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Re: Questions posed in the letter of Mr. Kenneth Willard to you, dated January 10, 2007

Dear Mr. Biles,

Mr. Willard's letter poses two questions relevant to the current debate over science standards as they pertain to origins:

1. "Is it permissible for the state to endorse materialism – the idea that material causes explain all natural phenomena."
2. "Is it permissible for the state to systematically suppress relevant scientific information that is critical of evolutionary theory?"

The purpose of this letter is to explain why I believe both questions must be answered in the negative. I believe I am qualified to do that given my training and experience in both science and the law, my full time study of these issues for the last seven years and my familiarity with the development of Kansas Science Standards as they relate to origins science since 1999.

I am a lawyer licensed to give legal advice with respect to the laws of the State of Missouri and of the United States. However, I am not submitting this letter on behalf of any client. It merely reflects views I am expressing on my own behalf as a Kansas resident and Taxpayer.

I have written extensively on the subject, however, I believe the most relevant of those writings are contained in my suggested conclusions of law that I submitted to you and the Kansas State Board Science Committee in May 2005 as a part of my testimony as a witness in the Kansas Science Hearings (the "Submission").¹ The Submission covers all the legal issues in detail.

I believe the first question must be answered in the negative because government endorsement of materialism is an activity proscribed by the First Amendment of the US Constitution and Section 7 of the Kansas Bill of Rights. The same provisions should also proscribe any systematic suppression by the State of relevant scientific information critical of the evolutionary theory, because evolutionary theory is a materialistic theory of origins. Thus, that

¹ *Suggested Findings of Fact and Conclusions of Law*, pp 31-59 (May 26, 2005); <http://www.kansasscience2005.com/Findings%20of%20fact%20final.pdf>

systematic suppression would promote materialism as effectively, or perhaps more effectively, than an overt endorsement of materialism.

Mr. Willard's letter does not address the question of whether proposed changes to the Kansas Standards would actually promote materialism. Rather his question assumes that they might. Given that assumption, is it legally permissible for the State to promote materialism? If the answer is yes, then there is no legal need to consider whether the changes would actually yield the proscribed effect.

The rationale for my conclusions begins with a discussion of the meaning and history of materialism, its impact on religion, ethics, morals and government and its use by science. I then explain why I believe state endorsement or promotion of materialism conflicts with the establishment, free exercise and speech clauses of the US Constitution and the Kansas Constitution. The legal discussion is essentially a summary of many parts of the Submission, which I will not repeat here.

Also, as a preliminary, I believe the NCLB requirement that certain educational services and materials provided by government be "secular, neutral and non-ideological" is relevant and helpful. I find this phrase to be a fairly concise summary of the law found in the body of First Amendment jurisprudence. A secular activity is one that does not favor one kind of religion or religious belief over another. "Neutral and non-ideological" means not advocating or favoring "a single perspective on a controversial issue." Given the role of materialism as the foundation for non-theistic religions and belief systems, it is hardly a "secular" concept and is obviously not "neutral" as between theistic and non-theistic religion or "non-religion." Furthermore, given its controversial nature, state advocacy or promotion of the view would render it an impermissible state ideology or orthodoxy, regardless of whether one views it as "religious" in nature. The ban on state promoted ideologies was explained by the Supreme Court in the famous *Barnette* case involving the pledge of allegiance: "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion..."²

The quote from *Barnette* opens the discussion of materialism with the understanding that it is not a fact, but rather a controversial "matter of opinion" that becomes an orthodoxy when its acceptance is required. The following definitions bear this out:

"Materialism...1.a: a *doctrine, theory or principle* according to which physical matter is the only reality and the reality through which all being and processes and phenomena can be explained." [Webster's Third New International Dictionary of the English Language, 1993]

Materialism is synonymous with Naturalism. Naturalism is "the doctrine that cause-and-effect laws (as of physics and chemistry) are adequate to account for all phenomena and that teleological [design] conceptions of nature are invalid."³

A materialist or naturalist holds that all phenomena can be explained by "natural" or "material causes." They are causes attributable to the interactions of the properties of matter, energy and the forces. An example of a pattern produced by material causes

² *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added)]

³ *Webster's Third New International Dictionary of the English Language, Unabridged*, 1993).

would be a perfect circle in a pond made by a drop of rain water (matter) being pulled by gravity (a force) at a particular speed (energy) into a substance having the properties of a liquid (more matter). Although material causes nicely explain rocks, rivers and snowflakes, they have been challenged to explain their origin, and the origin of living systems, which appear to move towards well defined ends via non-material codes, information processing systems and consciousness.

