

# McGREGOR & LEGERE

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 660  
BOSTON, MASSACHUSETTS 02108  
(617) 338-6464  
FAX (617) 338-0737

MICHAEL J. O'NEILL, ESQ.  
E-mail: [moneill@mcgregorlaw.com](mailto:moneill@mcgregorlaw.com)  
(617) 338-6464 ext. 125

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND EMAIL**

August 30, 2021

Judith Whiteside, Chair  
Peter W. Teitelbaum  
James M. Munise  
Alan Slavin  
Patrick G. Tropeano  
Memorial Town Hall  
54 Marion Road  
Wareham, MA 02571

Dear Chairperson Whiteside and Members of the Wareham Board of Selectmen:

This Firm represents Lisa Morales, of 4 Thirteenth Street, Wareham, Massachusetts, Leslie Edwards Davis, of 8 Trinity Lane, Wareham, Massachusetts, Kathleen M. Pappalardo, of 87 Fearing Hill Road, West Wareham, Massachusetts, and Jody Ann Santagate, of 9 Oakdale Street, Wareham, Massachusetts.

This is to notify the Wareham Board of Selectmen (“Board”) that in our opinion it has violated our clients’ constitutional rights of free speech guaranteed by the First Amendment of the Constitution of the United States by refusing to allow our clients to speak during “Citizen’s Comments” segments of public meetings of the Board.

On behalf of our clients, we respectfully demand that the Board immediately cease and desist from this illegal practice.

The Agendas for the Board’s meetings are posted on line before the meetings on the Town’s website. They include a segment entitled “Citizen’s Comments.”

Ms. Morales attended the Board’s public meeting on February 16, 2021, which was on zoom. Peter Teitelbaum, who was then chair of the Board, opened the public comment period of the meeting. Ms. Morales raised her hand to speak. Without recognizing Ms. Morales to speak, Mr. Teitelbaum stated that earlier that day, Ms. Morales expressed an intent on Facebook to sue the Town over the trash program, and that the Board’s policy for about nine years has been not to speak with people who have suits against the Town or have threatened to sue the Town. Ms.

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Morales interjected that this was a mischaracterization, whereupon Mr. Teitelbaum directed that Ms. Morales be silenced and asked if there was anyone else who would like to speak.

Ms. Morales asked if she could speak on an issue other than the trash program. Mr. Teitelbaum stated that the Board's policy is that it just does not speak to people at all once they make a threat to sue the Town.

Ms. Morales stated that she had sued the Town previously. She was part of a ten-taxpayer suit in 2018 and was allowed to address the Board. Mr. Teitelbaum said that was resolved, and Ms. Morales interjected that that was a mischaracterization. Mr. Teitelbaum again directed that Ms. Morales be silenced.

Selectman James Munise stated he was not aware of that policy and that, if someone wants to address something else, they should be given that privilege.

After Selectman Patrick Tropeano spoke, Ms. Morales asked for the opinion of Town Counsel Richard Bowen, who was present. Mr. Tropeano told Ms. Morales that she could not have anybody's opinion and directed that Ms. Morales be silenced.

Mr. Munise then asked, through the chair, for Mr. Bowen's opinion.

Mr. Bowen said that, if a person uses the public comment period to bait Town officials into ill-advised statements, it is a hazardous situation from a liability point of view and that generally the Board's practice is not to engage with persons who have either active litigation against the Town or have threatened litigation.

Selectwoman Judith Whiteside stated that in thirty years the Board has not allowed such a person to speak during the public comment period.

Ms. Morales asked if she is permanently silenced from ever addressing the Board, stated that her Facebook posting was a hypothetical statement, and denied Mr. Teitelbaum's characterization of it as a "clear threat."

Mr. Tropeano directed the zoom operator to turn Ms. Morales off and leave her off.

Mr. Teitelbaum said that they were not in the business of splitting hairs and then recognized another citizen.

On or about February 23, 2021, during the regularly scheduled Board meeting, Mr. Teitelbaum stated that the "chat" function of zoom had been disabled and that he caught himself responding to citizens through the chat function, which he stated was a violation of the Open Meeting Law.

On or about March 23, 2021, Ms. Morales attended the regularly scheduled Board meeting by zoom. During the "Citizen's Comments" period, Ms. Morales raised her hand electronically to

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speak. Mr. Teitelbaum acknowledged that Ms. Morales had her hand up, but said he was not going to acknowledge her because she had threatened litigation against the Town.

On March 23, 2021, Ms. Morales filed an Open Meeting Law complaint with the Attorney General with respect to the foregoing events.

On or about May 10, 2021, Ms. Morales became part of a group of ten residents of Wareham who appealed the Order of Conditions issued by the Wareham Conservation Commission for the proposed Borrego solar energy project on land owned by AD Makepeace Company, Inc. at 140 Tihonet Road, Wareham, Massachusetts.

At some time between May 10, 2021 and May 23, 2021, Ms. Morales was again denied permission to speak during the "Citizen's Comments" segment of the Board meeting.

On May 23, 2021, Ms. Morales notified the Massachusetts Attorney General that the Board had banned the ten residents of Wareham who appealed the Order of Conditions from addressing the Board, in violation of their constitutional rights under the First Amendment.

On May 23, 2021, Ms. Morales became aware that her March 23, 2021 Open Meeting Law complaint had been denied.

Ms. Pappalardo attended the Board's public meeting on May 18, 2021, by zoom. The Board Chair as of that time, Ms. Whiteside, stated that, before going to citizens' comments, she wished to make a statement. She said: "If you are a person who is currently suing the Town or if you have signed up as an appellant and your attorney has advised the town that we will probably end up in litigation, I will not allow you to speak."

