

# Public Comment: The Good, The Bad, And The Legal.

ULCT Annual Conference  
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Presented By: Todd Sheeran



## Outline

- Part 1: Public Comment and Free Speech
  - Constitution
  - Utah Code
- Part 2: Regulating Speech
  - Protected and Not Protected Speech
  - Forum and Court Scrutiny
  - Time, Place, and Manner Restrictions
- Part 3: Claims and Tips



## About Me

- Since graduating from law school at the University of Utah, I've practiced municipal law – both in private and public practice.
- I've represented towns and cities from 100 to 100,000.
- I'm currently the president of the Utah Municipal Lawyers Association (elected).
- I'm on the Board of Directors for the International Municipal Lawyers Association (elected).
- I'm actively involved with the Utah Leagues of Cities and Towns, including being on the Land Use Task Force.



## Public Comment

- Does this ring a bell?
- How many of you have experienced people “caring loudly” at you?





## Public Comment and the Constitution



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## The First Amendment and First Amendment Claims



### 42 U.S.C. § 1983

No one shall be deprived  
"of any rights, privileges, or  
immunities secured by the  
Constitution and laws..."

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The Fourteenth Amendment requires, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." *See also Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) ("The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech."")



## Public Comment and the First Amendment

- Does the First Amendment apply to public meetings?
- It depends....
- **On one hand:** "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984).
- **On the other hand:** States can mandate public comment, and councils can (and often do) impose public comment periods on themselves.

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*See also, Heffron v. International Society of Krishna Consciousness, Inc.*, 452 U.S. 640 (1981) ("[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.")



## Public Hearing Requirement in Utah (Title 10)

- Annexation Policy
- Boundary Adjustments
- Municipal Disconnect
- Municipal Consolidation
- Municipal Incorporation
- Salaries of Officials and Department Head
- Passing Budgets or Taxes
- Appropriate Money for Corporate Purpose
- Issuing Bonds
- Change of Form of Government
- General Plan Modifications
- Adopt/Change a Land Use Regulation, including Subdivision Ordinances
- Petition to Vacate a Street
- Amending Public Improvements in a Subdivision
- Modify Sign Regulations
- Designating a Steet as a “Mall”
- Provide Cable or Telecommunications

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Annexation – Utah Code § 10-2-401.5

Boundary Adjustment – Utah Code § 10-2-419

Municipal Disconnect – Utah Code § 10-2-502.5

Municipal Consolidation – Utah Code § 10-2-606

Municipal Incorporation – Utah Code § 10-2a-204.3

Salaries of Officials – Utah Code § 10-3-318; And SB91 (2024).

Change of Form of Government – Utah Code § 10-3b-603.

Passing Budgets – Utah Code §§ 10-3c-204, 10-5-107, 10-6-111

Appropriate Money – Utah Code § 10-8-2.

General Plan Modifications – Utah Code § 10-9a-204; and see Utah Code § 10-9a-302 (PC)

Adopt/Change a Land Use Regulation – Utah Code § 10-9a-205; and see Utah Code § 10-9a-302 (PC)

Petition to Vacate a Street – Utah Code § 10-9a-208

Amending Public Improvements in a Subdivision – Utah Code § 10-9a-212

Modify Sign Regulations – Utah Code § 10-9a-213

Designating a Steet as a “Mall” – Utah Code § 10-15-6

Provide Cable or Telecommunications – Utah Code § 10-18-202

Issuing Bonds – Utah Code § 10-18-302





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Mandatory public hearings generally fall into these categories: municipal boundaries, money, changing forms of government, and land use.



## What Do You Do?

- How many of you have a “general public comment period”? → **Not Required**
- How many of you have public hearings for conditional use permits? → **Not Required**
- How many of you have a public hearing in City Council on land use text amendments? → **Not Required**
- How many of you have a public hearing in City Council on a zoning amendment request? → **Not Required**
- What other public hearings do you have that are not required?



