

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
(AUSTIN DIVISION)**

---

**CHRISTINA CASTILLO COMER** )  
211 Northern Trail )  
Leander, Texas 78641, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
**ROBERT SCOTT**, Commissioner, )  
Texas Education Agency, )  
1701 N. Congress Avenue )  
Austin, Texas 78201, )  
 )  
In his official capacity, )  
 )  
and )  
 )  
**TEXAS EDUCATION AGENCY** )  
1701 N. Congress Avenue )  
Austin, Texas 78201, )  
 )  
Defendants. )

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C.A. No. \_\_\_\_\_

**COMPLAINT**

**(For Declaratory and Injunctive Relief for Violation of Establishment and Due Process  
Clauses of the United States Constitution)**

**Introduction**

1. Creationism is a religious belief. Teaching creationism as science in public schools violates the Establishment Clause of the First Amendment to the United States Constitution. The Texas Education Agency (“Agency”) has a policy of purported “neutrality” on teaching creationism as science in public schools. By professing “neutrality,” the Agency credits

creationism as a valid scientific theory. Creationism, however, is not a valid scientific theory; it is a religious belief. The Agency's policy is not neutral at all, because it has the purpose or effect of inviting dispute about an issue—teaching creationism as science in public schools—that is forbidden by the Establishment Clause. The Agency's "neutrality" policy has the purpose or effect of endorsing religion, and violates the Establishment Clause.

2. Christina Castillo Comer was the Director of Science for the Curriculum Division of the Agency. Director Comer held her position for more than ten years, receiving numerous awards and commendations for her work. In August 2006, Director Comer's supervisor recommended that she receive an "out-of-cycle merit [pay] increase of 3%," recognizing that Director Comer "consistently exceeds the expectations for her position." (Ex. A.)

3. On November 8, 2007, the Agency fired Director Comer for contravening the Agency's unconstitutional "neutrality" policy by forwarding an email to other science educators announcing an upcoming lecture about evolution and creationism. According to the Agency's memorandum recommending that Director Comer be fired:

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled "Inside Creationism's Trojan Horse." The email states that the speaker [Barbara Forrest] is a board member of a science education organization, and the email clearly indicates that **the group opposes teaching creationism in public education.**

...

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer's email implies endorsement of the speaker and **implies that TEA endorses the**

**speaker’s position on a subject on which the agency must remain neutral.** Thus, sending this email compromises the agency’s role in the TEKS revision process by creating the perception **that TEA has a biased position on a subject directly related to the science education TEKS.**

(Ex. B) (emphases added).

4. Teaching creationism in public schools violates the Establishment Clause “because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.” Edwards v. Aguillard, 482 U.S. 578, 597 (1987). *See also* Kitzmiller v. Dover Area Sch. Dist., 400 F. Supp. 2d 707 (M.D. Pa. 2005). Similarly, the Agency’s firing of its Director of Science for not remaining “neutral” on this subject violates the Establishment Clause, because it employs the symbolic and financial support of the State of Texas to achieve a religious purpose, and so has the purpose or effect of endorsing religion. By professing “neutrality,” the Agency credits creationism as a valid scientific theory. Finally, the Agency fired Director Comer without according her due process as required by the Fourteenth Amendment—a protection especially important here because Director Comer was fired for contravening an unconstitutional policy.

### **Jurisdiction and Venue**

5. This Court has original jurisdiction over Plaintiff’s constitutional claims pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendants reside in this District, and the events giving rise to the claims occurred in this District.

## **Parties**

7. Plaintiff Christina Castillo Comer is a resident of Leander, Texas. Until fired for contravening an unconstitutional policy, she was the Director of Science for the Curriculum Division in the Texas Education Agency in Austin. She held that position for almost ten years (since May 1998), receiving many awards and commendations for her contributions to science education in Texas.

8. Defendant Robert Scott is the Commissioner of the Texas Education Agency. He is being sued in his official capacity. He supervises Curriculum Manager Monica Martinez, who wrote the memorandum recommending the termination of Director Comer, as well as Deputy Commissioner for Statewide Programs Lizzette Reynolds and Deputy Associate Administrator for Standards and Alignment Sharon Jackson. Martinez, Reynolds, and Jackson all participated in the firing of Director Comer.

9. The Agency was created by Sections 7.001-010, Tex. Educ. Code Ann. Headed by a Commissioner (currently, Defendant Scott) who is appointed by the Governor of Texas, the Agency and the Commissioner, *inter alia*, develop and manage the statewide curriculum, and administer the statewide assessment program. *See generally* Tex. Educ. Code Ann. §§ 7.021, 7.055. *See also* Texas Education Agency Mission and Responsibilities. (Ex. C.)

## **Background**

### **A. Director Comer's Responsibilities at the Texas Education Agency**

10. As the Director of Science for the Curriculum Division, Director Comer:

- \* directed the K-12 science program including curricular issues involving assessment, textbook adoption, professional development, professional outreach to school boards, administrators, organizations, and teacher groups;

- \* provided technical assistance to over 1200 school districts and charter schools, over 12,000 science teachers K-12, and over four million students;
- \* provided oral and written science presentations at the national, state and regional levels;
- \* wrote and directed grant programs for science instruction; and,
- \* managed various programs for the state including the Presidential Awardees for Excellence in Mathematics and Science Teaching program and the National Youth Science Camp program for outstanding science seniors.

11. Director Comer has worked in the field of science education for more than 30 years. Before joining the Agency, Director Comer worked as a Science Mentor Teacher, Urban Systemic Initiative (1996-1998), a Science Teacher in the San Antonio Independent School District (1972-1995), a high school administrator in the Burbank High School in San Antonio (1995-1996), a Texas Science Standards Writer (1995-1998), and Science Teacher Consultant for the American Association for the Advancement of Science (1992-1995).

**B. Recognition of Director Comer’s Outstanding Contributions to Science Education in Texas**

12. Over the years Director Comer has received many awards, including:
- \* Outstanding Service to Texas Science Teachers      November 2007  
Science Teachers Association of Texas
  - \* Distinguished Service Award      November 2007  
Texas Science Education Leadership Association
  - \* Outstanding Service Award      September 2007  
University of Texas Medical Branch
  - \* Outstanding Service Award      September 2006  
University of Texas Medical Branch
  - \* Excellence in Elementary Science Rebecca Sparks Award      2006

### Texas Council of Elementary Science

*	Distinguished Service in Recognition of Exemplary Leadership, Dedication and Commitment Texas Regional Collaboratives	2005
*	Recognition of Outstanding Dedication and Support of Texas Teachers San Antonio, Texas	2004
*	Friend of TESTA Promoting Earth Science Award Texas Earth Science Teachers Association	1999
*	Outstanding Contribution to Science K-12 Award University of Texas Arlington	1999
*	Outstanding Achievement Award Metropolitan Association of Teachers of Science, Houston	1998
*	Exemplary Achievement in Science Award Texas Science Hall of Fame	1998
*	Outstanding Leadership in Science Award Texas Statewide Systemic Initiative	1996
*	Phi Delta Kappa San Antonio, Texas	1995
*	Outstanding Service in Science Education Texas State Senate, Frank Madia	1993

### C. The Theory of Evolution

13. “‘Evolution’ is defined as ‘the theory that the various types of animals and plants have their origin in other preexisting types, the distinguishable differences being due to modifications in successive generations.’” Aguillard, 482 U.S. at 599 (Powell, J., concurring) (quoting Webster’s Third New International Dictionary 789 (unabridged ed. 1981)).

14. The National Academy of Sciences summarizes the theory of evolution as follows: “Biological evolution concerns changes in living things during the history of life on

earth. It explains that living things share common ancestors. Over time, evolutionary change gives rise to new species. Darwin called this process ‘descent with modification,’ and it remains a good definition of biological evolution today.” Science and Creationism: A View from the National Academy of Sciences 27 (2d ed. 1999).

