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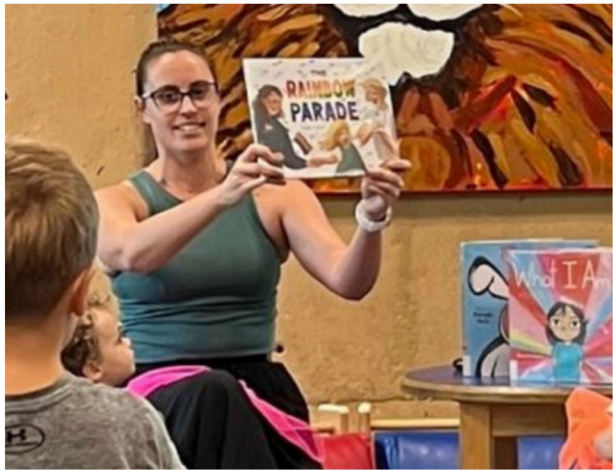
Dear Mayor Richard Bailey,

Our firm has been retained to represent Rachel Racz and Jessica Tompane, residents of Coronado, California. We write to bring your attention to numerous violations of state and federal law, including the Constitution, committed by the City of Coronado through the Coronado Public Library and its actions toward Mrs. Racz, Mrs. Tompane, and Tiny Patriots Story Time. We hope that you will be able to swiftly resolve this matter to avoid more significant legal action.

I. Factual Record

Rachel Racz and Jessica Tompane reside with their families in Coronado. This past year, they learned that, just blocks away from the base where Mrs. Racz's Navy SEAL husband is stationed and where Mrs. Tompane's former Navy SEAL husband was stationed, the Coronado Public Library has been exhibiting books with explicit sexual content to children aged one to four in its "toddler story time." Exhibit 1, Sexual Books. These books, and others exhibited on display in the children's book section throughout Pride Month, had depictions of naked people in sexualized situations, including bondage, or juxtaposed with naked children, as well as other shockingly prurient adult content, including depictions and descriptions of sexual kinks and exposed genitalia. *Id.* When parents raised concerns of presenting sexualized content to children and toddlers with the Library's director, Shaun Briley, he accused parents of harassment. In response to emails from Mrs. Tompane, he said he would not be beholden to "ancient texts," even though no one had based their objection to showing children explicit material on such texts. Exhibit 2, Briley Response. Although parents,

including Mrs. Tompane, have attempted to have the Library create a policy on inappropriate books and their presentation, including by bringing the issue before the City Council on multiple occasions, the City and Library have done nothing. Below are examples of images from books publicly read, exhibited, or available in the children’s section of the Library.



In response to this, Mrs. Racz launched Tiny Patriots Story Time (“TPST”). Under this program, local veteran heroes and members of the community would volunteer to read patriotic, historical, and family-oriented children’s books to toddlers at the Library. Exhibit 3, TPST News Article. But the Library refuses to allow Mrs. Racz to host these events at the Library—despite letting other similarly situated groups host their own reading hours and events. Exhibit 4, TPST Rejection Emails. The Library has given shifting rationales for its refusal, and it recently cited a non-existent policy banning all volunteers from hosting readings, even though other groups have used volunteers for this purpose. *Id.* As a result, Mrs. Racz and Mrs.

Tompane are now forced to host the group at the local community center at their own expense. Below are examples of books that are read at TPST events.



More recently, the Library erected a Hanukkah display, complete with recommended books, and hosted a Hanukkah reading hour. Mrs. Racz and other parents were happy about the Hanukkah display and asked if the Library could also exhibit a Christmas display and host a story time about the nativity (the origins of Christmas). The Library responded that it could not celebrate or promote any Christian version of Christmas because that would be religious and the Library could only host a Santa Claus event instead. The Library asserted that “as a government agency [it] does not do nor is it allowed to do religious programming. The Hanukkah story time is not a religious story time—it is about the culture and traditions of Hanukkah. Just as Santa is a cultural not religious figure.” Exhibit 5, Facebook Message. The Library in parallel had exhibits for Hanukkah and Christmas books,

but allowed only “secular” books. Below are the photos of the “secular” Hanukkah display and the Christmas books denied for being “religious.”



Hanukkah Exhibit and Books



Denied Christmas Books

II. Notice of Violations

It take no lawyer to see that the City of Cornado, through its Public Library, is in violation of federal and state law, including the First Amendment to the United States Constitution, or that these violations are depriving Mrs. Racz, Mrs. Tompane, and other parents of their constitutional rights. Nevertheless, given that the Library has not corrected these flagrant violations itself, we walk through some of them here at a high level. These represent but a sample of the ways the City and the Library have departed from their obligations.

A. The Free Speech Clause

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). “[A] government, including a municipal government vested with state authority, ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). There is no question that the Library has restricted Mrs. Racz’s and other parents’ speech based on what they sought to say.

Public libraries that allow for public events hosted by community members are typically considered public forums. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 44 (1983). Any restriction in a public forum must be viewpoint neutral and reasonable. *Id.* Mrs. Racz and TPST are being excluded from hosting reading events based strictly on their viewpoint and desire to read pro-American, family-friendly books in a military and veteran-centric community. The library allows other similarly situated groups to host their reading hours and events in various rooms of the library, but it does not allow Mrs. Racz or Mrs. Tompane to host TPST and other events. The only difference is the viewpoint of their speech. This discrimination is itself sufficient to violate the Constitution. But the Library’s shifting explanation for rejecting Mrs. Racz’s bookings is further evidence of the Library’s animus toward her and similar parents based on their viewpoint. The explanations appear pretextual given that similar groups are allowed to perform the same functions that Mrs. Racz seeks. But even if the policies have informally changed, it is apparent that this was done to thwart the ability of Mrs. Racz and similarly minded parents to host events based on their viewpoint, and that is equally unlawful.

