



November 5, 2009

CEASE AND DESIST

Via U.S. Mail & facsimile (916) 558-2149

Kathryn E. Jeffery
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Via U.S. Mail & facsimile (916) 558-2632

Michael C. Poindexter
Vice President of Student Services
Sacramento City College
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Re: Unlawful recall and retaliation against Steve Macias, Associated Student Government President

Dear Dr. Jeffery and Mr. Poindexter:

Steve Macias, the Associated Student Government (ASG) President at Sacramento City College (College), has retained the Alliance Defense Fund regarding a possible violation of his constitutional and statutory rights. ADF is a legal alliance that defends America's first liberty—religious freedom. The ADF Center for Academic Freedom is dedicated to ensuring that religious students enjoy rights to speak, associate, participate, and learn on an equal basis as students of different faiths or of no faith at all.

According to our information, the ASG and several College officials have engaged in a retaliatory and discriminatory campaign to recall Mr. Macias as ASG president simply because he refused to unlawfully censor an off-campus group who participated in the College's Constitution Day. As a result, Mr. Macias is being subject to a procedurally defective recall effort, is the target of ultra vires and retaliatory resolutions by the ASG Senate, and has been singled out for discriminatory treatment by College officials simply because he is a Christian. Although Mr. Macias notified Vice President Poindexter of this untenable situation, these violations have gone uncorrected. Mr. Macias now seeks immediate relief.

Factual Background

Mr. Macias began his term as ASG President in May 2009. At the beginning of the College's fall 2009 semester, Mr. Macias received an email from the Genocide Awareness Project (GAP) seeking permission to participate in the College's Constitution Day on September 17, 2009. Any person or group desiring action by the ASG may email the President and request inclusion on a future agenda. As you may know, the College's Constitution Day is a yearly tradition when ASG distributes copies of the Constitution to students and invites speakers to address the importance of our Nation's social contract. For Mr. Macias, however, Constitution Day initiated a campaign by College administrators and ASG members to retaliate and discriminate against Mr. Macias, and—ironically—violate his constitutional rights.

As he would have done with any request, Mr. Macias placed GAP on the ASG agenda for consideration. On September 2, 2009, the ASG reviewed several applications of groups and speakers to participate in Constitution Day. ASG voted to include the following off-campus groups in the festivities: the Laotian Community Development Center; Paul Smith, a political candidate running for Congress; Craig DeLuz; and GAP. ASG members did not inquire into what kind of organization GAP is, but simply approved its request to erect a display on campus on September 16 – 17.

The GAP Display

On September 16, ASG advisor Lee Weathers-Miguel repeatedly called Mr. Macias on his cell phone while Mr. Macias was in class. Mr. Macias stepped out of class to answer Mr. Weathers-Miguel's phone call and was told to "stay there, we're coming to get you." Shortly thereafter, Messrs. Weathers-Miguel and Michael Poindexter arrived and asked Mr. Macias to accompany them to a conference room upstairs. In the conference room, Mr. Poindexter asked Mr. Macias if the GAP display was put together by the ASG. Mr. Macias told him that GAP asked to participate in Constitution Day, which the ASG approved. Mr. Weathers-Miguel said Mr. Macias never mentioned that GAP was a pro-life display. Mr. Weathers-Miguel said that the event would have been okay if ASG had also invited Planned Parenthood to campus, but that GAP could not stay. Both Weathers-Miguel and Poindexter said that GAP needed to leave campus immediately and instructed Mr. Macias to remove it. Mr. Macias refused to do so because he knew that he could not censor GAP because of the viewpoint or content of its speech.

When it became apparent that Mr. Macias would not comply with these requests to censor GAP, Weathers-Miguel told Mr. Macias that GAP needed to turn its displays around so that students do not see them. Mr. Macias informed Weathers-Miguel and Poindexter that GAP was permitted to be on campus, but that he would relay the College's concerns to GAP personnel. Poindexter then left the conference room and Weathers-Miguel told Mr. Macias that he made him look like an "ass" and "I'm not going to forget this."

