



December 31, 2009

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Dear Ms. Vosburg:

On behalf of its Louisiana members and chapter, Americans United for Separation of Church and State writes to submit comments on Bulletin 741, § 2304 Science Education, Part E.

Americans United strongly suggests that Louisiana Board of Elementary and Secondary Education revise § 2304, Part E, to reflect the recommendations that the Louisiana Department of Education presented to the Student/School Performance and Support Committee of BESE at its September 16, 2009, meeting. Though imperfect, the Department of Education's recommended revisions are far less troubling than those adopted by BESE and published in the *Louisiana Register* in November 2009. More importantly, BESE's proposed revisions evidence an impermissible religious purpose.

BESE Should Ensure a Fair and Genuine Review of Supplemental Materials.

The proposed procedure for reviewing challenged supplemental material is unnecessarily complicated and appears designed to provide a forum for promoting creationism. In order to ascertain whether supplemental material is grade-level appropriate, scientifically sound and supported by empirical evidence, and does not promote religion, the original recommendation called for the DOE to appoint three expert reviewers to hear positions presented by the complainant and the LEA only. Then the DOE would consider the report of the reviewers and make recommendations to BESE. Under this plan, the DOE could have elected to support, reject, or modify the recommendations of the reviewers or, alternatively, could have submitted its own recommendation. In other words, DOE staff members, exercising their professional judgment, would have decided if challenged supplemental material fulfilled the three legal requirements.

In contrast, BESE's current proposed procedure essentially ignores the DOE professionals by giving them a nearly meaningless role in the process. First, the proposed procedure would render the opinions of the DOE experts meaningless. The DOE would appoint only two rather than three experts, while the complainant, the LEA, and even the publisher of the supplemental material would each be entitled to appoint an expert. Of these five total experts, the DOE-appointed experts would be a minority. As a result, if an LEA allows one of its teachers to introduce creationist supplementary materials, the LEA is naturally going to look to creationist "experts" to defend those materials. And, of course, a publisher of creationist material is going to likewise appoint creationist "experts," perhaps even the authors of the nonscience materials being used in Louisiana's science classrooms. The resulting interference by politically connected groups in what should be a straightforward administrative procedure will taint the review process.

Your voice in the battle to preserve religious liberty

Second, under BESE's proposed procedure, DOE will not be required to provide BESE with a recommendation that would interpret the expert reports based on their staff members' professional knowledge. Instead, DOE must transfer the reports directly to BESE for its evaluation and "may" make its own recommendation — making it one of six reports reviewed by BESE. And finally, the proposed procedure does not address whether teachers could continue using disputed material in the classroom until the review procedure's conclusion, thus potentially allowing the nonscience materials to remain in the classroom until the convoluted process is eventually resolved.

BESE's proposed procedure rejects the original fair and genuine review of supplemental materials and instead creates roles for creationists in the review process. This change is not only bad policy and would harm science education, but it also demonstrates an impermissible purpose of advancing religion.

The Proposed Procedure's Show Trial Promotes Creationism.

The proposed procedure would create the opportunity for a show trial with "experts" presenting reports about why creationist supplemental materials are scientifically sound and supported by empirical evidence and do not promote religion. This promotion of the merits of "intelligent design" or other forms of creationism may win political points for BESE, but appears to have the unconstitutional purpose of promoting religion. Federal courts — including the U.S. Supreme Court — have consistently and repeatedly held that creationism in all its variations ("creation science," "intelligent design," and other anti-evolution tactics) cannot be taught in public schools. In *Epperson v. Arkansas*, the Supreme Court struck down a state statute prohibiting the teaching of evolution in public schools, explaining that "the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any [religion]."¹ Subsequently, in *Edwards v. Aguillard*, the Supreme Court invalidated a Louisiana statute requiring the "balanced treatment" of evolution and "creation science" in the public schools, declaring the law unconstitutional because its "preeminent purpose . . . was clearly to advance the religious viewpoint that a supernatural being created humankind."² Other courts have similarly invalidated public schools' attempts to teach thinly disguised religious beliefs regarding evolution.³

The most recent in a long line of cases to uniformly uphold the constitutional prohibition on teaching creationism in public schools is *Kitzmiller v. Dover Area School District*.⁴ Finding that a requirement that students be instructed in the so-called weaknesses in the theory of evolution both "distort[s] and misrepresent[s] scientific knowledge"⁵ and that these attacks have been unmistakably refuted by scientists,⁶ the court held that "intelligent design" is religious and unscientific, and hence cannot be lawfully taught in public schools.

¹ 393 U.S. 97, 106 (1968).

² 482 U.S. 578, 591 (1987).

³ *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 348 (5th Cir. 1999) (striking down an oral disclaimer casting doubt on evolution and referring to "biblical" alternatives); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (holding that a science teacher was properly required by his school district to teach evolution and refrain from discussing his religious views); *Daniel v. Waters*, 515 F.2d 485, 491 (6th Cir. 1975) (striking down statute requiring schools teaching evolution to devote equal time to other theories, including Biblical account of creation); *Selman v. Cobb County Sch. Dist.*, 390 F. Supp. 2d 1286, 1312 (N.D. Ga. 2005), (striking down a textbook disclaimer sticker telling students that evolution is "just a theory"), *vacated and remanded*, 449 F.3d 1320 (11th Cir. 2006); *McLean v. Ark. Bd. of Educ.*, 529 F. Supp. 1255, 1258–64 (E.D. Ark. 1982) (holding that teaching creation science in public schools unconstitutionally advances religion).

⁴ 400 F. Supp. 2d 707, 765 (M.D. Pa. 2005). Americans United served as co-counsel in this case.

⁵ *Id.* at 743.

⁶ *E.g.*, 400 F. Supp. 2d at 739, 741, 744.

The September committee meeting itself augured the show trials of the future. At least six creationists testified in support of the proposed complaint procedure; and the omnipresent Rev. Gene Mills of the Louisiana Family Forum, a religious organization that openly advocates the teaching of creationism, also attended the meeting.⁷ One creationist, John Oller, who spoke in favor of this procedure, said that it would provide the opportunity for people to produce supplementary materials like those written by Charles Voss, vice-president of the creationist Origins Resource Association, who has “published” on the Internet creationist supplementary materials that he calls “Textbook Addenda.”⁸ Clearly, creationists have a vested interest in BESE’s adoption of the unfair and illogical proposed procedure.

Americans United strongly suggests that BESE revise § 2304, Part E, in accordance with the recommendations that the Louisiana Department of Education presented to the Student/School Performance and Support Committee of BESE at its September 16, 2009, meeting. These recommendations would create a better policy and would help BESE avoid the appearance of purposefully advancing religion.

If you have any questions about this or would like further information, please contact Dena Sher at (202) 466-3234 x. 242 or sher@au.org.

Sincerely,



Dena S. Sher
State Legislative Counsel

⁷ In fact, the Rev. Mills stated in an e-mail newsletter that because of Jesus Christ, the Louisiana Family Forum was able to “[a]dvance[] classroom-ready Louisiana Science Education Rules through the perilous State Board of Education process.” E-mail from the Rev. Gene Mills, “Merry Christmas from Louisiana Family Forum,” Dec. 22, 2009.

⁸ <http://textaddons.com>.