UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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CALIFORNIA PARENTS FOR THE EQUALIZATION OF EDUCATIONAL MATERIALS,

Plaintiff,

v.

NO. CIV. S-06-532 FCD KJM

THE CALIFORNIA DEPARTMENT OF EDUCATION, et al.,

Defendants.

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This matter is before the court on defendants California State Department of Education ("CDE"), California State Board of Education ("SBE"), Glee Johnson, Kenneth Noonan, Alan Bersin, Ruth Bloom, Yvonne Chan, Donald G. Fisher, Ruth E. Green, Joe Nunez, Bonnie Reiss, and Tom Adams' (collectively, "defendants") motion to dismiss plaintiff California Parents for the

Equalization of Educational Materials' ("plaintiff" or "CAPEEM") first amended complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.[1]

BACKGROUND[2]

Every six years, the SBE and CDE adopt and approve textbooks and instructional materials for use in California public schools. (FAC ¶ 4.1.) The Curriculum Development and Supplemental Materials Commission (the "Curriculum Commission"), an advisory body to the SBE, makes recommendations to SBE for specific revisions to the textbooks. (FAC ¶ 4.2.) This process is open to public comment from interested parties such as religious groups. (FAC ¶ 4.2.)

In 2005, CDE began the public review process for History-Social Sciences textbooks. It collected and received submissions for changes in September 2005. (FAC ¶ 4.4.) Along with other interested groups, members of CAPEEM, belonging to various Hindu groups, suggested edits. (FAC ¶ 4.6.) Among these edits, the Hindu groups' principal concerns related to the way in which Hindus and Hinduism were treated in the texts. These concerns included the textbooks' inclusion of (1) the origins of Hinduism, or the "Aryan Invasion Theory;" (2) the disproportionately inferior status of women as compared to other cultures; (3) the misconception of "untouchability" as a religious rather than a social construction; (4) the inaccurate description of Hindu concepts of divinity; and (5) derogatory comments about Hinduism

[1] All further references to a "Rule" are to the Federal Rules of Civil Procedure.

[2] The alleged facts below are drawn from plaintiff's complaint and, for purposes of this motion, are taken as true.

and Hindu tenets. (FAC ¶¶ 4.12-4.39.)

The CDE established an ad-hoc committee to review the edits and corrections proposed by the Hindu groups. (FAC ¶ 4.6.) The CDE also retained Dr. Shiva Bajpai, Professor Emeritus in History at Cal State Northridge, as a Content Review Panel Expert ("CRPE"). (FAC ¶ 4.7.) The CDE required the following of Dr. Bajpai: (1) he could not have published with any of the textbook publishers for the prior three years; (2) he had to be an expert of ancient Indian history and Hinduism; and (3) he could not be affiliated in any way with the Hindu groups submitting the comments. (FAC ¶ 4.8.)

In October 2005, the ad-hoc committee and Dr. Bajpai reviewed and approved the majority of the Hindu groups' proposed edits. (FAC ¶ 4.9.) On October 31, 2005, the ad-hoc committee and Dr. Bajpai submitted their recommendations to the Curriculum Commission, which accepted the recommendations in full (the "Initial Revisions"). (FAC ¶¶ 4.9-4.10.) During this time, other ad-hoc committees and subcommittees submitted recommendations regarding separate issues raised by other stakeholders such as Muslim and Jewish groups. (FAC ¶ 4.9.)

On November 8, 2005, Professor Michael Witzel, Professor of Sanskrit at Harvard University, sent the SBE a letter co-signed by other prominent academics in Indian history (the "Witzel Letter"). The Witzel Letter disagreed with many of the Initial Revisions, and it characterized the proposed changes as motivated by nationalist and religious sentiments. (FAC ¶ 4.41.) The Witzel Letter, however, did not include any specific reference to the Initial Revisions. Furthermore, the proposed revisions had

not yet been made available to the general public at the time Professor Witzel sent the letter, and neither he nor any of the letter's signatories had participated in the public comment period. (FAC ¶¶ 4.43-4.45.)