Mr. Macias then spoke with GAP personnel. GAP refused to move because of its constitutional right to speak on the campus. Mr. Macias then went to Mr. Poindexter's office and told him the same. Mr. Poindexter took no further action. The next day, September 17, students and personnel from the College's Health Services department staged a counterprotest

next to the GAP display and handed out information in favor of abortion rights to students, including information from Planned Parenthood, an off-campus organization. The speech activities continued peacefully and without harm to students or staff.

The Unlawful Recall and Retaliation

September 22, 2009 was the first time Mr. Macias learned of an effort to recall him as ASG President. The Queer Straight Alliance (QSA) and Equality California, an off-campus organization in favor of same-sex marriage, had a table on campus to collect signatures for a recall. Mr. Macias approached the table to determine who was being recalled, but before the QSA members determined who they were talking to, they told Mr. Macias that they were trying to recall “that right wing bastard because he’s pushing his values on us.”

On October 9, 2009, Mr. Weathers-Miguel emailed Mr. Macias and told him that he was removing Mr. Macias from an ASG trip to the National Conference on Student Leadership in Los Angeles, even though Mr. Macias planned the trip and received approval for ASG members to attend. Mr. Weathers-Miguel never responded to Mr. Macias’ repeated inquiries about why he could not attend.

On October 12, 2009, Mr. Macias read in the College newspaper that a recall vote had been scheduled for October 20-21. In order for a recall to occur the ASG Handbook states that a “petition containing signatures equal to 50 percent of the number of total votes cast in the last general election shall be a valid petition. The petition shall be presented to the Judicial Branch, and upon validation of the signatures, an election shall be called.” See ASG Handbook, Constitution Art. V(1d). Further, once the Judicial Branch validates the signatures, the Commissioner of Student Affairs is charged with setting the recall schedule and presenting this schedule to the ASG for a vote. See ASG Bylaws § 2.2.4. However, in this circumstance the recall signatures were neither presented to nor validated by the Judicial Branch of ASG. Chief Justice Dina Kirven wrote that she was “informed of the signature verification.” In other words, she did not verify the signatures. Instead, Mr. Weathers-Miguel unilaterally informed the Chief Justice that the signatures were valid. Moreover, the Student Affairs Committee “voted” on setting the recall election via text messages and email, neither of which are valid forms of meetings under the ASG Constitution and Bylaws. No one, including Mr. Weathers-Miguel, even informed Mr. Macias of the fact that the recall vote was set to occur or the date of the recall vote. These acts denied Mr. Macias the process he is due under the ASG Constitution and Bylaws.

Additionally, it should be noted that Monica Guzman, Commissioner of Student Affairs, is also being recalled. Ms. Guzman is the chair of the election committee and would have been responsible for the operation of the recall vote and ballot tabulation. She is apparently being recalled simply because she participates in College Republicans with Mr. Macias and is not accused, falsely or otherwise, of any wrongdoing. In fact, Mr. Weathers-Miguel admitted in an October 26, 2009 article in the student newspaper, *The Sac City Express*, that SGA did not follow proper procedures in setting Ms. Guzman’s recall election, but that the election would go forward anyway.

On October 13, 2009, Mr. Macias met with Mr. Poindexter to discuss the recall. Mr. Poindexter told Mr. Macias, "you can resign and be yourself, or fall into line with ASG by changing what you're doing and stay president of ASG." In reference to Mr. Macias not censoring the GAP display, Mr. Poindexter also told Mr. Macias, "I don't see anything in the Bible that says you should do what you're doing," and asked "What does your God think about what you're doing?"

On October 15, 2009, Mr. Macias sent a letter to Dr. Jeffery asking about the recall election. The following Monday, October 19, 2009, the recall election was cancelled. Nevertheless, Debby Dixon, Vice President of ASG, called a special meeting of ASG for October 21, 2009 and posted the meeting's agenda, but not its time, on October 20th. Ms. Dixon did not provide written notice to each member of SGA. Pursuant to the Brown Act, the presiding officer of a public body or a majority of its members may call a "special meeting" by providing 24 hours notice specifying the time and place of the meeting and business to be conducted. Cal. Gov't Code §54956. An "emergency meeting" may be called only if there is a "work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both," or if there is a "crippling disaster, mass destruction, terrorist act, or threatened terrorist activity." Cal. Gov't Code § 54956.5(a-b). Mr. Macias attended the October 21 meeting and informed the ASG that it could not convene a special or emergency meeting under the Brown Act because the criteria for holding such meetings were not met. Despite this, Mr. Weathers-Miguel told the ASG that its meeting was legitimate, so the ASG continued the meeting under the leadership of Ms. Dixon. ASG voted to reset the recall vote for October 27-28, even though the proper procedures for the recall had still not been complied with by the ASG.

