

DANIEL M. ORTNER (California State Bar No. 329866)
daniel.ortner@thefire.org
JEFFREY D. ZEMAN (Pennsylvania Bar No. 328570)*
jeff.zeman@thefire.org
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION
510 Walnut Street, Suite 900
Philadelphia, PA 19106
Telephone: (215) 717-3473
Attorneys for Plaintiffs

*Admitted *Pro Hac Vice*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

ALEJANDRO FLORES, ET AL.,

Plaintiffs,

v.

DR. LORI BENNETT, ET AL.,

Defendants.

Civil Action No: 1:22-cv-01003-JLT-HBK

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Alejandro Flores, Daniel Flores, Juliette Colunga, and Young Americans for Freedom at Clovis Community College (represented by President Hannah Edwards) (“Plaintiffs”), on the one hand, and State Center Community College District, a community college district of the State of California on behalf of each of the community colleges and educational centers in the District (which are Clovis Community College (“Clovis”), Madera Community College, Madera Community College at Oakhurst, Reedley College, Fresno City College, and the Career and Technology Center) as well as Dr. Lori Bennett, Marco J. De La Garza, Gurdeep Hébert, and Patrick Stumpf in both their official capacity as current and former officials of Clovis Community College and in their individual capacities (“Defendants”), on the other hand.

DEFINITIONS

As used in this Agreement:

“Defendants” include State Center Community College District (“SCCCD”) acting on behalf of each of the community colleges and educational centers in the District (which are Clovis

Community College, Madera Community College, Madera Community College at Oakhurst, Reedley College, Fresno City College, and the Career and Technology Center) and their departments, administrators, employees, agents, insurers, reinsurers, claims adjusters, and attorneys, as well as Dr. Lori Bennett, herself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Lori Bennett, Marco J. De La Garza, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Marco J. De La Garza, Gurdeep Hébert, herself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Gurdeep Hébert, and Patrick Stumpf, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Patrick Stumpf.

“Plaintiffs” include Alejandro Flores, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Alejandro Flores, Daniel Flores, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Daniel Flores, Juliette Colunga, herself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Juliette Colunga, and Young Americans for Freedom at Clovis Community College (“YAF-Clovis”) and its administrators, agents, attorneys, representatives (including current President Hannah Edwards), and all other persons or entities claiming through YAF-Clovis.

“FIRE” is the Foundation for Individual Rights and Expression, a nonprofit organization and counsel for Plaintiffs.

“Manager” means Employees in positions designated as management by the State Center Board of Trustees, including the Chancellor, Vice Chancellors, College Presidents, Vice Presidents, Deans, Associate Deans, Executive Directors, Senior Directors, Directors, and all other managers.

RECITALS

WHEREAS, Plaintiffs filed a lawsuit against Defendants in the United States District Court for the Eastern District of California (“District Court”) captioned *Alejandro Flores; Daniel Flores; Juliette Colunga; and Young Americans for Freedom at Clovis Community College, Plaintiffs v. Dr. Lori Bennett, in her individual and official capacities as President of Clovis Community College; Marco J. De La Garza, in his individual and official capacities as Vice President of Student Services at Clovis Community College; Gurdeep Hébert, in her individual and official capacities as Dean of Student Services at Clovis Community College; and Patrick Stumpf, in his individual and official capacities as Senior Program Specialist at Clovis Community College*, Defendants, Case No. 1:22-cv-01003-JLT-HBK (the “Lawsuit”);

WHEREAS, Plaintiffs alleged in the Lawsuit that Defendants violated the First and Fourteenth Amendments to the United States Constitution by removing Plaintiffs’ flyers from the indoor bulletin boards of Clovis Community College and denying Plaintiffs the permission to post other flyers on indoor bulletin boards based on viewpoint under a viewpoint-discriminatory overbroad, and vague, policy, and prior restraint prohibiting flyers Clovis officials deemed

“inappropriate” or “offensive”;

WHEREAS, Plaintiffs and Defendants wish to resolve all disputes and claims raised in the Lawsuit.

WHEREAS, Plaintiffs and Defendants agree that a Settlement Agreement that extends to SCCCD on behalf of its constituent community colleges and educational centers and their employees and representatives will better secure Plaintiffs’ First Amendment rights and ensure consistent application of the terms of this Settlement Agreement.

WHEREAS, Plaintiffs covenant that they have not assigned, transferred, or subrogated any portion of any claim that they have asserted or could have asserted in the Lawsuit; and

WHEREAS, for and in consideration of the promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, Plaintiffs and Defendants now compromise and settle the Lawsuit under the terms provided in this Agreement. The foregoing recitals are a substantive part of this Agreement.

I. CONSIDERATION AND RELEASE OF CLAIMS

(A) Entry of a Permanent Injunction, Judgment, and Order: For and in consideration of Plaintiffs’ promises and obligations under this Agreement, Defendants agree that they will join Plaintiffs in requesting that the Court enter the stipulated permanent injunction, judgment, and order attached as Exhibit A.

The stipulated permanent injunction, judgment, and order will include the following permanent injunction language:

State Center Community College District, its subsidiary colleges and educational centers, and their administrators, employees, and agents are permanently enjoined from enforcing, by policy or practice, any unlawful viewpoint-discriminatory, overbroad, or vague regulation, or prior restraint, on the content of recognized student-club speech, including but not limited to bans on “inappropriate” or “offensive” language.

This agreement will not be binding unless and until the Court enters this permanent injunction without alteration.

The stipulated permanent injunction, judgment, and order will also include language requiring the adoption of the Replacement Posting Procedure described in Section I(B).

(B) Adoption of Replacement Posting Procedure: For and in consideration of Plaintiffs’ promises and obligations under this Agreement, Defendants agree that they will join Plaintiffs in requesting that the Court order SCCCD to adopt and operate according to the Replacement Posting Procedure attached as Exhibit B for all SCCCD community colleges and educational centers, including Clovis Community College.

At the time of adoption, all existing flyer procedures at Clovis Community College and the other subsidiary community colleges and educational centers will be rescinded and removed from any place they exist at that time.

The Replacement Posting Procedure attached as Exhibit B will be posted on the Clovis Community College intranet page, the public-facing Clovis club handbook webpage, any relevant SCCCD webpages, and in the Clovis Community College Student Center. Copies of the Posting Procedure attached as Exhibit B will also be available to Clovis students and staff upon request at the Student Center. SCCCD will provide to Plaintiffs' counsel a copy of the Replacement Posting Procedure as further described in Section III(B).

The Replacement Posting Procedure adopted for other community colleges and educational centers in SCCCD may be adapted to reflect campus conditions such as the location and quantity of bulletin boards and the names and titles of administrators responsible for overseeing student organizations.

(C) First Amendment Training of SCCCD Managers: SCCCD will provide annual documented First Amendment training to all managers. The first training will be held in December 2024 and subsequent trainings will be conducted annually during SCCCD's quarterly management meetings. For the training that will be held in December 2024 and the following training held in 2025, these trainings will be conducted by qualified outside counsel. Subsequent annual trainings may be conducted by a qualified in-house attorney or outside counsel.

For the December 2024 and 2025 trainings, SCCCD agrees to certify to FIRE the number of people that attended and to submit a copy of the training materials. This certification will be submitted no more than thirty days after each training is completed.

This training will include, without limitation, the following topics:

- a. the parameters of protected speech and expression on college campuses;
- b. the prohibition on viewpoint-based discrimination by government actors;
- c. college students' entitlement to the full protection of the First Amendment;
- d. that campus administrators cannot limit speech by students or recognized student-group speech because they deem that speech "inappropriate" or "offensive";
- e. the First Amendment's limits on prior restraints;
- f. the First Amendment overbreadth doctrine; and,
- g. the Fourteenth Amendment's prohibition on vague speech policies.

The training must also include details about the following United States Supreme Court, Ninth Circuit Court of Appeals, and Eastern District of California cases:

- a. *Healy v. James*, 408 U.S. 169 (1972);
- b. *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667 (1973);
- c. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985);
- d. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995);
- e. *Matal v. Tam*, 582 U.S. 218 (2017);
- f. *Minnesota Voters All. v. Mansky*, 585 U.S. 1 (2018);
- g. *Shurtleff v. Boston*, 596 U.S. 243 (2022);
- h. *Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126 (9th Cir. 2018);
- i. *Cuviello v. City of Vallejo*, 944 F.3d 816 (9th Cir. 2019);
- j. *Flores v. Bennett*, No. 22-16762, 2023 WL 4946605 (9th Cir. Aug. 3, 2023);
- k. *Flores v. Bennett*, 635 F. Supp. 3d 1020 (E.D. Cal. 2022).

(D) **Damages, Attorneys' Fees, and Costs:** For and in consideration of Plaintiffs' promises and obligations under this Agreement, Defendants agree to pay the gross sum of \$330,000.00 (three hundred and thirty thousand dollars and zero cents) (the "Payment"). Of the Payment, \$20,000.00 (twenty thousand dollars and zero cents) in damages shall be made by one check payable directly to Daniel Flores; \$20,000.00 (twenty thousand dollars and zero cents) in damages shall be made by one check payable directly to Alejandro Flores; \$20,000.00 (twenty thousand dollars and zero cents) in damages shall be made by one check payable directly to Juliette Colunga; and \$20,000.00 (twenty thousand dollars and zero cents) in damages shall be made by one check payable to the Young America's Foundation noting "For Young Americans for Freedom at Clovis Community College" in the check's memo field. The remaining \$250,000.00 (two hundred and fifty thousand dollars and zero cents) of the Payment shall be paid by check payable to the Foundation for Individual Rights and Expression, in satisfaction of attorneys' fees and costs. Upon execution of this Agreement, each individual Plaintiff and FIRE will promptly provide Defendants an IRS Form W-9 or other suitable written communication providing the tax identification number for each Plaintiff, the Young America's Foundation, and FIRE. The Payment shall be made in accordance with Section III(C) of this Agreement.

(E) **Dismissal of the Lawsuit:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiffs agree to dismiss with prejudice all damages claims and claims for attorneys' fees and costs asserted in the Lawsuit or that could have been asserted in the Lawsuit in accordance with the process set forth in this Agreement, other than those claims

subject to the Court's permanent injunction and order. The permanent injunction will run against State Center Community College District, its subsidiary colleges and educational centers, and their administrators, employees, and agents, including those administrators, employees, and agents currently holding the positions held by the official-capacity Defendants at the time when Plaintiffs filed their lawsuit, but not against the named Defendants in their individual capacities.

(F) **Release by Plaintiffs:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiffs hereby release and forever discharge any and all Claims against the Defendants arising out of or relating to the Lawsuit, both past and present, known and unknown, foreseen and unforeseen, arising out of or relating to the Lawsuit occurring on or before the Effective Date of this Agreement as defined in Section III and not subject to the Court's permanent injunction and order. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity. This Release does not bar action necessary to enforce the terms of this Agreement.

(G) **General Release Waiver:** It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby waived. Said section reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

(H) **Release by Defendants:** For and in consideration of Plaintiffs' promises and obligations under this Agreement, Defendants hereby release and forever discharge any and all Claims against Plaintiff arising out of or relating to the Lawsuit, both past and present, known and unknown, foreseen and unforeseen occurring on or before the Effective Date of this Agreement as defined in Section III. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity. This Release does not bar action necessary to enforce the terms of this Agreement.

II. COOPERATION OF THE PARTIES

(A) Plaintiffs and Defendants agree to cooperate fully, to execute any documents necessary to effectuate this Agreement, and to take such additional actions that reasonably may be necessary or appropriate to give force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms. This includes taking any actions necessary to ensure the District Court can exercise its authority over SCCCD to implement the proposed final order. Each party shall bear his, her, or its own attorneys' fees, costs, and expenses arising from the negotiation,

preparation, and implementation of this Agreement, other than any fees or costs necessary to enforce this Agreement as identified in Section VI(A) and those attorneys' fees and costs identified in Sections I(D).

(B) Plaintiffs and Defendants represent and certify that they each have full authority to sign this Agreement, and that no further approvals or consents by any other persons or entities are necessary for Plaintiffs and Defendants to enter this Agreement and fulfill the conditions herein.

III. EFFECTIVE DATE OF AGREEMENT, TIME FOR PAYMENT, AND CONDITIONS FOR DISMISSAL

This Agreement shall be effective after it is signed by all parties ("Effective Date").

(A) On the Effective Date, the parties will file, in the action with the District Court, a joint motion for the entry of a stipulated permanent injunction, judgment, and order, with a proposed permanent injunction and order incorporating the permanent injunction language identified in Section I(A) and the adoption of the Replacement Posting Procedure identified in Sections I(A) and (B).

(B) Within twenty-one (21) business days of the Effective Date, Defendants shall send to Plaintiffs' counsel (via email to daniel.ortner@thefire.org and jeff.zeman@thefire.org) a copy of the Replacement Posting Procedure identified in Sections I(A) and I(B) with an acknowledgement that Clovis Community College and SCCCD have satisfied all requirements in Section I(B).

