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19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 WESTERN DIVISION

22 **NICOLAS TOMAS,**

23 Plaintiff,

24 v.

25 **SORAYA M. COLEY, BYRON E.**  
26 **HOWLETT, JR., LA'KEISHA**  
27 **GILFORD-BEARD, and RENEE**  
28 **MARIE FOISY**

Defendants.

Case No. 2:15-cv-2355

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF  
AND DAMAGES**

**I. INTRODUCTION**

1. Although the Supreme Court has made clear that “state colleges and universities are not enclaves immune from the sweep of the First Amendment,” *Healy v. James*, 408 U.S. 169, 180 (1972), California State Polytechnic University –

1 Pomona (“Cal Poly Pomona”) has prevented Plaintiff Nicolas Tomas from  
2 distributing literature on campus protesting the large-scale mistreatment of farm  
3 animals. Campus police have been called to the scene on more than one occasion  
4 when Tomas was doing nothing more than expressing his views peacefully in public  
5 areas of campus, and Tomas has been threatened with sanctions if he did not cease  
6 handing literature to passers-by.  
7

8  
9 2. Cal Poly Pomona’s policies restrict speech across the board, requiring  
10 the Plaintiff to obtain a “permit” to distribute handbills and confining his expressive  
11 activities to the university’s tiny “free speech zone,” which comprises less than  
12 0.01% of the campus. Such policies cannot be reconciled with the basic First  
13 Amendment precepts that “[t]he college classroom with its surrounding environs is  
14 peculiarly the ‘marketplace of ideas,’” *id.* at 180, and that “[a] primary purpose of a  
15 college or university is to contribute to the exchange of ideas.” *Jews for Jesus, Inc.*  
16 *v. City College of San Francisco*, No. C 08-03876, 2009 WL 86703, at \*3 (N.D.  
17 Cal. Jan. 12, 2009). As a consequence, “sidewalks and plazas on a publicly-  
18 supported college campus constitute a public forum.” *Id.*  
19  
20  
21

22 3. This is a civil rights action to protect and vindicate the First and  
23 Fourteenth Amendment rights of Nicolas Tomas and his fellow students at Cal Poly  
24 Pomona. By policy and practice, Cal Poly Pomona unlawfully restricts students’  
25 constitutional rights to free expression and has acted in the past to restrict Plaintiff’s  
26  
27  
28

1 constitutional rights. Accordingly, Cal Poly Pomona's policies and enforcement  
2 practices are challenged on their face and as applied to the Plaintiff.  
3

## 4 **II. JURISDICTION AND VENUE**

5 4. This action arises under the United States Constitution, particularly the  
6 First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and  
7 1988.  
8

9 5. This Court has original jurisdiction over these federal claims pursuant  
10 to 28 U.S.C. §§ 1331 and 1343.  
11

12 6. This Court has authority to grant the requested declaratory judgment  
13 pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.  
14

15 7. This Court has authority to issue the requested injunctive relief  
16 pursuant to 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65.

17 8. This Court has authority to award attorney's fees and costs pursuant to  
18 42 U.S.C. § 1988.  
19

20 9. Venue is proper in the United States District Court for the Central  
21 District of California pursuant to 28 U.S.C. § 1391(b) because the events giving rise  
22 to the instant claim occurred within this District and because at least one Defendant  
23 resides in this District.  
24

## 25 **III. PLAINTIFF**

26 10. Plaintiff Nicolas Tomas is a resident of El Monte, California, who is  
27 presently a student at Cal Poly Pomona. Tomas is the founder and president of the  
28

1 Vegan Earth Collective, a registered student group, whose members believe  
2 veganism is a stance against animal cruelty and a solution to the widespread social  
3 justice issue of animal rights.  
4

#### 5 **IV. DEFENDANTS**

6  
7 11. Defendant Soraya M. Coley became president of Cal Poly Pomona, a  
8 public university organized and existing under the laws of the State of California,  
9 on January 1, 2015. She is Cal Poly Pomona's chief executive officer, responsible  
10 for the University's administration and policymaking and has ultimate authority to  
11 approve the policies and procedures challenged herein that were applied to deprive  
12 Plaintiff of his constitutional rights. Defendant Coley acted under color of state law  
13 and is sued for injunctive relief in her official capacity.  
14  
15

