

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DOCKET NO. 05-10341-I

JEFFREY MICHAEL SELMAN;
DEBRA ANN POWER; KATHLEEN
CHAPMAN; JEFF SILVER; PAUL
MASON; and TERRY JACKSON,

Plaintiffs-Respondents,

v.

COBB COUNTY SCHOOL
DISTRICT; COBB COUNTY BOARD
OF EDUCATION; JOSEPH
REDDEN, SUPERINTENDENT,

Defendants-Appellants.

Appeal From Judgment of the
United States District Court for the
Northern District of Georgia, Hon.
Clarence Cooper, Civil Action File
No.: 1 02-CV-2325-CC

**AMICUS CURIAE BRIEF OF ISKCON OF ATLANTA, INC., IN
SUPPORT OF APPELLANTS AND SUPPORTING REVERSAL**

Of Counsel:

ADAM R. BERNSTEIN
Law Offices of Adam R. Bernstein
25221 Terrace Grove Road
Los Gatos, California 95033
(408) 353-5085

EDWARD H. SISSON
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, D.C. 20004

DAVID M. LIBERMAN
Law Office of David Liberman
1875 Century Park E, Suite 2130
Los Angeles, California 90067
(310) 277-9288
Counsel of Record for Amicus

April 20, 2005

Chapman, Kathleen, plaintiff-respondent

Cobb County Board of Education, defendant-appellant

Cobb County School District, defendant-appellant

Colorado Citizens for Science, *amicus curiae*

Cooper, Hon. Clarence, trial judge

DeWolf, David, counsel for *amicus curiae*

Fant, Lynn Gitlin, counsel for *amicus curiae*

Garrett, Margaret F., counsel to plaintiffs-respondents

Guin, Hon. J. Foy, Jr., *amicus curiae*

Gunn, E. Linwood IV, counsel to appellants-defendants

Hardage, Allen, proposed intervenor

Hollberg & Weaver, counsel for *amicus curiae* and counsel to proposed intervenors

International Society for Krishna Consciousness of Atlanta, Inc., *amicus curiae*

Jackson, Terry, plaintiff-respondent

Johnson, William, counsel for *amicus curiae*

Kansas Citizens for Science, *amicus curiae*

Liberman, David M., counsel to *amicus curiae*

Mason, Paul, plaintiff-respondent

McMurry, Kevin Thomas, counsel to proposed intervenors

Meazell, Emily Hammond, counsel to plaintiffs-respondents

Michigan Citizens for Science, *amicus curiae*

Nebraska Religious Coalition for Science Education, *amicus curiae*

New Mexicans for Science and Reason, *amicus curiae*

New Mexico Academy of Science, *amicus curiae*

New Mexico Coalition for Excellence in Science and Math Education, *amicus curiae*

Parents for Truth in Education, *amicus curiae*

Power, Debra Ann, plaintiff-respondent

Redden, Joseph, Superintendent, Cobb County School District, defendant-appellant

Rogers & Watkins, counsel for *amicus curiae*

Rogers, Marjorie, counsel for *amicus curiae*

Selman, Jeffrey Michael, plaintiff-respondent

Silver, Jeff, plaintiff-respondent

Sisson, Edward H., counsel to *amicus curiae*

Taylor, Larry, proposed intervenor

Texas Citizens for Science, *amicus curiae*

Therriott, Kevin H., counsel to proposed intervenors

Weaver, George M., counsel for *amicus curiae* and counsel to proposed intervenors

Weber, Gerald, counsel to plaintiffs-respondents

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
I. Statement of Identity of <i>Amicus Curiae</i> ISKCON of Atlanta.....	1
II. Statement of Issues.....	1
III. Summary of Argument.....	2
ARGUMENT AND CITATIONS OF AUTHORITY.	4
IV. Background On ISKCON and Hinduism.....	4
V. The Trial Court’s Ruling Misapplies Relevant Legal Precedents And Is Impermissibly Hostile to Religion.....	6
A. The Sticker Does Not Favor Christianity.....	6
B. The Court’s Ruling Is Impermissibly Hostile to Religion.	7
C. The Content of the Sticker – Not Who Proposed It – Is What Matters.....	8
VI. Even if Evolution Was Singled Out Because It Fails to Acknowledge a Creator, That Does Not Make The Sticker An Endorsement of Religion.	10

VII. The Sticker Does Not Suggest the Existence of a Creator. But Even If It Did, The Mere Suggestion of the Possibility of A Creator Promotes Critical Thinking Regarding Science and Philosophy, Promotes Respect For and Tolerance of Peoples Who Hold Different Beliefs In Our Religiously-Diverse Nation, And Would Not Endorse Religion Over Non-Religion.	12
A. Even If The Sticker Suggests the Possibility of A Creator (Which It Does Not), That Suggestion Would Promote Critical Thinking Regarding Science and Philosophy, and Would Not Endorse Religion.....	12
B. The Fact That Intelligent Design Theories Are Held by a Small, But Growing, Minority of the Scientific Community Does Not Make Them Religious Theories.	16
C. Even If The Sticker Suggests the Possibility of A Creator (Which It Does Not), That Suggestion Would Promote Respect For and Tolerance of Peoples Who Hold Different Beliefs In Our Religiously-Diverse Nation, and Would Not Endorse Religion.....	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Epperson v. Arkansas</i> , 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).....	11
<i>Frieler v. Tangipahoa Parish Board of Education</i> , 201 F.3d 602 (5 th Cir. 2000).....	9-10
<i>International Society for Krishna Consciousness, Inc. v. Barber</i> , 650 F.2d 430 (2 nd Cir. 1981).....	4
<i>Lemon v. Kurtzman</i> , 403 U.S. 602, 91 S. Ct. 2105, 29 L.Ed.2d 745 (1971).....	6,8
<i>Lynch v. Donnelly</i> , 465 U.S. 668, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984).....	7,11
<i>Roy v. Union of India</i> , 7 S.C.C. 368 (Supreme Court of India 2002).....	24-25
<i>Zorach v. Clauson</i> , 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952).....	11

