

There seems to be only one possible way by which the ~~Tennessee~~ Act can be linked to any mandate of the Federal Constitution against Congress, and thus bring the question raised by the Tennessee Act within the direct and immediate jurisdiction of the Federal Court in a serious action.

These are the primary propositions:

- (1) The 1st Amendment to the Federal Constitution provides "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof * * *"
- (2) The Tennessee Act provides "That it shall be unlawful for any teacher in any of the universities, normals and all other public schools of the State which are supported in whole or in part by the public school funds of the State, to teach any theory that denies the story of the Divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals."
- (3) Congress cannot do in effect by indirection that which it cannot do directly in derogation of the 1st Amendment to the Federal Constitution; and the Federal legislation appropriating federal moneys, in so far as they result in the support of state educational measures which establish a religion or prohibit the "free exercise of religion", is unconstitutional.
- (4) Therefore a tax payer's suit brought in the Federal court should be sustainable to restrain Federal officials from paying Federal moneys in aid of Tennessee state education-

al measures, to the extent that these measures are under the restriction of the Tennessee Act as to "teaching any theory that denies the story of the Divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals."

- (5) The holding of the U. S. Supreme Court in the State Maternity Aid case has no bearing upon the present question for in the Maternity Aid case there was no specific inhibition of the Federal Constitution against the use of Federal moneys for that purpose.