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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 DAYMON JOHNSON,

12 *Plaintiff,*

13 v.

14 STEVE WATKIN, et al.,

15 *Defendants.*

Case No. 1:23-cv-00848-ADA-CDB

Date: N/A  
Time: N/A  
Dept: N/A  
Judge: Hon. Ana de Alba  
Trial Date: Not Scheduled  
Action filed: June 1, 2023

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19 MEMORANDUM OF POINTS AND AUTHORITIES  
20 IN OPPOSITION TO KCCD DEFENDANTS' MOTION TO DISMISS [DOC. 46]<sup>1</sup>  
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28 <sup>1</sup> KCCD Defendants are all Defendants other than Sonya Christian.

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1 INTRODUCTION

2 Defendants are empowered to discipline and fire Professor Johnson for violating the  
3 Education Code, which, among other things, allows for the dismissal of community college faculty  
4 who will not comply with state regulations. They have previously investigated him for his political  
5 speech, and applied the Code to *terminate* faculty for expressing political views they oppose. They  
6 have demanded that faculty practice DEIA and “anti-racism” ideology and felt no shame in publicly  
7 declaring that dissident faculty should be “culled” like defective cattle. They are now charged with  
8 evaluating Johnson’s performance under regulations and guidelines that demand he extoll and  
9 conform to the state’s political ideology or face termination. Reasonably fearing for his job should  
10 he continue expressing his views and fail to spout Defendants’ views, Johnson seeks injunctive  
11 relief against Defendants’ application of the Education Code and their “civility” policy to punish  
12 disfavored views, and against their enforcement of the state’s ideological mandates.

13 Johnson plainly has standing to bring this action, and his complaint states valid claims for  
14 relief. Defendants’ motion to dismiss attacks the sufficiency of claims that are absent from the  
15 complaint, denies the factual assertions, and seriously misstates the law. It should be denied.

16 STATEMENT OF FACTS

17 *The regulatory regime*

18 California Education Code § 87732 provides that “[n]o regular employee or academic  
19 employee shall be dismissed except for one or more of the following causes: (a) Immoral or  
20 unprofessional conduct; (b) Dishonesty; (c) Unsatisfactory performance; (d) Evident unfitness for  
21 service; . . . (f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable  
22 regulations prescribed for the government of the community colleges by the board of governors or  
23 by the governing board of the community college district employing him or her.” A community  
24 college district’s governing board may also terminate an employee for “unprofessional conduct” or  
25 “unsatisfactory performance” per Cal. Educ. Code § 87734, and may suspend and terminate an  
26 employee within 30 days for “immoral conduct” or “willful refusal to perform regular assignments  
27 without reasonable cause, as prescribed by reasonable rules and regulations of the employing  
28 district,” per Cal. Educ. Code § 87735.

1 KCCD Board Policy 3050 (“BP 3050”) “requires that [faculty] conduct [them]selves with  
2 civility in all circumstances of [their] professional lives.” KCCD “encourages” free expression, but  
3 “expect[s] all expressions of content to be conducted in a manner respectful of persons.” BP 3050  
4 also claims that KCCD “do[es] not participate in or accept, condone, or tolerate physical or verbal  
5 forms of aggression, threat, harassment, ridicule, or intimidation.” These terms are undefined.

6 California’s community college system, of which the Kern Community College District is a  
7 constituent part, “embrace[s] diversity.” Cal. Code Regs. tit. 5, § 51201(a). This commitment  
8 “guide[s] the administration of all programs in the California Community Colleges, consistent with  
9 all applicable state and federal laws and regulations.” *Id.* § 51200. “Embracing diversity means that  
10 *we must intentionally practice acceptance, anti-racism, and respect towards one another and*  
11 *understand that racism, discrimination, and prejudices create and sustain privileges for some while*  
12 *creating and sustaining disadvantages for others.” Id.* § 51201(b) (emphasis added). An “anti-racist”  
13 is defined as one who “understand[s] that racism is pervasive and has been embedded into all  
14 societal structures.” *Diversity, Equity and Inclusion Glossary of Terms*, California Community  
15 Colleges Chancellor’s Office, <https://perma.cc/T22V-V866> at 1 (last visited Sept. 11, 2023). Anti-  
16 racists “challenge the values, structures, policies, and behaviors that perpetuate systemic racism”  
17 and are “also willing to admit the times in which they have been racist.” *Id.* “Practicing antiracism  
18 requires constantly identifying, challenging, and upending existing racist policies to replace them  
19 with antiracist policies that foster equity between racial groups.” *Id.* Moreover, “embracing  
20 diversity” requires “acknowledg[ment] that institutional racism, discrimination, and biases exist,”  
21 and a commitment to “eradicat[ing] these from our system,” to “strive to eliminate those barriers to  
22 equity.” Cal. Code Regs. tit. 5, § 51201(c). It requires “that we act deliberately to create a safe,  
23 inclusive, and anti-racist environment . . . .” *Id.*

24 “District employees must have or establish proficiency in DEIA-related [diversity, equity,  
25 inclusion, accessibility] performance to teach, work, or lead within California community colleges.”  
26 Cal. Code of Regs. tit. 5, § 53602(b). Faculty must comply with local DEIA policies to maintain  
27 employment. *Id.* § 53425. The California Community Colleges Chancellor “shall adopt and publish  
28 guidance describing DEIA competencies and criteria,” *id.* § 53601(a), which “shall be used as a





1 campus standing in general opposition to political viewpoints espoused by many faculty members  
2 and members of the school administration, which is aligned with Section 51201’s mandate to  
3 “embrace diversity” by, among things, “intentionally practic[ing] . . . anti-racism.” *Id.* at ¶ 61.