Commentaries:

3 J. Story, <i>Commentaries on the Constitution of the United States</i> 728 (1833)	11
---	----

I. Statement of Identity of *Amicus Curiae* ISKCON of Atlanta.

Amicus Curiae the International Society for Krishna Consciousness of Atlanta, Inc. (“ISKCON of Atlanta”), is the Atlanta, Georgia branch of the International Society for Krishna Consciousness (“ISKCON”), an international religious movement popularly known in the United States as Hare Krishna. *See International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 433 (2nd Cir. 1981) (Krishna Consciousness falls under the broad theological umbrella of the Vaishnava Tradition of Bhakti Hinduism). There has been a Hare Krishna temple in Atlanta for over 30 years. On an average Sunday more than 150 members of the congregation attend services; on certain festival days over 2,000 members may visit the temple.

As a non-Christian, minority religion, ISKCON and its members have a unique perspective on the subject of evolution instruction in the public schools. ISKCON of Atlanta also has a concrete, specific interest in the outcome of this appeal because members of the ISKCON of Atlanta congregation reside in Cobb County and have children who attend Cobb County public schools. ISKCON of Atlanta also has an interest in the outcome of this appeal because it has a general interest in matters concerning religion and religious freedom.

II. Statement of Issues.

Whether a state school district, in connection with its adoption of an improved, exclusively scientific evolution curriculum, and motivated by a secular purpose, may affix to a textbook that it has newly-adopted as part of that curriculum a statement that is devoid of religious content.

III. Summary of Argument.

ISKCON of Atlanta feels no threat that the Sticker favors Christianity over Vedic or Hindu views. The Sticker in question says nothing about Christianity, the Bible, God, or any religion whatsoever. As a non-Christian, minority religious organization, ISKCON of Atlanta would be concerned if the School Board mandated a sticker that actually endorsed the viewpoint of Christian fundamentalists or the Biblical account of creation. But the Sticker's sole focus is on evolution. ISKCON of Atlanta appreciates the School Board's neutral approach, and believes an informed, reasonable observer would not find any endorsement or disapproval of religion whatsoever in the School Board's Sticker.

The trial court's application of the First Amendment is hostile to religion. By going out of its way to find an endorsement of religion in the neutral wording of the Sticker, the trial court interfered with the School Board's efforts to legally accommodate the concerns of parents and students who have religious objections to evolution instruction. The Constitution affirmatively mandates accommodation, not merely tolerance, of all religions, and the School Board was trying to fulfill this mandate. The trial court's reasoning impermissibly tilts the Constitutional playing field to favor non-religion over religion.

The trial court incorrectly reasoned that the Sticker has the effect of endorsing religion because an informed, reasonable observer would supposedly know that some Christian opponents of evolution have proposed the theory/fact distinction as a "strategy" to dilute evolution education. But to the contrary,

the mere fact that some Christians have proposed this “strategy” in the past does not transform it into a “Christian strategy.” Were that so, virtually any idea that Christians held on any topic could not be embraced by government authorities. And the same analysis might one day be applied to bar the government from embracing ideas ISKCON holds on almost any topic. Such an approach is clearly too far-reaching.

The Sticker says nothing that could be construed as favoring belief in a creator over evolution. Moreover, the acknowledgement of a creator is an idea found not only in religion, but also in philosophy, and even in science. The courts should recognize the quite different roles that God plays in the realm of (1) religion, (2) philosophy, and (3) science. The fact that the idea of God is inherent in religions should not perpetually rule out the possibility that the idea of God can play a role in science. In the world of science, many scientists have incorporated the idea of God into their scientific work.

At different times science has been carried out employing different sets of metaphysical assumptions about the nature of reality. Today, scientists favoring metaphysical assumptions that are strictly materialistic are very numerous. But there are also scientists who wish to carry out scientific work with a different set of metaphysical assumptions, which include the existence of God as an intelligent designer. Several members of ISKCON have introduced into scientific discussion evidence that contradicts the current theories and have also introduced the idea of God as having some role in the

origin of living things. In the world of science there is active interest in evidence contradicting the current theories of evolution.

The trial court's ruling stifles legitimate scientific debate, and would suggest that the federal judiciary has found these scientific views scientifically unworthy, and merely expressions of religion rather than true science. But these ideas, regardless of whether they have been inspired or informed by religious belief, are actually scientific theories presented in the realm of science according to the methodology of science, and are not religious theories.

Lastly, even if the Sticker suggests the possibility of a Creator, which it does not, that suggestion would promote respect for and tolerance of peoples who hold different beliefs in our religiously-diverse nation, a valid secular goal that would not endorse religion.

ARGUMENT AND CITATIONS OF AUTHORITY

IV. Background On ISKCON and Hinduism.

The International Society for Krishna Consciousness ("ISKCON") is a modern branch of the monotheistic tradition of the Hindu religion that originated in ancient India. As with Hinduism, ISKCON follows the four Vedas and other scriptures.¹ *See, International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 433 (2nd Cir. 1981).

¹ The Bhagavad Gita and Srimad Bhagavatam have been translated into English, with extensive commentaries, by ISKCON's Founder-Acharya, His Divine Grace A.C. Bhaktivedanta Swami Prabhupada. Prabhupada's books have in turn been translated into over 70 languages and are distributed by ISKCON adherents throughout the world.

