



August 14, 2024

Board Members
Metamora Township
730 West Dryden Road
Metamora, Michigan 48455

*Sent via U.S. Mail and Electronic Mail (supervisor@metamoratownship.com;
clerk@metamoratownship.com; depclerk@metamoratownship.com;
treasurer@metamoratownship.com)*

Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, is concerned by Metamora Township's Public Time Policy restricting public comment at town meetings. The First Amendment bars Metamora from adopting and selectively enforcing vague, overbroad, or viewpoint-discriminatory rules that infringe its citizens' right to speak freely and criticize government officials. For that and the reasons that follow, FIRE calls on Metamora to amend the policy to comply with the First Amendment and to ensure uniform enforcement.

Our concerns arise out of the Board's March 11 approval of a new Public Time Policy governing permissible conduct during public comment periods of Town Board meetings. The policy states in relevant part:

4. Each speaker is limited to three (3) minutes of public time per the agenda, unless the Supervisor/Chairman, in his or her discretion under the circumstances, decides more time is necessary, and specifies an amount of additional time A speaker who exceeds the allotted time, after being informed, shall be deemed to be out of order, and if the Supervisor/Chairman informs such person that he/she is out of order but fails to cease, such person shall be deemed to be causing a breach of the peace, and may be removed from the meeting.

...

9. Speakers . . . may describe an action taken by a Township official; however, Speakers will not engage in name-calling, or make any other personal statement, or make any slanderous or profane statement about any person. This includes a prohibition on verbally attacking the Supervisor/Chairman,

Members of the Board or members of the public attending the meeting. Any such behavior will not be tolerated and any person presenting in this manner will be warned by the Supervisor/Chairman, and if the action continues, such person shall be deemed to be causing a breach of the peace, and may be removed from the meeting.¹

Because these provisions of the Public Time Policy include viewpoint-discriminatory, overbroad, and/or vague restrictions on speech, they violate the First Amendment rights of Metamora Township's citizens to speak during public comment periods at town meetings.²

I. The Public Time Policy Permits Discrimination on the Basis of Viewpoint

As the public comment period of a town meeting is at minimum a limited public forum, a town may restrict constituents' speech only if the restrictions are viewpoint-neutral *and* reasonable in light of the forum's purpose.³ The town may, for example, limit the time reserved for each comment. But in no case may officials prohibit speech based on its viewpoint, including speech that criticizes government officials. "Viewpoint discrimination is censorship in its purest form," and government action "that discriminates among viewpoints threatens the continued vitality of free speech."⁴

The Public Time Policy's prohibitions on "name-calling," making any "personal statement" or "profane statement about any person," and "verbally attacking the Supervisor/Chairman, Members of the Board or members of the public" are viewpoint discriminatory because they bar negative statements while (presumably) allowing praise and other positive sentiments.⁵ As the Supreme Court has made clear, even a speech restriction that "evenhandedly prohibits disparagement of all groups" is viewpoint discriminatory, because determining whether speech is disparaging requires the government to consider the viewpoint expressed.⁶

The First Amendment makes no exception for speech that others subjectively find offensive or objectionable.⁷ That core principle applies with special force to critical speech directed at the

¹ *Metamora Township Board Meeting Minutes, March 11th 2024*, METAMORA TWP., <https://metamoratwpmi.documents-on-demand.com/?l=9f70f2fda1f9e911a2d5000c29a59557&r=50FD58FB03AC6CC373E31801218734E4&d=7aec284131f8ee11a3f9000c29a59557> (policy enclosed).

² See, e.g., *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rel. Comm'n*, 429 U.S. 167, 174–76 (1976) (recognizing the public's right to speak at school board meetings "when the board sits in public meetings to conduct public business and hear the views of citizens").

³ See, e.g., *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁴ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 248 (6th Cir. 2015) (*en banc*) (cleaned up).

⁵ See *Marshall v. Amuso*, 571 F. Supp. 3d 412, 422 (E.D. Pa. 2021) (unlawful viewpoint discrimination is present when "those who express support for a decision by singling out a School Board member are welcome, but those who criticize a decision are cut off").

