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Superior Court of California
County of Fresno
By: Jamie Nelson, Deputy

6 Attorney for Plaintiff,
7 Michael Stannard, Ph.D., David Richardson

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**

11 MICHAEL STANNARD, Ph.D., DAVID
12 RICHARDSON,

13 Plaintiffs,

14 v.

15 STATE CENTER COMMUNITY
16 COLLEGE DISTRICT, and DOES 1
17 through 20, inclusive,

18 Defendant.

22CECG01787

Case No.:

COMPLAINT

1 **I. BACKGROUND ALLEGATIONS.**

2 1. This civil action seeks declaratory relief and damages. Venue properly lies in
3 this Court in that Defendant State Center Community College District (“SCCCD”)
4 has its headquarters and principle offices in Fresno County, California and many of
5 the acts complained of occurred in the County of Fresno, State of California.

6 2. Michael Stannard, Ph.D., (“Dr. Stannard”) and David Richardson
7 (“Richardson”) are instructors employed by SCCCDC. SCCCDC is a governmental
8 entity organized as part of the State of California. Dr. Stannard and Richardson will
9 be referred to collectively as “Plaintiffs.”

10 3. Plaintiffs are ignorant of the true names and capacities of Defendants sued
11 herein as Does 1-20, inclusive, and therefore sues these Defendants by such fictitious
12 names. Plaintiffs will amend this Complaint to allege the true names and capacities
13 of Does 1-20 when ascertained. Plaintiffs are informed and believe and thereon
14 allege that each of the fictitiously named Defendants are responsible in some manner
15 for the occurrences herein alleged and that Plaintiffs’ claims and damages herein
16 alleged were proximately caused by the conduct of said fictitiously named
17 defendants. A reference to any of the named defendants includes by reference an
18 allegation against the fictitiously named defendants.

19 4. Relief is sought against each and all of the Defendants as well as their agents,
20 successors, assistants, employees, attorneys and all persons acting in concert or
21 cooperation with them or at their direction.

22 **A. DR. MICHAEL STANNARD**

23 5. On approximately March 4, 2021, Dr. Stannard was asked to meet with the
24 SCCCDC Human Resources Department investigator, Erica Reyes, about some
25 unspecified claim that had been made against him. On March 9, 2021, Dr. Stannard
met with Ms. Reyes as part of that investigation.

1 6. During the hour-long interview, Dr. Stannard was interrogated about two
2 statements he allegedly made. One statement allegedly occurred during a race-
3 sensitivity training session occurring on the day after the January 6, 2021 protest/riot
4 at the United States Capitol. In connection with points made by another instructor
5 about the Capitol riot of January 6, 2021, Dr. Stannard observed that the riot at the
6 Capitol was “bad” and that the burning of minority-owned businesses during last
7 summer’s riots was “bad.” Another statement was allegedly made in a Justice and
8 Healing Circle that Dr. Stannard regularly attended. Dr. Stannard was reported to
9 have said in connection with some comment about single parent households that
10 studies showed that children do better if they are raised with both biological parents.
11 Dr. Stannard denied making this alleged comment; what he said was that children
12 have a right to be raised by their biological parents, and that there was a
13 philosophical argument for the biological two-parent family based on the “problem
14 of origins,” i.e., children who do not know their parents question their own origins.

15 7. Dr. Stannard was asked if he would have made these comments if there had
16 been no African Americans present and whether he intended to hurt the feelings of
17 other attendees. He was also asked if he was aware that he was invalidating the
18 opinions of others and whether he was aware that his comments had caused someone
19 to “become so angry they started to cry.”

20 8. Dr. Stannard affirmed that his intent was to speak the truth in a public
21 environment where these issues were raised and that while he was sorry that anyone
22 would have an emotional reaction, that did not justify his censoring himself.

23 9. Dr. Stannard also shared that after he had made his brief comment about the
24 “problem of origins,” he was told by the organizer that his remarks were “offensive.”
25 Another participant threatened to leave the group if the group did not move on from
the topic.

1 10. Dr. Stannard's rights were violated in multiple ways. The activities that Dr.
2 Stannard participated in were public activities where the participants were invited to
3 share their insights. Dr. Stannard's insights were responsive to the topics being
4 discussed. Dr. Stannard's demeanor and tone were restrained and respectful.

5 11. Dr. Stannard was exercising his academic freedom. Dr. Stannard's comments
6 were made in the context of a public discussion of public issues, which makes the
7 issues raised, and Dr. Stannard's observations, broadly political, entitling him to the
8 protection of California law as well as the Constitution.

9 12. However, notwithstanding his free speech rights, Dr. Stannard was singled
10 out for an "investigation" because of the content of his speech, and not because of
11 any neutral application of a neutral "time, place, and manner" restriction and/or
12 because of race and age.

13 13. Permitting venues for the discussion of only one side of public issues, and
14 tolerating the intimidation of one side of the debate, as occurred when Dr. Stannard
15 was told his remarks were offensive and that he would be boycotted or cancelled,
16 and then made the subject of an "investigation" created a retaliatory hostile
17 environment for Dr. Stannard in violation of the federal Constitution and California
18 law, including the Unruh Act which extends to "political affiliation." (*Marina Point
19 Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 726 ["Whether the exclusionary policy rests
20 on the alleged undesirable propensities of those of a particular race, nationality,
21 occupation, political affiliation, or age, ... the Unruh Act protects individuals from
22 ... arbitrary discrimination."].) In addition, Dr. Stannard was subjected to viewpoint
23 discrimination which singled out his speech for administrative action and censure,
24 which violates the First Amendment and federal law. (*R.A.V. v. City of St. Paul*, 505
25 U.S. 377, 120 L. Ed. 2d 305, 112 S. Ct. 2538 (1992); 18 USC §242.)

14. The explanation was offered at the interview that this was not a criminal
proceeding, but "merely" an administrative proceeding. This trivialized the

1 substantial chilling effect of the investigation on Dr. Stannard’s legal rights. Dr.
2 Stannard and others were sent a message that they must be very careful about what
3 they say, particularly if what they say runs counter in any way to the prevailing
4 academic orthodoxy, even if the statements are true and spoken in a restrained and
5 respectful manner.

6 15. Dr. Stannard was left on tenterhooks about what his future held. He did not
7 receive a communication about the disposition of the complaints until approximately
8 May 12, 2021. During the period he was kept in suspense, he did not know whether
9 he would keep his job. Even after being told that no further action would be taken,
10 he does not know if there will be any further specious claims against him and he has
11 been forced to censor and suppress his speech in order to avoid a further re-
12 occurrence of another “investigation.”

13 16. SCCCD’s determination had been made on May 10, 2021 by Lori Bennett,
14 Ed.D., President, Clovis Community College. The allegations were not described.
15 The finding was “not sustained.” Dr. Stannard was advised that “While your
16 comments did not rise to the level of discrimination in violation of District policy,
17 the investigative interviews demonstrated that some employees were offended by
18 your comments.” Stannard was instructed by SCCCD: “I encourage you, and all
19 employees, to demonstrate empathy toward others and to reflect on how statements
20 we make may impact others to ensure that we are creating an inclusive working and
21 learning environment for all employees and students.” Dr. Stannard was also told:

22 State Center Community College District does not condone
23 harassment, discrimination, unprofessional conduct, or other
24 misconduct in the workplace or educational environment and takes
25 such complaints seriously. The District has a strong policy prohibiting
discrimination, harassment, and retaliation and a thorough investigation
has been conducted of this complaint.

1 17. These warnings, admonitions and instructions were nebulous and threatening
2 to Dr. Stannard in that they implied that he had not demonstrated empathy, did not
3 explain what SCCCD meant by “demonstrating empathy,” and further implied that
4 he should reflect on how his statements in the context of the investigation hurt others
5 and undermined an “inclusive working and learning environment,” and concluded
6 with a nebulous threat about “unprofessional conduct.”

