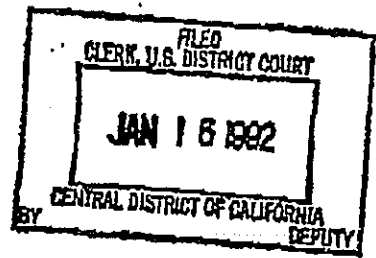


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN E. PELOZA,
Plaintiff,
v.
CAPISTRANO UNIFIED SCHOOL
DISTRICT, et. al.,
Defendants.

NO. CV 91-5268-DWW (Bxc)
MEMORANDUM

This memorandum revisits the long-standing debate between scientists and fundamentalists about human origins--the theories of evolution v. creationism. The Darwinian theory that humans are derived from lower life forms vs. the Christian concept in the opening Chapters of the Book of Genesis that

- (1) "In the beginning God created the heaven and the earth.
- (2) And the earth was without form, and void; and darkness was upon the face of the deep."

///

1 Constitution as forbidding "the establishment of a religion." It is
2 his argument that the school district commands him to teach evolution
3 as a fact rather than as a theory. Plaintiff takes the position that
4 forcing him to teach the religious belief of evolution as a valid
5 scientific theory would force him to become an unwilling agent of the
6 school district in the establishment of the religion of secular
7 humanism,¹ in violation of the First Amendment. Pelozo claims a First
8 Amendment right to freedom of speech and freedom to teach the truth in
9 the classroom and to teach science.

10 Pelozo further charges the defendants with conspiracy to deny his
11 First, Fifth and Fourteenth Amendment rights and to destroy his
12 professional reputation and career as a public high school teacher. He
13 contends that the defendants, by reason of issuing letters of reprimand
14 to him, are preparing to seek his dismissal as a public high school
15 teacher. He does not claim that he has been dismissed and in fact he
16 is still pursuing his career in this high school.

17 Finally, he complains that even if he is not permitted to teach his
18 theory of creationism in the classroom, he should be permitted to
19 privately discuss religion and his theory of creationism in
20 conversations with students during private, non-instructional time on
21

22 ¹ Plaintiff has enclosed literature which as the origin of
23 life and debunking the doctrine of secular humanism. Secular
24 humanism is the name many academics have tagged to the teaching
25 that man is the center and each person controls his own destiny.
26 Evolution is included among the subjects upon which secular
27 humanism is based. Pelozo argues that since a minority of
28 christians now recognize secular humanism as a religion, it follows
that the doctrine of evolution is also a religion. However,
evolutionism is the widely accepted scientific explanation of the
origin of life. This is the explanation accepted by the nations'
school districts in forming their curricula for the sciences.
Defendant school district bases its biological science curriculum
on the evolutionist theory.

1 the campus, during lunch, class breaks, and before and after school
2 hours.

3 The party defendants include the Capistrano Unified School District
4 and its Board of Trustees of the School District, and the Principal;
5 Vice-Principal and certain teachers at the high school.

6
7 CONTENTIONS OF DEFENDANTS

8 Defendants ask the Court to take judicial notice of lodged
9 certified copies of the following:

10 1. The State of California Office of Curriculum Framework and
11 Textbook Development's Instructional Materials and Framework Adoption:
12 Policies and Procedures.

13 2. California Department of Education's Science Framework for
14 California Public Schools Kindergarten Through Grade Twelve.

15 It is appropriate that such public documents be judicially noticed.
16 Massachusetts v. Westcott, Mass., 431 U.S. 322 (1977).

17 Defendants contend that the Capistrano Valley High School is part
18 of the Capistrano Unified School District ("District") and that the
19 District in turn is a creation of the legislature of the State of
20 California, and is governed by the California Education Code. Cal.
21 Educ. Code § 3500, et seq. That pursuant to the statutory scheme set
22 forth in that Code, every school district is required to establish a
23 local curriculum for grades 7 through 12. Cal. Educ. Code § 51054.
24 That curriculum must include the biological sciences and must conform
25 to minimum curriculum standards for California. Cal. Educ. Code
26 § 51220(e).

27 The defendants further claim that the State Department of Education
28 has the responsibility of developing a curriculum framework which is

1 formulated by educators with expertise in the area of curriculum
2 following public debate and input. Each local district has the
3 responsibility of either implementing or modifying the state curriculum
4 for its own particular needs (§ 51054).