On November 9, 2005, defendant Ruth Green, President of the SBE, read the Witzel Letter at a SBE meeting and subsequently delayed approval of the Curriculum Commission's proposed revisions regarding Hinduism. (FAC ¶ 4.47.) During this meeting, the Curriculum Commission also recommended revisions supported by other religious groups representing Christians, Jews and Muslims. (FAC ¶ 4.49.) At a later meeting, the SBE created a second panel of experts consisting of Professor Witzel, Professor Wolpert of UCLA, and Professor Heitzman of UC Davis. (FAC ¶ 4.50.) Plaintiff alleges this second panel did not meet the standards required of Dr. Bajpai as the first CRPE. (FAC ¶ 4.52.)

On November 22, 2005, the CDE released recommendations proposed by the second panel. The interested Hindu groups were not allowed an opportunity to comment on these revisions. (FAC ¶ 4.55.) On December 2, 2005, the Curriculum Commission met to discuss the new revisions and submitted its recommendations to the SBE. (FAC ¶¶ 4.56-4.59.) On January 6, 2006, the SBE conducted a closed-door meeting with Professors Bajpai and Witzel regarding the final proposed revisions. (FAC ¶¶ 4.62-4.63.) On January 12, 2006, the SBE created a five member subcommittee to consider the issue. (FAC ¶ 4.63.) On March 8-10, 2006, the SBE held a public meeting and adopted the final edits to the textbooks (the "Final Revisions"). (FAC ¶¶ 4.65-4.66.) The

Final Revisions adopted some of the Hindu groups' suggested edits, but they did not address the groups' primary concerns described above. (FAC ¶ 4.69.)

Plaintiff is a non-profit organization whose purpose is to promote an accurate portrayal of the Hindu religion in California public schools. (Defs.' Req. for Judicial Notice ("RJN") at Ex. C, filed June 12, 2006.) As a result of defendants' actions, plaintiff alleges damages to its members who include public participants in the textbook revision process as well as Hindu and Indian parents with students in California public schools. (FAC page 2.) Plaintiff alleges that educational materials that follow the Final Revisions will embarrass and degrade its members' children and will result in an inferior education for Hindu and Indian students. (FAC ¶ 4.72-4.75.)

Plaintiff filed its first amended complaint on May 4, 2006. Plaintiff included claims against all defendants for violation, under the United States Constitution, of the Equal Protection Clause of the Fourteenth Amendment, and the Establishment, the Free Speech and the Free Association Clauses of the First Amendment. Plaintiff also included a claim against the individual defendants[3] for violation of 42 U.S.C. § 1983. Plaintiff's complaint seeks injunctive relief, nominal damages and attorney's fees.

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[3] The "individual defendants" include all named defendants except the SBE and CDE. Defendant Tom Adams oversees the textbook revision process for CDE. Defendant Glee Johnson is the President of the SBE, defendant Kenneth Noonan is the Vice President of the SBE and the remaining individual defendants are board members of the SBE. (FAC ¶¶ 2.3, 2.5.)

STANDARD

On a motion to dismiss, the allegations of the complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322 (1972). The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.

Given that the complaint is construed favorably to the pleader, the court may not dismiss the complaint for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957); NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). Nevertheless, it is inappropriate to assume that plaintiff "can prove facts which it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." Associated Gen. Contractors of Cal., Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). Moreover, the court "need not assume the truth of legal conclusions cast in the form of factual allegations." United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

In ruling upon a motion to dismiss, the court may consider only the complaint, any exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201. See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th

Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

ANALYSIS

I. Constitutional Claims

Defendants argue that plaintiff's complaint improperly alleges claims directly under the Constitution. Defendants contend the Constitution does not provide a direct claim for relief, and thus, they request dismissal of plaintiff's claims. Plaintiff's complaint contains four claims for relief. The first three claims allege that all defendants violated the Constitution. (FAC ¶¶ 5.1-5.11 (first claim for relief for "violation of the Equal protection Clause of the Fourteenth Amendment"); FAC ¶¶ 6.1-6.9 (second claim for relief for "violation of the Establishment Clause of the First Amendment"); FAC ¶¶ 7.1-7.9 (third claim for relief for "violation of the Free Speech and Free Association Clauses of the First Amendment"). Plaintiff's fourth claim for relief is asserted against the individual defendants under 42 U.S.C. § 1983 for violations of the First and Fourteenth Amendments. (FAC ¶¶ 8.1-8.3.)

