EDWARDS v. AGUILLARD

SUPREME COURT OF THE UNITED STATES
482 U.S. 578
June 19, 1987
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CREATION SCIENCE V. EVOLUTION SCIENCE

OPINION: Justice Brennan...The question for decision is whether Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction" Act (Creationism Act) is facially invalid as violative of the Establishment Clause of the 1st Amendment.

The Creationism Act forbids the teaching of the theory of evolution in public schools unless accompanied by instruction in "creation science." No school is required to teach evolution or creation science. If either is taught, however, the other must also be taught. The theories of evolution and creation science are statutorily defined as "the scientific evidences for creation or evolution and inferences from those scientific evidences."

...The District Court...[and] the Court of Appeals...held that the Act violated the Establishment Clause...[We affirm.]

The Court has applied a three-pronged test to determine whether legislation comports with the Establishment Clause. First, the legislature must have adopted the law with a secular purpose. Second, the statute's principal or primary effect must be one that neither advances nor inhibits religion. Third, the statute must not result in an excessive entanglement of government with religion. *Lemon v. Kurtzman*[1]. State action violates the Establishment Clause if it fails to satisfy any of these prongs…

The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. **Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of**

[1] Case 1A-R-042 on this website.

the student and his or her family...In this case, appellants have identified no clear secular purpose for the Louisiana Act…

The goal of providing a more comprehensive science curriculum is not furthered either by outlawing the teaching of evolution or by requiring the teaching of creation science. While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham. *Wallace v. Jaffree*[2]; *Stone v. Graham*[3]*; Abington School Dist*. v. *Schempp*[4]. As Justice O'Connor stated in *Wallace*: "It is not a trivial matter, however, to require that the legislature manifest a secular purpose and omit all sectarian endorsements from its laws. That requirement is precisely tailored to the Establishment Clause's purpose of assuring that Government not intentionally endorse religion or a religious practice."

It is clear from the legislative history that the purpose of the legislative sponsor, Senator Bill Keith, was to narrow the science curriculum. During the legislative hearings, Senator Keith stated: "My preference would be that neither [creationism nor evolution] be taught." Such a ban on teaching does not promote -- indeed, it undermines -- the provision of a comprehensive scientific education.

It is equally clear that requiring schools to teach creation science with evolution does not advance academic freedom. The Act does not grant teachers a flexibility that they did not already possess to supplant the present science curriculum with the presentation of theories, besides evolution, about the origin of life. Indeed, the Court of Appeals found that no law prohibited Louisiana public school teachers from teaching any scientific theory. As the president of the Louisiana Science Teachers Association testified, "any scientific concept that's based on established fact can be included in our curriculum already, and no legislation allowing this is necessary." The Act provides Louisiana schoolteachers with no new authority. Thus the stated purpose is not furthered by it…

We agree with the Court of Appeals' conclusion that the Act does not serve to protect academic freedom, but has the distinctly different purpose of **discrediting** "evolution by counterbalancing its teaching at every turn with the teaching of creationism..."

The preeminent purpose of the Louisiana Legislature was clearly to advance the religious viewpoint that a supernatural being created humankind. The term "creation science" was defined as embracing this particular religious doctrine by those responsible for the passage of the Creationism Act. Senator Keith's leading expert on creation science, Edward Boudreaux, testified at the legislative hearings that the theory of creation science included belief in the existence of a supernatural creator...(noting that "creation scientists" point to high probability that life was "created by an intelligent mind"). Senator Keith also cited testimony from other experts to support the creation-science view that "a creator [was] responsible for the universe and everything in it." The legislative history therefore reveals that the term "creation science," as contemplated by the legislature that adopted this Act, embodies the religious belief that a supernatural creator was responsible for the creation of humankind.

[2] Case 1A-R-068 on this website.
[3] Case 1A-R-057 on this website.
[4] Case 1A-R-034 on this website.

Furthermore, it is not happenstance that the legislature required the teaching of a theory that coincided with this religious view. The legislative history documents that the Act's primary purpose was to change the science curriculum of public schools in order to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. The sponsor of the Creationism Act, Senator Keith, explained during the legislative hearings that his disdain for the theory of evolution resulted from the support that evolution supplied to views contrary to his own religious beliefs. According to Senator Keith, the theory of evolution was consonant with the "cardinal principles of religious humanism, secular humanism, theological liberalism, aetheistism." **The state senator repeatedly stated that scientific evidence supporting his religious views should be included in the public school curriculum to redress the fact that the theory of evolution incidentally coincided with what he characterized as religious beliefs antithetical to his own. The legislation therefore sought to alter the science curriculum to reflect endorsement of a religious view that is antagonistic to the theory of evolution…**