15. In science, the term “theory” has a distinct meaning and does not suggest uncertainty, doubt or speculation. The National Academy of Sciences defines a scientific theory as “a well-substantiated explanation of some aspect of the natural world that can incorporate facts, laws, inferences and tested hypotheses.” Science and Creationism 2. In addition to the theory of evolution, other examples of a scientific theory include the germ theory of diseases, the heliocentric theory of the solar system, atomic theory (the basis of the periodic table of the elements), the theory of plate tectonics, and the theory of gravity. These scientific theories integrate and explain such a wide range of data that they are considered crowning achievements of their respective fields.

16. According to the National Academy of Sciences, “evolution is one of the strongest and most useful scientific theories we have,” and “[t]he scientific consensus around evolution is overwhelming.” Science and Creationism 2, 28.

17. The American Association for the Advancement of Science states: “The contemporary theory of biological evolution is one of the most robust products of scientific inquiry. It is the foundation for research in many areas of biology as well as an essential element of science education.” AAAS Board Resolution on Intelligent Design Theory. (Ex. D.)

18. In Kitzmiller, the court relied on un rebutted expert testimony that “evolution, including common descent and natural selection, is ‘overwhelmingly accepted’ by the scientific community and that every major scientific association agrees.” 400 F. Supp. 2d at 743.

19. In Selman v. Cobb County School District, the court observed that “evolution is more than a *theory* of origin in the context of science. To the contrary, evolution is the dominant scientific theory of origin accepted by the majority of scientists.” 390 F. Supp. 2d 1286, 1309 (D. Ga.) (emphasis in original), *vacated and remanded on other grounds*, 449 F.2d 1320 (11th Cir. 2005).

20. The Texas Academy of Science describes the theory of evolution as “the primary unifying cognitive framework in the biological sciences.” Position Against the Inclusion of Creationism and Intelligent Design Concepts in the Science Curricula in Texas Schools. (Ex. E.)

21. According to the Science Teachers Association of Texas, “[t]here is no longer a debate among scientists about whether evolution has taken place.” Thus, “[i]f evolution is not taught properly, students will not achieve the level of scientific literacy needed for science-related careers and life in a society where understanding of the core concepts of science is critical.” STAT Position Statement on Evolution. (Ex. F.)

#### **D. Creationism**

22. While the theory of evolution is overwhelmingly accepted in the scientific community, it has been “historically opposed by religious denominations” which perceive that it contradicts their religious doctrines about the origin and development of life. Aguillard, 482 U.S. at 582.

23. “Too often, evolution has not been emphasized in science curricula and classrooms in a manner commensurate with its importance because of official policies, intimidation of science teachers, and the general public’s misunderstanding of the term ‘theory.’ Teachers are also being pressured to introduce nonscientific views, including ‘creationism,’ ‘intelligent design,’ ‘initial complexity,’ and ‘abrupt appearance,’ which are not supported by

evidence and have no legitimate place in the science curriculum.” STAT Position Statement on Evolution. (Ex. F.)

24. Opponents of evolutionary theory repeatedly have attempted to forbid, limit or otherwise undermine the teaching of the theory of evolution in the public schools. Challenges have included laws or policies prohibiting the teaching of evolution; requiring teachers to make statements or disclaimers questioning the validity of the theory of evolution; and requiring science teachers to present anti-evolutionary views, including religious views not based on scientific evidence such as creationism or “intelligent design.” *See generally* McLean v. Ark. Bd. of Educ., 529 F. Supp. 1255, 1258-60 (E.D. Ark. 1982) (discussing the history of Fundamentalism, evolution, and creationism in the United States and observing that “the creationist organizations consider the introduction of creation science into the public schools [as] part of their ministry”).

25. In Kitzmiller, the court ruled that intelligent design is “creationism re-labeled.” 400 F. Supp. 2d at 722. The court held that the Dover School Board violated the Establishment Clause by requiring teachers to read a statement in the ninth grade biology class that “Darwin’s Theory . . . is not a fact,” that “Intelligent Design is an explanation of the origin of life that differs from Darwin’s view,” and that a reference book “is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.” Id. at 761.

26. The court in Kitzmiller also described the jurisprudential history of attempts to insert creationism into public school curricula. *See* 400 F. Supp. 2d 711-12. In 1925, the criminal prosecution of a public school teacher for teaching about evolution in violation of a Tennessee statute culminated in the famous “monkey trial.” Scopes v. State, 154 Tenn. 105 (1927). Forty-one years later, the Supreme Court of the United States struck down an Arkansas

statute prohibiting the teaching of evolution. Epperson v. Arkansas, 393 U.S. 97 (1968). In 1987, the Court ruled that a Louisiana statute requiring public schools to teach creationism along with evolution (the “Balanced Treatment for Creation-Science and Evolution-Science Act”) violated the Establishment Clause. Aguillard, 482 U.S. at 596-97. The statute had the “purpose of discrediting evolution by counterbalancing its teaching at every turn with the teaching of creationism.” Id. at 589. The belief that a supernatural creator is responsible for the creation of humankind is a religious viewpoint. Id. at 591. The statute was “designed *either* to promote the theory of creation science that embodies a particular religious tenet *or* to prohibit the teaching of a scientific theory disfavored by certain religious sects.” Id. at 593. “Out of many possible science subjects taught in the public schools, the legislature chose to affect the teaching of the one scientific theory that historically has been opposed by certain religious sects.” Id. Thus, the Court held that the statute “violates the Establishment Clause of the First Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.” Id. at 597.

27. The current Texas statewide assessment standards require that students learn the theory of evolution. *See* 19 Tex. Admin. Code § 119.43(b)(1), (c)(7).

28. Nevertheless, upon information and belief, “[s]tarting this summer, the [Texas] state education board will determine the curriculum for the next decade and decide whether the ‘strengths and weaknesses’ of evolution should be taught” in public schools. Laura Beil, Opponents of Evolution Are Adopting New Strategy, N.Y. Times, June 4, 2008, at A14. (Ex. G.)

**E. Defendants’ Firing of Director Comer**

29. On Friday, October 26, 2007, Director Comer read an email dated October 23 from Glenn Branch, Deputy Director of the National Center for Science Education (“Branch

email”) (Ex. H). The subject of the Branch email was “Barbara Forrest in Austin 11/2.” The email read:

Dear Austin-area friends of NCSE,

I thought you might like to know that Barbara Forrest will be speaking on “Inside Creationism’s Trojan Horse” in Austin on November 2, 2007. Her talk, sponsored by the Center for Inquiry Austin, begins at 7:00 p.m. in the Monarch Event Center, Suite 3100, 6406 North IH-35 in Austin. The cost is \$6; free to friends of the Center.

In her talk, Forrest will provide a detailed report on her expert testimony in the *Kitzmiller v. Dover School Board* trial as well as an overview of the history of the “intelligent design” movement. Forrest is a Professor of Philosophy in the Department of History and Political Science at Southeastern Louisiana University; she is also a member of NCSE’s board of directors.

For further details, visit:

[http://www.centerforinquiry.net/austin/events/barbara\\_forrest\\_insider\\_creationisms\\_trojan\\_horse\\_lecture/](http://www.centerforinquiry.net/austin/events/barbara_forrest_insider_creationisms_trojan_horse_lecture/)

Sincerely,

Glenn Branch  
Deputy Director  
National Center for Science Education, Inc.

...

30. Director Comer “googled” Dr. Forrest and found that her credentials appeared impressive. Because Director Comer thought that Dr. Forrest’s comments about the Kitzmiller trial might be interesting to science educators, she forwarded the Branch email to two listservs: STATBOD@googlegroups.com, which is the private listserv of the officers of Science Teachers Association of Texas, and texasearth@googlegroups.com, most of whom are local geo-science educators.