5
6 CURRICULUM OF THE CAEBSTRAWO UNIFIED SCHOOL DISTRICT

7 In this case, the curriculum framework for science was revised and
8 approved by the State Board of Education in 1989 after a public hearing.
9 The district follows this framework for its biology courses.

10 Within this framework, the principle of evolution, is listed as one
11 of the major themes of science. The framework states: "In order to
12 teach life science, earth science or astronomy, evolution should be a
13 fundamental, central concept of the curriculum." The defendants
14 further contend that this concept of evolution as taught in the high
15 school classes today is not the simple, traditional Darwinism theory of
16 man's evolution from lower life forms, but encompasses changes in animal
17 life, plants, geologic and astronomic processes. The defendants further
18 claim that the framework notes that the question of "creation science"
19 was "thoroughly studied by leading scientific societies, and rejected
20 as not qualifying as a scientific explanation."

21
22 PLAINTIFF WOULD NOT TEACH THE PRESCRIBED CURRICULUM

23 The defendants further charge that Pelozo chooses to ignore the
24 accepted framework for biology classes and to insist upon using his own
25 religious preference in teaching the theory of creationism to his
26 students. Based upon this conflict, there has resulted considerable
27 controversy between the teacher and the school officials resulting in
28 the defendants causing a continuum of monitoring of plaintiff's classes

1 in order to make a determination of the content of his lectures to
2 students. This resulted in defendant Thomas R. Anthony on February 7,
3 1991 issuing a formal written reprimand to plaintiff accusing him of
4 teaching religion in the classroom. This reprimand incorporated in a
5 letter dated October 11, 1990 from defendant Ross Valderraine to
6 plaintiff. The 1991 letter from defendant Anthony issued a formal
7 written warning to plaintiff in which it was stated:

8 " You are hereby directed to refrain from any
9 discussion of religion in any of your science
10 classes and to refrain from attempting to influence
11 your students to accept your own personal religious or
12 philosophical beliefs. You are directed to follow
13 the court outlines in the subject area of high
14 school Biology and more specifically in the teaching
15 of evolution.

16 You are further directed to refrain from making any
17 comments about Jesus Christ, about the fact that
18 people who do not believe in Jesus Christ burn in
19 hell, and to refrain from discussing religion or quoting
20 from the Bible during any of your classes. If a student
21 does ask you a question about religion, you are
22 directed to refer them to their parents or to their own
23 clergy person for guidance.

24 You are further directed to teach evolution as a valid
25 scientific theory and to refrain from any teaching
26 of creationism as a valid scientific theory."

27 * * * *

28 At the outset it should be understood that my task in this
memorandum is not to decide whether the teaching of evolution in the
defendant's schools is or is not of itself a violation of the
Establishment Clause in the First Amendment of the Constitution. No one
has raised this as an issue in this case. The plaintiff in his argument
has conceded that this might be a separate issue in another case.
Simply put, the issue I must decide is whether Felozza has a
constitutional right to conduct himself as a loose cannon in his

1 classroom or on the campus and teach scientific theories of his own
2 choosing despite the fact that they are not authorized by and are
3 prohibited by the State Board of Education curriculum. I conclude that
4 he has not.

5 In McLean v. Arkansas Bd. of Education, 529 F.Supp. 1255, the court
6 held that teaching creationism is in fact teaching a religion. This
7 undermines plaintiff's notion that he has a constitutional right to
8 teach it because it is religion. It also debunks his idea that he can
9 teach creationism as a part of academic freedom. In Webster v New Lenox
10 School Dist. No. 122, 917 F.2d 1004 (7th Cir. 1990), the court was faced
11 with a teacher who sought to vary the curriculum by teaching creationism
12 to his junior high school social studies students. In ruling that the
13 school board sets the curriculum and that the plaintiff must follow it,
14 the Webster court stated as follows:

15 "There is a compelling state interest in the
16 choice and adherence to a suitable curriculum for the
17 benefit of our young citizens and society. It cannot be left
18 to individual teachers to teach what they please."
19 The First Amendment is "not a teacher license f o r
20 uncontrolled expression at variance with established
21 curricular content."

22 Id. at 1007, quoting from Palmer v. Board of Educ., 603 F.2d 1271,
23 1273-1274 (7th Cir. 1979), cert. den. 444 U.S. 1026.

