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Attorneys for: Plaintiff **STEVEN HINKLE**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION -- LOS ANGELES

STEVEN HINKLE,

Plaintiff,

v.

WARREN BAKER, in his personal
and official capacity as president of
California Polytechnic State Univer-
sity; PAUL J. ZINGG, in his personal
and official capacity as Provost;
CORNEL N. MORTON, in his
personal and official capacity as
Vice Provost; W. DAVID CONN,
in his personal and official capacity
as Vice Provost for Academic Affairs;
ARDITH TREGENZA, in her
personal and official capacity as
Judicial Affairs Director,

Defendants.

CASE NO.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF;
DAMAGES

42 U.S.C. §1983 First Amendment
California Constitution, Art. I, sec. 2
California Education Code §66301

Plaintiff Steven Hinkle, for his complaint against defendants, alleges as
follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
1331, 1343, and 2201. It has jurisdiction over plaintiff's state-law claims, which
arise out of the same facts as his federal claim, under 28 U.S.C. § 1367.

1 2. Venue in this Court is proper under 28 U.S.C. § 1391 and this Court
2 has personal jurisdiction over the defendants sued in their personal capacities in
3 this matter because the events giving rise to the plaintiff's claim occurred in this
4 district and division; the plaintiff resides in this district and division; and one or
5 more of the defendants resides in this district and division.

6 **Nature of the Action**

7 3. This is an action for declaratory and injunctive relief and damages,
8 pursuant to 42 U.S.C. § 1983 and other laws, arising from Defendants' violation of
9 the First Amendment to the U.S. Constitution, Article 1, Section 2 of the
10 California Constitution, and California Education Code § 66301. Defendants,
11 acting under color of state law, have deprived plaintiff of rights, privileges, and
12 immunities secured by the First and Fourteenth Amendments to the United States
13 Constitution.

14 4. Defendants infringed plaintiff's right to free speech and academic
15 freedom as set forth in more detail below.

16 **Parties**

17 5. Steven Hinkle is a resident of San Luis Obispo and a citizen of
18 California. He is a student at California Polytechnic State University, and was a
19 student there at all times relevant to the allegations of this Complaint.

20 **Defendants**

21 6. Defendant Warren Baker is President of Cal Poly. He is sued in his
22 personal and official capacities.

23 7. Defendant W. David Conn is Cal Poly's Vice Provost for Academic
24 Affairs and Undergraduate Education. He is sued in his personal and official
25 capacities.

26 8. Defendant Paul J. Zingg is Cal Poly's Provost and Vice President for
27 Academic Affairs. He is sued in his personal and official capacities.

28 9. Defendant Ardith Tregenza is Cal Poly's Director of Judicial Affairs.

1 She is sued in her personal and official capacities.

2 10. Defendant Cornel Morton is the Vice President of Student Affairs for
3 Cal Poly. He is sued in his personal and official capacities.

4 11. In doing the acts complained of, each of the defendants was acting as
5 the agent of the other and each was acting under color of state law at the time that
6 they engaged in this wrongful conduct.

7 **Background**

8 **The posting of the fliers:**

9 12. On the evening of Tuesday, November 12, 2002, Steven Hinkle was
10 posting a flier on bulletin boards around the Cal Poly campus. A copy of the flier
11 is attached as Exhibit 1. It advertised a speech by Mason Weaver, author of *It's*
12 *OK to Leave the Plantation*, listing the speaker, his book's title, and the date and
13 place of the lecture. In that book, Weaver, an African-American, argues that
14 dependence on government programs places many African Americans in
15 circumstances analogous to slavery. *See C. Mason Weaver, It's OK to Leave the*
16 *Plantation: the New Underground Railroad* (1998).

17 13. Hinkle was posting the fliers on behalf of a chartered student group
18 recognized by the university, the Cal Poly College Republicans, of which he was
19 Vice President. Moreover, Weaver's speech was an event scheduled in accordance
20 with university regulations.

