ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Southern California

FAC
FIRST AMENDMENT COALITION

August 21, 2023

Joseph Komrosky, Temecula Valley Unified School District Board President
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Temecula Valley Unified School District
3350 Rancho Vista Road
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RE: Temecula Valley Unified School District Brown Act and First Amendment Violations

Dear Mr. Komrosky and Members of the Temecula Valley Unified School District Board:

With the First Amendment Coalition, I write on behalf of Julie Geary to notify the Board of Directors of the Temecula Valley School District of a series of violations of the Brown Act and of constituents' First Amendment and California constitutional rights over the past several months, and to seek the Board's commitment to preventing similar violations going forward. The Board President has regularly violated the Brown Act, Government Code §§ 54950 et seq., and federal and state constitutional protections for free speech by expelling members of the public from school board meetings without adequate warning, and when they are not engaged in actual disruptive conduct. President Komrosky has implemented a penalty card process that ensures systemic repetition of Brown Act violations, and the Board has recently enacted a resolution containing unconstitutionally vague and overbroad terms that will only compound the troubling and ongoing pattern of violating the public's rights to free speech and access to government.

Factual Background and Legal Analysis

Julie Geary has been a Temecula valley resident for more than twenty-five years. She and her husband bought a home in the area because of the high quality of the public schools. As a

teacher, she cares deeply about the right to a free and fair public education, and about fundamental constitutional rights and civil liberties. As someone who is devoted to ensuring that children in her community receive a meaningful education, and who values community engagement in government affairs, she has been outraged and dismayed as she has watched the Board President unlawfully expel numerous people from multiple Board meetings. The President has also expelled Ms. Geary from two Board meetings, without her ever behaving in a manner that could plausibly be considered disruptive under any reasonable definition of the term. Ms. Geary has been particularly concerned about the President's consistent failure to honor the public's right to speak and petition the government because the Board has recently enacted a series of measures that impede students' right to access books, curricula, and materials that reflect the full diversity of our state, including the history of racial discrimination in the U.S., and experiences of LGBTQ+ people. She believes the Board's willingness to enact such troubling policies makes it even more important that members of the public are able to exercise their most basic democratic rights to engage with their elected officials.

Mr. Komrosky and the Board have violated the Brown Act or First Amendment in several ways. Mr. Komrosky has regularly expelled individuals from Board meetings when they were not engaged in disruptive conduct. He has ordered the wholesale removal a large number of people without adequate justification and regularly and systematically violated the Brown Act's warning requirements. Finally, the Board has adopted "disruptive conduct" regulations that in large part are unlawful on their face and set the stage for future Brown Act and First Amendment violations.

1. *Mr. Komrosky Has Implemented an Unconstitutionally Vague and Overbroad "Penalty Card" System that Bypasses and Waters Down the Brown Act's Disruptive Conduct Warning Requirement and Violates the First Amendment.*

The Brown Act allows the presiding member of a legislative body or their designee to remove an individual for genuinely disruptive behavior, but only after providing a clear and very specific warning: "Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior." Gov't Code § 54957.95(a)(2). The only exception to the warning requirement is for "behavior that constitutes use of force or a true threat of force." Gov't Code § 54957.95(b)(1)(B). This detailed set of requirements is essential for providing the individual with notice that the presiding member believes their conduct is disrupting the meeting, along with an opportunity to stop the disruptive conduct, so they may continue to participate in the democratic process. These requirements implement the First Amendment's guarantee that persons may not be removed if they do not actually disrupt the meeting. *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).

Mr. Komrosky has chosen to ignore these requirements in favor of employing a penalty card system loosely borrowed from sporting events, and familiar to his "soccer buddies." He inaugurated his unlawful system at the June 27, 2023 Board meeting, where he explained:

> If you cause disruptions you will be removed. What I'm gonna do tonight, we'll do something new to save time. If I give you this (holding yellow card up), from all my soccer buddies that's your first warning. If I give you a second one and this, (holding

> red card up), you're out, you can see yourself out. A disruption can be a loud outburst or even something like constant talking in the rear that causes one of the board members and staff here to lose the ability to concentrate and thus govern properly. Also, when people are commenting, no yelling. There's going to be controversial comments coming from both sides. Be respectful and let people talk. If you comment you're going to get yellow carded. If you keep on talking, you're going to get red and you're going to get out. … I expect you to follow the rules of proper decorum and I reserve the right -- If I give you the first warning, and it's so egregious, and it is a yellow card, you're going to be asked to be removed. I've had very egregious instances where people just get up and start yelling at the top of their lungs. I don't care who you are, it's just not gonna happen tonight.
>
> This is fair notice that if you have a burning desire to cause disruption, you'll be removed.