As in *Epperson*[5], the legislature passed the Act to give preference to those religious groups which have as one of their tenets the creation of humankind by a divine creator. The "overriding fact" that confronted the Court in *Epperson* was "that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with...a particular interpretation of the Book of Genesis by a particular religious group." Similarly, the Creationism Act is designed *either* to promote the theory of creation science which embodies a particular religious tenet by requiring that creation science be taught whenever evolution is taught *or* to prohibit the teaching of a scientific theory disfavored by certain religious sects by forbidding the teaching of evolution when creation science is not also taught. The Establishment Clause, however, "forbids *alike* the preference of a religious doctrine *or* the prohibition of theory which is deemed antagonistic to a particular dogma." Because the primary purpose of the Creationism Act is to advance a particular religious belief, the Act endorses religion in violation of the 1st Amendment.

We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught. Indeed, the Court acknowledged in *Stone* that its decision forbidding the posting of the Ten Commandments did not mean that no use could ever be made of the Ten Commandments, or that the Ten Commandments played an exclusively religious role in the history of Western Civilization. In a similar way, 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. But because the primary purpose of the Creationism Act is to endorse a particular religious doctrine, the Act furthers religion in violation of the Establishment Clause...

Is the Court saying that the State could have required the teaching of both theories?

The Louisiana Creationism Act advances a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious

[5] Case 1A-R-038 on this website.

viewpoint that rejects evolution in its entirety. The Act violates the Establishment Clause of the 1st Amendment because it seeks to employ the **symbolic and financial support of government** to achieve a religious purpose. [The judgment of the Court of Appeals is Affirmed.]

"**Symbolic** and **financial support** of government?"
Remind you of anything, like maybe, **a nativity scene**?

DISSENT: Justice Scalia/Rehnquist...The parties are sharply divided over what creation science consists of. Appellants insist that it is a collection of educationally valuable scientific data that has been censored from classrooms by an embarrassed scientific establishment. Appellees insist it is not science at all but thinly veiled religious doctrine. Both interpretations of the intended meaning of that phrase find considerable support in the legislative history.

At least at this stage in the litigation, it is plain to me that we must accept appellants' view of what the statute means. To begin with, the statute itself *defines* "creation-science" as "the *scientific evidences* for creation and inferences from those *scientific evidences*." If, however, that definition is not thought sufficiently helpful, the means by which the Louisiana Supreme Court will give the term more precise content is quite clear -- and again, at this stage in the litigation, favors the appellants' view. "Creation science" is unquestionably a "term of art" and thus, under Louisiana law, is "to be interpreted according to its received meaning and acceptation with the learned in the art, trade or profession to which it refers." The only evidence in the record of the "received meaning and acceptation" of "creation science" is found in five affidavits filed by appellants. In those affidavits, two scientists, a philosopher, a theologian, and an educator, all of whom claim extensive knowledge of creation science, swear that it is essentially a collection of scientific data supporting the theory that the physical universe and life within it appeared suddenly and have not changed substantially since appearing. **These experts insist that creation science is a strictly scientific concept that can be presented without religious reference. At this point, then, we must assume that the Balanced Treatment Act does *not* require the presentation of religious doctrine…**

For the purpose of the *Lemon* test..., if those legislators who supported the Balanced Treatment Act *in fact* acted with a "sincere" secular purpose, the Act survives the first component of the *Lemon* test, regardless of whether that purpose is likely to be achieved by the provisions they enacted.

Our cases have also confirmed that when the *Lemon* Court referred to "a secular...purpose," it meant "*a* secular purpose." The author of *Lemon*, writing for the Court, has said that invalidation under the purpose prong is appropriate when "there is *no question* that the statute or activity was motivated *wholly* by religious considerations." *Lynch v. Donnelly*[6]; *Wallace v. Jaffree*...In all three cases in which we struck down laws under the Establishment Clause for lack of a secular purpose, we found that the legislature's sole motive was to promote religion. See *Wallace v. Jaffree; Stone v. Graham; Epperson v. Arkansas; Lynch v. Donnelly*...Thus, the majority's invalidation of the Balanced

[6] Case 1A-R-066 on this website.

Treatment Act is defensible only if the record indicates that the Louisiana Legislature had *no* secular purpose.

It is important to stress that the purpose forbidden by *Lemon* is the purpose to "advance religion."...Our cases in no way imply that the Establishment Clause forbids legislators merely to act upon their religious convictions. We surely would not strike down a law providing money to feed the hungry or shelter the homeless if it could be demonstrated that, but for the religious beliefs of the legislators, the funds would not have been approved. Also, political activism by the religiously motivated is part of our heritage.

