

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

**REPLY BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	3
I. The Opinion Below Expands the Reserved Powers Doctrine Beyond the Confines Established by This Court.....	3
II. Petitioners’ Pursuit of Monetary Damages Is Not Procedurally Barred.	6
III. The State Cannot Defend the Bill of Attainder Clause Violation.....	9
CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases

<i>Allied Structural Steel Co. v. Spannaus</i> , 438 U.S. 234 (1978).	1
<i>Aubry v. Tri-City Hosp. Dist.</i> , 2 Cal. 4th 962 (1992).	8
<i>Beard v. Kindler</i> , 558 U.S. 53 (2009).	7
<i>Calder v. Bull</i> , 3 U.S. 386 (1798).	11
<i>Consolidated Edison Co. of New York, Inc. v. Pataki</i> , 292 F.3d 338 (2d Cir. 2002).	11
<i>Cummings v. Missouri</i> , 71 U.S. 277 (1866).	10
<i>East Hartford v. Hartford Bridge Co.</i> , 51 U.S. 511 (1850).	5
<i>Eghtesad v. State Farm Gen. Ins. Co.</i> , 51 Cal. App. 5th 406 (2020).	8
<i>Enterprise Irr. Dist. v. Farmers’ Mut. Canal Co.</i> , 243 U.S. 157 (1917).	7
<i>Fletcher v. Peck</i> , 10 U.S. 87 (1810).	3, 4
<i>Lee v. Kemna</i> , 534 U.S. 362 (2002).	9
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989).	1

TABLE OF AUTHORITIES (CONT'D)

<i>Newton v. Commissioners</i> , 100 U.S. 548 (1879).	5
<i>Nixon v. Adm’r of Gen. Servs.</i> , 433 U.S. 425 (1977).	11
<i>Panterra GP, Inc. v. Super. Ct. of Kern Cnty.</i> , 74 Cal. App. 5th 697 (2022).....	12
<i>Schifando v. City of Los Angeles</i> , 31 Cal. 4th 1074 (2003).	12
<i>Selective Service System v. Minnesota Public Interest Research Group</i> , 468 U.S. 841 (1984).	11
<i>Toy v. City & Cnty. of San Francisco</i> , 121 Cal. App. 5th 1292 (2026).....	7
<i>Trs. of Dartmouth Coll. v. Woodward</i> , 17 U.S. 518 (1819).	1
<i>U.S. Trust Co. of N.Y. v. New Jersey</i> , 431 U.S. 1 (1977).	4
<i>United States v. Brown</i> , 381 U.S. 437 (1965).	10
<i>United States v. Lovett</i> , 328 U.S. 303 (1946).	1
<i>United States v. Winstar Corp.</i> , 518 U.S. 839 (1996).	3

TABLE OF AUTHORITIES (CONT'D)

Statutes

42 U.S.C. § 1983. 7

Cal. Educ. Code § 92212. 6, 8

Rules

Sup. Ct. R. 10. 1

Other Authorities

Edward Coke, *The Fourth Part of the Institutes of the
Laws of England* 36 (1644). 10

Matthew Steilen, *Bills of Attainder*,
53 Hous. L. Rev. 767 (2016). 10

INTRODUCTION

The State of California has targeted private citizens, stripped them of what it now concedes are “special rights” without a judicial trial, and disrupted over a century of settled private reliance. This brazen action strikes at the heart of the Contract and Bill of Attainder Clauses, which reflect the Framers’ belief that securing contracts from state interference and separating legislative from judicial functions are essential to the preservation of liberty. *See Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 598 (1819); *Mistretta v. United States*, 488 U.S. 361, 380 (1989); Pet. 31–32. As set forth in the Petition, this Court’s intervention is critical under Supreme Court Rule 10 because the California Court of Appeal decided important questions of federal law in direct conflict with this Court’s precedent.

