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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Dennis Hodges, an individual;
Plaintiff(s)

v.

TODD GLORIA, both in his personal
capacity and in his official capacity as
the Mayor of the City of San Diego
Defendant(s)

Case No.: 23-cv-2065-LL-MSB

**PLAINTIFF’S MOTION FOR
RECONSIDERATION AND
PLAINTIFF’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF’S
MOTION FOR
RECONSIDERATION**

**NO ORAL ARGUMENT
PURSUANT TO LOCAL RULE**

Date: August 26, 2024
Time: N/A
Judge: Honorable Thomas J. Whelan
Courtroom: 3C

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I. INTRODUCTION

Plaintiff Pastor Dennis Hodges’ (“Pastor Hodges”) faith informs and directs how he acts and speaks in all areas of his professional and personal life, and he takes seriously both his public service and ecclesiastical roles. Unfortunately, in his motion to dismiss (ECF No. 8.1), Defendant Mayor Todd Gloria (“Defendant”) misconstrued the facts related to Pastor Hodges’ faith and values as political and fundamentally inconsistent with his ability to hold public office. The Court’s Order (ECF No. 13) granting Defendant’s motion to dismiss mistakenly adopts this premise and presupposes that Pastor Hodges’ sincerely held religious beliefs are political rhetoric not protected by the First Amendment. Pastor Hodges respectfully brings this Motion for Reconsideration on the basis that the facts, as alleged in the First Amended Complaint (“FAC”) (ECF No. 7), were improperly construed leading to a clear error of law. Pastor Hodges asks this Court to grant his Motion for Reconsideration for the following reasons:

First, the Court committed clear error by misconstruing Pastor Hodges’ religious beliefs as *political* rhetoric that gives a government official authority to effectively remove a public servant from public office due to a lack of “commonality of political purpose.” However, Pastor Hodges’ decision to abstain from voting on an agenda item related to his sincerely held religious beliefs had nothing to do with the political purposes of the public positions he held. The Court’s Order effectively created an unconstitutional religious test for public servants to hold public office.

Second, the Court committed clear error because it granted Defendant’s motion to dismiss the FAC without leave to amend despite neither the Defendant nor the Court addressing whether Pastor Hodges sufficiently pled his First Cause of Action (free exercise of religion) and Second Cause of Action (free speech). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Pastor Hodges respectfully requests that this Court reconsider its Order granting Defendant’s Motion to Dismiss.

1 **II. STATEMENT OF FACTS**

2 **A. Procedural Background**

3 On November 8, 2011, Pastor Hodges filed a verified complaint alleging three
4 separate causes of action: (1) Deprivation of the Free Exercise of Religion, (2)
5 Deprivation of the Freedom of Speech, and (3) First Amendment Retaliation. ECF
6 No. 1. On December 12, 2023, Defendant filed a Motion to Dismiss. ECF No. 5.1.
7 Pastor Hodges filed a First Amended Complaint (“FAC”) on December 12, 2023,
8 clarifying the scope of his role on the Citizens Advisory Board on Police/Community
9 Relations for the City of San Diego.¹ ECF No. 7. On January 11, 2024, Defendant
10 filed a Motion to Dismiss the FAC. ECF No. 8.1. On June 24, 2024, the Court granted
11 Defendant’s Motion to Dismiss the FAC without leave to amend (“Order”), holding
12 that Pastor Hodges could not maintain his First Amendment retaliation claims against
13 Defendant. ECF No. 13.

14 **B. Factual Background²**

15 In 2017, Myrtle Cole, then-San Diego City Councilmember, asked Pastor
16 Hodges to join the Citizens Advisory Board on Police/Community Relations for the
17 City of San Diego (“City Advisory Board”) given his significant experience in law
18 enforcement. FAC, ¶ 21. Pastor Hodges agreed to serve, and the City Council
19 subsequently appointed him on or about July 25, 2017. *Id.*, ¶ 22.

20 While continuing to serve on the City Advisory Board, on or about March 2021,
21 Joel Anderson, San Diego County Supervisor, asked Pastor Hodges to join the San
22 Diego County Human Relations Commission (“County Commission”) because he
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26 ¹ The FAC mooted Defendant’s December 7, 2023, Motion to Dismiss.

27 ² Pastor Hodges references only the relevant facts for purposes of this Motion. A more
28 thorough summary of the facts is provided in his Opposition Brief (ECF No. 9) to
Defendant’s motion to dismiss the FAC.

