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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**
19

20 **ROBERT VAN TUINEN,**
21 Plaintiff,

22 v.

23 **YOSEMITE COMMUNITY**
24 **COLLEGE DISTRICT, DR. JOAN**
25 **SMITH, JILL STEARNS,**
26 **MICHAEL GUERRA, BRENDA**
27 **THAMES, BECKY CROW,**
28 **CHRISTINE SERRANO,**
DOE DEFENDANT 1,

Defendants.

) Case No.

) **COMPLAINT FOR INJUNCTIVE**
) **AND DECLARATORY RELIEF**
) **AND DAMAGES**

) **JURY TRIAL DEMANDED**

1 Plaintiff Robert Van Tuinen complains of Defendants and alleges:

2 **I. INTRODUCTION**

3 1. Each year on September 17 the United States celebrates the freedoms
4 guaranteed by the Constitution and Bill of Rights. Congress officially designated
5 September 17 as “Constitution Day” to commemorate the anniversary of the date
6 that the Constitution was signed in 1787. Pursuant to that legislation, the
7 Department of Education requires educational institutions that receive federal
8 funding to hold educational programs pertaining to the United States Constitution
9 on that date. *Notice of Implementation of Constitution Day and Citizenship Day*, 70
10 Fed. Reg. 29727 (May 24, 2005).

11 2. On September 17, 2013, the students of Modesto Junior College (the
12 “College”) received a very different lesson on Constitution Day, as the school’s
13 officials barred Plaintiff Robert Van Tuinen from distributing copies of the U.S.
14 Constitution to fellow students in a public area of the campus. Both a College
15 security officer and a College administrator instructed Mr. Van Tuinen that he
16 would be allowed to distribute his message and any written materials only in the
17 College’s “free speech zone” that occupies a miniscule proportion of its East
18 Campus, and only after scheduling his planned activity several days or weeks ahead
19 of time. These actions were taken under College policies that not only require prior
20 permission – with at least *five days’* notice – to engage in even such non-obtrusive
21 speech as handing out literature, but also limit all individuals and student groups to
22 using the free speech zone no more than eight hours each semester. Given the size
23 of the student body, the free speech “allowance” amounts to scarcely more than
24 *two-and-half minutes* per student, per semester. The policies contain no criteria for
25 control of the free speech zone, which is thus left to the sole discretion of College
26 security and administrators.

27 3. The College’s reflexive bureaucratic restriction of free expression is
28 sadly ironic, as “[t]he essentiality of freedom in the community of American

1 universities is almost self-evident.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250
2 (1957). In a long line of cases, the United States Supreme Court has made clear that
3 “[t]eachers and students must always remain free to inquire, to study and to
4 evaluate, to gain new maturity and understanding; otherwise our civilization will
5 stagnate and die.” *Id.* The Court has stressed that “state colleges and universities
6 are not enclaves immune from the sweep of the First Amendment.” *Healy v. James*,
7 408 U.S. 169, 180 (1972). Quite to the contrary, “[t]he vigilant protection of
8 constitutional freedoms is nowhere more vital than in the community of American
9 schools.” *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). Accordingly,
10 courts have zealously guarded the freedoms of speech, assembly, and petition in
11 recognition that “[t]he college classroom with its surrounding environs is peculiarly
12 the ‘marketplace of ideas,’ *id.* and that “[t]he first danger to liberty lies in granting
13 the State the power” to limit these freedoms “against a background and tradition of
14 thought and experiment that is at the center of our intellectual and philosophic tradi-
15 tion.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

16 4. This is a civil rights action to protect and vindicate the First and
17 Fourteenth Amendment rights of Mr. Van Tuinen and his fellow students in the
18 Yosemite Community College District (the “District”), as well as their rights under
19 Article 1 of the California Constitution. By policy and practice, the District
20 unlawfully restricts the College’s students’ constitutional rights to free expression.
21 The policies enforced against Plaintiff are facially overbroad and prohibit the
22 exercise of rights to free expression on the District’s college campuses.

23 5. This action seeks declaratory and injunctive relief, damages, and
24 attorneys’ fees, to vindicate and safeguard the fundamental constitutional rights of
25 Mr. Van Tuinen and his fellow students to freedom of speech and due process of
26 law as secured by the First and Fourteenth Amendments of the United States
27 Constitution, and by the Liberty of Speech Clause in the California Constitution.

1 The College's and District's policies and enforcement practices are challenged on
2 their face and as applied to Mr. Van Tuinen.

3 **II. JURISDICTION AND VENUE**

4 6. This action arises under the United States Constitution, particularly the
5 First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and
6 1988.

7 7. This Court has original jurisdiction over these federal claims pursuant
8 to 28 U.S.C. §§ 1331 and 1343.

9 8. This Court has authority to grant the requested declaratory judgment
10 pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

11 9. This Court has authority to issue the requested injunctive relief
12 pursuant to 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65.

13 10. This Court has authority to award attorneys' fees and costs pursuant to
14 42 U.S.C. § 1988.

15 11. This Court has supplemental jurisdiction over state law claims pursuant
16 to 28 U.S.C. § 1367(a), and it is authorized to award attorneys' fees and costs
17 pursuant to Cal. Code Civ. Proc. § 1021.5.

18 12. Venue is proper in the United States District Court for the Eastern
19 District of California pursuant to 28 U.S.C. § 1391(b) because the events giving rise
20 to the instant claim occurred within this District and because at least one Defendant
21 resides in this District.

22 **III. PLAINTIFF**

23 13. Plaintiff Robert Van Tuinen is, and was at all times relevant to this
24 Complaint, a United States Army Veteran and resident of Modesto, California, who
25 is presently a student at the College pursuing an associate degree.

26 **IV. DEFENDANTS**

27 14. Defendant Yosemite Community College District, a public community
28 college district organized and existing under the laws of the State of California, is

1 one of 72 community college districts in the State, with oversight responsibility for
2 Modesto Junior College and Columbia College. It also operates a Central Services
3 unit for them.

4 15. Defendant Dr. Joan E. Smith serves as Chancellor and Chief Executive
5 Officer of the Yosemite Community College District. She is responsible for the
6 District's administration and policy-making, including the policies and procedures
7 challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional
8 rights. Defendant Smith acquiesced in, sanctioned, and supported the actions of
9 Defendants Stearns, Guerra, Thames, Crow, Serrano, and Doe Defendant 1 in
10 enforcing these policies against Mr. Van Tuinen. Defendant Smith acted under
11 color of state law when she violated Mr. Van Tuinen's constitutional rights to free
12 expression. Defendant Smith is sued in her official capacity.

13 16. Defendant Jill Stearns is, and was at all times relevant to this
14 Complaint, the President of Modesto Junior College, a public community college
15 organized and existing under the laws of the State of California. She is responsible
16 for enactment and enforcement of College polices, including the policies and
17 procedures challenged herein that were applied to deprive Mr. Van Tuinen of his
18 constitutional rights. Defendant acted under color of state law when she violated
19 Mr. Van Tuinen's constitutional rights to free expression. Defendant Stearns is
20 sued in her official capacity.

21 17. Defendant Michael Guerra is, and was at all times relevant to this
22 Complaint, Vice President of College Administrative Services at Modesto Junior
23 College. He is responsible for overseeing and enforcing the policies and procedures
24 challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional
25 rights. Defendant Guerra acted under color of state law when he violated Mr. Van
26 Tuinen's constitutional rights to free expression. Defendant Guerra is sued in his
27 official capacity.

1 18. Defendant Brenda Thames is, and was at all times relevant to this
2 Complaint, Vice President of Student Services at Modesto Junior College. She is
3 responsible for overseeing and enforcing the policies and procedures challenged
4 herein that were applied to deprive Mr. Van Tuinen of his constitutional rights.
5 Defendant Thames acted under color of state law when she violated Mr. Van
6 Tuinen's constitutional rights to free expression. Defendant Thames is sued in her
7 official capacity.

8 19. Defendant Becky Crow is, and was at all times relevant to this
9 Complaint, Director of Campus Safety at Modesto Junior College. She is
10 responsible for overseeing and enforcing the policies and procedures challenged
11 herein that were applied to deprive Mr. Van Tuinen of his constitutional rights.
12 Defendant Crow acted under color of state law when she violated Mr. Van Tuinen's
13 constitutional rights to free expression. Defendant Crow is sued in her official
14 capacity.

15 20. Defendant Christine Serrano is, and was at all times relevant to this
16 Complaint, an Administrative Specialist at Modesto Junior College. Ms. Serrano
17 was the College administrator who told Mr. Van Tuinen that because of "a time,
18 place, and manner" restriction he could pass out literature only inside the College's
19 "free speech area," after Constitution Day. Defendant Serrano acted under color of
20 state law when she violated Mr. Van Tuinen's constitutional rights to free
21 expression. Defendant Serrano is sued both in her individual and official capacities.

