

1 THEODORE J. BOUTROUS JR. (SBN 132099)
tboutrous@gibsondunn.com

2 THEANE EVANGELIS (SBN 243570)
tevangelis@gibsondunn.com

3 MATT AIDAN GETZ (SBN 335038)
mgetz@gibsondunn.com

4 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
5 Los Angeles, CA 90071-3197
6 Tel.: (213) 229-7000
Fax: (213) 229-7520

7 MATTHEW S. KAHN (SBN 261679)
mkahn@gibsondunn.com

8 ELIZABETH K. MCCLOSKEY (SBN 268184)
emccloskey@gibsondunn.com

9 GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
10 San Francisco, CA 94105-0921
11 Tel.: (415) 393-8200
Fax: (415) 393-8306

12 JOHN K. DiPAOLO (SBN 321942)
dipaolojohn@uchastings.edu

13 LAURA M. WILSON-YOUNGBLOOD (SBN 330892)
wilsonyoungbloodl@uchastings.edu

14 UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
15 San Francisco, CA 94102
16 Tel.: (415) 565-4787

17 *Counsel for the College Defendants*

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

20 HASTINGS COLLEGE CONSERVATION
21 COMMITTEE, an unincorporated association of
22 alumni of Hastings College of the Law;
STEPHEN HASTINGS BREEZE, an individual;
23 STEPHANIE AZALEA BRACKEL, an
individual; CATHERINE TORSTENSON, an
24 individual; SCOTT HASTINGS BREEZE, an
individual; COLLETTE BREEZE MEYERS, an
25 individual; and COLIN HASTINGS BREEZE,
an individual,

26 *Plaintiffs,*

27 v.

28 STATE OF CALIFORNIA; DAVID FAIGMAN,
in his official capacity as Chancellor and Dean of

CASE NO. CGC-22-602149

**COLLEGE DEFENDANTS' REPLY IN
SUPPORT OF SPECIAL MOTION TO
STRIKE (CODE CIV. PROC., § 425.16)**

HEARING:

Date: December 15, 2022
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Richard B. Ulmer Jr.

Action Filed: October 4, 2022
Trial Date: None set

1 Hastings College of the Law; SIMONA
2 AGNOLUCCI, in her official capacity as chair of
3 the Board of Directors of Hastings College of the
4 Law; CARL ROBERTSON, in his official
5 capacity as vice chair of the Board of Directors
6 of Hastings College of the Law; SHASHIKALA
7 DEB, in her official capacity as a director of
8 Hastings College of the Law; MICHAEL
9 EHRLICH, in his official capacity as a director
10 of Hastings College of the Law; ANDREW
11 GIACOMINI, in his official capacity as a
12 director of Hastings College of the Law;
ANDREW HOUSTON, in his official capacity as
a director of Hastings College of the Law;
CLAES LEWENHAUPT, in his official capacity
as a director of Hastings College of the Law;
MARY NOEL PEPYS, in her official capacity as
a director of Hastings College of the Law;
COURTNEY POWER, in her official capacity as
a director of Hastings College of the Law;
ALBERT ZECHER, in his official capacity as a
director of Hastings College of the Law; and
DOES 1-25, inclusive,

Defendants.

TABLE OF CONTENTS

	Page
INTRODUCTION	9
ARGUMENT	10
I. Plaintiffs' Claims Arise from Protected Speech and Petitioning Activity.	10
A. Plaintiffs Sue the College Defendants Based on Past Protected Conduct.	10
B. Plaintiffs Also Sue to Prevent Ongoing Protected Conduct.	12
II. Plaintiffs Haven't Shown a Probability of Prevailing on Their Claims.	13
A. Plaintiffs' Contracts Clause Claim Is Meritless.	13
B. Plaintiffs' Secondary Claims Are Equally Meritless.	17
CONCLUSION	18

INDEX OF EXHIBITS

Designation	Description
Declaration of Claes Lewenhaupt in Support of the College Defendants' Special Motion to Strike, filed on November 2, 2022 ("Lewenhaupt Decl.")	
Lewenhaupt Decl., Ex. 1	November 2, 2021 Resolution of the College's Board of Directors
Lewenhaupt Decl., Ex. 2	December 14, 2021 Resolution of the College's Board of Directors
Lewenhaupt Decl., Ex. 3	June 3, 2022 Report of Ad Hoc Committee to the College's Board of Directors and Dean Faigman
Lewenhaupt Decl., Ex. 4	June 3, 2022 Minutes of Meeting of the College's Board of Directors
Lewenhaupt Decl., Ex. 5	July 27, 2022 Minutes of Meeting of the College's Board of Directors
Declaration of Dean David Faigman in Support of the College Defendants' Special Motion to Strike, filed on November 2, 2022 ("Faigman Decl.")	
Faigman Decl., Ex. 1	December 14, 2021 Final Report of Professor Brendan Lindsay Entitled "Serranus Clinton Hastings in Eden and Round Valleys"
Faigman Decl., Ex. 2	July 29, 2020 Report of Ad Hoc Committee to Dean Faigman
Faigman Decl., Ex. 3	September 2, 2020 Memorandum from Dean Faigman to the College's Board of Directors
Faigman Decl., Ex. 4	July 3, 2021 Editorial, Co-Authored by Dean Faigman, Published in the <i>Sacramento Bee</i>
Faigman Decl., Ex. 5	July 27, 2022 Email from Dean Faigman to College Community
Declaration of Matthew S. Kahn in Support of the College Defendants' Request for Judicial Notice in Support of Special Motion to Strike, filed on November 2, 2022 ("Kahn Decl.")	
Kahn Decl., Ex. 1	Stats. 1878, ch. 351
Kahn Decl., Ex. 2	Stats. 1885, ch. 157
Kahn Decl., Ex. 3	Senate Committee on Education Analysis of AB 1936 (May 19, 2022 Version)
Kahn Decl., Ex. 4	Assembly Floor Analysis of AB 1936 (August 11, 2022 Version)
Kahn Decl., Ex. 5	Excerpt of <i>Current Topics</i> (1878) 1 Pacific Coast L.J. 341

Designation	Description
Supplemental Declaration of Matthew S. Kahn in Support of College Defendants' Request for Judicial Notice in Support of Reply in Support of Special Motion to Strike, filed concurrently ("Suppl. Kahn Decl.")	
Suppl. Kahn Decl., Ex. 6	Excerpt of Minutes Book of the First Board of Directors of the College

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Amalgamated Transit Union v. Superior Court</i> (2009) 46 Cal.4th 993	16
<i>Indiana ex rel. Anderson v. Brand</i> (1938) 303 U.S. 95	14
<i>Armijo v. Miles</i> (2005) 127 Cal.App.4th 1405	17
<i>Baral v. Schnitt</i> (2016) 1 Cal.5th 376	16
<i>Cal Fire Local 2881 v. Cal. Pub. Emps.' Ret. Sys.</i> (2019) 6 Cal.5th 965	14
<i>Chitsazzadeh v. Kramer & Kaslow</i> (2011) 199 Cal.App.4th 676	18
<i>City of Cotati v. Cashman</i> (2002) 29 Cal.4th 69	13
<i>City of Covington v. Commonwealth</i> (1899) 173 U.S. 231	14, 15
<i>Coats v. New Haven Unified Sch. Dist.</i> (2020) 46 Cal.App.5th 415	17
<i>Comstock v. Aber</i> (2012) 212 Cal.App.4th 931	10
<i>Conn. State Police Union v. Rovella</i> (2d Cir. 2022) 36 F.4th 54.....	16, 17
<i>Coutin v. Lucas</i> (1990) 220 Cal.App.3d 1016.....	18
<i>Cranston Firefighters v. Raimondo</i> (1st Cir. 2018) 880 F.3d 44	13, 14, 16
<i>Foltz v. Hoge</i> (1879) 54 Cal. 28	14
<i>Goonewardene v. ADP, LLC</i> (2019) 6 Cal.5th 817	15, 16
<i>Hylton v. Frank E. Rogozienski, Inc.</i> (2009) 177 Cal.App.4th 1264	10