## What Are The Pros and Cons in Having Public Comment?

**Pros**

**Cons**

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But what about this?

This video contains content related to domestic violence. This topic may be triggering to some.

View discretion is advised.

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## What Can You Do To Control Public Comment?

- **Step One:** You first must determine whether the speech is protected by the First Amendment.
- The answer to this question, in a public meeting setting, is almost always yes. In fact, most governmental entities concede this question.
- However,

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*See e.g., Eck v. Oley Valley Sch. Dist.*, 431 F. Supp. 3d 607, 623 (E. Dist. Penn. Dec. 17, 2019) (“Defendants concede the Students’ statements at the School Board Meeting are protected speech under the First Amendment.”)



## Not Protected Speech

- **Incitement to Imminent Lawless Action** (*Brandenburg v. Ohio*, 395 U.S. 444 (1969)).
- **True Threats** (*Virginia v. Black*, 538 U.S. 343 (2003)).
- **Defamation** (*Gertz v. Robert Welch*, 418 U.S. 323 (1974); and see *McKee v. Cosby*, 139 S. Ct. 675 (2019)).
- **Obscenity and Child Pornography** (*Miller v. California*, 413 U.S. 15 (1973)).
- **Fighting Words** (*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)).

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Examples of unprotected speech.



# GAME TIME:

PROTECTED OR NOT PROTECTED



- Is this Protected Speech?



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Protected. See *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79 (D.C. Me. July 20, 2022)



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

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Not protected. See *City of Los Angeles v. Herman*, 54 Cal. App. 5th 97 (2<sup>nd</sup> Dis. Ct. Aug. 10, 2020).





## GAME TIME:

PROTECTED OR NOT PROTECTED



- At a Q&A with the re-elected mayor, a resident was asked to leave by one of the officers. On her way out, the resident looked at the officer in a "fierce kind of way" and muttered "a\*\*hole," "son of a b\*\*\*\*," and "Opie-Taylor-looking motherf\*\*\*\*\*" to the officer.
- Protected speech?

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Protected. See *Osborne v. Lohr-Robinette*, 2006 U.S. Dist. LEXIS 92275 (D.C. W. Va. Dec. 20, 2006). Note: Even though the court found the speech protected, the defendants had qualified immunity "because at the time it was not clearly established that plaintiff's speech was constitutionally protected." Because this case is almost 20 years old, the court holding that qualified immunity may not apply in a suit today.



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

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Protected. See *Mama Bears of Forsyth Cty. V. McCall*, 2022 U.S. Dist. LEXIS 234538 (D.C. Ga. Nov. 16, 2022).



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?



# GAME TIME:

PROTECTED OR NOT PROTECTED



Protected  
speech?

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Protected. See *Draego v. City of Charlottesville*, 2016 U.S. Dist. LEXIS 159910 (D.C. W. Va. Nov. 18, 2016). The court was critical that “group defamation” is protected by the First Amendment.



## Court Analysis: Step 2 - Forum

- **Step two:** If the speech is protected, the court must next "identify the nature of the forum" in which the speech occurred.
- For government property, there are four categories of forums:
  - **Traditional public forums** – public places usually associated with the ability to freely express themselves (e.g., parks and sidewalks).
  - **Designated public forums** – places not normally a traditional forum, but the government intentionally opened it up.
  - **Limited public forums** – property limited to use by certain groups or dedicated solely to the discussion of certain subjects.
  - **Nonpublic forum** – places where it is clear that the entity did not intend to create a public forum.

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*See Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 679 n.11 (2010); *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 347 (5<sup>th</sup> Cir. 2001); *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023).



## Court Analysis: Step 2 - Forum

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## Comparison

### Designated Public Forum

- "Reasonable time, place and manner regulations are permissible, and a **content-based prohibition must be narrowly drawn to effectuate a compelling state interest.**"

### Limited Public Forum

- Public comment restrictions "need only be **viewpoint neutral and reasonable.**"

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*Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 46 (1983).

