

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN CALIFORNIA**

Peter J. Eliasberg (SBN 189110)

peliasberg@aclusocal.org

Amanda C. Goad (SBN 297131)

agoad@aclusocal.org

Jonathan Markovitz (SBN 301767)

jmarkovitz@aclusocal.org

1313 West 8th Street

Los Angeles, CA 90017

Telephone: +1 213 977 9500

Facsimile: +1 213 977 5299

*Attorneys for Petitioners and Plaintiffs Alianza
Translatinx; C.A., a minor by and through his
Guardian ad Litem, E.S.; H.P., a minor, by and
through her Guardian ad Litem C.W.; and Erin
Spivey*

Additional attorneys for Petitioners and Plaintiffs listed on next page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ALIANZA TRANSLATINX; C.A., a minor by
and through his Guardian ad Litem, E.S.; H.P., a
minor, by and through her Guardian ad Litem
C.W.; and ERIN SPIVEY, as taxpayer,

Petitioners and Plaintiffs,

v.

CITY OF HUNTINGTON BEACH, a municipal
corporation; HUNTINGTON BEACH CITY
COUNCIL, as the governing body of the
Huntington Beach Public Library; ASHLEY
WYSOCKI, in her official capacity as the
Director of Community and Library Services for
Huntington Beach; and DOES 1-50, inclusive,

Respondents and Defendants.

Case No. 30-2025-01462835-CU-WM-CJC
[UNLIMITED CIVIL CASE]

**OPENING BRIEF IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Judge: The Honorable Lindsey Martinez

Dept.: C24
Hearing Date: August 22, 2025
Time: 10:00 A.M.

Action Filed: February 26, 2025

1 **AMERICAN CIVIL LIBERTIES UNION**
2 **FOUNDATION OF NORTHERN**
3 **CALIFORNIA**

4 Chessie Thacher (SBN 296767)
5 cthacher@aclunc.org
6 39 Drumm Street
7 San Francisco, CA 94111
8 Telephone: +1 415 621 2493
9 Facsimile: +1 415 255 1478

FIRST AMENDMENT COALITION

David Loy (SBN 229235)
dloy@firstamendmentcoalition.org
Ann Cappetta (SBN 354079)
acappetta@firstamendmentcoalition.org
534 4th Street, Suite B
San Rafael, CA 94901
Telephone: +1 415 460 5060

7 **JENNER & BLOCK LLP**

8 Andrew J. Thomas (SBN 159533)
9 ajthomas@jenner.com
10 2029 Century Park East, Suite 1450
11 Los Angeles, CA 90067
12 Telephone: +1 213 239 6900
13 Facsimile: +1 213 239 5199

Attorneys for Petitioners and Plaintiffs Alianza Translatinx; C.A., a minor by and through his Guardian ad Litem, E.S.; H.P., a minor, by and through her Guardian ad Litem C.W.; and Erin Spivey

13 **COMMUNITY LEGAL AID SOCAL**

14 Sarah Reisman (SBN 294393)
15 sreisman@clsocal.org
16 Katelyn Rowe (SBN 318386)
17 krowe@clsocal.org
18 Erica Embree Ettinger (SBN 321865)
19 eettinger@clsocal.org
20 Ryan M. Kendall (SBN 324714)
21 rkendall@clsocal.org
22 2101 North Tustin Avenue
23 Santa Ana, CA 92702
24 Telephone: +1 652 330 1559

Attorneys for Petitioner and Plaintiff Alianza Translatinx

TABLE OF CONTENTS

I.	INTRODUCTION	7
II.	RELEVANT BACKGROUND	8
A.	California Legislature Enacts the Freedom to Read Act to Prohibit Library Censorship.....	8
B.	The City Adopts Huntington Beach Resolution No. 2023-41 to Restrict Minors’ Access to Library Materials Containing Sexual Content.....	9
C.	The City Enacts Ordinance No. 4318 to Establish the Community Parent-Guardian Review Board Called for in its Resolution	11
D.	The City’s Voters Repeal the Ordinance but the Resolution Remains in Effect	11
E.	Petitioners Sue the City for Failure to Comply with the Freedom to Read Act	12
III.	LEGAL STANDARD.....	12
IV.	ARGUMENT	13
A.	The City Has a Ministerial Duty to Comply with the Freedom to Read Act.....	13
B.	The Plain Terms of the City’s Resolution Violate the Freedom to Read Act.....	13
1.	The Resolution Unlawfully Restricts Minors’ Access to Library Materials Because Those Materials May Contain Sexual Content.....	14
2.	The Resolution Restricts Minors’ Access to Library Materials Based on Age.....	16
3.	With the Voters’ Repeal of the Ordinance, the City’s Resolution Now Operates as a Total Ban on All City Facilities’ Procurement of Certain Children’s Books	17
C.	Petitioners Have a Beneficial Interest in the City’s Compliance with the Act.....	18
D.	No Other Adequate Remedy Exists to Compel the City’s Compliance	20
V.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Page(s)

Cases

<i>AIDS Healthcare Found. v. Bonta</i> (2024) 101 Cal.App.5th 73	13
<i>People ex rel. Becerra v. Superior Court</i> (2018) 29 Cal.App.5th 486	20
<i>Carl v. City of Los Angeles</i> (1976) 61 Cal.App.3d 265	14
<i>Coachella Valley Unified School Dist. v. State of Cal.</i> (2009) 176 Cal.App.4th 93	12, 13
<i>Erznoznik v. City of Jacksonville</i> (1975) 422 U.S. 205	14
<i>Ginsberg v. New York</i> (1968) 390 U.S. 629	14, 15
<i>Humane Society of U.S. v. Superior Court</i> (2013) 214 Cal.App.4th 1233	15
<i>Ketchens v. Reiner</i> (1987) 194 Cal.App.3d 470	20
<i>Miller v. California</i> (1973) 413 U.S. 15	14, 15
<i>People v. Eckard</i> (2011) 195 Cal.App.4th 1241	15
<i>Planned Parenthood Affiliates of Calif. v. Van De Kamp</i> (1986) 181 Cal.App.3d 245	12
<i>Save the Plastic Bag Coalition v. City of Manhattan Beach</i> (2011) 52 Cal.4th. 155	18, 19
<i>Tesoro Logistics Operations, LLC v. City of Rialto</i> (2019) 40 Cal.App.5th 798	18
<i>Voters for Responsible Ret. v. Bd. of Supervisors</i> (1994) 8 Cal.4th 765	13