7 18. This matter should never have gotten this far. The complainants should have
8 been told about the Constitutional right of free speech and how they cannot subvert
9 the investigative procedures to harass and intimidate those who they perceived as
10 their ideological/career/political adversaries. (See e.g., *White v. Lee* (9th Cir. 2000)
11 227 F.3d 1214, 1230 (“The officials did not need to gather additional information
12 before determining whether these flyers incited imminent lawless action or not. That
13 the First Amendment protected the authors and distributors of the flyers was
14 plain.”).)

15 19. While Dr. Stannard was told in a pro forma manner that he could file his own
16 claim, his statements to that effect should have started an investigation. Further,
17 since Dr. Stannard was not told who the complainants against him were, something
18 known to the investigator, the suggestion that he file a claim was a hollow offer as
19 the investigator was told and knew already. This information is known to SCCCD,
20 which refused to perform any investigation into whether Stannard was the victim of
21 race/age harassment despite its duty under the Fair Employment and Housing Act
22 to perform such an investigation.

23 **B. INSTRUCTOR DAVID RICHARDSON**

24 20. Instructor David Richardson is an instructor at the Madera Community
25 College campus of SCCCD. Richardson has a Master’s degree and teaches history.
Richardson also publicly identifies as gay and conservative.

1 21. In the fall of 2021, SCCCD mandated that its college faculty attend a “College
2 Hour” on a regular basis. The “College Hour” was attended online by faculty and
3 provided an hour-long forum for SCCCD to instruct faculty on policy or other
4 subjects determined by SCCCD.

5 22. On or about October 15, 2021, SCCCD mandated that instructors attend a
6 College Hour on the subject of etiquette in the use of personal pronouns. This
7 instruction consisted of a presentation on “pronoun etiquette.” The presentation was
8 made by Jamie MacArthur Ph.D. who is a male identifying as a female, i.e., a
9 transexual or “trans-female.” Jamie MacArthur (“JM”) insists on being referred to
10 by third person plural pronouns, e.g., they/them, but in this complaint to avoid any
11 concession or dispute about the ontological reality of such subjective identification,
12 or confusion as to who or how many are being referred to, JM will be referred to as
13 “JM.”

14 23. The October 15, 2021 College Hour was attended on-line by several dozen
15 instructors. The format for the attendees was that the speaker could be seen in a
16 larger window on the computer screen while the other attendees were in small
17 thumbnails with either the live feed of them watching, or, if their camera was shut
18 off, some other image. In addition, the thumbnail had their name and in this case a
19 line was presented for the participants to insert their “preferred gender pronouns.”

20 24. By October 2021, the issue of preferred gender pronouns had become a
21 contentious political and philosophical issue. The issue was pressed by and on behalf
22 of transexuals and other people claiming other kinds of “sexual identities.” Under
23 this worldview, “sexual identities” are not just limited to “transexuals,” i.e., those
24 who identify with the opposite biological sex, and “cisgender,” i.e., those who
25 identify with their biological sex. Under this worldview, there are people who
claimed to identify as one of many other highly nuanced sexual identities based on
a plethora of subjective assessments. Along with transexuals there are abrosexuals,

1 androgynosexuals, androsexuals, aromantics, and asexuals, which are only an
2 incomplete listing of the various sexual identities that start with the letter “A.”¹ Such
3 people insist that other people call them by pronouns that recognize such putative
4 sexual identities. Since, in many cases the desired pronoun is not apparently
5 applicable or entirely fictitious, see e.g., the “Cake Sexual”² people having this
6 philosophical/sociological perspective insist that everyone “announce their
7 “preferred gender pronouns.” The range of “preferred gender pronouns” (“PGP”) is
8 potentially limitless, and includes “he/him,” “she/her,” “they/them” (for a single
9 human being) and “xe/xir” as some examples.³

10 25. Richardson philosophically and intellectually disputes that any person can
11 change empirical, ontological, or objective reality by a process of “identification.”
12 For example, he believes that a person will not grow an inch by identifying himself
13 as “taller.” Likewise, since females and women are not born with male
14 chromosomes, genitalia, and male secondary sex characteristics, as a matter of
15 philosophical and intellectual commitment to truth, he disputes that a male can
16 change sex by a matter of self-identification.

17 26. Richardson also believes as a philosophical and intellectual matter that the
18 purpose of language is to serve the social function of communicating truth.
19 Accordingly, he does not believe that certain classes can be privileged with their
20 own special set of “preferred gender pronouns” any more than they can be privileged
21 with their own set of “preferred adjectives.”

22 ¹ “A-Z List of Sexualities” by Unite UK (June 28, 2018) [https://uniteuk1.com/2018/06/a-z-list-](https://uniteuk1.com/2018/06/a-z-list-of-sexualities/)
23 [of-sexualities/](https://uniteuk1.com/2018/06/a-z-list-of-sexualities/)

24 ² See [https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4](https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ)
25 [b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ](https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ)

³ See https://en.wikipedia.org/wiki/Preferred_gender_pronoun

1 27. At the October 15, 2021, College Hour, Richardson reasoned that it was not
2 intellectually equitable to allow only certain people to pick certain “Preferred
3 Gender Pronouns.” Accordingly, Richardson filled out his “Preferred Gender
4 Pronouns” as “Do, Re, Mi.” In doing this, Richardson was not joking, and he was
5 not mocking anyone. He was making the serious point that if “Preferred Gender
6 Pronouns” should not be mandatory because they were based on an irrational
7 perception of reality and that if they were to be mandated, displayed, or required,
8 then they would frustrate communication for ideological reasons.

9 28. Richardson’s philosophical and intellectual position is that any rule, policy,
10 practice or official pressure mandating that he use PGP contrary to reality is an
11 imposition, burden and violation of his freedom of speech under the First
12 Amendment and therefore a violation of federal law, to wit, 18 USC §242
13 (“Whoever, under color of any law, statute, ordinance, regulation, or custom,
14 willfully subjects any person in any State, Territory, Commonwealth, Possession,
15 or District to the deprivation of any rights, privileges, or immunities secured or
16 protected by the Constitution or laws of the United States....shall be fined under
17 this title or imprisoned not more than one year....”); *United States v. Classic*
18 (1941) 313 U.S. 299, 326-329 [61 S.Ct. 1031, 1043-1044, 85 L.Ed. 1368, 1383-
1385].) Richardson refused to participate in this violation of his and other faculty
members’ First Amendment rights.

19 29. Richardson’s listing of his PGP was not disruptive. Richardson’s PGP
20 themselves were virtually unreadable on the screen with other attendees. No one
21 commented on his PGP. To all appearances at the meeting, no one noticed
22 Richardson’s PGP at the meeting.

23 30. However, on Monday, October 18, 2021, JM emailed Richardson and said in
24 relevant part:
25

1 The reason that I am contacting you is because I noticed in the
2 College Hour on Friday that you had what appeared to be a joke
3 shared where someone might normally share their pronouns on zoom
4 (do-re-mi). I wanted to let you know that doing this is considered to
5 be extremely offensive by people in the trans community. It's
6 possible that you didn't know this, so I wanted to take a moment to
7 share some resources related to this with you so that you have a better
8 understanding of how people in the trans community would like to
9 be treated

7 Here is an article:
8 [https://www.washingtonpost.com/outlook/please-stop-making-](https://www.washingtonpost.com/outlook/please-stop-making-jokes-about-gender-pronouns-when-people-tell-you-theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00-story.html)
9 [jokes-about-gender-pronouns-when-people-tell-you-](https://www.washingtonpost.com/outlook/please-stop-making-jokes-about-gender-pronouns-when-people-tell-you-theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00-story.html)
10 [theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00](https://www.washingtonpost.com/outlook/please-stop-making-jokes-about-gender-pronouns-when-people-tell-you-theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00-story.html)
11 [story.html](https://www.washingtonpost.com/outlook/please-stop-making-jokes-about-gender-pronouns-when-people-tell-you-theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00-story.html) Also you may have noticed that my email signature has a
12 link to some basic information on pronouns. This was written by
13 someone who did their dissertation on pronoun usage, so they have
14 a lot of rigorous academic expertise in this area. Here is their website
15 if you are interested in learning more about that
16 work: <http://www.kirbyconrod.com/>.

