

Is There a Federal Mandate to Teach Intelligent Design Creationism?

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Introduction

Since the beginning of 2002, anti-evolutionists have increased their activity immensely in states all across the country. The majority of these efforts involve attempts to have 'intelligent design theory' included in science curriculum alongside the theory of evolution.

This document provides background information on events leading up to this increased, and often more nationally organized, activity, as well as examples of how this agenda is being implemented. It consists of previously published documents from a variety of sources.

Equipped with the information contained here, educators, parents, students and citizens will more effectively be able to protect quality science education in their communities.

Farewell to the Santorum Amendment?

This article will appear in an upcoming issue of Reports of the National Center for Science Education.

Despite the claims of creationists and other ideological opponents of evolution, the so-called Santorum Amendment - which, by singling out evolution as uniquely "controversial", was apparently intended to discourage evolution education - was not included in the No Child Left Behind Act, passed by Congress in late 2001 and signed into law by President Bush in early 2002. Although the Joint Explanatory Statement of the Committee of Conference contains a brief and not as objectionable mention of evolution, the Joint Explanatory Statement is not part of the law as enacted. Teachers in particular should be aware that the No Child Left Behind Act in no way requires them to teach evolution any differently than they do now.

Background

On June 13, 2001, the US Senate adopted a Sense of the Senate amendment to the Elementary and Secondary Education Act Authorization bill, S 1, then under consideration. Proposed by Senator Rick Santorum (R-PA), the amendment read:

It is the sense of the Senate that (1) good science education should prepare students to distinguish the data or testable theories of science from philosophical or religious claims that are made in the name of science; and (2) where biological evolution is taught, the curriculum should help students to understand why the subject generates so much continuing controversy, and should prepare the students to be informed participants in public discussions regarding the subject.

As Eric Meikle explained (*RNCSE* 2000 Nov-Dec; 20 [6]: 4), the fact that evolution is singled out as uniquely controversial amply indicates the amendment's anti-evolutionary intention. There were several indications that "intelligent design" proponents were instrumental in framing the resolution. In proposing the amendment, Senator Santorum cited a law review article coauthored by "intelligent design" proponent David K DeWolf, professor of law at Gonzaga University and Senior Fellow at the Discovery Institute's Center for the Renewal of Science and Culture. And the godfather of the "intelligent design" movement, Phillip Johnson, was quoted in the June 18 *Washington Times* as having "helped frame the language" of the amendment.

On June 14, the bill, including the Santorum Amendment, passed the Senate 91-8. It seems likely that most of the senators who voted for the bill were unaware of the anti-evolution implications of the Santorum Amendment, although Senators Sam Brownback (R-KS) and Robert Byrd (D-WV) alluded to them in their remarks in the *Congressional Record*. Unsurprisingly, anti-evolution groups such as Answers in Genesis were quick to rejoice at the token of support for their cause embodied in the Santorum Amendment.

Because HR 1, the version of the bill that passed in the House of Representatives, contained no counterpart of the Santorum Amendment, the House-Senate Conference Committee needed to reconsider it when it met to reconcile the two versions of the bill. Thus there was still a chance for the scientific and educational communities to influence the outcome. And they seized the day. The officers of almost 100 scientific and educational societies, together representing over 100 000 scientists, called upon the chairs of the conference committee to drop the Santorum Amendment. (See *RNCSE* 2001; 21 [1-2]: 7 for the text of their letter.)

In December 2001, the joint committee finished its work. The compromise bill was submitted to Congress, which passed it (renaming it the No Child Left Behind Act in the process) and sent it to President Bush for his signature, which it duly received on January 8, 2002.

The Good News

The good news is twofold. First, the Santorum Amendment was substantially weakened during its stay in committee, eventually appearing in the following two sentences:

The conferees recognize that a quality science education should prepare students to distinguish the data and testable theories of science from religious or philosophical claims that are made in the name of science. Where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist, why such topics may generate controversy, and how scientific discoveries can profoundly affect society.

[See
<<http://edworkforce.house.gov/issues/107th/education/nclb/conference/stateofman/title1pa.htm>>.]

