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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 KARLA WESTPHAL; ALANNAH) NO. _____
16 ROSENBERG; MARGOT LOVETT;)
17 CLAIRE CESAREO-SILVA; ROY)
18 BAUER; ASHLEY MOCKETT, on her)
19 own behalf and as parent and next friend)
of L.M.; and DOES 1 and 2,)
20 *Plaintiffs,*)
21 v.) **COMPLAINT**

22 DONALD P. WAGNER, individually)
23 and in his official capacity as a member)
24 and the president of the South Orange)
25 County Community College District)
26 Board of Trustees; JOHN S.)
27 WILLIAMS, individually and in his)
28 official capacity as a member and the)
vice president of the South Orange)
County Community College District)
Board of Trustees; THOMAS A.)
FUENTES, individually and in his)
official capacity as a member and the)
clerk of the South Orange County)
Community College District Board of)
Trustees; DAVID B. LANG, WILLIAM)
O. JAY, NANCY M. PADBERG, and)

1 MARCIA MILCHIKER, in their official)
capacities as members of the South)
2 Orange County Community College)
District Board of Trustees; RAGHU P.)
3 MATHUR, individually and in his)
official capacity as chancellor of the)
4 South Orange County Community)
College District; and TOD A.)
5 BURNETT, individually and in his)
official capacity as president of)
6 Saddleback College,)

7 *Defendants.*)

8
9 **COMPLAINT**

10 **JURISDICTION AND VENUE**

11 1. In accordance with 28 U.S.C. §§ 1331 and 1343, this Court has original
12 jurisdiction over Plaintiffs’ causes of action arising under (a) the First and Fourteenth
13 Amendments to the U.S. Constitution, (b) 42 U.S.C. § 1983, and (c) the Declaratory
14 Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has supplemental
15 jurisdiction over Plaintiffs’ causes of action arising under the Constitution of the
16 State of California, in accordance with 28 U.S.C. § 1367.

17 2. Venue is proper in this District under 28 U.S.C. § 1391(b) because one
18 or more Defendants reside here, all Defendants reside in the state of California, and
19 the events giving rise to Plaintiffs’ claims occurred in the District.

20
21 **INTRODUCTION**

22 3. The South Orange County Community College District, its governing
23 Board of Trustees, and its chancellor operate two colleges in California’s
24 community-college system — Saddleback College in Mission Viejo and Irvine
25 Valley College in Irvine. For years, the trustees, the chancellor, and the president of
26 Saddleback College have routinely held official prayer at numerous events for
27 college students and faculty, including scholarship ceremonies, graduations, and the
28 Chancellor’s Opening Sessions.

1 7. Defendant Donald P. Wagner is the Board’s president, as well as the
2 representative for Area 2 (which includes parts of Tustin, Santa Ana, and Irvine).
3 He is being sued in both his official and his individual capacities.

4 8. Defendant John S. Williams is the Board’s vice president, as well as the
5 representative for Area 7 (which includes parts of Mission Viejo, Rancho Santa
6 Margarita, and unincorporated areas within the District). He is being sued in both
7 his official and his individual capacities.

8 9. Defendant Thomas A. Fuentes is the Board’s clerk, as well as the
9 representative for Area 6 (which includes Lake Forest, Foothill Ranch, Portola Hills,
10 and parts of Mission Viejo). He is being sued in both his official and his individual
11 capacities.

12 10. Defendants David B. Lang, William O. Jay, Nancy M. Padberg, and
13 Marcia Milchiker are the remaining members of the Board. They represent Area 1
14 (parts of Irvine), Area 3 (Laguna Beach, Aliso Viejo, Dana Point, and parts of
15 Laguna Hills, Newport Beach, and unincorporated areas), Area 4 (San Clemente, San
16 Juan Capistrano, Coto de Caza, Las Flores, and unincorporated areas), and Area 5
17 (Laguna Woods, Laguna Niguel, and parts of Laguna Hills), respectively. They are
18 being sued solely in their official capacities as Board members.

19 11. Defendant Raghu P. Mathur is the District’s chancellor — a post that
20 he has held since 2002. As chancellor, he is employed by the Board to act as the
21 District’s chief administrative officer and the Board’s secretary. The chancellor has
22 “full authority and responsibility for the proper conduct of the business and
23 educational programs of the district.” (Board Policy 2100; *see also* Board Policy
24 3100.) Mathur is being sued in both his official and his individual capacities.

25 12. Defendant Tod A. Burnett has been president of Saddleback College —
26 one of the two colleges operated by the District — since Summer 2008. As
27 president, Burnett serves as Saddleback’s chief executive officer; he “reports to,
28 assists, and supports the Chancellor in the performance of [the Chancellor’s] duties”;

1 he is “responsible for implementing the college[’s] strategic plan and district
2 policies”; and he is “the final authority at the college level.” (Board Policy 2101.)
3 He is being sued in both his official and his individual capacities.

4 **B. Plaintiffs**

5 13. Plaintiffs, collectively, are District students and faculty members, as
6 well as a former student, as explained below.

7 14. Plaintiff Karla Westphal is a Professor of Mathematics at Saddleback,
8 where she has taught since 2001. She is also the faculty advisor for the Freethinkers
9 Club — a student club at Saddleback. She is an atheist. In 2004, Professor Westphal
10 attended Saddleback’s scholarship ceremony in order to present a scholarship funded
11 by the Mathematics Department, as well as to support and recognize the
12 achievements of her students. She was deeply offended when a trustee delivered a
13 prayer as part of that official ceremony. Westphal attended and would have
14 presented her department’s scholarship again in 2005, but she became uncomfortable
15 when a trustee again delivered an official prayer; so she arranged for a colleague to
16 present the scholarship, and left the ceremony early. Because of the prayer practice,
17 Westphal has not attended the ceremony since 2005, although she otherwise would
18 have done so, both to present scholarships and to celebrate her students’
19 achievements. She personally funded two scholarships in 2009, but she did not
20 present them at the ceremony because of the official prayer. She intends to fund at
21 least one scholarship again in 2010. As long as no prayer is offered at the May
22 ceremony, she will present that scholarship there. Westphal also attended
23 Saddleback’s commencement in 2004, where she was offended by the official
24 prayer; and accordingly, she did not attend commencement in 2005 or 2006, even
25 though she wanted to see her students graduate and to honor them with her presence.
26 Because Westphal believes, however, that missing graduation is harmful to her and
27 to her students, she has resumed attending graduations since that time. Finally,
28 Westphal regularly attends the Chancellor’s Opening Sessions. But since official

