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**APPENDIX A**

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Filed 10/15/2025

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs and Appellants,  
v.  
STATE of California, et al.,  
Defendants and Respondents.

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A170255

(San Francisco City & County Super. Ct.  
No. CGC-22-602149)

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On January 1, 2023, Assembly Bill No. 1936  
(2021–2022 Reg. Sess.) (Assembly Bill 1936) changed  
the name of what was formerly known as “Hastings

College of the Law” to “College of the Law, San Francisco” (College). (Ed. Code, § 92200.) Assembly Bill 1936 also deleted from Education Code section 92204 the requirement that one member of the College’s board of directors “shall always be an heir or representative of S.C. Hastings.”

Plaintiffs the Hastings College Conservation Committee and individuals Stephen Hastings Breeze, Stephanie Azalea Brackel, Catherine Torstenson, Scott Hastings Breeze, Collette Breeze Meyers, and Colin Hastings Breeze appeal a judgment entered in favor of defendants State of California (State) and the College’s dean and directors in their official capacities (collectively the College Defendants)<sup>1</sup> on plaintiffs’ complaint challenging Assembly Bill 1936. The judgment was entered after the trial court sustained defendants’ demurrer without leave to amend. We affirm.

## BACKGROUND<sup>2</sup>

### I.

Born in 1814, Serranus Clinton Hastings (S.C. Hastings) was the first Chief Justice of California and the State’s third Attorney General. In addition to holding these public roles, he amassed significant wealth from various real estate ventures and by 1870 became one of the largest landowners in California. In

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<sup>1</sup> The College Defendants are David Faigman, Simona Agnolucci, Carl Robertson, Shashikala Deb, Michael Ehrlich, Andrew Giacomini, Andrew Houston, Claes Lewenhaupt, Mary Noel Pepys, Courtney Power, and Albert Zecher.

<sup>2</sup> Our recitation of facts is taken largely from our prior opinion in this action. (*Hastings College Conservation Committee v. Faigman* (2023) 92 Cal.App.5th 323, 327–329.)

1878, S.C. Hastings sought to establish the first law school on the West Coast of the United States and proposed the same to the California Legislature. In response, the Legislature enacted a statute that same year titled “An Act to create Hastings’ College of the Law, in the University of the State of California” (the Act). (Stats. 1878, ch. 351, p. 533, italics omitted.)

The Act provided “[t]hat S.C. Hastings be authorized to found and establish a Law College, to be forever known and designated as ‘Hastings’ College of the Law.’” (Stats. 1878, ch. 351, § 1, p. 533.) The Act further provided that the College would be governed by a board of directors (Board), independent of the Regents of California, and that the directors “shall always provide for filling a vacancy with some heir or some representative of . . . S.C. Hastings.” (*Ibid.*)

The Act’s passage was expressly conditioned upon S.C. Hastings’s payment of \$100,000 into the State’s treasury. (Stats. 1878, ch. 351, § 7, p. 534.) The Act required the State to appropriate seven percent per year of this sum and pay it “in two semi-annual payments to the Directors of the College.” (*Id.*, § 8, p. 534.) The Act further stated that “should the State . . . fail to pay to the Directors of said College the sum of seven per cent per annum . . . or should the College cease to exist, then the State . . . shall pay to the said S.C. Hastings, his heirs or legal representatives, the said sum of one hundred (\$100,000) thousand dollars and all unexpended accumulated interest.” (*Id.*, § 13, p. 534.) The College was established after S.C. Hastings paid \$100,000 to the State’s treasury. The Legislature subsequently codified the Act’s terms in the Education Code. (See Ed. Code, former § 92200 et seq.)

In 2017, the San Francisco Chronicle published an article titled “The Moral Case for Renaming Hastings College of the Law,” which included allegations that S.C. Hastings was involved in fomenting violence and atrocities against Native Americans living in what is present-day Mendocino County. In response, the College formed the Hastings Legacy Review Committee (HLRC) to consider and make appropriate recommendations to address S.C. Hastings’s legacy. It also commissioned a history professor to research and draft a report regarding S.C. Hastings’s role in the killing of indigenous people in Northern California in the mid-19th century. In September 2020, Dean Faigman submitted a report to the Board that discussed HLRC’s conclusions and recommended that the College retain its name but pursue other restorative justice initiatives. In recommending that the College keep its name, Dean Faigman reasoned that “most of the legal profession has no idea who Serranus Hastings was or that UC Hastings was named after him.”

On October 28, 2021, The New York Times published an article questioning the College’s name with a headline that S.C. Hastings “masterminded the killings of hundreds of Native Americans.” On November 2, 2021, the Board held a special meeting and passed a resolution directing Dean Faigman to “work with the California Legislature, the Governor’s Office, and other offices to enact legislation changing the name of the school.” A number of other meetings followed, and the Board ultimately passed a resolution to recommend the name “College of the Law, San Francisco” to the Legislature.

Assembly Bill 1936 was passed by the Legislature in August 2022 and signed by the Governor in September 2022. (Stats. 2022, ch. 478.) Assembly Bill 1936 designated the school's name as "College of the Law, San Francisco" and amended various statutes, including sections of the Education Code, to conform to the new name. It also eliminated S.C. Hastings's hereditary seat on the Board. Assembly Bill 1936 became effective on January 1, 2023.

## II.

Plaintiffs—a College alumni association and various descendants of S.C. Hastings—filed a complaint against the State and the College Defendants. The complaint included causes of action for declaratory relief against all defendants on the grounds that Assembly Bill 1936 violated the contract clauses of the California and United States Constitutions (first cause of action), constituted an impermissible bill of attainder and ex post facto law (second cause of action), and violated the California Constitution's provision regarding collegiate freedom (third cause of action). The complaint requested a declaration that the College's name remains "Hastings College of the Law" and that S.C. Hastings's heirs or representatives are still entitled to a seat on the Board. Against the College Defendants only, the complaint sought injunctive relief to enjoin them from implementing the unconstitutional provisions of Assembly Bill 1936, including the further expenditure of taxpayer funds to change the College's name (fourth cause of action) or to eliminate the hereditary Board seat (fifth cause of action). Against the State only, the complaint alleged a cause of action seeking specific performance for breach of contract (sixth cause of action) and a cause of action

seeking damages for breach of contract (seventh cause of action) on the grounds that the Act constituted a “binding written agreement between the State of California and S.C. Hastings and his descendants” and that the State breached this agreement by enacting Assembly Bill 1936.

Defendants demurred to the complaint on the ground that it failed to allege facts sufficient to state a cause of action. Following receipt of plaintiffs’ opposition and a hearing on the motion, the trial court issued an order sustaining the demurrers without leave to amend. As to the claims steeped in contract law (first, sixth, and seventh causes of actions), the trial court held that plaintiffs “fail[ed] to meet their heavy burden” of establishing that the Act is a contract as opposed to an exercise of ordinary legislative powers. As to the second cause of action, the court held that Assembly Bill 1936 does not constitute a bill of attainder or violate the ex post facto clause because it only “arguably singles out [ ] Mr. Hastings, who died years ago,” and does not punish plaintiffs. With respect to the third cause of action (collegiate freedom), the trial court held that Assembly Bill 1936 does not violate the California Constitution because the College’s Board was the impetus for the enactment of Assembly Bill 1936 “and therefore does not present the situation where the Legislature is attempting to dictate university policy.” By extension of these conclusions, the court reasoned that plaintiffs’ fourth cause of action (waste of taxpayer funds) and fifth cause of action (42 U.S.C. § 1983) failed for lack of an underlying constitutional or statutory violation.

#### DISCUSSION

We review de novo an order sustaining a demurrer without leave to amend, exercising our independent judgment to evaluate whether the complaint states a cause of action under any possible legal theory. We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law; we also consider matters that may be judicially noticed. Because we review the court’s ruling rather than its rationale, we are not bound by the trial court’s stated reasons, and affirm if any ground offered in support of the demurrer was well taken. (See *Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 433.)<sup>3</sup>

## I.

The complaint alleges that (1) the State “entered into a complete contract with S.C. Hastings concerning the College’s establishment, name, funding, and governance;” (2) the “California Legislature set forth the material terms of the agreement in its March 26, 1878 Act, which it later codified as California Education Code Section 92200–92212 after S.C. Hastings upheld his end of the bargain;” and (3) the enactment of Assembly Bill 1936 impermissibly impairs the State’s obligations under this agreement. Based on these allegations, plaintiffs assert causes of action for breach of contract and for violation of the Contracts Clauses of the state and federal Constitutions (Cal. Const., art. I, § 9; U.S. Const., art. I, § 10, cl. 1), which limit the power of the State to enact legislation modifying preexisting contractual obligations. (*United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 17.)

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<sup>3</sup> Plaintiffs do not challenge the denial of leave to amend.

As they do on appeal, in their demurrers defendants argued that the Act was not a contract for two reasons: First, the Legislature did not intend to bind itself contractually, and second, even if it did, it lacked the authority to do so because states cannot bargain away their right to regulate “public matters and bodies.” (*East Hartford v. Hartford Bridge Co.* (1851) 51 U.S. 511, 534 (*East Hartford*)). The trial court agreed with the first of these arguments and did not reach the second. Tackling the problem from the other direction, we find it unnecessary to decide whether the language of the Act or the history and circumstances of its adoption evince the requisite intent to contract because we agree with defendants that, under the reserved powers doctrine (see *United States v. Winstar Corp.* (1996) 518 U.S. 839, 888 (*Winstar*)), the Legislature could not contract away sovereign authority to manage a public institution like the College.

Defendants invoke *Newton v. Commissioners* (1879) 100 U.S. 548 (*Newton*), which concerned an 1846 Ohio statute providing that, “before the seat of justice shall be considered permanently established at Canfield, the proprietors or citizens thereof shall give bond with good and sufficient security, payable to the commissioners of said county . . . for the sum of \$5,000, to be applied in erecting public buildings for said county, and that the citizens of Canfield shall also donate a suitable lot of ground on which to erect public buildings.’” (*Id.* at p. 549.) Numerous citizens of the town executed the bond and conveyed the land, and a courthouse was built. (*Ibid.*) Almost 30 years later, however, the state enacted legislation moving the seat of justice from Canfield to Youngstown, and

several individuals who had executed the bond sued, arguing that the state was contractually bound by the provision in the 1846 statute that the seat of justice would be “permanently established” in Canfield. (*Id.* at pp. 549–552.)

The high court disagreed because “[t]he legislative power of a State, except so far as restrained by its own constitution, is at all times absolute with respect to all offices within its reach.” (*Newton, supra*, 100 U.S. at p. 559.) Reviewing prior cases in which the legislative or police power was found not to be subject to contractual restraint, it explained: “They involve *public interests*, and legislative acts concerning them are necessarily *public laws*. Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. . . . It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require.” (*Ibid.*; cf. *Casey v. Harned* (1857) 5 Iowa 1, 7, 14 [statute’s provision that whichever of two places receives the greatest number of votes “shall be and remain *forever* afterwards the County Seat of said county” could mean only that the selected town would remain the county seat “until changed by law”]; *Stevens v. Thames* (1920) 204 Ala. 487, 488 [statute absorbing the Mobile Medical College into the medical department of the University of Alabama, and providing that the “medical department shall remain in Mobile for all time, . . . could be no contractual obligation on the part of the state as to

the future maintenance and location of its own agency”].)

Plaintiffs argue that *Newton* is distinguishable because the Act “formed a contract between the State and a *private* individual, S.C. Hastings” and this case “does not concern any alleged *public* contractual interests asserted by the citizens of a municipality.” But the individuals who executed the bond and donated land for the courthouse in *Newton* were private citizens, and more importantly, the Court held that the State could not contract away its authority over “all offices within its reach” because it was “vital to the public welfare” that a future legislature “should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require.” (*Newton, supra*, 100 U.S. at p. 559.)<sup>4</sup> That is the point of the reserved powers doctrine—that “a state government may not contract away ‘an essential attribute of its sovereignty.’” (*Winstar, supra*, 518 U.S. at p. 888.) And what is at issue here is sovereign authority to manage a public entity: There is no dispute that the Act established the College as a public institution affiliated with the University of California, which exercises the powers of the State. (Stats. 1878, ch. 351, § 2, p. 533; see *Regents of University of California v. Superior Court* (2024) 102 Cal.App.5th 852, 858 [“The California Constitution

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<sup>4</sup> It is true that in *East Hartford*, another case cited by defendants, the high court also addressed the fact that the contract was between the state and a municipal corporation (*East Hartford, supra*, 51 U.S. at p. 534), but *Newton* makes clear that a state cannot contract away its sovereign authority to manage its own institutions regardless of the entity or person with whom the putative contract was made. The reserved powers doctrine is not limited to claimed contracts between public entities.

establishes the Regents as a ‘public trust . . . with full powers of organization and government’ ”]; *City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.5th 536, 545 [noting that the College is “statutorily designated as the law department of the University of California (Ed. Code, § 92201)”]; cf. *Trustees of Dartmouth College v. Woodward* (1819) 17 U.S. 518, 638 [distinguishing private educational corporations from unincorporated public educational institutions that are “controllable by the legislature”].)<sup>5</sup>

Plaintiffs cite *Matsuda v. City and County of Honolulu* (9th Cir. 2008) 512 F.3d 1148, 1154 for the proposition that “a complete list of the ‘essential attributes’ of sovereignty which may not be contracted away under the reserved powers doctrine has never been expressly established,” and aver that they are unaware of any case holding that “the ability to rename a particular public school or eliminate a single board seat reserved for school benefactors” belongs on the list. But because no complete list exists, the absence of a case directly on point is not dispositive. In our view, the appellation of a public institution or agency, or the qualifications of individuals entitled to manage it, are matters of public significance to which future

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<sup>5</sup> We see no merit to plaintiffs’ argument that “the reserved powers doctrine does not protect the State Legislature’s power to rename the College’s or eliminate the hereditary Board seat because the Legislature does not possess that power in the first place.” We conclude in section III below that the Legislature does possess the authority to change the name at the College’s request, and in any event, the authority to manage the College is an essential attribute of state sovereignty that may not be bargained away by any public entity.

changes may be deemed important to advance the institution's obligation to serve the public interest. Plaintiffs have developed no argument to the contrary. Nor have they argued by analogy to any case in which some aspect of a state's authority to manage its own institutions or agencies was held not to be an essential attribute of sovereignty. Accordingly, we conclude that the State cannot have contracted away sovereign authority to change the name of the College or to remove the hereditary board seat.<sup>6</sup>

## II.

Plaintiffs next allege that, by changing the College's name and eliminating the hereditary board seat, Assembly Bill 1936 constitutes a bill of attainder and an ex post facto law in violation of the United States and California Constitutions. We disagree.