Note that evolution is no longer singled out as uniquely controversial: it is merely used as one example of a host of potentially controversial topics. The conference committee's wish to keep "religious and philosophical claims that are made in the name of science" out of the science classroom is, of course, fully supported by NCSE. "Creation science", including "intelligent design", indeed consists largely of religious and philosophical claims that are disguised as science, and that is why NCSE opposes its presence in the science classrooms of our nation's public schools. Note also that the Santorum Amendment's original desire for students "to be informed participants in public discussions" was replaced with the conference committee's desire for students "to understand the full range of scientific views" - although creationism might be regarded as a matter of public discussion, it is certainly not a scientific view.

Second, the Santorum Amendment, even in its weakened form, is not present in the bill that was signed into law. It appears only in the Conference Report, buried deep in the Joint Explanatory Statement of the Committee of Conference in Title I, Part A, as item 78. The Joint Explanatory Statement is not part of the bill itself; it is simply an explanation of how the conference committee reconciled the various provisions of the House and Senate versions of the bill. The law itself neither mentions evolution nor includes any sentiments reflecting the Santorum Amendment. Thus the No Child Left Behind Act in no way requires teachers to teach evolution any differently.

It appears as if the conference committee largely heeded the call of the officers of the scientific and educational societies. The Santorum Amendment was dropped from the bill; the fact that a weakened version of it was included in the Joint Explanatory Statement of the Committee of Conference, where it enjoys no force of law, was probably intended to appease religiously conservative constituents - politics is, after all, the art of compromise.

The Bad News

The bad news is that many creationists and other ideological opponents of evolution took the Santorum Amendment and jumped on the propaganda bandwagon with it. In a press release dated December 21, 2001, with the headline "Congress gives victory to scientific critics of Darwin", Bruce Chapman, president of the Discovery Institute, announced, "The education bill just passed by Congress calls for greater openness to the study of current controversies in science, notably including biological evolution." Although he evidently recognized that the Santorum Amendment was substantially weakened and that the weakened version appeared not in the bill but only in the conference committee report - writing that "What began as the ' Santorum Amendment' ... now resides in report

language" - he nevertheless misleadingly characterized the bill as "a substantial victory for scientific critics of Darwin' s theory and for all who would like science instruction to exercise thoroughness and fairness in teaching about contemporary science controversies." Interestingly, Chapman harped on Darwin and Darwinists, although Darwin' s name never appeared in the Santorum Amendment; the Discovery Institute' s practice of tendentiously equating evolution and "Darwinism" is documented by Skip Evans in "Doubting Darwinism by creative license" (see *RNCSE* 2001; 21 [5-6]: 22-3).

Then, apparently in response to a precursor of the present report posted on the NCSE web site, the Discovery Institute issued a further press release on December 28, 2001, entitled "Congress urges teaching of diverse views on evolution, but Darwinists try to deny it". It also appeared in a slightly revised form as "Deny, deny, deny" by John West in WorldNetDaily <http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=25946>. In both versions, West contended that NCSE originally was wholeheartedly against the Santorum Amendment and then, when it appeared in weakened form in the conference committee report, opportunistically engaged in "after-the-fact attempts to rewrite history" by praising the conference committee' s wish to keep "religious and philosophical claims that are made in the name of science" out of the science classroom. Needless to say, he misrepresented NCSE' s views: it was only clause (2) of the Santorum Amendment that was intrinsically objectionable.

The Discovery Institute was misleading on the status of the Santorum Amendment vis-à-vis the bill that was signed into law, but Phyllis Schlafly of the conservative Eagle Forum was downright wrong. In an editorial posted on the conservative web site TownHall.com on February 6, 2002, Schlafly wrote:

The "No Child Left Behind" bill signed by President Bush on Jan 8 includes a science requirement that focuses on "the data and testable theories of science". This new federal law specifies that "where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist" [<http://www.townhall.com/columnists/phyllisschlafly/ps20020206.shtml>].

Because Schlafly was discussing the ongoing controversy about state science standards in Ohio, she may have been relying on misinformation about the Santorum Amendment posted on SEAO' s web site, which was later corrected.

To give credit where credit is due, the anti-evolutionist ministry Answers in Genesis recognized that the fact that the Santorum Amendment was not present in the No Child Left Behind Act was a defeat for the anti-evolution movement. In "Honest science ' left behind' in US education bill", posted at the AIG web site on January 7, 2002, Mike Matthews emphasizes that "The final version of the bill ... says not one word about evolution or the controversy surrounding it" and remarks in a footnote that "The original

Senate amendment was 'watered down' in two senses", citing the same changes of wording cited above <http://www.answersingenesis.org/docs2002/0107ed_bill.asp>.

