



April 14, 2025

Charter Review Commission
Clallam County
223 East 4th Street
Port Angeles, Washington 98362

Sent via U.S. Mail and Electronic Mail (loni.gores@clallamcountywa.gov)

Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE) urges the Clallam County Charter Review Commission (CRC) to reject a proposal that would bar commissioners—even when speaking in their personal capacities—from identifying individuals who made public comments at CRC meetings. As a nonpartisan nonprofit that defends free speech nationwide, FIRE is committed to ensuring local governments comply with their First Amendment obligations. The proposal under consideration would violate well-established First Amendment principles by restricting speech on public issues and publication of lawfully obtained information.

Our concerns arise from events beginning at the CRC's March 10, 2025, meeting.¹ Commissioner Jeff Tozzer raised concerns that holding government meetings on land under tribal jurisdiction could affect the application of transparency laws. During public comment, Clallam County resident and Sequim School Board member Patrice Johnston countered that transparency requirements apply regardless of meeting location and cautioned against suggesting that conducting government business on tribal lands is improper. After the meeting, Tozzer thanked Johnston for her comments and, at his request, she shared her email so he could follow up. They exchanged emails disputing each other's views, which Tozzer later published on his personal Substack newsletter, *Clallam County Watchdog*.²

During public comment at the CRC's March 24 meeting, Johnston accused Tozzer of misrepresenting their exchange by displaying her email as a single, continuous response,

¹ *Charter Review Commission Meeting - March 10, 2025*, CLALLAM CNTY., WASH., <https://clallamcowa.portal.civicclerk.com/event/3096/media>. The factual recitation in this letter reflects our understanding of the pertinent facts, but we invite you to share any additional information.

² *Balancing transparency and sovereignty*, CLALLAM CNTY. WATCHDOG (Mar. 22, 2025), <https://www.cwatchdog.com/p/balancing-transparency-and-sovereignty>.

rather than interlined replies to his original message.³ She also criticized Tozzer for including a copy of her page from a voters' pamphlet for the 2021 Sequim School Board election, and for making a "baseless accusation" about the board's lack of transparency without giving her a chance to respond before publishing it. Johnston also read aloud several comments posted under Tozzer's Substack entry that criticized her. She then urged the Commission to "adopt a rule that prohibits any commissioner from using social media or other channels to harass individuals who offer public comment and/or engage in email exchanges about issues."

Later in the meeting, the CRC moved to reconvene its Bylaws Committee to consider an amendment prohibiting commissioners, when speaking publicly, from identifying individuals who have made public comments at CRC meetings. At its April 3 meeting, the Committee approved a motion to amend the bylaws to add the following language: "To encourage the public to provide comments to the charter review commission, when making public statements (orally, in print publications, or electronically), commissioners shall refrain from identifying public commenters by name, appearance, address, employer, occupation, or affiliation with any organization." The Commission is slated to consider the proposed amendment at its meeting today.

The proposed amendment would violate the First Amendment by restricting commissioners from discussing public issues using publicly available information—even when speaking in their personal capacities and not on behalf of the Commission.

Government officials "have the right to speak about public affairs in their personal capacities."⁴ The Supreme Court has rejected the idea that the First Amendment's "policy of encouraging free debate" applies only to the "citizen-critic of his government" and not to their elected representatives.⁵ To the contrary, the "role that elected officials play in our society makes it all the more imperative that they be allowed to freely express themselves on matters of current public importance."⁶ As the Court explained:

The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in

³ *Charter Review Commission Meeting - March 24, 2025*, CLALLAM CNTY., WASH., <https://clallamcowa.portal.civicclerk.com/event/3097/media>.

⁴ *Lindke v. Freed*, 601 U.S. 187, 203 (2024).

⁵ *Bond v. Floyd*, 385 U.S. 116, 136 (1966) (state legislature's refusal to seat newly elected member because of his opposition to Vietnam War violated First Amendment).

⁶ *Wood v. Georgia*, 370 U.S. 375, 394–95 (1962) (reversing sheriff's contempt conviction for statement criticizing county judge's charge to grand jury).

governmental debates by the person they have elected to represent them.⁷

The First Amendment also protects the right to publish lawfully obtained information on matters of public significance,⁸ as the “free flow of ideas and opinions on matters of public interest and concern” is “[a]t the heart of the First Amendment.”⁹ Government officials may not restrict this right “absent a need to further a state interest of the highest order.”¹⁰

The Supreme Court has invalidated restrictions more narrowly drawn and aimed at far more sensitive information than the CRC’s proposal—including restrictions on publishing the names of rape victims¹¹ and minors charged with crimes.¹² If the government cannot censor speech to protect those privacy interests, it certainly cannot prohibit individuals from identifying public commenters in the course of public debate.

