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**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]

**PETITIONERS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
OF ITS MOTION FOR ATTORNEY FEES**

[Code of Civil Procedure section 1021.5]

Judge: The Honorable Lindsey Martinez

Dept.: C24  
Hearing Date: April 27, 2026  
Time: 1:30 PM

**Reservation Number: 74735506**

Action Filed: February 26, 2025

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1 **I. INTRODUCTION**

2 Petitioners brought this case to prevent the implementation of Huntington Beach’s library  
3 censorship scheme. Their petition for writ of mandate and complaint for injunctive relief alleged the  
4 scheme violated the recently enacted Freedom to Read Act (“FTRA” or “the Act”) and the rights to privacy  
5 and to receive information protected by the California Constitution. Despite vigorous opposition by  
6 Respondents, Petitioners achieved all the relief they sought in their Petition, thereby enforcing their rights  
7 under the FTRA, which furthers the constitutional right to receive information. Petitioners believe this is  
8 the first case brought under the FTRA. Petitioners are entitled to fees because they have vindicated  
9 important rights protected by the FTRA and otherwise satisfy all the requirements of Code of Civil  
10 Procedure section 1021.5, often referred to as the private attorney general fees statute.

11 The fees requested are reasonable. The rates sought are consistent with the market rates for lawyers  
12 and other legal personnel and the rates awarded by other courts under fee shifting statutes. In addition, the  
13 hours sought are reasonable because, among other things, Petitioners are not seeking fees for a significant  
14 amount of time expended to achieve an excellent result, in an exercise of billing judgment. Petitioners  
15 also had to expend substantial time responding to inappropriate filings and near-frivolous arguments put  
16 forth by Respondents. Finally, Petitioners’ attorneys are entitled to a multiplier of 1.25 because of the  
17 contingency risk they took on in representing petitioners on a pro bono basis, and the novelty of the issues  
18 presented.

19 **II. FACTS AND RELEVANT PROCEDURAL HISTORY**

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

21 In August 2024, the Legislature passed the FTRA to prohibit public libraries from pursuing library  
22 censorship or book bans. The Legislature found and declared that “[r]emoving and banning books from  
23 public libraries are dangerous acts of government censorship and erode our country’s commitment to  
24 freedom of expression and the right to receive information.” (Ed. Code, § 19801, subd. (d).) The Act  
25 mandates several safeguards that public library jurisdictions must uphold to remain in compliance with  
26 the Act, two of which are at stake in this lawsuit. *First*, the Act provides that Respondents “shall not  
27 proscribe or prohibit the circulation or procurement of, or access to, any library materials in a public  
28 library because of the topic addressed by the materials or because of the views, ideas, or opinions

1 contained in those materials.” (*Id.* at § 19802, subd. (b)(1).) The Act specifically bars libraries from  
2 excluding “library materials [that] may include sexual content, unless that content qualifies as obscene  
3 under United States Supreme Court precedent.” (*Id.* at subd. (b)(2)(A)(iii).) **Second**, the Act provides that  
4 “a person’s right to use a public library and its resources shall not be denied or abridged solely because of  
5 personal characteristics, age, background, or views.” (*Id.* at subd. (c).)

6 The FTRA expressly governs the conduct of charter cities like Huntington Beach. In passing the  
7 Act, the Legislature found and declared “that ensuring public libraries are free of censorship is a matter of  
8 statewide concern and is not a municipal affair” and therefore the Act “applies to all cities, including  
9 charter cities.” (Assem. Bill No. 1825 § 2; see also Ed. Code, § 19802, subd. (e).) Indeed, the Legislature  
10 singled out the City of Huntington Beach (along with Fresno County, another charter jurisdiction) for  
11 restricting access to library materials. (Register of Actions [“ROA”] 81, Petitioners’ Opening Brief  
12 [“POB”], p. 9, n.5.)

13 **B. The City Adopts Resolution No. 2023-41 to Restrict Minors’ Access to Library Materials**  
14 **Containing Sexual Content**

15 In October 2023, the City Council adopted Resolution No. 2023-41 to restrict minors’ access to  
16 existing and future City-owned library materials, based on the content of those materials. Specifically,  
17 “[n]o City Library or other City facility shall allow children ready access to books and other materials that  
18 contain any content of sexual nature.” (Resolution ¶ 1.a.) Any such library materials “shall not be placed  
19 in, or be present in, any section of any City Library or facility other than adult section(s), i.e., those  
20 areas/shelves designated for 18-years or older.” (*Ibid.*) In addition, “[p]arental or guardian consent will be  
21 required before accessing or checking out any book or other material that contains any sexual writings,  
22 sexual references, sexual images, and/or other sexual content by anyone under 18-years of age, whether  
23 the books or materials are intended for children or adults.” (*Id.* at ¶ 1.b.) The Resolution does not contain  
24 any definitions for the terms “sexual writings,” “sexual references,” “explicit sexual images,” or “sexual  
25 content,” nor is it limited to materials that are obscene as to adults or minors under United States Supreme  
26 Court precedent.