Nevertheless, expect to see distorted reports of the Santorum Amendment in the anti-evolution press from now on. As we know from long experience, creationist misinformation is hard to quash.

Is the Santorum "Amendment" Federal Law?

The short answer is "no." In reality, as is demonstrated above, the Santorum "Amendment" no longer exists. It only exists as language in the conference report.

Science vs. Intelligent Design: The Law

Resource: <http://ecology.cwru.edu/ohioscience/legal-hirsch.asp>

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The Santorum Amendment

Intelligent Design advocates claim that federal law supports teaching their views as an alternative to evolution in the public schools. As evidence, they cite to an amendment that Senator Rick Santorum offered to the Elementary and Secondary Education Authorization Act of 2001 (HB 1). The Santorum Amendment would have expressed a "sense of the Senate" that school curricula should include discussion of the "controversy" surrounding biological evolution. The Senate included this amendment in its version of the legislation, but the House did not. Importantly, the Conference Committee (a House/Senate group that resolved the differences between the competing versions and put together the final bill) deleted the amendment from the final Act. It was not part of the legislation that Congress passed and that President Bush signed into law.

The decision to remove an amendment from the text of a bill has a very specific legal meaning. It suggests that the legislature considered the language in question and rejected it. Sutherland on Statutory Construction, the leading treatise on statutory interpretation, has this to say on the subject: "The rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment." N. Singer, Sutherland on Statutory Construction 48:18 (2000). Congress deleted the Santorum Amendment from the legislation. This provides strong evidence

that Congress considered the views expressed in this amendment, and did not support them.

The Conference Committee did include a watered-down version of the amendment in a separate "explanatory statement" that it issued with respect to the final legislation. To understand the legal significance of this statement it is important to distinguish between a statute and legislative history. A statute passed by Congress and signed by the President constitutes federal law. Legislative history is merely a record of events leading up to the passage of a law. It is not part of the statute itself, is not voted on by Congress, and is not law, as such. Here, the Santorum Amendment was deleted from the statute. It did not become law. At most, the explanatory statement is an expression of the views of a few members of the House and Senate about the law. It forms a part of the legislative history. It does not constitute federal law on the subject.

On occasion, legislative history such as committee reports can be a helpful tool for interpreting the language of a statute. The statement here provides little help in that regard since there is no corresponding statutory language to interpret, Congress having deleted the Santorum Amendment. Moreover, legislative history only serves this interpretative function where it sheds light on the intentions of Congress as a whole. Here, Congress did not support the Santorum Amendment, as evidenced by the fact that it took it out of the final legislation. This suggests that the watered-down version that appeared in the explanatory statement was added at the behest of a special interest group and did not receive the endorsement of Congress as a whole. In such situations, courts give legislative history little weight even as an interpretative tool. They in no way treat it as the considered "federal law" on the subject.

A governmental requirement that intelligent design be taught with evolution would violate the Constitution. Intelligent design advocates in Ohio have sought, on a number of fronts, to require that intelligent design be taught with evolution in public school biology classes. Some have proposed legislation to this effect. Others have sought to have the State Board of Education require it. Recently, some have proposed that local boards of education should mandate it. In any of these forms, a government requirement of this nature would violate the Establishment Clause and would be unconstitutional under the Supreme Court' s decision in *Edwards v. Aguillard*, 393 U.S. 97 (1987).

The *Edwards* case concerned a Louisiana statute that prevented the state' s public schools from teaching the theory of evolution unless they also included instruction on "creation science." Creation science, as described by the legislation' s defenders, included a belief in "origin through abrupt appearance in complex form" and in the creation of life by an "intelligent mind." Like the current intelligent design advocates in Ohio, the creation scientists in Louisiana asserted that their ideas constituted a valid scientific theory and that they were seeking only to bring balance to the curriculum.

The United States Supreme Court rejected this claim and found the creation science

legislation to be unconstitutional. Applying the Lemon test (a legal test derived from the foundational case of *Lemon v. Kurtzman*), the Court focused on whether the challenged government action serves a secular purpose, or a religious one. The legislation's proponents had maintained that its purpose was to promote academic freedom. The Court did not accept this view. It found that the statute's true purpose was to use the coercive powers of the state to promote religious ends. As such, it was unconstitutional. The Court based its conclusion on the fact that the legislation had chosen to focus on the one scientific theory - evolution - that certain religious groups find most disturbing. It also looked to the religious motivations expressed by the statute's sponsors.

