

1 ROB BONTA
Attorney General of California
2 LISA W. CHAO
Supervising Deputy Attorney General
3 KARA SIEGEL
Deputy Attorney General
4 State Bar No. 296126
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9146
7 Fax: (619) 645-2012
E-mail: Kara.Siegel@doj.ca.gov
8 *Attorneys for Defendant*
State of California

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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

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

19 Plaintiffs,

20 v.

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

Case No. CGC22602149

**DEFENDANT STATE OF
CALIFORNIA'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

Date: December 29, 2022
Time: 9:30 AM
Dept: 302
Judge: Honorable Richard B. Ulmer, Jr.
Trial Date: Not Yet Set
Action Filed: October 4, 2022

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

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Defendants.

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1 violation of the contracts clause or breach of contract. The 1878 Act plainly is *not* a contract
2 between the State and S.C. Hastings; and even if it were, Assembly Bill 1936 neither
3 unconstitutionally impairs nor breaches the State’s obligations under the 1878 Act. Nor have
4 Plaintiffs alleged any harm to the independence of the law school, protected by article IX, section
5 9, of the California Constitution. As Plaintiffs themselves allege, Assembly Bill 1936 was drafted
6 and passed at the request of the law school’s governing board. Legislative action at the board’s
7 request does not amount to impermissible political influence of the board. And because AB 1936
8 is a civil statute and imposes no punishment on Plaintiffs, they can allege no violation of the
9 prohibition against ex post facto laws and bills of attainder.

10 *Second*, the balance of harms plainly favors the State and the College defendants, not the
11 Plaintiffs—particularly given the high showing required to halt enforcement of a statute. The
12 bill’s conversion of the designated board seat does not take immediate effect, so there is no
13 urgency to halt it; nor, in any event, does it prevent any of S.C. Hastings’s descendants from
14 serving on the board. Plaintiffs claim that the name change will harm the “Hastings brand” and
15 require expenditures that cannot be recovered. Taxpayer cases make clear that the costs of
16 implementing the bill do not constitute irreparable harm. And the law school’s brand turns on
17 many qualities more significant than its name—such as its provision of education and opportunity
18 and its affiliation with the UC system—all of which the board thoughtfully considered over the
19 course of years, consistent with their charge to govern the law school.

20 S.C. Hastings’s descendants claim an injunction is need to protect their right to specific
21 performance of the 1878 Act as a contract, but they have alleged no contract rights; and given that
22 Plaintiffs seek to halt enforcement of a legislative act, preserving the possibility of specific
23 performance is not a basis for an injunction.

24 Plaintiffs have failed to allege the great and irreparable harm needed to justify an
25 injunction of AB 1936. Their motion should be denied.

26 **BACKGROUND**

27 By an 1878 Act, the Legislature “authorized” S.C. Hastings to establish the Hastings
28 College of the Law (College). (Complaint, Exh. 1 (the Act), § 1.) The Act was intended to

1 establish “a perpetual annuity for the support and maintenance of said College.” (*Ibid.*, § 13.)
2 Consistent with that “object,” S.C. Hastings was to pay \$100,000 to the State treasury, and the
3 State was to appropriate annually to the College’s board of directors \$7,000—that is, “[t]he sum
4 of seven per cent. per annum” of his \$100,000 contribution. (*Ibid.*, §§ 7, 8, 13; see Educ. Code,
5 § 92212.) The board would manage “[a]ll the business of the College,” and one of its seats would
6 be designated for “some heir or some representative” of S.C. Hastings. (Act, §§ 1, 11.)

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

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

14 On November 2, 2021, following a three-year examination of S.C. Hastings’s involvement
15 in the deaths of Native Americans in Mendocino County in the mid-19th century, the College’s
16 board voted unanimously to remove “Hastings” from the College’s name. (Compl., ¶ 3; AB 1936,
17 § 1, subd. (m).) On July 27, 2022, the board voted unanimously to recommend that the College be
18 renamed “College of the Law, San Francisco.” (Compl., ¶ 4; AB 1936, § 1, subd. (p).)

