

February 6, 2005

To the Members of the Senate Committee on Education and Cultural Resources:

I'd like to remind everyone on the committee that recently, you, along with every other elected official in Montana including school board members, were required to take the following oath:

"I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

We are asking you, with this resolution, to reinforce the Montana Constitution, specifically, Article 10, section 7 which reads in part: "No sectarian tenets shall be advocated in any public educational institution of the state."

By adopting this resolution, Montana will take a clear position on the subject. This current legislative session is dealing in depth with a current educational issue of constitutionality, and the necessity of defining what a quality education is, within the perimeters of the constitution.

The proponents of intelligent design creationism are fully aware that their cause is unconstitutional, both by national and state standards. They have adopted the tactic of preying on well-meaning Christian school board members in an attempt to end-run the legal issues, and calling it local control. In every situation where the intelligent design creationism curriculum has been adopted by local school boards, the resulting legal challenges have overturned them.

This resolution will give the state of Montana a tool to avoid another educational constitutional battle.

I would like to recount the lawsuits that have led up to to this moment.

In 1968, in *Epperson v. Arkansas*, the United States Supreme Court invalidated an Arkansas statute that prohibited the teaching of evolution. The Court held the statute unconstitutional on the grounds that the First Amendment to the U.S. Constitution does not permit a state to require that teaching and learning must be tailored to the principles or prohibitions of any particular religious sect or doctrine. (*Epperson v. Arkansas* (1968) 393 U.S. 97, 37 U.S. Law Week 4017, 89 S. Ct. 266, 21 L. Ed 228)

In its 1971 decision *Lemon v. Kurtzman*, the Supreme Court set forth a three-pronged inquiry commonly known as the *Lemon* test. To pass this test, the government conduct (1) must have a secular purpose, (2) must have a principal or primary effect that does not advance or inhibit religion, and (3) cannot foster an excessive government entanglement with religion. This has become the standard to which all of these lawsuits are measured.

In 1981, in *Segraves v. State of California*, the court found that the California State Board of Education's *Science Framework*, as written and as qualified by its antidogmatism policy, gave sufficient accommodation to the views of Segraves, contrary to his

contention that class discussion of evolution prohibited his and his children's free exercise of religion. The anti-dogmatism policy provided that class discussions of origins should emphasize that scientific explanations focus on "how", not "ultimate cause", and that any speculative statements concerning origins, both in texts and in classes, should be presented conditionally, not dogmatically. The court's ruling also directed the Board of Education to disseminate the policy, which in 1989 was expanded to cover all areas of science, not just those concerning issues of origins. (*Seagraves v. California* (1981))

In 1982, in *McLean v. Arkansas Board of Education*, a federal court held that a "balanced treatment" statute violated the Establishment Clause of the U.S. Constitution. The Arkansas statute required public schools to give balanced treatment to "creation-science" and "evolution-science". In a decision that gave a detailed definition of the term "science", the court declared that "creation science" is not in fact a science. The court also found that the statute did not have a secular purpose, noting that the statute used language peculiar to creationist literature in emphasizing origins of life as an aspect of the theory of evolution. While the subject of life's origins is within the province of biology, the scientific community does not consider the subject as part of evolutionary theory, which assumes the existence of life and is directed to an explanation of how life evolved after it originated. The theory of evolution does not presuppose either the absence or the presence of a creator. (*McLean v. Arkansas Board of Education* (1982) 529 F. Supp. 1255, 50 U.S. Law Week 2412) Sacramento Superior Court #278978)

In 1987, in *Edwards v. Aguillard*, the U.S. Supreme Court held unconstitutional Louisiana's "Creationism Act". This statute prohibited the teaching of evolution in public schools, except when it was accompanied by instruction in "creation science". The Court found that, by advancing the religious belief that a supernatural being created humankind, which is embraced by the term *creation science*, the act impermissibly endorses religion. In addition, the Court found that the provision of a comprehensive science education is undermined when it is forbidden to teach evolution except when creation science is also taught. (*Edwards v. Aguillard* (1987) 482 U.S. 578)