1 prayer was added at that event, she has removed herself whenever the prayer has
2 been delivered. Westphal would attend the entire Opening Sessions if not for the
3 prayers. Westphal is offended by the District's prayer practice and the resulting
4 prayers at official functions, which make her feel like an outsider in the college
5 community, excluded and disrespected because she is not a member of the District's
6 preferred faith. She also objects to the prayer practice because students who belong
7 to minority faiths or are nonbelievers, and who see her at these important college
8 functions, might reasonably infer that she endorses and approves of the prayer, not
9 only adding to the students' feelings of alienation and exclusion, but also tarnishing
10 Westphal's reputation as a teacher and mentor who is dedicated to all her students,
11 regardless of their religious beliefs.

12 15. Plaintiff Alannah Rosenberg is a Professor of Economics at Saddleback,
13 where she has taught since 1990. She is a devout Jew. For most of the past 17 years,
14 Professor Rosenberg has served as chair or co-chair of Saddleback's Honors
15 Program; and both in that capacity and in her role as a professor, she has regularly
16 attended scholarship ceremonies and graduations. She also presents several
17 scholarships at the annual ceremony — including a scholarship that, since 2002, she
18 has personally endowed in her mother's name and that she has her daughter (now
19 eleven years old) present to the student recipient. Rosenberg attends Saddleback
20 graduations because she believes that it is important to celebrate graduating students'
21 achievements. And as a chair of the Honors Program, she knows most if not all
22 honors students personally, and believes that they expect her to be present when they
23 graduate. Rosenberg is deeply offended by the District's prayer practice. She feels
24 that the District is trying to impose a religion on her that conflicts with her own. In
25 particular, she believes that intercessory prayer and requests for blessings should be
26 made only in private, and only on very special religious occasions. She therefore
27 believes that the District's official prayers — which often ask God to care for and
28 bless students, faculty, and administrators — are inappropriate for college functions,

1 inconsistent with her religion, and offensive to God. The District's practice of
2 asking the audience to stand for prayer at school events is offensive to Rosenberg's
3 belief that a person should stand for prayer only at certain significant events, such
4 as when the Kaddish (the Jewish prayer of mourning) is said. Rosenberg feels that
5 Defendants' prayer practice communicates to her that because she is not a member
6 of the District's preferred Christian faith and does not share Defendants' philosophy,
7 style, and practice of delivering prayers, she is a disfavored outsider rather than an
8 equal member of the college community. Rosenberg also objects to the prayer
9 practice because she believes that her non-Christian students should not be made to
10 feel like disfavored outsiders either.

11 16. Plaintiff Margot Lovett is a Professor of History at Saddleback, where
12 she has taught since 1997. She served as Secretary of Saddleback's Academic
13 Senate from 2005 to 2007. She was raised Jewish. Professor Lovett used to attend
14 Saddleback's scholarship ceremonies regularly, but she has not done so for the past
15 several years because she is offended by the official prayer at those events. She
16 believes that the ceremonies are important events for the college's academic
17 community and significant occasions for her students. Accordingly, she would like
18 to resume attending, and would do so if the District ceased presenting prayer there.
19 Lovett also objects to official prayer at Saddleback graduations, but believes that
20 commencement is an extraordinarily important event in her students' life, and one
21 that she particularly ought to celebrate with them. She has therefore regularly
22 attended, and will continue to attend, commencement exercises, thus being subjected
23 to unwanted religious practices. Lovett believes that the District's official prayers
24 are overtly Christian, and hence that the prayer practice imposes on her a religion
25 that she does not share. She also feels that the official prayer communicates a
26 message of intolerance to the Saddleback academic community, which is culturally
27 and religiously diverse. She finds it personally offensive and ethically indefensible
28

1 that the leaders of a public institution, as representatives of the State, deliver official
2 prayer at public events that she attends.

3 17. Plaintiff Claire Cesareo-Silva is a Professor of Anthropology at
4 Saddleback, where she has taught since 2000. She is chair of the Anthropology and
5 Cross-Cultural Studies Departments; and she previously served as president of
6 Saddleback's Academic Senate. She is an agnostic. Professor Cesareo-Silva
7 attended Saddleback's scholarship ceremony in May 2006 to present a scholarship
8 in her capacity as Academic Senate President, and was offended by the official
9 prayer. The next year, she considered establishing an anthropology scholarship but
10 decided against doing so, in part because she did not want to present a scholarship
11 at an event that included official prayer. If the prayer practice is stopped, she intends
12 to establish the contemplated scholarship and to present it at the scholarship
13 ceremony. Cesareo-Silva does not attend Chancellor's Opening Sessions because
14 of the prayer, but would attend in the future if the prayer practice were halted. She
15 regularly attends Saddleback graduations, despite objecting to the official prayer at
16 those events, because it is important to her that she honor her students' achievements
17 with her presence, and that she celebrate with her students on this important occasion
18 in their lives. Thus, the price that Defendants have forced her to pay for participating
19 in the significant event of graduation is to be subject to unwanted religious practices.

20 18. Plaintiff Roy Bauer is a Professor of Philosophy at Irvine Valley
21 College (the other college in the District). He has taught there since 1986. He is also
22 a member of Irvine Valley's Academic Senate. He is an agnostic. He regularly
23 attends the Chancellor's Opening Sessions. Although he objects to the official
24 prayer at those events, he attends because officials in the college administration
25 encourage him to do so; because attending is one means that the District offers for
26 earning credits towards its professional-development requirement for faculty; and
27 because he finds the Sessions informative and useful. For example, Bauer learns at
28 the Chancellor's Opening Sessions about the academic and financial state of the

1 District and its colleges; and the chancellor's guest speakers provide him with
2 important information about social, technological, and pedagogical trends within
3 California's community college system and across the country. Of all the training
4 programs for faculty, Bauer considers the Chancellor's Opening Session to be the
5 one that best keeps him apprised of key developments respecting the District and
6 Irvine Valley College. Were he to decline to attend, he would be deprived of that
7 important information. Bauer objects to official prayer at the Opening Sessions
8 because it makes him feel like he and others who are nonreligious are being relegated
9 to second-class status and effectively excluded from the community because of their
10 beliefs about religion. Bauer feels that Defendants are telling him that the Sessions
11 are not intended for "misfits" like him, and that far from being appreciated or
12 respected, his presence is only minimally tolerated. He also feels that the prayer
13 violates the spirit of inclusiveness toward the entire community that he considers
14 critically important in a diverse educational environment.