27 Next, the Resolution calls for the establishment of a “community parent/guardian review board”  
28 (“Review Board”) with power over what materials can be purchased and added to the library collection.

1 (*Id.* at ¶ 2.a [Review Board “shall be established”].) The Resolution provides that “[n]o City Library . . .  
2 shall procure (children’s) books or materials containing any sexual writing, sexual references, sexual  
3 images, and/or other sexual content that are intended for children without first receiving the approval of a  
4 community parent/guardian review board.” (*Id.*) The Review Board’s approval would be contingent upon  
5 a “majority vote” that “the books and materials meet the community standards of acceptance for the City  
6 of Huntington Beach.” (*Id.* at ¶ 2.c.) The Review Board also would have the power to restrict minors’  
7 access to library materials that are currently in the library’s collection; if the Review Board “find[s] a book  
8 or material currently in circulation does not meet community standards, it shall be placed in the adult  
9 section and subject to parental and guardian consent.” (*Id.* at ¶ 2.d.) The Resolution does not define  
10 “community standards.” The Resolution was still in effect and had not been modified since the passage of  
11 the Freedom to Read Act before this Court granted Petitioners requested writ of mandate.

12 **C. Petitioners Sue for Failure to Comply with the Freedom to Read Act, and Respondents**  
13 **Aggressively Defend the Action**

14 Before filing the action, Petitioners’ counsel sent multiple demand letters to the City Council  
15 explaining that its censorship regime was unlawful. (ROA 2, Petition for Writ of Mandate [“Pet.”] ¶¶ 33,  
16 71.) The City did not respond. On February 26, 2025, Petitioners filed a Petition for Writ of Mandate and  
17 Complaint for Injunctive and Declaratory Relief. (ROA 2.) Petitioners’ First Cause of Action sought a  
18 writ of mandate directing the City to comply with the FTRA. (Pet. ¶¶ 97-106.) This writ cause of action  
19 involved a facial challenge, based on the plain language of the City’s enactments, and therefore raised  
20 only pure questions of law. Petitioners also raised causes of action under the Liberty of Speech Clause of  
21 the California Constitution, Const. Art. I, section 2, and the California Constitution’s Privacy Clause, Art.  
22 I, section 1, and a taxpayer cause of action under Code of Civil Procedure section 526a.

23 Respondents aggressively defended against the action at every step of the process. Respondents  
24 filed a demurrer arguing: (1) failure to allege sufficient facts, (2) lack of ripeness, (3) lack of standing, and  
25 (4) that the Act does not apply to charter cities. (ROA 52, Demurrer, p. 7-18.) Respondents also filed an  
26 opposition to Petitioners’ opening merits brief. (ROA 86.) The opposition—peppered with ad hominem  
27 attacks and misrepresentations—argued that (1) the Resolution has no legal effect and was repealed by  
28 implication, (2) the Act abridges parental rights, and (3) Petitioners lack standing. (*Id.* at p. 7, 9, 13-16.)

1 Respondents did not assert compliance with the Act or address the merits of Petitioners’ arguments and  
2 cases cited. Next, Respondents filed an ex parte application to unduly delay the writ hearing until months  
3 after the demurrer hearing. (ROA 56.) Petitioners successfully opposed with quick turnaround briefing,  
4 (ROA 62), and this Court found good cause to hear the writ and demurrer on the same date, as Petitioners  
5 had requested and had proposed to Respondents as a compromise to avoid ex parte practice. (ROA 66.)  
6 Lastly, just a day and a half before the writ and demurrer hearing, Respondents surprised the Court and  
7 Petitioners with a late-filed supplemental request for judicial notice. (ROA 117.) They introduced a newly  
8 adopted resolution and argued it mooted the case. (*Id.*) Petitioners opposed again with quick turnaround  
9 briefing, (1) explaining the request did not affect the legal issues in this case and (2) informing the Court  
10 that the City had omitted key legislation details from its request that undercut its mootness argument.  
11 (ROA 127, p. 3, 5-6.) Petitioners also submitted declarations demonstrating that the City was actively  
12 continuing its enforcement of Resolution No. 2023-41, in violation of the Act. (*Id.* at p. 8, ROA 121, 125.)

#### 13 **D. The Court Grants the Petition for Writ of Mandate and Denies the Demurrer**

14 The Court heard argument on the Petition on September 5, 2025 after issuing a tentative opinion  
15 granting the writ and overruling the demurrer. The parties submitted on the tentative opinion overruling  
16 the demurrer without argument. On the day of hearing, the Court issued a minute order confirming its  
17 tentative ruling. With respect to the Petition, the Court held—among other things—that Petitioners had  
18 standing; the Petition was not moot; Resolution No. 2023-41 violated the FTRA, thereby making the  
19 issuance of a writ of mandate “proper”; and the Act did not abridge the constitutional rights of parents to  
20 manage the upbringing of their children. (ROA 128.) Petitioners subsequently dismissed their remaining  
21 complaint causes of action without prejudice. (ROA 134.) The Court then entered judgment in favor of  
22 Petitioners on the Writ (ROA 153), and Petitioners gave notice of entry of judgment on October 28, 2025  
23 (ROA 157).

