

August 11, 2020

Via Email Only

Commissioner Carrie Blumert – carrie.blumert@oklahomacounty.org

Commissioner Brian Maughan – brian@oklahomacounty.org

Commissioner Kevin Calvey – kevin.calvey@oklahomacounty.org



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Ryan Kiesel
Executive Director

Michael C. Redman
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Nicole McAfee
**Director of Policy and
Advocacy**

Oklahoma County Commissioners
320 Robert S. Kerr
Oklahoma City, OK 73102

Re: Proposed Policy Regulating the Use of County Property for Free
Speech Activities

Dear Commissioners:

Currently under consideration is a proposed Policy Regulating the Use of County Property for Free Speech Activities, Resolution No. 2020-3957. As I am sure you are aware, the right to engage in free speech and petition the government for a redress of grievances is the bedrock to our democratic society. The proposed Policy is a direct and egregious violation of that right.

In *McCullen v. Coakley*, 134 S.Ct. 2518 (2014), the United States Supreme Court noted that the guiding First Amendment principle that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content applies with full force in a traditional public forum. In a traditional public forum, the government may not selectively shield the public from some kinds of speech on the ground that they are more offensive than others.

The Court also observed that even in a public forum the government may impose reasonable restrictions as to time, place, or manner of protected speech, provided that the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant government interest. Furthermore, they must leave open ample alternative channels for communication of the

information. As such, any limitation on free speech must be narrowly tailored to serve a significant government interest.

The proposed Policy is unconstitutional because it places impermissible burdens on the exercise of free speech and is not narrowly tailored to serve a significant government interest. It limits protected speech on the doorstep of our legal system, a place where, by the Policy's own admission, people have gathered from time immemorial to express themselves and make demands of public officials. If enacted – let alone enforced – the County can expect the ACLU of Oklahoma to challenge the Policy as an impermissible burden upon the First Amendment to the United States Constitution. Additionally, if successful, the County would be liable for reasonable attorney fees incurred in the prosecution of such litigation.

The ACLU of Oklahoma asks that you give serious consideration as to whether the proposed Policy is necessary in light of the constitutional violations of the right to free speech and anticipated legal challenge.

Sincerely,



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Interim Legal Director



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