



Southern California

March 17, 2026

Via email only

Rebecca McKee-Reimbold
Interim City Attorney
City Attorney's Office
3750 University Ave, Suite 250
Riverside, CA 92501
RMcKee@riversideca.gov

Re: Unconstitutional Restriction on Board/Commission Nominees

Dear Ms. McKee-Reimbold:

I was heartened by your email response to my letter expressing concern about Resolution No. 24348, passed by the Riverside City Council on January 27, 2026, which provides that neither the Mayor nor a City Councilmember shall nominate any applicant for appointment to fill any vacancy on any Citywide board or commission if that applicant has a pending lawsuit against the City.¹ Your February 26 email informed me that "A proposed amendment to the Boards & Commission Eligibility Rule will be presented to City Council on March 24" and I had some hope that meant that the proposed amendment would address the concerns that I addressed in my letter, and that it would pass constitutional muster. Unfortunately, now that I have seen the proposed amendment, it is clear that it contains almost all of the same constitutional problems I identified in my letter.

The proposed "Revised Resolution"² is identical to Resolution No. 24348 except that it makes clear that members of the public are not disqualified from being nominated to a City Board or Commission solely by virtue of being a class member of a class action lawsuit against the City. While this revision does address one of the glaring examples of overbreadth in

¹ Section XIV of Resolution 24348 at 36, available at <https://riversideca.legistar.com/View.ashx?M=F&ID=15088550&GUID=A97D3BFA-CB60-401D-955C-8EAF6CC11928>

² Located here: <https://riversideca.legistar.com/View.ashx?M=F&ID=15314263&GUID=843EF575-EF60-49F8-8662-949003554664>

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Resolution No. 24348, it does not address the rest of the concerns raised in the letter, so the Revised Resolution would still be unconstitutional.

As explained in my previous letter, preventing people from becoming board or commission members simply because they have exercised their constitutional right to sue the City, regardless of whether there is any individualized basis for believing that their lawsuit could create any conflict of interest with the business of the board or commission they wish to serve on, is a vastly overbroad and therefore unconstitutional restriction on the rights afforded by the Petition Clause of the First Amendment of the United States Constitution and Article I, section 3(a) of the California Constitution.

Should the City adopt the Revised Resolution in its current form, it will violate the constitutional rights of people who sue the City and who nevertheless wish to contribute their services to the City. The City should reject the currently contemplated revision and instead rescind *all* of the relevant portions of the current Resolution to avoid the risk of costly litigation.

LEGAL ANALYSIS

The right to sue the government is a core democratic freedom protected by the Petition Clause of the First Amendment of the United States Constitution, which prohibits laws abridging “the right of the people ... to petition the Government for a redress of grievances.” U.S. Const. amend. I.³ See *Wolfgram v. Wells Fargo Bank*, 53 Cal. App. 4th 43, 52 (1997) (“The right to petition encompasses the right to sue.”); *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 148 (1907) (“The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government.”); see also *City of Long Beach v. Bozek*, 31 Cal.3d 527 (1982), *judgment vacated and cause remanded*, 459 U.S. 1095 (1983), *reiterated* 33 Cal.3d 727, 728 (1983) (the “act of filing suit against a governmental entity represents an exercise of the right of petition and thus invokes constitutional protection.”). “The right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular freedom of expression.” *McDonald v. Smith*, 472 U.S. 479, 482 (1985).

The right to sue the government is especially important for marginalized groups who may not be able to achieve their goals at the ballot box, but who nevertheless seek justice from elected officials. For them, litigation against the government is a “form of political expression” as “under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.” *Nat’l Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415, 430 (1963).

The right to sue the government, like all other constitutional rights, is not absolute, and there may well be circumstances where the City has a sufficient interest in preventing people who are suing it from serving on boards or committees if such service is likely to create a genuine conflict of interest. There may be good reason, for example, to deny a seat on a water rate board to someone who is suing the City for allegedly setting water rates too high. But government actions that regulate or punish *more* First Amendment-protected activity than

³ The California Constitution similarly provides that “The people have the right to ... petition government for redress of grievances....” Cal. Const. art. I, § 3.

necessary to achieve a legitimate government purpose are constitutionally “overbroad” and impermissible. *See Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984); *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 483 (1995) (O’Connor, J., concurring) (government entities may not simply presume “that abuses may be so widespread as to justify a prophylactic rule” that burdens constitutional rights because “[o]ur cases do not support the notion that the bare assertion of a laudable purpose justifies wide-ranging intrusions on First Amendment liberties.”). And while it might make sense to perform individualized analyses of whether specific board or committee nominations present likely conflicts of interest, a blanket prohibition against allowing *anyone* who is suing the City for *any* reason to serve on *any* board or *any* commission sweeps in far too much protected conduct to pass constitutional muster.

