

INTELLIGENT DESIGN: A UNIQUE PERSPECTIVE TO THE ORIGINS DEBATE

I. INTRODUCTION

The fiery debate over which view of the origin of life will be taught in public school classrooms has raged for almost a century. The first publicized confrontation in the controversy occurred in Tennessee in 1927 during the *Scopes* trial.¹ From then until a decade ago, there were only two major factions represented in the controversy: creationists and evolutionists. Starting in the early 1990s, however, a new approach to the controversy began to gain recognition, and now this new player has kindled another flame in the controversy.² The movement is called intelligent design, or design theory.

Because intelligent design offers an alternative to evolution, it has been attacked vehemently by evolutionists. Common among evolutionists' claims is that intelligent design is merely creationism redressed.³ Yet even staunch evolutionists cannot rationally disclaim intelligent design's scientific validity. For example, Dr. Eugenie Scott, executive director of the National Center for Science Education, which promotes teaching evolution in public schools, reportedly remarked that "[t]he most striking thing about the intelligent design folks is their potential to really make anti-evolutionism intellectually respectable."⁴

This Comment first considers the foundational differences between creation, evolution, and intelligent design. Second, it analyzes the relevant caselaw relating to the origins controversy in public schools. Third, it discusses what a statute or resolution authorizing the teaching of intelligent design should contain to pass constitutional muster. Finally, this Comment considers whether intelligent design should replace creation science.

¹ *Scopes v. State*, 289 S.W. 363 (Tenn. 1927).

² See, e.g., Dan Falk, *A Pseudoscientific Challenge To Evolutionary Theory – "Intelligent Design" – Is Raising Questions About the Origins of Life and Sparking Debate in Academia*, BOSTON GLOBE, Oct. 21, 2001, (Magazine) at 16; Alex Kingsbury, *Scientists Debate Evolution's Place in Classroom*, U. WIRE, Mar. 27, 2001. Compare Robert M. Taylor, *Science Can't Rule Out God's Role in Creation of Life*, COLUMBUS DISPATCH, Nov. 9, 2001, at 2D, with *Creationism in Denial*, WASH. TIMES, Nov. 4, 2001, at B5.

³ See, e.g., Massimo Pigliucci, *Design Yes, Intelligent No: A Critique of Intelligent Design Theory and Neocreationism*, SKEPTICAL INQUIRER, Sept. 1, 2001, at 34; Jason Brown, *Origin of the Specious (Record in Progress)*, THIS MAG., Aug. 2001, at 6.

⁴ James Glanz, *Darwin vs. Design: Evolutionists' New Battle*, N.Y. TIMES, Apr. 8, 2001, § 1, at 1.

II. A PRESUPPOSITIONALIST APPROACH TO THE ORIGINS CONTROVERSY

To frame the context of this section, it will be helpful to define two mutually exclusive concepts. In this context, there are only two ways to approach scientific research. First, one can approach scientific research objectively. To be objective is to be “[u]ninfluenced by emotions or personal prejudices.”⁵ Prejudice is simply “[a] preconceived preference or idea.”⁶ Hence, to approach scientific research objectively means to approach facts and experiments without any preferences, emotions, or ideas that influence the way in which the researcher views the facts or results. Conversely, one can approach scientific research presuppositionally, which means that one presupposes certain things before any facts are observed. To presuppose is “[t]o believe or suppose in advance.”⁷ Likewise, a presupposition is a belief that is held in advance of any evidence being discovered or analyzed and that will continue to be held regardless of what facts are subsequently discovered.

Generally, the first approach is hailed as noble and scientific while the second approach is deplored as archaic and unscientific. The fact is, however, that the vast majority of scientists follow a presuppositionalist approach. This section demonstrates two points. First, both creation and evolution are based on presuppositions. Second, intelligent design is not based on presuppositions but rather examines the facts objectively.

A. Original Debate: Based on Opposite, Mutually Exclusive Presuppositions

1. Creation: Tenets and Presuppositions

Creationists adhere to certain tenets that are based on their underlying presuppositions about origins. The major tenets of creationism are as follows: “The earth was created in a single week of six twenty-four-hour days no more than ten thousand years ago; the major features of the earth’s geology were produced by Noah’s flood, and there have been no major innovations in the forms of life since the beginning.”⁸ In general, creationism may be defined as “[t]he position that the account of creation in Genesis is literally true.”⁹ And creation science may be defined as “[a]n effort to give scientific proof for the account of the creation of the universe given in Genesis.”¹⁰ Boiled down to its

⁵ AMERICAN HERITAGE COLLEGE DICTIONARY 940 (3d ed. 1993) [hereinafter AMERICAN HERITAGE].

⁶ *Id.* at 1079.

⁷ *Id.* at 1084.

⁸ PHILLIP E. JOHNSON, *What is Darwinism?, in* OBJECTIONS SUSTAINED: SUBVERSIVE ESSAYS ON EVOLUTION, LAW & CULTURE 20, 21 (1998).

⁹ AMERICAN HERITAGE, *supra* note 5, at 325; *see also* JOHNSON, *supra* note 8, at 21.

¹⁰ AMERICAN HERITAGE, *supra* note 5, at 325.

essence, creationism is simply the view that the world was created by the Creator.¹¹ Quite clearly, the entire theory of creation is based on the presupposition that God created the earth as is recorded in Genesis.

Further, creationists freely admit that their view of origins is based on the Bible. Creation scientist Ken Ham unashamedly declared the following:

We Christians must build all of our thinking in every area on the Bible. We must start with God's Word, not the word of finite, fallible man. We must judge what people say on the basis of what God's word says – not the other way around.¹²

Making this proposition more explicit and explaining the process of scientific-creationism research, Ham writes the following in *The Genesis Solution*:

As relatively ignorant and limited beings, we have no assurance of ever coming to the right conclusions about origins if we start only with human wisdom. In this confusing world, the joyous knowledge for Christians is that the Bible is the Word of the Creator who was there from the very beginning. He is the only truly reliable witness of the past, and he has all the knowledge and wisdom of infinity. This Creator has provided a written record so that we can know what really happened.

Scientists who accept the biblical record can research the evidence of the present (Scientific Creationism) and see if it fits with what has been revealed about the past (Biblical Creationism). And it does! Overwhelmingly so! Never in history has man accumulated more scientific evidence in support of Creationism and against Evolutionism.¹³

The foregoing quote clearly establishes the method by which creation scientists perform scientific research. They begin by believing that God created the world. They then conduct scientific research to validate their beliefs and to invalidate the claims of evolutionists. It should be noted also that creationists' beliefs extend beyond the scope of conclusive research. Hence, Creationists are presuppositionalists.

2. Evolution: Tenets and Presuppositions

In stark contrast to creationists who freely admit that they are presuppositionalists,¹⁴ evolutionists vehemently assert that they are not presuppositionalists and that evolution is fact.¹⁵ Before addressing

¹¹ JOHNSON, *supra* note 8, at 22.

¹² KENNETH A. HAM, *THE LIE: EVOLUTION 24* (1987) [hereinafter *THE LIE*]; *SCIENTIFIC CREATIONISM 4-5* (Henry M. Morris ed., gen. ed. 1985).

¹³ KENNETH A. HAM & PAUL TAYLOR, *THE GENESIS SOLUTION 18* (1988).

¹⁴ See, e.g., *THE LIE, supra* note 12, at 24.

¹⁵ See e.g., MICHAEL RUSE, *DARWINISM DEFENDED 58* (1982).

whether evolutionists are presuppositionalists, it is important to define what is meant by evolution in the context of the origins controversy.

First, and quite significantly, the debate over whether evolution occurred and is still occurring is centered on macroevolution (i.e., change between species).¹⁶ In general, creationists agree that microevolution (i.e., change within a single species, or a mutation) occurs.¹⁷

Evolutionists, like creationists, hold several tenets that are based on their presuppositions. Though not all evolutionists hold exactly the same tenets, Darwin's five tenets of evolution are the following:

1. Variation exists within members of the same species [microevolution]. . . .
2. Variation can be inherited. . . .
3. Resources like food, water and shelter are limited. . . .
4. Natural selection is the direct consequence of the first three tenets. . . .
5. Under the guidance of natural selection simple life evolved into complex life [macroevolution]. . . .¹⁸

In general, evolution may be defined as "[t]he theory that *groups* of organisms change morphologically and physiologically with time, mainly as a result of natural selection."¹⁹ When speaking of evolution, the evolutionist is referring to "naturalistic evolution," which means that everything happens because of natural or material forces and not because of any supernatural force, such as a Creator.²⁰ Such a view inherently requires chance because it rejects any intelligent force.²¹ Therefore, chance, as opposed to a Creator, becomes one of the cornerstones of evolutionary theory.²²

¹⁶ The National Academy of Sciences refers to evolutionary change giving rise to new species. See NATIONAL ACADEMY OF SCIENCES, *TEACHING ABOUT EVOLUTION AND THE NATURE OF SCIENCE* 55 (1998). Whether new species can be formed through evolution is the crux of the debate. See *id.* at 57; Pam Belluck, *Board for Kansas Deletes Evolution from Curriculum*, N.Y. TIMES, Aug. 12, 1999, at A1.

