

EXHIBIT 1

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Richard B. Katskee
2 Sara J. Rose
(motions for admission *pro hac vice* pending)
3 Heather L. Weaver (motion for admission to the Bar of this court pending)
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13 HURST et al.

14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 KENNETH HURST, JOAN BALCOME,) NO. _____
17 KIRK ROGER TINGBLAD, PHILIP JONES-)
THOMAS, BARRY S. GOLDBERG, SOPHIE)
18 GOLDBERG, JEANNIE PARENT, KEN and) **DECLARATION OF KENNETH HURST**
JODY VALMASSY, and ANN and RICHARD) **IN SUPPORT OF PLAINTIFFS' MOTION**
19 HOWARD,) **FOR TEMPORARY RESTRAINING**
Plaintiffs,) **ORDER AND, IF NECESSARY,**
v.) **PRELIMINARY INJUNCTION**
20)
STEVE NEWMAN, individually and in his) DATE:
official capacity as a member of the El Tejon) TIME:
21 Unified School District Board of Trustees;) COURT:
22 PAULA REGAN, individually and in her)
official capacity as a member of the El Tejon)
23 Unified School District Board of Trustees;)
24 STACEY GUSTAFSON, individually and in)
her official capacity as a member of the El)
25 Tejon Unified School District Board of)
Trustees; KITTY JO NELSON, individually)
26 and in her official capacity as a member of the)
El Tejon Unified School District Board of)
27 Trustees; PHYLLIS THROCKMORTON,)
individually and in her official capacity as a)
28 member of the El Tejon Unified School District)
Board of Trustees; JOHN WIGHT, individually)

1 and in his official capacity as superintendent of)
2 the El Tejon Unified School District; DAN)
3 PENNER, individually and in his official)
4 capacity as principal of Frazier Mountain High)
5 School; and SHARON LEMBURG,)
6 individually and in her official capacity as a)
7 teacher at Frazier Mountain High School,)
8)
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Defendants.)

10 I, Kenneth Hurst, hereby declare under penalty of perjury as follows:

11 1. I have two children who attend Frazier Mountain High School in the El Tejon
12 Unified School District. One is in tenth grade and one is in twelfth grade.

13 2. I pay local property and state income taxes and reside within the El Tejon Unified
14 School District.

15 3. I am a practicing scientist, specializing in the field of geology. I am employed by
16 the Jet Propulsion Laboratory in Pasadena, California. I hold a Ph.D. in geology from Columbia
17 University.

18 4. I share custody of my children with my ex-wife and have legal decision-making
19 authority for my children.

20 5. I am offended and upset about the school offering the Philosophy of Design course
21 because it advocates a perspective that conflicts with my beliefs as a scientist. I believe this class
22 undermines the sound scientific principles taught in Frazier Mountain High School's biology
23 curriculum and is structured in a way that deprives my children of the opportunity to be presented
24 with an objective education that would aid the development of their critical-thinking skills.

25 6. In addition, I believe that the class is an inappropriate attempt to bring religious
26 teachings into the classroom and to evangelize students. As a Quaker, my personal religious views
27 do not conform to the religious views taught in this course. I do not hold the view that the earth
28 is only thousands of years old or that the Bible is the literal truth. I believe that this course offering
favors a pro-creationist, pro-intelligent-design view over the views that I espouse. In addition, I

1 am offended and upset about the course because I believe that it reflects a preference for
2 fundamentalist Christianity over all other religious and scientific viewpoints.

3 7. As a scientist, I have raised my children to have inquiring attitudes regarding their
4 surroundings. I believe that the instruction in intelligent-design and young-earth creationism
5 conflicts directly with these views and undermines my right as a parent to provide religious
6 instruction to my children.

7 8. I am informed that Phillip Jones-Thomas has two children who attend Frazier
8 Mountain High School, one in the ninth grade and one in the tenth grade. I am informed that Mr.
9 Jones-Thomas pays local property and state income taxes and resides within the El Tejon Unified
10 School District. Further, I am informed that Mr. Jones-Thomas has full custody and decision-
11 making authority for his children.

12 9. I am informed that Barry S. Goldberg is the father of two children who attend
13 Frazier Mountain High School, one in the ninth grade and one in the tenth grade. I am informed
14 that Mr. Goldberg pays local property and state income taxes and resides within the El Tejon
15 Unified School District. Also, I am informed that Mr. Goldberg has no belief in a “higher power.”
16 I am informed that he objects to a course espousing intelligent design and young-earth creationism
17 based on his and his family’s beliefs and heritage.

18 10. I am informed that Sophie Goldberg is the mother of two children who attend
19 Frazier Mountain High School, one in the ninth grade and one in the tenth grade. I am informed
20 that Ms. Goldberg pays local property and state income taxes and resides within the El Tejon
21 Unified School District.

