

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
(AUSTIN DIVISION)**

**CHRISTINA CASTILLO COMER** )  
211 Northern Trail )  
Leander, Texas 78641, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
**ROBERT SCOTT**, Commissioner, )  
Texas Education Agency, )  
1701 N. Congress Avenue )  
Austin, Texas 78201, )  
 )  
In his official capacity, )  
 )  
and )  
 )  
**TEXAS EDUCATION AGENCY** )  
1701 N. Congress Avenue )  
Austin, Texas 78201, )  
 )  
Defendants. )

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C.A. No. \_\_\_\_\_

**COMPLAINT**

**(For Declaratory and Injunctive Relief for Violation of Establishment and Due Process  
Clauses of the United States Constitution)**

**Introduction**

1. Creationism is a religious belief. Teaching creationism as science in public schools violates the Establishment Clause of the First Amendment to the United States Constitution. The Texas Education Agency (“Agency”) has a policy of purported “neutrality” on teaching creationism as science in public schools. By professing “neutrality,” the Agency credits

creationism as a valid scientific theory. Creationism, however, is not a valid scientific theory; it is a religious belief. The Agency's policy is not neutral at all, because it has the purpose or effect of inviting dispute about an issue—teaching creationism as science in public schools—that is forbidden by the Establishment Clause. The Agency's "neutrality" policy has the purpose or effect of endorsing religion, and violates the Establishment Clause.

2. Christina Castillo Comer was the Director of Science for the Curriculum Division of the Agency. Director Comer held her position for more than ten years, receiving numerous awards and commendations for her work. In August 2006, Director Comer's supervisor recommended that she receive an "out-of-cycle merit [pay] increase of 3%," recognizing that Director Comer "consistently exceeds the expectations for her position." (Ex. A.)

3. On November 8, 2007, the Agency fired Director Comer for contravening the Agency's unconstitutional "neutrality" policy by forwarding an email to other science educators announcing an upcoming lecture about evolution and creationism. According to the Agency's memorandum recommending that Director Comer be fired:

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled "Inside Creationism's Trojan Horse." The email states that the speaker [Barbara Forrest] is a board member of a science education organization, and the email clearly indicates that **the group opposes teaching creationism in public education.**

...

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer's email implies endorsement of the speaker and **implies that TEA endorses the**

**speaker's position on a subject on which the agency must remain neutral.** Thus, sending this email compromises the agency's role in the TEKS revision process by creating the perception **that TEA has a biased position on a subject directly related to the science education TEKS.**

(Ex. B) (emphases added).

4. Teaching creationism in public schools violates the Establishment Clause “because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.” Edwards v. Aguillard, 482 U.S. 578, 597 (1987). *See also* Kitzmiller v. Dover Area Sch. Dist., 400 F. Supp. 2d 707 (M.D. Pa. 2005). Similarly, the Agency's firing of its Director of Science for not remaining “neutral” on this subject violates the Establishment Clause, because it employs the symbolic and financial support of the State of Texas to achieve a religious purpose, and so has the purpose or effect of endorsing religion. By professing “neutrality,” the Agency credits creationism as a valid scientific theory. Finally, the Agency fired Director Comer without according her due process as required by the Fourteenth Amendment—a protection especially important here because Director Comer was fired for contravening an unconstitutional policy.

### **Jurisdiction and Venue**

5. This Court has original jurisdiction over Plaintiff's constitutional claims pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendants reside in this District, and the events giving rise to the claims occurred in this District.

## **Parties**

7. Plaintiff Christina Castillo Comer is a resident of Leander, Texas. Until fired for contravening an unconstitutional policy, she was the Director of Science for the Curriculum Division in the Texas Education Agency in Austin. She held that position for almost ten years (since May 1998), receiving many awards and commendations for her contributions to science education in Texas.

8. Defendant Robert Scott is the Commissioner of the Texas Education Agency. He is being sued in his official capacity. He supervises Curriculum Manager Monica Martinez, who wrote the memorandum recommending the termination of Director Comer, as well as Deputy Commissioner for Statewide Programs Lizzette Reynolds and Deputy Associate Administrator for Standards and Alignment Sharon Jackson. Martinez, Reynolds, and Jackson all participated in the firing of Director Comer.

