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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**NATHAN APODACA; and  
STUDENTS FOR LIFE AT  
CALIFORNIA STATE  
UNIVERSITY-SAN MARCOS,**

Plaintiffs,

v.

**SILAS ABREGO, JANE W.  
CARNEY, ADAM DAY,  
REBECCA D. EISEN, DOUGLAS  
FAIGIN, DEBRA S. FARAR, JEAN  
P. FIRSTENBERG, LILLIAN  
KIMBELL, THELMA  
MELÉNDEZ DE SANTA ANA,  
HUGO N. MORALES, JOHN  
NILON, J. LAWRENCE NORTON,  
JORGE REYES SALINAS,  
LATEEFAH SIMON, STEVEN  
STEPANEK, PETER J. TAYLOR,  
and, MAGGIE WHITE, each  
individually and each in his or her  
official capacity as a member of the  
California State University Board of  
Trustees; TIMOTHY P. WHITE,  
Chancellor of California State**

Case No. '17CV1014 L NLS  
**DEMAND FOR JURY TRIAL**

**VERIFIED COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF,  
MONETARY DAMAGES, AND  
ATTORNEYS' FEES AND COSTS**

1 University, in his official and  
2 individual capacities; **KAREN S.**  
3 **HAYNES**, President of California  
4 State University-San Marcos, in her  
5 official and individual capacities;  
6 **LORENA CHECA**, Vice President of  
7 Student Affairs of California State  
8 University-San Marcos, in her official  
9 and individual capacities; **KIM**  
10 **CLARK**, Associate Vice President for  
11 Student Auxiliary Services and  
12 Executive Director of Associated  
13 Students, Inc. at California State  
14 University-San Marcos, in her official  
15 and individual capacities; **LOUIS**  
16 **ADAMSEL**, **CHRIS LEE**,  
17 **YOMIRA ZAMORA**, **ANNA**  
18 **RAPADA**, **NOAH HENWOOD**,  
19 **MATTHEW RICHARD**, **MEGHAN**  
20 **APARRI**, **JENNA HERNANDEZ**,  
21 **SAVANA DOUDAR**, **LONDON**  
22 **MAYS-HUMPHREY**, **KEVIN**  
23 **PALOMINO**, **ALEX VEGA**,  
24 **ALEJANDRO LOPEZ**, **JOSHUA**  
25 **FORONDA**, and **KIMBERLY**  
26 **ANDERSON**, each individually and  
27 each in his or her official capacity as a  
28 member of the Board of Directors of  
Associated Students, Inc.,

Defendants.

1 Plaintiffs Nathan Apodaca and Students for Life at California State  
2 University-San Marcos, by and through counsel, and for their Verified Complaint  
3 against the Defendants, hereby state as follows:

4 **INTRODUCTION**

5 1. The cornerstone of higher education is the ability of students to participate  
6 in the “marketplace of ideas” on campus. In the context of facilitating funding of  
7 student advocacy from mandatory student activity fees the First Amendment dictates  
8 that the university can collect such a mandatory student activity fee only if they  
9 proactively ensure that those funds are allocated in a viewpoint-neutral manner,  
10 bridling the discretion of those who allocate the funds. In violation of these  
11 principles, California State University-San Marcos (“University” or “CSU-SM”)  
12 unconstitutionally compels Mr. Apodaca and the other students members of Plaintiff  
13 Students for Life at CSU-SM to subsidize speech that they disagree with through its  
14 assessment of a mandatory Student Activity Fee through a policy which grants  
15 Associated Students, Inc. (“ASI”) unbridled discretion in allocating these funds for  
16 student advocacy, allowing it to favor popular views and to exclude unpopular  
17 views.

18 2. ASI has exercised this unbridled discretion to allocate the Student Activity  
19 Fees in a viewpoint discriminatory manner. ASI favors the viewpoints of two student  
20 community centers, the Gender Equity Center and the LGBTQA Pride Center, by  
21 allocating more than \$296,000 to them, which is more than 53% of the Student  
22 Activity Fees allocated to fund student advocacy, and by creating special rules to  
23 favor only them – including allowing the two centers to use Student Activity Fees to  
24 bring in speakers to advocate for certain viewpoints. ASI also allocates Student  
25 Activity Fees to sponsor the Arts & Lectures Series to bring speakers to campus to  
26 advocate for certain viewpoints. However, ASI denied Students for Life at CSU-  
27 SM’s request for funding because ASI limits all other student-run organizations to  
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1 \$500 per semester and they are not allowed to use the fees to pay speakers to  
2 advocate for their own viewpoints.

3 3. As a student at CSU-SM, Mr. Apodaca and other members of Students for  
4 Life at CSU-SM are required to subsidize the speech of the Gender Equity Center  
5 and the LGBTQA Pride Center through payment of the mandatory Student Activity  
6 Fee. Mr. Apodaca disagrees with their viewpoints which include advocating for  
7 abortion and sexually promiscuous behavior.

8 4. When Plaintiff Students for Life at CSU-SM applied for funding to host a  
9 nationally recognized columnist and speaker, Professor Mike Adams, to speak about  
10 the issue of abortion, ASI denied the request. Yet, ASI provides funding through  
11 Student Activity Fees to the Gender Equity Center and the LGBTQA Pride Center,  
12 allowing them to pay for numerous speakers to speak on campus over the last two  
13 semesters, reflecting their own views on a variety of topics that conflict with those  
14 of Mr. Apodaca, including abortion and human sexuality.

15 5. Defendants have violated Plaintiffs' constitutional rights and caused them  
16 irreparable injury by forcing Mr. Apodaca and the members of Students for Life at  
17 CSU-SM to subsidize speech with which they disagree without affording them the  
18 opportunity to respond by bringing in their own speakers; by favoring the views of  
19 the Gender Equity Center and the LGBTQA Pride Center by giving those centers far  
20 more funding than other student-run organizations and permitting only those centers  
21 to pay costs to bring in speakers; by granting the Gender Equity Center and the  
22 LGBTQA Pride Center unbridled discretion to co-sponsor the advocacy of other  
23 student organizations; by denying Students for Life at CSU-SM funding for its event  
24 with Professor Adams; and by allocating Student Activity Fees without objective  
25 criteria or standards to ensure against viewpoint discrimination.

26 6. This action is based on the denial of Plaintiffs' fundamental rights to free  
27 speech and equal protection of the laws under the United States Constitution. The  
28 policies and actions detailed below are challenged on their face and as applied to

1 Plaintiffs. Defendants' policies and actions have deprived and will continue to  
2 deprive Plaintiffs of their paramount rights and guarantees under the United States  
3 Constitution. Each and every act of Defendants alleged herein was committed by  
4 Defendants, each and every one of them, under the color of state law and authority.

5 **Jurisdiction and Venue**

6 7. This civil rights action raises federal questions under the United States  
7 Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights  
8 Act of 1871, 42 U.S.C. § 1983.

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

11 9. This Court has authority to award the requested damages pursuant to 28  
12 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02;  
13 the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65;  
14 and costs and attorneys' fees under 42 U.S.C. § 1988.

15 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because all  
16 of the Defendants reside in this district and/or all of the acts described in this  
17 Complaint occurred in this district.

18 **Plaintiffs**

19 11. Plaintiff Nathan Apodaca is the President of Students for Life at CSU-SM  
20 and a full-time student at the University.

21 12. Mr. Apodaca pays the mandatory Student Activity Fees at the University  
22 and has paid this fee every semester in which he has been enrolled.

23 13. Mandatory Student Activity Fees paid by Mr. Apodaca have been and will  
24 be allocated to student groups for causes to which he objects, including advocacy  
25 for the right to abortion and against his own pro-life views.

26 14. Mr. Apodaca is entitled to the viewpoint-neutral distribution of the  
27 mandatory Student Activity Fees he has been and will be required to pay or to the  
28 repayment of fees he has paid and to be exempt from paying such fees in the future.

1 15. Plaintiff Students for Life at California State University-San Marcos is an  
2 unincorporated expressive student organization comprised of CSU-SM students.

3 16. Students for Life at CSU-SM is recognized as an official student  
4 organization at the University. It is a student-led, non-partisan, pro-life expressive  
5 student organization.

6 17. Every student member of Students for Life at CSU-SM pays mandatory  
7 Student Activity Fees at the University.

8 18. Students for Life at CSU-SM and each of its members is entitled to  
9 viewpoint-neutral access to and allocation of mandatory Student Activity Fees  
10 collected by the University or to the repayment of the fees they have paid and to be  
11 exempt from paying such fees in the future.

12 19. Part of Students for Life at CSU-SM's mission is to be an expressive  
13 student organization at the University and to protect its members' constitutional  
14 rights on campus.