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

26 ///

27 ¹ Plaintiffs suggest that the Act “remov[es] . . . or the clause requiring the repayment of
28 the \$100,000 consideration upon the College ceasing to exist,” but the Act does not amend or
otherwise address that provision of the Education Code. (See Educ. Code, § 92212.)

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

7 Plaintiffs assert that the Act establishing the law school comprised a contract between the
8 State and S.C. Hastings and his descendants. (Compl., ¶ 6.) Plaintiffs contend that insofar as AB
9 1936 changes the name of the College and converts the designated board seat, the Bill violates the
10 U.S. and California Constitutions and comprises a breach of contract. Plaintiffs seek a declaration
11 that AB 1936: violates the contracts clauses of the California and U.S. Constitutions; constitutes a
12 bill of attainder and ex post facto law; and violates Article 9, Section 9 of the California
13 Constitution, which provides that that “[t]he university shall be entirely independent of all
14 political or sectarian influence”. (Compl., ¶¶ 58-77.) The Individual Plaintiffs further seek an
15 order compelling the State to specifically perform its purported contract with S.C. Hastings or, in
16 the alternative, pay damages. (Compl., ¶¶ 92-105.)

17 **PLAINTIFFS LACK STANDING**

18 Plaintiffs cannot seek a preliminary injunction because neither HCCC nor the Individual
19 Plaintiffs have standing to bring their claims before the Court.

20 To establish standing to challenge a legislative act, a plaintiff must show a beneficial
21 interest in the controversy—that is, “some special interest to be served or some particular right to
22 be preserved or protected over and above the interest held in common with the public at large.”
23 (*Limon v. Circle K Stores Inc.* (Cal. Ct. App., Oct. 25, 2022, No. F082289) --- Cal.Rptr.3d ----,
24 2022 WL 14391789, at *14.) California’s beneficial-interest standard is equivalent to the federal
25 injury-in-fact test, and requires that a party show an invasion of a legally protected interest that is
26 concrete and actual, not conjectural or hypothetical. (*Associated Builders and Contractors, Inc. v.*
27 *San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362.) Neither HCCC nor the Individual
28 Plaintiffs have done so.

1 **I. HCCC ALLEGES NO INJURY TO ITS MEMBERS, AS IT MUST**

2 HCCC must demonstrate that its alumni members have standing to sue in their own right.
3 (*Associated Builders, supra*, 21 Cal.4th 352, 361; *Angelucci v. Century Supper Club* (2007) 41
4 Cal.4th 160, 175.) “An action challenging a legislative act cannot be brought by any individual or
5 entity that disagrees with it.” (*Coral Construction, Inc. v. City and County of San Francisco*
6 (2004) 116 Cal.App.4th 6, 15[.]) Rather, HCCC must allege facts showing that enactment of the
7 Bill has actually invaded or will imminently invade its members’ legally protected interest.
8 (*Associated Builders, supra*, 21 Cal.4th at p. 362; e.g., *Collins v. Thurmond* (2019) 41
9 Cal.App.5th 879, 920 [members’ children could be subject to unfair discipline under school
10 district’s challenged program]; *Coral Construction, Inc. v. City and County of San Francisco*
11 (2004) 116 Cal.App.4th 6, 19 [ordinance could preclude regular bidder from submitting
12 compliant, competitive bids].) Instead, HCCC merely claims that its members are “dedicated to
13 preserving the College’s name, independence from sectarian or political influences, and freedom
14 from wasteful and ultra vires use of its taxpayer funds.” (Compl., ¶ 7.)² HCCC alleges no actual
15 or imminent harm to its members—and thus, it fails to establish standing.

