

# Atlanta Freethought News

An AFS Publication • Volume 11 Number 1 • January 2005

## The January Meeting

The January 9 AFS meeting will feature Bob Truett of Vandiver, AL, speaking on freethought issues.

Bob is a former director of the Birmingham Zoo and is the owner of Gymno-Vita Park in Vandiver. He has written several booklets and articles on nature and evolution.

The Atlanta Freethought Center is at Suite 500, 1170 Grimes Bridge Road, Roswell, GA. To get there from Atlanta, take I-400 north past I-285 by 8 miles to Exit 7B, which is GA-140. Take GA-140 (Holcomb Bridge Road) west about 1 mile and turn left at Grimes Bridge Road. Go 0.2 miles to 1170 Grimes Bridge Road, which is on the right.

## AFS Activities

The next **AFS Social** will be at **Las Margaritas Restaurant** at 1842 Cheshire Bridge Road (Atlanta) on Friday, January 14, at 7:00 PM. To get there, take I-85 to the Cheshire Bridge Road exit (Exit 88) on the north side of Atlanta. Turn east at the light and go about 1.5 miles. The restaurant will be on the right.

The **AFS Discussion Group** will meet at 2:00 to 4:00 at the AF Center on Sunday, January 16.

The **Tuesday Lunch Bunch** meets every Tuesday for lunch at Panahar Restaurant at 12:30.

## Humanists of Georgia Meeting

The **Humanists of Georgia** will meet at the Atlanta Freethought Center on Sunday, January 23, at 12:30.

## Fellowship of Reason Meeting

The **Fellowship of Reason** meets on the first Sunday of each month at 12:30 PM at the Northwest Unitarian Universalist Congregation, 1025 Mount Vernon Hwy, in Atlanta. For details, see [www.fellowshipofreason.com](http://www.fellowshipofreason.com).

## SOS Meets at AF Center

The **Secular Organizations for Sobriety** meets at the Atlanta Freethought Center every Tuesday evening at 7:30 PM. SOS is the secular replacement for AA (Alcoholics Anonymous).

## Darwin Day: February 12

On February 12, freethought groups around the world will celebrate the birthday of Charles Darwin. (For details, see [www.DarwinDay.org](http://www.DarwinDay.org).) The coordinator for AFS's Darwin Day activities is Ried Crowe. If you have ideas for the celebration, please email Ried at [riedpamc@bellsouth.net](mailto:riedpamc@bellsouth.net). We will announce our plans for the celebration in the February AFNews.

## The Center for Inquiry

### Third Annual Florida Conference

Progress in a Regressive Society! February 11-13, 2005

The conference will be held at the oceanfront Deauville Resort Hotel in Miami Beach, Florida.

Register online or view the complete conference schedule at [http://ga1.org/ct/LdSwg1d1zq\\_1/](http://ga1.org/ct/LdSwg1d1zq_1/).

Presentations include:

- **Alchemy to Skepticism: Turning Lead into Gold** by Jeanette Madea
  - **Fallibilism and Faith, Naturalism and the Supernatural, Science and Religion** by Susan Haack
  - **Reproduction: The Facts and Their Implications for Policy and Ethics** by Elaine M. Hull and Richard Hull
  - **Human Rights and Responsibilities** by Norm Allen Jr.
  - **Political Science and Its Discontents** by Austin Dacey
  - **Terrorism and Times of War: A Code Red Threat to Church-State Separation** by Beth Corbin
  - **Human Nature and the Role of Reason** by John Anton
  - **The American Historical Tradition of Humanist Values** by David Koepsell
  - A panel discussion on **Meaningful Alternatives to Evangelical Outreach on College Campuses**
  - **A Humanist Perspective** by Awilda Torres
  - **Social and Political Activism - Where Do We Go from Here?** by Sarah Jordan
  - **The Third Annual Banquet and Awards** hosted by Dr. Paul Kurtz and featuring Louis J. Appignani
- To register, call toll-free: 1-800-634-1610.

## Election Results

Congratulations to the following officers and board members elected to serve in 2005:

Steve Yothment, President	Bill Burton, Board
Judy Thompson, VP, Int.	Tony King, Board
Freya Harris, VP, Ext.	Jim Middleton, Board
Ed Buckner, Treasurer	

Lew Southern and Joel Kollin will continue their 2-year terms as board members.

## AFS Meetings and Activities

Jan 9: AFS Board Meeting at AF Center, 11:00 AM.  
Jan 9: AFS General Meeting at AF Center, 1:00 PM.  
Jan 14: AFS Social, Las Margaritas Restaurant, 7:00 PM.  
Jan 16: AFS Discussion Group at AF Center, 4:00 PM.



## Programs and Speakers

All programs are on the second Sunday of each month at the AFS Center, 1170 Grimes Bridge Road, Roswell, GA, unless otherwise noted. Programs start at 1:00 PM, but feel free to arrive at 12:00 for socializing. Visitors are always welcome.