### A.

Bills of attainder are prohibited by the United States Constitution. (U.S. Const., art. I, § 10.) “ ‘A bill of attainder is “punishment” directly inflicted by the legislature on a person or specified class for an action or status taken or existing prior to the date of the enactment.’ ” (*Alpha Standard Investment Co. v. County of Los Angeles* (1981) 118 Cal.App.3d 185, 189 (*Alpha*

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<sup>6</sup> In their opening brief, plaintiffs did not cite *East Hartford* or *Newton*, nor did they expressly address the reserved powers doctrine more generally. While we have nonetheless considered the arguments offered on that subject in the reply brief, the discussion there focuses on how the doctrine applies in the context of plaintiffs' Contract Clause claim and develops no separate argument that it applies differently to their state-law claims for breach of contract. Our review is limited to issues properly raised and briefed. (*Swain v. LaserAway Medical Group, Inc.* (2020) 57 Cal.App.5th 59, 72.)

*Standard*.) A law constitutes an unconstitutional bill of attainder if it satisfies three criteria: (1) it must specify the affected persons; (2) it must be punitive; and (3) it must fail to provide for the protections of a judicial trial. (*Selective Service v. Minn. Public Int. Res. Gp.* (1984) 468 U.S. 841, 847 (*Selective Service*.)

Initially, the State argues that Assembly Bill 1936 is not a bill of attainder because it does not single out a particular person or class for punishment as that term has been interpreted under the federal Constitution. The individual plaintiffs argue that Assembly Bill 1936 identifies S.C. Hastings by name and “sufficiently identifies them as his ‘heirs or representatives’ for the purpose of subjecting them to punishment—namely, by removing their family name from the College and eliminating their privileged status vis-a-vis the hereditary Board seat.”

Assuming, without deciding, that the individual plaintiffs make up an identifiable class, the demurrer was properly sustained because the bill does not punish plaintiffs within the meaning of the bill of attainder clause. (*See Kaspersky Lab, Inc. v. United States Dep’t of Homeland Sec.* (D.D.C. 2018) 311 F.Supp.3d 187, 206 [“Many laws apply with specificity. It is the inflicting of ‘punishment’ that is the ‘principal touchstone’ of a bill of attainder”].)

“ ‘Historically, [a bill of attainder] involved the punishment of death legislatively imposed, but by judicial construction in the United States, the Bill of Attainder Clause also prohibits a “bill of pains and penalties” by which lesser punishment (banishment, punitive seizure of property, imprisonment, etc.) is legislatively imposed on a particular individual or class.’ ” (*Alpha Standard, supra*, 118 Cal.App.3d at p.189.)

Forbidden legislative punishment, however, “is not involved merely because the Act imposes burdensome consequences.” (*Nixon v. Administrator of General Services* (1977) 433 U.S. 425, 472 (*Nixon*).

“In deciding whether a statute inflicts forbidden punishment,” the Supreme Court has “recognized three necessary inquiries: (1) whether the challenged statute falls within the historical meaning of legislative punishment [the Historical Test]; (2) whether the statute, ‘viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes’ [the Functional Test]; and (3) whether the legislative record ‘evinces a congressional intent to punish’ [the Motivational Test].” (*Selective Service, supra*, 468 U.S. at p. 852; *Legislature v. Eu* (1991) 54 Cal.3d 492, 526.) These three tests are each “independent—though not necessarily decisive—indicator[s] of punitiveness.” (*Foretich v. United States* (D.C. Cir. 2003) 351 F.3d 1198, 1218 (*Foretich*).

Assembly Bill 1936 does not qualify as a bill of attainder under any of these tests.

1.

“Traditionally, bills of attainder sentenced the named individual to death, imprisonment, banishment, the punitive confiscation of property by the sovereign, or erected a bar to designated individuals or groups participating in specified employments or vocations.” (*SeaRiver Maritime Financial Holdings Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 673.) The removal of the Hastings name from the College and the elimination of the hereditary board seat do not fall within those categories. Plaintiffs argue that “the legislative confiscation of property or vested rights with

attendant consequences for the descendants of the attainted person falls squarely within the historical meaning of punishment,” but our discussion in section I above rejects the premise on which this argument is based—that S.C. Hastings or the individual plaintiffs had a vested interest in the name of the College or in a reserved seat on its board. Because we disagree that Assembly Bill 1936 works any confiscation of property or interferes with any vested right, we do not see it as analogous to historical punishments that did so, including the “corruption of blood,” which prevented heirs from inheriting the attainted person’s property. (See *United States v. Brown* (1965) 381 U.S. 437, 441; *Nixon, supra*, 433 U.S. at p. 473, fn. 35.)

Plaintiffs further argue that the bill “marks S.C. Hastings and his descendants with a brand of infamy—a traditional form of reputational punishment ‘particularly susceptible to invalidation as a bill of attainder,’ and declares their actual or perceived wealth as stemming from the seizure of land through genocidal mass murder.”<sup>7</sup> But the bill imputes no blame to any of S.C. Hastings’s descendants for his

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<sup>7</sup> In their opening brief, plaintiffs argue that the bill “require[s] a biannual ‘reading of an annual statement of the history of atrocities committed by S.C. Hastings against the Yuki people,’” but their complaint did not challenge this provision as a bill of attainder. Moreover, the quoted provision imposes no requirement but is phrased as a “request” to the College’s board. The complaint did allege that certain legislative findings constituted a bill of attainder, but the cause of action was not focused on reputational harms, alleging simply that “[a] dispute has arisen among the Parties concerning whether AB 1936’s removal of ‘Hastings’ from the name of the College and removal of S.C. Hastings’ family’s hereditary seat on the Board violates the prohibition against bills of attainder.”

conduct with respect to California tribes. It does not directly or implicitly impugn their character. We see no basis to conclude that the bill causes the individual plaintiffs reputational harm.

As to S.C. Hastings himself, we note first that he died generations ago and is therefore not a party to this lawsuit. Plaintiffs argue that, as his living descendants, they have standing to seek relief from a bill of attainder against him, but their complaint does not allege that they are acting in any capacity other than as individuals or that they are bringing this claim on his behalf. Moreover, we have concluded above that Assembly Bill 1936 does not take their property, interfere with their rights, or damage their reputations. Plaintiffs' effort to liken themselves to heirs disinherited by the "corruption of blood" and to claim standing on that basis is not persuasive.

But even putting aside the threshold problem of whether a claim as to S.C. Hastings has been or could have been asserted by the individual plaintiffs here, we are not convinced that Assembly Bill 1936 falls within the historical meaning of legislative punishment even as to him. Plaintiffs rely on *Foretich, supra*, 351 F.3d 1198, which concerned a statute "embodying a congressional determination that [the plaintiff] is a child abuser and a danger to his own daughter," and preventing him from securing visitation with her without first obtaining his wife's consent. (*Id.* at pp. 1213, 1204.) *Foretich* does contain the language plaintiffs quote—that "the early cases also demonstrate that a statute will be particularly susceptible to invalidation as a bill of attainder where its effect is to mark specified persons with a brand of infamy or disloyalty" (*id.* at p. 1219)—but it cited for

that proposition the Supreme Court’s observation that bills of attainder included “legislative enact-ment[s] barring designated individuals or groups from participation in specified employments or voca-tions, a mode of punishment commonly employed against those legislatively branded as disloyal.” (*Nixon, supra*, 433 U.S. at p. 474.) The court’s conclu-sion in *Foretich* was equivocal: The challenged stat-ute, “while not squarely within the historical meaning of legislative punishment, is not dissimilar to the types of burdens traditionally recognized as punitive.” (*Foretich*, at p. 1220.)

Moreover, even that conclusion reflected the stat-ute’s pairing of the “opprobrium of being branded a criminal child abuser” with the “deprivation of paren-tal rights.” (*Foretich, supra*, 351 F.3d at p. 1220.) Plaintiffs have not identified a historical bill of attain-der the only effect of which was to impose reputa-tional harm—still less to do so on a person long since deceased. (Cf. *id.* at p. 1211 [“As Dr. Foretich detailed in the unrefuted affidavit submitted to the District Court, passage of the Act led to harassment by the media, estrangement from his neighbors, and loss of business and professional opportunities”].) Accord-ingly, plaintiffs have not shown that Assembly Bill 1936 imposes something akin to a punishment histor-ically associated with bills of attainder.

## 2.

Turning to the functional test, the question is “whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative pur-poses.” (*Nixon, supra*, 433 U.S. at pp. 475-476; *Alpha Standard, supra*, 118 Cal.App.3d 185, 191 [under this

test “‘we are looking for a “legitimate legislative purpose” to justify the burden placed on a particular class” ’”].) “Courts have conducted this inquiry by examining both the purported ends of contested legislation and the means employed to achieve those ends.” (*Foretich, supra*, 351 F.3d at pp. 1221, 1222 [“there must be a nexus between the legislative means and legitimate nonpunitive ends”].)

Here, the legislative findings indicate that Assembly Bill 1936 was enacted to address the injustice inflicted on the Yuki people and the Native American people of the state and to begin the healing process for the crimes of the past. (Stats. 2022, ch. 478, § 1(u).) The means imposed—changing the name of the College and removing the hereditary board seat—have a “rational connection” (*Foretich, supra*, 351 F.3d at p. 1221) to that aim. The name and hereditary board seat perpetuate the association between the College (a public institution with a mission to serve the public interest) and S.C. Hastings, an association the College and Legislature sought to sever in light of their conclusions about S.C. Hastings’s “significant responsibility” for the harms inflicted. (Stats. 2022, ch. 478, § 1(s).) The purpose of severing that association, however, was not to punish S.C. Hastings or his descendants but “to address the needs of the current generation of Yuki Tribal members and the College’s legal community.” (*Id.*, § 1(n).)

The bill’s reference to “crimes of the past” is not, as plaintiffs suggest, “an unequivocal admission of its punitive intent and effects.” The bill does find S.C. Hastings blameworthy, but it is not like the statute in *Foretich*, which adjudged Dr. Foretich a child abuser

after the courts consistently found his wife’s allegations unproven, and changed the law to deny him visitation with his daughter. (*Foretich, supra*, 351 F.3d at pp. 1203-1204.) S.C. Hastings died more than 130 years before Assembly Bill 1936 was enacted. The Legislature’s findings are a reappraisal—highly critical, to be sure—of a historical public figure. He is not and cannot be subjected to punishment by it.

Although plaintiffs characterize the legislation as a “gratuitous besmirching of the Hastings’ family legacy,” they do not meaningfully address “the magnitude of the burden relative to the purported nonpunitive purposes of the statute.” (*Foretich, supra*, 351 F.3d at p. 1222.) The bill imposes no burdens on S.C. Hastings himself and, contrary to plaintiffs’ argument, it does not impugn his descendants. The most that can be said is that there is no longer a board seat *reserved* for an heir or representative of S.C. Hastings, but plaintiffs do not offer any argument that this change constitutes a severe burden, and they do not dispute that the individual plaintiffs remain free to seek consideration for any seat on the board. Their continued eligibility to serve demonstrates that Assembly Bill 1936 does not deem them tainted by any relation to S.C. Hastings. It is the *reservation* of a board seat for an heir or representative of S.C. Hastings that, along with the name, publicly signifies the association between him and the College, and is what the bill seeks to end. Accordingly, we do not find the bill punitive under the functional test.

3.

“The final test of legislative punishment is ‘strictly a motivational one: inquiring whether the

legislative record evinces a [legislative] intent to punish.’ [Citation.] Under this prong, a court must inspect legislation for a congressional purpose to ‘encroach[ ] on the judicial function of punishing an individual for blameworthy offenses.’ [Citation.] Courts conduct this inquiry by reference to legislative history, the context or timing of the legislation, or specific aspects of the text or structure of the disputed legislation.” (*Foretich, supra*, 351 F.3d at p. 1225.) As indicated in our discussion above, we do not find a legislative intent to punish either S.C. Hastings or the individual plaintiffs. A legislative finding of historical wrongdoing as part of an effort to promote restorative justice is not the equivalent of punishing the wrongdoer, let alone his heirs.

Plaintiffs do not discuss the timing of the legislation, but again, the interval of more than 130 years between the death of S.C. Hastings and the enactment of Assembly Bill 1936 renders improbable the existence of a motive to punish him. There is also nothing in the legislation to indicate that it was enacted in response to anything purportedly done or said by his descendants, including the individual plaintiffs. Plaintiffs’ suggestion that “the express legislative intent” of Assembly Bill 1936 included securing ‘[a]n apology from . . . S.C. Hastings [sic] family’ ” is not supported by the record. Plaintiffs cite committee bill analyses that indicate that Assembly Bill 1936, as proposed, expressed the Legislature’s intent to ensure that the College obtain an “apology from the College, the S.C. Hastings family, and all of those associated with the genocide of the Yuki people.” This provision, however, was not included in the final bill. As enacted, the bill states that “[i]t is the intent of the

Legislature to ensure that the College” engage in several identified restorative justice measures and make “[a]n annual apology on a date to be determined by the Round Valley Indian Tribes, a federally recognized tribal government, its designees of the Yuki Indian Committee, and the College to attest to and acknowledge the social justice components achieved and ongoing efforts.” (Stats. 2022, ch. 478, § 2(b)(19).)

Lastly, plaintiffs repeat their argument that the elimination of the hereditary board seat has “no apparent purpose other than to penalize S.C. Hastings’ descendants, simply because of their shared genetic material.” As we have discussed, plaintiffs have not shown that the elimination of the board seat imposes any significant burden on them, let alone punishment, and it serves the remedial purpose of severing the association between the College and a historical figure who the Legislature concluded caused grievous harm to the Yuki people and the Native American people of the state. The Legislature’s desire “to address the needs of the current generation of Yuki Tribal members and the College’s legal community” (Stats. 2022, ch. 478, § 1(n)) is not a punitive motivation.

