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16 **FRESNO STATE STUDENTS FOR LIFE**, a  
17 recognized student organization at  
18 California State University, Fresno;  
19 **BERNADETTE TASY**; and **JESUS**  
20 **HERRERA**,

21 *Plaintiffs,*

22 v.

23 **WILLIAM GREGORY THATCHER**,  
24 Assistant Professor of Public Health at  
25 California State University, Fresno, in  
26 his official and individual capacities,

27 *Defendant.*

Case No. \_\_\_\_\_

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

**JURY TRIAL DEMANDED**

Plaintiffs Fresno State Students for Life, Bernadette Tasy, and Jesus Herrera, by and through counsel, and for their Verified Complaint against Defendant William Gregory Thatcher, hereby state as follows:

VERIFIED COMPLAINT

**INTRODUCTION**

1. The cornerstone of higher education is the ability of students to participate in the “marketplace of ideas” on campus. That marketplace depends on free and vigorous debate and expression between students that is often carried out through spoken and written expression. But at campuses throughout the country, this marketplace of ideas is under assault. As recent events show, university officials, including professors, often seek to silence those who express ideas to which they object. Some manipulate student passions so that these students will carry out, or at least assist in, the censorship.

2. Seeking to participate in this “marketplace of ideas,” Plaintiffs Fresno State Students for Life, Bernadette Tasy, and Jesus Herrera received permission from California State University, Fresno (“Fresno State” or “University”) officials to use sidewalk chalk to write positive, life-affirming messages on the sidewalks near and leading to the University’s library on the morning of May 2, 2017. Through this expression, Plaintiffs desired to communicate their pro-life beliefs and viewpoints to the University community.

3. While Plaintiffs were chalking these messages, Defendant Thatcher, a public health professor at Fresno State, confronted Miss Tasy, insisting that she and her associates had no right to engage in expressive activities at this location. When Miss Tasy informed him that Plaintiffs had permission, Defendant Thatcher stated that he would return shortly to erase their messages. True to his word, Defendant Thatcher returned with a group of approximately seven to ten Fresno State students. Acting at his direction, these students erased, obscured, and defaced Plaintiffs’ messages. One of them even stole Plaintiffs’ chalk and used it to write pro-abortion messages on the sidewalks. When Miss Tasy confronted him, Defendant Thatcher personally erased Plaintiffs’ chalked messages while absurdly proclaiming that “college campuses are not free speech areas.”

1 4. In the process, Defendant Thatcher claimed that Plaintiffs had no right to  
2 engage in expressive activities outside the “speech zone.” In actuality, Fresno State  
3 has no “speech zone.” Its policies instead state that “freedom of expression is allowed  
4 in all outdoor spaces on campus.” But Defendant Thatcher nevertheless assigned  
5 himself the role of student speech censor, a one-man taxpayer-paid heckler’s veto over  
6 student expression that differs with his own views. In the process, he engaged in  
7 content and viewpoint discrimination and restricted speech in areas that are at least  
8 designated public fora for student speech.

9 5. This civil action seeks injunctive, declaratory, and monetary relief, including  
10 attorneys’ fees and costs, to vindicate and to safeguard Plaintiffs’ fundamental rights  
11 to freedom of speech and equal protection under law as secured by the First and  
12 Fourteenth Amendments to the United States Constitution.

13 6. Defendant Thatcher’s actions have deprived and will continue to deprive  
14 Plaintiffs of their paramount rights and guarantees under the United States  
15 Constitution.

16 7. Each and every act of Defendant Thatcher alleged herein was committed by  
17 Defendant Thatcher under color of state law and authority.

18 **JURISDICTION & VENUE**

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

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

24 10. This Court has authority to award the requested damages pursuant to 28  
25 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02; the  
26 requested injunctive relief pursuant to 28 U.S.C. § 1343 and FED. R. CIV. P. 65; and  
27 costs and attorneys’ fees under 42 U.S.C. § 1988.

1 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because  
2 Defendant resides in this district and all of the acts described in this Complaint  
3 occurred in this district.

4 **PLAINTIFFS**

5 12. Plaintiff Fresno State Students for Life is an unincorporated expressive  
6 association comprised of Fresno State students.

7 13. Fresno State Students for Life is a recognized student organization at Fresno  
8 State.

9 14. Fresno State Students for Life is founded on the belief that all human life  
10 from the point of conception until natural death is sacred and has inherent dignity.

11 15. The purpose of Fresno State Students for Life is to sustain this dignity  
12 peacefully through the promotion and defense of the culture of life.

13 16. Part of Fresno State Students for Life's mission is to protect and advocate for  
14 its members' constitutional rights, including their rights to free speech and expression.

15 17. Fresno State Students for Life expresses its pro-life message on the  
16 University's campus through a variety of means, including flyers, signs, peaceful  
17 demonstrations, hosting tables with information, inviting speakers to campus,  
18 talking with fellow students about pro-life ideas, and chalking pro-life messages on  
19 campus sidewalks and walkways, just to name a few.

20 18. Fresno State Students for Life has used sidewalk chalk to express its pro-life  
21 message to the student body, just as other students and student groups at Fresno State  
22 have used sidewalk chalk to express their viewpoints or promote their activities.

23 19. Fresno State Students for Life holds meetings to organize its members on  
24 pro-life causes and events to explain how Planned Parenthood and the abortion  
25 industry operates.

26 20. Fresno State Students for Life brings this suit on behalf of itself as a  
27 recognized student organization at the University and on behalf of its individual

1 student members.

2 21. Plaintiff Bernadette Tasy is a student at Fresno State.

3 22. Miss Tasy serves as the President of Fresno State Students for Life.

4 23. Miss Tasy desires to express her message on the University's campus through  
5 a variety of means, including flyers, signs, peaceful demonstrations, hosting tables  
6 with information, inviting speakers to campus, talking with fellow students about  
7 pro-life ideas, and chalking pro-life messages on campus sidewalks and walkways,  
8 among other ways.

9 24. Plaintiff Jesus Herrera is a student at Fresno State.

10 25. Mr. Herrera serves as an officer of Fresno State Students for Life.

11 26. Mr. Herrera desires to express his message on the University's campus  
12 through a variety of means, including flyers, signs, peaceful demonstrations, hosting  
13 tables with information, inviting speakers to campus, talking with fellow students  
14 about pro-life ideas, and chalking pro-life messages on campus sidewalks and  
15 walkways, among other ways.

16 27. When engaging in these expressive activities, Fresno State Students for Life,  
17 Miss Tasy, and Mr. Herrera discuss political, religious, social, cultural, and moral  
18 issues, events, and ideas.

19 **DEFENDANT**

20 28. Defendant Gregory Thatcher is, and was at all times relevant to this  
21 Complaint, an Assistant Professor of Public Health at Fresno State.

22 29. Defendant Thatcher decided that Fresno State Students for Life's pro-life  
23 expression was not allowed to be displayed along the sidewalks near and leading to  
24 the University's library. He objected to Plaintiffs' views and messages.

25 30. Defendant Thatcher, exercising his authority as a professor at Fresno State,  
26 instructed a group of students to erase, obscure, and deface Fresno State Students  
27 for Life's pro-life expression.

31. Defendant Thatcher personally erased Fresno State Students for Life's pro-life expression and claimed that Plaintiffs had no right to express their views peacefully on campus—whether by chalking sidewalks or otherwise—outside the “speech zone.”

32. Defendant Thatcher claimed that he was exercising his free speech rights by censoring Plaintiff's speech and by directing students to do the same.

33. Defendant Thatcher is sued in both his official and individual capacities.

#### **FACTUAL BACKGROUND**

34. Fresno State University is a public university organized and existing under the laws of the State of California, and it receives funding from the State of California to operate.

35. The University's campus is composed of various publicly-accessible buildings and outdoor areas, including public streets, sidewalks, open-air quadrangles, and park-like lawns.

36. The outdoor areas of the University's campus are open to the public, and there are no gates or barriers to pedestrian entry.

37. Near and leading up to the University's library are many sidewalks and large, cultivated grassy areas with trees and benches that students regularly access at all hours of the day and utilize for a variety of expressive activities.

38. In the outdoor, open areas near and leading up to the library, expressive activities do not interfere with or disturb the University's activities, its campus environment, or access to its buildings and sidewalks.

39. The free exchange of ideas by students and student groups is a valuable part of students' education, because, while these students and groups do not speak for the University and the University is not responsible for their speech, they foster an environment of the open exchange of ideas on campus.

40. Throughout the 2016–2017 academic year, Fresno State Students for Life has

1 tried to use various methods, including the posting of flyers, to communicate its pro-  
2 life message to the University community.

3 41. Throughout the 2016–2017 academic year, Fresno State Students for Life  
4 also experienced various forms of censorship, including the removal and defacing of  
5 its flyers. This censorship prevented it from communicating its pro-life views to the  
6 University community in the ways that it planned, from communicating them as  
7 widely as it intended, and, as occurred in May 2017, from communicating them at all.

8 **I. Censorship of Fresno State Students for Life**

9 42. In the spring 2017 semester, Fresno State Students for Life continued its  
10 earlier efforts to communicate its message. But it also attempted to use other means  
11 of communication.

12 43. In April 2017, Fresno State Students for Life decided to use communicate  
13 positive, life-affirming messages by writing them using sidewalk chalk on the  
14 walkways near and leading to the University library.

15 44. Student organizations regularly express viewpoints or advertise expressive  
16 activities using sidewalk chalk on the sidewalks near and leading to the University  
17 library.

18 45. In April 2017, three members of Fresno State Students for Life spent  
19 approximately an hour planning the chalking event they desired to conduct on  
20 campus.

21 46. After this, Miss Tasy spent several hours researching effective messaging  
22 and facts regarding fetal development for use in this chalking event.

23 47. Miss Tasy also spent several hours researching where she could get the best  
24 price on chalk and other supplies Fresno State Students for Life would need for this  
25 event. She then ordered these supplies for approximately \$60.00.

26 48. On April 24, 2017, Miss Tasy contacted Plant Operations at Fresno State by  
27 phone, seeking permission to chalk these messages onto the sidewalks on the morning

1 of May 2, 2017.

2 49. The same day, an official from Plant Operations returned Miss Tasy's call,  
3 informing her that she should direct her request to the Office of Student Involvement  
4 at Fresno State.

