

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Filed: 9/26/13

COPE (a/k/a CITIZENS FOR OBJECTIVE
PUBLIC EDUCATION, INC.), et al.,

Civil Action No. 13-4119

Plaintiffs.

KHV
JPO

v.

KANSAS STATE BOARD OF
EDUCATION, et. al.,

Defendants.

COMPLAINT

(Bold face captions are intended as descriptive of the substantive content
of the related paragraph and need not be addressed by any answer)

I. INTRODUCTION

1. The Plaintiffs, consisting of students, parents and Kansas resident taxpayers, and a representative organization, complain that the adoption by the Defendant State Board of Education on June 11, 2013 of Next Generation Science Standards, dated April 2013 (the Standards; <http://www.nextgenscience.org/>) and the related *Framework for K-12 Science Education: Practices, Crosscutting Concepts and Core Ideas*, (2012; (http://www.nap.edu/catalog.php?record_id=13165#), incorporated therein by reference (the "Framework" with the Framework and Standards referred to herein as the "F&S") will have the effect of causing Kansas public schools to establish and endorse a non-theistic religious worldview (the "Worldview") in violation of the Establishment, Free Exercise, and Speech Clauses of the First Amendment, and the Equal Protection Clauses of the 14th Amendment.

Article III regarding the Parties begins at paragraph 26
Article IV regarding Venue and Jurisdiction begins at paragraph 48

II. BACKGROUND

2. The F&S take impressionable children, beginning in Kindergarten, into the religious sphere by leading them to ask ultimate religious questions like what is the cause and nature of life and the universe - "where do we come from?"

3. These questions are ultimate religious questions because answers to them profoundly relate the life of man to the world in which he lives. ["By its nature, religion - in the comprehensive sense in which the Constitution uses that word - is an aspect of human thought and action which profoundly relates the life of man to the world in which he lives." (*McGowan v. Maryland*, 366 U.S. 420, 461 (1961) (Frankfurter, J. concurring, with Harlan, J.))]

4. These questions are exceedingly important as ancillary religious questions regarding the purpose of life and how it should be lived ethically and morally depend on whether one relates his life to the world through a creator or considers it to be a mere physical occurrence that ends on death per the laws of entropy.

5. However, instead of seeking to objectively inform children of the actual state of our scientific knowledge about these questions in an age appropriate and religiously neutral manner, the Standards use, without adequately disclosing, an Orthodoxy (defined in paragraphs 8 and 9) and a variety of other deceptive methods to lead impressionable children, beginning in Kindergarten, to answer the questions with only materialistic/atheistic answers.

6. Instead of explaining to students that science has not answered these religious questions, the F&S seek to cause them to accept that controversial materialistic/atheistic answers are valid.

7. The purpose of the indoctrination is to establish the religious Worldview, not to deliver to an age appropriate audience an objective and religiously neutral origins science education that seeks to inform.

8. The orthodoxy, called methodological naturalism or scientific materialism, holds that explanations of the cause and nature of natural phenomena may only use natural, material or

mechanistic causes, and must assume that, supernatural and teleological or design conceptions of nature are invalid (the "Orthodoxy").

9. The Orthodoxy is an atheistic faith-based doctrine that has been candidly explained by Richard Lewontin, a prominent geneticist and evolutionary biologist, as follows: "Our willingness to accept scientific claims that are against common sense is the key to an understanding of the real struggle between science and the supernatural. We take the side of science *in spite* of the patent absurdity of some of its constructs, *in spite* of its failure to fulfill many of its extravagant promises of health and life, *in spite* of the tolerance of the scientific community for unsubstantiated just-so stories, because *we have a prior commitment, a commitment to materialism*. It is not that the methods and institutions of science somehow compel us to accept a material explanation of the phenomenal world, but, on the contrary, that *we are forced by our a priori adherence to material causes* to create an apparatus of investigation and a set of concepts that produce material explanations, no matter how counter-intuitive, no matter how mystifying to the uninitiated. *Moreover, that materialism is absolute, for we cannot allow a Divine Foot in the door.*" [Richard Lewontin, *Billions and Billions of Demons* 44 N.Y. REV. OF BOOKS 31 (Jan. 9, 1997) (emphasis added)]

10. Many of the misleading methods used to promote the Worldview are detailed in paragraphs 94 through 122; however, three critical devices are omissions to cause students to analyze and understand (a) that the ultimate questions which students are led to ask identify mysteries that have not been answered by science, (b) that the explanations to be accepted by students are driven by the Orthodoxy and not by an objective weighing of all the "available evidence," and (c) that many naturally occurring patterns and phenomena contradict the materialistic/atheistic tenet of the Orthodoxy, including (1) the fine-tuning of matter, energy and the physical forces to permit the existence of life and (2) the fact that physics and chemistry do not explain the sequences of nucleotide bases that carry the functional information and genetic programming necessary to the origin of life and much of its diversity.

11. **Concealing the Orthodoxy.** Although omissions mentioned in the preceding paragraph enhance the promotion of the Atheistic Worldview, a more robust tool for that indoctrination is the omission to provide standards that will adequately explain to students the nature, use and effect of use of the Orthodoxy.

12. Instead of candidly disclosing the Orthodoxy as explained by Richard Lewontin, its nature and use is masked by standards which misrepresent the materialistic and atheistic explanations provided as being based on all the "available evidence," and on "open-minded," "objective," "logical" and "honest" investigation per "common rules of evidence," when in fact the explanations violate all of those descriptors due to the use of the Orthodoxy and the lack of consideration given to evidence that is inconsistent with it.

