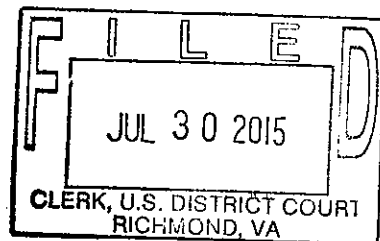


IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division



LINWOOD CHRISTIAN,

Plaintiff,

v.

CITY OF PETERSBURG and W. HOWARD
MYERS,

Defendants.

)
)
)
) **JURY DEMANDED**

) Civil No. 3:15cv00449

COMPLAINT

1. This is an action for damages under 42 U.S.C. §1983. As set forth below, the defendants violated plaintiff's rights under the First Amendment to the United States Constitution by prohibiting him from speaking during the public comments portion of a City Council meeting, solely because he owed a fine to the City that had not yet been paid.

JURISDICTION

2. This action arises under the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to Article III of the United States Constitution and 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. § 2201. Venue is proper under 28 U.S.C. § 1391 because all of the parties are located in the Eastern District of Virginia, and all of the events giving rise to this lawsuit took place in the Eastern District of Virginia.

PARTIES

3. Plaintiff Linwood Christian ("Christian") is an adult resident of Petersburg, Virginia.

4. Defendant City of Petersburg (“City”) is a political subdivision of the Commonwealth of Virginia.

5. Defendant W. Howard Myers (“Myers”) is and at all times relevant was the Mayor of the City of Petersburg.

6. At all times relevant, defendants acted under color of state law.

FACTUAL ALLEGATIONS

7. The Petersburg City Council is the governing body of the City.

8. The City Council holds regular meetings on the first and third Tuesday of most months.

9. In odd-numbered years, the City Council elects a Mayor and Vice-Mayor from among its members at its January organizational meeting

10. The Mayor presides at all City Council meetings, unless he is absent.

11. The Mayor has final decision-making authority over the conduct of each City Council meeting over which he presides.

12. Each regular City Council meeting includes a Public Information Period not to exceed thirty minutes. Pursuant to the Council’s rules, City residents and business owners may speak for up to three minutes during Public Information Period if they give notice to the Clerk before noon on the day of the meeting or sign up on a sheet provided at the meeting. “In the event that more than six people so qualify to speak, the Mayor, in the Mayor’s sole discretion, may increase the number of speakers and reduce the amount of time each is to speak so as to meet the 30-minute total time limitation.” (Exhibit A, City of Petersburg, Resolution Adopting the Rules of Council, as Amended, No. 13-R-01A, adopted Jan. 7, 2013.)

13. Plaintiff Linwood Christian is active in his community. He attends most City Council meetings, and frequently speaks during the Public Information Period.

14. In 2014, Christian ran unsuccessfully for School Board. In the course of that campaign the Petersburg Electoral Board assessed a fine against him due to an allegedly late filing. Christian did not contest the fine.

15. As of January 2015, Christian had made some payments toward the fine, but, due to financial difficulties, had temporarily stopped making payments.

16. At the regular City Council meeting on January 20, 2015, Christian signed up to speak during the Public Information Period.

17. Shortly before the Public Information Period, City Attorney Brian Telfair accompanied by Assistant City Attorney, Danielle N. Powell approached Christian and asked him to step outside with him. Telfair then told Christian that because of his outstanding fine, City Council had decided would not be permitted to speak during the public information period.

18. When Telfair and Christian returned to the meeting room, Christian observed Telfair speak to Mayor Myers, and then observed Mayor Myers speak to the Clerk, who subsequently crossed his name off the list of speakers for the Public Information Period.

19. As a result, Christian was deprived of his right to address the Council during the Public Information Period and suffered emotional distress and public humiliation.

20. Christian subsequently spoke to City Councilwoman Treska Wilson-Smith and City Councilman John Hart, both of whom told him that City Council had no involvement in any decision to prevent Christian from speaking during the Public Information Period.

21. On January 21, 2015, Wilson-Smith sent an email to Telfair inquiring about the decision to prevent Christian from speaking. Telfair responded to the email the next day, noting

that pursuant to the Resolution Adopting Rules of Council and the City Charter, the Mayor presides over City Council meetings. The email continued:

Pursuant to these powers as Chair . . . , the Mayor determined that Mr. Christian should not be allowed to speak until such time that he has either paid his campaign fines or made arrangements to pay them. Former Mayor Moore, who was standing there when I discussed Mr. Christian with Mayor Myers, agreed with this approach.

I would be remiss if I did not state that my office has repeatedly tried to work with Mr. Christian. In response he has either ignored our requests [] or simply stretched the truth. Last Tuesday, he simply walked away while I was in mid-sentence. Mr. Christian owes his fellow citizens \$800. The amount might now be higher.

