

1 Arthur I. Willner, State Bar No. 118480
2 Email: awillner@leaderberkon.com
3 David Salazar (State Bar No. 310949)
4 dsalazar@leaderberkon.com
5 LEADER & BERKON LLP
6 660 S. Figueroa Street, Suite 1150
7 Los Angeles, CA 90017
8 Tel: (213) 234-1750; Fax (213) 234-1747

7 Marieke Tuthill Beck-Coon (*Pro hac vice application to be filed*)
8 Email: marieke@thefire.org

8 Brynne Sasha Madway (*Pro hac vice application to be filed*)
9 Email: brynne.madway@thefire.org

9 THE FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION
10 510 Walnut Street, Suite 1250
11 Philadelphia, PA 19106
12 Tel: (215) 717-3473; Fax (215) 717-3440
13 Attorneys for Plaintiff Kevin A. Shaw

14
15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17
18 **KEVIN A. SHAW,**

19 Plaintiff,

20 vs.

21
22 **KATHLEEN F. BURKE, in her**
individual and official capacities;

23 **EARIC DIXON-PETERS, in his**
individual and official capacities;

24 **WILLIAM A. MARMOLEJO, in his**
individual and official capacities;

25 **JUAN C. ASTORGA, in his individual**
and official capacities;

26 **FRANCISCO C. RODRIGUEZ, in his**
official capacity;
27
28

) Case No. CV-17-2386

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

) **DEMAND FOR TRIAL BY JURY**

1 2. The District designates the majority of each of its nine community
2 college campuses as non-public forums. The president of each college is required to
3 create “Free Speech Area(s),” which the District designates as limited public
4 forums. See a true and correct copy of Los Angeles Community College District
5 Board Rule, Chapter IX, Article IX, Freedom of Speech, attached hereto as
6 Exhibit A.

7 3. In accordance with this directive, Pierce College, a community college
8 within the District, has implemented its own policies and practices governing free
9 speech and expressive activity, establishing a tiny “Free Speech Area” for speech
10 and expressive activity to take place on its campus. Pierce College’s Free Speech
11 Area consists of a small area, confined by painted lines, on the side of a campus
12 thoroughfare. The area measures approximately 616 square feet, comprising
13 approximately .003% of the total area of Pierce College’s 426-acre campus. In
14 contravention of its long-established constitutional obligations as a public
15 institution, Pierce College has unreasonably restricted the freedom of expression on
16 its campus to these tiny confines.

17 4. Pierce College has also adopted and enforced other policies and
18 practices that severely restrict free speech and expressive activity, including an
19 apparently unpublished requirement that students like Shaw seek and complete a
20 permit application before being granted access to use the tiny Free Speech Area.

21 5. Pierce College enforced its policies and practices and the District’s
22 policy against Shaw on November 2, 2016, when Defendant John Doe forced Shaw
23 to stop discussing his political views with his fellow students and distributing
24 Spanish-language copies of the United States Constitution outside of the Free
25 Speech Area. Defendant John Doe escorted Shaw into an office where he was
26 forced to complete a permit application to use the Free Speech Area, a copy of
27 which he was not able to retrieve from the administration until weeks later.

1 to the instant claim occurred within this district and because at least one Defendant
2 resides in this District.

3 **III. PLAINTIFF**

4 14. Plaintiff Kevin Shaw is, and was at all times relevant to this
5 Complaint, a resident of Los Angeles County, California, and a student at Pierce
6 College pursuing an associate degree. Shaw is the president of the Pierce College
7 chapter of Young Americans for Liberty, an unrecognized “pro-liberty” student
8 organization affiliated with the national organization of the same name which has
9 chapters on college campuses nationwide.

10 **IV. DEFENDANTS**

11 15. Defendant Kathleen F. Burke is, and was at all times relevant to this
12 Complaint, the President of Pierce College. Defendant Burke is responsible for the
13 implementation of the rules and policies promulgated by the District Board of
14 Trustees and policymaking, administration, and enforcement of the college’s
15 policies and procedures, including those that were applied to deprive Shaw of his
16 constitutional rights. Defendant Burke acted under the color of state law and is sued
17 in her individual and official capacities.

18 16. Defendant Earic Dixon-Peters is, and was at all times relevant to this
19 Complaint, the Vice President of Student Services at Pierce College. Defendant
20 Dixon-Peters is responsible for policymaking, administration, and enforcement of
21 the college’s policies and procedures, including those that were applied to deprive
22 Shaw of his constitutional rights. Defendant Dixon-Peters acted under the color of
23 state law and is sued in his individual and official capacities.

24 17. William A. Marmolejo is, and was at all times relevant to this
25 Complaint, Dean of Student Services at Pierce College. Defendant Marmolejo is
26 responsible for policymaking, administration, and enforcement of the college’s
27 policies and procedures, including those that were applied to deprive Shaw of his
28

1 constitutional rights. Defendant Marmolejo acted under the color of state law and is
2 sued in his individual and official capacities.

