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LEGAL PROCESS #1

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10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 HINDU AMERICAN FOUNDATION,
14 ARJUN BHAGAT, YASHWANT VAISHNAV,
15 and RITA PATEL,

16 Petitioner/Plaintiffs,

17 v.

18 CALIFORNIA STATE BOARD OF EDUCATION,
19 and DOES 1-10,

20 Respondents/Defendants.

CASE NO.:

06CS00386

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

(CCP §§ 526 (a), 1060, and 1085;
Gov. Code §§ 11130, 11130.3, and 11350)

21 Petitioners HINDU AMERICAN FOUNDATION, ARJUN BHAGAT, YASHWANT
22 VAISHNAV, and RITA PATEL allege as follows:

23 **PARTIES**

24 1. PETITIONER HINDU AMERICAN FOUNDATION ("HAF") is a national, non-profit
25 human rights group whose purpose is to provide a voice for the Hindu American community. HAF
26 interacts with and educates government, media, academia and the public at large about issues of concern
27 to Hindus locally and globally. HAF's membership includes a substantial number of California
28

1 partially dictate the process and requirements. (5 CCR §§ 9510, *et seq.*) A true and correct copy of
2 these regulations is attached as Exhibit A. The standards and criteria set forth in the publication entitled
3 “Standards for Evaluating Instructional Materials for Social Content, 2000 Edition” (“Standards”) are
4 incorporated by reference and apply to all instructional materials to be adopted by the Board. A true and
5 correct copy of the Standards is attached as Exhibit B.

6 10. This case involves compliance with those Standards, which provide, *inter alia*: No
7 religious belief or practice may be held up to ridicule or portrayed as inferior. Materials must accurately
8 and equitably portray cultural and racial diversity, and should not portray any groups in an adverse or
9 inappropriate way. Descriptions, depictions, or labels that tend to demean, stereotype or patronize a
10 particular group are prohibited. Portrayals must not depict differences in customs or lifestyles as
11 undesirable and must not reflect adversely on such differences.

12 11. The Legislature specifically created the Curriculum Development and Supplemental
13 Materials Commission (“Curriculum Commission”) to develop the curriculum framework for all texts,
14 review proposed texts for possible adoption, and to make recommendations for adoption to SBE. In
15 order to do so, the Commission is authorized to hold public hearings and, following those hearings, to
16 make recommendations to the State Board of Education concerning the content of instructional materials
17 and whether the contents of textbooks proposed for adoption comply with law, including the provisions
18 of Education Code sections 60040 and 60044. (Ed. Code, §§ 60204, 33530-33541.)

19 12. The Legislature has found and declared that it is in the public interest for SBE to adopt
20 policies and procedures concerning the adoption instructional materials only after public notice and
21 comment, review by the Office of Administrative Law, and publication of those policies and procedures
22 in the California Code of Regulations. (Ed. Code, § 60005 (a).)

23 13. Specifically, Board policies and procedures that define statutory terms, prescribe the
24 membership of committees used in the textbook approval process, or regulate public participation in the
25 adoption of instructional materials must be adopted in compliance with the APA. (*Id.*)

26 14. SBE is required by law to adopt the most open and flexible system consistent with quality
27 textbook criteria. The Board is required to ensure that adopted instructional materials provide for the
28 educational needs of a diverse pupil population, illustrate diverse points of view, cultural pluralism and a

1 broad spectrum of knowledge and information. (Ed. Code, §60200 (h).)

2 15. SBE may, upon recommendation by the Curriculum Commission, appoint task forces or
3 committees of subject matter experts to assist and advise the Curriculum Commission, which shall,
4 among other specified criteria, include representatives of the various ethnic groups in the state. (5 CCR §
5 9616.)

6 16. The State Board of Education has created an Instructional Materials Advisory Panel
7 (“IMAP”) and a Content Review Panel (“CRP”) to review and evaluate text books proposed for
8 adoption and to advise and make recommendations to the Curriculum Commission and the State Board
9 of Education as to whether the content complies with law, including the social content set forth in
10 Education Code sections 60040 and 60044, and the Standards. IMAP participants are generally K-12
11 teachers who teach in the subject area being reviewed. CRP participants are experts in the subject area,
12 usually having at least a doctoral degree.

13 17. In addition, any person may submit to the Curriculum Commission a written statement
14 regarding any instruction materials submitted to the State Board of Education for adoption, including

- 15 • a statement of error appearing in the instructional materials which identifies the place in which
16 the error appears and a specification of the error, and if possible, a responsible source of
17 information from which the Curriculum Commission can confirm the existence of the error. (5
18 CCR § 9520 (a).)
- 19 • A statement of objection to specified content, by reference to page number and item of content to
20 which objection is made and the grounds for the objection. (5 CCR § 9520 (b).)
- 21 • A general objection to the adoption of the instructional materials which includes a brief
22 statement of the objection and grounds that support it. (5 CCR § 9520 (d).)
- 23 • Comments relating to other factors which should be considered by the Curriculum Commission
24 before making its recommendation to the State Board of Education. (*Id.*)

25 **2005 Adoption of History-Social Science Texts**

26 18. In 2004, SBE began the review and evaluation process for new history-social science
27 textbooks in all grades, with the goal of approving new texts by the end of 2005. With respect to the
28 sixth grade texts, which focus on world history, including world religions, the process began with the

1 approval of curriculum frameworks. Shortly after, SBE began soliciting resumes in order to form the
2 IMAP and the CRP's for these texts. IMAP and CRP nominees are required to be screened for potential
3 conflicts of interest and must ultimately be approved by SBE. They then undergo training by SBE/CDE
4 to assist them in the process of evaluating proposed texts. Training for these texts took place April 5-8,
5 2005.

