

1 Mathew D. Evans (State Bar #78771)
James B. Carr (State Bar #53274)
2 EVANS, WIECKOWSKI & WARD, LLP
745 University Avenue
3 Sacramento, California 95825
916/923-1600; FAX: 916/923-1616
4 jcarr@lomde.com

5 Attorneys for Defendants ROSEVILLE JOINT UNION
HIGH SCHOOL DISTRICT; JAMES JOINER;
6 R. JAN PINNEY; TONY MONETTI; STEVEN
LAWRENCE; DONALD GENASCI; RONALD SEVERSON.
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 LARRY CALDWELL,

No. 2:05-CV-00061-FCD-JFM

11 Plaintiff,
12 vs.

13 ROSEVILLE JOINT UNION HIGH SCHOOL
DISTRICT; JAMES JOINER and R. JAN
PINNEY, in their official capacities as members
14 of the Board of Education; TONY MONETTI,
in his official capacity as Superintendent;
15 STEVEN LAWRENCE in his official capacity
as Assistant Superintendent for Curriculum and
16 Instruction; DONALD GENASCI, in his
official capacity as Deputy Superintendent for
17 Personnel and Chief Compliance Officer;
RONALD SEVERSON, in his official capacity
18 as Principal of Granite Bay High School; and
DOES 1-10,

**ANSWER TO FOURTH AMENDED
COMPLAINT**

19 Defendants.
20 _____/

21
22 Defendants ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT; JAMES JOINER and
23 R. JAN PINNEY, in their official capacities as members of the Board of Education; TONY
24 MONETTI, in his official capacity as Superintendent; STEVEN LAWRENCE in his official capacity
25 as Assistant Superintendent for Curriculum and Instruction; DONALD GENASCI, in his official
26 capacity as Deputy Superintendent for Personnel and Chief Compliance Officer; RONALD
27 SEVERSON, in his official capacity as Principal of Granite Bay High School(hereafter the
28 "Defendants") answer the Fourth Amended Complaint (hereafter "FHAC") on file in this action as

1 follows:

2 **I.**

3 **INTRODUCTION**

4 1. Answering Paragraph 1 of the FHAC, the Defendants deny that this action has been
5 properly brought under 42 U.S.C. § 1983. Defendants further deny each and every allegation
6 contained therein; and further denies that the plaintiff was deprived of any of his First Amendment
7 rights of petition and speech by any actions of the Defendants as alleged herein; and the Defendants
8 further allege that the Court, in its October 25, 2005 Memorandum And Order, has ordered all claims
9 related to plaintiff's right to petition dismissed without leave to amend.

10 2. Answering Paragraph 2 of the FHAC, the Defendants deny that the plaintiff is entitled
11 to seek declaratory relief related to any claims related to his First Amendment rights to petition and
12 to free speech, as alleged in the FHAC; further, the Defendants deny that the plaintiff is entitled to
13 any form of injunctive relief related to his First Amendment rights to petition and to free speech; and
14 further deny that the Defendants have at any time (either past, present or future) prevented said
15 plaintiff from exercising any of his First Amendment rights to petition and to free speech; and as such
16 allege that the plaintiff is not entitled to any prospective relief, either by injunction or by declaratory
17 relief, from the Court. In addition, Defendants deny that the plaintiff is entitled to nominal damages
18 in the amount of \$100.00, or in any amount; and that the Court, in its October 25, 2005 Memorandum
19 And Order, has ordered all claims related to nominal damages dismissed without leave to amend.

20 **II.**

21 **PARTIES**

22 3. Answering Paragraph 3 of the FHAC, the Defendants admit that the plaintiff was a
23 resident within the jurisdiction of the Roseville Joint Union High School District (hereafter the
24 "District") for purposes of this action and that he is the parent of a child who is enrolled in the District;
25 however, the Defendants do not have sufficient information to admit or deny whether the plaintiff was
26 assessed taxes which enured to the benefit of the District, and/or that he in fact paid any such taxes,
27 and based upon this lack of information and belief, deny all other allegations contained in Paragraph
28 3 of the FHAC.

1 4. Answering Paragraph 4 of the FHAC, the Defendants admit that the District is a public
2 school district established under California law.

3 5. Answering Paragraph 5 of the FHAC, the Defendants admit that defendant, James
4 Joiner, is a resident of Placer County and was acting in his official capacity only; however, the
5 Defendants deny all other allegations contained therein; in addition the Defendants deny that the
6 operative pleading in this action is the Third Amended Complaint and that all references to the Third
7 Amended Complaint should be ordered stricken by the Court; the Defendants further deny that there
8 was any past, present or future or any continuing deprivations of any of the plaintiff's constitutional
9 rights and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully
10 and/or under color of law.

11 6. Answering Paragraph 6 of the FHAC, the Defendants admit that R. Jan Pinney is a
12 resident of Placer County and was acting in his official capacity only; however, the Defendants deny
13 all other allegations contained therein; in addition the Defendants deny that the operative pleading
14 in this action is the Third Amended Complaint and that all references to the Third Amended
15 Complaint should be ordered stricken by the Court; the Defendants further deny that there was any
16 past, present or future or any continuing deprivations of any of the plaintiff's constitutional rights
17 and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully and/or
18 under color of law.

