



July 7, 2023

Foundation for Individual Rights and Expression
510 Walnut Street, Suite 250
Philadelphia, PA 19106

Re: Allegations concerning retaliation against ULA and employee speech

To Whom It May Concern:

The City has received your letter dated June 2, 2023, in which you allege that the City has violated the constitutional rights of the Utah Library Association (ULA) and library employees. We appreciate your interest in ensuring that First Amendment rights and protections are protected and we affirm that the City of Orem is also fully committed to respecting the constitutional rights of both employees and others with whom the City interacts.

I believe your letter reflects an incomplete and often inaccurate understanding of the facts surrounding the library, the City's relationship with the ULA and City management interaction with library employees. Although this is not an attempt to point out or explain every inaccuracy, I hope the additional information provided herein will give you a better understanding of the facts and will help to resolve concerns that have been expressed by you on behalf of the ULA. As discussed in greater detail below, the City hopes that the current concerns and misunderstandings can be resolved in a cooperative and non-adversarial manner.

In your letter you make a number of allegations and demands that I have summarized and addressed below:

1. Allegation that the City retaliated against the ULA for posting statements critical of the City and demand that the City rescind its ban on ULA benefits for library employees.

The City has had a long-standing relationship with the ULA that has been valued by Orem library employees for many years. Although the relationship between the City and the ULA was strained following the posting of accusations against the City on ULA's website, Orem library management began expressing their desire to repair the relationship with the ULA and making efforts to do so at least as early as February, 2023. The ULA initially appeared receptive to these efforts. However, for reasons unknown and inexplicable to library management, the ULA later rebuffed the City's efforts to reconcile and has declined the City's invitation to engage in a dialogue aimed at repairing the relationship.

The City's desire and efforts to repair the relationship with the ULA and the ULA's apparent unwillingness to reciprocate are illustrated by the following events:

On February 2, 2023, soon to be appointed library director Bryce Merrill communicated to Anthony Morris that he (Bryce) was interested in hearing from ULA and doing what he could "to

broker an arrangement that would have our citizens, our staff, our council, and professional associates like ULA feeling satisfied.” He expressed concern that another statement from ULA could set that process back.

That same day library division manager Anthony Morris contacted Marissa Bischoff (current ULA president) and asked to have a meeting with ULA before they released their next statement. Anthony mentioned that a transition in library management was occurring and he requested that the ULA allow the new library management time to get settled before ULA published another statement.

On February 3, 2023, Marissa Bischoff emailed Anthony Morris to express her interest “in finding a resolution that will be best for Orem Library staff and Orem residents.” She expressed her desire to have a meeting with library management. She also expressed her belief that heritage month displays should be allowed in the library again and that the ULA intended to release another statement soon.

On February 6, 2023, representatives from the ULA (Marissa Bischoff and Peter Bromberg) and Orem library management (Bryce Merrill, Anthony Morris and Mike Smith) held a twenty-minute zoom meeting to introduce Bryce Merrill who had just been appointed as the new library director earlier that day. Bryce informed the ULA representatives that Orem was committed to principles of free speech and was working on a new policy to administer library displays. Bryce asked that the ULA give Orem a couple weeks to develop and implement this policy before the ULA put out another public statement. Unfortunately, the ULA members said that they would not give Orem additional time before publishing their next statement.

On February 10, 2023, Bryce Merrill called and left a voicemail with Marissa Bischoff asking if the ULA would be willing to meet with library management in person prior to releasing their statement. In his message, Bryce stated that he felt the ULA did not have all the pertinent information. That same day, Marissa left a voicemail with Bryce stating that the ULA intended to move forward with releasing the statement as is.

On February 14, 2023, the ULA posted a second statement on its website regarding the Orem library. This second statement included a number of inaccurate and misleading statements which could have been avoided if the ULA had been willing to meet with and discuss their concerns with library management prior to publication.

On March 6, 2023, Anthony Morris sent an email to Bryce Merrill and Mike Smith where he stated, in referring to the upcoming ULA 2023 annual conference, “[a]s we are working towards reintegrating with ULA, this is a great date to keep in mind.”

