

ORIGINAL

26-38

No. _____

FILED

APR 14 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

HOWARD GENSLER,

Petitioner,

v.

BOARD OF TRUSTEES OF THE SOUTH
ORANGE COUNTY COMMUNITY COLLEGE
DISTRICT, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

PETITION FOR WRIT OF CERTIORARI

Howard Gensler
12 Merrimac
Irvine, CA 92620
batcomm57@gmail.com
(951) 640-4590

Pro Se Petitioner

MARCH MMXXVI

United States Commercial Printing Company • www.uscpc.us • (202) 866-8558

RECEIVED

JUN 26 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

Does the First Amendment prevent a college from employing a harassment policy to terminate a faculty member for true college lecture statements, symbolic clothing, non-sexual, non-racial epithets, and profanity?

Does due process require establishment of jurisdiction?

Does equal protection prevent woke college administrators and judges from ignoring the law to terminate a male community college faculty member?

PARTIES TO THE PROCEEDINGS

Petitioner and appellant below is Howard Gensler.

Respondents and appellee below are the Board of Trustees of the South Orange County Community College District and the South Orange County Community College District.

RELATED PROCEEDINGS

California Department of General Services, Office of Administrative Hearings:

In the case of the Termination of Howard Gensler, No. 2019040965, (Oct. 14, 2020) (ALJ Decision Entered) (Cited as OAH)

Superior Court of California (Orange Cnty):

Howard Gensler v. Board of Trustees of the South Orange County Community College District and the South Orange County Community College District, No. 30-2021-01177691-CU-WM-CJC (Mar. 21, 2022) (writ issued and petition granted in part)

Howard Gensler v. Board of Trustees of the South Orange County Community College District and the South Orange County Community College District, No. 30-2021-01177691-CU-WM-CJC (Mar. 4, 2024) (second judgment issued, writ denied) Cited as OCSC2.

Court of Appeal of California (4th App. Dist., Div. 3):

*Howard Gensler v. Board of Trustees of
the South Orange County Community
College District and the South Orange
County Community College District,
No. G064067 (Nov. 3, 2025) (judgment
affirmed)*

Supreme Court of California:

*Howard Gensler v. Board of Trustees of
the South Orange County Community
College District and the South Orange
County Community College District,
No. S294180 (Jan. 14, 2026) (discre-
tionary review denied)*

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceedings	ii
Related Proceedings	ii
Table of Authorities.....	vii
Opinions Below.....	1
Jurisdiction.....	1
Introduction.....	1
Constitutional Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Petition.....	9
I. The First Amendment.....	9
1. Introduction.....	9
2. The First Amendment and Academic Freedom.....	10
3. Cohen and Hostile Environment Regulations.....	11
4. Clothing	13
5. The Violation of the Principle of Party Presentation	13
6. Conclusion	14
II. Due Process	15
1. Introduction.....	15
2. Each Segment of Public Education is Separate.....	16

3.	Jurisdiction Over Termination Cases Requires an Evaluation	16
4.	The District Failed to Establish Jurisdiction.....	17
5.	No Notice of the Charges	18
6.	Gensler was Denied an Opportunity To Be Heard.....	18
7.	The Abuse of Unpublished Opinions Violates the Republican Form of Government Guaranty.....	19
III.	Equal Protection.....	21
1.	Introduction.....	21
2.	Gensler is Painted as a Toxic Male	22
3.	Gensler is Denied Equal Protection of the Law	22
	Conclusion	24
Appendix		
Appendix A		
	Opinion [not precedential] Court of Ap- peal of California for the Fourth Appel- late District, <i>Howard Gensler v. Board of Trustees of the South Orange County Community College District, et al.</i> , No. G064067 (Nov. 3, 2025)	App-1
Appendix B		
	Order Denying Petition for Writ of Man- date, Superior Court of California for the County of Orange, <i>Howard Gensler v.</i>	

*Board of Trustees of the South Orange
County Community College District and
Orange County Community College Dis-
trict,*

No. 30-2021-01177691 (Feb. 27, 2024) .. App-42

Appendix C

Legal Conclusions, Office of Administra-
tive Hearings for the California Depart-
ment of General Services, *In the case of
the Termination of Howard Gensler,*

No. 2019040965 (Oct. 14, 2020) App-62

Appendix D

Order [discretionary review denied], Su-
preme Court of California, *Howard
Gensler v. Board of Trustees of the South
Orange County Community College Dis-
trict, et al.*

