

In the Supreme Court of the United States

HASTINGS COLLEGE CONSERVATION
COMMITTEE, *et al.*,

Petitioners,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
FIRST APPELLATE DISTRICT

BRIEF IN OPPOSITION FOR STATE OF CALIFORNIA

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QUESTIONS PRESENTED

In 1878, the State of California received a donation to establish a public law school. A statute founding the law school stated that the school would perpetually be named after the donor and provided that the school's governing board would include one of his descendants or representatives, alongside other members appointed in the ordinary course. Some 140 years later, the Legislature changed the name of the school and removed the provision requiring special appointment of the donor's descendant or representative. Petitioners sued. The questions presented are:

1. Whether the state court of appeal erred in determining that, under the Contract Clause, petitioners could not succeed in obtaining an injunction requiring the original name and governance to be restored, because, under the reserved powers doctrine, the California Legislature would not have had the power to contractually surrender its sovereign authority to name and determine the governance of the law school.

2. Whether the Bill of Attainder Clause was violated by the legislation that renamed the law school and removed the special board seat for the donor's descendants but left them eligible for appointment on the same terms as any other candidate.

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STATEMENT

1. In 1878, Serranus Clinton Hastings proposed that the California Legislature establish the State's first law school. Pet. App. 2a-3a. In response, the Legislature passed a statute titled "An Act to create Hastings' College of the Law, in the University of the State of California." *Id.* at 72a-74a (reprinting 1878 Cal. Stat. ch. 351).

The Legislature initially considered statutory text that would permit state officials to "execute and deliver" to Hastings "a contract in the name of the State" that would require the State to make semi-annual payments of \$3,500 to the law school. Pet. App. 77a. But the Legislature removed that language before enacting the bill. *Id.* at 72a-74a.

Instead, the enacted statute provided "authoriz[ation]" for "Hastings" to "found and establish a Law College, to be forever known and designated as 'Hastings' College of the Law,'" that would "affiliate with the University of the State" and become "the Law Department of the University." Pet. App. 72a. The Act named the first Directors and charged them with appointing replacements as vacancies arose, and it stated that the Directors "shall always provide for filling a vacancy with some heir or some representative" of Hastings. *Id.*

The Legislature passed the statute "upon the condition" that Hastings pay \$100,000 into the State treasury, which "is never to be refunded except as hereinafter provided." Pet. App. 73a. The Act stated that "[t]he sum of seven per cent, per annum" upon the \$100,000 gift was "to be appropriated by the State and paid in two semi-annual payments to the Directors of the College." *Id.* And since the "object of this Act" was

to “grant a perpetual annuity for the support and maintenance” of the law school, \$100,000 and “all unexpended accumulated interest” was to be paid to Hastings or his “heirs or legal representatives” if the law school “cease[d] to exist” or if the State “fail[ed] to pay” to the law school’s Directors “the sum of seven per cent, per annum, as above stipulated.” *Id.* at 74a.

2. In 2017, the San Francisco Chronicle published an article alleging that Hastings was a “promoter and financier of Indian-hunting expeditions.” Briscoe, *The Moral Case for Renaming Hastings College of the Law*, S.F. Chron. (July 8, 2017), <https://tinyurl.com/2ym47x39>. The law school responded by undertaking a “three-year project to examine” Hastings’ involvement in “mass killings of Native Americans.” Pet. App. 63a. This assessment determined that Hastings “perpetrated genocidal acts against Native California Indigenous Peoples, most especially the Yuki Tribe.” *Id.* The law school’s Directors—including the Director holding the hereditary seat—unanimously determined that renaming the law school was “in the best interests of the continuation” of the law school and would “address the needs” of both “Yuki Tribal members” and the law school’s “legal community.” *Id.* at 63a-64a; see Asimov, *UC Hastings Leaders Move to Change Name Linked to Native American Massacres*, S.F. Chron. (Nov. 3, 2021), <https://tinyurl.com/58v3zuab> (quoting statement from hereditary board member Claes Lewenhaupt that renaming the law school “is the right thing to do”).

In response, the Legislature passed Assembly Bill 1936 in 2022. Pet. App. 60a-71a (reprinting 2022 Cal. Stat. ch. 478). This statute changed the name of the law school to “College of the Law, San Francisco.” *Id.* at 69a. In enacting AB 1936, the Legislature found

that Hastings “fund[ed] bounties resulting in the massacre of hundreds of Yuki men, women, and children.” *Id.* at 64a. It concluded that Hastings’ name “must be removed” from the law school to “end this injustice and begin the healing process for the crimes of the past.” *Id.* at 65a. AB 1936 also removed the requirement that one seat on the board be reserved for Hastings’ heir or representative, stating that *all* vacancies would be nominated by the Governor, subject to the State Senate’s approval. *Id.* at 71a. As a result, Hastings’ descendants are eligible, like anyone else, for an appointment—but have no special rights.

Since AB 1936 took effect, the law school has continued to receive funding from the State, and it has continued to operate without interruption. *See, e.g.*, Legislative Analyst’s Office, *The 2025-26 Budget: College of the Law, San Francisco*, <https://tinyurl.com/4hwsvjfc> (last visited Sept. 11, 2026).

3. Soon after AB 1936 passed, a group of Hastings’ descendants and alumni of the school filed a state-court lawsuit against the State and the law school’s Dean and Directors. Pet. App. 1a-2a. As relevant here, that lawsuit challenged AB 1936 under the Constitution’s Contract and Bill of Attainder Clauses.¹ Petitioners based their contract claim on the theory that the 1878 Act was a contract between Hastings and the State, whose obligations were substantially impaired by AB 1936. Pet. App. 7a. And they alleged that AB 1936 is a bill of attainder because it singles out and punishes Hastings and his descend-

¹ Below, petitioners also claimed that AB 1936 is an ex post facto law and violates the California Constitution’s Collegiate Freedom clause. Pet. App. 5a. Petitioners do not press those claims here.

ants. *Id.* at 14a-15a. The complaint sought declaratory and injunctive relief, specific performance of the alleged contract, and monetary damages. *Id.* at 5a-6a.

The trial court sustained the defendants’ demurrers and dismissed the case. Pet. App. 29a-36a. The court rejected petitioners’ contract claim because the 1878 Act “is a statute, not a contract.” *Id.* at 31a. Under the unmistakability doctrine, the court reasoned, a legislature does not bind itself by contract unless it does so “in terms too plain to be mistaken.” *Id.* at 32a (quoting *United States v. Winstar Corp.*, 518 U.S. 839, 875 (1996)). Here, the Act “does not include any covenanting language” and is not “couched in terms of a contract.” *Id.* at 32a-33a (citing *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 105 (1938)). The court also rejected petitioners’ bill of attainder claim, because AB 1936 does not punish petitioners. *Id.* at 34a-35a.

4. In the court of appeal, petitioners argued that AB 1936 should be enjoined because it interferes with the 1878 Act’s provisions related to the law school’s name and hereditary board seat. Pet. C.A. Br. 38-43; *see also id.* at 11 (asserting that the Contract Clause “bars implementation of AB 1936” and that “injunctive relief” is “warrant[ed]”). In a footnote, petitioners’ opening brief cited the general proposition that damages may be awarded even where the unmistakability doctrine applies. Pet. 11; Pet. App. 99a n.7; *but see Sandhu v. Bd. of Admin.*, 108 Cal. App. 5th 1048, 1062 (2025) (California courts of appeal do not consider arguments raised in footnotes). And in a footnote in their reply brief, petitioners proposed amending their complaint “to allege specifically that they are entitled to inherit property from S.C. Hastings” and “act as his representative[s],” to show their eligibility for the hereditary board seat. Pet. C.A. Rep. Br. 43 n.12; *but see*

Mora v. C.E. Enter., Inc., 116 Cal. App. 5th 72, 87 (2025) (arguments raised for the first time in a reply brief are forfeited).

The court of appeal affirmed. Pet. App. 1a-27a. With respect to the contract claim, the court determined that there was no need to decide whether the Legislature unmistakably intended for the 1878 Act to be a contract, because under the reserved powers doctrine, the Legislature’s abilities to rename the law school and determine the school’s governance were “essential attribute[s] of its sovereignty” that could not be surrendered by contract. *Id.* at 10a (quoting *Winstar*, 518 U.S. at 888)). The court reasoned that “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 changes may be deemed important to advance the institution’s obligation to serve the public interest.” *Id.* at 11a-12a. In so holding, the court cited this Court’s decision in *Newton v. Commissioners*, 100 U.S. 548 (1879), which held that a “State could not contract away its authority over ‘all offices within its reach.’” *Id.* at 10a (quoting *Newton*, 100 U.S. at 559).

The court also affirmed the trial court’s dismissal of petitioners’ bill of attainder claim. Pet. App. 12a-21a. Applying the three-part analysis of *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841 (1984), the court determined that AB 1936 does not impose a punishment historically associated with bills of attainder, that it serves the non-punitive purpose of addressing the needs of California tribal members and the school’s community, and that it was not motivated by any intent to punish Hastings or his descendants. *Id.* at 14a-21a.

Petitioners filed a petition for rehearing. Pet. App. 56a-57a. The petition argued that the reserved powers doctrine is inapplicable because the 1878 Act gave the State the option to close the law school and return the donated funds; the claim for monetary damages survives application of the reserved powers doctrine; and leave to amend the complaint should be granted. *Id.* at 57a. The court denied rehearing, explaining that the arguments had been forfeited under California’s procedural rule that “a reviewing court need not consider points raised for the first time on petition for rehearing.” *Id.* (quoting *CAMSI IV v. Hunter Tech. Corp.*, 230 Cal. App. 3d 1525, 1542 (1991)). The Supreme Court of California denied petitioners’ petition for review. *Id.* at 37a.

ARGUMENT

Petitioners do not contend that the issues in this case implicate any conflict among lower courts. Instead, they seek plenary review because the state court allegedly “err[ed],” Pet. 3, in resolving claims that were “exceptionally important,” *id.* at 29, 31, 33. Petitioners are mistaken on both counts. The court below correctly decided each argument presented, and the petition vastly overstates the importance of its infrequently arising issues.

1. The court of appeal correctly decided petitioners’ appeal on their Contract Clause claim.

a. Under the Contract Clause, no State shall pass any law “impairing the Obligation of Contracts.” U.S. Const. art. 1, § 10, cl. 1. But this Court has explained that the Clause is not “the Draconian provision that its words might seem to imply,” because “literalism” in its construction “would make it destructive to the public interest by depriving the State of its

prerogative of self-protection.” *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 240 (1978); *see also Energy Rsrv. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983) (Contract Clause’s “prohibition must be accommodated to the inherent police power of the State to safeguard the vital interests of its people”).

Accordingly, the reserved powers doctrine recognizes that the Contract Clause “does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty.” *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977); *see also United States v. Winstar Corp.*, 518 U.S. 839, 874 (1996) (a State cannot contract away “certain substantive powers of sovereignty”). This doctrine “protect[s] state regulatory powers” by limiting “contractual restraints upon legislative freedom of action.” *Winstar*, 518 U.S. at 874.

This Court has thus repeatedly held that state legislatures may not bargain away their duties to regulate “public matters and bodies.” *E. Hartford v. Hartford Bridge Co.*, 51 U.S. 511, 534 (1850). In *East Hartford*, the Connecticut Legislature granted a town certain rights in a river ferry, but later passed a law discontinuing the ferry. *Id.* at 532-533. The town argued that this statute impaired the State’s contractual obligations to the town. *Id.* at 532. This Court, however, held that the State had not “ma[de] a contract” that “could not be modified by subsequent legislation.” *Id.* at 533. That was because “one of the highest attributes and duties of a legislature is to regulate public matters with all public bodies . . . in the manner which the public welfare may appear to demand.” *Id.* at 534. A legislature cannot “permanently suspend or abandon” these duties by contract “without being usually

regarded as unfaithful, and, indeed, attempting what is wholly beyond its constitutional competency.” *Id.*

Similarly, in *Newton v. Commissioners*, 100 U.S. 548 (1879), the Ohio Legislature passed a statute authorizing private citizens of the town of Canfield to execute bonds and donate land to “permanently establish[]” a courthouse in that town. *Id.* at 549. Thirty years later, however, the Legislature enacted a law that moved the courthouse to a different town. *Id.* at 550. This Court held that the decision to move the courthouse did not violate the private citizens’ contractual rights, because “[t]he legislative power of a State, except so far as retrained by its own constitution, is at all times absolute with respect to all offices within its reach.” *Id.* at 559. The Court explained that “[e]very succeeding legislature possesses the same jurisdiction and power” with respect to “public interests” and “public laws” as its predecessors. *Id.* Indeed, a different result would be “fraught with evil.” *Id.*

b. The court of appeal correctly applied these precedents, in determining that the 1878 Act provided no basis for forcing the naming and governance reversion that petitioners sought. Petitioners sought “injunctive relief” because the 1878 Act allegedly created a contract under which the name of the law school and the criteria for the hereditary board seat could never be changed. Pet. C.A. Br. 11, 25. But the 1878 California Legislature could not have perpetually contracted away its ability to rename the public law school and change the qualifications of its board members when the State deemed the special honoring of Hastings no longer compatible with the law school’s public functions. Pet. App. 65a (reprinting 2022 Cal. Stat. ch. 478, § 1(u)); *see also Beer Co. v. Massachusetts*, 97 U.S. 25, 33 (1877) (a legislature “cannot, by

any contract, divest itself of the power to provide for” the preservation of “public morals”). Because the 1878 Legislature cannot have forced the 2022 Legislature to maintain a school name and board seat honoring a particular person, the 1878 Act provides no basis for a court to require that either.

Petitioners’ attempts to distinguish *East Hartford* and *Newton* are unpersuasive. Although neither case specifically dealt with the name and board composition of a public school (Pet. 18), this Court’s precedents do not control only those cases with identical fact patterns. *See, e.g., Ramos v. Louisiana*, 590 U.S. 83, 104 (2020) (“It is usually a judicial decision’s reasoning” that “allows it to have life and effect in the disposition of future cases.”). And it is hard to imagine why a State’s reserved powers with respect to ferry service (the issue in *East Hartford*) would be greater than its powers over a flagship public university that educates future lawyers from throughout the State.

Petitioners fare no better with their argument that *East Hartford* and *Newton* involved “*public* contracts between a state and a local citizenry.” Pet. 18. In *Newton*, the *private* citizens executed bonds and donated land to establish a *governmental* entity—a state courthouse—in their town. *Newton*, 100 U.S. at 549, 560. This Court concluded the Ohio Legislature nevertheless retained its sovereign authority to move the courthouse to a different town. The original Legislature’s acceptance of funding and land from the private citizens did not prevent a later Legislature from making changes in response to evolving public needs.

Petitioners’ reliance on *Fletcher v. Peck*, 10 U.S. 87 (1810) (Pet. 17-18) is also inapt. In *Fletcher*, this Court held that Georgia’s Legislature could not void land grants made by a prior state legislature. *Id.* at

139. But “it soon became apparent” that contracts created by state legislatures that bound their successors “could become a threat to the sovereign responsibilities of state governments.” *Winstar*, 518 U.S. at 874. The reserved powers and unmistakability doctrines developed in response, “to protect state regulatory powers.” *Id.* As a result, this Court’s post-*Fletcher* decisions became “less willing to recognize contractual restraints upon legislative freedom of action.” *Id.* The longstanding rule now is that “certain substantive powers of sovereignty could not be contracted away.” *Id.* (citing *W. River Bridge Co. v. Dix*, 47 U.S. 507 (1848), *Stone v. Mississippi*, 101 U.S. 814 (1879), and *Butchers’ Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746 (1884)). Because petitioners sought to have the court enforce supposed contractual restrictions that the 1878 Legislature would not have had the power to agree to, the court of appeal rightly rejected petitioners’ claim.

c. Petitioners, raising the damages argument from their rehearing petition below, argue that the reserved powers doctrine does not apply where “enforcement of the agreement merely shifts the risk that the government will pay damages arising from subsequent changes in the law.” Pet. 14-16 (discussing *Winstar*). That principle has no application here, because the 1878 Act did not require the State to pay any damages if it subsequently changed the law school’s name or removed the hereditary board seat. Pet. App. 72a-74a. Rather, it provided that Hastings’ donation “is never to be refunded” except under two express circumstances: if the State fails to fund the law school or if the law school ceases to exist. *Id.* at 73a-74a. Neither of those circumstances exist here.

More fundamentally, out of “[r]espect for the independence of state courts,” this Court will not review a state court decision that rests on an “adequate and independent state ground.” *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). Violation of a “firmly established and regularly followed” state procedural rule ordinarily is “adequate to foreclose review of a federal claim.” *Cruz v. Arizona*, 598 U.S. 17, 25-26 (2023).

The court of appeal applied such a firmly established and regularly followed rule when it refused to consider petitioners’ belatedly raised damages argument. Pet. App. 56a-57a. In California (like many other jurisdictions), an appellant “forfeits an issue by failing to raise it in his or her opening brief.” *Doe v. Cal. Dep’t. of Just.*, 173 Cal. App. 4th 1095, 1115 (2009); see, e.g., *Mora v. C.E. Enter.*, 116 Cal. App. 5th 72, 87 (2025). California courts thus regularly refuse to consider points raised for the first time on a petition for rehearing. *CAMSI IV v. Hunter Tech. Corp.*, 230 Cal. App. 3d 1525, 1542 (1991); see generally *In re Marriage of Sheldon*, 124 Cal. App. 3d 371, 381 (1981) (petition for rehearing is “an inappropriate occasion to raise arguments not pursued in the original appeal”).

Petitioners are wrong to contend that the waiver rule is inadequate because it gives California courts discretion to consider untimely arguments. Pet. 22. As *Beard v. Kindler*, 558 U.S. 53 (2009) explained, “a discretionary rule can be ‘firmly established’ and ‘regularly followed’—even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others.” *Id.* at 60-61. That is the case here, because it is “well-settled” that courts may deem any issues not raised in an opening brief to be waived. *Sheldon*, 124 Cal. App. 3d at 381.

Petitioners argue that the court of appeal should not have affirmed the trial court’s dismissal without assessing whether there was a reasonable possibility petitioners could cure their complaint by amendment. Pet. 22. But California law places the burden of proving such a reasonable possibility “squarely on the plaintiff,” *Genis v. Schainbaum*, 66 Cal. App. 5th 1007, 1015 (2021), and a plaintiff must show how its proposed amendments will change the legal effect of the pleadings, *Nealy v. Cnty. of Orange*, 54 Cal. App. 5th 594, 608 (2020). Here, in a footnote in their reply brief, petitioners proposed only one amendment: adding allegations that they are entitled to inherit Hastings’ property and act as his representatives. Pet. C.A. Rep. Br. 43 n.12. Raising that argument only in a reply brief’s footnote was procedurally defective twice over. *See Mora*, 116 Cal. App. 5th at 87 (arguments raised for the first time in a reply brief are forfeited); *Sandhu v. Bd. of Admin.*, 108 Cal. App. 5th 1048, 1062 (2025) (arguments raised only in a footnote are not considered). And petitioners did not explain how this amendment would cure the defects identified by the lower court. *Nealy*, 54 Cal. App. 5th at 608.

The assertion that petitioners did not need to address their monetary damages claim in their appellate briefs because the issue “arose” from the court of appeal’s “own decision,” Pet. 22, is also incorrect. The issue arose from the trial court’s order dismissing petitioners’ entire case—including their request for monetary damages—with prejudice. Pet. App. 58a-59a. If petitioners wished the appellate court to consider whether monetary damages were subject to a different rule than specific relief, they needed to properly raise that point in their opening brief.

Petitioners argue that they did preserve their damages arguments, by noting them in a footnote in their opening brief, Pet. App. 99a, and discussing them at oral argument, Pet. 12 n.9. But that was not sufficient to preserve the point. California courts have warned that “[f]ootnotes are not the appropriate vehicle for stating contentions on appeal” and that arguments raised only in a footnote will not be considered. *Sandhu*, 108 Cal. App. 5th at 1062; *see, e.g., Golden Door Prop., LLC v. Cnty. of San Diego*, 50 Cal. App. 5th 467, 554-555 (2020). Similarly, “issues raised at oral argument come too late” and thus are not preserved. *Opdyk v. Cal. Horse Racing Bd.*, 34 Cal. App. 4th 1826, 1830 (1995); *see, e.g., Kinney v. Vaccari*, 27 Cal. 3d 348, 356 n.6 (1980).

Finally, there is no merit to petitioners’ suggestion that their waiver should be excused under *Lee v. Kemna*, 534 U.S. 362 (2002). Pet. 22. Under *Lee*, default may be excused in an “exceptional case[] in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question.” *Id.* at 376. But the refusal to consider petitioners’ untimely arguments was a routine application of established principles that federal courts regularly enforce. *See, e.g., Rep. of Arg. v. NML Cap., Ltd.*, 573 U.S. 134, 140 n.2 (2014) (“We will not revive a forfeited argument simply because the petitioner gestures toward it in its reply brief.”). Petitioners’ belated wish that they had litigated their claim differently does not transform this into an “exceptional case.”

d. This case would also be an exceptionally poor vehicle in which to resolve broad issues under the Contract Clause. The principal arguments on which petitioners rely are forfeited, as described above. And

even if petitioners could somehow succeed on their reserved-powers argument, they still could not ultimately obtain relief. The trial court correctly recognized an additional, independent problem that forecloses petitioners' contract claim. Even if the State *could* have bargained away the powers at issue, relief under the Contract Clause is precluded unless the State actually *did* so. Here, as the trial court held, the State did not. *See supra* p. 4.

This Court has announced a “canon of construction disfavoring implied governmental obligations in public contracts”—the “unmistakability doctrine.” *Winstar*, 518 U.S. at 874-875. Under that rule, a “power of sovereignty” will not be held to have been surrendered “unless such surrender has been expressed in terms too plain to be mistaken.” *Id.* “Every reasonable doubt is to be resolved adversely” to the party claiming the existence of a contract, and “doubt is fatal to the claim.” *Nw. Fertilizing Co. v. Hyde Park*, 97 U.S. 659, 666 (1878). These principles foreclose petitioners' claim, because (as the trial court observed) the 1878 Act “does not include any covenanting language” and “is not couched in the terms of a contract.” Pet. App. 32a-33a (citing *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 105 (1938)). It merely “authorized” Hastings to found the law school. *Id.* at 32a.

Petitioners first claim that the unmistakability doctrine is inapplicable, because AB 1936 is a “bald repudiation” of the State's contractual obligations rather than an exercise of sovereign authority. Pet. 19 (citing *Cuyahoga Metro. Hous. Auth. v. United States*, 57 Fed. Cl. 751, 769, 776 (2003)). But that argument assumes its conclusion: The unmistakability doctrine provides the rule for determining whether there is a contractual obligation to begin with. (In petitioners' cited

cases, it was undisputed that the government did, in fact, enter into contracts that it later sought to modify through legislation. *See Cuyahoga*, 57 Fed. Cl. at 753; *Kimberly Assoc. v. United States*, 261 F.3d 864, 866 (9th Cir. 2001); *Gen. Dynamics Corp. v. United States*, 47 Fed. Cl. 514, 518 (2000); *Grass Valley Terrace v. United States*, 51 Fed. Cl. 436, 437 (2002).) Nor, for that matter, did the enactment of AB 1936 relieve the State of anything from prior law that could plausibly (let alone unmistakably) be considered a financial obligation. It did not alter any of the 1878 Act's provisions related to the State's ongoing funding and operation of the law school. *See supra* p. 3.

Next, petitioners assert that the 1878 Act satisfies the unmistakability doctrine's conditions. Pet. 19. But the language of the 1878 Act falls far short of showing the clear and unmistakable intent to contract that the doctrine demands. The 1878 Act "authorized" Hastings to establish a law school. Pet. App. 72a. But neither that, nor anything else in the Act, is "couched in terms of contract." *Brand*, 303 U.S. at 105. And "absent some clear indication that the legislature intends to bind itself contractually," a law is presumed not to create contractual rights. *Nat'l. R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 465-466 (1985). Indeed, the Legislature abandoned an early version of the 1878 Act that would have allowed the State to "execute and deliver" a contract to Hastings, Pet. App. 77a, and enacted a version without such language, *id.* at 72a-74a. *Cf. I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) ("Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.").

Finally, petitioners point to the 1878 Act's statements that the school would "be forever known and designated as 'Hastings' College of the Law'" and would "always provide for filling a vacancy" on its board with Hastings' heir or representative. Pet. App. 72a. But the whole point of the unmistakability doctrine is to distinguish a prior Legislature's hope and expectation that future Legislatures would not alter their decisions from the unmistakable intent to undertake a contractual obligation. The language on which petitioners rely "merely declar[ed] a policy to be pursued until the legislature shall ordain otherwise." *Nat'l. R.R. Passenger Corp.*, 470 U.S. at 466. It does not show an "unmistakable" intent to surrender a sovereign power, *Winstar*, 518 U.S. at 872, and "[e]very reasonable doubt" must be resolved against finding that a contract exists, *Nw. Fertilizing*, 97 U.S. at 666.

2. Petitioners' claim that AB 1936 is a bill of attainder, Pet. 23-28, also lacks merit. A law violates the Bill of Attainder Clause only if it specifies affected persons and punishes them, without the protections of a judicial trial. *Selective Serv. Sys. v. Minn. Pub. Int. Rsch. Grp.*, 468 U.S. 841, 846-847 (1984). Three "necessary inquires" govern whether a statute inflicts forbidden punishment: whether it "falls within the historical meaning of legislative punishment," whether it furthers "nonpunitive legislative purposes," and whether there was an "intent to punish." *Id.* at 852. The court below correctly determined that AB 1936 is not a bill of attainder under those inquiries. Pet. App. 14a-21a.

As to the first inquiry, Petitioners claim that the lower court "failed to account" for the fact that "attainders have often targeted the deceased." Pet. 23. But the court of appeal did not hold that AB 1936 could not

be a bill of attainder simply because Hastings is deceased. Rather, it focused on the type of harm that the statute allegedly caused. Bills of attainder traditionally have “sentenced the named individual to death, imprisonment, banishment,” caused “punitive confiscation of property by the sovereign,” or “erected a bar to designated individuals or groups participating in specified employments or vocations.” Pet. App. 14a; *see also Nixon v. Adm’r. of Gen. Serv.*, 433 U.S. 425, 474 (1977) (identifying same categories of historical bills of attainder). As the court rightly held, AB 1936 “do[es] not fall within those categories.” Pet. App. 14a.

Petitioners next assert that AB 1936 “punitively confiscates” vested rights, the original donation, and reputational good standing from Hastings and his descendants. Pet. 25-26. But the 1878 Act never conveyed any rights in the name or governance of the law school to Hastings or his descendants. *Supra* pp. 6-10, 13-16. And AB 1936 does not deprive Hastings’ descendants of the opportunity to serve on the law school’s board: They may continue to do so through the same appointment process as all other members. Pet. App. 71a. Nor does AB 1936 prevent petitioners from requesting a refund of Hastings’ original donation if the State ever stops funding the law school or if the school ceases to exist. Pet. App. 74a.

Finally, AB 1936 does not impugn the reputations of Hastings’ descendants. Nothing in the law suggests that *they* are responsible for any actions of their long-ago ancestor. And any reputational harm that AB 1936 caused to Hastings himself cannot, by itself, establish a bill of attainder claim. Governments routinely pass laws that impose reputational harm on historical figures. *See, e.g., Associated Press, Swift and Widespread, Efforts to Rebrand César Chavez Day*

are Fueled by Emotion and Duty, U.S. News (Mar. 29, 2026), <https://tinyurl.com/a5y4xhdk> (detailing States’ removal of Chavez’s name from public works and holidays). That cannot convert a legislative act into a bill of attainder, because as the lower court correctly noted, there is no historical bill of attainder that had the sole effect of imposing reputational harm on a long-deceased public figure. Pet. App. 16a-17a.

As to *Selective Service System*’s second inquiry, into punitiveness, petitioners incorrectly claim that the lower court “grafted an extralegal ‘historical public figure’ exception onto this Court’s analysis.” Pet. 26. In fact, the court applied the test that this Court provided in *Nixon*, which asks “whether the law under challenge, viewed in terms of the type and severity of the burdens imposed, reasonably can be said to further nonpunitive legislative purposes.” Pet. App. 17a (quoting *Nixon*, 433 U.S. at 475-476). Here, the court correctly answered this question in the affirmative, because the decision to sever the law school’s association with Hastings had a “rational connection” to the nonpunitive purposes of addressing the needs of Yuki Tribal members and the law school’s legal community. Pet. App. 18a (quoting *Foretich v. United States*, 351 F.3d 1198, 1221 (D.C. Cir. 2003)).² On the other hand, as the court observed, AB 1936 does not impose any burden on Hastings himself, given that he died many years ago. Pet. App. 19a. Nor does AB 1936 severely

² Petitioners argue that AB 1936’s findings were unsupported by evidence. Pet. 26. That argument has no relevance to the Bill of Attainder Clause, which bars bills of attainder regardless of their evidentiary support. In any event, AB 1936’s findings resulted from a three-year historical inquiry, Pet. App. 63a, and petitioners do not show the resulting findings to be wrong.

burden Hastings’ descendants, who “remain free to seek consideration” for a seat on the law school’s board on the same terms as any other candidate. *Id.*

Finally, under the third inquiry, the court correctly concluded that AB 1936’s legislative history does not show an intent to punish Hastings or his descendants. Pet. App. 19a-21a. Instead, AB 1936 was intended to “address the needs” of “Yuki Tribal members” and the school’s “legal community.” *Id.* at 86a. Both changing the name of the law school and converting the hereditary board seat fulfilled these goals by ending the school’s affiliation with Hastings.

3. Petitioners assert that this case deserves plenary review because it presents “exceptionally important” questions. Pet. 29. That contention does not withstand scrutiny.

In the absence of any conflict between the decision below and other lower court decisions—or any evidence that their Contract Clause issue is a recurrent one—petitioners raise the hyperbolic concern that the court of appeal’s decision “threatens” the “entire ecosystem” of partnerships between California and private parties that are “vital to California’s governance.” Pet. 31. But the decision below held only that the Legislature lacked power to perpetually contract away its authority to name and determine the leadership qualifications of flagship university institutions. Pet. App. 8a. That will not prevent public entities from entering into the sort of time-limited stadium-naming lease agreements described in petitioners’ cited cases. Pet. 30 (citing *Landis v. Wash. State Major League Baseball Stadium Pub. Fac. Dist.*, 403 F. Supp. 3d 907 (W.D. Wash. 2019), and *Pilot Air Freight Corp. v. Buffalo*, 1991 WL 275051 (W.D.N.Y. Dec. 16, 1991)). Nor

will it interfere more generally with California's ability to receive donations from private parties. This Court's reserved powers doctrine has prevented States from bargaining away their sovereign powers for over a century. *Supra* p. 10. Yet donors and States continue to freely negotiate within those limits. Petitioners are also wrong to claim that the decision below restricts donors' ability to seek "even modest monetary damages." Pet. 29. The court did not reach the issue of monetary damages at all, because petitioners forfeited it. *Supra* pp. 11-13.

Petitioners' argument for the importance of their bill of attainder issue is just as weak. Petitioners present this case as a "rare opportunity" for this Court to address the merits of such a claim, noting that this Court has not done so in over 40 years. Pet. 32-33. But the fact that it has been over four decades since this Court took up a bill of attainder case does not help petitioners. If anything, it shows that bill of attainder claims are not causing confusion in the lower courts, and that there is no need for this Court to clarify that doctrine.

CONCLUSION

The petition for a writ of certiorari should be denied.

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