



July 14, 2021

**VIA CERTIFIED MAIL**

City of Greensboro  
212 N Main St  
Greensboro, GA 30642

Mayor Glenn Wright  
Mayor Pro Tem Ronald McWhorter  
City Manager Larry R. Postell  
City Attorney Barry Fleming  
City Councilmember Chris Moore  
City Councilmember Cynthia Rivers  
City Councilmember Morris Miller  
City Councilmember Jontavius Smith

Dear Mayor Wright and City of Greensboro Officials:

We write to express our concern that the City’s recent decision to eliminate public comment from Greensboro City Council meetings in order to prevent further remarks about City Attorney Barry Fleming and Georgia Senate Bill 202 violates the First Amendment. The public comment period constitutes a limited public forum created by the City of Greensboro (“the City”) for community members to speak to their elected officials and fellow residents on matters related to city governance. For the reasons explained below, it is unconstitutional for the City to close this public forum for the purpose of silencing speech on a particular disfavored City-related topic or for suppressing the viewpoint of the speakers. We therefore urge the City to promptly reinstate the public comment period.

**The Speech at Issue**

Since March 2021, Greensboro community members have been addressing the City Council during the public comment period to express their opinions regarding City Attorney Barry Fleming. Earlier this year, Mr. Fleming, who is also a Georgia State Representative, introduced into the Georgia legislature Senate Bill 202, which increased voting restrictions throughout the state. Both the new law and Mr. Fleming have been the subject of much controversy since it was passed.<sup>1</sup> During the public comment period at the June 7, 2021 Regular

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<sup>1</sup> “Georgia lawmaker’s legal work targeted again over voting law,” *Associated Press*, <https://apnews.com/article/mlb-bills-georgia-voting-laws-2a10bc3244d2a713aaa65aabd64d4a71> (April 13, 2021); Deirnesa Jefferson, “Protesters ask Barry Fleming to resign as city attorney in Washington,” *WJBF*, <https://www.wjbf.com/top-stories/protesters-ask-barry-fleming-to-resign-as-city-attorney-in-washington/> (April 12, 2021); “Citizens continue protest of Fleming,” *Eatonton Messenger*, <https://www.msgrnews.com/article/citizens-continue-protest-fleming>.

City of Greensboro  
Re: Public Comment

Session of the Greensboro City Council, community members spoke against Mr. Fleming based on his role in the passage of the voting law and called for his removal. In response, others spoke in his defense. The public comments were delivered with feeling but in a non-disruptive manner. Toward the end of the June 7th meeting, however, Mayor Wright stated, “I’ve made up my mind ... and this will be the last meeting about anything related to Senate Bill 202 or this topic [i.e., Attorney Fleming]. There will not be any other discussion about it moving forward.”<sup>2</sup>

Following the meeting, a community member emailed the Mayor’s office stating, “Towards the end of the meeting the Mayor stated the future topics that would and would not be permitted during future public comment sessions. Kindly, have him or you to repeat, name and list what he stated so that it will be clear to me.”

On June 17, 2021, Ms. Robyn Mapp, Executive Assistant to the Mayor, responded by email stating:

“Per Mayor W[r]ight[:]

Public comments will not be allowed during the Greensboro City Council Regular Session until further notice.”

This statement was subsequently memorialized in the agenda for the June 21, 2021 City Council meeting, which reads, “Public Comments will not be allowed during the Greensboro City Council Regular Session until further notice.”<sup>3</sup> The agenda for the following Regular Session on July 6, 2021 contained no agenda item for public comment. At the beginning of the July 6th meeting, community members attempted to sign up to make a public comment, but were denied. In sum, since Mayor Wright’s announcement on June 7, 2021 that he would hear no more about Attorney Fleming and Senate Bill 202, no public comment has been allowed on any topic at Greensboro City Council meetings.

Based on the foregoing sequence of events, the decision to end public comment was motivated by a desire to silence speech on a matter of public concern, namely City Attorney Fleming and his involvement with Senate Bill 202. However, the First Amendment does not allow government officials to restrict speech based merely on dislike or disagreement with its viewpoint. *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 469-70 (2009) (viewpoint discrimination prohibited in traditional, designated, and limited public forums). Moreover, “speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (internal quotations omitted). To that end, the Supreme Court has held that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic,

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<sup>2</sup> Lance McCurley, “Mayor: ‘I’ve made up my mind’ on continued Fleming protests,” *Lake Oconee News*, <https://www.lakeoconeenews.us/article/mayor-%E2%80%98I%E2%80%99ve-made-my-mind%E2%80%99-continued-fleming-protests> (June 11, 2021).

<sup>3</sup>Agenda for June 21, 2021 Regular Session, Greensboro City Council, (<https://greensboroga.gov/Assets/Files/agendas-and-minutes/2021/doc01247920210617103639.pdf>).

and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). These First Amendment protections exist to “assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people,” *Roth v. United States*, 354 U.S. 476, 484 (1957). Indeed, the Supreme Court recognizes that “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). Thus, the City of Greensboro’s shutting down public comment in order to avoid further debate about a current local official transgresses the free speech rights of Greensboro’s citizens.

### **Closure of a Public Forum**

Courts have held that the public comment period during municipal government meetings constitutes a limited or designated public forum.<sup>4</sup> The government may enact limited content-based restrictions in such a forum. However, these restrictions are not boundless. They must be both viewpoint neutral and reasonable in light of the limited forum’s purpose. *See Barrett v. Walker County School District*, 872 F.3d 1209, 1225 (11th Cir. 2017). Here, the closure of the public comment segment during City Council meetings was neither.