Mr. Komrosky apparently intends for this impromptu penalty system to substitute for the specific warning requirements of Gov't Code § 54957.95(a)(2). This is clear because, starting with the June 27, 2023 Board meeting, Mr. Komrosky began to regularly hold up a yellow card when he identified something he wanted to label as disruptive conduct, telling the individual, or group of individuals, either that they had received a yellow card or a warning, but failing to inform them that their behavior was disrupting the meeting or that their failure to cease their behavior may result in their removal.

The penalty card system violates the Brown Act and First Amendment for several reasons.

First, even if the audience member had heard and memorized Mr. Komrosky's description of this system (which he apparently now provides at the start of each Board meeting), Mr. Komrosky's explanation does not state that people will be "yellow flagged" or warned only when they are engaged in disruptive conduct, as required by section 54957.95(a)(2). Nor does Mr. Komrosky's explanation let audience members know that they cannot be removed if they are involved in genuinely disruptive conduct, but immediately cease that conduct.

Second, while Gov't Code § 54957.95(a)(2) only allows expulsion for ongoing disruptive conduct that is not promptly ceased, Mr. Komrosky's unlawful system allows for expulsion based on two discrete incidents of that might occur hours apart, regardless of whether they are ceased. Apart from use of force or true threats of force, the Brown Act only allows the presiding member or their designee to remove an "individual if they do not promptly cease their disruptive behavior." Gov't Code § 54957.95(a)(2). If they do cease their disruptive behavior, they may remain in the audience. If they engage in disruptive behavior again later in the meeting, the presiding member or designee must provide another warning before removing the individual. By contrast, under the yellow card system, Mr. Komrosky has assumed the right to "red card" and expel audience members for a second alleged disruptive conduct offense, even if the individual has engaged in no other allegedly disruptive conduct after a previous alleged offense and regardless of whether the individual promptly ceased such behavior when warned. Mr. Komrosky has offered no explanation for why he believes he is permitted to water down the section 54957.95(a)(2) warning requirements, but he can find no support for doing so in the Brown Act.

Finally, Mr. Komrosky's "penalty card" system is unconstitutionally void for vagueness. "It is a basic principle of due process than an enactment is void for vagueness if its prohibitions are not clearly defined . . . [W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms." *Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972) (cleaned up). "[W]here First Amendment freedoms are at stake, an even greater degree of specificity and clarity of laws is required, and courts ask whether language is sufficiently murky that speakers will be compelled to steer too far clear of any forbidden areas." *Edge v. City of Everett*, 929 F.3d 657, 664 (9th Cir. 2019) (cleaned up). The monologue that Mr. Komrosky now uses to open Board meetings fails to place audience members on notice of the specific types of conduct that might get them expelled from a meeting.

The monologue informs members of the public that a disruption "can be" a "loud noise" but it can also be "even something like talking in the rear that causes one of board members and staff here to lose the ability to concentrate and thus govern properly." No audience member can hear this warning and have any idea how loudly they are allowed to talk, if at all. Would a whisper from the back row cause a particularly sensitive Board member to lose the capacity to concentrate and govern appropriately? (Mr. Komrosky regularly "yellow cards" audience members whose comments are inaudible on recordings of the Board meetings, and that do not bother other Board members, suggesting that he may have particularly acute hearing or sensitivity, but no audience member would have any way of assessing this.) What other behaviors might be incorporated into the phrase "something like talking"? Mr. Komrosky's monologue also threatens to expel members of the public who fail to "follow the rules of proper decorum," without specifying what those rules are, even though "rules of decorum should 'only permit a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting.'" *Acosta v. City of Costa Mesa*, 718 F.3d 800, 815 (9th Cir. 2013) (quoting *Norse*, 629 F.3d at 976 (added emphasis)). Mr. Komrosky's unlawful system simultaneously creates impermissible uncertainty about the kinds of behavior that can lead to expulsion and threatens to remove people for conduct that falls far short of First Amendment or Brown Act standards.

