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The Louisiana State Board of Elementary and Secondary Education
1201 North Third Street
P.O. Box 94604
Baton Rouge, LA 70804-9064

RE: Louisiana Science Education Act guidelines

Dear Board Members,

This correspondence is being submitted to you by the Alliance Defense Fund ("ADF") to express our concerns over the legality of the proposed regulations that have been promulgated in accordance with La. R.S. 17:285.1, the "Louisiana Science Education Act." The proposed regulations, "Science Education, §2304," contain some problematic language that could subject the state to unnecessary First Amendment litigation.

By way of introduction, the Alliance Defense Fund ("ADF") is a not-for-profit legal alliance of more than 1,200 attorneys nationwide defending the right of people to freely live out their faith, through strategy, training, funding and direct litigation. Our organization exists to educate the public and the government about important constitutional rights, and to vigorously defend those rights, particularly the freedom of religious expression. From our office in Shreveport, ADF's Louisiana Regional Service Center has successfully litigated a high volume of constitutional law cases throughout Louisiana, the U.S. Court of Appeals for the Fifth Circuit, and beyond, and has frequently been called upon to assist and successfully defend many public officials and legislative bodies on a variety of related issues.

Our chief concern with the proposed regulations is the undue emphasis that §2304(D)(4)(d) places upon particular viewpoints that may be regarded as "religious." If passed, this particular provision would improperly expand the lawful intent of La. R.S. 17:285.1 (*i.e.*, to "promote[] critical thinking skills, logical analysis, and open and objective discussion of scientific theories"), unnecessarily and unwisely draw the Board into a nuanced area of First Amendment law, and likely subject the Board to a costly legal challenge.

Establishment Clause jurisprudence requires neutrality and forbids hostility towards religion, even in the public school context. As the Supreme Court has often explained, the Establishment Clause "requires the state to be neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary." *Everson v. Board*

of Education, 330 U.S. 1, 18 (1947); accord *Lemon v. Kurtzman*, 430 U.S. 602, 612 (1971) (Establishment Clause forbids government action with an effect that "inhibits religion"); *Board of Education of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 248 (1990) (government is not permitted to show "hostility toward religion.") Further, the Establishment Clause "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies" respects "ideologies and viewpoints, including religious ones, [that] are broad and diverse." *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 839 (1995).

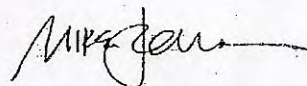
Subsection (D)(4)(d) of the proposed regulations would turn an otherwise lawful, "evenhanded policy" into one that is constitutionally infirm. We can see no reason for the inclusion of that provision, and believe that its risks far outweigh any conceivable benefit that may be imagined.

ADF is keenly interested in the Louisiana Science Education Act and its goal of promoting critical thinking skills, logical analysis, and open and objective discussion of scientific theories. If regulations are adopted that are more consistent with the intent of the Legislature as set forth in Act, and as articulated in the testimony of its authors and supporters during the debates on the House and Senate floors, ADF would consider offering its *pro bono* assistance in defense of the law should it face any legal challenge.

We thank you for your attention to this matter and your dedicated public service.

Very sincerely yours,

ALLIANCE DEFENSE FUND



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