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DISTRICT and DR. JAMES CORBETT

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 CHAD FARNAN, a minor, by and
through his parents BILL FARNAN and
12 TERESA FARNAN,

13 Plaintiff,

14 v.

15 CAPISTRANO UNIFIED SCHOOL
DISTRICT; DR. JAMES CORBETT,
16 individually and in his official capacity as
an employee of Capistrano Unified School
17 District; and DOES 1 through 20,
inclusive,

18 Defendants.

19
20 CALIFORNIA TEACHERS
ASSOCIATION/NEA; and
21 CAPISTRANO UNIFIED EDUCATION
ASSOCIATION,

22 Union Intervenors/Defendants.
23

CASE NO.: SACV07-1434-JVS (ANx)

**DEFENDANTS' MOTION FOR A
DETERMINATION THAT DR.
CORBETT IS ENTITLED TO
QUALIFIED IMMUNITY;
MEMORANDUM OF POINTES AND
AUTHORITIES**

HEARINGS PENDING:

TYPE: Motions
DATE: August 31, 2009
TIME: 1:30 p.m.
COURTROOM: 10C/Judge Selna

24 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

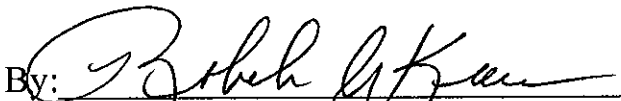
25 PLEASE TAKE NOTICE that on August 31, 2009, at 1:30 p.m. or as soon
26 thereafter as the matter may be heard in Courtroom 10C of the above-entitled Court,
27 located in the Ronald Reagan Federal Building, 411 West Fourth Street, Santa Ana,
28 California 92701, Defendants CAPISTRANO UNIFIED SCHOOL DISTRICT

1 (“CUSD”) and DR. JAMES CORBETT (“Dr. Corbett”) (sometimes collectively
2 “Defendants”) will and hereby do move this Court, following its ruling on the parties’
3 motions for summary judgment, for a determination that Dr. Corbett is entitled to
4 qualified immunity in this matter.

5 This motion is based on this notice, the attached memorandum of points and
6 authorities, the Court’s order regarding the parties’ motions for summary judgment,
7 the evidence filed by the parties’ in support of their motions for summary judgment,
8 such matters of which this Court may be asked to take judicial notice, as well as the
9 pleadings and records on file in this matter.

10 DATED: July 24, 2009

WOODRUFF, SPRADLIN & SMART, APC

11
12
13 By: 

DANIEL K. SPRADLIN
ROBERTA A. KRAUS
Attorneys for Defendants CAPISTRANO
UNIFIED SCHOOL DISTRICT and DR.
JAMES CORBETT

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1. INTRODUCTION**

3 Throughout this litigation Farnan took the position that “the gravamen of
4 Plaintiffs’ case was and remains the barrage of religious hostility expressed by Dr.
5 Corbett throughout the Fall 2007 semester during his Advanced Placement European
6 History class.”¹ This case “does not concern a few incidental statements of a teacher
7 that may periodically reflect upon the teacher’s personal beliefs” but concerns Dr.
8 Corbett’s alleged “continual and incessant actions.”²

9 Yet, on May 1, 2009, this Court found that Dr. Corbett did not engage in a
10 continual and incessant barrage of religious hostility. Instead, this Court determined
11 that Dr. Corbett violated the Establishment Clause when Dr. Corbett stated “religious,
12 superstitious nonsense” during a discussion about the lawsuit filed against CUSD, Dr.
13 Corbett and others by former biology teacher John Peloza who had refused to teach
14 the state-mandated curriculum (the theory of evolution) but instead taught creationism
15 in the classroom. Dr. Corbett made this single statement during the course of one
16 lecture while teaching his year-long AP European History course. The Court found
17 that no other statement attributed to Dr. Corbett during this year-long AP European
18 History course violated the Establishment Clause and that there was no evidence
19 presented sufficient to establish that Dr. Corbett had a pattern and practice of violating
20 the Establishment Clause.

21 Based on this ruling, it is apparent that Dr. Corbett now is entitled to a qualified
22 immunity defense. While this Court has held that the single statement by Dr. Corbett
23 violated the Establishment Clause, in 2007, the law was not established that a single
24 statement by a teacher made during one lecture given in the course of a year-long
25 class could trigger an Establishment Clause violation.

26 _____
27 ¹ See, Plaintiff’s reply to Defendants’ opposition to Plaintiff’s motion for summary
28 judgment, 1:4-6.