Were an intelligent design requirement challenged on constitutional grounds, a court would likely follow a very similar analysis and reach the same conclusion. Intelligent design theory is in many respects similar to creation science; including the shared belief in complex life forms at origin and the intervention of some type of intelligent actor. Moreover, just like the Louisiana statute at issue in *Edwards*, the intelligent design movement focuses its challenge on the one scientific theory that most conflicts with the views of certain religious groups, while ignoring far more significant scientific controversies. If the movement's real intent were to improve the teaching of scientific controversies, then evolution, one of the most settled of scientific theories, would be an odd place to begin. In *Edwards*, the Supreme Court found such a limited focus to be highly suggestive of the proponents' religious purposes and, therefore, of the requirement's unconstitutionality.

In the years following *Edwards*, those advocating the teaching of creation science/intelligent design have become far more careful about public expressions of their religious motivations. That said, one need not look far to find them. In an autobiographical essay posted on the True Parents website (a site dedicated to the Rev. Sun Myung Moon, available at <http://www.tparents.org/Library/Unification/Talks/Wells/DARWIN.htm>) Dr. Jonathan Wells, who testified before the Ohio State Board of Education in favor of intelligent design, explains that he is motivated by religious ends. He writes that Reverend Moon "frequently criticized Darwin's theory that living things originated without God's purposeful, creative activity. ". . . Father's words, my studies and my prayers convinced me that I should devote my life to destroying Darwinism." Similarly, the Center for the Renewal of Science and Culture (CRSC), a leading intelligent design advocacy group, states as a principal goal the "replac[ing of] materialistic explanations with the theistic understanding that nature and human beings are created by God" (see *The Wedge Strategy*, available on the Resources section of this website). These and other express statements should make it possible to demonstrate the religious purpose behind the intelligent design movement's effort to revise the curriculum in Ohio schools. In *Edwards*, the Supreme Court made clear that an educational requirement's secular purpose must be "sincere and not a sham." An intelligent design requirement in the State of Ohio would not stand muster under this test. Like the creation science requirement in

the Edwards case, a court would likely strike it down as an unconstitutional use of government power to serve religious ends.

The Truth about the “Santorum Language” on Evolution

Resource: <http://www.millerandlevine.com/km/evol/santorum.html>

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The "No Child Left Behind" Education Act does not call for the teaching of "Intelligent Design."

One of the remarkable ironies of the battle over evolution's place in the Ohio State Science Education Standards is that the opponents of Darwin, in the name of "truth," are spreading falsehoods about the law of the land. Their point of contention is the "No Child Left Behind Education Act," which was signed into law by President Bush on January 8, 2002.

During the March 11, 2002 panel discussion on evolution in front of the Ohio Board of Education, the Discovery Institute's Stephen Meyer claimed that two purportedly anti evolution sentences known as the "Santorum Amendment" were part of the recently-signed Education Bill, and therefore that the State of Ohio was obligated to teach alternative theories to evolution as part of its biology curriculum. I answered Meyer's contention by showing, using my own computer, that the Santorum language was not in the Bill, a copy of which I had downloaded from the Congressional web site. The effect on the crowd in attendance was devastating. The proponents of "intelligent design" had been caught in a lie.

Ever since that day, they have been trying to pretend otherwise.

The Santorum Language does not Appear in the Final Version of the Education Bill

Pennsylvania Senator Rick Santorum, writing in the March 14, 2002 [1] issue of the Washington Times, claimed that his language was a "provision" of the bill:

At the beginning of the year, President Bush signed into law the "No Child Left Behind" bill. The new law includes a science education provision where Congress states that "where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist." If the Education Board of Ohio does not include intelligent design in the new teaching standards, many students will be denied a first-rate science education.

This claim was repeated by Ohio Representatives John A. Boehner and Steve Chabot in a March 20, 2002 story also in the Washington Times, quoting the Congressmen as writing: "The Santorum language is now part of the law." The fact is that the Santorum language does not have the force of law, despite the Congressmen' s claims.