(Exhibit B.)

22. Wilson-Smith later received a letter dated January 23, 2015 from Mayor Myers.

The letter stated, in relevant part:

I have read all of the e-mails the City Attorney not only provided you with the factual background but also the authority provided in the City Charter and in the Rules of Council for the decision that I made – as Chair of the meeting. Where the Rules of Council elevates the position of mayor to enforce these established rules, you are governed by them as well, whether you voted with the majority or not.

(Exhibit C.)

23. On February 5, 2015, Rebecca Glenberg, the Legal Director of the American Civil Liberties Union of Virginia, emailed a letter to Mr. Telfair. The letter stated that prohibiting Christian from speaking during the Public Information Period because of his outstanding fine violated his free speech rights under the First Amendment. The letter concluded: “I therefore request written assurances that Mr. Christian will be permitted to speak at all future City Council meetings, and that he will not be barred from speaking or otherwise have his freedom of speech diminished based on any financial debt to the City. Mr. Christian further requests a public apology for the actions of City officials in this matter.” (Exhibit D.)

24. Shortly after sending this letter, Glenberg received a telephone call from Telfair, during which he told her that Christian was no longer banned from speaking at City Council meetings, because the City was now suing Christian to recover his outstanding fine. Indeed, on the same day that Glenberg sent the letter, the City filed a warrant in debt against Christian in the Petersburg General District Court.

25. Later that day, Telfair sent Glenberg an email stating that "the City filed a Warrant-In-Debt (see attached) to collect Mr. Christian's unpaid election fines. The filing and serving of the Warrant-in-Debt satisfies the City's needs for protection." The letter went on to assert that "Mr. Christian would have been permitted to speak at last Tuesday's [February 3] council meeting if he had tried to do so." The email concluded, "With respect to the contentions contained in your letter regarding the purported violation of First Amendment rights, I would be remiss if I did not remind you that we previously disagreed about the scope and manner of these rights (see attached) - and - that the Court agreed with me. . . ." (Exhibit E.)

26. The same day, Glenberg sent an email to Telfair reiterating her request for an apology and for written assurances that Christian would not be deprived of his right to speak at Council meetings due to any debt to the City. (*Id.*)

27. The same day, Telfair sent an email to Glenberg that stated, in relevant part:

With respect to your request that the City provide you with a "blanket" assurance, I will not do so as you should be aware that the pendulum swings both ways. The City can, and will, place content neutral time, place and manner restrictions on speech on a case-by-case basis. . . .

To conclude, a public apology is not forthcoming as there was no mistreatment. Indeed, Mr. Christian is the one who should be apologizing to the citizens of the Petersburg, Virginia as he has yet to pay his election fines despite unsuccessfully running for office in November.

(*Id.*)

28. In March 2015, Christian, with assistance from an acquaintance, paid in full the fine assessed by the Petersburg Electoral Board.

CAUSE OF ACTION
First Amendment to the United States Constitution

29. The Public Information Period at Petersburg City Council meetings is a limited public forum.

30. The defendants' prohibition on Christian speaking during the Public Information Period of the Petersburg City Council meeting on January 20, 2015 because of his outstanding fine was not reasonably related to the purpose of the forum.

31. The defendants' prohibition on Christian speaking during the Public Information Period of the Petersburg City Council meeting on January 20, 2015 because of his outstanding fine violated the First Amendment to the United States Constitution, as applicable to the States under the Fourteenth Amendment and 42 U.S.C. § 1983.

REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

A. A declaration that the defendants' prohibition on Christian speaking during the Public Information Period of the Petersburg City Council meeting on January 20, 2015 violated the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment.

B. Damages in an appropriate amount to compensate Christian for the infringement of his right to free speech.

C. Reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

D. Such other relief as the Court deems just and proper.

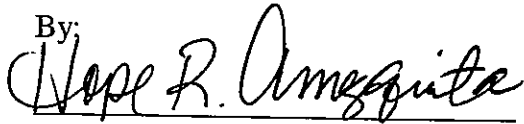
JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

LINWOOD CHRISTIAN

By:



Hope R. Amezcua (VSB #74629)

Rebecca K. Glenberg (VSB #44099)

American Civil Liberties Union Foundation of Virginia

701 E. Franklin Street, Suite 1412

Richmond, Virginia 23219

(804) 644-8080

Fax: (804) 649-2733

hamezcua@acluva.org

rglenberg@acluva.org

RESOLUTION ADOPTING THE RULES OF COUNCIL, AS AMENDED

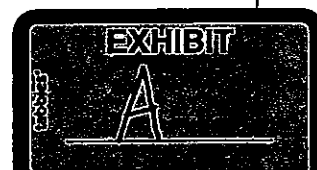
BE IT RESOLVED, by the City Council of the City of Petersburg, that the Rules of Council heretofore adopted, be, and they are hereby reenacted with no amendments, so as to read as follows:

RULE I. - MEETINGS

Section 1. The Council shall hold regular meetings on the first and third Tuesdays of each month in the Union Train Station, at 6:30 p.m. If a regularly scheduled meeting shall fall on the day of a general election, this meeting shall be held, instead, on the next Tuesday night following that election.