4 Defendants make clear their ideological orientation and seek to impose it on faculty. The  
5 “primary purpose” of Bakersfield College’s Equal Opportunity and Diversity Advisory Committee  
6 (EODAC) “is to actively assist/facilitate” the school’s “cultural and institutional policies and  
7 practices that demonstrate a commitment to greater diversity and inclusion.” Bakersfield College,  
8 *Equal Opportunity & Diversity Advisory Committee*, <https://perma.cc/BWR6-2U79> (last visited  
9 Sept. 12, 2023). EODAC’s website provides, “Section 51201 provides us with direction on  
10 diversity, equity and inclusion,” and recites Section 51201(b)’s mandatory language. *Id.*

11 On December 8, 2022, then-Bakersfield College President Zav Dadabhoy emailed  
12 employees what began as a holiday greeting, but which quickly devolved into a political declaration  
13 attacking RIFL. Doc. 8 at ¶ 62; Exh. C. Referencing RIFL, Dadabhoy decried “a small group  
14 promoting exclusion,” which he blamed for unspecified “attacks” on “members of BC’s  
15 communities of color, and LGBTQ community,” but explained that such exclusion “is not a value  
16 of this institution.” Exh. C. He then declared that Cal. Code Regs. tit. 5, § 51201 “provides us with  
17 direction on diversity, equity and inclusion,” and in particular, “[w]hat really resonates with me is  
18 subsection (b),” which he proceeded to quote in full. *Id.* Dadabhoy then added, “We must not allow  
19 the discontent or views of a few to supersede *what we are required* to provide at our college and the  
20 work that we have *intentionally developed* to support all members of the community. This is  
21 reminder that *we are all tasked with this work.*” *Id.* (emphasis added). Johnson understood the  
22 “attacks” to reference RIFL faculty’s political speech, and Dadabhoy’s exhortation to follow  
23 Section 51201 as an instruction to curtail his own non-compliant, dissenting speech and instead  
24 speak more consistently with anti-racism ideology. Doc. 8 at ¶ 98.

25 At a December 12, 2022, KCCD Board of Trustees’ meeting, Defendant Corkins termed  
26 RIFL faculty’s minority political views “abusive,” declaring that RIFL faculty are “in that five  
27 percent that we have to continue to cull. Got them in my livestock operation and that’s why we put  
28 a rope on some of them and take them to the slaughterhouse. That’s a fact of life with human nature

1 and so forth, and I don't know how to say it any clearer." *December 2022 Board of Trustees*  
2 *Meeting (12/13/2022)*, YouTube, <https://perma.cc/L7JY-4HJR> (last visited Sept. 12, 2023). "I don't  
3 think we're that way, if we are we've got to get the bad actors out of the room. It just bothers me  
4 when the bad actors are paid staff and faculty and if that's where it is we really got a problem." *Id.*;  
5 Doc. 8 at ¶ 66. None of the other Defendant trustees disavowed Corkins' call to take RIFL members  
6 to the "slaughterhouse." Doc. 8 at ¶ 67. Defendant Nan Gomez-Heitzeberg chuckled at the  
7 suggestion. *Id.* Johnson recognized the explicit threat against him if he continued to express  
8 political viewpoints that did not comport with the majority DEI ideologies on campus. *Id.* at ¶ 98.

9 Bakersfield College has adopted a requirement that faculty who wish to serve on committees  
10 that screen potential new hires must complete a training session to assure that their committee  
11 service would comply with the school's DEIA policies. *Id.* at ¶ 68; Exh. D.

12 *Bakersfield College investigates and threatens Professor Johnson*  
13 *for disagreeing with a colleague on Facebook*

14 On August 22, 2019, Bakersfield College Professor Andrew Bond posted on his personal  
15 Facebook page, "Maybe Trump's comment about shithole countries was a statement of projection  
16 because honestly, the US is a fucking piece of shit nation. Go ahead and quote me, conservatives.  
17 This country has yet to live up to the ideals of its founding documents." Exh. E at 2; Doc. 8 at ¶ 70.

18 In May 2021, Professor Johnson reposted Bond's post on RIFL's Facebook page, and added,  
19 "Here's what one critical race theorists at BC sounds like. Do you agree with this radical SJW from  
20 BC's English Department? Thoughts?" Exh. E at 2; Doc. 8 at ¶ 71. Bond filed an administrative  
21 complaint against Johnson for harassment and bullying over the Facebook post and commentary. *Id.*  
22 at ¶ 17. But rather than dismiss Bond's complaint out of hand, Dadabhoy subjected Johnson to an  
23 investigation that necessitated Johnson's retention of counsel. *See* Exh. E; Doc. 8 at ¶ 74. Finally,  
24 on February 23, 2022, five months after Bond's complaint, Dadabhoy sent Johnson KCCD's  
25 administrative determination that his conduct presented no cause for discipline. Exh. E at 9; Doc. 8  
26 at ¶¶ 74-75. In doing so, however, the district saw fit to pass judgment on each of 29 separate  
27 allegations raised in the dispute, including that another professor "liked" a negative comment about  
28 Bond (allegation 2, sustained), that Johnson's posting doxed Bond (allegation 3, "not sustained but  
plausible"), and that "Professor Bond was offended that Professor Johnson described his personal

1 views incorrectly. Professor Johnson admitted he would also be offended in a similar situation”  
2 (allegation 14, sustained). Exh. E; Doc. 8 at ¶ 75.

3 Although the inquiry “revealed no evidence that Dr. Johnson took any of these actions in his  
4 role as a [KCCD] employee,” Exh. E at 8, KCCD warned it “will investigate any further complaints  
5 of harassment and bullying and, if applicable, will take appropriate remedial action including but  
6 not limited to any discipline determined to be appropriate.” *Id.* at 9; Doc. 8 at ¶ 76.

7 *Bakersfield College punishes professors for speaking*

8 Bakersfield College determined that a public lecture given by then-RIFL Faculty Lead  
9 Professor Matthew Garrett entitled “The Tale of Two Protests: Free Speech and the Intellectual  
10 Origins of BC Campus Censorship,” at which Professor Erin Miller introduced him, constituted  
11 “unprofessional conduct.” When the school threatened the professors with further discipline, Garrett  
12 and Miller sued school officials for violating their First Amendment rights. Doc. 8 at ¶ 78; *Garrett*  
13 *v. Hine*, No. 1:21-cv-00845 (E.D. Cal. 2021).

14 Subsequently, Defendant McCrow charged Garrett with “unprofessional conduct,” and  
15 advised that Garrett could be charged with “unsatisfactory performance” and violation of BP 3050.  
16 Doc. 8 at ¶ 79; Exh. F. Garrett’s transgressions included:

- 17 • Authoring an op-ed piece in the *Bakersfield Californian* that “disregarded the impact of [an]  
18 attack” consisting of the posting of political stickers, “took issue with BC’s characterization  
19 of the stickers as ‘hate speech’ and ‘vandalism,’” “suggested that their content was protected  
20 by the First Amendment,” and even “went further to suggest that certain terms like ‘Cultural  
21 Marxism’ weren’t ‘hate speech’ but instead speech that challenges a dominant agenda on  
22 campus, i.e. the social justice movement,” Exh. F at 1;
- 23 • Opining that the EODAC committee “has been consistently staffed by the administration  
24 with faculty who hold one particular point of view,” *id.* at 2, ¶ 4c, and criticizing the  
25 committee chair’s conduct at a meeting, *id.* at 2-3, ¶ 5;
- 26 • Providing a public comment on the Bakersfield College’s Curriculum Committee proposal  
27 of two history courses stating, in opposition, that the courses were the equivalent of a “high  
28 school field trip” and “openly partisan training for children,” *id.* at 3, ¶ 6;
- Causing “very real harm” to students based on three student allegations: first, an  
unexplained assertion that Garrett was a racist who would fail students based on their skin  
color; second, the fact that a different professor whispered something in Garrett’s ear; and  
third, that Garrett allegedly “insult[ed] [another professor] and her way of teaching,” which  
purportedly made the student feel unsafe, *id.* at 4-5, ¶ 11;
- Expressing opinions on a local radio show including that “sociology, ethnic studies, [and]  
anthropology are producing bad information and poor narratives grounded in history;” that  
diversity trainings are just ways to figure out how to legally discriminate; and “[c]laim[ing]  
that Bakersfield College staff are trying to quiet [Garrett],” *id.* at 5, ¶ 12;

- 1 • “[R]epeatedly fail[ing], as the Faculty Lead for the Renegade Institute for Liberty, to  
2 restrict” criticism of KCCD and faculty “on RIFL’s social media” that McCrow alleged to  
be “baseless,” *id.* at 6, ¶ 13; and
- 3 • Using his social media account to express critical opinions of the school and faculty,  
4 including statements such as, “[a]s a public institution their financials should be open to  
public criticism,” *id.* ¶ 14.

5 McCrow added, “Importantly, you caused students to feel unwelcome and unsafe by belittling the  
6 community’s valid concerns.” *Id.* at 7. Johnson understands that “invalid views,” or criticism of  
7 views that “the community” deems “valid,” are punishable. Doc. 8 at ¶ 82.

8 McCrow stressed that Garrett’s speech harmed the school’s reputation, and that Garrett  
9 should not have expressed his concerns about the school publicly. Exh. F at 7. He asserted that  
10 Garrett’s speech dissuaded others from committee work and risked causing disapproval of proposed  
11 curriculum. McCrow commanded Garrett, apparently with respect to his public political and  
12 ideological speech, “You will not substitute your own judgment for the judgment of your supervisor  
13 or other administrators,” and directed Garrett to refrain from publicly airing his grievances and  
14 complaints. *Id.* at 8. Finally, McCrow also removed Professor Garrett from the Equal Opportunity  
15 and Diversity Advisory Committee. *Id.* Upon receiving McCrow’s letter, Garrett resigned as RIFL  
16 Faculty Lead. Johnson succeeded him in that position, and on the committee. Doc. 8 at ¶ 88.

17 On April 11, 2023, Dadabhoy formally recommended to Defendant Trustees, with the  
18 concurrence of Defendant Chancellor Burke’s predecessor, Defendant Christian, that they terminate  
19 Garrett’s employment. Two days later, Defendant Trustees found cause for Garrett’s termination as  
20 set out by the President and Chancellor and fired Professor Garrett. The “Statement of Charges and  
21 Recommendation for Statement of Decision to Terminate” upon which Defendants fired Garrett  
22 recounted McCrow’s allegations, and declared that Garrett failed to follow that notice’s directives  
23 to cure his allegedly deficient job performance by:

- 24 • “[D]eliberately mischaracterizing a Bakersfield College student housing initiative as ‘not  
25 student dorms’ and as ‘low income housing,’” and by “print[ing] and distribut[ing] a flyer”  
26 criticizing the project “as threatening the neighborhood with loud parties, safety issues,  
crime, crowded daily parking issues, overflow of parking for events, and decrease in  
property values.” Exh. G at 13, ¶ 8 (internal punctuation omitted);
- 27 • Alleging that KCCD failed to explain why his conduct was unprofessional, *id.* 14 ¶ 9, and  
28 sending McCrow a request for clarification that was not “made in good faith,” *id.* ¶ 10;

- 1 • Providing an interview for *Fox News Digital* in which he criticized Bakersfield College’s  
2 “affirmative action-type behavior”—“allegations [that] demeaned, demoralized, and  
3 disrespected the College’s employees and its students;” and “[p]rompting,” merely by virtue  
4 of being interviewed, third-party comments on social media that were critical of Bakersfield  
5 College and its students, *id.* ¶ 11a;
- 6 • Linking to his *Fox News Digital* interview on the RIFL Facebook page, and “continu[ing] to  
7 permit the RIFL Facebook page to post” criticism of the school and its faculty, which the  
8 President and Chancellor asserted were “false and baseless attacks,” *id.* at 15, ¶ 11b;
- 9 • Emailing a Daily Wire article about the school to another person, *id.* at ¶ 11c, and sharing  
10 the article on his social media, *id.* at ¶ 11e;
- 11 • Criticizing a faculty member for inciting students against him in an interview with *Inside  
12 Higher Ed*, *id.* at 15, ¶ 11d; and
- 13 • Engaging in “ongoing public attacks [that] demonstrate[d] Garrett’s continued refusal to  
14 engage in civil, honest discourse or to direct complaints to the appropriate college  
15 administrator as directed by the 90-day notice,” *id.* at 16.

11 Defendants charged Garrett with other offenses consisting of political speech, including the  
12 publication of an open letter criticizing Defendant Trustees, *id.* at 17, ¶ 14e; criticizing other  
13 professors on Facebook for excessive claims of racism, sexism, and classism, *id.* at 19, ¶ 19; linking  
14 to a *Just the News* article critical of the school on RIFL’s Facebook page, *id.* ¶ 20; and “accus[ing]”  
15 KCCD “of financial mismanagement,” *id.* ¶ 21.

16 Defendants alleged that Garrett’s speech amounted to immoral or unprofessional conduct  
17 per Cal. Educ. Code §§ 87732(a), 87735; dishonesty, *id.* § 87732(b); unsatisfactory performance, *id.*  
18 § 87732(c); evident unfitness for service, *id.* § 87732(d); persistent violation of, or refusal to obey,  
19 the school laws of the state or reasonable community college regulations, *id.* § 87732(f); and willful  
20 refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules  
21 and regulations of the employing district, *id.* § 87735. Exh. G at 17.

