



FIRE

Foundation for Individual
Rights and Expression

June 2, 2023

Sent Via FedEx Overnight Shipping and Email

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Jeff Lambson, Orem City Council [jlambson@orem.org]
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LaNae Millet, Orem City Council [lmillett@orem.org]
Terry Peterson, Orem City Council [tdpeterson@orem.org]
Dave Spencer, Orem City Council [dmspencer@orem.org]
Brenn Bybee, Acting City Manager [bdbybee@orem.org]
Bryce Merrill, Library and Recreation Director [bemerrill@orem.org]
City of Orem City Hall
56 North State Street
Orem, Utah 84057

**Re: Retaliation against the Utah Library Association and Censorship
of Employee Speech**

Dear Mayor Young, Orem City Council members, Acting City Manager Bybee, and
Director Merrill:

The Foundation for Individual Rights and Expression (FIRE)¹ is writing to demand that the City of Orem stop retaliating against our client, the Utah Library Association (the ULA), for criticizing the City's decision to ban book displays that promote views City officials do not like.

After supporting its librarians' participation in the ULA for years, the City has stripped those benefits, forcing Orem library staff to pay out of pocket and use personal time to participate in ULA programs and activities, even while the City provides similar professional development benefits to other departments. In addition, the City has threatened librarians who dare to speak out against the City on social media with discipline for insubordination. The City's actions violate our client's First Amendment rights to free speech and free association.

¹ FIRE is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the most essential qualities of liberty.

The City must immediately rescind its ban on benefits for library employees who want to associate with the ULA and cease any retaliation against the ULA and Orem librarians. The City must also revise its social media policy (Section 1.9.2 of the Orem Employee Handbook) to (1) clarify that employees retain their First Amendment right to criticize government policy when speaking in their capacities as private citizens on matters of public concern and (2) eliminate vague and overbroad language in the policy. In addition, the City should be fully transparent about its policies regarding book displays. We also join the ULA in calling for the City to embrace the library's mission of fostering the public's ability to engage with ideas, and to allow the library to create age-appropriate displays for all community members without the threat of restrictions based on partisan or ideological disagreement.

The Utah Library Association Is a Vital Asset to Orem's Librarians.

The ULA is a professional association for librarians and other library staff in Utah. The ULA advocates for libraries and cultivates leadership development to promote library excellence for the Utah library community. The ULA (1) promotes library services and librarians throughout Utah; (2) provides opportunities for the professional involvement of librarians; (3) assists in setting state standards and principles for libraries; and (4) provides continuing education programs for Utah librarians.

The City Bans Pride and Heritage Displays in the Public Library.

The City banned the Orem Public Library from displaying books or other materials in the children's or teen's areas celebrating Pride Month in June of last year. Soon after, the ULA publicly urged Orem officials to reverse course and²

transparently address their actions . . . rescind any directives they have given to the library related to displays of materials, and commit to refraining from future directives that seek to restrict library staff from carrying out the mission of the library, or directives that seek to limit access to information for the residents of Orem.

In addition to ULA, dozens of community members also objected to the City's prohibition on Pride Month displays in the library.

² Statement on Censorship of Pride Display at Orem Library, Utah Library Ass'n (June 2023), available at <https://ula.org/oremstatement/> [<https://perma.cc/9F3P-JM66>].

The City did not respond to those concerns. Instead, it further censored the public library by banning all heritage-month displays, including Hispanic Heritage Month, Native American History Month, and Black History Month, even though the library had hosted these popular displays for several years before the City's ban. Notably, the City allowed displays celebrating holidays such as the Fourth of July, Columbus Day, and Christmas to continue.

On November 25, 2022, the *Daily Herald* published an article regarding the City's display ban.³ In response to the public criticism, Councilmember Millet wrote a *Daily Herald* op-ed on February 1, 2023, lauding City Management for "end[ing] discontent by eliminating" the heritage-month displays.⁴

The ULA again criticized the City. In a February 2023 statement publicized on social media and the ULA's website, it declared that the City's actions violated the purpose of a public library as a place for freedom of expression:⁵

This act of censorship is not only a disservice to the Orem community, but also an act of overreach by the city government. The public library exists to serve ALL people, and, as an institution, the library is both a legal and a symbolic embodiment of the fundamental American value that we all have the right to self-direct, think for ourselves, read, learn, and engage with ideas and information without government interference.

The ULA called on the City to lift its display ban and to commit to the library's mission to create a place where a wide variety of perspectives and viewpoints are represented.

³ Genelle Pugmire, *Orem Library Accused of Censorship Over Removal of Celebratory Displays*, Daily Herald (Nov. 25, 2022), available at <https://www.heraldextra.com/news/local/2022/nov/25/orem-library-accused-of-censorship-over-removal-of-celebratory-displays/> [<https://perma.cc/592N-JCZA>].

⁴ LaNae Millett, *Guest Opinion: Celebrating the Orem Public Library*, Daily Herald (Feb. 1, 2023), available at <https://www.heraldextra.com/news/opinion/local-guest-opinions/2023/feb/01/guest-opinion-celebrating-the-orem-public-library/> [<https://perma.cc/PU8K-27G6>].

⁵ *Statement on Censorship at Orem Public Library*, Utah Library Ass'n (Feb. 13, 2023), available at <https://ula.org/content/2023/02/statement-on-censorship-at-orem-public-library> [<https://perma.cc/WPS7-GYTF>].

The City of Orem Retaliates Against the Utah Library Association for Its Speech.

The City has not taken the ULA's criticism in stride. Instead, City officials informed employees involved with the ULA that the City would no longer support employee participation in the ULA, despite for years having paid for ULA membership dues and conference attendance, and having allowed staff to participate in ULA activities during work hours. For instance, Rita Christensen, who at the time was an Orem librarian and the outgoing president of the ULA, spent scores of evenings and weekends volunteering for the ULA because the City stripped vital support for librarians' professional development.

Tellingly, the City has not banned other employees from using employee time and City resources to participate in other professional associations and development activities, such as the City Manager's participation in the International City/County Management Association. That disparate treatment reveals that the City is retaliating against library staff who are members of the ULA because the ULA spoke out against the City. Yet the City has refused repeated requests from the ULA to lift the professional benefits ban.

City Officials Threaten Library Employees Who Criticize the Display Policy.

The City threatened library staff with discipline for insubordination to prevent them from speaking publicly about the display ban. After the news of the display policy went public, the City conducted a lengthy inquisition among the library staff interrogating them to try to figure out who spoke to a former employee about the policy. City officials ultimately reprimanded one employee and forced them to forgo a raise. The City's punishment sent a clear, chilling message to other staff that they must stifle their criticism of the display ban or risk their jobs.

What's more, former library director Charlene Crozier, in an email sent on May 30, 2022, shortly after criticism over the pride ban erupted, pointedly reminded library employees of the City's restrictive employee social media policy. The policy forbids employees from "mak[ing] disparaging comments about the workplace, City policies, supervisors, co-workers, citizens, customers, or other persons associated with the City." It also forbids them from "post[ing] any information to any blog, social networking site, or other public internet site, that would discredit or disparage the City." To that end, library officials told employees that voicing dissent or criticism would be insubordination and could jeopardize their careers or the careers of their colleagues. Crozier and others in library and City leadership told Orem's librarians that that membership in the Utah Valley Parent's Alliance, which opposed the display ban, would also be considered

insubordination. City officials reinforced this message of censorship at a November 3, 2022 mandatory staff training, emphasizing that staff must not criticize City policies.

The City of Orem's Actions and Social Media Policy Violate the Constitution.

The City of Orem's actions violate the First Amendment rights of both the ULA and Orem employees. The City cannot "retaliate against [its] employee[s] for exercising [their] constitutionally protected right of free speech" or freedom of association. *Couch v. Bd. of Trs. of Mem'l Hosp. of Carbon Cnty.*, 587 F.3d 1223 (10th Cir. 2009) (internal quotation marks and citations omitted). The First Amendment likewise prohibits the City from retaliating against the ULA, a private association, based on its public criticism of the City's display ban. *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019) ("[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech.") (internal quotation marks and citations omitted). But that is precisely what the City is doing.

The City's social media policy likewise violates its employees' First Amendment right to speak. The policy bars not only "disparaging comments about the workplace," but also any information that "would discredit or disparage the City." The broad sweep of this policy means that it serves as a "wholesale deterrent to a broad category of expression" and is therefore a highly constitutionally suspect "prior restraint." *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 466-67 (1995).

The social media policy is also overly broad having "a substantial number of applications to protected speech" about matters of public concern. *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 944 (9th Cir. 2011). For instance, an employee risks discipline if she posts on Facebook complaining about excess traffic or criticizing something the Mayor said to the City Council, speech with little to no bearing on the operation of the Orem Public Library.

The social media policy is also unconstitutionally vague. City employees have no notice as to what speech is permissible or prohibited under the policy and therefore no "reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). For instance, it is not at all clear what would "discredit or disparage the City." Do City employees run afoul of the policy merely by disagreeing with the City's display ban in the library? Do they run afoul of the policy merely by posting their agreement with the Library Association's

criticism of the display ban? This vagueness opens the door for “arbitrary and discriminatory enforcement” where employees are punished only for speech that City leadership dislikes or finds challenging. *Id.* And it has a drastic chilling effect on the willingness of employees to speak out and voice concerns. *See Reno v. Am. C.L. Union*, 521 U.S. 844, 871–72, (1997) (“The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.”).

The policy’s saving clause, stating that “[n]othing herein shall be construed to prevent an employee from speaking out on matters of public concern provided that the employee’s interest in making the communication outweighs the City’s interest as an employer in preventing the communication,” does little to inform employees in advance as to what speech is permissible or prohibited and cannot save this unconstitutional policy. A library employee pondering whether to criticize the City on social media cannot know whether her “interest in making the communication outweighs the City’s interest as an employer in preventing the communication.”

The City’s retaliatory actions against the ULA and Orem Public Library employees, and its social media policy, are harming the ULA and Orem librarians and violating their First Amendment rights. The City must immediately stop its retaliatory and viewpoint discriminatory conduct.

Please provide confirmation no later than the close of business on **June 30, 2023**, that the City has rescinded its ban on benefits for library employees who want to associate with the ULA and that library employees will enjoy the same benefits as other city employees, including the right to participate in professional organizations. Additionally, please confirm by that date that library employees will be free to speak their mind with respect to City policies that impact their jobs without the fear of retaliation; that city employees will be made aware of their constitutional right to publicly criticize city policies; and that the City will eliminate the unconstitutionally vague and overbroad restrictions on employee speech from the employee handbook.

We are hopeful you will honor your constitutional obligations to respect and uphold the First Amendment rights of your employees. Otherwise, FIRE will file a lawsuit and seek the full array of remedies including damages and attorney’s fees.

Thank you for your prompt attention to this matter. Please do not hesitate to contact us with any questions.

Sincerely,

/s/ Jerome Mooney

Jerome Mooney*

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