TENTATIVE RULINGS
Judge Lindsey E. Martínez, Dept. C24

"Civility is not about etiquette. This is not a matter of bad manners. Incivility slows things down, it costs people money – money they were counting on their lawyers to help them save. And it contravenes the Legislature's directive that 'all parties shall cooperate in bringing the action to trial[.]' (Code Civ. Proc., § 583.130.)" (*Masimo Corp. v. The Vanderpool L. Firm, Inc.* (2024) 101 Cal. App. 5th 902, 911; *see generally* OCBA Civility Guidelines.)

- The court encourages remote appearances to save time and reduce costs.
- All hearings are open to the public.
- You must provide your own court reporter and interpreter, if required.
- Call the other side and ask if they will submit to the tentative ruling. If everyone submits, call the clerk. The tentative ruling will become the order. If anyone does not submit, there is no need to call the clerk.
- The court will hold a hearing. The court may rule differently at the hearing. (*See Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Hearing Date: September 5, 2025 at 8:45 am
Rulings Posted: 9/4/25 at 2:00 pm

#	Case Name	Tentative
1	*Alianza Translatinx vs. City of Huntington Beach*	The demurrer filed by defendants/respondents City of Huntington Beach; Huntington Beach City Council; and Ashley Wysocki (collectively referred to as the City) to the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief of plaintiffs/petitioners Alianza Translatinx (ATL); C.A., a minor by and through his GAL, E.S.; H.P., a minor by and through her GAL C.W.; and Erin Spivey (Spivey) (collectively referred to as Plaintiffs) is **OVERRULED**. Plaintiffs' Petition for Writ of Mandate is **GRANTED**.

		The parties' requests for judicial notice are **GRANTED**. (Evid. Code § 452, subd. (b).) <u>Motion No. 1: Demurrer</u> California Rules of Court, rule 3.1320, subdivision (a) mandates that each ground for demurrer must be stated separately and must specify whether it pertains to the entire pleading or particular causes of action. Here, the demurrer references three grounds but fails to specify their scope. The City's memorandum clarifies that dismissal of the entire pleading is sought—thus the court construes the demurrer as addressing the entire pleading under Code of Civil Procedure section 430.50. (See Demurrer p. 18:20-22.) When a general demurrer covers an entire pleading, it must be overruled if any cause of action is legally sufficient. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 29, 36.) *Standing* The Petition adequately establishes public interest standing for purposes of the first cause of action. A petitioner seeking a writ of mandate must generally demonstrate a "beneficial interest" in the subject matter. (Code Civ. Proc., § 1086; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165 (*Save the Plastic Bag Coalition*).) However, where enforcement of a public duty is at issue, public interest standing is appropriate. (*Save the Plastic Bag Coalition*, *supra*, at 166.) Petitioners challenge the City's enforcement of Resolution No. 2023-41, alleging it unlawfully restricts minors' access to certain library materials in violation of the California Freedom to Read Act (FTRA) (Educ. Code, § 19802) and the California Constitution. The public right implicated—minors' access to library materials and enforcement of

		statutory obligations imposed upon public libraries—is sufficient to confer standing under the public interest doctrine. The City fails to demonstrate any compelling reason to preclude application of this exception. Because the pleading adequately shows Plaintiffs have public interest standing to seek a writ of mandate and the remainder of the City's challenges on demurrer lack merit, the court does not reach the issue of standing as to the second through fourth causes of action. *Ripeness/Failure to State a Claim* The City argues Plaintiffs' action is not ripe because no actual dispute or controversy exists as the City has not implemented Resolution No. 2023-41 and none of the Plaintiffs have suffered harm. This argument fails as Plaintiffs here allege a facial challenge to Resolution No. 2023-41. "Because a facial challenge to a statute's constitutionality focuses on the statute's text rather than its application in a particular case, 'a facial challenge is generally ripe the moment the challenged [law] is passed.'" (*AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73, 80; see also, *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [discussing ripeness requirement].) In addition, Plaintiffs have indeed alleged facts showing the City began implementing Resolution No. 2023-41. (See Compl., ¶¶ 40-49.) The City also argues in the reply this case is unripe and moot due to the recent repeal of Ordinance No. 4318. This issue is discussed below in connection with the petition for writ of mandate. As set forth below, the court finds the repeal of Ordinance No. 4318 does not render this matter unripe and moot.