(C) Within twenty-one (21) business days of the Effective Date, Defendants or their agent or insurer shall mail, via overnight Federal Express with tracking information provided to Plaintiffs' counsel by email to daniel.ortner@thefire.org and jeff.zeman@thefire.org, the Payment checks described in Section I(D) to:

Jeffrey D. Zeman
Foundation for Individual Rights and Expression (FIRE)
510 Walnut Street, Suite 900
Philadelphia, PA 19106

(D) Within ten (10) business days after the latest of (1) entry by the District Court of the permanent injunction, incorporating the permanent injunction identified in Section I(A), (2) Receipt by Plaintiffs' counsel of the Posting Procedure described in Sections I(A), I(B) and III(B) and Defendants' acknowledgement of satisfying all steps in Section I(B), and (3) Receipt by Plaintiffs' counsel of the Payment checks described in Sections I(D) and III(C), Plaintiffs shall file the agreed-upon Stipulation of Dismissal and Final Judgment, attached as Exhibit C, in the action in the District Court.

IV. NO PENDING LITIGATION

Plaintiffs represent and confirm that, as of the date of their execution of this Agreement,

other than the Lawsuit, they have not filed or otherwise initiated any lawsuit, complaint, charge, appeal, or other proceeding against any of the Defendants in any local, state, or federal court or with any other governmental agency based upon events occurring prior to the date of this Agreement. To the extent permitted by law, Plaintiffs expressly waive any right to damages awarded by any governmental agency or court relating to any claims that are released by this Agreement.

V. TREATMENT FOR PURPOSES OF TAXATION

Plaintiffs agree and understand that Defendants have made no representations or guarantees regarding the proper tax treatment of the Payment set forth in this Agreement. Plaintiffs assume full and sole responsibility to any federal, state, or local taxing authority for any tax consequences, including interest, penalties, damages, or expenses, regarding income or other taxes arising out of the Payment. Plaintiffs agree and understand that the treatment of payments under this Agreement by governmental taxing authorities has no bearing on the validity of this Agreement.

VI. MISCELLANEOUS

(A) Any dispute related to the meaning or enforcement of this Agreement shall be brought in the United States District Court for the Eastern District of California. California law shall govern the validity and interpretation of this Agreement insofar as federal law does not control. If the United States District Court for the Eastern District of California declines to exercise jurisdiction over any such dispute, the parties agree that the dispute will be brought in the Fresno County Superior Court. If any action at law or in equity is necessary by any of the Parties to enforce this Agreement, the Party instituting the action shall be entitled to reasonable attorneys' fees and costs necessary to bring such action. Should the Party defending an action to enforce this Agreement instead prevail, that Party shall be entitled to the costs necessary to defend the action.

(B) This Agreement contains the entire understanding between Plaintiffs and Defendants. This Agreement supersedes any prior written or oral agreements. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing by Plaintiffs, on the one hand, and an authorized agent for Defendants on the other. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any party hereto which are not embodied in this Agreement, and no party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth.

(C) All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by Plaintiffs and Defendants.

(D) If any single paragraph or clause of this Agreement other than Sections I(A) and I(B) should be found unenforceable, invalid, or illegal, it shall be severed, and the remaining paragraphs and clauses shall be enforced in accordance with the intent of this Agreement. If Section I(A) and/or Section I(B) is found unenforceable, invalid, or illegal, this Agreement shall become void. In the event that the Agreement becomes void pursuant to this section, the parties

agree to cooperate fully to reach a new mutually acceptable agreement that is consistent with the intent and purpose of this Agreement

(E) Nothing in this Agreement prohibits either party from complying with any state or federal law.

(F) Any headings or subheadings used herein are for reference purposes only and do not affect the substantive provisions of the Agreement.

(G) The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or simultaneous breach.


(H) This Agreement may be executed in any manner of counterparts, all of which shall constitute, in any number of counterparts, one and the same instrument, and any party hereto may execute this Agreement, by signing and delivering one or more counterparts. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed via DocuSign, and that any electronic signatures made via DocuSign appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

(I) Plaintiffs hereby represent and certify that they have entered into this Agreement knowingly and voluntarily. Plaintiffs certify that they (i) have carefully read all of this Agreement and understand its provisions; (ii) have been advised to consult with an attorney of their choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) have not been influenced to sign this Agreement by any statement or representation by Defendants or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

(J) Defendants hereby represent and certify that they have entered into this Agreement knowingly and voluntarily. Defendants certify that they (i) have carefully read all of this Agreement and understand its provisions; (ii) have been advised to consult with an attorney of their choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) have not been influenced to sign this Agreement by any statement or representation by Plaintiffs or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

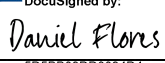
ALEJANDRO FLORES

DocuSigned by:

E663993608C444B...

7/12/2024

Date:

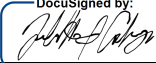
DANIEL FLORES

DocuSigned by:

5D5BB89DD8834D4...

7/12/2024

Date:

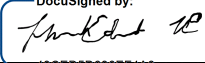
JULIETTE COLUNGA

DocuSigned by:

F38F836B5155404...

7/10/2024

Date:

**YOUNG AMERICANS FOR
FREEDOM AT CLOVIS
COMMUNITY COLLEGE**

DocuSigned by:

49CED5D696EF4A6...

By: Hannah Edwards

Its: President

7/11/2024

Date:

**STATE CENTER COMMUNITY
COLLEGE DISTRICT**

By: Dr. Carole Goldsmith

Its: Chancellor

Date:

LORI BENNETT

Date:

MARCO J. DE LA GARZA

Date:

GURDEEP HÉBERT

Date:

LORI BENNETT

Date:

PATRICK STUMPF

Date:

ACCEPTED and AGREED TO on the date stated below:

ALEJANDRO FLORES

Date:

JULIETTE COLUNGA

Date:

**STATE CENTER COMMUNITY
COLLEGE DISTRICT**



By: Dr. Carole Goldsmith

Its: Chancellor

Jul 16, 2024

Date:

MARCO J. DE LA GARZA

Date:

DANIEL FLORES

Date:

**YOUNG AMERICANS FOR
FREEDOM AT CLOVIS
COMMUNITY COLLEGE**

By: Hannah Edwards

Its: President

Date:

LORI BENNETT

Date:

GURDEEP HÉBERT

Date:

ACCEPTED and AGREED TO on the date stated below:

ALEJANDRO FLORES

Date: _____

JULIETTE COLUNGA

Date: _____

**STATE CENTER COMMUNITY
COLLEGE DISTRICT**

By: Dr. Carole Goldsmith

Its: Chancellor

Date: _____

MARCO J. DE LA GARZA

Date: _____

DANIEL FLORES

Date: _____

**YOUNG AMERICANS FOR
FREEDOM AT CLOVIS
COMMUNITY COLLEGE**

By: Hannah Edwards

Its: President

Date: _____

LORI BENNETT

Lori Bennett

Lori Bennett (Jul 15, 2024 15:28 PDT)

Jul 15, 2024

Date: _____

GURDEEP HÉBERT

Date: _____

ACCEPTED and AGREED TO on the date stated below:

ALEJANDRO FLORES

Date:

JULIETTE COLUNGA

Date:

**STATE CENTER COMMUNITY
COLLEGE DISTRICT**

By: Dr. Carole Goldsmith

Its: Chancellor

Date:

MARCO J. DE LA GARZA

Date:

DANIEL FLORES

Date:

**YOUNG AMERICANS FOR
FREEDOM AT CLOVIS
COMMUNITY COLLEGE**

By: Hannah Edwards

Its: President

Date:

LORI BENNETT

Date:

GURDEEP HÉBERT

Gurdeep K. Sihota-Hébert

Jul 15, 2024

Date:

ACCEPTED and AGREED TO on the date stated below:

ALEJANDRO FLORES

DANIEL FLORES

Date: _____

Date: _____

JULIETTE COLUNGA

**YOUNG AMERICANS FOR
FREEDOM AT CLOVIS
COMMUNITY COLLEGE**

Date: _____

By: Hannah Edwards

Its: President

**STATE CENTER COMMUNITY
COLLEGE DISTRICT**

Date: _____

LORI BENNETT

By: Dr. Carole Goldsmith

Its: Chancellor

Date: _____

Date: _____

MARCO J. DE LA GARZA

GURDEEP HÉBERT

Marco J. De La Garza

Marco J. De La Garza (Jul 15, 2024 14:48 PDT)

Jul 15, 2024

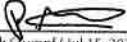
Date: _____

Date: _____

LORI BENNETT

Date:

PATRICK STUMPF



Patrick Stumpf (Jul 15, 2024 14:20 PDT)

Jul 15, 2024

Date:

EXHIBIT A:
Joint Motion for Entry of Stipulated Permanent Injunction, Judgment, and Order

1 DANIEL M. ORTNER (California State Bar No. 329866)
daniel.ortner@thefire.org
2 JEFFREY D. ZEMAN (Pennsylvania Bar No. 328570)*
jeff.zeman@thefire.org
3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION
510 Walnut Street, Suite 900
4 Philadelphia, PA 19106
Telephone: (215) 717-3473
5 Attorneys for Plaintiffs

6 *Admitted *Pro Hac Vice*

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
9 **FRESNO DIVISION**

10 ALEJANDRO FLORES, ET AL.,

11 *Plaintiffs,*

12 v.