22 15. I am informed that Barry S. Goldberg and Sophie Goldberg (now divorced) share
23 custody and decision-making authority equally for their two children.

24 16. I am informed that Jeannie Parent has one child in tenth grade at Frazier Mountain
25 High School. I am informed that Ms. Parent pays local property and state income taxes and resides
26 within the El Tejon Unified School District. I am informed that Ms. Parent has full custody and
27 decision-making authority for her child. I am informed further that Ms. Parent is a practicing
28 Buddhist and has raised her child with Buddhist teachings and values. I am informed that she is

1 offended by the pursuit of a fundamentalist Christian agenda in her child's school and the
2 favoritism shown toward one religion.

3 17. I am informed that Ken and Jody Valmassy have a child in tenth grade at Frazier
4 Mountain High School. I am informed that they pay local property and state income taxes and
5 reside within the El Tejon Unified School District.

6 18. I am informed that Ann and Richard Howard are parents of a child in eleventh grade
7 at Frazier Mountain High School. I am informed that Ann and Richard Howard pay local property
8 and state income taxes and reside within the El Tejon Unified School District.

9 19. On December 1, 2005, one of my children brought home from Frazier Mountain
10 High School a list of course descriptions for the intersession academic period. The course
11 description is attached hereto as Attachment A. At Frazier Mountain High School, there are three
12 academic sessions per year: a fall semester, a winter intersession and a winter/spring semester. The
13 intersession is a month-long academic session during which students are required to take remedial
14 classes, or if they do not need any remedial classes, to take elective courses. Students attend two
15 three-hour-long classes per day.

16 20. It is my understanding that electives offered during the intersession period are often
17 repeated in subsequent intersessions.

18 21. To my knowledge, the School District has never issued a revised course description
19 for this course.

20 22. On December 1, 2005, after reviewing the course description for "Philosophy of
21 Intelligent Design" (Attach. A, p.2), I contacted Dan Penner, Principal of Frazier Mountain High
22 School, to object to the course.

23 23. I felt that the course was an attempt to cloak intelligent-design and young-earth
24 creationism — notions that are derived from fundamentalist Christian views — in the mantle of
25 legitimate science. I objected to the course because intelligent-design and young-earth creationism
26 are not, and cannot be, science. Thus, they should not be presented as such to students.

27 24. On December 1, 2005, at the suggestion of Principal Penner, Sharon Lemburg, the
28 teacher who proposed the course, called me.

1 25. Several times during this phone conversation, Mrs. Lemburg referred to “intelligent
2 design” as “creationism” and told me that the original title of the course was “Creationism vs.
3 Evolution.”

4 26. After asking her several questions, I concluded that Mrs. Lemburg had no
5 knowledge of complicated scientific topics, such as the law of thermodynamics and fossil records
6 and dating methods, which the course would attempt to cover.

7 27. During our conversation, Mrs. Lemburg asked if I would be a speaker for the
8 course. I declined because I believed that the course was an intellectual sham and advocated a
9 fundamentalist Christian viewpoint that I do not share.

10 28. Based on our conversation, I concluded that Mrs. Lemburg planned to use the class
11 to advocate in favor of intelligent-design and young-earth creationism and against evolution, and
12 to indoctrinate students into these religious beliefs.

13 29. On December 5, 2005, I wrote a letter to Principal Penner, with a copy sent to John
14 Wight, Superintendent of the El Tejon Unified School District. In this letter, I reiterated my
15 concerns with the course, described my unsatisfactory conversation with Mrs. Lemburg, and
16 explained why intelligent design is not science and why evolution is a well-settled scientific
17 principle.

18 30. On December 9, 2005, Principal Penner emailed me a copy of the proposed course
19 syllabus. The syllabus is attached hereto as Attachment B.

20 31. I reviewed the proposed syllabus. It confirmed my concerns that the course was
21 biased in favor of intelligent-design and young-earth creationism and would blatantly advocate for
22 these religiously-based notions.

23 32. On December 15, 2005, I spoke with Principal Penner.

24 33. During that conversation, I provided Principal Penner with lists of scientific and
25 educational organizations that had made statements that intelligent design is not science.

26 34. During our conversation, I asked Principal Penner what qualifications Mrs.
27 Lemburg had to teach the complicated scientific concepts she intended to teach in the course.
28 Principal Penner said that he did not know, but he expressed no concern that Mrs. Lemburg might
be unqualified.

ATTACHMENT A

Intercession

Morning

Individual and Dual Sports: This fun-filled, games-oriented class is designed to give students fundamental skills in a wide variety of games and activities. Activities will include, but are not limited, to badminton, pickleball, aerobics, weight training, track and field, etc.

Outdoor Training/Cross Country Conditioning/ Soccer: Students will run a cross country course, increase their strength and flexibility, and participate in small games of soccer.

