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VIA EMAIL

Mayor Lee Kyriacou (mayor@beaconny.gov)
City Administrator Christopher White (cwhite@beaconny.gov)
City of Beacon
1 Municipal Plaza
Beacon, NY 12508

*re First Amendment Concerns Raised by Events at January 6, 2024 Mayoral
and City Council Swearing-In Ceremony*

Dear Mayor Kyriacou and City Administrator White:

On behalf of the New York Civil Liberties Union, we write to express our concerns about the events surrounding a peaceful and silent protest conducted at the Beacon Mayoral and City Council swearing-in ceremony on January 6, 2024 by residents of Beacon who were attending this public event. We urge the City to avoid treating silent protestors who may attend City meetings and events this way, and to respect the First Amendment rights of protesters going forward.

The Events of January 6, 2024

The swearing-in event was held at the Veterans Memorial Building, owned by the City of Beacon and currently occupied and used by the Veterans of Foreign Wars (“VFW”). It was a governmental event that was very much open to the public.¹ During the swearing-in event, Mayor Kyriacou introduced U.S. Representative Pat Ryan to address the gathering. Representative Ryan has been greeted at his public speaking events by various of his constituents requesting that he support a ceasefire in Gaza. As Representative Ryan began to speak, four people (three of whom are residents of Beacon, all of whom are Representative Ryan’s constituents) who were sitting in the last row of seats stood up and unfurled a small black cloth banner that read “Ceasefire” in white letters.

¹ See City of Beacon, All Events: Swearing-In Ceremony for Mayor and Councilmembers, January 6 @ 3:00 PM - 4:00 PM, available at <https://beaconny.gov/index.php/events/swearing-in-ceremony-for-mayor-and-councilmembers/>.

Christopher White, the City Administrator, and several people in attendance immediately moved to the side of and behind these four silent protesters and tried to hold down the banner. The silent protesters did not shout or interrupt Representative Ryan – they simply told the people holding down the banner that they would not let it go. The videotape of the swearing-in event, with a camera angle on Representative Ryan and the Mayor and other members of the City Council, shows that no one at the front of the hall appeared to be disturbed. No one even turned in their seats or appeared to be looking at the back of the VFW Hall. Representative Ryan continued his remarks, undisturbed and without pause. The videotape of the swearing-in event revealed no other noises in the hall other than the Representative's remarks to the audience.²

Nevertheless, the City Administrator directed the police officers in attendance to arrest these peaceful protesters. The officers indicated that they would not arrest anyone unless a VFW representative asked them to do so; they immediately apparently got that request and moved to arrest these silent protestors. Threatened with arrest, the peaceful protesters, one of whom was carrying an infant in a chest carrier, left the swearing-in event, escorted by police officers.

Preventing the Protesters from Silently Holding Their Banner Violated the Open Meetings Law.

New York's Open Meetings Law³ ("Open Meetings Law") provides members of the public with the right to observe and listen to a variety of meetings of public bodies. Several Open Meetings Law Advisory Opinions expressly address signage. In Open Meetings Advisory Opinion 5296⁴, the Committee on Open Government of the State Department of the State of New York ("Committee") provided guidance on the ability of government bodies to regulate signs at meetings open to the public. In doing so, the Committee listed as primary considerations: whether signs would be disruptive or obtrusive, whether the signs or sign holders would block a person from observing the proceedings or block an exit or create a fire code violation or would be obscene. [In the absence of these factors, the Committee indicated that signs should not be barred from an open meeting?]

None of these circumstances existed at the swearing-in event. The peaceful protesters stood holding their banner in the last row of seats at the back of the hall and were silent throughout – except to the extent that they told those seeking to push down the banner that they simply would not let it go. None of this exchange is even reflected in the video recording of the swearing-in event.

² See City of Beacon Swearing In 01-06-24, Beacon YouTube channel, available at https://www.youtube.com/watch?app=desktop&embeds_referring_curi=https%3A%2F%2Fbeaconny.gov%2F&feature=emb_title&source_ve_path=MzY4NDIsMzY4NDIsMzY4NDIsMzY4NDIsMzY4NDIsMzY4NDIsMzY4NDIsMjM4NTE&v=XNT-XeXQbSY.

³ NY Public Officers Law, Article 7.

⁴ Advisory Opinion 5296 may be found at: <https://docs.opengovernment.dos.ny.gov/coog/otext/o5296.doc>. See also Advisory Opinion 3845, which may be found at <https://docs.dos.ny.gov/coog/otext/o3845.htm>.

The Removal of the Protesters Upon Threat of Arrest Clearly Violated the First Amendment.

It is also well-settled that anyone may attend meetings of local public bodies in New York. This right of access is guaranteed by New York's Open Meetings Law,⁵ the First and Fourteenth Amendments to the United States Constitution and Article I, section 8 of the New York State Constitution. The only restrictions on this right of public access relate to keeping order in the meeting. Though the Council is authorized to adopt rules for its operations,⁶ its authority is not unlimited. Indeed, to the extent that the City Council Meeting Rules in effect at that time applied to that gathering, they did not address signage and cannot be interpreted to have prevented the attendees from silently holding the banner at the swearing-in event.⁷

Events like the swearing-in event are a "limited public forum" and, as such, any limitation on speech must be reasonable in light of the purpose of the forum.⁸ Further, any restrictions imposed must be viewpoint-neutral.⁹ Accordingly, a governmental body may not use an improper reason, such as a dislike for a particular speaker's viewpoint, as a basis to silence a person or exclude them from a public meeting, which is what apparently happened here.¹⁰

The protection of public access to open meetings serves fundamental constitutional values. The purpose of an open, public government meeting is to allow the public to understand, inform, petition and influence its government. In light of this purpose, it was patently unreasonable to prevent these Beacon residents from petitioning their elected official, Representative Ryan, to threaten to have the silent banner holders removed from the event space, and to threaten their arrest.¹¹

⁵ *Id.*

⁶ The Beacon City Council does not appear to have any published rules relating to its operations at public meetings.

⁷ City Council Rule of Procedure 8(d)(8)(i) reads: The audience shall be respectful of all speakers and shall refrain from comments and gestures, private discussions, cell phone use, or other conduct that interferes with the orderly progression of the meeting or in any way discourages free speech.

⁸ See *Devine v. Village of Port Jefferson*, 849 F. Supp. 185, 189-90 (E.D.N.Y. 1994) (analyzing village board meeting as a limited public forum); see also *City of Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 174-76 (1976) (suggesting that any portion of a meeting of a public body that the body opens for public comment is a limited public forum); *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010) (holding that First Amendment protections of a limited public forum applied not only during the public comment period of the meeting, but also throughout the entire meeting), *cert. denied*, 132 S. Ct. 112 (2011).

⁹ See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (stating that "[t]he State may not exclude speech where its distinction is not 'reasonable in light of the purpose served by the forum,' nor may it discriminate against speech on the basis of its viewpoint." (quoting *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985))).

¹⁰ See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

¹¹ See *We the People, Inc., of the U.S. v. Nuclear Regulatory Comm'n*, 746 F. Supp. 213, 216-18 (D.D.C. 1990) (signs that do not block the public's view are permissible).

Conclusion

Permitting citizens to engage with their government is a critical role of public officials in a democracy. We request that you review the events that took place at the swearing-in event, acknowledge that the city of Beacon should have let the protesters hold their banner and not be threatened with arrest, and ensure that such events going forward are handled consistently with the First Amendment and applicable New York State law.

We are of course available to discuss these matters with you at a mutually agreeable time. Please let us know if you would like to do so.

Sincerely

s/Beth Haroules

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Senior Staff Attorney

cc: Council members

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