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FUNDAMENTALISTS' EFFORTS TO INTERVENE IN CURRICULAR DECISIONS

Although challenges to the public school curriculum in courts and legislatures by conservative Christian groups are not new, these groups have increased their attacks in recent years. These recent challenges have focused on what fundamentalists perceive to be the effect of teaching "secular humanism" to their children: alienating children from their religious beliefs. This note argues that the public schools, as the institution responsible for developing democratic ideals in children, should teach tolerance of diverse views and beliefs. Although religion has played a significant role in the development of civilization and should not be ignored in the curriculum, the government must maintain the distinction between objective instruction and indoctrination.

DURING THE PAST several years, the number of assaults against the curriculum of the public schools has increased dramatically.¹ These active public campaigns have been conducted in part by fundamentalist Christians,² who perceive the public schools of the United States as institutions dominated by secular humanism,³ and by other conservative Christian groups⁴ con-

1. In their 1986-1987 report, the organization, People for the American Way, documented a 20% increase in censorship attempts on the materials, methods, and ideas used in public schools from the prior year. The statistics reveal an increase of 168% since the first report five years ago. The assaults have taken place in every region of the country and have often been carried out by well-organized and effective conservative interest groups. PEOPLE FOR THE AMERICAN WAY ATTACKS ON THE FREEDOM TO LEARN, REPORT 3 (1986-1987). People for the American Way was founded in reaction to the political mobilization of the Christian right, who were perceived as using religion and religious symbols for political purposes during the elections of 1980. ENCYCLOPEDIA OF ASSOCIATIONS 14,002 (23d ed. 1989).

2. It has been estimated that up to 40% of American adults classify themselves as fundamentalists. Yinger & Cutler, *The Moral Majority Viewed Sociologically*, in NEW CHRISTIAN POLITICS 69, 73 (D. Bromley & A. Shupe eds. 1984).

3. Secular humanism is a phrase often used but infrequently defined. A precise and manageable definition is found in Whitehead & Conlan, *The Establishment of the Religion of Secular Humanism and its First Amendment Implications*, 10 TEX. TECH L. REV. 1 (1978).

"Secularism" is a doctrinal belief that morality is based solely in regard to the temporal well-being of mankind to the exclusion of all beliefs in God, a supreme being, or a future eternity. "Humanism" is a philosophy or attitude that is con-

cerned with the "many . . . ills that attend contemporary society."⁵ These attacks no longer focus on only a particular novel or textbook, but now include the entire public school curriculum.⁶

cerned with human beings, their achievement and interests, and the condition or quality of being human, rather than with the abstract beings and problems of theology.

Id. at 29-30. See *infra* note 32 and accompanying text (discussing the doctrinal statements which have emerged from the definition).

4. Several groups have had a major impact on the national movement to disallow teachings which are incompatible with Christian ideology. Citizens for Excellence in Education has become one of the most active groups in recent years through both censorship efforts and election of its members to local school boards. The organization's goal is "to bring public education back under the control of Christians . . . and to change the atheist dominated ideology of secular humanism in our schools' texts, curriculum, and teachers' unions." PEOPLE FOR THE AMERICAN WAY, *supra* note 1, at 16.

Another group, The Eagle Forum, has used the Hatch Amendment as the primary source of support for attacks on such issues as drug abuse, evolution, and open-ended discussions in the classroom. *Id.* at 17. See *infra* note 40 for a discussion of the Hatch Amendment.

Concerned Women for America, founded by Beverly LaHaye, opposes sex education, the ERA, and all curricula which promote secular humanism. The organization has an extensive record in censorship efforts, including the funding of the plaintiffs in *Mozert v. Hawkins County Public Schools*, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3565 (U.S. Feb. 22, 1988)(No. 87-1100). PEOPLE FOR THE AMERICAN WAY, *supra* note 1, at 18.

Pat Robertson's National Legal Foundation is an organization specifically committed to reshaping the public schools. Robertson has said that the states, through their school systems are:

do[ing] something that few other states other than Nazis and the Soviets have attempted to do, namely to take children away from the parents and to educate them in a philosophy that is amoral, anti-Christian and humanistic and to show them a collectivistic philosophy that will ultimately lead toward Marxism, socialism and a communistic type of ideology.

Id. at 19. Robertson's organization is funding the plaintiffs in *Smith v. Board of School Commissioners*, 827 F.2d 684 (11th Cir. 1987). PEOPLE FOR THE AMERICAN WAY, *supra* note 1, at 19.

Finally, Educational Research Analysts, founded by Mel and Norma Gabler, has primarily concentrated its efforts on textbook reviews which are then used by the other conservative Christian groups. *Id.* at 20. This organization is committed to returning the focus of schools to the basic academic skills while eliminating the secular humanism from the curriculum. Weissman, *Building the Tower of Babel*, TEXAS OUTLOOK, Winter 1981-1982, at 13. See *infra* notes 115-18 and accompanying text.

5. Wood, *The Battle over the Public School*, 28 J. CHURCH & STATE 5, 11 (1986). Wood has suggested that the efforts against the public schools stem from the link that fundamentalists perceive between the public school system and the contemporary ills of American society. Problems such as the increase in teenage pregnancy rates and the growing use of illegal drugs among students have been used as examples of the consequences of having a school system void of moral and religious values. *Id.* at 11.

6. Wood, *Religious Fundamentalism and the Public Schools*, 29 J. CHURCH & STATE 7 (1986). A survey conducted by the American Library Association, the Association of American Publishers, and the Association for Supervision and Curriculum Development

These campaigns have heightened the conflict which exists between the government's ability to control the education of America's youth and the intense desire of these parents and children to shape the educational system to meet Judeo-Christian teachings and values. Although this is not a new political power struggle, the use of the courts and of statutory law to settle this dispute has increased dramatically.⁷

While challenges to the public school curriculum have involved a wide range of issues, the fundamentalist movement itself has concentrated on reforming three areas of school policy: (1) allowance of school prayer; (2) promotion of the teaching of creationism; and (3) the inclusion of fundamentalist ideals in textbooks.⁸ Section I of this Note will specifically discuss fundamentalism, its origins, tenets, and the fundamentalists' application of

asked librarians, principals, and school supervisors to answer a series of questions focusing on censorship pressures in the selection of school texts. The survey showed that at the local level no one area of instructional material was insulated from censorship efforts. The 837 responses received indicated that while most of the challenges were to contemporary fiction, 36.8%, other material subject to attack included: textbooks, 11.5%; non-fiction trade books, 8.6%; childrens' picture books, 7.5%; fictional classics, 7.2%; magazines, 6.2%; films, 5.5%. Several other categories were indicated in fewer than 5% of the responses. M. KAMHI, *BOOK AND MATERIALS SELECTION FOR SCHOOL LIBRARIES AND CLASSROOMS* 26 (1981).

7.

The court's activism has been premised on the need to make sure that government, including the public schools, as it grows and extends its influence over the lives of the populace, does so in ways that are consistent with the values of liberty and equality. The expanded role of courts has coincided not only with an expansion of the role of government itself but also with an increasing recognition of injustices in society — injustices both perpetrated and tolerated by government.

VAN GEEL, *AUTHORITY TO CONTROL THE SCHOOL PROGRAM* 17 (1976). A report by the Heritage Foundation states:

Parents, teachers, and citizens across the nation, concerned with the drift in the tax-supported schools toward humanistic education and academic decline, are confronting the question in their local communities, in the courts, and in the halls of Congress. The public is growing aware of the inequity of using tax dollars for the support of nontheistic religion. Secular humanism in the schools is indeed an issue whose time has come.

Rhode, *Is Secular Humanism the Religion of the Public Schools?*, in *DEALING WITH CENSORSHIP* 117, 119 (J. Davis ed. 1979)(quoting McGRAW, *SECULAR HUMANISM AND THE SCHOOLS: THE ISSUE WHOSE TIME HAS COME*, *CRITICAL ISSUES* SERIES 2, at 19-20 (1976)).

8. N.Y. Times, Aug. 29, 1987, at 6, col. 1. State-level challenges are generally classified as ideological concerns while local challenges are focused on the language of materials. The ideological concerns include secular humanism, evolution, criticism of United States history, values clarification, undermining of the traditional family, atheistic or agnostic views, and negative views. M. KAMHI, *supra* note 6, at 18.

the term secular humanism in their social and political efforts.⁹ Section II will discuss the broader historical reasons for separating the church from the state and the constitutional basis for the conflict in the public school context.¹⁰ Finally, the efforts of various interest groups to remove secular influences, through censorship and litigation, will be discussed in Section III. Particular attention will be given to three recent cases in which the efforts of conservative Christians to promote creationism and to advance fundamentalists' ideals in textbooks were defeated.¹¹

The first of these cases is *Edwards v. Aguillard*,¹² in which the Supreme Court struck down Louisiana's "Balanced Treatment for Creation Science and Evolution Science in Public Institution Act."¹³ The Act required public schools to devote equal time to creation science whenever the theory of evolution was taught.¹⁴ The Court held that the Act was invalid because its clear purpose was to "restructure the science curriculum to conform with a particular religious viewpoint."¹⁵

The second set-back suffered by the fundamentalist movement came just over a month after *Edwards* was decided. The Sixth Circuit Court of Appeals, in *Mozert v. Hawkins County Board of Education*,¹⁶ decided that a student can be required to read and discuss a basic series of textbooks which may offend his religious beliefs. The court held that such a requirement did not constitute an unconstitutional burden on the students' right to the free exercise of religion. The court of appeals' decision overturned the trial court holding that the plaintiff students were allowed to leave the classroom during normal reading periods.¹⁷

The Eleventh Circuit Court of Appeals dealt the fundamentalists a third defeat just two days after *Mozert*. In *Smith v.*

9. See *infra* notes 20-34 and accompanying text.

10. See *infra* notes 35-82 and accompanying text.

11. See *infra* notes 83-167 and accompanying text. Although the parents/plaintiffs lost the three primary cases in this Note, the overall success rate of censorship efforts has seen a troubling increase. In 1982, 26% of the efforts resulted in barring or restricting of materials. In 1986, 37% of the challenges were successful. PEOPLE FOR THE AMERICAN WAY, *supra* note 1, at 10.

12. 107 S. Ct. 2573 (1987).

13. LA. REV. STAT. ANN. §§ 17:286.1- .7 (West 1982).

14. *Id.* § 17:286.4.

15. *Edwards*, 107 S. Ct. at 2582.

16. 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3565 (U.S. Feb. 22, 1988)(No. 87-1100).

17. *Id.* at 1059.

Board of School Commissioners,¹⁸ a unanimous court of appeals reversed a trial judge's order that banned forty-four textbooks because they promoted a Godless religion. The court held that the books in question endorsed neither secular humanism nor theistic religions.¹⁹

I. THE MORAL CRUSADE OF THE FUNDAMENTALIST AGAINST SECULAR HUMANISM

If the premise that all social movements need an enemy against which to strive is true, then the fundamentalist movement has found that enemy in the form of secular humanism. The fundamentalists use "secular humanism" as a catch-all phrase to describe "progressive education, the exclusion of religion from the public schools, the decline of ethical and moral values, sexual promiscuity, the rise of drug abuse, and the waning of respect for authority."²⁰ During the past decade, the fundamentalists, primarily through the electronic church, have molded the term to encompass all of society's ills, while simultaneously defining fundamentalism as the quest to restore morality, dignity in the family unit, and fear of both God and the Second Coming to society.²¹

The word "fundamentalism" is the product of a paperback series entitled *The Fundamentals*, written shortly after World War I, which was originally intended to protect biblical purity.²² While it is not possible to say that today's fundamentalists possess a set of uniformly held beliefs, all such traditionalists rely upon the Bible for guidance and answers.²³ From this conviction comes many theistic tenets including creationism, the antithesis of evolution, and the belief that all events in life, however small or unpleasant, are part of God's plan.²⁴

18. 827 F.2d 684 (11th Cir. 1987).

19. *Id.* at 690.

20. Wood, *supra* note 6, at 8. See also *supra* note 3.

21. J. HADDEN & C. SWANN, PRIME TIME PREACHERS 85 (1981). One author has characterized the movement as a response to the historical events of immigration and the industrial revolution. Nelkin, *From Dayton to Little Rock: Creationism Evolves*, in CREATIONISM, SCIENCE, AND THE LAW 74 (LaFollette ed. 1983).

22. Chandler, *The Wicked Shall Not Bear Rule: The Fundamentalist Heritage of the New Christian Right*, in NEW CHRISTIAN POLITICS 43 (1984). See also J. HADDEN & C. SWANN, *supra* note 21, at 88.

23. J. HADDEN & C. SWANN, *supra* note 21, at 89. See generally EHRLICH, THE HOLY BIBLE AND THE LAW (1962) (providing Biblical passages as guidance for resolving legal issues).

24. J. HADDEN & C. SWANN, *supra* note 21, at 89-90.

The new religious right²⁵ has emerged dedicated to political and social issues which threaten "contemporary society at some of its most vulnerable points."²⁶ The fundamentalist preachers have called their flocks to rededicate themselves to America and to conquer many of society's evils,²⁷ by exerting Biblically-rooted social and political pressure on such controversial issues as abortion, homosexual rights, pornography, and school prayer.²⁸ The fundamentalists believe that all of their positions have Biblical support; thus, the possibility that their interpretation might be inaccurate is rejected outright.²⁹

25. The "new religious right" is the term that defines the re-emergence of the fundamentalist movement in 1979, when such organizations as the Moral Majority, Christian Freedom Foundation, the Christian Voice, the Christian Voters Victory Fund, the National Christian Action Coalition, and the Religious Roundtable were created. Chandler, *supra* note 22, at 43.

26. Shupe & Bromley, *Interpreting the New Christian Right: A Commentary on the Substance and Process of Knowledge Creation*, in *NEW CHRISTIAN POLITICS* 4, 6 (D. Bromley & A. Shupe eds. 1984).

27. James Robinson, a nationally syndicated evangelist, said that:
America's star is sinking fast. If Christians don't begin immediately to assert their influence, it may be too late to save America from the destruction toward which it is plunging. And, since America now stands as the key base camp for missions around the globe, to fail to save America now would almost certainly be to miss its last opportunity to save the world.

J. HADDEN & C. SWANN, *supra* note 21, at 97.

28. The effort to instill traditional morals based largely upon Biblical teachings led one author to define fundamentalism as "militantly antimodernist evangelical Protestantism." Marsden, *Understanding Fundamentalist Views of Science*, in *SCIENCE AND CREATIONISM* 97 (A. Montagu ed. 1984). Another critic has defined such believers as "[m]ilitant Evangelicals who hold to the inerrancy of the Scriptures, taken literally, and keep their churches strictly separate from Christians with differing views, even moderate Evangelicals." Ostling, *TV's Unholy Row*, *TIME*, Apr. 6, 1987, at 60.

29. J. HADDEN & C. SWANN, *supra* note 21, at 100. In response to the fundamentalist tradition of using the Bible to support their political and social doctrines, Robert McAfee Brown wrote:

The claim that the [fundamentalist] position embodies a biblical perspective must be challenged. It is biblicist, all right, evoking those stray verses here and there that support free enterprise, male domination, the death penalty, a hard line on homosexuals, the employment of physical force to bring unruly children into line and so forth. But it never subjects itself to the great biblical themes of doing justice or loving mercy, or acknowledging that God is truly Lord of all (even the Russians), or suggesting that peacemaking rather than war-making might be an important task for believers. . . . Call your position an appeal to patriotism. Call it a plea for a male-dominated society. Call it the gospel of free enterprise. Call it an invitation for America to be policeman of the world. Call it a brief for the Pentagon. Call it what you will. . . . But don't call it Christian, in a way that nobody else can claim the name. Don't call it biblical, when in fact it ignores central the pervasive concerns of the Scriptures.

Brown, *Listen, Jerry Falwell!*, in *CHRISTIANITY AND CRISIS* 360, 364 (1980)(quoted in

Even though secular humanism was recognized as a religion by the Supreme Court in 1961,³⁰ the term continues to acquire a different meaning based on the context in which it is used. When adopted by fundamentalists who seek to eliminate secular humanism from public schools the meaning "is not coextensive with the specific tenets of the organizations that expressly espouse humanism, such as the American Humanist Association and the Council for Democratic and Secular Humanism."³¹ These groups have clearly articulated the major principles of their doctrine, including those set forth in *The Humanist Manifesto I* (1933) and later reaffirmed in *The Humanist Manifesto II* (1973).³² While the for-

Chandler, *The Wicked Shall Not Bear Rule: The Fundamentalist Heritage of the New Christian Right*, in *NEW CHRISTIAN POLITICS* 49 (D. Bromley & A. Shupe eds. 1984)).

30. *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961). The now famous footnote listed a number of religions which are not based on a belief in the existence of God. "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others." *Id.*

31. Strossen, "Secular Humanism" and "Scientific Creationism": Proposed Standards for Reviewing Curricular Decisions Affecting Students' Religious Freedom, 47 OHIO ST. L.J. 333, 337-38 (1986)(footnotes omitted).

32. *The Humanist Manifesto I* appeared in *THE HUMANIST*, Jan.- Feb. 1973, at 13. *The Humanist Manifesto II* was published in *THE HUMANIST*, Sept.- Oct. 1973, at 4. The intellectual, concerned manner in which the supporters of *The Humanist Manifesto I* rejected traditional religious doctrines is conveyed through the doctrinal language of many of the 15 tenets which they affirmed:

Religious humanists regard the universe as self-existing and not created.

. . . .
 . . . [M]an's religious culture and civilization. . . are the product of a gradual development due to his interaction with his natural environment and with his social heritage.

. . . [S]cience makes unacceptable any supernatural or cosmic guarantees of human values.

. . . .
 . . . Religion consists of those actions, purposes, and experiences which are humanly significant.

. . . .
 . . . [W]orship and prayer [are to be replaced by] a heightened sense of personal life and . . . a cooperative effort to promote social well-being.

. . . .
 . . . [H]umanism will . . . affirm life[,] . . . seek to elicit the possibilities of life, . . . and establish conditions of a satisfactory life for all

The Humanist Manifesto I, *supra*, at 13-14.

The Humanist Manifesto II sets forth principles which will create a society concerned with mankind and its well being rather than any particular religious body.

. . . [R]eligions that place revelation, God, ritual, or creed above human needs and experience do a disservice to the human species.

. . . .
 . . . Reason and intelligence are the most effective instruments that human-

mal membership of these organizations may not encompass a large portion of American society, there are no doubt many more individuals who informally adhere to their basic tenets.³³ The term secular humanism is a vague and flexible word which makes its application to any of a number of conflicts possible. While its application is most frequently seen in the context of opposition to evolution, sex education, and complaints of non-moral, valuefree teaching, it has been used to describe many ideas concerning political, economic, and social issues.³⁴

II. THE CONSTITUTION AND THE CHURCH-STATE RELATIONSHIP IN PUBLIC SCHOOLS

The first amendment of the Constitution contains two clauses which prohibit Congress from both establishing and prohibiting the free exercise of religion.³⁵ In order to understand why these constitutional provisions were adopted, one must first understand the historical strain between church and state. History abounds with examples of the negative impact which governmental intrusion into religious liberty has had on the public. In reaction to this conflict the religion clauses of the first amendment "emerged to-

kind possesses.

. . . .
. . . Decision-making must be decentralized to include widespread involvement of people at all levels — social, political, and economic.

. . . .
. . . The separation of church and state and the separation of ideology and state are imperatives.

. . . .
. . . [National] sovereignty [shall be eliminated and replaced by] a world community in which all sectors of the human family can participate.

. . . .
. . . Technology is a vital key to human progress

The Humanist Manifesto II, supra.

33. C. LAMONT, *THE PHILOSOPHY OF HUMANISM* viii (6th ed. 1982) ("Of course there is quite a large number of Humanists who do not belong to the [American Humanist Association], and multitudes more who do not realize that they are Humanists and probably do not even know the word.").

34. One parent's group has described secular humanism as a belief in "equal distribution of America's wealth, . . . control of the environment, control of energy, . . . the removal of American patriotism and the free enterprise system, disarmament and the creation of one-world socialistic government." Barringer, *Department Proposes Rule to Curb Teaching of "Secular Humanism,"* Wash. Post, Jan. 10, 1985, at 19, col. 4.

35. The first amendment reads in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. CONST. amend. I.

gether from a common panorama of history.”³⁶ In *Zorach v. Clauson*,³⁷ the Supreme Court examined the historical context of the establishment clause and concluded:

It was precisely because Eighteenth Century Americans were a religious people divided into many fighting sects that we were given the constitutional mandate to keep Church and State completely separate The First Amendment was therefore to insure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters whom they could not convert to their faith.³⁸

The motivation behind the two clauses was not hostility toward religion but rather the desire to secure individual freedoms and protect citizens from the evils which had existed when a specific faith was established as an official governmental religion.³⁹

The Court has applied the religion clauses to protect the rights of both parents and students in public school programs; thus attempting to ensure that the school, as an agent of the state, will not advance religious views that may interfere with the private beliefs of students and their parents.⁴⁰ The Court has invalidated statutes which would indirectly influence the religious be-

36. *Abington School Dist. v. Schempp*, 374 U.S. 203, 232 (1963)(Brennan, J., concurring). See generally *Edwards v. Aguillard*, 107 S. Ct. 2573, 2588-89 (Powell, J., concurring)(briefly discussing the history of the first amendment's religion clauses).

37. 343 U.S. 306 (1952).

38. *Id.* at 318-19.

39. In *Abington School Dist. v. Schempp*, Justice Goldberg stated that “[t]he basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end.” 374 U.S. 203, 305 (1963)(Goldberg, J., concurring).

40. *Edwards*, 107 S. Ct. at 2577. See generally *Wisconsin v. Yoder*, 406 U.S. 205 (1972)(the state's claim that it is empowered to extend secondary education to children regardless of the wishes of their parents cannot be sustained); *Prince v. Massachusetts*, 321 U.S. 158 (1944)(parents have the primary responsibility of caring for children); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)(parents have the right to send their children to private schools).

Similar protective efforts have been undertaken through statutory means. The enactment of the Hatch Amendment (named after its sponsor, Senator Orrin Hatch, R-Utah) was a congressional response to demands by concerned parents claiming that they were excluded from content decisions regarding their child's education and were powerless to protect their rights. The Amendment, currently codified at 20 U.S.C. § 1232h (1986), states in relevant part:

All instructional material, including teachers' manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project.

liefs of students in public schools in every case they have decided. When collectively analyzed these establishment clause cases form an insightful outline of the Court's efforts in the area of education. These decisions have eliminated all forms of religious activity no matter how remote the influence upon students' religious beliefs. They demonstrate that the Court is intensely concerned about religious material in the school curriculum, fearing students and parents will consider such material to be the school's outward approval of religion.⁴¹ The Court has invalidated the recitation of a prayer although it was denominationally neutral,⁴² invalidated a statute which required the reading of verses from the Bible and the recitation of the Lord's Prayer by the students at the opening of the school day,⁴³ invalidated a statute forbidding the teaching of evolution,⁴⁴ prohibited the posting of a copy of the Ten Commandments on the wall,⁴⁵ held unconstitutional a moment set aside for "meditation" or "voluntary prayer,"⁴⁶ and prohibited state support to programs that will benefit religious schools.⁴⁷ In invalidating these measures, the Court has demonstrated its concern about permitting religious influences to affect impressionable children entrusted by parents to elementary and secondary schools.⁴⁸ Protection is arguably necessary because children, unlike adults, are "less mobile, less formed in their attitudes, more malleable, [and] more susceptible to authority."⁴⁹

The first amendment's religion clauses impose limitations on the role that religion may play in the public school system.⁵⁰

41. Strossen, *supra* note 31, at 359.

42. *Engel v. Vitale*, 370 U.S. 421 (1962).

43. *Abington School Dist. v. Schemp*, 374 U.S. 203 (1963).

44. *Epperson v. Arkansas*, 393 U.S. 97 (1968).

45. *Stone v. Graham*, 449 U.S. 39 (1980).

46. *Wallace v. Jaffree*, 472 U.S. 38 (1985).

47. *School Dist. v. Ball*, 473 U.S. 373 (1985).

48. *Edwards v. Aguillard*, 107 S. Ct. 2573 (1973). These decisions are clear indications of the Court's recognition of the public school as the institution "through which basic norms are transmitted to our young. It is thus unsurprising that no major religious activity, however voluntary, has been allowed to take place in the facilities through which we inculcate values for the future." L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 14-5, 825 (1978).

49. Galanter, *Religious Freedom in the United States: A Turning Point*, 1966 WIS. L. REV. 217, 284.

50. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court held, for the first time, that the first amendment religion clauses were fully applicable to both state and federal governments. "The fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties granted by the First Amendment." *Id.* at 303. Thus, although public education is considered a state function, maintenance of a school system

While the two clauses serve distinguishable functions there is also some overlap.

[The first amendment] forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.⁵¹

The debates over the exact role that religion is to have in the public schools are centered on the interplay between the two religion clauses of the first amendment. Since the word "religion" is used only once in the amendment, it "governs two prohibitions and governs them alike."⁵² The Supreme Court has used a series of tests to determine if an activity is an infringement upon first amendment rights and is, therefore, unconstitutional. The estab-

must be consistent with the federal Constitution. The United States Constitution does not specifically address the rights and responsibilities of the education system, nor is there any reserved power for the federal government to establish a system of education. Since it has been established that the education of the youth of America is a state function, the constitutions of 49 states now mandate the establishment of a public education system: ALA. CONST. art. XIV, § 260; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XX, par. 7; ARK. CONST. art. XIV, § 1; CAL. CONST. art. IX, § 5; COLO. CONST. art. IX, § 2; DEL. CONST. art. X, § 1; FLA. CONST. art. X, § 1; GA. CONST. art. VIII, § 1; HAW. CONST. art. IX, § 1; IDAHO CONST. art. IX, § 1; ILL. CONST. art. X, § 1; IND. CONST. art. VIII, § 1; IOWA CONST. art. IX, § 12; KAN. CONST. art. VI, § 1; KY. CONST. § 183; LA. CONST. art. VIII, § 1; ME. CONST. art. VIII, pt. 1, § 1; MD. CONST. art. VIII, § 1; MASS. CONST. ch. V, § 2; MICH. CONST. art. VIII, §§ 1-2; MINN. CONST. art. XIII, § 1; MISS. CONST. art. VIII, § 201; MO. CONST. art. XI, § 1; MONT. CONST. art. X, § 1; NEB. CONST. art. VII, § 1; NEV. CONST. art. XI, § 2; N.H. CONST. pt. 2, art. 83; N.J. CONST. art. VIII, § 4; N.M. CONST. art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. IX, § 2; N.D. CONST. art. VIII, §§ 147-148; OHIO CONST. art. VI, § 2; OKLA. CONST. art. I, § 5 & art. XIII, § 1; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; R.I. CONST. art. XII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; UTAH CONST. art. X, § 1; VT. CONST. art. II, § 68; VA. CONST. art. VIII, § 1; WASH. CONST. art. IX, § 1; W. VA. CONST. art. XII, § 1; WIS. CONST. art. X, § 3; WYO. CONST. art. I, § 23. See generally E. BOLMEIER, *THE SCHOOL IN THE LEGAL STRUCTURE* (1968) (discussing the relationship of the federal, state, and local governments to public schools); R. DRURY & K. RAY, *PRINCIPLES OF SCHOOL LAW* (1965) (a comprehensive examination of important principles of school law); N. EDWARDS, *THE COURTS AND THE PUBLIC SCHOOLS* (1971) (discussing the fundamental principles which underlie the relationship of the state to education).

51. *Cantwell*, 310 U.S. at 303-04.

52. *Everson v. Board of Educ.*, 330 U.S. 1, 32 (1947).

lishment clause test propounded in *Lemon v. Kurtzman*⁵³ consists of three criteria which an activity must satisfy in order to be held constitutional. "First, the statute must have a secular purpose; second, its principal or primary effect must be one that neither advances, nor inhibits religion; finally, the statute must not foster 'an excessive entanglement with religion.'"⁵⁴ The *Lemon* test prohibits the government from aiding religions, while the free exercise clause forces the government to accommodate religion. In other words, a law will be invalidated if its effect "is to impede the observance of one or all religions or is to discriminate invidiously between religions"⁵⁵

These constitutional constraints are weighed against the importance of the public school system, the need for governmental support of a stable democratic society, the need to promote a common set of values, the need to prepare the young for citizenship, and the need to foster feelings of loyalty and patriotism.⁵⁶ In *Brown v. Board of Education*,⁵⁷ the Supreme Court made a powerful statement, describing the educational system as:

the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.⁵⁸

53. 403 U.S. 602 (1971).

54. *Id.* at 612-13 (footnotes omitted).

55. *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961).

56. van Geel, *The Search for Constitutional Limits on Governmental Authority to Inculcate Youth*, 62 TEX. L. REV. 197, 262-63 (1983). The American public school system at one time was an institution uniquely American and one of the most highly regarded contributions of the United States to modern society. Wood, *supra* note 5, at 5. In *Ambach v. Norwick*, 441 U.S. 68, 77 (1979), Justice Powell relied on data provided by social scientists to conclude that the public school "inculcat[es] fundamental values necessary to the maintenance of a democratic political system." See K. LANGSTON, *POLITICAL SOCIALIZATION* 144-67 (1969); R. HESS & J. TORNEY, *THE DEVELOPMENT OF POLITICAL ATTITUDES IN CHILDREN* 114, 158-71, 217-20 (1967); V. KEY, *PUBLIC OPINION AND AMERICAN DEMOCRACY* 323-43 (1961). But see van Geel, *supra*, at 264-71 (contradicting Justice Powell's interpretation of the conclusions of social scientists in *Ambach v. Norwick*).

57. 347 U.S. 483 (1954).

58. *Id.* at 493.

Cases after *Brown* have centered primarily on the relationship between the educational process, the democratic society, and the constitutional limits on the teaching of course materials. Typically, the Supreme Court has been reluctant to interfere with school board decisions regarding the operation of the public schools,⁵⁹ but the governmental interest in inculcating the student with particular values, attitudes, and beliefs is often contrary to the beliefs held by the parents and students.⁶⁰

In *Keyishian v. Board of Regents*,⁶¹ a case specifically addressing higher education, the Court described the classroom as a "marketplace of ideas."⁶² Writing for the majority, Justice Brennan stressed the importance of the classroom to the development of democratic ideals, and noted that a learning environment free from constraints would develop "leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'"⁶³

The idea that students should be entitled to intellectual freedom while enrolled in the public school system manifested itself in 1969 in *Tinker v. Des Moines Independent Community School District*,⁶⁴ where the Court upheld the right of a group of students to wear black arm bands while in school as a protest of the Vietnam War.⁶⁵ The *Tinker* Court asserted that the first amendment protected the students⁶⁶ and that public high schools "do not pos-

59. *Bethel School Dist. v. Fraser*, 478 U.S. 675 (1986). In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court stated that while they were willing to rule on the removal of Amish children from the public schools based on religious objections that were held by the parents,

[o]ur disposition of this case, however, in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the "necessity" of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements.

Id. at 234-35.

60. *van Geel*, *supra* note 56, at 202.

61. 385 U.S. 589 (1966).

62. *Id.* at 603.

63. *Id.* (quoting *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943)).

64. 393 U.S. 503 (1969).

65. *Id.*

66. *Id.* at 506.

sess absolute authority over their students.”⁶⁷ Justice Fortas, after characterizing the activity as “a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the students],”⁶⁸ determined that this type of communication was “an important part of the educational process.”⁶⁹ The Court explained that students were not simply “closed-circuit recipients of only that which the State chooses to communicate” and that “[t]hey may not be confined to the expression of those sentiments that are officially approved.”⁷⁰ Therefore, the government’s interest in indoctrinating its public school students is off-set by the fact that the students are not simply receptors of the government’s beliefs, but are instead active participants in the educational process. There is an underlying realization in the Court’s analysis that while the school board is the primary authoritative body for determining what will be taught in the classroom,⁷¹ it is the teachers and the students who will determine the manner in which the material is taught and exactly what will be learned by the students.⁷²

Only ten years after deciding *Tinker*, the Court, in *Ambach v. Norwick*,⁷³ seemed to retreat from its emphasis on the students’ interests in freedom of belief.⁷⁴ Justice Powell, writing for the majority, instead emphasized that the inculcation of values and beliefs in the student is the dominating responsibility of American public schools, because they are “an ‘assimilative force’ by which diverse and conflicting elements in our society are brought together on a broad but common ground.”⁷⁵

67. *Id.* at 511. Prior to *Tinker* the Court had seldom addressed the problems surrounding the public high schools, focusing instead on college-level constitutionally protected rights. Gyory, *The Constitutional Rights of Public School Pupils*, 40 FORDHAM L. REV. 201 (1971). While the function of the high schools is to “transmit[] existing knowledge, traditions, and values,” college-level instruction is dedicated to “the development of intellectual and other skills to increase [the knowledge gained in high school].” Emerson & Haber, *Academic Freedom of the Faculty Member as Citizen*, in ACADEMIC FREEDOM — THE SCHOLAR’S PLACE IN MODERN SOCIETY 95, 117-19 (H. Baade ed. 1964); Nahmod, *Controversy in the Classroom: The High School Teacher and Freedom of Expression*, 39 GEO. WASH. L. REV. 1032 (1971).

68. 393 U.S. at 508.

69. *Id.* at 512.

70. *Id.* at 511.

71. See *supra* note 59.

72. Nahmod, *supra* note 67, at 1061.

73. 441 U.S. 68 (1979).

74. van Geel, *supra* note 56, at 245.

75. 441 U.S. at 77 (citing J. DEWEY, DEMOCRACY AND EDUCATION 26 (1929); N. EDWARDS & H. RICHEY, THE SCHOOL IN THE AMERICAN SOCIAL ORDER 623-24 (2d ed. 1963)).

The issue of first amendment limitations upon the ability of school board members to censor reading material in the school libraries was decided in *Board of Education v. Pico*.⁷⁶ The school board had decided to remove certain books from the library because of their "anti-American, anti-Christian, anti-Semitic and just plain filthy" content.⁷⁷ Justice Brennan, writing the plurality opinion, affirmed and remanded the judgment of the Second Circuit,⁷⁸ finding that the first amendment rights of students limit the discretion of school officials to remove library books.⁷⁹ The Court readily accepted the school board's assertion that broad discretion was to be afforded them in administering the school. The Court considered such discretion to be limited, however, by the constitutional rights of the students, particularly in light of the "unique role of the school library."⁸⁰ Justice Brennan then set forth a test to determine the extent to which these rights limit the removal of books, and guarantee the right to receive information:

[W]hether petitioners' removal of books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners' actions. If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, then petitioners have ex-

76. 457 U.S. 853 (1982).

77. 474 F. Supp. 387, 390 (E.D.N.Y. 1979). The objectionable books removed were: J. ARCHER, *A READER FOR WRITERS* (1962); A. CHILDRESS, *A HERO AIN'T NOTHING BUT A SANDWICH* (1973); E. CLEAVER, *SOUL ON ICE* (1967); *GO TELL ALICE* (anon. 1971); L. HUGHES, *BEST STORIES BY NEGRO WRITERS* (1967); O. LAFARGE, *LAUGHING BOY* (1957); B. MALAMUD, *THE FIXER* (1966); D. MORRIS, *THE NAKED APE* (1969); P. THOMAS, *DOWN THESE MEAN STREETS* (1967); K. VONNEGUT, *SLAUGHTER HOUSE FIVE* (1971); R. WRIGHT, *BLACK BOY* (1966). 457 U.S. at 856 n.3.

78. The Second Circuit reversed the district court's order granting the school district's motion for summary judgment. *Pico v. Board of Educ.*, 638 F.2d 404 (2d Cir. 1980).

79. The opinion specifically limits the holding to library books and does not reflect upon the general curriculum of the school. Justice Brennan stated, "the only books at issue in this case are library books, books that by their nature are optional rather than required reading. Our adjudication of the present case thus does not intrude into the classroom, or into the compulsory courses taught there." 457 U.S. at 862. Brennan did not explain why he thought it essential to protect the students only in the library and not in the classroom where they are more of a captive audience.

80. *Id.* at 869. The uniqueness to which Justice Brennan was referring was the voluntary nature of the library and the opportunities afforded for self-education. In accepting the school board's characterization of its functions, Justice Brennan wrote that "local school boards must be permitted 'to establish and apply their curriculum in such a way as to transmit community values,' and that 'there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political.'" *Id.* at 864 (quoting petitioners' brief at 10).

exercised their discretion in violation of the Constitution.⁸¹

Therefore, if an illegitimate motivation existed for the removal, such as an attempt to impose a specific social or political ideology, the school board's authority will be outside that granted by the Constitution.⁸²

III. EFFORTS TO PURGE SECULAR HUMANIST INFLUENCES FROM SOCIETY

A. Evolution Cases

Evolutionary theory⁸³ has been under concentrated attack by conservative Christians who perceive such an explanation for the origin of life as an outright rejection of traditional theism.⁸⁴ As a result, fundamentalist objections to perceived secular humanist aspects of public school curriculum has nowhere been more concentrated than in their efforts to restrict or eliminate the teaching of evolution. The difficulty in reconciling the theory of evolution with the traditional, theistic theory of the creation of the natural world is magnified by the process by which each theory is derived. Reli-

81. *Id.* at 871.

