



September 1, 2017

Chairman John Grasso  
Anne Arundel County Council  
44 Calvert St.  
Annapolis, MD 21401

Dear Chairman Grasso,

I write on behalf of Peter Cane, Yasemin Jamison, and the Caucus of African American Leaders, regarding your improper censorship of members of the public who wish to make statements critical of county council members at county council meetings.

We are aware of at least two past Council meetings where improper censorship has occurred. On April 3, 2017, during the public comment portion of the Council meeting (when, pursuant to Council Rule 3-105(a), any member of the public can address the Council on “pertinent matters of public business not otherwise provided for [on the agenda]”), Peter Cane attempted to read a statement concerning Councilman Michael Peroutka’s past membership in the League of the South, a white supremacist organization. You interrupted Mr. Cane’s statement and told him that he was not allowed to “badger a councilman,” and prohibited him from making his statement.

The second incident occurred during the Council’s June 5, 2017 meeting, during the discussion of Resolution 22-17, introduced by Councilman Peter Smith to condemn messages and acts of racism and white supremacy in the wake of Sean Christopher Urbanski’s murder of 2nd Lt. Richard Collins, III the prior month, as well as an incident where two men hung a noose outside of Crofton Middle School. Collins, an African American graduating senior in the ROTC program at Bowie State University, was stabbed to death in College Park by Urbanski, a white Severna Park resident and student at University of Maryland, on May 20, in an unprovoked attack. Urbanski was a member of a now disbanded white supremacist Facebook group called Alt-Reich: Nation. During the public comments on the resolution, Yasemin Jamison sought to again mention Councilman Peroutka’s membership in the League of the South, in connection with his initial opposition to the resolution, and his public statement that he had “always denounced racism.” Amanda Yaeger, *Peroutka Says He Will Co-Sponsor Anti-Hate Resolution*, Capital Gazette, June 2, 2017, <http://www.capitalgazette.com/news/government/ph-ac-cn-peroutka-resolution-folo-0603-20170602-story.html>. You again interrupted the speaker, and prevented her from making her statement, telling her that no personal or defamatory remarks were allowed (relying on Council Rule 4-106). Later during the same discussion, Peter Cane again sought to speak about Mr. Peroutka’s membership in the League of the South, and you again interrupted him, telling him that he could not attack other members of the Council, could not mention Mr. Peroutka’s name, and could not make his statement, relying again on Rule 4-106.

Rule 4-106, in part, prohibits making “personal, defamatory, or profane remarks” at a County Council meeting (it also prohibits disorderly conduct at Council meetings, but that provision is not at issue here, since none of the speakers were told to stop speaking due to any disorderly conduct). None of the remarks that they sought to make were defamatory (because they were either statements of opinion, not actionable as defamation, or were true statements of fact), so the

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only possible basis for prohibiting their remarks was that they were “personal,” which you appear to interpret as barring critical commentary on particular individuals, including council members and other public officials. Such a rule clearly violates the First Amendment.

It should go without saying that criticism of public officials lies at the heart of the speech protected by the First Amendment. *E.g. Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (“Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized.”). As the Court put it in *New York Times v. Sullivan*, 376 U.S. 254 (1964), “we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *Id.* at 270. And as courts around the country have repeatedly determined, similar rules that prohibit critical comments about public officials at meetings of public bodies are overbroad and/or content or viewpoint based rules in violation of the First Amendment. *E.g., Acosta v. City of Costa Mesa*, 718 F.3d 800, 811-821 (9th Cir. 2013) (City council’s prohibition on “any personal, impertinent, profane, insolent, or slanderous remarks” violates First Amendment); *Bach v. School Bd. of City of Virginia Beach*, 139 F. Supp. 2d 738, 743 (E.D. Va. 2001) (school board bylaw that prohibited “personal attacks” during the general public comment period of board meetings was facially unconstitutional); *Gault v. City of Battle Creek*, 73 F. Supp. 2d 811 (W.D. Mich. 1999) (Granting preliminary injunction against city commission rule barring personal attacks at public comment portion of meeting; comments about police chief’s extramarital affair protected by First Amendment); *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997) (School board bylaw prohibiting criticism of district employees at board meetings violates First Amendment); *Baca v. Moreno Valley Unified School Dist.*, 936 F. Supp. 719, 730 (C.D. Cal. 1996) (Granting preliminary injunction against school board policy prohibiting comments that include charges or complaints against any district employee).

Given the clarity of the legal issues presented, we urge the County Council to rescind the unconstitutional portions of Rule 4-106<sup>1</sup>, and to cease enforcing them immediately. Please let me know if you would like to discuss these issues further, or have any questions about our position. And please let us know how you intend to proceed, so that we can take appropriate action to protect our clients’ rights, if necessary.

Sincerely,

David Rocah  
Senior Staff Attorney

cc: Amy Tate, Esq.  
Nancy McCutchan Duden, Esq.  
Members of the County Council

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<sup>1</sup> I note that while defamatory speech may be punished through civil judgments for damages after the fact, it is at the very least unclear that the council can censor even defamatory remarks prior to a judicial determination that they are, in fact, defamatory