21 14. Hinkle entered Building No. 65, the University Union, and placed the
22 flier on bulletin boards in areas frequented by students for purposes of socializing.

23 15. Among the bulletin boards on which he sought to post a flier was one
24 located behind glass double doors in a small student lounge area. The lounge is
25 frequently used by students for casual socializing and relaxation. Couches for
26 students to recline on were located both inside and outside the lounge. Students
27
28

1 could pass through the lounge from multiple directions. Beyond the glass doors
2 was not just the lounge but also a hallway leading to offices used by the
3 University's Multicultural Center and its Office of Student Life and Leadership.
4 The doors of the lounge welcomed students to the Multicultural Center.

5 16. Inside the lounge was a partially-empty bulletin board large enough to
6 hold more than a dozen fliers. Nothing on the bulletin board suggested that
7 posting fliers on it was limited in any way. On the bulletin board were a handful
8 of fliers, none of which bore any stamp or other sign that it had been approved by
9 any university administrator.

10 17. Hinkle entered the lounge through the glass doors, seeking to post his
11 flier on the bulletin board inside it. Inside the lounge were no more than seven
12 individuals, some of whom were eating pizza.

13 18. When Hinkle approached the bulletin board to post the flier, however,
14 he was confronted by individuals inside the room, who demanded that he not post
15 the flier and told him that the flier offended them. Hinkle briefly attempted to
16 ascertain why they felt the flier was offensive before exiting the lounge without
17 posting the flier.

18 19. One of the individuals inside the lounge threatened to call the campus
19 police and in fact did so. The University police arrived within minutes and
20 reported that they had been "dispatched to the multi-cultural center to investigate a
21 suspicious white male passing out literature of an offensive racial nature," who
22 had "attempted to post [a] flyer with [a] racially oriented message."

23 20. The next day, Mason Weaver's speech about his book took place
24 without incident and was featured in a news story in the student newspaper the
25 *Mustang Daily*.

26 **The disciplinary action against Hinkle:**

27 21. On December 6, 2003, defendant Tregenza, Cal Poly's Judicial
28 Affairs Director, wrote to Hinkle that he was being investigated for a potential

1 violation of the regulations governing student conduct.

2 22. On January 10, 2003, defendants Tregenza and Morton met with
3 Hinkle, his parents, and the club advisor to the Cal Poly College Republicans, Dr.
4 Laura Freberg. Tregenza and Morton repeatedly emphasized how offensive the
5 fliers were to the students in the lounge and provided formal statements from
6 students in the lounge expressing offense at the flier Hinkle attempted to post.
7 They made clear that the basis for potential disciplinary action was how upset the
8 students in the lounge felt about the flier. They also pressured him to accept
9 discipline for attempting to post the flier, telling him that if he did not accept their
10 proposed punishment, he might receive more severe punishment from a university
11 hearing officer. Their recommended sanctions were that Hinkle write a letter of
12 apology to the offended students and meet twice with the university ombudsman.
13 Morton indicated he had the power to halt the proceedings but would do so only if
14 Hinkle would agree to reach a settlement. Morton also told Hinkle that his being
15 white and having blond hair and blue eyes was a "flashpoint" precipitating the
16 charges against him. Hinkle was also told at the meeting that any discipline he
17 received would go in his educational records.

18 23. On January 29, 2003, Hinkle was formally charged with violating
19 California Code of Regulations ("CCR"), Title 5, Section 41301(d), which
20 prohibits "obstruction or disruption, on or off campus property, of the campus
21 educational process, administrative process, or other campus function." The
22 University has expressly incorporated the CCR provision as its student code of
23 conduct. Exhibit 3. Tregenza informed Hinkle in a letter dated January 28, 2003,
24 that this charge was supported by the fact that the complaining students were "very
25 upset by you attempting to post a flyer," and that she "relied upon" this fact "in
26 deciding to proceed with the formal disciplinary process" against Hinkle. Exhibit
27 4. Morton had the authority to stop the investigation, but refused to do so.

28 24. On February 19, 2003, a hearing was held on the charges against

1 Hinkle. Warren Baker, Cal Poly's president, designated Robert Griffin, a retired
2 Cal Poly administrator, to serve as Hearing Officer. -On March 3, 2003, Griffin
3 recommended that Hinkle be found guilty of "disruption" of a "campus event," and
4 ordered "to express an apology in writing" to the offended students. Exhibit 2
5 (Report of Hearing Officer). Griffin's recommendation was forwarded to Vice
6 Provost W. David Conn, who was designated to decide Hinkle's case by Cal Poly
7 president Warren Baker.

8 25. On March 12, 2003, defendant Conn, acting "[a]s the President's
9 Designee," sent Hinkle a letter adopting the hearing officer's recommendations.
10 Exhibit 5. Although Conn conceded that there was "no evidence that you entered
11 the Multicultural Center with intent to disrupt the Bible Study session," he upheld
12 the finding that Hinkle was guilty of "disruption" and based on it ordered Hinkle
13 write a "formal letter of apology" to be approved by the Office of Judicial Affairs.
14 Conn's letter warned that "there is no parameter or guarantee regarding the
15 confidentiality of the letter [of apology]" and that "this decision is final."
16 Previously, Hinkle was warned orally by school officials that if he did not accept
17 this punishment, he would face much stiffer penalties, up to expulsion.

18 26. Before, during, and after the hearing, Hinkle argued that he had
19 simply been exercising his First Amendment rights in posting a flier about an
20 upcoming speech. Hinkle accordingly refused defendants' demand that he
21 apologize, and instead sought assistance from the Foundation for Individual
22 Rights in Education ("FIRE").

23 27. FIRE repeatedly wrote to President Baker, Provost Zingg, Vice
24 President Morton, and other Cal Poly administrators, asking them to overturn
25 Hinkle's discipline and respect his First Amendment. For example, on April 15,
26 2003, FIRE attorney Greg Lukianoff wrote to President Baker about Hinkle's case,
27 explaining the facts of the case and asking that Cal Poly overturn its rulings
28 against Hinkle and "expunge any derogatory information from his record." Copies

1 of the letter were sent to Defendants Zingg, Morton, and Tregenza. The
2 defendants declined to do either of these things, and an attorney writing on behalf
3 of Defendant Baker defended the actions against Hinkle. Similarly, on July 9,
4 2003, FIRE's chief executive officer, Thor Halvorssen, wrote, once again asking
5 that Hinkle's discipline be overturned and that Cal Poly expunge any negative
6 references from Hinkle's educational records. Copies of this letter were sent to all
7 of the defendants in this case and to the Trustees of the California State
8 University.

9 28. The University's discipline of Hinkle attracted considerable negative
10 publicity from the press and from legal commentators such as Stuart Taylor of the
11 National Journal.

12 29. Lamenting the "broad publicity" and "public and press inquiries we
13 have receiving concerning this matter," Provost Paul Zingg wrote to Hinkle on
14 July 14, 2003, stating that Cal Poly would not "pursue [the disciplinary
15 proceedings against Hinkle] any further." Exhibit 6. However, Zingg also urged
16 Hinkle "to accept" the university's "hearing officer's recommendation that [he]
17 issue a letter of apology." Rather than taking action to expunge references to the
18 allegations of "disruption" from Hinkle's records, he instead defended the hearing
19 officer's finding of "disruption" as correct. Thus, the disciplinary action remains
20 in Hinkle's educational records.

21 **The findings of the hearing officer:**

22 30. The hearing officer's finding of "disruption" was based on the
23 premise that the offended students were having a Bible Study that Hinkle
24 disrupted.

25 31. However, when Hinkle entered the lounge, the offended students
26 were not praying. In fact, some were eating pizza. Exhibit 7 (Transcript of
27 Hearing). Moreover, no bibles were in view, much less open, and the students
28 were not reading the Bible. The lounge was so small that had the students not

1 confronted Hinkle and prevented him from posting the flier, he would have posted
2 it and departed within a matter of seconds after entering the room.

3 32. Moreover, the hearing officer's conclusion that disruption occurred
4 was unreasonable even based on the findings of fact that he himself made in his
5 report. No university-recognized student group was meeting in the lounge. The
6 hearing officer himself conceded in his findings that the students were not a
7 "chartered club" and had been engaged in "an informal pizza meal." Even the
8 student who called the police in response to Hinkle's attempt to post the flier
9 admitted at the hearing that "we're not an official club." Exhibit 7.

10 33. There were no notices posted outside the lounge indicating that any
11 meeting was taking place inside. The hearing officer found that there were "no
12 signs" providing any such notice. The hearing officer found that "there was no
13 evidence that [Hinkle] entered the room with intent to disrupt" a meeting.
14 Moreover, Hinkle was never informed that a bible study was taking place. Exhibit
15 2.

16 34. The hearing officer found that it was the students in the lounge who
17 approached Hinkle, and that he did not initiate his encounter with them. The fourth
18 student to testify at the hearing against Hinkle confirmed that they "addressed
19 [Hinkle] first," Hinkle did not approach them. The hearing officer also found that this
20 encounter led to a "brief discussion" over the merits of the flier, and that Hinkle
21 ultimately left the room without ever posting the flier. *Id.*

22 35. Moreover, the hearing officer conceded in his report that "the police log
23 and responding officer statement do not indicate that the call was for disruptive
24 conduct." (Emphasis in original.) *Id.*

25 36. Nevertheless, the hearing officer found Hinkle guilty of disruption.
26 First, he found that Hinkle had been "contentious" when confronted by the offended
27 students who demanded that he not post the flier, "press[ing] those present and
28 objecting to engage then and there in discussion." The hearing officer conceded,

1 however, that when Hinkle entered, the topic of the fliers was already being
2 discussed, since "some of the participants were discussing the nature of the
3 announcement-flyers then being circulated on campus [about the speech Hinkle was
4 publicizing], as well as the speaker and program announced by the flyers." Exhibit
5 2.

6 37. Second, the hearing officer found that "[t]he arrival, investigation and
7 search efforts of the Police in response to the call contributed to a disruption of the
8 Bible Study session." *Id.* However, it was not Hinkle, but one of students in the
9 lounge, who chose to summon the police.

10 38. At the hearing, even students who came to testify against Hinkle
11 conceded that he would not have known that a meeting was being held in it. The
12 students testifying against Hinkle admitted that no one ever told Hinkle that he had
13 interrupted a Bible Study, that there were no signs outside the lounge about any
14 purported Bible Study, and that the lounge was a place in which it was commonplace
15 to find "[a] lot of people sleeping" or hanging out. Exhibit 7.

16 39. Moreover, Cal Poly's own Director of Student Life and Leadership,
17 Kenneth Barclay, even admitted that he "d[id]n't know how to answer" the question
18 of whether the students in the lounge qualified as a campus event. Exhibit 7.

19 40. Defendant Tregenza, the administrator who prosecuted Hinkle, and the
20 students who testified against him made clear that what they objected to was not any
21 interruption of their purported meeting resulting from his entering the room, but
22 rather the purportedly offensive content of his flier. Exhibit 7.

23 41. During the hearing, Tregenza repeatedly focused on the flier's
24 purportedly offensive content and the students' negative emotional reaction to it as
25 being disruptive. For example, she questioned how Hinkle "could have a poster like
26 that and walk into a room full of African-American students and not think that there
27 might be people who would find that offensive or that they might not take kindly to
28 you posting that . . . in what they consider to be a safe and comfortable environment."

1 She claimed to find a "disruption" "both" in the flier itself and in Hinkle's "presence"
2 there. Moreover, she found the fliers to be disruptive because "these students . . . were
3 able to well articulate why they found that flier offensive and that for [Hinkle] to say
4 that they misinterpreted it . . . was wrong" and "unacceptable." Exhibit 7.

5 42. During the hearing, Tregenza defined disruption to include "caus[ing]
6 people to do something other than they would normally do, have planned to do, [or]
7 anticipate doing, [or] shake [them] up." Exhibit 7.