Drumline: While no prior music experience is necessary, we seek students that will have great attitudes and a killer work ethic to create a great rock show. Be part of an aggressive musical group!

Keyboarding Skills: This class is designed to teach students and give them the ability and tools to proficiently type and master the alphabet and punctuation keys. It is designed to improve speed and accuracy in keyboarding.

Yearbook: Students will be responsible for creating and selling the school yearbook. Students will learn in a hands-on fashion about graphic design, computer based layouts, photography, sale techniques, and management.

Comparative Religion: A philosophical and historical overview of the worlds five great religions. Emphasis will be placed on the development of these religions in history and the world views that these religions are responsible for shaping. Impact of these religions on the modern world and its cultures will also be explored.

Biology: This class is for remediation of first semester biology. It will begin with the basic scientific method and continue on to cell anatomy and function.

Spanish I: Remediation and review of first semester of Spanish I, including vocabulary and phrases.

World of Knitting 1: Students will be required to purchase one set of knitting needles (size 9) and the necessary yarn needed to complete projects throughout the course. A minimum of 4 skeins will be required, however students may use more if they do additional projects. Basic knitting skills will be mastered, including: casting on, Garter, pull stitch, etc. Projects include completing: a scarf, a hat, a knitted backpack, and hand warmers.

C++: This course is designed to teach C++ to students who have no previous experience and no mathematics beyond high school algebra.

Music History: This class is a brief exploration into the history of rock from the earliest evolution of Black America musical influence to current styles. We will examine the social significance of this music and how it has influenced American culture. We will also highlight its major historical moments. This course will have a variety of listening examples and we'll be watching several documentaries that cover different aspects of rock history.

Wrestling: Basic instruction in the art and science of wrestling. Basic instruction will be introduced in both technique and tactics. Skills taught will include take down, and correct starting position. Some wrestling specific weight lifting could be included. Not for the lazy!

Algebra I: Remediation of first semester Algebra skills.

Academic Decathlon/SAT Prep: All students preparing for the Academic Decathlon competition will benefit from this class. This class is for sophomores and juniors who want to prepare for the SAT I. Algebra, geometry, and vocabulary skills are the focus of this class.

Drivers Ed: This class offers 40 hours of instruction in Drivers Education. The curriculum is approved by the CDE and the DMV. The students that successfully complete this class will be able to apply for his or her driving permit with the DMV. Students must be 15 ½ years of age!

Robotics: Students will design, build, and test a robot that will compete in the first Robotics Competition. They will work with tools, design parts on computers, assemble components, and program functions into the robot. The rules of the competition require the robot be completed and shipped in a 6 week period. Therefore, time outside of the regular class may be required. Students must be part of the Robotics roster or have permission from the teacher.

SOC: All SOC students are required to take Mr. Quick's class.

Mythology: Students will understand how ancient myths have shaped stories from "Frankenstein" to "Star Wars." They will also explore five prominent mythological stereotypes: "Hero," "Transgressor," "Trickster," and "Destroyer" in classic literature, film, art, and popular culture.

CHASSE: Any student (junior or senior) that has not passed the California High School Exit Exam must take this great review class.

English 11: Remediation of English 11 first semester skills.

Foods: Utilizing the school kitchen, students will learn safety, sanitation and knife skills while learning to plan, cook, and figure the cost of menu items. They will also learn to prepare and portion menu cycles, inventory, management, how to operate kitchen equipment, cake decorating, and customer relations.

Afternoon

Weights and You: This class is designed for the dedicated athlete that is determined to take their athletic ability to the optimal level. This class will be using the well-known "BFS (Bigger, Faster, Stronger)" principles. This class will include a cardiovascular component. It will be a tough four weeks, so **You Must Be Willing to Work Hard!**

Philosophy of Intelligent Design: This class will take a close look at evolution as a theory and will discuss the scientific, biological, and Biblical aspects that suggest why Darwin's philosophy is not rock solid. This class will discuss Intelligent Design as an alternative response to evolution. Topics that will be covered are the age of the earth, a world wide flood, dinosaurs, pre-human fossils, dating methods, DNA, radioisotopes, and geological evidence. Physical and chemical evidence will be presented suggesting the earth is thousands of years old, not billions. The class will include lecture discussions, guest speakers, and videos. The class grade will be based on a position paper in which students will support or refute the theory of evolution.

Advanced Guitar: This class is for advanced players who wish to increase their skills a great deal in a short amount of time. Prerequisites: Instrumental I and II completed with a passing grade, the ability to read and understand basic music notation and tablature, the ability to read chord charts. Own your own instrument and be able to have it at school to play every day.

Quilting: This is a hands-on course dedicated to developing the skills necessary to quilt by hand using the traditional methods of the Amish culture. Students will learn and develop several learning techniques involving rotary cutting, hand-stitching, design and the use of symmetry in quilting. The objectives are to take the skills learned and implement them into a 12 X 12 pillow or wall hanging and present them as the final goal or presentation to the class and student body.

