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Magistrate James Brian Combs
Madison County Fiscal Court
135 W Irvine Street, 3rd Floor
Richmond, KY 40475

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Magistrate James Brian Combs,

I am writing to complain about the "MADISON COUNTY FISCAL COURT RESOLUTION 2024-94" as it violates the freedom of speech guaranteed to all Kentuckians in the laws of The Commonwealth of Kentucky and The United States of America.

Kentucky law protects citizen's right to "freely communicat[e] their thoughts and opinions." and to "applying to those invested with the power of government for redress of grievances". Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their county. Our form of government cannot work without feedback from the people.

This resolution threatens violence against people who are exercising their free speech rights in a limited public forum with their elected representatives. That is indefensible.

In this resolution The Madison County Fiscal Court claims that because the open records statute does not forbid them from limiting speech, they may limit speech. That argument ignores all other sections of the laws of The Commonwealth of Kentucky and The United States of America that protect free speech. This argument is clearly wrong. We cannot look at the law with blinders on. We are obligated to follow the whole law. I expect better reasoning from Judge Executives.

I am sure that the open records statute does not forbid battery, rape, and murder. But are you legally allowed to do those things in a government meeting. No. God forbid.

Violations

The courts have ruled time and time again that in open meetings, government entities can limit when and for how long a citizen may speak. But government entities are not allowed to limit speech based on the content of that speech. This resolution does just that.

Under the Kentucky State Supreme Court ruling in Musselman v. COMMONWEALTH of Kentucky, the justices quoted, "The constitutional guarantees of freedom of speech forbid the States to punish the use of words or language not within 'narrowly limited classes of speech.'" Those narrowly limited classes of speech are so called fighting words. These are defined in the

case as "words that 'have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.'"

This resolution clearly restricts speech that is not in the narrowly limited classes when it states, "each speaker shall conduct themselves in a courteous manner and refrain from using derogatory or abusive language". The Fiscal Court is attempting to restrict speech in an unconstitutional manner. As Justice Stevens in the case *FCC v Pacifica Foundation* stated, "[I]f it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."

Many people I know use "derogatory or abusive language" and are discourteous in everyday life. That is part of their personality and how they were raised. When they are angry about an issue and take time out of their workday to attend a Fiscal Court meeting, how much more discourteous will they be? How much "derogatory or abusive language" will they use? Are they any less of a citizen? Do their voices count any less just because of the way they express themselves? These rules unfairly block many citizens who speak in a way that is not dignified enough to fit your rules.

Some people have a disease called Tourette Syndrome where one symptom is uncontrollable swearing (coprolalia). Are they not allowed to give public comments?

By being vague about what constitutes a disruption, the resolution allows full discretion to the "presiding officer" to outlaw any statement, "clapping, cheering, booing or hissing". Citizens attending meetings covered by this resolution cannot know what statement or what level of "clapping, cheering, booing or hissing" is a disruption since the term disruption is not defined.

By not defining what is a disruptive act and leaving it up to the "presiding officer" to determine, this resolution is setting up a situation where the "presiding officer" can decide that one citizen that quietly hissed in opposition of the issue is disruptive while citizens who supports the issue can whoop and holler without causing a disruption. This resolution is clearly unconstitutionally void because of this vagueness.

Requiring the citizens to write the topic of their comment and name and address before they publicly speak to their county government representatives allows the "presiding officer" to deny speakers any time based on the topic or content of their comment. Without a clear checks and balances on this power there is no way that this information can be demanded without violating citizens right to free speech.

Since the meeting videos are live streamed online and available for viewing later, requiring people that want to speak to state their name and address clearly violates Kentucky's "Dissemination of personally identifying information" law (KRS 525.085). You are demanding that public speakers that want to exercise their right to "applying to those invested with the power of government for redress of grievances" disclose private information that the law punishes people for disclosing.

Remedies

This resolution is a serious violation of the rights of the people of Madison County. Too many politicians do everything they can to ignore the voices of people. This needs to change if the politicians are going to have the will of the people behind them. And even more so if our republic is to continue to exist.

To remedy this violation I request the following steps be taken:

1. "MADISON COUNTY FISCAL COURT RESOLUTION 2024-94" shall be struck from the list of resolutions of the county.
2. Public notice shall be made in print and on social media that the rules contained in this resolution are legally unenforceable and that it has been removed.
3. All members of the Madison County Fiscal Court and staff shall attend at least 2 hours of classes covering the free speech rights of citizens.

Sincerely,

Elliott Stoddard