

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATION RESEARCH)
ASSOCIATION, INC.,)
)
AMERICAN PSYCHOLOGICAL ASSOCIATION,)
INC.,)
)
and)
)
NATIONAL COUNCIL ON MEASUREMENT IN)
EDUCATION, INC.)
Plaintiff-Counterdefendants,)
)
v.)
)
PUBLIC RESOURCE ORG., INC.,)
)
Defendant-Counterclaimant.)

Case No. 1:14-cv-00857 (TSC)

DECLARATION OF BRADLEY HUTTER

I, BRADLEY HUTTER, declare:

1. I am a Specialist with the law firm of Crowell & Moring LLP in Washington, D.C., the law firm representing Plaintiffs in this action. I file this declaration in connection with the Memorandum of Points and Authorities Addressing the Fair Use Issue Remanded by the Court of Appeals and in Support of Re-entry of Summary Judgment and a Permanent Injunction and accompanying motion.

2. Exhibit 1 to the motion is a copy of the 1999 edition of Standards for Educational and Psychological Testing (1999 Standards), which I downloaded from the Internet Archive <https://archive.org/details/gov.law.aera.standards.1999> in September 2019.

3. Exhibit 2 to the motion is a copy of the certificate that was included on the front of the version of 1999 Standards that I downloaded.

4. Exhibit 3 to the motion are screenshots taken in September 2019 of the Internet Archive page (<https://archive.org/details/gov.law.aera.standards.1999>) where the 1999 Standards are posted.

5. I also copied Exhibit 4 (California State Personnel Board Merit Section Manual: Policy and Practices, Summary of the Standards for Educational and Psychological Testing) from the California State Personnel Board page webpage where they are posted (http://www.spb.ca.gov/content/laws/selection_manual_appendixf.pdf).

6. I was asked to estimate the amount or percentage of text occupied by the standards within the 1999 edition of Standards for Educational and Psychological Testing that I downloaded from the Internet Archive at <https://archive.org/details/gov.law.aera.standards.1999>. I derived this estimate as follows. Beginning with the Introduction through the end of the Glossary, I estimated for each page, two columns with 46 lines in each column, equaling 92 lines per page. I then multiplied 92 by 170, the number of pages minus blank pages and single columned section cover pages. That total was 15,640. I then hand-counted the lines in the 272 standards, which totaled 2,159 lines. I arrived at percentage of 13.8%. Using the same methodology, the standards in the 8 chapters incorporated by reference in the three Department of Education regulations (as set forth in the Statement of Facts) was roughly 921, which is about 5.9% of the total number of lines.

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



Bradley Hutter

Executed on October 4, 2019