

Amy Harvey

From: Jeanette Coffin
Sent: Wednesday, October 05, 2022 12:41 PM
To: ELIZABETH MT ONAN
Cc: Adam Searing; Amy Ryan; Camille Berry; Jeanne Brown; Jess Anderson; Karen Stegman; Michael Parker; Pam Hemminger; Paris Miller-Foushee; Tai Huynh; Amy Harvey; Ann Anderson; Carolyn Worsley; James Baker; Laura Selmer; Loryn Clark; Mary Jane Nirdlinger; Maurice Jones; Ran Northam; Ross Tompkins; Sabrina Oliver
Subject: RE: Censored public information

Thank you for your correspondence with the Town of Chapel Hill. The Mayor and Town Council are interested in what you have to say. By way of this email, I am forwarding your message to the Mayor and each of the Council Members, as well as to the appropriate staff person who may be able to assist in providing additional information or otherwise addressing your concerns.

Again, thank you for your message.

Sincerely,

Jeanette Coffin



Jeanette Coffin
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From: ELIZABETH MT ONAN <emsonan@icloud.com>
Sent: Tuesday, October 4, 2022 10:19 PM
To: Town Council <mayorandcouncil@townofchapelhill.org>
Subject: Censored public information

External email: Don't click links or attachments from unknown senders. To check or report forward to reportspam@townofchapelhill.org

Town of Chapel Hill

405 Martin Luther King Blvd.

Chapel Hill, NC 27514

mayorandcouncil@townofchapelhill.org

Dear Mayor Hemminger:

Chapel Hill Organization for Clean Energy (CHOCE) is concerned by the Town of Chapel Hill's reliance on unconstitutional ordinances to make an assault on protected speech by removing CHOCE's signs, banners, and Bus ads. Signs and bus ads such as those sponsored by CHOCE are more needed and important than ever in keeping the public aware of the risks inherent in the land disposal and reckless handling of coal ash residue and coal plants.

Town of Chapel Hill Land Use Management Ordinance Section 5.14, to which the Code Enforcement officer has referred, as it now exists is not in compliance with US Supreme Court authority on this subject: see *Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218 (2015). *Gilbert* holds that if a sign code "identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions . . . these provisions are content-based regulations of speech . . ." This is exactly what Ordinance 5.14 does, and on its face it offends against the First Amendment. No specific provision of the ordinance as to placement was referenced in the Code Officer's letter to CHOCE. Rather, the Code Officer relied for his decision on the ordinance in its entirety.

The Code does not begin to comply with current First Amendment doctrine regarding signage. In your Code, different categories of signs are exempted from certain requirements. This is forbidden by the holding in *Gilbert*. For example, flags and government insignia are treated more favorably than residential property management signs, signs directing and guiding traffic, construction site identification signs, temporary political signs, and public event announcements by public or nonprofit organizations of activities of interest to the general public. All of these signs are treated less favorably than flag and government insignia signage.

Temporary political signage is defined in the Code on the basis of whether it advertises candidates or publicizes "election issues." This means that the Town's Sign Code is content based on its face. The First Amendment prohibits the passage of such laws 'abridging the freedom of speech.' US Constitution, Amendment 1.

"This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley*, 573 U.S. ___, ___ - ___, 134 S.Ct. 2518, 2529, 189 L.Ed.2d 502 (2014) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. St. Paul*, 505 U.S. 377, 386, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992)." Justice Breyer, concurring in the judgment. See *Gilbert*, at 2237.

CHOCE posted its signs because it desires that "truth will ultimately prevail." The Town has no right to regulate such speech based on any hostility toward the message expressed. *Gilbert* requires the Town's adherence to this First Amendment standard of review.

Unfortunately, the Chapel Hill Transit Partners Committee is also founding its decision to "park" CHOCE's bus signs (or take CHOCE's signs off its buses) on the basis of the signs' CONTENT, and in so doing to suppress protected speech. Houck Account Executive, Kris Klein ". . . received word from Chapel Hill Transit that the attached ad CONTENT conflicts with section 1.02 of policies and standards for advertising on Chapel Hill Transit facilities . . ." (Emphasis supplied.) Section 1.02 excludes advertising as defined in Section 2.01 on the basis of CONTENT: Under ©, the Transit Authority is checking for CONTENT that "threaten[s] or adversely affect[s] . . . the public image of Chapel Hill transit . . . or CH Transit's ability to attract and maintain the patronage of passengers." This is a blatant display of hostility toward the specific CONTENT of constitutionally protected speech. It is impossible to make such a "policy" decision to remove the signs from the buses without reference to the signs' content. Content-based suppression of speech is prohibited by our US Constitution. See First Amendment.

CHOCE would like to petition the Council to review the ordinance (5.14) and the policy and standards of the Chapel Hill Transit Authority, and in so doing to ascertain that both do actually fully comply with federal First Amendment rights. CHOCE believes the Town and its Transit Authority are guilty of free speech violations and are attempting to suppress CHOCE's message of environmental stewardship and responsibility. This is not what the citizens of Chapel Hill expect from the officials in charge of the operation and care of our health and environment.

Sincerely,

Elizabeth O’Nan

Pronouns: she/her

Chair

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