1	<i>Murphy v. Allstate Ins. Co.</i>	15
2	(1976) 17 Cal.3d 937	
3	<i>Navallier v. Sletten</i>	10
4	(2002) 29 Cal.4th 82	
5	<i>Neb. Press Assn. v. Stewart</i>	12
6	(1976) 427 U.S. 539	
7	<i>Nygård, Inc. v. Uusi-Kerttula</i>	12
8	(2008) 159 Cal.App.4th 1027	
9	<i>Park v. Bd. of Trs.</i>	11
10	(2017) 2 Cal.5th 1057	
11	<i>Pittman v. Chi. Bd. of Educ.</i>	14
12	(7th Cir. 1995) 64 F.3d 1098.....	
13	<i>Rand Res., LLC v. City of Carson</i>	13
14	(2019) 6 Cal.5th 610	
15	<i>San Ramon Valley Fire Prot. Dist. v. Contra Costa Cnty. Emps.' Ret. Assn.</i>	11
16	(2004) 125 Cal.App.4th 343	
17	<i>Sandlin v. McLaughlin</i>	11
18	(2020) 50 Cal.App.5th 805	
19	<i>Sarver v. Chartier</i>	12
20	(9th Cir. 2016) 813 F.3d 891.....	
21	<i>SeaRiver Mar. Fin. Holdings, Inc. v. Mineta</i>	18
22	(9th Cir. 2002) 309 F.3d 662.....	
23	<i>Shahbazian v. City of Rancho Palos Verdes</i>	11
24	(2017) 17 Cal.App.5th 823	
25	<i>Smith v. Randall</i>	15
26	(1856) 6 Cal. 47	
27	<i>Sveen v. Melin</i>	16
28	(2018) 138 S.Ct. 1815	
	<i>Trustees of Dartmouth College v. Woodward</i>	14
	(1819) 17 U.S. (4 Wheat.) 518.....	
	<i>U.S. Tr. Co. of N.Y. v. New Jersey</i>	16
	(1977) 431 U.S. 1	
	<i>Wandering Dago Inc. v. N.Y. State Off. of Gen. Servs.</i>	11
	(N.D.N.Y. 2014) 992 F.Supp.2d 102	
	Statutes	
	42 U.S.C. § 1983	18

1	Code Civ. Proc., § 425.16, subd. (b)(1)	18
2	Code Civ. Proc., § 425.16, subd. (c)(1)	18
3	Code Civ. Proc., § 425.16, subd. (e)	10, 11
4	Code Civ. Proc., § 526a	18
5	Educ. Code, § 92204	10
6	Educ. Code, § 92212	15
7	Constitutional Provisions	
8	Cal. Const., art. I, § 2	12
9	Cal. Const., art. IX, § 9, subd. (f).....	10, 18
10	U.S. Const., art. I.....	9, 11, 12
11	Other Authorities	
12	<i>Heir</i> , Black’s Law Dict. (1st ed. 1891)	15

INTRODUCTION

This case is about the decision to change the College’s name. That decision was the College’s to make and is the College’s to implement. And it is inextricably bound up in protected speech on a matter of public concern and petitioning activity protected by the First Amendment and the California Constitution: the College Defendants engaged in public debate about S.C. Hastings’s legacy, decided to change the way the College expresses its identity to the world, asked the Legislature to conform state statutes to the new name and the State for the funding necessary to implement it, and are on the precipice of a six-month transition to adopt and market the school’s new identity. Changing the name of a prominent public institution is the essence of speech on a public issue. Because Plaintiffs’ claims against the College Defendants arise from core protected speech and petitioning activity on public issues, the Complaint must be dismissed unless Plaintiffs can show a likelihood of prevailing.

Trying to avoid the anti-SLAPP statute, Plaintiffs mischaracterize their Complaint, suggesting the College Defendants’ speech and petitioning activities aren’t the basis for their claims. But Plaintiffs’ Complaint expressly challenges the College Defendants’ speech and petitioning that led to the name change. (See, e.g., Compl. ¶¶ 3-4, 45-47, 51-52.) And in both their Complaint and recent preliminary injunction motion, Plaintiffs seek a prior restraint—the most blatant First Amendment violation known to law—to enjoin the College Defendants from *ongoing* protected speech related to the school’s name and from petitioning for funds to carry out the name change. Plaintiffs cannot avoid their own allegations, theories, and requested remedies, which confirm the anti-SLAPP statute applies.

On the merits, Plaintiffs’ arguments defy precedent. They say it’s “plausible” to read the 1878 Act as a contract, but they ignore case law requiring not just plausibility, but *unmistakability*. They insist they have “vested” rights, but they don’t cite case law or explain why—and the only provision of the Act that could even conceivably give Hastings’s “heirs” (which Plaintiffs are not) an interest isn’t at issue here. They argue AB 1936 amounts to an *ex post facto* law and bill of attainder, but only by disregarding the statute’s civil, nonpunitive nature. And they contend AB 1936 invades the College’s sphere of autonomy, but only by relying on defunct constitutional text and ignoring the fact that it was the College that requested legislation in the first place. Plaintiffs’ disputes are political, not legal, and this is not the appropriate forum in which to air them. The College Defendants’ motion should be granted.

ARGUMENT

I. Plaintiffs' Claims Arise from Protected Speech and Petitioning Activity.

Plaintiffs don't dispute the core features of the anti-SLAPP statute or claim any exception to it applies. Instead, they offer a contorted, artificial reading of their Complaint, arguing that the College Defendants' protected speech and activities have nothing to do with either the past decisions Plaintiffs are challenging or the future speech and activity they're trying to restrain. But that is not what Plaintiffs alleged and does not match the relief they seek. Courts routinely reject efforts, like Plaintiffs', to rely on such "artifices" to avoid the anti-SLAPP statute. (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1271-1272; see, e.g., *Comstock v. Aber* (2012) 212 Cal.App.4th 931, 942.)

A. Plaintiffs Sue the College Defendants Based on Past Protected Conduct.

Plaintiffs argue they sued the College Defendants only because of their role in implementing AB 1936. (Opp'n at p. 7.) That's not the story Plaintiffs told in their Complaint. There, Plaintiffs took issue with everything the College Defendants did to bring about the school's name change—from Dean Faigman's initial recommendations based on a review of Hastings's legacy, to the Board's public meeting and resolution to remove the Hastings name, to the Board's process for and eventual selection of a new name. (Compl. ¶¶ 3-4, 45-47, 51-52.) Those were the acts "about which [P]laintiffs complain[ed]" and, as Plaintiffs concede, those acts fall comfortably "within the plain language of the anti-SLAPP statute." (*Navallier v. Sletten* (2002) 29 Cal.4th 82, 90.)

That leaves Plaintiffs to argue that the bulk of their Complaint is "only tangentially related" to their claims. (Opp'n at p. 10.) What Plaintiffs now say about their Complaint doesn't withstand scrutiny.