9. The Agency was created by Sections 7.001-010, Tex. Educ. Code Ann. Headed by a Commissioner (currently, Defendant Scott) who is appointed by the Governor of Texas, the Agency and the Commissioner, *inter alia*, develop and manage the statewide curriculum, and administer the statewide assessment program. *See generally* Tex. Educ. Code Ann. §§ 7.021, 7.055. *See also* Texas Education Agency Mission and Responsibilities. (Ex. C.)

## **Background**

### **A. Director Comer's Responsibilities at the Texas Education Agency**

10. As the Director of Science for the Curriculum Division, Director Comer:

- \* directed the K-12 science program including curricular issues involving assessment, textbook adoption, professional development, professional outreach to school boards, administrators, organizations, and teacher groups;

- \* provided technical assistance to over 1200 school districts and charter schools, over 12,000 science teachers K-12, and over four million students;
- \* provided oral and written science presentations at the national, state and regional levels;
- \* wrote and directed grant programs for science instruction; and,
- \* managed various programs for the state including the Presidential Awardees for Excellence in Mathematics and Science Teaching program and the National Youth Science Camp program for outstanding science seniors.

11. Director Comer has worked in the field of science education for more than 30 years. Before joining the Agency, Director Comer worked as a Science Mentor Teacher, Urban Systemic Initiative (1996-1998), a Science Teacher in the San Antonio Independent School District (1972-1995), a high school administrator in the Burbank High School in San Antonio (1995-1996), a Texas Science Standards Writer (1995-1998), and Science Teacher Consultant for the American Association for the Advancement of Science (1992-1995).

**B. Recognition of Director Comer’s Outstanding Contributions to Science Education in Texas**

12. Over the years Director Comer has received many awards, including:
- \* Outstanding Service to Texas Science Teachers      November 2007  
Science Teachers Association of Texas
  - \* Distinguished Service Award      November 2007  
Texas Science Education Leadership Association
  - \* Outstanding Service Award      September 2007  
University of Texas Medical Branch
  - \* Outstanding Service Award      September 2006  
University of Texas Medical Branch
  - \* Excellence in Elementary Science Rebecca Sparks Award      2006

### Texas Council of Elementary Science

*	Distinguished Service in Recognition of Exemplary Leadership, Dedication and Commitment Texas Regional Collaboratives	2005
*	Recognition of Outstanding Dedication and Support of Texas Teachers San Antonio, Texas	2004
*	Friend of TESTA Promoting Earth Science Award Texas Earth Science Teachers Association	1999
*	Outstanding Contribution to Science K-12 Award University of Texas Arlington	1999
*	Outstanding Achievement Award Metropolitan Association of Teachers of Science, Houston	1998
*	Exemplary Achievement in Science Award Texas Science Hall of Fame	1998
*	Outstanding Leadership in Science Award Texas Statewide Systemic Initiative	1996
*	Phi Delta Kappa San Antonio, Texas	1995
*	Outstanding Service in Science Education Texas State Senate, Frank Madia	1993

### C. The Theory of Evolution

13. “‘Evolution’ is defined as ‘the theory that the various types of animals and plants have their origin in other preexisting types, the distinguishable differences being due to modifications in successive generations.’” Aguillard, 482 U.S. at 599 (Powell, J., concurring) (quoting Webster’s Third New International Dictionary 789 (unabridged ed. 1981)).

14. The National Academy of Sciences summarizes the theory of evolution as follows: “Biological evolution concerns changes in living things during the history of life on

earth. It explains that living things share common ancestors. Over time, evolutionary change gives rise to new species. Darwin called this process ‘descent with modification,’ and it remains a good definition of biological evolution today.” Science and Creationism: A View from the National Academy of Sciences 27 (2d ed. 1999).

15. In science, the term “theory” has a distinct meaning and does not suggest uncertainty, doubt or speculation. The National Academy of Sciences defines a scientific theory as “a well-substantiated explanation of some aspect of the natural world that can incorporate facts, laws, inferences and tested hypotheses.” Science and Creationism 2. In addition to the theory of evolution, other examples of a scientific theory include the germ theory of diseases, the heliocentric theory of the solar system, atomic theory (the basis of the periodic table of the elements), the theory of plate tectonics, and the theory of gravity. These scientific theories integrate and explain such a wide range of data that they are considered crowning achievements of their respective fields.

16. According to the National Academy of Sciences, “evolution is one of the strongest and most useful scientific theories we have,” and “[t]he scientific consensus around evolution is overwhelming.” Science and Creationism 2, 28.