Materialism was recently explained by the renowned physicist and astronomer, Robert Jastrow. In his explanation he acknowledges that materialism is a belief that is in his view inconsistent with his observations of the universe:

“Just as I can’t believe there was a creator, ***I can’t believe that this all happened by chance, which implies there was a creator.***

“You see, I’m in a completely hopeless bind, and I stay there.

“Again, I find it hard to believe that this is all a matter of atoms and molecules.

“And so I try to fit into my concept of the world the conclusion that there is a larger force of some kind, which we can call God or you can call it whatever. And I find...but ***I can’t accept that. I’m what’s called a materialist***, in philosophy. I believe...., that doesn’t mean I like Cadillacs and big cars. My students always used to think that. It means that I ***believe*** the world consists entirely of material substances. And when you specify those substances, the atoms and molecules and the laws by which they interact you’ve done it all. There isn’t anything more to be said or inserted into your model of the universe.

“That’s what my science tells me and I’ve been a scientist all my life, but I find it unsatisfactory. In fact it makes me uneasy. I feel I’m missing something but it will not, uh, I will not find out what I’m missing within my lifetime.”⁴

Wikipedia, a popular internet encyclopedia contrasts materialism with Hindu idealism.⁵ The contrast illuminates how materialism is core to world views:

“Meaning of Life

“The debate about the true nature of the world typically boils down to materialism or idealism. Idealism espouses the view that consciousness, which at its root emanates from God, is the essence or meaning of the phenomenal reality. The existence has a purpose that transcends any particular life.

“The Logic of Materialism

By contrast, materialism treats consciousness as a by-product of material existence, which has no purpose other than what we imbue the life with, as expressed by e.g. Jean-Paul Sartre or Friedrich Nietzsche. For materialists, there is no continuum of existence or conscious experience beyond this life, and

⁴ [Excerpt from Dr. Jastrow’s discussion of materialism in chapter 6 of the “Questions and Answers” portion of the DVD, *The Privileged Planet: The Search for Purpose in the Universe* (Illustra Media, 2004)].

⁵ http://en.wikipedia.org/wiki/Hindu_idealism

certainly no God. Morality becomes a matter of subjective reasoning, frequently with different conclusions and even the collapse of social mores, as noted by Alasdair MacIntyre in his work "After Virtue". There is an account in the Bible about The Fall of Man. The essence of that story is that mankind, having gained knowledge of good and evil, runs into problems of moral judgement. The murder of Abel shows mankind's inherent problem with moral reasoning due to our imperfections and desires. In Hindu idealism, as in most religious thought, the attunement to the divine is seen to reconnect the moral discrimination with a higher law.”

Materialism/Naturalism is the foundation of the religions of deists, non-theists and Humanists. Humanism was described in a 1987 case holding it to be a religion:

“Dr. Kirk defines Secular Humanism as “.....a creed or world view which holds that we have no reason to believe in a creator, that **the world is self existing**, that there is no transcendent power at work in the world, that we should not turn to traditional religion for wisdom; rather that we should develop a new ethics and a new **method** of moral order **founded upon the teachings of modern naturalism and physical science.**”⁶

The religious effect of materialism is reflected in the following classification of religion by C.S. Lewis, the highly regarded Christian philosopher:

*“The first big division of humanity is into the majority, who believe in some kind of God or gods, and the minority who do not. On this point, Christianity lines up with the majority — lines up with ancient Greeks, and Romans, modern savages, Stoics, Platonists, Hindus, Mohammedans, etc., **against the modern Western European materialist.**”⁷*

Following the Science hearings in May 2005 the Seventh Circuit held that Atheism is an establishment clause religion that would entitle prison inmates to organize the atheistic equivalent of a church.⁸

As explained by the renowned evolutionary biologist Ernst Mayr, evolutionary theory is a materialistic theory of origins:

⁶ *Smith v. Board of School Commissioners of Mobile County*, 655 F. Supp, 939, (SD Ala 1987), *rev'd* on other grounds 827 F2d 684 (11th Cir 1987). *relied on the following description of that religion:*

