



**AMERICAN ATHEISTS
LEGAL CENTER**

718 7th Street NW, Washington DC 20001

July 29, 2019

Via Hand Delivery & E-Mail

James R. Guy, President
St. Mary's County Commission
P.O. Box 653
41770 Baldrige St.
Leonardtown, MD 20650

Via Hand Delivery & E-Mail

Michael Blackwell, Director
St. Mary's County Library
23250 Hollywood Rd.
Leonardtown, MD 20650

Re: Penalizing St. Mary's County Library for hosting the "Drag Queen Story Hour" event may have adverse First Amendment consequences.

Dear Mr. Guy and Mr. Blackwell:

Southern Maryland Area Secular Humanists (SMASH), an affiliate of American Atheists, and PFLAG Leonardtown, an affiliate of PFLAG, organized the recent "Drag Queen Story Hour" event at a branch of the St. Mary's County Library (the Library). In the wake of that event, at a St. Mary's County Commission (the Commission) business meeting on July 16, 2019, (the July 16 Meeting) Commissioner O'Connor moved that \$2,439.38 be removed from the Library's budget and placed into the budget of the St. Mary's County Sheriff's Department in order to cover the cost of providing security at the Library for the Drag Queen Story Hour. The Commission's action of partially defunding the Library, as well as remarks made by a number of county commissioners both at the July 16 Meeting and elsewhere, likely violated Maryland law and raise serious First Amendment concerns.

The undersigned write to advise both the Commission and the Library of their obligations under Maryland law and the First Amendment. To the extent that the Commission's decision at the July 16 Meeting results in the implementation of new policies regarding the public's use of Library facilities, we also offer guidance in crafting a policy that avoids engaging in viewpoint discrimination by either the Commission or the Library.

American Atheists, Inc., is a national nonprofit organization dedicated to protecting the separation of religion and government and elevating the voices of atheists in our nation's public discourse. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in St. Mary's County, Maryland.

SMASH is a chapter of Washington Area Secular Humanists, a regional nonprofit organization that promotes scientific methods of knowing, separation of church and state, and a commitment

to the pursuit of humanist goals outside religious frameworks. WASH sponsors twelve local chapters for the promotion of Secular Humanist activities, including one based in St. Mary's County.

PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people, their parents and families, and allies. With over 400 chapters and 200,000 members and supporters crossing multiple generations of families in major urban centers, small cities, and rural areas across the United States, PFLAG is committed to creating a world where diversity is celebrated and all people are respected, valued, and affirmed. To learn more, visit pflag.org, like us on Facebook ([/pflag](https://www.facebook.com/pflag)), or follow us on Twitter ([@pflag](https://twitter.com/pflag)) or Instagram.

PFLAG of Leonardtown is an all-volunteer organization run by parents, family members, LGBTQ+ individuals, and their friends. The organization serves Southern Maryland and is committed to advancing equality in the community through support, education and advocacy. PFLAG Leonardtown is a local chapter of PFLAG National which is an organization that provides assistance to over 400 chapters nationwide. To find out more about PFLAG Leonardtown please visit us on the web at PFLAGLeonardtown.org.

The decision to defund the Library violated Maryland law and the Free Speech Clause of the First Amendment.

By law, Maryland's county public libraries must be apolitical.¹ The plain text of the statute indicates that funds appropriated to a county public library by the county must keep the library "free from political influence."² The act of partially defunding the Library in response to a group's use of its facilities with which the commissioners disagree violates both the text and the spirit of the law.

Moreover, the partial defunding, coupled with the statements of several St. Mary's County commissioners, both in public meetings and elsewhere, have a chilling effect on the expressive activities of SMASH and PFLAG of Leonardtown. A government agency violates the First Amendment when it takes a regulatory or proscriptive action that creates "a non-speculative and objectively reasonable chilling effect" sufficient to deter "[a] person of ordinary firmness" from engaging in disapproved expressive conduct.³ By defunding the Library in direct response to an event of which the individual commissioners disapprove, coupled with an admonition that the Library avoid making its facilities available for such events in the future,⁴ the Commission acted with the express intent to discourage individuals and groups from using the spaces provided by the Library for purposes the Commission deemed controversial.

The constitutional injury becomes all the more acute if, as the Commission urged in the July 16 Meeting, the Library takes steps to pass the costs imposed by the Commission on to the Library's patrons. The Commission's apparent desire to make using the Library increasingly

¹ Md. Code Ann., Educ. § 23-401(a) (Lexis 2019).

² Id.

³ *Cooksey v. Futrell*, 721 F.3d 226, 236, 237 (4th Cir. 2013); see also *Laird v. Tatum*, 408 U.S. 1, 11 (1972).

⁴ St. Mary's County MD Government, *6/18/2019 Commissioners of St. Mary's County Business Meeting*, YouTube (June 18, 2019), <https://www.youtube.com/watch?v=qN1NTkpOVsc>.

expensive for groups that the Commission and some in the community deem too controversial will only serve to heighten the chilling effect of those actions.