17. The American Association for the Advancement of Science states: “The contemporary theory of biological evolution is one of the most robust products of scientific inquiry. It is the foundation for research in many areas of biology as well as an essential element of science education.” AAAS Board Resolution on Intelligent Design Theory. (Ex. D.)

18. In Kitzmiller, the court relied on unrebutted expert testimony that “evolution, including common descent and natural selection, is ‘overwhelmingly accepted’ by the scientific community and that every major scientific association agrees.” 400 F. Supp. 2d at 743.

19. In Selman v. Cobb County School District, the court observed that “evolution is more than a *theory* of origin in the context of science. To the contrary, evolution is the dominant scientific theory of origin accepted by the majority of scientists.” 390 F. Supp. 2d 1286, 1309 (D. Ga.) (emphasis in original), *vacated and remanded on other grounds*, 449 F.2d 1320 (11th Cir. 2005).

20. The Texas Academy of Science describes the theory of evolution as “the primary unifying cognitive framework in the biological sciences.” Position Against the Inclusion of Creationism and Intelligent Design Concepts in the Science Curricula in Texas Schools. (Ex. E.)

21. According to the Science Teachers Association of Texas, “[t]here is no longer a debate among scientists about whether evolution has taken place.” Thus, “[i]f evolution is not taught properly, students will not achieve the level of scientific literacy needed for science-related careers and life in a society where understanding of the core concepts of science is critical.” STAT Position Statement on Evolution. (Ex. F.)

#### **D. Creationism**

22. While the theory of evolution is overwhelmingly accepted in the scientific community, it has been “historically opposed by religious denominations” which perceive that it contradicts their religious doctrines about the origin and development of life. Aguillard, 482 U.S. at 582.

23. “Too often, evolution has not been emphasized in science curricula and classrooms in a manner commensurate with its importance because of official policies, intimidation of science teachers, and the general public’s misunderstanding of the term ‘theory.’ Teachers are also being pressured to introduce nonscientific views, including ‘creationism,’ ‘intelligent design,’ ‘initial complexity,’ and ‘abrupt appearance,’ which are not supported by

evidence and have no legitimate place in the science curriculum.” STAT Position Statement on Evolution. (Ex. F.)

24. Opponents of evolutionary theory repeatedly have attempted to forbid, limit or otherwise undermine the teaching of the theory of evolution in the public schools. Challenges have included laws or policies prohibiting the teaching of evolution; requiring teachers to make statements or disclaimers questioning the validity of the theory of evolution; and requiring science teachers to present anti-evolutionary views, including religious views not based on scientific evidence such as creationism or “intelligent design.” *See generally* McLean v. Ark. Bd. of Educ., 529 F. Supp. 1255, 1258-60 (E.D. Ark. 1982) (discussing the history of Fundamentalism, evolution, and creationism in the United States and observing that “the creationist organizations consider the introduction of creation science into the public schools [as] part of their ministry”).

25. In Kitzmiller, the court ruled that intelligent design is “creationism re-labeled.” 400 F. Supp. 2d at 722. The court held that the Dover School Board violated the Establishment Clause by requiring teachers to read a statement in the ninth grade biology class that “Darwin’s Theory . . . is not a fact,” that “Intelligent Design is an explanation of the origin of life that differs from Darwin’s view,” and that a reference book “is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.” Id. at 761.

26. The court in Kitzmiller also described the jurisprudential history of attempts to insert creationism into public school curricula. *See* 400 F. Supp. 2d 711-12. In 1925, the criminal prosecution of a public school teacher for teaching about evolution in violation of a Tennessee statute culminated in the famous “monkey trial.” Scopes v. State, 154 Tenn. 105 (1927). Forty-one years later, the Supreme Court of the United States struck down an Arkansas

statute prohibiting the teaching of evolution. Epperson v. Arkansas, 393 U.S. 97 (1968). In 1987, the Court ruled that a Louisiana statute requiring public schools to teach creationism along with evolution (the “Balanced Treatment for Creation-Science and Evolution-Science Act”) violated the Establishment Clause. Aguillard, 482 U.S. at 596-97. The statute had the “purpose of discrediting evolution by counterbalancing its teaching at every turn with the teaching of creationism.” Id. at 589. The belief that a supernatural creator is responsible for the creation of humankind is a religious viewpoint. Id. at 591. The statute was “designed *either* to promote the theory of creation science that embodies a particular religious tenet *or* to prohibit the teaching of a scientific theory disfavored by certain religious sects.” Id. at 593. “Out of many possible science subjects taught in the public schools, the legislature chose to affect the teaching of the one scientific theory that historically has been opposed by certain religious sects.” Id. Thus, the Court held that the statute “violates the Establishment Clause of the First Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.” Id. at 597.

