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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 California Parents for the
Equalization of Educational Materials,
12
13 Plaintiff,

14 v.

15 Kenneth Noonan, Ruth Bloom, Alan
Bersin, Yvonne Chan, Donald G.
16 Fisher, Ruth E. Green, Joe Nuñez,
Johnathan Williams, and David Lopez,
17 all in their official capacities as
Members of the California State Board
of Education; and Tom Adams, in his
18 official capacity as Director of the
Curriculum Frameworks and
19 Instructional Resources Division and
Executive Director of the Curriculum
20 Commission (of the California State
Department of Education),
21

22 Defendants.
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Case No.: 2:06-CV-00532-FCD-KJM

**SECOND AMENDED
COMPLAINT:**

- (1) Violation of the Fourteenth Amendment to the U.S. Constitution (Equal Protection Clause; 42 U.S.C. § 1983);
- (2) Violation of the First Amendment to the U.S. Constitution (Establishment Clause; 42 U.S.C. § 1983); and
- (3) Violation of the First Amendment to the U.S. Constitution (Free Speech and Association Clauses; 42 U.S.C. § 1983).

1 Plaintiff, California Parents for the Equalization of Educational
2 Materials (“Plaintiff”) files this Complaint against individual members of the
3 California State Board of Education and officials of the California
4 Department of Education (in their official capacities, and against their official
5 capacity successors) (collectively “Defendants”), for itself and on behalf of its
6 members who are parents (the “Parents”) who have children currently
7 attending public schools in the State of California in the first through sixth
8 grades (the “Students”) and who will be using the textbooks adopted by
9 Defendants. Plaintiff alleges based on personal knowledge as to its own
10 activities and on information and belief as to the activities of others, as
11 follows:

12 I. NATURE OF THE CASE

13 1.1. This case challenges the derogatory and unequal treatment of the
14 Hindu religion in social sciences textbooks used in the sixth grade in the
15 California public education system.

16 1.2. Plaintiff challenges the recent adoption of certain suggested edits
17 and rejection of other edits by Defendants in their capacities as members of
18 the California State Board of Education (“SBE”) and officials of the California
19 Department of Education (“CDE”). Plaintiff challenges Defendants’ refusal to
20 revise the textbooks to remove the offensive and derogatory references to the
21 Hindu religion. Plaintiff challenges the substance of the final edits as well as
22 the (disparate) procedures followed by Defendants in adopting certain edits
23 and rejecting others.

24 1.3. Defendants’ actions resulted in the adoption of educational
25 materials which – because they (1) embrace Judeo-Christian conceptions of
26 Divinity to the exclusion of other conceptions, (2) portray Hinduism in an
27 inaccurate manner, and (3) portray Hinduism in a negative light compared to
28 other religions – will cause stigma, and significant and irreparable harm to

1 the Students, and which will result in the denial of equal educational
2 opportunities for these students.

3 1.4. Defendants rejected edits suggested by Hindu groups and
4 individuals solely based on improper (*e.g.*, political and religious) *ad hominem*
5 attacks against those groups and individuals. Defendants, acting under color
6 of law, deprived Plaintiff and its members of the rights, privileges, and
7 immunities secured under the First and Fourteenth Amendments of the
8 United States Constitution, in violation of 42 U.S.C. § 1983.

9 1.5. This lawsuit seeks to enjoin the Defendants' unlawful conduct, a
10 declaration that Defendants' actions were improper, and an Order prohibiting
11 Defendants from taking further actions injurious to Plaintiff's rights. The
12 lawsuit seeks prospective injunctive relief and declaratory relief.

13 II. THE PARTIES

14 2.1. Plaintiff, California Parents for the Equalization of Educational
15 Materials, is a California non-profit corporation, with its principal place of
16 business in Fullerton, California. Plaintiff was formed to (among other
17 things) "promote an accurate portrayal of the Hindu religion in the public
18 education system of, and in the educational materials used in, the State of
19 California." Plaintiff was also formed to provide counseling services to its
20 members (Students and Parents, as necessary) and non-members who have
21 been adversely affected by educational materials which cause
22 embarrassment, stigma, or other harm. Plaintiff is comprised of Hindu and
23 Indian parents who have children currently attending public schools in the
24 first through sixth grades in California (and who will use the materials
25 approved and adopted by Defendants) and who assert their own interests as
26 well as the interests of their children.

27 2.2. Defendants are believed to be residents of the State of California,
28 and current members of the California State Board of Education (SBE) or

1 officials of the California Department of Education (CDE).¹

2 2.3. The CDE is a California state agency which oversees the public
3 school system of the State of California. The Curriculum
4 Framework/Instructional Resources Division and the Curriculum
5 Commission (units or divisions of the CDE) play a substantial part in the
6 textbook revision process for the CDE.

7 2.4. The SBE is an arm of the CDE, charged with, among other
8 things, adopting and approving educational materials for public schools in the
9 State of California. The SBE is the policy-making body for public elementary
10 and secondary school education.

11 2.5. Defendants are all sued in their official capacities (*i.e.*, as
12 members or officials of the SBE or CDE). Defendants acted under color of
13 state law throughout the revisions process, with respect to the actions alleged
14 herein, including in approving the Final Revisions.

15 III. JURISDICTION AND VENUE

16 3.1. This Court has original subject matter jurisdiction over this
17 action pursuant to 28 U.S.C. § 1331 over Plaintiff's causes of action arising
18 under the First and Fourteenth Amendments to the United States
19 Constitution, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C.
20 §§ 2201 and 2202.

21 3.2. This Court has personal jurisdiction over Defendants because
22 each of them are present, domiciled, resident, or a citizen of this state, or
23 undertook the actions alleged herein in this state.

24 3.3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because one or
25 more of the Defendants reside in this District, or the substantial part of the
26

27 ¹ The current members are substituted for the previous members pursuant to Fed.
28 R. Civ. P. Rule 25(d)(1).

1 events or omissions giving rise to the claims at issue occurred in this District.

