

FILED

AUG 24 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SOUTHERN CALIFORNIA INSTITUTE
OF LAW, a California corporation,

Plaintiff - Appellant,

v.

THE STATE BAR OF CALIFORNIA;
THE COMMITTEE OF BAR
EXAMINERS; JAMES H. AGUIRRE,
individually and in his official capacity;
ARCHIE JOE BIGGERS, individually and
in his official capacity; JAMES A.
BOLTON, individually and in his official
capacity; COMETRIA C. COOPER,
individually and in his official capacity; J.
SCOTT BOVITZ, individually and in his
official capacity; RICHARD A.
FRANKEL, individually and in his official
capacity; K. V. KUMAR, individually and
in his official capacity; SEAN M.
MCCOY, individually and in his official
capacity; SANDRA MENDOZA,
individually and in her official capacity;
JOEL MILIBAND, individually and in his
official capacity; MARTHA PRUDEN-
HAMITER, individually and in her official
capacity; STEVEN J. RENICK,

No. 14-55690

D.C. No. 2:14-cv-00996-JVS-RNB

MEMORANDUM*

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

individually and in his official capacity;
SANDRA L. SALAZAR, individually and
in her official capacity; JEANNE C.
VANDERHOFF, individually and in her
official capacity; LEE H. WALLACH,
individually and in his official capacity;
PATRICIA P. WHITE, individually and in
her official capacity; ALAN
YOCHELSON, individually and in his
official capacity; GEORGE LEAL,
individually and in his official capacity;
DAVID A. CARRILLO, in his official
capacity; LISA CUMMINS, individually
and in her official capacity; PATRICK R.
DIXON, individually and in his official
capacity, Erroneously Sued As Patrick R.
Duncan; JOHN P. MCNICHOLAS,
individually and in his official capacity,
Erroneously Sued As John P. Nicholas;
JAMES VAUGHN, individually and in his
official capacity,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Argued and Submitted August 5, 2015
Pasadena, California

Before: O'SCANNLAIN, SILVERMAN, and WARDLAW, Circuit Judges.

The Southern California Institute of Law (SCIL) appeals the district court's dismissal of its federal constitutional claims against members of California's Committee of Bar Examiners (CBE). As the facts are known to the parties, we repeat them only as necessary to explain our decision.

We need not decide whether Appellees enjoy absolute immunity in this case, because SCIL has failed to allege a cognizable injury. The letter SCIL received from CBE had no legal consequence; by sending it, CBE did not "make any decision or take any state action affecting [SCIL's] rights, benefits, relationship or status with the state." *Gini v. Las Vegas Metro. Police Dep't*, 40 F.3d 1041, 1045 (9th Cir. 1994). Rather, the letter simply notified SCIL that CBE was *contemplating* taking action against the school, and would do so if SCIL failed to correct its conduct. This mere warning of potential action against SCIL does not give rise to the school's constitutional claims. *See Corales v. Bennett*, 567 F.3d 554, 565 (9th Cir. 2009) ("Plaintiffs do not have a retaliation claim based on threats of discipline for First Amendment activity if that threat is itself based upon lawful consequences and is not *actually* administered."); *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) ("We find no case that squarely holds a threat to do an act prohibited by the Constitution is equivalent to doing the act itself . . . [and] we are not prepared to create an exception to this pattern."); *Kerley Indus., Inc. v. Pima*

Cnty., 785 F.2d 1444, 1446 (9th Cir. 1986) (“[A letter without] operative legal effect . . . cannot constitute the basis of a claim of deprivation of property without due process.”). Because no action affecting SCIL’s constitutional rights ever occurred, the school’s claims with respect to CBE’s letter were properly dismissed.

AFFIRMED.