During this time, various members of the ASG, including Ms. Dixon, as well as QSA members, were apparently telling large numbers of people on campus that Mr. Macias had misrepresented the nature of the GAP display during the meeting, when that was demonstrably false. These same individuals also insinuated that if they knew the GAP display had a pro-life viewpoint, they would have censored it. *The Express* printed their false claims on October 12, 2009, but retracted them in a small statement on October 26, 2009, one day before the rescheduled recall vote, but Ms. Dixon in particular continued to defame Mr. Macias in interviews with the *Express* and accused him of misrepresentation during the meeting.

The recall vote occurred on October 27-28, but Mr. Macias learned through third parties on November 2, 2009 that the administration may be voiding the recall results because the October 21 ASG Senate meeting violated the Brown Act.

The Unlawful and Retaliatory ASG Senate Resolution

On November 2, 2009, the ASG Senate passed a resolution attempting to suspend Mr. Macias' presidential duties. The resolution stated: "Shall be enacted that any A.S.G. member having either recall or impeachment proceedings sought against them, shall be placed on indefinite suspension of duties as not to hinder the business of A.S.G. as a whole." Ms. Dixon informed Mr. Macias that his duties were suspended indefinitely because Mr. Macias allegedly violated Article IV § 1 and Article II § 2a of the ASG Constitution. Ms. Dixon said that the resolution was passed in accordance with Article I § 5c.

The ASG Senate's resolution is ultra vires and has no binding impact upon Mr. Macias. Dixon alleges that Mr. Macias violated Article IV § 1. That section states:

The President, Vice President, Senators, Commissioners, and Justices of the ASG shall be removed from office on impeachment for and conviction of any illegal behavior while fulfilling the duties of his/her position, including representing the ASSCC at any time or while on SCC grounds. Gross negligence of his/her official duties may also justify removal. Gross negligence includes failure to comply with the ASSCC Bylaws, Attendance Section, or to meet the eligibility requirements of his/her position violating this Constitution and Bylaws.

ASG Constitution Art. IV § 1. Mr. Macias is not the subject of an impeachment proceeding, nor has he been convicted of any illegal behavior, nor has he violated the ASG Constitution or Bylaws. ASG, not Mr. Macias, has failed to follow procedures outlined in its Constitution and Bylaws, and has committed gross negligence in carrying out its public duties and waging an unlawful and retaliatory campaign to force Mr. Macias out of office and punish him for simply refusing to engage in unconstitutional viewpoint discrimination.

Ms. Dixon also believes that the ASG Senate's resolution was warranted because Mr. Macias violated Article II § 2a. That section states:

The President shall have power to set all agendas, which shall be publicly posted no later than 72 hours before the beginning of a regular session of the Legislative Branch. The President may require in writing the opinion of the Executive Officers of the Cabinet upon any subject relating to the duties of their respective offices.

ASG Constitution Art. II § 2a. It is obvious that the ASG Senate has no idea what it is charging Mr. Macias with violating. This section describes the powers of the ASG President and does not specify any grounds for relieving him of his duties. A government only has the power granted to it by its governing documents, any actions outside of those documents are unlawful. Besides being simply illogical, the ASG Senate's resolution strays far from its vested authority and constitutes unlawful ultra vires actions that are void, ab initio.