#### *Closure Was Not Viewpoint-Neutral*

In the same way the government may not exclude speakers from a public forum based on the viewpoint they express<sup>5</sup>, neither may the government close a forum altogether to prevent expression of a certain viewpoint. For example, the federal district court in *ACT-UP v. Walp*, 755 F. Supp. 1281, 1289 (M.D. Pa. 1991) found the closure of a public forum unconstitutional when the government’s purpose was to restrict access to certain community members, even though the effect of the action was to restrict access to everyone. In that case, the Pennsylvania legislature shut down public access to the visitor’s gallery of the chamber of the House of Representatives in order to prevent ACT-UP—an AIDS-awareness organization characterized as “unabashedly boisterous, demonstrative, and often profane”—from gaining access to the gallery during an address by the governor. *Id.* at 1284, 1289.<sup>6</sup> The “government admit[ted] that the closing of the

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<sup>4</sup> *Galena v. Leone*, 638 F.3d 186, 198–99 (3d Cir. 2011) (county council meeting was limited public forum); *Surita v. Hyde*, 665 F.3d 860, 869 (7th Cir. 2011) (describing city council meeting as designated public forum); *Steinburg v. Chesterfield County Planning Com’n*, 527 F.3d 377, 385 (4th Cir. 2008) (county planning commission meeting was limited public forum); *Eichenlaub v. Twp. of Ind.*, 385 F.3d 274, 280–81 (3d Cir. 2004) (township board of supervisors meeting was limited public forum); *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 802 (11th Cir. 2004) (city commission meeting was limited public forum).

<sup>5</sup> *See Manhattan Community Access Corp. et al. v. Halleck et al.*, 139 S.Ct. 1921, 1930 (2019) (“[w]hen the government provides a forum for speech . . . the government ordinarily may not exclude speech or speakers from the forum on the basis of viewpoint”); *Sumnum*, 555 U.S. at 469-70.

<sup>6</sup> Here, there is no evidence of profane or disruptive behavior during public comment periods at Greensboro City Council meetings. However, terminating the public comment period altogether is not a narrowly tailored approach if the goal is to prevent disruption. The City can enact, and

gallery, though closed to everyone, was aimed at preventing the ACT-UP members access.” *Id.* at 1289. The court found that this violated the First Amendment because the closure was undertaken for the improper purpose of specifically excluding ACT-UP. Similarly, here, the decision to eliminate public comment at City Council meetings for all community members violates the First Amendment because the purpose, as evidenced by the Mayor’s comments on June 7, 2021, was specifically to exclude those who wished to speak on the one particular topic of Mr. Fleming’s involvement with Senate Bill 202.

In another forum-closure case, the federal district court in *Rhames v. City of Biddeford*, 204 F.Supp.2d 45, 51 (D. Me. 2002) stated, “Certainly if [the City] were to shut down the [public forum] temporarily so as to stifle discussion of a particular current controversy, with plans to reopen the channel later after the controversy had subsided, or so as to stifle the particular speech of this plaintiff, *that shutdown would be speaker and viewpoint censorship and would violate the First Amendment under any analysis.*” (Emphasis added). This is precisely what the City of Greensboro has done here. It removed access to public comment for all members of the community in order to stifle discussion of the current controversy concerning Mr. Fleming. The Mayor clearly articulated this improper motivation for the forum closure when he announced on June 7, 2021: “[T]his will be the last meeting about anything related to Senate Bill 202 or this topic [of Mr. Fleming]. There will not be any other discussion about it moving forward.” The public comment forum was promptly thereafter declared closed “until further notice”—i.e., until the controversy involving Mr. Fleming and the senate bill has subsided. The City’s improper purpose for eliminating public comment constitutes censorship in violation of the First Amendment.

*Closure to Avoid the Topic of Attorney Fleming/S.B. 202 Is Not Reasonable in Light of the Public Comment Period’s Purpose*

As noted above, because the public comment section of Greensboro City Council meetings is a limited public forum, the City is entitled to enact certain content-based restrictions so long as they are “viewpoint neutral and reasonable in light of the forum’s purpose.” *Barrett*, 872 F.3d at 1225. Permissible restrictions might include preventing community members from speaking on matters unrelated to city governance such as, for example, child custody proceedings or a private dispute with a co-worker since these topics bear little relevance to the community at large. But the speech activity that triggered the closure of the public comment forum in this case falls squarely within the type of speech that the forum was created to host: community members’ views and opinions on matters of local governance, including their local public officials. Closing the forum altogether to prevent speech on a topic that fits within the subject-matter parameters of the limited forum but happens to be disfavored by the City is therefore not a reasonable restriction and constitutes an impermissible government restriction on speech.

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may already have in place, other, less restrictive measures to achieve this end—e.g., rules banning shouting and profanity; imposition of time limits; and procedures announcing that physically disruptive speakers will be asked to cease and if they do not comply, will be required to leave the meeting.

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“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Greensboro residents’ First Amendment rights are repeatedly violated with each passing City Council meeting where they are denied the opportunity to give public comment. We therefore urge the City to reinstate a public comment period as soon as the next City Council Regular Session on July 19, 2021.

**Failure to Post Meeting Minutes**

The City has not posted council meeting minutes since the April 19, 2021 meeting. As it is now July 14, 2021, this nearly three-month delay in posting minutes violates the Georgia Open Meetings Act (“OMA”).

The OMA states, “The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting.” O.C.G.A. § 50-14-1 (e)(2)(B). We urge the City to remedy its lack of compliance with this requirement by promptly posting the outstanding minutes.

Thank you for your attention to these important matters. We look forward to your response and are happy to discuss as desired.

Sincerely,



Samantha Hamilton  
Senior Clinic Fellow



Clare R. Norins  
Clinic Director