

# NEWS AND COMMENTS

## THE TEXTBOOK CONTROVERSY IN TENNESSEE

When the State of Tennessee approved the 1973 statute which required inclusion of creation theory along with evolution in the public-school textbooks (see *Origins* 1:86-93), it seemed that creationists had finally won a major victory.

Opposition, however, set in immediately. Opponents of the "Genesis Law" denounced it as being an updated version of the anti-evolution law that had been used to convict John T. Scopes of teaching evolution in 1925.

Two Nashville attorneys brought a lawsuit on behalf of the citizen's group called Americans United for the Separation of Church and State. In September 1974, as a result of this suit, Nashville Chancellor Ben H. Cantrell issued a memorandum opinion, deciding that the demand for equal time was an act "respecting the establishment of religion" and thus violated the First Amendment to the United States Constitution. He stated that the legislature had attempted to place the Biblical account of creation above other theories. Apparently he ignored the provision in the Genesis Law that allowed for the use of supplementary materials to meet the requirements of "equal time" for alternative theories, for he reasoned that it would be impossible to include all theories of man's origins in the textbooks. Therefore, he concluded, the act was really saying, "We don't care what other theories are included, just be sure the Genesis account gets equal time."

The Chancellor further defended his decision by citing the criteria established by the Supreme Court for evaluating "establishment of religion" claims. The act was constitutional if it had a secular legislative purpose, neither advanced nor inhibited religion, and if it did not foster excessive government entanglement with religion. In his opinion, this singling out of one account of origins was "inferential of an essentially sectarian, religious purpose underlying this public act." Because it was "altogether impossible" to include all accounts within the context of a basic high-school survey course, he ruled the law invalid.

While the proceedings in Nashville were going on, the National Association of Biology Teachers (NABT) also retained counsel to challenge the constitutionality of the Genesis Law.

In their federal suit, the NABT attorneys maintained that the requirement to give equal attention to the Biblical account of creation along with evolution was an attempt to impose *religious* beliefs on the

public-school students. The state meanwhile argued that this law represented a fairness doctrine for educators.

On April 10, 1975, the U. S. Court of Appeals for the Sixth Circuit issued its ruling 2 to 1 in favor of the NABT, the only dissenting vote being on procedural grounds. Circuit Judge George Edwards noted that “for a state to seek to enforce such a preference by law is to seek to accomplish the very establishment of religion which the First Amendment to the Constitution of the United States squarely forbids....The antecedents of today’s decision are many and unmistakable. They are rooted in the foundation soil of our Nation. They are fundamental to freedom.”

In August, two more separate rulings were issued. The Tennessee Supreme Court rejected the state’s contention that the law represented fairness, saying, “we concur in the holding of the 6th Circuit Court of Appeals that (the statute) violates the First Amendment to the U. S. Constitution and further hold, for the same reasons, the act violates Article I, Section 3, of the Constitution of the State of Tennessee.”

In another decision, the U. S. District Judge Frank Gray, Jr. agreed with the Supreme Court’s ruling, saying that the Genesis Law violated the First Amendment prohibitions of preferential treatment for certain religious beliefs. He argued that the requirement to give equal attention to all the theories of origins was unreasonable, for “every religious sect, from the worshippers of Apollo to the followers of Zoroaster, has its belief or theory. It is beyond the comprehension of this court, how the Legislature, if indeed it did, expected that all such theories could be included in any textbook of reasonable size.”

With these separate, but unanimously adverse, rulings, it would appear that the creationists have been defeated in their attempt to see scientific creation taught in the public schools of Tennessee. Since creationists, who pay for public education, are discriminated against by current practice in public schools, the issue will probably arise again. The equal protection clause of the Fourteenth Amendment to the United States Constitution is also involved. Its applicability remains to be tested.

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