Plaintiffs' core quarrel is with the change to "the College's name" (Compl. ¶ 2), but it was the *College Defendants* who "remove[d] 'Hastings' from the College's name." (*Id.* ¶ 80; see *Lewenhaupt Decl.* ¶¶ 15-17.) The Board did so in accordance with its statutory authority to manage the College's affairs (Educ. Code, § 92204), authority that is protected from interference under the state constitution (Cal. Const., art. IX, § 9, subd. (f)). That decision was the product of extensive debate "in connection with . . . official proceeding[s]" before the Board. (Code Civ. Proc., § 425.16, subd. (e).) And the College Defendants' statements and resolutions are speech that directly "contributed to and furthered the ongoing public debate" about S.C. Hastings's legacy and the steps the College should take in

1 response. (*Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 825-826.) At the most basic level,
2 everything the College Defendants said and did was related to the name the College would use to
3 represent its values to the world—and that is heartland protected expression. (See, e.g., *Wandering Dago*
4 *Inc. v. N.Y. State Off. of Gen. Servs.* (N.D.N.Y. 2014) 992 F.Supp.2d 102, 116 [a “corporate name . . . is
5 a form of expressive speech protected under the First Amendment”].)

6 Plaintiffs argue that they take issue only with “the enactment of AB 1936.” (Opp’n at p. 12.)
7 Not true: they seek redress for having been supposedly harmed by the removal of “the Hastings family
8 name” from the College (*id.* at p. 17), but again, that was a speech-laden decision the *Board* made.
9 (Lewenhaupt Decl. ¶¶ 15-17.) The notion that Plaintiffs would not have sued the College Defendants
10 had the College implemented its new name *without* AB 1936 (Opp’n at p. 12) is absurd.

11 The result is the same even taking Plaintiffs’ focus on AB 1936 at face value. It’s true that a
12 challenge to government action isn’t subject to the anti-SLAPP statute merely because protected
13 activity “contributed to” the action. (*Park v. Bd. of Trs.* (2017) 2 Cal.5th 1057, 1060-1061.) But that’s
14 not Plaintiffs’ theory. They allege that the College Defendants, who “expressed their desire and intent”
15 to remove Hastings from the College’s name (Compl. ¶ 87), “work[ed] with” the Legislature to effect
16 a supposedly unlawful name change (*id.* ¶¶ 3-5). That makes the College Defendants’ petitioning
17 activity to secure passage of AB 1936 “*itself* . . . the wrong complained of,” bringing this case within
18 the anti-SLAPP statute. (*Park, supra*, 2 Cal.5th at p. 1060.)

19 *Shahbazian v. City of Rancho Palos Verdes* (2017) 17 Cal.App.5th 823 isn’t to the contrary.
20 (Opp’n at pp. 11-12.) There, a city sued for issuing a fence permit invoked the anti-SLAPP statute,
21 arguing it had issued the permit after public deliberation. (17 Cal.App.5th at pp. 828-829.) Accepting
22 that theory, the court explained, would subject virtually all government decisions to anti-SLAPP
23 protection. (*Id.* at pp. 831-834, citing *Park, supra*, 2 Cal.5th at p. 1068; *San Ramon Valley Fire Prot.*
24 *Dist. v. Contra Costa Cnty. Emps.’ Ret. Assn.* (2004) 125 Cal.App.4th 343, 354.) But unlike the city
25 in *Shahbazian*, the College Defendants weren’t responsible for *passing* the statute; they were the parties
26 who engaged in protected speech and petitioning activity to *advocate for* it. That activity is what the
27 anti-SLAPP statute was designed to protect. (Code Civ. Proc., § 425.16, subd. (e).)
28

1 **B. Plaintiffs Also Sue to Prevent Ongoing Protected Conduct.**

2 Plaintiffs ask the Court to focus on the prospective relief they are seeking. (Opp’n at pp. 11-
3 13.) That doesn’t help their cause, as that relief would interfere with the College Defendants’ *ongoing*
4 exercise of protected speech and petitioning rights. In fact, as their preliminary injunction motion (at
5 p. 24) illustrates, Plaintiffs seek a prior restraint—“the most serious and the least tolerable infringement
6 on First Amendment rights” (*Neb. Press Assn. v. Stewart* (1976) 427 U.S. 539, 559; see Cal. Const.,
7 art. I, § 2)—that would muzzle the College Defendants’ speech about the school’s identity and values.

8 When a lawsuit would halt ongoing expression on an issue of public interest, it is subject to the
9 anti-SLAPP statute. (*Sarver v. Chartier* (9th Cir. 2016) 813 F.3d 891, 901-902.) Plaintiffs don’t
10 dispute that the College’s identity and relationship to Hastings’s legacy are issues of public interest.
11 (Cf. Compl. ¶ 65 [alleging this action involves an issue “affecting the public interest”].) Hastings’s
12 legacy and how the College should respond are unquestionably issues “in which the public takes an
13 interest.” (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042.)

14 Plaintiffs contend they are seeking to enjoin only “implement[ation]” of AB 1936, not any
15 protected activities by the College Defendants. (Opp’n at p. 12.) That distinction is illusory. The
16 College’s name itself is speech tied to how the school expresses its values and identity. And how the
17 College will implement the change is likewise inseparable from protected activities: as Plaintiffs know
18 (Yamamoto Decl. in Supp. of Prelim. Inj. Mot., Ex. 24), the College is poised to begin using its new
19 name on January 1, 2023 and to embark on a six-month process to fully implement, market, and explain
20 the change. The College wants to use “UC College of the Law, San Francisco” to describe itself to the
21 world; Plaintiffs want to force it to use a different name. That is a prior restraint, plain and simple.

22 The Complaint itself puts the lie to Plaintiffs’ arguments. They claim they’re not seeking “relief
23 limiting the College Defendants’ ability to continue engaging in” speech related to the College’s name
24 (Opp’n at p. 7), but in reality they seek a declaration “that the College’s name remains ‘Hastings
25 College of the Law’” (Compl. ¶ 64) and an injunction preventing the College Defendants from
26 “implementing the unconstitutional *aims* of AB 1936” or from spending funds “in *pursuit of* changing
27 the College’s name” (*id.* ¶¶ 83, 89, italics added). All of this reaches beyond the statute itself to prohibit
28 the College Defendants from engaging in constitutionally protected activity. In fact, Plaintiffs recently

1 confirmed as much by moving for a preliminary injunction preventing the College Defendants from
2 doing anything that would “alter[] the name of the College.” (Prelim. Inj. Mot. at p. 11.) Plaintiffs’
3 contention that they’re not trying to limit the College Defendants’ “speech activities in the future”
4 (Opp’n at p. 13) thus runs headlong into their own requests for relief.

5 Even Plaintiffs’ brief acknowledges, if unwittingly, the broad relief they seek. They assure the
6 Court that nothing would stop the College Defendants from pursuing the name change—but only by
7 pursuing “amendments to the State and U.S. Constitutions.” (Opp’n at pp. 12-13.) Under Plaintiffs’
8 view, any protected speech or petitioning short of pursuing a constitutional amendment must stop.

