



ACLU OF THE NATION'S CAPITAL
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November 3, 2016

By email and hand-delivery

Karl A. Racine, Attorney General
Office of the Attorney General
441 4th Street NW
Washington, DC 20001

Joel Maupin, Chief
District of Columbia Housing Authority Police Department
1133 North Capitol Street NE, 4th Floor
Washington, DC 20002

Re: D.C. Housing Authority barring order issued to Schyla Pondexter-Moore

Dear Attorney General Racine and Chief Maupin:

On October 7, 2016, D.C. Housing Authority police officers handed Ms. Schyla Pondexter-Moore an order banning her from attending (and therefore from speaking during the public comment period of) public meetings of the D.C. Housing Authority (DCHA) for 60 days. That order is a prior restraint on Ms. Pondexter-Moore's speech in a limited public forum, and it was issued without any prior notice or opportunity for a hearing. In our view, the order violated Ms. Pondexter-Moore's rights to freedom of speech under the First Amendment and to due process under the Fifth Amendment. Ms. Pondexter-Moore wishes to attend and speak at the November 9 public meeting of the DCHA Board of Commissioners. If the barring order is not lifted immediately, we will seek judicial relief so that she can attend that meeting and future meetings.

Ms. Pondexter-Moore has been an organizer-activist regarding public housing issues since 2010, when DCHA began renovations and forced displacements in the public housing community where she lived, Highland Dwellings. At that time, Ms. Pondexter-Moore began organizing tenants to fight back against displacement, and she founded the organization Highland Together We Stand, which won significant victories in a 2012 settlement with DCHA. Since 2012, Ms. Pondexter-Moore has worked as an organizer with Empower DC, a non-profit organization that describes its mission as "work[ing] to enhance, improve and promote the self-advocacy of low and moderate income DC residents . . . through grassroots organizing and trainings, leadership development, and community education." Most recently, Ms. Pondexter-Moore has been organizing to stop the displacement of residents under the redevelopment plans for the Barry Farm public housing complex in Southeast D.C. and has helped form the Barry Farm Tenants and Allies Association to challenge proposed changes to the public housing community through the legal system.

On September 14, 2016, Ms. Pondexter-Moore attended a DCHA Board of Commissioners meeting to speak out against a proposal to approve \$13 million in “predevelopment funding” for Barry Farm. During the public comment portion of the meeting, Ms. Pondexter-Moore testified against the proposal, commenting on the intimidation faced by Barry Farm residents and presenting a petition against the proposal signed by more than one hundred Barry Farm residents. At the end of the meeting, the Board voted six-to-four to approve the proposal. Ms. Pondexter-Moore became upset, stood up, and loudly questioned why Board members had voted “yes,” pointing out that many Board members were not personally affected by the measures they adopted. At that point, several security officers ejected her from the meeting.

Several weeks later, on October 7, 2016, Ms. Pondexter-Moore received the barring order noted above, which informed her that she was barred from “all DCHA Board meetings” for the following two months. Prior to the imposition of the bar, Ms. Pondexter-Moore had no notice or opportunity to challenge the blanket restriction. The order did not indicate any further process for challenging the exclusion and simply stated that the reason for its issuance was that Ms. Pondexter-Moore had engaged in “excessively loud or disruptive conduct or disturbing the peace of DCHA residents/employees.” When Ms. Pondexter-Moore asked the officers how she could challenge the bar, she was told to “call the Chief.” In her years of housing activism, Ms. Pondexter-Moore has attended more than twenty DCHA Board meetings. Other than on September 14, she has never caused a disturbance. She does not attend meetings for the purpose of causing a disturbance, but rather for the purpose of participating in the process.

Because of the barring order, Ms. Pondexter-Moore has already been unable to attend DCHA meetings on October 12, 2016 and October 27, 2016, and she is not permitted to attend the upcoming DCHA Board meeting on November 9, 2016 at Barry Farm or the subsequent DCHA meeting on November 24, 2016.

A prospective bar on Ms. Pondexter-Moore’s attendance at a governmental meeting open for public participation violates the First Amendment’s guarantee of freedom of speech. The bar presents two independent First Amendment problems, each of which is fatal to the bar’s validity. First, the bar does not survive any conceivable level of scrutiny that applies based on the nature of the limited public forum that the government has established when it invited the public to participate in DCHA meetings. The bar against Ms. Pondexter-Moore is a speaker-based restriction unrelated to the purpose of the limited public forum; it fails even intermediate scrutiny because it is not narrowly tailored; and it is in any event unreasonable. Courts from around the country have analyzed the issue under various analytical frameworks, but they have been unanimous in their conclusion: a prospective ban of a particular individual from future public meetings based on the person’s past conduct is unconstitutional. *See Surita v. Hyde*, 665 F.3d 860, 868-71 (7th Cir. 2011) (bar invalid as content-based regulation; would also be invalid if it were content-neutral); *Theyerl v. Manitowoc Cty.*, 41 F. Supp. 3d 737, 738-45 (E.D. Wis. 2014) (same); *Brown v. City of Jacksonville*, 2006 WL 385085, at *1-8 (M.D. Fla. Feb. 17, 2006) (bar invalid as content-neutral regulation); *Barna v. Bd. of Sch. Directors of the Panther Valley Sch. Dist.*, 143 F. Supp. 3d 205, 207-29 (M.D. Pa. 2015) (same); *Stevens v. Sch. City of Hobart*, 2015 WL 4870789, at *14 (N.D. Ind. Aug. 6, 2015) (same); *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 544-50 (D. Vt. 2014) (same); *Reza v. Pearce*, 806 F.3d 497, 502-05