16 12. Defendant Byron E. Howlett, Jr. is Acting Associate Vice President  
17 and Dean of Students at Cal Poly Pomona. Defendant Howlett acted under color of  
18 state law and is sued in his official capacity.  
19

20 13. Defendant La'Keisha Gilford-Beard is Acting Director of the Office of  
21 Student Life and Cultural Centers at Cal Poly Pomona. Defendant Beard acted  
22 under color of state law and is sued in her official capacity.  
23

24 14. Defendant Renee Marie Foisy is a campus police officer at Cal Poly  
25 Pomona. Defendant Foisy acted under color of state law and is sued in both her  
26 personal and official capacities.  
27  
28

## V. STATEMENT OF FACTS

### A. Cal Poly Pomona's Suppression of Plaintiff's Free Speech Rights

15. On February 4, 2015, Plaintiff and three other non-student activists distributed literature about farm animal abuse and the vegan lifestyle on a sidewalk near the Administration building in a central area of the Cal Poly Pomona campus.

16. After engaging passers-by without incident for about an hour, Tomas's three colleagues left the area while Plaintiff continued distributing leaflets.

17. No more than five minutes after the others departed, Defendant Renee Marie Foisy, a Cal Poly Pomona campus police officer, approached Plaintiff. Two other campus police officers stood nearby.

18. When Plaintiff inquired whether everything was okay, Defendant Foisy replied "No. You don't have a permit to hand out flyers." She directed Tomas to obtain a permit from the Cal Poly Pomona Office of Student Life, and informed Plaintiff that once he obtained a permit he would only be allowed to leaflet in "a designated area" on campus.

19. As he was leaving the area, Plaintiff passed Michael Ortiz, President of Cal Poly Pomona from 2003 through 2014. When Tomas explained he had just been asked to leave because he had been distributing literature, Ortiz told Plaintiff "you need to get permission to distribute that literature" and referred Tomas to the "student affairs office."

1           20. When Defendant Foisy forced Plaintiff to stop handing out flyers, it  
2 was the second time in two weeks that the university police had been called to  
3 restrict his expressive activities.  
4

5           21. On January 21, 2015, Tomas stopped by a booth run by the university  
6 parking services at an outdoor information fair to voice his opinion that campus  
7 officers earned excessive salaries for a public institution. After initiating a  
8 conversation with officers at the booth, Defendant Foisy and Officer Kenneth A.  
9 Kerkhof arrived via squad car, approached Plaintiff, and asked whether Tomas was  
10 familiar with the campus “free speech zone.” Kerkhof suggested it would be more  
11 appropriate for Tomas to “go over there” where he could say anything he wanted as  
12 long as it “wasn’t inciteful [sic].”  
13  
14  
15

16           22. On December 1, 2014, Plaintiff met with Defendants Byron Howlett  
17 and La’Keisha Gilford-Beard to express his concerns about Cal Poly Pomona’s free  
18 speech restrictions. Defendants Howlett and Gilford-Beard gave Tomas copies of  
19 Cal Poly Pomona speech policies and insisted that Tomas was required to obtain  
20 approval from the Office of Student Life before engaging in expressive activities on  
21 campus. Specifically, Defendants Howlett and Gilford-Bear gave Tomas copies of:  
22 (a) an “Interim University Grounds And Facilities Policy,” Ex. A; (b) an “Interim  
23 Freedom of Expression Policy,” Ex. B; and (c) a document marked “Time, Place,  
24 and Manner Restrictions,” Ex. C.  
25  
26  
27  
28

1           23. Defendants Howlett and Gilford-Beard also maintained that Cal Poly  
2 Pomona could withhold authorization for any activity involving free expression that  
3 was not scheduled during weekly business hours, thus precluding Plaintiff's ability  
4 to share his beliefs on campus outside of administrative working hours.  
5

6           24. Cal Poly Pomona's policies create numerous roadblocks to free  
7 expression and have forced Plaintiff to curtail his outreach activities.  
8