9 Finally, Plaintiffs suggest any effect on ongoing speech or petitioning is merely “collateral.”
10 (Opp’n at p. 13, citing *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 72-73.) *Cashman* doesn’t bear
11 the weight of that argument. There, a city sued in federal court over a rent-stabilization law responded
12 with a state-court suit seeking declaratory relief upholding the law, and the challenger moved to strike
13 the state complaint under the anti-SLAPP statute. (*Cashman, supra*, 29 Cal.4th at pp. 71-72.) The
14 court held that the state-court suit “arose from” the underlying dispute over the law’s validity, not from
15 the challenger’s federal complaint. (*Id.* at pp. 76-79.) But here, the case centers around speech: what
16 the College will say about its name and identity. Because Plaintiffs’ Complaint seeks to restrain that
17 quintessential protected speech and related activities, it falls within the anti-SLAPP statute.¹

18 **II. Plaintiffs Haven’t Shown a Probability of Prevailing on Their Claims.**

19 **A. Plaintiffs’ Contracts Clause Claim Is Meritless.**

20 **Existence of a contract.** Every Contracts Clause claim requires a contract. But here, Plaintiffs
21 rely on a statute, which means they “confront[] a tropical-force headwind in the form of the
22 ‘unmistakability doctrine.’” (*Cranston Firefighters v. Raimondo* (1st Cir. 2018) 880 F.3d 44, 48.)
23 Although the College Defendants featured this doctrine prominently in their anti-SLAPP motion (at

24 ¹ Plaintiffs complain that the College Defendants don’t identify which “elements of the challenged
25 claim[s]” depend on protected conduct. (Opp’n at p. 11, quoting *Rand Res., LLC v. City of Carson*
26 (2019) 6 Cal.5th 610, 621.) But Plaintiffs’ claims “rest on allegations that are virtually identical”
27 and share the same “crux.” (*Rand, supra*, 6 Cal.5th at p. 622.) Without the College’s decision to
28 change the name, there is no breach of a supposed contract, no “scorn” heaped on Hastings’s
descendants, no “unlawful” expenditures to prevent, and no purported constitutional violation.
(Compl. ¶¶ 58-72, 78-91.) And without the College’s petitioning activity, there is no supposed
unwanted “influence” on the College’s affairs. (Compl. ¶¶ 73-77.) Each of Plaintiffs’ claims
against the College Defendants therefore arises from protected activities.

1 pp. 18-19), Plaintiffs all but disregard it in their opposition. Plaintiffs bear the burden of proving their
2 claim has merit; their sidestepping of the governing case law confirms that it doesn't.

3 In place of that doctrine, Plaintiffs rely on *Trustees of Dartmouth College v. Woodward* (1819)
4 17 U.S. (4 Wheat.) 518, which involved a charter King George III granted in 1769. (*Id.* at pp. 626-627.)
5 A royal charter was the preconstitutional article of incorporation: parties applied to the crown to
6 incorporate any "religious [or] literary institution." (*Id.* at pp. 627, 629.) In holding the charter was a
7 contract, the Supreme Court underscored that "'contract' must be understood in a . . . limited sense," to
8 preserve legislatures' ability to address "varying circumstances." (*Id.* at pp. 627-628.) *Dartmouth*
9 *College* thus involves a unique contractual instrument that satisfied the rigorous unmistakability doctrine.
10 It does not, as Plaintiffs suggest, supplant the unmistakability doctrine for statutes that involve a school.²

11 Plaintiffs also argue that if it is "plausible" to construe the 1878 Act as a contract,³ the College
12 Defendants' motion must be denied. (Opp'n at p. 15.) But the point of the unmistakability doctrine is
13 that "plausible" is not enough. (*Cranston, supra*, 880 F.3d at p. 49.) In fact, courts have rejected statute-
14 as-contract arguments based on the same language Plaintiffs invoke. If a law stating that reservoirs shall
15 "remain forever exempt from" taxation wasn't enough to satisfy the standard (*City of Covington v.*
16 *Commonwealth* (1899) 173 U.S. 231, 236-239), the same goes for the statement that the College would
17 "be forever known and designated as 'Hastings'" (Kahn Decl., Ex. 1 [the "1878 Act"], § 1).

18 Plaintiffs' only response is that the unmistakability doctrine supposedly applies only to "broadly
19 applicable" statutes. (Opp'n at p. 16.) No case so holds, and for good reason: as a core component of
20 "the operation of democratic government" (*Pittman v. Chi. Bd. of Educ.* (7th Cir. 1995) 64 F.3d 1098,
21 1104), the unmistakability doctrine applies to *all* statutes. And Plaintiffs' distinction doesn't hold up

22 ² Plaintiffs' other citations are equally unhelpful. In *Indiana ex rel. Anderson v. Brand* (1938) 303
23 U.S. 95, the statute was "couched in terms of contract": it "sp[oke] of the making and canceling of
24 indefinite contracts" and used the word "contract" 25 times. (*Id.* at p. 105.) In *Cal Fire Local*
25 *2881 v. California Public Employees' Retirement System* (2019) 6 Cal.5th 965, the court reaffirmed
26 the "clear manifestation of intent" required "to create contractual rights" and held the statute in
27 question did *not* implicate the Contracts Clause. (*Id.* at pp. 967-970, 981.) And although Plaintiffs
28 continue to cite *Foltz v. Hoge* (1879) 54 Cal. 28, they ignore that the statement they quote arose in
a fundamentally different context and isn't binding here. (See Anti-SLAPP Mot. at p. 19, fn. 2.)

³ In making that argument, Plaintiffs claim that S.C. Hastings paid \$100,000 in "consideration" and
that the State "subsequently" codified the supposed contract in a statute. (Opp'n at p. 16.) Plaintiffs'
history is wrong. The 1878 Act was enacted on March 26, 1878. Hastings paid the State *after* its
enactment, in three installments from April to May 1878. (Suppl. Kahn Decl. Ex. 6, at p. 23.)

1 anyway. The law in *Covington*, for instance, authorized a specific reservoir. (173 U.S. at pp. 232-233.)

2 **Standing to sue.** Plaintiffs treat the question whether they have rights under the supposed
3 contract as a matter of incantation—they insist they have “vested” rights or “sufficiently protectible
4 interest[s]” (Opp’n at pp. 8-9, 16-17), but they don’t cite a single case or statute to explain how or why.
5 That omission is particularly glaring given the extensive case law the College Defendants cited, which
6 makes clear that third-party rights under a contract are limited and that distant descendants cannot
7 automatically assert their ancestors’ rights. (Anti-SLAPP Mot. at pp. 20-21.)

8 Plaintiffs place great weight on section 13 of the Act (Opp’n at pp. 16-17), which gives
9 Hastings’s “heirs or legal representatives” a right to repayment if the State withholds funding or the
10 College “ceases to exist.” There are two problems with that approach. First, Plaintiffs don’t try to
11 prove that any of them is Hastings’s “heir[.]” or “representative[.]” “Heir” is a term of art meaning “[a]
12 person who succeeds, by the rules of law, to an estate” (Black’s Law Dict. (1st ed. 1891) p. 565), but
13 Plaintiffs claim only that they are distant *relatives*. Second, section 13 isn’t at issue here: the College
14 is consistently funded and hasn’t “cease[d] to exist.” (Compl. ¶ 104.) So even if section 13 had been
15 crafted “for [Plaintiffs’] benefit” (*Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937, 943-944), it
16 wouldn’t allow them to sue based on claimed violations of *other* provisions of the Act, including the
17 provision in section 1 addressing the College’s name. As the California Supreme Court put it shortly
18 before the 1878 Act, if the Legislature grants one remedy but not another, the inference is that the
19 Legislature didn’t mean to grant any other remedy. (*Smith v. Randall* (1856) 6 Cal. 47, 50.)⁴

20 Plaintiffs also highlight the only other part of the 1878 Act to mention “heir[s]”: the provision
21 calling for a Board seat to be filled “with some heir or some representative” of Hastings. (1878 Act,
22 § 1.) Again, Plaintiffs haven’t proved they are “heirs.” And in any event, a party doesn’t have third-
23 party rights unless it would “in fact” benefit from the contract (*Goonewardene v. ADP, LLC* (2019) 6
24 Cal.5th 817, 830), and the College Defendants have demonstrated that the descendant plaintiffs have
25 at best an attenuated, hypothetical interest in the seat—one that, until it became convenient for this
26 litigation, they never expressed to the man who’s held the seat for the last sixteen years. (Anti-SLAPP

27 ⁴ Plaintiffs suggest the repayment provision was eliminated or otherwise affected by AB 1936.
28 (Opp’n at pp. 8, 17.) It wasn’t. The repayment provision is codified at Education Code
section 92212. That section was not repealed or amended by AB 1936.

1 Mot. at p. 21.) It was Plaintiffs’ burden to make a “prima facie factual showing” in their opposition
2 (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 385), but the lone declaration they submitted with their
3 opposition doesn’t even mention the seat. And the sparse declarations filed with their preliminary
4 injunction motion assert only that the descendant plaintiffs are “eligible for” the seat, not that they have
5 any real interest in, or realistic probability of, filling it.

6 Ultimately, Plaintiffs are left to argue that they enjoy having the “family name” on the College.
7 (Opp’n at pp. 16-17.) Maybe so—but that is not a concrete right grounded in the “language of the
8 [Act]” (*Goonewardene, supra*, 6 Cal.5th at p. 830), and that means they have no right to assert here.⁵

9 **Substantial impairment.** In two ways, Plaintiffs’ arguments regarding impairment neglect the
10 ““wide discretion”” legislatures enjoy even when they enter into contracts. (*U.S. Tr. Co. of N.Y. v. New*
11 *Jersey* (1977) 431 U.S. 1, 16.) *First*, in Contracts Clause cases, courts must “ask the narrower, more
12 focused question” of whether a statute creates the “specific” rights a plaintiff is asserting, not merely
13 whether a statute “bound the State in some manner.” (*Cranston, supra*, 880 F.3d at p. 48.) Here, if
14 there were any contract at all, it would be to create a continuous, well-funded law school—not to cement
15 every provision of the original act for all time. (See Anti-SLAPP Mot. at pp. 21-22.) And that
16 “contractual bargain” has not been “undermine[d].” (*Sveen v. Melin* (2018) 138 S.Ct. 1815, 1821-1822.)

17 *Second*, although Plaintiffs ask for “heightened judicial scrutiny” (Opp’n at pp. 14-15), that
18 standard applies only when a state avoids its “own financial obligations” (*U.S. Tr., supra*, 431 U.S. at
19 pp. 25-26)—not, as here, when a state acts in “the public interest” (*Conn. State Police Union v. Rovella*
20 (2d Cir. 2022) 36 F.4th 54, 63-67). When the state is regulating, its actions merit “deference,” and the
21 challenger must make a “compelling” showing that the law is “unreasonable or unnecessary.” (*Ibid.*)

22 Plaintiffs try to distinguish *Rovella* (Opp’n at pp. 18-19), but to no avail. In *Rovella*, the
23 question was whether, in response to protests about police misconduct, the state should override its
24 collective bargaining agreement to make police records publicly available. (36 F.4th at p. 58.) Here,

25
26 ⁵ Plaintiffs make a last-ditch argument that the Hastings College Conservation Committee has
27 standing because plaintiff Colin Breeze recently joined its ranks. (Opp’n at p. 17.) Associations
28 can sue only when their members have standing and the asserted interests “are germane to the
organization’s purpose.” (*Amalgamated Transit Union v. Superior Court* (2009) 46 Cal.4th 993,
1004.) But the individual plaintiffs don’t have standing, and even if they did, the Committee is
dedicated to the interests of *alumni*, not of distant descendants of S.C. Hastings. (Compl. ¶ 7.)

1 the question was whether, given the years-long debate over S.C. Hastings’s troubling legacy, the statute
2 should be amended to conform to the College’s new name. Neither statute was “politically expedient”
3 or a “self-serving[]” effort to benefit the government. (*Id.* at pp. 65-67.)

4 Rather than dealing with the applicable standard, Plaintiffs instead rely on a faulty syllogism:
5 the only interest underlying AB 1936 is “restorative justice”; the College pursued restorative-justice
6 measures before changing its name; therefore the change was unnecessary. (Opp’n at pp. 18-19.) To
7 be sure, *part* of the reason for the change was to safeguard the College’s relationship with tribal leaders,
8 for whom the change had become a vital and pressing issue. (Faigman Decl., Ex. 5.) But the name
9 change also served other interests, including preserving the College’s reputation and attracting “talented
10 students and faculty” in the future. (Lewenhaupt Decl. ¶¶ 11-14.) Those are also unquestionably
11 “legitimate public purposes,” and Plaintiffs don’t try to make a “compelling” showing that *those* purposes
12 could be accomplished by keeping the Hastings name. (*Rovella, supra*, 36 F.4th at pp. 63-67.)

13 **B. Plaintiffs’ Secondary Claims Are Equally Meritless.**

14 **Ex Post Facto and Bill of Attainder Clauses.** The Ex Post Facto Clause “applies only to
15 criminal laws.” (*Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1419-1420.) AB 1936 isn’t criminal.
16 Plaintiffs point out that in extreme situations a statute may be “so punitive . . . in purpose or effect” as
17 to overcome its civil label (Opp’n at p. 20, citing *Coats v. New Haven Unified Sch. Dist.* (2020) 46
18 Cal.App.5th 415, 425), but they fail to mention that only “the ‘clearest proof’ will suffice” to make that
19 showing. (*Coats, supra*, 46 Cal.App.5th at p. 425.) The Clause didn’t apply, for instance, when the
20 legislature passed a law reviving a barred cause of action against a defendant, thereby exposing the
21 defendant to damages. (*Id.* at p. 428.) Plaintiffs’ complaints about “scorn” and being “gasli[t]” (Opp’n
22 at p. 20) don’t come close to clear proof that AB 1936 is effectively a retroactive criminal law.

23 Plaintiffs’ bill of attainder claim fares no better. AB 1936 doesn’t single out alumni or
24 descendants for punishment (Anti-SLAPP Mot. at p. 24), and Plaintiffs don’t suggest otherwise.
25 Instead, their claim rests on AB 1936’s phrase “begin the healing process for the crimes of the past.”
26 (AB 1936, § 1, subd. (u).) But that phrase immediately follows a discussion of *the State’s* violence
27 against indigenous people (*id.*, subd. (t)), and in any event, the statute also makes clear the name change
28 was intended to support the “interests of the continuation of the College in perpetuity.” (*Id.*, subd. (n).)

1 That “nonpunitive legislative purpose” precludes AB 1936 from being held a bill of attainder (*SeaRiver*
2 *Mar. Fin. Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 673-674), as the College Defendants
3 pointed out in their motion (at p. 24) and Plaintiffs failed to address.

4 **Constitutional Autonomy.** The California Constitution protects the College against “political
5 or sectarian influence” (Cal. Const., art. IX, § 9, subd. (f))—what the courts have called unwanted
6 “interference.” (*Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1026-1027.) But here, the Legislature
7 amended the Education Code *at the College’s request*, and in response to a decision the Board reached
8 independently. No case in history endorses the illogical proposition that action taken at the College’s
9 request would amount to unwanted interference with the College’s authority.

10 Plaintiffs effectively concede the point by relying on defunct constitutional text. They claim
11 Article IX forbids any “changes to the College’s form and character.” (Opp’n at pp. 20-21.) But as
12 even Plaintiffs recognize (*id.* at p. 21), the “form and character” restriction was *removed* in 1918, in
13 favor of language barring only unwanted “influence” from the Legislature. That leaves Plaintiffs to
14 make the perplexing argument that even though the constitutional text was changed, its meaning
15 remained the same. (*Ibid.*) But the very source they cite *rejects* that proposition, pointing out that the
16 1918 amendments eliminated any requirement that the College “be perpetually continued in the form
17 prescribed by” statute. (*Coutin, supra*, 220 Cal.App.3d at pp. 1022-1023.)

18 **Derivative Claims.** Plaintiffs agree that their *ultra vires* expenditure claim under Code of Civil
19 Procedure section 526a requires the expenditures to be “unlawful.” (Opp’n. at p. 21; see Anti-SLAPP
20 Mot. at pp. 25-26.) Because Plaintiffs can’t show that any part of the name change or AB 1936 is
21 unlawful, that claim lacks merit. The same goes for Plaintiffs’ claims under 42 U.S.C. § 1983, which
22 hinge on federal constitutional claims with no chance of success. (See Anti-SLAPP Mot. at p. 26.)

23 CONCLUSION

24 The Court should strike Plaintiffs’ claims against the College Defendants and award attorney’s
25 fees and costs.⁶ (Code Civ. Proc., § 425.16, subds. (b)(1), (c)(1).)

26
27 ⁶ Plaintiffs seek their own fees and costs, which would require a showing that “any reasonable
28 attorney would agree that the motion is totally devoid of merit.” (*Chitsazzadeh v. Kramer &*
Kaslow (2011) 199 Cal.App.4th 676, 683-684.) Plaintiffs haven’t made anything like that showing.

1 DATED: December 8, 2022

Respectfully submitted,

2 By: /s/ Theodore J. Boutrous Jr.

3 THEODORE J. BOUTROUS JR. (SBN 132099)

tboutrous@gibsondunn.com

4 THEANE EVANGELIS (SBN 243570)

tevangelis@gibsondunn.com

5 MATT AIDAN GETZ (SBN 335038)

mgetz@gibsondunn.com

6 GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

7 Los Angeles, CA 90071-3197

8 Tel.: (213) 229-7000

Fax: (213) 229-7520

9 MATTHEW S. KAHN (SBN 261679)

mkahn@gibsondunn.com

10 ELIZABETH K. MCCLOSKEY (SBN 268184)

emccloskey@gibsondunn.com

11 GIBSON, DUNN & CRUTCHER LLP

555 Mission Street, Suite 3000

12 San Francisco, CA 94105-0921

13 Tel.: (415) 393-8200

Fax: (415) 393-8306

14 JOHN K. DiPAOLO (SBN 321942)

dipaolojohn@uchastings.edu

15 LAURA M. WILSON-YOUNGBLOOD (SBN 330892)

wilsonyoungbloodl@uchastings.edu

16 UC HASTINGS COLLEGE OF THE LAW

200 McAllister Street

17 San Francisco, CA 94102

18 Tel.: (415) 565-4787

19 *Counsel for the College Defendants*

THEODORE J. BOUTROUS JR. (SBN 132099)
tboutrous@gibsondunn.com

THEANE EVANGELIS (SBN 243570)
tevangelis@gibsondunn.com

MATT AIDAN GETZ (SBN 335038)
mgetz@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel.: (213) 229-7000
Fax: (213) 229-7520

MATTHEW S. KAHN (SBN 261679)
mkahn@gibsondunn.com

ELIZABETH K. MCCLOSKEY (SBN 268184)
emccloskey@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Tel.: (415) 393-8200
Fax: (415) 393-8306

JOHN K. DiPAOLO (SBN 321942)
dipaolojohn@uchastings.edu

LAURA M. WILSON-YOUNGBLOOD (SBN 330892)
wilsonyoungbloodl@uchastings.edu

UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
San Francisco, CA 94102
Tel.: (415) 565-4787

Counsel for the College Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

HASTINGS COLLEGE CONSERVATION
COMMITTEE, an unincorporated association of
alumni of Hastings College of the Law;
STEPHEN HASTINGS BREEZE, an individual;
STEPHANIE AZALEA BRACKEL, an
individual; CATHERINE TORSTENSON, an
individual; SCOTT HASTINGS BREEZE, an
individual; COLLETTE BREEZE MEYERS, an
individual; and COLIN HASTINGS BREEZE,
an individual,

Plaintiffs,

v.

STATE OF CALIFORNIA; DAVID FAIGMAN,
in his official capacity as Chancellor and Dean of

CASE NO. CGC-22-602149

PROOF OF SERVICE

HEARING:

Date: December 15, 2022

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Richard B. Ulmer Jr.

Action Filed: October 4, 2022

Trial Date: None Set

Hastings College of 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, in his official capacity as
a director of Hastings College of the Law;
CLAES LEWENHAUPT, in his official capacity
as a director of Hastings College of the Law;
MARY NOEL PEPYS, in her official capacity as
a director of Hastings College of the Law;
COURTNEY POWER, in her official capacity as
a director of Hastings College of the Law;
ALBERT ZECHER, in his official capacity as a
director of Hastings College of the Law; and
DOES 1-25, inclusive,

Defendants.

1 **PROOF OF SERVICE**

2 I, Matt Aidan Getz, declare as follows:

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and am not a party to this action. My business address is 333 South Grand Avenue,
5 Los Angeles, CA 90071, in said County and State. On December 8, 2022, I served the following
6 document(s):

7 **COLLEGE DEFENDANTS' REPLY IN SUPPORT OF SPECIAL MOTION TO
8 STRIKE (CODE CIV. PROC., § 425.16)**

9 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF COLLEGE
10 DEFENDANTS' REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE
11 (CODE CIV. PROC., § 425.16)**

12 **SUPPLEMENTAL DECLARATION OF MATTHEW S. KAHN IN SUPPORT
13 OF COLLEGE DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN
14 SUPPORT OF REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE
15 (CODE CIV. PROC., § 425.16)**

16 on the parties stated below, and by the following means of service:

17 HARMEET K. DHILLON
18 harmeet@dhillonlaw.com
19 DHILLON LAW GROUP INC.
20 177 Post Street, Suite 700
21 San Francisco, CA 94108
22 Tel.: (415) 433-1700

Attorneys for Plaintiffs

23 GREGORY R. MICHAEL
24 greg@my.law
25 DOROTHY C. YAMAMOTO
26 dorothea@my.law
27 MICHAEL YAMAMOTO LLP
28 1400 Shattuck Ave., #412
Berkeley, CA 94709
Tel.: (510) 296-5600

KARA SIEGEL
kara.siegel@doj.ca.gov
MAYRA GALLEGOS
mayra.gallegos@doj.ca.gov
CALIFORNIA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
600 West Broadway, Suite 1800
San Diego, CA 92101
Tel.: (619) 738-9146

Attorneys for Defendant State of California

1 ☒ **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents
2 to be sent to court-approved e-filing service provider ("EFSP") First Legal Network for electronic service and
3 filing. Electronic service will be accomplished by First Legal Network's case-filing system at the electronic
4 notification addresses as shown above.

5
6 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct.

