Sixty-ninth North Dakota Legislative Assembly
Senate Education Committee
S.B. 2355
February 12, 2025

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Chair Beard, Vice Chair Lemm, and members of the Committee:

On behalf of the American Civil Liberties Union of North Dakota, I submit testimony in opposition to Senate Bill 2355 which would mandate the inclusion of intelligent design in science content standards for elementary and secondary students.

Intelligent design, simply put, is a form of creationism and this bill would enact blatant violation of students' and parents' First Amendment rights, undermine science education across the state, invite costly litigation.[1]

The federal courts, including the U.S. Supreme Court, have repeatedly held that teaching creationism in public schools and other efforts to suppress or undermine evolution education are unconstitutional—no matter what form they may take.[2] Nevertheless, the Dover Area School District in Pennsylvania incorporated into its biology lessons a disclaimer questioning the validity of evolution and promoting intelligent design as an alternative. In 2005, the ACLU and Americans United for Separation of Church and State sued the school district on behalf of local families. Experts from the National Center for Science Education (NCSE) served as consultants and expert witnesses in the case, and this letter was written in consultation with NCSE to ensure accuracy as to its representations about intelligent design.[3]

The Dover school district tried to defend its policy by arguing that, unlike other forms of creationism, intelligent design is not a religious belief and is thus properly taught as a scientific alternative to evolution. To ensure that these arguments were fairly heard and considered, Judge John E. Jones III—who was nominated to the bench by President George W. Bush—held a six-week trial during which extensive evidence about intelligent design was presented.[4] As participants in the trial, our organizations can attest to the fact that Judge Jones left no stone unturned.

In the end, Judge Jones unequivocally rejected the district's arguments and systematically refuted each one. He ruled that intelligent design is merely "creationism re-labeled" and that incorporating

[1] Intelligent design" costs Dover over $1,000,000, NCSE (Feb. 24, 2006).

[2] *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 596-97 (1987) (striking down Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act"); *Epperson v. Arkansas*, 393 U.S. 97, 107-09 (1968) (overturning state law prohibiting the teaching of evolution in public schools as "there can be no doubt that Arkansas has sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man"); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F. 3d 337, 349 (5th Cir. 1999) (holding unconstitutional school-board policy requiring teachers to read classroom disclaimer questioning validity of evolution and promoting creationist beliefs); *Daniel v. Waters*, 515 F.2d 485, 489-90 (6th Cir. 1975) (striking down state statute that prohibited "the selection of any textbook which teaches evolution unless it also contains a disclaimer stating that such doctrine is 'a theory as to the origin and creation of man and his world and is not represented to be scientific fact'"); *Selman v. Cobb County Sch. Dist.*, 390 F. Supp. 2d 1286, 1309-12 (N.D. Ga. 2005) (enjoining school-board policy requiring placement of sticker disclaiming evolution as theory, not fact, in all science textbooks), *vacated and remanded on grounds of incomplete trial record*, 449 F.3d 1320 (11th Cir. 2006); *McLean v. Ark. Bd. of Educ.*, 529 F. Supp. 1255, 1274 (E.D. Ark. 1982) (overturning statute that mandated the teaching of creation-science in public schools and holding that "[n]o group, no matter how large or small, may use the organs of government, of which the public schools are the most conspicuous and influential, to foist its religious beliefs on others").

[3] *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp.2d 707, 763-66 (M.D. 2005) (enjoining school board policy promoting the teaching of intelligent design in biology class).

[4] *See id.* at 735 (noting that the court held "a six-week trial that spanned twenty-one days and included countless hours of detailed expert witness presentations").

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it into science classes violates the Establishment Clause of the First Amendment.[5] Moreover, he concluded that intelligent design "is not science" because it "fails to meet the essential ground rules that limit science to testable, natural explanations." [6] Indeed, "[t]he evidence presented... demonstrate[d] that [intelligent design was] not supported by any peer-reviewed research, data or publications."[7]

By contrast, evolution "is the only tested, comprehensive scientific explanation for the nature of the biological world today that is supported by overwhelming evidence and widely accepted in the scientific community."[8] It is a cornerstone of biology and is so well-established as a scientific theory that there is no legitimate scientific debate regarding its validity, any more than there is a scientific debate regarding the validity of the theory of universal gravity.[9]

Even should SB 2355 be amended to permit rather than mandate the teaching of intelligent design, the constitutional problem with the law would remain. The State may neither mandate nor permit its agents to act unconstitutionally.[10] Teaching intelligent design in public-school science classes is patently unconstitutional and should it become law it will inevitably violate students' and parents' constitutional rights and invite litigation. The ACLU and Americans United successfully sued in Pennsylvania, where the plaintiffs' attorneys' fees totaled more than $2,000,000, but they

[5] *Id.* at 722, 766; *see also id.* at 721 ("It is notable that not one defense expert was able to explain how the supernatural action suggested by [intelligent design] could be anything other than an inherently religious proposition. . . . The evidence at trial demonstrates that [intelligent design] is nothing less than the progeny of creationism."); *id.* at 765 ("[Intelligent design] cannot uncouple itself from its creationist, and thus religious, antecedents.").

[6] *Id.* at 735-38. The false claim that intelligent design is rooted in science is similar to the false claim made decades ago that "creation science" was science-based and should thus be taught in public schools. As the *Dover* court explained, creationism advocates simply "utilize[d] scientific-sounding language to describe religious beliefs" and then renamed creationism "creation science" or "scientific creationism" and demanded that it be taught in public schools as an alternative to evolution. *Id.* at 711-12. The U.S. Supreme Court firmly rejected these efforts. *See Edwards*, 482 U.S. at 596-97.

