



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 28, 2019

Mayor Ron Nirenberg  
Members of the City Council  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

**Re: Discriminatory Treatment of Chick-fil-A in the City's Concessionaire  
Contract for San Antonio International Airport**

Dear Mayor Nirenberg and City Councilmembers:

The Constitution's protection of religious liberty is somehow even better than Chick-fil-A's chicken. Unfortunately, I have serious concerns that both are under assault at the San Antonio airport. Please see the enclosed letter from my office to Secretary of Transportation Elaine Chao highlighting my concerns that the City's recent action to remove Chick-fil-A from the City's new airport concessionaire contract may violate federal law and applicable federal regulations. You should also note that I have directed my office to open an investigation into whether the City's action violates state law. I trust the City will fully cooperate with my investigation into this matter, and will abide by relevant federal and state laws in the future.

Very truly yours,

A handwritten signature in blue ink that reads "Ken Paxton".

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ATTORNEY GENERAL OF TEXAS

Enclosure



**KEN PAXTON**  
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March 28, 2019

The Honorable Elaine Chao  
Secretary of the U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

**Re: Potential Religious Discrimination by Grant Recipient City of San Antonio**

Dear Madam Secretary:

I write to request that the Department of Transportation open an investigation into San Antonio's potential breach of federal law and your agency's regulations prohibiting religious discrimination by federal grant recipients.

**I. San Antonio's Potential Discrimination Against Religious Liberty**

Last week, the San Antonio City Council voted to discriminate against a popular American fast food restaurant—Chick-fil-A—because of that organization's religious beliefs. The Council was in the process of approving a concessionaire agreement with Paradies Legadere (Paradies) to run concession facilities in the San Antonio airport. The Paradies proposal included a license that would bring Chick-fil-A to the airport.<sup>1</sup> That proposal scored 95.80 on a 100-point scale, while the next best proposal scored a mere 73.40.<sup>2</sup>

When the Council moved to adopt the staff recommendation to agree to the Paradies contract, a Council member instead moved to exclude and replace Chick-fil-A.<sup>3</sup> His rationale was that Chick-fil-A has a "legacy of anti-LGBT behavior."<sup>4</sup> He continued: "Perhaps the [San Antonio] Office of Equity and Inclusion should be involved in the vetting of economic deals to

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<sup>1</sup> San Antonio Legislation File Regarding Concession Agreement with Paradies, Mar. 21, 2019, at <https://sanantonio.legistar.com/LegislationDetail.aspx?ID=3888304&GUID=EAFACDCC-CDE8-4B26-9CBC-9A63F95865F1&FullText=1> ("Chick-fil-A, which calls itself the home of the original chicken sandwich, will bring their national brand to San Antonio International.").

<sup>2</sup> San Antonio Legislation File Regarding Concession Agreement with Paradies, Final Score Matrix, Mar. 21, 2019, at <https://sanantonio.legistar.com/View.ashx?M=F&ID=7095018&GUID=921CC1D0-479C-4BE5-AC23-8565E91281C4>.

<sup>3</sup> Vote Slips at 46, San Antonio City Council Meeting, Mar. 21, 2019, at <https://sanantonio.legistar.com/View.ashx?M=M&ID=671873&GUID=C5EEC666-2EA5-45EF-8FA5-91C9A3121181>.

<sup>4</sup> City Council A Session Video, Mar. 21, 2019, at 3:53:25, at <https://sanantoniotx.new.swagit.com/videos/26748>.

ensure they align with our core values as a city.”<sup>5</sup> The Council member who seconded the motion referred to Chick-fil-A as a “symbol of hate.”<sup>6</sup> This was despite testimony from City staff that, in its contract, Paradies would include compliance with San Antonio’s ordinance that prohibits discrimination based on sexual orientation or gender identity.<sup>7</sup> The Council voted 6-4 with one abstention for the motion to have staff work toward substituting Chick-fil-A in the Paradies agreement.<sup>8</sup> Ironically, the City’s efforts to be “inclusive” resulted in the *exclusion* of Chick-fil-A based on its religious beliefs.

## II. Federal Law and Agency Regulations Prohibiting Discrimination Against Religious Beliefs

The City’s decision to specifically exclude Chick-fil-A from a government program based on the sincerely-held religious beliefs of its leadership raises serious constitutional questions. As you are no doubt aware, the Supreme Court has affirmed that the Free Exercise Clause protects individuals and organizations of faith alike. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). The Court has also found that exclusion of an entity from participating in a generally-available government benefit or program will violate the Free Exercise Clause in most circumstances. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). In addition, the Supreme Court has soundly rebuked state actors for actions based on animosity to religious belief similar to those in question here. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018).

In addition to potential violations of the First Amendment, it seems likely the City of San Antonio’s apparent discrimination against Chick-fil-A violates various federal statutes and regulations to which the City is subject as a recipient of Department of Transportation grant funds.<sup>9</sup> Numerous relevant federal statutes and regulations prohibit federal grant recipients from engaging in discrimination based on “creed.” *See, e.g.*, 49 U.S.C. § 47123; 14 C.F.R. § 152.401; 14 C.F.R. § 405. Because the statute and regulations do not give any special meaning to the term “creed,” the common meaning of the word applies, which is “a brief authoritative formula of religious belief.”<sup>10</sup> Thus, the federal policy is clearly intended to prevent grant recipients from discriminating on the basis of sincerely-held religious beliefs.

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<sup>5</sup> *Id.* at 4:52:35.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4:55:35, 4:58:10.

<sup>8</sup> Vote Slips at 46, San Antonio City Council Meeting, Mar. 21, 2019, at <https://sanantonio.legistar.com/View.ashx?M=M&ID=671873&GUID=C5EEC666-2EA5-45EF-8FA5-91C9A3121181>.

<sup>9</sup> *See, e.g.*, Federal Aviation Administration, Press Release — U.S. Department of Transportation Announces \$151.1 Million in Infrastructure Grants to 66 Airports in 35 States, Sept. 7, 2017, at [https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=22135](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=22135) (announcing \$5.6 million grant to San Antonio to repair an airport taxiway).

<sup>10</sup> Webster’s Dictionary (Last visited Mar. 28, 2019), at <https://www.merriam-webster.com/dictionary/creed>.

The Hon. Elaine Chao

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There is no evidence indicating that Chick-fil-A has ever maintained any policy or practice of discriminating against any group of people, and the City offered no such evidence as the basis of its action. Indeed, shortly after the City's decision was announced, a member of the City Council who dissented from the City's decision openly apologized to the Chairman of Chick-fil-A, noting that the restaurant "employs and serves everyone, without prejudice, discrimination or hate."<sup>11</sup> Furthermore, Chick-Fil-A apparently agreed in the present instance to abide by all applicable nondiscrimination rules imposed by the contract with the City. Nonetheless, the comments of the Council members made clear Chick-fil-A would be excluded based solely on its owners' religious beliefs.

Thank you for your consideration this request to open an investigation of potential religious discrimination by a grantee.

Very truly yours,



Ken Paxton

ATTORNEY GENERAL OF TEXAS

CC: Mayor Ron Nirenberg  
Members of the San Antonio City Council

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<sup>11</sup> Letter by Councilman Greg Brockhouse to Dan T. Cathy, Mar. 26, 2019, *available at* [https://www.scribd.com/document/403231230/Chick-Fil-a-Letter#from\\_embed](https://www.scribd.com/document/403231230/Chick-Fil-a-Letter#from_embed).