Ms. Pappalardo raised her hand to speak. Ms. Whiteside told her that she was not allowed to speak because she was a party to an appeal against the Town.

At that meeting a Board member stated that Staples would laminate Covid vaccination cards for free and citizens should do this.

Ms. Pappalardo wanted to advise the Board and the public that medical experts and AARP are advising people not to get their vaccination cards laminated due to the possibility of needing booster shots, and health professionals would need the ability to write on the vaccination card. This had absolutely nothing to do with any appeal against the Town.

Ms. Edwards Davis had the same experience at the Board's July 13, 2021 meeting.

Ms. Edwards Davis attended the July 13 meeting of the Board, which was in-person at the Wareham Multi-Service Center, Selectmen's Meeting Room, 48 Marion Road, Wareham, Massachusetts.

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The Board Chair, Ms. Whiteside, called the meeting to order. Approximately two and one-half minutes later she opened the meeting for public comment. Ms. Edwards Davis raised her hand, requesting to be recognized by the Chair to speak.

At the sight of Ms. Edwards Davis' raised hand, Ms. Whiteside stated: "I'm sorry, but you are Ms. Edwards Davis, is that correct?" Ms. Edwards Davis replied: "Yes." Ms. Whiteside then stated: "I'm not going to allow you to speak."

Ms. Edwards Davis responded: "I'm not commenting on the issue you think I'm commenting on, which is ridiculous anyway, but I'm commenting on something completely different."

Ms. Whiteside replied: "I'm sorry, our policy is that if there's either a threat or actual litigation, we cannot speak...allow you to speak."

At that point, Annie Hayes raised her hand to be recognized to speak. Ms. Whiteside replied: "No Miss Hayes." Ms. Edwards Davis then stated: "This is ridiculous but thank you very much." Ms. Whiteside then said: "Thank you."

Ms. Whiteside then moved on. She said: "Is there anyone else who chooses to address this Board?" No one replied.

Ms. Santagate had similar experience with the Board. On or about June 1, 2021, Ms. Santagate applied through the Town's online portal for an open seat on two committees, the Council on Aging and the Finance Committee.

On July 22, 2021, Ms. Santagate attended an in-person meeting with the appointing authority for the Finance Committee, which consisted of three members, one of whom was Ms. Whiteside. Ms. Whiteside stated that she could not speak to Ms. Santagate because she was one of the "Wareham Ten" and left the room.

On July 30, 2021, Ms. Santagate received an email informing her that another person had been selected for the Finance Committee.

On August 4, 2021, Ms. Santagate received an email informing her that her Council of Aging application had been placed on the Board of Selectmen agenda for August 10, 2021. It also said: "Please note that the Board will not be able to speak with you unless you have withdrawn from the Meg Sheehan appeal."

The "Meg Sheehan appeal" refers to a Request for a Superseding Order of Conditions under the Wetland Protection Act by ten or more Wareham residents seeking reversal by the Department of Environmental Protection of an Order of Conditions by the Wareham Conservation Commission allowing a solar array and energy storage project at 140 Tihonet Road, Wareham, Massachusetts. It is an administrative proceeding, not a lawsuit. There is nothing in the First

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Amendment or in the cases construing it that provides that citizens lose their First Amendment rights of free speech if they exercise their constitutional right to petition government.

The Board's actions described above are violations of our clients' First Amendment rights. Under First Amendment jurisprudence, there are three categories of public forums, traditional public forums, such as public streets and parks, designated public forums, which the government has opened for use by the public as a place to assemble or debate, and limited public forums, which are limited to use by certain groups or dedicated solely to the discussion of certain subjects. *Roman v. Trustees of Tufts College*, 461 Mass. 707 (2012).

The First Amendment rights of expression are fundamental to the preservation of an open, democratic society since a restriction on their exercise inhibits the debate by which society's values are set and its laws reformed to reflect prevailing opinion. *Hanover v. Northrup*, 325 F. Supp. 170 (D. Conn. 1970).

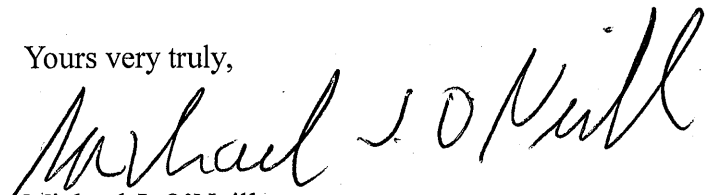
As a general matter, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. *State v. Ruggiero*, 156 Idaho 662, 330 P. 3d 408 (2014).

The "Citizen Comments" segments of the Board's public meetings are designated public forums. In designated public forums, the governmental body may impose reasonable time, place, and manner restrictions on the exercise of free speech rights, "However, any content-based restrictions must pass strict scrutiny, meaning they must be narrowly tailored to advance compelling government interests." *Spaulding v. Natick School Committee*, Middlesex Superior Court MICV2018-01115 (Nov. 21, 2018).

The Board's practice and policy of not allowing our clients to speak at all during Board Meetings fails the strict scrutiny test miserably. It amounts to before-the-fact censorship based on the person's identity, without even inquiring what they were going to say. None of our clients was rude or disruptive. There was no evidence that they were going to express obscenities or say or do anything inappropriate.

I request that the Board respond that it has rescinded its policy described and will allow our clients to address the Board during the "Citizens Comments" segments.

Yours very truly,



Michael J. O'Neill