In an email from Bryce Merrill to Marissa Bischoff dated March 28, 2023, Bryce asked Marissa if there would be an opportunity to meet with her (and other ULA staff) to “discuss what path towards collaboration would look like between Orem City Library and the ULA.” In his email, Bryce expressed his belief that the Orem library and the ULA shared many priorities “including a principled defense of access to and within libraries (including the Orem Library)” and further expressing his belief that the Orem library and the ULA had the common goal of “promoting the

success of the Orem Public Library” which was “enough common ground to build off of.” Bryce also noted that “relationship between our organizations’ leadership is likely too strained currently to discuss any sort of immediate action in earnest” but that he was “hopeful that an in-person meeting could yield some better understanding, and a roadmap towards a renewed relationship.” Bryce asked that if Marissa was amenable to the idea of meeting with Orem library staff that she let Bryce know so that they could “set a time and place to meet and discuss further.”

In an email from Marissa Bischoff to Bryce Merrill dated March 30, 2023, Marissa Bischoff declined Bryce Merrill’s request for a meeting stating “[a]t this point, I don’t think a meeting would be productive but perhaps at a later date.”

In a subsequent email from Marissa Bischoff to Anthony Morris, Marissa stated that she was sorry that she declined the meeting at this time.

In an email from Anthony Morris to Marissa Bischoff dated March 31, 2023, Anthony thanked Marissa for reaching out and stated that he had hoped that a conversation with ULA would help to talk about everyone’s concerns and might help city administration be more willing to let Anthony bring a group of staff to the ULA conference. Anthony stated that he was “a little crushed” when the ULA, a group that he considered to be advocates for he and his fellow librarians, “declined to meet and help with that.” Anthony expressed his concern that the ULA didn’t have the full picture if the ULA wasn’t meeting regularly with Orem library management staff.

The emails referenced above clearly show the intent and desire of Orem library management to reestablish a relationship with the ULA. Although ULA representatives did meet with Orem library management in an introductory zoom meeting in early February, 2023, the ULA has refused the City’s requests for an in-person meeting to discuss the substance of concerns and a path toward reconciliation. In late March, 2023, both Bryce Merrill and Anthony Morris reached out to Marissa Bischoff requesting a meeting with the ULA to discuss each side’s concerns that would hopefully lead to a “path toward collaboration” including Orem participation in the ULA annual conference. By refusing the City’s request for a meeting and a path toward reconciliation, it is the ULA that has effectively decided that the rift between the two entities would remain unresolved.

Notwithstanding the ULA’s previous unwillingness to meet with the City to discuss reconciliation, the City maintains its desire to return to the positive relationship with the ULA that previously existed. Since at least February, 2023, the City has been working toward reestablishing its relationship with the ULA and is still willing to do so. In that interest, the City has reestablished its policy of paying for Orem librarians’ ULA membership dues and allowing Orem librarians to participate in ULA activities on City time to the same extent it did prior to June, 2022.

In order to facilitate better understanding between the parties going forward, the City would like to schedule an in-person meeting with the ULA as soon as possible to allow the City to provide the ULA with the City’s perspective, which to this point, we don’t believe the ULA has had the

benefit of hearing. Please let us know at your earliest convenience if the ULA would be willing to agree to such a meeting.

2. Allegation that the City has threatened library employees that criticizing City policies could lead to discipline and demand that the City “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 that the City “eliminate vague and overbroad language in the policy.”

In your letter you state that the City “threatened library staff with discipline for insubordination to prevent them from speaking publicly about the display ban.” Your allegation appears to be primarily based on an incident in which you mistakenly claim that a library employee was disciplined for speaking to a former employee about the library display policy. You claim that the City conducted “a lengthy inquisition” among library staff to determine who spoke to a former employee about the policy. You allege that City officials reprimanded one employee and forced that employee to forgo a raise. You further allege that this punishment sent a clear, chilling message to other employees.

It is true that a library employee was disciplined in late May-early June, 2022, but it was not for merely speaking to others about the library display policy or even for criticizing the policy. Rather, the employee was disciplined for recklessly spreading false information about the library. Specifically, the employee spread word that the library was being threatened with budget cuts. This false information was widely disseminated causing significant alarm among employees, patrons and other supporters of the library. It also required library management to spend significant time and resources to quell this false rumor. In short, the spreading of this false information caused significant harm to the library and the City as a whole. The reckless spreading of false information about the library was the sole basis for the employee discipline. The employee was not disciplined for exercising his constitutional right to speak out on a matter of public concern or for criticizing library policy.