14 I didn't mention anything about this at the time of the meeting, as
15 I wanted to stay focused on the dialogue at hand. Although it was
16 painful for me to not say anything in that moment, I chose to put the
17 good of the community ahead of my own well being. I am choosing
18 to share this information with you directly now instead of with
19 someone else out of respect for the ideals embodied by our union of
20 solidarity within our community of scholars. I hope this message is
21 received with the spirit of good will that I intend and that you would
22 choose not to use the zoom platform as a way of making a joke that
23 is harmful to trans people.

21 31. JM's email conceded that the issue of PGP was a matter of scholarly
22 discussion, but also insisted that only one side be permitted to engage in a non-
23 disruptive discussion because JM's felt it was "painful" for JM not to say anything
24 immediately. JM dismissed Richardson's speech as not being worthy of any First
25 Amendment protection and as merely a "joke."

1 32. JM's communication was threatening to Richardson. Richardson was well-
2 aware that such communications was the first step in the "cancellation" of
3 dissenting voices. Such "cancellation" could involve termination, discipline,
4 mobbing, or the loss of privileges and professional standing. Richardson was aware
5 that JM was using his position as a transexual victim in order to coerce Richardson
6 and others to accede to Richardson's ideological positions and that JM intended to
7 force Richardson to cease to exercise his right of free expression and be forced to
8 espouse Richardson's speech. At all times, Richardson was aware that JM was
9 exercising authority given to him by the State of California through SCCCD in that
10 JM was placed in charge of training on PGP etiquette. In engaging in this conduct,
11 both SCCCD and JM were violating 18 USC §242. Richardson refused to
12 participate in this violation of 18 USC §242 and was thereafter terminated in
13 retaliation for his refusal to participate in their deprivation of his rights under the
14 Constitution, to wit, the First and Fourteenth Amendments.

15 33. Richardson responded to JM's email as follows:

16 To be blunt, what makes they think it was a joke? Am Do not
17 allowed to identify mi own pronouns as an LGBTQIA2+ individual?
18 Have Do done or said anything to anyone to make they think it was
19 a "joke"? Do think they are making assumptions about mi own
20 thought processes and rationale that is offensive in and of itself. Do
21 don't find anything about the entire debate "funny". If they are
22 uncomfortable with mi choice of pronouns, Do might suggest that
23 the issue is not re although Do would never presume to know what
24 is going on in their mind. Do also find it interesting that they would
25 presume Do is any less educated on the subject of the transgender
community than they is. Do don't question their choice of personal
pronouns. Personal pronouns are personal.⁴

⁴ In this email, Richardson's references to "they" and "their" are to JM and Richardson's reference to "Do" is to himself.

1 34. The next contact in this sequence was on November 1, 2021 when James
2 Young the “Employee Relations Coordinator” for SCCCD contacted Richardson
3 about JM and the “concerns they had regarding your use of pronouns in a Zoom
4 meeting.”⁵ Young requested some time to speak to Richardson about “this matter.”

5 35. In response to Young, Richardson wrote:

6 If Dr. MacArthur and yourself would like to make an issue of my
7 personal pronouns which as I have told Dr. MacArthur are personal,
8 then we are going to be opening a can of worms that I don't believe
9 the District would want to get involved in. Picking and choosing
10 which personal pronouns people can and cannot use would amount
11 to harassment in the workplace and the creation of a toxic work
12 environment. This week is not possible as I have three faculty
13 evaluations that need to be completed. That being said, I would be
14 happy to meet with you in the future as long as any meeting includes
15 a union representative and everyone understands that any attempt to
16 coerce or in any other way change my personal pronouns will be seen
17 on my part as hostility towards an open and proud LGBTQIA2S+
18 individual. Thank you.

19 36. Richardson copied his supervisors and some faculty members because he
20 understood that JM was moving in the direction of “canceling” him. Richardson had
21 observed that Dr. Stannard had been subjected to an investigation for angering
22 leftwing members of the campus community for failing to say things properly
23 supportive of anti-racist ideology. Richardson has observed that leftwing professors
24 have used harassment claims in order to stifle speech that is contrary to leftwing
25 ideology, such as that human gender is fluid and not determined by biology. Since
there was no policy against speaking or associating with other instructors,
Richardson copied the other instructors on his email. His intent was to exercise his
constitutional right of speech and association. He was not under official investigation

⁵ Again, the use of “they” is a reference to JM.

1 at that time. He had not been instructed not to share this information. He did not
2 intend to retaliate but was attempting to protect himself from retaliation for not
3 subscribing to leftwing ideology.

4 37. On November 1, 2021, JM responded by including the administration in his
5 email to Richardson. JM admitted that JM had gotten HR and the relevant union
6 involved. JM expressed JM's purpose as being "to discuss the harm that has been
7 caused and how to mediate a solution to that harm," which assumed that
8 Richardson's exercise of his free speech rights qualified as a "harm." JM said that
9 JM sought a "facilitated discussion" in order to obtain the "consent" of Richardson
10 to create a workplace setting that would be "safe" for everyone. To translate from
11 the Orwellian euphemisms, JM wanted Human Resources to compel Richardson to
12 adhere to JM's speech standards.

13 38. In response, Richardson requested that HR investigate JM's harassment of
14 Richardson. Richardson explained:

15 After finding out that HR had been involved, my preexisting and
16 well documented anxiety and panic disorder has gone through the
17 roof. Having personally experienced firsthand the hate and vitriol
18 that open members of the community were subjected to in the 1980s
19 when I was in college, having been spat on, called "fxxxxx" and other
20 such behavior, I am hypervigilant to use the words of my therapist
21 when I feel that my own safety and livelihood are threatened. I feel
22 that way now which is only heightened by the atmosphere of chaos
23 and uncertainty surrounding COVID, vaccine mandates and the like.
24 I'm not looking for anything more than to be left in peace. I thought
25 Dr. MacArthur understood that, but it seems not. I haven't questioned
their choices and I believed that mine would not be questioned. It
seems I am wrong. I am not interested in any resolution that would
involve the changing of my pronouns until the district is interested
in examining everyone's personal pronoun choices and
implementing some sort of policy on how pronouns are to be used
and which ones are acceptable. I am willing to let the matter drop if
Dr. MacArthur is amenable, but it is their choice.

1 39. Nonetheless there was no investigation of JR's harassment of Richardson.
2 Instead SCCCD began an investigation of Richardson. The "investigation" involved
3 asking Richardson personal questions that intruded on his academic freedom and
4 right of privacy. The alleged investigation lasted for approximately six months. After
5 making several inquiries, Richardson was informed that the allegations and findings
6 were:

7 **Allegations and Findings**

8 Allegation 1: You intentionally misused pronouns in a mocking
9 manner for Jamie MacArthur 8 times in an email exchange on
10 October 18, 2021.

11 Finding: Sustained.

12 Analysis: Dr. MacArthur stated that they sent an email to you on
13 October 18, 2021 regarding the pronouns that were displayed on your
14 Zoom profile. Dr. MacArthur alleged that you replied to the email on
15 October 18, 2021 using the third person pronouns of "they/them" in
16 place of the second-person "you", and using the third-person
17 pronouns "Do-Re-Mi" in place of the first-person pronoun "I" 8
18 different times.

19 The investigator found that it is more likely than not that you sent
20 the email to Dr. MacArthur on October 18, 2021 intentionally using
21 second- and third-person pronouns in a mocking manner.

22 Allegation 2: You retaliated against Dr. MacArthur for bringing
23 up concerns related to your use of pronouns in a Zoom meeting, and
24 for attempting to seek an informal resolution through Human
25 Resources.

Finding: Sustained.

Analysis: Dr. MacArthur alleged that you sent a series of emails
to Madera Community College faculty, staff, administrators, and
Human Resources representatives as retaliation for seeking an
informal resolution through Human Resources, as a way to
intimidate Dr. MacArthur into dropping their complaint.

1 The investigator found that it is more likely than not that the
2 emails you sent to Madera Community College faculty, staff,
3 administrators, and Human Resources representatives were sent as
4 retaliation for Dr. MacArthur attempting to seek an informal
5 resolution through Human Resources, as a way to intimidate Dr.
6 MacArthur into dropping their complaint.

7 40. The Findings are specious. First, the Findings ignore that Richardson's
8 response came after, and in the context of, JM's email taking Richardson to task for
9 daring to use PGP that Richardson felt were inappropriate or joking. In his response,
10 Richardson was not mocking JM; he was making the point that the attempt by one
11 group to dictate PGP for other groups based on arbitrary and subjective
12 identifications is absurd and undermines communication. This was an
13 academic/scholarly subject that fell within Richardson's zone of academic freedom
14 and free expression. At no time was Richardson advised that his private *response* to
15 a private email accusing him of ignorance and rudeness would be vetted for
16 "harassment."

17 41. Likewise, Richardson did not retaliate against JM by sending a copy of his
18 response to James Young to interested faculty members. Upon being contacted by
19 a member of SCCCD's administration, Richardson concluded that the issue involved
20 the SCCCD faculty community. Richardson was not aware of any policy infringing
21 on his right of free speech and association that would have prevented him from
22 sharing his communications with James Young with such faculty. Richardson
23 reached out to such interested faculty only after JM had taken the private discussion
24 to the administration.

25 **C. DISCIPLINE.**

42. On May 17, 2022, David Richardson was called into a meeting with Vice
President of Learning and Student Services Dr. Marie Harris ("Dr. Harris.") Dr.

1 Harris gave Richardson a copy of a Letter of Reprimand the “Letter.”) A copy of the
2 Letter of Reprimand was placed in Richardson’s file.

3 43. The Letter advised:

4 This letter is to address concerns regarding your recent
5 unprofessional conduct. State Center Community College District
6 received a Sexual Harassment/Gender Discrimination complaint on
7 December 1, 2021, and the investigation determined that you
8 intentionally misused pronouns in a mocking manner with a
9 colleague and that you retaliated against that colleague for bringing
10 their concerns to the attention of the District and seeking an informal
11 resolution through Human Resources.

12 44. This conclusion was specious in that Richardson had no knowledge that JM
13 had brought the relevant issue to the attention of the District and he had not
14 “intentionally misused pronouns in a mocking manner.”

15 45. Richardson was instructed:

16 You are directed to immediately stop using pronouns in a
17 mocking manner in the workplace. You are to exhibit basic standards
18 of conduct and act professionally when you interact with employees
19 and students of this District, including in written exchanges via
20 email. Further failure of this type or similar unprofessional behavior
21 may result in disciplinary action, and as stated in BP 3430, may lead
22 to termination.

23 46. As punishment, Richardson was directed:

24 In an effort to assist you in overcoming these deficiencies,
25 you will comply with each of the following directives:

1) You will communicate with your coworkers and students in
accordance with basic standards of professional conduct effective
immediately.

2) You will adhere to all provisions of the Board Policies and
Administrative Procedures of the District, and the SCFT collective
bargaining agreement between the District and the State Center
Federation of Teachers, Local 1533, particularly the provisions of

1 Article XIII, Section 3, 2, b, which incorporates the ethical standards
2 in of the American Association of University Professors.

3 3) You will complete six (6) hours of Diversity, Equity, and
4 inclusion training by September 9, 2022. Once you complete each
5 training, you must submit proof of completion to me via email. Log
6 in to the Vision Resource Center to access the trainings and then
7 search for the learning module title.

8 a) How to be more inclusive

9 b) Promoting Respect in the Workplace for Employees

10 c) Diversity, inclusion, and Belonging

11 d) Creating a Positive and Healthy Work Environment

12 e) Inclusive Mindset

13 f) I Don't See Color, 1 Just See People: Becoming Culturally
14 Competent

15 g) Playing Behind the Screen: The Implicit Bias in Our
16 Colleges

17 4) You will complete the Equity and the LGBTQIA+
18 Community Challenge which requires you to read, watch, and
19 engage provided resources.

20 [https://unitedwaysem.org/equity_ challenge/day-18-equity-
21 and-the-lgbtq-community/](https://unitedwaysem.org/equity_challenge/day-18-equity-and-the-lgbtq-community/)

22 Once you complete the directive, you must provide a written
23 response to me via email by September 9, 2022, responding to
24 reflection questions.

25 a) How did the material make you feel? What did you learn
from the material?

b) What are ways you can create a more inclusive environment
that does not center on homophobia or transphobia? Think of your
school, workplace, home, religious group, etc.

47. This discipline constituted punishment in that it exceeded any reasonable
relationship to the alleged offense. In particular, although Richardson was alleged to
have frightened a pre-operative transexual and Richardson is homosexual, he was

1 assigned to receive indoctrination on racism and making his environment, including
2 his home and religious group, one “that does not center on homophobia. “The scope
3 of this ideological training impermissibly burdened Richardson’s right of privacy
4 and constituted more viewpoint discrimination in that there was no basis to assume
5 that Richardson was “homophobic” and SCCCD’s remit does not extend to homes
6 and religious groups. Richardson has actually completed a portion of the so-called
7 training assigned to him.

8 48. Richardson was also informed at the meeting with Harris that SCCCD had an
9 unwritten PGP policy and that he could use his own PGP so long as they were not
10 deemed “mocking.” SCCCD’s representatives were unable to provide a definition
11 of mocking that was not subjectively based on the feelings of an objecting person
12 who does not feel that the subject is being treated solemnly enough.

13 **D. PRONOUN POLICY**

14 49. Prior to the Findings, SCCCD had not published a policy on pronouns. The
15 mandatory College Hour was presented as offering tips on “etiquette,” which
16 generally means “the set of conventional rules of personal behavior in polite society,
17 usually in the form of an ethical code that delineates the expected and accepted social
18 behaviors that accord with the conventions and norms observed by a society, a social
19 class, or a social group.” (Wiki - <https://en.wikipedia.org/wiki/Etiquette> .)
20 Richardson understood that JM was offering his own beliefs about how society
21 should apply the new and untested rules of PGP, not that such rules had become a
22 social convention or that anyone was required to adhere to this convention.

23 50. In addition, in his meeting with SCCCD to obtain the Findings, Richardson
24 was told by SCCCD that the problem had been that Richardson was “mocking JM”
25 by using the pronouns that Richardson had selected. Richardson was not “mocking
JM” The implication left by SCCCD’s representatives was that if Richardson was
not “mocking JM” he could use the pronouns he had selected. When Richardson

1 asked SCCCD’s representatives for how they would determine if someone’s mental
2 state was to “mock” a person, SCCCD’s representatives were unable to provide a
3 definition or mechanism to intuit the subjective mental state of a speaker.

4 51. As a result, Richardson and others are chilled in their speech because of the
5 arbitrary and vague nature and application of the pronoun policy.

6 **E. VIEWPOINT DISCRIMINATION.**

7 52. Viewpoint discrimination by the government is impermissible. When the
8 government targets not subject matter, but particular views taken by speakers on a
9 subject, the violation of the First Amendment is all the more blatant." (*Rosenberger*
10 *v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 132 L.
11 Ed. 2d 700 (1995) "Viewpoint discrimination is thus an egregious form of content
12 discrimination," one from which "[t]he government must abstain." *Id.* The
13 government may not regulate speech based on "the specific motivating ideology or
14 the opinion or perspective of the speaker," *id.*; nor may it "favor some viewpoints or
15 ideas at the expense of others," (*Members of City Council v. Taxpayers for Vincent*,
16 466 U.S. 789, 804, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984). The Ninth Circuit
17 recognizes the longstanding principles that instruct that "government may not favor
18 speakers on one side of a public debate." (*Hoye v. City of Oakland*, 653 F.3d 835,
19 849 (9th Cir. 2011); *Moss v. United States Secret Serv.* (9th Cir. 2012) 675 F.3d
1213, 1223.)

20 53. A restriction on speech is viewpoint-based if (1) on its face, it distinguishes
21 between types of speech or speakers based on the viewpoint expressed; or (2) though
22 neutral on its face, the regulation is motivated by the desire to suppress a particular
23 viewpoint. (See *Berger v. City of Seattle*, 569 F.3d 1029, 1051 (9th Cir. 2009) (en
24 banc) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642-43, 114 S. Ct. 2445,
25 129 L. Ed. 2d 497 (1994); *ACLU v. City of Las Vegas*, 466 F.3d 784, 793 (9th Cir.
2006) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105

1 L. Ed. 2d 661 (1989); *Moss v. United States Secret Serv.* (9th Cir. 2012) 675 F.3d
2 1213, 1224.)

3 54. By investigating Stannard and not investigating the people he was speaking
4 to, SCCCD engaged in invidious viewpoint discrimination. In the conversation at
5 the faculty training session, Stannard was told that the behavior of Trump supporters
6 on January 6 was execrable. Stannard's response was that black store owners during
7 the BLM riots were equally subjected to bad behavior. In sum, one side of the
8 conversation (the "Progressive side") was that conservatives/Republicans/Trump
9 supporters should be condemned for January 6 and the other side of the conversation
10 (the "Conservative side") voiced the position that rioters during the BLM riots of
11 2020 should similarly be condemned. SCCCD chose to ignore the Progressive side's
12 involvement in the discussion, which was not investigated for possible harassment
13 and discrimination because of SCCCD's embrace of a policy and practice of
14 viewpoint discrimination.

15 55. Likewise, the second conversation at the Justice and Healing Circle also
16 involved the exchange of different political positions. After the nuclear family had
17 been criticized, Dr. Stannard offered an explanation about why the nuclear family
18 had merit. Again, SCCCD ignored the fact that there were two sides to the discussion
19 and treated the side that Stannard was espousing as impermissible.

20 56. Similarly, with respect to Richardson, SCCCD ignored that there was a
21 conversation with two sides and that Richardson's position expressed viewpoints
22 that mirrored the position of JM. Thus, after JM chose to speak to third parties,
23 Richardson chose to speak to third parties. After JM announced that he could create
24 his own grammatically confusing PGP, Richardson chose to do so as well. Again,
25 SCCCD ignored JM's speech actions but chose to punish the identically mirroring
speech of Richardson.

1 57.Plaintiffs are also informed that SCCCD distinguished between the speech
2 involved based on the viewpoints expressed. Plaintiffs are further informed and
3 believe and therefore allege that SCCCD’s policies and conduct were motivated by
4 an animus against the “conservative” side of the debate.

5 **F. CHILLING THE EXERCISE OF FREE SPEECH.**

6 58.Plaintiffs’ exercise of their free speech rights have been chilled by SCCCD’s
7 actions. Dr. Stannard has withdrawn from social justice circles and other forms of
8 social interaction on his own time because of this incident and being told by SCCCD
9 that he might be held liable for his private and personal speech on his own time in
10 activities sponsored by SCCCD. Likewise, he has censored himself during activities
11 related to mandatory trainings, although he hears constant attacks on conservatives,
12 religious, traditional and, in general, non-leftist viewpoints.

13 59.Richardson likewise has engaged in self-censorship.

14 **G. ACADEMIC FREEDOM**

15 60. "Academic freedom, though not a specifically enumerated constitutional
16 right, long has been viewed as a special concern of the First Amendment."
17 (*University of California Regents v. Bakke*, 438 U.S. 265, 312, 98 S. Ct. 2733, 57 L.
18 Ed. 2d 750 (1978); see also *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 87 S.
19 Ct. 675, 17 L. Ed. 2d 629 (1967) (academic freedom is "a special concern of the First
20 Amendment, which does not tolerate laws that cast a pall of orthodoxy over the
21 classroom"). The roots of academic freedom are found in the first amendment insofar
22 as it protects against infringements on a teacher's freedom concerning classroom
23 content and method." (*Hillis v. Stephen F. Austin State University*, 665 F.2d 547,
24 553 (5th Cir. 1982))

25 61.The Supreme Court has repeatedly stressed the importance of protecting
academic freedom under the First Amendment. It wrote in *Keyishian*:

1 Our Nation is deeply committed to safeguarding academic freedom, which is
2 of transcendent value to all of us and not merely to the teachers concerned.
3 That freedom is therefore a special concern of the First Amendment, which
4 does not tolerate laws that cast a pall of orthodoxy over the classroom. "The
5 vigilant protection of constitutional freedoms is nowhere more vital than in
6 the community of American schools."

7 *Id.* at 603 (*quoting Shelton v. Tucker*, 364 U.S. 479, 487, 81 S. Ct. 247, 5 L. Ed. 2d
8 231 (1960)). It had previously written to the same effect in *Sweezy v. New
9 Hampshire*:

10 The essentiality of freedom in the community of American universities is
11 almost self-evident. . . . To impose any strait jacket upon the intellectual
12 leaders in our colleges and universities would imperil the future of our Nation.
13 . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust.
14 Teachers and students must always remain free to inquire, to study and to
15 evaluate, to gain new maturity and understanding; otherwise our civilization
16 will stagnate and die.

17 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). More recently, the Court
18 wrote in *Grutter v. Bollinger*, "We have long recognized that, given the important
19 purpose of public education and the expansive freedoms of speech and thought
20 associated with the university environment, universities occupy a special niche in
21 our constitutional tradition." 539 U.S. 306, 329, 123 S. Ct. 2325, 156 L. Ed. 2d 304
22 (2003); see also *Rust v. Sullivan*, 500 U.S. 173, 200, 111 S. Ct. 1759, 114 L. Ed. 2d
23 233 (1991) ("[T]he university is . . . so fundamental to the functioning of our society
24 that the Government's ability to control speech within that sphere by means of
25 conditions attached to the expenditure of Government funds is restricted by the
vagueness and overbreadth doctrines of the First Amendment."); See *Rosenberger
v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 835, 115 S. Ct. 2510, 132

1 L. Ed. 2d 700 (1995) (stating that the university has a “background and tradition of
2 thought and experiment that is at the center of our intellectual and philosophic
3 tradition”); *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 671, 93 S. Ct.
4 1197, 35 L. Ed. 2d 618 (1973) (per curiam) (stating that “the First Amendment leaves
5 no room for the operation of a dual standard in the academic community with respect
6 to the content of speech”).

7 62.The Ninth Circuit has held that the envelope of academic freedom is
8 expansive, to wit: “We therefore doubt that a college professor's expression on a
9 matter of public concern, directed to the college community, could ever constitute
10 unlawful harassment and justify the judicial intervention that plaintiffs seek.”
11 (*Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605 F.3d 703,
12 710.)

13 **H. SCCCD’S POLICIES CHILL THE EXERCISE OF FREE SPEECH.**

14 63.The chilling effect on plaintiffs’ free speech through the unequal application
15 of the SCCCD’s policies is exacerbated by the vagueness and ambiguity of
16 SCCCD’s AR 3430 (Prohibition of Harassment) and AR 3435 (Discrimination,
17 Harassment, Retaliation, and Sexual Misconduct, Complaints and Investigations.)

18 64.AR 3435 includes the following definition of “discrimination”:

19 "Discrimination" includes the unfair or unjust treatment of an
20 individual based on certain protected characteristics that adversely
21 affects their employment or academic experience. An adverse action
22 for discrimination purposes is any action taken or pattern of conduct
23 that, taken as a whole, materially and adversely affected the terms,
24 conditions, privileges, benefits of or the ability to fully participate in
25 activities or events associated with an individual's employment or
academic environment. An adverse action includes conduct that is
reasonably likely to impair a reasonable individual's work or
academic performance or prospects for advancement or promotion.
However, minor or trivial actions or conduct that is not reasonably

1 likely to do more than anger or upset an individual cannot constitute
2 an adverse action.

3 65. “Protected Characteristics” are defined in AR 3435 as:

4 "Protected Characteristics" include race, color, ethnicity, national
5 origin, ancestry, religious creed, age, sex/gender, gender identity,
6 gender expression, medical condition, pregnancy, sexual orientation,
7 marital status, physical/mental disability, genetic information,
8 military/ veteran status, or opposition to unlawful discrimination or
harassment, or because they are perceived to have one or more of
those foregoing characteristics.

9 66. AR 3435 includes the following definition of “harassment”:

10 "Harassment" includes conduct based on certain protected
11 characteristics that creates a hostile, offensive, oppressive, or
12 intimidating work or educational environment and deprives a person
13 of their statutory right to work or learn in an environment free from
14 harassment. In the workplace, harassment also includes conduct
15 based on certain protected classes that sufficiently offends,
16 humiliates, distresses, or intrudes upon a person, so as to disrupt the
17 person's emotional tranquility in the workplace, affect their ability to
perform the job as usual, or otherwise interfere with and undermine
their personal sense of well-being. (Refer to AR 3430 - Prohibition
of Harassment for specific examples of harassment).

18 67. The definition of “harassment” is vague and inaccurate in that it includes a
19 partial legal definition of “harassment.” The definition of “harassment” has always
20 included a subjective and an objective element. The harassment must satisfy an
21 objective and a subjective standard. (*Ortiz v. Dameron Hospital Assn.* (2019) 37
22 Cal.App.5th 568, 582-583.) (“[T]he objective severity of harassment should be
23 judged from the perspective of a reasonable person in the plaintiff's position,
24 considering ‘all the circumstances.’ ...” (*Miller v. Department of Corrections*,
25 *supra*, 36 Cal.4th at p. 462.) And, subjectively, an employee must perceive the work
environment to be hostile. [Citation.] Put another way, “[t]he plaintiff must prove

1 that the defendant's conduct would have interfered with a reasonable employee's
2 work performance and would have seriously affected the psychological well-being
3 of a reasonable employee and that [she] was actually offended.' [Citation.]" (*Hope*
4 *v. California Youth Authority* (2005) 134 Cal.App.4th 577, 588.") While the
5 legislature endorses a subjective definition of "harassment that "includes conduct
6 based on certain protected classes that sufficiently offends, humiliates, distresses, or
7 intrudes upon a person, so as to disrupt the person's emotional tranquility in the
8 workplace, affect their ability to perform the job as usual, or otherwise interfere with
9 and undermine their personal sense of well-being" (Government Code §12933), this
10 subjective definition has always been paired with an objective element requiring
11 that the harassing conduct be persistent, pervasive, and/or severe from the
12 perspective of a person with the same protected characteristics as the complaining
13 party. (*Caldera v. Department of Corrections & Rehabilitation* (2018) 25
14 Cal.App.5th 31, 38 ("All harassment claims require severe or pervasive conduct.");
15 4 California Forms of Jury Instruction 2523 (2022); 4 California Forms of Jury
16 Instruction 2524 (2022).)

16 68.AR 3435 equates "harassment" with subjectively "unwelcome" conduct, as
17 can be seen in the following language:

18 **Communicating that the Conduct is Unwelcome**

19 When a person experiences unwelcome conduct, the District
20 encourages employees, students, and third parties to let the offending
21 person know immediately and clearly that the conduct or behavior is
22 unwelcome, offensive, in poor taste and/or inappropriate.

22 69.On its face, AR 3435 is vague and overbroad for the following reasons.

23 70.First AR 3435 is vague because it purports to provide a definition of
24 harassment that ignores elements that substantially qualify the language of the
25 policy.

1 71.Second, it is overbroad because by providing only the subjective element that
2 defines harassment as “conduct” that is “unwelcome” or “offends” the complainer,
3 it extends to speech that is protected by the First Amendment even though such
4 speech might be unwelcome or offend the hearer.

5 72.Third, the conduct complained of could not have been pervasive, persistent,
6 or severe since the alleged conduct was a single verbal statement that shared
7 information. The only way that the conduct could have been deemed “pervasive,
8 persistent or severe” is if SCCCD employed a subjective standard whereby the
9 subjective experience of the alleged harassed person defined harassment. This is
10 consistent with the questions Dr. Stannard was asked about whether he was aware
11 of someone crying with rage at one of his statements.

12 73.A further circumstance is that SCCCD has embraced and implemented “anti-
13 racism” and similar ideologies as part of its official philosophy. Dr. Stannard and
14 other SCCCD have been required to attend “anti-racist” trainings. SCCCD’s
15 webpage on “Justice, Equity, Diversity, Inclusion and Equal Employment
16 Opportunities” refers to and recommends “Resources” including a “Code of Ethics
17 for White Anti-Racists” and “For our White Friends Desiring to be Allies.” The
18 Equity, Diversity and Inclusion also recommended as a “resource” the LeftRoots
19 website, which is an overt leftwing website. In 2021, SCCCD required its faculty to
20 read Ibrahim X. Kendi’s “How to be an Anti-Racist.” The gist of this ideology is
21 that there is a thing called “whiteness” that subsists in “whites” and makes them
22 intrinsically “racist” against “People of Color.” “Whites” who want to “do the work”
23 against “whiteness” must acknowledge their “racism” and not merely refrain from
24 “racism” but confess their own “racism” and publicly condemn “racism” wherever
25 it is discerned. A problem with this ideology is that the term “racism” is not

1 rigorously defined but often roughly defines “racism” as political and philosophical
2 positions that are not consistent with contemporary leftwing political positions⁶.

3 74. These features are consistent with the fact that Dr. Stannard was subject to an
4 investigation for harassment based on (a) a comment about the harm done to black
5 business owners during the 2020 riots and (b) his statement that children did best in
6 families with their biological parents. Neither statement implicates any protected
7 class, but under an “anti-racist” approach, statements that do not publicly agree with
8 an undefined set of partisan political positions is construed as “racist” if the
9 statement is objected to by someone claiming to be an” anti-racist.”

10 75. A final factor is that SCCCD’s policy on Academic Freedom is vague. AR
11 4030 states:

12 The District is unequivocally and unalterably committed to the
13 principle of academic freedom in its true sense which includes
14 freedom to study, freedom to learn and freedom to teach and provide
15 educational professional services to students....Faculty must,
16 however, accept the responsibility that accompanies academic
17 freedom. The right to exercise any liberty implies a duty to use it
18 responsibly. Academic freedom does not give faculty freedom to
19 engage in indoctrination. Nor can faculty invoke the principle of
20 academic freedom to justify non-professional conduct.

21 76. SCCCD does not define professional conduct or where academic freedom
22 ends and “responsibility that accompanies academic freedom” begins.

23 77. As a result of this vagueness, SCCCD’s “harassment” policy has been
24 unconstitutionally applied to speech protected by the First Amendment.
25

⁶ “Capitalism is essentially racist; racism is essentially capitalist. They were birthed together from the same unnatural causes, and they shall one day die together from unnatural causes. Or racial capitalism will live into another epoch of theft and rapacious inequity, especially if activists naïvely fight the conjoined twins independently, as if they are not the same”. (Kendi, Ibram X.. How to Be an Antiracist (p. 163). Random House Publishing Group. Kindle Edition.)

1 **II. FIRST CAUSE OF ACTION : VIOLATION OF THE FIRST**
2 **AMENDMENT**

3 78. Plaintiffs incorporate each and every allegation contained in the Background
4 Allegations.

5 79. "The Constitution embraces such a heated exchange of views, even (perhaps
6 especially) when they concern sensitive topics like race, where the risk of conflict
7 and insult is high. (See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391, 112 S. Ct. 2538,
8 120 L. Ed. 2d 305 (1992). Without the right to stand against society's most strongly
9 held convictions, the marketplace of ideas would decline into a boutique of the banal,
10 as the urge to censor is greatest where debate is most disquieting and orthodoxy most
11 entrenched. See, e.g., *Gitlow v. New York*, 268 U.S. 652, 667, 45 S. Ct. 625, 69 L.
12 Ed. 1138 (1925); *id.* at 673 (Holmes, J., dissenting). The right to provoke, offend
13 and shock lies at the core of the First Amendment." (*Rodriguez v. Maricopa County*
Cnty. College Dist. (9th Cir. 2009) 605 F.3d 703, 708.)

14 80. "This is particularly so on college campuses. Intellectual advancement has
15 traditionally progressed through discord and dissent, as a diversity of views ensures
16 that ideas survive because they are correct, not because they are popular. Colleges
17 and universities--sheltered from the currents of popular opinion by tradition,
18 geography, tenure and monetary endowments--have historically fostered that
19 exchange. But that role in our society will not survive if certain points of view may
20 be declared beyond the pale. "Teachers and students must always remain free to
21 inquire, to study and to evaluate, to gain new maturity and understanding; otherwise
22 our civilization will stagnate and die." (*Keyishian v. Bd. of Regents of the Univ. of*
23 *the State of N.Y.*, 385 U.S. 589, 603, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967) (quoting
24 *Sweezy v. New Hampshire*, 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d 1311
25 (1957)). We have therefore said that "[t]he desire to maintain a sedate academic
environment . . . [does not] justify limitations on a teacher's freedom to express

1 himself on political issues in vigorous, argumentative, unmeasured, and even
2 distinctly unpleasant terms." (*Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir.
3 1975).” (*Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605
4 F.3d 703, 708-709.)

5 81. “There is no categorical ‘harassment exception’ to the First Amendment’s
6 free speech clause.” (*Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir.
7 2001) (Alito, J.). Rather, “[t]he right to provoke, offend and shock lies at the core of
8 the First Amendment. This is particularly so on college campuses. Intellectual
9 advancement has traditionally progressed through discord and dissent, as a diversity
10 of views ensures that ideas survive because they are correct, not because they are
11 popular.” (*Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir.
12 2010). “[I]f it is the speaker’s opinion that gives offense, that consequence is a reason
13 for according it constitutional protection.” (*Hustler Magazine, Inc. v. Falwell*, 485
14 U.S. 46, 55 (1988).

15 82. In *Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605
16 F.3d 703, 710, the Ninth Circuit held:

17 We therefore doubt that a college professor's expression on a
18 matter of public concern, directed to the college community, could
19 ever constitute unlawful harassment and justify the judicial
20 intervention that plaintiffs seek. See Eugene Volokh, Comment,
21 Freedom of Speech and Workplace Harassment, 39 UCLA L. Rev.
22 1791, 1849-55 (1992). Harassment law generally targets conduct,
23 and it sweeps in speech as harassment only when consistent with the
24 First Amendment. See *R.A.V.*, 505 U.S. at 389-90. For instance,
25 racial insults or sexual advances directed at particular individuals in
the workplace may be prohibited on the basis of their non-expressive
qualities, *Saxe*, 240 F.3d at 208, as they do not "seek to disseminate
a message to the general public, but to intrude upon the targeted
[listener], and to do so in an especially offensive way," *Frisby v.*
Schultz, 487 U.S. 474, 486, 108 S. Ct. 2495, 101 L. Ed. 2d 420
(1988). See, e.g., *Flores*, 324 F.3d at 1133, 1135; *Meritor Sav. Bank*,

1 FSB v. Vinson, 477 U.S. 57, 60, 73, 106 S. Ct. 2399, 91 L. Ed. 2d 49
2 (1986). But Kehowski's website and emails were pure speech; they
3 were the effective equivalent of standing on a soap box in a campus
4 quadrangle and speaking to all within earshot. Their offensive
5 quality was based entirely on their meaning, and not on any conduct
6 or implicit threat of conduct that they contained. (.)

5 83. SCCCD's discriminatory harassment policy is unconstitutionally
6 overbroad. By its terms, the policy plainly applies to protected speech. And
7 virtually any opinion or political belief—as well as any use of humor, satire, or
8 parody—could be perceived as “harassing” or “humiliating.”

9 84. While a university might be able to prohibit harassment that amounts to
10 “discrimination” against a protected class that is “so severe, pervasive, and
11 objectively offensive that it can be said to deprive the victims of access to the
12 educational opportunities or benefits provided by the school,” (*Davis ex rel.*
13 *LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999)), as applied,
14 the SCCCD's verbal-harassment rule goes far beyond that to censor speech
15 protected by the First Amendment.

16 85. The Supreme Court has also consistently recognized the “substantial and
17 expansive threats to free expression posed by content-based restrictions.” (*United*
18 *States v. Alvarez*, 567 U.S. 709, 717 (2012). “Content-based regulations are”
19 therefore “presumptively invalid.” (*R.A.V. v. City of St. Paul*, 505 U.S. 377, 382
20 (1992). “[A]ny restriction based on the content of the speech must satisfy strict
21 scrutiny, that is, the restriction must be narrowly tailored to serve a compelling
22 government interest.” (*Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009).)

23 86. “The First Amendment’s hostility to content-based regulation extends” to
24 “restrictions on particular viewpoints.” (*Reed v. Town of Gilbert*, 135 S. Ct. 2218,
25 2230 (2015)). Policies cannot “suppress disfavored speech.” (*Id.* at 2229.)

1 Viewpoint discrimination is flatly prohibited. (See *Iancu v. Brunetti*, 139 S. Ct.
2 2294, 2302 (2019).)

3 87.By restricting speech about academic subjects that might be interpreted as
4 involving personal characteristics such as race, ethnicity, or gender, SCCCD’s
5 discriminatory-harassment policy is a content-based and viewpoint-based
6 restriction on protected speech. SCCCD has no compelling interest in suppressing
7 the unfettered exchange of viewpoints. Even if SCCCD could identify a compelling
8 interest, its viewpoint-discriminatory ban is not narrowly tailored to further that
9 interest.