Statutes

Code Civ. Proc., § 1085, subd. (a)	12
--	----

1	Code Civ. Proc., § 1086.....	13
2	Ed. Code § 19800 et seq.	7, 21
3	Ed. Code, § 19801.....	9, 16
4	Ed. Code, § 19802 et seq.	<i>passim</i>
5	Ed. Code, § 19802, subd. (b)(1).....	8
6	Ed. Code, § 19802, subd. (b)(2)(A)(iii)	13, 14
7	Ed. Code, § 19802, subd. (c).....	14, 16
8	Ed. Code, § 19802, subd. (e).....	9, 13
9	Elec. Code, § 9217	12, 18
10	Elec. Code, § 10262(a).....	11
11	H.B. Mun. Code § 2.66	11
12	H.B. Mun. Code § 2.66.020	11
13	H.B. Mun. Code § 2.66.030	11
14	H.B. Mun. Code § 2.66.110	11
15	Huntington Beach Ordinance No. 4318.....	11
16	Penal Code § 313	14
17	Penal Code § 313.1	14
18	Other Authorities	
19	AB No. 1825 § 2	7, 9, 13
20	American Heritage Dictionary, “ <i>Sexual</i> ”	
21	< https://ahdictionary.com/word/search.html?q=sexual > (as of June 26, 2025)	15
22	City of Huntington Beach, <i>Request for City Council Action</i> (Jan. 21, 2025)	
23	< http://bit.ly/4nhJoCz >	11
24	H.B. Charter, § 502.....	15
25	H.B. Charter, § 703.....	11
26		
27		
28		

1	Huntington Beach, <i>Special Municipal Election Calendar</i> p. 2	
2	< https://ocvote.gov/sites/default/files/elections/2025HB/City%20of%20Huntington%20Beach%20Special%20Municipal%20Election%20Calendar%206.10.2025.pdf > (as	
3	of June 26, 2025).....	11
4	Merriam-Webster, “ <i>Sexual</i> ” < https://www.merriam-webster.com/dictionary/sexual > (as	
5	of June 26, 2025).....	15
6	Michael Slaten, <i>Huntington Beach will hold June 10 special election over two library</i>	
7	<i>initiatives</i> , OC Register (March 5, 2025)	
8	< https://www.ocregister.com/2025/03/05/huntington-beach-will-hold-june-10-special-election-over-two-library-initiatives/ > (as of June 26, 2025).....	11
9	Orange County Registrar of Voters, <i>Current Election Results</i>	
10	< https://ocvote.gov/results/current-election-results > (as of June 26, 2025).....	11

1 **I. INTRODUCTION**

2 The City of Huntington Beach has enacted a censorship regime that targets public libraries in
3 violation of the California Freedom to Read Act (“Freedom to Read Act” or “Act”).¹ To bring an end to
4 this abuse of power, Petitioners seek writ relief compelling Respondents the City of Huntington Beach,
5 Huntington Beach City Council, and the Director of Community and Library Services (collectively
6 “City” or “Respondents”) to comply with the Act, which, among other things, prohibits library
7 jurisdictions that receive state funds from restricting access to books based on their content.

8 The blueprint for Respondents’ unlawful censorship regime appears in Huntington Beach
9 Resolution No. 2023-41² (“Resolution”), which was adopted in October 2023. Under its plain terms, the
10 Resolution restricts access to public library materials for all minors solely because of their age and
11 because the materials contain purported “sexual content,” a vague term that covers far more content than
12 anything courts have deemed legally obscene as to adults or minors. (Resolution ¶ 1.a-b.) The plain
13 terms of the Resolution, which define “children” as anyone under 18 years of age, require that any such
14 materials must be placed in the Adult Section of the library, and that all minors—regardless of their
15 reading level or how close they are to adulthood—must obtain parent or guardian consent before
16 accessing or checking out those materials. (*Ibid.*) In addition, the Resolution’s plain terms prohibit
17 public libraries from procuring library materials “that are intended for children” and that contain sexual
18 content without first securing approval from a “community parent/guardian review board” (“Review
19 Board”). (*Id.* at ¶ 2.a.) The Resolution provides that this review board “*shall* be established” with
20 sweeping power to veto the acquisition of materials containing “any sexual writing, sexual references,
21 sexual images, and/or other sexual content”—guided by nothing more than undefined “community
22 standards of acceptance.” (*Id.* at ¶¶ 2.a, c, italics added.) The Resolution requires restricting minors’
23 access to an array of library materials, including beloved literary classics such as *Romeo and Juliet* and
24 *1984*, science and health books containing educational material about puberty, and stories about the

25 _____
26 ¹ The Freedom to Read Act was passed as Assembly Bill (“AB”) No. 1825 (2023-2024 Reg. Sess.),
27 enacted and codified at Education Code Section 19800 et seq.; it is attached as Exhibit 1 to the
28 accompanying Petitioners’ Request for Judicial Notice (“RJN”).

² Huntington Beach Resolution No. 2023-41 is attached as Exhibit 2 to Petitioners’ Request for Judicial Notice.

lived experiences of members of the LGBTQ+ community.