I am not aware of any communications from library management to employees that threatened employees with discipline for exercising their constitutional right to speak out on matters of public concern. The May 30, 2022, email from Charlene Crozier to library employees to which you refer, did not tell employees that they could not criticize the display policy or threaten them with discipline for doing so. It merely advised them to “understand the City’s social media policy” so that they could be aware of the contours and extent of their rights to speak out on matters of public concern. As you will certainly concede, government employees do not have unlimited or unrestricted rights to criticize their governmental employer’s policies. There are limits and boundaries on when and under what circumstances a government employee may express criticism of his or her employer. The Crozier email very reasonably exhorted employees to familiarize themselves with those limits so that they could exercise their constitutional rights to speak out without running afoul of the policy. And to the best of my knowledge, no library employee has ever been disciplined for criticizing library policy.

The City’s social media policy clearly advises employees that they have the right to speak out on matters of public concern. Although the policy does advise employees not to make disparaging

comments about the workplace, City policies, supervisors, etc., or to post anything that would discredit the City, Section 9 of the policy clearly states that “Nothing 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.” The language of this section clearly conveys that it takes precedence over any other section of the policy including those that prohibit disparagement of the City. Employees are clearly put on notice that notwithstanding any provision in the policy prohibiting disparagement or criticism of the City, they have the right to speak out on matters of public concern.

The fact that library employee speech has not been chilled is evidenced by the fact that some library employees have very publicly spoken out against library display policies and have not been disciplined. An Orem librarian published a post on her blog on January 31, 2023, that is highly critical of the Mayor, the City Council, City management and library display policies. Both library and City management became aware of the blog post shortly after publication. Notwithstanding the highly critical content of the post, no disciplinary action or even threat of discipline was ever made against the employee. And given the highly public nature of the blog post, it is almost certain that every library employee was aware of the post and of the fact that this particular library employee was never disciplined for it or asked to take it down.

The City has been and continues to be fully committed to allowing employees to exercise their First Amendment rights and I believe that the City’s social media policy currently expresses that intent. As you know, determining when an employee’s criticism of his or her government employer is constitutionally protected is highly dependent on the facts of each situation. It is therefore impossible to craft a policy that clearly defines every situation where a government employee’s speech is or is not protected. However, the City wants to make it as clear as possible to employees when their speech is constitutionally protected. We are therefore willing to examine our social media policy and to make any improvements we can to clarify this for our employees. I expect that we can complete this process in 60 days or less.

3. Demand that the City be fully transparent about its policies regarding book displays.

This is an area where it appears that the City and ULA/FIRE are already fully aligned. In early February, 2023, with the appointment of new library director Bryce Merrill, the City saw the need for a library display policy that was comprehensive and fully transparent. Bryce Merrill worked with library staff and the library advisory commission to prepare a detailed policy that outlines how decisions regarding the location, size, and content of library displays are made. It vests responsibility for decisions regarding displays in library staff with input from the library advisory commission. This display policy was put into effect in mid-April, 2023, and the City has been providing displays in accordance with the policy (including heritage displays) since that time. A copy of the library display policy is attached hereto.

In summary, the City has been and continues to be interested in repairing its relationship with the ULA and returning to a collaborative and cooperative relationship. As stated previously, although I believe the City’s social media policy already adequately informs employees of their right to speak out on matters of public concern, the City is willing to review the policy to identify ways the policy could be improved to help employees better understand the contours of their

First Amendment rights. In order to facilitate a more positive relationship in the future, we also ask that the ULA be willing to engage with library management to better understand the City's concerns and perspective.

If you have any questions or would like to discuss any aspect of this letter, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Steve Earl". The signature is written in a cursive style with a large, stylized "S" and "E".

Steve Earl
Orem City Attorney

Orem Public Library Display Policy

Display Purpose and Scope

This policy outlines the Orem Public Library's display philosophy, selection, and criteria policies for all of the library's displays. This includes areas such as:

- Main displays located in the lobbies and common spaces of the Library
- Cover outs, Stack Top and end cap displays
- Thematic display tables and shelves
- "New", "Award Winning" and other criteria-based displays
- Staff and Resident Recommendation shelves
- Artistic/multimedia displays, and craft displays from Library outreach programs
- Selections used within Outreach programming
- Displayed materials in and around reference desks
- Promotional & marketing-based posters, digital signs, internet content, and more
- Collaborative displays and events in conjunction with other community organizations

Display Philosophy

The library is guided by the principles of a freedom to read and intellectual freedom that can be more fully explored in the American Librarian Association's Library Bill of Rights, including the following statement:

"We believe that free communication is essential to the preservation of a free society and a creative culture. ... We believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the readers to choose freely from a variety of offerings.

The freedom to read is guaranteed by the Constitution. Those with faith in free people will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights."

Displays are an important part of the Orem Library's offerings and efforts to connect residents to these essential rights. Therefore, display policy should allow for an abundance of topics, with appropriate weight and priority given to each topic. The displays should recognize the role of the Orem Public Library in providing the books and materials to the residents and then allowing the book and author to present a particular point of view. The display process should also clearly define the responsibility and professional and creative purview of various library staff. Ultimately, the library displays are the responsibility of the Library Director and administrative team.

Display Selection

Displays play a helpful role in highlighting materials and circulation. With dozens of locations throughout the library where displays are regularly curated, key stakeholders within the library select materials for display based on the professional judgment of library staff and the following criteria:

- The various needs and interests of library patrons
- The item's purpose, quality, enduring significance or interest, context within the genre as a whole, accuracy of the information, comprehensiveness, representation of many (often competing or controversial) points of view, and suitability of subject and style for intended audience

- Historic, current, and anticipated significance of the author, creator, or publisher
- A variety of perspectives, including (but not limited to): race, ethnicity, gender, religious belief, sexual orientation, age, political thought, and occupation
- Local interest or local history and Current regional and national interests
- Relation of materials to the existing library collection, or other resources in the community
- Industry standard critical resources that provide recommendations to discover, review, and select materials, such as professional journals and reviews.

Display Implementation

The selection of library materials for displays in the library is made by library personnel (as shown in the [Display Creation and Approval Matrix](#)). These selections are then presented for discussion to the Library Advisory Commission annually. Following review, library supervisors will follow the [Implementation Plan](#) schedule to make assignments with reference and collection staff regarding the preparation and management of the displays in their respective work areas using themes and disciplines outlined in the Implementation Plan. The Library Advisory Commission presents a report on library operations, including data on the previous year's displays, annually as part of their city council report.

Not all materials will be to every patron's taste or interest, but the library seeks to ensure that all patrons find representation within the displays. The library does not define what is interesting or acceptable for the Orem community at large. Inclusion of materials in displays does not indicate endorsement by the library or the City of Orem of any theory, argument, or statement contained in library materials. Materials are not excluded from displays for representing challenging or competing subject matter. The library acknowledges every patron's right to develop their personal interests free of judgment or embarrassment.

Suggestions for topics are collected from staff, residents, the Library Advisory Commission, and other sources constantly. An annual library advisory commission meeting helps provide direction for major topics and trends each year. Other topics are then presented to staff regularly in meetings, where they are assigned a curation source (childrens, teen, adult reference, media, etc), or identified as a potential component of outreach programming, library blog topic, or other outlet. Other minor displays in areas of the library may exist to display materials in support of general topics or programming as appropriate and include basic signage to communicate the topics. These topics are included and reviewed in the Implementation Plan. The library organizes displays and content based on a number of factors including age appropriateness; however the library does not presume to claim from parents and guardians the responsibility to determine what content is appropriate for children and teenagers.

Items excluded from displays include materials normally held in Closed Stacks collections that are rare, prone to theft or vandalism, physically inappropriate for display spaces, or irreplaceable and materials that have significant pornographic (as defined by the Utah State Code Section [76-10-1203](#)) content or which display material "harmful to minors" (as defined by Utah Code Section [76-10-1201](#)) as determined by the library's collection development staff. (For our policy on Collection Development, please see here.)

Display Feedback and Escalation Process

A [Library Display Feedback](#) form can be found on the library website or at one of the reference desks if Orem Library cardholders wish to provide suggestions for topics for future displays, or feedback regarding current displays. These forms will be reviewed by the Library Director or a Division Manager. If the display is found to be inconsistent with the criteria listed above, it may be changed or removed.