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2 **INTRODUCTION**

3 1. This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff sought to
4 exercise his First Amendment rights of petition and speech in Defendant school District.
5 Defendants, and each of them, have systematically deprived him of these rights by refusing to
6 allow him to place items on public school board meetings or allowing him to participate in public
7 meetings relative to changes in curriculum.

8 2. Plaintiff seeks declaratory relief as to whether the Defendants have the legal
9 discretion to prevent him from the public participation as described below. He further seeks
10 injunctive relief to prohibit Defendants from further preventing Plaintiff from exercising his First
11 Amendment rights. He further seeks nominal damages from all defendants in the amount of \$100
12 for the deprivation of his constitutional rights, as alleged below.

13 **PARTIES**

14 3. Plaintiff, Larry Caldwell (“Caldwell”), is at all times relevant to this action, an
15 individual who resides within the jurisdiction of the Roseville Joint Union High School District
16 (“RJUHSD” or “District”). Within one year of the commencement of this present action, Caldwell
17 has been assessed for, and is liable to pay, a tax which is for the benefit and support of RJUHSD.
18 Caldwell is the parent of a child who is enrolled in the District.

19 4. Defendant, RJUHSD is a union school district as defined under Education Code
20 (“Educ.C.”) §86 and is a school district established pursuant to Article IX, §6 of the California
21 Constitution.

22 5. Defendant, James Joiner, also known as Jim Joiner (“Joiner”), is a resident of
23 Placer County, California, who serves as a member of the Board of Trustees of the District.
24 Currently, he serves as the President of the Board of Trustees. Joiner has personal knowledge of
25 the policies and procedures of RJUHSD as described in this Third Amended Complaint (“TAC”).
26 Caldwell alleges on information and belief that Joiner participated in some or all of the decisions
27 and actions by the District that resulted in the deprivation of Caldwell’s constitutional rights, as
28 alleged below, and that Joiner is likely to participate in future decisions and actions on behalf of
the District that will result in continuing or future deprivation of Caldwell’s constitutional rights.
All of the acts described in this TAC were intentionally and willfully done by Joiner acting under
color of law. Joiner is being sued in his official capacity.

1 6. Defendant, R. Jan Pinney also known as Jan Pinney (“Pinney”), is a resident of
2 Placer County, California, who serves as a member of the Board of Trustees of the District.
3 Pinney was the President of the Board of Trustees from January through December of 2003.
4 Pinney has personal knowledge of the policies and procedures of RJUHSD as described in this
5 Third Amended Complaint (“TAC”). Caldwell alleges on information and belief that Pinney
6 participated in some or all of the decisions and actions by the District that resulted in the
7 deprivation of Caldwell’s constitutional rights, as alleged below, and that Pinney is likely to
8 participate in future decisions and actions on behalf of the District that will result in continuing or
9 future deprivation of Caldwell’s constitutional rights. All of the acts described in this TAC were
10 intentionally and willfully done by Pinney acting under color of law. Pinney is being sued in his
11 official capacity.

12 7. Defendant, Tony Monetti (“Monetti”), is a resident of Placer County, California,
13 who serves as the Superintendent for the District. Monetti is the secretary and executive officer
14 of the governing board of RJUHSD. Monetti has personal knowledge of the policies and
15 procedures of RJUHSD as described in this Third Amended Complaint (“TAC”). Caldwell
16 alleges on information and belief that Monetti participated in some or all of the decisions and
17 actions by the District that resulted in the deprivation of Caldwell’s constitutional rights, as
18 alleged below, and that Monetti is likely to participate in future decisions and actions on behalf of
19 the District that will result in continuing or future deprivation of Caldwell’s constitutional rights.
20 All of the acts described in this TAC were intentionally and willfully done by Monetti acting
21 under color of law. Monetti is being sued in his official capacity.

22 8. Defendant, Steven Lawrence (“Lawrence”), is a resident of Placer County,
23 California, who serves as the Assistant Superintendent for Curriculum and Instruction for the
24 District. Lawrence has personal knowledge of the policies and procedures of RJUHSD as
25 described in this Third Amended Complaint (“TAC”). Caldwell alleges on information and belief
26 that Lawrence participated in some or all of the decisions and actions by the District that resulted
27 in the deprivation of Caldwell’s constitutional rights, as alleged below, and that Lawrence is likely
28 to participate in future decisions and actions on behalf of the District that will result in continuing
or future deprivation of Caldwell’s constitutional rights. All of the acts described in this TAC
were intentionally and willfully done by Lawrence acting under color of law. Lawrence is being
sued in his official capacity.

1 9. Defendant, Donald Genasci also known as Don Genasci (“Genasci”), is a resident
2 of Placer County, California, who serves as the Deputy Superintendent for Personnel and Chief
3 Compliance Officer for the District. Genasci has personal knowledge of the policies and
4 procedures of RJUHSD as described in this Third Amended Complaint (“TAC”). Caldwell
5 alleges on information and belief that Genasci participated in some or all of the decisions and
6 actions by the District that resulted in the deprivation of Caldwell’s constitutional rights, as
7 alleged below, and that Genasci is likely to participate in future decisions and actions on behalf of
8 the District that will result in continuing or future deprivation of Caldwell’s constitutional rights.
9 All of the acts described in this TAC were intentionally and willfully done by Genasci acting
10 under color of law. Genasci is being sued in his official capacity.

11 10. Defendant, Ronald Severson, also known as Ron Severson (“Severson”), is a
12 resident of Placer County, California, who serves as the Principal of Granite Bay High School
13 which is a high school operated by the District. Severson has personal knowledge of the policies
14 and procedures of RJUHSD as described in this Third Amended Complaint (“TAC”). Caldwell
15 alleges on information and belief that Severson participated in some or all of the decisions and
16 actions by the District that resulted in the deprivation of Caldwell’s constitutional rights, as
17 alleged below, and that Severson is likely to participate in future decisions and actions on behalf
18 of the District that will result in continuing or future deprivation of Caldwell’s constitutional
19 rights. All of the acts described in this TAC were intentionally and willfully done by Severson
20 acting under color of law. Severson is being sued in his official capacity.

