FIRE
Foundation for Individual Rights and Expression

December 10, 2025

Bradford County Board of Commissioners
Bradford County Courthouse
301 Main Street
Towanda, Pennsylvania 18848

Sent via U.S. Mail and Electronic Mail (sheddenm@bradfordcountypa.gov)

Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned that provisions in Bradford County Resolution No. 2025-01 (the Public Meeting Participation Policy)[1] allow the Bradford County Board of Commissioners to unconstitutionally restrict speech at its meetings. First, a Decorum rule says, "Speakers during public comment and people in the audience must refrain from abusive or profane remarks and slanderous, personal attacks."[2] Second, another rule allots time for "press inquiries" without defining who qualifies as press.[3] And the Board has barred, for example, Bradford County resident Walter Woods from participating in the "press" segment, despite his regular documentation of meetings and use of public records requests to share relevant information with the public through his "Sunshine Knowledge" webpages.[4] As these provisions accordingly raise serious constitutional issues, we call on the Board to bring them in line with the First Amendment.

Decorum Rule

The Decorum rule violates the First Amendment's protection of speech by members of the public at government meetings.[5] Public comment periods are, at minimum, limited public forums, where the Board may impose only viewpoint-neutral restrictions that are reasonable

[1] BRADFORD CNTY. BD. OF COMM'RS, BRADFORD COUNTY RESOLUTION NO. 2025-01 PUBLIC MEETING PARTICIPATION POLICY (adopted Feb. 13, 2025), https://pa-bradfordcounty.civicplus.com/AgendaCenter/ViewFile/Item/94?fileID=278.

[2] *Id.* § III.1.f.ii.

[3] *Id.* § III.3.d.

[4] Sunshine Knowledge PA, FACEBOOK, https://www.facebook.com/profile.php?id=61568395456526; SunshineK (@Sunshine_Knowledge), YOUTUBE, https://www.youtube.com/@Sunshine_Knowledge.

[5] *City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp. Rels. Comm'n*, 429 U.S. 167, 174–76 (1976).

in light of the forum's purpose.[6] It may, for example, impose time limits on comments and prohibit genuinely disruptive conduct, such as speaking when not recognized. But it may not restrict speech based on its viewpoint or perceived offensiveness.[7]

Although the policy correctly states "the public does have the right to make critical and harsh remarks,"[8] its ban on "abusive or profane remarks and slanderous, personal attacks" contradicts that and impermissibly targets critical or negative speech. The Supreme Court has made clear restrictions turning on whether speech is disparaging are inherently viewpoint-based, because they require officials to consider the speaker's perspective.[9] Courts nationwide have thus rejected similar attempts to restrict "personal attacks" or "abusive," "antagonistic," "derogatory," "confrontational," "vile," or "personally directed" public comments.[10]

Even aside from its fatal viewpoint discrimination, the policy is unconstitutionally overbroad because it "prohibits a substantial amount of protected speech … not only in an absolute sense, but also relative to the statute's plainly legitimate sweep."[11] In *Marshall v. Amuso*, a Pennsylvania federal court blocked enforcement of school board bans on "abusive," "inappropriate," "offensive," and "personally directed" public comments as encompassing a "broad array of constitutionally protected speech."[12] While the Board may be able to bar *some* speech it deems "abusive," "profane," "slanderous," or a "personal attack" if it actually disrupts a meeting or is unrelated to county business, the policy has no language limiting enforcement to such cases.

Importantly, there is no "profanity" exception to the First Amendment, which the Supreme Court has held protects even the right to wear a jacket reading "Fuck the Draft" in a public courthouse where children are present.[13] And although slander, properly defined, is a form of

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[6] *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

[7] *Id.* (government may not restrict speech "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction"); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (It is a "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable.").

[8] BRADFORD COUNTY RESOLUTION NO. 2025-01, *supra* note 1, at § III.1.f.i.

[9] *Matal v. Tam*, 582 U.S. 218, 243 (2017).

[10] *See, e.g.*, *Moms for Liberty — Brevard Cnty. v. Brevard Cnty. Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) (enforcement of restrictions on "abusive," "personally directed," and "obscene" public comments was unconstitutional); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (bans on "antagonistic," "abusive," and "personally directed" public comments violated First Amendment as effectuating "impermissible viewpoint discrimination" by prohibiting nondisruptive speech "purely because it disparages or offends"); *Mejia v. Lafayette Consol. Gov't*, No. 6:23-CV-00307, 2025 U.S. Dist. LEXIS 52868, at *24–25 (W.D. La. Mar. 20, 2025) (library board official had no authority to restrict public comments on grounds they were "vile," "derogatory," or "confrontational"); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022) (school district's public comment protocols stating that "attacks of a personal nature . . . will not be allowed or tolerated" constituted evidence of viewpoint discrimination).

[11] *United States v. Williams*, 553 U.S. 285, 292 (2008).

[12] 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021) (noting the Supreme Court, in *Gooding v. Wilson*, 405 U.S. 518 (1972), found the term "abusive" overbroad in other contexts, reaching speech outside the "fighting words" category of unprotected speech).

[13] 403 U.S. 15 (1971). The Court explained that "so long as the means are peaceful, the communication need not meet standards of acceptability. *Id.* at 25.

defamation outside the First Amendment's protection, the Board may not prohibit speech it deems "slanderous" absent prior judicial determination that the speech is in fact defamatory—something only courts, not local legislative officials, may decide.[14]

The Decorum rule is also unconstitutionally vague because speakers "of common intelligence must necessarily guess at its meaning,"[15] and it lacks "explicit standards" to prevent "arbitrary and discriminatory enforcement."[16] Even in a limited public forum, where "some degree of discretion in how to apply a given policy is necessary, 'that discretion must be guided by objective, workable standards' to avoid the moderator's own beliefs shaping his or her 'views on what counts' as a policy violation."[17] The *Marshall* court held that terms such as "abusive," "offensive," "inappropriate," and "personally directed" are vague because they are "irreparably clothed in subjectivity"—their interpretation varies from "speaker to speaker, and listener to listener."[18] The court emphasized the absence of "guidance or other interpretive tools to assist in properly applying" the policies, allowing officials' personal views to shape enforcement.[19]

The same problem is present here. Absent more, whether a comment is "abusive," "profane," "slanderous," or a "personal attack" is "irreparably clothed in subjectivity." When does criticism become "abusive" or a "personal attack"? What language is "profane"—only certain four-letter swear words, or any expression disrespectful of religion?[20] Does "slanderous" encompass any comment the Board deems false or insulting? Without clear, precise definitions, the policy invites arbitrary and viewpoint-discriminatory enforcement.

Press Inquiries Provision

By reserving a portion of meetings for general "press inquiries," the Board has created another limited public forum where limits on who speaks must be reasonable and viewpoint-neutral.[21]

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[14] *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 728 (C.D. Cal. 1996) (citing *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975)). Whether a statement is defamatory requires a fact-intensive legal analysis that courts must perform under constitutionally prescribed standards, which require the plaintiff to prove the speaker (1) made a false statement of fact (as opposed to a true statement or opinion); (2) had the requisite state of mind, which in the case of speech about a public figure means the speaker knew the statement was false or recklessly disregarded the truth; and (3) damaged the plaintiff's reputation. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974).

[15] *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

[16] *Id. at* 108–09.

[17] *Marshall v. Amuso*, 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021) (quoting *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21–22 (2018)). This "need for specificity is especially important where … the regulation at issue is a content-based regulation of speech," as vagueness has an "obvious chilling effect on free speech." *Id.* (quoting *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002)).

[18] *Id.*

[19] *Id.*

[20] One definition of "profane" is: "characterized by irreverence or contempt for God or sacred principles or things; irreligious." *Profane*, DICTIONARY.COM, https://www.dictionary.com/browse/profane.

[21] *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009). Even if the Press Inquiries period is treated as a nonpublic forum, restrictions must be reasonable and viewpoint-neutral. *See, e.g.*, *John K. MacIver Inst. For Pub. Pol'y, Inc. v. Evers*, 994 F.3d 602, 610 (7th Cir. 2021) (limited-access press conferences open only to journalists who met content-neutral criteria were nonpublic forums, requiring any restrictions on access to

To satisfy that standard, the Board must "articulate some sensible basis for distinguishing what may come in from what must stay out."[22] That requires ensuring that who qualifies as "press" is "guided by objective, workable standards" that avoid "unfair or inconsistent enforcement."[23]

The current policy provides no criteria at all, granting officials unchecked discretion to decide who may access the forum.[24] And that discretion has produced arbitrary results: the Board has excluded at least one individual, Mr. Woods, whose activities—regularly attending meetings and submitting public records requests to disseminate information to the public—receive protection under the First Amendment's Free Press Clause. Mr. Woods may not work for the institutional press, but as the Supreme Court has recognized, "liberty of the press is not confined to newspapers and periodicals," but "comprehends every sort of publication which affords a vehicle of information and opinion."[25] The Board's exclusion of someone engaged in core press functions—and whose public comments have drawn the ire of Board members—makes plain the need for clear, neutral, and reasonable standards.

Conclusion

FIRE urges the Board to amend its Decorum policy and to adopt constitutionally compliant standards governing participation in the Press Inquiries portion of meetings. We would be pleased to assist the Board, at no cost, in ensuring its policies respect the First Amendment rights of the public and the press.

We respectfully request a substantive response by December 29, 2025.

Sincerely,

Aaron Terr
Director of Public Advocacy

Cc: Jonathan Foster Jr., County Solicitor

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be reasonable and "not an effort to suppress expression merely because public officials oppose the speaker's view") (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 46 (1983)).

[22] *Minn. Voters All.*, 585 U.S. at 16 (state ban on wearing "political" apparel in polling places was unreasonable due to lack of objective standards defining the term).

[23] *Id.* at 21–22; *see also Sherrill v. Knight*, 569 F.2d 124, 129, 132 (D.C. Cir. 1977).

[24] *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755 (1988) (ordinance giving mayor unfettered discretion to grant or deny newsrack permits was unconstitutional).

[25] *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938); *see also von Bulow by Auersperg v. von Bulow*, 811 F.2d 136, 142 (2d Cir. 1987) ("process of newsgathering is a protected right under the First Amendment" and does not require association with "the institutionalized press").