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February 1, 2022

By Electronic Mail:

Board of County Commissioners
for Richmond County, NC
1401 Fayetteville Rd
Rockingham, NC 28380

Re: Public Comment Policy

Dear Commissioners,

The Rutherford Institute is a nonprofit civil liberties organization which seeks to protect individuals' constitutional rights and educate the public about threats to their freedoms. It has just recently come to our attention that you plan to consider approving a revised Public Comment Policy at your meeting later today. Certain provisions in Rules 4 and 7 of the proposed Policy raise significant concerns as they could violate or create a chilling effect on the First Amendment rights of your constituents to freely express their concerns, and the Board should therefore eliminate those provisions from the policy.

As the elected representatives tasked with establishing the policies of Richmond County, it is crucial that you remain open to communications from your constituents both individually and when acting as a collective Board. Public meetings of local legislative boards have historically served as the quintessential citizens forum—giving individuals the opportunity to speak on issues important to the community and to directly address those who have the authority to take action on such matters. The First Amendment's protections of freedom of speech and the right to petition the government therefore apply to public meetings of bodies such as the Richmond County Board of Commissioners.¹

However, Rule 4 of the proposed policy gives the Chair the authority to revoke an individual's right to speak if the comments are "deemed inappropriate (such as slanderous or libelous remarks)." Similarly, Rule 7 prohibits speakers from making "comments which are

¹ See *Davison v. Rose, et al.*, No. 20-1683 at 12 (4th Cir. Dec. 3, 2021).

harmful, discriminatory or embarrassing to any citizen(s), official(s) or employees or Richmond County,” and from discussing “‘closed session’ type issues. (Ex. Personnel matters, litigation...) and matters which are subject of public hearings.” Rule 7 then ends by threatening a criminal charge and punishment against speakers who are considered to have disturbed the meeting by not following the rules.

While the Board may establish some limits on a public forum to maintain order and avoid unnecessary delay or disruption, it may “not impose those limits in a manner that discriminates based on the speaker’s viewpoint,” and “any restriction must be reasonable in light of the purpose served by the forum.”² Although some policies which prohibit harassment and personal attacks, particularly when they affect the order and decorum of a meeting, have been upheld, it is questionable if they would still be upheld when facing different arguments, and the language in the Board’s proposed Policy prohibiting “inappropriate,” “harmful, discriminatory or embarrassing” comments is incredibly vague and subjective.

The rules at issue here are not aimed solely at maintaining the order and decorum of the meetings, but rather restrict any speech which a commissioner might consider “harmful” or “embarrassing,” and thus make such speech vulnerable to censorship. “A vague law impermissibly delegates basic policy matters to [a government official] for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.”³

Therefore, your constituents might fear that if they express anything which could be construed as being critical of a county official or employee, or which might highlight a failure or wrongful act which an official or employee feels embarrassed about, that the constituents’ right to speak at the meeting(s) will be revoked and that they could face being charged with a criminal offense. This could create a chilling effect on your constituents and thus inhibit them from freely expressing concerns to their elected officials.

While the Policy prohibits criticism of its officials and employees, it does not prohibit praising or commending them. This could therefore be considered impermissible censorship and viewpoint discrimination in violation of the First Amendment. Further, there does not appear to be any basis or justification for a rule prohibiting speakers from commenting on “‘closed session type issues...and matters which are subject of public hearings,” which could involve important issues of public concern.

Instead of seeking to restrict the ability of citizens to communicate with their representatives, the Board should maintain an open and robust exchange of views with the people of Richmond County. The limits on speech imposed by these rules in the proposed Policy are not only contrary to the First Amendment but are unwise. For citizens to feel vested in their government, they must know that they are free to express their views and be heard by

² *Id.* at 13.

³ *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

Board of County Commissioners
Richmond County, NC
Feb. 1, 2022
Page 3

their representatives. The Rutherford Institute therefore urges the Board to revoke these rules and provide its constituents with a free and open forum for speech.

Sincerely yours,

John W. Whitehead
President