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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/05/2022
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

**Exempt from Filing Fees Pursuant
to Gov. Code, § 6103.**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11
12 **HASTINGS COLLEGE CONSERVATION**
13 **COMMITTEE, an unincorporated**
14 **association of alumni of Hastings College of**
15 **Law; STEPHEN HASTINGS BREEZE, an**
16 **individual; STEPHANIE AZALEA**
17 **BRACKEL, an individual; CATHERINE**
18 **TORSTENSON, an individual; SCOTT**
19 **HASTINGS BREEZE, an individual;**
20 **COLLETTE BREEZE MEYERS, an**
21 **individual; and COLIN HASTINGS**
22 **BREEZE, an individual,**

23 Plaintiffs,

24 v.

25 **STATE OF CALIFORNIA; DAVID**
26 **FAIGMAN, in his official capacity as**
27 **Chancellor and Dean of Hastings College of**
28 **the Law; SIMONA AGNOLUCCI, in her**
official capacity as chair of the Board of
Directors of Hastings College of the Law;
CARL ROBERTSON, in his official
capacity as vice chair of the Board of
Directors of Hastings College of the Law;
SHASHIKALA DEB, in her official capacity
as a director of Hastings College of the Law;
MICHAEL EHRLICH, in his official
capacity as a director of Hastings College of
the Law; ANDREW GIACOMINI, in his
official capacity as a director of Hastings
College of the Law; ANDREW HOUSTON,

Case No. CGC22602149

**DEFENDANT STATE OF
CALIFORNIA'S NOTICE OF
DEMURRER AND DEMURRER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER**

Date: January 17, 2023
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Richard B. Ulmer Jr.
Trial Date: Not yet set
Action Filed: October 4, 2022

1 **in his official capacity as a director of**
2 **Hastings College of the Law; CLAES**
3 **LEWENHAUPT, in his official capacity as a**
4 **director of Hastings College of the Law;**
5 **MARY NOEL PEPYS, in her official**
6 **capacity as a director of Hastings College of**
7 **the Law; COURTNEY POWER, in her**
8 **official capacity as a director of Hastings**
9 **College of the Law; ALBERT ZECHER, in**
10 **his official capacity as a director of Hastings**
11 **College of the Law; and DOES 1-25,**
12 **inclusive,**

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Defendants.

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on January 17, 2023, at 9:30 a.m., or as soon thereafter as
3 the matter may be heard, in Department 302 of the Civic Center Courthouse, Superior Court of
4 California for the County of San Francisco, located at 400 McAllister Street, San Francisco,
5 California 94102, defendant the State of California will and hereby does demur to Plaintiffs' five
6 causes of action against the State.

7 As provided by Code of Civil Procedure, sections 430.10, subs. (b) and (e), and 430.30,
8 subd. (a), and California Rules of Court, Rule 3.1320, the State demurs to the first, second, third,
9 sixth, and seventh causes of action on the following grounds:

- 10 • Plaintiffs lack standing to pursue the first, second, third, sixth, and seventh causes
11 of action. (Code Civ. Proc., § 430.10, subd. (b).)
- 12 • Plaintiffs cannot seek declaratory relief against the State (first, second, and third
13 causes of action). (Code Civ. Proc., § 430.10, subd. (e).)
- 14 • Plaintiffs fail to state a claim under the contracts clauses of the U.S. and California
15 Constitutions (first cause of action). (Code Civ. Proc., § 430.10, subd. (e).)
- 16 • Plaintiffs fail to state a claim for violation of the prohibition on ex post facto laws
17 and bills of attainder in the U.S. and California Constitutions (second cause of
18 action). (Code Civ. Proc., § 430.10, subd. (e).)
- 19 • Plaintiffs fail to state a claim under article IX, section 9, of the California
20 Constitution (third cause of action). (Code Civ. Proc., § 430.10, subd. (e).)
- 21 • Plaintiffs fail to state a claim for breach of contract (fifth and sixth causes of
22 action). (Code Civ. Proc., § 430.10, subd. (e).)

