



## **II.** **PARTIES**

3. Plaintiff San Antonio Professional Firefighters' Association, Local 624, is a labor union and the exclusive bargaining agent for firefighters employed by the City of San Antonio.

4. Defendant City of San Antonio, including its respective departments, agencies, and other instrumentalities, is a home rule municipality organized under the laws of the State of Texas. It may be served with process by serving its chief executive officer, City Manager Shelly Sculley, at City Hall, 100 Military Plaza, San Antonio, Texas 78205.

5. Defendant Ron Nirenberg is sued in his official capacity. As Mayor, Nirenberg is charged with the administration and enforcement of San Antonio's policies and practices regarding petition circulators. He may be served with process at City Hall, 100 Military Plaza, Fourth Floor, San Antonio, Texas 78205.

6. Defendant Andrew Segovia is sued in his official capacity. As City Attorney, Segovia directed the enforcement of the San Antonio's policies and practices regarding petition circulators. He may be served with process at City Hall, 100 Military Plaza, Third Floor, San Antonio, Texas 78205.

7. Defendant Ramiro S. Salazar is sued in his official capacity. As the City of San Antonio's Public Library Director, Salazar is responsible for the administration of the policies and procedures at San Antonio's public libraries. He may be served with process at 600 Soledad St., San Antonio, Texas 78205.

8. Defendant William McManus is sued in his official capacity. As Chief of Police, McManus is responsible for the enforcement of San Antonio's policies and practices regarding petition circulators. He may be served with process at 315 South Santa Rosa Ave., San Antonio, Texas 78207.

**III.**  
**JURISDICTION & VENUE**

9. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over all civil matters arising under the laws of the United States and has jurisdiction to award damages and grant equitable or other relief. Specifically, this Court has jurisdiction because this is an action arising under the First and Fourteenth Amendments to the United States Constitution.

10. Venue of this case lies in the Western District of Texas pursuant to 28 U.S.C. § 1391(b) because this is a civil action not founded in diversity of citizenship, and because this claim arose within the Western District of Texas, San Antonio Division.

**IV.**  
**FACTS**

**A. The “San Antonio First” Ballot Initiative.**

11. SAPFA is a 100-year-old firefighters’ union and member of the International Association of Fire Fighters. SAPFA is the exclusive bargaining agent for firefighters employed by the City of San Antonio.

12. On February 20, 2018, SAPFA launched the “San Antonio First” ballot initiative that seeks amendment of the City of San Antonio’s municipal charter in three key respects: (1) limiting the salary and length of employment of the city manager and increasing the number of city council votes required to approve city manager contracts; (2) reducing the number of signatures required for a petition to change the City’s ordinances from 75,000 to 20,000 qualified voters and expanding the amount of time to gather those signatures from 40 days to 120 days, and; (3) requiring the City to agree to arbitration (as opposed to pursuing litigation) in the event an impasse is reached in collective bargaining with the City.

13. A week after SAPFA launched the San Antonio First initiative, Mayor Ron Nirenberg held a press conference in which he expressed his strong disapproval of SAPFA's aims, tying its petitions to a collateral dispute being waged in state court:

I want to be sure that San Antonians are fully aware of the facts regarding the petition drive launched by the firefighter's union to change the City's charter and the dangers imposed by the amendments proposed by the union bosses....

It has gone beyond union bosses trying to get more money from the City. It is now about destroying the City's ability to operate effectively. The three petitions being circulated by the union at primary election polling sites propose measures that, if approved, would deform a city charter that has been voted upon repeatedly by the public. They would hamstring the ability of the City to conduct its business effectively and efficiently, and make no mistake, signing these petitions is the same as signing up for future tax increases and fees....