3 18. Defendant Juan C. Astorga is, and was at all times relevant to this
4 Complaint, the Dean of Student Engagement at Pierce College. He is responsible
5 for the administration and enforcement of the policies and practices governing the
6 Free Speech Area, including the policies and practices governing its use that were
7 applied to deprive Shaw of his constitutional rights. Defendant Astorga acted under
8 the color of state law and is sued in his individual and official capacities.

9 19. Defendant Francisco C. Rodriguez is, and was at all times relevant to
10 this Complaint, the Chancellor of the District. Defendant Rodriguez has oversight
11 of Defendant Burke and is responsible for implementing the policies, rules, and
12 regulations of the District's Board of Trustees, including those applied to deprive
13 Shaw of his constitutional rights. Defendant Rodriguez acted under the color of
14 state law and is sued in his official capacity.

15 20. Defendant Scott J. Svonkin is, and was at all times relevant to this
16 Complaint, the President of the Board of Trustees of the District, which has
17 policymaking authority over the District-wide policies and procedures that were
18 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
19 District is responsible for establishing rules and regulations that govern the
20 operation of Pierce College and all other District campuses. Defendant Svonkin
21 acted under the color of state law and is sued in his official capacity.

22 21. Defendant Sydney K. Kamlager is, and was at all times relevant to this
23 Complaint, the First Vice President of the Board of Trustees of the District, which
24 has policymaking authority over the District-wide policies and procedures that were
25 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
26 District is responsible for establishing rules and regulations that govern the

27 ///

1 operation of Pierce College. Defendant Kamlager acted under the color of state law
2 and is sued in her official capacity.

3 22. Defendant Mike Fong is, and was at all times relevant to this
4 Complaint, the Second Vice President of the Board of Trustees of the District,
5 which has policymaking authority over the District-wide policies and procedures
6 that were applied to deprive Shaw of his constitutional rights. The Board of
7 Trustees of the District is responsible for establishing rules and regulations that
8 govern the operation of Pierce College. Defendant Fong acted under the color of
9 state law and is sued in his official capacity.

10 23. Defendant Mike Eng is, and was at all times relevant to this
11 Complaint, a member of the Board of Trustees of the District, which has
12 policymaking authority over the District-wide policies and procedures that were
13 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
14 District is responsible for establishing rules and regulations that govern the
15 operation of Pierce College. Defendant Eng acted under the color of state law and is
16 sued in his official capacity.

17 24. Defendant Andra Hoffman is, and was at all times relevant to this
18 Complaint, a member of the Board of Trustees of the District, which has
19 policymaking authority over the District-wide policies and procedures that were
20 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
21 District is responsible for establishing rules and regulations that govern the
22 operation of Pierce College. Defendant Hoffman acted under the color of state law
23 and is sued in her official capacity.

24 25. Defendant Ernest H. Moreno is, and was at all times relevant to this
25 Complaint, a member of the Board of Trustees of the District, which has
26 policymaking authority over the District-wide policies and procedures that were
27 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
28

1 District is responsible for establishing rules and regulations that govern the
2 operation of Pierce College. Defendant Moreno acted under the color of state law
3 and is sued in his official capacity.

4 26. Defendant Nancy Pearlman is, and was at all times relevant to this
5 Complaint, a member of the Board of Trustees of the District, which has
6 policymaking authority over the District-wide policies and procedures that were
7 applied to deprive Shaw of his constitutional rights. The Board of Trustees of the
8 District is responsible for establishing rules and regulations that govern the
9 operation of Pierce College. Defendant Pearlman acted under the color of state law
10 and is sued in her official capacity.

11 27. Defendant John Doe is an employee of Pierce College who interfered
12 with Shaw's ability to exercise his constitutional right to freedom of expression on
13 November 2, 2016, when he forced Shaw to stop discussing his political views with
14 his fellow students and distributing Spanish-language copies of the Constitution
15 outside of the Free Speech Area, informed him that he would be asked to leave
16 campus if he continued, and escorted him to complete a permit application to use
17 the Free Speech Area. Defendant John Doe acted under the color of state law and is
18 sued in his individual and official capacities.

19 **V. STATEMENT OF FACTS**

20 **A. The District Free Speech Policy.**

21 28. The District consists of nine community colleges and has a total of
22 enrollment of more than 150,000 students.

23 29. The District is governed by an elected Board of Trustees and managed
24 by Defendant Rodriguez, the District Chancellor.

25 30. The Board of Trustees promulgates and maintains a series of Board
26 Rules that are binding on the community colleges within the District.

27 ///

1 31. Among the Board Rules is, and was at all times relevant to this
2 Complaint, Los Angeles Community College District Board Rule, Chapter IX,
3 Article IX, Freedom of Speech (hereinafter the “District Free Speech Policy”).
4 See Exhibit A.

5 32. Upon information and belief, the District adopted the terms of the
6 District Free Speech Policy in their current form on or about April 20, 1989.

7 33. Upon information and belief, the Board of Trustees amended the
8 District Free Speech Policy without any substantive changes on or about December
9 7, 2016.

10 34. The District Free Speech Policy consists of numerous rules that govern
11 the freedom of expression of students, staff, faculty members, and people who are
12 not members of the college community on the District colleges’ campuses.