6 19. The contents of the texts (also termed "programs") were first made available to the
7 IMAP/CRP members and the public in May, 2005. The public was allowed to view the texts at certain
8 designated sites throughout the State and were allowed to complete "Public Comment Forms."

9 20. Between May and June, 2005, SBE staff conducted what it has described as a "Legal and
10 Social Compliance Review" of these texts. Neither the membership of the Legal and Social Compliance
11 Review Panels nor the Legal and Social Compliance Review process itself is described in any SBE
12 regulation. Review for legal compliance includes review for matters such as improper inclusion of
13 brand names in the texts (e.g., "Coca-cola"). Review for social compliance is meant to review for
14 compliance with the Standards.

15 21. Upon information and belief, numerous members of the public made inquiries to SBE
16 staff about the sixth grade text adoption and raised concerns about the contents of those texts, including
17 representatives from the Vedic Foundation (VF), the Hindu Education Foundation (HEF) and several
18 other Hindu groups and individuals. None of these individuals were made aware of the Legal and Social
19 Compliance Review process, and none of the individuals' complaints were apparently referred to that
20 process for evaluation. In fact, the "Public Comment Form" at the textbook display sites specifically
21 states that the comments are "not 'citations' under the legal compliance review process." "Citations" are
22 concerns that must be addressed by the publishers.

23 22. Final determinations were made by the Legal and Social Compliance Review Panels on
24 June 28, 2005. At that time, only ten citations were identified that required attention by the publishers.
25 None of these ten concerned the Hindu sections of the texts, although the SBE staff would later concede
26 that the texts contained "egregious" examples of religious and cultural insensitivity.

27 23. As late as June 28, 2005, members of the public expressing objections to the texts were
28 told that there would be numerous opportunities for public participation in the future, even though in

1 fact social compliance review had already ended at that time. Some individuals were advised that
2 comments could be submitted for consideration until October 31, 2005.

3 24. Written objections to the religious presentations in these texts continued into August and
4 September, 2005. A substantial number of objections and proposed edits were submitted by
5 representatives of various Christian, Jewish and Muslim groups as well as VF, HEF and individual
6 Hindus in early September, 2005.

7 **The Actions of the Curriculum Commission and the Ad Hoc Committee**

8 25. In order to evaluate the large volume of objections, SBE staff retained several individuals
9 to review the objections and the texts and make recommendations as to proposed "edits and
10 corrections." Professors David Nystrom, Naomi Janowitz, and Bill Evers had originally served as CRP
11 members for these texts and were individually retained to examine the objections relating to
12 Christianity, Judaism and Islam, respectively. Upon information and belief, no IMAP or CRP members
13 were Hindus, and no expert was retained to review the sections on Hinduism until September 13, 2005,
14 approximately two weeks before the Curriculum Commission was scheduled to make recommendations
15 as to these texts. On that date -- one day before the IMAP/CRP report was issued for the September
16 meeting -- Professor Shiva Bajpai was retained.

17 26. Formal adoption or rejection of these texts was first scheduled to be considered at the
18 September 28 meeting of the Curriculum Commission. On September 14, 2005, the Curriculum
19 Commission issued its IMAP/CRP Report in advance of the meeting. That document recommended
20 approximately 123 edits and corrections to the sections on Christianity, 175 on Judaism, and 20 on
21 Islam. The Report included only 3 recommendations for edits or corrections to the sections on
22 Hinduism.

23 27. The Commission's public hearing on that Report extended over two days -- September
24 28-29, 2005. At that time, it was clear that there was substantial Hindu concern over the contents of the
25 texts presented that had been presented both in writing and orally that had not been evaluated because of
26 the lateness in contacting an expert in Hinduism.

27 28. The Commission ultimately recommended approval of several sixth grade texts subject to
28 further edits and corrections. It specifically declined to recommend the Oxford University Press text,

1 which the minutes indicate was “not neutral and was most offensive in its treatment of specific religions,
2 [particularly] Judaism and Hinduism.” The minutes also reflect that the Commission expressly rejected
3 a suggestion that the edits and corrections process could adequately correct the problem.

4 29. With respect to the six texts actually recommended for adoption, the Commission
5 appointed an Ad Hoc Committee “to review edits and corrections identified from public comment” and
6 directed the Committee to hold a public hearing on these issues before November 4, 2005. The motion
7 also indicated that “[e]dits and corrections approved by the Ad Hoc Committee will be forwarded to the
8 SBE as part of the Commission report on the 2005 History-Social Science Adoption.”

9 30. Based on the representations made by SBE at the September meeting, VF, HEF and other
10 Hindu groups believed that their edits submitted in September were part of the “public comment” being
11 reviewed as part of the Ad Hoc Committee’s charge. On Friday, October 28, 2005, when the Ad Hoc
12 Committee’s report became available for the October 31 meeting, those organizations became aware that
13 many of the VF proposed edits had not been reviewed or evaluated. At that time, they were told by SBE
14 staff – for the first time – that their edits were “not in the correct format” to be considered.

