

February 16, 2024

Dear Members of the Maryland State Legislature:

House Bill 763 does not violate the First Amendment to the Constitution of the United States, as incorporated by the due process clause of the Fourteenth Amendment. The legislative decision to remove the representative of the Council on American-Islamic Relations from the Commission on Hate Crime Response and Prevention is consistent with the Supreme Court's decisions in *Elrod v. Burns*, 427 U.S. 347 (1976) and *Pickering v. Board of Education of Township High School District 205, Will County, Illinois*, 391 U.S. 563 (1968).

I reach this conclusion for three reasons. First, unpaid members of an advisory task force are not government employees whose positions are subject to first amendment protections. They do not receive salaries, obtain health care or any gain any of the other benefits that the Supreme Court has held trigger free speech rights. Second, constitutional free speech guarantees do not protect persons in government positions who make policy when their speech activities are inconsistent with the policymaking obligations. Supreme Court decisions have ruled that persons whose primary responsibility is to provide policy advice to government officials do not enjoy first amendment protections when they speak in ways inconsistent with the policies being promoted by the state executive or legislative branch. Third, even if the circumstances warrant use of the *Pickering* balancing test, that test supports the House Bill 763. The Maryland state legislature could reasonably conclude that a representative of an organization that "was happy to see" the Hamas massacre that took place in Israel on October 7, 2023 would not be an effective or appropriate member of a task force designed to make recommendations on responses and prevention of hate crimes.

Yours truly,

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