⁶ *Matal v. Tam*, 582 U.S. 218, 243 (2017).

⁷ See, e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); See also *Matal v. Tam*, 582 U.S. at 243 ("Giving offense is a viewpoint."); *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (determinations of whether something is "immoral"

government, given our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”⁸ The “First Amendment right to criticize public officials is well-established . . . by ample case law.”⁹

In *Ison v. Madison Local School District Board of Education*, the U.S. Court of Appeals for the Sixth Circuit—whose decisions bind Metamora Township—invalidated as unconstitutional a school board decorum policy similar to your new policy.¹⁰ The case involved “restrictions on ‘abusive,’ ‘personally directed,’ and ‘antagonist[ic]’ statements,” and the school board’s use of them to cut off a community member’s statements at a public board meeting.¹¹ The court noted the antagonistic restriction “by definition, prohibits speech opposing the Board”; that the limit on “abusive” speech “prohibits ‘insulting’ language”; and that the board construed “personally directed” speech to mean “simply abusive speech directed at one person.”¹² As such, the restrictions imposed “impermissible viewpoint discrimination” in prohibiting speech “purely because it disparages or offends.”¹³

As in *Ison*, Metamora Township’s bans on name-calling, personal statements, profane statements about any person, and verbal attacks are unconstitutional because they selectively target critical speech based on viewpoint. Such regulations are incompatible with the “free flow of ideas and opinions on matters of public interest and concern” that lies at “the heart of the First Amendment.”¹⁴

The policy’s provision giving the Board complete discretion over whether to extend a speaker’s time presents further constitutional concerns because it “allows arbitrary application” with “the potential for becoming a means of suppressing a particular point of view” in violation of the First Amendment.¹⁵ Under the policy, speakers praising the Board could be permitted more time while critical speakers remain subject to the time limit. The Board must either remove this discretionary exception or specify “objective, workable standards” for how it will make these determinations irrespective of an individual speaker’s viewpoint.¹⁶ The Board should

or “scandalous” is viewpoint-based as it “distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation.”).

⁸ *N. Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); see also *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

⁹ *Barrett v. Harrington*, 130 F.3d 246, 264 (6th Cir. 1997).

¹⁰ 3 F.4th 887 (6th Cir. 2021).

¹¹ *Id.* at 893.

¹² *Id.* at 894.

¹³ *Id.*

¹⁴ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

¹⁵ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

¹⁶ See *Minn. Voters All. V. Mansky*, 585 U.S. 1, 4 (2018).

also ensure evenhanded enforcement of its rules by, for example, using a publicly viewable timer that counts down each speaker’s comment time.

II. The Public Time Policy Is Unconstitutionally Overbroad

The policy’s bans on name-calling, verbal attacks, profane statements, and other personal statements are also unconstitutionally overbroad in reaching a vast amount of non-disruptive, critical speech. A regulation is overbroad if it “prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to [its] plainly legitimate sweep.”¹⁷ While *some* speech the policy proscribes could conceivably fall into one of the few narrowly defined categories of expression that receive no First Amendment protection—such as true threats¹⁸—the vast majority of speech these provisions bar *is* protected.

The policy’s flat ban would not even permit, for example, a speaker to quote relevant “profane” statements mentioned in a news report or uttered by a government official. The policy’s sweeping reach cannot be squared with longstanding First Amendment precedent. In its landmark *Cohen v. California* decision, issued more than a half-century ago, the Supreme Court cleared a man convicted of disturbing the peace for wearing a jacket emblazoned with “Fuck the Draft” in a public courthouse,¹⁹ holding that “so long as the means are peaceful, the communication need not meet standards of acceptability.”²⁰ The Court also cautioned “governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views.”²¹ And protection for profane speech clearly extends to public meetings.²²