*Hotel Emples. & Rest. Union, Local 100 v. City of N.Y. Dep't of Parks & Rec.*, 311 F.3d 534, 546 (2<sup>nd</sup> Cir. 2002).

See also *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023); and *Bronx Household of Faith v. Cmty. Sch. Dist. No. 10*, 127 F.3d 207, 212 (2<sup>nd</sup> Cir. 1997)



## Comparison

### **Designated Public Forum – Strict Scrutiny**

- Strict scrutiny is the highest standard of review courts use to evaluate your conduct.
- It is very difficult for a municipality to win a case if the court applies the strict scrutiny standard.

### **Limited Public Forum – Viewpoint Neutral and Reasonable**

- Viewpoint neutral stands for the idea that when government actions implicate the speech rights of a group and individuals, those actions must be done in an even-handed way.
- You have a WAY better chance of winning a First Amendment suit.

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## Municipal Meeting Forums

### **Designated Public Forum**

- “Generally, courts have treated the public comment portion of municipal council meetings where any member of the public may talk *on any subject* as a designated public forum, which is subject to strict scrutiny.”
- E.g., an “open mic”

### **Limited Public Forum**

- When you have a meeting that is limited to members of the public “talking about matters *listed on the meeting's agenda*.”

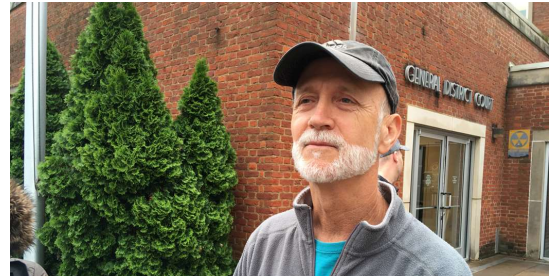
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*Eberhardt v. Vill. of Tinley Park*, 2024 IL App (1st) 230139.



## Analysis

- Remember the guy who claimed that the increase in people being raped is because of the Muslim migrants?
- If the city had a “limited” public forum instead of a “designated” public forum, the city would have likely won that case.



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In *Draego*, the court found, “The Council invites citizens during public comment period **to share their views on whatever topics the speaker feels warrants the Council’s attention.**” *Draego v. City of Charlottesville*, 2016 U.S. Dist. LEXIS 159910, 34 (D.C. W. Va. Nov. 18, 2016). The Council, in this case, let other citizens speak “on a range of issues.” *Id.* If the Council created a limited public forum by limiting comments to items on the agenda, or within the direct purview of the municipality, Draego’s comments about Muslim immigration would likely have failed.



## How To Create A Limited Forum.

- It's simple – require public comments to be relevant/germane to municipal business.
- “We can think of no content-based restriction more reasonable than asking that content be relevant.” *Youkhanna v. City of Sterling Heights*, 934 F.3d 508 (6<sup>th</sup> Cir. 2019)



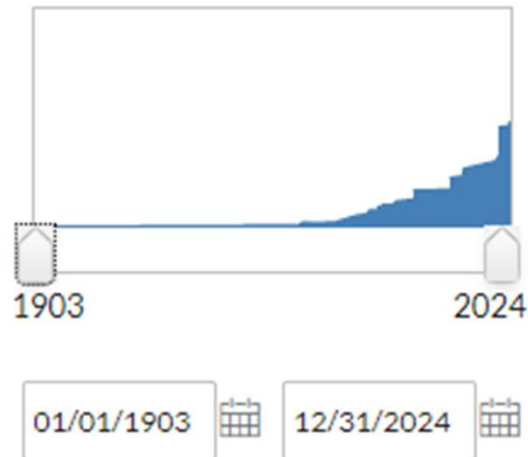
## Public Comment - General Rule

"There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."

- *Rowe v. City of Cocoa*, 358 F.3d 800, 803 (11<sup>th</sup> Cir. 2004).



