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17 *David Faigman, Simona Agnolucci, Carl Robertson, Shashikala Deb, Michael Ehrlich, Andrew*
18 *Giacomini, Andrew Houston, Claes Lewenhaupt, Mary Noel Pepys, Courtney Greene Power,*
and Albert Zecher (the "College Defendants")

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SAN FRANCISCO**

21 HASTINGS COLLEGE CONSERVATION
22 COMMITTEE, an unincorporated association
of alumni of Hastings College of the Law;
23 STEPHEN HASTINGS BREEZE, an
individual; STEPHANIE AZALEA
24 BRACKEL, an individual; CATHERINE
TORSTENSON, an individual; SCOTT
25 HASTINGS BREEZE, an individual;
COLLETTE BREEZE MEYERS, an
26 individual; and COLIN HASTINGS BREEZE,
an individual,

27 Plaintiffs,

CASE NO.: CGC-22-602149

**~~PROPOSED~~ ORDER ON
COLLEGE DEFENDANTS' AND
STATE OF CALIFORNIA'S
DEMURRERS**

Hearing Date: February 6, 2024
Time: 9:30 am
Dept.: 302
Judge: Hon. Richard B. Ulmer Jr.
Action filed: October 4, 2022
Trial Date: None set

v.

STATE OF CALIFORNIA; DAVID FAIGMAN, in his official capacity as Chancellor and Dean of Hastings College of the Law; SIMONA AGNOLUCCI, in her official capacity as chair of the Board of Directors of Hastings College of the Law; CARL ROBERTSON, in his official capacity as vice chair of the Board of Directors of Hastings College of the Law; SHASHIKALA DEB, in her official capacity as a director of Hastings College of the Law; MICHAEL EHRLICH, in his official capacity as a director of Hastings College of the Law; ANDREW GIACOMINI, in his official capacity as a director of Hastings College of the Law; ANDREW HOUSTON, in his official capacity as a director of Hastings College of the Law; CLAES LEWENHAUPT, in his official capacity as a director of Hastings College of the Law; MARY NOEL PEPYS, in her official capacity as a director of Hastings College of the Law; COURTNEY POWER, in her official capacity as a director of Hastings College of the Law; ALBERT ZECHER, in his official capacity as a director of Hastings College of the Law; and DOES 1-25, inclusive,

Defendants.

PROPOSED ORDER

COLLEGE DEFENDANTS' DEMURRER

College Defendants' (DAVID FAIGMAN, SIMONA AGNOLUCCI, CARL ROBERTSON, SHASHIKALA DEB, MICHAEL EHRLICH, ANDREW GIACOMINI, CLAES LEWENHAUPT, MARY PEPYS, COURTNEY POWER, ALBERT ZECHER, ANDREW HOUSTON) demurrers to causes of action one through five are sustained without leave to amend. Those claims fail as a matter of law and cannot be cured by amendment.

Plaintiffs' request for judicial notice ("RJN") is granted.

In 1878, Serranus Clinton Hastings deposited \$100,000 with the State of California ("State") to establish "Hastings' College of the Law." (Plaintiffs' RJN, Ex. 5 ["An Act to create

1 Hastings' College of Law" ("Act"); Complaint, par. 1.) The Act provided that the school would
2 be "forever known" as Hastings and his heir or representative would have a seat on the College's
3 Board of Directors. In response to claims that Mr. Hastings committed genocidal acts, the State
4 enacted AB 1936 to remove both the Hastings name from the school and the hereditary Board
5 seat. Plaintiffs contend that AB 1936 is illegal and unconstitutional.

6 The court concludes that plaintiffs (or at least some of them) have standing to maintain
7 this action. To have standing, a party must be "beneficially interested" in the controversy;
8 specifically, the party must have "some special interest to be served or some particular right to be
9 preserved or protected over and above the interest held in common with the public at large."
10 (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; see also *Limon v. Circle K*
11 *Stores Inc.* (2022) 84 Cal.App.5th 671, 696 [explaining that the injury must be (a) concrete and
12 particularized and (b) actual or imminent, not conjectural or hypothetical].) The removal of the
13 hereditary Board seat constitutes concrete injury.
14

15 Plaintiffs' action presents pure legal issues and is amenable to resolution by
16 demurrer. "A trial court may properly sustain a general demurrer to a declaratory relief action
17 without leave to amend when, as here, the controversy presented can be determined as a matter
18 of law." (*City of Fresno v. California Highway Com.* (1981) 118 Cal.App.3d 687, 699; see also
19 *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 240-241.)
20

21 Cause of Action One

22 The demurrer to cause of action one [declaratory relief—contracts clause] is sustained
23 without leave to amend because plaintiffs fail to state a cause of action. The Act that created the
24 law school is a statute, not a contract.
25

26 "In order for a legislative enactment to be deemed a contract for the purposes of the
27 Contract Clause, there must be a clear indication that the legislature intends to bind itself in a
28

1 contractual manner.” (*Puckett v. Lexington-Fayette Urban Cnty. Gov’t* (6th Cir. 2016) 833 F.3d
2 590, 600; see also *Nat’l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S.
3 451, 465–66 (1985) [“[A]bsent some clear indication that the legislature intends to bind itself
4 contractually, the presumption is that ‘a law is not intended to create private contractual or vested
5 rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.’ ”].)
6 The presumption that a law is not intended to create private contractual rights is known as the
7 “unmistakability doctrine.” (*United States v. Winstar Corp.*, 518 U.S. 839, 871 (1996).) In
8 *Winstar*, the Supreme Court explained that the purpose of the doctrine is to avoid unnecessarily
9 infringing on a state legislature’s ability to legislate regarding state sovereign rights unless it is
10 clear beyond any doubt that the legislature meant to give up that right. “[S]overeign power ...
11 governs all contracts subject to the sovereign’s jurisdiction, and will remain intact unless
12 surrendered in unmistakable terms.” (*Winstar*, 518 U.S. at 872.) The surrender necessary to
13 bind the government by contract must be “‘in terms too plain to be mistaken.’” (*Id.* at 875.) “A
14 claim that a state statute creates a contract that binds future legislatures confronts a tropical-force
15 headwind in the form of the ‘unmistakability doctrine.’ [citation] This doctrine precludes finding
16 that a statute creates a binding contract absent a clear and unequivocal expression of intent by the
17 legislature to so bind itself.” (*Cranston Firefighters, IAFF Local 1363, AFL-CIO v. Raimondo*
18 (2018) 880 F.3d 44, 48.)

21 “To determine whether a legislature intended to bind itself contractually, courts examine
22 both the language of the statute itself and the circumstances surrounding its enactment or
23 amendment—such as its apparent purpose, context, legislative history, or any other pertinent
24 evidence of actual intent.” (*Puckett*, 833 F.3d at 600-601.)

26 Here, plaintiffs fail to meet their heavy burden. The Act “authorized” S.C. Hastings to
27 found the law college. (See Plaintiff’s RJN, Ex. 5 [Section 1].) The Legislature provided that

1 “[t]his Act is passed,” referred to “[t]he object of this Act,” and stated when “[t]his Act shall take
2 effect.” (*Id.* [Sections 7, 13, 15].) The Act does not include any covenanting language; the Act
3 is not couched in the terms of a contract. (See *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95,
4 105 (1938) [the statutory benefit was literally “couched in terms of contract.”].)

5 For example, in *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1997), the intent
6 to contract was clear. The legislation expressly stated that New York and New Jersey “covenant
7 and agree with each other and with the holders of any affected bonds” that the Port Authority
8 would not “apply any of the ... revenues or reserves ... pledged in whole or in part as security for
9 such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set
10 forth.” (*Id.* at 9–10.)

12 The Act has no such language. In addition, the fact that Mr. Hastings paid money into
13 the state treasury is not dispositive. (See *Cranston Firefighters v. Raimondo* (1st Cir. 2018) 880
14 F.3d 44, 49 [no contract even though “the state ‘received something in return’” for passing the
15 law].)

17 Citing *Cal Fire Local 2881 v. CALPERS* (2019) 6 Cal.5th 965, plaintiffs contend that the
18 court does not need to inquire into legislative intent because the parties had a unilateral contract
19 and Mr. Hastings performed by donating the \$100,000. (Opposition, pgs. 32-33.) Plaintiffs’
20 reliance on *Cal Fire* is misplaced. There, the court explained that it will imply contractual rights
21 for a public employee to receive statutory pension benefits because those benefits constitute
22 deferred compensation. (See also *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853
23 [same and noting distinction between tenure and pension rights]; *California Teachers Assn. v.*
24 *Cory* (1984) 155 Cal.App.3d 494, 505 [“That is the case here. The subject of the legislation,
25 pension rights, has long been characterized as within the domain of contract.”].) This action is
26 unrelated to protecting earned pension rights.
27

1 Cause of Action Two

2 The demurrer to cause of action two [declaratory relief—bill of attainder/ex post facto] is
3 sustained without leave to amend because plaintiffs fail to state a cause of action.

4 AB 1936 is not a proscribed bill of attainder, nor does it violate the Ex Post Facto
5 Clause.

6 The Ex Post Facto Clause generally only applies to criminal laws and AB 1936 is a civil
7 statute. (See *Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1419 [“The United States Supreme
8 Court has long recognized that ‘the constitutional prohibition on ex post facto laws applies only
9 to penal statutes which disadvantage the offender affected by them.’”].) AB 1936 is not “so
10 punitive either in purpose or effect as to negate [the State’s] intention to deem it ‘civil.’” (*Coats*
11 *v. New Haven Uni. Sch. Dist.* (2020) 46 Cal.App.5th 415, 425.)

12 “[L]egislative acts, no matter what their form, that apply either to named individuals or to
13 easily ascertainable members of a group in such a way as to inflict punishment on them without a
14 judicial trial are bills of attainder prohibited by the Constitution.” (*United States v. Lovett* (1946)
15 328 U.S. 303, 315.) To prevail on the bill of attainder claim, plaintiffs would need the “clearest
16 proof” that AB 1936 “specifies” and “inflicts punishment” on them. (See *SeaRiver Mar. Fin.*
17 *Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 668-669.) But the only person that AB
18 1936 arguably singles out is Mr. Hastings, who died years ago. In sum, AB 1936 is not
19 punishing plaintiffs without a judicial trial.

20 Cause of Action Three

21 The demurrer to cause of action three [declaratory relief—collegiate freedom] is
22 sustained without leave to amend because plaintiffs fail to state a cause of action.

23 Plaintiffs argue that AB 1936’s removal of the Hastings name and hereditary seat violate
24 Article 9, Section 9 of the California Constitution [“[t]he university shall be entirely independent
25
26
27
28

1 of all political or sectarian influence and kept free therefrom in the appointment of its regents and
2 in the administration of its affairs”]. “The purpose of designating the University as a public
3 trust was to insulate it from state government.” (*People v. Lofchie* (2014) 229 Cal.App.4th 240,
4 254.) In this case, the College Board itself was the impetus to make the changes; it passed the
5 resolution to remove the Hastings name and hereditary seat. (See Complaint, pars. 3-5.) This
6 case therefore does not present the situation where the Legislature is attempting to dictate
7 university policy.

8 Causes of Action Four and Five

9
10 The demurrers to causes of action four [injunctive relief—waste of taxpayer funds] and
11 five [deprivation of civil rights (42 USC 1983)] are sustained without leave to amend. These
12 derivative claims fail to state a claim because plaintiffs do not allege any unlawful or
13 unconstitutional conduct.

14 **STATE OF CALIFORNIA’S DEMURRER**

15
16 State of California’s (“State”) demurrer to the complaint is sustained without leave to
17 amend.

18 Plaintiffs’ request for judicial notice is granted and the court overrules State’s objections.

19 State’s demurrers to causes of action one [declaratory relief—contracts clause], six
20 [breach of contract—specific performance] and seven [breach of contract—damages] are
21 sustained without leave to amend. For the reasons explained in College Defendants’ companion
22 demurrer, these claims fail as a matter of law. The Act does not constitute a contract. Cause of
23 action two fails because there was no violation of the ex post facto laws or prohibition against
24 bills of attainder. AB 1936 does not “punish” plaintiffs. Cause of action three fails because
25 there was no violation of collegiate freedom. The College Board caused the changes and was not
26 a victim of State overreaching.
27

Plaintiffs do not allege the fourth cause of action [injunctive relief—waste of taxpayer funds] or fifth cause of action [deprivation of civil rights] against State.

IT IS SO ORDERED.

Dated: February 0, 2024

UG
Honorable Richard B. Ulmer, Jr.
Judge of the Superior Court