



FIRE

Foundation for Individual
Rights and Expression

August 24, 2023

D. Scott Love
Library Regional Manager, Yolo County Library
Mary L. Stephens – Davis Branch
315 E. 14th Street
Davis, California 95616

Sent via Electronic Mail (davislibrary@yolocounty.org)

Dear Mr. Love:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by an August 20 incident at Yolo County Library’s Mary L. Stephens – Davis Branch (“Davis Library”), where you disbanded a local Moms for Liberty event held in one of the library’s publicly available meeting rooms because speakers referred to transgender women as “male,” “men,” or “biological men.” Such viewpoint-based censorship violates the First Amendment, which applies to public forums like meeting rooms that public libraries make available to users for private speaking events. We urge the Davis Branch to reschedule the event at the earliest possible opportunity and to confirm that it will honor its First Amendment duties going forward.

I. Davis Library Ejects Speakers for Referring to Transgender Women as “Biological Men”

Davis Library has two meeting rooms that nonprofits and community groups may reserve to host events.² Library policy makes clear that “[u]se of the meeting rooms does not constitute an endorsement by the Library.”³

The Yolo County chapter of the advocacy organization Moms for Liberty reserved one of the meeting rooms for August 20, 2023, from 4:00 PM to 6:00 PM, to host an event titled, “Forum on

¹ More information about FIRE’s mission and activities is available at thefire.org.

² *Meeting Rooms in the Davis Branch*, YOLO CNTY. LIBR., <https://www.yolocounty.org/home/showdocument?id=31558>. The narrative in this letter reflects our understanding of the pertinent facts, but we appreciate that you may have more information and invite you to share it with us.

³ *Id.*

FAIR AND SAFE Sport for GIRLS.” Among the forum’s stated goals was to “[e]mpower and protect girls’ sports and female athletes.”⁴ The group planned to feature a variety of speakers and the event was free and open to the public. Per library policy, the event flyer stated: “This event is not sponsored by Yolo County Library and the presence of this group in the meeting room does not constitute Yolo County Library’s endorsement of the policies or beliefs of this group.”⁵

Prior to the forum, you told a person affiliated with the event that California law “recognizes transgender as protected” and, therefore:

If you’re speaking about a transgender female, they need to be referred to as a female. Transgender male needs to be referred to as a male. And if there’s any misgendering, we will ask – if it’s by any of the organizers, they will be asked to leave. There’s no exceptions. If you’re having problems with the audience, you know, we may give one warning. I’ll be in there the whole time.⁶

Sophia Lorey, Outreach Coordinator for the California Family Council and a former college athlete, delivered opening remarks at the event. When she noted that speakers would talk about the “physiological advantage of male athletes” and the “emotional and psychological impact on girls when men play on their sports teams,” an audience member interrupted and asked if she was “going to misgender people” throughout the event.⁷ A few moments later, you said, “This is a library, we will not – I do not want any transgender females being called males in sporting events with females. If that happens, you are not following our code of conduct, and we will ask the person to leave immediately.”⁸

Another scheduled speaker, Erin Friday, asked you in turn for the “written library requirements that abrogate our First Amendment rights, that compel us to speak in a different way.”⁹ You responded: “California state law recognizes trans women as women. They are protected under state law. Our policy talks about treating people with respect. And if you are misgendering somebody, that is not respectful.”¹⁰

Lorey then began to tell her personal story of becoming a college soccer player. “I was able to live out my dream,” Lorey said, “but current ten-year-old girls cannot live out this same dream as long as men are allowed to compete in women’s sports.”¹¹ After Lorey spoke this last line,

⁴ @SophiaSLorey, TWITTER (Aug. 20, 2023, 11:23 PM), <https://twitter.com/SophiaSLorey/status/1693463768934883369>.

⁵ *Id.*

⁶ @JZachreson, TWITTER (Aug. 21, 2023, 1:18 AM), <https://twitter.com/JZachreson/status/1693492646852059525>.

⁷ @CAFAMILY, TWITTER (Aug. 20, 2023, 11:05 PM), <https://twitter.com/CAFAMILY/status/1693459291410497772>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

you and various audience members interrupted. One said, “you can’t do that,” while another said, “just say ‘biological.’” Lorey took the latter advice and rephrased her last sentence to, “biological men can compete in women’s sports.”¹² You told Lorey she could not say that either and would be asked to leave if she repeated it. After Lorey again referred to “biological men” playing women’s sports, you again interrupted and said she had to leave or you would shut down the event.¹³

Friday then took the podium and asked audience members not to disrupt the event and defended the speakers’ First Amendment rights. You reminded Lorey that you had asked her to leave because she was “misgendering.”¹⁴ Friday told you nobody was calling a specific person a man or a woman, and you reiterated your objection to speakers referring to “males in female sports.”¹⁵ When Lorey asked for clarification about why you ordered her to leave, you said she was being “disruptive.”¹⁶ After further back-and-forth between you, Friday, and another speaker, you announced “the program is over” and left the room.¹⁷

Friday nevertheless continued with her prepared remarks, during which you reentered the room. At one point, Friday said, “How did we get to where boys can compete in girls’ sports and take their scholarships, trophies, and podium spots?”¹⁸ You then told her she had to leave and shut off the projector to prevent the event from continuing.¹⁹

II. Yolo County Library’s Censorship of Speakers in a Public Meeting Room Violates the First Amendment

Yolo County Library’s viewpoint-based censorship of the Moms for Liberty forum violates the First Amendment. As a public entity, the library cannot suppress speech at private groups’ events in publicly available meeting rooms based on the speakers’ views or ideology. The U.S. Court of Appeals for the Ninth Circuit—whose decisions bind the Yolo County Library—has held that a similar public library meeting room policy, which allowed nonprofit and civic organizations to use the room for “meetings, programs, or activities of educational, cultural or community interest,” constituted a public forum.²⁰ And it is well-settled that government actors—including public library staff—have no authority in *any* type of forum to prohibit speech based on the ideas or views conveyed.²¹

¹² *Id.*

¹³ *Id.*

¹⁴ @JZachreson, TWITTER (Aug. 21, 2023, 12:59 AM), <https://twitter.com/JZachreson/status/1693488046338081276>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ XxtraEstrogenny (@xxtraestrogenny), INSTAGRAM (Aug. 20, 2023), <https://www.instagram.com/p/CwL2CwaqCfF>.

¹⁹ *Id.*

²⁰ *Faith Ctr. Church Evangelistic Ministries v. Glover*, 462 F.3d 1194, 1204 (9th Cir. 2006).

²¹ *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019); *Pleasant Grove City v. Summum*, 555 U.S. 460, 469–70 (2009); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985).

The Supreme Court has called viewpoint discrimination an “egregious” form of censorship, unambiguously stating that the “government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”²² This limitation on governmental authority extends to speech and viewpoints that some find offensive or disrespectful. Hence, the state cannot outlaw burning the American flag,²³ punish wearing a jacket emblazoned with “Fuck the Draft,”²⁴ or disperse civil rights marchers out of fear that “muttering” and “grumbling” onlookers might resort to violence.²⁵ In holding the First Amendment protects protesters holding insulting signs outside soldiers’ funerals, the Court reiterated the broad constitutional protection for expression, recognizing that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”²⁶

In banning speakers at the Moms for Liberty event from referring to transgender women as “men,” “males,” or “biological men,” Yolo County Library suppressed speech based on viewpoint, in direct violation of the First Amendment. The library violated the constitutional rights of both the speakers and the audience members who wished to listen to them.²⁷ As a government entity, the library cannot condition use of a public forum on a speaker’s willingness to affirm certain views on sex or gender—or any other issue on which government actors may hold preferred positions—or to abstain from language expressing viewpoints that library officials (or spectators) disfavor.

You claimed California law bans individuals from “misgendering.” While state law provides certain protections for individuals based on gender identity and expression, such as protection from workplace harassment and discrimination,²⁸ nothing in state or federal law regulates how people may refer to transgender individuals in a public forum. Nor could California lawfully enact any such regulation, as it would be unconstitutional. The First Amendment protects all speech unless it falls into one of the “historic and traditional categories” of unprotected speech, such as true threats, obscenity, defamation, or incitement.²⁹ Absent more, referring to transgender women as “men” or “males” (or transgender men as “women” or “females”) does not fall into any category of unprotected speech.

Likewise, no public library policy can supersede the First Amendment. Yet a provision in the Yolo County Library’s “Code of Behavior” reads, “Treat people, materials and furniture with

²² *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

²³ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

²⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).

²⁵ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

²⁶ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

²⁷ *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas.”).

²⁸ *Employment Discrimination*, CAL. CIVIL RIGHTS DEP’T, <https://calcivilrights.ca.gov/employment/#whoBody>.

²⁹ *United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (cleaned up).

respect.”³⁰ The library may not use this provision to eject speakers from a public forum for constitutionally protected speech, even if others subjectively find it disrespectful.

While Yolo County Library retains the authority to regulate disruptive conduct, it cannot constitutionally expand the definition of “disruptive” to cover speech that merely offends or upsets others. That audience members at the Moms for Liberty event reacted to speech they disliked by interrupting and shouting at the speakers does not permit the library to punish *the speakers*, rather than the hecklers, for disruptive conduct. As a federal appellate court proclaimed: “The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker’s message.”³¹

III. Conclusion

Yolo County Library’s censorship of speakers in a public forum is a betrayal of its First Amendment obligations. FIRE calls on the library to immediately offer the Yolo County chapter of Moms for Liberty an opportunity to reschedule the “Forum on FAIR AND SAFE Sport for GIRLS” in a library meeting room, and to confirm the library will ensure that its operations conform to the First Amendment going forward.

We request a substantive response to this letter no later than September 7, 2023.

Sincerely,



Aaron Terr
Director of Public Advocacy, FIRE

Cc: Diana Lopez, Yolo County Librarian and Chief Archivist
Yolo County Library Advisory Board

³⁰ *Library Code of Behavior*, YOLO CNTY. LIBR., <https://yolocountylibrary.org/wp-content/uploads/sites/71/2021/06/Workplace-Safety-Behavior-Code-2014.pdf>.

³¹ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 252 (6th Cir. 2018).