

TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

Civil Action, File Number 05-10341-~~IT~~

JEFFREY MICHAEL SELMAN, et al.,  
Plaintiffs-Appellees,

v.

COBB COUNTY SCHOOL DISTRICT,  
COBB COUNTY BOARD OF  
EDUCATION, AND JOSEPH REDDEN,  
Superintendent,  
Defendants-Appellants

Motion for  
Extension of  
Time to File

Herman Cummings moves for Extension of Time to File an amicus-curiae brief in support of the defendants. Since the date that the decision of the District Court was made known, both the defendant and counsel have refused to communicate with the movant, not giving him any information concerning trial dates and proceedings. All information has been obtained by chance by internet alerts (Google).

On June 10<sup>th</sup>, an "evolution Cobb County" email alert by Google informed this movant of an amicus-curiae submitted by the Anti-Deformation League, in support of the Appellees. Then learning what a amicus brief was, this movant used information obtained on the internet to formulate a brief to submit to the Court of Appeals.

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TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

Civil Action, File Number 05-10341 - II

JEFFREY MICHAEL SELMAN, et al.,  
Plaintiffs-Appellees,

v.

COBB COUNTY SCHOOL DISTRICT,  
COBB COUNTY BOARD OF  
EDUCATION, AND JOSEPH REDDEN,  
Superintendent,  
Defendants-Appellants

Motion for Leave  
to File

Herman Cummings moves for Leave to File an amicus-curiae brief in support of the defendants. The movant's interest is in the correct and complete education of middle and high school student, which are subjected to confusion because of what is presently taught in public schools, and what they may be taught elsewhere about the origins of life.

The amicus brief is desirable because it conveys to the court different perspectives that were not addressed in the original trial, and asserts new information that the public at large has not been aware of.

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No. 05-10341--II

TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

JEFFREY MICHAEL SELMAN, et al.,  
Plaintiffs-Appellees,

Vs

COBB COUNTY SCHOOL DISTRICT, COBB COUNTY BOARD OF  
EDUCATION, AND JOSEPH REDDEN, Superintendent,  
Defendants-Appellants

On Appeal from the UNITED STATES DISTRICT COURT for the  
Northern District of Georgia, Atlanta Division

Brief AMICUS CURIAE of Herman Cummings, in support of  
DEFENDANTS-  
APPELLANTS and in SUPPORT of REVERSAL

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June 23, 2005

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## **INTRODUCTION**

For many years, over and over again, the secular scientific community has advocated that evolution is the only scientifically valid explanation for the diversity of life on this planet. This amicus wishes to demonstrate to the court that such is not true. This amicus also wishes to convey to the court that both creationism and the conclusions of science (evolution, Big Bang) are in error, when studied separately. Yet when the correct interpretation of Genesis is combined with the evidence that secular science has discovered, only then is the truth of Earth's ancient geological past and the origins of prehistoric and modern mankind revealed.

The most notable interested parties in this case are all school boards and school districts across the country, their students, and all humanity around the world.

## **IDENTITY AND INTEREST OF AMICUS CURIAE**

Amicus Herman Cummings, is not a member of any group or

organization, but is the author of the unpublished manuscript “Moses Didn’t Write about Creation”, copyrighted 1991 & 1992. Last November, this amicus contacted each member of the Cobb County School Board, one week before the trial, offering testimony that would reveal what truth Genesis was saying to mankind. So called bible scholars and the world of theology have *never* understood the text of the first two chapters of Genesis. Theology has erroneously taught mankind that Genesis is describing “the Seven Days of Creation (Week)”, while the book of Genesis is actually conveying a previously unknown concept, given to the ancient nation of Israel in 1598 BC, which modern science would not discover for another 3,000 years. If desired, this can be explained to the court.

However, the Cobb County School Board refused to give this amicus any audience, and rejected all communications. The attorneys for the defense also refused to communicate with this amicus, rejecting the line of questioning that would have demonstrated to the District Court that the exclusive teaching of evolution in public schools is actually unconstitutional. A total of two messages, one voicemail, the other via his secretary, were given to Atty. E. Linwood Gunn on Wednesday and Thursday during the week of the trial, but no return calls were received from anyone from the law firm of Brock, Clay, and Calhoun, P.C.