13. **Other methods of Indoctrination.** Other tools of indoctrination and evangelism are detailed in paragraphs 87 through 122 below, but three additional strategies employed by the F&S reflect a purpose to establish in impressionable minds the materialistic/atheistic Worldview rather than to provide an objective and religiously neutral origins science education.

14. **Indoctrinating Impressionable Young Minds.** First, the F&S begin the indoctrination of the materialistic/atheistic Worldview at the age of five or six with young impressionable minds that lack the cognitive or mental development and scientific, mathematical, philosophical and theological sophistication necessary to enable them to critically analyze and question any of the information presented and to reach their own informed decision about what to believe about ultimate questions fundamental to all religions.

15. Because living systems appear to be "brilliantly" and "superbly" "designed for a purpose" by a "sentient" designer and because of religious training and belief acquired from family and the community, young children bring to public schools teleological conceptions of the natural world which conflict with the tenets of the materialistic/atheistic Orthodoxy.

16. Taking advantage of their malleable minds the F&S deem these "conceptions" to be "misconceptions," as they are inconsistent with the Orthodoxy, and then provide strategies for

correcting them as explained herein, which include strategies to train teachers to identify and then lead children to correct their so-called "misconceptions" about the natural world.

17. No secular purpose exists for the state seeking to teach impressionable young children about a materialistic/atheistic view of origins before the mind of the child has achieved the necessary cognitive development and has acquired knowledge of the necessary intellectual predicates of math, chemistry, physics, geology, biology, molecular biology, biochemistry, statistics, philosophy and theology.

18. The effect of the F&S in teaching the materialistic/atheistic Worldview to young children before they attain the age and sophistication necessary to make an informed decision about it, is likely to cause them to embrace it, because studies show (a) that children between the age of five and eleven simply assimilate and take, unthinkingly, what authorities have taught to the child and (b) that they generally form their religious worldview by the time they attain the age of 13.

19. The effect of teaching for thirteen years only the materialistic/atheistic side of a religious controversy to an audience that is not age appropriate is religious, not educationally objective, and is indicative of an intent to inculcate and establish that non-theistic religious Worldview in the children.

20. The effect of seeking to establish the Worldview, particularly in the minds of impressionable primary school students, amounts to an excessive governmental entanglement with religion.

21. **Excluding Theists from policies of non-discrimination and "equity."** Second, the F&S implicitly excludes from its policies regarding non-discrimination and equity, children, parents and taxpayers that embrace theistic worldviews, thereby enabling the discriminatory establishment of the non-theistic Worldview under the guise of "science."

22. **Causing the Worldview to be incorporated in all other curriculum.** Third, the F&S use a strategy that seeks to cause the core materialistic/atheistic ideas of the Worldview to

be used in and "cohere" with all other curriculum and to cause students to develop "habits of mind" that accept those core ideas.

23. The foregoing strategies have the effect of evangelizing students to accept a religious idea rather than objectively informing children about the actual state of our scientific knowledge concerning the cause and nature of life and the universe.

24. As a consequence, implementation of the foregoing strategies by Kansas will cause it to endorse a particular religious viewpoint, without a valid secular purpose, with a primary effect that is not religiously neutral, and in a manner that will treat atheists and materialists as favored insiders and theists as disfavored outsiders, and otherwise cause the state of Kansas to be excessively entangled with religion.

25. Plaintiffs therefore complain that the implementation of the F&S will infringe on their rights under the First and Fourteenth Amendments.

III. THE PARTIES

26. Plaintiff **Citizens for Objective Public Education** ("COPE") is a nonprofit organization whose purpose is to promote the religious rights of parents, students and taxpayers in public education and whose members include residents of Kansas who are taxpayers and parents that have children that are enrolled in Kansas public schools and children that are expected to be enrolled in Kansas Public Schools.

27. Plaintiffs Carl and Mary Angela Reimer, are residents of Meade, Kansas, are parents of BR, age 5, HR, age 8, BR, age 9 and NR, age 11, who are enrolled in Kansas public schools, and are Christian parents who seek to instill in their children a belief that life is a creation made for a purpose, that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

28. Plaintiffs BR, HR, BR and NR seek to enforce their rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the

F&S seek to establish, which rights are being asserted herein on their behalf by their father and mother and next friend, Carl and Mary Angela Reimer.

29. Plaintiff Sandra Nelson, is a resident of Rush Center, Kansas, and is the mother of JN, age 13, who is enrolled in a Kansas public school, and is a Christian parent who seeks to instill in her child a belief that life is a creation made for a purpose that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

30. Plaintiff JN seeks to enforce his rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which right is being asserted herein on his behalf by his mother and next friend, Sandra Nelson.

31. Plaintiffs Lee and Toni Morss, are residents of Burdett, Kansas, are parents of LM, age ten, RM, age 13 and AM, age 14, who are enrolled in Kansas public schools, and are Christian parents who seek to instill in their children a belief that life is a creation made for a purpose that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

32. Plaintiffs LM, RM and AM seek to enforce their rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which rights are being asserted herein on their behalf by their father and mother and next friend, Lee and Toni Morss.

33. Plaintiffs Mark and Angela Redden, are residents of Gypsum, Kansas, are parents of MR, age nine who is enrolled in a Kansas public school, and are Christian parents who seek to instill in their child a belief that life is a creation made for a purpose that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

34. Plaintiff MR seeks to enforce his rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish,

which rights are being asserted herein on his behalf by his father and mother and next friend, Mark and Angela Redden.

