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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521, A Recognized Employee Organization on its Own Behalf and on Behalf of its Represented Members in the Employ of San Benito County, Plaintiff, v. SAN BENITO COUNTY, a General Law County and Governmental Subdivision of the State of California, Defendant.	No. **COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C § 1983** Demand for Jury Trial

Plaintiff, Service Employees International Union, Local 521 complains and alleges as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff Services Employees International Union, Local 521 (hereinafter "SEIU" or "Union") is the exclusive bargaining representative for approximately 240 employees of San

Benito County (hereinafter "County" or "Employer"). The County has implemented a Political Activity Policy (hereinafter "Policy") that impermissibly restricts and chills employee free speech activities in contravention of the First Amendment of the United States Constitution and Article I, § 2, subdivision (a) of the California Constitution. Among the offending provisions, the Policy prohibits employees from expressing political activities in the workplace, even when employees are not on duty, prohibits employees from wearing campaign buttons, even when employees have no contact and are out of view of the public, and prohibits employees from displaying political bumper stickers, pictures or posters on an automobile or in the window of their home while the employee is on duty. Consequently, the County's policy is unconstitutionally overbroad, unconstitutionally vague and content based. For these reasons, the Union seeks relief.

II. JURISDICTION AND VENUE

2. This is an action for declaratory judgment, injunctive relief and damages, arising under the First and Fourteenth Amendments to the United States Constitution and under the Civil Rights Act of 1871 42 U.S.C § 1983, as well as under Article 1, § 1, 2 and 3 of the California Constitution. This action seeks, *inter alia,* a declaration that the County's policy violates both the United States and California Constitutions on its face.

3. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that Plaintiff seeks redress for deprivations made under color of state law rights, and privileges and immunities secured by the United States Constitution; under 28 U.S.C § 1342(a)(4) in that Plaintiff seeks damages and equitable relief under 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 42 U.S.C. § 1988(b) for an award of attorneys' fees; under 28 U.S.C § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief.

4. Venue is proper in this Court under 28 U.S.C § 1391(b) in that the causes of action asserted herein arose based on actions occurring within the territorial boundaries of the Northern District, San Jose Division.

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III. PARTIES

5. Plaintiff Service Employees International Union, Local 521 is an unincorporated association and employee organization within the meaning of California Government Code § 3501(a), in that SEIU includes within its membership employees of various public agencies, including employees of San Benito County, and has as its primary purpose representation of those employees in their employment relations with public agencies. SEIU represents approximately 240 San Benito County employees in the general bargaining units.

6. Defendant San Benito County is a municipal corporation authorized and organized under the laws of the State of California. At all times mentioned herein the County employed employees represented by Plaintiff.

IV. GENERAL ALLEGATIONS

7. At all relevant times, Plaintiff SEIU was a labor organization having among its purposes the representation of San Benito public employees in matters concerning grievances, labor disputes, wages, hours and other terms and conditions of employment in San Benito County.

8. At all relevant times, San Benito County had in place a policy restricting and/or prohibiting political activities of San Benito County employees while on duty or in the workplace.

9. On or about September 10, 2008, the County issued a Political Activity Policy (attached hereto as "Exhibit A") to all County Employees containing the following provisions relevant to this lawsuit:

> Other activities which are permitted off work, but ***NOT PERMITTED*** while on duty (for San Benito County) or in the workplace:
>
> 1. Express their opinions on political subjects and candidates
>
> ...
>
> 3. Engage in partisan or non-partisan political activities as an individual or as a member of a group.
>
> ...

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> 9. Initiate, sign or circulate partisan or non-partisan nominating petitions, distribute campaign literature, badges, etc.
>
> ....
>
> 10. Wear campaign badges and buttons, display bumper stickers, pictures, or posters on an automobile or in the window of a home.

10. On or about April 12, 2012, Jacki Credico, Management Analyst for the County, re-sent the County's Political Activity Policy to all San Benito County employees via e-mail. (Attached hereto as "Exhibit B")

11. Numerous County employees represented by the Union have expressed their concern over the County's Political Activity memo, and expressed to the Union that they were afraid to engage in any type of political activity that may violate the Policy for fear of being disciplined.

