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02.16.2012

## [Credit-for-creationism scheme unconstitutional?](#) [3]



A leading authority on the law of religious liberty regards Alabama's House Bill 133 — which would, if enacted, "authorize local boards of education to include released time religious instruction as an elective course for high school students" — as unconstitutional. Douglas Laycock of the University of Virginia [told](#) [4] WBHM (February 16, 2012) that although the bill attempts to ensure that the state would not be unconstitutionally supporting the teaching of religion, it is "oblivious to the question of whether academic credit is a form of support." But, he added, "awarding academic credit would seem to be a pretty significant incentive."

The sponsor of the bill, Blaine Galliher (R-District 30), is on record as saying that the point of the bill is to balance the presentation of evolution in the public schools. Laycock commented, "I think that should not be constitutional. Despite all the political rhetoric, there is essentially no scientific evidence for creationism. The only scientific debate is about the details and mechanisms of evolution. So a course in creationism is essentially promoting a religious belief, and the state is supposed to stay neutral on questions of religious belief and leave us free to decide those questions for ourselves."

Laycock argued, "the state should not be granting credit for instruction in religion, either from a believing perspective or from a non-believing perspective. The only state credit for religion courses should be objective study of what each of the great religions does or teaches." It would be problematic for schools to offer credit for released time religious instruction, he explained: "We don't want the government telling churches how to provide the religious instruction. ... There'd be an entanglement problem with the school trying to regulate these courses, trying to tell the churches what kind of religion course they can

offer."

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## **Transcript of Douglas Laycock's on-air interview with WBHM's Dan Carsen, February 16, 2012**

LAYCOCK: It's better drafted than most such bills. It deals with all the forms of financial support and other kinds of indirect support, and says the school can't provide any of that. It's sort of oblivious on the question of whether academic credit is a form of support. It says release time doesn't work because kids can't get academic credit. That means families aren't going to do this on their own. So awarding academic credit would seem to be a pretty significant incentive. But the bill is written on the assumption that it's not. While it's got a lot of recitals in its preamble, it doesn't say anything to justify the assumption that academic credit is not an incentive.

CARSEN: The impression that I was given was that this had all been litigated already. But the fact that we're talking about a course for credit, that's not true then.

LAYCOCK: That is not true, no. It seems to me the risk here is that they're giving academic credit for something that's appropriate to a church but not appropriate to a school.

CARSEN: I interviewed the sponsor of the Alabama bill yesterday. He wants it to be a course in creation as a balance against evolution.

LAYCOCK: I think that should not be constitutional. Despite all the political rhetoric, there is essentially no scientific evidence for creationism. The only scientific debate is about the details and mechanisms of evolution. So a course in creationism is essentially promoting a religious belief, and the state is supposed to stay neutral on questions of religious belief and leave us free to decide those questions for ourselves.

CARSEN: And granting that credit, that would be stepping over the line of neutrality?

LAYCOCK: I think so. And obviously that's the central issue here. But I think the state should not be granting credit for instruction in religion, either from a believing perspective or from a non-believing perspective. The only state credit for religion courses should be objective study of what each of the great religions does or teaches.

CARSEN: I've heard the argument that basically a completely secular school day, from 8:00 in the morning to 3:00 in the afternoon, whatever that may be, that in itself is not neutral, as far as religion. It seems understandable to me. What do you think about that argument?

LAYCOCK: There's some force to that, but there are other solutions to that. This is certainly not going to help a Muslim student who has a prayer call five times a day. They've got to accommodate his needs some other way. They can have the release time program, and it can be as intensely religious as people want it to be without giving academic credit. And if the issue is that people who want religious instruction aren't sufficiently concerned to go get it unless they get academic credit, then it's not much of a problem, and they're really not that concerned. They can have religious student groups in the school that meet during the extracurricular activity period on school property; that's entirely permissible. There are plenty of things they can do that enable individual students or groups of students or the private sector to

introduce religion into the school day without school sponsorship and while the school itself remains neutral on religious questions. But what they cannot have is the school giving religious instruction itself. And then this is a sort of in-between case: the school is going to give academic credit for religious instruction by a church or a religious organization. That seems to me to be on the non-neutral side of the line.

CARSEN: Doesn't this go to the issue of local control?

LAYCOCK: Well, local control is a slogan. School boards have local control over many things. They do not have local control to do unconstitutional things. The Constitution applies to all levels of government. Saying it's about local control doesn't tell you which side of that line it's on. It doesn't tell you whether it's really a local matter or really a constitutional matter.

CARSEN: Do the logistics of something like this concern you also?

LAYCOCK: There's an issue about what happens for the kids who don't attend. Is their school day going to continue undisrupted? It needs to, otherwise they're being pressured or leaned on to go participate. But what's really troubling about this to me is there's no quality control over these courses. We don't know if they're going to be the objective study of religion or if they're going to be Sunday School, but we can guess they're probably going to be Sunday School, and that seems to be what the sponsor wants.

CARSEN: In this case, definitely, yes.

LAYCOCK: I don't think the school wants to control that. It would be very problematic if the school did control that, right? We don't want the government telling churches how to provide their religious instruction. The problem here is giving academic credit for something offered by a church that the state doesn't control, cannot control, and it may not be an academic course at all; that's the problem.

CARSEN: So there's a potential entanglement of teacher accreditation or school standards, and that could actually represent more government control over, say, a church.

LAYCOCK: There'd be an entanglement problem with the school trying to regulate these courses, trying to tell the churches what kind of religion course they can offer. That's the kind of problem that the court sometimes describes as entanglement, but it's really a problem of the state interfering inside the church, and that's generally unconstitutional. But here, if you don't interfere in that way, if you don't regulate what the church does with this course, then you wind up giving academic credit for something that is not academic at all, but is inherently religious.

CARSEN: In your career, have you come across other new bills similar to this one?

LAYCOCK: No. There's a steady stream of bills to try to get more religion in the public schools, but this is the first bill I've seen that does anything like this.

CARSEN: Professor, thank you so much for your time. I appreciate it very much.

LAYCOCK: Okay.

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