Defendants are correct that a litigant does not have a claim for relief directly under the United States Constitution. Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir. 1992). However, under the liberal notice-pleading standard of the Federal Rules of Civil Procedure, a party need only plead the facts underlying a § 1983 claim and not the statute itself. McCalden v. California Library Ass'n, 955 F.2d 1214, 1223 (9th Cir. 1992) (stating, "[Plaintiff] is not required to state the statutory or constitutional basis for his claim, only the facts

underlying it").

To state a claim for relief under § 1983, a plaintiff must allege that (1) a person deprived him of a federal right, and (2) that the person depriving him of the right acted under color of state law. Cabrera v. Martin, 973 F.2d 735, 745 (9th Cir. 1992). Liability under § 1983 explicitly includes deprivation of the "rights, privileges or immunities secured by the Constitution." 42 U.S.C. § 1983. Here, plaintiff alleges that defendants violated its rights and its members' rights under the Equal Protection Clause of the Fourteenth Amendment and the Establishment, Free Speech and Free Association Clauses of the First Amendment. (FAC ¶¶ 5.1-7.9, 8.3.) Plaintiff also alleges that defendants acted under color of state law throughout the revision process. (FAC ¶ 8.2.) Therefore, by pleading facts alleging violations of constitutional rights and alleging defendants acted to violate those rights under color of state law, plaintiff has alleged facts in support of a § 1983 claim. Plaintiff's failure to cite directly to § 1983 as the vehicle for asserting its constitutional claims is not fatal because the underlying facts supporting such a claim are alleged. McCalden, 955 F.2d at 1223. Furthermore, the court notes that while § 1983 is not mentioned directly in the first, second or third claims for relief, it is mentioned in the complaint. Indeed, it is referenced as the basis for jurisdiction in this action, and the fourth claim for relief is for violation of § 1983 by the individual defendants. Thus, plaintiff's reference to § 1983, in some respects in the complaint, provided adequate notice to defendants of the grounds upon which plaintiff seeks relief.

II. Standing

Defendants assert that plaintiff lacks standing to bring a claim for violation of § 1983. Specifically, defendants argue that plaintiff fails to allege facts sufficient to establish associational standing.

Establishing standing is an essential part of the case or controversy requirement of Article III of the United States Constitution. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). An association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977).

A. Individual Standing of CAPEEM Members

Under the first prong of the Hunt test, plaintiff must allege facts supporting its members standing in their own right. Id. To allege individual standing, a plaintiff must state facts demonstrating: (1) a concrete and particularized injury in fact that is actual or imminent; (2) a causal connection between the injury and the defendants' conduct or omissions; and (3) the likelihood that the injury will be redressed by a favorable decision. Lujan, 504 U.S. at 560. On a motion to dismiss, general allegations of injury resulting from the defendants' conduct suffice. Id. at 561.

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1. Injury in Fact

Plaintiff alleges injury to (1) its members who are parents of children who currently are, or will be, attending California public schools in grades first through sixth, and (2) members of CAPEEM who engaged in the textbook adoption process. With respect to the parent members, plaintiff alleges they will be injured by their children suffering embarrassment, degradation and an inferior education. (FAC ¶ 4.72.) With respect to the CAPEEM members who participated in the revision process, plaintiff alleges they were treated disparately in the process because of their religious, political and national affiliation. (FAC ¶ 5.4.)

First, regarding the parent CAPEEM members, the Ninth Circuit has specifically recognized a parent's standing to sue for constitutional violations affecting his child's education. Johnson v. Stuart, 702 F.2d 193, 197 (9th Cir. 1983) (finding parents had standing to bring suit challenging the constitutionality of Oregon's textbook selection process); Grove v. Mead School Dist., 753 F.2d 1528, 1532 (9th Cir. 1985) (finding the plaintiff parent had standing to bring a suit asserting a religious objection to her child's high school literature assignment because a parent has the right to direct the religious training of her child).

In the instant case, defendants contend that plaintiff fails to sufficiently allege that its members, or its members' children, will use the sixth grade History-Social Science textbooks in question. Specifically, defendants argue that plaintiffs' allegation that its members are "parents who have

children attending public schools in the State of California and who will be attending public schools in the State of California in the first through sixth grades (FAC at 2)," is inadequate to allege that CAPEEM's members or their children *will* use the subject textbooks.

Defendants' contention parses this allegation too narrowly. Indeed, for purposes of a motion to dismiss, the court must make, in plaintiff's favor, every reasonable inference that can be drawn from the allegations in the complaint. Retail Clerks Int'l Ass'n, 373 U.S. at 753 n.6. Here, the court reads plaintiff's allegation that some of its members have children who will be attending public schools in the first through sixth grades, to include the assertion that some members' children will be in the sixth grade, during the next six years, and will use the subject textbooks before the next revision process occurs.

As to these students, plaintiff alleges injury in the form of embarrassment, degradation and an inferior education. (FAC ¶ 4.72.) The students' parents have standing, as set forth above, to press the alleged constitutional violations which are the claimed cause of the injuries. Johnson, 702 F.2d at 197. Therefore, plaintiff has sufficiently alleged that these parent members of CAPEEM and their children would suffer an injury in fact that is concrete, particularized and imminent.

Plaintiff also alleges injury in fact to its members who participated in the textbook revision process. Plaintiff asserts that these members were treated disparately in the revision process because of their religious, political and national affiliations. Plaintiff argues that the alleged denial of equal

treatment because of religion is itself an injury in fact sufficient to establish standing for an Equal Protection Claim.

Plaintiff is correct that discriminatory treatment, without the additional requirement of demonstrating actual injury, may be sufficient to establish standing when a defendant creates a barrier to a potential benefit. Northeastern Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 666 (1993) (allowing standing for a group of contractors allegedly denied equal footing in a bidding process). However, a party that does not assert a direct injury must still identify a lost benefit or opportunity. Day v. Sebelius, 376 F. Supp. 2d 1022, 1038 (D. Kan. 2005) (noting the limits of Northeastern's application to standing issues in Equal Protection claims); See Scott v. Pasadena Unified School Dist., 306 F.3d 646, 654-62 (9th Cir. 2002) (finding no standing for an Equal Protection claim where a particularized injury to plaintiff did not exist). In the instant action, plaintiff's complaint wholly fails to allege a potential benefit that was denied to those members whose alleged injury occurred solely through their participation in the textbook revision process.[4] Nevertheless, the court grants plaintiff leave to amend the complaint to include allegations, if possible, that its members who participated in the process suffered actual injury or were denied the opportunity to equally compete for a benefit.

[4] By relying on Northeastern, plaintiff was required to demonstrate a lost benefit or opportunity. Had plaintiff alleged facts to demonstrate an actual injury, the demonstration of a lost benefit or opportunity would not have been necessary.

2. Causal Connection[5]

Defendants do not contend that plaintiff has inadequately alleged the causal connection between defendants' alleged actions and the alleged injury to the parent members of plaintiff. Plaintiff alleges that the content of the textbooks would result in injury to the students and that defendants are responsible for approving and adopting the textbook content. (FAC ¶ 4.1.) Therefore, plaintiff has sufficiently alleged a causal connection between defendants' actions and the alleged injury of its members.

3. Likelihood of Redressability

Defendants also do not contend that this element is inadequately pled. With respect to the CAPEEM parents, plaintiff alleges that the basis of the injury is the textbooks' content. In that regard, plaintiff requests injunctive relief prohibiting defendants' use of the offensive material. The injunctive relief would prevent the use of the textbooks in schools, thereby eliminating the embarrassment, degradation and inferior education plaintiff alleges the students will otherwise suffer. Because the requested relief is prospective and seeks to directly prohibit the offensive material, plaintiff has alleged that a favorable outcome will likely redress plaintiff's alleged injuries. Thus, plaintiff has adequately alleged this final element of individual standing.

In sum, plaintiff has adequately alleged each of the three required elements to state the individual standing of at least

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[5] As the court finds that the "participant" CAPEEM members have not alleged an injury in fact, it does not discuss the remaining standing elements as they pertain to them.

some of its members. Therefore, plaintiff's complaint meets the first prong of the Hunt test for associational standing.

B. Germaneness of Plaintiff's Organizational Purpose

Under the second prong of the Hunt test, plaintiff must allege that the relevant interests in the instant case are germane to the organization's purpose. Hunt, 432 U.S. at 343. Defendants argue that plaintiff makes no reference to its purpose in the complaint; therefore, the court cannot determine whether its purpose is germane to the instant case.

Defendants correctly argue that an organization must identify its purpose and its membership to meet federal standing requirements. Individuals for Responsible Gov't, Inc. v. Washoe County, 110 F.3d 699, 702 (9th Cir. 1997). However, the instant action is distinguishable from Washoe County. There, the plaintiff organization did not identify its organizational purpose or the make-up of its membership. Id. Here, although plaintiff's *complaint* does not state CAPEEM's organizational purpose, its purpose is stated in CAPEEM's articles of incorporation. (RJN at Ex. C (stating plaintiff's purpose as "to promote an accurate portrayal of the Hindu religion in the public education system of the State of California")). The court may consider said articles of incorporation as they are properly judicially noticed. See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).[6]

[6] Indeed, *defendants* requested that the court take judicial notice of the articles of incorporation, among other (continued...)

Furthermore, as stated above, plaintiff alleges that its membership includes parents of children who will be attending public schools in California. The primary basis of the instant case is plaintiff's overall allegation that defendants approved textbooks for use in California public schools that inaccurately portray the Hindu religion. Plaintiff's organizational purpose is clearly germane, and in fact appears tailor-made, for the instant action. Therefore, plaintiff has adequately alleged facts that meet the second prong of the Hunt test.

C. Requirement of Individual Participation in Litigation

Defendant argues that plaintiff fails to satisfy the third prong of the Hunt test. When considering associational standing, the individual participation of plaintiff's members must not be necessary for determination of either the claim asserted or relief requested. Hunt, 432 U.S. at 343; See, e.g., United Union of Roofers v. Insurance Corp. of Am., 919 F.2d 1398, 1400 (9th Cir. 1990) (denying standing when individual members of organization would be necessary to determine money damages); Committee for Reasonable Regulation of Lake Tahoe v. Tahoe Reg'l Planning Agency, 365 F. Supp. 2d 1146, 1163 (D. Nev. 2005) (denying standing for equitable relief claim where the details of each parcel of land were required to perform the fact-specific balancing test in a takings claim).

Defendants assert that plaintiff's individual members must participate in the litigation to establish proof of injury. Therefore, defendants argue, the complaint fails the third prong

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[6](...continued)
documents, and plaintiff filed a notice of non-opposition to the request.

of the Hunt test. However, this conclusion misinterprets the Hunt test. The court in Hunt found that standing was proper because neither the constitutional claim nor the relief requested required *individualized* proof. 432 U.S. at 344. There is no prohibition against generalized evidence from members showing injury. Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 602-03 (7th Cir. 1993) (finding the plaintiff organization met the third prong of Hunt even though some generalized evidence from individual members was necessary); See also Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity, 950 F.2d 1401, 1408 (9th Cir. 1991). Here, plaintiff claims that the defendants implemented the textbook revision process in a manner that violated § 1983. The particular injuries that may be inflicted on each student are not relevant to the determination of whether the *process* was implemented using discriminatory means. Cf. Committee for Reasonable Regulation of Lake Tahoe, 365 F. Supp. 2d at 1163 (rejecting associational standing because determination of the takings claim required a balancing test that was case by case specific). As such, it is not necessary for the affected students or their parents to present individualized evidence.

Furthermore, the plaintiff's requested relief is injunctive. Plaintiff does not seek damages that would require any individualized determination of the extent of injury to the students. Therefore, individual member participation is not required, and the third prong of the Hunt test is satisfied. See, e.g., Gay-Straight Alliance Network v. Visalia Unified Sch. Dist., 262 F. Supp. 2d 1088, 1105 (E.D. Cal. 2001) (allowing

standing for organization of gay students seeking injunctive relief to stop constitutional violations based on school district's past and ongoing discriminatory behavior).

As a final argument on standing, defendants ask this court to apply Second Circuit authority and find that associational standing is not permissible in a § 1983 case. Defendants base their argument on Aguayo v. Richardson, 473 F.2d 1090, 1099 (2nd Cir. 1973) (declining to extend organizational standing for claims under § 1983) and League of Women Voters v. Nassau County Bd. of Supervisors, 737 F.2d 155, 160 (2nd Cir. 1984) (noting a circuit restriction on organizational standing for claims under § 1983). However, defendants ignore the fact that the Ninth Circuit does not recognize this restriction. California First Amendment Coal. v. Calderon, 150 F.3d 976, 980 (9th Cir. 1998) (allowing standing for organization of journalists bringing suit under § 1983); Associated Gen. Contractors of California, Inc., 950 F.2d at 1408 (9th Cir. 1991) (finding standing for organization of contractors bringing civil rights claims under §§ 1981 and 1983); See also National Ass'n for Advancement of Psychoanalysis v. California Bd. of Psychology, 228 F.3d 1043, 1049 n.4 (9th Cir. 2000) (dismissing the case on other grounds, but noting organization of psychologists had standing to seek injunctive and declaratory relief under § 1983).

Clearly, this court is bound to follow Ninth Circuit precedent. Consequently, there is no blanket prohibition against an organization bringing a civil rights claim under § 1983. For the reasons set forth above, plaintiff has sufficiently alleged

facts that support associational standing.[7]

III. Equal Protection Claim

Defendants assert that plaintiff fails to state a claim under the Equal Protection Clause of the Fourteenth Amendment. Defendants argue that plaintiff does not allege facts supporting a claim of unequal treatment in violation of the Constitution.

The Equal Protection Clause of the Fourteenth Amendment requires all similarly situated persons to be treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). In an Equal Protection analysis, the plaintiff must first identify the classification it belongs to, then it must show a similarly situated class against which plaintiff can be compared. Freeman v. City of Santa Ana, 68 F.3d 1180, 1187 (9th Cir. 1995). In identifying a classification, the plaintiff must show that the law is applied in a discriminatory fashion to members of its class. Id. (citing, Christy v. Hodel, 857 F.2d 1324, 1331 (9th Cir. 1988)). On a motion to dismiss, a plaintiff need only make a broad allegation regarding the class it belongs to and the different treatment of others who are "similarly situated". Williams v. Vidmar, 367 F. Supp. 2d 1265, 1271 (N.D. Cal. 2005).

Plaintiff's complaint includes allegations that defendants treated Hindu groups differently during the textbook review process. (FAC ¶ 5.11.) The allegations sufficiently identify religion as the classification defendants allegedly used to apply

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[7] Plaintiff also asserts direct standing as an organization. Because plaintiff has sufficiently established associational standing, the court does not consider whether CAPEEM, as an organization, has direct standing.

the law in a discriminatory fashion. Plaintiff also specifically alleges defendants applied a less restrictive standard to Muslim, Christian and Jewish groups involved in the review process. For example, plaintiff alleges that only Hindu groups were subjected to, *inter alia*, repeated scrutiny of proposed edits; secretive processes in making final decisions; and, hostile academic advisors. (FAC ¶ 5.11.) These allegations, if true, could establish grounds for relief under an Equal Protection claim.

Defendants argue further that plaintiff's Equal Protection claim should be dismissed because the textbook adoption process is a matter of state law. Defendants rely on the Supreme Court's decision in Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106 (1984), holding that a federal court cannot grant relief against state officials on the basis of state law. However, this argument mischaracterizes plaintiff's claim. Plaintiff alleges defendants violated *federal* constitutional law by discriminating in the *application* of a state law. Plaintiff is not asking the court to apply any California law against defendants. Therefore, the Court's decision in Pennhurst does not prevent plaintiff from bringing a § 1983 claim against defendants.

IV. Eleventh Amendment Immunity

Defendants argue the Eleventh Amendment prohibits plaintiff from bringing a § 1983 claim against the State. As such, defendants SBE and CDE, as agencies of the State, must be dismissed. Defendants also contend that state officials cannot be sued for damages or other retrospective relief under § 1983.

The Eleventh Amendment bars suit against a State for alleged deprivations of civil liberties unless the State waives its

immunity or Congress overrides it. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66 (1989). This immunity extends to virtually all state agencies, as they are arms of the state. Durning v. Citibank, 950 F.2d 1419, 1422 (9th Cir. 1991). However, a suit seeking prospective injunctive relief against a state official in his or her official capacity is allowable. Will, 491 U.S. at 71 n.10 (citing Ex Parte Young, 209 U.S. 123, 159-60 (1908)); Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997).

In the instant action, plaintiff seeks prospective injunctive relief against defendants. Defendants SBE and CDE are both agencies of the State of California. As such, the Eleventh Amendment shields them from suit. Emma C. v. Easton, 985 F. Supp. 940, 947 (N.D. Cal. 1997); Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist., 714 F.2d 946, 950 (9th Cir. 1983). However, plaintiff also brings suit against individual defendants, who are members of SBE, and defendant Adams, who is the director of the Curriculum Committee. A suit against these individuals acting in their official capacities is not barred by the Eleventh Amendment where, as it is here, the requested relief is prospective. See Ex Parte Young, 209 U.S. 123 (1908).

Nonetheless, defendants argue that plaintiff's suit against the individual defendants is barred because the complaint seeks to redress a past injury. Papasan v. Allain, 478 U.S. 265, 277-78 (1986) (limiting the application of Young to ongoing violations of federal law as opposed to violations that occurred at one time or over a period of time in the past). However, the Ninth Circuit has recognized that actions rooted in the past are

not barred by the Eleventh Amendment if the injunctive or declaratory relief sought would prevent future ongoing illegality. Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003). Plaintiff's complaint seeks to redress an allegedly unconstitutional application of the textbook revision process. If left unaddressed, the alleged violation would continue six years until the next revision process. Therefore, plaintiff's reliance on past events in the complaint does not bar it from pursuing redress.

Defendants finally contend that plaintiff does not clearly allege in the complaint whether the individual defendants are named in their official or personal capacities, or both. The court addresses this issue in more detail below. For purposes of the application of the Eleventh Amendment to any personal capacity claims against the individual defendants, the court defers ruling on that issue pending clarification by plaintiff, via an amended complaint, of the allegations against the individual defendants.

In sum, to the extent plaintiff seeks only prospective injunctive relief, the Eleventh Amendment does not bar plaintiff's suit against the individual defendants in their official capacities. However, the Eleventh Amendment does bar plaintiff's claims against the state agencies, SBE and CDE. Therefore, defendants SBE and CDE's motion to dismiss is GRANTED.

V. Qualified Immunity

The individual defendants assert that they are entitled to qualified immunity to the extent they are sued in their personal capacities. Both parties offer analysis regarding the

application of the qualified immunity doctrine to the instant case. However, as defendants indicate, it remains unclear whether plaintiff names the individual defendants in their official capacities, their personal capacities, or both. The distinction is important. Qualified immunity is only relevant if plaintiff brings suit against the individual defendants in their personal capacities. Individual defendants sued in their official capacities are not entitled to qualified immunity. See Kentucky v. Graham, 473 U.S. 159, 166 (1985). As such, the court defers ruling on the issue of qualified immunity until plaintiff has clarified the capacities under which the individual defendants are named.

Therefore, the court grants plaintiff leave to amend the complaint to clearly indicate the capacity in which the individual defendants are named.

CONCLUSION

For the foregoing reasons, defendants' motion is GRANTED IN PART and DENIED IN PART. Defendants SBE and CDE's motion to dismiss is GRANTED with prejudice on the grounds that said defendants are entitled to Eleventh Amendment immunity for the claims asserted herein. As to the individual defendants' motion, their motion is denied with respect to the issues addressed above.

Plaintiff is granted leave to amend to file a second amended complaint in accordance with the instant order. Said complaint shall be filed and served within 20 days of the date of this

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order. Defendants shall have 30 days thereafter to file a response thereto.

IT IS SO ORDERED.

DATED: August 11, 2006

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE