

Prof. Sues Univ. For Retaliation Over Views On NA Remains

By **Joyce Hanson**

Law360 (February 1, 2022, 8:25 PM EST) -- A tenured anthropology professor has hit San Jose State University officials with a suit in California federal court, accusing them of retaliating against her for writing a book opposing laws that mandate the return of human remains and cultural items to modern Native American tribes.

The professor, Elizabeth Weiss, sued SJSU officials including interim university president Stephen Perez and provost Vincent J. Del Casino on Monday, claiming that they stripped her of her academic position as a curator of the university's collection of skeletal remains, which had allowed her since 2004 to do her research as a physical anthropologist, after her views on the Native American Graves Protection and Repatriation Act went viral on Twitter.

In addition, university officials have denied Weiss access to the remains and have prohibited her from taking X-rays and photographs of them, according to the suit, which also names the chair of the anthropology department and the dean of San Jose State University's College of Social Sciences.

Weiss told Law360 on Tuesday that when she was hired, she made it clear to the university that she was against the federal NAGPRA repatriation law as well as the California Native American Graves Protection and Repatriation Act. She added that her book criticizes NAGPRA and similar state laws that require universities and museums to surrender Native American skeletal remains to tribal descendants.

Her suit claims such laws undermine objective scientific inquiry and violate the Establishment Clause of the U.S. Constitution by favoring religion over science. It also claims that the university has violated Weiss' First Amendment right to freedom of speech.

"I've been at San Jose State University since 2004 and have been getting positive peer reviews and awards for my research," she said. "I was asked to give a provost talk and everything was fine. I knew that people disagreed with me, but we respected one another's perspective."

All that changed when the University of Florida Press in 2020 published Weiss' peer-reviewed book, co-authored by James Springer, "Repatriation and Erasing the Past," and it drew "a social media mob," Weiss said.

The online controversy was followed by an open letter signed by about 1,000 professors and graduate students — some of them Weiss' colleagues, according to the suit. The letter condemned the book as "anti-Indigenous" and "racist" for arguing that Indigenous communities should not be given exclusive or preferential control over remains of general scientific interest.

"No similar claims of racism had been leveled by peer reviewers or the publisher," the suit asserted. "Moreover, Professor Weiss is not alone in her field regarding her views on repatriation of remains."

Weiss said she "absolutely" denies that she is racist or anti-Indigenous, adding that university officials "panicked" when her book was challenged by social media voices attempting to cancel her views.

According to the suit, after the negative social media campaign zeroed in on Weiss, the dean of the College of Social Sciences, Walt Jacobs, hosted a Zoom event in June for deans and chairs titled

"What to Do When a Tenured Professor is Branded a Racist."

"The event was attended by many others because it did not require a password for attendance and was not closed to the public," the suit said. "Throughout the hour-long event, several university administrators present, including [anthropology department chair Roberto] Gonzalez, repeatedly branded Weiss a white supremacist, and one even compared her views on repatriation to lynching. Defendant Jacobs, who hosted the event, remained silent and did not dispute any of this calumny."

Since the Zoom meeting, university officials have threatened Weiss with disciplinary action or other forms of retaliation "if she dares to teach her views to her students in the future," according to the suit.

Weiss seeks a court declaration that her constitutional rights have been violated and that the university may not restrict her access to the curation facilities or ban her from taking photos of remains or otherwise take retaliatory actions against the professor.

"They're retaliating against my position on repatriation," Weiss told Law360. "However, when I teach classes about repatriation, I also teach about pro-repatriation views. I tell students, and I mean it, that they don't have to agree with my perspective. I just want them to identify the bones."

SJSU spokesman Kenneth Mashinchi said in a statement Tuesday, "San Jose State University is aware of the filing and is currently reviewing it."

Weiss is represented by Daniel M. Ortner and Ethan W. Blevins of the Pacific Legal Foundation.

Counsel information for the university was unavailable.

The case is Weiss v. Perez et al., case number 5:22-cv-00641, in the U.S. District Court for the Northern District of California.

--Editing by Peter Rozovsky.