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RE: Video Recording of Open Meetings

June 21, 2023

Dear Honorable Members of the City of Barre Diversity and Equity Committee,

Thank you very much for your important work.

The New England First Amendment Coalition and the Vermont Press Association respectfully wish to express our shared concern about a recent incident where committee members asked an attendee of the committee's public meeting to stop recording the meeting. Although we understand the committee's desire to keep attendees and viewers local, we write to remind the Committee that any member of the public may validly record public meetings under Vermont law. The Committee may not prohibit members of the public from engaging in their right to record future public meetings.

As reported by the Barre-Montpelier *Times-Argus*, during the June 8, 2023, meeting of the committee, Vice Chair Ellen Kaye and Chair Joelen Mulvaney asked Barre city councilman Michael Boutin to stop recording video of the meeting. According to the *Times-Argus*, Mulvaney told Boutin, "I wish you would stop (recording) ... and if you don't stop, I'm going to stop you. Do you understand?" Mulvaney refused to resume the meeting until Boutin confirmed he had stopped recording. During this incident — and, indeed, the entirety of the meeting — CVTV was recording the public meeting to air on public access television.

We write to remind the Committee that such recording is not just legally protected but encouraged under the law. First, as explained by "numerous [federal] circuit and district courts," the "First Amendment protects the filming of government officials in public spaces." *Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (listing cases). This includes filming government officials during public meetings like the June 8 committee meeting.

Second, and similarly, Article 6 of the Constitution of Vermont states: “That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.” Vermont’s Open Meetings Law (OML) exists to effectuate this value: “[P]ublic commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people’s business and are accountable to them pursuant to Chapter I, Article VI of the Vermont Constitution.” 1 V.S.A. § 311(a).

The public’s right to record public meetings is solidly established in Vermont law and practice. In its 2019 Guide to Open Meetings, the Vermont Secretary of State’s Office declared “the open meeting law to permit members of the public to record or film public meetings, so long as this is not done in a manner that disrupts the meeting.” Although the publication does not define disruption, it can hardly be said that a citizen passively and quietly recording a public meeting “disrupts” that meeting. For that reason, such recordings are common practice for meetings of public bodies throughout the state, and allowing the public to record these meetings facilitates this key constitutional value.

Third, prohibiting recording from certain members of the public, while allowing recording via CTV and potentially others, likely amounts to unconstitutional viewpoint discrimination under the First Amendment to the U.S. Constitution. When responding to a question from a member of the public about why the committee does not allow recording, Chair Mulvaney said the committee’s meetings aren’t “entertainment,” and that they have “nothing to do with people being able to sit in their living rooms and watch a meeting any time they feel like it. This has to do with publicly warned meetings and people who actually attend them in the time that the meeting is being held.” Mulvaney also suggested that public recordings may invite scrutiny or attention from outside Barre. But much like a person doesn’t have to provide a reason for asking for a public record in Vermont, a person engaged in protected First Amendment activity such as recording a public meeting need not give a reason for exercising their rights. Public officials cannot forbid the exercise of those rights simply because they do not align with their viewpoints or because they may invite further public scrutiny.

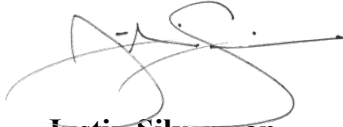
Fourth, and finally, freely allowing recordings of meetings increases not just access, but equity. Citizens of Barre living with disabilities — some of the very citizens who the committee seeks to recognize and assist through its work — rely on the reasonable accommodation of viewing a recording of the meeting at a later time. The OML clearly states that “[a] meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139,” which requires government entities to make reasonable accommodations to allow people with disabilities an equal opportunity to participate in its services.

Although Barre Public Access TV can meet this accommodation through its recordings, it is much more convenient for these individuals to watch the meetings on YouTube at a time of their choosing after a fellow Barre citizen has posted their recording of the meeting. In short, denying the public their right to record not only denies all listeners their right to view the meeting, but it may also deprive listeners with disabilities equitable access to the Committee’s important work. Multiple records are important, especially when sound systems are not perfect and audio may not

be fully heard on each recording. This concern is especially acute for Vermonters with hearing impairments.

For all of these reasons, we urge the members of the City of Barre Diversity and Equity Committee to allow citizens attending future committee meetings to record them. Thank you again for your attention to these critical issues. We stand ready to assist your committee and the city in complying with open government laws.

Respectfully,



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