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The State of California respectfully requests that the Court sustain its demurrer and, because Plaintiffs’ lack of standing is an incurable defect, dismiss all Plaintiffs’ claims against the State without leave to amend.

Dated: December 5, 2022

Respectfully submitted,
ROB BONTA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General



KARA SIEGEL
Deputy Attorney General
Attorneys for Defendant State of California

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1 1936 was drafted and passed at the request of the law school’s governing board. Legislative
2 action at the board’s request does not amount to impermissible political influence of the board.

3 Finally, AB 1936 is a civil statute and imposes no punishment on Plaintiffs (or anyone
4 else), so that Plaintiffs can allege no violation of the prohibition against ex post facto laws and
5 bills of attainder.

6 Because Plaintiffs lack standing to bring their claims against the State, and because each of
7 those claims fails for other reasons, the State of California respectfully requests that the Court
8 sustain its demurrer to the complaint and dismiss all claims against the State. Because Plaintiffs
9 cannot cure their lack of standing, the State respectfully requests that the demurrer be sustained
10 without leave to amend.

11 **BACKGROUND**

12 In 1878, an Act of the California Legislature “authorized” S.C. Hastings to establish the
13 Hastings College of the Law (College). (Complaint, Exh. 1 (the Act), § 1.) The Act was intended
14 to establish “a perpetual annuity for the support and maintenance of said College.” (*Ibid.*, § 13.)
15 Consistent with that “object,” S.C. Hastings was to pay \$100,000 to the State treasury, and the
16 State was to appropriate annually to the College’s board of directors \$7,000—that is, “[t]he sum
17 of seven per cent. per annum” of his \$100,000 contribution. (*Ibid.*, §§ 7, 8, 13; see Educ. Code,
18 § 92212.) The board would manage “[a]ll the business of the College,” and one of its seats would
19 be designated for “some heir or some representative” of S.C. Hastings. (Act, §§ 1, 11.)

20 The Act provided that S.C. Hastings’s contribution was “never to be refunded” except if
21 “the State . . . fail[ed] to pay . . . the sum of sever per cent. per annum, . . . or [if] the College
22 cease[d] to exist.” (Act, §§ 7, 13.) In either event, “the State . . . shall pay to the said S.C.
23 Hastings, his heirs or legal representatives the said some of one hundred (\$100,000) thousand
24 dollars and all unexpended accumulated interest.” (*Ibid.*, § 13.)

25 Since its passage, the Act has been repeatedly amended and recodified, and it is now part of
26 the Education Code. (Compl., Exh. 2 (AB 1936), § 1, subd. (j); Educ. Code, §§ 92200-92215.)

27 On November 2, 2021, following a three-year examination of S.C. Hastings’s involvement
28 in the deaths of Native Americans in Mendocino County in the mid-19th century, the College’s

1 board voted unanimously to remove “Hastings” from the College’s name. (Compl., ¶ 3; AB 1936,
2 § 1, subd. (m).) On July 27, 2022, the board voted unanimously to recommend that the College be
3 renamed “College of the Law, San Francisco.” (Compl., ¶ 4; AB 1936, § 1, subd. (p).)

4 On September 23, 2022, the Governor signed Assembly Bill 1936 (AB 1936 or the Bill).
5 The Bill provides that the College be renamed “College of the Law, San Francisco,” effective
6 January 1, 2023. (AB 1936, § 1.) The Bill further provides that all directors will be appointed by
7 the Governor and approved by the Senate to serve 12-year terms; and that “any director in office
8 on January 1, 2023, who was not appointed by the Governor shall be limited to a six-year term.”
9 (*Ibid.*, §§ 21, subd. (b), 24.) The Bill thus converts the seat designated for heirs or representatives
10 of S.C. Hastings to one governed by the same terms as the other board seats.

11 On October 4, 2022, Plaintiffs sued the State of California and the dean and board of
12 directors of the College, including the occupant of the designated board seat, Claus Lewenhaupt.
13 Stephen Hastings Breeze, who alleges that he is a “great grandson of S.C. Hastings,” and
14 Breeze’s children comprise the “Individual Plaintiffs.” (Compl., ¶¶ 8-14.) They are joined as
15 Plaintiffs by the Hastings College Conservation Committee (HCCC), an association of Hastings
16 alumni. (Compl., ¶ 7.)

