



December 2, 2024

Sandra Kennedy
Corporation Counsel
City of South Bend
227 W. Jefferson Blvd., Suite 1200S
South Bend, IN 46601

Dear Ms. Kennedy,

I have been contacted by Black Lives Matter South Bend about proposed South Bend Ordinance 72-24 that will alter the City Council's "Privilege of the Floor." After reviewing the proposed ordinance, I am concerned about Section 2-12(13)(d), which states that those who are speaking "shall refrain from making comments that have already been made by other speakers." I believe that this section violates the First Amendment.

One problem is that the section is vague. What does "making comments that have already been made by other speakers" mean. Does this mean that the speaker is planning to repeat verbatim what the previous speaker said? I doubt that. But then, what does it mean? As you know, vagueness is a particular concern when First Amendment rights are impacted.

The above questions raise another concern. No matter the nature of the forum for First Amendment purposes, any restrictions on speech must be viewpoint neutral. *See, e.g., Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 806 (1985). But, by definition, this section is not viewpoint neutral. The determination of whether someone can speak is based solely on the viewpoint they wish to express. If the first person supports a position, the proposed ordinance seems to indicate that a second person cannot also support the position. However, the third person can speak if they oppose the position. This is the definition of viewpoint discrimination.

In addition to being viewpoint neutral, any restriction on expression must also be reasonable. *Id.* I assume that the purpose of allowing persons to speak to the Council is for the Council to be better apprised of the positions and interests of the citizens of South Bend. If the Council is considering something that has a great deal of community support,

how is it reasonable to cut off supportive comments after the first person speaks? How is the Council to learn about the depth of community support or opposition to an issue if persons are not able to make repetitive comments? This is simply not reasonable.

Given what appears to be obvious First Amendment difficulties, I am hoping that the Council reconsider the proposed amendment.

Thank you very much.

Very truly yours,



Kenneth J. Falk
Attorney at Law

cc: legaldept@southbendin.gov