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18 and DAVID LINDBERG

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 JEANNE E. CALDWELL,

22 Plaintiff,

23 v.

24 ROY L. CALDWELL, Ph.D., in his official  
25 capacity as Director of the University of  
26 California Museum of Paleontology; DAVID  
27 LINDBERG, in his official capacity as Chair  
28 of the Integrative Biology Department of the  
University of California-Berkeley; and  
MICHAEL D. PIBURN, in his official  
capacity as Program Director for the National  
Science Foundation,

Defendants.

Case No. C05-04166

**DEFENDANTS ROY L. CALDWELL,  
Ph.D. AND DAVID LINDBERG'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR ADMINISTRATIVE  
RELIEF**

**Date: March 20, 2006  
Judge: Hon. Phyllis J. Hamilton**

In her motion for administrative relief, plaintiff Jeanne E. Caldwell requests  
"clarification" concerning the Court's March 13, 2006 Order granting defendants' motion to  
dismiss ("the Order"). Specifically, plaintiff seeks guidance as to whether the Court, in issuing its  
decision, considered plaintiff's "oral motion for leave to amend" made during the February 8,

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1 2006 hearing on defendants' motion. If in fact the Court failed to consider this oral motion,  
2 plaintiff submits, the Court should now rule on it, and either expressly grant or deny plaintiff  
3 leave to amend in order to include the "Additional Allegations" which were the subject of the oral  
4 motion.

5 In opposing the instant motion, defendants Roy Caldwell and David Lindberg  
6 ("defendants") assume the Court did, in fact, consider plaintiff's oral motion for leave to amend  
7 in issuing its March 13<sup>th</sup> Order. Since that Order did not grant plaintiff leave to amend,  
8 defendants fail to discern the need for any further action by the Court at this time.

9 To the extent the Court is inclined at this point to reconsider plaintiff's earlier motion to  
10 amend, plaintiff fails to identify any sound basis for altering the Court's ruling. Plaintiff's  
11 proposed amendment would add "additional allegations that the Understanding Evolution ("UE")  
12 website is aimed at the general public as well as at K-12 teachers, and that defendants have  
13 expressly invited members of the general public to visit and use the website." (Plaintiff's Motion  
14 for Administrative Relief at p. 2.) Plaintiff does not suggest, nor do defendants see any relevance  
15 these allegations would have on the Court's analysis of the standing issue, as set forth in the  
16 March 13<sup>th</sup> Order.

17 In opposing defendants' standing arguments, plaintiff sought to analogize her case to the  
18 "public park" standing cases in the Ninth Circuit. (See, e.g., Order at p. 12.) In seeking to draw  
19 this analogy, plaintiff has, at least implicitly, already asserted that she has some entitlement, as a  
20 member of the public, to use the UE website, just as a citizen is entitled to use a local park.  
21 Defendants did not take issue with the notion that the general public was "invited" to use the UE  
22 website – to the contrary, in their opening brief, they pointed out that the UE website had been  
23 expanded to add substantial content aimed at the general public. (Defendants' Memorandum of  
24 Points and Authorities in Support of Motion to Dismiss at p. 4.) The proposed amendment would  
25 do nothing to strengthen the purported analogy to the public park cases – an analogy which this  
26 Court has properly rejected, in view of the "vast difference between a citizen's inability to use a  
27 public park due to the presence of an overtly religious symbol, and a citizen's viewing of a  
28 purportedly offensive website." (Order, page 12.) Plaintiff's proposed amendment would have

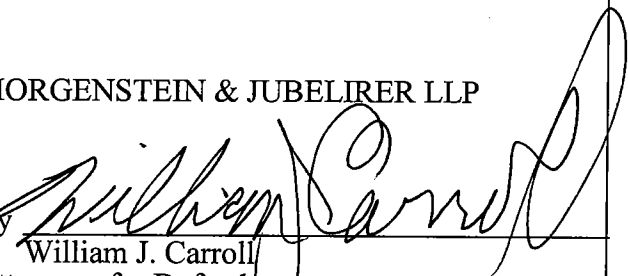
1 no bearing on this analysis, or on the Court's broader conclusion that plaintiff's alleged offense at  
2 viewing the webpages at issue amounts to nothing more than a generalized grievance. In sum,  
3 because plaintiff's proposed amendment failed to identify allegations establishing she has  
4 standing to pursue her claims, the Court properly granted defendants' motion without leave to  
5 amend. Plaintiff has failed to suggest any sound basis for now changing that ruling.

6 **CONCLUSION**

7 For the foregoing reasons, defendants respectfully submit that plaintiff's motion for  
8 administrative relief should be denied.

9 DATED: March 17, 2006

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10  
11 By 

12 William J. Carroll  
13 Attorneys for Defendants  
14 ROY L. CALDWELL, Ph.D.,  
15 and DAVID LINDBERG

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