Special meetings of the City Council shall be held when called by the mayor or requested by two or more of the members of Council. The call or request shall be made to the Clerk, and shall specify the matters to be considered at the meeting. Upon receipt of such call or request the Clerk, after consultation with the mayor, shall immediately notify each member of the Council and the City Attorney in writing. Such notice shall specify the matters to be considered at the meeting. No matter not specified in the notice shall be considered at such meeting, unless all members are present. The notice may be waived if all members of the Council attend the special meeting or sign a waiver.

In January of every year, City Council will hold an organizational meeting. The purpose of the meeting will be to adopt the Rules of Council. In odd-numbered years, City Council will elect a Mayor and Vice Mayor.



Section 2. A majority of the Council shall constitute a quorum for the transaction of business, unless otherwise required by law or ordinance.

Section 3. If a quorum of the Council fails to attend any meeting, whether regular or special, the presiding officer may adjourn the meeting to some later date, and notice of such adjournment shall be given to each member of the Council by the Clerk. The Clerk shall enter such adjournment on the journal.

Section 4. All meetings of the Council shall be presided over by the Mayor, or, in the Mayor's absence, by the Vice Mayor, or, in the absence of both, by some other member of the Council to be designated by the Council and entered of record on the journal.

Section 5. No meeting shall extend after the hour of 12 midnight unless Council by an affirmative vote of the majority of those members present extends the length of the meeting. The member so moving to extend the length of the meeting shall include in his or her motion the matters appearing on the docket for that meeting to be considered after the hour of 12 midnight.

Section 6. No regular meetings of Council will be held during the month of August of each year. Also, there shall be only one meeting in the month of December on the second Tuesday of that month, unless otherwise scheduled by City Council.

RULE II. - CLERKS AND RECORDS

Section 1. The Council shall elect a Clerk who shall keep a neat and accurate journal of the proceedings and shall be the custodian thereof. After the minutes are read and approved, they shall be signed by the presiding officer.

Section 2. The Council shall keep a journal of its proceedings and its meetings shall be open, except when, by a recorded vote of a majority of the members present, the Council shall declare a closed session in accordance with the Virginia Freedom of Information Act.

Section 3. The Clerk shall prepare and present at each sitting of the Council a docket of all matters requiring the attention of the Council. The docket of all regular meetings shall be provided to all members of Council no later than five days before Council is scheduled to meet.

Section 4. Voting on all questions shall be by "ayes" and "nays", and no roll call shall be necessary unless one or more members of the Council shall vote "nay" on a question, or unless the vote is to be upon nomination of two or more persons for the same position, in either of which events the vote shall be by roll call of the members of the Council in alphabetical order, and the vote of each member shall be recorded in the minutes. If any member shall refrain from voting, such fact shall be recorded, and the vote shall be by roll call, the vote of each member voting shall be recorded.

RULE III. - ORDINANCES AND AMENDMENTS

Section 1. Every ordinance shall be read by its title when presented. No ordinance shall be amended, suspended or repealed except by ordinance regularly introduced and passed, nor shall any section of any ordinance be amended unless the whole section shall be reordained. No ordinance shall be considered at the meeting at which it is introduced if objection thereto be made by four members of the Council.

Section 2. All ordinances and resolutions shall be recorded in a book to be kept for that purpose and shall be attested by the Clerk. They shall then be signed by the Mayor.

Section 3. No ordinance or resolution appropriating money exceeding the sum of One Hundred Dollars, imposing taxes or authorizing the borrowing of money, shall be passed except by a recorded affirmative vote of a majority of all the members elected to the Council.

Section 4. No ordinance or resolution appropriating money exceeding the sum of One Thousand Dollars, imposing taxes or authorizing the borrowing of money shall pass on the date of its introduction. The vote on such ordinance or resolution shall be taken by "ayes" and "nays" and shall be entered on the journal, and the affirmative vote of a majority of the members elected to the Council shall be necessary to its passage.

Section 5. No ordinance or resolution amending or changing the rate of license fees or taxes imposed by the City of Petersburg shall pass on the day of its introduction.

Section 6. The Mayor shall provide an opportunity for public hearing on each ordinance or resolution considered by Council. Where specific procedures for public hearing are established by law, such procedures shall be followed. In all other instances, public comment will be heard after a motion for adoption of the ordinance or resolution has been accepted by the Mayor and prior to discussion by Council. Once City Council has started discussing the motion, no further input from the public will be accepted.