According to the latest Indian government census there are about eight hundred million Hindus in India.² The Hindu religious tradition includes impersonal spiritualists, polytheists, and monotheists. Among the theists, the most numerous are the Vaishnavas (comprising about 70 percent of Hindus).³ The Vaishnavas accept that one supreme being (variously named Vishnu, Krishna, Vasudeva, Narayana) is the source of the material creation.⁴ Accounts of this supreme being and the creation of the universe are found in Vedic scriptures, and differ markedly in many details from the Bible's account in Genesis.

In early debates about whether or not there should be an established religion in the state of Virginia, Thomas Jefferson mentioned that there should be no favoring any religion by establishing Christianity as the state religion because the rights of Hindus, Muslims, Jews, and others should be protected.⁵

² Census of India 2001. The first report on religion. Office of the Registrar General, India 2A Mansingh Road, New Delhi 110011, 6th September 2004.

³ Manorama Yearbook (1997) K. L. Mathew, editor. Kottayam: Malayala Manorama Press, p. 334.

⁴ Bhaktivedanta Swami Prabhupada, A.C., *Srimad Bhagavatam*, (Bhaktivedanta Book Trust, Los Angeles, 1993) Canto One, Chapter One, Text 1, p. 45.

⁵ Thomas Jefferson (1821) *Autobiography*. The Works of Thomas Jefferson. Collected and edited by Paul L. Ford. Federal Edition. 12 volumes. (New York and London. G. P. Putnam's Sons. 1904-1905) Vol. 1, p. 73. ("Where the preamble [of the Virginia Act for Religious Freedom] declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed by inserting 'Jesus Christ,' so that it would read 'A departure from the plan of Jesus Christ, the holy author of our religion;' the insertion was rejected by the great majority, in proof that they meant to comprehend, within

Footnote continued on next page

There is now a substantial Hindu population in American society, and among these are many Vaishnavas, including members of ISKCON.

V. The Trial Court's Ruling Misapplies Relevant Legal Precedents And Is Impermissibly Hostile to Religion.

The trial court's application of the "effect" prongs of the test announced in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L.Ed.2d 745 (1971),⁶ is inconsistent with the court's own factual findings, and even appears hostile to religion.

A. The Sticker Does Not Favor Christianity.

The Sticker in question says nothing about Christianity, the Bible, God, or any religion whatsoever. Its sole focus is on evolution. The statement, "Evolution is a theory, not a fact," which concerned the court below, is consistent with the textbook the school board adopted and into which it placed the Sticker, which defines a theory as a "well-supported testable explanation of phenomena that have occurred in the natural world." As a non-Christian, minority religious organization, ISKCON of Atlanta would be concerned if the School Board mandated a sticker that actually endorsed the viewpoint of Christian fundamentalists or the Biblical account of creation. However,

Footnote continued from prior page

the mantle of its protection, the Jew and the Gentile, the Christian and Mohammedan, the Hindoo and Infidel of every denomination.")

⁶ Under the test established in *Lemon*, a government-sponsored message violates the Establishment Clause if (1) it does not have a secular purpose, (2) its principal or primary effect advances or inhibits religion, or (3) it creates an excessive entanglement of government with religion. *Lemon*, 403 U.S. at 612-613.

ISKCON of Atlanta feels no threat that the Sticker favors Christianity over Vedic or Hindu views. ISKCON of Atlanta appreciates the School Board's neutral approach, and believes an informed, reasonable observer would not find any endorsement or disapproval of religion whatsoever in the School Board's Sticker.

B. The Court's Ruling Is Impermissibly Hostile to Religion.

On the other hand, by going out of its way to find an endorsement of religion in the neutral wording of the Sticker, the trial court interfered with the School Board's efforts to legally accommodate the concerns of parents and students who have religious objections to evolution instruction. ISKCON's members also have religious, philosophical, and even scientific objections to the materialistic theory of evolution, albeit for different reasons than Christians. The Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions," (*Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984)), and the School Board was trying to fulfill this mandate.⁷ ISKCON of Atlanta believes the trial court's reasoning impermissibly tilts the Constitutional playing field to favor non-religion over

⁷ The trial court's Order found the School Board intended to strengthen evolution instruction and make it a mandatory part of the curriculum (slip op. 22), that it was previously common practice in some classes for textbook pages on evolution to be removed (slip op. 5), that a majority of the Board did not intend to promote or benefit religion (slip op. 9), that the Board's chairman publicly stated the Sticker "was not intended to interject religion into science instruction but simply to make students aware that a scientific dispute exists" (p. 9), and that various Board members wanted the Sticker to encourage students to think critically (slip op. 10-11).

religion, and wrongly condemns the School Board's due regard for the concerns of citizens with a variety of religious beliefs.

The trial court's reasoning that the Sticker has the effect of endorsing religion because an informed, reasonable observer would supposedly know that some Christian opponents of evolution have proposed the theory/fact distinction as a "strategy" to dilute evolution education, is deeply flawed.

The mere fact that some Christians have proposed this "strategy" in the past does not transform it into a "Christian strategy." Were that so, virtually any idea that Christians held on any topic could not be embraced by government authorities, for fear that doing so would violate the "effects prong" of *Lemon*. And the same analysis might one day be applied to bar the government from embracing ideas ISKCON holds on almost any topic. Such an approach is clearly too far-reaching.

Nor is employment of the strategy an endorsement of Christianity or of any other religion. One can easily imagine *proponents* of evolution education adopting the identical strategy as a compromise to overcome objections of those opposed to any teaching of evolution. In fact, the trial court specifically found that the School Board's adoption of the Sticker was part of an effort to strengthen evolution education.