15 20. If Students for Life at CSU-SM succeeds in this lawsuit, it will be able to  
16 obtain viewpoint-neutral access to the mandatory Student Activity Fee funding, and  
17 its members will not be compelled to pay for others' expression in a system that  
18 permits viewpoint discriminatory allocation of those funds to views they oppose.

19 21. Students for Life at CSU-SM brings this suit on behalf of itself as a  
20 registered student organization at the University and on behalf of its individual  
21 student members, all of whom are compelled to pay mandatory student fees for the  
22 expression of viewpoints they oppose and are denied viewpoint-neutral access to the  
23 University's organizational funding mechanism through a system that permits  
24 discrimination against them because of the viewpoint of their speech activities and  
25 which actually does advantage others' opposing views over their own.

26 **Defendants**

27 22. Defendants Silas Abrego, Jane W. Carney, Adam Day, Rebecca D. Eisen,  
28 Douglas Faigin, Debra S. Farar, Jean P. Firstenberg, Lillian Kimbell, Thelma

1 Meléndez de Santa Ana, Hugo N. Morales, John Nilon, J. Lawrence Norton, Jorge  
2 Reyes Salinas, Lateefah Simon, Steven Stepanek, Peter J. Taylor, and Maggie White  
3 are, and were at all times relevant to this Complaint, voting members of the  
4 California State University Board of Trustees (herein collectively, the “Board  
5 Defendants”), a public university organized and existing under the laws of  
6 California.

7 23. The Board Defendants are responsible for, among other things, the  
8 adoption and authorization of policies that govern students at the University,  
9 including the Student Activity Fee Policy and related procedures challenged herein  
10 (hereinafter all of Defendants’ policies and regulations governing student activity  
11 fees will be collectively referred to as the “Student Activity Fee Policy”), and their  
12 application to Plaintiffs.

13 24. The Board Defendants are responsible for enactment, amendment, and  
14 repeal of Board of Trustees’ policies that govern the collection and allocation of  
15 mandatory Student Activity Fees at the University, including the Student Activity  
16 Fee Policy.

17 25. The Board Defendants have acquiesced in, sanctioned, and supported the  
18 actions of all Defendants complained of herein, including the enforcement of the  
19 Student Activity Fee Policy and related procedures regarding allocation of  
20 mandatory Student Activity Fees to recognized student organizations.

21 26. The Board Defendants participate in the assessment and allocation of  
22 Student Activity Fees by granting the University the authority to assess and allocate  
23 the amount of mandatory Student Activity Fees that the University will collect each  
24 year, including for distribution to student organizations.

25 27. Each Board Defendant is sued in his or her official and individual  
26 capacities.

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1 28. Defendant Timothy P. White is, and was at all times relevant to this  
2 Complaint, the Chancellor of California State University, a public university  
3 organized and existing under the laws of the State of California.

4 29. Defendant White is responsible for the establishment, oversight and  
5 adjustment of mandatory Student Activity Fees imposed pursuant to the Student  
6 Activity Fee Policy and related procedures challenged herein and their application  
7 to Students for Life at CSU-SM in denying its application for funding.

8 30. As Chancellor, Defendant White is responsible for reviewing the annual  
9 report prepared by the University which sets forth the allocation of the mandatory  
10 Student Activity Fees assessed on the University's students, including Mr. Apodaca  
11 and the other student members of CSU-SM.

12 31. Defendant White has enforced the Student Activity Fee Policy in a  
13 viewpoint-discriminatory manner by establishing the policy which authorizes the  
14 University to require its students, including Mr. Apodaca and the members of  
15 Students for Life at CSU-SM, to pay mandatory Student Activity Fees and grants  
16 unbridled discretion to discriminate in the allocation of Student Activity Fees by  
17 favoring the viewpoints of the Gender Equity Center and the LGBTQA Pride Center,  
18 and disfavoring the views of Students for Life at CSU-SM.

19 32. Defendant White is sued in his official and individual capacities.

20 33. Defendant Karen S. Haynes is, and was at all times relevant to this  
21 Complaint, the President of California State University-San Marcos, a public  
22 university organized and existing under the laws of the State of California.

23 34. Defendant Haynes is responsible for the oversight and enforcement of  
24 mandatory Student Activity Fees imposed pursuant to the Student Activity Fee  
25 Policy and related procedures challenged herein and their application to Students for  
26 Life at CSU-SM in denying its application for funding.

27 35. As president of the University, Defendant Haynes is responsible for  
28 reviewing and approving the annual budget prepared by Associated Students, Inc.



1 which sets forth ASI's proposed allocation of the mandatory Student Activity Fees  
2 assessed on the University's students, including Mr. Apodaca and the other student  
3 members of CSU-SM.

4 36. As president of the University, Defendant Haynes has the authority to  
5 review, approve, or reject the funding decisions of the ASI Defendants.

6 37. Defendant Haynes has enforced the Student Activity Fee Policy in a  
7 viewpoint-discriminatory manner because she has approved ASI's viewpoint  
8 discriminatory allocation of Student Activity Fees which favors the views of, *inter*  
9 *alia*, the Gender Equity Center and the LGBTQA Pride Center, and disfavors the  
10 views of Students for Life at CSU-SM, and she has not instructed Defendants Checa,  
11 Clark, or the ASI Defendants to change or alter these policies and related procedures  
12 to restrict the discretion of University officials in the allocation of Student Activity  
13 Fees.

14 38. Defendant Haynes is sued in her official and individual capacities.

15 39. Defendant Lorena Checa is, and was at all times relevant to this Complaint,  
16 Vice President of Student Affairs of California State University-San Marcos, a  
17 public university organized and existing under the laws of the State of California.

18 40. Defendant Checa is responsible for administration and oversight of  
19 policies for the University, including the Student Activity Fee Policy and related  
20 procedures challenged herein which require all students, including Mr. Apodaca and  
21 all other members of Students for Life at CSU-SM, to pay Student Activity Fees as  
22 a condition of enrollment.

23 41. Defendant Checa is responsible for the enforcement of University policies,  
24 including the Student Activity Fee Policy and related procedures challenged herein  
25 that were applied to Students for Life at CSU-SM in denying its application for  
26 funding and required the members of Students for Life at CSU-SM, including Mr.  
27 Apodaca, to pay mandatory Student Activity Fees pursuant to a policy that grants  
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1 unbridled discretion to discriminate in the allocation of funds based on the viewpoint  
2 of student speech.

3 42. Defendant Checa is responsible for employing, evaluating, and dismissing  
4 the ASI Executive Director. As the Chief Administrative Officer of ASI, the ASI  
5 Executive Director reports directly to Defendant Checa and is responsible for  
6 overseeing the operations of and enforcing the policies of ASI.

7 43. Defendant Checa has enforced the Student Activity Fee Policy in a  
8 viewpoint discriminatory manner because she has failed to stop University officials,  
9 including the other defendants, from allocating Student Activity Fee funding in a  
10 viewpoint-discriminatory manner, including denying funding to Students for Life at  
11 CSU-SM.

12 44. Defendant Checa possesses the authority to change and enforce the Student  
13 Activity Fee Policy and procedures challenged herein.

14 45. Defendant Checa possesses the authority to instruct ASI to change the  
15 Student Activity Fee Policy and related procedures challenged herein.

16 46. Defendant Checa is sued in her official and individual capacities.

17 47. Defendant Kim Clark is, and was at all times relevant to this Complaint,  
18 Associate Vice President for Student Auxiliary Services and Executive Director of  
19 Associated Students, Inc. at California State University-San Marcos, a public  
20 university organized and existing under the laws of the State of California.

21 48. Defendant Clark is responsible for administration and policymaking for  
22 the University, including the Student Activity Fee Policy and related procedures  
23 challenged herein which require all students, including Mr. Apodaca and all other  
24 members of Students for Life at CSU-SM, to pay Student Activity Fees as a  
25 condition of enrollment.

26 49. Defendant Clark is responsible for the enforcement of University policies,  
27 including the Student Activity Fee Policy and related procedures challenged herein  
28 that were applied to Students for Life at CSU-SM in denying its application for

1 Student Activity Fee funding and that required Mr. Apodaca to pay mandatory  
2 Student Activity Fees pursuant to a policy that grants unbridled discretion to  
3 discriminate in the allocation of funds based on the viewpoint of student speech.

4 50. Defendant Clark, under the direction of Defendants Haynes and Checa,  
5 instructs ASI when to create, review, change, authorize, and enforce the Student  
6 Activity Fee Policy and related procedures.

7 51. Defendant Clark enforced the Student Activity Fee Policy in a viewpoint  
8 discriminatory manner because she has failed to stop University officials, including  
9 the other defendants, from allocating funds in a viewpoint-discriminatory manner,  
10 including denying funding to Students for Life at CSU-SM.