12. On or about July 3, 2012, Counsel for Union sent a letter to Matthew Granger, San Benito County Counsel, and Rich Inman, San Benito County Administrative Officer, setting forth the constitutional deficiencies in the County's Political Activity Policy, and requested that the County amend or remove the offending portions of the Policy. (Attached hereto as "Exhibit C")

13. As of the date of the filing of this Complaint, the County has failed to respond to Union Counsel's July 3, 2012 letter, but instead, the County re-issued the memo on September 17, 2012. Consequently, the Political Activity Policy is still in place in its original form. (Attached hereto as "Exhibit D")

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Defendant's Violation of Plaintiff's Federal Constitutional Rights)

14. Plaintiff incorporates by reference Paragraphs 1 through 13 of the Complaint as though set forth fully herein.

15. By implementing, and thereafter continuing to re-issue the Political Activity Policy, Defendant has violated the Plaintiff's First and Fourteenth Amendment rights guaranteed by the United States Constitution.

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16. The County's policy is overbroad as it restricts more speech than constitutionally permissible by, *inter alia*, prohibiting employees from expressing opinions on, or engaging in activities related to, political subjects when employees are on lunch or break time in non-working areas such as break rooms or parking lots; restricts employees from placing bumper stickers on their personal vehicles; and prohibits employees from placing signs or posters in the windows of their homes.

17. Alternatively, even if the County asserts that the policy does not prohibit employees from engaging in political activity while on break or at lunchtime in areas such as break rooms or parking lots, the Policy is unconstitutionally vague, as any reasonable employee would have to guess at whether such conduct is prohibited by the policy.

18. The County's Political Activity Policy is content-based as it prohibits employees, and by extension any member of the employee's household, from displaying political signs or posters in the windows of their home while the employee is on duty, while not prohibiting any other type of sign being displayed.

19. The County's content based policy is subject to strict scrutiny which it cannot survive because the County's interests are not compelling, the policy is not narrowly tailored and it is not the least restrictive means for the County to achieve legitimate goals.

20. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.* in that the County's Political Activity Policy unconstitutionally restricts and prohibits Plaintiff from engaging in protected free speech activity.

SECOND CLAIM FOR RELIEF

(Defendant's Violation of Plaintiff's Federally Protected Rights Under 42 U.S.C §1983)

21. Plaintiff incorporates by reference Paragraphs 1 through 20 of the Complaint as though set forth fully herein.

22. By implementing, and thereafter re-issuing, the Political Activity Policy prohibiting Plaintiff's members from engaging in protected free speech activities, Defendant has violated the Plaintiff's First and Fourteenth Amendment rights guaranteed by the United States Constitution.

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23. The actions of the County, which acted under the color of statute, ordinance, regulation, custom and usage, caused the violation of Plaintiff's constitutional and federally protected rights.

24. The County's violation of Plaintiff's constitutional rights is attributable to the implementation, and subsequent re-issuance, of the County's Political Activity Policy.

THIRD CLAIM FOR RELIEF

(Defendant's Violation of Plaintiff's California State Constitutional Rights)

25. Plaintiff incorporates by reference Paragraphs 1 through 24 of the Complaint as though set forth fully herein.

26. By implementing, and subsequently re-issuing the Political Activity Policy, prohibiting employees from engaging in protected speech activities, Defendant has violated the Plaintiff's free speech rights guaranteed by Article I, § 2 subdivision (a) of the California Constitution.

27. The County's policy is overbroad as it restricts more speech than constitutionally permissible by, *inter alia*, prohibiting employees from expressing opinions on, or engaging in activities related to, political subjects when employees are on lunch or break time in non-working areas such as break rooms or parking lots; restricts employees from placing bumper stickers on their personal vehicles; and prohibits employees from placing signs or posters in the windows of their homes.

28. Alternatively, even if the County asserts that the policy does not prohibit employees from engaging in political activity while on break or lunchtime in areas such as break rooms or parking lots, the Policy is unconstitutionally vague, as any reasonable employee would have to guess at whether such conduct is prohibited by the policy.

