



September 27, 2018

Mr. Marshall Fisher
Commissioner
Mississippi Department of Public Safety
1900 East Woodrow Wilson Avenue
Jackson, MS 39216

Re: Open Letter Requesting MDPS Not Conduct a Government Boycott

Dear Commissioner Fisher:

As you may know, Chick-Fil-A executives in the past have made public comments in support of traditional marriage. Many socially-conservative Mississippians support this viewpoint. However, the Denver Airport authority once considered refusing to rent space to Chick-fil-A because of this speech. If something like this happened in Mississippi, many citizens would be outraged. Rightfully so.

But this is happening in Mississippi, just not to Chick-Fil-A. Instead, Nike has drawn the ire of the Mississippi Department of Public Safety (MDPS) for its new ad campaign featuring former NFL quarterback Colin Kaepernick, who is widely known for sparking a protest movement in professional sports where players kneel during the national anthem.

You recently announced to the Associated Press that MDPS will no longer purchase training equipment from Nike. You specifically admitted that your decision to initiate a government boycott was based upon your personal objection to the speech made by Nike, saying: "As commissioner of the Department of Public Safety, I will not support vendors who do not support law enforcement and our military."

Your service as a Navy veteran and a law enforcement officer are commendable, and your personal views are understandable. As a proud American, and as a fellow military veteran who lost a leg in Iraq, I would not personally choose the national anthem as a venue for protest as Kaepernick has, or to highlight this act as Nike has. However, I fought to protect their right to do just that without fear of government retribution, and I am always heartened to see citizens actually exercising that right.

The Mississippi Center for Public Policy (MCP) (of which the Mississippi Justice Institute (MJI) is a Division) has clearly communicated, on several occasions, its opposition to using the national anthem as a venue to protest at sporting events. Regardless, this letter is not about you and me, our views on Nike's speech, or the identity politics which would elevate our views above those of others based on our status as veterans. It is about the Constitution that we have both sworn to protect.

A government boycott of Nike for its exercise of free speech would be a violation of the First Amendment. *Compare Bd. of Cty. Comm'rs, Wabaunsee Cty., Kan. v. Umbehr*, 518 U.S. 668

(1996) (holding that “the First Amendment protects independent contractors from the termination of at-will government contracts in retaliation for their exercise of the freedom of speech,” based on case law concerning government employment); *with Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (holding that politically based refusals to hire are just as unconstitutional as politically based dismissals of employees).

Additionally, a government boycott would ignore Mississippi law establishing bidding requirements for most public purchases. *See* Miss. Code. § 31-7-13.

Lastly, conducting a government boycott is simply not be the proper role of government. Any effort by you to not “support” vendors with certain views would imply that taxpayer money is your money, to reward or withhold from whom you see fit based on your own personal beliefs. Some Mississippians agree strongly with the political message being advanced by Nike. Other Mississippians oppose Nike’s message. You should not use public funds to attempt to speak for all taxpaying Mississippians on matters of public discourse.

If you wish to personally boycott Nike, or to convince your friends and neighbors to do the same, you are free to do that and the First Amendment protects that right for you. But when acting in your official capacity using taxpayer money, neither the Constitution, nor Mississippi law, nor a healthy respect for the opinions of your fellow Mississippians allow for such personal indulgences. On behalf of the MCPP and the MJI, I ask that you please rescind MDPS’s unconstitutional government boycott of Nike.

Sincerely,

MISSISSIPPI JUSTICE INSTITUTE

A handwritten signature in blue ink, appearing to read 'Aaron R. Rice', with a stylized flourish at the end.

Aaron R. Rice, Esq., Director

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