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[Exempt from filing fees pursuant To Government Code Section 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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,

vs.

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.

Case No.: 30-2025-01462835-CU-WM-CJC
[Judge Lindsey Martinez – C24]

OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF MANDATE

[Filed concurrently with the Declaration of Michael J. Vigliotta]

Judge: The Honorable Lindsey Martinez
Dept.: C24
Hearing Date: August 22, 2025
Time: 10:00 A.M.

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STATUTES

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I. INTRODUCTION

While one can appreciate their enthusiasm, leavened, as it is, by their inchoate anger, Plaintiffs' petition, and Opening Brief, miss the mark on almost every possible ground. It is, though, a splendid exercise in misdirection, misinterpretation, misrepresentation, misunderstanding and outright falsehood. While zealous advocacy is to be expected, there is a line of truth one must not cross, and Plaintiffs have repeatedly crossed and recrossed that line in an attempt to create the false impression that, first, the City of Huntington Beach has engaged in an extra-legal "censorship" project, and, second, maintains a *law* that is contrary to state statute. (Huntington Beach Resolution No. 2023-41, hereinafter, "Resolution".) Plaintiffs are short on the procedure, the facts and the law. But, in fairness, they are long on breathless hyperbole.

While Plaintiffs' Opening Brief briefly addresses the question of mootness, it not only misrepresents the power and effect of the Resolution it challenges, it misstates the standard by which mootness, in this circumstance, must be determined. That is, in part, because Plaintiffs misunderstand – or misrepresent – the legal effect of a "resolution." They also misunderstand the effect of a resolution that is a mere precursor to actual legislative action. After an ordinance that was the result of the resolution is repealed, the resolution has no further legal effect.

As Plaintiffs have alleged, a citizen initiative repealed the ordinance that resulted from the adoption of the Resolution, in its entirety. But it did more: it adopted and implemented an ordinance that fully occupied the field of access to library materials in the City of Huntington Beach. There is, therefore, no further room for the implementation or enforcement of any contrary provision of any statement of opinion, which is the sole legal effect of the Resolution. This case is moot.

In addition, though, the Plaintiffs have misrepresented the actual provisions of the Resolution and the state statutes, *Education Code* §§ 19801 and 19802, they claim contradict its terms. The Resolution does not purport to "ban" books or to engage in any form of "censorship", as those terms are defined. And, in a neat bit of misdirection, Plaintiffs have argued for mandate on the basis of standards applicable to *adults*, when the action items in the Resolution are directed solely to *children*, the standards of access for whom are significantly different than that for adults, especially in light of recent – and clear – Supreme Court authority.

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There is no basis upon which this Court can issue a writ of mandate, in this instance, not only because the matter is non-justiciable and the Court therefore lacks jurisdiction to do so, (See Code Civ. Proc., § 1060; see also *Placer Foreclosure, Inc. v. Aflalo* (2018) 23 Cal.App.5th 1109, 1112 [cleaned up] [stating that "California courts will decide only justiciable controversies"].) but, also, because the Resolution under attack has no legal effect and, to the extent state law purports to contradict Constitutionally protected parental rights, it is void.

II. FACTUAL BACKGROUND

The City of Huntington Beach adopted a resolution on October 17, 2023 that was a statement of policy that was directed, specifically, to the access of library materials containing sexual content to children.[1] (Huntington Beach Resolution No. 2023-41; Declaration of Michael J. Vigliotta at ¶ 3 ["Vigliotta Decl."] [Resolution No. 2023-41 is attached therein as "Exhibit A"].) It does not purport to regulate access to such materials with respect to adults. Indeed, it does not even purport to limit access to such materials with respect to children. (Vigliotta Decl. ¶ 3.) It merely requires that all such materials be shelved in the "adult" section of the library and that children can access them if they obtain parental consent to do so. (*Id*.) This is what Plaintiffs curiously (and inaccurately) refer to as "banning" and "censorship".

The Resolution had no actual legal power, as we indicate hereinbelow, and was intended to, and was, a precursor to the adoption of an ordinance – an actual actionable, enforceable *law* – implementing the policy the Resolution articulated. The Resolution was adopted in the manner set forth in the Huntington Beach Charter ("*Charter*"), Article V, Section 502, a less exacting and formal procedure than that required for ordinances (which *do* have the force of law, and, unlike resolutions, are included in the City of Huntington Beach Municipal Code ("*Municipal Code*"). (*Id*. at ¶ 4.) Indeed, the City Council subsequently adopted an ordinance, Ordinance No. 4318, to implement the policies articulated in the Resolution, by amendment to the *Municipal Code* by adding Chapter 2.66 to it, which subsumed the Resolution. (*Id*. at ¶ 6 [Ordinance No. 4318 is

[1] While Plaintiffs suggest that the term "children" is defined by Huntington Beach, it is actually defined by California statute. California Family Code § 6500.