11 52. Defendant Clark applied the Student Activity Fee Policy in a viewpoint  
12 discriminatory manner because she participated in the review of the application for  
13 funding made by Students for Life at CSU-SM and denied the application based on  
14 the Student Activity Fee Policy.

15 53. Defendant Clark possesses the authority to change and enforce the Student  
16 Activity Fee Policy, and related procedures challenged herein, including those of  
17 ASI.

18 54. Defendant Clark is sued in her official and individual capacities.

19 55. Defendants Louis Adamsel, Chris Lee, Yomira Zamora, Anna Rapada,  
20 Noah Henwood, Matthew Richard, Meghan Aparri, Jenna Hernandez, Savana  
21 Doudar, London Mays-Humphrey, Kevin Palomino, Alex Vega, Alejandro Lopez,  
22 Joshua Foronda, and Kimberly Anderson are, and were at all times relevant to this  
23 Complaint, the members of the ASI Board of Directors (hereinafter the "ASI  
24 Defendants").

25 56. The ASI Defendants have the authority assigned them by the other  
26 Defendants herein through the Student Activity Fee Policy, to create policies relating  
27 to use and allocation of mandatory Student Activity Fees, review funding  
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1 applications and make funding decisions to student groups applying for Student  
2 Activity Fee funding.

3 57. The ASI Defendants applied the Student Activity Fee Policy in a viewpoint  
4 discriminatory manner by favoring the viewpoints of the Gender Equity Center and  
5 the LGBTQA Pride Center and discriminating against the viewpoints of Students for  
6 Life at CSU-SM by denying its application for funding.

7 58. The ASI Defendants are sued in both their official and individual  
8 capacities.

9 **Factual Background**

10 **I. Defendants' Unconstitutional Student Activity Fee Funding System**

11 **A. California laws and regulations governing mandatory Student**  
12 **Activity Fees**

13 59. California State University-San Marcos is a public university organized  
14 and existing under the laws of the State of California, and it receives funding from  
15 the State of California in order to operate.

16 60. The Board Defendants govern the University through regulations and  
17 policies.

18 61. The Board Defendants derive their authority from Cal. Educ. Code § 66600  
19 *et seq.*

20 62. The University may establish a student body organization for the purpose  
21 of providing essential activities closely related to, but not normally included as part  
22 of, the regular instructional program of the university. Cal. Educ. Code § 89300.

23 63. A student body organization is considered an "auxiliary organization" of  
24 the University. Cal. Educ. Code § 89901(b).

25 64. An auxiliary organization is an independently governed corporation that is  
26 legally separate from the University. Cal. Educ. Code § 89913(c).

27 65. The governing board of a student body organization must consist primarily  
28 of students, with a representative of the University president to advise on policy and

1 to provide a liaison between the student governing board and the President of the  
2 University. 5 CCR § 42602(a).

3 66. The president of the University is responsible for ensuring that the student  
4 body organization operates in conformity with the policy of the Board Defendants  
5 and the University. 5 CCR § 42402.

6 67. If two-thirds of the student body approves by vote, the Board Defendants  
7 have the authority to establish a mandatory membership fee for the student body  
8 organization that all students are required to pay as a condition of enrollment. Cal.  
9 Educ. Code § 89300.

10 **B. The Unconstitutional Student Activity Fee Policy**

11 68. The principle underlying the expenditure of student body organization  
12 funds collected through mandatory fees is that such expenditures shall be made in  
13 programs that reflect the broadest variety of student interests and that are open to all  
14 students who wish to participate. 5 CCR § 42659.

15 69. The Board Defendants have determined that mandatory Student Activity  
16 Fees may only be used for the following specific purposes: (a) Programs of cultural  
17 and educational enrichment and community service; (b) Recreational and social  
18 activities; (c) Support of student unions; (d) Scholarships, stipends, and grants-in-  
19 aid for only currently admitted students; (e) Tutorial programs; (f) Athletic  
20 programs, both intramural and intercollegiate; (g) Student publications; (h)  
21 Assistance to recognized student organizations; (i) Student travel insurance; (j)  
22 Administration of Student Activity Fee program; (k) Student government-  
23 scholarship stipends, grants-in-aid, and reimbursements to student officers for  
24 service to student government; (l) Student employment to provide payment for  
25 services in connection with the general administration of Student Activity Fees; (m)  
26 Augmentation of counseling services, including draft information, to be performed  
27 by the campus; (n) Transportation services; (o) Child day care centers for children  
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1 of students and employees of the campus; and (p) Augmentation of campus health  
2 services. 5 CCR § 42659.

3 70. The Board Defendants have delegated broad authority and responsibility  
4 to Defendant White, as Chancellor, to take whatever actions are necessary for the  
5 establishment and oversight of campus Student Activity Fees. A true and correct  
6 copy of the Standing Orders of the Board of Trustees of the California State  
7 University is attached as Exhibit 1 to this Complaint.

8 71. Pursuant to this authority, Defendant White issued Executive Order 1102  
9 which governs the establishment and allocation of student activity fees. A true and  
10 correct copy of Executive Order 1102 is attached as Exhibit 2 to this Complaint.

11 72. But the Student Activity Fee Policy violates the First and Fourteenth  
12 Amendment rights of the University's students because it grants University  
13 administrators unbridled discretion to discriminate in the allocation of their  
14 mandatory student activity fees based on the viewpoint of student speech.

15 73. As detailed in subsequent paragraphs, Plaintiffs challenge, facially and  
16 as-applied, the Defendants' Student Activity Fee Policy because:

- 17 • The policy grants Defendants unbridled discretion to allocate mandatory  
18 Student Activity Fees in a viewpoint-discriminatory manner.
- 19 • The policy does not include necessary objective criteria, factors, or  
20 standards required to guide the Defendants in allocating mandatory  
21 Student Activity Fees to fund expressive activity in a viewpoint-neutral  
22 manner.
- 23 • The policy affords unbridled discretion to favor certain viewpoints by  
24 creating student-run "centers" like the Gender Equity Center and the  
25 LGBTQA Pride Center, funding them through Student Activity Fees, and  
26 creating different rules governing their use of student fees inapplicable to  
27 other student groups.

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- 1           • The policy does not provide for an appeals process if a student  
2           organization's request for funding is denied.
- 3           • The Defendants apply the policy to favor the speech of the Gender Equity  
4           Center and the LGBTQA Pride Center and disfavor alternative  
5           viewpoints offered by student organizations like Students for Life at  
6           CSU-SM.
- 7           • The Defendants apply the policy to allow the Gender Equity Center, the  
8           LGBTQA Pride Center, and the Arts & Lectures Series to use mandatory  
9           Student Activity Fees to pay for speakers to speak at their events on a  
10          variety of viewpoints including abortion, human sexuality, birth control,  
11          and exploitation of women, but forbid Students for Life at CSU-SM and  
12          other student organizations from using mandatory Student Activity Fees  
13          to pay for speakers to speak on those topics from a different viewpoint.
- 14          • The Defendants applied the policy to deny Students for Life at CSU-  
15          SM's request for reimbursement of a portion of expenses for Professor  
16          Adams to speak at their event, which was open to all CSU-SM students,  
17          and Defendants will apply the policy to deny student activity funding for  
18          Students for Life at CSU-SM to pay for speakers to present its viewpoints  
19          on topics such as abortion and human sexuality, thereby favoring the  
20          viewpoints presented by the Gender Equity Center and the LGBTQA  
21          Center whose speakers are reimbursed with student activity fees.
- 22          • The Defendants applied the policy to require Mr. Apodaca and other  
23          members of Students for Life to pay mandatory Student Activity Fees  
24          pursuant to a policy which is not viewpoint-neutral.

25       74. The Student Activity Fee Policy establishes six categories of fees. Campus  
26       mandatory fees that must be paid to enroll in or attend the university are classified  
27       as Category II fees (hereinafter referred to as "mandatory Student Activity Fees").  
28       Ex. 2 § II. B.

1       75. Associated Students, Inc. of California State University-San Marcos is a  
2 non-profit, student-run auxiliary student body organization formed pursuant to Cal.  
3 Educ. Code § 89300. A true and correct copy of the Bylaws of ASI is attached as  
4 Exhibit 3 to this Complaint.

5       76. ASI is governed by the ASI Board of Directors and Executive Officers.  
6 Ex. 3, Art. 10 § 2.

7       77. One of ASI's stated purposes is "to improve the quality of student life by  
8 promoting student intellectual, cultural, recreational, and social welfare." Ex. 3,  
9 Preamble.