15 31. In fact, 5 CCR § 9520 does not require specific statements of error or objections. While
16 it allows for them, it also allows for “comments relating to any other factor of which the Curriculum
17 Commission should be aware” and even a “general objection” to the adoption of the materials.” SBE
18 has made numerous representations about the “edits and corrections” process and the rules governing
19 that process that do not appear anywhere in SBE regulations.

20 32. Representatives of VF nonetheless proceeded to “re-format” their objections to the
21 proposed texts and re-submitted them to SBE/CDE over the weekend. Paper copies were also brought
22 to the October 31, 2005 meeting and representatives appeared to express their concern about the texts.
23 Although there were numerous specific objections, they fell generally into several categories:

24 33. *Women’s status.* Hindus complained that the texts inappropriately highlighted the
25 inferior status of women in the Hindu religion in a way that is not present in the discussion of other
26 religions. Hinduism is portrayed in an unfavorable and inequitable light insofar as historical gender
27 discrimination is described as part of Hinduism without making comparable observations about other
28 religions. For example, women in Hinduism are described as having fewer rights than men although no

1 comparable statement is made about women in the Christian, Judaic or Islamic traditions. In addition,
2 the texts omit any discussion of many positive “feminine” aspects of Hinduism, *i.e.*, worship of the
3 feminine divine and a history of women sages, and women saints and philosophers.

4 34. *Basic tenets of Hinduism are inaccurately described and Hinduism is inappropriately*
5 *compared to other religions.* Hindus pointed out that the concept of God in Hinduism is complex; it
6 combines the idea of one Supreme Being with manifestations in multiple forms and fashions. The texts
7 over-simplify this and present it as a form of polytheism, which in turn carries negative connotations of
8 paganism. Christianity and Judaism are portrayed as “superior” monotheistic religions. A number of
9 Hindu and non-Hindu scholars confirmed that the Hindu concepts of the Divine were mischaracterized.
10 In addition, Buddhism is often implicitly presented in the texts as an “improvement” over “defects” in
11 Hinduism. Similar unfavorable comparisons were the subject of objections by Judaic groups (who
12 objected to comparisons of Judaism and Christianity) and were appropriately corrected in those contexts,
13 but not in the Hindu/Buddhist context.

14 35. *Caste and untouchability.* The texts almost without exception identify the caste system
15 and the discriminatory social practice of untouchability as distinguishing features of Hinduism. The
16 texts fail to distinguish between the social organization aspects (which were more cultural than religious
17 and were common to most South Asian societies and faith communities) with religious requirements. In
18 fact, Hindu scriptures do not reference “untouchables,” a point made by Gandhi in urging an end to the
19 social practice. In addition, variants on the caste system have also been present in Buddhism, but no
20 mention is made of this in the section on Buddhism. Although other religions can historically also be
21 associated with practices discarded and disapproved by modern standards, these historical practices are
22 not presented as an essential aspect of the religious tradition itself as they are with Hinduism.

23 36. *Origins of Hinduism/Aryan “invasion” theory.* The texts treat as a “fact” the view that
24 Hinduism was the result of an Aryan invasion of India and the imposition of Aryan culture on the
25 indigenous population. This is a subject of continuing research and debate. Some historians/scientists
26 believe that Hinduism emerged from an indigenous civilization, while other believe it was the result of
27 Aryan invasion or migration. The origins of Hinduism are understandably a matter of great sensitivity
28 to Hindus, and Hindu groups requested that the texts reflect that both theories continue to be debated.

1 previously participated in the textbook adoption process, an attack based largely on allegations about the
2 motivations or ideological beliefs of those persons that was wholly unrelated to the California textbook
3 adoption process.

4 42. Professor Witzel's allegations were clearly the focus of communications between Board
5 staff and Board members that resulted in a non-public decision to reject the recommendations of the Ad
6 Hoc Committee and Curriculum Commission and substitute a different approach to the
7 recommendations publicly approved by those bodies. Although the allegations set forth in the Witzel
8 letter clearly formed the basis of the Board's non-public determination made that day, the public was not
9 given an opportunity to address the Board's proposed "decision" during the public hearing on this matter
10 because that "decision" was never made public.

11 43. The fact that non-public communications took place is also illustrated by Dr. Adams'
12 oral representation at the November 9 SBE meeting that the Oxford University textbook, which had *not*
13 been recommended for approval by the Curriculum Commission based on its unfavorable treatment of
14 religions – including Hinduism – had somehow been modified since the Commission's public meeting
15 and was now acceptable to the Commission. The modified version of that text was never made available
16 for public review and comment as required by law. Dr. Adams did not explain how the "Commission"
17 reached this conclusion without conducting any meeting between its September 29 rejection of the text
18 and November 9. The "changed" position of the Commission was not reflected in the staff report
19 prepared for the meeting, and action on that text was neither on the November 9 agenda nor subject to
20 public comment.

21 44. Following approval of the motion of the Board on November 9, numerous and repeated
22 efforts were made during November, 2005 by VF, HEF and other Hindu groups and individuals to
23 obtain information from SBE/CDE about the status of the proposed edits and what, if any, actions would
24 be taken by the Curriculum Commission. None was provided.

25 45. During this same period, staff was privately consulting with Professors Witzel and two
26 associates, Professors Heitzman and Wolpert, to prepare a new "staff" report that would implement the
27 non-public decision made earlier that month and recommend rejection of most of the edits previously
28 approved by the Ad Hoc Committee.

Referral Back to the Curriculum Commission

1
2 46. On November 29, 2005 a memorandum (dated November 22) was made available to the
3 public in preparation for the December 2, 2005 Curriculum Commission meeting. That memorandum
4 identified Professors Witzel, Heitzman and Wolpert as "CRP [Content Review Panel] members" and
5 characterized the views of these individuals as "CFIR/CRP Final Recommendations." In fact, none of
6 these individuals were members of CRP and none ever went through the screening or training process.
7 None were approved by either the Curriculum Commission or SBE; the actual CRP members appointed
8 in early 2005 have not taken any action with respect to the Hindu edits since September, 2005 (if at all).
9 Upon information and belief, the document that purported to be prepared by "CFIR" was in fact
10 prepared by these three private individuals between November 9 and November 22, 2005.

11 47. The Curriculum Commission met on December 2, 2005. Included in that meeting were
12 Commissioners Dr. Norma Baker (Chair), Dr. Deborah Keys (Vice Chair), William Brakemeyer
13 (departed at 1:15 p.m.), Katherine Crawford, Wendy Levine, Dr. Sandra Mann, Julie Maravilla, Mary-
14 Alicia McRae, Dr. Stan Metzenberg, Dr. Charles Munger, Jr., Armida Ornelas (departed at 1:15 p.m.),
15 Becky (Brown) Sullivan, Jose Velasquez, and Richard Wagoner. The Curriculum Commission
16 determined that its proper role was to examine each of the proposed edits in order to determine whether
17 they were required. The Commission concluded that many of the proposed edits and corrections
18 properly addressed issues of religious sensitivity, not only to Hindus but other religions as well. Edits
19 were discussed and voted upon on an individual basis. At the end of the day, after a lengthy public
20 meeting and discussion at which all viewpoints were represented, the Curriculum Commission voted to
21 adopt the vast majority of the Ad Hoc Committee's recommended edits as their own recommended
22 edits. The Commission determined that it could not consider the remaining VF edits because of the
23 restriction imposed by the SBE directive from November 9.

24 48. Commission Chair Baker made clear on December 2 that the Commission's decisions
25 were "final." This was consistent with the Board's longstanding historical practice to have the
26 Commission finalize edits and have staff work with publishers to implement the determinations of the
27 Commission without additional Board action.
28

1 Efforts to Reverse the Commission's Final Determination

2 49. Notwithstanding the Commission's "final" determinations and the Board's longstanding
3 practice in this area, when the December 2 Commission meeting failed to reach the non-public decision
4 that had been previously made by then-President Ruth Green and SBE staff, Green communicated her
5 displeasure directly to the Curriculum Commission. By letter dated December 30, 2005, Green
6 convened a meeting and appointed a committee to reconsider the action taken by the Commission. In
7 her letter, Green indicated her view that the Commission's actions were not "consistent with the
8 direction from the November State Board meeting" and that "rather than ask the Commission to
9 reconsider its action or bring the matter back to the State Board, I have decided to convene a
10 distinguished work group...to advise me as to whether those edits and corrections in fact met the criteria
11 that the State Board established." To that end, Green stated: "I am requesting that you...attend a
12 meeting Friday, January 6, 2006..." A true and accurate copy of the December 30 letter is attached as
13 Exhibit C.

14 50. Green also indicated in the December 30, 2005 letter that the January 6 meeting would be
15 "strictly invitation only." In fact, upon information and belief, Green had already invited Witzel, had
16 made arrangements for him to fly to California from Massachusetts, and had discussed the meeting with
17 him well in advance of contacting other participants. During the same period that these plans were
18 being made, inquiries from the public about the status of the December 2 edits were ignored.

19 51. The "private" January 6, 2006 meeting of the President's Committee included three SBE
20 members (including Green) and two Curriculum Commission members. At the very last minute, only
21 days before the January 6 meeting, Professor Bajpai was invited, but was given no information about the
22 agenda.

23 52. SBE provided no notice of its intent to hold the January 6th meeting, nor did it prepare
24 and distribute an agenda in advance of that meeting informing the public of the matters that were to be
25 addressed. Petitioners requested permission to attend, which was denied by SBE staff. A request to
26 have the meeting recorded was also denied. A letter dated January 6, 2006 was sent by undersigned
27 counsel for petitioners objecting to the meeting. Petitioners were advised by SBE staff that the meeting
28 was motivated in part to discuss what to do about the remaining VF objections and proposed edits that

1 had never been examined. Upon information and belief, this information was inaccurate and was known
2 to be inaccurate when the representation was made. To date, those remaining objections and proposed
3 edits have never been subject to public review and evaluation by the Curriculum Commission or SBE,
4 although many were recommended by Dr. Bajpai after his review.

5 53. On January 6, 2006, the illegally constituted "President's Subcommittee" reviewed the
6 Ad Hoc Committee/Curriculum Commission edits. Professor Witzel and Professor Bajpai disagreed on
7 a number of edits. Professor Bajpai has stated that the tenor of the meeting was such that if Professor
8 Witzel did not agree with the edit, it was unlikely to be "adopted" by the Subcommittee, despite Bajpai's
9 views. SBE staff took notes of the discussion. Those notes have not been produced, despite a Public
10 Records Act request to SBE sent shortly after that meeting.

