ACLJ
American Center
for Law & Justice

February 12, 2014

Dr. Paul Matney
President, Amarillo College
2201 S. Washington St.
Amarillo, TX 79109

Re: Reinstatement of "Evolution vs. Intelligent Design" Continuing Education Course

Dear Dr. Matney,

I am writing on behalf of Stanley Wilson, the instructor of an Amarillo College continuing education course entitled "Evolution vs. Intelligent Design" that was approved for the Fall 2013 semester but later cancelled due to concerns of disruption by disgruntled individuals. For the reasons stated below, we respectfully ask that the course be approved for future semesters. By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.[1]

Discussion of Facts

As we understand the facts, Amarillo College (AC) approved a continuing education course entitled "Evolution vs. Intelligent Design," to be taught by Stanley Wilson during the Fall 2013 semester. The course was not required for any student, and no credits were offered. A course description stated, "Join the fun with this interesting subject. Pros and cons of neo-Darwinism. Most current information available. No science background required. Textbook optional, but what a great reference tool." A few dozen individuals enrolled in the course.

[1] *See, e.g., Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding that the First Amendment does not require the government to display counter-monuments when it displays a Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

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The extent to which the prevailing orthodoxy within the scientific community adequately explains the origins and complexity of life is a subject of debate among scientific and academic leaders, and Stanley Wilson's course would aid interested individuals in exploring these issues. For instance, hundreds of prominent scientists from around the world have signed a public statement, entitled *A Scientific Dissent From Darwinism*, in which they declare, "We are skeptical of claims for the ability of random mutation and natural selection to account for the complexity of life. Careful examination of the evidence for Darwinian theory should be encouraged." The signers of this document

> hold doctorates in biological sciences, physics, chemistry, mathematics, medicine, computer science, and related disciplines from such institutions as Oxford, Cambridge, Harvard, Dartmouth, Rutgers, University of Chicago, Stanford and University of California at Berkeley. Many are also professors or researchers at major universities and research institutions such as Cambridge, Princeton, MIT, UCLA, University of Pennsylvania, University of Georgia, Tulane, Moscow State University, Chitose Institute of Science & Technology in Japan, and Ben-Gurion University in Israel.[2]

Wilson's course would survey the strengths and weaknesses of the prevailing and dissenting views, with the idea that individuals enrolled in the course will be better equipped to form their own educated opinions on the subject. Unfortunately, however, it is fairly common for some individuals who oppose dissenting viewpoints to go to great lengths to shut down open and frank discussion of this issue, and that is what happened with Wilson's course.

In August 2013, a few weeks before the start of the semester, the leader of a local "free thought" organization learned of the course's existence and began an aggressive campaign to push AC administrators to cancel it. Among other things, he was verbally aggressive with Wilson and administrators in voicing his opposition to the course, and said that several members of his group who also opposed the course had enrolled in it. It became apparent that members of the group were likely to repeatedly disrupt the course in the hopes of shutting it down, rather than engaging in any form of civil discussion of the course's content.

One week before the course was set to begin, AC cancelled it, citing fears of disruption. An op-ed in the *Amarillo Globe News* criticized the decision:

> "As we learned more about this, there appeared to be the possibility of a disruption in the classrooms. This is a very emotionally charged issue. We decided rather than it being a course where you come in and learn the pros and cons, this may turn into . . . a conflict situation where there could be a disruption."
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> . . . It is just unfortunate that AC officials feared, maybe for good reason, that a course on evolution vs. intelligent design could erode into something less than positive. Isn't higher education, or education at most levels, supposed to foster an open debate on such subjects — a free exchange of ideas?

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[2] *A Scientific Dissent from Darwinism*, http://www.dissentfromdarwin.org/faq.php.

> By the way, the class was a non-credit/continuing education course . . . . In other words, if you do not want to engage in a discussion about evolution and intelligent design, then don't take the class. . . .

In sum, individuals who opposed the course made it clear that they would take actions to prevent the course from functioning, rather than discussing their viewpoints in a civil manner, and AC chose to cancel the course rather than reprimanding individuals who engage in disruptive behavior. AC's decision to cancel the course sets a bad precedent and runs counter to the venerable tradition of public colleges being places where controversial issues and novel or unpopular viewpoints can be freely discussed and debated, rather than being censored.

Discussion of Law

The Supreme Court of the United States has repeatedly emphasized the importance of free and robust debate at public colleges. In *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), the Court observed that "[t]he essentiality of freedom in the community of American universities is almost self-evident." *Id.* at 250. The Court also noted that "[t]eachers and students must always remain free to inquire, to study and to evaluate, [and] to gain new maturity and understanding." *Id.* Additionally, in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), the Court declared:

> [T]he First Amendment . . . does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon 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."

Id. at 603 (citations omitted).

Moreover, in *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), the Court observed that, in the public university setting, "the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Id.* at 835. The Court emphasized that

> [t]he quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For [a] University . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.

Id. at 836.

In effect, AC's cancellation of the course due to possible disturbances by disgruntled individuals was a "heckler's veto," which numerous First Amendment cases have criticized. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992) ("Speech cannot be . . .

punished or banned, simply because it might offend a hostile mob."); *Brown v. Louisiana*, 383 U.S. 131, 133 n.1 (1966) ("Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence."). For instance, in *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007), the court noted with respect to a university policy designed to limit disturbances that "yielding to a 'heckler's veto' infringes a speaker's free speech." *Id.* at 471. In 2010, a Texas federal court invalidated a policy enacted by the Tarrant County College District prohibiting students from symbolically wearing empty holsters on campus to protest policies preventing the concealed carrying of firearms. *Smith v. Tarrant Cnty. Coll. Dist.*, 694 F. Supp. 2d 610, 629-30 (N.D. Tex. 2010). The court stated:

> Buchanan's concern seemed to be that the debate over the right to carry concealed handguns on campus might get too heated . . . . But Buchanan's concerns about the reaction of the student body to Smith and Schwertz's message is not a sufficient basis to suppress their symbolic speech. "The existence of a hostile audience, standing alone, has never been sufficient to sustain a denial of or punishment for the exercise of First Amendment rights." . . . .

Id.

Another federal case involving a Texas public library stated:

> By conferring upon any 300 patrons the power to remove from the children's section any books they find objectionable, the Altman Resolution unconstitutionally confers a "heckler's veto" on the complaining patrons, effectively permitting them to veto lawful, fully-protected expression simply because of their adverse reaction to it. The Supreme Court repeatedly has invalidated other "heckler's veto" regulations as antithetical to core First Amendment values.

Sund v. City of Wichita Falls, 121 F. Supp. 2d 530, 549 (N.D. Tex. 2000).

Here, when AC learned that some individuals were likely to enroll in the continuing education course for the sole purpose of disrupting it, the appropriate course of action would have been to uphold AC's standards for acceptable student behavior. Cancelling the course, rather than simply requiring objecting individuals to behave like adults, signals to students that it is acceptable to react to viewpoints that they dislike by being disruptive, and also signals to instructors that they should steer clear of any topics or viewpoints to which someone may strongly object. This, sadly, transforms classrooms from a place where a "robust exchange of ideas [may] discover[] truth 'out of a multitude of tongues," 385 U.S. at 603, into a place where issues that people may have strong feelings and views about are avoided or minimized. AC should reinstate the continuing education course to further the interests of academic rigor and diversity.

Additionally, AC's decision to cancel the class is not supported by cases addressing the Establishment Clause of the First Amendment. Indeed, in the most relevant Supreme Court

decision, in which the Court invalidated a law designed to "restructure [Louisiana's] science curriculum to conform with a particular religious viewpoint," the Court explained:

> We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught. . . . [T]eaching a variety of scientific theories about the origins of humankind to schoolchildren might be validly done with the clear secular intent of enhancing the effectiveness of science instruction.

Edwards v. Aguillard, 482 U.S. 578, 593-94 (1987). In other words, discussion of the strengths and weaknesses of various *scientific* theories on the origins of humankind, which is what the cancelled AC course entails, is not an inherently *religious* undertaking. As noted previously, countless leading scientists have doubts about the prevailing orthodoxy concerning the origins of humankind and the diversity of life, and a discussion of that debate is a scientific and philosophical endeavor, not a sectarian one.

It is important to note that, properly understood, *intelligent design* is entirely distinct from *creationism*:

> The theory of intelligent design is simply an effort to empirically detect whether the "apparent design" in nature acknowledged by virtually all biologists is genuine design (the product of an intelligent cause) or is simply the product of an undirected process such as natural selection acting on random variations. Creationism typically starts with a religious text and tries to see how the findings of science can be reconciled to it. Intelligent design starts with the empirical evidence of nature and seeks to ascertain what inferences can be drawn from that evidence. Unlike creationism, the scientific theory of intelligent design does not claim that modern biology can identify whether the intelligent cause detected through science is supernatural.
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> Honest critics of intelligent design acknowledge the difference between intelligent design and creationism. . . . [T]he charge that intelligent design is "creationism" is a rhetorical strategy on the part of Darwinists who wish to delegitimize design theory without actually addressing the merits of its case.[3]

In sum, Supreme Court jurisprudence does not, in any way, preclude the discussion of evolutionary theory, intelligent design, or other scientific theories in a college adult education course.[4] To the contrary, the Court expressly noted that discussing various "scientific critiques of prevailing scientific theories" is permissible, 482 U.S. at 593-94, and the Court has repeatedly emphasized that government-sponsored conduct is not impermissible merely because it may coincide with the beliefs of some religious groups. *See, e.g., McGowan v. Maryland*, 366 U.S.

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[3] http://www.intelligentdesign.org/whatisid.php.

[4] A district judge's decision in *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005), which invalidated a religiously-motivated policy requiring the presentation of intelligent design to ninth graders, is not binding outside of part of Pennsylvania, and is clearly flawed for numerous reasons. *See, e.g.,* David K. DeWolf *et al., Intelligent Design Will Survive* Kitzmiller v. Dover, 68 Mont. L. Rev. 7 (2007). In any event, courts apply the Establishment Clause far more stringently in elementary or high school settings, where children are compelled by law to attend, than in the college setting, where adults voluntarily choose to attend.

420, 442 (1961) ("[T]he 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions."); *Harris v. McRae*, 448 U.S. 297, 319-20 (1980) ("[T]he fact that the funding restrictions . . . may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.").

Conclusion

We respectfully request that Stanley Wilson be permitted to offer his continuing education course at AC in future semesters. This would send a clear message that AC is committed to offering an open and diverse educational experience in which important issues can be discussed and controversial or unpopular viewpoints can be expressed without censorship. Thank you for your time and attention to this matter.

Sincerely,

Erik Zimmerman

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American Center for Law & Justice

cc: Stanley Wilson