17 Plaintiffs assert that the Act establishing the law school comprised a contract between the
18 State and S.C. Hastings and his descendants. (Compl., ¶ 6.) Plaintiffs contend that insofar as AB
19 1936 changes the name of the College and converts the designated board seat, the Bill violates the
20 U.S. and California Constitutions and comprises a breach of contract. Plaintiffs seek a declaration
21 that AB 1936: violates the contracts clauses of the California and U.S. Constitutions (first cause
22 of action); constitutes a bill of attainder and ex post facto law in violation of the California and
23 U.S. Constitutions (second cause of action); and violates Article 9, Section 9 of the California
24 Constitution, which provides that that “[t]he university shall be entirely independent of all
25 political or sectarian influence” (third cause of action). (Compl., ¶¶ 58-77.) The Individual
26 Plaintiffs further seek an order compelling the State to specifically perform its purported contract
27 with S.C. Hastings or, in the alternative, pay damages (sixth and seventh causes of action).

28

1 (Compl., ¶¶ 92-105.)¹

2 **PLAINTIFFS’ CLAIMS SHOULD BE DISMISSED FOR LACK OF STANDING**

3 Neither HCCC nor the Individual Plaintiffs have standing to bring their claims.

4 To have standing to challenge a legislative act, a party must be beneficially interested in the
5 controversy—that is, they must have “some special interest to be served or some particular right
6 to be preserved or protected over and above the interest held in common with the public at large.”
7 (*Limon v. Circle K Stores Inc.* (Cal. Ct. App., Oct. 25, 2022, No. F082289) --- Cal.Rptr.3d ----,
8 2022 WL 14391789, at *14.) California’s beneficial-interest standard is equivalent to the federal
9 injury-in-fact test, and requires that a party show an invasion of a legally protected interest that is
10 concrete and actual, not conjectural or hypothetical. (*Associated Builders and Contractors, Inc. v.*
11 *San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362; see *Holmes v. California Nat. Guard*
12 (2001) 90 Cal.App.4th 297, 314–315 [standing requires an “an injury of sufficient magnitude
13 reasonably to assure that all of the relevant facts and issues will be adequately presented”].)

14 This Plaintiffs cannot do.

15 **I. HCCC MUST AND DOES NOT ALLEGE ANY INJURY TO ITS MEMBERS**

16 HCCC must demonstrate that its alumni members have standing to sue in their own right.
17 (*Associated Builders, supra*, 21 Cal.4th 352, 361; *Angelucci v. Century Supper Club* (2007) 41
18 Cal.4th 160, 175.) “An action challenging a legislative act cannot be brought by any individual or
19 entity that disagrees with it.” (*Coral Construction, Inc. v. City and County of San Francisco*
20 (2004) 116 Cal.App.4th 6, 15].) Rather, HCCC must allege facts showing that enactment of the
21 Bill has actually invaded or will imminently invade its members’ legally protected interest.
22 (*Associated Builders, supra*, 21 Cal.4th at p. 362; e.g., *Collins v. Thurmond* (2019) 41
23 Cal.App.5th 879, 920 [members’ children could be subject to unfair discipline under school
24 district’s challenged program]; *Coral Construction, Inc. v. City and County of San Francisco*
25 (2004) 116 Cal.App.4th 6, 19 [ordinance could preclude regular bidder from submitting

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28 ¹ Plaintiffs’ fourth and fifth causes of action are asserted only against “All Individual Defendants,” not the State, and are thus not addressed by this demurrer. (Compl., ¶¶ 78-91.)

1 compliant, competitive bids].)²

2 Instead, HCCC merely claims that its members are “dedicated to preserving the College’s
3 name, independence from sectarian or political influences, and freedom from wasteful and ultra
4 vires use of its taxpayer funds.” (Compl., ¶ 7.) HCCC alleges no actual or imminent harm to its
5 members—and thus, it fails to establish standing.