8 43. The students who accused Hinkle of disruption conceded that they were
9 not concerned with the amount of time he spent in the room, but the content of his
10 flier and their resultant emotional reaction. One student admitted that "if [Hinkle]
11 had just gone through" to post the flier, that would not have been disruptive, but that
12 the content of the flier and the students' reaction to it afterwards were what prevented
13 their "Bible study" from proceeding:

14 the disruption was the fact that you had the flier and we had been talking
15 about the flier and how [we] were offended by it. . . having to go into all
16 that explanation and that further conversation, I believe, disrupted it
17 even more. And then when the police came on two occasions and then
18 the conversations after that, I mean, further disrupted the Bible study. .
19 ..

20 44. The student who called the police conceded that she had not said
21 anything about disruption in her call to the police, only about "post[ing] offensive
22 literature." She recounted demanding that Hinkle not post the flier on the grounds
23 that "it's offensive" and "I just told you it's offensive" before threatening to "call
24 public safety." Moreover, she objected to the content of the flier, not the manner in
25 which Steve expressed himself, admitting that his "demeanor" was neither
26 "threatening" or "abusive." Exhibit 7.

27 45. Several of the complaining students admitted that they submitted
28 complaints only after being contacted by the Office of Judicial Affairs or its head,

1 Ardith Tregenza. Exhibit 7.

2 **Past disciplinary threats against the Cal Poly College Republicans:**

3 46. On information and belief, the Cal Poly College Republican Club, the
4 student club on whose behalf Hinkle was handing out the fliers, has previously been
5 condemned and investigated by Cal Poly's administration based specifically and
6 expressly on the content of fliers disseminated by its members. For example, in
7 February 2002, the club invited Reginald Jones, a conservative African-American,
8 to give a speech at Cal Poly. On March 14, 2002, the student newspaper *Mustang*
9 *Daily* carried a letter to the editor from defendant Zingg and defendant Morton's
10 predecessor as Vice President for Student Affairs, Robert Detweiler, regarding fliers
11 advertising the speech. The letter "condemn[ed] the content of the unfortunate flyers"
12 which they claimed "deeply offended and distressed many members of our
13 community," although they also stated that the fliers "may not have been authorized
14 by the sponsoring club." On April 12, 2002, Cal Poly's Director of Student Life and
15 Leadership, Kenneth Barclay, informed the club's advisor, Laura Freberg, that an
16 investigation of the club was proceeding based on allegations that the "Coll. Rep.
17 Club distributed posters/flyers that . . . were hurtful and offensive." To hear the
18 charges against the club, Cal Poly convened a hearing panel that included Defendant
19 Tregenza. The panel ruled against the the club, directing it to write a letter of apology
20 to be printed in the *Mustang Daily*.

21 47. Hinkle is currently President of the Cal Poly College Republicans, and
22 continues to post fliers for the club, including announcements of campus events
23 sponsored by it. He has refrained from posting fliers in the University Union since
24 the discipline against him. He would like to keep posting such fliers in the University
25 Union, because it is a central gathering point on campus and the best place to reach
26 the most members of the Cal Poly community, but is reluctant to do so because he
27 fears that doing so will lead to further disciplinary proceedings against him.

1 **Claim for Relief**

2 **Violation of Free Speech Rights**

3 48. Plaintiff repeats and realleges each of the allegations in paragraphs 1-47
4 as if fully set forth herein.

5 49. Steve Hinkle was investigated and disciplined pursuant to CCR 41301(d)
6 based on the content and viewpoint of the flier he was seeking to post in the
7 Multicultural Center lounge. He was also disciplined based on his perceived political
8 viewpoint, as he expressed it in a brief discussion with the students in the lounge who
9 had taken offense to his flier. Both the flier Hinkle sought to post and his speech
10 responding to the demands that he not post it were protected speech.

11 50. The claim that Hinkle disrupted a meeting was simply a *post hoc*
12 rationalization for punishing him.

