

1 William J. Becker, Jr., Esq. (SBN 134545)
2 **THE BECKER LAW FIRM**
3 11500 Olympic Blvd., Suite 400
4 Los Angeles, California 90064
5 Phone: (310) 636-1018
6 Fax: (310) 765-6328
7 Attorneys for Plaintiff, David Coppedge

FILED
Superior Court of California
County of Los Angeles

DEC 14 2011

John A. Clarke, Executive Officer/ Clerk
By M. A. P., Deputy
MOSES SOTO

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 **DAVID COPPEDGE**, an individual;

Case No. BC435600

12 Plaintiff,

The Honorable Ernest M. Hiroshige, Dept. 54

13 vs.

14 **JET PROPULSION LABORATORY**, form
15 unknown; **CALIFORNIA INSTITUTE OF**
16 **TECHNOLOGY**, form unknown;
17 **GREGORY CHIN**, an Individual; **CLARK**
18 **A. BURGESS**, an Individual; **KEVIN**
19 **KLENK**, an Individual; and **Does 1** through
20 **25**, inclusive,

PLAINTIFF DAVID COPPEDGE'S
OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE NO. 1 RE:
VIEWPOINT DISCRIMINATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

[Declaration of William J. Becker, Jr. and
exhibits filed concurrently herewith]

19 Defendants.

FSC: February 24, 2012
HEARING TIME: 9:00 a.m.
DEPT: 54

Trial Date: March 7, 2011

23 ///

24 ///

25 ///

1 COMES NOW PLAINTIFF DAVID COPPEDGE ("Coppedge") and hereby opposed
2 Defendant California Institute of Technology's/Jet Propulsion Laboratory's ("JPL's) Motion in
3 Limine No. 1 for an order excluding testimony, evidence, argument and comment regarding
4 viewpoint discrimination.
5

6 This Opposition is based on the ground that JPL's motion lacks merit, is improperly pre-
7 sented for the purpose of suppressing admissible evidence and would create confusion if granted.

8 DATED: December 13, 2011

THE BECKER LAW FIRM

9 William J
10 Becker Jr, Esq

Digitally signed by William J
Becker Jr, Esq
DN: cn=William J Becker Jr, Esq,
o=THE BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com,
c=US
Date: 2011.12.13 09:57:07 -08'00'

By:

11 WILLIAM J. BECKER, JR., ESQ.
12 Attorneys for Plaintiff, DAVID COPPEDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 JPL contends that this case is not about viewpoint discrimination. *Seriously?* Coppedge
4 has alleged that he was discriminated against when he was ordered to stop “pushing” his religion
5 on people. Coppedge has alleged that he suffered discrimination on the basis of complaints that
6 co-workers felt harassed because of his “personal views.” This case is specifically *about* view-
7 point discrimination. No, not *that* viewpoint discrimination (First Amendment viewpoint dis-
8 crimination),¹ but viewpoint discrimination nonetheless.

9
10 After warning him not to discuss his personal *views* with co-workers, demoting him for
11 sharing his *views* with co-workers and firing him for challenging the *viewpoint* restrictions
12 placed on him, JPL now wishes to clamp down on Coppedge’s right to tell his story to the jury.
13 As Americans we resist systems where the powerful control the weaker members of society
14 through the suppression of ideas and complete censorship. This court should resist JPL’s des-
15 perate attempt to suppress relevant evidence concerning the central issue in the case: viewpoint
16 discrimination.

17
18 II. RELEVANT FACTS

19 On March 2, 2009, Coppedge’s office manager accused him of pushing his religious
20 views on people. (Exh. No. 1, e-mail from D.Coppedge to G.Chin, 3/3/2009 (“You told me that
21

22
23 ¹ Under 42 U.S.C. § 1983, the government can be held liable for violating an individual’s First Amendment guaran-
24 tee of free expression by discriminating on the basis of viewpoint. Even in those case, religious viewpoints are fre-
25 quently targeted. The only distinction between the concept of viewpoint discrimination in section 1983 lawsuits and
26 viewpoint discrimination in this action is that Defendant JPL contends it is not a government agency. Coppedge
27 believes otherwise (*See, e.g., Lebron v. National Railroad Passenger Corporation* (1994) 513 U.S. 374; *Vallier v.*
28 *Jet Propulsion Laboratory* (2000) 120 F.Supp.2d 887, 890, fn.2 (“JPL is owned by the United States under the
sponsorship of the National Aeronautics Space Administration (“NASA”).”); *Moore v. California Institute of Tech-*
nology Jet Propulsion Laboratory(C.A.9, Cal., 2002) 275 F.3d 838 (JPL’s state actor status not challenged)). Never-
theless, Coppedge elected not to contest the issue – whether or not JPL is a government agency – in this case be-
cause it would have created too great a distraction from the core employment discrimination issues.