6 **II. THE INDIVIDUAL PLAINTIFFS ALLEGE NEITHER THIRD-PARTY STANDING TO**
7 **ENFORCE A CONTRACT NOR A CONCRETE AND ACTUAL INJURY FROM AB 1936**

8 The Individual Plaintiffs fail to allege standing to bring either their constitutional claims or
9 their claims for breach of contract. In support of both, they allege only that they are descendants
10 of S.C. Hastings and “successors in interest of S.C. Hastings and/or third-party beneficiaries to
11 his written agreement with the State.” (Compl., ¶ 6.)

12 The Act is not a written agreement, however. (See, *infra*, Plaintiffs’ Claims Based in
13 Contract Theory Fail, pp. 16-17.) Nor do the Individual Plaintiffs allege facts to support their
14 entirely conclusory claims to beneficiary and successor status—claims belied by the Act itself.
15 (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 413 [“We do not
16 accept as true . . . conclusions or contentions when reviewing a ruling on a demurrer.”].)

17 Moreover, aside from their faulty claim of third-party standing, the Individual Plaintiffs
18 allege no other basis for standing to challenge the Bill—no concrete, actual injury to a legally
19 protected interest.

20 **A. The Individual Plaintiffs Are Not Third-Party Beneficiaries nor Successors**

21 Even applying contract principles to the Act, the Individual Plaintiffs are neither third-party
22 beneficiaries nor successors in interest. A third party may sue to enforce a contract only when it
23 was “made expressly for the benefit of [that] third person.” (Civ. Code, § 1559; see *Murphy v.*
24 *Allstate Ins. Co.* (1976) 17 Cal.3d 937, 943.) That the Act’s “object” was “to grant a perpetual
25 annuity for the support and maintenance of [the] College” undermines the suggestion that it was

26 _____
27 ² HCCC also alleges that “[a]t least one member . . . has, within the past year, paid taxes
28 to the State of California,” apparently in support of its action for waste of taxpayer funds; but that
cause of action is not asserted against the State. (Compl., ¶ 7; see Code Civ. Proc., § 526a, subd.
(a); *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1244.)

1 intended to benefit any specific third party. (Act, § 13; cf. *Martinez v. Socoma Companies, Inc.*
2 (1974) 11 Cal.3d 394, 397–398 [government contracts were not intended to benefit specific class
3 of plaintiffs but rather to achieve public purposes stated in contracts and underlying legislation].)
4 Nor does the Act express S.C. Hastings’s intent to benefit the Individual Plaintiffs.

5 The Act identifies no third-party beneficiary with respect to the name of the College. (Act,
6 § 1.) And although the Act designates a board seat for “some heir or some representative” of S.C.
7 Hastings and that any refund be directed to “S.C. Hastings, his heirs or legal representatives,”
8 these provisions do not establish that the Individual Plaintiffs comprise a “class intended to be
9 benefitted” by the Act. (*Zigas v. Superior Court* (1981) 120 Cal.App.3d 827, 835.) The Individual
10 Plaintiffs allege no facts showing that they comprise “heirs” or “legal representatives” of S.C.
11 Hastings—terms with legal meanings distinct from “descendants.” (Compl., ¶ 6; *Ginochio v. City*
12 *and County of San Francisco* (1924) 194 Cal. 159, 166.) Moreover, the board-seat designation is
13 ancillary to the object of the Act, and any refund passes to “heirs” or “legal representatives” only
14 if both the object of the Act (the College) is no longer extant and S.C. Hastings is no longer alive
15 —so that “heirs” and “representatives” are, at best, incidentally benefitted by the Act, and
16 “descendants” not benefitted at all. (*Shell v. Schmidt* (1954) 126 Cal.App.2d 279, 290 [“the
17 beneficiary must be more than incidentally benefited by the contract”]; see *Zigas, supra*, 120
18 Cal.App.3d at p. 838 [finding third-party standing when “narrow and specific” purpose of
19 contract is to benefit specific group].)