RULE IV. - RECONSIDERATION

No question decided by the Council shall be again brought forward at any subsequent meeting during the period of thirty days thence ensuing, unless there be a motion to reconsider it before the Council adjourns. No motion to reconsider a question which has been decided shall be entertained unless it be made by a member voting with the prevailing side. No vote shall be reconsidered or rescinded at any special meeting, except upon the affirmative vote of all members elected to the Council.

RULE V. - ORDER OF BUSINESS

Section 1. At every regular meeting of the Council the order of business shall be as follows

1. Roll Call
2. Closed Session
3. Prayer/Pledge of Allegiance *either/or*
4. Proclamations/Recognitions
5. Consent Agenda (to include minutes of previous meeting/s)
6. Official Public Hearings
7. Public Information Period:

A public information period, limited in time to 30 minutes, shall be part of the Order of Business at each regular council meeting. Each speaker shall be a resident of or a business owner in the City and shall be limited to three minutes. No speaker will be permitted to speak on any item scheduled for consideration on the regular docket of the meeting at which the speaker is to speak. The order of speakers, limited by the 30-minute time period, shall be determined as follows:

- (a) First, in chronological order of the notice, persons who have notified the Clerk no later than 12:00 noon of the day of the meeting,
- (b) Second, in chronological order of their sign up, persons who have signed a sign-up sheet placed by the Clerk in the rear of the meeting room prior to the meeting.

The sign-up sheet will be retrieved by the Clerk immediately prior to the commencement of the public information period. Only those persons who have notified the Clerk prior to the meeting in accordance with (a) above, or whose name appears on the sign-up sheet will be eligible to speak. In the event that more than six people so qualify to speak, the Mayor, in the Mayor's sole discretion, may increase the number of speakers and reduce the amount of time each is to speak so as to meet the 30-minute total time limitation. Any matter brought before the attention of the City Council during a public information period shall not be acted upon by City Council at that meeting.

8. Business or reports from the Mayor or other members of Council
9. City Manager's Agenda:
 - (a) items removed from consent agenda
 - (b) unfinished business
 - (c) new business
 - (d) communications/special reports
 - (e) reports/responses to previous public information period
10. Business or reports from the Clerk
11. Business or reports from the City Attorney

Section 2. The order of business shall not be departed from except by the determination of the Mayor, subject to approval of the majority of the members of Council present.

RULE VI. - PROCEDURE

In passing upon any question of procedure, the presiding officer shall be governed by Robert's Rules of Order.

RULE VII. - CHANGES AND SUSPENSIONS OF RULES

No rule shall be suspended or changed except upon the affirmative vote of a majority of all members elected to the Council, except as herein otherwise provided, or as regulated by the City Charter.

Resolution 13-B-01A
Adopted by the City of Petersburg
Council of the City of Petersburg on:
1/7/2013


Clerk of City Council

-----Original Message-----

From: Treska Wilson-Smith <treskaw@aol.com>
To: btelfair <btelfair@petersburg-va.org>
Sent: Fri, Jan 23, 2015 9:42 am
Subject: Re: Linwood Christian and Pamela Penna

Mr. Telfair,

That is not necessary. I will not attend another meeting with the Mayor. A mayor in the city of Petersburg has NO powers. He did not have the power to make such a decision as to whom can speak at a public meeting. You have given your opinion and I have given mine. You think you are right and I think you are not. You took this to the mayor on the night of and he responded to you. The mayor of this city is in title only, it does not give him anymore powers that the rest of council has. Thank you anyway and please, once again, send me the written ordinance, code, ruling or whatever you have on the use of the city seal. Thank you in advance.



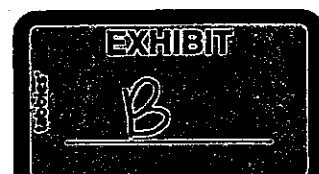
Treska Wilson-Smith
804-720-9520

-----Original Message-----

From: Brian K. Telfair <btelfair@petersburg-va.org>
To: Treska Wilson-Smith <treskaw@aol.com>
Cc: Howard Wayne Myers <whowardmyers@petersburg-va.org>
Sent: Fri, Jan 23, 2015 9:27 am
Subject: RE: Linwood Christian and Pamela Penna

Good morning,

I request a meeting with the Mayor to discuss these issues.



Best,

B.

From: Treska Wilson-Smith [mailto:treskaw@aol.com]
Sent: Friday, January 23, 2015 9:05 AM
To: Brian K. Telfair
Subject: Re: Linwood Christian and Pamela Penna

Good Morning Mr. Telfair,

I find your explanation(s) very sad. No one, not any of us has the authority to stop someone from speaking. We are not above the law. If this was to be a council decision then you should have spoken to all of us and not just those whom I am sure you knew would side with you. It is not up to us to review how much money a citizen owes the city. WE, the council held a public comment period and that was what was on the table, not, the amount of money a person owed.

