No. ____

In The Supreme Court of The United States

DAVID ROEMER,

Petitioner,

v.

ATTORNEY GRIEVANCE COMMITTEE; JANE E. BOOTH; LEE C. BOLLINGER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether the dismissal of *Roemer v. Booth* is consistent with the decisions about the teaching of biological evolution in public schools in *Epperson v. Arkansas* (evolution of human beings), *Edwards v. Aguillard* (creationism), and *Kitzmiller v. Dover* (theory of intelligent design). Citing the First Amendment, these decisions prohibit state governments from promoting faith in God. The New York State Unified Court System, through Jane Booth and the Attorney Grievance Committee, threatened me with legal action in a letter reproduced on p. A-14–15 to prevent me from offering to give the Columbia University community a lesson/lecture on the cosmological argument for God's existence.

2) Whether Andrew Schilling, the attorney who represents the general counsel of Columbia University, Jane Booth, is perpetrating a fraud upon the federal judiciary by claiming that he represents the president of Columbia University, Lee Bollinger.

PARTIES TO THE PROCEEDINGS

All parties are listed in the caption.

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The Summary Order of the court of appeals is reprinted at p. A-1. The order of the district court dismissing the motion to disqualify the district judge is at p. A-7. The order of the district court dismissing the lawsuit is at p. A-12.

JURISDICTION

The court of appeals heard oral argument on January 18, 2018, entered its judgment on January 30, 2018, and denied a petition for rehearing en banc on March 13, 2018.

STATEMENT OF THE CASE

The Catholic Church teaches that we know God exists from reason. Many people mistakenly think that the rational arguments for God's existence can be found in Thomas Aquinas's "five ways." The "five ways" includes the "first cause" argument, which Aquinas got from Aristotle's "prime mover" argument. It also includes the teleological argument, which was made popular by William Paley in the 18th century. These two arguments are called "god of the gaps" arguments. They can be refuted by asking what caused the "first cause"? Who designed the designer?

In the 1920s, Etienne Gilson showed that the philosophy of Thomas Aquinas provides an argument for God's existence that makes sense. It can be said that this argument is the crowning

achievement of method of inquiry called *metaphysics*.

This argument is based on the metaphysical observation that human beings have free will and the conscious knowledge of human beings as opposed to the sense knowledge of animals. That animals and humans can see and hear and solve simple problems is a scientific observation and is the subject matter of evolutionary biology. Free will means we possess a center of action that makes us unified with respect to ourselves and different from other human beings. Hence, humans are finite beings. According to metaphysics, a finite being is a composition of the principles or incomplete beings called *essence* and *existence*. A finite being needs a cause, just as a being that begins to exist at some point in time needs a cause. Assuming or hoping that the universe is intelligible means that there exists a being that is a pure act of *existence* without a limiting *essence*. Such a being is not finite, and is called *God* in the religions originating in the Near East. The Chinese and Indian religions have a different terminology. This argument not only makes sense, but sheds light on Exodus 3.14: "God said to Moses, I AM WHO I AM. This is what you are to say to the Israelites: 'I AM has sent me to you.'"

In my pleadings, I supported this argument with quotations from a biology textbook (Neil Campbell and Jane Reece, *Biology*, 7th edition, p. 82) and Stephen Jay Gould (Stephen Jay Gould, "Nonoverlapping Magisteria," Natural History, March 1997, 13th paragraph). Professor Gould, like

practically all biologists at secular universities, does not believe in God or life after death. On December 16, 2016, I got an email from Uri Nodelman, the senior editor of the Stanford Encyclopedia of Philosophy, which says:

> *Thanks for your message. We take critiques of SEP entries seriously --especially if there are claims about the errors of fact (or of omission) or claims about violations of SEP guidelines seriously. At present, however, we don't know exactly which passages you find problematic. From a quick read of your linked page, it seems like you think there ought to be some citation of Etienne Gilson's work and possibly Alan Bennett's work.*

Alan Bennett is a British comedian and has a series of very funny skits titled "Oxford Philosophy." My interpretation of this reference to Bennett is that Professor Nodelman cannot imagine that the authors of the lengthy entry in the Stanford Encyclopedia of Philosophy titled "Cosmological Argument" don't understand the argument or are pretending they don't understand it.

There is nothing in the entry about human beings having free will and the conscious knowledge of human beings. There is nothing about the metaphysical truth that the human soul is spiritual. In effect, the General Counsel of Columbia University sent me a letter threatening me with legal action if I made any more offers to correct the misinformation being disseminated by the Stanford

Encyclopedia of Philosophy and many others.