20 The Individual Plaintiffs allege no facts demonstrating that they are S.C. Hastings’s
21 successors in interest with respect to the Act—whether through assignment (*see Foreman Roofing*
22 *Inc. v. United Union of Roofers etc. Workers* (1983) 144 Cal.App.3d 99, 107) or inheritance
23 (Code Civ. Proc., §§ 377.10, 377.11, 377.30, 377.32).

24 **B. The Individual Plaintiffs Allege No Other Basis for Standing**

25 Aside from their unsupported claim of third-party or successor standing, the Individual
26 Plaintiffs allege no basis to challenge the Bill. They allege no concrete and actual harm stemming
27 from the change of the College’s name nor the conversion of the designated board seat. Aside
28 from one “recent graduate of the College,” none of the Individual Plaintiffs alleges any

1 connection to or interest in the College—let alone “some special interest to be served or some
2 particular right to be preserved or protected over and above the interest held in common with the
3 public at large.” (*Limon, supra*, 2022 WL 14391789, at *14.). The Individual Plaintiffs do not
4 allege that they have ever served or even sought to serve on the College’s board—an option still
5 open to them on a term basis and by appointment. Even the Legislative findings in support of the
6 name change very clearly concern only S.C. Hastings, and not any of his descendants.

7 The Individual Plaintiffs thus also fail to allege any injury attributable to the Bill, and they
8 therefore lack standing to challenge it.

9 Because neither HCCC nor the Individual Plaintiffs have standing to bring their first,
10 second, third, sixth, and seventh causes of action, all those claims must be dismissed. Moreover,
11 because there is no reasonable possibility that Plaintiffs can cure this deficiency, dismissal
12 without leave to amend is appropriate. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

13 **PLAINTIFFS CANNOT SEEK DECLARATORY RELIEF AGAINST THE STATE**

14 By their first three causes of action, Plaintiffs seek a declaration that AB 1936 violates the
15 U.S. and California Constitutions. (Compl., ¶¶ 64, 71, 76.) The State of California is not,
16 however, a proper party as to which declaratory relief may be granted. (*Serrano v. Priest* (1976)
17 18 Cal.3d 728, 752 [“[I]t is the general and long-established rule that in actions for declaratory
18 and injunctive relief challenging the constitutionality of state statutes, state officers with statewide
19 administrative functions under the challenged statute are the proper parties defendant.”]),
20 collecting cases; see also *Templo v. State* (2018) 24 Cal.App.5th 730, 736.) Because Plaintiffs
21 seek declaratory relief challenging the constitutionality of AB 1936, state officers are the proper
22 defendants—not the State of California. Plaintiffs’ first three causes of action thus fail insofar as
23 they seek relief against the State.

24 **PLAINTIFFS’ CLAIMS BASED IN CONTRACT THEORY FAIL**

25 Plaintiffs allege that the Act comprises a contract between the State and S.C. Hastings, and
26 that by amending the Act, the Bill violates the contracts clauses of the U.S. and California
27 Constitutions and breaches the State’s agreement with S.C. Hastings. Plaintiffs’ contract-based
28 claims fail for a few reasons—in addition to Plaintiffs’ lack of standing to bring them.

1 **I. THE ACT IS NOT A CONTRACT**

2 Contrary to Plaintiffs’ contention, the Act is not an agreement between the State and S.C.
3 Hastings. Unlike in *U.S. Trust Co. of New York v. New Jersey*, cited in the complaint, the Act
4 contains no language from which “[t]he intent to make a contract is clear.” (*U.S. Trust Co. of New*
5 *York v. New Jersey* (1977) 431 U.S. 1, 18 [citing statutory language that “[t]he 2 States covenant
6 and agree with each other and with the holders of any affected bonds. . . .”].) Rather, the Act is
7 introduced: “The People of the State of California, represented in Senate and Assembly, do as
8 follows. . . .” (Act, p. 1.) The People do not *agree with* but instead “authorize[.]” S.C. Hastings to
9 establish the College on certain terms. (Act, § 1.) Those terms—which include College
10 governance, annual funding, affiliation with the University of California, facilities,
11 professorships, and granting of diplomas—comprise the bulk of the Act and have nothing to do
12 with S.C. Hastings, his heirs, or his legal representatives.