10       78. Pursuant to the Student Activity Fee Policy, the University requires that  
11 every student enrolled is automatically a member of ASI and is required to pay a  
12 mandatory fee of \$75 for each semester that he or she is enrolled as a student.

13       79. ASI is completely funded through the payment of mandatory Student  
14 Activity Fees.

15       80. The total amount of mandatory Student Activity Fees collected by the  
16 University on behalf of ASI for the 2016-2017 academic year was approximately  
17 \$1.31 million. A copy of ASI's Annual Budget for 2016-2017 is attached as Exhibit  
18 4 to this Complaint.

19       81. Pursuant to the Student Activity Fee Policy, the ASI Defendants are  
20 responsible for preparing ASI's Annual Budget and presenting it to Defendant  
21 Haynes, as the President of the University. Ex. 3, Art. 14 § 2.8.

22       82. The Student Activity Fee Policy does not contain provisions requiring that  
23 the mandatory Student Activity Fees must be allocated in a viewpoint-neutral  
24 manner.

25       83. The Student Activity Fee Policy does not contain objective criteria  
26 necessary to guide decisionmakers when allocating Student Activity Fees to fund  
27 student organization speech or other expressive activities.

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1       84. Pursuant to the Student Activity Fee Policy, upon information and belief,  
2 Mr. Apodaca will pay approximately \$300 in mandatory Student Activity Fees in  
3 his four semesters at the University, and the other members of Students for Life at  
4 CSU-SM will pay approximately \$600 during their four years at the University.

5       85. Pursuant to the Student Activity Fee Policy, ASI allocates mandatory  
6 Student Activity Fees to fund expressive activities and programs through: (1) the  
7 Campus Activities Board; (2) the Gender Equity Center; (3) the LGBTQA Pride  
8 Center; (4) the Arts & Lectures Series; and (5) ALF Leadership Funding. A copy of  
9 ASI's webpage is attached as Exhibit 5 to this Complaint.

10       86. For the 2016-2017 academic year, ASI allocated \$218,860 in mandatory  
11 Student Activity Fees to the Campus Activities Board ("CAB"). Ex. 4.

12       87. The duties of the CAB include: (1) developing "programming on campus  
13 based on the focus areas and needs of the student body"; (2) developing "engaging  
14 and informative campus activities that are representative of diversity of the campus  
15 community"; and (3) ensuring that "all events contribute to engaging the campus  
16 community." Campus Activities Board Code § VIII, a copy of which is attached as  
17 Exhibit 6 to this Complaint.

18       88. The CAB also is tasked with organizing a Volunteer Committee for at-  
19 large students to assist with campus activities. Ex. 6 § VIII.

20       89. In 2005, ASI created the Women's Center to provide resources, advocate  
21 for, and express viewpoints on issues related to women. The purpose of the  
22 Women's Center was to educate students about social justice issues that affect  
23 women such as domestic violence, sexual equality, and eating disorders. A copy of  
24 The Cougar Chronicle article dated September 6, 2010 discussing the formation is  
25 attached as Exhibit 7 to the Complaint.

26       90. In 2015, ASI decided to change the purpose of the advocacy and  
27 expression of the Women's Center and renamed it the Gender Equity Center.  
28

1 91. The Gender Equity Center is a student-run organization that is governed  
2 by the ASI Board of Directors.

3 92. The stated purpose of the Gender Equity Center is to “provide a space  
4 dedicated to gender equity in which students of all genders and diverse identities feel  
5 safe, valued, and respected.” Gender Equity Center Code § III, a copy of which is  
6 attached as Exhibit 8 to the Complaint.

7 93. The Gender Equity Center accomplishes its purpose “through  
8 programming, education, and advocacy.” Ex. 8 § III.

9 94. The duties and responsibilities of the Gender Equity Center include: (1)  
10 provide a safe and welcoming space for all students, staff, and faculty; (2) conduct  
11 educational programming and events focused on meeting the needs of students of all  
12 genders and diverse identities; (3) increase awareness about issues that primarily  
13 affect women, gender nonconforming, and transgender students on campus; and (4)  
14 pursue gender equity through dialogue, support, programming, education, and  
15 advocacy. Ex. 8 § VIII.

16 95. For the 2016-2017 academic year, ASI allocated \$147,919 in mandatory  
17 Student Activity Fees to the Gender Equity Center. It is funded solely through  
18 Student Activity Fees. Ex. 4.

19 96. The Gender Equity Center regularly engages in and promotes speech that  
20 advocates a pro-abortion viewpoint, and Plaintiffs disagree with this viewpoint. For  
21 example, last semester, the Gender Equity Center hosted a pro-abortion lecture by  
22 CSU-SM Women’s Studies professor Cecili Chadwick entitled “A Feminist History  
23 of Reproductive Rights.”

24 97. Upon information and belief, the Gender Equity Center has not held any  
25 event or brought any speaker to campus that expressed or advocated for a pro-life  
26 viewpoint.

27 98. The Gender Equity Center hosts several annual events. Love Your Body  
28 Day is an annual “feminist celebration to raise awareness about health issues,

1 challenge harmful and offensive advertisements and media, and promote positive  
2 body image.” A copy of Gender Equity Center’s Events webpage is attached as  
3 Exhibit 9 to this Complaint.

4 99. Women’s Herstory Month is an annual campus-wide celebration with over  
5 a dozen events that is intended to recognize the struggles and celebrate the  
6 achievements of women in the U.S. Ex. 9.

7 100. The Gender Equity Center also hosts other miscellaneous events  
8 throughout the year. Some of the events this year include the Safe Zone Training  
9 Workshop, ABC’s of LGBTQ: Queer Women, and the Pleasure Party. Ex. 9.

10 101. For the Pleasure Party, students were invited to “[c]ome and learn more  
11 about how to increase your pleasure! We will go over different ways to increase your  
12 pleasure, whether it’s for yourself, for your partner, or both!” A picture of the  
13 Pleasure Party advertisement is attached as Exhibit 10 to the Complaint.

14 102. The Gender Equity Center also provides various resources. One of these  
15 resources is LGBTQ Safe Zone which includes educational workshops and training  
16 seminars for classes, campus agencies, student organizations, and departments about  
17 topics including gender, sexuality, identity, and other topics relating to multicultural  
18 competence.

19 103. Another resource is a training entitled Mask of Marginalization in which  
20 attendees participate in a simulation activity where they can identify their roles that  
21 mirror those in society of privilege and marginalization.

22 104. The Gender Equity Center also offers “trans affirming spaces,” “gender  
23 inclusive restrooms,” and a “preferred name policy.” A copy of the Gender Equity  
24 Center’s Trans Resources webpage is attached as Exhibit 11 to the Complaint.

25 105. In 2007, ASI created the LGBTQA Pride Center to provide resources,  
26 advocate for, and express viewpoints on issues related to LGBTQA individuals.

27 106. The LGBTQA Pride Center is a student-run organization that is governed  
28 by the ASI Board of Directors.

1 107. The purpose of the LGBTQA Pride Center is to “create, sustain, and affirm  
2 an open, safe, and inclusive environment for lesbian, gay, bisexual, transgender,  
3 queer, questioning, intersex, and ally (LGBTQIA) individuals and communities at  
4 CSU San Marcos.” LGBTQA Pride Center Code § III, a copy of which is attached  
5 as Exhibit 12 to the Complaint.

6 108. The LGBTQA Pride Center “accomplishes its purpose by building  
7 community, service as a voice of advocacy fostering a positive campus climate for  
8 LGBTQIA individuals, sponsoring events and programs which reflect the diversity  
9 within LGBTQIA communities, and providing educational resources and  
10 opportunities.” Ex. 12 § III.

11 109. The duties and responsibilities of the LGBTQA Pride Center include: (1)  
12 conduct educational programming and events focused on meeting the needs of  
13 students of all genders, sexual orientations, and diverse identities; (2) increase  
14 awareness about issues impacting LGBTQIA students on campus; and (3) pursue  
15 equity for LGBTQIA individuals through dialogue, support, programming,  
16 education, and advocacy. Ex. 12 § VIII.

17 110. For the 2016-2017 academic year, ASI allocated \$148,579 in mandatory  
18 Student Activity Fees to the LGBTQA Pride Center. Ex. 4.

19 111. The LGBTQA Pride Center hosts several annual events. The Coming Out  
20 Monologues is an annual community-based theater project “celebrating the diversity  
21 of experience and identity in the coming out journey.” A copy of the LGBTQA Pride  
22 Center’s Event’s webpage is attached as Exhibit 13 to the Complaint.

23 112. Gaypril is an annual month-long celebration of the “lesbian, gay, bisexual,  
24 transgender, questioning and allied (LGBTQA+) community through a series of  
25 events that will include lectures, discussions, art collaborations and a pride festival.”  
26 Ex. 13.