11 54. Six days later, on January 12, 2006, SBE held its regular monthly meeting. At the outset
12 of the meeting, President Green informed the SBE of the meeting of her Committee and its conclusions.
13 She proposed forming a subcommittee comprised of five SBE members ("Board Subcommittee") to
14 review the December 2, 2005 actions of the Curriculum Commission regarding the Ad Hoc Committee's
15 edits and corrections in relation to the November 9, 2005 SBE directive. Selected for inclusion on the
16 Subcommittee were Board Members Green, Johnson, Williams, Noonan and Nunez, the majority of
17 whom had been present at the January 6 meeting. Neither the textbook adoption issue nor the proposed
18 action to form a new subcommittee was included on the agenda publicly distributed before the meeting.
19 The appointment of the Subcommittee was never recommended by the Curriculum Commission. The
20 motion was unanimously adopted by SBE without debate and without an opportunity for the public to
21 provide comment.

22 55. By its timing and content, it is apparent that the January 12 motion to create the Board
23 Subcommittee to review the Curriculum Commission's affirmation of the Ad Hoc Committee's
24 publicly-vetted recommendations meeting was based on the non-public discussions and information
25 from the January 6th meeting, and was created specifically to "formally" implement the decisions made
26 at that meeting.

27 56. Inquiries about the Subcommittee's intentions were again rebuffed following the January
28 meeting. On or about February 9, undersigned counsel met with SBE counsel in an effort to determine

1 its course of action. Plans at that time were said to be “tentative,” with a meeting to “possibly” take
2 place on February 27, 2006.

3 57. Near the close of business on February 14, 2006, SBE announced a meeting to be held
4 on February 27, 2006 and posted a 126-page staff memorandum that proposed a substantial number of
5 changes to the edits approved by the Ad Hoc Committee/Curriculum Commission. Most were
6 consistent with the views advocated by Professor Witzel and had been specifically rejected by the
7 Commission on December 2, 2005. Written responses were directed to be filed by February 21, 2006.
8 February 20 was a holiday.

9 58. In response, HAF filed a 12-page letter detailing the procedural violations that had
10 occurred and reiterating several the same substantive concerns with the portrayal of Hinduism in the
11 texts that had been raised as long ago as September, 2005, and explaining why further edits were
12 required to comply with the Standards. In addition, a detailed edit-by-edit review was done of the
13 February 21 memorandum demonstrating why many of the staff-proposed edits were internally
14 inconsistent or failed to correct the underlying negative portrayal or correct the underlying
15 mischaracterization. Letters of support for the December 2 edits were included from a number of
16 scholars from around the nation, both Hindu and non-Hindu, as well as the editor of Hinduism Today.

17 59. On February 27, 2006, the Board Subcommittee held its public meeting, ostensibly to
18 receive public comment on the staff-proposed edits and corrections. Dr. Adams began with a lengthy
19 introduction and background statement that contained both inaccuracies by omission and by
20 commission. Speakers were limited to one minute. Representatives of a few organizations were given
21 two minutes. Many speakers noted the inconsistencies within the edits. None of the concerns raised by
22 HAF or others were addressed by the Subcommittee members or the staff. There was literally no
23 discussion. Following the public comment period, the Board Subcommittee unanimously approved the
24 staff-proposed edits and corrections without any deliberations and without change.

25 60. The SBE considered the Board Subcommittee’s recommended edits and corrections at its
26 March 8, 2006 meeting. Again, limited public presentations were nominally allowed. Again, speakers
27 noted the inconsistencies within the edits. After close of public comment, new-President Johnson
28 moved to substitute the edits and corrections recommended by the Board Subcommittee for those that

1 had been approved by the Board at the November, 2005 meeting with directions to the staff to prepare a
2 letter instructing the publishers to resolve some of the inconsistencies. She also modified the motion to
3 allow any publishers who had already begun publishing to be relieved of the obligation to make the edits
4 being approved. No information about this issue was included in the agenda or staff memorandum, and
5 it was not subject to public comment. One Board member indicated that he was unsure what the Board
6 was actually voting upon. The motion nonetheless passed 7-0, with two abstentions.

7 61. Petitioners have no plain, speedy or adequate remedy at law and are beneficially
8 interested in the issuance of a writ of mandate.

9 62. Petitioners have necessarily engaged counsel to represent them in the preparation and
10 prosecution of this suit. The legal services rendered seek to ensure that the State and Respondents fulfill
11 their obligations under law and to provide the school districts with those funds required by law. Such
12 benefits will be derived through Petitioner's efforts. Petitioners request that the court award reasonable
13 attorney's fees and costs upon entry of final judgment.

14
15 **FIRST CAUSE OF ACTION**

16 **WRIT OF MANDATE**

17 **[C.C.P. § 1085; Violations of Ed. Code, §§ 60040 and 60044 and SBE Regulations]**

18 63. Petitioners reallege and incorporate by reference all allegations set forth in paragraphs 1
19 through 62 above.

20 64. Respondent State Board of Education and Does 1-10 have failed to perform those duties
21 required by Education Code sections 60040 and 60044 and the Standards for Evaluation of Instructional
22 Materials With Respect to Social Content, incorporated into SBE regulations, by approving textbooks
23 for sixth grade history-social science that include descriptions or depictions of Hindus and Hinduism
24 that tend to demean, stereotype, and reflect adversely upon them; that portray Hinduism as undesirable;
25 that hold Hindu beliefs and practices up to ridicule or as inferior; that inaccurately describe and
26 characterize Hinduism and discourage belief in that religious tradition.