2. *Mr. Komrosky Regularly Violates the Brown Act and First Amendment by Ordering Members of the Public Removed When They Are Not Engaged in Disruptive Conduct.*

The Brown Act allows the presiding member of a legislative body or their designee to remove an individual for disruptive behavior after appropriate warning, but only if their conduct "actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting." Gov't Code § 54957.95(b)(1). This statutory requirement is consistent with the First Amendment, which requires that "rules of decorum should 'only permit a presiding officer to eject an attendee for actually disturbing or impeding a meeting.'" *Acosta* , 718 F.3d at 815.

"Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city," *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990), or their school board. A presiding officer abuses his discretion and violates the First Amendment if he "rules speech out of order simply because he disagrees with it, or because it employs words he does not like." *Id*. at 1426. Similarly, the Brown Act provides that a legislative body of a local agency "shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body." Gov't Code § 54954.3(c).

A school board president may not expel someone who makes "personal impertinent, slanderous or profane remarks to any member of the [Board], staff or general public, … or who utters loud, threatening, personal, or abusive language" *unless* that person's actions create "some type of actual disruption." *Acosta*, 718 F.3d at 815. Expelling people for engaging in any of those types of speech or conduct when they do not create "actual disruption" is "an unconstitutional prohibition on speech." *Id*. at 813.

Mr. Komrosky has regularly ordered people removed from Board meetings when their behavior has not actually disrupted the meeting, in violation of these basic First Amendment and Brown Act principles. For example:

- In a widely reported incident, Mr. Komrosky ordered Temecula Valley Unified School District teacher Jennee Scharf removed from the July 18, 2023 Board meeting after she called Board member Danny Gonzalez a "homophobe" while she was providing public comment and speaking in a calm and measured tone. As the *Los Angeles Times* reported, Mr. Gonzalez had supported a decision to reject proposed instructional material that mentioned "slain gay rights leader Harvey Milk" by baselessly claiming "[w]ithout evidence… that [the] proposed instruction would promote pedophilia."[1] Ms. Scharf's comment was the essence of speech protected by the First Amendment, which reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). "Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). The First Amendment therefore guarantees that during a school board meeting, "a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing." *White*, 900 F.2d at 1425. Ms. Scharf's conduct was in no way disruptive, and "the open session of a school board meeting is a legally proper place for citizens to voice their complaints about a school district's employees" or board members. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 736 (C.D. Cal. 1996). The First Amendment and Article 1, Section 2 of the California Constitution thus prohibit government bodies from retaliating against speech that is "negatively critical of" public officials or employees. *Id*. at 728. Mr. Komrosky's actions left another Board member befuddled, forcing her to ask for an explanation and telling him that she objected. In defense of his actions, Mr. Komrosky could only offer that "we're gonna conduct this meeting without name calling, racism, derogatory remarks to the board members like what just occurred." Of course, as *Baca* explains, all of these things are allowed by the First Amendment and the California Constitution. At the August 9, 2023 Board meeting, Mr. Komrosky suggested that the reason he ordered Ms. Scharf

[1] Mackenzie Mays, Temecula School Board Outrage Over LGBTQ+ Lessons Motivates Newsom to Rush New Textbook Law," *Los Angeles Times*, July 19, 2023, https://www.latimes.com/california/story/2023-07-19/newsoms-push-for-textbook-regulation-defies-current-state-law. Video of the incident can be viewed at approximately 8 minutes and 45 seconds into the video of the meeting, found here: https://www.youtube.com/watch?v=NN-Z_IcswqM.

removed from the July 18 meeting was that he considered her use of the word "homophobe" to be hate speech. It is not clear what "hate speech" means, but the First Amendment does not permit expulsion from a board meeting for criticizing public officials in such a manner. An ad hoc, undefined, and vague term such as "hate speech" cannot justify removing Ms. Scharf or any other individual. *See Dambrot v. Central Michigan University*, 55 F.3d 1177, 1184 (6th Cir. 1997) (holding university's code prohibiting "negative" or "offensive" speech was void for vagueness); *cf. Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 95–96 (1st Cir. 2004) (noting "vagueness concerns are more pressing when there are sanctions (such as expulsion) attached to violations of a challenged regulation").