C. The Content of the Sticker – Not Who Proposed It – Is What Matters.

Even assuming the School Board approved an approach that was proposed as a "strategy" by fundamentalist Christians, the crucial question is whether the strategy, as reflected in its specific concrete embodiment – in this

case the Sticker – succeeds in complying with the Establishment Clause, without regard to who may have proposed it. Presumably, some fundamentalist Christians would prefer that evolution not be taught at all. If a fundamentalist Christian faction found it necessary to adopt such a watered-down “strategy,” an informed, reasonable observer would see that they were not “political insiders.”⁸ The trial court’s focus on which political or social groups favored the “strategy,” would punish groups who propose compromise strategies. Proper legal analysis should not permit the goalposts to be moved because one faction is willing to agree to a legal compromise as a “strategy.” The “effects” analysis should focus on the statement itself and its actual effects, rather than on supposed “strategies.”

In *Frieler v. Tangipahoa Parish Board of Education*, 201 F.3d 602, 603 (5th Cir. 2000), the Fifth Circuit’s per curium opinion denying the Board of Education’s petition for rehearing en banc stated:

In denying rehearing, we emphasize that we do not decide that a state-mandated statement violates the Constitution simply because it disclaims any intent to communicate to students that the theory of evolution is the only accepted explanation of the origin of life, informs students of their right to follow their religious principles, and encourages students to evaluate all explanations of life’s origins, including those taught outside the classroom. We decide only that under the facts and circumstances of this case, the statement of the

⁸ The trial court found that Marjorie Rogers, a parent who identifies herself as a “six-day biblical creationist” testified she was not happy with the Sticker because it did not go far enough. (Slip op. 13)

Tangipahoa Parish School Board is not sufficiently neutral to prevent it from violating the Establishment Clause.

The Sticker at issue in this case is clearly more neutral than the statement at issue in *Tangipahoa*. The trial court in this case has erroneously done what the Fifth Circuit's *per curiam* opinion expressly declined to do: If the Sticker at issue here violates the First Amendment, it would be difficult to imagine any state-mandated disclaimer about evolution that does not.

VI. Even if Evolution Was Singled Out Because It Fails to Acknowledge a Creator, That Does Not Make The Sticker An Endorsement of Religion.

The trial court reasoned that the Sticker's singling out of evolution among other scientific theories implies that School Board's problem with evolution is its failure to acknowledge a creator, and that therefore the Sticker sends an impermissible message of endorsement of religion. The court was mistaken, for two reasons:

First, as the trial court's factual findings establish, it was not the School Board members themselves who were troubled by evolution theory. They merely wanted to accommodate the concerns of students and parents in the district while they strengthened evolution education. An informed, reasonable observer would understand all this and see that the School Board had adopted an appropriately religion-neutral solution to the problem.

Second, even if evolution was singled out for failing to acknowledge a creator, it does not follow that the Sticker endorses religion over non-religion. The Sticker says nothing that could be construed as favoring belief in a creator

over evolution. Moreover, as discussed below, the acknowledgement of a creator is an idea found not only in religion, but also in philosophy, and even in science.

As with other people in America, the lives of members of ISKCON have different parts. Part of their lives has to do with their religious observances, part with their philosophical outlook on the world, and part with their scientific views. It is natural that God is present in all three of these things. This is not surprising, because even in the history of Western civilization, the idea of God has been present not just in theology and religion, but also in philosophy and science. Indeed, our Constitutional jurisprudence recognizes that “We are a religious people whose institutions presuppose a Supreme Being.” *Lynch, supra*, 465 U.S. at 675, quoting *Zorach v. Clauson*, 343 U.S. 306, 313, 72 S.Ct. 679, 96 L.Ed. 954 (1952).

In the realm of religion, God is an object of worship, and people have different ways of worshiping God. Although the government must not favor any particular mode of worship, the Establishment Clause does not permit hostility toward religion in general. “The real object of the [First] Amendment was . . . to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government.” *Lynch, supra*, 465 U.S. at 678, citing 3 J. Story, *Commentaries on the Constitution of the United States* 728 (1833). The First Amendment mandates government neutrality between religion and religion, and between religion and non-religion. *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

Government can no more favor atheism over religion than it can favor religion over atheism. The trial court's decision here would impermissibly result in such favoritism, by interpreting even a neutral statement about evolution as a prohibited endorsement of religion.

VII. The Sticker Does Not Suggest the Existence of a Creator. But Even If It Did, The Mere Suggestion of the Possibility of A Creator Promotes Critical Thinking Regarding Science and Philosophy, Promotes Respect For and Tolerance of Peoples Who Hold Different Beliefs In Our Religiously-Diverse Nation, And Would Not Endorse Religion Over Non-Religion.

The courts should recognize the quite different roles that God plays in the realm of (1) religion, (2) philosophy, and (3) science. God can be an object of worship, God can be part of a philosophical system, and God can also be part of scientific understanding of reality. The fact that the idea of God is inherent in religions should not perpetually rule out the possibility that the idea of God can play a role in science, defined as our understanding of the origin and nature of physical reality.

A. Even If The Sticker Suggests the Possibility of A Creator (Which It Does Not), That Suggestion Would Promote Critical Thinking Regarding Science and Philosophy, and Would Not Endorse Religion.

In the realm of philosophy, many great thinkers, like Plato and Aristotle, have concluded that logic and experience point to the existence of a supreme conscious being, a supreme intelligence, or final teleological cause that is responsible for the design of living things and the world they inhabit. Other philosophers have used reason in support of atheism. This debate was as

prevalent in ancient Indian philosophy as much as in ancient Greek philosophy, and is prevalent in modern philosophy as it was with the ancients.