29. The County's Political Activity Policy is content-based as it prohibits employees, and by extension any member of the employee's household, from displaying political signs or posters in the windows of their home while the employee is on duty, while not prohibiting any other type of sign being displayed.

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30. The County's content based policy is subject to strict scrutiny which it cannot survive because the County's interests are not compelling, the ordinance is not narrowly tailored and it is not the least restrictive means for the County to achieve its goals.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief Pursuant to 28 U.S.C. § 2201 *et seq.)*

31. Plaintiff incorporates by reference Paragraphs 1 through 30 of the Complaint as though set forth fully herein.

32. An actual controversy exists between Plaintiff and the County in that the County's Political Activity Policy prohibits the Union's members' from engaging in constitutional protected free speech activities.

33. A declaratory judgment is necessary insofar as Plaintiff contends that the County has implemented a policy that violates the Plaintiff's members Federal and State Constitutionally protected rights by refusing to permit them from engaging in constitutionally protected free speech activity.

34. A declaratory judgment is necessary insofar as the County's policy chills Plaintiff's members from engaging in constitutional protected free speech activities for fear of reprisal.

35. In light of the County's actions implementing, and subsequently re-issuing the Political Activity Policy, Plaintiff has a reasonable expectation that the will County unconstitutionally enforce the Policy in a manner consistent with the text of Policy.

36. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.* in that the County's Political Activity Policy unconstitutionally restricts and prohibits Plaintiff from engaging in protected free speech activity.

VI. PRAYERS FOR RELIEF

Based on the foregoing, Plaintiff prays as follows:

First Claim for Relief

1. For injunctive relief enjoining the County from enforcing the Policy in a manner prohibiting Plaintiff and its members from engaging in protected free speech activity;

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2. For injunctive relief enjoining the County from violating the Plaintiff's Federal Constitutionally protected rights;

3. For an order directing the County to rescind the offending portions of the Political Activity Policy;

4. Award of actual damages to Plaintiff in an amount to be determined at trial;

5. Award Plaintiff attorneys fees and costs; and,

6. Award any other relief which this Court deems just and proper.

Second Claim for Relief

7. For injunctive relief enjoining the County from enforcing the Policy in a manner prohibiting Plaintiff and its members from engaging in protected free speech activity;

8. For injunctive relief enjoining the County from violating the Plaintiff's Federal Constitutionally protected rights;

9. For an order directing the County to rescind the offending portions of the Political Activity Policy;

10. Award of actual damages to Plaintiff in an amount to be determined at trial;

11. Award Plaintiff attorneys fees and costs; and,

12. Award any other relief which this Court deems just and proper

Third Claim for Relief

13. For injunctive relief enjoining the County from enforcing the Policy in a manner prohibiting Plaintiff and its members from engaging in protected free speech activity;

14. For injunctive relief enjoining the County from violating the Plaintiff's rights protected by the California Constitution;

15. For an order directing the County to rescind the offending portions of the Political Activity Policy;

16. Award of actual damages to Plaintiff in an amount to be determined at trial;

17. Award Plaintiff attorneys fees and costs; and,

18. Award any other relief which this Court deems just and proper.

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Fourth Claim for Relief

19. For a declaration that the County's Political Activity Policy constitutes a violation of Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution; that the Policy violates the Civil Rights Act of 1871, 42 U.S.C. § 1983; that the Policy violates Article I, § 1, subdivision (a) of the California Constitution.