## **SUMMARY OF ARGUMENT**

This amicus agrees with the defendant that the disclaimer placed by the Cobb County School Board in biology textbooks correctly identifies a false assumption made by the author in the textbook. It is not the responsibility of any school board to interpret data. Since they must purchase books published by others believed to be experts, any such interpretation is delegated to the author(s).

Yet when 2,300 parents voiced their objection to the book that was assuming a scientific conclusion to be an undeniable fact, the board was compelled to respond. Rather than to recall those books, and make another (additional) choice of books, the board agreed to put disclaimers on the textbooks. For hidden reasons that will not be addressed in this brief, certain segments of society (the atheists) feel “threatened”, and want the disclaimers permanently removed, as if there is an obligation to protect the “Ideology of Evolution”. Others (the “separatists”) are afraid that it could lead to the teaching of biblical creationism in public schools. Let this amicus make this perfectly clear, that it is nearly impossible to teach biblical creationism, because Genesis does not convey how Earth was created. However it *does* explain the 600 million year fossil record that science has

uncovered.

## **THE CONSTITUTIONAL POSITION OF THE COURT**

The U.S. Court of Appeals for the Eleventh District has found itself in a precarious position. Our branches of government must not entangle themselves in matters of religious doctrine, unless it is somehow necessary. For example, Congress may not find reason to block an appointment, whether the appointee is a theist or an atheist. But if that appointee practices a form of Satanism that requires human sacrifice, Congress rightfully should deny confirmation, solely on those religious grounds.

Without any new evidence being presented, the court may be inclined to uphold the decision of the lower court. But in doing so, it will be seen as an endorsement of the religion of Atheism by the American people. The defense in the original trial did a poor job of conveying the proper evidence to the court, and was ineffective in their cross-examination of witnesses.

Like it or not, the U. S. Court of Appeals has also been drawn into the “arena of origins”, which is dominated by religious idealization. Theists claim that God (the God of Abraham, Isaac, & Jacob) created the Earth and mankind, but have never presented sound evidence to that effect. Atheists



zealously embrace the theory of evolution, and secular science often tries to present evolution to the public as reality, which prompted the first trial.

Neither should the court want to find itself in the position of telling school boards what they can or cannot teach. That is an issue to be addressed at the state level. However, if a situation arises which a breach of ethics must be examined, then the court should make a judgment in order to restore equity. Case in point, *Edwards v. Aguillard*, U.S. Supreme Court 482 U.S. 578, in which the high court correctly upheld that Creation Science should not be required to be taught whenever and where ever evolution was taught. The heart of the matter was that the apparent progression of prehistoric life forms on Earth through 600+ million years of history was being discussed. Creation Science did not address that issue, but rather *denied* that there even was a 600 million year history. The Louisiana “Creationism Act” created an inequity, which needed to be resolved.

### **THE SOVERNTY OF THE LOCAL/STATE SCHOOL BOARD**

The federal government must not mandate what schools can or cannot teach, as long as the curriculum is based upon as much truth as reasonably can be expected. The goal of our schools must foremost be to teach the truth, and educate our children. The future of our nation and all of humanity

will be in our children's hands. Therefore we are obligated to instruct them in knowledge, wisdom, and morality. But above all, our schools are required to teach reality.

How much influence does the idealism of Atheism have in our school systems? How much does it have in our courts? How much of Atheism has infiltrated into legislative and executive branches at all levels of government? Fifty years of indoctrinating our students with Atheism has produced people in positions of authority that question and/or deny the existence of God. Fifty years ago, who would have thought that an American judge would try to remove "under God" from the Pledge of Allegiance?. Are we now becoming an atheist society?

What may also be a surprise, is the question of how much have the fields of science been impeded by the influence of Atheism. The term "science" can be defined as an act, method, or result of obtaining correct (or the most reliable) knowledge about everything in our universe, including descriptions of what happened in the past, what is currently happening, and explanations of why it happens or has happened. The influence of Atheism forces modern science to only look for natural causes for any phenomena. If no natural cause can be found, then a fictional cause is invented or theorized, in order to stay within the "natural realm", and deny any supernatural

involvement (or existence).