There is no legitimate government interest, for example, in preventing someone who is suing the City for excessive force by the police department from serving on a zoning commission, or from preventing someone who is a class member in a case challenging the City’s provision of emergency medical services from serving on its library advisory board. This is especially true because City boards and commissions can generally be expected to have their own internal mechanisms for handling possible conflicts, including requiring recusal of members who have conflicting interests. Because the Resolution imposes a cost on the ability to petition the government without adequate justification, it needlessly chills the public’s ability to exercise its First Amendment rights, impermissibly burdening those rights. *See Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (discussing the chilling effect of overbroad laws).

It is no defense to argue that the ability to serve on a City board or commission is a benefit or a privilege, and not a right. The United States Supreme Court and other federal courts have clearly stated on multiple occasions and in a variety of contexts that even though the government may deny someone a benefit for “any number of reasons,” those reasons may *not* include “a basis that infringes [] constitutionally protected interests—especially” First Amendment interests. *Perry v. Sinderman*, 408 U.S. 593, 597 (1972). The government may not deny even a “gratuitous governmental benefit,” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013), to “produce a result which it could not command directly.” *Perry*, 408 U.S. at 597 (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)) (cleaned up). That principle holds true even if the party could have declined the benefit or had no right to the benefit. *See Agency for Int’l Dev. v. Alliance for Open Society Int’l, Inc.*, 570 U.S. 205, 214 (2013) (holding that the government “may not deny a benefit to a person on a basis that infringes his [First Amendment rights] even if he has no entitlement to that benefit” (quoting *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47, 59 (2006))); *Perry*, 408 U.S. at 596 (lack of contractual right to re-employment did not defeat claim that “nonrenewal of [] contract violated the First and Fourteenth Amendments.”). “For if the government could deny a benefit to a person because of his constitutionally protected [First Amendment freedoms], his exercise of those freedoms would in effect be penalized and inhibited.” *Perry*, 408 U.S. at 597; *see also Nichols v. Dancer*, 657 F.3d 929, 932 (9th Cir. 2011) (“It is by now black letter law that “a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression.”).

California courts similarly follow this precedent. *See California Building Industry Assn. v. City of San Jose*, 61 Cal.4th 435, 457 (2015) (“As a general matter, the unconstitutional conditions doctrine imposes special restrictions upon the government’s otherwise broad authority

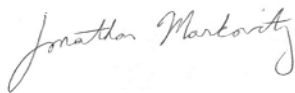
to condition the grant of a privilege or benefit when a proposed condition requires the individual to give up or refrain from exercising a constitutional right.”) (citing *Perry*, 408 U.S. at 597–98; *Pickering v. Board of Ed.*, 391 U.S. 563, 568 (1968)).

Unconstitutional conditions can take many forms. *See, e.g., Perry*, 408 U.S. 593 (holding that a public college violated professor’s freedom of speech by declining to renew his employment contract because he was an outspoken critic of the college administration); *Koontz*, 570 U.S. 595 (holding that a water district could not condition a land use permit on an agreement to fund public lands projects because the requirement amounted to an illegal taking); *Overbey v. Mayor of Baltimore*, 930 F.3d 215 (4th Cir. 2019) (holding that a city may not demand a waiver of First Amendment rights as a condition of a police brutality settlement, even though it appeared in an otherwise valid contract). But regardless of the specific structure, the well-established principle remains the same: the government may not condition a privilege or a benefit—here, nomination to a City board or commission—on giving up a right, including and *especially* First Amendment rights such as the right to petition (via suing) the government.

CONCLUSION

For these reasons, the boards and commissions restrictions in Resolution No. 24348 *and* in the Revised Resolution are unconstitutional. The City Council should eliminate that restriction to avoid the risk of needless and costly litigation. Please let me know by March 25th whether the City intends to rescind this resolution which clearly violates the United States and California Constitutions. If you have any questions or concerns, please contact me at jmarkovitz@aclusocal.org.

Sincerely,



Jonathan Markovitz
Free Expression and Access to Government Senior Staff Attorney

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