13 35. District Free Speech Policy Rule 9901 (“Rule 9901”) states:

14 The colleges of the Los Angeles Community College District
15 are non-public forums, except for those portions of each college
16 designated as Free Speech Areas are hereby designated as limited
17 public forums, which designation may be removed and reverted to
18 non-public forum designation by the Board of Trustees

19 36. District Free Speech Policy Rule 9902 (“Rule 9902”) states:

20 The college president shall designate an area or areas on the
21 college campus as areas for free discussion and expression by all
22 persons. A Free Speech Area may only be located where there is a
23 normal flow of student traffic with unlimited accessibility. Necessary
24 campus rules governing the operation of such areas shall govern only
25 the time, place and manner in which said areas are to be used.

26 37. District Free Speech Policy Rule 9902.11 (“Rule 9902.11”) restricts
27 the distribution of literature, including “petitions, circulars, leaflets, newspapers,
28 miscellaneous printed matter and other materials,” to “the geographical limits of the
Free Speech Area” on each campus.

 38. District Free Speech Policy Rule 9902.13 permits the president of each
college to set “reasonable time restrictions on the use of the Free Speech Area, in

1 order to ensure that all persons are given equal access to the use of the Free Speech
2 Area.” Rule 9902.13 further states: “The times at which the Free Speech Area may
3 be used shall be subject to reasonable campus regulations.”

4 39. District Free Speech Policy Rule 9903 permits the college presidents
5 to designate areas outside of the Free Speech Areas “where students, faculty and
6 staff may exercise freedom of expression subject only to reasonable time, place and
7 manner restrictions.”

8 **B. Pierce College’s Free Speech Area Policy and Practices.**

9 40. Upon information and belief, Pierce College does not, and at all times
10 relevant to this Complaint did not, publish rules or regulations regarding free
11 speech or expressive activity specific to its campus on its website, on its student
12 portal website, or in a student handbook or other student policy manual. Students,
13 therefore, have no public, generally accessible means to discern any restrictions to
14 which they are subject or under which they could be punished for engaging in
15 speech or expressive activity on Pierce College’s campus.

16 41. Upon information and belief, Pierce College administrators have
17 nonetheless internally designated one small “Free Speech Area” on campus for
18 speech, expressive activity, and distribution of literature on campus, pursuant to
19 District Free Speech Policy Rules 9901 and 9902.

20 42. The Free Speech Area is indicated on Pierce College’s online campus
21 map with the words “Free Speech,” but the map fails to indicate that speech,
22 expressive activity, and distribution of literature on campus are restricted to this
23 area. See a true and correct copy of Pierce College’s Online Campus Map, attached
24 hereto as Exhibit B.

25 43. Rules regarding use of the Free Speech Area, and the restriction of
26 speech, expressive activity, and distribution of literature to that Area, are printed on
27 applications for use of the Area and are titled “Rules for Distribution of Material
28

1 and use of Free Speech Areas Off-Campus Entities” (the “Pierce College Free
2 Speech Area Policy”). See a true and correct copy of Pierce College Application
3 for use at Free Speech Area, attached as Exhibit C.

4 44. Shaw became aware of the Pierce College Free Speech Area Policy
5 only when he was prevented by Defendant John Doe from distributing literature
6 and speaking to students outside the Free Speech Area and was required to fill out a
7 permit application with the attached Pierce College Free Speech Area Policy.

8 45. The Pierce College Free Speech Area Policy states that “[t]here is one
9 (1) area designated for free speech and gathering of signatures.” This designated
10 Free Speech Area “is located on the Mall within the red and black dotted lines.”

11 46. The Free Speech Area delineated “on the Mall within the red and black
12 dotted lines” is approximately 616 square feet, comprising approximately .003% of
13 the total area of Pierce College’s 426 acres, and approximately .007% of the main
14 area of campus featured in Pierce’s online campus map (attached as Exhibit B),
15 which excludes the approximately 226-acre farm dedicated to Pierce’s agricultural
16 and equestrian programs.

17 47. The Pierce College Free Speech Area Policy states that “[t]he
18 distribution of material/obtaining of signatures shall be allowed from 9:00am until
19 7:30pm, Monday through Friday.”

20 48. The Pierce College Free Speech Area Policy states:

21 Individuals planning to distribute material on campus are required to
22 go to the Vice President of Student Services Office located on the third
23 floor of the Student Services Building between the hours of 9:00am
and 4:00pm to:

- 24 1. Report his/her presence on campus
- 25 2. Identify the organization and give the names(s) of the distributor(s)
and address of the organization
- 26 3. Indicate how many people will be distributing along with the
27 date(s) and time(s) of distribution

28 ///

1 49. The Pierce College Free Speech Area Policy incorporates the language
2 of District Free Speech Policy Rule 9902.11 restricting the distribution of literature,
3 including “petitions, circulars, leaflets, newspapers, miscellaneous printed matter
4 and other materials,” to “the geographical limits of the Free Speech Area.”

5 50. On its face, the Pierce College Free Speech Area Policy does not limit
6 the discretion of the Vice President of Student Services Office, or other
7 administrators responsible for its enforcement, to deny or approve an application
8 because of the content or viewpoint of the speaker’s intended message.