24 DISCUSSION

25 Plaintiff has stated in his complaint and opposition papers that
26 he does not want to teach creationism. He claims that he only wants to
27 teach science. The problem with his request is that there must be a
28 foundation on which to build. The theory of evolution provides such a
29 foundation. Plaintiff has not comported himself in the manner of one
30 who only wants to teach science. In the classroom he has stated more

1 than once that he is a creationist and does not believe in the theory
2 of evolution. Additionally, plaintiff has had various conversations
3 with members of his class espousing his christian views.

4 2. SCHOOL DISTRICT HAS NOT VIOLATED PLAINTIFF'S FIRST AMENDMENT RIGHTS
5 A. TEACHERS DO NOT HAVE A CONSTITUTIONAL RIGHT TO TEACH OR NOT TEACH
6 CERTAIN SUBJECTS BASED ON THEIR PERSONAL VIEWS

7 The California Education Code establishes that the state gives a
8 broad outline of what should be covered in secondary education and the
9 local districts take those guidelines and develop a curriculum that
10 would best serve the needs of the pupils in their respective areas.
11 Cal. Educ. Code § 51000 et. seq.

12 There is a compelling state interest for secondary school teachers
13 to adhere to the curriculum set forth by the appropriate school
14 district. Palmer v. Board of Ed. of City of Chicago, 603 F.2d 1271 (7th
15 Cir. 1979), cert. den. 444 U.S. 1026, 100 S. Ct. 689, 62 L.Ed. 2d 659
16 (1980). Encompassed in that interest, teachers must adhere to the
17 provided curriculum regardless of their own religious views and
18 practices. Id. at 1274.

19 In Palmer the plaintiff, a probationary kindergarten teacher, was
20 a member of the Jehovah's Witnesses religion. Before the beginning of
21 classes the teacher informed the principal that because of her religious
22 beliefs she would not be able to teach any subject that had to do with
23 love of country, the flag or other patriotic matters. Id. at 1272. The
24 court held that the teacher had no constitutional right to require
25 students to submit to her views and to "forego a portion of their
26 education they would otherwise be entitled to enjoy." Id. at 1274.

27 In Webster v. New Lenox School Dist. No. 122, 917 F.2d 1004 (7th
28 Cir. 1990) the plaintiff was a social studies teacher in Illinois. A

1 student of Mr. Webster complained that the plaintiff was teaching
2 religion in his class. Plaintiff claimed that he was teaching non-
3 evolutionary theories of creation, and that such theories do not
4 violate the doctrine of separation of church and state. The district
5 court held that plaintiff did not have a right to teach creation science
6 in a public school. Id. at 1006. The lower court stated that a "school
7 board generally has wide latitude in setting the curriculum, provided
8 the school board remains within the boundaries established by the
9 constitution." Id. The Seventh Circuit affirmed, holding that an
10 individual teacher does not have the right to ignore the curriculum
11 compiled by education authorities. Id. at 1008.

12 The Supreme Court has recognized that a secondary school teacher
13 serves as a "role model for his students, exerting a subtle but
14 important influence over their perceptions and values." Ambach v.
15 Norwick, 441 U.S. 68, 78-79, 60 L.Ed 2d 49, 99 S.Ct 1589 (1979).
16 Secondary school students are at a stage of development where they are
17 open to many ideas. However, their intellectual development imposes
18 more responsibility on the local school board to control the curriculum,
19 choose the teachers and regulate their pedagogical methods. Zykan v.
20 Warsaw Community School Corp., 631 F.2d 1300, 1304 (7th Cir. 1980).
21 "Students in such institutions are impressionable and their attendance
22 is involuntary." Edwards v. Aquillard, 482 U.S. 578, 584, 96 L.Ed 2d
23 510, 107 S Ct 2573.

24 The rigid requirements set forth in the Cal. Educ. Code are to
25 insure that high school students receive a well-balanced and thorough
26 course of study. If every teacher chose to teach the areas he or she
27 personally believed in and omitted those topics which are different from

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1 | beliefs they hold, a curriculum compiled by the state and the local
2 | district would be useless.

3 | In Bishop v. Aronov, 926 F.2d 1066 (11th Cir. 1991) cert. denied,
4 | granted sub. nom., Bishop v. Dalchamps, 116 L.Ed. 2d 238, 1991 U.S.
5 | Lexis 5831, 60 U.S.C.W. 3292 (1991), the Eleventh Circuit stated that
6 | at the university level, those responsible for preparing the curriculum
7 | for public education have the right to prohibit a professor from
8 | including his religious viewpoints as part of his science curriculum.
9 | The court in Bishop refrained from reaching the Establishment Clause
10 | questions that were raised. The court stated that "by its effort to
11 | avoid endorsement of [plaintiff's] religious ideas in its classrooms"
12 | the university's reprimand of plaintiff espousing his religious ideas
13 | in the classroom "does not create an establishment of religion." Id.
14 | at 1078. The Bishop court held "that the University's restrictions
15 | with respect to classroom conduct issued under its authority to control
16 | curriculum do not infringe the free speech or free exercise rights of
17 | Dr. Bishop." Id.