31. Director Comer also forwarded the Branch email to seven individuals: Kamil Jbeily, Executive Director of the Texas Regional Collaboratives at UT; Carol Fletcher, Assistant Director and R&D Coordinator of the Texas Regional Collaboratives at UT; Kevin Fisher, Past President of the Science Teachers Association of Texas; Gina Day, then Director of Student Support Initiatives at TEA; Julie Harris-Lawrence, Director of Math and Science Partnerships at TEA; Irene Pickhardt, Assistant Director of Science for the Curriculum Division at TEA; and, Barbara ten Brink, Elementary Science Specialist at Austin Independent School District and Past President of the Science Teachers Association of Texas.

32. Director Comer forwarded the Branch email only to science educators in the Austin area, a total of about 36 people. She sent her forwarding email at 9:49 a.m. on October 26. The only comment on her forwarding email was “FYI.” (Ex. I.)

33. Later that same morning, Director Comer was pulled out of a meeting by Sharon Jackson, Deputy Associate Commissioner for Standards and Alignment. Jackson brought Director Comer into Jackson’s office.

34. Deputy Associate Commissioner Jackson then handed Director Comer a hard copy of an email from Deputy Commissioner Lizzette Reynolds, Statewide Policy and Programs, to Jackson.

35. In this email, Deputy Commissioner Reynolds asserted in substance that Director Comer’s forwarding of the Branch email was an offense worthy of termination or at least reassignment of her duties, that Director Comer must immediately issue a disclaimer, and that she was not allowed to express opinions on this subject.

36. Director Comer orally responded to Deputy Associate Commissioner Jackson in words to the effect of asking: “Is she firing me over creationism?” Deputy Associate

Commissioner Jackson responded in words to the effect: “Just keep reading the email.” After reading more of the email, Director Comer responded that she had only written “FYI” on her forwarding email, that she had not expressed a personal opinion about creationism in her forwarding of the Branch email, and that she forwarded the Branch email only to local individuals, not to the official TEA listserv.

37. Deputy Associate Commissioner Jackson ordered Director Comer to draft and send a disclaimer.

38. Director Comer left immediately to draft the disclaimer. Director Comer sent three drafts of her disclaimer email to Deputy Associate Commissioner Jackson for her review and approval. (Exs. J, K & L.)

39. At 1:33 p.m. that same day, Director Comer sent an email to everyone to whom she had forwarded the Branch email, stating: “Please disregard the previous email with the subject title ‘Barbara Forrest...’; it was sent in error. This email does not represent the position of the Texas Education Agency.” (Ex. M.) Both Deputy Associate Commissioner Jackson and Deputy Commissioner Reynolds reviewed and approved this disclaimer. (Ex. N.)

40. Director Comer was out of the office on personal matters the following week (October 28-November 2), plus the first two days of the next week (November 5-6). She had no contact with Martinez, Jackson, or Reynolds during that time.

41. When Director Comer returned to the office on Wednesday, November 7, she found that she was locked out of her computer. Thinking she had made an error in attempting to log in, she left to attend a 9:00 a.m. meeting of the Curriculum Division.

42. At the conclusion of the Curriculum Division meeting, Tom Shindell, Director for Organizational Development, instructed Director Comer to meet with him in his office.

43. Director Comer met with Shindell and Curriculum Manager Monica Martinez in Shindell's office. Shindell said, "we are here to discuss your termination."

44. Shindell handed Director Comer two documents. One was a memorandum dated November 5, 2007, from Martinez through Jackson to Susan Barnes, Associate Commissioner for Standards and Programs, Re: "Proposed Disciplinary Action." (Ex. B) ("Termination Memo").

45. The Termination Memo reads in pertinent part:

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled "Inside Creationism's Trojan Horse." The email states that the speaker [Barbara Forrest] is a board member of a science education organization, and the email clearly indicates that **the group opposes teaching creationism in public education.**

...

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer's email implies endorsement of the speaker and **implies that TEA endorses the speaker's position on a subject on which the agency must remain neutral.** Thus, sending this email compromises the agency's role in the TEKS revision process by creating the perception **that TEA has a biased position on a subject directly related to the science education TEKS.**

(emphases added).

46. Shindell told Director Comer that she had until noon the following day to resign; otherwise she would be fired. Shindell informed Director Comer that she was on administrative leave and that she could not speak to anyone at the Agency or any other entity. Neither Shindell

nor Jackson (nor anyone else) informed Director Comer of any right to appeal her termination as required by Texas Operating Procedures 07-08(2), either during this meeting or at any other time.

47. Shindell then walked Director Comer to her office and asked for her badge.

48. Given the “choice” to quit or be fired, Director Comer resigned.

49. The following day, November 8, Director Comer went to Shindell’s office where they printed out the resignation letter that she had typed on her laptop (but was unable to print because the laptop had been encrypted). (Ex. O.)

50. Director Comer was never informed of her right to appeal her termination pursuant to Texas Operating Procedures 07-08(2), nor was she given an opportunity to respond to the accusations and assertions in the Termination Memo.

51. Upon information and belief, the Agency’s firing of Director Comer received widespread publicity, locally, statewide, nationally, and internationally.

52. On December 10, 2007, 121 Ph.D.-holding professors of biology at various Texas universities—including the University of Texas, Baylor University, Rice University, Texas A&M, Texas State University, the University of Houston, Texas Tech University and the University of North Texas—wrote an open letter to Robert Scott, Commissioner of the Texas Education Agency, criticizing the firing of Director Comer. (Ex. P.) These professors criticized the unconstitutional policy, referenced in the Termination Memo, that evolution and intelligent design are “subject[s] on which the agency must remain neutral”:

It is inappropriate to expect the TEA’s director of science curriculum to “remain neutral” on this subject, any more than astronomy teachers should “remain neutral” about whether the Earth goes around the sun. In the world of science, evolution is equally well-supported and accepted as heliocentrism [the theory

that the sun is the center of our solar system]. Far from remaining neutral, it is the clear duty of the science staff at TEA and all other Texas educators to speak out unequivocally: evolution is a central pillar in any modern science education, while “intelligent design” is a religious idea that deserves no place in the science classroom at all.

(Ex. P.)

### COUNT ONE

#### **(Violation of the Establishment Clause of the First Amendment to the United States Constitution: Declaratory Relief That TEA’s “Neutrality” Policy Regarding Creationism Is Unconstitutional)**

53. The allegations of paragraphs 1-52 are incorporated by reference.

54. Evolution is “the dominant scientific theory of origin accepted by the majority of scientists.” Selman, 390 F. Supp. 2d at 1309. Creationism’s reliance on a supernatural designer “remove[s] creationism from the realm of science and ma[kes] it a religious proposition.” Kitzmiller, 400 F. Supp. 2d at 720 (citing Aguillard, 482 U.S. at 591-92, and McLean, 529 F. Supp. at 1265-66). Under the Supreme Court’s decision in Aguillard, teaching creationism in public schools violates the Establishment Clause.

55. The Termination Memo reads in pertinent part:

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled “Inside Creationism’s Trojan Horse.” The email states that the speaker [Barbara Forrest] is a board member of a science education organization, and the email clearly indicates that **the group opposes teaching creationism in public education.**

...

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the

forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer’s email implies endorsement of the speaker and **implies that TEA endorses the speaker’s position on a subject on which the agency must remain neutral.** Thus, sending this email compromises the agency’s role in the TEKS revision process by creating the perception **that TEA has a biased position on a subject directly related to the science education TEKS.**

(Ex. B.) (emphases added).

56. Under Aguillard, the “subject on which the Agency must remain neutral”—the “teaching [of] creationism in public education”—is a subject on which the Agency may not, without violating the Establishment Clause, have, express, or impose a so-called “neutral” position.

