2001

Wolves in sheeps' clothing: Creationist manipulation of Kansas science standards

Nathan Christopher Gehlert
Colby College

Follow this and additional works at: https://digitalcommons.colby.edu/honorstheses

Part of the Political Science Commons

Colby College theses are protected by copyright. They may be viewed or downloaded from this site for the purposes of research and scholarship. Reproduction or distribution for commercial purposes is prohibited without written permission of the author.

Recommended Citation
https://digitalcommons.colby.edu/honorstheses/95

This Honors Thesis (Open Access) is brought to you for free and open access by the Student Research at Digital Commons @ Colby. It has been accepted for inclusion in Honors Theses by an authorized administrator of Digital Commons @ Colby. For more information, please contact mfkelly@colby.edu.
Wolves in Sheeps' Clothing:

Creationist Manipulation of Kansas Science Standards

by

Nathan Christopher Gehlert

A thesis submitted to

Colby College

in partial fulfillment of requirements for

honors in the major of

Government.

Readers:

Professor G. Calvin Mackanzie

Professor L. Sandy Maisel

Spring 2001
Table of Contents

I. Preface
II. Monkey Trials: Laying the Foundation for Future Tribulations
III. The Supreme Court Welcomes Darwin into the Garden
IV. Evolution: the Vanquished or the Neglected?
V. Of Manipulation and Separation: How creationists have sought to place the Constitution at the right hand of God.
VI. The Looming Constitution

Works Cited
Preface

On August 11, 1999, the Kansas State Board of Education adopted science standards that effectively excluded the teaching of macroevolution. This decision returned the debate between evolution and creationism to the national spotlight. Biologists labeled as “harebrained” and “nutty” the decision to remove testing on the theory of evolution from the state’s science standards. The Washington Post described the Board’s decision as “deeply uncomfortable both in terms of First Amendment values and in terms of students being educated in the actual state of biological science.” To the most fervent critics, the new standards seemed to promote a blatantly religious agenda.

Those on the other side of the debate had good reason to celebrate. For decades, creationists and religious fundamentalists have been struggling to keep evolution out of public school science curricula. Nevertheless, the United States Supreme Court severely hampered their efforts in 1968 and 1987. The Court determined in Epperson v. Arkansas and Edwards v. Aguillard that teaching creation science in public schools would violate the Establishment Clause of the Constitution’s First Amendment. The Establishment Clause states: “Congress shall make no law respecting an establishment of religion.”

Quoting Thomas Jefferson, the Supreme Court has affirmed that the Establishment Clause effectively erects a “wall of separation between church and state.”

The battle in Kansas raised new controversy about the Establishment Clause and inflamed a centuries-old conflict between religion and science. However, those who led creation science to victory in Kansas do not see the issue in those terms. Steve Abrams, a

---

1 Macroevolution is used to refer to any evolutionary change at or above the level of species. It means the splitting of a species into two or the change of a species over time into another.
3 ibid.
4 Constitution of the United States of America, First Amendment.
prominent member of the Kansas Board of Education who disapproves of the teaching of macroevolution is adamant that he is not "trying to push religion into public schools."6

Perhaps, then, the science v. religion controversy may not be as simple as it initially seems.7 If evolutionists and creationists were placed on an evolution-creationism spectrum where those who feel most passionate about their respective opinions sit at the far ends of that spectrum, one would find that, politically, the issue most often involves those in the middle. Thus, the "extremists" must lobby and manipulate the "moderates" to have their objectives realized as public policy.

Fortunately, the foundations of the evolution-creationism dispute are simple. All public schools have curricula that mandate what should be taught in the classroom. Schools base their curricula on the standards put forth by the state. In Kansas, scientists traditionally played an integral role in determining the language and extent of the material included in the state standards. However, state and local school boards have the final say in determining what should be included in these standards and curricula. Both scientists and creationists lobbied the Kansas Board of Education in an attempt to have their views favored in the new state standards. Creationists won that battle.

In many ways, the debate over evolution involves religious and social values. In a statement criticizing the Kansas standards, Bruce Alberts, President of the National Academy of Science, pointed out that, "Evolution is not only universally accepted by scientists; it has also been accepted by the leaders of most of the world's major

5 Everson v. Board of Education of Ewing (1947)
religions. However, some do believe that teaching evolution directly threatens their religious beliefs and ideologies. This disagreement centers on religious values.

To understand the religious and social values expressed here, one need only turn to the American public. A 1999 Gallup poll found that 47 percent of Americans consider themselves to be creationists who believe that “God created human beings pretty much in their present form at one time within the last 10,000 years or so;” 40 percent describe themselves as theistic evolutionists who believe that “human beings have developed over millions of years from less advanced forms of life, but God guided this process;” 9 percent are Darwinists who believe that “human beings have developed over millions of years from less advanced forms of life. God had no part in this process;” 4 percent are undecided or do not know. A majority in a society can establish collective social values. When the Kansas Board of Education removed macroevolution from that state’s science standards, it mirrored the beliefs of nearly half of the Americans and aligned educational policy with widely held social values.

While it may seem appropriate for school curricula to reflect popular social values, it is also imperative that they support the fundamental ideals upon which our society is based. John Dewey, a scholar of epistemology and author of countless works outlining the relationship between society and public education, charged society with the task of educating its citizenry as a means of preparing them for participation in democracy. In his 1916 work Democracy in Education, he wrote that “a government resting upon popular suffrage cannot be successful unless those who elect and who obey

their governors are educated. For Dewey, this essential educating of a nation's citizenry was a political act. Teachers choose what information they teach. When these choices involve social and political values and democratic ideals, the teacher is ultimately making political decisions on behalf of our nation.

Eighty-five years later, the consensus on this matter has not changed. As Alex Molnar, a Dewey scholar and director of the Center for Education Research, Analysis, and Innovation writes:

The importance of public education to civil society is... the role it can play in providing children and adults the opportunity to work out their collective future in a sustained, serious, and humane way in a democratic context.

This "democratic context" necessarily involves a system that champions the essential values of the American democratic system. The foundation of this system is the U.S. Constitution, which spells out a clear separation of church and state. The U.S. Supreme Court has never condoned standards or curricula that breach this separation.

Furthermore, American public schools trend quickly toward mediocrity when evolution is excluded as a foundation of the biological sciences. A joint statement by the National Research Council, American Association for the Advancement of Science, and the National Science Teachers Association regarding the Kansas science standards affirms that the role of evolution is "critical to high-quality science education because evolutionary theory serves as the foundation for all areas of modern biology."

---


11 Joint Statement from the National Research Council, American Association for the Advancement of Science, and the National Science Teachers Association Regarding the Kansas Science Education
So the question that animates this paper is this: what happens when a state’s education policy seeks to make popular social and religious values a central part of its education standards in direct confrontation with the Establishment Clause of the First Amendment of the U.S. Constitution?

I will try to answer that question in three ways. First, I will examine the tactics used in the manipulation of curricula to reflect social and religious values, with special focus on the Kansas case. Second, I will try to ascertain the determinants of success in these efforts; under what conditions are movements to impose creation science on public school curricula likely to succeed, and when to fail? Third, I will try to place these struggles over educational curricula, and between religion and science, in broader context, focusing on what they tell us about the nature of public policy making in the contemporary United States.

We will begin with a history of the creation-evolution debate in America, starting with the Tennessee Scopes Trial of 1925, which effectively initiated the creation-evolution debate by bringing the issue to national attention. Examining additional, more recent, legal battles will show the evolution of creationist tactics and methods of manipulation. This timeline will lead directly to the science standards debate in Kansas, the primary case study for this paper. By studying these events, this paper will show that creationist tactics and methods have clearly evolved over time. This evolution has been necessary, for if the creationist movement had been inflexible, the American legal system would have crushed it long ago.
I. Monkey Trials: Laying the Foundation for Future Tribulations

Before tackling contemporary questions, it is essential to understand the history of the controversy among science, religion, and the Establishment Clause. The infamous Scopes "Monkey Trial" of 1925 is the logical point to begin.

In January 1925, the Tennessee House of Representatives passed by a solid majority a bill known as the Butler Act. This act made it unlawful for teachers in public schools "to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals." Violation of the law carried a fine of $100 to $500. The law was typical for the time; many states had laws similar to the Butler Act. In some states, such as North Carolina, Georgia, and Texas, antievolutionists kept evolution out of schools through rulings made by boards of education.

In May of 1925, the American Civil Liberties Union (ACLU) solicited John Thomas Scopes, a science teacher at a Dayton high school, to test the constitutionality of the case. Scopes had only occasionally substituted in biology and had on at least one occasion taught from the Tennessee-approved textbook, Civic Biology. The book contained one chapter on Darwin's natural selection and phrases such as: "We have now learned that animal forms may be arranged so as to begin with the simple one-celled forms and culminate with a group which contains man himself." Thus, Civic Biology taught macroevolution, or evolution that results in relatively large and complex changes (as in species formation).

---

12 Butler Act (1925).
The ACLU solicited Scopes’ assistance and, in exchange for making it publicly known that he had taught evolution, the ACLU provided Scopes with the legal counsel of Clarence Darrow, a famed Chicago attorney. William Jennings Bryan, leader of the fundamentalist movement to ban the teaching of evolution, served as prosecutor for the state. The trial lasted only eight days and few seriously questioned its outcome, for Scopes’ defense attorneys explicitly conceded that Scopes had taught the banned theory. This admission was deliberate and purposeful; Scopes’ lawyers actually hoped for a conviction. They wanted to appeal the case in higher courts that could test the constitutionality of the law.¹⁶

The ACLU planned to test whether the Butler Act violated Section 8 of Article I of the Tennessee Constitution, and Section 1 of the Fourteenth Amendment of the Constitution of the United States. The Law of the Land clause of the state Constitution, and the Due Process of Law clause of the Federal Constitution, which are practically equivalent in meaning, forbids states to “make or enforce any law which shall abridge the privileges or immunities of citizens of the United States... deprive any person of life, liberty, or property, without due process of law... deny to any person within its jurisdiction the equal protection of the laws.”¹⁷ The ACLU believed that the Butler Act abridged Scopes’ freedom of speech and religion.

Not surprisingly, Scopes lost at Dayton, and he and the ACLU appealed the ruling. In 1927, the Tennessee Supreme Court heard the case (John Thomas Scopes v. the State). However, any hopes of the Tennessee Supreme Court or a higher court determining the Butler Act to be unconstitutional were abandoned when the Tennessee

¹⁷ Constitution of the United States of America, Fourteenth Amendment.
Supreme Court upheld the Butler Act and overturned Scopes' conviction on a technicality. The trial judge had imposed the $100 on Scopes. However, Tennessee law mandated that a jury impose any fine over $50. The Tennessee Supreme Court had no choice but to reverse the lower court's judgment. Consequently, the ACLU lost all hopes of further appeal in higher courts.

