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13 HURST et al.

14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 KENNETH HURST, JOAN BALCOME,) NO. _____
17 KIRK ROGER TINGBLAD, PHILIP JONES-)
18 THOMAS, BARRY S. GOLDBERG, SOPHIE)
19 GOLDBERG, JEANNIE PARENT, KEN and)
20 JODY VALMASSY, and ANN and RICHARD) **COMPLAINT**
21 HOWARD,)

22) DATE:
23) TIME:
24) COURT:
25)
26)
27)
28)

29 *Plaintiffs,*
30 v.

31 STEVE NEWMAN, individually and in his)
32 official capacity as a member of the El Tejon)
33 Unified School District Board of Trustees;)
34 PAULA REGAN, individually and in her)
35 official capacity as a member of the El Tejon)
36 Unified School District Board of Trustees;)
37 STACEY GUSTAFSON, individually and in)
38 her official capacity as a member of the El)
39 Tejon Unified School District Board of)
40 Trustees; KITTY JO NELSON, individually)
41 and in her official capacity as a member of the)
42 El Tejon Unified School District Board of)
43 Trustees; PHYLLIS THROCKMORTON,)
44 individually and in her official capacity as a)
45 member of the El Tejon Unified School District)
46 Board of Trustees; JOHN WIGHT, individually)

1 and in his official capacity as superintendent of)
2 the El Tejon Unified School District; DAN)
3 PENNER, individually and in his official)
4 capacity as principal of Frazier Mountain High)
5 School; and SHARON LEMBURG,)
6 individually and in her official capacity as a)
7 teacher at Frazier Mountain High School,)
8)
9 *Defendants.*)

10 **COMPLAINT**

11
12 **I. INTRODUCTION**

13 **1.** On January 1, 2006, New Year’s Day, after providing barely 24 hours notice to the
14 community, the El Tejon Unified School District Board of Trustees (“Board of Trustees”)
15 approved, by a 3-2 vote, a new course — “Philosophy of Intelligent Design” — to commence only
16 two days later on January 3, 2006. The class is now in its second week, and is scheduled to run
17 for the length of the school’s month-long intersession period, which ends on February 3, 2006.
18 The course was designed to advance religious theories on the origins of life, including creationism
19 and its offshoot “intelligent design.” With a single, inapposite exception, the course relies
20 exclusively on videos that advocate religious perspectives and present religious theories as
21 scientific ones — and, because the teacher has no scientific training, students are not provided with
22 any critical analysis of this presentation. The course thus amounts to a patent violation of the
23 constitutions of both the United States and the State of California. Plaintiffs seek a temporary
24 restraining order and, if necessary, preliminary and permanent injunctions, to prevent the ongoing
25 violation.

26 **II. JURISDICTION AND VENUE**

27 **2.** This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over
28 plaintiffs’ causes of action arising under the First and Fourteenth Amendments to the Constitution
of the United States, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and

1 2202. This Court has supplemental jurisdiction over plaintiffs' causes of action arising under the
2 Constitution of the State of California pursuant to 28 U.S.C. § 1367.

3 **3.** Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because one or
4 more defendants resides in this District, all defendants reside in the state of California and the
5 events or omissions giving rise to the claims at issue occurred in this District.

6 **III. PARTIES**

7 **4.** Plaintiff Dr. Kenneth Hurst, Ph.D., is a resident and taxpayer in Frazier Park,
8 California, which is located within the El Tejon Unified School District. He is a parent of a child
9 in the tenth grade and a child in the twelfth grade at Frazier Mountain High School.

10 **5.** Plaintiffs Joan Balcome and Kirk Roger Tingblad are residents and taxpayers in
11 Pine Mountain Club, California, which is located with the El Tejon Unified School District. They
12 are the parents of a child in the ninth grade at Frazier Mountain High School. They also are the
13 foster parents of a child in the tenth grade at Frazier Mountain High School.

14 **6.** Plaintiff Phillip Jones-Thomas is a resident and taxpayer in Lebec, California,
15 which is located within the El Tejon Unified School District. He is the parent of a child in the
16 ninth grade and a child in the tenth grade at Frazier Mountain High School.

17 **7.** Plaintiff Barry S. Goldberg is a resident and taxpayer in Pine Mountain Club,
18 California, which is located within the El Tejon Unified School District. He is the parent of a child
19 in the ninth grade and a child in the tenth grade at Frazier Mountain High School.

20 **8.** Plaintiff Sofie Goldberg is a resident and taxpayer in Pine Mountain Club,
21 California, which is located within the El Tejon Unified School District. She is a parent of child
22 in the ninth grade and the tenth grade at Frazier Mountain High School.

23 **9.** Plaintiff Jeanie Parent is a resident and taxpayer in Pine Mountain Club, California,
24 which is located within the El Tejon Unified School District. She is a parent of a child in the tenth
25 grade at Frazier Mountain High School.

26 **10.** Plaintiffs Ken and Jody Valmassy are residents and taxpayers in Pine Mountain
27 Club, California, which is located within the El Tejon Unified School District. They are the parents
28 of a child in the tenth grade at Frazier Mountain High School.

11. Plaintiffs Ann and Richard Howard are residents and taxpayers in Pine Mountain

1 Club, California, which is located within the El Tejon Unified School District. They are the
2 parents of a child in the eleventh grade at Frazier Mountain High School. .

3 **12.** Defendant Steve Newman is a member of the El Tejon Unified School District
4 Board of Trustees. At all times herein, defendant Newman was acting under color of state law.

5 **13.** Defendant Stacy Gustafson is a member of the El Tejon Unified School District
6 Board of Trustees. At all times herein, defendant Gustafson was acting under color of state law.

7 **14.** Defendant Paula Regan is a member of the El Tejon Unified School District Board
8 of Trustees. At all times herein, defendant Regan was acting under color of state law.

9 **15.** Defendant Phyllis Throckmorton is a member of the El Tejon Unified School
10 District Board of Trustees. At all times herein, defendant Throckmorton was acting under color
11 of state law.

12 **16.** Defendant Kitty Jo Nelson is a member of the El Tejon Unified School District
13 Board of Trustees. At all times herein, defendant Nelson was acting under color of state law.

14 **17.** Defendant John Wight is the Superintendent of the El Tejon Unified School
15 District. At all times herein, defendant Wight was acting under color of state law.

16 **18.** Defendant Dan Penner is the principal of Frazier Mountain High School. At all
17 times herein, defendant Newman was acting under color of state law.

18 **19.** Defendant Sharon Lemburg is a special education teacher, and instructor of the
19 course “Philosophy of Intelligent Design” or “Philosophy of Design” at Frazier Mountain High
20 School. At all times herein, defendant Lemburg was acting under color of state law.

21 **20.** All of the defendants are being sued in their official capacities with respect to the
22 plaintiffs’ claims for injunctive relief, and in their individual capacities with respect to the
23 plaintiffs’ claims for nominal damages.

24 **IV. BACKGROUND REGARDING THE COURSE**

25 **21.** The Frazier Mountain High School operates around three academic sessions per
26 year: a fall semester, a winter intersession and a winter/spring semester. The intersession is a
27 month-long academic session during which students are required to take remedial classes, or if
28 they do not need any remedial classes, to take elective courses. Rather than a typical seven-period

1 school day, the students attend two three-hour-long classes per day during intersession. Electives
2 offered during the intersession period are often, if not usually, repeated in subsequent intersessions.

3 **22.** On December 1, 2005, students at Frazier Mountain High School were given, and
4 told to share with their parents, the course descriptions for the upcoming intersession, to begin on
5 January 3, 2006. Among the available courses was “Philosophy of Intelligent Design,” which was
6 described with a plainly pro-creationist, anti-evolution bent, as follows:

7 The class will take a close look at evolution as a theory and will discuss the
8 scientific, biological, and Biblical aspects that suggest why Darwin’s philosophy
9 is not rock solid. This class will discuss Intelligent Design as an alternative
10 response to evolution. Topics that will be covered are the age of the earth, a world
11 wide flood, dinosaurs, pre-human fossils, dating methods, DNA, radioisotopes, and
12 geological evidence. Physical and chemical evidence will be presented suggesting
13 the earth is thousands of years old, not billions. The class will include lecture
14 discussions, guest speaker, and videos. The class grade will be based on a position
15 paper in which students will support or refute the theory of evolution.

16 **23.** The course instructor, Sharon Lemburg, is a special education teacher with a
17 bachelor of arts degree in physical education and social science with an emphasis in sociology and
18 special education. Mrs. Lemburg has no training or certification in the teaching of science,
19 religion or philosophy. She is the wife of the minister for the local Assembly of God church, a
20 Christian fundamentalist church, and a proponent of a creationist world view. She informed the
21 local newspaper, the *Mountain Enterprise*, “Everything happened quickly, I had to have a Syllabus
22 overnight. I’m not an expert of this subject.” She added that she just wanted “to tell people about
23 the ideas of intelligent design.”

24 **24.** Like the course description, the syllabus that Mrs. Lemburg drafted for the class
25 manifested a patently anti-evolution, pro-creationism perspective. It listed five subject areas to be
26 covered in the month-long course: “What is Philosophy?,” “What is Intelligent Design?,” “What
27 is Darwinism/Evolution?,” “Laws of Thermodynamics,” and “Fossil Records and Dating
28 Methods.”

29 **25.** The segment entitled “What is Intelligent Design?” posited several questions that
30 reflected a pro-creationism, anti-evolution stance, including “Why is it a movement?”; “Why is
31 it gaining momentum?”; and “Why is it so threatening to society?”

32 **26.** The topics to be addressed in the fourth and fifth phases of the course – the “laws
33 of Thermodynamics” and “Fossil Records and Dating Methods” – represent scientific phenomenon

1 that are often referenced by creationists as reflecting areas in which the scientific theory of
2 evolution is misguided. Ms. Lemburg planned to discuss these topics despite her lack of any
3 scientific background.

4 **27.** Ms. Lemburg listed on the original syllabus 24 videos, which she planned to
5 potentially show to students during class. 23 of the 24 videos are produced or distributed by
6 religious organizations and assume a pro-creationist, anti-evolution stance. The 24th video has
7 nothing to do with creationism *or* evolution; it is thus unclear why it even appears on the list.

8 **28.** In addition to the videos listed on the original syllabus, Ms. Lemburg provided a
9 list of speakers who purportedly were invited to address the class. The only two proposed speakers
10 who would support evolution were Dr. Hurst and “Francis Krich.” Dr. Hurst never agreed to speak
11 to the class and, indeed, had declined the invitation because of his concerns about the course.
12 “Francis Krich” was revealed to actually be Nobel Prize winner Francis Crick, the co-discoverer
13 of the double helix structure of DNA. Mr. Crick died in June 2004. The remaining proposed
14 speakers were all vocal advocates of intelligent design.

15 **29.** On January 1, 2006, New Year’s day, the Board of Trustees called a special
16 meeting. Notice to the public was provided only one day earlier. The only item on the public
17 agenda was the “Consideration of Intercession Curriculum Courses at Frazier Mountain High
18 School.”

19 **30.** At this meeting, the Board of Trustees was presented with a revised syllabus for the
20 class, now denominated “Philosophy of Design.” Wight informed the school board that he had
21 consulted with the school’s attorneys, and that they had told him that as long as the course was
22 called “philosophy,” the district could, if it wanted, even present an unbalanced class entirely about
23 intelligent design.

24 **31.** The revised syllabus eliminates the fourth and fifth phases of the course (on
25 thermodynamics and fossil records and dating methods). Instead, it identifies four phases: “What
26 is Philosophy;” “What is the Theory of Evolution/Darwinism;” “What is Intelligent
27 Design/Creationism?” and “Philosophies Concerning Origins.”

28 **32.** The questions to be addressed in the third phase of the course – “What is Intelligent
Design/Creationism?” – remain reflective of a pro-creationist, anti-evolution perspective, asking

1 “Why [sic] is this movement and why is it gaining momentum?”; and “Why is it so threatening to
2 society, the educational system, and evolutionists?”.

3 **33.** The revised syllabus retains some of the videos listed on the original syllabus, but
4 also drops many of those that advocated young-creationist ideology, replacing them with videos
5 advocating intelligent design.

6 **34.** The revised syllabus also adds a video series in support of evolution, namely,
7 “Evolution by PBS,” which the syllabus explains “will be used to understand what evolution
8 teaches, its relation and effect on society and culture, and the history behind it” because, as Mrs.
9 Lemburg further explains in the syllabus, she “was unable to obtain a speaker in support of
10 evolution at this time.” The syllabus restates that guest speakers will still make appearances, but
11 does not list anyone specific.

12 **35.** Aside from the PBS video series on evolution, the revised syllabus relies
13 exclusively on videos that advocate intelligent design and/or young-earth creationism and that seek
14 to disprove evolution.

15 **36.** At the January 1 meeting, Frazier Mountain High School science teachers Tim
16 Garcia and Jim Selgrath and math teacher Jim Atkinson voiced their objections to the class on the
17 ground that it would undermine the school’s science curriculum.

18 **37.** The Board voted at the January 1 meeting to allow the Philosophy of Design course
19 to proceed, with Trustees Throckmorton and Nelson in dissent.

20 **38.** The class commenced on January 3, 2006. Since then, the class has met each school
21 day for three hours. Upon information and belief, no more than 13 students currently remain
22 enrolled in the class. This violates the school district’s own class enrollment rules, which require
23 that any class with less than 15 enrolled students be cancelled.

24 **39.** In California, public schools are funded by a combination of local property taxes
25 and state funds. *See Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 251-52 (9th Cir. 1992);
26 EdSource Online, http://www.edsource.org/edu_fin.cfm#where (last visited on Jan. 9, 2006).
27 Upon information and belief, Ms. Lemburg is paid with public funds to perform her duties,
28 including the teaching of the Philosophy of Design course. Furthermore, also upon information
and belief, the course materials (including the videos) have been purchased with public funds.

1 **40.** The plaintiffs perceive defendants’ actions as conveying a governmental message
2 that students should subscribe to the religious views reflected in the principles of intelligent design
3 and young-earth creationism. The plaintiffs feel harmed, intimidated, and distressed by the
4 defendants’ endorsement and promotion of religious views.

5 **41.** On January 4, 2006, Americans United for Separation of Church and State sent
6 defendants a letter stating that the class is unconstitutional and asking that it be cancelled. On
7 January 6, 2005, Americans United received a written response from Superintendent Wight stating
8 that the District intends to proceed with the class.

9 **V. BACKGROUND REGARDING CREATIONISM, INTELLIGENT DESIGN, AND**
10 **THE SCIENTIFIC THEORY OF EVOLUTION**

11 **42.** The National Academy of Sciences summarizes the scientific theory of evolution
12 as follows:

13 Biological evolution concerns changes in living things during the history of life on
14 earth. It explains that living things share common ancestors. Over time,
15 evolutionary change gives rise to new species. [Charles] Darwin called this process
16 “descent with modification,” and it remains a good definition of biological
17 evolution today.

18 **43.** According to the Academy, the scientific theory of “evolution is one of the
19 strongest and most useful scientific theories we have” and “[t]he scientific consensus around
20 evolution is overwhelming.” The American Association for the Advancement of Science has
21 stated that: “The contemporary theory of biological evolution is one of the most robust products
22 of scientific inquiry. It is the foundation for research in many areas of biology as well as an
23 essential element of science education.”

24 **44.** In science, the term “theory” has a distinct meaning and does not suggest
25 uncertainty, doubt, or speculation. Rather, according to the National Academy of Sciences, a
26 scientific “theory” is “a well-substantiated explanation of some aspect of the natural world that can
27 incorporate facts, laws, inferences and tested hypotheses.” Aside from evolution, other examples
28 of scientific theories include the germ theory of diseases, the heliocentric theory of the solar
system, atomic theory (the basis of the periodic table of the elements), the theory of plate tectonics,
and the theory of gravity. Each of these scientific theories integrates and explains such a wide
range of data that they are considered the crowning achievements of their respective fields.

1 **45.** “Creationism,” more specifically known as (and synonymous with) “special
2 creationism,” posits that God created biological organisms or systems through a “special” creative
3 act, and that those organisms or systems have not changed appreciably since they were created.
4 Special creationism encompasses both “young-earth creationism” and “progressive creationism.”

5 **46.** Young-earth creationism arises out of a literalist view of the Bible. It entails the
6 beliefs that the earth is only (roughly) 10,000 years old and that God created all animals and plants
7 as independent “kinds” over six twenty-four-hour days. Young-earth creationists reject the
8 possibility of evolution between kinds (which they call “macroevolution”). Young-earth
9 creationists also believe that varied geological forms are the product of a worldwide flood (*i.e.*, the
10 one in the story of Noah).

11 **47.** “Creation science” is an endeavor associated with young-earth creationism. It
12 accepts the tenets of young-earth creationism, including that the earth is some 10,000 years old,
13 that the “kinds” of plants and animals were created in six days, and that there was a worldwide
14 flood.

15 **48.** Progressive creationism is another type of special creationism. It entails the view
16 that God creates things in their present form, but serially at different points over a long period of
17 time and not over a six-day period. Progressive creationism does not assume that the Earth is only
18 10,000 years old, but instead generally accepts the scientific evidence that the Earth is billions of
19 years old, with God engaging in multiple acts of special creation throughout the Earth’s history.
20 Progressive creationists, like young-earth creationists, reject common ancestry of created “kinds,”
21 typically accepting that there can be “microevolution” within a kind — however a kind may be
22 defined — but denying that there can be evolution from one such kind to another.

23 **49.** In the 1920s, Christian fundamentalists pushed state legislatures to adopt laws
24 prohibiting public schools from teaching evolution, culminating in the Scopes “monkey trial” of
25 1925. *See Kitzmiller v. Dover School Board*, No. 04cv2688, 2005 WL 3465563, *3 (M.D. Pa. Dec.
26 20, 2005) This effort did not meet with success: In *Epperson v. Arkansas*, 393 U.S. 97 (1968),
27 the Supreme Court struck down Arkansas’s statutory prohibition against teaching evolution. *See*
28 *also Kitzmiller*, 2005 WL 3465563 at *3.

1 **50.** Thereafter, the anti-evolution, pro-creationism forces modified their tactics
2 somewhat: They began advocating for “balanced treatment” statutes, which required public-school
3 teachers who taught evolution to devote equal time to teaching the biblical view of creation, but
4 “courts realized this tactic to be another attempt to establish the Biblical version of the creation of
5 man.” *Kitzmiller*, 2005 WL 3465563 at *3.

6 **51.** The anti-evolution, pro-creationism forces adapted yet again, this time by seeking
7 “to utilize scientific-sounding language to describe religious beliefs and then to require that schools
8 teach the resulting ‘creation science’ or ‘scientific creationism’ as an alternative to evolution.”
9 *Kitzmiller*, 2005 WL 3465563 at *3. However, the Supreme Court once again saw through this
10 veiled effort to inject religious doctrine into public school classrooms, and held *in Edwards v.*
11 *Arkansas*, 482 U.S. 578 (1987), that creation science was a religious doctrine that could not be
12 taught in public schools.

13 **52.** After the defeat in *Edwards*, the anti-evolution, pro-creationist forces devised a new
14 incarnation of creationist principles: “intelligent design.” Intelligent design advocates tend to
15 ignore issues such as the age of the earth, and simply focus on the claim that God (or, as they put
16 it, “an intelligent agent” with powers greater than any known material agent) specially creates
17 “irreducibly complex” biological structures or processes. The claim is that such complex
18 structures and processes are unexplainable through natural cause, and therefore, by default, God
19 must have created them specially. The majority of intelligent-design creationists are progressive
20 creationists, though some are young-earth creationists. Some claim to accept evolution, but what
21 they inevitably are referring to is evolution within the “kind,” or “microevolution,” which is a
22 common creationist position.

23 **53.** Intelligent design is simply a “form of creationism.” *Kitzmiller*, 2005 WL 3465563
24 at *12. In an effort to further cloak the religious belief of creationism in scientific terms, however,
25 advocates of intelligent design have simply tweaked creation science doctrine by “systematically
26 purg[ing] from [intelligent design] explanations” the words “God,” “creationism,” and “Genesis”
27 and replacing them with an unnamed “designer.” *Id.* at *13.

28 **54.** Creationism and intelligent design represent religious viewpoints, rather than
scientific theories. They lack the hallmarks of scientific exploration: they cannot be proven or

1 scientific basis. The course attempts to undermine the credibility of evolutionary theory while at
2 the same time advancing the validity of intelligent design and young-earth creationism.

3 **59.** The reasonable, objective observer would perceive that the Philosophy of Design
4 course advances and endorses the specific religious viewpoint and beliefs encompassed by the
5 religious doctrines of intelligent design and young-earth creationism.

6 **COUNT TWO**

7 **(Violation of the Constitution of the State of California, Article I, Sec. 4; Article IX, Sec.
8 8; and Article XVI, Sec. 5)**

9 **60.** The actions of defendants, as set forth paragraphs 2 through 55, which are fully
10 incorporated herein, violate both facially and as applied Article I, Sec. 4; Article IX, Sec. 8 and
11 Article XVI, Sec. 5 of the Constitution of the State of California. The purpose of defendants'
12 actions is to advance and endorse religion and a particular religious viewpoint. The defendants's
13 actions succeed in doing so, resulting in the endorsement by the state of religion over non-religion
14 and of one religious viewpoint over others. The defendants' actions also represent an
15 impermissible appropriation of state funds for sectarian education and violate the express mandate
16 of Article IX, section 8 that no "sectarian or denominational doctrine be taught, or instruction
17 thereon be permitted, directly or indirectly, in any of the common schools of this State."

18 **PRAYER FOR RELIEF**

19 WHEREFORE, in light of the foregoing, plaintiffs respectfully request the following:

- 20 a. a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2002 and 42 U.S.C.
21 § 1983, that the Philosophy of Design course violates the Establishment Clause of
22 the First Amendment of the Constitution of the United States and Article I, Sec. 4;
23 Article IX, Sec. 8 and Article XVI, Sec. 5 of the Constitution of the State of
24 California;
- 25 b. a temporary restraining order, pursuant to Fed. R. Civ. Pro. 65(b), ordering
26 defendants to immediately cancel the class "Philosophy of Design";
- 27 c. in the event that the Court does not issue a TRO that remains in effect through the
28 conclusion of the class, a preliminary injunction prohibiting the teaching of the
"Philosophy of Design" course;

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- d. a permanent injunction prohibiting the defendants from teaching this class in the future;
- e. nominal damages against the defendants for violating the plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution; and Article I, Sec. 4; Article IX, Sec. 8 and Article XVI, Sec. 5 of the Constitution of the State of California;
- f. an order awarding plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
- g. any other relief the Court deems just and proper.

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Respectfully submitted,

Ayesha N. Khan
Richard B. Katskee
Sara J. Rose
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Heather L. Weaver
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Date: January 10, 2006