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LEGAL GROUP

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Via Email and U.S. Mail
Wachusett Regional School Committee
Sherrie Haber - Chair
<sherrie_haber@wrsd.net>
1745 Main Street
Jefferson, MA 01522

Re: First Amendment Violations by Wachusett Regional School Committee

Dear Committee Members:

1.0 Introduction

This law firm serves as First Amendment counsel to Turtleboy Daily News and Aidan Kearney. We are writing to address harassment and illegal conduct at your January 30 meeting.

Mr. Kearney attended a public meeting. He had every right to be there and every right to record the meeting. However, it appears that you insisted that he had no right to record the meeting without your permission. Then, when he refused to be intimidated, you announced that you were giving him permission to record, but that he had to delete the footage he had already taken. Further, you enlisted members of the audience to engage in attempts to suppress Mr. Kearney's First Amendment rights.

The First Amendment protects newsgathering. United States v. Sherman, 581 F.2d 1358, 1361 (9th Cir. 1978); *see also* Branzburg v. Hayes, 408 U.S. 665, 681, 6 (1972) ("[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated."); Cable News Network, Inc. v. Am. Broad. Cos., 518 F. Supp. 1238, 1244 (N.D. Ga. 1981) ("[T]he rights guaranteed and protected by the First Amendment include a right of access to news or information concerning the operations and activities of government.")

The media serves an essential role as "surrogates for the public" when it reports on government affairs. Richmond Newspapers v. Virginia, 448 U.S. 555, 573 (1980); *see also* Cox Broad. Corp. v. Cohn, 420 U.S. 469, 490-91 (1975) ("[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.").

Mr. Kearney was engaged in newsgathering, and will not be intimidated. I will now address the specific issues pertaining to your meeting and your actions. You should have known all of this already. Everything I am explaining to you in this letter is **clearly established law**, unless otherwise noted. "Clearly established" is a very important concept for you to understand, as it is the key factor in deciding whether you would have qualified immunity for your actions.

2.0 The Right to Record Open Meetings

2.1 Kearney rejects your "permission" to record meetings: He will continue to record them any time he pleases, as will all members of the public.

Mr. Kearney has a right to attend your meetings, whether he is a resident of your district or not (although he is). Further, he has every right to record these meetings, to publish what he recorded, and to do all of it without harassment by the government or its proxies.

Open government has been a hallmark of our democracy since our nation's founding. As James Madison wrote in 1822, "a popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." Leigh v. Salazar, 677 F.3d 892, 897 (9th Cir 2012) (citing 9 WRITINGS OF JAMES MADISON 103 (G. Hunt ed. 1910)). You have no right to try and restrict open government or how citizens ensure that it remains open and transparent.

We understand that you belated gave Mr. Kearney "permission" to record the meeting. However, Mr. Kearney does not require your permission to record a public meeting. Therefore, he rejects your "permission." Permission implies a grant of a privilege. Mr. will no sooner accept your grant of "permission" to record meetings than he would accept your "permission" to engage in any other First Amendment protected activity.

Your belief that you have the right to grant or deny permission to record a meeting appears to be an attempt to grant a license to gather the news. While the British Crown claimed that right in Colonial times, the last attempt to enforce this right failed in 1725. Whether because the colonists would not accept press licensing or by the mandates of our Constitution, there is not, nor should there ever be, press licensing in America. Press licensing "would make it easy for dictators to control their subjects." Grosjean v. American Press Co., 297 U.S. 233, 240 (1936) (discussing press licensing through taxation).

Here comes that "clearly established" stuff. The First Circuit has made it clear that the First Amendment protects "a citizen's right to film government officials ... in the discharge of their duties in a public space...." Glik v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011). However, it was clearly established even before Glik. That case, in part, relied on Iacobucci v. Boulter, 193 F.3d 14 (1st Cir. 1999) where a local journalist brought a § 1983 claim after commissioners objected to him filming them.

Mr. Kearney therefore rejects your permission. He expresses the most extreme disrespect possible for it. No free American would ever accept "permission" from the government to engage in a clear First Amendment right. That you would even imagine that you had the right to grant or withhold permission is offensive to the Constitution, and it carries neither weight nor authority with us.

If you attempt to interfere with it again, we will sue you in your official *and* personal capacities. Given that the law is clearly established, you will not enjoy qualified immunity.

2.2 Mr. Kearny rejects your request that he delete footage

During the meeting, as you granted your "permission" for him to record, you conditioned it on him deleting the footage taken prior to that. Thereafter, Chairwoman Haber insisted that he had to delete his footage. He did not. He will not.

The right to publish is the bedrock for freedom of speech and of the press. *See* McMillan v. Carlson, 369 F. Supp. 1182, 1185 (D. Mass. 1973) ("The right to publish is firmly embedded in the First Amendment and is central to the constitutional guarantee of free speech and a free press.") (collecting cases); Branzburg v. Hayes, 408 U.S. 665, 727 (1972) ("the right to publish is central to the First Amendment and basic to the existence of constitutional democracy."). And the most pertinent case is obviously New York Times Co. v. United States, 403 U.S. 713 (1971). If one can publish The Pentagon Papers, the "School Committee Video" can also see the light of day. Simply put: You have no right to even ask, much less demand, that he delete any of his footage.

Mr. Kearney not only rejects your demand, but mocks it. Mr. Kearny will not only refuse to comply, but he has published the footage online, and he will not stop doing so. In fact, he intends to now publish it more widely than he otherwise might have, simply as an exercise of defiance against your unjust attempts to exercise your non-existent authority.[1]

3.0 Harassment

As you are well aware, a number of people during this meeting harassed Kearney, in an attempt to force him to forego his First Amendment rights during this meeting.

Ms. Soudie Tahmassebipour, who appeared to be there trying to convince your Committee to adopt certain policies that could financially benefit her (as she has commercialized DEI initiatives). Meanwhile, she did not disclose this to the public, but we presume you were aware of it.

Jennifer Lish, who apparently was tasked with not just harassing Mr. Kearney, but blocking his camera from viewing the Committee. Apparently, she was selected for this task because she is elderly and appears to be mentally ill. Obviously, shoving her out of the way would have been morally justified, but the optics of that would clearly have been bad. Selecting her for this task shows all the class of a terrorist holding a child in front of them as a human shield.

The next one was Brendan O'Malley, a teacher from another district – Worcester. However, it seems that his task was to inform Mr. Kearney that he had no right to be there because he is not from the district. As a factual matter, this is incorrect – Kearney does live

[1] If you are familiar with history, you might remember that this used to be a bedrock principle in the hearts of people from New England.

in the district. I can see no difference between his conduct and racists who might yell "blood and soil" into an immigrant's face.

Tom Curran, a member of the Board of Selectmen, seems to be the one asked to deliver the message that nobody in the room could be videotaped without their consent. Curran certainly knows better than that. But, what was most surprising is the physically threatening manner in which he approached the situation. He seemed like a dog that had been trained with an electric fence and shock collar, because right before he got intimidating enough that it would have been within Mr. Kearney's rights to clock him, he backed off.

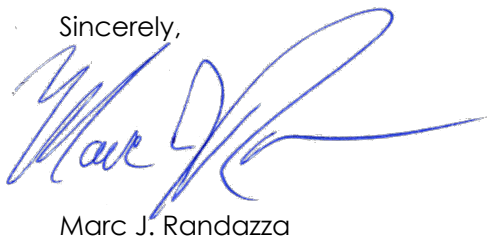
It is clear that that these individuals were not acting autonomously. The Joint Action doctrine applies when the government acts jointly with a private party. In cases like this, when private conduct is "fairly attributable to the State," it is joint action. *See* Santiago v. Puerto Rico, 655 F.3d 61, 68 (1st Cir. 2011) (citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982)). When the Government does "more than adopt a passive position toward the underlying private conduct" it is deemed to be acting jointly with these private individuals. *See* Skinner v. Railway Labor Executives' Assoc., 489 U.S. 602, 614-15 (1989).

In this case, it appears that these four harassers were working in concert with the Committee. Even if they were not initially, the Committee chose to credit their positions and to stop the meeting, not to end the harassment, but to at least tacitly endorse it.

4.0 Conclusion and Demand

When the government does not like the media's coverage, that is not an unfortunate wrinkle in the First Amendment - rather it is the purpose of the free press clause. My client demands, on behalf of himself and all members of the press, that you cease any further actions that may impede the press in doing its job. We demand that you acknowledge that meetings may be recorded by anyone in attendance. We further demand that you cease your coordination with, or at least your tolerance of, harassment of the press during your meetings. If you refuse, we will hold you responsible for any further harassment or any further attempts to suppress my client's First Amendment rights.

Sincerely,



Marc J. Randazza

cc: Client