Electronically Filed by Superior Court of California, County of Orange, 08/11/2025 10:03:00 PM.
30-2025-01462835-CU-WM-CJC - ROA # 97 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

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]

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' DEMURRER

Judge: The Honorable Lindsey Martinez

Dept.: C24
Hearing Date: August 22, 2025
Time: 10:00 a.m. PDT

Action Filed: February 26, 2025

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
Chessie Thacher (SBN 296767)
cthacher@aclunc.org
39 Drumm Street
San Francisco, CA 94111
Telephone: +1 415 621 2493
Facsimile: +1 415 255 1478

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

JENNER & BLOCK LLP
Andrew J. Thomas (SBN 159533)
ajthomas@jenner.com
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
Telephone: +1 213 239 6900
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

COMMUNITY LEGAL AID SOCAL
Sarah Reisman (SBN 294393)
sreisman@clsocal.org
Katelyn Rowe (SBN 318386)
krowe@clsocal.org
Erica Embree Ettinger (SBN 321865)
eettinger@clsocal.org
Ryan M. Kendall (SBN 324714)
rkendall@clsocal.org
2101 North Tustin Avenue
Santa Ana, CA 92702
Telephone: +1 562 330 1559

Attorneys for Petitioner and Plaintiff Alianza Translatinx

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions

Statutes

Other Authorities

The Legislature finds and declares that ensuring public libraries are free of censorship is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article 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.

- California's Freedom to Read Act, Assembly Bill No. 1825, section 2.[1]

I. INTRODUCTION

In October 2023, the City of Huntington Beach, its City Council, and the Director of Community and Library Services (collectively the "City" or "Respondents") passed a resolution that requires its public libraries to engage in ongoing and systemic censorship by prohibiting them from allowing anyone under 18 to access library materials containing "any content of a sexual nature" without the consent of their parent or guardian. (Huntington Beach Resolution ("Resolution") No. 2023-41 at ¶ 1.a.)[2]

Petitioners state claims that the Resolution violates the California Freedom to Read Act ("FTRA"). The Legislature passed, and the Governor signed, the FTRA with the Resolution and similar measures elsewhere clearly in mind.[3] The Legislature recognized that censorship is a matter of statewide concern and it specifically intended the FTRA to apply to charter cities, contrary to the City's repeated assertions. The City's status as a charter city does not absolve it of the obligation to follow this law. The Petition also states claims that the Resolution violates the Liberty of Speech and Privacy Clauses of the California Constitution. Just as the City has no discretionary authority to violate its obligations under state law, it also is not free to violate minors' constitutional rights to privacy and to receive information.

The City's argument that Petitioners rely on speculation about the ways the Resolution might be enforced lacks merit because the Petition presents a facial challenge to an unlawful formal City policy. No prediction or speculation as to future enforcement is needed: the Resolution *already* violates the FTRA on its face, and its plain terms *require* further violation of the FTRA and constitutional rights.

[1] Assem. Bill No. 1825, 2023-24 Reg. Sess. (Cal. 2024) ("AB 1825"), (enacted and codified at Education Code Section 19800 et seq.), Sec. 2. These legislative findings from the Freedom to Read Act clearly demonstrate that the City's repeated claims that the Act does not "expressly state" that it addresses a matter of statewide concern are flatly wrong. (Demurrer at 16:27-27, 17:14-16.)

[2] Huntington Beach Resolution No. 2023-41 is attached as Exhibit 2 to Petitioners' Request for Judicial Notice that was filed concurrently with the Opening Brief in Support of Petition.

[3] See, e.g., Sen. Judiciary Com., Analysis of Assem. Bill No. 1825 (2023-2024 Reg. Sess.) as amended June 18, 2024, p. 7, http://bit.ly/41vriUp (recognizing that Huntington Beach has made a "concerted effort to restrict access to books"].)

Respondents' ripeness argument fails under the same flawed assumption. Fortunately, Petitioners need not wait for mounting violations of their rights to seek redress: When a city has enacted a policy that is unlawful on its face, the public can sue and the Court can enjoin it. Moreover, the City *has* implemented the Resolution. (Register of Actions ["ROA"], No. 2, Petitioners' Verified Petition for Writ of Mandate ["Petn."] ¶¶ 39-49.)

II. LEGAL STANDARD

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action." (*C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872.) Petitioners are "required to plead only ultimate facts, not evidentiary facts." (*C.W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal.App.5th 165, 169.) A complaint is adequate if it "apprises the defendant of the factual basis for the claim." (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1549.) The court must take the facts pled as true and read the complaint as a whole in the light most favorable to plaintiffs. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1557.) On demurrer, the Court may "only rule on matters disclosed in" the complaint or matters that may be judicially noticed. (*See Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 [courts should not rule on matters disclosed "in a memorandum in support of demurrer"].)

