

STATE OF INDIANA)
COUNTY OF MARION)

SS: IN THE MARION SUPERIOR COURT NO. 5
CAUSE NO. S577-0139

JON HENDREN, by next friend
ROBERT HENDREN, ROBERT HENDREN,
in his own right and E. THOMAS
MAISE,

Plaintiffs,

v.

GLENDEEN CAMPBELL,
BETTY CROWE,
HAROLD H. NEGLEY,
STERLING M. HALTON,
JANET N. WICKERSEAM,
WILLIAM LYON and
BETTY LOU JERREL,

Individually and in their
official capacity as Members of
the Indiana Textbook Commission.

Defendants.

MEMORANDUM OPINION

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Dated: April 14, 1977



Michael T. Dugan, III, Judge
Superior Court No. 5
Marion County at Indianapolis

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-vs-

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WILLIAM LYON and
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Members of the Indiana
Textbook Commission.

Defendants.

OPINION

I. STATEMENTS OF FACTS:

Before the Court is a Verified Petition for Review (Amended Complaint) filed on March 23, 1977 on behalf of a ninth grade student, Jon Hendren, his father and another parent of a student in the West Clark Community School Corporation. The defendants are members of the Indiana Textbook Commission.

The Textbook Commission is responsible for the adoption of textbooks to be used in the public schools of Indiana. In the general area of biology the Commission adopted seven books, including the one at issue. From that list local school boards may then adopted texts to be used for a period of five years. Five school systems co-adopted this text with another text. Two systems, West Clark Community Schools and South Ripley Community Schools adopted only A Search for Order in Complexity.

In all of these systems the text is in current use in the first year of the five year cycle.

On March 18, 1977 the Textbook Commission pursuant to an order of the Court convened a hearing on the use of this text. The Commission issued findings of fact on that date denying the request of the plaintiffs that the text be withdrawn. (Exhibit A)

II. NATURE OF THE CASE:

This petition is brought under the Indiana Administrative Adjudication Act IC 1971, 4-22-1-2 et seq. in a judicial review of the action of the Textbook Commission. The general rule in Indiana has been that the reviewing court use the test of an agency's factual determination as whether there was substantial evidence in the administrative record to support the agency's finding.² More recently appellate courts have found that "Judicial attempts to define the meaning of substantial evidence have met with less than unqualified success."³ Accordingly Courts may review the whole record, rather than merely evidence supporting the agency's findings. The Court is also asked to view the Commission's findings and the text in light of the Establishment Clause of the First and Fourteenth Amendments of the Constitution of the United States, Article 1, Section 4 of the Constitution of the State of Indiana, and I.C. 1971 20-10.1-9-11 which provides:

"The Commission on textbook adoptions shall not approve a textbook which contains anything of a partisan or sectarian character".

III. ISSUES:

1. Was the finding of the Commission arbitrary, capricious, or an abuse of discretion or not otherwise in accordance with the law because it violates statutory or constitutional prohibitions?

2. Were the findings of the Commission supported by substantial evidence at the administrative hearing?

3. Does the textbook violate statutory and constitutional guarantees and prohibitions?

IV. REVIEW OF THE COMMISSION HEARINGS TESTIMONY AND EXHIBITS:

At the hearing of the Commission, the Plaintiffs called ten witnesses, among them being biologists and theologians. The Attorney General called one witness, one of the authors of the text. All of the Plaintiff's witnesses complained that the book was "sectarian" in viewpoint. One witness, Dr. Jon R. Hendix, was also a member of the State Science Advisory Committee that wrote guidelines for science instruction for the State of Indiana. Dr. Hendix testified that the book was outside of state guidelines. The witness had recommended disapproval of the book.

The witness for the Attorney General, Dr. Larry G. Butler, was one of the authors of the book. Dr. Butler felt the book was "in accord" with his own Christian perspective.⁵ A witness for the plaintiff, Donald L. Need, observed that the main-line Protestant denominations, including Presbyterians, Methodist, United Church of Christ, Christian Church (Disciples of Christ), and certain elements of the Lutheran's and American Baptist Convention had not considered the theological basis of the book viable for many years.⁶

The Plaintiff also introduced nine exhibits including the book, Teachers Guide, and various letters and booklets from the publisher. In terms of the purpose of the textbook, a letter from Henry M. Morris, PhD., Director of the Institute for Creation Research relates:

"The Institute for Creation Research in the research division of the Christian Heritage College, and all of the students in the College are given 90 class hours of instruction in creationism, so that they are all well equipped to be leaders in the creationist movement in the future." 7.

In another exhibit, Dr. Tim F. LaHaye, President of Christian Heritage College, discusses "the ministry of the Institute for Creation Research...", it is a "...unique missionary organization...", ".....it has a remarkable evangelistic and spiritual outreach." 8.

In a distribution brochure, including the text at issue, the publisher states:

"We are seeking to inform the public about the latest findings regarding special creation, but we also desire to publish and distribute material which will educate the reader concerning scriptural evidence and religious thought, and which will help build up the body of Christ." 9.

Dr. Morris, in an article entitled "Creation in the Christian School" relates:

"Although a considerable part of ICR's activity is aimed at the restoration of creationism in the nation's public schools and state universities, we realize this is difficult to accomplish and is a

long-range goal rather than one quickly attainable."

"In the public schools, for example, we urge that creationism be taught as an alternative to evolutionism not on a religious basis, but strictly on a scientific basis."

"In a private Christian school, however, this neutral approach is neither necessary or desirable. Although students in such schools should be taught about evolution, the curriculum should stress throughout that creation is the only Biblical position and the only realistic scientific position as well." 10.

V. EXAMINATION OF THE TEXTBOOK AND TEACHER'S GUIDE:

The textbook A Search for Order in Complexity, of some 595 pages and the Teachers Guide, of some 96 pages, were published in 1974 in revised editions by the Zondervan Publishing House. Distribution and promotion was thereafter done through the Institute for Creation Research.

The text itself includes some 29 chapters with corresponding teacher's guide with suggested answers to questions for students in the text. The text in its preface indicates:

"There are essentially only two philosophic viewpoints of origins among modern biologists - the doctrine of evolution and the doctrine of special creation. Proponents of the former

postulate the gradual appearance of the various forms of life and of life itself by natural processes over vast ages of time. Exponents of the latter assume the essentially instantaneous origin of life and of the major kinds of living organisms by special creative acts utilized directly by the Creator Himself."

The text asserts that the two viewpoints "cannot really be harmonized ...since they represent diametrically opposite viewpoints of origins".¹²

The index to the text seems, on its face, to support the assertion that the text attempts to present both viewpoints for consideration by the thoughtful student. Under "Creation Theory" are found 47 reference pages in the index while 88 reference pages are listed for "Evolution Theory".¹³

The "Glossary of Terms" also seems to support a balance view by defining the viewpoints as follows:

"Creation, the sum total of acts by the Creator or Supreme Being who brought into existence the universe, the earth, and all life, including mankind that is therein."

"Evolution, the explanatory belief system that all life, including mankind, came from an inorganic beginning from one celled forms through multicellular organizations of two-celled layered and three-celled layered forms of animals and moss and ferns and flowering plants."¹⁵

In fact, the text consistently presents creationism in a positive light and evolution in a negative posture. The preface summarizes the program of the text followed in the text itself.

Discussing the evolution and creation "models" the preface presents a definition of each followed by tests and predictions necessary to support each theory. As to evolution, the text asserts "basic predictions" as being:

"....processes which tend to produce functional similarities...with no 'gaps' of any consequence between adjacent kind;"

"....processes which tend to produce new entities in an even higher state of order and integration;"

"...that variety and complexity of the world and all its inhabitants tend to increase as time increases." 16

Discussing the evolution predictions the text, the authors state at page XIX:

"the inference of a continuous array of such similarities,...is not supported by the data."

"Secondly, study of various processes does bear out the evolutionary inference..."

"Once again, however, this evidence is not very compelling...(and)" seem always to fall into one of two categories."

(These categories)... "may be used better to support the principles of conservation and decay rather than origination and integration, as proponents of the evolution model would suggest."

"The inference that the complexity of life should have increased with the passage of geologic time...is seriously weakened by the necessity of circular reasoning in its

development" 17

The preface disputes "index fossils" starting at page XX:

"...the fossil record does not necessarily reflect slow, uniformitarian evolutionary change over vast ages, but rather contains a graphic record of violence and death on a worldwide scale."

Summarizing, the preface concludes:

"The evolution mode contains numerous deficiencies and discrepancies. One may adhere to it as an act of faith, but it is fallacious and misleading to label it 'science' " 18

As to the creation model, the preface relates at page XX and XXI:

"That there was a period of special creation in the past, during which the world was brought into existence out of nothing but the power of the Creator..."

"The features of the creation model are confirmed by most or all of the actual observed phenomena of nature, thus demonstrating the validity of the creation model as being scientifically sound..."

"Similarly, the second law (increasing entropy) is essentially a confirmation of the universal law of decay and death postulated in accordance with the biblical version of the creation model."

"In fact, there seems to be no way of accounting for most of the great fossil beds of the world. ...except in terms of very rapid burial

and lithification, such as might be possible in accordance with the biblical deluge, and accompanying volcanic and tectonic activity and inferred subsequent glaciological phenomena."

Summarizing the creation model, the preface concludes at page xxii:

"On this basis, the creation model is a framework of interpretation and correlation which is at least as satisfactory as the evolution model."

"However, (the various principals and laws) all may be correlated far more easily with the creation model than with the evolution model."

"Furthermore, the data and principles of physics, chemistry and the other physical sciences are much more easily understood within the framework of the creation model than in that of the evolution model."

Finally at pages xxii and xxiii of the preface, the editor states:

"Evidences usually presented in support of evolution as a model of origins are accurately presented and considered. At the same time, it is explicit throughout the text that the most reasonable explanation for the actual facts of biology as they are known scientifically is that of biblical creationism."

"We hope this approach will be attractive first of all to the many private schools directed by those seeking to maintain an educational philosophy and methodology consistent with traditional Christian perspectives. We trust it will also be of interest and use in public school systems by teachers desiring

to develop a genuine scientific attitude in their students rather than an artificially induced evolutionary world view."

Most of the chapters in the text itself deal with non-controversial elements of biological science such as insects, chemical principles, algae, one-celled organisms, and so on. The book is replete, however, with references to biblical topics, the "wonderful findings of God's creation" and "divine creation" as being the only correct viewpoint to be considered. Throughout the text, while both viewpoints are mentioned, biblical creation is consistently presented as the only correct "scientific" view. Two entire chapters, in fact are devoted to lengthy discussions of the fallacies and weaknesses of the evolution viewpoint. Chapter 21 "weakness of Geologic Evidence" goes into great detail disputing evolutionary theories as to fossils and geologic evidence. It explains fossils "...by the fact that most fossil material was laid down by the flood in Noah's time" ²⁰ Chapter 24, "Problems for Evolutionists" devotes some eight pages to arguments refuting evolution theory. There are no chapters or passages in the text which deal critically with biblical creationism.

Also persuasive as to the avowed purpose of the book is the Teachers Guide. This publication, designed for teacher in using the text, summarizes the text, offers suggestions for use and enrichment and provides answers to questions found at the end of textbook chapters. These questions are designed to test the student as to his understanding and study of each chapter.

A review of some of the questions and corresponding "correct" answers is instructive.

Question 10, page 163, text:

"To what extent was Alexander Fleming's discovery based on chance, and to what extent on training?"

Answer, page 39, Teachers Guide:

"It was 'chance' (under the direction of God's providence) which allowed the penicillian spores to get into the culture dishes of bacteria..."

Question 8, page 77, text:

"Why does an old human skeleton of low type sometimes receive more attention than an old human skeleton of the same type as living men?"

Answer, page 77, Teacher's Guide:

"Some persons believe that evolution has been amply demonstrated to be true. When a skeleton of low type is found, they jump to the conclusion that it is ancestral to modern man. Such persons forget that they are using their assumption of evolution as proof of evolution."

Question 7, page 459, text:

"How does the Doctrine of evolution by natural selection explain the development of altruism, or doesn't it?"

Answer, page 79, Teacher's Guide:

"If the doctrine of evolution were true, it would favor heartless ruffians such as bandits and weeds. An altruistic person would be less 'fit' to survive. On the other hand, where a majority of a group of people recognize God, they appreciate and favor the altruistic person."

Question 7, page 471, text:

"Creationists believe there are limits to natural change. Are they afraid to extrapolate, or are there reasons for such a belief?"

Answer, page 81, Teacher's Guide:

"An evolutionist might say, if you recognize small changes, multiply them by the number of years the earth has existed and you will have learned, however, that there are limits beyond which small changes no longer accumulate."

Question 8, page 471, text:

"What do hydra, the opossum and the jack pine teach about development of complexity?"

Answer, page 81, Teacher's Guide:

"A complex animal or plant does not, because of its complexity have an advantage in the struggle for existence. Complexity must have been conferred by the Creator rather than by natural conditions such as we observe today." e

VI. APPLICATION OF STATUTORY AND CONSTITUTIONAL STANDARDS.

Numerous cases in the history of the United States have dealt with issues of the 1st Amendment to the Constitution.²¹ The United States Supreme Court has frequently determined that the authors of the Constitution did not merely prohibit the establishment of a state church or a state religion. This nation's founders regarded such a matter as one to be carefully and seriously avoided. They stated through the Constitution that there should be "no law respecting an establishment of religion." The Supreme Court has interpreted this to mean that:

"A given law might not establish a state religion but nevertheless be one respecting that and in the sense of being a step that could lead to such establishment and hence offend the First Amendment."²²

The Court has not required total separation between church and state. Many regulations and laws involve the ~~co-existence~~ of church and state such as tax exemption of property used for religious worship. Judicial caveats against entanglement must recognize that the line of separation, far from being a wall, is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship.²³ In fact a sense of neutrality has been a goal of the courts as it relates to the state and religion. As Mr. Justice Douglas pointed out:

"We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according

to the zeal of its adherents and the appeal of its dogma". 23

For example in Walz v. Tax Commission the Supreme Court found that:

"The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility." 25

In Walz it was pointed out that New York City had not given preference to any particular church or religious sect. Instead a tax exemption was granted to houses of religious worship within a broad class of property.

The Court had no problem with the fact that the state

... "has an affirmative policy that considers these groups as beneficial and stabilizes influences in community life and finds this classification useful, desirable and in the public desirable." 25

As Mr. Justice Harlan pointed out in Walz:

"Two requirements frequently articulated and applied in our cases for achieving this goal are 'neutrality' and 'voluntarism'. These related and mutually reinforcing concepts are short-form for saying that the Government must neither legislate to accord benefits that favor religion or nonreligion, nor sponsor a particular sect, nor try to encourage participation in or abrogation of religion" 27

As a result of the balancing of state and religion throughout this nation's history, courts have also recognized the constitutional rights of individuals to substitute private and parochial schools to exercise dissent and in-

dependent views.²⁸ In fact it is well recognized that parochial schools in our society perform both religious and secular functions. Their right to foster particular religious views is unquestioned. Their obligation to provide secular education regulated by the state is also certain.²⁹ States may even provide certain benefits to parochial schools such as transportation, books, and allowing students to be released from public school classes to attend religious instruction.³⁰ These types of benefits have not been held to subvert the prohibition of the First Amendment.

Three tests have been offered by the Supreme Court to measure whether the action of the state has stepped beyond the prohibition of the First Amendment. These tests are designed to prevent "sponsorship", financial support, and active involvement of the sovereign in religious activity".³¹ These tests are:

1. The statute must have a secular legislative purpose.
2. The principal or primary effect must be one that neither advances nor inhibits religion.
3. The statute must not foster an excessive governmental entanglement with religion.³²

Three cases are particularly instructive. In Epperson v. Arkansas³³, a public school biology teacher brought a action challenging an Arkansas statute which prohibited teachers from teaching Darwinian theory. Mr. Justice Fortas found that the statute was contrary to the First and Fourteenth Amendments pointing out that as early as 1872 the Supreme Court has said: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."³⁴ He continued:

"There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma." ³⁵

Finding that the clear purpose of the statute was the advancement of fundamentalist sectarian conviction the Court found such purpose untenable under our Constitution. The Supreme Court was not persuaded that the Arkansas statute was carefully worded to be "less explicit" than its predecessor the Tennessee "monkey law". ³⁶ Pointing out that the Scopes trial may have induced the state to temper its statute, nevertheless,

"...there is no doubt that the motivation for the law was the same: to suppress the teaching of a theory which it was thought, 'denied' the divine creation of man." ³⁷

Mr. Justice Black, in a concurring opinion, however, the difficulty of these cases. He expressed the doubts addressed by the Attorney General in this case as to whether neutrality is served by striking down such statutes. He reminded the Court:

"The Darwinian theory is said to challenge the Bible's story of creation: so too have some of those who believe in the Bible, along with many other's, challenged the Darwinian theory. Since there is no indication that the literal Biblical Doctrine of the origin of man is included in the curriculum of Arkansas schools, does not the removal of the subject of evolution leave the State in a neutral position toward these supposedly competing

religious and anti-religious Doctrines" 38

"Certainly the Darwinian theory precisely like the Genesis story of the creation of man is not above challenge" 39

In Metzer v. Board of Public Instruction 40 decided in march, 1977, Florida Courts reviewed a school board policy encouraging daily Bible reading to public school students and the distribution of Gideon Bibles. The Court found that this policy violated the prohibitions of the First Amendment. The School Board argued that its policy was justified in that it directed school officials to labor faithfully and earnestly for the advancement of the pupils in their studies, deportment and morals, and embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty and patriotism and the practice of every Christian virtue." 41

Citing a number of cases the Court demonstrated that the distribution of Gideon Bibles "...approximates an annual promotion and endorsement of the religious sects or groups which follow its teaching and precepts". 42

The school board's policy was found to constitute and unconstitutional preference to one religion over another. The court found that the purpose of a Florida "Christian Virtue" statute was to advance a particular religion. They rejected arguments that the word "Christian" was a mere adjective with little implication as to its application.

"The phrase "Christian Virtue" suggests a very particular type of virtue that is tied particularly to one religion, and a type of virtue that is or may be at odds

with minority religions concept of virtue.

If the statute had required inculcation of 'Jewish virtue' or 'Moslem virtue' we have no doubt that the unconstitutionability of the statute would be conceded by all." ⁴³

Finally, the 1975 case of Daniel v. Waters ⁴⁴ should be viewed with this action. In Daniel a Tennessee statute was examined which required that any textbook expressing an opinion about the origin of man would be prohibited from use unless it specifically stated that the opinion was a theory. The statute also required that the biblical account of creation as set forth in Genesis be printed with commensurate attention and equal emphasis. Lastly, the statute required that biblical creation be printed without a disclaimer that it was a theory not represented by scientific fact. The Court of Appeals found that this statute violated the First Amendment. They found that "the result of this legislation is a clearly defined preferential position for the Biblical version of creation as opposed to any account of the development of man based on scientific research and reasoning." ⁴⁵ The court argued that teaching and learning cannot be "tailored" to the principles or prohibitions of any religious dogma.

Clearly, it is not the function of the courts to determine the validity or fallacy of any religious doctrine. In fact the judiciary has long had an abhorrence to wandering into the thicket of conflicting dogmas and creeds. Personal considerations of the court have no place in the determination of cases of this type.

The constitution of the State of Indiana has expressed its confirmation and interpretation of the

First Amendment by providing that "no preference shall be given, by law, to any creed, religious society, or mode of worship ...". In this case we do not have that situation of an obvious statutory attempt to impose religious doctrines on the citizens of Indiana. On the contrary, we face a textbook which, on its face, appears to present a balanced view of evolution and Biblical Creation. The record and the text itself do not support this assertion of fairness. Since the Scopes controversy over fifty years ago, the courts of this county have faced repeated attempts by groups of every conceivable persuasion to impose particular standards, whether religious or ethical, on the populace as a whole. We may note that with each new decision of the courts religious proponents have attempted to modify or tailor their approach to active lobbying in state legislature and agencies. Softening positions and amending language, these groups have, time and again, forced the courts to reassert and redefine the prohibitions of the First Amendment. Despite new and continued attempts by such groups, however, the courts are bound to determine, if possible, the purpose of the approach.

Clearly, the purpose of A Search for Order in Complexity is the promotion and inclusion of fundamentalist Christian doctrine in the public schools. The publishers, themselves, admit that this text is designed to find its way into the public schools to stress Biblical Creationism. The court takes no position as to the validity of either evolution or Biblical Creationism. That is not the issue. The question is whether a text obviously designed to present only the view of Biblical Creationism in a favorable light is constitutionally acceptable in the public schools of

Indiana. Two hundred years of constitutional government demand that the answer be no. The asserted object of the text to present a balanced or neutral argument is a sham that breaches that "wall of separation" between church and state voiced by Thomas Jefferson. Any doubts of the texts fairness is dispelled by the demand for "correct" Christian answers demanded by the Teacher's Guide. The prospect of biology teachers and students alike, forced to answer and respond to continued demand for "correct" fundamentalist Christian doctrines, has no place in the public schools. The attempt to present Biblical Creationism as the only accepted scientific theory, while novel, does not rehabilitate the constitutional violation.

After consideration of the text and the evidence at the agency hearing, the action of the Indiana State Textbook Commission is untenable. Government cannot be insensitive to the Constitution and statutes of the nation and state. Their approval both advanced particular religious preferences and entangled the state with religion. The decision of the commission is without merit and violative of both statutory and constitutional provision.


VII. FINDINGS OF THE COURT:

1. The findings of the Indiana Textbook Commission were arbitrary, capricious and an abuse of discretion.
2. The findings were inconsistent with the evidence at the administrative hearing. e
3. The findings of the Commission were in violation with I.C. 1971 20-10.1-9-11; Article 1, Section 4 of the Constitution of the State of Indiana, and the First Amendment of the Constitution of the United States.

4. The textbook A Search for Order in Complexity, as used in the public schools, violates I.C.1971 20-10-1-9-11, Article 1, Section 4 of the Constitution of the State of Indiana, and the First Amendment of the Constitution of the United States.

IT IS THEREFORE ORDERED AND ADJUDGED that the findings of the Indiana State Textbook Commission are reversed, and the Commission is ordered to make findings not inconsistent with this decision after re-hearing.

So ordered.



Michael T. Dugan, Judge
Marion Superior Court, No. 5

Dated: April 14, 1977

FOOTNOTES

¹Baughco Community Schools, Union Township Schools, Warsaw Community Community Schools, Morgan School District (Martinsville), East Washington School Corporation.

²Boone Co. Rural Elec. Membership Corp. v. Public Serv. Comm'n, 239 Ind 525, 159 N.E. 2d 121 (1959).

³City of Evansville v. Southern Indiana Gas & Electric Co., 339 N.E. 2d 562 (Ind. Ct. App. 1975).

⁴Hearing before the Indiana Textbook Commission, March 16, 1977 p. 74

⁵ID, p. 131.

⁶ID, p. 36.

⁷ID, Exhibit #4#

⁸ID, Exhibit #7

⁹ID, Exhibit #9

¹⁰ID, Exhibit #8

¹¹A Search for Order in Complexity, pp xvii

¹²ID pp xviii

¹³ID pp 576, 577, 579.

¹⁴ID p. 555

¹⁵ID p. 556

¹⁶ID pp xviii, xix

¹⁷ID p. xix

¹⁸ID p. xx

¹⁹ID pp 3, 8

²⁰ID p. 415

²¹Abington School Dist. v. Schempp, 374 US 203, 10 Led 2d 844, 83 Sct 1560 (1963)

Engle v. Vitale, 370 US 421, 8 Led 2d 601, 82 Sct 1261 (1962)

McGowan v. Maryland, 366 US 420 6 L Ed 2d 393, 81 Sct 1101 (1961)

Everson v. Board of Education 330 US 1, 91 Led 711, 67 Sct 504 (1947)

²²Lemon v. Kurtzman, 403 US 602, 29 Led 2d 745, 91 Sct 2105 (1971), p. 755

²³ID p. 757.

(Footnotes Continued)

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²⁴Zorach v. Clauson, 343 US 306, 96 L. Ed 954, 72 S. ct 679 (1952) p. 313.

²⁵Walz v. Tax Commission, 397 US 664, 25 LEd 2d 697, 90 Sct 1409 (1970) p. 703.

²⁶ID p. 704

²⁷ID p. 716

²⁸Pierce v. Society of Sizzlers, 268 US 510, 69 LEd 1070, 45 Sct 571.

²⁹Board of Education v. Allen, 392 US 236, 20 LEd 2d 1060, 88 Sct 1923 (1968)

³⁰Averson, supra.

Allen, supra.

Zorach, supra.

³¹Walz, supra.

³²Lennon, supra, p. 755

³³Epperson v. Arkansas, 393 US 97, 21 LEd 2d 228, 89 Sct 266 (1968)

³⁴ID p. 234, L.Ed 2d

³⁵ID p. 235

³⁶ID p. 237

³⁷ID.

³⁸ID p. 240

³⁹ID.

⁴⁰Meltzer v. Board of Public Instruction of Orange City, Fla., 45 L.W. 2434, (1977).

⁴¹ID.

⁴²Brown v. Orange County Board of Public Instruction, 128 So. 2d 181 (Fla.App. 1960)

Tudor v. Board of Education, 100 A. 2d 857 (N.J. 1953)

Godwin v. Cross County School District, 394 F. Supp 417 (ED Ark.)

⁴³Meltzer, p. 2435

⁴⁴Daniel v. Waters, 515 F. 2d 485 (1975)

⁴⁵ID, p. 489.