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Via email

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RE: Rejection of Public Art Commission’s denial of PETA’s application to display Sheep Spectacular statue in downtown San Angelo

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

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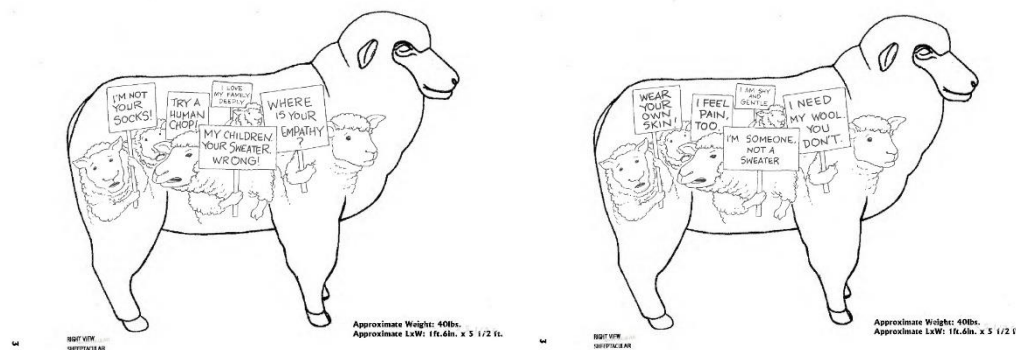
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Dear Mayor Gunter and Councilmembers:

I am writing on behalf of People for the Ethical Treatment of Animals, Inc. (PETA) to urge the San Angelo City Council to reject the Public Art Commission’s (Commission) denial of PETA’s application to display a Sheep Spectacular statue, as the City Council’s adoption of the Commission’s decision would violate PETA’s First Amendment rights.

In June 2023, PETA and San Angelo resident, Nanci Cox, jointly applied to the Commission to temporarily display the proposed Sheep Spectacular statue, shown below, in downtown San Angelo.



On October 31, 2023, the Commission convened to discuss and vote on PETA’s application. The Commission’s liaison, Carl White, informed PETA on November 2 that the Commission “did not approve the art or its placement” and that PETA was “welcome to reach out to a private property owner for placement on their

PETA FOUNDATION IS AN OPERATING NAME OF THE FOUNDATION TO SUPPORT ANIMAL PROTECTION.

ENTITIES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

property” because “the application would not need consideration by the Public Art Commission.”¹ This was, therefore, presented to PETA as a final rejection of the statue based on the Commission’s vote. After PETA asked for the Commission’s reasoning, Mr. White sent PETA the meeting minutes from the October 31 meeting. The meeting minutes indicate that various Commission members and Mr. White commented on PETA’s proposed statue, including the message it expressed:

- “Ms. Ramos stated that she did not feel this ‘Sheep Spectacular’ sheep was fitting for the downtown area due to the fact that the design goes against the history of San Angelo.”²
- Mr. Dalglish “stated that the design seemed political” and that “he does not approve of this design as well and wanted to prevent other political statements being expressed on other ‘Sheep Spectacular’ sheep that are placed.”³
- Mr. Ruiz “stated that this ‘Sheep Spectacular’ sheep being downtown is not a fit for the downtown area.”⁴
- “Mr. White stated that most of the ‘Sheep Spectacular’ sheep are placed in close proximity to sponsoring businesses, but this sheep does not have an affiliated business.”⁵
- “Mr. Stevenson expressed his concern for the statement this ‘Sheep Spectacular’ sheep is representing and it does not go with our mission in his opinion.”⁶

The Commission members did not reference any policy, guiding criteria, or standards to support the denial. Consequently, PETA sent a public records request to the City on November 9, 2023, for “any policies, standards, or guidelines applied . . . in considering whether to approve the placement of sculptures or other art on public property.” The records PETA received on November 15 did not include any such documents or other applicable standards. Accordingly, it appears the Commission has no policy and is not required to use any criteria or standards to guide its decisions.

The City Council’s adoption of the Commission’s decision would violate PETA’s constitutional rights, as its decision apparently discriminated based on viewpoint and was unmoored from any objective standards guiding its ad hoc determinations.

San Angelo’s program for the outdoor display of artwork appears to be a nonpublic forum because it is a government-sponsored medium of expression—the program invites the public to submit their artwork to the Commission for temporary display on public property. *See, e.g., Estiverne v. Louisiana State Bar Ass’n*, 863 F.2d 371, 377-81 (5th Cir. 1989) (concluding that a state bar journal constituted a nonpublic forum, in part, because it extended an invitation to the public to submit articles for

¹ Email from Carl White, Parks & Recreation Director, City of San Angelo, to Jakob Shaw, Special Assistant to the Executive Vice President, PETA (Nov. 2, 2023).

² *Meeting Minutes*, SAN ANGELO PUBLIC ART COMM’N (Oct. 31, 2023).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

consideration by the editorial board); *see also* *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 347, 349-50 (5th Cir. 2001) (explaining that government-sponsored mediums of expression are nonpublic forums subject to First Amendment constraints). Accordingly, the City can restrict speech only if the restriction is (1) reasonable in light of the forum’s purpose, (2) viewpoint neutral, and (3) capable of “reasoned application” through “objective, workable standards.” *Minnesota Voters All. v. Mansky*, 138 S.Ct. 1876, 18886, 1888-92 (2018); *Freedom From Religion Found. v. Abbott*, 955 F.3d 417, 426 (5th Cir. 2020). In this case, the City Council’s adoption of the Commission’s decision would violate PETA’s First Amendment rights because the Commission’s decision does not appear to be viewpoint-neutral and the Commission was not guided by objective, workable standards.

