

1 MOLLIE M. LEE (SBN 251404)
 2 CHRISTINA E. FLETES-ROMO (SBN 312661)
 3 ANGÉLICA SALCEDA (SBN 296152)
 4 AMERICAN CIVIL LIBERTIES UNION
 5 FOUNDATION OF NORTHERN CALIFORNIA
 6 39 Drumm Street
 7 San Francisco, CA 94111
 8 Tel: (415) 621-2493
 9 Fax: (415) 255-8437
 10 mlee@aclunc.org
 11 cfletes@aclunc.org
 12 asalceda@aclunc.org

8 STEPHEN M. HANKINS (CSB No. 154886)
 9 MISHAN R. WROE (CSB No. 299296)
 10 RILEY SAFER HOLMES & CANCELIA LLP
 11 456 Montgomery Street, 16th Floor
 12 San Francisco, CA 94104
 13 Telephone: (415) 275-8550
 14 Facsimile: (415) 275-8551
 15 shankins@rshc-law.com
 16 mwroe@rshc-law.com

17 *Attorneys for Plaintiff The Unitarian
 18 Universalist Church of Fresno*

19 **IN THE UNITED STATES DISTRICT COURT**
 20 **EASTERN DISTRICT OF CALIFORNIA**
 21 **FRESNO DIVISION**

22 THE UNITARIAN UNIVERSALIST
 23 CHURCH OF FRESNO,

24 Plaintiff,

25 vs.

26 BRANDI L. ORTH, Fresno County
 27 Clerk/Registrar of Voters,

28 Defendant

Case No.: 1:19-cv-00808-LJO-BAM

**FIRST AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF AND DAMAGES**

Trial Date: December 15, 2020
 Time: 8:30 a.m.
 Department: 4 (LJO)
 Judge: Hon. Lawrence Joseph O’Neill

1 Plaintiff The Unitarian Universalist Church of Fresno (“Plaintiff” or “the Church”) brings
2 this complaint against Defendant Fresno County Clerk/Registrar of Voters Brandi Orth
3 (“Defendant” or “the Registrar”) and alleges the following:

4 **JURISDICTION**

5 1. This action arises under the First and Fourteenth Amendments to the United
6 States Constitution and 42 U.S.C. § 1983. This Court has subject matter jurisdiction under 28
7 U.S.C. §§ 1331 and 1343 because Plaintiff sues to address deprivations, under color of state
8 authority, of rights, privileges, and immunities secured by the United States Constitution. This
9 Court has personal jurisdiction over Defendant because she is a public official of Fresno County
10 who resides within this District and performs official duties within the State of California.

11 **INTRODUCTION**

12 2. Like many other parts of the country, Fresno County suffers from the legacy of
13 racism and ongoing practices that perpetuate racism. Segregation created intentionally through
14 redlining and other exclusionary practices continues to this day. In one recent example, a Fresno
15 Housing Authority Commissioner opposed a housing project in a predominately white
16 neighborhood near Plaintiff The Unitarian Universalist Church of Fresno, saying that the area
17 might not be the “best place” for diversity.

18 3. The impacts of racism in Fresno County are pervasive and profoundly harmful.
19 There are stark differences in life expectancy, wealth, and other outcomes between Black
20 communities and other communities of color in southwest Fresno and people living in the
21 predominately white communities in north Fresno. A Black person living in the southwest part
22 of the City of Fresno can expect to live 20 years fewer than a white person in north Fresno.
23 Infant mortality rates for Black babies in Fresno County are similar to infant mortality rates in
24 developing countries. The poverty rate for Black residents in the City of Fresno is over three
25 times that for white residents. A recent nationwide study found that Fresno is one of the ten
26 worst cities in the country for Black people, in terms of employment, educational attainment,

1 household income, and mortality rates. A Fresno Unified School District task force recently
2 determined the environment for the District’s Black students is in a state of emergency.

3 4. In order to express its support for movements to combat racism in Fresno and
4 more generally the United States, Plaintiff The Unitarian Universalist Church of Fresno displays
5 “Black Lives Matter” banners on its property. These banners express a view on a matter of
6 serious public concern and reflect the Church’s belief in the inherent dignity and worth of every
7 person; justice, equity and compassion in human relations; and respect for the interdependent
8 web of existence. They also communicate the Church’s belief that society does not value Black
9 lives as much as it values white lives and the Church’s desire to change this.

