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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 **CHAD FARNAN**, a minor, by and through
17 his parents **BILL FARNAN** and **TERESA**
18 **FARNAN**;

19 Plaintiffs,

20 vs.

21 **CAPISTRANO UNIFIED SCHOOL**
22 **DISTRICT; DR. JAMES CORBETT**,
23 individually and in his official capacity as an
24 employee of Capistrano Unified School
25 District; and **DOES 1 through 20** inclusive,

26 Defendants.

Case No.: SACV07-1434 JVS (ANX)

**PLAINTIFFS' REPLY TO UNION
INTERVENORS' OPPOSITION TO
PLAINTIFFS' SUPPLEMENTAL
BRIEF ON REMAINING ISSUES**

Date: July 13, 2009
Time: 1:30 p.m.
Dept: 10C
Judge: James V. Selna

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1 ARGUMENT

2 **I. PLAINTIFFS' VICTORY IS NOT DE MINIMUS, DESPITE**
3 **INTERVENORS' INFLAMMATORY ARGUMENTS THAT ARE DEVOID**
4 **OF ANY LEGAL AUTHORITY**

5 The Intervenors, similar to Defendants, assert a plethora of arguments amounting
6 to one simple statement: "This case was wrongly decided." While Plaintiffs can
7 appreciate that Intervenors do not agree with this Court's May 1, 2009, ruling, their
8 arguments are at once disjointed, without support, and unnecessarily inflammatory.
9 The Intervenors devote two pages to addressing Plaintiffs' "deceptive allegations" and
10 "de minimus victory." Those arguments, however, amount to nothing more than a last
11 ditch effort to secure a different outcome.

12 Intervenors first explain how they feel the Court's ruling will effect public
13 education, and describe Plaintiffs' successful lawsuit as "frivolous." (Intervenors'
14 Opposition, p. 1, lns. 14-21.) Intervenors state that a "Plaintiff deprived of that
15 exploration and education cannot be said to have prevailed." (Intervenors' Opposition,
16 p. 1, lns. 20-21.) This argument is beyond the pale of comprehension and not supported
17 by any rational legal analysis. Prior to this lawsuit, Plaintiff Chad Farnan was devoid of
18 rights that are constitutionally guaranteed. The applicable legal authority, which
19 Intervenors fail to cite completely, defines "prevailing party" and gives a standard that
20 is to be applied. (See Plaintiffs' Reply to Defendants' Opposition to Plaintiffs'
21 Supplemental Briefing Pursuant to Order Dated June 1, 2009, filed concurrently
22 herewith.) While Intervenors may dream of an America that is based on their
23 understanding of a "secular environment" in education, America was in fact founded
24 upon constitutional principles that still exist to this day and which this lawsuit sought to
25 protect. Even if this Court had ruled against Plaintiffs, Intervenors arguments are
26 without merit, unnecessarily inflammatory, and completely without legal authority.

27 Intervenors then state that Plaintiffs have not "prevailed on [their] sole legal
28 claim." (Intervenors' Opposition, p. 1, ln. 22.) They base this assertion on the inane

1 argument that Dr. Corbett's statement found to violate the Establishment Clause was
2 not found in the examples of statements included in the initial complaint. This
3 argument defies common sense and legal authority. There is no requirement that the
4 Complaint state every fact upon which a lawsuit is based. Intervenors then cite a case
5 with no application or analysis that is completely inapposite. (Intervenors' Opposition,
6 p. 2, lns. 4-7.) This case involved one "claim," an Establishment Clause violation, on
7 which Plaintiffs were successful. The simple fact that the statement was not located
8 within the confines of a Complaint, which requires only notice pleading, is not
9 indicative of anything legally or otherwise, other than the fact that it was not stated on
10 the single day of comments put into the Complaint – October 19, 2007.

11 Finally, Intervenors' assert that Plaintiffs' deceptive allegations, i.e., the
12 statements Plaintiffs "wrongly claimed violated the Establishment Clause," render
13 Plaintiffs unable to obtain attorneys' fees as a prevailing party." (Intervenors'
14 Opposition, p. 2, lns. 14-18.) Once again, Intervenors do not cite any legal authority for
15 such a proposition. They do not refute Plaintiffs' cases, cited in Plaintiffs'
16 supplemental briefing applying the standard that actually applies here, nor do they
17 attempt to at least address the arguments included therein. Instead, they make
18 inflammatory statements about "deceptive allegations" that are based neither in law or
19 fact. (Intervenors' Opposition, p. 1, lns. 1-4.) It is common in litigation and advocacy
20 to provide the Court with all plausible arguments in attempting to secure a victory on a
21 given claim, and for the Court to provide a ruling as to the application of law. Alleging
22 a statement indicating "religion was invented when the first con man met the first fool"
23 is hostile towards religion is certainly plausible. Furthermore, asking the Court to
24 consider each of Dr. Corbett's statements regarding religion is more appropriately and
25 professionally entitled "advocacy," not "deception."