13 Moreover, under Plaintiffs’ interpretation, the Act precludes the State from acting on the
14 board’s request to change the name of the College—but a contract placing such limits on the
15 State’s exercise of its police power would be unenforceable. (*U.S. Trust, supra*, 431 U.S. at p. 23;
16 *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 560;
17 see AB 1936, § 1, subds. (s)-(u) [finding that name change would aid in addressing harm to tribes
18 whose members were among those killed in Mendocino County in the 1850s].) Because the Act
19 does not manifest an intent to make a contract, and because the contractual agreement Plaintiffs
20 allege exists here would be unenforceable, the Act does not form a contract between the State and
21 S.C. Hastings.

22 **II. THE BILL DOES NOT VIOLATE THE CONTRACTS CLAUSE**

23 Even if the Act were a contract, its amendment by the Bill would not violate the contracts
24 clause. The Bill only violates the contracts clause if it (1) impairs the state’s obligation under a
25 valid contract, and (2) the impairment was not “reasonable and necessary to serve an important
26 public purpose.” (*U.S. Trust Co., supra*, 431 U.S. at p. 25; see *City of Hermosa Beach, supra*, 86
27 Cal.App.4th at pp. 554-555 [applying test set forth in *U.S. Trust Co.* to assess alleged violation of
28 California’s coextensive contracts clause].)

1 The State has only one obligation under the Act—to ensure that \$7,000 is “appropriated by
2 the State and paid in two semi-annual payments to the Directors of the College.” (Act, § 8; see
3 *ibid.*, § 13.) Plaintiffs do not dispute that the State has consistently fulfilled this obligation, such
4 that the College “has operated successfully in its current form since it was founded in 1878.”
5 (Compl., ¶ 1; see also *ibid.*, ¶ 81 [noting current appropriation of over \$15 million annually].)
6 Although Plaintiffs characterize maintenance of the College’s name and its designated board seat
7 as contractual obligations belonging to the State, nothing in the Act says as much.

8 Moreover, even if the Bill did impair the State’s obligation under the Act, such impairment
9 would be reasonable and necessary to serve an important public purpose—namely, to address
10 violence, the reverberations of which are still felt by California tribe members. (AB 1936, § 1,
11 subs. (s)-(u).) State action directed at the welfare of state residents is a legitimate exercise of
12 traditional police power. (See *City of Hermosa Beach, supra*, 86 Cal.App.4th at pp. 469-470;
13 *Interstate Marina Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435, 448.)
14 The changes to the College’s name and board seat are reasonable in scope and will not impact the
15 continued operation of the College. As Plaintiffs concede, even with the changes made by the
16 Bill, the College established by the Act has not “cease[d] to exist.” (Compl., ¶ 104, citing Act,
17 § 13.) And the Legislature found that the name change was necessary to address the injustice
18 suffered by the tribes.

19 Plaintiffs’ contracts clause claim is without merit.

20 **III. THE BILL DOES NOT IMPACT THE MATERIAL TERMS OF THE ACT**

21 Further, even if the Act were a contract, the Individual Plaintiff’s breach-of-contract claims
22 would fail because neither amending the College’s name nor converting the designated board seat
23 would comprise a material breach of the Act’s terms.

24 Although the Act includes various provisions for the establishment and operation of the
25 College, its sole “object” is “to grant a perpetual annuity for the support and maintenance of [the]
26 College.” (Act (Act), § 13.) Thus, it is only if “the College cease[s] to exist” or the State fails to
27 appropriate for the College a minimum of \$7,000 a year that the State must “refund[]” S.C.
28 Hastings’s initial contribution. (*Id.*, §§ 7, 13.) To play out the contract analogy, these are the only

1 material terms whose breach warrants dissolution of the agreement. (See *Brown v. Grimes* (2011)
2 192 Cal.App.4th 265, 277 [material breach by one party excuses performance by the other].)