2 **IV. FACTS**

3 **A. THE TEXTBOOK APPROVAL AND REVISION PROCESS**

4 4.1. Every six years the SBE and CDE adopt and approve textbooks
5 and instructional materials for use in public schools in California. In most
6 cases, the SBE and CDE revisit existing textbooks and approve revisions and
7 edits to existing textbooks (the "Materials").

8 4.2. The Curriculum Development and Supplemental Materials
9 Commission (the "Curriculum Commission"), an advisory body to the SBE,
10 makes recommendations for specific edits and corrections to the textbooks.
11 The SBE adopts or rejects these recommendations.

12 4.3. The SBE generally conducts the corrections process in a public
13 manner, and allows interested groups the opportunity to publicly comment
14 and participate. Christian, Jewish, and Muslim groups have long participated
15 in this process.

16 **B. THE 2005 REVIEW**

17 4.4. CDE opened History-Social Sciences textbooks in California for
18 public review and comment during the 2005 adoption process. During a
19 September 2005 meeting, it collected and received all submissions for changes
20 and edits.

21 4.5. Marking the closure of the review process, the CDE sent the
22 suggestions to the Curriculum Commission so that the Curriculum
23 Commission could make its recommendations to the SBE, who could then
24 make the final decision regarding the suggestions.

25 4.6. Like other religious groups (*e.g.*, Jewish and Muslim groups)
26 various Hindu groups, including the Hindu Education Foundation and the
27 Vedic Foundation along with individuals (which included members of
28 Plaintiff) suggested edits during the September 2005 meeting. Other groups

1 such as Educators' Society for the Heritage of India submitted comments
2 directly to the SBE. (These groups and individuals (including members of
3 Plaintiff) are referred to collectively as the "Hindu Groups".)

4 4.7. Defendants constituted an ad-hoc committee ("AHC") along with
5 a Content Review Panel Expert ("CRPE") to review the edits and corrections
6 proposed by the Hindu Groups.

7 4.8. Defendants retained Dr. Shiva Bajpai (Professor Emeritus in
8 History, California State Northridge) as the sole member of the CRPE. The
9 CDE required Professor Bajpai to fulfill three criteria prior to his
10 appointment: (1) he could not have published with any of the textbook
11 publishers for the prior three years; (2) he had to be an expert of ancient
12 Indian history and Hinduism; and (3) he could not be affiliated in any way
13 with the Hindu Groups (the Vedic Foundation or the Hindu Education
14 Foundation).

15 4.9. In October, the AHC and Professor Bajpai reviewed the edits and
16 corrections proposed by the Hindu Groups. The AHC and Professor Bajpai
17 approved the majority of these proposed edits. On October 31, 2005, the AHC
18 and Professor Bajpai (along with other ad hoc committees and subcommittees
19 which dealt with other groups such as Muslim and Jewish groups) made their
20 recommendations to the Curriculum Commission. The AHC did not have an
21 opportunity to review all of the edits, and Professor Bajpai requested the
22 AHC to seek additional time from the SBE in order to consider all of the edits
23 proposed by the Hindu Groups.

24 4.10. Of the edits AHC considered, the Curriculum Commission
25 accepted the recommendations of AHC and Professor Bajpai in full and
26 submitted these recommendations (the "Initial Revisions") to the SBE for
27 final approval.

28

1 **C. THE INITIAL REVISIONS**

2 4.11. The Initial Revisions principally addressed the following issues,²
3 seeking to correct numerous inaccurate characterizations of the Hindu faith:

4 **The Origins of Hinduism: Aryan Invasion Theory.**

5 4.12. The Aryan Invasion Theory (“AIT”), prominently featured in the
6 textbooks, holds that a people called “Aryans” migrated into Northern India
7 sometime in the second millennium B.C.E. Colonial-era scholars who
8 developed this theory, and their modern day adherents believe “Aryans” were
9 the descendants of “Japhet,” the son of the Biblical character Noah.

10 4.13. For example, one textbook states: “Around 1500 BCE, invaders
11 called Aryans conquered northern India. Some historians credit the Aryans
12 with bringing Hinduism to India.”

13 4.14. AIT decidedly has an ethnic or racial component, as well as
14 (noted above) a Judeo-Christian component. For example, Professor Stanley
15 Wolpert, a proponent of the AIT, and one of the individuals who objected to
16 the Initial Revisions (and a subsequent advisor to Defendants), notes in one of
17 his books that “[the Aryan invasion] was the most important invasion in all of
18 India’s history, since the Aryans brought with **their Caucasian genes** a new
19 language – Sanskrit – and a new pantheon of gods . . .” (See Stanley Wolpert,
20 A New History of India, 4th Edition, Oxford University Press (emphasis
21 added).)

22 4.15. AIT lacks support in Hindu scriptures. AIT is derived from a
23 Biblical, colonial, and Eurocentric perspective, and presupposes the truth of
24
25

26 _____
27 ² In addition to these issues, the Hindu Groups sought to correct numerous errors,
28 misstatements, incorrectly captioned or incorrect photographs, and contradictions. For
purposes of brevity, the Complaint focuses on the issues discussed below.

1 the Judeo-Christian version of creationism.³

2 4.16. AIT is particularly offensive when used to explain the genesis of
3 the Hindu faith because the theory purports to project modern racial and
4 ethnic stereotypes onto Hindu traditions, when no such notions existed in
5 ancient India.

6 4.17. With respect to the origin and migrations of the adherents of
7 other religions (*e.g.*, Judaism and Islam), the SBE deferred to the
8 characterizations of the adherents, or the prevailing texts of those religions.

9 **Treatment of Women.**

10 4.18. The textbooks typically single out Hinduism for granting a
11 grossly inferior status to women vis-à-vis men.

12 4.19. When viewed relative to other ancient religions, however,
13 Hinduism granted women equal – if not greater status. For example, the
14 textbooks ignore the significant role and positive contributions of women to
15 Hinduism.

16 4.20. Hinduism is one of the few living traditions that honors and
17 worships the feminine manifestations of the Divine. These manifestations
18 receive no positive attention in the textbooks. Similarly, Hinduism boasts a
19 long and ancient history of women sages of the Vedas.

