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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**California Parents for the Equalization of
Educational Materials,**

Plaintiff,

v.

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

Defendants.

2:06-CV-00532-FCD-KJM

**DEFENDANTS' ANSWER TO
PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Judge: The Hon. Frank C. Damrell

In response to plaintiff's second amended complaint for violations of the First and Fourteenth Amendment of the United States' Constitution filed on August 25, 2006, defendants admit, deny, and allege as follows:

In answer to plaintiff's introductory paragraph, defendants respond that this paragraph purports to describe the complaint and its effect, which complaint speaks for itself, and as such does

1 not require an answer. Defendants lacks sufficient knowledge or information to admit or deny the
2 remaining allegations in this paragraph. To the extent that an answer is required to any allegation
3 in this paragraph, defendants deny every such allegation.

4 1.1 In answer to paragraph 1.1, defendants allege that this paragraph attempts to
5 characterize or paraphrase plaintiff's legal contentions and, as such, does not require an answer. To
6 the extent that an answer is required to any allegation in this paragraph, defendants deny every such
7 allegation.

8 1.2 In answer to paragraph 1.2, defendants allege that this paragraph attempts to
9 characterize or paraphrase plaintiff's legal contentions and, as such, does not require an answer. To
10 the extent that an answer is required to any allegation in this paragraph, defendants deny every such
11 allegation.

12 1.3 In answer to paragraph 1.3, defendants deny every allegation in this paragraph.

13 1.4 In answer to paragraph 1.4, defendants deny every allegation in this paragraph.

14 1.5 In answer to paragraph 1.5, defendants allege that this paragraph attempts to
15 characterize or paraphrase plaintiff's legal contentions and the nature of the relief sought and, as
16 such, does not require an answer. Defendants deny that their conduct was unlawful, that their actions
17 were improper, and that their actions were injurious, as alleged. Defendants admit that the lawsuit
18 seeks prospective injunctive and declaratory relief. To the extent that an answer is required to any
19 allegation in this paragraph, except as specifically admitted, defendants deny every other allegation.
20 in this paragraph.

21 2.1 In answer to paragraph 2.1, defendants admit that plaintiff's articles of incorporation
22 state that it was formed to "promote an accurate portrayal of the Hindu religion in the public
23 education system." Defendants lacks sufficient knowledge or information to admit or deny the
24 remaining allegations in this paragraph, and on that basis, deny these allegations. Additionally, to
25 the extent that paragraph 2.1, sentence 2, purports to quote an unidentified document, that document
26 speaks for itself and, as such, does not require an answer.

27 2.2 In answer to paragraph 2.2, defendants admits that the defendants named in the
28 caption are residents of the State of California. Defendants further admit that they are current board

1 members of the State Board of Education, except for Tom Adams. Defendants deny that any of them
2 is an official of the California Department of Education, but affirmatively allege that Tom Adams
3 is an employee of CDE.

4 2.3 In answer to paragraph 2.3, defendants admit that CDE is a state agency. Except
5 as expressly admitted, defendants deny every allegation in this paragraph.

6 2.4 In answer to paragraph 2.4, defendants deny every allegation in this paragraph.

7 2.5 Paragraph 2.5 contains a mixture of legal arguments and contentions and references
8 to the complaint, which speaks for itself, and, as such, does not require an answer. To the extent an
9 answer is deemed necessary, defendants deny every allegation in this paragraph.

10 3.1 In answer to paragraph 3.1, defendants admit that this Court has subject matter
11 jurisdiction over this action pursuant to 28 U.S.C. § 1331, because plaintiff is purporting to state
12 claims under the First and Fourteenth Amendment to the United States Constitution, and under 42
13 U.S.C. § 1983. Defendants affirmatively allege that plaintiff has failed to state each of these claims.
14 Defendants deny that the complaint state or even purports to state a claim under the Declaratory
15 Judgment Act and, as such, defendants further deny that the Court has jurisdiction based on 28
16 U.S.C. § 2201 or § 2202.

17 3.2 In answer to paragraph 3.2, defendants admit that this Court has personal
18 jurisdiction over them, because each of them is present, domiciled , a resident, or a citizen of
19 California. In answer to the portion of this paragraph asserting personal jurisdiction because
20 defendants "undertook the actions alleged [in the second amended complaint]," defendants deny this
21 allegation, except as expressly admitted in response to each specific action alleged in the second
22 amended complaint.

23 3.3 In answer to paragraph 3.3, defendants admit that venue is proper in the Eastern
24 District pursuant to 28 U.S.C. § 1391(b), because one or more of them reside in this district.

25 4.1 In answer to paragraph 4.1, defendants admit that the SBE adopts and approves
26 textbooks and instructional materials for use in California public schools for kindergarten through
27 grade 8 only. Defendants deny every other allegation in this paragraph.

28 4.2 In answer to paragraph 4.2, defendants admit that the Curriculum Development and

1 Supplemental Materials Commission (Curriculum Commission) is an advisory body to the SBE.
2 Defendants deny every other allegation in this paragraph.

3 4.3 In answer to paragraph 4.3, defendants deny every allegation in this paragraph.
4 Defendants affirmatively allege that instructional materials for kindergarten through grade 8 are
5 adopted after public inspection of the instructional materials and public hearings, as set forth in
6 Education Code sections 60202 and 60203.

7 4.4 In answer to paragraph 4.4, defendants deny every allegation in this paragraph.

8 4.5 In answer to paragraph 4.5, defendants deny every allegation in this paragraph.

9 4.6 In answer to paragraph 4.6, defendants lack sufficient knowledge or information
10 to admit or deny the allegations in the first two sentences of this paragraph and, on that basis, deny
11 every allegation in this paragraph. The parenthetical sentence is merely a descriptive sentence and,
12 as such, does not require an answer. To the extent an answer is deemed necessary, defendants deny
13 the allegations, if any, in this parenthetical sentence.

14 4.7 In answer to paragraph 4.7, defendants deny every allegation in this paragraph.

15 4.8 In answer to paragraph 4.8, defendants deny every allegation in sentence 1. In
16 answer to sentence 2, defendants admit that Professor Bajpai's consultant contract with CDE
17 required that he have expertise in ancient India history and the Hindu religion. Defendants lack
18 sufficient knowledge or information to admit or deny every other allegation in sentence 2 and, on
19 that basis, except as expressly admitted, deny every allegation in this sentence.

20 4.9 In answer to paragraph 4.9, defendants deny every allegation in sentences 1, 2, and
21 3. Defendants lack sufficient knowledge or information to admit or deny the allegations in sentence
22 4 and, on that basis, deny every allegation in this sentence.

23 4.10 In answer to paragraph 4.10, defendants deny every allegation in this paragraph.

24 4.11 In answer to paragraph 4.11, defendants lack sufficient knowledge or information
25 to admit or deny the allegations in this paragraph, including the information in footnote 2, and, on
26 that basis, deny every allegation in this paragraph and footnote.

27 4.12 In answer to paragraph 4.12, defendants respond that this paragraph contains a
28 mixture of argument, contentions, and factual allegations, and characterizations of textbooks, which

1 speak for themselves, such that no answer is required. Further, defendants lack sufficient knowledge
2 or information to admit or deny the factual allegations in this paragraph and, on that basis, deny
3 every allegation in this paragraph.

4 4.13 In answer to paragraph 4.13, defendants respond that this paragraph contains a
5 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
6 required. Moreover, paragraph 4.13 purports to quote from one unidentified textbook, which speaks
7 for itself and, as such, does not require an answer. To the extent an answer is required, defendants
8 lack sufficient knowledge or information to admit or deny the factual allegations in this paragraph
9 and, on that basis and because the textbook speaks for itself, deny every allegation in this paragraph.

10 4.14 In answer to paragraph 4.14, defendants respond that this paragraph contains a
11 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
12 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
13 factual allegations in this paragraph. This paragraph also purports to quote from a book by a
14 Professor Stanley Wolpert, which book speaks for itself and, as such, does not require an answer.
15 To the extent an answer is required, defendants deny every allegation in this paragraph.

16 4.15 In answer to paragraph 4.15, defendants respond that this paragraph contains a
17 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
18 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
19 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
20 allegation in this paragraph.

21 With respect to footnote 3, defendants respond that this paragraph contains a mixture of
22 argument, contentions, characterizations, and factual allegations, such that no answer is required.
23 Moreover, defendants lack sufficient knowledge or information to admit or deny the factual
24 allegations in this paragraph. This footnote also purports to quote from a document, which speaks
25 for itself, and, as such, does not require an answer. To the extent an answer is required, defendants
26 deny every allegation in this footnote.

27 4.16 In answer to paragraph 4.16, defendants respond that this paragraph contains a
28 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is

1 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
2 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
3 allegation in this paragraph.

4 4.17 In answer to paragraph 4.17, defendants respond that this paragraph contains a
5 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
6 required. To the extent an answer is required, defendants deny every allegation in this paragraph.