English 9: Remediation in first semester English 9 skills.

World Civ/U.S History: Remediation of first semester World Civ and/or U.S. History with the express goal of getting students up to speed with the skills needed to succeed in social science course work.

Ag World: This will be an educational course involving hands-on experience with landscape and design around the Ag facilities, including: the greenhouse, barn, stalls, chicken coup, classroom, and surrounding areas. There will be specific objectives to achieve each day that will bring us to our ultimate goals of beautification and implementation of our Ag department. Physical work is required!

English 10: Remediation of English 10 first semester.

Video Tech: This class is designed for students in grades 9-12. No previous experience in video tech is required. This course provides students with fundamental training in Video

Production including camera operation and technique, lighting, audio, news broadcasting, script writing, producing, directing, and editing. Students create videos including: commercials, claymation, music videos, promotional pieces, newscasts, and animation.

Music History: This class is a brief exploration into the history of rock from the earliest evolution of Black America musical influence to current styles. We will examine the social significance of this music and how it has influenced American culture. We will also highlight its major historical moments. This course will have a variety of listening examples and we'll be watching several documentaries that cover different aspects of rock history.

Pre-Algebra: Remediation for students needing first semester pre-algebra skills.

Gotta Dance: Students will learn the basics of hip-hop dance with a mixture of jazz. They will follow warm up procedures and stretching techniques everyday. The students will also be required to participate in all class activities and dance routines learned. The final will be a scheduled dance routine for a school assembly or basketball game. Also, the students will be required to write a 3 page paper on an influential person from history.

Geometry: Remediation for students needing first semester geometry skills.

Drivers Ed: This class offers 40 hours of instruction in Drivers Education. The curriculum is approved by the CDE and the DMV. The students that successfully complete this class will be able to apply for his or her driving permit with the DMV. Students must be 15 ½ years of age!

Hoops World: Students will learn/develop basic to advanced basketball skills. The class will stress correct fundamentals in shooting, dribbling, defense, and other essential skills needed to compete in the game of basketball. Students will also learn to play together through team drills and scrimmages. Conditioning will be stressed as stamina and quickness are important assets to the game.

History of Film: Students will study history by reviewing, discussing, and writing about classic popular films. These films were produced to address historical events and to provide a context for what some people were experiencing due to major happenings in their lifetimes.

Physical Science: Remediation of first semester physical science skills.

Drama Competition: Intercession period will be used to prepare for the March 6th competition. Class will include: dancing, deciding categories to perform in, choosing monologues, choosing 2 person scene pieces, and gathering props and costumes. Rehearse, rehearse, rehearse!

ATTACHMENT B

Philosophy of Intelligent Design

Teacher: Sharon Lemburg

Tentative: Subject matter that will be covered

1. What is Philosophy? @ 3 days

... How does philosophy influence individual lives?

... Is Evolution a science or a philosophy?

... Is Intelligent Design a science or a philosophy?

2. What is Intelligent Design? @ 5 days

... Why is it a movement?

... Why is it gaining momentum?

... Why is it so threatening to society?

Video: Unlocking the Mysteries of Life

... Is it based on science?

... Is it based on what we know?

... What evidence does it bring and is the evidence measurable data?

3. What is Darwinism/ Evolution? @5 days

... The History behind Darwinism/ Evolution.

... The Historical Roots/ the Greeks.

... Is Evolution based on a religion?

... Is Evolution based on philosophy?

4. Laws of Thermodynamics @ 2 days

... Conservation of Energy

... Law of Entrophy

5. Fossil Records and Dating Methods @ 2 days

... Testable Predictions/ experiments

... What is known about the fossil records

... How the dating methods work

***** Much of the teaching will be done by way of videos and discussion. A list of video will be presented.**

*****Several scholars/ scientists in the field will be invited to come and present on selected topics.**

***** Students will prepare a position paper supporting their beliefs on the subject of evolution or intelligent design.**

Philosophy of Intelligent Design

Speakers:

... **Ken Hurst** ñ Ph.D. in geology; works at JPL in jet propulsion; an evolutionist.

... **Ross Anderson** ñ Ph.D. In biochemistry; professor at The Master's College in Santa Clarita.

