No. 17-818
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Before the Honorable ROBERT A. KATZ, *Chief Judge*,
AMALYA L. KEARSE and ROSEMARY S. POOLER, *Circuit Judges*
(Opinion filed January 30, 2018)

David Roemer, pro se
Plaintiff-Appellant
v.
Attorney Grievance Committee; Jane E. Booth; Lee C. Bollinger
Defendants-Appellees

Appeal From the United States District Court
For the Southern District of New York
Case No. 17-cv-000703-PCK
The Honorable Judge P. Kevin Castel

PETITION FOR REHEARING
EN BANC

David Roemer, pro se
Plaintiff-Appellant

I. STATEMENT OF REASONS FOR EN BANC REVIEW

Oral argument took place without the participation of defendants on January 18, 2018. My ORAL ARGUMENT STATEMENT says I only wanted to discuss the connection between my lawsuit and Epperson v. Arkansas, 393 U.S. 97 (1968), Edwards v. Aguillard (1987), and Kitzmiller v. Dover (2005). These three cases are about biological evolution and prohibit state governments from promoting faith in God. The New York State Unified Court System through Jane Booth and the Attorney Grievance Committee is promoting what could be called *atheism* but what I call in my pleadings *humanism*. The decision to dismiss my lawsuit conflicts with the decisions made in these three cases.

II. THE SUMMARY ORDER IS GROSSLY ILLEGAL

I requested oral argument on June 23, 2017. On October 2, 2017, I made the following accusation against Judge Castel in an email to the United States Attorney General. On October 3, 2017, the Second Circuit accepted my request for oral argument.

A case before the Second Circuit (Roemer v. Columbia U. and Attorney Grievance Committee, 17-818) might be of interest to the Attorney General because the defendants and the district judge are blatantly violating the First Amendment. Columbia U. declined my offer to give a lecture/lesson on this argument for God's existence: Humans are finite beings, finite beings need a cause, therefore, an infinite being exists. In doing this, Columbia violated the academic freedom of the Columbia community because this argument is generally unknown. I proved this in the pleadings by citing the entries in the Stanford Encyclopedia of Philosophy which tell only about the arguments based on unsolved scientific questions.

There is a cause of action because the General Counsel of Columbia sent me a letter threatening me with legal action if I sent emails to the various ministers at Columbia with my offer. I also think the behavior of the district judge who dismissed the case is grossly illegal. My first complaint named the General Counsel of Columbia and the Attorney Grievance Committee of New York State. After an exchange of emails with the attorney representing the General Counsel, I added the President of Columbia U. as a defendant, and hired a process server to serve papers on the President. The attorney representing the General Counsel claimed that he represented the President one day before the President got the summons. I may be mistaken, but in my mind the President has defaulted. I see no reason why the Second Circuit should not sign the default judgment I submitted.

Concerning the issue of whether or not Lee Bollinger has defaulted on the case, the order says:

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 shows that Mr. Schilling announced his appearance for Bollinger one day before Bollinger got the summons. The truth is that there is nothing on the record that shows Schilling represents Bollinger and that Bollinger does not want the default judgment. The default judgment will only allow me to send emails and

letters to the Columbia community with my offer of a lecture/lesson on the cosmological argument for God's existence without fear of being sued or prosecuted.

III. THE SUMMARY ORDER MISREPRESENTS MY BRIEF

The fourth paragraph in the order states:

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."

There are five arguments in my brief: A, B, C, D, and E. Section A argues that Judge Castel was biased. The Judge Castel quote in the Summary Order is in section D, which argues that Judge Castel's decision is irrational. This means that the Second Circuit does not understand why I think Judge Castel's decision is irrational.

IV. THE SUMMARY ORDER IS IRRATIONAL

The summary order is irrational for the same reasons I give in section D of my brief, which I reproduce below. The Court does not understand the two-level nature of my complaint. The first level is about morality and academic freedom. The second level is about the First Amendment.

Everyone should know and understand the arguments for God's existence, not just to decide whether or not we pay for our sins after we die, but for the sake of understanding history. By declining my invitation to explain the cosmological argument, Columbia violated the academic freedom of its community because there is no other way the students and faculty could learn the argument. I proved this in my pleadings. The reason the defendants made no attempt to counter my arguments was that they could not. After my five-minute presentation on January 18, there

appeared to be a look of astonishment on Judge Katz's face. I am interpreting this to mean he was surprised to learn human beings did not evolve from animals and that there was a rational argument for God's existence.

I suggest that the reason the Second Circuit is not persuaded by my arguments in section D that Judge Castel's decision is irrational is the same as the reason the Attorney Grievance Committee did not sanction Jane Booth for unethical behavior. These individuals cannot wrap their heads around the idea that the Columbia community needs a retired high school teacher to explain the cosmological argument for God's existence.

D. Judge Castel Is Irrational

Judge Castel's expression of respect for my religious and philosophical beliefs quoted in section III.D is quite absurd. My complaint only refers to scientific and philosophical facts. There is no reference to religion except for the religion called *humanism* in paragraph 12 of the complaint. I think that Judge Castel was referring to paragraph 10 when he mentioned my religious beliefs:

> The science establishment in the United States disseminates the misinformation that human beings evolved from animals. The truth is that homo sapiens evolved from animals. Homo sapiens are hypothetical creatures that lack free will and the conscious knowledge of human beings as opposed to the sense knowledge of animals.[3 and 4]

The footnotes are supportive quotes from a biology textbook widely used by biology majors in college and Stephan Jay Gould, who is a famous for his contributions to evolutionary biology and who happens to be a humanist. If Judge Castel thinks I am wrong about this, he should have said so in his decision. His reference to my religious beliefs indicates he doesn't understand the case.

Concerning my philosophical beliefs, Judge Castel was probably referring to paragraph 11:

> Many philosophers in the United States disseminate misinformation about the cosmological argument for God's existence. The only version of the cosmological argument that makes sense is based on the scientific fact that human beings did not evolve from animals. This argument, which is from Thomas Aquinas as explained by Etienne Gilson, assumes that the universe is intelligible and that human beings are finite beings. From these assumptions, it can be argued that an infinite being (God) exists. [5 and 6]

Ms. Booth and Mr. Bollinger are guilty of violating the academic freedom of the Columbia community because my lesson/lecture has social value. How much social value my lesson/lecture has depends on how true paragraph 11 is. This is what the court has to decide to render a legal and just verdict. Dismissing paragraph 11 by saying it is a philosophical belief indicates Judge Castel is confused and biased.

V. CASES CITED IN SUMMARY ORDER

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 this lawsuit:

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.

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. I suggest that the behavior of the Attorney Grievance Committee and Jane Booth is egregiously evil. These state actors are using the power of the New York State Unified Court System to prevent the Columbia community from learning and understanding the cosmological argument for God's existence with the effect of

promoting the religions rooted in the belief that life ends in the grave. 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.

VI. Conclusion

For the above reasons, I respectfully request that the Court grant this petition for rehearing en banc.

s/ David Roemer, pro se
345 Webster Ave., Apt. 4-O, Brooklyn, NY 11230
david@dkroemer.com
347-414-2285
Dated this 31th day of January, 2018

17-818
Roemer v. Booth

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CORRECTED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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. 17-818

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