8 Executed on December 8, 2022.



Matt Aidan Getz

THEODORE J. BOUTROUS JR. (SBN 132099)
tboutrous@gibsondunn.com

THEANE EVANGELIS (SBN 243570)
tevangelis@gibsondunn.com

MATT AIDAN GETZ (SBN 335038)
mgetz@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel.: (213) 229-7000
Fax: (213) 229-7520

MATTHEW S. KAHN (SBN 261679)
mkahn@gibsondunn.com

ELIZABETH K. MCCLOSKEY (SBN 268184)
emccloskey@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Tel.: (415) 393-8200
Fax: (415) 393-8306

JOHN K. DiPAOLO (SBN 321942)
dipaolojohn@uchastings.edu

LAURA M. WILSON-YOUNGBLOOD (SBN 330892)
wilsonyoungbloodl@uchastings.edu

UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
San Francisco, CA 94102
Tel.: (415) 565-4787

Counsel for the College Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

HASTINGS COLLEGE CONSERVATION
COMMITTEE, an unincorporated association of
alumni of Hastings College of the Law;
STEPHEN HASTINGS BREEZE, an individual;
STEPHANIE AZALEA BRACKEL, an
individual; CATHERINE TORSTENSON, an
individual; SCOTT HASTINGS BREEZE, an
individual; COLLETTE BREEZE MEYERS, an
individual; and COLIN HASTINGS BREEZE,
an individual,

Plaintiffs,

v.

STATE OF CALIFORNIA; DAVID FAIGMAN,
in his official capacity as Chancellor and Dean of

CASE NO. CGC-22-602149

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF COLLEGE
DEFENDANTS' REPLY IN SUPPORT OF
SPECIAL MOTION TO STRIKE (CODE
CIV. PROC., § 425.16)**

[Supplemental Declaration of Matthew S.
Kahn filed concurrently]

HEARING:

Date: December 15, 2022

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Richard B. Ulmer Jr.

1 Hastings College of the Law; SIMONA
2 AGNOLUCCI, in her official capacity as chair of
3 the Board of Directors of Hastings College of the
4 Law; CARL ROBERTSON, in his official
5 capacity as vice chair of the Board of Directors
6 of Hastings College of the Law; SHASHIKALA
7 DEB, in her official capacity as a director of
8 Hastings College of the Law; MICHAEL
9 EHRLICH, in his official capacity as a director
10 of Hastings College of the Law; ANDREW
11 GIACOMINI, in his official capacity as a
12 director of Hastings College of the Law;
ANDREW HOUSTON, in his official capacity as
a director of Hastings College of the Law;
CLAES LEWENHAUPT, in his official capacity
as a director of Hastings College of the Law;
MARY NOEL PEPYS, in her official capacity as
a director of Hastings College of the Law;
COURTNEY POWER, in her official capacity as
a director of Hastings College of the Law;
ALBERT ZECHER, in his official capacity as a
director of Hastings College of the Law; and
DOES 1-25, inclusive,

Defendants.

Action Filed: October 4, 2022
Trial Date: None set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that, under Evidence Code sections 451, 452, and 453 and Rules of
3 Court 3.1113(l) and 3.1306(c), defendants David Faigman, Simona Agnolucci, Carl Robertson,
4 Shashikala Deb, Michael Ehrlich, Andrew Giacomini, Andrew Houston, Claes Lewenhaupt, Mary
5 Noel Pepys, Courtney Power, and Albert Zecher (the “College Defendants”) request that the Court take
6 judicial notice of the documents set forth below in ruling on the College Defendants’ Special Motion
7 to Strike (Code Civ. Proc., § 425.16). The authenticity of the exhibits is established through the
8 Supplemental Declaration of Matthew S. Kahn (the “Supplemental Kahn Declaration”), which is filed
9 concurrently with this request for judicial notice.

- 10 • Attached to the Supplemental Kahn Declaration as **Exhibit 6** is a true and correct excerpt from
11 the first minutes book of the Board of Directors of UC Hastings College of the Law, showing
12 records of payments made by S.C. Hastings to the State General Fund.
- 13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Request for Judicial Notice**

2 A trial court “shall” take judicial notice of matters upon request, where the requesting party
3 provides (1) sufficient notice to adverse parties and (2) “sufficient information to enable [the court] to
4 take judicial notice of the matter.” (Evid. Code, § 452, subds. (c)-(d); *id.* § 453.) Under clearly
5 established law, the document attached to the Supplemental Kahn Declaration is properly subject to
6 judicial notice by this Court, and should be considered in connection with the College Defendants’
7 reply in support of their special motion to strike (Code Civ. Proc., § 425.16).

8 ***Exhibit 6.*** Exhibit 6 is a record entered in the first minutes book of the Board of Directors of
9 the UC Hastings College of the Law. Courts routinely take notice of the minutes of the governing
10 bodies of California’s public entities, including institutions of higher learning. (*Requa v. Regents*
11 (2012) 213 Cal.App.4th 213, 223, fn. 7; see also *Page v. MiraCosta Cmty. Coll. Dist.* (2009) 180
12 Cal.App.4th 471, 501.)

13 For the foregoing reasons, the College Defendants respectfully request that this Court take
14 judicial notice of Exhibit 6 identified above and submitted as an attachment to the Supplemental Kahn
15 Declaration under Evidence Code sections 451, 452, and 453.

16 DATED: December 8, 2022

17 Respectfully submitted,

18 By: /s/ Theodore J. Boutrous Jr.

19 THEODORE J. BOUTROUS JR. (SBN 132099)
tboutrous@gibsondunn.com
20 THEANE EVANGELIS (SBN 243570)
tevangelis@gibsondunn.com
21 MATT AIDAN GETZ (SBN 335038)
mgetz@gibsondunn.com
22 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
23 Los Angeles, CA 90071-3197
Tel.: (213) 229-7000
24 Fax: (213) 229-7520

25 MATTHEW S. KAHN (SBN 261679)
mkahn@gibsondunn.com
26 ELIZABETH K. MCCLOSKEY (SBN 268184)
emccloskey@gibsondunn.com
27 GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
28 San Francisco, CA 94105-0921
Tel.: (415) 393-8200

Fax: (415) 393-8306

JOHN K. DiPAOLO (SBN 321942)
dipaolojohn@uchastings.edu

LAURA M. WILSON-YOUNGBLOOD (SBN 330892)
wilsonyoungbloodl@uchastings.edu

UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
San Francisco, CA 94102
Tel.: (415) 565-4787

Counsel for the College Defendants

THEODORE J. BOUTROUS JR. (SBN 132099)
tboutrous@gibsondunn.com

THEANE EVANGELIS (SBN 243570)
tevangelis@gibsondunn.com

MATT AIDAN GETZ (SBN 335038)
mgetz@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel.: (213) 229-7000
Fax: (213) 229-7520

MATTHEW S. KAHN (SBN 261679)
mkahn@gibsondunn.com

ELIZABETH K. MCCLOSKEY (SBN 268184)
emccloskey@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Tel.: (415) 393-8200
Fax: (415) 393-8306

JOHN K. DiPAOLO (SBN 321942)
dipaolojohn@uchastings.edu

LAURA M. WILSON-YOUNGBLOOD (SBN 330892)
wilsonyoungbloodl@uchastings.edu

UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
San Francisco, CA 94102
Tel.: (415) 565-4787

Counsel for the College Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

HASTINGS COLLEGE CONSERVATION
COMMITTEE, an unincorporated association of
alumni of Hastings College of the Law;
STEPHEN HASTINGS BREEZE, an individual;
STEPHANIE AZALEA BRACKEL, an
individual; CATHERINE TORSTENSON, an
individual; SCOTT HASTINGS BREEZE, an
individual; COLLETTE BREEZE MEYERS, an
individual; and COLIN HASTINGS BREEZE,
an individual,

Plaintiffs,

v.