The Legislature enacted the Freedom to Read Act in direct response to the City’s censorship efforts. (See *infra* Pt. II.A.) The Act amended the Education Code to prohibit library jurisdictions like the City from restricting access to library materials based on the age of the library patron or based on the topics addressed in the materials (such as sexual content that does not meet the high bar of obscenity). (See Ed. Code, § 19802, subds. (b)(1)-(2)(A)(iii), (c).)³ The City has a mandatory, ministerial duty to comply with these provisions, as the Legislature left no room for it to contravene the express prohibitions set out in the Act. However, the City has not taken any steps to come into compliance with the Act; the City’s Resolution remains in effect and expressly violates these provisions. Therefore, Petitioners request this Court enter judgment on their first cause of action and issue a writ of mandate directing Respondents to comply with the Act and prohibiting them from further implementation or enforcement of the Resolution.

II. RELEVANT BACKGROUND

A. California Legislature Enacts the Freedom to Read Act to Prohibit Library Censorship

In August 2024, the Legislature passed the Freedom to Read Act to prohibit public library jurisdictions from pursuing library censorship or book bans. The Act mandates several safeguards that public library jurisdictions must uphold to remain in compliance with the Act—two of which are at stake in this lawsuit. *First*, the Act provides that “[t]he governing board or body of a public library, or any body or commission designated to review the procurement, retention, or circulation of, or access to, library materials, *shall not* proscribe or prohibit the circulation or procurement of, or access to, any library materials in a public library *because of the topic addressed by the materials or because of the views, ideas, or opinions contained in those materials.*” (Ed. Code, § 19802, subd. (b)(1), italics added.) In particular, “[l]ibrary materials in public libraries shall not be excluded, and access to library materials shall not be limited, *solely on the basis [that] . . . [t]he library materials may include sexual content, unless that content qualifies as obscene under United States Supreme Court precedent.*” (*Id.* at subd. (b)(2)(A)(iii), italics added.) *Second*, the Act provides that “a person’s right to use a public library and

³ All statutory references are to California law unless otherwise specified.

1 its resources *shall not be denied or abridged* solely because of personal characteristics, *age*, background,
2 or views.” (*Id.* at subd. (c), italics added.) As discussed in Part II.B, the City’s Resolution transgresses
3 both these mandates.

4 The Freedom to Read Act expressly governs the conduct of charter cities like the City of
5 Huntington Beach. In passing the Act, the Legislature stated that it:

6 [F]inds and declares that ensuring public libraries are free of censorship is a matter of
7 statewide concern and is not a municipal affair as that term is used in Section 5 of Article
8 XI of the California Constitution. Therefore, Section 1 of this act adding Chapter 10
(commencing with Section 19800) to Part 11 of Division 1 of Title 1 of the Education
Code applies to all cities, including charter cities.

9 (AB No. 1825 § 2; see also Ed. Code, § 19802, subd. (e) [“This section applies to a public
10 library, as defined in Section 18015, including any public library operated . . . by a city, *including a*
11 *general law or charter city.* . . .”], italics added.)⁴ Indeed, the Legislature singled out the City of
12 Huntington Beach (alongside Fresno County, another charter jurisdiction) for restricting access to
13 library materials.⁵ The Legislature also found and declared that “[r]emoving and banning books from
14 public libraries are dangerous acts of government censorship and erode our country’s commitment to
15 freedom of expression and the right to receive information.” (Ed. Code, § 19801, subd. (a)-(f).) The
16 plain text of Education Code section 19802, coupled with these legislative findings, leaves no room for
17 doubt that the Act applies to the City.

18 **B. The City Adopts Huntington Beach Resolution No. 2023-41 to Restrict Minors’ Access**
19 **to Library Materials Containing Sexual Content**

20 In October 2023, the City Council adopted Resolution No. 2023-41 to restrict minors’ access to
21 existing and future City-owned library materials, based on the content of those materials. Specifically,

22 _____
23 ⁴ These legislative findings from the Freedom to Read Act clearly disprove Respondents’ repeated
24 assertions that the Act does not “expressly state” that it addresses a matter of statewide concern. (ROA
No. 52 [Demurrer] at pp. 16:27-27, 17:14-16.) Respondents’ assertions are misleading and flatly wrong.

25 ⁵ The City’s censorship efforts were referenced in several legislative bill analyses considering the
26 Freedom to Read Act. (See, e.g., Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1825 (2023-
27 2024 Reg. Sess.) as amended Apr. 1, 2024, p. 1 [noting that the Act would be enacted “in light of”
reports from “two California communities – Fresno and Huntington Beach – [that] have recently seen
efforts to remove material from libraries”]; Sen. Judiciary Com., Analysis of Assem. Bill No. 1825
(2023-2024 Reg. Sess.) as amended June 18, 2024, p. 7 [recognizing that Huntington Beach has made a
“concerted effort to restrict access to books”],
28 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1825>

1 “[n]o City Library or other City facility shall allow *children* ready access to books and other materials
2 *that contain any content of sexual nature.*” (Resolution ¶ 1.a, italics added.) “Books and other materials
3 containing any sexual writings, sexual references, explicit sexual images, and any other sexual content
4 shall not be placed in, or be present in, any section of any City Library or facility other than adult
5 section(s), i.e., those areas/shelves designated for 18-years or older.” (*Ibid.*) In addition, “[p]arental or
6 guardian consent will be required before accessing or checking out any book or other material that
7 contains any sexual writings, sexual references, sexual images, and/or other sexual content *by anyone*
8 *under 18-years of age*, whether the books or materials are intended for children or adults.” (*Id.* at ¶ 1.b,
9 italics added.) The Resolution does not contain any definitions for the terms “sexual writings,” “sexual
10 references,” “explicit sexual images,” or “sexual content,” nor is it limited to materials that are obscene
11 as to adults or minors under United States Supreme Court precedent.

