

February 9, 2006

VIA FED EX

Thomas K. Kahn, Clerk
U.S. Court of Appeals for the 11th Circuit
56 Forsyth Street N.W.
Atlanta Georgia 30303

Re: Cobb County School Board, et al., v. Selman, et al., Nos. 05-10341-I & 05-11725-II

Dear Mr. Kahn:

Amici curiae 56 Professional Scientific Organizations are writing to inform the Court of a newly-decided authority, Kitzmiller v. Dover Area School District, 400 F. Supp. 2d 707 (M.D. Pa. 2005). See I.O.P. following 11th Cir. R. 29 (expressly authorizing citation of supplemental authority by *amici curiae*).

In Kitzmiller, the District Court held a Dover Area School Board resolution and press release violated the First Amendment Establishment Clause. The resolution and press release stated, in part, “[b]ecause Darwin’s Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact.” Kitzmiller, 400 F. Supp. 2d at 708-709. The Court stated that the “paragraph is both misleading and creates misconceptions in students about evolutionary theory by misrepresenting the scientific status of evolution and by telling students that they should regard it as singularly unreliable, or on shaky ground.” Id., at 725.

Kitzmiller generally supports the *amici*’s argument that there is no pedagogical or scientific merit to the Cobb County School District’s requirement that biology textbooks carry a disclaimer that singles out evolution as a theory. Indeed, the Kitzmiller court noted that the above-quoted language “undermines students’ education in evolutionary theory and sets the groundwork for presenting students with the District’s favored religious alternative.” Id.

The Kitzmiller decision specifically supports the point made by *amici* on pages 3-6 of their brief that the disclaimer misuses the scientific terms “theory” and “fact.” The Kitzmiller Court noted that the press release singled out evolution from the rest of the science curriculum as “‘just a theory’, which plays on the colloquial or popular understanding of the term [‘theory’] and suggest[ing] to the informed reasonable observer that evolution is only a highly questionable ‘opinion’ or a

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'hunch.'" Id. (citing Selman v. Cobb County School District, 390 F. Supp. 2d 1286, 1310 (2005)). Further, "[a] reasonable observer is presumed to know the social meaning of the theory-not-fact deliberate word choice and would 'perceive the School Board to be aligning itself with proponents of religious theories of origin'..." Id., at 732 (citing Selman, 390 F. Supp. 2d at 1308).

Respectfully Submitted,



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