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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **FRESNO DIVISION**

16 ALEJANDRO FLORES, ET AL.,

17 Plaintiffs,

18 v.

19 DR. LORI BENNETT, ET AL.,

20 Defendants.

Civil Action No.
1:22-cv-01003-JLT-HBK

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO STAY
THE CASE PENDING THE
RULING OF THE NINTH CIRCUIT
ON DEFENDANTS'
INTERLOCUTORY APPEAL**

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Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics, 29 F.4th
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Glatt v. Fox Searchlight Pictures Inc., No. 11–Civ–6784 (WHP), 2013
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Greer v. Dick's Sporting Goods, Inc., No. 215CV01063KJMCKD, 2018
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Healy v. James, 408 U.S. 169 (1972) 9

In re Kemble, 776 F.2d 802 (9th Cir. 1985) 18

In re Petrobras Sec. Litig., 193 F. Supp. 3d 313 (S.D.N.Y. 2016)..... 18

Johnson v. Starbucks Corp., No. 2:18-CV-1886 WBS EFB, 2019 WL
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Leiva-Perez v. Holder, 640 F.3d 962 (9th Cir. 2011)..... 7, 8, 13

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Nikon Corp. v. GlobalFoundries U.S., Inc., No. 17-mc-80071-BLF, 2017
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Nken v. Holder, 556 U.S. 418 (2009) 7

Papish v. Bd. of Curators of the Univ. of Mo., 410 U.S. 667 (1973)..... 10

Perry Educ. Ass'n. v. Perry Loc. Educators Ass'n., 460 U.S. 37 (1983)..... 10

Planned Parenthood of S. Nev. v. Clark Cnty. Sch. Dist., 941 F.2d 817
(9th Cir. 1991) (en banc)..... 9, 11

1 *R&L Ltd. Invs., Inc. v. Cabot Inv. Prop., LLC*, No. CV 09-1525-PHX-
 2 MHM, 2010 WL 3789401 (D. Ariz. Sept. 21, 2010) 15
 3 *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995) 10
 4 *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415 (9th Cir.
 1984) 17

5 **OTHER AUTHORITIES**

6 Blaine Evanson, Taylor King, Jessica Hudak and Monica Paladini,
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 8 Diarmuid F. O'Scannlain, *Access to Justice Within the Federal Courts-A
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 9 Notice of Cases Set for Hearing, Office of the Clerk, U.S. Court of
 10 Appeals for the Ninth Circuit (Sept. 2022) 12
 11 The Appellate Lawyer Representatives' Guide to Practice in the United
 States Court of Appeals for the Ninth Circuit (May 2021 ed.) 11, 12, 17

12 **RULES**

13 Fed. R. App. P. 34 12

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1 Under Federal Rule of Civil Procedure 7 and Local Rule 130, Plaintiffs Alejandro
2 Flores, Daniel Flores, Juliette Colunga, and Young Americans for Freedom at Clovis
3 Community College, respectfully submit this opposition to Defendants' Motion to Stay
4 the Case Pending the Ruling of the Ninth Circuit on Defendants' Interlocutory Appeal.
5

6 INTRODUCTION

7 More than six months after appealing this Court's Preliminary Injunction Order,
8 Defendants now move to stay proceedings in this Court pending appeal. But there is
9 no reason for further delay in this case. Defendants are unlikely to succeed on the
10 merits of their preliminary injunction appeal, and their Motion to Dismiss will likely
11 meet a similar fate. Defendants also will not suffer irreparable harm should discovery
12 commence. On the other hand, Plaintiffs and the public will suffer substantial injury
13 absent the efficient adjudication of their First Amendment rights. And proceeding
14 with discovery is consistent with this Court's interest in the efficient resolution of
15 cases on its docket. The Court should not allow Defendants to needlessly delay the
16 "just, speedy, and inexpensive" adjudication of Plaintiffs' First and Fourteenth
17 Amendment rights. Fed. R. Civ. P. 1.
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20 In a few instances, *see* ECF No. 46, ECF No. 46-2 at 4–5, Defendants also appear
21 to move for a stay of the preliminary injunction that this Court granted in October.
22 But the totality of their brief is focused on the reasons that discovery should be halted
23 and not on why they should be allowed to reinstate their viewpoint-discriminatory
24 Flyer Policy while an appeal is pending. The lengthy delay before Defendants brought
25 their motion further shows that Defendants will not suffer irreparable harm if the
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1 preliminary injunction remains in force. Their dilatory, unsupported, and meritless
2 request should therefore be denied.

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 Before this Court’s preliminary injunction, Clovis administrators maintained a
5 Flyer Policy that prohibited students from posting flyers with “inappropriate or
6 offens[ive] language or themes” on the indoor bulletin boards and required prior
7 approval of flyers by Clovis staff. Hahn Decl. in Suppt. of PI, ECF No. 6, Ex. 11. In
8 November 2021, Clovis administrators applied the “inappropriate or offens[ive]”
9 provision to remove Plaintiffs’ previously approved “Freedom Week” flyers from the
10 bulletin boards. Verified Compl. ¶¶ 58–62.¹ A few weeks later, they applied the same
11 provision to deny approval to Plaintiffs’ pro-life flyers. *Id.* ¶¶ 79–99, 135–36.

12 Plaintiffs sued for violation of their First and Fourteenth Amendment rights in
13 August 2022, seeking injunctive and declaratory relief as well as monetary damages.
14 *Id.* ¶¶ 118–79. At the same time, Plaintiffs sought to preliminarily enjoin the
15 “inappropriate or offens[ive]” policy provision in the Flyer Policy. On October 14, 2022,
16 this Court granted Plaintiffs’ Motion for Preliminary Injunction, enjoining the
17 challenged provision as an overbroad and vague restriction on students’ speech. Order
18 Granting Mot. for Prelim. Inj. ECF No. 40 at 22.

19 In response, Clovis immediately replaced the entire Flyer Policy with a new
20 policy that did not include the “inappropriate or offens[ive]” provision or other
21 viewpoint-based restrictions. But the new policy nonetheless asserts, contrary to this
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¹ All citations to the Verified Complaint are to a verified allegation.

1 Court’s preliminary injunction decision, *see* ECF No. 40 at 11, that posted student-
2 organization flyers are the College’s speech.

3 On December 9, 2022, Defendants filed their Opening Brief in the Ninth
4 Circuit. Plaintiffs filed their Answering Brief in opposition on February 21, 2023, and
5 Defendants filed their Reply on March 14, 2023.
6

7 **ARGUMENT**

8 Defendants have failed to meet their burden of “showing that the circumstances
9 justify” a stay of either the case or the preliminary injunction, *Nken v. Holder*, 556
10 U.S. 418, 434 (2009).² In particular, they fail to show a legally cognizable and probable
11 irreparable harm—“a *necessary* but not sufficient condition for the exercise of judicial
12 discretion to issue a stay.” *Leiva-Perez v. Holder*, 640 F.3d 962, 965, 968 (9th Cir. 2011)
13 (emphasis added). The four factors to be considered in issuing a stay of either the case
14 or a preliminary injunction pending appeal are well established: “(1) whether the stay
15 applicant has made a strong showing that he is likely to succeed on the merits;
16 (2) whether the applicant will be irreparably injured absent a stay; (3) whether
17 issuance of the stay will substantially injure the other parties interested in the
18 proceeding; and (4) where the public interest lies.” *Nken*, 556 U.S. at 426.
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21 Notably, the Ninth Circuit has recognized that *Nken* overruled the cases
22 Defendants cite as representing the standard for stays pending appeal. *See Leiva-*
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25 ²*Nken* applies equally to a motion to stay discovery pending appeal and a motion to stay a
26 preliminary injunction pending appeal. *See, e.g., Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020)
27 (applying *Nken* standard to motion for a stay of the district court’s preliminary injunction pending
28 appeal); *Fraihat v. U.S. Immigr. & Customs Enf’t*, No. EDCV191546JGBSHKX, 2020 WL 6540441, at
*1 (C.D. Cal. Oct. 30, 2020) (applying *Nken* standard to motion for a stay of discovery pending appeal)
(citing *Nikon Corp. v. GlobalFoundries U.S., Inc.*, No. 17-mc-80071-BLF, 2017 WL 4865549, at *1 (N.D.
Cal. Oct. 26, 2017)).

1 *Perez*, 640 F.3d at 968, 971 (“While *Nken* did not affect *Abbassi*’s likelihood of success
2 prong, it did overrule that part of *Abbassi* that permitted a stay to issue upon the
3 petitioner simply showing some *possibility* of irreparable injury.” (internal quotation
4 marks omitted)). To secure a stay, Defendants therefore “must demonstrate that
5 irreparable harm is *probable* if the stay is not granted.” *Id.* (emphasis added);
6 *Evergreen Cap. Mgmt. LLC v. Bank of N.Y. Mellon Tr. Co.*, No. CV207561MWFAGR, X,
7 2020 WL 13240703, at *2 (C.D. Cal. Dec. 7, 2020) (“The *Golden Gate* test . . . is no
8 longer good law”). Because Defendants fail to satisfy *Nken*’s four-factor test, the Court
9 should deny their motion.
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12 **I. Defendants’ Appeal Is Unlikely to Succeed.**

13 Defendants do not have a likelihood—let alone a “strong” likelihood—of success
14 on the merits of their appeal. First, the Ninth Circuit may not even reach the merits
15 because Defendants’ appeal is moot. Second, their arguments on appeal lack merit
16 just as they did when this Court correctly rejected them. Third, Defendants’ Motion
17 to Dismiss is similarly unlikely to succeed on the merits, and thus provides no
18 alternative basis for a stay of discovery or the injunction.
19

20 **A. Defendants’ appeal is likely to be held moot.**

21 As an initial matter, Defendants’ appeal is moot because they voluntarily
22 rescinded the entire Flyer Policy after this Court issued its preliminary injunction
23 order, and Defendants express no intention of reinstating the Policy if they prevail.
24 See Appellant’s Opp. to Appellee’s Mot. For Leave to File Suppl. App. ECF No. 18,
25 *Flores v. Bennett*, Case No. 22-16762 (9th Cir.). Indeed, even in their reply brief
26 responding to Plaintiffs’ mootness arguments, Defendants do not assert that they
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1 would reinstate the policy if the preliminary injunction were lifted. Appellant’s Reply
2 Br. ECF No. 20, *Flores v. Bennett*, Case No. 22-16762 (9th Cir). Therefore, there is a
3 likelihood that the Ninth Circuit will not reach the merits of the preliminary
4 injunction appeal.
5

6 **B. Defendants’ appeal is without merit.**

7 Even if the appeal is not moot, Defendants are unlikely to prevail on the merits.
8 As this Court already held, *Plaintiffs* are likely to succeed on the merits because the
9 Flyer Policy’s “inappropriate or offens[ive]” provision was overbroad, and void for
10 vagueness, violating the First and Fourteenth Amendments facially and as applied to
11 Plaintiffs. ECF No. 40 at 22, 25. The Policy created an “unacceptable risk of the
12 suppression of ideas otherwise protected by the First Amendment.” *Id.* at 22. It also
13 “exemplifie[d] the kind of arbitrary and discriminatory treatment that the vagueness
14 doctrine [wa]s designed to prevent.” *Id.* at 24. Given the Flyer Policy’s multiple and
15 significant constitutional defects and this Court’s preliminary injunction of the
16 Policy’s enforcement, Defendants’ appeal is unlikely to succeed.
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19 On appeal, Defendants repeat their meritless argument that high school
20 curricular-speech cases, like *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988),
21 and *Planned Parenthood of S. Nev. v. Clark Cnty. Sch. Dist.*, 941 F.2d 817, 829 (9th
22 Cir. 1991) (en banc), should apply in college settings. But even if *Hazelwood* and
23 *Planned Parenthood* apply in higher education settings, their K–12 curricular-speech
24 standard still would not apply to *this case*.³ Defendants are therefore wrong to suggest
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27 ³ The Supreme Court has repeatedly underscored what this Court described as the “distinction
28 between schools that oversee younger student bodies and colleges that foster learning in adults.” ECF
No. 40 at 15; *see, e.g., Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave

1 that this case presents “substantial and novel legal questions” that could impact the
2 validity of Plaintiffs’ challenge, Defs.’ Mot. To Stay, ECF No. 46-2 at 8.

3 First, *Hazelwood* and *Planned Parenthood*’s “school-sponsored speech doctrine”
4 applies only to K–12 curricular speech, not the speech of a college student organization
5 at issue here. *Hazelwood*, 484 U.S. at 271. Clovis student-organization flyers on
6 interior bulletin boards are not curricular speech—and Defendants have never
7 suggested otherwise. Indeed, even in the K–12 context, courts do not consider the
8 expression of student organizations to be school-sponsored curricular speech. *See, e.g.*,
9 *Bd. of Edu. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 249–50 (1990) (rejecting
10 argument that providing religious student groups equal access to high school facilities
11 would cause “an objective observer in the position of a secondary school student [to]
12 perceive official school support for such religious meetings”); *Perry Educ. Ass’n. v.*
13 *Perry Loc. Educators Ass’n.*, 460 U.S. 37, 47 (1983); *Rosenberger v. Rector & Visitors*
14 *of Univ. of Va.*, 515 U.S. 819, 828-30 (1995). Nor could Plaintiffs’ flyers raise any
15 concern “that the views of the individual speaker are . . . erroneously attributed to
16 the school,” *Hazelwood*, 484 U.S. at 271, because Clovis’s bulletin boards feature a
17 variety of views from a diverse array of student groups each labeled with the
18 organization’s name, as required by State Center Community College District’s
19 (SCCCD) administrative regulation 5550 (AR 5550).

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no room for the view that . . . First Amendment protections should apply with less force on college
campuses than in the community at large”); *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667,
671 (1973) (noting that the “First Amendment leaves no room for the operation of a dual standard in
the academic community with respect to the content of speech”).

1 Second, in the Ninth Circuit, regulation of school-sponsored speech in a
2 nonpublic forum must nevertheless be reasonable and viewpoint neutral. *Planned*
3 *Parenthood*, 941 F.2d at 829; *see also Downs v. Los Angeles Unified Sch. Dist.*, 228
4 F.3d 1003, 1010–11 (9th Cir. 2000) (criticizing *Planned Parenthood* for embracing
5 viewpoint neutrality but acknowledging the standard as Ninth Circuit law). Thus,
6 once Clovis Administrators allowed student speech on the interior bulletin boards,
7 they could only restrict it with reasonable and viewpoint-neutral rules. Their use of
8 the viewpoint-discriminatory “inappropriate and offen[sive]” provision was thus
9 unlawful even if the Plaintiffs’ speech could be construed as school-sponsored
10 curricular speech and the bulletin boards as nonpublic fora.

13 Defendants attempt to bolster their arguments’ merit by noting that the Ninth
14 Circuit is considering their appeal for oral argument. But despite Defendants claim of
15 oracular abilities regarding the Ninth Circuit’s reasons for considering oral argument,
16 their unfounded assertion is at best a wild guess that should not influence this Court’s
17 decision. *See Flores v. Bennett*, Case No. 22-16762 ECF No. 23 (9th Cir.) (stating “[t]his
18 case is being *considered* for an upcoming oral argument calendar in San Francisco”
19 without additional explanation (emphasis added)). Initial consideration for placement
20 on the Ninth Circuit’s argument calendar may simply reflect the importance of the
21 constitutional rights at stake, rather than any assessment of the merit or
22 frivolousness of a party’s arguments.⁴ Regardless, even cases placed on the Ninth
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26 ⁴ *See* The Appellate Lawyer Representatives’ Guide to Practice in the United States Court of
27 Appeals for the Ninth Circuit at 8 (hereinafter “Ninth Circuit Practice Guide”) (May 2021 ed.),
28 <https://cdn.ca9.uscourts.gov/datastore/uploads/guides/AppellatePracticeGuide.pdf> [<https://perma.cc/R74B-TX64>] (“The case management attorneys then assign a numerical weight to the case to reflect the complexity of the case and the number of issues presented”); Blaine Evanson, Taylor King, Jessica

1 Circuit argument calendar will not necessarily be heard because merits panels may
2 nonetheless resolve a case scheduled for argument on the briefing alone.⁵ The Ninth
3 Circuit’s procedural decision to consider calendaring this case for oral argument does
4 not signal that Defendants’ appeal has any merit whatsoever, let alone that it has a
5 “strong” likelihood of success.

7 **C. Defendants’ motion to dismiss is similarly meritless.**

8 Defendants are similarly unlikely to prevail on their Motion to Dismiss pending
9 before this Court, providing no alternative basis for a stay. Defendants’ primary
10 argument for dismissal is that Plaintiffs failed to challenge AR 5550, but the Court
11 already rejected this argument because AR 5550 neither authorizes nor requires
12 Defendants to engage in viewpoint discrimination by prohibiting flyers that are
13 “inappropriate or offens[ive].” ECF No. 40 at 30. In fact, AR 5550 undermines
14 Defendants’ appellate argument that Plaintiffs’ flyers were school-sponsored speech
15 because the regulation specifically requires Defendants to provide bulletin boards “for
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18 _____
19 Hudak and Monica Paladini, *Argued Vs. Submitted Cases At 9th Circ. During Pandemic*, Law360,
20 <https://www.gibsondunn.com/wp-content/uploads/2020/04/Evanson-King-Hudak-Paladini-Argued-Vs.-Submitted-Cases-At-9th-Circ.-During-Pandemic-Law360-04-24-2020.pdf>. [<https://perma.cc/HH7V-YP99>] (April 24, 2020) (explaining that the “Ninth Circuit’s case management attorneys . . . assign a numerical weight to each case based on the type of case, the issues presented, and the difficulty or complexity of those issues).

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22 ⁵ Federal Rule of Appellate Procedure 34 provides that “[o]ral argument *must* be allowed in every
23 case unless a panel of three judges who have examined the briefs and record unanimously agrees that
24 oral argument is unnecessary[.]” (emphasis added). Further, the Ninth Circuit’s instructions regarding
25 oral argument advise that, even where a hearing date is assigned, “the panel retains discretion
26 pursuant to Fed. R. App. P. 34 to submit the case on the briefs without argument.” Notice of Cases Set
27 for Hearing, Office of the Clerk, U.S. Court of Appeals for the Ninth Circuit (Sept. 2022),
28 https://cdn.ca9.uscourts.gov/datastore/uploads/forms/hearing_notice/ntc_hear.pdf [<https://perma.cc/8B4U-8Z7K>]; *see also* Ninth Circuit Practice Guide at 18 (“Merits panels often decide appeals ‘on the briefs’ (meaning without oral argument) even after they are placed on an argument calendar”). And Ninth Circuit Judge O’ Scannlain noted that “from one-quarter to one-half” of cases assigned to the argument calendar “will not see oral argument b/c the panel decides to submit the case on the briefs.” Diarmuid F. O’Scannlain, *Access to Justice Within the Federal Courts-A Ninth Circuit Perspective*, 90 Or. L. Rev. 1033, 1050 (2012).

1 use in posting *student materials* at campus locations convenient for student use”
2 which “clarif[ies] that these messages should not be construed as that of the College.”
3 *Id.* at 11 (emphasis added).

4
5 **II. Defendants’ Failure to Show Irreparable Harm Is a Fatal Flaw.**

6 For the second factor, Defendants’ failure to show “actual and imminent”
7 irreparable harm from the denial of a stay is determinative since proving a probable
8 irreparable harm is necessary for the issuance of a stay. *Leiva-Perez*, 640 F.3d at 965,
9 968. Contrary to Defendants’ motion, ECF No. 46 at 5, a mere *possibility* of harm is
10 inadequate. *Leiva-Perez*, 640 F.3d at 968, 971.

11
12 Regardless, Defendants show no legally cognizable harm, identifying only the
13 ordinary costs of litigation as their possible irreparable harm. But the Supreme Court
14 has held that “the expense and annoyance of litigation is part of the social burden of
15 living under government” and, accordingly, “[m]ere litigation expense, even
16 substantial and unrecoupable cost, does not constitute irreparable injury.” *F.T.C. v.*
17 *Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (rejecting request to review Federal
18 Trade Commission complaint before conclusion of administrative proceedings,
19 notwithstanding the substantial burden of defending those proceedings); *see also*
20 *Monaco v. Bear Stearns Cos, Inc.*, No. CV0905438SJOJCX, 2012 WL 12506860, at *4
21 (C.D. Cal. Dec. 5, 2012) (denying a stay because “litigation costs in and of themselves
22 generally do not constitute irreparable injury” absent proof that these costs “will be
23 somehow atypical or unusually severe”); *Daniels v. City of New York*, 138 F. Supp. 2d
24 562, 564 (S.D.N.Y. 2001) (denying stay pending appeal and rejecting as “without
25 merit” movant’s claim that it would suffer irreparable harm in the form of a
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1 “significant waste of time and resources” because “litigation costs do not rise to the
2 level of irreparable injury” (citations and internal quotation marks omitted)).
3 Defendants therefore allege no legally cognizable irreparable harm absent a stay,
4 requiring denial of the Motion.
5

6 Here, Defendants’ dilatory actions leading up to the present Motion
7 demonstrate their actual motive for seeking a stay—to delay the proceedings to gain
8 some perceived settlement or litigation advantage. Plaintiffs first contacted
9 Defendants to schedule a Rule 26(f) conference in September 2022—the month before
10 this Court granted Plaintiffs’ Motion for Preliminary Injunction. Ortner Decl. ¶ 2.
11 Plaintiffs requested a conference date no later than November 1, 2022. *Id.* After the
12 Court preliminarily enjoined Defendants’ offending Flyer Policy provision, Plaintiffs
13 agreed to Defendants’ request to postpone the 26(f) conference in lieu of settlement
14 negotiations. *Id.* ¶ 3. When negotiations stalled, Plaintiffs renewed their request for
15 a 26(f) conference via email on March 16. *Id.* ¶ 4. This request was ignored. *Id.* ¶ 5.
16 Plaintiffs again renewed their request on March 28 and March 31. *Id.* ¶¶ 6–8. On
17 March 31, Defendants’ counsel informed Plaintiffs’ counsel that he did not intend to
18 participate in a 26(f) conference and would instead file for a stay of discovery. *Id.* ¶ 9.
19 Nearly three weeks later, with no motion filed, Plaintiffs sent their fifth request for a
20 Rule 26(f) conference. *Id.* ¶ 10. Three days later, on April 21, Defendants finally filed
21 their motion to stay. *Id.* ¶ 11. Because Defendants show no irreparable harm, and
22 their dilatory actions evidence an intent to delay adjudication to gain some perceived
23 settlement or litigation advantage, their motion for a stay must be denied.
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1 Defendants similarly suffer no irreparable harm that can justify staying this
2 Court’s preliminary injunction. As already discussed, Defendants replaced their Flyer
3 Policy after the issuance of the preliminary injunction and have not expressed any
4 intention to reinstate the enjoined provision. They also fail to describe any harm that
5 they would suffer from leaving the injunction in place, and likely could not establish
6 such a harm after waiting six months to move to stay the injunction.
7

8 **III. A Stay Will Cause Substantial Injury to Plaintiffs.**

9 As it relates to the third factor, Plaintiffs will suffer substantial injury from
10 further delay, especially considering the important First Amendment issues at stake.
11

12 Plaintiffs seek a permanent injunction and certainty—for themselves and other
13 Clovis students—that Clovis administrators cannot remove flyers from the bulletin
14 boards based on viewpoint-discriminatory criteria. In unnecessarily delaying the
15 adjudication of a permanent injunction, a stay would, in and of itself, constitute
16 substantial injury to Plaintiffs. *See, e.g., Johnson v. Starbucks Corp.*, No. 2:18-CV-
17 1886 WBS EFB, 2019 WL 3202849, at *2 (E.D. Cal. July 16, 2019) (denying a stay
18 when “there is a good possibility” that a party would be hurt “by delaying resolution
19 of these proceedings” and explaining that “[s]uch costs outweigh any savings in
20 judicial economy”); *R&L Ltd. Invs., Inc. v. Cabot Inv. Prop., LLC*, No. CV 09-1525-
21 PHX-MHM, 2010 WL 3789401, at *2 (D. Ariz. Sept. 21, 2010) (denying a stay because
22 “delaying a plaintiff’s day in court constitutes substantial injury”).
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25 Specifically, an unnecessary delay will result in chilling Plaintiffs’ First
26 Amendment rights due to the continued uncertainty about whether Clovis
27 Administrators may prohibit or remove flyers based on the viewpoint they express. As
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1 this Court explained when granting the preliminary injunction, “[t]he mere threat of
2 enforcement of an unconstitutional restriction on speech” results in a chilling effect.
3 ECF No. 40 at 28. This uncertainty is particularly chilling to Plaintiffs because they
4 experienced additional delays and likely viewpoint discrimination related to posting
5 certain flyers *after* they filed their lawsuit. In September 2022, for example, Clovis
6 administrators, including Defendant Stumpf, failed to approve Plaintiffs’ flyers
7 commemorating the anniversary of the September 11, 2001 terrorist attacks. Flores
8 Decl. ¶¶ 2–13.

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11 In addition, Defendants’ have repeatedly changed their flyer-related policies,
12 further chilling Plaintiffs’ free speech. Hours after this Court enjoined the Flyer
13 Policy’s “inappropriate or offens[ive]” provision, Defendant Hébert emailed student
14 organization faculty advisors to notify them that the Flyer Policy was being replaced
15 with a new policy (the “Replacement Policy”). Colunga Decl. ¶ 4. This Replacement
16 Policy, published on the Clovis website a few days later, omitted viewpoint-based
17 restrictions, but added a new provision that “postings placed on the bulletin boards
18 become official college announcements,” *id.* ¶ 7—contrary to this Court’s preliminary
19 injunction decision, *see* ECF No. 40 at 11 (“Student flyers on the College’s bulletin
20 boards do not equate to government speech”).⁶

21
22
23 Then, on February 1, 2023, one day after the Clovis administrators approved
24 Plaintiff Juliette Colunga’s request to post dozens of flyers with unique designs on the
25 indoor bulletin boards, Defendants amended the Replacement Policy to limit the
26

27 ⁶ Plaintiffs’ counsel raised concerns about this provision with Defendants’ counsel immediately
28 after it went into effect. Ortner Decl ¶ 13. But the language nevertheless remained in the Replacement
Policy posted on Clovis’s website even after subsequent updates on February 1, 2023. *Id.* ¶ 14.

1 number of flyers per student group to just two flyers per event. *Id.* ¶ 9.⁷ The repeated
2 policy amendments and continuing lack of clarity from Clovis administrators has left
3 Plaintiffs uncertain about what is permissible, resulting in the confusion and chill on
4 speech that this Court warned of.

5
6 Granting a stay of discovery will punish Plaintiffs for successfully seeking a
7 preliminary injunction to prevent enforcement of a viewpoint-discriminatory policy. A
8 preliminary injunction “is not a preliminary adjudication on the merits but rather a
9 device for preserving the status quo and preventing the irreparable loss of rights
10 before judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422
11 (9th Cir. 1984). Defendants’ meritless appeal, which could take a year or more to
12 adjudicate,⁸ cannot outweigh the ongoing chill on Plaintiffs’ exercise of their First
13 Amendment rights.

14
15 A stay of the preliminary injunction would similarly cause substantial injury to
16 the Plaintiffs as it would allow Defendants to once again impose an unlawful Flyer
17 Policy that is viewpoint based, overbroad, and void for vagueness—resulting in further
18 chilling Plaintiffs’ speech. This factor therefore decidedly tips against a stay of the
19 preliminary injunction.
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25
26 ⁷ The next day, Plaintiffs’ counsel alerted Defendants’ counsel that this change could be seen as
27 directly targeting Plaintiffs for their First Amendment activity. Ortnier Decl ¶ 16. Shortly thereafter,
28 the Replacement Policy was removed from Clovis’s website. *Id.*

⁸ Ninth Circuit Practice Guide at 19 (“The Court has no time limit, but most cases are decided within 3 months to a year”).

1 **IV. The Public Interest Favors Vindicating Constitutional Claims**
2 **Efficiently and Expeditiously.**

3 As to the fourth factor, the public interest lies with a “speedy and effective”
4 adjudication, and the issuance of a permanent injunction. *In re Petrobras Sec. Litig.*,
5 193 F. Supp. 3d 313, 318 (S.D.N.Y. 2016). The Ninth Circuit has “consistently
6 recognized the significant public interest in upholding First Amendment principles”
7 and enjoining unconstitutional regulatory schemes. *Cal. Chamber of Com. v. Council*
8 *for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) (citing *Harris*, 772 F.3d
9 at 583). Plaintiffs, Clovis students, and the public at large have an acute interest in
10 knowing whether Clovis will employ viewpoint-discriminatory criteria to remove
11 student flyers that college officials deem “inappropriate or offens[ive].”

12
13
14 Judicial economy, too, favors allowing Plaintiffs’ case to proceed. *In re Kemble*,
15 776 F.2d 802, 807 (9th Cir. 1985) (noting that “[m]any cases have held that a district
16 court may properly consider the factor of judicial economy in deciding whether to lift
17 an automatic stay” and concluding that the trial court’s “decision to lift a stay could
18 be upheld on this ground alone”).

19
20 Defendants argue that a stay will free up this Court’s resources, “but that is true
21 of every case,” *Glatt v. Fox Searchlight Pictures Inc.*, No. 11–Civ–6784 (WHP), 2013
22 WL 5405696, at *4 (S.D.N.Y. Sep. 17, 2013), and does not justify a stay absent an
23 articulation of “hardship with sufficient particularity,” *Greer v. Dick’s Sporting Goods,*
24 *Inc.*, No. 215CV01063KJMCKD, 2018 WL 372753, at *4 (E.D. Cal. Jan. 10, 2018).
25 Here, in fact, a stay “may not result in the conservation of judicial resources” because
26 Defendants do not have a strong likelihood of success on appeal. *Bradberry v. T-Mobile*
27

1 *USA, Inc.*, No. C 06 6567 CW, 2007 WL 2221076, at *5 (N.D. Cal. Aug. 2, 2007)
2 (holding that conservation of judicial resources was unlikely in a case where the
3 appellate argument was weak and contrary to precedent and there were alternative
4 grounds for affirmative). Because Defendants do not have a strong likelihood of
5 success on appeal, a stay may not result in the conservation of judicial resources.
6 Therefore, the public interest in judicial economy does not strongly favor granting a
7 stay. Rather, the public interest is more likely to be served by the speedy and effective
8 administration of justice, not least in cases of such obvious public interest as this one.
9

10
11 Defendants only argument for why a stay will conserve judicial resources—that
12 the Ninth Circuit’s decision will be “determinative of the case”—is plainly incorrect.
13 Mot. to Stay at 3. Success for Plaintiffs on appeal will further establish that they are
14 likely to prevail on the merits. And even if the Ninth Circuit reverses this Court’s
15 opinion in material respects, discovery conducted in the meantime will support the
16 Court’s efficient fact-finding and adjudication of the case in line with the Ninth
17 Circuit’s ruling, as well as helping to resolve the Plaintiffs as-applied and damages
18 claims.
19

20 Simply put, there is no reason to keep this case in limbo or stay the injunction.
21 The parties can engage in productive discovery while Defendants’ appeal is pending.
22 Defendants offer no meaningful justification for staying discovery or the injunction,
23 and a stay will result only in substantial injury to the Plaintiffs and the public
24 interest. Defendants’ motion should be denied.
25
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28

1 CONCLUSION

2 Every factor weighs against staying the District Court proceedings in this case
3 or the preliminary injunction. Defendants cannot show that they are likely to succeed
4 on the merits of their appeal, as principally evidenced by this Court’s preliminary
5 injunction decision. Defendants have also failed to identify a cognizable and probable
6 irreparable harm in the absence of a stay. However, a stay will cause substantial
7 injury to Plaintiffs. And the public interest in determining a rule’s constitutionality
8 and the efficient adjudication of court proceedings also favors denying Defendants’
9 request for a stay. Defendants should not be permitted to further delay Plaintiffs’
10 ability to vindicate their constitutional rights or reinstate the policy that violated
11 those rights. Accordingly, Defendants’ motion to stay discovery and to stay the
12 preliminary injunction should be denied.
13
14

15 DATED: May 5, 2023

16 Respectfully submitted,

17 /s/ Daniel M. Ortner

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CERTIFICATE OF SERVICE

I, Daniel M. Ortner, hereby certify that on May 5, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court’s electronic filing system to all parties indicated below and parties may access this filing through the Court’s electronic filing system.

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**Pro Hac Vice*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

ALEJANDRO FLORES, ET AL.,

Plaintiffs,

v.

DR. LORI BENNETT, ET AL.,

Defendants.

Civil Action No.
1:22-cv-01003-JLT-HBK

**DECLARATION OF
JULIETTE COLUNGA IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO STAY DISCOVERY**

Pursuant to 28 U.S.C. § 1746(2), I, Juliette Colunga, declare the following:

1. I am a Plaintiff-Appellee in the above-captioned case and a resident of the State of California. I am over eighteen (18) years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in support of Plaintiffs' Opposition to Defendants' Motion to Stay Discovery. If called as a

witness, I believe I could and would testify competently under oath to the following facts, which are based on my personal knowledge.

2. I am a student at Clovis Community College (“Clovis”) and the current President of the Clovis Community College Chapter of Young Americans for Freedom (“YAF-Clovis”).

3. Before October 14, 2022, the Club Handbook page of the Clovis website contained the text of the former Flyer Policy that was the subject of the District Court’s October 14, 2022 preliminary injunction. A true and accurate copy of the Club Handbook page as it appeared before October 14, 2022, is attached to this declaration as Exhibit A.

4. On Friday, October 14, 2022, at 9:54 pm, Defendant-Appellant Dean Gurdeep Hébert sent an email to YAF-Clovis faculty advisor Jennifer Hanson and other Clovis student club advisors, sharing Clovis’s “updated Posting Guidelines.” A true and accurate copy of Dean Hébert’s October 14, 2022 email is attached to this declaration as Exhibit B.

5. Dean Hébert advised in her email that “the attached Posting Guidelines and Process for Campus Postings go into effect today, October 14, 2022.”

6. Dean Hébert attached to her email a Word document entitled “CCC Posting Guidelines Effective October 14.” A true and accurate copy of the posting guidelines (the “Replacement Policy”) is attached to this declaration as Exhibit C.

7. On October 18, 2022, the guidelines attached to Dean Hébert's October 14 email were posted to the Club Handbook page of the Clovis website. A true and accurate copy of the Club Handbook page as it appeared after the October 18, 2022 amendment is attached to this declaration as Exhibit D.

8. On Friday, January 27, I submitted approximately 90 flyers advertising a school-approved speaker event to the Clovis Student Center for approval. I created 6 different flyer designs and, consistent with the rules of the posting guidelines then in place, I submitted no more than 15 copies of each. I received approval to post them on January 31, 2023.

9. On February 2, 2023, I visited the Club Handbook page of the Clovis website and read that the guidelines for posting flyers had been amended as of February 1, 2023. A true and accurate copy of the Club Handbook page as it appeared on February 2, 2023, is attached to this declaration as Exhibit E.

10. The February 1, 2023 amendments to the posting guidelines reduced the number of flyers student groups are allowed to post at the same time from "up to 15 copies" with "[n]o more than two copies" on each bulletin board" to "1 copy per board," with "[n]o more than two copies of the same event" on each board, and prohibited students from posting flyers on any bulletin board that has not been specifically designated for student club use.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5 day of May, 2023.

A handwritten signature in cursive script, appearing to read "Juliette Colunga", written over a horizontal line.

Juliette Colunga

Flores, et al. v. Bennett, et al.

**Exhibit A to
Declaration of Juliette Colunga**

The Wayback Machine - <https://web.archive.org/web/20220929214818/https://www.cloviscollege.edu/campus-life/clu...>



Club Handbook

What is a Club and how do I start one?

Clubs are student organizations that are formed to develop students' interests and provide community on campus and beyond.

Requirements for Clubs to officially organize:

- Have a full-time faculty advisor.
- Include at least five Clovis Community College students.
- Have a Constitution on file with Student Activities.
- Hold meetings on a regular basis (at least one club advisor must be present).
- Attend Inter-Club Council Meetings.

Please consult with Student Activities (AC1-160) or email

patrick.stumpf@cloviscollege.edu

(<https://web.archive.org/web/20220929214818/mailto:patrick.stumpf@cloviscollege.edu>) if

you have questions or are struggling to meet these requirements.

Active vs Inactive Clubs

ACTIVE CLUBS

Active Clubs are clubs that are currently meeting, have a current advisor and attend I.C.C. Meetings.

Active Clubs will need to turn in (to Student Activities) the following paperwork:

- Advisor Acceptance Form (once per year)
- List of Club Members (once per semester)

Please visit our website for these documents: [cloviscollege.edu/campus-life/clubs-organizations \(index.html\)](https://cloviscollege.edu/campus-life/clubs-organizations/index.html)

Please email patrick.stumpf@cloviscollege.edu (<https://web.archive.org/web/20220929214818/mailto:patrick.stumpf@cloviscollege.edu>) if you have trouble accessing or have questions.

INACTIVE CLUBS

Inactive Clubs have a constitution and have been active in the past. They can become active by turning in the documentation above.

Inter-Club Council

PURPOSE

I.C.C. meetings are to take place no less than twice per month and will be chaired by the I.C.C. President (a member of the ASG). Clubs may bring up topics of concern, propose an event, etc. at this meeting. Each club is required to send a representative to this meeting (the representative can be a student or advisor). Meeting days, and times will be set by the ASG in consultation with Student Activities.

Failure to attend I.C.C. Meetings will result in the suspension of all club activities. According to the A.S.G. Bylaws:

- 2.4.2 Any club without a representative present at two (2) consecutive meetings of the ICC will automatically be subject to a written warning from the Chair of the ICC.

Absence from three (3) consecutive meetings per semester or a total of four (4) meetings per semester will result in the club automatically being placed on probation. Absence from six (6) meetings may result in suspension.

- 2.4.2.1 The suspension of a club or student organization that is in violation of the provisions of these Bylaws may be lifted by a complex majority vote of the present eligible members of the Student Senate.

For questions, or if a club is having difficulty attending, contact

patrick.stumpf@cloviscollege.edu

(<https://web.archive.org/web/20220929214818/mailto:patrick.stumpf@cloviscollege.edu>).

Setting up an Event

When setting up a club event, it is best that the club consults with Student Activities. The club should go through these processes:

- Talk about the event in your meeting and agree as a club to hold the event.
- Get the approval of your advisor.
- Consult Student Activities to make sure the event is feasible.
- Submit a Facilities request for the event through the Student Activities Office.
- See financial processes (last section) if purchasing items for the event.
- Clubs are responsible to staff the event at all times. Clubs are also responsible for ensuring that all materials are taken down after the event.

At the end of the event, debrief amongst your club and determine what worked and what did not.

Advertising

Clubs may advertise on campus and via social media. Clubs must follow the established Posting Guidelines as set by Student Activities.

POSTING INSTRUCTIONS

Here are the posting guidelines (revised in September 2018):

- Groups/individuals/clubs can post up to 25 posters.

- Posters are to be posted on appropriate indoor poster boards with 3-4 tacks (two at the top corners of the poster and one to two at the bottom).
- Posters can also be posted on permitted outside kiosks.
- Posters should never overlap one another and should be posted at least two to three finger lengths across.
- Posters need to be in a straight and upright position.

POSTING INFORMATION

- All posters not bearing the Clovis Community Logo or in the provided Clovis Community College Template (i.e. posters not from a College Department or Division) must be approved and stamped by the Clovis Community College Student Center Staff. Failure to do so will result in unapproved/unstamped flyers being removed and thrown away.
- Posters with inappropriate or offensive language or themes are not permitted and will not be approved.
- Posters posted anywhere other than designated areas will be removed.
- Posters with unapproved (post-approval) writing will be removed.
- Damaged posters will be removed.

SOCIAL MEDIA POSTING:

Social Media posting/advertising must be conducted in consultation with the full-time faculty advisor. The full-time faculty advisor must approve each posting before it is posted. Any posts deemed inappropriate by Student Activities, the College Administration, etc. will result in the club being asked to take down the post. Failure to do so could result in the suspension of club social media privileges and/or other club privileges for a period of time determined by Student Activities/The College Administration.

Fundraising

FINANCIAL PROCESSES FOR STUDENT ORGANIZATIONS

Before the Fundraiser

1. Discuss potential fundraising events/activities during a general club meeting at least a month in advance of the planned activity. Club members must vote on and pass the motion to hold a fundraiser. Record of voting to be documented in the club's meeting minutes.

2. Contact the ASG Vice President in order to have your fundraiser to be placed on the ASG agenda. Attend the ASG meeting in which the approval of your fundraiser will be voted on. The ASG minutes in which the fundraiser was approved must be submitted with the fundraising event request form!
3. Obtain a Fundraising Event Request Form and Revenue Recap/Potential form from The Student Activities Office or the Business Services Office.
4. Attach the following documentation to The Fundraising Event Request form:
 - a. Copy of Revenue Recap/Potential Form
 - b. Copy of club meeting minutes and ASG minutes
 - c. Copy of facility use permit (if the event is being held on campus)
 - d. Itemized list of what is being sold and the price it's being sold for
5. Submit the Fundraising Event Request to The Student Activities Office: Required signatures
 - a. Club Advisor
 - b. Dean or Students/Instruction
 - c. Vice President of Admin Services
6. Make photocopies of signed documentation for your records. Student Activities will submit the approved Fundraising Request to Business Office.
7. Request petty cash or money for supplies if needed (see Activities Office).

Completed fundraising event requests must be received by the business office 30 days in advanced

Day of the Fundraiser

1. Pick up the cash box in the Business Services Office
2. Record how much is sold of each item that the club is selling on the **Fundraising Sales Record Form/Talley Sheet**

After the Fundraiser

1. Record on the white copy of the Revenue Recap/Potential Form any monies received.
2. If totals at end of the fundraiser are recorded as a loss (no money was made or less money was made than originally projected), make note of why (i.e.-sodas sold at 50% off at the end of the fundraiser, not all product was sold, the club will keep for a future fundraiser, etc).

3. Make a copy of the Fundraising Sales Record/Talley sheet form for your records and attach the original to the Revenue Recap/Potential form.
4. **Deposit all money immediately** at Admissions and Records. If the fundraiser is taking place outside of regular business hours (8:00 am-5:00 pm), monies should be taken to the office of the Evening Coordinator (Maya Davis) prior to leaving campus. They keep the white copy, you will keep the yellow copy for your records.

All food fundraisers must follow Fresno County health rules and regulations and must be approved by the Crush Cafe

GENERAL CASH HANDLING CHECKLIST

1. All district or student body fundraisers must have prior approval from the Administration and Associated Student Government.
2. Cash or checks collected from fundraisers, book sales, or any other school-related activity must not be deposited into personal checking accounts. All funds must be promptly deposited into the campus safe pending preparation of the deposit into the club account.
3. The fund must remain on district property.
4. **Raffles, lotteries, or games of chance are in violation of Penal Code 326.5.**
5. It is necessary to notify the ASG and the ASG advisor when donations are made to a club or the campus by any entity.
6. All requests for reimbursement of expenses must be accompanied by an original receipt.
7. All club purchases must have prior authorization by the ASG, advisor, and Dean of Students.
8. Outside organization funds should not be held on the campus site or any district property.
9. Outside organizations are responsible for collecting and depositing any funds related to their sponsored events. ASG personnel should not do bookkeeping or act as an office for outside organizations.
10. **Whenever money changes hands, a receipt must be given (in the case of a sale, the exchange must be recorded on a tally sheet).**

PROCEDURES FOR OBTAINING A CHECK OR REFUND REQUEST

The general procedure for obtaining a check or refund payment is as follows:

1. Approve the expenditure in a club meeting first.

2. Submit a request for a Purchase order with the following documentation:
 - a. Minutes in which the club approved the expenditure
 - b. A quote for the product being purchased.
 - c. Once a purchase order number is created, receive goods and turn in receipts to the Business Office (or Activities)

3. To submit a Reimbursement submit:
 - a. Check Request
 - b. Attach minutes in which the expenditure was approved by the club (BEFORE purchase)
 - c. Itemized Receipts

Any Questions? Contact Patrick Stumpf at patrick.stumpf@cloviscollege.edu
(<https://web.archive.org/web/20220929214818/mailto:patrick.stumpf@cloviscollege.edu>)

The provisions in this Handbook are subject to change at the discretion of Student Activities.

Download a PDF version of the Club Handbook
([/web/20220929214818/https://www.cloviscollege.edu/_uploaded-files/_documents/campus-life/ccc-club-handbook.pdf](https://web/20220929214818/https://www.cloviscollege.edu/_uploaded-files/_documents/campus-life/ccc-club-handbook.pdf))

Flores, et al. v. Bennett, et al.

**Exhibit B to
Declaration of Juliette Colunga**



Juliette Colunga <colungajuliette@gmail.com>

Fw: Updated Posting Guidelines and upcoming events

Jennifer Heyne <jennifer.heyne@cloviscollege.edu>
To: Juliette Colunga <colungajuliette@gmail.com>

Sat, Oct 15, 2022 at 6:13 PM

Hi Juliette, they wrote up new guidelines which are attached. I guess you gave our dean something to do. Jennifer

From: Gurdeep Hebert <gurdeep.hebert@cloviscollege.edu>

Sent: Friday, October 14, 2022 9:54 PM

To: Tabatha Stewart <tabatha.stewart@cloviscollege.edu>; Cody Hoover <cody.hoover@cloviscollege.edu>; William Kerney <william.kerney@cloviscollege.edu>; Diane Schoenburg <diane.schoenburg@cloviscollege.edu>; Michelle Selvans <michelle.selvans@cloviscollege.edu>; Amy Danowitz <amy.danowitz@cloviscollege.edu>; Michael Stannard <michael.stannard@cloviscollege.edu>; Nathan Wensko <nathan.wensko@cloviscollege.edu>; Daniel Gutierrez <daniel.gutierrez@cloviscollege.edu>; Carla Stoner-Brito <carla.stoner-brito@cloviscollege.edu>; Nancy Chavero <nancy.chavero@cloviscollege.edu>; Shilpa Ranganathan <shilpa.ranganathan@cloviscollege.edu>; Shawn Fleming <shawn.fleming@cloviscollege.edu>; Colleen Brannon <colleen.brannon@cloviscollege.edu>; Anna Martinez <anna.martinez@cloviscollege.edu>; Gurinder Khaira <gurinder.khaira@cloviscollege.edu>; Jennifer Heyne <jennifer.heyne@cloviscollege.edu>; Rebekah Villalta <rebekah.villalta@cloviscollege.edu>; Jared Rutledge <jared.rutledge@cloviscollege.edu>

Cc: Patrick Stumpf <patrick.stumpf@cloviscollege.edu>; Siena Flores <siena.flores@cloviscollege.edu>; Emalee Aguilar <emalee.aguilar@cloviscollege.edu>

Subject: Updated Posting Guidelines and upcoming events

Hi there Club Advisors!

Hope you are doing well. It has certainly been a very busy semester however it is really nice seeing so many students back on campus. I am reaching out to you so I can share our updated Posting Guidelines and to give you an update on several upcoming events. Please note that the attached Guidelines and Process for Campus Postings go into effect today, October 14, 2022.

Many of you have already heard that we lost a very dear member of our Crush family. Professor Adela Santana was a full-time Anthropology instructor and an advisor to our Muslim Student Association (MSA). On Monday, Oct 17th, the MSA and ASG will hold a candlelight vigil in memory of Adela. The vigil will be held in front of the Café and will begin at 6pm. Please join us as we honor Adela.

Our Annual RocktoberFest will take place next Thursday so please make sure your club has connected with Student Activities to be a part of the festivities.

And lastly, our Women's Soccer team will go up against Fresno City College next Friday. This is the big game and our student athletes need your support. We will have giveaways, food, and fun. Please encourage your clubs to come out and support the team.

Thank you again for serving as advisors. We truly appreciate the time and support that you provide to our student clubs.

Gurdeep

Gurdeep Hébert (she/her)

Dean, Student Services

Clovis Community College

10309 N. Willow Avenue

Fresno, CA 93730

559-325-5378 office

559-307-5499 cell



Creating Opportunities...One Student at a Time



2 attachments



Black Candle Photocentric Deep Condolences Instagram Post (3).png
3243K

 **CCC Posting Guidelines Effective October 14, 2022.DOCX**
32K

Flores, et al. v. Bennett, et al.

**Exhibit C to
Declaration of Juliette Colunga**

Clovis Community College

Guidelines and Process for Campus Postings

Clovis Community College encourages recognized student organizations and College programs and departments to share information about their programs, services, events, student clubs, classes, and more. The Student Activities Office is responsible for stamping and dating materials from recognized student organizations before they are posted inside the campus buildings. When stamped and dated, the postings placed on the bulletin boards become official college announcements. The college has developed a set of guidelines to help govern the placement of posters to ensure that we have a welcoming and safe environment. The following guidelines will assist your recognized student organization with publicizing your program, service, or event. Please remember, these guidelines are intended to:

- Facilitate greater campus community engagement and better communication of campus events.
- Keep the college's buildings clean and in good condition.
- Ensure consistency with college standards for publications.
- Comply with relevant college policies and procedures.

Speech Kiosks

The College has designated two kiosks as a public forum for free speech. Any person may post on the exterior kiosks any material except that which is defamatory, which is obscene according to current legal standards, which so incites others as to create a clear and present danger of the commission of unlawful acts on district property, which violates district policies or regulations, or which leads to the substantial disruption of the orderly operation of the District. The kiosks do not require prior approval before expressive material is posted. Posted material on the free speech kiosks may remain posted for ten days or until after the date of the event to which they relate. The College's exterior walls, fences, and other surfaces on campus are not forums for posting expressive material and the College regulates posting on those surfaces. The College will remove any material posted on the College's exterior walls, fences, and other surfaces.

Posting Guidelines for College Interior Walls

- All posters must be stamped and dated prior to posting on the designated interior bulletin boards.
- All postings on interior bulletin boards must relate to recognized student organizations, College departments, or College programs.
- Recognized student organizations may post 15 copies of a poster. No more than two copies of a poster may be posted on each bulletin board.
- Poster must not exceed 8 ½" x 14" in size.
- Posting in classrooms is limited to College, College department, or College program events and announcements. Recognized student organizations, or third parties are not permitted to post inside classrooms.
- Posted information must clearly indicate the full name of the recognized student organization and the date and location of the any event to which the poster relates.

- College name and logo cannot be used without prior campus approval. If logo is used without permission posters will be removed.

Obtaining Student Activities Office Stamp

- All posters must be presented to Student Activities located in the Student Center (AC1-160) or emailed to cccstudentcenter@cloviscollege.edu.
- Student Activities Staff will respond as soon as possible, but please allow three business days for designated Student Activities staff to respond to all requests whether in person or by email.
- Student Activities staff will place the Student Activities Office stamp on all posters and will date the poster.
- Posters may be posted for ten days after date stamped, or until after the event to which they relate, and then removed in accordance with Administrative Regulation 3900.
- Posters may only be posted on designated bulletin boards.
- The Student Activities Office will make and keep one copy of each poster.
- The Student Activities Office cannot photocopy posters to be posted. The Recognized student organization must bring the appropriate number of copies at the time of stamping and dating. Each copy will be stamped, no copies of the stamp are allowed.
- Posters in languages other than English, must be accompanied by an English translation of the poster when the Student Activities Office stamps and dates the poster.

Questions, comments, or concerns may be addressed in the Student Activities Office, which is in Academic Center One, Room 160 (Student Center).

Flores, et al. v. Bennett, et al.

**Exhibit D to
Declaration of Juliette Colunga**

The Wayback Machine - <https://web.archive.org/web/20221216170523/https://www.cloviscollege.edu/campus-life/clu...>



Club Handbook

What is a Club and how do I start one?

Clubs are student organizations that are formed to develop students' interests and provide community on campus and beyond.

Requirements for Clubs to officially organize:

- Have a full-time faculty advisor.
- Include at least five Clovis Community College students.
- Have a Constitution on file with Student Activities.
- Hold meetings on a regular basis (at least one club advisor must be present).
- Attend Inter-Club Council Meetings.

Please consultate with Student Activities (AC1-160) or email

patrick.stumpf@cloviscollege.edu

(<https://web.archive.org/web/20221216170523/mailto:patrick.stumpf@cloviscollege.edu>) if you have questions or are struggling to meet these requirements.

Active vs Inactive Clubs

ACTIVE CLUBS

Active Clubs are clubs that are currently meeting, have a current advisor and attend I.C.C. Meetings.

Active Clubs will need to turn in (to Student Activities) the following paperwork:

- Advisor Acceptance Form (once per year)
- List of Club Members (once per semester)

Please visit our website for these documents: [cloviscollege.edu/campus-life/clubs-organizations \(index.html\)](https://cloviscollege.edu/campus-life/clubs-organizations/index.html)

Please email patrick.stumpf@cloviscollege.edu (<https://web.archive.org/web/20221216170523/mailto:patrick.stumpf@cloviscollege.edu>) if you have trouble accessing or have questions.

INACTIVE CLUBS

Inactive Clubs have a constitution and have been active in the past. They can become active by turning in the documentation above.

Inter-Club Council

PURPOSE

The Inter-Club Council is a meeting/forum for each of the clubs to communicate/collaborate with other clubs on campus, as well as the ASG and Student Activities.

I.C.C. meetings are to take place no less than twice per month and will be chaired by the I.C.C. President (a member of the ASG). Clubs may bring up topics of concern, propose an event, etc. at this meeting. Each club is required to send a representative to this meeting (the representative can be a student or advisor). Meeting days, and times will be set by the ASG in consultation with Student Activities.

Failure to attend I.C.C. Meetings will result in the suspension of all club activities. According to the A.S.G. Bylaws:

- 2.4.2 Any club without a representative present at two (2) consecutive meetings of the ICC will automatically be subject to a written warning from the Chair of the ICC. Absence from three (3) consecutive meetings per semester or a total of four (4) meetings per semester will result in the club automatically being placed on probation. Absence from six (6) meetings may result in suspension.
- 2.4.2.1 The suspension of a club or student organization that is in violation of the provisions of these Bylaws may be lifted by a complex majority vote of the present eligible members of the Student Senate.

For questions, or if a club is having difficulty attending, contact

patrick.stumpf@cloviscollege.edu

(<https://web.archive.org/web/20221216170523/mailto:patrick.stumpf@cloviscollege.edu>).

Setting up an Event

When setting up a club event, it is best that the club consults with Student Activities. The club should go through these processes:

- Talk about the event in your meeting and agree as a club to hold the event.
- Get the approval of your advisor.
- Consult Student Activities to make sure the event is feasible.
- Submit a Facilities request for the event through the Student Activities Office.
- See financial processes (last section) if purchasing items for the event.
- Clubs are responsible to staff the event at all times. Clubs are also responsible for ensuring that all materials are taken down after the event.

At the end of the event, debrief amongst your club and determine what worked and what did not.

Advertising

Clubs may advertise on campus and via social media. Clubs must follow the established Posting Guidelines as set by Student Activities.

POSTING INSTRUCTIONS

Here are the posting guidelines (revised on October 18, 2022):

Clovis Community College encourages recognized student organizations and College programs and departments to share information about their programs, services, events, student clubs, classes, and more. The Student Activities Office is responsible for stamping and dating materials from recognized student organizations before they are posted inside the campus buildings. When stamped and dated, the postings placed on the bulletin boards become official college announcements. The college has developed a set of guidelines to help govern the placement of posters to ensure that we have a welcoming and safe environment. The following guidelines will assist your recognized student organization with publicizing your program, service, or event. Please remember, these guidelines are intended to:

- Facilitate greater campus community engagement and better communication of campus events.
- Keep the college's buildings clean and in good condition.
- Posters can also be posted on permitted outside kiosks.
- Ensure consistency with college standards for publications.
- Comply with relevant college policies and procedures.

SPEECH KIOSKS

The College has designated two kiosks as a public forum for free speech. Any person may post on the exterior kiosks any material except that which is defamatory, which is obscene according to current legal standards, which so incites others as to create a clear and present danger of the commission of unlawful acts on district property, which violates district policies or regulations, or which leads to the substantial disruption of the orderly operation of the District. The kiosks do not require prior approval before expressive material is posted. Posted material on the free speech kiosks may remain posted for ten days or until after the date of the event to which they relate. The College's exterior walls,

fences, and other surfaces on campus are not forums for posting expressive material and the College regulates posting on those surfaces. The College will remove any material posted on the College's exterior walls, fences, and other surfaces.

POSTING GUIDELINES FOR COLLEGE INTERIOR WALLS

- All posters must be stamped and dated prior to posting on the designated interior bulletin boards.
- All postings on interior bulletin boards must relate to recognized student organizations, College departments, or College programs.
- Recognized student organizations may post 15 copies of a poster. No more than two copies of a poster may be posted on each bulletin board.
- Poster must not exceed 8 ½" x 14" in size.
- Posting in classrooms is limited to College, College department, or College program events and announcements. Recognized student organizations, or third parties are not permitted to post inside classrooms.
- Posted information must clearly indicate the full name of the recognized student organization and the date and location of the any event to which the poster relates.
- College name and logo cannot be used without prior campus approval. If logo is used without permission posters will be removed.

OBTAINING STUDENT ACTIVITIES OFFICE STAMP

- All posters must be presented to Student Activities located in the Student Center (AC1-160) or emailed to ccstudentcenter@cloviscollege.edu.
- Student Activities Staff will respond as soon as possible, but please allow three business days for designated Student Activities staff to respond to all requests whether in person or by email.
- Student Activities staff will place the Student Activities Office stamp on all posters and will date the poster.
- Posters may be posted for ten days after date stamped, or until after the event to which they relate, and then removed in accordance with Administrative Regulation 3900.
- Posters may only be posted on designated bulletin boards.
- The Student Activities Office will make and keep one copy of each poster.
- The Student Activities Office cannot photocopy posters to be posted. The Recognized student organization must bring the appropriate number of copies at the time of

stamping and dating. Each copy will be stamped, no copies of the stamp are allowed.

- Posters in languages other than English, must be accompanied by an English translation of the poster when the Student Activities Office stamps and dates the poster.

Questions, comments, or concerns may be addressed in the Student Activities Office, which is in Academic Center One, Room 160 (Student Center).

SOCIAL MEDIA POSTING:

Social Media posting/advertising must be conducted in consultation with the full-time faculty advisor. The full-time faculty advisor must approve each posting before it is posted. Any posts deemed inappropriate by Student Activities, the College Administration, etc. will result in the club being asked to take down the post. Failure to do so could result in the suspension of club social media privileges and/or other club privileges for a period of time determined by Student Activities/The College Administration.

Fundraising

FINANCIAL PROCESSES FOR STUDENT ORGANIZATIONS

Before the Fundraiser

1. Discuss potential fundraising events/activities during a general club meeting at least a month in advance of the planned activity. Club members must vote on and pass the motion to hold a fundraiser. Record of voting to be documented in the club's meeting minutes.
2. Contact the ASG Vice President in order to have your fundraiser to be placed on the ASG agenda. Attend the ASG meeting in which the approval of your fundraiser will be voted on. The ASG minutes in which the fundraiser was approved must be submitted with the fundraising event request form!
3. Obtain a Fundraising Event Request Form and Revenue Recap/Potential form from The Student Activities Office or the Business Services Office.
4. Attach the following documentation to The Fundraising Event Request form:
 - a. Copy of Revenue Recap/Potential Form
 - b. Copy of club meeting minutes and ASG minutes
 - c. Copy of facility use permit (if the event is being held on campus)
 - d. Itemized list of what is being sold and the price it's being sold for

5. Submit the Fundraising Event Request to The Student Activities Office: Required signatures
 - a. Club Advisor
 - b. Dean or Students/Instruction
 - c. Vice President of Admin Services
6. Make photocopies of signed documentation for your records. Student Activities will submit the approved Fundraising Request to Business Office.
7. Request petty cash or money for supplies if needed (see Activities Office).

Completed fundraising event requests must be received by the business office 30 days in advanced

Day of the Fundraiser

1. Pick up the cash box in the Business Services Office
2. Record how much is sold of each item that the club is selling on the **Fundraising Sales Record Form/Talley Sheet**

After the Fundraiser

1. Record on the white copy of the Revenue Recap/Potential Form any monies received.
2. If totals at end of the fundraiser are recorded as a loss (no money was made or less money was made than originally projected), make note of why (i.e.-sodas sold at 50% off at the end of the fundraiser, not all product was sold, the club will keep for a future fundraiser, etc).
3. Make a copy of the Fundraising Sales Record/Talley sheet form for your records and attach the original to the Revenue Recap/Potential form.
4. **Deposit all money immediately** at Admissions and Records. If the fundraiser is taking place outside of regular business hours (8:00 am-5:00 pm), monies should be taken to the office of the Evening Coordinator (Maya Davis) prior to leaving campus. They keep the white copy, you will keep the yellow copy for your records.

All food fundraisers must follow Fresno County health rules and regulations and must be approved by the Crush Cafe

GENERAL CASH HANDLING CHECKLIST

1. All district or student body fundraisers must have prior approval from the Administration and Associated Student Government.
2. Cash or checks collected from fundraisers, book sales, or any other school-related activity must not be deposited into personal checking accounts. All funds must be promptly deposited into the campus safe pending preparation of the deposit into the club account.
3. The fund must remain on district property.
4. **Raffles, lotteries, or games of chance are in violation of Penal Code 326.5.**
5. It is necessary to notify the ASG and the ASG advisor when donations are made to a club or the campus by any entity.
6. All requests for reimbursement of expenses must be accompanied by an original receipt.
7. All club purchases must have prior authorization by the ASG, advisor, and Dean of Students.
8. Outside organization funds should not be held on the campus site or any district property.
9. Outside organizations are responsible for collecting and depositing any funds related to their sponsored events. ASG personnel should not do bookkeeping or act as an office for outside organizations.
10. **Whenever money changes hands, a receipt must be given (in the case of a sale, the exchange must be recorded on a tally sheet).**

PROCEDURES FOR OBTAINING A CHECK OR REFUND REQUEST

The general procedure for obtaining a check or refund payment is as follows:

1. Approve the expenditure in a club meeting first.
2. Submit a request for a Purchase order with the following documentation:
 - a. Minutes in which the club approved the expenditure
 - b. A quote for the product being purchased.
 - c. Once a purchase order number is created, receive goods and turn in receipts to the Business Office (or Activities)
3. To submit a Reimbursement submit:

- a. Check Request
- b. Attach minutes in which the expenditure was approved by the club (BEFORE purchase)
- c. Itemized Receipts

Any Questions? Contact Patrick Stumpf at patrick.stumpf@cloviscollege.edu
(<https://web.archive.org/web/20221216170523/mailto:patrick.stumpf@cloviscollege.edu>)

The provisions in this Handbook are subject to change at the discretion of Student Activities.

Flores, et al. v. Bennett, et al.

**Exhibit E to
Declaration of Juliette Colunga**

The Wayback Machine - <https://web.archive.org/web/20230202203107/https://www.cloviscollege.edu/campus-life/clubs-organi..>



Club Handbook

WHAT IS A CLUB AND HOW DO I START ONE?

Clubs are student organizations that are formed to develop students' interests and provide community on campus and beyond.

Requirements for Clubs to officially organize:

- Have a full-time faculty advisor.
- Include at least five Clovis Community College students.
- Have a Constitution on file with Student Activities.
- Hold meetings regularly (at least one club advisor must be present).
- Attend Inter-Club Council Meetings.

Please consultate with Student Activities (AC1-160) or email ASG Advisor Maricarmen

Figueroa maricarmen.figueroa@cloviscollege.edu

(<https://web.archive.org/web/20230202203107/mailto:maricarmen.figueroa@cloviscollege.edu>) if you have questions or are struggling to meet these requirements.

ACTIVE VS INACTIVE CLUBS

Active Clubs

Active Clubs are clubs that are currently meeting, have a current advisor and attend I.C.C. Meetings.

Active Clubs will need to turn in (to Student Activities) the following paperwork:

- Advisor Acceptance Form (once per year)
- List of Club Members (once per semester)

Please visit our website for these documents: cloviscollege.edu/campus-life/clubs-organizations/index.html

Please email maricarmen.figueroa@cloviscollege.edu (<https://web.archive.org/web/20230202203107/mailto:maricarmen.figueroa@cloviscollege.edu>) if you have trouble accessing or have questions.

Inactive Clubs

Inactive Clubs have a constitution and have been active in the past. They can become active by turning in the documentation above.

INTER-CLUB COUNCIL

Purpose

The Inter-Club Council is a meeting/forum for each of the clubs to communicate/collaborate with other clubs on campus, as well as the ASG and Student Activities.

I.C.C. meetings are to take place no less than twice per month and will be chaired by the I.C.C. President (a member of the ASG). Clubs may bring up topics of concern, propose an event, etc. at this meeting. Each club is required to send a representative to this meeting (the representative can be a student or advisor). Meeting days, and times will be set by the ASG in consultation with Student Activities.

Failure to attend I.C.C. Meetings will result in the suspension of all club activities. According to the A.S.G. Bylaws:

- 2.4.2 Any club without a representative present at two (2) consecutive meetings of the ICC will automatically be subject to a written warning from the Chair of the ICC. Absence from three (3) consecutive meetings per semester or a total of four (4) meetings per semester will result in the club automatically being placed on probation. Absence from six (6) meetings may result in suspension.
- 2.4.2.1 The suspension of a club or student organization that violates the provisions of these Bylaws may be lifted by a complex majority vote of the present eligible members of the Student Senate.

For questions, or if a club is having difficulty attending, contact

maricarmen.figueroa@cloviscollege.edu

(<https://web.archive.org/web/20230202203107/mailto:maricarmen.figueroa@cloviscollege.edu>).

SETTING UP AN EVENT

When setting up a club event, the club should consult with Student Activities. The club should go through these processes:

- Talk about the event in your meeting and agree as a club to hold the event.
- Get the approval of your advisor.
- Consult Student Activities to make sure the event is feasible.
- Submit a Facilities request for the event through the Student Activities Office.
- See financial processes (last section) if purchasing items for the event.
- Clubs are responsible to staff the event at all times. Clubs are also responsible for ensuring that all materials are taken down after the event.

At the end of the event, debrief amongst your club and determine what worked and what did not.

ADVERTISING GUIDELINES

Clubs may advertise on campus and via social media. Clubs must follow the established Posting Guidelines as set by Student Activities.

Posting Instructions

Here are the posting guidelines (revised on February 1, 2023):

Clovis Community College encourages active student organizations and College programs and departments to share information about their programs, services, events, student clubs, classes, and more. The Student Activities Office is responsible for stamping and dating materials from active student organizations before they are posted inside the campus buildings. When stamped and dated, the postings placed on the bulletin boards become official college announcements. The college has developed a set of guidelines to help govern the placement of posters to ensure that we have a welcoming and safe environment. The following guidelines will assist your active student organization with publicizing your program, service, or event. Please remember, these guidelines are intended to:

- Facilitate greater campus community engagement and better communication of campus events.
- Keep the college's buildings clean and in good condition.
- Posters can also be posted on permitted outside kiosks.

- Ensure consistency with college standards for publications.
- Comply with relevant college policies and procedures.

Posting Guidelines for College Interior Walls

- All posters must be stamped and dated before posting on the designated interior bulletin boards.
- All postings on interior bulletin boards must relate to recognized student organizations and must be placed on the appropriate board. (ex. Student clubs can only post on designated student club boards)
- Active student organizations may post 1 copy per board on every board labeled for student clubs. No more than two copies of the same event may be posted on each bulletin board.
- Posters that exceed the limit or are placed on the incorrect board will be removed.
- The poster must not exceed 8 ½" x 14" in size.
- Posting in classrooms is limited to College, College department, or College program events and announcements. Recognized student organizations or third parties are not permitted to post inside classrooms.
- Posted information must clearly indicate the full name of the recognized student organization and the date and location of any event to which the poster relates.
- The college name and logo cannot be used without prior campus approval. If the logo is used without permission posters will be removed.

Obtaining Student Activities Office Stamp

- All posters must be presented to Student Activities located in the Student Center (AC1-160) or emailed to cccstudentcenter@cloviscollege.edu (<https://web.archive.org/web/20230202203107/mailto:cccstudentcenter@cloviscollege.edu>).
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Questions, comments, or concerns may be addressed in the Student Activities Office, which is in Academic Center One, Room 160 (Student Center).

Social media posting:

Social Media posting/advertising must be conducted in consultation with the full-time faculty advisor. The full-time faculty advisor must approve each posting before it is posted. Any posts deemed inappropriate by Student Activities, the College Administration, etc. will result in the club being asked to take down the post. Failure to do so could result in the suspension of club social media privileges and/or other club privileges for a period of time determined by Student Activities/The College Administration.

FUNDRAISING**Financial Processes for Student Organizations****Before the Fundraiser**

1. Discuss potential fundraising events/activities during a general club meeting at least a month in advance of the planned activity. Club members must vote on and pass the motion to hold a fundraiser. Record of voting to be documented in the club's meeting minutes.
2. Contact the ASG Vice President in order to have your fundraiser to be placed on the ASG agenda. Attend the ASG meeting in which the approval of your fundraiser will be voted on. The ASG minutes in which the fundraiser was approved must be submitted with the fundraising event request form!
3. Obtain a Fundraising Event Request Form and Revenue Recap/Potential form from The Student Activities Office or the Business Services Office.
4. Attach the following documentation to The Fundraising Event Request form:
 - a. Copy of Revenue Recap/Potential Form
 - b. Copy of club meeting minutes and ASG minutes
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 - d. Itemized list of what is being sold and the price it's being sold for
5. Submit the Fundraising Event Request to The Student Activities Office: Required signatures
 - a. Club Advisor
 - b. Dean of Students/Instruction
 - c. Vice President of Admin Services
6. Make photocopies of signed documentation for your records. Student Activities will submit the approved Fundraising Request to Business Office.
7. Request petty cash or money for supplies if needed (see Activities Office).

Completed fundraising event requests must be received by the business office 30 days in advanced

DAY OF THE FUNDRAISER

1. Pick up the cash box in the Business Services Office
2. Record how much is sold of each item that the club is selling on the **Fundraising Sales Record Form/Talley Sheet**

After the Fundraiser

1. Record on the white copy of the Revenue Recap/Potential form any monies received.
2. If totals at end of the fundraiser are recorded as a loss (no money was made or less money was made than originally projected), make note of why (i.e.-sodas sold at 50% off at the end of the fundraiser, not all product was sold, the club will keep for a future fundraiser, etc).
3. Make a copy of the Fundraising Sales Record/Talley sheet form for your records and attach the original to the Revenue Recap/Potential form.
4. **Deposit all money immediately** at Admissions and Records. If the fundraiser is taking place outside of regular business hours (8:00 am-5:00 pm), monies should be taken to the office of the Evening Coordinator (Maya Davis) prior to leaving campus. They keep the white copy, you will keep the yellow copy for your records.

All food fundraisers must follow Fresno County health rules and regulations and must be approved by the Crush Cafe

General Cash Handling Checklist

1. All district or student body fundraisers must have prior approval from the Administration and Associated Student Government.
2. Cash or checks collected from fundraisers, book sales, or any other school-related activity must not be deposited into personal checking accounts. All funds must be promptly deposited into the campus safe pending preparation of the deposit into the club account.
3. The fund must remain on district property.
4. **Raffles, lotteries, or games of chance are in violation of Penal Code 326.5.**
5. It is necessary to notify the ASG and the ASG advisor when donations are made to a club or the campus by any entity.
6. All requests for reimbursement of expenses must be accompanied by an original receipt.
7. All club purchases must have prior authorization by the ASG, advisor, and Dean of Students.
8. Outside organization funds should not be held on the campus site or any district property.
9. Outside organizations are responsible for collecting and depositing any funds related to their sponsored events. ASG personnel should not do bookkeeping or act as an office for outside organizations.
10. **Whenever money changes hands, a receipt must be given (in the case of a sale, the exchange must be recorded on a tally sheet).**

Procedures for obtaining a check or refund request

The general procedure for obtaining a check or refund payment is as follows:

1. Approve the expenditure in a club meeting first.
2. Submit a request for a Purchase order with the following documentation:
 - a. Minutes in which the club approved the expenditure
 - b. A quote for the product being purchased.
 - c. Once a purchase order number is created, receive goods and turn in receipts to the Business Office (or Activities)
3. To submit a Reimbursement submit:
 - a. Check Request
 - b. Attach minutes in which the expenditure was approved by the club (BEFORE purchase)
 - c. Itemized Receipts

Any Questions? Contact ASG Advisor Maricarmen Figueroa at

maricarmen.figueroa@cloviscollege.edu

<https://web.archive.org/web/20230202203107/mailto:maricarmen.figueroa@cloviscollege.edu>

The provisions in this Handbook are subject to change at the discretion of Student Activities.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

ALEJANDRO FLORES, ET AL.,

Plaintiffs,

v.

DR. LORI BENNETT, ET AL.,

Defendants.

Civil Action No:
1:22-cv-01003-JLT-HBK

**DECLARATION OF DANIEL FLORES IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' MOTION TO STAY
DISCOVERY**

Pursuant to 28 U.S.C. § 1746(2), I, Daniel Flores, declare the following:

1. I am a Plaintiff in the above-captioned case and a resident of the State of California. I am over eighteen (18) years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in opposition to Defendants' motion for a stay, ECF No. 46. If called as a witness, I believe I could and would testify competently under oath to the following facts, which are based on my personal knowledge.

2. I am a student at Clovis Community College ("Clovis") and the current Vice President of the Clovis Community College Chapter of Young Americans for Freedom ("YAF-Clovis").

3. On Friday, September 9, 2022, at approximately 9:15 am, I entered the Student Center at Clovis Community College to apply for permission to post five (5) copies of a flyer encouraging readers to "Never Forget" the terrorist attacks of September 11, 2001, among other violent attacks on the United States and its citizens, (the "Never Forget flyer") on the Clovis Academic Centers' indoor bulletin boards.

4. The Never Forget flyer, a copy of which is attached here as **Exhibit 1**, contained the Young Americans for Freedom logo, photographs related to violent and terroristic acts committed against the United States and United States citizens, and the phrase "Never Forget." Before

1 submitting the Never Forget flyer copies for approval, I also wrote YAF-Clovis's Instagram and
2 Twitter handle, "@YAF_CCC" on three (3) of the flyers.

3 5. When I arrived at the Student Center, I handed the Never Forget flyer copies to a
4 staff member. I told them that I was a member of YAF-Clovis, a registered student club on campus.
5 I also said that my club wanted to post the flyers as soon as possible because we wanted students
6 to see them on or before that Sunday's September 11th anniversary.

7 6. The staff member told me that she understood but could not guarantee the flyers'
8 approval. She said she would let me know if they were approved or denied for posting on the
9 Academic Centers' bulletin boards. I then observed the staff member give the copies of the Never
10 Forget flyer to Defendant Patrick Stumpf. Neither the staff member nor Defendant Stumpf gave me
11 an answer at that time as to whether they would approve the flyers.

12 7. I returned to the Student Center a little over an hour later, at approximately 10:45
13 am. I spoke to the same staff member I had spoken with earlier and asked her for an update on the
14 status of my application. Defendant Stumpf immediately walked over to me and said "Daniel,
15 right?" After I replied "yes," Defendant Stumpf said he would send me an email when there was
16 an update.

17 8. I reiterated to Defendant Stumpf that the copies of the Never Forget flyer were
18 intended to be posted so students could see them on or before that Sunday's September 11
19 anniversary and that it was currently Friday, September 9. Defendant Stumpf replied that he
20 understood, that the Never Forget flyer copies were "in process right now" and that they were "with
21 the Dean." Again, he said he would let me know the outcome via email. I thanked him and left the
22 Student Center.

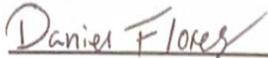
23 9. Neither Defendant Stumpf nor any other Clovis representative ever advised me of
24 any deficiencies with the Never Forget flyer, as it pertained to Clovis's Flyer Policy or any other
25 policy. Nevertheless, I did not receive approval either on September 9 or anytime since and
26 therefore was not able to post the flyers for the anniversary of September 11.

27 10. Based on my experience and knowledge, the Student Center has never taken more
28 than one day to respond to an application for posting on the Academic Centers' bulletin boards.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of May 2023


Daniel Flores

Flores, et al. v. Bennett, et al.

**Exhibit 1 to
Declaration of Daniel Flores**



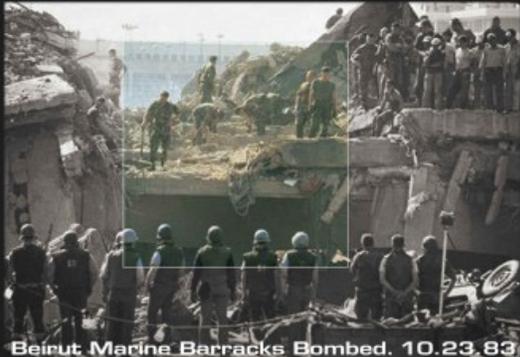
Diplomats Held Hostage. 11.14.79



3,000 Civilians Murdered. 9.11.01



US Ambassador Murdered. 9.11.12



Beirut Marine Barracks Bombed. 10.23.83

Never Forget.



ISIS Beheads American. 8.19.14



USS Cole Attacked. 10.12.00



Innocent Reporter Murdered. 2.21.02



49 People Murdered in Orlando. 6.12.16

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

ALEJANDRO FLORES, ET AL.,

Plaintiffs,

v.

DR. LORI BENNETT, ET AL.,

Defendants.

Civil Action No:
1:22-cv-01003-JLT-HBK

**DECLARATION OF DANIEL ORTNER
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO STAY**

Pursuant to 28 U.S.C. § 1746(2), I, Daniel Ortner, declare the following:

1. I am lead counsel for Plaintiffs in the above-captioned case and a resident of the State of California. I am over eighteen (18) years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in support of Plaintiffs' Opposition to Defendants' Motion to Stay. If called as a witness, I believe I could and would testify competently under oath to the following facts, which are based on my personal knowledge.

2. In September 2022, while Plaintiffs' Motion for Preliminary Injunction was pending, Plaintiffs' co-counsel Jeff Zeman and I contacted Defendants' counsel, Anthony DeMaria, via telephone to schedule a Rule 26(f) conference. Both parties agreed to set the conference in October 2022.

3. Shortly after this Court granted Plaintiffs' Motion for Preliminary Injunction on October 14, 2022, Attorney DeMaria requested, via phone call, to delay the 26(f) conference to allow settlement conversations to proceed.

4. When settlement discussions stalled, Plaintiffs' counsel renewed their request for a Rule 26(f) conference via email on March 16, 2023. A true and correct

1 copy of this email is attached as Exhibit A.

2 5. Defendants did not respond to the March 16 request.

3 6. Plaintiffs' counsel again renewed their request on March 28, 2023. A true
4 and correct copy of this email is attached as Exhibit B.

5 7. Defendants did not respond to the March 28 request.

6 8. Plaintiffs' counsel again renewed their request on March 31, 2023. A true
7 and correct copy of this email is attached as Exhibit C.

8 9. Finally, on March 31, Attorney DeMaria informed Plaintiffs' counsel that
9 he would refuse a 26(f) conference and planned to file for a stay of discovery. A true
10 and correct copy of this email is attached as Exhibit D.

11 10. After nearly three weeks without a motion for a stay filed by Defendants,
12 Plaintiffs' counsel sent their fifth request for a Rule 26(f) conference on April 18, 2023.
13 A true and correct copy of this email is attached as Exhibit E.

14 11. Three days later, Defendants filed a motion to stay discovery pending
15 appeal—but neglected to mention Plaintiffs' repeated requests for a Rule 26(f)
16 conference over the previous six months. ECF No. 46.

17 12. On October 14, 2022, hours after this Court issued its preliminary
18 injunction, Clovis Community College ("Clovis") rescinded the enjoined Flyer Policy
19 and published a new flyer policy (the "Replacement Policy"). The Replacement Policy
20 contained a provision that "postings placed on the bulletin boards become official
21 college announcements."

22 13. Plaintiffs' counsel immediately raised concerns with this provision with
23 Attorney DeMaria.

24 14. But the Replacement Policy with this concerning language remained on
25 Clovis's website despite Plaintiffs' concerns. This language remained even after the
26 Replacement Policy was updated again on February 1, 2023.

27 15. On February 1, 2023, Defendants changed the Replacement Policy to
28 limit the number of flyers per event that could be posted by student groups. This

1 change came one day after Plaintiff Juliette Colunga received approval to post dozens
2 of flyers with six unique designs on the indoor bulletin boards.

3 16. On February 2, 2023, during an already scheduled settlement call,
4 Plaintiffs' counsel informed Attorney DeMaria that this change could be seen as
5 directly targeting Plaintiffs for their First Amendment activity. Shortly after the
6 phone call, the Replacement Policy was removed from Clovis's website.

7
8 I declare under penalty of perjury that the foregoing is true and correct.

9
10 Executed on this 5th day of May 2023.

11
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13 

14 Daniel Ortner

Flores, et al. v. Bennett, et al.

**Exhibit A to
Declaration of Daniel Ortner**



Jeff Zeman <jeff.zeman@thefire.org>

Setting up a 26(f) conference

Daniel Ortner <daniel.ortner@thefire.org>

Thu, Mar 16, 2023 at 4:58 PM

To: Anthony DeMaria <Ademaria@demarialawfirm.com>, Jeff Zeman <jeff.zeman@thefire.org>, Jessie Appleby <jessie.appleby@thefire.org>, Jay Diaz <jay.diaz@thefire.org>

Anthony,

We plan to move ahead with discovery in the Flores v. Bennett case. When would you be available to conduct a 26(f) conference call? Perhaps sometime the week after next? Please let us know your availability.

Best regards,

Daniel Ortner

Flores, et al. v. Bennett, et al.

**Exhibit B to
Declaration of Daniel Ortner**



Jeff Zeman <jeff.zeman@thefire.org>

Setting up a 26(f) conference

Daniel Ortner <daniel.ortner@thefire.org>

Tue, Mar 28, 2023 at 2:17 PM

To: Anthony DeMaria <Ademaria@demarialawfirm.com>, Jeff Zeman <jeff.zeman@thefire.org>, Jessie Appleby <jessie.appleby@thefire.org>, Jay Diaz <jay.diaz@thefire.org>

Anthony,

Hope you had a good weekend.

I wanted to follow up on my request to set up a rule 26(f) conference. We do not see any cause for delay and would like to get this call on the calendar as soon as possible so that discovery can move forward.

Best,

Daniel Ortner

*Attorney***Foundation for Individual Rights and Expression*

510 Walnut Street, Suite 1250

Philadelphia, PA 19106

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Mobile: (385)-242-9582

daniel.ortner@thefire.orgwww.thefire.org

@dortner1

*Member of the Virginia and California bars

[Quoted text hidden]

Flores, et al. v. Bennett, et al.

**Exhibit C to
Declaration of Daniel Ortner**



Jeff Zeman <jeff.zeman@thefire.org>

Motion to Stay

Daniel Ortner <daniel.ortner@thefire.org>

Fri, Mar 31, 2023 at 5:42 PM

To: Anthony DeMaria <Ademaria@demarialawfirm.com>, Jessie Appleby <jessie.appleby@thefire.org>, Jeff Zeman <jeff.zeman@thefire.org>, Jay Diaz <jay.diaz@thefire.org>

Anthony,

We will not stipulate to your motion to stay the underlying case and will oppose such a motion.

We do not see any reason why the underlying case should be delayed while we wait for the resolution of your preliminary injunction appeal.

Any discovery that is conducted will remain relevant to the underlying case especially since you recognize that claims for damage will continue regardless of the outcome of the PI appeal. Our clients (and other students at Clovis) also have a significant interest in the efficient resolution of their case given the First Amendment issues involved and the fact that Clovis Administrators keep altering the flyer policy and other policies related to student expression. A permanent and final judgment in our clients' favor is therefore crucial to ensure that their rights do not continue to be in jeopardy. And your clients will not suffer prejudice as a result of allowing the ordinary course of discovery to proceed.

Accordingly, we renew our request to schedule a Rule 26(f) conference.

Best

Daniel Ortner

*Attorney**

Foundation for Individual Rights and Expression

510 Walnut Street, Suite 1250

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Flores, et al. v. Bennett, et al.

**Exhibit D to
Declaration of Daniel Ortner**



Jeff Zeman <jeff.zeman@thefire.org>

Motion to Stay

Anthony DeMaria <Ademaria@demarialawfirm.com>

Fri, Mar 31, 2023 at 5:54 PM

To: Daniel Ortner <daniel.ortner@thefire.org>, Jessie Appleby <jessie.appleby@thefire.org>, Jeff Zeman <jeff.zeman@thefire.org>, Jay Diaz <jay.diaz@thefire.org>

Thank you for the response. Obviously, we do not have agreement on that point and we will proceed with the motion to stay the District Court action. There is no need to debate the motion points herein, as you do not agree, so we will file with the court. That makes our position that no discovery should take place until the 9th Circuit hears and rules on the appeal, taking note of the fact that the merit review already designated the matter for hearing and not ruling on the papers. If the ruling of the 9th circuit is in our favor, and there is a finding that *Planned Parenthood* applies and there was no violation, then certainly I do not agree that any damages could be awarded and a defense judgment would ultimately be entered. That would make all four individual defendants the prevailing parties against the named plaintiffs.

You did not respond to the settlement proposal. Your response to settlement would be appreciated. The 9th circuit mediator is also available to help obtain resolution.

[Quoted text hidden]

Flores, et al. v. Bennett, et al.

**Exhibit E to
Declaration of Daniel Ortner**



Jeff Zeman <jeff.zeman@thefire.org>

Follow up regarding Discovery and 26(f) Conference

Daniel Ortner <daniel.ortner@thefire.org>

Tue, Apr 18, 2023 at 1:53 PM

To: Anthony DeMaria <Ademaria@demarialawfirm.com>, Jay Diaz <jay.diaz@thefire.org>, Jessie Appleby <jessie.appleby@thefire.org>, Jeff Zeman <jeff.zeman@thefire.org>

Anthony,

Following up on our previous conversation regarding proceeding with discovery, we would like to renew our request to schedule a 26(f) conference and begin to schedule discovery.

This is our fourth request for a scheduling conference. We sent similar requests on March 6, March 28, and March 31. On March 31 you informed us that you would not agree to a 26(f) conference, and instead would file a motion to stay discovery. No motion has been filed in this case more than two weeks later. We therefore ask you once again to schedule a 26(f) conference for sometime next week or the week after. Some proposed dates and times that work for us would be Monday April 24 at 10 am; Wednesday April 26 at 1 PM; Tuesday May 2 at 9 am; or Friday May 5 at 10 am

If you do not respond by April 21 agreeing to one of our suggested dates/times or providing alternative dates/times for the 26(f) conference, we will be forced to ask the Court to compel Defendants' participation in the conference.

Thank you.

Sincerely

Daniel Ortner

*Attorney***Foundation for Individual Rights and Expression*

510 Walnut Street, Suite 1250

Philadelphia, PA 19106

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