² See, Plaintiff’s opposition to Defendants’ motion for summary judgment, 10:14-16.

1 **A. Background Facts**

2 Since the filing of his lawsuit and up through this Court’s ruling on the parties’
3 motions for summary judgment, Farnan has contended that Dr. Corbett made anti-
4 Christian or anti-religious comments on a daily basis throughout the 2007 semester;
5 that anti-Christian comments essentially were the theme of Dr. Corbett’s lectures.
6 According to Farnan, it was the continual and incessant comments attributed to Dr.
7 Corbett that violated the Establishment Clause. Examples of Farnan’s position in this
8 regard are voluminous and can be found, by way of illustration, in the following
9 documents:

10 (1) Farnan’s first amended complaint:

- 11 ▪ “On a regular basis during the Fall 2007 semester . . .” (4:7-11);
- 12 ▪ “Parents and/or students have complained to the District for many years
13 regarding Dr. Corbett’s religious hostility expressed in his classroom”
14 (9:26-27);
- 15 ▪ “Dr. Corbett continues to spend a large portion of class time . . . , he
16 clearly demonstrates hostility towards religion . . .”, “As a result of his
17 ongoing comments . . .” (10:3-7)

18 (2) Farnan’s opposition to Defendants’ motion to dismiss:

- 19 ▪ “statements made by Dr. Corbett are continual and incessant” (10:14);
- 20 ▪ “continual and incessant disapproval of religion” (10:23);
- 21 ▪ “For months Chad Farnan sat in an AP European History class . . .
22 learning . . . about Dr. Corbett’s own propagation of a ‘religion of
23 secularism” (12:11-14);
- 24 ▪ “When taken together, [Dr. Corbett’s comments] are clearly anti-
25 Christian diatribes” (15:12-13)

26 (3) Farnan’s responses to Defendants’ special interrogatories, response nos. 5 and

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- “Throughout the Fall 2007 semester, Dr. Corbett made numerous statements regarding Christianity and religion generally that expresses a viewpoint that is derogatory, disparaging, and belittling regarding religion and Christianity in particular. . . . While there are individual comments that are particularly offensive and expressive of said viewpoints, those and all of his comments must be taken in context of the entire lecture and class environment . . .” (6:16-25 and 7:20-28)
- (4) Plaintiff’s opposition to Defendants’ motion for summary judgment:
 - “Plaintiffs brought this action with the intent to quell the religious hostility that has germinated for many years in Dr. Corbett’s public classroom at Capistrano Valley High School” (1:2-4)
 - “numerous hostile comments of Dr. Corbett” (4:4-5)
 - “the Court must inquire into the purpose for the overreaching theme established by Dr. Corbett’s lectures” (6:6-7)
 - “[Dr. Corbett] states it many times, and in many ways, both indirectly and directly” (6:16-17)
 - “Dr. Corbett is using his bully pulpit to spew his propaganda . . .” (8:12-13)
 - “Dr. Corbett’s statements regarding religion and Christianity, both in Chad’s class and other classes, send primarily a message of disapproval of religion” (9:2-4)
 - “Defendants’ actions fail the third prong of the Lemon test because the statements made by Dr. Corbett are continual and incessant, and the School District has done nothing to lessen them” (9:18-20)
 - “*This case does not concern a few incidental statements of a teacher that may periodically reflect upon the teacher’s personal beliefs. Instead, it concerns Dr. Corbett’s continual and incessant actions . . .*” (10:14-16; emphasis added)

- 1 ▪ “When applying the correct standard, and reviewing all of Dr. Corbett’s
2 comments instead of singling out a few comments . . .” (14:24-26)

3 (6) Plaintiff’s memorandum of points and authorities in support of motion
4 for summary judgment:

- 5 ▪ “[T]eachers, including [Dr. Corbett] violate the Establishment Clause
6 when they use the classroom to *repeatedly express* disapproval of
7 religion, religious faith, and the resulting worldviews” (1:6-8; emphasis
8 added)
- 9 ▪ “Defendants’ decision to ‘teach’ anti-Christian themes” (15:8-9)
- 10 ▪ “barrage of hostility aimed at Dr. Corbett’s students over the years past”
11 (17:16-17)
- 12 ▪ “the statements of Dr. Corbett are continual and incessant” (18:3-4)

13 (7) Declaration of Chad Farnan in support of Plaintiffs’ motion for summary
14 judgment:³