13 51. Hinkle's actions promoted the educational process and did not disrupt or
14 obstruct any campus function or event. There was no reasonable basis for the
15 university's conclusion that he disrupted a campus event.

16 52. If any meeting had in fact been disrupted, it would not have been the
17 result of Hinkle's speech, the flier, or his attempt to post it. Instead, any such
18 disruption would have been the result of the complaining students' own actions, such
19 as their decision to call the university police.

20 53. The defendants' actions violated plaintiff Hinkle's free speech rights
21 under the First Amendment of the U.S. Constitution, Article 1, Section 2 of the
22 California Constitution, and California Education Code § 66301. Accordingly,
23 plaintiff Hinkle is entitled to an injunction expunging any mention of the discipline
24 or allegations against him from his educational records and prohibiting the defendants
25 from taking any adverse action against him based on his speech and actions in the
26 Multicultural Center.

27 54. Each of the defendants sued in his or her personal capacity (hereinafter
28 referred to as the "individual defendants") knowingly disregarded plaintiff Hinkle's

1 clearly-established constitutional right to free speech.

2 55. Plaintiff Hinkle has suffered damages as a consequence of defendants'
3 actions, including emotional distress and injury to reputation. Accordingly, he seeks
4 an award of damages against the individual defendants in an amount to be determined
5 at trial.

6 56. The individual defendants' deprivation of plaintiff's free speech rights
7 was willful and/or recklessly indifferent to plaintiff's rights. Accordingly, plaintiff
8 is entitled to punitive damages.

9 57. CCR 41301(d) prohibits anything, including core speech, that
10 "obstructs" or "disrupts" any campus activity. Defendants define disruption as
11 including protected speech when the content of such speech has the effect of
12 unsettling listeners, causing unrest, or leading listeners to do anything that they would
13 not customarily do. That definition of disruption reaches a substantial amount of
14 constitutionally protected speech and is content-based, unconstitutionally vague and
15 overbroad, without being narrowly-tailored to serve a compelling governmental
16 interest.

17 58. Accordingly, plaintiff is entitled to an injunction against the defendants
18 barring them from prohibiting "disruptive" speech or expressive conduct or enforcing
19 the rule against disruption, Cal. Code of Regulations, Title V, § 41301(d).

20 59. An actual controversy has arisen between plaintiff and defendants
21 concerning the validity of Cal Poly's prohibition against disruption. Defendants
22 contend that it is valid and content-neutral. Plaintiff contends that it is content-based
23 and unconstitutionally vague and overbroad. The parties also dispute the
24 constitutionality of plaintiff's discipline for "disruption." A judicial declaration
25 resolving these issues is necessary and appropriate to enable plaintiff and defendants
26 to ascertain their respective rights and duties regarding the scope of plaintiff's free
27 speech rights.

1 **WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:**

2 1. An injunction expunging and removing any and all documentation and/or
3 notation of the discipline or allegations against him from his educational records and
4 prohibiting the defendants from taking any adverse action against him based on his
5 speech and actions in the Multicultural Center lounge;

6 2. A declaratory judgment that defendants violated plaintiff's rights to free
7 speech and academic freedom;

8 3. An injunction prohibiting the defendants from prohibiting "disruptive"
9 speech and expressive conduct, or enforcing Title V, § 41301(d) of the California
10 Code of Regulations;

11 4. A declaratory judgment that Cal Poly's ban on "disruption" is
12 unconstitutionally vague and overbroad;

13 5. Damages, both compensatory and punitive, in an amount to be
14 determined at trial;

15 6. Interest on any damages award;

16 7. Attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988,
17 California Education Code § 66301, California Code of Civil Procedure § 1021.5, and
18 any other applicable authority; and

19 8. Such other relief as is just and appropriate.
20

21 Respectfully submitted,

22 LAW OFFICE OF CAROL A. SOBEL
23 CENTER FOR INDIVIDUAL RIGHTS

24 DATED: Sept. 25, 2003

25 _____
26 By: CAROL A. SOBEL
27
28