It is difficult to determine which side left Tennessee the victor and which side the vanquished. While Scopes and the ACLU were in many ways the bona fide losers – he lost the case and the ACLU lost the opportunity to bring the case before a higher court – "the defense's performance in the courtroom led many to believe that Darrow had successfully weakened the arguments of the antievolution movement. In his biography of Darrow, Irving Stone wrote: "The Scopes case had won another conquest for freedom: Bryan and his Fundamentalist dogma had been discredited [and] the literal interpretation of the Bible had been weakened." However, antievolutionists did not recognize the trial as a setback.

The 1920s were a time of fervent scriptural literalism among fundamentalists, to which Darwinism posed a genuine threat. Interdenominational organizations such as the Bible Crusaders of America (formed after Bryan’s death), the Anti-Evolution League, the Bryan Bible League, and the World’s Christian Fundamentals Association fought against modernism and Darwinism, which these groups believed undermined the Genesis account of creation.19

19 Bailey 475
Historian Kenneth K. Bailey argues that the conservative battle against "theological innovations" was only one aspect of a larger social movement. Americans were embracing fundamentalism as part of a general reaction against postwar social and political reforms, against Communism, against labor organizations, against new literary and artistic techniques — in a word, against all those innovations which seemed to threaten the traditional. Thus,... the movement in Tennessee was singular only in detail of procedure and level of success. It was not unique in its objectives. It was typical in its motivating spirit.  

Many Americans were motivated to fight against not only Darwinism, but also the other modern social and religious trends that threatened their worldview.

Bailey identifies two additional contributory factors that led to the realization and success of antievolution legislation. First, Tennessee lacked widespread industrialization. The predominantly agrarian populace sought to uphold the status quo — strict Scriptural literalism — and shied away from the modernism that was becoming popular in more industrialized regions of the United States.  

Second, and more importantly for this thesis, the efforts of fundamentalist campaigners, such as William Jennings Bryan, succeeded in rousing conservative sympathizers to action. As a former Democratic leader — U.S. congressman, three-time Democratic presidential nominee, and secretary of state — Bryan’s outspoken opposition to evolution carried weight in Tennessee, a normally Democratic state. Conservatives also allied themselves with a prominent newspaper in Tennessee, the *Memphis Commercial Appeal*. This afforded conservatives a platform from which to attack the alleged evils of Darwinism. Furthermore, the *Memphis Commercial Appeal* covered the

---

20 Bailey 474.  
21 Bailey 474.  
22 All information in this paragraph from Bailey 474.
efforts to secure antievolution legislation in neighboring states; Tennesseans thus felt more comfortable with the implications of the Butler Act.

In *Enactment of Tennessee's Anti-Evolution Law*, Bailey also describes one of the formal attempts made by conservatives to sway public opinion against Darwinism. W.B. Marr and several other loyal followers of William Jennings Bryan invited Bryan to give a lecture entitled "Is the Bible True?" in Nashville in 1925. Following the lecture, Marr arranged for the publication and distribution of several thousand pamphlets containing the text of Bryan's lecture. Creationists directly lobbied members of the Tennessee General Assembly by distributing approximately five hundred of these pamphlets at the start of the 1925 session.²³

These factors created a climate in which the conservative antievolution agenda could thrive. Conservatives were establishing the necessary conditions for introducing antievolution legislation. On January 20, 1925, Senator John A. Shelton introduced a bill before the Senate to "prohibit the teaching of evolution in public schools."²⁴ The next day, Representative John Washington Butler introduced House Bill 185 - the Butler Act. Shelton's legislation died in committee while the House passed Butler's within a week by a margin of seventy-one to five, with five representatives abstaining.²⁵ On March 13, the Butler Act passed the Senate by a margin of twenty-four to six, with one senator abstaining.²⁶

While the Butler Act and the Scopes' Trial provided Dayton, Tennessee and the nation with an entertaining piece of courtroom drama, the Scopes' Trials did not resolve any of the larger issues. *Scopes v. the State* upheld the Butler Act, but only because of a

---

²³ Bailey 475.
²⁵ Bailey 476.
technicality. A higher court did not have the opportunity to consider the larger constitutional issues.

The ACLU, serving as Scopes' defense, probably realized that the local courts were unlikely to rule in favor of separation of church and state because of the conservative climate of the South. The American legal system had rarely considered Establishment Clause questions. In fact, the Supreme Court had only considered cases dealing with the Establishment Clause on three occasions — *Bradfield v. Roberts* (1899), *Quick Bear v. Leupp* (1908), and *Pierce v. Society of Sisters* (1925); none of these cases involved educational curricula.²⁷

With the Butler Act still on the books, Tennessee and other states continued the ban on teaching evolution. For decades conservative attitudes sustained support for antievolution laws. Few people questioned these laws because they reflected the social values of the times. The Supreme Court would not have the opportunity to address the issue of creationism in public education until 1968 when its attention was drawn to Arkansas and the Establishment Clause.

²⁷ Bailey 482.
II. The Supreme Court Welcomes Darwin into the Garden

Three southern states retained antievolution laws until the 1960s. The fundamentalism born in the 1920s remained a strong cultural force throughout much of that time. Some scholars of the creationist movement mark 1957 as the year that sparked a change in the antievolution battle. In 1957, the Soviet Union successfully launched Sputnik, the first successful man-made satellite. As a scientific achievement, Sputnik obviously had no direct effect on the evolution-creation controversy. It did, however, lead to greater government attention to and support for the sciences.

In 1958, Congress passed the National Defense Education Act, which provided funding for education and sought to advance education in science, mathematics, and modern foreign languages. More importantly, in 1958 the National Science Foundation began funding the Biological Science Curriculum Study (BSCS), an organization that promotes scientific excellence through scientifically sound curricula in public schools. Within a few years, BSCS had sponsored sixteen textbooks that “boldly embraced evolution” and by the late 1960s, nearly half of all children in the United States were using one of the BSCS textbooks in the science classroom.

In the late 1960s, an Arkansas biology teacher found herself in a peculiar situation. Susan Epperson’s Little Rock school district had just adopted a textbook that taught the theory of evolution. This directly violated a Scopes-era law that forbade the teaching of evolution in Arkansas public schools and banned the adoption of any textbook that included the theory of evolution. Epperson had two choices: she could teach from the textbook, therefore violating state criminal law, or not teach from the book.

---

and risk disciplinary action from local school authorities. Epperson attempted to remedy the situation by seeking a declaration from the State Chancery Court that the law was void and an injunction that would prevent the state from enforcing the law.

The Chancery Court ruled in favor of Epperson, stating that the antievolution statute violated the First and Fourteenth Amendment to the United States Constitution. The Court held that the Arkansas law violated the Fourteenth Amendment, which mandates that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," because it effectively restricted Epperson's freedom of speech. It then held that the law violated the First Amendment because it "tends to hinder the quest for knowledge, restrict the freedom to learn, and restrain the freedom to teach."

On appeal, however, the Supreme Court of Arkansas reversed the ruling. The Court ruled that the statute was an exercise of the state's power to determine the curriculum in public schools.

The Supreme Court accepted the case in 1968. In considering Epperson v. Arkansas, the Court applied the secular purpose test to determine the constitutionality of the law. The secular purpose test had been created by the Supreme Court in School District of Abington Township v. Schempp (1963) and gives clarity to the First Amendment's Establishment Clause. According to the test, laws must have a secular purpose and can neither advance nor hinder religion. Justice Tom Clark, delivering the opinion of the Court, wrote: "to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor

---

31 Constitution of the United States of America, Fourteenth Amendment.
inhibits religion.” In applying the secular purpose test, the Court seeks to determine if a law intends to endorse religion. In *Epperson*, the Court found:

The State's undoubted right to prescribe the curriculum for its public schools does not carry with it the right to prohibit...the teaching of a scientific theory or doctrine where that prohibition is based upon reasons that violate the First Amendment.... In the present case, there can be no doubt that Arkansas has sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man.

This decision struck down the Arkansas law because it did not have a secular legislative purpose and because it sought to advance religion. *Epperson v. Arkansas* effectively invalidated all of the remaining Scopes-era antievolution laws. By 1970, Arkansas and Mississippi – the only states that still had antievolution laws when *Epperson* was decided in 1968 – had repealed their antievolution laws.

But this was hardly the end of the antievolution movement, only the beginning of a new phase. The outcome of *Epperson* forced creation advocates to modify their efforts to discredit Darwinism. Up to that time, creationists had been wary of the university-trained scientists who had always been among their ranks. These individuals sought to incorporate creationism into mainstream science. However, many strict creationists thought this type of doctrinal modernization endangered biblical creation; *Epperson* changed that thinking entirely. Creationism needed a new face.

During the coming decade many institutions were established that advocated creation science. For instance, in 1970 the Creation-Science Research Center (C-SRC) was established as an organization seeking to “change the manner in which the public schools teach about evolutionary theories” and “relate scientific data to the biblical record.

---

34 Flowers 66.
35 *Epperson v. Arkansas*
of creation and thus promote a biblical Christian world view."  

"Creation science," or "scientific creationism," sought to legitimize creationism in a scientific context. Like the antievolution movement, creation science's roots lie in the religious antievolutionism of the 1920s. In 1923, George McCready Price, a fundamentalist Seventh Day Adventist, published a book called *The New Geology*. His text presents the theory of flood geology, which argues that the Genesis flood formed most of the geographic features on Earth. This flood was also responsible for the abundance of fossil evidence that Darwinists argue supports the theory of evolution. In *The New Geology*, Price clearly states his fundamental assumption: "Of real scientific information regarding [the origin of man]...we know only that God must have created man."  

Following in the footsteps of Price, modern-day creation scientists contend that science itself supports the literally true biblical story of creation. Instead of working to remove evolution from public school curricula, the new front of the antievolution movement proposed state legislation that would require the concurrent presentation of evolution and creation science. In 1981, Arkansas became the first state to adopt a balanced treatment law. Arkansas Legislative Act 590, or the Balanced Treatment for Creation-Science and Evolution-Science Act, stated that "public schools within this State shall give balanced treatment to creation-science and to evolution-science." Act 590 also gave specific definition to creation science, stating:

'Creation-science' includes the scientific evidences and related inferences that indicate: (1) Sudden creation of the universe, energy and life from nothing, (2) The

---

40 Flowers 94.  
41 Arkansas Legislative Act 590 (1981).
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 men 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.\footnote{ibid.}

Act 590 sought to present the antievolution agenda in public schools while staying within
the confines of the law. Within months of the passing of Act 590, sixteen other states
\footnote{b) "Evolution-science" means the scientific evidences for evolution and inferences from those scientific
evidences. Evolution-science includes the scientific evidences and related 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 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.}.