III. ARGUMENT

The Petition pleads causes of action supporting writ relief for the City's failure to comply with the FTRA, for constitutional violations, and for illegal expenditure of taxpayer funds.[4] The Petition does not depend on speculation because it presents a facial challenge to the Resolution, which expressly violates state law, and because the Resolution requires further violations of statutory and constitutional

[4] Petitioners' Opening Brief in Support of Petition provides a detailed discission of the relevant factual and procedural background. (Petitioners' Opening Brief [ROA No. 081] ["POB"] at 8-12.)

requirements.[5] Petitioners have established standing, and because this is a facial challenge to an unlawful Resolution and policy, it is ripe for adjudication, and it would be so even without implementation.

A. The City Is Violating the FTRA, Which Expressly Applies to Charter Cities

The City relies on the home rule doctrine to argue that the FTRA does not apply to charter cities because the "operation of the public library is a municipal affair." (Demurrer at 15-18.) However, "[h]ome rule authority . . . *does not* mean charter cities can never be subject to state laws that concern or regulate municipal affairs." (*City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 254 ["*Becerra*"] italics added.) Instead, when local enactments or policies conflict with a state law reasonably tailored to address a statewide concern, the local enactment is preempted and invalid. (See Cal. Const., art. XI, § 5; *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 7). The City's argument therefore lacks merit.

To determine whether state laws like the FTRA unconstitutionally infringe the home rule authority of charter cities, courts employ a well-established, four-part framework:

> First, the court determines whether the local law [or enactment] at issue regulates an activity that can be characterized as a municipal affair. Second, the court determines whether there is an actual conflict between state law and the local law. . . .Third, [if there is a conflict] the court determines whether the state law addresses a matter of "statewide concern." Fourth . . . the court determines whether the law is reasonably related to . . .resolution of the identified statewide concern and is narrowly tailored to avoid unnecessary interreference in local governance.

(*Becerra*, *supra*, 44 Cal.App.5th at 255, citation modified.)

1. FTRA Regulates a Matter of Statewide Concern and Not a Municipal Affair

Even if a local enactment can initially be characterized as regulating a municipal affair, if a statute addresses a matter of statewide concern and "is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance," then any "conflicting charter city measure ceases to be a municipal affair pro tanto and the Legislature is not prohibited . . . from

[5] Contrary to Respondents' arguments (Demurrer at 4, 7-9), Petitioners need not allege, for example, that the City has prevented them from borrowing specific books. As discussed below, the Resolution violates the FTRA on its face, and its terms ensure that libraries *must* further violate Petitioners' rights. A facial challenge implicates "only the text of the measure itself, not its application to the particular circumstances of an individual [Citation]." (*Baba v. Board of Supervisors* (2004) 124 Cal.App.4th 504, 512.) By alleging that the Resolution directly conflicts with state law and constitutional provisions, the Petition is more than adequate to inform the City of its violations under the law. (See Pet. ¶¶ 29-49, 99-100, 110, 116-117; see also POB at 13-17.)

addressing the statewide dimension by its own tailored enactments." (*State Bldg. & Constr. Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556 ["City of Vista"].) Because the FTRA *is* narrowly tailored to address matters of statewide concern, as discussed below, there is no need for the Court to engage in the first step of the *Becerra* analysis and make the initial determination of whether the Resolution regulates an activity that can be characterized as a municipal affair.

2. The City's Resolution Conflicts with the Freedom to Read Act

Petitioners' Opening Brief details the conflict between the Resolution and the FTRA. (POB at 13-18.) The Resolution violates the FTRA on its face in at least three ways. *First*, the Resolution restricts minors' access to library materials that contain any "sexual content," regardless of whether that content qualifies as "obscene" under binding precedent. (Resolution ¶ 1.a.) The Act, by contrast, prohibits restricting access to library materials on the basis that they "may include sexual content, unless that content qualifies as obscene under United States Supreme Court precedent." (Ed. Code, § 19802, subd. (b)(2)(A)(iii).) These provisions are irreconcilable because the Resolution *requires* libraries to restrict access to materials that contain non-obscene sexual content that *cannot* be restricted under the FTRA. (POB at 14-16.)