13 DR. LORI BENNETT, ET AL.,

14 *Defendants.*

Civil Action No: 1:22-cv-01003-JLT-HBK

**JOINT MOTION FOR ENTRY OF
STIPULATED PERMANENT
INJUNCTION, JUDGMENT, AND
ORDER**

15
16
17 Pursuant to Federal Rules of Civil Procedure 50(a) and 57, Plaintiffs Alejandro Flores,
18 Daniel Flores, Juliette Colunga and Young Americans for Freedom at Clovis Community College,
19 and Defendants Dr. Lori Bennett, Marco J. De La Garza, Gurdeep Hébert, and Patrick Stumpf, in
20 their official capacities as administrators and employees of Clovis Community College, as well as
21 State Center Community College District, jointly request that the Court issue the attached proposed
22 stipulated permanent injunction, judgment, and order, adding State Center Community College
23 District as a defendant and resolving Plaintiffs' claims for declaratory and injunctive relief in this
24 case.
25

26 This proposed permanent injunction and order is contingent on the Court accepting the
27 proposed permanent injunction in its entirety. If the Court does not accept any aspect of the
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July __, 2024

DEMARIA LAW FIRM

By: /s/ _____

Anthony N. DeMaria, #177894
ademaria@demarialawfirm.com
Brian K. Chin, #333976
bchin@demarialawfirm.com
1684 W. Shaw Ave. Suite 1014
Fresno, California 93711
Telephone: (559) 206-2410
Facsimile: (559) 570-0126

*Attorneys for Defendants and State Center
Community College District*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

ALEJANDRO FLORES, ET AL.,

 Plaintiffs,

 v.

DR. LORI BENNETT, ET AL.,

 Defendants.

Civil Action No: 1:22-cv-01003-JLT-HBK

**[PROPOSED] ENTRY OF PERMANENT
INJUNCTION, JUDGMENT, AND
ORDER**

The Court, having considered the Plaintiffs’ claims through a motion for preliminary injunction and having granted that motion (ECF No. 40), finds that entry of the Parties’ proposed stipulated permanent injunction, judgment, and order is appropriate. Therefore, upon the agreement of all parties to this action, as well as State Center Community College District, the Court enters the following order:

WHEREAS, Plaintiff Young Americans for Freedom at Clovis Community College (YAF-Clovis) is a recognized student-club that advocates for conservative principles including “individual freedom, a strong national defense, free enterprise, and traditional values.” Verified Complaint, ECF No. 1, ¶ 44.

WHEREAS, Plaintiffs Alejandro Flores, Daniel Flores, and Juliette Colunga were students at Clovis Community College and student leaders of YAF-Clovis during the events described in the Verified Complaint.

WHEREAS, YAF-Clovis and its student leaders attempted to post flyers promoting the group’s anti-communist and pro-life viewpoints on the student-club bulletin boards in the Clovis Community College student center.

WHEREAS, Clovis Community College maintained Poster/Flyer Instructions that

1 authorized administrators and staff to reject student flyers from being posted on interior bulletin
2 boards if those flyers were deemed “inappropriate” or “offensive.”

3 WHEREAS, Defendant Dr. Lori Bennett was the President of Clovis Community College,
4 Marco J. De La Garza was Vice President of Student Services, Gurdeep Hébert was the Dean of
5 Student Services, and Patrick Stumpf was a Senior Program Specialist during the events described
6 in the Verified Complaint.
7

8 WHEREAS, the Poster/Flyer Instructions in place at the times asserted in the Verified
9 Complaint subjected the Plaintiffs to the potential for viewpoint discrimination for their
10 requested postings and did not meet the First Amendment requirements for college posting
11 procedures.

12 WHEREAS, Plaintiffs filed their Verified Complaint on August 11, 2022, and also filed a
13 motion for preliminary injunction that same day.
14

15 WHEREAS, Plaintiffs argued in their Verified Complaint and preliminary injunction
16 motion that administrators and employees of Clovis Community College, applied the Poster/Flyer
17 Instructions to remove YAF-Clovis’s anti-communist flyers and prevent the club’s posting of pro-
18 life flyers and also that the Poster/Flyer Instructions were unconstitutionally viewpoint based,
19 overbroad, vague, and an improper prior restraint on speech.
20

21 WHEREAS, the Defendants were sued in both their official capacities for declaratory and
22 injunctive relief, and their individual capacities for damages.

23 WHEREAS, this Court and the Ninth Circuit Court of Appeals both ruled that the
24 Poster/Flyer Instructions likely violated the First and Fourteenth Amendments to the United States
25 Constitution on its face by being both unconstitutionally overbroad and vague and posing “an
26 unacceptable risk of the suppression of ideas otherwise protected by the First Amendment.” Order,
27 ECF No. 40, at 22.
28

1 WHEREAS, this Court preliminarily enjoined the Post/Flyer Instructions “in so far as [they]
2 require[] preapproval from College administrators or staff and prohibit[] ‘inappropriate or offense
3 language or themes.’” Order, ECF No. 40, at 31.

4 WHEREAS, Clovis Community College is a college in the State Center Community
5 College District, a political subdivision of the State of California.

6 WHEREAS, the parties and State Center Community College District jointly agree that the
7 Court should enter a stipulated permanent injunction in this case to bind State Center Community
8 College District, all of its subsidiary colleges and educational centers, and their administrators,
9 employees, or agents, including those administrators, employees, or agents currently holding the
10 positions held by the official-capacity Defendants at the time when Plaintiffs filed their lawsuit, but
11 not the Defendants in their individual capacities.

12 WHEREAS, the parties have entered into a Settlement Agreement which will result in the
13 release of the remaining claims for damages, as well as attorneys’ fees and costs, upon the entry of
14 (1) this permanent injunction and order and (2) the fulfillment of additional conditions described in
15 the Settlement Agreement.

16 WHEREFORE, upon the consent and request of Plaintiffs, Defendants, and State Center
17 Community College District,

18 It is **ORDERED, ADJUDGED, and DECREED** that:

- 19 1. State Center Community College District is added to this action as a Defendant.
- 20 2. Clovis Community College’s Poster/Flyer Instructions violated the First and Fourteenth
21 Amendments to the United States Constitution.
- 22 3. Defendants, in their official capacities, violated the Plaintiffs’ First and Fourteenth
23 Amendments to the United States Constitution when they enforced the Poster/Flyer Instructions
24 against Plaintiffs’ flyers.

1 4. State Center Community College District, its subsidiary colleges and educational centers,
2 and their administrators, employees, and agents including those administrators, employees, and
3 agents currently holding the positions held by the official-capacity Defendants at the time when
4 Plaintiffs filed their lawsuit, are permanently enjoined from enforcing, by policy or practice, any
5 unlawful viewpoint-discriminatory, overbroad, or vague regulation, or prior restraint, on the
6 content of the speech of recognized student clubs, including but not limited to bans on
7 “inappropriate” or “offensive” language.
8

9 5. State Center Community College District, its subsidiary colleges and educational centers,
10 and their administrators, employees, and agents are permanently enjoined from using or further
11 instituting the use of the prior Poster/Flyer Instructions, attached hereto as Exhibit “A” at any State
12 Center Community College District school site.
13

14 6. State Center Community College District and its subsidiary colleges and educational
15 centers are mandated to adopt and implement the Replacement Posting Procedure attached hereto
16 as Exhibit “B” within 21 days of this order.
17

18 6. No bond or posting of security is required in connection with the entry of this order.

19 7. The entry of this permanent injunction, judgment, and order does not result in the release,
20 discharge, waiver, or estoppel of any of Plaintiffs’ claims for damages or their entitlement to seek
21 attorneys’ fees and costs as a prevailing party under 42 U.S.C. § 1988 or any other provision of law
22 authorizing the payment of a prevailing party’s attorneys’ fees and costs.

23 8. The permanent injunction entered by the Court binds State Center Community College
24 District, its subsidiary colleges and educational centers, and their administrators, employees, and
25 agents, including those administrators, employees, and agents currently holding the positions held
26 by the official-capacity Defendants at the time when Plaintiffs filed their lawsuit, but not the
27 Defendants in their individual capacities.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. This Court will retain jurisdiction to make any orders or findings necessary to effectuate and enforce this permanent injunction, judgment, and order.

IT IS SO ORDERED on this _____ day of _____, 2024.