35. Plaintiffs Burke and Kelcee Pelton, are residents of Burdett, Kansas, are parents of BP, age 1 and LP, age 3, who are expected to be enrolled in Kansas public schools, and KP, age 5, who is enrolled in a Kansas public school, and are Christian parents who seek to instill in their children a belief that life is a creation made for a purpose, that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

36. Plaintiffs BP, LP and KP seek to enforce their rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which rights are being asserted herein on their behalf by their father and mother and next friend, Burke and Kelcee Pelton.

37. Plaintiffs Michael and Bre Ann Leiby, are residents of Burdett, Kansas, are parents of EL, age 1 who is expected to be enrolled in Kansas public schools, and PL, age 9, and ZL, age 10, who are enrolled in a Kansas public schools, and are Christian parents who seek to instill in their children a belief that life is a creation made for a purpose, that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

38. Plaintiffs EL, PL and ZL seek to enforce their rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which rights are being asserted herein on their behalf by their father and mother and next friend, Michael and Bre Ann Leiby.

39. Plaintiffs Jason and Robin Pelton, are residents of Burdett, Kansas, are parents of CP, age 7, SP, age 9, CP, age 10 and SP, age 12, who are enrolled in Kansas public schools, and are Christian parents who seek to instill in their children a belief that life is a creation made for a purpose, that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

40. Plaintiffs CP, SP, CP and SP seek to enforce their rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which rights are being asserted herein on their behalf by their father and mother and next friend, Jason and Robin Pelton.

41. Plaintiffs Carl and Marisel Walston, are residents of Lenexa, Kansas, are parents of HW, age 9, who is enrolled in a Kansas public school, and are Christian parents who seek to instill in their son a belief that life is a creation made for a purpose, that does not end on death and is not simply a purposeless occurrence that is the product of an unguided evolutionary process.

42. Plaintiff HW seeks to enforce his rights to not be indoctrinated by Kansas public schools to accept the materialistic/atheistic religious Worldview which the F&S seek to establish, which right is being asserted herein on his behalf by his father and mother and next friend, Carl and Marisel Walston.

43. Plaintiffs David and Victoria Prather, are residents of Lake Quivira, Kansas, who pay state and local income and property taxes which are used in part to fund public schools in Kansas, and who object to the use of such funds by the State of Kansas for the establishment and promotion of a non-theistic religious worldview through its implementation of the F&S.

44. Defendant Kansas State Board of Education (the "Board") is a ten member governmental body, established under Section 2 of Article 6 of the Kansas Constitution to have general supervision of K-12 public schools, educational institutions and educational interests of the state, and has its principal offices at 120 SE 10th Avenue, Topeka, Kansas 66212.

45. The ten elected defendant members of the Board are individual Kansas residents, are joined only in their official capacities and may be served at 120 SE 10th Avenue, Topeka, Kansas 66212.

46. The Defendant Kansas State Department of Education is a governmental entity established by Section 72-7701 of the Kansas Statutes which is under the administrative

supervision of a commissioner of education as directed by law and by the state board. The Department has offices at and may be served at 120 SE 10th Avenue, Topeka, Kansas 66212.

47. Diane DeBacker is the Kansas Commissioner of Education appointed by the Board, is joined in her official capacity only and may be served at 120 SE 10th Avenue, Topeka, Kansas 66212.

IV. JURISDICTION AND VENUE

48. This is a civil action whereby Plaintiffs seek: a Declaratory Judgment that the F&S adopted by the defendant Kansas State Board of Education (the “Board”) on June 11, 2013, seeks to establish a program for indoctrinating students in a non-theistic religious Worldview in public schools (the "Policy") and thereby violates the rights of Plaintiffs under the Establishment, Free Exercise and Speech Clauses of the First Amendment and the Equal Protection Clause of the 14th Amendment of the United States Constitution; and permanent injunction against implementation of all or certain portions of the Policy by the Board and defendant Kansas State Department of Education (the “Department”); nominal damages incurred by all Plaintiffs; the costs incurred in this litigation, including attorneys' fees, and such other relief as the Court deems equitable, just and proper.

49. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. §§ 1983 and 1988.

50. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

51. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

52. This Court has authority to issue the requested injunctive relief under 28 U.S.C. § 1343(a)(3).

53. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(a)(3).

54. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

55. Venue is proper under 28 U.S.C. § 1391(b) in the District of Kansas because the offices of the Kansas Department of Education and the Kansas State Board of Education are located therein, all members of the Board reside therein, and the events or omissions giving rise to the claims occurred therein.

**V. ALLEGATIONS COMMON TO ALL COUNTS -
THE F&S AND THE WORLDVIEW IT SEEKS TO ESTABLISH AND PROMOTE**

56. The Framework was published by the National Academies of Science in final form in 2012 as a "blueprint" for K-12 science education in the U.S.

57. The Standards were developed pursuant to that Framework and finalized in April 2013.

58. Plaintiff COPE issued analyses objecting to the F&S on June 1, 2012, and January 29, 2013, copies of which are appended as Exhibits A and B (the "COPE Analyses").

59. On May 14, 2013 and June 11, 2013 representatives of COPE urged the Kansas Board to reject the F&S for the reasons stated in the COPE Analyses and invited representatives of the Board to engage in a detailed discussion of concerns that the F&S infringe on the religious rights of parents, children and taxpayers.

60. COPE's invitations were met with silence.

61. During the meeting of the State Board on June 11, 2013, Mr. Willard, a member of the State Board, urged the Board to delay action on the F&S until it had investigated the assertions in the COPE analyses that the F&S were unconstitutional.

62. The Chairman invited discussion on Mr. Willard's proposal for the Board to engage in such due diligence before adoption of the F&S, however, other Board members

expressed the view that there was no need to consider those and other objections expressed by Mr. Willard.

