

OPEN LETTER REGARDING PUBLIC COMMENT POLICY

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Jefferson Parish School Board

501 Manhattan Boulevard

Harvey, LA 70058

Via e-mail: mark.morgan@jppss.k12.la.us, larry.dale@jppss.k12.la.us,
ricky.johnson@jppss.k12.la.us, tiffany.kuhn@jppss.k12.la.us,
melinda.bourgeois@jppss.k12.la.us, cedric.floyd@jppss.k12.la.us,
Melinda.doucet@jppss.k12.la.us, marion.bonura@jppss.k12.la.us,
sandy.denapolis@jppss.k12.la.us, mfanning@grantbarrow.com, and
postal mail



AMERICAN CIVIL LIBERTIES UNION

Louisiana

P.O. Box 56157
New Orleans, LA 70156
504-522-0617
www.laclu.org

Jane Johnson
Interim Executive Director

Bruce Hamilton
Staff Attorney

Dear members of the Jefferson Parish School Board:

The ACLU of Louisiana has learned that the Jefferson Parish School Board (the “Board”) is considering a measure that would restrict public comments at its public meetings. As proposed, this measure would prohibit “political and/or election comments at meetings of the board, having deemed that such comment is disruptive, inflammatory, self-promoting, threatening and/or interferes with” Board business.

The proposed measure defines “political and/or election comment” as “any reference, comment, communication or discussion, direct or veiled, that references, directly or indirectly, an individual’s or a collection of an individual’s past, present, or future election, campaign, or defeat in an election” to the Board. Any person addressing the Board who “engages in political and/or election comment” would be “found out of order” and “forfeit the right to further address the Board at that meeting.” A Board member who “engages in political and/or election comment” would be “found out of order” and “in violation of Board policy.”

This proposal is patently unconstitutional for several reasons, which we urge you to consider before taking any action with respect to this policy. As proposed, the policy is an unlawful, content-based restriction on protected speech, and it is unconstitutionally overbroad. It is troubling to us that you consider “political and/or election comments” as presumptively disruptive or inflammatory, as political comments by the public at a public meeting of a public body are a hallmark of American democracy.

A couple examples illustrate how restrictive the proposed policy



would be. Under the policy, a concerned resident could not say to a Board member, “people in your district oppose this measure, and they will remember your vote when they go to the polls.” A Board member could not say to another Board member, “you vowed to support this measure last October, are you breaking your campaign promise?”

In the hierarchy of constitutionally protected speech, the United States Supreme Court notes that “core political speech occupies the highest, most protected position[.]” *R.A.V. v. St. Paul*, 505 U.S. 377, 422 (1992). Speech “concerning public affairs is more than self-expression; it is the essence of self-governance.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). “Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). “The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Id.* (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957).

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (citations omitted). “Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 2227 (citations omitted).

When a law prohibits a substantial amount of protected speech, “not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep,” it violates the First Amendment. *United States v. Williams*, 553 U.S. 285, 292 (2008); *Hill v. City of Houston, Tex.*, 764 F.2d 1156, 1161 (5th Cir. 1985). “An overbroad statute is invalid on its face, not merely as applied, and cannot be enforced until it is either re-drafted or construed more narrowly by a properly authorized court.” *Id.*

Here, the proposed policy targets a wide variety of speech protected by the First Amendment based on its content. As such, the policy is unconstitutional. For these reasons, we urge the Jefferson Parish School Board not to enact this unlawful policy.

Sincerely,

Jane Johnson
Interim Executive Director