1 it has been reported to you that I had been pushing my religious views at work and that some
2 found this offensive. You told me this must stop. You ordered me not to discuss politics or reli-
3 gion with anyone in this office.”.) An investigation was conducted in which witnesses com-
4 plained that Coppedge had harassed them due to his religious and political beliefs, including his
5 views concerning intelligent design. (Exh. No. 2, Huntley interview notes with Coppedge.)

6
7 Coppedge was issued a Written Warning stating in relevant part:

8 “The Employee Relations Office has completed an investigation concerning allegations
9 that you approached various co-workers during JPL business hours to discuss your *religi-
ous and political beliefs.*”

10 “You acknowledged that you approached various coworkers during work hours to inquire
11 if they were interested in watching your DVDs *which clearly express your personal
views* and you engaged various co-workers in conversations *about your personal views.*

12
13 “You created disruption in the workplace by approaching a co-worker during work hours
14 to engage in a political *debate about a recent controversial issue.*”

15 “For example, co-workers found your requests to watch your DVDs *that express your
personal views* to be unwelcome.”

16 (Exh. 3, Written Warning; emphasis added.)

17 Coppedge was demoted due to his views. (Exh. No. 4, e-mail chain between Burgess and
18 Coppedge). David’s Group Manager (Cab Burgess) told others that he had spoken with
19 Coppedge “recommending that he discuss his views at a more appropriate time and place, not
20 during work time.” (Exh. No. 5, email from Whitney Haggins to Sheri Curtis.)

21
22 **III. ARGUMENT**

23 **A. JPL Creates Confusion By Inserting The Federal Constitutional Law Concept**
24 **Of “Viewpoint Discrimination.” But This Case Involves Actual Employment Dis-**
25 **crimination On The Basis Of Viewpoint And Is Grounded Upon The Plain**
26 **Meaning And Usage Of The Words In This Context.**

27 JPL contends that “viewpoint discrimination” involves government restrictions on
28 speech, not those of a private employer. (JPL’s Br., 2:6-12). That contention confuses the de-

1 scriptors with a legal doctrine. The words "viewpoint discrimination" are no more the property
2 of federal legal theory than is the word "constitutional." As a legal doctrine, upper-case View-
3 point Discrimination differs from lower-case viewpoint discrimination. The former addresses
4 government action, and falls under First Amendment jurisprudence. The latter addresses all dis-
5 crimination based on the suppression of ideas, in this case religious ideas and ideas perceived as
6 religious.
7

8 The evidence in this case overwhelmingly shows that Coppedge was discriminated
9 against because of the views he held about his Christian faith and intelligent design. As he testi-
10 fied in deposition, that is Coppedge's belief:

11 "Q So you believe that whatever actions are being taken against you with which you
12 disagree are being motivated to keep you quiet about intelligent design?"

13 A I cannot read people's minds. But --

14 Q Is that your belief?

15 A That is my belief, that I have been singled out for viewpoint discrimination here."

16 (Exh. No. 6, Coppedge Dep.Tr., 669:19-670:10.)

17 Coppedge additionally testified that he tried to show Jhertaune Huntley, JPL's HR inves-
18 tigator, a list of published news stories about JPL containing religious and philosophical over-
19 tones. He testified that his purpose in presenting the list to Huntley was to disabuse her of the
20 assumption that his views on intelligent design were improper:

21 "[My purpose was] [t]o show that discussion of questions about origins which intelligent
22 design addresses is a frequent topic at JPL and that allowing only one side – the natural-
23 istic, Darwinian side – amounts to viewpoint discrimination because most of these press
24 releases go far beyond any scientific evidence and delve into questions that could be con-
25 strued as religious or philosophical.

26 (*Id.*, 352:18-353:1.)

27 "It relates to Greg Chin's claim that intelligent design is religion and I had to stop
28 discussing it. And yet I could turn around and say, 'Look at this. JPL discusses the very
same questions with a different viewpoint. Is this viewpoint discrimination?'"