Also, in the world of science, many scientists have incorporated the idea of God into their scientific work. René Descartes founded modern science by arguing the objective existence of matter and the possibility to know it based on the existence of God and the individual self. Sir Isaac Newton discovered some mathematically expressed laws of physics that could account for the observed motions of the planets, but his metaphysical assumptions also included a God who could intelligently act in the world.⁹

If we carefully study the work of Charles Darwin in the *Origin of Species*, we see that he was discussing an essentially theological question. He was not arguing against creation *per se*, but against the idea of special creation. In other words, the question he posed was: did God create first one or a few kinds of simple living things, and let them evolve, or did God specially create each of the many kinds of living things. Of course, he favored the first idea, but essentially he was trying to say something scientific regarding the action of

⁹ “When I wrote my treatise about our Systeme I had an eye upon such Principles as might work with considering men for the beleife of a Deity & nothing can rejoyce me more than to find it usefull for that purpose.” Newton to Bentley, 10 December 1692, *The Correspondence of Sir Isaac Newton*, ed. H.W. Turnbull, J.F. Scott, A. Rupert Hall and Laura Tilling, 7 vols. (Cambridge: Cambridge University Press, 1959-1977), 3: 233. “This most beautiful System of the Sun, Planets and Comets, could only proceed from the counsel and dominion of an intelligent and powerful being.” *Newton, The mathematical principles of natural philosophy by Sir Isaac Newton: translated into English by Andrew Motte*, 1729, 2 vols., reprinted with an introduction by I. Bernard Cohen (London: Dawson’s, 1968), vol. 2, p. 388.

God in the world.¹⁰ Thus, following the trial court's reasoning, one might question whether public school instruction about Darwin's thought is an unconstitutional endorsement of religion, presupposing as it does the existence of a creator.

Philosophers and historians of science, such as Thomas Kuhn, recognize that at different times science has been carried out employing different sets of metaphysical assumptions about the nature of reality.¹¹ At some points in history, scientific work has been primarily carried out on the foundation of metaphysical assumptions that included the existence of God, the soul, and a vital force. At other times, scientists' metaphysical assumptions have generally excluded the existence of those things.

Thus, there have always been scientists operating with different sets of metaphysical assumptions, although at particular times and places one set of assumptions has been more dominant over the others.

Today, scientists favoring metaphysical assumptions that are strictly materialistic and which rule out the action of God in the world are very influential and numerous. But this is nothing but a metaphysical bias, having

¹⁰ See Darwin C.R., *The Origin of Species by Means of Natural Selection*, [1872], (Everyman's Library, J.M. Dent & Sons: London, 6th Edition, 1928, reprint), pp.462-463: "There is grandeur in this view of life, with its several powers, having been originally breathed by the Creator into a few forms or into one; and that, whilst this planet has gone cycling on according to the fixed law of gravity, from so simple a beginning endless forms most beautiful and most wonderful have been, and are being evolved."

¹¹ Kuhn, Thomas, *The Structure of Scientific Revolutions*, 3rd edition, (1996 Chicago, University of Chicago Press).

nothing to do with science *per se*. There are also scientists who wish to carry out scientific work with a different set of metaphysical assumptions, which include the existence of God as an intelligent designer. This idea has a long history in science. Government interference at this juncture in this longstanding debate within the world of science, even in favor of the currently dominant materialistic approach, is an unwarranted intrusion that tends to infringe on the free expression of the thoughts of other scientists favoring metaphysical assumptions that differ.

What the Sticker does, rather than endorse religion over non-religion, is accommodate the concerns of those who oppose evolution by making a neutral statement that encourages careful and critical free thought. This neutral approach has the effect of accommodating not only religious objections to evolution, but philosophical and scientific objections as well. Such objections are prevalent, and gaining momentum.

The trial court has erroneously inferred that in singling out evolution, the Sticker appears to have a nexus to God, but the court failed to recognize that if such a connection exists it is due to the nature of evolution theory itself, because the theory is concerned with explaining phenomena that many religions attribute to a God. The religion-neutral language of the Sticker contains no nexus to God. Moreover, in finding that any connection between the Sticker and God is an impermissible endorsement of religion, the trial court has overlooked the legitimate role that the idea of God has had and can have in science.

In the field of anthropology, it has been common for scientists to cite not only scientific evidence, but Supreme Court and other judicial decisions as a kind of evidence for evolution.¹² Ironically, while trying to prevent unconstitutional entanglement of the government with religion, the judiciary is playing a perhaps unwitting role as an arbiter of what is true or not true in scientific work. Under some facts and circumstances, the judiciary may be required to determine whether a particular statement in public educational materials is actually a religious endorsement in the guise of science. However, the trial court's rejection of the neutral Sticker here – which does not even mention any alternatives to evolution – amounts to a gratuitous, unwarranted foray into the role of arbiter of a scientific debate, despite the court's protestations that it takes no position on the origin of the human species.

B. The Fact That Intelligent Design Theories Are Held by a Small, But Growing, Minority of the Scientific Community Does Not Make Them Religious Theories.