18 | It is well known that institutions of higher education allow their
19 | instructors more latitude in choosing their subject matter. University
20 | students are more mature and are therefore better able to separate
21 | opinion from fact and infuse their own personal beliefs into a given
22 | framework. However, the Eleventh Circuit has stated that even on the
23 | university level the officials responsible for formulating the
24 | curriculum may control what a professor teaches without violating the
25 | professor's first amendment right to free speech.

26 | ///

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28 | ///

1 B. PLAINTIFF'S CLAIM THAT EVOLUTION IS A RELIGION IS UNSUPPORTED

2 Plaintiff has stated that he will not teach evolution because it
3 is a religion and therefore in violation of the establishment clause of
4 the first amendment.

5 "It is clearly established in the case law, and perhaps also in
6 common sense, that evolution is not a religion and that teaching
7 evolution does not violate the Establishment clause." McLean v.
8 Arkansas Bd. of Ed., 529 F. Supp. 1255, 1274 (E.D. Ark. 1982). See
9 Epperson v. Arkansas, 393 U.S. 97, 21 L.Ed. 2d 228, 89 S. Ct. 266;
10 Willoughby v. Stever, No. 15574-75 (D.D.C. May 18, 1973); aff'd. D.C.
11 Cir. 1974), cert. denied, 420 U.S. 927, 95 S. Ct. 1124, 43 L.Ed. 2d 397
12 (1975); Wright v. Houston Indep. School Dist., 366 F. Supp. 1208 (S.D.
13 Tex. 1978), aff'd. 486 F.2d 137 (5th Cir. 1973), cert. denied, 417 U.S.
14 969, 94 S.Ct. 3173, 41 L.Ed. 2d 1140 (1974).

15 The Supreme Court has recognized that "the term 'religion' has
16 reference to one's view of his relation to his Creator, and to the
17 obligations they impose of reverence for his being and character, and
18 of obedience to his will." Davis v. Beason, 133 U.S. 333, 342, 10
19 S.Ct. 299, 33 L.Ed. 637, quoted in Wright at 1210, n. 5.

20 In Wright the court stated:

21 Plaintiff's case depends in large measure upon their
22 demonstrating a connection between "religion" as employed in
23 the first amendment, and defendant's approach to the subject
24 of evolution. The Court is convinced that the connection is
25 too tenuous a thread on which to base a first amendment
26 complaint.

27 Id. at 1210.

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1 C. THE CURRICULUM IN BIOLOGY IS NOT A VIOLATION OF THE
2 ESTABLISHMENT CLAUSE

3 In case at issue plaintiff states that following the curriculum
4 would be a violation of the establishment clause. In Edwards, the Court
5 stated that it has "been particularly vigilant in monitoring compliance
6 with the Establishment Clause in elementary and secondary schools."
7 Id. at 583-84. "Families entrust public schools with the education of
8 their children, but condition their trust on the understanding that the
9 classroom will not purposely be used to advance religious views that may
10 conflict with the private beliefs of the student and his or her family."
11 Id. at 584.

12 Since the evolutionist theory is not a religion, to require an
13 instructor to teach this theory is not a violation of the Establishment
14 Clause. Creationism is associated with "a particular interpretation of
15 the Book of Genesis by a particular religious group." Edperson v.
16 Arkansas, 393 U.S. 97, 103, 89 S. Ct. 266, 21 L.Ed. 2d 228 (1968).
17 "The ideas of [creationism] are not merely similar to the literal
18 interpretation of Genesis; they are identical and parallel to no other
19 story of creation." McLean v. Arkansas Bd. of Education, 529 F. Supp
20 1255, 1265 (E.D. Ark. 1982). "The idea of sudden creation from nothing,
21 or creation ex nihilo, is an inherently religious concept." Id. at
22 1266.

23 Evolution is a scientific theory based on the gathering and
24 studying of data, and modification on new data. It is an established
25 scientific theory which is used as the basis for many area of science.
26 As scientific methods advance and become more accurate, the scientific
27 community will revise the accepted theory to a more accurate
28 explanation of life's origins.

1 Plaintiff's assertions that the teaching of evolution would be a
2 violation of the Establishment Clause is unfounded.

3
4 D. THE SCHOOL DISTRICT HAS NOT VIOLATED PLAINTIFF'S RIGHT TO FREE
5 SPEECH

6 In Rankin v. McPherson, 483 U.S. 378, 388, 107 S. Ct. 2791, 97
7 L.Ed. 2d 315 (1987), the Supreme Court examined the extent of a public
8 employee's first amendment rights to free speech. In Rankin, the Court
9 used a balancing test to determine whether a public employee's speech
10 is protected under the first amendment. The test used is "a balance
11 between the interests of the employee, as a citizen, in commenting upon
12 matters of public concern and the interest of the state, an employer,
13 in promoting the efficiency of the public services it performs through
14 its employees." Id. at 384, quoting Pickering v. Board of Education,
15 391 U.S. 563, 88 S. Ct. 1731, 20 L.Ed. 811 (1968).

16 In the case at issue the school district as the employer has a
17 compelling interest to teach the students within the district the basic
18 materials needed to become contributing citizens. Additionally, as the
19 public employer, the school board does not want to infringe upon the
20 religious beliefs held by individual students and their families.
21 Because of the continuous controversy in the area of religion in
22 schools, plaintiff's statements about evolution and his outward bias
23 toward the creationist view and the christian religion, may be
24 identified as public concerns. While the school district is not
25 attempting to chill plaintiff's speech, it does have a strong interest
26 in maintaining its secular purpose of educating high school students.

27 ///

28 ///

1 Under the framework set forth in Rankin, the interests and concerns
2 of the school district overrule plaintiff's claimed right to free
3 speech.

4 "In public education, individual's right to free speech is not
5 absolute. It may be limited if exercise of that right materially
6 interferes with the rights of others." Tinker v. Des Moines
7 Independent Community School District, 393 U.S. 503, 513, 89 S.Ct. 733,
8 21 L.Ed.2d 731 (1969). "The Supreme Court has never held that a teacher
9 has a constitutional right to teach what he sees fit, not to pre-empt
10 parents' decisions regarding what courses their children should take."
11 Mercer v. Michigan State Bd. of Education, 379 F. Supp. 580, 586 (E.D.
12 Mich. 1974), aff'd mem., 419 U.S. 1081, 95 S. Ct. 673, 42 L.Ed. 2d 678
13 (1974).

14 The plaintiff's right to free speech must be balanced "against his
15 student's right to be free of religious influence or indoctrination in
16 the classroom." Roberts v. Madigan, 702 F. Supp. 1505 (D. Col. 1989),
17 aff'd 921 F.2d 1047 (10th Cir. 1990). See Board of Education, Island
18 Treas Union Free School District No. 26 et al. v. Pico, 457 U.S. 853,
19 102 S. Ct. 2799, 73 L.Ed. 2d 435 (1982). Here, the balance seems to
20 lie in the students favor. The high school students at Capistrano High
21 School have a right to be taught biology without the added comments and
22 religious biases of plaintiff. As shown in defendants motion papers
23 some students have already been effected by plaintiff's teachings.
24 Parents have complained of frustration with the differences between the
25 religious beliefs taught at home and the beliefs of the plaintiff.

26 Defendants have notified plaintiff that he is not to engage in
27 discourse with students regarding his personal religious beliefs. If
28 a student approaches him with a question about religion, plaintiff is

1 | correctly, instructed to refer the student to his or her parents or
2 | clergy. This instruction is not a violation of the plaintiff's first
3 | amendment right to free speech, but rather a directive to insure that
4 | religious dogma is not taught in the public school.

5 | Pelozo seeks permission of this Court to speak privately to
6 | students on campus during lunch hours and class breaks so that he may
7 | preach to them his creativism views. He looks upon this as a First
8 | Amendment right. I don't see this as an instance of students clamoring
9 | to him as a Pied Piper to seek the blessings of his pronouncements.
10 | Rather it appears that he desires to do a job or proselytizing pupils
11 | in his classroom to swell the numbers of those who will follow him to
12 | his lecture during lunch hours or class breaks so he may expound his
13 | views to them out of the classroom and thus avoid the accusation of
14 | disseminating them while off the school payroll.

15 |
16 | DEFERENCE

17 | SCHOOL DISTRICT'S PROHIBITION OF PLAINTIFF DISCUSSING CHRISTIAN BELIEFS
18 | OUTSIDE OF THE CLASSROOM IS NOT A VIOLATION OF HIS CONSTITUTIONAL RIGHTS

19 | States and School Boards are generally afforded considerable
20 | discretion in operating public schools. Dist. No. 403 v. Frasier, 478
21 | U.S. 675, 683 (1986). Yet their discretion must be exercised in a
22 | manner that comports with the transcendent imperatives of the First
23 | Amendment. Board of Education v. Pico, 457 U.S. 853, 864 (1982). See
24 | also Bethel School Dist. No. 403 v. Frasier, 106 S.Ct. 3159 (1986);
25 | Jordan v. Gardner, et. al, Nos. 90-35307, 90-35552 (9th Cir. Jan. 10,
26 | 1992); 47 Ohio State Law Journal 354 (1986).

27 | Under the California Code an "instructional day" includes the hours
28 | before and after school, lunch and class breaks. 5 Cal. Code of

1 Regulations § 5552; Cal. Educ. Code § 44807. See Johnson v. Huntington
2 Beach Union High School District, 68 Cal. App. 3d 1 (1977). During
3 these times a teacher is not permitted to discuss religious views with
4 students. In the Equal Access Act, the United States Congress has
5 determined that even though students may meet among themselves, teacher
6 may not become involved in the student discussions. 20 U.S.C.
7 § 4071(c). See Westlake Community Schools v. Mergens, 495 U.S. ____
8 (1990). I follow this precedent to conclude against plaintiff's right
9 to go through the back door when the front door is closed to him.

10 The district is correct in prohibiting plaintiff from having any
11 religious discussions during the "hours of instruction."

12
13 II. PLAINTIFF CLAIMS DUE PROCESS VIOLATIONS VIA THE FIFTH AND THE
14 FOURTEENTH AMENDMENTS

15 A. No Violation of any Property Interest

16 A complainant may allege that he has been deprived of a property
17 right if he can prove that his legal rights or status have been removed
18 or significantly altered. Paul v. Davis, 424 U.S. 693 (1976). In the
19 case at issue plaintiff has not lost a property right. He has received
20 reprimands from his superiors but he has not lost his job. Plaintiff
21 does not have a claim as to a loss of property rights.

22
23 B. Plaintiff has not Been Deprived of any Liberty Interest:

24 In Board of Regents v. Roth, 408 U.S. 564 (1972), the Court stated
25 that if the state makes statements that seriously damage a persons's
26 standing and forecloses his opportunity to find other employment,
27 adequate notice and a hearing may be necessary to clear one's name.
28 However, statements which affect one's reputation or tortious defamation

1 do not deprive one of a liberty interest. Hayes v. Phoenix-Talent
2 School Dist., 893 F.2d 235 (9th Cir. 1990).

3 As defendants point out, the statements made to plaintiff and the
4 editorials in the paper were merely comments by various people within
5 the school and District who disagree with plaintiff's teaching methods.
6 Plaintiff has not established a deprivation of his liberty interest.

7
8 **III. INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED**

9 Plaintiff has named a series of individual defendants who have
10 made statements in opposition to plaintiff's teaching methods. These
11 comments do not infringe on plaintiff's right to teach. In fact the
12 individuals are only exercising their first amendment right to free
13 speech. The reprimands received by plaintiff do not violate his
14 constitutional rights.

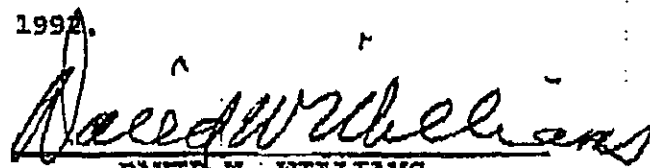
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16 **IV. REMAINING CLAIMS TO BE DISMISSED**

17 Once plaintiff's constitutional claims are dismissed, the remaining
18 state causes of action should be dismissed for lack of jurisdiction.

19
20 **CONCLUSION**

21 Based on the discussion above, plaintiff's constitutional claims
22 via 42 U.S.C. § 1983 and 42 U.S.C. § 1985 are dismissed on the grounds
23 that plaintiff has not stated a claim for which relief can be granted.
24 Defendants' motion is be GRANTED.

25 DATED: January 17, 1992.

26
27 

28 **DAVID W. WILLIAMS**
Senior, U. S. District Judge