- Minutes after ordering Ms. Scharf removed from the July 18 meeting, Mr. Komrosky ordered Pastor Tim Thompson expelled for referring to another Board member as "probably a Communist" because he had expressed support for Governor Newsom's comments about the district. Like Ms. Scharf, Mr. Thompson was speaking in a calm but deliberate and forceful tone during public comment and did nothing more than criticize a Board member. Some people may find such critical speech insulting, but it is nonetheless protected by the First Amendment and cannot justify removing the speaker from a board meeting.

- Mr. Komrosky ordered a woman named Monica Lacombe removed from the May 16 meeting after pointing at a group of people sitting together in one part of the room, and telling them "audience, this is a warning, this is a warning to this group over here. First warning." It is unclear what provoked Mr. Komrosky's ire, but Ms. Lacombe immediately agreed to leave, but told Mr. Komrosky not to point at them, in a soft but firm voice, as she pointed back at him. Mr. Komrosky continued to point at Ms. Lacombe, telling her "you got the first warning." Ms. Lacombe again told Mr. Komrosky "don't do that" in a fairly soft voice. She stopped speaking, but Mr. Komrosky nevertheless told Ms. Lacombe "You're outta here." As she started to leave, Mr. Komrosky ordered security to escort Ms. Lacombe out. Mr. Komrosky never told Ms. Lacombe that she was engaged in disruptive conduct.

- Mr. Komrosky ordered Ms. Geary removed from two recent Board meetings for quietly expressing concern about Board actions while she was seated in the audience. At the July 18, 2023 meeting, one speaker engaged in a sustained rant employing religious rhetoric in an anti-LGBTQ+ barrage. He took on the persona of God as he exclaimed that Governor Newsom and his "woke army" would "will reap the whirlwind of my wrath." When Mr. Komrosky failed to "yellow card" this speaker, Ms. Geary held out her arms in dismay, saying something to the effect of "what is this?" and asking why the speaker was not ejected for threating language. She spoke at a fairly low level, while another speaker approached the podium. She did not impede the progress of the new speaker. Because the Board was waiting for that speaker to reach the podium and begin his comments, there was no Board business occurring at the time Ms. Geary spoke from the audience, and hence no business for her to disrupt. Mr. Komrosky nevertheless red carded her, ordering her removed.[2]

[2] See video of the Board meeting at approximate the 28 minute mark here: https://www.youtube.com/watch?v=NN-Z_IcswqM.

Similarly, Mr. Komrosky ordered Ms. Geary removed from the August 9, 2023 Board meeting when she questioned Board members' understanding and definitions of "hate speech," and noted that the Board's proposed "disruptive conduct" regulations would violate the public's First Amendment rights. She spoke in the audience to the people around her in a calm tone at low volume in a normal speaking voice. None of her comments at either meeting were "actually disturbing or impeding a meeting.'" *Acosta*, 718 F.3d at 815.

- During the public comment period of the otherwise closed session of the June 13, 2023 Board meeting, Pastor Deon Hairston criticized the Board's decision to implement its purported "CRT" ban, addressing what he considered poor leadership and racist decision making.[3] At one point during his comments, Mr. Komrosky interrupted Pastor Hairston, and told him to "be respectful, Deon." As part of his public comment in the open session of the same meeting, Pastor Hairtson addressed a history of Mr. Komrosky's having targeted Black members of the public for expulsion. He noted that he was the only Black speaker at the closed session, and that even though other speakers had addressed the CRT ban during that session, he was the only speaker Mr. Komrosky interrupted and told he was off topic. He also noted that Mr. Komrosky had ejected three Black women in earlier meetings. He said that even white community members had approached him, asking why Mr. Komrosky was "targeting Black people in such an openly racist manner, with no shame?" Mr. Hairston said that the community had noticed Mr. Komrosky's "habit of kicking Black people out," and reminded the board that Mr. Komrosky had ordered him removed from an earlier meeting after Pastor Hairston objected to a white woman's yelling that he should "go back to Africa."[4] Later in the June 13 open session, Mr. Komrosky targeted two audience members for ejection. If the people who were ejected were engaged in any conversation, it was not loud enough to be captured in the recording, and clearly was not genuinely disruptive. Nevertheless, Mr. Komrosky can be heard saying "That's a first warning for the person in the audience right there. Thank you. Thank you. Let us conduct business. Thank you. Audience member. Second warning, both of you are removed." There was no time at all between Mr. Komrosky's reference to a second audience member and his decision to eject both people. Mr. Komrosky certainly provided the second audience member no opportunity to cease the allegedly disruptive conduct (or even to be clearly accused of having engaged in disruptive conduct).[5]

