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June 26, 2020

*Via: Email to Avoid Delay*

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Members of the Board  
South Kitsap School District  
2869 Hoover Ave. SE  
Port Orchard, WA 98366

***Re: Your Public Comment Policy***

Dear Board Members:

I have been retained by Citizens Supporting South Kitsap Schools to advise them as to the legality of your recent amendment to the District's meetings policy, GP-2-E5, that permits only "district residents" to "address the board".

While I am fully appreciative of the District's interest in conducting efficient and orderly public meetings, I hope that you would reconsider the residency requirement as it needlessly and arbitrarily curtails the ability of a variety of vested stakeholders to participate.

It should go without saying that many citizens who are non-residents of the District still have a distinct interest in the operation of the District. For example, in the case of separated parents, a parent or custodian living outside the District clearly has an acute interest in the education of their child and, consequently, the operation and business of the District. It would be entirely unfair for non-resident parents to be barred from addressing the Board just because of their geographical location of their residence, while the resident parent is free to voice their concerns.

Given that it is the public policy of Washington for its citizens to participate and have equal access to petition their government, the District's recent adoption of GP-2-E5 arbitrarily favors residents over non-residents, even when their interests in the operation of the District is otherwise similar.

Moreover, it is not hard to imagine a scenario where such a restriction becomes impermissible because it favors or disfavors a particular viewpoint. Courts have struggled with defining the extent to which an agency may limit public speakers. In general, so long as the restriction is

reasonable and “viewpoint neutral” such is permissible. A local government body, such as school board, can restrict speech at public meetings when it refers to the timing, location, and manner of the challenged speech. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed. 2d 794 (1983). Any restrictions placed on speech must be reasonable and tied to a compelling state interest. *Id.*

However, legislative bodies cannot suppress expression simply because public officials do not agree with a certain viewpoint. And restrictions that appear facially neutral, may be found to be de facto unconstitutionally viewpoint restrictive. See, *Joint School Dist. v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed. 2d 376 (1976).

Given that District levies are a key source of funding and are assessed on properties within the District, it is entirely likely that residents and non-residents have differing viewpoints on the necessity or wisdom of such. Such a circumstance could transmute your policy from a facially neutral one that *de facto* favors certain viewpoints.

On behalf of my clients, I urge you to reconsider your adopted policy permitting only District residents to address the Board and to permit the general public, regardless of residency, to provide public testimony so long as it is appropriate, non-disruptive, and conforms to the general rules established by the Board.

My client is looking to improve the democratic and collaborative operation of the District and I hope that you will consider revisiting your policy so as to allow greater access and participation by the public. I look forward to hearing from you.

Regards,

A handwritten signature in blue ink, appearing to read 'N. Power', with a long horizontal flourish extending to the right.

Nicholas Power