



By First Class Mail & Email: michellermcghee@gmail.com

June 23, 2017

Michelle McGhee, President
Board of Education
Tonganoxie USD 464
330 E. Hwy 24-40
Tonganoxie, KS 66086

Re: First Amendment Rights of Speakers During Public Comment Part of Board Meetings

Dear President McGhee:

The American Civil Liberties Union of Kansas is concerned that the Tonganoxie Board of Education's rules applicable to the public comment period during school board meetings violate the First Amendment. According to the agenda for the Board's June 12 meeting, "Individuals may not publicly address the board concerning matters relating to named individuals or students."

I write to emphasize that people have a well-established First Amendment right to criticize *both* elected officials *and other public servants*. The Free Speech Clause of the First Amendment reflects "a 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 v. Sullivan*, 376 U.S. 254, 271 (1964). "Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations." *Id.* at 273. "The right of free public discussion of the stewardship of public officials was thus, in Madison's view, a fundamental principle of the American form of government." *Id.* at 275. Moreover, this right to criticize the stewardship of public officials is not limited to elected officials; it extends to other public servants as well. *See, e.g., Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951, 958 (S.D. Cal. 1997) ("Debate over public issues, including the qualifications and performance of public officials (such as a school superintendent), lies at the heart of the First Amendment.").

By prohibiting commenters from discussing "matters related to named individuals or students," the Board's current public comment rules are overbroad and inconsistent with the First Amendment. Specifically, the rules prohibit citizens from making public comments – whether good or bad – about the stewardship of school employees who have key responsibilities for carrying out the public functions of the school district. For example, the rules would prohibit a parent from criticizing the Tonganoxie Superintendent by name for his alleged failure to report sexual abuse at his former school district. Similarly, the guidelines would prohibit a parent from extolling the selfless dedication of a particular teacher or principal in the district who has made extraordinary efforts to help bullied students or has won a national award or honor. Because

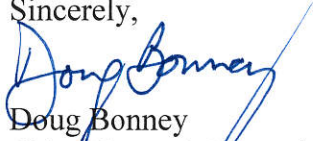
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such comments fall squarely within the people's First Amendment right to comment on the stewardship of public officials, the Board's current rules applicable to the open comment period during board meetings are unconstitutional.

For these reasons, I strongly urge the Board of Education to remove the rule that prohibits commenters from mentioning district employees by name.

I look forward to hearing from you at your earliest convenience regarding the policy matters that I have addressed here.

Sincerely,



Doug Bonney
Chief Counsel & Legal Director
Direct Dial: (913) 490-4102

cc: All members of the Board of Education by Email