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**VIA ELECTRONIC MAIL**

Mayor Anne Mallari  
Mayor Pro Tem Scott Minikus  
Council Member Frances Marquez, Ph.D.  
Council Member David Burke  
Council Member Bonnie Peat  
City of Cypress  
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Cypress, CA 90630

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Re: City Council Agenda Item No. 17

Dear Mayor, Mayor Pro Tem, and Council Members:

The First Amendment Coalition (“FAC”) is a nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. I am writing on behalf of FAC to protest the City’s conduct after the Event-News Enterprise published newsworthy information of public concern. As the Supreme Court and numerous decisions have confirmed, the First Amendment guarantees the right of the press to report the news no matter how inconvenient or embarrassing it may be to those in power, and the press may publish information of public concern even if someone within the City broke the law in disclosing it.

As reported in the [Event-News Enterprise](#) on September 13, the City has been sued by the Southwest Voter Registration Project under the California Voting Rights Act. In the same story, it was reported that the City Council twice voted in closed session, once 3-2 and once 5-0, to participate in mediation in an attempt to resolve the lawsuit.

Today’s City Council agenda [includes an item](#) contending that “the Event-News Enterprise’s decision to report on confidential closed session votes is regrettable and inconsistent with ethical journalism principles” and recommending “an investigation into the disclosure of the closed session information to the Event-News Enterprise.” I also understand the Mayor has [publicly accused](#) the Event-News Enterprise of “reckless reporting,” and the City Attorney demanded “a full retraction” without stating any specific errors.

I write to protest any veiled threats to intimidate the press arising from allegations of unethical or reckless behavior or plans to conduct a leak investigation. I presume the City is familiar with the

following principles, but I will describe them in the interest of avoiding misunderstanding and upholding freedom of the press.

The First Amendment was designed to “preserve an untrammelled press as a vital source of public information.” *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936). From the earliest days of this nation, the “right of free public discussion of the stewardship of public officials” has been “a fundamental principle of the American form of government.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964).

As the Supreme Court has confirmed, the “Constitution specifically selected the press” to “play an important role in the discussion of public affairs,” and “the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966).

Therefore, the First Amendment “gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people.” *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring).

An attack on the press “muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.” *Mills*, 384 U.S. at 219. The government’s function is to serve the people and defend the Constitution, not to “sit as some kind of journalism review seminar.” *Fletcher v. San Jose Mercury News*, 216 Cal. App. 3d 172, 187 (1989) (citation and quotation marks omitted). By condemning a newspaper as “unethical” or “reckless” simply for reporting the news and by demanding a retraction without naming any specific errors, the City’s actions undermine respect for press freedom.

Assuming a city official or employee committed a violation of law by disclosing matters discussed in a closed session, the First Amendment protects the Event-News Enterprise’s right to publish information of public concern. *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001) (noting “a stranger’s illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern” and holding media outlets could not be punished for publishing contents of illegally recorded conversation); *Landmark Commc’ns v. Virginia*, 435 U.S. 829, 837-38 (1978) (upholding media’s right to publish information about “confidential proceedings of the Judicial Inquiry and Review Commission”).

As the Court of Appeal has explained, the business of the press is “obtaining and publishing newsworthy information through routine reporting techniques,” and “ordinary news-gathering techniques ‘of course, include asking persons questions, including those with confidential or restricted information.’” *Ass’n of L.A. Deputy Sheriffs v. L.A. Times Commc’ns LLC*, 239 Cal. App. 4th 808, 819 (2015) (quoting *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519–20 (1986)).

If the City decides to investigate whether any conduct of its own officials or employees resulted in unlawful disclosure of information, it must bear in mind that California's reporter shield law guarantees absolute immunity against any demand by the city, civil or criminal, for "the source of any information" obtained or published by the Event-News Enterprise or "any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public." Cal. Const., art. I, § 2(b); see also Cal. Evid. Code § 1070(a); *Miller v. Superior Ct.*, 21 Cal. 4th 883, 899 (1999); *New York Times Co. v. Superior Ct.*, 51 Cal. 3d 453, 461 (1990); *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 119–20 (2007); *O'Grady v. Superior Ct.*, 139 Cal. App. 4th 1423, 1456–66 (2006).

In addition to immunity against discovery, California and federal law prohibit the issuance of a search warrant for or any search for and seizure of unpublished information, work product, or documentary materials of the Event-News Enterprise related to this matter. Cal. Penal Code § 1524(g) (citing Cal. Evid. Code § 1070); 42 U.S.C. § 2000aa; *Citicasters v. McCaskill*, 89 F.3d 1350, 1355 (8th Cir. 1996); *Morse v. Regents of the Univ. of Cal.*, 821 F. Supp. 2d 1112, 1121 (N.D. Cal. 2011).

Thank you for your attention to these matters. Please let me know if you have any questions.

Sincerely,

FIRST AMENDMENT COALITION



David Loy  
Legal Director