



West Virginia

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Re: SB 280 must clarify that teachers may not teach or promote intelligent design, creation science, or any other form of creationism.

Dear Speaker Hanshaw:

We write in opposition to SB 280. As passed by the Senate, the bill provides that “[n]o public school board, school superintendent, or school principal shall prohibit a public[-]school classroom teacher from discussing or answering questions from students about scientific theories of how the universe and/or life came to exist.” This measure is unnecessary and will create confusion for teachers and schools. Public-school teachers may already discuss *scientific* theories with students. What they may not do is teach or promote—under the guise of pseudo-science—*religious* doctrine, including intelligent-design creationism.

Given that the original language of SB 280 purported to allow just that, and that its lead sponsor admitted during debate that the amended bill would likewise permit teaching intelligent design,¹ some schools and teachers may mistakenly believe that they are allowed to inject religious beliefs into science lessons. In fact, teaching or promoting intelligent design or any form of creationism would blatantly infringe students’ and parents’ First Amendment rights and expose schools to costly litigation. One Pennsylvania school district, for example, paid over \$1,000,000 in plaintiffs’ attorneys’ fees after being sued for unconstitutionally promoting intelligent design.² We thus urge you to reject this bill or, at a minimum, to further amend it to expressly state that creationism, creation science, and intelligent design do not qualify as scientific theories.

Legislative History of SB 280

As introduced, SB 280 would have expressly authorized public schools to teach intelligent design as a “theory of how the universe and/or humanity came to exist.” In its original form, the bill was identical to SB 619,³ which the House Education Committee wisely declined to advance last year. While the amended text of SB 280 now omits any reference to intelligent design, some schools and teachers may nevertheless view the bill as encouraging or allowing them to teach or promote it in class. Indeed, that appears to be the intent of the bill’s supporters.

During a Senate Education Committee hearing on the bill’s amended text, Sen. Mark Maynard lamented that SB 619 had failed to be enacted last year and expressed concern that using the phrase “scientific theories” in SB 280 would restrict teachers’ ability to discuss creationism in class.⁴ Seeking to allay Sen. Maynard’s concerns, a student testifying in support of the measure explained: “Right now, the focus is to try and get intelligent design specifically able to be taught in schools. So maybe further on down the road we can do stuff in regards to creationism, but you know right now intelligent design is the focus.”⁵ The student falsely stated that the “theory of intelligent design wouldn’t fall in the same category as creationism” because “creationism is specifically, almost entirely a Christian thing, or at least a theistic thing” whereas intelligent

design is “completely agnostic” and “is a purely scientific theory.”⁶ After hearing the student’s explanation, Sen. Maynard replied, “I understand, one step at a time.”⁷

Similarly, Sen. Amy Grady, the bill’s sponsor, made clear during the floor debate that SB 280 would allow public-school teachers to teach intelligent design. When asked by Sen. Mike Woelfel if the bill would allow intelligent design to be taught in classrooms, Sen. Grady conferred with counsel before explaining that, “[b]ased on the counsel’s determination, I do not believe it would prevent them from teaching it.”⁸ Sen. Woelfel followed up to ask, “Is it permissible for a teacher in West Virginia, under your bill, to teach intelligent design?”⁹ Sen. Grady responded, “I believe so, yes.”¹⁰ If the bill’s sponsor is uncertain whether it would permit teaching intelligent design, public-school administrators, principals, and teachers are likely to be confused as well.

Legal Analysis

The federal courts, including the U.S. Supreme Court, have repeatedly held that teaching creationism in public schools and other efforts to suppress or undermine evolution education are unconstitutional—no matter what form they may take.¹¹ Nevertheless, the Dover Area School District in Pennsylvania incorporated into its biology lessons a disclaimer questioning the validity of evolution and promoting intelligent design as an alternative. In 2005, the ACLU and Americans United for Separation of Church and State sued the school district on behalf of local families. Experts from the National Center for Science Education (NCSE) served as consultants and witnesses in the case, and this letter was written in consultation with NCSE to ensure accuracy as to its representations about intelligent design.

The Dover school district tried to defend its policy by arguing that, unlike other forms of creationism, intelligent design is not a religious belief and is thus properly taught as a scientific alternative to evolution. To ensure that these arguments were fairly heard and considered, Judge John E. Jones III—who was nominated to the bench by President George W. Bush—held a six-week trial during which extensive evidence about intelligent design was presented.¹² As participants in the trial, our organizations can attest to the fact that Judge Jones left no stone unturned.

In the end, Judge Jones unequivocally rejected the district’s arguments and systematically refuted each one. He ruled that intelligent design is merely “creationism re-labeled” and that incorporating it into science classes violates the Establishment Clause of the First Amendment.¹³ Moreover, he concluded that intelligent design “is not science” because it “fails to meet the essential ground rules that limit science to testable, natural explanations.”¹⁴ Indeed, “[t]he evidence presented . . . demonstrate[d] that [intelligent design was] not supported by any peer-reviewed research, data or publications.”¹⁵

By contrast, evolution “is the only tested, comprehensive scientific explanation for the nature of the biological world today that is supported by overwhelming evidence and widely accepted in the scientific community.”¹⁶ It is a cornerstone of biology and is so well-established as a scientific theory that there is no legitimate scientific debate regarding its validity, any more than there is a scientific debate regarding the validity of the theory of universal gravity.¹⁷

Some may argue that SB 280 is necessary to protect teachers’ rights. Not so. As discussed above, teachers are already permitted to discuss scientific theories with students. And while school officials enjoy a broad range of religious-liberty and free-speech rights in their personal capacities,¹⁸ they are not entitled to promote biblical doctrine or other religious beliefs, such as creation science and intelligent design, in class.¹⁹ SB 280, therefore, is not justified on academic-freedom grounds.²⁰ Nor does promoting religious doctrine in connection with biology instruction, or otherwise undermining evolution lessons, somehow provide more comprehensive science education.²¹

The confusion that will no doubt result from SB 280's passage will not only risk schools and teachers violating students' constitutional rights, but it also may endanger the educational and employment futures of West Virginia's students as well as the state's own economic and job prospects. Recent reports show that only 28% of West Virginia students are proficient in science.²² If teachers and schools improperly seize on SB 280 to undermine education in key scientific principles, such as evolution, West Virginia students will fall even further behind. They will be unprepared for advanced college coursework in scientific areas and subsequently disadvantaged in the competitive technical and scientific job sectors. And employers with science- and tech-related businesses may hesitate to settle in West Virginia if they believe its government and public schools do not value, and its citizens do not possess, basic scientific knowledge.

Finally, as the Supreme Court explained in *Edwards* while rejecting a state creation-science law, “[f]amilies 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 and his or her family.”²³ Parents, not public schools, are entitled to instill religious beliefs in their children. SB 280 could be used to impede that right. Religion belongs where it prospers best—with individuals, families, and religious communities—not in the public-school science classroom.

Because SB 280 is unnecessary and will create significant confusion and liability for public schools and teachers, we urge you not to take up the bill for additional consideration. At the very least, it must be further amended to make clear that intelligent-design creationism—and, indeed, all forms of creationism—are not “scientific theories” that fall under the scope of SB 280.

Sincerely,



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ACLU of West Virginia



Nik Nartowicz
Americans United
for Separation of Church and State