15 19. Plaintiff Ashley Mockett is a former Saddleback student. She initially
16 took courses at Saddleback between 2000 and 2006; and she was a full-time student
17 from Fall 2007 until her graduation in May 2009. She was an honors student,
18 graduating *cum laude* with an Associate's degree and a certificate of achievement in
19 English. Upon graduating, she transferred to the University of California at
20 Berkeley, where she is now pursuing her Bachelor's degree in English. Ms. Mockett
21 is an atheist. While at Saddleback, she was subjected to official prayer on three
22 separate occasions. First, she attended the May 2008 scholarship ceremony, where
23 she received an award. The college informed her that she was required to attend, and
24 that she risked forfeiting her scholarship if she failed to do so. But she also wanted
25 to attend. That she was receiving the award made the event an important one in her
26 college career because it capped a year in which she had, for the first time, felt truly
27 connected to her fellow students, to the faculty, and to the rest of the Saddleback
28 academic community. The award was not just a check: it was the college's official

1 confirmation that she belonged. But at the ceremony, the Board president (Trustee
2 Wagner) delivered an invocation combining official prayer with a verbal attack on
3 nonbelievers and those who had criticized the District's prayer practice. The
4 invocation spoiled the entire event for Mockett, making her feel like an unwelcome
5 outsider. Indeed, she was so offended and disappointed that she founded and became
6 president of Saddleback's Freethinkers Club. Then, in May 2009, she again attended
7 the scholarship ceremony (where she received five scholarships), as well as
8 commencement (where she was awarded her degree and certificate). Again, Mockett
9 attended the scholarship ceremony not only because she was required to be there and
10 risked losing the scholarships by not attending, but also because she wished to
11 express her personal thanks to the donors who had funded the scholarships, and
12 because she wanted to receive the recognition that she had earned for her significant
13 academic accomplishments. She attended commencement because she wanted to
14 celebrate graduation together with her fellow students and her professors, and
15 because she knew that it was important to her family to see her graduate. But at both
16 events, the District again held official prayer, making her feel like an excluded
17 outsider because she did not share the District's preferred faith. Moreover, the
18 District's prayer practice interfered with Mockett's right as a parent to determine her
19 child's religious education and upbringing. She took her son to the 2008 and 2009
20 scholarship ceremonies and to the 2009 commencement. The Board president's
21 delivery of the official prayer along with a speech disparaging nonbelievers and
22 minority faiths at the 2008 scholarship ceremony made it necessary for Mockett to
23 have difficult conversations with her son — who was barely six years old at the time,
24 and therefore was, in Mockett's view, far too young to have to deal with such
25 difficult, adult concepts.

26 20. Plaintiff Mockett is also suing, therefore, as parent and next friend of
27 her seven-year-old son, L.M. The prayer at the 2008 scholarship ceremony confused
28 L.M., who did not know whether he should stand and participate in the District's

1 official prayer. On previous occasions, L.M. had noticed that his mother did not
2 stand when others prayed, but he had always before accepted his mother's statement
3 that he was too young to understand why that was the case. The Board member's
4 request that the audience stand for prayer left L.M. confused about how to behave
5 during public prayer, however; and Mockett therefore felt compelled to try to explain
6 why some people pray or stand for public prayer while others do not. But L.M.
7 remained confused about how to act and whether to do as his mother does or to
8 follow the crowd and participate in public prayer. That confusion was only
9 compounded when L.M. was exposed to official prayer at the 2009 scholarship
10 ceremony and graduation. Both on her own behalf and in her capacity as parent and
11 next friend of L.M., Ms. Mockett is suing solely for nominal damages.

12 21. Plaintiff Doe 1 is a full-time student at Saddleback, working toward two
13 Associate's degrees. Doe 1 expects to have earned the necessary academic credits
14 for both degrees by May 2010 or May 2011. Doe 1 is a deist, believing — just as
15 many of this nation's founders did — that a divine being has set life and the universe
16 in motion but does not get involved in details of people's daily lives or judge,
17 reward, or punish their actions. Doe 1 intends to apply for a scholarship this
18 academic year, which would then be awarded at the May 2010 scholarship
19 ceremony. If Doe 1 receives the scholarship, Doe 1 will likely attend the ceremony
20 and be exposed to unwanted religious exercises because the college requires that
21 recipients be present, and threatens to take away their scholarships if they are not.
22 Doe 1 would also attend the ceremony in order to be recognized for the achievements
23 that the scholarship would represent. Doe 1 further intends to attend commencement
24 when receiving the degrees in May 2010 or May 2011. Although Doe 1 objects to
25 and is offended by the District's prayer practice, Doe 1 nonetheless believes that it
26 is important to be at commencement in order to celebrate the significant achievement
27 of graduating with classmates, family, and friends. The District's official prayers,
28 which often ask God to bless individuals or groups, conflict with Doe 1's religious

1 beliefs, offend Doe 1, and make Doe 1 feel that Defendants are trying to force their
2 religious beliefs on Doe 1. Doe 1 is also offended when asked to stand for prayer,
3 because Doe 1 must then either comply, and thereby participate in a prayer to a god
4 in which Doe 1 does not believe, or else remain seated and make it known to others
5 at the event that Doe 1 does not share the District's preferred religious beliefs.