No. S294180 (Jan. 14, 2026) App-92

TABLE OF AUTHORITIES

Cases

<i>Bonnell v. Lorenzo</i> , 241 F. 3d 800 (CA6 2001)	14
<i>Cleveland Board of Education v. Loudermill</i> , 470 U. S. 532 (1985).....	2, 15, 18-19
<i>Cohen v. San Bernardino Community College Dis- trict</i> , 92 F. 3d 968 (CA9 1996)	2, 4, 6, 10-12, 14
<i>Demers v. Austin</i> , 746 F. 3d 402 (CA9 2014)	14
<i>FCC v. Pacifica Foundation</i> , 438 U. S. 726 (1978).....	14
<i>Greenlaw v. United States</i> , 554 U. S. 237 (2008).....	2, 6-7, 13-15, 18-19
<i>Keyishian v. Board of Regents</i> , 385 U. S. 589 (1967).....	1
<i>Mahanoy Area School District v. Levy</i> , 594 U. S. 180 (2021).....	1, 10-11
<i>Morrison v. State Board of Education</i> , 1 Cal. 3d 214 (1969)	18
<i>People v. Richardson</i> , 65 Cal. App. 5th 360 (Cal. App. 2021)	4, 13
<i>Perry v. Sindermann</i> , 408 U. S. 593 (1972).....	2, 15
<i>Pickering v. Board of Education</i> , 391 U. S. 563 (1968).....	1, 4, 7, 10, 14

<i>Public Service Commission of Utah v. Wycoff Co.</i> , 344 U. S. 237 (1952).....	2, 21
<i>Sachs v. Sachs</i> , 44 Cal. App. 5th 59 (Cal. App. 2020)	8
<i>Shelton v. Tucker</i> , 364 U. S. 479 (1960).....	1, 10
<i>Smith v. O'Grady</i> , 312 U. S. 329 (1941).....	2, 21
<i>Sole v. Grand Jurors of the State of New Jersey for Passaic and Bergen Counties</i> , 393 F. Supp. 1322 (D NJ 1975)	15
<i>State of Missouri v. Lewis</i> , 101 U. S. 22 (1879).....	20
<i>Tarquin v. Commission on Professional Competence</i> , 84 Cal. App. 3d 251 (Cal. App. 1978)	3-4, 17
<i>Tinker v. Des Moines Independent Community School District</i> , 393 U. S. 503 (1969).....	1, 4, 10-11, 13
<i>United States v. Sineneng-Smith</i> , 590 U. S. ____ (2020)	2, 5, 14
<i>Voices of the Wetlands v. State Water Resources Con- trol Board</i> , 52 Cal. 4th 499 (2011)	5
Constitutional Provisions, Statutes, and Rules	
U. S. Const., Art. IV, § 4.....	19
U. S. Const., Amdt. I	1-2, 4, 6, 8-15, 22-23
U. S. Const., Amdt. XIV	2, 15, 17-18, 21-23
28 U. S. C. § 1257	1

Cal. Code Civ. Proc. § 1094.5	5, 8
Cal. Educ. Code § 13407.....	4
Cal. Educ. Code § 44663.....	17
Cal. Educ. Code § 44664.....	17
Cal. Educ. Code § 87663.....	3-4, 7, 16-17
Cal. Educ. Code § 87671.....	3, 16-17
Cal. Educ. Code § 87732.....	3
S. Ct. R. 10.....	1

OPINIONS BELOW

The opinion of the Court of Appeal of California (CCA) is reproduced in the Appendix at App. 1-41. The decision of the Superior Court of California for the County of Orange is reproduced in the Appendix at App. 42-61. The legal conclusions of the Administrative Law Judge is reproduced in the Appendix at App. 61-91.

JURISDICTION

The Court of Appeal of California's opinion was entered on November 3, 2025. The Supreme Court of California denied petition for review on January 14, 2026. This Court has jurisdiction under 28 U.S.C. §1257(a).

INTRODUCTION

Jurisdiction of the United States Supreme Court is established under S. Ct. R. 10(c): a state court ... has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The California Court of Appeals has decided that the First Amendment does not apply to true, in-class lecture statements in conflict with *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968); and *Mahanoy Area School District v. Levy* 594 U.S. 180 (2021).

The California Court of Appeal has decided that the First Amendment does not protect the wearing of symbolic clothing in conflict with *Tinker v. Des Moines Independent Comm. Sch. District* 393 U.S. 503 (1969).

The California Court of Appeals has decided that a generic hostile environment regulation is sufficiently detailed to pass First Amendment scrutiny to serve as an offensive language policy in conflict with *Cohen v. San Bernardino Community College District*, 92 F.3d 968 (CA9 1996).

The California Court of Appeals has repeatedly violated the principle of party presentation in violation of *Greenlaw v. United States* 554 U.S. 237, 243 (2008); and *United States v. Sineneng-Smith*, 590 U.S. ____ (2020) which also violates the Due Process Clause of the Fourteenth Amendment and *Perry v. Sinderman*, 408 U.S. 593 (1972); and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), and the Equal Protection Clause of the Fourteenth Amendment, and *Public Service Commission of Utah v. Wycoff Co.* 344 U.S. 237 (1952); and *Smith v. O'Grady*, 312 U. S. 329 (1941).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment, the Due Process clause of the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

From 2003 to 2019, the South Orange County Community College District (District) employed Howard Gensler (hereinafter Gensler) as a full-time faculty member at Saddleback College, a community college in Mission Viejo, California. App. 3, 43.

The District hired Debra Reilly's investigative firm to write a report to get Gensler fired; Reilly included irrelevant inflammatory material from Gensler's

personal Instagram account to bias Woke administrators and judges. (Material included in Statement of Charges referenced in CCA at App. 4, and in the accusation, Exs. 22 and 23 of Ex. 15, referenced in the CCA at App. 8, which was included in the administrative record of the case by the Office of Administrative Hearings (hereinafter OAH) referenced at App. 5.) Despite having absolutely no factual or legal basis to terminate Gensler, the strategy was 100% effective. The persistence of the inflammatory material, as part of the OAH administrative record, inflamed Woke judges throughout the seven years of legal proceedings and appeals to ignore the record, exaggerate the facts, ignore the law, and act as advocates of the District, not impartial arbiters of the law.

The Board of Trustees (Board) unlawfully terminated Gensler on February 25, 2019, based on his alleged "evident unfitness for service" (California Education Code §87732(d))¹ and "persistent violation of ... reasonable regulations" (§87732(f)). App. 4 Gensler's last faculty performance evaluation is dated November 2, 2015. App. 19-20. It did not contain any unsatisfactory objective ratings. The objective criteria on fitness to serve and rule following were all satisfactory. The evaluation does not contain a peer review or student evaluations as required by §§87663 (c) and (g). App. 11. Gensler was due for another evaluation at the end of the 2017-18 academic year. (§§87671(a), 87663, *Tarquin v. Comm'n on Prof. Competence*, 84 Cal.App.3d 251, 259 (Cal. App. 3d 1978).) Without a current and complete evaluation, the District lacked

¹ Unless otherwise specified, all code references are to the California Education Code.

jurisdiction to discipline Gensler at any time after the conclusion of the 2017-2018 academic year (about May 30, 2018). *Ibid.*

Gensler appealed to the Office of Administrative Hearings on March 6, 2019. App. 5 Administrative Law Judge Adam Berg (hereinafter Berg) held a hearing in February 2020. *Ibid.* Berg incorrectly held that the notice of termination preempted the need for another evaluation in direct contradiction with *Tarquin* at 259 and that no peer review or student evaluations were required in direct contradiction with §87663 (c) and (g) and *Tarquin* at 259. App. 46-47.

Applying an expired K-12 statute, §13407, Berg ruled that an evaluation was not required to terminate a faculty member on either “evident unfitness” or “persistent violations” grounds. (Decision of the OAH in the case *Termination of Howard Gensler*, OAH No. 2019040965, dated October 14, 2020 App. 79-80.

Berg held that the First Amendment did not apply, dismissing the controlling case, *Cohen v. San Bernardino Community College District*, 92 F.3d 968 (CA9 1996). App. 84. Berg incorrectly concludes that Gensler’s true in-class lecture statements failed the *Pickering* balancing test. (*Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). App. 85-89. Berg also overlooks that clothing has First Amendment protection under *Tinker v. Des Moines Independent Comm. Sch. District*, 393 U.S. 503 (1969). See App. 74; see also App. 8-9. (See Argument, I, *infra.*)

Berg then concocted two hostile environment charges that the District had not charged or argued in violation of the principle of party presentation. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *People v. Richardson*, 65 Cal.App.5th 360, 368 (Cal. App. 5th

2021); *United States v. Sineneng-Smith*, 590 U.S. ____ (2020). App. 74-75.

Berg made numerous Woke observations along the way, explicitly revealing his Woke cultural bias and disregard for legal standards. (See comments on college lectures on Iran (hookers), the jail tour (student description), money supply (bitches), and Arianna Huffington, the wearing of a jacket with a logo, and the use of the word tard, App. 74-75.) Without any demonstration that Gensler had violated the hostile environment provisions of the regulation, without even identifying a victim, Berg summarily found Gensler guilty, which then formed the foundation for upholding the District's charges. *Ibid.* (Cf. Berg's decision with the elements cited by the Court of Appeal. App. 6-9.)