20 4.21. Some textbooks inaccurately note that in ancient India, Hinduism
21 denied property rights to women, and denied them education.

22 4.22. With respect to other religions and societies the textbooks were
23 far more favorable of their portrayal of the differences in status between men
24

25 ³ Like other proponents of AIT, Professor Wolpert cited to the work of colonialists,
26 such as F. Max Muller, who also held an unabashed creationist, anti-evolutionist, and
27 Biblical perspective. F. Max Muller is quoted as “[looking] upon the account of creation as
28 given in Genesis as **simply historical.**” (*See Letter to The Duke of Argyll*, 4 Feb 1875, *The
Life and Letters of Friedrich Max Muller*, vol. 1, page 509 (emphasis added).) Max Muller
once wrote: “India has been conquered once, but India must be conquered again India
can never be anglicized, but it can be reinvigorated” (*See Id.* at p. 377.)

1 and women. For example, with respect to ancient Greek society as a whole,
2 the Curriculum Commission recommended an edit (ultimately adopted by the
3 SBE) that read “[i]n Athens, for example, girls stayed at home, and boys went
4 off to school.” This is a euphemistic way of saying that women received less
5 education than men. The edit also notes that it clarifies the statement to
6 make clear it refers to Athenian society and not necessarily Greek society in
7 general.

8 4.23. With respect to the edits relating to the status of women
9 suggested on behalf of other groups, revisions adopted by the SBE were far
10 more solicitous.

11 4.24. In general, the textbooks portray women as having greater status
12 in other ancient societies than in ancient Hindu society, when, in reality,
13 women did not enjoy a particularly inferior status in ancient Hindu society.

14 **Wrongly Conflating Untouchability with Hinduism.**

15 4.25. The textbooks improperly present social evils as Hindu religious
16 characteristics and fail to explain that such practices have no basis in the
17 Hindu faith.

18 4.26. The textbooks discuss the social practice of untouchability, only in
19 the context of Hinduism. However, the practice is not sanctioned anywhere
20 in the sacred texts of Hinduism. Hindu societies – such as in Bali (Indonesia)
21 – never practised untouchability. It is a social and not a religious construct.

22 4.27. The textbooks ignore the fact that both Muslims and Christians
23 in India practiced, and continue to practice, untouchability. The scriptures of
24 other major ancient religions contain endorsements of the practice of
25 untouchability. However, Hinduism seems to be singled out in the textbooks.

26 4.28. The fact that Hindu scriptures and philosophy do not advocate
27 this practice was used by Mahatma Gandhi, a devout Hindu, to fight the
28 practice in modern times. Mahatma Gandhi called modern untouchables

1 “Harijans,” or people of God, in order to fight this practice.

2 4.29. One textbook commences the section on Hinduism with a
3 rhetorical question purporting to juxtapose modern egalitarian ideals with
4 alleged ancient Hindu-endorsed notions of social inequality.

5 **Failure to Articulate the Hindu Conceptions of the Divine.**

6 4.30. The textbooks portray two possible conceptions of God: the Judeo-
7 Christian concept of God as a single omnipotent being separate and apart
8 from humans, versus a polytheistic concept of multiple gods, also separate
9 and apart from humans.

10 4.31. Hinduism, as expressed in the relevant texts, conceives of God as
11 an omnipotent force that is not separate and apart from humans. Hinduism
12 holds that the universe, and everything in the universe, is a manifestation of
13 the Divine. Hinduism conceives of all living things as being, or having a part
14 of, the divine force. God in Hinduism is both immanent and transcendent –
15 the Hindu religion is monistic in nature. Hence, Hindu concepts of divinity
16 do not neatly fit into either the Judeo-Christian framework or the polytheistic
17 alternative.

18 4.32. The textbooks ignore this nuance altogether and instead wrongly
19 describe central Hindu tenets based on the Judeo-Christian conception and
20 the polytheistic alternative, as articulated by hostile outsiders.

21 4.33. Scholars such as F. Max Muller (a principal proponent of AIT)
22 took care to distinguish between the Judeo-Christian “God,” designated with
23 a capital “G,” and non-Judeo-Christian “gods,” designated with a lower case
24 “g”:

25 The greatest confusion was raised and the greatest mischief done
26 when ancient and even modern thinkers imagined that gods were
27 actually the plural of God, and that what was applicable to the gods
28

1 was applicable to God also.⁴

2 Historically, scholars employed this usage to denigrate religions other than
3 Judeo-Christian religions.

4 4.34. The textbooks followed this scheme, designating Hindu
5 conceptions of divinity with a lower case “g”.

6 4.35. The textbooks accurately portray the core of the Judeo-Christian
7 conceptions of Divinity but make no effort to accurately portray the Hindu
8 conceptions of Divinity.

9 **Derogatory Remarks About Hinduism and Hindu Tenets.**

10 4.36. Certain textbooks characterize Buddhism, which has its historical
11 origins in the practice of Hinduism, as somehow an improvement over
12 Hinduism. Analogously, no textbook claims that Christianity is an
13 improvement over Judaism.

14 4.37. Hindu beliefs are often held up to ridicule in these textbooks. For
15 example, the textbooks noted (when discussing the Hindu epic Ramayana):
16 “[t]he monkey king Hanuman loved Rama so much that it is said that he is
17 present every time the Ramayana is told. So look around—see any
18 monkeys?”⁵ Defendants did not allow substantial changes to the textbooks
19 despite the textbooks containing such negative, derogatory, and insulting
20 contents in the textbooks.

21 4.38. Central Hindu texts are repeatedly described using terms such as
22 ‘stories’, ‘poems’, ‘myths’ whereas textbooks typically use the word ‘scriptures’
23 for Judeo-Christian religions such as the Bible, Koran, and the Torah. In

24
25 ⁴ F. Max Muller, Contributions to the Science of Mythology, Part 1 (Kessinger
Publishing, 2003).