6 22. Plaintiff Doe 2 is 19 years old and is a full-time student at Saddleback
7 College. Doe 2 is not religious. Doe 2 plans to apply for a scholarship this academic
8 year. If Doe 2 receives the scholarship, it will be presented at Saddleback's
9 scholarship ceremony. Although offended by the official prayer at the scholarship
10 ceremonies, Doe 2 will likely attend upon receiving a scholarship. In part, that is
11 because attendance is required and Doe 2 could lose the scholarship by failing to do
12 so. But even if attendance were not required, Doe 2 would not want to miss the
13 event and forgo the public recognition and celebration by the college community that
14 the ceremony represents. Accordingly, if Doe 2 receives a scholarship, Doe 2 will
15 be put to an unreasonable choice: Either be subjected to the unwanted official
16 prayer, or miss the recognition and celebration that makes the scholarship ceremony
17 a special event — and very possibly forfeit the scholarship funds as well. Doe 2 will
18 likely graduate at Saddleback's May 2010 commencement, and intends to transfer
19 at that time to a four-year college in order to pursue a Bachelor's degree. Although
20 objecting to official prayer at commencement, Doe 2 expects to attend nonetheless
21 because it is extremely important to Doe 2's family — and especially Doe 2's
22 grandmother — to see Doe 2 graduate. Yet the District's official prayer makes Doe
23 2 uncomfortable and makes Doe 2 feel excluded and looked down upon by the
24 District and the Saddleback administration.*

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26
27 ^{z/} Plaintiffs are prepared to file a motion requesting leave for Does 1 and 2 to
28 proceed under pseudonyms, but will first attempt, in accordance with L.R. 7.3, to
reach agreement on the matter with Defendants' counsel. Plaintiff Mockett's son is
designated as L.M. in accordance with Fed. R. Civ. P. 5.2(a).

1 **GENERAL ALLEGATIONS**

2 **A. The Prayer Practice**

3 23. Defendants have a pervasive practice of presenting prayer at official
4 District and college events.

5 24. In accordance with this practice, the District has, since at least 2004,
6 sponsored and presented official prayer at numerous events for students and faculty,
7 including scholarship ceremonies, graduations, Chancellor’s Opening Sessions,
8 District leadership receptions, and building dedications.

9 25. The Board members and the chancellor have authority over whether
10 District and college events include official prayer. And the president of Saddleback
11 College also has authority over whether prayer will be delivered at Saddleback
12 events.

13 26. Defendants decide or directly influence whether a District or college
14 event will include official prayer, and they determine who will deliver the official
15 prayer.

16 27. Defendants typically present the prayers personally, choosing one from
17 their number to perform the official function of prayergiver.

18 28. On information and belief, each official prayer is composed either by
19 the individual Defendant delivering it or by another Board member. Trustee Fuentes
20 has, for example, not only delivered official prayers himself, but also written or
21 offered to write the prayer to be delivered by another Board member at an official
22 function.

23 **i. Scholarship Ceremonies**

24 29. Saddleback offers student scholarships through the Saddleback College
25 Foundation — a division of the college itself. The scholarships are typically funded
26 by private individuals, who donate money to the Foundation to be awarded to
27 students. Many of the scholarships are intended for students who plan to transfer to
28 a four-year college.

1 30. Saddleback’s Scholarship Committee decides which applicants will be
2 awarded a scholarship. The college then notifies the winners of their award and
3 informs them of the scholarship ceremony where they will receive a certificate (with
4 which they can later claim their scholarship check), and where they can thank the
5 donors who have funded the scholarship. Traditionally, the Foundation and several
6 of the college’s administrative offices plan the ceremony, which is held each May.

7 31. The trustees, the chancellor, and Saddleback’s president each have
8 authority or influence over the program at the scholarship ceremony — including
9 authority or influence over whether there will be official prayer.

10 32. The District requires students who have been selected for scholarships
11 to attend the scholarship ceremony. If students do not attend, they may lose their
12 scholarship. In May 2009, for example, the college administration notified award
13 recipients by e-mail that:

14 You are expected to attend the award ceremony held on Thursday, May
15 14th and to arrive at 5:00 pm in the Saddleback College Gymnasium.
16 You may forfeit your scholarship if you are not there. If you absolutely
17 cannot attend the ceremony you must send an adult who will represent
18 you.

19 33. The award ceremonies are intended to be, and are, special events for
20 scholarship recipients, their families, their professors, and the donors who are their
21 benefactors. Recipients are honored and receive accolades for their academic,
22 leadership, community-service, and other achievements. Donors meet the
23 scholarship recipients and present the awards, thus allowing recipients to thank their
24 benefactors, both personally and publicly before the entire college community.

25 34. Various District and college officials participate in the ceremony, which
26 features an official prayer delivered by a District trustee. The designated trustee
27 typically asks the attendees to stand and join in the prayer.

28

1 35. Before 2008, students were seated on the stage, while the donors sat
2 directly in front of it. Since then, the students have typically been assigned to sit at
3 tables with their respective benefactors.

4 36. Because of those seating arrangements, scholarship recipients are under
5 scrutiny from their benefactors, as well as faculty, other students, and the college and
6 District administration. If they were to absent themselves from the room or refuse
7 to stand for the prayers, they would publicly single themselves out as religious
8 dissenters to all the other attendees — including the people funding their
9 scholarships. They are thus a captive audience, facing tremendous pressure to
10 conform by participating in official prayer.

11 **ii. Graduations**

12 37. Saddleback holds commencement each May. It is a monumental
13 occasion for graduating students, their families and friends, and the Saddleback
14 faculty who taught them. It marks the students' successful completion of their career
15 at the college and honors them for their accomplishments. For many students, the
16 ceremony will be their only post-secondary graduation; for others, it is an important
17 milestone on their way to earning a bachelor's degree at a four-year institution.
18 Either way, for many students and their families, missing graduation is simply not
19 an option.

20 38. Graduation at Saddleback is a formal event, beginning with a
21 processional in which the graduates, in their caps and gowns, march together to their
22 seats. Immediately after the processional, a trustee delivers the official prayer from
23 the podium, typically asking the graduates and other attendees to stand and join in
24 the prayer. Trustees, the District's chancellor, and the college president then make
25 congratulatory remarks; commencement addresses are given; awards are presented
26 to outstanding faculty; and, finally, the graduates receive their degrees.

27
28

1 39. Faculty, in their gowns, are seated together, in a section adjacent to the
2 graduates'. Their attendance is integral to the ceremony, and is strongly encouraged
3 by the District and the Saddleback administration.