Mrs. Racz has also been unlawfully excluded from hosting readings from a Christian viewpoint. It is also beyond dispute that a government entity like a library cannot reject a presentation from a religious viewpoint (including a “Christian viewpoint”) when it would allow a similar event from a secular viewpoint. *See, e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111 (2001); *Rosenberger*, 515 U.S. at 831. Yet that is precisely what the Library has done in allowing a Santa-themed story time and display about Christmas yet rejecting any one of either from a Christian viewpoint. And more generally, because the Library would allow the celebration of any holiday through story times and other activities, it cannot reject a similar activity held from a religious perspective, whether for Christmas or Easter.

B. The Free Exercise Clause

The First Amendment, through the Free Exercise Clause, also bars the government from “prohibiting the free exercise” of religion. It protects from government action that “discriminates against some or all religious beliefs.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Governments are “obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [a person’s] religious beliefs.” *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018). And the government violates that principle of neutrality where it “treat[s] any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

There is no question that the Library’s actions stem from an overt hostility and animus towards religion, particularly the religious beliefs of Mrs. Racz, Mrs. Tompane, and other community members. That the Library would have the gall to make comments quite similar to those that the Supreme Court has found to violate constitutional protections and on the same issue is astounding. *See Masterpiece Cakeshop*, 138 S. Ct. at 1731. But the Library has further clarified explicitly that it is hostile toward any display of what it deems religion—not only Mrs. Racz’s Christian beliefs, but also those of Judaism in characterizing one of its holidays as being as “secular as Santa.” And it has put this animus into practice by refusing to display books or allow a story time with any Christian elements about Christmas, even while promoting a secular version for the same holiday. This bias and these actions are inconsistent with the requirements of the First Amendment. The Library also cannot use the Establishment Clause as a shield. There is no question that even a government-created display for the holiday season can include material with Christian content about Christmas. *Lynch v. Donnelly*, 465 U.S. 668, 685–87 (1984).

C. Equal Protection

The Fourteenth Amendment “protects religious observers against unequal treatment” and against “laws that impose special disabilities on the basis of religious status.” *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2254 (2020) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 460 (2017)). But the government also cannot exclude some religions based on the particular character of their beliefs. *See id.* at 2254–55. Yet the Library is doing precisely that by fully celebrating what it considers a holiday in Hanukkah that is secular enough while barring mention of the history and origins of Christmas. Is the Library really contending that the miracle of one night’s oil lasting eight nights is less religious than a story about how beloved fictional character Pete the Cat saves Christmas? Or is it that the Library considers Hanukkah a ‘lesser’ holiday and so allows readings about the Maccabees when it would disallow books about Sandy Koufax not pitching on Yom Kippur? Leaving this theological parsing to municipal officers violates core constitutional commitments.

D. California Penal Code Section 313.4

Finally, we remind the City and Library of California Penal Code Section 313.1:

Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4.

This criminal statute can be enforced by prosecutors not beholden to the City or Library, and there are potential civil remedies for violations of criminal laws like this as well. More immediately, it further highlights how far the Library’s conduct departs from the law. Even as the Library exhibits sexually explicit material in the children’s section and in sponsored readings, the Library refuses to allow the display or reading of material protected by multiple facets of the Constitution.

III. Relief Sought

We respectfully demand that the City and Library permit Mrs. Racz, Mrs. Tompane, and TPST to host their events—both patriotic and religious—at the Library. They must be permitted to reserve and use library rooms for public reading hours that they conduct—even if the readings contain religious content. If any new or

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nonpublic policies would prevent Mrs. Racz, Mrs. Tompane, and TPST from hosting these events for the public at the Library, those policies must be rescinded.

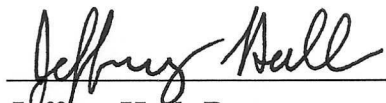
We also respectfully request that the City immediately review and amend its policies surrounding the presentation and exhibition of sexually explicit materials to minors through reading hours or special displays. Specifically, the Library must segregate material with depictions of adult nudity, genitalia, and sexual acts from the children's section (for ages 0-12) and must not present materials with such content during the children's section story times. We further request that the City and Library investigate whether the actions of the Library and its staff have violated federal and state laws and discipline accordingly.

IV. Request for Response

The purpose of this letter is to encourage you to resolve our clients' claims in an expeditious manner, without the need for further legal action. In the event you fail to take advantage of this opportunity, formal legal action is eminently justified. We further remind the City that a court may, in a lawsuit alleging violations of constitutional rights, award the prevailing party not only damages, but also attorney's fees. We are confident that a court would readily rule in favor of our clients.

If you are interested in resolving this matter without more formal proceedings, please contact us **within thirty (30) days** of your receipt of this letter.

Sincerely,



Jeffrey Hall, Partner

Ilya Shapiro, Counsel

Natalie Burkholder, Attorney

Ryan Hiepler, Attorney

cc: Mike Donovan, City Council
John Duncan, City Council
Casey Tanaka, City Council
Carrie Anne Downey, City Council
Johanna Canlas, City Attorney

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