12 Next, the Resolution calls for the establishment of a “community parent/guardian review board”
13 (“Review Board”) with power over what materials can be purchased and added to the library collection.
14 (Resolution at ¶ 2.a [Review Board “*shall be established*”], italics added.)⁶ The Resolution provides that
15 “[n]o City Library . . . shall procure (children’s) books or materials *containing any sexual writing,*
16 *sexual references, sexual images, and/or other sexual content* that are intended for children without first
17 receiving the approval of a community parent/guardian review board.” (*Ibid.*, italics added.) The Review
18 Board’s approval is to be contingent upon a “majority vote” that “the books and materials *meet the*
19 *community standards of acceptance* for the City of Huntington Beach.” (*Id.* at ¶ 2.c, italics added.) The
20 Review Board would also have the power to restrict minors’ access to library materials that are currently
21 in the library’s collection; if the Review Board “find[s] a book or material currently in circulation *does*
22 *not meet community standards*, it shall be placed in the adult section and subject to parental and
23 guardian consent.” (*Id.* at ¶ 2.d, italics added.) The Resolution does not define “community standards.”

24 The Resolution is still in effect and has not been modified since the passage of the Freedom to
25 Read Act.

26
27
28 ⁶ The Resolution provides that the existence of any such Review Board “does not modify the
requirement . . . that any book containing sexual content be placed in the adult section and require
parental or guardian consent for children to access.” (Resolution at ¶ 2.e.)

1 **C. The City Enacts Ordinance No. 4318 to Establish the Community Parent-Guardian**
2 **Review Board Called for in its Resolution**

3 In March 2024, the City Council enacted Ordinance No. 4318, adding Chapter 2.66 to the
4 municipal code and establishing a “Community Parent-Guardian Review Board Procurement For
5 Children’s Library Materials.” (H.B. Mun. Code (“HBMC”) § 2.66.)⁷ Consistent with the Resolution,
6 the Review Board was granted unfettered power to restrict minors’ access to library materials. (cf. *supra*
7 Pt. II.B with HBMC, §§ 2.66.020, 2.66.030, 2.66.110, subds. (A)-(C), (G) [Review Board has “sole
8 discretion” to “determine by majority vote” if “Children’s Books meet the Community Standards of
9 acceptance”; “[i]f a Children’s Book is nominated for review, it shall not be purchased by the City for
10 Library circulation unless first approved by the Board”].)

11 **D. The City’s Voters Repeal the Ordinance but the Resolution Remains in Effect**

12 Huntington Beach residents responded to the passage of Ordinance No. 4318 with a citizen
13 initiative petition demanding that the Ordinance be repealed.⁸ The petition received more than 17,000
14 signatures—far surpassing the requisite 13,247 signatures needed to bring the issue to the City’s voters.⁹
15 On June 10, 2025, the City held a special election on a measure (“Measure A”) that would, if successful,
16 strike Chapter 2.66 in its entirety and repeal the Ordinance.¹⁰ Huntington Beach voters overwhelmingly
17 approved Measure A.¹¹ According to the City, the election results will be certified no later than July 4,
18 2025.¹² The Ordinance will be repealed 10 days after the City Council officially declares the vote. (H.B.

19 ⁷ Huntington Beach Ordinance No. 4318 (“Ordinance”) is attached as Exhibit 3 to the RJN. Citations to
20 the Huntington Beach Municipal Code were current as of this writing, but Chapter 2.66 of the City’s
21 Municipal Code was struck by Ballot Measure A, discussed in Part II.D. Once that measure has been
22 properly codified, the Chapter should no longer be reflected in the Municipal Code. Therefore, Chapter
2.66 has been attached as Exhibit 4 to the RJN.

23 ⁸ See City of Huntington Beach, *Request for City Council Action* (Jan. 21, 2025) p. 1,
<<http://bit.ly/4nhJoCz>>.

24 ⁹ *Id.* at p. 2.

25 ¹⁰ See e.g., Michael Slaten, *Huntington Beach will hold June 10 special election over two library*
26 *initiatives*, OC Register (March 5, 2025) <<https://www.ocregister.com/2025/03/05/huntington-beach-will-hold-june-10-special-election-over-two-library-initiatives/>> (as of June 26, 2025).

27 ¹¹ See Orange County Registrar of Voters, *Current Election Results* <<https://ocvote.gov/results/current-election-results>> (as of June 26, 2025).

28 ¹² See Elec. Code, § 10262(a); see also City of Huntington Beach, *Special Municipal Election Calendar*

1 Charter, § 703 [initiative governed by code]; Elec. Code, § 9217 [initiative effective 10 days after vote
2 declared by city council].) Because Measure A addressed only the Ordinance, the City’s Resolution
3 remains in effect.

4 **E. Petitioners Sue the City for Failure to Comply with the Freedom to Read Act**

5 Counsel for Petitioners sent multiple demand letters to the Huntington Beach City Council
6 explaining that its censorship regime was unlawful. (Register of Actions [“ROA”] No. 2, Petition for
7 Writ of Mandate [“Pet.”] ¶¶ 33, 71.) The City Council did not respond. On February 26, 2025,
8 Petitioners filed a Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief.
9 (ROA No. 2.) Petitioners are a coalition of a nonprofit organization devoted to creating and promoting
10 inclusiveness for transgender and gender non-conforming community members in Orange County,
11 young library patrons, and concerned taxpayers. (Pet. ¶¶ 3, 13-16.)