## Why is it Important to Have A Good Public Comment Policy?





## Public Comment Regulations & Policy

- Requiring names
- Requiring residency
- Time restrictions
- Disrespectful or attacking comments
- Signs during public meetings
- Profanity/vulgarity/obscenity
- Online vs in-person comments
- Recording of public comment

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Red = Government compelling speech  
Green = Government regulating speech



## Compelling Speech

- “It is well settled that the First Amendment protects not only the right to speak but also **the right not to speak.**”
- Generally, municipalities require/force the person to state:
  - Their name,
  - The address in which they live, and
  - If they are a resident of the community.
- Can municipalities require the above?

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*Associated Builders & Contrs. of Southeast Tex. v. Rung*, 2016 U.S. Dist. LEXIS 155232 (Tex. E.D. 2016).



## Requiring Name Before Speaking



Requiring a speaker to announce their name before giving public comment does not violate the First Amendment. *See Miller v. Goggin*, 672 F. Supp. 3d 14 (E.D. Pa. May 5, 2023).





## What About Requiring Address?

- “[R]equiring the speaker to announce their specific home address is an unreasonable restriction” because of “the chilling effect of being forced to announce to all present one’s actual home address before speaking on a hotly-contested issue.” *Marshall v. Amuso*, 571 F. Supp. 3d 412 (E.D. Pa. 2021)



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*See also Miller v. Goggin*, 672 F. Supp. 3d 14, 38 (E.D. Pa, May 5, 2023).



## What About Requiring Residency?

- Courts have upheld a bona fide residency requirement as a reasonable speech restriction in a limited public forum. *See, e.g., Rowe v. City of Cocoa*, 358 F.3d 800, 803-04 (11<sup>th</sup> Cir. 2004) ("It is reasonable for a city to restrict the individuals who may speak at meetings to those individuals who have a direct stake in the business of the city").





## Policy Example



The Salt Lake Tribune

DONATE



### Public comment returns to St. George City Council meetings — with new rules

The mayor 'paused' such comments this month after disruptions and accusations of being 'communists.'



According to the mayor's statement Tuesday, those wishing to comment at City Council meetings must live in St. George and provide their name and address to the city recorder. The public cannot comment on "any agenda item or pending land use application" — just "City business."



## Residency Caution

- Anyone potentially affected by a city decision should be allowed to speak.
  - For example:
    - Business or lot owner who does not live in the city.
    - A person who lives just outside city limits but is affected by an adjacent development.
    - Other individuals who are directly impacted by the city.



## Time Restrictions Per Person



- A time limit for speakers is a reasonable time, place and manner restriction and serves "a significant governmental interest in conserving time and in **ensuring that others had an opportunity to speak.**" *Wright v. Anthony*, 733 F.2d 575 (8<sup>th</sup> Cir. 1984). *See also Shero v. City of Grove* 510 P.3d 1196 (10<sup>th</sup> Cir. 2007) (time limitations "**promote orderly and efficient meetings.**")

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## Time Restrictions Per Topic

- Courts have found that a municipality may limit the total time per topic.
- But...

### Salt Lake City Council's approval of cap on public comments prompts rowdy protest

By Carter Williams, KSL.com | Posted - March 5, 2024 at 10:30 p.m.



A protester reads from a book while the Salt Lake City Council attempts to resume a meeting Tuesday night. The meeting was delayed nearly 30 minutes by disruptions from a group opposed to the council's new public comment policy. (Salt Lake City Corporation)



## Time Limitations On Land Use Items

- Word of Caution
  - LUMDA defines public hearing as “a hearing at which members of the public are provided *reasonable opportunity to comment* on the subject of the hearing.” Utah Code § 10-9a-103(54).
  - What does a “reasonable opportunity to comment” mean?
  - Does that mean 2 minutes per person or 10?
  - Does that require 100 people to speak?