¹⁷ See, e.g., NORMAN L. GEISLER & J. KERBY ANDERSON, *ORIGIN SCIENCE: A PROPOSAL FOR THE CREATION-EVOLUTION CONTROVERSY* 147-49 (1987); see also Eric P. Martin, *The Evolutionary Threat Of Creationism: The Kansas Board of Education's Omission of Evolution from Public School Curricula*, 27 J. LEGIS. 167, 179 (2001).

¹⁸ H. Wayne House, *Darwinism and the Law: Can Non-Naturalistic Scientific Theories Survive Constitutional Challenge?* 13 REGENT U. L. REV. 355, 399 (2001); see Stu Pullen, *Evolution vs. Intelligent Design*, at <http://www.theory-of-evolution.org/introduction/evoution-vs-design.html> (Jan. 1, 2001).

¹⁹ AMERICAN HERITAGE, *supra* note 5, at 476 (emphasis added).

²⁰ JOHNSON, *supra* note 8, at 22.

²¹ *Id.* at 22-23. Yet, change alone cannot explain the complex systems in nature. Hence, evolutionists attempt to explain the appearance of design with the process of natural selection. *Id.*

²² Natural selection is the other cornerstone. See *supra* note 21 and accompanying text.

a. Fact or Theory: Seeing Through the Smoke Screen

Now that the parameters of the debate have been defined, one can address whether evolutionists are presuppositionalists. Evolutionists argue vehemently that evolution is fact. For example, Michael Ruse states, "Evolution is a fact, *fact*, *FACT!*"²³ The form of their argument usually takes one of two basic structures. First, and less accepted, is the view that evolution was once a theory but is now fact.²⁴ The more accepted view is that "facts and theories are different things, not rungs in a hierarchy of increasing certainty."²⁵ Creationists, in general, also agree with this distinction.²⁶ But, after acknowledging that there is a distinction between fact and theory, evolutionists use one of two semantic devices to blur that distinction.

Before examining these devices, however, it is important to see how evolutionists define what is meant by "fact" and what is meant by "scientific theory."²⁷ "Facts are the world's data."²⁸ In other words, facts are things that can be observed, tested, and proven to a reasonable certainty.²⁹ But, evolutionists admit, a fact is not "absolute[ly] certain,"³⁰ and to say it is "true" is to be "dogmatic, not scientific."³¹ Indeed, evolutionist Richard Alexander, in responding to the claim that creation is a fact, replied as follows:

Nothing is irreversibly factual. Any fact may turn out not to be a fact at all; and in scientific investigation the only useful thing one can do with a fact is to use it to build better or more complete explanations.

²³ RUSE, *supra* note 15, at 58. Some evolutionists, however, agree that evolution is only a theory and not fact. For example, evolutionist M. Cartmill wrote, "To say that evolution is a fact may be politic at present, but it seems wrong in several ways, and its wrongness points up some other peculiarities of Darwinism as a scientific theory." M. Cartmill, *An Ill-Timed Modesty*, NATURAL HISTORY, June 1982, at 61.

²⁴ VERNE GRANT, THE EVOLUTIONARY PROCESS: A CRITICAL REVIEW OF EVOLUTIONARY THEORY 14 (1985); *see also* Stephen Jay Gould, *Evolution as Fact and Theory*, DISCOVER, May 1981, at 34-35 [hereinafter *Evolution as Fact and Theory*].

²⁵ STEPHEN JAY GOULD, HEN'S TEETH AND HORSE'S TOES 254 (1983); *see also* NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 4-5.

²⁶ *See* PHILLIP E. JOHNSON, DARWIN ON TRIAL 67 (1991) [hereinafter DARWIN ON TRIAL].

²⁷ *See* GOULD, *supra* note 25, at 253-59; TIM M. BERRA, EVOLUTION AND THE MYTH OF CREATIONISM: A BASIC GUIDE TO THE FACTS IN THE EVOLUTION DEBATE 2-4 (1990); NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 4-6; Theodosius Dobzhansky, *Nothing in Biology Makes Sense Except in the Light of Evolution*, in EVOLUTION VERSUS CREATION: THE PUBLIC EDUCATION CONTROVERSY 27-28 (J. Peter Zetterberg ed., 1983); Malcolm Jay Kottler (compiler), *Evolution: Fact? Theory? . . . or Just a Theory?*, in EVOLUTION VERSUS CREATIONISM: THE PUBLIC EDUCATION CONTROVERSY 29-36 (J. Peter Zetterberg ed., 1983).

²⁸ GOULD, *supra* note 25, at 254.

²⁹ *See id.* at 254-55; NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 5

³⁰ GOULD, *supra* note 25, at 254.

³¹ J.E. Hendrix, *Response to R.C. Lewontin*, 31 BIOSCIENCE 788 (1981).

What researchers do with facts is establish the next line of hypotheses. And if their "fact" proves vulnerable, they discard it and start over. It is a fact that 100% certainties are obvious only in useless tautologies such as: Hairless men have no hair. It is a fact that life insurance companies make money by operating on probabilities.³²

Theories, on the other hand, are distinguished from a fact or group of facts because "[t]heories are structures of ideas that explain and interpret facts."³³ For example, one can observe the fact that many different animals have similar bone structures. Based on these observable facts, two different theories may be proposed: 1) bone structures are similar because "they are related to one another" and evolved from a common ancestor;³⁴ or 2) bone structures are similar because they are created by God.³⁵

How, then, can some evolutionists claim that the theory of evolution is a fact? Can a theory become fact? Quite simply, it cannot. Evolutionists, however, use two basic, semantic techniques to transform the theory of evolution into a so-called fact. First, they carefully distinguish a scientific theory from the vernacular use of the term, which "means a 'guess' or [a] 'hunch.'"³⁶ Instead, scientific theory means "a well-substantiated explanation of some aspect of the natural world that can incorporate facts, laws, inferences, and tested hypotheses."³⁷ Evolutionists then claim that the theory of evolution is supported by facts to such a degree that it cannot be challenged,³⁸ and when they teach evolution, they refer to it as a fact.³⁹

Second, some evolutionists shift the categories of fact and theory. They claim that, based on other facts, evolution is a fact, and the theoretical aspect is simply the method by which evolution took place (e.g., spontaneous generation).⁴⁰ Thus, they only investigate *how*

³² Richard D. Alexander, *Evolution, Creation, and Biology Teaching, in EVOLUTION VERSUS CREATIONISM: THE PUBLIC EDUCATION CONTROVERSY* 99 (J. Peter Zetterberg ed., 1983).

³³ *Evolution as Fact and Theory, supra* note 24, at 34-35.

³⁴ NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 2.

³⁵ To this point, creationists agree with the distinction between fact and theory.

³⁶ NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 4.

³⁷ *Id.* at 5.

³⁸ *Id.* at 6.

³⁹ DARWIN ON TRIAL, *supra* note 26, at 133-44.

⁴⁰ Stephen Jay Gould takes this approach. He claims that evolution is both theory and fact. GOULD, *supra* note 25, at 254. He bases his proposition that evolution is fact on three arguments. First, there is observable evidence of microevolution (change within a species). *Id.* at 257. By Gould's own admission, this argument is his only argument based on direct, observable evidence; the second and third arguments are based on inference or his theory. *Id.* Second, "the imperfection of nature reveals evolution." *Id.* at 258. Third, "transitions are often found in the fossil record." *Id.* A clear indication that his claim does not hold up is the mere fact that he has to prove it. By definition, a fact can be observed

evolution occurred; they do not investigate *whether* it occurred, because they take it as fact that it did occur.⁴¹ Of course, this argument cannot stand because a fact, by definition, is observable and testable. One cannot use facts and arguments to prove another fact, which is itself untestable and unobservable. When one is forced to compile arguments and other facts to establish a conclusion that itself cannot be observed or tested, that conclusion cannot be a fact. Hence, evolution is a theory that is attempting to explain observable facts; it is not itself fact.

b. Presuppositions of Evolutionists: Theory as Belief

Simply proving that evolution is a theory does not in itself prove that evolution is a presupposition. Some evolutionists, however, admit that evolution is a belief. For example, Harold C. Urey, a Nobel laureate, stated the following:

All of us who study the origin of life find that the more we look into it, the more we feel that it is too complex to have evolved anywhere. *We all believe as an article of faith* that life evolved from dead matter on this planet. It is just that its complexity is so great it is hard for us to imagine that it did.⁴²

Evolutionists Paul Ehrlich and L.C. Birch admit that evolutionary ideas cannot be proved but, instead, "have become part of an evolutionary *dogma* accepted by most of us as a part of our training."⁴³

Another example comes from evolutionist Robert Jastrow, who states,

Either life was created on the earth by the will of a being outside the group of scientific understanding; or it evolved on our planet spontaneously, through chemical reactions occurring in nonliving matter lying on the surface of the planet. The first theory is a statement of faith in the power of a Supreme Being not subject to the laws of science. *The second theory is also an act of faith.* The act of faith consists in assuming that the scientific view is correct, without having concrete evidence to support that belief.⁴⁴

and tested and, therefore, does not have to be proved by supporting arguments. By attempting to prove that evolution is a fact by evidence other than a test showing that macroevolution occurs, he disproves his own claim. For a more thorough critique of Gould's claim, see DARWIN ON TRIAL, *supra* note 26, at 63-72.

⁴¹ NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 4; *see also* GOULD, *supra* note 25, at 253-62.