57. By professing “neutrality,” the Agency unconstitutionally credits creationism, a religious belief, as a valid scientific theory. The Agency’s policy is not neutral at all, because it has the purpose or effect of inviting dispute about whether to teach creationism as science in public schools, despite the fact that the Establishment Clause prohibits the teaching of creationism as science in public schools. The Agency’s “neutrality” policy violates the Establishment Clause of the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, because it has the purpose or effect of endorsing religion.

## **COUNT TWO**

### **(Violation of the Establishment Clause of the First Amendment to the United States Constitution: Termination of Director Comer)**

58. The allegations of paragraphs 1-52 are incorporated by reference.

59. The actions of Defendants set forth in paragraphs 1-52 above entitle Director Comer to relief under 42 U.S.C. § 1983. Defendants, acting under color of law, deprived Director Comer of her constitutional rights under the Establishment Clause by firing her for contravening an unconstitutional policy.

60. Specifically, the Agency fired her for violating the Agency's unconstitutional policy of "neutrality" by forwarding an "email [that] clearly indicates that the group [of which the speaker is a board member] opposes teaching creationism in public education." Director Comer's termination pursuant to the Termination Memo violates the Establishment Clause of the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, because it has the purpose or effect of endorsing religion.

### **COUNT THREE**

#### **(Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution)**

61. The allegations of paragraphs 1-52 are incorporated by reference.

62. The actions of Defendants set forth in paragraphs 1-52 entitle Director Comer to relief under 42 U.S.C. § 1983 because Defendants, acting under color of law, deprived Director Comer of her Fourteenth Amendment due process rights by firing her without affording her the rights to which she was entitled under Texas Operating Procedures 07-08(2).

### **PRAYER FOR RELIEF**

WHEREFORE, having been fired for contravening an unconstitutional policy, Plaintiff respectfully requests that the Court issue the following:

a. a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that any policy or practice of the Texas Education Agency of being “neutral” on the subject of the teaching of creationism in Texas public schools violates the Establishment Clause;

b. a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 that the firing of Director Comer by the Texas Education Agency for sending an email and thereby contravening the Agency’s unconstitutional “neutrality” policy violates the Establishment Clause;

c. an injunction requiring the offer to Plaintiff of reinstatement into her former position as Director of Science, Curriculum Division, Texas Education Agency;

d. an injunction against the Agency’s having, expressing, or imposing through any means, a policy of “neutrality” with respect to the teaching of creationism in the Texas public schools, or a policy that expressly or implicitly equates evolution and creationism, or that in any way credits creationism as a valid scientific theory;

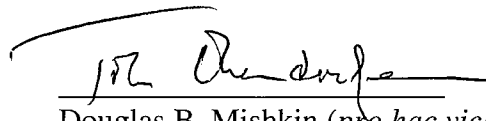
e. an order awarding Plaintiff the costs incurred in this litigation, including attorneys’ fees pursuant to 42 U.S.C. § 1988; and,

f. any other relief the Court deems just and proper.

Respectfully submitted,



Judith W. Bagley  
Patton Boggs LLP  
2001 Ross Avenue  
Suite 3000  
Dallas, TX 75201  
214-758-1500



Douglas B. Mishkin (*pro hac vice* pending)  
John L. Oberdorfer (*pro hac vice* pending)  
Pamela S. Richardson (*pro hac vice* pending)  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, DC 20037  
202-457-6000

June 30, 2008

# **Exhibit A**

## MEMORANDUM

TO: Human Resources

THRU: Adam Jones

THRU: Susan Barnes *B*

THRU: Sharon Jackson *W*

FROM: George R. Rislov *GR*

SUBJ: Out-of Cycle Merit Recommendation for Christina Comer

DATE: August 28, 2006

Chris Comer consistently exceeds the expectations for her position. Over the past year she has provided significant assistance and guidance to the Director of Mathematics as she moved from the position of Asst. Math Director to Director. Ms. Comer has also collaborated with other divisions on the successful implementation of many projects related to the science initiative. She has been an integral part of the development of the new Texas Science Diagnostic System. She has worked with SBEC on certification related issues including providing support in the Master Science Teacher certification exam. Additionally, Ms. Comer continues to work very well with the Student Assessment Division. Changes in the organization of the division earlier this year led to her being passed over when she was eligible for her merit increase in May.

Please consider this recommendation on behalf of Ms. Comer for an out-of-cycle merit increase of 3%.

Attachment-Personnel Action Form

EDUCATION

PR 3 44

HUMAN RESOURCES

# **Exhibit B**



# TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Robert Scott  
Commissioner

## MEMORANDUM

TO: Susan Barnes

THROUGH: Sharon Jackson *SS*

FROM: Monica Martinez *mm*

DATE: November 5, 2007

RE: Proposed Disciplinary Action

HUMAN RESOURCES  
11/5/07 - 6 PM 4:08

In accordance with OP 07-08, *Employee Disciplinary Actions and Complaint Procedures*, I propose to terminate the employment of Chris Castillo-Corner due to misconduct and insubordination. Ms. Comer has engaged in a series of incidents evidencing a serious lack of good judgment and failure to follow agency policies and supervisory directives.

Ms. Comer is employed as the Director of Science in a Manager III level position. As the Director of Science, Ms. Comer should understand that it is her job to explain law and rule regarding the science Texas Essential Knowledge and Skills (TEKS), but not cross the line into providing guidance or opinions about instructional methodology or any other matters about which we have no statutory authority. It is crucial for Ms. Comer to exercise good judgment and the utmost care when sharing information regarding science education in Texas whether orally or in writing. It is also essential that Ms. Comer support the integrity of the upcoming TEKS development and revision process and ensure that it does not appear in any way that she is advocating for any given position or stance. Ms. Comer should be well aware of her role in the TEKS revision process and the need to maintain neutrality based on the guidance provided by agency management and division procedures as well as numerous meetings and discussions on this topic.

The following summarizes Ms. Comer's recent history of performance problems and the incidents giving rise to this proposed action. On February 23, 2007 Ms. Comer was given a Letter of Counseling due to concerns about her involvement with work outside the agency and failure to follow supervisory directives. The Letter of Counseling included the following directives:

- You are not to attend or present at any meeting or conference, whether on your own time or on agency time, in which you represent the agency, attend as the Director of Science, or present on a science related topic unless you have obtained the appropriate prior approval.

- You are not to travel in-state or out-of-state to represent the agency as the Director of Science, whether on your own time or on agency time, unless you have obtained prior approval.
- When making any presentations, you are to obtain approval on the content prior to the presentation.
- You are not to communicate in writing or otherwise with anyone outside the agency in any way that might compromise the transparency and/or integrity of the upcoming TEKS development and revision process.

On October 9, 2007, it was reported that Ms. Comer stood up in front of the Texas Regional Collaboratives Science Directors, who represent educators from all over the state, and said that Robert Scott was only Acting Commissioner and that there was no real leadership at the agency. This comment demonstrates a serious lack of judgment and constitutes misconduct as defined in OP 07-08, Section 8(a)(4).

(4) Misconduct - Improper, unacceptable, and/or unlawful behavior. Some examples of misconduct include:

- (p) Conduct that negatively impacts TEA.

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled "Inside Creationism's Trojan Horse". The email states that the speaker is a board member of a science education organization, and the email clearly indicates that the group opposes teaching creationism in public education. Sending this email not only demonstrates a serious lack of good judgment, it also violates the directive Ms. Comer was given not to communicate in writing or otherwise with anyone outside the agency in any way that might compromise the integrity of the TEKS development and revision process. This constitutes misconduct in violation of OP 07-08, Section 8(a)(4)(p) as well as insubordination as defined by OP 07-08, Section 8(a)(3).

(3) Insubordination - Failure to follow a directive given by a supervisor or other agency representative who possesses the authority to give the directive; use of language or conduct that shows disrespect towards one's supervisor(s); acting outside the scope of one's authority.

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer's email implies endorsement of the speaker and implies that TEA endorses the speaker's position on a subject on which the agency must remain neutral. Thus, sending this email compromises the agency's role in the TEKS revision process by creating the perception that TEA has a biased position on a subject directly related to the science education TEKS.

