Appignani Humanist Legal Center

1821 Jefferson Place NW, Washington, DC 20036 | T 800.837.3792 202.238.9088 | F 202.238.9003 | legal@americanhumanist.org | www.humanistlegalcenter.org

September 17, 2018

Via Email

Don Embry – Superintendent
Bedford County Schools
500 Madison Street
Shelbyville, TN 37160

Hello Mr. Embry,

Thank you for promptly attending to this matter. We appreciate your willingness to address the issues at hand. It seems, however, there is one area that needs further clarification, and that is the issue of presenting "both sides" or "both theories equally."

The Supreme Court and circuit courts have been clear that teaching creationism in public school violates the Establishment Clause. *See Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (holding that a statute requiring the teaching of creationism alongside evolution in public schools violates the Establishment Clause); *see also Epperson v. Arkansas*, 393 U.S. 97 (1968) (holding that a statute that forbids the teaching of evolution in public schools violates the Establishment Clause); *Freiler v. Tangipahoa Parish Bd. of Educ*., 185 F. 3d 337, 346 (5th Cir. 1999) (holding that a required disclaimer to be read before evolution lessons in public schools that states that they were "not intended to influence or dissuade the Biblical version of Creation" and that urged students "to exercise critical thinking and gather all information possible and closely examine each alternative" violates the Establishment Clause because it "protect[s] and maintain[s] a particular religious viewpoint"); *Webster v. New Lenox Sch. Dist.*, 917 F.2d 1004, 1008 (7th Cir. 1990) (upholding school board's prohibition on the teaching of creation science to junior high students); *Daniel v. Waters*, 515 F.2d 485 (6th Cir. 1975) (declaring unconstitutional a statute that required a disclaimer to accompany all theories of origin except the Biblical theory of creation and that precluded the teaching of occult or satanical beliefs of human origin); *McLean v. Arkansas Bd. of Educ*., 529 F. Supp. 1255 (E.D. Ark 1982) (striking down statute that required balanced treatment of creation science and evolution in public schools); *Kitzmiller v. Dover Area Sch. Dist*., 400 F. Supp. 2d 707 (M.D. Pa. 2005) (holding that it was unconstitutional to teach Intelligent Design as an alternative to evolution in public school); *c.f. Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521-22 (9th Cir. 1994) (requiring that a public school teacher to teach evolution and not creationism does not violate the First Amendment). As the Ohio Supreme Court summarized:

> Federal courts consistently hold that the teaching of evolution in public schools should not be prohibited, *Epperson v. Arkansas*, 393 U.S. 97, 106-107, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968), and have struck as unconstitutional policies and statutes that require public school teachers to devote equal time to teaching both evolution and the Biblical view of creation. *See, e.g., Daniel v. Waters*, 515 F.2d 485 (6th Cir.1975).
>
> The United States Supreme Court and at least one other federal court have held that teaching theories of creationism and intelligent design in public schools violates the Establishment Clause because they convey "supernatural causation of the natural world" and therefore are inherently religious concepts. *Kitzmiller v. Dover Area School Dist*., 400 F.Supp.2d 707, 736 (M.D.Pa.2005); *Edwards v. Aguillard*, 482 U.S. 578, 591-592, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987).

Freshwater v. Mount Vernon City Sch. Dist. Bd. of Educ., 1 N.E.3d 335, 355 (Ohio 2013). The court in *Kitzmiller* also succinctly summarized the Supreme Court precedent as follows:

> In 1968, a radical change occurred in the legal landscape when in *Epperson v. Arkansas*, the Supreme Court struck down Arkansas's statutory prohibition against teaching evolution. Religious proponents of evolution thereafter championed "balanced treatment" statutes requiring public-school teachers who taught evolution to devote equal time to teaching the biblical view of creation; however, courts realized this tactic to be another attempt to establish the Biblical version of the creation of man.
>
> Fundamentalist opponents of evolution responded with a new tactic . . . which was ultimately found to be unconstitutional under the First Amendment, namely, to utilize scientific-sounding language to describe religious beliefs and then to require that schools teach the resulting "creation science" or "scientific creationism" as an alternative to evolution.
>
> In *Edwards v. Aguillard*, . . . the Supreme Court held that a requirement that public schools teach "creation science" along with evolution violated the Establishment Clause. The import of *Edwards* is that the Supreme Court turned the proscription against teaching creation science in the public school system into a *national prohibition*.

400 F. Supp. 2d at 711-12 (citations omitted, emphasis added). The court thus held that "teaching about supposed gaps and problems in evolutionary theory are creationist religious strategies that evolved from earlier forms of creationism," and that therefore, such teachings constitute "an endorsement of a religious view" in violation of the Establishment Clause. *Id.* at 731. This holding is fully in accord with Supreme Court precedent.

Of course, different *scientific* theories may be presented in a science classroom, but the courts have recognized that creationism is *not science.* In *Kitzmiller*, the court noted:

> We are in agreement with Plaintiffs' lead expert Dr. Miller, that from a practical perspective, attributing unsolved problems about nature to causes and forces that lie outside the natural world is a "science stopper." (3:14-15 (Miller)). As Dr. Miller explained, once you attribute a cause to an untestable supernatural force, a proposition that cannot be disproven, there is no reason to continue seeking natural explanations as we have our answer. *Id*.

400 F. Supp. 2d at 736. *See also McLean v. Ark. Bd. of Educ.*, 529 F. Supp. 1255, 1267 (E.D. Ark. 1982) (explaining that creation science is religious "because it depends upon a supernatural intervention which is not guided by natural law").

The Fifth Circuit also recognized that it is unconstitutional to teach students the "Biblical version of Creation" as scientific fact. *Freiler v. Tangipahoa Par. Bd. of Educ*., 185 F.3d 337, 346 (5th Cir. 1999). The court explained, as relevant here:

> Although it is not per se unconstitutional to introduce religion or religious concepts during school hours, there is a fundamental difference between introducing religion and religious concepts in "an appropriate study of history, civilization, ethics, comparative religion, or the like" and . . . urg[ing] students to think about religious theories of "the origin of life and matter" as an *alternative* to evolution, the State-mandated curriculum.

Id. at 347 (emphasis in original). "The conclusion that creation science has no scientific merit or educational value as science has legal significance in light of the Court's previous conclusion that creation science has, as one major effect, the advancement of religion." *McLean v. Ark. Bd. of Educ*., 529 F. Supp. 1255, 1272 (E.D. Ark. 1982). "Since creation science is not science, the conclusion is inescapable that the only real effect of Act 590 is the advancement of religion." *Id.*

In view of the foregoing, we kindly ask for written assurances that Biblical theories (including creationism) will no longer be taught as scientific fact in the classroom. This includes presenting creationism as an "alternative" to evolution and telling students "God" is responsible for natural phenomena.

Sincerely,
Monica Miller, Esq.