⁷ C.S. Lewis, *Mere Christianity: What One Must Believe to be a Christian*, p. 43 (Macmillan, 1952)

⁸ *JAMES J. KAUFMAN, v. GARY R. MCCAUGHTRY*, No. 04-1914, p 5 (7th Cir August 19, 2005): “As the Court put it in *Wallace v. Jaffrey*.....’ At one time it was thought that this right [referring to the right to choose one’s own creed] merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.’ *Id.* at 52-53. In keeping with this idea, the Court has adopted a broad definition of “religion” that includes nontheistic and atheistic beliefs, as well as theistic ones. Thus, in *Torcaso v. Watkins*, 367 U.S. 488, it said that a state cannot “pass laws or impose requirements which aid all religions as against non-believers, and neither can [it] aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” *Id.* at 495. **Indeed, *Torcaso* specifically included “Secular Humanism” as an example of a religion.** *Id.* at 495 n.11.

“First, Darwinism rejects **all** supernatural phenomena and causations. The theory of evolution by natural selection explains the adaptedness and diversity of the world **solely materialistically**. It no longer requires God as creator or designer (although one is certainly still free to believe in God even if one accepts evolution). **Darwin pointed out that creation, as described in the Bible and other origin of accounts of other cultures, was contradicted by almost any aspect of the natural world.** Every aspect of the “wonderful design” so admired by the natural theologians could be explained by natural selection.”⁹ (emphasis added)

This is consistent with the Humanist Manifesto III, which holds that human life results from “*unguided* evolutionary change.”¹⁰

Chemical evolution seeks to explain how life arose via a purely chemical materialistic process from “natural or material causes,” while biological evolution seeks to show the origin of the diversity of life using only material causes – random mutation and natural selection.

Because evolution provides the foundation for a materialistic explanation of life, a systematic suppression of relevant, but critical, scientific information regarding evolutionary theory can be expected to have the effect of promoting a materialistic view of origins.

The issue of materialism is raised by science education because many evolutionary biologists, but not all scientists, espouse a hard core commitment to materialism. This is explained by Richard Lewontin, a prominent evolutionary biologist and geneticist:

*“[W]e have a prior commitment, a commitment to materialism. It is not that the methods and institutions of science somehow compel us to accept a material explanation of the phenomenal world, but, on the contrary, that **we are forced by our a priori adherence to material causes** to create an apparatus of investigation and a set of concepts that produce material explanations, no matter how counterintuitive, no matter how mystifying to the uninitiated. **Moreover, that materialism is absolute, for we cannot allow a Divine Foot in the door.**”* (emphasis added) [Richard Lewontin, *Billions and Billions of Demons*, (*The New York Review*, January 9, 1997, p. 31)]

Materialism/naturalism denies not only the supernatural, but the idea that any true purpose or teleology inheres in the natural world. This is explained by another well known evolutionary biologist, Douglas Futuyma:

⁹ Ernst Mayr, *Darwin's Influence on Modern Thought*, p. 81 (July 2000, Scientific American).

¹⁰ Humanist Manifesto III. “Humanism is a progressive philosophy of life that, *without supernaturalism*, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The life stance of Humanism—*guided by reason...Knowledge of the world is derived by observation, experimentation, and rational analysis. Humanists find that science is the best method for determining this knowledge as well as for solving problems and developing beneficial technologies. Humans are an integral part of nature, the result of unguided evolutionary change. Humanists recognize nature as self-existing.* We accept our life as all and enough, distinguishing things as they are from things as we might wish or imagine them to be. ...Ethical values are derived from human need and interest as tested by experience.”

“It cannot be sufficiently emphasized that before Darwin, both philosophers and people in general answered "Why?" questions by citing purpose. **Only an intelligent mind, one with the capacity for forethought, can have purpose.**

“The entire tradition of philosophical explanation by the purposes of things, with its theological foundation, was made completely superfluous by Darwin's theory of natural selection. The adaptations of organisms-long cited as the most conspicuous evidence of intelligent design in the universe-could now be explained by purely mechanistic causes. **For evolutionary biologists, the flower of a violet has a function, but not a purpose. ... The profound, and deeply unsettling, implication of this purely mechanical, material explanation for the existence and characteristics of diverse organisms is that we need not invoke, nor can we find any evidence for, any design, goal, or purpose anywhere in the natural world, except in human behavior.”** Douglas J. Futuyma, *Evolutionary Biology, Third Edition*, p. 10 (Sinauer Associates, Inc. 1998)