DEMAND

The unconstitutional retaliation and discrimination against Mr. Macias must cease immediately. The ASG's limited governing authority is now being grossly abused by members who are retaliating and discriminating against Mr. Macias because of his religious and political views, and because he failed to unconstitutionally censor speech on campus. ASG is violating Mr. Macias' rights to due process and equal protection of law that are outlined in ASG's governing documents. ASG may not act outside the scope of its authority. Mr. Macias acted appropriately when he refused to remove GAP from campus because of the viewpoint of its message. But instead of garnering the support of College officials, who are charged with

upholding the Constitution, Messrs. Poindexter and Weathers-Miguel have also sought to retaliate and discriminate against Mr. Macias because of his religious and political beliefs.

The actions of the ASG Senate, Messrs. Poindexter and Weathers-Miguel, and any other College official involved constitute the following: First Amendment retaliation, the deprivation of due process and equal protection of law under the Fourteenth Amendment, multiple violations of the Brown Act, violations of the common law duties of good faith and fair dealing, ultra vires actions by a public body, conspiracy to violate civil rights, and civil conspiracy. You are hereby put on notice of these violations and Mr. Macias' demands under the Brown Act, Cal. Gov't Code § 54960.1(b).

Please respond to this letter in writing by close of business on **November 10, 2009** indicating that you are voiding the recall election results, that the ASG's actions during the October 21 meeting are null and void under the Brown Act, ASG's November 2, 2009 resolution divesting Mr. Macias of his presidential duties is void or dissolved, that the College will protect Mr. Macias from further retaliation by Lee Weathers-Miguel, Michael Poindexter and the ASG, and that Mr. Macias' constitutional and statutory rights will be respected.

Please further respond by **November 19, 2009** to the following Public Records Act request we hereby make pursuant to Cal. Gov't Code §§ 6250 to 6277. We request access to and a copy of the following documents:

1. All communications (including electronic) sent or received by President Kathryn E. Jeffery concerning: Steve Macias, the Genocide Awareness Project display on campus, Constitution Day 2009, the October 20-21 recall election, the October 27-28 recall election, and the November 2, 2009 resolution by ASG;
2. All communications (including electronic) sent or received by Vice President of Student Services Michael C. Poindexter concerning: Steve Macias, the Genocide Awareness Project display on campus, Constitution Day 2009, the October 20-21 recall election, the October 27-28 recall election, and the November 2, 2009 resolution by ASG;
3. All communications (including electronic) sent or received by Lee Weathers-Miguel, Student Leadership and Development Specialist concerning: Steve Macias, the Genocide Awareness Project display on campus, Constitution Day 2009, the October 20-21 recall election, the October 27-28 recall election, and the November 2, 2009 resolution by ASG;
4. All communications (including electronic) sent or received by ASG Senators Paul Xiong, Ruben Moody, Jelani Freitas, Anthony Dell'Aringa, Angel Rojas, Kyle Fall, Renee Worley, Yana Kulinich, and Marianna Rakhuba concerning: Steve Macias, the Genocide Awareness Project display on campus, Constitution Day 2009, the October 20-21 recall election, the October 27-28 recall election, and the November 2, 2009 resolution by ASG;
5. All communications (including electronic) sent or received by ASG members Debby Dixon, Sarai Rodriguez, Jeannette Carpenter, Dina Kirven, Monica Guzman, Navid Bayar, La Donya Reed, Justin Turner, and Kacey Poiesz concerning: Steve Macias, the Genocide Awareness Project display on campus, Constitution Day 2009, the October 20-

21 recall election, the October 27-28 recall election, and the November 2, 2009 resolution by ASG.

If the College does not maintain these public records, please inform me of the proper custodian's name and address. If you choose to charge any fee for access to these records, please send me an invoice indicating the charges for each document. As provided in Cal. Gov't Code § 6253(c), I expect your response within ten business days. If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that we are prepared to pursue whatever legal remedy necessary to obtain access to these records. Willful violation of California's Public Records Act can result in the award of court costs and reasonable attorney fees. *See* § 6259(d).

If we do not hear from you by the dates set forth above we will advise our client of his rights to seek immediate redress of his grievances in federal court.

Very truly yours,



David J. Hacker
Litigation Staff Counsel
Alliance Defense Fund

cc: Los Rios Community College District Board of Trustees, *via facsimile* (916) 568-3023
Lee Weathers-Miguel, *via facsimile* (916) 558-2330