Gensler filed a writ of administrative mandamus under California Code of Civil Procedure §1094.5 in the Orange County Superior Court on Jan. 5, 2020. App. 11. Judge Derek Hunt granted the writ but erroneously remanded the matter to the Board to conduct a peer review. App. 13. Hunt did not understand that jurisdictional issues cannot be cured by remand: "there should be no second chance to muster sufficient evidence to impose administrative sanctions on a fundamental or vested right, such as the right against dismissal from tenured public employment except upon good cause." *Voices of the Wetlands v. State Water Resources Control Bd* 52 Cal. 4th 499, 534 (Cal. 2011). Gensler appealed, and the Court of Appeal mistakenly held that a final order had not been entered on the misunderstanding that remand was available. App. 13-14.

On return to the Superior Court, Hunt retired and was replaced by Judge Kimberley Knill. (App. 19, n. 4.) On February 27, 2024, instead of issuing a proper remedial writ (correcting Hunt's erroneous remand order), Knill ignored Hunt's grant of the writ and denied the petition. App. 5. Knill acknowledged that Berg had erred when he ruled that the Education Code did not require a faculty evaluation as a precondition to disciplining or terminating Gensler. App. 47. But Knill proceeded to uphold the termination based upon a "substantial compliance" theory that: (1) Respondents had not made, (2) she concocted *sua sponte* and to which she gave Gensler no opportunity to respond, (3) contradicts the law governing claims of "substantial compliance," and (4) ignores and conflicts with the explicit requirements of the Education Code. App. 47. (Compare Knill's substantial compliance theory based upon three timely notices (App. 48-49) with Berg's substantial compliance theory based upon excusing the timeliness requirement (App. 79-80). Note, neither argument was timely made by the District.) Knill's order does not even acknowledge the statutory requirements for a peer review or student evaluations, much less attempt to explain how Respondents supposedly "substantially complied" with them. (See App. 46-50. Knill's introduction of a new argument similarly violates the principle of party presentation. (*Greenlaw, et al., supra.*) Knill also dismisses Gensler's First Amendment defenses. App. 49-53. Knill, like Berg, dismisses the identical, controlling case, *Cohen v. San Bernardino Community College District*, 92 F.3d 968 (CA9 1996), and fails to explain how true, in-class collegiate lecture statements

are not protected when false, public K-12 statements are protected. (See *Pickering* at 568.)

Knill abdicated her responsibilities as a superior court judge reviewing an ALJ's decision. She did not apply the correct standards of review, exercise her independent judgment, resolve factual disputes, or make credibility decisions. Her opinion does not contain a single reference to the actual hearing testimony and her misstatements of even ALJ Berg's findings demonstrate she did not properly review the administrative record either. A meticulous review would show her glaring bias. Her poorly written, inaccurate, and inadequate opinion hides her mistakes and attempts to prejudice the reader against Gensler. Her writing is argumentative and adversarial, looking for salacious detail rather than arranging facts issue by issue, covering each element. She simply acts in an inflamed and biased manner, advancing her Woke agenda of cancelling a toxic male.

Gensler appealed. App. 15. The Court of Appeals affirmed Knill's opinion. App. 3, 41. Instead of overturning Knill's violations of the principle of party presentation, the court thereby adopted all of Knill's violations as its own. App. 23-25. (*Greenlaw, et al., supra*). The Court of Appeal incorrectly argued that since the District brought up the theory of substantial compliance based on timeliness, that Knill and the Court of Appeal could raise an entirely new argument for substantial compliance based on timely notices. App. 19-20, n. 8. The argument is incorrectly based on the K-12 statute, which they then applied to Gensler, instead of the correct community college statutes, §§87663(c). and (g). Also, the District did not raise the issue in their opening brief as required. See the Court

of Appeal's own citation to *Sachs v. Sachs*, 44 Cal. App. 5th 59, 66 (2020) at App. 37, n.12, disallowing arguments not raised in an opening brief.)

Not only did the Court of Appeal mishandle the principle of party presentation, it violated the principle itself an additional 17 times by citing 11 new cases and rules that the Respondents did not cite. This substantial amount of new legal research shows a level of advocacy far in excess of the Respondents' own paid attorneys. The Court of Appeal is the District's attorney, not the neutral arbiters of justice.

In addition, the Court of Appeal engages in speculation. "It is not reasonably possible Gensler would have received a more favorable outcome had the District performed an evaluation by November 2018." (App. 25, footnote omitted.) This breath-takingly biased statement, that yet another detailed positive review, with positive statements from professional peers and an enormous amount of overwhelmingly positive student evaluations would not belie the administration's smear campaign shows how hostile the Court of Appeal is to Gensler, who is clearly the despised enemy of the humorless Woke tribunal.

The Court of Appeal similarly dismissed Gensler's First Amendment arguments. The Court's bias was palpable throughout the opinion which ignored the law, misrepresented Gensler's arguments, and demonstrated Woke exaggeration of the facts. App. 28-38.

The Court of Appeal similarly dismissed Gensler's fairness arguments. App. 38-41. The Court simply failed to give weight to the facts Gensler marshaled under CCP sec. 1094.5's fairness requirement. Nothing Gensler could have said would have satisfied the

Court which found that a badly written, ambiguous, nearly 900 page accusation was “precise.” App. 39-40. The Court quotes a couple of salacious details, and equates this Woke smear with a precise recitation of a hostile environment charge which requires a victim, subjective offense taken by the victim, objective authentication of the offensiveness of such facts, proof that the statements were unrelated to the curriculum, proof that the behavior permeated the class, proof that the behavior impaired the student from learning, and proof that the statements were not protected by the First Amendment and academic freedom. App. 28–36, App. 65–67. The consistent misstatement of Gensler’s arguments and neglect to actually apply the law demonstrates the Court’s Woke commitment.

Gensler filed a Request for Rehearing on November 17, 2025, which was denied on November 20, 2025.

Gensler filed a Request for Publication on Nov. 21, 2025, which was denied on Dec. 1, 2025. App. 92.

Gensler timely sought California Supreme Court review of the Court of Appeal’s novel legal theory of “analogous law,” it’s expansion of the standards for allowable deviations from strict compliance in the law of substantial compliance, and the introduction of the notion of harmless error and speculation into the law of substantial compliance. The petition was denied on January 14, 2026. App. 92.

REASONS FOR GRANTING THE PETITION

I. The First Amendment

1. Introduction

This is a case of pure speech. Gensler is not accused of property destruction or physical harm. Gensler is

accused of creating a hostile environment in two political science classes for three types of offenses: true, in-class lecture statements, offensive language, and wearing symbolic clothing. The true college lecture statements are protected by *Pickering*. The offensive language is protected under *Mahonay*. *Cohen* holds that hostile environment regulations cannot be used to control classroom speech. A valid offensive language policy is needed to prohibit in-class offensive language. In light of *Mahonay*, that task is surely now impossible. The clothing is protected under *Tinker*. None of the accusations made against Gensler survive First Amendment scrutiny.

2. The First Amendment and Academic Freedom

This Court has long recognized faculty members' First Amendment rights to free speech and academic freedom:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.

Shelton v. Tucker, 364 U. S. 479, 487 (1960).

As this Court stated in 1969: "It can hardly be argued that either students or teachers shed their

constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.” *Tinker*, 393 U.S. at 506. And this Court has held steadfast to that principle in the ensuing 50+ years:

America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the “marketplace of ideas.” This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People’s will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection.

Mahanoy Area School District v. Levy, 594 U.S. 180 (2021) (holding school district had no right to discipline a high school student who failed to make the varsity cheerleader team and then posted the text “Fuck school fuck softball fuck cheer fuck everything,” along with a photo of herself and a friend raising their middle fingers, to her fellow schoolmates).

3. Cohen and Hostile Environment Regulations

Cohen v. San Bernardino Community College District, 92 F.3d 968 (CA9 1996) involves a California community college instructor who was terminated for in-class lecture statements under the hostile environment prohibition of a harassment regulation. *Id.* at 970. The court held that a hostile environment regulation cannot be used to control speech in California

community college class. *Id.* at 972. The two cases are identical, except that the behavior by Cohen was orders of magnitude worse than Gensler. Where Gensler is accused of making one true lecture statement about women in Tehran dressing like hookers, a 5-second comment in a semester long class, Cohen talked non-stop about sex, often using profanity, for the entire semester, and forcing his students to write about pornography. *Id.* at 970-971. A student filed a hostile environment complaint against Cohen. *Id.* at 971. The Court held one cannot use hostile environment policies to control speech. *Id.* at 972.

The court noted three problems with employing a hostile environment regulation to control speech in the classroom:

There are three objections to vague policies in the First Amendment context. First, they trap the innocent by not providing fair warning. Second, they impermissibly delegate basic policy matters to low level officials for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, a vague policy discourages the exercise of first amendment freedoms.

Ibid.

Berg, the trial court, and the Court of Appeal all find that *Cohen*, literally the exact same case as Gensler's, does not apply. App. 81-85, 51-55, 29-36.