Ms. Comer's forwarding of this email not only violates an established directive, as stated above, it directly conflicts with her responsibilities as the Director of Science. In addition, Ms. Comer's

assertion that she sent the email innocently is itself unacceptable, as it indicates that she lacks an adequate understanding of TEA's role in the TEKS process and her appropriate role as the Director of Science.

On October 29, 2007 Ms. Comer attended a meeting at the Courtyard Marriot without submitting an off-site activity form or obtaining approval to attend the meeting. This violates the directive Ms. Comer was given not to travel in-state or out-of-state to represent the agency as the Director of Science, whether on her own time or on agency time, unless she obtained prior approval. This also constitutes insubordination pursuant to the TEA OP 07-08.

On August 14, 2007, Ms. Comer sent me an email stating that she had given a "verbal report sans slideshow" at a Texas Science Educational Leadership Association meeting. Ms. Comer said they wanted to post the presentation on their website and she was requesting approval of a PowerPoint presentation after the fact. Ms. Comer did not obtain prior approval to present at this meeting which violates the directives specified in the Letter of Counseling to obtain prior approval to make a presentation and prior approval on the content of the presentation. The fact that the presentation was made without back up slides does not exempt Ms. Comer from this directive. This also constitutes insubordination pursuant to the TEA OP 07-08.

Additionally, the PowerPoint slides submitted to me for approval after the fact include information about the SBOE TEKS review process for science that had not yet been confirmed by the SBOE and was therefore inappropriate to share. The slides also include comments on policy implications that are inappropriate for Ms. Comer to make. In addition, the presentation includes information on conceptual chemistry and physics courses, the inclusion of which could be viewed as Ms. Comer and/or the agency advocating for this teaching methodology. This demonstrates extreme lack of good judgment with respect to determining which information is and is not appropriate to share, and a lack of understanding of the impropriety of including such information in a presentation. The fact that Ms. Comer gave a presentation that included inappropriate content demonstrates that she lacks an adequate understanding of her appropriate role as Science Director.

Based on the reasons set forth above, I request that you approve this recommendation for the termination of Ms. Comer's employment. This action is necessary due to Ms. Comer's repeated incidents of insubordination, the seriousness of her misconduct, and the extent to which she has demonstrated poor judgment.

Approved       Disapproved      Date: Nov. 5, 2007

  
\_\_\_\_\_  
Susan Barnes

Associate Commissioner for Standards and Programs

Attachments: Letter of Counseling  
Email from Chris Comer dated 10-26-07  
Email from Chris Comer dated 8-14-07

Cc: Tom Shindell  
Harvester Pope

# **Exhibit C**

SEARCH TEA's Site

Advanced Search



# Texas Education Agency Mission & Responsibilities

## Mission

The mission of the Texas Education Agency is to provide leadership, guidance, and resources to help schools meet the educational needs of all students.

(Note: The agency's current mission statement is included on page 6 of the current strategic plan )

## Composition

The Texas Education Agency (TEA) is comprised of the commissioner of education and agency staff. The TEA and the State Board of Education (SBOE) guide and monitor activities and programs related to public education in Texas. The SBOE consists of 15 elected members representing different regions of the state. One member is appointed chair by the governor.

## Roles & Responsibilities

Located in Austin, Texas at 1701 N. Congress Ave., the TEA is the administrative unit for primary and secondary public education. Under the leadership of the commissioner of education, the TEA:

- manages the textbook adoption process;
- oversees development of the statewide curriculum;
- administers the statewide assessment program;
- administers a data collection system on public school students, staff, and finances;
- rates school districts under the statewide accountability system;
- operates research and information programs;
- monitors for compliance with federal guidelines; and
- serves as a fiscal agent for the distribution of state and federal funds.

The TEA operational costs are supported by both state and federal funds.

*Texas Education Agency (TEA)*  
Last Update - October 8, 2003  
Send **comments or suggestions** to TEA

Some of the content on this page may require one of the following plug-ins:  
Adobe Acrobat Reader | Readers for Microsoft Word, Excel, or Powerpoint | Windows Media Player

# Exhibit D

# News

## News Archives

### AAAS Board Resolution on Intelligent Design Theory

The contemporary theory of biological evolution is one of the most robust products of scientific inquiry. It is the foundation for research in many areas of biology as well as an essential element of science education. To become informed and responsible citizens in our contemporary technological world, students need to study the theories and empirical evidence central to current scientific understanding.

Over the past several years proponents of so-called "intelligent design theory," also known as ID, have challenged the accepted scientific theory of biological evolution. As part of this effort they have sought to introduce the teaching of "intelligent design theory" into the science curricula of the public schools. The movement presents "intelligent design theory" to the public as a theoretical innovation, supported by scientific evidence, that offers a more adequate explanation for the origin of the diversity of living organisms than the current scientifically accepted theory of evolution. In response to this effort, individual scientists and philosophers of science have provided substantive critiques of "intelligent design," demonstrating significant conceptual flaws in its formulation, a lack of credible scientific evidence, and misrepresentations of scientific facts.

Recognizing that the "intelligent design theory" represents a challenge to the quality of science education, the Board of Directors of the AAAS unanimously adopts the following resolution:

*Whereas*, ID proponents claim that contemporary evolutionary theory is incapable of explaining the origin of the diversity of living organisms;

*Whereas*, to date, the ID movement has failed to offer credible scientific evidence to support their claim that ID undermines the current scientifically accepted theory of evolution;

*Whereas*, the ID movement has not proposed a scientific means of testing its claims;

*Therefore Be It Resolved*, that the lack of scientific warrant for so-called "intelligent design theory" makes it improper to include as a part of science education;

*Therefore Be Further It Resolved*, that AAAS urges citizens across the nation to oppose the establishment of policies that would permit the teaching of "intelligent design theory" as a part of the science curricula of the public schools;

*Therefore Be It Further Resolved*, that AAAS calls upon its members to assist those engaged in overseeing science education policy to understand the nature of science, the content of contemporary evolutionary theory and the inappropriateness of "intelligent design theory" as subject matter for science education;

*Therefore Be Further It Resolved*, that AAAS encourages its affiliated societies to endorse this resolution and to communicate their support to appropriate parties at the federal, state and local levels of the government.

AAAS Events & Links

Other News Sources

ScienceNow News

Science Update Radio

Alert! News Headlines

Science for Kids

Science Sources

Resources for Reporters

News Release Archives

AAAS News & Notes

RSS Feeds

Approved by the AAAS Board of Directors on 10/18/02

For more information, read the related article.

[TOP OF PAGE ▲](#)

[HOME ◀](#)

[PRESS](#)

[POLICY](#)

[EDUCATORS](#)

[STUDENTS](#)

[KIDS/PARENTS](#)

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# **Exhibit E**

## THE TEXAS ACADEMY OF SCIENCE

INCORPORATED IN 1929: AFFILIATED WITH THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE

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### Texas Academy of Science Position Against the Inclusion of Creationism and Intelligent Design Concepts in the Science Curricula in Texas Schools

The **Texas Academy of Science** has been one of the state's leading advocates of scientific education since its founding in 1892. The Academy's membership of nearly 1000 scientists and educators pursue a diverse array of scientific disciplines including mathematics, physics, chemistry, biology, geosciences, physical anthropology, and computer science. Within their respective disciplines of study, the Academy's members practice critical observation and experimentation of falsifiable concepts, which are the primary methods for obtaining the data on which scientifically defensible theories and concepts are based. Peer review and re-testing of hypotheses generated through scientific research are mandatory steps prior to the acceptance by the scientific community of any hypothesis or set of hypotheses leading to the development of a credible scientific theory. Newton's theory of gravitation and the theory of evolution by natural selection are prime examples of scientific concepts that have been rigorously tested in this way by generations of scientists.