In the matter of Ms. Penna, she asked her questions in a public meeting, she did not do a FOIA request. It was only AFTER, you copied the information and finally answered her that she was submitted with a bill. To answer questions of a citizen is our job at no charge.

The law is designed to protect its citizens, not to bully or to mistreat them. I am very disappointed in your tactics. We should not be treating our citizens in this manner.

Lastly, would you please send me a copy of the ruling, code, ordinance, or whatever is available about the use of the city seal. Thank you in advance.



Treska Wilson-Smith
804-720-9520

—Original Message—

From: Brian K. Telfair <btelfair@petersburg-va.org>
To: Treska Wilson-Smith <treskaw@aol.com>
Sent: Thu, Jan 22, 2015 11:21 am
Subject: RE: Linwood Christian and Pamela Penna

Good morning,

In relevant part, the City's Resolution Adopting Rules of Council states "All meetings of Council shall be presided over by the Mayor This echoes Section 3-4 of the City Charter which states "The mayor shall preside over the meetings of council"

Pursuant to these powers as Chair (See Rule VI Procedure of the Resolution Adopting Rules of Council), the Mayor determined that Mr. Christian should not be allowed to speak until such time that he has either paid his campaign fines or made arrangements to pay them. Former Mayor Moore, who was standing there when I discussed Mr. Christian with Mayor Myers, agreed with this approach.

I would be remiss if I did not state that my office has repeatedly tried to work with Mr. Christian. In response, he has either ignored our requests or simply stretched the truth. Last Tuesday, he simply walked away while I was in mid-sentence. Mr. Christian owes his fellow citizens \$800.00. The amount might now be higher.

With respect to Ms. Penna, she owes the City \$200.00. The very same rule should apply to her. Despite receiving the information she requested, Ms. Penna has also ignored the City's request for payment, including agreeing to a payment plan. She was sent a bill, because Virginia's FOIA authorizes the City to charge for such requests. See Va. Code Sect. 2.2-3704(F). Under principles of fairness, the requesting party should pay for their requests not the citizens.

Please contact me with any additional questions or comments you may have.

Best,

B

From: Treska Wilson-Smith [<mailto:treskaw@aol.com>]

Sent: Wednesday, January 21, 2015 9:50 AM

To: Brian K. Telfair

Subject:

Good Morning,

As you may have know I would have gotten a call about last night. It is my understanding that you told Mr. Christian he could not speak because he still owed fines and that this decision was made by council. Can you please tell me or direct me to the code, the law, the ruling of such. In addition, what council made this decision?

Last year, Ms. Pamela Penna approached the council with a lot of questions. She was sent a bill for the answers to her request. Can you tell me why this is, did she ever get her questions answered and was she charged for this?



Treska Wilson-Smith
804-720-9520



City of Petersburg

Office of the Mayor
City Hall

Room 210
Petersburg, Virginia 23803

January 23, 2015

The Honorable Council Member Treska Wilson-Smith
816 Cameron Street
Petersburg, VA 23803

Dear Council Member Wilson-Smith,

I am in receipt of e-mails that you have been sending the City Attorney. Unfortunately, I must express my disappointment with the tone and message that you are sending. As a representative of the constituents you serve, the citizens of the First Ward did not elect you to admonish appointees, because of your personal beliefs and opinions. I have read all of the e-mails the City Attorney not only provided you with the factual background of what happened, but also the authority provided in the City Charter and in the Rules of Council for the decision that I made – as Chair of the meeting. Where the Rules of Council elevates the position of Mayor to enforce these established rules, you are governed by them as well, whether you voted with the majority or not. With that being said, the rules were adopted by a majority of Council members as recorded in the Clerk of Council's Office.

Despite the City Attorney's and staff's willingness to assist you, I am disheartened that you feel frustrated, because you are not getting what you want or not getting your way. For the good of the City, I ask that you stop bombarding City staff, employees and appointees with excessive e-mails in an effort to discredit them. Staff provides you with all the responses necessary, however, as a leader you should be prudent and respectful to allow each support staffer the time to carry out the citizens business without you micromanaging.

To conclude, as requested during yesterday's meeting and in my letter to you, please immediately stop using the City logo or letterhead on non-City sponsored events. This includes your private functions.

Sincerely,


W. Howard Myers, Mayor
City of Petersburg



From: Rebecca Glenberg <rglenberg@acluva.org>
Sent: Thursday, February 5, 2015 1:15 PM
To: Brian K. Telfair
Subject: Free Speech at City Council Meetings

Dear Mr. Telfair:

Please see the attached letter. Thank you.

