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April 30, 2024

Cranston City Council
869 Park Avenue
Cranston, RI 02910

VIA EMAIL AND MAIL

Dear City Council Members:

The ACLU of Rhode Island was recently contacted by former City Council member Aniece Germain seeking our views on the events that have recently transpired leading to her resignation from the Council. Because we believe she has raised legitimate concerns, I am writing to request that the Council take steps to ensure that no similar incident arises in the future.¹

Let me begin by emphasizing what this letter is not about. We have no inside information on the personal conversations that took place between Ms. Germain, Council President Marino and others, and offer no views on what was or was not said during those conversations. Instead, our concerns arise solely from the publicly available information of the events leading to Ms. Germain's resignation. Nor do we purport to rely on any extenuating or aggravating circumstances surrounding the revocation of the tax-exempt status of the private organization that Ms. Germain leads, which is what led to this controversy. At least for now, that is a matter for the organization and the IRS. But whatever the ultimate ramifications of that lapse in status, the threat of a city council investigation into Ms. Germain's conduct based on what is presently known was clearly inappropriate.

Our major concern involves President Marino's stated belief that she had a "public duty" to take action, in the form of a Council investigation of Ms. Germain, after being "presented with allegations or evidence of improper and unethical conduct," and that Ms. Germain "could have remained on council and presented her case as part of an investigatory hearing pursuant to our city charter."² As alluded to above, the "improper and unethical conduct" involved Hope and Change for Haiti, the non-profit organization Ms. Germain leads, and which Ms. Marino learned had its tax-exempt status revoked "nearly two years [ago], and despite the fact, the organization is up and running."³

We do not know whether Ms. Marino's view that this information was sufficient to trigger the Council's investigatory powers reflects the view of other Council members. We are writing to request the Council to make clear that it does not. That is because this position is extraordinarily problematic.

The Council simply had, and has, no authority to engage in such an investigation under these facts. The City Charter is unambiguous: the Council has the power to "investigate *the official conduct* of any department, board, commission, office or agency, or officer or employee of the city..."

¹ We note that Melissa Jenkins of the Collective Action Network RI and others have already publicly raised many of the same points expressed in this letter.

² Facebook post of Jessica Marino, Cranston Citywide Councilwoman, <https://www.facebook.com/marinoforcranston>, April 19, 2024

³ "Cranston councilor resigns amid concerns over nonprofit 'filing error'", Sarah Doiron and Shiina LoSciuto, WPRI TV, <https://www.wpri.com/news/local-news/west-bay/cranston-councilor-resigns-amid-concerns-over-nonprofit-filing-error/>

(emphasis added). Section 3.17. There have been absolutely no allegations that any tax exemption problems that may exist with Hope and Change for Haiti were in any way related to Ms. Germain's official duties as a city councilor, and therefore any investigation would have had nothing to do with her "official conduct."⁴

Indeed, it would be deeply disconcerting if the Council felt it had the authority to act as a roving commission to examine any allegations of "unethical conduct" of its fellow members, board appointees or city employees that was unrelated to their official work for the city. An investigation in this instance would have enmeshed the Council in potentially using its official subpoena powers to seek private information completely unrelated to city governance, setting an extremely damaging example. It would also have involved the Council in weighing the intricacies of federal tax law, something we would argue falls even further outside its authority, much less expertise.

Making use of the City Council's investigatory powers over private conduct is especially troubling when aimed at fellow council members, regardless of the intent, in light of the inherent political implications and consequences of such an investigation. We have no reason to wade into the dispute of whether, as Ms. Germain alleges and Ms. Marino denies, there were political reasons behind Ms. Marino warning her that she would be the subject of an investigation, but the controversy acutely demonstrates the dangers in perception that are bound to arise when the Council wields an investigatory club against fellow council members for non-official conduct.

According to Ms. Germain, she resigned her position because she did not want her private organizational difficulties to be the subject of a public investigation by the Council she sat on. She had a right not to expect that.

In light of what has transpired and to avoid any future disputes, we believe it is incumbent upon the Council to address the scope of Section 3.17 of the Charter and what it believes constitutes "official conduct" allowing for investigatory action – and to acknowledge that the information known about the status of Ms. Germain's organization did not rise to such a level. Without a clear rejection of the notion that Section 3.17 applied to Ms. Germain's situation in the absence of any other additional evidence of "misconduct," we fear this incident, left unaddressed, establishes a very disturbing precedent of City Council overreach that could easily be abused in the future.

Thank you for your review of this request, and I look forward to the Council's attention to it.

Sincerely,



Steven Brown
Executive Director

cc: Aniece Germain
Mayor Kenneth Hopkins
City Solicitor Christopher Millea
Attorney General Peter Neronha
Col. Darnell Weaver, RI State Police

⁴ Nor is this a situation where, say, an employee or council member had been charged with, or convicted of, a serious and relevant criminal offense that one might argue would directly interfere with the continued performance of their official duties.