22 *Defendants’ adoption and enforcement of an official ideology chills*  
23 *Professor Johnson’s speech, and compels him to speak contrary to his conscience*

24 Considering his experience of being investigated by Defendants over his Facebook posts,  
25 Defendants’ adoption of an official political ideology that he rejects, Defendants’ exhortations that  
26 their ideology must be affirmed and followed, Defendants’ application of the termination standards  
27 to disfavored speech, and Johnson’s responsibility for some of the speech for which Professor  
28 Garrett was fired, Professor Johnson refrains from expressing his political views and from freely

1 participating in the intellectual life of the college for fear that Defendants would investigate and  
2 discipline him, and terminate his employment based on his viewpoints. Doc. 8 at ¶ 97.

3 Johnson’s conscience does not allow him to believe in and practice the state’s “embracing  
4 diversity” ideology. He does not believe that racism is pervasive and embedded into all societal  
5 structures—particularly at Bakersfield College—and thus he does not wish to challenge the values,  
6 structures, policies, and behaviors that, according to others, allegedly perpetuate systemic racism.  
7 Johnson does not believe he is racist, and he does not wish to constantly identify, challenge, upend,  
8 and replace existing policies. Professor Johnson not only disagrees with the ideology Defendants  
9 require him to affirm, but Johnson also believes that his political viewpoints, which he would like to  
10 express, are inconsistent with and even defiant of that ideology. Doc. 8 at ¶¶ 154-155.

11 Johnson identifies generally with the viewpoints espoused by RIFL, and shares many of  
12 Garrett’s conservative political views and social values the expression of which Defendants censor  
13 and punish. *Id.* at ¶ 100. For example, Johnson posted 15 of the 18 RIFL Facebook posts that  
14 reference the phrase “cultural Marxism,” a term which Garrett was fired for defending. *Id.* at ¶ 101.  
15 Johnson, like Garrett, does not agree with Bakersfield College’s apparent definition of what  
16 constitutes “hate speech” and believes that what is often considered “hate speech” by some is  
17 nonetheless speech protected by the First Amendment. *Id.* at ¶ 100. But Johnson now refrains from  
18 mentioning “Cultural Marxism.” *Id.* at ¶¶ 101-102. He canceled a speech addressing the topic, and  
19 refrains from recommending books that discuss the subject. *Id.* Indeed, mindful of Garrett’s  
20 experience, Johnson refrains from inviting speakers on behalf of RIFL, as they would explore  
21 similar views. *Id.* at ¶ 103.

22 Johnson’s speech is also chilled by the fact that Garrett was disciplined for filing an ethics  
23 complaint about Defendant McCrow, in circumstances that Johnson, too, would have complained.  
24 *Id.* at ¶ 104. And Johnson refrains from speaking further about his department’s curriculum  
25 considering Defendants fired Garrett for opposing proposed history courses, and Johnson likewise  
26 commented about the same courses to the same committee. *Id.* at ¶ 105.

27 Johnson refrains from offering any potentially controversial political views on social media,  
28 owing to Defendants’ behavior. *Id.* at ¶ 107. He opposes censorship, but mindful that Garrett was

1 fired for not censoring comments on RIFL’s Facebook page, Johnson deleted posts that he believed  
2 Defendants would find objectionable and turned over the page’s management to two retired  
3 professors. *Id.* Nonetheless, another professor has now filed a complaint against Johnson over  
4 commentary that others posted on RIFL’s Facebook page. *Id.* Given his experience being  
5 investigated by Defendants over Bond’s complaint, Johnson understands that any of his critics can  
6 trigger investigations and potential discipline over his social media use. *Id.* at ¶ 99. Indeed,  
7 Johnson authored and was responsible for some of the Facebook posts that Defendants attributed to  
8 Garrett and used to justify his termination. *Id.* at ¶ 105.

9 Defendants’ citation of Garrett’s media appearances as cause for his discipline and  
10 termination have also prompted Johnson to turn down invitations to speak to the same media  
11 outlets. *Id.* at ¶ 111. Johnson has also stopped attending committee meetings where he would share  
12 his views on race, diversity, equity, and inclusion, considering that Garrett was fired for just  
13 listening to another professor’s comment to him while sitting on that committee. *Id.* at ¶ 108.  
14 Johnson also refrains from offering conservative views about LGBTQ issues, as Defendants and  
15 various progressive professors have linked these topics to DEI. *Id.* at ¶¶ 108-110.

16 Johnson has previously served on numerous screening committees for new hires, and wishes  
17 to continue doing so, but he refrains from taking the DEIA training now required to continue such  
18 service and will not apply to serve on screening committees because he does not wish to promote  
19 DEIA ideology, and will not evaluate faculty based on their DEIA adherence or instruct them on  
20 DEIA compliance. *Id.* at ¶ 112.

21 Bakersfield College evaluates Johnson’s performance every three years. An unsatisfactory  
22 evaluation will lead to remediation and potentially termination. Johnson has just successfully  
23 completed an evaluation period and intends to keep working as a professor at Bakersfield College,  
24 so his performance moving forward will be evaluated under the new DEIA standards and rules. *Id.*  
25 at ¶ 113. The DEIA requirements chill his speech, including his academic freedom in the classroom  
26 and as the Faculty Lead of RIFL, and compel him to affirm, promote, and celebrate a political  
27 ideology that he rejects and even finds abhorrent. *Id.* at ¶ 112. Johnson cannot meet the standards  
28 set out in the Chancellor’s “Competencies and Criteria,” which will guide KCCD’s evaluation of his

1 teaching, without expressing beliefs and viewpoints that he rejects and without stifling his own  
2 viewpoints on political and social topics. *Id.* at ¶ 120. Johnson is profoundly opposed to the  
3 ideology that Defendants would have him promote rather than criticize, as he is dissuaded from  
4 doing for fear of official retribution and loss of employment. *Id.* at ¶¶ 114-147.

5 Almost everything Johnson teaches violates the new DEIA requirements—not just by failing  
6 to advance the DEIA and “anti-racist” ideology, but also by criticizing it. Johnson fears that if he  
7 continues teaching his courses as he has designed them, he will surely be deemed “unsatisfactory”  
8 in his upcoming evaluations. *Id.* at ¶ 119. Johnson is set to teach three courses in the upcoming  
9 semester which challenge DEI historical narratives and present views incompatible with DEI. In  
10 these courses, Johnson assigns books critical of DEI, written by authors who have been targeted by  
11 DEI adherents. *Id.* at ¶¶ 149-151. Indeed, one DEI sympathizer has already called for Johnson to be  
12 fired for recommending and assigning books used in these courses. *Id.* at ¶ 152. In the following  
13 semester, Johnson will teach history courses that raise the same problems under Defendants’  
14 ideological mandates. The material Johnson will use, his pedagogy, and the views he will teach are  
15 utterly contrary to the state’s DEIA and the Chancellor’s DEIA competency standards. If Johnson  
16 teaches his classes as he normally would and always has, he will not be “demonstrating” or  
17 “progressing” toward compliance with the new DEI standards. *Id.* at ¶ 148.