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attached therein as "Exhibit B"].)

Thereafter, on June 10, 2025, the citizens of Huntington Beach passed a citizen initiative that repealed Ordinance 2.66 and substituted a new section of the City Code, Section 2.30.090 of Title 2 of the Huntington Beach Municipal Code, that fully set forth new policies with regard to the procurement and accessibility of library materials, fully occupying the field of library materials and accessibility in the *Municipal Code*, and there are no other or alternative provisions thereof that contradict the provisions of the new ordinance. (*Id*. at ¶¶ 4-6 [Section 2.30.090 of Title 2 of the Huntington Beach Municipal Code is attached therein as "Exhibit C"].) The new ordinance is the law of Huntington Beach.

Not content with having repealed the actionable law of Huntington Beach, Plaintiffs now seek a writ of mandate requiring that the City of Huntington Beach "cease to enforce any and all provisions" of the Resolution and to "adhere to the provisions of the 'Freedom to Read Act'".

Plaintiffs have furnished this Court with not one jot of evidence indicating that the City has enforced the Resolution; is actually "enforcing" the Resolution; intends to enforce the Resolution or has threatened to do so. Indeed, as a mere resolution, and in light of the new ordinance – which actually *is* enforceable law – it is not actually enforceable. It is effectively a statement of opinion.

III. CITY PROCEDURE.

Cities in the State of California enact laws through a process prescribed by statute and/or by their respective charters or municipal codes. (Govt. Code §§ 36931, et seq.; City of Huntington Beach Municipal Code, Article V, Section 500.) It is a defined process, and unless it is employed correctly, an ordinance has no force of law. Charter Cities – those established through the procedure prescribed in the California Constitution (See Cal. Const. Art. XI § 3.) – have more latitude in the adoption of ordinances than "General Law Cities" (those established by state legislation). (See Cal. Const. Art. XI § 5; *Rutgard v. City of Los Angeles* (2020) 52 Cal.App.5th 815, 835, quoting *Fletcher v. Porter* (1962) 203 Cal.App.2d 313, 324 [general law provisions "apply to general law cities only and do not regulate charter cities."].) Huntington Beach is a charter city, so the adoption of ordinances is governed by Section 500 of Article V of its *Municipal Code*.

Resolutions, on the other hand, are adopted without the requisites and restrictions required

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for the adoption of ordinances, and they do not have the force of law unless they have been adopted in the manner prescribed for the adoption of ordinances. As observed hereinabove, they do not become enforceable parts of the *Municipal Code*. The Huntington Beach Municipal Code does not have a provision allowing the city council to adopt resolutions in the same manner as required for the adoption of ordinances, for resolutions to have the force of law or for resolutions to become incorporated into its *Municipal Code*.

The procedures set forth in the Huntington Beach *Charter* were followed, in this instance, both with respect to the adoption of the Resolution and with respect to the follow-on ordinance. (Vigliotta Decl. ¶ 4.) Because the procedure required for the adoption of resolutions was followed with respect to the Resolution, it did not become incorporated into the *Municipal Code* and did not have the force of law.

When the ordinance implementing the policy articulated by the Resolution was adopted, the Ordinance was incorporated into the *Municipal Code*, and fully occupied the field related to its subject matter, the accessing of library materials by minors. (Vigliotta Decl. ¶ 6.) The Ordinance was enforceable as law and subsumed the Resolution. (*Ibid*.) The Resolution was then moot and stood merely as a statement of opinion, without the force of law. (See *San Diego City Firefighters, Local 145 v. Board of Administration et al*. (2012) 206 Cal.App.4th 594, 607 [Stating that "A resolution is usually a mere declaration with respect to future purpose or proceedings"].)

