Montana Law Review

Volume 68
Issue 1 *Winter 2007*

Article 1

1-2007

Editor's Note: Intelligent Design Articles

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Recommended Citation
, *Editor's Note: Intelligent Design Articles,* 68 Mont. L. Rev. 1 (2007).
Available at: http://scholarship.law.umt.edu/mlr/vol68/iss1/1

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ARTICLES

EDITORS' NOTE: INTELLIGENT DESIGN ARTICLES

This edition of the *Montana Law Review* hosts three articles considering *Kitzmiller v. Dover Area School District*,[1] the closely watched federal district court ruling on the Dover, Pennsylvania school board's attempt to introduce a statement regarding "intelligent design" (ID) into public high school biology classrooms.

In the first article, *Intelligent Design Will Survive* Kitzmiller v. Dover,[2] David K. DeWolf, John G. West, and Casey Luskin argue that (1) ID is a valid scientific theory; (2) the question of ID's scientific validity should not have been addressed by the district court; and (3) the flawed decision will not affect the development of ID as a scientific alternative to Darwinian evolution.

In the second article, *Disaster in Dover: The Trials (and Tribulations) of Intelligent Design*,[3] Peter Irons responds to DeWolf et al., arguing that the decision—which Irons claims was impeccably reasoned—foils the efforts of ID proponents to repackage creationism, and dooms future attempts to introduce ID as a scientific alternative to Darwinian evolution in public schools. In the third article, *Rebuttal to Irons*,[4] DeWolf, West, and Luskin address Irons's response.

A chronology of important events in the *Kitzmiller* case follows.

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1. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

2. David K. DeWolf, John G. West & Casey Luskin, *Intelligent Design Will Survive* Kitzmiller v. Dover, 68 Mont. L. Rev. 7 (2007).

3. Peter Irons, *Disaster in Dover: The Trials (and Tribulations) of Intelligent Design*, 68 Mont. L. Rev. 59 (2007).

4. David K. DeWolf, John G. West & Casey Luskin, *Rebuttal to Irons*, 68 Mont. L. Rev. 89 (2007).

January 9, 2002	Dover Area School District (DASD) board member Alan Bonsell ranks "creationism" as his top priority for the coming school year while at a board retreat.[5]
March 26, 2003	Bonsell again mentions "creationism" as concern at board retreat.[6]
April 1, 2003	DASD Assistant Superintendent Michael Baksa tells Dover High School science department chair Bertha Spahr that Bonsell, now chair of the board's curriculum committee, wants creationism to "share equal time with evolution" in biology classes.[7]
June 2003	Board approves purchase of several science texts, including *Biology*.[8]
Spring 2004	Discovery Institute (Seattle-based champion of ID theory) attorney Seth Cooper calls William Buckingham, new chair of the board's curriculum committee, warning him against the legal dangers of teaching creationism,[9] and notifies Buckingham that Discovery Institute's preferred education policy is not to mandate teaching ID, but to introduce scientific critique of Darwinism into biology curricula. Cooper sends Buckingham a Discovery Institute book and DVD titled *Icons of Evolution*.[10] The high school biology teachers view the DVD but decide not to use it in classes.[11]
June 2004	Curriculum committee hears Buckingham's complaints that *Biology* did not include the "theory of creationism with God as creator of all life."[12]
June 7 and 14, 2004	At two successive board meetings, Bonsell, as board president, and Buckingham press for "creationism" in the biology curriculum; Buckingham claims *Biology* is "laced with Darwinism."[13]

5. *Kitzmiller*, 400 F. Supp. 2d at 748.
6. *Id.*
7. *Id.*
8. *Id.* at 750.
9. Seth L. Cooper, Discovery Inst., *Center for Science and Culture, Evolution News & Views*, "Statement by Seth L. Cooper Concerning Discovery Institute and the Decision in *Kitzmiller v. Dover Area School Board* [sic] Intelligent Design Case," http://www.evolutionnews.org/2005/12/statement_by_seth_l_cooper_con.html (Dec. 21, 2005).
10. *Kitzmiller*, 400 F. Supp. 2d at 750; Jonathan Wells, *Icons of Evolution: Science or Myth? Why Much of What We Teach about Evolution Is Wrong* (Regnery Publg. 2000) (DVD based on book).
11. Test. of Jennifer Miller, Transc. of Procs. Afternoon Sess. 25–26 (Oct. 28, 2005), *Kitzmiller*, 400 F. Supp. 2d 707; Test. of Bertha Spahr, Transc. of Procs. Morn. Sess. 16 (Oct. 28, 2005), *Kitzmiller*, 400 F. Supp. 2d 707.
12. *Kitzmiller*, 400 F. Supp. 2d at 752.
13. *Id.* at 750–51.

July 2004	Buckingham calls Richard Thompson, general counsel of the Thomas More Law Center, who offers to represent the board in any litigation and recommends the book *Of Pandas and People*[14] as pro-ID biology text.[15]
August 2, 2004	DASD board meets, and Buckingham opposes purchase of Miller textbook unless *Pandas* is also purchased, indicating that "if he didn't get his book, the district would not get the biology book."[16]
August 24, 2004	DASD lawyer warns Superintendent Richard Nilsen of the possibility of litigation, saying "even if use of the [*Pandas*] text is purely voluntary, this may still make it very difficult to win a case."[17]
August 30, 2004	Buckingham presses *Pandas* book on Dover High School biology teachers, who reluctantly agree to use it as a reference text.[18]
September 2004	Buckingham collects $850 at his church to purchase copies of *Pandas*, and writes a check to board president Alan Bonsell, whose father purchases sixty copies.[19]
October 7, 2004	Superintendent Nilsen tells board he accepted a donation of sixty copies of *Pandas*.[20] Curriculum committee drafts curriculum change that states, "Students will be made aware of gaps/problems in Darwin's theory and of other theories of evolution, including but not limited to intelligent design," and cites *Pandas* as a reference text.[21]
October 18, 2004	Board adopts curriculum committee change by six-to-three vote; two members resign in protest.[22]

14. Percival Davis & Dean H. Kenyon, *Of Pandas and People: The Central Question of Biological Origins* (Charles B. Thaxton ed., Haughton Publg. Co. 1993).

15. *Kitzmiller*, 400 F. Supp. 2d at 753–54.

16. *Id.* at 754.

17. *Id.* (emphasis omitted).

18. *Id.* at 755.

19. *Id.* at 755–56.

20. *Id.*

21. *Kitzmiller*, 400 F. Supp. 2d at 757.

22. *Id.* at 757–60.

October–November 2004	Assistant Superintendent Baksa drafts statement to be read to biology classes that Darwin's theory of evolution "is not a fact. Gaps in the Theory exist for which there is no evidence. . . . Intelligent design is an explanation of the origin of life that differs from Darwin's view." The statement notes that "[t]he reference book, *Of Pandas and People*, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves."[23]
November 12, 2004	John West of Discovery Institute is quoted in an Associated Press article expressing opposition to Dover's choice to mandate intelligent design: "the Seattle-based Discovery Institute, which supports scientists studying intelligent-design theory, opposes mandating it in schools . . . said John West, associate director of the institute's Center for Science and Culture."[24]
December 14, 2004	The American Civil Liberties Union and Americans United for Church and State file suit on behalf of eleven Dover parents against the DASD board in the U.S. District Court for the Middle District of Pennsylvania, alleging an Establishment Clause violation. The case is assigned to District Judge John E. Jones III.[25]
January 2005	Dover school administrators read ID policy statement to students after biology teachers refuse. Biology teachers issue a statement that "Intelligent design is not science. Intelligent design is not biology. Intelligent design is not an accepted scientific theory."[26]
July 27, 2005	Judge Jones denies motion to intervene by Foundation for Thought and Ethics, publisher of *Pandas*.[27]
September 26–November 4, 2005	Bench trial takes place before Judge Jones. Numerous amicus briefs are filed, and Judge Jones hears testimony from thirty-three witnesses.[28]

23. *Id.* at 760–61.

24. Martha Raffaele, *Teaching "Intelligent Design" Required*, Wis. State J. (Madison) A8 (Nov. 14, 2004).

25. Compl. at 1, 24–25, *Kitzmiller*, 400 F. Supp. 2d 707.

26. *Id.* at 761 (emphasis omitted).

27. Memo. & Or. at 1, 22, *Kitzmiller*, 400 F. Supp. 2d 707.

28. *Kitzmiller*, 400 F. Supp. 2d 707.

November 11, 2005	Voters in the DASD defeat all eight pro-ID board members running for reelection and replace them with pro-evolution members. Plaintiff Brian Rehm is among those elected.[29]
November 14, 2005	Lame duck Dover Board meets for the last time. Board member David Napierskie offers a motion to repeal the ID policy, but the motion dies for a lack of a second.[30]
December 5, 2005	New anti-ID Dover Board meets (with the exception of Brian Rehm) and chooses not to rescind Dover's ID policy. Old board member David Napierskie submits an attorney's opinion to the new board members explaining that rescinding the policy could moot the case and prevent a judgment against the district. New board prefers instead to ask Judge Jones to issue his decision before taking any action.[31]
December 20, 2005	Judge Jones issues *Kitzmiller* opinion, holding the Dover ID policy unconstitutional, and ruling that "ID is a religious view, a mere re-labeling of creationism, and not a scientific theory,"[32] and that it "has utterly no place in a science curriculum."[33]
January 3, 2006	The Dover school board unanimously rescinds the ID policy.[34]
February 22, 2006	Judge Jones awards $2,067,226 in attorneys' fees to be paid by the DASD to the plaintiffs' attorneys. The plaintiffs agree to accept $1,000,011 to settle the case.[35]

29. Christina Kauffman, *Dover Dumps Designers*, York Dispatch (Nov. 14, 2005) (available at http://www.yorkdispatch.com/local/ci_3198408).

30. Heidi Bernhard-Bubb, *Dover School Board's Last Gasp on Design*, York Dispatch (Nov. 15, 2004) (available at http://www.yorkdispatch.com/searchresults/ci_3218015).

31. Heidi Bernhard-Bubb, *Sticking to His Guns*, York Dispatch (Dec. 2, 2005) (available at http://www.yorkdispatch.com/searchresults/ci_3272956).

32. *Kitzmiller*, 400 F. Supp. 2d at 726.

33. *Id.* at 745.

34. Martha Raffaele, *MSNBC, Intelligent-Design Policy Rescinded*, http://www.msnbc.msn.com/id/10698535/ (Jan. 3, 2006).

35. Christina Kauffman, *Dover Gets a Million-Dollar Bill*, York Dispatch (Feb. 22, 2006) (available at http://www.yorkdispatch.com/local/ci_3535139); Amy Worden, *Dover District to Pay $1 Million in Legal Fees*, Phila. Inquirer B1 (Feb. 22, 2006).