26
27 ⁵ Jonathan Mark Kenoyer and Kimberly Heuston, The Ancient South Asian World
28 (Oxford University Press, 2005). Professor Kenoyer was one of those who opposed the edits
suggested by the Hindu Groups, and was a signatory to a letter authored by Professor
Michael Witzel, referenced in paragraph 4.40, *infra*.

1 contrast, Defendants accepted the suggestions of the Judeo-Christian groups
2 and modified language depicting Judeo-Christian events to reflect these
3 events as facts.

4 4.39. The textbooks also ignore significant contributions to modern
5 society having their roots in Hinduism. Specifically, the practices of Yoga,
6 meditation, and Ayurveda medicine all currently enjoy widespread adoption
7 in the modern Western world. However, these are not accurately described
8 anywhere in the sections on Hinduism, notwithstanding their Hindu roots.
9 In contrast, textbooks describing other religions make special efforts to
10 highlight and explain their contributions to modern society.

11 **D. THE WITZEL LETTER**

12 4.40. On November 8, 2005 Professor Michael Witzel, a Professor of
13 Sanskrit at Harvard University sent a letter to the SBE (the "Witzel Letter").
14 A copy of this letter is attached hereto as **Exhibit A**.

15 4.41. The Witzel Letter accused the Hindu Groups of harboring
16 political and religious motivations. Among other things, the Witzel letter
17 called on the SBE "to reject the demands by nationalist Hindu ('Hindutva')
18 groups that California textbooks be altered to conform to their religious-
19 political views." According to Professor Witzel, the "proposed revisions [were]
20 . . . of a religious-political nature."

21 4.42. The letter also warned of an impending "international education
22 scandal" if the proposed changes are accepted by the SBE.

23 4.43. The Witzel Letter did not actually address any edits or
24 corrections (including those suggested by the Hindu Groups), or any of the
25 Initial Revisions. Indeed, the Initial Revisions were only available to the
26 participants in the process, and had not been made available to the general
27 public as of the date of the Witzel Letter.

28 4.44. Thus, the letter did not – and could not have – made any specific

1 substantive charges against the Initial Revisions. Professor Witzel's
2 objections to the Initial Revisions were based solely on the identity of the
3 Hindu Groups and their supposed political and religious leanings.

4 4.45. Up to this point in the process neither Professor Witzel nor any of
5 the signatories to the Witzel Letter had participated in any way in the
6 process – *i.e.*, the signatories to the Witzel Letter failed to follow the required
7 procedure of submitting their reviews and proposed edits to the Curriculum
8 Commission, nor did they timely provide any specific objections to any edits
9 submitted by third parties.

10 4.46. Defendants acted solely based on the Witzel Letter, accepting and
11 adopting its *ad hominem* characterizations wholesale.

12 **E. THE SECOND CRPE PANEL**

13 4.47. During a November 9, 2005 meeting of the SBE, SBE President
14 Ruth Green read the Witzel Letter and based on this letter decided to delay
15 approval of the Curriculum Commission's edits (*i.e.*, the Initial Revisions).
16 President Green asked the Executive Director of Curriculum Commission to
17 revisit the Initial Revisions. Notwithstanding this delay, the Executive
18 Director of the Curriculum Commission failed to follow through on the
19 October 31 proposal for seeking an extension of time from the SBE in order to
20 complete the evaluation of the remaining edits of the Hindu Groups.

21 4.48. President Green gave no substantive reason for delaying approval
22 of the Initial Revisions. Nor did she cite any scholarly reasons for the SBE's
23 reconsideration of the Initial Revisions.

24 4.49. During this meeting the SBE approved in full the Curriculum
25 Commission recommended edits and changes urged by other religious groups,
26 including Christianity, Judaism and Islam.

27 4.50. At a second meeting following the initial SBE meeting
28 Defendants constituted a second panel of CRPEs, consisting of Professor

1 Witzel, Professor Wolpert of University of California at Los Angeles, and
2 Professor Heitzman of University of California at Davis.

3 4.51. All three members of the second CRPE were affiliated with the
4 Witzel Letter. Professor Witzel drafted the letter. Professor Wolpert co-
5 signed the letter. While not a co-signatory, Professor Heitzman delivered the
6 letter to the SBE.

7 4.52. The appointment of these three experts violated the criteria the
8 Curriculum Commission required of Professor Bajpai. With respect to the
9 initial expert (Professor Bajpai) the Curriculum Commission required that
10 the expert: (1) not have any financial relationship with any of the textbook
11 publishers (*i.e.*, not have published anything with the publishers in the last
12 three years), (2) be a scholar in ancient Indian history and Hinduism, and
13 (3) not have any affiliation with any of the groups suggesting or objecting to
14 the edits. Professors Witzel, Wolpert, and Heitzman did not fulfill these
15 criteria.

16 4.53. Professors Witzel, Wolpert, and Heitzman were adherents of AIT
17 and had expressed antagonistic sentiments towards Indians, Hinduism, and
18 the Hindu Groups. They sought the outright rejection of all the Initial
19 Revisions. For example, Professor Witzel opposed the suggestion of the
20 Hindu Groups to use the upper case "G" to describe Hindu Gods. Members of
21 the Curriculum Commission characterized Professor's Witzel's comments as
22 "insensitive" to the Hindu religion.

23 4.54. Defendants failed to provide notice (to either the Hindu Groups or
24 Professor Bajpai) that the SBE and CDE were considering retaining a second
25 CRPE panel.

26 4.55. On November 22, 2005, the CDE released a memorandum
27 containing new final recommendations, as determined by the second CRPE
28 Panel (consisting of Professors Witzel, Wolpert and Heitzman) and endorsed

1 by the CDE and Curriculum Commission, to be submitted to the SBE.
2 Despite repeated requests, neither the Hindu Groups nor Professor Bajpai
3 were afforded an opportunity to rebut the charges of the second CRPE Panel.
4 Nor were the Hindu Groups and Professor Bajpai afforded input into this
5 process.

6 4.56. On December 2, 2005, the Curriculum Commission met to
7 address final edits and corrections on Ancient India and Hinduism.

