



ACLU

AMERICAN CIVIL LIBERTIES UNION
of NEW JERSEY

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BY REGULAR MAIL & EMAIL (jschatzle@colts-neck.nj.us)

August 13, 2015

Mayor James C. Schatzle
Township of Colts Neck
124 Cedar Drive
Colts Neck, New Jersey 07722

Re: Colts Neck Township's Restrictions on Public Comment and Inaccurate Meeting Minutes

Dear Mayor Schatzle:

The American Civil Liberties Union of New Jersey (ACLU-NJ) recently received a complaint from Colts Neck resident Jeffrey Sauter, who was prevented from making certain statements during the public comment portion of several public meetings held by the Colts Neck Township Committee. The ACLU-NJ has investigated the complaint and is concerned that the Township is violating constitutional principles and that it is giving the public incorrect information about the right to participate in public meetings.

After receiving Mr. Sauter's complaint, we reviewed footage of public comment portions of public meetings conducted by the Committee **from January 14, 2015 to June 24, 2015**, and corresponding Committee meeting minutes. Based on this review, it is clear that the Committee has been restricting public comment based on an individual's viewpoint on a particular subject. This practice violates the principles of free speech as guaranteed by the First Amendment to the U.S. and New Jersey constitutions, and the Open Public Meeting Act (OPMA, also known as "the Sunshine Law").

On May 27, 2015, you interrupted Mr. Sauter's comment regarding your involvement with the fire department, to object to the relevance of the comment. He explained that he was responding to your remarks from a meeting two weeks earlier. At the same meeting, you did not object to the relevance of another citizen's comment in support of your involvement. Mr. Sauter sought to address this incident during the June 10th meetings by reading a prepared statement during the public comment period. The footage of the June 10th meeting shows that Mr. Sauter was repeatedly interrupted and prevented from speaking by Committee attorney, John Bennet. Mr. Sauter was accused of engaging in "personal attacks." Likewise, the June 24 meeting footage documents Mr. Sauter's attempt to read another prepared letter addressing both your involvement with the fire department and the Committee's censorship of his June 10 comment. The video documents Mr. Sauter being interrupted and prevented from speaking by Deputy Mayor Thomas Orgo. Deputy Mayor Orgo's reasons for preventing the statements were your absence from the meeting and a belief that Mr. Sauter "cannot bash [you] for [your involvement with the fire department]." Additionally,

Committee attorney Joseph Clark instructed Mr. Sauter that he was prevented from reading the letter because it allegedly contained “derogatory comments and personal attacks.” However, even if true, these accusations do not support restricting Mr. Sauter’s speech during the public comment portion of a public meeting. Similarly, the footage documents numerous other instances of the Committee’s misunderstanding regarding the Sunshine Law and the principles of free speech.¹ The Open Public Meetings Act guarantees members of the public the right to speak on “any governmental . . . issue that a member of the public feels may be of concern to the residents of the municipality . . .” See N.J.S.A. 10:4-12. Failure to allow such comments (as occurred here) violates the Act.

Further, in *Besler v. Board of Education of West Windsor – Plainsboro Regional School District*, 201 N.J. 544 (2010), the New Jersey Supreme Court held that public comment periods are public forums.” *Id.* at 570. As such, the governing body may not favor any one viewpoint. While it may impose reasonable time, place and manner restrictions, the government “may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more suppress speech because of disagreement with the message it conveys.” *Id.* at 570-71.

The Committee does not have the unilateral authority to foreclose a speaker from voicing unpopular opinions which its members have decided amount to a “personal attack” or are not truthful. Such a policy undermines our “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.” See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (U.S. 1964). The First Amendment “does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered.” *Id.* at 271 (internal quotation marks omitted).

