

**SETTLEMENT AGREEMENT**

*The Unitarian Universalist Church of Fresno v.  
Brandi L. Orth, Fresno County Clerk/Registrar of Voters,*  
United States District Court for the Eastern District of California,  
Case No.: 1:19-cv-00808-NONE-BAM

This Settlement Agreement (“Agreement”) is entered into by the following parties: Plaintiff The Unitarian Universalist Church of Fresno (“UU Church”), and Brandi L. Orth sued in her official capacity as Clerk/Registrar of Voters of the County of Fresno in the lawsuit entitled *The Unitarian Universalist Church of Fresno v. Brandi L. Orth, Fresno County Clerk/Registrar of Voters*, Case No.: 1:19-cv-00808-NONE-BAM, currently pending in the United States District Court for the Eastern District of California (“Action”) and the County of Fresno a political subdivision of the State of California. Brandi Orth and the County of Fresno are hereinafter collectively referred to as the “County”. The UU Church and the County are referred to collectively herein as “the Parties”.

**I.**

**RECITALS**

A. WHEREAS, UU Church and County are parties to the Action currently pending in United States District Court, and

B. WHEREAS, In the Action, UU Church alleged in its complaint and first amended complaint that the County violated UU Church’s rights to free speech and discriminated against UU Church for its speech in the selection of polling locations commencing with the November 2018 general election due to UU Church’s Black Lives Matter banners and UU Church sought in its complaint and first amended complaint declaratory and injunctive relief and nominal damages, and

C. WHEREAS, the County denies UU Church’s allegations in this Action. County specifically denies that it has violated or failed to carry out any constitutional or statutory duty whatsoever in relation to the claims and allegations asserted in this Action, and further denies that any act, omission, law, or policy of the County has caused or will cause any harm to UU Church or those whose rights they claim to protect in this Action, and

D. WHEREAS, Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation,

E. THEREFORE, The Parties have negotiated in good faith and have agreed on the following terms in this Agreement in order to resolve this case short of trial.

**II.**  
**AGREEMENT**

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows.

1. Effective Date of Agreement: The Effective Date of this Agreement shall be the date of final execution of this Agreement by all the Parties. The Parties expressly recognize that by suing defendant Brandi L. Orth in her official capacity as an officer of the County of Fresno, the County of Fresno is the real party in interest in the lawsuit and an appropriate party to this Agreement. This Agreement shall not be effective until signed by the authorized representative of the UU Church and approved by the Board of Supervisors of the County of Fresno and signed by the Board's designee.

2. Placement of Ballot Drop off Box on UU Church's Property:

a. In consideration of the covenants and performances required by this Agreement, the County agrees to place, at County expense, a standard ballot drop off box on UU Church's property located at 2672 E. Alluvial Avenue in Fresno, California for at least the November 2020 statewide general election, the March 2022 statewide primary election, the November 2022 statewide general election, the March 2024 statewide primary election, the November 2024 statewide general election, and any local or special election if UU Church is in the jurisdiction where the special election is held, that takes place between the Effective Date and November 2024.

b. Pursuant to the Voter's Choice Act and procedures of the Fresno County Elections Office, the ballot drop off box shall be placed on UU Church's property approximately 29 days prior to the election date for each of the elections listed in Section 2.a. of this Agreement and shall be removed the week after said election date. The ballot drop off shall be available for a minimum of 12 hours per day including regular business hours.

c. The ballot drop off box shall be placed on UU Church's property in a location that complies with all applicable local, state and federal laws, as determined by the County after consultation with UU Church.

d. The ballot drop off box placed on UU Church's property is subject to Elections Code §§ 319.5 and 18370, regarding electioneering near ballot drop off boxes.

