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## [A settlement in \*Selman v. Cobb County\*](#) [3]

There is a settlement in [Selman v. Cobb County](#) [4], the case that challenged the constitutionality of a textbook disclaimer sticker that described evolution as "a theory, not a fact." In 2002, the Cobb County Board of Education, pressured by local creationists, adopted the stickers, and eleven parents subsequently filed suit, with a trial following in late 2004. On January 13, 2005, Judge Clarence Cooper ruled that the stickers violated the Establishment Clause of the First Amendment, writing, "the Court believes that an informed, reasonable observer would interpret the Sticker to convey a message of endorsement of religion. ... an informed, reasonable observer would understand the School Board to be endorsing the viewpoint of Christian fundamentalists and creationists that evolution is a problematic theory lacking an adequate foundation."

The board chose to appeal the decision, however. While the appeal to the Eleventh Circuit Court of Appeals was in progress, the stickers were removed from the textbooks, pursuant to Judge Cooper's order, which the board unsuccessfully sought to have stayed. After oral arguments in December 2005, on May 25, 2006, a three-judge panel vacated the decision, primarily because of concerns about the evidence introduced at trial concerning the adoption of the stickers; the panel's decision emphasized that "we want to make it clear that we do not intend to make any implicit rulings on any of the legal issues that arise from the facts once they are found on remand." The case was then remanded to the trial court for further evidential proceedings, which could have involved a full retrial.

Preparing for a possible retrial, the ACLU of Georgia (which, with Marietta lawyer Michael Manely, represented the plaintiffs in the trial) was joined by lawyers from the Atlanta law firm Bondurant, Mixon & Elmore; Americans United for Separation of Church and State; and the Philadelphia law firm Pepper Hamilton. AU and Pepper Hamilton brought their expertise from *Kitzmiller v. Dover*, the 2005 case in which teaching "intelligent design" creationism in the public schools was ruled to be unconstitutional. As

in *Kitzmiller*, Brown University's Kenneth R. Miller and McGill University's Brian Alters were recruited to serve as expert witnesses, as was NCSE's executive director Eugenie C. Scott. In the event, however, the preparation for a retrial was unnecessary, as the Cobb County Board of Education signed a settlement agreement on December 19, 2006.

In the agreement, the board and the school district are enjoined not only from "restoring to the science textbooks of students in the Cobb County schools any stickers, labels, stamps, inscriptions, or other warnings or disclaimers bearing language substantially similar to that used on the sticker that is the subject of this action" but also from taking any of a number of actions that "would prevent or hinder the teaching of evolution," including making oral or written disclaimers about evolution or Darwin, placing statements in textbooks about "creationism, creation science, intelligent design, or any other religious view concerning the origins of life or the origins of human beings," and "excising or redacting materials on evolution in students' science textbooks." The agreement is binding in perpetuity.

NCSE's executive director Eugenie C. Scott commented, "The settlement was clearly in the best interests of both the district and the plaintiffs. The district was spared a lengthy, divisive, and expensive trial that it was practically bound to lose again, especially faced with the winning team from the landmark case *Kitzmiller v. Dover*. And although the plaintiffs were already successful in ensuring that the misleading stickers were removed from the textbooks, the settlement agreement explicitly forbids the board and the district from doing anything in the future that would compromise the integrity of evolution education in Cobb County. That means that the real winners today are the kids, who will be free to learn about evolution -- the central principle of the biological sciences -- without the distortions of a narrow religious agenda."

In a December 19, 2006, press release from Americans United, the Reverend Barry W. Lynn [lauded](#) [5] the settlement, saying, "Cobb County school officials have taken the right step to ensure that their students receive a quality education." Lead plaintiff Jeffrey Selman commented, "The settlement brings to an end a long battle to keep our science classes free of political or religious agendas, adding, "I am very pleased that the Cobb school board has dropped its defense of the anti-evolution policy. The board should be commended for taking this action." The chair of the board, Teresa Plenge, [expressed](#) [6] **[Link broken]** her satisfaction at the result to the Associated Press (December 19, 2006), explaining, "we faced the distraction and expense of starting all over with more legal actions and another trial ... With this agreement, it is done and we now have a clean slate for the new year."

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