



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103  
(801) 521-9862 PHONE • (801) 532-2850 FAX  
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

---

January 19, 2006

Utah State Senate  
W 115 Capitol Complex  
Salt Lake City, UT 84114

Re: Senate Bill 96 "Public Education – Instruction and Policy Relating to the Origins of Life"

Dear Senator,

I write on behalf of the American Civil Liberties Union of Utah to express our concerns regarding the constitutionality of Senate Bill 96 "Public Education – Instruction and Policy Relating to the Origins of Life," and to urge you to vote against the bill.

SB 96 is the latest in a series of anti-evolution statutes and policies that have attempted to forbid, limit, or otherwise undermine the teaching of the scientific theory of evolution in public schools. Challenges to evolution have included laws or policies that prohibit the teaching of evolution; that require the presentation of anti-evolutionary views, including religious views not based on scientific evidence, such as creationism or intelligent design; and that, like SB 96, require statements or disclaimers questioning the validity of the scientific theory of evolution.

Courts have reviewed all of the above strategies and consistently ruled against them. Attached is an excellent summary of four major court decisions regarding the constitutionality of anti-evolution statutes and policies, which was prepared by the National Center for Science Education. All of the laws or policies in question were found to violate the Establishment Clause of the First Amendment of the United States Constitution, because they all had the purpose of furthering a religious doctrine or protecting that doctrine from a seemingly competing theory.

The two most recent cases regarding the teaching of evolution are not included in the attached list, and they deserve special attention because of their relevance to SB 96. The first is *Selman v. Cobb County School District*. In January 2005, a federal court ordered a Georgia school district to remove stickers from school science textbooks that warned that evolution is "a theory, not a fact," because those stickers were an unconstitutional government intrusion on religious liberty. *Selman* is currently on appeal. The second case, decided just last month, is *Kitzmiller v. Dover Area School District*. In that case, a federal court found that a Dover, Pennsylvania school district policy requiring that high school science teachers read a statement questioning the scientific theory of evolution and presenting intelligent design as an alternative was an unconstitutional endorsement of religion.

Both the *Selman* and *Kitzmiller* courts noted the sectarian motivation behind the school districts' selection of one, and only one, scientific area for particular scrutiny. In both cases, district officials

ignored areas of science where there is more controversy than evolution, and instead chose the one scientific theory that has long been a target of religiously-motivated hostility. SB 96 suffers from this same defect.

Additionally, by singling out evolution for particular scrutiny and by playing on the common, non-scientific understanding of the term “theory,” the courts found that the district policies misled students about the scientific support for evolutionary theory and the workings of the scientific method. It is likely that a court would similarly find that SB 96 unconstitutionally interferes with scientific instruction for ideological, rather than scientific, reasons.

Often, disclaimer policies require or suggest the teaching of non-scientific religious theories, such as intelligent design or creationism, and SB 96 may also be read to require the teaching of similar alternative theories regarding the origins of life. But even if the bill does not have this requirement, that does not save it from Establishment Clause problems. The unconstitutional sticker that the Cobb County School District was required to remove from science textbooks contained a statement much like SB 96. It stated:

This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered.

Similarly, SB 96 encourages students to “critically analyze theories,” to “consider opposing viewpoints,” and to “form their own opinions.” It is important to note that neither SB 96 nor the Cobb County sticker mention alternative theories. In its decision, the *Selman* court noted:

Defendants persuasively argue that the Sticker in this case does not explicitly reference any alternative theory of origin, religious or otherwise. Nor does the Sticker explicitly urge students to consider alternative theories of origin or remind them that they have the right to maintain their home teachings regarding the origin of life. Nevertheless, the Sticker here disavows the endorsement of evolution, a scientific theory, and contains an implicit religious message ... which is discernible after one considers the historical context of the statement that evolution is a theory but not a fact.

Americans have the right to believe, practice, and profess their religious beliefs in the public square, and the ACLU defends those rights. However, the government should not accommodate those religious beliefs by misleading public school students about the scientific basis for evolutionary theory. We sincerely hope the Utah State Senate will take note of the current legal landscape regarding the constitutionality of statutes and policies like SB 96, and will not risk an expensive and unnecessary lawsuit by passing the bill.

Please contact me directly at (801) 521-9862 ext 103 if you have any questions about our position. Thank you for your consideration.

Sincerely,

Margaret Plane  
Legal Director

## Major Court Decisions

By Molleen Matsumura for the National Center for Science Education

1. In 1968, in *Epperson v. Arkansas*, the United States Supreme Court invalidated an Arkansas statute that prohibited the teaching of evolution. The Court held the statute unconstitutional on the grounds that the First Amendment to the U.S. Constitution does not permit a state to require that teaching and learning must be tailored to the principles or prohibitions of any particular religious sect or doctrine. (*Epperson v. Arkansas* (1968) 393 U.S. 97, 37 U.S. Law Week 4017, 89 S. Ct. 266, 21 L. Ed 228)

2. In 1982, in *McLean v. Arkansas Board of Education*, a federal court held that a “balanced treatment” statute violated the Establishment Clause of the U.S. Constitution. The Arkansas statute required public schools to give balanced treatment to “creation-science” and “evolution-science.” In a decision that gave a detailed definition of the term “science,” the court declared that “creation science” is not in fact a science. The court also found that the statute did not have a secular purpose, noting that the statute used language peculiar to creationist literature in emphasizing origins of life as an aspect of the theory of evolution. While the subject of life’s origins is within the province of biology, the scientific community does not consider the subject as part of evolutionary theory, which assumes the existence of life and is directed to an explanation of how life evolved after it originated. The theory of evolution does not presuppose either the absence or the presence of a creator. (*McLean v. Arkansas Board of Education* (1982) 529 F. Supp. 1255, 50 U.S. Law Week 2412)

3. In 1987, in *Edwards v. Aguillard*, the U.S. Supreme Court held unconstitutional Louisiana’s “Creationism Act.” This statute prohibited the teaching of evolution in public schools, except when it was accompanied by instruction in “creation science.” The Court found that, by advancing the religious belief that a supernatural being created humankind, which is embraced by the term creation science, the act impermissibly endorses religion. In addition, the Court found that the provision of a comprehensive science education is undermined when it is forbidden to teach evolution except when creation science is also taught. (*Edwards v. Aguillard* (1987) 482 U.S. 578)

4. In 1997, in *Freiler v. Tangipahoa Parish Board of Education*, the United States District Court for the Eastern District of Louisiana rejected a policy requiring teachers to read aloud a disclaimer whenever they taught about evolution, ostensibly to promote “critical thinking.” Noting that the policy singled out the theory of evolution for attention, that the only “concept” from which students were not to be “dissuaded” was “the Biblical concept of Creation,” and that students were already encouraged to engage in critical thinking, the Court wrote that, “In mandating this disclaimer, the School Board is endorsing religion by disclaiming the teaching of evolution in such a manner as to convey the message that evolution is a religious viewpoint that runs counter to ... other religious views.” Besides addressing disclaimer policies, the decision is noteworthy for recognizing that curriculum proposals for “intelligent design” are equivalent to proposals for teaching “creation science.” (*Freiler v. Tangipahoa Board of Education*, No. 94-3577 (E.D. La. Aug. 8, 1997). On August 13, 1999, the Fifth Circuit Court of Appeals affirmed the decision; on June 19, 2000, the Supreme Court declined to hear the School Board’s appeal, thus letting the lower court’s decision stand.

(Updated 4/18/01)