



Mayor Ron Nirenberg
115 Plaza de Armas, 2nd Floor
San Antonio, TX 78205

March 27, 2019

Dear Mayor Nirenberg:

I write as one member of the U.S. Commission on Civil Rights¹, and not on behalf of the Commission as a whole, to address the bigoted virtue-signaling displayed by the City Council in banning Chick-Fil-A from the San Antonio airport.²

If the City Council had banned Chick-Fil-A from the airport because its members hate the tastiest chicken sandwiches in creation, there would be no constitutional violation. The City Council, however, explicitly banned Chick-Fil-A because of the company's charitable donations to religious organizations. *Fortune* reports:

“With this decision, the City Council reaffirmed the work our city has done to become a champion of equality and inclusion,” said City Councilman Roberto Treviño. “San Antonio is a city full of compassion, and we do not have room in our facilities for a company with a history of anti-LGBTQ behavior.”³

The lack of self-awareness in that statement is astonishing. Exclusion in the name of ostensible inclusion; intolerance in the name of tolerance.

The First Amendment protects the free speech rights of contractors in their dealings with government officials. This means that government officials are prohibited from terminating contractors based on their speech.⁴ “Speech” includes monetary donations to organizations that government officials may not like.⁵ And as First Amendment scholars point out, governments may not refuse to hire contractors because of their speech, nor may they pressure contractors into taking action against a third party.⁶

¹ The U.S. Commission on Civil Rights is an independent, bipartisan, fact-finding agency comprised of eight members. 42 U.S.C. § 1975.

² Chris Morris, “Chick-Fil-A Banned From San Antonio Airport,” *Fortune*, March 22, 2019, <http://fortune.com/2019/03/22/chick-fil-a-banned-san-antonio-airport/>.

³ *Id.*

⁴ Board of County Commissioners v. Umbehr, 518 U.S. 668 (1996); O’Hare Truck Service v. City of Northlake, 518 U.S. 712 (1996).

⁵ One might think it is impossible to be pettier than to ban a chicken sandwich shop because you don’t like the owners’ beliefs. The San Antonio City Council somehow manages to sink even lower and oppose people standing out in the cold, ringing bells to raise money for the poor. In Council’s defense, smug if oblivious righteousness is a powerful intoxicant.

⁶ Eugene Volokh, “San Antonio Likely Violating Chick-Fil-A’s First Amendment Rights,” *The Volokh Conspiracy*, Mar. 26, 2019, <https://reason.com/volokh/2019/03/26/san-antonio-violates-chick-fil-as-first>; Hans Bader, San



In 2013, the Commission held a hearing on conflicts between nondiscrimination and religious liberty. The types of conflicts envisioned at that briefing were cake bakers who were asked to bake cakes for same-sex weddings and Catholic nuns required to provide contraceptive coverage.⁷ These were legitimate constitutional issues. The idea of a city council banning a fast-food restaurant because the restaurant's owners gave money to organizations that espouse traditional religious beliefs in regard to marriage would have been too far-fetched to consider. Yet here we are, with the council of a city named for a Catholic saint singling out a fast-food restaurant for opprobrium and disparate treatment because the owners gave money to religious organizations that share the Catholic Church's view of marriage. I respectfully suggest that by that standard, City Council's got a lot more banning to do. What an amazingly stupid time to be alive.

I urge the City Council to rescind its ban of Chick-Fil-A. Failing that, I expect Chick-Fil-A will sue the City Council members in their official and personal capacities. I doubt the taxpayers of San Antonio will consider the legal fees and damages the City will incur to be worth Council members' exercise in moral vanity.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

cc: San Antonio City Council
Governor Greg Abbott

Antonio violates Chick-fil-A's First Amendment rights," Liberty Unyielding, Mar. 24, 2019, <https://libertyunyielding.com/2019/03/24/san-antonio-violates-chick-fil-as-first-amendment-rights/>.

⁷ See U.S. Commission on Civil Rights, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, Written Statement of Alan Brownstein, at 177 (2016), <https://www.usccr.gov/pubs/docs/Peaceful-Coexistence-09-07-16.PDF>; see also U.S. Commission on Civil Rights, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, Written Statement of Leslie C. Griffin, at 220-221 (2016), <https://www.usccr.gov/pubs/docs/Peaceful-Coexistence-09-07-16.PDF>.