9           **B. Cal Poly Pomona's Unconstitutional Speech Policies**

10          25. Expressive activities at Cal Poly Pomona are regulated by several  
11 policies including (a) a 2008 Presidential Order on Use of University Buildings,  
12 Facilities or Grounds ("2008 Presidential Order"), Ex. D; and (b) a 2014  
13 Presidential Order on Use of University Buildings, Facilities or Grounds ("2014  
14 Presidential Order"), Ex. E.  
15  
16

17          26. Together, the policies establish an unconstitutional "free speech zone"  
18 and impose unconstitutional prior restraints on expressive activities that limit free  
19 expression at Cal Poly Pomona.  
20

21          27. The policies are contradictory, confusing, and do not provide adequate  
22 notice to students regarding Cal Poly Pomona's policies on free expression. For  
23 example, the Student Life webpage on the Cal Poly Pomona website provides links  
24 to the Interim Freedom of Expression Policy (dated 2002) and the 2008 Presidential  
25 Order policies, but not the 2014 Presidential Order.  
26  
27  
28

1           28. The inconsistent policies allow administrators to pick and choose  
2 provisions that they are going to enforce, allowing them unlimited discretion to  
3 promote or silence speech based on its content or the identity of the speaker.  
4

5           **1. Free Speech Zone**

6           29. Pursuant to the 2008 Presidential Order and the 2014 Presidential  
7 Order, to engage in outreach on campus without interference, Plaintiff and other Cal  
8 Poly Pomona students must register to use Cal Poly Pomona's "free speech zone" in  
9 advance and have their materials approved by the Office of Student Life.  
10

11           30. A person seeking to engage in expressive activities may only stand in  
12 University Park "in the northeast grassy area of the entrance to the Bronco Student  
13 Center."  
14

15           31. Before entering the free speech zone, students must check in with the  
16 Office of Student Life, allow administrators to make a copy of their student  
17 identification, and wear a badge with their name and affiliation while in the "free  
18 speech zone" as a permit to show that the university has authorized them to speak.  
19

20 *See* Ex. F.  
21

22           32. Cal Poly Pomona's "free speech zone" is a tiny area between the  
23 library and the Bronco student center, comprising less than 0.01% of the campus.  
24

25 *See* Ex. G.  
26

27           33. Cal Poly Pomona has many open areas and sidewalks beyond the "free  
28 speech zone" where student expressive activity, including distribution of literature,  
29

1 would not interfere with or disturb access to College buildings or sidewalks, impede  
2 vehicular or pedestrian traffic, or in any way substantially disrupt the operations of  
3 campus or the University's educational functions.  
4

5 34. Plaintiff wishes to engage in expressive activities, including handing  
6 out flyers on campus without being limited to Cal Poly Pomona "free speech zone."  
7

8 35. Tomas has not engaged such activities outside of the free speech area  
9 since being told by Defendant Foisy on February 4, 2015 that he needed a permit to  
10 leaflet and could only do so in the "free speech zone," for fear that he will be  
11 disciplined.  
12

## 13 **2. Prior Restraint**

14 36. The 2008 Presidential Order and 2014 Presidential Order impose  
15 further limitations on expressive activities by imposing several prior restraints on  
16 anyone wishing to use University facilities, including the grounds, for  
17 "solicitation."  
18

19 37. Plaintiff and similarly situated Cal Poly Pomona students must obtain  
20 prior written authorization from Cal Poly Pomona officials in the Office of Student  
21 Life before engaging in "solicitation" on campus. Once students are permitted to  
22 engage in "solicitation," they are limited to expressing themselves within the free  
23 speech zone, and they must display their authorization to speak at all times.  
24

25 38. The 2008 Presidential Order arbitrarily limits time for solicitation and  
26 distribution of handbills to five days a quarter for each student and only between the  
27  
28

1 hours of 8:00 a.m. to 5:00 p.m. on weekdays – eliminating the possibility of free  
2 speech on weekends.

3  
4 39. Speakers are also prohibited from making noise “louder than normal  
5 conversation,” thus restricting their ability to gain the attention of passers-by to  
6 share their views.

7  
8 40. The 2014 Presidential Order extends the allowable time for solicitation  
9 and distribution of handbills to 10:00 p.m. on weekdays, although weekend exercise  
10 of free speech is still unauthorized.

