

January 29, 2018

Suzanne McGee Cienki, President
East Greenwich Town Council
125 Main Street
PO Box 111
East Greenwich, RI 02818

(BY EMAIL AND MAIL)

Dear Ms. Cienki:

We were recently contacted by some local residents about the Town Council's passage last week of an "Employee Social Media Policy." The ACLU has reviewed the policy, and we share the concerns of those who contacted us about its breadth and its impact on Town employees' First Amendment rights. I am therefore writing to ask the Council to reconsider and revise the policy to address the free speech issues it raises.

It is worth emphasizing that attempts to regulate employee social media use, by definition, involve regulating an exercise of free speech. The Town, of course, has the right to restrict certain employee speech – on social media and otherwise – but it must be done carefully to meet First Amendment standards.

A major problem with this policy, however, is that it inappropriately conflates an employee's speech as an employee with their speech as a private citizen. Subsection (a) of the policy, under "Personal Use Precautions and Prohibitions," explicitly states that "whenever an employee uses social media sites, *including during non-work hours*, the employee must abide by this policy..." See also subsection (e): "adherence ... is required in the *personal use* of social media." (emphasis added) But the Town simply has no authority to regulate an employee's private speech in the same manner as his or her speech in an official capacity. Government employees retain the general right to speak out as private citizens on matters of public concern.

The policy's restrictions are also extremely vague and open-ended. Among the types of speech that employees, even in their personal capacity, cannot post are comments that "ridicule," "disparage," or "otherwise bias [sic] against ... any protected class of individuals." A person privately retweeting, or responding to, some of President Trump's less tolerant comments over this past year could very well find themselves in violation of this policy.

The policy further bans employees' private speech "involving themselves or other Town personnel reflecting behavior that would reasonably be considered reckless." In light of last November's rather scathing opinion issued by Superior Court Judge Susan McGuirl, finding that the Town engaged in knowing and willful violations of the law, would it violate this policy for an employee to make reference to that opinion since it reflects "reckless" behavior on the part of Town officials?

Subsection (c)'s "disclaimer" provision is also problematic. It provides that "any comments directly or indirectly relating to the Town" must include an explicit disclaimer that the postings "are my own and do not represent the Town of East Greenwich's positions, strategies, or opinions." First, the reference to "any" comments "directly or indirectly" relating to the Town is extraordinarily broad. Second, the disclaimer is required even when the person has made no attempt to identify him or herself in the post as a Town employee in the first place. A government's actions in *compelling* speech of an individual can be just as inappropriate as censoring it. As a practical matter, the length of the mandated disclaimer would likely place Twitter off limits for any person employed by the Town to say anything even indirectly relating to East Greenwich. In any event, it is difficult to understand the point of demanding that employees' private social media posts include a disclaimer that they are speaking personally, when the rest of the policy essentially limits their Town-related comments to only those that are acceptable in speaking as a Town employee.

In light of all that has gone on in the Town during the past year, we would respectfully submit that more speech, rather than less, should be encouraged among Town employees. A policy that so broadly serves only to chill employees from speaking out about improprieties, misconduct or other matters affecting the residents of East Greenwich is a disservice not only to the Town and its employees, but to its residents as well. The additional broad censorship of private speech unrelated to Town matters also sets a poor example.

For all these reasons, we urge that the Council reevaluate this policy. We are sorry that we were not made aware of the policy in advance of its passage in order to allow us to submit these comments before it was adopted. Nonetheless, now that these issues have been brought to your attention, we hope you and the rest of the Council will give these comments careful consideration.

Please feel free to let me know if you have any questions about them. Thank you.

Sincerely,

Steven Brown
Executive Director

cc: East Greenwich Town Council
Town Manager Gayle Corrigan
Town Solicitor David D'Agastino
Town Clerk Leigh Carney