9 51. The Free Speech Area at Pierce College is not open to spontaneous or
10 anonymous speech because individuals must fill out an application for use of the
11 space and identify themselves and their organizations prior to accessing the Free
12 Speech Area.

13 52. By requiring a permit application prior to accessing the Free Speech
14 Area, and by prohibiting expressive activity and distribution of literature outside of
15 the Free Speech Area, the Pierce College Free Speech Area Policy imposes a prior
16 restraint on the freedom of expression of all Pierce College students.

17 53. Upon information and belief, Pierce College has no other areas for free
18 expression designated by the college president under District Free Speech Policy
19 Rules 9902 or 9903.

20 54. The Pierce College campus has many open areas and sidewalks
21 beyond the Free Speech Area where student speech, expressive activity, and distri-
22 bution of literature would not interfere with or disturb access to college buildings or
23 sidewalks, impede vehicular or pedestrian traffic, or in any way substantially
24 disrupt the operations of the campus or the college’s educational functions.

25 55. The Standards of Student Conduct printed in each Pierce College
26 Schedule of Classes notify students that their conduct must conform to District and
27 college rules and regulations. It further notifies students that violations of such rules
28

1 and regulations may result in disciplinary action, including violations of Los
2 Angeles County Community College District Board Rule 9803.11, which prohibits
3 “[v]iolation of college rules and regulations including those concerning student
4 organizations, the use of college facilities, or the time, place, and manner of public
5 expression or distribution of materials.”

6 **C. The Pierce College Defendants Prevented Shaw from Exercising His**
7 **Rights in Violation of the Constitution of the United States.**

8 56. On November 2, 2016, Shaw and two field representatives from
9 Young Americans for Liberty, a national pro-liberty organization, sought to
10 distribute Spanish-language copies of the United States Constitution and discuss
11 issues pertaining to freedom of speech with Pierce College students.

12 57. Shaw and the representatives from Young Americans for Liberty set
13 up a small folding table outside of the Free Speech Area on the Pierce College
14 Mall, to the side of the large thoroughfare called “the Mall.”

15 58. Shaw and the two representatives intended to discuss their political
16 beliefs with students on the Pierce College campus. They were not disrupting
17 campus operations or interfering with foot traffic.

18 59. Shortly after arriving on the Mall, they were approached by Defendant
19 John Doe.

20 60. Defendant John Doe informed Shaw that he was in violation of Pierce
21 College’s Free Speech Area Policy and that he was not permitted to engage in his
22 chosen expressive activity outside the Free Speech Area, and Doe insisted that
23 Shaw accompany him into a building so that Shaw could complete a permit
24 application for use of the Free Speech Area.

25 61. When Shaw asked Defendant John Doe what would happen if he
26 refused to accompany him into the building and continued his expressive activity in
27 his current location, he was told that he would be asked to leave the campus.

28

1 62. Once inside the Associated Student Organization (“ASO”) office,
2 Defendant John Doe prompted Shaw to fill out and sign a permit application, which
3 included the rules and restrictions contained in the Pierce College Free Speech Area
4 Policy, as described above (attached as Exhibit B).

5 63. Shaw requested a copy of the signed permit application. However,
6 Defendant John Doe refused to provide him with a copy of the permit application
7 that he had filled out and signed.

8 64. On November 11, 2016, Shaw emailed Defendant Astorga and
9 informed him that he intended to gather signatures outside of the Free Speech Area
10 for the purpose of encouraging Pierce College to adopt a free speech policy
11 statement produced by the Committee on Freedom of Expression at the University
12 of Chicago.

13 65. In his email, Shaw informed Defendant Astorga that he would not
14 block access to Pierce College buildings, use amplified sound, or otherwise disrupt
15 Pierce College’s operations.

16 66. On or about November 16, 2016, Shaw again attempted to distribute
17 materials outside of the Free Speech Area. After distributing materials for several
18 hours in an open, grassy area of campus outside of the Free Speech Area without
19 encountering Defendant John Doe or any other administrator, Shaw observed a
20 large protest that formed outside of the Free Speech Area to protest the election of
21 then-President-Elect Donald Trump.

22 67. Upon information and belief, Pierce College enforces its Free Speech
23 Area policy selectively and unevenly, allowing speakers at various times to engage
24 in expressive activity and distribute materials outside of the Free Speech Area and
25 enforcing the Free Speech Area policy in other instances.

26 ///

27 ///

1 68. Throughout November 2016, Shaw made repeated attempts to retrieve
2 a copy of the permit application that he had filled out and signed and the attached
3 Pierce College Free Speech Area Policy from the ASO office.

4 69. Several individuals working at the ASO office on the instances Shaw
5 went there to request the documents, including Defendant Joe Doe, refused to
6 provide Shaw with a copy of the Pierce College Free Speech Area Policy or the
7 permit application that he signed.

8 70. On November 22, 2016, Shaw emailed Defendant Marmolejo, Pierce
9 College's Dean of Student Services, and asked him for a copy of the Pierce College
10 Free Speech Area Policy.