63. On June 11, 2013, over the objections of two members of the State Board, the Defendant State Board adopted the Standards and the Framework, which is incorporated therein by reference, without engaging in any due diligence with regard to the issues expressed in the COPE analyses.

64. The F&S seek to cause students to embrace a non-theistic Worldview. As used herein, "worldview" means a religious view that is "an aspect of human thought and action which profoundly relates the life of man to the world in which he lives" (McGowan v. Maryland, *supra*).

65. The F&S seek to establish the Worldview by leading very young children to ask ultimate questions about the cause and nature of life and the universe - *Where do we come from?* - and then using a variety of deceptive devices and methods that will lead them to answer the questions with only materialistic/atheistic explanations about how their lives are related to the world in which they live.

66. The effect of the F&S is to cause the student to ultimately "know" and "understand" that the student is not a design or creation made for a purpose, but rather is just a "natural object" that has emerged from the random interactions of matter, energy and the physical forces via unguided evolutionary processes which are the core tenets of Religious ("secular") Humanism.

67. The F&S engage the child to ask and answer ultimate questions by causing them to observe naturally-occurring patterns and then leading them to explain the cause of the patterns using only mechanistic or materialistic/atheistic causes.

68. The patterns which children are led to examine and ascertain the cause of include the pattern that emerged during the origin of the universe in the "Big Bang," and the patterns consisting of the origin and diversity of life, such that children are led to reconstruct "histories"

or genesis accounts of the cosmos and of life on earth using materialistic and atheistic explanations and narratives.

69. As explained by the late Ernst Mayr, an icon of evolutionary biology, origins science differs from traditional experimental sciences in that it relies on the construction of historical narratives rather than laws and experiments to explain the cause of past events: “. . . Darwin introduced historicity into science. Evolutionary biology, in contrast with physics and chemistry, is a historical science – the evolutionist attempts to explain events and processes that have already taken place. *Laws and experiments are inappropriate techniques for the explication of such events and processes. Instead one constructs a historical narrative, consisting of a tentative reconstruction of the particular scenario that led to the events one is trying to explain.*” [Ernst Mayr, *Darwin’s Influence on Modern Thought*, SCIENTIFIC AMERICAN, Jul. 2000, at 80 (emphasis added).]

70. Historical sciences use a form of abductive reasoning that seeks to develop an inference to the best of competing alternative explanations based on the weight of all of the available evidence, which method requires that the weight of the evidence both favor or rule in one hypothesis while disfavoring or ruling out the other competing possibilities.

71. Two principal competing evidence-based explanations have existed for thousands of years with respect to the origin of the universe, of life and of the diversity of life, one materialistic and the other teleological.

72. The teleological hypothesis argues that the apparent design that may be observed in many naturally occurring patterns may be real and therefore due to an intelligent cause. It is an evidence-based logical inference derived from patterns that are observed to (a) exhibit function or purpose, (b) consist of sequences or arrangements of elements that are not ordered by any physical or chemical necessity and, (c) cannot be plausibly explained, because of their complexity, by stochastic or random events.

73. Naturally occurring patterns which support the teleological hypothesis include (a) the fine-tuning of the universe for life, (b) the genetic programming necessary to get life started, (c) the genetic code which has been found to exhibit "eerie perfection" which organizes the "messages" in DNA that must be "error-checked," "edited" and then translated into functional proteins, (d) a fossil record that shows large increases in biological information over very short time-spans, such as the Cambrian explosion, (e) the existence of "orphan" genes that lack an apparent common ancestor, (f) human consciousness and free will, and (g) the fact that all living systems exhibit similarities and differences consistent with a "unifying" idea that life may be the result of a common design.

74. The competing materialistic or naturalistic idea is "a theory that expands conceptions drawn from the natural sciences into a worldview and that denies that anything in reality has a supernatural or more than natural significance; specifically: the doctrine that cause-and-effect laws (as of physics and chemistry) are adequate to account for all phenomena and that teleological conceptions of nature are invalid " ("Naturalism" - Merriam Webster's Unabridged Dictionary, 2013).

75. The two competing ideas about the nature of the natural world generate competing religious beliefs.

76. The teleological hypothesis supports (but does not require belief in) traditional theistic religions that claim that life was created for a purpose and that it has a soul that does not end on death.

77. The materialistic/naturalistic hypothesis supports (but does not require belief in) non-theistic religions like Atheism and Religious ("secular") Humanism which deny the supernatural, hold that physical matter is the only reality and the reality through which all being and processes can be explained, that life arises via unguided evolutionary processes driven by physics and chemistry, and that it ends on death.

78. The F&S employ the Orthodoxy called methodological naturalism or scientific materialism described in paragraphs 8 and 9 above.

79. The Orthodoxy has utility as a refutable presumption in a variety of scientific endeavors.

80. When applied to subjective historical origins science as an irrefutable absolute commitment, the Orthodoxy is inconsistent with (a) an objective search for the truth and intersubjectively accessible knowledge, (b) common rules of evidence, (c) accepted methods of testing historical hypotheses using abductive reasoning and (d) objective science that eschews preconceptions that favor a particular theistic or non-theistic religious view.

81. The Orthodoxy when applied to historical origins sciences violates the common rules of evidence and the logic of abductive reasoning by excluding the principal evidence-based competing alternative to materialism - the idea that many naturally occurring patterns may be due to teleological rather than materialistic causes.

82. The effect of the use of the Orthodoxy is that it causes the investigation to close its mind to competing alternatives and evidence that undermine the core materialistic assumption so that the investigation becomes one that employs "tunnel vision" that necessarily leads to only atheistic explanations of the cause and nature of life and the universe.