19 7. Answering Paragraph 7 of the FHAC, the Defendants admit that Tony Monetti, is a
20 resident of Placer County and was acting in his official capacity only; however, the Defendants deny
21 all other allegations contained therein; in addition the Defendants deny that the operative pleading
22 in this action is the Third Amended Complaint and that all references to the Third Amended
23 Complaint should be ordered stricken by the Court; the Defendants further deny that there was any
24 past, present or future or any continuing deprivations of any of the plaintiff's constitutional rights
25 and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully and/or
26 under color of law.

27 8. Answering Paragraph 8 of the FHAC, the Defendants admit that Steven Lawrence is
28 a resident of Placer County and was acting in his official capacity only; however, the Defendants

1 deny all other allegations contained therein; in addition the Defendants deny that the operative
2 pleading in this action is the Third Amended Complaint and that all references to the Third Amended
3 Complaint should be ordered stricken by the Court; the Defendants further deny that there was any
4 past, present or future or any continuing deprivations of any of the plaintiff's constitutional rights
5 and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully and/or
6 under color of law.

7 9. Answering Paragraph 9 of the FHAC, the Defendants admit that Donald Genasci is a
8 resident of Placer County and was acting in his official capacity only; however, the Defendants deny
9 all other allegations contained therein; in addition the Defendants deny that the operative pleading
10 in this action is the Third Amended Complaint and that all references to the Third Amended
11 Complaint should be ordered stricken by the Court; the Defendants further deny that there was any
12 past, present or future or any continuing deprivations of any of the plaintiff's constitutional rights
13 and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully and/or
14 under color of law.

15 10. Answering Paragraph 10 of the FHAC, the Defendants admit that Ronald Severson is
16 a resident of Placer County and was acting in his official capacity only; however, the Defendants deny
17 all other allegations contained therein; in addition the Defendants deny that the operative pleading
18 in this action is the Third Amended Complaint and that all references to the Third Amended
19 Complaint should be ordered stricken by the Court; the Defendants further deny that there was any
20 past, present or future or any continuing deprivations of any of the plaintiff's constitutional rights
21 and/or that any of the acts alleged herein in the FHAC were done intentionally and willfully and/or
22 under color of law.

23 11. Defendants lack sufficient information and belief to either admit or deny the allegations
24 contained in Paragraph No. 11 relating to fictitiously sued Doe Defendants Nos. 1-10, including the
25 allegations of acting in their official capacities; and based on said lack of information and belief deny
26 all allegations contained in Paragraph No. 11; in addition, the Defendants deny that the operative
27 pleading in this action is the Third Amended Complaint and that all references to the Third Amended
28 Complaint should be ordered stricken by the Court; the Defendants further deny that any of said

1 fictitiously sued Doe Defendants have any knowledge of any District policies and procedures, if any
2 are alleged herein, and/or participated in any "decisions and acts" described in the non-operative Third
3 Amended Complaint; the Defendants further deny that there was any past, present or future or any
4 continuing deprivations of any of the plaintiff's constitutional rights and/or that any of the acts alleged
5 herein in the FHAC were done intentionally and willfully and/or under color of law.

6 **III.**

7 **JURISDICTION AND VENUE**

8 12. The Defendants in answering the allegations contained in Paragraph No. 12, deny that
9 the Court has jurisdiction over the claims alleged in the FHAC pursuant to the United States
10 Constitution, and/or any federal statute and/or the Declaratory Judgment Act. In addition, the
11 Defendants deny that there is any ancillary jurisdiction and/or pendent lite jurisdiction over any
12 California State law statutory claims and/or California Constitution claims; and further alleges that
13 the Court, in its October 25, 2005 Memorandum And Order, has ordered all California State law and
14 California Constitutional claims dismissed without leave to amend.

15 13. In answering Paragraph No. 13, Defendants admit that, if there is federal jurisdiction
16 in this case, the action is properly venued in the Eastern District of California.

17 **IV.**

18 **COMMON ALLEGATIONS**

19 14. Answering Paragraph 14 of the FHAC, the Defendants deny each and every allegation
20 contained therein; Defendants further allege that Court, in its October 25, 2005 Memorandum And
21 Order, has ordered that the plaintiff's right to petition under the First Amendment dismissed without
22 leave to amend, and that the Court has determined that the plaintiff has in fact, at all times relevant
23 to the FHAC, been able to advocate his QSE Policy to the District and that implicit in that finding is
24 that his rights as a citizen, parent and taxpayer have not been violated because he has in fact exercised
25 his rights to present his QSE Policy to the District; the Defendants further allege that the QSE Policy
26 is based on a religious viewpoint and that the plaintiff has no right to impose his religious viewpoints
27 on the District or its science and/or biology curriculums, because this is itself a violation of the
28 Establishment Clause of the First Amendment; Defendants further deny that the QSE Policy is

1 "strictly secular," and further allege that if said policy is in fact "strictly secular" that the plaintiff
2 cannot establish any claims for any violations of the Free Exercise or the Establishment Clause of the
3 First Amendments, as a matter of law.