Materialism was born at least as early as the fifth century BC by Democritus [460-370 BC], Epicurus [341-270 BC] and Lucretius [94-49 BC] but did not proliferate until Darwinian evolution provided a materialistic explanation for living systems:

“One of the first detailed descriptions of the philosophy occurs in the scientific poem *De Rerum Natura* by Lucretius [94-49 BC] in his recounting of the mechanistic philosophy of Democritus and Epicurus. According to this view, all that exists is matter and void, and all phenomena are the result of different motions and conglomerations of base material particles called "atoms." *De Rerum Natura* provides mechanistic explanations for phenomena, like erosion, evaporation, wind, and sound, that would not become accepted for more than 1500 years.¹¹

Materialism was a subject of public debate during the first century AD.¹²

Materialism impacts not only religion but our world views concerning ethics and morals. Dr. Benjamin Wiker, explains the ethical and moral impacts in *Moral Darwinism: How We Became Hedonists*¹³ Materialism also has a major impact on our view of government and its role in defining human rights. The US was founded on the notion that humans have certain “unalienable rights” provided by a creator. Since they derive from a creator they may not be usurped by government. However, in a materialistic Marxist culture, life has no inherent rights because it has not resulted from any creative act.

As mentioned, I believe relevant Federal and Kansas authorities preclude the state from promoting materialism, either explicitly or implicitly through systematic suppression of relevant scientific information that is critical of materialistic theories of origins like chemical and biological evolution.

¹¹ Wikipedia, *The Free Encyclopedia*, <http://en.wikipedia.org/wiki/Materialism>

¹² Acts 17:17 describing the debate between Epicureans (who were materialists) and the Apostle Paul

¹³ Benjamin Wiker, *Moral Darwinism: How We Became Hedonists*, (InterVarsity Press, 2002)

The First Amendment

The First Amendment to the US Constitution provides that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

As you know, it has been interpreted to apply not just to congress and to “laws” but also to any governmental agency, including a state board of education and also to policies of such agencies.¹⁴ Furthermore, the Court has defined the word “religion” broadly to proscribe state discrimination as between particular religious sects, as between theistic and non-theistic religions and belief systems and as between religion and “non-religion.”

This broad definition of religion is obviously important because materialism is the foundation of desitic and non-theistic varieties of religion – those that reject the intervention of any creative power within the natural world.

Establishment Clause

The Establishment clause is very broad due to the use of the word “respecting.” Respecting means regarding or concerning. Literally the Establishment Clause proscribes any state involvement “respecting an establishment of religion.” In *Allegheny County v. Greater Pittsburgh ACLU*¹⁵ the court held that the activity in question need only “**touch** upon religion” to invoke an establishment clause analysis. Since materialism is key to religion, it would seem that literally the state may not adopt any policies that promote it. That would be an activity that clearly “touches” religion.

Due to the broad reach of the clause, the well known 1971 case of *Lemon v. Kurtzman*, carves out a narrow area of permissible state involvement with religion. In that case the Supreme Court held that government practices which “touch” religion under the Establishment Clause are permissible if three requirements are satisfied:

They “must have a **secular legislative purpose**; second, its principal or primary **effect must be one that neither advances nor inhibits religion**, Board of Education v. Allen, 392 U.S. 236, 243 (1968); finally, the statute **must not foster ‘an excessive government entanglement with religion.’**”¹⁶

Although the Lemon test has been criticized, the Court continues to decide cases based on its formulations and concepts, except that the “entanglement” prong appears to have been

¹⁴ Submission, p 31

¹⁵ *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 592 (1989); ruling against a nativity scene at the entrance of a government office.

¹⁶ *Lemon v. Kurtzman*, 403 U.S. 602, 613-14 (1971)

folded ...into the primary effect inquiry.”¹⁷

The secular purpose prong is violated if the government’s “**actual purpose is to endorse or disapprove of religion:**”

“The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.”¹⁸ (emphasis added)

The Purpose Prong. Under this formula a state may not engage in an activity that touches religion if it does not have a predominant secular purpose for engaging in the activity. According to the National Assessment Governing Board, “secular” means that the activity in question will not “advocate or oppose any particular religious view or belief.”¹⁹ The case of *Epperson v. Arkansas*, is an example of a case where a state suppressed relevant scientific information regarding origins in order to promote the supernatural.²⁰ The present case, is essentially the opposite. May the state suppress relevant scientific information regarding origins in order to promote materialism – the idea that there is no supernatural – that life is not a creation, but just an occurrence?