First, the comments various members and Mr. White made during the October 31 meeting suggest that the Commission engaged in viewpoint discrimination. The Government engages in viewpoint discrimination when it restricts speech based on its “*subjective* judgment that the content of protected speech is *offensive* or *inappropriate*.” *Robinson v. Hunt Cnty.*, 921 F.3d 440, 447 (5th Cir. 2019) (emphases added); *see Matal v. Tam*, 582 U.S. 218, 244 (2017) (indicating the government cannot prohibit expression that it finds offensive or disagreeable). Here, several comments made by Commission members during the October 31 meeting strongly indicate that the decision not to approve the statue was motivated by a disapproval of the particular viewpoint expressed.

For example, a Commission member explicitly stated he had “concern for the statement [PETA’s] ‘Sheep Spectacular’ sheep is representing.” This comment demonstrates that the Commission’s decision was impermissibly influenced or guided by the Commission’s subjective judgment that the viewpoint expressed by the proposed statue is undesirable or disagreeable. *See Matal*, 582 U.S. at 244. Another member commented that PETA’s statue “goes against San Angelo’s history,” indicating that the Commission believes it is appropriate to deny an application if the statue expresses a critical viewpoint of San Angelo or related issues, like the sheep industry. Under the First Amendment, however, the City Council cannot approve only artwork that expresses a positive viewpoint of San Angelo or the sheep industry, while rejecting artwork that is critical, because that expressly discriminates based on the *viewpoint* expressed by the statue. *See Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (explaining that “the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others”); *see also Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg’l Transportation*, 978 F.3d 481, 499 (6th Cir. 2020) (“Viewpoint discrimination obviously exists when the government allows speech conveying one point of view (say, speech promoting a President’s ‘policy on aid to inner cities’) but prohibits speech conveying the opposite point of view (say, speech criticizing that policy).”).

Second, the City has apparently invested the Commission with unbridled discretion because it does not appear the Commission is guided by any policies on approving statutes, let alone a policy that is capable of reasoned application through objective, workable standards. *Abbott*, 955 F.3d at 429; *Mansky*, 138 S.Ct. at 1891. In *Minnesota Voters Alliance v. Mansky*, the U.S. Supreme Court addressed whether Minnesota’s restrictions on wearing politically expressive clothing in a polling place included sufficient standards to avoid creating an opportunity for government abuse. *Mansky*, 138 S.Ct. 1891-92. The Court determined that the government could not reasonably apply its restrictions because there was no “sensible basis for distinguishing what [speech] may come in from what must stay out.” *Id.* at 1888. The Court explained that the term “political” was too expansive and subject to open-ended interpretations. *Id.* at 1888, 1891. Accordingly, the Court concluded that government officials enforcing speech restrictions in nonpublic forums “must be guided by *objective, workable standards*” to

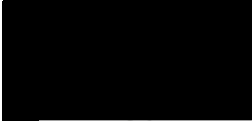
prevent an opportunity for abuse. *Id.* at 1891 (emphasis added); *see Abbott*, 955 F.3d at 428-29 (explaining that unbridled discretion creates an opportunity for viewpoint discrimination).

Because there is no evidence that the Commission uses objective, workable standards, its apparent ad hoc decisions create too great of a risk for viewpoint discrimination to survive constitutional scrutiny. *Abbott*, 955 F.3d at 429; *see also Mansky*, 138 S.Ct. 1891. One particular comment that a member made during the October 31 meeting exemplifies that the Commission’s restrictions are almost certainly susceptible to such viewpoint discrimination. Mr. Dalgliesh, who commented that PETA’s sheep “seemed political,” also stated that he would like to prevent other Sheep Spectacular statues from expressing political statements. This comment reveals that the Commission’s current policy, to the extent one exists, does not actually prohibit “political” artwork.⁷ This means that any denial based on this factor would apparently constitute an ad hoc restriction to deny PETA’s application, which—based on the other comments concerning PETA’s message—would be an unconstitutional pretext for viewpoint discrimination. Note, however, there need not be a finding of applied viewpoint discrimination because the City’s apparent absence of objective, workable standards is enough to render the City’s rejection unconstitutional.

For these reasons, PETA urges the City Council to reject the Commission’s decision and approve PETA and Ms. Cox’s application to display a Sheep Spectacular statue in downtown San Angelo. **Please provide your assurance that the Commission will do so no later than December 27, 2023.** Absent the City Council’s assurance that it will display PETA’s statue, PETA will be forced to consider its legal remedies and expressly reserves its rights in this matter.

Thank you for your attention to this matter.

Respectfully,



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⁷ Even if the City had a policy prohibiting “political” artwork, this alone would not be enough under *Mansky* because the policy must include “workable standards” that are capable of reasoned application. *Mansky*, 138 S.Ct. 1891-92.