

May 14, 2007

Brian Rice  
Rice, Michels & Walther, LLP.  
10 Second Street NE, Suite 206  
Minneapolis, Minnesota 55413

VIA FACSIMILE and U.S. Mail

RE: Public Comment at MPRB Meetings

Dear Mr. Rice,

The ACLU-MN was recently informed that a Minneapolis resident, Arlene Fried, was ordered to stop speaking during her allotted time during the public comment period of the May 2, 2007 Minneapolis Parks and Recreation Board meeting. Ms. Fried reports that she was cut off halfway through her statement and was subjected to derision for the content of her speech. I have viewed the video of the meeting and it appears that she was told to stop speaking shortly after she criticized the MPRB for not adhering to the Minnesota Data Practices Act. Another Board member then argued that their actions were justified because Ms. Fried's statement violated the Board's rule against public comment on personnel matters. While we are not yet formally representing Ms. Fried, I am writing to advise you of our concerns about free speech rights at meetings and to request that you take steps to remedy this situation as soon as possible.

It is well settled law that once a government body creates a limited public forum such as the public comment period during MPRB meetings, regulations of speech in that forum must be content neutral time, place and manner restrictions that are narrowly tailored to serve a significant government interest. *See e.g. City of Madison Joint School District v. Wisconsin Public Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976). Courts have generally recognized that public bodies may make those rules necessary to preserve order during public meetings; thus, rules limiting the amount of time that an individual speaks, restricting individuals to matters within the jurisdiction of the public body, and some courts have upheld rules prohibiting obscenities and vulgarities, and rules prohibiting actual disruptions at meetings. Generally, courts have taken a dim view of restrictions that are intended to shield the government

body from public criticism because they are not only content-based restrictions, but they are also even more questionable viewpoint-based restrictions on purely political speech.

We believe that the speech at issue here was clearly protected and should not have been censored simply because Ms. Fried was criticizing the work of government officials. The stated basis for censoring Ms. Fried was that she was making personal attacks. While courts differ as to whether a restriction on “personal attacks” is a permissible restriction in a limited public forum, those courts that have upheld such a restriction have defined personal attacks narrowly to include attacks against individuals in their personal capacity rather than criticisms of the way in which government officials are carrying out their official duties. Scroggins v. City of Topeka Kansas, 2 F.Supp. 2d 1362 (D. Kan. 1998); . The criticism raised by Ms. Fried simply does not rise to the level of a personal attack. It is our understanding that Ms. Fried has experienced difficulty getting a response for some of her pending requests under the Data Practices Act; therefore, her accusations are not simply something that she made up out of the blue.

While it was not the primary basis for censoring Ms. Fried, the MPRB rule prohibiting speakers from discussing personnel is also troubling because it effectively silences citizen criticism of government officials and the job that they are doing.

We respectfully request that you remedy this situation by allowing Ms. Fried to present her statement at the May 16<sup>th</sup> Board meeting. In addition, we request that you review the current rules governing public comment at meetings and revise them to ensure that they comply with the requirements of the First Amendment and that this situation does not arise again.

Thank you for your attention to this matter. I look forward to your response.

Sincerely,

Teresa Nelson  
Legal Counsel