IV. LEGAL STANDARD

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station...." (Code Civ. Proc. § 1085, subd. (a).) "To obtain writ relief, a petitioner must show: (1) A clear, present and usually ministerial duty on the part of the respondent ...; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty" (*Agosto v. Board of Trustees of Grossmont-Cuyamaca Community College Dist.* (2010) 189 Cal.App.4th 330, 335-336 [cleaned-up].) "In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld." (*Helena F. v. West Contra Costa*

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Unified School Dist. (1996) 49 Cal.App.4th 1793, 1799.) "Moreover, the right to the writ must be demonstrated by clear, certain, and positive evidence." (*California Federation of Teachers, AFL-CIO v. Oxnard Elementary Schools* (1969) 272 Cal.App.2d 514, 545.)

V. ARGUMENT

A. IT IS PREMATURE TO CONSIDER MANDAMUS.

The City of Huntington Beach ("City") filed a demurrer in which it challenges the Plaintiffs' standing to bring this action. It is set to be heard on September 29, 2025. If the City is correct in its argument on demurrer, the issuance of a writ of mandate by this Court would be voidable. The more prudent course would be for the Court to consider and rule on the demurrer before deciding the instant petition. In the absence of that, however, the City argues below that Plaintiffs, and all of them, lack standing to maintain this action. In any event, the City hereby incorporates the arguments set forth in its demurrer at pages 9 through 12, inclusive, herein.

B. THE PLAINTIFFS LACK STANDING TO MAINTAIN THIS ACTION.

Petitioners' assertion of standing fails for multiple, independent reasons, including the absence of any actual or imminent injury, speculative claims unsupported by evidence, and failure to satisfy the legal requirements for taxpayer or public interest standing.

First, as discussed in detail below, the ordinance at issue is no longer in effect and the Resolution is not enforceable law. There is not, nor could there be, any ongoing injury to justify an actual controversy. Petitioners cannot be affected by the so-called "censorship scheme" because one does not exist. In fact, it never did. (Vigliotta Decl. ¶¶ 3-6.)

Second, even were the Resolution to have any legal effect (which it does not), the Petitioners' asserted harm is wholly speculative, based on hypothetical fears and assumptions, and is not supported by any facts on the record or by the submission by Plaintiff of evidence supporting their assertions. There is neither evidence that any child was ever denied access to any books, nor was this ever alleged. Similarly, there is no evidence that any member of the organization Alianza Translatinx was denied access to any book (this too, was not even alleged).

Third, Spivey lacks taxpayer standing because (1) the City has not spent any taxpayer money in connection with this moot issue, and (2) Courts have consistently held that a generalized

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grievance or policy disagreement does not meet the criteria for taxpayer standing unless it directly involves unlawful or wasteful use of public funds. (See *Fiske v. Gillespie* (1988) 200 Cal.App.3d 1243, 1246 [affirming that principle, explaining that the taxpayer action statute "requires actual expenditure, or at the least a threat of actual expenditure, of public funds, if only in small amounts."]; see also Vigliotta Decl. ¶ 9; ["The City [of Huntington Beach] has not expended any measurable public funds for the implementation or enforcement of Resolution No. 2023-41 or the subsequent Ordinance"].) And "the right to the writ must be demonstrated by clear, certain, and positive evidence." (*California Federation of Teachers, supra*, 272 Cal.App.2d at p. 545.) There is no such evidence here, nor could there be. "California Courts have no power in mandamus or otherwise to render advisory opinions or give declaratory relief." (*Municipal Court v. Superior Court (Gonzalez)* (1993) 5 Cal.4th 1126, 1132 [citing other cases].)

Finally, Petitioners cite *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155 as authority to establish public interest standing, but that case undermines their position. There, a Manhattan Beach ordinance *actually* banned the distribution of plastic bags at point-of-sale locations. (*Id*. at 161.) The organization, which was a coalition of plastic bag manufacturers and distributors, was concretely harmed by the ordinance because the ban would directly impact the coalition's business members. (*Id*. at 160.) Here, the Petitioners have neither established nor presented any evidence of any concrete interest or injury beyond mere policy disagreement. That is not proper. And it is not sufficient.

As the *Save the Plastic* Court noted, "One who ***is in fact adversely affected*** by governmental action should have standing to challenge that action if it is judicially reviewable." (*Id*. at 165 [quoting 3 Davis, Administrative Law Treatise (1958) p. 291] [emphasis added].) As discussed, there is not a single fact on the record establishing any adverse effect to any of the Petitioners nor have Plaintiffs offered evidence of same.

In sum, the Petitioners' writ is based on pure speculation and fanciful hypotheticals, claiming a conspiracy to establish a non-existent censorship regime. Their allegations rely on conjecture and generalized grievances, not on facts, evidence or law. Because standing is a jurisdictional requirement, and the Petitioners have no standing on any ground, this Court, on that basis alone,

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should deny the relief sought.

C. THIS CASE IS MOOT.

This case is moot not only as a matter of law, but as a matter of fact. Resolutions do not generally have the force of law. That is because resolutions have temporary character and are "mere declaration[s] with respect to future proceedings" (See *San Diego City Firefighters, supra,* 206 Cal. App. 4th at 607-608 [Discussing the nature of resolutions as distinguished from ordinances, which do have legal effect].) They can, in some jurisdictions, get the force of law, if they are adopted in the manner required of ordinances. (See *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 566 ["A resolution adopted without the 'formality' required of an ordinance cannot be deemed an ordinance."].)

But the Huntington Beach Charter does not provide a mechanism for doing so, and, in fact, proscribes it. (*Charter*, Article V, Section 502). As mere statements of opinion, not incorporated into the *Municipal Code*, resolutions have no force of law. As acts not adopted in accordance with the requirements for the adoption of ordinances, which *do* have the force of law, they have no legal impact. The Resolution at issue here, was adopted in accordance with the provisions of *Charter*, Article V, Section 502, which does not carry with it the force of law. So, as a matter of law, this case is moot,

In addition, the new ordinance – that adopted through citizen initiative – fully occupied the field related to municipal law in Huntington Beach. It negated the provisions of the Resolution about which Plaintiffs seek a writ of mandate. It sets forth who is in charge of the selection, accessibility and use of library materials. It does not include any limitations, by age or otherwise, on use or accessibility. So, as a matter of *fact*, the new ordinance mooted the Resolution.

We pause to note that Plaintiffs have egregiously misrepresented the meaning of the Resolution. They assert that the Resolution restricts minors' access to materials with sexual content. (Plaintiffs' Opening Brief, Page 13, Lines 25-27.) That is false. It makes such materials available to minors, provided they obtain parental consent. Plaintiffs assert that the Resolution restricts all materials with "sexual content," (Opening Brief page 15 Line 10.) but that, too is false. Plaintiffs underhandedly suggest that the Resolution applies to adults, when it is specifically directed and

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applicable only to access for children.

The Resolution goes to great pains in its recitals to define "obscenity," in accordance with Supreme Court precedent. It specifically directs its conditions to children, and to children alone. Far from being a "censorship" project, it merely states the Council's opinion that such materials should be available to children, but only with the children's parental consent.

D. THE NATURE OF RESOLUTIONS.

In California, courts recognize the substantial difference between a resolution and an ordinance. For example, in S*an Diego City Firefighters*, *supra,* 206 Cal.App.4th at 607-608, the Fourth District Court of Appeals stated:

> "[A] resolution…is ordinarily not equivalent to an ordinance. A resolution is usually a mere declaration with respect to future purposes or proceedings…. An ordinance is a local law which is adopted with all the legal formality of a statute. A resolution adopted without the 'formality' required an ordinance cannot be deemed an ordinance." (quoting *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565-566.)

The court further explained, "'Resolution' denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides. Ordinarily it is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government." (*San Diego City Firefighters, supra* 206 Cal.App.4th at 608 [quoting *County of Del Norte v. City of Crescent City* (1999) 71 Cal. App. 4th 965, 979]; see also *City of Brentwood v. Department of Finance* (2020) 54 Cal.App.5th 418.)

The Resolution has no legal force or effect. That is true as a matter of law with regard to the nature of resolutions as opposed to ordinances. The citizen initiative repealing the ordinance that effectuated the Resolution effectively nullified the Resolution, as well. There is nothing here about which to issue a writ of mandate, since there is no effective law that the City has attempted to implement, much less enforce, and the ordinance arising from the Resolution as its implementing vehicle has been completely repealed and the new ordinance fully occupies the field.

E. DOCTRINE OF IMPLIED REPEAL.

In *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, the California Supreme Court found that a citizen-approved initiative (Proposition 35) did not expressly

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repeal certain preexisting statutes that imposed restrictions on private contracting for architectural and engineering services and transportation projects. Nevertheless, the Court reviewed the initiative's context as a whole and determined that its constitutional and statutory provisions impliedly repealed the preexisting statutes. (*Id*. at 1038.)

The Court reasoned that repeal by implication may be found when (1) "the two acts are so inconsistent that there is no possibility of concurrent operation, or (2) the later provision gives undebatable evidence of an intent to supersede the earlier provision." (*Professional Engineers in California Government, supra,* 40 Cal.4th at 1038 [cleaned up] [citing *Hays v. Wood* (1979) 25 Cal.3d. 772, 784].) While the Court acknowledged the "presumption against repeals by implication," its application is appropriate in "those limited situations where it is necessary to effectuate the intent of drafters of the newly enacted statute." (*Ibid*.) That is the situation here.

Furthermore, the Court stated that "in order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say it was intended to be a substitute for the first." (*Professional Engineers in California Government, supra,* 40 Cal.4th at 1038 [citing *Board of Supervisors v. Lonergan* (1980) 27 Cal. 3d. 855, 868].) Finally, the Court stated that "because the power to legislate is shared by the Legislature and the electorate through the initiative process, the principles governing repeals by implication where the statutory conflict is the result of enactments by the Legislature should also apply where, as here, the question is whether the provisions of an initiative impliedly repealed preexisting statutes." (*Id.* at 1039.)

It is basic that the law neither does nor requires idle acts. (Civ. Code § 3532.) Nothing would be more idle than to issue a writ of mandate requiring the City to comply with the provisions of an act, the "Right to Read Act", when there is no evidence before this Court that the City has not done so, intends to do so or has threatened to do so. No act could be more idle than to issue an order directing the City to cease enforcing a Resolution that has no force of law, was a mere statement of opinion, was only a precursor to an implementing ordinance that has been repealed, which, itself, has effectively been repealed by implication, and which has been fully replaced by a new ordinance that fully occupies the field of accessibility to library materials and *does* have the force of law. We urge the Court to decline Plaintiffs' invitation to error in issuing a mandate to cease doing what is neither

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being done nor threatened, and to negate that which has no force of law and has, by the voters, been nullified.

F. TO THE EXTENT THAT THE "RIGHT TO READ ACT" ABRIDGES PARENTAL RIGHTS TO RESTRICT MATERIAL TO WHICH THEIR CHILDREN ARE EXPOSED, IT IS UNCONSTITUTIONAL.

It is basic that statutes must be read as if they were consistent with the Constitutions of the United States and California. To the extent that a statute is inconsistent with the Constitution, it is void. (*Moore v. Harper* (2023) 600 U.S. 1, 20 ["an act of the legislature, repugnant to the constitution, is void."]; See also *Hotel Employees and Restaurant Employees Intern. Union v. Davis* (1999) 21 Cal.4th 585, 602 [citing *Nougues v. Douglas* (1857) 7 Cal. 65, 70]; See also *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674 [holding "[a] statutory initiative is subject to the same state and federal constitutional limitations as are the Legislature and the statutes which it enacts."].) Plaintiffs argue that the "Right to Read Act" prohibits libraries from restricting access to materials with sexual content from minors. If that is the meaning and effect of the Right to Read Act, then, to that extent, the Act is unconstitutional. However, if the statute can be interpreted as not imposing such a restriction, it may be preserved:

> "If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable. [Citations.] The basis of this rule is the presumption that the Legislature intended, not to violate the Constitution, but to enact a valid statute within the scope of its constitutional powers."
>
> (*Conservatorship of Wendland* (2001) 26 Cal. 4th 519, 548 [quoting *Miller v. Municipal Court* (1943) 22 Cal.2d 818, 828].) (Cleaned up)

The United States Supreme Court has clearly held that parents have a liberty interest in managing the upbringing of their children and to restrict materials to which their children are exposed. (*Troxel v. Granville* (2000) 530 U.S. 57, 65 ["The liberty interest ... of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."].) The Court further elaborated that the liberty interest enjoys

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constitutional protection:

> "[T]here is a constitutional dimension to the right of parents to direct the upbringing of their children. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.... [W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children." (*Id*. at 65-66)

Indeed, the Court writes: "[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." (*Ibid.*)

This very term, the United States Supreme Court, in *Mahmoud v. Taylor* (2025) 606 U.S. ___, 31 No. 24-297, 2025 WL 1773627 at 15 held that parents have the constitutional right to opt out of mandatory aspects of public education and course materials that conflict with the parents' religious or moral principles. The Court was unequivocal: "We reject this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children."

The Court made the breadth of its intention very clear:

> "[W]e have long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza* v. *Montana Dept. of Revenue*, 591 U.S. 464, 486 (2020) (quoting *Yoder*, 406 U.S., at 213–214). And we have held that those rights are violated by government policies that "substantially interfer[e] with the religious development" of children. *Id*., at 218. Such interference, we have observed, "carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Ibid.* For the reasons explained below, we conclude that such an "objective danger" is present here."

This is not just a matter of Constitutional protection under the United States Constitution. California courts have consistently held that where a child's constitutional rights collide with those of parents to govern their education and upbringing, the parents' rights prevail.

In *In re Antonio R.* 78 (2000) Cal.App.4th 937, 941, the court held that "[A] parent may curtail a child's exercise of the constitutional rights because a parent's own constitutionally protected liberty includes the right to bring up children and to direct the upbringing and education of children." And in *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1243 the court writes: "Parents, of course, have powers greater than that of the state to curtail a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected liberty includes the right to 'bring up

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children and to direct the upbringing and education of children.'"

The Resolution and the follow-on ordinance were very clear. No "right" was being curtailed by the City of Huntington Beach. The right being vindicated by those enactments was the constitutionally protected right of parents to restrict access of sexual content from their children. Neither the ordinance nor the Resolution imposed a blanket ban on materials with sexual content from children. Indeed, it made that material *available* to children. But it required parental consent in recognition of the constitutionally protect rights of parents to control materials to which their children are exposed.

The Resolution was very clear in its intent. The recitals read:

> "WHEREAS, those books and other materials containing sexual content are presently readily available to children without parental involvement or requirement for parental involvement;
>
> WHEREAS, the City Council seeks to proetid our community's children by necessarily involving parental oversight and participation regarding children's access to obscene [define above], pornographic, or sexual content in books and other material at or from the City libraries;

This is not a "censorship" project. This is a rational exercise in the constitutionally protected rights of parents to control that to which their children are exposed. If state law constricts the right of a city to ensure that constitutionally protected parents' rights are vindicated, then, to that extent, the statute is void and unenforceable against the City of Huntington Beach. These plaintiffs may not like parental control. They may wish to surreptitiously expose vulnerable minors to sexually charged materials. But the state cannot mandate it without doing violence to the constitutional rights of parents – not the state; not activists; not libraries – to determine what their children can and cannot read.

So, for this reason, too, Plaintiffs' Petition fails on the merits.

CONCLUSION

Plaintiffs' petition is an exercise in political activism dressed up as a serious legal effort. It has no place in a court of law. The plaintiffs lack standing to bring it. To the extent they have the power to bring the action, the effort to obtain a writ of mandate fails because it is moot. The Resolution at issue has no force of law. It is not an enforceable act, not just because, as a mere

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resolution adopted without fulfilling the legal requisites necessary to become enforceable, it is not *law*, but also because it has effectively been nullified by the citizen initiative that repealed the ordinance that *was* enforceable law and, thus, actionable. It is also moot because the citizen initiative supplanted the original ordinance and sets forth the complete sum and substance of how library materials are to be governed in the City of Huntington Beach and fully occupies the field, to the exclusion of any contrary enactment.

In addition, of course, the Resolution, even if actionable, is not violative in any way with the Right to Read Act, which must be read as having meaning that is not contrary to the United States Constitution. To the extent that the Act can be read as contrary to the Constitution, it is void. Parents have the right to govern what their children consume, whether it be physical nourishment or books, materials and information. Political actors may wish it were otherwise, but the United States Supreme Court has resoundingly – and recently – so held, as has the Supreme Court of California. All the Resolution did was set forth the City's opinion that parents have the right to determine what their children read. That is constitutionally determinative.

This case should never have been brought. But, in the end, it cannot be sustained. The petition for a writ of mandate must be denied.

Dated: July 18, 2025

JW HOWARD | ATTORNEYS, LTD.

By: */s/ John W. Howard*
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PROOF OF SERVICE

STATE OF CALIFORNIA) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2000 Main Street, Huntington Beach, CA 92648.

On July 18, 2025, I served the foregoing document described as: **OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF MANDATE** on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

a. [ ] BY MAIL -- I caused such envelope to be deposited in the mail at Huntington Beach, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the City's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in the affidavit.

b. [X] BY EMAIL – Electronic Service through One Legal, LLC. I affected electronic service by submitting an electronic version of the documents to One Legal, LLC, www.onelegal.com, which caused the documents to be sent by electronic transmission to the person(s) at the electronic service address(es) listed above.

c. [ ] BY EMAIL -- By causing a true copy of the above document to be emailed to the email addresses listed above on the date listed in this proof of service.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 18, 2025, at Huntington Beach, California.

CHRISTINA KELEMEN Christina Kelemen

SERVICE LIST

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