

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE

APR -4 2003

Deputy Clerk

JEFFREY MICHAEL SELMAN, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
COBB COUNTY SCHOOL DISTRICT, )  
COBB COUNTY BOARD OF )  
EDUCATION, )  
JOSEPH REDDEN, SUPERINTENDENT, )  
 )  
Defendants. )

CIVIL ACTION FILE  
NUMBER: 1:02-CV-2325-CC

JOINT PRELIMINARY PLANNING REPORT  
AND DISCOVERY PLAN

1. Description of Case:

(a) Describe briefly the nature of this action.

Plaintiff contends that:

This action pertains to Defendant School District's decision undermine the validity of science education in order to accommodate religious doctrine which disagree with science.

The parties agree that:

This action is brought pursuant to 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988, the First Amendment to the United States Constitution; The Fourteenth Amendment to the United States Constitution; Article 1, § 2, ¶ 7 of the Constitution of the State of Georgia; the Laws of the State of Georgia, including O.C.G.A. § 36-5-22.1(a)(1), based upon allegations that Defendant's placement of

a statement regarding evolution in science textbooks violates the establishment clause.

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

(1) By Plaintiff:

Defendant School District was extensively lobbied by Christian fundamentalists to disavow scientific theory and facts pertaining to evolution. Defendant School District accommodated the fundamentalists by placing a disclaimer in all Cobb County Schools' science textbooks which states: "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." Defendant School District members have stated that the disclaimer was important to remind Cobb County students of the role of the Supreme Being.

(2) By Defendant:

Cobb County Board of Education adopted new science textbooks in March, 2002. At that time, the Board inserted a statement into certain science texts indicating that evolution is a theory, and not a fact, and that material regarding evolution in the textbook should be approached with an open mind. The Board of Education was also in the process of revising the school district policy regarding instruction on theories of origin. Neither the statement inserted into the textbooks, nor the policy regarding instruction on theories of origin, was intended to promote religion or to restrict instruction regarding evolution.

(c) The legal issues to be tried are as follows:

- I. Whether the disclaimer violates the First Amendment to the United States Constitution;
- II. Whether the disclaimer violates the Fourteenth Amendment to the United States Constitution;
- III. Whether the disclaimer violates Article 1, § 2, ¶ 7 of the Constitution of the State of Georgia;
- IV. Whether the disclaimer violates O.C.G.A. § 36-5-22.1(a)(1);
- V. Whether Plaintiff is entitled to declaratory or other relief pursuant to 28 U.S.C. §§ 2201 and 2202;
- VI. The extent of compensatory, special or nominal damages, punitive damages and expenses of litigation to which Plaintiff is entitled.

(d) The cases listed below (included both style and action number) are :

(1) Pending related cases: None

(2) Previously adjudicated cases: None

2. This case is complex because it possesses one (1) or more of the features listed below

(please check): The parties agree that, before discovery, the case is not complex.

Plaintiff believes discovery may, however, yield issues which are complex. If so, Plaintiff believes the case will be complex because:

\_\_\_ (1) Unusually large number of parties

\_\_\_ (2) Unusually large number of claims or defenses

\_\_\_ (3) Factual issues are exceptionally complex

X (4) Greater than normal volume of evidence

- (5) Extended discovery period is needed
- (6) Problems locating or preserving evidence
- (7) Pending parallel investigations or action by government
- (8) Multiple use of experts
- (9) Need for discovery outside United States boundaries
- (10) Existence of highly technical issues and proof

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

For Plaintiff:

Michael E. Manely  
The Manely Firm  
7 Atlanta St. Suite C  
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(770) 421-0808

For Defendants:

E. Linwood Gunn, IV  
Brock, Clay, Calhoun, Wilson & Rogers, P.C.  
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Marietta, GA 30060  
770-422-1776

4. Jurisdiction:

Is there any question regarding this court's jurisdiction?

Yes  No

If "yes", please attach a statement, not to exceed on (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

None

(b) The following persons are improperly joined as parties:

None

(c) The names of the following parties are either inaccurately stated or necessary portions of their names omitted:

None

(d) The parties shall have a continuing duty to inform the court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary:

Plaintiff needs to amend the Complaint to add additional plaintiffs.

(b) Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the preliminary planning report is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for

some motions. These times are restated below.

All other motions must be filed **WITHIN THIRTY (30) DAYS** after the preliminary planning report is filed or should be filed, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) **Motions to Compel:** before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1

(b) **Summary Judgement Motions:** within twenty (20) days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) **Other Limited Motions:** Refer to Local Rules 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) **Motions Objecting to Expert Testimony:** Daubert motions with regard to expert testimony no later than the date the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

**8. Initial Disclosures.**

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection.

No Objection.

**9. Request for Scheduling Conference:**

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and position of each party.

The parties do not request a scheduling conference.

10. Discovery Period:

The discovery period commences thirty (30) days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.1A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this court are assigned to one of the following three (3) discovery tracks: (a) zero (0) months discovery period, (b) four (4)-months discovery period, and (c) eight (8) months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

The School District's Board Member's intention and motivation for the disclaimer.

The scientific basis for evolution.

Whether evolution is a theory and a fact.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery, please state those reasons in detail below:

The parties waited until after the Defendant had written new regulations pertaining to teaching evolution before beginning discovery. Consequently, the parties require 45 days from the filing of this report and plan to complete discovery. The parties may request additional discovery if discovery responses broaden the issues presently presented.

11. Discovery Limitation:

What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be

imposed.

As stated above, the parties need 45 days from the filing of this report and plan to complete discovery.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

Plaintiff requests until April 15, 2003 to amend the Complaint to add additional plaintiffs.

13. Settlement Potential

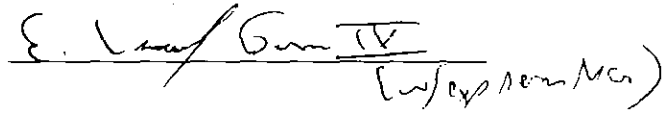
(a) Lead counsel for the parties certify by their signatures below that they met in person at an early planning conference that was held on March 20, 2003, and that they participated in settlement discussions as required by LR 16.1. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature):



Other participants:

For defendant: Lead counsel (Signature):



Other participants:

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

A possibility of settlement before discovery.

A possibility of settlement after discovery.

A possibility of settlement, but a conference with the judge is needed.

No possibility of settlement.

(c) Counsel  do or  do not intend to hold additional settlement

conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is May 1, 2003.


(d) the following specific problems have created a hindrance to settlement of this case.

14. Trial by Magistrate Judge:


Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties (x) do not consent to having this case tried before a magistrate judge of this court.

(b) The parties ( ) do consent to having this case tried before a magistrate judge of this court. A completed Consent to jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this 4 day of April, 2003.

  
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