January 9: Bob Truett will speak on Freethought issues.

February 13: (tentative) Ed Kagin will speak about his new book *Baubles of Blasphemy*.

March 13: TBD

To join the AFS Forum e-mail list, send a blank message to AFSforum-subscribe@yahoogroups.com. To join the AFS Announcements list, send a blank email to afs-announce-subscribe@yahoogroups.com. To join the Georgia Freethinkers Letter Writing Cooperative, send a blank email to flwc-ga-subscribe@yahoogroups.com.

You can unsubscribe by sending an email to xxxx-unsubscribe@yahoogroups.com.

The Atlanta Freethought Society is a member-run organization dedicated to advancing freethought and protecting the rights and reputation of freethinkers, agnostics, atheists and humanists.

We welcome anyone who is interested in learning about living a good life free from religion through attending AFS speeches, debates, and discussions. We employ protests, letters to the editor, broadcast appearances, and any other reasonable and civil means available to achieve our mission.

We define *freethought* as "the forming of opinions about life in general and religion in particular on the basis of reason and the evidence of our senses, independently of tradition, authority, or established belief."

We actively support a strict separation of church and state as the best means to guarantee liberty for all, regardless of religious belief or lack of belief.

We seek to educate ourselves on many topics but especially on religion and non-religion. We do this through a series of thought-provoking speakers and programs, and by maintaining a web forum and an extensive library of freethought, religious, and related books, pamphlets, videotapes, and audiotapes.

We provide an organization where freethinkers and non-theists can develop friendships, talk freely, socialize and enjoy each other's company. We do not discriminate against anyone on such irrelevant grounds as race, sexual orientation, age, gender, class, or physical disability. We welcome members and leaders of all political parties and preferences.

Because we are designated by the IRS as a 501(c)(3) educational organization, contributions to AFS are tax deductible.

Any who are like-minded are welcome to join us.

**Atlanta Freethought News**  
an AFS publication

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Steve Yothment

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Vol. 11, Number 1, January 2005

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Membership in AFS is \$25/year for individuals, \$35 for households, and \$10 for students/low income/under 21. Sustaining members (individual) \$100 and sustaining members (households) \$125.

Subscriptions alone are \$20 for 12 issues, \$25 to Canada/Mexico, \$30 for other addresses. Please make checks and money orders payable to Atlanta Freethought Society, Inc.

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# Judge's Robe Rekindles Debate

Here we go again. Another Alabama judge has taken an action that once again injects the display of the Ten Commandments into another legal debate. Starting on December 13, Circuit Judge Ashley McKathan has appeared in his Covington County courtroom wearing a judicial robe with the Ten Commandments embroidered on the front in gold. The commandments are big enough to read by anyone near the judge.

## THE FIRST CHALLENGE

By the next day, attorney Riley Powell, defending a client charged with DUI, filed a motion objecting to the robe and asked that the case be continued. He said McKathan denied both motions.

"I feel this creates a distraction that affects my client," Powell said.

McKathan said that he believes the Ten Commandments represent the truth "and you can't divorce the law from the truth... The Ten Commandments can help a judge know the difference between right and wrong."

He said he doesn't believe the commandments on his robe would have an adverse effect on jurors.

"I had a choice of several sizes of letters. I purposely chose a size that would not be in anybody's face," he said.

The case raised comparisons to former Alabama Chief Justice Roy Moore, who was removed from office in 2003 for refusing to remove a Ten Commandments monument from the rotunda of the Alabama Judicial Building in Montgomery.

Moore said he supports McKathan's decision to wear the Ten Commandments robe.

"I applaud Judge McKathan. It is time for our judiciary to recognize the moral basis of our law," Moore said.

Powell said if he loses his case, he expects the judge's wearing of the Ten Commandments robe to be part of an appeal.

## SUPPORTERS READY FOR CONFLICT

McKathan supporters appear to be

ready for a legal conflict. The Mobile Register reported on December 24 that the words on the judge's robe are likely to spur a long, expensive court battle and one with a twist from past Ten Commandments cases.

This time, the case is supposedly not just about separation of church and state, but also about freedom of expression, since the Commandments display is on clothing, not on the courtroom wall or in a lobby.

"It is a much more personal thing," said Mike Jones, an attorney who represented Judge Moore in his Ten Commandments monument case. "Freedom of expression issues may play out with McKathan that were not involved in Moore's case. It will be interesting to see what transpires."

Retired Supreme Court Justice Terry Butts, who also defended Moore in the monument case, said McKathan's situation is similar to Moore's cases because "they have to do with the First Amendment right to acknowledge God."

"I think the chances of McKathan's case winding up in court are very good," Butts said. "I am confident someone will file a complaint with the Judicial Inquiry Commission and/or in Circuit Court to have the robe with the Commandments removed."

Context matters in such cases, said Bryan Fair, a professor and constitutional law expert at the University of Alabama.

