

MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



**9.23**

During the oral communication section of the agenda for Tuesday, May 25, 2010, Julie Waltz requested the repeal of Ordinance 884.

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**ATTACHMENTS FILED WITH  
CLERK OF THE BOARD**

**AGENDA NO.  
9.23**

# CENTER FOR INDIVIDUAL RIGHTS

1233 TWENTIETH STREET, N.W., SUITE 300  
WASHINGTON, D.C. 20036

<http://www.cir-usa.org>  
202-833-8400

**For Immediate Release**  
**Terry Pell**  
**Monday, May 17, 2010**  
**x113**

[usa.org](http://www.cir-usa.org)

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**202-833-8400**

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## Victory for California Free Speech

Washington, D.C.—California resident Julie Waltz' long fight for free speech for opponents of state subsidized housing policies came to a victorious conclusion today, when the California Department of Fair Employment and Housing agreed to implement the "Julie Waltz First Amendment Policy."

The new policy prohibits the Department from investigating citizens for housing discrimination solely on the basis of free speech activity, including writing and displaying flyers, signs, or newspaper articles critical of public housing projects, even if they appear to advocate discriminatory policies or positions.

The new policy sets forth complaint handling procedures that must be followed by Department personnel to ensure that citizens are not subjected to long investigations that have the effect of stifling public criticism of housing policies. The Department agreed to adopt the new policy, attempt to have it codified in the California Code of Regulations, publish it on its website and train employees in its use.

The dispute grew out of a 2006 housing discrimination investigation of Waltz that lasted about one year. Waltz had posted yard signs and expressed opposition in other peaceful ways to the state's efforts to place sex offenders and other individuals with a history of behavioral problems in residential group homes, including homes in Phelan, CA, and one next door to her home in Norco, CA. Despite the fact that the complaint did not allege specific facts constituting a violation of housing discrimination laws nor any specific facts that would show that Waltz had illegally threatened group home residents, Department officials inexplicably conducted a lengthy inquiry.

During the year-long state investigation, officials told Waltz that her speech violated state fair housing laws, requested that she refrain from her speech activities, threatened her with prosecution, and used the public media to characterize her as a discriminator and a violator of the California Fair Housing and Employment Act. Officials also told her that the investigation would end if she removed signs from her yard objecting to the next-door group home as well as signs posted by other people in her neighborhood. Waltz declined to remove the signs.

Waltz sued in 2008, seeking an injunction prohibiting DFEH officials from engaging in investigations designed

*Submitted by Julie Waltz  
oral comm. 05/25/10*

only to punish individuals for speaking out against government housing policies. In addition, Waltz sued Lillianita Brumfield, who handled her case, and other officials in their individual capacities for damages for violating Waltz's federal constitutional rights.

Waltz commented, "I am pleased that the Department has recognized the need to protect the free speech rights of ordinary citizens to criticize and question housing policies without being made the subject of prolonged discrimination investigations. It is my hope should any future investigations of this type occur, may the Government Officials recognize the fact their power of authority does not supersede The United States Constitution. God Bless America."

CIR President Terence Pell commented, "This was an egregious case of housing investigators using their authority to hector, harass and intimidate a citizen whose only crime was speaking out in opposition to government policies. It would be difficult to find a clearer violation of the First Amendment."


Waltz was represented by the Los Angeles, CA firm of Munger, Tolles & Olson LLP, which donated its time *pro bono* and the Center for Individual Rights.

[insert quote from Munger Tolles if desired]

CIR has successfully represented California residents in other cases involving the misuse of housing discrimination laws to silence criticism of government housing policy. In two earlier cases, *Affordable Housing v. Fresno* (2006) and *White v. Lee* (2000) the Court of Appeals for the Ninth Circuit made unequivocally clear that citizens may not be investigated or sued for housing discrimination solely because of their public speech concerning government housing policies. In both cases, the court found individual officials liable in their personal capacities for violating the clear constitutional rights of CIR's clients.

The Center for Individual Rights is a non-profit public interest firm that specializes in civil rights, free speech, and other cases affecting individual rights. For more information, contact Terry Pell at 202-833-8400 x 113, or visit CIR's web site at <http://www.cir-usa.org>.

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	<b>DEPARTMENT OF FAIR EMPLOYMENT &amp; HOUSING</b> Enforcement Division	<b>Directive Number</b>  H-103r
	<b><i>HOUSING DIRECTIVE</i></b>	<b>Distribution Date</b>  05/20/2010

1. **SUBJECT: JULIE WALTZ FIRST AMENDMENT POLICY**
2. **PURPOSE:** To establish intake, investigation and conciliation procedures for housing complaints implicating protected First Amendment activity. It is the policy of the Department of Fair Employment and Housing to not investigate complaints based solely on protected First Amendment activities.
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) adopts the following First Amendment policy. This policy only applies to complaints received by the DFEH when the following three required factors are present. First, the complaint must be a housing complaint. Second, the complaint is not against an owner within the meaning of Government Code section 12927, subdivision (e). Third, the complaint implicates protected First Amendment activity as described by the Ninth Circuit in *White v. Lee* (9th Cir. 2000) 227 F.3d 1214. These protected First Amendment activities include, but are not limited to, writing, distributing, and displaying signs, flyers, and newspapers or articles, engaging in expressive associational activities even if they appear to advocate discriminatory policies or positions, and petitioning the government for redress of grievances (e.g., filing of a lawsuit that is not frivolous, contacting law enforcement and providing the police with information that is not deliberately false, or participating in the political or legislative process). (*Id.* at pp. 1226-1228.) If these three factors are present, then the DFEH will follow the protocol described below.
4. **PROCEDURE:**
  - A. **Intake Process:**

