

SEP 13 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRADLEY R. JOHNSON,

Plaintiff - Appellee,

v.

POWAY UNIFIED SCHOOL DISTRICT;
et al.,

Defendants - Appellants.

No. 10-55445

D.C. No. 3:07-cv-00783-BEN-
WVG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Argued and Submitted May 5, 2011
Pasadena, California

Before: SILVERMAN, TALLMAN, and CLIFTON, Circuit Judges.

Poway Unified School District and its officials appeal the district court's
award of summary judgment in Bradley Johnson's favor on claims arising under

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

the California Constitution, article I, sections 2 and 4.¹ We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

Poway did not violate Johnson’s rights under the liberty of speech clause of the California Constitution by ordering that he curtail his in-class employee speech. *San Leandro Teachers Ass’n v. Governing Bd. of the San Leandro Unified Sch. Dist.*, 209 P.3d 73, 87 (Cal. 2009).

Because Poway’s conduct satisfies *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971), it also did not violate either the establishment clause or the no preference clause of the California Constitution under the circumstances before us. *East Bay Asian Local Dev. Corp. v. State of Cal.*, 13 P.3d 1122, 1138 (Cal. 2000) (“We do not believe, however, that the protection against the establishment of religion embedded in the California Constitution creates broader protections than those of the First Amendment.”); *id.* at 1139 (“Having concluded above that an exemption from a landmark preservation law satisfies all prongs of the *Lemon* test, it follows that the exemption is neither a governmental preference for or discrimination against religion.”).

¹ We reverse the district court’s award of summary judgment to Johnson on his federal claims in a published opinion filed concurrently with this disposition. The relevant facts underlying all of the issues on appeal are found there.

We reverse and remand with instructions that the district court vacate its grant of injunctive and declaratory relief and award of damages and enter summary judgment in favor of Poway and its officials on all claims. Johnson shall bear all costs. Fed. R. App. P. 39(a)(3).

REVERSED and REMANDED with instructions.