27. The current Texas statewide assessment standards require that students learn the theory of evolution. *See* 19 Tex. Admin. Code § 119.43(b)(1), (c)(7).

28. Nevertheless, upon information and belief, “[s]tarting this summer, the [Texas] state education board will determine the curriculum for the next decade and decide whether the ‘strengths and weaknesses’ of evolution should be taught” in public schools. Laura Beil, Opponents of Evolution Are Adopting New Strategy, N.Y. Times, June 4, 2008, at A14. (Ex. G.)

**E. Defendants’ Firing of Director Comer**

29. On Friday, October 26, 2007, Director Comer read an email dated October 23 from Glenn Branch, Deputy Director of the National Center for Science Education (“Branch

email”) (Ex. H). The subject of the Branch email was “Barbara Forrest in Austin 11/2.” The email read:

Dear Austin-area friends of NCSE,

I thought you might like to know that Barbara Forrest will be speaking on “Inside Creationism’s Trojan Horse” in Austin on November 2, 2007. Her talk, sponsored by the Center for Inquiry Austin, begins at 7:00 p.m. in the Monarch Event Center, Suite 3100, 6406 North IH-35 in Austin. The cost is \$6; free to friends of the Center.

In her talk, Forrest will provide a detailed report on her expert testimony in the *Kitzmiller v. Dover School Board* trial as well as an overview of the history of the “intelligent design” movement. Forrest is a Professor of Philosophy in the Department of History and Political Science at Southeastern Louisiana University; she is also a member of NCSE’s board of directors.

For further details, visit:

[http://www.centerforinquiry.net/austin/events/barbara\\_forrest\\_insider\\_creationisms\\_trojan\\_horse\\_lecture/](http://www.centerforinquiry.net/austin/events/barbara_forrest_insider_creationisms_trojan_horse_lecture/)

Sincerely,

Glenn Branch  
Deputy Director  
National Center for Science Education, Inc.

...

30. Director Comer “googled” Dr. Forrest and found that her credentials appeared impressive. Because Director Comer thought that Dr. Forrest’s comments about the Kitzmiller trial might be interesting to science educators, she forwarded the Branch email to two listservs: STATBOD@googlegroups.com, which is the private listserv of the officers of Science Teachers Association of Texas, and texasearth@googlegroups.com, most of whom are local geo-science educators.

31. Director Comer also forwarded the Branch email to seven individuals: Kamil Jbeily, Executive Director of the Texas Regional Collaboratives at UT; Carol Fletcher, Assistant Director and R&D Coordinator of the Texas Regional Collaboratives at UT; Kevin Fisher, Past President of the Science Teachers Association of Texas; Gina Day, then Director of Student Support Initiatives at TEA; Julie Harris-Lawrence, Director of Math and Science Partnerships at TEA; Irene Pickhardt, Assistant Director of Science for the Curriculum Division at TEA; and, Barbara ten Brink, Elementary Science Specialist at Austin Independent School District and Past President of the Science Teachers Association of Texas.

32. Director Comer forwarded the Branch email only to science educators in the Austin area, a total of about 36 people. She sent her forwarding email at 9:49 a.m. on October 26. The only comment on her forwarding email was “FYI.” (Ex. I.)

33. Later that same morning, Director Comer was pulled out of a meeting by Sharon Jackson, Deputy Associate Commissioner for Standards and Alignment. Jackson brought Director Comer into Jackson’s office.

34. Deputy Associate Commissioner Jackson then handed Director Comer a hard copy of an email from Deputy Commissioner Lizzette Reynolds, Statewide Policy and Programs, to Jackson.

35. In this email, Deputy Commissioner Reynolds asserted in substance that Director Comer’s forwarding of the Branch email was an offense worthy of termination or at least reassignment of her duties, that Director Comer must immediately issue a disclaimer, and that she was not allowed to express opinions on this subject.

36. Director Comer orally responded to Deputy Associate Commissioner Jackson in words to the effect of asking: “Is she firing me over creationism?” Deputy Associate