... **Joe Francis** ñ Ph.D. In Microbiology

... **David Kopich** ñ Creation Scientists

... **Francis Krich** ñ Evolutionist

Videos: (incomplete list)

... Creation/Evolution

... Dating fossils and rocks

... The origen of life

... The Fossil Records

- ... Astronomy and the Bible
- ... Lucy: She's no Lady!
- ... From a Frog to a Prince
- ... Chemicals to Living Cells: Fantasy or Science?
- ... Unlocking the Mystery of Life
- ... Mt. Saint Helens: Explosive Evidence for Catastrophe
- ... The Fire Below Us: Remembering Mount St. Helens
- ... Grand Canyon: Monument to Catastrophe
- ... The Grand Canyon Catastrophe
- ... Thousands...Not Billions
- ... Life's Story
- ... The Privileged Planet
- ... Rocks of Ages or Rock of Creation?
- ... Radioisotopes and the age of the earth
- ... Experiments in Stratification
- ... Icons of Evolution
- ... War of the Worldviews
- ... In the Beginning
- ... Evidences: the Record and the Flood
- ... Geologic Evidences

I still need to view the videos and decide which videos will be used and with what topics of discussion. This may not be completed until the time the class starts. This class is a work in progress.

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ATTACHMENT C

December 29, 2005

Syllabus for Philosophy of Design

Teacher: Sharon Lenburg

Class Title: "Philosophy of Design"

Ideas, beliefs, and theories about the origin of life.

Objective:

Philosophy is a class about ideas and theories. It is about beliefs. It is addressing the question, what do you think and why. It is about a search for wisdom and truth. This class will discuss various views on the origin of life, in order to gain a better and broader understanding of the views that are held by society. This class is not meant to guide you into a certain belief, but to allow you to search, become aware of the differences, and gain a better understanding of world views on origins.

Outline of Course Topics: Each heading gives a general idea of the topics that will be discussed either by lecture, video, internet, or guest speaker.

1. What is Philosophy?
 - How does philosophy influence individual lives?
 - What disciplines does philosophy cross over into or influence?
 - How does philosophy affect religious beliefs or science?

2. What is the Theory of Evolution/ Darwinism?
 - What is the history of evolutionary theory?
 - What is evolution and how does it work?
 - What is the evidence for evolution?
 - What are the misconceptions?

3. What is Intelligent Design/ Creationism?
 - Why is this a movement and why is it gaining momentum?
 - Why is it so threatening to society, the educational system, and evolutionists?
 - Is Intelligent Design based on science or faith?
 - What evidence does it bring, and is the evidence measurable data?
 - How does Intelligent Design differ from Creationism? And how is it similar?

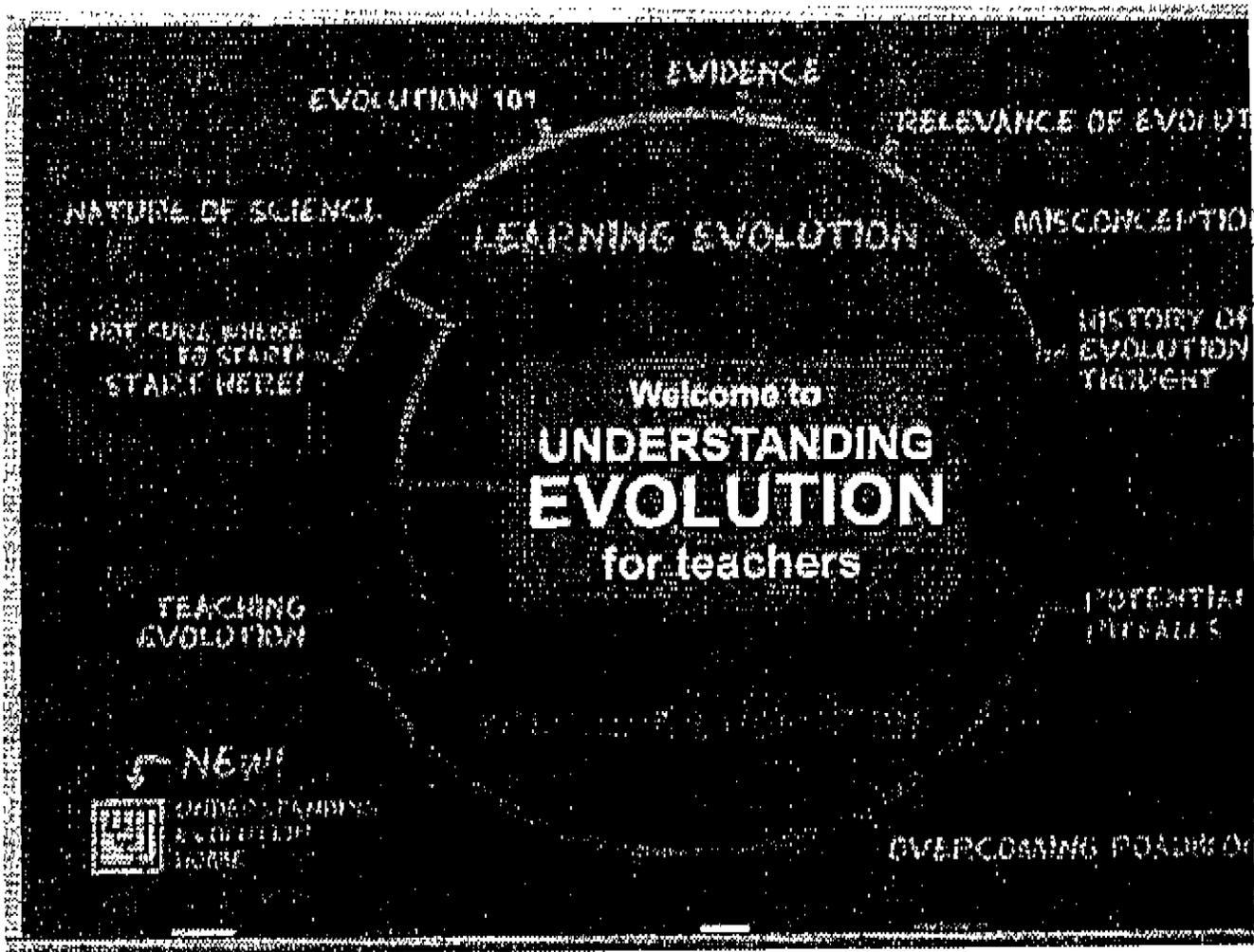
4. Philosophies concerning Origins?
 - A summary of ideas
 - How does the Philosophy of Intelligent Design differ from the Theory of Evolution? Are these ideas concerning origins philosophies or are they science?
 - How does this debate concerning philosophies affect society? How does it affect you, the student?

