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[Home](#) > Victory again in California creationism case

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01.12.2010

[Victory again in California creationism case](#) [3]



In a January 12, 2010, ruling, the Ninth Circuit Court of Appeals affirmed a federal district court's summary judgment in favor of the University of California system in *ACSI et al. v. Stearns et al.* The case, originally filed in federal court in Los Angeles on August 25, 2005, centered on the University of California system's policies and statements relevant to evaluating the qualifications of applicants for admission. The plaintiffs — the Association of Christian Schools International, the Calvary Chapel Christian School in Murrieta, California, and a handful of students at the school — charged that the university system violated the constitutional rights of applicants from Christian schools whose high school coursework is deemed inadequate preparation for college.

Creationism was not the only issue in the case, to be sure, but it was conspicuous. The plaintiffs objected to the university system's policy of rejecting high school biology courses that use textbooks published by Bob Jones University Press and A Beka Books — *Biology: God's Living Creation* and *Biology for Christian Schools* — as "inconsistent with the viewpoints and knowledge generally accepted in the scientific community." Michael Behe, a proponent of "intelligent design" creationism, defended the textbooks, while Donald Kennedy and Francisco J. Ayala (a Supporter of NCSE) contended that they were inappropriate for use as the principal text in a college preparatory biology course. The trial judge was unpersuaded by Behe's defense.

After the trial judge granted the defendants' motion for summary judgment on August 8, 2008, the plaintiffs promptly appealed, asserting, inter alia, that the University of California's policy on high school biology courses "constitutes viewpoint discrimination, content discrimination, and content-based

regulation, which conflict with the First Amendment." Of particular interest in the preparation from the appeal was the California Council of Science and Technology's amicus curiae brief. Coauthored by attorneys from Pepper Hamilton LLP who were part of the legal team representing the plaintiffs in *Kitzmiller v. Dover*, the 2005 case over "intelligent design" creationism, the brief argued, "Students educated with these textbooks will not be adequately prepared for science courses."

The Ninth Circuit affirmed the trial court's ruling that the University of California's policy was constitutional on its face and as applied, [writing](#) [4] (PDF), "The plaintiffs have not alleged facts showing any risk that UC's policy will lead to the suppression of speech. ... the plaintiffs fail to allege facts showing that this policy is discriminatory in any way. ... The district court correctly determined that UC's rejections of the Calvary [Baptist School] courses [including a biology class that used *Biology: God's Living Creation*] were reasonable and did not constitute viewpoint discrimination. ... The plaintiffs assert a myriad of legal arguments attacking the district court's decision, all of which lack merit." Documents from the case are available on NCSE's website, in a special section devoted to [ACSI v. Stearns](#) [5].

[General](#) [6]

[2010](#) [7]

[California](#) [8]

[+ read](#) [3]

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Links

[1] <https://ncse.com/printpdf/13505>

[2] <https://ncse.com/users/glenn>

[3] <https://ncse.com/news/2010/01/victory-again-california-creationism-case-005282>

[4] <http://www.ca9.uscourts.gov/datastore/memoranda/2010/01/12/08-56320.pdf>

[5] <https://ncse.com/creationism/legal/acsi-v-stearns>

[6] <https://ncse.com/general>

[7] <https://ncse.com/news/2010>

[8] <https://ncse.com/news/california>