21 11. Defendants Does 1 through 10 are sued fictitiously because plaintiff does not know
22 their true identities at this time. Plaintiff alleges on information and belief that Does 1 through 10
23 are or were employees of the District who have personal knowledge of the policies and procedures
24 of RJUHSD as described in this Third Amended Complaint (“TAC”). Plaintiff further alleges on
25 information and belief that such Does 1 though 10, or some of them, participated in some or all of
26 the decisions and acts described in this TAC, that such participation in such decisions and acts was
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1 intentionally and willfully done by such defendants acting under color of law, and that such
2 defendants are likely to engage in future decisions and acts that will result in continuing or future
3 deprivation of Caldwell's constitutional rights. Does 1 through 10 are being sued in their official
4 capacities

5 **JURISDICTION AND VENUE**

6 12. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over
7 plaintiff's claims arising under the First and Fourteenth Amendments to the United States
8 Constitution, 42 U.S.C. §1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
9 This court has ancillary jurisdiction pursuant to 28 U.S.C. §1367 over each of plaintiff's claims, to
10 the extent they arise under the California Constitution.
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12 13. Venue is proper in the Eastern District of California, in Sacramento, under 28
13 U.S.C. §1391(b) based on the fact that one or more of the defendants resides in the Eastern
14 District, based upon the fact that all of the defendants reside in the State of California, and based
15 on the fact that most if not all of the events and conduct on which the claims are based occurred,
16 or are occurring, in the Eastern District.
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18 **COMMON ALLEGATIONS**

19 14. During a one-year period from June 3, 2003 through June 1, 2004, Caldwell sought
20 to exercise his rights as a citizen, parent and taxpayer in the District in an effort to improve science
21 education in at RJUHSD. More specifically, Caldwell's proposal, which he called the Quality
22 Science Education Policy ("QSE Policy") would change how Darwin's theory of evolution is
23 taught in biology classes, to include presentation of some of the scientific weaknesses of evolution
24 along with the scientific strengths. Caldwell's science education proposal was strictly secular in
25 content with the strictly secular goal of providing students a more thorough understanding of the
26 theory of evolution, and to enhance students' critical thinking skills in the process. The wholly
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1 secular educational content and purpose of Caldwell’s QSE Policy is obvious from its language,
2 which provides in its entirety:

3 “Because ‘nothing in science or in any other field of knowledge shall be taught
4 dogmatically’ and ‘scientific theories are constantly subject to testing, modification, and
5 refutation as new evidence and new ideas emerge,’¹ teachers in the Roseville Joint Union
6 High School District are expected to help students analyze the scientific strengths and
7 weaknesses of existing scientific theories, including the theory of evolution.”
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9 15. Caldwell’s QSE Policy was accompanied by proposed supplementary instructional
10 materials that were designed to cover some of the scientific evidence relevant to the theory of
11 evolution that was not covered in the District’s biology textbook (referred to collectively as the
12 “QSE Instructional Materials.”) The QSE Instructional Materials are strictly secular in content,
13 consisting solely of science materials prepared by secular scientists. The QSE Instructional
14 Materials contain absolutely no discussion of religious beliefs or tenets, or sacred texts.
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16 16. Caldwell is a Christian whom Defendants pejoratively refer to as a “right-wing
17 evangelical Christian fundamentalist.” Plaintiff contends that Defendants were motivated by their
18 false presumptions about his perceived religious and political viewpoints and thus engaged in a
19 pattern and practice of preventing Caldwell from exercising his rights under the First and
20 Fourteenth Amendments to the United States Constitution, and under equivalent provisions of the
21 California Constitution as more fully described below. Caldwell attempted to use three distinct
22 public processes to petition public officials to adopt his QSE Policy and accompanying QSE
23 Instructional Materials.
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25 **Interfering With the Right to Place Items on the School Board Agenda**

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27 ¹ California State Board of Education Policy on the Teaching of Natural Sciences (1989).

1 17. On or around August 5, 2003 at the very latest, Superintendent Tony Monetti
2 (“Superintendent Monetti”) had received written notice of Caldwell’s request for his proposed
3 Quality Science Education Policy (the “QSE Policy”) to be placed on the agenda of a regular
4 school board meeting for public debate and potential adoption by the school board.

5 18. Instead of placing said item on the agenda, an item called “supplemental instructional
6 materials” was placed on the agenda. At the September 2, 2003 board meeting, Caldwell asked
7 Defendant Pinney why the agenda item on supplemental instructional materials was on the board
8 agenda instead of Caldwell’s QSE Policy. Pinney responded that the Board had left Caldwell’s
9 QSE Policy off the agenda “on purpose.” At the end of the meeting, Pinney further asserted to
10 Caldwell and another parent, Clay Frederick, that Caldwell would have to take his QSE Policy
11 before each high school’s site councils for approval before Plaintiff would be permitted to place
12 the proposed policy on the school board’s agenda for potential adoption.

13 19. In a letter from Caldwell to Superintendent Monetti dated and hand-delivered on
14 February 18, 2004, Caldwell repeated his request that his proposed QSE Policy be placed on the
15 agenda of a regular school board meeting in April of 2004. In this letter, Caldwell also
16 complained about the fact that the District had not previously placed his QSE Policy on a regular
17 school board meeting agenda.

18 20. On or around April 9, 2004, Defendant Genasci wrote on behalf of RJUHSD that
19 Education Code § 35145.5 does not require the District to allow the public to place specific draft
20 Board policies on the regular agenda. As such, the Genasci further wrote that the Board did not
21 violate section 35145.5 of the Education Code by not placing Caldwell’s proposed specific QSE
22 Policy the Board agenda.

23 21. In a letter dated April 16, 2004, from Genasci to Caldwell, Genasci wrote, in
24 pertinent part, as follows: “The April 20, 2004 meeting agenda does not contain your proposed
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1 policy.” Thus, RJUHSD denied Caldwell’s request to place the QSE Policy on the agenda for the
2 April 20, 2004, Board meeting.

3 22. Prior to receiving the denial in the April 16, 2004, letter, Caldwell again requested
4 that his QSE Policy be placed on the agenda of a regular school board meeting, in a letter to
5 Superintendent Monetti dated April 13, 2004. This time, Caldwell requested that his QSE Policy
6 be placed on the agenda of a regular school board meeting in May of 2004.