Note:

- The ideas presented under each topic will be covered by lecture, video presentations, and guest speakers. Equal time will be given to each idea or philosophy. Presentations may vary depending on the available resources.
- Due to the fact that I am unable to obtain a speaker in support of evolution at this time, I have purchased a video series from PBS, that will be used to understand what evolution touches, its relation and effect on society and culture, and the history behind it. This video series was presented on national television by PBS in 2001. I will be using a overhead presentation directly from the internet which was created by the University of California Museum of Paleontology with support provided by the National Science Foundation and the Howard Hughes Medical Institute. I will also be referring to a textbook entitled Evolution vs. Creation by Eugenie C. Scott (as recommended by Ken Hurst).
- Ideas or philosophies concerning Intelligent Design/ Creationism will be presented by the instructor through videos and guest speakers. Students will be able to bring questions from their research, from the videos, or from their own knowledge.
- Equal and balanced instruction will be given on all philosophies.
- Students will also be given time to research the subject matter.
- At the conclusion of the course, students will discuss and share their comments, concerns, opinions, and position on the subject by writing a paper stating their position and evidence to support that position.

Suggested Videos & Internet Source:

- Evolution by PBS (2001): 600 minutes of tape
- www.berkeley.edu/evosite/evohome.html
Understanding Evolution for teachers.
- Unlocking the Mysteries of Life: The scientific case for intelligent design.
- Where does the evidence lead? Exploring the theory of intelligent design.
- Chemicals to living cells: Fantasy or Science?
- Focus on the Origin of Life: an interview with Dean H. Kenyon, Professor of Biology at San Francisco State University (1994).
- Focus on the Origin of Life: an interview with Dr. Charles Thaxton
- The Theological Roots of Modern Science: Dr. Henry F. Schaefer, Professor of Chemistry at the University of Georgia (no date).
- Focus on Origins Series: How Darwinists Think by Phillip E. Johnson
- Focus on Origins Series: Raising Questions About Evolution in the Schools by Phillip E. Johnson
- A Critique of Darwinist Icons: Lecture and Interview with Jonathan Wells (2002).
- Focus on Origins: A Panel Discussion On the Theory of Evolution (2003)
- On the Origins of Phyla: Interview with James W. Valentine (1999).
- Icons of Evolution: The growing scientific controversy over Darwin (2002).
- 2001 Darwin, Design & Democracy Conference with Jonathan Wells
- The Triumph of Design and the Demise of Darwin, featuring Phillip Johnson (1999).
- Note: Not all the videos will be used, but I wanted to list all possible videos. Some portions of videos may be used and others may not be used at all. There is 600 minutes of Evolution videos, plus overhead presentations from the listed internet source. The remaining videos have to do with intelligent design.



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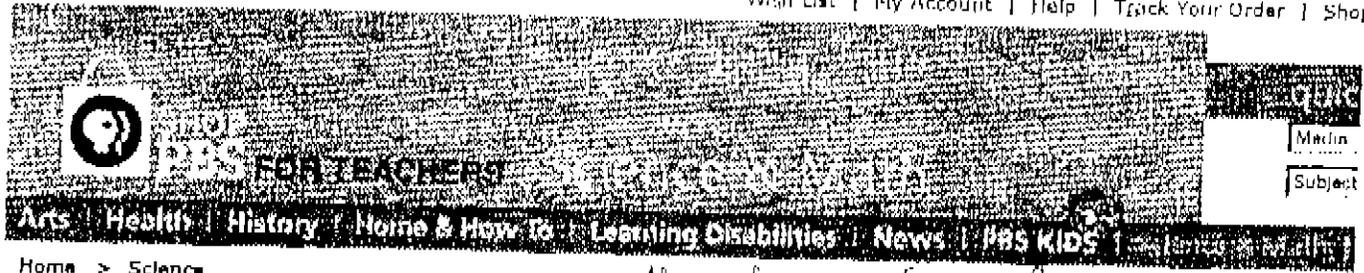


This site was created by the University of California Museum of Paleontology with support provided by the National Science Foundation (grant no. 0096613) and the Howard Hughes Medical Institute (grant no. 51003439).

