



PLLC

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SENT VIA US MAIL AND FAX

May 2, 2018

King County Executive Dow Constantine
King County Chinook Building
401 5th Ave, Suite 800
Seattle, WA 98104
Fax: 206-296-0194

Re: Blocking of Emails Sent by the “No New Youth Jail Coalition”

Dear Executive Constantine:

I am a cooperating attorney for the ACLU of Washington Foundation, and write on behalf of the “No New Youth Jail Coalition” (the “Coalition”). As you are likely aware, the Coalition has an ongoing “People’s Moratorium,” trying to get King County to pause construction on the youth jail and courts, and to redesign and repurpose these institutions in a way to meet real human needs. Attached is a letter sent to your office requesting a moratorium as a prelude to an advocacy campaign directed to the general public, including King County employees.

It has come to the Coalition’s attention that King County may be blocking emails sent from the Coalition that contain “no new youth jail” or “people’s moratorium” in the body of any emails. Any such action by King County would implicate the free speech rights of the Coalition under the federal and state constitutions. Indeed, courts have recognized that public email systems are subject to the strictures of the First Amendment. *See, e.g., White Buffalo Ventures, LLC v. Univ. of Texas*, 420 F.3d 366, 374 (5th Cir. 2005) (applying the *Central Hudson* commercial speech test to public university’s filtering decision restricting transmission of commercial emails); *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 711 (9th Cir. 2010) (holding that community college may not restrict email messages based on their viewpoints).

The First Amendment interests are of course greater where, as here, the speech is non-commercial and from an advocacy group rather than an employee. At a minimum, the First Amendment will require King County to articulate a non-content based reason for blocking such emails. Recent cases likewise affirm a similar principle in the social media context, holding that government officials may not block constituents based on the

viewpoints expressed. See, e.g., *Davison v. Loudoun Cnty. Bd. of Supervisors*, 267 F. Supp. 3d 702, 718 (E.D. Va. 2017) (concluding that government official violated a constituent's First Amendment rights by "banning Plaintiff from a digital forum for criticizing her colleagues in the County government").

The Coalition wants to flag the issue and seek additional information. It is submitting a Public Records Act request contemporaneously with this letter. If King County is blocking emails based on their content, we wanted to raise the issue by letter before taking further action and thus give King County an opportunity to resolve it quickly.

We look forward to receiving additional information regarding the above matter, and working with King County to resolve this issue.

Sincerely,

Focal PLLC

s/ Venkat Balasubramani

Venkat Balasubramani (cooperating attorney for the ACLU of Washington Foundation)

March 19, 2018

King County Chinook Building
401 5th Ave. Suite 800
Seattle, WA 98104

Dear Dow Constantine,

We are writing to demand a moratorium on building the youth jail and courts at 12th and Alder. For six years, individuals and organizations have been opposing this project. In 2012 and 2013, 26 local organizations signed on to Points of Unity opposing the jail.¹ In 2014, 107 health professionals wrote a joint letter opposing the project because of the harms of youth incarceration and family court involvement to health outcomes.² In 2015, the Seattle City Council unanimously passed an ordinance calling for zero youth detention,³ Native American leaders urged a rejection of the jail building plan,⁴ and 149 artists signed a petition opposing the youth jail.⁵ In 2016, the leading legal advocacy organizations in the County co-authored an op-ed in response to the project calling for an end to youth incarceration.⁶ In 2017, over 60 community organizations representing a wide array of King County's service providers and advocacy organizations signed on to appeal the Master Use Permit granted to start construction.⁷ That same year, the County requisitioned a study from the University of Washington about the project that raised significant concerns, including the large bed count and a design "reminiscent of adult correctional facilities."⁸

¹ "Points of Unity from 2012-13," No New Youth Jail, March 02, 2017, accessed March 17, 2018, <https://nonewyouthjail.wordpress.com/points-of-unity/>.

² See *Appendix A*. "Healthcare Professionals Respond With Signatures," Letter to King County Council Members, May 22, 2014, King County, Washington, https://docs.google.com/document/d/1wxo1dvdxXsEidgnqpdAgkiSLU-b7O2Cb5I5X_XFi9kM/edit?usp=sharing.

³ "A Resolution: Endorsing a Vision for The City of Seattle to Become a City with Zero Use of Detention for Youth, and Establishing a Path Forward to Develop Policies That Eliminate the Need for Youth Detention," Seattle City Council, Record No: Res 31614, September 21, 2015, accessed March 17, 2018, <https://seattle.legistar.com/LegislationDetail.aspx?ID=2458519&GUID=93E5F1D7-42A7-4899-BB78-03150F043416>.