3. *Mr. Komrosky Violated the Brown Act and First Amendment by Clearing Out an Entire Section of the Room Without Individualized Warnings, When Most of the Audience Members Who Were Removed Were Not Engaged in Disruptive Conduct.*

[3] Pastor Hairston's comments during the closed session of the June 13, 2023 meeting begin at approximately the 32 minute mark here: https://www.youtube.com/watch?v=oR3yjz-UnA8.
[4] See Khaleda Rahman, "Black Man Removed From School District's CRT Event Speaks Out," *Newsweek*, March 30, 2023, https://www.newsweek.com/black-man-removed-crt-event-speaks-out-1791531. Video of the June 13, 2023 Open Session of the Board meeting can be found here: https://www.youtube.com/watch?v=dj483Tj1CKQ.
[5] Video of the June 13, 2023 Open Session of the Board meeting at approximately 1:57. https://www.youtube.com/watch?v=dj483Tj1CKQ.

At the August 9, 2023 Special Session Board Meeting, after the Board abruptly ended public comment about a motion to hire a law firm to represent them in a challenge to the Board's purported ban on "CRT," some of the audience members on one side of the room objected to the decision. There are audible boos on the recording of the meeting, and one person yells out "Dictator, Dictator, kick me out, I don't care." While that individual may have been engaged in disruptive conduct, there is no indication this was true of every member of the public who was sitting on that side of the room.

The Brown Act allows the Board to "order the meeting room cleared and continue in session" if a meeting is "willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting." Gov't Code § 54957.9. The Board may also establish "a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting." *Id*.

If there was the type of overwhelmingly disruptive conduct contemplated by the above section of the Brown Act, the Board would have had the authority to clear the entire meeting room. It could then have allowed members of the public who had not been disruptive back into the meeting, assuming it had established a procedure for so doing. Mr. Komrosky was not authorized, however, to simply kick out everyone he thought might disagree with him, or who were sitting in their vicinity, in one fell swoop, while allowing others to remain in the room.

4. *The Board Has Adopted a New Set of Regulations that Are Unlawful in Large Part and Can Only Exacerbate Existing Patterns of Violating the Brown Act and First Amendment.*

At the August 9, 2023 open meeting, the TVUSD Board adopted new regulations "related to board meeting disruptions pursuant to Government Code Sections 54954.3 and 54957.95." These regulations include a list of types of conduct that are deemed "disruptive" and a requirement to "advise attendees of the Board's prohibitions of disruptions based on these and other forms of conduct." During the meeting, Komrosky indicated that this advisal would take the form of posting a notice at Board meetings that will contain a list of the varieties of purportedly "disruptive" conduct. The types of conduct that will be listed are:

- Use of hate speech, obscenity, and similar conduct;
- Loud, profane, and abusive language;
- Speaking, whistling, clapping, stomping feet, and other conduct interrupting recognized speaker(s);
- Use of force and threats of force;
- Efforts to engage other attendees for the purpose of creating a disruption;
- Display of signs or other large objects designed to block attendees' view or participation [in a] meeting; and
- Refusal to comply with directives to comply with rules of conduct.