⁴² Richard Cowen, *Biological Origins: Theories Evolve*, CHRISTIAN SCI. MONITOR, Jan. 4, 1962, at 4.

⁴³ Paul Ehrlich & L.C. Birch, *Evolutionary History & Population Biology*, 214 NATURE 352 (1967) (emphasis added).

⁴⁴ L.A. TIMES, Nov. 9, 1977, § IV, at 1 (emphasis added). In Jastrow's writings, he often refers to evolution as a belief or religion. *See generally* ROBERT JASTROW, UNTIL THE SUN DIES (1977). For example, in the preface to his book, he writes that many recent discoveries taken together "provide some of the elements of the natural religion which illuminates the nature of man. Like other religions, this one has a cosmology . . . Its cosmology is the scientific theory of the origin of the Universe. . . . There is a surprising

Cartmill gives an example of how evolution is used as a belief, even by those who do not admit that it is. He claims that evolution best explains the fossil record because “[r]eptiles come before mammals and birds in the sequence of sedimentary rocks, and the oldest mammals and birds are more like reptiles than later mammals and birds are.”⁴⁵ But then he explains how belief affects the picture: he states, “These facts support the hypothesis of evolution, but only if we make certain assumptions about geology.”⁴⁶ Evolution does not stand on its own based on the facts; evolution requires belief just as creation does.

In fact, for many evolutionists, evolution is not simply a belief about origins, it is a principle that affects their view of all of science and even life in general. The National Academy of Sciences declared that “evolution is the central organizing principle that biologists use to understand the world.”⁴⁷ Evolutionist Theodosius Dobzhansky states, “Seen in light of evolution, biology is, perhaps, intellectually the most satisfying and inspiring science. Without that light it becomes a pile of sundry facts – some of them interesting or curious but making no meaningful picture as a whole.”⁴⁸

But biologists are not the only evolutionists for whom evolution provides “a ‘way of looking’ at the world.”⁴⁹ Teilhard de Chardin, a French philosopher, used evolution as an entire worldview. He writes, “[T]he ramifications of evolution reappear and go on close to us in a thousand social phenomena which we should never have imagined to be so closely linked with biology.”⁵⁰ He lists some of the social phenomena affected, including “development and specialisation of new industries” and “the formulation and propagation of philosophic and religious doctrines.”⁵¹ He continues, “*The social phenomenon is the culmination and not the attenuation of the biological phenomenon.*”⁵² But, for Teilhard, evolution covered even more than the social phenomena:

correspondence between western science and western religious thought.” *Id.* at vii-viii. Later he refers to the “faith in the power of scientific reasoning.” *Id.* at 2. In the third chapter he writes, “If there is a religion it’s science,” and the cause-and-effect relationship “can be regarded as its main article of faith.” *Id.* at 11.

⁴⁵ Kottler, *supra* note 27, at 35.

⁴⁶ *Id.*

⁴⁷ NATIONAL ACADEMY OF SCIENCES, *supra* note 16, at 3.

⁴⁸ Dobzhansky, *supra* note 27, at 27.

⁴⁹ Bahnsen, *On Worshipping the Creature Rather Than the Creator*, 1 J. OF CHRISTIAN RECONSTRUCTION 98, 102 (1974); see also BERRA, *supra* note 27, at 120-44. See generally PHILLIP E. JOHNSON, *EVOLUTION AS DOGMA: THE ESTABLISHMENT OF NATURALISM* (1990).

⁵⁰ PIERRE TEILHARD DE CHARDIN, *THE PHENOMENON OF MAN* 223 (Bernard Wall trans., Harper & Row Publishers, Inc. 1965) (1959).

⁵¹ *Id.*

⁵² *Id.*

Is evolution a theory, a system, or a hypothesis? It is much more – it is a general postulate to which all theories, all hypotheses, all systems must henceforward bow and which they must satisfy in order to be thinkable and true. Evolution is a light which illuminates all facts, a trajectory which all lines of thought must follow – this is what evolution is.⁵³

It is clear that evolutionists are not objectively looking at facts and then presenting them to students in the classroom. Rather, evolutionists approach facts in light of their presuppositions, and they interpret the facts accordingly. Like creationists, evolutionists begin with a belief; they believe that evolution occurred through chance aided by natural selection. Next, they conduct scientific research to validate their beliefs and to invalidate the claims of creationists. It should be noted also that evolutionists' beliefs, like creationists' beliefs, extend beyond the scope of conclusive research. Hence, evolutionists are presuppositionalists.

Theodosius Dobzhansky once wrote that he was amused at how creationists could construe his and other evolutionists' writings to indicate that they were dubious about the doctrine of evolution. He was amazed that he and his colleagues were "quoted in a way showing that [they] are really antievolutionists under the skin."⁵⁴ He was amazed because he knows how strongly he and his colleagues *believe* in evolution. Indeed, he and most evolutionists are not antievolutionists under the skin. They are presuppositionalists under the skin.

3. Presuppositions of Evolution and Creation Compared

The presuppositions adopted by both sides are many and contradictory, making each mutually exclusive of the other. H. Wayne House lists some of those competing presuppositions as follows:

<u>Evolution</u>	<u>Creation</u>
Humanism	Theism
Naturalism	Supernaturalism
Nature	God
Impersonal Force	Personal being
Chance	Design
Mediterranean cosmologies	Hebrew Scriptures
Man as animal	Man as image of God
Relative truth	Absolute Truth
Amoral or non-moral	Moral law of Creator ⁵⁵

For purposes of this Comment, however, one competing presupposition is predominately important. That is, creationists presuppose that God created the world out of nothing while evolutionists presuppose that the world evolved by chance.

⁵³ TEILHARD DE CHARDIN, *supra* note 50 at 241.

⁵⁴ Dobzhansky, *supra* note 27, at 27.

⁵⁵ House, *supra* note 18, at 392.

B. Intelligent Design: Approaching the Origins Controversy Without Presuppositions

1. What is Intelligent Design Theory?

It should first be noted that design arguments are not novel. In fact, they have been around for centuries and have even been characterized as “old hat.”⁵⁶ But design arguments have not been given much scientific weight because, at least until the past decade, there were no “precise methods for distinguishing intelligently caused objects from unintelligently caused ones.”⁵⁷ The methods for determining intelligent design are discussed later in this section.

Stated in its most basic form, intelligent design provides a means to analyze nature in an attempt to determine what may be inferred about its origin. Intelligent design uses methods developed in various areas of science to detect design.⁵⁸ When design is detected, there is underlying information that is uncovered. That information “becomes a reliable indicator of intelligent causation as well as a proper object for scientific investigation.”⁵⁹ In other words, the higher the information content of an object, the higher the likelihood that the object is a product of intelligent design. Hence, it is a theory “for detecting and measuring information, explaining its origin and tracing its flow”; it is not a “study of intelligent causes *per se* but of informational pathways induced by intelligent causes.”⁶⁰

Furthermore, intelligent design employs a general yet reliable method to determine whether design may be inferred. The method has been dubbed the “explanatory filter.”⁶¹ In general, any observable fact may have one of three causes: law, chance, or design. Any observable fact is analyzed first against law and then against chance. If both law and chance are eliminated as possible explanations for the fact, design may

⁵⁶ WILLIAM A. DEMBSKI, *INTELLIGENT DESIGN: THE BRIDGE BETWEEN SCIENCE & THEOLOGY* 105 (1999). One author traces design theory to 1802 in England. Falk, *supra* note 2, at 16.

⁵⁷ DEMBSKI, *supra* note 56, at 106.

⁵⁸ Some of those areas of science are as follows: in biochemistry, Michael Behe’s “irreducible complexity,” see MICHAEL J. BEHE, *DARWIN’S BLACK BOX: THE BIOCHEMICAL CHALLENGE TO EVOLUTION* 39-45 (1996); in mathematics, Marcel Schutzenberger’s “functional complexity,” see Marcel-Paul Schutzenberger, *The Miracles of Darwinism*, 17 *ORIGINS & DESIGN* 2, 10-15 (1996); and William Dembski’s “specified complexity,” see William Dembski, *Intelligent Design as a Theory of Information* (1998), at http://www.arn.org/docs/dembski/wd_idtheory.htm.

⁵⁹ DEMBSKI, *supra* note 56, at 106; see also David D. DeWolf et al., *Teaching the Origins Controversy: Science, or Religion, or Speech?*, 2000 UTAH L. REV. 39, 60-61 (2000).

⁶⁰ DEMBSKI, *supra* note 56, at 107.

⁶¹ William A. Dembski, *Redesigning Science*, in MERE CREATION: SCIENCE, FAITH & INTELLIGENT DESIGN 99 (William A. Dembski ed., 1998) [hereinafter *Redesigning Science*].

be inferred.⁶² Design inference works especially well in the following two specific areas: high-information systems⁶³ and high-complexity systems (e.g., molecules and DNA).⁶⁴

2. The Method of Analysis Excludes Presuppositions

Simply examining the method of analysis used in intelligent design makes it clear that the theory is not based on presuppositions. A closer look will make it even more obvious. Intelligent design has been explained as follows:

Design theory *begins with the data that scientists observe in the laboratory and nature*, and attempts to explain such data based on what we know about the patterns that generally indicate intelligent causes. For design theorists, the conclusion of design constitutes an inference from biological data, not a deduction from religious authority.⁶⁵

The first clause in the above quotation is quite significant. Intelligent design theory *begins* with observable facts; it does not begin with presuppositions already in place before the facts are known. In fact, William Dembski, one of intelligent design's foremost proponents, states that "intelligent design presupposes neither a creator nor miracles. Intelligent design is theologically minimalist. It detects intelligence without speculating about the nature of the intelligence."⁶⁶

Thinking back to the definition of "objective" (i.e., "[u]ninfluenced by emotions or personal prejudices"⁶⁷), intelligent design can certainly be placed in that category. Another well-known term also describes intelligent design as it relates to presuppositions. That term is "neutral." Neutral may be defined as "[b]elonging to neither side in a controversy."⁶⁸ When the way in which intelligent design theory fits into the origins controversy is examined from a presuppositioalist approach, the forgoing definition of "neutral" is particularly fitting.⁶⁹

⁶² *Id.* For an in-depth discussion of the explanatory filter and why it works see *id.* at 93-112.

⁶³ See DEMBSKI, *supra* note 56, at 153-86.

⁶⁴ BEHE, *supra* note 58, at 194; see also DeWolf, *supra* note 59, at 61-66; Stephen C. Meyer, *The Explanatory Power of Design: DNA and the Origin of Information*, in MERE CREATION: SCIENCE, FAITH & INTELLIGENT DESIGN 113-47 (William A. Dembski ed., 1998).

⁶⁵ DeWolf, *supra* note 59, at 93 (emphasis added).

⁶⁶ DEMBSKI, *supra* note 56, at 107.

⁶⁷ AMERICAN HERITAGE, *supra* note 5, at 940; see also *supra* Part II.A.

⁶⁸ *Id.* at 917.

⁶⁹ Purpose should not be confused with presuppositions. Intelligent design is promoted as an alternative to the view that chance caused the world to exist; opposing chance is its purpose. See DEMBSKI, *supra* note 56, at 106, 125. This purpose, however, is accomplished without regard to presuppositions because of the very nature of the explanatory filter; belief does not play any role in the analysis. See *Redesigning Science*, *supra* note 61, at 99.

III. THE ORIGINS CONTROVERSY IN THE COURTS

A cardinal claim among evolutionists is that evolution is the only scientifically valid theory about the origin of life that may be taught in a public school without violating the Establishment Clause of the First Amendment.⁷⁰ The Establishment Clause simply states that "Congress shall make no law respecting an establishment of religion."⁷¹ The Supreme Court has adopted several tests to determine whether a particular state action violates the Establishment Clause. Notable among those used are the *Lemon* test⁷² and the endorsement test.⁷³ Before the Court adopted these tests, it simply inquired into whether a state action was neutral toward religion.⁷⁴ Instead of examining a chronology of significant cases, however, it will be more helpful to focus on the two elements that courts, particularly the Supreme Court, have found most significant. These two elements are derived from the first two tests mentioned above: the *Lemon* test and the endorsement test.

The first element comes primarily from the first prong of the *Lemon* test. The question asked by a court is whether a proposed law has a secular purpose.⁷⁵ This inquiry is a search into the subjective intent of those who authored, sponsored, and passed the law. The second element analyzed in this Comment deals with an objective inquiry into the effect of the statute. This element is taken from the second prong of the *Lemon* test and from the endorsement test.

A. Secular Purpose: A Subjective Inquiry

The *Lemon* test, adopted by the Supreme Court thirty years ago, is the most-used test in Establishment Clause cases.⁷⁶ The first prong of

⁷⁰ The First Amendment applies to state actors via the Incorporation Doctrine. See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The Establishment Clause in particular was not applied to the states until 1947. See *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947). Of course, public school teachers are state actors because they are seen as an extension of the state. See *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995).

⁷¹ U.S. CONST. amend. I.

⁷² *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

⁷³ *Lynch v. Donnelly*, 465 U.S. 668, 688-94 (1984) (O'Connor, J., concurring). The coercion test could be applied to school-sponsored activities to determine whether students were coerced into participating. See, e.g., *Lee v. Weisman*, 505 U.S. 577 (1992). One of the essential elements in this test, however, is that the government must sponsor "a formal religious exercise." *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 970 (5th Cir. 1992). Hence, the coercion test will likely not even be applied in origin-controversy cases because they do not involve a formal, religious exercise. See *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 344 (5th Cir. 1999).

⁷⁴ See *Epperson v. Arkansas*, 393 U.S. 97, 103-09 (1968) (striking down a statute that banned the teaching of evolution in public schools).

⁷⁵ *Lemon*, 403 U.S. at 612.

⁷⁶ Since its adoption, the *Lemon* test has been applied in all Establishment Clause cases except one. *Edwards v. Aguillard*, 482 U.S. 578, 583 n.4 (1987). In *Marsh v.*

the *Lemon* test requires that any government action have a secular purpose.⁷⁷ It does not require that the government action have *only* a secular purpose: government action may have a religious purpose so long as the secular purpose is not dominated by the religious purpose.⁷⁸ The search for a secular purpose is an inquiry into the subjective intent of those doing or authorizing the state action. That the inquiry is subjective is made explicit by the necessity of determining the *actual* purpose,⁷⁹ or as Justice O'Connor stated it, what "was intended to [be] communicate[d]."⁸⁰

To determine the actual purpose of a statute, a court makes a two-part inquiry. First, the court analyzes the plain language of the statute.⁸¹ Second, the court may also be prompted to examine the circumstances in which the statute was passed for one of two reasons: either the statute is ambiguous on its face⁸² or the court suspects that the stated purpose is merely a sham to hide an ulterior purpose.⁸³ This practice has been dubbed the "sham inquiry."⁸⁴ In a case involving the origins controversy, it is almost certain that a court will conduct a sham inquiry.

The sham inquiry incorporates both inquiries mentioned above. Though not formally divided into independent prongs, the sham inquiry is, in effect, a two-part process. The court first analyzes the stated purpose, if any, to determine whether it is a valid secular purpose. Next, the court looks for an ulterior religious purpose.⁸⁵ The secular purposes most commonly stated for statutes that authorize the teaching of

Chambers, 463 U.S. 783 (1983), where the Court did not apply the *Lemon* test in finding it constitutionally permissible for the Nebraska Legislature to open its sessions with prayer, it based its decision on historical practice. A historical analysis, however, is not appropriate for Establishment Clause cases regarding public schools because the public school system, as it is known today, was not in existence at the founding of our country. See *Wallace v. Jaffree*, 472 U.S. 38, 80 (1985) (O'Connor, J., concurring). Further, the continued validity of the *Lemon* test was reaffirmed in *Agostini v. Felton*, 521 U.S. 203 (1997). The Court stated in particular that the first prong of the *Lemon* test has "remained largely unchanged." *Id.* at 223; see also *Freiler*, 185 F.3d at 344.

⁷⁷ *Lemon*, 403 U.S. at 612.

⁷⁸ *Lynch*, 465 U.S. at 690-91 (O'Connor, J., concurring); *Edwards*, 482 U.S. at 599 (Powell, J., concurring).

⁷⁹ *Lynch*, 465 U.S. at 690.

⁸⁰ *Id.*

⁸¹ *Edwards*, 482 U.S. at 597.

⁸² See, e.g., *id.* at 598-99 (Powell, J., concurring).

⁸³ See, e.g., *id.* at 586-87.

⁸⁴ *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 344 (5th Cir. 1999); see also Robert Vaught, *The Debate Over Evolution: A Constitutional Analysis of the Kansas State Board of Education*, 48 KAN L. REV. 1013, 1026 (2000).

⁸⁵ Often these two prongs will be analyzed simultaneously by the court. See, e.g., *Freiler*, 185 F.3d at 344-46. This Comment divides them to clarify the analysis.

theories that conflict with evolution are enhancing academic freedom⁸⁶ or encouraging critical thinking.⁸⁷ Academic freedom is formally defined as follows: “The right [of a teacher] to speak freely about political or ideological issues without fear of loss of position or other reprisal.”⁸⁸ Specifically in the context of teaching different views of the origins of life, the Supreme Court has indicated that it will allow the term to be defined as “referring to enhancing the freedom of teachers to teach what they will.”⁸⁹ But the Court will not allow the term “academic freedom” to be used as anything but its legal definition.⁹⁰ It cannot simply mean fairness or teaching all the evidence.⁹¹

For a statute to truly further the goal of academic freedom, it must not limit what teachers can already teach, and it must give new authority that teachers did not already possess prior to the statute. In *Edwards v. Aguillard*, the Court found that a Louisiana statute mandating the teaching of creation science whenever evolution was taught did not further the purpose of academic freedom because the statute actually restricted what teachers could teach by removing flexibility that they previously enjoyed.⁹² According to the Court, a balanced treatment act could cause teachers to avoid certain subjects altogether so that they would not be forced to teach creation science.⁹³ Hence, for a statute to truly enhance academic freedom, it is imperative that the statute not limit, in any way, the freedom already afforded teachers. More than simply not restricting a teacher’s freedom, however, a valid statute must grant new authority.⁹⁴

Another claimed secular purpose is that of urging students “to exercise critical thinking and gather all information possible and closely examine each alternative toward forming an opinion.”⁹⁵ In *Freiler v.*

⁸⁶ See, e.g., *Edwards*, 482 U.S. at 586.

⁸⁷ See, e.g., *Freiler*, 185 F.3d at 344-45.

⁸⁸ BLACK’S LAW DICTIONARY 11 (7th ed., 1999).

⁸⁹ *Edwards*, 482 U.S. at 586.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 586. The Court further explained the statute by quoting the appellate court:

[T]he Act “requires, presumably upon risk of *sanction* or *dismissal* for failure to comply, the teaching of creation-science whenever evolution is taught. Although states may prescribe public school curriculum concerning science instruction under ordinary circumstances, the compulsion inherent in the Balanced Treatment Act is, on its face, inconsistent with the idea of academic freedom as it is universally understood.”

Id. at 586 n.6 (quoting *Aguillard v. Edwards*, 765 F.2d 1251, 1257 (5th Cir. 1985)).

⁹³ *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255, 1273 (E.D. Ark. 1982).

⁹⁴ See *Edwards*, 482 U.S. at 586.

⁹⁵ *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 344 (5th Cir. 1999) (quoting the resolution adopted by the school board).

Tangipahoa Parish Board of Education, the Board of Education adopted a resolution that required teachers to read a disclaimer before teaching evolution.⁹⁶ The disclaimer stated that evolution “‘should be presented to inform students of the scientific concept’ but that such teaching [was] ‘not intended to influence or dissuade the Biblical version of Creation or any other concept.’”⁹⁷ The Fifth Circuit found that the purpose of encouraging critical thinking was instead frustrated by the disclaimer. The court reasoned as follows:

From [the disclaimer], school children hear that evolution as taught in the classroom need not affect what they already know. Such a message is contrary to an intent to encourage critical thinking, which requires that students approach new concepts with an open mind and a willingness to alter and shift existing viewpoints.⁹⁸

To actually further the purpose of urging students to use critical thinking, students cannot be told that they may simply disregard evolution – or any other theory. Instead, they should be challenged to make their own choice, via critical thinking, among several options.

After a court has analyzed the stated purpose, it will then determine whether that purpose is sincere or a sham.⁹⁹ To determine whether the purpose claimed is sincere, a court will examine the legislative history of the statute or resolution, especially focusing on statements made by its sponsors.¹⁰⁰ Any statement that can be construed as identifying an ulterior religious purpose will be used to show that the stated secular purpose is merely a front. For example, in *Edwards*, the Court based its finding that the term “creation science” was religious rather than scientific on statements made by State Senator Bill Keith and his expert witnesses in support of the bill.¹⁰¹ Especially significant to the Court were statements made in direct relation to the sponsor’s religious views. Senator Keith stated during debates that his disdain for evolution was a result of his religious beliefs. He claimed that evolution was the basis of such religious views as “religious humanism, secular

⁹⁶ *Id.* at 337.

⁹⁷ *Id.* at 345 (quoting the resolution adopted by the school board).

⁹⁸ *Id.*

⁹⁹ *See Edwards*, 482 U.S. at 586-87.

¹⁰⁰ *See, e.g., id.* at 587-93 (in overturning a balanced treatment act for lack of a secular purpose, the Court quoted the bill’s sponsors and supporters ten times); *Wallace v. Jaffree*, 472 U.S. 38, 56-57 (1985); *Freiler*, 185 F.3d at 342 (5th Cir. 1999); *McLean v. Arkansas Bd. of Educ.*, 185 F.3d 1255, 1261-64 (E.D. Ark. 1982).

¹⁰¹ *Edwards*, 482 U.S. at 591-93 (especially consider footnotes 11-14 where the Court recounts (1) statements that describe creation-science as a theory that provides evidence that the world was created by the supernatural act of a creator and (2) statements by the sponsor and witnesses that they personally believed in a literal interpretation of the Bible).

humanism, theological liberalism, [and] atheism [sic]."¹⁰² The Court used these statements and others to show that the primary purpose of the act "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."¹⁰³ To prevent the Court from finding an ulterior religious purpose, the legislative history of a statute or resolution must be void of any statements referring to religion or a literal interpretation of the Bible.

In summary, in the context of the origins controversy, a court will likely conduct both parts of a sham inquiry. It will first examine the stated purpose of a statute or resolution to determine if it is a valid secular purpose. It will then scrutinize the statute's legislative history to determine whether the stated purpose is merely a sham to hide an ulterior religious purpose.

B. Endorsement or Effect: An Objective Analysis

The second inquiry that must be considered is derived from the second prong of the *Lemon* test and the endorsement test. The second prong of the *Lemon* test states that the statute's "principal or primary effect must be one that neither advances nor inhibits religion."¹⁰⁴ The relevant portion of the endorsement test states the following: "What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion."¹⁰⁵ Taken together, these two principals stand for the proposition that a statute violates the Establishment Clause if a reasonable observer would consider the government action to have the effect of endorsing a religion.¹⁰⁶ If, however, the benefit to religion is merely incidental, according to the Supreme Court, "no realistic danger exists that the community would think that the [government] was endorsing religion or any particular creed."¹⁰⁷ The test, therefore, is an objective one to determine what message is conveyed to the intended audience,¹⁰⁸ which, in this context, is the students.

¹⁰² *Id.* at 592. Senator Keith's claim that evolution harms society is well substantiated. See THE LIE, *supra* note 12, at 83-95; HAM & TAYLOR, *supra* note 13, at 89-99. See generally DARWIN ON TRIAL, *supra* note 39, at 123-32. But the time to make that argument was not on the floor of the senate while supporting creation science; it was merely the wrong forum.

¹⁰³ *Edwards*, 482 U.S. at 592.

¹⁰⁴ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

¹⁰⁵ *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984).

¹⁰⁶ See *County of Allegheny v. ACLU*, 492 U.S. 573, 620 (1989).

¹⁰⁷ *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993).

¹⁰⁸ See *County of Allegheny*, 492 U.S. at 620.

Note, however, that if a court does not find a valid secular purpose, as outlined in the preceding section, it will not reach this second analysis.¹⁰⁹ Because of this fact, the relevant caselaw regarding the origins controversy is much more limited in the objective analysis than in the subjective.¹¹⁰ There is no Supreme Court ruling that analyzes an origins statute in light of the second prong.¹¹¹ Twenty years ago, the United States District Court for the Eastern District of Arkansas applied the objective test in finding a balanced treatment act unconstitutional in *McLean v. Arkansas Board of Education*.¹¹² The *McLean* court ruled that the primary effect of the act was to advance a particular religion because it found that “[t]he idea of sudden creation from nothing, or *creatio ex nihilo*, is an inherently religious concept.”¹¹³

The most recent relevant ruling applying the second prong, however, comes from the Fifth Circuit in *Freiler v. Tangipahoa Parish Board of Education*.¹¹⁴ The state action in question in *Freiler* was a resolution adopted by the school board that mandated that a disclaimer be read before evolution was taught.¹¹⁵ The school board argued that the disclaimer had the effect of “communicat[ing] to students that they are free to form their own opinions or maintain beliefs taught by parents concerning the origin of life and matter.”¹¹⁶ The Fifth Circuit disagreed,

¹⁰⁹ See *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985).

¹¹⁰ See, e.g., *Edwards v. Aguillard*, 482 U.S. 578 (1987) (finding a statute unconstitutional after finding no valid secular purpose and without addressing the statute’s effect).

¹¹¹ See *id.*; see also *Epperson v. Arkansas*, 393 U.S. 97 (1968) (decided before the *Lemon* test was adopted in 1971).

¹¹² *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255 (E.D. Ark. 1982).

¹¹³ *Id.* at 1266.

¹¹⁴ *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 346-48 (5th Cir. 1999).

¹¹⁵ *Id.* at 341. The disclaimer reads as follows:

Whenever, in classes of elementary or high school, the scientific theory of evolution is to be presented, whether from textbook, workbook, pamphlet, other written material, or oral presentation, the following statement shall be quoted immediately before the unit of study begins as a disclaimer from endorsement of such theory.

It is hereby recognized by the Tangipahoa Board of Education, that the lesson to be presented, regarding the origin of life and matter, is known as the Scientific Theory of Evolution and should be presented to inform students of the scientific concept and not intended to influence or dissuade the Biblical version of Creation or any other concept.

It is further recognized by the Board of Education that it is the basic right and privilege of each student to form his/her own opinion and maintain beliefs taught by parents on this very important matter of the origin of life and matter. Students are urged to exercise critical thinking and gather all information possible and closely examine each alternative toward forming an opinion.

Id. (quoting the resolution adopted by the school board).

¹¹⁶ *Id.* at 346.

finding instead that the primary effect of the disclaimer was to promote religion.¹¹⁷ The court, reading the two-paragraph disclaimer as a whole,¹¹⁸ based its finding on three factors. First, the disclaimer not only removed any endorsement of evolution (first paragraph), but it also encouraged students to think about the biblical account of creation (first and second paragraphs read together).¹¹⁹ Second, the disclaimer reminded students that they did not have to sway in the beliefs that their parents had taught them.¹²⁰ Finally, the biblical account of creation was the only alternative to evolution specifically referenced in the disclaimer.¹²¹ In summary, the basic holding of the Fifth Circuit is that any state action that encourages students to think about a particular religious view at the expense of another view has the primary effect of promoting religion.

IV. HOW TO DRAFT A CONSTITUTIONAL INTELLIGENT DESIGN STATUTE

Before addressing what a statute or resolution that authorizes teaching intelligent design should contain, a preliminary question should be addressed: Do individual teachers need authorization from a statute in order to teach a view that conflicts with evolution? The simple answer is an emphatic "No!" In *Edwards*, the Supreme Court specifically stated that "no law prohibited Louisiana public school teachers from teaching any scientific theory."¹²² This statement inherently means that, if a teacher is not explicitly forbidden to teach a certain theory, the teacher may teach whatever theory he chooses so long as it is scientific.¹²³

Many teachers, however, may not be comfortable presenting intelligent design without express authorization for several reasons. First, they may not know that they are allowed to present scientific evidence that conflicts with evolution. Second, if they do know that they are allowed, they may not know to what extent they may present conflicting evidence. Finally, they may be fearful of a lawsuit. There are,

¹¹⁷ *Id.* at 348.

¹¹⁸ *Id.* at 346 n.3. Although the court claimed to be reading the disclaimer as a whole, in practice the court simply connected the encouragement to thinking critically in the second paragraph with the reference to the Biblical account of creation in the first, thereby concluding that the disclaimer encouraged students to think about creation and disregard evolution. *Id.* at 347.

¹¹⁹ *Id.* at 346. The court's rationale on this point is suspect because it took the wording of the disclaimer, which encouraged students to think critically and "examine each alternative," to mean that students were encouraged "to read and meditate upon religion in general and the 'Biblical version of Creation' in particular." *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Edwards v. Aguillard*, 482 U.S. 578, 587 (1987).

¹²³ See David K. DeWolf, *Academic Freedom After Edwards*, 13 REGENT U. L. REV. 447, 474-78 (2001); see generally DeWolf, *supra* note 59, at 39-110.

no doubt, other reasons, as well. Whatever a particular teacher's reason may be, the simple fact is that many science teachers who are not entirely convinced that evolution is incontrovertibly true continue to teach evolution as if it were fact and do not present any other theories. A statute or resolution specifically authorizing them to teach conflicting views would serve to outline their rights as well as strengthen their courage. In addition, students deserve to be presented with the evidence for intelligent design.

It is necessary, therefore, to determine what a statute¹²⁴ that authorizes the teaching of intelligent design requires to pass constitutional muster. If design theory is deemed to be religious, the relevant caselaw, discussed in the preceding section, will apply.¹²⁵ If, however, intelligent design is not religious, the Establishment Clause should have no bearing on whether it may be taught in public schools. This section first considers whether intelligent design is religious. It then analyzes, if intelligent design is not religious, whether it may nevertheless be attacked either as a sham under the first prong of the *Lemon* test or as an endorsement of religion.

A. Is Intelligent Design Religious?

Although the courts are usually careful not to define religion, the Ninth Circuit deviated from this ordinary course in *Peloza v. Capistrano Unified School District*¹²⁶ and *Alvarado v. City of San Jose*.¹²⁷ In *Alvarado*, the Ninth Circuit applied a three-part test to define religion. The test is as follows:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to

¹²⁴ In this context, state action could be authorized by a statute passed in the state legislature or by a resolution passed by the board of education (state or local). For purposes of consistency, this Note will refer to the context of a statute being passed in a legislature, but the principles still apply to a resolution being adopted by a school board.

¹²⁵ The constitutional landscape may have been altered slightly since *Edwards* through rulings such as *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1989), and *Good News Clubs v. Milford*, 533 U.S. 98 (2001). See DeWolf, *supra* note 59, at 97-98. These cases, however, deal with private groups gaining equal access inside public schools and are easily distinguishable from the situation of a state-employed teacher instructing his students. See *Freiler*, 185 F3d at 348. Because equal access cases are factually distinguishable, this Note will not consider them in its analysis.

¹²⁶ *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994) (deciding that a school board could require a teacher to teach evolution because it is not a religious concept).

¹²⁷ *Alvarado v. City of San Jose*, 94 F.3d 1223 (9th Cir. 1996) (affirming the dismissal of a claim alleging that the city's installation and maintenance of a sculpture of the "Plumed Serpent" of Aztec mythology violated the Establishment Clause).

an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.¹²⁸

Intelligent design must be analyzed in light of each element. First, a court would have to determine whether intelligent design theory “addresses fundamental and ultimate questions having to do with deep and imponderable matters.”¹²⁹ This inquiry requires an analysis of the subject matter of the theory.¹³⁰ One characteristic of the subject matter of recognized religions is that a religion deals with the “underlying theories of man’s nature or his place in the Universe.”¹³¹ Intelligent design deals with neither of these issues.¹³² Instead, “design theory seeks to answer a question raised by Darwin, as well as contemporary biologists: How did biological organisms acquire their appearance of design?”¹³³ The lack of presuppositions in intelligent design theory is particularly relevant in this context.¹³⁴ Design theory takes the facts as they are and applies the explanatory filter;¹³⁵ it does not attempt to define or describe the characteristics of the designing intelligence.¹³⁶ Although intelligent design may add credibility to the claims of creationists, the theory itself is not religious. It is well established that “[t]he Establishment Clause is not violated because government action happens to coincide or harmonize with the tenets of some or all

¹²⁸ *Id.* at 1229 (quoting *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981)). These three elements were first suggested by Judge Adams of the Third Circuit in a concurring opinion. *Malnak v. Yogi*, 592 F.2d 197, 207-10 (3d Cir. 1979) (Adams, J., concurring) (*Malnak II*). When Judge Adams proposed this definition of religion, he indicated that the elements were merely “useful indicia.” *Id.* at 208. He explicitly stated that “[a]lthough these indicia will be helpful, they should not be thought of as a final ‘test’ for religion.” *Id.* at 210. He added, however, that “it is important to have some objective guidelines in order to avoid *ad hoc* justice.” *Id.* Two years later, the Third Circuit adopted Adam’s test for religion. *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981). Although the court pointed out that the indicia were not to be seen as a rigid, all-encompassing “test,” *see id.* at 1032 n.13, it did, in effect, apply the definition as a test. *Id.* at 1032-33. The Ninth Circuit explicitly followed the Third Circuit’s lead in *Alvarado*, 94 F.3d at 1228-31.

¹²⁹ *Alvarado*, 94 F.3d at 1229.

¹³⁰ *Malnak II*, 592 F.2d at 208.

¹³¹ *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (1969).

¹³² Of course, creation addresses these issues, but it is also interesting to note that evolution also addresses the issues, which “characterize recognized religions.” *Id.* Man’s nature is addressed by survival of the fittest; man’s place in the universe is addressed as an existence that is the result of chance and owing no accountability to anyone.

¹³³ DeWolf, *supra* note 59, at 85.

¹³⁴ *See supra* Part II.B.

¹³⁵ *Redesigning Science*, *supra* note 61, at 99.

¹³⁶ DeWolf, *supra* note 59, at 85; *see also* William A. Dembski, *Intelligent Design is Not Optimal Design*, at http://www.designinference.com/documents/2000.02.ayala_response.htm (Feb. 2, 2000).

religions.”¹³⁷ Clearly, then, intelligent design theory does not run afoul of the first prong of the religion test.

Second, a court would have to determine whether intelligent design “is comprehensive in nature, consist[ing] of a belief-system, [or] an isolated teaching.”¹³⁸ Even if a theory is deemed to address “ultimate” issues about “deep and imponderable matters,” it will still not be considered a religion if it is not comprehensive.¹³⁹ Here the limited scope of intelligent design theory renders it not religious. Design theory only addresses “[h]ow biological organisms [obtained] the appearance of design.”¹⁴⁰ The Third Circuit pointed out that “[t]he component of comprehensiveness is particularly relevant in the context of state education.”¹⁴¹ The court continued with a specific example of a science curriculum: “A science course may touch on many ultimate concerns, but it is unlikely to proffer a systematic series of answers to them that might begin to resemble a religion.”¹⁴² Hence, intelligent design is not in danger of being classified as a comprehensive belief system.¹⁴³ In addition to not being comprehensive, however, design theory is not even a *belief* system. A belief system, by definition, requires that any adherent to the system maintain certain foundational beliefs. As has already been discussed in this Comment,¹⁴⁴ intelligent design does not require any foundational beliefs, or presuppositions.

Third, “a religion often can be recognized by the presence of certain formal and external signs.”¹⁴⁵ This element, however, is not required to prove that a set of ideas is a religion; hence, the absence of such formalities is not determinative of the question.¹⁴⁶ Of course, intelligent design does not incorporate any such formalities.¹⁴⁷ Although design theorists have formed academic associations, which resemble other

¹³⁷ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1381 (9th Cir. 1994); see also *Edwards v. Aguillard*, 482 U.S. 578, 606 (1987) (Powell, J., concurring); *McGowan v. Maryland*, 366 U.S. 420, 442 (1961).

¹³⁸ *Alvarado v. City of San Jose*, 94 F.3d 1223, 1229 (9th Cir. 1996).

¹³⁹ *Malnak v. Yogi*, 592 F.2d 197, 208-09 (3d Cir. 1979) (*Malnak II*).

¹⁴⁰ See DeWolf, *supra* note 59, at 85.

¹⁴¹ *Malnak II*, 592 F.2d at 209.

¹⁴² *Id.* (footnotes omitted).