16 **II. THE INDIVIDUAL PLAINTIFFS ALLEGE NEITHER A BENEFICIAL INTEREST NOR**
17 **STANDING TO ENFORCE THE ACT AS A CONTRACT**

18 The Individual Plaintiffs fail to allege standing to bring either their constitutional claims or
19 their claims for breach of contract. In support of both, they allege only that they are descendants
20 of S.C. Hastings and “successors in interest of S.C. Hastings and/or third-party beneficiaries to
21 his written agreement with the State.” (Compl., ¶ 6.) The Act is not a written agreement, however.
22 (See, *infra*, pp. 15-16.) And the Individual Plaintiffs’ conclusory claims to beneficiary and
23 successor status are unsupported by facts and belied by the Act itself. (*Carter v. Prime*
24 *Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 413 [“We do not accept as true . . .
25 conclusions or contentions when reviewing a ruling on a demurrer.”].)

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 Even applying contract principles to the Act, the Individual Plaintiffs have standing to
2 enforce the Act as a contract only if it was made expressly for their benefit. (Civ. Code, § 1559;
3 see *Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937, 943; *Zigas v. Superior Court* (1981) 120
4 Cal.App.3d 827, 835.) That the Act’s “object” was “to grant a perpetual annuity for the support
5 and maintenance of [the] College” undermines the suggestion that it was intended to benefit any
6 specific third party. (Act, § 13; cf. *Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394,
7 397–398 [government contracts were not intended to benefit a specific class but rather to achieve
8 public purposes stated in contracts and underlying legislation].)

9 Nor does the Act express S.C. Hastings’s intent to benefit the Individual Plaintiffs. The Act
10 identifies no third-party beneficiary with respect to the name of the College. (Act, § 1.) And
11 although the Act designates a board seat for “some heir or some representative” of S.C. Hastings
12 and stipulates that any refund be directed to “S.C. Hastings, his heirs or legal representatives,”
13 these provisions do not establish that the Individual Plaintiffs comprise a “class intended to be
14 benefitted” by the Act. (*Zigas, supra*, 120 Cal.App.3d at p. 835.) The Individual Plaintiffs allege
15 no facts showing that they comprise “heirs” or “legal representatives” of S.C. Hastings—terms
16 with legal meanings distinct from “descendants.” (Compl., ¶ 6; *Ginocchio v. City and County of*
17 *San Francisco* (1924) 194 Cal. 159, 166.) And in any event, the board-seat designation is
18 ancillary to the object of the Act: any refund passes to “heirs” or “legal representatives” only if
19 both the object of the Act (the College) is no longer extant and S.C. Hastings is no longer alive —
20 so that “heirs” and “representatives” are, at best, incidentally benefitted by the Act, and
21 “descendants” not benefitted at all. (*Shell v. Schmidt* (1954) 126 Cal.App.2d 279, 290 [“the
22 beneficiary must be more than incidentally benefited by the contract”]; see *Zigas, supra*, 120
23 Cal.App.3d at p. 838 [finding third-party standing when “narrow and specific” purpose of
24 contract is to benefit specific group].) Because the Act was not a contract made expressly for their
25 benefit, Individual Plaintiffs may not enforce the Act as a contract.

26 The Individual Plaintiffs also allege no facts demonstrating that they are S.C. Hastings’s
27 successors in interest with respect to the Act—whether through assignment (*see Foreman Roofing*
28 *Inc. v. United Union of Roofers etc. Workers* (1983) 144 Cal.App.3d 99, 107) or inheritance

1 (Code Civ. Proc., §§ 377.10, 377.11, 377.30, 377.32). Therefore, Individual Plaintiffs do not
2 establish standing to enforce the Act as a contract.