Today, the theory of evolution remains the primary unifying cognitive framework in the biological sciences. The effectiveness of the expanding knowledge base of biological systems and their multi-billion year histories requires a firm understanding of evolutionary processes. The purportedly competing "theories" explicated by creationists to displace the theory of evolution in the biological sciences are not based on an effective application of scientific methodologies, nor are they testable using established scientific methodologies. Scientific methodologies are not designed to address metaphysical questions that deal with the nature of god(s) or the reasons for the existence of the universe. The viewpoints expressed by adherents to creationism and intelligent design explicitly address such issues. The overwhelming majority of members of the scientific community defer to experts in philosophy and religion to address metaphysical issues relevant to their respective disciplines.

It is the position of the **Texas Academy of Science** that because neither creationism nor intelligent design are based on information obtained using scientific methodologies, and because

neither has withstood the test of scientific peer review, they are not scientific concepts. It is critically important to recognize that neither of these concepts is falsifiable. Having failed the scientific verification process, both must be excluded from scientific curricula at the primary, secondary and higher education levels. This is not just the position of the **Texas Academy of Science**, it is the consensus of the U. S. Supreme Court, Judge John E. Jones in *Kitzmiller vs. Dover* (2004) and 11,000 plus Christian clergy signers of the Clergy Letter Project. Other scientific organizations throughout the United States have formulated position statements calling for the exclusion of creationism and intelligent design from science curricula, including the American Association for the Advancement of Science; the National Academies of Sciences, Engineering, and Medicine; the National Research Council; the National Center for Science Education; the National Science Teachers Association; the National Association of Biology Teachers; the Geological Society of America; and the American Geological Institute. It is the overwhelming consensus of the scientific community that creationism and intelligent design are faith-based concepts that have no scientific merit.

Texas science teachers have a finite amount of class time and textbook space in which to teach the many valid and foundational scientific concepts that enable students to become knowledgeable consumers, decision makers and voters. Inclusion of creationist or intelligent design concepts in science curricula would seriously diminish the effectiveness of science education by distracting teachers from covering an already overwhelming body of knowledge, and would consequently dilute student's understanding of scientifically valid concepts and theories. Therefore, it is the position of the **Texas Academy of Science** that, through their policies and decisions, the State Board of Education, the Texas Education Agency and the Texas Higher Education Coordinating Board should ensure that neither "creationism" nor "intelligent design" is added to the state's scientific curricula. If the State Board of Education considers the material presented by the concepts of "creationism" or "intelligent design" to be appropriate for inclusion in school curricula, these concepts should be addressed in humanities, social science, or religious studies curricula separate from all pre-kindergarten to graduate school-level science education programs.

Modern industry requires a scientifically educated workforce. In order for Texas to remain economically competitive, it is essential that all Texans, but especially our youth obtain a solid foundation in the sciences. Government agencies which oversee their education must enact

policies and make personnel decisions that reflect a commitment to sound, science-based education and which are never dictated by the religious views of agency administrators. Integrating religious doctrine into the mission of the Texas Education Agency or the State Board of Education will result in a further lowering of the educational performance of Texas school children. The hiring of TEA administrators and staff must be based on appropriate educational credentials and teaching experience for those individuals to conduct the agency's mission to educate the children of Texas. Texas's reputation is at stake and the country is watching.

# **Exhibit F**



## Science Teachers Association of Texas

*Celebrating 50 Years of Serving Science Educators*

P.O. Box 4828, Austin, TX 78765 - (512) 451-STAT [7828]

# Position Statement on Evolution

Adopted by the STAT Board of Directors, February 4, 2006

## Introduction

The Science Teachers Association of Texas (STAT) recognizes that evolution is the principal unifying concept of the life sciences and that it must occupy a central part of K - 12 science education frameworks and curricula. If evolution is not taught properly, students will not achieve the level of scientific literacy needed for science-related careers and life in a society where understanding of the core concepts of science is critical. A thorough understanding of evolution is essential to scientific literacy, and must therefore be one of the goals of science education in our schools. This position is shared by the National Academies, the American Association for the Advancement of Science, the National Science Teachers Association, the National Association of Biology Teachers, the Texas Association of Biology Teachers, and many other scientific and educational organizations.

Too often, evolution has not been emphasized in science curricula and classrooms in a manner commensurate with its importance because of official policies, intimidation of science teachers, and the general public's misunderstanding of the term "theory." Teachers are also being pressured to introduce nonscientific views, including "creationism," "intelligent design," "initial complexity," and "abrupt appearance," which are not supported by evidence and have no legitimate place in the science curriculum.

## Supporting Information

- 1. Empirical Evidence:** Science seeks to understand the natural world. It does this by collecting data in the form of observation and experiment. It then attempts to develop natural explanations of these data that can be tested empirically. Explanations that do not meet such tests are discarded, while those that survive rigorous testing over time come to be considered scientifically reliable. Explanations of natural phenomena that cannot be tested in this way are simply not part of science.
- 2. Theory Defined:** In their efforts to understand the natural world, scientists develop explanatory theories that are based upon scientific evidence, are logically consistent with other well-established principles, and have the potential to lead to new knowledge. Theories can be modified or discarded as new observations and data emerge. Theories are formulated and tested on the basis of evidence, internal consistency, and their explanatory power. Scientific theories are not hunches or guesses. "A theory is a well-substantiated explanation of some aspect of the natural world that can incorporate facts, laws, inferences, and tested hypotheses." (National Academy of Science. 1998. *Teaching About Evolution and the Nature of Science*. Washington, DC: National Academy Press). It should be noted in the Texas Essential Knowledge and Skills (TEKS) document for science, TEKS 3.A, asks students to understand what a theory can explain and what is cannot. It does not allow for a nonscientific claim based on religion, the supernatural or personal beliefs, to be brought into a science class as a legitimate explanation.

Continued

**3. Unifying Theme:** Evolution can be defined as change in the hereditary characteristics of groups of organisms that has taken place through time. There is abundant and consistent evidence from physics, biochemistry, geochronology, geology, biology, anthropology, and other sciences that evolution has taken place. Evolution unifies science disciplines and provides students with powerful ideas to help them understand the natural world. Scientific disciplines cannot be taught with integrity if evolution is not included as a unifying theme.

**4. Legal Issues:** Several judicial decisions have negated laws that were designed to prohibit the teaching of evolution or permit the teaching of creationism or scientific creationism. These rulings have focused on the precept that governmental agencies can neither prohibit nor promote the practice of religion.

There is no longer a debate among scientists about whether evolution has taken place. Scientific investigation continues to focus on the detailed mechanisms of how evolution has and continues to take place. In science, disagreements are subject to rules of evaluation. Scientific conclusions are tested by experiment and observation, and evaluation as with any aspect of theoretical science, is automatically open to and subject to experimental and observational testing.

The *National Science Education Standards* note that “explanations of how the natural world changes based on myths, personal beliefs, religious values, mystical inspiration, superstition, or authority may be personally useful and socially relevant, but they are not scientific.” “Creationism,” “abrupt appearance,” “initial complexity,” or “intelligent design”- which assert that the diversity and complexity of life are due to an intelligent designer, represent nonscientific views that have no place in the science curriculum. Supporters of these views tend to seek out supposed anomalies among many existing theories and accepted facts regarding the history of life on Earth and have failed to develop theories with explanatory power and the potential to catalyze new research questions.

Opposition to the teaching evolution persists for a variety of reasons. Thus, it is important that policy makers, parents, and administrators support teachers as they provide instruction that is aligned with the Texas Essential Knowledge and Skills (TEKS) objectives related to evolution. Omitting evolution, de-emphasizing its teaching or introducing scientifically-discredited "evidence against evolution" will only weaken science education. We must support student understanding of the natural world so that the science literacy of our society is strengthened.

Adopted by the STAT Board of Directors, February 4, 2006.