¹⁴³ See also DeWolf, *supra* note 59, at 86.

¹⁴⁴ See *supra* Part II.B.

¹⁴⁵ *Alvarado v. City of San Jose*, 94 F.3d 1223, 1229 (9th Cir. 1996). Some signs of religion were identified in Judge Adams’s concurrence in which he first formulated the three indicia, which later became the religion test. They are as follows: “formal services, ceremonial function, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions.” *Malnak II*, 592 F.2d at 209.

¹⁴⁶ *Id.*

¹⁴⁷ See DeWolf, *supra* note 59, at 86.

academic institutions, these groups do not resemble religious groups.¹⁴⁸ Thus, the third element of the religion test is inapplicable as well.

Because intelligent design theory is not a religion, individual teachers should be allowed to teach it in their classrooms.¹⁴⁹ Yet evolutionists already oppose those who teach intelligent design.¹⁵⁰ If teaching design theory were codified in a statute or resolution, the controversy would be intensified all the more. Even though intelligent design theory is not a religion, some argue that it may nevertheless violate the Establishment Clause. Their strategy is to claim that intelligent design is merely a sham to introduce religion into the classroom or that it has the effect of endorsing a religion.¹⁵¹ One must consider both arguments and determine how to safeguard a statute against such claims.

B. Safeguarding Against a Secular Purpose Challenge to Intelligent Design

Because intelligent design is not, in fact, a religion, and because incidental benefit to a religion is allowed under the endorsement test,¹⁵² the primary controversy would be whether the statute has a valid secular purpose or is merely a sham. Indeed, as Justice Powell noted in his concurrence in *Edwards*, "In the context of a challenge under the Establishment Clause, interference with the decisions of [states and locally elected school boards] is warranted only when the *purpose* for their decisions is *clearly religious*."¹⁵³

To determine whether a particular state action has a secular purpose, a court will normally first analyze the language of the statute and then the history of the statute.¹⁵⁴ But because arguing that a theory that is not a religion actually has the purpose of supporting a religion is a backdoor approach to the Establishment Clause, a court would most likely analyze a statute's legislative history before addressing whether the statute states a valid secular purpose.¹⁵⁵ This Comment follows the same analytical framework.

¹⁴⁸ *Id.* at 86-87. For examples of institutions begun by design theorists see *id.* at 87 n.241.

¹⁴⁹ See *id.* at 98-100.

¹⁵⁰ See, e.g., Teresa Watanabe, *Enlisting Science to Find the Fingerprints of a Creator*, L.A. TIMES, Mar. 25, 2001, at A1.

¹⁵¹ See, e.g., *supra* notes 2-3.

¹⁵² See *supra* Part III.B; see also *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993).

¹⁵³ *Edwards v. Aguillard*, 482 U.S. 578, 605 (1987) (emphasis added).

¹⁵⁴ See, e.g., *id.* at 586-94.

¹⁵⁵ This is so because intelligent design is not religious on its face, see *supra* Part IV.A; thus, looking at the language first would be counter-productive. Instead, one would have to first establish that intelligent design was made part of a statute to hide an ulterior religious purpose. Of course, such a claim would have to be substantiated by analyzing the

First, the legislative history of an intelligent design statute must not reveal an ulterior, religious purpose.¹⁵⁶ Statements made by the bill's sponsor, witnesses called by the sponsor to support the bill, and the drafters of the bill are especially scrutinized for an ulterior, religious purpose.¹⁵⁷ For this reason, it is essential that the debates on whether an intelligent design statute should be adopted be strictly limited to scientific evidence – just like the theory itself.¹⁵⁸ Statements about the supporter's personal faith or beliefs are not appropriate.¹⁵⁹ Further, although the social effects of evolutionary theory are harmful to society in general,¹⁶⁰ the Supreme Court has held that opposing evolution because of its affect on society is, in reality, a hidden religious purpose and will not pass constitutional muster.¹⁶¹ Therefore, the support of intelligent design theory must be strictly limited to scientific evidence.

If a court finds that the legislative history of an intelligent design statute does, in fact, reveal an ulterior religious purpose, the language of the document must state a valid secular purpose that will dominate the religious one. Two secular purposes are particularly applicable in the context of an intelligent design statute: promoting academic freedom and promoting critical thinking. To promote the goal of academic freedom, a statute must (1) not restrict what teachers are already allowed to do and (2) give the teacher new authority that he did not have before.¹⁶² Because of the first requirement, a statute should not limit a teacher's ability to teach evolution. It would also be wise not to *require* teachers to present intelligent design because the requirement could be seen as a restriction on the teacher's prior freedom. This ailment was one of the flaws in the balanced treatment statutes.¹⁶³ Each teacher should be free to decide for himself whether he will teach his students intelligent design theory,

legislative history of the statute. Only if the court found an ulterior religious purpose would it examine the language of the statute to determine whether it established a valid secular purpose that would not be dominated by the religious purpose. *Lynch v. Donnelly*, 465 U.S. 668, 690-91 (1984) (O'Connor, J., concurring); *Edwards*, 482 U.S. at 599 (Powell, J., concurring).

¹⁵⁶ See *id.* at 586-87. If the court finds that the statute actually contravenes the stated secular purpose or that the purpose stated is not a valid secular purpose, it will not be necessary to reach an analysis of the legislative history. See *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 344-46 (5th Cir. 1999).

¹⁵⁷ See, e.g., *Edwards*, 482 U.S. at 587-94; *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255, 1261-64 (E.D. Ark. 1982).

¹⁵⁸ See *supra* Part II.B.

¹⁵⁹ Because of the method of analysis used in intelligent design, statements about one's beliefs are not helpful to the discussion anyway.

¹⁶⁰ See *supra* note 102 and accompanying text.

¹⁶¹ *Edwards*, 482 U.S. at 592-93.

¹⁶² See *supra* Part III.A.

¹⁶³ See *Edwards*, 482 U.S. at 587; *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255, 1273 (E.D. Ark. 1982).

otherwise academic freedom is restricted rather than promoted. If, however, intelligent design theory were given the same legal status as evolution, which it rightfully deserves, teachers could be required to present it.¹⁶⁴ But until then, drafters should be more cautious.

After getting past the first hurdle of not restricting what teachers can do, the statute must also authorize new flexibility.¹⁶⁵ This task may be impossible if teachers are not already forbidden from teaching intelligent design because the Supreme Court has found that teachers already have flexibility unless it is specifically taken away. Even then, the Court may find that academic freedom is not a "relevant concept in [that] context."¹⁶⁶ Hence, it is not advisable to rely solely on the secular purpose of promoting academic freedom.

A more viable secular purpose that may be stated is the purpose of promoting critical thinking. If critical thinking is truly to be achieved, the statute cannot reflect any bias toward one theory or against a different theory; the statute must be neutral.¹⁶⁷ In *Freiler*, the Fifth Circuit interpreted a required disclaimer to suggest contrary concepts to the students. The disclaimer stated that the teaching of evolution should not "influence or dissuade the Biblical version of Creation."¹⁶⁸ Instead, to promote critical thinking, a statute should encourage students to "approach new concepts with an open mind and a willingness to alter and shift existing viewpoints."¹⁶⁹ Hence, an intelligent design statute should encourage students to consider evidence of all theories of the origin of life, but the statute must not favor any one theory, either directly or indirectly.¹⁷⁰ While academic freedom may not be legally

¹⁶⁴ See *Epperson v. Arkansas*, 393 U.S. 97 (1968) (striking down as unconstitutional a statute that prohibited teaching evolution); see also *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994) (requiring a teacher to teach evolution despite his religious beliefs that conflicted with the theory).

¹⁶⁵ See *Epperson*, 393 U.S. at 97.

¹⁶⁶ *Edwards*, 482 U.S. at 586 n.6. The state has the authority to prescribe public school curriculum, but it may not sanction or dismiss teachers for failing to comply. *Id.* The Court's reasoning in this footnote is not logical. First, it acknowledges that teachers in Louisiana are required to teach the proscribed courses and may not teach other courses without permission. Then it simply writes off academic freedom as not being "a relevant concept in this context." *Id.* But academic freedom does apply, according to the Court, to courses that are required to be taught subject to a penalty of sanction or dismissal for failure to do so. The Court concludes that the balanced-treatment act actually limited flexibility to teach evolution by requiring creation-science be taught alongside it. In essence, the Court is saying that the state may limit a teacher's academic freedom so long as the limit is not enforceable and does not interfere with a teacher's right to teach only evolution. *Id.*

¹⁶⁷ See *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 345 (5th Cir. 1999).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Although "academic freedom" cannot be legally defined as "teaching all the evidence," *Edwards*, 482 U.S. at 586, teaching all the evidence is an integral part of

defined as “teaching all the evidence,”¹⁷¹ encouraging critical thinking inherently involves teaching all the evidence, for students cannot have an “open mind” about new concepts and be willing “to alter and shift existing viewpoints” if they are not presented with all the evidence.¹⁷²

In summary, for an intelligent design statute to pass the first prong of the *Lemon* test, it must pass a two-part analysis. First, the stated purpose must not be a sham intended to mask an ulterior, religious purpose. Second, the statute must state a valid secular purpose that is not dominated by a religious purpose and is not contravened by the application of the statute.

C. Avoiding an Endorsement Test Challenge to Intelligent Design

If an intelligent design statute passes the scrutiny of its subjective purpose, it may alternatively be attacked as having the primary effect of endorsing religion. The test is an objective one, which determines whether a particular state action appears to its intended audience or to a reasonable observer to be an endorsement of religion.¹⁷³ This prong does not stand for the proposition that there may be no benefit to religion, but merely that any benefit to religion must be incidental.¹⁷⁴ For example, balanced treatment acts, which require creation science to be taught whenever evolution is taught, have been found to violate this prong because, as the *McLean* court held, “the idea of *creatio ex nihilo* is an inherently religious concept.”¹⁷⁵ Thus, even presenting creation in an objective manner, without reference to God, would violate the endorsement test.¹⁷⁶

Intelligent design theory should not encounter this dilemma, however, because it is not a religion¹⁷⁷ and it makes no assertion about a creator.¹⁷⁸ Its only inquiry is whether design may be inferred from highly complex¹⁷⁹ or highly information-based¹⁸⁰ systems. The analysis is purely

promoting critical thinking. The statute must be careful, however, to not include any bias for a particular theory.

¹⁷¹ *Id.* at 586.

¹⁷² As a practical note, any statute that limits the scope of scientific debate to a simple, two-model approach will not be seen as advancing academic freedom or critical thinking. *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255, 1269-72 (E.D. Ark. 1982).

¹⁷³ See *County of Allegheny v. ACLU*, 492 U.S. 573, 620 (1989).

¹⁷⁴ See *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993).

¹⁷⁵ *McLean*, 529 F. Supp. at 1266; see *Edwards*, 482 U.S. at 592.

¹⁷⁶ DeWolf, *supra* note 59, at 93 (pointing out that the Court's rationale in *Edwards* leads to the conclusion that an idea's legal status depends on its source; hence the idea of creation is religious because it comes from the Bible).

¹⁷⁷ See *supra* Part IV.A.

¹⁷⁸ Philip Gold, *Darwinism in Denial*, WASH. TIMES, Aug. 23, 2001, at A15.

¹⁷⁹ See BEHE, *supra* note 58, at 39-45.

scientific and does not presuppose that God created everything – or anything, for that matter.¹⁸¹ A comparison of the primary assertions of creation science and intelligent design theory will help to solidify the legal difference between the two. Creation science adheres to the following propositions:

- (1) There was a sudden creation of the universe, energy, and life from nothing.
- (2) Mutations and natural selection are insufficient to bring about the development of all living kinds from a single organism.
- (3) Changes in the originally created kinds of plants and animals occur only within fixed limits.
- (4) There is a separate ancestry for humans and apes.
- (5) The earth's geology can be explained via catastrophism, primarily by the occurrence of a worldwide flood.
- (6) The earth and living kinds had a relatively recent origin (on the order of ten thousand years ago).¹⁸²

On the other hand, intelligent design asserts different propositions:

- (1) High information content (or specified complexity) and irreducible complexity constitute strong indicators or hallmarks of past intelligent design.
- (2) Biological systems have a high information content (or specified complexity) and utilize subsystems that manifest irreducible complexity.
- (3) Naturalistic mechanisms or undirected causes do not suffice to explain the origin of information (specified complexity) or irreducible complexity.
- (4) Therefore, [intelligent] design theory constitutes the best explanation for the origin of information and irreducible complexity in biological systems.¹⁸³

Clearly, by supporting intelligent design, one is not simultaneously supporting any religion. Intelligent design and creation science do not originate from the same source. Hence, “the ruling in *Edwards* does not apply to design theory and can provide no grounds for excluding discussion of [intelligent] design from the public school science curriculum.”¹⁸⁴ A statute authorizing the teaching of intelligent design or requiring it to be included in textbooks should not run afoul of the endorsement test.

¹⁸⁰ See WILLIAM DEMBSKI, *THE DESIGN INFERENCE: ELIMINATING CHANCE THROUGH SMALL PROBABILITIES* 1-35 (1998).

¹⁸¹ See *supra* Part II.B.

¹⁸² RONALD L. NUMBERS, *THE CREATIONISTS: THE EVOLUTION OF SCIENTIFIC CREATIONISM*, at x (1993).

¹⁸³ *Id.* at 95 (footnotes omitted).

¹⁸⁴ *Id.*

V. SHOULD INTELLIGENT DESIGN REPLACE CREATIONISM?

A. Attempting to Access the Public Schools

To this point, this Comment has discussed whether intelligent design *could* be taught in public schools. But it is also important to determine whether it *should* be seen as a replacement for those who wish to have creationism taught in public schools.¹⁸⁵ The Supreme Court found in *Edwards* that the view that a “supernatural creator was responsible for the creation of humankind” is a religious belief.¹⁸⁶ In 2000, when the Court declined to review the Fifth Circuit’s decision that creation is inherently religious,¹⁸⁷ it implicitly acknowledged that the Court does not disagree with the finding. It is, therefore, apparent that those who wish to offer evidence contrary to evolution in public schools need a new strategy – preferably one that does not implicate any religious purpose or endorsement. Intelligent design is the answer. Unlike creation and evolution, it does not rely on presuppositions, either religious or secular.¹⁸⁸ Hence, to give science presentations in public schools a neutral perspective, teachers should teach intelligent design.¹⁸⁹

B. Outside the Public Schools

When addressing whether intelligent design is a replacement for creationism, it is important to distinguish between several different forums. Until now, this Comment has only considered intelligent design in the context of public school classrooms. But to keep from painting a distorted picture, other forums must be considered. Intelligent design is particularly attractive in the context of public schools because of its lack of presuppositions. But that characteristic gives it a significant disadvantage in other contexts where the Establishment Clause is not binding,¹⁹⁰ such as private education and the home. Intelligent design,

¹⁸⁵ The scope of this section is limited to considering whether supporters of creation-science should turn their efforts to helping intelligent design gain access into the public school.

¹⁸⁶ *Edwards v. Aguillard*, 482 U.S. 578, 592 (1987).

¹⁸⁷ *Tangipahoa Parish Bd. of Educ. v. Freiler*, 530 U.S. 1251 (2000).

¹⁸⁸ See *supra* Part II.

¹⁸⁹ See also House, *supra* note 18, at 439-41.

¹⁹⁰ Since the Establishment Clause has been applied to the states, *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947), students in public schools have been forced to accept a bifurcated approach to learning because God has been banned from education. Our Founders prohibited the government from establishing any religion. U.S. CONST. amend. I. Yet, at the same time, those same Founders believed that education and religion were inseparable. See AMERICA’S GOD & COUNTRY: ENCYCLOPEDIA OF QUOTATIONS 34, 214, 439-42 (William J. Federer ed., 1994). These principles are reconcilable in either of two ways: (1) Either the Founders did not believe that teaching about God was an establishment of religion, see generally David Barton, THE MYTH OF SEPARATION 21-40 (1992), or (2) they did not believe

therefore, should be used as a *supplement* to creation science rather than a *replacement* for it in such contexts.

Intelligent design shows that there is an intelligent designer, but it makes no attempt to identify that designer.¹⁹¹ For example, Michael Behe said, "Intelligent Design only takes you so far It's certainly not an argument for the existence of God. Although, certainly, most people will probably conclude that the designer is God. And I myself believe the designer is God."¹⁹² William Dembski reinforced this sentiment: "God need not enter into this discussion. In fact, Intelligent Design has no commitment to theism as such."¹⁹³ If God need not be implicated by intelligent design, what could be implicated? The answer, quite simply, is anyone or anything. Nicolas Miller explains, "While the 'intelligence' of design theory is consistent with theistic religions such as Christianity, Judaism, and Islam, it is not identified by design principles with the God of the Bible or the Koran. Nor need it be identified with a transcendent, supernatural deity at all."¹⁹⁴ For all intelligent design tells us, aliens could have designed the universe and all that is in it. Therefore, it is incumbent on any who truly believe that God is the Creator to teach their students and children the truths that cannot be addressed by the government – the truth that God is the Creator.¹⁹⁵

VI. CONCLUSION

Intelligent design is uniquely positioned in the debate over the origin of life because it lacks presuppositions. For this reason, it should be taught in public school science classrooms as a neutral approach to scientific investigation. Further, to encourage teachers to present an unbiased approach to science, a state legislature or board of education should pass a statute or resolution to ensure that intelligent design is presented to students. Only then may students critically evaluate the evidence and choose the approach that is scientifically sound.

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that the government should be the one to educate. See AMERICA'S GOD & COUNTRY, *supra* at 234; JOHN D. PULLIAM, HISTORY OF EDUCATION IN AMERICA 56 (4th ed. 1987). Both arguments are historically sound, but neither is accepted by the Court.

¹⁹¹ Gold, *supra* note 178, at A15.

¹⁹² Falk, *supra* note 2, at 16 (quoting Behe without citing him).

¹⁹³ *Id.* (quoting Dembski without citing him).

¹⁹⁴ Nicholas P. Miller, *Life, the Universe & Everything Constitutional: Origins in the Public Schools*, 43 J. OF CHURCH & STATE 483 (2001); see also House, *supra* note 18, at 402-03.

¹⁹⁵ See THE LIE, *supra* note 12, at 55-69; HAM & TAYLOR, *supra* note 13, at 33-42, 81-88.