The CRC’s proposed rule, which extends to speech by commissioners in their personal capacities, would violate these settled constitutional principles. The CRC may have discretion to regulate commissioners’ speech during its meetings, such as setting rules of order or limiting interaction with public commenters. But when commissioners speak outside their official roles—such as on a personal newsletter—the First Amendment protects their right to comment on matters of public concern using publicly available information, just as it does for any other citizen.

Comments made during public government meetings are, by definition, public information and matters of public interest.¹³ The identities of those making the comments are generally public as well, either because the speakers identify themselves or because their names are readily matched to their appearance through other publicly available information. The CRC cannot constitutionally restrict commissioners from referring to those names when commenting, in their personal capacities, on matters of public concern. To receive First Amendment protection, it is enough that the speech “generally, as opposed to the specific identity contained within it,” addresses a matter of public significance.¹⁴

⁷ 385 U.S. at 136–37.

⁸ *Bartnicki v. Vopper*, 532 U.S. 514, 527–28 (2001).

⁹ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988); accord *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339 (2010) (“The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”).

¹⁰ *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979).

¹¹ *Fla. Star v. B. J. F.*, 491 U.S. 524 (1989); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469 (1975).

¹² *Smith*, 443 U.S. at 105–06.

¹³ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (“Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.”) (cleaned up).

¹⁴ *Fla. Star*, 491 U.S. at 536–37.

Moreover, the public has an interest in who said what on issues of public concern. A speaker's identity—whether they are, for example, a subject-matter expert, a government employee, or someone with a personal or financial stake in the matter—may affect how their comment is received. While the First Amendment generally bars the government from forcing anonymous speakers to reveal their identities,¹⁵ it also protects the right of individuals—including officials speaking in their personal capacities—to refer to a speaker's identity, especially if it is already public.

The First Amendment protects Tozzer's Substack post, which he published in his personal capacity, not on behalf of the CRC. The post plainly addressed matters of public concern, including government transparency and the propriety of holding public meetings on tribal lands. Johnston's comments about this issue were themselves a matter of public concern—speech to which others were free to respond.

Citizens who speak out on public matters invite scrutiny and cannot rely on the government to restrict others' speech in response. That is especially true where, as here, the speaker is herself a public official. Tozzer's commentary included criticism of Johnston in her role as a school board member. His right to identify Johnston and comment on her public role is not diminished by her decision to speak at a Commission meeting; it is affirmed by it. As the Supreme Court has warned, “[c]riticism of those responsible for government operations must be free, lest criticism of government itself be penalized.”¹⁶ That the CRC's proposed policy is a direct response to core political speech only compounds the constitutional harm.

While the stated intent of the proposal is to encourage public participation, the Commission “may not restrict the speech of some elements of our society in order to enhance the relative voice of others.”¹⁷ Any mention of a commenter's name—not just by commissioners, but by any person with a public platform—could lead to criticism or hostile reactions. But it is not the government's role to manage the tone of public discourse or insulate speakers from criticism.¹⁸

¹⁵ *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995).

¹⁶ *Rosenblatt v. Baer*; *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”).

¹⁷ *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024) (cleaned up). “On the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana.” *Id.* at 741–42.

¹⁸ There also is no credible argument that Tozzer's Substack post, or the negative comments under it about Johnston, constitutes unlawful harassment or falls within any of the narrow, well-defined First Amendment exceptions. Criticism, even if pointed or unpleasant, is not harassment. *See Snyder*, 562 U.S. at 448 (“As a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”).

The CRC has constitutionally sound ways to encourage public participation, such as making clear that commenters are not required to provide their names or other identifying information.¹⁹ But it cannot resort to censorship.

Based on the foregoing, FIRE calls on the CRC to reject any proposal that would prohibit commissioners speaking in their personal capacities from identifying public commenters.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Terr", written in a cursive style.

Aaron Terr
Director of Public Advocacy

¹⁹ Our understanding is that while the CRC asks commenters to state their name, those who decline are still permitted to speak.