





1 universities is almost self-evident.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250  
2 (1957). In a long line of cases, the United States Supreme Court has made clear that  
3 “[t]eachers and students must always remain free to inquire, to study and to  
4 evaluate, to gain new maturity and understanding; otherwise our civilization will  
5 stagnate and die.” *Id.* The Court has stressed that “state colleges and universities  
6 are not enclaves immune from the sweep of the First Amendment.” *Healy v. James*,  
7 408 U.S. 169, 180 (1972). Quite to the contrary, “[t]he vigilant protection of  
8 constitutional freedoms is nowhere more vital than in the community of American  
9 schools.” *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). Accordingly,  
10 courts have zealously guarded the freedoms of speech, assembly, and petition in  
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1 one of 72 community college districts in the State, with oversight responsibility for  
2 Modesto Junior College and Columbia College. It also operates a Central Services  
3 unit for them.

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

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

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



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

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

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

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

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

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

2           33. The Yosemite Community College District includes two two-year  
3 colleges (Columbia College and Modesto Junior College). In the 2011-2012  
4 academic year, 16,209 Full Time students were enrolled. The District had a 2011-  
5 2012 budget of \$114.4 million.

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

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

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

26           37. California Education Code § 76120, however, does not declare that  
27 campuses are non-public forums, and states that "[s]uch rules and regulations shall  
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1 not prohibit the right of students to exercise free expression,” including “the  
2 distribution of printed materials or petitions.”

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

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

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

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

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

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

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

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**THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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





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

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

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

3 105. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is  
4 appropriate and hereby requested that this Court issue a permanent injunction  
5 prohibiting the Defendants from enforcing their restrictions on Plaintiff's expressive  
6 activities to the extent they are unconstitutional, to prevent the ongoing violation of  
7 Plaintiff's constitutional rights. Plaintiff and his fellow students are suffering

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

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

5 **VIII. DEMAND FOR JURY TRIAL**

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

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9 DATED: October 10, 2013 DAVIS WRIGHT TREMAINE  
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