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8 23. Superintendent Monetti responded to Caldwell by letter dated April 16, 2004,
9 which stated, in part, as follows: “it is the Board President and the Superintendent who are
10 charged with the responsibility for constructing the agenda, and it is they who decide whether a
11 request is within the subject matter jurisdiction of the Board, how a matter appears, and whether a
12 matter is appropriate for discussion in open or closed session. . . . in accord with the policies and
13 statutes as well as the past practice of the Board, the Board President and I will decide whether
14 and in what manner the requested subject matter is placed on the agenda.”

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16 24. On April 19, 2004, Caldwell sent another letter to Superintendent Monetti
17 demanding that Monetti place his QSE Policy on the agenda of the May regular school board
18 meeting, and threatening legal action if the District refused the request. In response, on or around
19 April 20, 2005, Superintendent Monetti, acting on behalf of the District, agreed to place
20 Caldwell’s QSE Policy on the agenda of a regular school board meeting in May, based upon
21 Caldwell’s agreement to dismiss his request for the School Board to accept his appeal from the
22 District’s Decision denying Caldwell’s Administrative Complaint regarding the District’s failure
23 to place the QSE Policy on the agenda in September and October of 2003.

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25 25. The District placed the QSE Policy on the agenda of the May 4, 2004, regular
26 school board meeting. Following public debate, the school board was set to vote on an amended
27 version of the QSE Policy, when Superintendent Monetti asserted a bogus procedural objection to
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1 prevent the board from voting on the matter. As a result of Superintendent Monetti's assertion of
2 the bogus objection, Caldwell was deprived of a board vote on his QSE Policy at the May 4, 2004
3 school board meeting.

4 26. On May 17, 2004, Caldwell made a written request to Superintendent Monetti to
5 place a revised version of his QSE Policy on the agenda of the June 1, 2004, regular school board
6 meeting, as an action item. On May 24, 2004, Superintendent Monetti sent a letter to Caldwell
7 stating, *inter alia*, "the District denies the requests set forth in your May 17, 2004 letter."
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9 27. The School Board held eleven (11) regular school board meetings on the following
10 dates: 9/16/2003; 10/7/2003; 10/21/2003; 11/04/2003; 12/02/2004; 12/16/2004; 1/20/2004;
11 2/17/2004; 3/04/2004; 3/16/2004; 4/20/2004. Despite Caldwell's lawful request to exercise his
12 First Amendment rights to speech and petition by placing the QSE Policy on the agenda,
13 Defendants refused to comply with the law by placing said the item on the agenda. Additionally,
14 Defendants denied Caldwell's request again to place an item on the agenda on May 17, 2004.
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16 28. There is a disagreement between the parties as to the proper interpretation of the
17 rights of members of the public to place an item on the school board agenda under Education Code
18 §35145.5. As a result of said disagreement, RJUHSD has restricted Caldwell and members of the
19 public from exercising their rights to petition and instruct elected officials, and Caldwell alleges
20 on information and belief that such restriction is motivated by an intent to discriminate against
21 Caldwell and other citizens on the basis of their viewpoint and/or their religious beliefs and
22 affiliations. Based upon the conduct by the individual defendants and the District, as alleged in
23 this complaint and other statements and conduct at board meetings and in other venues by
24 individual defendants, including in particular statements made by Joiner at board meetings and in
25 his communications with Caldwell and other constituents, Caldwell alleges on information and
26 belief that defendants are hostile to Caldwell's actual and perceived religious beliefs and
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1 affiliations, and that defendants have been motivated and continue to be motivated by such anti-
2 religious hostility in depriving Caldwell of constitutional rights, as alleged below.

3 **Interfering With the Right to Participate on the Curriculum Instruction Team**

4 29. In addition to seeking to place an item on the agenda, Caldwell also sought to
5 exercise his First Amendment rights to speech and petition by participating in the District's
6 Granite Bay High School Curriculum Instruction Team ("CIT").

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8 30. At the close of the September 2, 2003 School Board Meeting, Board President
9 Pinney informed Caldwell that he would be required to take his proposed QSE Policy to the parent
10 councils at each of the high schools for approval before Plaintiff would be permitted to place the
11 QSE Policy on the school board's agenda for public debate and potential adoption by the school
12 board.

13 31. As a result of the above-representation made by Pinney, Caldwell decided to begin
14 that process at his daughter's high school, Granite Bay High School ("GBHS").

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16 32. The District, acting through the GBHS principal, Defendant Severson, has
17 established a parent advisory council called the Granite Bay High School Curriculum Instruction
18 Team. ("GBHS CIT"). Pursuant to section 51101(a)(14) of the California Education Code, the
19 District is required to permit all parents of Granite Bay High School students to attend and
20 participate in meetings of the GBHS CIT. The GBHS CIT holds monthly meetings.

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22 33. Writing for GBHS CIT and representing the District, Severson, wrote in a
23 publication distributed to parents as follows: "The purpose of GBHS CIT is to involve parents
24 significantly in the development of our programs here [at GBHS]. If you would like to be kept
25 abreast of what is going on in our classrooms, these meetings will provide you the opportunity to
26 learn about and to contribute to the growth and improvement of our program. Everyone is
27 welcome. . . . Come and join us!" In that same newsletter, Severson gave the following example

1 of a topic that would be within the content open to discussion by parents at GBHS CIT meetings:
2 “How is evolution taught in our school? . . . If you have questions like these about curriculum
3 and instruction issues at GBHS, the Curriculum and Instruction team is the place for you.”

4 34. After receiving this newsletter, on September 22, 2003, Caldwell sent an e-mail
5 message to Severson inquiring whether the GBHS CIT would be the appropriate forum in which
6 to discuss Caldwell’s proposed QSE Policy regarding how evolution should be taught. Severson
7 responded in an e-mail to Caldwell dated September 23, 2003 in which he told Caldwell that he
8 “would prefer to meet with you on this issue” rather than bringing it to the GBHS CIT for public
9 discussion. Severson also stated, “I do not support your policy recommendation.”

