

September 25, 2020

*By U.S. Priority Mail and email to diane.calta@beachwoodohio.com, sscalise@universityheights.com,
James.Pasch@beachwoodohio.com*

Diane Calta, Stephanie Scalise, and James Pasch
c/o City of Beachwood
25325 Fairmount Boulevard
Cleveland, OH 44122

Re: Beachwood councilperson Mike Burkons

Counselors:

Mike Burkons has been consulting with me periodically over the last several months regarding various developments relating to his service as an elected councilperson for the City of Beachwood. While the apparently retaliatory “censure” that Council ambushed him with on August 17 was troubling enough—particularly in the context of Burkons’ effective advocacy on behalf of Beachwood citizens concerned with police misconduct in the City—I was flabbergasted to learn this afternoon that the City has doubled down by filing criminal charges against Burkons for his allegedly having violated R.C. 2921.45, by allegedly having acted “under color of his office, employment, or authority,” to “knowingly deprive or attempt to deprive” Assistant Cleveland Heights Law Director Alix Nouredine of his First Amendment right to free speech.

Before I go any further, please first allow me to confirm that my colleague Rachel Hazelet and I represent Burkons on this matter, and that all future communications relating to it should come through us.

With that, please consider the rest of this letter as explaining the basis for my hope that the next communication we receive from you on this will be to confirm that these charges against Burkons have been dismissed.

Kindly correct me if I’m wrong as to what is at issue here: Burkons took issue with how an attorney who represents a neighboring municipality (Nouredine) acted in reporting to Beachwood officials alleged misconduct by a Beachwood police officer, so Burkons voiced his concerns about Nouredine’s conduct to Nouredine’s colleagues in this neighboring municipality's government. In other words, Burkons had an opinion about the way a certain official in a neighboring municipality acted, and he expressed that opinion to other officials of that neighboring municipality, just as Nouredine did regarding the Beachwood police officer’s conduct. Burkons’ position as a Beachwood councilman obviously vested him with no authority to terminate Nouredine’s employment with the neighboring municipality or otherwise discipline him. And Burkons did not so much as suggest to Nouredine or anyone that he

would use any authority or influence he has as a Beachwood councilperson to have Nouredine criminally prosecuted or otherwise disciplined by Beachwood officials. In other words, Burkons was in no way acting “under color of his office,” nor could he possibly have been.

It is incredibly ironic, to say the least, that Beachwood officials who are now accusing Burkons of depriving a citizen of free-speech rights are doing just that to Burkons, but to an exponential degree, by—*quite unlike Burkons*—*having actually used* the influence and authority of their public offices to institute criminal proceedings against him. Even more incredibly, this irony is compounded by the fact that these Beachwood officials have taken this apparently retaliatory action in purported defense of a Cleveland Heights official—Nourredine—who complains that Burkons is somehow a criminal for doing the very same thing that Nourredine himself did to set off this whole mess: Register a complaint to a municipal government in which he is not an official about the conduct of one of that government’s officials.

It is perhaps needless to say at this point that if these absurd and transparently retaliatory proceedings continue, those participating—behind the scenes or otherwise—will invite civil liability (including punitive damages and attorneys’ fees) on a retaliation claim under 42 U.S.C. § 1983 (in which it would be shown what a real case of First-Amendment-violative conduct looks like), as well as under Ohio common law on a claim of malicious prosecution, at very least. For now, I have advised Mr. Burkons to withhold any public statements on this matter until I’ve had a reasonable chance to discuss a resolution with you (unless you have already gone to the press on this in which case we will have no choice but to issue a public response).

Finally, please also consider this letter to be a public records request under R.C. 149.43, as well as a request under Crim. R. 16, for all documents relating to this matter, including all documents categorized under Crim. R. 16, and records reflecting all communications, by phone, email, or otherwise, between Mr. Nourredine and any Beachwood officials, including all Councilpersons, and including records of all communications relating to this matter that took place prior to Nourredine having sent his June 6, 2020 email complaining about the Beachwood police officer.

I will look forward to your prompt response.

Thank you,

A handwritten signature in black ink, appearing to read "Peter Pattakos". The signature is stylized with large, rounded letters and a long horizontal stroke at the end.

Peter Pattakos

cc: Rachel Hazelet