At first glance, Act 590 seemed to conform to the Supreme Court's ruling in
\textit{Epperson}. The language was deliberate and precise. It gave not only the aforementioned
definition of creation science, but also a detailed definition of evolution science.\footnote{ibid.} The
Act stipulated that there should be no religious instruction accompanying the teaching of
creation science and that only scientific evidence could be used as a foundation for
creation science. The legislature also wrote that there should be no discrimination against
students who studied and understood both theories and believed – for religious or
scientific reasons – in one or the other. The intent of the Act, wrote the legislature, was
to protect academic freedoms and guarantee that First Amendment rights were not being
violated by only teaching evolution. Finally, the Act included the statement: "This
legislature does not have the purpose of causing instruction in religious concepts or
making an establishment of religion." These statements of intent sought to clarify the constitutional justification for Act 590.

Several concerned citizens sued the Arkansas Board of Education in hopes of having Act 590 judged unconstitutional as a violation of the Establishment Clause. Even though the Arkansas legislature had painstakingly sought to substantiate the constitutionality of the Act, a U.S. District Court in McLean v. Arkansas Board of Education (1982) employed an extension of the secular purpose test to assess its constitutionality. The Lemon test, developed by the U.S. Supreme Court in Lemon v. Kurtzman (1973), asks three questions to determine if a law violates the Establishment Clause:

1) Does the statute have a religious legislative purpose?
2) Do the principal or primary effects of the statute advance or hinder religion?
3) Does the statute foster an excessive entanglement with religion?

If a statute brings an answer of 'yes' to any of these question, then that statute violates the Establishment Clause.

Judge William R. Overton found that Act 590 violated all three elements of the Lemon test. First, Overton painstakingly traced the origins of Act 590 to antievolution activist Wendell Bird. A graduate of Yale Law School, Bird published extensively on constitutional justifications for balanced treatment laws. After passing the bar, Bird joined the Institute for Creation Research (ICR) as a legal adviser and staff attorney. At ICR, Bird worked to update ICR's balanced treatment resolution. In 1979, ICR distributed Bird's resolution to thousands of antievolution activists and educators across

---

44 Arkansas Legislature Act 590.
45 Larson 149
the nation. The resolution clearly stated, “Please note that this is a suggested resolution, to be adopted by boards of education, not legislation proposed for enactment as law.”

While the intent of the IRC disclaimer may have been genuine, antievolution activists used the resolution to coerce reform by legal means. Paul Ellwanger, an activist affiliated with the pro-creationism organization Citizens for Fairness in Education, used the resolution to draft balanced treatment legislation that he then distributed to state legislatures. It was a copy of Ellwanger’s legislation that appeared before the Arkansas legislature. Overton further discredited Ellwanger, noting that he was “trained in neither law nor science.” By tracing Act 590 to Bird, Ellwanger, and other creationist activist and groups, Overton found that Act 590 had an express religious legislative purpose: the reflection of the concerned groups’ religious beliefs in school curricula.

Second, Overton found that aspects of creation science (as described in Act 590) directly paralleled the biblical story of creation. He wrote that creation science is “not merely similar to the literal interpretation of Genesis; they are identical and parallel to no other story of creation.” This, argued Overton, advanced not only religion, but specifically Christianity. Finally, Overton showed that Act 590 would bring the state into excessive entanglement with religion. The Act would require excessive monitoring of textbooks and teachers “in order to uphold the Act’s prohibition against religious instruction.” Overton ruled that despite the language of Act 590, creation science was

---

47 Larson 150.
48 Larson 150.
49 "McLean v. Arkansas Board of Education." ibid.
50 ibid.
based on religious principles, thus confirming the unconstitutional foundations of Act 590.

Overton acknowledged that the language of Act 590 might reflect public opinion that creationism should be taught in public schools. However, he cautioned:

> The application and content of First Amendment principles are not determined by public opinion polls or by a majority vote. Whether the proponents of Act 590 constitute the majority or the minority is quite irrelevant under a constitutional system of government. No group, no matter how large or small, may use the organs of government, of which the public schools are the most conspicuous and influential, to foist its religious beliefs on others.\(^5\)

Creationists could have appealed Overton's ruling before the Supreme Court, but they chose instead to focus their efforts on another balanced treatment act in Louisiana, which they felt would fare better before the U.S. Supreme Court.\(^5\)

Louisiana's Creationism Act (1981) used language similar to Act 590, but was unique in several aspects. First, and most importantly, it avoided the use of religious doctrine in its definition of creation science. An early draft of the Act had included a definition similar to Arkansas Act 590, but it was deleted the day after the complaint in McLean was filed.\(^5\) Second, the Creationism Act gave only brief definitions of creation science and evolution science:

> 'Creation-science' means the scientific evidences for creation and inferences from those scientific evidences.

> 'Evolution-science' means the scientific evidences for evolution and inferences from those evidences.\(^5\)

Third, the Creationism Act demonstrated an entirely different legislative purpose, expressly stating that the act was established "for the purpose of protecting academic

---

\(^5\) ibid.

\(^5\) Flowers 94.


\(^5\) Pre-trial brief of creationist lawyer Wendell Bird. Quoted in Wisebroad.
freedom.\textsuperscript{55} Finally, the enactment of the Creationism Act was not characterized by the "hasty adoption of the proposal in the exact form supplied by religiously motivated private citizens."\textsuperscript{56} Creationists believed these differences would make the Creationism Act constitutionally viable.

The Creationism Act was brought before a United States District Court in 
*Aguillard v. Treen (1985)*. In a summary judgment, Judge Adrian Duplantier overturned the Creationism Act, not on the basis of the Establishment Clause, but on the premise that the right to determine school curricula rests solely in the hands of the state education board.\textsuperscript{57} On appeal, the Louisiana Supreme Court rejected Duplantier's limitation of the "plenary power of the people of a state exercised through the legislature" and stressed that his ruling lacked any consideration of the conflict between creation science and evolution science.\textsuperscript{58} This returned the case to the District Court.

Again, Duplantier ruled in summary judgment, but this time on the grounds that the Creationism Law expressly promoted religious doctrine, thus violating the Establishment Clause. Duplantier ruled in summary because he felt "there is no doubt that the defendants could produce a great deal of evidence on collateral issues.... We are convinced that whatever that evidence would be, it could not affect the outcome."\textsuperscript{59} Louisiana appealed the decision and the case became *Edwards v. Aguillard (1987)* before the U.S. Court of Appeals, Fifth Circuit where the ruling was again upheld. The plaintiffs then appealed the decision to the U.S. Supreme Court.

By a seven-two majority, the Supreme Court upheld the lower court's ruling, voiding the Creationism Act because it served no secular purpose and thus violated the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{55} Louisiana Creationism Act.
\item \textsuperscript{56} Larson 164.
\item \textsuperscript{57} Larson 165.
\end{itemize}
\end{footnotesize}
Establishment Clause. In writing the majority opinion, Justice William Brennan stressed that "[w]hile the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham."\textsuperscript{60} The Court found that the Louisiana legislature's written intent of "protecting academic freedom" was, in reality, a sham.

The Court based this opinion on the intent of the man chiefly responsible for the Creationism Act, Louisiana Senator Bill Keith. Brennan wrote that, "It is clear from the legislative history that the purpose of the legislative sponsor, Senator Bill Keith, was to narrow the science curriculum."\textsuperscript{61} In a hearing before the Louisiana legislature, Keith had admitted that he would rather that neither creation science nor evolution science were taught in public schools.\textsuperscript{62} The Court felt that, "Such a ban on teaching does not promote - indeed, it undermines - the provision of a comprehensive scientific education."\textsuperscript{63} Furthermore, the Court cited the testimony of Keith's chief witness before legislative hearings. At these hearings, Edward Boudreaux testified that, "the theory of creation science included belief in the existence of a supernatural creator."\textsuperscript{64} Finally, the Court felt that "the term 'creation science,' as contemplated by the legislature that adopted this Act, embodies the religious belief that a supernatural creator was responsible for the creation of humankind."\textsuperscript{65}

\textsuperscript{58} Aguillard v. Treen.
\textsuperscript{59} Aguillard v. Treen.
\textsuperscript{60} Edwards v. Aguillard
\textsuperscript{61} ibid.
\textsuperscript{62} ibid.
\textsuperscript{63} ibid.
\textsuperscript{64} ibid.
\textsuperscript{65} ibid.
Where did court doctrine stand at the conclusion of Edwards v. Aguillard? The Supreme Court believed that balanced treatment acts violated the secular-purpose part of the Lemon test.

The Creationism Act is designed either to promote the theory of creation science which embodies a particular religious tenet by requiring that creation science be taught whenever evolution is taught or to prohibit the teaching of a scientific theory disfavored by certain religious sects by forbidding the teaching of evolution when creation science is not also taught. The Establishment Clause, however, "forbids alike the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular dogma." Because the primary purpose of the Creationism Act is to advance a particular religious belief, the Act endorses religion in violation of the First Amendment.66

The Court’s ruling in Epperson v. Arkansas prohibited the banning of evolution from public school curricula; the Court’s ruling in Edwards v. Aguillard meant that curricula could not require the teaching of both creationism and evolution. Both cases were the result of the pro-creationism campaign to reflect fundamentalist ideology in public school curricula. Since the Supreme Court now interpreted both positions to violate the Establishment Clause, creationists needed to adopt a new front in their battle against Darwinism. That new front would open victoriously in the late summer of 1999.

66 ibid.
III. Evolution: the Vanquished or the Neglected?

August 1999 did not mark the rebirth of the evolution debate in America. Even following the Supreme Court's decision in Edwards v. Aguillard, creationists enjoyed near success in numerous states. In 1995, the school board of Merrimack, New Hampshire considered a proposal to adopt textbooks that stressed that both evolution and creationism were assumptions and to begin using the Bible as a textbook in science classes. In 1996, the Tennessee legislature considered a bill that would fire any teacher who taught evolution as a fact.