10 5. Defendant has a policy that facilities serving as voting locations must be
11 “neutral.” This policy applies beyond the 100-foot no-electioneering zone established by state
12 law and applies to speech that is not electioneering. This policy does not define “neutrality” or
13 set forth standards or criteria for assessing “neutrality.” Instead, Defendant exercises unlimited
14 discretion in determining whether a facility’s speech satisfies her “neutrality” policy.

15 6. Defendant decided that the Church’s banners—placed well outside the 100-foot
16 no-electioneering zone—are politically controversial and not “neutral.” Defendant removed the
17 Church as a polling place and will not consider it as a vote center, because of the banners.

18 7. This lawsuit challenges Defendant’s “neutrality” policy on its face and as applied
19 to the Church. Defendant decided to remove the Church as a polling place solely because of its
20 Black Lives Matter banners, even though the display of the banners complies with all aspects of
21 the California Elections Code. Prior to Defendant’s unlawful decision, the Church had served as
22 a polling place in two elections without incident.

23 8. Defendant’s actions violate the right of freedom of speech and expression as
24 guaranteed by the First Amendment and the due process guarantee of the Fourteenth
25 Amendment. The Church respectfully requests that the Court enter judgment declaring that
26 Defendant’s “neutrality” policy is unconstitutional on its face and as applied to the Church,
27

1 declaring that Defendant has violated and is violating the Church’s First and Fourteenth
2 Amendment rights, enjoining Defendant from enforcing her “neutrality” policy, enjoining
3 Defendant from continuing to engage in unlawful content and viewpoint discrimination and
4 retaliation against the Church, enjoining Defendant from requiring the Church to remove its
5 Black Lives Matter signs as a condition for serving as a voting location for future elections, and
6 awarding the Church nominal damages and attorneys’ fees.

7 **VENUE**

8 9. Venue in this District is proper under 28 U.S.C. § 1391(b)(1) and (2) because
9 Defendant is a resident of the District and a substantial part of the events or omissions giving rise
10 to the claim occurred within this District.

11 **PARTIES**

12 10. Plaintiff The Unitarian Universalist Church of Fresno is a non-profit corporation
13 organized and existing under the laws of the State of California, with its principal place of
14 business in Fresno County, California.

15 11. Defendant Brandi Orth is the elected County Clerk/Registrar of Voters of Fresno
16 County, California, an office created pursuant to Article 11, section 1 of the California
17 Constitution; California Government Code sections 24000, 24009, 26802; and the Charter of the
18 County of Fresno, section 14. Defendant Orth is sued in her official capacity as the Fresno
19 County Clerk/Registrar of Voters.

20 12. Defendant is responsible for the conduct of elections in Fresno County and is the
21 final decisionmaker and policymaker about which locations in Fresno will be polling places, vote
22 centers, or other locations where ballots can be delivered (collectively “voting locations”). Cal.
23 Elec. Code §§ 320, 4005, 12286(a)(3).

24 13. Defendant resides in Fresno County, California.

25 14. Defendant acted under color of law at all times material to this complaint.

26 **ALLEGATIONS**

1 25. After this conversation, and as part of its commitment to racial justice and
2 equality, the Church decided to display two Black Lives Matter banners on its property.

3 26. The Church has displayed these banners continuously since August 2017 and
4 wants to continue displaying them.

5 27. For the Church, the Black Lives Matter message is both a theological and civil
6 rights statement.

7 28. As a theological statement, Black Lives Matter expresses three of the core
8 Principles and Purposes of Unitarian Universalism: “The inherent worth and dignity of every
9 person,” “Justice, equity, and compassion in human relations,” and “Respect for the
10 interdependent web of all existence of which we are a part.”

11 29. As a civil rights statement, the banners communicate the Church’s belief that
12 society does not value Black lives as much as it values white lives and the Church’s desire to
13 confront and change this racism.

