



P.O. Box 77208, Atlanta, GA 30357
770.303.8111 | syoung@acluga.org

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City Council Members of Peachtree City
151 Willowbend Road
Peachtree City, GA 30269
council@peachtree-city.org

Mayor Vanessa Fleisch, vfleisch@peachtree-city.org
Councilmember Mike King, mking@peachtree-city.org
Councilmember Phil Prebor, pprebor@peachtree-city.org
Councilmember Kevin Madden, kmadden@peachtree-city.org
Councilmember Terry Ernst, ternst@peachtree-city.org

Via E-mail

Re: “Revised Indemnification Resolution”

To the City Council Members of Peachtree City:

The First Amendment to the United States Constitution zealously protects the freedom of speech, and especially the freedom to criticize public officials. The “Revised Indemnification Resolution” you are considering today commits to spending precious taxpayer dollars on potentially frivolous defamation lawsuits brought by politicians against ordinary citizens who dare to criticize them.

As we are sure you agree, threatening to sue constituents who criticize public officials is no way to run a democracy and is inconsistent with the spirit of the First Amendment. Whether or not that is the purpose of this resolution, it will have that effect. Thus, the ACLU of Georgia respectfully asks that you reject this resolution.

The ACLU of Georgia also respectfully reminds you that the First Amendment makes it exceedingly difficult for politicians to bring successful defamation lawsuits against constituents who criticize them. As the United States Supreme Court has explained decades ago, ample “breathing space” in the marketplace of ideas is “essential” to the “fruitful exercise” of First Amendment rights.

For that reason, politicians can only win defamation lawsuits against ordinary citizens on “clear and convincing proof” that a false statement was “made with knowledge of its falsity or with reckless disregard for the truth.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) (citing

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). City resolutions cannot unilaterally rewrite the United States Constitution or otherwise change this strict legal standard.

Furthermore, the Revised Indemnification Resolution wastes taxpayer dollars in several respects which you might not realize.

First, the resolution forces Peachtree City taxpayers to pay the city's lawyers when politicians bring defamation lawsuits against ordinary constituents, which are unlikely to succeed due to the protections of the First Amendment.

Second, the resolution potentially forces taxpayers to pay the *constituent's* lawyers when the constituent successfully defends himself or herself against the defamation lawsuit. That is because under Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1, which Peachtree City cannot rewrite, the city may have to pay the attorneys' fees of the constituent if their defamation lawsuit is dismissed on First Amendment grounds.¹

Third, the resolution potentially forces taxpayers to pay additional legal fees even after the defamation lawsuit is over. That is because constituents who successfully defend against a politician's defamation lawsuit can respond with a new lawsuit of their own, bringing so-called "SLAPPback" claims of malicious abuse of process against the politicians who use defamation lawsuits for ulterior motives. The resolution would appear to authorize the use of taxpayer dollars to defend against SLAPPback lawsuits.

All of us agree that the freedom to criticize elected officials is at the heart of the First Amendment. In that spirit, we trust that you will reject the Revised Indemnification Resolution, and respectfully urge you to do so. Feel free to contact us if you have any questions or you wish to discuss the matter further.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

¹ "SLAPP" stands for "Strategic Lawsuits Against Public Participation." Governments around the country have used lawsuits to threaten constituents from criticizing them in public discourse, and numerous states have passed laws to protect those constituents.