3 And aside from their faulty claim of third-party standing, the Individual Plaintiffs allege no
4 other basis for standing to challenge the Bill—no concrete, actual injury to a legally protected
5 interest. Aside from one “recent graduate of the College,” none of the Individual Plaintiffs alleges
6 any connection to or interest in the College, let alone “some special interest to be served or some
7 particular right to be preserved or protected over and above the interest held in common with the
8 public at large.” (*Limon, supra*, 2022 WL 14391789, at *14.). The Individual Plaintiffs do not
9 allege that they have ever served or even sought to serve on the College’s board—an option still
10 open to them on a term basis and by appointment. Even the Legislative findings in support of the
11 name change very clearly concern only S.C. Hastings, and not any of his descendants.

12 Because Plaintiffs fail to allege any injury attributable to the Bill, they lack standing to
13 challenge it—let alone enjoin its enforcement.

14 **PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION**

15 In determining whether to issue a preliminary injunction, a trial court evaluates two
16 interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail
17 on the merits and (ii) the balance of interim harm presented. (*Common Cause v. Board of*
18 *Supervisors* (1989) 49 Cal.3d 432, 442.) The court’s determination is guided by a “mix” of the
19 potential-merit and interim-harm factors—such that the weaker a plaintiff’s showing on one, the
20 greater the showing must be on the other to support an injunction. (*O’Connell v. Superior Court*
21 (2006) 141 Cal.App.4th 1452, 1463.) A trial court may not grant a preliminary injunction,
22 regardless of the balance of interim harm, unless there is some possibility that the plaintiff would
23 ultimately prevail on the merits. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999; see
24 *Common Cause, supra*, 49 Cal.3d at p. 447.)

25 When a plaintiff seeks to restrain enforcement of a statute, the plaintiff must make a
26 showing that the statute is invalid or unconstitutional and threatens significant irreparable injury.
27 (*O’Connell, supra*, 141 Cal.App.4th at p. 1463; *Tahoe Keys Prop. Owners’ Assn. v. State Water*
28 *Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.) Finally, “equitable relief against other

1 branches of government must be restrained by principles of comity and separation of powers,”
2 i.e., a “court should always strive for the least disruptive remedy adequate.” (*O’Connell, supra*,
3 141 Cal.App.4th at p. 1476.)

4 **I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS**

5 **A. The Act Is Not a Contract; and if It Were, the Bill Would Neither Violate**
6 **the Contracts Clause nor Breach the State’s Obligations under the Act**

7 Plaintiffs contend that the Bill’s changes to the College’s name and its designated board
8 seat violate the contracts clause of the U.S. and California Constitutions and breach the State’s
9 obligation under the Act, which Plaintiffs call a contract between S.C. Hastings and the State.

10 First, the Act is not an agreement between the State and S.C. Hastings. The Act contains no
11 language from which “[t]he intent to make a contract is clear.” (*U.S. Trust Co. of New York v.*
12 *New Jersey* (1977) 431 U.S. 1, 18 [citing statutory language that “[t]he 2 States covenant and
13 agree with each other and with the holders of any affected bonds. . . .”].) Rather, the Act is
14 introduced: “The People of the State of California, represented in Senate and Assembly, do as
15 follows. . . .”; and the People do not *agree with* but instead “authorize[]” S.C. Hastings to
16 establish the College on certain terms. (Act, p. 1 & § 1.) Those terms—which describe College
17 governance, affiliation with the University of California, facilities, and faculty—comprise the
18 bulk of the Act and have nothing to do with S.C. Hastings.

19 Those terms also make clear that the “object” of the Act is to create a public institution
20 affiliated with the existing state university system.³ That the creation of the College was
21 conditioned on the receipt of funds does not convert the Act to a contract but, rather, reflects the
22 reality of limited state coffers. (E.g., *Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240,
23 1250 [upholding state statute conditioning program on receipt of federal funding].) Consistent
24 with the Act’s status as a statute, the Court in *Foltz v. Hoge* (1879) 54 Cal. 28, held that the terms
25 of the Act must be construed according to “the intent of the Legislature, that the College, when

26 ³ The Act is unlike the corporate charter at issue in *Trustees of Dartmouth College v.*
27 *Woodward* (1819) 17 U.S. 518, which established a private corporation. Notably, the *Woodward*
28 Court emphasized the difference in civil institutions, such as the College, whose character turns
largely on “the objects for which they are created,” and which, as “instruments of government,”
would “of course, be controllable by the legislature.” (*Id.* at p. 638.)