⁴ "Huy Letter to Seattle City Council King County Juvenile Justice Facility," Gabriel S. Galanda to Seattle City Council, November 23, 2015, Seattle, Washington, accessed March 17, 2018, <https://www.documentcloud.org/documents/3245996-Huy-Letter-to-Seattle-City-Council-King-County.html>.

⁵ "Sign the Petition," Change.org, accessed March 17, 2018, <https://www.change.org/p/king-county-children-and-family-justice-center-artists-boycott-the-new-youth-jail-in-seattle>.

⁶ "Op-Ed: A Shared Vision to End Youth Incarceration," South Seattle Emerald, January 05, 2016, accessed March 17, 2018, <https://southseattleemerald.com/2016/01/04/op-ed-a-shared-vision-to-end-youth-incarceration/>.

⁷ See *Appendix B*. End Prison Industrial Complex (EPIC) v. King County, 17-2-09822-1 SEA 1-30 (SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY April 14, 2017), Land Use Petition and Complaint, <https://drive.google.com/file/d/0BwvhXojqs21MRU9leVhhNGw1c3VjOEVVTjFY2c5RVN5O2pz/view?usp=sharing>.

⁸ King County's own 2011 facilities assessment found that the youth jail building was in "generally good condition." See Trupin, Eric, and Mara Lucia Puertolas, Working to Reduce the Use of Secure Confinement A Review of King County's Children and Family Justice Center, Report, Department of Psychiatry and Behavioral

The widespread opposition to this project, by both lay people and organizations that are experts in serving vulnerable populations in King County, is based on many shared understandings:

- King County's policing and imprisonment systems, including the criminalization of youth, have been delegitimized. They are widely understood to be racially targeted and to criminalize poverty.
- The child welfare system in King County targets Black and indigenous families and produces terrible health, education, and employment outcomes for foster youth.
- The County's rationale for the \$210 million project was a lie. We were told that a new jail was needed for the benefit of the children inside detention, when in reality the current jail building is less than twenty-six years old and the project emerged because judges wanted new chambers.⁹ The project was labeled a "Children and Family Justice Center" on the tax levy, when in reality it is a jail and courts that will target and harm low-income families of color.
- The funding for the jail is now in jeopardy, since the Washington Court of Appeals found that the tax levy was unlawful.¹⁰ By continuing to build, you are putting the County's general fund in danger. Countless programs and services will be defunded to pay for this unpopular project if you continue to lose in court. Rushing the jail forward is not worth risking transportation, housing, and other basic services in a county facing a severe crisis of homelessness.

Over the last six years of opposition to this project, rather than engage with the significant concerns being raised from all sides, the County has worked to silence and intimidate its critics, and block public participation. When people from impacted communities repeatedly came to King County Council meetings to bring concerns,¹¹ the Council changed its rules to make it easier to remove people from meetings and to limit public comments.¹² When people opposed to the project began coming to the Open Houses and public meetings the County was hosting about the project to ask questions, the County cancelled the events and closed the meetings. The County has directed processes to prevent the 60 organizations that sought to appeal the Master Use Permit for the project from being heard in court,

Sciences, University of Washington Medicine, Seattle, WA: King County, 2017, 1-32, accessed March 17, 2018, https://www.kingcounty.gov/elected/executive/constantine/news/release/2017/September/~media/elected/executive/constantine/news/documents/CFJC_Report_8.-d.-17_FINAL.ashx?la=en.

⁹ EPIC vs. King County, Complaint, (Superior Court of the State of Washington for Pierce County, April 27, 2016) at page 11,

https://www.thestranger.com/images/blogimages/2016/04/28/1461874482-complaint_epic_v_king_county.pdf.

¹⁰ Washington State Court of Appeals rules that County is Illegally Gathering Funds to build the Youth Jail, removing \$150 million of funding for building project, *See* EPIC vs. King County, Complaint (Court of Appeals of the State of Washington Division II September 26, 2017),

https://www.scribd.com/document/360078637/Appeals-court-decision-on-youth-jail-project?irgwc=1&content=10079&campaign=Skimbit%2C%20Ltd.&ad_group=66960X1516509X9de48f92208499e19edcf74f482b9ea5&keyword=ft750noi&source=impactradius&medium=affiliate.

¹¹ Green, Marcus Harrison, "King County Moves Forward with New Youth Jail amid Protest," The Seattle Globalist, February 10, 2015, accessed March 18, 2018,

<http://www.seattleglobalist.com/2015/02/10/king-county-approves-new-youth-jail-contract-amid-protest/33615>.