Just how the courts view a Commandments display has varied, but there are cases pending from Texas and Kentucky before the U.S. Supreme Court that should

give some clarification on which displays are acceptable, he said.

Fair said that embracing the displays as religious expression as Moore did is contrary to the Alabama Constitution of 1901 and the U.S. Constitution, which prohibit any governmental establishment of religion.

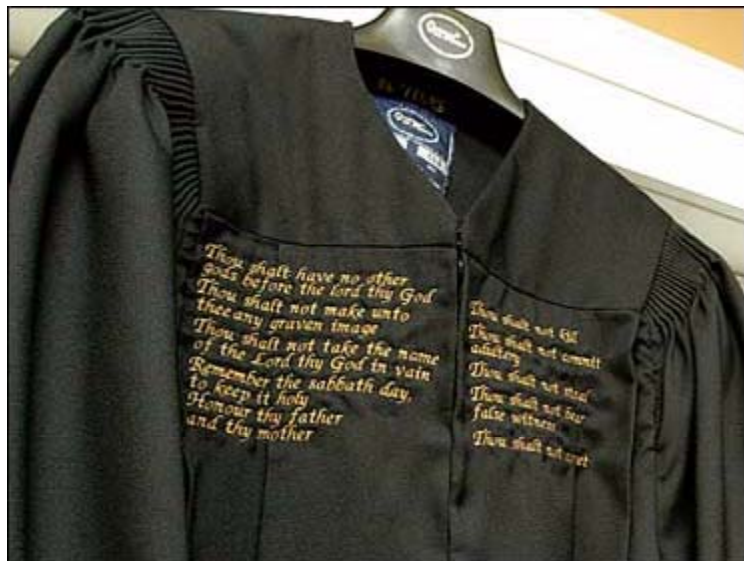
The Commandments on a robe, Fair said, could be seen as the state sponsoring a religious message — and that context is not allowed. "The state does not have a religion," Fair said. "When judges in the courtroom embrace one religion, they inherently reject the others. Judges are state representatives, and their judicial work is not religious work."

According to Fair, "The United States has avoided theocracy" up to the present. Perhaps those who favor a move toward that, he said, need to see why we avoided that in the first place. "Our judges rule in court based on the codified law of the state and the United States — not the rules of Buddhism, Islam or Judeo-Christian rules."

Fair said he believes the courts will eventually rule against the robe display.

## EDITORIALS ABOUT THE ROBE

On December 16, the Montgomery Advertiser printed an editorial strongly criticizing the judge, saying, "Does



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## The Judge's Robe (*continued*)

the judge ask the people of his circuit, and by extension the people of the state, to believe that he needs the Ten Commandments stitched on the breast of his robe in order to distinguish between right and wrong?"

The editorial continued: "The issue here is not the merits of the Ten Commandments, which are seen by many as an ideal guide for daily living. The issue is the glaring impropriety of a judge, presiding in a system dedicated to fair and impartial treatment under the laws of the state and nation of all who face charges before it, injecting a set of religious beliefs into that system... Has nothing been learned from the Moore case?"

### ATHEIST LAW CENTER RESPONDS

"I was shocked to learn of the situation," commented Larry Darby, president of the Montgomery-based Atheist Law Center, to an Andalusia Star News reporter. "It's like some public officials in Alabama learned nothing from the Roy Moore debacle."

"I'm an attorney. To me, this man (McKathan) is just a renegade who has no respect for the law. Judge McKathan is making a mockery of the judicial system, his office and the constitution," Darby continued.

"The United States Constitution, particularly the Bill of Rights and the First Amendment, are a direct counter to biblical law. Our Constitution is quite godless. A lot of people confuse the religious clauses or try to sneak in their beliefs under 'free speech.' (But) government cannot support religion. Government cannot aide it in any way."

While many in Covington County and other areas support McKathan, some, like Darby, are starkly opposed.

"I know people in Covington County who are not Protestant," said Darby. "This guy (McKathan) is the government. What he is doing is — he has merged religious law, with the actual law of government. When these religious demagogues are saying there's a higher power, who's going to interpret that higher law? When a

judge takes it upon himself to (dictate a higher law), he is usurping our constitutional republic. That is a very dangerous situation."

### AMERICANS UNITED REACTION

Jeremy Leaming, spokesman for Americans United For Separation of Church and State, said the "in your face" tone of Moore's displays and now McKathan's are at once alarming and silly since the issue has been decided again and again against such displays.

"The attorney in McKathan's court who objected has a really strong argument," Leaming said. "If the judge wants to wear the Ten Commandments on his suit outside the courtroom in his private capacity, he is entitled... But in-your-face promotion of religion by judges, being almost combative to show 'I'm going to do what I want no matter what higher courts say' — that is wrong. That court building does not belong to Christians alone, and the court is not the place to promote religion."