MOTION TO DISQUALIFY JUDGE CASTEL

Judge Castel's order (p. A-13) discusses only his lack of fellowship with the Attorney Grievance Committee and Jane Booth. He fails to mention the other reasons I have to think he was biased against me.

a. Judge Castel signed the order dismissing *Roemer v. Booth* on February 23, 2017 (docket no. 13), one day after Andrew Schilling requested the dismissal (docket no. 7).
b. On February 23, 2017, my request for a hearing was denied (docket no. 11).
c. On February 24, 2017, I sent a letter to Judge Castel with the question: "How do you know Mr. Schilling is representing Lee Bollinger? Mr. Bollinger may claim that Mr. Schilling acted on his behalf without his knowledge" (docket no. 14).

JUDGE CASTEL DOES NOT UNDERSTAND THE COMPLAINT

Judge Castel writes:

> *Plaintiff accuses "many philosophers in the United States" of disseminating "misinformation that human beings evolved from animals" and "misinformation about the cosmological argument for God's existence." (ECF No. 3, at 2.) He maintains that this "misinformation . . . has the effect*

> *of promoting the religion called humanism," which Defendants "are unlawfully promoting," by not accepting Plaintiff's offer to give a lecture about the arguments for God's existence or to contact members of the university community about his lecture. (Id. At 3.) Plaintiff seeks an "injunction that will protect [his] right to free speech and enforce the Establishment Clause." (Id.) (p. A-15)*

Judge Castel does not understand that the complaint has two levels or stages and that a determination has to be made at both stages. The first stage is how much social value my proposed lecture/lesson has. The second stage is whether the First Amendment is being violated.

If my accusation against "many philosophers" is wrong, the students and faculty at Columbia University are not being deprived of enlightenment by Jane Booth's letter and there is no violation of the First Amendment.

If I am right, however, it raises the question of whether the defendants violated the First Amendment. The defendants did not make any attempt to cast doubt upon the social value of my lecture/lesson. Nor did Judge Castel. Judge Castel is simply repeating the content of what I want to tell the Columbia University community. Judge Castel is just assuming that my accusation against "many philosophers" is wrong.

AUTHORITIES IN SUMMARY ORDER OF COURT OF APPEALS

Whereas Judge Castel simply asserts that Roemer v. Booth is frivolous, the court of appeals cites two cases to support this view. The first is *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999). This case concerns a decision made by a private insurer. I think this excerpt from the decision indicates how little it has to do with *Roemer v. Booth*:

> *A private insurer's decision to withhold payment and seek utilization review of the reasonableness and necessity of particular medical treatments is not fairly attributable to the State so as to subject the insurer to the Fourteenth Amendment's constraints.*

The second case is *In re Attorney Disciplinary Appeal*, 650 F.3d 202, 203–05 (2d Cir. 2011). In this case, the plaintiff complained about unspecified unethical behavior of two attorneys. This is an excerpt from the decision:

> *Plaintiff is an informer and nothing more, and as such, has no right to be heard at any stage of the proceeding, save as the court or its committee may call upon him to testify. The plaintiff has averred nothing to show that his interest in the matter before the [Pennsylvania] Supreme Court differed in any particular from the interest of any other citizen and member of the bar, none of whom*

have any standing as a party in interest.

IRRATIONALITY OF SUMMARY ORDER OF COURT OF APPEALS

The following excerpt from the Summary Order misrepresents the brief I submitted to the court of appeals (docket no. 10) and shows that the court of appeals is making the same mistake the district court is making. The court of appeals, like the district court, is just assuming that my proposed lecture/lesson has little social value.

> *Roemer hypothesizes that the district court's passing reference to his religious and philosophical beliefs demonstrates bias by the court. However, the district court merely stated that, in finding Roemer's legal theories meritless, it "expresse[d] no views on Mr. Roemer's religious and philosophical beliefs."* (p. A-4)

There are five arguments in my brief: A, B, C, D, and E. Section A argues that Judge Castel was biased. Section D argues that Judge Castel's Order of Dismissal is irrational. I used the quote from Judge Castel's decision ("expressed no views on Mr. Roemer's religious and philosophical beliefs") in section D, not section A.