Dated: 9/19/12

Weinberg, Roger & Rosenfeld
A Professional Corporation

By: _____
MATTHEW J. GAUGER
GARY P. PROVENCHER
Attorneys for Plaintiff

125475/676131

EXHIBIT A

COUNTY OF SAN BENITO
Internal Services Department

Human Resources Division ● Administration Building ● 481 Fourth Street, 1st Floor ● Hollister, CA 95023
phone: 831.636.4000 ● fax: 831.636.4010 ● Web site: www.san-benito.ca.us

MEMORANDUM

TO: ALL COUNTY EMPLOYEES
FROM: HUMAN RESOURCES
DATE: SEPTEMBER 10, 2008

RE: POLITICAL ACTIVITY

With the upcoming elections, this memo shall serve to inform or remind all County employees that political activity shall be kept out of the workplace. No County resources (including conducting activity on County work time) shall be used to perform any type of political activity. This policy is reinforced in both the Personnel Rules and Regulations and the Electronic Communications policy as well as the Personnel Ordinance. Our personnel ordinance says that political activities of county employees shall conform to state law and any local provisions adopted pursuant to state law, which states the following:

Prohibited activities – ***ILLEGAL***

Under state law a county officer or employee may not do any of the following:

1. Participate in political activities of any kind while in uniform.

2. Knowingly solicit political funds or contributions from other officers or employees of the county or from persons on the employment list of the county, except:

(a) An officer or employee may solicit or receive political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of the officer or employee

(b) An officer or employee may communicate through the mail or by other means of requests for political funds or contributions to a significant segment of the public which may include officers or employees of the county.

(c) An officer or employee may solicit political funds or contributions from a bona fide public employee's organization provided that the funds when collected by the employee's organization, were not earmarked for a clearly identifiable local office-holder or candidate.

3. Use, promise, threaten or attempt to use their county position or official authority to influence the political actions of other county officers or employees or those seeking county employment.

Other activities which are permitted off-work, but ***NOT PERMITTED*** while on-duty (for San Benito County) or in the workplace:

1. Express their opinions on political subjects and candidates.

2. Become a candidate for nomination or election in any partisan or non-partisan campaign--national, state or local.

3. Engage in partisan or non-partisan political activities as an individual or as a member of a group.

Other activities which are permitted off-work, but ***NOT PERMITTED*** while on-duty (for San Benito County) or in the workplace (continued):

4. Contribute to political campaign funds if the contribution is not made to or through another county officer or employee.

5. Join political organizations and vote on any questions presented.

6. Organize and manage political clubs, serve as officer, delegate or alternate, or as a member of any committee.

7. Participate actively in political conventions.

8. Attend political meetings, rallies, etc., and organize, prepare and conduct such gatherings.

9. Initiate, sign or circulate partisan or non-partisan nominating petitions, distribute campaign literature, badges, etc.

10. Wear campaign badges or buttons, display bumper stickers, pictures or posters on an automobile or in window of home.

11. Speak publicly, or write letters or articles for or against any political candidates; endorse or oppose such candidate in a political advertisement.

12. Manage the campaign of a political candidate

If you have questions as to whether or not an activity in question is permitted in the workplace, please consult your immediate supervisor or Department Head. Thank you in advance for your cooperation and compliance.

EXHIBIT B

Gary Provencher

From: Henry Soria <Henry.Soria@seiu521.org>
Sent: Thursday, July 19, 2012 10:44 AM
To: Gary Provencher
Subject: FW: POLITICAL ACTIVITY MEMO TO ALL EMPLOYEES

-----Original Message-----
From: Jacki Credico
Sent: Thursday, April 12, 2012 2:09 PM
To: __San Benito County All Employees
Subject: POLITICAL ACTIVITY MEMO TO ALL EMPLOYEES

ALL EMPLOYEES, PLEASE READ ATTACHED MEMO.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

<POLITICAL ACTIVITY MEMO APRIL 2012.pdf>

COUNTY OF SAN BENITO
Internal Services Department

Human Resources Division ● County Administration Building ● 481 Fourth Street, 1st Floor ● Hollister, CA 95023
Phone: 831.636.4000 ● Fax: 831.636.4010 ● Web Site: www.COSB.US

MEMORANDUM

TO: ALL COUNTY EMPLOYEES
FROM: HUMAN RESOURCES
DATE: APRIL 12, 2012

RE: POLITICAL ACTIVITY

As a general reminder, this memo shall serve to inform all County employees that political activity shall be kept out of the workplace. No County resources (including conducting activity on County work time) shall be used to perform any type of political activity. This policy is reinforced in both the Personnel Rules and Regulations and the Electronic Communications policy as well as the Personnel Ordinance. Our personnel ordinance says that political activities of county employees shall conform to state law and any local provisions adopted pursuant to state law, which states the following:

Prohibited activities – *ILLEGAL*

Under state law a county officer or employee may not do any of the following:

1. Participate in political activities of any kind while in uniform.
2. Knowingly solicit political funds or contributions from other officers or employees of the county or from persons on the employment list of the county, except:

(a) An officer or employee may solicit or receive political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of the officer or employee

(b) An officer or employee may communicate through the mail or by other means of requests for political funds or contributions to a significant segment of the public which may include officers or employees of the county.

(c) An officer or employee may solicit political funds or contributions from a bona fide public employee's organization provided that the funds when collected by the employee's organization, were not earmarked for a clearly identifiable local office-holder or candidate.

3. Use, promise, threaten or attempt to use their county position or official authority to influence the political actions of other county officers or employees or those seeking county employment.

Other activities which are permitted off-work, but *NOT PERMITTED* while on-duty (for San Benito County) or in the workplace:

1. Express their opinions on political subjects and candidates.

2. Become a candidate for nomination or election in any partisan or non-partisan campaign-- national, state or local.

3. Engage in partisan or non-partisan political activities as an individual or as a member of a group.

Other activities which are permitted off-work, but *NOT PERMITTED* while on-duty (for San Benito County) or in the workplace (continued):

4. Contribute to political campaign funds if the contribution is not made to or through another county officer or employee.

5. Join political organizations and vote on any questions presented.

6. Organize and manage political clubs, serve as officer, delegate or alternate, or as a member of any committee.

7. Participate actively in political conventions.

8. Attend political meetings, rallies, etc., and organize, prepare and conduct such gatherings.

9. Initiate, sign or circulate partisan or non-partisan nominating petitions, distribute campaign literature, badges, etc.

10. Wear campaign badges or buttons, display bumper stickers, pictures or posters on an automobile or in window of home.

11. Speak publicly, or write letters or articles for or against any political candidates; endorse or oppose such candidate in a political advertisement.

12. Manage the campaign of a political candidate

If you have questions as to whether or not an activity in question is permitted in the workplace, please consult your supervisor or Department Head. Thank you in advance for your cooperation and compliance.

EXHIBIT C

STEWART WEINBERG
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WILLIAM A. SOKOL
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BLYTHE MICKELSON
BARRY E. HINKLE
JAMES RUTKOWSKI •
SANDRA RAE BENSON
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SEAN D. GRAHAM
DANIEL S. BROME

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
RICHARD T. DRURY, Of Counsel
NINA FENDEL, Of Counsel
ANA M. GALLEGOS, Of Counsel

• Also admitted in Arizona
•• Admitted in Hawaii
••• Also admitted in Nevada
•••• Also admitted in Illinois
••••• Also admitted in Missouri
•••••• Also admitted in New York

July 3, 2012

Via U. S. Mail and Email

Matthew Granger
County Counsel
County of San Benito
481 4th Street, Second Floor
Hollister, CA 95023

Rich Inman
County Administrative Officer
County of San Benito
481 4th Street, First Floor
Hollister, CA 95023

Re: County of San Benito Political Activity Policy

Dear Mr. Granger and Mr. Inman:

Our office represents SEIU 521. It has come to our attention that the County of San Benito currently has in place a Political Activity Policy that severely restricts San Benito County employees' federal and state protected rights to speak and associate freely. This letter is to inform you that the County's policy violates both the United States and California Constitutions, in three ways. First, the County cannot establish that its interest in implementing and enforcing many provisions of the policy outweigh the rights of its employees to speak on matters of public concern. Second, many provisions of the policy are overly broad and restrict more speech than necessary. Lastly, the policy is unconstitutionally vague.

This letter is long because it appears by the restrictions in the policy that the County has not recently made any effort to learn, observe or comply with the well-established law of public employee free speech laws. Therefore, this letter will: 1) inform the County of the current state of the law concerning public employees' free speech rights; 2) apply the law to the County's current policy; and 3) request that the County amend its policy to conform both the Federal and State Constitutions.