The purpose typically put forth for promoting materialism within a scientific context is that scientific materialism/methodological naturalism is a way of keeping the “supernatural” out of scientific discussions. However, this is an explicitly religious purpose, not a scientific one.

¹⁷ “Nor does today’s decision signal a major departure from this Court’s prior Establishment Clause jurisprudence. A central tool in our analysis of cases in this area has been the Lemon test. As originally formulated, a statute passed this test only if it had a secular legislative purpose, if its principal or primary effect was one that neither advance[d] nor inhibit[ed] religion, and if it did not foster an excessive government entanglement with religion..... **In *Agostini v. Felton*,... we folded the entanglement inquiry into the primary effect inquiry.** This made sense because both inquiries rely on the same evidence, see *ibid.*, and the degree of entanglement has implications for whether a statute advances or inhibits religion, see *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’CONNOR, J., concurring). ***The test today is basically the same as that set forth in *School Dist. of Abington Township v. Schempp**** over 40 years ago. (emphasis added and citations omitted) *Zelman v. Simon-Harris*, (No. 00-1751, Argued February 20, 2002, Decided June 27, 2002); holding that the state could issue payment vouchers to both religious and nonreligious schools chosen by parents.

The “test” enunciated in *Abington Township v. Schempp* which Justice O’Connor referred to is:

“The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. ***That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose AND a primary effect that neither advances nor inhibits religion.***” *Abington School Dist. v. Schempp*, 374 U.S. 203, 222 (1963); prohibiting readings from the bible at beginning of each school day.

¹⁸ *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984); holding that the erection of a nativity scene as a part of a traditional holiday display in a privately owned park to celebrate the Holiday recognized by Congress and national tradition and to depict the origins of that Holiday, are legitimate secular purposes.

¹⁹ Submission, p 48.

²⁰ *Epperson v. Arkansas*, 393 U.S. 97 (1968); There the State prohibited the teaching of evolutionist theory but ‘did not seek to excise from the curricula of its schools and universities all discussion of the origin of man.’”

By suppressing evidence consistent with a theistic view of origins and critical of materialism one promotes non-theistic religions and belief systems and denigrates the theistic. Hence, suppressing relevant evidence to keep the supernatural out of the minds of children hardly seems to qualify as a secular purpose.

It has been argued that science must utilize a naturalistic assumption to do good science. Like Schroeder's blanket in the Peanuts cartoon, it is said that science just can't operate without it. However, the experts at the science hearings testified that any required form of naturalism or materialism is not necessary in operational science and actually is counterproductive in origins science.

Methodological naturalism is typically not an issue in operational science that seeks to understand how bio-systems work. As explained by the philosopher of science Michael Ruse, the expert who testified in *McLean v. Arkansas*,²¹ end-directed or teleological thinking is often used in trying to understand bio-systems because they operate like designed systems:

"Both history and present Darwinian evolutionary practice have shown us that this kind of design-type thinking is involved in the adaptationist paradigm. We treat organisms – *the parts at least* -- as if they were manufactured, as if they were designed, and then we try to work out their functions. End-directed thinking – teleological thinking – is appropriate in biology because, and only because, *organisms seem as if they were manufactured*, as if they had been created by an intelligence and put to work."²²

This shows that methodological naturalism is not a necessary part of all science. Generally it is used as nothing more than a refutable presumption or working hypothesis rather than a doctrine that must be accepted. In fact, it appears that the only area of science in which it is promoted dogmatically as a requirement is in the area of origins science.