11 71. In his email Shaw also informed Defendant Marmolejo that he was
12 unable to locate a copy of the Pierce College Free Speech Area Policy on the
13 college's website and that he was unable to find a copy of the policy on campus.

14 72. Upon information and belief, the Pierce College Free Speech Area
15 Policy is not made available on Pierce College's website, on its student portal
16 website, or in a student handbook or other student policy manual. Copies are made
17 available only in the ASO office or Vice President of Student Services Office.

18 73. Instead of responding to Shaw's email, Defendant Marmolejo
19 forwarded the email to Defendant Astorga.

20 74. On November 22, 2016, Defendant Astorga replied to Shaw and
21 informed him:

22 The use of the Free Speech area is under my purview. I do not recall
23 meeting you or speaking with you in regards to this matter. Can you
24 please describe the person that you interacted with? All individuals
25 that come onto the campus to use the free speech area are asked to fill
26 out a free speech use form. Once that is done a copy of the policy and
27 a permit is handed to each person that comes into our office. Please
28 come see me next time you would like to distribute any materials and I
would be more than happy to provide you with the paperwork for you
[sic].

1 75. Shaw responded to Defendant Astorga's email on November 28, 2016,
2 and set up a meeting to discuss the issue on December 1, 2016.

3 76. On November 30, 2016, Shaw was informed that his meeting with
4 Defendant Astorga was canceled.

5 77. On December 7, 2016, Shaw stopped by the ASO office in an attempt
6 to obtain a copy of the Pierce College Free Speech Area Policy and the permit
7 application that he signed; however, Defendant John Doe and Jeremy Mason, a
8 Senior Secretary in the ASO office, refused to provide Shaw with a copy of the
9 policy.

10 78. Later that day, Shaw emailed Defendant Astorga to request a copy of
11 the Pierce College Free Speech Area Policy.

12 79. In this email, Shaw informed Defendant Astorga that he was told by
13 Pierce employees, including Mason and Defendant John Doe, that Defendant
14 Astorga had directed them not to provide Shaw with a copy of the Pierce College
15 Free Speech Area Policy and permit application that he had signed.

16 80. On December 8, 2016, Shaw again stopped by the ASO office to
17 attempt to meet with Defendant Astorga and pick up a copy of the Pierce College
18 Free Speech Area Policy and permit application that he had signed. At that time,
19 Mason again told Shaw that he was not permitted to give Shaw a copy of the
20 policy.

21 81. Shaw refused to leave without a copy of the policy and application,
22 prompting Mason to call Defendant Astorga on his cellular telephone.

23 82. Defendant Astorga told Shaw over the telephone that he had not
24 instructed Mason or Defendant John Doe to refuse to provide Shaw with a copy of
25 the policy and his signed permit application.

26 ///

27 ///

28

1 83. At that time, Defendant Astorga told Shaw that he had told Mason and
2 Defendant John Doe not to provide Shaw with a copy of the Pierce College Free
3 Speech Area Policy unless Defendant Astorga was there.

4 84. Over the telephone, Defendant Astorga directed Mason to provide
5 Shaw with a copy of the Pierce College Free Speech Area Policy and his signed
6 permit application.

7 85. Mason provided Shaw with a copy of the Pierce College Free Speech
8 Area Policy and his signed permit application. See Exhibit C.

9 86. Upon information and belief, no rules other than the Free Speech Area
10 Policy govern use of Pierce College's Free Speech Area.

11 87. Pierce College's policies and practices regarding student speech,
12 expressive activity, and distribution of literature on campus have a chilling effect on
13 Shaw's rights and those of all other Pierce students to engage freely and openly in
14 such expressive activity.

15 88. Shaw wishes to engage in expressive activity on campus, including
16 petitioning for signatures and distribution of literature, without seeking prior
17 permission or being limited to a tiny 616-square-foot space comprising less than
18 .003% of campus. Shaw is fearful of punishment for taking his chances in simply
19 exercising his First Amendment rights outside the Free Speech Area and hoping he
20 does not run into an administrator charged with enforcing the Pierce College Free
21 Speech Area Policy, who might charge him with a violation under the Standards of
22 Student Conduct or contact the sheriff's office to remove him from campus.

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of the Right to Freedom of Speech Under**
4 **the First and Fourteenth Amendments (42 U.S.C. § 1983)**
5 **District Free Speech Policy**
6 **(Defendants Rodriguez, Svonkin, Kamlager, Fong, Eng, Hoffman, Moreno,**
7 **and Pearlman)**

8 89. Shaw repeats and realleges each of the foregoing paragraphs in this
9 Complaint.

10 90. The First and Fourteenth Amendments extend to the campuses of state
11 colleges and universities. *See Healy*, 408 U.S. at 180. “With respect to persons
12 entitled to be there, our cases leave no doubt that the First Amendment rights of
13 speech and association extend to the campuses of state universities.” *Widmar*, 454
14 U.S. at 268.

