



OFFICE OF THE PRESIDENT & FOUNDER SHANE HARRIS

PEOPLE'S ASSOCIATION OF JUSTICE ADVOCATES

M E M O R A N D U M

DATE: NOVEMBER 3, 2021

TO:

SAN DIEGO COUNTY BOARD OF SUPERVISORS

FLETCHER, VARGAS, DESMOND,

ANDERSON, & LAWSON-REMER

SAN DIEGO COUNTY COUNSEL

FROM: SHANE HARRIS PRESIDENT & FOUNDER PEOPLE'S ASSOCIATION OF JUSTICE ADVOCATES

SUBJECT: SAN DIEGO COUNTY PROPOSAL ON BANNING RACIALLY INCITEFUL PUBLIC COMMENTS

Harris proposes the "Racial Integrity at Public Meetings" policy following San Diego County's Public Health Officer Dr. Wilma Wooten being called "Aunt Jemima" by a public speaker who sought to racially incite violence at the November 2nd County Supervisors Meeting

Overview:

Government agencies must actively engage with the public at all levels of government especially at public meetings per the Brown Act. Public meetings were created to essentially engage the public on issues being voted on by any particular government agency. These meetings give the public the opportunity to chime in on those issues that elected officials may vote on at any given time. Elected officials are elected by citizens and have an open obligation to be transparent and to listen to those same constituents even when they disagree with them. During San Diego County's November 2, 2021 meeting that line was crossed when a man identified by

the name of Jason Robo appeared at the podium in county chambers to speak on the COVID-19 item regarding the county's response to COVID-19. He spoke at length about how he disagreed with the county's response to COVID-19. During his comments he took a swift turn for the worst. He began to personally attack the elected officials who are elected by the citizens of San Diego. During this moment where he shared personal attacks on Supervisors Lawson-Remer, Vargas and Fletcher he then turned to a county employee who isn't elected by the citizens of San Diego County. Dr. Wilma Wooten is only an employee of San Diego County and is appointed by county supervisors essentially. During these remarks he called Dr. Wooten "Aunt Jemima" and then doubled down on those remarks with more racial incited statements. The history of the Aunt Jemima brand goes beyond the syrup. Aunt Jemima is based on a "'mammy,' a devoted and submissive servant during slavery who eagerly nurtured the children of her white master and mistress while neglecting her own." A statue of a slave mammy stereotype was approved by the US Senate in 1923, but it was never built. The statements that Mr. Robo was bad toward other supervisors however in addition to that he overstepped something we have acknowledged in society and that is racism. He incited racial violence by calling Dr. Wooten a county employee "A F***** Aunt Jemima" as to say she is a servant for the slave master, saying she is a "mammy" and that ultimately her life is invaluable. That statement he made went further than the other ones. Following Mr. Robo calling Dr. Wooten, an "Aunt Jemima" San Diego County Supervisor Nora Vargas passionately stopped him and said "you cannot say that". Not too long after that San Diego County Chairman Nathan Fletcher who was chairing the meeting returned to the dais after leaving for a period of time. Upon returning the chairman banged his gavel and told Mr. Robo "your time is up please be seated". These two moments combined prove what county supervisors can do rather emphasize where they stand on what is racially inciteful. Now my office is requesting Supervisors take actions to research how to ban racial incitements at meetings without freedom of speech being infringed to ensure these actions that took place November 2, 2021 never happen again at a public meeting.

Analysis:

Currently, there are no boundaries on how far "freedom of speech" goes at a public meeting during public comment. This is why researching and/or implementing boundaries is important. According to [uscourts.gov](https://www.uscourts.gov) we have reached the following analysis on what we see as yesterday's comments by the public speaker Mr. Robo:

Freedom of speech includes the right:

- Not to speak (specifically, the right not to salute the flag).
West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).
- Students wear black armbands to school to protest a war ("Students do not shed their constitutional rights at the schoolhouse gate.").
Tinker v. Des Moines, 393 U.S. 503 (1969).
- To use certain offensive words and phrases to convey political messages.
Cohen v. California, 403 U.S. 15 (1971).
- To contribute money (under certain circumstances) to political campaigns.
Buckley v. Valeo, 424 U.S. 1 (1976).
- To advertise commercial products and professional services (with some restrictions).
Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1976); *Bates v. State Bar*

- *of Arizona*, 433 U.S. 350 (1977).
- To engage in symbolic speech, (e.g., burning the flag in protest).
Texas v. Johnson, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990).

Freedom of speech does not include the right:

- To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”).
Schenck v. United States, 249 U.S. 47 (1919).
- To make or distribute obscene materials.
Roth v. United States, 354 U.S. 476 (1957).
- To burn draft cards as an anti-war protest.
United States v. O’Brien, 391 U.S. 367 (1968).
- To permit students to print articles in a school newspaper over the objections of the school administration.
Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).
- Of students to make an obscene speech at a school-sponsored event.
Bethel School District #43 v. Fraser, 478 U.S. 675 (1986).
- Of students to advocate illegal drug use at a school-sponsored event.
Morse v. Frederick, ___ U.S. ___ (2007).

Background:

During this year’s riots in the U.S. It was clear that there is a line that should be drawn between freedom of speech and inciting. During this week’s Board of Supervisors meeting my office feels that the freedom of speech boundaries were overstepped into inciting because we believe the speaker created a racial incitement by informing others at the meeting that they too can go after African Americans like Dr. Wooten with slavery literature and ultimately that they believe that we should go back to a time where a “Mammy” or rather a “Aunt Jemima” was Appropriate. Aunt Jemima is based on a "'mammy,' a devoted and submissive servant during slavery who eagerly nurtured the children of her white master and mistress while neglecting her own." A statue of a slave mammy stereotype was approved by the US Senate in 1923, but it was never built. During 2020 Aunt Jemima was taken off of syrup bottles because of the noted racist connotations of it being representative of a “mammy” who was also violently raped among other connotations of the time period of slavery in America.

Recommendations:

1. Direct San Diego County’s County Counsel to do a 30 day review of the statement made by Mr. Robo and ultimately look at how the county can ban the use of statements that are inciting racism without infringing on freedom of speech.
2. Ban the use of racial incitement during public comment by cutting off the mic of speaker’s and ceding the remainder of their time to the Board of Supervisors once such incited statements are used.

3. If County Counsel finds that the statements made by Mr. Robo were potentially inciting racial violence then San Diego County Supervisors should implement a “Three Strikes” policy for those who use racial inciting statements toward county employees from entering the county chambers during public meetings after three times of repeating the same behaviors. This would be in protection of county staff.

We hope that you will take what happened this week seriously and that you understand the duty you as county supervisors have to protect people. If there are any questions we can answer please contact the sponsor of this policy Shane Harris the President of the People’s Association of Justice Advocates at 619-354-8051 or via email at info@pajmovement.org . The People’s Association of Justice Advocates is a national civil & human rights organization founded to keep Dr. Martin Luther King's dream alive through direct action with a balanced standard of justice for all no matter what race, religion, criminal record, sexuality, gender status, or citizenship. Learn more about us at www.pajmovement.org .



Shane Harris

President & Founder

People’s Association of Justice Advocates