1 established, should affiliate with the University, and be governed by the laws applicable to the
2 University”—implicitly rejecting the argument that the Act comprised a contract. (*Id.* at p. 33
3 [assessing “the general framework of the Act” and “the nature or purpose of such a College”]; see
4 *Changsha Metro Group Co., Ltd. v. Peng Xufeng* (2020) 57 Cal.App.5th 1, 7 [“Our fundamental
5 task when interpreting a statute is to determine the Legislature’s intent.”]; see also *Trustees of*
6 *Dartmouth College v. Woodward* (1819) 17 U.S. 518, 638 [noting that civil institutions, as
7 “instruments of government,” would “of course, be controllable by the legislature”].) Thus, the
8 Act does not constitute a contract.

9 Second, even if the Act were a contract, its amendment by the Bill would not violate the
10 contracts clause. The Bill only violates the contracts clause if it (1) impairs the state’s obligation
11 under a valid contract, and (2) the impairment was not “reasonable and necessary to serve an
12 important public purpose.” (*U.S. Trust Co., supra*, 431 U.S. at p. 25; see *Hermosa Beach Stop Oil*
13 *Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 563-564.) The State’s sole
14 obligation under the Act is to ensure that \$7,000 is “appropriated by the State and paid in two
15 semi-annual payments to the Directors of the College”—an obligation the State has indisputably
16 fulfilled. (Act, § 8; see *ibid.*, § 13; Compl., ¶¶ 1, 81.) Although Plaintiffs characterize
17 maintenance of the College’s name and its designated board seat as contractual obligations
18 belonging to the State, nothing in the Act says as much. The Individual Plaintiffs’ claim of
19 “vested rights” to the College’s name and designated board seat misreads the cited cases, in
20 which the term “vested right” “refer[s] to the terms and conditions of public employment that are
21 protected from impairment.” (*Cal Fire Local 2881 v. California Public Employees' Retirement*
22 *System* (2019) 6 Cal.5th 965, 977.)

23 And even if the Bill did impair any obligation under the Act, such impairment would be
24 reasonable and necessary to serve an important public purpose—namely, to address violence
25 whose reverberations are still felt by California tribe members. (AB 1936, § 1, subs. (s)-(u).)
26 State action directed at the welfare of state residents is a legitimate exercise of traditional police
27 power. (See *City of Hermosa Beach, supra*, 86 Cal.App.4th at pp. 469-470; *Interstate Marina*
28 *Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435, 448.) Although Plaintiffs

1 dispute the reasonableness of the changes to the College’s name and board seat, they identify no
2 more reasonable alternative, and they concede that these changes will not impact the continued
3 operation of the College. (Compl., ¶ 104, citing Act, § 13.)

4 Third, the Individual Plaintiffs cannot recover for “breach” of the Act because neither
5 amending the College’s name nor converting the designated board seat would comprise a material
6 breach of the Act’s terms. Although the Act includes various provisions for the establishment and
7 operation of the College, its sole “object” is “to grant a perpetual annuity for the support and
8 maintenance of [the] College.” (Act (Act), § 13.) Thus, it is only if “the College cease[s] to exist”
9 or the State fails to appropriate for the College a minimum of \$7,000 a year that the State must
10 “refund[.]” S.C. Hastings’s initial contribution. (*Id.*, §§ 7, 13.) To play out the contract analogy,
11 these are the only material terms whose breach warrants dissolution of the agreement. (See *Brown*
12 *v. Grimes* (2011) 192 Cal.App.4th 265, 277 [material breach by one party excuses performance
13 by the other].) Sections 7 and 13 of the Act underscore that all the other provisions in the Act can
14 be amended—and many have, such as those specifying the number of board members and the
15 board president. (Compare Act, §§ 1, 14 with Educ. Code, § 92207; see *Coutin v. Lucas* (1990)
16 220 Cal.App.3d 1016 [upholding amendment to remove Chief Justice from board].)

