A Setback in Dover

Last rites for Intelligent Design

BY JOSH DUNN AND MARTHA DERTHICK

Will Judge John Jones’s blunt, much-publicized, year-end opinion in *Kitzmiller v. Dover*, a Pennsylvania case on Intelligent Design (ID), be the end of lawsuits over ID or the beginning of a wave?

*Kitzmiller* was launched after the school board in Dover, a town outside Harrisburg with just 3,600 students, voted to require the district’s 9th-grade biology teachers to read to their students a four-paragraph statement advising them that evolution is a theory, “not a fact.” The board told teachers to refer students to *Of Pandas and People*, a text favored by many creationists that defines ID as the belief “that various forms of life began abruptly through an intelligent agency, with their distinctive features already intact—fish with fins and scales, birds with feathers, beaks, and wings, etc.” A more usual definition holds merely that ID finds some organic matter to be of “irreducible complexity” and thus not explicable as a product of evolution.

Eleven local parents (one named Kitzmiller) sued, with help from the American Civil Liberties Union, Americans United for Separation of Church and State, and an elite Philadelphia law firm, Pepper Hamilton. The suit claimed that the board’s action violated the First Amendment ban on establishment of religion.

The defendants were badly beaten on every front. In November, soon after the six-week, non-jury trial ended, the Dover electorate voted eight of the school board’s nine members out of office. The following month they were beaten again by Judge Jones, whose 139-page opinion called the board’s ID decision religiously motivated and accused it of “breathtaking inanity.” Jones said that ID was not science. He also ordered that the school district pay the plaintiffs’ legal costs. Pepper Hamilton hinted that it might send bills to individual board members who voted for the ID statement.

The defeats, along with the turmoil caused by hordes of reporters from far-flung places, are likely to make other local boards hesitate before raising even timid questions about evolution. At the least, a prudent board might want to have the backing of the Discovery Institute, a Seattle-based nonprofit and a principal proponent of ID, which had distanced itself from the Dover defense, perhaps anticipating the loss. The defendants were instead represented by Richard Thompson of the Thomas More Law Center of Ann Arbor, Michigan, which is dedicated to protecting the religious freedoms of Christians.

Earlier in the year a Cobb County, Georgia, school board was similarly rebuffed by a federal district judge. The Georgia board had ordered that a sticker be attached to biology textbooks stating, “This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered.” The judge in that case ruled that the statement was an unconstitutional endorsement of religion because it was supported by religious opponents of evolution. Unlike Dover, however, the Cobb County board survived to file an appeal, which was being heard by the 11th Circuit as Jones handed down his opinion.

Will there be fresh lawsuits in the wake of *Kitzmiller*? The victors appear ready to turn to state school boards, where proponents of ID have made the most headway. State boards in Kansas and Ohio, among others, have adopted science standards that call for critical analysis of evolution. The day after Jones ruled, the *Cleveland Plain Dealer* reported that Americans United had obtained boxes of records from the Ohio Department of Education and was threatening a lawsuit. “We hope Ohio takes notice and cleans house,” said an official of Americans United.

There remains the question of what the litigation, no matter the outcome or opinions, means for science education, and beyond that whether science education has much effect on what Americans believe. Polls show that an overwhelming majority of Americans believe in a providential being and are skeptical about evolution. Critics of evolution seem to be fighting a battle that they have already won.

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