Second, the Resolution restricts access to library materials solely based on the age of the library patron, in direct violation of the FTRA. 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).) The Resolution directly conflicts with this prohibition by singling out all library patrons who are under 18 years of age, restricting their access to any books or materials that may contain sexual content, based only on the fact that they *are* under 18. (Resolution ¶ 1.a-b; POB at 16-17.) *Finally*, these restrictions in the Resolution directly conflict with the FTRA's prohibition against creating "policies or practices that limit or restrict access to library materials offered by the public library" absent conditions that do not apply here. (Ed. Code, § 19802, subd. (b)(3) [access restrictions permissible only to "preserve the safety or security" of library materials].) For all these reasons, there is an "actual conflict" between the FTRA and the Resolution. (*Becerra*, *supra*, 44 Cal.App.5th at 255.)

3. The FTRA Addresses Matters of Statewide Concern

"Any fair, reasonable and substantial doubt whether a matter is a municipal affair or broader state concern must be resolved in favor of the legislative authority of the state." (*Cox Cable San Diego, Inc. v. City of San Diego* (1987) 188 Cal.App.3d 952, 962.) The FTRA addresses a matter of statewide concern for at least three reasons. *First*, the FTRA was supported by legislative findings and a declaration that "ensuring public libraries are free of censorship is a matter of statewide concern and is not a municipal affair [as defined in state constitution]." (AB 1825, § 2, italics added.) Such "a declaration . . . is entitled to 'great weight.'" (*AIDS Healthcare Found. v. Bonta* (2024) 101 Cal.App.5th 73, 83 [quoting *City of Vista*, *supra*, 54 Cal.4th at 552.) The City's repeated contentions that the FTRA does not expressly state it regulates a matter of statewide concern are inexplicable and incorrect. (Demurrer 16:26-27; 17:14-16.)

Second, the FTRA is designed to protect constitutional rights. The "protection of the constitutional rights of California residents is a matter of paramount statewide concern." (*Becerra*, *supra*, 44 Cal.App.5th at 275.) The right to receive information is guaranteed by the Liberty of Speech Clause of the California Constitution, and minors' right to privacy is guaranteed by the state constitution's Privacy Clause. (*infra,* Pt. B.) The Act is expressly designed to protect these rights. (Ed. Code, §§ 19801, subd. (d), 19802, subd. (d).)

Third, the FTRA is the most recent addition to a longstanding regulatory scheme to protect access to library materials and "provide all residents with the opportunity to obtain from their public libraries needed materials and informational services by facilitating access to the resources of all libraries in this state." (Ed. Code, § 18702.) The Legislature enacted the Library Services Act nearly fifty years ago, declaring "that it is in the interest of the people of the state to ensure that all people have free and convenient access to all library resources and services that might enrich their lives, regardless of where they live or of the tax base of their local government." (*Id*. at § 18701 [added 1977].) The Legislature long ago declared its intent "to provide all residents with the opportunity to obtain from their public libraries needed materials and informational services by facilitating access to the resources of all libraries in this state." (*Id*. at § 18702.) Access to libraries is also regulated through the California Public Records Act, which mandates that "[a]ll patron use records of a library that is in whole or in part supported by public funds shall remain confidential." (Gov. Code, § 7927.105, subd. (c).) "Clearly, the creation of a uniform

regulatory scheme is a matter of statewide concern, which should not be disrupted by permitting . . . contradictory local action." (*Fiscal v. City & Cnty. of San Francisco* (2008) 158 Cal.App.4th 895, 919.) The Act is the most recent step in the Legislature's effort to create such a uniform regulatory scheme.

The Legislature referenced the statewide regulatory scheme when enacting the FTRA, noting that "[u]nder existing law, the Legislature declares that the public library is, among other things, a source of information and inspiration to persons of all ages, cultural backgrounds, and economic statuses."[6] The FTRA creates uniform access to such information and inspiration and cannot "be disrupted by permitting" the City of Huntington Beach to engage in "contradictory local action." (*Fiscal*, *supra*, 158 Cal.App.4th at 919.)

For these reasons, the Act manifestly addresses matters of statewide concern. There is no plausible contrary argument. Respondents' assertion that the Legislature did not find that the FTRA addresses matters of statewide concern is directly contradicted by the bill. (Compare Demurrer at 17:14-16 with AB 1825, § 2.) The City's argument that the Resolution addresses matters of municipal affairs (Demurrer at 17:19-25) is immaterial because the FTRA addresses matters of statewide concern, and any conflicting local measure therefore "ceases to be a municipal affair pro tanto" leaving the Legislature free to address the statewide issue "by its own tailored enactments." (*City of Vista*, *supra*, 54 Cal.4th at 556.) But the Resolution, in fact, does *not* address matters of municipal affairs, and the authorities the City relies upon do not demonstrate otherwise.

