

NEWS AND COMMENTS

ARKANSAS ACT 590

Is the teaching of creation in science classes of public schools unconstitutional? This question has been put to the legal test in the State of Arkansas, one of the first states in recent times to pass a creation bill (Arkansas Act 590) into law.

On 19 March 1981, Governor Frank White signed the “Balanced Treatment for Creation-Science and Evolution-Science Act,” scheduled to go into effect beginning in September 1982. The act was quite extensive, requiring balanced treatment as a whole in classroom lectures, textbook and library materials for both the sciences and the humanities, and in other educational programs in public schools, to the extent that they “deal in any way with the subject of the origin of man, life, the earth, or the universe.”

A further section defined “creation-science” as being the scientific evidences for creation and related inferences that indicated:

(1) Sudden creation of the universe, energy, and life from nothing; (2) The insufficiency of mutation and natural selection in bringing about development of all living kinds from a single organism; (3) Changes only within fixed limits of originally created kinds of plants and animals; (4) Separate ancestry for man and apes; (5) Explanation of the earth's geology by catastrophism including the occurrence of a worldwide flood; and (6) A relatively recent inception of the earth and living kinds.

In contrast, “evolution-science” was defined as being scientific evidences and their inferences that indicate:

(1) Emergence by naturalistic processes of the universe from disordered matter and emergence of life from nonlife; (2) The sufficiency of mutation and natural selection in bringing about the development of present living kinds from simple earlier kinds; (3) Emergence by mutation and natural selection of present living kinds from simple earlier kinds; (4) Emergence 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 somewhat later of life.

The law also emphasized the presentation of scientific models for origins and the exclusion of “any religious instruction or references to religious writings.” It did not require instruction in the subject of origins, but simply

“instruction in both scientific models (of evolution-science and creation-science) if public schools choose to teach either.”

Similar or identical bills have been introduced in at least 16 other states, and a few months after the Arkansas bill was signed, a similar measure was passed into law in Louisiana. The careful wording can be credited to Paul Ellwanger, head of “Citizens for Fairness in Education,” a “concerned citizens” group from South Carolina, who received advice from sympathetic lawyers, including Wendell R. Bird, a constitutional specialist. Bird described the bill as being consistent with the neutrality towards religion that is required by the First Amendment to the U.S. Constitution.

The Arkansas Academy of Sciences and the 300 faculty members of the University of Arkansas requested that the law be rescinded. To no one’s surprise, on 27 May, the American Civil Liberties Union (ACLU) filed a complaint in Federal District Court to declare Act 590 unconstitutional because it violates the principle of church-state separation. It also maintained that the law abridged academic freedom. More than half of the 23 plaintiffs were individuals or organizations representing several branches of religion. The complaint stated that the plaintiffs were “neither anti-religion nor asserting the final truth of any theory of evolution.” Though the creation-evolution controversy is no stranger to the courtroom, it is the first time that the creation model *as a science* has been legally challenged. Previous court cases have concentrated on whether evolution was a fact or a theory. The ACLU hoped that this lawsuit would provide a test case whereby creation science would be evicted from the public schools nationwide.

Described by Bruce Ennis, ACLU’s legal director, as “one of the most important First Amendment cases to be held this century,” the trial opened on 7 December. The ACLU argued that creationism is a religion, not a science; that the academic freedom of both teachers and students is abridged by Act 590; and that the statute is vague because it “does not give teachers fair notice of what can or what cannot be taught, and it gives school officials virtually unfettered discretion arbitrarily to enforce its provisions.” The state maintained that the ACLU was attempting to censor the teaching of creationism, “shutting out from the ‘marketplace of ideas’ those ideas with which they disagree because they are incompatible with their personal, religious or philosophical views.”

ACLU attorney Robert M. Cearley, Jr., opened with a statement of intent to prove that creation science is pseudoscience. He characterized Act 590 as an attempt by religious fundamentalists to “arrogate unto itself the power and authority to define what science is and force the teaching of religious beliefs in the classroom” under the guise of science. Among the 17 witnesses who testified against creationism as a science during the first week of the trial were science philosopher Michael Ruse, theologian Langdon Gilkey, biophysicist Harold Morowitz and paleontologist Stephen Jay Gould.

The state constructed its defense upon the theory that creation does not necessarily imply the existence of a creator. State Attorney General Steve Clark

said that the issues were scientific, not religious, and that “creation-science is at least as scientific as evolution-science.” Among the list of potential expert witnesses who support creationism were 60 scientists, all but one having an earned Ph.D. in some field of life science.

In the second and concluding week of the trial, Clark presented 11 witnesses for the state. One science teacher testified that true academic freedom was abridged by the exclusion of creation from the classroom and stated that he was not presently allowed to give evidence for creation in his science classes. Another stated that while there was no strong scientific evidence for either the creation or evolutionary models of origins, biological and biochemical data pointed to the concept of a Designer. A Buddhist astronomer labeled evolution science as being religious in assuming the development of life from non-life. Scientific evidences from the fossil record, catastrophism, and questions about the origin of life were also presented in support of creation.

The trial concluded on Thursday morning, 17 December. U.S. District Judge William R. Overton announced that he would need at least a week to study his 300 pages of notes taken during the trial before making a decision. He clearly stated that his opinion would concern only the narrow question of whether the creation model was religion, and that he would not “undertake to decide the validity of the biblical version of creation nor the theory of evolution.”

The judge did not issue his ruling until 5 January. In his 40-page decision, he stated that the law was unconstitutional because it was “simply and purely an effort to introduce the biblical version of creation into the public school curricula.” According to him, the definition of creation-science reflected “an inescapable religiosity,” and it would be impossible for teachers to present the Genesis account of creation in a secular manner.

While the ACLU attorneys applauded the decision as dealing a “fatal blow” to creation-science, supporters of the law vowed to continue their efforts to legislate the teaching of creation-science. Attorney General Clark is considering appealing to the 8th U.S. Circuit Court of Appeals in St. Louis. On the same day as Judge Overton’s ruling of the Arkansas law, the Mississippi Senate opened its 1982 session by approving overwhelmingly a similar bill requiring public schools to present a balanced treatment of origins.

Meanwhile, a modified version of the original bill under the title of the “Unbiased Presentation of Creation-Science and Evolution-Science Bill” has already been drafted by Paul Ellwanger and is expected to avoid many of the problems faced by the Arkansas law. It will also be interesting to watch the forthcoming trial over the Louisiana law, as well as further events in Mississippi.

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