22 21. Doe Defendant 1 is, and was at all times relevant to this Complaint, a
23 campus security officer at Modesto Junior College. Doe Defendant 1 was the
24 College security officer who prevented Mr. Van Tuinen from distributing copies of
25 the U.S. Constitution to fellow students outside the College student center. Doe
26 Defendant 1 acted under color of state law when he violated Mr. Van Tuinen's
27 constitutional rights to free expression. Doe Defendant 1 is sued both in his
28 individual and official capacities.

V. STATEMENT OF FACTS

A. Violation of Plaintiff’s Constitutional Rights

22. On September 17, 2013, Mr. Van Tuinen endeavored to distribute copies of the U.S. Constitution to fellow students outside the campus student center at Modesto Junior College.

23. Approximately ten minutes after he began handing out copies of the Constitution, a College campus security officer, Doe Defendant 1, arrived and told Mr. Van Tuinen that any individual who wants to distribute pamphlets or literature on campus must first register with the College Student Development office.

24. Mr. Van Tuinen responded that requiring him to pre-register with College officials in order to distribute copies of the Constitution would impair his freedom of speech. After Doe Defendant 1 insisted that Mr. Van Tuinen would not be permitted to continue speaking to students or distributing literature without official approval, Mr. Van Tuinen followed the officer into the student center.

25. Once inside, Mr. Van Tuinen explained to Doe Defendant 1 that he intended to start a chapter of Young Americans for Liberty at the College and wanted to distribute copies of the Constitution to spark student interest. Doe Defendant 1 told Mr. Van Tuinen that “as a student on campus passing out anything whatsoever, you have to have permission through the Student Development office.” Doe Defendant 1 then directed Mr. Van Tuinen to the Student Development office.

26. In the Student Development office, Mr. Van Tuinen spoke with Administrative Specialist Christine Serrano. Defendant Serrano told Mr. Van Tuinen that because of “a time, place, and manner” restriction, he could distribute literature only inside the “free speech area,” which was located “in front of the student center, in that little cement area.” The “free speech area” is a small, slightly raised concrete “stage” that makes up a minuscule portion of the College campus, as described in Paragraph 38 of this Complaint.

1 27. Defendant Serrano told Mr. Van Tuinen to fill out an application,
2 which she indicated would require providing, among other things, a photocopy of
3 his student identification card. Defendant Serrano informed Mr. Van Tuinen that
4 she had “two people on campus right now, so you’d have to wait until either the
5 20th, 27th, or you can go into October.” Mr. Van Tuinen reiterated his desire to
6 pass out copies of the Constitution that day – on Constitution Day. Defendant
7 Serrano denied his request, stating “you really don’t need to keep going on.”

8 28. Defendant Serrano then telephoned an unnamed person and informed
9 that individual that Mr. Van Tuinen “just wants to question the authority of why
10 can’t he hand out constitutional-type papers.” Thereafter, Defendant Serrano told
11 Mr. Van Tuinen that he would have to make an appointment with College Vice
12 President of Student Services Brenda Thames so that she could further explain to
13 him “what the time, place, and manner is.”

14 29. On information and belief, when Doe Defendant 1 approached Mr.
15 Van Tuinen outside the student center, when he spoke with him within the student
16 center, and when he directed Mr. Van Tuinen to the Student Development office,
17 Doe Defendant 1 knew, or should have known, that Mr. Van Tuinen would be
18 instructed that he must restrict his distribution of literature to the “free speech area,”
19 subject to the application and other limits that doing so entails.

20 30. Doe Defendant 1 and Defendant Serrano censored Mr. Van Tuinen’s
21 lawful and constitutionally protected expression.

22 31. The actions by Doe Defendant 1 and Defendant Serrano have caused
23 Mr. Van Tuinen to refrain from expressing his beliefs or distributing literature while
24 on campus for fear of being punished under College or District policies.

25 32. Doe Defendant 1 and Defendant Serrano knew or should have known
26 that preventing Mr. Van Tuinen from speaking and distributing literature in public
27 areas of the College campus violates his clearly established constitutional rights.
28

B. The District's and College's Policies

33. The Yosemite Community College District includes two two-year colleges (Columbia College and Modesto Junior College). In the 2011-2012 academic year, 16,209 Full Time students were enrolled. The District had a 2011-2012 budget of \$114.4 million.

34. The District promulgates Policies and Administrative Procedures pursuant to Cal. Educ. Code §§ 66300 and 70902.

35. District Policy 3900 (formerly policy 5550) titled "Time, Place & Manner," provides that "[t]he Colleges of the District are non-public forums, except for those areas designated as 'free speech areas', which are limited public forums." (See Exhibit A.) District Policy 3900 also establishes that "The Chancellor shall enact such administrative procedures as are necessary to reasonably regulate the time, place and manner of the exercise of free expression in the limited public forums." Policy 3900 further states: "The administrative procedures promulgated by the Chancellor shall not prohibit the right of students to exercise free expression, including but not limited to the use of bulletin boards designated for such use, the distribution of printed materials or petitions in those parts of the College designated as 'free speech areas', and the wearing of buttons, badges, or other insignia."

36. Pursuant to District Policy 3900, the College adopted and published "Guidelines and Procedure for Requesting College Facilities for Free Speech" (the "College Guidelines"). (See Exhibit B.) The College Guidelines state that District Policy 3900 was promulgated "in furtherance of and consistent with California Education Code § 76120," and it "provides that Colleges of the District are non-public forums, except for those areas on each campus designated as 'free speech areas,' which are deemed limited public forums."

37. California Education Code § 76120, however, does not declare that campuses are non-public forums, and states that "[s]uch rules and regulations shall

1 not prohibit the right of students to exercise free expression,” including “the
2 distribution of printed materials or petitions.”

3 38. Nevertheless, the College Guidelines confine all approved campus
4 expression to two small areas of the campus. The College Guidelines state that
5 pursuant to District Policy 3900, the College has identified “appropriate locations
6 on campus to be used as limited public forum use as prescribed by [District] Board
7 Policy.” According to the College Guidelines, “Limited public forums on Modesto
8 Junior College’s campus” include, at the College’s East Campus, “the stage area
9 northeast of the Quad,” and “Free Speech boards ... located in front of the Student
10 Center.” The East Campus Map shows this area of the Quad. It is indicated by the
11 green shaded area. (*See* Exhibit C, East Campus Map, modified with color and
12 explanation, and related photograph.) At its longest and widest points, Plaintiff
13 estimates that the free speech area on the East Campus is approximately 28 feet
14 long, and 22 feet across, though it is irregularly shaped with several angles and
15 small outcroppings, but in any event comprises approximately 600 square feet. The
16 College Guidelines further provide a “[l]imited public forum” at the College’s West
17 Campus, a space “designated in the Quad area in between Yosemite and Sierra
18 Halls,” and “Free Speech boards ... located inside Mary Stuart Rogers Student
19 Learning Center.”

20 39. The College’s East and West Campuses have many suitable open areas
21 and sidewalks beyond the free speech areas where student expressive activity,
22 including distribution of literature, will not interfere with or disturb access to
23 College buildings or sidewalks, impede vehicular or pedestrian traffic, or in any
24 way substantially disrupt the operations of campus or the College’s educational
25 functions.

26 40. The College Guidelines state that the College “reserves the right to
27 assign applicants to use limited public forum locations based upon College
28

1 operations,” without describing any criteria the College applies to assigning free
2 speech applicants to a specific location.

3 41. The College Guidelines further require that students request permission
4 to distribute printed materials on campus. According to the College Guidelines:

5 To use the free speech areas, student groups or individuals
6 must submit a completed “Limited Public Forum Request
7 Form” to the Office of Student Development and Campus
8 Life for approval *not less than five (5) working days* prior
9 to the proposed date of use. * * * Student requests
10 submitted less than five (5) working days before the
11 proposed date of use (“last minute requests”) will be
12 considered, but must be reviewed by the Student Activities
13 Advisor, and reconciled with the College Facilities Office.

14 (Emphasis added).

15 42. In addition, the College Guidelines limit individuals or groups to eight
16 hours of access to the “free speech areas” per semester. “Requests for additional
17 time per semester may be authorized by administration if space and time is
18 available.” With just over 17,900 students enrolled, a Fall semester that runs for 16
19 weeks from August 26 through December 14, 2013, and Guidelines restricting the
20 availability of the “free speech zone” to “normal hours of operation,” which
21 generously construed might encompass 8 a.m. to 6 p.m. Mondays through Fridays,
22 students are even more limited in their ability to exercise their rights to free speech.
23 Indeed, if each student sought to exercise his or her right to free expression on the
24 East Campus, they would be able to do so for a mere 2.57 minutes *per semester*.

25 43. The College’s “Limited Public Forum Request Form,” affirms that the
26 College requires “5 Working Days ... For Processing.” (See Exhibit D.) Students
27 must indicate on the form whether they plan to use the East Campus or West
28 Campus free speech area, and the hours of use, submit a form of identification, and
affirm that “the guidelines for use of the free speech areas will be followed.”

44. The College Guidelines do not provide standards to guide the
discretion of the public officials of the College tasked with reviewing requests to

1 use “free speech areas” or to evaluate requests for additional time, thus empowering
2 such public officials to administer the policy arbitrarily or on the basis of
3 impermissible factors.

4 45. Because the policy functions as a licensing scheme with which
5 students must comply before engaging in the exercise of their free speech rights, the
6 policy constitutes a prior restraint on speech, resulting in censorship.

7 46. Students are subject to disciplinary action for violating District and
8 College rules and regulations. The College Guidelines state that “[r]efusal to
9 cooperate with the ... guidelines will subject the user to possible punitive action,
10 including, but not limited to, termination of the program in process; denial of
11 further use of Free Speech Areas; Discipline; Probation; Suspension; Expulsion
12 and/or Removal from campus.”

13 47. District Policy 3900 and the College Guidelines have a chilling effect
14 on Mr. Van Tuinen’s rights, and those of all students of the District and the College,
15 to engage freely and openly in expressive activities, including distributing literature.

16 48. Mr. Van Tuinen wishes to engage in expressive activities, including
17 distributing literature, on the College’s campus without the need to obtain advance
18 approval from College officials, but he has not done so since being censored by Doe
19 Defendant 1 and Defendant Serrano on September 17, 2013, for fear of disciplinary
20 action.

21 49. All of the acts of Defendants, their officers, agents, employees, and
22 servants were executed, and are continuing to be executed, by the Defendants under
23 the color and pretense of the policies, statutes, ordinances, regulations, customs, and
24 usages of the State of California.

25 50. Because the policies and actions of Defendants prevent Mr. Van
26 Tuinen from exercising his constitutional rights to free expression at the College, he
27 is suffering irreparable injury.
28

1 51. Defendants' policies and actions create a hostile atmosphere for free
2 expression on campus, chilling the speech of other College students who are not
3 before the Court.

4 **VI. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **As-Applied Violation of Plaintiff's Right to Free Speech Under**
7 **the First and Fourteenth Amendments (42 U.S.C. § 1983)**

8 52. Plaintiff repeats and realleges each of the foregoing allegations in this
9 Complaint.

10 53. The First and Fourteenth Amendments extend to campuses of state
11 colleges and universities. *Healy v. James*, 408 U.S. at 180.

12 54. The College bears the burden of justifying regulation of expressive
13 activity in the public areas of the campus.

14 55. By stopping Plaintiff's lawful activities distributing copies of the U.S.
15 Constitution on the Modesto Junior College campus without prior approval and
16 outside the "free speech zone," Defendants have explicitly and implicitly chilled
17 Plaintiff's free expression, and have deprived Plaintiff of his clearly established
18 rights to freedom of speech and expression secured by the First and Fourteenth
19 Amendments to the Constitution of the United States.

20 56. Doe Defendant 1 and Defendant Serrano violated a clearly established
21 constitutional right of which all reasonable college administrators and staff should
22 have known, rendering them liable to Mr. Van Tuinen under 42 U.S.C. § 1983.

23 57. The denial of constitutional rights is irreparable injury *per se*, and Mr.
24 Van Tuinen is entitled to declaratory and injunctive relief. As a consequence of
25 being denied his First Amendment right to distribute copies of the U.S. Constitution
26 on Constitution Day, Plaintiff experienced significant emotional pain and anguish.

27 58. Plaintiff is entitled to a declaration that Defendants violated his First
28 Amendment rights. Additionally, Plaintiff is entitled to damages in an amount to be

1 determined by the evidence and this Court, and the reasonable costs of this lawsuit,
2 including his reasonable attorneys' fees.

3 **SECOND CAUSE OF ACTION**

4 **As-Applied Violation of the Right to Liberty of Speech Under**
5 **the California State Constitution**

6 59. Plaintiff repeats and realleges each of the foregoing allegations in this
7 Complaint.

8 60. Plaintiff's peaceful speech activities are protected under article 1,
9 section 2 of the California Constitution.

10 61. By stopping Plaintiff's lawful activities distributing copies of the U.S.
11 Constitution on the College campus without prior approval and outside the "free
12 speech zone," Defendants, acting under color of state law and according to policy
13 and practice, have explicitly and implicitly chilled Plaintiff's free expression, and
14 deprived Plaintiff of his clearly established rights to freedom of speech protected
15 under article 1, section 2 of the California Constitution.

16 62. Because of Defendants' policies and actions, Plaintiff has suffered, and
17 continues to suffer, irreparable injury that cannot be fully compensated by an award
18 of money damages.

19 63. Plaintiff is entitled to a declaration that Defendants violated his Liberty
20 of Speech rights under the California Constitution. Additionally, Plaintiff is entitled
21 to damages in an amount to be determined by the evidence and this Court, and the
22 reasonable costs of this lawsuit, including his reasonable attorneys' fees.

THIRD CAUSE OF ACTION

**Facial Challenge to Violation of Right to Free Speech Under the
First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint**

64. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

65. Students have a First Amendment right to engage in expressive activities and to distribute written materials in the public areas of a state college without obtaining advance permission from government officials. *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981); *Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667 (1973); *Jews for Jesus, Inc. v. City Coll. of San Francisco*, 2009 WL 86703, at *3 (N.D. Cal. Jan. 12, 2009).

66. A permitting requirement is a prior restraint on speech and therefore bears a heavy presumption against its constitutionality. *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th Cir. 2009). The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden they place on free speech.

67. The policies and conduct of Defendants restricting all First Amendment protected speech by requiring an advance application to engage in such activity before allowing expressive activities on the College campus grounds is an unconstitutional prior restraint on First Amendment rights.

68. Laws that subject the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, are unconstitutional. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). Defendants' policies vest unfettered discretion in College security and administrative personnel to restrict constitutionally protected expression.

69. As a direct result of the Defendants' continued maintenance of District Policy 3900 and the College Guidelines, Plaintiff and other similarly situated

1 students have been, and will continue to be, irreparably injured in that they have
2 been, and will be, deprived of their right to free speech under the First and
3 Fourteenth Amendments to the Constitution.

4 70. As a legal consequence of the Defendants' violation of Plaintiff's and
5 other similarly situated students' First and Fourteenth Amendment rights, Plaintiff
6 is entitled to injunctive relief, and the reasonable costs of this lawsuit, including his
7 reasonable attorneys' fees.

8 **FOURTH CAUSE OF ACTION**

9 **Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's**

10 **First and Fourteenth Amendment Rights (42 U.S.C. § 1983) –**

11 **Overbreadth**

12 71. Plaintiff repeats and realleges each of the foregoing allegations in this
13 Complaint.

14 72. The College bears the burden of justifying any regulation of expressive
15 activity in the public areas of the campus. Any restrictions on speech in public
16 areas must serve a substantial public interest and must be narrowly tailored and
17 applied so as not to burden more speech than is essential.

18 73. Even purportedly neutral regulations, such as time, place, or manner
19 restrictions, must be narrowly tailored and must not burden more speech than
20 necessary to achieve a substantial governmental interest.

21 74. The College cannot legitimately declare the vast majority of public
22 areas on campus to be "non-public forums." *McGlone v. Bell*, 681 F.3d 718 (6th
23 Cir. 2012). Nor can the College identify a substantial governmental interest to be
24 served by preventing individuals from speaking through the distribution of literature
25 in the public areas of campus.

26 75. The policy restricting all First Amendment protected speech to
27 designated "free speech zones" at the College is unconstitutionally overbroad
28

1 because it does not serve a significant governmental interest, is not narrowly drawn,
2 and impermissibly restricts student expression.

3 76. The policies restricting speech on campus burden far more speech than
4 is necessary to serve the asserted interest. Rather than being narrowly tailored to
5 protect speech as the Constitution requires, the College policies are tailored to
6 preclude speech. Among other, less speech-restrictive alternatives, the College
7 could enforce rules against those who actually disrupt traffic and/or educational
8 activities or who engage in disorderly conduct.

9 77. As a direct result of the Defendants' continued maintenance of District
10 Policy 3900 and the College Guidelines, students at the College are deprived of
11 their right to free speech under the First and Fourteenth Amendments to the
12 Constitution.

13 78. As a legal consequence of the Defendants' violation of Plaintiff's and
14 other similarly situated students' First and Fourteenth Amendment rights, as alleged
15 above, Plaintiff is entitled to injunctive relief, and the reasonable costs of this
16 lawsuit, including his reasonable attorneys' fees.

17 **FIFTH CAUSE OF ACTION**

18 **Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's**

19 **First and Fourteenth Amendments Rights (42 U.S.C. § 1983) –**

20 **Vagueness**

21 79. Plaintiff repeats and realleges each of the foregoing allegations in this
22 Complaint.

23 80. A state enactment is void for vagueness if the prohibitive terms are not
24 clearly defined such that a person or ordinary intelligence can readily identify the
25 applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*,
26 408 U.S. 104, 108 (1972).

27 81. Defendants' policies restricting speech fail to adequately advise the
28 students subject to discipline under them of the obligations the policies create, and

1 are unconstitutionally vague on their face in violation of the First Amendment and
2 of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution.

3 82. Defendants' policies do not provide standards to guide the discretion of
4 public officials at the College as to whether the College Guidelines apply to
5 particular acts of free expression in the first instance, or for reviewing requests to
6 use "free speech areas," or for evaluating requests for additional time beyond the
7 eight hours of free expression allotted to each student per semester. This empowers
8 such public officials to administer the policy on the basis of impermissible factors
9 or through arbitrary application.

10 83. Because of Defendants' policies and actions, Plaintiff has suffered, and
11 continues to suffer, economic injury and irreparable harm. Plaintiff is therefore
12 entitled to injunctive relief, and the reasonable costs of this lawsuit, including his
13 reasonable attorneys' fees.

14 **SIXTH CAUSE OF ACTION**

15 **Facial Challenge to Violation of the Right to Liberty of Speech**

16 **Under the California Constitution**

17 84. Plaintiff repeats and realleges each of the foregoing allegations in this
18 Complaint.

19 85. Under California law applicable to restrictions implicating the Liberty
20 of Speech Clause in the State constitution, for a restriction governing speech in a
21 public forum to survive, the communicative activity must be basically incompatible
22 with the normal activity of that particular place at a particular time. *Kuba v. I-A*
23 *Agric. Ass'n*, 387 F.3d 850, 857 (9th Cir. 2004).

24 86. The policies and conduct of Defendants restricting all First
25 Amendment protected speech by requiring an advance application to engage in such
26 activity before allowing expressive activities on the College campus grounds is an
27 unconstitutional prior restraint on the Liberty of Speech. This is so because no
28 compelling governmental interest is advanced by the policy, the policy is over-

1 broad, and there are no guidelines for application of the policy by administrators.
2 The policy vests unfettered discretion in Defendants to restrict constitutionally
3 protected expression.

4 87. The Defendants' purported "time, place and manner" restrictions are
5 unreasonable in light of the purpose of the forum, are overly broad, and are not
6 narrowly tailored to serve significant government interests nor leave open ample
7 alternative channels of communication.

8 88. As a proximate result of Defendants' actions, Plaintiff and other
9 similarly situated students have been and will continue to be irreparably injured in
10 that they have been and will be deprived of their rights under the Liberty of Speech
11 Clause in the California Constitution.

12 89. As a direct result of the Defendants' violation of the Plaintiff's and
13 other similarly situated students' constitutional rights, and of the continued main-
14 tenance of District Policy 3900 and the College Guidelines, students at the College
15 continue to be prohibited from engaging in constitutional speech activities.

16 90. As a legal consequence of the Defendants' violation of Plaintiff's and
17 other similarly situated students' Liberty of Speech rights, as alleged above,
18 Plaintiff is entitled to injunctive relief, and the reasonable costs of this lawsuit,
19 including his reasonable attorneys' fees.

20 **SEVENTH CAUSE OF ACTION**

21 **Section 1983 Monell Claim (Defendant**

22 **Yosemite Community College District)**

23 91. Plaintiff repeats and realleges each of the foregoing allegations in this
24 Complaint.

25 92. A government body such as the District here may be held liable under
26 42 U.S.C. § 1983, when the execution of government policy or custom, that may be
27 fairly said to represent its official policy, inflicts injury on a plaintiff. Section 1983
28 also allows liability for constitutional violations committed by government

1 employees if the government body itself is responsible for causing constitutional
2 deprivations. *Monell* liability can further rest on ratification by a final policymaker,
3 or for damages caused by a failure to train employees that leads to the deprivation
4 of constitutional rights.

5 93. In prohibiting Mr. Van Tuinen from distributing copies of the
6 Constitution on the Modesto Junior College campus without obtaining prior
7 approval and limiting his activities to the “free speech areas,” Defendants violated
8 Mr. Van Tuinen’s clearly established rights under the First and Fourteenth
9 Amendments to the United States Constitution.

10 94. At all times relevant to this Complaint, Defendants were acting under
11 color of the laws of the State of California and of Stanislaus, Tuolumne, Calaveras,
12 Merced, San Joaquin, and Santa Clara Counties.

13 95. At the time of Mr. Van Tuinen’s unlawful prohibition from distributing
14 written materials, California Education Code § 76120 provided that state colleges
15 may not promulgate rules and regulations that “prohibit the right of students to
16 exercise free expression,” including “the distribution of printed materials or
17 petitions.”

18 96. Nonetheless, Doe Defendant 1 and Defendant Serrano interfered with
19 and prevented Mr. Van Tuinen from distributing written materials on the Modesto
20 Junior College campus. And further, the District and College promulgated policies
21 limiting student speech activities to designated “free speech areas,” and required
22 prior approval to use such facilities.

23 97. The District fails to train its administrators and employees adequately
24 with respect to the First Amendment rights of college students, displaying deliberate
25 indifference to the student body’s constitutional rights.

26 98. On information and belief, the District failed to supervise and
27 discipline its administrators and employees for unlawfully interfering with the First
28 Amendment right of students to engage in expressive activities and distribute

1 written materials in the public areas of a state college without obtaining advance
2 permission from government officials, displaying deliberate indifference to its
3 citizens' constitutional rights.

4 99. These unconstitutional policies, customs, and practices of the District
5 were the moving force behind the violation of Mr. Van Tuinen's constitutional
6 rights by Doe Defendant 1 and Defendant Serrano.

7 100. As a direct and proximate result of the District's unconstitutional
8 policies, customs and practices, Mr. Van Tuinen suffered lost opportunities to speak
9 and significant emotional pain and anguish. Plaintiff is thus entitled to a declaration
10 that Defendants violated his First Amendment rights. Additionally, Plaintiff is
11 entitled to damages in an amount to be determined by the Court, and the reasonable
12 costs of this lawsuit, including his reasonable attorneys' fees.

13 **EIGHTH CAUSE OF ACTION**

14 **Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)**

15 101. Plaintiff repeats and realleges each of the foregoing allegations in this
16 Complaint.

17 102. An actual controversy has arisen and now exists between Plaintiff and
18 Defendants concerning Plaintiff's rights under the United States Constitution and
19 under California's Constitution. A judicial declaration is necessary and appropriate
20 at this time as to Counts I through VII above.

21 103. Plaintiff desires a judicial determination of his rights against
22 Defendants as they pertain to Plaintiff's right to speak, assemble, and distribute
23 literature on the outdoor campus areas of Modesto Junior College without being
24 subjected to a prior restraint or "time, place, and manner" regulations that are
25 unreasonable, that are not narrowly tailored to serve a substantial governmental
26 interest, and that do not leave open ample alternative channels of communication.

27 104. To prevent further violation of Plaintiff's constitutional rights by
28 Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant

1 to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the District's and the
2 College's policies unconstitutional.

3 105. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is
4 appropriate and hereby requested that this Court issue a permanent injunction
5 prohibiting the Defendants from enforcing their restrictions on Plaintiff's expressive
6 activities to the extent they are unconstitutional, to prevent the ongoing violation of
7 Plaintiff's constitutional rights. Plaintiff and his fellow students are suffering
8 irreparable harm from continued enforcement of the District's and College's
9 unconstitutional policies, monetary damages are inadequate to remedy their harm,
10 and the balance of equities and public interest both favor a grant of injunctive relief.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff Robert Van Tuinen respectfully requests that the
13 Court enter judgment against Defendants and provide Plaintiff the following relief:

14 A. A declaratory judgment stating that Defendants' speech codes are
15 unconstitutional facially and as-applied and that they violate the Plaintiff's rights as
16 guaranteed under the First and Fourteenth Amendments to the United States
17 Constitution and by the Liberty of Speech Clause of California's Constitution;

18 B. A permanent injunction restraining enforcement of Defendants'
19 unconstitutional speech codes and enforcement practices;

20 C. A declaratory judgment that Defendants' censorship of Plaintiff's
21 expressive activity of distributing copies of the U.S. Constitution without prior
22 approval and outside the "free speech zone" violated his First and Fourteenth
23 Amendment rights and the California Constitution's Liberty of Speech Clause;

24 D. Monetary damages in an amount to be determined by the Court to
25 compensate for the Defendants' application of the illegal speech codes to interfere
26 with Plaintiff's expressive activity of distributing copies of the U.S. Constitution
27 without prior approval and outside the "free speech zone;"
28

1 E. Plaintiff's reasonable costs and expenses of this action, including
2 attorneys' fees, in accordance with 42 U.S.C. § 1988, Cal. Code Civ. Proc.
3 § 1021.5, and other applicable law; and

4 F. All other further relief to which Plaintiff may be entitled.

5 **VIII. DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury of all issues properly triable by jury in this
7 action.

8
9 DATED: October 10, 2013 DAVIS WRIGHT TREMAINE LLP
10 ROBERT CORN-REVERE (*pro hac vice to be filed*)
11 RONALD G. LONDON (*pro hac vice to be filed*)
12 LISA B. ZYCHERMAN (*pro hac vice to be filed*)
13 ROCHELLE L. WILCOX

14 By: /s/ Rochelle L. Wilcox
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