27 65. Petitioners seek a Writ of Mandate to compel the Respondent State Board of Education
28 and Does 1-10 to vacate and set aside the approvals of the sixth grade history-social science textbooks

1 conferred on November 9, 2005 as modified on March 8, 2006 as arbitrary, capricious and contrary to
2 law, and to further order Respondent State Board of Education to refrain from approving these texts
3 until the texts have been modified to meet the Standards.

4 66. Petitioners have no plain, speedy, or adequate remedy at law to compel respondent State
5 Board of Education to carry out its legal duties under Education Code sections 60040 and 60044.

6 **SECOND CAUSE OF ACTION**

7 **WRIT OF MANDATE**

8 **[C.C.P. § 1085; Violation of Cal. Const., art. I, § 3(b)(1);**
9 **Violation of Open Meeting Act, Gov. Code, § 11130]**

10 67. Petitioners reallege and incorporate herein by reference each and every allegation
11 contained in paragraphs 1 through 66, above.

12 68. The Bagley-Keene Open Meeting Act is the statutory regime governing the people's right
13 to access governmental decision-making bodies. (Gov. Code, §§ 11120-11132) The Act provides that
14 "[a]ll meetings of a state body shall be open and public and all persons shall be permitted to attend any
15 meeting of a state body" except as otherwise provided by the Act. (Gov. Code, § 11123.) A "state
16 body" includes "[a]n advisory board, advisory commission, advisory committee, advisory
17 subcommittee, or similar multimember advisory body of a board, commission, or similar multimember
18 body advisory body of a state body, if created by formal action . . . of any member of the state body, and
19 if the advisory committee so created consists of three or more persons." (Gov. Code, § 11122(c).)

20 69. The Bagley-Keene Act also prohibits "serial" meetings, *i.e.*, individual discussions
21 among a number of members of a deliberative body that collectively take the place of a noticed meeting.

22 70. In 2004, California voters approved Proposition 59, which amended the state constitution
23 to expressly recognize Californians' right to access information concerning the conduct of the people's
24 business. Added by Proposition 59, Article I, section 3 provides that "the meetings of public bodies and
25 the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, §
26 3(b)(1).) That amendment also requires that any exceptions to public notice and access be construed
27 narrowly.

28 71. State bodies must provide public notice at least 10 days in advance of holding a meeting.

1 (Gov. Code, § 11125(a)). Such notice “shall include a specific agenda for the meeting, containing a
2 brief description of the items of business to be transacted or discussed in either open or closed session.”

3 (Gov. Code, § 11125(b).) A state body may not take action on items not appearing on a properly posted
4 agenda unless (i) a majority of the state body declares that an emergency exists, or (ii) two-thirds of the
5 membership determines that immediate action is necessary and that the need for action came to the
6 attention of the body subsequent to the agenda being posted. (Gov. Code, § 11125.3.)

7 72. The Open Meeting Act permits “any interested person” to commence an action by
8 mandamus, injunction, or declaratory relief “for the purpose of stopping or preventing violations or
9 threatened violations.” (Gov. Code, § 11130.) It also permits “any interested person” to commence an
10 action by mandamus, injunction or declaratory relief “for the purpose of obtaining a judicial
11 determination that an action taken by the state body in violation of section 11123 or 11125 is null and
12 void . . . within 90 days from the date the action is taken.” (Gov. Code, § 11130.3.)

13 73. The January 6, 2006 meeting convened by then-President Green and attended by three
14 SBE members, several members of the Curriculum Commission, SBE staff, and others for the purpose
15 of discussing and taking action related to the Curriculum Commission’s acceptance of the Ad Hoc
16 Committee’s edits and corrections violated the Bagley-Keene Open Meeting Act. That meeting was not
17 open to the public as required by law, nor was public notice or an agenda provided as required by law.
18 All actions taken at the January 6th meeting should be declared void null and void.

19 74. Action taken by SBE at the January 12, 2006 meeting to adopt a motion to create a five-
20 member committee (“Board Subcommittee”) to review the Curriculum Commission’s acceptance of the
21 Ad Hoc Committee’s edits and corrections was also in violation of the Open Meeting as no public notice
22 of the proposed action was provided in the agenda for that meeting or otherwise, and no public comment
23 was allowed before the action was taken. The action appointing the Board Subcommittee should be
24 declared void null and void. That action should also be declared null and void for the separate and
25 independent reason that it was the “formal” implementation of non-public decisions reached at or around
26 the time of the January 6, 2006 meeting.

27 75. Since the Board Subcommittee’s formation was contrary to the requirements of the
28 Bagley-Keene Act, any and all actions taken by it at the February 27, 2006 meeting, including its

1 adoption of recommendations concerning edits and corrections to SBE, should be declared null and
2 void. Finally, SBE's March 8, 2006 adoption of the Subcommittee's recommendations, derived in
3 violation of the law, furthered the continuing pattern of misconduct in violation of the Open Meeting
4 Law and should therefore be declared null and void.

5 76. To the extent that Respondent SBE has conducted other "serial" meetings that were not
6 publicly disclosed or open to the public, such meetings constitute additional violations of the Open
7 Meeting Law and any actions taken based thereon should also be declared null and void.

8 77. Petitioners seek a Writ of Mandate to set aside each of the above-described actions or
9 decisions and to command the Respondent to refrain from further violations of the Open Meeting Law.