4 15. In answering Paragraph 15 of the FHAC, the Defendants deny each and every
5 allegation contained there in; and Defendants further allege that the QSE Policy supplementary
6 instructional materials are based on a religious viewpoint, and that the plaintiff has no right to impose
7 his religious viewpoints on the District or its science and/or biology curriculums, because this is itself
8 a violation of the Establishment Clause of the First Amendment; Defendants further deny that the
9 QSE Policy supplementary instructional materials are "strictly secular," and further allege that if said
10 policy is in fact "strictly secular" that the plaintiff cannot establish any claims for any violations of the
11 Free Exercise or the Establishment Clause of the First Amendments, as a matter of law.

12 16. In answering Paragraph 16 of the FHAC, the Defendants deny each and every
13 allegation contained there in; Defendants further allege that said allegations are motivated by the
14 plaintiff own "persecution complex" and his attempt to present and portray himself as a "martyr" and
15 that the District and/or the Defendants herein did nothing to prevent the plaintiff from exercising his
16 rights under the First and Fourteenth Amendments; Defendants further allege that the Court, in its
17 October 25, 2005 Memorandum And Order, has ordered all California Constitutional claims dismissed
18 without leave to amend. In addition, the Court, in its October 25, 2005 Memorandum And Order, has
19 determined that the plaintiff has in fact freely exercised all three distinct public processes to petition
20 the District and the Defendants to adopt his QSE Policy and the accompanying QSE instructional
21 materials into the District's science and biology curriculums, and that the Court has ordered all right
22 to petition claims dismissed without leave to amend.

23 17. In answering Paragraphs Nos. 17--28, Inclusive, the Defendants deny each and every
24 allegation contained therein; Defendants further allege that the Court, in its October 25, 2005
25 Memorandum And Order, has dismissed without leave to amend all of the plaintiff's right to petition
26 claims, including the "interfering with the right to place items on the School Board Agenda," and that
27 all state law statutory claims and/or California Constitutional claims alleged by the plaintiff have been
28 ordered dismissed without leave to amend by the Court; and the Defendants further deny that any

1 communications, statements, or acts allegedly done by the Defendants in Paragraphs Nos. 17---28
2 constituted any type of religious hostility towards the plaintiff and that he has not suffered any
3 discrimination (or any form of constitutional violations) based on his Right of the Free Exercise and/or
4 the Establishment Clauses of the First Amendment, and/or of any other federal constitutional rights;
5 and the Defendants further deny that there is any basis for any pendent, supplemental, and/or ancillary
6 jurisdiction over any state law claims and/or California Constitutional claims alleged and/or implied
7 in Paragraphs Nos. 17-28 in the FHAC.

8 18. In answering Paragraphs Nos. 29---37, Inclusive, the Defendants deny each and every
9 allegation contained therein; Defendants further allege that the Court, in its October 25, 2005
10 Memorandum And Order, has dismissed without leave to amend all of the plaintiff's right to petition
11 claims, including the "interfering with the right to participate on the curriculum instruction team," and
12 that all state law statutory claims and/or California Constitutional claims alleged by the plaintiff have
13 been ordered dismissed without leave to amend by the Court; and the Defendants further deny that any
14 communications, statements, or acts allegedly done by the Defendants in Paragraphs Nos. 29-37
15 constituted any type of religious hostility towards the plaintiff and that he has not suffered any
16 discrimination (or any form of constitutional violations) based on his Right of the Free Exercise and/or
17 the Establishment Clauses of the First Amendment, and/or of any other federal constitutional rights;
18 and the Defendants further deny that there is any basis for any pendent, supplemental, and/or ancillary
19 jurisdiction over any state law claims and/or California Constitutional claims alleged and/or implied
20 in Paragraphs Nos. 29-37 in the FHAC.

21 19. In answering Paragraphs Nos. 38--45, Inclusive, the Defendants deny each and every
22 allegation contained therein; the Defendants further allege that the Court, in its October 25, 2005
23 Memorandum And Order, has dismissed without leave to amend all of the plaintiff's right to petition
24 claims, including the "interfering with the right to challenge instructional materials," and that all state
25 law statutory claims and/or California Constitutional claims alleged by the plaintiff have been ordered
26 dismissed without leave to amend by the Court; and the Defendants further deny that any
27 communications, statements, or acts allegedly done by the Defendants in Paragraphs Nos. 38-45
28 constituted any type of religious hostility towards the plaintiff and that he has not suffered any

1 discrimination (or any form of constitutional violations) based on his Right of the Free Exercise and/or
2 the Establishment Clauses of the First Amendment, and/or of any other federal constitutional rights;
3 and the Defendants further deny that there is any basis for any pendent, supplemental, and/or ancillary
4 jurisdiction over any state law claims and/or California Constitutional claims alleged and/or implied
5 in Paragraphs Nos. 38-45 in the FHAC.