12 Petitioners’ First Cause of Action, which is the sole concern of this Opening Brief, seeks a writ
13 of mandate directing the City to comply with the Freedom to Read Act. (Pet. ¶¶ 97-106.) This writ cause
14 of action involves a facial challenge, based on the plain language of the City’s enactments, and therefore
15 raises only pure questions of law that can be decided by this Court. At the time Petitioners filed this
16 Opening Brief, the City had not taken any steps to comply with or fulfill its mandatory duties under the
17 Act. Instead, the City continues to assert that it is not bound by the Act because it is a charter city. (ROA
18 No. 52 [Demurrer] at pp. 15-19.) Petitioners will address this argument in greater detail in their
19 forthcoming Opposition to the City’s Demurrer.

20 **III. LEGAL STANDARD**

21 Petitioners may seek a writ of mandate “to compel the performance of an act which the law
22 specially enjoins, as a duty resulting from an office, trust, or station. . . .” (Code Civ. Proc., § 1085,
23 subd. (a).) Mandate will issue “to compel the performance of a clear, present and ministerial duty on the
24 part of the respondent where the petitioner has a beneficial right to performance of that duty.”
25 (*Coachella Valley Unified School Dist. v. State of Cal.* (2009) 176 Cal.App.4th 93, 113.) A writ of
26 mandate may also prohibit conduct that is “in violation of a statutory ministerial duty.” (*Planned*

27 p. 2

28 <<https://ocvote.gov/sites/default/files/elections/2025HB/City%20of%20Huntington%20Beach%20Special%20Municipal%20Election%20Calendar%206.10.2025.pdf>> (as of June 26, 2025).

1 *Parenthood Affiliates of Calif. v. Van De Kamp* (1986) 181 Cal.App.3d 245, 263.) The writ “must be
2 issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of
3 law.” (Code Civ. Proc., § 1086.)

4 **IV. ARGUMENT**

5 **A. The City Has a Ministerial Duty to Comply with the Freedom to Read Act**

6 “A ministerial act is one that a public functionary is required to perform in a prescribed manner
7 in obedience to the mandate of legal authority, without regard to his or her own judgment or opinion
8 concerning the propriety of such act.” (*Coachella, supra*, 176 Cal.App.4th at p. 113, internal quotations
9 and citations omitted.) All cities, including Huntington Beach, have an obligation to comply with state
10 laws involving matters of statewide concern, which are presumed valid. (*Voters for Responsible Ret. v.*
11 *Bd. of Supervisors* (1994) 8 Cal.4th 765, 780; *AIDS Healthcare Found. v. Bonta* (2024) 101 Cal.App.5th
12 73, 81, review Den. (July 10, 2024).) This presumption applies to the Freedom to Read Act, which
13 expressly applies to charter cities like Huntington Beach. (See AB No. 1825, § 2; Ed. Code, § 19802,
14 subd. (e).) The plain language of the Freedom to Read Act creates a mandatory duty on the part of
15 public library jurisdictions; it prohibits the following: (1) restricting access to library materials solely
16 based on their content, including non-obscene sexual content; and (2) restricting library patrons’ access
17 to materials solely based on their age. (cf. *supra* Pt. II.A [citing Ed. Code § 19802, subs. (b)(1)-(2)
18 (providing that public library jurisdictions “*shall not* proscribe or prohibit . . .”), (c) (providing that
19 “[a] person’s right to use a public library and its resources *shall not be denied or abridged* . . .”), italics
20 added.) These provisions offer no room for the City to exercise discretion and restrict access to library
21 materials in violation of the Act.

22 **B. The Plain Terms of the City’s Resolution Violate the Freedom to Read Act**

23 The Freedom to Read Act prohibits the City from pursuing the type of censorship regime it has
24 adopted under the Resolution. The plain language of the City’s Resolution violates the Act in at least
25 two distinct ways. *First*, it restricts minors’ access to library materials solely because the materials
26 contain any “sexual content”—even though those materials do not qualify as obscenity under United
27 States Supreme Court precedent. (Compare Resolution ¶ 1(a) [restricting access on the basis of “sexual
28 content”] with Ed. Code, § 19802, subd. (b)(2)(A)(iii) [prohibiting this exact kind of restriction].)

1 *Second*, the Resolution restricts access to library materials for all minors based on age alone. (Compare
2 Resolution ¶ 1.a [“No City Library . . . shall allow children ready access”] with Ed. Code, § 19802,
3 subd. (c) [“A person’s right to use a public library and its resources shall not be denied or abridged
4 solely because of . . . age”].) Because the City’s Resolution remains in effect and violates the
5 Freedom to Read Act, Petitioners ask this Court to issue the requested writ relief.

6 **1. The Resolution Unlawfully Restricts Minors’ Access to Library Materials Because**
7 **Those Materials May Contain Sexual Content**

8 The Freedom to Read Act prohibits the City from restricting access to library materials “solely
9 on the bas[is] [that] . . . [t]he library materials may include sexual content, unless that content qualifies
10 as obscene under United States Supreme Court precedent.” (Ed. Code, § 19802, subd. (b)(2)(A)(iii);
11 *supra* Pt. II.A.) This precedent includes *Miller v. California* and *Ginsberg v. New York*, which set forth
12 rigorous standards for determining whether a work meets the high bar of qualifying as obscenity as to
13 adults or minors. (See *Miller v. California* (1973) 413 U.S. 15 [obscenity test]; *Ginsberg v. New York*
14 (1968) 390 U.S. 629 [test for obscenity that is harmful to minors]; see also *Erznoznik v. City of*
15 *Jacksonville* (1975) 422 U.S. 205, 213 [recognizing that “[c]learly all nudity cannot be deemed obscene
16 even as to minors”].)¹³

