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James Corbett

A teacher's description of creationism as "superstitious nonsense" was ruled to violate the Establishment Clause of the First Amendment by a federal judge in a decision in *C. F. et al. v. Capistrano Unified School District et al.*, issued on May 1, 2009. James Corbett, a twenty-year teacher at Capistrano Valley High School in Mission Viejo, California, was accused by a student, Chad Farnan, of "repeatedly promoting hostility toward Christians in class and advocating 'irreligion over religion' in violation of the First Amendment's establishment clause," [according](#) [4] to the *Orange County Register* (May 1, 2009). "Farnan's lawsuit had cited more than 20 inflammatory statements attributed to Corbett, including 'Conservatives don't want women to avoid pregnancies — that's interfering with God's work' and 'When you pray for divine intervention, you're hoping that the spaghetti monster will help you get what you want.'"

In his decision in the case, however, Judge James Selna of the United States District Court, Central District Court of California, identified only one of the statements as constitutionally impermissible, [writing](#) [5] (PDF):

The Court turns first to Corbett's statement regarding John Peloza ... This statement presents the closest question for the Court in assessing secular purpose. Peloza apparently brought

suit against Corbett because Corbett was the advisor to a student newspaper which ran an article suggesting that Pelozo was teaching religion rather than science in his classroom. ... Corbett explained to his class that Pelozo, a teacher, "was not telling the kids [Pelozo's students] the scientific truth about evolution." ... Corbett also told his students that, in response to a request to give Pelozo space in the newspaper to present his point of view, Corbett stated, "I will not leave John Pelozo alone to propagandize kids with this religious, superstitious nonsense." ... One could argue that Corbett meant that Pelozo should not be presenting his religious ideas to students or that Pelozo was presenting faulty science to the students. But there is more to the statement: Corbett states an unequivocal belief that creationism is "superstitious nonsense." The Court cannot discern a legitimate secular purpose in this statement, even when considered in context. The statement therefore constitutes improper disapproval of religion in violation of the Establishment Clause.

Selna ended his decision by writing, "The Supreme Court's comments with regard to governmental promotion of religion apply with equal force where the government disapproves of religion ... The ruling today protects Farnan, but also protects teachers like Corbett in carrying out their teaching duties."

Corbett was evidently describing Pelozo's lawsuit against the Capistrano Unified School District, arguing that the district and its trustees and employees were violating his constitutional rights by "pressuring and requiring him to teach evolutionism, a religious belief system, as a valid scientific theory"; Corbett was among the named defendants. The lawsuit failed in the United States District Court, Central District Court of California, and then in the Ninth Circuit Court of Appeals, which specifically [endorsed](#) [6] the district court's statement, "Since the evolutionist theory is not a religion, to require an instructor to teach this theory is not a violation of the Establishment Clause. ... Evolution is a scientific theory based on the gathering and studying of data, and modification of new data. It is an established scientific theory which is used as the basis for many areas of science."

Opinion is predictably divided about the verdict. Douglas Laycock, a law professor at the University of Michigan, [told](#) [7] the *Orange County Register* (May 5, 2009), "I'm not sure [Judge Selna] drew the line in the right place ... The line can be fine sometimes. But here we have a teacher who wasn't interested in finding the line, and the judge manages to explain away all but one of the teacher's comments," while Rachel Moran, a law professor at the University of California, Irvine, said, "What it means is that if you're a teacher, your liability can turn on a single sentence ... Teachers can avoid this by not talking about these issues at all, but that has a chilling effect," and John Eastman, a law professor at Chapman University, said, "School districts are routinely sued for making one statement that favors a religion ... The rules apply both ways here."

Corbett himself [told](#) [8] the alternative *OC Weekly* (May 6, 2009), "I expected to win. I expected the whole case would be thrown out." But, the newspaper added, "after rereading it and thinking about it, he says he's come to different conclusions with regard to the judgments in his favor. 'I think it's a victory for the right of teachers to provoke students into thinking,' he says." He expressed concern, however, about the possible chilling effect of the verdict, commenting, "You'd almost have to survey the class to find out what their beliefs are so you wouldn't insult anyone." Corbett hopes to appeal the decision. In the meantime, fees and damages have yet to be determined; the *Orange County Register* (May 5, 2009) reported, "Farnan plans to ask for attorneys' fees, nominal damages and a court injunction prohibiting Corbett from violating the establishment clause again."

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