** To be used as overheads.*

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 - Country Of (States

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HELP

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Discovery Institute News

1311 3rd Ave Suite 808 - Seattle, WA 98101 (206) 202-0401 x107

Teaching About Evolution in the Public Schools: A Short Summary of the Law

By: Prof. David K. DeWolf, J.D. and Seth L. Cooper, J.D.
Discovery Institute
April 1, 2005

Few educational issues have sparked such continuing controversy and debate as the teaching of evolution. In the past, the debate has been polarized between those who advocate teaching only the positive case for evolution and those who ask either to remove evolution or from the curriculum or to require teaching some form of creationism alongside evolution. School boards have been forced to address concerns about good science education as well as conflicting claims about constitutional limitations. But in the last decade a new approach to teaching about evolution has been developed to meet the test of good science and satisfy the courts' standards of constitutionality. This new approach uses the phrase "teach the controversy." The idea is to use scientific disagreements over evolution to help students learn more about evolution, and about how science deals with controversy. According to this approach, students should learn the scientific case for evolution, but in doing so they should study the scientific criticisms of various aspects of evolutionary theory.

The Constitution permits scientific critiques of prevailing scientific theories.

It is clear from U.S. Supreme Court precedents that the Constitution permits both the teaching of evolution as well as the teaching of scientific criticisms of prevailing scientific theories. Those who would like to remove evolution from the curriculum altogether have been told in no uncertain terms that the right to teach about this subject is inherent in the First Amendment. (*Epperson v. Arkansas*, 1967) At the same time, the U.S. Supreme Court has made clear that criticism of the theory of evolution may also be a required part of the curriculum. In the case of *Edwards v. Aguillard* (1987), the Court explicitly stated: "We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught."

Public schools have broad discretion in developing curricula. Including more scientific information about evolutionary theory, even scientific information that raises questions about its explanatory power, can satisfy the goal of improving science education. Particularly where the effect of a "teach the controversy" approach is to help both advocates and critics of evolutionary theory to have a better understanding of the claims of evolutionary theory and its supporting evidence, the test of constitutionality can easily be met.

It is important to note that legal scholars and groups with differing views about evolution have conceded the constitutionality of presenting scientific criticisms of evolutionary theory. In 1995 a broad range of legal, religious and non-religious organizations (including the American Civil Liberties Union, Americans United for Separation of Church and State and the Anti-Defamation League) signed a statement called "Religion in the Public Schools: A Joint Statement of Current Law." The joint statement of over 30 organizations agreed that "any genuinely scientific evidence for or against any explanation of life may be taught." (See <http://www.aclu.org/ReligiousLiberty/ReligiousLiberty.cfm?ID=900/&c=139>.)

At the same time, school boards and administrators need to bear in mind that any presentation of a science curriculum dealing with evolutionary theory should focus on scientific evidence and theories reasonably inferable from that evidence, rather than upon claims that rest upon religious beliefs. Resources discussing scientific criticisms of aspects of neo-Darwinian and chemical evolutionary theories include the Icons of Evolution Study Guide and the Icons of Evolution Curriculum Modules. (See <http://www.arn.org/arnproducts/books/b090.htm> and

<http://www.arn.org/arnproducts/vjdocs/v054.htm>.)

The Constitution prohibits the censoring of scientific ideas.

In *Epperson v. Arkansas* (1967), the Supreme Court stated that while shaping public school curricula is within a state's power, that power "does not carry with it the right to prohibit, on pain of criminal penalty, the teaching of a scientific theory or doctrine where that prohibition is based upon reasons that violate the First Amendment." To be sure, that case dealt with a statute that prohibiting the teaching of "...the theory or doctrine that mankind ascended or descended from a lower order of animals..." But the same principle could be applied to the prohibition of teaching any criticism of such a theory.

In his analysis of *Epperson*, Dr. Francis J. Beckwith stated the following: "the Court is not saying that publicly supported criticism of Darwinism (or evolution) is unconstitutional, but rather, that prohibiting academic discussion of these issues in the classroom—discussions necessary for the advancement of human knowledge—is inconsistent with the First Amendment if the prohibition has the effect of advancing sectarian religious or antireligious beliefs." (Francis J. Beckwith, *Law, Darwinism, and Public Education: The Establishment Clause and the Challenge of Intelligent Design* (Rowman and Littlefield, 2003), p. 12.)