There can be no doubt the First Amendment protects the rights of public employees to speak on matters of public concern. *Pickering v. Board of Education,* 391 US 563 (1968) However, in *Pickering*, the Supreme Court acknowledged that the government, as an employer, has a legitimate interest in regulating employee speech in ways that differ from the interest of the government regulating speech of ordinary citizens. *Id.* Thus, the Court in *Pickering* established a framework for determining the scope of a public employee's free speech rights which balances the "interests of public employee, as a citizen, in commenting on matters of public concern, and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. *Id.; Connick v. Myers*, 461 US 138, 142 (1983)

The Pickering balancing test itself is straightforward. First, an employee must establish that the speech being regulated involves a matter of public concern. If the employee establishes that speech does involve a matter of public concern, and is thus protected by the First Amendment, the employer must then establish that its interests in promoting the efficiency of the public services it performs through its employees outweighs the employees' interest in engaging in protected free speech activities. *Pickering* at 568; See also *Connick* at 150; *Rankin v. McPherson,* 483 US 378, 388-389 (1987)

It is axiomatic that political speech involves a matter of public concern. California Government Code section 3201 *et seq.* provides, "The Legislature finds that the political activities of public employees are of significant statewide concern." Section 3201 authorizes the County to adopt regulations that reflect the balance discussed above. It does not authorize the County to restrict or prohibit employees from engaging in speech activities that involve a matter of public concern. Consequently, the County must be able to establish that by implementing and enforcing the policy, the County's interest in promoting the efficiency of services outweighs the interest of its employees engaging in protected speech activities.

The County's policy prohibits employees from expressing their opinions on political subjects and candidates while on duty or in the workplace. It appears that the County has taken this language of the policy directly from Section 3207 of the California Government Code. This section authorizes the County to create a policy that steers clear of constitutional infirmities. The problem with calling the statute a policy is that County managers could interpret the language to prohibit more speech than is necessary to accomplish the County's interests. Without knowing what this provision of the policy allows or prohibits, employees are chilled from exercising their protected free speech rights. Thus, the provision is unconstitutionally vague, and depending on the County's interpretation and enforcement of the policy, it may be unconstitutionally overbroad. For example, the policy does not define what constitutes "on-duty" or "in the workplace". While a public employer could certainly establish legitimate interest in prohibiting an employee from making a political speech from their desk while working, it is virtually certain that same employer could not prohibit an employee from sending a text message to a friend concerning political activity while the employee is on break in the parking lot or break room without running afoul of the First Amendment. The fact that an employee cannot tell whether the latter is prohibited makes the policy unconstitutionally vague. As stated by the Supreme Court in *Keyishian v. Board of Regents of the University of the State of New York*:

> We emphasize once again that precision of regulation must be the touchstone in an area so closely touching our most precious freedoms; for standards of permissible statutory vagueness are strict in the area of free expression. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity...When one must guess what conduct or utterance may lose him his position, one necessarily will steer far wider of the unlawful zone . . . For the threat of sanctions may deter . . . almost as potently as the actual application of sanctions. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform [public employees] what is being proscribed.

Keyishian v. Bd. of Regents, 385 U.S. 589, 603-604 (U.S. 1967) (internal citations omitted)

In addition to the overly broad policy prohibiting employees from expressing political opinions, the County's policy also prohibits employees from wearing campaign badges or buttons, displaying bumper stickers, pictures or posters on an automobile or in the window of their home while the employee is on duty or in the workplace. In regards to the prohibition against campaign badges or buttons, the policy is once again overbroad, as it prohibits employees from wearing these items even when they are not in contact with the County's customers. See, *Scott v. Meyers,* 191 F.3d 82 (5th Cir. 1999). Consequently, in order to overcome a constitutional challenge, the County would have to show that prohibiting employees that have no contact with the public from wearing political badges or buttons outweighs the employees' interest in engaging in free speech activity.

