

June 7, 2019

The Honorable Sharon Bulova, Chair  
Fairfax County Board of Supervisors  
Brian Hill, Fairfax County Executive  
12000 Government Center Parkway  
Fairfax, VA 22035  
[chairman@fairfaxcountv.gov](mailto:chairman@fairfaxcountv.gov)

Dear Chairman Bulova, County Executive Hill and Members of the Fairfax County Board of Supervisors:



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We have recently been contacted about the issue of political campaigning activities at Reston Station Plaza. It is our understanding that Comstock Companies, the developer of Reston Station, has barred general political campaigning at the Plaza, but has permitted its Vice President of Communications, Maggie Parker, to campaign and to post campaign materials in the area.

The ACLU of Virginia is concerned about the protection of the First Amendment rights of the people who seek to use Reston Station Plaza for expressive activities. Fairfax County has granted a ninety-nine-year lease of Reston Station Plaza to Comstock Companies, a private entity. Nevertheless, even while it is leased to a private company, the Plaza remains a “traditional public forum” – government property where the Supreme Court has said that free speech rights are most protected.

Public plazas and parks are quintessential traditional public forums, which “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). Fairfax County’s lease with Comstock Companies does not divest the Plaza of its public forum status. *See, e.g., Lee v. Katz*, 276 F.3d 550 (9th Cir. 2002); *Corral v. Montgomery County*, 4 F. Supp. 3d 739 (D. Md. 2014); *Citizens to End Animal Suffering and Exploitation, Inc. v. Faneuil Hall Marketplace*, 745 F. Supp. 65, 76 (D. Mass 1990).

Accordingly, Reston Station Plaza must operate as a public forum throughout the term of the lease. This means that speech may only be limited by reasonable time, place, and manner restrictions that “must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.” *Forsyth Cnty.*

*v. Nationalist Movement*, 505 U.S. 123, 130 (1992). The lessee's policy of prohibiting political campaigning activities except for those of Comstock employees runs directly afoul of the law.

The Board of Supervisors has an important responsibility to ensure that the First Amendment rights of the public are protected fully in the use of the Plaza. Failure to protect the public's free speech rights could expose both the County and the Plaza lessee to liability. As the entity that owns the space, it is incumbent upon you to act promptly to address these concerns and provide assurances that the Plaza will operate as a public forum for all expression. We urge the Board of Supervisors to meet with their counsel and to take appropriate action to protect First Amendment activities in Reston Station Plaza.

Thank you for your immediate attention to this matter. Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,



Claire G. Gastañaga  
Executive Director

Cc: Members of the Fairfax County Board of Supervisors



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Virginia

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