Why the Santorum Language Should Guide State Science Education Standards

by Bruce Chapman and David DeWolf

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Federal education policy as articulated by the U.S. Congress favors teaching students the scientific controversy over biological evolution. Support for this even-handed approach to science education is clearly expressed in the "Santorum Amendment" adopted by Congress in 2001 as part of the Conference Report of the No Child Left Behind Act. (The language crafted by Sen. Rick Santorum was originally offered as a "sense of the Senate" amendment to the Senate version of the education bill; hence the title by which it is known.)

Recently some advocates of a Darwin-only approach to science education have tried to dismiss or deny the reality of the Santorum Amendment, charging that supporters of the Santorum language are "mislead[ing] the public," "making fraudulent claims," and even "spreading falsehoods about the law of the land."[1] To clear up any confusion that may have been generated by such rhetoric, we would like to set the record straight in the following areas:

(1) What is the origin of the Santorum Amendment?
(2) What happened to the Santorum Amendment in the Conference Committee for the No Child Left Behind Act of 2001?
(3) What is the legal status of the Santorum Amendment?
(4) What is the relevance of the Santorum Amendment to science standard discussions in Ohio and other states?

We contend that those who wish the Board of Education (and the media) to ignore the education bill's report language have tried to intentionally confuse the matter.

I. What is the origin of the Santorum Amendment?

Offered on the Senate floor on June 13, 2001, the original resolution by Sen. Rick Santorum of Pennsylvania was worded as follows:

> "It is the sense of the Senate that—
> "(1) good science education should prepare students to distinguish the data or testable theories of science from philosophical or religious claims that are made in the name of science; and
> "(2) where biological evolution is taught, the curriculum should help students to understand why this subject generates so much continuing controversy, and should prepare the students to be informed participants in public discussions regarding the subject."[2]

Senator Santorum stated that the purpose of this language was to promote intellectual freedom,[3] and he was supported by other members of the Senate from both political parties.[4] In the end the amendment passed the Senate by an overwhelming vote of 91-8.[5]

Because there were differences between the Senate version of the overall education bill and the House version, the two houses, as is customary, appointed a "conference committee"—a group of members from each house whose job is to reconcile the two versions of the bill and produce a uniform piece of legislation that could be approved by both houses and sent to the President for his signature. A conference committee also typically produces a "conference report," a document that contains both the final statutory language of the bill and "report language" that provides authoritative guidance on how the final statutory language is to be interpreted and applied. (More information on the legal importance of report language is supplied under question #3.) Congress approves the final version of a bill by voting on the conference report, and the conference report is transmitted to the president along with the bill itself. The report language in the conference report is so important that the President's decision to sign a bill may depend upon his agreement with that bill's report language.[6] As we shall see by example, three recent instances when Bill Clinton was President underscore this importance.

II. What happened to the Santorum statement in the Conference Committee for the No Child Left Behind Act?

After the Senate vote on Sen. Santorum's resolution, those favoring a Darwin-only approach to science education campaigned to have the conference committee remove the Santorum language or to water it down by deleting any reference to "biological evolution." Many letters, phone calls and emails were launched to persuade members of the committee to omit the Santorum language. These efforts failed. The conference committee included the following modified Santorum language in its conference report:

> "The Conferees recognize that a quality science education should prepare students to distinguish the data and testable theories of science from religious or philosophical claims that are made in the name of science. Where topics are taught that may

> generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist, why such topics may generate controversy, and how scientific discoveries can profoundly affect society."[7]

While the wording in the conference report was revised slightly from the original Santorum Amendment, the changes made actually *strengthened* support for what we at the Discovery Institute have called a "teach the controversy" approach. Darwin-only advocates often assert that students should only be exposed to the majority view in science and therefore have no right to hear about competing scientific views. In contrast to this view, the conference committee language explicitly encourages a curriculum teaching "the full range of scientific views that exist."

It is especially noteworthy—as Rep. Tom Petri, Vice-Chairman of the House Education Committee mentioned to the House—that the Santorum statement was included as report language for the education act's provision requiring state science assessments. Congress believed that federally mandated science assessments should not be used to require teaching only one side of a controversial issue like biological evolution. The Santorum statement put Congress on record as affirming that state science assessments ought to ensure that students "understand the full range of scientific views that exist" and "why such topics may generate controversy."

III. What is the legal status of the Santorum statement?

Some supporters of a Darwin-only approach to science education have tried to create a controversy over the fact that the final Santorum statement resides in the report language rather than the statutory language of the No Child Left Behind Act. These Darwin-only advocates apparently hope to convince state and local policymakers that Congress did not intend for the Santorum statement to be taken seriously. This view of congressional intent is false.