Frankly, the County's prohibition in regard to displaying bumper stickers, pictures or posters on an automobile or in the window of the home while the employee is on duty or in the workplace is simply ridiculous. According to the plain language of the policy, employees wanting to place political bumper stickers on their cars, or posters in their home windows would be required to remove the stickers or posters prior to reporting to work, and then replace them after getting off work. It is incomprehensible how the County thinks they can reach into employees' private life and dictate to them what they can display in their home and vehicles. Aside from the fact that it would be virtually impossible to show that the County's interest in implementing and enforcing these prohibitions outweigh employees' interest in engaging in free speech activity, this portion on the County's policy almost certainly violates employees' right to privacy as well.

Although it is unclear at this point, if, or to what extent, the County has disciplined, or threatened to discipline employees for violating the County's policy, it is worth noting that individual supervisors enforcing the policy may be held individually liable for violating the constitutional rights of County employees. See, *Saucier v. Katz.* 533 US 194 (2001); *Clairmont v. Sound Mental Health*, 632 F.3d 1091. Thus, not only does the County's policy place the County itself at risk, it also exposes those who enforce the policy to potential liability as well.

The Union requests that the City amend its Political Activity Policy and remove the offending portions of the policy by July 16, 2012.

Please contact either of the undersigned with language for a revised policy.

Sincerely,

Matthew J. Gauger
Gary P. Provencher

GPP:tag
opeiu 3 afl-cio(1)

125475

EXHIBIT D

COUNTY OF SAN BENITO
Internal Services Department

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MEMORANDUM

TO: ALL COUNTY EMPLOYEES
FROM: HUMAN RESOURCES
DATE: SEPTEMBER 17, 2012

RE: POLITICAL ACTIVITY

As a general reminder, this memo shall serve to inform all County employees that political activity shall be kept out of the workplace. No County resources (including conducting activity on County work time) shall be used to perform any type of political activity. This policy is reinforced in both the Personnel Rules and Regulations and the Electronic Communications policy as well as the Personnel Ordinance. Our personnel ordinance says that political activities of county employees shall conform to state law and any local provisions adopted pursuant to state law, which states the following:

Prohibited activities – *ILLEGAL*

Under state law a county officer or employee may not do any of the following:

1. Participate in political activities of any kind while in uniform.
2. Knowingly solicit political funds or contributions from other officers or employees of the county or from persons on the employment list of the county, except:

(a) An officer or employee may solicit or receive political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of the officer or employee

(b) An officer or employee may communicate through the mail or by other means of requests for political funds or contributions to a significant segment of the public which may include officers or employees of the county.

(c) An officer or employee may solicit political funds or contributions from a bona fide public employee's organization provided that the funds when collected by the employee's organization, were not earmarked for a clearly identifiable local office-holder or candidate.

3. Use, promise, threaten or attempt to use their county position or official authority to influence the political actions of other county officers or employees or those seeking county employment.

Other activities which are permitted off-work, but *NOT PERMITTED* while on-duty (for San Benito County) or in the workplace:

1. Express their opinions on political subjects and candidates.

2. Become a candidate for nomination or election in any partisan or non-partisan campaign-- national, state or local.

3. Engage in partisan or non-partisan political activities as an individual or as a member of a group.

Other activities which are permitted off-work, but *NOT PERMITTED* while on-duty (for San Benito County) or in the workplace (continued):

4. Contribute to political campaign funds if the contribution is not made to or through another county officer or employee.

5. Join political organizations and vote on any questions presented.

6. Organize and manage political clubs, serve as officer, delegate or alternate, or as a member of any committee.

7. Participate actively in political conventions.

8. Attend political meetings, rallies, etc., and organize, prepare and conduct such gatherings.

9. Initiate, sign or circulate partisan or non-partisan nominating petitions, distribute campaign literature, badges, etc.

10. Wear campaign badges or buttons, display bumper stickers, pictures or posters on an automobile or in window of home.

11. Speak publicly, or write letters or articles for or against any political candidates; endorse or oppose such candidate in a political advertisement.

12. Manage the campaign of a political candidate

If you have questions as to whether or not an activity in question is permitted in the workplace, please consult your supervisor or Department Head. Thank you in advance for your cooperation and compliance.