15 91. The District Board of Trustees cannot legally declare the vast majority
16 of public areas of District community college campuses to be “non-public forums.”
17 *Khademi v. S. Orange Cty. Cmty. Coll. Dist.*, 194 F. Supp. 2d 1011 (C.D. Cal.
18 2002). Moreover, the District Board of Trustees cannot legally declare public areas
19 of campuses designated as Free Speech Areas to be limited public forums, at least
20 with respect to students and other university community members. *Roberts v.*
21 *Haragan*, 346 F. Supp. 2d 853, 862 (S.D. Tex. 2004).

22 92. Defendants Rodriguez, Svonkin, Kamlager, Fong, Eng, Hoffman,
23 Moreno, and Pearlman have promulgated and enforced a District-wide policy that
24 explicitly designates the vast majority of Pierce College’s campus a non-public
25 forum; requires college presidents to identify specific areas for expressive activity,
26 which it designates as limited public forums; and limits expressive activity,
27 including distribution of literature, to those areas. The result is that protected
28

1 expression is quarantined to small areas of District campuses, including at Pierce
2 College.

3 93. To pass constitutional muster, time, place, and manner restrictions
4 must be “justified without reference to the content of the regulated speech” and
5 “narrowly tailored to serve a significant governmental interest,” and they must
6 “leave open ample alternative channels for communication of the information.”
7 *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

8 94. Restricting all student expressive activity and distribution of literature
9 to designated Free Speech Areas impermissibly restricts student expression, does
10 not serve a significant government interest, does not allow ample alternative
11 channels for communication of students’ messages, and is unconstitutionally vague
12 and overbroad.

13 95. Defendants Rodriguez, Svonkin, Kamlager, Fong, Eng, Hoffman,
14 Moreno, and Pearlman’s decision to maintain and enforce the District Free Speech
15 Policy directly resulted in the deprivation of Shaw’s and other students’
16 constitutional rights under the First and Fourteenth Amendments to the
17 Constitution.

18 96. The District Free Speech Area Policy is challenged on its face and as
19 applied to Shaw.

20 97. The denial of constitutional rights is an irreparable injury *per se*, and
21 Shaw is entitled to declaratory and injunctive relief as well as the reasonable costs
22 of this lawsuit, including his reasonable attorneys’ fees.

23 ///

24 ///

25 ///

26 ///

27

28

1 **SECOND CAUSE OF ACTION**

2 **Facial Challenge to Violation of Shaw’s Right to Freedom of Speech Under**
3 **the First and Fourteenth Amendments (42 U.S.C. § 1983)**
4 **Pierce College Free Speech Area Policy**
5 **(Defendants Burke, Dixon-Peters, Marmolejo, and Astorga)**

6 98. Shaw repeats and realleges each of the foregoing paragraphs in this
7 Complaint.

8 99. To pass constitutional muster, a time, place, and manner restriction
9 must be “justified without reference to the content of the regulated speech” and
10 “narrowly tailored to serve a significant governmental interest,” and they must
11 “leave open ample alternative channels for communication of the information.”
12 *Clark*, 468 U.S. at 293.

13 100. Restricting all First Amendment activity to Pierce College’s tiny,
14 designated Free Speech Area impermissibly restricts student expression, does not
15 serve a significant government interest, does not allow ample alternative channels
16 for communication of students’ messages, and is unconstitutionally vague and
17 overbroad.

18 101. Defendant Burke is responsible for the designation of the Free Speech
19 Area under District Free Speech Policy Rule 9902.

20 102. The Pierce College Free Speech Area Policy instructs permit
21 applicants to file applications with the Vice President of Student Services Office
22 over which Defendants Dixon-Peters and Marmolejo have administrative authority.

23 103. The use of the Free Speech Area is under Defendant Astorga’s
24 purview.

25 104. As a legal consequence of the Defendants Burke, Dixon-Peters,
26 Marmolejo, and Astorga’s violation of Shaw’s and other similarly situated students’
27 First and Fourteenth Amendment rights, as alleged above, all of which are an
28 irreparable injury *per se*, Shaw is entitled to declaratory and injunctive relief,

1 damages, and the reasonable costs of this lawsuit, including reasonable attorneys'
2 fees.

3 **THIRD CAUSE OF ACTION**

4 **Facial Challenge to Violation of Shaw's Right to Freedom of Speech Under**
5 **the First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint**
6 **Pierce College Free Speech Area Policy**
7 **(Defendants Burke, Dixon-Peters, Marmolejo, and Astorga)**

8 105. Shaw repeats and realleges each of the foregoing paragraphs in this
9 Complaint.

10 106. By requiring a permit application prior to accessing the Free Speech
11 Area, and by prohibiting expressive activity and distribution of literature outside of
12 the Free Speech Area, the Pierce College Free Speech Area Policy imposes a prior
13 restraint on the freedom of expression of all Pierce College students.

14 107. Students have a First Amendment right to engage in expressive
15 activities in the public areas of a state college or university without obtaining
16 advance permission from government officials. *Widmar*, 454 U.S. at 267 n.5;
17 *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667 (1973). Permitting
18 requirements are a prior restraint on speech, and there is a heavy presumption
19 against their constitutionality. *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th
20 Cir. 2009); *Jews for Jesus, Inc. v. City Coll. of San Francisco*, 2009 U.S. Dist.
21 LEXIS 1613, at *11–12 (N.D. Cal. Jan. 12, 2009).