¹² Winkel, Taylor, "New County Ordinance a Check on Free Speech?" South Seattle Emerald, May 06, 2015, accessed March 18, 2018,

<https://southseattleemerald.com/2015/05/06/new-county-ordinance-a-check-on-free-speech/>.

leading to the dismissal of the appeal in March 2017¹³ - the same month you called for Zero Detention of Youth in your State of the County speech.¹⁴ Later that year, when the City passed an ordinance clarifying that the appeal should be allowed to move forward,¹⁵ King County's lawyers actually filed suit against the City of Seattle and the 60 social justice organizations to again oppose their request to be heard regarding the permit.¹⁶ Now, King County is threatening to sue one of the leading organizations opposing this project, EPIC, an organization of youth of color, for attorneys fees for their efforts to have their day in court to appeal the Master Use Permit.¹⁷

At every turn, the County has made efforts to avoid community input and participation, to hide the truth about the project, and to prevent a meaningful public process. The County is still lying about the nature of the jail and courthouse, pretending that it will be a space for non-profit organizations to provide services. First, and foremost, youth should not have to be arrested to get services. Moreover, the County's public designs are misleading, labeling two pods of the jail as "non-detention program areas."¹⁸ However, the actual contract documents label these pods more accurately as "Transition Units (non-secure detention)." It is not believable that these units, which are designed like jail cells with hardened concrete walls, are ever meant to be used as a space to provide services or that any reputable non-profit would be willing to provide housing to youth in a jail cell environment. The County has further failed to disclose any details about their plans for selling off large parts of the 12th and Alder site to private developers.¹⁹ Is the plan really for a youth jail filled with Black children to be surrounded by real estate development that displaces more Black families and businesses from the Central District? There is no reason for the people of King County to have faith that justice or equity are organizing principles for the County in its dealings, based on the history of this project.

¹³"City of Seattle Dismisses Appeal by Over 60 Community Groups on Youth Jail Permitting Decision," Columbia Legal Services, March 03, 2017, accessed March 18, 2018,

<http://columbialegal.org/seattle-dismisses-appeal-60-community-groups-against-youth-jail>.

¹⁴ "2017 State of the County Address," King County, March 20, 2017, accessed March 18, 2018,

<https://www.kingcounty.gov/elected/executive/constantine/news/speeches/03-20-2017-state-of-the-county.aspx>.

Trumm, Doug, "Merry Xmas Seattle, King County Got You A New Youth Jail," The Urbanist, December 20, 2016, accessed March 18, 2018,

<https://www.theurbanist.org/2016/12/20/merry-xmas-seattle-king-county-got-new-youth-jail/>.

¹⁵ Lloyd, Sarah Anne, "Youth Jail Opponents Will Have a Chance to Appeal Master-use Permit after All," Curbed Seattle, May 31, 2017, accessed March 18, 2018,

<https://seattle.curbed.com/2017/5/31/15719622/youth-jail-permit-appeal-ordinance>.

¹⁶ Kroman, David, "King County Also Names EPIC, Youth Undoing Institutional Racism, Block the Bunker and Whole Host of Others in Lawsuit," Twitter, September 27, 2017, accessed March 18, 2018,

<https://twitter.com/KromanDavid/status/912834778105233408>.

¹⁷ See "End Prison Industrial Complex (EPIC) vs. King County, 77212-1-I (Court of Appeals of the State of Washington Division I November 2, 2017),

<https://drive.google.com/file/d/0BwvhXojqs21MQ2JINndiMXUtTXlwRFc5WXJsSjJxTkdIZVVV/view>. At page 50 stating "The Court should award attorney's fees to respondents.

¹⁸ See *Appendix I*. "Executive Response Letter to Working to Reduce the Use of Secure Confinement," Dow Constantine to Dr. Eric Trupin, September 14, 2017, King County, accessed March 18, 2018,

https://www.kingcounty.gov/~media/elected/executive/constantine/news/documents/Executive_response_letter_to_Working_to_Reduce_the_Use_of_Secure_Confinement.ashx?la=en.

¹⁹ See *Appendix C*. Howard S. Wright Company, "Draft Construction Phasing Plan.pdf," Google Drive, August 06, 2015, accessed March 18, 2018, <https://drive.google.com/file/d/1ir7-atQ-IX4Bf4AcUENjoMJIpUphsII7/view>.

We demand a moratorium on construction until the County repurposes the site for meeting the needs of youth and families and eliminating any plans for courts or jails on the site. You are trying to push this project to completion in a rush because it is unpopular, unfunded, and illegitimate. Doing so exposes your disinterest in the wisdom and input from the people most impacted by this project. Your lack of integrity is exposed by your disingenuous support for “zero youth detention” while simultaneously risking the County’s budget on an unfunded \$210 million project designed specifically to detain youth. Stop the construction now and begin real negotiations with community stakeholders to repurpose the site for basic human needs and implement an end to youth detention.

Sincerely,

The No New Youth Jail Coalition