FIRE
Foundation for Individual Rights and Expression

October 7, 2024

Salt Lake City Council
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Sent via U.S. Mail and Electronic Mail (council.comments@slcgov.com; mayor@slcgov.com; victoria.petro@slcgov.com; alejandro.puy@slcgov.com; chris.wharton@slcgov.com; eva.lopezchavez@slcgov.com; darin.mano@slcgov.com; dan.dugan@slcgov.com; sarah.young@slcgov.com)

Dear Council Members:

On August 14, FIRE wrote regarding the unconstitutionality of the Council's decorum rules and its ejection of constituent Jenna Martin from its May 7 meeting. Since then, we have not received a response, which suggests the Council either has no intention of bringing its rules into constitutional conformity or mistakenly believes its actions and rules are lawful.

As illustrated in our previous letter, half a century of established First Amendment case law protects the public's rights to criticize their elected officials in public meetings, provided they are not actually disrupting the meeting. The Council's seemingly liberal construction of "disruption" as evidenced by Martin's case will not pass legal scrutiny. Use of profanity or harsh language is a constitutionally protected means of conveying the intensity with which a speaker holds her views—or how important she believes an issue to be—and is not *per se* disruptive, as "words are often chosen as much for their emotive as their cognitive force."[1] Any legal opinion which suggests otherwise is unsupported by law. The Council may *encourage* "respectful" discourse, but its expulsion of Martin makes clear that its decorum policy unconstitutionally *mandates* "respectful" discourse.

The Council also lacked grounds to eject Martin under Utah law. The Utah Open and Public Meetings Act imposes a high bar in allowing "removal of any person from a meeting" only if the person "willfully disrupts the meeting to the extent that orderly conduct is seriously compromised."[2] Similarly, a person is guilty of disrupting a meeting or procession—a class B misdemeanor—only "if, intending to prevent or disrupt a lawful meeting . . . he obstructs or interferes with the meeting . . . by physical action, verbal utterance, or any other means."[3]

[1] *Cohen v. California*, 403 U.S. 15, 26 (1971).

[2] UT Code § 52-4-301.

[3] UT Code § 76-9-103.

The Council had no grounds, constitutionally or under Utah law, to eject Martin. As irrefutable video footage of the exchange makes clear, orderly conduct was not "seriously compromised," nor was there any conceivable intent to disrupt the proceedings as Utah law requires. The Council's vague mandates that comments be "respectful" and not contain "discriminatory language" also conflict with Utah law, as comments can be "disrespectful" or "discriminatory" without obstructing or interfering with the meeting. The Council must not conflate passionate or provocative criticism with disruption.

By disregarding established and binding law, the Council leaves itself at risk of litigation.[4] Confusion by elected officials over their perceived authority to censor public comments is no new issue. FIRE just celebrated the first anniversary of our settlement in Eastpointe, Michigan, whose mayor repeatedly censored critical speakers. Eastpointe established "First Amendment Day" as part of the settlement agreement with four residents whom Mayor Monique Owens censored.[5] The City of Surprise, Arizona, also recently repealed an unconstitutional public comment rule[6] after FIRE filed suit on behalf of a constituent ejected after criticizing a public official.[7]

Salt Lake City, as Utah's capital and most populous city with over 200,000 residents, is in a unique position to set an example for good governance and robust civic engagement. FIRE urges the Council to amend its decorum rules accordingly and refrain from infringing on First Amendment rights going forward. FIRE's offer to assist the Council free of charge remains open.

We respectfully request a substantive response to this letter no later than October 14.

Sincerely,

Tyler Coward

Tyler Coward
Lead Counsel, Government Affairs

Cc: Erin Mendenhall, Mayor
Victoria Petro, District 1, Chair
Alejandro Puy, District 2, RDA Chair
Chris Wharton, District 3, Vice Chair
Eva Lopez Chavez, District 4
Darin Mano, District 5, RDA Vice Chair
Dan Dugan, District 6
Sarah Young, District 7

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[4] *See e.g.*, *Rathbun v. Montoya*, 628 F. App'x 988, 993 (10th Cir. 2015) (government officials do not receive qualified immunity—and thus may be held personally liable—for violations of "clearly established statutory or constitutional rights of which a reasonable person would have known").

[5] *See FIRE announces party to celebrate Michigan town's inaugural First Amendment Day,* FIRE (Aug. 22, 2024), https://www.thefire.org/news/fire-announces-party-celebrate-michigan-towns-inaugural-first-amendment-day.

[6] *See* Casey Torres, *Surprise City Council repeals decades-long rule after arrest of public speaker,* ARIZONA'S FAMILY (Sept. 19, 2024), https://www.azfamily.com/2024/09/19/surprise-city-council-repeals-decades-long-rule-after-arrest-public-speaker/.

[7] *See LAWSUIT: Arizona mom sues city after arrest for criticizing government lawyer's pay,* FIRE (Sept. 3, 2024), https://www.thefire.org/news/lawsuit-arizona-mom-sues-city-after-arrest-criticizing-government-lawyers-pay.