In 1990, in *Webster v. New Lenox School District*, the Seventh Circuit Court of Appeals found that a school district may prohibit a teacher from teaching creation science in fulfilling its responsibility to ensure that the First Amendment's establishment clause is not violated and that religious beliefs are not injected into the public school curriculum. The court upheld a district court finding that the school district had not violated Webster's free speech rights when it prohibited him from teaching "creation science", since it is a form of religious advocacy. (*Webster v. New Lenox School District* #122, 917 F. 2d 1004)

In 1994, in *Peloza v. Capistrano School District*, the Ninth Circuit Court of Appeals upheld a district court finding that a teacher's First Amendment right to free exercise of religion is not violated by a school district's requirement that evolution be taught in biology classes. Rejecting plaintiff Peloza's definition of a "religion" of "evolutionism", the Court found that the district had simply and appropriately required a science teacher to teach a scientific theory in biology class. (*John E. Peloza v. Capistrano Unified School District*, (1994) 37 F. 3rd 517)

In 1997, in *Freiler v. Tangipahoa Parish Board of Education*, the United States District Court for the Eastern District of Louisiana rejected a policy requiring teachers to read aloud a disclaimer whenever they taught about evolution, ostensibly to promote "critical thinking". Noting that the policy singled out the theory of evolution for attention, that the only "concept" from which students were not to be "dissuaded" was "the Biblical concept of Creation", and that students were already encouraged to engage in critical thinking, the Court wrote that, "In mandating this disclaimer, the School Board is endorsing religion by disclaiming the teaching of evolution in such a manner as to convey the message that evolution is a religious viewpoint that runs counter to ... other religious views". Besides addressing disclaimer policies, the decision is noteworthy for recognizing that curriculum proposals for "intelligent design" are equivalent to proposals for teaching "creation science". (*Freiler v Tangipahoa Board of Education*, No. 94-3577 (E.D. La. Aug. 8, 1997). On August 13, 1999, the Fifth Circuit Court of Appeals affirmed the decision; on June 19, 2000, the Supreme Court declined to hear the School Board's appeal, thus letting the lower court's decision stand.

In 2000, District Court Judge Bernard E. Borene dismissed the case of *Rodney LeVake v Independent School District 656, et al.* (Order Granting Defendants' Motion for Summary Judgment and Memorandum, Court File Nr. CX-99-793, District Court for the Third Judicial District of the State of Minnesota [2000]). High school biology teacher LeVake had argued for his right to teach "evidence both for and against the theory" of evolution. The school district considered the content of what he was teaching and concluded that it did not match the curriculum, which required the teaching of evolution. Given the large amount of case law requiring a teacher to teach the employing district's curriculum, the judge declared that LeVake did not have a free speech right to override the curriculum, nor was the district guilty of religious discrimination.

Disclaimers about evolution are a popular antievolution strategy, and most of them follow the "theory, not fact" approach of the disclaimer affixed inside the books used in Cobb County's public schools, which reads:

"This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully and critically considered."

*Selman et al. v. Cobb County School District et al.* was heard in the Atlanta Division of the US District Court of the Northern District of Georgia, with Judge Clarence Cooper presiding, in November 2004.

After carefully identifying the precise issue -- whether the disclaimer violated the Establishment Clause -- and reviewing the facts in the case, Judge Cooper's ruling applies the Supreme Court's *Lemon* test. "Under the *Lemon* test," Cooper writes, "a government-sponsored message violates the Establishment Clause of the First Amendment if (1) it does not have a secular purpose, (2) its principal or primary effect advances or inhibits religion, or (3) it creates an excessive entanglement of the government with religion." Since the second and third prongs of the *Lemon* test are interrelated, he considered them together.

As you can see with these specific examples, the intelligent design creationism agenda is clearly been established as unconstitutional. The community of Darby is still reeling in its' destructive wake. Whenever a local school board has adopted the policy, it has ended in lawsuits and ultimately the same decision.

I have a letter from the superintendent of Hamilton School District, verifying the proponents of intelligent design creationism's intentions to continue to further their agenda.

By passing this resolution, Montana will establish a clear position on this subject, saving communities from this destructive and unnecessary process.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Gantt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corrine Gantt

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