

February 18, 2015

Menifee City Council

Subject: Demand to Cease and Desist content-based restrictions on Free Speech

City Council:

The California Coalition for Better Government (“CCBG”), whose membership includes constituents throughout Riverside County, hereby demands that the City of Menifee, by and through its City Council and Mayor, immediately cease and desist its practice of engaging in content-based restriction of free speech at its regularly held City Council meetings.

While the CCBG concedes that the City Council may impose reasonable time, place and manner restrictions upon public speech at its City Council meetings, those restrictions must be “content neutral” as opposed to “content based” and narrowly tailored to serve a significant government interest. See *Perry Educ. Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45 (1983). Content-neutral restrictions are those that are both viewpoint and subject matter neutral. See *Boos v. Bary*, 485 U.S. 312,320 (1988). Restrictions on speech in a public forum must be justified without reference to the protected speech’s content. See *ACLU v. City of Las Vegas* 466 F. 3d 784,792 (9th Cir. 2006). When content based restrictions are involved, a very high standard must be met before the government can restrict such speech. Any restriction imposed must be neutrally administered. See *Baca v. Moreno Valley Unified School District* 936 F. Supp. 719 (rejecting a rule prohibiting the addressing of charges or complaints against employees of the District in public comment).

It is important to note that free speech comes in many forms, and is not limited to that which is merely spoken. Speech can consist of non-verbal expressions, such as clapping or stomping, which may communicate a speaker’s agreement or discontent with a particular item of discussion. For people suffering with disabilities which prohibit or limit their ability to speak or sign, including those with autism, non-verbal forms of communication are their only avenue of meaningful participation.

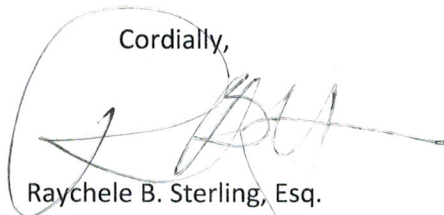
While the presiding officer may not stop a speaker because he or she disagrees with the speaker’s viewpoint, he or she may stop the speaker if they become “disruptive”. Disruption occurs when a speaker prevents the legislative body from accomplishing its business in a reasonably efficient manner. See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990). The City Council is cautioned that masking content based restrictions on free speech by declaring an “alleged disruption” will be reviewed under the highest level of scrutiny by the courts. There must be an actual disruption, not the illusion of one.

At the regularly held City Council meeting on February 4, 2015, Jeff Melching ("Melching"), in his capacity as City Attorney and agent of the City of Menifee, and Mayor Scott Mann ("Mann"), as presiding officer, did impose content based restrictions upon free speech to silence criticism of the Mayor by members of the public by disrupting their speech and ordering their removal from the meeting by the sheriff. These actions constitute an unlawful restriction on free speech in violation of the court's ruling in *Baca v. Moreno Valley Unified School District*, as cited above.

Review of the Menifee City Council meeting tape available on-line, as well as video taken by a member of the public at the time of the incident, shows that when public comments were made that were critical of the Mayor and his practices, Melching immediately interjected himself, usurping the authority of the presiding officer, Mayor Mann, and interrupting the speaker under the illusionary guise of decorum. If any "disruption" occurred, it was at the hand of Melching, not the speaker. Melching's actions not only violated the first amendment rights of the speaker, but also potentially exposed his client to financial liability.

In closing, these actions by the City of Menifee, by and through its City Attorney and presiding officer, Mayor Scott Mann, constitute an impermissible restriction on free speech based solely upon its content. If the City of Menifee does not cease its unlawful practices, the California Coalition for Better Government will seek legal redress in federal court to enjoin them. Your prompt attention to this very serious matter is greatly appreciated.

Cordially,

A handwritten signature in black ink, appearing to read "RBS", is written over a circular stamp. The signature is fluid and cursive.

Raychele B. Sterling, Esq.

Member California Coalition for Better Government

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