FIRE
Foundation for Individual Rights and Expression

June 30, 2026

Calais Mayor and Council
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Sent via U.S. Mail and Electronic Mail (Mayor@calaismaine.org, M.Sherrard@calaismaine.org, E.Beale@calaismaine.org, E.Moreside@calaismaine.org, W.Quinn@calaismaine.org, P.Foster@calaismaine.org, J.Macdonald@calaismaine.org)

Dear Mayor Rogers and Calais City Council members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by Calais's ordinance banning "Abusive and profane language" in city parks and recreational areas.[1] On its face, that provision applies to speech in all forms—whether spoken or written—and we are aware that it has been cited as a justification for removing signs. The ordinance violates the First Amendment under long established Supreme Court precedent and must be repealed.

The Supreme Court has long made clear the "public retain[s] strong free speech rights when they venture into public streets and parks," traditional public fora that "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."[2] Government authority to "limit expressive activity" in these areas is "sharply circumscribed."[3]

A prohibition on "abusive" or "profane" language cannot be reconciled with these principles. Indeed, courts have repeatedly held that even in settings where the government possesses substantially greater regulatory authority than it does in a traditional public forum, the First Amendment protects the use of profanity. Such restrictions raise especially serious First

[1] CALAIS, ME., ORDINANCES, PARK USE ORDINANCE 2005-400 § 4-523 (Jan. 12, 2023), *available at* https://storage.googleapis.com/juniper-media-library/63/2024/01/Park-Use-Ordinance-Amended-1-12-23.pdf.

[2] *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983)); *see also Frisby v. Schultz*, 487 U.S. 474, 480 (1988) ("Time out of mind public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.") (cleaned up).

[3] *Perry Educ. Ass'n*, 460 U.S. at 45.

Amendment concerns when aimed at political expression, which lies "at the core of what the First Amendment is designed to protect."[4]

For example, the Supreme Court protected the right to wear a jacket bearing the words "Fuck the Draft" inside a courthouse, notwithstanding the presence of children.[5] As one court has observed, "courts have generally held that outright prohibitions on profane language or profanity are not allowed."[6] So too have courts across the country repeatedly held that bans on "abusive" language, including on public property and at government meetings, violate the First Amendment.[7]

These decisions flow from the "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable."[8] This applies, of course, when speech is deemed offensive based on its underlying message—the Supreme Court has long held governments may not restrict expression "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[9] But this principle also applies when officials deem speech offensive because of the particular words used. Courts protect speech even when it involves language some may find abusive or profane. The First Amendment protects "not only ideas capable of relatively precise, detached explication" but also words chosen precisely for their "emotive function which, practically speaking, may often be the more important element of the overall message."[10] As the Supreme Court explained: "Giving offense is a viewpoint" the First Amendment protects.[11] Calais may not, consistent with the First Amendment, restrict speech because its officials consider the speaker's chosen language offensive.

Moreover, bans on "abusive" or "profane" language are unconstitutionally vague because they fail to provide persons of ordinary intelligence reasonable notice of what speech is prohibited, while at the same time affording officials unbridled discretion to decide what speech to allow.[12]

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[4] *Virginia v. Black*, 538 U.S. 343, 365 (2003).

[5] *Cohen v. California*, 403 U.S. 15 (1971).

[6] *Mama Bears of Forsyth Ct. v. McCall*, 642 F. Supp. 3d 1338, 1355 (N.D. Ga. 2022) (citing as examples *Acosta v. City of Costa Mesa*, 718 F.3d 800, 813 (9th Cir. 2013) ("§ 2-61 prohibits the making of 'personal, impertinent, profane, insolent or slanderous remarks.' That, without limitation, is an unconstitutional prohibition on speech"); *Kalman v. Cortes*, 723 F. Supp. 2d 766, 798–99 (E.D. Pa. 2010) (a restriction on "'profanity,' without more, is not a valid reason for suppressing speech")).

[7] *See, e.g.*, *Moms for Liberty v. Brevard Pub. Sch.*, 118 F.4th 1324 (11th Cir. 2024) (restrictions on "abusive," "personally directed," and "obscene" public comments); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (bans on "antagonistic," "abusive," and "personally directed" public comments); *Marshall v. Amuso*, 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021) ("abusive," "inappropriate," "offensive," and "personally directed" public comments).

[8] *Texas v. Johnson*, 491 U.S. 397, 414 (1989); *see also Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944) (explaining freedom of expression necessarily protects "not only informed and responsible criticism," but also "freedom to speak foolishly and without moderation," particularly in criticizing "public men and measures").

[9] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

[10] *See Cohen*, 403 U.S. at 26.

[11] *Matal v. Tam*, 582 U.S. 218, 243 (2017).

[12] *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

"Abusive," in particular, is inherently subjective: there is no objective standard by which a speaker can know when sharp criticism crosses the line. "Profane" is likewise imprecise—even if some words are more commonly regarded as profane than others, Calais's ordinance contains no objective standard for determining what language actually falls within the prohibition. The ordinance also provides no meaningful guidance for officials charged with enforcing it, leaving decisions to their own subjective judgments. Such discretion violates the requirement that speech regulations must "provide explicit standards for those who apply them" to prevent "arbitrary and discriminatory enforcement."[13]

For all these reasons, FIRE urges Calais to repeal the ordinance. Until it does so, the city should immediately cease enforcing the ordinance against protected speech. Continued enforcement not only violates the First Amendment but also needlessly exposes Calais to risk of litigation.

We respectfully request a substantive response to this letter no later than July 14, 2026.

Sincerely,

M. Brennen VanderVeen
Program Counsel, Public Advocacy

Cc: Michael Ellis, City Manager

[13] *Id.* at 108.