### 24 **III. LEGAL STANDARD**

25 Petitioners are seeking attorney fees under Code of Civil Procedure section 1021.5, which provides  
26 for the award of attorney fees to a “successful party” in any action resulting “in the enforcement of an  
27 important right affecting the public interest if (a) a significant benefit, whether pecuniary or nonpecuniary,  
28 has been conferred on the general public or a large class of persons, (b) the necessity and financial burden

1 of private enforcement, or of enforcement by one public entity against another public entity, are such as  
2 to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the  
3 recovery, if any.” (Code Civ. Proc., § 1021.5.)

#### 4 **IV. ARGUMENT**

##### 5 **A. Petitioners Satisfy All the Requirements for Fees Under CCP Section 1021.5**

###### 6 *1. Petitioners Are Successful Parties Under CCP section 1021.5*

7 “It is settled that plaintiffs may be considered prevailing parties for attorney’s fees purposes if they  
8 succeed *on any significant issue* in litigation which achieves *some of the benefit* the parties sought in  
9 bringing suit.” (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153 [internal citation  
10 and quotations omitted, italics in original].)<sup>1</sup> Petitioners achieved the principal relief they sought: “a Writ  
11 of Mandate compelling Defendants to comply with the requirements of the FTRA and prohibiting them  
12 from implementing or enforcing the Library Measures.” (Pet. Prayer for Relief ¶1.) Thus, they are  
13 successful parties under section 1021.5.

###### 14 *2. Petitioners’ Lawsuit Resulted in the Enforcement of an Important Right*

15 Under section 1021.5, an important right affecting the public can derive from a statute or a  
16 constitutional provision. (See *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917,  
17 925. [“[T]he public always has a significant interest in seeing that legal strictures are properly enforced”].)  
18 “Courts have broadly interpreted the important right concept . . . .” (*The Kennedy Com. v. City of*  
19 *Huntington Beach* (2023) 91 Cal.App.5th 436, 463 [citation omitted].) Courts have held that a wide variety  
20 of suits in which the successful party has enforced a statutory right satisfy the important rights requirement  
21 of section 1021.5. (See e.g., *County of Colusa v. California Wildlife Conservation Bd.* (2006) 145  
22 Cal.App.4th 637, 651–52 [successful suit under The Williamson Act, a statute enacted to protect  
23 agricultural land, enforced an important right], per Cantil–Sakayue, J.).

24 The Petition’s enforcement of the FTRA furthers an “important right” because the Act protects  
25 against the “ero[sion of] our country’s commitment to freedom of expression and the right to receive  
26 information.” (Ed. Code, § 19801, subd. (d).) Freedom of expression and the right to receive information

27 \_\_\_\_\_  
28 <sup>1</sup> The phrases “prevailing party” and “successful party” in fee shifting statutes are synonymous. (See *Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 610.)

1 are fundamental rights under both the United States and California Constitutions. (See U.S. Const.,  
2 Amend. I; Cal. Const. art. 1, § II.) Indeed, this Court’s ruling recognized “[t]he issue presented in this case  
3 is one of broad importance. . . .” (ROA 128.)

4 *3. The Lawsuit Conferred a Significant Nonpecuniary Benefit on the General Public*

5 Courts have recognized that “the extent of the public benefit need not be great to justify a fee  
6 award” (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 894  
7 [internal quotations and citation omitted].) Petitioners’ suit easily satisfies this standard.

8 **First**, by obtaining the writ, Petitioners vindicated the legislative intent behind the Act to protect  
9 and promote freedom of expression and the right to receive information, thereby benefiting anyone under  
10 18 years of age who wants free access to non-obscene materials in the library’s collection. (*See Folsom v.*  
11 *Butte County Ass’n of Gov’ts* (1982) 32 Cal.3d 668, 684 [holding that suit that “vindicated legislative  
12 intent” by diverting funds from roads and highways to public transit needs “benefitted not only those who  
13 are transit-dependent in Butte County but the citizenry as a whole.”].) **Second**, the suit benefited a large  
14 number of people in the community. As of 2023, before the adoption of the challenged Resolution, the  
15 City had issued more than 20,000 teen and minor library cards. (Pet. at ¶ 50.) Thus, thousands of minors  
16 will benefit from this lawsuit, which is sufficient to satisfy the requirement that a large class of people  
17 benefit from the suit. (*See Press v. Lucky Stores* (1983) 34 Cal.3d 311, 321 [suit that vindicated  
18 constitutional right and benefitted 3,000 people satisfied requirement of section 1021.5 that it benefit “a  
19 large class of people.”].) **Third**, there is a reasonable likelihood that the suit will benefit people in other  
20 places. The legislature passed the Act at least in part because of “efforts to remove materials” from public  
21 libraries in both Huntington Beach and Fresno. (Assem. Com. on Judiciary, Analysis of Assem. Bill No.  
22 1825 (2023- 2024 Reg. Sess.) as amended Apr. 1, 2024, p. 1.) Petitioners’ victory may well deter other  
23 cities from pursuing similar censorship efforts.

