



March 12, 2024

Laura Kavanagh  
Commissioner, Fire Department of New York City  
9 MetroTech Center, 8W-6  
Brooklyn, NY 11201  
Email: [Laura.Kavanagh@fdny.nyc.gov](mailto:Laura.Kavanagh@fdny.nyc.gov)

Re: Unlawful Censorship of FDNY Members for Exercising Their First Amendment Rights.

Dear Commissioner Kavanagh:

America First Policy Institute (AFPI)'s Center for Litigation exists to protect the most fundamental rights of all Americans. Please direct all correspondence concerning this matter to AFPI using the contact information below.

### Background

On March 7, 2024, the Fire Department of New York City (FDNY) leadership invited New York Attorney General Letitia James to speak at an event at the Christian Cultural Center in Brooklyn. As Attorney General James was introduced, members of the audience, which included civilians as well as current and retired FDNY members, briefly expressed their opinions about her. Some members of the audience cheered, while some booed.<sup>1</sup> As Attorney General James approached the podium to speak, members of the audience again briefly expressed their opinions, some applauding and some booing.<sup>2</sup> Attorney General James began delivering her remarks, which occasionally drew cheers from the audience.<sup>3</sup> At one point during Attorney General James' speech, some audience members briefly expressed their support for former President Donald J. Trump.<sup>4</sup> The cheers subsided, and Attorney General James finished her speech.

As a result of some of the audience members' actions, FDNY Commissioner Laura Kavanagh initiated an investigation via the FDNY Bureau of Investigation and Trials (BITS). As

---

<sup>1</sup> New York City Government. (2024, March 7). *Fire Commission Laura Kavanagh presides at FDNY Promotion Ceremony*. <https://www.nyc.gov/site/fdny/news/Y40307/fire-commissioner-laura-kavanagh-presides-fdny-promotion-ceremony> (at 38:49)

<sup>2</sup> *Id.* at 51:58.

<sup>3</sup> *Id.* at 52:32.

<sup>4</sup> *Id.* at 53:46.



reported by the *New York Post*,<sup>5</sup> FDNY Chief of Department John Hodgens circulated an email within FDNY leadership stating, “BITS is investigating this so they will figure out who the members are. I recommend they come forward. I have been told by the Commissioner it will be better for them if they come forward and we don’t have to **hunt them down**.” See *Attachment 1* [Emphasis added].

The implicit threat in Chief Hodgens’ email was further emphasized by a memo that circulated amongst numerous FDNY firehouses on Sunday, March 10, 2024, which stated that “BITS is gathering video and identifying members” from the event that once identified those members will need to “come to HQ to be **educated** why their behavior is unacceptable.” See *Attachment 2* [Emphasis added]. The Uniformed Fire Officers Association (UFOA) stated it is ready to aid any FDNY member made subject to an investigation with securing representation.<sup>6</sup>

UFOA should look no further than AFPI, who likewise stands ready to aid any FDNY member who faces adverse action due to engaging in protected First Amendment expression.

### The Law

The First Amendment protects the rights of all Americans in their political speech. This includes government employees such as FDNY members. The United States Supreme Court recently reinforced this core principle in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. \_\_\_ (2022). In *Kennedy*, the Supreme Court upheld the right of a public school football coach to engage in brief, personal expression, even while “on the clock.” *Kennedy*, slip op. at 2-3. Clearly, if the First Amendment protects the right of a public school employee to engage in brief, personal expression, then it protects the rights of New York’s Bravest to do the same.

Moreover, FDNY has an established history of permitting and even encouraging audience members to express themselves during events and functions. FDNY promotion ceremonies are notoriously boisterous events. The presence of blaring airhorns from audience members, sometimes configured to maximize their volume, is so commonplace that on one occasion, a Battalion Chief commented on their non-appearance, saying: “That is what we like to hear at promotion ceremonies, loud boisterous cheering – no airhorns.”<sup>7</sup>

---

<sup>5</sup> Edelman, S., & Calder, R. (2024, March 9). FDNY Boss Hunts Down Staffers Who Booed NY AG Letitia James, Cheered for Trump at Promotion Ceremony. *The New York Post*. <https://nypost.com/2024/03/09/us-news/fdny-boss-laura-kavanagh-hunts-down-staffers-who-booed-ny-ag-letitia-james-cheered-for-trump-at-promotion-ceremony/>

<sup>6</sup> McCarthy, C., Campanile, C., & Fitz-Gibbon, J. (2024, March 10). FDNY Turns up Heat on Firefighters who Cheered Trump, Booed Letitia James with Scolding Internal Letter. *The New York Post*. <https://nypost.com/2024/03/10/us-news/fdny-turns-up-heat-on-firefighters-who-cheered-trump-booed-letitia-james-with-scolding-internal-letter/>

<sup>7</sup> Battalion Chief Mark Garra. (2021, July 8). *Address at FDNY EMS Officers Promotion Ceremony*. [https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=547928713120070](https://www.facebook.com/watch/live/?ref=watch_permalink&v=547928713120070) (at 31:33)