17 Plaintiffs therefore will not succeed on the merits of their claims of violation of the
18 contracts clause and breach of contract.

19 **B. The Bill Does Not Violate Article IX, Section 9 of the State Constitution**

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).) This constitutional provision
25 protects the independence of the College and its officials and faculty, including its governing
26 board. (*People v. Lofchie* (2014) 229 Cal.App.4th 240, 254; see *ibid.* at p. 248, fn. 5.) Given that
27 the board itself initiated the name change, it can hardly be said to be bowing to the Legislature.

28

1 Nor will the change to the College’s name or board seat impact the “form or character” of
2 the College. The College will still operate consistent with the object of the Act, and the board will
3 still govern “the business of College through the work of the same number of directors, with all
4 appointed to equal terms.” (AB 1936, § 21.) And as part of the University of California, the
5 College and its board will remain largely insulated from the acts of the Legislature, as intended by
6 article IX, section 9. (See *Lofchie, supra*, 229 Cal.App.4th at pp. 256-259 [describing limited
7 areas of legislative impact].) To the extent the conversion of the board seat “affects the
8 institution’s internal affairs” at all, the modification still would not violate section 9 because it
9 relates to a “matter[] of statewide concern not involving internal university affairs.” (*Coutin,*
10 *supra*, 220 Cal.App.3d at pp. 1026-1027; *Lofchie, supra*, 229 Cal.App.4th at p. 250.)

11 Plaintiffs therefore will not succeed on the merits of their claim under article IX.

12 **C. The Bill Is Neither an Ex Post Factor Law nor a Bill of Attainder**

13 Plaintiffs’ contention that the Bill constitutes an ex post facto law and bill of attainder is
14 plainly without merit. Plaintiffs point to the Bill’s legislative findings of S.C. Hastings’s
15 involvement in the mass killings of tribe members to support their contention that the Bill “heaps
16 scorn and punishment upon S.C. Hastings, his descendants, and . . . all . . . Hastings law graduates
17 living and deceased.” (AB 1936, § 1, subds. (k)-(l), (q)-(s).)

18 But the constitutional prohibition against ex post facto laws “applies only to penal statutes,”
19 which are not at issue here. (*Collins v. Youngblood* (1990) 497 U.S. 37, 41; *Armijo v. Miles*
20 (2005) 127 Cal.App.4th 1405, 1418.)

21 Nor have Plaintiffs alleged facts showing that the Bill inflicts punishment upon them
22 without trial, in violation of the constitutional prohibition on bills of attainder. (*SeaRiver*
23 *Maritime Financial Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 668; *California State*
24 *Employees’ Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 224.) The Bill’s findings are confined
25 to acts by S.C. Hastings and the State. (AB 1936, § 1, subds. (k)-(l), (q)-(u).) The Bill does not
26 mention S.C. Hastings’s descendants or College alumni who favor retaining “Hastings” in the
27 name of the College, nor are any of its provisions directed towards these groups. (See *Franceschi*
28 *v. Yee* (9th Cir. 2018) 887 F.3d 927, 942 [“[Plaintiff] does not contend that when the provisions

1 were enacted anyone in the legislature had him in mind. . . .”.) Plaintiffs have alleged no way in
2 which changing the name of the College even impacts them, let alone punishes them. And the
3 conversion of the designated board seat neither prevents the Individual Plaintiffs from serving on
4 the board nor bars them from other board seats or volunteer roles. (Cf. *Flournoy*, *supra*, 32
5 Cal.App.3d at p. 226 [Legislature’s decision not to appropriate funds for academic salary
6 increases “is not tantamount to a ban on continuing state employment of [academic] personnel”].)

7 Plaintiffs therefore will not succeed on the merits of their claim that the Bill violates the
8 prohibition on ex post facto laws and bills of attainder.

9 **II. THE BALANCE OF THE INTERIM HARMS WEIGHS AGAINST AN INJUNCTION**

10 Given Plaintiffs’ low likelihood of success on the merits, they must show significant harm
11 to merit a preliminary injunction—particularly as here, when they seek to enjoin enforcement of a
12 public statute. (*O’Connell*, *supra*, 141 Cal.App.4th at p. 1463.)

13 No irreparable harm is threatened by the conversion of the designated board seat to an
14 open-appointment, term-limited seat. First, there is no urgency. The Bill provides that the
15 designated seat will first be subject to a six-year term, during which the current occupant will
16 continue to serve, and only after that six-year term will a new director be appointed. (AB 1936,
17 § 21.) Second, conversion of the designated board seat does not preclude the Individual Plaintiffs
18 from serving on the board. Rather, once converted, the designated board seat will become
19 available every 12 years, just like the other seats. Were Individual Plaintiffs to take an interest in
20 the College’s governance—something they do not allege or state that they have done to date—
21 they could seek appointment to the board in any of the 11 seats.

22 Nor have Plaintiffs alleged irreparable harm in connection with the name change. The cost
23 of the name change is not itself a basis for a preliminary injunction halting enforcement of the
24 Bill. (*Leach v. City of San Marcos* (1989) 213 Cal.App.3d 648, 662 [imminent expenditure of tax
25 increment revenues would not support a preliminary injunction in favor of a private citizen];
26 *Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447, 454 [Plaintiff’s interest “appears to
27 be limited to his taxpayer’s pocketbook, . . . which to our knowledge has never been held to
28 substitute for the high degree of existing or threatened injury required for the prejudgment

1 injunctive relief sought here.”].)

2 Plaintiffs contend that the name change will rob students and alumni of the value of the
3 “Hastings brand.” Plaintiffs cite no facts supporting their contention that a diploma from the UC
4 College of the Law San Francisco will lack economic value or endanger the prospects of
5 graduates. More relevant to the College’s brand, in any event, is the education, training, and job
6 placement it affords and its affiliation with the well-regarded University of California system—
7 none of which depends on keeping “Hastings” in the name. Further, as Plaintiffs note, the
8 College’s board and dean have thoughtfully considered the impact of the name change since 2017
9 and did not take lightly the decision to change it. Those entrusted with the school’s governance
10 having made that decision, it is difficult to see how suspending the change while continuing to
11 debate it in the courts will prevent, rather than enhance, any harm.

12 The Individual Plaintiffs contend that a preliminary injunction is appropriate to preserve
13 their alleged right to specific performance of the Act as a purported contract and because any
14 damages would be difficult to determine, citing Code of Civil Procedure section 526. (See Code
15 Civ. Proc., § 526, subd. (a)(4)-(5).) As noted, however, Individual Plaintiffs’ claim of contractual
16 rights fails. Further, given that Plaintiffs seek to halt enforcement of a legislative act, section 526
17 does not apply. (*Leach v. City of San Marcos* (1989) 213 Cal.App.3d 648, 660 [261 Cal.Rptr.
18 805, 812].) Rather, a preliminary injunction is appropriate only if the law is unconstitutional or
19 otherwise invalid—and as set forth above, the Court is unlikely to find that to be so. (*Agricultural*
20 *Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401; *Green Valley Landowners*
21 *Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 440.) Moreover, were the Act indeed a
22 contract, and were the Individual Plaintiffs entitled to enforce it, “damages” would be precisely
23 what the Act provides: refund of S.C. Hastings’s \$100,000 and any unexpended accumulated
24 interest. (Act, § 13.)

25 Plaintiffs contend that once the name is changed, “that bell cannot be easily unring.” Not
26 easily, it is true. But Plaintiffs have shown neither a likelihood that the bill is unconstitutional nor
27 any harm from going forward with the decision of the College’s governing board and the
28 Legislature. Meanwhile, Plaintiffs seek to hold up a process in which the College and the

1 Legislature have invested significant time and resources. Although Plaintiffs concede that the
2 name change will not impact the College’s continued operations, they ask this Court to step in
3 and stop the lawful activity of the Legislature. (See *O’Connell, supra*, 141 Cal.App.4th at p. 1464
4 [noting “significant restraints on courts’ authority to order or ratify acts normally committed to
5 the discretion of other branches or officials”].) Nor do Plaintiffs address the significant cost upon
6 the College’s reputation and its governance of leaving the name-change decision in limbo while it
7 is further examined in court.

8 Plaintiffs have failed to allege the great and irreparable harm needed to justify an injunction
9 of AB 1936. Their motion should be denied.


10 CONCLUSION

11 Because Plaintiffs lack standing to even bring their claims in this Court, and because
12 Plaintiffs fail to allege either a likelihood of success on the merits or that the balance of harms
13 favors them, the State respectfully requests that the Court deny their motion for preliminary
14 injunction.

15
16 Dated: December 5, 2022

Respectfully submitted,

17 ROB BONTA
18 Attorney General of California
19 LISA W. CHAO
20 Supervising Deputy Attorney General

21 
22 KARA SIEGEL
23 Deputy Attorney General
24 *Attorneys for Defendant*
25 *State of California*

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Hastings College Conservation Comm., et al. v. State of California, et al.**
Case No.: **CGC22602149**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 8, 2022, I served the attached **DEFENDANT STATE OF CALIFORNIA'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 8, 2022, at San Diego, California.

M. Gallegos
Declarant


Signature

ATTACHMENT TO DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Hastings College Conservation Comm., et al. v. State of California, et al.**
Case No.: **CGC22602149**

MICHAEL YAMAMOTO LLP
Dorothy C. Yamamoto, Esq.
1400 Shattuck Ave., #412
Berkeley, CA 94709
dorothy@my.law
Attorney for Plaintiffs

UC Hastings College of the Law
John DiPaolo, Esq.
200 McAllister Street
San Francisco, CA 94102
dipaolojohn@uchastings.edu
Attorney for the College Defendants

MICHAEL YAMAMOTO LLP
Gregory R. Michael, Esq.
1400 Shattuck Ave., #412
Berkeley, CA 94709
greg@my.law
Attorney for Plaintiffs

UC Hastings College of the Law
Laura M. Wilson-Youngblood, Esq.
200 McAllister Street
San Francisco, CA 94102
wilsonyoungbloodl@uchastings.edu
Attorney for the College Defendants

DHILLON LAW GROUP, INC.
Harmeet K. Dhillon, Esq.
177 Post Street, Suite 700
San Francisco, CA 94108
harmeet@dhillonlaw.com
Attorney for Plaintiffs

GIBSON, DUNN & CRUTCHER, LLP
Matthew S. Kahn, Esq.
Elizabeth K. McCloskey, Esq.
555 Mission Street, Suite 3000
San Francisco, CA 94105
mkahn@gibsondunn.com
emccloskey@gibsondunn.com
Attorney for the College Defendants

GIBSON, DUNN & CRUTCHER LLP
Matt Aidan Getz, Esq.
Theodore J. Boutrous Jr. Esq.
Theane Evangelis, Esq.
333 South Grand Avenue
Los Angeles, CA 90071-3197
mgetz@gibsondunn.com
tboutrous@gibsondunn.com
tevangelis@gibsondunn.com
Attorney for the College Defendants