and procedures."

For the 2015-2016 academic year, budgeted revenues of Associated Students were about $3.7 million. Of that amount, the office of Student Organizations was allocated about $432,000. Prior to the Senate's November 18, 2015 amendment to the Standing Rules, RSOs, like The Koala, could receive up to a maximum of $1,000 per quarter for printed media costs. The 2015-2016 budget contained a $17,000 line item for these printed media costs. The Funding Guide also noted that the receipt of funding was not guaranteed and that not all media organizations "may not be fully funded in every circumstance for budgetary or other reasons." While ten or more RSOs requested print media funding between 2010 and 2013, for the Fall of 2015 only two RSOs applied for funding. Plaintiff was one of those and received $634 in funding for the Fall of 2015 and was approved for $453 for the Winter of 2016.

On November 18, 2015, the Senate, on a 22-2 vote, passed the Media Act. Among other things, the Media Act eliminated funding for all printed media, a funding source for RSOs like Plaintiff. It is this decision that gives rise to Plaintiff's request to restore or provide access to funding.

Plaintiff's Claims

The Koala publishes a satirical student newspaper at UCSD. It publish[illegible]

held its regular meeting where the Vice Chancellor of Student Affairs read the official statement denouncing the Koala for its article and several speakers objected to continued funding of The Koala. Ultimately, the Senate voted to end funding for RSOs seeking print media funding. The elimination of funding has allegedly caused Plaintiff to reduce the number of its yearly print publications (but not the on-line publications).[1]

In broad brush, Plaintiff contends that Defendants violated the Free Press and Free Speech Clauses of the First Amendment by "categorically refusing to provide campus activity fee funding for the publication of student print media." (FAC ¶¶ 84-87). Plaintiff seeks prospective injunctive relief, and not compensatory damages for lost funding.

DISCUSSION

The Motion for Preliminary Injunction

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). Preliminary injunctive relief is available if the party meets one of two tests: (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) the party raises serious questions and the balance of hardship tips in its favor. Arcamuzi v. Continental Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." Id. Under both formulations, however, the party must demonstrate a "fair chance of success on the merits" and a "significant threat of irreparable injury." Id; Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.,240 F.3d 832, 840-41 (9th Cir. 2001). Further, courts are required to consider the public interest where the public interest may be affected. In re Excel Innovations, Inc., 502 F.3d 1086, 1093 (9th Cir. 2007).

[1] Defendants represent that print media funding was on the Senate's agenda prior to publication of the article; and that a decision to terminate funding was also reached prior to learning of the publication of the dangerous places article.

Before turning to the relief requested, the court addresses Defendants' argument that this entire action is barred by the Eleventh Amendment.

The Eleventh Amendment

The Eleventh Amendment provides:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

The Eleventh Amendment extends to suits by citizens against their own States. Board of Trustees of the Univ of Alabama v Garrett, 531 U.S. 356, 363 (2001). The ultimate guarantee of the Eleventh Amendment is that non-consenting States or their agencies may not be sued by private individuals in federal court. Id. Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and "act[s] pursuant to a valid grant of constitutional authority." Kimel v. Florida Bd. of Regents, 528 U.S. 62, 73 (2000).

Under the doctrine developed in Ex parte Young, 209 U.S. 123, 166 (1908), actions brought against state officials to enjoin them from continuing to enforce allegedly unconstitutional state laws are not necessarily deemed actions against the state and are, therefore, not barred by the Eleventh Amendment. The Supreme Court recognizes that the "general criterion for determining when a suit is in fact against the sovereign is the effect of the relief sought." Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 107 (1984). The doctrine rests on the premise, or "fiction," "that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes. The doctrine is limited to that precise situation, and does not apply 'when 'the state is the real, substantial party in interest [] as when the 'judgment sought would expend itself on the public treasury or domain, or interfere with public administration.'" Id. "Naming state officials as defendants rather than the state itself will not avoid the Eleventh Amendment when the state is the real party in interest. The state is the real

party in interest when the judgment would tap the state's treasury or restrain or compel government action." Almond Hill Sch. v. U.S. Dep't of Agric., 768 F.2d 1030, 1033 (9th Cir. 1985).

"Ex parte Young cannot be used to obtain an injunction requiring the payment of funds from the State's treasury." Virginia Office for Protection and Advocacy v, Stewart, 563 U.S. 247, 256-57 (2011). Prospective financial consequences to the state are acceptable, and do not interfere with a state's Eleventh Amendment rights, where the fiscal effects "are necessarily incident to compliance with prospective orders." Almond Hill, 768 F.2d at 1034.

Here, the relief requested in the FAC constitutes a claim against the state treasury and interferes with the state's administration of UCSD. At the heart of Plaintiff's claim is a request to provide/restore funding from the state. Plaintiff seeks the restoration of funding for those RSOs who previously received funding for print media. The funding is not incidental to Plaintiff's claims. Rather, the receipt of funding **is** Plaintiff's remedy. Plaintiff cannot avoid the Eleventh Amendment by recasting its claim as one for prospective injunctive relief, when that relief is solely dependent upon obtaining funds from the state treasury.

While Plaintiff characterizes its remedy as one for prospective injunctive relief only, Plaintiff ignores that this remedy would require direct payments by the state from its treasury to Plaintiff and other RSOs who had their funding eliminated when the Associated Students determined to no longer fund any print media request. In Council 31 of Am. Fed. of State, County & Munic. Workers, AFL-CIA v. Quinn, 680 F.3d 875 (7th Cir. 2012), plaintiff brought an action to enjoin the State of Illinois from implementing a pay freeze for state employees. The Seventh Circuit concluded that plaintiff's claims were barred by the Eleventh Amendment because the request for injunctive relief to enjoin implementation of the pay freeze "would require direct payments by the state from its treasury" to state employees. Such a result "would have an effect upon the state treasury that is not merely ancillary but is the essence of the

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Campaign v. King Cty., 781 F.3d 489, 499 (9th Cir. 2015).

To identify the relevant limited public forum for purposes of a First Amendment analysis, the court focuses "on the access sought by the speaker." Cornelius, 473 U.S. at 801. As Plaintiff seeks to restore and obtain access for funding for print media, the court agrees with Defendants, based upon the FAC's current allegations, that the relevant forum consists of Associated Students' funding of student print publications. Plaintiff seeks to expand the relevant forum to include Associated Students' rules and practices and funding activities of RSOs. (FAC ¶29). The court rejects Plaintiff's attempt to expand the scope of the forum beyond the funding of print media publications. The Associated Students is a student government organization charged with serving the diverse collective interests of the undergraduates at UCSD. The funds raised through the student activities are about $3.7 million. These funds support student organizations for such events as tournaments, competitions, sports clubs, concerts and other activities. To provide context, Plaintiff seeks to restore access to the $17,000 in budgeted funds for print media publications (Plaintiff received $634 in funding for Fall of 2015).

Having defined the limited public forum at issue, the court looks to the actions taken to close the forum to all RSOs receiving print media funding. "In a limited public forum, restrictions that are viewpoint neutral and reasonable in light of the purpose served by the forum are permissible." DiLoreto v. Downy Unif. Sch. Dist. Bd. Of Ed., 196 F.3d 958, 965 (9th Cir. 1999) (citing Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 829 (1995)). Rather than address the alleged restrictions in context of a limited public forum, Plaintiff largely responds to First Amendment issues in the context of a public forum.

In Rosenberger, a university student organization which published a newspaper with a Christian editorial viewport challenged the university's decision to deny funding for printing costs available to other student groups. The student organization was denied funds because it was considered a religious organization in light of its content.

The Supreme Court found that the government in a limited public forum may not