7 4.18 In answer to paragraph 4.18, defendants respond that this paragraph contains a
8 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
9 required. To the extent an answer is required, defendants deny every allegation in this paragraph.

10 4.19 In answer to paragraph 4.19, defendants respond that this paragraph contains a
11 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
12 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
13 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
14 allegation in this paragraph.

15 4.20 In answer to paragraph 4.20, defendants respond that this paragraph contains a
16 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
17 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
18 factual allegations in sentence 1 or 3 of this paragraph. Sentence 2 purports to describe material
19 contained in the textbooks, which textbooks speak for themselves and, as such, do not require an
20 answer. To the extent an answer is required, defendants deny every allegation in this paragraph.

21 4.21 In answer to paragraph 4.21, defendants respond that this paragraph contains a
22 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
23 required. It also purports to describe material contained in some unidentified textbooks, which
24 textbooks speak for themselves and, as such, do not require an answer. To the extent an answer is
25 required, defendants deny every allegation in this paragraph.

26 4.22 In answer to paragraph 4.22, defendants respond that this paragraph contains a
27 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
28 required. It also purports to describe and interpret material contained in some unidentified

1 textbooks, which textbooks for themselves and, as such, do not require an answer. It also purports
2 to quote and interpret a Curriculum Commission recommended edit, which edit speaks for itself
3 and, as such, does not require an answer. To the extent an answer is required, defendants deny every
4 allegation in this paragraph.

5 4.23 In answer to paragraph 4.23, defendants respond that this paragraph contains a
6 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
7 required. To the extent an answer is required, defendants deny every allegation in this paragraph.

8 4.24 In answer to paragraph 4.24, defendants respond that this paragraph contains a
9 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
10 required. Defendants lack sufficient knowledge or information to admit or deny the factual
11 allegations regarding whether "women did not enjoy a particularly inferior status in ancient Hindu
12 society." To the extent an answer is required, defendants deny every allegation in this paragraph.

13 4.25 In answer to paragraph 4.25, defendants respond that this paragraph contains a
14 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
15 required. To the extent an answer is required, defendants deny every allegation in this paragraph.

16 4.26 In answer to paragraph 4.26, defendant deny every allegation in sentence 1.
17 Defendants further respond that the remainder of this paragraph contains a mixture of argument,
18 contentions, characterizations, and factual allegations, such that no answer is required. Moreover,
19 defendants lack sufficient knowledge or information to admit or deny the factual allegations in the
20 remainder of this paragraph. To the extent an answer is required, defendants deny every allegation
21 in this paragraph.

22 4.27 In answer to paragraph 4.27, defendants respond that this paragraph contains a
23 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
24 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
25 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
26 allegation in this paragraph.

27 4.28 In answer to paragraph 4.28, defendants respond that this paragraph contains a
28 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is

1 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
2 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
3 allegation in this paragraph.

4 4.29 In answer to paragraph 4.29, defendants respond that this paragraph contains a
5 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
6 required. It also purports to describe and interpret material contained in some unidentified textbook,
7 which textbook speaks for itself and, as such, does not require an answer. Moreover, defendants lack
8 sufficient knowledge or information to admit or deny the factual allegations in this paragraph. To
9 the extent an answer is required, defendants deny every allegation in this paragraph.

10 4.30 In answer to paragraph 4.30, defendants respond that this paragraph contains a
11 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
12 required. It also purports to describe and interpret material contained in some unidentified textbook,
13 which textbook speaks for itself and, as such, does not require an answer. To the extent an answer
14 is required, defendants deny every allegation in this paragraph.

15 4.31 In answer to paragraph 4.31, defendants respond that this paragraph contains a
16 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
17 required. It also purports to describe and interpret material contained in some unidentified (possibly
18 Hindu) texts, which texts speaks for themselves and, as such, do not require an answer. Moreover,
19 defendants lack sufficient knowledge or information to admit or deny the factual allegations in this
20 paragraph. To the extent an answer is required, defendants deny every allegation in this paragraph.

21 4.32 In answer to paragraph 4.32, defendants respond that this paragraph contains a
22 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
23 required. It also purports to describe and interpret material contained in some unidentified
24 textbooks, which textbooks speaks for themselves and, as such, do not require an answer. Moreover,
25 defendants lack sufficient knowledge or information to admit or deny the factual allegations in this
26 paragraph. To the extent an answer is required, defendants deny every allegation in this paragraph.

27 4.33 In answer to paragraph 4.33, defendants respond that this paragraph contains a
28 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is

1 required. This paragraph purports to quote and characterize the work of F. Max Muller (as cited in
2 footnote 4), which work speaks for itself, and, as such does not require an answer. It also purports
3 to generalize about unnamed scholars and their intent in unspecified works, works speak for
4 themselves, and, as such do not require an answer. Moreover, defendants lack sufficient knowledge
5 or information to admit or deny the factual allegations in this paragraph. To the extent an answer
6 is required, defendants deny every allegation in this paragraph.

7 4.34 In answer to paragraph 4.34, defendants respond that this paragraph purports to
8 describe or characterize material contained in some unidentified textbooks, which textbooks speaks
9 for themselves and, as such, do not require an answer. Moreover, defendants lack sufficient
10 knowledge or information to admit or deny the factual allegations in this paragraph. To the extent
11 an answer is required, defendants deny every allegation in this paragraph.

12 4.35 In answer to paragraph 4.35, defendants respond that this paragraph contains a
13 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
14 required. It purports to describe or characterize material contained in some unidentified textbooks,
15 which textbooks speaks for themselves and, as such, do not require an answer. Moreover,
16 defendants lack sufficient knowledge or information to admit or deny the factual allegations in this
17 paragraph. To the extent an answer is required, defendants deny every allegation in this paragraph
18 as pled.

19 4.36 In answer to paragraph 4.36, defendants respond that this paragraph contains a
20 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
21 required. It purports to describe or characterize material contained in some "certain textbooks" and
22 "no textbooks," which textbooks speaks for themselves and, as such, do not require an answer.
23 Moreover, defendants lack sufficient knowledge or information to admit or deny the factual
24 allegations in this paragraph. To the extent an answer is required, defendants deny every allegation
25 in this paragraph.

26 4.37 In answer to paragraph 4.37, defendants respond that this paragraph contains a
27 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
28 required. It purports to describe, characterize, and/or quote material contained in a textbook (cited

1 and characterized in footnote 5), which textbook speak for itself and, as such does not require an
2 answer. Moreover, defendants lack sufficient knowledge or information to admit or deny the factual
3 allegations in this paragraph. To the extent an answer is required, defendants deny every allegation
4 in this paragraph.

5 4.38 In answer to paragraph 4.38, defendants respond that this paragraph contains a
6 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
7 required. It purports to describe and characterize the "typical[]" content of unidentified textbooks,
8 which unidentified textbooks speak for themselves and, as such, does not require an answer.
9 Moreover, defendants lack sufficient knowledge or information to admit or deny the factual
10 allegations in this paragraph. To the extent an answer is required, defendants deny every allegation
11 in this paragraph.

12 4.39 In answer to paragraph 4.39, defendants respond that this paragraph contains a
13 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
14 required. It purports to describe or characterize material contained in unidentified textbooks, which
15 unidentified textbooks speaks for themselves and, as such, do not require an answer. Moreover,
16 defendants lack sufficient knowledge or information to admit or deny the factual allegations in this
17 paragraph. To the extent an answer is required, defendants deny every allegation in this paragraph.

18 4.40 In answer to paragraph 4.40, defendants admit the allegations in sentence 1.
19 Defendants deny that a copy of the Witzel letter referred to in sentence 1 is attached as exhibit A
20 to the second amended complaint, but instead affirmative allege that only a portion of this letter is
21 attached as exhibit A.

22 4.41 In answer to paragraph 4.41, defendants respond that this paragraph contains a
23 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
24 required. Furthermore, this paragraph purports to describe, characterize, and quote the Witzel letter,
25 which speaks for itself, and, as such, does not require an answer. To the extent an answer is
26 required, defendants deny every allegation in this paragraph.

27 4.42 In answer to paragraph 4.42, defendants respond that this paragraph contains a
28 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is

1 required. Furthermore, this paragraph purports to describe and quote the Witzel letter, which speaks
2 for itself, and, as such, does not require an answer. To the extent an answer is required, defendants
3 deny every allegation in this paragraph.

4 4.43 In answer to paragraph 4.43, defendants respond that this paragraph contains a
5 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
6 required. Furthermore, sentence 1 purports to describe and characterize the Witzel letter, which
7 speaks for itself, and, as such, does not require an answer. Moreover, defendants lack sufficient
8 knowledge or information to admit or deny the factual allegations in sentence 2. To the extent an
9 answer is required, defendants deny every allegation in this paragraph.

10 4.44 In answer to paragraph 4.44, defendants respond that this paragraph contains a
11 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
12 required. Furthermore, this paragraph purports to describe and characterize the Witzel letter, which
13 speaks for itself, and, as such, does not require an answer. To the extent an answer is required,
14 defendants deny every allegation in this paragraph.

15 4.45 In answer to paragraph 4.45, defendants respond that this paragraph contains a
16 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
17 required. Defendants lack sufficient knowledge or information to admit or deny the factual
18 allegations that "[u]p to this point in the process neither Professor Witzel nor any of the signatories
19 to the Witzel Letter had participated in any way in the process." To the extent an answer is required,
20 defendants deny every allegation in this paragraph.

21 4.46 In answer to paragraph 4.46, defendants deny every allegation in this paragraph.

22 4.47 In answer to paragraph 4.47, defendants admit that during a November 9, 2005 SBE
23 meeting, SBE President Ruth Green read the Witzel letter. Except as expressly admitted, defendants
24 deny every allegation in this paragraph.

25 4.48 In answer to paragraph 4.48, defendants deny every allegation in this paragraph.

26 4.49 In answer to paragraph 4.49, defendants deny every allegation in this paragraph.

27 4.50 In answer to paragraph 4.50, defendants deny every allegation in this paragraph.

28 4.51 In answer to paragraph 4.51, defendants deny that the three "members" referenced

1 were part of a second CRPE. With regard to the allegation that these three "members . . . were
2 affiliated with the Witzel letter," this letter speaks for itself as would any affiliation with it, and, as
3 such, this allegation does not require an answer. Moreover, defendants lack sufficient knowledge
4 or information to admit or deny the allegations in this paragraph, except as expressly denied. To the
5 extent an answer is required, defendants deny every allegation in this paragraph.

6 4.52 In answer to paragraph 4.52, defendants deny every allegation in sentence 1. In
7 response to sentence 2, In answer to sentence 2, defendants admit that Professor Bajpai's consultant
8 contract with CDE required that he have expertise in ancient India history and the Hindu religion.
9 Defendants lack sufficient knowledge or information to admit or deny every other allegation in
10 sentence 2 and, on that basis, except as expressly admitted, deny every allegation in this sentence.
11 Defendants lack sufficient knowledge or information to admit or deny every allegation in sentence
12 3 and, on that basis, deny every allegation in this sentence.

13 4.53 In answer to paragraph 4.53, defendants respond that this paragraph contains a
14 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
15 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
16 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
17 allegation in this paragraph.

18 4.54 In answer to paragraph 4.54, defendants deny every allegation in this paragraph.

19 4.55 In answer to paragraph 4.55, defendants deny every allegation in this paragraph.

20 4.56 In answer to paragraph 4.56, defendants admit that on December 2, 2005, the
21 Curriculum Commission met to address edits and corrections on Ancient India and Hinduism, but
22 deny that these were "final edits."

23 4.57 In answer to paragraph 4.57, deny every allegation in this paragraph.

24 4.58 In answer to paragraph 4.58, defendants respond that this paragraph contains a
25 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
26 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
27 factual allegations in sentence 1. To the extent an answer is required, defendants deny every
28 allegation in this paragraph.

1 4.59 In answer to paragraph 4.59, defendants deny every allegation in this paragraph.

2 4.60 In answer to paragraph 4.60, defendants deny every allegation in this paragraph.

3 4.61 In answer to paragraph 4.61, defendants admit that on January 6, 2006, some SBE
4 board members met privately with Professors Bajpai and Witzel, among others. Defendants lack
5 sufficient knowledge or information to admit or deny the factual allegations in sentence 3 and, on
6 that basis, deny every allegation in this sentence. Except as expressly admitted, defendants deny
7 every allegation in this paragraph.

8 4.62 In answer to paragraph 4.62, defendants lack sufficient knowledge or information
9 to admit or deny the factual allegations in sentence 1 and, on that basis, deny every allegation in this
10 sentence. Defendants deny every allegation in sentence 2.

11 4.63 In answer to paragraph 4.63, defendants deny every allegation in sentence 1. Except
12 as expressly denied, defendants admit the allegations in this paragraph.

13 4.64 In answer to paragraph 4.64, defendants lack sufficient knowledge or information
14 to admit or deny the factual allegations in this paragraph and, on that basis, deny every allegation.

15 4.65 In answer to paragraph 4.65, defendants admit the allegations in this paragraph.

16 4.66 In answer to paragraph 4.66, defendants admit the allegations in this paragraph.

17 4.67 In answer to paragraph 4.67, defendants deny every allegation in this paragraph.

18 4.68 In answer to paragraph 4.68, defendants respond that this paragraph contains a
19 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
20 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
21 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
22 allegation in this paragraph.

23 4.69 In answer to paragraph 4.69, defendants respond that this paragraph contains a
24 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
25 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
26 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
27 allegation in this paragraph.

28 4.70 In answer to paragraph 4.70, , defendants respond that this paragraph contains a

1 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
2 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
3 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
4 allegation in this paragraph.

5 4.71 In answer to paragraph 4.71, , defendants respond that this paragraph contains a
6 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
7 required. Moreover, defendants lack sufficient knowledge or information to admit or deny the
8 factual allegations in this paragraph. To the extent an answer is required, defendants deny every
9 allegation in this paragraph.

10 4.72 In answer to paragraph 4.72, , defendants respond that this paragraph contains a
11 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
12 required. To the extent an answer is required, defendants deny every allegation in this paragraph.

13 4.73 In answer to paragraph 4.73, , defendants respond that this paragraph contains a
14 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
15 required. It also purports to quote Abhijit Kurup, whose statement speaks for itself, and, as such
16 does not require an answer. Moreover, defendants lack sufficient knowledge or information to admit
17 or deny the factual allegations in this paragraph. To the extent an answer is required, defendants
18 deny every allegation in this paragraph.

19 4.74 In answer to paragraph 4.74, , defendants respond that this paragraph contains a
20 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
21 required. It also purports to quote Abhijit Kurup, whose statements speak for themselves, and, as
22 such, do not require an answer. Moreover, defendants lack sufficient knowledge or information to
23 admit or deny the factual allegations in this paragraph. To the extent an answer is required,
24 defendants deny every allegation in this paragraph.

25 4.75 In answer to paragraph 4.75, defendants deny every allegation in this paragraph.

26 4.76 In answer to paragraph 4.76, defendants respond that this paragraph contains a
27 mixture of argument, contentions, characterizations, and factual allegations, such that no answer is
28 required. This paragraph also purports to describe law and regulations, which speak for themselves,

1 and, as such do not require an answer. Moreover, defendants lack sufficient knowledge or
 2 information to admit or deny the factual allegations in this paragraph. To the extent an answer is
 3 required, defendants deny every allegation in this paragraph. Defendants affirmatively allege that
 4 instructional materials for kindergarten through grade 8 are adopted after public inspection of the
 5 instructional materials and public hearings, as set forth in Education Code sections 60202 and 60203.

6 4.77 In answer to paragraph 4.77, defendants respond that this paragraph contains a
 7 mixture of argument, contentions, characterizations, interpretation of law, and factual allegations,
 8 such that no answer is required. To the extent any further answer is required, defendants deny every
 9 allegation in this paragraph.

10 4.78 In answer to paragraph 4.78, defendants respond that this paragraph purports to
 11 describe the intended beneficiaries of the second amended complaint, which speaks for itself, and,
 12 as such, does not require an answer. To the extent an answer is required, defendants deny every
 13 allegation in this paragraph.

14 4.79 In answer to paragraph 4.79, defendants admit that plaintiff's articles of
 15 incorporation state that it was formed to "promote an accurate portrayal of the Hindu religion in the
 16 public education system." Defendants lack sufficient knowledge or information to admit or deny the
 17 remainder of this paragraph, and, on that basis, except as expressly admitted, deny every allegation
 18 in this paragraph.

19 **FIRST CLAIM**

20 **(Violation of the Equal Protection Clause)**

21 5.1 In answer to paragraph 5.1, defendants incorporate by reference their answers to
 22 paragraphs 1.1 through 4.79, inclusive, of the second amended complaint.

23 5.2 In answer to paragraph 5.2, defendants deny the allegations, if any, because plaintiff
 24 is purporting to paraphrase, quote, or characterize a legal provision, which legal provision speaks
 25 for itself, and, as such does not require an answer.

26 5.3 In answer to paragraph 5.3, defendants deny the allegations, if any, because plaintiff
 27 is purporting to paraphrase, quote, or characterize a legal provision, which legal provision speaks
 28 for itself, and, as such does not require an answer.

1 5.4 In answer to paragraph 5.4, defendants respond that sentence 1 contains a mixture
2 of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that
3 no answer is required. To the extent an answer is required, defendants deny every allegation in this
4 sentence. Defendants deny every allegation in sentence 2.

5 5.5 In answer to paragraph 5.5, defendants respond that this paragraph contains a
6 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
7 such that no answer is required. To the extent an answer is required, defendants deny every
8 allegation in this paragraph.

9 5.6 In answer to paragraph 5.6, defendants respond that this paragraph contains a
10 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
11 such that no answer is required. To the extent an answer is required, defendants deny every
12 allegation in this paragraph.

13 5.7 In answer to paragraph 5.7, defendants deny every allegation in this paragraph.

14 5.8 In answer to paragraph 5.8, defendants deny every allegation in this paragraph.

15 5.9 In answer to paragraph 5.9, defendants respond that sentence 1 contains a mixture
16 of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that
17 no answer is required. To the extent an answer is required, defendants deny every allegation in this
18 sentence. In response to sentence 2, defendants admit that some of the defendants met with
19 Professor Witzel and other persons, regarding the edits on Hinduism. In response to sentence 2,
20 defendants further admit that some defendants communicated with Professor Witzel and others.
21 Defendants lack sufficient knowledge or information to admit or deny the factual allegations in this
22 sentence with any greater specificity and, on that basis, deny all other allegations in sentence 2.

23 5.10 In answer to paragraph 5.10, defendants respond that this paragraph contains a
24 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
25 such that no answer is required. To the extent an answer is required, defendants deny every
26 allegation in this paragraph.

27 5.11 In answer to paragraph 5.11, defendants respond that sentence 1 contains a mixture
28 of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that

1 no answer is required. To the extent an answer is required, defendants deny every allegation in
 2 sentence 1. Defendants lack sufficient knowledge or information to admit or deny the factual
 3 allegations regarding "[o]rganized community advocacy groups lobbying for change" and, on that
 4 basis, deny this allegation. Defendants deny every other allegation in this paragraph.

5 5.12 In answer to paragraph 5.12, defendants respond that this paragraph contains a
 6 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
 7 such that no answer is required. To the extent that any further answer is required, defendants deny
 8 every allegation in this paragraph.

9 5.13 In answer to paragraph 5.13, defendants respond that this paragraph contains a
 10 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
 11 such that no answer is required. To the extent an answer is required, defendants deny every
 12 allegation in this paragraph. Defendants affirmatively allege that instructional materials for
 13 kindergarten through grade 8 are adopted after public inspection of the instructional materials and
 14 public hearings, as set forth in Education Code sections 60202 and 60203.

15 SECOND CLAIM

16 (Violation of the Establishment Clause)

17 6.1 In answer to paragraph 6.1, defendants incorporate by reference their answers to
 18 paragraphs 1.1 through 5.13, inclusive, of the second amended complaint.

19 6.2 In answer to paragraph 6.2, defendants deny the allegations, if any, because plaintiff
 20 is purporting to paraphrase, quote, or characterize a legal provision, which legal provision speaks
 21 for itself, and, as such does not require an answer.

22 6.3 In answer to paragraph 6.3, defendants deny every allegation in this paragraph.

23 6.4 In answer to paragraph 6.4, defendants deny every allegation in this paragraph.

24 6.5 In answer to paragraph 6.5, defendants deny every allegation in sentence 1.
 25 Defendants further respond that sentence 2 contains a mixture of legal argument, contentions,
 26 interpretation of legal provisions, and factual allegations, such that no answer is required to this
 27 sentence. To the extent an answer is required, defendants deny every allegation in sentence 2.

28 In answer to footnote 6, defendants respond that this paragraph contains a mixture of legal

1 argument, contentions, interpretation and quotation of legal provisions, and factual allegations, such
2 that no answer is required. This paragraph also purports to describe the legal effect of the second
3 amended complaint, which speaks for itself, and, as such, does not require an answer. To the extent
4 an answer is required, defendants deny every allegation in this paragraph.

5 6.6 In answer to paragraph 6.6, defendants respond that this paragraph contains a
6 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
7 such that no answer is required. To the extent an answer is required, defendants deny every
8 allegation in this paragraph.

9 6.7 In answer to paragraph 6.7, defendants respond that sentence 1 contains a mixture
10 of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that
11 no answer is required to this sentence. To the extent an answer is required, defendants deny every
12 allegation in sentence 1. In answer to sentence 2, defendants admit that there were certain criteria
13 for retaining Professor Bajpai. Except as expressly admitted, defendants deny every allegation in
14 sentence 2.

15 6.8 In answer to paragraph 6.8, defendants respond that this paragraph contains a
16 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
17 such that no answer is required. To the extent an answer is required, defendants deny every
18 allegation in this paragraph.

19 6.9 In answer to paragraph 6.9, defendants respond that this paragraph contains a
20 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
21 such that no answer is required. To the extent an answer is required, except as expressly alleged,
22 defendants deny every allegation in this paragraph.

23 6.10 In answer to paragraph 6.10, defendants respond that this paragraph contains a
24 mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations,
25 such that no answer is required. To the extent an answer is required, except as expressly alleged,
26 defendants deny every allegation in this paragraph.

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THIRD CLAIM

(Violation of the Free Speech and Free Association Clauses)

7.1 In answer to paragraph 7.1, defendants incorporate by reference their answers to paragraphs 1.1 through 6.10, inclusive, of the second amended complaint.

7.2 In answer to paragraph 7.2, defendants deny the allegations, if any, because plaintiff is purporting to paraphrase, quote, or characterize a legal provision, which legal provision speaks for itself, and, as such does not require an answer.

7.3 In answer to paragraph 7.3, defendants lack sufficient knowledge or information to admit or deny the factual allegations in this paragraph. To the extent an answer is required, defendants deny every allegation in this paragraph.

7.4 In answer to paragraph 7.4, defendants deny every allegation in sentences 1 and 3. Sentence 2 purports to paraphrase, quote, or characterize the Witzel letter, which letter speaks for itself, and, as such does not require an answer. To the extent an answer is required, defendants deny every allegation in sentence 2.

7.5 In answer to paragraph 7.5, defendants respond that this paragraph contains a mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that no answer is required. To the extent an answer is required, defendants deny every allegation in this paragraph.

7.6 In answer to paragraph 7.6, defendants deny the allegations, if any, because plaintiff is purporting to paraphrase, quote, or characterize a legal provision, which legal provision speaks for itself, and, as such does not require an answer.

7.7 In answer to paragraph 7.7, defendants deny every allegation in this paragraph.

7.8 In answer to paragraph 7.8, defendants deny every allegation in sentences 1 and 4. Defendants respond that sentence 2 contains a mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that no answer is required. To the extent an answer is required, defendants deny every allegation in this sentence. Defendants lack sufficient knowledge or information to admit or deny the factual allegations in sentence 3, and on that basis deny every allegation in this sentence.

7.9 In answer to paragraph 7.9, defendants respond that this paragraph contains a mixture of legal argument, contentions, interpretation of legal provisions, and factual allegations, such that no answer is required. To the extent an answer is required, defendants deny every allegation in this paragraph.

FIRST AFFIRMATIVE DEFENSE

1. As a first affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred by res judicata.

SECOND AFFIRMATIVE DEFENSE

2. As a second affirmative defense, defendants asserts that plaintiff lacks standing and the capacity either to bring or to maintain this action or both, or to obtain the relief sought.

THIRD AFFIRMATIVE DEFENSE

3. As a third affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred by the separation of powers doctrine in that the second amended complaint seeks court intervention in the State Board of Education's textbook adoption process, which is within the exclusive jurisdiction and province of the Legislative and Executive branches.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred because the matter in controversy constitutes a political question.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred because there is no justiciable controversy that may be adjudicated by this court.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth affirmative defense, defendants assert the second amended complaint, as a whole, and every claim asserted in it, is barred by the doctrine of laches.

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SEVENTH AFFIRMATIVE DEFENSE

7. As a seventh affirmative defense, defendants assert the second amended complaint, as a whole, and every claim asserted in it, is barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

8. As an eighth affirmative defense, defendants assert the second amended complaint, as a whole, and every claim asserted in it, is barred by the doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

9. As a ninth affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred because plaintiff has failed to exhaust its administrative remedies.

TENTH AFFIRMATIVE DEFENSE

10. As a tenth affirmative defense, defendants assert that the second amended complaint, as a whole, and every claim asserted in it, is barred by the Eleventh Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

11. As an eleventh affirmative defense, defendants assert that because the second amended complaint, as a whole, and every claim asserted in it, is stated in such vague and ambiguous terms and is framed more in terms of legal argument than factual allegation, defendants cannot fully anticipate all affirmative defenses that may apply to this action. Accordingly, defendants reserve the right to assert additional affirmative defenses as the legal and factual bases for the claims become known.

Wherefore, defendants pray as follows:

1. That plaintiff takes nothing by its second amended complaint and that judgment be rendered in favor of defendants;

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- 1 2. That defendants be awarded their costs of suit incurred defending this action; and,
2 3. For such other relief as the Court deems appropriate.

3 Dated: September 25, 2006

4 Respectfully submitted,

5 BILL LOCKYER
6 Attorney General of the State of California

7 JOSEPH O. EGAN
8 Lead Supervising Deputy Attorney General

9 

10 KARA READ-SPANGLER
11 Deputy Attorney General
12 Attorneys for Defendants

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