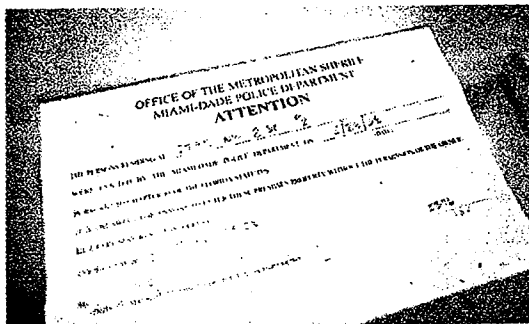
# Exhibit G

# National Report

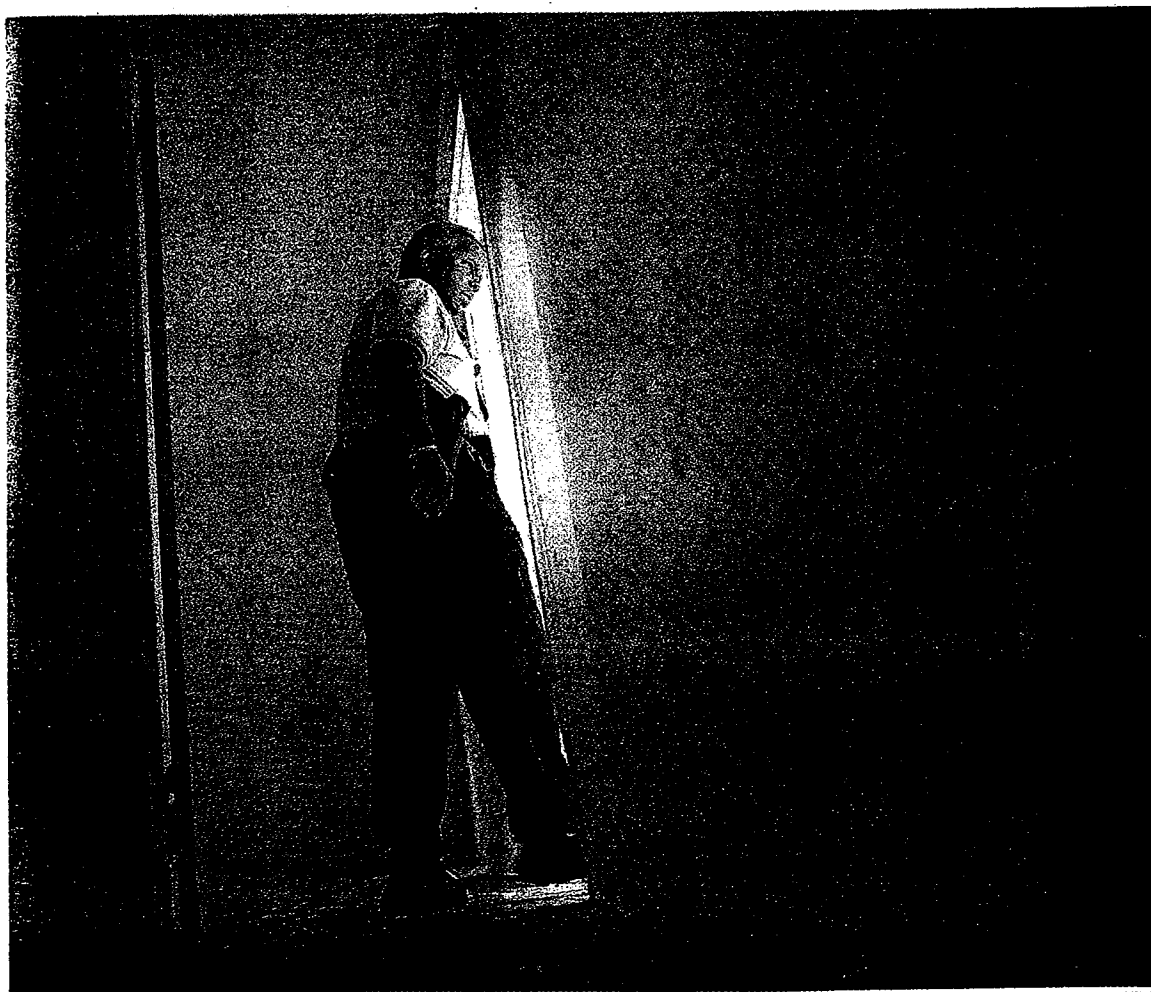
WEDNESDAY, JUNE 4, 2008

The New York Times

Eviction notices like this one are being served more frequently in South Florida.



## South Florida, Spares Few



PHOTOGRAPHS BY ERIC THAYER FOR THE NEW YORK TIMES

...ce serving eviction papers last month in Miami. "People of all walks of life are getting evicted," Officer Fernandez said.

...e prisoners attached by  
...ins: when one falls, the  
...p too.  
...o nearly a dozen proper-  
...Officer Fernandez and

The rent was \$640 a month. She said she would find work soon and so would her boyfriend, a carpenter who stood beside her, silent, with paint splashed on his

checks in the past and \$1,000 was not enough to cover their back rent. But Mrs. Rosado and her daughter, Vivian, a real estate lawyer, decided to let them stay,

These days, however, most houses are empty when the police arrive.

Many evictions go something like what occurred when Officer

## Opponents Of Evolution Are Adopting New Strategy

By LAURA BEIL

DALLAS — Opponents of teaching evolution, in a natural selection of sorts, have gradually shed those strategies that have not survived the courts. Over the last decade, creationism has given rise to "creation science," which became "intelligent design," which in 2005 was banned from the public school curriculum in Pennsylvania by a federal judge.

Now a battle looms in Texas over science textbooks that teach evolution, and the wrestle for control seizes on three words. None of them are "creationism" or "intelligent design" or even "creator."

The words are "strengths and weaknesses."

Starting this summer, the state education board will determine the curriculum for the next decade and decide whether the "strengths and weaknesses" of evolution should be taught. The benign-sounding phrase, some argue, is a reasonable effort at balance. But critics say it is a new strategy taking shape across the nation to undermine the teaching of evolution, a way for students to hear religious objections under the heading of scientific discourse.

Already, legislators in a half-dozen states — Alabama, Florida, Louisiana, Michigan, Missouri and South Carolina — have tried to require that classrooms be open to "views about the scientific strengths and weaknesses of Darwinian theory," according to a petition from the Discovery Institute, the Seattle-based strategic center of the intelligent design movement.

"Very often over the last 10 years, we've seen antievolution policies in sheep's clothing," said Glenn Branch of the National Center for Science Education, a

Should the

to nearly a dozen proper-  
 Officer Fernandez and  
 er, Officer Charles Veid  
 aided several stops in  
 5th renters and owners  
 o be struggling.

1 noon, the officers  
 to a comfortable devel-  
 n Doral, where a young  
 in a red shirt could be  
 ying large garbage bags  
 econd-story apartment.

oman, who identified  
 nly as Maria, said that  
 an accountant, a mother  
 and that she was being  
 because of a double  
 r: she had fallen behind  
 the \$1,450 a month in  
 her landlord could no  
 fford the mortgage and  
 nium fees, pushing the  
 toward foreclosure.

blems, she said, began  
 year ago when the es-  
 father of her children  
 b at a mortgage compa-  
 stopped paying regular  
 port.

ituation is bad for every-  
 ne, the landlord, the fa-  
 y kids too," said Maria,  
 would only give her first  
 ecause she feared her  
 lord would discover her  
 troubles. She added that  
 rily a decade in Miami,  
 started asking relatives  
 mala for help.

diculous to have to move  
 om my country to here,"  
 "This is not how it's sup-  
 be."

ther apartment building  
 er, poorer area, the own-  
 eption Rosado, 71, ar-  
 id confronted a couple  
 stopped paying the rent  
 months ago after four  
 the apartment.

streamed down the  
 f Alisa Soriano, 48, as she  
 for mercy in a dark,  
 furnished living room.

and so would ner boyfriend, a  
 carpenter who stood beside her,  
 silent, with paint splotted on his  
 jeans.