4. Clothing

Berg uses Gensler's wearing of a jacket with a small Playboy logo bunnyhead as a contributing factor to a hostile environment in a Spring 2015 political science class. App. 74. No student witness testified to having seen the jacket. The First Amendment protects clothing just as it protects verbal utterances. (*Tinker v. Des Moines Independent Comm. Sch. District*, 393 U.S. 503 (1969) (school district could not enforce dress code prohibiting wearing black armbands).) Despite citation of authority, the Court of Appeal claimed Gensler's clear First Amendment defense was unsupported and dismissed it citing a case and arguments that Respondents had not used, again violating the principle of party presentation. (*Greenlaw, et al.*) App. 36-37. Gensler wore a jacket with a symbol on it. Berg objected to the symbol. Gensler cited a case holding that symbolic clothing is protected under the First Amendment even at schools. One can only wonder how such a simple and syllogistic argument eluded the Court of Appeal.

5. The Violation of the Principle of Party Presentation

Berg, Knill, and the Court of Appeal all find that the First Amendment does not apply to so much as one single aspect of this case. Not only do they all deny the obvious, but the Court of Appeal cites nine new cases and rules ten times just in the First Amendment section of their opinion. App. 28-36. All of these cases cited by the Court of Appeal violate the principle of party presentation. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *People v. Richardson*, 65

Cal. App. 5th 360, 368 (Cal. App. 5th 2021); *United States v. Sineneng-Smith* 590 U.S. ____ (2020).

To prove that colorful language is not protected, Berg cites *FCC v. Pacifica* 438 U.S. 726, 747 (1978) App. 87. Not only is an FCC case clearly inapplicable to speech in the college classroom, but is yet another violation of the principle of party presentation. (*Greenlaw, et al.*) The District did not cite this case. Berg cites eleven new cases just in the First Amendment section of his decision all violating the principle of party presentation. App. 81-91. (*Greenlaw, et al., supra.*) Berg also cites a case, *Bonnell v. Lorenzo* 241 F.3d 800 (CA6 2001), which is exactly on point, but from the Sixth Circuit. Since *Cohen* is exactly on point and in the Ninth Circuit, *Bonnell* is not even persuasive authority.

Knill cites no new cases, but mistakenly argues that somehow *Pickering* and *Demers* do not offer First Amendment protection when Gensler's true, in-class lecture statements, despite some salacious detail and informal language, especially in light of *Mahoney*, is squarely protected. App. 50-51. *Cohen* seals the argument. The much worse protected behavior in *Cohen* and *Pickering* clearly demonstrate that Gensler's in-class true statements are protected.

6. Conclusion

Gensler's First Amendment defense is factually detailed and legally sound. Faced with a winning argument, the Court of Appeal simply dismisses the work and violates the principle of party presentation citing new cases that do not apply. The Court of Appeal acts as the Respondents' attorneys, not a neutral arbiter. It simply is unimaginable to think that any Court

would fail to find true college lecture statements and the wearing of a jacket on a college campus that had a bunny head logo on it was not protected by the First Amendment. Yet here we are. The California Office of Administrative Hearings, the California Superior Court, the California Court of Appeals, and the California Supreme Court are perfectly content with these conclusions. How is it possible for them to fail to follow the patently clear federal authority? Because they are not enforcing the law or upholding the Constitution of the United States of America as they all swore to do and is their obligation to do. *Sole v. Grand Jurors of the State of New Jersey for Passaic and Bergen Counties*, 393 F. Supp 1322 (D NJ 1975). Rather, they all are part of the Woke culture which seeks to remove men from society, and regards anything associated as male behavior or interests to be "toxic." If it walks like a man, and talks like a man, it must be cancelled.

II. Due Process

1. Introduction

A tenured instructor at a public college who is removable only for cause has a property interest in his position and is entitled to due process prior to removal. *Perry v. Sinderman*, 408 U.S. 593 (1972). Due process includes notice of the charges and a meaningful opportunity to respond. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). Gensler was not informed of the charges; rather they were concocted by Berg after trial. Every single legal argument used to defeat Gensler was concocted after briefing by the judges in violation of the principle of party presentation. (*Greenlaw, et al., supra.*)

Even more outrageous, jurisdiction was never established, certainly a fundamental aspect of due process of law. In California, the Trustees of a community college do not have jurisdiction over a termination case of a faculty member without first completing a timely evaluation that complies with the statutory requirements: having a peer review and including student evaluations. This was not done. Gensler clearly pointed out this problem to the Office of Administrative Hearings, the Superior Court, the Court of Appeal, and the California Supreme Court. The first three actively refused to follow the law. The last denied review. These intentional gross misstatements of the law constitute a gross denial of due process of law.

2. Each Segment of Public Education is Separate

Each segment of public education in California is governed by their own part of the Education Code. The Elementary and Secondary (K-12) system is governed by sections 33000 to 65001. The Post-secondary system is governed by sections 66000 to 101460. Community colleges are governed by sections 70900 to 88933. K-12 statutes do not apply to community college instructors and community college law does not apply to K-12 teachers.

3. Jurisdiction Over Termination Cases Requires an Evaluation

The community college law requires full-time faculty to receive an evaluation every three years with a peer review and student evaluations. §§87671(a) and 87663. K-12 law requires an evaluation every two

years with a description of any unsatisfactory performance and recommendations to improve delivered at least 30 days before the end of the school year. (§§44663, 44664.) No instructor can be terminated where a timely evaluation is required but has not been performed. *Tarquin v. Comm'n on Prof. Competence*, 84 Cal.App.3d 251, 259 (Cal. App. 3d 1978)

4. The District Failed to Establish Jurisdiction

Gensler was a full-time community college instructor. App. 2. His district did not evaluate him within the required three-year period before terminating him. App. 19-20. The Office of Administrative Hearings, the Superior Court, and the Court of Appeals all failed to enforce the applicable law: §§87671(a) and 87663. (See App. 11, 19, 51) All courts applied the irrelevant K-12 law, §44664, and ignored the applicable community college statutes. *Ibid.* The Court of Appeal expressly ruled that it could apply analogous K-12 code sections and ignore applicable community college code sections. This due process cannot allow.

In addition, the Court of Appeal held that even if Gensler had been properly evaluated, the result would have been the same. App. 25. In other words, the failure of the District to evaluate Gensler (i.e., follow the law), was a harmless error. Of central interest to this Court is the Court of Appeal's introduction of the concept of harmless error to the requirement of establishing jurisdiction. The lack of jurisdiction can never be "harmless error." Jurisdiction was never established. The use of analogous law and post-hearing legal arguments in violation of the principle of party presentation are substantial violations of due process.

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985); *Greenlaw, et la., supra.*

5. No Notice of the Charges

Berg made up the two central charges on which the termination was upheld after the hearing. No where in the Accusation is there a hostile environment charge made based upon a Fall 2017 political science class and a Spring 2018 political science class under AR 4000.5. The issue was not discussed at the hearing. The issue was not briefed by either party. The charge came as a complete surprise to Gensler. Gensler did not receive any notice of the only relevant charges against him in violation of due process of law. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); and *Greenlaw, et al., supra.*)

Similarly, Berg made unprofessional conduct charges against Gensler after the briefs. Unprofessional conduct is a separate charge with additional required statutory procedures which were not followed. Again, Gensler had no notice of these charges.

6. Gensler was Denied an Opportunity To Be Heard

Every judge invented a new argument that Gensler never had an opportunity to address in order to uphold the termination. Not once was Gensler afforded an opportunity to address the case against him. Berg invented two hostile environment charges based on AR 4000.5. Berg used substantial compliance theory on an inapplicable statute to establish jurisdiction. Berg substituted the Morrison factors for an actual analysis of AR 4000.5. Berg invented unprofessional conduct charges.

Knill invented a substantial compliance theory based on evaluation substitutes and an inapplicable statute. The Court of Appeal reiterated the same argument, and introduced the standard of harmless error and the use of speculation to the establishment of jurisdiction. App. 25.

At no time in seven years of legal proceedings was Gensler once allowed to address the legal argument which upheld his termination. At no point was Gensler given an opportunity to be heard. *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985); *Greenlaw, et al., supra*.

7. The Abuse of Unpublished Opinions Violates the Republican Form of Government Guaranty

Each state is required by the Constitution to provide a republican form of government. (U.S. Constitution, Art. 4, sec. 4.) Unpublished opinions are convenient devices to avoid cluttering the law with standard applications of established principles which do not elucidate the law or contribute to legal understanding.

However, there is a sinister abuse of unpublished opinions at play here. Unpublished opinions are virtually never taken up on appeal. Using an unpublished opinion guarantees that an Court of Appeal's opinion will not be reviewed by a Supreme Court. The Court of Appeal is free to deny entire classes of people their rights to redress of grievances by denying them their remedy, then employing an unpublished opinion.

This case is an obvious example of that abuse. The Court of Appeal introduced the notion of "analogous law." The Court of Appeal recognized the applicable

community college statutes, dismissed them, and utilized the different and inapplicable K-12 law. This outrageous behavior was cloaked in legal acceptability by calling the practice "analogous law." This was opening an entirely new area of legal theory, yet it failed to gain the interest of the Supreme Court because it was buried in an unpublished opinion.