STATE OF CALIFORNIA; DAVID FAIGMAN,

CASE NO. CGC-22-602149

**SUPPLEMENTAL DECLARATION OF
MATTHEW S. KAHN IN SUPPORT OF
COLLEGE DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF REPLY IN SUPPORT OF SPECIAL
MOTION TO STRIKE (CODE CIV.
PROC., § 425.16)**

HEARING:

Date: December 15, 2022

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Richard B. Ulmer, Jr.

1 in his official capacity as Chancellor and Dean of
2 Hastings College of the Law; SIMONA
3 AGNOLUCCI, in her official capacity as chair of
4 the Board of Directors of Hastings College of the
5 Law; CARL ROBERTSON, in his official
6 capacity as vice chair of the Board of Directors
7 of Hastings College of the Law; SHASHIKALA
8 DEB, in her official capacity as a director of
9 Hastings College of the Law; MICHAEL
10 EHRLICH, in his official capacity as a director
11 of Hastings College of the Law; ANDREW
12 GIACOMINI, in his official capacity as a
13 director of Hastings College of the Law;
14 ANDREW HOUSTON, in his official capacity as
15 a director of Hastings College of the Law;
16 CLAES LEWENHAUPT, in his official capacity
17 as a director of Hastings College of the Law;
18 MARY NOEL PEPYS, in her official capacity as
19 a director of Hastings College of the Law;
20 COURTNEY POWER, in her official capacity as
21 a director of Hastings College of the Law;
22 ALBERT ZECHER, in his official capacity as a
23 director of Hastings College of the Law; and
24 DOES 1-25, inclusive,

Defendants.

Action Filed: October 4, 2022
Trial Date: None set.

1 **SUPPLEMENTAL DECLARATION OF MATTHEW S. KAHN**

2 I, Matthew S. Kahn, declare as follows:

3 1. I am an attorney admitted to practice law before this Court and all courts of the State of
4 California. I am a partner at Gibson, Dunn & Crutcher LLP, counsel for the College Defendants in the
5 above-captioned action.

6 2. I offer this supplemental declaration in support of the College Defendants' request for
7 judicial notice in support of their reply in support of their special motion to strike (Code Civ. Proc.,
8 § 425.16). I previously prepared a declaration in support of the special motion to strike. I have personal
9 knowledge of the facts set forth in this supplemental declaration and, if called to testify, I could and
10 would competently testify to them.

11 1. Attached as **Exhibit 6** is a true and correct copy of excerpts from the first minutes book
12 of the Board of Directors of UC Hastings College of the Law ("College"). This document was obtained
13 at my direction by photocopying pages from the book in the College's Law Library.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16
17
18 Executed in San Francisco, California on this 8th day of December, 2022.

19
20 

21 _____
 Matthew S. Kahn

22 *Attorney for the College Defendants*
23
24
25
26
27
28

Kahn Declaration

Ex. 6





Record

Hastings

+ College of Law.

over

Law

+

Act of the Legislature. Page
Address of S. C. Hastings, Thos. B. Bishop and
Hon. J. B. Crockett Justice of the Supreme Court
Page 3 to 19

A
B
C
D
E
F
G
H
I
K
L
M
N
O
P
Q
R
S
T
U
V
W
Y
Z

By-Laws 445

Cont
S. C. 1/4

Controller's receipts for 100,000 deposited by
S.C. Hastings Pages 23-24.

C
D
E
F
G
H
I
K
L
M
N
O
P
Q
R
S
T
U
V
W
Y
Z

N^o 156

Controller's Office

Sacramento, Cal. April 18th 1878

This is to certify That S. C. Hastings
has paid the Treasurer of the State
in U. S. Gold Coin. Sixty Thousand⁰⁰/₁₀₀ Dollars
Credited as follows.

To the General Fund \$60,000

Being a portion of the money to be paid into the
State Treasury in accordance with the
provisions of an Act entitled an Act to Create
Hastings College of the Law in the University
of the State of California. Approved March 26th 1878
And that he is hereby discharged from all
liabilities as to the same.

(#60000) W. B. C. Brown. Controller of State

N^o 181

Controller's Office

Sacramento, Cal. May 20th 1878

This is to certify That S. C. Hastings
has paid the Treasurer of the State
in U. S. Gold Coin. Thirty Thousand⁰⁰/₁₀₀ Dollars
Credited as follows.

To the General Fund \$30,000.

Being a portion the Amount due said Fund
received by him in accordance with the
provisions of an Act entitled an Act to Create
Hastings College of the Law in the University
of the State of California. Approved March 26th 1878
And that he is hereby discharged from all
liabilities as to the same.

(#30,000) W. B. C. Brown. Controller of State

N^o 182

Controller's Office

Sacramento, Cal. May 27th 1878

This is to certify that S. C. Hastings
has paid the Treasurer of the State
in U.S. Gold Coin Ten Thousand⁰⁰ Dollars
Credited as follows

To the General Fund

\$ 10,000

Being the amount due said Fund received by
him in accordance with the provisions of
an Act entitled an Act to create Hastings
College of the Law in the University of the
State of California, approved March 26th 1876
And that he is hereby discharged from all
liabilities as to the same.

\$10,000

W. B. C. Brown Controller of State

1878

Class

and by
 ons of
 Hastings
 the
 1878
 all

State

San Francisco June 6th 1878

On this the day above written S.C. Hastings Founder of Hastings College of the Law as the Law Department of the University of California invited the Directors of said College to meet him at the rooms of the Bar Association of the City of San Francisco. Present: W.W. Cope, T.B. Bishop, C.P. Evans, J.R. Sharpstein and Thos. J. Berghin being a quorum. (The other Directors being absent from the City. Hon W.W. Cope was appointed Chairman pro tem. The Founder stated that having transferred to the Directors all future control of the College it now was necessary that a Dean and Registrar should be appointed. Where upon motion S.C. Hastings was by a unanimous vote appointed Dean, C.F. Dio Hastings Registrar and Lloyd Lewis Treasurer. The Founder manifested his high appreciation of the sympathy of the Directors with him in his efforts to establish the College said he would accept the position tendered for a limited period.

Ordered that a future meeting of the Directors will be had, as soon as a full meeting of the Directors can be had to consider and adopt further measures for the organization of the College and especially a curriculum of studies for students.

Ordered that the Registrar enter upon the Records of this College. The Act of the Legislature relative to the foundation and establishment of this College.

The Address of the Founder before the Regents President and Faculty of the University of the State on the 5th day of June A.D. 1878, expressing his own views as to the plan of organization and of the meaning and intention of the Founder relative to the same, and it is further ordered that the vouchers of payment into the State Treasury the sum

of \$100,000 be put upon record.

San Francisco July 8th 1878

On this the day above written a meeting of the Directors was held at the Rooms of the Bar Association, San Francisco. Present full board of Directors and the President the Chief Justice of the Supreme Court and S. C. Hastings Dean of the Hastings Law Department of the University and C. F. Dig Hastings Registrar of the above College and Judge Stephen J. Field of the Supreme Court of the United States. Ordered that a Professorship of Municipal Law be established at a salary of \$300 per month.

July 8th
1878

San Francisco July 11th 1878

On this the day above written a meeting of the Directors was held at the Rooms of the Bar Association, San Francisco. Present full board of Directors and the President the Chief Justice of the Supreme Court and S. C. Hastings, Dean of the College also Judge Stephen J. Field of the Supreme Court of United States. Ordered that John Norton Pomeroy be and is hereby appointed Professor of Municipal Law at a salary of \$300 per month. Subject to the will of the Board of Directors.

July 11th

(Aug 3rd)