6 20. In answering Paragraphs Nos. 46 and 47, the Defendants deny each and every
7 allegation contained therein; the Defendants further allege that the Court, in its October 25, 2005
8 Memorandum And Order, has dismissed without leave to amend all of the plaintiff's right to petition
9 claims, including the "interfering with the right to challenge instructional materials," and that all state
10 law statutory claims and/or California Constitutional claims alleged by the plaintiff have been ordered
11 dismissed without leave to amend by the Court; the Defendants further deny that any
12 communications, statements, or acts allegedly done by the Defendants in Paragraphs Nos. 45 and 46
13 constituted any type of religious hostility towards the plaintiff and that he has not suffered any
14 discrimination (or any form of constitutional violations) based on his Right of the Free Exercise and/or
15 the Establishment Clauses of the First Amendment, and/or of any other federal constitutional rights;
16 and the Defendants further deny that there is any basis for any pendent, supplemental, and/or ancillary
17 jurisdiction over any state law claims and/or California Constitutional claims alleged and/or implied
18 in Paragraphs Nos. 46 and 47 in the FHAC; and the Defendants further deny that they in anyway
19 prevented the plaintiff from voicing and/or presenting his viewpoints on the teaching of evolution
20 in the District's science and biology curriculums and that the plaintiff has suffered no form of
21 discrimination based upon his anti-evolutionary viewpoints; and the Defendants further allege that any
22 claims of deprivation of any federal constitutional rights was in fact cured by the District through the
23 mechanism of the plaintiff's exercise of his rights to petition the District and by the fact that he was
24 accorded administrative review and procedures, and that the plaintiff voluntarily withdrew his
25 administrative review claims relating to the exercise of his political and religious free speech rights
26 and has waived all such constitutional claims, as alleged or implied in Paragraphs Nos. 47 and 46.

27 21. In answering Paragraph No. 48, the Defendants deny all of the allegations contained
28 therein; Defendants further deny that there is any practice and/or policy (official or otherwise) that

1 discriminates against the plaintiff and/or private citizens based upon their religious and/or political
2 viewpoints regarding discretionary decisions made by the District relating to curriculum and
3 instructional materials used in classrooms in the District as authorized and required by California law;
4 the Defendants further allege that the Court in its October 25, 2005 Memorandum And Order, has
5 ordered all state law statutory and California Constitutional claims dismissed without leave to amend;
6 the Defendants further allege that the Court in its October 25, 2005 Memorandum And Order, has
7 ordered all right to petition claims dismissed without leave to amend, and as such, to the extent that
8 any constitutional violations alleged in Paragraph No. 48, are based upon the right to petition
9 (participate in public debates and processes) there are no violations of any of the plaintiff's
10 constitutional rights regrading violations of the Free Exercise and/or Establishment Clauses of the
11 First Amendment and as such there is no controversy, disagreement or dispute between the parties
12 entitling the plaintiff to any prospective injunctive or declaratory relief.

13 22. In answering Paragraph No. 49, the Defendants incorporates by references all of their
14 prior denials and allegations as set forth in Paragraphs Nos. 1--21, Inclusive, of the Defendants'
15 Answer, and makes them a part of Paragraph No. 22, as if set forth in full; further, the Defendants
16 deny all other allegations set forth in Paragraph No. 49; and the Defendants further deny that the
17 District had any established policies, practices or customs, which are alleged upon information and
18 belief only by the plaintiff, that resulted in any form of discrimination against the plaintiff, or violated
19 his rights to equal protection, and/or violated any other of his federal constitutional rights; and deny
20 that the plaintiff has suffered any harm, intimidation, distress, harassment or damages in the sum of
21 \$100.00, or in any amount; and the Court has by it October 25, 2005 Memorandum And Order,
22 dismissed all nominal damage claims, without leave to amend, and has further ruled that the plaintiff
23 is not seeking any monetary damages in this action, but only prospective injunction and declaratory
24 relief.

25 23. In answering Paragraph No. 50, the Defendants deny all allegations contained therein;
26 the Defendants further allege that the Court, in its October 25, 2005 Memorandum And Order, has
27 ordered all California Statutory and Constitutional Claims dismissed without leave to amend; and as
28 such, the plaintiff is not entitled to any prospective declaratory and injunctive relief based upon the

1 California Constitution.

2 24. In answering Paragraphs Nos. 51-53, Inclusive, the Defendants denies all allegations
3 contained therein; and further alleges that the plaintiff voluntarily withdrew his administrative
4 remedies before exhausting them, and as such, plaintiff has waived all claims based upon his
5 allegations contained in Paragraphs Nos. 1-50, Inclusive, of the FHAC.

6 **V.**

7 **FIRST CLAIM FOR RELIEF**

8 25. In answering Paragraph No. 54, the Defendants re-allege and incorporate by references
9 all of their denials and allegations contained in Paragraph Nos. 1-24, Inclusive, of their Answer and
10 make them a part herein, as if set forth in full.

11 26. In answering Paragraph Nos. 55--58, Inclusive, the Defendants admit that Defendants,
12 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities
13 only; Defendants further allege and deny that any of them acted under color of state law that resulted
14 in any violations of the plaintiff's federal civil rights; defendants further deny that they are liable for
15 any violations of 42 U.S.C. § 1983 and/or that plaintiff has been, is being and/or will be subjected to
16 any deprivation (or other violation) of any Free Speech rights under the United States Constitution;
17 Defendants further deny that plaintiff has suffered and/or will suffer any irreparable harm and/or any
18 continuing and/or future violation of his right to free speech; and the Defendants further allege that,
19 pursuant to the Court's October 25, 2005 Memorandum And Order, all California Constitutional
20 claims have been ordered dismissed with prejudice.