11 35. The printed agenda for the December 3, 2003 monthly GBHS CIT meeting
12 included an agenda item entitled, “Science Curriculum Update.” This agenda was distributed to
13 parents and others in the District prior to the meeting. This agenda item referred to the QSE
14 Supplementary Instructional Materials that Caldwell had submitted to the District for possible
15 adoption in conjunction with his proposed QSE Policy.
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17 36. In response to the agenda, Caldwell and approximately ten other citizens who
18 support his QSE Policy and accompanying QSE Supplementary Instructional Materials attended
19 the December 3, 2003 GBHS CIT meeting in order to participate in the public discussion of the
20 “Science Curriculum Update” agenda item. At the December 3, 2003 GBHS CIT meeting,
21 Severson announced that the “Science Curriculum Update” item had been taken off the agenda,
22 and Severson told Caldwell and the citizens supporting him in attendance that they would not be
23 permitted to discuss the QSE Instructional Materials nor the QSE Policy at the GBHS CIT
24 Meeting. Severson opposed and was hostile to Caldwell’s viewpoint on how evolution should be
25 taught in biology, as expressed in Caldwell’s QSE Policy and the accompanying QSE
26 Instructional Materials. Severson never permitted Caldwell and other parents to discuss the QSE
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1 Policy or the QSE Instructional Materials at a GBHS CIT meeting during the remainder of the
2 2003-2004 school year. Based upon the conduct by Severson alleged in this complaint and other
3 statements and conduct by Severson, Caldwell alleges on information and belief that Severson is
4 hostile to Caldwell's actual and perceived religious beliefs and affiliations, and that Severson has
5 been motivated and continues to be motivated by such anti-religious hostility in depriving
6 Caldwell of constitutional rights in relation to CIT meetings. Caldwell further alleges on
7 information and belief that other defendants are hostile to Caldwell's actual and perceived
8 religious beliefs and affiliations, and that such hostility motivated such defendants to participate
9 with Severson in depriving Caldwell of constitutional rights in relation to CIT meetings.

11 37. There is a disagreement between the parties regarding the rights of parents and
12 members of the community to have the opportunity to have involvement in the selection of the
13 agendas for and participation in public debates during public meetings of the CIT at GBHS, and
14 regarding public meetings of equivalent parent advisory councils at the other high schools in the
15 District. As a result of said disagreement, RJUHSD has restricted Caldwell's and members of the
16 public from exercising their rights to petition and instruct government officials in the CIT of
17 GBHS and the equivalent parent advisory councils of the other high schools in the District, and
18 Caldwell alleges on information and belief that such restriction is motivated by an intent to
19 discriminate against Caldwell and other citizens on the basis of their viewpoint and/or their
20 religious beliefs and affiliations. Caldwell alleges on information and belief that some of Does 1
21 through 10 are principals of one or more of the high schools in the District, and in that capacity act
22 as the District's administrator in charge of such parent advisory councils at such high schools.

