

Subject: In Response to Your Email

From: Bo and Lacey Cooper [REDACTED]

Date: 10/16/2011 4:45 PM

To: ahill@co.slo.ca.us, lindeowen@sbcglobal.net, [REDACTED]

CC: jpatterson@co.slo.ca.us, fmecham@co.slo.ca.us, bgibson@co.slo.ca.us,
pteixeira@co.slo.ca.us, [REDACTED]

Dear Adam Hill,

There are certain ideas about which we agree, and there are other very fundamental concepts about which we strongly disagree.

You and I agree that it is disrespectful, indecent and lacks civic consciousness to allow people to go homeless, to be hungry, and to be denied access to healthcare.

We disagree about the duties and responsibilities of the chairman of the Board of Supervisors in regard to a citizen's free speech rights during Public Comment. While each of us favors law and order, I believe you have clearly sacrificed law in the name of what you misconceive as order. Let me explain.

The law regarding free speech in an open public forum such as a BOS meeting was definitively interpreted in the court case of BACA v MORENO VALLEY UNIFIED SCHOOL DISTRICT (1996). In BACA, it was ruled that under the First Amendment of the U.S. Constitution, the Constitution of the State of California, and the California Government Code (section 53954.3, The Brown Act) a public speaker is unconditionally allowed to express an uncensored opinion during Public Comment. (All quotations in CAPITALS below will be from BACA.)

A Brief Background:

Victoria Baca was prevented from speaking in an open School Board meeting during Public Comment by the president of the Board and, at the direction of the president of the Board, was escorted out of the meeting by a sheriff's deputy. The basis for her being silenced was a School District policy that prohibited any public criticism of any public employee, either by name or even by title. Ms. Baca maintained that this policy violated her free speech rights in an open Public Forum, and the court agreed and ruled in her favor.

Adam, I think that if you read the actual case either in whole or in the excerpts I sent to you, you would come to understand that your subjective criteria for what speech is acceptable---your sense of "decency and civility"---do not correspond to the legal criteria for what a citizen is allowed to say at the podium.

The law is clear that it is not up to you, as Chairman of the Board of Supervisors, to censor the content of a public speaker's message. The judgment about appropriateness, or even the truth, of a speaker's opinion is not yours to make:

"IT WOULD LEAVE THE DETERMINATION OF WHAT IS 'SLANDEROUS' OR 'FALSE' UP TO ONE PERSON...CALIFORNIA CONSTITUTION FORBIDS PRIOR RESTRAINT OR CENSORSHIP, EVEN BY JUDGES, BECAUSE THIS 'SUBJECT[S] ALL FREEDOM OF SENTIMENT TO THE PREJUDICES OF ONE MAN, AND MAKE[S] HIM THE ARBITRARY AND INFALLIBLE JUDGE OF ALL CONTROVERTED POINTS IN LEARNING, RELIGION, AND GOVERNMENT."

You must follow the law as it is; you do not have the option to run a meeting according to your own personal preferences and beliefs. Legally, you must allow citizens to express themselves at the podium even if the style or content of their speech runs contrary to your own opinion about what is "decent and civil."

"..THE CITY OFFICIAL COULD NOT CUT OFF SPEECH BECAUSE THE MODERATOR DISGREED WITH THE VIEW EXPRESSED."

"THUS, UNDER THE CALIFORNIA CONSTITUTION...DISTRICT CANNOT PROHIBIT SPEECH ON THE GROUNDS THAT IT IS, OR MAY BE, FALSE OR DEFAMATORY, LET ALONE ON THE GROUNDS THAT IT IS NEGATIVELY CRITICAL OF DISTRICT EMPLOYEES... NOR MAY IT REGULATE THE USE OF DEFAMATORY SPEECH BASED ON 'HOSTILITY---OR FAVORITISM---TOWARDS THE UNDERLYING MESSAGE EXPRESSED.'"

'THE CALIFORNIA CONSTITUTION... PREVENTS CENSORSHIP OF EVEN DEFAMATORY SPEECH."

Finally, to be absolutely clear about the First Amendment's protection of freedom of speech, the BACA decision explains:

"THE FIRST AMENDMENT PROTECTS SPEECH WHICH IS UNINHIBITED, ROBUST, WIDE-OPEN, VEHEMENT, CAUSTIC, AND SHARP, AS WELL AS SPEECH WHICH LACKS TRUTH, SOCIAL UTILITY OR POPULARITY OR WHICH EXAGGERATES OR VILIFIES."

Therefore, Adam, even if you strongly disagree with either the content of a speaker's point-of-view or the manner in which they present their opinion, you are obligated by law not to interfere with the speaker nor censor his or her speech.

I think the BACA ruling clears up what you called in your email to me, "the hazy banner of what's democratic."

I'll repeat my original contention: I believe you overstepped your authority when you silenced Linde Owen on October 11, 2011 at the BOS meeting during Public Comment.

When you cut off Linde's microphone you said, "We don't want you to make personal attacks on people during our Public Comment" and "We do not allow personal attacks on individuals during Public Comment." I must say that I do not think that any individuals were being "attacked," but even if they were, your action in prohibiting Linde's speech was not legally permissible and was contrary to the Law.

I still believe you owe Linde an apology.

In good citizenship,
Bo Cooper