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New England First Amendment Coalition

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Select Board
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SENT VIA EMAIL TOWNOFISLELAMOTTE@GMAIL.COM

August 3, 2022

Dear Board of Selectmen,

I'm writing on behalf of the New England First Amendment Coalition, a non-partisan non-profit organization that advocates for journalists and free press rights in Vermont.

We recently became aware of an incident during an August 1 Select Board hearing about vandalism to LGBTQ pride flags. During the meeting, Select Board member Mary Catherine Graziano directed all members of the press to refrain from publishing the names of those who spoke at the hearing and indicated that the identity of those speakers would not be included in the meeting minutes.¹ While we appreciate the sensitivity of the issues being discussed at the hearing, Graziano's directive is nevertheless concerning as both an open meeting law and First Amendment matter.

The Select Board hearing was an open meeting under Vermont state law and any member of the public had the right to attend. Those who participated in the meeting had little or no expectation of privacy and at least some of those offering comment publicly identified themselves. In these circumstances, the identifying information provided publicly becomes part of the record and should be included in the meeting minutes. The information can also be reported by any news organization covering the hearing.

The Open Meeting Law requires that minutes include all "active participants" in the meeting.² Those attending the meeting and publicly identifying themselves are doing so presumably because they want their experiences to be heard and reflected in the record. Regardless of their intent, the law requires meeting minutes to include them as active participants. Their names cannot be struck from the record. Again, we recognize the sensitivity of the issues discussed, but those wishing to express their opinion privately or anonymously have other options outside a public meeting to do so. They can meet one-on-one with town officials, for example, or share their opinion with Select Board members anonymously over the phone or through the mail.

As for Graziano's directive to the media that no names be published, the First Amendment protections against such orders — a type of prior restraint — are black letter law. The ability of journalists to gather and report the news without government interference is firmly entrenched in our constitution — especially when the newsworthy event occurs in a public forum.

¹ Graziano stated the following: "I do want to make it really clear to the news folk that any names that are mentioned not be on the record for this. It's really important. So if you heard any names about incidents please remove it from the record. I've asked any names to be struck from the minutes. Privacy and anonymity is really important."

² See 1 V.S.A. §312 (b)(1)(B).

NEFAC appreciates the support of all its donors and Sustaining Members. In particular, we would like to thank the following Leadership Circle donors and Major Supporters for their contributions: The Rhode Island Foundation, Hearst Connecticut Media Group, The Boston Globe, Paul and Ann Sagan, The Robertson Foundation, Boston University, WBUR-Boston, Academy of New England Journalists, Society of Professional Journalists Foundation, Genie Gannett for the First Amendment Museum, Linda Pizzuti Henry, Connecticut Public and GBH-Boston.

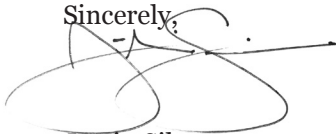
While there is no shortage of cases espousing the dangers of prior restraints and other government restrictions on the press, we note the words of former U.S. Supreme Court Justice Hugo L. Black in *New York Times v. United States*, 403 U.S. 713 (1971):

Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.

As members of a public body, you encounter many competing interests and we acknowledge this often difficult balancing act. When it comes to privacy interests, however, orders simply cannot be made during public meetings that violate state law or the First Amendment rights of the press.

We welcome the opportunity to discuss our concerns in further detail and to provide additional resources you may find helpful for future meetings.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Silverman", with a large, sweeping flourish extending to the right.

Justin Silverman
Executive Director