10
11 **THIRD CAUSE OF ACTION**

12 **WRIT OF MANDATE**

13 **[C.C.P. § 1085; Ed. Code section 60002 and 60005]**

14 78. Petitioners reallege and incorporate by reference all allegations set forth in paragraphs 1
15 through 77 above.

16 79. Respondent State Board of Education has failed to perform those duties required by
17 Education Code sections 60002 and 60005 by adopting and implementing policies and procedures
18 concerning the approval of instructional materials without adopting those policies and procedures
19 pursuant to the Administrative Procedure Act as set forth in Gov. Code, § 11340, *et seq.*, after public
20 notice and comment, review by the Office of Administrative Law and publication of those policies and
21 procedures to be published in the California Code of Regulations.

22 80. Specifically, Respondent State Board of Education implemented Board policies that
23 prescribe the membership of committees used in the textbook development and adoption process, and
24 procedures that regulate public participation in the approval of instructional materials without adopting
25 those policies and procedures pursuant to the Administrative Procedure Act as set forth in Gov. Code, §
26 11340, *et seq.* These unlawful policies and procedures include, but are not limited to: the formation of
27 the Legal and Social Compliance Review Panels and conferral of independent authority on those Panels;
28 appointment of other advisory panels to advise SBE and staff, including submission of reports not made

1 available or provided to members of the public; the imposition of additional requirements and
2 limitations on public participation, including rejection of public comment that did not meet the
3 standards; the unauthorized use of experts and consultants in the social content and edits and corrections
4 review processes; the unauthorized creation of ad hoc committees or other advisory committees to
5 directly advise the Board in circumvention of the statutorily created review and recommendations of the
6 Curriculum Commission; the conduct of private meetings among selected members of the State Board of
7 Education and the Curriculum Commission and their staff and selected advisors to take official action;
8 and the unlawful delegation to staff and/or publishers of the authority to make further revisions to
9 approved texts after SBE approval without further SBE review. None of these policies or procedures
10 were adopted by the State Board of Education as regulations in compliance with the Administrative
11 Procedure Act, as set forth in Gov. Code, § 11340, *et seq.*

12 81. Specifically, Petitioners seek a Writ of Mandate to compel the State Board of Education
13 to set aside all actions taken by SBE to implement or impose policies and procedures that do not comply
14 with the provisions of sections 60002 and 60005, including the requirements of the APA incorporated
15 therein.

16 82. Petitioners have no plain, speedy, or adequate remedy at law to compel respondent State
17 Board of Education to carry out its legal duties under Education Code sections 60002 and 60005.

18
19 **FOURTH CAUSE OF ACTION**

20 **DECLARATORY RELIEF**

21 **[C.C.P. §§ 1060, 1062]**

22 83. Petitioners reallege and incorporate by reference all allegations set forth in paragraphs 1
23 through 82 above.

24 84. An actual controversy has arisen between Petitioners and Respondent as to whether
25 Respondent's policies and procedures concerning the adoption of instructional materials have been
26 properly adopted by the SBE pursuant to the Administrative Procedure Act as set forth in Gov. Code, §
27 11340, *et seq.*, including public notice and comment, review by the Office of Administrative Law, and
28 publication in the California Code of Regulations. Petitioners contend that actions taken by the State

1 Board of Education have not been in compliance with Education Code sections 60002 and 60005 and
2 the requirements of the APA incorporated therein and Respondent contends that they have.

3 85. An actual controversy has arisen between Petitioners and Respondent as to whether
4 Respondent's approval of the sixth grade history social science texts meet the requirements of Education
5 Code sections 60040 and 60044 and the Standards for Evaluating Instructional Materials For Social
6 Content. Petitioners contend that actions taken by the Respondent State Board of Education have not
7 been in compliance with Education Code sections 60040 and 60044 and the Standards, and Respondent
8 contends that they have.

9 86. An actual controversy has arisen between Petitioners and Respondent as to whether
10 Respondent's actions on January 6, January 12, February 27 and March 8, 2006 comply with the Open
11 Meeting Act. Petitioners contend that actions taken by the Respondent State Board of Education have
12 not been in compliance with the Open Meeting Act and Respondent contends that they have.

13 87. Petitioners desire a judicial determination of their rights and a declaration of whether the
14 State Board of Education has implemented and/or imposed policies and procedures for the adoption of
15 instructional materials without complying with Education Code sections 60002 and 60005 and the
16 requirements of the APA incorporated therein.

17 88. Petitioners desire a judicial determination of their rights and a declaration of whether the
18 State Board of Education has failed to comply with Education Code sections 60040 and 60044 and the
19 Standards for adoption of instructional materials.

20 89. Petitioners desire a judicial determination of their rights and a declaration of whether the
21 State Board of Education has violated the requirements of the Open Meeting Act.

22 90. A judicial determination is necessary and proper at this time and under these
23 circumstances in order to whether the Board of Education has complied with the law, as set forth above.

24
25 **FIFTH CAUSE OF ACTION**

26 **INJUNCTIVE RELIEF**

27 **[C.C.P. § 526]**

28 91. Petitioners reallege and incorporate by reference all allegations set forth in paragraphs 1

1 through 90 above.

2 92. Respondent State Board of Education and Does 1-10 are currently in the process of
3 finalizing edits for the proposed textbooks or have already done so. This is the final action required to
4 be taken before actual printing and publication can commence.

