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April 9, 2024

Via U.S. Mail

Bill Griset
Chair, Salem Planning Board
City Hall Annex – Dept. of Planning & Community Development
98 Washington Street, 2d Floor
Salem, MA 01970

Re: Censorship of public comment

Dear Mr. Griset:

We write on behalf of the American Civil Liberties Union of Massachusetts (“ACLUM”) to ask you and other members of the Planning Board to cease interrupting or terminating the opportunity of members of the public to provide comment at Planning Board meetings because you disagree with or disapprove of the substance of their comments.

An example of this happening occurred on March 21, 2024, when at approximately the 1 hour 48 minute mark,¹ a speaker who expressed the view that the Zoning Board of Appeals had illegally approved a variance because of failure of the applicant to establish one of three elements of the test. He was first interrupted and told he could not say ZBA conduct was illegal and then when he committed to continuing without mentioning the potential illegality he was muted and not allowed to continue at all.

As the Supreme Judicial Court made clear approximately one year ago in its important decision in *Barron v. Kolenda*, 491 Mass. 408 (2023), public bodies violate state constitutional protections when they restrict expression at public meetings either because they disagree with it, consider the comments insufficiently courteous, or virtually any other content-based reason, other than relevance limitations related to the scope of the forum at issue. And

¹ <https://reflect-satv.cablecast.tv/store-3/31533-Salem-Planning-Board-Meeting-3-21-24-v1/vod.mp4>.

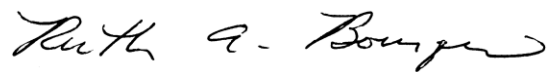
those who engage in such conduct open themselves to legal liability, including but not limited to under the Massachusetts Civil Rights Act, G.L. c. 12, § 11I.²

We ask you to share this letter with the entire Board, cease immediately interrupting, cutting off or silencing members of the public for content-based reasons, and apologize to the person who was cut off on March 21, 2024.

In case helpful to you, we are sharing a link to a letter we wrote to all cities and towns after the *Barron* decision was released about how public comment periods can be efficiently run *without* treading on constitutional rights.³

If you or the City attorney wish to discuss the serious issues raised by this letter, please do not hesitate to reach out at rbourquin@aclum.org or 617-482-3170 ext. 348. Either way, we would appreciate confirmation of receipt, since we were unable to locate a public facing listing of any email address for you or your colleagues.

Sincerely,



Ruth A. Bourquin
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² Interestingly, the public comment policy of the Board does not purport to allow members of the body to silence comments for such reasons.

https://www.salemma.gov/sites/g/files/vyhlif12836/f/uploads/planning_board_guidelines_03232016.pdf. Of course, if it did, the policy would be unlawful, but the fact that the policy does not even purport to allow such action makes it even more clear that Board members should know this kind of silencing of protected speech is not allowed.

³

https://www.aclum.org/sites/default/files/aclum_letter_to_mmla_and_masc_on_barron_decision_-_march_10_2023_update3.21.23.pdf.