83. The Orthodoxy is functionally atheistic when used to explain the origin of the universe and of life as it precludes any supernatural or teleological explanation and holds that life may only be explained via unguided evolutionary processes.

84. The F&S employ the Orthodoxy in seeking to educate students about the cause and nature of natural phenomena and naturally occurring patterns, including the origin and nature of life and the universe.

85. Because the F&S use the Orthodoxy, standards that lead children to investigate the cause and nature of naturally occurring patterns such as life and the universe lead them to

employ tunnel vision and to explain the patterns as due only to materialistic and functionally atheistic causes.

86. Because the F&S use the Orthodoxy, the Worldview it seeks to promote is materialistic and atheistic and thereby favors, promotes and endorses non-theistic religion over theistic religion.

A. GENERAL METHODS OF INDOCTRINATION

87. The F&S seek to inculcate the Worldview through a variety of deceptive methods, including those listed in paragraphs 1 through 25 above and 88 through 122 below.

88. As explained in paragraphs 1 through 25 above the F&S seek to inculcate the Worldview by teaching one side of a complex and sophisticated scientific and religious controversy to impressionable primary and middle school children who lack the cognitive development, maturity, intellectual sophistication and knowledge necessary to question or critically analyze the information presented to reach an informed decision and simply assimilate and take unthinkingly what their teachers have taught to them.

89. It uses standards that seek to inculcate the materialistic/atheistic explanations as "habits of mind."

90. As set out in paragraph 21 the F&S implicitly exclude from policies of non-discrimination, equity and diversity children being trained by their parents to accept and embrace traditional theistic religious views, thereby placing them in a disfavored class.

91. The F&S create a false dilemma that the "way of knowing" promoted by the Worldview is intellectually honest, objective, open-minded, logical, open to criticism, skeptical and subject to change, while the Worldview (a) actually lacks those qualities due to use of the Orthodoxy and (b) suggests to students that other "ways of knowing" lack these qualities and should therefore be avoided.

92. The F&S seek to promote the Worldview by causing it to be used in and to "cohere" with all curricula provided by the school, not just science curricula.

93. The F&S employ a number of other devices that tend to indoctrinate rather than objectively inform about the actual state of our scientific knowledge about issues affecting the Worldview, including, without limitation, (a) the misrepresentations and omissions described in paragraphs 94 through 122 below, (b) the omission of explicit, accurate and complete definitions of important terms and concepts through the use of a glossary or otherwise, (c) the use of generalizations about science that are not always applicable, (d) teaching only one side of a controversy, (e) the misleading use of statistics, (f) combining subjects into a single class and ignoring important distinctions, (g) appeals to authority, (h) appeals to consensus, (i) appeals to emotion, (j) generating implications that opposing views are incorrect and not deserving of consideration, and (k) ignoring assumptions and built-in biases.

B. F&S USE OF MISREPRESENTATION AND OMISSION TO ADVANCE THE WORLDVIEW

94. The F&S use misrepresentation of fact and the omission of facts relevant to explanations about the cause and nature of life and the universe as outlined in paragraphs 95 and 122 to inculcate and advance the Worldview.

95. The most critical omission is that the F&S employ the Orthodoxy but do not provide for standards that will inform students about (a) the nature of the Orthodoxy and how its use in origins science affects religious beliefs, (b) the fact that the F&S and the explanations provided have been developed using the Orthodoxy and the tunnel vision it provides, (c) the effects of the use of the Orthodoxy that suppress relevant evidence that casts doubt on the plausibility of the materialistic/atheistic explanations provided, and (d) the purpose of using the Orthodoxy in seeking to provide to impressionable young minds answers to deeply religious questions.

C. MISREPRESENTATIONS

96. The F&S use misrepresentations to advance the Worldview, including those listed in paragraphs 97 through 108 below.

97. **Misrepresenting the Evidentiary Basis for Materialistic/Atheistic Explanations.** The F&S implicitly represent that unguided evolutionary theory is based on a consideration of all the "available evidence," when F&S use of the Orthodoxy excludes from consideration evidence inconsistent with the Orthodoxy and evidence that supports an evidence-based alternative.

98. The F&S represent that explanations provided by the standards regarding unguided evolutionary processes are based on a use of common rules of evidence, when in fact an Orthodoxy is used that violates common rules of evidence in historical origins science.

99. **Misrepresenting the Nature of "science" promoted by the F&S.** The F&S misrepresent the nature of the kind of "science" promoted by the F&S as "logical, precise, objective, open-minded, logical, skeptical, replicable, and honest and ethical," when the concealed use of the Orthodoxy in origins science violates all of these characteristics with respect to explanations about the cause and nature of life and the universe.

100. **False Dichotomies.** The F&S use a series of false dichotomies that divide all objects, structures, systems and the world into two classes: *natural* objects, systems, structures and the world into one class and *designed* objects, systems structures and the world into the other, with the latter class consisting of objects, structures and systems made by humans.

101. These dichotomies used by the F&S teach that "design" is the attribute that one class has that the other class lacks, such that children are taught that natural objects, systems and structures and the natural world lack the attribute of design.

102. The dichotomies are false because the representation that natural objects, systems, structures and the world lack the attribute of design is (a) based on a questionable assumption and not a conclusive evidential showing, and (b) because much empirical evidence exists that living systems reflect actual design.

103. **False Descriptors.** The F&S use a descriptor that implicitly classifies the natural world as just "material," consistent with the materialistic tenet of the Orthodoxy: "Science

Addresses Questions About the Natural and *Material* World....scientists study the *natural and material* world. (2-ESS2-1)" (emphasis added) [NGSS, *Topic Arrangements of the Next Generation Science Standards*, p.15 (April 2013)].