FALSE STATEMENT IN SUMMARY ORDER OF COURT OF APPEALS

The court of appeals writes:

> *And Roemer's conjecture that Bollinger may have "decided to let the court issue whatever injunction it deemed just" finds no support in the record.*

The record contains a considerable amount of evidence that Bollinger does not want to be responsible for preventing me from contacting the Columbia University community with my offer to give a lecture/lesson on the cosmological argument for God's existence. The text of the injunction the court of appeals is saying Mr. Bollinger is against is in (c) (docket no. 20)

a. On September 22, 2016, I sent an email to Mr. Bollinger (docket no. 7, Exhibit B) repeating an offer to give a lesson/lecture on God's existence to the University Chaplain, Jewelnel Davis. This offer included my lesson plan and a link to the article I published in Academia.edu titled, "Why People Think God Caused the Big Bang." The email complained that Diedre Fuchs of Columbia University's Department of Public Safety threatened me with legal action if I contacted any members of the Columbia community with this offer. There was no response from Mr. Bollinger's office other than an acknowledgement of its receipt. There was also no response at all from Ms. Davis other than a telephone call from Ms. Fuchs followed by a meeting

in her office.

b. Mr. Schilling announced his appearance for Mr. Bollinger on February 22, 2017 (docket no. 5). Mr. Bollinger was served the amended complaint naming him as a defendant at 3:58 PM on February 23, 2017 (docket no. 16)

c. ORDERED, ADJUDGED AND DECREED: That Lee Bollinger not cause any civil or criminal legal action to be taken against the plaintiff for offering to give a lecture/lesson on the arguments for God's existence via email, regular mail, or telephone to the following individuals appointed by the University Chaplain of Columbia University: Rev. Doyeon Park, Rabbi Yonah Blum, Rabbitzen Keren Blum, Rabbi Yonah Hain, Rev. Daniel Lee, Rev. Richard Sloan, Dr. Anne Klaeysen, Bryan Scott, Ashley Byrd, Hon Eng, Monsignor John Paddack, and Eric Lipscomb.

ORAL ARGUMENT

I downloaded the Summary Order from Public Access to Electronic Court Records. The heading does not contain the phrase "Argued January 18, 2018" and there is no mention of the oral argument heard by the court of appeals in the Summary Order.

My brief to the court of appeals was filed on March 27, 2017. The defendant's response was filed on June 23, 2017, and did not address the arguments in my brief. On June 23, 2017, I requested oral argument, not to discuss *Roemer v. Booth*, but to explain the connection between *Roemer v. Booth* and

the three cases listed on p. 2 (docket no. 40):

> *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).*

I learned that the Attorney General of the United States was interested in First Amendment conflicts over religion at public colleges. I sent a message to the Attorney General on October 2, 2017, telling about *Roemer v. Booth* and accusing Judge Castel of collaborating with Andrew Schilling's deception of the federal judiciary (see p. 2). On October 3, 2017, the court of appeals granted my

request for oral argument. On March 14, 2018, I mailed a complaint of judicial misconduct against Judge Castel to the court of appeals.

REASONS FOR GRANTING PETITION

The conflict about the teaching of evolution in public schools is just one of many legal conflicts in the United States concerning religious faith. Many religious people think that judges in the federal judiciary are biased against religious faith. This case gives the federal judiciary the opportunity to show that federal judges are concerned with upholding the law and are not biased against religion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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March xx, 2018

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CORRECTED SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of January, two thousand eighteen.

PRESENT:
ROBERT A. KATZMANN, Chief Judge,
AMALYA L. KEARSE, ROSEMARY S. POOLER,
Circuit Judges.

David K. Roemer,
Plaintiff-Appellant,
v.
Jane E. Booth, Lee Bollinger, President, Columbia University,
Defendants-Appellees,

Attorney Grievance Committee,
Defendant.

FOR PLAINTIFF-APPELLANT: DAVID K. ROEMER, pro se, Brooklyn, NY.

FOR DEFENDANTS-APPELLEES: Andrew W. Schilling, Caroline K. Eisner, Buckley Sandler LLP,

New York, NY.

Appeal from orders of the United States District Court for the Southern District of New York (Castel, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the orders of the district court are AFFIRMED.