For all of these reasons, we conclude that Assembly Bill 1936 is not a bill of attainder.

#### B.

“Article I, section 10, clause 1 of the federal Constitution and article I, section 9 of the state Constitution prohibit the passage of ex post facto laws. [Citation.] California’s ex post facto law is analyzed in the same manner as the federal prohibition. [Citation.] [T]he ex post facto clauses of the state and federal

Constitutions are “aimed at laws that ‘retroactively alter the definition of crimes or increase the punishment for criminal acts.’ ” ” ( *People v. Alford* (2007) 42 Cal.4th 749, 755.)

The individual plaintiffs challenge the court’s ruling on the demurrer to this cause of action solely in a footnote. They argue: “Setting aside [Assembly Bill] 1936’s unfounded accusations regarding murder and genocide, the remaining accusations about S.C. Hastings are limited to his petitioning the State for the formation of a militia—an action that was legal at the time and amounts to an exercise of Hastings’s fundamental right to petition, which is protected by the First Amendment to the U.S. Constitution. To the extent [Assembly Bill] 1936 seeks to retroactively criminalize S.C. Hastings’ petitioning or other lawful activities, [Assembly Bill] 1936 also violates, at a minimum, the Ex Post Facto Clause.”

Putting aside whether this footnote is sufficient to assert a challenge to the court’s ruling on this cause of action (see *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 554-555), the court properly sustained the demurrer. Generally, both the federal and state constitutional prohibitions on ex post facto laws apply only to criminal statutes. (*Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1419.) A civil statute may be found to violate the ex post facto clause only “ ‘if it is “ ‘so punitive either in purpose or effect as to negate [the State’s] intention’ to deem it ‘civil.’ ” ” ” ( *Coats v. New Haven Unified School Dist.* (2020) 46 Cal.App.5th 415, 425 [“ ‘Only the “clearest proof” will suffice to override the Legislature’s stated intent and render a nominally civil statute penal for

ex post facto purposes’ ”].) Assembly Bill 1936 does not meet this standard.

### III.

Article IX, section 9, subdivision (a) of the California Constitution provides in pertinent part: “The University of California shall constitute a public trust, to be administered by the existing corporation known as ‘The Regents of the University of California,’ with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.” Subdivision (f) further provides: “[The Regents] shall also have all the powers necessary or convenient for the effective administration of its trust . . . . The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs.” These constitutional “limitations upon the Legislature’s power to change the form of government of the university, or to interfere with its internal affairs, apply with equal force to the Legislature’s power to affect the internal affairs or form of government of [the College].” (*Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1024 (*Coutin*).

Plaintiffs assert that Assembly Bill 1936’s changes to the College’s name and governance structure are politically motivated and violate article IX, section 9, subdivision (f) of the California Constitution. The State argues, and we agree, that plaintiffs’

claim fails because the College's current Board invited the changes.

The requirement that the College be "kept free" of "political and sectarian influence" operates to protect the independence of the College from state government interference. (*San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d 785, 788-789 [" "[The] power of the Regents to operate, control, and administer the University is virtually exclusive . . . ."]; *People v. Lofchie* (2014) 229 Cal.App.4th 240, 254 ["The purpose of designating the University as a public trust was to insulate it from state government, ensuring that the University and its faculty would be 'entirely independent of all political or sectarian influence.'"]; *Coutin, supra*, 220 Cal.App.3d at p. 1024 [describing constitutional provision as limiting "Legislature's power to change the form of government of the university, or to interfere with its internal affairs".]) Plaintiffs have not cited any authority suggesting that this provision prohibits the Board from making decisions regarding the College that are allegedly based on "political or sectarian whim," or prohibits the State from enacting Legislation at the request of the Board.

Plaintiffs' citation to the historic language of article IX, section 9, subdivision (f) of the California Constitution is misplaced. Prior to 1918, article IX, section 9, read in relevant part, "The University of California shall constitute a public trust, and its organization and government *shall be perpetually continued in the form and character* prescribed by the organic act creating the same . . . ." (Italics added.) The italicized language was interpreted by the California Supreme Court to prevent the Legislature from altering

the composition of the College's Board. (*People v. Kewen* (1886) 69 Cal. 215, 216.) This language was eliminated in 1918. The purported "twofold purposes of the amendment" were "[t]o permit the adaptation of the details of the internal organization of the university to meet modern-day requirements" and "to give to the alumni of the university direct representation on the governing body of the university." (*Coutin, supra*, 220 Cal.App.3d at pp. 1022-1023.) Plaintiffs argue that the 1918 amendment was not intended to "diminish the Board's constitutional obligation to refrain from changing the College's form or character" and that "Section 9 is still intended to safeguard changes to 'form and character' especially when based on political or sectarian whim." We disagree.

Contrary to plaintiffs' argument, the amendment quite clearly affected a significant change in the statute: "[B]y deleting that portion of article IX, section 9, that required the organization and government of the university to be perpetually continued in the form prescribed by its Organic Act, the amendment rendered the provisions of the Hastings Act (as codified in the Political Code and subsequently in the Education Code) subject to modification." (*Coutin, supra*, 220 Cal.App.3d at p. 1023.) Thus, nothing in the provision, as it now reads, prohibits the Board from making, or to the extent necessary, requesting from the Legislature, changes to the provisions of the Act, now codified in the Education Code. Accordingly, the provision of Assembly Bill 1936 that changed the name of the College at the request of the Board did not violate article IX of California Constitution.

As plaintiffs argue, this reasoning does not necessarily resolve the dispute about the provision eliminating the hereditary seat because no such request was expressly made by the Board. The State responds, “That the [B]oard’s focus was on removing ‘Hastings’ from the name of the College—rather than converting the designated board seat (itself an unusual feature for a public institution)—does not alter that the College [B]oard ‘was the impetus’ behind the changes accomplished by [Assembly Bill] 1936.” We agree with the State.

The resolution adopted by the Board, which directed the Chancellor and the Dean to pursue legislation changing the College’s name, makes clear that the separation of the Hastings name from the college was “vital” to the “process of reconciliation between the College and members of the affected Tribes.” Changing the name of the College, however, was not the singular focus of the resolution. Rather, the Board indicated that the ultimate objective of substantive restorative justice would require other additional efforts. The elimination of the hereditary board seat is entirely consistent with the Board’s resolution. Although framed as an issue of standing, which we need not reach, College Defendants reasonably assert that plaintiffs “have no business attempting to enforce the Board’s right [to be free of political or sectarian influence] against the Board itself.”

#### IV.

State common law and Code of Civil Procedure section 526a authorize taxpayers to sue to enjoin the State from carrying on any unlawful actions. (See, e.g., *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1249.) Title 42 of United States Code,

section 1983, provides a cause of action against any person acting under color of state law who deprives another's rights guaranteed by the United States Constitution, including the right not to have a state impair its obligations of contract. (*Southern California Gas Co. v. City of Santa Ana* (9th Cir. 2003) 336 F.3d 885, 886-887.)

Plaintiffs acknowledged that their claims based on the above authority are "derivative" of the claims discussed in the preceding sections. Because we have upheld the court's rulings on the underlying causes of action, the court's order sustaining the demurrers to the derivative causes of action must be upheld as well.

#### DISPOSITION

The judgment is affirmed. Respondents are entitled to recover their costs.

GOLDMAN, J.

WE CONCUR:  
BROWN, P. J.  
CLAY, J.\*

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\* Judge of the Alameda Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court:	Superior Court of the City and County of San Francisco
Trial Judge:	Honorable Richard B. Ulmer
Counsel for Plaintiffs and Appellants:	Michael Yamamoto, Gregory R. Michael, Dorothy Yamamoto Dhillon Law Group Inc., Harmeet Dhillon, Mark P. Meuser, Karin Sweigart
Counsel for College Defendants and Respondents:	Wilkie Farr & Gallagher, Cooley, Benedict Y. Hur, Eduardo E. Santacana, Joshua D. Anderson
Counsel for State of California Defendant and Respondent:	Rob Bonta Attorney General of California Tamar Pachter Senior Assistant Attorney General Lisa W. Chao Supervising Deputy Attorney General Kara Siegel Deputy Attorney General

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**APPENDIX B**

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Filed Feb 06, 2024

**SUPERIOR COURT OF THE  
STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

No. CGC-22-602149

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,

Plaintiffs,

v.

STATE of California, et al.,

Defendants.

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**ORDER ON COLLEGE DEFENDANTS' AND  
STATE OF CALIFORNIA'S DEMURRERS**

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**ORDER**

**COLLEGE DEFENDANTS' DEMURRER**

College Defendants' (DAVID FAIGMAN, SIMONA AGNOLUCCI, CARL ROBERTSON, SHASHIKALA DEB, MICHAEL EHRLICH, ANDREW GIACOMINI, CLAES LEWENHAUPT, MARY PEPYS, COURTNEY POWER, ALBERT ZECHER, ANDREW HOUSTON) demurrers to

causes of action one through five are sustained without leave to amend. Those claims fail as a matter of law and cannot be cured by amendment.

Plaintiffs' request for judicial notice ("RJN") is granted.

In 1878, Serranus Clinton Hastings deposited \$100,000 with the State of California ("State") to establish "Hastings' College of the Law." (Plaintiffs' RJN, Ex. 5 ["An Act to create Hastings' College of Law" ("Act")]; Complaint, par. 1.) The Act provided that the school would be "forever known" as Hastings and his heir or representative would have a seat on the College's Board of Directors. In response to claims that Mr. Hastings committed genocidal acts, the State enacted AB 1936 to remove both the Hastings name from the school and the hereditary Board seat. Plaintiffs contend that AB 1936 is illegal and unconstitutional.

The court concludes that plaintiffs (or at least some of them) have standing to maintain this action. To have standing, a party must be "beneficially interested" in the controversy; specifically, the party must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; see also *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th 671, 696 [explaining that the injury must be (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical].) The removal of the hereditary Board seat constitutes concrete injury.

Plaintiffs' action presents pure legal issues and is amenable to resolution by demurrer. "A trial court may properly sustain a general demurrer to a declaratory relief action without leave to amend when, as here, the controversy presented can be determined as a matter of law." (*City of Fresno v. California Highway Com.* (1981) 118 Cal.App.3d 687, 699; see also *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 240-241.)

#### Cause of Action One

The demurrer to cause of action one [declaratory relief—contracts clause] is sustained without leave to amend because plaintiffs fail to state a cause of action. The Act that created the law school is a statute, not a contract.

"In order for a legislative enactment to be deemed a contract for the purposes of the Contract Clause, there must be a clear indication that the legislature intends to bind itself in a contractual manner." (*Puckett v. Lexington-Fayette Urban Cnty. Gov't* (6th Cir. 2016) 833 F.3d 590, 600; see also *Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 465–66 (1985) ["[A]bsent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'"]) The presumption that a law is not intended to create private contractual rights is known as the "unmistakability doctrine." (*United States v. Winstar Corp.*, 518 U.S. 839, 871 (1996).) In *Winstar*, the Supreme Court explained that the purpose of the doctrine is to avoid unneces-

sarily infringing on a state legislature’s ability to legislate regarding state sovereign rights unless it is clear beyond any doubt that the legislature meant to give up that right. “[S]overeign power ... governs all contracts subject to the sovereign’s jurisdiction, and will remain intact unless surrendered in unmistakable terms.” (*Winstar*, 518 U.S. at 872.) The surrender necessary to bind the government by contract must be “in terms too plain to be mistaken.” (*Id.* at 875.) “A claim that a state statute creates a contract that binds future legislatures confronts a tropical-force headwind in the form of the ‘unmistakability doctrine.’ [citation] This doctrine precludes finding that a statute creates a binding contract absent a clear and unequivocal expression of intent by the legislature to so bind itself.” (*Cranston Firefighters, IAFF Local 1363, AFL-CIO v. Raimondo* (2018) 880 F.3d 44, 48.)

“To determine whether a legislature intended to bind itself contractually, courts examine both the language of the statute itself and the circumstances surrounding its enactment or amendment—such as its apparent purpose, context, legislative history, or any other pertinent evidence of actual intent.” (*Puckett*, 833 F.3d at 600-601.)

Here, plaintiffs fail to meet their heavy burden. The Act “authorized” S.C. Hastings to found the law college. (See Plaintiff’s RJN, Ex. 5 [Section 1].) The Legislature provided that “[t]his Act is passed,” referred to “[t]he object of this Act,” and stated when “[t]his Act shall take effect.” (*Id.* [Sections 7, 13, 15].) The Act does not include any covenanting language; the Act is not couched in the terms of a contract. (See *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 105

(1938) [the statutory benefit was literally “couched in terms of contract.”].)

For example, in *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1997), the intent to contract was clear. The legislation expressly stated that New York and New Jersey “covenant and agree with each other and with the holders of any affected bonds” that the Port Authority would not “apply any of the ... revenues or reserves ... pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.” (*Id.* at 9–10.)

The Act has no such language. In addition, the fact that Mr. Hastings paid money into the state treasury is not dispositive. (See *Cranston Firefighters v. Raimondo* (1st Cir. 2018) 880 F.3d 44, 49 [no contract even though “the state ‘received something in return’” for passing the law].)

Citing *Cal Fire Local 2881 v. CALPERS* (2019) 6 Cal.5th 965, plaintiffs contend that the court does not need to inquire into legislative intent because the parties had a unilateral contract and Mr. Hastings performed by donating the \$100,000. (Opposition, pgs. 32-33.) Plaintiffs’ reliance on *Cal Fire* is misplaced. There, the court explained that it will imply contractual rights for a public employee to receive statutory pension benefits because those benefits constitute deferred compensation. (See also *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853 [same and noting distinction between tenure and pension rights]; *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 505 [“That is the case here. The subject of the

legislation, pension rights, has long been characterized as within the domain of contract.”.) This action is unrelated to protecting earned pension rights.

#### Cause of Action Two

The demurrer to cause of action two [declaratory relief—bill of attainder/ex post facto] is sustained without leave to amend because plaintiffs fail to state a cause of action.

AB 1936 is not a proscribed bill of attainder, nor does it violate the Ex Post Facto Clause.

The Ex Post Facto Clause generally only applies to criminal laws and AB 1936 is a civil statute. (See *Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1419 [“The United States Supreme Court has long recognized that ‘the constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them.’”].) AB 1936 is not “so punitive either in purpose or effect as to negate [the State’s] intention to deem it ‘civil.’” (*Coats v. New Haven Uni. Sch. Dist.* (2020) 46 Cal.App.5th 415, 425.)

“[L]egislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution.” (*United States v. Lovett* (1946) 328 U.S. 303, 315.) To prevail on the bill of attainder claim, plaintiffs would need the “clearest proof” that AB 1936 “specifies” and “inflicts punishment” on them. (See *SeaRiver Mar. Fin. Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 668-669.) But the only person that AB 1936 arguably singles out is Mr. Hastings, who died years

ago. In sum, AB 1936 is not *punishing plaintiffs* without a judicial trial.

#### Cause of Action Three

The demurrer to cause of action three [declaratory relief—collegiate freedom] is sustained without leave to amend because plaintiffs fail to state a cause of action.

Plaintiffs argue that AB 1936’s removal of the Hastings name and hereditary seat violate Article 9, Section 9 of the California Constitution [“[t]he university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs . . . .”]. “The purpose of designating the University as a public trust was to insulate it from state government.” (*People v. Lofchie* (2014) 229 Cal.App.4th 240, 254.) In this case, the College Board itself was the impetus to make the changes; it passed the resolution to remove the Hastings name and hereditary seat. (See Complaint, pars. 3-5.) This case therefore does not present the situation where the Legislature is attempting to dictate university policy.

#### Causes of Action Four and Five

The demurrers to causes of action four [injunctive relief—waste of taxpayer funds] and five [deprivation of civil rights (42 USC 1983)] are sustained without leave to amend. These derivative claims fail to state a claim because plaintiffs do not allege any unlawful or unconstitutional conduct.

### **STATE OF CALIFORNIA’S DEMURRER**

State of California’s (“State”) demurrer to the complaint is sustained without leave to amend.

Plaintiffs' request for judicial notice is granted and the court overrules State's objections.

State's demurrers to causes of action one [declaratory relief—contracts clause], six [breach of contract—specific performance] and seven [breach of contract—damages] are sustained without leave to amend. For the reasons explained in College Defendants' companion demurrer, these claims fail as a matter of law. The Act does not constitute a contract. Cause of action two fails because there was no violation of the ex post facto laws or prohibition against bills of attainder. AB 1936 does not "punish" plaintiffs. Cause of action three fails because there was no violation of collegiate freedom. The College Board caused the changes and was not a victim of State overreaching.

Plaintiffs do not allege the fourth cause of action [injunctive relief—waste of taxpayer funds] or fifth cause of action [deprivation of civil rights] against State.

**IT IS SO ORDERED.**

Dated: February 6, 2024

Honorable Richard B. Ulmer, Jr.  
Judge of the Superior Court

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**APPENDIX C**

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Filed Jan 28, 2026

Court of Appeal, First Appellate District,  
Division Four – No. A170255

**S294099**  
**IN THE SUPREME COURT OF CALIFORNIA**  
**En Banc**

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs and Appellants,  
v.  
STATE of California, et al.,  
Defendants and Respondents.

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The petition for review is denied.

GUERRERO

Chief Justice

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**APPENDIX D**

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Filed 6/5/2023

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE et al.,  
Plaintiffs and Respondents,  
v.  
DAVID FAIGMAN et al.,  
Defendants and Appellants.

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A166898

(City & County of San Francisco Super. Ct.  
No. CGC-22-602149)

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On January 1, 2023, Assembly Bill No. 1936  
(2021-2022 Reg. Sess.) (AB 1936) changed the name  
of what was formerly known as "Hastings College of

the Law" to "College of the Law, San Francisco" (College). Plaintiffs and respondents Hastings College Conservation Committee, Stephen Hastings Breeze, Stephanie Azalea Brackel, Catherine Tortenson, Scott Hastings Breeze, Collette Breeze Meyers, and Colin Hastings Breeze (collectively plaintiffs) have filed a lawsuit against the State of California challenging the constitutionality of AB 1936. As relevant here, the lawsuit also names as defendants the College's Dean and Directors in their official capacities (collectively the College Defendants<sup>1</sup>), seeking both declaratory relief and an injunction to prevent them from implementing the "unconstitutional aims" of the law.

The College Defendants filed a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16<sup>2</sup>), arguing that the complaint was replete with references to their public statements and resolutions regarding a new name for the College and calling upon the Legislature to pass legislation adopting it. The trial court denied the motion, concluding that plaintiffs' causes of action were based on the Legislature's enactment of AB 1936, not on the College Defendants' speech or petitioning activity that preceded it. On appeal, the College Defendants no longer

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<sup>1</sup> The College Defendants are David Faigman, Simona Agnolucci, Carl Robertson, Shashikala Deb, Michael Ehrlich, Andrew Giacomino, Andrew Houston, Claes Lewenhaupt, Mary Noel Pepys, Courtney Power, and Albert Zecher. The State is not a party to this appeal.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless otherwise specified. SLAPP stands for "strategic litigation against public participation." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 85 & fn. 1 (*Navellier*).)

try to justify their motion by pointing to their activities prior to the statute's enactment. Instead, they argue that the anti-SLAPP statute applies because AB 1936 "authorizes and requires" them to engage in particular speech—the new name by which they "represent the College's identity and values to the public"—and because plaintiffs' claims, if successful, would prevent or interfere with that speech.

We can agree that the success of plaintiffs' claims would, at a minimum, prevent the College Defendants from expressing a new official designation for the College, but even assuming that future speech in which the College Defendants use the new name is protected activity within the meaning of the anti-SLAPP statute, it is not the reason plaintiffs have sued them. Because plaintiffs' claims are not *based on* the College Defendants' speech, we conclude that the trial court properly denied the motion.

## BACKGROUND

### **1. *Facts***<sup>3</sup>

Born in 1814, Serranus Clinton Hastings (S.C. Hastings) was the first Chief Justice of California and the State's third Attorney General. In addition to holding these public roles, he amassed significant wealth from various real estate ventures and by 1870, became one of the largest landowners in California. In 1878, S.C. Hastings sought to establish the first law school on the West Coast of the United States and proposed the same to the California Legislature. In response, the Legislature enacted a statute that same

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<sup>3</sup> Our recitation is based on the pleadings and on the papers submitted in the trial court in connection with the anti-SLAPP motion.

year titled "An Act to create Hastings' College of the Law, in the University of the State of California" (the Act). (Stats. 1878, ch. 351.)

The Act provided "[t]hat S.C. Hastings be authorized to found and establish a Law College, to be forever known and designated as 'Hastings' College of the Law.'" (Stats. 1878, ch. 351, § 1.) The Act further provided that the College would be governed by a Board of Directors (Board), independent of the Regents of California, and that the directors "shall always provide for filling a vacancy with some heir or some representative of[] S.C. Hastings." (*Id.*)

The Act's passage was expressly conditioned upon S.C. Hastings's payment of \$100,000 into the State Treasury. (Stats. 1878, ch. 351, § 7.) The Act required the State to appropriate seven percent per year of this sum and pay it "in two semi-annual payments to the Directors of the College." (*Id.* at § 8.) The Act further stated that "should the State . . . fail to pay to the Directors of said College the sum of seven per cent per annum . . . or should the College cease to exist, then the State . . . shall pay to the said S.C. Hastings, his heirs or legal representatives, the said sum of one hundred (\$100,000) thousand dollars and all unexpended accumulated interest." (*Id.* at § 13.) S.C. Hastings accepted these terms and paid \$100,000 to the State Treasury, and the College was established. The Legislature subsequently codified the Act's terms in the Education Code. (See former Ed. Code, § 92200 et seq.)

In 2017, The San Francisco Chronicle published an article titled "The Moral Case for Renaming Hastings College of the Law," which included allegations that S.C. Hastings was involved in fomenting violence

and atrocities against Native Americans living in what is present-day Mendocino County. In response, the College formed the Hastings Legacy Review Committee (HLRC) to consider and make appropriate recommendations to address S.C. Hastings's legacy. It also commissioned a history professor to research and draft a report regarding S.C. Hastings's role in the killing of indigenous people in Northern California in the mid-nineteenth century. In September 2020, Dean Faigman submitted a report to the Board that discussed HLRC's conclusions and recommended that the College retain its name but pursue other restorative justice initiatives. In recommending that the College keep its name, Dean Faigman reasoned that "most of the legal profession has no idea who Serranus Hastings was or that UC Hastings was named after him."

On October 28, 2021, the New York Times published an article questioning the College's name with a headline that S.C. Hastings "masterminded the killings of hundreds of Native Americans." On November 2, 2021, the Board held a special meeting and passed a resolution directing Dean Faigman to "work with the California Legislature, the Governor's Office, and other offices to enact legislation changing the name of the school." A number of other meetings followed, and the Board ultimately passed a resolution to recommend the name "College of the Law, San Francisco" to the Legislature.

AB 1936 was passed by the Legislature in August 2022 and signed by the Governor in September 2022. (Stats. 2022, ch. 478.) AB 1936 designated the school's name as "College of the Law, San Francisco" and amended various statutes, including sections of the

Education Code, to conform to the new name. It also eliminated S.C. Hastings's hereditary seat on the Board. AB 1936 became effective on January 1, 2023.

## ***2. Lawsuit and Anti-SLAPP Motion***

Plaintiffs—a College alumni association and various descendants of S.C. Hastings—filed a complaint against the State and the College Defendants. The complaint included causes of action for declaratory relief against all defendants on the grounds that AB 1936 violated the contract clauses of the California and United States Constitutions, constituted an impermissible bill of attainder and ex post facto law, and violated the California Constitution's provision regarding collegiate freedom. (Cal. Const., art. IX, § 9.) The complaint requested a declaration that the College's name remains "Hastings College of the Law" and that S.C. Hastings's heirs or representatives are still entitled to a seat on the Board. As against the State only, the complaint alleged causes of action for breach of contract (specific performance and damages) on the grounds that the Act constituted a "binding written agreement between the State of California and S.C. Hastings and his descendants" and that the State breached this agreement by enacting AB 1936. As against the College Defendants only, the complaint sought injunctive relief to enjoin them from implementing the unconstitutional provisions of AB 1936, including the further expenditure of taxpayer funds to change the College's name or to eliminate the hereditary Board seat.

The College Defendants filed a special motion to strike the complaint under the anti-SLAPP statute. They argued that plaintiffs' claims arose from the following protected activity: (1) statements made by the

College Defendants at Board meetings with respect to the College's name; (2) the College Defendants' public expressions regarding the College's name and request to the Legislature for a name change; and (3) the College Defendants' future conduct that the injunctive and declaratory relief would prevent, such as lobbying for additional funding to implement the name change, pursuing any other change to the College's original statutory framework, or "even . . . referring to the College by the name they selected." They also argued that plaintiffs could not establish a probability of prevailing on the merits of their claims under the second prong of the anti-SLAPP statute.

The trial court denied the motion under the first prong and did not reach the second. It held that "none of plaintiffs' claims are predicated on defendants' protected activity" because plaintiffs are "challenging the enactment of AB 1936 and the consequences that flow from that statute, i.e., the replacement of the Hastings College of the Law name and the removal of the hereditary seat on the college's board of directors." The College Defendants timely appealed.

## DISCUSSION

### *1. Anti-SLAPP Law and Standard of Review*

The anti-SLAPP statute provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

"The anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*)). "Litigation of an anti-SLAPP motion involves a two-step process. First, 'the moving defendant bears the burden of establishing that the challenged allegations or claims "aris[e] from" protected activity in which the defendant has engaged.' [Citation.] Second, for each claim that does arise from protected activity, the plaintiff must show the claim has 'at least "minimal merit."' ( *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009 (*Bonni*)).

"Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier, supra*, 29 Cal.4th at p. 89.) We review *de novo* a trial court's ruling denying an anti-SLAPP motion. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

## **2. We Find No Forfeiture**

In general, a reviewing court will not consider for the first time on appeal arguments that could have been, but were not, presented to the trial court. (*Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591.) Because the College Defendants' argument on appeal is not based, as it was in the trial court, on the speech and petitioning activity by which they sought AB 1936's enactment, and instead rests on the future speech that they claim AB 1936 "authorizes and requires" of

them, plaintiffs contend that the argument is forfeited.<sup>4</sup>

Any appearance the College Defendants' current argument made in the trial court was fleeting at best, and by no means can we fault the trial court for not addressing it. However, their motion and opening memorandum did note that plaintiffs sought to prevent them from referring to the College by its new name, and their reply memorandum maintained that their implementation of AB 1938 was "inseparable from protected activities" because the College "wants to use 'UC College of the Law, San Francisco' to describe itself to the world." Moreover, at the hearing on the motion, the College Defendants' counsel argued that "the statute itself . . . is authorizing and supporting speech activity." In light of these statements, we will not deem the argument forfeited.

### ***3. Whether Plaintiffs' Claims Arise From Protected Activity***

#### *a. "Arising From" Under the First Prong*

Under the first prong of the anti-SLAPP statute, we must determine whether the College Defendants have made a threshold showing that the challenged causes of action arise from their protected activity. (*Bonni, supra*, 11 Cal.5th at p. 1009.) If such a showing has been made, we then move to the second prong

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<sup>4</sup> We think the trial court was correct to reject the argument the College Defendants made there. (See, e.g., *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 ["That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such"]; *Durkin v. City and County of San Francisco* (2023) 90 Cal.App.5th 643, 652-654.)

to determine whether plaintiffs have shown that their claims have at least minimal merit. (*Ibid.*)

The anti-SLAPP statute identifies four categories of protected activity. (§ 425.16, subd. (e)(1)-(4).) While the College Defendants argue that the name used to describe the College falls within the range of speech entitled to First Amendment protection, "courts determining whether conduct is protected under the anti-SLAPP statute look not to First Amendment law, but to the statutory definitions in section 425.16, subdivision (e)." (*City of Montebello v. Vasquez* (2016) 1 Cal 5th 409, 422.) The College Defendants do not expressly invoke any of the statutory definitions, but plaintiffs, for their part, do not argue that no definition applies. To avoid dwelling on an issue the parties have not raised, we will therefore assume, without deciding, that the College Defendants' use of the new name could qualify for protection under subdivision (e)(3), which covers "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest," or under subdivision (e)(4), which covers "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

"A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] Critically, 'the defendant's act underlying the plaintiffs cause of action must *itself* have been an act in furtherance of the right of petition or free speech.'" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062-1063 (*Park*)). In other words, "a claim may be struck only if the

speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability . . . ." (*Id.* at p. 1060.)

In *Park*, for example, the Supreme Court held that a discrimination claim brought by a university professor who was denied tenure did not arise from any protected statements or communications made by the university during the tenure process. Rather, the claim was based on "the denial of tenure itself and whether the motive for that action was impermissible." (*Park, supra*, 2 Cal.App.5th at p. 1068.) The court reasoned that "[t]he tenure decision may have been communicated orally or in writing, but that communication does not convert Park's suit to one arising from such speech." (*Ibid.*)

*b. The Conduct Underlying Plaintiffs' Causes of Action Was the Enactment of AB 1936, Not the College Defendants' Speech*

The five causes of action asserted against the College Defendants (alone or alongside the State) challenge the same two things: the change to the College's name, and the removal of the hereditary seat on the College's Board. For the purposes of our discussion, we can disregard the dispute over the Board seat because the College Defendants do not argue that it is based on protected activity.<sup>5</sup> As for the name, the

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<sup>5</sup> Thus, as the College Defendants acknowledge, plaintiffs have pled what are at most "mixed" causes of action, meaning they arise only in part from protected activity. (See *Baral, supra*, 1 Cal.5th at p. 382.) While the College Defendants' motion sought to strike each cause of action in its entirety, on appeal they argue that "at a minimum," each of plaintiffs' causes of action "should be stricken to the extent they arise from and seek to interfere with" the College Defendants' speech.

complaint alleges that it was initially "enshrined by State law" in 1878, and that AB 1936—another state law—has changed it. It is the Legislature's enactment of AB 1936 that, according to the complaint, gives rise to liability and therefore, in our view, provides the basis for plaintiffs' claims.

It is well established that anti-SLAPP protection "extends to statements and writings of governmental entities and public officials on matters of public interest and concern that would fall within the scope of the statute if such statements were made by a private individual or entity." (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17.) It appears to be an open question whether a challenge based on a speech-related *enactment*, rather than on other activities undertaken by public entities or officials in furtherance of their rights to free speech or to petition, may give rise to an anti-SLAPP motion. (See *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal.App.4th 343, 357 [suggesting that a public entity's speech-related enactment may implicate its exercise of free speech for anti-SLAPP purposes]; *City of Montebello v. Vasquez, supra*, 1 Cal.5th at pp. 425-427 [discussing *San Ramon* and noting concern that applying section 425.16 to a public entity's enactment may chill citizens' exercise of their right to challenge government action].) But we need not decide that question here. Even assuming that AB 1936 is a "speech-related" measure and that plaintiffs' challenge to its enactment may be subject to an anti-SLAPP motion, such a motion would properly be brought by the public entity that enacted it: the State, not the College Defendants. As the plain language of the anti-SLAPP statute provides, "[a]

cause of action against a person arising from any act of *that person* in furtherance of the person's right of petition or free speech . . . shall be subject to a special motion to strike." (§ 425.16, subd. (b)(1), italics added.)

To avoid this problem, the College Defendants explain that their anti-SLAPP motion is not based on the fact that AB 1936 *itself* can be characterized as a speech-related measure insofar as it establishes a new name for the College. Rather, they argue that AB 1936 "authorizes and requires specific speech" by the College Defendants—i.e., referring to the College by its new name—and that the success of plaintiffs' claims would prevent them from engaging in that speech. Or as they write in their reply, "[t]he point is that AB 1936 authorizes speech, and that plaintiffs' claims arise directly from (and seek to silence) the speech that the statute governs."

Nothing in the language of section 425.16 or the case law construing it authorizes an anti-SLAPP motion simply because a claim would have an adverse effect on protected activity. Presumably that is why the College Defendants also assert that plaintiffs' claims "arise directly from" their future speech referring to the College by its new name, but we are not persuaded. "In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." (*Navellier, supra*, 29 Cal.4th at p. 89.) While the complaint alleges that the College Defendants "cannot lawfully remove 'Hastings' from the College's name," and seeks to prevent them from doing so, the reasons plaintiffs contend the name's removal would be unlawful are the same reasons they contend AB

1936 itself is unlawful—for example, that it would violate the contract clauses of the federal and state constitutions or would constitute an impermissible bill of attainder. The wrongfulness of any acts by the College Defendants depends on and derives from the wrongfulness of AB 1936 itself. In these circumstances, "the wrong complained of" (*Park, supra*, 2 Cal.5th at p. 1060) is the law's enactment, not what the College Defendants do or say in conformity with it. That is true even if we accept that, under *Vargas*, the College Defendants' use of the new name is protected activity within the meaning of section 425.16, subdivision (e), and that plaintiffs' claims would interfere with or prevent that speech. The College Defendants' future speech is at most a *consequence* of the State's enactment of AB 1936; it is the enactment itself that gives rise to plaintiffs' claims.<sup>6</sup>

We are aware that in *Bonni*, the Supreme Court rejected the plaintiff doctor's argument that legally mandated reports the defendant hospital made to the Medical Board of California and National Practitioner Data Bank regarding his suspension did not give rise to his claims because they were simply the "natural consequence" of the acts that actually harmed him. (*Bonni, supra*, 11 Cal.5th at p. 1018.) However, the court rejected the doctor's argument because his com-

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<sup>6</sup> Plaintiffs observe that, while the name established by AB 1936 is the one that the College Defendants prefer to use, it is not their preference that is determinative; if the College Defendants were to "vote tomorrow to revert to using the College's former name," the College's official designation would remain the same. Thus, plaintiffs reason, it is AB 1936 that is responsible for their claimed injury.

plaint alleged the reports "as separate acts of retaliation," and his declaration in opposition to the anti-SLAPP motion "separately describe[d] the harm he suffered as a result of the allegedly retaliatory reports." (*Ibid.*) Here, by contrast, plaintiffs do not allege the College Defendants' future speech as an independent basis for liability or as imposing distinct harms.

Plaintiffs contend that the reason they have sued the College Defendants is that they "merely occupy official positions on the College's Board for which injunctive relief is needed to effectively cease implementation of AB 1936 by the College." The complaint refers to tasks such as "changing physical signage, student and faculty email addresses, websites, and other various references to 'Hastings' within the College and its programs and materials," as well as "communicating the new name to prospective students and employers." The College Defendants do not argue that these specific tasks are protected activity, but rather (as they first wrote in the trial court) that the College's implementation of AB 1936 is "inseparable" from its protected activity in describing itself and signifying its values to the world.

But even if these implementation measures were themselves protected activity, rather than simply bound up with it, "the remedy sought does not affect whether the claim is based on protected activity." (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1392.) In *Coretronic*, the defendant—a law firm sued for allegedly obtaining the plaintiffs' confidential information during an insurance coverage evaluation and using it to benefit another client that was the plaintiffs' adversary in litigation—

argued that the suit was a SLAPP in part because the plaintiffs sought to enjoin the firm's continued communications with its client. The court disagreed, finding that the claims arose from the firm's breach of its duties, and the fact that the plaintiffs sought an injunction that would enjoin communication did not alter the nature of the causes of action. (*Ibid.*) Similarly, in this case plaintiffs' claims arise from AB 1936, and the fact that plaintiffs seek injunctive and declaratory relief to prevent the College Defendants from implementing the law does not alter the basis for those claims. The College Defendants argue that *Coretronic* is distinguishable because AB 1936 itself is speech related, and because the complaint asserts separate causes of action for injunctive relief against the College Defendants. But as we have discussed, even assuming that AB 1936 is a speech-related measure, it is the State's speech, not the College Defendants', and the alleged wrongfulness of the College Defendants' implementation of the law is not legally distinct from the alleged wrongfulness of the law itself. Thus, while plaintiffs' claims may adversely affect the College Defendants' future speech, they are based on the enactment of AB 1936.

Since we find that plaintiffs' claims do not arise from any protected activity by the College Defendants under the first prong of the anti-SLAPP analysis, we need not determine whether plaintiffs have shown a probability of prevailing on the merits under the second prong.<sup>7</sup>

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<sup>7</sup> We deny plaintiffs' request for judicial notice because it relates only to the second prong of the anti-SLAPP analysis and is therefore not relevant to our resolution of the appeal. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4.)

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DISPOSITION

The order denying the anti-SLAPP motion is affirmed. Plaintiffs are entitled to recover their costs on appeal.

GOLDMAN, Acting P. J.

WE CONCUR:

TUCHER, J.\*

FINEMAN, J.\*\*

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\*\* Judge of the Superior Court of California, County of San Mateo, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court:	City and County of San Francisco Superior Court
Trial Judge:	Honorable Richard B. Ulmer Jr.
Counsel for Defendants and Appellants:	GIBSON, DUNN & CRUTCHER, Matthew S. Kahn, Elizabeth K. McCloskey, Theodore J. Boutrous Jr., Theane Evangelis, Matt Aidan Getz UC COLLEGE OF THE LAW, SAN FRANCISCO, John K. DiPaolo, Laura M. Wilson-Youngblood
Counsel for Plaintiffs and Respondents:	MICHAEL YAMAMOTO, Gregory R. Michael, Dorothy Yamamoto DHILLON LAW GROUP, Harmeet Dhillon, Mark P. Meuser, Karin Sweigart

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**APPENDIX E**

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Filed November 7, 2025

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs and Appellants,  
v.  
STATE of California, et al.,  
Defendants and Respondents.

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A170255

(San Francisco City & County Super. Ct.  
No. CGC-22-602149)

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ORDER DENYING REHEARING

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THE COURT:

Appellants' petition for rehearing, filed October 30, 2025, is denied. In addition to several asserted grounds for rehearing that we reject summarily, appellants raise the following arguments for the first time in their petition: (1) The reserved powers doctrine is inapplicable in this instance because the State retained the option under the 1878 Act to cease operation of the school and return the donated funds; (2) Appellants' claim for monetary damages for the State's alleged breach of contract survives application of the reserved powers doctrine; and (3) Appellants should be granted leave to amend to allege a cause of action for violation of the 1878 Act. It is well established that "a reviewing court need not consider points raised for the first time on petition for rehearing." (*CAMS/ IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542; *In re Marriage of Sheldon* (1981) 124 Cal.App.3d 371, 381 ["a petition for rehearing is an inappropriate occasion to raise arguments not pursued in the original appeal"].) Appellants have offered no explanation for their failure to raise these arguments earlier. Accordingly, we deem them waived for purposes of this appeal. (*Samantha B. v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, 107, fn. 5 [finding waiver where issue was raised for first time in a petition for rehearing].)

Dated: 11/07/2025

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Brown, P.J. P.J.

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**APPENDIX F**

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Filed Feb 22, 2024

**SUPERIOR COURT OF THE  
STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

No. CGC-22-602149

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**HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs,**

**v.**

**STATE of California, et al.,  
Defendants.**

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**FINAL JUDGMENT FOR DEFENDANTS STATE  
OF CALIFORNIA AND COLLEGE DEFENDANTS**

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The demurrers of State of California and College Defendants to Plaintiffs' Complaint came on for hearing on February 6, 2024, in the above-entitled Court, the Honorable Richard B. Ulmer, Jr. presiding. Upon fully considering the pleadings and arguments of counsel, the Court took the matter under submission. The Court issued an Order sustaining the demurrers

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to all causes of action without leave to amend on February 6, 2024.

Accordingly, the Court ORDERS, ADJUDGES AND DECREES that the above-entitled action is dismissed in its entirety with prejudice and that Plaintiffs take nothing against the State of California and College Defendants.

**IT IS SO ORDERED.**

Dated: February 22, 2024

Honorable Richard B. Ulmer, Jr.  
Judge of the Superior Court

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**APPENDIX G**

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*Excerpts from*

Assembly Bill No. 1936 - University of California:  
Hastings College of the Law. (2021-2022)

**CHAPTER 478**

An act to amend Section 1245.210 of the Code of Civil Procedure, to amend Sections 17200, 44320, 66022, 67346.5, 67347.7, 67358.1, 67358.4, 67380, 67385, 67391, 68052, 68120, 68120.3, 68120.7, 68121, 92200, 92204, 92205, 92205.5, 92206, 92214, 92215, 92630.5, 94110, 99275, 99277, 100110, 100120, 100450, 100460, 100510, 100650, 100652, 100710, 100745, 100850, 100852, 100910, 100945, 101040, 101041, 101051, and 101057 of, and to amend the heading of Article 1 (commencing with Section 92200) of Chapter 3 of Part 57 of Division 9 of Title 3 of, the Education Code, to amend Sections 3527, 3560, 3561, 3562, 3572.3, 3580.3, 3592, 3593, 8248, 8880.5, 11012, 11346.3, 14685, and 15855 of the Government Code, to amend Section 53533 of the Health and Safety Code, and to amend Section 830.4 of the Penal Code, relating to the University of California.

[ Approved by Governor September 23, 2022. Filed  
with Secretary of State September 23, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1936, Ramos. University of California: Hastings College of the Law.

The California Constitution provides that the University of California constitutes a public trust, and requires the university to be administered by the

Regents of the University of California, a corporation in the form of a board, with full powers of organization and government, subject to legislative control only for specified purposes. Existing law establishes the Hastings College of the Law, under the governance of an 11-member Board of Directors of the Hastings College of the Law, within the University of California. Existing law provides that the college shall forever be known and designated as the Hastings College of the Law. Under existing law, six directors constitutes a quorum for the transaction of all business of the college's board of directors. Existing law requires one of the directors to always be an heir or representative of Serranus Clinton (S.C.) Hastings and all other directors to serve 12-year terms. Existing law requires vacancies occurring in the board of directors other than the death or resignation of the heir or representative of S.C. Hastings to be filled by the Governor and approved by the Senate.

This bill would instead provide that the college shall be designated as the College of the Law, San Francisco, as provided. The bill would make conforming changes. The bill would specify that a majority of directors constitutes a quorum for the transaction of all of the board of directors' business, and would require all directors to serve 12-year terms, except as provided. The bill would require all vacancies occurring on the board of directors, including a vacancy of the heir or representative of S.C. Hastings, to be filled by the Governor and approved by the Senate.

This bill would incorporate additional changes to Section 67385 of the Education Code proposed by AB 1467 to be operative only if this bill and AB 1467 are enacted and this bill is enacted last.

Vote: MAJORITY Appropriation: NO Fiscal  
Committee: YES Local Program: NO

The people of the State of California do enact as follows:

**SECTION 1.** The Legislature finds and declares all of the following:

(a) On March 26, 1878, the Legislature approved an act (the “Original Act”) to create Hastings’ College of the Law, in the University of the State of California.

(b) The Original Act authorized Serranus Clinton Hastings (“S.C. Hastings”) to found and establish a law college known as Hastings College of the Law (the “College”).

(c) The object of the Original Act was for the state to grant a perpetual annuity for the support and maintenance of the College.

(d) The Original Act provided that S.C. Hastings would pay into the State Treasury the sum of \$100,000, and that amount is never to be refunded, except as provided in the Original Act.

(e) S.C. Hastings completed the payment of \$100,000 specified in the Original Act on May 24, 1878.

(f) The Original Act required the state to appropriate the sum of seven percent per annum upon \$100,000 to be paid in two semiannual payments to the Board of Directors of the College.

(g) In each year since 1878, the state has appropriated and paid, in semiannual payments to the Board of Directors of the College, a sum equal to or greater than seven percent per annum upon \$100,000.

(h) The College was established in 1878, and has continued to exist ever since without interruption.

(i) The Original Act stated that the College was to be designated as Hastings College of the Law.

(j) The Legislature previously amended the Original Act in 1907, in 1943, in 1959, in 1976, in 1980, and in 1992 (as amended, the “Act”), and the Act currently is codified in Article 1 (commencing with Section 92200) of Chapter 3 of Part 57 of Division 9 of Title 3 of the Education Code.

(k) In September 2020, the College completed a three-year project to examine founder S.C. Hastings’ involvement in mass killings of Native Americans in California’s Eden and Round Valleys before the College’s founding.

(l) The project determined that the founder of the College, S.C. Hastings, perpetrated genocidal acts against Native California Indigenous Peoples, most especially the Yuki Tribe, in the 1850s in the Eden Valley and Round Valley areas in the County of Mendocino.

(m) For a period of four years preceding this act, the College collaborated with the Round Valley Indian Tribes Tribal Council and Yuki Tribal members in pursuit of restorative justice. As one of several restorative justice actions, on November 2, 2021, the Board of Directors of the College unanimously authorized that the name of the College be changed.

(n) In connection with the name change authorization, the Board of Directors of the College determined that changing the name of the College is in the best interests of the continuation of the College in perpetuity, and is an element of the College’s ongoing work to address the needs of the current generation of Yuki Tribal members and the College’s legal community.

(o) An act of the Legislature is needed to change the name of the College.

(p) On July 27, 2022, the Board of Directors of the College voted on the replacement name for the College. This vote was informed through multiple consultative meetings with the Round Valley Indian Tribes, a federally recognized tribal government, and its designees of the Yuki Indian Committee approved by the Round Valley Indian Tribes. During the consultation period, the Yuki Indian Committee representatives forwarded the name Powe'no'm as the replacement name for the College. After due consideration, the Board of Directors of the College voted unanimously to make the final recommendation to replace "Hastings College of the Law" with "College of the Law, San Francisco."

(q) S.C. Hastings, founder of the Hastings College of the Law, promoted and financed Native American hunting expeditions in the Eden and Round Valleys, funding bounties resulting in the massacre of hundreds of Yuki men, women, and children.

(r) S.C. Hastings enriched himself through the seizure of large parts of these lands and financed the college of the law bearing his namesake with a \$100,000 donation.

(s) S.C. Hastings and the state bear significant responsibility for the irreparable harm caused to the Yuki people and the Native American people of the state.

(t) The state has formally apologized to the Native American people of the state for the genocide financed and perpetrated by the state.

(u) S.C. Hastings' name must be removed from the College to end this injustice and begin the healing process for the crimes of the past.

**SEC. 2.** (a) As used in this section, "College" means the college named in Section 92200 of the Education Code.

(b) It is the intent of the Legislature to ensure that the College achieves all of the following:

(1) Assists in the formation of a nonprofit organization, as described in subsection (c) of Section 501 of the Internal Revenue Code, in association with, and jointly governed by, Yuki descendants selected by the government of the Round Valley Indian Tribes to provide an organizational structure to raise capital, organize pro bono legal assistance and other support, and assist tribal leadership with federal, state, and county matters, water and property rights, economic development, and efforts to meet the social needs of the community. The College's responsibilities extend only to assisting in the formation of the nonprofit organization, and will not otherwise involve its governance or the ongoing operations of the organization.

(2) Seeks to organize, through the College's Indigenous Law Center or other administrative offices, as appropriate, pro bono legal assistance and other support, and assist tribal leadership with federal, state, and county matters, water and property rights, economic development, tribal courts, and efforts to meet the social and security needs of the community.

(3) Works with interested public and private parties or entities to develop scholarship assistance for duly admitted law students at the college that are mem-

bers of Round Valley Indian Tribes, a federally recognized tribal government. These funds may be used to offset tuition, housing costs, and other incidentals for Round Valley Indian Tribes tribal members admitted to the law school.

(4) Dedicates a permanent and public memorial, and other displays, as appropriate, to the Yuki people at an appropriate location on its campus, with display panels, historical explanations, and cultural presentations. This memorial should acknowledge and atone for the historical traumas suffered by the Yuki people.

(5) Provides a fully functional, interactive public internet website to allow dissemination of the College's approach, to seek public input, and to keep the public advised of historical, academic, and programmatic work to address the broader issues and the restorative justice agenda. A page on this internet website shall be dedicated to the College's work with Round Valley Indian Tribes and the Yuki people.

(6) Establishes clinical or experiential educational programs for its students, one that may serve as a model for other law schools, to address the specific needs of the residents of the Round Valley, including the possibility of a center for pro bono legal assistance in tribal legal matters and public law assistance that could be staffed with student interns, faculty leadership, and pro bono contributors.

(7) Collaborates with Governor Newsom's Tribal Advisor to engage with, and contribute to, that office and the newly formed Truth and Healing Council, which is working to clarify the historical record of mistreatment, violence, and neglect of Native Americans in California.

(8) Assists in the organization of pro bono attorneys with a connection to the College to assist in mutually agreed upon goals and objectives.

(9) Assists tribal leaders, where possible, with other community needs, such as making connections to the College's award-winning moot court program, preservation of the Yuki legacy with an emphasis on youth, preservation of tribal oral traditions and stories, and advancement in teaching and preserving native languages.

(10) Assists, as appropriate, with the legal aspects of establishing a museum or cultural center in the Round Valley, and a project for the protection of sacred sites and repatriation of artifacts and human remains.

(11) Highlights the injustices of the past by bringing attention to the public at large and the College's community with a lecture series, guest speakers, and tribal elders, dealing with "Righting the Wrongs."

(12) Supports collaboration by assisting tribal members to obtain grant opportunities from public and private sources, including identifying grants for economic development.

(13) Establishes an Indian Law Program and related academic and educational programs at the College, available to all students interested in studying Indian Law. The goal of these programs is the encouragement of scholarship, educational growth, opportunity and support for students, and recruitment of qualified individuals from the Round Valley Tribes or Yuki descendants for legal education and career opportunities in law.

(14) Assists, as appropriate to the work of a law school, with the revitalization and preservation of Yuki history and language efforts.

(15) Provides academic support, as needed, to Round Valley Indian Tribes students attending the College.

(16) Creates a working group consisting of members of the College's Restorative Justice Advisory Board and members of the Yuki Indian Committee to define the content to be placed in the commemorative space reserved for this purpose at the College.

(17) Assists tribal leadership with understanding the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code) laws.

(18) Engages in ongoing relationship building between the Round Valley Indian Tribes and the Yuki people, submitting reports to the Legislature, and the Assembly Select Committee on Native American Affairs.

(19) An annual apology on a date to be determined by the Round Valley Indian Tribes, a federally recognized tribal government, its designees of the Yuki Indian Committee, and the College to attest to and acknowledge the social justice components achieved and ongoing efforts.

(20) Grants a seat on the College's commemorative committee to a representative of the Yuki people. The College shall create a subcommittee of the commemorative committee with Yuki Indian representation.

(21) The College and the Board of Directors provides resources for restorative justice to the extent required by law, and, when not required by law, assists in restorative justice policies.

...

Article 1. A Law College Affiliated with the University of California

**SEC. 20.** Section 92200 of the Education Code is amended to read:

92200. (a) In compliance with the process described in subdivision (c), the law college founded in the City of San Francisco in 1878 shall be designated as the College of the Law, San Francisco.

(b) As requested by the Legislature, the college engaged in a consultative process with the Round Valley Indian Tribes, a federally recognized tribal government, and its designees of the Yuki Indian Committee.

(c) (1) A name change shall require all of the following:

(A) The Legislature requests that the Board of Directors of the law college founded in the City of San Francisco in 1878 engage in consultation with representatives of the Round Valley Indian Tribes, a federally recognized tribal government, and its designees of the Yuki Indian Committee.

(B) That full consultation with the Round Valley Indian Tribes, a federally recognized tribal government, and its designees of the Yuki Indian Committee approved by the Round Valley Tribes, has concluded.

(C) The Legislature requests that the Board of Directors of the college vote on replacement name names for the college. The Legislature requests that this vote

be pursuant to consultation described in this subdivision. The Legislature requests that the Board of Directors of the college include the final vote in its minutes for the meeting in which the final vote occurs.

(D) After the board approves the replacement name pursuant to subparagraph (C), the Legislature requests that the Board of Directors of the college make a final recommendation to the Legislature.

(2) For purposes of this subdivision, “consultation” means the same as that term is defined in Section 65352.4 of the Government Code.

(d) The amendments to this section by the act that added this subdivision shall only become operative if funds are appropriated in the Budget Act of 2022 to the College of the Law, San Francisco for the purpose of designating a name for the law college founded in the City of San Francisco in 1878.

(e) The Legislature requests the Board of Directors of the college to adopt all of the following:

(1) Name the college’s campus library with an appropriate Yuki name or name determined by the Round Valley Indian Tribes.

(2) Ensure that the reading of an annual statement of the history of atrocities committed by S.C. Hastings against the Yuki people occurs at the start of both the convocation and commencement ceremonies, the college’s two signature annual ceremonies.

(3) Reengage in consultation with the Round Valley Indian Tribes if there is a change in the geographical name of the location of the college.

(4) Develop opportunities for collaboration between the college's Moot Court and Trial Advocacy and Competition Groups programs with students of the Round Valley Indian Tribes to provide experience in debate and writing skills.

(5) Institute a moot court competition related to California's treatment of Native Americans and atrocities committed against them.

**SEC. 21.** Section 92204 of the Education Code is amended to read:

92204. (a) The business of the college, which includes the power to incur indebtedness, shall be managed by the board of directors. A majority of directors then in office shall constitute a quorum for the transaction of all business. The directors shall serve without compensation.

(b) (1) Directors shall serve 12-year terms.

(2) Notwithstanding paragraph (1), any director in office on January 1, 2023, who was not appointed by the Governor shall be limited to a six-year term from January 1, 2023, to January 1, 2029, inclusive.

...

**SEC. 24.** Section 92206 of the Education Code is amended to read:

92206. Vacancies occurring in the board of directors shall be filled by the Governor and approved by the Senate, a majority of the membership concurring.

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**APPENDIX H**

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Chap. CCCLI.-An Act to create Hastings' College of the Law, in the University of the State of California.

[Approved March 20, 1878.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. That S.C. Hastings be authorized to found and establish a Law College, to be forever known and designated as "Hastings' College of the Law." That the officers of said college shall be a Dean, Registrar, and eight (8) Directors. That the Directors shall be Joseph P. Hodge, W. W. Cope, Delos Lake, Saml. M. Wilson, O. P. Evans, Thos. B. Bishop, John R. Sharpstein, and Thos. I. Bergin, of the Bar Association of the City of San Francisco, who shall, when vacancies occur, fill the same from members of said Association or otherwise, and shall always provide for filling a vacancy with some heir or some representative of the said S. C. Hastings. That the Dean and Registrar shall be appointed by the Directors.

SEC. 2. Said College shall affiliate with the University of the State, upon such terms as shall be for the welfare of the College and University, and shall be the Law Department of the University.

SEC. 3. The Faculty of the University shall grant diplomas to the students of the College, and the President shall sign and issue the diplomas.

SEC. 4. There shall be set apart for the use of the students of the College some room or suitable hall at the University, and the Board of Supervisors of the City of San Francisco is authorized to supply a suitable

hall in the City of San Francisco for the students and Directors.

SEC. 5. The Dean of said College shall be ex officio of the Faculty of the University, to be designated as such by the Directors of the College.

SEC. 6. The diploma of the students shall entitle the student to whom it is issued to a license to practice and all the Courts of this State, subject to right of the Chief Justice of the State to order an examination, as is in ordinary cases of applicants without such diploma.

SEC. 7. This Act is passed upon the condition that said S. C. Hastings shall pay into the State treasury the sum of one hundred thousand dollars, and is never to be refunded except as hereinafter provided.

SEC. 8. The sum of seven per cent. per annum upon one hundred (\$100,000) thousand dollars is to be appropriated by the State and paid in two semi-annual payments to the Directors of the College.

SEC. 9. The business of the College shall be to afford facilities for the acquisition of legal learning and all branches of the law, and to this end shall establish a curriculum of studies, and shall matriculate students who may reside at the University of the State as well as students residing in other parts of the State.

SEC. 10. Professorships may be established in the name of any founder of such Professorships who shall pay to the Directors the sum of thirty (\$30,000) thousand dollars.

SEC. 11. All the business of the College shall be managed by the Directors without compensation, and all acting officers, including the Dean and Registrar,

shall be appointed by the Directors and removed by them.

SEC. 12. The Law Library Association, of the City of San Francisco, shall grant to the students the use of their library upon such terms and conditions as they may agree with the Directors of the College.

SEC. 13. The object of this Act being to grant a perpetual annuity for the support and maintenance of said College, should the State, or any government which shall succeed it, fail to pay to the Directors of such College the sum of seven per cent. per annum, as above stipulated, or should the College cease to exist, then the State, or its successor, shall pay to the said S. C. Hastings, his heirs or legal representatives, the said sum of one hundred (\$100,000) thousand dollars and all unexpended accumulated interest; *provided*, that such failure be not caused by mistake or accident, or omission of the Legislature to make the appropriation at any one session.

SEC. 14. That the Chief Justice of the Supreme Court of the State (or if there be no such judicial officer of the State or Government) shall be the President of the Board of Directors, five of whom shall be a quorum to transact all business.

SEC. 15. This Act shall take effect and be in force from and after its passage.

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**APPENDIX I**

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Senate Bill No. 438

An Act to accept a Proposition of S.C Hastings.  
And to establish a “College of Law”

On Senate, Feb 27, 1878

Read first and second times, and ordered on General File with recommendation by Judiciary Committee that it pass. Seckel Asst. Secy

March 1<sup>st</sup> Substitute reported and passage of substitute recommended. Seckel Asst. Secy

438

Introduced by Senator Judiciary

An Act to accept a proposition of S.C. Hastings  
and to establish a College of Law

The People of the State of California represented  
in Senate and Assembly do enact as follows

**Section I.** The following proposition of S. Clinton Hastings submitted to the Legislature at this session by the Governor is hereby accepted

To His Excellency William Irwin Governor of the State of California and to the Honorable the Senate and Assembly of the said State

S C Hastings of the City and County of San Francisco, proposes to found a College of the Law. And to this end to pay into the Treasury of the State the sum of one hundred thousand Dollars gold coin in consideration whereof the State shall enact a Law providing that the State shall pay to the Directors of a College

to be Incorporated under the Laws of this State, interest-at-the rate of seven percent per annum Interest payable semi-annually

Also that said S.C. Hastings is authorized and shall proceed to incorporate said College, which shall become the Law Department of the University of California that all diplomas of students shall be granted by the Faculty and duly signed by the President of the University that also the City of San Francisco be authorized to provide in the City Hall or some other suitable place a Hall for the use of the students and Directors of said College. Also that so far as may be this College shall be perpetual and if its existence shall terminate from any cause whatsoever the fund of one hundred thousand Dollars and unexpended interest shall revert to the Founder his heirs and assigns forever.

That the business and administration of the affairs of the said College shall be solely in the hands and control of the Directors thereof. The object of the projector of this College is to offer the best facilities for instruction in all branches of the Law to students of the University and Law students of the City of San Francisco.

S. Clinton Hastings

**Section 2.** The said S.C. Hastings is authorized to pay unto the Treasury of the State the sum of one hundred thousand dollars in gold coins and upon the said payment being made the Treasurer of the State shall give a receipt to the said Hastings for said amount and shall report the said payment to the Controller

**Section 3.** The Governor Controller and Secretary of State can appoint a commission to execute and deliver to the said Hastings, upon the production of said receipt, a contract in the name of the State that upon the incorporation of said college under the laws of this State, the State will pay to said corporation semi-annually in gold coin the sum of thirty five hundred dollars

**Section 4.** The said Hastings and such persons as may be named by him are authorized to incorporate said College under the general Laws of this State and when so incorporated the said College shall become the Law department of the University of California; and Diplomas to students of said College shall be granted by the Faculty and duly signed by the President of the University

**Section 5** The Board of Supervisors of the City and County of San Francisco are hereby authorized to provide in the City Hall or some other suitable place in the City of San Francisco a hall for the use of the students and Directors of said College.

**Section 6.** The said corporation shall be perpetual

**Section 7** The business and administration of the affairs of said Collee shall be solely in the hands and counsel of the Directors thereof

**Section 8.** This Act shall take effect immediately

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**APPENDIX J**

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*Excerpts from*

AUDIO TRANSCRIPTION

June 30, 2022 Senate Floor

Transcribed by:

Diana Sasseen

CSR No. 13456

Job No. 10110798

PRESIDENT ATKINS: We're going to move on to file number 25.

Senator Umberg. He is prepared.

Please read.

THE CLERK: Assembly Bill 1936 by Assembly-member Ramos, an act relating to the University of California.

PRESIDENT ATKINS: Senator Umberg.

SENATOR UMBERG: Thank you, Madam President and Members.

I think many of you know that the University of California Hastings is the oldest law school west of the Mississippi. It's got a distinguished group of alumni, including the vice president of the United States, the former mayor and speaker Willie Brown, and, of course, its most distinguished alumnus is our own colleague from Los Angeles.

What several of you may not know is that the person who established the University of California Hastings, Serranus Hastings, in the 1850s, 1860s also funded a massacre of a large number of Native Americans in Mendocino County and around Mendocino County.

What we name things, what we name schools, what we name streets, what we name cities are important. It's important for several things. Our young folks, they ask us why is the University of California Hastings named after Serranus Hastings? And now it's important that we acknowledge what he did and we acknowledge that we shouldn't have young people asking us why it's named after Serranus Hastings, because he assisted in this massacre. He assisted in the funding of the massacre.

And oh, by the way, the California legislature was also complicit in this massacre because they authorized, they authorized those acts and ratified those acts.

So now it's appropriate that we strike the name, we strike the name of "Hastings" from the University of California Hastings and we simply call it the "University of California School of Law San Francisco."

It's also appropriate that an acknowledgement, acknowledgement of those past wrongs, those past criminal acts, that we also engage in some restorative justice, and that's exactly what we hope is going to happen by supporting pro bono activities, by supporting a legal clinic, by supporting the Yuki and Round Valley Indian people who are the descendants of those who were so seriously harmed, indeed even killed. It's

important that we acknowledge that, it's important that we provide this restorative justice.

...

And with that, I urge an aye vote.

...

SENATOR BERGEAS: Madam President, I have some reservations with the rename process. This is the – I don't have a background in what the Hastings legacy is about and I understand that if all of these things were true that this could very well be grounds for renaming an institution; but, colleagues, I would think we would want to go through a more holistic process, perhaps use an existing entity to offer recommendations to the legislature on the renaming process, because it seems like we've taken a very ad hoc approach to what should be maintained and what should be removed and reborn. We've seen the debate over here with just the park behind us.

I think the motivations are probably accurate. I just don't know about the history and I don't know about the process. And I would encourage us that maybe this should be woven into the process whereby a state-appointed committee reviews the history, reviews, you know, the varying levels of legacy that merit whether a name should be removed.

I mean we've seen what Princeton went through with removing Woodrow Wilson. And let's not forget the fact that there's other legacy programs and schools in California that probably had some involvement in genocide and certainly humanitarian displacement. Let's not forget the railroad system that came through America over to California that has its name called Stanford.

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So if we embark on this, I would hope it would be on the merits and it would be through a system, a process rather than ad hoc going through and renaming these schools. And for that reason I would abstain, even though I think if the history and legacy is accurate, maybe the name should be removed.

...

PRESIDENT ATKINS: Any further discussion or debate?

Seeing none, Senator Umberg you may conclude.

SENATOR UMBERG: Thank you, Madam President and Colleagues.

Let me respond to my friend and colleague from Fresno.

The issue of this horrendous genocidal activity is no longer debatable. I mean just as though – just as there are others who deny historic events that are irrefutable, this is a historic event that is irrefutable that has been thoroughly researched. There is no reasonable doubt that Serranus Hastings engaged, involved, participated in the funding of this genocidal activity.

...

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**APPENDIX K**

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**SENATE COMMITTEE ON EDUCATION**

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 1936                      Hearing Date: June 30, 2022

Author: Ramos

Version: May 19, 2022

Urgency: No

Fiscal: Yes

Consultant: Olgalilia Ramirez

Subject: University of California: Hastings College of the Law

**SUMMARY**

This bill modifies provisions relative to the founding of Hastings College of the Law by striking references throughout the Education Code of its founder, S.C. Hastings. This bill further re-designates Hastings College as the College of the Law and specifies a process for renaming the college in the future.

**BACKGROUND**

Existing law:

1) Establishes, under the California Constitution, the University of California (UC) as a public trust to be administered by the Regents of the UC with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university, and such

competitive bidding procedures as may be made applicable to the university for construction contracts, selling real property, and purchasing materials, goods and services. (Constitution of California, Article IX, Section 9).

2) Establishes the Hastings College of the Law, under the governance of an 11-member Board of Directors of the Hastings College of the Law, within the UC. It provides that the college forever be known and designated as the Hastings College of the Law. Additionally, existing law requires that one of the directors include an heir or representative of S.C. Hastings (Education Code § 92200-92215)

#### ANALYSIS

This bill:

##### *Renaming Hastings College of the Law*

1) Modifies provisions relative to the founding of Hastings College of the Law by striking references throughout the Education Code of its founder, S.C. Hastings, and re-designates the college as the College of the Law.

2) States the city and year in which the College of the Law was founded.

3) Provides that a future name change requires both of the following:

a) The Legislature requests that the Board of Directors of the Law college, make a final recommendation to the Legislature after consultation with representatives of the Round Valley Indian Tribes, and its designees of the Yuki Indian Committee.

b) That full consultation with the Round Valley Indians Tribes, and its designees of the Yuki

Indian Committee approved by the Round Valley Tribes, have concluded.

4) Defines “consultation” for the purposes of the bill, to mean the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation is to recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

5) Makes the provisions of the bill relative to the future name change contingent upon an appropriation of funds in the Budget Act of 2022 to the University of California for the purpose of designating a name for the College of the Law.

*Changes to the Board of Directors*

6) Modifies the composition of the Board of Directors of the College of the Law as follows:

a) Removes the requirement that an heir or representative of S.C. Hastings be on the board of directors.

b) Limits any director in office on January 1, 2023, who was not appointed by the Governor to a six-year term, from January 2023 to January 1, 2029, inclusive.

7) Makes conforming changes.

*Finding and declarations*

8) States all of the following Legislative findings and declarations:

a) On March 26, 1878, the Legislature approved an act (the “Original Act”) to create Hastings’ College of the Law, in the University of the State of California.

b) The Original Act authorized Serranus Clinton Hastings (“S.C. Hastings”) to found and establish a law college known as Hastings College of the Law (the “College”).

c) The object of the Original Act was for the state to grant a perpetual annuity for the support and maintenance of the College.

d) The Original Act provided that S.C. Hastings would pay into the State Treasury the sum of \$100,000, and that amount is never to be refunded, except as provided in the Original Act;

e) S.C. Hastings completed the payment of \$100,000 specified in the Original Act on May 24, 1878.

f) The Original Act required the state to appropriate the sum of seven percent per annum upon \$100,000 to be paid in two semiannual payments to the Board of Directors of the College.

g) In each year since 1878, the state has appropriated and paid, in semiannual payments to the Board of Directors of the College, a sum equal to or greater than seven percent per annum upon \$100,000.

h) The College was established in 1878 and has continued to exist ever since without interruption.

i) The Original Act stated that the College was to be designated as Hastings’ College of the Law.

j) The Legislature previously amended the Original Act in 1907, in 1943, in 1959, in 1976, in 1980, and in 1992 (as amended, the “Act”), and the Act currently is codified in Article 1 (commencing with Section 92200) of Chapter 3 of Part 57 of Division 9 of Title 3 of the Education Code.

k) In September 2020, the College completed a three-year project to examine founder S.C. Hastings’ involvement in mass killings of Native Americans in California’s Eden and Round Valleys before the College’s founding.

l) The project determined that the founder of the College, S.C. Hastings, perpetrated genocidal acts against Native California Indigenous Peoples, most especially the Yuki Tribe, in the 1850s in the Eden Valley and Round Valley areas in the County of Mendocino.

m) For a period of four years preceding this bill, the College collaborated with the Round Valley Indian Tribes’ Tribal Council and Yuki Tribal members in pursuit of restorative justice. As one of several restorative justice actions, on November 2, 2021, the Board of Directors of the College unanimously authorized that the name of the College be changed.

n) In connection with the name change authorization, the Board of Directors of the College determined that changing the name of the College is in the best interests of the continuation of the College in perpetuity, and is an element of the College’s ongoing work to address the needs of the current generation of Yuki Tribal members and the College’s legal community.

o) An act of the Legislature is needed to change the name of the College.

p) S.C. Hastings, founder of the Hastings College of the Law, promoted and financed Native American hunting expeditions in the Eden and Round Valleys, funding bounties resulting in the massacre of hundreds of Yuki men, women, and children.

q) S.C. Hastings enriched himself through the seizure of large parts of these lands and financed the college of the law bearing his namesake with a \$100,000 donation to the state.

r) S.C. Hastings and the state bear significant responsibility for the irreparable harm caused to the Yuki people and the Native American people of the state.

s) The state has formally apologized to the Native American people of the state for the genocide financed and perpetrated by the state.

t) S.C. Hastings' name must be removed from the College to end this injustice and begin the healing process for the crimes of the past.

*Legislative intent*

9) Expresses that the Legislature intends to ensure that the "College" (defined for this measure as Hastings College of the Law) achieves all of the following:

a) Assists in the formation of a nonprofit organization, as described in subsection (c) of Section 501 of the Internal Revenue Code, in association with, and jointly governed by, Yuki descendants selected by the government of the Round Valley Indian Tribes to provide an organizational structure to raise capital,

organize pro bono legal assistance, and other support, and assist tribal leadership with federal, state, and county matters, water and property rights, economic development, and efforts to meet the social needs of the community. The College's responsibilities extend only to assisting in the formation of the nonprofit organization, and will not otherwise involve its governance or the ongoing operations of the organization.

b) Seeks to organize, through the College's Indigenous Law Center or other administrative offices, as appropriate, pro bono legal assistance and other support, and assist tribal leadership with federal, state, and county matters, water and property rights, economic development, tribal courts, and efforts to meet the social and security needs of the community.

c) Works with interested public and private parties or entities to develop scholarship assistance for duly admitted law students at the college that are members of Round Valley Indian Tribes, a federally recognized tribal government. These funds may be used to offset tuition, housing costs, and other incidentals for Round Valley Indian Tribes tribal members admitted to the law school.

d) Dedicates a permanent and public memorial, and other displays, as appropriate, to the Yuki people at an appropriate location on its campus, with display panels, historical explanations, and cultural presentations. This memorial should acknowledge and atone for the historical traumas suffered by the Yuki people.

e) Provides a fully functional, interactive public internet website to allow dissemination of the

College's approach, to seek public input, and to keep the public advised of historical, academic, and programmatic work to address the broader issues and the restorative justice agenda. A page on this internet website shall be dedicated to the College's work with Round Valley Indian Tribes and the Yuki people.

f) Establishes clinical or experiential educational programs for its students, one that may serve as a model for other law schools, to address the specific needs of the residents of the Round Valley, including the possibility of a center for pro bono legal assistance in tribal legal matters and public law assistance that could be staffed with student interns, faculty leadership, and pro bono contributors.

g) Collaborates with Governor Newsom's Tribal Advisor to engage with, and contribute to, that office and the newly formed Truth and Healing Council, which is working to clarify the historical record of mistreatment, violence, and neglect of Native Americans in California.

h) Assists in the organization of pro bono attorneys with a connection to the College to assist in mutually agreed upon goals and objectives.

i) Assists tribal leaders, where possible, with other community needs, such as making connections to the College's award-winning moot court program, preservation of the Yuki legacy with an emphasis on youth, preservation of tribal oral traditions and stories, and advancement in teaching and preserving native languages.

j) Assists, as appropriate, with the legal aspects of establishing a museum or cultural center in the Round Valley, and a project for the protection of

sacred sites and repatriation of artifacts and human remains.

k) Highlights the injustices of the past by bringing attention to the public at large and the College's community with a lecture series, guest speakers, and tribal elders, dealing with "Righting the Wrongs."

l) Supports collaboration by assisting tribal members to obtain grant opportunities from public and private sources, including identifying grants for economic development.

m) Establishes an Indian Law Program and related academic and educational programs at the College, available to all students interested in studying Indian Law. The goal of these programs is the encouragement of scholarship, educational growth, opportunity and support for students, and recruitment of qualified individuals from the Round Valley Tribes or Yuki descendants for legal education and career opportunities in law.

n) Assists, as appropriate to the work of a law school, with the revitalization and preservation of Yuki history and language efforts.

o) Provides academic support, as needed, to Round Valley Indian Tribes students attending the College.

p) Creates a working group consisting of members of the College's Restorative Justice Advisory Board and members of the Yuki Indian Committee to define the content to be placed in the commemorative space reserved for this purpose at the College.

q) Assists tribal leadership with understanding the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code) laws.

r) Engages in ongoing relationship building between the Round Valley Indian Tribes and the Yuki people, submitting reports to the Legislature, and the Assembly Select Committee on Native American Affairs.

s) An apology from the College, the S.C. Hastings family, and all of those associated with the genocide of the Yuki people.

t) Grants a seat on the College's commemorative committee to a representative of the Yuki people. The College shall create a subcommittee of the commemorative committee with Yuki Indian representation.

u) The College and the Board of Directors provide resources for restorative justice to the extent required by law, and, when not required by law, assists in restorative justice policies.

#### **STAFF COMMENTS**

**1) Need for the bill.** According to the author, "This bill is seeking to change the name of the UC Hastings College of the law, which is named in California statute.

"In September of 2020, the College of law completed a three-year project on the founder's role in the mass killings of Native Americans in Eden and Round

Valleys before the College's founding. The project determined the founder perpetrated genocidal acts, most especially against the Yuki Tribe in the 1850s.

"The Board of directors unanimously approve a name change on November 2021 along with other measures to address the needs of the current generation of Yuki Tribal members and the College's legal community."

**2) Hastings College of the Law.** Hasting College of the Law, founded in 1878, is a public law school affiliated with the UC, it is one of five public law schools within the system. Hastings, however, has its own governing board (known as the Board of Directors), and the state budgets for it separately from UC. Hastings' board has similar responsibilities as the UC Board of Regents, including establishing policy and setting student tuition and fee levels. Serranus Clinton (S.C.) Hastings, the first Chief Justice of the State of California, is credited as the founder of the college.

The decision to rename the college by the Board of Directors follows findings from the Hastings Legacy Review Committee which was commissioned by the Chancellor and Dean of the college in 2016. The findings include a report by a Sacramento State historian that detailed Serranus Hastings' involvement in promoting and funding genocide against Native Americans. Historical accounts also show that the California State Legislature voted to reimburse Serranus Hastings for expenses incurred during these massacres.

However, a consensus on a new name was not achieved. This bill requires the college to engage in meaningful consultation, as defined, with the tribes

impacted by Hastings' actions, specifically Round Valley Indians Tribes, and members of its Yuki Indian Committee prior to making a recommendation to the Legislature on renaming the college.

**3) Restorative justice advisory board action.**

Subsequent action by the college led to the creation of the Restorative Justice Advisory Board, which made recommendations on restorative justice actions and initiatives for reconciliation and partnership with the Round Valley Indian Tribal Council and the Yuki Indian Committee for members of the pertinent tribes, including establishment of an Indigenous Law Center at the College, which has been operating as of September 2020. This bill expresses that it is the Legislature's intent that the college supports the community through the law center and commitment to other restorative justice efforts to meet the social and educational needs of the Round Valley Indian community.

**4) Arguments of support.** The Chairwomen for the Habematolel Pomo of Upper Lake writes, in part, "The namesake of the College was responsible for the massacre and subsequent land theft of the Yuki Indian people. The wealth he created from those actions allowed him to help found the College. Therefore, we believe changing the name of the college and enacting true, effective restorative justice for the Yuki Indian people establishes the best path toward true healing of past wrongs.

"Historically, Native American tribes have always been excluded in decision-making about issues that involve our history and shared trauma. The shameful history of Serranus Hastings is not a unique episode for California's tribes. We share a history of

stolen lands and a ‘divide and conquer’ approach that pits tribe against tribe. In these tumultuous times, it is more essential than ever that California Indian Country stand united behind the Round Valley Tribal Council and Yuki Indian people in their quest for restorative justice and meaningful acknowledgment of the past.”

**5) Arguments in opposition.** None received on AB 1936 as of 6/24/2022.

**6) Related legislation.** SB 1288 (Umberg) similar to this bill, SB 1288 also sought to remain Hastings College of the Law by striking references to its founder S.C. Hastings and re-designates the law college as College of the Law. SB 1288, however, did not include provisions relative to consultation with tribal members. SB 1288 was ordered to the inactive file on the Senate Floor.

### **SUPPORT**

Federated Indians of Graton Rancheria  
Habematolel Pomo of Upper Lake  
Morongo Band of Mission Indians  
San Manuel Band of Mission Indians  
Yocha Dehe Wintun Nation>

### **OPPOSITION**

None received.

**-- END --**

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**APPENDIX L**

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*Excerpt from Appellants' Reply Brief filed with the  
Court of Appeal*

*Re: the reserved powers doctrine*

Filed 08/16/2024

Case No. A170255

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs and Appellants,

v.

STATE of California, et al.,  
Defendants and Respondents.

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Appeal from the Final Judgment of the Superior  
Court of San Francisco County, Case No. CGC-22-  
602149

Honorable Richard B. Ulmer, Jr., (415)551-3723

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APPELLANTS' REPLY BRIEF

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...

**A. The Reserved Powers Doctrine Does Not Prohibit the State from Entering into a Contract that Names the College or Affords Its Founder a Voice on Its Governing Board.**

Respondents misinterpret the reserved powers doctrine. (SRB pp.21–24; CRB pp.39–43.) The reserved powers doctrine holds that a state government may not contract away an “essential attribute” of its sovereignty, and that, consequently, the Contracts Clause may not be used to compel a state to adhere to a contract that purports to achieve such a result. (*U.S. v. Winstar Corp.* (1996) 518 U.S. 839, 888 [citing to *U.S. Trust Co. of New York v. New Jersey* (1977) 431 U.S. 1, 23].) Application of the reserved powers doctrine to this case, then, turns on whether the State Legislature’s ability to rename the College or eliminate the hereditary Board seat constitute an “essential attribute” of the State’s sovereignty.

...

Affirming the State’s contractual obligations under the 1878 Act would not strip the State Legislature, or the State generally, of any of its reserved powers. It should be acknowledged, for example, that

the Act does not mandate that the State continue operating the College, regardless of the name it bears. In fact, the 1878 Act provides for a financial remedy should the College at some point “cease to exist.” (1CT88.) Likewise, the State retains its choice of whether to continue funding the College or not since the 1878 Act provides for a financial remedy should the State willfully cease funding the College a specified minimum amount. (*Ibid.*) The State also remains free to exercise its police powers to enact general laws to protect the welfare of Californians, including by advancing restorative justice measures in relation to its past mistreatment of Indigenous Peoples. Indeed, to the extent AB 1936 seeks to implement generally applicable restorative justice measures, such measures are not challenged by Appellants under any contract theory. (1CT90–134.)

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**APPENDIX M**

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*Excerpts from Appellants' Opening Brief filed with  
the Court of Appeal  
re: Monetary Damages*

Filed 8/16/2024

Case No. A170255

IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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HASTINGS COLLEGE CONSERVATION  
COMMITTEE, et al.,  
Plaintiffs and Appellants,  
v.  
STATE of California, et al.,  
Defendants and Respondents.

---

Appeal from the Final Judgment of the Superior  
Court of San Francisco County, Case No. CGC-22-  
602149  
Honorable Richard B. Ulmer, Jr., (415)551-3723

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APPELLANTS' OPENING BRIEF

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...

Footnote 7. In dismissing Appellants' alternative state-law damages claim, the trial court also overlooked the fact that *Winstar* confirms that, even under the unmistakability doctrine, "damages are always the default remedy for breach of contract," *Winstar, supra*, at pp.885, 919, invoking Justice Brandeis' statement in *Lynch v. United States* (1934) 292 U.S. 571, 580 that "punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors." (Id. at 884-85).

...

The State also argues, without citation or explanation, that Sections 7 and 13 of the 1878 Act preclude specific performance as a remedy for its breaches of contract. (SRB pp.32–33.) Section 7 states that S.C. Hastings' \$100,000 payment is "never to be refunded except as hereinafter provided." (1CT88.) It has no direct application here, because Appellants do not seek a "refund." They seek, if not specific performance, then monetary damages arising from the State's breach of contract. (1CT83 [¶99: identifying monetary damages as a less favored alternative to equitable relief].) Regardless, Section 7 supports Appellants' primary request for specific performance by underscoring the inadequacy of monetary damages in remedying the State's breaches generally. (See *Tamarind Lithography Workshop, Inc. v. Sanders* (1983)

100a

143 Cal.App.3d 571, 575 [the inadequacy of a legal remedy is a prerequisite to obtaining specific performance].)

...

101a

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**APPENDIX N**

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*Excerpts from Appellants' Opening Brief filed with  
the Court of Appeal  
re: Leave to Amend*

Filed 8/16/2024

Case No. A170255

IN THE COURT OF APPEAL OF THE STATE OF  
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APPELLANTS' OPENING BRIEF

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...

STANDARD OF REVIEW

...

Because the function of a demurrer is to test the sufficiency of a pleading as a matter of law, this Court “must assume the truth of the complaint’s properly pleaded or implied factual allegations” and “must also consider judicially noticed matters.” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

...

And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a “reasonable possibility” any defect identified by the defendant can be cured by amendment. (*City of Dinuba, supra*, 41 Cal.4th at p.865.)

...

ARGUMENT

...

- C. Judicially Noticeable Materials Nevertheless Establish that the State Unmistakably Surrendered Its Ability to Alter the Relevant Terms of the 1878 Act.

Assuming, *arguendo*, that AB 1936’s renaming of the College and elimination of the hereditary Board seat constitutes an exercise of the State’s sovereign powers (it does not), the unmistakability doctrine still does not govern because 1878 Act and surrounding

circumstances unequivocally establishes that the State surrendered any power it otherwise possesses to alter the specific provisions at issue. Beyond the threshold requirement, the crux of the unmistakability doctrine analysis is whether the State made “an unmistakable promise precluding [it’s] legislature from exercising its sovereign power” in such a way as to breach or impair the underlying contract, even while acting for the “public and general” good. (*Puckett v. Lexington-Fayette Urban County Government* (6th Cir. 2016) 833 F.3d 590, 601; see also *St. Louis v. United Railways Co.* (1908) 210 U.S. 266, 280 [indicating that a government’s power to tax was unaffected by a contract, unless it “has been specifically surrendered in terms which admit of no other reasonable interpretation.”].) As such, the analysis is not to look for the presence of specific contract terminology, as the trial court did, but for a “second promise,” above and beyond the underlying contractual agreement, to refrain from later legislatively abridging that agreement. (*Winstar, supra*, at p.887.)

...

Here, the State’s “second promise,” *Winstar, supra*, at p.887, not to legislatively undermine its contractual commitments to S.C. Hastings is stated expressly and unambiguously in the 1878 Act itself. Although it could have done so, the 1878 Act does not merely set forth the terms of the underlying agreement—i.e., the College’s name and establishment of the hereditary seat on its Board in exchange for receipt of S.C. Hastings’ \$100,000. It also commits that those conditions shall “forever” and “always” remain in place. (1CT87 [Section 1].) Accordingly, this Court need not imply terms into the 1878 Act, or guess at

their meaning, in order to find an unmistakable promise; it must only give effect to the plain meaning of the terms expressly given. Because Appellants allege ample facts reasonably and plausibly establishing that the State entered into a perpetually binding unilateral contract with S.C. Hastings, the trial court's Order sustaining Respondents' demurrers as to Claims 1, 6, and 7 should be reversed.