Report language, while not part of a statute in a technical sense, is typically regarded by Congress as on par with the authority of statutory language. While it does not have the "force of law," it might be said to have the "effect of law." That is why Congress regularly provides substantive policy guidance to federal agencies through report language, including detailed instructions on how the money provided for in appropriations bills should be spent. In fact, most earmarks for specific projects to be funded by congressional appropriations bills are provided through report language rather than statutory language.[8] Report language also typically provides authoritative guidance on how statutory language should be interpreted and applied. For example, report language elsewhere in the No Child Left Behind Act supplies detailed instructions for how the graduation rate statistics required by the Act should be calculated.[9]

Report language is considered so important that the President may choose to veto or approve bills based on their report language. In 1995, for example, President Clinton vetoed a bill dealing with securities litigation primarily because he objected to the bill's report language.[10] In 1996, President Clinton notified Congress of his intention to veto another bill in part because of its report language.[11] And in 1998, President Clinton signed a bill after noting that his approval hinged on a statement inserted in the bill's report language.[12]

Congress's high view of the authority of report language is reflected in the letter written to the Ohio State Board of Education by Rep. John A. Boehner (R-OH), chair of the House Education and Workforce Committee, and Rep. Steve Chabot (R-OH), Chair of the House Constitution Subcommittee. In their understanding, because the Santorum language was included in the No Child Left Behind Act's conference report, the Santorum language should be regarded as "part of the law."[13]

In fact, the language on teaching the scientific evidence for and against controversial theories such as evolution was of such importance that some members of Congress threatened to vote against the inclusion of federal requirements for science standards if it was not included. Their fear—thoroughly justified, it turns out!—was that states would be pressured to adopt science standards that attempted to close down debate on Darwin's theory.

The main reason the language is in the report, not the main body of the new law, is that it does not include any characteristic financial incentives—or penalties—for states or local school boards. Also, the spirit of the new act is to avoid dictating specific curriculum to the states. The Santorum language comes as close to breaching that policy as Congress was willing to go on any topic, and it was adopted because the language itself is a plea for openness and academic freedom on controversial topics. Therefore, it does not dictate; it recommends strongly. If any state or local boards doubt that it is now federal policy, they should inquire about the subject to the U. S. Department of Education.

IV. What is the relevance of the Santorum statement to science standard discussions in Ohio and other states?

As stated previously, while the Santorum statement does not legally *mandate* an even-handed approach to the teaching of evolution, or penalize a failure to do so, it does provide a clear call to states to follow its policy direction in adopting science standards. Congress's bipartisan policy in this area ought to be given serious weight by state and local policymakers.

We can think of no better way to conclude than to quote Senator Santorum's original statement on the Senate floor, which in turn cited a guidebook written by Discovery Institute scholars for school boards:

> Several benefits will accrue from a more open discussion of biological origins in the science classroom. First, this approach will do a better job of teaching the issue itself, both because it presents more accurate information about the state of scientific thinking and evidence, and because it presents the subject in a more lively and less dogmatic way. Second, this approach gives students greater appreciation for how science is actually practiced. Science necessarily involves the interpretation of data; yet scientists often disagree about how to interpret their data. By presenting this scientific controversy realistically, students will learn how to evaluate competing interpretations in light of evidence—a skill they will need as citizens, whether they

> choose careers in science or other fields. Third, this approach will model for students how to address differences of opinion through reasoned discussion within the context of a pluralistic society.[14]

FOOTNOTES

[1] Ken Miller, "The Truth about the 'Santorum Amendment' Language on Evolution," http://www.millerandlevine.com/km/evol/santorum.html.

[2] *Congressional Record,* June 13, 2001, p. S6148.

[3] Senator Santorum introduced his amendment with the following statement:

> Mr. SANTORUM. Mr. President, I rise to talk about my amendment which will be voted on in roughly 40 minutes. This is an amendment that is a sense of the Senate. It is a sense of the Senate that deals with the subject of intellectual freedom with respect to the teaching of science in the classroom, in primary and secondary education. It is a sense of the Senate that does not try to dictate curriculum to anybody; quite the contrary, it says there should be freedom to discuss and air good scientific debate within the classroom. In fact, students will do better and will learn more if there is this intellectual freedom to discuss…
>
> I think there are many benefits to this discussion that we hope to encourage in science classrooms across this country. I frankly don't see any down side to this discussion--that we are standing here as the Senate in favor of intellectual freedom and open and fair discussion of using science--not philosophy and religion within the context, within the context of science but science--as the basis for this determination.