Jennifer L. Thurston
United States District Judge

**EXHIBIT B:
Replacement Posting Procedure**

Clovis Community College

Guidelines and Process for Campus Postings

Clovis Community College (“College”) encourages recognized student organizations and College programs and departments to share information about their programs, services, events, student clubs, classes, and more. The Student Activities Office is responsible for stamping and dating materials from recognized student organizations before they are posted inside the campus buildings. The College has developed a set of guidelines to help govern the placement of posters to ensure that we have a welcoming and safe environment. The following guidelines will assist your recognized student organization with sharing information related to your organization, program, or department. These guidelines are intended to:

- Facilitate greater campus community engagement and better communication of campus events.
- Keep the College's buildings clean and in good condition.

Posting Guidelines for College Interior Walls

- All posters must be stamped and dated prior to posting on the designated interior bulletin boards.
- All postings on interior bulletin boards must contain the official name of the recognized student organization, College department, or College program making the posting.
- Recognized student organizations may post 15 copies of a poster. No more than two copies of a poster may be posted on each bulletin board.
- Posters must not exceed 8 ½” x 14” in size.
- Posting in classrooms is limited to College, College department, or College program events and announcements. Recognized student organizations, or third parties are not permitted to post inside classrooms.
- Any poster promoting an event must include the name of the recognized student organization and the date and location of the event to which the poster relates.
- The College’s name and logo cannot be used without prior College approval. Posters will be removed if they use the College’s logo without permission.
- Posters may be posted for ten days after date stamped, or until after the event to which they relate, and then removed in accordance with Administrative Regulation 3900.
- Posters may only be posted on designated bulletin boards.

Obtaining Student Activities Office Stamp

- All posters for college interior walls must be presented to Student Activities located in the Student Center (AC1-160) or emailed to ccstudentcenter@cloviscollege.edu.
- Student Activities Staff will respond expeditiously and as soon as possible, but no later than two (2) business days after requests have been made in person or by email. If denied, students have the right to appeal to the college president’s office via email or in person, who will respond no later than three (3) business days after receipt of the appeal.
- If the posters satisfy the Posting Guidelines detailed above, Student Activities staff will approve

the posters, place the Student Activities Office stamp on all posters and will date the posters.

- The Student Activities Office will make and keep one copy of each poster.
- The Student Activities Office will not photocopy posters to be posted. The recognized student organization must bring the appropriate number of copies at the time of stamping and dating.
- Each copy will be stamped, no copies of the stamp are allowed.
- Posters in languages other than English must be accompanied by an English translation of the poster when the Student Activities Office stamps and dates the poster.

Posting on Exterior Speech Kiosks

The College has designated two kiosks as a public forum for free speech. Any person may, at any time and without prior approval, post on the exterior kiosks any material except that which is defamatory, which is obscene according to current legal standards, which so incites others as to create a clear and present danger of the commission of unlawful acts on State Center Community College District ("District") property, which violates District or College policies or regulations, or which leads to the substantial disruption of the orderly operation of the College. Posted material on the free speech kiosks may remain posted for ten days or until after the date of the event to which they relate, whichever is later. The College will remove all postings from time to time, generally near the mid-point and end-point of each semester or session without regard to when the material was posted. The College's exterior walls, fences, and other surfaces on campus are not forums for posting expressive material and the College regulates posting on those surfaces. The College will remove any material posted on the College's exterior walls, fences, and other surfaces.

Questions, comments, or concerns may be addressed in the Student Activities Office, which is in Academic Center One, Room 160 (Student Center).

EXHIBIT C:
Stipulation of Dismissal and Final Judgment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July __, 2024

FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION

By: /s/

DANIEL M. ORTNER (California
State Bar No. 329866)
JEFFREY D. ZEMAN (Pennsylvania
Bar No. 328570)*
JAMES M. DIAZ (Vermont Bar No.
5014)*
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
510 Walnut Street, Suite 900
Philadelphia, PA 19106
Telephone: (215) 717-347
daniel.ortner@thefire.org
jeff.zeman@thefire.org
jay.m.diaz@thefire.org

DRAFT

Attorneys for Plaintiffs

**Admitted Pro Hac Vice*

Dated: July __, 2024

DEMARIA LAW FIRM, APC

By: /s/

Anthony N. DeMaria, #177894
ademaria@demarialawfirm.com
Brian K. Chin, #333976
bchin@demarialawfirm.com
1684 W. Shaw Ave. Suite 1014
Fresno, California 93711
Telephone: (559) 206-2410
Facsimile: (559) 570-0126
Attorneys for Defendants