22 108. The Pierce College Free Speech Area Policy contains a permitting
23 requirement that forces all speakers to obtain advance permission from university
24 officials prior to speaking on campus. It is a prior restraint on speech. Pierce
25 College's policies and practices restricting First Amendment activities to the Free
26 Speech Area ensure that all First Amendment activity on campus is subject to a
27 prior restraint.

28 ///

1 109. By requiring that individuals provide their name, affiliation, and
2 contact information, the Pierce College Free Speech Area Policy prohibits
3 individuals from engaging in anonymous speech.

4 110. The Pierce College Free Speech Area Policy unconstitutionally
5 prohibits students from engaging in spontaneous expression due to the requirement
6 that they seek permission before speaking.

7 111. The Pierce College Free Speech Area Policy and its practices with
8 respect to expression on campus fail to provide “narrow, objective, and definite
9 standards,” *see Shuttlesworth v. Birmingham*, 394 U.S. 147, 150 (1969), which
10 “provide the guideposts that check the licensor and allow courts quickly and easily
11 to determine whether the licensor is discriminating against disfavored speech,” *see*
12 *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 758 (1988); *see also Seattle*
13 *Affiliate of the October 22nd Coal. To Stop Police Brutality, Repression & the*
14 *Criminalization of a Generation v. City of Seattle*, 550 F.3d 788, 799 (9th Cir.
15 2008).

16 112. Defendant Burke is responsible for designating and creating the Free
17 Speech Area pursuant to District Free Speech Policy Rule 9902.

18 113. The Pierce College Free Speech Area Policy instructs permit
19 applicants to file applications with the Vice President of Student Services Office
20 over which Defendants Dixon-Peters and Marmolejo have administrative authority.

21 114. Defendant Astorga is responsible for enforcing the Pierce College Free
22 Speech Area Policy.

23 115. As a legal consequence of the Defendants’ violation of Shaw’s and
24 other similarly situated students’ First and Fourteenth Amendment rights, as alleged
25 above, all of which are irreparable injuries *per se*, Shaw is entitled to declaratory
26 and injunctive relief, damages, and the reasonable costs of this lawsuit, including
27 reasonable attorneys’ fees.

28

FOURTH CAUSE OF ACTION

**As-Applied Violation of Shaw’s Right to Freedom of Speech Under
the First and Fourteenth Amendments (42 U.S.C. § 1983)
Pierce College Free Speech Area Policy and Practices
(Defendants Burke, Dixon-Peters, Marmolejo, Astorga, and John Doe)**

116. Shaw repeats and realleges each of the foregoing paragraphs in this Complaint.

117. Defendant John Doe enforced the Pierce College Free Speech Area Policy by preventing Shaw from distributing literature or speaking to fellow students about his political views outside of Pierce’s Free Speech Area on November 2, 2016.

118. By preventing Shaw from distributing copies of the U.S. Constitution outside of the Free Speech Area, or speaking to fellow students about his political views, Defendant John Doe chilled Shaw’s right to free expression and deprived Shaw of his clearly established rights to freedom of speech and expression secured by the First and Fourteenth Amendments.

119. Defendant Astorga enforced the Pierce College Free Speech Area Policy by emailing Shaw on November 22, 2016: “All individuals that come onto the campus to use the free speech area are asked to fill out a free speech use form. Once that is done a copy of the policy and a permit is handed to each person that comes into our office. Please come see me next time you would like to distribute any materials and I would be more than happy to provide you with the paperwork for you [*sic*].”

120. Defendant Astorga further obstructed Shaw for several weeks from receiving a copy of the permit he had signed on November 2, 2016, or any written copy of the Pierce College Free Speech Area Policy, which is printed on the “free speech use form” to which Astorga’s email refers.

///

1 121. By instructing Shaw to fill out a “free speech use form” in order to
2 distribute literature on campus and by maintaining and enforcing regulations of
3 student expression that are not publicly available or guided by publicly discernable
4 standards, Defendant Astorga chilled Shaw’s right to free expression and deprived
5 Shaw of his clearly established rights to freedom of speech and expression secured
6 by the First and Fourteenth Amendments.

7 122. Defendants Burke, Dixon-Peters, Marmolejo, and Astorga have
8 policymaking, administrative, and enforcement authority over Pierce College’s
9 policies and practices governing student speech and expressive activity. By
10 designating only a tiny area of campus for speech and distribution of literature,
11 requiring a permit for its use, and failing to provide generally available notice to
12 students regarding such restrictions or any publicly discernable standards guiding
13 those tasked with enforcing them, Defendants should reasonably have known that
14 their actions and inactions would lead to the deprivation of clearly established
15 student rights to freedom of speech and expression secured by the First and
16 Fourteenth Amendments in the manner experienced by Shaw.

17 123. Defendants violated Shaw’s clearly established constitutional rights,
18 which any reasonable college official should have known, rendering them liable to
19 Shaw under 42 U.S.C. § 1983.

20 124. The denial of constitutional rights is an irreparable injury *per se*.