Audience interjections at FDNY functions are not always celebratory; firefighters frequently express disapproval when a controversial speaker approaches the podium or is introduced. Fire Commissioner Kavanagh herself was introduced to both cheers and jeers at one FDNY Fire Officers Promotion Ceremony.<sup>8</sup> Nevertheless, in FDNY’s well-documented history of permitting and encouraging its members to be vocal during ceremonies and functions, there is no record of any FDNY members being “hunted down” and threatened with “education” or adverse action. Indeed, when Fire Commissioner Kavanagh was booed, the FDNY members were merely exhorted to “pipe down gentlemen.”<sup>9</sup> That brief admonishment was the start and end of the discipline. No subsequent BITS investigation followed, no firefighter was hunted down, no re-education was imposed, nor any other adverse actions taken.

In a fit of selective outrage, the government cannot choose which messages it will permit and which it will censor in a viewpoint-discriminatory manner. It may not, such as in this case, target and punish those who express a view contrary to the government’s preferred message. In short, this is clearly nothing more than a political witch hunt designed to bandage Attorney General James’ badly damaged reputation.

We encourage you to cease this baseless investigation and to rescind any subsequent disciplinary employment action taken against any FDNY member as a result of engaging in First Amendment-protected expression. Should you persist in your unconstitutional discrimination and censorship, AFPI is prepared to provide legal representation to any FDNY member adversely affected by your unlawful actions.

Respectfully,

/s/ Pamela J. Bondi

By: Pamela J. Bondi, Chair  
Jessica Hart Steinmann  
Michael Berry

AMERICA FIRST POLICY INSTITUTE  
Center for Litigation  
1001 Pennsylvania Ave., N.W., Ste 530  
Washington, D.C. 20004

---

<sup>8</sup> FDNY[@FDNY] (2023, February 7). *Join us for the FDNY Fire Officers Promotion Ceremony*. [Video attached] [Post] X. <https://twitter.com/FDNY/status/1622971477602754561>( at 41:19)

*See also*, Celona, L., Moore, T., & Sheehy, K. (2023, February 7)., FDNY Commissioner Booed at Promotion Ceremony after Brass Shake-up Rankled Members. *The New York Post*. <https://nypost.com/2023/02/07/fdny-commish-jeered-at-promotions-event/> (“Kavanagh stood up to the dais as she was announced at the start of the event, prompting a bare smattering of applause and then some loud boos from the back of the Christian Cultural Center[.]”).

<sup>9</sup> *Id.* at 41:27.

# Attachment 1

Gents,

This is the talking points. Please have the DC's start the visits tomorrow on the 9X and continue on the 6X. I understand this is late notice so have the visits continue on Sunday if necessary.

BITS is investigating this so they will figure out who the members are. I recommend they come forward. I have been told by the Commissioner it will be better for them if they come forward and we don't have to hunt them down.

The DC's shall direct the Captain of the Company to make a list of those that come forward and send it directly to John and Kevin in Operations. I realize members might not come forward but they should know that there is clear video of the entire incident and they will be contacted by BITS if they don't.

Thank you  
-Jack

Get [Outlook for iOS](#)

## Attachment 2

- I'm here to address the behavior of firefighters that attended Thursday's promotion.
- The behavior we saw and heard was grossly inappropriate
- Protesting, heckling, or booing anyone at a ceremony is simply unacceptable.
- This was a promotion ceremony to honor members who made sacrifices and worked hard to achieve this day. They had close family and friends there to celebrate with them.
- Absolutely no one should have been subjected to what happened based on the political beliefs of some members.
- It was disrespectful to the speakers, to the promoted members and their families
  
- This was not a political event and Letitia James was not there to give a political speech.
- She was there to support her friend and our new chaplain Pamela Holmes. Pamela invited her friend to attend the ceremony.
  
- Members have a right to political beliefs. But you don't have a right to make a job related ceremony political in nature.
- When you're not on duty, feel however you want about politicians. Vote. Protest. That's your right. But don't do it on the job's time, on other members' time, or on their families' time. Do it on your own time.
  
- Our actions at the promotion damaged the relationship with the attorney general and the Christian Cultural Center. We may lose that venue now.
  
- Politics aside, the attorney general is a friend to the UFA and UFOA and a supporter of our Department. She has come to the hospital on more than one occasion to support us when one of our members is seriously injured or died.
  
- These actions reflected very poorly upon us and diminished the dignity of the occasion.
- Instead of news reports talking about the accomplishments of our members, it talked about the politics and our poor behavior.
  
- Everyone must be better. Do the right thing. Even if you aren't the one acting poorly, if you see a fellow firefighter act in this manner, STOP IT.
- Act in a manner befitting of the uniform that you wear. Nothing less should be tolerated.

### Next steps:

Have DC visit each firehouse that had a member promoted

Relay bullet point message

They should understand that BITS is gathering video and identifying members that brought discredit and to the Department

We want the members to come forward. They will come to HQ to be educated why their behavior is unacceptable.