Appellant David Roemer, proceeding pro se, sued the New York Attorney Grievance Committee ("State Committee") as well as Columbia University's general counsel, Jane Booth, and president, Lee Bollinger, under 42 U.S.C. § 1983, claiming violations of the First and Fourteenth Amendments. Roemer is a retired high school science teacher who has repeatedly offered to give a lecture on the cosmological argument for God's existence at Columbia University ("Columbia"), offers that Columbia repeatedly declined. In October 2016, Booth wrote to Roemer advising him that continued efforts to contact members of the Columbia community could be considered harassment. Roemer responded by filing an ethics complaint against Booth with the State Committee, which was dismissed. Before the district court, Roemer sought injunctive relief against the defendants for depriving him of the right to free speech and violating the Establishment Clause.

The district court sua sponte dismissed the complaint as frivolous. Roemer subsequently moved

for the district court judge to recuse himself and for default judgment against Bollinger. The district court denied the recusal motion, and this appeal followed. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

As an initial matter, Appellees Booth and Bollinger argue that we lack jurisdiction to review the underlying dismissal of Roemer's complaint because his notice of appeal designated only the district court's order denying recusal. We construe notices of appeal liberally, taking the parties' intentions into account." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995).

Consistent with this principle, a brief may serve as a notice of appeal required by Federal Rule of Appellate Procedure 3 when it is filed within the time specified by Rule 4, *Smith v. Barry*, 502 U.S. 244, 248–49 (1992), and parties may file "an amended notice of appeal within the time limits set forth by Rule 4," *Peter F. Gaito Architecture, LLC v. Simone Dev. Corp.,* 602 F.3d 57, 62 (2d Cir. 2010).

Here, Roemer's brief—which was filed a mere five days after his notice of appeal and within the time specified by Rule 4—operates as an amended notice of appeal. Therefore, the issues identified therein are properly before this Court.

This conclusion is consistent with the purpose of Rule 3's requirement, which is "to ensure that the filing provides sufficient notice to other parties and

the courts." *Smith*, 502 U.S. at 248.

On appeal, however, we agree with the district court that Roemer's complaint was frivolous. Roemer provides no legal argument but only cursorily states that he is "certain" that he is "right" and that the district court wrongly concluded that he had no cause of action, Appellant Br. at 12, and has therefore arguably abandoned his claims. See *Tolbert v. Queens Coll.,* 242 F.3d 58, 75 (2d Cir. 2001). In any event, his claims are meritless. Neither Columbia employee is a state actor. See *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999) (explaining that an action brought under § 1983 must be based on an alleged deprivation by an individual acting under color of state law). And Roemer lacks standing to challenge the State Committee's decision not to discipline Booth. See *In re Attorney Disciplinary Appeal*, 650 F.3d 202, 203–05 (2d Cir. 2011) (per curiam).

Roemer also challenges the district court's denial of his recusal motion, a decision we review for abuse of discretion. *United States v. Morrison*, 153 F.3d 34, 48 (2d Cir. 1998). A judge should recuse when "a reasonable person, knowing all the facts, would question the judge's impartiality." *United States v. Yousef*, 327 F.3d 56, 169 (2d Cir. 2003) (internal quotation marks omitted); see also 28 U.S.C. § 455(a). Roemer hypothesizes that the district court's passing reference to his religious and philosophical beliefs demonstrates bias by the court. However, the district court merely stated that, in finding Roemer's legal theories meritless, it

"expresse[d] no views on Mr. Roemer's religious and philosophical beliefs." App. at 18.

This statement would not lead an "objective, disinterested observer" to question whether the district court judge was biased against Roemer, *Yousef*, 327 F.3d at 169, and the dismissal order itself is insufficient to demonstrate bias, see *Chen v. Chen Qualified Settlement Fund*, 552 F.3d 218, 227 (2d Cir. 2009) (per curiam) (observing that "adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality"). Accordingly, we see no abuse of discretion.

Roemer also argues that he was entitled to default judgment against Bollinger. We disagree. Although the district court did not explicitly rule on Roemer's motion for default judgment, any error was harmless: the district court had already *sua sponte* dismissed Roemer's complaint, therefore there was no basis for entry of default judgment. See Fed. R. Civ. P. 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). And Roemer's conjecture that Bollinger may have "decided to let the court issue whatever injunction it deemed just" finds no support in the record. Appellant Br. at 10.

We have considered Roemer's remaining arguments and find them to be without merit. Accordingly, we AFFIRM the district court's orders.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID ROEMER,

Plaintiff

-against-

ATTORNEY GRIEVANCE COMMITTEE; JANE E. BOOTH; LEE C. BOLLINGER,

Defendants.