21 **VI.**

22 **SECOND CLAIM FOR RELIEF**

23 27. In answer to Paragraphs No. 59, the Defendants re-allege and incorporate by references
24 all of their denials and allegations contained in Paragraph Nos. 1-27, Inclusive, of their Answer and
25 make them a part herein, as if set forth in full.

26 28. In answer to Paragraphs Nos. 60-62, Inclusive, the Defendants admit that Defendants,
27 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities
28 only; Defendants further allege and deny that any of them acted under color of state law that resulted

1 in any violations of the plaintiff's federal civil rights; defendants further deny that they are liable for
2 any violations of 42 U.S.C. § 1983 and/or that plaintiff has been, is being and/or will be subjected to
3 any deprivation (or other violation) of any right to petition under the First Amendment; Defendants
4 further deny that plaintiff has suffered and/or will suffer any irreparable harm and/or any continuing
5 and/or future violation of his right to petition the government; and the Defendants further allege that,
6 pursuant to the Court's October 25, 2005 Memorandum And Order, all California Constitutional
7 claims have been ordered dismissed with prejudice; however, the Defendants further deny any alleged
8 violations of the California Constitution, Art. I, Sec. 3.

9 **VII.**

10 **THIRD CLAIM FOR RELIEF**

11 29. In answer to Paragraph No. 63, the Defendants re-allege and incorporate by references
12 all of their denials and allegations contained in Paragraph Nos. 1-28, Inclusive, of their Answer and
13 make them a part herein, as if set forth in full.

14 30. In answer to Paragraph Nos. 64--66, Inclusive, the Defendants admit that Defendants,
15 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities
16 only; Defendants further allege and deny that any of them acted under color of state law that resulted
17 in any violations of the plaintiff's federal civil rights; defendants further deny that they are liable for
18 any violations of 42 U.S.C. § 1983 and/or that plaintiff has been, is being and/or will be subjected to
19 any deprivation (or other violation) of any rights under the Establishment and/or Free Exercise Clauses
20 of the United States Constitution; Defendants further deny that plaintiff has suffered and/or will
21 suffer any irreparable harm and/or any continuing and/or future violation of his Establishment and/or
22 Free Exercise rights under the First Amendment; and the Defendants further allege that, pursuant to
23 the Court's October 25, 2005 Memorandum And Order, all California Constitutional claims have been
24 ordered dismissed with prejudice.

25 **VIII.**

26 **FOURTH CLAIM FOR RELIEF**

27 31. In answer to Paragraph No. 67, the Defendants re-allege and incorporate by references
28 all of their denials and allegations contained in Paragraph Nos. 1-30, Inclusive, of their Answer and

1 make them a part herein, as if set forth in full.

2 32. In answer to Paragraphs Nos. 68-71, Inclusive, the Defendants admit that Defendants,
3 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities
4 only; Defendants further allege and deny that any of them acted under color of state law that resulted
5 in any violations of the plaintiff's right to equal protection under law under the Fourteenth
6 Amendment; defendants further deny that they are liable for any violations of 42 U.S.C. § 1983 and/or
7 that plaintiff has been, is being and/or will be subjected to any deprivation (or other violation) of any
8 right to equal protection under the Fourteenth Amendment to the United States Constitution;
9 Defendants further deny that plaintiff has suffered and/or will suffer any irreparable harm and/or any
10 continuing and/or future violation of his right to equal protection; and the Defendants further allege
11 that, pursuant to the Court's October 25, 2005 Memorandum And Order, all California Constitutional
12 claims and all California statutory claims, including the California Education Code and various
13 District policies, staff rules and procedures, have been ordered dismissed with prejudice; the
14 Defendants further; Defendants also allege that pursuant to the Court's October 25, 2005
15 Memorandum And Order, that all right to petition the government claims have been ordered
16 dismissed, without leave to amend, related to the plaintiff's year long effort to persuade the District
17 to adopt his QSE Policy; Defendants further deny that any acts, statements or discretionary curriculum
18 decisions made by the District (and/or the Defendants) were motivated by any hostility to plaintiff's
19 religious beliefs and/or view points, and/ or constituted any discrimination against the plaintiff based
20 upon this "political viewpoint" on science education; and Defendants further allege that the plaintiff's
21 free speech rights regarding the science curriculum were not violated, as alleged in the FHAC.

22 **IX.**

23 **FIFTH CLAIM FOR RELIEF**

24 33. In answer to Paragraph No. 72, the Defendants re-allege and incorporate by references
25 all of their denials and allegations contained in Paragraph Nos. 1-32, Inclusive, of their Answer and
26 make them a part herein, as if set forth in full.

27 34. In answering Paragraph Nos. 73--75, Inclusive, the Defendants admit that Defendants,
28 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities

1 only; Defendants further allege and deny that any of them acted under color of state law that resulted
2 in any violations of the plaintiff's federal civil rights; defendants further deny that they are liable for
3 any violations of 42 U.S.C. § 1983 and/or that plaintiff has been, is being and/or will be subjected to
4 any deprivation (or other violation) of any rights of Procedural Due Process under the Fourteenth
5 Amendment to the United States Constitution; Defendants further deny that plaintiff has suffered
6 and/or will suffer any irreparable harm and/or any continuing and/or future violation of his right to
7 Procedure Due Process; and the Defendants further allege that, pursuant to the Court's October 25,
8 2005 Memorandum And Order, all California Constitutional claims have been ordered dismissed with
9 prejudice.