To say, as some have, that opposition to evolution is not part of science today and that there is no role in science for discussion of evidence that contradicts the evolution theory, is not correct. Several members of ISKCON have introduced into scientific discussion evidence that contradicts the current theories and have also introduced the idea of God as having some role in the origin of living things. For example, Michael A. Cremo, a member of ISKCON, has presented papers at major international scientific conferences

¹² See, e.g., Stein, Philip L. and Rowe, Bruce M., *Physical Anthropology*, Fifth Edition. (1993 New York, McGraw-Hill), p. 37.

that present physical evidencing contradicting the evolutionary account of human origins.¹³ In 2001, Cremo received a National Science Foundation travel grant, administered through the History of Science Society, to present a paper giving evidence against human evolution at a major international conference on history of science.¹⁴ Cremo's papers have been published in

¹³ The following papers, presented at scientific and scholarly conferences, present evidence against the theory of evolution and in favor of intelligent design or creation based on the Vedic literature, employing metaphysical assumptions allowing for God, a soul, and vital force. They show that such presentations are part of the current world of science, whether or not many scientists agree with Cremo's point of view. Cremo, M A. (1994) Puranic Time and the Archeological Record. Presented at World Archaeological Congress 3, New Delhi, India, December 4-11; Cremo, M. A. (1995) The Impact of *Forbidden Archeology*. Kentucky State University Institute for Liberal Studies Sixth Annual Interdisciplinary Conference on Science and Culture, March 30 - April 1; Cremo, M. A. (1999) Forbidden Archeology of the Middle and Early Pleistocene. World Archeological Congress 4, Capetown, South Africa, Jan 4 - 11; Cremo, M. A. (1999) Forbidden Archeology of the Paleolithic. European Association of Archeologists Fifth Annual Meeting. Bournemouth, England, Sept. 15-18; Cremo, M.A. (2000) The Discoveries of Carlos Ribeiro: A Controversial Episode in Nineteenth-Century European Archeology. European Association of Archaeologists Sixth Annual Meeting, Lisbon, Portugal. September 10-16; Cremo, M.A. (2001) Paleobotanical Anomalies Bearing on the Age of the Salt Range Formation of Pakistan: A Historical Survey of an Unresolved Scientific Controversy. Presented at XXIst International Congress of History of Science, Mexico City, July 8-14, 2001; Cremo, M. A. (2001) The Discoveries of Belgian Geologist Aimé Louis Rutot at Boncelles, Belgium: An Archeological Controversy from the Early Twentieth Century. XXIVth Congress of the International Union of Prehistoric and Protohistoric Sciences, Liège, Belgium, September 2-8, 2001; Cremo, M. A. (2003) The Nineteenth Century California Gold Mine Discoveries: Archeology, Darwinism, and Evidence for Extreme Human Antiquity. World Archaeological Congress 5, June 21-26, 2003 Washington, D.C.

¹⁴ Cremo, M.A. (2001) *Paleobotanical Anomalies Bearing on the Age of the Salt Range Formation of Pakistan: A Historical Survey of an Unresolved*

Footnote continued on next page

peer reviewed conference proceedings volumes.¹⁵ Cremo has also been invited to speak about his work at major international scientific institutions, such as the Royal Institution in London and the Russian Academy of Sciences department of anthropology.¹⁶ These invitations show that in the world of science there is active interest in evidence contradicting the current theories of evolution. They also demonstrate interest in alternatives to Darwinism involving the idea of creation and intelligent design, although not of the Christian variety. This is

Footnote continued from prior page

Scientific Controversy. Presented at XXIst International Congress of History of Science, Mexico City, July 8-14, 2001.

¹⁵ Cremo, M A. (1999) Puranic Time and the Archeological Record. In Tim Murray, ed. *Time and Archaeology*, edited by Tim Murray, Routledge, London, pp. 38-48. Cremo, M. A. (2002) The Later Discoveries of Boucher de Perthes at Moulin Quignon and Their Impact on the Moulin Quignon Jaw Controversy. In Goulven Laurent ed. *Proceedings of the XXth International Congress of History of Science (Liege, 20-26 July 1997), Volume X, Earth Sciences, Geography and Cartography*. Turnhout, Belgium: Brepols, pp. 39-56.

¹⁶ Cremo, M. A. (1996) Invited lecture. Forbidden Archeology. Russian Academy of Sciences, Institute for the Study of Theoretical Questions. Moscow, July 14. Cremo, M. A. (1999) Invited lecture. Forbidden Archeology. University of Oklahoma School of Geology and Geophysics, Shell Oil Colloquium Series. Guest Speaker. September 9. Cremo, M.A. (2000) Forbidden Archeology. Invited lecture. The Royal Institution of Great Britain. Feb. 3. Cremo, M. A. (2001) Forbidden Archeology. Invited lecture. Ukrainian Academy of Sciences. Institute of Archeology, April 19. Cremo, M. A. (2003) Forbidden Archeology. Invited lecture. Russian Academy of Sciences, Moscow. Department of Ethnography and Anthropology. April. Cremo, M. A. (2003) Forbidden Archeology. Invited lecture. Bulgarian Academy of Sciences. Department of Experimental Morphology and Anthropology. May. Cremo, M. A. (2005) Human Devolution: A Vedic Alternative to Darwin's Theory. Invited lecture. Society for the Anthropology of Consciousness (a section of the American Anthropological Association), April 14.

not to say that there is significant agreement with the views represented by Mr. Cremo, but rather that scientists consider such views worthy of being heard and considered in scientific venues. Dr. Richard L. Thompson, an ISKCON member with a Ph.D. in Mathematics from Cornell University, has also published scientific papers in peer-reviewed scientific publications favoring the idea of intelligent design.¹⁷ Dr. Thoudam Damodar Singh, an ISKCON leader with a Ph.D in Physical Organic Chemistry from the University of California, Irvine, has organized conferences bringing together scientists and religious leaders from different religious backgrounds to discuss the question of the evolution of life from matter, among other things.¹⁸

Mr. Cremo, along with Dr. Thompson, has written a book entitled *Forbidden Archeology* (1993 Govardhan Hill Publishing, San Diego) which documents fossil evidence contradicting the Darwinian theory of human evolution, and supporting the Vedic concept of the origin of human life. *Forbidden Archeology* has attracted many reviews in the professional scientific literature, acknowledging that its brand of Hindu creationism has in fact

¹⁷ Thompson, Richard L., "Movable Finite Automata (MFA): A New Tool for Computer Modeling of Living Systems," in *Artificial Life: Proceedings of an Interdisciplinary Workshop on the Synthesis and Simulation of Living Systems, Los Alamos, 1987*, Langdon, Christopher G., editor, (1989 Addison-Wesley); N. S. Goel and R. L. Thompson, *Computer Simulations of Self-Organization in Biological Systems* (1988 Macmillan Publishing Co., Inc., Indianapolis, IN).