The measures being proposed would threaten the financial standing of this City.... If the union boss gets his way, taxpayers and ratepayers would pay tens of millions of dollars more in taxes, higher rates and higher fees to pay for the same roads, the same libraries, the same parks. ...The proposed change limiting the city manager's salary and tenure ... would handcuff city council by dramatically diminishing its ability to recruit and retain candidates for the job .... And, the proposed change that would require arbitration and block litigation of collective bargaining if negotiations reach an impasse, would deny ... taxpayers and their representatives their constitutional right to be heard in court. ... This latest political stunt by the union boss won't solve the problem, it only creates more.<sup>1</sup>

14. As subsequent events revealed, in order to effectuate the Mayor's political position, the Defendants sought to prevent citizens from coming into contact with persons circulating the petitions for signatures, depriving SAPFA of its constitutional rights in the process.

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<sup>1</sup> "Mayor Responds to firefighters' campaign to change city charter," <http://news4sanantonio.com/news/local/mayor-responds-to-firefighters-campaign-to-change-city-charter> (last accessed May 23, 2018).

**B. SAPFA Gathers Signatures for its Petitions in Public Places.**

15. For a charter amendment petition to be certified and the subject measure submitted to voters, state law requires the valid signatures of five percent of the qualified voters in the municipality, or 20,000 of such signatures, whichever is less. TEX. LOC. GOV'T CODE § 9.004. In San Antonio, the number of signatures required is 20,000. To gather the requisite number of signatures for its petitions, SAPFA retained the services of Texas Petition Strategies (“TPS”), to act as its agent to mobilize personnel to circulate petitions and gather signatures in public places.

16. In early March 2018, TPS personnel, acting on behalf of SAPFA, began gathering signatures in and around the plazas and walkways outside of the City of San Antonio Public Library System’s branch facilities, as well as the Northeast Senior Center, a facility operated by the City’s Department of Human Services.

17. Seeking to remain visible to the facilities’ patrons and peaceably interact with them, petition circulators stationed themselves to the sides of public walkways and plazas. They positioned themselves at reasonable distances away from facility entryways to avoid impeding the ingress and egress of the buildings’ patrons.

18. Despite the petition circulators’ scrupulous efforts to avoid interfering with the ability of others to use and enjoy the resources and services of municipal facilities, the City of San Antonio began enforcing a “free speech area” policy and practice designed to hinder the circulation of SAPFA’s petitions.

**C. The City Impedes SAPFA’s Petition Drive.**

19. Indeed, following directives from their superiors, including City Attorney Andrew Segovia, the City’s personnel repeatedly instructed petition circulators at multiple locations that they could not gather signatures anywhere near the entryways of public facilities. Instead, petition

circulators were only allowed to gather signatures within designated “free speech areas,” isolated areas of public property located far from foot traffic.

20. By way of example, on March 2, 2018, after early voting had closed at the Brook Hollow Library, library personnel told a petition circulator named Diann Gentry that if she returned the next day to gather signatures, she would have to stand in a grassy area approximately 150 feet away from the library’s entryway.

21. On March 3rd, another petition circulator named Annette Lord set about collecting signatures approximately 100 feet from the front door of the Tobin Library. Upon witnessing these activities, library personnel instructed Ms. Lord to relocate to a “free speech area.” When Ms. Lord asked for a copy of the library’s policy requiring her to move to a “free speech area,” she was presented with a “Patron Conduct Policy” dated October 25, 2013 and executed by Library Director Ramiro S. Salazar.