104. The descriptor is false as the representation that the world is just material is (a) based on a questionable assumption and not a conclusive evidential showing and (b) because living systems are driven by functional information and genetic programming which is not material and because human consciousness and other entities have not been shown to be reducible only to the material.

105. The F&S misrepresent to children that changes in living systems are due to a "choice," by teaching that the changes are due to "natural selection."

106. The "natural selection" descriptor is false because the mechanism it describes is one which sorts, not selects or chooses, as the mechanism lacks an actual mind and the capacity to "choose" as it consists merely of the effects of random changing environmental constraints that tend to positively sort or enhance the survival of organisms that happen by chance to be most fit for those constraints.

107. The misrepresentation that this mindless mechanism "selects" is materially misleading because it leads one to believe that a mindless materialistic mechanism has the capacity of a mind that can therefore explain the apparent design of living systems, when it actually does not.

108. The false descriptor conceals from the student the critical question as to whether random mutations coupled with a mindless random sorting process actually has the capacity to generate living systems that appear to have been "brilliantly" and "superbly" designed by a "sentient mind."

D. OMISSIONS

109. The F&S omit to include standards that seek to inform students of facts relevant to the materialistic/atheistic explanations of the cause and nature of natural phenomena, including those described above and in paragraphs 110 through 122 below.

110. **Omitting to explain the impact of origins science on religious belief and the fact that the state may not take a position as to whether a particular view of origins is or is not valid.** The F&S omit to include a standard that will cause students to know and understand (a) that explanations regarding the cause and nature of life and the universe deal with deeply religious issues that can dramatically affect the student's religious belief and religious worldview, (b) that science has not provided definitive answers to the questions, (c) that the state may not pass on the validity of any answer to the questions or take a position as to which is the best of competing explanations, and (d) that science education about these questions is required to be objective so that the effect of instruction is religiously neutral.

111. **Omitting to explain that scientific knowledge does not include knowledge of the cause of certain origins events.** The F&S omit to include a standard that will cause students to know and understand that scientific knowledge does not now and may never include knowledge of the cause of the universe, the cause of the genetic code, the cause of life, the cause of the sequences of bases in DNA necessary to explain life, the cause of large increases in biocomplexity such as that which suddenly occurred during the Cambrian explosion, the cause of orphan genes, the cause of consciousness, and many other mysteries regarding the origin of life and its diversity.

112. **Omitting consideration of the evidence-based alternative.** The F&S omit to include a standard that will cause students to understand that an evidence-based teleological alternative to unguided evolutionary theory exists and that the explanations they are to learn and accept per the F&S exclude consideration of the alternative and the evidence that supports it due to the use of the Orthodoxy.

113. **Omitting consideration of evidence of the teleological alternative.** The F&S fail to provide standards that will inform students about evidence that supports the evidence-based teleological alternative to the materialistic origins narrative, including those set forth in paragraphs 114 through 120 below.

114. **Omitting to explain that the historical explanations used to support the theory of unguided biological evolution have not been adequately tested.** The F&S omit to include a standard that will cause students to know and understand that historical science seeks to test historical narratives or explanations through the use of abductive reasoning that seeks an inference to the best of the competing alternatives by a weighing of all of the available evidence and that the materialistic/atheistic explanations of unguided evolution students are to learn pursuant to the F&S have not been tested through the use of that method as an Orthodoxy is employed that precludes consideration of the evidence-based competing teleological alternative.

115. **Omitting consideration of the fine-tuning of the universe.** The F&S fail to provide standards that will inform students about the fine-tuning of the Universe for life.

116. **Omitting chemical evolution.** The F&S fail to provide standards that will inform students about the state of our scientific knowledge regarding the chemical origin of life and the lack of natural or material cause explanations for the genetic code, and the biological information necessary for replicating life to exist.

117. **Omitting to inform students of critical assumptions and the lack of their evidentiary foundations.** The F&S fail to provide standards that will inform students that biological evolution is an unguided process that depends on the assumption (a) that only material or mechanistic causes have operated in the natural world when the assumption is essentially faith-based and not consistent with much contrary evidence and (b) that chemical evolution occurred via only material or mechanistic causes when there is little or no evidence that such causes are adequate to explain it.

118. **Omitting to explain that the materialistic/atheistic explanations are not based on a weighing of all the available evidence.** The F&S fail to provide standards that will inform students that the historical narratives that purport to explain biological evolution are not based on a consideration of all the available evidence as use of the Orthodoxy excludes consideration of evidence inconsistent with the materialistic tenets of the Orthodoxy and evidence of the evidence-based teleological alternative it presumes to be invalid.

119. **Omitting to explain that most of the evidence for the core idea of unguided biological evolution is consistent with the disallowed competing alternative.** The F&S fail to provide standards that will inform students that the evidence that supports unguided biological evolution also supports the competing evidence-based alternative and therefore is insufficient to support an inference that unguided biological evolution is the best explanation.

120. **Omitting consideration of evidence that supports the competing teleological alternative.** The F&S fail to provide standards that will inform students about evidence that supports the teleological alternative, including (a) the fact that living systems appear brilliantly and superbly designed, (b) that physics and chemistry do not order the sequences of bases that provide the information and genetic programming that runs life, and (c) that statistical calculations and experiments suggest that stochastic processes are not adequate to explain the information necessary for the origin and existence of life and large increases in biological information, such as that which occurred during the Cambrian Explosion.