1 (Id., 353:5-10).

2 JPL's motion in limine injects the discussion with irrelevant First Amendment doctrine
3 by contending that somehow merely using the phrase "viewpoint discrimination" in this case is
4 improper because it denotes a federal legal theory. Inconsistently, JPL does not seek to ban us-
5 ing the term "civil rights." Yet Coppedge also testified that he believed his civil rights were vio-
6 lated. Should the term "civil rights" also be suppressed in this case under the pretense that it in-
7 vokes a federal statute? The genesis of JPL's paranoia arose from a colloquy between counsel at
8 Coppedge's deposition:
9

10 "Q BY MR. ZAPP: So you're criticizing JPL of being -- strike that. So you're saying
11 JPL is guilty of viewpoint discrimination? Is that what you're saying?

12 MR. BECKER: Calls for a legal conclusion and --

13 MR. ZAPP: *I've not heard of viewpoint discrimination as a legal matter*, but go ahead.

14 MR. BECKER: You haven't?

15 MR. ZAPP: No.

16 MR. BECKER: My practice is built around it. It's part of Title 42, U.S. Code Section
17 1983, jurisprudence. So anyway, it calls for a legal conclusion.

18 Q BY MR. ZAPP: So you're accusing JPL of having -- of supporting viewpoint dis-
19 crimination?

20 A Yes, because all of the follow-up discipline and actions subsequent to this reinforced
21 Greg's statement to me.

22 Q And even though you were told that the issue related not to the substance as much as
23 it is to the manner or the way in which you were interacting with people, you still believe
24 it was all about the substance; is that right?

25 A Yes."

26 (Id., 356:13-357:12; emphasis added.)

27 Now that JPL's counsel has received this gnostic knowledge, it assumes everyone has it.
28 Counsel's concern overestimates the legal acumen of the average juror. The central issue of this
case is whether JPL discriminated against Coppedge due to his religious viewpoints. That is a
form of viewpoint discrimination.

1 **B. The Content Of Coppedge's Speech Also Is A Central Issue In This Case.**

2 JPL absurdly contends that the content of Coppedge's speech is not in issue in this case –
3 only the manner of his speech. Again, it is difficult to take JPL's argument seriously. Coppedge
4 alleges that he was discriminated against because of his religious beliefs. Whether JPL acted on
5 the basis of the content or manner of Coppedge's speech is a central question in dispute, which a
6 jury will be asked to determine on the basis of all the evidence, not just the evidence JPL likes.
7

8 Coppedge was specifically told that his "personal views" were found to be unwelcome
9 and ordered to refrain from discussions concerning them ("Effective immediately, you must re-
10 frain from discussions which are argumentative, disruptive and/or harassing to your co-
11 workers.... *For example*, co-workers found your requests to watch your *DVDs that express your*
12 *personal views* to be unwelcome."). (Exh. No. 3, Written Warning; emphasis added). JPL's re-
13 strictions arose out of HR's investigation. The evidence acquired in HR's investigation focuses
14 on Coppedge's religious beliefs. Although JPL utilized sophistry and double-talk to conceal the
15 true meaning of the restrictions placed on Coppedge ("Today we have talked about what type of
16 conduct is unwelcome or offensive"), JPL cannot hide from its own words identifying
17 Coppedge's "personal views" as the basis for its restrictions. Moreover, there is absolutely *no*
18 *evidence* that Coppedge's "manner" was ever improper. Although JPL concluded that
19 Coppedge's communications with co-workers were "argumentative, disruptive and/or harass-
20 ing," JPL never described the behavior justifying its conclusion.
21
22

23 Ultimately, the evidence shows JPL took issue with Coppedge's religious beliefs, includ-
24 ing his views on intelligent design, which were perceived to be religious. Coppedge's manner of
25 conveying those beliefs was not the real problem.
26
27
28

1 **C. Coppedge's Reference To Viewpoint Discrimination Constitutes Proper Opinion**
2 **Testimony.**

3 Testimony in the form of an opinion that is otherwise admissible is not objectionable
4 because it embraces the ultimate issue to be decided by the trier of fact. Evid. Code, § 805.
5 "Rarely, if ever, does an expression of opinion ... not amount to that which either the court or
6 jury might adopt as a basis for the ultimate decision in the case. However, that does not mean
7 that the witness is deciding the case or ... usurping the functions of the jury. He is merely giving
8 an opinion ... which the court may or may not accept." *Wells Truckways v. Cebrian* (1954) 122
9 Cal.App.2d 666, 674.