ORDER 17 Civ. 703 (PKC) CASTEL, District Judge:

On February 24, 2017, the undersigned issued an Order dismissing Mr. Roemer's claims as indisputably without legal merit because there was no legal theory alleged on which he could prevail. (Doc 13, Order of Febr. 24, 2017.)

The next day Mr. Roemer moved to disqualify the undersigned by reason of his past membership on the defendant Attorney Grievance Committee (the "State Committee"). Mr. Roemer's complaint names the State Committee but no individual member of that Committee as a defendant. The complaint does not identify any member of the State Committee or its staff who functioned on his complaint against defendant Jane Booth, an

admitted attorney.

The undersigned served on the Departmental Disciplinary Committee for the Appellate Division, First Department, from 1988 to 1993 and again from 1997 to 2003 (the "DDC"). The undersigned assumed his present judicial office on November 4, 2003 and has not been a member of the DDC since at least that date. The undersigned has never served on the State Committee, which is a successor to the DDC that came into existence sometime in the fall of 2016. The present roster of the State Committee is not included in Mr. Roemer's motion and does not appear on the website of the New York State Unified Court System.

Although not raised in the motion, until March 9, 2017, the undersigned, served as Chair of the Southern District of New York's Grievance Committee. The district's Grievance Committee operates independently from the DDC or the State Committee, although it interacts from time to time with other attorney disciplinary authorities, including the DDC and the State Committee.

The undersigned has had no affiliation with Columbia University, except for a brief unrelated representation thirty-five years ago as a law firm associate, and does not believe he has ever met Mr. Bollinger. The undersigned knows Ms. Booth as a member of the bar of this Court, who served as an Assistant United States Attorney and a law clerk more than a decade ago. Any interaction with Ms. Booth since taking the bench in 2003 has been

limited to brief pleasantries at Courthouse functions or bar association events.

Insofar as it may apply to this action, the standard for judicial disqualification is as follows:

> Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455(a).

A section 455(a) motion is "be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance." Liteky v. United States, 510 U.S. 540, 548 (1994)(emphasis in the original). The Second Circuit, applying Liteky, has said that on section 455 (a) motion "[t]he question ... is whether 'an objective, disinterested observer fully informed of the underlying facts, [would] entertain significant doubt that justice would be done absent recusal'." ISC Holding AG v. Nobel Biocare Finance AG, 688 F.3d 98, 107 (2d Cir. 2012)(quoting United States v. Carlton, 534 F.3d 97, 100 (2d Cir. 2008).)

To the extent that the bias or prejudice claim is premised upon a bias in favor of the State Committee or its members, no individual member of the State Committee is named as a defendant. The State Committee as a body is not likely to be an entity capable of being sued in its own right; rather it is a committee appointed by the Appellate

Division, First Department, and acts under its auspices. If the Committee is capable of being sued, it would nevertheless be an arm of the state of New York entitled to sovereign immunity as to any claim for money damages.

If and to the extent that Mr. Roemer's motion is premised upon this Court's decision to dismiss his claim, the Supreme Court in Liteky reviewed the standards for disqualification not arising from the judge's acquisition of information from extra-judicial sources:

> [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

Id. at 555.

The Court noted that "judicial rulings alone almost never constitute a valid basis for a bias or partiality recusal motion ...." Id. at 555.

On this record, an objective, disinterested observer fully informed of the facts, would not

entertain significant doubt that justice would be done absent recusal. Accordingly, the motion (Doc 15) is DENIED.

SO ORDERED.

Dated: March 21, 2017, New York, New York

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID ROEMER,

Plaintiff
-against-

ATTORNEY GRIEVANCE COMMITTEE; JANE E. BOOTH; LEE C. BOLLINGER,

Defendants.

ORDER OF DISMISSAL 17-cv-703 (PKC)
P. KEVIN CASTEL, United States District Judge:

Plaintiff, appearing pro se, brings this action alleging that Defendants are violating his rights under the First Amendment to the United States Constitution. He filed an initial complaint on January 30, 2017 and an amended complaint on February 13, 2017 (collectively, as amended, they are referred to as the "Complaint.") The Court dismisses the Complaint for the reasons set forth below.