5 50. On April 25, 2017, Miss Tasy called Ms. Geraldine Panelo Elizondo, the  
6 Assistant Director for Student Involvement at Fresno State, and left her a voicemail  
7 message. Ms. Elizondo returned the call later that day and left a voicemail message  
8 for Miss Tasy.

9 51. On April 26, 2017, Miss Tasy spoke by phone with Ms. Elizondo, seeking  
10 permission to chalk these messages onto the sidewalks on the morning of May 2,  
11 2017.

12 52. During this phone call, Ms. Elizondo asked Miss Tasy to send her an e-mail,  
13 detailing Fresno State Students for Life's plans, so that Ms. Elizondo could send it to  
14 the Event Review Committee, which reviews these requests at Fresno State.

15 53. On April 26, 2017, Miss Tasy e-mailed Ms. Elizondo, as requested. A true,  
16 correct, and complete copy of Miss Tasy's correspondence with Ms. Elizondo is  
17 attached as Exhibit 1 to this Complaint.

18 54. In her e-mail to Ms. Elizondo, Miss Tasy explained that Fresno State  
19 Students for Life would be chalking messages that "celebrat[e] pregnant and  
20 parenting students' hard work as they pursued their education," messages like  
21 "'Support Pregnant and Parenting Students,' 'Pregnant on Campus Initiative,' 'Know  
22 your Title IX Rights [against pregnancy discrimination],' and different facts about  
23 development in the womb." Ex. 1 at 2.

24 55. Miss Tasy explained to Ms. Elizondo that Fresno State Students for Life  
25 would be chalking these messages "out by the library and the pathways leading up to  
26 it (from the fountain area towards the library, from the [Professional Human  
27 Services] building towards the library . . .)." Ex. 1 at 2.

1 56. On April 27, 2017, the day after Miss Tasy submitted her request, Ms.  
2 Elizondo responded, noting that “the Event Review Committee . . . reviewed the  
3 request” and that “[y]our chalking request is approved.” In the process, Ms. Elizondo  
4 copied officials from Plant Operations. Ex. 1 at 1.

5 57. At approximately 6:30 a.m. on May 2, 2017, Miss Tasy and Mr. Herrera began  
6 chalking pro-life messages on the sidewalks near and leading to the University’s  
7 library, including the walkways in the area bordered by the library, the University  
8 Student Union, the University Center, and the Fountain, and those in the area  
9 between the University’s library and the Professional Human Services building.

10 58. Miss Tasy and Mr. Herrera were assisted in this chalking event by other  
11 members of Fresno State Students for Life.

12 59. In chalking these messages, Miss Tasy, Mr. Herrera, and those assisting  
13 them were careful to comply with all University rules and regulations concerning  
14 sidewalk chalking, including those Ms. Elizondo outlined. Ex. 1 at 1.

15 60. All of the messages that Miss Tasy, Mr. Herrera, and those assisting them  
16 chalked on the sidewalks were positive, life-affirming messages that either  
17 communicated support for pregnant students or outlined various facts about the  
18 development of unborn children. These messages included the following:

- 19 • “Pregnant? Need Help? Call 800–712–HELP.”
- 20 • “You CAN be pregnant & successful.”
- 21 • “Love them both.”
- 22 • “At 20 weeks, the human fetus can feel pain.”
- 23 • “Women need love, NOT abortion.”
- 24 • “Support pregnant + parenting students.”
- 25 • “The essence of all humanity is inside a fetus.”
- 26 • “Fetus is Latin for small child.”
- 27 • “Love them both. Choose life.”

- 1 • “Fresno State Students for Life.”
- 2 • “A person is a person, no matter how small. ~ Dr. Seuss.”
- 3 • “A baby’s heart beats at 21 days in the womb.”
- 4 • “Unborn lives matter.”
- 5 • “A fetus has ALL of her organs at 8 weeks.”
- 6 • “The human baby has his own DNA at conception.”
- 7 • “Human Rights for ALL: Born + Preborn.”
- 8 • “Human Dad + Human Mom = Human Baby. Protect Human Rights.”
- 9 • “Choose life!”
- 10 • “A heart beats 3 weeks after conception.”
- 11 • “Brainwaves can be detected six weeks after conception.”
- 12 • “Save the baby humans.”
- 13 • “Pregnant? Call 559-446-6295. Free & Confidential Pregnancy Care
- 14 Center.”
- 15 • “We believe in maternity leave for all.”
- 16 • “We support & believe you can be pregnant & successful.”
- 17 • “Pregnant? You are not alone. There’s help!”
- 18 • “Life is worth saving, no matter how small, young, old.”
- 19 • “We’re all human, aren’t we? Every human life is worth the same, and
- 20 worth saving. ~ J.K. Rowling.”
- 21 • “Heart beats 21 days after conception.”
- 22 • “Social justice begins in the womb.”

23 True, correct, and complete pictures of many of the messages that Fresno State  
24 Students for Life chalked on campus on May 2, 2017 are attached to this Complaint  
25 as Exhibit 2.