4 40. Students, faculty, and other attendees are not free to come and go as
5 they please. The printed program directs them to remain seated until the end of the
6 recessional. And the seating arrangements ensure that graduates and faculty cannot
7 enter after the prayer, leave during it, or decline to stand and participate without
8 attracting unwanted attention. They thus face enormous pressure from the
9 administration and their peers to conform by participating in the prayers.

10 **iii. Chancellor's Opening Sessions**

11 41. The Chancellor's Opening Session is held in August and January of
12 each academic year, before the start of the academic semesters. It is a program for
13 faculty and staff of both Saddleback and Irvine Valley Colleges, providing them with
14 information that is relevant to their work during the upcoming semester. In recent
15 years, for example, the Opening Session has featured introductions of new faculty,
16 administrators, and managers; presentations on using new technology effectively in
17 the classroom; presentations on the District's marketing and outreach plans; and a
18 status update on the District's launch of the Advanced Technology & Education Park
19 (which offers courses in science and technology). The Opening Session typically
20 also includes a keynote address by a leader in education, business, or government,
21 who provides faculty with important insights that may enhance their teaching.

22 42. The Chancellor's Opening Sessions also provide faculty with an
23 opportunity to honor colleagues: the events typically include presentation of service
24 pins to faculty members based on their long service to one of the colleges. The
25 award recipients are called to the podium, where they receive congratulations from
26 District and college officials and are presented with their service pin. Attending the
27 presentation and cheering the awards is one way that faculty honor their colleagues.
28

1 43. The Opening Sessions include official prayer. Typically, a trustee
2 delivers the prayer, often introducing it by asking those in attendance to stand and
3 join in the prayer.

4 44. The Opening Session is held during the biannual Flex/In-Service Week
5 for Saddleback and Irvine Valley faculty. Saddleback and Irvine Valley offer
6 various meetings, workshops, and other events during the In-Service Week to aid
7 faculty, staff, and administrators in their professional development.

8 45. All full-time faculty are required to devote 38 hours to professional
9 development each year. They can earn credit toward this requirement by attending
10 events during the In-Service Weeks. The Chancellor's Opening Session lasts nearly
11 three hours, allowing attendees to earn 2.75 credit hours.

12 46. The District and the college administration specifically encourage
13 faculty to attend the Chancellor's Opening Session.

14 47. Thus, faculty members are put to an unreasonable choice: Either attend
15 the Opening Session and be exposed to unwanted official prayer, or miss an event
16 providing important information and professional-development credit while allowing
17 them to honor colleagues for their service. And if they decide to forgo the event,
18 they know that they are doing so against the administration's wishes.

19 **B. Opposition to the prayer practice and the District's response**

20 48. In May 2004, after witnessing the official prayer at that year's
21 scholarship ceremony and commencement, Professor Westphal wrote to the Board,
22 and spoke at the Board's monthly meeting, opposing the prayer practice. She
23 explained that including prayer in a public-school ceremony constituted
24 governmental imposition of religious beliefs and practices, and that it created a
25 hostile environment for everyone — including the students who were being honored.
26 She suggested that the Board replace the official prayer with a moment of silence.

27 49. Westphal again expressed her opposition to the prayer practice at Board
28 meetings in 2005 and 2006. At the May 2006 meeting, she informed the Board that

1 she had made the difficult decision not to attend that year’s scholarship ceremony
2 and commencement because the official prayer made her “fe[el] unwelcome.” She
3 explained, too, that she was unwilling to risk having her presence interpreted as “in
4 any way condoning or accepting [the Board’s] decision to impose a religious event
5 on a community as diverse as [Saddleback’s].”

6 50. Between October 2006 and early 2007, various faculty and student
7 bodies also publicly opposed the District’s prayer practice:

- 8 ● The Saddleback College Academic Senate is charged by statute with
9 representing the college faculty and “mak[ing] recommendations to the
10 administration of a college and to the governing board of a district with
11 respect to academic and professional matters.” (Cal. Code Regs. tit. 5,
12 § 53200(b).) It passed a resolution “oppos[ing] the inclusion of a
13 religious invocation in the Scholarship Awards Ceremony; the
14 Commencement ceremony; or in any other official college event at
15 which faculty, staff, and students are in, or might reasonably be
16 expected to be in, attendance.” The Academic Senate expressly stated
17 that it would not oppose a moment of silence at those events.
- 18 ● The Irvine Valley College Academic Senate, which represents the
19 Irvine Valley faculty, voted to support the Saddleback Academic
20 Senate’s resolution.
- 21 ● Saddleback’s Associated Student Government, which represents the
22 student body, also voted to support the resolution.
- 23 ● The Academic Senate for California Colleges is the official statewide
24 voice of the faculty of California community colleges in academic and
25 professional matters. It passed a resolution “oppos[ing] the inclusion
26 of a religious invocation in any official district-wide or college event”
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1 except meetings of student clubs. It also resolved to “accept the
2 inclusion of a moment of silence if so desired in any such event.”

- 3 ● The South Orange County Community College District Faculty
4 Association represents the interests of faculty in dealings with the
5 District. It wrote a letter to the Saddleback and Irvine Valley
6 Foundations, opposing official prayer at scholarship ceremonies. The
7 Faculty Association explained that official prayer is inappropriate
8 “since the colleges are public institutions serving a very diverse
9 population,” including “faculty, staff, and students of many religious
10 faiths and of no religious faith.” The Faculty Association requested
11 that “formal invocations at the scholarship ceremonies be replaced with
12 a moment of silence,” noting that doing so would allow people to pray
13 “without imposing their own beliefs on others.”
14

15 51. When Trustee Fuentes delivered an official prayer at Saddleback’s May
16 2007 commencement, faculty members silently held up a banner reading “Respect
17 Everyone’s Beliefs” as a form of nondisruptive protest.

18 52. Then, at the next Board meeting, several faculty members voiced further
19 objections to the prayers. For example, Professor Lovett explained that Saddleback
20 College has students, faculty, and staff of many religions, including Buddhists,
21 Hindus, Baha’is, animists, agnostics, atheists, Wiccans, Muslims, Jews, and
22 Christians. She pointed out that some non-Christian students, faculty, and staff were
23 deeply offended by Fuentes’s prayer. And Professor Rosenberg explained that she
24 is a very religious person and that, as a public employee, she is offended by being
25 asked to participate in prayer in a manner incompatible with her faith.

