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Dear Committee Chair and Ranking Member,

We at the Foundation for Open Government are gravely concerned that new and unconstitutional restrictions are being placed on the public's First Amendment right to photograph and/or film the public proceedings of Senate committees. We urge you to ensure that from this day forward, no person attending your committee proceedings will be restricted from filming or photographing unless restrictions are (1) viewpoint-neutral; (2) limited to governing the time, place and manner of photography or filming; and (3) narrowly tailored to serve an important objective.

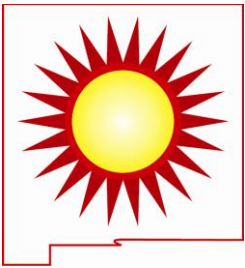
One day after Rule 9-5-7 was adopted by the Senate, we witnessed the rule being implemented in a way that threatens citizens' First Amendment rights. Specifically, on Feb. 24 the chair and ranking member of the Senate Finance Committee consented to being photographed by an audience member only after asking for the photographer's identity and purpose. The photographer was Heath Haussamen, a political journalist.

This indicates that permission to film or photograph the committee proceedings was predicated on having an identity and a profession or purpose that met with Committee approval. But the right to film public meetings is not conditional – it is guaranteed to all citizens by the First Amendment.<sup>1</sup>

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<sup>1</sup> See:

- *Blackston v. Alabama*, 30 F.3d 117, 120 (11th Cir.1994) (finding that plaintiffs' interest in filming public meetings is protected by the First Amendment)
- *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir.1995) (recognizing a "First Amendment right to film matters of public interest")
- *Iacobucci v. Boulter*, 1997 U.S. Dist. Lexis 7010, No. CIV.A. 94-10531 (D.Mass, Mar. 26, 1997) (unpublished opinion) (finding that an independent reporter has a protected right under the First Amendment and state law to videotape public meetings)
- *United States v. Hastings*, 695 F.2d 1278, 1281 (11th Cir.1983) (finding that the press generally has no right to information superior to that of the general public) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978))
- *Lambert v. Polk County*, 723 F. Supp. 128, 133 (S.D. Iowa 1989) ("It is not just news organizations ... who have First Amendment rights to make and display videotapes of events....")
- *Thompson v. City of Clio*, 765 F. Supp. 1066, 1070-71 (M.D.Ala.1991) (finding that city council's ban on member's attempt to record proceedings regulated conduct protected by the First Amendment)



## New Mexico Foundation for Open Government

Because public legislative committee hearings are designated public forums, a very high standard must be met before regulations on attendance or taping may be imposed. Reasonable time, place and manner regulations are permissible, but those regulations must be viewpoint-neutral and narrowly tailored to serve an important objective that is unrelated to the suppression of particular viewpoints.<sup>2</sup> Sweeping restrictions are subject to challenge for being overbroad.

We wish to bring all this to your attention because we trust that it was not the Senate's intention to infringe upon fundamental First Amendment freedoms within the walls of the Capitol building. If you have any questions or concerns about this matter, please don't hesitate to contact me at 505-901-9297.

Sincerely,

Sarah Welsh  
Executive Director

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<sup>2</sup> See *Int'l Soc'y for Krishna Consciousness*, 505 U.S. at 678 (“[R]egulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if they are narrowly drawn to achieve a compelling state interest. [*Perry Ed. Assn. v. Perry Local Educators' Assn.*], 460 U.S., at 45. The second category of public property is the designated public forum, whether of a limited or unlimited character - property that the State has opened for expressive activity by part or all of the public. *Ibid.* Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Id.*, at 46.”) Also, *ACLU v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006). (Restrictions on speech in a public forum “must be justified without reference to the protected speech’s content.”)