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January 23, 2019

Senator Butch Miller  
Senate President Pro Tempore  
Georgia State Senate  
321 State Capitol  
Atlanta, GA 30334  
butch.miller@senate.ga.gov

Representative David Ralston  
Speaker of the House  
Georgia House of Representatives  
332 State Capitol  
Atlanta, GA 30334  
david.ralston@house.ga.gov

Captain Lewis Young  
Capitol Police Division  
180 Central Avenue  
Atlanta, GA 30303  
c/o tpiper@law.ga.gov

Via E-mail

**Re: Unconstitutional ban on expressive clothing in the legislative galleries**

Dear President Miller, Speaker Ralston, and Captain Young,

Thank you for taking the time out of your busy schedules at the start of the legislative session to briefly consider this letter, which concerns an important First Amendment issue in the State Capitol Building.

On the last day of the legislative session last year, several students were prevented by Capitol Police from entering the legislative gallery solely because they wore expressive clothing, i.e., T-shirts and buttons with messages on them. There was no indication that these students would shout or exhibit disruptive behavior while watching gallery proceedings. This was a violation of the First Amendment.

To prevent such a police confrontation from happening again in the new legislative session, the ACLU of Georgia respectfully seeks confirmation that members of the public wearing clothing or buttons with messages on them may enter the legislative galleries or the immediate environs thereof, so long as their behavior is not disruptive and so long as they otherwise comply with state law concerning behavior in the State Capitol Building. *See* O.C.G.A. § 16-11-34.1. We would also welcome an opportunity to discuss this matter further in person or by phone or e-mail.

We assure you that nothing we request in this letter requires any explicit amendment to the Senate or House Rules, including the recently-passed SR 4, or any other state law. The rules currently prohibit disruption, the use of signs and placards in the gallery and immediate environs, audible “expressions of approval or disapproval,” and “[a]ppause, hisses, shouting, or other disruptive noise.”<sup>1</sup> But none of the rules or statutes explicitly prohibit the mere entry into the gallery or its immediate environs of anyone wearing clothing with messages on them who intends to remain quiet—nor could they under the Constitution. We simply seek confirmation because the rules are apparently being misinterpreted to contain this prohibition.

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Wearing shirts or buttons with messages on them is core expressive activity protected by the First Amendment. While the state may be able to regulate disruptive behavior in the legislative gallery, courts have been highly skeptical about government restraints on expressive clothing in the name of preventing disruptive behavior, even in sensitive government facilities.

For example, courts have protected the rights of students wearing black armbands in public schools, religious organizations wearing symbolic clothing in airports, and an individual wearing a jacket with vulgar language in a courthouse.<sup>2</sup> Similarly here, constituents should be able to silently express themselves through clothing in the legislative gallery, where they have the opportunity to watch democracy in action. *See ACT-UP v. Walp*, 755 F. Supp. 1281, 1290 (M.D. Penn. 1991) (“The closing of the gallery of the house chamber, which has consistently been open to all who would care to sit and listen, in order to deny access to a particular group is not only in all probability unconstitutional, but also cuts against the grain of the notions of a free and open society embodied in the first amendment.”).

We understand concerns about disruptive behavior, which can prevent hard-working legislators from doing their job. But quietly watching legislative proceedings while passively wearing clothes or buttons with words on them is not inherently disruptive. Actual disruptive behavior, such as shouting, can be prevented by removing people who exhibit such behavior, without preemptively precluding certain members of the public from quietly entering the gallery based solely on what they are wearing. *See ACT-UP*, 755 F. Supp. at 1290 (“If officials were

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<sup>1</sup> There are some constitutional problems with prohibiting signs and placards outside the gallery and in the immediate environs absent any evidence of disruptive behavior or obstruction, as well as prohibiting silent, non-disruptive expressions of approval or disapproval (e.g., wearing black clothing to express opposition to a bill), but this letter does not address those issues at this time.

<sup>2</sup> *See, e.g., Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1887 (2018) (“our decisions have noted the ‘nondisruptive’ nature of expressive apparel”); *Bd. of Airport Comm’rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 576 (1987) (“the wearing of a T-shirt or button that contains a political message” in an airport is “nondisruptive”); *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 508 (1969) (students wearing black armbands to protest the Vietnam War engaged in “silent, passive expression of opinion, unaccompanied by any disorder or disturbance”); *Cohen v. California*, 403 U.S. 15, 20 (1971) (vulgar language printed on jacket permitted in courthouse notwithstanding the nature of the message); *see also Bynum v. U.S. Capitol Police Bd.*, 93 F. Supp. 2d 50, 57 (D.D.C. 2000) (legitimate need to “prevent disruptive conduct in the Capitol” did not justify banning “expressive conduct”); *Tobey v. Jones*, 706 F.3d 379, 384 (4th Cir. 2013) (message written on chest did not cause disruption at airport screening station).

afraid that visitors would be rude and boisterous, . . . [i]f someone became disruptive, they could be removed.”). Indeed, state law and both Senate and House Rules already make it illegal for members of the public to disrupt a legislative meeting, either through shouting or physical obstruction. *See* O.C.G.A. § 16-11-34.1. Any further restriction is unnecessary and unconstitutional.

This is not the first time that First Amendment activity was unconstitutionally suppressed in the State Capitol Building. Just last year, the ACLU of Georgia filed a successful lawsuit striking down an *ad hoc* ban on hand-held signs in the State Capitol Building, which was enacted in the name of preventing disruption, but which ultimately swept too broadly for First Amendment purposes.

For these reasons, we respectfully seek confirmation that members of the public may quietly enter the legislative galleries or its immediate environs even if they are wearing clothing or buttons with messages on them, so long as the spectators’ behavior is not disruptive. Rules against disruption can still be enforced without violating anyone’s First Amendment rights. We are grateful for your consideration and look forward to a response, and we are happy to have additional discussions on the matter if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean J. Young". The signature is fluid and cursive, with a large initial "S" and "Y".

Sean J. Young  
Legal Director  
ACLU of Georgia