10 88.SCCCD’s policies also violated the rights of Plaintiffs and other instructors
11 under the First and Fourteenth Amendments by burdening their speech on the basis
12 of the viewpoints expressed with lengthy investigations during which Plaintiffs’
13 ability to freely express themselves was chilled by the prospect that if they said
14 anything inconsistent with the viewpoints allowed by SCCCD or leftwing
15 instructors such statements would be used against them. Both of plaintiffs academic
16 freedom and right of free speech was also burdened on the basis of viewpoint
17 discrimination in that in both cases, in that they received either a warning or a
18 discipline based on speech that fell within Plaintiffs’ First Amendment/Academic
19 Freedom rights, while those who made equivalent statements with viewpoints that
20 were supported by SCCCD were not warned or disciplined. Hence, Richardson was
21 subjected to discipline and Stannard was told by Lori Bennett, President of Clovis
22 Community College:

23 While your comments did not rise to the level of discrimination in
24 violation of District policy, the investigative interviews
25 demonstrated that some employees were offended by your
comments. I encourage you, and all employees, to demonstrate
empathy toward others and to reflect on how statements we make

1 may impact others to ensure that we are creating an inclusive
2 working and learning environment for all employees and students.

3 89. Stannard was also warned that if he “retaliated” against the unknown
4 complainants, he would be subject to discipline and that:

5 “State Center Community College District does not condone
6 harassment, discrimination, unprofessional conduct, or other
7 misconduct in the workplace or educational environment and takes
8 such complaints seriously. The District has a strong policy
prohibiting discrimination, harassment, and retaliation and a
thorough investigation has been conducted of this complaint.”

9 90. Plaintiff is informed and believes that the other people participating in the
10 discussions with Plaintiff were not accused of harassment, that they were not
11 investigated, that they were not interviewed and asked questions that assumed they
12 were racist based on the color of their skin, and were not told that their statements
13 “did not rise to the level of a discrimination in violation of District policy” without
14 providing context for how such statement could ever rise to that level, and were not
15 thereafter told that their statement “offended” other people – as if that were a
16 relevant criteria in an academic discussion – or told to “demonstrate empathy.” A
17 reasonable person would believe – and Stannard did believe – that he was being
18 singled out because of the contents of his statement for disparate treatment designed
19 to warn, threaten and chill his speech with threats that some future statement made
20 in an academic discussion to some other person making a statement might “rise to
21 the level of a discrimination in violation of District policy” and result in the
threatened sanctions being imposed on him.

22 91. In addition, the application of SCCCD’s policies, including AR 3435, has
23 been applied in the case of the Plaintiffs to speech that is constitutionally protected.
24 As such SCCCD’s harassment-discrimination policies are unconstitutional as
25 applied.

1 92. In addition, the discipline imposed on Richardson violated the First and
2 Fourteenth Amendments to the United States Constitution in that they bore no
3 reasonable relationship to any constitutionally-permitted objective or condition of
4 the employment relationship but instead unconstitutionally burdened Richardson's
5 academic freedom and right to free speech by, inter alia, imposing viewpoint
6 discrimination on Richardson and forcing him to mouth and/or accept the tenets of
7 a sectarian political position.

8 93. Defendant adopted this unconstitutional policy under color of state law. This
9 action is brought pursuant to 42 USC §1983 for prospective relief, injunctive relief
10 and declaratory relief. Plaintiffs are entitled to attorney's fees pursuant to 42 USC
11 §1988(b).

12 **III. SECOND CAUSE OF ACTION: VIOLATION OF FIRST AND**
13 **FOURTEENTH AMENDMENTS.**

14 94. Plaintiff incorporates each and every allegation contained in paragraphs 1
15 through 93, inclusive, of this Complaint.

16 95. "It is a basic principle of due process that an enactment is void for vagueness
17 if its prohibitions are not clearly defined." (*Grayned v. City of Rockford*, 408 U.S.
18 104, 108 (1972)). "[T]he vagueness doctrine has two primary goals: (1) to ensure
19 fair notice to the citizenry and (2) to provide standards for enforcement [by
20 officials]." (*Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551
21 (6th Cir. 2007); see also *In re Hunt*, 835 F.3d 1277, 1279 (11th Cir. 2016) (An
22 "impossibly vague" law or regulation "guarantees arbitrary enforcement of the law
and denial of fair notice to the public."))

23 96. With respect to the first goal, ... "[a] statute which either forbids or requires
24 the doing of an act in terms so vague that [individuals] of common intelligence must
25 necessarily guess at its meaning and differ as to its application, violates the first

1 essential of due process of law.” (Id. (quoting *Connally v. Gen. Constr. Co.*, 269
2 U.S. 385, 391 (1925).) “With respect to the second goal, ... ‘if arbitrary and
3 discriminatory enforcement is to be prevented, laws must provide explicit standards
4 for those who apply them. A vague law impermissibly delegates basic policy matters
5 to [officials] for resolution on an ad hoc and subjective basis.” (Id. (quoting
6 *Grayned*, supra, 408 U.S., at 108-09).)

7 97. This principle of clarity is especially demanding when First Amendment
8 freedoms are at stake. If the challenged law “interferes with the right of free speech
9 or of association, a more stringent vagueness test should apply.” (*Village of Hoffman*
10 *Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). “Certainty is
11 all the more essential when vagueness might induce individuals to forego their rights
12 of speech, press, and association for fear of violating an unclear law.” (*Scull v. Va.*
13 *ex rel. Comm. on Law Reform & Racial Activities*, 359 U.S. 344, 353 (1959).)

14 98. SCCCD discrimination-harassment policy lacks any definitions, detail,
15 context, or notice to faculty about what sorts of language the University views as
16 “harassing,” “invasive,” or “unwanted.” The only clue the policy provides is that the
17 acceptability of certain communications turns on what an observer or recipient
18 subjectively perceives as “unwelcome.” This provision is “impossibly vague” and
19 therefore unconstitutional.”

20 99. In addition, the application of SCCCD’s policies, including AR 3435, has
21 been applied in the case of the Plaintiffs to speech that is constitutionally protected.
22 As such SCCCD’s harassment-discrimination policies are unconstitutional as
23 applied.

24 100. Defendant adopted this unconstitutional policy under color of state
25 law. This action is brought pursuant to 42 USC §1983 for prospective relief,
injunctive relief, and declaratory relief. Plaintiffs are entitled to attorney’s fees
pursuant to 42 USC §1988(b).

1 Wherefore, Plaintiffs pray judgment as follows:

- 2 1. For Declaratory Judgment that AR 34235 is unconstitutional on its
3 face and/or as applied in this case because it violates the First and
4 Fourteenth Amendments to the United States Constitution.
- 5 2. For Declaratory Judgment that SCCCD's PGP policy is on its face
6 and/or as applied in this case because it violates the First and
7 Fourteenth Amendments to the United States Constitution.
- 8 3. For Declaratory Judgment that SCCCD's Discrimination-Harassment
9 policy is unconstitutional on its face and/or as applied in this case
10 because it violates the First and Fourteenth Amendments to the United
11 States Constitution.
- 12 4. For Declaratory Judgment that the discipline imposed by SCCCD on
13 Richardson were unconstitutional as applied in this case because it
14 violates the First and Fourteenth Amendments to the United States
15 Constitution.
- 16 5. For Injunctive Relief prohibiting SCCCD from enforcing the policies
17 that violated the First and Fourteenth Amendments to the United
18 States Constitution as alleged herein.
- 19 6. For attorney's fees as pled.
- 20 7. For costs of suit herein incurred; and
- 21 8. For such other and further relief as the court deems proper.
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Dated: June 10, 2022.

Peter Sean Bradley, Esq.

Peter Sean Bradley

By _____
Peter Sean Bradley
Attorney for Plaintiffs