24 *4. The Necessity and Financial Burden of Private Enforcement*

25 Petitioners satisfy both prongs of the final requisite for entitlement to fees under section 1021.5.  
26 When a case is brought against a governmental entity, the need for private enforcement is clear. (See  
27 *Woodland Hills, supra*, 23 Cal.3d at p. 941.) In addition, when a party who later prevails attempted to  
28 resolve a dispute before litigating by sending a demand letter—as was the case here (Pet. ¶¶ 33, 71)—it

1 helps “demonstrate litigation was necessary.” (See *Vasquez v. State* (2008) 45 Cal.4th 243, 252.)

2 Finally, in determining whether the “financial burden of private enforcement” makes “the award  
3 appropriate,” the Court considers only the *financial* burdens of litigation as well as the potential *financial*  
4 benefits to the party bringing the suit, no matter how strong a litigant’s non-financial interest in a lawsuit  
5 may be. (See *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1215-27; *id.* at p. 1225.) In other words,  
6 when as in this case, plaintiffs are not seeking damages or other monetary relief, they have no pecuniary  
7 interest in the outcome of the litigation and thus the “financial burden” of pursuing litigation justifies an  
8 award of attorney fees. (See *Press, supra*, 34 Cal.3d at p. 321.) Petitioners sought only equitable and writ  
9 relief, and thus the financial burden of private enforcement necessarily makes an award of fees  
10 appropriate. (See *id.*)<sup>2</sup>

11 **B. The Amount of Fees Petitioners’ Counsel Seek is Reasonable**

12 The touchstone of any fee award is the lodestar analysis: the number of hours reasonably expended  
13 on the litigation, multiplied by a reasonable hourly rate for each attorney for whom compensation is  
14 sought. (*Press, supra*, 34 Cal.3d at p. 322.) Petitioners’ counsel’s lodestar is reasonable because their  
15 billing rates are comparable to those of attorneys with similar expertise and experience, and detailed,  
16 contemporaneous records or detailed declarations summarizing the hours for which compensation is  
17 sought show that counsel expended all hours on tasks necessary to attaining relief.

18 *1. Petitioners’ Counsel’s Hourly Rates Are Reasonable*

19 Counsel’s hourly rates are reasonable because they track the reasonable market value of attorneys  
20 of comparable skill, reputation, and experience for similar litigation in the Los Angeles and Orange  
21 County area. (See *Serrano v. Unruh* (1982) 32 Cal.3d 621, 643 (*Serrano IV*).

22 Petitioners’ counsel’s qualifications are detailed in supporting declarations and in the expert  
23 declaration of Carol Sobel. Petitioners were represented by the co-counsel team: ACLU Foundation of  
24 Southern California, ACLU Foundation of Northern California,<sup>3</sup> First Amendment Coalition, Community  
25 Legal Aid SoCal, and Jenner & Block LLP. A lawyer from each organization has submitted a declaration

26 \_\_\_\_\_  
27 <sup>2</sup> Petitioners did not seek damages, and there is no damage award. Thus section 1021.5(c) is inapplicable.

28 <sup>3</sup> Petitioners are not seeking compensation for any of the time spent in this case by the lawyer from the  
ACLU of Northern California in the exercise of billing judgment. (Thacher Decl. ¶ 4.)

1 setting forth the qualifications of all attorneys, paralegals, and law student interns who worked on the case  
2 and either a detailed description of hours for which compensation is being sought, or actual detailed time  
3 records. (Eliasberg Decl. ¶¶ 3-18; Loy Decl. ¶¶ 2-24; Kendall Decl. ¶¶ 9-44; Thomas Decl. ¶¶ 13-23.)

4 Counsel’s rates track market rates for similar work by similarly situated attorneys in the Los  
5 Angeles and Orange County area. (See *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999,  
6 1004 [“The reasonable hourly rate is that prevailing in the community for similar work. . . . [A] reasonable  
7 hourly rate is the product of a multiplicity of factors . . . the level of skill necessary, time limitations, the  
8 amount to be obtained in the litigation, the attorney’s reputation, and the undesirability of the case.”].)  
9 Awards in the Southern California legal market to attorneys of comparable experience and skill track  
10 counsels’ rates. (Sobel Decl. ¶¶ 7-34 & Exhs 1-10.)