(9th Cir. 2015) (bar unreasonable even under analysis applicable to nonpublic forum); *Walsh v. Enge*, 154 F. Supp. 3d 1113, 1126-34 (D. Or. 2015) (same); *see also Cuellar v. Bernard*, 2013 WL 1290215, at *2-4 (W.D. Tex. Mar. 27, 2013) (whether content-based or -neutral, bar not narrowly tailored). Indeed, as a district court considering a three-month ban remarked earlier this year, “This Court has found no case authorizing a time, place and manner restriction that limits such a length of time for a single disruptive incident.” *Brown*, 2006 WL 385085, at *6; *accord Walsh*, 154 F. Supp. 3d at 1118 (“No appellate opinion of which this Court is aware has ever held that the First Amendment permits prospective exclusion orders from otherwise public city council meetings.”). Second, the bar is a prior restraint imposed without required procedural safeguards limiting the discretion of officials to impose the bar or providing expeditious judicial review. For this reason as well, the bar cannot stand. *See Brown*, 2006 WL 385085, at *4-5; *Cuellar*, 2013 WL 1290215, at *3-4. Although it is reasonable to eject individuals who cause disturbances in public meetings, the First Amendment does not allow prospectively barring citizens from speaking in public meetings based on prior conduct.

The barring order also violates Ms. Pondexter-Moore’s right to due process of law under the Fifth Amendment. Ms. Pondexter-Moore has both a First Amendment and a D.C. Code-created liberty interest in attending and speaking at DCHA Board meetings. *See Sherrill v. Knight*, 569 F.2d 124, 130-31 (D.C. Cir. 1977) (“The first amendment interest undoubtedly qualifies as liberty which may not be denied without due process of law under the fifth amendment.” (footnote omitted)); *accord Procunier v. Martinez*, 416 U.S. 396, 418 (1974), *overruled on other grounds, Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989); D.C. Code § 6-211(w) (statutory requirement that DCHA meetings be conducted in public and provide a period for public comment). Accordingly, the due process clause applies, and the nature of the process that is due depends on (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Escobar v. I.N.S.*, 896 F.2d 564, 571 (D.C. Cir. 1990) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Based on Ms. Pondexter-Moore’s job with Empower DC, her personal passion for the subject matter, and her constitutional right to speak, her interest in speaking out publicly against proposed public housing developments is quite significant. Ms. Pondexter-Moore did not receive any opportunity to be heard regarding the barring notice either prior to or following its imposition; accordingly, the risk of erroneous deprivation of her rights was high. Finally, the burden on the government of providing even minimal procedural safeguards is extremely low. For these reasons, the barring notice is a violation of Ms. Pondexter-Moore’s right to due process. *See Cyr*, 60 F. Supp. 3d at 550-53 (balancing these factors in the context of a public meeting ban); *Stevens*, 2015 WL 4870789, at *14-15 (same).

We request that you respond in writing by 1 pm on Friday November 4, 2016, indicating that Ms. Pondexter-Moore is permitted to attend the DCHA Board meeting at Barry Farm. Otherwise, legal action will be required to enforce Ms. Pondexter-Moore’s rights. Please feel free to let me know of any other germane facts or legal authorities that you feel have bearing on this matter.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Michelman", with a horizontal line extending to the right.

Scott Michelman, Senior Staff Attorney
ACLU of the Nation's Capital

cc: Adrienne Todman, Executive Director, DCHA

Attachment: DCHA Barring Notice issued to Schyla Pondexter-Moore, October 7, 2016.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

BARRING NOTICE

REV. 12/11/12-RMM

PURSUANT TO DC CODE § 6-203(3) AND 14 DCMR CHAPTER 96, YOU ARE HEREBY NOTIFIED THAT YOU ARE NOT PERMITTED ENTRY INTO THE FOLLOWING DISTRICT OF COLUMBIA HOUSING AUTHORITY PROPERTY (INCLUDING THE SURROUNDING AREAS THAT COMPRISE THE PROPERTY) UNDER ANY CIRCUMSTANCES:

PROPERTY: HEADQUARTERS

ADDRESS: 1133 NORTH CAPITOL STREET, NE AND:

UNIT NO: ALL DCHA BOARD MEETINGS SEE ATTACHMENT A

THE REASON FOR THE ISSUANCE OF THE BAR NOTICE IS THE FOLLOWING:

TEMPORARY BAR

- VIOLATION OF SECTION 9600.4 - UNAUTHORIZED PERSON/NOT A GUEST
ENTERING DCHA PROPERTY WITHOUT PRESENTING IDENTIFICATION OR PROPERLY SIGNING THE VISITOR LOG
BEING ON DCHA PROPERTY AT A LOCATION OR DWELLING UNIT OTHER THAN THE LOCATION IDENTIFIED ON AN AUTHORIZED GUEST PASS, VISITOR LOG, OR SIGN-IN SHEET, OR AS A VERBALLY IDENTIFIED AND VERIFIED TENANT RESIDENCE.
UNAUTHORIZED OCCUPANT RESIDING IN A DWELLING UNIT
EXCESSIVELY LOUD OR DISRUPTIVE CONDUCT OR DISTURBING THE PEACE OF DCHA RESIDENTS/EMPLOYEES
THIS TEMPORARY BAR SHALL REMAIN IN EFFECT FOR 2 MONTHS FROM THE DATE OF THIS BAR NOTICE AS THIS IS YOUR FIRST OFFENSE.

EXTENDED BAR

- THIS EXTENDED BAR SHALL REMAIN IN EFFECT FOR FIVE (5) YEARS FROM THE DATE OF THIS BAR NOTICE.
CRIMINAL/ILLEGAL ACTIVITY OF A GUEST
REPEATED VIOLATION OF DCHA BAR POLICY BY A GUEST
EVICTION FROM DCHA PROPERTY FOR CRIMINAL/ILLEGAL ACTIVITY
CONDUCT THAT IS DANGEROUS TO HEALTH OR SAFETY OF DCHA RESIDENTS/EMPLOYEES BY A GUEST
IF YOU RETURN TO THE PROPERTY AND GAIN ENTRY, EVEN IF ACCOMPANIED OR INVITED BY A GUEST, RESIDENT, AND/OR EMPLOYEE, YOU WILL BE SUBJECT TO CRIMINAL PROSECUTION FOR UNLAWFUL ENTRY.
A COPY OF THE BAR NOTICE ISSUED TO A GUEST WILL BE PROVIDED TO THE RESIDENT, IF THE GUEST HAS IDENTIFIED THE UNIT NUMBER AND NAME OF THE RESIDENT. RESIDENT NAME: UNIT #:

PROFILE/PHYSICAL DESCRIPTION

LAST NAME: PONDEXTER-MIQUE FIRST NAME: SCHAYLA MIDDLE:
AKA: RACE: B SEX: F DATE OF BIRTH: 08/15/1976
ADDRESS: 741 YUNIT ST. SE SSN:
HEIGHT: WEIGHT: HAIR:
COMPLEXION: MEDIUM IDENTIFICATION MARKS:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT SERVICE OF THIS BAR NOTICE WAS MADE TO THE ABOVE PERSON ON THE 7 DAY OF OCTOBER, 2016 AT 10:30 AM/PM AS FOLLOWS:

- By personally leaving copy of the same with the person
By personally attempting to leave a copy of the same with the person but the person refused service or the person did not make himself/herself available by

Issued By: X DCHAPD MPD Last Name: MAURIN First Name: JOEL Title: CHIEF OF POLICE Organization: DCHA PD



DISTRICT OF COLUMBIA HOUSING AUTHORITY

BARRING NOTICE – ATTACHMENT A

Pursuant to §6-203(3) and 14 DCMR Chapter 96, PONJEXTER-MOORE, SCHYLA
(Name of Barred Individual (Last, First)) is hereby notified that you are not permitted entry into the following District of Columbia Housing Authority Properties (including the surrounding grounds that comprise the property) under any circumstances as indicated below:

Any and all District of Columbia Housing Authority Board Meetings for the next 60 days, including but not limited to:

- | | |
|--------------------------|--|
| October 12, 2016 | DCHA Brown Bag and Board Meeting
Potomac Gardens – 1225 G St SE, Washington, DC
11:00 a.m. – 6:00 p.m. |
| October 27, 2016 | DCHA Resident Services Meeting
1133 North Capitol Street, Washington, DC
12:00 p.m. – 1:00 p.m. |
| November 9, 2016 | DCHA Brown Bag and Board Meeting
Barry Farm Recreation Center, 1230 Sumner Rd. SE, Washington, DC
1:00 p.m. – 6:00 p.m. |
| November 24, 2016 | DCHA Resident Services Meeting
1133 North Capitol Street, Washington, DC |