10 **X.**

11 **SIXTH CLAIM FOR RELIEF**

12 35. In answer to Paragraph No. 76, the Defendants re-allege and incorporate by references
13 all of their denials and allegations contained in Paragraph Nos. 1-34, Inclusive, of their Answer and
14 make them a part herein, as if set forth in full.

15 36. In answering Paragraph Nos. 77-90, Inclusive, the Defendants admit that Defendants,
16 Joiner, Pinney, Monetti, Lawrence, Genasci and Severson, are being sued in their official capacities
17 only; Defendants further allege and deny all other allegations contained in Paragraphs Nos. 77-90,
18 Inclusive; Defendants further deny that plaintiff has suffered and/or will suffer any irreparable harm
19 and/or any continuing and/or future violation of his taxpayers rights; and the Defendants further allege
20 that, pursuant to the Court's October 25, 2005 Memorandum And Order, all California Constitutional
21 claims and all California statutory claims have been ordered dismissed with prejudice, and as such,
22 there is no jurisdiction or factual basis for any claims of the violation of California Code of Civil
23 Procedure § 526a; in addition, the Defendants allege that there are no disputes, no irreparable harm
24 to the plaintiff and no federal constitutional violations, either express or implied, stated by the
25 allegations contained in Paragraphs Nos. 77-90, Inclusive; and the Defendants further deny that there
26 is, was or continued to be, any denial of equal protection and/or due process rights, based upon the
27 religious and/or political viewpoints of the public or parents, related to parent-teacher advisory
28 councils, curriculum meetings and/or the discretionary selection of the District's science and biology

1 curriculums, as alleged in the FHAC.

2 **XI.**

3 **AFFIRMATIVE DEFENSES**

4 **AS SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSES, THE DEFENDANTS**
5 **ALLEGE AS FOLLOWS:**

6 1. The Court lacks traditional Article III subject matter jurisdiction, because the
7 prospective relief sought by the plaintiff cannot be granted by the Court.

8 2. The FHAC is barred by Eleventh Amendment Sovereign Immunity.

9 3. The FHAC is barred by State Sovereign Immunity.

10 4. The FHAC raises political questions, which do not raise a justifiable controversy, and
11 the Court should voluntarily decline to exercise jurisdiction.

12 5. The plaintiff lacks prudential standing to bring this action for the general public and/or
13 other unnamed parents and/or citizens residing in the District.

14 6. The FHAC contains generalized grievances, which are more appropriately addressed
15 by other branches of governmental, and the Court should voluntarily decline to exercise jurisdiction.

16 7. The plaintiff has raised claims that involve another person's legal rights, who are not
17 parties to the litigation, and the Court should voluntarily decline jurisdiction.

18 8. The claims raised by the FHAC are outside the zone of interest protected by the laws
19 and constitutional provisions invoked by the plaintiff.

20 9. The plaintiff's high school child is a necessary party to this action, and said child has
21 not been joined as a party to this action.

22 10. There is no basis for a next-friend suit by the plaintiff.

23 11. The Court has no jurisdiction to adjudicate California State Constitutional and/or
24 California State Statutory claims, because of Eleventh Amendment Sovereign Immunity.

25 12. These issues and controversies, if any, raised by the plaintiff are now moot, since there
26 are no facts showing any continuing constitutional violations, and the plaintiff did in fact present his
27 QSE Policy to the District, and the District voted 3 to 2 to reject the QSE Policy for inclusion in the
28 District science and biology curriculum in June of 2004, which was a discretionary decision of the

1 District authorized by California law.

2 13. The FHAC fails to state facts sufficient to constitute a claim upon which relief may be
3 granted.

4 14. The FHAC fails to state facts sufficient to constitute a cause of action under California
5 law for any alleged pendent state causes of action.

6 15. The claims and the causes of action are all barred by the appropriate and applicable
7 statutes of limitation under both federal and state law.

8 16. All state law claims are barred because the plaintiff failed to file a California
9 Governmental Tort Claim against the District and the individually named District employees and
10 officials.

11 17. All claims are barred because there is no direct entity liability under 42 U.S.C. § 1983.

12 18. All claims are barred because there is no basis for vicarious liability under 42 U.S.C.
13 § 1983.

14 19. All claims against all defendants are barred, because of federal qualified immunity.

15 20. All claims are barred because all individually named defendants are state agents
16 entitled to state agent immunity under the laws of California, pursuant to Venegas v. County of Los
17 Angeles (2004) 32 Cal. 4th 820, 828-829.

18 21. All claims are barred against the defendants, because there is absolute discretionary
19 immunity for the actions of the District and its officials and employees involving the selection of the
20 District science and biology curriculums, pursuant to California Government Code § 820.2.