Several items on this list are void for vagueness or otherwise unlawful. As discussed above, the mere assertion that comments are "hate speech" or "abusive" or "similar conduct" cannot justify restricting them, nor can the contention that speech is "profane." *Acosta*, 718 F.3d at 815. Likewise, the mere assertion of "obscenity" cannot justify removal for expressing "opinions about matters of public concern," regardless of whether one finds such opinions

offensive.[6] *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1198 (9th Cir. 1989). Also, conduct that merely has the "purpose of creating a disruption" cannot justify removal if it does not in fact cause actual disruption. *See Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 216-17 (3d Cir. 2001) (holding that policy prohibiting speech which merely had "purpose" of "interfering with educational performance" cannot meet standard that speech must cause "actual, material disruption").

Moreover, any "rules of conduct" themselves must be lawful. School boards are not free to define disruptive conduct "in any way they choose. … Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption. The [Board] cannot define disruption so as to include non-disruption." *Norse*, 629 F.3d at 976 (holding that city's definition of "disturbance" was overbroad and in violation of the First Amendment). The Board, or particular Board members, may be afraid that audience members might disrupt a board meeting by engaging in critical or controversial speech, but "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969).

A more fundamental problem with the new regulations, however, is that they define each of the listed types of conduct as inherently disruptive, and therefore as the basis of a potential warning or expulsion, regardless of whether the conduct "actually" disrupts or impedes the meeting. *Acosta*,718 F.3d at 815. Because the President may only order the removal of an individual if their conduct rises to the level of *actual* disruption, the President will violate the Brown Act and First Amendment by enforcing these regulations. *See id*. at 816 (noting approval of a statute making it unlawful for any person in the audience at a council meeting to engage in "disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, which conduct substantially *interrupts, delays, or disturbs* the peace and good order of the proceedings of the council," but only because of the final clause in the sentence) (original emphasis).

Finally, the posted notice of these regulations cannot serve as a substitute for the individualized warnings required by the Brown Act, for all the reasons addressed above. The Brown Act does invest the Board with the power to "adopt reasonable regulations to ensure that the intent of" the Act's public comment requirements are carried out. Gov't Code § 54954.3(b)(1). However, the statute only permits a legislative body to expel someone for violating the body's regulations if a) the regulations are reasonable and lawful b) the violation(s) cause actual disruption of the meeting, and c) a warning is given and the person to be expelled fails to change their behavior. Gov't Code § 54957.95. In other words, simply passing regulations that purport to define disruptive conduct do not short-circuit the statutory and constitutional requirements that must be met before someone can be expelled from a meeting.

Conclusion and Cease and Desist Demand

[6] Under First Amendment law, speech is unprotected as "obscene only if it appeals to the prurient interest, it depicts specifically defined sexual conduct in a patently offensive way, and, taken as a whole, it 'lacks serious literary, artistic, political, or scientific value.'" *Dworkin*, 867 F.2d at 1198 (quoting *Miller v. California*, 413 U.S. 15, 24 (1973)). When statements address matters of public concern, they cannot lack serious political or other value, and it thus "follows that they are not obscene." *Id.*

The pattern and practice of inappropriately expelling members of the public has regularly and systematically violated the Brown Act in numerous ways and has specifically violated Ms. Geary's Brown Act and First Amendment rights. Accordingly, pursuant to Government Code section 54960.2(a), I hereby notify the Board and its members that the Board and its President must immediately cease and desist from removing individuals from Board meetings unless they have engaged in actual disruptive conduct, and been provided with adequate notice and an opportunity to cease their disruptive behavior. This means that Mr. Komrosky must abandon his unlawful penalty card system, and that the Board must not enforce its new disruptive conduct regulations to the extent they do not comport with constitutional and Brown Act requirements.

Pursuant to Government Code section 54960.2(b), Ms. Geary and/or other interested parties may take legal action if the Board does not respond to this letter within 30 days, providing its unconditional commitment to cease, desist from, and not repeat the violations described here. In that eventuality, Ms. Geary would be entitled to court costs and attorney fees. *Id.* Of course, the timing requirements for legal action under the Brown Act do not apply to other potential legal claims, nor does an unconditional commitment to cease and desist from Brown Act violations necessarily preclude claims under laws other than the Brown Act.

Please let me know if you have any questions or would like any additional information. I look forward to your response. I can be reached via email at jmarkovitz@aclusocal.org.

Sincerely,

Jonathan Markovitz
Free Expression and Access to Government Staff Attorney
American Civil Liberties Union Foundation of Southern California

Cc: David M. Huff
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