82. See generally J. BRYSON & E. DETTY, CENSORSHIP OF PUBLIC SCHOOL LIBRARY AND INSTRUCTIONAL MATERIALS (1982) ("Thus, the *Pico* majority acknowledges that school children not only have the right to First Amendment self-expression but also the First Amendment right to receive information and ideas." *Id.* at 134.); Sorenson, *Removal of Books from School Libraries 1972-1982: Board of Education v. Pico and its Antecedents*, 12 J. L. & EDUC. 417, 439-441 (1983) ("The Supreme Court has clearly reaffirmed the trend of lower federal court decisions holding that there are constitutional limitations on school board authority to remove books from school libraries. Attempts to impose a particular social or political orthodoxy or to suppress ideas will not be tolerated in a constitutional democracy." *Id.* at 439.); Note, *Removal of Library Books vs. Students' Right to Receive Information and Ideas: Board of Education, Island Tree Union Free School District No. 26 v. Pico*, 14 U. TOL. L. REV. 1329, 1355-1370 (1983) ("[W]hether or not a school board's removal decision denies the students their first amendment rights depends on the Board's motivation behind its action. If the Board's decision to remove a book was made for political reasons or if the Board did not like the ideas expressed in the book, then the Board action constitutionally would be impermissible." *Id.* at 1369 (footnotes omitted)).

83.

The general theory of evolution . . . embraces several key premises. It proposes origination of the universe and earth through natural processes and naturalistic development of life from non-life. The general theory involves evolution of present living forms from this first organism through mutation and natural selection, and entails evolution of human beings from ancestry common with apes.

Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 521-22 (1978) (footnotes omitted).

84. *Id.* at 522.

gions typically ask why humanity, the world, and the universe came into being, while the sciences ask how these things occurred.⁸⁵ Yet, neither doctrinal approach is capable of supplying an absolute explanation of exactly how the natural world was created; all that is unquestionable is that the possibilities have been reduced to two: creationism or evolution. There is no third theory to act as a spoiler for the other two.⁸⁶ There will be no resolution to this conflict given that the answer is one which will be continually sought, yet impossible to reach.⁸⁷

During this century, courts have been confronted with several challenges to the teaching of evolution in public schools. In 1927, the Tennessee Supreme Court upheld a state statute which prohibited teaching evolution.⁸⁸ Forty years after the now famous

85. See McMILLAN, *RELIGION IN THE PUBLIC SCHOOLS* 199 (1984) ("[T]he theories of science[] center on the empirical processes by which man, his world, and the universe came into being. . . . [T]he explanations of religion ask *why* humanity, the world and the universe came into being.").

86. Wald, *Theories of the Origin of Life*, in *FRONTIERS OF MODERN BIOLOGY* 187 (1962). The joining of religion and science forms a complementary relationship through which God creates the laws and the matter of the universe which materialize through evolution. Root-Bernstein, *On Defining a Scientific Theory: Creationism Considered*, in *SCIENCE AND CREATIONISM* (A. Montagu ed. 1984). The combination of institutions, however, is not acceptable to the fundamentalists who support only the Biblical authority. *Id.* at 79-83.

87.

It is impossible to *prove* scientifically any particular concept of origins to be true A scientific investigator, be he ever so resourceful and brilliant, can never observe and repeat *origins*!

Thus one must *believe*, at least with respect to ultimate origins. However, for optimally beneficial application of that belief, his faith should be a reasoned faith; not a credulous faith or a prescribed faith.

Whitehead & Conlan, *supra* note 3, at 53 (quoting H. MORRIS, *SCIENTIFIC CREATIONISM* 4, 5 (1974)). Based upon this "belief" in evolution, Whitehead and Conlan have methodically classified secular humanism as a religion and have argued that without its evolutionary basis the doctrine could not continue.

The evolutionary hypothesis is one tenet, if extracted, that will disembowel Secular Humanism. In fact, the other tenets of Secular Humanism are themselves based on the evolutionary implications of there being no Creator and no revelation from the Creator. If there is no Creator, then man is not dependent upon Deity, because Deity, does not exist. Thus man is autonomous. The religion of Secular Humanism . . . places Man at the center of its worship, and denies the traditional theistic concept of God.

Id. at 54.

88. *Scopes v. State*, 154 Tenn. 105, 289 S.W. 363 (1927). Although Scopes, a high school biology teacher, lost his challenge to the statute prohibiting the teaching of evolution in science classes, the efforts by fundamentalists to ban instruction of evolution decreased dramatically during the period of economic despair caused by the Depression. However, many publishers, fearful of pressure from fundamentalists, continued to ignore the evolu-

Scopes trial, the United States Supreme Court, in *Epperson v. Arkansas*,⁸⁹ wrote that the Constitution "forbids alike the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular dogma."⁹⁰ In that case, the Court held a statute similar to the one upheld in *Scopes* unconstitutional because "fundamentalist sectarian conviction was and is the law's reason for existence."⁹¹

Since *Epperson*, those who view evolution as conflicting with their religious beliefs have had to find alternative means to discredit the doctrine. The promotion of anti-evolution legislation is now an unacceptable tactic; instead, opponents seek to include scientific creationism along with evolution in the public school curriculum. The most recent approach is to forbid the teaching of evolution unless equal time is given to the teaching of creation science.

In *Edwards v. Aguillard*,⁹² the Supreme Court had to decide if creationism was a science, and therefore, outside the limits of the establishment clause. At issue was Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science Act" which required the teaching of creation-science in addition to evolution whenever the latter was to be taught.⁹³ Supporters of the Act maintained that its purpose was to promote academic freedom⁹⁴ and that scientific evidence supports their beliefs.⁹⁵

The district court held that the Act violated the establishment clause either because it prohibited the teaching of evolution or because it purposefully advanced a particular religious doctrine.⁹⁶ In affirming the district court's opinion, the Fifth Circuit held that the Act advanced a religious belief while simultaneously inhibiting academic freedom.⁹⁷ The Supreme Court also invali-

tion/creationism debate. Nelkin, *supra* note 21, at 85-86.

89. 393 U.S. 97 (1968).

90. *Id.* at 106-07.

91. *Id.* at 108.

92. 107 S. Ct. 2573 (1987).

93. LA. REV. STAT. ANN. §§ 17:286.1-.7 (West 1982).

94. Reidinger, *Creationism in the Classroom*, A.B.A. J., Dec. 1, 1986, at 66.

95. *Id.*

96. *Aguillard v. Treen*, 634 F. Supp. 426, 429 (E.D. La. 1985).

97. The Fifth Circuit flatly declared that "the Act violates the establishment clause of the first amendment because the purpose of the statute is to promote a religious belief." *Aguillard v. Edwards*, 765 F.2d 1251, 1253 (5th Cir. 1985). The court also stated that the Act did not ensure academic freedom. "Academic freedom embodies the principle that individual instructors are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment." *Id.* at 1257.

dated the Act, and thus reaffirmed its commitment to the *Lemon* test⁹⁸ when faced with determining whether a law is a forbidden accommodation of religion. The Court indicated its special concern with establishment clause cases in which the public schools are involved.⁹⁹

In applying the first prong of the *Lemon* test to determine whether the government's actual purpose was secular, the Court held that the legislative history of the Act clearly indicated that the state's intention was to narrow the science curriculum.¹⁰⁰ The Court could find no secular purpose whatsoever for the Act and reasoned that "[i]f the . . . purpose was solely to maximize the comprehensiveness and effectiveness of science instruction, it would have encouraged the teaching of all scientific theories about the origins of humankind."¹⁰¹ Instead, the Act was designed to conform the science curriculum to the views of a particular religious viewpoint. The Court interpreted the Act as either promoting creation science "by requiring that [it] be taught whenever evolution is taught" or "by forbidding the teaching of evolution when creation science is not also taught."¹⁰²

In holding that the statute did not have a clear secular purpose under the *Lemon* standard, the Court focused on the legislative history of the Act.¹⁰³ The Court noted that it would examine the purpose for the statute's enactment since "[t]here is a historic and contemporaneous link between the teachings of certain religious denominations and the teaching of evolution."¹⁰⁴ This "link" manifested itself in the Louisiana Act in a number of ways: the term "creation science" was defined by the legislature so as to include a religious belief, and creationism was purposefully intro-

98. See *supra* note 54 and accompanying text.

99. An amicus curiae brief filed by the National Education Association warned that if Louisiana prevailed, "there is no principled reason why any majority, or any effective combination of minorities, could not require that the teaching of any secular subject in the public schools be 'balanced' by its particular religious views." NEA Today, Nov. 1986, at 8, col. 1.

100. *Edwards v. Aguillard*, 107 S. Ct. 2573, 2579 (1987).

101. *Id.* at 2580.

102. *Id.* at 2582.

103. Justice Powell in his concurring opinion, joined by Justice O'Connor, stated that the purpose of the Act was ambiguous thus requiring an examination of the legislative history. *Id.* at 2586. In his dissent, Justice Scalia maintained that the constitutionality of the Act could not be dispensed of through an examination of the legislature's motives. *Id.* at 2592.

104. *Id.* at 2580-81.

duced in order to completely counter evolutionary doctrine.¹⁰⁵ The Court concluded that the purpose of the Act was to endorse a specific religious doctrine, and therefore, it violated the establishment clause.¹⁰⁸

Justice Scalia, in a lengthy dissent, stated that the Act was intended to ensure that students of the Louisiana school system could freely decide how life began. "The legislature," Scalia reasoned, "did not care whether the topic of origins was taught; it simply wished to ensure that when the topic was taught, students would receive 'all of the evidence.'"¹⁰⁷ Justice Scalia denounced the majority's decision as one designed to prevent the people of the state from having "whatever scientific evidence there may be against evolution presented in the schools."¹⁰⁸

Throughout the arguments in the Louisiana legislature frequent references were made to the religiousness of secular humanism and its role in the public schools.¹⁰⁹ In avoiding this part of the legislative history, Justice Brennan missed an opportunity to clarify both the term secular humanism, as used in the public school context, and the *Torcaso* footnote in which the Court specifically referred to secular humanism as a religion.¹¹⁰ Thus, by not specifically upholding or denying the constitutionality of the teaching of secular humanism, fundamentalists may be encouraged by the majority's opinion to continue or even to increase the frequency of their assaults on the public school curriculum.

105. *Id.* at 2581-82.

106. *Id.* at 2583.

107. *Id.* at 2601 (Scalia, J., dissenting)(quoting Transcript of Oral Argument at 60).

108. *Id.* at 2604.

109. The references included the following: "Either we need to take the teaching of the religion of secular humanism out of our public schools and teach neither or we need to teach both." Legislative Transcripts and Other Documents in Support of Summary Judgment, Joint App., at E37-38, *Edwards v. Aguillard*, 107 S. Ct. 2753 (1987)(No. 85-1513).

"[W]hat we have in the schools in Louisiana today is a form of religion being taught that advances those religions that hold evolution as one of the tenets of their religion. And these people from the scientific community knows [sic] what religions those are." *Id.* at E282.

"[O]ur public school children are being molested by secular humanism." *Id.* at E312-13.

"There are two religions in this world and secular humanism is one of them. . . . [A]nd I would only remind you gentlemen that evolution is the cornerstone of that religion." *Id.* at E418.

"[G]overnment has established religion in our public schools, and it's the religion of secular and religious humanism." *Id.* at E499.

110. See *supra* note 30, *infra* note 143 and accompanying text.

B. Textbook Adoption

The textbook serves as the primary tool for classroom instruction, thus the selection of a particular book is essentially the selection of what ideas students will learn regarding a particular subject. In just over half the states this process is conducted at the school board level, while twenty-three states adopt books on a statewide basis.¹¹¹ Under the state-wide adoption process a local school board is limited to purchasing books which are on an approved list created by the state, whereas in open states, the local school board may use any textbook it chooses.

The original purpose of state-wide adoption was the political benefit of reducing the price that children had to pay for books by contracting with publishers to supply books at a fixed price for a fixed period, termed the "adoption period."¹¹² The issue today has shifted from the price charged for books to the ideology promulgated in them. Currently, a significant advantage in promoting a particular ideology can be obtained by certain pressure groups who successfully initiate state-wide challenges to textbook selection.¹¹³ Such a group may benefit from the selection process itself because it often includes a public hearing capable of increasing the exposure of the group and its principles.¹¹⁴

For example, the most active and influential organization is the Educational Research Analysts, a Texas-based group founded by Norma and Mel Gabler,¹¹⁵ who along with their supporters use state adoption to raise objections to textbook content.¹¹⁶ Publish-

111. Needham, *Textbooks Under Fire*, NEA Today, Dec. 1982, at 4, col. 1. The 23 states which utilize the state-wide adoption method are: Alabama, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, and West Virginia.

112. *Id.* at col. 2.

113. *Id.* at col. 3.

114. Needham notes that "with state adoption, there's the obvious advantage of statewide impact. And since the proceedings are often formalized and public, there's always the possibility they will become a media event as they have in Texas." *Id.*

115. The Gablers are driven by a concern that textbooks have created "the present epidemic of promiscuity, unwanted pregnancies, VD, crime, violence, vandalism, rebellion, etc." *Id.* at cols. 2-3.

116. The Gabler's organization encourages concerned parents to review their children's books, focusing in particular, on a list of categories provided by the organization in order to determine objectionable content:

(1) Attacks on Values, (2) Distorted Content, (3) Negative Thinking, (4) Violence, (5) Academic Unexcellence, (6) "Isms" Fostered (Socialism, Communism, Internationalism) [It has been argued that ideologies such as communism

ers, fearful of economic reprisals,¹¹⁷ are forced to market the Gablers concept of an appropriate book by eliminating material labeled objectionable.¹¹⁸ For economic reasons, publishers determine the content of their textbooks based upon the "specifications" of the largest adoption states. This generally means that controversial subjects are given less discussion, thereby increasing the adoption chances of the book.¹¹⁹ The impact of this procedure is felt nationwide because publishers cannot practically produce alternative versions of books for sale in those states which are more tolerant of controversial material.¹²⁰ This empowers a conservative group in a state with high student enrollment, such as the Gablers in Texas, to dictate the content of textbooks used nationwide.

C. Litigation

A number of cases have been litigated in which a party has claimed that a governmental action contained "religious" aspects which violated the establishment clause. Although this Note focuses on those cases which directly involve allegations that public

are directly linked to atheism, the enemy of God. J. HADDEN & C. SWANN, *supra* note 21, at 96.], (7) Invasions of Privacy, (8) Behavioral Modification, (9) Humanism, Occult, and other Religions Encouraged, and (10) Other important Educational Aspects.

Jenkinson, *How the Mel Gablers Have Put Textbooks on Trial*, in DEALING WITH CENSORSHIP 108, 111 (J. Davis ed. 1979)(citing a mimeographed outline entitled Textbook Reviewing by Categories, which had been distributed by the Gablers to concerned parents).

117. The publication and sale of public school textbooks produces nearly one billion dollars in annual revenue (figures from the American Publishers Industry Statistics, 1982, plus 6% inflation adjustments for 1983-1985). As a result, a publisher will not risk losing its share of the profits unless pressured by outside groups to do so. VITZ, CENSORSHIP: EVIDENCE OF BIAS IN OUR CHILDREN'S TEXTBOOKS 81 (1986). The considerable influence that conservative religious groups exert over the publishers of school textbooks dates back to the first part of the century. During the 1920's, the fundamentalists successfully lobbied for the passage of anti-evolution statutes and influenced publishers to qualify statements regarding evolution in textbooks. Nelkin, *supra* note 21, at 61. See *McLean v. Arkansas*, 529 F. Supp. 1255, 1258-60 (E.D. Ark. 1982).

118. Note, *Textbook Adoption Laws, Precensorship, and the First Amendment: The Case against Statewide Selection of Classroom Materials*, 17 J. MARSHALL L. REV. 167, 170 (1984).

119. Needham, *supra* note 111, at 5, col. 2..

120. *Id.* The process forces publishers to produce a product which will have the widest appeal and thus the largest distribution while also avoiding "the possibility of challenges, costly litigation and adverse publicity." Note, *Appealing to a Higher Law: Conservative Christian Legal Action Groups Bring Suit to Challenge Public School Curricula and Reading Materials*, 18 RUTGERS L.J. 437, 460 n.138 (1987).

school curriculum promotes secular humanism, it should be noted that there have been cases outside of the school context which further exemplify the fundamentalist opposition to secular humanism.¹²¹

In *Todd v. Rochester Community Schools*,¹²² the plaintiff complained that his child should not have been assigned Kurt Vonnegut's *Slaughter House Five* because it contained "reference[s] to religious matters" in violation of the first amendment.¹²³ In rejecting the plaintiff's claim, the court remarked that the "Constitution does not command ignorance; on the contrary, it assures the people that the state may not relegate them to such a status and guarantees to all the precious and unfettered freedom of pursuing one's own intellectual pleasures in one's own personal way."¹²⁴ Such independence must be guaranteed since "[s]chools are an institution, indeed the only institution, in which our youth is exposed to exciting and competing ideas, varying from antiquity to the present."¹²⁵

In *Williams v. Board of Education*,¹²⁶ the plaintiffs, parents of two infant children, claimed that they were forced to place their children in private schools because the public school system was undermining their religious beliefs and was invading their personal and family privacy. Without detailed discussion, the court found that the first amendment "does not guarantee that nothing about religion will be taught in the schools nor that nothing offensive to any religion will be taught in the schools."¹²⁷ Therefore, although the court considered the material in question

121. One unique application of the label "secular humanism" was developed in *Crowley v. Smithsonian Inst.*, 636 F.2d 738 (D.C. Cir. 1980), in which the National Foundation for Fairness in Education unsuccessfully argued that the Smithsonian Institution's Museum of Natural History had unconstitutionally supported secular humanism by erecting "The Emergence of Man" exhibition, thereby promoting the theory of evolution. The appeals court held that the exhibits were not unconstitutional simply because they were in accord with a tenet of secular humanism. *Id.* at 743. In addressing the claim that the expenditure of funds on such an exhibit violated the first amendment, the court noted that as among the appellants' right to remain free from governmental interference with their religious beliefs, the appellee's right to disseminate information, and the public's right to receive information, the balance is in favor of the latter two. *Id.* at 744.

122. 41 Mich. App. 320, 200 N.W.2d 90 (1972).

123. *Id.* at 324, 200 N.W.2d at 93-94.

124. *Id.* at 329, 200 N.W.2d at 94.

125. *Id.* at 340, 200 N.W.2d at 99.

126. 388 F. Supp. 93 (S.D. W. Va.), *aff'd mem. on rehearing*, 530 F.2d 972 (4th Cir. 1975)(without opinion).

127. *Id.* at 96.

to be offensive to the students' religious beliefs, the court found nothing which "constitute[d] an inhibition on or prohibition of the free exercise of religion."¹²⁸ The court concluded that although there was no relief available to the plaintiffs under the Constitution, they were free to pursue administrative remedies through school board elections and proceedings.¹²⁹

The plaintiff in *Malnak v. Yogi*¹³⁰ successfully challenged an innovative approach to teaching a high school elective class entitled the Science of Creative Intelligence — Transcendental Meditation (SCI/TM). The course was taught by teachers trained by an organization dedicated to the dissemination of SCI/TM teachings throughout the United States. Additionally, the class requirements included participation in a religious ceremony called a "puja," held outside of school on a Sunday. This participation was necessary in order to obtain the "mantra," a sound unique to each individual, used during periods of meditation. The Third Circuit Court of Appeals held that such characteristics clearly advanced a religion in violation of the first amendment.¹³¹

*Grove v. Mead School District*¹³² involved a parent who brought suit against a school district alleging that a book used in a sophomore English class contained ideas contrary to her family's religious beliefs and as a result violated the free exercise and establishment clauses of the first amendment. The plaintiff claimed that the English book in question, *The Learning Tree* by Gordon Parks, embodied the philosophy of secular humanism, which is religious in nature.¹³³ The Ninth Circuit, while not specifically deciding whether secular humanism is a religion, held that the book in question was to be categorized as a "religiously neutral work" used only for literary study.¹³⁴

In a concurring opinion by Judge Canby, the issue of secular humanism was addressed at greater length.¹³⁵ While the judge did not question the sincerity of the plaintiff's objection, he did address the inaccuracy of the plaintiff's assertion that secular humanism is anti-religious. Such a characterization would serve only

128. *Id.*

129. *Id.*

130. 592 F.2d 197 (3d Cir. 1979).

131. *Id.* at 199.

132. 753 F.2d 1528 (9th Cir.), *cert. denied*, 474 U.S. 826 (1985).

133. *Id.* at 1535.

134. *Id.* at 1534.

135. *Id.* at 1535-43 (Canby, J., concurring)..

to "divide the universe of value-laden thought into only two categories — the religious and the anti-religious . . . [and thereby establish an] insurmountable barrier to meaningful application of the establishment clause."¹³⁶

In addressing the plaintiff's claim that the use of the textbook violated the establishment clause, Judge Canby applied the *Lemon* test¹³⁷ and concluded that by including the book within the curriculum of the school the purpose was not to promote a religion but rather to expose the students "to different cultural attitudes and outlooks."¹³⁸ Even if the book could be classified as having anti-Christian concepts, assigning the novel to students would not promote secular humanism since promotion of those beliefs would require the government to approve of the anti-Christian elements of the book.

D. Censorship of Textbooks and Curriculum

Two recent cases were decided in which parents argued that their children were being forced to compromise their religious beliefs while attending public schools due to the nature of the chosen curriculum.

1. *Mozert v. Hawkins County Public Schools*¹³⁹

Mozert is one of a growing number of textbook and curriculum challenges brought by conservative Christians. The suit was filed in response to a decision by the Hawkins County (Tennessee) Board of Education to adopt the Holt, Rinehart, and Winston basic reading series. The plaintiffs objected to some of the ideas conveyed in the reading series. These objections fell into seventeen categories and included such concerns as evolution, secular humanism, "futuristic supernaturalism," pacifism, magic, and false views of death.¹⁴⁰ The plaintiff was able to obtain an agreement with the school principal which would allow the students of complaining families to leave the classroom during the use of the objectionable materials. An alternative reading program replaced

136. *Id.* at 1536.

137. *See supra* note 54 and accompanying text.

138. 753 F.2d at 1539.

139. 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 1029 (1988).

140. *Id.* at 1062.

the controversial series for these students. The alternative reading program was subsequently terminated by the school board, at which point the plaintiffs filed a complaint asserting that forcing the students to read the objectionable material violated the free exercise clause.

The District Court for the Eastern District of Tennessee held that the plaintiffs' free exercise rights had been burdened and that the students should be permitted to opt-out of the classroom instruction and instead receive home instruction.¹⁴¹ Additionally, the court granted a hearing to determine damages for the cost of sending the children to alternate schools which resulted in a verdict for the plaintiffs for \$51,531.

The Sixth Circuit reversed the lower court's decision and held that the children could be exposed to the objectionable material because allowing an individual to add or remove religious material for the purpose of advancing or inhibiting a religion would "lead to a forbidden entanglement of the schools in religious matter."¹⁴² The court rejected the plaintiff's argument that the facts of their case were similar to those in *Torcaso v. Watkins*,¹⁴³ in which the Supreme Court ruled that the government could not force a person to profess a belief or disbelief in any religion, since the student in *Mozert* was not forced to profess any beliefs. The plaintiff's reliance on another precedent, *Board of Education v. Barnette*,¹⁴⁴ was also rejected. In *Barnette*, the Court held that the plaintiff, a Jehovah's Witness, could not be forced to salute the flag because such an action forced the student to declare a belief. *Mozert* did not involve any compulsion to do an act that violated religious convictions.¹⁴⁵ The court also rejected the plaintiff's claim that *Wisconsin v. Yoder*¹⁴⁶ supported the proposition that mere exposure to materials that offend religious beliefs is a burden on the free exercise of religion. The action in *Yoder* was brought by members of an Amish church who claimed that mandatory school attendance until the age of sixteen conflicted with their desire to isolate their children from the world, to prevent them from being assimilated into society, and to shield them from worldly influ-

141. 647 F. Supp. 1194, 1203 (E.D. Tenn. 1986).

142. 827 F.2d at 1065.

143. 367 U.S. 488 (1961).

144. 319 U.S. 624 (1943).

145. 827 F.2d at 1066.

146. 406 U.S. 205 (1972).

ences. The court in *Mozert* distinguished *Yoder* on its facts. In *Yoder*, the parents objected to being forced to send their children to school to prepare them for life outside their society.¹⁴⁷ The plaintiffs in *Mozert*, however, wanted their children to have the skills provided by the schools but also wanted to isolate the children from ideas that the parents found offensive.¹⁴⁸ Tennessee's school attendance laws offered several alternatives to those parents: the children could have attended school at home, at a private school, or at a church school.¹⁴⁹ The court concluded that requiring that public school students to study a book chosen by the school board does not violate the free exercise clause, provided the students are not required to profess any beliefs or to participate in a practice prohibited by their religion.¹⁵⁰

Judge Kennedy wrote a separate concurring opinion to emphasize the fact that the burden on the plaintiffs' free exercise rights would be justified by the state's compelling interest.¹⁵¹ The judge noted that the state had an interest in inculcating the youth. "Teaching students about complex and controversial social and moral issues is just as essential for preparing public school students for citizenship and self-government as inculcating in the students the habits and manners of civility."¹⁵² Judge Kennedy also noted that the state has a compelling interest in avoiding the religious divisiveness and disruption caused by the opt-out program.¹⁵³ The exact usefulness of this process in protecting the student's right to freely exercise his beliefs is uncertain due to the

147. 827 F.2d at 1067.

148. *Id.*

149. *Id.*

150. *Id.* at 1070 (Kennedy, J., concurring).

151. *Id.*

152. *Id.* at 1071.

153. *Id.* at 1071-72. The court decided that both the disruption created by the departure of students from the classroom and the method of teaching used in the lower grades, whereby information taught during the school day is reinforced in different subject areas, would force teachers "to either avoid the students discussing objectionable material contained in the Holt readers in non-reading classes or dismiss appellee students from class whenever such material is discussed." *Id.* at 1072. Allowing a student to be excused from class would create similar problems even if the different subjects could be isolated from one another.

Moreover, the necessity of a number of exemptions from class on nonconsecutive days would magnify pressure against excusal. Because the general theory appears in many parts of the ordinary biology course, rather than in a block . . . the act of exemption would have to occur not just once but many times during the academic year.

Note, *supra* note 83, at 547 n.157.

ongoing interaction between the student and his peers and teachers.¹⁵⁴

The Supreme Court had recognized the importance of the relationship, noted by Judge Kennedy, between students and their teachers on at least two prior occasions. First, in *Ambach v. Norwick*,¹⁵⁵ the Court decided that a New York statute denying a permanent teaching position to an unnaturalized alien did not violate the equal protection clause.¹⁵⁶ In reaching its decision, the Court addressed the influence that a teacher has over developing student attitudes.

[The teacher is] a role model for his students, exerting a subtle but important influence over their perceptions and values. Thus, through both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitudes of students toward government, the political process, and a citizen's social responsibilities. This influence is crucial to the continued good health of a democracy.¹⁵⁷

Then, in *Abington School District v. Schempp*,¹⁵⁸ the father of the students expressed his concern about the removal of his children during the time that the Bible was being read and the potential impact this removal would have on his children's relationship with their peers and teachers. In his concurring opinion, Justice Brennan noted that the stigmatism surrounding the option, especially in light of "peer-group norms," would be likely to force students to remain in the class subjecting themselves to the objectionable material.¹⁵⁹

While the *Mozert* case will not end the litigation involving religious challenges to school curriculum, there is, at least for the moment, a recess in the possible disruption to the curriculum and to the school environment caused by these challenges.¹⁶⁰

154. 827 F.2d at 1072.

155. 441 U.S. 68 (1979).

156. *Id.* at 80-81.

157. *Id.* at 78-79.

158. 374 U.S. 203 (1963).

159. *Id.* at 289-90 (Brennan, J., concurring)(children will "continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists." *Id.* at 290).

160. The response to the Sixth Circuit's decision, clearly indicates the convictions and determination which all of the parties have for their causes. "School boards now have the authority to trample the religious freedom of all children" responded Beverly LaHaye, founder of Concerned Women for America, while the Chairman of People for the American Way, John H. Buchanan, said the decision was a victory, restoring "pluralism and

2. *Smith v. Board of School Commissioners*¹⁶¹

The plaintiff in *Smith*, a parent of three children, made three arguments against the public school curriculum: first, the curriculum used by the school advanced the religion of humanism; second, the curriculum inhibited Christianity and was openly hostile to his religious beliefs; and finally, the curriculum excluded the historical contributions of Christianity. The district court agreed, finding that use of forty-four textbooks violated the establishment clause, and therefore enjoined their use.¹⁶²

diversity in our nation's public schools." Taylor, *Justices Refuse to Hear Tennessee Case on Bible and Textbooks*, N.Y. Times, Feb. 23, 1988, at D29, col. 2.

161. 827 F.2d 684 (11th Cir. 1987).

162. 665 F. Supp. 939, 988 (S.D. Ala. 1987). The history and social studies books, in the opinion of the district court, did not contain enough discussions regarding the importance of religion in American society. The court noted that:

[f]or many people, religion is still important. One would never know it by reading these books. Religion, where treated at all, is generally represented as a private matter, only influencing American public life at some extraordinary moments. . . . The[] history books discriminate against the very concept of religion, and theistic religions in particular, by omissions so serious that a student learning history from them would not be apprised of relevant facts about America's history.

Id. at 985 (footnote omitted).

A study conducted recently supports this characterization by the district court. Paul Vitz, who presented expert testimony regarding the social studies books in dispute in *Smith* in his recent book *CENSORSHIP: EVIDENCE OF BIAS IN OUR CHILDREN'S TEXTBOOKS* (1986), found that religion, traditional family values, and conservative political and economic positions are not included in textbooks. *Id.* at 1. The study was funded by the National Institute of Education, a part of the Department of Education, and conducted at New York University. *Id.* at xiii. Using the state adoption lists from California and Texas, the author's study of elementary social studies books included all of the texts listed. *Id.* at 5-6. The reason the author chose California and Texas was primarily because of the large combined student enrollment of the two states (California and Texas account for 16.9% of the total student population) and because these adoption lists are used by other states in developing their individual lists. *Id.* at 6. The author estimates that the books in the study are used for 88% of the students nationwide. *Id.*

For the study of high school American history textbooks, the author chose twelve books which appeared on five or more of the fourteen state adoption lists submitted. Eight of the twelve were then randomly selected. *Id.* at 45. Vitz estimated that 50% of the students would be using one of the eight books. *Id.*

For the social studies textbooks used in grades one through four there was a complete absence of religious text dealing with modern American religious life. *Id.* at 15. "[The] Protestant religious world of the Bible Belt, of the born-again Christians, of the fundamentalists, and of the evangelicals, of the Moral Majority, of Billy Graham, Oral Roberts, Jerry Falwell, the TV evangelists . . . [are] without *one* reference in word or image." *Id.* at 16. When there were comments made regarding the religious life, they usually focused on either Catholicism or Judaism. Vitz suggested that any mention of the "threatening form of religion, i.e., fundamentalist and evangelical Protestantism" was purposely omitted.

The Eleventh Circuit, however, reversed, finding that even if secular humanism is a religion, the parents had failed to prove that use of the textbooks violated the establishment clause.¹⁶³ Focusing its inquiry on the second arm of the *Lemon* test, the court sought to determine if the use of the challenged textbooks had the primary effect of either advancing or inhibiting religion.¹⁶⁴ The court held that the use of home economics textbooks, which the district court found to promote a fundamental faith, did not convey an endorsement of any religion.¹⁶⁵ The fact that the parents found elements of the books offensive is not enough to render the use of them unconstitutional.¹⁶⁶ The court did not believe that the use of a particular history or social studies book violated the establishment clause by not giving enough discussion to the role of religion in history, since no neutral observer could conclude that an omission of historical facts regarding religion was approval of the religion of secular humanism.¹⁶⁷

Id. at 16-17.

The study showed that fifth grade texts (introduction to U.S. history) and sixth grade texts (introduction to world history) were likewise lacking in their treatment of religion in contemporary society.

There was not *one* reference in *any* of these books to such major religious events as the Salem Witch Trials; the Great Awakening of the 1740s; the great revivals of the 1830s and 1840s; the great urban Christian revivals of the 1870-90 period; . . . [the] Holiness and Pentecostal movements around 1880-1910; the liberal and conservative Protestant split in the early twentieth century; or the Born-Again movement of the 1960s and 1970s. Religion in the twentieth century hardly figures at all in these books; the whole issue is seriously neglected. For example, Martin Luther King, Jr.'s religious motivation is noted in only one text and only one text mentions the black churches as important in King's Civil Rights movement.

Id. at 27 (emphasis added).

The high school history books also suffer from an absence of religious discussions in the text and essentially ignore its existence in the last century. *Id.* at 56. The result is that "Americans who hold conservative, traditional, and religious positions are made to appear irrelevant, strange, on the fringe, old-fashioned, reactionary." *Id.* at 77-78. See generally Nielsen, *The Advancement of Religion Verses Teaching About Religion in the Public Schools*, 26 J. CHURCH & STATE 105 (1984) (students should be able to explore religions intellectually); Note, *The Myth of Religious Neutrality by Separation in Education*, 71 VA. L. REV. 127 (1985).

163. 827 F.2d at 689.

164. *Id.* at 691.

165. *Id.* at 691-92.

166. *Id.* at 693.

167. *Id.*

CONCLUSION

The fundamentalist Christians have labeled the public school system of America an institution influenced by secular humanism. This term is limitless in its application and is used by conservative Christians to support their perception of the deterioration of society and of public education. Yet, the striking contradiction in their argument is that they maintain that the establishment of secular humanism is in violation of the establishment clause, while ignoring similar arguments regarding the establishment of Judeo-Christian values. If the establishment clause indeed prohibits the teaching of the "religion of secular humanism" it follows that it must also prohibit the Christianization of the public schools. It is true that the public schools are places of indoctrination and socialization as the fundamentalists claim. They are wrong, however, in their desire to indoctrinate the students with fundamentalist values since such a situation would force the government to abandon its neutrality to religion.

The public school system has the responsibility of instilling in children the values and beliefs central to a democratic government, which includes tolerating diverse opinions and beliefs. To argue that the students should only be exposed to those values and beliefs which are compatible with those held by their parents would be to threaten the foundation upon which the public school system is based. Allowing any parent, representing any one of a number of religions, to object, in whole or in part, to a particular textbook or teaching method would not only inhibit wide exposure to differing ideas but it would also eventually bring about the publication of textbooks of questionable reliability.

While a school may not promote a specific religious viewpoint it must still fulfill its obligations to the student, parents, and society by not ignoring religion. The Supreme Court has stated that while the indoctrination of religion is forbidden by the establishment clause, instruction about religion in an objective, neutral fashion will be permitted. "[O]ne's education is not complete without a study of . . . religion and its relationship to the advancement of civilization."¹⁶⁸ Religion has played a critical role in the history of man and in some respect needs to be shown in the textbooks for its historical importance. Teaching the facts is not

168. *Abington School Dist. v. Schempp*, 374 U.S. 203, 225 (1963).

the same as promoting religion. Instead, it is recognizing that the importance of religion cannot be trivialized. Textbooks which have edited out all of the controversial religious material and left whole areas of history blank are unacceptable.

The public school has become a forum for many of the political issues of the day. Resolving these issues is important not only for the school but also for society. In general, the cases discussed in this Note do not involve the issue of whether religion is to be taken out of the school; instead, they involve the issue of religious tolerance. If parents and students find the curriculum of the public school *so* objectionable and *so* contrary to their beliefs and values, the Constitution protects their right to seek an education outside of the public school system or to attempt to persuade their local school boards to change the curriculum. The courts have clearly stated that they are not willing to invoke their power to accomplish the changes which the fundamentalists are unable to do through the democratic process.

The recent holdings by the courts in *Edwards*, *Mozert*, and *Smith* have helped re-dedicate the public school system to the idea that the student should be exposed to different values and beliefs, even when they are in conflict with their own. If every parent with an objection were able to revise a book, or to edit instructional material, the result would be a destruction of the public educational system. This is especially true since there are at least "256 separate and substantial religious bodies . . . in the . . . United States. . . . If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds."¹⁶⁹

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169. *McCollum v. Board of Educ.*, 333 U.S. 203, 235 (1948)(Jackson, J., concurring).