5 93. Upon information and belief, printing and publication is imminent and will commence in
6 the absence of injunctive relief by this Court.

7 94. In the absence of injunctive relief, the proposed texts may be published and marketed to
8 California schools even though they fail to meet the Standards for adoption of instructional materials
9 and any judgment ultimately granted in favor of petitioners on that issue will be rendered ineffectual.
10 The texts as currently approved portray Hinduism in an unfavorable and inequitable light and include a
11 presentation of Hinduism that is demeaning, stereotypical and more critical than the presentation of any
12 other religious tradition.

13 95. In the absence of injunctive relief, the proposed texts may be published and marketed to
14 California schools even though Respondent has failed to comply with the procedural requirements of
15 Education Code sections 60002 and 60005 and the APA requirements incorporated therein and any
16 judgment ultimately granted in favor of petitioners on this issue will be rendered ineffectual.

17 96. In the absence of injunctive relief, the proposed texts may be published and marketed to
18 California schools even though the Respondent failed to comply with the requirements of the Open
19 Meeting Act in approving them and any judgment ultimately granted in favor of petitioners on this issue
20 will be rendered ineffectual.

21 97. Publication of these texts in reliance upon SBE's unlawful approvals will cause
22 irreparable injury to petitioners and the public as the sixth grade history-social science texts violate the
23 law and the California Standards for textbook adoption, and were adopted in violation of the procedures
24 imposed by the Education Code, the Administrative Procedures Act, and the Open Meeting Act.

25
26 WHEREFORE, Plaintiffs pray for relief as follows:

27 1. That this Court issue a peremptory writ of mandate setting aside the actions taken by
28 Respondent to approve the sixth grade history social science textbooks on November 9, 2005 as

1 modified on March 8, 2006 and directing Respondent to refrain from approval of any textbooks that fail
2 to comply with Education Code sections 60040 and 60044 and the Standards for Evaluation of
3 Instructional Materials With Respect to Social Content.

4 2. That this Court issue a peremptory writ of mandate setting aside the actions taken by
5 Respondent to convene the January 6, 2006 meeting, appoint the Board Subcommittee on January 12,
6 2006, and adopt the Subcommittee's recommendations on March 8, 2006 based on violations of the
7 Open Meeting Act that occurred in connection with those actions, and directing Respondent to refrain
8 from further violations of the Open Meeting Act;

9 3. That this Court issue a peremptory writ of mandate setting aside the actions taken by
10 Respondent to implement or impose policies and procedures relating to the adoption of instructional
11 materials that have not complied with the provisions of sections 60002 and 60005, including the
12 requirements of the APA incorporated therein, and directing Respondent to refrain and directing
13 Respondent to refrain from further implementing or imposing any policies and procedures relating to the
14 adoption of instructional materials that have not complied with the provisions of sections 60002 and
15 60005, including the requirements of the APA incorporated therein;

16 4. That this Court issue a judgment declaring that Respondent has violated Education Code
17 sections 60002 and 60005 by implementing or imposing policies and procedures not adopted pursuant to
18 the Administrative Procedures Act;

19 5. That this Court issue a judgment declaring that Respondent's actions on January 6,
20 January 12, February 27 and March 8, 2006 violated the Bagley-Keene Open Meeting Act;

21 6. That this Court issue a judgment declaring that Respondent's actions have violated
22 Education Code 60040 and 60044 and the requirements of the Administrative Procedures Act;

23 7. That this Court enter a temporary restraining order staying Respondent's approval of the
24 sixth grade history-social textbooks conferred on November 9, 2005 as modified on March 8, 2006
25 pending a hearing on petitioners' request for preliminary injunction.

26 8. That this Court enter a preliminary and permanent injunction setting aside Respondent's
27 approval of the sixth grade history-social textbooks conferred on November 9, 2005 as modified on
28 March 8, 2006 and enjoining future approval of texts that do not contain the edits and corrections

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recommended by the Curriculum Commission on December 2, 2005 and such further edits and corrections as were recommended by Dr. Shiva Bajpai on November 4, 2005.

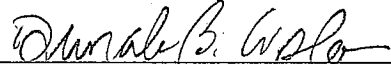
9. That this Court enter a preliminary and permanent injunction enjoining further actions by Respondent to adopt any instructional materials without complying with all requirements of the Open Meeting Act and Administrative Procedures Act, and from conducting any proceedings not in conformity with those requirements; and

10. That this Court order an award of attorneys fees to petitioners, and provide such other and further relief as the Court deems appropriate.

Dated: March 16, 2006

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP
Deborah B. Caplan
N. Eugene Hill
Richard C. Miadich

By: 
DEBORAH B. CAPLAN
Attorneys for Plaintiffs

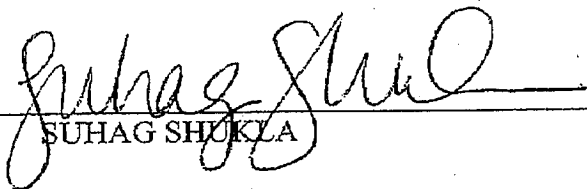
VERIFICATION

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I, Suhag Shukla, am the counsel for the Hindu American Foundation and am authorized to make this declaration on its behalf. I hereby certify that I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and the contents thereof are true and accurate to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 16, 2006



SUHAG SHUKLA

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