

1 MICHAEL D. HERSH - [State Bar No.144095]

2 mhersh@cta.org

3 CALIFORNIA TEACHERS ASSOCIATION - LEGAL DEPARTMENT

4 11745 East Telegraph Road

5 Santa Fe Springs, California 90670

6 Telephone: 562.478.1410

7 Fax: 562.478.1434

FILED
 CLERK U.S. DISTRICT COURT
 21
 MAR 21 2008
 CENTRAL DISTRICT OF CALIFORNIA
 BY *SV* DEPUTY

8 Attorneys for Union Intervenors CALIFORNIA TEACHERS ASSOCIATION;
 9 and CAPISTRANO UNIFIED EDUCATION ASSOCIATION

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

12 CHAD FARNAN, a minor, by and
 13 through his BILL FARNAN and
 14 TERESA FARNAN,

15 Plaintiff,

16 v.

17 CAPISTRANO UNIFIED SCHOOL
 18 DISTRICT; DR. JAMES CORBETT,
 19 et al.,

20 Defendants.

21 CALIFORNIA TEACHERS
 22 ASSOCIATION/NEA; and
 23 CAPISTRANO UNIFIED
 EDUCATION ASSOCIATION,

24 Union Intervenors for
 25 Defendants.

26 Case No. : SACV-07-1434 JVS (ANx)

27 BEFORE THE HONORABLE
 28 JAMES V. SELNA – COURTROOM 10C

UNION INTERVENORS' ANSWER
 TO FIRST AMENDED
 COMPLAINT (PROPOSED)

3-17p
 RECEIVED
 BUT NOT FILED
 MAR 21 2008
 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION
 DEPUTY

1 **JURISDICTION**

2 1. Responding to paragraph 1 of the First Amended Complaint (“FAC”),
3 Intervenors California Teachers Association (“CTA”) and Capistrano Unified
4 Education Association (“CUEA”), together referred to herein as “Union
5 Intervenors,” admit that the FAC raises federal claims under the First and
6 Fourteenth Amendments to the United States Constitution.

7 2. Responding to paragraph 2 of the FAC, Union Intervenors admit that
8 the Court has original jurisdiction over the raised federal law claims by operation
9 of 28 U.S.C. §§ 1331 and 1343.

10 3. Responding to paragraph 3 of the FAC, Union Intervenors admit that
11 this Court has authority to issue injunctive relief under 28 U.S.C. § 1343, or costs
12 and attorney’s fees under 42 U.S.C. § 1988(b).

13
14 **VENUE**

15 4. Responding to paragraph 4 of the FAC, Union Intervenors admit that
16 venue is proper in the United States District Court for the Central District of
17 California, Southern Division because a substantial part of the alleged events
18 giving rise to the claims occurred within the Central District.

19 5. Responding to paragraph 5 of the FAC, Union Intervenors admit all
20 factual allegations therein.

21 6. Responding to paragraph 6 of the FAC, Union Intervenors admit all
22 factual allegations therein.

23
24 **IDENTIFICATION OF THE DEFENDANTS**

25 7. Responding to paragraph 7 of the FAC, Union Intervenors admit all
26 factual allegations therein.

27 8. Responding to paragraph 8 of the FAC, Union Intervenors admit all
28 factual allegations therein.

1 without sufficient knowledge or information to form a belief as to the truth of the
2 allegation, and on that basis deny that allegation.

3 17. Responding to paragraph 17 of the FAC, Union Intervenors are
4 without sufficient knowledge or information to form a belief as to the truth of the
5 allegation, and on that basis deny that allegation.

6 18. Responding to paragraph 18 of the FAC, Union Intervenors are
7 without sufficient knowledge or information to form a belief as to the truth of the
8 allegation, and on that basis deny that allegation.

9
10 **ALLEGATIONS OF LAW**

11 19. Responding to paragraph 19 of the FAC, Union Intervenors are
12 without sufficient knowledge or information to form a belief as to the truth of the
13 allegation, and on that basis deny that allegation.

14 20. Responding to paragraph 20 of the FAC, Union Intervenors are
15 without sufficient knowledge or information to form a belief as to the truth of the
16 allegation, and on that basis deny that allegation.

17 21. Responding to paragraph 21 of the FAC, Union Intervenors are
18 without sufficient knowledge or information to form a belief as to the truth of the
19 allegation, and on that basis deny that allegation.

20
21 **CLAIMS FOR RELIEF**

22 21. Responding to paragraph 21 (apparently an inadvertent
23 misnumbering) re-allege and incorporate herein by reference the responses to
24 plaintiff's allegations set forth above.

25 22. Responding to paragraph 22, Union Intervenors deny that allegation.

26 23. Responding to paragraph 23, Union Intervenors deny that allegation.

27 24. Responding to paragraph 24, Union Intervenors deny that allegation.

28 25. Responding to paragraph 25, Union Intervenors deny that allegation.

AFFIRMATIVE DEFENSES

1
2 1. As a first affirmative defense, Union Intervenors assert that the
3 factual allegations in the FAC fail to state a claim of the Establishment Clause of
4 the First Amendment because the alleged statements of Defendant Corbett do not
5 taken apart or as pattern of such statements, plausibly favor “irreligion” over
6 “religion” nor any particular religious group over another.

7 2. As a second affirmative defense, Union Intervenors assert that the
8 relief sought by plaintiff would violate the First Amendment expressive rights and
9 inalienable free speech rights pursuant Article I, section 2 of the California
10 Constitution of Defendants and Union Intervenors, as well as those of students,
11 California agencies and officials responsible for setting teacher standards and
12 curricula, and the public at large.

13 3. As a third affirmative defense, Union Intervenors assert that the relief
14 sought by Plaintiff would violate the Establishment Clause of the First
15 Amendment by equating religious beliefs and practices that are not based upon
16 established historical, social and scientific facts with curricula and teaching
17 material based upon established historical, social and scientific facts.

18 4. As a fourth affirmative defense, Union Intervenors assert that the
19 relief sought by plaintiff would violate Article IX, section 1 of the California
20 Constitution which states that, “A general diffusion of knowledge and intelligence
21 being essential to the preservation of the rights and liberties of the people, the
22 Legislature shall encourage by all suitable means the promotion of intellectual,
23 scientific, moral and agricultural improvement.”

24 5. As a fifth affirmative defense, Union Intervenors assert that the relief
25 sought by plaintiff would violate Article IX, section 8 of the California
26 Constitution which states in relevant part, “nor shall any sectarian or
27 denominational doctrine be taught, or instruction thereon be permitted, directly or
28 indirectly in any of the common schools of this State.”

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the
4 age of 18 years and not a party to the within action; my business address is 11745 East
Telegraph Road, Santa Fe Springs, California 90670.

5 On **March 20, 2008**, I served the foregoing document described as **UNION**
6 **INTERVENORS' ANSWER TO FIRST AMENDED COMPLAINT (PROPOSED)**, on the
interested parties in this action by placing

7 the original a true copy thereof

8 enclosed in a sealed envelope addressed as follows:

9 **Attorney for Plaintiff**
10 **Robert Tyler, Esq.**
11 **Jennifer Monk, Esq.**
12 **Advocates for Faith & Freedom**
13 **24910 Las Brisas Road -- Suite 110**
14 **Murrieta, California 92562**

Attorney for Defendants
15 **Daniel Spradlin, Esq.**
16 **Woodruff, Spradlin & Smart, A PLC**
17 **555 Anton Boulevard -- Suite 1200**
18 **Costa Mesa, California 92626**

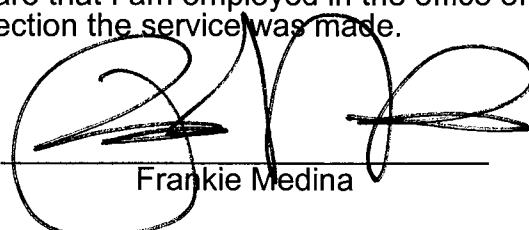
13 (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and
14 processing correspondence for mailing. Under that practice it would be deposited
15 with U.S. postal service on that same day with postage thereon fully prepaid at
16 Santa Fe Springs, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or
postage meter date is more than one day after date of deposit for mailing in
affidavit.

17 (By Fax) I transmitted said document(s) to the fax telephone number(s) listed
18 on the attached service list.

19 (By Personal Service) I caused such envelope to be delivered by hand to the offices
20 of the addressee.

21 (State Court) I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct.

23 (Federal Court) I declare that I am employed in the office of a member of the bar of
24 this court at whose direction the service was made.

25 
26 Frankie Medina