Rebecca K. Glenberg

Legal Director



ACLU of Virginia

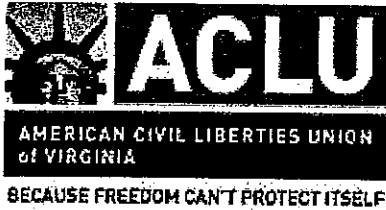
701 E. Franklin St., Ste. 1412

Richmond, VA 23219

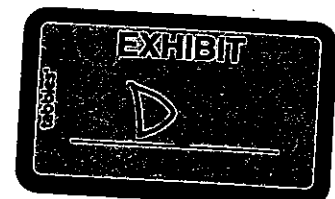
■ o 804.523.2152 ■ rglenberg@acluva.org

■ f 804.649.2733

www.acluva.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.





February 5, 2015

Via Electronic and Regular Mail

Brian K. Telfair
City Attorney
City of Petersburg
135 N. Union St.
Petersburg, VA 23803
btelfair@petersburg-va.org

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
VIRGINIA
701 E. FRANKLIN ST.
SUITE 1412
RICHMOND, VA 23219
T/804.644.8080
WWW.ACLUVA.ORG

Dear Mr. Telfair:

I write on behalf of Linwood Christian, who was prohibited from speaking at the January 20, 2015 Petersburg City Council meeting solely because he owes certain fines to the City. This prohibition violates the First Amendment and must be rescinded immediately.

Mr. Christian signed up to speak during the public information period of the January 20 meeting. According to Mr. Christian, just prior to the public information period, you approached him and asked him to outside with you and an Assistant City Attorney. You told him that City Council had determined that because of his outstanding fine, he would not be permitted to speak during the public information period. You then returned to the meeting room and spoke to Mayor W. Howard Myers, after which the Clerk removed Mr. Christian's name from the sign-up sheet.

In an e-mail to a City Council member dated January 22, 2015, you acknowledged that Mr. Christian was not allowed to speak at the meeting because of his debt to the City. In the e-mail, you stated that "[p]ursuant to [his] powers as Chair . . . , the Mayor determined that Mr. Christian should not be allowed to speak until such time that he has either paid his campaign fines or made arrangements to pay them. Former Mayor Moore, who was standing there when I discussed Mr. Christian with Mayor Myers, agreed with this approach."

In a subsequent letter to the same City Council member, Mayor Myers expressed "disappointment" that the Council member had "admonished" you after you had "not only provided [her] with the factual background of what happened, but also the authority provided in the City Charter and in the Rules of Council for the decision that I made - as Chair of the meeting." The letter further asked the Council member to "stop bombarding the City staff, employees and appointees with excessive e-mails in an effort to discredit them."

The First Amendment to the United States Constitution does not permit the City to prohibit a resident from speaking at a public meeting because he owes fines to the City. This is true regardless of whether the decision was made by you, by City

Council, or by the Mayor. Nor does any provision of the City Charter or the Rules of Council authorize the City or its officials to violate the First Amendment.

The public comment portion of a City Council meeting is a limited public forum. *Steinburg v. Chesterfield Cnty. Planning Comm'n*, 527 F.3d 377, 385 (4th Cir. 2008). Accordingly, "[s]peech at public meetings called by government officials for discussion of matters of public concern is entitled to normal first amendment protections against general restrictions or *ad hoc* parliamentary rulings by presiding officials." *Id.* (citing *Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175-76 (1976)) (emphasis added).

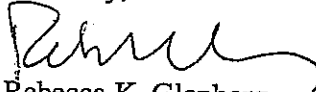
Moreover, "any restriction [on speech] must be reasonable in light of the purpose served by the forum." *Steinburg*, 527 F.3d at 385. The purpose of a public comment period at a government meeting is, presumably, to allow residents to contribute their views on the running of their government, and to allow government officials to benefit from those views. Thus, courts have upheld restrictions that prohibit discussion of matters not before the Council, personal attacks, and disruption of the meeting, because such conduct is not conducive to an orderly exchange of views between the government and its people.

Barring a speaker because he owes money to the City, however, is not reasonably related to any purpose of the forum. Mr. Christian is just as entitled to speak his mind at a public meeting as any other Petersburg resident, and the City may not use his First Amendment rights as leverage to extract payment of fines. Discrimination against a speaker because of his status is not reasonable. *Cf. Madison Joint Sch. Dist.*, 527 F.3d at 176 (First Amendment does not permit board of education "to discriminate between speakers on the basis of their employment").

I therefore request written assurances that Mr. Christian will be permitted to speak at all future City Council meetings, and that he will not be barred from speaking or otherwise have his freedom of speech diminished based on any financial debt to the City. Mr. Christian further requests a public apology for the actions of City officials in this matter.