11  
12 41. Pursuant to the 2008 Presidential Order, all interaction “shall be carried  
13 out without deliberate provocation, harassment or disturbance of persons in the area  
14 (including prolonged or repeated contact with persons who have declined the  
15 handbills and circulars).”

16  
17 42. The terms “deliberate provocation,” “harassment” or “disturbance of  
18 persons” in the 2008 Presidential Order are not defined.

19  
20 43. The 2008 Presidential Order’s undefined terms allow university  
21 administrators to limit speech they do not like and promote speech they favor.

22  
23 44. Moreover, any student or student group wishing to hold an event  
24 outside must submit a request to the Office of Student Life at least ten days in  
25 advance, by submitting an online form describing the activity.

26  
27 45. The Office of Student Life website states that “Groups using outdoor  
28 spaces that have not been confirmed through our office will be penalized.”

1           46. Together, these policies have a chilling effect on Plaintiff's rights and  
 2 those of all other students to engage freely and openly in expressive activities,  
 3 including distribution of literature about animal cruelty and other issues of public  
 4 concern.  
 5

## 6 7                                   **VI. CAUSES OF ACTION**

### 8   **COUNT I**

#### 9                                   **As-Applied Violation of Plaintiff's Rights to Free Speech Under** 10 **The First and Fourteenth Amendments (42 U.S.C. § 1983) – Free Speech Zone** **(Defendant Foisy)**

11           47. Plaintiff repeats and realleges each of the foregoing allegations in this  
 12 Complaint.  
 13

14           48. The First and Fourteenth Amendments extend to campuses of state  
 15 colleges and universities. *Healy v. James*, 408 U.S. at 180.  
 16

17           49. Defendant Foisy enforced the 2008 Presidential Order and 2014  
 18 Presidential Order to prevent Plaintiff from advocating for animal rights and  
 19 distributing literature outside the school's "Free Speech Zone."  
 20

21           50. Defendant Foisy violated clearly established constitutional rights of  
 22 which any reasonable college official should have known, rendering her liable to  
 23 Plaintiff under 42 U.S.C. § 1983.  
 24

25           51. The denial of constitutional rights is irreparable injury *per se*, and  
 26 Plaintiff is entitled to declaratory and injunctive relief. Additionally Plaintiff  
 27  
 28

1 experienced emotional injury as a consequence of being denied his First  
2 Amendment rights.

3  
4 52. Plaintiff is entitled to a declaration that Defendants violated his First  
5 Amendment rights. Additionally, Plaintiff is entitled to damages in an amount to be  
6 determined by the evidence of this Court, and the reasonable costs of this lawsuit,  
7 including reasonable attorneys' fees.  
8

9  
10 **COUNT II**

11 **Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's**  
12 **First and Fourteenth Amendment Rights (42 U.S.C. § 1983) –**  
13 **Free Speech Zone Policy**  
14 **(Defendants Coley, Howlett, and Gilford-Beard)**

15 53. Plaintiff repeats and realleges each of the foregoing allegations in this  
16 Complaint.

17 54. Through policy and practice Defendants have promulgated and  
18 enforced a Free Speech Zone policy that prohibits free expression on all but a tiny  
19 fraction of the Cal Poly Pomona campus, despite the fact that the University has  
20 many open areas and sidewalks that are suitable for expressive activities.

21 55. Restricting all First Amendment activity to a designated "Free Speech  
22 Zone" impermissibly restricts student expression, does not serve a significant  
23 government interest, and is unconstitutionally overbroad.  
24  
25  
26  
27  
28



1 *Vincent*, 454 U.S. 263, 267 n.5 (1981); *Papish v. Board of Curators of Univ. of Mo.*,  
2 410 U.S. 667 (1973).

3  
4 61. Cal Poly Pomona policies that require all students to obtain permission  
5 before engaging in expressive activities, including distributing handbills, are an  
6 unconstitutional prior restraint. Cal Poly Pomona policies that require all student  
7 groups to request permission ten days in advance to engage in expressive activity  
8 outdoors, are an unconstitutional prior restraint. Defendants' 2008 President Order  
9 and 2014 Presidential Order unconstitutionally subject the exercise of First  
10 Amendment freedoms to the prior restraint of a license, without narrow, objective,  
11 and definite standards to guide the licensing authority. *Shuttlesworth v. City of*  
12 *Birmingham*, 394 U.S. 147, 150-51 (1969).