- 15 ▪ “Dr. James Corbett spent a significant amount of class time discussing
16 topics and issues not relevant to European history” (2:19-20);
- 17 ▪ “On a regular basis during the fall 2007 semester, Dr. Corbett discussed a
18 wide variety of topics not related to Advanced Placement European
19 History” (3:3-4);
- 20 ▪ “While teaching the subject of the class and while discussing various
21 other topics, Dr. Corbett made statements and expressed viewpoints that
22 were derogatory, disparaging, and belittling regarding religion and
23 Christianity in particular” (3:5-9)
- 24 ▪ “These comments were not limited to one particular day, but instead
25 occurred on most days that I was in his classroom” (3:10-11)

26 _____

27 ³ Many of these same assertions are also contained in Plaintiff’s statement of
28 uncontroverted facts and conclusions of law in support of his motion for summary
judgment. (See, for example, fact nos. 9, 10, 11, 36, 37)

- 1 ▪ “Dr. Corbett’s anti-Christian viewpoints are well-known by the students
- 2 at my high school as they are often presented through comments he
- 3 makes during class” (3:12-14)
- 4 ▪ “Dr. Corbett made many comments regarding his personal bias against
- 5 Christianity” (3:15-16)
- 6 ▪ “When Dr. Corbett was talking to my class, he regularly included his
- 7 own ideas about God and religion” (3:16-17)
- 8 ▪ “As a result of his ongoing comments . . .” (3:19-20)

9 (8) Plaintiff’s reply to Defendants’ opposition to Plaintiff’s motion for
10 summary judgment:

- 11 ▪ *“The gravamen of Plaintiffs’ case was and remains the barrage of*
- 12 *religious hostility expressed by Dr. Corbett throughout the Fall 2007*
- 13 *semester during his Advanced Placement European History class” (1:4-6;*
- 14 *emphasis added)*

15 (9) Plaintiff’s response to Defendants’ objections to Plaintiff’s evidence
16 submitted by Plaintiff in support of his motion for summary judgment:

- 17 ▪ “Dr. Corbett’s habit or routine practice of making negative or hostile
- 18 comments about religion and Christianity . . .” (3:21-22)

19 This Court, itself, in denying Defendants’ motion to dismiss, also noted that the
20 gist of Farnan’s claim against Defendants is based on Farnan’s claim that his rights
21 were violated by a “practice and policy hostile toward religion and favoring irreligion
22 over religion.” (Court’s minute order denying motion to dismiss, ¶2)

23 **2. THIS COURT SHOULD DETERMINE THE APPLICABILITY OF THE**
24 **QUALIFIED IMMUNITY DEFENSE TO DR. CORBETT**

25 In light of this Court’s May 1, 2009 ruling on Farnan’s motion for summary
26 judgment, Dr. Corbett is entitled to qualified immunity. Qualified immunity “shield[s]
27 [government agents] from liability for civil damages insofar as their conduct does not
28 violate clearly established statutory or constitutional rights of which a reasonable

1 person would have known.” (Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727,
2 73 L.Ed.2d 396 (1982); see also, Behrens v. Pelletier, 516 U.S. 299, 305-306, 116
3 S.Ct. 834, 133 L.Ed.2d 773 (1996))

4 **A. The Right that Dr. Corbett has been Determined to have Violated**
5 **was not Clearly Established in 2007**

6 The United States Supreme Court has repeatedly rejected the position that
7 simply because a broad category of a right might be well established under the
8 Constitution, governmental actors who are alleged to have violated that right are not
9 entitled to qualified immunity. (See, Anderson v. Creighton, 483 U.S. 635, 638-640,
10 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)) In Anderson, an FBI agent who participated
11 in a warrantless search of the plaintiff's home while looking for a bank robbery
12 suspect asserted a right to qualified immunity on summary judgment. The court of
13 appeal denied the motion, holding that the right of persons to be protected from
14 warrantless searches unless the searching officers have probable cause and/or there are
15 exigent circumstances was clearly established at the time of the search. The Supreme
16 Court reversed, noting:

17 “[T]he right to due process of law is quite clearly established by the Due
18 Process Clause, and thus there is a sense in which any action that violates
19 that Clause (no matter how unclear it may be that the particular action is
20 a violation) violates a clearly established right. Much the same could be
21 said of any other constitutional or statutory violation. But if the test of
22 ‘clearly established law’ were to be applied at this level of generality, it
23 would bear no relationship to the ‘objective legal reasonableness’ that is
24 the touchstone of Harlow. Plaintiffs would be able to convert the rule of
25 qualified immunity that our cases plainly establish into a rule of virtually
26 unqualified liability simply by alleging violation of extremely abstract
27 rights. Harlow would be transformed from a guarantee of immunity into a
28 rule of pleading. Such an approach, in sum, would destroy ‘the balance