121. **Omitting to explain extrapolations used to support the materialistic/atheistic explanation.** The F&S omit to provide standards that distinguish between micro-evolutionary change (small-scale change within a species) and macro-evolutionary change (the generation of large-scale biological innovations above the level of species), thereby leading students to believe that stochastic processes which do account for certain micro-evolutionary changes are adequate to explain macro-evolutionary changes, although significant scientific controversy exists over the plausibility of that extrapolation.

122. **Omitting to explain the discrimination that exists within the scientific community against those who do not embrace the Orthodoxy.** The F&S fail to provide standards that will inform students that explanations of unguided biological evolution have not been open to the criticism and critique that other scientific explanations have experienced that do not invoke or affect religious beliefs, and that scientists who criticize the explanations provided by the F&S are subject to significant employment and other discrimination within academic and educational communities.

E. PLAINTIFFS' ACTUAL, THREATENED AND REDRESSABLE INJURY TRACEABLE TO THE POLICY

123. **All Plaintiffs**, who are Kansas residents or Kansas taxpayers, are injured by their State's endorsement and promotion of an Orthodoxy that establishes and promotes non-theistic religious beliefs while seeking to suppress competing theistic religious views because it:

- a. causes the state to promote religious beliefs that are inconsistent with the theistic religious beliefs of plaintiffs, thereby depriving them of the right to be free from government that favors one religious view over another;
- b. sends a message that they, being theists, are outsiders within the community and that non-theists and materialists are insiders within the community;
- c. denies them the right to be treated equally with non-theists; and
- d. causes them to pay taxes to fund the state's endorsement of the tenets of non- theistic religions which conflict with their theistic beliefs.

124. **Plaintiffs who are students who attend public schools** are injured by State use of the F&S in a manner calculated to cause them to be indoctrinated into accepting a non-theistic religious Worldview that effectively:

- a. deprives them of the right to choose what to believe about an origins narrative critical to the formation of their worldviews regarding religion, ethics, morals, and other matters of opinion;

- b. imbues them with, rather than educates them about, a concept fundamental to religious belief that also has a major influence on other views they will form regarding ethics, morals, politics, government, and other matters of opinion;
- c. imbues them with a religious belief that is inconsistent with the beliefs their parents have sought to instill in them;
- d. interferes with the free exercise of their religion by imbuing them with a religious belief that is inconsistent with their existing religious beliefs;
- e. discourages questions that imply any criticism of the Orthodoxy;
- f. causes them to lose respect for their parents and advisors who hold views inconsistent with the Orthodoxy; and
- g. causes them to lose respect from their peers who have accepted the Orthodoxy.

125. **Plaintiffs who are parents of students who attend public schools** are injured by State endorsement and promotion of the Orthodoxy that is hostile to theistic religious beliefs and supportive of non-theistic religious beliefs because it:

- a. interferes with their right to direct the religious education of their children.
- b. interferes with their right to direct the development of their children's worldviews regarding ethics, morals, government, politics, and other matters of opinion that are affected by the materialistic orthodoxy;
- c. interferes with their right to freely exercise their theistic religion by causing their children to embrace a materialistic/atheistic Worldview that is inconsistent with that religion; and
- d. causes them to lose the respect of their children for holding views inconsistent with a materialistic Orthodoxy that their children have been indoctrinated to accept.

126. **Members of Plaintiff Citizens for Objective Public Education ("COPE")** consist of parents, students and taxpayers who are residents of the state of Kansas have suffered

actual and threatened injuries of the kind suffered by other plaintiffs herein alleged that are traceable to the F&S and that can be redressed by the relief requested herein. The interests at stake in this complaint are germane to the purposes of COPE, and neither the claim asserted nor the relief requested requires the participation of individual members of COPE in the lawsuit.

VI. CLAIMS AND CAUSES OF ACTION

COUNT 1

(Violation of the Establishment Clause of the First Amendment of the Constitution of the United States)

127. The actions of defendants as set forth in paragraphs 1 through 122 amount to a violation of the Establishment Clause of the First Amendment of the Constitution of the United States and entitle plaintiffs to relief under 42 U.S.C. § 1983 because defendants, acting under color of law, subjected plaintiffs to a deprivation of their rights under the Establishment Clause of the First Amendment of the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

COUNT 2

(Violation of the Free Exercise Clause of the First Amendment of the Constitution of the United States)

128. The actions of defendants as set forth in paragraphs 1 through 122 amount to a deprivation of their rights to freely exercise their religion in violation of the Free Exercise Clause of the First Amendment of the Constitution of the United States and entitle plaintiffs to relief under 42 U.S.C. § 1983 because defendants, acting under color of law, subjected plaintiffs to a deprivation of their rights under the Free Exercise Clause of the First Amendment of the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

COUNT 3

(Violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States)

129. The actions of defendants as set forth in paragraphs 1 through 122 amount to the establishment of an orthodox answer to ultimate questions that causes Kansas to discriminate

against Plaintiff theists who reject the Orthodoxy and in favor of those who hold religious and other beliefs that depend on or are consistent with the Orthodoxy all in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and entitle plaintiffs to relief under 42 U.S.C. § 1983 because defendants, acting under color of law, subjected plaintiffs to a deprivation of their rights under the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

COUNT 4
(Violation of the Speech Clause of the First Amendment
of the Constitution of the United States)

130. The use of the Orthodoxy to restrict the kinds of explanations permitted in public schools about the natural world infringes on the speech rights of Plaintiffs in violation of the Speech Clause of the First Amendment of the Constitution of the United States and entitle plaintiffs to relief under 42 U.S.C. § 1983 because defendants, acting under color of law, subjected plaintiffs to a deprivation of their rights under the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

VII. PRAYERS FOR RELIEF

WHEREFORE, in light of the foregoing, plaintiffs respectfully request the following:

- a. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that the defendants' adoption and implementation of the F&S violates the Establishment and Free Exercise Clause of the First Amendment as made applicable to the States by the 14th Amendment and the Equal Protection Clause of and 14th Amendment of the Constitution of the United States; and
- b. An injunction pursuant to Fed. R. Civ. P. 65 prohibiting the defendants from implementing the F&S;

c. In the alternative to the relief requested under the preceding paragraph b. an injunction prohibiting the implementation of those provisions of the F&S that seek to teach about the origin, nature and development of the cosmos and of life on earth (origins science)

(1) For grades K-8, and

(2) for grades 9 through 12 unless the origins science instruction includes adequate and reasonably complete information about the following matters and is taught objectively so as to produce a religiously neutral effect with respect to theistic and non-theistic religion:

(a) An explanation that origins science addresses ultimate religious questions, the answers to which will likely influence the religious beliefs of students;\

(b) An explanation that the body of scientific knowledge that exists does not include knowledge of the cause of many naturally occurring origins events, including without limitation, the origin of (i) the universe, (ii) the particular characteristics of matter, energy and the physical forces, (iii) life on earth (iv) the genetic codes, (v) the functional information and genetic programming needed to cause replicating cellular life to exist, (vi) the causes of major increases in biodiversity such as the numerous body plans that arose during the Cambrian explosion, (vii) orphan genes, and (viii) nonmaterial phenomena such as functional information, and human consciousness, mind, free will, feelings and emotions.

(c) That there exists conflicting scientific views about the cause of the origins events listed in paragraph (b) ("origins events") that also impact religious views and that students should keep an open mind

about these events, subject to religious guidance provided by their parents;

(d) That teachers may not present one of competing explanations of an origins event as valid or as the best explanation, but rather should seek to merely objectively explain the actual state of our scientific knowledge concerning those events;

(e) that (i) origins science is primarily an historical rather than experimental science that uses abductive reasoning that seeks an inference to the best of competing evidence-based alternative explanations; (ii) that it is appropriate for students to use this method in seeking to ascertain the cause of origins events; (iii) that it is appropriate and permissible for them to consider the evidence-based teleological alternative to the materialistic/atheistic alternative provided by F&S in seeking to reach an inference to the best explanation; and (iv) that it is up to the student, not the state, to decide which is the best of the competing explanations, subject to parental guidance on the subject.

(f) With respect to the Orthodoxy, (i) that the origins science explanations provided by most institutions of science and the Standards are based on a doctrine or orthodoxy that permits only natural, material, or mechanistic explanations for the cause of origins events, (ii) that the Orthodoxy is inconsistent with the abductive method of reasoning used in historical origins science as it excludes from consideration the evidence based teleological alternative, (iii) that the explanations permitted by the Orthodoxy are materialistic and functionally atheistic, and (iv) that students are not expected to understand, know or accept

those explanations to be true, valid or the best of the competing evidence-based explanations;

- (g) That an evidence-based teleological alternative competes with the materialistic explanations provided by the Orthodoxy, which is an inference to an intelligent rather than a material cause for a pattern that exhibits (i) purpose or function, (ii) a sequence or arrangement of elements that is not due to physical or chemical necessity, and (iii) where the elements of the pattern necessary to its function are too numerous or complex to be plausibly explained by chance or stochastic processes.
- (h) That intersubjectively accessible evidence exists which supports the teleological alternative and which is inconsistent with the Orthodoxy regarding the origins events, and that such evidence may not have been taken into account in the development of the materialistic/atheistic answers allowed by the Orthodoxy (the "excluded evidence");
- (i) That students will be reasonably and objectively informed of the nature and extent of the excluded evidence;
- (j) That it is rational and reasonable for students to take into account the excluded evidence in deciding what to believe about the best explanation for the cause of origins events;
- (k) That explanations for biological evolution provided by the Standards were developed using the Orthodoxy and therefore are not based on a weighing of all the available evidence using common rules of evidence consistent with the principles of abductive reasoning used in historical sciences;

- (l) That explanations for biological origins provided by the F&S do not distinguish between micro and macro-evolution, and although significant evidence exists to support micro-evolutionary explanations via random mutation and natural sorting, a scientific controversy exists as to whether random mutation and natural sorting adequately explain the cause of macro-evolutionary events.
 - (m) That various lines of evidence used to support the theory of biological evolution (fossil record, anatomical similarities, biochemical similarities, embryological development, biogeography) are also consistent with the evidence-based teleological alternative, thereby necessitating a weighing of the evidence for and against the competing teleological and materialistic views to logically reach an inference to the best explanation;
 - (n) That explanations for biological evolution are also based on an assumption that the origin of life occurred via a material, mechanistic or natural cause, although there is no known evidential basis for that explanation and that science is essentially ignorant as to how life began if it did begin via a material cause;
 - (o) That the misleading statements described in paragraphs 96 through 108 be eliminated from all science curricula;
 - (3) Any standard that will have the effect of causing origins science explanations to cohere with other subject matter or curriculum unless the coherence includes all of the elements of (2).
- d. nominal damages against the defendants for violating the plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

- e. an order awarding plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
- f. any such further relief as the Court deems equitable, just, and proper;
- g. that this Court adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and
- h. that this Court retain jurisdiction of this matter as necessary to enforce the Court's orders.

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs and hereby demand a trial by jury on all triable issues.

Respectfully submitted,

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