25 **Interfering With the Right to Challenge Instructional Materials**

26 38. The District has an "instructional materials challenge" procedure available to
27 parents and other citizens in the District who object to use of a particular textbook or other
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1 curricula. (The District’s “instructional challenge procedure” is referred to herein as the
2 “Challenge Procedure”.) The Instructional Materials Challenge provides for the four levels of
3 review as follows: Level one: Potential resolution by individual teacher. Level two:
4 Potential resolution by school principal(s). Level three: Potential resolution by Assistant
5 Superintendent for Curriculum Instruction, after investigation, public hearing and a report by a
6 properly constituted “Review Committee.” If the matter cannot be resolved with the principal(s),
7 the principal(s) is/are to forward the ‘Request for Reconsideration of Instructional Materials’ to
8 the Assistant Superintendent for Curriculum Instruction, Defendant Steven A. Lawrence
9 (“Assistant Superintendent Lawrence”). Level four: Appeal of the Assistant Superintendent’s
10 decision to the Superintendent.
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12 39. Commencing on or about September of 2003, Caldwell initiated an Instructional
13 Materials Challenge to the Holt Biology Textbook, on the grounds that its presentation of
14 evolution was not “accurate, objective and current” in compliance with the California Education
15 Code. Caldwell proposed to cure the deficiencies in the Holt Biology Textbook by having the
16 District adopt the “Quality Science Education Instructional Materials” to be used by science
17 teachers in conjunction with the Holt Biology Textbook.
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19 40. Ordinarily, Levels One and Two of an Instructional Materials Challenge are
20 initially conducted by a meeting with an individual teacher [Level One], followed by a meeting
21 with an individual principal [Level Two], followed by referral to Assistant Superintendent
22 Lawrence, for Level Three. However, in this case, since Caldwell wished to challenge a biology
23 textbook that was being used (or to be used) by every biology teacher at every high school in the
24 District, it was mutually agreed by the District and Caldwell, through conversations Caldwell had
25 with Lawrence and Severson, that Caldwell would present Level One of his Instructional Materials
26 Challenge to the Holt Biology Textbook to all science teachers in the District at one time, in a
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1 single, consolidated Instructional Materials Challenge, as an alternative to a series of individual
2 Instructional Materials Challenges to each of the twenty-plus science teachers in the District
3 (“District Science Teachers Meeting”). It was also Caldwell’s understanding from his discussions
4 with Assistant Lawrence that these consolidated Instructional Materials Challenge(s) would also
5 incorporate Level Two of the Instructional Materials Challenge procedure, since, according to
6 Assistant Superintendent Lawrence, the science teachers and administrators from each high school
7 would be required to make a “site” decision for each high school on whether to accept Caldwell’s
8 Instructional Materials Challenge and proposed cure for the deficiencies in the Holt Biology
9 textbook, and that the administration of each high school would then communicate its “site”
10 decision to Caldwell and Assistant Superintendent Lawrence, together with a supporting rationale
11 for the decision.
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13 41. Assistant Superintendent Lawrence convened the District Science Teachers
14 Meeting on October 29, 2003, and nearly all of the District’s science teachers attended. The
15 District Science Teachers Meeting was held at the District’s headquarters, and was chaired by
16 Assistant Superintendent Lawrence. Severson attended the District Science Teachers Meeting in
17 his capacity as the principal of GBHS. Caldwell does not know whether other high school
18 principals or other site administrators were in attendance at the District Science Teachers Meeting,
19 but he alleges on information and belief that they were. Caldwell’s science expert, Cornelius G.
20 Hunter, Ph.D., presented a detailed power point presentation at the meeting, together with
21 supporting recommended written materials to cure the deficiencies in the Holt Biology Textbook.
22 Caldwell made a power point presentation regarding the legal requirements for science textbooks.
23 Caldwell also submitted proposed video curriculum modules addressing five perceived
24 deficiencies in the Holt Biology Textbook.
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1 42. During the District Science Teachers Meeting, participants asked questions and
2 made comments indicating that they were basing their decision on Caldwell’s Instructional
3 Materials Challenge in part on the perceived and actual conservative Christian religious beliefs
4 and affiliations of Caldwell, of his expert, Dr. Hunter, and of the Discovery Institute and scholars
5 affiliated with the Discovery Institute, some of whom are depicted in the video curriculum
6 modules. Before and after the District Science Meeting, some participants in the District Science
7 Teachers Meetings made other statements indicating that based their decision on Caldwell’s
8 Instructional Materials Challenge in part on the perceived and actual conservative Christian
9 religious beliefs and affiliations of Caldwell. As further evidence of the District’s improper
10 consideration of Caldwell’s perceived and actual conservative Christian religious beliefs in
11 making its decision on Caldwell’s Instructional Materials Challenge, following the District
12 Science Teachers Meeting, the participants solicited and relied upon purported expert opinions
13 from outside “science” experts that contained anti-religious statements about Caldwell’s perceived
14 and actual conservative Christian religious beliefs and affiliations, and about the perceived and
15 actual conservative Christian religious beliefs and affiliations of authors and scholars associated
16 with the QSE Instructional Materials.
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19 43. On or about December 15, 2003, nineteen science teachers who had attended the
20 District Science Teachers Meeting issued a written statement in which they rejected Caldwell’s
21 Instructional Materials Challenge to the Holt Biology Textbook. The science teachers’ rejection
22 constituted the Level One review of Caldwell’s instructional materials challenge. It is unclear
23 whether Caldwell was accorded the Level Two review of his Instructional Materials Challenge,
24 since none of the high school principals communicated a decision on Caldwell’s Instructional
25 Materials Challenge to Caldwell, as contemplated by Level Two of the District’s written
26 procedure. Caldwell alleges on information and belief that Severson and each of the other
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1 principals of the District’s high schools either failed to accord Caldwell a Level Two review of his
2 Instructional Materials Challenge, and that such failure was motivated by a hostility on the part of
3 Severson and the other principals to Caldwell’s actual and perceived religious beliefs and
4 affiliations, and by an attempt to discriminate against Caldwell’s political and religious
5 viewpoints. Caldwell further alleges on information and belief that some of Does 1 through 10 are
6 principals of District high schools other than GBHS who attended the District Science Teachers
7 Meeting, and/or, who failed to accord Caldwell a proper Level Two review of his Instructional
8 Materials Challenge.
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10 44. Assistant Superintendent Lawrence did not accord Caldwell a Level Three review
11 of his challenge to the Holt Biology Textbook, since Lawrence did not convene a Review
12 Committee, since Caldwell did not have a chance for himself and his supporters to make a
13 presentation in support of his challenge to a properly constituted Review Committee, since a
14 properly constituted Review Committee did not “formulate its recommendations and prepare a
15 written report to Assistant Superintendent Lawrence,” and since Lawrence made his final decision
16 on Caldwell’s challenge without receiving recommendations and a written report from a properly
17 convened review committee. Instead, Assistant Superintendent Lawrence precipitously made his
18 final decision on Caldwell’s challenge to the Holt Biology Textbook without input from a review
19 committee, as required by the District’s written procedure. Then, Assistant Superintendent
20 Lawrence further violated the District’s procedure by failing to “communicate his decision in
21 writing to” Caldwell. Instead, Assistant Superintendent Lawrence communicated his decision to
22 the school board and to the press. Caldwell alleges on information and belief that such failure to
23 accord Caldwell a Level Three was motivated by Lawrence’s hostility to Caldwell’s actual and
24 perceived religious beliefs and affiliations, and by Lawrence’s hostility toward and attempt to
25 discriminate against Caldwell’s political and religious viewpoints. In this regard, Lawrence
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1 evidenced such hostility by failing to take any action to object to inappropriate religious
2 statements and questions by teachers during the District Science Teachers Meeting, by failing to
3 take any action to prevent the participants in the District Science Teachers Meeting from basing
4 their decision to deny Caldwell's Instructional Materials Challenge on anti-religious statements
5 contained in the outside "science" expert reports, and by otherwise failing to take action to prevent
6 the participants in the District Science Teachers Meeting from basing their decision to deny
7 Caldwell's Instructional Materials Challenge on hostility towards Caldwell's actual and perceived
8 religious beliefs and affiliations and on hostility towards Caldwell's political and religious
9 viewpoints.
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11 45. Caldwell also was not accorded the Level Four review of the science teachers'
12 rejection of his Instructional Materials Challenge to the Holt Biology Textbook, since
13 Superintendent Monetti never heard a review of Assistant Superintendent Lawrence's precipitous
14 denial of Caldwell's challenge. Caldwell alleges on information and belief that such failure to
15 accord Caldwell a Level Four review was motivated by Superintendent Monetti's hostility to
16 Caldwell's actual and perceived religious beliefs and affiliations, and by Superintendent Monetti's
17 hostility toward and attempt to discriminate against Caldwell's political and religious viewpoints.
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19 46. Caldwell alleges that the District's real reason for not complying with its own
20 procedure for Instructional Materials Challenges was because of unlawful religious animus toward
21 Caldwell, and/or because of discrimination based on Caldwell's viewpoint on teaching evolution.
22 As such, Defendants deprived Caldwell of a public hearing on his Instructional Materials
23 Challenge to the Holt Biology Textbook and proposed cures for the deficiencies in the textbook.
24 Based upon the conduct by the individual defendants and the District, as alleged in this complaint.
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26 47. Between December 30, 2003 and February 25, 2004, the deprivation of
27 constitutional rights alleged in this complaint were brought to the attention of defendant Genasci
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1 through administrative complaints presented to the District by Caldwell on behalf of himself and
2 other citizens. In response to such administrative complaints, Genasci, acting in his official
3 capacity as compliance officer for the District, had the legal authority and duty to cause the
4 District to cure its deprivation of Caldwell's constitutional rights in relation to Caldwell's right to
5 place an item on the school board agenda, in relation to Caldwell's right to participate in CIT
6 meetings, and in relation to Caldwell's Instructional Materials Challenge. On April 9, 2004,
7 Genasci made the District's decision to deny each of those administrative complaints. Instead of
8 causing the District to remedy the denial of constitutional rights to Caldwell, Genasci decided to
9 cause the District to provide no remedy to Caldwell. Caldwell alleges on information and belief
10 that Genasci's decision in this regard was motivated by Genasci's hostility to Caldwell's actual
11 and perceived religious beliefs and affiliations, and by Genasci's hostility toward and attempt to
12 discriminate against Caldwell's political and religious viewpoints.
13