1 that our cases strike between the interests in vindication of citizens'
2 constitutional rights and in public officials' effective performance of their
3 duties, by making it impossible for officials 'reasonably to anticipate
4 when their conduct may give rise to liability for damages.'" (Id. at 639,
5 citation omitted)

6 The Supreme Court reiterated this view in Saucier v. Katz, 533 U.S. 194, 121
7 S.Ct. 2151, 150 L.Ed.2d 272 (2001), where it held that the inquiry is not whether a
8 particular right is established in a vacuum but whether it was established on the
9 specific facts of a particular case. (Id. at 202 [the court must find that the right was
10 clearly established in light of the specific facts of a particular case such that "a
11 reasonable official would understand that what he is doing violates that right").

12 In Saucier, the court identified two inquiries to be made in determining whether
13 a public official is entitled to qualified immunity. The first is whether the alleged acts,
14 when construed in the light most favorable to the plaintiff, show that the official's
15 conduct violated a constitutional right. (Id. at 200-201) If no constitutional right was
16 violated even under the plaintiff's allegations, the official is entitled to judgment;
17 however, if a constitutional violation could be established under a favorable view of
18 the evidence submitted, the court must move to the second step in the analysis. That
19 step involves an inquiry into whether the constitutional right was clearly established
20 and "must be undertaken in light of the specific context of the case, not as a broad
21 general proposition." (Ibid.)⁴

22 Quoting Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271
23 (1986), the Saucier court stated that qualified immunity protects "all but the plainly

24
25 ⁴ More recently the United States Supreme Court held that while the sequence set
26 forth in Saucier is often appropriate, it should no longer be regarded as mandatory.
27 Instead, judges should be permitted to exercise their sound discretion in deciding
28 which of the two prongs of the qualified immunity analysis should be addressed first
in light of the circumstances in the particular case at hand. (Pearson v. Callahan, 555
U.S. --, 129 S.Ct. 808, 818, 172 L.Ed.2d 565 (2009)) The Pearson court also
recognized that the Saucier protocol, while not mandatory, often is beneficial.
(Pearson v. Callahan, supra, 129 S.Ct. at 818)

1 incompetent or those who knowingly violate the law.” (Saucier v. Katz, *supra*, 533
2 U.S. at 202) A public official or employee is entitled to qualified immunity even if
3 that official makes a good faith mistake about the law. (*Id.* at 205)

4 The inquiry on the second prong is not whether a particular right is established
5 in a vacuum. The inquiry is whether it was established on the *specific facts* of a
6 particular case. (*Id.* at 202) The court must find that the right was clearly established
7 in light of the specific facts of a particular case such that “a reasonable official would
8 understand that what he is doing violates that right.” (*Ibid.*; see also, Dibble v. City of
9 Chandler, 515 F.3d 918, 930 (9th Cir. 2008) [since determining whether a “public
10 employee’s speech is constitutionally protected turns on a context-intensive, case-by-
11 case balancing analysis, the law regarding such claims will rarely, if ever, be sufficient
12 ‘clearly established’ to preclude qualified immunity”])

13 In United States v. Lanier, 520 U.S. 259, 270, 117 S.Ct. 1219, 137 L.Ed.2d 432
14 (1997), the court stated that a public official can be liable for a constitutional violation
15 “only if ‘the contours of the right [violated are] sufficiently clear that a reasonable
16 official would understand that what he is doing violates that right.’” Under qualified
17 immunity, public employees remain immune as long as their actions do not violate
18 clearly established [federal] statutory or constitutional rights of which a reasonable
19 person would have known. (Harlow v. Fitzgerald, *supra*, 457 U. S. at 817-818
20 [allegations of malice are insufficient to overcome application of qualified immunity])

21 The Ninth Circuit recently stated:

22 “The constitutional violation must be ‘clearly established’ at the time of
23 the alleged misconduct. [Citation] ‘The operation of this standard,
24 however, depends substantially upon the level of generality at which the
25 relevant “legal rule” is to be identified.’ [Citation] ‘[T]he right the
26 official is alleged to have violated must have been “clearly established”
27 in a more particularized, and hence more relevant, sense: The contours of
28 the right must be sufficiently clear that a reasonable official would

