NEWS AND COMMENTS

THE LOUISIANA BALANCED-TREATMENT ACT

While Judge William R. Overton's decision in January 1982 against the Arkansas law requiring equal time for creation in public-school science classes was being hailed by evolutionists as a stunning defeat for creationist legislation, supporters of balanced-treatment laws merely transferred their energies to the State of Louisiana where in 1981 the legislature had passed a Balanced Treatment for Creation-Science and Evolution-Science Act to begin in September 1982.

Although the teaching of origins was not compulsory, the Act required the inclusion of scientific evidence and related inferences for creation-science (e.g., the abrupt appearance of complex living forms in the fossil record and the systematic gaps between fossil forms) whenever scientific evidence and related inferences for evolution were presented in the science classes. A panel of seven creation-scientists, appointed by the governor, would advise local school districts on the appropriate curriculum. The Act neither required nor allowed instruction in any religious doctrine or material, and the vaguer terms of the new law made it less vulnerable to legal challenge.

The Act faced formidable opponents. The Louisiana Department of Education, the Superintendent of Education, the Board of Elementary and Secondary Education (BESE) and its members refused to implement it, because they believed it to be a thinly veiled disguise for the fundamental Christian view of creation and therefore a violation of the First Amendment principle of separation of church and state.

On December 2, 1981, forty-four state legislators, scientists (including an agnostic evolutionist who believed that both views should be taught), educators, spokesmen for Christian, Jewish and Muslim faiths, concerned parents and students filed a lawsuit [*Keith v. Louisiana Department of Education* (No. 81-989B)] in the U.S. District Court in Baton Rouge, Louisiana, asking for a declaratory judgment that the Act was constitutional. The lawsuit argued that balanced treatment of creation along with evolution did not violate the First Amendment, because the law required only the presentation of *scientific* evidence on the subject of origins, and neither did it violate academic freedom, because it gave students a choice between the explanations.

State Attorney General William J. Guste, Jr., appointed constitutional lawyers Wendell R. Bird and John W. Whitehead (whose services had been refused by the State of Arkansas) as lead counsels to take depositions and to argue the case at trial. They hoped to be able to make many constitutional arguments that had either not been made at all or that were inadequately supported by testimony at the Arkansas trial. One creationist newsletter stated: "We are optimistic that the Louisiana lawsuit will result in a judicial opinion that public school instruction in creation-science is constitutional, directly contrary to the

Arkansas decision, because it involves a different statute, new and different arguments and support, different expert witnesses, new and different scientific evidence, a-different legislative purpose, and an adequate defense" (*Acts and Facts* Impact Series #105, p iv).

This lawsuit was only the beginning of protracted legal maneuvers by supporters and opponents. The following day, the American Civil Liberties Union (ACLU) filed an action in the U.S. District Court in New Orleans, challenging the law's constitutionality, requesting permission to add new intervenors to attack the law, and asking for a dismissal of the lawsuit filed the previous day. In response, state-deputized attorneys filed a motion, along with 200 pages of briefs and accompanying materials, to stay or dismiss the ACLU suit on the basis of the pending suit in Baton Rouge. Attorney General Guste commented that the ACLU was "seeking to censor scientific information with which it disagrees."

Now there were two lawsuits over the same law. On March 9, 1982 in Baton Rouge Federal Judge Frank J. Polozola denied the ACLU's motion to intervene in the case and to dismiss it. In New Orleans on March 19 Federal Judge Adrian Duplantier ordered a stay of the ACLU suit. The trial date was set for July 26 - August 6 in the U.S. District Court in Baton Rouge.

On June 28 the U.S. District Court in Baton Rouge dismissed the case, and the battleground over the constitutionality of the Balanced-Treatment Act moved to the U.S. District Court in New Orleans. The case [Aquillard v. Edwards] was rescheduled to 1983.

Meanwhile, the Louisiana BESE and the ACLU moved for summary judgment (an immediate decision on some of the issues before a trial or on all of the issues without a trial), arguing that the Louisiana constitution allowed only the BESE to make educational policy and that the Balanced-Treatment Act violated this delegation of authority. Judge Duplantier agreed and ruled the Balanced-Treatment Act to be unconstitutional.

Duplantier's ruling was immediately appealed to the U.S. Court of Appeals for the Fifth Circuit. On January 31, 1983 the motion to certify the question to the Louisiana Supreme Court was granted. On April 1 the Louisiana Supreme Court accepted certification and granted the attorneys' motion for the opportunity to brief the issue, to present oral arguments in court, and to expedite its consideration of the issue.

Major television networks covered the oral arguments that were presented on June 29, 1983 before the Louisiana Supreme Court. Attorney Bird argued that under both state and general law the legislature has the authority to prescribe courses of study and that they exercised that authority by passing the Balanced-Treatment Act. On October 17 the State Supreme Court ruled in favor of the act. The seven-member court was split four to three, and one dissenter stated that even though the legislature had the right to prescribe educational curricula, it could not foster the teaching or promotion of religion — and creation-science was a religious belief rather than a course of study.

The Supreme Court's decision prepared the way for a full trial in a federal court over the constitutional issues. Senator Bill Keith of Shreveport, sponsor of the Balanced-Treatment Act and founder of the Creation-Science Legal Defense Fund (CSLDF), announced that this trial would be "the major test [case] of all time" on the constitutionality of teaching creation-science in public school science classes.

While the deputized State attorneys filed a motion for partial summary, the ACLU filed a motion for summary judgment, which could be granted only where no facts are in dispute. On another front, the ACLU lobbied extensively for repeal, and although the State senate voted in favor of it, on June 25,1984 the House of Representatives voted 61 to 26 against repeal.

In September 1984 both sides filed massive briefs. The State brief contended that balanced treatment for creation-science was constitutional and that there were many material factual issues that prevented summary judgment without a full trial. It discussed the affirmative scientific evidence for biological, biochemical, and cosmic creation, the problems with evolution-science, and the constitutional issues (e.g., the Constitution did not require hostility towards theism). The ACLU brief stated that creation-science was fundamentalist religious doctrine in disguise which therefore violated the First Amendment. It further argued that academic freedom was violated when teachers were forced to present currently censored scientific information.

On January 11, 1985 Judge Duplantier entered a summary judgment ruling the Balanced-Treatment Act to be a violation of the establishment clause, because the concepts of creation and a creator are necessarily religious and therefore unscientific. In his ten-page written opinion, Duplantier stated that "the teaching of 'creation-science' and 'creationism,' as contemplated by the statute, entails teaching tailored to the principles of a particular religious sect or group of sects," and the statute "promotes the beliefs of some theistic sects to the detriment of others." He added that it was unnecessary to consider the evidence presented by the state.

Nature, a leading science journal, predicted that "because this time the decision came in the form of a summary judgment, finding that the law is unconstitutional, other states are unlikely to test the courts further." An ACLU spokesperson said that the decision "sets a precedent for a 'knock-out blow' to creationist statutes." Supporters of balanced-treatment appealed Duplantier's decision to the Fifth U.S. Circuit Court of Appeals, asking for a reversal because material factual issues exist for creation-science. The February newsletter from the CSLDF informed its supporters that the U.S. Court of Appeals for the Fifth Circuit had granted their motion to expedite the appeal, thus shortening the time required for appeal by at least half a year or perhaps even a full year. A verdict is expected soon.

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