III. The Public Time Policy Is Unconstitutionally Vague

The policy’s provisions are also unconstitutional for the additional and independent reason that they are unconstitutionally vague. Specifically, they fail to provide persons of ordinary intelligence reasonable notice what speech is prohibited, and they afford township officials wide discretion to decide what speech is allowed by failing to “provide explicit standards for those who apply them” and to prevent “arbitrary and discriminatory enforcement.”²³ The policy lacks specificity as to what constitutes “name-calling,” “any other personal statement,”

¹⁷ *United States v. Williams*, 553 U.S. 285, 292 (2008). The overbreadth doctrine “is predicated on the danger that an overly broad statute, if left in place, may cause persons whose expression is constitutionally protected to refrain from exercising their rights for fear” of violating the law. *Massachusetts v. Oakes*, 491 U.S. 576, 581 (1989).

¹⁸ See *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (holding that content-based restrictions on speech are generally invalid except in rare circumstances such as true threats).

¹⁹ 403 U.S. 15 (1971).

²⁰ *Id.* at 25.

²¹ *Id.* at 26.

²² *Mama Bears of Forsyth County v. McCall*, 642 F.Supp. 3d 1338, 1356 (N.D. Ga. 2022) (enjoining school board policy that prohibited “profane statements” by public commenters, holding that, “Had the Board qualified the language to restrict profane remarks or profanity that was actually disruptive of the Board’s business, that might have been a different story.”).

²³ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

or a “profane” statement, and it is unclear when comments directed to a town official might cross the line from merely critical to “verbally attacking.” Would the Board, for example, construe the use of “incompetent” as “name-calling” or a “verbal attack?” Such determinations are unavoidably subjective exercises that impermissibly turn on the idiosyncratic biases of Board members.

Further, the inability of speakers to readily access the new Public Time Policy before commenting compounds the issue of inadequate notice. The policy is not posted on the town website, the Board appears to have broken from prior practice by no longer verbally reciting the policy’s terms at meetings, and FIRE is informed the old policy remains taped to the lectern.²⁴ Providing a policy only moments before a speaker begins their comments can chill speech by interposing delay, forcing speakers to rephrase on the fly, or pressuring them to abandon speaking entirely. Rules that fail to provide those subject to them sufficient notice may also serve as *post hoc* censorship justifications.

The Board can eliminate the Public Time Policy’s vagueness by instead prohibiting specific behaviors (such as true threats or speaking out of turn) that may disrupt meetings. The Board should also, after amending the policy, post it online and recite it at the start of meetings.

IV. Conclusion

While the Board may proscribe conduct that disrupts meetings or qualifies as a “true threat,”²⁵ it cannot ban speech based on viewpoint or enforce overbroad or vague rules. It is all too easy to envision the Board enforcing the current rules to suppress criticism of its members and other town officials while giving the public free rein to praise the town and its leaders. That is exactly what happened in a lawsuit FIRE brought against Eastpointe, Michigan, whose mayor shut down critical comments repeatedly at city council meetings but had no issue with constituents praising her. The mayor’s disregard of constitutional standards compelled the city to enter a consent decree that, among other concessions, prohibits it from enforcing a limitation on public comments “directed at” elected officials, requires it to allow members of the public to criticize elected officials, and has resulted in an apology to its citizens whose rights the mayor violated.²⁶

²⁴ Even if the new policy were taped to the lectern, that alone would give speakers little to no *advance* notice of the rules.

²⁵ “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 143 S. Ct. 2106, 2110 (2023), citing *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats include intimidation, defined as speech that “directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. True threats do not include speech which amounts to a joke or rhetorical hyperbole. *See, e.g., Watts v. United States*, 394 U.S. 705, 708 (1969) (man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

²⁶ *See VICTORY: Michigan town declares Sept. 6 ‘First Amendment Day’ after FIRE sues its mayor for shouting down residents*, FIRE (Apr. 17, 2024), <https://www.thefire.org/news/victory-michigan-town-declares-sept-6-first-amendment-day-after-fire-sues-its-mayor-shouting-0>.

FIRE accordingly calls on Metamora Township to amend its Public Time Policy to eliminate its unconstitutional defects. We recently worked with Bay City, Michigan, to amend a similar policy to remove bans on public comments that are “derogatory,” “vulgar,” or “demeaning” to city officials or employees, while still serving the city’s legitimate interest in preventing disruption.²⁷ We would be pleased to work with Metamora Township to ensure its laws and regulations likewise comply with the First Amendment.

We respectfully request a substantive response to this letter no later than August 28, 2024.

Sincerely,



Stephanie Jablonsky, Esq.
Senior Program Officer, Public Advocacy

Cc: Dave Best, Supervisor
Sue Clark, Clerk
Scott Bencoter, Treasurer
Traci Chouinard, Trustee
Ann Derderian, Trustee

Encl.

²⁷ See *VICTORY: Michigan city recognizes First Amendment right to ‘demean’ government officials* (Jan. 17, 2024), <https://www.thefire.org/news/victory-michigan-city-recognizes-first-amendment-right-demean-government-officials>.

**Metamora Township
Public Time Policy**

At regular and special meetings of the Township Board, individuals wishing to be heard may address the Supervisor/Chairman during the public comment/public hearing periods as set forth in the agenda under the following rules:

1. Each speaker shall state their name and address.
2. Each speaker must speak from the podium.
3. Speakers shall address the board through the Supervisor and/or Chairman.
4. Each speaker is limited to three (3) minutes of public time per the agenda, unless the Supervisor/Chairman, in his or her discretion under the circumstances, decides more time is necessary, and specifies an amount of additional time. Speakers are encouraged to be concise and refrain from repeating comments already addressed by the Board members. A speaker who exceeds the allotted time, after being informed, shall be deemed to be out of order, and if the Supervisor/Chairman informs such person that he/she is out of order but fails to cease, such person shall be deemed to be causing a breach of the peace, and may be removed from the meeting.
5. Prior to a speaker handing out presentation materials to the Board, he or she must ask the Supervisor/Chairman for guidance on how the Supervisor/Chairman wishes the materials to be disbursed to its members.
6. Board members shall not comment during public time unless authorized by the Supervisor/Chairman. Furthermore, Board members shall not decide issues that arise during public time. If it is determined that a matter raised at public comment, the Supervisor/Chairman shall direct that such matter be scheduled as an agenda item at the same or future meeting.
7. No speaking time allotment may be shared with or given to another person.
8. A person who talks out of turn when not recognized during public comment or during the public meeting will be deemed out of order. if

such person continues to talk after being requested to cease, he/she shall be deemed to be causing a breach of the peace and may be removed from the meeting.

9. Speakers may address facts and issues relevant and germane to the Township, and may describe an action taken by a Township official; however, Speakers will not engage in name-calling, or make any other personal statement, or make any slanderous or profane statement about any person. This includes a prohibition on verbally attacking the Supervisor/Chairman, Members of the Board or members of the public attending the meeting. Any such behavior will not be tolerated and any person presenting in this manner will be warned by the Supervisor/Chairman, and if the action continues, such person shall be deemed to be causing a breach of the peace, and may be removed from the meeting.
10. A person shall have the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the Board during a public meeting. The exercise of this right does not depend on the prior approval of the Board. However, in order to minimize the possibility of disrupting the meeting, the person or persons who desire to exercise this right shall notify the Supervisor/Chairman prior to the commencement of the meeting, who shall specify a reasonable location in the meeting room for the equipment and associated activities to be utilized in order to avoid reducing the rights of others to attend and participate in the meeting in a reasonable manner. In addition, the use of such equipment shall not result in sounds, lights, and related impacts that would disrupt the meeting.

If any member of the public desires to meet with any Board Member following the meeting, please do not hesitate to make your wishes known. If an immediate meeting is not feasible, an attempt shall be made to schedule a meeting without delay. Furthermore, all speakers are encouraged to reach out to the board members during office hours if issues are urgent and need to be resolved prior to each scheduled monthly meeting.