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1 **II. PLAINTIFFS' REQUESTED RELIEF IS BOTH WARRANTED AND**
2 **WORKABLE, DOES NOT HARM DEFENDANTS AND INTERVENORS,**
3 **AND IS IN THE PUBLIC INTEREST**

4 While injunctions are not issued "as of course," they are warranted where, as
5 here, there is "irreparable injury and the inadequacy of legal remedies." *Weinberger v.*
6 *Romero-Barcelo*, 456 U.S. 305, 311-12 (1982); *see also N. Cheyenne Tribe v. Norton*,
7 503 F.3d 836, 843 (9th Cir. 2007). It is a clearly established principle in the Ninth
8 Circuit that ". . . **constitutional violations cannot be adequately remedied through**
9 **damages and** therefore generally **constitute irreparable harm.**" *Nelson v. National*
10 *Aeronautics and Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008) ("*Nelson*") (emphasis
11 added) (citing *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir.1997)); *see*
12 *also Associated General Contractors v. Coalition For Economic Equity*, 950 F.2d 1401,
13 1412 (9th Cir.1991); *Goldie's Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th
14 Cir.1984). In the present matter, the Court's finding that there was a constitutional
15 violation evidences the fact that the harm at issue here is of the irreparable type, which
16 cannot be relieved through legal remedies and specifically warranting an injunction.

17 Intervenor, without citing any legal precedent or any legal standard make the
18 claim that equitable relief is not necessary here because nominal damages and
19 Dr. Corbett's possible "devastating" feelings regarding this matter are somehow enough
20 of a "remedy." This is preposterous. The fix for constitutional violations is equitable
21 relief that ensures such irreparable harm does not happen again. Courts should not, and
22 do not, leave the remedy up to the emotions of the violator.

23 Further, "[o]nce a right and a violation have been shown, the scope of a district
24 court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are
25 inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402
26 U.S. 1, 15 (1971) ("*Swann*"). When a violation is found, the scope of the constitutional
27 violation dictates the scope of the injunction. *Id.* at 15-16. Plaintiffs' desired injunction
28 is workable because Plaintiffs are only seeking an injunction as broad as the violation in

1 this matter, using the plain requirements of First Amendment law. Specifically,
2 Plaintiffs are seeking an injunction that requires Dr. Corbett to refrain from conveying
3 his disapproval of religion while acting as a public school employee – the very conduct
4 he has been found to have carried out in violation of the Constitution. This warranted
5 injunction is in keeping with Supreme Court precedent, which walks the same line
6 adhered to by this Court, in limiting speech disapproving of religion while allowing the
7 proper discussion of religion as an educational topic.

8 Intervenor also, again with no reference to any legal precedent, assert that the
9 harm of an injunction to Defendants and Intervenor outweighs the harm Plaintiffs
10 would suffer if the injunction did not issue. Despite Intervenor conjecture, how others
11 may behave as a result of the requested injunction being granted is not one of the legal
12 criteria for this Court’s determination – it is the direct harm to the parties. *N. Cheyenne*
13 *Tribe*, 503 F.3d at 843. What is at issue is prohibiting Dr. Corbett from using his bully
14 pulpit to express his disapproval of religion while acting as an employee of the school
15 district. Because that violative conduct has been shown in the past, the fact it can
16 potentially happen to Chad Farnan in the future is the great harm that lies in Plaintiffs
17 not obtaining their requested injunction. *See LGS Architects, Inc. v. Concordia Homes*
18 *of Nevada*, 434 F.3d 1150, 1153-54 (9th Cir. 2006) (relying on *Jacobus v. Alaska*, 338
19 F.3d 1095, 1103 (9th Cir.2003) (finding that even though a statute that had been passed
20 by the legislature had since been repealed, the fact it could be reenacted in the future
21 was a hardship to the plaintiff)).

22 Finally, Intervenor essentially make the claim that it is not in the public’s best
23 interest to mandate that Dr. Corbett comply with the First Amendment’s Establishment
24 Clause and refrain from conveying his disapproval of religion while acting as a public
25 school teacher. Further, how Intervenor can argue that an injunction ordering
26 Dr. Corbett to comply with the Constitution would be unconstitutional is not entirely
27 clear. The requested injunction will serve the public interest by requiring Dr. Corbett to
28 operate within the confines of the First Amendment. Protecting public school children

1 should be the benchmark in this case. This court has jurisdiction to fashion equitable
2 relief that will further constitutional protections in public schools. *See Lemon v.*
3 *Kurtzman*, 411 U.S. 192, 200 (1973) (“[I]n constitutional adjudication as elsewhere,
4 equitable remedies are a special blend of what is necessary, what is fair, and what is
5 workable.”). For all of these reasons, Plaintiffs respectfully request that this Court grant
6 them injunctive relief.

7 **III. INTERVENORS’ STATEMENT THAT THIS COURT’S RULING**
8 **SHOULD NOT BE THE BASIS OF A FINAL JUDGMENT IN THIS CASE**
9 **IS PROCEDURALLY INFIRM AND LACKS PLAUSIBILITY**

10 If Intervenors’ would like to file a motion to reconsider this case, they may do so
11 if they feel an argument can be articulated that satisfies the standard for such a motion.
12 A standard Intervenors have not even attempted to satisfy here. Asking this Court to
13 “revisit [its] finding” and stating that the “Court has already recognized it to be both
14 difficult and worthy of such review” is both procedurally and substantively
15 preposterous. (Intervenors’ Opposition, p. 6, lns. 24-26.) Additionally, at no point has
16 this Court indicated that its lengthy and well-articulated ruling needs to be “reviewed.”
17 Once again, the entire argument is a statement of Intervenors’ dislike of this Court’s
18 ruling. Throughout the entirety of the section, Intervenors fail to cite either a case, local
19 rule, or statute that supports the substance of their argument, which amounts to nothing
20 more than a statement of beliefs and unsubstantiated assertions. Procedurally,
21 Intervenors’ should file a motion to reconsider if they would like this Court to take such
22 an action, instead of improperly inserting it in a brief that was intended to address solely
23 the issues set forth in the Joint Proposal.

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1 **IV. AS THE PREVAILING PARTY, PLAINTIFFS' MOTION FOR**
2 **ATTORNEYS' FEES SHOULD BE CONSIDERED BY THIS COURT**
3 **FOLLOWING ENTRY OF FINAL JUDGMENT**

4 In any action to enforce federal civil rights laws, including 42 U.S.C. § 1983, 42
5 U.S.C. § 1988 allows courts to award “the prevailing party, other than the United States,
6 a reasonable attorney’s fee as part of the costs.” In order to qualify as a “prevailing
7 party,” a plaintiff must obtain at least some relief on the merits of its claim that
8 materially alters the legal relationship between the parties by modifying defendant's
9 behavior in a way that directly benefits plaintiff. *See Martinez v. Wilson*, 32 F.3d 1415,
10 1422 (9th Cir. 1994) (citing *Farrar v. Hobby, Jr.*, 506 U.S. 103, 111-12 (1992)
11 (“*Farrar*”).

12 Plaintiffs are clearly the prevailing parties in this case. Plaintiffs brought this
13 action under 42 U.S.C. § 1983 and have sought a declaratory judgment, nominal
14 damages and a permanent injunction against Defendants. Any type of relief to which
15 Plaintiffs are entitled will “materially alter[] the legal relationship” between Plaintiffs
16 and Defendants “by modifying [Dr. Corbett’s] behavior” for the benefit of Plaintiffs.
17 *Farrar*, 506 U.S. at 111-12 (“a judgment for damages in any amount, whether
18 compensatory or nominal, modifies the defendant’s behavior for the plaintiffs’ benefit
19 by forcing the defendant to pay an amount of money he otherwise would not pay.”).
20 Therefore, Plaintiffs are the prevailing parties in this matter.

21 Intervenors, in their one and only attempt to apply this standard, argue that
22 Plaintiffs are not the prevailing parties in this litigation because “the legal relationship
23 between Dr. Corbett and Plaintiffs [has not] been altered as a result of this litigation.”
24 (Intervenors’ Opposition, p. 2, lns. 7-9.) Intervenors, however, fail to support this
25 contention with legal authority. Instead, Intervenors assert that because Plaintiffs’
26 dropped Dr. Corbett’s AP European History course the legal relationship between
27 Plaintiffs and Defendants will not be altered upon this Court’s entry of final judgment.
28 (Intervenors’ Opposition, p. 2, lns. 7-9.) This fact is irrelevant to the issue, however,

1 and Intervenor fail to even provide analysis as to why under the applicable precedent it
2 is relevant. Additionally, Intervenor fail to provide an explanation based on simple
3 common sense. An award of nominal damages alone would be sufficient to alter the
4 parties' legal relationship. *Farrar*, 506 U.S. at 111-12 ("a judgment for damages in any
5 amount, whether compensatory or nominal, modifies the defendant's behavior for the
6 plaintiffs' benefit by forcing the defendant to pay an amount of money he otherwise
7 would not pay.").

8 Intervenor also contend that "Dr. Corbett has not altered his behavior as a result
9 of the Court's ruling" and thus the legal relationship between the parties has not been
10 "altered as a result of this litigation." (Intervenor's Opposition, p. 2, lns. 7-11.) While
11 this statement certainly is significant in that it supports Plaintiffs' request for a
12 permanent injunction, Intervenor fail to recognize that this Court has not yet entered a
13 final judgment or made a determination as to the relief to which Plaintiffs' are entitled.
14 Furthermore, as stated above and in Plaintiffs' Reply to Defendants' Opposition filed
15 concurrently herewith, a change in the legal relationship will result from both nominal
16 damages and declaratory relief. Intervenor's failure to cite any legal authority for this
17 proposition renders the argument baseless.

18 Intervenor then assert two arguments that lack credibility or support.
19 Intervenor first argue that Plaintiffs are not the prevailing party in this litigation
20 because "[t]he loss of candor between teachers and students, the chilling impact upon
21 religious discussions in public education and the encouragement of frivolous pupil-
22 driven litigation that [is] likely to result should the court makes its ruling for summary
23 judgment the basis of a final judgment, deprives students, including Plaintiff, of a
24 secular environment to explore and consider the impact of religions and religious
25 beliefs on the world and their own lives." (Intervenor's Opposition, p. 1, lns. 14-21.)
26 Thus, Defendants assert that "[a] Plaintiff deprived of that exploration and education
27 cannot be said to have prevailed." (Intervenor's Opposition, p. 1, lns. 20-21.) The
28 Union Intervenor's concern is underwhelming and amounts to a further argument that

1 this Court wrongly decided this case. Their failure to apply the appropriate standard for
2 determining whether Plaintiffs are a “prevailing party” is more significant than the
3 legally unsubstantiated and frivolous arguments included in their Opposition. The
4 Intervenors’ beliefs as to the impact of this Court’s ruling are immaterial to the issue of
5 whether Plaintiffs are a prevailing party in this litigation. Thus, this argument is
6 completely without merit.

7 Finally, Intervenors argue that Plaintiffs are not the prevailing parties because the
8 “Court found that all the statements of Dr. Corbett that Plaintiff[s] alleged in the First
9 Amended Complaint passed Constitutional muster.” (Intervenors’ Opposition, p. 2, lns.
10 4-7.) Thus, the Union Intervenors argue that that “Plaintiffs cannot be said to have
11 prevailed on the merits of even one of his claims” as the statement upon which
12 Plaintiffs’ ultimately prevailed was not specifically set forth in Plaintiffs First Amended
13 Complaint. (Intervenors’ Opposition, p. 2, lns. 6-7)

14 Intervenors, however, fail to recognize the purpose of the complaint in Federal
15 court is to provide defendant fair notice of the general nature and type of the claim or
16 defense asserted. *Skaff v. Meridien North America Beverly Hills, LLC*, 506 F.3d 832,
17 842 (9th Cir. 2007) (“the purpose of a complaint under Rule 8 [is] to give the defendant
18 fair notice of the factual basis of the claim and of the basis for the court's jurisdiction.
19 ‘Specific facts are not necessary....’”) (quoting *Erickson v. Pardus*, 551 U.S. 89 (2007)).
20 Plaintiffs need not have identified every statement made by Dr. Corbett that they
21 believed violated the Establishment clause at the outset of this case. Thus, Union
22 Intervenors’ argument that “Plaintiffs cannot be said to have prevailed on the merits of
23 even one of his claims” is disingenuous at best. (Intervenors’ Opposition, p.2, lns. 6-7.)

24 The Union Intervenors’ final argument in opposition to Plaintiffs’ Supplemental
25 Brief is that Plaintiffs are not entitled to attorneys’ fees because Plaintiffs “have
26 prevailed in only a technical and de minimis way”. (Intervenors’ Opposition, p. 2, lns.
27 12-14, 18-19.) Plaintiffs fully addressed this argument in Plaintiffs’ Reply to
28 Defendants’ Opposition filed concurrently herewith, including the fact that *Farrar* does

1 not stand for this proposition. Notably, however, Intervenors' again fail to cite legal
2 authority to actually support this contention. Plaintiffs, contrary to Union Intervenor'
3 assertions, are the prevailing party in this matter and as such are entitled to an award of
4 their attorneys' fees.

5 **CONCLUSION**

6 For the foregoing reasons, Intervenors' requests as reflected in their Opposition to
7 Plaintiffs' Supplemental Briefing to Order dated June 1, 2009, should be denied.

8 DATED: June 22, 2009

ADVOCATES FOR FAITH & FREEDOM

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