26 61. During this time, Miss Tasy, Mr. Herrera, and those assisting them chalked  
27 between thirty-five and fifty messages onto the sidewalks near and leading to the

1 University's library.

2 62. At about 7:40 a.m., Miss Tasy, Mr. Herrera, and those assisting them finished  
3 chalking these messages on the sidewalks near and leading to the University's  
4 library.

5 63. Just before they finished, Defendant Thatcher confronted Miss Tasy,  
6 claiming that she and Fresno State Students for Life could not chalk messages on the  
7 sidewalks near and leading to the University library, but instead had to use the "free  
8 speech area."

9 64. When Miss Tasy explained that she had permission to chalk on the sidewalks  
10 near and leading to the library, Defendant Thatcher announced that he would return  
11 and erase the messages shortly.

12 65. After finishing the chalking, Miss Tasy put all of Fresno State Students for  
13 Life's chalking supplies back in her car.

14 66. Upon returning to the area about ten or fifteen minutes later (*i.e.*, 7:50 or  
15 7:55 a.m.), Miss Tasy observed Defendant Thatcher talking with a group of  
16 approximately seven to ten students and gesturing towards the area where Fresno  
17 State Students for Life had just chalked.

18 67. When Defendant Thatcher finished speaking, these students dispersed to the  
19 areas where Fresno State Students for Life had just finished chalking.

20 68. Upon information and belief, Defendant Thatcher instructed these students  
21 to erase, obscure, and deface the messages that Fresno State Students for Life had  
22 just chalked.

23 69. On this Tuesday morning, one of the classes Defendant Thatcher taught  
24 began at 8:00 a.m. A true and correct copy of Defendant Thatcher's teaching schedule  
25 is attached as Exhibit 3 to this Complaint.

26 70. Upon information and belief, Defendant Thatcher recruited students from  
27 his 8:00 a.m. class to join him in erasing, obscuring, and defacing the messages that

1 Fresno State Students for Life had just chalked.

2 71. Upon information and belief, some or all of the students to whom Defendant  
3 Thatcher was speaking and who then dispersed to the area where Fresno State  
4 Students for Life had just chalked attended his 8:00 a.m. class.

5 72. Around the time Fresno State Students for Life was finishing its chalking  
6 efforts, Mr. Herrera observed someone using sidewalk chalk to write pro-abortion  
7 messages (e.g., “My body, my choice”; “Your body, your choice. I ♥ you.”) on the  
8 sidewalks near the library. A picture of one of these messages is attached as Exhibit  
9 4 to this Complaint.

10 73. Later, Miss Tasy determined that someone had stolen or used Fresno State  
11 Students for Life’s sidewalk chalk to write these messages.

12 74. Upon information and belief, the individual who stole Fresno State Students  
13 for Life’s sidewalk chalk and used it to write these pro-abortion messages was one of  
14 the students acting at Defendant Thatcher’s direction.

15 75. At approximately 7:55 a.m., Miss Tasy observed two Fresno State students  
16 wiping away the messages she and her colleagues had just chalked.

17 76. These two students were altering Fresno State Students for Life’s message by  
18 erasing the words “not abortion” from the message: “Women need love, not abortion.”

19 77. In so doing, these two students materially altered the message Fresno State  
20 Students for Life intended to communicate.

21 78. When Miss Tasy confronted these students, they indicated that their  
22 professor had instructed them to erase Fresno State Students for Life’s messages.

23 79. One of these two students explained to Miss Tasy, “We have a teacher that’s  
24 telling us to get rid of it.”

25 80. This student then identified the “teacher” as Defendant Thatcher.

26 81. Upon information and belief, these two students attended Defendant  
27 Thatcher’s 8:00 a.m. class.

1 82. Moments later, Miss Tasy spoke with Dr. Thatcher again.

2 83. When Miss Tasy again reminded him that Fresno State Students for Life had  
3 permission to chalk these messages on the sidewalks near and leading to the  
4 University library, Defendant Thatcher responded: “No, you don’t.”

5 84. Defendant Thatcher went on to explain: “Free speech is free speech in the  
6 free speech area. It’s a pretty simple concept. Okay? This does not constitute a free  
7 speech area. Okay?”

8 85. In saying this, Defendant Thatcher unilaterally prevented Plaintiffs from  
9 engaging in constitutionally protected speech in any open, outdoor, generally  
10 accessible areas of campus other than the “speech zone.”

11 86. Defendant Thatcher never informed Miss Tasy where the personal speech  
12 zones he created were located or where their boundaries fell.

13 87. At one time, Fresno State restricted student expression to a “free speech  
14 area,” but it eliminated this policy almost two years ago. A true, correct, and complete  
15 copy of Fresno State’s *Policy on the Use of University Buildings and Grounds*, noting  
16 on page 14 § 12.0 that the “free speech area” was rescinded in June 2015, is attached  
17 as Exhibit 5 to this Complaint.

18 88. Fresno State’s former speech zone policy was superseded by its *Time, Place*  
19 *and Manner of Free Expression Policy*, which states that “freedom of expression is  
20 allowed in all outdoor spaces on campus.” A true, correct, and complete copy of Fresno  
21 State’s *Time, Place and Manner of Free Expression Policy*, with the language quoted  
22 here appearing on page 3 § 6.3.3.1, is attached as Exhibit 6 to this Complaint.

23 89. Although Fresno State does not restrict student expression to a “speech  
24 zone,” Defendant Thatcher did so for Fresno State Students for Life and its members,  
25 denying their right to free speech.

26 90. When Miss Tasy again insisted that Fresno State Students for Life had  
27 received permission to chalk on the sidewalks near the library, Defendant Thatcher

1 momentarily offered to confirm this.

2 91. When Miss Tasy asked him to instruct his students to stop erasing,  
3 obscuring, and defacing Fresno State Students for Life's messages while he did so,  
4 Defendant Thatcher refused.

5 92. Instead, Defendant Thatcher insisted that his students were exercising their  
6 free speech rights by following his directions to erase, obscure, and deface Fresno  
7 State Students for Life's expression.

8 93. Next, Defendant Thatcher walked over to one of Fresno State Students for  
9 Life's chalked messages and began erasing it himself.

10 94. While erasing this message, Defendant Thatcher told Miss Tasy: "You had  
11 permission to put it down. . . . I have permission to get rid of it. . . . This is our part of  
12 free speech."

13 95. In actuality, Fresno State's policies prohibit the actions of Defendant  
14 Thatcher and the students acting at his direction.

15 96. Fresno State's *Policy on the Use of University Buildings and Grounds*  
16 specifically states: "The right of self-expression does not extend to preventing self-  
17 expression by others." Ex. 5 at 8 § 7.1.6.

18 97. Next, Defendant Thatcher pontificated that "college campuses are not free  
19 speech areas."

20 98. Defendant Thatcher erased Fresno State Students for Life's chalked  
21 messages and instructed his students to do the same. In so doing, he discriminated  
22 based on the viewpoint and content of the messages Fresno State Students for Life  
23 was trying to communicate to the University community.

24 99. After this conversation, Miss Tasy left the area to attend a meeting, but  
25 Defendant Thatcher and the students acting at his direction remained in the area.

26 100. Later that morning, Miss Tasy walked around the library again to survey the  
27 damage done to Fresno State Students for Life's chalked messages.

1 101. Many of Fresno State Students for Life's messages had been completely  
2 erased.

3 102. For other messages, only portions were erased or obscured. For example, the  
4 words "human baby" (and a few nearby words) were erased from the message that  
5 read: "Human Dad + Human Mom = Human Baby. Protect Human Rights." A true,  
6 correct, and complete copy of a picture of this defaced message is attached to this  
7 Complaint as Exhibit 7.

8 103. For other messages, so much of the message was erased that it became  
9 unintelligible. For example, in the message that read, "We support & believe you can  
10 be pregnant & successful," all but the last word were erased. A true, correct, and  
11 complete copy of the picture of this defaced message is attached to this Complaint as  
12 Exhibit 8.

13 104. Miss Tasy observed that all or nearly all of Fresno State Students for Life's  
14 chalked messages had been erased completely, obscured, or altered.

15 105. Upon information and belief, Defendant Thatcher and the students acting at  
16 his direction were responsible for erasing, obscuring, defacing, and altering these  
17 messages.

18 106. As a result of Defendant Thatcher's actions (and those of the students acting  
19 at his direction), Fresno State Students for Life was substantially thwarted in its  
20 efforts to communicate a pro-life message to the campus community through these  
21 chalked messages.

22 107. Many other student organizations have used sidewalk chalk to promote their  
23 viewpoints or events on the sidewalks near the library.

24 108. For example, the Richter Center Student Leaders, a service-oriented  
25 leadership student organization, promoted its events, including its Random Acts of  
26 Kindness Week, using sidewalk chalk in these areas.

27 109. More recently, a student organization chalked messages regarding violence

1 against women on these same sidewalks.

2 110. Many other student organizations have used the lawns and other park-like  
3 open areas near the library for expressive activities.

4 111. Student organizations regularly reserve space on the cement areas for  
5 information tables, organizational recruiting, and other expressive activities.

6 112. One student organization displayed a giant chalkboard in one of these open,  
7 outdoor areas that features a question, and passing students could write their  
8 answers to this question in chalk on the same chalkboard.

9 113. The Catholic Student Association has used these open, outdoor areas of  
10 campus to promote upcoming events.

11 114. Plaintiffs have never observed Defendant Thatcher erasing, obscuring, or  
12 defacing the messages other student organizations have chalked onto the sidewalks  
13 near and leading to the library or directing students to do the same.

14 115. Upon information and belief, Defendant Thatcher has not erased, obscured,  
15 or defaced the messages any other student organization has chalked onto the  
16 sidewalks near and leading to the library or directed students to do the same.

17 116. Plaintiffs have never observed Defendant Thatcher interfering with,  
18 disrupting, or harassing students engaged in expressive activities on the lawns and  
19 other park-like open areas near the library or directing students to do the same.

20 117. Upon information and belief, Defendant Thatcher has not interfered with,  
21 disrupted, or harassed other students engaged in expressive activities on the lawns  
22 and other park-like open areas near the library or directed students to do the same.

23 **II. Impact of Defendant's Actions on Plaintiffs**

24 118. Since Defendant Thatcher and the students acting at his direction erased  
25 Fresno State Students for Life's chalked messages on May 2, 2017, Plaintiffs have  
26 not attempted to engage in expressive activities (including chalking) in the open,  
27 outdoor, generally accessible areas of campus.

1 119. Plaintiffs desire to resume freely using the open, outdoor, generally  
2 accessible areas of the Fresno State campus (including the sidewalks near and  
3 leading to the library) for expressive activities (including chalking) at the earliest  
4 opportunity.

5 120. Since May 2, 2017, Plaintiffs have not attempted to engage in expressive  
6 activities (including chalking) in the open, outdoor, generally accessible areas of  
7 campus because of Defendant Thatcher's actions and because they fear further  
8 intimidation, harassment, and interference from him and from students acting at his  
9 direction.

10 121. Defendant Thatcher's actions in using a group of students to censor peaceful  
11 expression, in personally participating in that censorship, and in declaring that  
12 students may not engage in expressive activities outside the speech zones of his own  
13 creation burden Plaintiffs' speech.

14 122. Plaintiffs want to speak publicly via chalked messages and other methods of  
15 communication without having to confine their expression to the unspecified speech  
16 zones of Defendant Thatcher's arbitrary creation and without having to endure his  
17 discrimination against their speech in opposition to their pro-life views.

18 123. If Plaintiffs happen to engage in expression outside of Defendant Thatcher's  
19 invented speech zones or happen to express pro-life views to which he objects, they  
20 risk further harassment and interference in their expression from him or from  
21 students acting at his direction.

22 124. Plaintiffs are chilled in their ability to express themselves publicly on issues  
23 related to abortion, the sanctity of life, and support for pregnant students because of  
24 Defendant Thatcher's actions and his intimidation of them in opposition to their views.

25 125. Due to the restrictions imposed by Defendant Thatcher and the students  
26 acting at his direction, Plaintiffs lack an alternative means of communicating their  
27 pro-life beliefs to students, faculty, and other members of the Fresno State

1 community that they desire to reach. If Plaintiffs engage in any form of  
2 communication outside the “speech zones” Defendant Thatcher created, they will  
3 expose themselves to further harassment, intimidation, and censorship from  
4 Defendant Thatcher or from students acting at his direction.

5 126. If it were not for Defendant Thatcher’s actions and intimidation in opposition  
6 to their pro-life views, Plaintiffs would immediately go to the open, outdoor areas of  
7 the Fresno State campus and engage in expressive activities like chalking.

8 127. Plaintiffs refrain for fear of further intimidation, harassment, and  
9 interference from Defendant Thatcher and students acting at his direction.

10 128. The fear of further intimidating, harassment, and interference from  
11 Defendant Thatcher and students acting at his direction severely limits Plaintiffs’  
12 constitutionally-protected expression on campus.

13 **ALLEGATIONS OF LAW**

14 129. At all times relevant to this Complaint, each and all of the acts alleged herein  
15 were attributed to Defendant Thatcher, acting under color of a statute, regulation,  
16 custom, or usage of the State of California, including the actions of the students who  
17 acted at his direction.

18 130. Defendant Thatcher knew or should have known that by restricting Fresno  
19 State Students for Life’s expression to speech zones of his own creation, he violated  
20 the constitutional rights of Fresno State Students for Life and its members.

21 131. Defendant Thatcher knew or should have known that by erasing Fresno  
22 State Students for Life’s chalked messages, intimidating Fresno State Students for  
23 Life and its members against expressing themselves freely outside of any speech zone  
24 of his own invention, and by instructing students to erase Fresno State Students for  
25 Life’s messages, he violated the constitutional rights of Fresno State Students for Life  
26 and its members. *See generally Giebel v. Sylvester*, 244 F.3d 1182 (9th Cir. 2001)  
27 (finding that a professor engaged in viewpoint discrimination when he removed

1 handbills advertising a speech on campus and that he was not entitled to qualified  
2 immunity for these actions).

3 132. Plaintiffs are suffering irreparable harm from the actions and intimidation  
4 of Defendant Thatcher, which cannot be fully compensated by an award of money  
5 damages.

6 133. Plaintiffs have no adequate remedy at law to correct or redress the  
7 deprivation of their rights by Defendant Thatcher.

8 134. Defendant Thatcher's actions (including those of the students acting at his  
9 direction), as set forth above, do not serve any legitimate or compelling state interest.

10 135. Defendant Thatcher's actions (including those of the students acting at his  
11 direction), as set forth above, have deprived, and continue to deprive, Plaintiffs of  
12 their clearly established rights under the United States Constitution, as set forth in  
13 the causes of action below.

14 136. Unless Defendant Thatcher's actions are enjoined, Plaintiffs will continue to  
15 suffer irreparable injury.

16 137. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to appropriate  
17 relief declaring Defendant Thatcher's actions unconstitutional and prohibiting him  
18 from further interference in Plaintiff's expression.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Plaintiffs' First Amendment Right to Freedom of Speech**  
21 **(42 U.S.C. § 1983)**

22 138. Plaintiffs repeat and reallege each of the allegations contained in paragraphs  
23 1–137 of this Complaint, as if set forth fully herein.

24 139. Speech, including public written expression, is entitled to comprehensive  
25 protection under the First Amendment.

26 140. Religious and political speech are also fully protected by the First  
27 Amendment.

141. The First Amendment right of free speech extends to the campuses of state

1 universities.

2 142. The sidewalks and open spaces of the Fresno State campus are designated  
3 public fora—if not traditional public fora—for speech and expressive activities by  
4 students enrolled at Fresno State.

5 143. The First Amendment’s Free Speech Clause, incorporated and made  
6 applicable to the states by the Fourteenth Amendment to the United States  
7 Constitution, prohibits content and viewpoint discrimination in the public fora for  
8 student speech and expression on the campus of a public college.

9 144. Government officials’ ability to restrict speech—particularly student  
10 speech—in a public forum on a public university campus is limited.

11 145. The First Amendment’s Free Speech Clause prohibits censorship of religious  
12 and political expression.

13 146. The First Amendment prohibits the government from prohibiting or  
14 restricting speech because it might offend, disturb, or discomfort the sensibilities of  
15 listeners or viewers, and any government attempts to do so are inherently content  
16 and/or viewpoint based.

17 147. The Free Speech Clause of the First Amendment protects speech that is  
18 provocative and challenging, and it prohibits government officials from restricting  
19 speech simply because they or other listeners find it offensive or discomforting.

20 148. Under the First Amendment’s Free Speech Clause, a prior restraint on  
21 citizen’s expression is presumptively unconstitutional, unless it (1) does not delegate  
22 overly broad licensing discretion to a government official, (2) contains only content  
23 and viewpoint neutral time, place, and manner restrictions, (3) is narrowly tailored  
24 to serve a significant government interest, and (4) leaves open ample alternative  
25 means for communication.

26 149. Defendant engaged in content and viewpoint discrimination when he erased,  
27 obscured, and defaced Plaintiffs’ chalked expression and directed students to do the

1 same.

2 150. By erasing, obscuring, and defacing Plaintiffs' chalked messages, Defendant  
3 effectuated a heckler's veto and censored the content and viewpoint of Plaintiffs'  
4 expression.

5 151. Defendant engaged in content and viewpoint discrimination by prohibiting  
6 Plaintiffs from expressing messages that he personally opposed.

7 152. Defendant engaged in content and viewpoint discrimination by erasing,  
8 obscuring, and defacing Plaintiffs' messages and by directing students to do the same.

9 153. Defendant's asserted restriction of student expression to certain, unspecified  
10 areas of campus violates the First Amendment facially and as applied because it is a  
11 prior restraint on speech in areas of campus that are traditional or designated public  
12 fora for Fresno State students.

13 154. Defendant's self-assignment of authority to move student expression to  
14 speech zones of his own invention violates the First Amendment because it  
15 discriminates against the content and viewpoint of speech.

16 155. Defendant's restriction of student expression to certain, unspecified areas of  
17 campus is an unconstitutional "time, place, and manner" restriction that violates  
18 Plaintiffs and other students' right to freedom of speech and expression because it is  
19 not content-neutral, it is not narrowly tailored to serve a significant government  
20 interest, and it does not leave open ample alternative channels of communication.

21 156. Defendant's restriction of student expression to certain, unspecified areas of  
22 campus unconstitutionally censors or restricts all private speech (including, but not  
23 limited to, chalking) that occurs outside the undefined speech zone.

24 157. Defendant's actions chill, deter, and restrict Plaintiffs from freely expressing  
25 their religious, political, and moral beliefs.

26 158. Defendant's actions in restricting student expression to certain, unspecified  
27 areas of campus do not satisfy strict scrutiny because they support no compelling

1 government interest and is not narrowly tailored to meet any such concerns.

2 159. Defendant's actions in erasing, obscuring, and defacing Plaintiffs' expression  
3 and in directing students to do the same do not satisfy strict scrutiny because they  
4 support no compelling government interest and are not narrowly tailored to meet any  
5 such concerns.

6 160. Defendant's actions both in restricting student expression to certain,  
7 unspecified areas of campus and in erasing, obscuring, and defacing Plaintiffs'  
8 expression and in directing students to do the same violate Plaintiffs' clearly  
9 established right to free speech as guaranteed by the First Amendment to the United  
10 States Constitution.

11 161. Because of Defendant's actions, Plaintiffs have suffered, and continue to  
12 suffer, irreparable harm. They are entitled to an award of monetary damages and  
13 equitable relief.

14 162. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a  
15 declaration that Defendant violated their First Amendment right to freedom of  
16 speech and an injunction against Defendant's actions. Additionally, Plaintiffs are  
17 entitled to damages in an amount to be determined by the evidence and this Court  
18 and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

19 **SECOND CAUSE OF ACTION**  
20 **Violation of Plaintiffs' Fourteenth Amendment Right to**  
21 **Equal Protection of the Law**  
**(42 U.S.C. § 1983)**

22 163. Plaintiffs repeat and reallege each of the allegations contained in paragraphs  
23 1–137 of this Complaint, as if set forth fully herein.

24 164. The Fourteenth Amendment to the United States Constitution guarantees  
25 Plaintiffs the equal protection of the laws, which prohibits Defendant from treating  
26 Plaintiffs differently than similarly situated students.

27 165. Government officials may not treat someone disparately as compared to

1 similarly situated persons when such disparate treatment burdens a fundamental  
2 right, targets a suspect class, or has no rational basis.

3 166. Plaintiffs are similarly situated to other students and student organizations  
4 at Fresno State.

5 167. Defendant has allowed students and student organizations to engage in  
6 various expressive activities outside of his undefined speech zones, but denied the  
7 same to Plaintiffs.

8 168. Defendant has allowed students and student organizations to engage in  
9 expressive activities in the form of chalked messages outside of his undefined speech  
10 zones (including in the exact location where Plaintiffs' messages were written), but  
11 denied the same to Plaintiffs.

12 169. Defendant's actions restricting student expression to certain, unspecified  
13 areas of campus violates Plaintiffs' fundamental right to freedom of speech.

14 170. Defendant's actions in erasing, obscuring, and defacing Plaintiffs' messages  
15 and in directing students to do the same violate Plaintiffs' fundamental right to  
16 freedom of speech.

17 171. When government officials infringe on fundamental rights, discriminatory  
18 intent is presumed.

19 172. Defendant's restriction of student expression to certain, unspecified areas of  
20 campus is underinclusive, prohibiting some speech while leaving other speech equally  
21 harmful to his asserted interests unprohibited.

22 173. Defendant's actions in erasing, obscuring, and defacing Plaintiffs' messages  
23 and in directing students to do the same are underinclusive, prohibiting some speech  
24 while leaving other speech equally harmful to his asserted interests unprohibited.

25 174. Defendant lacks a rational or compelling state interest for such disparate  
26 treatment of Plaintiffs.

27 175. Defendant's restriction of student expression to certain, unspecified areas of

1 campus is not narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does  
2 not implicate any legitimate interest Defendant might have.

3 176. Defendant's actions in erasing, obscuring, and defacing Plaintiffs' messages  
4 and in directing students to do the same are not narrowly tailored as applied to  
5 Plaintiffs because Plaintiffs' speech does not implicate any legitimate interest  
6 Defendant might have.

7 177. Defendant has acted against Plaintiffs' expression in a discriminatory and  
8 unequal way, allowing other students to speak freely in and out of his speech zones  
9 when he says that Plaintiffs cannot do the same, in violation of Plaintiffs' right to  
10 equal protection of the laws under the Fourteenth Amendment.

11 178. Because of Defendant's actions, Plaintiffs have suffered, and continue to  
12 suffer, irreparable harm. They are entitled to an award of monetary damages and  
13 equitable relief.

14 179. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a  
15 declaration that Defendant violated their Fourteenth Amendment right to equal  
16 protection of law and an injunction against Defendant's actions. Additionally,  
17 Plaintiffs are entitled to damages in an amount to be determined by the evidence and  
18 this Court and the reasonable costs of this lawsuit, including their reasonable  
19 attorneys' fees.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment  
22 against Defendant and provide Plaintiffs with the following relief:

23 A. A declaratory judgment that Defendant's actions in erasing, obscuring, and  
24 defacing Plaintiffs' expression and in directing students to do the same violate  
25 Plaintiffs' rights under the First and Fourteenth Amendments;

26 B. A declaratory judgment that Defendant's actions in restricting Plaintiffs'  
27 speech to unspecified speech zones violates Plaintiff's rights under the First

and Fourteenth Amendments;

C. A preliminary and permanent injunction prohibiting Defendant and any other persons acting on his behalf or at his direction from interfering, disrupting, or altering any future lawful expressive activities that Plaintiffs conduct;

D. Nominal and compensatory damages for the violation of Plaintiffs' First and Fourteenth Amendment rights from Defendant in his individual capacity;

E. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and

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

Respectfully submitted this 11th day of May, 2017,

/s/ Travis C. Barham

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\* Applications for admission *pro hac vice*  
to be filed.

*Attorneys for Plaintiffs*

**DEMAND FOR TRIAL BY JURY**

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

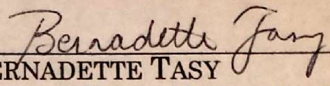
/s/ Travis C. Barham

TRAVIS C. BARHAM  
*Attorney for Plaintiffs*

**DECLARATION UNDER PENALTY OF PERJURY**

I, BERNADETTE TASY, a member of Fresno State Students for Life, a citizen of the United States, and a resident of the State of California, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, except as to statements made on information and belief, and those I believe to be true and correct.

Executed this 9th day of May, 2017, at Fresno, California.

  
BERNADETTE TASY  
FRESNO STATE STUDENTS FOR LIFE

**DECLARATION UNDER PENALTY OF PERJURY**

I, BERNADETTE TASY, a citizen of the United States and a resident of the State of California, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, except as to statements made on information and belief, and those I believe to be true and correct.

Executed this 9<sup>th</sup> day of May, 2017, at Fresno, California.

Bernadette Tasy  
BERNADETTE TASY

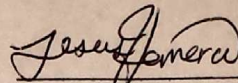
VERIFIED COMPLAINT

26

**DECLARATION UNDER PENALTY OF PERJURY**

I, JESUS HERRERA, a citizen of the United States and a resident of the State of California, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, except as to statements made on information and belief, and those I believe to be true and correct.

Executed this 9<sup>th</sup> day of May, 2017, at Fresno, California.

  
JESUS HERRERA