

345 Webster Ave. Apt. 4-0
Brooklyn, NY 11230
June 23, 2017

Brenda Mojica
Second Circuit Court of Appeals
40 Foley Square
New York, NY 10007

Re: Roemer v. Attorney Grievance Committee (17-0818)

Dear Ms. Mojica,

I requested oral argument to explain the connection between 17-0818 and the famous Scopes Monkey Trial of 1927. High school teacher John Scopes was found guilty of violating the Tennessee law, passed in 1925, against teaching that human beings evolved from animals. In *Epperson v. Arkansas*, 393 U.S. 97 (1968), the majority decision, written by Abe Fortas, said the Arkansas version of the Tennessee law violated the First Amendment. Two of the minority decisions agreed that the law was unconstitutional because the law was vague, not because it violated the First Amendment.

I want to argue that Justice Fortas's opinion is irrational and exacerbates the conflict in the United States about the teaching of evolutionary biology. I think the Fortas opinion caused states to pass laws that did violate the First Amendment, as you can see from *Edwards v. Aguillard* (1987) and *Kitzmiller v. Dover* (2005).

To explain myself, I will refer to these 7 excerpts:

Opinion of Justice Fortas in *Epperson v. Arkansas*

This appeal challenges the constitutionality of the "anti-evolution" statute which the State of Arkansas adopted in 1928 to prohibit the teaching in its public schools and universities of the theory that man evolved from other species of life. The statute was a product of the upsurge of "fundamentalist" religious fervor of the twenties. The Arkansas statute was an adaptation of the famous Tennessee "monkey law" which that State adopted in 1925. The constitutionality of the Tennessee law was upheld by the Tennessee Supreme Court in the celebrated Scopes case in 1927.

In any event, we do not rest our decision upon the asserted vagueness of the statute. On either interpretation of its language, Arkansas' statute cannot stand. It is of no moment whether the law is deemed to prohibit mention of Darwin's theory or to forbid any or all of the infinite varieties of communication embraced within the term "teaching." Under either interpretation, the law must be stricken because of its conflict with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof. The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious

doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.”

Opinion of Justice Black in Epperson v. Arkansas

The Court, not content to strike down this Arkansas Act on the unchallengeable ground of its plain vagueness, chooses rather to invalidate it as a violation of the Establishment of Religion Clause of the First Amendment. I would not decide this case on such a sweeping ground for the following reasons, among others.

Opinion of Justice Stewart in Epperson v. Arkansas

The Arkansas Supreme Court has said that the statute before us may or may not be just such a law. The result, as MR. JUSTICE BLACK points out, is that "a teacher cannot know whether he is forbidden to mention Darwin's theory at all." Since I believe that no State could constitutionally forbid a teacher "to mention Darwin's theory at all," and since Arkansas may, or may not, have done just that, I conclude that the statute before us is so vague as to be invalid under the Fourteenth Amendment.

Textbook Used by John Scopes

- 1) There exist ... five races of man...the highest type of all, the Caucasians, represented by the civilized white inhabitants of Europe and America.
- 2)...the health and vigor of the future generations of men and woman...might be improved by applying to them the [same] laws of selection. This improvement [is a] science called eugenics.
- 3) Just as certain animals or plants become parasitic on other plants and animals, these families have become parasitic on society.
- 4) If such people were lower animals we would probably kill them off to prevent them from spreading. Humanity will not allow this, but we do have the remedy of separating the sexes in asylums, .. and various [ways of] preventing intermarriage and .. perpetuating such a low and degenerate race.

Stanford Encyclopedia of Philosophy Entry titled “Cosmological Argument”

The cosmological argument is less a particular argument than an argument type. It uses a general pattern of argumentation (logos) that makes an inference from particular alleged facts about the universe (cosmos) to the existence of a unique being, generally identified with or referred to as God. Among these initial facts are that particular beings or events in the universe are causally dependent or contingent, that the universe (as the totality of contingent things) is contingent in that it could have been other than it is, that the Big Conjunctive Contingent Fact possibly has an explanation, or that the universe came into being. From these facts philosophers infer deductively, inductively, or abductively by inference to the best explanation that a first or sustaining cause, a necessary being, an unmoved mover, or a personal being (God) exists that caused and/or sustains the universe. The

cosmological argument is part of classical natural theology, whose goal is to provide evidence for the claim that God exists.

Stephen Jay Gould, Natural History, March 1997

Catholics could believe whatever science determined about the evolution of the human body, so long as they accepted that, at some time of his choosing, God had infused the soul into such a creature. I also knew that I had no problem with this statement, for whatever my private beliefs about souls, science cannot touch such a subject and therefore cannot be threatened by any theological position on such a legitimately and intrinsically religious issue. (13th paragraph)

Apostle's Creed of the Catholic Church

I believe in God, the Father almighty, creator of heaven and earth.

I believe in Jesus Christ, his only Son, our Lord.....

He ascended into heaven and is seated at the right hand of the Father.

He will come again to judge the living and the dead.

I believe in the Holy Spirit, the holy Catholic Church, the communion of saints, the forgiveness of sins, the resurrection of the body, and the life everlasting.

Very truly yours,

David Roemer

s/ David Roemer