26 53. Despite all these objections, the District has not ceased its prayer
27 practice. Quite the contrary. It expanded the practice by, among other things, adding
28 official prayer to the August 2007 Chancellor’s Opening Session — an event at

1 which prayer had not been held before. Trustee Wagner delivered that prayer, after
2 asking the faculty and staff to stand. All subsequent Opening Sessions have likewise
3 featured official prayer.

4 54. In May 2008, Plaintiffs’ counsel sent two letters to the District,
5 explaining the unconstitutionality of the prayer practice and asking the District to
6 “refrain from including prayers at future scholarship-award ceremonies, Chancellor’s
7 Opening Ceremonies, and other official school functions.”

8 55. The District went ahead and presented official prayer at the scholarship
9 ceremony and commencement that month.

10 56. At the scholarship ceremony, Trustee Wagner gave the following
11 invocation:

12 Let me invite you to stand for the invocation and remain
13 standing, if you would, to be followed by the Pledge of Allegiance.

14 We take the opportunity today to offer our congratulations to the
15 many students of Saddleback College who have worked so hard and
16 achieved so much.

17 Historically at events such as these we also take the opportunity
18 to offer a moment of thanksgiving to God — if He exists. And I’m not
19 here to say that He does. That would be wrong for an elected official,
20 I am told. No matter that America’s founders invoked the name of
21 God, and encouraged and participated in religious ceremonies in
22 government facilities. No matter that the overwhelming majority of our
23 fellow citizens believe, or they have no objection to religious mention
24 at public gatherings. No, no matter to the special interest group that has
25 contacted this college to pursue its agenda of driving God from the
26 public square. No matter to those too uncertain in the strength of their
27 own views that they cannot abide any mention in public of the divine,
28 and that would prefer instead to censor and silence free speech.

1 If you don't believe in God, that's fine. The government has no
2 business trying to convince you otherwise. You're welcome to sit
3 down. We invited you to stand, but no one made you.

4 But if you *do* believe, I would ask you, personally and not on
5 behalf of the government, to take a moment to thank Him, for the many
6 gifts you believe you have received from Him, including the
7 opportunity to pursue an education in a country *explicitly founded on*
8 the belief that we are endowed by our Creator with the gift of liberty.
9 If you would, take that moment now, and then if you're so inclined, say
10 a simple "Amen."

11 57. A number of attendees shouted "Amen!," while at least one person
12 made the sign of the cross.

13 58. Wagner's invocation upset, offended, and sparked criticism from
14 scholarship donors, faculty, and students. Two faculty members who funded a
15 scholarship wrote to the Board that they "had recently decided to double [their]
16 scholarship contributions next year," but that in light of Wagner's remarks they were
17 looking for a better way to honor students. Another professor, who for several years
18 had given \$5,000 in scholarships, informed the Board that she and other donors had
19 decided to fund their scholarships through an independent nonprofit organization
20 instead of through the Saddleback Foundation, in order to avoid future scholarship
21 ceremonies. Later, another donor, who had previously given more than \$15,000,
22 informed the Saddleback Foundation that she had decided against establishing a
23 \$5,000 endowment as long as the scholarship ceremonies would continue to include
24 official prayer.

25 59. At the May 2008 Board meeting, a scholarship recipient, the recipient's
26 mother, a community member, and five faculty members — including Professors
27 Westphal, Lovett, and Cesareo-Silva — spoke on their own behalf or read statements
28 on behalf of others, opposing Wagner's invocation and the prayer practice as a

1 whole. And Trustee Padberg announced that she, too, had been offended by
2 Wagner's invocation, acknowledging that it had put a "very black mark on what
3 should have been a joyous occasion."

4 60. Wagner responded by publicly stating: "I do not back away, nor do I
5 apologize for any of [my words], nor do I intend to." And in an e-mail to the
6 chancellor and fellow trustees, he added, "I will continue to offer prayer when
7 requested to do so," and "I have no intention of apologizing for my invocation."

8 61. Neither the Board as a whole, nor any trustee or other District official
9 apart from Padberg, ever publicly condemned, apologized for, expressly disagreed
10 with, or acknowledged the impropriety of Wagner's conduct.

11 62. In July 2008, Plaintiffs' counsel wrote to the District a third time,
12 inquiring whether the Chancellor's Opening Session in August would include
13 official prayer. The District never responded.

14 63. But in an e-mail exchange with the chancellor and other trustees,
15 Trustee Williams offered to deliver the invocation at that next Opening Session.
16 Wagner responded: "As for the invocation, John, give 'em hell!" Williams'
17 rejoinder was to explain that he was searching the internet for a prayer that would be
18 yet more provocative and "liven things up a bit." The chancellor responded: "Great!
19 Thank you."

20 64. At its November 2008 meeting, the Board voted to retain, at public
21 expense, new counsel to handle all prayer-related matters. In doing so, the Board
22 ignored objections by Professor Westphal and Ms. Mockett, as well as by Trustee
23 Lang, who, as one of three trustees to cast a 'no' vote, stated that continuing to fight
24 the prayer issue would be "wasteful spending" and that he would prefer to replace
25 the prayer with a "thought for the day" or silent reflection.

26 65. In December 2008, Plaintiffs' counsel wrote to the District for the
27 fourth time. They inquired whether there would be official prayer at the January
28 2009 Chancellor's Opening Session. The District did not respond. But Trustee

1 Williams did deliver the prayer, introduced by Trustee Fuentes, who asked the
2 audience to stand.

3 66. In February 2009, Plaintiffs' counsel sent a fifth letter, this time to
4 Saddleback College and its Foundation. The letter stated: "Because we understand
5 that the College and the Saddleback College Foundation may have independent
6 authority over the 2009 scholarship ceremony, we write to ask you to consider
7 refraining from including prayer at the event." The letter again explained that
8 delivering the official prayer was unconstitutional.