#### 18 SUMMARY OF THE ARGUMENT

19 Perhaps Defendants meant to file their brief, or a portion of it, in another case. Page after  
20 page, they repeat the term “adverse employment action”—23 times in all—in support of the  
21 proposition that “[w]ithout an adverse employment action, Johnson has not stated a valid First  
22 Amendment retaliation claim.” Doc. 46 at 16. True. Johnson has not stated a retaliation claim. He  
23 has stated *pre-enforcement* claims. The words “adverse employment action” and “retaliation” might  
24 be all over Defendants’ brief, but they appear nowhere in Johnson’s Complaint.

25 Defendants misstate the law of standing, erroneously asserting that the communication of an  
26 actual enforcement threat is a prerequisite to any pre-enforcement claims. It is not. While an  
27 official’s formal enforcement threat obviously establishes standing, the government cannot “pocket  
28 veto” First Amendment claims by withholding formal threats. The question is whether the



1 plaintiff's fear of enforcement is reasonable. On this record, the answer is not in any doubt. And on  
2 a motion to dismiss, that answer does not change merely because Defendants deny the allegations.

3 Defendants next assert that they are municipal officers enforcing a state law for which they  
4 are not responsible. And Johnson, goes their argument, not having identified a municipal custom,  
5 policy, or practice, cannot sue them under 42 U.S.C. § 1983 per *Monell v. Dep't of Soc. Servs. of*  
6 *City of New York*, 436 U.S. 658 (1978). But KCCD is not a municipality and Defendants are not  
7 municipal officers. As Defendants should know, KCCD is an arm of the State of California. It is not  
8 a municipality. This is a lawsuit against *state officials* for their enforcement of *state law* in  
9 contravention of the Constitution. Plaintiffs are allowed to bring facial and as-applied constitutional  
10 challenges against the enforcement of state laws and regulations by the state officials who enforce  
11 them. And just as *Monell* allows for lawsuits over the enforcement of a municipal policy reflected in  
12 an ordinance, the state's laws and regulations reflect the state's duly adopted policies. It is absurd to  
13 suggest that plaintiffs cannot challenge an unconstitutional law or regulation, or the unconstitutional  
14 application of a law or regulation, unless they *also* challenge some unwritten, uncodified custom,  
15 practice, or policy. Similarly, because constitutional challenges are brought against those who  
16 participate in the violation, there is no suing the legislature or administrative body for enacting the  
17 laws or regulations. And because they have discretion as to how they enforce the state's laws and  
18 regulations, Defendants would be subject to injunctive relief under Section 1983 even if they were  
19 municipal officers.

20 ARGUMENT

21 I. JOHNSON DOES NOT BRING A RETALIATION CLAIM.

22 Defendants argue that Johnson cannot sustain a retaliation claim because has not alleged that  
23 he sustained an "adverse employment action." But the complaint does not contain the word  
24 "retaliation." Johnson makes no such claim.<sup>2</sup> Johnson's complaint sounds in pre-enforcement.  
25 Retaliation is what Johnson fears and seeks to enjoin, not a past event for which he seeks redress.

26  
27  
28 <sup>2</sup> To be sure, Defendants' investigation into Johnson's Facebook post would be an "adverse employment  
action," defined as "any adverse treatment that is based on a retaliatory motive and is reasonably likely to  
deter the charging party or others from engaging in a protected activity," *Little v. Windermere Relocation,*  
*Inc.*, 301 F.3d 958, 970 (9th Cir. 2002) (internal quotation marks omitted), were that a relevant question.

## 1 II. JOHNSON HAS STANDING TO SUE KCCD DEFENDANTS.

2 “In a pre-enforcement challenge, plaintiffs can show injury in fact by establishing that (1)  
3 they intend to violate the law; and (2) have shown a reasonable likelihood that the government will  
4 enforce the statute against them.” *Project Veritas v. Schmidt*, 72 F.4th 1043, 1053 (9th Cir. 2023).  
5 “Reasonable likelihood” does not require a formal promise of prosecution. Article III requires only  
6 that “the threat of enforcement must at least be ‘credible,’ not simply ‘imaginary or speculative.’”  
7 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc)  
8 (quoting *Babbitt v. UFW Nat’l Union*, 442 U.S. 289, 298 (1979)).

9 “[A] government’s preliminary efforts to enforce a speech restriction or its past enforcement  
10 of a restriction [is] strong evidence (although not dispositive) that pre-enforcement plaintiffs face a  
11 credible threat of adverse state action.” *Lopez v. Candaele*, 630 F.3d 775, 786 (9th Cir. 2010)  
12 (citation omitted). A credible threat exists where “prosecuting authorities have communicated a  
13 specific warning or threat to initiate proceedings under the challenged speech restriction,” or if there  
14 is “a history of past prosecution or enforcement under the challenged statute.” *Thomas*, 220 F.3d at  
15 1139. But even that much is often not required, as when the state enacts a new speech-restricting  
16 law. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000) (citing *Virginia v. Am. Booksellers*  
17 *Ass’n, Inc.*, 484 U.S. 383 (1988)). “[T]he tendency to find standing absent actual, impending  
18 enforcement against the plaintiff is stronger in First Amendment cases.” *Id.* (internal quotations  
19 omitted).

20 Defendants misread the Ninth Circuit’s three-factor test for pre-enforcement standing, in  
21 which the communication of a specific warning or threat is the second factor. These factors are  
22 “weigh[ed].” *Unified Data Servs., LLC v. FTC*, 39 F.4th 1200, 1210 (9th Cir. 2022). The nature of  
23 plaintiffs’ plans to violate the law, and enforcement history, also count. *Id.* More to the point, “[i]n  
24 the context of First Amendment speech, a threat of enforcement may be inherent in the challenged  
25 statute, sufficient to meet the constitutional component of the ripeness inquiry.” *Wolfson v.*  
26 *Brammer*, 616 F.3d 1045, 1059 (9th Cir. 2010) (citations omitted). The Ninth Circuit has not  
27 overruled the Supreme Court’s pre-enforcement standing doctrine, or the numerous pre-  
28 enforcement cases sustaining pre-enforcement standing in the absence of a specific, explicit threat.