Modern science has been impeded by the influences of atheism. Currently, science teaches us that mankind has only been on Earth (since we supposedly evolved) for less than 10 million years. Much of theology will adhere to the belief that mankind was created by God only 10,000 years ago. With science being kept separate from theism, both fields of study are in error. By overlaying the geological (physical) data with the biblical data (Genesis), science would have learned that mankind in his present likeness has been on Earth tens of millions of years earlier than anthropology now believes. The world of theology has had that data, but has not had the scientific knowledge to comprehend the Genesis data.

Insanity can be described as a deranged state of the mind usually occurring as a specific disorder (as schizophrenia), and that which denies reality. With the doctrine of denial of any supernatural involvement, secular science has established both the theory of “the Big Bang”, and the theory of evolution. Those that oppose any critical examination of the theory of evolution are the ones that had successfully drawn in the District Court into this “arena of origins”. This amicus believes that it would be advantageous if the court would examine to what degree the atheists and separatists are impeding the education of our children. All available data

and evidence should be examined, and none should be excluded, just to appease those that would deny reality.

Citing *Brown v. Board of Education*, 347 U.S. 483, in the opinion of the court, delivered by Chief Justice Warren, "*We conclude that, in the field of public education, the doctrine of "separate but equal" has no place.*"

The separatists expect our children to learn the conclusions of science concerning Earth's ancient past in public school, and for those that will, learn what Genesis says only in a theological setting, concerning the same subject matter. If both explanations are kept separate, aren't they then unequal? Doesn't that impress upon the students that one is considered reality, and the other a fantasy? If only one explanation is "approved" by the government, and the other excluded, then the government is willfully entangling itself in matters of which they would prefer not to be involved, especially when no inequity has been established. An answer to this dilemma is given in the CONCLUSION of this brief.

The worlds of Creationism and Theology are extremely ignorant of Earth's prehistoric history, and can not be relied upon to teach our children the truth. Most of Creationism and Theology denies the existence of previous life forms in prehistoric times (the geologic time scale), and can not explain the existence and purpose of prehistoric mankind. Both sides

(atheists and theists) are at fault in perpetuating the “controversy of origins”. If mankind has enough intelligence to land on the Moon, and return safely, then he ought to have enough intelligence to learn, and pass on to our children, the truth of our origins without bias. The recent reign of Atheism has caused another inequity, and all of mankind is looking to the U.S. Court of Appeals of the Eleventh Circuit to resolve it.

### **EVOLUTION: THE CONCLUSION OF SECULAR SCIENCE**

What follows is a novice view of the evolution theory, using a specific geological span of time in Earth's past. Geologic time is considered in terms of the history of the earth, as viewed over the course of geological events that scientific research has revealed to have occurred. It's also referred to as the Geologic Time Scale. It is divided into geologic eons, eras within eons, periods within eras, and epochs within periods. Depending on the period of the geologic time scale one is looking at, increments are as long as hundreds of millions of years in the earlier years of the scale, and in the more recent periods as short as thousands of years. Scientific geological analysis of both the Earth and the Moon have proven that the Earth (and solar system) came into existence about 4.6 billion Earth years ago. The span of time between

the formation of Earth (4.6 Billion BC) and about 600 Million BC, this amicus shall call the Precambrian Age. This is the block of time that secular science believes only very primitive life forms existed, originating from what's called the "primordial soup". The span of time between 600 Million BC and 245 Million BC we shall call the Paleozoic Age, when an abundance of fossils (remains or impressions of) of more advanced and diversified life forms appear .

A geologic age is defined as being a span of time delimited by major events in the historic past. The world of science believes that (type 1) animals from the late Precambrian Age are the ancestors of (or evolved into) the early (type 2) Paleozoic animals, such as the trilobites of the Cambrian Period. The first major mass extinction is called "the Cambrian explosion", in about 510 Million BC. Science has no idea when these animals first came into existence, nor how long their life span was. Next, science believes type 2 animals evolved into type 3 animals. Following that, type 4 animals died in the Oligocene Period extinction, in about 440 Million BC, such as snails, clams, and cephalopods.

Up to now, science believes all life, both plant and animal, lived only in the seas. Then, science believes type 4 animals evolved into type 5 animals, that lived in the sea and began to first make headway upon land.

Next, science believes that type 5 animals evolved into type 6 animals (land and sea), which are found in the Devonian Period extinction, in about 360 Million BC. These life forms include amphibians , insects, and the apparent first true land plants, giving rise to the first forests, according to science.

Next, type 6 life forms evolved into type 7 life forms, and type 7 later evolved into type 8 life forms as found in the Permian Period mass extinction, which occurred about 245 million years ago. Example of these animals are 30-inch wing-span dragon flies, 6-inch cockroaches, dimetrodons, bony fish and sharks. Science has not found the odd numbered life form types, but only the even numbered types. The Bible describes the word “faith” as the substance of things hoped for, the evidence of things not seen. The world of science has had “faith” that those odd numbered transitional life forms will someday be found in the fossil record.

If the theory of evolution is true, then the question arises if mankind really has “a soul”. If humans *now* have a soul, then when, over the course of prehistoric time, did mankind obtain such? Atheism zealously embraces the evolution theory because evolution denies the existence of God, and would show the Bible to be manmade (pagan) literature. If there is no Creator, then there is no final judgment. Unfortunately, it is the atheist agenda to keep the knowledge of God (the Creator) away from others, which

causes inequity.

### **ANOTHER PLAUSIBLE THEORY FOR THE SAME DATA**

A major problem with evolution is the mysterious reason that the “odd numbered types” of life forms would be missing from the fossil record.

Another problem is that science only knows when the even numbered types died, and not when they first came into existence. Their life span is unknown, and perhaps could be millions of years. Assumptions are made based on modern forms of life.

The defense in the first trial refused to present the following scenario to the court. Suppose all of those prehistoric known life forms came into existence at the beginning of the Precambrian Age, and the rotation of our galaxy brought our solar system through an agent of catastrophe, such as a cosmic cloud, that first killed the lower forms of sea life, type 2, causing the “Cambrian explosion”. Suppose at certain intervals, that same or similar cloud is encountered, that kills more type 2 and many type 4 life forms because of repeated exposure, which causes the Oligocene Extinction.

Many millions of years later, that cloud again is encountered and causes the Devonian Extinction, killing the type 6 life forms. A fourth



encounter kills all remaining types 2, 4, and 6, and also kills all of the more advanced type 8 life forms. This would be the Permian Extinction, which is the greatest mass extinction ever recorded in Earth's history. With this scenario, the escalating death of life forms in Earth's early history is explained, without the need of the "missing" transitional types. Let this be known as the "escalating death" theory.

### **BIBLICAL REALITY**

As stated earlier in this brief, the worlds of creationism and theology have never understood the book of Genesis. With the theory of "escalating death" in mind, suppose the Seven Days of Moses (not "Creation") are not linear, and are in some sort of sequential order other than chronological order? Suppose Moses saw one day from the beginning of each geological age as defined by God? That would make Genesis too scientific for bible scholars and theologians to understand.

Creation Science denies obvious geological evidence in order to adhere to an incorrect interpretation of Genesis, insisting on a "young Earth". Theistic evolution denies that God created the Earth and universe in six days (144 hours), as said in Exodus 20:11. The "Ruin/Restoration" and "gap" theories teach that the week mentioned in chapter one of Genesis is a

Divine week of restoration after the Earth suffered an earlier “ruin”. But the Fourth Day disqualifies those theories. The doctrine of Intelligent Design only says that there must be a designer, but does not address when the design was put into existence, and neither addresses the history of Earth. Also, the rise and decline of both previous life forms and prehistoric mankind are not addressed, and therefore has no place in public schools.

The atheists and separatists will try (and have tried) to use the “false finale” that the introduction of Genesis (or the Bible) into public schools will unconstitutionally “establish worship (religion) in our schools”, by teaching what God has done, and His relationship with the universe. That is not true. Theology teaches about Lucifer, and how he rebelled against God, but does not teach the worshiping of Satan (Satanism). Public school is a place of learning, not worship. By the way, Satan believes in God, more so than we. What “religion” will the atheist say that Satan believes in, or practices?

Citing *Torcaso v. Watkins*, 367 U.S. 488 (1961), “We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person [to profess a belief or disbelief in any religion.] Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”

Atheism is a religion that has it's own doctrines, publications, and websites which are used to convert others to their belief system. If a person goes to the website <http://www.atheists.org/membership.html>, which is one of many, they will see the following:

Your membership in American Atheists shows that you care about taking a stand for Reason, civil liberties for Atheists, and the total, absolute separation of church and state! Membership is open to all who agree with our Statement of Aims and Purposes. Joining American Atheists, though, also has it rewards! Benefits and Privileges of Membership include... ([click here to apply](#))

- **Membership dues and donations to American Atheists are tax deductible.**
- Your personal Membership card qualifying you at Conferences, Conventions and other organizational activities for special Membership Discounts.

If a person wants to accept such a belief system, that is their choice. Our county was founded for the very purpose of freedom of religion (within reason). But when any religion tries to force it's views upon others, impedes the quest for knowledge, and interferes with the development of our children, an inequity has been created.

## **CONCLUSION**

The court must make every effort not to be fooled by the tricks of those that traditionally oppose any compromise to the way biological science is taught in public schools. A favorite tactic is what's called a "false finale". It's purpose is to give an apparent finish to an argument or debate, but when more closely examined, it generates more questions than it answers. For example, the theory of evolution can not answer how inorganic matter (Earth's primordial soup) gave birth to organic organisms. So secular science will often use a false finale, saying that life on Earth probably originated from outer space. However, when that answer is further examined, it is discovered that the theory of evolution is accompanied by the "Big Bang" theory, which states that this whole universe was born by an explosion of inorganic matter. So again, where and how did organic organisms originate? Another false finale was used in the original trial, by stating that the disclaimer sticker, or anything questioning evolution, is an endorsement of religion. The defense failed to expose that claim by asking "which religion?" It is Voodoo, Hinduism, Catholicism, Satanism, or what?

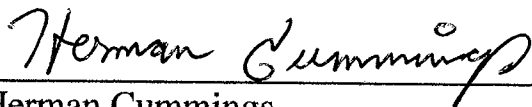
In the original trial, the "Lemon test" was applied, but not with equity. Does the exclusive teaching of evolution in public school pass the Lemon test? Does it have a secular purpose? Yes. Is it's primary effect one that neither advances nor inhibits religion? Evolution advances the religion

of Atheism. Having a monopoly in public school, it is not counter balanced by the correct biblical interpretation, or other theories.

Children are impressionable. Those that attend Sunday School learn about God, the Bible, and godly living. But Monday through Friday, their religious training is inhibited and or damaged by the godless theories of secular science, with circumstantial evidence to “prove” that the Bible is a fairy tale, at least as presented by mainstream creationism. If the disclaimers can be judged as having an unknown religious purpose, then surely the continued exclusive teaching of evolution is a government endorsement of the religion of Atheism.

This amicus offers the following suggestion. In biological science classes, the goal is the teach about the possible origin of life, and how life progressed on Earth since this planet was formed. Specifically, the 600+ million year fossil record is the focal point. We have undeniable data that tells us that the Earth is 4.6 billion years old, and that multi-celled life has existed at least since 600 million years ago. Allow all theories that address (explain) those issues, whether they be secular or biblical, and exclude all doctrines that deny the reality of that data. That way, the students are not prevented from learning all possible scenarios, and hopefully the truth attained.

This amicus respectfully entreats the U.S. Court of Appeals of the Eleventh Circuit that since another theory exists which could explain the same data, that it will reverse the decision of the District Court, and the (re)establishment of equity in public schools.



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### **CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of this Brief of Amicus Curiae have been served on counsel (listed below) for each party, by certified mail, and that the original and six (6) copies of this Brief of *Amicus Curiae* have been dispatched to the Clerk of the United States Court of Appeals for the 11th Circuit, by first-class U.S. Mail, on this 24th day of June, 2005.

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