3 Sections 7 and 13 of the Act underscore that all the other provisions in the Act can be
4 amended—and indeed some have. For instance, the board has increased from eight to 11
5 members and is no longer chaired by the Chief Justice of the Supreme Court. (Compare Act, §§ 1,
6 14 with Educ. Code, § 92207; see *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016 [upholding
7 amendment to remove Chief Justice from board].) Sections 7 and 13 also preclude the possibility
8 of “specific performance” of the Act (sought by Plaintiffs’ sixth cause of action) by specifying
9 precisely what will happen in the event that the College ceases to operate or be adequately
10 funded. Namely, the State will pay “S.C. Hastings, his heirs or legal representatives, the said sum
11 of one hundred (\$100,000) thousand dollars and all unexpended accumulated interest.” (*Ibid.*,
12 § 13.)

13 Plaintiffs do not dispute that the College will continue to exist—even after the Bill becomes
14 effective—and that the State has adequately funded the College from its inception. (Compl., ¶¶ 1
15 [College “has operated successfully in its current form since it was founded in 1878”], 104.) The
16 Bill does not undermine the State’s obligations under the Act, and even if it were a contract
17 between S.C. Hastings and the State, neither specific performance nor damages would be
18 warranted.

19 **PLAINTIFFS ALLEGE NO VIOLATION OF ARTICLE IX, SECTION 9**

20 Plaintiffs allege that by changing the College’s name and converting its designated board
21 seat, AB 1936 effects “politically motivated” changes to the “form and character” of the College,
22 in violation of the requirement that the University of California “be entirely independent of all
23 political or sectarian influence and kept free therefrom in the appointment of its regents and in the
24 administration of its affairs.” (Cal. Const., art. IX, § 9, subd. (f); see Compl., ¶ 74, citing *People*
25 *v. Kewen* (1886) 69 Cal. 215, 216.)

26 Plaintiffs have alleged no facts showing a violation of article IX, section 9, which protects
27 the independence of the College and its officials and faculty. (*People v. Lofchie* (2014) 229
28 Cal.App.4th 240, 254 [“The purpose of designating the University as a public trust was to insulate

1 it from state government, ensuring that the University and its faculty would be ‘entirely
2 independent of all political or sectarian influence.’”], citing Cal. Const., art. IX, § 9, subd. (f).³
3 Here, the College’s governing board voted unanimously to change the name of the College,
4 affirmatively seeking the aid of the Legislature and Governor to do so. (Compl., ¶¶ 3, 51.) The
5 College thus did not bow to any State political influence but instead took initiative of its own
6 accord. Moreover, the board itself selected the new name, “College of the Law, San Francisco,”
7 which tracks the prior name of the College while indicating only its purpose and location—thus
8 arguably rendering the College’s name apolitical. (Compl., ¶ 4 & Exh. 2, § 20, subd. (c)(1)(D).)

9 Further, Plaintiffs allege no facts suggesting that the change to one board seat—through
10 conversion of the designated life-term board seat to a term-limited, open-appointment seat—is a
11 change to the “form or character” of the College. The board will still govern “the business of
12 college” through the work of the same number of directors, with all appointed to equal terms.
13 (AB 1936, § 21.) And as part of the University of California, the College and its board will
14 remain largely insulated from the acts of the Legislature, as intended by article IX, section 9. (See
15 *Lofchie, supra*, 229 Cal.App.4th at pp. 256-259 [describing limited areas of legislative impact].)
16 To the extent the conversion of the board seat “affects the institution’s internal affairs” at all—an
17 unlikely suggestion—the modification still would not violate section 9 because it relates to a
18 “matter[] of statewide concern not involving internal university affairs.” (*Coutin, supra*, 220
19 Cal.App.3d at pp. 1026-1027; *Lofchie, supra*, 229 Cal.App.4th at p. 250.)

20 Plaintiffs thus fail to allege a claim for relief under article IX, section 9.

21 **THE BILL IS NEITHER AN EX POST FACTO LAW NOR A BILL OF ATTAINDER**

22 Plaintiffs contend that by changing the College’s name and converting its designated board
23 seat, the Bill constitutes an ex post facto law and bill of attainder in violation of the U.S. and
24 California Constitutions. (Compl., ¶¶ 69-71.) Plaintiffs point to the Bill’s legislative findings of
25 S.C. Hastings’s involvement in the mass killings of tribe members to support their contention that
26 the Bill “heaps scorn and punishment upon S.C. Hastings, his descendants, and . . . all . . .