9 67. In response, the District's counsel wrote:

10 The Foundation is not directly involved in the awards ceremonies or the
11 invocations, but the South Orange County Community College District
12 and Saddleback College will review the invocation practice at
13 scholarship award ceremonies, as requested, for the purpose of
14 considering policies to clarify the purposes and procedures associated
15 with the invocations.

16 68. On information and belief, neither the District nor Saddleback College
17 have adopted any new policies or procedures regarding prayer at District or college
18 events.

19 69. In approximately March 2009, the Saddleback Foundation broke with
20 tradition by deciding not to take responsibility for planning the upcoming
21 scholarship ceremony.

22 70. Following on the Foundation's action, Saddleback's Associated Student
23 Government voted to take responsibility for planning the scholarship ceremony, with
24 the understanding that it would not include official prayer.

25 71. The Associated Student Government simultaneously passed a resolution
26 opposing "the inclusion of any school led worship, including prayer at the
27 Scholarship Awards Ceremony; the Commencement Ceremony; any in-service; staff
28

1 training event; or any other official college or district event at which students,
2 faculty, and staff are in or might reasonably be expected to be in, attendance.”

3 72. When, in late March 2009, Trustee Wagner learned that the Student
4 Government, rather than the Saddleback Foundation, would be planning the
5 scholarship ceremony, he wrote an e-mail to the chancellor, Trustees Williams and
6 Fuentes, and President Burnett, stating:

7 Adults need to plan this, adults that we trust and that will include,
8 among other things, a responsible invocation. . . . I’m sorry, but I just
9 don’t trust the Saddleback ASG. They passed an anti-invocation
10 resolution not long ago

11 73. When the chancellor asked Wagner whether he preferred to have a
12 trustee or a student deliver the invocation at the ceremony, Wagner responded that
13 Trustee Williams should deliver it, “so that we send the message that we’re behind
14 the invocations, aren’t running scared of Americans United [i.e., Plaintiffs’ counsel],
15 and so as not to put a student in an awkward position.”

16 74. Around this time, Burnett informed members of the Saddleback
17 community that he, not the Saddleback students, would be deciding whether to
18 include official prayer. And he told Board members and the chancellor that he had
19 decided that “there will be an invocation.”

20 75. During this same period, students, faculty, and others again spoke out
21 against the prayer practice. Among others, Ashley Mockett wrote to the Board and
22 to President Burnett, opposing the inclusion of official prayer in the upcoming
23 scholarship ceremony and commencement, both of which she would be attending.
24 Another student wrote to ask Burnett to eliminate official prayer from college events
25 if he could not articulate a reason for including it. The Anti-Defamation League, a
26 national civil-liberties organization dedicated to ending religious discrimination,
27 likewise asked Burnett to eliminate the official prayers. And Stephanie Campbell,
28 a former Saddleback student and the president of the Orange County chapter of

1 Americans United for Separation of Church and State, urged the Board to “respect
2 those students who oppose prayer at school events” and to “reject an intermingling
3 of religiosity with education.”

4 76. Despite the overwhelming opposition to the prayer practice, Trustee
5 Williams delivered an official prayer at the May 2009 scholarship ceremony.

6 77. Mockett and other students had planned to oppose the prayer, and hence
7 were contemplating walking out of the prayer portion of the ceremony in silent
8 protest. But Lise Telson, Saddleback’s Director of Student Services, urged them not
9 to stage any protest. The students honored that official’s request, and so were
10 present for, and offended by, the prayer.

11 78. Then, at the 2009 commencement, Trustee Fuentes delivered an official
12 prayer in which he invoked God many more times than in his previous prayers. He
13 began with: “Almighty and eternal God, you in whom America proclaims, ‘In God
14 We Trust,’ you the one to whom America declares ourselves, ‘One Nation Under
15 God,’ you whom our leaders beseech when they say, ‘God Bless America,’ we thank
16 you for this beautiful morning of celebration.”

17 79. Mockett, who was graduating that day, held up a sign from the student
18 section reading “Respect Everyone’s Beliefs.” As they had done in 2007 and 2008,
19 Professor Westphal and other faculty also held up signs opposing the prayer.

20 80. An Orange County resident later wrote to Burnett and the Board, stating
21 that he found it “disturbing to learn that the President of Saddleback College is
22 encouraging invocations and prayers during commencement and other school
23 events.” He explained that the prayer practice violated the separation of church and
24 state, and added, “I strongly suspect that Mr. Burnett’s effort is . . . about promoting
25 a conservative religious agenda.”

26 81. At the August 2009 Chancellor’s Opening Session, the Board and the
27 chancellor continued to stir the pot, injecting even more state-sponsored religion into
28 the event. Trustee Wagner invited the assembled faculty and staff to stand for an

1 invocation “[i]n recognition of this country’s rich religious heritage.” Trustee
2 Williams then offered this extended prologue:

3 Before the invocation, I thought I’d tell a little Biblical story.

4 Today’s story is about Jonah. In grade school one day, a little girl
5 spoke to her teacher about Jonah and how he was swallowed by a
6 whale. The teacher said it was physically impossible for a whale to
7 swallow a human because even though they’re a large mammal they
8 have very small throats. The little girl said, “But how can that be?
9 Jonah was swallowed by a whale, and the Bible says so.” Again the
10 teacher said it’s physically impossible for a whale to swallow a human.
11 Undaunted, the little girl said, “When I get to heaven, I will ask Jonah.”
12 To this the teacher replied, “What if Jonah has gone to hell?” The little
13 girl replied, “Then *you* can ask him.”

14 Please join me in the invocation now.

15 The prayer followed.

16 82. To conclude the Opening Session, the chancellor showed the faculty
17 and staff an audiovisual presentation projected onto a large screen. The presentation
18 consisted of some forty-six slides accompanying the song “God Bless the USA.”
19 The slides were mostly photos of American flags and members of the armed forces,
20 including photos of soldiers praying and receiving ashes on their forehead for Ash
21 Wednesday. The presentation concluded with two images of uniformed
22 servicemembers carrying a flag-draped coffin, with superimposed text reading:

23 Only two defining forces have ever offered to die for you. Jesus Christ
24 and the American G.I. One died for your soul, the other died for your
25 freedom.

