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**Via Email**

Thomas Theodore  
Chair, Select Board  
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Re: Suspension of Public Comment Periods

Dear Chair Theodore and other members of the Select Board:

I write on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) to share our concern about the suspension of public comment periods at meetings of the Select Board. It appears that notice of this suspension is confirmed by an official publication in local media and was announced at the start of the September 26 meeting.

The importance and robust constitutional protection for the right to address one’s elected officials in a public forum was recently and strongly endorsed by the Supreme Judicial Court in *Barron v. Kolenda*, 491 Mass. 408 (2023). There, the Court made clear that public comment opportunities cannot constitutionally be curtailed on the grounds that public officials do not like being criticized, even in very pointed terms.

In response to the *Barron* decision, we shared a set of proposed guidelines with associations representing all cities and towns, noting that public meetings can be efficient, orderly, and open for public comment after the *Barron* ruling.<sup>1</sup> Our input in light of the *Barron* decision is consistent with our longstanding concern that public comment not be restricted by public officials who may not wish to hear the input being provided by the people for whom they work. We have regularly raised such concerns with

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<sup>1</sup> A copy of that letter is available here:  
[https://www.aclum.org/sites/default/files/aclum\\_letter\\_to\\_mmla\\_and\\_masc\\_on\\_barron\\_decision\\_-\\_march\\_10\\_2023\\_update3.21.23.pdf](https://www.aclum.org/sites/default/files/aclum_letter_to_mmla_and_masc_on_barron_decision_-_march_10_2023_update3.21.23.pdf).

other municipalities without regard to the content of the views members of the public wish to express.<sup>2</sup>

As stated in our prior communications on these issues, public bodies are free to impose generally applicable and reasonable time limits on the overall period of public comment and on individual speakers. Based on our review of video of recent meetings, we understand you have experienced some members of the public going over their allotted time on occasion. We perceive no legal issue with those time limits being enforced, provided they are enforced in a neutral way without regard to the viewpoint being expressed by the speaker.

However, suspending all public comment is not a reasonable response to a few people going over their allotted time or to commenters or attendees indicating frustration. Indeed, it raises serious questions of overbreadth and lack of the narrow tailoring that is required by both the state constitution and the First Amendment. These questions are particularly raised here given the varying explanations for the suspension of public comment.

We have seen a public notice about suspension of public comment suggesting that the suspension is being justified by the Board's need to attend to other business, including budgetary issues. It is hard to see how allotting a reasonable but cabined period of time for public comment would interfere with that work. This is particularly true given the Chair's recent choice to hold public comment only at the end of the meeting (which for reasons stated in our post-*Barron* letter is not ideal). Indeed, public comment on budgetary and financial issues may be particularly appropriate given the direct impact on the taxpayers.

We have also reviewed video of the Chair stating that the reason for the suspension was to let "emotions" subside. But the SJC made clear in *Barron* that the fact that speakers may feel very strongly and passionately about their views does not justify curtailing their rights to speak. If the "emotions" of people in the audience cause actual disruption to the meeting or to the presentations of recognized speakers that can be addressed in a much more tailored manner.

We also have seen an email from the Chair to a resident of Canton saying that the decision to suspend indefinitely all opportunity for public

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<sup>2</sup> See, for instance, our letter to Taunton from November 2022: [https://www.aclum.org/sites/default/files/taunton\\_letter\\_re\\_public\\_comment\\_issues\\_november\\_4\\_2022\\_1.pdf](https://www.aclum.org/sites/default/files/taunton_letter_re_public_comment_issues_november_4_2022_1.pdf) and [Spaulding v. Natick School Committee | ACLU Massachusetts](#). We take no view as to whether any of the concerns being expressed by some residents of Canton are or are not valid, as that is irrelevant to the propriety of suspending public comment.

comment was purportedly based on “personal safety concerns for the meeting attendees” in light of the way the September 12, 2023 meeting ended. But we have reviewed the video of the September 12 meeting. While residents who had been seeking to participate in further public comment were obviously concerned when that opportunity was abruptly suspended, we saw no indication whatsoever that anyone threatened violence or that anyone had their personal safety put at risk.

We note, however, that, even if there were some legitimate safety concern, the answer would not be to suspend public comment for everyone but to take individualized action against anyone who threatens violence or engages in physical disruption. Further, individuals who are subject to a pattern of actual harassment, as opposed to the mere exercise of free speech rights, may seek orders pursuant to G.L. c. 258E against persons allegedly engaging in such harassment.

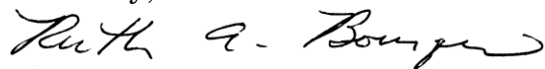
We also are aware that at a recent meeting the Chair suggested that the fact that people can communicate their views in writing to Board members and or visit them during office hours is a sufficient stand-in for public comment. It is not. While it is good that the City provides additional means for residents to communicate concerns, public comment sessions at public meetings enable members of the public to address the Board as a group and it allows other members of the public to be informed and educated about the concerns their neighbors may have. The alternatives are not adequate substitutes.

Given all of the above, we have serious concerns that the opportunity for public comment has been suspended because the Board does not wish to hear concerns being expressed by some participants. This raises serious questions of content and viewpoint-based discrimination, which the Court in *Barron* made clear is unconstitutional.

We therefore urge the Board to reinstate public comment immediately. As discussed above, such sessions may be subject to reasonable rules for the overall time for the public comment period and reasonable and neutrally applied limits on oral input by individual members of the public.

If you or your counsel wish to discuss this matter, please do not hesitate to reach out.

Sincerely,



Ruth A. Bourquin