Respondents’ insistence on the presence of split decisions over the constitutionality of AB 1936 misapprehends the nature of the constitutional issues presented. Certiorari-worthy disputes centering on the Contract and Bill of Attainder Clauses often fail to generate traditional split authorities because the challenged legislation is inherently targeted and localized. *Cf. United States v. Lovett*, 328 U.S. 303, 307 (1946) (considering whether an act of Congress was a bill of attainder “because of the manifest importance of the questions involved”); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 242–51 (1978) (holding that a Minnesota act targeting a narrow class of employers violated the Contract Clause).

Respondents’ efforts to downplay the public policy implications of the Court of Appeal’s decision also fail. The court’s novel and paradoxical application of the

reserved powers doctrine to diminish the State’s power to contract applies with equal force to “time-limited” naming-rights leases as it does the granting of perpetual rights. State Opp. 19. And the court’s holding does not limit itself to “flagship university institutions.” *Id.* The lower court issued a sweeping constitutional rule that prohibits the State from contracting over the name or title of a public institution or the provision of a single seat on the multi-person board of directors governing the same. The ruling does not cleanly sever the naming of a public institution from the naming of the property it manages; indeed, such a delineation is not always clear.¹ Given the recent societal fixation with renaming public institutions, holidays, and other property, the impact of the decision will likely prove substantial. *See, e.g.*, State Opp. 17–18 (discussing the recent removal of Cesar Chavez’s name from public works).

As discussed below, Respondents’ various merits and procedural arguments fall flat and, in any event, do not eliminate the need for certiorari. This Court should not allow the State’s severe constitutional overreach and the California Court of Appeal’s blatant defiance of binding jurisprudence to stand.

¹ The San Francisco resolution cited in the Petition, for example, appends “Priscilla and Mark Zuckerberg” to the name of the “institution” of the San Francisco General Hospital and Trauma Center, not just the hospital building. Pet. 30, n.11.

ARGUMENT²

I. The Opinion Below Expands the Reserved Powers Doctrine Beyond the Confines Established by This Court.

The California Court of Appeal’s published opinion in this case extends the reserved powers doctrine to unprecedented lengths. Respondents have not, and cannot, identify any prior decision appropriately shielding a state from contractual liability regarding its changes to the name or board of a public college.

Respondents and the court below reach their conclusions only by ignoring this Court’s central holdings in *United States v. Winstar Corp.*, 518 U.S. 839 (1996), and *Fletcher v. Peck*, 10 U.S. 87 (1810). *See* Pet. 15–18. Rather than engage with *Winstar*’s holding that the reserved powers doctrine does not apply where enforcement of the agreement merely shifts the financial risk of subsequent legislative changes to the government, Respondents assert that Petitioners’ pursuit of injunctive relief triggers the doctrine regardless. Coll. Resp. Opp. 20. Their argument oversimplifies Petitioners’ position, is belied by the record, and, in any event, does not excuse the Court of Appeal’s departure from *Winstar*.³

² This brief does not comprehensively address Respondents’ many premature merits arguments, which will be more appropriately briefed in accordance with the standard schedule and length limitations.

³ 1CT82–83 (Petitioners’ complaint alternatively seeks damages for breach of contract); 1CT83 (alleging that if the College has “cease[d] to exist,” the State’s failure to return the \$100,000 plus interest constitutes a further breach of the 1878 Act).

The 1878 Act respects the State’s freedom to legislate while also placing clear contractual obligations around the State’s usage of S.C. Hastings’ \$100,000. The State is free to found a college under the name and governance structure of its choosing—it simply cannot do so with S.C. Hastings’ money. The State’s inability to lawfully operate the College in its current manner arises from the State’s *present* choice to retain S.C. Hastings’ payment. That the State may not retroactively repurpose these funds for unsanctioned uses does not trigger the reserved powers doctrine. See *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 24 (1977) (recognizing that states possess the “power to enter into effective financial contracts”).

The 1878 Act’s stated limitations on refunding the \$100,000 are irrelevant to this analysis. See State Opp. 10. The parties’ agreement concerning refunds was made with the understanding and expectation that the State would *also* adhere to its name and Board seat obligations. All these obligations must be taken together, in the same manner they were offered to and accepted by S.C. Hastings. The State cannot unilaterally pick and choose which sections remain enforceable.⁴

In *Fletcher*, 10 U.S. at 135, this Court further recognized that the State cannot rely on the reserved powers doctrine to retroactively divest vested rights. AB 1936 revoked, at a minimum, the descendants’ “special rights” pertaining to their eligibility to serve on the College’s Board. State Opp. 3. Because those rights have long since been bought and paid for,

⁴ Under its theory of the case, the State could also unilaterally eliminate the refund obligation at any time.

Fletcher does not permit the reserved powers doctrine to insulate the State from contractual liability. In response to this problem, the State argues that “post-*Fletcher*” it has become the trend of this Court to be less willing to restrain legislative action in the face of contractual rights. See State Opp. 10. *Fletcher*, however, remains binding precedent of this Court, and it is neither Respondents’ nor the California Court of Appeal’s purview to disregard its holding in favor of a perceived trend.

Respondents’ reliance on *East Hartford v. Hartford Bridge Co.*, 51 U.S. 511 (1850) and *Newton v. Commissioners*, 100 U.S. 548 (1879) is inapt. See State Opp. 7–8. Both cases concern restrictions on a state’s ability to contract with its *public sub-entities*. The present case does not concern an intra-state shuffling of public funds or programs, but explicit contractual promises made to a *named* individual and conditioned on that individual’s payment to the State of a specific sum. Moreover, the obligations allegedly breached in those cases arose from ambiguous contextual clues or were altogether non-existent. *East Hartford*, 51 U.S. at 533 (the alleged contract could not be found, rendering it “difficult to fix the terms or character of it”); *Newton*, 100 U.S. at 561 (holding that even if the alleged contract existed, it did not impose the obligation allegedly breached). The State’s promises in the 1878 Act regarding the name and Board seat, however, are unequivocal and plainly material.

II. Petitioners’ Pursuit of Monetary Damages Is Not Procedurally Barred.

The California state courts were given the opportunity to consider all arguments raised by the Petition. The California Court of Appeal’s refusal to consider certain arguments regarding monetary damages on grounds that Petitioners “waived” those arguments poses no obstacle to this Court’s review.

First, the State exaggerates the scope of the purported waiver. State Opp. 13.⁵ The Court of Appeal’s waiver ruling pertains to Petitioners’ arguments that: (1) Petitioners could still pursue damages for breach of contract even if the reserved powers doctrine bars injunctive relief; and (2) Petitioners are entitled to a refund of the \$100,000 plus interest because the College has ceased to exist within the meaning of Section 13 of the 1878 Act. App. 57a, 74a; Cal. Educ. Code § 92212; 1CT83.

The Petition’s core constitutional issues presented—whether the 1878 Act created binding contractual obligations subject to the protections of the Contract Clause and whether AB 1936 constitutes a bill of attainder—remain untouched by the State’s procedural argument. Accordingly, even if this Court declines consideration of these specific arguments, it should still grant certiorari on the remaining federal questions, including as to whether the reserved powers or unmistakability doctrines apply and whether

⁵ This Court should disregard College Respondents’ challenges to Petitioners’ breach of contract claims, which are asserted against the State only. *See* Coll. Resp. Opp. 15–20.

Petitioners have otherwise pled causes of action under the Contract and Bill of Attainder Clauses.⁶

This Court should consider Petitioners’ damages arguments, however, because Petitioners neither intentionally relinquished nor failed to raise these arguments below. Indeed, the State rightfully retreats from the Court of Appeal’s “waiver” ruling and instead argues “forfeiture”—a distinct concept the lower court never mentioned. State Opp. 11; App. 57a; *see also Toy v. City & Cnty. of San Francisco*, 121 Cal. App. 5th 1292, 1303 (2026). The State’s reliance on *Beard v. Kindler*, 558 U.S. 53 (2009), is inapposite; in *Beard*, the parties debated whether a state rule was discretionary, whereas here, the lower court wielded “waiver” as an arbitrary artifice to thwart review. *See Enterprise Irr. Dist. v. Farmers’ Mut. Canal Co.*, 243 U.S. 157, 164 (1917); Pet. 21–23.

That Petitioners did not foresee the Court of Appeal’s misapplication of the reserved powers doctrine to their separate damages cause of action does not constitute a forfeiture or waiver. At the trial court, Respondents did not identify this doctrine by name. Pet. 11–12. The trial court therefore did not address it, let alone apply it to Petitioners’ separate claim for damages. App. 29a–36a. As such, Petitioners did not address the issue in their opening brief to the Court of Appeal. *But see* App. 99a n.7 (noting that the trial court’s unmistakability analysis did not preclude their separate damages claim).

⁶ In addition to vindicating Petitioners’ constitutional claims, this Court should vacate the lower court’s ruling as to Petitioners’ derivative claims under 42 U.S.C. § 1983.

On appeal, Respondents raised generally the reserved powers doctrine but failed to address specifically whether, under *Winstar*, the doctrine barred Petitioners’ alternative pursuit of damages. Accordingly, Petitioners opposed generally the application of the doctrine in their reply brief. At oral argument, Petitioners further argued that the doctrine, if it applied at all, prevented only injunctive relief and not damages. Pet. 12 n.9. Under these circumstances, Petitioners did not forfeit their argument that the Court of Appeal misapplied *Winstar* in relation to their damages claim.

The lower court also improperly ignored Petitioners’ theory that the College “cease[d] to exist” under the 1878 Act, entitling them to a refund under California statutory law, regardless of the 1878 Act’s contractual status. 1CT83; Cal. Educ. Code § 92212. This alternative ground for liability was apparent on the face of Petitioners’ complaint. 1CT83. Because Petitioners never had an opportunity to amend, the Court of Appeal’s failure to consider the theory on appeal or otherwise permit leave to amend for the purpose of stating such a claim was an abuse of discretion. *See Eghtesad v. State Farm Gen. Ins. Co.*, 51 Cal. App. 5th 406, 411 (2020); *Aubry v. Tri-City Hosp. Dist.*, 2 Cal. 4th 962, 967 (1992).

When the Court of Appeal unexpectedly dismissed Petitioners’ separate damages claim based solely on the reserved powers doctrine and ignored entirely Petitioners’ alternative allegation regarding the State’s violation of Section 13 of the 1878 Act, Petitioners promptly sought rehearing and petitioned the California Supreme Court for review of these and all

other issues presented by the Petition. Because Petitioners gave the state courts every opportunity to take “appropriate corrective action,” the procedural “waiver” finding by the Court of Appeal does not bar this Court’s consideration of any of Petitioners’ arguments. *See Lee v. Kemna*, 534 U.S. 362, 378 (2002); Pet. 22.

III. The State Cannot Defend the Bill of Attainder Clause Violation.

AB 1936 operates as a classic bill of attainder by bypassing the judiciary to punish S.C. Hastings and his descendants. Respondents’ merit-based arguments aimed at buttressing the California Court of Appeal’s decision serve only to highlight the importance of this constitutional issue and the need for this Court’s review.

Each of Respondents’ arguments fails. First, Petitioners amply established standing to assert their bill of attainder cause of action on behalf of both themselves and S.C. Hastings. App. 30a (finding the removal of the hereditary Board seat to constitute a concrete injury); Pet. 25. Indeed, the California Court of Appeal decided both issues on the merits, not on standing, and the State notably raised no standing argument in its Opposition. App. 16a. Moreover, if Petitioners lacked standing to make arguments on S.C. Hastings’ behalf, then this Court’s review of Petitioners’ own attainder claim would become even more critical to ensuring that the Bill of Attainder Clause is given meaningful effect.

Second, Respondents cannot erase the historical reality that bills of attainder were traditionally levied against the deceased. Their reliance on a context-free

quotation from Sir John Dodderidge, Coll. Resp. Opp. 24, is undermined by the very next sentence of the article from which they cite, which provides that “condemning those who had died in rebellion” is among the “traditional uses for attainder.” Matthew Steilen, *Bills of Attainder*, 53 Hous. L. Rev. 767, 806 (2016). Respondents also completely ignore Edward Coke’s seventeenth-century treatise, which explicitly states that Parliament possessed the power to attain a man “after his death.” Edward Coke, *The Fourth Part of the Institutes of the Laws of England* 36 (1644).