		Home Rule Doctrine Although Huntington Beach is a charter city, the FTRA addresses a statewide concern concerning access to public library materials. Resolution No. 2023-41 conflicts with the FTRA and is not protected by home-rule principles. The City has not rebutted the presumption of state preemption. (*State Building & Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547, 556.) In the reply, the City argues for the first time the FTRA violates the Fourteenth Amendment rights of parents to make decisions concerning the care, custody, and control of their children and the FTRA is thus unconstitutional. This is new argument in the reply which the court declines to consider. (*See Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38.) Even if the court were to consider the argument, the argument lacks merit as discussed further below in connection with the petition for writ of mandate. <u>Motion No. 2: Petition for Writ of Mandate</u> Plaintiffs seek a Writ of Mandate compelling Defendants to comply with the requirements of the FTRA and prohibiting them from implementing or enforcing the subject library measures. "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station…." (Code Civ. Proc., § 1085(a).) "[M]andate will lie to compel the performance of a clear, present and ministerial duty on the part of the respondent where the petitioner has a beneficial right to performance of that duty." (*Coachella Valley Unified School Dist. v. State of*

		Cal. (2009) 176 Cal.App.4th 93, 113.) "A ministerial act is one that a public functionary is required to perform in a prescribed manner in obedience to the mandate of legal authority, without regard to his or her own judgment or opinion concerning the propriety of such act. (*Ibid*., internal quotations omitted.) Here, the FTRA expressly applies to charter cities like Huntington Beach. (See Assembly Bill No. 1825, § 2.) The FTRA also creates a mandatory duty on the part of public library jurisdictions in that it prohibits limiting access to library materials solely on the basis the materials may include sexual content, unless that content qualifies as obscene under United States Supreme Court precedent and prohibits denying or abridging a person's right to use a public library and its resources solely based on their age. (See Educ. Code § 19802, subds. (b)(1)-(2), (c).) As Plaintiffs contend, these provisions offer no room for the City to exercise discretion and restrict access to library materials in violation of the FTRA. The terms of Resolution No. 2023-41 violate the FTRA because the Resolution limits minors' access to library materials that "contain any content of sexual nature" without regard to whether the materials qualify as obscene and restricts access to library materials based on age alone. The Resolution does so by requiring library materials containing any "sexual content" to be placed in the adult section of the libraries and requiring parental consent before minors can access such materials, "whether the books or materials are intended for children or adults." (Resolution No. 2023-41, ¶ 1a-b.) While it is true minors would be able to access the materials with their parents' consent, the moving of materials to the adult section and the requirement of obtaining parental consent to view those materials itself appears to be an improper

		limitation on minors' access to library materials in violation of the FTRA. The foregoing requirements appear to be in direct conflict with the FTRA. No authority is offered showing such requirements do not conflict with the FTRA or do not constitute a limitation on minors' access to library materials. Plaintiffs have thus shown a writ of mandate is proper in this instance. As discussed below, none of the City's challenges to the writ of mandate have merit. *Standing* As discussed above in connection with the demurrer, Plaintiffs have public interest standing to seek a writ of mandate. (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at p. 166.) *Mootness* The City argues this case is moot because Ordinance No. 4318, which established the community parent-guardian review board called for in the Resolution, was repealed, and thus the Resolution has no further legal effect. The City argues Resolution No. 2023-41 on its own does not have the force of law because it was not adopted in the manner prescribed in the City's Charter for the adoption of ordinances and as such there is nothing here about which to issue a writ of mandate. The City cites *San Diego City Firefighters, Local 145 v. Board of Administration et al.* (2012) 206 Cal.App.4th 594, *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, and *City of Brentwood v. Department of Finance* (2020) 54 Cal.App.5th 418. However, none of these cases involved the issue of mootness. The cases set forth the differences between resolutions and ordinances, but did not address whether repeal of an ordinance

		renders a mandamus proceeding directed to a related resolution moot. The City's cited cases thus do not mandate a finding that this case is moot. "A case is considered moot when the question addressed was at one time a live issue in the case but has been deprived of life because of events occurring after the judicial process was initiated. The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (*Cohen v. Superior Court* (2024) 102 Cal.App.5th 706, 714 [internal citations and quotations omitted]; see also, *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 ["[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief."].) Here, there is nothing presented showing the City cannot still act to enforce Resolution No. 2023-41. Section 2 of the Resolution, which called for the community parent/guardian review board, expressly states, "This section does not modify the requirement of Section 1 of the Resolution that any book containing sexual content be placed in the adult section and require parental or guardian consent for children to access." (Resolution ¶ 2.e.) Thus, the requirement of Section 1 of the Resolution remains in effect even without the community parent/guardian review board. Moreover, the City does not assert it has no plans to enforce the Resolution. In addition, as discussed below, the City has not shown Resolution No. 2023-41 was repealed by implication due to the enactment of new Section 2.30.090. Thus, a ruling by this court enjoining enforcement of Resolution No. 2023-41 would have practical effect. As such, it does not appear to the court the repeal of Ordinance No. 4318 has rendered this case moot.

		The City also points to Huntington Beach Charter, Article V, Section 502, which states: "The City Council may act by resolution or minute order in all actions not required by this Charter to be taken by ordinance." It is unclear how this section supports the City's mootness argument. As Plaintiffs argue, Section 502 confirms the City's power to act by resolution. Moreover, the City points to no provisions in its Charter requiring an ordinance or prohibiting the use of a resolution for actions related to the City's public libraries. (See *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276, 1286-1287 [rejecting argument that County could act only via ordinance when county charter allowed action by resolution].) In addition, the City has cited no authority holding a resolution alone is not a proper subject of mandamus proceedings. Additionally, even if repeal of Ordinance No. 4318 rendered this case moot, the court has discretion to consider the merits because the matter involves an issue of broad public interest. "[T]here is an exception to mootness applicable to issues of broad public interest: [I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot." (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1104 [internal citations and quotations omitted].) The issue presented in this case is one of broad importance and capable of recurring because the City can still act to enforce Resolution No. 2023-41. *Doctrine of Implied Repeal* The City argues Section 2.30.090, added to the City's Municipal Code in July 2025 pursuant to Measure A, fully occupies the field of accessibility to library materials and thus negates and repeals by

		implication the provisions of Resolution No. 2023-41. Repeal by implication may be found "where (1) 'the two acts are so inconsistent that there is no possibility of concurrent operation,' or (2) 'the later provision gives undebatable evidence of an intent to supersede the earlier' provision. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038.) "In order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say it was intended to be a substitute for the first… [C]ourts will infer the repeal of a statute only when ... a subsequent act of the legislature clearly is intended to occupy the entire field covered by a prior enactment." (*Ibid*.) As an initial matter, although the City contends Section 2.30.090 fully occupies the field of accessibility to library materials, the City failed to offer any analysis or explanation showing why or how this is so. It does not appear to the court Resolution No. 2023-41 was repealed by implication because it and Section 2.30.090 can concurrently operate and there is not "undebatable evidence" of an intent to supersede the Resolution. Section 2.30.090 does not address the question of whether libraries can require parental consent for minors to access materials containing "sexual content." Section 2.30.090 states only materials shall not be excluded from the library collection due to the stated reasons. It says nothing as to whether the City libraries are prohibited from segregating materials containing "sexual content" and requiring anyone under age 18 to obtain parental consent before accessing such materials. City libraries could thus still limit access to materials as set forth in the Resolution. The two provisions therefore do not

		appear to be "so inconsistent that there is no possibility of concurrent operation." There also does not appear to be "undebatable evidence" of an intent to supersede Resolution No. 2023-41. Section 2.30.090 expressly repealed Chapter 2.66, which was adopted pursuant to Ordinance No. 4318. However, there is not clear evidence showing Section 2.30.090 intended to repeal Resolution No. 2023-41 as well. Section 2.30.090 does not refer to the Resolution or address any of its provisions regarding minors' access to materials with "sexual content." Thus, it does not appear Section 2.30.090 prohibits the City from enforcing Resolution No. 2023-41, nor does Section 2.30.090 "fully occupy" the field of access to library materials, as the City contends. In connection with its argument regarding implied appeal, the City also appears to contend issuing a writ of mandate here would be an idle act because there is no evidence the City intends to enforce Resolution No. 2023-41. However, there is also no evidence offered showing the City has no plans to do so. The City simply maintains it is not "required to take any action to repeal the resolution as it no longer has any legal effect." (Vigliotta Decl., ¶ 7.) *Constitutionality of FTRA* Lastly, the City argues to the extent the FTRA abridges parental rights to restrict material to which their children are exposed, it is unconstitutional. The City cites authority holding parents have a liberty interest in managing the upbringing of their children and parental rights may curtail a child's exercise of constitutional rights. (See *Troxel v. Granville* (2000) 530 U.S. 57, 65; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1243;

		Mahmoud v. Taylor (2025) 606 U.S. ___, 2025 WL 1773627.) In the reply, Plaintiffs argue the FTRA does not abridge parental rights because it prohibits library jurisdictions—not parents—from restricting minors' access to library materials and parents remain free to stop their children from using the library or reading certain books. Plaintiffs also argue the City cannot stand in the shoes of parents and assert their constitutional rights. Plaintiffs have the better argument. The plain language of the FTRA shows it applies to public officials, not parents. Parents thus remain free to restrict what materials their children access. Moreover, the City's cited cases are factually distinguishable and thus do not support a finding the FTRA is unconstitutional. In addition, the City has not shown how it can properly assert the constitutional rights of parents in this instance. "[G]iven that constitutional rights are generally personal, a defendant generally may not assert a constitutional claim on behalf of others. [Citations.] The rule is well established ... that one will not be heard to attack a statute on grounds that are not shown to be applicable to himself…" (*People v. Bocanegra* (2023) 90 Cal.App.5th 1236, 1253 [internal quotations omitted].) Moreover, "[a]ll presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780 [internal quotations omitted].) Here, it is not clearly shown the FTRA is unconstitutional.

		Based on the foregoing, the court finds the City's argument in this regard lacks merit. Plaintiffs shall submit a proposed order and proposed writ of mandate in accordance with this ruling within 30 days. Plaintiffs shall give notice.