17 The City’s Resolution violates the Act because it broadly restricts access to library materials
18 based solely on whether they contain any undefined “sexual content” that is far from legally obscene.
19 The Resolution “establish[es] a policy for children’s library materials containing sexual content.”
20 (Resolution at p. 1 [recitals].) Its plain terms require that “books and other materials that **contain any**
21 **content of sexual nature**” already in the library’s collection must be placed in the Adult Section, and all
22 minors must obtain parent or guardian consent “before accessing or checking out any book or other
23 material that **contains any sexual writing, sexual references, sexual images, and/or other sexual**
24 **content.**” (*Id.* at ¶ 1.a-b, boldface added.) Without parent or guardian consent, minors are banned from
25 accessing those materials. (*Id.*)

26
27 ¹³ It is already unlawful to provide minors with access to material that is obscene as to minors under
28 Penal Code sections 313, 313.1. (See also *Carl v. City of Los Angeles* (1976) 61 Cal.App.3d 265, 274.)
Thus, the City’s Resolution is unnecessary as a method of preventing such access.

1 This goes far beyond regulating material that is deemed legally obscene as to adults or minors.
2 The Resolution’s plain terms restrict access based on “sexual content,” not obscenity. Notably, the
3 Resolution does not include any definitions for “sexual content,” “sexual references,” “sexual writing,”
4 or “sexual images.” Under well-settled precedent, the Court must interpret these terms according to their
5 plain meaning. (See, e.g., *People v. Eckard* (2011) 195 Cal.App.4th 1241, 1246 [reviewing terms of a
6 statutory provision “in their context and giving them their ordinary and usual meaning”].)¹⁴ Indeed, upon
7 the Resolution’s enactment, the library took action to restrict minors’ access to books that do not contain
8 materials that could not be considered “obscene” under United States Supreme Court precedent, at least
9 some of which remain restricted. (Pet. ¶¶ 39-49.)¹⁵

10 While the Resolution restricts all materials with any “sexual content,” Supreme Court precedent
11 only allows for restrictions on a small subset of materials that contain sexual content *and* meet other
12 conditions such that the material is deemed “obscene.” (See *Miller, supra*, 413 U.S. at p. 24 [holding
13 that a work only qualifies as obscene for adults if, when “taken as a whole” it “appeals to the prurient
14 interest ... depicts or describes, in a patently offensive way, sexual conduct specifically defined by the
15 applicable state law; and ... lacks serious literary, artistic, political, or scientific value.]). *Ginsberg,*
16 *supra*, 390 U.S. at p. 633 [defining obscenity that is harmful to minors based on whether the work at
17 issue “(i) predominantly appeals to the prurient, shameful or morbid interest of minors, and (ii) is
18 patently offensive to prevailing standards in the adult community as a whole with respect to what is
19 suitable material for minors, and (iii) is utterly without redeeming social importance for minors”].)

20 The plain text of the City’s Resolution necessarily extends to materials that could never qualify
21

22 ¹⁴ While the Resolution does not define “sexual” content, it limits access to materials containing “any”
23 sexual content. Virtually every definition of the term sexual would include intercourse and sexual
24 reproduction. See, e.g., Merriam-Webster, “*Sexual*” <[https://www.merriam-](https://www.merriam-webster.com/dictionary/sexual)
25 [webster.com/dictionary/sexual](https://www.merriam-webster.com/dictionary/sexual)> (as of June 26, 2025) (“of, relating to, or associated with sex or the
26 sexes,” “having or involving sex”); American Heritage Dictionary, “*Sexual*”
27 <<https://ahdictionary.com/word/search.html?q=sexual>> (as of June 26, 2025) (“Relating to, involving, or
28 characteristic of sex or sexuality, or the sex organs and their functions: sexual partners; sexual fantasies;
sexual dysfunction.”); *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1251)
 (“The dictionary is a proper source to determine the usual and ordinary meaning of words in a statute.”).

¹⁵ The City’s Charter confirms the City Council’s authority to act by resolution. (H.B. Charter, § 502
 [“The City Council may act by resolution or minute order in all actions not required by the Charter to be
 taken by ordinance”].) The City’s Charter does not contain any requirement that the City Council
 conduct library business by ordinance. (See H.B. Charter.)

as obscene but that may contain “sexual content” or “sexual references”—including, among others, the Bible, literary classics such as *Romeo and Juliet*, *The Great Gatsby*, *1984*, *Beloved*, and *I Know Why the Caged Bird Sings*, as well as sex education reference materials. All of these works contain “sexual” content and must be placed off limits to minors or otherwise restricted under the City’s Resolution, even though they are protected from such censorious actions by the Freedom to Read Act because they could not possibly be deemed obscene as to adults or minors under Supreme Court precedent. For example, no one could seriously contend that the Bible, *1984*, or *Romeo and Juliet* qualify as obscene under standards set by Supreme Court precedent—but they are all subject to restricted access under the City’s Resolution because the Bible contains numerous sexual acts, Winston and Julia sleep together in *1984*, and *Romeo and Juliet* depicts a romantic relationship between teenagers.¹⁶

For these reasons, the City’s Resolution violates the Freedom to Read Act and this Court should issue writ relief to ensure the City no longer disregards its mandatory duty under the Act.

2. The Resolution Restricts Minors’ Access to Library Materials Based on Age.

The Freedom to Read Act and the City’s Resolution conflict over *minors’* right to access library materials. The Act provides that a “person’s right to use a public library and its resources shall not be denied or abridged . . . solely because of . . . age. . . .” (Ed. Code, § 19802, subd. (c), italics added.) The Act protects minors’ access to diverse library materials, including those that may contain sexual content, for good reason: The Legislature found that libraries “are essential for information, education, and enlightenment of all people” and “provide access to books that offer teachable moments *for readers of all ages*.” (*Id.* at § 19801, subds. (b)-(c), italics added.)

There can be no dispute that the City’s Resolution abridges minors’ access to library materials that may contain non-obscene sexual content, based solely on their age. The Resolution expressly singles out all library patrons who are under 18 years old, restricting their access to any books or materials that may contain sexual content. (Resolution ¶¶ 1.a [“No City library . . . shall allow *children* ready access to books and other materials that contain *any* content of sexual nature”], 1.b [“Parental or

¹⁶ See, e.g. Genesis 19:30-38 (story of Lot sleeping with his daughters to preserve their family line); George Orwell, *Nineteen Eighty-Four* (1949); *Romeo and Juliet*, act I, scene 2, line 9 (“She hath not seen the change of fourteen years”).

guardian consent will be required before access or checking out” such materials “by *anyone under 18-years of age*”], 2.a [no procurement of such materials “*that are intended for children* without first receiving the approval of a community review board.”], italics added; 2.e.) Minors may wish to access information in their public libraries for educational purposes, pure enjoyment, or any number of other reasons—but simply (and “solely”) because of their age, minors will be impeded from accessing materials that contain non-obscene sexual content. (*supra* Pt. IV.B.1.) Notably, the Resolution does not differentiate among minors of varying ages; a child accessing picture books is subject to the same restrictions as a teenager—like Petitioners C.A. (15 years old) and H.P. (16 years old)—who are nearing the cusp of adulthood and wish to access literary classics, young adult novels, or popular graphic novels. These restrictions are irreconcilable with the Freedom to Read Act’s prohibition against restricting minors’ access to non-obscene library materials.

For these reasons, the City’s Resolution violates the Freedom to Read Act, which prohibits age-based restrictions on access to public libraries. Writ relief should issue to ensure the City comes into compliance with the Act.

3. With the Voters’ Repeal of the Ordinance, the City’s Resolution Now Operates as a Total Ban on All City Facilities’ Procurement of Certain Children’s Books

The City’s Resolution calls for the establishment of a “community parent/guardian review board” with the powers outlined in the Resolution—all of which contravene state law. (Compare Resolution ¶¶ 2.b-d with Ed. Code, § 19802 et seq. [prohibiting same].) The Resolution provides that “No City Library or other City facility shall procure (children’s) books or materials containing any . . . sexual content . . . intended for children without first receiving the approval of a community parent/guardian review board.” (Resolution ¶ 2.a.) Because Huntington Beach voters overwhelmingly repealed the City’s municipal code provisions establishing the Review Board called for in the Resolution, the remaining operative portions of the Resolution in effect ban the City, and any City facilities, from procuring any materials intended for children that may contain any sexual content. Under the terms of the Resolution, no City facility, let alone the public library, can procure children’s materials without first receiving approval from a review board that no longer exists. (*Ibid.*) Moreover, the City cannot reconstitute the Review Board without a vote of the people, which seems unlikely given that

1 residents just repealed the Review Board. (*Ibid.*; Elec. Code, § 9217 [requiring vote of people to alter
2 approved initiative]; see *Tesoro Logistics Operations, LLC v. City of Rialto* (2019) 40 Cal.App.5th 798
3 [holding City Council implementation of initiative violated voters’ intent and was thus invalid].) Even
4 so reconstituted, such a board would also violate the Act. (Ed. Code, § 19802, subds. (b)(1), b(3).) This
5 circumstance is, in effect, a total book ban for the procurement of certain categories of new children’s
6 material even though those same materials are explicitly protected by state law. (Ed. Code, § 19802,
7 subds. (b)(1), (b)(2)(A)(i) & (iii), (c).)

8 For these reasons, the City’s Resolution violates the Freedom to Read Act, and writ relief should
9 issue to ensure the City comes into compliance with the Act.

10 **C. Petitioners Have a Beneficial Interest in the City’s Compliance with the Act**

11 Petitioners are beneficially interested because the City’s library censorship scheme as written
12 affects them. In addition to the Petitioners’ beneficial interests, the public interest standing doctrine also
13 applies because of the nature of this case. (*Save the Plastic Bag Coalition v. City of Manhattan Beach*
14 (2011) 52 Cal.4th. 155, 165-166 [A beneficial interest is some “special interest to be served or some
15 particular right to be preserved or protected over and above the interest held in common with the public
16 at largeThe beneficial interest must be direct and substantial”]; *Ibid.* [“[W]here the question is one
17 of public right and the object of the mandamus is to procure the enforcement of a public duty, the
18 [petitioner] need not show that he has any legal or special interest in the result. . . .”].)

19 Petitioners are two young library patrons, an adult Huntington Beach resident, and a community
20 organization with members who hold Huntington Beach library cards, utilize the City’s library services,
21 and pay taxes that support the City’s library system. Petitioner Alianza Translatinx (“ATL”) is a
22 nonprofit serving the local transgender, gender non-conforming, and intersex (“TGI”) community,
23 whose staff and members hold City library cards and utilize library services. (Pet. ¶13.) ATL refers
24 members, including members in Huntington Beach, to library services to help effectuate its own service
25 mission. (*Ibid.*) ATL recognizes that library materials are a “vital, free, and accessible resource that ATL
26 and other community-based organizations rely on to ensure TGI individuals can find accurate, affirming,
27 information about their identities, healthcare, and legal rights.” (*Ibid.*) Moreover, ATL brings this suit
28 “to challenge policies that further disenfranchise the TGI community and limit access to essential public

resources.” (*Ibid.*) Given the vital importance of library materials to ATL’s mission, staff, and members, ATL is beneficially interested in thwarting library censorship by compelling the City to comply with its mandatory obligations under state law.

Petitioners C.A. and H.P. are teens, 15 and 16 respectively, who are avid readers, scholars, and future young adults. (Pet. ¶¶ 14-15.) C.A. reads graphic novels, which commonly involve relationships that would qualify as sexual under common definitions of the term, and he reads non-fiction books to help him understand his own body. (*Id.* at ¶14.) As an older teen, C.A. is keenly sensitive to the library’s restriction of his academic inquiry and intellectual freedom. (*Ibid.*) H.P. is an avid reader who loves books like *Dune*, *1984*, and *East of Eden* (*Id.* at ¶15)—timeless classics with salient lessons for the present day. These great works of literature, like most human stories, touch upon numerous aspects of sexuality, and, like *1984*, they contain “sexual content.” H.P. knows that these books, which her high school assigned to her as class readings, have been subjected to censorship throughout the country. (*Ibid.*) The City’s Resolution unlawfully restricts C.A. and H.P. from accessing library materials, stifles their free inquiry, and degrades the development of their young, curious minds.

Petitioner Erin Spivey is a taxpaying Huntington Beach resident, librarian by profession, and former Branch Manager for the Huntington Beach Public Library. (Pet. ¶ 16.) Ms. Spivey knows the vital importance of library materials as a professional librarian who has worked to connect adults with needed library services. (*Ibid.*) As a librarian, a parent, and a community member, she is extremely concerned about the decision to remove materials with any “sexual content” from the children’s section of the library and prevent minors from accessing such materials without parental knowledge and consent. She fears this will interfere with minors’ rights to access information that will help them grow into well-rounded adults capable of fully participating in our diverse society. (*Ibid.*)

Petitioners’ request for writ relief is exactly the type of situation for which courts have allowed petitioners to seek writ relief under the relaxed public interest standing requirements, so there is no need for them to establish beneficial interest. (*Save the Plastic Bags, supra*, 52 Cal.4th. 155, 166.) Nonetheless, Petitioners are beneficially interested here: ATL seeks the freedom to support its community using library resources that contain vital information for the TGI individuals. C.A. and H.P want to read, learn, and grow as people free from the illegal censorship imposed by the City’s

1 Resolution. Erin Spivey wants her local library to include the types of materials that residents need to
2 develop as people. Through this case, Petitioners seek the freedom to read. Because state law grants
3 Petitioners that right, this Court should issue a judgment and writ of mandate ordering the City to
4 comply with its duties under the Act.

5 **D. No Other Adequate Remedy Exists to Compel the City’s Compliance**

6 Writ relief is most urgent in cases involving issues of “great public importance and [which]
7 require prompt resolution.” (*People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 494.)
8 Indeed, writ relief is vital here because the City of Huntington Beach is violating a state law the
9 Legislature deemed necessary to protect fundamental rights: freedom of speech, access to library
10 materials, and youth privacy. Speedy writ relief is especially appropriate here because the City’s
11 censorship regime causes irreparable harm to Petitioners while it remains in effect. (*Ketchens v. Reiner*
12 (1987) 194 Cal.App.3d 470, 480 [loss of free speech, “for even minimal periods of time, unquestionably
13 constitutes irreparable injury”].) While Huntington Beach voters have overwhelmingly repealed the
14 City’s unlawful Ordinance, the Resolution remains in effect. As detailed above, the Resolution now
15 operates as a total ban on purchasing certain categories of library materials protected by state law. This
16 situation is unworkable and must be speedily remedied to vindicate Petitioners’ public rights under the
17 Act, and to curtail the City’s unlawful behavior. Petitioners have no other speedy and adequate remedy
18 at law to enforce the public duties imposed upon public officials by the Freedom to Read Act.

19 Petitioners have no alternative remedy that will provide the relief needed: The Freedom to Read
20 Act does not contain a private right of action and must be enforced via writ of mandate. (Pet. ¶ 107.)
21 Moreover, pursuing relief via Petitioners’ legal complaint is neither speedy nor adequate: complaints
22 involve great expense and delay through discovery procedures, pre- and post-trial motion practice, and
23 trial itself. Only a writ of mandate compelling Respondents to comply with state law will ensure that
24 Petitioners’ rights, and the Legislature’s intent in enacting the Freedom to Read Act, are speedily
25 vindicated.

26 **V. CONCLUSION**

27 For the reasons stated herein, Petitioners respectfully request that this Court grant the relief
28 requested in its first cause of action and issue the [Proposed] Writ of Mandate concurrently filed

1 herewith, which orders the City to comply with the Freedom to Read Act by immediately: (1) Ceasing
2 enforcement and implementation of the City's Resolution; (2) restoring any books and materials affected
3 by the Resolution to the general collection; and (3) complying with all requirements of the Freedom to
4 Read Act (Ed. Code, § 19800 et seq.).

5
6 Respectfully Submitted:

7
8 Dated: June 27, 2025

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA**

10 By: /s/ Jonathan Markovitz
11 Jonathan Markovitz
12 Peter J. Eliasberg
13 Amanda C. Goad
Attorneys for Petitioners and Plaintiffs

14 **AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA**

16 By: /s/ Chessie Thacher
17 Chessie Thacher
18 *Attorneys for Petitioners and Plaintiffs*

19 **FIRST AMENDMENT COALITION**

20 By: /s/ David Loy
21 David Loy
22 Ann Capetta

23 *Attorneys for Petitioners and Plaintiffs*

24 **JENNER & BLOCK LLP**

25 By: /s/ Andrew J. Thomas
26 Andrew J. Thomas

27 *Attorneys for Petitioners and Plaintiffs*
28

1 **COMMUNITY LEGAL AID SOCAL**

2 By: /s/ Ryan M. Kendall

3 Ryan M. Kendall

4 Sarah Reisman

5 Erica Embree Ettinger

6 Katelyn Rowe

7 *Attorneys for Petitioner and Plaintiff Alianza*
8 *Translatinx*