[7] *Kitzmiller*, 400 F. Supp. at 745. All the major scientific organizations agree. The National Academy of Sciences (NAS) describes intelligent design as "not supported by scientific evidence." Evolution Resources at the Nat'l Academies (Science & Religion), Intelligent Design, NAS (last visited Feb. 25, 2023). The National Science Teaching Association (NTSA) includes intelligent design in a list of creationist beliefs that "cannot be considered science, and have no place in science classrooms." Position Statement, Intelligent Design, NTSA (last visited Feb. 25, 2023). And, because intelligent design is not science, the American Association for the Advancement of Science (AAAS) says that promoting it in schools would undermine science education. AAAS Board Resolution on Intelligent Design Theory, AAAS (July 1, 2013).

[8] *See Science, Evolution, & Creationism*, NAS, 53 (2008).

[9] *Id.* at 50 ("[E]volution itself has been so thoroughly tested that biologists are no longer examining *whether* evolution has occurred and is continuing to occur."). Any suggestion that evolution is "just a theory," in the vernacular sense, is extremely misleading. *See* What is a Theory? Am. Museum of Natural History (last visited Feb. 25, 2023) ("In everyday use, the word 'theory' often means an untested hunch, or a guess without supporting evidence. But for scientists, a theory has nearly the opposite meaning. A theory is a well-substantiated explanation of an aspect of the natural world that can incorporate laws, hypotheses and facts. . . . The theory of evolution explains why so many plants and animals—some very similar and some very different—exist on Earth now and in the past, as revealed by the fossil record. . . . [T]he theory of evolution still persists today, much as Darwin first described it, and is universally accepted by scientists.").

[10] *See, e.g.*, *Karen B. v. Treen*, 653 F.2d 897, 899, 902 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (state statute authorizing, *but not requiring*, teachers to offer prayer if no students volunteered was unconstitutional because it made "inappropriate governmental involvement in religious affairs inevitable").

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agreed to accept half that after the community voted out the school board members insistent on pushing intelligent design.[11]

While teachers and school officials enjoy a broad range of religious-liberty and free-speech rights in their personal capacities,[12] they are not entitled to promote biblical doctrine or other religious beliefs, such as creation science and intelligent design, in class.[13] SB 2355, therefore, is not justified on academic-freedom grounds.[14] Nor does promoting religious doctrine in connection with biology instruction, or otherwise undermining evolution lessons, somehow provide more comprehensive science education.[15]

Finally, as the Supreme Court explained in *Edwards* while rejecting a state creation-science law, "[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family."[16] Parents, not public schools, are entitled to instill religious beliefs in their children. SB2355 infringes that right. Religion belongs where it prospers best—with individuals, families, and religious communities—not in science classrooms of public schools.

In issuing his intelligent design ruling, Judge Jones lamented the devastation that the school board had wrought on the Dover schools and community in its reckless pursuit of an obviously unconstitutional policy:

> *"Those who disagree with our holding will likely mark it as the product of an activist judge. If so, they will have erred as this is manifestly not an activist Court. Rather, this case came to us as the result of the activism of an ill-informed faction on a school board, aided by a national public interest law firm eager to find a constitutional test case on [intelligent design], who in combination drove the Board to adopt an imprudent and ultimately unconstitutional policy. The breathtaking inanity of the Board's decision is evident when*

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[11] *See supra* n.1 (noting that the ACLU and co-counsel agreed to accept half of the fees awarded "in recognition of the limited resources of the district and of the change in the school board's composition after the November 2005 election").

[12] *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422, 2432 (2022) (public-school employee permitted to engage in private act of silent prayer during noninstructional time after school, where prayers were *not* recited to a captive audience, such as a classroom, and students were not involved). Consistent with *Kennedy*'s "historical practices and understandings" test, *id.* at 2428, there is a long line of Supreme Court cases tracing the principle of governmental religious neutrality back to the beliefs and understandings of the Founding Fathers. *See, e.g.*, *Everson v. Bd. of Educ.*, 330 U.S. 1, 8-16 (1947); *Engel v. Vitale*, 370 U.S. 421, 425-31 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 214-26 (1963); *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 875-81(2005). And the case law pertaining to evolution and creationism relies on that longstanding constitutional principle.

[13] *See, e.g.*, *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521-22 (9th Cir. 1994) (holding that a science teacher was properly required by his school district to teach evolution and refrain from discussing his religious views); *Helland v. S. Bend Cmty. Sch. Corp.*, 93 F.3d 327, 329, 332 n.2 (7th Cir. 1996) (holding that public-school district had properly dismissed substitute teacher for, among other infractions, "the unconstitutional interjection of religion" into classes "by reading the Bible aloud to middle and high school students, distributing Biblical pamphlets, and professing his belief in the Biblical version of creation in a fifth grade science class"); *cf. Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1099 (7th Cir. 2007) ("Teachers and other public[-]school employees have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment's [E]stablishment [C]lause[.]").

[14] *See Edwards*, 482 U.S. at 587 ("It is equally clear that requiring schools to teach creation science with evolution does not advance academic freedom.").

[15] *See id.* at 586.

[16] *Edwards*, 482 U.S. at 584.

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> *considered against the factual backdrop which has now been fully revealed through this trial. The students, parents, and teachers of the Dover Area School District deserved better than to be dragged into this legal maelstrom, with its resulting utter waste of monetary and personal resources."*[17]

North Dakota's public schools, communities, and students also deserve better. Students' and parents' constitutional rights must be protected. The ACLU of North Dakota urges the Senate Education Committee to give a "do not pass" recommendation on SB2355.

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[17] *Kitzmiller*, 400 F. Supp. 2d at 765.