## Public Comment vs Rules of Decorum

- What are rules of decorum?
- They often look like this:
  8. Comments shall be respectful and courteous. Comments which do not conform to those requirements including those that are personal, threatening, attack others, are obscene or insulting, berate opposing points of view, or are properly subject to closed session such as those relating to personnel matters, will not be allowed. Offending commentators or those who are disruptive will be ruled out of order by the Board Chair and shall immediately stop speaking as directed by the Board Chair. Such individuals may be required to leave the meeting.





- Or this:

Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste.

- Or this

Comments shall be brief, to the point, and about library business only. Personal attacks on Library Board Members or staff members will not be tolerated, nor will language that is considered offensive, harassing, or profane.



- Or this:

6. Speakers and audience members shall maintain proper decorum, etiquette, and civility at all times. Speakers shall remain at the podium to make comments and not approach City Council or City staff. No one can accompany the speaker at the podium. The speaker may use visual aids but shall not engage in demonstrations or inappropriate theatrics. Yelling, making threats, insulting, or rude comments directed towards the Mayor, City Council, City staff or a member of the public will not be tolerated. Profanity, abusive language, public ridicule, or personal attacks will not be tolerated. A speaker that fails to maintain proper decorum may be sanctioned including forfeiting the remainder of their time or, in especially egregious cases, be asked to leave the City Council Meeting.



## Decorum: Criticisms



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*Barron v. Kolenda*, 491 Mass. 408 (Mass. 2023). The Town’s civility code read as follows:

All remarks and dialogue in public meetings must be respectful and courteous, free of rude, personal, or slanderous remarks. Inappropriate language and/or shouting will not be tolerated. Furthermore, no person may offer comment without permission of the [c]hair, and all persons shall, at the request of the [c]hair, be silent. No person shall disrupt the proceedings of a meeting.

The Court stated this:

the text, history, and case law surrounding art. 19 provide for the “fullest and freest” discussion of public matters, including protection of fierce criticism of governmental action and actors, so long as that criticism is done in a peaceable and orderly manner and is consistent with time, place, and manner restrictions. *Porter*, 1 Gray at 478. See *Desrosiers*, 486 Mass. at 390-391. “Peaceable and orderly” is not the same as “respectful and courteous.” There was nothing respectful or courteous about the public assemblies of the revolutionary period. There was also much that was rude and personal, especially when it was directed [\*\*\*19] at the representatives of the king and the king himself.<sup>8</sup> Link to the text of the note See *Bowie*, 130 Yale L.J. at

1677 (“in London, a columnist called [\*419] Boston's town meetings a ‘declaration of war’ and criticized Boston's leaders for ‘working up the populace to such a frenzy of rage’”).

A provision “that public officials [can] be praised but not condemned” is “the essence of viewpoint discrimination.”



## Continued

Courts have said this about criticizing public officials:



- Actually, courts have said this:
  - "Public officials may need to have **thicker skin** than the ordinary citizen when it comes to attacks..."
    - *Mattox v. City of Forest Park*, 183 F.3d 515, 522, (6<sup>th</sup> Cir. 1999)



- And this:
  - "It is asking much of City Council members, who have given themselves to public service, to tolerate profanities and personal attacks, but **that is what is required by the First Amendment.**"
    - *Dowd v. City of L.A.*, 2013 U.S. Dist. LEXIS 111435, p. 61 (C.D. Cal. Aug. 7, 2013)
- And this:
  - "The right to criticize public officials is at the heart of the First Amendment's right of free speech."
    - *Kaluczy v. City of White Plains*, 57 F.3d 202, 210 (2<sup>nd</sup> Cir. 1995).



