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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, 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, 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, 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, DeWolf, West, and Luskin address Irons's response.

A chronology of important events in the Kitzmiller case follows.

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

Bonsell again mentions “creationism” as concern at board retreat.6

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

Board approves purchase of several science texts, including Biology.8

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

Curriculum committee hears Buckingham’s complaints that Biology did not include the “theory of creationism with God as creator of all life.”12

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.
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* as pro-ID biology text.\(^{14}\)

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.\(^{22}\)


\(^{15}\) *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.
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 "[the reference book, Of Pandas and People, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves."  

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."  

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.  

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."  

Judge Jones denies motion to intervene by Foundation for Thought and Ethics, publisher of Pandas.  

Bench trial takes place before Judge Jones. Numerous amicus briefs are filed, and Judge Jones hears testimony from thirty-three witnesses.  

23. Id. at 760–61.  
26. Id. at 761 (emphasis omitted).  
27. Memo. & Or. at 1, 22, 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  

32. Kitzmiller, 400 F. Supp. 2d at 726.  
33. Id. at 745.  