



June 29, 2020

VIA ELECTRONIC MAIL

Council President Corey Pack
Councilmember Laura E. Price
County Council of Talbot County
Courthouse
11 North Washington St.
Easton, MD 21601

Re: Talbot County Council Speech Censorship

Dear Council President Pack and Councilmember Price:

We write on behalf of the Talbot County Branch of the NAACP and its President, Richard Potter, as well as Trappe resident Ari Rubenstein and the American Civil Liberties Union of Maryland, regarding unlawful censorship at County Council meetings when speakers express concern or criticism about the conduct of elected officials. Specifically at issue is censorship of criticism about Councilmember Price's remarks at the Council's June 23 meeting dismissing as false and overly "emotional" deeply-felt community concerns about racial inequities in Talbot County. As explained below, Mrs. Price's use of authority to silence her critics violates the First Amendment.

At this moment when Black people across America are suffering enormous anguish triggered by events displaying official contempt for their lives and well being, it is critically important for all elected officials to open their minds and listen to the voices of their constituents, particularly on charged issues of race. Regrettably, Councilmember Price's approach instead displayed both ignorance about the lived reality of many Black people in the community, and an unwillingness to listen and learn about perspectives different from her own. Accordingly, we ask you to publicly address and apologize¹ for these incidents at the next Council meeting, and provide assurances that such abuse of authority will not recur in the future.

¹We note, and appreciate, that Mr. Pack contacted Mr. Potter on June 24 to privately apologize for any role he played in allowing Mrs. Price to censor Mr. Potter's speech.

The Facts at Issue

As you know, the agenda for the County Council's June 23 meeting² contained several measures proposed by Council and community members to address race equity concerns, including establishment of a formal "Diversity Statement" for County government, and institution of regular diversity trainings and assessments. The agenda also included a resolution – long sought by the NAACP and other members of the community – concerning removal and possible replacement of the "Talbot Boys" Confederate monument. Indeed, we find the irony rich that Mrs. Price made her remarks denying the reality of racial issues in the County at the very same meeting where the Council was addressing removal from the Courthouse lawn of this controversial statue symbolizing white supremacy and racial oppression to so many.

Among the objectionable statements Mrs. Price made during the June 23 meeting were her contentions that measures addressing diversity were unnecessary, and her outright dismissal of racism saying "we do not have a problem here with this." (Video, 37:56) "We don't need to make a huge deal out of this," she proclaimed, (Video, 38:40) in total disregard for the feelings of Black constituents whose experience living in Talbot County is quite different from hers. To make matters worse, Mrs. Price also contended that anyone who dared to disagree with her – expressly including Council President Pack – was being overly "emotional." (Video, starting at 49:05) Coming from an elected representative of the Talbot County government, Mrs. Price's pronouncements outraged many, prompting some speakers to want to respond during the portion of the meeting set aside for public comment. That is exactly what Mr. Rubenstein and Mr. Potter set out to do when it was their turn to speak.

Unfortunately, however, Councilmember Price was not willing to hear it. During the public comment portion of the Council meeting, Mr. Rubenstein, participating in the meeting via telephone, expressed his concern about Mrs. Price's attempt to pretend away the existence of any race discrimination in the County, calling it "disgusting." As he said this, Mrs. Price raised her voice, exclaiming: "[T]hat's inappropriate!" (Video, starting at 3:15:00) President Pack then cut in, asking Mr. Rubenstein to give the Council his comments without any "direct." Struggling to understand what this instruction might mean, Mr. Rubenstein altered his remarks to drop Councilmember Price's name from the rest of his comments. He then provided a series of statistics revealing racial disparities in Talbot County government to dispute Mrs. Price's uninformed contention that there exist no racial inequities in local government.

² Video of this meeting, which was conducted partly in person, and partly remotely, is available at this link: http://talbot-md.granicus.com/MediaPlayer.php?view_id=1&clip_id=418

The problem got significantly worse when it was Richard Potter's turn to speak. Mr. Potter, the well-known President of the Talbot County NAACP, called in to the meeting to address the Talbot Boys resolution, as well as Councilmember Price's false claim that there is no racial divide in Talbot County. As is his nature, Mr. Potter spoke in a respectful and reasonable, albeit impassioned, tone. He commended Councilmember Divillio for his initiative in proposing a resolution for the long-running Talbot Boys dispute, then turned his attention to Councilmember Price's "appalling" remarks opposing any vote on the diversity statement or training, and claiming no racial issues exist in Talbot County. "*This has got to stop!*" interrupted Councilwoman Price, in a piercing voice. Mr. Potter continued nevertheless, saying what was clear already to many in the audience: "It's obvious that she is speaking from her white privilege." At this, Councilmember Price pushed back her chair, grabbed her purse and snapped "I'm done." As she rose from her chair, and Mr. Potter went on trying to speak, Councilmember Price rudely spoke over him, demanding "if you don't stop him, I'm leaving." Responding to Mrs. Price, the clerk controlling the technology for the meeting said she was trying to "mute" Mr. Potter as quickly as she could, succeeding in this effort to silence Mr. Potter a few seconds later. (Video, starting at 3:17:20)

No rule was cited to justify this action, no legitimate objection made or discussed. Rather, Councilwoman Price decided unilaterally to deny Mr. Potter his opportunity as a citizen of Talbot County to be heard on matters that impact his community. It was, as Mr. Potter said of Mrs. Price's other conduct, appalling.

The President then abruptly ended the public comment section of the meeting. (Video, at 3:18:15)

The Governing Law

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, prohibition of critical comments about public officials at meetings of public bodies that are overbroad and/or content or viewpoint based restrictions violate 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).

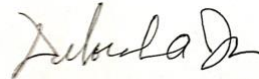
Here, Councilwoman Price cannot even claim to be enforcing any County rule to justify silencing her critics, as the County has no such rule. There is nothing in the County's "Meetings Protocols"³ allowing officials to stifle speech that is protected by the First Amendment just because they don't like it. Rather, members of the public are allotted three minutes in which to speak their minds on relevant topics of their choice, including expressing concern or criticism of public officials. As such, Councilwoman Price's abuse of authority to silence criticism was unlawful.

* * *

Never have citizen rights to speak freely and to petition their government for redress of grievances been more vital than they are today, as America faces a historic reckoning about race and racial justice. Talbot County is not exempt from this moment, as the Council has recognized by proposing resolutions and initiatives concerning issues of race, equity and diversity. Members of the community strongly support this; they wish to seize this opportunity to engage with elected officials in courageous conversations aimed at acknowledging and reconciling the evils of the past and their continuing legacy. This requires County Council members not only to speak boldly, but also to listen thoughtfully, especially to viewpoints and opinions that differ from their own. Councilmember Price's June 23 actions precluded this, and if her interference with citizen speech rights is left unaddressed, it will hinder progress at this pivotal moment.

For these reasons, we ask you to publicly address the Council's error in censoring citizen speech, and commit to conduct future meetings in accordance with the Constitution. Please contact us, or have your attorney contact us, at 410-357-0996 or 410-736-8669 if you would like to discuss these issues further, and to let us know how you intend to proceed.

Sincerely,



Deborah A. Jeon
Legal Director



Vikrant S. Chandel
Law Clerk

Cc: Anthony Kupersmith, Esq.

³Talbot County Meeting Protocols:

<http://www.talbotcountymd.gov/uploads/File/council/Talbot%20County%20Council%20Meeting%20Protocols.pdf>