"Private citizens have the right of self-expression and judges can express their religious beliefs, but not from the bench," Leaming said. "For a judge in Alabama to wear the Ten Commandments into court — that must have been quite startling. Judges rule based on the state and federal constitutions. We do not go before religious courts. Iran has religious courts."

Leaming said people like Moore and McKathan sound as if they believe the United States is actually a theocracy or that the nation should move more in that direction, a dangerous suggestion, he said.

### COMMENTS FROM FINDLAW.COM

Marci Hamilton, a lawyer writing for FindLaw.Com on December 16, indicated that McKathan "undermines the dignity of his robes by making them a billboard for his personal religious beliefs, and he undermines public trust in his office. The judiciary, of course, is supposed to apply secular law, and apply it neutrally and evenhandedly, regardless of the parties' re-

ligious beliefs."

"Even worse," says Hamilton, "he suggested that the law he was applying might not be the law the People and their representatives have created, but rather the law of his own religion. Instead of wearing a black robe of sober dispassion, he came dressed to preach. And by so doing, he took direct aim at the system that is perhaps the greatest achievement of the United States' pluralist democracy."

"Are the judge's constitutional rights violated by the requirement that he wear an unadorned robe? Of course not. He can express his message — and worship as he chooses — on his own time, wearing his off-duty clothing. Neither his Free Exercise rights, nor his Free Speech rights are infringed by that distinction. All that is asked is that he refrain from using his public position to foster his personal views."

"The Establishment Clause is violated if the government action has the purpose or effect of furthering or hindering religion, or if the government has endorsed a particular religious (or anti-religious) viewpoint. Here, there is no question that Judge McKathan has the purpose of furthering the Christian tradition. Nor is there any question that he is personally endorsing a particular religious doctrine. On both counts then, he flagrantly violated the Establishment Clause," says Hamilton.

"Imagine a defendant who appears before Judge McKathan and who is accused of stealing, or who has a history of adultery. Would he be unreasonable to believe he will be judged by the Ten Commandments, not secular law? Of course not. Moreover, when does the Judge resort to the Bible rather than the code to determine the law end? The punishments in the Old Testament are a far cry from those required by law in this country. Nor would he be unreasonable to believe that he will receive harsher justice than a defendant whom the judge views as a 'good Christian.' Any non-

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## The Judge's Robe (*continued*)

Christian is going to feel disenfranchised, and rightly so. "

"In short," says Hamilton, "this judge is advocating a theocracy. If he does not agree to remove the robe, he should be removed from the bench — as soon as possible. His viewpoint is fundamentally at odds with the still emerging, rich pluralism that is the product of the balance struck by both of our Religion Clauses: The Free Ex-

ercise Clause, which protects diverse religious belief and expression, and the Establishment Clause, which establishes a balance of power between government and religion."

### SO WHAT HAPPENS NOW?

It is too early to tell what will happen in McKathan's case, but there are disturbing indications that he shares Moore's thoroughly discredited view of the law. Whether he shares Moore's

obstinacy and arrogance in the face of an unbroken string of legal defeats remains to be seen.

[From a Dec 16 article by Kim Henderson in the *Andalusia Star News*, a Dec 16 AP article by Bob Johnson, a Dec 16 editorial in the *Montgomery Advertiser*, a Dec 16 article by Marci Hamilton on FindLaw.Com, and a Dec 24 article by Connie Baggett in the *Mobile Register*.]

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## Lucretius on Mortality

By Austin Cline

*"There is no murky pit of hell awaiting anyone... Mind cannot arise alone without body, or apart from sinews and blood... You must admit, therefore, that when then body has perished, there is an end also of the spirit diffused through it. It is surely crazy to couple a mortal object with an eternal."* —Lucretius, quoted in *2000 Years of Disbelief*, by James A. Haught

**F**or the most part, people enjoy life and don't look forward to dying. It is, then, no surprise that people might prefer to live on and on, never dying at all. Perhaps one of the most common beliefs throughout human history has been in some form of immortality. Neanderthals' bodies have been found buried with flowers and other items, suggesting a possible belief in a future existence. Ancient Greeks believed in an afterlife that was dull, drab, and miserable for the vast majority of humanity—but it was still a form of eternal existence and evidently preferable to mortality.

Just about every religion has incorporated some sort of idea about immortal existence. It may be one of the most popular beliefs in the history of humanity. Is it, however, a justified belief? That doesn't seem to be the case—and that was evident even to many philosophers in ancient Greece and Rome, like Marcus Lucretius. His

observations above would be radical in many circles even today. There aren't a lot of people who would accept the notion that once their physical bodies die, there will be no more of "them" left to live on.

That is, however, what science, reason, and evidence tells us will happen. All of the information we have about human beings makes it clear that our memories and personalities are based firmly in our physical brains. When our brains are damaged, our memories can be compromised and our personalities may change dramatically. It's clear that neither memory nor personality are independent of our physical brains. Some still insist on the presence of some "soul" behind it all, but not based upon any evidence—it's a purely faith-based belief without roots in reality.

Why is this important? Because it's also clear that who we are as people is based upon our personalities and

memories. If our memories and/or personalities change enough, then we as individuals will change. Our friends and families won't know us any more and we may not know them, either. It would be impossible to conceive of who we would be without the presence of our memories or our personalities.

What this means, then, is that once our personalities and memories disappear, we disappear as well. Thus, the death of the brain that leads to the termination of our memories and personalities must necessarily lead to the termination of us, as individuals, as well. As difficult as it may be to accept, our existences are limited and finite. We are mortals and have no immortality or eternal life to look forward to. Because of that, we really should focus on the lives we have here and now because this is the only life we have.

[From a Dec. 26 article on About.com]

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## When Tragedy Strikes...

The Atlanta Journal-Constitution asked representatives of various faiths and philosophies to comment on "Why does God allow so much pain and suffering?" Here is the response of Ed Buckner, southern U.S. director for the Council for Secular Humanism (and an AFS officer):

"I understand that for some religious people it stirs deep questions for which there are no easy answers. For a secular humanist who doesn't believe in a supernatural explanation for anything, it is easier in some ways to take events like this. We don't ask questions like 'How could God let this happen?' since we don't believe there is a God.

To people who think we are not compassionate or not moral, we feel great compassion for our fellow human beings who are suffering unimaginable agony right now. It's not exclusively a Christian impulse to want to reach out and help."

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# Why It's Unconstitutional to Teach "Intelligent Design" in the Public Schools, as an Alternative to Evolution

By **MICHAEL C. DORF**

**B**ack on December 14, the American Civil Liberties Union sued the Dover, Pennsylvania School Board. The ACLU argued that the School Board violated the Constitution's Establishment Clause by mandating that students in public school biology classes be taught the theory of "intelligent design" as an alternative to evolution.

Proponents of intelligent design—which is closely related to what is sometimes called "creationism"—point to gaps in the fossil record and other uncertainties to argue that evolution by natural selection cannot explain the emergence of new species. They contend instead that an intelligent agent must have been guiding the course of life on Earth.

Evolution opponents have recently scored political victories outside Dover, Pennsylvania as well. In Cobb County, Georgia, public school textbooks discussing evolution must now contain a disclaimer warning that evolution is "a theory, not a fact." That policy, too, is the subject of pending litigation.

And the November election returns in Kansas have given critics of evolution a majority on that state's school board. It is only a matter of time until Kansas mandates the teaching of alternatives to evolution.

Yet Supreme Court precedent holds that state-sponsored attacks on evolution in the public schools are unconstitutional. Why, then, are evolution opponents in Dover, Cobb County and Kansas, trying to change curricula? Aren't these efforts doomed to fail once they are challenged in court? Are the evolution opponents engaging in mere symbolic protest?

The surprising answer is: Perhaps not. That is because the leading Supreme Court decision, in the 1987 case of *Edwards v. Aguillard*, contains an apparent loophole that evolution's critics may hope to exploit.

*Aguillard* appears to rest on the

Justices' finding that the proponents of theories like intelligent design were subjectively motivated by religion. Accordingly, by keeping their religious motivation secret, proponents of the policies in Dover, Cobb County, and elsewhere may hope to evade the *Aguillard* decision.

However, as I argue below, this evasion should not succeed. Instead, the First Amendment should be construed to bar the mandatory teaching of intelligent design regardless of the purposes expressed by those imposing the mandate.

## THE AGUILLARD DECISION: BARRING TEACHING OF CREATION SCIENCE IN PUBLIC SCHOOLS

In the Dover case, the ACLU contends that the "intelligent agent" in intelligent design theory is simply God in disguise, and that the Dover policy therefore amounts to an unconstitutional establishment of religion. At first blush, the Supreme Court's *Aguillard* decision would appear to support the ACLU's position.

In *Aguillard*, the high court invalidated a Louisiana law that forbade the teaching of evolution in public school unless "creation science" was taught alongside it as an alternative. There, as in Dover, the law made no express reference to God or to any religion. Yet the Justices nonetheless found that its purpose "was to restructure the science curriculum to conform with a particular religious viewpoint."

How did the Court know that was the purpose of the Louisiana law? Justice Brennan's opinion looked at two sorts of evidence. First, and unproblematically, it examined the law's actual requirements, to show that the law did not further "academic freedom," as the law itself stated it was meant to do.

Nothing in Louisiana law had previously barred critical analysis of evolution, the Court observed, and so the actual impact of the law was to narrow, rather than broaden, the curricu-

lum.

But the Court went beyond the objective evidence of what the Louisiana law did, invoking its legislative history as further proof that it was impermissibly designed to advance religion. In particular, Justice Brennan's opinion focused attention on the expressed views of the law's principal sponsor.

## THE POTENTIAL LOOPHOLE IN AGUILLARD: THE ROLE OF SUBJECTIVE MOTIVE

Justice Scalia, joined by Chief Justice Rehnquist, dissented from the *Aguillard* ruling. These Justices took special exception to the majority's reliance on evidence of the subjective motives of the legislators who enacted the Louisiana law. In their view, the "purpose" of the Louisiana legislature in enacting the challenged law was necessarily a fiction—a composite of the multiple and mixed motives of the many people composing the legislature.

Justice Scalia's seemingly categorical criticism of any constitutional inquiry into subjective purpose was somewhat overstated. There are other areas of the law in which even Justice Scalia himself accepts that subjective legislative purpose holds the key to a law's constitutionality. For example, under the Court's Equal Protection doctrine, a law that has a disproportionate negative impact on a racial group will be held invalid if, but only if, the law was adopted for the subjective purpose of disadvantaging members of the racial group. To my knowledge, neither Justice Scalia nor Chief Justice Rehnquist has disavowed or even criticized this principle.

Nonetheless, the broader point of Justice Scalia's *Aguillard* dissent is valid. Legislative purpose is something that courts construct, rather than simply find.

Furthermore, clever legislators can readily evade a constitutional rule that depends on finding evidence of

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## Why It's Unconstitutional... (continued)

an illicit purpose. The legislators merely need to watch what they say in favor of the bill, expressly relying only on permissible factors.

Whether the members of the Dover School Board were sufficiently disciplined to survive scrutiny of their motives remains to be seen. But the broader lesson that foes of evolution should take from Aguillard is clear: Strictly avoid any reference to religion in your arguments for the laws you seek to enact, even if you secretly favor these laws on religious grounds.

### HOW TO CLOSE THE AGUILLARD LOOPHOLE

Nonetheless, if Aguillard is interpreted sensibly, even such a strategy of referring only to secular arguments should fail. After all, Justice Brennan's opinion in Aguillard does not state that the Louisiana law would have been valid if only its sponsor had not slipped in acknowledging a religious motive.

Indeed, as Justice Scalia noted, the law's sponsor "repeatedly and vehemently denied that his purpose was to advance a particular religious doctrine." The sponsor's statements quoted by Justice Brennan merely showed that his true aim was not to increase the diversity of biological viewpoints taught in the Louisiana schools.

Thus, the better reading of the Aguillard opinion makes the constitutionality of a law challenged on Establishment Clause grounds depend on its objective purpose—the purpose or purposes that a reasonable person would attribute to the legislature, in light of what the law actually requires. Justice Brennan's opinion saw through the sponsor's stated aim, to his true aim. In the Dover case and other litigation involving intelligent design, the courts ought to be able to do the same.

### DISCERNING THE OBJECTIVE PURPOSE OF THE DOVER POLICY: WHY IT MATTERS WHETHER INTELLIGENT DESIGN IS A SCIENTIFIC THEORY

But how should courts go about attributing a purpose to the proponents

of laws mandating the teaching of intelligent design? The obvious answer is to ask whether intelligent design is a valid scientific theory.

To be clear, there is no general constitutional requirement that public school students be taught the truth. For example, suppose a school board mandates that high school American history courses emphasize inspiring moments from our past—entirely omitting the shameful treatment of Native Americans, the enslavement of millions of African Americans, and the internment of Japanese Americans. Certainly, the school board would thereby do its students and the community a disservice, but it would not violate any provision of the Constitution with its highly selective history classes.

Nor is science, or even evolution, different. In the old Soviet Union, children were taught Lamarck's view that acquired characteristics are inherited by the next generation—long after that view, as a matter of science, had been discredited. Why? For a political reason: That biological theory fit nicely with Communist ideology about the malleability of man and the natural world. Suppose, for whatever reason, that a contemporary American school board wished to handicap its students by teaching them Lamarckian rather than Darwinian evolution. The Constitution would be no obstacle to such a foolish policy.

But given the social reality, "intelligent design" is different. It is an allegedly scientific theory that bears a striking resemblance to religious views. When the government mandates that students be taught such a theory, courts are rightly suspicious.

At that point, a court should ask whether intelligent design is, in fact, a scientific theory at all. It should do so, not because of any general obligation on the part of schools to teach science correctly, but simply because if intelligent design is not science, then the inference is almost inescapable that the state is impermissibly acting for the purpose of fostering a religious

viewpoint.

### IS INTELLIGENT DESIGN A SCIENTIFIC THEORY?

Thus we come to the crucial question: Is intelligent design a scientific theory? If by intelligent design, one means the Biblical account of God's creation of the world in six days, the answer is clearly no. Science is based on empirical observation rather than acceptance of divinely revealed truth.

However, most versions of intelligent design offered as alternatives to Darwinian evolution do not insist on the literal truth of the book of Genesis. Rather, they contend that gaps in evolutionary theory can only be plugged by the assumption that an intelligent agent has guided the development of life on Earth.

Some proponents of intelligent design do raise real objections to current understandings of Darwinian evolution. Based on my own reading of the intelligent design literature, it appears that its two strongest arguments point to the general absence of intermediate forms in the fossil record, and to unanswered questions about how certain new, complex patterns of animal bodies could have arisen through random mutation and natural selection.

Nonetheless, for two reasons, it appears that intelligent design is not a scientific theory.

### THE FIRST REASON INTELLIGENT DESIGN IS NOT A SCIENTIFIC THEORY: CONFLATING UNCERTAINTY WITH ERROR

First, insofar as it offers itself as a critique of standard Darwinian evolution, intelligent design cherry-picks uncertainties at the edge of our knowledge, and asserts that these undermine our core understandings. But the fact that some phenomena remain unexplained by natural selection hardly shows that natural selection—which provides a powerful organizing principle for vast swaths of biological data—will not eventually provide the best account of these phenomena.

Consider an analogy. Our best current understanding of gravity remains mysterious because the most ambi-

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## Why It's Unconstitutional... (continued)

tious efforts to unify gravity with other forces in the universe—comprising so-called superstring theories or M-theory—have not been empirically tested. Yet that hardly calls into question the principal analytical tools of modern physics.

If the intelligent designers were to apply the same criticisms to physics that they apply to evolution, they would have to say that gravity, too, is “just a theory.” However, the fact of Darwinian evolution is as real as the fact of gravity. To be sure, our understanding of each phenomenon is incomplete, but the scientific approach to plugging gaps in our knowledge is not to create a new-anti-theory that dismisses the underlying phenomenon.

### THE SECOND REASON INTELLIGENT DESIGN IS NOT A SCIENTIFIC THEORY: IT ISN'T AN EXPLANATION

The second problem with intelligent design is even more fundamental: It does not actually explain anything.

Darwinian evolution by natural selection posits a mechanism that explains how species change over time: As environmental conditions change, individual members of a species with traits suited to the new environment survive and reproduce in greater numbers than those lacking the traits. And so, over time, and aided by randomly occurring occasionally adaptive mutations, the species evolves to adapt to the new conditions.

By contrast, what does it mean to say that species arise or change through “intelligent design?” Certainly the term connotes intervention by some intelligent agent. But are the

intelligent agent's interventions themselves subject to the laws of the natural world, or are they supernatural?

Even if one is prepared to accept the possibility that science could, without sacrificing its essential premises, include accounts of supernatural phenomena, the concept of “intelligent design,” standing alone, is simply a label, not an account.

To press the physics analogy, in classical mechanics, Newton's law of gravity—according to which the attraction between two bodies increases in proportion to the product of their masses and decreases in proportion to the square of their distance—was for many years viewed as problematic, because it described action at a distance. Scientists wondered: How did distant celestial bodies transmit their masses and positions to one another across space, such that they moved instantaneously in reaction?

To a substantial extent, Einstein's theory of general relativity solved the action-at-a-distance puzzle, but suppose that prior to Einstein someone had proposed that gravity worked through the operation of an “intelligent agent.” It would have been a perfectly valid objection to this proposal that it isn't an explanation at all, but merely a restatement of the problem. For now, we must ask how the intelligent agent accomplishes action at a distance.

In both biology and physics, in other words, supernatural phenomena may be conceivable. But for an account of such phenomena to qualify as science, it must do more than simply posit an intervention from outside the ordinary natural order. It must

also explain how the intervening agent interacts with the natural world. Otherwise, it is simply an article of faith rather than a scientific explanation.

### WILL COURTS HAVE THE CONFIDENCE TO DECLARE THAT INTELLIGENT DESIGN IS NOT SCIENCE?

Accordingly, absent either radical changes in nearly everything we know about biology, or a wholesale reformulation of the tenets of intelligent design, the latter should not be deemed a legitimate scientific theory. And if intelligent design is not science, then it follows that the objective purpose of those who would have it taught alongside evolution in the public schools is to advance a religious view.

Nonetheless, I worry that courts may lack the confidence to declare the mandatory teaching of intelligent design in public schools unconstitutional on the grounds that it is unscientific. As lawyers, most judges lack any serious training in science, and thus may not be comfortable saying what is, and what is not, science.

But the alternative suggested by the Aguillard opinion—of relying simply on the subjective purpose of those who mandate the teaching of so-called alternatives to evolution—is far worse. For while judges can learn enough science to distinguish the real from the fake, they can only ever guess at what legislators are thinking.

*Michael C. Dorf is a Professor of Law at Columbia University in New York City. His book, Constitutional Law Stories, tells the stories behind fifteen leading constitutional cases.*

[From a Dec. 16 article at FindLaw.Com.]

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## AHA Tells Supreme Court: Ten Commandments Displays are a Sham

The American Humanist Association submitted an amicus brief to the Supreme Court on December 16 signed by sixteen national organizations, that addresses the two Ten Commandments cases the Court will be hearing early next year.

“This brief makes it clear that the

Court must now declare once and for all that Ten Commandments displays on government property are violations of the Establishment Clause of the US Constitution,” says Tony Hileman, AHA executive director.

Says AHA president Mell Lipman, “This brief shows the perspective of

those who are disenfranchised by public displays of the Ten Commandments. To endorse a sectarian point of view is not the business of government.”

To view the amicus brief, go to <http://www.americanhumanist.org/TenCommandmentsBrief.pdf>.



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**Household memberships:** A household is defined as two members sharing one newsletter, and is available for \$35 per year. Since some of our households have additional members, there will be a \$5 per year charge for each additional voting household member.

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court argument  
**Andrew Bradley** • creator of the website Betty Bowers, America's Best Christian (www.bettybowers.com )  
**Dr. Bruce Flamm** • quoted in Time Magazine, as the man whose persistent inquiry proved the Korean-Columbia fertility study to be fatally flawed  
 The hotel is convenient to LAX and has a shuttle, and the rates cannot be beat for an event of this quality.  
 More information is available at [www.atheistalliance.org](http://www.atheistalliance.org)

## The Atheist Alliance Convention: Stars of Freethought March 25-27 Los Angeles, CA

The Atheist Alliance Convention will be at the Crowne Plaza Hotel in Los Angeles this year. This is a homecoming of sorts, since we they had their first convention in LA in 1995.  
 So far the guest list includes:  
**Penn & Teller** • At Sunday Brunch, Penn & Teller will accept the Richard Dawkins award for outstanding work in the cause of atheism  
**Michael Newdow** • One year after his eloquent Supreme

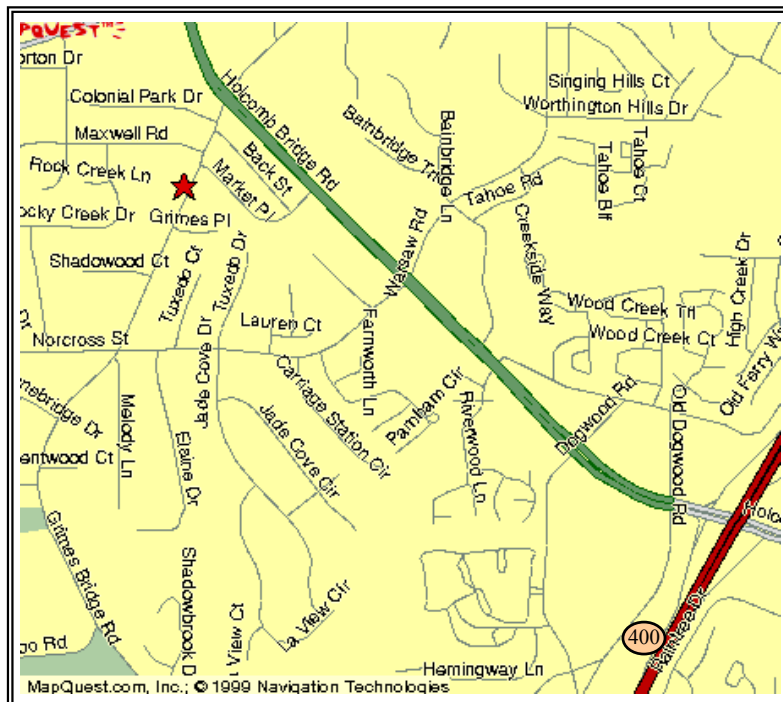
“Reason is the greatest enemy that faith has: it never comes to the aid of spiritual things, but — more frequently than not — struggles against the Divine Word...”  
 “Reason must be deluded, blinded, and destroyed. Faith must trample underfoot all reason, sense, and understanding, and whatever it sees must be put out of sight and ... know nothing but the word of God.”  
 “Whoever wants to be a Christian should tear the eyes out of his reason.”  
 — Martin Luther

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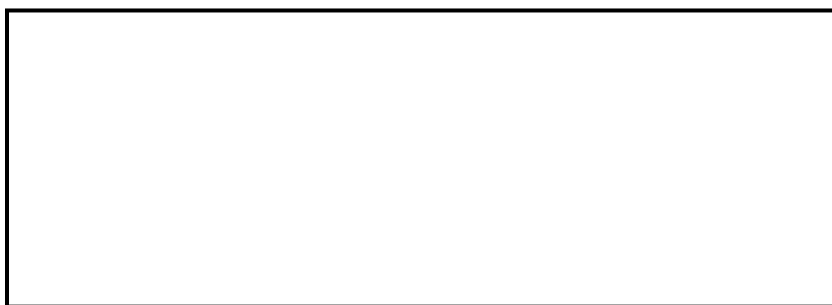


**The January Meeting:  
Sunday, January 9  
1:00 at the AF Center  
1170 Grimes Bridge Road  
Roswell, GA**

**This Month's Speaker:  
Bob Truett**



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