Please respond to this request by February 12, 2015. Should you wish to discuss this matter further, please do not hesitate to contact me at (804) 523-2152 or rglenberg@acluva.org.

Sincerely,



Rebecca K. Glenberg
Legal Director

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
VIRGINIA
701 E. FRANKLIN ST.
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WWW.ACLUVA.ORG

From: Brian K. Telfair [btelfair@petersburg-va.org]
Sent: Thursday, February 05, 2015 6:50 PM
To: Rebecca Glenberg
Subject: Re: Free Speech at City Council Meetings
Attachments: Yates_v_Norwood.pdf

Good evening,

In our telephone conversation on February 5, 2015, I made it very clear that I would not discuss privileged information with you.

In our telephone conversation, you stated that an e-mail response stating that Mr. Christian could speak was sufficient. I did that. I will not provide anything further and suggest you contact your client about his ability to speak at future meetings. I don't speak with parties represented by counsel for obvious reasons. I do, however, take the time out to learn as many facts as I can before drafting demand letters. You clearly did not do so in the present circumstance. Rather, as indicated in my previous e-mail, you made erroneous conclusions based on a very limited set of facts. Again, you should have picked up the phone, but failed to do so.

With respect to your request that the City provide you with a "blanket" assurance, I will not do so as you should be aware that the pendulum swings both ways. The City can, and will, place content neutral time, place and manner restrictions on speech on a case-by-case basis. If memory serves me correct, Judge Hudson repeatedly advised you that the First Amendment is not an unfettered right, but one that faces varying levels of scrutiny. Again, Judge Hudson agreed with me in Yates. I attach the opinion again as you apparently don't remember what happened at oral argument.

To conclude, a public apology is not forthcoming as there was no mistreatment. Indeed, Mr. Christian is the one who should be apologizing to the citizens of the Petersburg, Virginia as he has yet to pay his election fines despite unsuccessfully running for office in November.

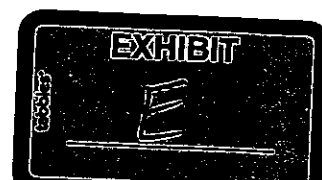
Before I forget, I request a Rule 11 Conference with Claire and you if you decide to file suit on a case where there's no prohibition and no actual case.

Best,

B

Brian K. Telfair, Esq.
City Attorney
Petersburg City Hall
135 N. Union Street
Petersburg, Virginia 23803
P: 804-733-2305
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BTelfair@Petersburg-VA.org



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From: Rebecca Glenberg <rglenberg@acluva.org>
Sent: Thursday, February 5, 2015 5:39 PM
To: Brian K. Telfair
Subject: RE: Free Speech at City Council Meetings

Dear Mr. Telfair:

I appreciate your prompt reply. Your e-mail is not responsive to my letter, however.

Because of your written representation to Councilwoman Wilson-Smith that "the Mayor determined that Mr. Christian should not be allowed to speak until such time that he has either paid his campaign fines or made arrangements to pay them," it is important that Mr. Christian receive written assurance from you or the Mayor that he will be allowed to speak at any Council meeting in the future. It is also important that we receive written assurance that others who come before the Council will not ever again be denied the right to speak on this basis. Your "suggestion to Mr. Christian that he attempt to speak the next Council meeting" as a way of testing whether the policy has changed is simply inadequate under the circumstances.

Accordingly, as requested in my letter, please provide written assurances that Mr. Christian will be permitted to speak at all future City Council meetings, and that neither he nor any other person will be barred from speaking or otherwise have their freedom of speech diminished based on any financial debt to the City. Additionally, please advise whether a public apology for Mr. Christian's treatment, as requested in the letter, will be forthcoming.

Thank you again for your prompt initial reply to my letter.

Sincerely,

Rebecca K. Glenberg

Legal Director

ACLU of Virginia

701 E. Franklin St., Ste. 1412

Richmond, VA 23219

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BECAUSE FREEDOM CAN'T PROTECT ITSELF

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

From: Brian K. Telfair [<mailto:btelfair@petersburg-va.org>]
Sent: Thursday, February 05, 2015 2:35 PM
To: Rebecca Glenberg

Cc: Treska Wilson-Smith

Subject: Re: Free Speech at City Council Meetings

Good afternoon Attorney Glenberg,

As discussed, the City filed a Warrant-In-Debt (see attached) to collect Mr. Christian's unpaid election fines. The filing and serving of the Warrant-in-Debt satisfies the City's needs for protection.

As advised, Mr. Christian entered into a payment plan with the City and then stopped paying. He also ignored the City's requests for payment.

