



October 19, 2009

Clark County School District  
Attn: Bill Hoffman  
5100 W. Sahara Ave.  
Las Vegas, NV 89146

Mary-Anne Miller  
Clark County School Board Counsel  
District Attorney's Office  
500 South Grand Central Parkway  
Las Vegas, NV 89101

**AMERICAN CIVIL  
LIBERTIES UNION OF  
NEVADA**

732 SOUTH SIXTH STREET  
SUITE 200A  
LAS VEGAS, NEVADA 89101  
P/ 702.366.1536  
F/ 702.366.1331  
VEGAS@ACLUNV.ORG

1325 AIRMOTIVE WAY  
SUITE 202  
RENO, NEVADA 89502  
P/ 775.786.1033  
F/ 775.786.0805  
RENO@ACLUNV.ORG

WWW.ACLUNV.ORG

Terri Janison, President  
Carolyn Edwards, Vice President  
Sheila Moulton, Clerk  
Chris Garvey, Member  
Larry P. Mason, Member  
Deanna L. Wright, Member  
Dr. Linda E. Young, Member  
Clark County School Board of Trustees  
Clark County School District  
5100 West Sahara Ave.  
Las Vegas, NV 89146

**Re: Proposed Warning to Public Speakers**

Dear CCSD Trustees and Legal Counsel:

At the September 24, 2009 meeting of the CCSD Board of Trustees, changes to the Public Speaking Guidelines were proposed, including the following warning to be given to speakers:

Public comment, the content of which is irrelevant, beyond the authority of the board, willfully disruptive of the meeting, repetitious, slanderous, offensive, inflammatory, irrational, amounts to personal attacks or interferes with the rights of other speakers, is prohibited.

We strongly urge against the adoption of this, or any, CCSD regulation which gives School Board members the discretion to limit or prohibit public comment based on the content.

Allowing School Board members such power violates Nevada's Open Meeting Law as well as the First Amendment to the U.S. Constitution, as well as free speech protections contained in the Nevada Constitution. Furthermore, public officials should be accountable to the public and should not immunize themselves from criticism and should not attempt to limit public comment.<sup>1</sup> A board member's determination that a comment is "offensive" is not an adequate justification to limit the right of a member of the public to exercise their right comment at public meetings and to share their views of elected officials are doing. Indeed, limiting public comment in such a way constitutes censorship.

Nevada's Open Meeting Law explicitly provides members of the public the opportunity to make comments. NRS 241.020(c)(3); NRS 241.035(d). The proposed regulation would render this right meaningless because the public would be constrained in what comment they may give, or may be deterred from giving comment at all. Indeed, the whole point of the Open Meeting Law is to allow members of the public both the opportunity to learn about the decisions that elected officials are making – *and to have input into those decisions*.

Further, the proposed regulation violates the First Amendment. Because the public is invited to speak under Nevada's Open Meeting Law and CCSD regulations, School Board meetings are a designated public forum and free

---

<sup>1</sup> A *Las Vegas Sun* article reported:

Board members have asked staff to come up with a warning to potential public speakers that personal attacks won't be tolerated. For first-term member Linda Young, who has been the recent target of a few of her West Las Vegas constituents, "it's becoming badgering and harassment. We want to hear what you have to say. You have good ideas and recommendations ... at the same time, none of us up here relishes being smacked around."

Emily Richmond, "Rule in works in try to keep comments at meetings civil. Objective: Rein in personal attacks on board members," September 28, 2009 (available at <http://m.lasvegassun.com/news/2009/sep/28/rule-works-try-keep-comments-meetings-civil/>) Again, board members cannot immunize themselves from public criticism; even if they dislike speakers' comments about their actions, or failures to act, and characterize such comments as "badgering and harassment," public comment at school board meetings is protected speech.

speech protections apply. *See, e.g., Hopper v. City of Pasco*, 241 F.3d 1067, 1075-1079 (9th Cir. 2001). In a designated public forum, speech restrictions must be both content and viewpoint neutral and must also serve a compelling governmental interest. *Id.* Because of the subjective definition of prohibited comment – “irrelevant, beyond the authority of the board, willfully disruptive of the meeting, repetitious, slanderous, offensive, inflammatory, irrational, amounts to personal attacks or interferes with the rights of other speakers” – the regulation necessarily runs the risk of viewpoint discrimination. Thus, the regulation is not viewpoint neutral.

Further, under any First Amendment analysis, the proposed regulation fails because it is an invalid prior restraint. *See, e.g., Near v. Minnesota*, 283 U.S. 697, 713 (1931) (prior restraint exists when the enjoyment of protected expression is contingent upon the approval of government officials). A speaker is only permitted to speak or continue speaking as long as not a single Board Member perceives the comment as “irrelevant, beyond the authority of the board, willfully disruptive of the meeting, repetitious, slanderous, offensive, inflammatory, irrational, amounts to personal attacks or interferes with the rights of other speakers.” Thus, officials have unfettered discretion to limit public comment or even censor it, a result the Constitution forbids. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 770 (1988) (unfettered discretion on the part of governmental agencies is an impermissible prior restraint and a violation of First Amendment protections).

While the School Board may of course act to prohibit actual disruption at its meeting, it simply cannot equip itself with the ability to censor speech. Here, the proposed regulation is invalid on its face and it is irrelevant whether the Board’s intent is to censor speech. The prior restraint and unfettered discretion doctrines protects against the *risk* of censorship. *See, e.g., City of Lakewood v. Plain Dealer Pub. Co.* 486 U.S. 750, 763-64 (1988) (“... a law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official. ... we have often and uniformly held that such statutes or policies impose censorship on the public or the press, and hence are unconstitutional, because without standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.”); *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 589 (1976) (“Prior restraints are the essence of censorship, and our distaste for censorship

reflecting the natural distaste of a free people is deep-written in our law.”)  
(internal quotation marks and citations omitted).

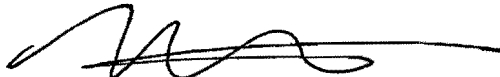
Finally, speech restrictions that are vague and overly broad are impermissible because they carry the risk of preventing or chilling protected speech. *Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C.*, 518 U.S. 727 (1996). Here, the vague and undefinable terms used in the warning would have the effect of chilling speech and lead to self censorship by members of the public: speakers fearing censure or reproach from the School Board may abstain from speaking or may refrain from expressing negative or unpopular opinions. Chilling speech both violates the First Amendment and the spirit of the Open Meeting Law.

In conclusion, while we do not question the Board’s right to prevent actual disruptions to public meetings, we strongly urge against the adoption of this speech regulation. We will be monitoring this issue closely. If you have any questions, please do not hesitate to contact us.

Sincerely,



Allen Lichtenstein  
General Counsel



Margaret A. McLetchie  
Staff Attorney and Interim  
Southern Program Director