27 113. The LGBTQA Pride Center also hosts miscellaneous events throughout  
28 the year, some of which include outside speakers. For example, this semester the

1 LGBTQA Pride Center hosted (1) Dr. Sayaka, a professional sexologist, for a  
2 presentation entitled “Kink 101” which was a discussion of BDSM and Kink which  
3 included prizes and participation in an interactive workshop, and interested  
4 individuals were encouraged to bring a scarf or tie if they wanted to play along; and  
5 (2) Dr. Jennifer Gunsallus, a sexuality speaker, for a presentation entitled “Spice  
6 Up Your Valentine’s Day” which was an interactive presentation designed to  
7 explore mindfulness in your sexuality and included sex quizzes, myth busting, and  
8 information on popular aphrodisiacs. The LGBTQA Pride Center used Student  
9 Activity Fees to pay speakers to participate in both of these events. Pictures of the  
10 advertisements for these events are attached as Exhibit 14 to this Complaint.

11 114. The LGBTQA Pride Center also offers “trans affirming spaces,” “gender  
12 inclusive restrooms,” and a “preferred name policy” which are the same resources  
13 provided by the GEC. Ex. 11.

14 115. The LGBTQA Pride Center regularly engages in and promotes speech that  
15 advocates for and encourages sexual activities that Plaintiffs believe are immoral  
16 and unhealthy.

17 116. Upon information and belief, the LGBTQA Pride Center has not held any  
18 event or brought any speaker to campus that expressed or advocated for the  
19 viewpoint that sex should only occur between a man and a woman in a marital  
20 relationship.

21 117. The Gender Equity Center and the LGBTQA Pride Center also publish two  
22 annual student-written magazines. The Query, published by the LGBTQA Pride  
23 Center, focuses on artwork and articles related to and advocating for the interests of  
24 “LGBTQ, Queer, and Ally issues and identities.” The Feminist Agenda, published  
25 by the Gender Equity Center, focuses on feminist and gender issues.

26 118. The CAB, Gender Equity Center, and the LGBTQA Pride Center are all  
27 ASI entities. ASI employs a media and communications team that supports the  
28

1 activities of the ASI entities. A copy of the Media and Communications Team Code  
2 is attached as Exhibit 15 to this Complaint.

3 119. The media and communications team designs, develops, and prints  
4 promotional items and all marketing materials for all events and services for all ASI  
5 entities. Ex. 15 § VIII.

6 120. The media and communications team also coordinates with each ASI  
7 entity to construct a marketing plan for the entity's activities and programs. Ex. 15  
8 § VIII.

9 121. ASI allocates mandatory Student Activity Fees to pay for outside speakers  
10 to speak on campus through its sponsorship of the Arts & Lectures Series which is  
11 produced by the College of Humanities, Arts, Behavioral and Social Sciences. A  
12 copy of the Arts & Lectures Series webpage and Spring 2017 brochure is attached  
13 to the Complaint as Exhibit 16.

14 122. The Arts & Lectures Series is a series of events that is designed to offer  
15 "eye-opening perspectives on multiple topics, issues, and disciplines by bringing in  
16 exceptional guests who are experts in various fields creatively and intellectually."  
17 Ex. 16.

18 123. The Arts & Lectures Series includes "lectures across various fields,  
19 film/video screenings, visual art talks, dance and theatre performances, music  
20 concerts, scientific discussions, book readings and more." Ex. 16.

21 124. The Spring 2017 series included: (1) Jane Elliott in a lecture entitled "The  
22 Anatomy of Prejudice"; (2) storyteller and sociologist Kimberly Dark in a lecture  
23 entitled "Things I Learned from Fat People on the Plane"; and (3) hip hop artist and  
24 activist Nomis in a performance entitled "The Socially Just."

25 125. For the 2016-2017 academic year, ASI allocated \$38,629 in mandatory  
26 Student Activity Fees to ASI Leadership Funding ("ALF"). Ex. 4.

27

28

1 126. ALF is a program that provides funding for student organizations to hold  
2 on-campus events and for student attendance at professional conferences. A copy of  
3 the ASI Leadership Funding Policy is attached to the Complaint as Exhibit 17.

4 127. The University has more than 100 recognized student organizations.

5 128. The maximum amount that a student organization can receive is \$250 for  
6 an event that is not open to the entire campus community and \$500 for an event that  
7 is open to the entire campus community. Ex. 17.

8 129. The maximum amount that a student organization may receive in ALF  
9 funding is \$500 per semester. Ex. 17.

10 130. Allocation of ALF funds is determined by Defendant Lee, as the ASI  
11 Executive Vice President, and professional staff members who meet five times per  
12 semester to review applications. Ex. 17

13 131. The meetings to review ALF applications are not recorded.

14 132. Students are encouraged to apply early in the year because funds are  
15 awarded on a first come, first served basis. Ex. 17.

16 133. To be eligible for an ALF grant, student organizations must satisfy the  
17 following criteria: (1) must be officially recognized by the University; (2) must work  
18 with the Student Life and Leadership Coordinator to plan the event; (3) events must  
19 be held on-campus; (4) funding is available for consumable items and facility costs,  
20 which support the event such as food for attendees, paper products, and advertising  
21 specific for the event; (5) programs must not make a profit and the event must be  
22 free to attend; (6) funding is not available for individual student organization  
23 members; (7) funding is not available for door prizes, raffles, opportunity drawings,  
24 honorariums, speaker fees, donations, gifts, or give-away items; (8) only original  
25 forms and signatures are accepted; and (9) incomplete applications will be rejected.  
26 Ex. 17.

27

28

1 134. Pursuant to the ASI Leadership Funding Policy, Defendant Lee and the  
2 other members of the committee have the discretion to deny the grant application  
3 even if all of the listed criteria are satisfied.

4 135. The Student Activity Funding Policy provides no objective criteria or  
5 standards to limit the discretion of Defendant Lee and the other members of the  
6 committee in evaluating the applications that meet the threshold criteria above.

7 136. Student organizations are required to submit a completed application for  
8 ALF funding along with a program description which must be at least two  
9 paragraphs and include the following information explaining why the program  
10 should be funded: (1) the purpose of the event; (2) how the event benefits students;  
11 (3) whether the organization has put on this event in the past; and (4) if the event has  
12 been put on in the past, describe the impact and why it is important to offer this event  
13 again. Ex. 17.

14 137. An itemized budget must also be included showing the allowable expenses.  
15 Ex. 17.

16 138. After submitting the completed application, Defendant Lee and the  
17 committee evaluates the request and informs the organization by email whether the  
18 funding request was approved. Ex. 17.

19 139. Funds are provided on a reimbursement basis to individuals or for payment  
20 to a vendor after the event. Ex. 17.

21 140. Student organizations may co-sponsor an event with another student  
22 organization. The ALF contribution for co-sponsored events is up to \$1,000. Ex. 17.

23 141. The Student Activity Fee Policy does not contain any provision requiring  
24 that the mandatory Student Activity Fees must be allocated in a viewpoint-neutral  
25 manner.

26 142. The Student Activity Fee Policy does not contain objective criteria, factors,  
27 or standards necessary to guide ASI in allocating Student Activity Fees to fund  
28 expressive activity in a viewpoint-neutral manner.



1       143. Pursuant to the unbridled discretion granted to them in the Student Activity  
2 Fee Policy, the ASI Defendants apply the policy in a viewpoint-discriminatory  
3 manner by favoring the speech and expressive activities of the Gender Equity  
4 Center, the LGBTQA Pride Center, and the Arts & Lectures Series and disfavoring  
5 all other student speech.

6       144. For the 2016-2017 academic year, the ASI Defendants allocated \$296,498  
7 to the Gender Equity Center and the LGBTQA Pride Center which is more than 53%  
8 of the total mandatory Student Activity Fees allocated to student advocacy.

9       145. In contrast, the ASI Defendants allocated only \$38,629 to fund the speech  
10 and expressive activities of the more than 100 other student organizations at the  
11 University which is less than 7% of the total mandatory Student Activity Fees  
12 allocated to student advocacy. Further, the other student organizations are limited to  
13 \$500 per semester to fund their speech and expressive activities.

14       146. The ASI Defendants also favor the speech and expressive activities of the  
15 Gender Equity Center, the LGBTQA Pride Center, and the Arts & Lectures Series  
16 by allocating mandatory Student Activity Fees to them to pay speakers for their on-  
17 campus events. But, Students for Life at CSU-SM is forbidden from using  
18 mandatory Student Activity Fee funds to pay for speakers at its events.

