

1 JAMES E. HOLST (CSB # 34654)
CHRISTOPHER M. PATTI (CSB #118283)
2 University of California
Office of the General Counsel
3 1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
4 Telephone: (510) 987-9800
Facsimile: (510) 987-9757

5 MORGENSTEIN & JUBELIRER LLP
6 WILLIAM J. CARROLL (CSB #118106)
ADRIENNE S. LEIGHT (CSB #226854)
7 One Market, Spear Street Tower, 32nd Floor
San Francisco, CA 94105
8 Telephone: (415) 901-8700
Facsimile: (415) 901-8701

9 Attorneys for Defendants
10 ROY L. CALDWELL, Ph.D.,
and DAVID LINDBERG

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 JEANNE E. CALDWELL,
16 Plaintiff,

17 v.

18 ROY L. CALDWELL, Ph.D., in his official
19 capacity as Director of the University of
California Museum of Paleontology; DAVID
20 LINDBERG, in his official capacity as Chair of
the Integrative Biology Department of the
21 University of California-Berkeley; and
MICHAEL D. PIBURN, in his official capacity
22 as Program Director for the National Science
Foundation,

23 Defendants.
24

Case No. C05-04166

**DEFENDANTS ROY L. CALDWELL,
Ph.D. AND DAVID LINDBERG'S
NOTICE OF MOTION TO DISMISS**

[Fed. R. Civ. Proc. 12(b)(6)]

Date: January 25, 2006
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on January 25, 2006 at 9:00 a.m., or as soon thereafter as
27 the matter may be heard in Courtroom 3 of the above-entitled court, defendants Roy L. Caldwell,
28 Ph.D. and David Lindberg (collectively, "defendants") will and hereby do move the Court for an


1 order dismissing the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

2 By this motion, defendants seek an order granting their motion to dismiss with prejudice
3 on the grounds that plaintiff's complaint fails to state a claim upon which relief may be granted
4 because: (1) plaintiff lacks Article III standing to assert the claims alleged in the complaint; and
5 (2) plaintiff has not and cannot state a claim for relief under the Establishment Clause.

6 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
7 and Authorities, the Request for Judicial Notice, the Complaint on file, and any other evidence or
8 argument accepted by the Court at or before the hearing on this motion.

9
10 DATED: December 19, 2005

MORGENSTEIN & JUBELIRER LLP

11
12 By 
13 William J. Carroll
14 Attorneys for Defendants
15 ROY L. CALDWELL, Ph.D.
16 and DAVID LINDBERG

MORGENSTEIN & JUBELIRER LLP
ATTORNEYS AT LAW
SAN FRANCISCO