To the City Council of Parkersburg, West Virginia,

We are writing to you regarding the adoption and enforcement of rules or policies relating to content-based restrictions imposed on public comments during City Council meetings. It is the firm position of the American Civil Liberties Union of West Virginia that any policy that prohibits interested citizens from speaking about their council members violates West Virginians' right to free speech.

The right to free speech is pivotal for the survival of our democracy. Without the free exchange of ideas, citizens cannot make informed choices about their governance. The Supreme Court in *New York Times v. Sullivan* famously held that free speech must be "uninhibited, robust, and wide-open." Courts have held time and again: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because it finds it offensive or disagreeable." *Texas v. Johnson* (1989). "Above all else, . . . the government may not restrict speech because of its message, its ideas, subject matter, or its content." *Chicago Police Department v. Mosley* (1972). Thus, when the government creates a public forum, it may not discriminate based on the content of the speech.

Free speech by nature includes criticism of government officials. This "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials," *New York Times v. Sullivan*. Selective silencing of viewpoints is viewpoint discrimination. Sometimes, this discrimination is conducted in the guise of maintaining order or avoiding offense, but the Supreme Court made clear in *Matal v. Tam* (2017) that "[g]iving offense is a viewpoint." Judgment of speech as "offensive" necessarily involves viewpoint discrimination, *Iancu v. Brunetti* (2019). Thus, it is impermissible as a motive or effect for the government to silence speech against public officials. As we understand it, the current policy of the Parkersburg City Council goes beyond silencing speech critical of public officials and disallows speech which references or concerns public officials at all. In light of prior court holdings, such a restriction is blatantly and unquestionably impermissible.

Most courts consider public comment periods to be **designated public forums**, or forums the government has opened and designated for free public expression—akin to parks and public streets: areas the government holds in trust for the public of a democracy to assemble and share ideas freely. A designated public forum can be converted to a **limited public forum**—one the government opens for speech serving a particular purpose. In a limited public forum, the state may impose content restrictions that are viewpoint-neutral, so long as these are reasonable considering the meeting's purpose, such as establishing topics or allotting a certain amount of floor time. However, it is not permissible to curtail, close, or otherwise limit the speech of an individual or forum if the motive or effect of doing so is to suppress a viewpoint. Reasonable rules can be applied even-handedly, but they must never be wielded to silence dissenting voices.

For example, in *Baca v. Moreno Valley Unified School District* (C.D. Cal. 1996), a Federal District Court invalidated a school board policy that prohibited individuals from making "charges or complaints against any employee of the [school] District" during public comment sessions. The U.S. Court of Appeals for the Sixth Circuit invalidated a nearly identical school board policy that restricted so-called "abusive," "personally directed," and "antagonistic" public

comments during board meetings, *Ison v. Madison Local School District Board of Education* (Sixth Cir. 2021), explaining that these restrictions "prohibit speech because it opposes, or offends, the Board or members of the public, in violation of the First Amendment."

Regardless of how the meeting is structured, your aims in enforcement of this policy, or the degree of convenience it provides to City Council, the Constitution is clear - you can't engage in content-based discrimination of speech. A blanket policy disallowing the public from referencing their public officials – in either a positive or a negative light – unconstitutionally restricts the content of their speech and undermines the essence of our free society; that members of the public can voice their opinions, including ones critical of government officials.

If you have an interest in discussing this with us further, please feel free to contact me at the information included below.

Best,

/s/ Aubrey Sparks

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