1 would bring diversity to the group as an African American. *Id.*, ¶ 32. Pastor Hodges
2 agreed to serve, and the County Commission subsequently appointed him. *Id.*, ¶ 33.

3 On November 9, 2021, during Transgender Awareness Month, the County
4 Commission discussed an agenda item to amplify the voices of the San Diego
5 transgender community. *Id.*, ¶ 42. Pursuant to the County Commission’s Rules of
6 Order, Pastor Hodges abstained from voting on the motion because of his sincerely
7 held religious belief that humans are to embrace their biological and creational
8 differences as men and women. *Id.*, ¶ 43. As a Christian, Pastor Hodges believes that
9 God defines human sexuality, and that men and women are created in the image of
10 God. *Id.*, ¶ 38. He also believes that God created two sexes: male and female. *Id.* As
11 a result of his faith, Pastor Hodges believes that humans are to embrace their
12 biological and creational differences as men and women. *Id.*, ¶ 39.

13 On August 8, 2023, more than a year and a half after Pastor Hodges exercised
14 his right to abstain from voting on a County Commission agenda item, Defendant
15 vetoed the reappointment of Pastor Hodges to the City Advisory Board because of his
16 religious beliefs regarding transgenderism. *Id.*, ¶ 61. Defendant explained that he
17 vetoed Pastor Hodges’ reappointment because he “has made repeated concerning
18 public comments about LGBTQ people – specifically, the transgender community.”
19 *Id.*, ¶ 62. Defendant’s veto of Pastor Hodges’ reappointment to the Advisory Board
20 was not based on Pastor Hodges’ credentials (or lack thereof). *Id.*, ¶ 63. Indeed, Pastor
21 Hodges has a lengthy background in not only public service, but law enforcement. *Id.*
22 He is well-suited to serve on the City Advisory Board. *Id.*

23 Pastor Hodges’ decision to abstain from voting on a County Commission
24 agenda item did not interfere with the efficient operation of the City Advisory Board.
25 *Id.*, ¶ 64. The County Commission and City Advisory Board are two separate entities,
26 and his action to exercise his sincerely held religious beliefs was related to his position
27 on the County Commission, not the City Advisory Board. *Id.*, ¶ 65. Defendant based
28 his decision to exercise his veto authority against Pastor Hodges solely based on his

1 biblical beliefs on human creation and transgenderism – issues that are unrelated to
2 his role on the City Advisory Board. *Id.*, ¶ 66. Defendant did not remove, or otherwise
3 retaliate against, other members of the county Commission or City Advisory Board
4 who hold or held differing opinions than Pastor Hodges. *Id.*, ¶ 70.

5 III. ARGUMENT

6 A motion for reconsideration is appropriate if “the district court is presented
7 with newly discovered evidence, committed clear error, or if there is an intervening
8 change in the controlling law.” *Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH*
9 *& Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citing *389 Orange St. Partners v. Arnold*,
10 179 F.3d 656, 665 (9th Cir. 1999)). “Clear error occurs when ‘the reviewing court on
11 the entire record is left with the definite and firm conviction that a mistake has been
12 committed.’” *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013)
13 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Courts usually
14 grant motions for reconsideration only in exceptional circumstances, typically when
15 the judgment fails to account for dispositive factual matters or controlling decisions
16 of law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011); *McDowell*
17 *v. Calderon*, 197 F.3d 1253, 1255 & n.1 (9th Cir. 1999) (en banc) (per curiam); *see*
18 *also Smith*, 727 F.3d at 955 (“It is common for both trial and appellate courts to
19 reconsider and change positions when they conclude that they made a mistake.”). A
20 district court may alter or amend a judgment on this ground if the court, for example,
21 based its ruling on incorrect factual assumptions. *Duarte v. Bardales*, 526 F.3d 563,
22 567 (9th Cir. 2008), abrogated on other grounds by *Lozano v. Montoya Alvarez*, 134
23 S. Ct. 1224 (2014). Whether to grant or deny a motion for reconsideration is in the
24 “sound discretion” of the district court. *Navajo Nation v. Norris*, 331 F.3d 1041, 1046
25 (9th Cir. 2003).

1 **A. The Court Should Reconsider Its Order Because The Court Committed**
2 **Clear Error When it Failed to Consider Dispositive Facts in the FAC.**

3 The Court improperly construed Pastor Hodges' sincerely held religious beliefs
4 as political rhetoric not protected by the First Amendment. Order, pp. 6-12. As
5 discussed in his Opposition Brief to Defendant's motion to dismiss, Pastor Hodges
6 argued that "Defendant misconstrue[d] the facts presented in Pastor Hodges' FAC."
7 Opp. Br., pp. 6-7. Defendant asserted that Pastor Hodges was a "political extension"
8 and "public face" of the Mayor, and consequently, not protected by the First
9 Amendment. Dft's Mtn. to Dismiss, p. 9. The Court likewise agreed with Defendant's
10 framing of the facts in the FAC and prefaced its analysis upon a recent Ninth Court
11 decision which held that "an appointed public official can be removed for engaging
12 in otherwise protected First Amendment activity if 'political affiliation is an
13 appropriate requirement for the effective performance of the public office involved.'"
14 Order, p. 6 (quoting *Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1241 (9th
15 Cir. 2023)). The Court then addressed several other cases that discussed political
16 affiliation and First Amendment activity. Order, pp. 6-9 (citing *Branti v. Finkel*, 445
17 U.S. 507 (1980), *Blair v. Bethel School District*, 608 F.3d 540, 546 (9th Cir. 2010),
18 *Lathus*, 56 F.4th 1238).

19 However, markedly absent from Defendant's briefing and the Court's Order—
20 but present in the FAC and Pastor Hodges Opposition Brief—are facts related to
21 Pastor Hodges' sincerely held religious beliefs. His decision to abstain from voting
22 on a particular agenda item was more than just a politically motivated scheme. He had
23 to abstain from voting on the particular agenda item that was before the County
24 Commission because to do otherwise would be to violate his sincerely held religious
25 beliefs. While it is not clear which specific facts the Court relied upon, much, if not
26 all, of the Court's analysis focused on a presumption that Pastor Hodges' decision to
27 abstain from voting on the County Commission agenda item was politically motivated
28 action or speech. Order, pp. 6-9. Indeed, *Branti*, *Blair*, and *Lathus*, the cases the Court

1 relied upon in reaching this holding, discussed whether a public officer could be
2 removed from public office for his or her “political party” affiliation (*Branti*), his or
3 her criticism of an elected officer (*Blair*), or his or her participation in a political rally
4 (*Lathus*). In each of these cases, however, none of the plaintiffs claimed to have a
5 sincerely held religious belief that inspired their actions or statements. Their speech
6 and/or conduct was treated for what it was – political.

7 Here, Pastor Hodges alleged in his FAC that as a Christian, he “believes that
8 God defines human sexuality, and that men and women are created in the image of
9 God.” FAC, ¶ 38. He also alleged that he believes that “God created two sexes: male
10 and female.” *Id.* Consistent with his sincerely held religious beliefs and pursuant to
11 the Commission’s Rules of Order, Pastor Hodges abstained from voting on a motion
12 relating to a transgender initiative before the County Commission because of his
13 sincerely held religious beliefs that “humans are to embrace their biological and
14 creational differences as men and women.” *Id.*, ¶ 43. His decision to exercise his right
15 to abstain from voting on the agenda item was rooted in his sincerely held religious
16 beliefs as a Christian.

17 As argued in Pastor Hodges Opposition Brief, “there is no case law to support
18 the proposition that exercising government authority justifies a government official’s
19 disregard and discrimination of a person’s sincerely held religious beliefs.” Opp. Br.,
20 p. 14; *see also* Opp. Br., p. 15 (“Defendant effectively gave Pastor Hodges an
21 ultimatum—adhere to Defendant’s own ideology regarding transgenderism in
22 violation of his religious beliefs to maintain his volunteer appointment or lose his
23 position for adhering to his religious beliefs.”). In failing to consider the dispositive
24 facts concerning Pastor Hodges’ religious beliefs, this Court’s Order undermines the
25 principles of the First Amendment. By categorizing Pastor Hodges’ actions/speech as
26 *political* rhetoric rather than *sincerely held religious beliefs*, the Court encourages and
27 permits the Defendant, and other government officials, to establish a religious test to
28 hold public office—a test that is not legally valid. *Torcaso v. Watkins*, 367 U.S. 488,

1 495 (1961) (“We repeat and again reaffirm that neither a State nor the Federal
2 Government can constitutionally force a person ‘to profess a belief or disbelief in any
3 religion.’”) While “commonality of political purpose” may be an appropriate
4 requirement to serve in particular government positions (Order, p. 12),³ *commonality*
5 *of religious beliefs* can never be required for service on the City Advisory Board. To
6 hold otherwise sets dangerous precedent and is in direct conflict with the purpose of
7 the First Amendment. *See Everson v. Bd. of Ed. Ewing Twp.*, 330 U.S. 1, 15-16 (1947)
8 (“No person can be punished for entertaining or professing religious beliefs or
9 disbeliefs”). Defendant set up a religious test which was designed to and, if
10 valid, does bar every person who refuses to declare a belief in transgenderism from
11 holding a public position.

12 In *Feminist Women’s Health Ctr. v. Codispoti*, the Ninth Circuit addressed the
13 issue of religious tests, holding that a circuit judge who held deeply held religious
14 views regarding abortion did not need to recuse himself from a case involving
15 abortion issues. 69 F.3d 399 (9th Cir. 1995). Judge Noonan correctly observed, “If
16 religious beliefs are the criterion of judicial capacity in abortion-related cases, many
17 persons with religious convictions must be disqualified from hearing them.” *Id.* at
18 400. He noted that if a judge’s religious beliefs were dispositive, “[N]o judge with
19 religious beliefs condemning abortion may function in abortion cases.” *Id.* at 401.
20 Likewise, Defendant’s actions and the Court’s Order, present the same dichotomy: no
21 public servant with religious beliefs espousing a traditional view on biological sex
22 and gender may function in local government.

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27 ³ Pastor Hodges maintains, as argued in his Opposition Brief to Defendant’s motion
28 to dismiss, that “commonality of political purpose” is not required to serve on the
Advisory Board. Opp. Br., pp. 6-12.

1 The Court’s Order adopted the precedent of a string of cases that dealt solely
2 with a plaintiff’s political affiliation. Order, pp. 6-9. But neither the Court, nor the
3 cited cases, address dispositive facts related to religious beliefs. The Court ignores or
4 overlooks the dispositive facts alleged in Pastor Hodges FAC regarding his sincerely
5 held religious beliefs, leading to a holding that is fundamentally at odds with Supreme
6 Court precedent and the Constitution. The Court has committed clear error, and for
7 this reason, Pastor Hodges respectfully requests that the Court grant his Motion for
8 Reconsideration.

9 **B. The Court Should Reconsider Its Order Because The Court Committed**
10 **Clear Error When it Failed to Opine on Pastor Hodges Other Causes of**
11 **Actions.**

12 The Ninth Circuit has explicitly held that a district court must provide reasoning
13 in support of its decision to dismiss a complaint. *Homestead Ins. Co., Inc. v. Casden*
14 *Co.*, 99 Fed.Appx. 797, 798 (2004). This is necessary to enable the plaintiff to
15 understand the dismissal and to allow for effective appellate review. *Id.*

16 Defendant, in his motion to dismiss, and the Court, in its Order, focused only
17 on whether Pastor Hodges’ Third Cause of Action (First Amendment Retaliation)
18 stated a claim upon which relief can be granted under Federal Rules of Civil
19 Procedure, Rule 12(b)(6). Deft’s Mtn. to Dismiss, pp. 9-20; Order, pp. 6-12. As
20 addressed in Pastor Hodge’s Opposition Brief, Defendant waived his right to address
21 the merits of Pastor Hodges’ first and second causes of action in his reply because he
22 failed to first raise the issues in his motion to dismiss. Opp. Br., p. 6; *see also State of*
23 *Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (“[Parties] cannot raise a new
24 issue for the first time in their reply briefs.” (Citations omitted.)). Pastor Hodges
25 maintains that he sufficiently pled these causes of action, but, if they are somehow
26 deficient, he is left with no understanding for the dismissal of these two causes of
27 action given that neither Defendant nor the Court addressed these causes of action. At
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1 the very least, Pastor Hodges’ first and second causes of actions should not have been
2 dismissed.

3 The Court held that Pastor Hodges could not maintain his First Amendment
4 retaliation claim against the Defendant. Order, p. 12. The Court did not opine as to
5 whether Pastor Hodges’ First Cause of Action (Free Exercise of Religion) and Second
6 Cause of Action (Free Speech) stated claims upon which relief can be granted. It is
7 unclear why the Court dismissed the FAC without leave to amend without also
8 addressing Pastor Hodges’ other causes of actions. The Order provides Pastor Hodges
9 no way to understand the reason for dismissal of his First and Second Causes of
10 Actions. *Homestead Ins. Co., Inc.*, 99 Fed.Appx. at 798. While the Court concluded
11 that each of the three separate causes of actions is premised on “the theory that Mayor
12 Gloria retaliated against Hodges based on the exercise of his First Amendment rights,”
13 the Court did not discuss whether Pastor Hodges adequately pled facts sufficient to
14 maintain a free exercise of religion and a free speech cause of action under Rule
15 12(b)(6). The Court committed clear error of law by tossing Pastor Hodges’ first and
16 second causes of action out with his First Amendment retaliation cause of action. The
17 elements of a free exercise, free speech, and First Amendment retaliation claim are
18 different and should be treated separately. Under a free exercise claim, the plaintiff
19 must show that the government action substantially burdens the person’s practice of
20 religion. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). On the other
21 hand, a First Amendment retaliation claim requires proof that a plaintiff was subjected
22 to adverse action by a government entity in response to exercising constitutionally
23 protected rights. *Ariz. Students’ Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th
24 Cir. 2016). While Pastor Hodges maintains that Defendant retaliated against Pastor

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1 Hodges’ for exercising his constitutionally protected rights,⁴ even if the Court holds
2 that Defendant’s actions were not retaliatory in nature, a free exercise claim
3 necessitates an analysis on whether Defendants’ actions burdened Pastor Hodges’
4 religious practice. To require Pastor Hodges to violate his sincerely held religious
5 beliefs in order to hold a volunteer position on a city presents a significant burden on
6 Pastor Hodges’ religious practice. *Everson*, 330 U.S. at 15-16. Additionally, a First
7 Amendment retaliation claim specifically addresses adverse actions taken in response
8 to the exercise of free speech, requiring retaliatory motive, which is not necessarily a
9 component of a general free speech claim under the First Amendment. *Compare Ariz.*
10 *Students’ Ass’n*, 824 F.3d at 867 with *In re Nat’l Sec. Letter*, 33 F.4th 1058, 1070 (9th
11 Cir. 2022); *see also Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (“If an official takes
12 adverse action against someone based on that forbidden motive, and ‘non-retaliatory
13 grounds are in fact insufficient to provoke the adverse consequences,’ the injured
14 person may generally seek relief by bringing a First Amendment claim.”).

15 Indeed, Pastor Hodges alleged that he decided to abstain from voting on a
16 transgender agenda item that was presented before the County Commission for
17 Human Rights because of his sincerely held religious beliefs regarding
18 transgenderism. FAC, ¶ 43. The transgender agenda item was not an item before the
19 City Advisory Board. However, based upon Pastor Hodges’ religious-based decision
20 before the County Commission, Defendant effectively removed Pastor Hodges from
21 the City Advisory Board—a city government entity wholly unrelated to the County
22 Commission. *Id.*, ¶ 61. In his FAC, Pastor Hodges alleges that Defendant exercised
23 his veto authority in a discriminatory manner in violation of his right to free exercise
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27 ⁴ As alleged in the FAC, Defendant specifically stated that he took action against
28 Pastor Hodges because of Pastor Hodges’ religious beliefs regarding
transgenderism. FAC, ¶ 62.

1 of religion. *Id.*, ¶¶ 72-87. Further, Pastor Hodges alleges that Defendant attempted to
2 regulate Pastor Hodges’ religious speech based upon its communicative content in
3 violation of his free speech rights. *Id.*, ¶¶ 91-105.

4 The Court neither addresses these allegations and claims nor explains how
5 Pastor Hodges did not adequately plead a free exercise of religion or free speech cause
6 of action. The Court provides no opportunity for Pastor Hodges to understand the
7 basis dismissing his FAC without leave to amend. At the very least, Pastor Hodges
8 should be given the opportunity to understand the basis for dismissal of these causes
9 of actions and an opportunity to amend the FAC if such causes of actions have not
10 been sufficiently pled.

11 On this basis, Pastor Hodges respectfully requests that the Court grant his
12 Motion for Reconsideration.

13 **IV. CONCLUSION**

14 Pastor Hodges acknowledges and values the Court’s efforts on this matter.
15 Because the dispositive facts surrounding Pastor Hodges’ religious beliefs are critical
16 to his causes of actions and these dispositive facts have not been properly considered,
17 Pastor Hodges respectfully requests the Court grant his Motion for Reconsideration
18 under Local Rule 7.1(i)(2) and Federal Rules of Civil Procedure, Rule 59(e).

19
20 DATED: July 22, 2024

ADVOCATES FOR FAITH & FREEDOM

21
22 By: /s/ Julianne Fleischer
Julianne Fleischer

23 Attorney for **Plaintiff**
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