"I won't fail you," Ms. Soriano  
 told her landlord in Spanish, be-  
 tween wails. "I won't fail you. I

## Owners, banks and renters, bound together in a crisis.

won't fail you."

Mrs. Rosado nodded. In her  
 hand, she held the tenants' final  
 effort: \$300 in cash and a check  
 for \$700. "It's just that I have to  
 pay taxes," she said. "I have to  
 pay insurance. It's very compli-  
 cated."

Ms. Soriano cried. "Ay, Dios  
 mio," Mrs. Rosado said.

The couple had bounced

daughter, Vivian, a real estate  
 lawyer, decided to let them stay,  
 at least for another month. "We  
 know these are hard times," Vivi-  
 an Rosado said.

Back in the patrol car, Officer  
 Fernandez agreed. "Sometimes  
 we go to the same apartment  
 building three, four times a  
 week," he said.

The neighborhoods have var-  
 ied, from the upper-middle class  
 to the down and out. In recent  
 years, he has done evictions on  
 properties owned or inhabited by  
 drug dealers, former N.F.L. stars  
 and renters who try to hide by re-  
 moving the numbers of their ad-  
 dressing.

"The hardest ones are the old  
 ladies," Officer Fernandez said.  
 Many have been victimized by  
 relatives who took out a home eq-  
 uity loan, often with a forged sig-  
 nature, and then never paid the  
 money back.

"It's tough," he said. "You  
 think of them as your grandmoth-  
 er or grandmother."



Officer Fernandez with a locksmith, Eddie Afraf, in Miami.  
 Banks have hired companies that specialize in evictions.

Many evictions go something  
 like what occurred when Officer  
 Fernandez pulled into the park-  
 ing lot at the Villas at Midway,  
 where a bank had foreclosed two  
 weeks earlier on a two-story con-  
 dominium.

Christopher J. Fedor was wait-  
 ing with a drill in hand. "We do  
 evictions, trash outs, rehabs," he  
 said.

Mr. Fedor had been hired by  
 HSBC, the bank that now owned  
 the property. His job was to  
 change the lock, check the prop-  
 erty for damage and clean it out.

In this case, the apartment was  
 nearly spotless. Often, items  
 have been left behind. At one  
 apartment Officer Fernandez vis-  
 ited last week, there was a single  
 white tube sock on the floor of an  
 upstairs bedroom; at another, a  
 teddy bear with blue feet smiled  
 from the top of a dirty stove.

"We had one the other day with  
 a three-foot-long snake under a  
 bed where a baby had been sleep-  
 ing," Mr. Fedor said, his voice  
 echoing off the blank walls and  
 tile floors. "Miami-Dade fire and  
 rescue had to take it away."

Mr. Fedor seemed busy, deter-  
 mined, even a bit frantic with the  
 energy of an entrepreneur in  
 the midst of a boom. He said his  
 company, Florida Field Services,  
 started doing evictions a year  
 ago. Since then, he said, business  
 has doubled.

"We work seven days a week,"  
 he said.

Owners of other eviction compa-  
 nies, like Proeviction.com,  
 which offers help with an eviction  
 in any Florida County for around  
 \$400, also said customers seemed  
 to be lining up. When they were  
 asked if they saw any sign of a  
 turnaround, of the market's bot-  
 tom, their answers were clear.

"We see it getting worse," Mr.  
 Fedor said. "And worse. And  
 worse."

## Should the 'weaknesses' of evolution be taught in school?

group based in Oakland, Calif.,  
 that is against teaching creation-  
 ism.

The "strengths and weakness-  
 es" language was slipped into the  
 curriculum standards in Texas to  
 appease creationists when the  
 State Board of Education first  
 mandated the teaching of evolu-  
 tion in the late 1980s. It has had  
 little effect because evolution  
 skeptics have not had enough  
 power on the education board to  
 win the argument that textbooks  
 do not adequately cover the  
 weaknesses of evolution.

Yet even as courts steadily pro-  
 hibited the outright teaching of  
 creationism and intelligent de-  
 sign, creationists on the Texas  
 board grew to a near majority.  
 Seven of 15 members subscribe to  
 the notion of intelligent design,  
 and they have the blessings of  
 Gov. Rick Perry, a Republican.

What happens in Texas does  
 not stay in Texas: the state is one  
 of the country's biggest buyers of  
 textbooks, and publishers are  
 loath to produce different ver-  
 sions of the same material. The  
 ideas that work their way into  
 education here will surface in  
 classrooms throughout the coun-  
 try.

"Strengths and weaknesses"  
 are regular words that have now  
 been drafted into the rhetorical  
 arsenal of creationists," said  
 Kathy Miller, director of the Tex-  
 as Freedom Network, a group  
 that promotes religious freedom.

The chairman of the state edu-  
 cation board, Dr. Don McLeroy, a  
 dentist in Central Texas, denies  
 that the phrase "is subterfuge for  
 bringing in creationism."

"Why in the world would any-  
 body not want to include weak-  
 nesses?" Dr. McLeroy said.

The word itself is open to broad  
 interpretation. If the teaching of  
 weaknesses is mandated, a text-  
 book might be forced to say that  
 evolution has an "inability to ex-  
 plain the Cambrian Explosion,"  
 according to the group Texans for  
 Better Science Education, which  
 questions evolution.

The Cambrian Explosion was a  
 period of rapid diversification  
 that evidence suggests began  
 around 550 million years ago and  
 gave rise to most groups of com-  
 plex organisms and animal  
 forms. Scientists are studying  
 how it unfolded.

Evolution as a principle is not

Continued on Page A16

## st Who Mocked Clinton to Take a Leave and 'Reflect'

priest, the Rev. Michael  
 to "step back from his  
 ns" at St. Sabina and  
 ave for a couple of

Pfleger has been a  
 Senator Barack Obama  
 ved until several weeks  
 unpaid role on the Ob-  
 aign's Catholic advisory  
 He has apologized for re-  
 e made last month as a  
 eaker at Trinity United  
 of Christ, where Mr. Ob-  
 agned as a member last

iose remarks, Father

Pfleger mockingly took on the  
 role of Mrs. Clinton, feigning  
 tears and declaring of her quest  
 for the presidency: "I'm white.  
 I'm entitled. There's a black man  
 stealing my show."

Father Pfleger, who is white, is  
 well known here as a maverick  
 on matters of race, poverty and  
 equality. His parish is made up of  
 2,000 families, most of them  
 black, in the Auburn Gresham  
 neighborhood on the South Side.

He could not be reached for  
 comment late Tuesday, but Cardi-  
 nal George made it clear that  
 Father Pfleger had disagreed with

the decision that he take a brief  
 leave.

"Father Pfleger does not be-  
 lieve this to be the right step at  
 this time," Cardinal George said  
 in a statement released by the  
 archdiocese. "While respecting  
 his disagreement, I have never-  
 theless asked him to use this op-  
 portunity to reflect on his recent  
 statements and actions in the  
 light of the church's regulations  
 for all Catholic priests. I hope  
 that this period will also be a time  
 away from the public spotlight  
 and for rest and attention to fam-  
 ily concerns."

The archdiocese declined to  
 elaborate on the cardinal's state-  
 ment.

Father Pfleger has had a reg-  
 ular place at the forefront of ac-  
 tivism here, participating in pro-  
 tests against violence and police  
 corruption and at times defying  
 the church leadership.

At one point, he publicly ob-  
 jected to a church policy that gen-  
 erally allows pastors to lead a  
 parish for no more than six years,  
 though sometimes for a six-year  
 extension beyond that. He him-  
 self has stayed put, as pastor of  
 St. Sabina, for nearly 25 years.