The Kansas State Board of Education's approval of state science standards with virtually no reference to macroevolution was one of the major political victories for creationists since their setback in Edwards v. Aguillard. The Board's decision came as the culmination of a conflict that had lasted nearly two years. The political explanations for the revisions to the Kansas standards can be traced back even further.

The authority of the Kansas State Board of Education comes from the Constitution of the State of Kansas, Article 6:

...the state board of education... shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

Overall, the Kansas State Board of Education is "charged with the general supervision of public education and other educational interests in the state." The ten Board members hold four year terms, with half of the Board up for election every two years; there are no

---

67 Pennock, Robert T. Tower of Babel: The Evidence Against the New Creationism. Cambridge: The MIT Press, 1999. 344. [In the 1996 school board election, conservatives lost control of the school board and in 1997 the remaining two conservatives members of the board lost their seats. Moderates were able to gain control due to increased public awareness of policy issues and increased voter turnout.]

68 ibid. [In 1996 the Senate voted against the adoption of this bill (effectively killing the bill) even thought it has been approved by both the Senate and House Education Committees.]

69 Constitution of the State of Kansas, Article 6.
The Board holds monthly meetings in Topeka, but two meetings per year are held in one of the ten districts on a rotating basis.

The Board is responsible for setting education standards and testing assessments in mathematics, science, social studies, and the communicative arts (reading and writing). The Board also licenses and sets training standards for teachers. Furthermore, the Board holds hiring and firing power over the Commissioner of Education, Dr. Andy Tompkins, who heads the State Department of Education. The Board does not work directly with local boards of education, but local boards do base their curricula on the education standards set by the State Board.

The Board periodically reviews and revises state education standards. In 1995, the National Academy of Sciences (NAS) released new national science education standards and simultaneously called for “dramatic changes” in the methods and materials used to teach science in public grade schools and high schools. The standards stressed that “evolution by natural selection is a broad, unifying theoretical framework in biology” and warned schools that “biological evolution cannot be eliminated from the life science standards.”

In response to the NAS publication, the Kansas Board of Education delegated the task of revising the Kansas science standards to a committee of 27 science educators and academics, instructing them to bring the Kansas standards in line with the NAS standards. Each Board member recommended one appointee for the committee, but

---

71 Subsequent information in this and the following paragraphs from: Interview with Sue Gamble. (Member, Kansas State Board of Education). 15 Jan. 2001. Shawnee Mission, Kansas.
Commissioner Tompkins formally appointed and directed the committee; Tompkins approved each Board member's recommendation.\textsuperscript{74}

The committee met nine times and members of the committee were present at every Board meeting.\textsuperscript{75} Discussion at the meetings often centered on the concerns that some Board members had about teaching macroevolution as scientific dogma. As Board member Steve Abrams explained, "I had a substantial number of doubts about [evolution]... and initially thought they would take our concerns into consideration."\textsuperscript{76} Nevertheless, in October 1998, the writing committee submitted standards based directly on the National Science Education Standards and the 1992 and 1995 Kansas standards that included two pages on the theory of evolutionary biology.\textsuperscript{77}

It was clear that the Board would not reach a consensus on the committee's proposal. According to Democratic Board member Dr. Bill Wagnon, "everybody understood from the comments that were being made that this issue was a highly controversial issue."\textsuperscript{78} Since the spring of 1997, the Board had been experiencing a series of deadlocked votes. There was a clear division between the conservatives and moderates based on "different views of education and different ways of approaching the education system."\textsuperscript{79} As Wagnon explains, "their side... was based on an assumption that our schools were bad and failing and our assumption was that our schools were solid and improving." These ideological differences resurfaced when the Board considered the

\textsuperscript{74} Interview with Dr. Steve Abrams. (Member, Kansas State Board of Education). 19 Jan. 2001. Arkansas City, Kansas.
\textsuperscript{75} ibid.
\textsuperscript{76} ibid.
\textsuperscript{77} Benen. -and- Kansas State Board of Education Meeting Minutes. 11 August 1999.
\textsuperscript{78} Interview with Dr. Bill Wagnon. (Member, Kansas State Board of Education). 17 Jan. 2001. Topeka, Kansas.
\textsuperscript{79} ibid.
standards submitted to them by the writing committee; the public and the media assumed that the Board would reach deadlock on the science standards.80

Abrams, a doctor of veterinary medicine and active participant in the religious right-wing of state GOP politics, led the opposition to the proposed standards. Abrams insisted that it was “not good science to teach evolution as fact.”81 Because of the deadlock, then Board Chairperson Linda Holloway appointed a three-member subcommittee to meet with a subcommittee of the writing committee.82 The Board subcommittee consisted of Abrams, conservative Scott Hill, and Harold Voth.

Voth was identified as the moderate on the subcommittee who would probably support the standards written by the science writing committee. However, Voth explains that Abrams, Hill, and he were “all on the side that was concerned about the teaching of evolution as a fact.”83 The objective of the meetings between the two subcommittees was to find some common ground between those who stood on opposite sides of the issue and develop a set of standards that would be “as amiable as possible.”84

But according to Abrams, these meetings produced no substantive dialogue between the two sides. He explains that the science writing committee “still believed, and left in the draft...the statement that ‘evolution by natural selection is a broad, unifying theoretical framework in biology.’”85 Abrams and the other conservative members of the Board strongly disagreed with that statement.

82 Abrams, interview.
83 Voth, interview.
84 Abrams, interview.
85 Ibid.
Sensing that their meetings with the writing subcommittee were not leading to compromise, Abrams, Hill, and Voth turned to outside experts for assistance. One of the nearly twenty people that assisted the subcommittee was Tom Willis, president of the Creation Science Association for Mid-America (CSAMA). CSAMA identifies the following as its objectives:

1) To educate people regarding the vast amount of scientific evidence that supports Biblical Creation as the true account of origins, and that the General Theory of Evolution is not only a false notion of history, it is an extremely dangerous one, the fruits of which have destroyed entire nations including the wanton slaughter of at least 100 million people in this century.

2) To inspire faith in unbelievers and encourage the faith of believers, in the Bible as the Word of God, and therefore the only trustworthy source of information regarding the meaning, purpose, destiny and conduct of human lives.

3) To show that Biblical Creation, because it is true, is the only "scientific" explanation of origins, and therefore is the only account of origins that can possibly be useful to science.

Over the summer, Abrams, Hill, and Voth worked through several drafts of the new standards. Each varied in differing degrees from the document proposed by the 27-member committee of scientists and educators; all contained no reference to macroevolution. Abrams’s final draft made fifty significant changes from the writing committee’s proposed standards.86

As public awareness of the pending vote on the standards grew, many individuals addressed the Board, most asking that Abrams’s standards be rejected. The harshest blow to the credibility of the standards came one week before the final vote when the presidents and chancellors of all six state universities in Kansas expressed strong disapproval of Abrams’s proposal. In a letter to the Board, they argued that the standards would “set Kansas back a century and give hard-to-find science teachers no choice but to pursue other career fields or assignments outside of Kansas.”87

86 Kansas State Board of Education Meeting Minutes. 11 August 1999.
87 Benen 4.
Despite the lobbying efforts of scientists, academics, and concerned citizens, the advocates of creationism eventually prevailed. On August 11, Voth broke the perceived 5-5 deadlock by voting in favor of the standards he had helped to write. Voth defended his position by stating that most of the people who had contacted him favored the evolution-free standards; many individuals even threatened to withdraw their children from the public schools if evolution was kept in the standards.\(^8\) However, Voth is careful to clarify, “I don’t think our version moves the standards toward creationism.”\(^9\) Additionally, he hoped that his vote would help the Board move on to other matters.\(^10\)

The 1999 standards did not actually replace evolution with creationism since the standards did not directly mention the concept of creationism. While earlier drafts of the subcommittee’s standards did contain “the idea that the design and complexity of the cosmos requires an intelligent designer,” the subcommittee removed that language to distance the standards from creationism and to avoid the possibility of a First Amendment challenge.\(^11\) Nevertheless, the changes in the Kansas standards were unlike any seen before in other states. Molleen Matsumura of the National Center for Science Education, expressed fear that “the number of changes made, the thoroughness with which references to evolution are deleted or definitions changed, [are] more extensive than what we’ve seen before.”\(^12\)

Most significantly, the theory of macroevolution was absent from the standards. Macroevolution is the process by which one species evolves into another, such as the

\(^8\) Voth, interview.
\(^10\) Voth, interview.
\(^12\) Belluck, Pam. “Kansas Votes to Delete Evolution From State’s Science Curriculum”
evolution of man from the apes. References to microevolution, or the process of genetic adaptations or natural evolution within a species, were kept in the standards. The theory of the big bang was removed, as were suggestions of geological timescales such as radioisotope dating. Some critics felt that the standards indirectly supported young-earth theories by citing events such as the eruption of Mount St. Helens as an example of how geological changes can occur rapidly.

The omission of macroevolution was of considerable concern to scientists because the theory of evolution is arguably meaningless without it. This omission meant that macroevolution would not be included in the statewide tests required of all Kansas students; teachers were still free to teach macroevolution if they so wished. It is impossible to know if teachers actually would have stopped teaching macroevolution. However, there are scenarios that suggest this may have occurred. Teachers in many schools are encouraged to follow state standards to ensure that their students perform well on the state standardized tests. Kansas bases a school’s accreditation on students’ performance on state assessment tests. Therefore, some local school boards might have pressured teachers to strictly adhere to the 1999 standards.

As the debate in Kansas got hotter, critics feared that creationist pressure might become less blatant. As Eugenie Scott, executive director of the National Center for Science Education explains, “teachers get the message... more subtly, that evolution has become a controversial subject in their community and they’ll just quietly stop teaching

---


94 Holden.


96 Benen.
it, and evolution will sink out of the curriculum.” Sue Gamble, who was elected to the
Board in 2000, paints the following picture:

You’re a biology teacher, head of the department, a Sunday school teacher, and
your husband is a prominent businessman in your community. Several people
approach you, saying, ‘Evolution goes against my religion. We won’t give your
husband our business if you teach it.’

That type of pressure would be difficult for many teachers to resist.

Reaction from across the U.S. to the Board’s decision came swiftly. The
overwhelming majority of articles, interviews, and political cartoons lambasted the
Board’s decision. An editorial in the New York Times proclaimed that “deep sadness is
the most sensible response to this week’s decision by the Kansas Board of Education to
downgrade the teaching of evolution in the state’s public schools... the real losers here
will be the very schoolchildren the board members thought they were protecting.”

Furthermore, the Board suffered an embarrassing blow in September 1999, when three
national science groups – the National Research Council, the National Science Teachers
Association, and the American Association for the Advancement of Science – announced
they would not permit the use of their copyrighted material upon which the Kansas
standards were based. The groups felt that the new science standards did not “embrace
the vision and content of the national documents” and that “[b]y deeming that only
certain aspects of the theory of evolution should be taught, the State Board of Education
adopted a position that is contrary to modern science.” On December 7, 1999, the

97 Lynn, Leon. “What’s a Teacher to Do? An interview with Scientist Eugenie Scott.” Rethinking Schools.
98 Gamble, interview.
100 “Joint Statement from the National Research Council, American Association for the Advancement of
Science, and the National Science Teachers Association Regarding the Kansas Science Education
Standards.”
Board sought to avoid copyright liability by adopting a revised version of the standards that contained no substantive changes from the August standards.

Reaction within Kansas was equally critical. John Staver, director of the Center for Science Education at Kansas State University and co-chair of the 27-member writing committee described the Board's decision as a "travesty to science education" and added, "Kansas just embarrassed itself on the national stage." He led the movement to have the names of the science educators on the original committee removed from the final standards. Even Kansas's Republican Governor Bill Graves spoke against the new standards, describing them as "a terrible, tragic, embarrassing solution to a problem that did not exist."

The cleavage between the two sides could not be clearer. On one side, scientists, educators, and the media voiced deep dissatisfaction with the 1999 standards. They believed that the standards would ultimately provide students with less information and a second-rate education. Unlike equal-time laws, which the Supreme Court judged unconstitutional in *Edwards v. Aguillard*, the 1999 Kansas standards did not expressly prohibit or encourage the teaching of either evolution or creationism. Thus situations could have arisen where only creationism was taught, because students, under the 1999 standards would never be held responsible for understanding macroevolution on state assessment tests. This was the primary concern of proponents of evolution.

On the other side, fundamentalists and creationists applauded the new standards. They argued that the standards simply empowered local school boards to design curricula that best suited the needs of students in their districts. "They're all out there thinking

---

102 Benen.
we've banned evolution, and we haven't," said then Board Chairperson Linda Holloway in an interview with the *Kansas City Star*. "What we've done is put that decision at the local board."104 Board member Scott Hill felt the same way. He believed the new standards "simply give more latitude to local school districts in deciding what to teach about the origins of life. Most teachers will probably continue to teach evolution."105

Even Abrams agreed, "I have said all along that I thought evolution ought to be taught... I'm saying, let's teach controversy, teach both sides of it. That's what we had in our standards. We simply gave scientific examples that seemed to contradict evolution. Not one of the science teachers I've talked to said they were going to change their curricula to get rid of evolution."106 Henry Morris, president of the Institute for Creation Research has said that "what the Kansas school board has done is a strong step forward for producing good students, good thinkers, and good scientists."107

Critics of the 1999 standards feared there would be local and national implications to the Kansas standards. First, they feared that the approval of macroevolution-free standards in Kansas would create a climate where other states might perceive that it was acceptable to adopt standards similar to those in Kansas. While the Kansas standards were certainly more extreme than those in other states, there are several states whose standards verge upon the exclusion of evolution that exists in Kansas; these states would be primary targets for the introduction of similar standards.

In January 2000, the Thomas B. Fordham Foundation, under the direction of Dr. Lawrence Lerner, emeritus professor of physics and astronomy at California State

---

102 Holden.
104 Davis.
105 Abrams, interview.
University, released its most recent appraisal of state science standards. The study designates letter grades (A through F) based on a state’s presentation of evolution as an organizing principle for the historical sciences; the study then characterizes the various ways in which each state has responded to anti-evolution pressure. The findings of the Fordham Foundation present a good indication of which states might be likely to adopt standards similar to the Kansas standards. Alabama, Florida, Georgia, Maine, Mississippi, New Hampshire, North Dakota, Ohio, Oklahoma, Tennessee, West Virginia, and Wyoming received a grade of F because they “fail so thoroughly to teach evolution as to render their standards totally useless.” Specifically, “Nine of these states... attempt to teach a little something about evolution but miss the mark completely. Five sedulously avoid or (in one case) carefully conceal the E-word, at least in the context of biology.... Most employ the misleading euphemism ‘change over time.’”

Kansas received an F- for its standards.

Second, critics feared that textbook publishers would remove evolution from their textbooks to satisfy market demand. This action would have then inadvertently affected other states, since textbook publishers often base their textbooks on the standards of larger states.

Supporters of the 1999 Kansas standards refute this perception of the situation. Board member Scott Hill has emphatically asked, “Where are you going to get a textbook that doesn’t have evolution in it?” Nevertheless, the publisher of the new textbook on Kansas’ history decided to remove a chapter on the state’s prehistory, which focused on

---

109 Lerner.
110 Lerner.
111 Carroll, Diane. “Evolution Decision Seen as Victory for Conservatives.”
150 million-year-old fossils and a prehistoric inland sea, subject matter that conflicts with the young-earth theory that creation scientists embrace.\textsuperscript{112}

Finally, there were critics who suggested that the 1999 Kansas standards would adversely affect the students whom supporters of the standards adamantly felt they were protecting. Ignorant of the fundamental theory of the biological sciences, students in Kansas might have found it difficult to compete with more informed students from other states. John Rennie, editor of Scientific America has urged college admissions officers to carefully consider the qualifications of students from Kansas, thus sending a clear message of disapproval to the Board.\textsuperscript{113}

Some have suggested that the decision might have negatively affected the Kansas economy. The Oregon firm Broadcast Software International (BSI) withdrew consideration of Topeka as a possible site for a new regional technical center. According to BSI president Ron Burley, “The issue for us… is whether or not we can count on finding a good selection of well-educated future employees in the area…. Following today’s decision, that is in doubt.”\textsuperscript{114}

These, then, are the simple facts about the 1999 Kansas standards. An independent committee of scientists and educators wrote scientifically sound science standards. These standards were then rewritten by members of the Board to remove any reference to macroevolution; the Kansas Board of Education adopted the revised standards. Reaction to the standards varied along clear lines. Supporters felt the 1999 standards were more consistent with their religious beliefs (though Board members deny this is why they favored the standards) and were sound science. Those who disapproved


\textsuperscript{113} Behe.
of the standards maintained that they did support a religious position and were bad science. With this factual foundation, we can begin to consider what tactics and strategies creationists have used to manipulate the Kansas standards and whether they have successfully girded for a potential constitutional challenge.

IV. Of Manipulation and Separation: How creationists have sought to place the Constitution at the right hand of God.

Since the early part of the twentieth century, fundamentalist attempts to manipulate education laws and standards have evolved to reflect and counter the current interpretation of the Establishment Clause. Following *Epperson v. Arkansas* (1968), *McLean v. Arkansas Board of Education* (1981), and *Edwards v. Aguillard* (1987), creationists necessarily altered their methods and tactics. Furthermore, they became more scientific in an attempt to survive the Supreme Court’s strict separationism.

Until the 1960s, three states had laws that forbade the teaching of evolution. Most of these laws were written during the 1920s and reflected the scriptural literalism that had become an accepted critique of modernism. Creationists could be content in the knowledge that their beliefs were being taught in many public schools until 1968, the year the Supreme Court heard *Epperson v. Arkansas*. In its judgment in *Epperson v. Arkansas*, the Court ruled that a Scopes-era Arkansas law that forbade the teaching of evolution was unconstitutional because it failed the secular purpose test by endorsing religion.

Once *Epperson v. Arkansas* established that laws that forbade the teaching of evolution were unconstitutional, creationists needed a new tactic. In 1981, the Arkansas legislature adopted Act 590, a balanced treatment law that mandated equal-time presentation of evolution and creationism. The concept of equal-time developed at the same time that creation science was taking form. Creationists believed that by presenting creationism in scientific terms and simultaneously teaching evolution, they could teach creationism in public schools while not violating the secular purpose test. Creationists

---

115 Bailey
assumed the courts would interpret Act 590 as a law that neither advanced nor hindered
religion.

They were wrong. The Arkansas federal district court considering *McLean v. Arkansas Board of Education* used not only the secular purpose test, but also the Lemon test to decide the constitutionality of Act 590. Judge William D. Overton ruled that Act 590 violated all three prongs of the Lemon test. He found that Act 590 had a religious legislative purpose and effects that would advance religion and foster excessive entanglement with religion.

In 1987, the Supreme Court considered a law similar to Act 590. Louisiana’s Creationism Act differed from Act 590 in that it avoided the use of religious doctrine in its definition of creation science, gave vaguer definitions of evolution and creationism, and expressly stated that through the Creationism Act the Louisiana legislature intended to protect academic freedom. The Creationism Act attempted to constitutionalize balanced treatment laws by making the ties between the Creationism Act and religion less obvious: this was the latest creationist method of avoiding constitutional violation.

As Overton had done in 1981, the Supreme Court in *Edwards v. Aguillard* applied the Lemon test to determine the constitutionality of the Creationism Act. The Court found that the Creationism Act did not serve a secular purpose and that the Louisiana legislature’s written intent of protecting academic freedoms was a façade for the introduction of a religiously biased law. The Court was of the opinion that the author of the Creationism Act intended to narrow Louisiana’s science curriculum.

The evolution of the creationist methods is blatant. With each court ruling, creationists have gained a clearer understanding of their constraints, of the language and obvious purposes they must avoid. So they’ve rolled with each punch, modifying their
tactics to accommodate the current interpretation of the Establishment Clause. There are three principal questions that a study of these strategies should consider: What groups seek to manipulate school curricula? What are the motives of these groups? What strategies and tactics have these groups employed?

Who are the creationists?

There are various terms that loosely identify the individuals and groups who favor the teaching of creationism in America's public schools: the religious right, fundamentalists, Christian fundamentalists, creationists, creation scientists, social conservatives, etc. However, these labels are in the end only generalizations. Not every person on the religious right believes in strict biblical creationism. Conversely, not every creationist is a fundamentalist. However, one can generalize that "overwhelmingly, American creationists are conservative Protestants who reject evolution on religious grounds." In *Creationist Movement in Modern America*, Raymond Eve and Francis Harrold support this suggestion with several statistical justifications:

First, opinion poll data shows that similar percentages of people both reject the theory of evolution and accept the Genesis creation account. Second, nearly all organizations and individual activists publicly opposing evolution in this country frankly acknowledge the religious nature of their motivation. Finally, other data link antievolutionism with conservative Protestant religious orientations.

Furthermore, these individuals and groups position themselves not just on the right of the political spectrum, but as Kansas State Treasurer (and former House Speaker) Tim Shallenburger explains, "so far out there, they're not really Republicans anymore." A conservative Republican himself, Shallenburger believes it is a "burning religious desire" that motivates these individuals.

---

117 Eve 35.
In fact, Eve and Harrold have found that degree of religiosity is the most unifying characteristic of creationists. For self-identified fundamentalists, rejection of evolution is not related to education, income, or other social indicators, but to how religious they are. Conversely, for most people, the more educated they are, the more likely they are to support evolution.

Motivations

Religious fervor, not merely religious belief, is the principal factor inspiring the creationist crusade against evolution. Fundamentalist beliefs have not significantly changed since the 1920s. Board member Bill Wagnon believes this 1920s-style motivation was apparent in Kansas:

There is a very clear social agenda, a clear cultural war agenda that is driving them. It doesn’t have anything to do with science, it has to do with their dissatisfaction with the current state of modern society, the degradation of morals and all the other homophobic, anti-feminist views that are a part of that whole movement. The retreat into the absolutism and certitude of biblical inerrancy has emerged out of this debate.

As Bryan fought against Darwinism, modernism, and secular humanism, so, too, do modern creationists fight against the evils that undermine the Genesis account of creation and, in a larger sense, the fundamentalist world-view.

Creationists want their religious perspectives reflected in public school curricula for two reasons. First, creationist parents want their children taught science that affirms their religious beliefs. Creationists believe the First Amendment speaks directly to their cause: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....” Former conservative Board member Linda Holloway makes this point clear:

---

119 Eve 36.
120 ibid.
121 Wagnon, interview.
Every religion has a creation story. If we're supposed to be neutral, then this [the standards developed by the science writing committee] is not neutral because this supports the creation story of evolution, which supports atheism, agnosticism, nature worship, and new age thinking.122

Parents who believe in creationism feel the free exercise clause ought to protect their children from learning a theory (evolution) that undermines their religion.123

Second, the fundamentalist interpretation of evangelism motivates creationists to attack evolution. As Eve and Harrold explain, "to most fundamentalists, Jews, Catholics, and liberal Protestants are doomed to hell no matter how sincere they are in their religious commitments, unless they change their ways."124 Teaching creationism in America's public schools, or at least removing evolution from curricula is in effect a massive effort to save the souls of the self-condemned. Not simply believing, but also acting aggressively in defense of their beliefs, is fundamentalist dogma.

The creationist struggle has a conservative political dimension as well. The new Kansas standards were also celebrated as a victory for local control over national standards.125 Board member Abrams claims that the 1999 standards were specifically "aimed at increasing local control," which has been "the heart of the issue all along."126

The federal push for standards-based education reform can be traced back to America 2000, a George H. W. Bush administration program that emphasized state flexibility under increased federal funding.127 At its launching in 1989, America 2000 was instigated in Kansas by the then-progressive State Board of Education. The Board implemented measurable state standards that followed the premise of America 2000:

123 Eve 145.
124 Eve 38.
126 Abrams, interview.
states should replace local school boards in setting public education standards. In the 1996 election, however, the progressives lost control of four seats on the Kansas Board of Education and consequently control of the Board itself. The Board was then split 5-5 on the issue of state v. local control. This victory opened the door for the August 1999 vote on the new standards.

**Strategies and Tactics**

Historically there have been five tactics used most often by creationists to manipulate public school science curricula. The tactics have enjoyed varying levels of success. Eve and Harrold argue that creationist strategies attempt to see two creationist beliefs become more widely accepted by the general public: (1) evolution is pernicious; and (2) evolutionists are wrong and creationists are right. Because of their motivations, creationists seek to fully undermine evolution. Even though both creationist tenets seek to counter science itself, none of the creationist strategies target mainstream science. Creationist tactics must target the lay public because mainstream science has demonstrated little interest in compromise.

The following tactics and strategies are presented in order of their general historical development. However, the use of these tactics overlaps to some degree.

1) **Lobby State Legislatures**

State legislatures were the principal target of creationist activism during the 1920s. Between 1921 and 1929, creationist legislation was introduced in thirty-seven state legislatures. The first creationist legislation enacted by a state legislature was

---

127 All information in this paragraph from: Larson and Witham.
128 Eve 72-73.
129 Eve 86.
Tennessee's infamous Butler Act. It is difficult to know the extent of the efforts used by creationists to directly lobby members of the Tennessee legislature. However, creationists did send nearly five hundred pamphlets outlining a speech by William Jennings Bryan to the legislature. Mississippi also passed creationist legislation in 1926 and Arkansas in 1928. These laws focused solely on the banning of evolution. However, after the Supreme Court held in Epperson v. Arkansas that the Arkansas law was an attempt to advance religion, banning evolution was no longer a viable option for the creationist movement.

Epperson v. Arkansas forced creationists to redirect their efforts. In the 1970s, creationists again made state legislatures a target of their lobbying. This time, however, they focused on the equal time argument. Creationists first fought for equal time for religion. In 1973, the Tennessee legislature passed an act that forced biology textbooks to specify that evolution was a theory and not a scientific fact. Furthermore, the Genesis account of creation was to be given equal coverage in biology textbooks. Two years later, the act was challenged before a federal appeals court where it was struck down because it violated the Establishment Clause.

Kentucky was the only state in which an equal time for religion law was successful. In 1976, the Kentucky legislature adopted Senate Bill No. 50, a law that gave teachers the option of teaching the biblical account of creation. The law stipulated that this instruction should only involve direct instruction from the Bible without stressing a particular denominational interpretation. Interestingly, Kentucky had been the first state to defeat antievolution legislation in the 1920s. However, this act passed by an

---


Information in this paragraph from Eve 146-147.
overwhelming majority in both the House and the Senate. Senate Bill No. 50 has never been challenged in court. Historian Edward J. Larson explains, “By neither imposing restrictions on either students or teachers nor challenging the scientific status of evolution, this statute has escaped the legal and political controversies that have dogged all other creationism laws.”

The legislative approach evolved further when creationists sought to present creationism not as a religious doctrine (which would bring down the hammer of the Establishment Clause), but instead as a scientific theory. Both intelligent design and creation science are a result of this tactic. *Equal time for creation science* seeks the cloak of academic freedom with the notion that complete education should include the presentation of all perspectives. The individual chiefly responsible for promoting this tactic is attorney Wendell Bird. He believes that “scientific creationism is science, not religion, and therefore is not subject to challenge on Establishment Clause grounds.” Furthermore, Bird believes that not teaching creation science violates both religion clauses of the First Amendment. It violates the Establishment Clause because teaching only evolution “causes preference to religious Liberalism, Humanism, and other religious faiths.” Teaching only evolution violates the free exercise clause by stating or implying disapproval of a particular religious belief. Clearly, the courts in *McLean v. Arkansas Board of Education* and *Edwards v. Aguillard* have not agreed with Bird’s perspective.

---

133 Larson, *Trial and Error: The American Controversy Over Creation and Evolution*, 144.
135 Eve 147.
136 Eve 148.
137 Bird, Wendell. 1979 Pre Trial Brief. From Eve 148.
Ultimately, the drawback to using state legislators as a tool for the manipulation of public school science curricula has not been in getting legislative support for antievolution or equal-time laws, but in overcoming the substantive hurdle of designing language that would survive in court.

2) Seeking Constitutional Protection from Courts

Many creationists agree with Bird's assertion that their constitutional rights are violated when schools teach only evolution. There has been one noteworthy occasion when individuals sought legal action in an attempt to change public school science curricula. In 1970, Rita Wright *et al.* sued the Houston public schools (*Wright v. Houston Independent School District*) in an attempt to enjoin them "from teaching the theory of evolution as part of the District's academic curriculum and from adopting textbooks which present that theory without critical analysis and to the exclusion of other theories regarding the origins of man." Writing the opinion of the Court, Judge Woodrow Seals summarized Wright's position:

"Plaintiffs' principal contention is that the teaching of the theory of evolution in the Houston Independent School District... constitutes an 'establishment of religion'... The State, by implicitly rejecting a central tenet of Plaintiffs' religion, is holding that religion up to contempt, scorn, and ridicule, and is thus acting to discourage, if not to restrain, Plaintiffs in the free exercise of their religion." 138

Wright believed that the Houston schools were violating both the free exercise and the Establishment Clauses of the First Amendment.

The U.S. District Court in Houston ultimately dismissed the case because the plaintiffs had failed to present a claim upon which relief could be granted. However, Seals did address the plaintiffs' complaints. He believed the teaching of evolution did not amount to establishing a religion. In his ruling, Seals described the plaintiffs

association of evolution and religion as "too tenuous a thread on which to base a First Amendment complaint." Furthermore, by applying the secular purpose test, Seals found that the Houston curriculum served solely a secular purpose and described the teaching of evolution as being "peripheral to the matter of religion."

Seals also believed that the teaching of evolution did not prevent the plaintiffs from freely exercising their religion. He held that "there has been no suggestion that Plaintiffs, or any other students, have been denied the opportunity to challenge their teachers’ presentation of the Darwinian theory."

3) Manipulation of State Boards of Education

The rulings in McLean v. Arkansas Board of Education and Edwards v. Aguillard meant that creationists could no longer achieve their goals by pressuring legislatures to pass laws requiring the equal presentation of evolution and creationism. So they turned to a third tactic that played out successfully in the summer of 1999. Creationists lobbied the Kansas Board of Education to develop standards that included neither evolution nor creationism. The strategy was clear: "Even if creationism is not taught as a classroom subject, at least it is not disadvantaged by the regular presentation of evolutionary theory."

Boards of education are an inviting target for creationists seeking to insert their beliefs into public school curricula. Board elections are rarely publicized; a fact exploited in Kansas. Consider the following data.

---

139 ibid.
140 ibid.
141 ibid.
142 ibid.
143 ibid.
144 Davis, Derek H. "Kansas Versus Darwin: Examining the History and Future of the Creationism-Evolution Controversy in American Public Schools."
[2000 statistics are based on a projected Voting Age Population.]
<table>
<thead>
<tr>
<th></th>
<th>1996 VAP turnout</th>
<th>1998 VAP turnout</th>
<th>2000 VAP turnout</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Election</td>
<td>23.67%</td>
<td>16.67%</td>
<td>24.95%</td>
</tr>
<tr>
<td>Primary Election</td>
<td>9.75%</td>
<td>8.67%</td>
<td>8.61%</td>
</tr>
</tbody>
</table>

These low rates of voter turnout mean that relatively few people can influence who gets into office and subsequently what public policy will be pursued. While the August, 1999 Board decision may not have reflected the opinions of the majority of Kansans, it certainly did represent the opinions the few people who, over the years, had voted for and helped establish a conservative Board of Education.

Furthermore, Kansas is a conservative state where moderate Republicans feel they stand on the left of the political spectrum; Democrats are occasionally compared to communists. The Board currently consists of two Democrats and eight Republicans. Because Kansans typically vote republican, primary elections are of particular importance. In the primaries, voters essentially decide between a conservative and moderate Republican. Whoever wins moves on to challenge a democrat in the general election, where the Republican candidate typically wins. So it is in the primary election where the real issues are decided, and where voter turnout is the lowest.

Historically, religious conservatives themselves often did not vote in elections because they “just didn’t want to lower themselves to be involved in the process.” But then, in the mid-1990s, the religious conservative movement in Kansas had a political awakening. Board member Sue Gamble explains it:

The religious right has become so successful because they prey on the complacency of the American voter. In Kansas, they went out, they organized their membership,

145 VAP refers to the Voting Age Population.
147 Gamble. interview.
they informed their membership as to what it is they wanted them to know and said, 'vote,' and they have.\textsuperscript{148}

Conservatives simply used the time-honored method of diligent campaigning and aggressive voter turnout to gain control of the Board. They started at the local level, gaining control of city councils and local boards of education.\textsuperscript{149} Once a political operation was in place, conservatives took control of the State Board of Education with ease.

This happened in the 1996 election. In January, 1997, three conservatives – Mary Douglas-Brown, Linda Holloway, and Scott Hill – came onto the Board, giving conservatives half the seats. Because science standards were not an issue in the 1996 election, many Kansans did not realize the extent of these individuals' views. Those views became all too apparent in August 1999.

Then, only one vote was needed to swing the 5-5 conservative-moderate deadlock. Essentially, Creationists did not need to lobby the Board, for the ideological structure was already in place for the adoption of the 1999 standards; the five conservatives simply voted what they believed.\textsuperscript{150} Harold Voth was the only member who needed to be folded in. No one will know exactly why he voted for the evolution-free standards, but there are some details that paint a general picture.

First, Voth is admittedly controversy-adverse. Board member Bill Wagnon believes that, "instead of continuing to deadlock [Voth] decided to support the Abrams standards, which he characterized as a compromise." Second, Abrams sent a copy of Refuting Evolution, a creationist critique of the NAS standards written by Australian creationist Dr. Jonathan D. Sarfati, to each member of the Board. While moderate

\textsuperscript{148}\textit{ibid.} \\
\textsuperscript{149}\textit{Tallman, interview} \\
\textsuperscript{150}\textit{ibid.}
members of the Board found the "theology of Refuting Evolution so blatantly obvious, as opposed to scientific," Voth thought the text cast serious doubt on Darwinian evolution. These reservations led Voth to support standards that de-emphasized evolution. Third, Voth represents one of the most conservative districts in Kansas with a considerable Mennonite population. The majority of the people who contacted Voth from his district probably did favor science standards that de-emphasized evolution.

There is a straightforward recipe that creationists follow when lobbying boards of education. In 1979, Wendell Bird wrote Evolution in Public Schools and Creation in Student's Homes: What Creationists Can Do, a document published by the Institute for Creation Research that instructs creationists in the process of lobbying school boards. Bird outlined the procedure as follows:

1) "Learn the Biblical teaching about creation."
2) "Become familiar with the scientific evidence for creation."
3) "Understand the legal implications of public school instruction in only evolution and the implications of instruction also in scientific creationism."
4) Learn "how exclusive instruction in public school classrooms in evolution abridges the Establishment Clause, and how balanced presentation of both scientific creationism and evolution conforms to that clause."
5) "Get copies of scientific creationist texts to show to school authorities."
6) Learn what bodies are responsible for developing educational curricula.
7) "Petition the state (or district) board of education to pass a resolution to teach both the scientific evidence for creation and the scientific evidence for evolution, in any course dealing with origins."

People who diligently followed these guidelines ultimately convinced Voth to adopt the new curriculum. His was the only vote they needed to swing. Because most Americans are not politically involved in education issues, the voices of just a few can be

---

151 Wagnon, interview.
powerful.\textsuperscript{153} And where voter turnout is low and indifference high, motivated minorities have opportunities to win elections and change public policy.

4) \textit{Community Actions – Grassroots Efforts}

Attacked on local communities are perhaps the “most effective campaign against evolution.”\textsuperscript{154} This tactic is linked closely with the manipulation of state boards of education and essentially extends the grassroots efforts used in Kansas. A critical aspect of the Kansas standards was that they did not discuss evolution or creationism. Local school boards could determine what would be taught in their schools. Wendell Bird’s seven-step approach is clearly intended for local use. Creationists must pressure communities; otherwise their efforts at the state board of education level would have been useless because communities could choose to teach evolution.

Even more significant is the concept of friends pressuring friends. When creationists speak against evolution in their homes, churches, and places of work, they create an atmosphere hostile to evolution. Sometimes teachers feel direct pressure not to teach evolution. Eugenie Scott, executive director of the National Center for Science Education believes it is “very likely” that teachers will feel this direct pressure sometime in their career.\textsuperscript{155} Teachers may refrain from teaching evolution simply because it is a controversial topic. When this happens, creationists have ultimately won the battle against evolution.

5) \textit{Maintaining Organization Strength and Momentum through Creationist SMOs}

Creationist social movement organizations (SMOs) have played an important role in the manipulation of public school science standards. Creationist SMOs are similar to

\textsuperscript{153} Eve 155.
\textsuperscript{154} Eve 161
\textsuperscript{155} "What's a Teacher To Do?" \textit{Rethinking Schools}, v12, n2. Winter 1997/1998.
most other special interest groups; they maintain a following and lobby individuals in power to see a realization of their agenda. A few SMOs have already been discussed in previous sections of this thesis. However, it is worth taking at least a brief look at these organizations.

Many creationist organizations stress research as a principal facet of their work. However, most creationist SMOs spend the majority of their time educating the public about their beliefs (a.k.a., evangelism). Because creationist SMOs are responsible for the majority of the above-mentioned manipulatory tactics, development and maintenance of these organizations is itself an important tactic of the creationists. SMOs publish literature written by creation activists and creation scientists. This literature is then distributed by creationist SMOs throughout America. Remember that a creationist SMO sent pro-creationism pamphlets to the Tennessee legislature in 1925. More recently, a creationist SMO distributed formal guidelines on evolution-free curricula to all 305 Kansas school boards. Steve Abrams sent *Refuting Evolution* to fellow members of the Kansas State Board of Education. When read by laypersons, this literature can cast seemingly scientific doubt on evolution.

Furthermore, it was the Institute for Creation Research (ICR) that developed the equal time concept adopted by many schools prior to *McLean v. Arkansas Board of Education* and *Edwards v. Aguillard*. Additionally, the Creation Science Association of Mid-America (CSAMA) played a role in the development of the standards that were adopted in Kansas. These and other organizations have played a significant role in the success of the creationist movement in America.
In Kansas, as elsewhere in America, creationists have emerged as a potent influence on public policy by learning – then climbing – the ropes of politics. Effective political action is the key to policy influence in America, and by enlarging their political skills creationists also enlarge their policy influence.

156 Davis, "Kansas Versus Darwin: Examining the History and Future of the Creationism-Evolution Controversy in American Public Schools."
V. The Looming Constitution

The language of the 1999 Kansas standards left the decision of whether to teach evolution to local school boards. When teachers choose to teach creationism they introduce a topic that reflects the religious values of certain groups in America. However, the First Amendment dictates that public schools cannot teach ideas that further a specific religion. Surveys conducted in the 1970s, 1980s, and early 1990s suggested that many Americans supported the teaching of creationism or, at least, the teaching of both evolution and creationism. However, as demonstrated in the 2000 state school board election in Kansas, when the issue of evolution is brought to the public's attention, creationists have a hard time maintaining support for creationism. In this election, three members who voted for the macroevolution-free standards, Mary Douglas Brown, Linda Holloway, and Steve Abrams, were up for reelection. Both Brown and Holloway mounted unsuccessful campaigns; their opponents simply ran on platforms centered solely on good, solid education standards.

The election gave the moderates control of the Board and on February 14, 2001 the Board voted 7-3 to adopt standards nearly identical to those proposed by the science writing committee a year and a half earlier.

Recent surveys also suggest that few Americans support the teaching of creationism in public schools. In March 2000, People for the American Way Foundation released a comprehensive study of public perception of the creationism-evolution debate and the 1999 Kansas standards. The study produced four "main findings," each of which is worth mentioning in relation to this thesis.

1) The overwhelming majority of Americans (83%) want Evolution taught in public schools. While many Americans also support the in-school discussion of

\[157\text{ Eve 260.}\]
religious explanations of human origins, the majority do not want these religious explanations presented as 'science'. They would like these Creationist ideas to be taught in separate classes other than science (such as Philosophy) or taught as a ‘belief’. Only a minority of the public (fewer than 3 in 10) wants Creationism taught as science in public schools.

2) A substantial majority of Americans (about 7 in 10) believe the scientific theory of evolution is compatible with a belief in God – one does not preclude the other.

3) According to most Americans (66%), the issue of whether or not to teach evolution in the public schools is too important to leave to individual localities to decide. They endorse a national approach.

4) A majority (60%) reject the 1999 Kansas State Board of Education decision to delete evolution from its state science standards. Less than 3 in 10 (28%) support the move.138

These data suggest that few Americans want creationism taught as a science and most Americans want evolution included in science standards.

However, if the Kansas standards had been challenged on constitutional grounds, then it would have been the courts, and not public opinion that would have decided their fate. It is worth considering the constitutionality of the 1999 Kansas standards because one day other states might consider similar standards. The adoption of creation-friendly standards in Kansas was not an anomaly. In the fall of 2000, the Pennsylvania State Board of Education gave preliminary approval of standards which present theories in science classes “that do or do not support the theory of evolution” and allow schools to “analyze the impact of new scientific facts on the theory of evolution.”159 These standards are currently under review by various government agencies.160

Constitutional jurisprudence has shown that religious motivations carry little weight in American courts. In ruling on the 1999 Kansas standards, a court would have necessarily applied the Lemon test. According to the Lemon test, the Kansas curriculum


160 Ibid.
must serve a secular purpose, neither advance nor hinder religion, and not bring the
government into excessive entanglement with religion. If the standards failed any one of
these tenets, they would be found unconstitutional.