8 4.57. The Curriculum Commission conducted a line review of the
9 proposed edits. This was the third review in the entire process.

10 4.58. One Curriculum Commission member highlighted scientific and
11 archaeological evidence supporting the Initial Revisions. The Curriculum
12 Commission ignored these points.

13 4.59. The Curriculum Commission then submitted the results of the
14 meeting (*i.e.*, its recommendations) to the SBE.

15 4.60. The SBE has yet to release these recommendations to interested
16 parties. The SBE has yet to address these recommendations, although the
17 President of the SBE is required to approve or reject the recommendations.

18 **F. SBE'S ADOPTION OF FINAL REVISIONS**

19 4.61. On January 6, 2006, the SBE (or select SBE members) conducted
20 a closed-door meeting with Professors Bajpai and Witzel. The representatives
21 of the Hindu Groups were not invited, despite requests to be present. At this
22 juncture, Plaintiff's members and predecessors-in-interest sent a letter to
23 Defendants specifically advising that Defendants were not fairly considering
24 the input of the Hindu Groups and were treating them in a discriminatory
25 fashion.

26 4.62. At the January 6, 2006 meeting Professors Bajpai and Witzel
27 essentially debated each line item before SBE members. A record of this
28 closed door meeting – to the extent the SBE maintained a record – has not yet

1 been released to the interested parties.

2 4.63. On January 12, 2006, SBE President announced the creation of a
3 new sub-committee. SBE then appointed a five SBE member committee,
4 which would make recommendations to the full SBE to consider at its
5 following meeting (scheduled to take place on March 8-10, 2006).

6 4.64. The SBE provided no further details regarding the follow up
7 recommendations of the Curriculum Commission or the private meeting
8 between select SBE members, Professors Bajpai and Witzel, held on January
9 6, 2006.

10 4.65. The SBE conducted a public meeting on March 8-10, 2006.

11 4.66. At this meeting the SBE adopted final edits (the "Final
12 Revisions") to the textbooks.

13 4.67. The SBE also purported to adopt four amendments to the Final
14 Revisions. The SBE did not formally vote on these four amendments. Thus,
15 these amendments merely constitute the suggestions of one or more of the
16 members of the SBE.

17 4.68. The Final Revisions leave unaddressed the salient concerns of the
18 Hindu Groups.

19 4.69. The Final Revisions rejected many of the Initial Revisions, and
20 fail to adequately address the concerns of the Hindu Groups regarding
21 (1) AIT; (2) description of the treatment and status of women in Hinduism;
22 (3) conflation of untouchability with Hindu beliefs; (4) inaccurate descriptions
23 of core Hindu beliefs; and (5) derogatory references about Hinduism.

24 **G. DAMAGES TO PLAINTIFF AND ITS MEMBERS**

25 4.70. It is widely acknowledged that the content of educational
26 materials affects the quality of education received by students.

27 4.71. Numerous Hindu and Indian students, including members of
28 Plaintiff, attest that the negative portrayal of Hinduism causes these

1 students embarrassment and degradation.

2 4.72. The embarrassment and degradation caused by educational
3 materials containing negative portrayal of a certain group or groups affects
4 the education obtained by members of that group – *i.e.*, members of that
5 group will receive a lesser quality education and will be less likely to achieve
6 success as members of other groups.

7 4.73. One student, Abhijit Kurup, who attended Claremont middle
8 school characterized the textbook portrayal of Hinduism as “a religion of
9 monkey and elephant gods, rigid caste discrimination and oppression of
10 women.”

11 4.74. Mr. Kurup, now a student at University of California at Riverside
12 said the textbooks “degraded” his religion. Upon reading these materials Mr.
13 Kurup said he “felt a mixture of anger, embarrassment and humiliation.”
14 Plaintiff’s student members experience these same effects due to the
15 Materials and their use in the classroom.

16 4.75. Plaintiff and its members who participated in the process are now
17 suffering, and after adoption of the Final Revisions and Materials will
18 continue to suffer, actual and irreparable harm solely due to Defendants’
19 actions in the textbook adoption process. Defendants’ actions deprived
20 Plaintiff and its members of the benefits of equal educational opportunity,
21 and the elimination of embarrassment and degradation in the Materials.

22 4.76. Plaintiff’s members were entitled pursuant to state law to
23 participate in the textbook revisions process, to comment on proposed edits
24 and the Materials, and to ensure that the state adopts educational materials
25 fairly incorporating public input. Comments made by Plaintiff’s members
26 and the Hindu Groups were not accepted or considered by Defendants at any
27 stage in the process. The rules governing the textbook revisions process exist
28 to provide the public (including religious and ethnic groups) notice of

1 revisions, to inform individuals affected by existing materials and proposed
2 revisions, and to incorporate and address comments by the public and
3 affected individuals and groups. Plaintiff's members were deprived of these
4 rights and benefits due to their religion, political beliefs, ethnicity, and/or
5 national origin. Further, Defendants' actions deprived the Plaintiffs of the
6 opportunity to remove contents from textbooks that cause harm (including
7 psychological harm) to their children.

8 4.77. The Parents have a right to direct the religious education of their
9 children – adoption of the Materials interferes with this right.

10 4.78. Plaintiff asserts the causes of action below on its own behalf, on
11 behalf of its members (Parents and Students), and on behalf of certain of the
12 Hindu Groups.

13 4.79. Plaintiff was formed to (among other things) “promote an
14 accurate portrayal of the Hindu religion in the public education system of,
15 and in the educational materials used in, the State of California.” Plaintiff
16 was also formed to provide counseling services to its members (students and
17 parents, as necessary) and non-members who have been adversely affected by
18 the Materials, which cause embarrassment, stigma, or other harm.
19 Defendants' actions frustrate these purposes.

20 **V. FIRST CAUSE OF ACTION**
21 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
22 **FOURTEENTH AMENDMENT OF THE UNITED STATES**
23 **CONSTITUTION (UNDER 42 U.S.C. § 1983)**

24 5.1. Plaintiff incorporates the allegations set forth in paragraphs 1.1
25 through 4.79 above as though fully set forth herein.