21 22. All claims are barred against the defendants, because there is absolute privilege for all
22 communications and derivative tort actions arising out the public school board meetings and District
23 decisions relating to the adoption of the District's science and biology curriculums, under California
24 Civil Code § 47(a) and § 47(b).

25 23. There are no facts that establish any basis for a continuing or prospective violation of
26 the Free Speech Clause of the First Amendment, and the plaintiff is not entitled to any prospective
27 declaratory and/or injunctive relief.

28 24. There are no facts that establish any basis for continuing or prospective violations of

1 the Establishment Clause of the First Amendment, and the plaintiff is not entitled to any prospective
2 declaratory and/or injunctive relief.

3 25. There are no facts that establish any basis for a continuing or prospective violation of
4 the Free Exercise Clause of the First Amendment, and the plaintiff is not entitled to any type of
5 prospective declaratory and/or injunctive relief.

6 26. There are no facts that establish any basis for a continuing or prospective violation of
7 the Right to Petition the government clause of the First Amendment; the Court in its October 25, 2005
8 Memorandum And Order, has ordered all right to petition claims dismissed from the FHAC, without
9 leave to amend; and as such, the plaintiff is not entitled to any prospective declaratory and/or
10 injunctive relief, as a matter of law.

11 27. There are no facts that establish any basis for a continuing or prospective violations of
12 the Equal Protection Clause of the Fourteenth Amendment, and the plaintiff is not entitled to any
13 form of declaratory and/or injunctive relief.

14 28. There are no facts that establish any basis for a continuing or prospective violations of
15 the Due Process Clause of the Fourteenth Amendment, and the plaintiff is not entitled to any form
16 of declaratory and/or injunctive relief.

17 29. There are no facts that establish any basis for a California state law taxpayer's claim
18 pursuant to California Code of Civil Procedure § 526a, based upon 42 U.S.C. § 1983, because of the
19 Tax Injunction Act, 28 U.S.C. § 1341, and because the Court in its October 25, 2005 Memorandum
20 And Order, ordered all state law claims dismissed without leave to amend, and as such, the plaintiff
21 is not entitled to any form of prospective declaratory and/or injunctive relief for any taxpayer suit
22 claims.

23 30. All claims based upon the California State Constitution are barred, and the Court in
24 its October 25, 2005 Memorandum And Order, has ordered all such claims dismissed without leave
25 to amend, because the defendants, as officials of the District, are entitled to Eleventh Amendment
26 Sovereign Immunity as agents of the State of California.

27 31. No claims for any common law torts or monetary damages can be asserted, under 42
28 U.S.C. § 1983, to the extent that any of the plaintiff's pendent lite claims seek to state a recovery for

1 any such common law torts against the Defendants and District.

2 32. The FHAC still fails to meet the requirements of a short, plain and concise statement,
3 in violation of Federal Rules of Civil Procedure, Rule 8(a), and as such, the FHAC is vague,
4 ambiguous and confusing.

5 33. The Claims and the causes of action are all barred by the failure of the plaintiff to
6 exhaust his administrative, internal and/or judicial remedies.

7 34. All claims for monetary damages and for nominal damages have been ordered
8 dismissed without leave to amend, pursuant to the Court's October 25, 2005 Memorandum And Order,
9 and all claims for any type of monetary damages are barred.

10 35. The claims in the FHAC are barred by the doctrine of laches.

11 36. The claims in the FHAC are barred by the doctrine of unclean hands.

12 37. The plaintiff is estopped from asserting any claims, and/or causes of action, against
13 the District and the individually named Defendants, because the Plaintiff entered into a negotiated
14 settlement (pursuant to his internal administrative remedies) in April of 2004 with the District to have
15 his QSE Policy placed on the Board Agenda for consideration and a vote, which was finally
16 accomplished in June 2004, which fact was intentionally omitted from the FHAC by the plaintiff, and
17 which resulted in a vote of 3 to 2 by the School Board to reject adoption of the plaintiff's QSE Policy
18 and related instructional materials, and which renders the entire FHAC moot.

19 38. The prospective claims in the FHAC are barred by the doctrines of res judicata,
20 collateral estoppel and claim preclusion.

21 39. The claims in the FHAC are barred by the doctrines of administrative estoppel and
22 judicial estoppel.

23 40. The District and its officials, administrators, staff, teachers and employees were
24 justified and privileged in doing the acts alleged in the FHAC as an exercise of their discretion, under
25 both California and federal law, to adopt a science and biology curriculum.

26 41. The plaintiff consented to the acts alleged against the Defendants and the District by
27 provoking the Defendants and the District with false claims of religious discrimination, while in the
28 same instance requesting that the District violate California and federal case precedents regarding his

1 attempt to have his religious viewpoint imposed upon the District and its students, which was an
2 attempt to have the District establish a religious viewpoint in its science and biology curriculum,
3 which would have been itself a violation of the First Amendment's Establishment Clause, and an
4 illegal act by the District.

5 42. The plaintiff has refused to mitigate his damages, if any, and his alleged claims of
6 continuing and prospective violations of his federal constitutional rights.

7 43. All claims and causes of action based on negligence are subject to the defense of
8 comparative fault, and in that regard the plaintiff has failed to exercise that degree of ordinary care,
9 caution, and skill necessary for the protection of plaintiff's interests, and that said failure on the part
10 of the plaintiff constituted the legal and proximate cause of the harm alleged in the FHAC, and that
11 the plaintiff's recovery, if any, should be reduced by the percentage of fault that is attributable to him.