## But What About Criticizing An Employee?



1 Daniel J. Quigley  
2 (State Bar No. 011052)  
3 DANIEL J. QUIGLEY, P.L.C.  
4 5425 E. Broadway Blvd., Ste. 352  
5 Tucson, Arizona 85711  
6 (520) 867-4430  
7 quigley@dqplc.com  
8  
9 Connor T. Fitzpatrick\*  
10 (Aosh. FTS#01 / D.C. 90015616)  
11 FOUNDATION FOR INDIVIDUAL RIGHTS  
12 AND EXPRESSION  
13 700 Pennsylvania Ave. SE, Ste. 340  
14 Washington, D.C. 20003  
15 (202) 717-3473  
16 conner.fitzpatrick@thefire.org  
17 \*Pro Hac Vice motion forthcoming  
18  
19 Counsel for Plaintiffs  
20 Additional counsel listed in signature block  
21  
22 UNITED STATES DISTRICT COURT  
23 DISTRICT OF ARIZONA  
24  
25 Rebelah Mawick, and  
26 Quintus Schulke, Plaintiffs, No. \_\_\_\_\_  
27 v. \_\_\_\_\_  
28 City of Surprise, a municipal corporation  
29 and a governmental entity;  
30 Skip Hall, in his individual capacity; and  
31 Steven Shernicoff, in his individual  
32 capacity, Defendants. Hon. \_\_\_\_\_  
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There are some cases where courts have found that public comment is not a time to criticize employees of the city or town.



## Decorum: Vulgar Speech



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Foundation for Individual Rights and Expression or FIRE sent Salt Lake City a warning letter and demanded that they fix their decorum policies to comply with the First Amendment. See <https://www.thefire.org/research-learn/letter-salt-lake-city-council-august-14-2024>





## Decorum: Vulgar

- Remember the “F\*\*\* the Draft” case? In *Cohen v. California* (1971), the United States Supreme Court famously stated, “it is nevertheless often true that one man’s vulgarity is another’s lyric.”
- Courts are split on the question of whether profane or vulgar remarks constitute protected speech in a public council meeting.
- One court observed that “whether profane speech is constitutionally protected may in fact depend on its context and thus, it is not categorically protected or unprotected.”
- 10<sup>th</sup> Circuit (2024), “The impoliteness, passion, or profanity of his speech do not overcome his free speech interests. (Citations omitted). And the offensive, vulgar manner of Plaintiff’s speech does not deprive him of constitutional protections—especially in the context of petitioning the government for redress for grievances.”

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*Cohen v. Cal.*, 403 U.S. 15 (1971).

*Knots v. Or. Trail Sch. Dist.* 46, 2017 U.S. Dist. LEXIS 178441 (D.C. Or. Oct. 26, 2017).

*Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243 (10<sup>th</sup> Cir. 2024).



## Racist Remarks

- In *Mama Bears of Forsyth Cty. v. McCall*, 642 F. Supp. 3d 1338 (Ga N. Dist. 2022), the court found that a prohibition on “abusive remarks” was “impermissible viewpoint discrimination and is therefore unconstitutional.” *Id.* at 1358. However, the court went on to say that ***a governmental entity may “restrict certain sub-categories of that type of speech, such as hateful racial epithets.”*** *Id.* (emphasis added).
- The court cited two cases as guidance: *Dyer v. Atlanta Indep. Sch. Sys.*, 426 F. Supp. 3d 1350, 1357, 1369-61 (N.D. Ga. December 5, 2019); and *Moms for Liberty v. Brevard Pub. Schs.*, 582 F. Supp. 3d 1214, 1220 (Fla. Mid Dist. Ct. 2022).



## What About Signs During Public Meetings?

- In *Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023), the council was scheduled to hold a public meeting to discuss whether the City would purchase an armored rescue vehicle. Several activists planned to protest the purchase and bring non vulgar or obscene signs (e.g., "No Tanks No Thanks!" and "Oh my God! No Tank! Move on!!")
- Getting word of the protest, the council (a few days earlier) passed a No Signs policy for city hall.
- The court held that "Plaintiffs have not adequately alleged that the sign prohibition was unreasonable in relation to the City's common-sense interest in running efficient and orderly meetings."