14
15 48. There is a disagreement between the parties regarding the legality, under the
16 referenced provisions of the United States and California Constitutions, of the practice and policy
17 of the District and its decision makers, as alleged in this complaint, of taking into consideration
18 the actual or perceived religious beliefs, affiliations, and motivations, and religious and political
19 viewpoints of private citizens such as Caldwell in making public policy decisions regarding
20 curriculum and instructional materials used in classrooms. As a result of said disagreement,
21 RJUHSD has interfered with the rights of Caldwell and other members of the public to exercise
22 their right to participate in public debates and processes in the District regarding curriculum
23 decisions and instructional materials, without suffering a violation of their rights to religious
24 freedom guaranteed by the United States and California Constitutions.
25

26 49. As to all of the acts described in the previous paragraphs, Caldwell alleges on
27 information and belief that some or all of the respective conduct by these individual Defendants
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1 and other District employees, who are and were officials of the District during the time frame
2 relevant to this complaint, was performed pursuant to established policies, practices or customs of
3 RJUHSD. As a result of Defendants' violation of Caldwell's right to equal protection under the
4 law, as guaranteed by the United States Constitution, Caldwell feels harmed, intimidated,
5 distressed and harassed and seeks nominal damages in the amount of \$100 for such deprivation of
6 his constitutional rights.

7
8 50. As a result of Defendants' acts described in this complaint, Caldwell has also
9 suffered, and will continue to suffer, irreparable harm. Based upon Defendants' past conduct,
10 Caldwell faces the prospect of continuing and future violations of his constitutional right to equal
11 protection under the law, as guaranteed by the United States Constitution and the California
12 Constitution, which entitles him to declaratory and injunctive relief to prevent such continuing and
13 future violations.

14
15 51. As to all of the acts described in the previous paragraphs, Plaintiff is informed
16 and believes and thereon alleges that he has exhausted his administrative remedies.

17
18 52. As to all of the acts described in the previous paragraphs, in the alternative,
19 Plaintiff is informed and believes and thereon alleges that if he did not exhaust his administrative
20 remedies, it would have been futile to further pursue such administrative remedies.

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22 53. As to all of the acts described in the previous paragraphs, in the alternative,
23 Plaintiff is informed and believes and thereon alleges that if he did not exhausted his
24 administrative remedies, he is not required to exhaust administrative remedies as a matter of law.

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FIRST CLAIM FOR RELIEF
FOR VIOLATION OF CALDWELL'S RIGHTS UNDER
THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION AND THE
FREE SPEECH CLAUSE OF THE CALIFORNIA CONSTITUTION
(42 U.S.C. §1983)

1 continue to subject Caldwell to deprivation of his rights under the Establishment and Free
2 Exercise Clauses of the First Amendment to the United States Constitution, as applied to the states
3 by the Fourteenth Amendment to the United States Constitution, and under the religious freedom
4 provisions of the California Constitution.

5 **FOURTH CLAIM FOR RELIEF**
6 **FOR VIOLATION OF CALDWELL’S CONSTITUTIONAL**
7 **RIGHT TO EQUAL PROTECTION UNDER THE LAW**
8 **GUARANTEED BY THE FOURTEENTH AMENDMENT**
9 **OF THE UNITED STATES CONSTITUTION**
10 **(42 U.S.C. §1983)**

11 67. Caldwell repeats, re-alleges and incorporates by reference the allegations in
12 paragraphs 1 through 66 above.

13 68. Defendants Joiner, Pinney, Monetti, Lawrence, Genasci and Severson are being
14 sued in their official capacities under 42 U.S.C. §1983 for their conduct under color of state law
15 that resulted in the violation of Caldwell’s civil rights as alleged below in this claim.

16 69. Defendant RJUHSD is sued under 42 U.S.C. §1983 for the official capacity
17 liability for the conduct by the individual Defendants.

18 70. The actions of Defendants, as alleged in detail in this complaint, entitle Caldwell to
19 relief under 42 U.S.C. §1983, because Defendants, acting under color of law, subjected and
20 continue to subject Caldwell to deprivation of his right to equal protection under the law
21 guaranteed by the Fourteenth Amendment of the United States Constitution.

22 71. As alleged in detail above, Defendants have denied Caldwell equal protection and
23 privileges under, *inter alia*, the United States Constitution, the California Constitution, applicable
24 provisions of the California Education Code, and various board policies, staff rules and procedures
25 of the District in the course of Caldwell’s year-long effort to persuade the District to adopt his
26 science education proposals. Caldwell alleges on information and belief that defendants’ denial of
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1 equal protection to Caldwell was motivated by defendants' hostility to and disapproval of
2 Caldwell's Christian religious beliefs and viewpoints, in addition to hostility to and discrimination
3 against Caldwell's political viewpoint on science education.

4 **FIFTH CLAIM FOR RELIEF**
5 **FOR VIOLATION OF CALDWELL'S RIGHTS OF PROCEDURAL DUE PROCESS UNDER**
6 **THE LAW GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED**
7 **STATES CONSTITUTION**
8 **(42 U.S.C. §1983)**

9 72. Caldwell repeats, re-alleges and incorporates by reference the allegations in
10 paragraphs 1 through 71 above as if fully set forth herein.

11 73. Defendants Joiner, Pinney, Monetti, Lawrence, Genasci and Severson are being
12 sued in their official capacities under 42 U.S.C. §1983 for their conduct under color of state law
13 that resulted in the violation of Caldwell's civil rights as alleged below in this claim.

14 74. Defendant RJUHSD is sued under 42 U.S.C. §1983 for the official capacity
15 liability for the conduct by the individual Defendants.

16 75. The actions of Defendants, and each of them, have subjected Caldwell to a
17 deprivation of his rights to procedural due process under the Fourteenth Amendment to the
18 Constitution of the United States.

19 **SIXTH CLAIM FOR RELIEF**
20 **TO PREVENT THE WASTE OF TAX DOLLARS IN VIOLATING**
21 **THE PUBLIC'S RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF**
22 **THE UNITED STATES CONSTITUTION**
23 **AND UNDER THE RELIGIOUS FREEDOM AND PETITION, INSTRUCTION, AND**
24 **ACCESS TO GOVERNMENT INFORMATION PROTECTIONS**
25 **OF THE CALIFORNIA CONSTITUTION**
26 **(CALIFORNIA CODE OF CIVIL PROCEDURE §526a)**

27 76. Caldwell repeats, re-alleges and incorporates by reference, the allegations in
28 paragraphs 1 through 75.

77. Defendants, and each of them, are sued in their official capacities.

1 78. Tax dollars have been expended by Defendants to engage in the unlawful activities
2 described in this complaint.

3 79. Defendants, and each of them, are engaging in the above-described unlawful
4 conduct on school district property and are using school personnel and resources to engage in the
5 unlawful conduct.

6 80. The expenditure of taxpayer funds for the acts described above is an illegal
7 expenditure of, waste of, or injury to, the estate, funds, or other property of RJUHSD. Based on
8 his standing as a resident who pays taxes for the benefit of RJUHSD, Caldwell seeks a judgment
9 to restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other
10 property of RJUHSD pursuant to section 526a of the California Code of Civil Procedure.
11

12 81. Absent relief from this Court, RJUHSD will continue to violate the rights of
13 citizens under the United States and California Constitutions, as alleged in the First through Fifth
14 Claims for Relief above.
15

16 82. There is a disagreement between the parties as to the proper interpretation of the
17 rights of members of the public to place an item on the school board agenda under Education Code
18 §35145.5.

19 83. There is a disagreement between the parties as to the interpretation of the rights of
20 parents and members of the community to have the opportunity to have involvement in the
21 selection of instructional materials as per Education Code §60002.
22

23 84. There is a disagreement between the parties regarding the rights of parents and
24 members of the community to have the opportunity to have involvement in the selection of the
25 agendas for and participation in public debates during public meetings of the CIT at GBHS, and
26 regarding public meetings of equivalent parent-teacher advisory councils at the other high schools
27 in the District.
28

1 85. Absent declaratory relief from this Court, Plaintiff and members of the public will
2 continue to suffer harm by the deprivation of rights under the U.S. and California Constitutions.

3 86. Based on his standing as a resident who pays taxes for the benefit of RJUHSD,
4 Caldwell seeks declaratory relief pursuant to section 526a of the California Code of Civil
5 Procedure, as detailed in the Prayer below.

6 87. Based on his standing as a resident and taxpayer, Caldwell seeks an injunction to
7 restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other
8 property of RJUHSD by engaging in activities that prevent a member of the public from placing
9 an item on the agenda for RJUHSD School Board meetings.

11 88. Based on his standing as a resident and taxpayer, Caldwell seeks an injunction to
12 restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other
13 property of RJUHSD by engaging in activities that prevent a member of the public or parent from
14 involvement in the selection of instructional materials.

15 89. Based on his standing as a taxpayer, Caldwell seeks an injunction to restrain and
16 prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other property of
17 RJUHSD by engaging in activities that prevent a member of the public or parent from
18 participating in public debates and processes in the District regarding curriculum decisions and
19 instructional materials, including selection of instructional materials and instructional materials
20 challenges to instructional materials, without suffering a violation of their rights to free speech,
21 religious freedom, equal protection and due process, guaranteed by the United States and
22 California Constitutions.
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25 90. Based on his standing as a resident and taxpayer, Caldwell seeks an injunction to
26 restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other
27 property of RJUHSD by engaging in activities that prevent a member of the public or parent from
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1 participating on an equal basis in the determination of the agenda for and public debates during
2 meetings of the Curriculum and Instruction Team of Granite Bay High School and the equivalent
3 parent-teach advisory councils of the other high schools in the District, without regard to the
4 viewpoints or religious beliefs or affiliations of such member of the public or parent.

5 **PRAYERS FOR RELIEF**

6 WHEREFORE, plaintiff requests judgment against defendants as follows:

7
8 1. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a that the
9 Defendants, and each of them, have violated Caldwell’s constitutional rights to petition his
10 government under the First Amendment to the Constitution of the United States and the parallel
11 rights of petition, instruction, and access to government information under Article 1, Section 3 of
12 the California Constitution;

13 2. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a that
14 Defendants, and each of them, have violated Caldwell’s rights guaranteed by the Free Speech
15 Clause of the First Amendment of the United States Constitution.
16

17 3. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a that
18 Defendants, and each of them, have violated Caldwell’s rights guaranteed by the Establishment
19 Clause of the First Amendment of the United States Constitution, and parallel religious freedom
20 rights guaranteed by Article XVI, section 5, and Article IX, section 8, of the California
21 Constitution.
22

23 4. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a that
24 Defendants, and each of them, have violated Caldwell’s right to equal protection guaranteed by the
25 Fourteenth Amendment of the United States Constitution.
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1 5. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a that
2 Defendants, and each of them, have violated Caldwell’s right to procedural due process
3 guaranteed by the Fourteenth Amendment of the United States Constitution.

4 6. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a as to whether
5 a member of the public has a right to petition and instruct elected officials by placing an item on
6 the agenda of the board of trustees of a public high school district and enjoying public debate on
7 that item, including the possibility of dynamic political action on that item, without censorship or
8 editing of such agenda item by Defendants and each of them.