I now turn to the main issue raised in your letter. Mr. Christian would have been permitted to speak at last Tuesday's council meeting if he had tried to do so. Indeed, he appeared to sign up, but left before doing so. I would have advised him or Councilwoman Wilson-Smith about this if either had bothered to ask.

With respect to the contentions contained in your letter regarding the purported violation of First Amendment rights, I would be remiss if I did not remind you that we previously disagreed about the scope and manner of these rights (see attached) - and - that the Court agreed with me. I look forward to perhaps arguing this issue with you in the future.

To conclude, I suggest calling next time to ascertain all of the facts before leaping to conclusions. Clearly, a phone call or a suggestion to Mr. Christian that he attempt to speak the next Council meeting would have alleviated the need for your letter as the issues raised them are moot.

Best,

B

Brian K. Telfair, Esq.
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WARRANT IN DEBT (CIVIL CLAIM FOR MONEY)
Commonwealth of Virginia VA. CODE § 16.1-79

PETERSBURG
CITY OR COUNTY
General District Court

Mailing: 35 E. Tabb St., Petersburg, VA 23803, Courtroom: 144 N. Sycamore St.
STREET ADDRESS OF COURT
(804) 733-2374

TO ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).

TO THE DEFENDANT(S): You are summoned to appear before this Court at the above address on
Feb. 19, 2015 @ 11:30 AM
RETURN DATE AND TIME to answer the Plaintiff(s)' civil claim (see below)

DATE ISSUED

CLERK DEPUTY CLERK MAGISTRATE

CLAIM: Plaintiff(s) claim that Defendant(s) owe Plaintiff(s) a debt in the sum of

\$ 1,000.00 net of any credits, with interest at 11.11 % from date of 11/2/14 until paid,
\$ costs and \$ attorney's fees with the basis of this claim being

Open Account Contract Note Other (EXPLAIN)

Bill, this court, 10/1/14

HOMESTEAD EXEMPTION WAIVED? YES NO cannot be demanded

CASE DISPOSITION

PLAINTIFF PLAINTIFF/SALTOBNEY PLAINTIFF'S EMPLOYER/AGENT

JUDGMENT against named Defendant(s)

for \$ net of any credits, with interest at % from date

of until paid, \$ costs and \$ attorney's fees
HOMESTEAD EXEMPTION WAIVED? YES NO CANNOT BE DEMANDED

JUDGMENT FOR NAMED DEFENDANT(S)

NON-SUIT DISMISSED

Defendant(s) Present? YES NO
DATE JUDGE

CASE NO.

135-1000000-0001
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)
135-1000000-0001
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

135-1000000-0001
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)
135-1000000-0001
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

135-1000000-0001
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)
135-1000000-0001
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

135-1000000-0001
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)
135-1000000-0001
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

WARRANT IN DEBT

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.

To dispute this claim, you must appear on the return date to try this case.
To dispute this claim, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars ORDERED DUE

Grounds of Defense ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)
Danielle M. Priddy

ATTORNEY FOR DEFENDANT(S)
135-1000000-0001

HEARING DATE AND TIME
2/19/15

11:30am

JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION.
DATE

CLERK

DISABILITY ACCOMMODATIONS for loss of hearing, vision, mobility, etc., contact the court ahead of time.

RETURNS: Each defendant was served according to law, as indicated below, unless not found.

NAME
 ADDRESS

PERSONAL SERVICE Tel. No.
 Being unable to make personal service, a copy was delivered in the following manner:

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purpose. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

Served on Secretary of the Commonwealth.

NOT FOUND

SERVING OFFICER _____
 DATE for _____

NAME
 ADDRESS

PERSONAL SERVICE Tel. No.
 Being unable to make personal service, a copy was delivered in the following manner:

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purpose. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

Served on Secretary of the Commonwealth.

NOT FOUND

SERVING OFFICER _____
 DATE for _____

NAME
 ADDRESS

PERSONAL SERVICE Tel. No.
 Being unable to make personal service, a copy was delivered in the following manner:

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purpose. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

Served on Secretary of the Commonwealth.

NOT FOUND

SERVING OFFICER _____
 DATE for _____

OBJECTION TO VENUE:
 To the Defendant(s): If you believe that Plaintiff(s) should have filed this suit in a different city or county, you may file a written request to have the case moved for trial to the general district court of that city or county. To do so, you must do the following:

1. Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the right corner, (c) Plaintiff(s) name(s) and Defendant(s) name(s), (d) the phrase "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.
2. File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to plaintiff.
3. If you mail this request to the court, you will be notified of the judge's decision.

I certify that I mailed a copy of this document to the defendants named therein at the address shown therein on

DATE

Plaintiff
 Plaintiff's Adv.
 Plaintiff's Agent

Fi. Fa. issued on

Interrogatories issued on:

Garnishment issued on: