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**By email to [golden@nysenate.gov](mailto:golden@nysenate.gov); USPS First Class**

Senator Martin J. Golden  
7408 5<sup>th</sup> Avenue – 1<sup>st</sup> Floor  
Brooklyn, New York 10954

Re: Fight Back Bay Ridge

Dear Senator Golden,

My firm is retained by Sally McMahon and Mallory McMahon, a mother and daughter, who, as individuals residing in your district, participate in an association of people known as “Fight Back Bay Ridge” (“FBBR”). FBBR is a collaborative action group that seeks to activate community organizing and civic engagement in South Brooklyn.

My clients advise me that numerous recent statements from your office staff have placed them in fear of retaliation for their expressive activity, have sown doubt about whether their speech must be licensed or regulated, and made them question whether they would be breaking the law by doing it again. Indeed, you have now acted in textbook case of First Amendment retaliation by fling a specious complaint with the Board of Elections. These acts were a violation of my clients’ Constitutional Rights as embodied in the Constitutions of the United States and the State of New York. My clients reserve all rights.

**FBBR:** In addition to being a group active on social media, FBBR engages in public actions of social protest and other manners of political and advocacy speech, pursuant to their members’ collective decision-making. Their mission statement declares that they work towards the betterment of their neighborhood through projects implemented at the local, state, and federal levels. They bring attention to matters such as environmental policy, the rights of marginalized populations, healthcare, education, and others. Some of their past examples of public-facing political speech include bringing women in costumes from *The Handmaid’s Tale* to Congressman Donovan’s “Coffee with your Congressman” events to protest his voting record on women’s health; handing out free #NotSoGolden reusable tote bags on Earth Day to call attention to the environmental impact of single-use plastic and the your voting record on related issues; assisting other organizations in their political speech by distributing materials and co-sponsoring activities; organizing and hosting rallies and protests at the offices of several local and federal political leaders, including a rally at your office in support of the New York Health Act; and most notably, hosting an empty-chair Town Hall for Congressman Donovan, who refused to appear.



**AUGUST 3, 2018 SUMMER STROLL:** As you probably know, during the August 3<sup>rd</sup> Summer Stroll on Third Avenue, members of FBBR distributed political literature, in the form of small, octagonal hand-held fans, with the words “STOP MARTY GOLDEN” printed on them, as well as other text referencing their dissatisfaction with your actions with respect to the speed camera legislation as well as your driving record. The group also handed out the reusable tote bags described above, which contained additional literature. This, as you know, is protected speech and, while it is in opposition to you, is their right whether you agree or not.

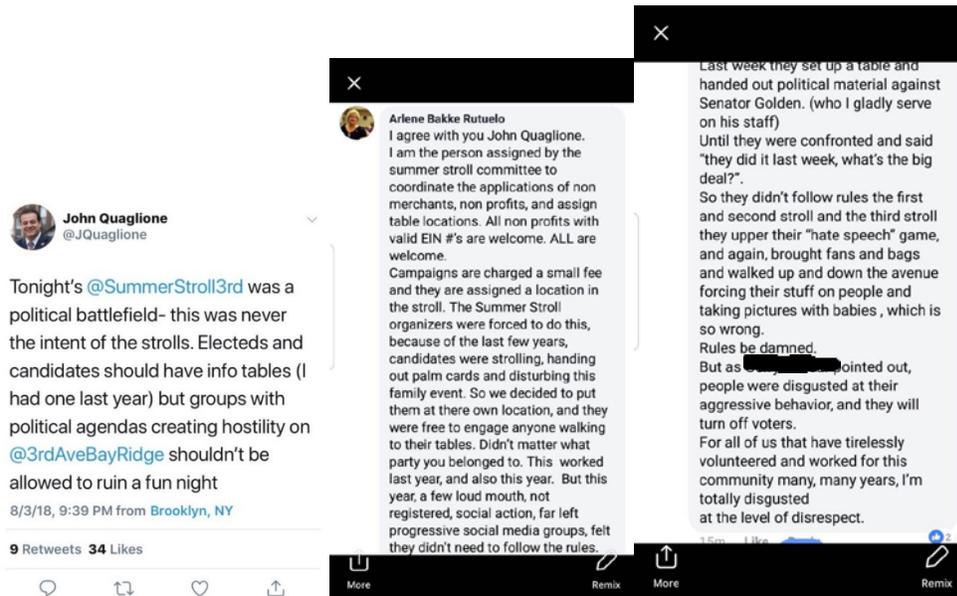
About ten volunteers participated in this outing, all whom are your constituents. Several brought their children and everyone otherwise participated in the Summer Stroll. FBBR gave out a few hundred items. I understand that you interacted with some of these folks, and that a local newspaper recently described it as something like “all smiles.” The undersigned attended the event and did not witness any hostility surrounding FBBR. Many others have similar recollections and photos. By all accounts, the Summer Stroll was a great event, and I personally thank you for helping organize it, along with the Merchants of Third Avenue.

It certainly appeared that you were not harmed by FBBR, or that they acted improperly toward you or others, except by having a political disagreement – something which I believe you appreciate as a long serving politician. As far as anyone is aware, you did not make any complaints, the police were not involved, there was no yelling or screaming, nor pushing and shoving. Everything proceeded without any trouble, as it should, and as it always has whenever FBBR had previously conducted public events, including at prior Summer Strolls.

**YOUR RESPONSE:** Nothing happened at this event that should’ve consumed another minute of anybody’s time, except all of a sudden, John Quaglione and Arlene Rutuelo, who are members of your staff, started making made a number of statements on social media, specifically via Facebook and Twitter, directed at FBBR, about last Friday’s Stroll. Apparently acting in their official capacity as your spokespeople, that have now placed my clients in reasonable fear of excessive government interference with their fundamental speech rights, enough for them to wonder how they will be treated during the next Stroll. Several of these statements are reproduced below, and there are many more which I will not be including here.

I don’t know if he was acting under your authority as your communications director, but to state such things numerous times, and throughout the weekend, only to finally delete many of these comments when some of your purported defenders offered to bring “bats” and “riot gear” to the next stroll, was irresponsible at best. It was also unlawful – as I will discuss below – to characterize FBBR’s actions as a “battlefield” and as “creating hostility”, and as “hate speech.” Mr. Quaglione further referred to FBBR as “the enemy,” perhaps in jest. To blame a political “enemy” for ruining a good time for the whole community worked exactly as expected. Even more disconcerting, to claim that a political adversary is the “enemy” shocks the conscience.

Mr. Quaglione also made a number of references to “checking the rules” referencing his belief that FBBR “shouldn’t be allowed” to hand out political leaflets without a permit and referring this matter to the Merchants of Third Avenue. No rules were ever produced, however, to my knowledge.



We have come to learn that your campaign has filed a complaint against FBBR. While I will not address its substance, I note that your filing it even prior to the August 3, 2018 Stroll shows that you wished to interfere with FBBR's speech.

**FIRST AMENDMENT RETALIATION:** FBBR does not need a permit to engage in protected First Amendment activity, nor do they need to rent a table from the group which sponsors the Summer Stroll on the public street. Any suggestion to the contrary by a governmental official, acting presumably in his official capacity, is an impermissible restraint on speech and, arguably, the permitting would constitute a prior restraint, and any suggestion to the contrary has a chilling effect on FBBR's ability to go forward with its protected speech activity. I trust that your office will consult with your own attorney and reach the inevitable conclusion that **your staff must cease and desist from making statements that appear to discourage and criminalize political speech with which it disagrees.**

Although it currently appears difficult to believe, there is no such thing as absolute power in our nation. There is however, an absolute right to certain types of speech. As a matter of constitutional law, there is some elemental, essential mode of expression that is directly protected by the First Amendment, the sort of speech against which absolutely no government regulation could or should be allowed. Such a basic unit of expression is an individual handing out a pamphlet on a public street or speaking in political disagreement in a park. From time immemorial to the present date, places such as streets and sidewalks – and recently politicians' twitter accounts – have been considered a public forum for the purpose of determining the types of governmental regulations that are permissible. And inevitably, the courts have held that simply no regulation based on the contents of the speech apply to speech where individuals merely hand out written materials. Other types of speech are regulated differently (e.g. passing



out menus is commercial speech) and other laws can be enforced against non-speech actions, such as using loudspeakers, obstructing pedestrian traffic, or committing vehicular offenses.

Conversely, there is no right to be free of discomfort on a public street. To the extent that someone's leafleting is done in an orderly and polite manner, the law requires that the persons be left alone, regardless of whether the message is antithetical to one's views. Your office has two tables where you hand out balloons with your brand messaging on it, and your staff member runs the festival. That's great! But it cannot be the case that the only political speech that is allowed is yours, and it cannot be the law that as participants in this public event FBBR members are subject to any known or unknown license or permit or set of private rules. The city of New York only requires a daily fair license for those who sell items or offer services, which clearly does not apply to FBBR. The right to political speech in a public place so designated as open to the public to engage in such speech cannot be limited to one side.

We are confident that you know that FBBR does not need to purchase a table at the Summer Stroll, and they are not bound by any of its rules and regulations, in so far as they infringe on their free-speech rights. For representatives of your office to suggest otherwise, and do so under the apparent authority and apparently on behalf of your office, is to commit act of retaliation against FBBR First Amendment-protected activity and to attempt to discourage it by implying that they're breaking the law stifles their rights by placing fear in my clients of criminal reprisal for their rights to free speech.

**CONCLUSION: You and your staff and your campaign staff must cease and desist from making statements that appear to discourage and criminalize political speech with which you disagree. You must not act in a way that suppresses and retaliates against FBBR's protected First Amendment activity.**

I encourage you to hold First Amendment and social media training for your staff to make sure the public is clearly informed about which statements are your staff's personal, protected beliefs, and which are to be attributed to your office, as official policy statements. I would agree that this is a fairly unexplored area of law – until recently it was never an issue of whether local and national politicians conduct policy and diplomacy by Twitter, yet here we are, at the intersection of the digital and Third Avenue, trying to figure this out.

Thank you again for your prompt attention.

Very truly yours,

Eugene Strupinsky, Esq.

JML:me

Client: (via Email)