The Court of Appeal stated that the failure to perform a peer review did not affect the outcome of the case. This not only violated the prohibition of the use of speculation, it introduced a new legal notion, the notion of harmless error to the law of jurisdiction and to the law of substantial compliance. App. 25. Again, it failed to gain the interest of the Supreme Court because it was buried in an unpublished opinion.

A fundamental principle of republican form of government is equality before the law and an impartial administration of the law. (*State of Missouri v. Lewis* (1879) 101 U.S. 22.) The abuse of the tactic of the unpublished opinion here disenfranchises men, white men, in pro per litigants, self-represented attorneys, whatever group the judges decide they do not want to give a fair day in court to on any given day. Not every unpublished opinion does this. But the employment of the unpublished opinion here clearly does this. This was not a standard case. This was a ground-breaking case, which also gave first impressions to over a half-dozen statutes. This is a case that screamed publication.

The use of unpublished opinions is the tool of choice for the Woke judiciary to hide their malicious subversion of the law. They can continue to ignore the rule of law with impunity, flying under the radar of appellate review with complete confidence. This shadow

government that ignores the law and divides us must be stopped.

III. Equal Protection

1. Introduction

One of the most commonly understood and cherished principles in American society is equal protection of the law: "No state shall . . . deny to any person within its jurisdiction the equal protection of the law." (Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America.) This mandate applies to state courts. (*Public Service Commission of Utah v. Wycoff Co.* 344 U.S. 237 (1952). State courts are obligated to enforce every aspect of the U.S. Constitution. *Smith v. O'Grady* 312 U.S. 329 (1941).

A vast cultural shift has overtaken this fundamental value. Woke culture requires the immediate cancellation of anyone who dissents from their values of inclusion. A corollary of the prime directive to hire, promote, and advance women, minorities, gays, lesbians, and transsexuals is to remove white males from society. Any male who engages in male behavior (e.g., talking sports, admiring females, supporting the military) is simply exhibiting male toxicity. Showing respect to women such as opening doors or paying for dates is demonstrating commitment to the patriarchy. Subscribing to any traditional values or basic manners is characterized as micro-aggressions. These enemies of the Woke agenda must be eliminated from society. They must be fired from their jobs. They must be denied a livelihood. They must die. The extension of civil liberties and the rule of law is not to be made for these cultural outcasts.

2. Gensler is Painted as a Toxic Male

These Woke adherents are everywhere: in our colleges, our courts, and our corporations. They are not to be trifled with. Do you want to get rid of a white male? Accuse him of basic male behavior and the judiciary will fail to lift a finger to help him. That is what has happened to Gensler.

His employer maliciously created a report that was filled with numerous irrelevant pictures gleamed from Gensler's personal Instagram account which were never used in the classroom. (Exhibit 22 of Exhibit 15, Reilly's Report, , photos from Gensler's Instagram account and Exhibit 23 of Exhibit 15, of the Accusation, referred to at App. 4, names of Instagram accounts Gensler followed.) This material had absolutely nothing to do with Gensler's employment. They were an invasion of his personal life, his freedom of association, and his freedom of expression. They were included solely to inflame Woke judges.

3. Gensler is Denied Equal Protection of the Law

This unethical tactic was 100% effective. Gensler was not judged on the law or the facts. He was condemned as unworthy by the Woke judicial system who violated their oaths as judges to uphold the law and the Constitution and railroaded Gensler out of his job as a tenured full-time professor at a public college.

Why is a college professor not allowed to teach about the cultural context to the Iranian revolution of 1979 and its effect upon the U.S. election of 1980?

Why is a college professor who must be evaluated before being terminated allowed to be terminated without such an evaluation?

Why is there absolutely no effort made to show that a professor actually violated a regulation?

Why does an identical case get dismissed as inapplicable?

How are true college lecture statements and symbolic attire not protected by the First Amendment?

How are detailed arguments with ample legal support dismissed as undeveloped?

Why does not one single judge allow a professor an opportunity to address the arguments used against him?

Why is the principle of party presentation violated by every single judge?

Because the professor is a male who is deemed to be toxic by the Woke Establishment.

This case can be addressed in standard First Amendment, Due Process, and Equal Protection grounds. But that would miss the entire point of this case. Woke culture is out of control and has declared war on the laws and culture of the United States. Humor, manners, and freedom of thought are at stake here. This case is exactly the vehicle needed to push back against a judiciary infected with un-American values. The Constitution and the country must be defended against this treacherous infection of the judiciary. This petition must be granted. This case must be heard. The Woke must be forced to stand before the highest court in the land and answer for their conduct.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari.

Howard Gensler
12 Merrimac
Irvine, CA 92620
(951) 640-4590
batcomm57@gmail.com

Pro Se Petitioner