Third, Respondents fail to excuse the Court of Appeal’s refusal to consider these historical facts. Coll. Resp. Opp. 24 (claiming that Petitioners forfeited this argument). In their brief to the Court of Appeal, Respondents took the factually incorrect and unsupported position that attainders were not historically issued against the deceased. Petitioners appropriately rebutted that assertion on reply. The Court of Appeal’s adoption of Respondents’ position without addressing Petitioners’ reply does not amount to a forfeiture, nor does it permit the lower court to deny historical reality; it simply represents the ordinary sequence of appellate briefing.

As to the nature of the punishment AB 1936 inflicts, Respondents, like the California Court of Appeal, ignore that AB 1936 eliminated statutory—not just contractual—rights entitling S.C. Hastings’ descendants to a seat on the Board. This Court has long held that the deprivation of any civil or political rights previously enjoyed may constitute punishment. *See, e.g., Cummings v. Missouri*, 71 U.S. 277, 320 (1866); *United States v. Brown*, 381 U.S. 437, 447 (1965); *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 484

(1977) (Stevens, J., concurring).⁷ Furthermore, the Court of Appeal inappropriately masked its factual findings about the supposed absence of reputational harm as a legal deduction, which it is not. State Opp. 17–18; Coll. Resp. Opp. 26.

Likewise, Respondents’ self-serving belief that legislative history materials amount to a “smattering” of remarks is of no consequence. Coll. Resp. Opp. 29. The cases cited by Respondents, *Consolidated Edison Co. of New York, Inc. v. Pataki*, 292 F.3d 338, 354 (2d Cir. 2002), and *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 856 (1984), were decided on the evidence, not on the pleadings, and the court in *Consolidated Edison* found there *was* sufficient evidence of punitive motivation by the legislature.

Respondents also fail to excuse the Court of Appeal’s adoption of an alternative, disputed factual narrative that the Board was the “impetus” of AB 1936’s elimination of the reserved Board seat. Coll. Resp. Opp. 29–30; App. 26a. The material Respondents cite in advance of their argument makes no mention of the Board seat.⁸ Regardless, factual disputes of this nature cannot be resolved on a demurrer.

⁷ *Calder v. Bull*, 3 U.S. 386 (1798), 397, does not, as College Respondents incorrectly suggest, Coll. Resp. Opp. 26 n.5, hold that a state could never conceivably eliminate its own contractual obligations as a means of enhancing a criminal penalty.

⁸ At a legislative hearing, the College’s Dean expressed support for AB 1936’s removal of the old name, deference to the Board’s selection of a new name, and the framework it provides for future restorative justice efforts. 3CT695. He did not express an opinion as to AB 1936’s elimination of descendants’ right to serve on the Board. *Id.*

Finally, Respondents’ many factual distortions are of no value to the analysis at the pleading stage. See *Schifando v. City of Los Angeles*, 31 Cal. 4th 1074, 1081 (2003); *Panterra GP, Inc. v. Super. Ct. of Kern Cnty.*, 74 Cal. App. 5th 697, 709 (2022). For example, Respondents contend that *the State* founded the College through promulgation of the 1878 Act and characterize S.C. Hastings’ payment as a mere “donation.” State Opp. i; Coll. Resp. Opp. i. The Act, however, is not self-executing but authorizes *S.C. Hastings* to “found and establish” the College “upon the condition” that he “pay” (not donate) \$100,000 to the State. App. 72a–73a.

Respondents also claim that the College’s investigation found that S.C. Hastings “perpetrated genocidal acts.” State Opp. 2; Coll. Resp. Opp. 6. The College’s actual White Paper, however, makes no such statement. In fact, it refrains from even using the word “genocide” except when referencing the titles of cited works. 4CT1071–1188. That the State Legislature may ordain a disputed fact to be true, App. 63a, does not make it so. Nor does the mere existence of such a proclamation entitle Respondents or the court below to ignore Petitioners’ well-pled, contradictory allegations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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