Speech that falls within the broad scope permitted during public comment periods (as described above) can only be excluded based on its content or viewpoint when the government demonstrates a compelling interest. However, such an interest is simply not implicated in preventing citizens from voicing concerns regarding the performance of public servants, even if those statements are alleged (by the public official in charge of the meeting) to be false. In fact, the purpose of a public meeting is, in part, to provide an opportunity for citizens to “to make known their opinions to their representatives, and to petition for redress of grievances.” *Besler* at 576 (quoting N.J. Const. art. I, ¶ 18). Such a diversity of comments and opinions is essential to ensuring that public officials make informed decisions and be held accountable for their performance. As such, our Supreme Court has acknowledged that “breathing room for an ‘uninhibited’ and ‘robust’ discussion of public issues” must be provided in our free society. *Id.* at 569.

¹ For example, on January 14, 2015, subsequent to Mr. Sauter’s comment, Committee member Michael Fitzgerald stated “I have interrupted you when you’ve said something that’s not true, I intend to continue to do that when you don’t tell the truth . . .” Likewise, Committee member Russell Macnow used the time set aside for public comment to berate Mr. Sauter for his civic engagement. On February 11, 2015, Deputy Mayor Thomas Orgo interrupted Mr. Sauter’s comment period to control the title he used to address you. On May 13, 2015, another speaker was interrupted and advised to ask questions outside of the public comment period.

Similarly, we are concerned that the Committee meeting minutes are drafted in a way that excludes certain comments based on viewpoint. For example, the May 27, 2015 minutes include public comment supporting the Mayor's involvement with the fire department; yet omit Mr. Sauter's critical statement regarding the same subject matter. Likewise, the June 10, 2015, minutes state that Mr. Sauter commended officials, and attempted to "read a prepared letter; however Counsel Bennett advised the purpose of the public comment was not for personal attacks. Counsel Bennett recommended Mr. Sauter's letter be filed with Township Clerk." However, the minutes omit Mr. Sauter's criticism of you, the subject of the letter, and his objection to the Committee's viewpoint censorship. Similarly, the June 24, 2014, only include Mr. Sauter's comment on another matter and that "[a]t the urging of Counsel Clark, Mr. Sauter provided the Clerk's Office with a letter for the file, which is on file in the office of the Clerk." Such categorization implies Mr. Sauter's agency in providing the letter to the clerk, when in reality submitting the letter was his only recourse in light of the Committee's obstruction of his comment.

Please be advised that excluding speech from minutes based on viewpoint not only violates the First Amendment, but undermines one of the fundamental purposes of maintaining minutes - namely, to inform the wider public of the discussions and deliberations within meetings.

To ensure that no further action is necessary, we ask the Township Committee to take the following actions:

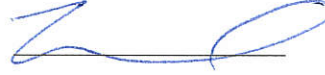
- 1) Provide us with a written assurance that the Township Committee will cease its unlawful practice of preventing citizens from voicing their opinions regarding the performance of their representatives;
- 2) At its next three public meetings, inform the public that they are free to voice opinions of any viewpoint regarding "any governmental . . . issue that a member of the public feels may be of concern to the residents of the municipality . . ." See N.J.S.A. 10:4-12;
- 3) At the August 19 meeting or the next public meeting, publicly state that Mr. Sauter should not have been stopped from speaking at the June 10 and June 24 public meetings, and affirm that he will be permitted to express his opinions about his elected leaders at future Council meetings;
- 4) Provide Mr. Sauter with an opportunity to read the letters; and
- 5) Correct the minutes to accurately reflect the May 27, June 10 and June 24 meetings.

Given the clarity of the law and our joint aims of encouraging public participation in the democratic process, I am hopeful this matter can be amicably resolved and that the ACLU-NJ will not need to take further steps to protect the constitutional right to free speech at public meetings. Please respond regarding the Committee's position on the above points by August 21, 2015, and feel free to contact me directly at ibromberg@aclu-nj.org or 973-854-1713.

Additionally, if they exist, please provide me with Township Committee policies regarding the public comment portion of public meetings. If necessary, please consider this request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law right of citizens of the state to obtain access to public documents.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Iris Bromberg', written over a horizontal line.

Iris Bromberg, Esq.

Cc: Members of the Township Committee (by email only)
John O. Bennett, Township Attorney (by email only)
Jeffrey Sauter (by e-mail only)