14 30. The Church initially displayed its Black Lives Matter banners on poles
15 approximately three feet high. After the banners were vandalized several times, including with
16 graffiti changing the message to “All Lives Matter,” the Church elevated the banners on taller
17 poles to put them beyond easy reach of vandals.

18 **Defendant’s Decision to Remove the Church as a Polling Place**

19 31. The California Elections Code prohibits “electioneering” within 100 feet of a
20 polling place. Cal. Elec. Code § 18370. This distance is measured from the room where voters
21 sign the roster and cast ballots. *Id.*

22 32. “Electioneering” is defined as “the visible display or audible dissemination of
23 information that advocates for or against any candidate or measure on the ballot within 100 feet
24 of a polling place....” Cal. Elec. Code § 319.5.

25 33. The Church’s Black Lives Matter banners were on display when the Church
26 served as a polling place during the June 2018 election.

1 34. The Church's Black Lives Matter banners were not electioneering. They did not
2 advocate for or against any candidate or measure on the ballot, and they were displayed more
3 than 100 feet from the polling place at the Church.

4 35. The Black Lives Matter banners are approximately 200 feet from the Church
5 entrances that voters use to enter the building and approximately 225 feet from the room in
6 which voters sign the roster and cast ballots.

7 36. The Church displays the Black Lives Matter banners on its private property,
8 separate and apart from the portion of the property used as a polling place and the entrance
9 thereto.

10 37. Prior to the June 2018 election, the Church also displayed two small signs within
11 100 feet of the polling place entrance stating: "One Human Family: We support refugees and our
12 Muslim neighbors." A polling place worker asked the Church to move those signs away from
13 the polling place entrance. Even though the signs were not electioneering, the Church complied
14 with the request and moved them out to the front sidewalk, so they were over 100 feet away from
15 the polling place entrance.

16 38. During the June 2018 election, there were no problems at the polling place located
17 at the Church.

18 39. During the June 2018 election, in-person voter turnout at this polling place was
19 16.46%, well above the County average of 10.93%.

20 40. In August 2018, upon information and belief, Defendant received a complaint
21 about the Black Lives Matter sign in front of the Church. This complaint stated:

- 22 • I inquired as to why it was okay to have a Black Lives Matter (a known domestic
23 terrorist group) sign in front of our polling place. I spoke to a Ms. R.A. Lopez on
24 May 22, and she assured me she would personally go by there and look at it, and
25 contact me before the week was up. It has been three months. Is she that busy? I
26 am a tax-paying citizen who has been ignored. ALL of the citizens deserve to be

1 heard and their concerns looked into. Yes, it has been three months and our
2 primary elections came and went. Will the sign remain for the general in
3 November?

4 41. This complaint prompted a conversation via email among Defendant and her
5 staff:

- 6 • 8/14/18, 6:10 p.m. email from Defendant to Fresno County Elections Program
7 Manager Rachel Lopez (“Ms. Lopez”):

8 “Rachel – I think you may have been involved in this. Can you please
9 respond? Do we need to chat first?”

- 10 • 8/15/18, 8:34 a.m. email from Ms. Lopez to Defendant:

11 “The banner that the voter is referring to is beyond 100’ marker of the
12 entrance to the polling place; not that the slogan is campaigning but does
13 support a controversial movement. In November, the Church willingly
14 removed small signage supporting the movement posted within the 100’ of
15 the polling place but they were adamant about keeping the banner. Grace
16 Lally was the EC in June and she said there were no issues in June.”

- 17 • 8/15/18, 9:47 a.m. email from Defendant to Ms. Lopez:

18 “Can you ask the church if just for one day – could they cover or remove
19 the sign on election day? Tell them we have had complaints. That way,
20 when you call the voter you can say all the things you have done and what
21 the law is regarding 100’. Do you think we should cancel using that
22 polling place? Thanks.”

23 42. Defendant herself contacted the Church on or about August 31, 2018 and asked
24 the Church to remove its Black Lives Matter banners on election day.

25 43. On or about September 5, 2018, the Church informed Defendant that it would not
26 take down the Black Lives Matter banners.

1 44. Defendant responded by removing the Church as a polling place because it
2 refused to take down the banners. Defendant informed elections staff on September 5, 2018:
3 “The church will not take the “Black Lives Matter” sign down. Rossy – please do not use this
4 location for November. Put these voters somewhere else, nearby. Thanks.”

5 45. Later that day, elections staff responded to the person who had complained about
6 using the Church as a polling place, telling them that the County Clerk’s office had decided not
7 to use the Church in the upcoming election.

8 46. Defendant moved the polling place location from Plaintiff’s Church to CrossCity
9 Christian Church.

10 47. After Defendant moved the polling place, she received numerous messages
11 criticizing her decision and asking her to reinstate the Church as a polling place.

12 48. Defendant also received complaints about displays of messages at CrossCity
13 Christian Church. For example, one complaint stated: “I demand that the Registrar remove the
14 Cross City Church from the rolls because the Church prominently displays controversial
15 religious symbols and slogans.”

16 49. Defendant did not remove CrossCity Christian Church as a polling place after
17 receiving these complaints. Defendant used CrossCity Christian Church as a polling place in the
18 November 2018 general election and again in a March 2019 special election.

19 50. Many other churches in Fresno serve as polling places and display expressive
20 messages on their property. Defendant did not remove any other polling place location in the
21 November 2018 or March 2019 election—except Plaintiff—because of complaints about
22 displays of messages.

23 **The Church’s Request to Be Reinstated as a Polling Place**

24 51. On October 22, 2018, the Church requested that Defendant meet with an inter-
25 faith group of concerned clergy to discuss her decision to remove the Church as a polling place.
26 This meeting took place on January 16, 2019.

1 52. Defendant stated at the meeting that she moved the polling place because she
2 wanted to ensure a safe and neutral polling place. She also stated that she did not have a set
3 protocol to determine whether a place was safe and neutral.

4 53. Clergy at the meeting explained that she was seeing “safe and neutral” through a
5 white primacy culture lens and making polling places more comfortable for some white people
6 and less comfortable for Black people.

7 54. Two Black pastors spoke about the pain that her decision inflicted in their
8 community.

9 55. At this meeting, the Church’s Reverend Tim Kutzmark asked Defendant to
10 reinstate the Church as a polling place.

11 56. Defendant informed Reverend Kutzmark and other participants that Fresno would
12 be moving to the Voter’s Choice Act model in 2020. The Voter’s Choice Act is a state law that
13 allows counties to replace traditional polling places with vote centers that offer expanded voting
14 options, as well as ballot drop-box locations. *See* Cal. Elec. Code § 4005.

15 57. Reverend Kutzmark asked Defendant if she would guarantee that the Church
16 could display its Black Lives Matter banners and still be under consideration to be a vote center
17 on an even playing field with other churches. Defendant would not commit to this.

18 58. Defendant did not reinstate the Church as a polling place for the March 2019
19 special election.

20 59. Defendant did not select the Church as a vote center for the March 2020 election.

21 **Defendant’s “Neutrality” Policy**

22 60. Defendant has a policy that voting locations must be “neutral.” Defendant does
23 not have any procedure to determine whether a voting location is neutral.

24 61. Defendant’s “neutrality” policy is reflected in contracts that Defendant requires
25 vote centers to sign. These contracts include a provision that states: “The path of travel on the
26 Facility’s property, including within the line of sight from the path of travel, to and from the
27

1 Buildings/Rooms and Parking shall be free from signage, displays, audible dissemination of
2 information and obstructions interfering with the neutrality or operations of the Facility with
3 respect to election/voting purposes, whether or not within 100 feet of a polling place, a vote
4 center, an elections official's office, or a satellite location.”

5 62. Defendant does not define “neutrality” in this policy or in any other document.

6 63. Defendant does not have any objective criteria for determining neutrality.

7 Defendant could not say whether the following messages would be allowed near a polling place:

8 “All Lives Matter,” “Girl Power,” “recycle.”

9 64. The Church desires to serve as a vote center, polling place, or other voting
10 location. Defendant has determined that Black Lives Matter is a political and controversial
11 statement that makes the Church not “neutral.” Defendant applied her “neutrality” policy to
12 remove the Church as a polling place before the November 2018 election. Defendant continues
13 to apply this policy and will not consider the Church as a voting location so long as it displays its
14 Black Lives Matter banners.

15 65. The Church asked Defendant to agree that she would not disqualify the Church
16 from serving as a vote center or ballot dropoff location because of its Black Lives Matter sign;
17 would not consider the Church's Black Lives Matter sign as a factor in determining whether the
18 Church may serve as a vote center or ballot dropoff location; and would not require the Church
19 to remove, cover, or alter its Black Lives Matter sign in order to serve as a vote center or ballot
20 dropoff location. *See* Dkt. 14 at 10, dkt. 14-1 at 3. Defendant would not agree to this. *Id.*

21 66. There exists an actual, present and justiciable controversy between Plaintiff and
22 Defendant about whether Defendant's “neutrality” policy is constitutional on its face and as
23 applied to Plaintiff, and whether Defendant may disqualify Plaintiff as a polling place, vote
24 center, or other voting location because of its Black Lives Matter banners. This controversy is ripe
25 for judicial decision, and declaratory relief is necessary and appropriate so that the parties may
26 know the legal obligations that govern their present and future conduct.

1 than the one [it] has offered here.” *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1891
2 (2018).

3 **Defendant’s “neutrality” policy is unconstitutional as applied to Plaintiff**

4 Content Discrimination

5 72. The First Amendment prohibits the government from “abridging the freedom of
6 speech.” U.S. Const. amend. I. Under the First Amendment, the government “has no power to
7 restrict expression because of its message, its ideas, its subject matter, or its content.” *Reed v.*
8 *Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (citation omitted).

9 73. Defendant discriminated against the Church because of the message, ideas,
10 subject matter, and content of its Black Lives Matter banners.

11 74. Defendant disqualified the Church as a polling place because it displayed a
12 message related to racial justice, while allowing other polling places to display messages on
13 other subjects, religious or otherwise.

14 Viewpoint Discrimination

15 75. “When the government targets not subject matter, but particular views taken by
16 speakers on a subject, the violation of the First Amendment is all the more blatant.”
17 *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (citation omitted).
18 “Viewpoint discrimination is thus an egregious form of content discrimination.” *Id.*

19 76. The government engages in viewpoint discrimination when it “single[s] out a
20 subset of messages for disfavor based on the views expressed.” *Matal v. Tam*, 137 S. Ct. 1744,
21 1766 (2017) (Kennedy, J., concurring).

22 77. Defendant singled out Plaintiff’s message for disfavor by asking Plaintiff to cover
23 up its Black Lives Matter banners, and when Plaintiff refused, removing Plaintiff as a polling
24 place.

25 78. Defendant did not ask other polling places to cover up overtly political messages.
26 For instance, during the November 2018 election, Faith Community Church served as a polling
27

1 place while displaying a large banner stating “Vote According to Your Faith.” Defendant was
2 not concerned that this banner was political or controversial, or that it would make Faith
3 Community Church not neutral. She did not ask Faith Community Church to cover up this
4 banner.

5 79. Defendant did not remove other polling places that displayed expressive messages
6 on their property, including messages expressing socio-religious beliefs. For example, during
7 the March 2019 special election in Fresno, Defendant used polling places that displayed large
8 signs on their property stating messages such as: “I AM ANGRY / JONAH 4: 1-11,”
9 “SOMEDAY YOU WILL REST IN PEACE, WHY NOT LIVE IN PEACE, TOO?,” and
10 “NOTHING IS BEYOND GODS POWER.”

11 First Amendment Retaliation

12 80. A public official “may not deny a benefit to a person on a basis that infringes his
13 constitutionally protected interests—especially, his interest in freedom of speech.” *Perry v.*
14 *Sindermann*, 408 U.S. 593, 597 (1972).

15 81. This rule applies even where there is no affirmative right to a government benefit
16 and the benefit could be denied for any number of other reasons. *Id.* (“For at least a quarter-
17 century, this Court has made clear that even though a person has no ‘right’ to a valuable
18 governmental benefit and even though the government may deny him the benefit for any number
19 of reasons, there are some reasons upon which the government may not rely.”).

20 82. The lost benefit “need not be particularly great in order to find that rights have
21 been violated.” *Elrod v. Burns*, 427 U.S. 347, 359 n.13 (1976). The government violates the
22 First Amendment “both where [it] fines a person a penny for being a Republican and where it
23 withholds the grant of a penny for the same reason.” *Id.* Something “as trivial as failing to hold
24 a birthday party for a public employee” violates the First Amendment “when intended to punish
25 her for exercising her free speech rights.” *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 n.8
26 (1990) (quoting *Rutan v. Republican Party of Ill.*, 868 F.2d 943, 954 n.4 (7th Cir. 1989)).

1 91. Defendant’s decision did not reflect any legitimate administrative analysis that
2 outweighed Plaintiff’s First Amendment rights.

3 92. Defendant violated the First Amendment by denying Plaintiff the opportunity to
4 serve as a polling place because of Plaintiff’s First Amendment expression.

5 **Defendant’s Actions and Policy Are Not Justified by Law or Legitimate**

6 **Administrative Concerns**

7 93. Defendant’s actions and policy are not a reasonable regulation of polling place
8 activity. California law prohibits electioneering within 100 feet of a polling place, *see* Cal. Elec.
9 Code § 18370, an approach sanctioned by the Supreme Court. *See Burson v. Freeman*, 504 U.S.
10 191 (1992). Defendant’s policy seeks to regulate speech that is not electioneering and that is
11 outside the 100 foot zone around a polling place. Plaintiff’s message was not electioneering and
12 was not within the 100-foot zone around the polling place.

13 94. Defendant’s actions and policy are not justified by legitimate administrative
14 concerns. The government may not regulate a message merely because it is controversial or
15 offensive to some. *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017); *Tinker v. Des Moines Indep.*
16 *Cnty. Sch. Dist.*, 393 U.S. 503, 508-10 (1969). The government may not subject protected
17 speech to a heckler’s veto by restricting speech based on the anticipated reaction of a listener.
18 *See Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1294 (9th Cir.
19 2015).

20 95. Defendant’s actions and policy are not narrowly tailored to a compelling state
21 interest and further, are not tailored to any legitimate state interest. Government officials “may
22 not ‘defer[] to the [discriminatory] wishes or objections of some fraction of the body politic.’”
23 *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1163 n.26 (9th Cir. 2013)
24 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985)).

25 96. Defendant’s actions and policy are not “guided by objective, workable standards.”
26 *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1891 (2018). Defendant does not have objective,

1 workable standards to determine “neutrality.” “[I]f voters experience or witness episodes of
2 unfair or inconsistent enforcement of [an elections law], the State’s interest in maintaining a
3 polling place free of distraction and disruption would be undermined by the very measure
4 intended to further it.” *Id.*

5 **FIRST CLAIM FOR RELIEF**

6 (Violation of the First Amendment, 42 U.S.C. § 1983)

7 (Content Discrimination)

8 97. Plaintiff realleges and incorporates by this reference each of the foregoing
9 paragraphs, as if fully set forth in this claim for relief.

10 98. The First Amendment to the United States Constitution guarantees individuals the
11 right to free speech.

12 99. Defendant violated Plaintiff’s right to free speech by removing Plaintiff as a
13 polling place because of the message, ideas, subject matter, and content expressed in Plaintiff’s
14 Black Lives Matter banners.

15 100. Defendant continues to violate Plaintiff’s right to free speech by disqualifying
16 Plaintiff from serving as a voting location because of the message, ideas, subject matter, and
17 content expressed in Plaintiff’s Black Lives Matter banners.

18 101. Plaintiff has no clear and adequate remedy at law for this violation of its
19 constitutional rights and has suffered irreparable injury as a result of Defendant’s conduct, which
20 will continue unless and until enjoined by appropriate order of this Court. Plaintiff is also
21 entitled to nominal damages as compensation for the violation of its constitutional rights.

22 **SECOND CLAIM FOR RELIEF**

23 (Violation of the First Amendment, 42 U.S.C. § 1983)

24 (Viewpoint Discrimination)

25 102. Plaintiff realleges and incorporates by this reference each of the foregoing
26 paragraphs, as if fully set forth in this claim for relief.

FOURTH CLAIM FOR RELIEF

(Violation of the First Amendment, 42 U.S.C. § 1983)

(Overbreadth, Vagueness, Unbridled Discretion)

112. Plaintiff realleges and incorporates by reference each of the foregoing paragraphs, as if fully set forth in this claim for relief.

113. Defendant’s “neutrality” policy violates the First Amendment on its face and as applied to Plaintiff.

114. Defendant’s “neutrality” policy is unconstitutionally overbroad and vague. It prohibits a substantial amount of protected speech, and it does not provide fair notice of what is prohibited.

115. Defendant’s “neutrality” policy is a prior restraint that authorizes and encourages discriminatory enforcement. The policy has no objective, workable standards for determining “neutrality,” and the Registrar has unbridled discretion to decide whether a voting location is “neutral.”

116. Plaintiff has no clear and adequate remedy at law for this violation of its constitutional rights and has suffered irreparable injury as a result of Defendant’s conduct, which will continue unless and until enjoined by appropriate order of this Court. Plaintiff is also entitled to nominal damages as compensation for the violation of its constitutional rights.

FIFTH CLAIM FOR RELIEF

(Violation of the Fourteenth Amendment, 42 U.S.C. § 1983)

(Due Process)

117. Plaintiff realleges and incorporates by reference each of the foregoing paragraphs, as if fully set forth in this claim for relief.

118. Plaintiff has a Fourteenth Amendment right to due process of law before the government deprives it of life, liberty, or property.

1 119. Plaintiff has protectable liberty interests in free speech and association under the
2 First Amendment and in due process of law under the Fourteenth Amendment.

3 120. It is a basic principle of due process that a regulation is void for vagueness if its
4 prohibitions are not clearly defined.

5 121. Defendant implemented a vague “neutrality” policy that allows her to exercise
6 unbridled discretion in determining what expression is “neutral,” leaving her free to censor ideas
7 and enforce her own personal preferences.

8 122. Defendant failed to develop objective, workable standards to guide her discretion.
9 Defendant cannot articulate a sensible basis for distinguishing what expression at voting
10 locations is “neutral” and what is not.

11 123. Defendant deprived Plaintiff of due process by arbitrarily removing Plaintiff as a
12 polling place and refusing to consider it as a voting location because of Plaintiff’s speech.

13 124. Defendant’s “neutrality” policy, on its face and as applied to Plaintiff, is
14 unconstitutionally vague in violation of the Fourteenth Amendment.

15 125. Plaintiff has no clear and adequate remedy at law for this violation of its
16 constitutional rights and has suffered irreparable injury as a result of Defendant’s conduct, which
17 will continue unless and until enjoined by appropriate order of this Court. Plaintiff is also
18 entitled to nominal damages as compensation for the violation of its constitutional rights.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- 21 (a) Declaring that by removing Plaintiff as a polling place and refusing to consider
22 Plaintiff as a voting location, Defendant has violated and is violating Plaintiff’s rights
23 under the First and Fourteenth Amendments of the United States Constitution and 42
24 U.S.C. § 1983;

- 1 (b) Granting injunctive relief enjoining Defendant from engaging in unlawful retaliation
2 and content and viewpoint discrimination by deeming Plaintiff ineligible to serve as a
3 voting location because of the Black Lives Matters signs on Plaintiff's property;
- 4 (c) Granting injunctive relief enjoining Defendant from requiring Plaintiff to cover or
5 remove the Black Lives Matter signs on its property as a condition for serving as a
6 voting location for future elections;
- 7 (d) Declaring that Defendant's "neutrality" policy is unconstitutional on its face and as
8 applied to Plaintiff;
- 9 (e) Granting injunctive relief enjoining Defendant from imposing or enforcing this
10 "neutrality" policy;
- 11 (f) Awarding Plaintiff nominal damages of one dollar;
- 12 (g) Awarding Plaintiff its reasonable attorneys' fees and costs; and
- 13 (h) Granting any additional relief as may be just and proper.
- 14

15 DATED: January 22, 2020

/s/ Mollie M. Lee

Mollie M. Lee
*Attorney for Plaintiff The Unitarian
Universalist Church of Fresno*