

² For example, in Section 112.36 Earth and Space Science, Beginning with School Year 2010-2011, proposed subsection 8(A), pertaining to fossils, provides that students “assess the arguments for and against universal common descent in light of this fossil evidence.” The view that this and other proposed changes to this section are pro-creationist and unscientific is expressed in a report entitled “Report of the Earth and Space Science TEKS Working

adoption would violate the Establishment Clause for the reasons previously set forth throughout Plaintiff's briefs in support of her motion for summary judgment. Whether expressly or implicitly, the state may not promote creationism as science or dilute evolution to appease creationists.

Epperson v. Arkansas, 393 U.S. 97, 106 (1968) *reh'g denied en banc*, 201 F.3d 602 (5th Cir. 2000), *cert. denied*, 530 U.S. 1251 (2000) (states "may not require that teaching and learning be tailored to the principles or prohibitions of any religious sect or dogma").

Thus, the significance for this case is that TEA may not require Comer and its other employees to be "neutral" as to policies that expressly or implicitly promote creationism as science or denigrate evolution as science. This is so whether or not such unconstitutional policies are being considered by the State Board of Education.

Respectfully submitted,

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Group Concerning The Five Amendments Passed by the State Board of Education on January 22, 2009" (<http://www.texscience.org/reports/ESS-Report-Final-2009Jan29.htm> at page 3). The report says that this proposed language is "totally unscientific. There are no good arguments in modern science 'against universal common descent,' which has been accepted by biologists for over 130 years, so the phrase is asking for something that authors and publishers cannot honestly supply. . . . The added phrase supports an anti-evolution intent which is not scientific."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2009, I served the foregoing Plaintiff's Response To Defendant's Unopposed Request to Take Judicial Notice of Proposed Rules via email and the Court's electronic system to Defendants' counsel, as follows:

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