e. The ballot drop off box shall be placed a minimum of 100 feet away from any point on the Black Lives Matter permitted sign on UU Church's property which was the subject of the Action. UU Church shall place no Black Lives Matter sign and no political or campaign signs within 100 feet of the ballot drop off box during the period the box is in place prior to and during one of the elections listed in 2.a. of this Agreement. UU Church shall not be required to remove or cover the Black Lives Matter permitted sign from its property during the relevant election periods set forth in Sections 2.a. and 2.b. of this Agreement as a condition of the placement of the ballot drop off box as described in this Agreement.

f. If California or Federal law changes to make the placement of the ballot drop off box on UU Church's property as described above illegal or if other legal or financial issues make it impossible for the County to place the ballot drop box, then the County shall not be required to place the ballot drop off box as described above so long as the UU Church's property is treated equally to any other site for the placement of ballot drop off box that is similarly situated. If the County opts out of the California Voter's Choice Act at any time applicable to this Agreement, then the County shall not be required to place the ballot drop box on UU Church's property as described above so long as the UU Church's property is treated equally to any other site for the placement of ballot drop off box that is similarly situated.

3. Placement of Ballot Drop off Box Sole Consideration: The placement of the ballot drop off box on UU Church's property as described in Section 2 of this Agreement is the sole obligation or requirement placed on the County by this Agreement. Nothing in this Agreement shall be construed to limit, control, dictate or require any discretionary or other action by the County or the Fresno County Clerk/Registrar of Voters with respect to the selection of any polling location, polling place, vote center, or ballot drop off box location. Further, except as specified in Section 2 of this Agreement, nothing in this Agreement shall be construed to limit, control, dictate or require any action that the County or Fresno County Clerk/Registrar of Voters may take to protect or preserve the neutrality, political neutrality or safety of any polling location, polling place, vote center, or ballot drop off box location.

4. Dismissal of the Action: Within 15 days of the Execution Date of this Agreement, UU Church will cause a request for dismissal with prejudice to be filed in the Action, dismissing all claims and causes of action alleged in its first amended complaint, and terminating the Action. The parties agree to cooperate on any extensions of deadlines or communications to the Court concerning this settlement as may be reasonably necessary to effectuate this Agreement and the dismissal of the Action as provided in this Section.

5. Costs and Attorney's Fees: The Parties agree to each bear their own costs and attorney's fees in this Action and no payment of any kind to or from any party is required by any term of this Agreement.

6. Public Statements: Neither Party will make any public statement or announcement or cause any third party to make a public statement or announcement, about this Agreement until it is fully executed, which the Parties estimate will be the end of the business day on June 23, 2020.

7. No Admission of Liability: This Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. By executing this Agreement, no Party admits liability or concedes any factual or legal allegation, claim, or contention asserted by any other Party in the Action.

8. Release of Claims:

a. General Release: Except for the obligations that are expressly set forth in this Agreement, UU Church shall and hereby does release, compromise and forever discharge

the County, its past or current board members, officers, employees, contractors, agents, successors and assigns, and all of them, as well as any and all persons acting or allegedly acting by, under, through or in concert with any of them (hereinafter “Released Parties”), against any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs and expenses (including, but not limited to, attorneys' fees), damages and charges of whatsoever nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, or ever filed or prosecuted (hereinafter, collectively referred to as “Claims”) which UU Church may now have, or claims to have, or any time heretofore had, or claimed to have had, against the Released Parties as a result of things undertaken, said, stated, done or admitted to be done up to and including the Effective Date of this Agreement that relates in any way or manner to the selection or removal of a vote center, polling place, or ballot drop off box, because of a sign or display that the County deems to be political, controversial, not neutral, or unsafe, prior to the Agreement date and/or which arise out of or relate in any way or manner with the allegations and defenses that were or may have been asserted by UU Church in the Action.

b. Waiver of Unknown and Unanticipated Claims: It is understood and agreed that the releases as referred to herein are full and final releases by UU Church of the Released Parties, and that such full and final releases include, without limitation, all unknown and unanticipated claims, injuries, debts, or damages, as well as those now known or disclosed. With respect to any claims by UU Church against the Released Parties, UU Church expressly waives the provisions of California Civil Code section 1542, which provides as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her must have materially affected his or her settlement with the debtor or released party.”**

In that connection, the Parties hereto, and each of them, understand and acknowledge that one or more of the Claims may include losses sustained by UU Church on account of the Released Parties that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future which are not now anticipated. Nevertheless, UU Church acknowledges that this release has been negotiated and agreed upon, and that in consideration for the rights and benefits under this Agreement, UU Church intends and hereby does release, acquit and forever discharge the Released Parties as set forth in Section 8.a of this Agreement, above.

9. Covenant Not to Sue: UU Church agrees not to initiate, participate in as a party or actively support any other property owner’s challenge to its selection or removal as a vote center, polling place, or ballot drop off box location that the County deems to be political, controversial, not neutral, or unsafe for the time period (a) through the general election date in November 2024, or (b) so long as the County complies with the terms and conditions of this Agreement, whichever is shorter.

10. Construction: This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties agree that this Agreement shall be construed and interpreted without regard to the identity of the party drafting this Agreement, as though all Parties hereto participated equally in the drafting of this Agreement.

11. Advice of Counsel: The Parties represent that they know and understand the contents of this Agreement, and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations under this Agreement. The Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress or undue influence.

12. Entire Agreement: No promise, inducement, understanding, or agreement not expressly stated herein has been made by or on behalf of the Parties, and this Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

13. Amendments in Writing: This Agreement may not be altered, amended, modified, or changed in any way except by a writing duly executed by all Parties hereto. UU Church acknowledges that formal Fresno County Board of Supervisor approval of any such alteration, amendment, modification or change is required in order to be effective and binding on the County.

14. Enforcement of Agreement: The Parties stipulate that the Court shall retain jurisdiction to enforce the terms of this Agreement for a period of four years. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity of this Agreement shall be decided pursuant to a Motion to Enforce Settlement filed in the Eastern District. The prevailing party in any action to enforce any term of this Agreement will be entitled to recover reasonable attorneys' fees and costs.

15. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the County of Fresno, California.

16. Execution of Agreement: This Agreement may be executed in duplicate copies, each of which is deemed an original and each Party shall receive a fully executed version. The Parties agree that either fully executed version is an original and may be entered into evidence to prove the terms of this Agreement or for any other lawful purpose.

18. Severability: If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

19. Representation and Warranties of Authority: Each Party to this Agreement has the authority to execute this Agreement, and this Agreement as so executed will be binding upon each Party and upon its agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to

protect in this Action. Each person signing this Agreement represents and warrants that they have the authority to sign and execute this Agreement on behalf of the Party for which they sign.

This Agreement consists of Recitals A – E and Paragraphs 1 – 19.

DATED: 6/19/2020

The Unitarian Universalist Church of Fresno

By Ida Jones  
Ida Jones  
Chairperson, Board of Trustees

DATED: 6/23/2020

COUNTY OF FRESNO

By Ernest Buddy Mendes  
Ernest Buddy Mendes, Chairman  
County of Fresno Board of Supervisors

**ATTEST:**

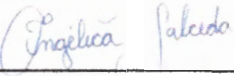
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By Shemie Exus, Deputy

**(ATTORNEY SIGNATURES FOLLOW)**

**Approved as to Form:**

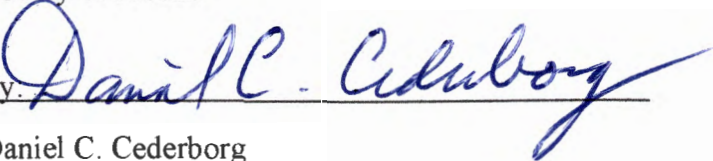
American Civil Liberties Union  
Foundation of Northern California, Inc.

By: 

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*Attorneys for Plaintiff The Unitarian Universalist Church of Fresno*

**Approved as to Form:**

County Counsel  
County of Fresno

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Brandi L. Orth, Fresno County Clerk/Registrar of  
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