



INSTITUTE FOR JUSTICE

April 7, 2025

BY CERTIFIED & ELECTRONIC MAIL

Office of Decatur County Attorney
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RE: *Your Retaliatory Letter to Ms. Audlehelm Sent on Feb. 5, 2025.*

Dear Mr. Wilson:

I write on behalf of the Institute for Justice (IJ), a national nonprofit law firm dedicated to defending the constitutional rights of ordinary people living in America. We recently became aware of your letter to Ms. Rita Audlehelm, a resident of Decatur County, and a frequent attendee of the Board of Supervisor's weekly meetings.

For over a year, Ms. Audlehelm has often attended Board meetings and then reported her opinion about what happened during the meetings in editorial columns in the Leon Journal-Reporter and the Lamoní Chronicle. The Board, however, has apparently become upset with Ms. Audlehelm's take on their meetings. For instance, Steve Fulkerson's editorial called Ms. Audlehelm's speech "drama," "disrespectful," and "stirring up trouble." And your recent letter to Ms. Audlehelm threatens to sue her for defamation if she doesn't retract her statements and stop talking about "any elected official of Decatur County."

Your letter to Ms. Audlehelm raises serious First Amendment concerns. We respectfully request that you immediately (and publicly) retract your letter and talk to your clients about adopting the necessary reforms we've outlined below, including taking steps to make a permanent livestream of the meetings available to the public.

Like everyone here in America, Ms. Audlehelm has views on governance that are shared by some and disliked by others. Thankfully, the First Amendment stands ready to protect our right to disagree with our elected officials. Indeed, from the Founders' criticisms of King George III to modern commentary about Republicans and Democrats alike, the core principle of the First Amendment is the right to freely criticize the government without fear of retribution. That freedom to dissent is what

separates America from totalitarian regimes elsewhere in the world. But that core First Amendment tenet becomes compromised when elected officials feel empowered to silence and intimidate critics through the threat of baseless lawsuits.

To start, the idea that the government could sue for defamation is wrong. That's why "no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence." *City of Chicago v. Tribune Co.*, 139 N.E. 86, 88 (Ill. 1923). To hold otherwise would revert to the rejected theory "that the king could do no wrong." *Ibid.* Rather (and thankfully), in the United States, the government can't determine what opinions may be shared in the public square. A free society does not permit governments to sue newspapers or individuals for publishing editorials. That's why, for nearly a century, the U.S. Supreme Court has been crystal clear: An indispensable principle of free speech guaranteed by the First Amendment to the United States Constitution is "that debate of public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964) (citing *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937)).

What's more, your letter neither mentions, nor could you satisfy, the heightened "actual malice" standard required for public officials to sue for defamation. *See id.*; *see also Mercer v. City of Cedar Rapids*, 308 F.3d 840, 849–50 (8th Cir. 2002). That's because, as your letter ignores, Ms. Audlehelm's statements were factually true. For example, your letter alleges that Ms. Audlehelm's question of, "Why are you not attending BOS meetings and the committee meetings assigned to you?" is defamatory because "it insinuates Board of Supervisor Fulkerson isn't taking part in any meetings at all when you know full well he is taking part by either phone or Zoom." But the first two sentences of Ms. Audlehelm's editorial explain exactly that: "Did you know that of the last 17 BOS (Board of Supervisors) meetings since 9/30/2024, Supervisor Fulkerson has attended just ONE meeting (12/23/2024) **in person**? There have been 8 call-ins by Fulkerson to meetings, the majority of those calls have been short, only long enough to address one issue, and some resulting in a dropped call." (Emphasis added.) Put simply, Ms. Audlehelm's question was rooted in truth.

The deficiencies in your letter reveal the Board's true nature: To intimidate and silence Ms. Audlehelm. Thankfully, as IJ knows well, courts stand ready to protect the right to criticize public officials without risking frivolous lawsuits. After elected officials sued a political critic in Kentucky for defamation, IJ got involved, and the appellate court sharply threw out the lawsuit: "It is no accident that freedom of political speech is protected by the First Amendment to the Constitution. That freedom was particularly important to the founders who, if they had lost their battle

for freedom, could have been executed by a king for criticizing him.” *Ramler v. Birkenhauer*, 684 S.W.3d 708, 726 (Ky. Ct. App. 2024); *see also Judge Dismissed Bogus Defamation Lawsuit Against Foxconn Critic*, IJ (May 24, 2022), <https://tinyurl.com/WI-Anti-SLAPP>.

One reason there’s a market for Ms. Audlehelm’s opinion pieces is because the public meetings are not livestreamed on the County’s website. Rather, when Mr. Fulkerson attends a meeting in person, he may livestream the meeting from his cell phone. Of course, if the Board of Supervisors is unhappy with Ms. Audlehelm’s speech, the solution is *more* public discussion, not less. By livestreaming meetings, for instance, the Board of Supervisors would ensure that the public has ready access to what transpired in the meetings and would not be so reliant on Ms. Audlehelm’s recap. Either way, threatening meritless lawsuits is never the proper response when citizens speak critically of their government.

We respectfully urge you to retract your letter and publicly acknowledge that Ms. Audlehelm has a First Amendment right to criticize the Board of Supervisors by publishing editorials in the Leon Journal-Reporter and the Lamoni Chronicle. We also urge you to work to make a permanent livestream available to the public for all Board of Supervisor meetings. Our understanding is that this access is the primary concern and impetus for Ms. Audlehelm’s editorials because when Supervisor Fulkerson does not attend in person, he cannot livestream the meeting from his cell phone. That, of course, is not a sustainable solution to provide public access to the weekly meetings. The Board should have a clear and consistent livestream that is posted on the county’s website and not dependent on the attendance of Mr. Fulkerson.

We would welcome the opportunity to discuss this matter further. Please feel free to contact me at (859) 408-6382 or bmorris@ij.org if you have any questions.

Sincerely,



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