10 Evidence of an individual's state of mind, including intent, plan, motive and design, is
11 admissible to explain his acts or conduct. Evid. Code § 1250. Evidence relating to a witness's
12 credibility, including the character of his testimony and the existence or nonexistence of a bias,
13 interest, or other motive, is also admissible. Evid. Code § 780. In *Cope v. Davison* (1947) 30
14 Cal.2d 193, 200, the California Supreme Court recognized that a lay witness's testimony con-
15 cerning his own intent, motive, emotion, or other state-of-mind fact is admissible when it is rele-
16 vant to the issues in the case:
17

18 "The state of mind of a person, like the state or condition of the body, is a fact to be
19 proved like any other fact when it is relevant to an issue in the case, *and the person him-*
20 *self may testify directly thereto.* Whenever the motive or intent with which an act was
21 done is relevant, direct testimony is admissible, although not conclusive.... Also, when
22 knowledge of a fact has important bearing upon the issues, evidence is admissible which
23 relates to the question of the existence or nonexistence of such knowledge and a wide
24 range of proof is allowed."

25 (Internal citations omitted.)

26 Here, Coppedge has testified that he was discriminated against because of his "view-
27 points" concerning religion and intelligent design. Such testimony is clearly relevant to the is-
28 sues in this case.

1 **D. Mentioning Viewpoint Discrimination At Trial Will Neither Confuse The Jury**
2 **Nor Unduly Prejudice JPL.**

3 JPL next contends that permitting Coppedge to testify concerning his belief that he was
4 discriminated against on the basis of his viewpoint, and his use of the term viewpoint discrimina-
5 tion, will somehow confuse jurors. JPL's argument for this position is based on speculation, and
6 is offered without any supporting legal authority.

7 JPL's gratuitously asserts that "argument regarding viewpoint discrimination has no pro-
8 bative value." (JPL Br. 3:15.) But that just states the obvious: *argument* is never *probative*. If
9 what JPL means is that *evidence* of viewpoint discrimination is not probative, it is obviously in-
10 correct; evidence of viewpoint discrimination not just probative, it is a *sine qua non* of recovery
11 under Coppedge's religious discrimination claims.

12 Next, JPL contends that jurors will be confused by the term because it has meaning in the
13 context of First Amendment jurisprudence. This assumes that jurors possess an understanding of
14 First Amendment jurisprudence even counsel for JPL did not have prior to this lawsuit. Contra-
15 dictionarily, JPL credits the average juror with possessing extraordinary legal acumen while simul-
16 taneously lacking enough sophistication to draw the distinction between the issues in this case
17 and the issues in a First Amendment case. If jurors know enough to spot the distinction, they
18 ought to be presumed to know enough to assess the evidence correctly.

19
20
21 **IV. CONCLUSION**

22 Albert Einstein said: If the facts don't fit the theory, change the facts. There is a clear pat-
23 tern collectively demonstrated by JPL's eight motions in limine. Taken as a piece, they seek to
24 tell the jury a one-sided story. By chipping away at every bit of relevant evidence, JPL hopes to
25 double down on the speech constraints it placed on Coppedge giving rise to this action. The
26
27
28

1 facts don't fit JPL's theory of the case, so they want to change them. The question is: what is
2 JPL so afraid of?

3 Coppedge's use of the term "viewpoint discrimination" is just the first strike of the chisel.
4
5 If JPL succeeds at chipping away at Coppedge's entire body of evidence, the result will look
6 less like something sculpted, and more like rubble. The court is urged to resist JPL's heavy-
7 handed moves and deny this motion.

8 DATED: December 13, 2011

THE BECKER LAW FIRM

William J
Becker Jr, Esq

Digitally signed by William J Becker Jr,
Esq
DN: cn=William J Becker Jr, Esq, o=THE
BECKER LAW FIRM, ou,
email=bbeckerlaw@gmail.com, c=US
Date: 2011.12.13 09:57:21 -0800

By:

WILLIAM J. BECKER, JR., ESQ.
Attorneys for Plaintiff, DAVID COPPEDGE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28