12 44. The plaintiff assumed the risk of injury by sending his child to a public high school,
13 which was prohibited by law from establishing a religious viewpoint in its science and biology
14 curriculum.

15 45. The District and the Defendants are not legally responsible for any injuries caused to
16 the plaintiff by other third-parties, and/or by other named un-named Doe Defendants, in the FHAC,
17 pursuant to California Government Code § 820.8.

18 46. The injuries alleged to have been caused to plaintiff were not the proximate cause of
19 the actions and/or omissions of the Defendants and/or the District, as alleged in the FHAC.

20 47. The District did not owe the plaintiff any duty of care under the Federal statute alleged
21 in the FHAC.

22 48. The FHAC fails to state any proper claim, or basis, for the award of attorneys fees and
23 costs to the plaintiff.

24 49. All claims for nominal damages have been ordered dismissed, without leave to amend,
25 by the Court pursuant to its October 25, 2005 Memorandum And Order, and said claims are now
26 moot.

27 50. The plaintiff is not entitled to any equitable relief, any prospective injunctive and /or
28 declaratory relief, because has alleged no facts in the FHAC that show any alleged continuing and/or

1 prospective violations of any of his federal constitutional rights by the Defendants, and because he
2 has unclean hands in that he intentionally omitted the fact that he cut a deal with the District to have
3 his QSE Policy placed on the Board Agenda, as part of the resolution of his administrative appeal
4 rights, and this constituted a waiver of all claims, and that it was debated, considered and voted down
5 3 to 2 by the District's Board in the June 2004 meeting, but the plaintiff has continued to pursue this
6 frivolous matter without good cause and in violation of Federal Rules of Civil Procedure, Rule 11
7 against the Defendants and the District.

8 **XII.**

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Defendants and the District pray that:

11 1. Plaintiff take nothing by reason of the FHAC and that judgment be entered in favor
12 of the District and all of its officials, administrators, teachers, staff members, and employees, and in
13 favor of all individually named Defendants.

14 2. The District be awarded costs of suit, including attorneys fees pursuant to Federal Rules
15 of Civil Procedure, Rule 11, and pursuant to 42 U.S.C. § 1988, because said action is frivolous and
16 has been filed and maintained without good cause.

17 3. The District be awarded cost, including attorneys fees, pursuant to California Code of
18 Civil Procedure §1038(a), for defense of the pendent state law claim for a taxpayer's suit, which was
19 also filed and maintained against the District without good cause and in bad faith.

20 4. The Court do equity between the parties; and

21 5. The Court grant such other and further relief that is deems just and proper.

22 DATED: December 1, 2005

EVANS, WIECKOWSKI & WARD, LLP

23 /s/ JAMES B. CARR
24 By JAMES B. CARR
j carr@lomde.com
25 Attorneys for Defendants ROSEVILLE JOINT
26 UNION HIGH SCHOOL DISTRICT; JAMES
27 JOINER; R. JAN PINNEY; TONY
MONETTI; STEVEN LAWRENCE;
28 DONALD GENASCI; and RONALD
SEVERSON

1 **CERTIFICATE OF SERVICE**

2 [Federal Rules of Civil Procedure, Rule 5(b)]
3 [CCP §§1011, 1012, 1012.5, 1013 and 1013a]

4 I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the
5 within-entitled case. I am an employee of EVANS, WIECKOWSKI & WARD, LLP and my business address
6 is 745 University Avenue, Sacramento, California 95825.

7 On this date, I served the following document:

8 **DEFENDANTS' ANSWER TO PLAINTIFF'S FOURTH AMENDED COMPLAINT**

9 **XX** By electronic mail/transmission.

10 — by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in
11 the United States Post Office mail at Sacramento, California, addressed as set forth below.

12 — by personally delivering, or causing to be delivered, a true copy thereof to the person at the address
13 set forth below.

14 — by causing a true copy thereof to be delivered to the party or parties at the address(es) listed below,
15 by and/or through the services of:

- 16 — Federal Express
- 17 — Express Mail
- 18 — FAX (Followed by First Class Mail)

19 LARRY JACK CALDWELL
20 Attorney at Law
21 caldewellandassociates@surewest.net

22 KEVIN TRENT SNIDER
23 Attorney at Law
24 kevinSnider@pacificjustice.org

25 MATTHEW BROWN McREYNOLDS
26 Attorney at Law
27 mattmcreynolds@pacificjustice.org

28 I am familiar with the business practice of the EVANS, WIECKOWSKI & WARD, LLP with regard
to collection and processing of documents for mailing with electronic mail and the United States Postal
Service. The documents described above were electronically mailed (transmitted) to the e-mail addresses
listed above on the date stated below from the EVANS, WIECKOWSKI & WARD, LLP, pursuant to said
business practices, that same day in the ordinary course of business.

I certify by the act of filing that the original document was produced on paper purchased as recycled.
(CRC, Rules 981.1, and 201.)

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was
executed at Sacramento, California on December 1, 2005.

/s/

JAMES B. CARR