27 ³ See also *Lofchie, supra*, 229 Cal.App.4th at p. 248, fn. 5 [noting that article IX, section
28 9, was adopted in response to a “controversy . . . among political factions seeking to control the
University’s governance and curriculum.”.]

1 Hastings law graduates living and deceased.” (AB 1936, § 1, subds. (k)-(l), (q)-(s).) This claim
2 has no merit.

3 The constitutional prohibition against ex post facto laws “applies only to penal statutes,”
4 which are not at issue here. (*Collins v. Youngblood* (1990) 497 U.S. 37, 41; *Armijo v. Miles*
5 (2005) 127 Cal.App.4th 1405, 1418 [“We interpret our state ex post facto provision . . .
6 identically to that of its federal counterpart.”].)

7 Nor have Plaintiffs alleged facts showing that the Bill inflicts punishment upon them
8 without trial, in violation of the constitutional prohibition on bills of attainder. (*SeaRiver*
9 *Maritime Financial Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 668; *California State*
10 *Employees’ Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 224.) The prohibition on bills of
11 attainder targets laws that subject (1) an identifiable group of individuals (2) to punishment
12 (3) without trial. (*SeaRiver, supra*, 309 F.3d at p. 668.) For instance, laws preventing gainful
13 employment of Communists, those identified as “subversives,” and those who fought for the
14 Confederacy have been struck down. (*United States v. Brown* (1965) 381 U.S. 437; *United States*
15 *v. Lovett* (1946) 328 U.S. 303; *Cummings v. Missouri* (1867) 4 Wall. 277; *Ex parte Garland*
16 (1867) 4 Wall. 333.) That a law imposes a burden upon the plaintiff is not enough; it must inflict
17 punishment. (*Franceschi v. Yee* (9th Cir. 2018) 887 F.3d 927, 941; *Alpha Standard Investment*
18 *Co. v. County of Los Angeles* (1981) 118 Cal.App.3d 185, 190.)

19 The Bill does not directly impact Plaintiffs, let alone single them out for punishment. The
20 legislative findings in AB 1936 are confined to acts by S.C. Hastings and the State. (AB 1936,
21 § 1, subds. (k)-(l), (q)-(u).) The Bill does not mention S.C. Hastings’s descendants or College
22 alumni who favor retaining “Hastings” in the name of the College, nor are any of its provisions
23 directed towards these groups. (See *Franceschi, supra*, 887 F.3d at p. 942 [“[Plaintiff] does not
24 contend that when the provisions were enacted anyone in the legislature had him in mind. . . .”].)
25 Plaintiffs have alleged no way in which changing the name of the College even impacts them, let
26 alone punishes them. And the conversion of the designated board seat neither prevents the
27 Individual Plaintiffs from serving on the board nor prevents them from serving on other boards or
28 pursuing other compensated or volunteer employment. (Cf. *Flournoy, supra*, 32 Cal.App.3d at p.


1 226 [Legislature’s decision not to appropriate funds for academic salary increases “is not
2 tantamount to a ban on continuing state employment of [academic] personnel”].) Indeed, given
3 the distance between the challenged provisions of the Bill and any potential impact upon
4 Plaintiffs, AB 1936 cannot even be said to burden them.

5 **CONCLUSION**

6 Plaintiffs’ claims against the State fail because Plaintiffs lack standing to bring their claims;
7 Plaintiffs cannot seek declaratory relief against the State; and Plaintiffs fail to allege a claim for
8 violation of the U.S. and California Constitutions or for breach of contract. Moreover, Plaintiffs’
9 lack of standing is incurable. Defendant the State of California respectfully requests that the Court
10 sustain its demurrer and dismiss the complaint without leave to amend.

11 Dated: December 5, 2022

Respectfully submitted,
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