STANDARD OF REVIEW

The Court has the authority to dismiss a complaint, even when the plaintiff has paid the filing fee, if it determines that the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Corp.*, 221

F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (citing *Pillay v. INS*, 45 F.3d 14, 1 6-17 (2d Cir. 1995) (per curiam) (holding that Court of Appeals has inherent authority to dismiss frivolous appeal), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.,* 526 U.S. 574, 583 (1999). While the law mandates dismissal on any of these grounds, the Court is obliged to construe pro se pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471,474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

A claim is "frivolous when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory." *Livingston v. Adirondack Beverage Co.,* 141 F.3d 434, 437 (2d Cir. 1998) (internal quotation marks and citation omitted). "A claim is based on an 'indisputably meritless legal theory' when either the claim lacks an arguable basis in law, or a dispositive defense clearly exists on the face of the complaint." Id. (citations omitted).

The Court concludes that the Complaint is indisputably meritless and hence frivolous. Lest there be any doubt on the subject, this Court expresses no views on Mr. Roemer's religious and philosophical beliefs. He is entitled to hold them without any judgment on their merits by a Court. However, his legal theories against the First

Department's Attorney Grievance Committee, Ms. Booth and Mr. Bollinger are indisputably meritless. There is no basis in law for this Court to Order the Attorney Grievance Committee to discipline a particular attorney or to hold it accountable for failing to do so. There is no basis for this Court to order university officials to invite Mr. Roemer to lecture or teach on a subject or to hold them liable for failure to do so. There is no known theory of liability for the statements made in Ms. Booth's letter quoted in full below.

BACKGROUND

Plaintiff alleges the following facts: On September 15, 2016, Plaintiff sent an email to the University Chaplain of Columbia University offering to give a lecture about God's existence. A few days later, he sent a letter to Lee Bollinger criticizing the Columbia Department of Public Safety for unspecified statements made by unspecified individuals during a meeting on the campus. On October 13, 2016, Jane Booth sent Plaintiff a letter asking him to "please cease communicating" with members of the university community, noting that "further contact could be perceived as harassment" and thanking him in advance for his expected cooperation. The full text of Ms. Booth's brief letter (annexed to the plaintiff's complaint) is as follows:

> Dear Mr. Roemer,
>
> I am following up on your phone conversation with Deidre Fuchs yesterday.

> Please cease communicating with the members of the Columbia community. If you continue to reach out to the member [sic] of the community, further contact could be perceived as harassment.
>
> If you have any further questions or concerns, you can contact Executive Director Fuchs. Thank you in advance for your cooperation with this matter.
>
> Sincerely,
> Jane E. Booth
> General Counsel

On October 18, 2016, Plaintiff filed an ethics complaint against Booth with the Attorney Grievance Committee of the New York Supreme Court Appellate Division, First Department. The Grievance Committee replied that Plaintiff's submissions failed to indicate any violation of the New York Rules of Professional Conduct. Plaintiff then sent a letter to Booth, giving reasons why his lecture had social value and explaining why Booth's threats violated the academic freedom of Columbia University. And Plaintiff sent another letter to Bollinger in which he complained about the treatment he received and suggested a settlement.

Plaintiff accuses "many philosophers in the United States" of disseminating "misinformation that human beings evolved from animals" and "misinformation about the cosmological argument for God's existence." (ECF No. 3, at 2.) He maintains

that this "misinformation . . . has the effect of promoting the religion called humanism," which Defendants "are unlawfully promoting," by not accepting Plaintiff's offer to give a lecture about the arguments for God's existence or to contact members of the university community about his lecture. (Id. at 3.) Plaintiff seeks an "injunction that will protect [his] right to free speech and enforce the Establishment Clause." (Id.)

DISCUSSION

The Complaint read with the "special solicitude" due pro se pleadings, *Triestman*, 470 F.3d at 474-75, must be dismissed as frivolous. There is no legal theory on which he can rely. See *Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437.

District courts generally grant a pro se plaintiff an opportunity to amend a complaint to cure its defects, but leave to further amend is not required where it would be futile. See *Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

CONCLUSION

Plaintiff's Complaint is dismissed as frivolous. Plaintiff's motion for permission for electronic case filing (Doc 4) is denied as moot.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket and to close the case.

Plaintiff paid the fee for this action, but the Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in *forma pauperis* status is denied for the purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: February 23, 2017, New York, New York

APPENDIX D

Docket 17-818
Roemer v. Booth

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of March, two thousand eighteen.

David Roemer,
Plaintiff - Appellant,
v.
Jane E. Booth, Lee Bollinger, President, Columbia University,
Defendants - Appellees,
Attorney Grievance Committee,
Defendant.

ORDER

Appellant, David Roemer, filed a petition for panel rehearing, or, in the alternative, for rehearing en banc. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing en banc.

IT IS HEREBY ORDERED that the petition is

denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk