No. 25-1231

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

BENEDICT Y. HUR
EDUARDO E. SANTACANA
JOSHUA D. ANDERSON
Counsel of Record
ROBERT H. WU
COOLEY LLP
3 Embarcadero Center
Suite 2000
San Francisco, CA 94111
(415) 693-2000
joshua.anderson@cooley.com

Counsel for the College Respondents

QUESTIONS PRESENTED

In 1878, the State of California enacted legislation that founded a public college of law (the "College"). The legislation's "object" was for the State to provide a "perpetual annuity for the support and maintenance of" the College. Pet. App. 74a. While the legislation was conditioned on a $100,000 payment from S.C. Hastings, the sum was "never to be refunded" except in two instances: the State's "fail[ure] to pay" an annuity to the College's Board of Directors ("Board"), or should the College "cease to exist." Pet. App. 74a.

In 2021, and after an independent investigation concluded that S.C. Hastings was involved in fomenting atrocities against Native Californians, the Board unanimously proposed that "Hastings" be removed from the College's name. The College's Dean and state Legislature worked collaboratively to effectuate this request alongside other restorative justice measures. The enacted legislation, Assembly Bill 1936, amended state law to rename the College and eliminate a requirement reserving a Board seat for an heir or representative of S.C. Hastings.

The questions presented are:

1. Whether a state may contract away its authority in perpetuity over a public college and its governing Board, to a private citizen and his heirs, and give rise to protections under the U.S. Constitution's Contract Clause, through a statute devoid of covenanting language.
2. Whether restorative legislation that adjusts the name of a public college and broadens eligibility requirements for a seat on its governing board, constitutes an impermissible bill of attainder.

PARTIES TO THE PROCEEDING

Petitioners in this Court are 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.

Respondents are the State of California, and the College Respondents: individuals David Faigman, in his official capacity as Chancellor and Dean of the College, and the following individuals in their official capacities as Directors of the College: Simona Agnolucci, Carl Robertson, Shashikala Deb, Andrew Giacomini, Andrew Houston, Claes Lewenhaupt, Courtney Power, Albert Zecher, C. Don Clay, and Joshua Perttula.[1]

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[1] As explained in the College Respondents' Rule 35.3 letter to the Court, dated July 16, 2026, Messrs. Clay and Perttula succeeded Michael Ehrlich and Mary Noel Pepys as Directors of the College during the pendency of this litigation.

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INTRODUCTION

This case concerns legislation, Assembly Bill 1936 ("AB 1936"), which changed the name of the University of California College of the Law, San Francisco (the "College"), and the eligibility requirements for a seat on the College's governing board (the "Board"). When presented with evidence that the College's erstwhile namesake, S.C. Hastings, funded and fomented the genocide of Native Californians, the College Respondents directed the school's Dean to pursue restorative justice measures with the California Legislature. AB 1936 was the result.

Petitioners, consisting of an alumni group and several purported descendants of S.C. Hastings, sued to enjoin these changes. In their telling, S.C. Hastings entered into a contract with the State of California (the "State") and effectively purchased eternal naming rights to this public institution—an arm of the State—along with a perpetual seat on its governing Board for his heirs. As a result, they contend, no changes may be made to the College's name or Board composition without violating the Contract Clause and Bill of Attainder Clause of the U.S. Constitution. California's state courts correctly rejected Petitioners' arguments, concluding that the legislation that founded the College, 1878 Cal. Stat. ch. 351 (the "1878 Act"), was not a contract, and therefore did not vest any contractual rights in S.C. Hastings or his heirs; and that AB 1936 did not constitute a bill of attainder under any of the three governing tests—historical, functional, or motivational.

This case does not satisfy the Court's criteria for certiorari. As an initial matter, the Petition does not even assert a conflict between state high courts or between a state high court and a federal appellate court. Instead, it seeks error correction of a decision from a state intermediate appellate court that the California Supreme Court declined to review. This Court should deny certiorari for that reason alone.

In any event, the Petition identifies no error in the decision below. *First*, Petitioners claim that the Court of Appeal erred in its application of the sovereign powers doctrine, a doctrine that restricts the formation of contracts concerning a sovereign's legislative and regulatory authority. In their telling, the sovereign powers doctrine is inapplicable because a private individual, as opposed to a government entity, was a party to the purported contract. But no authority excuses the bartering away of sovereign powers simply because the counterparty to the "contract" is a private individual rather than a government institution.

Petitioners also quarrel with the *trial court's* holding that a separate doctrine, the unmistakability doctrine, prohibits interpreting the 1878 Act—a statute devoid of covenanting language—as a contract that binds the State's authority. The Petition suggests that the doctrine does not apply because AB 1936 amounts to an attempt by the State to short-circuit and repudiate any existing contractual obligations. But the trial court's findings, which are distinct from the Court of Appeal's conclusions regarding the sovereign powers doctrine, are not before this Court. Even if they were, Petitioners' argument gets them nowhere because the 1878 Act's legislative history demonstrates an unmistakable intent *not* to bind itself by contract.

Second, Petitioners argue that an alternative damages theory rescues their claims even if the sovereign powers doctrine applied to the 1878 Act. But they concede that they first pressed this "alternative" theory in a *petition for rehearing* before the Court of Appeal, and their attempts to dislodge California's waiver doctrines fall short. Forfeiture aside, this damages argument hinges on cobbling together a majority holding using a four-justice plurality opinion that directly rejected Petitioners' theory.

Third, Petitioners assert that the appellate court invented bright-line rules that substantially deviate from the three distinct tests used to evaluate a bill of attainder. Those charges have no foundation in the decision below: the Court of Appeal faithfully followed precedent and persuasive authorities from this Court and other federal appellate courts in evaluating the three tests (historical, functional, and motivational) for a bill of attainder.

Fourth, Petitioners warn that denying certiorari will lead to a collapse in private-public philanthropy and a torrent of legislation "punishing" the deceased. Those warnings are far from the truth: any claims that the decision below hampers a State's ability to contract are hyperbolic, and the decision below is strictly constrained to an alleged attainder concerning one deceased individual, his purported descendants, and a 148-year-old statute that allegedly vested contractual rights in S.C. Hastings and his heirs, despite being completely devoid of any contracting language.

The Court should deny the petition for a writ of certiorari.

STATEMENT OF THE CASE

A. Factual Background

1. In January 1878, California Governor William Irwin informed the state Legislature that S.C. Hastings "desire[d] to donate from his own private fortune one hundred thousand dollars to found and maintain a College of the Law." 1CT69–70, 8CT2136.[2] Governor Irwin referred to the $100,000 sum as a "donation" or "gift"—"a most commendable one" in view of its public-minded "object." 8CT2136. S.C. Hastings specifically proposed that the College would "become the Law Department of the University of California." 8CT2136. He also proposed "that the State shall pay to the [College's] Directors," for the College's benefit, "interest" on the gift "at the rate of seven (7) per cent per annum." 8CT2136. He further proposed the administration of the College remain "solely in the hands and control of the Directors thereof." 8CT2137.

Although S.C. Hastings expressed a hope that the College would "be perpetual," he proposed that "if its existence shall terminate from any cause whatever the fund of one hundred thousand dollars and unexpended interest shall revert to the founder, his heirs and assigns." 8CT2136–2137. He did not propose any other circumstances in which his gift might be returned. Nor did he offer a name for the College or suggest that a seat on its governing Board be reserved for himself, his heir, or any representative.

2. In response to Governor Irwin's correspondence, the state Legislature considered S.C. Hastings's

[2] Citations to the record below, referred to as the "Clerk's Transcript," are denoted by volume number, followed by "CT" and the page number.

proposition to establish a law school. An early draft of Senate Bill 438, titled "An act to accept a proposition of S.C. Hastings and to establish a College of Law," set forth S.C. Hastings's proposal verbatim and declared that it was "hereby accepted." Pet. App. 75a. Despite this mirroring language, the initial draft only authorized the creation of a contract for a portion of the proposal. Section 3 of the draft bill authorized three state officers "to execute and deliver to the said Hastings . . . a contract in the name of the State" following his $100,000 payment. Pet. App. 77a. The initial version, consistent with S.C. Hastings's proposition, would require the State to pay 7 percent interest per annum on the gift to the College's Directors. Likewise consistent with the proposition, the draft bill was silent as to the College's name and Board's composition.

But on March 1, 1878, the Senate Judiciary Committee replaced the initial draft with a substitute bill, titled "An Act to create Hastings' College of the Law in the University of the State of California." Pet. App. 72a. This replacement, which was ultimately enacted, eliminated all contracting language present in the earlier draft. Pet. App. 72a–74a. Instead, the substitute bill identified its "object" as "to grant a perpetual annuity for the support and maintenance of [the] College." Pet. App. 72a, 74a.

The substitute legislation also contemplated matters absent from S.C. Hastings's proposition and the initial bill. Relevant to this case, it provided that the College would "forever be known and designated as 'Hastings College of the Law,'" and that "the Directors . . . shall always provide for filling a vacancy [on the Board] with some heir or some representative of the said S.C. Hastings." Pet. App. 72a.

Shortly after the State enacted the substitute legislation, the College was established, "and has continued to exist ever since without interruption." Pet. App. 62a; *see also* 1CT83 (Petitioners alleging in the operative complaint that "the College has not 'cease[d] to exist' within the meaning of the [1878] Act." (first alteration in original)).

3. In 2017, reports emerged that "S.C. Hastings was involved in fomenting violence and atrocities against Native Americans." Pet. App. 4a. In response, the College's Dean commissioned an independent investigation, performed by Sacramento State University historian Brendan Lindsay, into S.C. Hastings's reported involvement in these crimes. Pet. App. 92a. After three years of study, Professor Lindsay published the results of his investigation, which concluded that "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." Pet. App. 63a.

The Board then contemplated several restorative justice measures, in collaboration with tribal communities, in response to the investigation. In November 2021, the Board unanimously passed a resolution to remove "Hastings" from the College's name "in the best interests of the continuation of the College." Pet. App. 63a. The resolution further directed the College's Dean to work with the Legislature to enact legislation effectuating the change and to pursue other restorative justice measures.

These efforts culminated in AB 1936. Among its provisions, AB 1936 amended the Education Code to rename the College and eliminate the requirement that a Board seat be reserved exclusively for an heir or representative of S.C. Hastings, though it does not bar any heir or representative from serving on the Board. Pet. App. 60a–71a.

B. Judicial Proceedings

1. Shortly after AB 1936's enactment, Petitioners brought this action in San Francisco Superior Court. Pet. 9. Petitioners asserted violations of the Contract Clauses of the California and U.S. Constitutions, the U.S. Constitution's prohibitions against bills of attainder and ex post facto laws, and a provision of the California Constitution that safeguards the independence of the University of California. The complaint named the College Respondents and the State as defendants. Petitioners also alleged two derivative claims against the College Respondents: a taxpayer-waste claim, and a deprivation of rights claim under 42 U.S.C. § 1983. Specific to the State, Petitioners alleged two breach-of-contract claims: one demanding specific performance, the other seeking damages.

All parties filed substantive motions in late 2022: Petitioners sought a preliminary injunction, the State demurred, and the College Respondents filed a motion under California's anti-SLAPP (strategic lawsuit against public participation) statute. Pet. 10. The trial court denied the anti-SLAPP motion and motion for preliminary injunction. Pet. 10. Before the trial court addressed the State's demurrer, the College Respondents appealed the anti-SLAPP denial, and the

California Court of Appeal affirmed. Pet. App. 38a–54a.

2. After remand, the trial court sustained separate demurrers from the State and College Respondents without leave to amend. Pet. App. 29a. As relevant here, the trial court held that Petitioners had failed to state a claim for relief. Beginning with the contract claims, the court held that Petitioners failed "to meet their heavy burden" of showing a "clear and unequivocal expression of intent by the legislature" to bind itself by contract. Pet. App. 32a (citation omitted).

The trial court also concluded that the bill of attainder claim failed because AB 1936 does not punish the Petitioners without a judicial trial; the only person the legislation "arguably singles out is Mr. Hastings, who died years ago." Pet. App. 34a–35a. Nor is AB 1936 "so punitive in purpose or effect" as to be deemed penal, the trial court found. Pet. App. 34a (citation omitted). The remaining claims, which Petitioners no longer pursue, were likewise deemed lacking. Pet. App. 35a. On February 22, 2024, the trial court entered a final judgment dismissing Petitioners' claims. Pet. App. 59a.

Petitioners appealed to the California Court of Appeal, which affirmed the trial court's judgment on October 15, 2025. Beginning with Petitioners' contract allegations, the Court of Appeal relied on long-standing authority from this Court holding that legislatures cannot contract away their regulatory authority over public bodies. Pet. App. 8a (citing *Town of East Hartford v. Hartford Bridge Co.*, 51 U.S. 511 (1851); *Newton v. Mahoning Cnty. Comm'rs* 100 U.S. 548 (1879), and *United States v. Winstar Corp.*, 518

U.S. 839 (1996)). Applying these authorities, the appellate court explained that the 1878 Act was not a contract because it implicated the State's "sovereign authority to manage a public entity," Pet. App. 10a, and 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," Pet. App. 11a–12a.

Next, the Court of Appeal addressed Petitioners' bill of attainder claim. It evaluated each of the "necessary inquiries"—a historical test, a functional test, and a motivational test—and concluded that all three favored the College Respondents. Pet. App. 14a. Regarding the historical test, the Court of Appeal explained that AB 1936's provisions did not impose "something akin to a punishment historically associated with bills of attainder." Pet. App. 17a. It further explained that AB 1936 was not "punitive under the functional test" because the legislation was intended to advance restorative justice for Native Californians. Pet. App. 18a–19a. And as for the motivational test, the Court of Appeal concluded that the Legislature's "desire to address the needs of the current generation of Yuki Tribal members and the College's legal community" did not amount to "a punitive motivation" against Petitioners. Pet. App. 21a (citation omitted).

The Court of Appeal also deemed the ex post facto and university independence claims insufficient. Pet. App. 22a–26a. Finally, recognizing that Petitioners' taxpayer and Section 1983 claims were "derivative" of their prior allegations, the Court of Appeal sustained the demurrers as to those causes. Pet. App. 26a–27a.[3]

Petitioners then filed a petition for rehearing, which the Court of Appeal denied. Pet. App. 57a. In addition to "reject[ing] summarily" several grounds for rehearing, the appellate court explained that Petitioners improperly raised multiple "arguments for the first time in their petition," deeming them "waived for purposes of this appeal." Pet. App. 57a. The waived arguments include those Petitioners raise here, that (1) "[t]he reserved powers doctrine is inapplicable . . . because the State retained the option under the 1878 Act to cease operation of the school and return the donated funds," (2) a "claim for monetary damages . . . survives application of the reserved powers doctrine," and (3) "leave to amend" was proper "to allege a cause of action for violation of the 1878 Act." Pet. App. 57a.

Petitioners then petitioned the Supreme Court of California for review, which denied the petition in January 2026. Pet. App. 37a. Petitioners timely petitioned this Court for a writ of certiorari on April 28, 2026.

REASONS FOR DENYING THE PETITION

The Petition meets none of the Court's criteria for review. Most fundamentally, the Petition does not allege—much less establish—any conflict between state high courts or a state high court and a federal appellate court. Rather, the Petition simply seeks to correct the supposed errors in an intermediate state

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[3] Petitioners do not challenge the Court of Appeal's holdings on these claims.

appellate decision. For that reason alone, this Court's review is unwarranted.

Even setting that defect aside, the Petition should be denied because there is no error to correct. To the contrary, the court below properly applied this Court's precedents in rejecting Petitioners' claims. Nor does the Petition implicate any issue of nationwide importance that could justify review.

I. The decision below is correct.

This Court should deny the Petition because the decision below is correct on the merits and faithfully follows this Court's precedents. In arguing to the contrary, Petitioners misconstrue the decision below, the historical record, and this Court's jurisprudence. At bottom, Petitioners simply disagree with the Court of Appeal and trial court's respective applications of binding precedent to the 1878 Act and AB 1936. Those disagreements are not a basis for this Court's review.

A. The State cannot contract away its sovereign authority to regulate public bodies such as the College.

The Court of Appeal correctly concluded that the 1878 Act did not confer contractual benefits on S.C. Hastings or his heirs. Relying on the sovereign powers doctrine, the appellate court determined that because the 1878 Act squarely contemplates the Legislature's authority over a public body, the legislation could not offer any contractual rights.

1. The sovereign powers doctrine, which the Court of Appeal invoked in sustaining the College Respondents' and State's respective demurrers, derives from two core principles of republican governance. *First*, "one legislature cannot abridge the

powers of a succeeding legislature" because doing so "limits [the State's] power to act in the future." *U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977) (citation omitted). *Second*, a "legislature cannot bargain away the police power of a State," because doing so "impair[s] the supreme authority to make laws for the right government of the State." *Id.*; *Stone v. Mississippi*, 101 U.S. 814, 817–18 (1879). Legislators accordingly have no authority to "bargain away the public health or the public morals" for any period of time: not for a year, not in perpetuity, not at all. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 436 (1934).

Two of this Court's cases are particularly illustrative of these principles. In *Town of East Hartford v. Hartford Bridge Co.*, 51 U.S. 511 (1850) ("*East Hartford*"), a municipality asserted that Connecticut legislators had previously conferred the right to operate a ferry by "absolute title," and that subsequent state legislation suspending the ferry was thus invalid under the Contract Clause. *Id.* at 529–32. This Court rejected that position, explaining that "the doings of the legislature . . . must be considered rather as public laws than as contracts," because "[t]hey related to public interests." *Id.* at 534. The Court further observed that it could not reach a contrary result—*e.g.*, in the municipality's favor—"without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies." *Id.*

The Court reaffirmed these principles in *Newton v. Mahoning County Commissioners*, 100 U.S. 548 (1879) ("*Newton*"). There, the citizens of Canfield contended that an "executed contract which [was] binding on the

State" prevented Ohio legislators from moving the county seat to Youngstown. *Id.* at 556. In rejecting that argument, this Court surveyed its past cases concerning purported contracts regarding public organizations or offices, and observed:

> 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. . . . 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.

Id. at 559.

The Court of Appeal correctly applied these decisions, and the sovereign powers doctrine, by centering its analysis on the subject of the 1878 Act. There is no dispute that the legislation established a state body—the College—for the public's benefit. *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 638–39 (1819) (distinguishing private educational corporations from public educational institutions, which were "controllable by the legislature"). The very subject of this case concerns the State's regulation of fundamental aspects of the College: its name and governance structure. *East Hartford* and *Newton* accordingly compel the conclusion that the Legislature cannot contract away its regulatory authority over the College.

Petitioners' attempts to distinguish *East Hartford* and *Newton* hold no purchase. Their principal argument is that the sovereign powers doctrine may yield a different result when "private bodies" or "individuals" are parties to the alleged contract. Pet. 18 (quoting *East Hartford*, 51 U.S. at 533–35). But this Court already rejected that argument in *Newton*. *See* 100 U.S. at 553 (citizens claiming that *East Hartford* "ha[d] no application" because the "question turned on the public character of the parties to the grant"). As *Newton* held, the doctrine turns not on the identity or status of the parties, but on whether the implicated power concerns a "governmental subject[]." *Id.* at 559. This case concerns the State's "supervision over its subordinate public bodies," including "all offices within its reach." *Id.* (emphasis omitted). The sovereign powers doctrine accordingly directs that the State's legislative authority in such fields "is at all times absolute" and incapable of being contracted away. *Id.*

Petitioners next remark that *East Hartford* and *Newton* are inapplicable because "[n]either case dealt with the name of a public college or the reservation of one of its board seats." Pet. 18. These factual distinctions, which are unique to every case, "do not affect the legal question." *Gilman v. City of Philadelphia*, 70 U.S. 713, 728 (1865). Petitioners have not disputed, nor can they reasonably challenge, that the 1878 Act implicates the governance of a public body: the College. Such statutes "must be considered rather as public laws than as contracts." *East Hartford*, 51 U.S. at 534. And legislative authority in this domain is "at all times absolute": each subsequent legislature holds "the same power of repeal and modification which the former had of enactment, nothing more nor less." *Newton*, 100 U.S. at 559. The Court of Appeal correctly applied this doctrine in sustaining the College Respondents' demurrer.

2. Petitioners also suggest that the sovereign powers doctrine is inapplicable to their alternative claim for monetary damages. But that argument gets them nowhere for procedural and substantive reasons.

To start, Petitioners did not assert a claim for damages against the College Respondents. *See* Pet. App. 36a (trial court noting that the damages claim was only asserted against the State). Accordingly, Petitioners' argument regarding the application of the sovereign powers doctrine to a damages claim has no relevance to the claim asserted against the College Respondents, which sought only declaratory and injunctive relief.

Even if Petitioners' argument were relevant, Petitioners concede their tardiness in advancing it: they first addressed their "alternative" claim for monetary damages in a petition for rehearing *after* the Court of Appeal affirmed the trial court's judgment. Pet. 21 ("Prior to seeking review in the California Supreme Court, Petitioners alerted the California Court of Appeal of the continued availability of monetary damages via a petition for rehearing."). Unsurprisingly, the appellate court deemed this argument waived. Pet. App. 57a.

Yet Petitioners maintain that they are blameless for failing to preserve a monetary damages theory. In their telling, their forfeiture is excused by two justifications: "the trial court did not address the reserved powers doctrine," and "Respondents' answering briefs in the appellate court made no mention of that doctrine's specific application to Petitioners' separate damages claim." Pet. 22.

That narrative omits two critical facts. *First*, beginning with their demurrer before the trial court, the College Respondents consistently pressed a sovereign powers theory alongside a multitude of defenses to Petitioners' claims. Any of the College Respondents' arguments, be it the sovereign powers argument that the Court of Appeal embraced, or the separate unmistakability claim that the trial court ruled upon, presented an independent means for sustaining the demurrers. Petitioners elected to only address the unmistakability doctrine, and not the sovereign powers doctrine, in their opening brief below. *See* Pet. App. 12a & n.6 ("In their opening brief, [petitioners] did not cite *East Hartford* or *Newton*, nor did they expressly address the reserved powers doctrine more generally.").

Second, and notwithstanding that fact, the Court of Appeal did precisely what Petitioners claim it did not: it reviewed Petitioners' opening *and* reply briefs, concluding that neither "develop[ed a] separate argument that [the sovereign powers] doctrine applies differently to their state-law claims for breach of contract." Pet. App. 12a & n.6.

Next, Petitioners suggest that they "sufficiently preserved" their alternative theory by, among other things, "noting in their principal brief that the trial court overlooked the survivability of the damages claim." Pet. 23. Yet reviewing Petitioners' argument evinces a wholesale failure to press a damages theory. In a *footnote* before the Court of Appeal, Petitioners equivocated that they sought, "if *not* specific performance, *then* monetary damages arising from the State's breach of contract." Pet. App. 99a (emphases added). And that clandestine request does not even survive the *following sentence* in the footnote: Petitioners there insisted that the 1878 Act "supports [their] primary request for specific performance by underscoring the *inadequacy of monetary damages* in remedying the State's breaches generally." Pet. App. 99a (emphasis added).

Perhaps recognizing this, Petitioners resort to the proverbial Hail Mary: they argue that their damages claim remains viable because the Court of Appeal twice misapplied state waiver doctrine. But this Court is not the forum for deciding fact-bound questions of state procedural law. In any event, neither challenge holds merit.

Petitioners first fault the appellate court for failing to "search for a reasonable possibility of curation." Pet. 21. But our adversarial system "rel[ies] on the parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243–44 (2008). Consistent with this fundamental premise, California law places the burden of demonstrating the possibility of a curative amendment "squarely on the plaintiff." *Genis v. Schainbaum*, 66 Cal. App. 5th 1007, 1015 (2021). The Court of Appeal acted well within the boundaries of party presentation by refusing to develop arguments on the Petitioners' behalf and declining to remand for an amendment Petitioners never properly requested.[4]

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[4] At Appendix N of their Petition, Petitioners purport to excerpt the portions of their opening brief below that concerned leave to amend. *See* Pet. 11; Pet. App. 101a–104a. The *only* reference to amendment appears in the standard of review. Pet. App. 102a. The balance of the Appendix neither seeks leave to amend nor discusses the claim for money damages Petitioners belatedly assert before this Court. *See* Pet. App. 102a–104a; Pet. App. 7a & n.3 ("[Petitioners] do not challenge the denial of leave to amend."); Pet. App. 12a & n.6 (noting that Petitioners' briefing "develops no separate argument that [the reserved powers

What is more, Petitioners' breach theory is premised on a factual predicate their Complaint explicitly disavowed—that the College ceased to exist, thereby triggering a duty to return S.C. Hastings's donation. Though missing from their Appendix, Petitioners' Complaint alleged that "the College *has not 'cease[d] to exist*' within the meaning of the [1878] Act." 1CT83 (emphasis added) (first alteration in original). That is why Petitioners at all times pursued injunctive relief, only resorting to a damages theory in their petition for rehearing after the Court of Appeal rejected their "primary request." Pet. App. 99a. Effectuating a tactical flip-flop any earlier would require Petitioners to amend their pleadings to directly contradict the operative Complaint, which California law prohibits. *Cal. Dental Ass'n v. Cal. Dental Hygienists' Ass'n*, 222 Cal. App. 3d 49, 53 n.1 (1990) ("[A] plaintiff may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading.").

Petitioners also proclaim that the Court of Appeal erred in refusing to exercise a "broad *discretion* [] to consider arguments not raised in an opening brief." Pet. 21–22 (emphasis added). But "for purposes of the adequate state ground doctrine," a discretionary procedural "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." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). What is more, the appellate court, once again, did exactly what the Petition asserts it failed to do: it "considered the arguments offered on

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doctrine] applies differently to their state-law claims for breach of contract.").

[the sovereign powers doctrine] in the reply brief" and found them unavailing. Pet. App. 12a & n.6. Petitioners' failure to substantively advance any of those arguments before oral argument or their motion for rehearing voids any attempt at further review.

To be sure, Petitioners' monetary damages theory also fails on the merits. They submit that *United States v. Winstar Corp.*, 518 U.S. 839 (1996) (plurality opinion), allows the claim to survive application of the sovereign powers doctrine. But *Winstar* did not involve any Contract Clause analysis, as that constitutional provision does not apply to the federal government. *Union Pac. R.R. v. United States*, 99 U.S. 700, 718–19 (1878). And *Winstar* disclaimed any attempt to evaluate the dispositive issue decided below and raised here: "[t]he anterior question [of] whether there were contracts at all between the Government and respondents." 518 U.S. at 860; Pet. App. 15a (appellate court "disagree[ing] that [AB] 1936 works any confiscation of property or interferes with any vested right"); Pet. App. 33a (trial court noting that "the [1878] Act has no [covenanting] language").

Even considering Contract Clause precepts like the unmistakability and sovereign powers doctrines, *Winstar* rejected the notion that a plaintiff may avoid them simply by claiming damages rather than injunctive relief. The plurality opinion stressed that the inquiry turns not on the relief requested, but rather "on whether enforcement of the contractual obligation alleged would block the exercise of a sovereign power of the Government." 518 U.S. at 879. Indeed, the four justices discredited the very position Petitioners advance: "the particular remedy sought is not dispositive and the doctrine is not rendered inapplicable by a request for damages, as distinct from specific performance." *Id.*

In applying this framework, the *Winstar* court adopted the lower courts' interpretations of the at-issue contracts, and found that the sovereign powers doctrine was inapplicable. As construed, the implicated agreements did "not purport to bind the Congress" from exercising legislative powers and were "solely risk-shifting agreements," and the respondents did not seek "any such limit on sovereign power." 518 U.S. at 881. But Petitioners have pursued the opposite theory here: they have maintained throughout the course of this litigation that the 1878 Act *did* restrict legislative powers, and that they are thus entitled to specific performance—restoring the College's original name and hereditary seat.

Petitioners' damages theory accordingly fails on multiple grounds. The Petition concedes that the argument was raised in an untimely manner, and none of Petitioners' explanations rescue it from a finding of forfeiture. And on the merits, Petitioners' attempt to cobble a majority principle from multiple distinct opinions is wholly inconsistent with the plurality opinion it references. Whether "alternative" or legitimate, Petitioners' monetary damages claim cannot rescue a theory that the courts below correctly rejected.

B. The 1878 Act is not a contract.

Petitioners also take issue with the trial court's application of the "unmistakability" doctrine, which holds that "a statutory scheme is not intended to create private contractual or vested rights," *Walsh v. Bd. of Admin.*, 4 Cal. App. 4th 682, 697 (1992), and that "[e]very reasonable doubt should be resolved against [the existence of a contract]." *Newton*, 100 U.S. at 561 (citation omitted). The Court of Appeal did not pass on that doctrine, and its application of the sovereign powers doctrine renders it irrelevant whether the California Legislature intended to create a contract. The unmistakability doctrine is therefore not before this Court.

To the extent legislative intent is relevant to the issues before the Court, Petitioners leave out key details from their discussion of the 1878 Act. The Act's legislative history confirms that the Legislature knew how to draft covenanting language but affirmatively chose not to do so. An initial draft bill contained multiple instances of covenanting text, including its title, effectuating provisions, and authorizing language. *See* Pet. App. 75a–77a. It would have explicitly authorized a contract to be executed between S.C. Hastings and the State, but *only* as to the obligation to fund the College. Pet. App. 77a. The Legislature, however, replaced this draft with a final bill that did not "include *any* covenanting language" and no longer authorized the creation of a contract. Pet. App. 32a (emphasis added); *see* Pet. App. 72a.

This history confirms what the Act's absence of covenanting text suggests: the Legislature did not intend to contractually bind itself. *Doe v. Chao*, 540 U.S. 614, 623 (2004) (deletion of provision in draft legislation for presumed damages "precludes any hope of a sound interpretation of entitlement to recovery"). Indeed, given that *East Hartford* preceded the 1878 Act by over 25 years, it is a fair inference that the state Legislature—presumed aware of judicial holdings that restrained the ability to covenant away sovereign authority—acted with an unmistakable intent to not be bound by a contract. *People v. Scott,* 58 Cal. 4th

1415, 1424 (2014) (California "Legislature is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof" (citation omitted)). At a minimum, it would be absurd to suggest that the Legislature acted to broaden the scope of its contractual obligations—*e.g.*, covenanting not only as to funding, but also as to the name and governance of the College—by removing the delegation of contracting authority and stripping the final version of covenanting language. Petitioners' fixation on a pair of aspirational words in the text of the 1878 Act, *see* Pet. at 20 (pointing to the words "forever" and "always"), come nowhere close to demonstrating "a clear and unequivocal expression of intent by the legislature to so bind itself." *Cranston Firefighters, IAFF Local 1363, AFLCIO v. Raimondo*, 880 F.3d 44, 48 (1st Cir. 2018); *see also Newton*, 110 U.S. at 562 (rejecting argument that the words "permanently established" formed a contract).

Relatedly, Petitioners insist that AB 1936 amounts to "a bald repudiation of a contractual obligation . . . to correct what it perceives to be an overly generous deal." Pet. 19 (citing *Cuyahoga Metro. Hous. Auth. v. United States*, 57 Fed. Cl. 751, 769 (2003)). However, AB 1936 neither alters the State's financial obligations to the College nor the return of S.C. Hastings's donation should the College cease to exist. AB 1936 is therefore consistent with the only contract the Legislature ever contemplated with respect to S.C. Hastings—which the Legislature in any event stripped from the final text of the 1878 Act.

C. AB 1936 is not a bill of attainder.

Petitioners separately request that this Court revisit the Court of Appeal's conclusion that AB 1936 does not constitute a bill of attainder. Yet their justifications for review are incongruent with the decision below, and at odds with the historical record. The appellate court faithfully applied each of the three attainder tests: (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 . . . further[s] nonpunitive legislative purposes" (the "functional test"); and (3) whether the legislative record "evinces a congressional intent to punish" (the "motivational test"). *Nixon v. Adm'r of Gen. Servs*, 433 U.S. 425, 473, 475–76, 478 (1977). Petitioners' mere disagreement with those conclusions, and their mischaracterizations of the decision below, do not warrant certiorari.

1. Beginning with the "historical test," Petitioners contend that the Court of Appeal misconstrued *Nixon*'s comment on vocational and employment punishments as "a limitation on the historical evidence courts may consider." Pet. 24. Yet no restriction is apparent in the decision below: the appellate court merely noted that Petitioners' charges amounted at best to "reputational harm," and bore no resemblance to "the types of burdens traditionally recognized as punitive," including employment or vocation bans. Pet. App. 17a.

For at least three reasons, AB 1936 cannot be a bill of attainder under the historical test. *First*, as the Court of Appeal indicated, Petitioners have not demonstrated standing for their attainder claims pertaining to S.C. Hastings. Petitioners' statuses as purported descendants of S.C. Hastings are insufficient for standing purposes, and the 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." Pet. App. 16a. This holding comports with similar federal cases concluding that descendant status alone does not confer standing to challenge, for example, the removal of monuments. *See, e.g., McMahon v. Fenves*, 946 F.3d 266, 270–71 (5th Cir. 2020) (descendants of veterans lacked standing to press claim over removal of monuments).

Second, while Petitioners claim that the Court of Appeal "disregard[ed] the historical reality that bills of attainder have long targeted the deceased," Pet. 24, they omit why the appellate court did so. Petitioners first raised the argument that "bills of attainder frequently targeted the dead" in their *reply brief* below. The Court of Appeal acted within its discretion in declining to "revive a forfeited argument simply because the petitioner gestures toward it in its reply brief." *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 140 n.2 (2014).

Third, Petitioners' cited materials demonstrate that there is anything but a "historical reality" of attainting the dead. Pet. 23. Much of their argument relies on a law review article that details *differing* understandings of bills of attainder in English and American history. *See* Matthew Steilen, *Bills of Attainder*, 53 Hous. L. Rev. 767, 774–850 (2016). For example, while Petitioners identify certain English figures who proposed attainting the dead, Pet. 24–25, Petitioners omit the fact that in response to such suggestions, "Solicitor General Sir John Dodderidge replied, simply, that there was 'never any Precedent'" of using attainder in that fashion. Steilen, *supra*, at 806. And Petitioners' argument that historical bills of attainder were used to "seiz[e] property interests from, or quiet[] disputes raised by, the targeted person's heirs," Pet. 24, omits a crucial distinction between

English and American conceptions of attainder. In feudal England, bills of "attainder proved attractive" to dynastic royals who wished to amass land. *See* Steilen, *supra*, at 783–84. Those maneuvers have little relevance in American society; indeed, England's arcane system of hereditary titles and estates hold no place in American law.

Even the Petition's lone example of an *American* attainder discards precision for generalities. *See* Pet. 25 (claiming "Pennsylvania attainted nearly 500 loyalists, including individuals who were already deceased"). The "Pennsylvania" that Petitioners reference was not the legislature, but rather, the *executive* authority in revolutionary Pennsylvania: the Supreme Executive Council. That distinction already places this example outside of the scope of a bill of attainder in American jurisprudence. *See Nixon*, 433 U.S. at 468–69 (explaining that a bill of attainder is a legislative act).

And as for that executive action, the referenced bill was a "suspensive attainder" that specifically directed 13 named individuals to "surrender [for trial] within forty days of their naming." Steilen, *supra* at 885. Those 13 individuals were presumably alive; demanding that the dead appear for trial would be nonsensical. The remainder of the "500 loyalists" were then added to the attainder by the aforementioned Supreme Executive Council. *Id.* at 826. While it is unclear how some deceased persons were included on the attainder list, *see id.* at 888 (describing those who assisted in the list's assembly as "habitually 'careless'"), it is a fair assumption that by requiring those named to surrender for trial, authorities believed the attainder applied only to living subjects. Succinctly stated, while Petitioners claim that bills of attainder have "long targeted the deceased," Pet. 24, their only reference to an American attainder is a single *executive* action that contemplated live subjects and is far divorced from traditional notions of an attainder.

Petitioners separately posit that the appellate court "ignored" three burdens associated with the "punitive confiscation" that AB 1936 purportedly effectuates: the elimination of the hereditary seat, a purported financial loss of $100,000 because the College "no longer exists," and reputational harm through "falsely impugning S.C. Hastings with claims of perpetuating acts of genocide." Pet. 25–26.

But the Court of Appeal directly addressed these harms to the extent that Petitioners adequately pled them. It found that because the 1878 Act was not a contract, Petitioners lacked "a vested interest in the name of the College or in a reserved seat on its board." Pet. App. 15a.[5] The appellate court also concluded that despite Petitioners' threadbare assertion of reputational harm, "the bill imputes no blame to any of S.C. Hastings's descendants for his conduct with respect to California tribes. It does not directly or implicitly impugn their character." Pet. App. 15a–16a. And as noted earlier, Petitioners' "alternative" damages claim appeared on appeal in a reply brief *footnote* and was briefly mentioned *in rebuttal* at oral argument before the Court of Appeal. *See* Pet. 12. The appellate court correctly deemed these arguments waived. *Sandhu v. Bd. of Admin.*, 108 Cal. App. 5th 1048, 1062 (2025) ("Footnotes are not the appropriate

[5] In any event, this Court has held since shortly after the framing that the bill of attainder clause does not vindicate contractual rights. *Calder v. Bull*, 3 U.S. 386, 397 (1798).

vehicle for stating contentions on appeal." (citation omitted)); *Opdyk v. Cal. Horse Racing Bd.*, 34 Cal. App. 4th 1826, 1830 (1993) ("[I]ssues raised at oral argument come too late."). While Petitioners may disagree with the Court of Appeal's conclusions, that is no basis for asserting that their pled arguments were ignored.

2. Turning to the "functional test," which evaluates whether an enactment "reasonably can be said to further nonpunitive legislative purposes," *Nixon*, 433 U.S. at 475–76, Petitioners contend that the appellate court "grafted an extralegal 'historical public figure' exception" that allowed it to "insulate legislation from judicial scrutiny." Pet. 26. Not so. This supposed exception is a single sentence where the Court of Appeal summarized that AB 1936's legislative "findings are a reappraisal—highly critical, to be sure—of a historical public figure." Pet. App. 19a. This acknowledgement of S.C. Hastings's stature had little bearing on the appellate court's evaluation, which focused on whether the "means imposed" through AB 1936 "have a 'rational connection'" to an aim of addressing injustices and crimes of the past against Yuki and Native Californians. Pet. App. 18a (citation omitted).

As part of their functional test argument, Petitioners revive their self-serving charge that the "College's renaming actually undermines [any] restorative justice efforts." Pet. 27. They cite as proof the Dean's acknowledgement about learning from the past, and a public commenter's dissatisfaction with including "San Francisco" in the College's name. Pet. 27. Petitioners, however, supply no authority to suggest that an individual's subjective view of a statute's prudence is relevant to the analysis.

Rather, this Court's decisions confirm that the proper analysis is one of statutory interpretation. In *Nixon*, for example, the Court looked to the legislative text to determine that "legitimate justifications for passage of the Act are readily apparent." 433 U.S. at 477. And in *Selective Service System v. Minnesota Public Interest Research Group*, the Court reviewed the statutory text and legislative history to conclude that the legislation furthered non-punitive ends. 468 U.S. 841, 855 (1984). Indeed, the Court there disregarded the remarks of those who opposed the law. *Id.* at 869, n.15.

The Court of Appeal properly conducted this analysis: it evaluated the statute and its legislative history, and independently determined that the "name and hereditary board seat perpetuate . . . an association the College and Legislature sought to sever," and that "[t]he purpose of severing that association" was "to address the needs of the current generation of Yuki Tribal members and the College's legal community." Pet. App. 18a (citation omitted). And Petitioners' charge of misapplied standards is self-defeating: their Petition itself fails to "meaningfully address 'the magnitude of the burden relative to the purported nonpunitive purposes of the statute.'" Pet. App. 19a (quoting *Foretich v. United States*, 351 F.3d 1198, 1222 (D.C. Cir. 2003)).

3. Finally, with respect to the "motivational" test, Petitioners claim the appellate court "boldly created a bright-line rule that 'a legislative finding of historical wrongdoing' as part of 'an effort to promote restorative justice' cannot equate to punishment." Pet. 27. No such rule exists in the decision below: in a preceding sentence, the Court of Appeal cited a comprehensive "discussion above" in concluding that AB 1936

contained no "legislative intent to punish either S.C. Hastings or the individual [petitioners]." Pet. App. 20a.

Petitioners separately contend that the appellate court failed to "examin[e] the legislative record to ascertain the motivation, if not accuracy, behind legislative findings and enactments." Pet. 27. They note, for example, that a draft version of AB 1936 "desired . . . to coerce 'an apology from . . . the S.C. Hastings family.'" Pet. 27 (citation omitted). But the Court of Appeal fully considered this argument: it studied the "committee bill analyses" that Petitioners identified and explained that the "apology" provision "was not included in the final bill." Pet. App. 20a.

The Petition also identifies one legislator's statement that there was "no reasonable doubt" that S.C. Hastings engaged in genocidal activities. Pet. 28. That statement, at face value, hardly evinces a punitive goal. More fundamentally, "[s]tatements by a smattering of legislators 'do not constitute [the required] unmistakable evidence of punitive intent.'" *Consol. Edison Co. of N.Y. v. Pataki,* 292 F.3d 338, 354 (2d Cir. 2002) (second alteration in original) (quoting *Selective Serv. Sys.*, 468 U.S. at 856 (disagreeing with district court's reliance on "several isolated statements" expressing indignation regarding the burdened class)).

Lastly, Petitioners contend that the elimination of the hereditary seat on the College's governing board was punitive because AB 1936's text offers no explanation for the seat's removal, and the College's Board "never requested its elimination." Pet. 28. That contention ignores the Court of Appeal's observation that the change to the board seat was among the restorative justice initiatives the Board directed the Dean to pursue. Pet. App. 26a. The legislative history corroborates that fact: Dean Faigman personally appeared before the Legislature's Senate Education Committee during its consideration of the draft legislation, and expressed that the College was pleased to sponsor the then-current version of AB 1936—which included the removal of the hereditary seat. 3CT695. Moreover, Petitioners do not explain how the change to the hereditary seat constitutes a severe burden. After all, as the Court of Appeal observed, "the individual plaintiffs remain free to seek consideration for *any* seat on the [College's governing] [B]oard." Pet. App. 19a (emphasis added).

Each of *Nixon*'s three tests confirms the same result: AB 1936 is not a bill of attainder. Petitioners' charges that the Court of Appeal invented "bright-line rules" or improper "exceptions" are misplaced. As for the "historical reality" they posit, Petitioners' own sources defeat their claims. Certiorari is unnecessary in light of the correct determinations issued by the appellate and trial courts.

II. This case has no certiorari-worthy issues.

Attempting to manufacture an "exceptionally important" issue that warrants the Court's review, Petitioners postulate that the decision below "threatens [an] entire ecosystem" of public-private partnerships between states and private entities, and violates the separation of powers by "adjudicating the guilt of the deceased while stripping their surviving family members of vested statutory, contractual, and reputational interests." Pet. 31. Those hyperbolic claims make little sense, especially when contextualized against the narrow facts of this dispute.

1. Beginning with fundraising, Petitioners' hypothesis conflates a state's regulatory authority over its public entities, such as the College, with a public entity's power to enter into contracts related to the property it holds. None of the Petition's examples concern the naming or governance of a public body at issue in this case. Each instead concerns the name of buildings or facilities that are owned or operated by public agencies. *See, e.g.*, *Landis v. Wash. State Major League Baseball Stadium Pub. Facilities Dist.*, 403 F. Supp. 3d 907, 910 (W.D. Wash. 2019) (baseball stadium owned by "a Washington state municipal corporation"); *Pilot Air Freight Corp. v. City of Buffalo*, No. CIV-91-308E, 1991 WL 275051, at *1 (W.D.N.Y. Dec. 16, 1991) (naming rights to baseball stadium obtained from city).

Even if such examples were relevant here, no portion of the sovereign powers or unmistakability doctrines, or the decisions below, create any impediment on a public body's ability to buy, sell, or name its facilities. As *Newton* explained, while one legislature cannot bargain away the authority of another, citizens may impose constitutional restrictions on legislative authority. 100 U.S. at 559. Californians have done so by conferring on the College "the legal title and the management and disposition of the property of the university and of property held for its benefit." *See* Cal. Const., art. IX, § 9, subd. (f). The College is thus constitutionally permitted to make agreements concerning its facilities, including naming contracts.

It is noteworthy that as part of this hypothesis, Petitioners challenge whether the "board seats" of "a public college" are "beyond the reach of the Contract Clause and the State's power to contract." Pet. 29.

True enough, the decision below would prevent a Legislature from selling the governance of public, taxpayer-funded institutions to the highest bidder. But that result flows from application of the sovereign powers doctrine, which prohibits legislatures from bargaining away the governmental powers that belong to the people governed. *See Stone*, 101 U.S. at 820 ("But the power of governing is a trust committed by the people to the government, no part of which can be granted away."). That this may prevent the State from engaging in such "fundraising," as Petitioners euphemistically put it, does not justify a departure from the fundamental principle of democratic self-governance.

2. Petitioners also recast their bill of attainder argument as a separation-of-powers issue, stressing that this case provides a "rare opportunity to clarify this vital doctrine in a novel but consequential context." Pet. 33. But as explained above, certiorari should be denied because the appellate court correctly concluded that AB 1936 does not constitute a bill of attainder. And their separation-of-powers framework is little more than a garden-variety reminder that the judiciary's role is to evaluate statutes and ensure that they are consistent with constitutions and applicable doctrines. Pet. 32 ("It has long been the role of this Court to define and limit the activities of the branches of government to their respective spheres, thereby ensuring that the constitutional guarantees of liberty are given meaningful effect."). Both the trial court and the Court of Appeal carefully considered Petitioners' arguments—relating to purported contracts, vested rights, constitutional doctrines, and the tests for attainder—and concluded that the claims were not

cognizable. Petitioners' disagreement with these determinations is not a separation-of-powers concern.

Relatedly, Petitioners' acknowledgment that this dispute offers a "rare opportunity" within "a novel but consequential context," Pet. 33, confirms the narrowness of their attainder issue. They identify no circuit split. They concede that the last attainder case to receive merits review from this Court occurred "over forty years ago"—a telling indicator of the fact-specific inquiries that are associated with an alleged attainder. And that most recent case, *Selective Service System*, contemplated whether legislation concerning a class of 18-to-26-year-old males constituted a bill of attainder. *See* 468 U.S. 843–44. This case, in stark contrast, focuses on just one figure—deceased for over 130 years—and the efforts of his descendants to enforce supposed rights that have been rejected by the California courts.

Beyond these circumscribed facts, this case is a poor vehicle for addressing the questions that Petitioners raise. Among the numerous procedural issues raised in this response, Petitioners have concededly waived many arguments on appeal—including their alternative "damages" claim and historical allegations concerning a bill of attainder. In particular, this Court should not disturb the Court of Appeal's waiver finding, Pet. App. 57a, by reviving claims that Petitioners themselves discarded. And that is especially true as to the "alternative claim" for damages, which hinges on a fact—the nonexistence of the College—that the Complaint expressly disavows. This Court is simply not an appropriate forum for such gamesmanship, especially on a circumscribed dispute that has no application beyond the parties to the instant dispute.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

BENEDICT Y. HUR
EDUARDO E. SANTACANA
JOSHUA D. ANDERSON
Counsel of Record
ROBERT H. WU
COOLEY LLP
3 Embarcadero Center
Suite 2000
San Francisco, CA 94111
(415) 693-2000
joshua.anderson@cooley.com

Counsel for the College Respondents

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