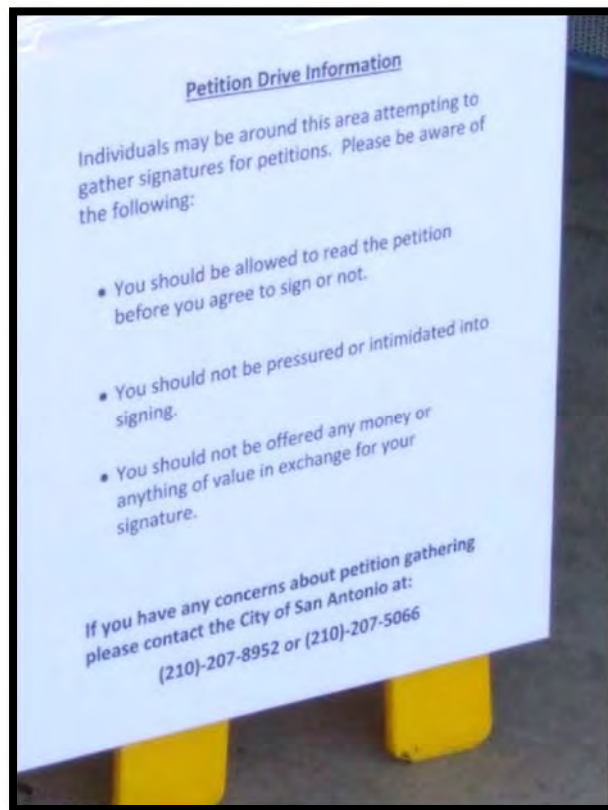
22. In relevant part, the Patron Conduct Policy states as follows:

**EXTERIOR GROUNDS**

The Library has a policy of allowing the use of portions of the exterior grounds of library property by the public for free speech activities including campaigning, political statements, announcements, speeches, and distributing literature ... Library Administration has approved the designation of “Free Speech Areas” at each location in coordination with your Branch Services Coordinator. Such Free Speech Areas should be selected to allow for a full range of freedom of speech activities while also affording adequate to [sic] protection to the efficient functioning of the library.

23. Tobin Library personnel then instructed the petition circulator to move to the “free speech area.” Despite purporting to be compatible with “a full range of freedom of speech activities,” the selected “free speech area” was an isolated area located at the outer periphery of the premises, far from the public, preventing Ms. Lord from interacting with persons going to and from the library.

24. On March 6th, election day for party primaries, petition circulator Jennifer McDuffie properly situated herself outside of the Great Northwest Library, which was a polling place. A local candidate approached Ms. McDuffie and alerted her to the fact that the library had posted a sign by the front door:



25. The library's director told Ms. McDuffie that City personnel had recently brought the sign out and directed its placement at the library's front door.

26. Ms. McDuffie brought the issue to the attention of the on-site election judge, who then took it upon himself to remove the sign. However, he was intercepted by library personnel who told him that the City had instructed the library to maintain the sign where it stood.

27. This same signage was also posted at the Las Palmas, John Igo, and Tobin Libraries, as well as on the City's social media accounts, with the intention of having a chilling effect on prospective signatories to the petitions.

**D. The City Threatens Petition Circulators with Arrest.**

28. On March 7th, following the election, Ms. Lord and another petition circulator named Charles Chavez sat at a small table they placed in front of the Parman Library's stone monument sign, approximately 90 feet from the doorway. The library's manager, Barbara Kwiatkoski, instructed them to move to the "free speech area" across an adjacent grassy area and at the edge of the parking lot, which served to prevent the petition circulators from communicating with the public.

29. The petition circulators objected to this demand because the "free speech area" was located away from the walkway, precluding them from gathering signatures or interacting with patrons. Library staff proceeded to call the police.

30. Upon their arrival, police officers informed Ms. Lord and Mr. Chavez that after consulting with the Chief of Police and the City Attorney, if the library manager wanted them to relocate or leave, they must do so and that the "City Attorney had ruled"<sup>2</sup> on the issue.

31. According to the supervising officer, "the City Attorney is the one who gave [the chief] that order." The officers then instructed Ms. Lord and Mr. Chavez to relocate or leave the premises, and that if they did not, they would be arrested. The petition circulators departed.

32. On the same day, another petition circulator, Holden Harris, circulated petitions at the Northeast Senior Center. The Northeast Senior Center is a place for seniors to congregate to share meals, participate in activities and access services tailored for the elderly.

33. After gathering several signatures in front of the building, the Senior Center's staff told Mr. Harris that he could not petition at the location – despite the fact that they had told him a week prior that he could circulate petitions in front of the building after the elections were over.

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<sup>2</sup> Video of the interaction with San Antonio Police Officers is attached as **Exhibit A**.



34. After he protested this new and contrary directive, the manager of the facility, Jessica Dovalina, told Mr. Holden that it was against “policy” to allow his activities. Upon the arrival of Mr. Holden’s superiors, Ms. Dovalina informed the group that she had just conferred with the City Attorney and was instructed that petitions could only be circulated in a “free speech zone,” an area located on a sidewalk adjacent to Thousand Oaks Drive nearly 100 feet away from the front door.

35. Mr. Holden complied with these instructions. Nevertheless, the police were once more summoned. Ms. Dovalina informed him that she was simply following orders from her superiors and the City Attorney. She then gave him a “policy,” a document that only referred to candidate campaigning and not petition circulation.

36. With word of SAPFA’s frustrated efforts having reached the press, on March 8th, the City of San Antonio issued an official press release that stated, in relevant part:

San Antonio Public Library locations have dedicated free speech zones. Yesterday, fire union representatives at the Semmes Branch Library were informed of the free speech area that could be used for petition-gathering activities, as is appropriate. Today, they refused to use it and falsely claimed during a news conference that library staff forced them to relocate to a nearby park.

“Our public libraries are dedicated to our library patrons, who have every right to visit the library unencumbered,” said Kathy Donellan, San Antonio Public Library assistant director.

The San Antonio Public Library has designated certain areas in the exterior of library facilities as “free speech areas.” These areas may be used for petition activity, campaigning or other free speech activities. Staff at each library does and will assist individuals or groups with locating and using these areas.<sup>3</sup>

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<sup>3</sup> Cowart, Caitlin, “Despite Fire Union Claims, San Antonio Public Libraries have Free Speech Zones” <https://www.sanantonio.gov/Commpa/News/ArtMID/1970/ArticleID/12663/Despite-Fire-Union-Claims-San-Antonio-Public-Libraries-have-Free-Speech-Zones> (last accessed May 23, 2018).

37. On March 16th, a Union member named Jim Bruno circulated petitions near a tree by the Brook Hollow Library's front doorway. The library's manager, Heidi Novotony, told Mr. Bruno that he could not stand near the door and then escorted him to a grassy area across the parking lot and behind the library's stone sign, some 150 feet away from his original location and far removed from any possible contact with persons going to and from the library.

38. Library staff then called the police. The responding officer was sympathetic to Mr. Bruno and acknowledged that he was doing nothing disruptive. Nevertheless, the officer informed Mr. Bruno that the library's policy would require him to stand in the grass areas surrounding the parking lot.<sup>4</sup>

39. SAPFA wishes to continue engaging in core political speech with the public outside of so-called "free speech areas" by seeking further change to the City Charter and City ordinances through the petition process available under state law (for charter amendments) for initiative and referendum. However, with the City having broadcast its intentions to continue restricting access to public property, and with SAPFA reasonably fearing that petition circulators will be arrested and prosecuted for trespass, it has little choice but to petition this Court for relief.

## **V.** **CAUSES OF ACTION**

### **A. Claims Pursuant to 42 U.S.C. § 1983.**

40. The foregoing factual allegations are incorporated herein by reference as if set forth in full.

41. 42 U.S.C. § 1983 prohibits a person who, acting under color of law, subjects or causes to be subjected any United States citizen to the deprivation of any rights, privileges, or

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<sup>4</sup> Video of Mr. Bruno's interactions is attached as **Exhibit B**.

immunities secured by the United States Constitution. Any person who violates Section 1983 shall be liable to the injury party.

42. At all relevant times and with regard to all relevant actions of the Defendants as alleged in this Complaint, the Defendants were acting in their official capacities, under color of state law, and pursuant to the official policies, practices and customs of the governmental agencies or entities which the Defendants respectively represent.

43. Defendants, acting under color of law, have subjected and caused Plaintiff to be subjected to the deprivation of its rights, privileges, or immunities secured by the First and Fourteenth Amendments

**1. Violation of the First Amendment – Free Speech Claim.**

44. As applied to the states through the Fourteenth Amendment, the First Amendment to the Constitution prohibits the government from making laws that “... abridg[e] the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. AMEND. I. Defendants’ policy and practice of restricting petition circulators to “free speech areas,” both facially and as-applied to Plaintiff and its agents, violates the First Amendment.

45. The First Amendment applies to the expressive activities of Plaintiff’s petition circulators. “The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988). Because petition circulators must, at the very least, explain the nature of a proposal and why its advocates support it, “the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Id.*

46. “In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). The plazas and walkways in front of the City’s libraries are traditional public fora. All involved library facilities offer free access to the public and afford patrons walking between the library and its parking lots open ingress and egress. They are aesthetically pleasing areas that are much larger than average sidewalks, allowing people to rest, congregate, engage in discourse and line-up to vote.

47. Likewise, the Northeast Senior Center is a facility that is open to the public, allows open ingress and egress, and has the express purpose of serving as a comprehensive resource facility for senior citizens.

48. The Defendants’ policy and practice of restricting Plaintiff’s speech to “free speech areas,” as-applied to Plaintiff, is a content-based restriction. It is a policy that suppresses, disadvantages and imposes differential burdens upon Plaintiff’s speech because the City vehemently disagrees with the content and aims of the “San Antonio First” initiative.

49. Nor is the Defendants’ “free speech area” policy and practice a content-neutral reasonable time, place or manner regulation. It is not narrowly tailored to serve a significant governmental interest and fails to leave open ample alternative channels for communication.

50. The Defendants’ policy and practice is insufficiently narrowed to serve any cognizable interest in the efficient operation of its public facilities. At least with respect to City libraries, the “Patron Conduct Policy” issued in 2013 gives unfettered discretion to branch personnel to designate “free speech areas.”

51. As evidenced in recent months, the Defendants’ policies and practices do not, in fact, leave open ample alternative avenues for communication or allow for a “full range of freedom

of speech activities.” Instead, they have been deployed to shield the public from interacting one-on-one with the City’s political opponents. The location of “free speech zones” prevent Plaintiff’s petition circulators from adequately communicating with their audience unless they yell, scream or shout. The City’s cautionary signage further compounds the spatial obstacles created by the “free speech areas” as it casts a cloud of suspicion over the motives of petitioner circulators, thereby discouraging citizens from approaching petition circulators and further chilling Plaintiff’s speech.

52. The Defendants’ policy and practice burdens substantially more speech than is necessary to further the its legitimate interests. In the context of petition campaigns, personal communication is the most effective, fundamental and efficient avenue of political discourse. The City’s arbitrary positioning of “free speech zones” away from foot traffic compromises the ability of petition circulators to initiate contact with passersby, all but eliminating the viable means of communicating their message at a normal conversational distance or handing literature to citizens.

## **2. Violation of the First Amendment – Retaliation Claim.**

53. “As a general rule, the First Amendment prohibits not only direct limitations on speech but also adverse government action against an individual because of her exercise of First Amendment freedoms.” *Colson v. Grohman*, 174 F.3d 498, 508 (5th Cir. 1999).

54. The Defendants’ repeated summoning of the police and threats of having Plaintiff’s petition circulators arrested unless they remove themselves from the premises or confine themselves to “free speech areas” is retaliatory. It is an adverse action that would chill a person of ordinary firmness from continuing to engage in expressive activity.

55. Defendants’ adverse actions in this regard have been substantially motivated as a response to the content and purpose of Plaintiff’s petitions. But for the content and purpose of

Plaintiff's petitions, the Defendants would not have enforced its arbitrary policies and practices against Plaintiff's petition circulators or threatened them with arrest.

**3. Violation of the First and Fourteenth Amendments – Vagueness.**

56. The Defendants' "free speech area" policy is so vague and amorphous that it encourages arbitrary and discriminatory enforcement in violation of not only Plaintiff's First Amendment rights, but also its rights under the Due Process Clause of the Fourteenth Amendment.

57. The "free speech area" policy and practice lacks any guiding principles or directives for library administrators and other municipal personnel to utilize when determining where to reasonably situate those zones.

58. Because the Defendants' policy is left completely undefined in any meaningful way, it fails to provide a person of ordinary intelligence with fair notice of where they may engage in protected activity, chilling that speech, and further encourages the subjective creation of "free speech zones" based on animus towards the expression at issue.

**B. Claims Under the Texas Constitution.**

59. The foregoing factual allegations are incorporated herein by reference as if set forth in full.

**1. Violation of Article I, Section 8 – Free Speech.**

60. The Texas Constitution guarantees the right of free speech. In relevant part, Article I, Section 8 of the Texas Constitution provides:

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

61. TEX. CONST. ART. 1 § 8. The application of the Texas Constitution's affirmative grant of free speech rights is consistent with federal law. Accordingly, all of the allegations

contained in Section V, subparts (A) (1)-(3), *supra*, are independently actionable under the Texas Constitution and are incorporated herein by reference as if set forth in full.

**2. Violation of Article I, Section 19 – Vagueness.**

62. The Texas Constitution also guarantees its citizens due process of law. In relevant part, Article I, Section 19 of the Texas Constitution provides:

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

63. TEX. CONST. ART. 1 § 19. The application of the Texas Constitution’s due process provisions is consistent with federal law. Accordingly, all of the allegations contained in Section V, subparts (A)(3), *supra*, are independently actionable under the Texas Constitution and are incorporated herein by reference as if set forth in full.

**VI.**  
**REQUEST FOR DECLARATORY RELIEF**

64. Pursuant to 28 U.S.C. § 2201, Plaintiff asks the Court to declare the rights and legal relations of Plaintiff and the Defendants with respect to relevant provisions of the United States and Texas Constitutions. Specifically, Plaintiff seeks a declaratory judgment that the Defendants’ policy and practice of restricting the circulation of petitions to “free speech areas” is unlawful, because:

- a. Both facially and as-applied, it constitutes an unlawful attempt to regulate and chill expression protected by the First Amendment of the Federal Constitution and Article I, Section 8 of the Texas Constitution; and
- b. both facially and as-applied, it constitutes a denial of due process under the Fifth and Fourteenth Amendments of the Federal Constitution, as well as under Article I, Section 19 of the Texas Constitution.

**VII.**  
**APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION**

65. Plaintiff seeks a preliminary and permanent injunction precluding Defendants from continuing to enforce its unlawful policy and practice of arbitrarily segregating petition circulators into “free speech areas.”

66. As set forth above, Defendants’ conduct demonstrates that Plaintiff has a substantial likelihood of success on the merits.

67. Absent an injunction, the continued enforcement of the Defendants’ “free speech areas” policy and interference in Plaintiff’s petition circulation and signature gathering efforts presents a substantial threat of causing irreparable injury to Plaintiff because “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The deprivation of First Amendment rights, in addition to being irreparable, is a grave harm that denies “a most precious freedom.” *Id.* at 363.

68. An injunction will not significantly burden any of the Defendants’ interests in the efficient and orderly operation of public spaces. Indeed, the public interest favors the issuance of injunctive relief to protect the constitutional rights at stake in this case.

**VIII.**  
**ATTORNEY’ FEES & EXPERT FEES**

69. Plaintiff is entitled to recover reasonable and necessary attorneys’ fees and expert fees pursuant to 42 U.S.C. § 1988(b) and (c).

**IX.**  
**JURY DEMAND**

70. Plaintiff respectfully demands a jury trial. FED. R. CIV. P. 8(b).



**X.**  
**CONCLUSION**

Wherefore, Plaintiff, San Antonio Firefighter's Association, Local 624, respectfully asks the Court to judgment in its favor providing for an award of the following:

- a. Injunctive relief;
- b. Declaratory relief;
- c. Attorneys' fees;
- d. Expert fees;
- e. Costs of suit; and
- g. All other relief, in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**FELDMAN & FELDMAN, P.C.**

/s/ David M. Feldman

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