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## What About Online Comments?



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## Continued

- You can prohibit online comments if you have physical comment period at the council meeting.
  - **Possible exception:** accommodation requests under the ADA. *See Barich v. City of Cotati*, 2022 U.S. Dist. LEXIS 222435 (N.D. Cal. Dec. 9, 2022).
- Require the camera to be turned on, name to be given, and residency stated.



## What About Not Recording or Broadcasting the Comment Period?

- One court has held that denying the listening of public comments online does not violate the First Amendment. It also held that there is no First Amendment right to observe public comment outside of the physical location provided by the town.

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*Potanovic v. Town of Stony Point*, 2023 U.S. Dist. LEXIS 8045 (S.D. N.Y. Jan. 17, 2023)



## Retaliation - *MacIntosh v. Clous* (6<sup>th</sup> Cir. 2023)

- Patricia MacIntosh expressed her concern about the Commission's prior invitation to and endorsement of the Proud Boys, a group that has been designated an extremist group and a hate group. She requested that the Commissioners make a public statement condemning the group's violent behavior.
- In response, a commissioner did this:



## MacIntosh v. Clous - Clip



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## MacIntosh v. Clous

- After the district court denied Clous' motion to dismiss, Clous appealed the decision to the Sixth Circuit.
- The Sixth Circuit held that the "facts alleged in the Complaint also demonstrate that **Clous's threat would deter a person of ordinary firmness from speaking at future meetings**" and its plausible that "**Clous is not entitled to qualified immunity** because it was clearly established that Clous's conduct violated MacIntosh's First Amendment rights."

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*MacIntosh v. Clous*, 69 F.4th 309, 317 & 321 (6<sup>th</sup> Cir. 2023)



## Immunity for Councils?

- Maybe...
- Some jurisdictions have declared, “At a public comment session in a meeting of a board, a resident of the town thus clearly has the right to accurately complain about violations of law committed by town officials and object to other town actions... Such a right is clearly protected [by the State Constitution]. ... Thus, there is no basis for qualified immunity.”

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*Barron v. Kolenda*, 491 Mass. 408



- But other jurisdictions have stated, “the Court will not address whether Plaintiff’s First Amendment rights have been violated because any right was not clear enough to overcome Defendant’s qualified immunity.”

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*Biggers v. Massingill*, 2023 U.S. Dist. LEXIS 159071

**Court:** Texas Northern District Court

**Date:** September 8, 2023



## Removing Disrupters

- Utah Code § 52-4-301 states, “This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.”



## Pro Tips

- Create a public comment policy.
- The policy should include:
  - A robust purpose statement e.g., “There is a significant governmental interest in conducting orderly, efficient meetings of the municipality.”
  - An understanding that the municipality has created a **limited** public forum and comments need to relate to municipal business or issues within the council’s purview.
  - Clear statements of restrictions e.g., residents only, time constraints per person.



## Pro Tips

- Publish your public comment policy and have it available online ***and*** in print at the meeting (next to the public comment sign in card).
- Require anyone giving public comment to fill out a public comment card. The card should include:
  - The person's name,
  - The person's address, and
  - Acknowledgment that they will adhere to the public comment policy.



## Pro Tips

- Time limits do not represent lack of interest
  - Mutual respect of all speakers
  - Key points heard
- Coaching public on participation can be helpful
  - Where emotion, conviction (including intimidation) have been effective before.



## Pro Tips

- Strategy meetings between Mayor & City Manager prior to meetings
  - Anticipate issues and appropriate responses
  - Can staff help clarify informational issues?
  - Can/Should an issue be separated into parts?
  - Is further work needed?





## Pro Tips

- Consider holding meetings between staff & stakeholders
  - Public has all info the municipality has
  - Public knows the governing body understands their concerns
  - Possible resolutions can be explored
- Staff encourages public respect of officials
  - Take breaks when issues get heated
  - Use humor, as appropriate



## Questions?

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