



August 3, 2023

Ms. Cindy Hewitt
Executive Director
Huntsville-Madison County Libraries
915 Monroe St Southwest
Huntsville, AL 35801

Sent via email (chewitt@hmcp.org) and U.S. Mail

Re: Unconstitutional religious discrimination

Ms. Hewitt:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Brave Books and Kirk Cameron. Please direct all communications concerning this letter to my attention.

As you are aware, Brave Books has encouraged Americans across the country to host, "See You at the Library Day" at their local libraries. Until yesterday, you supported the event in Huntsville, AL at every step, including offering a large room at the Madison Public Library branch to accommodate the 250 local residents who plan to attend. However, upon learning that Mr. Cameron and his friend and Brave Books author, Riley Gaines, will be attending in person, you abruptly cancelled the event citing "security concerns" from a potential protest of Mr. Cameron and claiming the event exceeds the library's capacity. *See Exhibit 1.*

We write to inform you that, should you persist in the cancellation of this event, you will have engaged in unlawful and unconstitutional religious viewpoint and content discrimination in violation of the Alabama Constitution and the First Amendment to the U.S. Constitution. We therefore request that you respond by Noon Friday, August 4, 2023, confirming Brave Books and Mr. Cameron may utilize the Madison Public Library to host the "See You at the Library" event on Saturday, August 5, 2023. Should you refuse, we are prepared to vindicate this violation of our client's civil rights in court.

Administrators violate the Constitution by censoring speech for "security."

The Supreme Court of the United States has clearly condemned policies that leave the decision to cancel otherwise protected speech to the "whim of the administrator." *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992). Indeed, the Supreme Court is wary of any administrator—whether librarian, mayor, or governor—who is imbued with power that smacks of "the possibility of censorship through uncontrolled discretion." *Id.* That is especially so when the administrator institutes a

policy that roots its concerns “based upon the content of the speech,” including any concerns for security. *Id.* at 134. When the implementation of such a policy is measured against the “amount of hostility likely to be created by the speech based on its content,” the Supreme Court is all the more inclined to condemn the government administrator’s actions and vigorously protect the First Amendment rights of those censored by the administrator.

The Supreme Court has held: “Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.” *Regan v. Time, Inc.*, 468 U.S. 641, 648–49 (1984) *see also Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92 (1972) (“[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”). Likewise, the U.S. Court of Appeals for the Eleventh Circuit, which has jurisdiction over Alabama, has held that “[e]xcessive discretion over permitting decisions is constitutionally suspect because it creates the opportunity for undetectable censorship[.]” *Burk v. Augusta-Richmond Cnty.*, 365 F.3d 1247, 1256 (11th Cir. 2004). Your actions unconstitutionally censor our client’s speech through your unbridled, unilateral decision-making.

The gathering of citizens to hear authors read books at libraries is hardly a novel invention. Further, the exchange of ideas at libraries—including the exchange of ideas that some deem offensive and even dangerous—has been a staple of our American experience and long protected by the First Amendment. Citing mysterious, undefined concerns about security is further misplaced when Mr. Cameron and Brave Books have made clear their intent to provide personal private security for the duration of the event. While no private citizen should be compelled to provide for the security of the general public to access public resources, surely their provision of the same for them, their guests, and your staff should assure the safety of all concerned and allay any legitimate concerns of your own.

Regardless, appeals to phantom “security concerns” cannot override the First Amendment. The Supreme Court has made quite plain that government officials cannot impose “anything like a modified heckler’s veto, in which [] religious activity can be proscribed based on perceptions or discomfort.” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427 (2022) (internal citations and quotations removed). As it stands, however, you have denied our clients access to your facility out of an ill-defined fear that the content of their speech will generate security concerns. Moreover, appeals to concerns over capacity are similarly unavailing. It strains credulity to cancel an event that may be over capacity when library staff could simply operate on a first-come, first-serve basis. Claiming capacity concerns to cancel an event otherwise protected by the First Amendment is precisely the “whim of the administrator” of which the Supreme Court warned.

In short, whether over concerns of security or capacity, you have censored our client.

Conclusion

It may be just one event—just a story time at the local library by a Christian children’s book author—that you have cancelled. Large or small, such unbridled censorship impacts the freedom of speech upon which we all depend in this free society. Further, because the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” your decision places Madison County Libraries in legal jeopardy. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Therefore, we require you to notify us in writing no later than Noon, Friday, August 4, 2023, that you have reversed your decision and will allow the “See You at the Library” event to proceed as planned. Should I be of further assistance, please contact me at 971-941-4444 or jdys@firstliberty.org. Thank you.

Sincerely,



Jeremy Dys,
Senior Counsel.

CC: The Hon. Steve Marshall
Alabama Attorney General
501 Washington Avenue
Montgomery, AL 36104

Exhibit 1



FOR IMMEDIATE RELEASE

Moms for Liberty event exceeds capacity for Madison Public Library

Madison, ALA (August 3, 2023) – The Moms for Liberty organization had planned to feature Brave Books in a meeting room at Madison Public Library. Due to the event's anticipated attendance increasing beyond the Library's capacity, the Library will be unable to host the event. Initially, the organizers of the event reported 20 attendees to library officials. On Tuesday the Library learned that event organizers are now expecting over 300 people, a number that far exceeds any meeting room capacity within the Huntsville-Madison County Library System.

The Library explored options to make the event logically possible by consulting the Madison City Police, the Madison City Fire Marshal and City officials. After discussing the logistics of the event with both the Library and the event organizer, the Madison City Police Department and the Madison City Fire Marshal have recommended that the event be held at an alternate location.

The City of Madison has issued the following statement concerning the circumstances:

"The City of Madison applies permitting regulations for outside events equally to all groups and organizations. While the initially planned event was suited for the Madison Library's capacity, the scope of attendees quickly grew. The Moms for Liberty group failed to apply for an event permit in advance, and it was determined that City resources cannot support an event of this size on such short notice. Alternative accommodations have been recommended to the organization to ensure a safe and well attended event."

The Library is available to the public and welcomes all individuals and groups to use its facilities within posted guidelines and policies. The safety of Library users and staff is of utmost importance to the Huntsville-Madison County Public Library and the City of Madison. On Wednesday the Library notified Moms for Liberty and Brave Books that the Library venue is no longer available.

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For more information contact:

Jay Hixon, Public Relations Director

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