Notwithstanding the majority's implication to the contrary, we do not presume that the sole purpose of a law is to advance religion merely because it was supported strongly by organized religions or by adherents of particular faiths. To do so would deprive religious men and women of their right to participate in the political process. Today's religious activism may give us the Balanced Treatment Act, but yesterday's resulted in the abolition of slavery, and tomorrow's may bring relief for famine victims.

Similarly, we will not presume that a law's purpose is to advance religion merely because it "happens to coincide or harmonize with the tenets of some or all religions." *McGowan v. Maryland*[7]...Thus, the fact that creation science coincides with the beliefs of certain religions, a fact upon which the majority relies heavily, does not itself justify invalidation of the Act.

Finally, our cases indicate that even certain kinds of governmental actions undertaken with the specific intention of improving the position of religion do not "advance religion" as that term is used in *Lemon*. Rather, we have said that in at least two circumstances government *must* act to advance religion, and that in a third it *may* do so.

First, since we have consistently described the Establishment Clause as forbidding not only state action motivated by the desire to *advance* religion, but also that intended to "disapprove," "inhibit," or evince "hostility" toward religion...and since we have said that governmental "neutrality" toward religion is the preeminent goal of the 1st Amendment,...a State which discovers that its employees are inhibiting religion must take steps to prevent them from doing so, even though its purpose would clearly be to advance religion. *Walz*[8]. Thus, if the Louisiana Legislature sincerely believed that the State's science teachers were being hostile to religion, our cases indicate that it could act to eliminate that hostility without running afoul of *Lemon*'s purpose test.

Second, we have held that intentional governmental advancement of religion is sometimes required by the Free Exercise Clause. For example,...we held that in some circumstances States must accommodate the beliefs of religious citizens by exempting them from generally applicable regulations. We have not yet come close to reconciling *Lemon* and our Free Exercise cases, and typically we do not really try. It is clear, however, that members of the Louisiana Legislature were not impermissibly motivated for purposes of the *Lemon* test if

[7] Case 1A-R-028 on this website.
[8] Case 1A-R-039 on this website.

they believed that approval of the Balanced Treatment Act was *required* by the Free Exercise Clause…

I now turn to the purposes underlying adoption of the Balanced Treatment Act...There is ample evidence that the majority is wrong in holding that the Balanced Treatment Act is without secular purpose...The legislators specifically designated the protection of "academic freedom" as the purpose of the Act. We cannot accurately assess whether this purpose is a "sham" until we first examine the evidence presented to the legislature far more carefully than the Court has done.

Before summarizing the testimony of Senator Keith and his supporters, I wish to make clear that I by no means intend to endorse its accuracy. But my views (and the views of this Court) about creation science and evolution are (or should be) beside the point. **Our task is not to judge the debate about teaching the origins of life, but to ascertain what the members of the Louisiana Legislature believed. The vast majority of them voted to approve a bill which explicitly stated a secular purpose; what is crucial is not their *wisdom* in believing that purpose would be achieved by the bill, but their *sincerity* in believing it would be…**

The witnesses repeatedly assured committee members that "hundreds and hundreds" of highly respected, internationally renowned scientists believed in creation science and would support their testimony. Senator Keith and his witnesses testified essentially as set forth in the following numbered paragraphs:

(1) There are two and only two scientific explanations for the beginning of life -- evolution and creation science. Both are bona fide "sciences." Both posit a theory of the origin of life and subject that theory to empirical testing. Evolution posits that life arose out of inanimate chemical compounds and has gradually evolved over millions of years. Creation science posits that all life forms now on earth appeared suddenly and relatively recently and have changed little. Since there are only two possible explanations of the origin of life, any evidence that tends to disprove the theory of evolution necessarily tends to prove the theory of creation science, and vice versa. For example, the abrupt appearance in the fossil record of complex life, and the extreme rarity of transitional life forms in that record, are evidence for creation science.

(2) The body of scientific evidence supporting creation science is as strong as that supporting evolution. In fact, it may be *stronger*. The evidence for evolution is far less compelling than we have been led to believe. Evolution is not a scientific "fact," since it cannot actually be observed in a laboratory. Rather, evolution is merely a scientific theory or "guess." It is a very bad guess at that. The scientific problems with evolution are so serious that it could accurately be termed a "myth."

