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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MONTEREY

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11 HOWARD JARVIS TAXPAYERS ASSOCIATION;
and MATTHEW BOLNER,

12 Plaintiffs,

13 v.

14 CALIFORNIA STATE UNIVERSITY, MONTEREY
15 BAY; ERNEST STROMBERG; and DOES 1-25,

16 Defendants.

No.

**COMPLAINT FOR DECLARATORY
RELIEF (CCP 1040), TAXPAYERS
INJUNCTIVE RELIEF (CCP 526a),
AND DAMAGES FOR VIOLATION OF
FEDERAL RIGHTS (42 USC 1983)**

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18 This is a taxpayers' action brought to declare the impropriety of using public
19 resources for political campaigning, to enjoin any further use of public resources for political
20 campaigning, and for nominal damages to a student whose constitutional rights of free
21 speech and association were violated by the use of public resources for political
22 campaigning. Plaintiffs allege as follows:

23 PARTIES

24 1. Plaintiff Howard Jarvis Taxpayers Association ("HJTA") is a nonprofit public
25 benefit corporation, comprised of over 200,000 California taxpaying members, organized
26 and existing under the laws of California for the purpose, among others, of advocating the
27 reduction of taxes and engaging in civil litigation on behalf of its members and all California
28 taxpayers to protect taxpayer rights. HJTA has members who reside and pay taxes in

1 California, and members who are students at California State University, Monterey Bay.

2 2. Plaintiff Matthew Bolner is a taxpayer and resident of the County of Monterey,
3 and a full-time tuition-paying student at California State University, Monterey Bay.

4 3. Defendant California State University, Monterey Bay is a campus of the
5 California State University ("CSU"), governed by its own campus president. Pursuant to
6 regulations adopted by the CSU Trustees under the authority of Education Code sections
7 89030 *et seq.*, the president of each campus is responsible for hiring and supervising the
8 staff and faculty for that campus (5 Cal. Admin. Code §§ 42702, 43521), and is also
9 responsible for regulating noncommercial solicitations on campus (5 Cal. Admin. Code §§
10 42350-42350.6). Pursuant to Government Code section 945, CSU Monterey may sue and
11 be sued in its own name.

12 4. Defendant Ernest Stromberg is the Director of the Division of Humanities and
13 Communication at CSU Monterey Bay.

14 5. Defendant Does 1-25 are sued herein under fictitious names because their
15 true names and capacities are unknown to plaintiffs. When their true names and capacities
16 are ascertained, plaintiffs will amend this complaint to assert their true names. Plaintiffs are
17 informed and believe, and on that basis allege, that each of the fictitiously named
18 defendants is responsible in some manner for the occurrences alleged herein, and that
19 plaintiffs' damages were proximately caused by those defendants.

20 FIRST CAUSE OF ACTION

21 (Declaratory Relief - CCP 1040)

22 6. Proposition 30 is an initiative measure on the November 6, 2012 ballot,
23 sponsored by Governor Jerry Brown, the California Federation of Teachers, and the
24 California Teachers Association. If passed, Proposition 30 will increase the State sales and
25 use tax for four years on all taxable purchases, and will increase the State income tax for
26 seven years on incomes above \$250,000 for individuals, or \$500,000 for joint filers.

27 7. Plaintiffs are informed and believe, and on that basis allege, that on or about
28 September 27, 2012, defendant Ernest Stromberg sent the communication attached hereto

1 as Exhibit A ("communication") from the Division of Humanities and Communication email
2 address, using the CSU Monterey email system, to the students enrolled in the Humanities
3 and Communication program, using their CSU Monterey email addresses.

4 8. The communication expresses and solicits support for Proposition 30. The
5 email is addressed "Dear Students," and solicits them to "work together to pass Prop 30" in
6 order to spare State funding for CSU. The solicitation is coupled with both a threat that, "If
7 Prop. 30 does not pass ... CSU students will face higher fees [and] fewer classes," and with
8 an inducement that, "If we work together to pass Prop 30 ... students will get a \$498 tuition
9 refund." The email closes with a solicitation to "share this information with your family
10 [presumably because many parents pay their children's tuition] and friends and encourage
11 them to vote their support for the CSU System this November." The email is electronically
12 signed "Dr. Ernest Stromberg, Professor, Director Division of Humanities and
13 Communication, 100 Campus Center, CSU Monterey Bay."

14 9. The CSU Monterey email system is primarily funded through State tax
15 revenue and compulsory student fees. All email sent from a CSU Monterey email address
16 to a CSU Monterey email address is routed through the CSU Monterey server.

17 10. The CSU Monterey email system is not a public forum. Every student is
18 assigned a CSU Monterey email address to ensure that the college administration and
19 faculty are able to communicate with the students.

20 11. Government Code section 89001 provides, "No newsletter or other mass
21 mailing shall be sent at public expense." Section 82041.5 defines "mass mailing" as a
22 mailing to more than 200 recipients. Defendant Stromberg's email to approximately 360
23 students qualifies as a prohibited mass mailing.