¹⁸ See, e.g., Singh, T.D. and Gomatam, Ravi, editors, *Synthesis of Science and Religion*, (1987 Bhaktivedanta Institute).

become part of scientific discussion of the question of human evolution.¹⁹ One such review says:

So has *Forbidden Archeology* made any contribution at all to the literature on palaeoanthropology? Our answer is a guarded 'yes', for two reasons. First, while the authors go in for overkill in terms of swamping the reader with detail . . . much of the historical material they resurrect has not been scrutinized in such detail before. Second, . . . Cremo and Thompson do raise a central problematic regarding the lack of certainty in scientific 'truth' claims. . . . those

¹⁹ Anonymous (1994) Notice of *Forbidden Archeology*. "Publications," *Journal of Field Archeology*, vol. 21, p. 112; Anonymous (1994) Notice of *The Hidden History of the Human Race*. *Sci Tech Book News*, November; Anonymous (1994) Review of *Forbidden Archeology*. "Book news," *Ethology Ecology & Evolution*, vol. 6, p. 461. Broodbank, Cyprian (1993) Notice of *Forbidden Archeology*. New books section, *Antiquity*, vol. 67, p. 904. Corliss, William (1993) Notice of *Forbidden Archeology*. *Science Frontiers Book Supplement*, no. 89, September-October, p. 1. Davidson, John (1994) Fascination Over Fossil Finds. *International Journal of Alternative and Complementary Medicine* August, p.28. Feder, Kenneth L.(1994) Review of *Forbidden Archeology*. *Geoarchaeology*, vol. 9, pp. 337-340. Flynn, Dr. Pierce J. (1993) Foreword to *Forbidden Archeology: The Hidden History of the Human Race*, by Michael A. Cremo and Richard L. Thompson. San Diego: Govardhan Hill Publishing. Groves, Colin (1994) Creationism: The Hindu View. A Review of *Forbidden Archeology*. *The Skeptic* (Australia), vol 14, no 3, pp. 43-45. Langenheim Jr., R.L. (1995) Notice of *Forbidden Archeology*. "Books for Geoscientists," *Journal of Geological Education*, vol. 43(2), p. 193. Marks, Jonathan (1994) Review of *Forbidden Archeology*. *American Journal of Physical Anthropology*, vol. 93(1), pp. 140-141. Murray, Tim (1995) Review of *Forbidden Archeology*. *British Journal for the History of Science*, vol. 28, pp. 377-379. Patou-Mathis, Marylène (1995) Review of *Forbidden Archeology*. *L'Anthropologie*, vol. 99(1), p. 159. Rothstein, Mikael (1994) *Forbidden Archeology: Religious Researchers Shake the Theory of Evolution*. *Politiken*, January 1. Stoczowski, Wiktor (1995) Review of *Forbidden Archeology*. *L'Homme*, vol. 35, pp.173-174.

scientists who insist that evolution is a fact might be better advised to recast this as ‘highly probable theory’. This more modest claim might go some way to disarming today’s increasingly vociferous opposition.²⁰

This is a highly significant statement in one of the main scientific journals that deals with science policy. The Sticker at issue here presents precisely such a modest claim about evolutionary theory. It says nothing in support of the views of fundamentalist Christians or any other religion.

In another review of *Forbidden Archeology*, a leading archeologist writes:

For the practising quaternary archaeologist current accounts of human evolution are, at root, simply that. The ‘dominant paradigm’ has changed and is changing, and practitioners openly debate issues which go right to the conceptual core of the discipline. Whether the Vedas have a role to play in this is up to the individual scientists concerned.²¹

As the quotation above suggests, many practicing archeologists admit that the current account of human evolution is simply the current account, and that it is an account that could change, even very deeply. Moreover, some leading archeologists accept that metaphysical assumptions from religious sources can be part of the process of the constant reevaluation of the theory of human evolution. That is not to say that many archeologists currently agree

²⁰ Wodak, J., and Oldroyd, D. (1996), ‘Vedic Creationism’: A Further Twist to the Evolution Debate. *Social Studies of Science*, vol. 26, p. 207.

²¹ Murray, Tim (1995) Review of *Forbidden Archeology*. *British Journal for the History of Science*, vol. 28, pp. 377-379.

with the position taken by Mr. Cremo, or with the evidence he presents. The significance is that ideas can change, and that metaphysical assumptions derived from religious sources can be part of the scientific process, while still being entirely in the realm of science, not religion.

Mr. Cremo has more recently written another book, *Human Devolution: A Vedic Alternative to Darwin's Theory* (2003 Bhaktivedanta Book Publishing, Los Angeles) which elaborately presents an alternative to the Darwinian evolution theory inspired by the Vedic literature of ancient India. According to Vedic texts, life in the form of consciousness has always been present in the universe. "Among all the eternally conscious beings there is one supreme eternal living being who is supplying the needs of all the innumerable others." (Katha Upanishad 2.2.13). If a conscious being gives up its connection with the supreme eternal being, it comes into the world of matter and assumes a material form.²² ISKCON members believe that life never arises from matter, but that conscious life is fundamental, and matter exists for the benefit and reformation of conditioned living beings. Life comes from other life, not from matter. Mr. Cremo and other ISKCON-affiliated scientists have presented systematic arguments in favor of this view, supported by empirical observation and reasoned analysis.