9 7. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a as to whether
10 a parent or member of the community has a right to petition and instruct government officials by
11 participating in the selection of instructional materials in a public high school.

12 8. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a as to whether
13 a parent or other member of the public has a right to petition and instruct government officials by
14 being permitted to participate equally in the determination of the agenda for and in public debates
15 during meetings of the Curriculum and Instruction Team of Granite Bay High School and the
16 equivalent citizen participation councils of each of the other high schools in the District, without
17 regard to the viewpoints or religious beliefs or affiliations of such parent or other member of the
18 public.

19 9. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a as to whether
20 the District and its decision makers can constitutionally take into consideration the actual or
21 perceived religious beliefs, affiliations, and motivations of private citizens such as Caldwell in
22 making public policy decisions regarding curriculum and instructional materials used in
23 classrooms.

24 10. For a declaration under 28 U.S.C. §§ 2201 and 2202 and CCP §526a as to whether
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1 a parent or member of the community has a right to petition and instruct government officials by
2 being permitted to enjoy their right to utilize the District's procedure for challenging instructional
3 materials, including all levels of review and appeal included in such procedure, on an equal basis
4 with other citizens, without regard to the viewpoints or religious beliefs or affiliations of such
5 member of the public.

6 11. For an order enjoining Defendants, and each of them, from preventing Caldwell
7 from exercising his rights to petition his government under the First Amendment to the
8 Constitution of the United States and the parallel rights of petition, instruction, and access to
9 government information under Article 1, Section 3 of the California Constitution; for an injunction
10 under CCP § 526a to restrain and prevent the illegal expenditure of, waste of, or injury to, the
11 estate, funds, or other property of RJUHSD by engaging in these activities.

12 12. For an order enjoining Defendants, and each of them, from preventing Caldwell
13 from exercising his rights of speech by unlawfully restricting public comment and debate at public
14 meetings; for an injunction under CCP § 526a to restrain and prevent the illegal expenditure of,
15 waste of, or injury to, the estate, funds, or other property of RJUHSD by engaging in these
16 activities.

17 13. For an order enjoining Defendants, and each of them, from preventing Caldwell
18 exercising his rights to fully participate in public meetings based upon Caldwell's religious or
19 perceived religious beliefs in violation of the rights guaranteed by the Establishment and Free
20 Exercise Clauses of the First Amendment of the United States Constitution, and parallel religious
21 freedom rights guaranteed by Article XVI, section 5, and Article IX, section 8, of the California
22 Constitution; for an injunction under CCP § 526a to restrain and prevent the illegal expenditure of,
23 waste of, or injury to, the estate, funds, or other property of RJUHSD by engaging in these
24 activities.

1 14. For an order enjoining Defendants, and each of them, from preventing Caldwell's
2 right to equal protection guaranteed by the Fourteenth Amendment of the United States
3 Constitution based on Caldwell's or perceived religious beliefs; for an injunction under CCP §
4 526a to restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or
5 other property of RJUHSD by engaging in these activities.

6 15. For an order enjoining Defendants, and each of them, from preventing Caldwell's
7 right to due process guaranteed by the Fourteenth Amendment of the United States Constitution
8 based on Caldwell's or perceived religious beliefs; for an injunction under CCP § 526a to restrain
9 and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other property of
10 RJUHSD by engaging in these activities.

11 16. For an order enjoining Defendants, and each of them, from preventing Caldwell or
12 any member of the public from placing an item whose subject matter is within the jurisdiction of
13 the District on the school board's agenda; for an injunction under CCP § 526a to restrain and
14 prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other property of
15 RJUHSD by engaging in these activities.

16 17. For an order enjoining Defendants, and each of them, from preventing Caldwell or
17 any member of the public from participating in the selection of instructional materials in a public
18 high school; for an injunction under CCP § 526a to restrain and prevent the illegal expenditure of,
19 waste of, or injury to, the estate, funds, or other property of RJUHSD by engaging in these
20 activities.

21 18. For an order enjoining Defendants, and each of them, from preventing Caldwell or
22 any member of the public participating fully and equally in the determination of the agenda for
23 and in public debates during meetings of the Curriculum and Instruction Team of Granite Bay
24 High School and the equivalent citizen participation councils of each of the other high schools in
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1 the District, without regard to the viewpoints or religious beliefs or affiliations of such parent or
2 other member of the public; for an injunction under CCP § 526a to restrain and prevent the illegal
3 expenditure of, waste of, or injury to, the estate, funds, or other property of RJUHSD by engaging
4 in these activities.

5 19. For an order enjoining Defendants, and each of them, from preventing Caldwell or
6 any member of the public from taking into consideration the actual or perceived religious beliefs,
7 affiliations, and motivations of private citizens such as Caldwell in making public policy decisions
8 regarding curriculum and instructional materials used in classrooms; for an injunction under CCP
9 § 526a to restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or
10 other property of RJUHSD by engaging in these activities.

11 20. For an order enjoining Defendants, and each of them, from preventing Caldwell or
12 any member of the public from fully participating in the District's procedure for challenging
13 instructional materials, including all levels of review and appeal included in such procedure, on an
14 equal basis with other citizens, without regard to the viewpoints or religious beliefs or affiliations
15 of such member of the public; for an injunction under CCP § 526a to restrain and prevent the
16 illegal expenditure of, waste of, or injury to, the estate, funds, or other property of RJUHSD by
17 engaging in these activities.

18 21. For such other equitable relief as this court deems to be appropriate in the interests of
19 justice.

20 22. For nominal damages in the amount of \$100.00 against the District and all defendants
21 for the feelings of harm, intimidation and distress Caldwell has suffered as a result of the violation
22 of his constitutional rights.

23 23. For attorneys' fees pursuant to 42 U.S.C. §1988

24 24. For plaintiffs' costs of suit; and
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25. For such other relief as the court may deem just and proper.

DATED: October 27, 2005

By: /s/ Kevin T. Snider
Kevin T. Snider
Attorney for Plaintiff

REQUEST FOR JURY TRIAL

Caldwell requests trial by jury of each of his claims, to the extent available under law.

DATED: October 27, 2005

By: /s/ Kevin T. Snider
Kevin T. Snider
Attorney for Plaintiff