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October 16, 2023

Shawn Brown
Town Administrator
350 East Main Road
Middletown, RI 02842

VIA EMAIL

Dear Mr. Brown:

I am writing in response to a complaint our office has received from Middletown residents Terri Flynn and Antone Viveiros regarding the town's revocation of approval for group use of a community room at the Middletown fire station to discuss a school bond issue appearing on next month's ballot. Because we believe that Ms. Flynn and Mr. Viveiros have raised legitimate concerns about that revocation, I'm writing to request that you promptly reinstate the group's ability to hold a meeting at that site.

It is our understanding that you revoked the approval based on the town's "Facility Use Policy," and particularly section 2.11, which requires meetings at this forum to be "non-partisan in nature" and "avoid advocacy of a particular position in areas of public policy dispute." It is our further understanding that you made this decision after seeing an ad from the group in *Newport This Week* that was labeled a "political advertisement," and that you affirmed this revocation on Friday, October 13th after your initial decision was appealed by Mr. Viveiros. We find both the policy and the Town's implementation of it extremely problematic and constitutionally infirm, prompting this letter.

As for the policy itself, we believe it raises serious First Amendment issues. It inappropriately gives town officials virtually unbridled discretion to arbitrarily deny use of public spaces based solely on their determination as to how controversial a meeting topic may be.¹ To make decisions on access to the community room based solely on its political content is anathema to basic First Amendment principles. Further, "political" meetings, no less than educational, civic or cultural ones, are fully deserving of First Amendment protection. In any event, the meeting planned by the group was open to all and clearly designed to serve an educational purpose.²

¹ To offer a timely example of the problematic nature of the policy's distinctions on who may use the space, would a local Italo-American group have been allowed to make use of the community room to celebrate Columbus Day, or would it have been denied on the grounds that its commemoration was advocacy in a "public policy dispute" in light of the strong opposition by some to the continued holiday tribute to the explorer?

² We believe the policy contains additional procedural flaws, such as failing to require that denials be provided in writing and containing no timeframes for ensuring that decisions and appeals are made expeditiously, essential requirements when dealing with a denial of the exercise of free speech rights.

Leaving aside the constitutional infirmities with the ordinance itself, the Town's implementation of it is even more problematic. Ms. Flynn has made us aware that, contrary to the policy's purported ban on use of the facility for partisan purposes, the fire station has routinely been the location for meetings of the town Democratic and Republican party committees, which have been posted on the Town's own public calendar. At least one upcoming meeting of the GOP Committee at the fire station can be found on the current calendar. Your sudden decision to begin strictly enforcing this policy only when an effort was made to use a town facility to discuss opposition to a bond referendum that is strongly supported by the Town simply cannot withstand scrutiny.³

Because the group remains interested in making use of the fire station community room for discussions about the bond referendum in the short time still available before the election, we therefore ask that you immediately overturn the revocation and apprise Ms. Flynn and Mr. Viveiros that they may make use of the fire station for a meeting on the bond referendum, absent any current scheduling conflicts.

Thank you in advance for your attention to this matter, and I look forward to hearing back from you about it at the earliest possible opportunity.

Sincerely,



Steven Brown
Executive Director

cc: Peter B. Regan, Town Solicitor
Paul M. Rodrigues, Town Council President
Terri Flynn
Antone Viveiros

³ An [online article](#) in today's *Newport Daily News* quotes the Town's Public Affairs Officer Matt Sheley as acknowledging that the use of the facility for months by the Democratic Party committee – which recently came out in support of the referendum – violated the policy, and that the issue was “being addressed as we speak.” While we agree that, for the reasons mentioned above, both the policy and its implementation deserve closer examination and review, the Town's abrupt and questionable change in its practice in the middle of an election, directly in response to the requested use of the space by a group expressing opposition to the Town's electoral position, is completely unjustifiable.