1 Johnson is not vague about what he wants to say and not say. Nor is he imagining the very  
2 real risk to his employment if he continues on his intended path.

3 *A. Johnson has provided clear evidence of speech he reasonably refrains from uttering or*  
4 *feels compelled to utter.*

5 Johnson has painstakingly detailed his “concrete plan” to speak or refrain from speaking in  
6 ways that Defendants would punish. Many of his plans involve speech that Defendants have already  
7 punished. For example, Johnson is currently refraining from discussing “Cultural Marxism” or  
8 defending it as a speaker topic, FAC, Doc. 8, at ¶ 102; recommending books, *id.* at ¶ 102; posting  
9 on the RIFL Facebook page or his own social media, *id.* at ¶ 107; finalizing speaker agreements, *id.*  
10 at ¶ 103; filing internal complaints about fellow school staff or faculty, *id.* at ¶ 104; addressing or  
11 criticizing Bakersfield College history curriculum, *id.* at 105; expressing the viewpoints that  
12 students are being weaponized by the EODAC to push DEI ideology agendas, *id.* at ¶ 108; attending  
13 EODAC meetings where, if he attended, he would express concerns about “reverse” racism and  
14 deceptive ways the committee was pushing affirmative action, *id.* at ¶ 109; interviewing with the  
15 media and providing commentary similar to Garrett’s, *id.* at ¶ 111; serving on screening committees  
16 so as not to have to espouse views mandated in the school’s DEIA training, *id.* at ¶ 112; protesting  
17 against the participation of males in female sports competitions, *id.* at ¶ 110; protesting against  
18 “drag queen story hours,” *id.*; and expressing his objections to anti-racist ideology, *id.* at ¶ 118.

19 Johnson has also explained how Defendants compel him to speak. Defendants evaluate  
20 Johnson, *id.* at ¶¶ 113-14, and will terminate him for not following the rules, *id.* at ¶¶ 27-29; Cal.  
21 Educ. Code § 87732(f). They must and will evaluate him based on his DEIA compliance. FAC at ¶¶  
22 39-41; Cal. Code of Regs. tit. 5, §§ 53601, 53602, 53605. Accordingly, Johnson is now compelled,  
23 against his will, to “[a]dvocate[] for and advance[] DEI and anti-racist goals and initiatives,” FAC at  
24 ¶ 126; “[l]ead[] DEI and anti-racist efforts” *id.*; “constantly identify, challenge, upend, and replace  
25 existing policies,” *id.* at ¶ 154; “introduce ‘new employees to the institution and system’s focus on  
26 DEI and anti-racism and the expectations for their contribution,’” *id.* at ¶ 112; “[s]eek[] DEI and  
27 anti-racist perspectives and appl[y] knowledge to problem solving, policies, and processes to create  
28 respectful, DEI-affirming environments (e.g., campus and classroom environments that are  
inclusive, promotes equity, and affirms diversity),” *id.* at ¶ 120; “demonstrate[] a commitment to

1 continuous improvement as it relates to [his] DEI and anti-racism knowledge, skills, and  
2 behaviors[,]” *id.* at ¶ 122; “[p]romote[] and incorporate[] DEI and anti-racist pedagogy,” *id.* at ¶  
3 123; “[a]rticulate[] the importance and impact of DEI and anti-racism” *id.* at ¶ 125 and “seek[]  
4 opportunities for growth to acknowledge and address the harm caused by internal biases and  
5 behavior,” *id.* at ¶ 121. The record contains much more. But Johnson “need not provide  
6 transcriptions of the conversations” to prove “content, form and context of speech.” *Greisen v.*  
7 *Hanken*, 925 F.3d 1097, 1110 (9th Cir. 2019). His complaint more than suffices.

8 *B. Defendants have threatened Johnson and demonstrated their intent to enforce the laws*  
9 *against him, placing him at risk of imminent harm.*

10 Defendants have plainly communicated their intent to enforce the DEIA regulations and  
11 initiate proceedings under Cal. Educ. Code §§ 87732 and 87735, and BP 3050, if Johnson engages  
12 in speech that does not comport with “intentionally practic[ing] . . . antiracism.” Cal. Code Regs. tit.  
13 5, § 51201(b). Defendant Corkins thinks the RIFL members’ views are “abusive,” and has  
14 threatened to “cull” Johnson and “take [him] to the slaughterhouse” for expressing those views.  
15 Defendant Watkin’s predecessor referred to those same views as “attacks” on minorities that violate  
16 § 51201, Exh. C, and said Garrett’s views, which Johnson shares, are inconsistent with the school’s  
17 DEIA ideologies and “make[ ] his colleagues and the District’s students feel unsafe.” Exh. G at 12,  
18 22. Defendant McCrow issued a disciplinary notice to Garrett threatening further action for speech  
19 that is contrary to KCCD’s preferred DEIA ideology. Exh. F. And Defendants have already  
20 investigated Johnson for posting dissident political speech on Facebook. Exh. E.

21 These acts suffice, as “informal measures, such as the threat of invoking legal sanctions and  
22 other means of coercion, persuasion, and intimidation, can violate the First Amendment also.”  
23 *Mulligan v. Nichols*, 835 F.3d 983, 989 n.5 (9th Cir. 2016) (citations omitted). Defendants posit this  
24 Court should simply disregard them all as, for example, “the off-hand remark of only one Trustee”  
25 (John Corkins) or a mere email about “aspirational community goals.” (Watkin’s predecessor). Doc.  
26 46 at 19. But in evaluating a motion to dismiss, court must draw inferences in favor of the plaintiff,  
27 not the defendants. These statements do not sound benign to a reasonable KCCD faculty member.  
28 They are part of an escalating pattern that has already led to one professor’s termination—Johnson’s  
predecessor as RIFL lead—in part for not censoring Johnson’s speech.