24 12. Government Code section 8314 provides, "It is unlawful for ... any state ...
25 appointee, employee, or consultant to use or permit others to use public resources for a
26 campaign activity, or personal or other purposes which are not authorized by law."
27 Defendant Stromberg's email qualifies as a prohibited use of public resources either for a
28 campaign activity or for a personal or other unauthorized purpose.

1 13. The First Amendment of the United States Constitution, applied to the states
 2 through the Fourteenth Amendment, and Article I, sections 2 and 3 of the California
 3 Constitution guarantee every citizen freedom of speech and the right to assemble. These
 4 rights include the right to not speak and to not assemble. By using public resources to
 5 conduct a mass mailing advocating one side of a contested political campaign, defendant
 6 Stromberg violated taxpayers' and students' right against being compelled to speak in favor
 7 of a measure they oppose, and their right against being compelled to assemble with the
 8 proponents of a measure they oppose.

9 14. Government Code section 815.2 provides, "A public entity is liable for injury
 10 proximately caused by an act or omission of an employee of the public entity within the
 11 scope of his employment." CSU Monterey is liable under this statute for injuries caused by
 12 defendant Stromberg's unlawful use of public resources for political campaigning.

13 15. An actual controversy exists between the parties in that plaintiffs believe
 14 defendant Stromberg's use of the CSU Monterey email system to conduct a mass
 15 campaign mailing is unlawful and violates the constitutional rights of taxpayers and students
 16 whose tax dollars and student fees are being misused to promote a political cause which
 17 they do not support, and that CSU Monterey is liable for defendant Stromberg's actions;
 18 whereas defendants believe the alleged activities are valid in all respects.

19 16. Plaintiffs desire a judicial determination of the rights and duties of the parties,
 20 including a declaration regarding the validity of the email attached as Exhibit A.

21 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

22 SECOND CAUSE OF ACTION

23 (Injunctive Relief - CCP 526a)

24 17. Plaintiffs repeat the allegations contained in Paragraphs 1 through 16 above
 25 as though fully set forth herein.

26 18. Plaintiffs are informed and believe, and on that basis allege, that defendant
 27 Stromberg and other administrators and faculty employed at CSU Monterey Bay will
 28 continue to have access to the CSU Monterey email system and to other public resources,

1 and that CSU Monterey's president may neglect to regulate the political solicitation of
2 students at public expense by CSU Monterey employees as to Proposition 30 or other
3 measures on the ballot, unless enjoined from doing so.

4 19. Plaintiffs have no adequate remedy at law, or otherwise, for the harm and
5 injury that will be caused by defendants' continued acts and omissions as alleged herein.

6 20. Irreparable harm and injury will follow and be suffered by plaintiffs unless the
7 acts and omissions of defendants are enjoined.

8 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

9 THIRD CAUSE OF ACTION

10 (Damages for Violation of Federal Rights - 42 USC 1983)

11 21. Plaintiffs repeat the allegations contained in Paragraphs 1 through 20 above
12 as though fully set forth herein.

13 22. In committing the acts and omissions complained of herein, defendants acted
14 under color of state law to deprive plaintiffs of certain constitutionally protected rights
15 secured by the First and Fourteenth Amendments of the United States Constitution.

16 23. In committing the acts complained of herein, defendants have damaged
17 plaintiffs in an amount which plaintiffs are presently unable to ascertain. Plaintiffs will
18 request leave to amend this complaint to allege the amount of damages once they are
19 determined through discovery.

20 WHEREFORE, plaintiffs pray for judgment as set forth below:

21 PRAYER

22 Based on the foregoing allegations, plaintiffs pray for judgment against defendants
23 as follows:

24 1. For a declaration that defendant Stromberg's use of the CSU Monterey email
25 system to send the email attached as Exhibit A to the students enrolled in the Humanities
26 and Communication program using their CSU Monterey email addresses was unlawful and
27 violated plaintiffs' rights under the First and Fourteenth Amendments of the United States
28 Constitution, and that CSU Monterey is liable for defendant Stromberg's actions;

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- 2. For a permanent injunction ordering defendants to refrain from using public resources for political activities in the future, and from approving or permitting the same by persons under their supervision;
- 3. For damages according to proof;
- 4. For costs of suit including reasonable attorney fees; and
- 5. For such other or further relief as the Court deems just and proper.

DATED: _____

Respectfully submitted,

TREVOR A. GRIMM
JONATHAN M. COUPAL
TIMOTHY A. BITTLE

TIMOTHY A. BITTLE
Attorneys for Plaintiffs

1 VERIFICATION

2 I, Jon Coupal, am the President of Howard Jarvis Taxpayers Association, one of the
3 plaintiffs in this action, and authorized to sign this Verification on the Association's behalf. I
4 have read the attached complaint. Except as to matters stated on information and belief,
5 the allegations contained in the complaint are true of my own knowledge and, with regard to
6 those matters stated on information and belief, I believe them to be true.

7 I declare, upon penalty of perjury under the laws of the State of California, that the
8 foregoing is true and correct and that this verification was executed on the date shown
9 below in the City of Sacramento, California.

10 DATED: _____

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12 _____
13 JON COUPAL