



Andrew J. Marshall, Attorney at Law  
709 Main Street  
P.O. Box 287  
Creighton, NE 68729

March 17, 2014

Dear Mr. Marshall,

We have recently been made aware that the Creighton City Council, through its attorney, has threatened Mike Nutting with legal action if he publishes any more "libelous" letters to the editor or if he fails to apologize for his previous letters. Mr. Nutting will be making no such apology and will continue to write letters to the editor if he chooses to do so. We stand ready to defend Mr. Nutting if any attempt is made to prevent him from speaking out on issues of public interest.

Government attempts at censorship run afoul of the First Amendment and are deeply un-American. Our nation was founded in part on the principles of open debate and the right of citizens to publicly disagree with those in power. This includes the right to be rude, sexist, offensive and even outright wrong. The fact that Mr. Nutting may have made one or more mistakes of fact in his letters to the editor does not change the constitutional analysis. No democracy can function if those who would challenge the government live in fear of a lawsuit if they speak their minds.

As I am sure you are aware, the Supreme Court of the United States has made it very clear that speech on matters of public concern is highly protected. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Given our "profound commitment" to open public debate, there has never been a test of truth applied to First Amendment protections, which apply regardless of the "truth, popularity or social utility of the ideas . . . offered." *Id.* at 271. In fact, the "erroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'" *Id.* at 271-272. See also *Garrison v. La.*, 379 U.S. 64 (1964) (even statements published out of hate or desire to injure the subject not punishable); *St. Amant v. Thompson*, 390 U.S. 727 (1968) (failure to investigate claims that turned out to be false not sufficient to show actual malice).

Within the Eighth Circuit, which includes Nebraska, courts have followed *Sullivan* and recognized the fundamental importance of free public debate. See *Williams v. City of Carl Junction*, 480 F.3d 871 (8th Cir. 2007) (political

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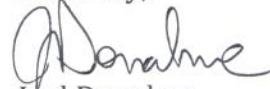
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speech at the heart of First Amendment; § 1983 lawsuit possible where retaliation for political speech occurred); *Hammer v. Osage Beach*, 318 F. 3d 832 (8th Cir. 2003) (political speech given heightened protection); *Campbell v. Citizens for an Honest Gov't, Inc.*, 255 F.3d 560 (8th Cir. 2001) (public figure must prove claims were false, defamatory, and made with actual malice).

Both fundamental American values and Supreme Court precedent are clearly on Mr. Nutting's side. Our Board of Directors has approved litigation and we stand ready to defend his right to publish letters to the editor in the Creighton News or anywhere else he chooses to do so.

Please advise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joel Donahue".

Joel Donahue  
Staff Attorney