26 83. At the next Board meeting, several faculty members, including
27 Professors Westphal and Cesareo-Silva, publicly objected to the prayer and the “God
28 Bless the USA” presentation. One of the faculty members explained that the

1 presentation was disrespectful to those in the audience who did not subscribe to the
2 religious beliefs that it promoted, as well as to anyone who considers religious
3 appeals to be private acts that are inappropriate at secular, public events. She stated
4 that the District owed an apology to college staff and faculty, as well as to members
5 of the community.

6 84. The sole response from the District was the chancellor’s statement that
7 *he* had not been offended — a view of the presentation that was unsurprising since
8 the chancellor had been the one to direct that the presentation be shown.

9 85. The next Chancellor’s Opening Session will be held on or about January
10 6, 2010; Saddleback’s next scholarship ceremony will be held in May 2010; and
11 commencement is scheduled for May 21, 2010.

12
13 **COUNT ONE**

14 **(Federal Establishment Clause Violation)**

15 86. Defendants’ actions set forth in paragraphs 1 through 85, fully
16 incorporated here, entitle Plaintiffs to relief under 42 U.S.C. § 1983 because
17 Defendants, acting under color of law, have subjected Plaintiffs to a deprivation of
18 their rights under the Establishment Clause of the First Amendment to the U.S.
19 Constitution, as applied to the states by the Fourteenth Amendment. The
20 Establishment Clause provides that “Congress shall make no law respecting an
21 establishment of religion.” U.S. CONST. amend. I.

22 87. Defendants’ practice of delivering, or causing to be delivered, official
23 prayer, making religious presentations (such as the “God Bless the USA”
24 presentation), and disparaging members of minority faiths and nonbelievers on the
25 basis of religion at Saddleback College and District events for college students or
26 faculty (including scholarship ceremonies, graduations, and Chancellor’s Opening
27 Sessions) violates the Establishment Clause because:
28

- 1 a. The practice coerces students, faculty, and others to be exposed
- 2 to, and participate in, prayer and religious rituals and activities.
- 3 b. The practice endorses and prefers religion over nonreligion, as
- 4 well as Christianity over minority faiths.
- 5 c. The practice’s primary purpose is religious.
- 6 d. The practice’s principal and primary effect is to advance
- 7 religion.
- 8 e. The practice excessively entangles government with religion.
- 9

10 **COUNT TWO**

11 **(Violation of CAL. CONST. art. I, § 4)**

12 88. Defendants’ actions set forth in paragraphs 1 through 85, fully
13 incorporated here, violate Article I, section 4, of the Constitution of the State of
14 California, which provides that “[f]ree exercise and enjoyment of religion without
15 discrimination or preference are guaranteed,” and that “[t]he Legislature shall make
16 no law respecting an establishment of religion.” CAL. CONST. art. I, § 4.

17 89. Defendants’ practice of delivering, or causing to be delivered, official
18 prayer, making religious presentations (such as the “God Bless the USA”
19 presentation), and disparaging members of minority faiths and nonbelievers on the
20 basis of religion at Saddleback College and District events for college students or
21 faculty (including scholarship ceremonies, graduations, and Chancellor’s Opening
22 Sessions) violates the Constitution of the State of California, Article I, section 4,
23 because:

- 24 a. The practice coerces students, faculty, and others to be exposed
- 25 to, and participate in, prayer and religious rituals and activities.
- 26 b. The practice endorses and prefers religion over nonreligion, as
- 27 well as Christianity over minority faiths.
- 28 c. The practice’s primary purpose is religious.

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- d. The practice’s principal and primary effect is to advance religion.
- e. The practice excessively entangles government with religion.

COUNT THREE

(Violation of CAL. CONST. art. XVI, § 5)

90. Defendants’ actions set forth in paragraphs 1 through 85, fully incorporated here, violate Article XVI, section 5, of the Constitution of the State of California, which provides that “[n]either the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose.” CAL. CONST. art. XVI, § 5.

91. Defendants’ practice of delivering, or causing to be delivered, official prayer, making religious presentations (such as the “God Bless the USA” presentation), and disparaging members of minority faiths and nonbelievers on the basis of religion at Saddleback College and District events for college students or faculty (including scholarship ceremonies, graduations, and Chancellor’s Opening Sessions) violates Article XVI, section 5, of the Constitution of the State of California because it constitutes official action that has the effect of promoting religious and sectarian purposes. Specifically, through their practice, Defendants lend the state’s prestige and power to religious proselytization and practice.

1 **PRAYER FOR RELIEF**

2 Plaintiffs therefore respectfully request the following relief:

- 3 a. A declaratory judgment, under 28 U.S.C. §§ 2201 – 2002 and 42 U.S.C.
4 § 1983, against all Defendants in their official capacities, that
5 Defendants’ practice of offering, or causing to be offered, official
6 prayer and religiously themed programming at Saddleback College and
7 District events for college students or faculty (including scholarship
8 ceremonies, graduations, and Chancellor’s Opening Sessions) violates
9 the Establishment Clause of the First Amendment to the U.S.
10 Constitution, as well as Article I, section 4, and Article XVI, section 5,
11 of the Constitution of the State of California.
- 12 b. Provisional relief, against all Defendants in their official capacities,
13 prohibiting Defendants from delivering, or causing or permitting to be
14 delivered, official prayer or religiously themed programming at
15 Saddleback scholarship ceremonies, Saddleback graduations,
16 Chancellor’s Opening Sessions, or any other Saddleback College or
17 District event for college students or faculty, until such time at which
18 the Court issues a final judgment in the case. A motion for provisional
19 relief and supporting documents will follow.
- 20 c. A permanent injunction, against all Defendants in their official
21 capacities, prohibiting Defendants from delivering, or causing or
22 permitting to be delivered, official prayer or religiously themed
23 programming at Saddleback scholarship ceremonies, Saddleback
24 graduations, Chancellor’s Opening Sessions, or any other Saddleback
25 College or District event for college students or faculty.
- 26 d. Nominal damages of one dollar from Defendants Wagner, Williams,
27 Fuentes, Mathur, and Burnett, in their individual capacities, for
28 violating Plaintiffs’ federal and state constitutional rights.

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- e. An order awarding Plaintiffs all costs incurred in this litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988.
- f. Any other relief that the Court deems just and proper.

Respectfully submitted,

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