

# SOUTHEAST LAW INSTITUTE™

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Dear SLI Supporter:

In the 1970's pastors went to jail and churches were actually padlocked because of their refusal to submit to state regulation of their church schools. No one ever argued the state did not have an interest in protecting the welfare and health of the children. However, churches could not submit to pervasive regulation of the very important ministry of Christian based education. Guarding against those very same possibilities today requires constant vigilance.

SLI has been very busy over the last weeks representing church schools in Alabama before the state board of education on an issue extremely important to the protection of the right to faith-based education as a choice. We hope by next month the matter will be successfully concluded. We will report the outcome to you. In the meantime, please pray for the success of our efforts and the protection of this valuable ministry.

On February 22, 2003, I participated in a teacher's seminar sponsored by Troy State University entitled "Teaching Balance in Theories of Origin: Creation, Evolution and Intelligent Design." The purpose of the seminar was to explain to public school teachers the various theories of origin and their rights to teach. It was the first ever for such a seminar and SLI was honored to participate. This month's educational update is a summary of our presentation.

If you are a public school teacher or know one, you may be interested in knowing more about the origins debate. Please contact us or refer a friend. SLI has information on your legal rights to teach this subject and can refer you to resources for class materials.

We will be sharing legislative information with you in the coming months. Because we have just finished an election year, the legislative session does not actively start until March. Therefore, we do not have any progress to report to you, but we have already been very busy meeting with elected officials, drafting legislation, and providing advice on pertinent issues.

We continue to be grateful for your support. For those who give us continuous support, we especially thank you. As with many ministries, our donations for 2002 were down, specifically 25%. Please keep that in mind as you consider your donation to us. Also, please remember to send your \$12.00 for the newsletter, even if you are unable right now to give more. With personal regards, I am,

Yours Very Truly,

A. Eric Johnston

AEJ/mc

*The Southeast Law Institute™ is a 501(c)(3) organization providing legal counsel on constitutional and public policy issues.*

**AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.**

**To: SLI Supporters**  
**Date: March 2003**  
**From: A. Eric Johnston**  
**Re: Teaching Balance in Theories of Origin: Creation, Evolution, and  
Intelligent Design**

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## INTRODUCTION

The title of this month's update is the title of the seminar sponsored by Troy State University in Montgomery. This seminar provided a series of workshops to help teachers equip students to critically analyze the theories of origin currently being debated in science and history. SLI was requested to participate in the workshop on "Legal Rights and Wrongs." Specifically, our job was to explain to teachers their rights to provide complete academic information to students.

Evolution is taught as fact in most public schools. Scientists have debated the issue of origins for decades. The debate during the last part of the twentieth century has entered the legal arena on what theories of origins can be taught in public schools. Church schools may, of course, teach all theories without regulation.

### TWO AREAS OF LEGAL CONCERN

There is a great deal of acrimony between evolutionists and other scientists. Evolution is exclusive of other theories and, primarily, omits the reality of a creator. Several courts have viewed any alternatives to evolution as religion and in violation of the establishment clause.

There are two legal areas which effect teachers' rights. The first deals with the two U.S. Supreme Court cases dealing with the subject. First, *Epperson v. Arkansas*, 393 U.S. 97 (1968) held an Arkansas law to be unconstitutional because it made it unlawful for any state sponsored school to teach a theory or doctrine that man may have ascended or descended from any lower form of life. The court held the law unconstitutional stating it was an effort to establish a religion.

In *Edwards v. Aguillard*, 482 U.S. 78 (1987) the same court reviewed a Louisiana law which required that if evolution is taught, then so to must creation science. Again, the court found the state was trying to set up a religion and this violated the establishment clause.

While these cases recognize the concept of academic freedom and the need to study all theories, they focused on alternative theories as "religion." As long as the court focuses on religion, the outcome will be the same. Ant future case must rely on science even though a theory may coincide with a religious belief. That science and religion overlap does not establish a religion.

### WHAT RIGHTS TO TEACHERS HAVE?

The U.S. Supreme Court has not ruled directly on how much academic freedom teachers have. One of the main cases relied on by lower courts is *Hazelwood School District v. Kuhlmeier* 484 U.S. 260 (1988). This case involved student speech and held that the public school could limit that speech based

on a proper pedagogical basis. For the judicial circuit in which Alabama is located, the case of *Bishop v. Aronov*, 926 F. 2d 266 (11<sup>th</sup> Cir. 1991) held that a University professor may not interject his religious views in the classroom, though he may answer questions from students.

Therefore, it seems there may be some limitation on what teacher can teach. However, the state's public policy on such an issue is very important. In 1995 and 2001 the Alabama State Board of Education adopted inserts to be put into Alabama science textbooks. The essence of these inserts is that students should have an open mind and inquire into all issues of origins. The state of Alabama encourages academic freedom.

### **WHAT SHOULD A TEACHER DO?**

Teachers should exercise academic freedom and follow the suggestion of the textbook inserts. However, many school boards have their own regulations on what supplemental material may be used. Teachers should work within those rules. If the rules are overly restrictive or if school administrators do not permit the use of appropriate supplemental material, the school teacher should seek legal help.

Finally, the supplemental material to be used should be "scientific" in its approach. The U.S. Supreme Court referenced above made it clear that "religious" material may not be used. While we may disagree with the outcome of those cases, it remains the "law of the land" at this time. Ultimately, we hope the U.S. Supreme Court will clarify the necessity for teaching all of the theories of origins without simply identifying alternatives to evolution as merely being religion and therefore prohibited by the establishment clause of the U.S. Constitution.