

IN THE MATTER OF  
THE  
INSTITUTE FOR CREATION RESEARCH GRADUATE SCHOOL

before the  
TEXAS HIGHER EDUCATION COORDINATING BOARD

---

**FIRST SUPPLEMENT TO ICRGS's**  
**PETITION FOR CONTESTED CASE STATUS**

Submitted June 12<sup>th</sup>, A.D. 2008

By:  
INSTITUTE FOR CREATION RESEARCH  
GRADUATE SCHOOL

**EXHIBIT #2**

The Institute for Creation Research Graduate School (“**ICRGS**”), petitioner herein, replies to Texas Higher Education Coordinating Board (“**THECB**”)’s letter response<sup>1</sup> of June 11<sup>th</sup> of 2008, as follows:

1. ICRGS **concur**s that its Petition’s primary request, designated as requested action “**A**” (on Petition page 9) is ICRGS’s primary and focal request for this phase of this administrative remedy proceeding.
2. Regarding the timing and venue issues related to ICRGS’s notice of “**substantial burden**”, under the *Texas Religious Freedom Restoration Act of 1999* (“Texas RFRA”), ICRGS suggests that this administrative process could potentially provide timely “administrative remedies” to satisfactorily relieve that burden.<sup>2</sup>
3. ICRGS concurs that the procedural and jurisdictional limitations of THECB and SOAH, as an administrative law-governed entities, cause ICRGS’s other proposed remedy issues (i.e., those remedies other than the aforesaid request “**A**”, such as requests “**B**”, “**C**”, “**D**”, noted on Petition pages 9—10, as well as some unresolved issues raised on Petition page 62), to be potentially addressable via **PFD**<sup>3</sup> **findings of fact and/or conclusions of law**, until such time as this matter may become a matter of judicial review and/or some other kind of parallel litigation (e.g., a declaratory judgment/injunctive relief action commenced pursuant to the Texas RFRA).
4. ICRGS further concurs that the style of this controversy, viewed (and processed) as an administrative matter under 19 T.A.C. § 7.7, especially § 7.7(d)(6)(D)(7), should be expressed, in formal protocol, as “***In the Matter of the Institute for Creation Research Graduate***

---

<sup>1</sup> Letter of 6-11-2008, from the THECB’s General Counsel, William M. Franz, Esq., unto ICRGS’s special counsel.

<sup>2</sup> Accordingly, ICRGS requests THECB’s suggestions (e.g., perhaps a tolling agreement, if that option is statutorily available) on how to apply timing-and-venue issues raised by Tex. Civ. Prac. & Rems. Code § 110.005(c), § 110.007(a), and § 110.007(b). Although Tex. Civ. Prac. & Rems. Code § 110.006 contemplates service of ICRGS’s pre-litigation “notice” via “certified mail, return receipt requested”, ICRGS’s Petition was sent to THECB via FedEx (not certified mail). Thus, if necessary, an additional re-mailing of relevant portions of the Petition (with cross-reference to the entirety of the Petition) should be timely provided, via certified mail, return receipt requested. In the previous sentence the word “timely”, according to Tex. Civ. Prac. & Rems. Code § 110.007, would be within “one year” of April 24<sup>th</sup> of 2008, unless the “75<sup>th</sup> day” rule of § 110.007(b) would otherwise affect the timing for filing any such civil action under the Texas RFRA of 1999.

<sup>3</sup> “PFD” = “Proposal for Decision” by a SOAH-appointed Administrative Law Judge.

**School**". Also, if and when an adversary proceeding form is needed (at the SOAH phase), this controversy can there be styled "*In the Matter of the Institute for Creation Research Graduate School (Institute for Creation Research Graduate School v. Texas Higher Education Coordinating Board)*".

5. ICRGS hereby gives notice of 2 *nunc-pro-tunc* corrections<sup>4</sup> now provided to correct the text of its **Petition**, neither of which involves any substantive "unfair surprise" or any "unfair prejudice" to THECB:
  - (a) on Petition **page 33**, in footnote # 58, the phrase "Christians, choosing (**unless** the French Revolutionaries a few years later) to date their Constitution" should read "Christians, choosing (**unlike** the French Revolutionaries a few years later) to date their Constitution" . . . ; and
  - (b) in Petition **Appendix "H"**, on its second page,<sup>5</sup> the content should not be obscured as it is; accordingly, a complete version of that page is provided within a substitute Appendix "H" (notice: a full copy of said appendix, originally titled "*Supplement" to Appendix "R" to ICRGS's Progress Report*") was distributed to THECB committees on April 23<sup>rd</sup> of 2008).
  
6. ICRGS hereby also gives notice of 1 *nunc-pro-tunc* correction now provided to correct the text of one part of the Petition's **Appendix "N"**, specifically, within the article captioned "Kepler Discovered God's Natural Laws" (reprinted within said Appendix "N").<sup>6</sup> In the second

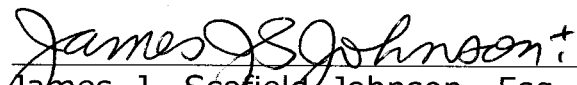
<sup>4</sup> Other typos exist in ICRGS's Petition (e.g., unclosed parentheses) but should be self-evident.