The mandatory use of methodological naturalism in origins science was explained by Albert de Roos, a Belgium scientist in an exhibit handed to the State Board during the science hearings. Dr. de Roos, an expert in bioinformatics, wrote a paper that hypothesizes that introns and exons in genes are akin to software modules used in human designed software. He was asked if he was using methodological design rather than methodological naturalism as his working hypothesis. He was also asked if his colleagues used the same design oriented methodology rather than methodological naturalism in their work in operational science. His response was:

Most scientists indeed do use "design" as a practical approach or methodology. The teleological approach works very fine in deciphering systems like the brain, the eye etc. **However, as soon as you touch on the subject evolution, it is "forbidden" to talk about design.** I have not come across real design thinking in trying to understand genome evolution. On the contrary, with the advent of neo-darwinism, **evolution has (in my opinion) become a magical thing that arose by chance without any goal-direction.** This basic lack of understanding

²¹ *McLean v. Arkansas Board of Education*, 529 F.Supp 1255 (E.D. Ark 1982)

²² Michael Ruse, *Darwin and Design: Does evolution have a purpose?*, p. 268 (Harvard, 2003)

evolution has led to the current position evolutionary science has gotten into: no logical explanations about evolution before the Cambrian explosion (comprising 90% of evolution) and speculative theories about the last part. My article is the first, from a methodological approach, to show how design thinking can give new insight into evolution.

Mandating materialism only in historical origins science is actually scientifically counter-productive because historical explanations or narratives typically cannot be confirmed by empirical methods such as direct observation and repeatable experiments. As a consequence testing is often limited to a forensics approach that requires consideration of competing possibilities. Methodological naturalism prohibits that comparison and thereby allows only one answer to the ultimate question: *where do we come from?* – a material cause. The answer leaves the realm of science and becomes a religious dogma.

The scientific or secular utility of mandating materialism only in origins science is not apparent. It violates the idea of science being open-minded and tentative in all of its conclusions, it proscribes hypotheses logically suggested by the data²³ and it effectively insulates evolutionary theory from any serious test. Normally science tests theories via repeated experiment and direct observation. However, evolution postulates singular unobserved events in the remote past as the cause of certain effects. Some experimentation can be accomplished as Dr. Seelke explained during the science hearings. However, in many cases the initial conditions are unknown and are not reproducible in the laboratory. As explained during the hearings the only effective way to test historical claims regarding origins is to postulate multiple competing hypotheses and try to find evidence that will accomplish two things: (1) rule in the hypotheses being tested and (2) rule out the competing alternatives. The problem with methodological naturalism is that it performs step (2) by presupposition and not by the evidence. This essentially renders evolutionary theory nothing more than a speculation. Methodological naturalism robs evolutionary theory of its scientific credibility. This is evidenced by Dr. de Roos' conclusion that it has become a "magical" "speculation," and Physicist Robert Laughlin's view that it currently functions more as an "anti-theory" that is "not even wrong."²⁴ "Not even wrong," means the theory is so vaguely articulated that it can't even be proved to be wrong.

The concern is not with individual scientists using materialism/naturalism exclusively. The problem arises when *institutions of science and government* join together to exclusively embrace it and not allow the public and students to possess information that tends to contradict the idea. When this occurs both science and the state establish materialism as an ultimate orthodoxy as have the governments of Russia and China.

Under our form of government, the state must have a secular purpose when it engages in a matter that touches religion like origins science. Since methodological naturalism is actually counter productive in origins science and because it is not required in all of science, there appears no valid secular purpose for withholding relevant scientific information that calls into question a materialistic origins narrative.

²³ Note Professor Ruse's logical inference that "organisms *seem as if they were manufactured*, as if they had been created by an intelligence and put to work." The inference can be used in operational science but not in origins science. What is the scientific utility of this construct?

²⁴ Robert B. Laughlin, *A Different Universe: Reinventing Physics from the bottom down*, pp 168-170 (Basic Books, New York 2005) [Nobel prize in physics in 1998.

The Effect Prong. Regardless of the purpose of the state in permitting only a materialistic answer to the ultimate question of origins, that activity is still not permissible if it has a biased or non-neutral religious effect. State promotion of materialism/naturalism is obviously not neutral given its critical importance to non-theistic religions and belief systems. Humanism specifically depends on naturalism and physical science as the very foundation of its belief system.²⁵ Accordingly it can be expected that state promotion of that foundation would have the effect of winning adherents to that religious viewpoint and the ethics and morals it entails. That effect will be to support religious beliefs of a non-theistic variety and denigrate those who depend on a creator to explain life. The traditional theist is one who worships a creator while the materialist is one who worships the creation.

A theist argues that life being a creation, it must necessarily have an inherent purpose. The function of theistic religion is to then explain the purpose of life. A popular book by Rick Warren, *The Purpose Driven Life*, argues that not only does life as a whole have a purpose, but that each individual is imbued by God with a special purpose. This is to be contrasted with the Humanist and Atheist who believe that purpose does not inhere in the natural world because it has not been created. Instead life is the product of materialistic mechanistic processes that lack the capacity to produce purpose. Hence, the Humanist develops the purpose of life through human reason and “the teachings of modern naturalism and physical science.”²⁶

Given the clear non-neutral religious effects of Materialism, state endorsement of it appears clearly proscribed by the Establishment Clause.

The Free Exercise Clause

Under the Free Exercise Clause, parents have a right to instill theistic religious beliefs in their children. An official state policy that seeks to imbue students with a contrary non-theistic belief in naturalism or materialism would also seem to prohibit or conflict with the free exercise of the rights of the parents.

Many parents have no actual choice in the matter. They are required by law to send their children to school yet lack the resources to choose private schooling or home schooling. Life science is a required part of most public school curriculum. If that curriculum allows teaching only the materialistic view of origins without any objective discussion of legitimate scientific shortcomings of that view, then parental rights to instill a contrary theistic view will be effectively thwarted due to the parents duty to educate. They will effectively be forced to expose their children to a view that is inconsistent with their theistic religious beliefs.

The Free Exercise Clause can be avoided if the government regulation that impinges on free exercise is of general applicability and neutral as to religion, but then only if government

²⁵ *Smith v. Board of School Commissioners of Mobile County*, 655 F. Supp, 939, (SD Ala 1987), *rev'd* on other grounds 827 F2d 684 (11th Cir 1987). *relied on the following description of that religion*: “Dr. Kirk defines Secular Humanism as “.....a **creed** or world view which holds that **we have no reason to believe in a creator**, that the world is self existing, that there is no transcendent power at work in the world, that **we should not turn to traditional religion for wisdom; rather that we should develop a new ethics** and a new method of moral order **founded upon the teachings of modern naturalism and physical science.**”

²⁶ *Smith v. Board of School Commissioners of Mobile County*, 655 F. Supp, 939, (SD Ala 1987), *rev'd* on other grounds 827 F2d 684 (11th Cir 1987). *relied on the following description of that religion*: “Dr. Kirk defines Secular Humanism as “.....a **creed** or world view which holds that **we have no reason to believe in a creator**, that the world is self existing, that there is no transcendent power at work in the world, that **we should not turn to traditional religion for wisdom; rather that we should develop a new ethics** and a new method of moral order **founded upon the teachings of modern naturalism and physical science.**”

can show both a compelling state need for the law or practice and that it is narrowly tailored to achieve that compelling interest.²⁷ This exception describes a number of hurdles that state materialism does not appear to have the capacity to jump. Regulations designed to moderate discussions of origins are not ones of general applicability and limiting the discussion to only the materialistic view is not neutral. Furthermore, there appears to be no compelling state need to raise children as materialists. The only policy regarding origins that comes close to this mandate is the policy currently in place that actually promotes a materialistic view of origins, but that does so narrowly by introducing students to legitimate scientific critiques of that materialistic perspective.

As stated by the Court in *Planned Parenthood v. Casey*, “[a]t the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”²⁸ State promotion of materialism and systematic suppression of relevant contradictory information would seem wholly inconsistent with this mandate.

Speech Clause

But even beyond the religion clauses, the teaching of the Supreme Court, as explained in *Barnette*, is that our “Constitution does not permit the official suppression of ideas” or to impose any orthodoxy.²⁹ This is reflected in the provisions of the No Child Left Behind Act that require educational materials to be non-ideological.³⁰ This means that the state can not take sides on a controversial issue. Thus, it can not favor blacks over whites or men over women. For the same reason it can not discriminate between materialists and theists. The Court in *Pico* explained the effect of the speech clause as follows:

“And we have recognized that **“the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.”** In keeping with this principle, we have held that, in a variety of contexts, **“the Constitution protects the right to receive information and ideas.”.... This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the sender's First Amendment right to send them: “The right of freedom of speech and press . . . embraces the right to distribute literature, and necessarily protects the right to receive it.”** .. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers, and no buyers..... **More importantly, the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom.** Madison admonished us: “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors must arm themselves with the power which knowledge gives.” As we recognized in *Tinker*, students too are beneficiaries of this principle: **In our system, students may not be regarded as**

²⁷ Submission, p 44, 57

²⁸ *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)

²⁹ *Board of Education. v. Pico*, 457 U.S. 853, 871 (1982) (J. Brennan, Concurring). At 867-8

³⁰ Submission, pp 47 and 58.

closed-circuit recipients of only that which the State chooses to communicate. . . . [S]chool officials cannot suppress "expressions of feeling with which they do not wish to contend..." (emphasis added)

This quotation should be laid next to the proposed change that would remove from the mission statement the idea that science education serves to aid “informed” decision making.