Anti-evolution activists are now circulating rumors charging me with lying about the Santorum language. One email that has been sent to me made the following claim:

Dr. Kenneth Miller tried to convince the audience at the 3/11 debate that the word "evolution" does not appear in the bill. He stated that he preferred to use "empirical evidence." He scanned the first 600 pages and came up empty. This was due to the fact that the Santorum language is on p. 703. Congress approved the conference report with the same vote as the statutory text. It seems that Dr. Miller retrofitted the empirical evidence to make an inaccurate point.

I cannot know if this statement is merely a mistake, or an outright, intentional lie, but here are the facts: I did not scan just the "first 600 pages" of the bill at the March 11 debate. I scanned the whole thing, and the Santorum language was not in it. Why? Because it had been struck from the bill, and it is NOT part of the law.

What' s remarkable about this little squabble is just how easy it is to find out the truth. Congressional and Department of Education web sites contain the full text of the Education bill, all six versions of it, as it moved through Congress, including the final version signed by President Bush, which is now Public Law 107-110[2]. Check it out yourself, and you will see that the Law makes no mention of "evolution" or any of the other language that Senator Santorum attempted to insert in the bill.

Here's how you can check for yourself:

First, go to the Congressional Web site[3], which includes legislative histories of all bills introduced in Congress. Then, type in the legislative name of the bill, which was **HR-1**, and search for the bill' s legislative record. You will bring up this page, which lists the 6 different versions of the bill as it moved through Congress:

<http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.1:>

If you have the patience (and a speedy Internet connection), you can download each version and do a search for the word "evolution" or any of the distinctive phrases that appear in the Santorum language. You will find that the language appears only in "Version 1" of the bill, on page 1196. This is the version that was "engrossed" (first passed) by the Senate. It does not appear in any of the other versions, including the only one that really matters, the final version passed by both houses and presented to the President, which is the "enrolled bill," Version 3. This was the version I used for my search in Ohio on March 11, and it is exactly 670 pages in length. So the claim that I manipulated the search is false. I searched every page of the bill. The Santorum language is not there because it was struck from the bill.

The same web page noted above has a link to the new Education Law itself. I invite you to examine Public Law 107-110[2], and look for the Santorum reference to evolution. Guess what? It's not there! The Congressmen, the Senator, and the "intelligent design" people have been telling the public that the Education Bill contains language that Congress actually removed from the Bill.

How do these folks justify making fraudulent claims? By a little bit of mental gymnastics that shows exactly how willing the anti-evolution crowd is to misrepresent the truth. Go to the web page of the House Committee on Education and the Workforce:

<http://edworkforce.house.gov/issues/107th/education/nclb/nclb.htm>

As you scroll down the page you will first see a link to the Law itself. Then you will see a link for the Bill as presented to the President, then links to help implement the bill, then remarks by the First Lady, and only then a link to the "Conference Committee Report." After Santorum's language was deleted from the bill, he was able to insert a watered down version of his language in the explanatory report of the conference committee. Here is where the language about evolution is located, right on page 703. However, a committee report, even when it is accepted by the Congress, is not a bill. It was not sent to the President's desk for signature, and it is not part of Public Law 107-110. Case closed. Committee reports simply do not have the force of law. **The new Education Act simply does not require the teaching of "Intelligent Design."**

The fact that the anti-evolutionists eagerly misrepresent both the content of the Education Bill and the language in the new Education Act is at once distressing and instructive. It is indeed sad to see how people who claim only to be interested in the truth are willing to mislead the public, but it also sets a standard of inaccuracy by which the people of Ohio may judge the reliability of their scientific claims as well.

These folks are wrong about the law, and wrong about science.

Resources cited above:

1. <http://www.washtimes.com/national/20020320-76260745.htm>
2. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ110.107.pdf
3. <http://thomas.loc.gov/>

Senator Edward Kennedy on Intelligent Design

In a Washington Times editorial, March 14, 2002, Senator Santorum implied that Senator Edward Kennedy supported the teaching of intelligent design in public schools. Senator Kennedy responded in a letter to the editor on March 21.

Evolution is designed for science classes

The March 14 Commentary piece, "Illiberal education in Ohio schools," written by my colleague Sen. Rick Santorum, Pennsylvania Republican, erroneously suggested that I support the teaching of "intelligent design" as an alternative to biological evolution. That simply is not true. Rather, I believe that public school science classes should focus on teaching students how to understand and critically analyze genuine scientific theories. Unlike biological evolution, "intelligent design" is not a genuine scientific theory and, therefore, has no place in the curriculum of our nation's public school science classes.

EDWARD M. KENNEDY
Senator