From: J. Kevin Hunt
To: Grp. City Council and City Web Site; John Engen
Subject: Council Violation of Citizen Constitutional Rights
Date: Sunday, December 19, 2021 11:09:28 AM

To those retiring from the City Council, please accept my sincere thanks for your public service.

At the December 13, 2021 City Council meeting, Zoom attendee Matt Larson (with whom I have neither a personal acquaintance nor any shared political/ideological organizational affiliation of which I'm aware), had his microphone cut off by the Mayor a few seconds into Mr. Larson's Citizen Comment (the first of three comments by Mr. Larson at this meeting). Mr. Larson was respectful and was not using profanity. Nor was he yelling. Nor was he making offensive personal comments about the Mayor or any member of the Council (although doing so would be fully protected speech and expression under both the Montana and United States Constitutions). Nor was he disruptive. Nor did he expressly or impliedly threaten violence of violation of any law. Nor did he engage in any conduct constituting breach of the peace. Nor did he utter anything akin to "shouting 'FIRE!' in a crowded theater"or otherwise posing a clear and present danger to anyone.

The reason given by the Mayor for abruptly censoring Mr. Larson in mid-sentence was that Mr. Larson had said two things about city policy that were historically inaccurate. This authoritarian action by the Mayor, which evoked no objection, opposition or disapproving remark from any member of the Council, violated the following provisions of the Declaration of Rights proclaimed in Article II of the Montana Constitution:

(1) Article II, section 7 of the Montana Constitution provides, in relevant part: "... Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. ...".

(2) Article II, section 9 of the Montana Constitution provides: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action."

(3) Article II, section 8 of the Montana Constitution provides: "The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

(4) Article II, section 4 of the Montana Constitution provides: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

Whether or not Mr. Larson made two statements that were not accurate, nothing in his comments was of such a nature that cutting him off after a few seconds was justified. Whether a statement is historically accurate will often be a matter of opinion, but in no event may a citizen be constitutionally muzzled in a public forum controlled by government to which all are invited to participate, on the arbitrary and capricious whim of a government official who opines that the citizen is mistaken upon a point made during exercise of the foregoing rights. We can only imagine the outrageous denial of liberty that would result if such arbitrary

government action were permissible. The foundation and essence of participatory democracy would be eviscerated.

This is not a trivial matter. *Not one* of the Council members expressed any objection or disapproval of the Mayor's unconstitutional, content-based censorship of Mr. Larson. Nor did City Attorney Jim Nugent. All Council members, the Mayor, and Mr. Nugent took oaths to obey the Constitutions of the United States and the State of Montana.

It's apparent that the Mayor realized his transgression, because during later invited citizen comments on agenda items, Mr. Larson was not cut off and on (as I recall) one occasion, the Mayor responded to Mr. Larson's comments after they were completed by highlighting a couple of assertions by Mr. Larson that the Mayor refuted by reference to a different version of purported historical fact. That, of course, is the appropriate manner of responding to citizen comments with which any of you takes issue.

This censorship violated not only Mr. Larson's constitutional rights, but at least with respect to Article II, section 3 of the Montana Constitution, violated the rights of every member of the public.

Ergo, any member of the public, including the undersigned, has standing to seek redress for such violation(s).

Accordingly, I hereby respectfully demand that at the next meeting of the Missoula City Council, Mayor John Engen publicly and on the record apologize to Matt Larson and to the public for the arbitrary deprivation of the aforecited Constitutional rights of Mr. Larson and the public.

Sincerely,

/s/ J. Kevin Hunt

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