

attorney, propose the following agreed findings of fact and conclusions of law:

AGREED FINDINGS OF FACT

1. Plaintiff Emiley Sund is a twelve-year-old eighth grader at a Wichita Falls public junior high school. She maintains a valid library card at the Wichita Falls Public Library.

2. Plaintiff Andrea Sund is an eight-year-old third grader at a Wichita Falls public elementary school. She maintains a valid library card at the Wichita Falls Public Library.

3. Plaintiff Pamela Sund is a resident of Wichita Falls, Wichita County, Texas and parent of Plaintiffs Emiley Sund and Andrea Sund. She is also a part-time merchandiser in Wichita Falls.

4. Plaintiff Richard N. Sutton, M.D. is a resident of Wichita Falls, Wichita County, Texas. He practices medicine full-time in Wichita Falls.

5. Joseph C. (Jace) Shelton is a resident of Wichita Falls, Wichita County, Texas. He is an automobile mechanic.

6. Plaintiff Lois Gallenberger is a resident of Wichita Falls, Wichita County, Texas. She is also President of the local P-FLAG (Parents and Friends of Lesbians and Gays) chapter.

7. Plaintiff Tom Fairclough is a resident of Wichita Falls, Wichita County, Texas. He is retired.

8. Plaintiff Nancy Horvath is resident of Wichita Falls, Wichita County, Texas. She is a minister of the local Metropolitan Community Church.

9. Plaintiff Michael Land is a resident of Wichita Falls, Wichita County, Texas. He is an educator at Midwestern State University in Wichita Falls, Texas.

10. Plaintiff Vernon Raschke is a resident of Wichita Falls, Wichita County, Texas and is a library card holder at the Wichita Falls Public Library. He is also an ordained priest who recently served a local Episcopal church in Wichita Falls.

11. Plaintiff La Verna I. Sobiesk is a resident of Wichita Falls, Wichita County, Texas and is a library card holder at the Wichita Falls Public Library. She is retired.

12. Plaintiff Emory J. Sobiesk, M.D. is a resident of Wichita Falls, Wichita County, Texas and is a library card holder at the Wichita Falls Public Library. He is a psychiatrist.

13. Plaintiff Blair P. Coleman is a resident of Wichita Falls, Wichita County, Texas, and is a library card holder. He is a semi-retired physician in Wichita Falls.

14. Plaintiff Ann B. Coleman is a resident of Wichita Falls, Wichita County, Texas, and is a library card holder. She is retired.

15. Plaintiff Mildred Gore Lancaster is a resident of Wichita Falls, Wichita County, Texas, and an educator at Midwestern State University in Wichita Falls, Texas.

16. Plaintiff Robert G. Baggott is a Colonel (ret.) U.S. Army and is a resident of Wichita Falls, Wichita County, Texas.

17. Plaintiff Dan Lewandowski is a resident of Wichita Falls, Wichita County, Texas. He is

a library card holder and also a freelance technician.

18. Plaintiff Michael Bauman is an eight-year-old fourth grader at a local elementary school in Wichita Falls.

19. Plaintiff Mitch Bauman is a resident of Wichita Falls, Wichita County, Texas, and parent of Plaintiff Michael Bauman.

20. Defendant City of Wichita Falls, Texas ("Wichita Falls" or the "City"), is a city within Wichita County, Texas. The City owns, controls, and operates the Wichita Falls Public Library (the "Library"). The Wichita Falls City Council (the "Council") is the executive governing body of Wichita Falls, and comprises seven members elected by residents of Wichita Falls. The Council is responsible for overseeing the operation and maintenance of the city of Wichita Falls through the exercise of its powers outlined in the City Charter. On February 16, 1999, the Council enacted a Resolution 16-99 (the "Altman Resolution"), which authorizes the removal of children's books from the children's areas of the Library.

21. Defendant Jim Berzina is sued in his official capacity as City Manager of Wichita Falls, the chief executive officer of the City.

22. Defendant Linda Hughes is sued in her official capacity as Library Administrator of the Wichita Falls Public Library, the highest administrative officer in the Wichita Falls Public Library system.

23. Heather Has Two Mommies by Leslea Newman and Daddy's Roommate by Michael

Willhoite (the "Books", which are attached as Exhibits 1 and 2 to Plaintiff's Complaint, filed on July 16, 1999, and incorporated herein by reference) are children's books written for children about the subject of gay and lesbian parents. According to Linda Hughes, the Library Administrator of the Wichita Falls Public Library, the books are "a wonderful way to explain to children that you may live in a different lifestyle, but the important thing is people love you."

24. In September 1997, the Library purchased the Books in accordance with the Library's Collection Development Policy. The Library's Collection Manager had received more than four requests that the titles be considered for purchase, and there had been multiple Inter-Library Loan requests for the Books. At the time, the Collection Manager and Library Administrator had checked professional reviewing publications and recommended bibliographies of youth materials for titles on the subject of homosexual parents.

25. Two copies of each Book were catalogued -- one copy of each in Youth Picture Books and one in Youth Reference -- and placed on the Library's shelves on October 4, 1997.

26. In response to the controversy surrounding the two Books, the Library Advisory Board -- a nine-member advisory board that issues non-binding recommendations to the Library on circulation and collection issues -- agreed to reconsider the appropriateness of the two Books for children. In June 1998, after careful consideration, the Advisory Board recommended that both Books remain in the children's areas of the Library. The Library Administrator then placed both books in the Youth Non-

Fiction section of the Library. That area targets juveniles ages 9-13.

27. Opponents of the two Books had pressed the City Council to ban the Books entirely from the Library. The Council rejected such proposals.

28. Although all previous attempts to restrict access to the Books had failed, on February 16, 1999, the Council passed, by a vote of 4-3, Resolution 16-99, known as the "Altman Resolution" (attached as Exhibit 4 to Plaintiff's Complaint, filed on July 16, 1999, and incorporated herein by reference).

29. The Altman Resolution sets forth a petition process.

30. Under the Resolution, upon presentation of the completed petition, a book must be removed from the children's area of the Library to the adult areas if the book is "of a nature that it is most appropriately read with parental approval and/or supervision."

31. Those signing a removal petition need not have children of their own.

32. Once a petition is filed with the Library Administrator, the Altman Resolution requires her to remove the targeted book from the children's area within 24 hours.

33. The Altman Resolution applies only to materials "marketed or designed primarily for children age twelve and under."

34. On July 14, 1999, Linda Hughes, the Library Administrator, received petitions to remove Heather Has Two Mommies and Daddy's Roommate from the children's areas of the Library.

35. Pursuant to the Altman Resolution, Administrator Hughes removed the two Books from the Youth Non-Fiction section of the Library on July 15, 1999.

AGREED CONCLUSIONS OF LAW

1. This case arises under 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 8 of the Texas Constitution. This Court has jurisdiction over Plaintiffs' federal constitutional claims under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

2. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this District under 28 § 1391(b) because the Defendants reside in this District and a substantial part of the events relevant to this litigation occurred in this District.

4. The Wichita Falls Public Library is a limited public forum.

Respectfully submitted,

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