26 5.2. The Equal Protection Clause of the Fourteenth Amendment to
27 the United States Constitution provides “[n]o state shall make or enforce any
28 law which shall abridge the privileges or immunities of citizens of the United
States; nor shall any state deprive any person of life, liberty, or property,

1 without due process of law; nor deny to any person within its jurisdiction the
2 equal protection of the laws.”

3 5.3. Absent a compelling state interest, the Equal Protection Clause
4 prohibits consideration of a person or group’s religious or political affiliation,
5 ethnicity, or national origin in governmental decisionmaking. The Equal
6 Protection Clause also prohibits – absent a compelling state interest – denial
7 of equal benefits based on membership in such groups.

8 5.4. Defendants’ decision to reverse course and revisit the Initial
9 Revisions based on a letter that explicitly referenced the ethnic, political, and
10 religious affiliations and national origin of the Hindu Groups violated
11 Plaintiff’s rights under the Equal Protection Clause. Defendants singled out
12 the Hindu Groups for negative and unequal treatment based on their ethnic,
13 political, and religious affiliations and activities, and national origin.

14 5.5. Defendants’ disparate treatment of Plaintiff’s members and the
15 Hindu Groups – and subjecting edits put forth by them to unique hurdles –
16 violated Plaintiff’s rights under the Equal Protection Clause.

17 5.6. Defendants’ treatment of other religions in a more favorable
18 manner than Hinduism violated Plaintiff’s rights under the Equal Protection
19 Clause.

20 5.7. Among other things, Defendants considered the input of other
21 groups, but did not consider the input of the Hindu Groups. Defendants did
22 not hire a second CRPE expert for any other religious group, or hire an expert
23 who expressed antipathy towards those groups. Nor did Defendants initially
24 adopt the edits suggested by any other groups only to reverse course.
25 Defendants set forth certain criteria for the initial CRPE expert with respect
26 to the edits suggested by the Hindu Groups, but did not follow these criteria
27 in empaneling the second set of CRPE experts (*e.g.*, Professor Witzel) who
28 opposed those edits. Defendants also allowed third parties who did not

1 comply with CDE/SBE procedural rules to provide input into the process
 2 while purporting to rigorously enforce these rules against the Hindu Groups.

3 5.8. The Materials adopted by Defendants portray Plaintiff’s religious
 4 beliefs in a negative light.

5 5.9. Defendants failed – in violation of Plaintiff’s Equal Protection
 6 rights – to follow their own guidelines and procedures with respect to the
 7 Hindu Groups but not with respect to any other religious groups. Solely with
 8 respect to the Hindu Groups, Defendants conducted private (*i.e.*, closed door)
 9 meetings, engaged in *ex parte* communications with Professor Witzel, and
 10 others who opposed the edits suggested by Hindu Groups.

11 5.10. Defendants’ adoption of the Final Revisions and approval of the
 12 Materials will have the effect of depriving the Students of an educational
 13 experience equal to that of their peers, thus violating the rights of Plaintiff
 14 and its members under the Equal Protection Clause.

15 5.11. Defendants’ use of disparate processes (summarized below) with
 16 respect to the Hindu Groups as compared to other religious groups deprived
 17 Plaintiff and its members their rights under the Equal Protection Clause:

<u>Process</u>	<u>Islam</u>	<u>Judaism</u>	<u>Christianity</u>	<u>Hinduism</u>
Organized community advocacy groups lobbying for change?	YES	YES	YES	YES
Academics protesting against community activism?	NO	NO	NO	YES
Defendants empaneled hostile academics as advisors?	NO	NO	NO	YES
Advocates of religion were branded as “chauvinists”, “fundamentalists”, and “nationalists”?	NO	NO	NO	YES
Repeated scrutiny of edits proposed by religious advocacy groups?	NO	NO	NO	YES

1	Defendants utilized secretive	NO	NO	NO	YES
2	processes in making final				
3	decisions?				
4	Defendants made conflicting	NO	NO	NO	YES
5	recommendations on multiple				
6	edits related to similar topics?				
7	Overseas politics injected by	NO	NO	NO	YES
8	opponents into textbook				
9	adoption process to derail the				
10	efforts of advocacy groups?				

11 5.12. Defendants’ portrayal of Judeo-Christian beliefs as facts (in
12 contrast to ancient Indian history and Hindu religion) violates the Equal
13 Protection Clause.

14 5.13. Plaintiff’s members were entitled pursuant to state law to
15 participate in the textbook revisions process, to comment on proposed edits
16 and the Materials, and to ensure that the state adopts educational materials
17 fairly incorporating public input. The rules governing the textbook revisions
18 process exist to provide the public (including religious and ethnic groups)
19 notice of revisions, to inform individuals affected by existing materials and
20 proposed revisions, and to incorporate and address comments by the public
21 and affected individuals and groups. Plaintiff’s members were deprived of
22 these rights and benefits due to their religion, political beliefs, ethnicity,
23 and/or national origin. Further, Defendants’ actions deprived the Plaintiffs of
24 the opportunity to remove contents from textbooks that will cause harm
25 (including psychological harm) to their children. Defendants’ actions
26 deprived Plaintiff and its members of the benefits of equal educational
27 opportunity, and the elimination of embarrassment and degradation caused
28 by the Materials. Defendants deprived Plaintiff’s members of these benefits
in violation of the Equal Protection Clause.

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1 **VI. SECOND CAUSE OF ACTION**
2 **VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST**
3 **AMENDMENT OF THE UNITED STATES CONSTITUTION (UNDER**
4 **42 U.S.C. § 1983)**

5 6.1. Plaintiff incorporates the allegations set forth in paragraphs 1.1
6 through 5.13 above as though fully set forth herein.

7 6.2. The Establishment Clause (as applied to the states via the
8 Fourteenth Amendment) requires state neutrality towards religion in general
9 and towards different religions – *i.e.*, government action cannot convey a
10 message of endorsement or disapproval of a particular creed, promote a
11 favored religion, or conversely, denigrate a disfavored one.