19       147. Additionally, in creating the Gender Equity Center and the LGBTQA Pride  
20 Center as ASI Entities, the ASI Defendants further favor the speech of these entities  
21 by employing a media and communications team which creates a marketing plan  
22 and then designs, develops, and prints promotional items and all marketing materials  
23 for their events. All of this is paid for through mandatory Student Activity Fees. Yet,  
24 other student organizations, specifically Students for Life at CSU-SM, are denied  
25 this same benefit.

26       148. The Board Defendants and Defendants White, Haynes, Checa and Clark  
27 have the authority to establish the terms of the Student Activity Fee Policy and to  
28 require the ASI Defendants to abide by the policy.

1 149. Pursuant to the Student Activity Fee Policy, the ASI Defendants have  
2 discretion over the specific allocation of mandatory Student Activity Fees, and thus  
3 have control over the viewpoint of the speech and expressive activities funded by  
4 those fees.

5 150. Pursuant to the Student Activity Fee Policy, there is no appeals process if  
6 a student organization's funding application for an ALF grant is denied by ASI.

7 151. Pursuant to the Student Activity Fee Policy, there is no process to punish  
8 or remove University officials that violate viewpoint neutrality when making student  
9 activity fee funding decisions.

## 10 **II. Background on Students for Life at CSU-SM**

11 152. Students for Life at CSU-SM is a nonprofit, student-led expressive student  
12 group at the University and is a recognized student organization.

13 153. Students for Life at CSU-SM is founded upon its view that all human life  
14 from the point of conception until natural death is sacred and has inherent dignity.

15 154. Students for Life at CSU-SM also believes and advocates that sexual  
16 activity should only occur between a man and a woman in a marital relationship.

17 155. Students for Life at CSU-SM advocates for these views peacefully on  
18 campus.

19 156. Students for Life at CSU-SM engages in expression on the University's  
20 campus through a variety of means including flyers, signs, peaceful demonstrations,  
21 hosting tables with information, inviting speakers to campus, and talking with fellow  
22 students about its pro-life views.

23 157. When engaging in these expressive activities, Students for Life at CSU-  
24 SM and its members discuss political, religious, social, cultural, and moral issues,  
25 events, and ideas.

26 158. For example, in this past year, Students for Life at CSU-SM hosted the  
27 Genocide Awareness Project in September 2016 and February 2017 and it also  
28

1 hosted a debate on the topic of abortion between Seth Gruber of the Life Training  
2 Institute and Cecili Chadwick of the CSU-SM Women's Studies department.

3 159. Students for Life at CSU-SM intends to engage in these types of expressive  
4 activities during the remainder of the 2017–2018 academic year and subsequent  
5 years thereafter. It wants to apply for grants from mandatory Student Activity Fees  
6 to offset the cost of providing these educational opportunities for the CSU-SM  
7 campus but has been and will be denied such funding because the Student Activity  
8 Fee Policy grants the ASI Defendants unbridled discretion to allocate funds based  
9 upon the viewpoint of the speech. And the ASI Defendants have utilized such  
10 discretion to favor the speech of the Gender Equity Center, the LGBTQA Pride  
11 Center, and the Arts & Lectures Series and to disfavor all other student speech  
12 reflecting competing viewpoints, including the speech of Students for Life at CSU-  
13 SM.

14 **III. Defendants' Unconstitutional Denial of Students for Life at CSU-SM's**  
15 **Funding Request**

16 160. As required by the ALF Policy, Students for Life at CSU-SM submitted  
17 an application for an ALF grant of \$500 to host Professor Mike Adams to deliver a  
18 speech, open to all students, entitled, "Abortion and Human Equality: A Scientific  
19 and Philosophical Defense of the Pro-Life View."

20 161. The application indicated that the program was scheduled to be held on  
21 March 9, 2017.

22 162. The total cost of the event would be approximately \$3,000 which includes  
23 Professor Adams' speaking fee and travel expenses.

24 163. Students for Life at CSU-SM had obtained commitments of \$2,000 from  
25 other non-university sources to assist with the expenses of the event.

26 164. After submitting the application, Mr. Apodaca received an e-mail stating  
27 that the application was denied. No explanation was provided. A copy of the e-mail  
28 is attached as Exhibit 18 to the Complaint.

1 165. Mr. Apodaca inquired about the reason for the denial. The ASI  
2 representative responded that the application was not complete because it did not  
3 include an itemized list of the expenses. Ex. 18.

4 166. Mr. Apodaca responded that the funds were needed to cover the costs of a  
5 speaker and asked whether he could resubmit the application with this information.  
6 The ASI representative informed Nathan that ALF grants are not available for  
7 speaker fees and travel expenses. Ex. 18.

8 167. Mr. Apodaca responded that he was surprised that student organizations  
9 could not receive funds for speakers because the Pride Center and the GEC both  
10 receive funding for speakers. The ASI representative provided the following  
11 response:

12 Well, the BOD, GEC, and Pride Center (and CAB-Campus Activities  
13 Board) are all departments of ASI and have their own budgets to do  
14 their own programming.

15 ALF comes from the BOD's programming funds to assist student orgs  
16 even though the student orgs technically have nothing to do with ASI  
17 since they are run and recognized by Student Life & Leadership (SLL).  
18 But, since we believe student life on campus is important, we have the  
19 funding available to help events happen as a courtesy to the student  
20 orgs. But, we (as BOD-ALF) don't coordinate the event or participate  
21 in the event, which is why we can't fund things such as speaker fees or  
22 travel expenses. The other ASI entities fully coordinate and run their  
own events and programming and thus can have speakers and/or other  
programming events.

23 Ex. 18.

24 168. Mr. Apodaca inquired whether the Gender Equity Center would be  
25 willing to co-sponsor the Students for Life at CSU-SM's event, but they declined.

26 169. Upon information and belief, the Gender Equity Center and the  
27 LGBTQA Pride Center do not have any written policies and procedures governing  
28 whether they will co-sponsor an event, and neither ASI nor any of the other

1 Defendants have placed any restriction on their discretion to determine whether to  
2 co-sponsor another student group's event. Thus, the Gender Equity Center and the  
3 LGBTQA Pride Center, as ASI departments, have unbridled discretion to  
4 discriminate in their co-sponsorship with another student group using mandatory  
5 Student Activity Fees based upon the viewpoint of the proposed speech.

6 170. As a result of ASI's denial of the grant request, Students for Life at CSU-  
7 SM canceled the event with Professor Adams because it had insufficient funds to  
8 cover the cost of the event.

9 171. Pursuant to the Student Activity Fee Policy, Students for Life at CSU-SM  
10 could not appeal the denial of funding by ASI or the Gender Equity Center.

11 172. Pursuant to the Student Activity Fee Policy, the ASI Defendants denied  
12 Students for Life at CSU-SM's request for funding for Professor Adams' speech.

13 173. Pursuant to the Student Activity Fee Policy, the ASI Defendants denied  
14 Students for Life at CSU-SM's request for funding, thereby discriminating against  
15 the viewpoint intended to be expressed by Students for Life at CSU-SM and its  
16 invited speaker.

17 174. Pursuant to the Student Activity Fee Policy, the ASI Defendants allocate  
18 mandatory Student Activity Fees to the Gender Equity Center and the LGBTQA  
19 Pride Center and allow those student-run entities to use such funds for speakers to  
20 discuss topics chosen by those centers and reflecting the viewpoints for which the  
21 centers choose to advocate, including advocating for abortion and sexually  
22 promiscuous behavior.

23 175. Students for Life at CSU-SM plans to apply for Student Activity Fee  
24 funding through an ALF grant immediately for its upcoming events on campus  
25 which will promote a different viewpoint on abortion and sexual behavior.

26 176. Students for Life at CSU-SM is currently working on plans to bring at  
27 least two speakers to campus in the fall of 2017 and wants to apply for funding  
28 through an ALF grant for those events.

1 177. For example, Students for Life at CSU-SM intends to bring pro-life  
2 speakers Scott Klusendorf, President of Life Training Institute, and Professor Mike  
3 Adams to campus to speak in the fall of 2017, and it intends to apply for an ALF  
4 grant to defray the costs of hosting these speakers.

5 178. Pursuant to the Student Activity Fee Policy, Defendants will deny Students  
6 for Life at CSU-SM's request for an ALF grant to bring Scott Klusendorf and  
7 Professor Adams to speak on campus because they will not pay for speaker fees or  
8 their travel expenses.

9 179. Students for Life at CSU-SM also intends to host an event on campus  
10 entitled "Real Sex Week" which will include activities and provide information  
11 related to the myths of safe sex and abortion, education about the risk of STDs, and  
12 education about the health risks of common forms of birth control. Students for Life  
13 at CSU-SM's viewpoints on issues such as sex, human sexuality, birth control, and  
14 abortion will differ from the viewpoints advocated by the Gender Equity Center and  
15 the LGBTQA Pride Center.