In June 2000, the Kansas Law Review (KLR) published an article by Robert
Vaught entitled The Debate over Evolution: A Constitutional Analysis of the Kansas State
Board of Education that thoroughly considered the constitutionality of the Kansas
standards. A summary of the article’s findings paints a helpful picture of the standards’
constitutionality.\textsuperscript{161}

Do the Kansas standards have a secular purpose?

Vaught has identified three secular purposes that the Kansas standards either
expressly purport or members of the Board have identified as their purposes.

Specifically, the standards seek to:

1) promote academic excellence and freedom
2) refrain from offending religious beliefs
3) provide autonomy to local schools and boards of education

These intended purposes seem to pass the secular purpose test. However, as Justice
Brennan determined in Edwards v. Aguillard, "it is required that the statement of such
purpose be sincere and not a sham."\textsuperscript{162}

The degree to which the Kansas standards promoted academic excellence is
debatable. The standards stated they “intended to enhance the preparation of all students
with a focus on excellence and equity."\textsuperscript{163} Yet the Board not only rejected the standards
developed by twenty-seven scientists and academics that were written in the spirit of the
National Science Academy standards, but also rejected the appeals of countless academic

\textsuperscript{161} All constitutional arguments from Vaught, Robert. "The Debate over Evolution: A Constitutional
\textsuperscript{162} Edwards v. Aguillard.
\textsuperscript{163} "Kansas Curricular Standards for Science Education." Kansas State Board of Education. 7 Dec. 1999.
organizations. Furthermore, the new standards promote no more nor less academic freedom than the previous standards. The stated intention of promoting academic excellence and freedom is a sham.

Conservative Board members would argue that the standards refrained from offending religious beliefs. However, “no court has ever held that the purpose of avoiding offending religious beliefs is a sufficient reason to discourage teaching evolution.”164 Wright v. Houston Independent School District specifically addressed this matter. Rita Wright sued the Houston Independent School District because she felt the teaching of evolution violated both the Free Exercise and the Establishment Clauses of the First Amendment. The court rejected her suit, noting that there were simply no legal grounds for her complaint. Former Kansas Board of Education chair Linda Holloway has stated that the standards sought to maintain the status quo – this being a situation where religious beliefs were not offended. Did the 1999 standards really seek to maintain the status quo, or did they seek to take the curriculum to a new level of exclusivity? The latter seems obvious. Thus the stated intention of refraining from offending religious beliefs is a sham.

The new standards did not explicitly state that they sought to give more autonomy to local school districts. However, several members of the Board have stated this was one of their motives for supporting the 1999 standards. A court would consider this motivation a secular purpose. However, this intention is a sham because local school boards had the same autonomy under the 1999 standards as they did under the previous standards. Under the previous standards, schools could choose whether they wanted to teach evolution and/or creation science. The 1999 standards imparted that same choice.

164 Vaught.
Do the Kansas standards either advance or hinder religion?

The 1999 Kansas standards did not explicitly advance or hinder religion. As the standards excluded mention of evolution, so, too, did they exclude mention of religion. This caveat does not exempt the standards from constitutional scrutiny. Members of the Kansas Board of Education have alluded to, if not specifically identified, their intent of advancing religion. Linda Holloway spoke on several occasions of the Board's true intent. Consider her following statements:

- There's no room [in the old standards] to even mention that there might be any kind of divine intervention or to - to even have that thought. 165
- Anyone who believes that the teaching of evolution fits with the belief that God created the world is not thinking clearly. 166

Holloway evidently believed that the 1999 standards allowed more latitude for teachers to teach creation science, a theory that *Epperson v. Arkansas* and *Edwards v. Aguillard* found to advance not only religion, but also Christianity.

Do the Kansas standards bring the government into excessive entanglement with religion?

Vaught contends that the 1999 Kansas standards would probably pass the third element of the Lemon test. Vaught states that "it seems unlikely the Board's decision could be characterized as an excessive entanglement of religion and government under Lemon's third prong." 167 Nevertheless, Vaught has not considered a comprehensive review of constitutional jurisprudence on this issue. Such a review suggests that a court might find that the 1999 Kansas standards did violate Lemon's third element. The point may be moot, since the standards would need to violate only one of the three prongs to be found unconstitutional, but the third prong is worth considering fully.

---

In ruling on *McLean v. Arkansas Board of Education*, Judge Overton found that Arkansas Act 590 would require excessive monitoring of textbooks and teachers “in order to uphold the Act’s prohibition against religious instruction.”168 The Kansas standards did not explicitly prohibit religious presentation of creationism. However, the standards did suggest that “compelling student belief is inconsistent with the goal of education. Nothing in science or in any other field of knowledge should be taught dogmatically.”169 Does this imply that Kansas would have monitored its schools to ensure that biblical creationism was not presented dogmatically in science classrooms in a way that furthered religious beliefs? Doing so would have entangled the government excessively in a hopeless process of screening out religion. This process would have violated the third element of the Lemon test.

* * * * * * * * * * * * * * * *

The 1999 Kansas standards ultimately fail all three elements of the Lemon test. It is safe to say that a court considering the constitutionality of the standards would almost certainly find them unconstitutional.

Chapter IV of this thesis considered the tactics and methods used by creationists to manipulate public school curricula. Because of the various court rulings on the evolution-creationism debate, legislatures and courts are no longer viable instruments for this manipulation. Creationists have most recently sought to use boards of education as a tool for inserting their beliefs into public school science curricula. In Kansas, the Board of Education adopted standards that mandated the teaching of neither evolution nor creation science. The 1999 Kansas standards were the first significant success for this

---

167 Vaught.
168 *McLean v. Arkansas Board of Education.*
169 “Kansas Curricular Standards for Science Education.”
tactic. A court ruling against the 1999 Kansas standards would have required creationists to refocus their efforts once again; the adoption of new standards in February 2001 meant that would not need to happen. However, creationists may one day assist in the adoption of standards similar to the 1999 Kansas standards in another state.

Creationists learned in Kansas that who you get in government determines what you get out of government; conservative board members were able to implement creation-friendly science standards. However, the manipulation of boards of education is no simple matter, especially in the long term. There will always be low-visibility elections that lend themselves to creationist capture. In spite of this, the controversy in Kansas demonstrated that once creationists, or at least supporters of creationism, are elected onto a board of education they have a hard time holding onto their seats because public opinion does not support their beliefs and goals, and a once-indifferent public begins to take note – and action.

If standards similar to those adopted in Kansas in 1999 ever are adopted in another state, then it is likely that eventually they will be challenged in court. Judicial history suggests that creationism rarely, if ever, survives the inevitable trip to court.

Where, then, does the future of the creationist movement lie? Grassroots efforts have always been the most successful vehicle for creationist manipulation of education laws and standards. Creationists and creationist SMOs can easily create an atmosphere in schools and communities where evolution is perceived as such a controversial topic that science teachers quietly stop teaching evolution. There are few legal or practical means of countering such a situation.
One solution is to focus on educating the public about evolution. Kansas Board member Sue Gamble believes that,

The solution to the current debate is openness. We must continue to educate the public as to what is good, solid, sound education and increasingly say, ‘I am a Christian and yet I believe in good science, as do most scientists. I believe that belief in evolution does not lead to atheism.’ Furthermore, we must hold out a hand of friendship to fundamentalists who feel very threatened.170

Fundamentalists do feel threatened by many aspects of modern American culture. Many consider evolution part of that threat.

The complexity of the evolution-creationism debate and the diversity and intensity of creationist tactics suggest the need for national science standards and national achievement testing of students. The findings of the People for the American Way Foundation support such a proposal. Their study found that 66 percent of Americans felt the issue of teaching evolution was too important to leave to local authorities. National science standards would not only ensure that American children were instructed in evolution, but would also find popular support among the American public.

National standards would facilitate a resolution to the evolution-creationism debate. Both sides are entrenched behind ideological lines that they are not willing to compromise. Creationists demand that some form of creationism be taught in America’s science classes. Scientists and their advocates insist that creationism cannot be taught as a science. America ought to embrace national science standards because the most effective creationist tactic – grassroots manipulation – is otherwise unstoppable. Even though more scientifically-sound standards were adopted in February 2001, grassroots pressure may still keep evolution out of some Kansas schools.

170 Gamble, interview
Finding support for national education standards would prove difficult. Even members of the Kansas Board of Education believe that national education standards would not be a viable, or acceptable, solution to this debate. The political debate on education standards is more likely to focus on the issue of local v. national control than on the actual evolution v. creationism debate. Local control has already become a codeword for creationists, much as it once was for segregationists.

The debate will also be focused on partisan lines. Kansas has certainly shown that the higher up the level of controversy, the more likely it is to be polarized and partisan. The GOP traditionally promotes the local aspect of federalism and thus Republicans are less apt to favor the implementation of national education standards. In an interview with NBC Nightly News, then GOP candidate George W. Bush stated that, “It’s up to local districts to make decisions on how to achieve standards of excellence.” With both the executive and legislative branches of government currently controlled by the GOP, national education standards can only be an educational concept of the future. However, the fact that two-thirds of Americans favor national science education standards may limit any benefits creationists would derive from devolution of standard-setting.

---

171 Interviews with Sue Gamble, Linda Holloway, Dr. Bill Wagon, Harold Voth, and Dr. Steve Abrams.
172 Benen.
Works Cited

_Aguillard v. Treen (1985)._ 

Allison, Jim. Batte, Susan. _The Constitutional Principle: Separation of Church and State._


_Arkansas Legislative Act 590 (1981)._ 


Bird, Wendell. 1979 Pre-Trial Brief.


_Butler Act (1925)._ 


Constitution of the State of Kansas.

Constitution of the United States of America.


Interview with Dr. Steve Abrams.  (Member, Kansas State Board of Education).  19 January 2001. Arkansas City, Kansas.


Interview with Dr. Bill Wagnon. (Member, Kansas State Board of Education). 17 Jan. 2001. Topeka, Kansas.


Kansas State Board of Education Meeting Minutes. 11 August 1999.


<http://www.gallup.com/poll/releases/pr000802b.asp>.


<http://www.rethinkingschools.org/Archives/12_02/scott.htm>.


"Office of Ron Thornburgh, Kansas Secretary of State." 23 April 2001.


Pre-trial brief of creationist lawyer Wendell Bird.


Statement by Academy President Bruce Alberts on Kansas State Science Curriculum. 20 Aug. 1999. The National Academies. 19 April 2001