<sup>5</sup> On the THECB-posted version of ICRGS's Petition, this obscured page is numbered as # 181 of 755. The contents of the yellow notes denote topics which ICRGS's special counsel was prohibited from mentioning, in support of academic freedom, on 4-24-2008, relative to ICRGS's request for a Certificate of Authority.

<sup>6</sup> The Johannes Kepler article is one component of a larger lesson, titled "Thinking God's Thoughts After Him". The Kepler article illustrates how ICR's Biblical/scientific creationism "tenets" are, institutionally speaking, sincerely held religious/academic viewpoints which logically accord with those of real-world science pioneers. Creationist scientists, like Kepler, who anticipate finding divine logic (including "intelligent design") in the universe are **unlikely** to err by promoting (the now falsified) theories of so-called "**vestigial organs**" or so-called "**junk DNA**". Master's-level students should be taught that evolutionary theory has, historically, misled evolutionary scientists to anticipate "left-over junk" from (presupposed) genetic transmogrification "accidents", such as "vestigial organs" (useless organs supposedly illustrating left-over anatomy or genes from evolutionary ancestors of a different kind/species), yet real-world science proves that there are **no** such useless "vestigial organs" (e.g., appendix, tonsils, adnoids, coccyx, etc.). Likewise, real-world science is now proving that the evolutionists "jumped the gun" when labeling portions of human DNA as "junk DNA", because the purpose and function of those "non-coding"

non-indented sentence of that article, alluding to King Josiah, the last phrase is "God's **natural** law" but should read "God's **Biblical** law". (This correction involves no substantive "unfair surprise" or any "unfair prejudice" to THECB).

Respectfully submitted,  
This 12<sup>th</sup> day of June, A.D. 2008, by:

  
James J. Scofield Johnson, Esq.  
Texas Bar # 10741520

Special Counsel for the  
INSTITUTE FOR CREATION RESEARCH GRADUATE SCHOOL  
1806 Royal Lane, Dallas, Texas 75229  
214-615-8314 telephone; 214-615-8299 FAX

---

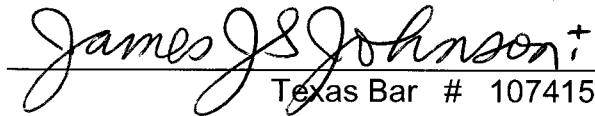
DNA portions is now being learned, and it's not useless "junk". See, accord, **David Demick**, "Glimpses of Christ the Creator" **Acts & Facts** (January 2003) (posted on ICR's website as <http://www.icr.org/article/131/>) ("Another small part of the brain, the pineal gland, needs mention at this point as an important component of what physiologists were beginning to call the "photo-neuroendocrine system." . . . . Understanding the function of the pineal organ took a step backward for a century after 1859, when Darwinian wisdom decided that it was no more than a largely useless 'vestigial organ'. However, modern insight into the importance of the pineal began with the discovery in 1958 that it secreted a hormone called melatonin, which has several important positive physiologic effects. With regard to the light-brain-body interaction, melatonin has a circadian (daily) rhythm of secretion which affects the daily sleep-wake cycle. Studies have shown a functional link between the pineal gland and the suprachiasmatic nucleus, or "clock" center of the hypothalamus, and it has been demonstrated that their daily rhythms of activity are closely tied together. Thus, through the hypothalamus, pituitary, and pineal glands, light impulses conducted through the ocular retinae have far-reaching effects on the entire body, quite independent of the sense of sight."). See also, accord, **Frank Sherwin**, "Revealing Purpose in 'Junk' DNA", **Acts & Facts** (August 2007) (posted on ICR's website as <http://www.icr.org/article3396/>) ("Creation scientists countered--as they did with other alleged vestigial organs and tissues--that just because we don't know the function at the present, that doesn't mean the DNA doesn't have some important function. One need only look at the tonsils and appendix that were once taught by Darwinists to be vestigial but are now known, thanks to good scientific research, to serve important functions in the human body.")

CERTIFICATE REGARDING SERVICE

This Supplement, **with its attached replacement copy** of its Petition's **Appendix "H"** (which reproduces the 4-23-2008-distributed "Supplement to Appendix 'R' to ICR Graduate School's "THECB Progress Report" of March 2008), will have been served upon the THECB's attorney of record, via certified mail,<sup>7</sup> with return receipt requested, or by other verifiable delivery service (e.g., FedEx), at:

**William M. Franz, Esq.**, General Counsel  
*Texas Higher Education Coordinating Board*  
1200 East Anderson Lane  
Austin, Texas 78752 - 1743.

and/or via FAX (c/o 512-427-6127), and/or via email (unto william.franz@theccb.state.tx.us ), on this the 12<sup>th</sup> day of June, A.D. 2008, to which service the below signature attests.

  
Texas Bar # 10741520

---

<sup>7</sup> Also, a copy of this Supplement is to be provided, contemporaneously, to the Texas Attorney General's Office, at the following address: **Hon. Greg Abbott**, in his official capacity as the Attorney General of Texas, c/o Office of the Attorney General, 300 W. 15<sup>th</sup> Street, Austin, Texas 78701.