²² See, *Bhagavad-gita As It Is* (2001 Bhaktivedanta Book Trust, Los Angeles, hardcover edition) Chapter 15, Verse 7, p. 720 ("The living entities in this conditional world are My eternal fragmental parts. Due to conditional life, they are struggling very hard with the six senses, which include the mind.")

Although the views expressed by Cremo, Thompson, Singh, and many other scientists who argue in favor of some version of Intelligent Design, are minority views, and there is considerable opposition to such views by other scientists, the fact is that there is a growing debate on the evolution question going on within the world of science—in the universities, scientific institutions, scientific conferences, and scientific publications. The School Board's Sticker does not take sides in this debate, and at most has the effect of acknowledging that such a debate exists, which is not and cannot be a religious endorsement by any means.

The trial court's ruling that the School Board cannot require such a neutral Sticker would actually have the effect of stifling legitimate, valuable scientific debate, and would suggest that the federal judiciary has found the scientific views of Cremo, Thompson, Singh and others like them to be scientifically unworthy expressions of religion rather than true science.

Although it is not necessary for the Court to find that scientific alternatives to evolution theory are scientifically worthy in order to reverse the trial court's judgment, the fact remains that *the ideas expressed by Cremo, Thompson, Singh, and others, regardless of whether they have been inspired or informed by religious belief, are actually scientific theories presented in the realm of science according to the methodology of science, and are not religious theories.* A court that recognized this fact could not find the Sticker, which does not even mention any alternative theory, an impermissible endorsement of religion.

C. Even If The Sticker Suggests the Possibility of A Creator (Which It Does Not), That Suggestion Would Promote Respect For and Tolerance of Peoples Who Hold Different Beliefs In Our Religiously-Diverse Nation, and Would Not Endorse Religion.

The Supreme Court of India, in *Roy v. Union of India*, 7 S.C.C. 368 (2002)²³, held that teaching students about religious doctrines promotes harmony, respect, and understanding by students of peoples who hold different religious beliefs. India, like the United States, includes among its people large numbers of people who follow different religions. Justice Dharmadhikari, in his opinion in *Roy*, paragraph 60, held that informing students about the doctrines of different religions would aid “in creating a real secular society in which ... a heartfelt respect develops in people of one religious faith towards people of another religious faith.” He described secularism as meaning “*equal treatment and respect for all religions*” and condemned an understanding of secularism as requiring “*negation of all religions*.” Dharmadhikari, J., concurring, at paragraph 84 (emphasis added). Similarly, Justice Shah stated in his opinion (paragraph 33) that “knowledge of various religious philosophies is material for bringing communal harmony as ignorance breeds hatred because of wrong notions, assumptions, preaching and propaganda by misguided interested persons.” For these reasons, and others, all three justices in *Roy*

²³ The decision may be accessed via the internet at the Indian Supreme Court’s official website, <http://judis.nic.in/supremecourt/querycase.asp>, by selecting “Writ Petition (civil) 98 of 2002” in the selection window. A separate window must be opened for each of the three opinions (Justices Shah, Dharmadhikari, and Sema. It is also available via the internet at <http://www.supremecourtonline.com/cases/7371.html>.

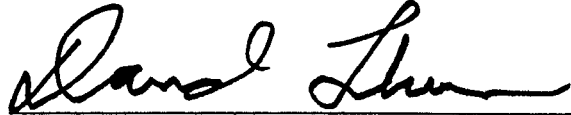
CERTIFICATE OF COMPLIANCE

I hereby certify that the attached

AMICUS CURIAE BRIEF OF ISKCON OF ATLANTA, INC., IN SUPPORT
OF APPELLANTS AND SUPPORTING REVERSAL

in *Selman v. Cobb County School District*, No. 05-10341, United States Court
of Appeals for the Eleventh Circuit, complies with the type-volume limitations
set forth in FRAP 32(a)(7)(B). The *amicus* brief contains 6,849 words.

This motion for leave to file the *amicus* brief also complies with the rules. The
motion contains 733 words.

A handwritten signature in black ink, appearing to read "David Liberman", is written over a horizontal line.

David M. Liberman, Esq.
LAW OFFICE OF DAVID LIBERMAN
1875 Century Park E, Suite 2130
Los Angeles, California 90067
(310) 277-9288
Counsel for *Amicus Curiae*
ISKCON of Atlanta, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

UNOPPOSED MOTION OF ISKCON OF ATLANTA, INC., TO FILE
BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND
SUPPORTING REVERSAL


and a true and correct copy of

AMICUS CURIAE BRIEF OF ISKCON OF ATLANTA, INC., IN SUPPORT
OF APPELLANTS AND SUPPORTING REVERSAL

in *Selman v. Cobb County School District*, No. 05-10341, United States Court
of Appeals for the Eleventh Circuit, was duly served on each of the following
persons by first-class mail, postage pre-paid, this 20th day of April, 2005:

E. Linwood Gunn, IV
Brock, Clay & Calhoun, P.C.
49 Atlanta Street
Marietta, GA 30060
Counsel of record for defendants-appellants

Gerald Weber
American Civil Liberties Union
70 Fairlie Street, Suite 340
Atlanta, GA 30303
Counsel of record for plaintiffs-respondents


Edward Sisson