Congressional Record, June 13, 2001, p. S6148.

[4] *Congressional Record,* June 13, 2001, p. S6152:

> Mr. BYRD. Mr. President, I have been interested in the debate surrounding the teaching of evolution in our schools. I think that Senator Santorum's amendment will lead to a more thoughtful treatment of this topic in the classroom. It is important that students be exposed not only to the theory of evolution, but also to the context in which it is viewed by many in our society.
>
> I think, too often, we limit the best of our educators by directing them to avoid controversy and to try to remain politically correct. If students cannot learn to debate different viewpoints and to explore a range of theories in the classroom, what hope have we for civil discourse beyond the schoolhouse doors?

[5] *Congressional Record,* June 3, 2001, p. S6153.

[6] Ryan G. Miest, *Would the Real Scienter Please Stand Up: The Effect of the Private Securities Litigation Reform Act of 1995 on Pleading Securities Fraud*, 82 MINN. L. REV. 1103, 1115 (1998): "President Clinton vetoed the legislation on December 19, 1995. The President objected not to the statute's text, but to the Statement of the Managers accompanying the Conference Committee Report, which he felt would raise the pleading standards beyond that required in the Second Circuit." A real, as distinguished from hypothetical example, can be found in the article in the MINNESOTA LAW REVIEW cited earlier. In the process of adopting the Private Securities Litigation Reform Act of 1995, there was disagreement between the House and the Senate over the procedure for bringing securities fraud cases.

In reconciling the two versions, the conference committee report stated that "it does not intend to codify the Second Circuit's case law interpreting this pleading standard." 82 MINN. L. REV. at 1114-1115. Because this interpretation would be followed by future courts in interpreting the statute, President Clinton decided to veto the legislation.

[7] House Report 107-334, No Child Left Behind Act Conference Report (2001), p. 703. The Santorum report language can be accessed at http://thomas.loc.gov/cgi-bin/cpquery/1?cp107:./temp/~cp1071fhk:e2268628:&&sid=khf101pcmocibttatneilc10&&report=hr334.107&&sel=TOC_2268627&&previous_query=&&xform_type=1000&&hold_doc_count=1&&level=3&&variant=no&&item_number=1&&bool=n&. Scroll down to #78 to see the Santorum language.

[8] Sandy Streeter, "Earmarks and Limitations in Appropriations Bills," Congressional Research Service Report to Congress, January 11, 1999.

[9] "The Conferees intend that reporting of graduation rates described in clause (vi) shall be determined by reporting the percentage of students who graduate from high school with a regular diploma (not an alternative degree that may not be fully aligned with State academic standards, such as a certificate or GED), on time (within four years of starting the ninth grade for high schools that begin with the ninth grade or within the standard number of years for high schools that begin with another grade). The approach used to calculate graduation rates must also avoid counting dropouts as transfers. States that have or could have a more accurate longitudinal system that follows individual student progress through high school may use that system if approved by the Secretary as part of the State's Title I plan." House Report 107-334, No Child Left Behind Act Conference Report (2001). http://thomas.loc.gov/cgi-bin/cpquery/1?cp107:./temp/~cp1071fhk:e2268628:&&sid=khf101pcmocibttatneilc10&&report=hr334.107&&sel=TOC_2268627&&previous_query=&&xform_type=1000&&hold_doc_count=1&&level=3&&variant=no&&item_number=1&&bool=n&. Scroll down to #137.

[10] "Message to the House of Representatives Returning Without Approval the Private Securities Litigation Reform Act of 1995," Dec. 19, 1995, *Public Papers of the Presidents* (1995), vol. 2, pp. 1912-1913.

[11] "Letter to Congressional Leaders on Product Liability Legislation," March 16, 1996, *Public Papers of the Presidents* (1996), vol. 1, pp. 464-465.

[12] "Statement on Signing the Securities Litigation Uniform Standards Act of 1998," Nov. 3, 1998, *Public Papers of the Presidents* (1998), vol. 2, pp. 1974-1976.

[13] Letter from Congressmen Boehner and Chabot to the Ohio State Board of Education (2002), http://www.discovery.org/news/BoehnerChabotLetterToOhio.html.

[14] *Congressional Record,* June 13, 2001, p. S6148, quoting from David K. DeWolf, Stephen C. Meyer and Mark E. DeForrest, "Intelligent Design in Public School Science Curricula: A Legal Guidebook," available at http://www.arn.org/docs/dewolf/guidebook.htm.