1 It is implausible that that Defendants hold such dim views of Johnson’s ideas, but would not  
2 label them “immoral or unprofessional,” Cal. Educ. Code § 87732(a), “[e]viden[ce] [of] unfitness  
3 for service,” *id.* § 87732(b), evidence of refusal to obey DEIA regulations, *id.* § 87732(f); lacking in  
4 “civility,” BP 3050, or “aggressi[ive], threat[ening], harass[ing], ridicul[ing], or intimidat[ing],” *id.*  
5 And Johnson should not be required to teach for the next three years, only to meet that same fate  
6 and find out his “abusive” views and failure to incorporate DEIA into his teaching have cost him his  
7 job, as Defendants take his failure to satisfy Cal. Code Regs. tit. 5, §§ 53425, 53462, and 53605 as  
8 “unsatisfactory performance,” Cal. Educ. Code § 87732(c); “[e]vident unfitness for service,” *id.* §  
9 87732(d), or “[p]ersistent violation of, or refusal to obey” state regulations, *id.* § 87732(f).

10 Defendants have also demonstrated a “history of past prosecution or enforcement under the  
11 challenged statute[s]” by disciplining and terminating Garrett. *Thomas*, 220 F.3d at 1139.  
12 Defendants assert that Garrett was terminated for “conduct” that BP 3050 prohibits. Doc. 46 at 20  
13 (emphasis in the original). But BP 3050 expressly prohibits “verbal forms of aggression, threat,  
14 harassment, ridicule or intimidation.” And there is no denying that the bulk of Garrett’s alleged  
15 transgressions were acts of pure political speech, the same speech from which Johnson refrains.

16 Defendants punished Garrett for opining that the phrase “Cultural Marxism” is not hate  
17 speech and is protected by the First Amendment. Exh. F at 1. Johnson agrees and has posted that  
18 same view on social media in the past; but he distances himself from referencing and supporting the  
19 term in every possible way now. Doc. 8 at ¶¶ 101-102. Defendants punished Garrett for filing a  
20 complaint against Defendant McCrow for viewpoint discrimination. Exh. F at 3, ¶ 2.d.ii. Johnson  
21 has since refrained from filing internal complaints about school staff or faculty. Doc. 8 at ¶ 104.  
22 Defendants punished Garrett for opining that the EODAC committee is staffed by faculty who  
23 “hold one particular point of view,” Exh. F at 2, ¶ 4c, and criticizing the committee chair’s conduct  
24 at a meeting, *id.* at 2-3, ¶ 5. Johnson has stopped attending EODAC meetings to completely avoid  
25 having to give his conservative views on race, diversity, equity, and inclusion that EODAC  
26 addresses. Doc. 8 at ¶¶ 108-109. Defendants punished Garrett for criticizing two proposed history  
27 courses via public comment and posts on the RIFL Facebook page. Exh. F at 3, ¶ 6. Johnson also  
28 wrote a critical public comment, and *he* authored the Facebook posts that Defendants attributed to

1 Garrett. Doc. 8 at ¶ 105. Defendants punished Garrett for giving interviews to the Terry Maxwell  
2 Show and Fox News Digital in which he criticized Bakersfield College’s diversity practices. Exh. F  
3 at 5, ¶ 12; Exh. G at 13, ¶ 11a. Johnson turned down invitations to appear on the same media outlets  
4 to discuss similar topics, on which he shares Garrett’s views. Doc. 8 at ¶ 111. Defendants punished  
5 Garrett for expressing critical opinions of the school and faculty - and allowing other third parties to  
6 do so – on RIFL’s Facebook page. Exh. F ¶ 14; Exh. G ¶¶ 3(a)(vi), 11(b), 15, 19, 20. Johnson had  
7 actually been the one to author or sanction many of the posts that Garrett was disciplined for; he no  
8 longer posts on the RIFL Facebook page and or his own social media page. Doc. 8 at ¶¶ 106-107.

9 Defendants’ history with Garrett is not “unrelated.” Doc. 46 at 11. It demonstrates a clear  
10 “history of past enforcement against parties similarly situated to” Johnson, which “cuts in favor of a  
11 conclusion that a threat is specific and credible.” *Lopez*, 630 F.3d at 786-87. Defendants cannot  
12 charge Garrett with mostly speech offenses, convict him of everything, and then cherry-pick the  
13 non-speech allegations to claim that *those* were the ones for which he was really fired. A reasonable  
14 professor looking at Garrett’s experience would silence himself.

15 Defendants’ assertion that Johnson faces no credible threat of discipline because he is not  
16 *currently* being disciplined is irrelevant. “To establish a dispute susceptible to resolution by a  
17 federal court,” all a “plaintiff[ ] must allege [is] that they have been threatened with prosecution,  
18 that a prosecution is likely, or even that a prosecution is *remotely possible*.” *Culinary Workers*  
19 *Union, Local 226 v. Del Papa*, 200 F.3d 614, 617 (9th Cir. 1999) (internal citations and quotations  
20 omitted) (emphasis added); *see, e.g., Canatella v. California*, 304 F.3d 843, 855 (9th Cir. 2002)  
21 (“While Canatella is not currently involved in disciplinary proceedings, it cannot be said that  
22 Canatella’s fear of facing future disciplinary proceedings is ‘imaginative and wholly speculative.’”).

23 Finally, Defendants’ claim that Johnson does not face a current threat of discipline because  
24 he “will not be evaluated for three more years” under the new DEIA regulations, Doc. 46 at 12,  
25 misses the point. Aside from the fact that Defendants could terminate Johnson tomorrow for his  
26 speech (they did not fire Garrett for failing a three-year review), Johnson’s evaluation in three years  
27 will be based on his speech *today*.

28

1 III. DEFENDANTS ARE SUBJECT TO INJUNCTION BECAUSE THEY ARE THE RELEVANT STATE  
2 OFFICIALS WHO ARE ENFORCING THE CHALLENGED STATE LAWS AND REGULATIONS.

3 Defendants err in persisting with the theory that they are municipal officials who can only be  
4 sued for enforcing municipal policies under *Monell*. Doc. 46 at 21-25; *see also* Doc. 43.

5 Simply put: Community college districts are *not municipalities*. They are not “persons”  
6 under Section 1983. Defendants fail to cite one Ninth Circuit case that has ever treated community  
7 college districts as *Monell* entities, or that has treated community college trustees as municipal  
8 actors. To the contrary, “the Ninth Circuit has held that community college districts in California  
9 are state entities that possess Eleventh Amendment immunity from 1983 claims[.]” *Berry v.*  
10 *Yosemite Cmty. Coll. Dist.*, No. 1:18-cv-00172-LJO-SAB, 2018 U.S. Dist. LEXIS 64732, at \*7  
11 (E.D. Cal. Apr. 17, 2018) (citing *Mitchell v. Los Angeles Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th  
12 Cir. 1988)). KCCD is a *state* entity. Defendants are *state* officials who *can* be enjoined from  
13 enforcing *state* laws when sued in their official capacities. *Ex Parte Young*, 209 U.S. 123 (1908).

14 Having been made aware of this basic defect in their argument, Defendants seek to fuse  
15 *Monell* with *Ex parte Young* in a footnote asserting that even if they are state officials, “*Monell*’s  
16 requirements apply,” Doc. 46 at 23, n. 7 (citing *Norsworthy v. Beard*, 87 F. Supp. 3d 1104 (N.D.  
17 Cal. 2015)), meaning Johnson must point to a custom or policy beyond the laws and regulations that  
18 Defendants implement. But this would mean that nobody could challenge the constitutionality of a  
19 state law or regulation unless he or she *also* challenged some uncodified “custom or practice.” This  
20 is not the law. And *Norsworthy* is irrelevant—an ordinary case where a plaintiff sued state officials  
21 over an uncodified “policy or custom.” The case does *not* stand for the proposition that state  
22 officials cannot be sued for enforcing state laws and regulations.

23 Defendants also misread *Monell*, which does *not* establish that injunctions may only be  
24 entered against uncodified policies, customs, and practices. Rather, *Monell* stands for the simple  
25 proposition that “[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary,  
26 declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional  
27 implements or executes a policy statement, *ordinance, regulation, or decision officially adopted and*  
28 *promulgated* by that body’s officers.” *Monell*, 436 U.S. at 690 (footnote omitted) (emphasis added).  
“[I]t is when execution of a [local] government’s policy or custom, *whether made by its lawmakers*

1 or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that  
2 the government as an entity is responsible under § 1983.” *Id.* at 695 (emphasis added). If Johnson  
3 sued Kern County officials, *Monell* would not require him to point to anything more than a duly  
4 enacted county ordinance, or, absent that, to an uncodified policy or custom.

5 Here, Johnson sues *state* officials, and he can challenge their enforcement of state laws and  
6 regulations—a basic feature of federal practice since *Ex parte Young*. Section 53601(b) directs  
7 Defendants to formulate local DEIA standards. The Court can enjoin them from doing so. Section  
8 53602 directs Defendants to adopt policies for evaluating Johnson’s performance based on his  
9 commitment to DEIA, evaluate him based on DEIA, and take a host of steps to implement DEIA  
10 ideology. The Court can enjoin them from doing so. Section 53605 directs Johnson to incorporate  
11 DEIA into his teaching. The Court can enjoin Defendants from firing Johnson under the Education  
12 Code if he refuses to do so. And even absent the DEIA regulations, the Court can enjoin Defendants  
13 from applying the Education Code to Johnson in the same manner that they applied against Garrett,  
14 interpreting disapproved political thought as grounds for termination.

15 It is not a defense under *Ex Parte Young* for state officials to claim, as Defendants have, that  
16 they have no choice but to enforce state law. The Constitution is supreme. U.S. Const. art. VI. This  
17 Court’s orders enforcing it—even against state law—are not optional. “Allowing state actors to  
18 escape liability by claiming that they have a ‘compelling state interest’ in implementing a state law  
19 that violates federal law would make the Supremacy Clause hollow indeed.” *Bessard v. Cal. Cmty.*  
20 *Coll.*, 867 F. Supp. 1454, 1464 (E.D. Cal. 1994) (footnote omitted).

21 And even if the Defendants were somehow municipal officers who find themselves in the  
22 position of enforcing state law, they would *still* be subject to injunctive relief under Section 1983 as  
23 they exercise discretion in employment decisions, and in crafting local DEIA policies. *Evers v.*  
24 *Cnty. of Custer*, 745 F.2d 1196, 1203 (9th Cir. 1984); *see* FAC at ¶ 58.

25 IV. THE STATE BOARD OF GOVERNORS IS IRRELEVANT.

26 Seeking to shift the blame elsewhere, Defendants suggest that the true defendants ought to  
27 be the state community college system’s Board of Governors who are “responsible for the  
28 challenged regulations.” Doc. 46 at 25. Defendant Christian, represented by the California Attorney



1 General’s Office, has notably not advanced this argument, and it is unclear why the state governors  
2 belong here.<sup>3</sup> Unlike Defendant Christian, the state governors have no role in maintaining the  
3 “competencies and criteria.” And while the state governors may have enacted the DEIA regulations,  
4 they do not enforce them against Johnson, nor do they enforce the Education Code against Johnson,  
5 nor do they enforce BP 3050 against Johnson. KCCD Defendants do.

6 Injunctions are not directed at legislators who enact challenged provisions. They are directed  
7 at those who participate in the challenged provisions’ enforcement. *Wolfson* stands directly on-  
8 point. There, the plaintiff sued members of Arizona’s Commission on Judicial Conduct, Arizona’s  
9 Supreme Court Disciplinary Committee, and Arizona’s Chief Bar Counsel to enjoin enforcement of  
10 judicial canons that he claimed violated his First Amendment rights. The Ninth Circuit rejected  
11 Defendants’ arguments that Wolfson lacked standing because they were powerless to repeal the  
12 canons. “Wolfson need not obtain a Code revision . . . in order to obtain a measure of relief.”  
13 *Wolfson*, 616 F.3d at 1056. “These defendants have the power to discipline Wolfson and, if they are  
14 enjoined from enforcing the challenged provisions, Wolfson will have obtained redress in the form  
15 of freedom to engage in certain activities without fear of punishment.” *Id.* “Without a possibility of  
16 the challenged canons being enforced, those canons will no longer have a chilling effect on speech.  
17 Wolfson will thus be able to engage in the political speech and campaign activities he desires.” *Id.*  
18 at 1057. The same holds here.<sup>4</sup>

19 CONCLUSION

20 This Court should deny the KCCD Defendants motion to dismiss (Doc. 46).

21 Dated: September 12, 2023

Respectfully submitted.

22 By: /s/ Alan Gura

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27 \_\_\_\_\_  
28 <sup>3</sup> Defendants do not suggest suing the California legislators who are “responsible” for the Education Code.  
<sup>4</sup> Should this Court decide that the state governors are necessary parties for having promulgated the DEIA  
regulations, leave to amend should be granted to address this technical matter.

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2023, I electronically filed the foregoing with the Clerk using the Court’s CM/ECF system, and that all participants in this case are registered CM/ECF users who have thereby been electronically served.

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

Executed on September 12, 2023.

/s/ Alan Gura  
Alan Gura