The City is wrong that limiting access to certain materials based on content or age is a "municipal affair[]." (Demurrer at 17:19-20 [citing *City of Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 98] ["*Paine*"]). *Paine* asked only whether a charter city was required to "submit the matter" of acquiring land for a new branch library "to the city planning commission" pursuant to a state statute. (*Paine, supra*, 126 Cal.App.2d at 97.) The court found for Pasadena in a narrow opinion holding only that "the necessity for and location of a branch library" was a "municipal affair." (*Id.* at 98.) That holding is irrelevant; the case concerned only the process a charter city may use to acquire land to build a branch library. (*Id.* at 95.) It said nothing about the operation of an entire library system once it is established, including the access the

[6] Assem. Bill No. 1825, Legislative Counsel Digest (2023-2024 Reg. Sess.) Jan. 11, 2024.

system must provide to certain materials or the reasons it may use for not acquiring or circulating materials. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1097 [opinion limited by and must be construed consistent with facts of case].)

While the decision to set up certain services for the public may be a matter of municipal concern, once a charter city has established such services, they are subject to state regulation. For example, charter cities have the authority to establish their own public transit systems, (*see Ruane v. City of San Diego* (1968) 267 Cal.App.2d 548, 558), but those systems are still subject to state traffic and safety regulations. (*See L.A. Metro. Transit Auth. v. Pub. Utils. Com.* (1963) 59 Cal. 2d 863, 869-70.) Along the same lines, the state surely has the right to enact statewide, binding legislation to proscribe racial discrimination, even with respect to a municipal matter like providing bus service. Thus, even with respect to matters that can be characterized as involving a municipal concern, the state remains free to regulate those matters in service of an important statewide policy. In *Mervynne v. Acker*, for instance, the Court of Appeal held that parking meter traffic regulation is a matter of statewide concern, even though "local citizens quite naturally are especially interested in the traffic on the streets in their particular locality," because "[p]ublic highways belong to all the people of the state [and] [e]very citizen has the right to use them." ((1961) 189 Cal.App.2d 558, 561–62.) Likewise, while a charter city might not be required to establish a particular committee or commission for public input, once it does so, the operation of such a body is subject to the Brown Act. (*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 958.) Similarly, while the City's decision to establish a library system may have been a municipal affair, that does not preclude a holding that the regulation of specific aspects of that system is a matter of statewide concern, as the Legislature determined in enacting the FTRA.

The City mistakenly relies on a non-binding Attorney General ("AG") opinion to argue "the Education Code provisions relating to city libraries 'are inapplicable to charter cities.'" (Demurrer at 17:20-22 [quoting 61 Ops. Cal. Atty. Gen 512, 529 (1978)].) For that proposition, the opinion relies only on *Paine*, which is limited to the land acquisition process for a new library and not the access and collection practices of an entire library system.[7] Accordingly, the AG's "opinion has no persuasive value

[7] The opinion also cites *Simons v. City of Los Angeles* (1976) 63 Cal.App.3d 455, which discusses only the general question whether a matter is a municipal affair or of statewide concern, not the operation of a public library system.

under the circumstances presented" here. (*Almond Alliance of California v. Fish & Game Comm'n*. (2022) 79 Cal.App.5th 337, 358.) In any event, Attorney Generals' opinions are not binding on this Court. (*See Shapiro v. Bd. of Directors* (2005) 134 Cal.App.4th 170, 184 n.17.)

The AG opinion's reference to the parts of the Education Code dealing with city libraries refers only to provisions in Chapter 5 of the code covering matters like establishing a municipal library and appointing its board of trustees. (Ed. Code, §§ 18900-18965.) Notably, it does not appear the City's library system is organized under Chapter 5 because it is not governed by the required board of trustees.[8] Regardless, the FTRA is codified in a different chapter (Ch. 10, Ed. Code, §§ 19800-19802), postdates the AG opinion, and expressly finds the FTRA binds charter cities (AB 1825, § 2; Ed. Code, § 19802, subd. (e).) For this reason, the opinion "has no bearing on the question before us." (*Shapiro,* supra, 134 Cal.App.4th at 184 [AG opinion irrelevant when issued before statute at issue took effect].) Regardless, it is well-established that "[w]hat may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63.) Even if censorship in public libraries may not have been a matter of statewide concern in 1978, that does not preclude the Legislature from determining that it is now, as it has expressly done. (AB 1825, § 2; Ed. Code, § 19802, subd. (e).)

4. The FTRA is Reasonably Related to Statewide Concern and Narrowly Tailored

The FTRA addresses a matter of statewide concern and preempts the Resolution because it is narrowly tailored to avoid unnecessary interference in local governance. (*City of Vista*, *supra*, 54 Cal.4th at 556). The FTRA is based in part on express legislative findings that "[a] person's right to use a library should not be denied or abridged solely because of personal characteristics, age, background, or views"; that "[r]emoving and banning books from public libraries are dangerous acts of government censorship and erode our country's commitment to freedom of expression and the right to receive information"; and that "[l]ibraries are essential for information, education, and enlightenment of all people of the community the library serves." (Ed. Code, § 19801, subd. (a), (c), (d).) The Act's author adds that "the California [FTRA], protects the fundamental right of access to diverse and inclusive books and library materials."[9]

[8] See Huntington Beach Mun. Code, Ch. 2.30, available at http://bit.ly/4lNaWPi.
[9] Sen. Judiciary Com., Analysis of Assem. Bill No. 1825 (2023-2024 Reg. Sess.) as amended August 22, 2024 at 3, available at http://bit.ly/41vriUp.

The Act does no more than necessary to address these findings and protect this right. It prohibits only actions that would restrict access to constitutionally protected materials, without, for example, conditioning public funding on local jurisdictions' decision "to acquire or exclude any specific book, periodical, film, recording, picture, or other material, or any specific equipment, or to acquire or exclude any classification of books or other material by author, subject matter, or type." (*Id*. at § 18703, subd. (b).) What the FTRA "does not do" includes taking any steps that would impact the City's library policies beyond preventing the types of censorship the Act is designed to guard against. (*Becerra*, *supra*, 44 Cal.App.5th at 278). By avoiding any restrictions on charter cities' authority that are unnecessary to achieve the Legislature's goals, the Act demonstrates that it is appropriately tailored to address issues of statewide concern and does not intrude on the City's interests. (*Id.* at 280 [rejecting the City's charter city challenge to provision of the California Values Act].)

B. Petitioners State a Claim for Violation of the California Liberty of Speech Clause

Freedom of speech includes the right to receive information. (*Griswold v. Connecticut* (1965) 381 U.S. 479, 482 ["[t]he right of freedom of speech . . . [includes] the right to receive, [and] the right to read" [Citation.]]; *Keenan v. Superior Ct.* (2002) 27 Cal.4th 413, 436 ["The California [Liberty of Speech Clause] provides similar, and sometimes greater, protection of speech than the First Amendment"].) This right is especially salient in a public library, "the 'quintessential' locus for the exercise of the right to receive information and ideas." (*Kreimer v. Bureau of Police* (3d Cir. 2002) 958 F.2d 1242, 1256; *see also Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, 1341 [holding that Liberty of Speech Clause applied to a local policy enacted by a library board of trustees regarding leafleting activities near the library].)

Speech is not unprotected merely because it contains some alleged "sexual content." (*Ashcroft v. Free Speech Coal.* (2002) 535 U.S. 234, 245). Unless it is legally obscene as to minors, which is not at issue here, speech "cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them."[10] (*Erznoznik v. City of Jacksonville* (1975) 422 U.S. 205, 213–14; *see also, e.g.*, *Matsumoto v. Labrador* (9th Cir. 2024) 122 F.4th 787, 813.) The Petition states a claim that the

[10] The recent decision in *Free Speech Coalition v. Paxton* (2025) 145 S.Ct. 2291, is irrelevant, because it concerned only "content that is obscene to minors," and the Resolution restricts access to materials that go far beyond that limited category of speech.

Resolution requires exactly this sort of suppression and violates the Liberty of Speech Clause by restricting minors' access to a range of non-obscene library materials that may contain "sexual content." (Petn. ¶¶ 34-49, 109-122.)

C. The Petition States a California Constitutional Claim for Privacy Violation

A privacy claim under Article I, Section 1 of the state constitution requires three elements: "(1) identification of a specific, legally protected privacy interest; (2) a reasonable expectation of privacy; and (3) conduct by defendant constituting a serious invasion of privacy." (*Dep't of Fair Emp. & Hous. v. Superior Ct.* (2002) 99 Cal.App.4th 896, 903.) The Petition alleges all three elements in detail. *First*, the Petition alleges that minors have a legally protected interest in their library patron records. (Petn. ¶¶ 85-96.) This privacy interest is grounded in case law and statute. (*See Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 334 [("[T]here can be no question but that minors, as well as adults, possess a constitutional right of privacy under the California Constitution."]; Gov. Code, § 7927.105, subd. (c) [("[a]ll patron use records of a library that is in whole or in part supported by public funds shall remain confidential"].)

Second, the Petition provides numerous bases to conclude that minors in Huntington Beach have a reasonable expectation to privacy in the library materials they access, as their privacy interest is guaranteed and protected by state law and recognized by professional librarian organizations. (Petn. ¶¶ 86-89.)

Finally, the Petition alleges that the Resolution invades this privacy interest by requiring parental or guardian consent as a condition for minors to access library materials containing any "sexual content," thereby forcing them to sacrifice their privacy as a condition for exercising their right to receive information. (Petn. ¶ 126.)

D. The Petition States a Taxpayer Claim for Illegal Expenditure of Taxpayer Funds

Petitioners state a taxpayer claim to enjoin the Resolution because the facts pled show the City receives state funds and is a "public library jurisdiction" as defined by the FTRA (Ed. Code, § 19802, subd. (f)(2)), and that the City's expenditure of federal, state, county, and/or municipal funds to administer and implement the Resolution necessarily violates the FTRA and the state constitution. (Petn. ¶ 131.) Petitioners have alleged that the Resolution's terms violate the FTRA's prohibition against policies that

restrict access to library materials. (*Id*. at ¶¶ 34-36; Ed. Code, § 19802, subd. (b)(3).) The Resolution *requires* City libraries to operate a governmental system that violates people's statutory and constitutional rights. Such a system "is illegal and a waste under section 526a." (*California DUI Lawyers Assn. v. California Dep't of Motor Vehicles* (2018) 20 Cal.App.5th 1247, 1259.) "[E]xpending the time" of government officials who are "performing illegal and unauthorized acts" constitutes an unlawful use of funds that can be enjoined under Code Civ. Proc., § 526a. (*Wirin v. Horrall* (1948) 85 Cal.App.2d 497, 504-505; *Citizens for Unif. Laws v. Cnty of Contra Costa* (1991) 233 Cal.App.3d 1468, 1472-73 [taxpayer standing requires only that public employees "have expended their time in performing acts prescribed by the challenged law"].)

City staff already have expended time implementing the Resolution (Petn. ¶¶ 39-49) and continued implementation will require more expenditures of employee time. Respondents are mistaken in asserting that Petitioners have not alleged facts showing unlawful expenditure of funds. (Demurrer at 7:23-24.) Petitioners therefore state a taxpayer claim. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267 [Code Civ. Proc., § 526a authorized taxpayer "to obtain an injunction restraining and preventing the illegal expenditure of public funds"]; *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1086 (1995) [same].) Because the Resolution and its implementation violate the FTRA and the California Constitution, Petitioners Alianza Translatinx ("ATL") and Erin Spivey have taxpayer standing.

For these reasons, and contrary to the City's assertions, Petitioners have made sufficient allegations to demonstrate their causes of action. (See Petition; *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1019–1020 ["[A] plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint defendant with the nature, source, and extent of his cause of action"].)

E. Petitioners Have Presented a Justiciable Controversy

Respondents attempt to rewrite the Petition as an as-applied challenge, rather than a facial challenge, arguing that it is based solely on speculation, asserting this case is not ripe and that Petitioners fail to sufficiently allege their rights have been violated. The Court should reject these arguments because the Resolution violates the FTRA and the California Constitution both on its face and in its previous and ongoing implementation.

"[A] facial challenge is generally ripe the moment the challenged [law] is passed." (*AIDS Healthcare*, *supra,* 101 Cal.App.5th at 80, citation modified.) The Resolution *already* violates the FTRA because it restricts access to library materials. (Ed. Code, § 19802(b)(3).) It "inevitably" or "in the . . . great majority of cases" *necessarily* violates the FTRA and the California Constitution (*AIDS Healthcare*, *supra*, 101 Cal.App.5th at 80) because it *requires* the City to impose restrictions the FTRA and the California Constitution prohibit. (Secs III(A-C), *ante*.)[11] That is enough for ripeness. Moreover, the City *has* implemented the Resolution. (Petn. ¶¶ 39-49.)

There also is no need to speculate about how the Resolution will be implemented to establish standing. (Demurrer at 9-14.) Petitioners demonstrated in prior briefing that they have sufficiently alleged beneficial interest standing and public interest standing. (See POB at 18-20 [citing Petn. ¶¶ 13-16], Reply in Support of Writ of Mandate [ROA No. 093] ["Reply"] at 15 [citing Petn. ¶¶ 13-16].) Petitioner ATL seeks to ensure community access to library resources containing vital information for transgender, gender-expansive, and intersex ("TGI") individuals, while C.A., H.P., and Erin Spivey have a demonstrated interest in securing access to library materials containing "sexual content." (POB at 18-20.) The Resolution requires restrictions on such access, so Petitioners have a beneficial interest in challenging it. (*Ibid*.)[12]

Petitioners also demonstrated they have standing to bring their remaining causes of action. "In assessing standing, California courts are not bound by the 'case or controversy' requirement of Article III of the United States Constitution, but instead are guided by 'prudential' considerations. [Citation.]" (*Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 370.) "California decisions . . . generally require a plaintiff to have a personal interest in the litigation's outcome. [Citation]." (*Ibid.*; see also Code Civ. Proc., § 367.) Each of the Petitioners has sufficiently alleged facts to establish such an interest.

[11] This is not a case where it is unclear whether implementation of a challenged law or policy will violate the plaintiffs' rights. (*See Pac. Legal Found. v. California Coastal Com*. (1982) 33 Cal.3d 158, 172 [challenge to guidelines interpreting portions of Coastal Act was not ripe because guidelines were flexible, general, and not mandatory].) Here, the Resolution contains mandatory prohibitions *requiring* restriction of minors' access to library materials.

[12] For similar reasons, Petitioners should be granted standing under the relaxed public interest standing requirements for petitioners seeking writ relief. (POB at 18-20; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165-166.)

ATL provides critical services to TGI people in Orange County and Huntington Beach. (Petn. ¶ 13.) ATL asserts associational standing to bring claims on behalf of its members. Instead of grappling with ATL's verified standing allegations, the City pretends they do not exist, writing that "ATL fails to demonstrate that any of its members would have standing in their own right." (Demurrer at 11.) But ATL's verified allegations include (1) that ATL's staff and members hold Huntington Beach library cards and use library services (Petn. ¶ 13); (2) that library services are directly related to ATL's mission (*ibid.*), and (3) that its staff and members have paid taxes in Huntington Beach within the last calendar year (*ibid.*). ATL seeks broad writ, injunctive, and declaratory relief which does not require individual members to participate. (Petn at 34) ATL's verified allegations meet the associational standing test and the City has not shown otherwise. (*Cal. Comm. Choice Assn. v. Pub. Util. Com.* (2024) 103 Cal.App.5th 845, 853 [stating test].)

Because the City ignores the existence of these specific, verified allegations, this Court can disregard the City's standing arguments. (*Cal. Comm. Choice Assn.*, *supra*, 103 Cal.App.5th at 843 [finding associational standing where Respondent did not identify "any basis to question the requirements of the doctrine are satisfied"].) Finally, the Demurrer does not even address the fact that the City's unlawful censorship scheme directly harms ATL's organizational mission. (Demurrer at 10-11; Petn. ¶ 13 [asserting ATL's use of library services to fulfill its core mission].)

Petitioners C.A. and H.P. are Huntington Beach minor residents who hold library cards, regularly use the City's library services, and allege that the Resolution restricts their access to constitutionally protected materials. (Petn. ¶¶ 14-15.) In addition to their writ claim, they assert claims for violation of the California Constitution's Liberty of Speech Clause and Privacy Clause. (*Id*. at ¶¶ 14-15; 109-122; 123-128.) They have a real interest in the outcome of this case, and the Resolution harms them. They identify specific categories of books they would like to access that must be restricted under the Resolution. (*Id*. at ¶¶ 14-15.) They also allege that the Resolution's parental notification and consent requirement for minors to access such materials infringes their rights to access information while maintaining their privacy. (*Id*.

at ¶¶ 123-128.) For these reasons, they have alleged sufficient facts establishing standing to bring these claims.[13]

Erin Spivey is a Huntington Beach resident, taxpayer, and professional librarian who previously managed a branch of the City's library system. (Petn. ¶ 16.) In addition to her writ and taxpayer expenditure claims, she asserts a claim for violation of the Liberty of Speech Clause. (Petn. ¶¶ 109-122.) She has a real interest in the outcome of this case, and the Resolution harms her. Her professional and civic experience gives her a direct interest in ensuring that the library operates in a lawful and inclusive manner. (Petn. ¶ 16) She reasonably fears that the Resolution prevents minors from accessing great works of literature, books on history and art, and more—all of which are critical to their intellectual growth and identity development. (*Ibid*.)

Simply put, because the Resolution is in effect and contravenes the California FTRA and the California Constitution, Petitioners' fundamental rights are impaired. (Petn. ¶¶ 97-134; see also *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 480 [loss of free speech, "for even minimal periods of time, unquestionably constitutes irreparable injury"].)

IV. CONCLUSION

For the reasons stated herein, Petitioners respectfully ask this court to overrule the City's Demurrer in its entirety.

[13] Respondents assert that C.A. and H.P. can avoid violation of their privacy rights by applying for "Teen Cards" that would allow them to avoid "parental involvement" in access to library materials. (Demurrer at 10:12-14.) Those facts are outside the Petition and not properly before the Court on Demurrer. But assuming the City does allow certain minors to have "Teen Cards" allowing access to materials containing "sexual content" without parental consent, such access violates the Resolution. The alleged "Teen Cards" could be revoked at any time. Even if the Court could consider the "Teen Cards" on Demurrer, they cannot prevent the Court from deciding this case, which challenges the Resolution on its face.

Respectfully Submitted:

Dated: August 11, 2025

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA

By: */s/ Jonathan Markovitz*
Peter J. Eliasberg
Amanda C. Goad
Jonathan Markovitz

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

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

By: *Chessie Thacher*
Chessie Thacher

Attorney 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

FIRST AMENDMENT COALITION

By: */s/ David Loy*
David Loy

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

JENNER & BLOCK LLP

By: */s/ Andrew J. Thomas*
Andrew J. Thomas

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

COMMUNITY LEGAL AID SOCAL

By: */s/ Ryan M. Kendall*
Sarah Reisman
Katelyn Rowe
Erica Embree Ettinger
Ryan M. Kendall

Attorneys for Petitioner and Plaintiff Alianza Translatinx

Electronically Filed by Superior Court of California, County of Orange, 08/11/2025 10:03:00 PM.
30-2025-01462835-CU-WM-CJC - ROA # 99 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

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]

PROOF OF SERVICE

Judge: The Honorable Lindsey Martinez
Dept.: C24

Action Filed: February 26, 2025

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
Chessie Thacher (SBN 296767)
cthacher@aclunc.org
39 Drumm Street
San Francisco, CA 94111
Telephone: +1 415 621 2493
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

JENNER & BLOCK LLP
Andrew J. Thomas (SBN 159533)
ajthomas@jenner.com
2029 Century Park East, Suite 1450
Los Angeles, CA 90067
Telephone: +1 213 239 6900
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

COMMUNITY LEGAL AID SOCAL
Sarah Reisman (SBN 294393)
sreisman@clsocal.org
Katelyn Rowe (SBN 318386)
krowe@clsocal.org
Erica Embree Ettinger (SBN 321865)
eettinger@clsocal.org
Ryan M. Kendall (SBN 324714)
rkendall@clsocal.org
2101 North Tustin Avenue
Santa Ana, CA 92702
Telephone: +1 652 330 1559

Attorneys for Petitioner and Plaintiff Alianza Translatinx

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On **August 11, 2025**, I served the following documents in the manner described below:

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' DEMURRER

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Jenner & Block LLP's electronic mail system to the email addresses set forth below.

On the following part(ies) in this action:

Mike Vigliotta (mvigliotta@surfcity-hb.org)
Peggy Z. Huang (peggy.huang@surfcity-hb.org)
Andrew Kornoff (andrew.kornoff@surfcity-hb.org)
Christina Kelemen (chris@surfcity-hb.org)
Michele Hoffman (michele.hoffman@surfcity-hb.org)
Office of the City Attorney, City of Huntington Beach
2000 Main Street, P.O. Box 190
Huntington Beach, CA 92648

AMERICA FIRST LEGAL FOUNDATION
James K. Rogers (james.rogers@aflegal.org)
Nicholas Barry (nicholas.barry@aflegal.org)
Ryan Giannetti (ryan.giannetti@aflegal.org)
611 Pennsylvania Avenue, SE #231
Washington, D.C. 20003

JW HOWARD ATTORNEYS
John W. Howard (johnh@jwhowardattorneys.com)
Scott Street (sstreet@jwhowardattorneys.com)
Michelle Volk (michelle@jwhowardattorneys.com)
Peter Shelling (pshelling@jwhowardattorneys.com)
Mitchell Stein (mitchell@jwhowardattorneys.com)
One America Plaza
600 West Broadway, Suite 1400
San Diego, CA 92101

Attorneys for Respondents and Defendants City of Huntington Beach, City of Huntington Beach City Council, and Ashley Wysocki

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 11, 2025, at Los Angeles, California.

Laura Saltzman