As a center of knowledge and haven for freedom of speech, it is essential that the Library not be pressured into censoring events held in spaces open to the public. The event, “Drag Queen Story Hour,” held on June 23, 2019, was an event for children and teens, with different activities for each group. Though this has been described by certain members of the community as a controversial event that the community did not want, approximately 35 children and 50 adults (including parents, volunteers, and performers) were present in the room, with more supporters outside. Police presence at the event was only necessitated by the expectation of protests from anti-LGBTQ+ activists. These protestors were goaded, in part, by statements such as that of Commissioner Morgan who, on June 18, 2019, accused the event’s organizers of “targeting the kids for sexuality.”⁵

The First Amendment does not permit a “heckler’s veto.”⁶ The Commission, by placing the burden of security costs on the library (with the expectation that those costs will be passed on to its patrons), effectively gave control of library use over to those who would channel their disapproval into disruptive, even dangerous, conduct as evidenced by the arrest of one protester who took it upon himself to disrupt the event and disturb the families in attendance. With this decision, the County Commission is progressing further down a very dangerous path. Far from quelling controversy, the Commission has incentivized it.

Any policy designed to deter “controversial” use of Library facilities will constitute unconstitutional viewpoint discrimination.

Though we object to the decision by the St. Mary’s County Commission to partially defund the Library in the wake of the Drag Queen Story Hour event, we are not insensitive to the government’s obligation to ensure public safety, both to preserve the Library as a forum for free speech and to permit those on all sides of an issue to voice their opinions peacefully and safely. Any measures implemented by the government to maintain public safety must do so in a manner that is content-neutral, and must safeguard against viewpoint discrimination by administering officials, particularly in a designated public forum like the Library’s public-use spaces.⁷

“Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”⁸ This was the Supreme Court’s blunt assessment of a county ordinance which sought to recoup police expenses incurred as a result of controversial events by imposing a fee on event organizers.⁹ Key to the Supreme Court’s invalidation of the

⁵ St. Mary’s County MD Government, *7/16/2019 Commissioners of St. Mary’s County*, YouTube (July 16, 2019), <https://www.youtube.com/watch?v=dArKMUpKUuk>.

⁶ *Reno v. ACLU*, 521 U.S. 844, 880 (1997); *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133-36 (1992).

⁷ *Ark. Educ. TV Comm’n v. Forbes*, 523 U.S. 666, 677 (1998); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) (“Discrimination against speech because of its message is presumed to be unconstitutional.”); *Child Evangelism Fellowship of Md., Inc. v. Montgomery County Pub. Sch.*, 457 F.3d 376, 382 (2006); *Warren v. Fairfax County*, 196 F.3d 186, 193 (1999).

⁸ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) (“[T]he government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.”).

⁹ *Id.* at 133-36.

ordinance in that case was the fact that it gave county officials discretion to adjust the imposed fee according to the level of security the county officials anticipated would be necessary for a given event.¹⁰

The decision how much to charge for police protection or administrative time -- or even whether to charge at all -- is left to the whim of the administrator. There are no articulated standards either in the ordinance or in the county's established practice. The administrator is not required to rely on any objective factors. He need not provide any explanation for his decision, and that decision is unreviewable. Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees. *The First Amendment prohibits the vesting of such unbridled discretion in a government official.*¹¹

To avoid running afoul of these constitutional requirements, restrictions placed on the use of a designated public forum must be content-neutral. Neither the Commission nor the Library can place limits on the topics permitted to be discussed in the space,¹² regardless of any perceived level of controversy a topic may bring. Those wishing to meet for the purpose of debating hot-button issues can face no greater government burden than those meeting for arts and crafts lessons.

In addition to assuring that limitations on use are content-neutral, the government has a closely related obligation not to discriminate based on the viewpoint of the speaker. The government can make it no more burdensome for a proponent of LGBTQ+ rights to use Library spaces than it would for an individual opposed to that position.

When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. *Viewpoint discrimination is thus an egregious form of content discrimination.* The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.¹³

These constitutional limits on the government's authority to regulate and limit speech are stringent. That is no accident. Government officials are entrusted with the solemn duty to preserve the freedom of speech and expression of individuals while also endeavoring to maintain public safety and diligently manage public funds. Meeting these obligations, however, need not be complicated. A policy need only be based on objective criteria, independent of the subject of discussion or the viewpoint of the speaker, and applied in a transparent manner free from subjective administrative discretion. Both SMASH and PFLAG of Leonardtown are ready and willing to assist the Commission and the Library in crafting a policy which meets the budgetary needs of St. Mary's County while also complying with the government's constitutional and statutory obligations.

¹⁰ *Id.* at 132-33.

¹¹ *Id.* at 133 (emphasis added).


¹² *Child Evangelism Fellowship of Md., Inc. v. Montgomery County Pub. Sch.*, 457 F.3d 376, 382 (2006).

¹³ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (emphasis added); see also *lanca v. Brunetti*, 588 U.S. ____ (2019), No. 18-302, (June 24, 2019).

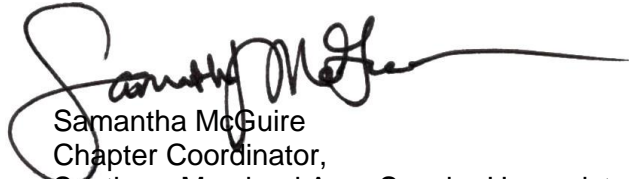
If, as a result of the actions of the Commission or Library administrators, SMASH or PFLAG of Leonardtown are subjected to discriminatory burdens when engaging in expressive activity, they are prepared to seek judicial remedies for that violation of their rights.

Thank you for your time and attention to this matter.

Sincerely,

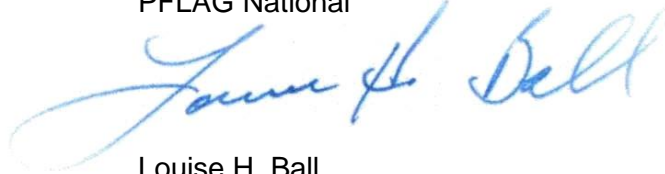


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