12 6.3. Defendants’ approval of the Final Revisions and adoption of the
13 Materials denigrates the religious beliefs of the Plaintiff and its members and
14 constitutes an endorsement of other religions. Defendants’ actions have a
15 principal or primary effect of advancing other religions while inhibiting the
16 Hindu religion.

17 6.4. Defendants’ more favorable treatment of the edits suggested by
18 other religious groups promotes those other religions and groups at the
19 expense of Hinduism and the Hindu Groups. The Materials approved and
20 adopted by Defendants cast religions other than Hinduism in a more
21 favorable light. Solely with respect to Hinduism the Materials focus on
22 negative aspects.

23 6.5. Defendants’ actions were intended to and will have the overall
24 effect of promoting and endorsing other religions while denigrating
25 Hinduism. These actions violate the Establishment Clause.⁶

26 ⁶ Defendants also likely violated CDE regulations (5 Cal. Code Reg § 9511) and
27 California Education Code §§ 51500, 51501, & 60044. These statutes and rules prohibit the
28 adoption and use of educational materials “reflecting adversely upon persons because of
their . . . creed . . . national origin, or ancestry.” The Standards for Evaluating the Social
Content of Instructional Materials (incorporated by reference into regulation 9511) (the
“Standards”) provide: “[n]o religious belief or practice may be held up to ridicule and no

1 6.6. Defendants' adoption of educational materials which portray
2 other religions from the insider perspective while looking to the critics'
3 perspective with respect to Hinduism violates the Establishment Clause.

4 6.7. Defendants' imposition of special hurdles for the Hindu Groups
5 and for the Hindu CRPE expert violates the Establishment Clause.
6 Defendants set forth certain criteria for Professor Bajpai but did not follow
7 these criteria in empaneling the second set of CRPE experts (*e.g.*, Professor
8 Witzel).

9 6.8. Defendants' use of experts who expressed antipathy towards the
10 Hindu Groups – while employing neutral or favorable experts for other
11 religious groups – violates the Establishment Clause.

12 6.9. Defendants' accurate portrayal of Judeo-Christian beliefs while
13 inaccurately portraying the Hindu religion constitutes an endorsement of
14 Judeo-Christian beliefs in violation of the Establishment Clause.

15 6.10. Defendants' portrayal of Judeo-Christian beliefs as facts is in
16 violation of the Establishment Clause.

17 **VII. THIRD CAUSE OF ACTION**
18 **VIOLATION OF THE FREE SPEECH AND FREE ASSOCIATION**
19 **CLAUSES OF THE FIRST AMENDMENT OF THE UNITED STATES**
20 **CONSTITUTION (UNDER 42 U.S.C. § 1983)**

21 7.1. Plaintiff incorporates the allegations set forth in paragraphs 1.1
22 through 6.10 above as though fully set forth herein.

23 7.2. The Free Speech Clause of the First Amendment to the United
24 States Constitution (as applied to the states via the Fourteenth Amendment)
25 protects the rights of individuals to express themselves free of government

26 _____
27 religious group may be portrayed as inferior.” The Standards “are derived . . . from the
28 United States and California constitutions” – *i.e.*, the Standards implement requirements of
the United States and California Constitutions. Plaintiff is not bringing any claims under
these provisions, but may establish Defendants' digression from these laws, rules and
procedures to the extent necessary to demonstrate the constitutional claims asserted.

1 retribution.

2 7.3. Plaintiff, its members, and the Hindu Groups engaged in
3 expressive activity outside the proceedings in front of the SBE, and in front of
4 the SBE. This included political and religious expression.

5 7.4. Defendants improperly considered such expression – highlighted
6 in the Witzel Letter – in rejecting the Initial Revisions. The Witzel letter cast
7 Plaintiff and its Members as members of “nationalist Hindu (‘Hindutva’)
8 groups,” and “Hindu nationalists.” Defendants rejected the edits suggested
9 by the Hindu Groups solely based on religious and political expression of
10 Plaintiff and its members.

11 7.5. Defendants’ consideration of the expressive and political activities
12 of Plaintiff and the Hindu Groups (rather than the merits of the edits
13 suggested by the Hindu Groups) in rejecting the Initial Revisions violated the
14 rights of Plaintiff and the Hindu Groups under the Free Speech Clause of the
15 First Amendment to the United States Constitution by penalizing their
16 protected expression. Defendants’ actions will have a chilling effect on the
17 exercise of First Amendment rights by Plaintiff’s members.

18 7.6. The Association Clause of the First Amendment to the United
19 States Constitution protects the right of individuals to associate with persons
20 of their choosing, including in order to express themselves.

21 7.7. In rejecting the Initial Revisions and constituting the second
22 CRPE, Defendants took into account Plaintiff’s and the Hindu Groups’
23 association with third parties deemed “nationalist Hindu” or “Hindutva
24 supporters.”

25 7.8. Defendants’ consideration of Plaintiff’s and the Hindu Groups’
26 alleged association with these third parties and with each other has the effect
27 of discouraging such association. Defendants’ consideration and adoption of
28 Professor Witzel’s *ad hominem* religious and political attacks violated the

1 rights of Plaintiff and the Hindu Groups under the Association Clause of the
2 First Amendment to the United States Constitution. Witzel attempted to
3 black ball the Hindu Groups and their edits. By rejecting the Initial Edits
4 based on the Witzel Letter and appointing Witzel to the second CRPE panel
5 Defendants adopted Professor Witzel's *ad hominem* attacks.

6 7.9. The foregoing actions violated Plaintiff's rights under the
7 Association Clause of the First Amendment to the United States
8 Constitution.