When housing complaints are received by the DFEH, they will be screened to determine if this policy applies. If the

intake consultant determines that the required factors appear to be present, then prior to accepting the complaint for investigation, the consultant will refer the complaint to the District Administrator. If the District Administrator concurs, he/she will report the complaint to the Deputy Director of Housing. If the Deputy Director of Housing concurs that the factors appear to be present, then the Deputy Director will report the complaint to the Chief of Enforcement. If the Chief of Enforcement concurs that all the factors appear to be present, then the Chief of Enforcement will report the complaint to the Chief Counsel or the Chief Counsel's designated Associate Chief Counsel (ACC). After the Chief of Enforcement consults with the Chief Counsel or the Chief Counsel's designated ACC, the Chief Counsel or the Chief Counsel's designated ACC will decide whether these factors are present, and whether or not to accept the complaint for investigation under this policy. If the Chief Counsel or the Chief Counsel's designated ACC accepts the complaint for investigation, then the Chief Counsel or Chief Counsel's designated ACC will draft the complaint. The complaint will only include the specific allegations that are appropriately subject to the DFEH investigation under this policy.

**B. Legal Advice by the DFEH Legal Division on the Investigation**

If the Chief Counsel or the Chief Counsel's designated ACC decides to accept the complaint for investigation, then legal advice will be provided regarding the proper scope of the investigation. The legal advice will include the following three topics:

- 1.) **Scope of Investigation:** The investigation should be limited in a manner that will permit the DFEH to properly investigate the complaint, but not violate the respondent's First Amendment rights. When advising the Chief of Enforcement, the Chief Counsel or the Chief Counsel's designated ACC will provide guidance on how the specific allegations in the complaint will be investigated. The investigation will not be overbroad, but instead will focus on the specific allegations that were approved for an investigation under this policy. In providing this guidance, the Chief Counsel or the Chief Counsel's designated ACC will be mindful that activities such as distributing flyers and newsletters, lobbying public officials, and petitioning the government are protected by the First Amendment. On the other hand, acts of

violence, threats, or intimidation may constitute unlawful housing discrimination that is not protected by the First Amendment. The investigation will focus on the specific allegations that might prove a FEHA violation.

- 2.) Communications: The Chief Counsel or the Chief Counsel's designated ACC will advise that when communicating with the respondent, media, or public regarding an investigation under this policy, the DFEH representatives will make clear that protected First Amendment activities do not, by themselves, constitute a violation of the FEHA.
- 3.) Length of Investigation: The Chief Counsel or the Chief Counsel's designated ACC will advise on the proper length of the investigation. The DFEH will strive to complete investigations under this policy within 100 days. Any investigation under this policy will be completed as expeditiously as possible, and may not exceed 100 days without the express approval of either the Chief Counsel or the Chief Counsel's designated ACC. Under no circumstances may an investigation under this policy exceed 180 days.

**C. Ongoing Monitoring of Investigation by the DFEH Legal Division**

If the Chief Counsel or Chief Counsel's designated ACC approves of an investigation under this policy, the investigation will remain under the monitoring of the DFEH Legal Division. To conduct this monitoring the Chief Counsel or Chief Counsel's designated ACC will assign a DFEH staff counsel to monitor the investigation. The monitoring staff counsel will perform the following tasks:

- 1.) Case Review Every Thirty Days: At least once every thirty days the assigned staff counsel and assigned consultant will discuss the status of the investigation. Topics to discuss will include the proper scope of the investigation, and whether the investigation will be completed within 100 days.
- 2.) Formal Discovery: The assigned staff counsel is responsible for reviewing and approving any written discovery (subpoenas, request for production of documents, interrogatories) to insure that the written discovery requests are not overbroad, and that the requests are limited to the allegations that have been approved for investigation by the Chief Counsel or the Chief Counsel's designated ACC.

3.) Settlement/Conciliation: Any settlement discussions or conciliation attempts in an investigation under this policy will be conducted by the assigned staff counsel. During any such settlement discussions or conciliation attempts, the staff counsel will take special care to insure that the respondent is not asked to sacrifice any protected First Amendment activity to settle the action or end the investigation. Additionally, staff counsel are advised not to discuss protected First Amendment activity in the context of any settlement or conciliation efforts.

5. **APPROVAL:**

May 10, 2010

\_\_\_\_\_  
Phyllis W. Cheng, Director

\_\_\_\_\_  
Date

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**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** JULIE WALTZ

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 5-25-10 **Agenda #** PUBLIC COMMENT

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_