Although I believe the primary rights violated by state promotion of materialism relates to the religious rights of parents, students and taxpayers, I also believe any origins model that selectively allows for only one scientific view of origins in a public school classroom that opens that subject for discussion, necessarily promotes viewpoint discrimination. It would be no different if the state were to adopt standards for teaching politics that contemplate showing students only the republican perspective.

“Generally, the government may not regulate speech based on its substantive content or the message it conveys.”³¹ However, where the government is the speaker it may regulate the content of speech when the government occupies a non-public forum.³² Normally a school classroom is deemed to be a non-public forum.³³ However, even in a non-public forum the state may not engage in viewpoint discrimination. Viewpoint discrimination occurs where there is no ban on a general subject matter [such as scientific information relating to origins] but only on one or more of the relevant scientific perspectives:

“If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint.”³⁴

Generally, the speech clause is one that militates against state sponsored ideologies or orthodoxies. When a controversial subject is opened, but the state allows only one perspective, then the state effectively is promoting an orthodoxy or ideology. This idea is expressed well in the case of *Board of Education. v. Pico* where the Court held that the Speech Clause reflects a right of students to receive ideas.³⁵ In that case the court held that school officials violated the speech clause by causing the school library to remove certain books because those in authority did not agree with the ideas expressed by the books in question.

³¹ *Rosenberger v. Rector*, 515 U.S. 819, 828 (1995)

³² *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 US 788, 800 (1985)

³³ *Citizens for a Responsible Curriculum, et.al. v. Montgomery County Public Schools*, p. 19, (Civil Action No. AW - 05-1194 (D. MD. May 5, 2005)

³⁴ *Rosenberger v. Rector*, 515 U.S. 819, 832 (1995)

³⁵ *Board of Education. v. Pico*, 457 U.S. 853, 871 (1982) (J. Brennan, Concurring). At 867-8.

Section 7 of the The Kansas Bill of Rights

Section 7 of the Kansas Bill of Rights provides:

§ 7. Religious liberty. The right to worship God ***according to the dictates of conscience*** shall ***never be infringed***; nor shall any person be compelled to attend or support any form of worship; ***nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given*** by law ***to any religious establishment or mode of worship***. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any elections, nor shall any person be incompetent to testify on account of religious belief. [emphasis added]

The Kansas constitution's prohibition on religious discrimination appears even stronger than the religion clauses in the First Amendment of the US Constitution. Isn't the state infringing on the rights of parents and students to worship God according to the dictates of their conscience when parents are required to subject their children to hard core instruction in dogmatic Materialism? Does the state compel children to attend a kind of worship of the creation rather than the creator when they are indoctrinated in materialism? Doesn't state promotion of materialism effectively provide a "*preference*" to non-theistic religions and "modes of worship?"

Given the impact of Materialism/Naturalism on religious beliefs and other world views, its controversial nature, and relevant legal precepts, it appears that the state may not engage in either of the activities raised by Mr. Willard's questions.

In considering this matter, I would encourage you to watch the new documentary of the Kansas Science Hearings: *Teaching Origins Objectively*. In particular consider the testimony of Mustafa Akyol, a Muslim journalist and science writer. This is not an issue just peculiar to Christians. It is an issue of utmost importance to a variety of religious perspectives. I had a call the other day from a science teacher that teaches Native American Indians. She was interested in the new science standards because they are much more friendly to the religious beliefs of that culture. The state also needs to consider the private school community since those schools are affected by the standards as well.

I have not addressed in this letter the question of whether the proposed changes would promote Materialism. Although that is a separate issue, I believe this was the conclusion reached by the experts who testified during the Science Hearings. Some of that testimony is reflected in the documentary.

Thank you for your consideration of these views.

Very truly yours,



John H. Calvert, J.D.

cc: Members of the State Board of Education
Commissioner of the Kansas Department of Education