21 125. Shaw is entitled to a declaration that Defendants violated his First
22 Amendment rights. Additionally, Shaw is entitled to damages in an amount to be
23 determined by this Court, and the reasonable costs of this lawsuit, including
24 reasonable attorneys’ fees.

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION

**As-Applied Violation of Shaw's Right to Freedom of Speech Under
the First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint
Pierce College Free Speech Area Policy and Practices
(Defendants Burke, Dixon-Peters, Marmolejo, Astorga, and John Doe)**

126. Shaw repeats and realleges each of the foregoing paragraphs in this Complaint.

127. By forcing Shaw to stop engaging in expressive activity and requiring him to complete a permit application in order to access the Free Speech Area, as described above, Defendant John Doe imposed a prior restraint on Shaw's speech and expressive activity in violation of his right to freedom of expression under the First and Fourteenth Amendments.

128. By instructing Shaw to fill out a "free speech use form" in order to distribute literature on campus and by maintaining and enforcing regulations of student expression that are not publicly available or guided by publicly discernable standards, as described above, Defendant Astorga chilled Shaw's right to free expression and deprived Shaw of his clearly established rights to freedom of speech and expression secured by the First and Fourteenth Amendments.

129. Defendants Burke, Dixon-Peters, Marmolejo, and Astorga have policymaking, administrative, and enforcement authority over Pierce College's policies and practices governing student speech and expressive activity. As described above, by designating only a tiny area of campus for speech and distribution of literature, requiring a permit for its use, and failing to provide generally available notice to students regarding such restrictions or any publicly discernable standards guiding those tasked with enforcing them, Defendants should reasonably have known that their actions and inactions would lead to the deprivation of clearly established student rights to freedom of speech and

1 expression secured by the First and Fourteenth Amendments in the manner
2 experienced by Shaw.

3 130. Defendants violated Shaw's clearly established constitutional rights, of
4 which any reasonable college official should have known, rendering them liable to
5 Shaw under 42 U.S.C. § 1983.

6 131. The denial of constitutional rights is an irreparable injury *per se*, and
7 Shaw is entitled to declaratory and injunctive relief. Shaw experienced emotional
8 injury as a consequence of being denied his First Amendment rights.

9 132. Shaw is entitled to a declaration that Defendant John Doe violated his
10 First Amendment rights. Additionally, Shaw is entitled to damages in an amount to
11 be determined by this Court, and the reasonable costs of this lawsuit, including
12 reasonable attorneys' fees.

13 **SIXTH CAUSE OF ACTION**

14 **Declaratory Relief and Injunction (28 U.S.C. § 2201, *et seq.*)**
15 **(all Defendants)**

16 133. Shaw repeats and realleges each of the foregoing paragraphs in this
17 Complaint.

18 134. An actual controversy has arisen and now exists between Shaw and
19 Defendants concerning his rights under the United States Constitution. A judicial
20 declaration is necessary and appropriate at this time as to Counts I through V above.

21 135. Shaw desires a judicial determination of his rights against Defendants
22 as they pertain to his right speak, assemble, and distribute literature in the outdoor
23 areas of Pierce College without being subjected to an unconstitutional prior restraint
24 or unreasonable "time, place, and manner" regulations, which are not narrowly
25 tailored to serve a substantial government interest, and which do not leave open
26 alternative channels of communication.

27 ///

- 1 D. Monetary damages in an amount to be determined by the Court to
- 2 compensate for the Defendants' application of unlawful speech codes
- 3 to interfere with Shaw's expressive activity without prior approval and
- 4 outside of the "Free Speech Area";
- 5 E. Shaw's reasonable costs and expenses of this action, including
- 6 attorneys' fees, in accordance with 42 U.S.C. § 1988 and other
- 7 applicable law; and
- 8 F. All other further relief to which Shaw may be entitled.

9 ///
10 ///
11 ///
12 ///
13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///

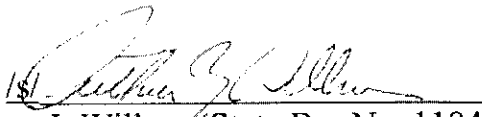
21
22
23
24
25
26
27
28

VIII. JURY TRIAL

138. Shaw demands a trial by jury on all claims triable by jury in this cause of action.

DATED: March 27, 2017

LEADER & BERKON LLP

By: 
Arthur I. Willner (State Bar No. 118480)
Email: awillner@leaderberkon.com
David Salazar (State Bar No. 310949)
dsalazar@leaderberkon.com
LEADER & BERKON LLP
660 S. Figueroa Street, Suite 1150
Los Angeles, CA 90017
Tel: (213) 234-1750; Fax (213) 234-1747

Marieke Tuthill Beck-Coon
Email: marieke@thefire.org
Brynne Sasha Madway
Email: brynne.madway@thefire.org
THE FOUNDATION FOR INDIVIDUAL
RIGHTS IN EDUCATION
510 Walnut Street, Suite 1250
Philadelphia, PA 19106
Tel: (215) 717-3473; Fax (215) 717-3440
Pro hac vice applications to be filed