11 a. Rates Sought by Lawyers and Paralegals from Jenner & Block

12 The rates sought by lawyers and a paralegal from Jenner & Block are 90% (or less) of the rates  
13 they charge their billing clients. They are seeking compensation as follows:

14 <b>Lawyer</b>	<b>Graduation Year</b>	<b>2025 Billing Rate<sup>4</sup></b>	<b>Rate Sought</b>
15 Andrew J. Thomas, Partner	1991	\$1,505	\$1,355
16 Andrew Sullivan, Special Counsel	2014	\$1,410	\$1,269
17 Edward Crouse, Associate	2018	\$1,350	\$1,215
18 Manuel Salas, Paralegal	22 years of experience	\$630	\$330

19 The declaration of Mr. Thomas, who has practiced law in the Southern California legal market for  
20 more than 30 years, including in state and federal courts in Los Angeles and Orange Counties,  
21 demonstrates the typical billing rates for Messrs. Sullivan, Crouse, and his own billing rate “are reasonable  
22 and well within the range of, and competitive with, average billing rates charged by law firms with  
23 comparable litigation practices in Los Angeles and Orange County.” (Thomas Decl. ¶ 18.) Finally,  
24 Petitioners are seeking compensation for Manuel Salas, a Jenner paralegal with 22 years of experience at  
25 \$330 per hour, almost 50% of his ordinary billing rate of \$630. (*Id* at ¶ 17.) Mr. Thomas’s declaration  
26 provides the Court with a more than sufficient basis to conclude that the rates sought here – 90% of

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28 <sup>4</sup> The majority of the hours worked were incurred in 2024 and 2025. Petitioners seek their 2025 rates, to  
account for delay in payment and other factors. (See *Graham, supra*, 34 Cal.4th at p. 584.)

Jenner’s ordinary billing rates – comprise reasonable market rates. (See, e.g., *Baer v. Tedder* (2025) 115 Cal.App.5th 1139, 338 Cal.Rptr.3d 754, 773-74 [declaration of law firm partner that firm’s ordinary billing rates are reasonable and consistent with other similarly situated firms in the legal community supports finding that the rates charged are reasonable]; *Matter of Continental Illinois Securities Litigation* (7th Cir. 1992) 962 F.2d. 566, 568 [district court erred in refusing to award lawyer for prevailing party his regular hourly rate.].) The 10% across the board reduction in Jenner’s ordinary rates for this motion further justifies finding that Jenner’s rates are reasonable.

b. Rates Sought by Lawyers from Nonprofit Legal Organizations

Petitioners have submitted a wide variety of evidence demonstrating that the rates sought by the lawyers from the nonprofit legal organizations—the ACLU, CLA SoCal, and the First Amendment Coalition (FAC)—are reasonable and well within the reasonable market rates charged by lawyers with similar skill and experience. The rates sought by the nonprofit lawyers are as follows:

<b>Billor</b>	<b>Organization</b>	<b>Graduation Year</b>	<b>Billing Rate</b>
<b>Peter Eliasberg</b>	ACLU	1994	\$1150
<b>Jonathan Markovitz</b>	ACLU	2014	\$865
<b>David Loy</b>	FAC	1994	\$1150
<b>Annie Cappetta</b>	FAC	2021	\$575
<b>Erica Ettinger</b>	CLA	2015	\$840
<b>Katelyn Rowe</b>	CLA	2017	\$790
<b>Ryan Kendall</b>	CLA	2018	\$765

The \$1150 per hour sought by Messrs. Eliasberg and Loy, both of whom graduated from law school in 1994 and have substantial experience litigating First Amendment and civil rights cases in state and federal trial and appellate courts<sup>5</sup> is consistent with the rates charged by lawyers with similar experience at Jenner & Block. For example, Mr. Thomas graduated only three years before Messrs. Loy and Eliasberg and ordinarily bills about \$350 more per hour. (Thomas Decl. ¶¶ 9,13.) Mr. Markovitz from the ACLU and Ms. Ettinger from CLA are 2014 and 2015 law school graduates respectively with

<sup>5</sup> Loy Decl. ¶¶ 2,10; Eliasberg Decl. ¶¶ 3-5.

1 substantial civil rights litigation experience<sup>6</sup> and are seeking \$865 and \$840, rates that are well below the  
2 \$1,410 Jenner charges for Mr. Sullivan, who graduated from law school in 2014. (*Id.* at ¶ 14.) Petitioners  
3 are seeking \$790 and \$765 for Ms. Rowe and Mr. Kendall from CLA SoCal who graduated from law  
4 school in 2017 and 2018. These rates are well below the \$1,350 per hour that Jenner ordinarily bills for  
5 Ms. Lee, an associate who graduated in 2016. (*Id.* at ¶ 23.) Petitioners are seeking \$575 for the time spent  
6 by Ms. Cappetta, a 2022 law school graduate, from FAC. That rate is reasonable because it is well below  
7 the \$1075 ordinary billing for Jenner associate, Ms. Keller, a 2022 law school graduate. (*Ibid.*) Relying  
8 on rates charged by these Jenner attorneys to determine whether rates sought by the attorneys from the  
9 nonprofit organizations are reasonable is appropriate because Mr. Thomas testified the Jenner lawyers’  
10 ordinary billing rates are “commensurate with the rate[s]” that Jenner charged for other lawyers at the firm  
11 with “similar level[s] of experience.” (*Id.* at ¶¶ 13-16, 22.)

12 Ms. Sobel’s expert declaration further supports the billing rates of the nonprofit attorneys. Her  
13 expert declarations on reasonable market rates are based on careful examination of firm billing rates in  
14 the relevant legal market and attorney fees awards in those markets for the lawyers seeking fees in  
15 particular cases or other lawyers with similar skill and experience and have been relied on by numerous  
16 state and federal courts. (Sobel Decl. ¶¶ 5-13.) She relies on fee declarations submitted in cases in both  
17 Los Angeles and Orange Counties because, based on her experience and review of relevant materials, “the  
18 rates for civil rights and constitutional litigation in Orange County and Los Angeles County are the same.”  
19 (*Id.* ¶ 33.)

20 Ms. Sobel opines that the requested \$1,150 rate for Messrs. Loy and Eliasberg is reasonable based  
21 on fee declarations and fee awards in Los Angeles and Orange County for lawyers with similar experience.  
22 (*Id.* at ¶¶ 36-41 [citing, inter alia, anti-SLAPP fee award at rate of \$1480 per hour to lawyer who graduated  
23 in 1993; see also Eliasberg Decl. ¶5 & Exh 1 [2025 anti-SLAPP fee order finding \$1150 rate to Mr.  
24 Eliasberg to be reasonable].) Ms. Sobel’s declaration also establishes the reasonableness of the \$865 rate  
25 sought by Mr. Markovitz and the \$840 rate sought by Ms. Ettinger. (Sobel Decl. ¶¶ 39 [citing, inter alia  
26 anti-SLAPP fee award of \$885 per hour in 2020 to lawyer who graduated two years after Mr. Markovitz  
27 and the same year as Ms. Ettinger]; see also Eliasberg Decl., Exh 1 [rate of \$875 reasonable in anti-SLAPP

28 <sup>6</sup> Eliasberg Decl. ¶ 6; Kendall Decl. ¶¶ 26-34.

1 fee motion for ACLU lawyer who graduated one year before Mr. Markovitz].) The same is true for the  
2 rates sought by Ms. Rowe, a 2017 law school graduate, and Mr. Kendall, a 2018 law school graduate.  
3 (Sobel Decl. ¶ 40.) Finally, the customary billing rate in 2020 for a Gibson Dunn lawyer with three years  
4 of experience—the same as Ms. Cappetta in 2025—was \$740, demonstrating that the \$550 rate sought for  
5 her time is eminently reasonable. (*Id.* at ¶ 39.)

6           2. *The Hours for Which Petitioners’ Counsel Are Seeking Compensation After the Exercise*  
7                 *of Billing Judgment are Reasonable*

8           Petitioners’ counsel needed to perform an extensive variety of tasks to achieve the excellent result  
9 they obtained in this case including, but not limited to, the following:

- 10           • Legal research on the standards to allege violations of the California Constitution’s  
11           Right to Privacy and Liberty of Speech Clause; on the standards for proceeding  
            pseudonymously; and on a variety of taxpayer standing issues.
- 12           • Factual research on the source of the HB library’s funding.
- 13           • Draft and submit CPRA requests and review produced documents relating to,  
14           among other things, what steps the City had taken to implement its library  
            measures.
- 15           • Research and respond to Respondents’ Demurrer, which included arguments on  
16           failure to state a claim, standing, ripeness, whether the City had to abide by the  
            FTRA because it was a charter city, and whether a ballot initiative mooted  
17           Petitioner’s claims.
- 18           • Research and brief the Petition for Writ of Mandate and address Respondents’  
19           Opposition, which included arguments on mootness, a challenge to the  
            constitutionality of the FTRA, and claims that the resolutions had no legal effect.
- 20           • Respond on an expedited basis to Respondents’ late-filed Supplemental Request  
21           for Judicial Notice to rebut an argument by the City that a recently passed resolution  
            mooted Petitioner’s claims.

22           The hours counsel expended were justified by the wide variety of work required for the successful  
23 prosecution of this case, as well as Respondents’ vigorous defense. (See *Bronshteyn v. Department of*  
24 *Consumer Affairs* (2025) 114 Cal.App.5th 537, 539-540 [“When the plaintiff files a case with the prospect  
25 of recovering attorney fees, the defense is fully entitled to fight hard. But the defense does so knowing it  
26 might end up paying for all the work for both sides. Filing a flood of unselective and fruitless motions can  
27 be counterproductive if the plaintiff ultimately prevails, for the bill for that flood will wash up on the  
28

1 defense doorstep.”].) Moreover, because Petitioners’ counsel did not charge their clients<sup>7</sup> and their only  
2 possibility of receiving compensation was contingent on prevailing on both the merits and a fee motion,  
3 they had no incentive to spend unnecessary hours on the case. (See *Moreno v. City of Sacramento* (9th  
4 Cir. 2008) 535 F.3d 1106, 1112 [“[L]awyers are not likely to spend unnecessary time on contingency fee  
5 cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount  
6 of the fee. It would therefore be the highly atypical civil rights case where plaintiff’s lawyer engages in  
7 churning.”].)

8         Petitioners’ counsel are submitting with this motion detailed documentation of the time for which  
9 they are seeking compensation and the time they are excluding in an exercise of billing judgment, either  
10 through detailed time records attached to the declarations of Messrs. Kendall and Eliasberg, or through  
11 thorough explanations of the time expended for various categories of work in the declarations of Messrs.  
12 Thomas and Loy. These records are more than adequate to meet the documentation requirements in  
13 California courts. (See *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324 [“It is  
14 not necessary to provide detailed billing timesheets to support an award of attorney fees under the lodestar  
15 method. . . . Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked  
16 and the tasks performed are sufficient,” internal citations omitted].) As the Court of Appeal has stated,  
17 “the verified time statements of the attorneys, as officers of the court, are entitled to credence in the  
18 absence of a clear indication the records are erroneous.” (*Horsford v. Bd. of Trs. of Cal. State Univ.* (2005)  
19 132 Cal.App.4th 359.)

20         The enormous reductions in hours sought, in the exercise of billing judgment, further supports the  
21 conclusion that the hours for which compensation is sought are reasonable. For example, counsel made a  
22 good faith effort to bill for only one lawyer per organization for most strategy calls. In addition, Jenner &  
23 Block is not seeking compensation for almost \$80,000 of work by lawyers on this matter. (Thomas Decl.  
24 ¶ 24.) FAC is not seeking compensation for at least 15 hours of Mr. Loy’s time and is writing off entirely  
25 21.7 hours spent by legal fellows (i.e., new lawyers working at FAC on fellowships). (Loy Decl. ¶¶ 18-  
26 19, 24.) This comprises more than \$36,000 of lodestar FAC is writing off in the exercise of billing  
27 judgment. The ACLU SoCal is writing off more than 45 hours of work, including 15 hours spent by Ms.

28 <sup>7</sup> Eliasberg Decl. ¶ 8; Kendall Decl. ¶ 4; Loy Decl. ¶ 15; Thomas Decl. ¶ 2.

Morones, a 2021 UCLA Law School graduate, with the total write-off comprising a lodestar of about \$41,000. (Eliasberg Decl. ¶¶ 16-18.) CLA SoCal is not seeking compensation for more than 900 hours of work, which comprises a write-off of more than \$615,000 of lodestar. (Kendall Decl. ¶ 50.) All told, Petitioners’ counsel is writing off more than \$765,000 in lodestar in an exercise of billing judgment and then applying an *additional* 5% across-the-board reduction to ensure that fees are not awarded for any excessive or duplicative work. Overall, Petitioners are seeking:

<b>Billor</b>	<b>Hours with billing judgment</b>	<b>Lodestar</b>	<b>Adjusted Lodestar with 5% reduction</b>
<b>Andrew J. Thomas</b>	130.6	\$196,553	\$186,725.35
<b>Edward Crouse</b>	112.1	\$151,335	\$143,786.25
<b>Andrew Sullivan</b>	27.4	\$38,634	\$36,702.30
<b>Peter Eliasberg</b>	46.4	\$53,360	\$50,692
<b>Jonathan Markovitz</b>	222.2	\$192,203	\$182,592.85
<b>David Loy</b>	37.5	\$43,125	\$40,968.75
<b>Annie Capetta</b>	136	\$78,200	\$ 74,290
<b>Erica Ettinger</b>	34.4	\$28,896	\$27,451.20
<b>Katelyn Rowe</b>	181	\$142,990	\$135,840.5
<b>Ryan Kendall</b>	404.2	\$309,213	\$293,752.35
<b>Total Hours and Lodestar</b>	1,331.8	<b>\$1,234,509</b>	
<b>Total Adjusted Lodestar</b>			<b>\$1,172,783.55</b>

**C. Petitioners are Entitled to a Multiplier of 1.25**

Petitioners are entitled to a 1.25 multiplier that would enhance the amount sought on the underlying motion to \$1,465,979.44. Lodestar enhancements, also known as multipliers, are permitted under California fee shifting statutes, including section 1021.5. (See, e.g., *Center for Biological Diversity, supra*, 185 Cal.App.4th at p. 899 [affirming multiplier of 1.5 for contingent risk under section 1021.5].) “Under [California Supreme Court] precedents, the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138 [italics in

1 original].) Courts may augment the lodestar based on several factors, including contingency risk, the  
2 difficulty of the case, the novelty and complexity of the issues, the skill displayed by counsel, and the  
3 experience and expertise of counsel. (*Id.* at p. 1132.) “[A]ny one of [these] factors may be responsible for  
4 enhancing . . . the lodestar,” and in this case, numerous factors are present and support an enhancement of  
5 1.25. (*Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947.)

6 **First**, in analogous contingency fee cases where counsel bears the risk of non-payment, courts  
7 commonly enhance the lodestar amount to account for that risk. (*Graham v. DaimlerChrysler Corp.*  
8 (2004) 34 Cal.4th 553, 579 [noting that contingency risk is “[o]ne of the most common fee enhancers”];  
9 *Ketchum, supra*, 24 Cal.4th at p. 1136 [holding that an enhancement for contingency risk is permissible  
10 basis for lodestar enhancement].) The enhancement “is intended to approximate market-level  
11 compensation for such services, which typically includes a premium for the risk of nonpayment or delay  
12 in payment of attorney fees.” (*Ketchum, supra*, 24 Cal.4th at p. 1138; see also *Horsford, supra*, 132  
13 Cal.App.4th at pp. 394-395 [“[T]he contingent and deferred nature of the fee award in a civil rights or  
14 other case with statutory attorney fees requires that the fee be adjusted to reflect the fact that the fair  
15 market value of legal services provided on that basis is greater than the equivalent noncontingent hourly  
16 rate.”].) Although the ACLU, FAC, and CLA SoCal are nonprofit organizations and represented  
17 Petitioners on a pro bono basis,<sup>8</sup> fee awards play an important role in ensuring the organizations have the  
18 funds to continue to take on other pro bono cases enforcing important constitutional rights. (Eliasberg  
19 Decl. ¶5; Loy Decl. ¶17; Kendall Decl. ¶5.)<sup>9</sup> A fee enhancement is therefore appropriate because  
20 Petitioners’ counsel risked, and continue to risk, non-payment if they had not prevailed on some or all of  
21 their claims, or if the Court were to conclude that they are not entitled to fees. The risk that Petitioners’  
22 counsel faced from representing the Petitioners—knowing that they would not be paid unless they both  
23 prevailed in the case and established entitlement to fees under §1021.5—justifies a 1.25 multiplier.

24 **Second**, Respondents’ litigation tactics made this case more challenging and introduced substantial  
25 obstacles to its efficient resolution. Courts may apply a multiplier where opposing counsel’s “litigation

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27 <sup>8</sup> Eliasberg Decl. ¶8; Loy Decl. ¶15; Kendall Decl. ¶4; Thomas Decl. ¶2.

28 <sup>9</sup> Co-counsel, Jenner & Block is a private law firm that generally charges its clients but has an extensive  
pro bono practice and represents Petitioners on a pro bono basis. (Thomas Decl. ¶2).

1 tactics complicated the case and made what could have been a ‘simple’ case into a difficult one.” (*Pulliam*  
2 *v. HNL Auto. Inc.* (2021) 60 Cal.App.5th 396, 409; accord, *Kern River Public Access Com. v. City of*  
3 *Bakersfield* (1985) 170 Cal.App.3d 1205, 1228-29.) Respondents engaged in a variety of tactics that made  
4 litigating this matter more complicated, including filing a Request for Judicial Notice on the eve of the  
5 writ and demurrer hearing, engaging in needless ex parte practice about the writ hearing date, and making  
6 complicated mootness arguments based on the passage of a measure that might at first blush appear to  
7 support a mootness claim, but which required detailed analysis of the measure to demonstrate that  
8 Respondents’ claims about its effect on the legal issues presented were inaccurate. (*ante* Sect. II.B.) The  
9 necessity of grappling with these litigation tactics provides an additional basis supporting a 1.25  
10 multiplier. (See *Edgerton v. State Personnel Bd.* (2000) 83 Cal.App.4th 1350, 1363 [upholding a 1.5  
11 multiplier in part because of “the skill displayed by plaintiff’s counsel in overcoming the intransigent  
12 opposition of defendant”].)

13 ***Finally***, this case presented novel issues because it was the first one brought to enforce the FTRA,  
14 including the Act’s application to charter cities. Accordingly, the novelty of the issues presented also  
15 supports Petitioners’ request for a multiplier. (*Ibid.* [“novelty and difficulty of issues involved” one of  
16 reasons supporting 1.5 multiplier].)

17 A 1.25 multiplier is reasonable, as courts regularly approve higher enhancements. (See, e.g.,  
18 *Santana v. FCA US, LLC* (2020) 56 Cal.App.5th 334, 351-353 [affirming a multiplier of 2]; *Center for*  
19 *Biological Diversity, supra*, 185 Cal.App.4th at pp. 897-899 [affirming a 1.5 multiplier]; *Lunada*  
20 *Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488-489 [same].) Because the lodestar does not  
21 accurately reflect counsel’s contingency risk, the full extent of Respondents’ unreasonable opposition, and  
22 the novelty of issues, a multiplier of 1.25 is appropriate.

## 23 **V. CONCLUSION**

24 Petitioners respectfully request that the Court grant the Motion and award \$1,174,912.25 in fees  
25 and 1.25 multiplier, for a total lodestar of \$1,468,640.31, plus a reasonable lodestar for time spent on the  
26 reply brief, which Petitioners will document when they file their reply.

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Respectfully submitted,

Dated: December 23, 2025

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

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