16 180. Pursuant to the Student Activity Fee Policy, Defendants possess unbridled  
17 discretion in allocating mandatory Student Activity Fees and in evaluating Students  
18 for Life at CSU-SM's future applications for an ALF grant and Defendants possess  
19 the authority to deny the applications based upon the viewpoint of Students for Life  
20 at CSU-SM's speech.

21 **Allegations of Law**

22 181. All of the acts of Defendants, their officers, agents, employees, and  
23 servants, were executed and are continuing to be executed by Defendants under the  
24 color and pretense of the policies, statutes, ordinances, regulations, customs, and  
25 usages of the State of California.

26 182. The ASI Defendants act under color of state law when carrying out their  
27 duties and functions delegated to them by the other Defendants pursuant to the  
28

1 Student Activity Fee Policy with respect to allocating mandatory Student Activity  
2 Fees.

3 183. Defendants are not engaging in government speech or their own speech in  
4 their allocation of mandatory Student Activity Fees.

5 184. Defendants knew or should have known that by forcing Mr. Apodaca and  
6 the other members of Students for Life at CSU-SM to pay into a viewpoint  
7 discriminatory Student Activity Fee system and by denying Students for Life at  
8 CSU-SM's application for an ALF grant due to the viewpoint of its guest speaker's  
9 expression, Defendants violated Plaintiffs' constitutional rights.

10 185. The Student Activity Fee Policy which Defendants applied to violate  
11 Plaintiffs' constitutional rights remains in full force and effect.

12 186. Plaintiffs are suffering irreparable harm from the Student Activity Fee  
13 Policy and conduct of Defendants, which cannot be fully compensated by an award  
14 of money damages.

15 187. Plaintiffs have no adequate or speedy remedy at law to correct or redress  
16 the deprivation of their rights by Defendants.

17 188. Defendants' actions and policies, as set forth above, do not serve any  
18 legitimate or compelling state interest.

19 189. Defendants have deprived, and continue to deprive, Plaintiffs of their  
20 clearly established rights under the United States Constitution, as set forth in the  
21 causes of action below.

22 190. Unless the conduct of Defendants is enjoined, Plaintiffs will continue to  
23 suffer irreparable injury.

24 191. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
25 appropriate relief invalidating Defendants' Student Activity Fee Policy, along with  
26 the related practices and procedures.

27

28

1 **First Cause of Action**

2 **Violation of Plaintiffs' First Amendment Right to Freedom of Speech**  
3 **Compelled Speech and Viewpoint Discrimination**

4 192. Plaintiffs repeat and reallege each of the allegations contained in  
5 paragraphs 1–191 of this Complaint.

6 193. The First Amendment's Freedom of Speech Clause prohibits the  
7 government from compelling citizens to express or support a message not of their  
8 own choosing.

9 194. The First Amendment's Freedom of Speech Clause prohibits public  
10 universities from collecting a mandatory Student Activity Fee that is used to fund  
11 student organization speech, if that mandatory Student Activity Fee is not allocated  
12 in a viewpoint-neutral manner.

13 195. The First Amendment's Freedom of Speech Clause prohibits viewpoint  
14 discrimination in a public forum created for student speech.

15 196. When a public university collects mandatory Student Activity Fees and  
16 allows registered student organizations to apply for Student Activity Fee funding, or  
17 otherwise makes funds available to student groups to foster a diversity of viewpoints,  
18 it creates a public forum for student speech and expression.

19 197. The government is not speaking when it allows registered student  
20 organizations promoting a multiplicity of views to apply for funding, whether  
21 through Student Activity Fees or otherwise. Instead, it creates a public forum for  
22 student speech and expression.

23 198. The funds that a public university collects through a mandatory Student  
24 Activity Fee and uses to fund student organizations do not constitute government  
25 funds.

26 199. The government's ability to restrict speech in a public forum is limited.

27 200. A public university may not apply viewpoint-based standards in allocating  
28 student organization funding, including through mandatory Student Activity Fees.



1       201. The Defendants have created a public forum for student speech through its  
2 Student Activity Fee Policy.

3       202. Through the Student Activity Fee Policy, the Defendants compel Plaintiff  
4 Nathan Apodaca, the other members of Plaintiff Students for Life at CSU-SM, and  
5 all University students to pay a mandatory Student Activity Fee that is used in part  
6 to fund student organization speech on campus pursuant to a policy which is not  
7 viewpoint-neutral.

8       203. Defendants' policies governing the allocation of mandatory Student  
9 Activity Fees, including the Student Activity Fee Policy, confer unbridled discretion  
10 on Defendants or other government officials charged with allocating those funds to  
11 suppress and/or discriminate against disfavored speech based on viewpoint.

12       204. The lack of objective criteria, factors, or standards for determining who  
13 may access a student organization funding forum gives government officials  
14 unbridled discretion to exclude or prohibit speech based on its viewpoint in violation  
15 of the First Amendment.

16       205. The lack of a process to remove officials who violate viewpoint neutrality  
17 when deciding student organization funding requests indicates that the government  
18 has unbridled discretion to govern the speech forum.

19       206. The lack of advanced notice for meetings, public meetings, and recording  
20 of meetings of government officials charged with allocating student organization  
21 funding indicates that the government has unbridled discretion to govern the speech  
22 forum.

23       207. The lack of an appeals process in a student organization funding forum  
24 indicates that the government has unbridled discretion to govern the speech forum.

25       208. Defendants' policies governing the allocation of funds, including the  
26 Student Activity Fee Policy, confer unbridled discretion on Defendants or other  
27 government officials charged with allocating those funds to suppress and/or  
28 discriminate against disfavored speech because of its viewpoint.

1 209. Defendants' policies governing the allocation of funds, including the  
2 Student Activity Fee Policy, grant Defendants unbridled discretion to promote or  
3 create student organizations that advocate for Defendants' favored viewpoints, such  
4 as the Gender Equity Center and the LGBTQA Pride Center, and to favor those  
5 viewpoints over the viewpoints of all other student organizations.

6 210. Defendants' policies governing the allocation of funds, including the  
7 Student Activity Fee Policy, grant Defendants unbridled discretion to allow the  
8 Gender Equity Center and the LGBTQA Pride Center to favor certain viewpoints  
9 over others by co-sponsoring the events of certain student organizations but  
10 declining to co-sponsor events of other disfavored student organizations.

11 211. Defendants' policies governing the allocation of funds, including the  
12 Student Activity Fee Policy, do not provide a process through which Defendants or  
13 other government officials may remove an ASI Defendant for violating the  
14 constitutional prohibition against viewpoint discrimination.

15 212. Defendants' policies governing the allocation of funds, including the  
16 Student Activity Fee Policy, do not provide that ALF grant meetings be announced  
17 in advance to the public, be open to the public, or be recorded.

18 213. Defendants' policies governing the allocation of funds, including the  
19 Student Activity Fee Policy, do not provide student organizations with the ability to  
20 appeal student organization funding decisions by the ASI Defendants.

21 214. The ASI Defendants have exercised the unbridled discretion granted by  
22 the remaining Defendants through the challenged policies to deny Plaintiff Students  
23 for Life at CSU-SM the opportunity to receive mandatory Student Activity Fees for  
24 speakers, but they still force students, including Plaintiff Apodaca and members of  
25 Plaintiff Students for Life at CSU-SM, to support other speakers reflecting the views  
26 of the Gender Equity Center, the LGBTQA Pride Center, the Arts & Lectures Series,  
27 and other student organizations through the mandatory Student Activity Fee.

28

1       215. The ASI Defendants have exercised the unbridled discretion granted by  
2 the remaining Defendants through the challenged policies to deny Plaintiff Students  
3 for Life at CSU-SM the opportunity to receive mandatory Student Activity Fees in  
4 the same manner as the Gender Equity Center and the LGBTQA Pride Center, but  
5 they still force students, including Plaintiff Apodaca and members of Plaintiff  
6 Students for Life at CSU-SM, to support the speech of the Gender Equity Center and  
7 the LGBTQA Pride Center through the mandatory Student Activity Fee.

8       216. Defendants' Student Activity Fee Policy compels Plaintiff Apodaca and  
9 the student members of Plaintiff Students for Life at CSU-SM to fund and support  
10 speech and viewpoints with which they disagree and which they find offensive and  
11 objectionable.

12       217. Pursuant to the Student Activity Fee Policy, Defendants engaged in  
13 content- and viewpoint-based discrimination by favoring the expressive activities of  
14 the Gender Equity Center and the LGBTQA Pride Center, but not providing Plaintiff  
15 Students for Life at CSU-SM the same treatment.

16       218. Defendants applied the Student Activity Fee Policy, and procedures,  
17 practices, and customs to Plaintiff Students for Life at CSU-SM in a discriminatory  
18 manner by (1) allocating more than \$296,000 to the Gender Equity Center and the  
19 LGBTQA Pride Center to fund their advocacy but limiting Plaintiff Students for Life  
20 at CSU-SM to \$500 per semester; (2) granting the student-operated Gender Equity  
21 Center and the LGBTQA Pride Center special benefits, such as use of the media and  
22 communications team, that are not available to Students for Life at CSU-SM; and  
23 (3) allowing the Gender Equity Center, the LGBTQA Pride Center, and the Arts &  
24 Lectures Series to use mandatory Student Activity Fees to pay for speakers but  
25 denying funding to Students for Life at CSU-SM to pay for speakers.

26       219. Defendants' Student Activity Fee Policy permits viewpoint discrimination  
27 in the allocation of Student Activity Fees because it grants unbridled discretion to  
28 University administrators and the ASI Defendants.

1 220. Defendants have no legitimate interest to support by favoring the speech  
2 of the Gender Equity Center, the LGBTQA Pride Center, and the Arts & Lectures  
3 Series and disfavoring the speech of Plaintiff Students for Life at CSU-SM.

4 221. Accordingly, Defendants' Student Activity Fee Policy and their  
5 enforcement of those policies against Plaintiffs, violates Plaintiffs' right to freedom  
6 of speech guaranteed by the First Amendment.

7 222. Because of Defendants' actions, Plaintiffs have suffered, and continue to  
8 suffer, economic injury and irreparable harm. They are entitled to an award of  
9 monetary damages and equitable relief.

10 223. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a  
11 declaration that Defendants violated their First Amendment right to freedom of  
12 speech and an injunction against Defendants' policy and actions. Additionally,  
13 Plaintiffs are entitled to damages in an amount to be determined by the evidence and  
14 this Court and the reasonable costs of this lawsuit, including their reasonable  
15 attorneys' fees.

16 **Second Cause of Action**

17 **Violation of Plaintiffs' Fourteenth Amendment**

18 **Right to Equal Protection of the Law**

19 224. Plaintiffs repeat and reallege each of the allegations contained in  
20 paragraphs 1–191 of this Complaint.

21 225. The Fourteenth Amendment to the United States Constitution guarantees  
22 Plaintiffs the equal protection of the laws, which prohibits Defendants from treating  
23 Plaintiffs differently than similarly situated students and student organizations.

24 226. The government may not treat someone disparately as compared to  
25 similarly situated persons when such disparate treatment burdens a fundamental  
26 right, targets a suspect class, or has no rational basis.

27 227. Plaintiff Nathan Apodaca and the other student members of Students for  
28 Life at CSU-SM are similarly situated to all other students at the University because

1 they pay Student Activity Fees as a condition of enrollment at the University.

2 228. Pursuant to the Student Activity Fee Policy, Defendants treated Plaintiff  
3 Nathan Apodaca and the other student members of Students for Life at CSU-SM  
4 disparately than other students because Defendants have used Plaintiffs' fees to fund  
5 the speech of students that agree with the viewpoints advocated for by the Gender  
6 Equity Center and the LGBTQA Pride Center but have denied funding to advocate  
7 for Plaintiffs' viewpoints on those same topics.

8 229. Defendants' Students Activity Fee Policy and related practices violate  
9 Plaintiff Nathan Apodaca and the other student members of Students for Life at  
10 CSU-SM's fundamental right to freedom of speech.

11 230. Plaintiff Students for Life at CSU-SM is similarly situated to the Gender  
12 Equity Center and the LGBTQA Pride Center at the University because they are all  
13 student-led organizations that engage in expressive activity on campus to advocate  
14 for their own viewpoints.

15 231. Pursuant to the Student Activity Fee Policy, Defendants granted  
16 mandatory Student Activity Fee funding to the Gender Equity Center and the  
17 LGBTQA Pride Center, but denied the same to Plaintiff Students for Life at CSU-  
18 SM.

19 232. Pursuant to the Student Activity Fee Policy, Defendants granted  
20 mandatory Student Activity Fee funding to the Gender Equity Center and the  
21 LGBTQA Pride Center to bring in speakers for events advocating viewpoints on  
22 political, ideological, and social issues, but denied the same funding to Plaintiff  
23 Students for Life at CSU-SM for its speech by Professor Adams, which also would  
24 have focused on political, ideological, and social issues, but from a different  
25 viewpoint.

26 233. Pursuant to the Student Activity Fee Policy, Defendants treated Plaintiff  
27 Students for Life at CSU-SM disparately when compared to the Gender Equity  
28

1 Center and the LGBTQA Pride Center by denying Plaintiff Student Activity Fee  
2 funding.

3 234. Defendants' Student Activity Fee Policy and related practices violate  
4 Plaintiff Students for Life at CSU-SM's fundamental right to freedom of speech.

5 235. When government regulations, like Defendants' mandatory Student  
6 Activity Fee funding policy and practices challenged herein, infringe on  
7 fundamental rights, discriminatory intent is presumed.

8 236. Defendants' mandatory Student Activity Fee funding policy and practices  
9 have also been applied to discriminate intentionally against Plaintiffs' rights to  
10 freedom of speech.

11 237. Defendants lack a rational or compelling state interest for such disparate  
12 treatment of Plaintiffs.

13 238. Defendants' Student Activity Fee Policy and their practices are not  
14 narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not  
15 implicate any of the compelling or even legitimate interests Defendants might have.

16 239. Defendants have applied the Student Activity Fee Policy and their  
17 procedures, practices, and customs to Plaintiff Students for Life at CSU-SM in a  
18 discriminatory and unequal manner, allowing the Gender Equity Center and the  
19 LGBTQA Pride Center to receive preferred treatment, including preferred funding  
20 allocations, and authorization to use those funds to pay speakers to advocate for their  
21 views, while providing only the opportunity for far less funding for Plaintiff and  
22 subjecting it to restrictions on using those funds to bring in its own speakers in  
23 violation of Plaintiff's right to equal protection of the laws under the Fourteenth  
24 Amendment.

25 240. Because of Defendants' actions pursuant to the Student Activity Fee  
26 Policy, Plaintiffs have suffered, and continue to suffer, economic injury and  
27 irreparable harm. Plaintiffs are entitled to an award of monetary damages and  
28 equitable relief.

1 241. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a  
2 declaration that Defendants violated their Fourteenth Amendment right to equal  
3 protection of law and an injunction against Defendants' Student Activity Fee Policy  
4 and actions. Additionally, Plaintiffs are entitled to damages in an amount to be  
5 determined by the evidence and this Court and the reasonable costs of this lawsuit,  
6 including their reasonable attorneys' fees.

7 **Prayer For Relief**

8 Wherefore, Plaintiffs respectfully request that this Court enter judgment against  
9 Defendants and provide Plaintiffs with the following relief:

- 10 (A) A declaratory judgment that Defendants' Student Activity Fee Policy,  
11 facially and as-applied, violates Plaintiffs' rights under the First and  
12 Fourteenth Amendments;
- 13 (B) A declaratory judgment that Defendants' denial of Student Activity  
14 Fee funding to Plaintiff Students for Life at CSU-SM violated  
15 Plaintiff's rights under the First and Fourteenth Amendments;
- 16 (C) A preliminary and permanent injunction prohibiting Defendants, their  
17 agents, officials, servants, employees, and any other persons acting on  
18 their behalf from enforcing the Student Activity Fee Policy challenged  
19 in this complaint;
- 20 (D) Actual compensatory damages in the amount of \$500.00 for infringing  
21 Plaintiff Students for Life at CSU-SM's exercise of its First and  
22 Fourteenth Amendment rights;
- 23 (E) Actual compensatory damages in the amount of mandatory Student  
24 Activity Fees paid by each of Plaintiff Students for Life at CSU-SM's  
25 student members, including Plaintiff Apodaca, that was collected  
26 pursuant to a viewpoint-discriminatory policy that infringed Plaintiffs'  
27 First Amendment rights;
- 28

- 1 (F) Nominal damages for the violation of Plaintiffs' First and Fourteenth  
2 Amendment rights;  
3 (G) Plaintiffs' reasonable attorneys' fees, costs, and other costs and  
4 disbursements in this action pursuant to 42 U.S.C. § 1988; and  
5 (H) All other further relief to which Plaintiffs may be entitled.  
6

7 Respectfully submitted this 17th day of May 2017.  
8

9 By: s/ Daniel R. Watkins

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**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand trial by jury of all matters so triable herein.

By: s/ Daniel R. Watkins  
DANIEL R. WATKINS  
*Attorney for Plaintiffs*