612-13. However, because this Note envisions the purpose prong of the *Lemon* test to be dispositive, a further discussion is best served by other authors.

180. *Mitchell v. Helms*, 120 S. Ct. 2530 (2000).

181. *Id.* at 2540.

182. *Id.*

183. See *Edwards v. Aguillard*, 482 U.S. 578, 596-97 (1987) (striking down balanced treatment act); *Epperson v. Arkansas*, 393 U.S. 97, 107-09 (1968) (invalidating anti-evolution legislation).

184. James Glanz, *Poll: Teach Evolution, Creationism*, DES MOINES REG., Mar. 12, 2000, at 2A.

185. *Id.*

186. *Id.*

187. See Davis, *supra* note 27, at 213, 216, 221.

188. *Lynch v. Donnelly*, 465 U.S. 668 (1984).

189. *Id.* at 693-94 (O'Connor, J., dissenting).

recent attempts to restrict Darwin's presence in the classroom are unconstitutional.¹⁹⁰ Scientists unquestionably embrace the theory of evolution and stress that "understanding evolutionary change is essential to understanding vital processes."¹⁹¹ According to Eugenie Scott, evolution is as well documented and established as the fact the earth revolves around the sun and not vice versa.¹⁹² Stephen Jay Gould furthermore states that "[s]erious scientists do not doubt that evolution occurred. It has not been the subject of any debate among scientists for more than a hundred years."¹⁹³

In light of the fact evolution is "the most important concept to modern biology," what reasons do creationists offer for not requiring it be taught or for disclaiming its factual basis?¹⁹⁴ Neo-creationists contend their theories bolster academic freedom and critical thinking.¹⁹⁵ However, reality illustrates that these stated purposes cannot pass *Aguillard's* sham inquiry.¹⁹⁶ In Kansas, a conservative Board member solicited the assistance of the president of the Creation Science Association for Mid-America in drafting the Standards.¹⁹⁷ Everyone, including the executive officer of the state, knew the decision to adopt the Standards was religiously motivated.¹⁹⁸ The same holds equally true of other attempts to hush Darwinism in public education.¹⁹⁹ It is simply impossible to look at the history of the evolution-creationism controversy, coupled with the universal scientific acceptance of evolution, and not infer a religious purpose that ultimately runs afoul of the First Amendment to the United States Constitution.

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190. See *Epperson v. Arkansas*, 393 U.S. 97, 108 (1968).

191. Robert Greene, *Panel Affirms Importance of Teaching Evolution*, Apr. 9, 1998, available at <<http://www.onlineathens.com/1998/041098/0410.a3evolution.html>> (accessed Oct. 26, 2000).

192. CNN, *supra* note 118.

193. *Id.*

194. See Greene, *supra* note 191 (quoting a panel of scientists in response to efforts to keep evolution teachings out of public schools).

195. See *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 342 (5th Cir. 1999), *cert. denied*, 120 S. Ct. 2706 (2000).

196. See *Edwards v. Aguillard*, 482 U.S. 578, 586 (1987).

197. Witham, *supra* note 12, at A1.

198. See Roger Myers, *Evolution De-Emphasized*, *TOPEKA CAP. J.*, Aug. 12, 1999 (quoting Kansas Governor Bill Graves as stating that the Board's decision was "a terrible, tragic, embarrassing solution to a problem that didn't exist").

199. See Larson, *supra* note 34, at 120-21.