(3) Creation science is educationally valuable. Students exposed to it better understand the current state of scientific evidence about the origin of life. Those students even have a better understanding of evolution. **Creation science can and should be presented to children without any religious content.**

(4) Although creation science is educationally valuable and strictly scientific, it is now being censored from or misrepresented in the public schools. Evolution, in turn, is misrepresented as an

absolute truth. Teachers have been brainwashed by an entrenched scientific establishment composed almost exclusively of scientists to whom evolution is like a "religion." These scientists discriminate against creation scientists so as to prevent evolution's weaknesses from being exposed.

(5) The censorship of creation science has at least two harmful effects. First, **it deprives students of knowledge** of one of the two scientific explanations for the origin of life and leads them to believe that evolution is proven fact; thus, their education suffers and **they are wrongly taught that science has proved their religious beliefs false**. Second, **it violates the Establishment Clause. The United States Supreme Court has held that secular humanism is a religion. Belief in evolution is a central tenet of that religion.** Thus, by censoring creation science and instructing students that evolution is fact, public school teachers are *now* advancing religion in violation of the Establishment Clause…

The Court today plainly errs in holding that the Louisiana Legislature passed the Balanced Treatment Act for exclusively religious purposes…Had the Court devoted to this central question of the meaning of the legislatively expressed purpose a small fraction of the research into legislative history that produced its quotations of religiously motivated statements by individual legislators, it would have discerned quite readily what "academic freedom" meant: *students*' freedom from *indoctrination*. **The legislature wanted to ensure that students would be free to decide for themselves how life began, based upon a fair and balanced presentation of the scientific evidence -- that is, to protect "the right of each student voluntarily to determine what to believe (and what not to believe) free of any coercive pressures from the State."** The legislature did not care *whether* the topic of origins was taught; it simply wished to ensure that *when* the topic was taught, students would receive "all of the evidence."...The Act's reference to "creation" is not convincing evidence of religious purpose. The Act defines creation science as "*scientific evidence*" and Senator Keith and his witnesses repeatedly stressed that the subject can and should be presented without religious content. We have no basis on the record to conclude that creation science need be anything other than a collection of scientific data supporting the theory that life abruptly appeared on earth. Creation science, its proponents insist, no more must explain *whence* life came than evolution must explain whence came the inanimate materials from which it says life evolved. But even if that were not so, to posit a past creator is not to posit the eternal and personal God who is the object of religious veneration. Indeed, it is not even to posit the "*unmoved* mover" hypothesized by Aristotle and other notably nonfundamentalist philosophers…It is undoubtedly true that what prompted the legislature to direct its attention to the misrepresentation of evolution in the schools (rather than the inaccurate presentation of other topics) was its awareness of the tension between evolution and the religious beliefs of many children. But even appellees concede that a valid secular purpose is not rendered impermissible simply because its pursuit is prompted by concern for religious sensitivities. If a history teacher falsely told her students that the bones of Jesus Christ had been discovered, or a physics teacher that the Shroud of Turin had been conclusively established to be inexplicable on the basis of natural causes, I cannot believe (despite the majority's implication to the contrary) that legislators or school board members would be constitutionally prohibited from taking corrective action, simply because that action was prompted by concern for the religious beliefs of the misinstructed students...The people of Louisiana, including those who are Christian fundamentalists, are quite entitled, as a secular matter, to have whatever scientific evidence there

may be against evolution presented in their schools, just as Mr. Scopes was entitled to present whatever scientific evidence there was for it...Because I believe that the Balanced Treatment Act had a secular purpose…I would reverse the judgment of the Court of Appeals...

I had no problem with *Epperson* in striking down a statute that prohibited the teaching of evolution. I do have a serious problem with this case…The Majority Opinion states up front: "Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student or his family." If we assume our representative form of government is, indeed, "representative," then the "families" of Louisiana (the majority) wanted this Act --- it passed. The Court has it all wrong.

We have learned that Constitutional rights are not the subject of a vote --- i.e., not the subject of "majoritarian rule." That is why certain rights are guaranteed to all, including the minority. The question is not whether "families" wanted this Act or not. So, please, Justice Brennan, enough with the paternalism shtick.

The difficulty with this Act and these concepts are that this is the first time where the requirement of teaching evolution is antithetical to creation science. The right to Free Exercise was placed at the pinnacle of constitutional protection in *Wisconsin v Yoder*. It seems to me that where the mere "potential" for establishment clashes with the right to free exercise, free exercise should prevail. If we do not permit the teaching of creation science while, at the same time, require the teaching of evolution, we are submitting "impressionable children" to only one theory and censoring their right to all of the "scientific knowledge" on this subject. Discuss!

In my mind, this is a prime example of "judicial activism" where the majority has taken it upon themselves to decide what is best for the children of Louisiana in complete rejection of what the legislators have decided and, more importantly, without sound constitutional reasoning. That is going too far.