Under *Epperson*, it is unconstitutional to exclude a theory simply because it is incompatible with the religious or anti-religious beliefs of a dominant group. At the same time, as noted above, curriculum must be chosen based upon the educational needs and resources available to the school board. Thus, the ideal standard for science education regarding evolutionary theory is to present both the case for mainstream evolutionary theory as well as the salient criticisms that are appropriate for the age group under consideration. Teaching students both the scientific strengths and weakness of neo-Darwinian and chemical evolutionary theories is consistent with academic freedom and avoids the problematic approach to the issue that the Court faced in *Epperson*.

States have called for critical thinking about evolutionary theory, following Congress's advice.

The No Child Left Behind Act (NCLB) requires all states to implement state-wide science standards by the 2005-06 school year. States are currently creating or revising science standards, which will dictate how evolution is taught in each state for the foreseeable future.

The Conference Committee Report of the No Child Left Behind Act of 2001 addressed the question of whether the implementation of state standards should result in a narrowing of science education. The Report says that where controversial topics like biological evolution exist, students should be able to "understand the full range of scientific views that exist."

Three states (Ohio, New Mexico, and Minnesota) have already adopted science standards that require learning about some of the scientific controversies relating to evolution.

Further, Ohio adopted a model curriculum that includes a lesson plan on the "Critical Analysis of Evolution." (Available for download here: http://www.ode.state.oh.us/academic_content_standards/sci/sci_ncesbop/pdf_setA/t10-1123_Critical_Analysis_of_Evolution_Mar_SBOE_changes.pdf.)

In a March, 2003 letter on science curriculum under NCLB, the Acting Deputy Secretary of the U.S. Department of Education stated that "The Department...embraces the general principles—reflected in the [NCLB report language] of academic freedom and inquiry into scientific views or theories." It also made clear that "The NCLB does not contain any language that requires or prohibits the teaching of any particular scientific views or theories either as part of a state's science curriculum or otherwise..." (See:

<http://www.discovery.org/scripts/viewDB/index.php?command=view&id=1899> and <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=1897>).

What about intelligent design theory?

In recent years a growing number of scientists, philosophers of science, and other scholars

have developed a theory known as intelligent design (ID). Intelligent design argues that some features of the universe are best explained as the products of an intelligent cause rather than an undirected cause such as natural selection acting on random mutations. Many scholars working on intelligent design are affiliated with Discovery Institute, a non-profit, non-partisan think tank in Seattle, a leading advocate of the "teach the controversy" approach.

As a matter of public policy, Discovery Institute opposes any effort to mandate or require the teaching of intelligent design by school districts or state boards of education. Recognizing the potential for sharp conflict in this area, Discovery Institute believes that a curriculum that aims to provide students with an understanding of the strengths and weaknesses of neo-Darwinian and chemical evolutionary theories (rather than teaching an alternative theory, such as intelligent design) represents a common ground approach that all reasonable citizens can agree on.

Beyond the question of what a school board should mandate as part of its science curriculum, there is the question of a teacher's constitutional right to teach more than the school board requires with regard to intelligent design theory. Without attempting to predict specific outcomes in specific cases, a few general comments can be made. First, the United States Supreme Court's opinion in *Edwards v. Aguillard* contains a strong affirmation of the individual teacher's right to academic freedom. It also recognized that, while the statute requiring the teaching of creationism in that case was unconstitutional, "...teaching a variety of scientific theories about the origins of humankind to schoolchildren might be validly done with the clear secular intent of enhancing the effectiveness of science instruction." On the other hand, courts have recognized that teachers in K-12 public schools are subject to reasonable curricular guidelines, so long as those guidelines are applied consistently to all teachers and issues. Moreover, courts are aware of the danger that a teacher will use the classroom to advance personal religious (or anti-religious) views. As a result, science teachers should avoid even the appearance of exploiting a captive audience as distinguished from helping students develop critical thinking skills.

For a detailed discussion about the constitutionality of teaching intelligent design, see David K. DeWolf et. al., "Teaching the Origins Controversy: Science, Religion, or Speech?" in the *Utah Law Review* (2000); Jeffrey F. Addicott, "Storm Clouds on the Horizon of Darwinism: Teaching the Anthropic Principle and Intelligent Design in the Public Schools," in the *Ohio State Law Journal* (2002). (See article available here: <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=7110&program=CSC%20-%20Science%20and%20Education%20Policy%20-%20Legal%20Resources>.) Also see Francis J. Beckwith's *Law, Darwinism, and Public Education: The Establishment Clause and the Challenge of Intelligent Design* (Rowman & Littlefield, 2003) (Available here: <http://www.arn.org/arnproducts/books/b071.htm>.)



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