9 **VIII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for the following relief:

11 1. Injunctive Relief:

- 12 a. prohibiting Defendants from treating Plaintiff or its
13 members differently because of their religion, ethnicity,
14 political beliefs, or national origin;
15 b. prohibiting Defendants from promoting other religions (and
16 portraying other religions in a more favorable light) at the
17 expense of the religious beliefs of Plaintiff and its members;
18 c. prohibiting Defendants from denigrating the religious
19 beliefs of Plaintiff and its members;
20 d. prohibiting Defendants from utilizing creationist, Judeo-
21 Christian-based theories to explain the development of
22 Hinduism and the migrations of ancient Hindus; and
23 e. prohibiting Defendants from taking adverse action against
24 Plaintiff or its members based on their protected
25 expression, political beliefs, or association;

26 2. Attorney's fees: an award of attorney's fees and costs; and

27 3. Other relief: for such other and further relief as the Court
28 may deem just and proper.

Dated this 25th day of August, 2006.

Respectfully Submitted,

BALASUBRAMANI LAW

By: 

Venkat Balasubramani (State Bar No. 189192)

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EXHIBIT A

**LETTER FROM PROFESSOR MICHAEL WITZEL TO RUTH GREEN AND
MEMBERS OF THE STATE BOARD OF EDUCATION
DATED NOVEMBER 8, 2005**

HARVARD UNIVERSITY
DEPARTMENT OF SANSKRIT AND INDIAN STUDIES
1 BOW STREET • CAMBRIDGE, MASSACHUSETTS 02138

E-Mail: sanskrit@fas.harvard.edu
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November 8, 2005

Ruth Green, President
State Board of Education
1430 N Street, Room 5111
Sacramento, California 95814

Dear Ms. Green and Members of the Board,

I write on behalf of a long list of world specialists on ancient India — reflecting mainstream academic opinion in India, Pakistan, the United States, Europe, Australia, Taiwan, and Japan — to urge you to reject the demands by nationalist Hindu ('Hindutva') groups that California textbooks be altered to conform to their religious-political views. The names of over four dozen scholars who have asked me to write you and the Board — more names are coming in hourly — are attached at the end. The list includes the most distinguished world experts in the field.

The nature of these proposed revisions only became known to international scholars on Saturday, November 5 — or we would have acted sooner and with even greater force.

On behalf of my colleagues, I would like to call the Board's attention to four points:

1. The agenda of the groups proposing these changes is familiar to all specialists on Indian history, who have recently won a long battle to prevent exactly these kinds of changes from finding a permanent place in history textbooks in India. The proposed revisions are not of a scholarly but of a religious-political nature, and are primarily promoted by Hindutva supporters and non-specialist academics writing about issues far outside their areas of expertise. These opinions do not reflect the views of the majority of specialists on ancient Indian history nor of mainstream Hindus. There are ill-concealed political agendas behind these views that are well-known to researchers and tens of millions of non-Hindu Indians, who are routinely discriminated against by these groups.
2. Ironically, the revisions that Hindu nationalists are now trying to force into California textbooks have been soundly repudiated in the last two years by Indian educators; previously, in a brief period in which the central government was under Hindutva control, those same types of revisions were temporarily inserted in Indian textbooks by the National Council of Education Training and Research (NCERT). The result was chaos in the Indian educational system and an extended battle in the Indian press that lasted several years. It would trigger an immediate international scandal if the California State Board of Education were to unwittingly endorse religious-nationalistic views of Indian history from which India has only extricated itself in the last two years.
3. The U.S. State Department has repeatedly warned of the dangers to religious freedom involved in the kinds of historical revisions demanded by Hindutva groups. Thus the

State Department's "International Religious Freedom Report 2003" complains of the massive "rewriting of textbooks to favor Hindu extremist interpretations of history" that occurred when the national government was under Hindutva control. In its 2004 report, written after the fall of that government, the State Department noted that these revisions were being corrected, but continued to warn of dangers to public education in Indian states like Gujarat in which Hindutva power remained firm, resulting in those regions in "the politicized inculcation of Hindu religious and cultural norms". The politicized views of history criticized by the U.S. Department of State are of the same type currently being proposed for use in textbooks aimed at sixth-grade California students.

For the 2003 and 2004 U.S. State Department reports discussing these issues, see:

<http://www.state.gov/g/drl/rls/irf/2003/24470.htm>

<http://www.state.gov/g/drl/rls/irf/2004/35516.htm>

4. The names on this letter, which have all been gathered over the past 48 hours, represent a broad cross-section of the world's leading historians, religious scholars, archaeologists, philologists, and linguists conducting specialized research on ancient India. A few of the signers include Romila Thapar, India's most famous historian, and a recent Kluge Fellow at the Library of Congress in Washington; Stanley Wolpert, Professor Emeritus at U.C.L.A, long the preeminent U.S. specialist on Indian history; Madhav Deshpande of the University of Michigan; Harry Falk, of Free University, Berlin; Patrick Olivelle, of the University of Texas; Muneo Tokunaga of Kyoto University, Japan; Maurizio Tosi of the University of Bologna; and dozens of equally world-famous researchers.

Our growing list, as it existed early this morning, is provided below. Other names are coming in at a rapid pace, and hundreds more could be quickly gathered. I will be happy to update the Board on additional endorsers of this letter if that becomes necessary, and to personally assist the Board in any way possible in the future.

In conclusion: the proposed textbook changes are unscholarly, are politically and religiously motivated, have already been rejected by India's national educational authorities, and will lead without fail to an international educational scandal if they are accepted by California's State Board of Education.

Sincerely,

Michael Witzel
Wales Professor of Sanskrit
Editor-in-Chief, The Harvard Oriental Series

Several pages of endorsements by internationally known researchers follow


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 25, 2006, I caused the following **SECOND AMENDED COMPLAINT** to be served via the Court's electronic filing and notification system (ECF) on counsel for the following parties:

Kenneth Noonan, Ruth Bloom, Alan Bersin, Yvonne Chan, Donald G. Fisher, Ruth E. Green, Joe Nuñez, Johnathan Williams, and David Lopez, Members of the California State Board of Education; and

Tom Adams, Director, Curriculum Frameworks and Instructional Resources Division and Executive Director, Curriculum Commission (the California State Department of Education).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct and that this declaration was executed on August 25, 2006, at Seattle, Washington.



Venkat Balasubramani

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