

CHAPTER 40 ACTIVITY
Expressing Your OpinionGLENCOE
STREET LAW
A Course in Practical Law

Directions: Read the Facts, Law, and Opinions A and B below. Then, on a separate sheet of paper, identify the arguments in each opinion. Write which opinion you agree with and why.

Facts

One state adopted a Creationism Act, which requires balanced treatment of creation and evolution science in public elementary and secondary schools. The act does not require the teaching of either theory but forbids the teaching of the theory of evolution unless accompanied by instruction in the theory of creation science and vice versa. It further requires that each shall be taught as a theory, rather than as proven scientific fact.

The law defines the theories as “the scientific evidences for creation and evolution and inferences from those scientific evidences.” While not included in the final version of the law, during the drafting of this law, creation theory was defined to include the belief that the elements, the galaxy, the solar system, life, all the species of plants and animals, man, and all things and their processes and relationships were originally created from nothing and fixed by God. Also during the drafting of this law, the following inferences of creation science were included, although later deleted: (a) the sudden creation of the universe, energy, and life from nothing; (b) the insufficiency of mutation and natural selection in bringing about development of all living kinds from a single organism; (c) changes only within fixed limits or originally created kinds of plants and animals; (d) separate ancestry for man and apes; (e) explanation of the earth’s geology by catastrophism, including the occurrence of a worldwide flood; and (f) a relatively recent inception of the earth and living kinds.

The experts who testified in the state legislature on behalf of creation science made these points:

- a. There are only two scientific explanations for the beginning of life—creation and evolution science. Both are true sciences, and both present a theory of the origin of life and subject that theory to empirical testing.
- b. The body of scientific evidence supporting creation science is as strong as that supporting evolution.
- c. Creation science is educationally valuable and can be taught without reference to religion. Students exposed to creation science better understand the current state of scientific evidence about the origin of life.
- d. Although creation science is educationally valuable and strictly scientific, it is now being censored or misrepresented in the public schools. Evolution is misrepresented as an absolute truth.
- e. The censorship of creation science has at least two harmful effects: it deprives students of knowledge, and it violates the establishment clause. Secular humanism is itself a religion, and evolution is a central tenet of that religion.

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The stated purpose for this law is to protect academic freedom. A group of parents, teachers, and religious leaders challenge the act's constitutionality in federal court, claiming that the act violates the establishment clause of the First Amendment.

Law

To determine whether legislation complies with the establishment clause, it must pass a three-pronged test, called the Lemon Test:

1. The legislature must have adopted the law with a secular purpose. If the law has no secular purpose, the law is unconstitutional.
2. The statute's primary effect must be one that neither advances nor inhibits religion.
3. The statute must not result in an excessive entanglement of government with religion.

Opinion A

The state law is unconstitutional. The primary purpose of the state legislature was to advance the religious viewpoint that a supernatural being created humankind. The leading expert on creation science testified at the legislative hearings that the theory of creation science included belief in the existence of a supernatural creator. The legislative history also 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 true purpose of enacting this law is to narrow the science curriculum. 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. Because schoolteachers can already teach any scientific theory, the stated purpose of academic freedom is not furthered by the law.

Out of many possible science subjects taught in the public schools, the legislature chose to affect the teaching of the one scientific theory that historically has been opposed by certain religious sects. The legislature passed the act to give preference to those religious groups that have as one of their tenets the creation of humankind by a divine creator. The act is 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 it is 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.

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The establishment clause forbids alike the preference of a religious doctrine or the prohibition of theory that 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 First Amendment.

Opinion B

The Creationism Act is clearly constitutional. The legislators considered the potential establishment clause problems and went through several drafts of the law in order to approve a final law that articulated the secular purpose they meant to serve. The only evidence in the record on creation science is 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. It is a strictly scientific concept that can be presented without religious reference.

The first prong of the Lemon Test requires that the law have a secular purpose. To determine whether the law has a secular purpose, we must examine the actual motives of the state legislators. The establishment clause does not forbid legislators to act upon their religious convictions. We 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.

The fact that the law coincides with the tenets of some or all religions does not mean that the law's purpose is to advance religion.

The Court's task is not to judge the debate about teaching the origins of life but to determine what the members of the state legislature believed. Most of them voted to approve a bill that explicitly stated a secular purpose.

They heard the scientific experts give an authoritative basis for including creation as a science. Therefore, this act has a secular purpose.

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