13  
14  
15 62. Cal Poly Pomona's policies unconstitutionally prohibit students from  
16 engaging in spontaneous expression due to the requirements to seek permission  
17 before speaking, obtain approval of handbills and leaflets, wear a permit at all  
18 times, and the limitations on speech to business hours.

19  
20  
21 63. A permitting requirement is a prior restraint on speech and therefore  
22 bears a heavy presumption against its constitutionality. *Berger v. City of Seattle*,  
23 569 F.3d 1029, 1037 (9th Cir. 2009).

24  
25 64. Advance notice and permitting requirements are presumptively invalid  
26 because of the significant burden they place on free speech. The Supreme Court  
27 has labeled prior restraint on speech as "the essence of censorship." *Near v.*  
28

1 *Minnesota*, 283 U.S. 697, 713 (1931). Such restrictions are “the most serious and  
2 the least tolerable on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*,  
3 427 U.S. 539, 559 (1976).  
4

5 65. Defendant Coley is responsible for Cal Poly Pomona’s administration  
6 and policy-making and has ultimate authority to approve the policies challenged  
7 herein.  
8

9 66. Defendants Howlett and Gilford-Beard participated in creating the  
10 policies challenged herein and oversee implementation and enforcement of them.  
11 In their official capacities, these Defendants informed the Plaintiff of the restrictions  
12 imposed by the permit requirements.  
13

14 67. As a legal consequence of the Defendants’ violation of Plaintiff’s and  
15 other similarly situated students’ First and Fourteenth Amendment rights, as alleged  
16 above, all of which is irreparable injury *per se*, Plaintiff is entitled to declaratory  
17 and injunctive relief, damages, and the reasonable costs of this lawsuit, including  
18 reasonable attorneys’ fees.  
19  
20

21 **COUNT IV**  
22 **Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)**

23 68. Plaintiff repeats and realleges each of the foregoing allegations in this  
24 Complaint.  
25

26 69. An actual controversy has arisen and now exists between Plaintiff and  
27 Defendants concerning Plaintiff’s rights under the United States Constitution. A  
28

1 judicial declaration is necessary and appropriate at this time as to Counts I through  
2 IV above.

3  
4 70. Plaintiff desires a judicial determination of his rights against  
5 Defendants as they pertain to Plaintiff's right to speak without being subjected to  
6 content-based requirements, a Free Speech Zone policy, and other policies that  
7 impose prior restraints on speech, give school officials unlimited discretion whether  
8 to allow expression and under what conditions, and that are vague, overbroad, and  
9 that are not narrowly tailored to serve a substantial governmental interest.  
10

11  
12 71. To prevent further violation of Plaintiff's constitutional rights by  
13 Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant  
14 to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the Cal Poly Pomona's  
15 policies unconstitutional.  
16

17 72. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, this Court issue a  
18 permanent injunction prohibiting the Defendants from enforcing their restrictions  
19 on Plaintiff's expressive activities to the extent they are unconstitutional, to prevent  
20 the ongoing violation of Plaintiff's constitutional rights.  
21

22 73. Plaintiff and his fellow students are suffering irreparable harm from  
23 continued enforcement of Cal Poly Pomona's unconstitutional policies, monetary  
24 damages are inadequate to remedy his harm, and the balance of equities and public  
25 interest both favor a grant of injunctive relief.  
26  
27  
28

**VII. PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment against Defendants and provide Plaintiff the following relief:

A. A declaratory judgment stating that Defendants' speech codes as specified in this Complaint facially and as-applied to Plaintiff are unconstitutional and that they violate the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. A permanent injunction restraining enforcement of Defendants' unconstitutional speech codes and enforcement practices;

C. A declaratory judgment that Defendants' censorship of Plaintiff's expressive activities violated his First and Fourteenth Amendment rights'

D. Monetary damages in an amount to be determined by the Court to compensate Plaintiff for the impact of a deprivation of fundamental rights;

E. Plaintiff's reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988, and other applicable law; and

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

**VIII. DEMAND FOR JURY TRIAL**

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

Dated: March 31, 2015

Respectfully submitted,

/s/ Rochelle L. Wilcox

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