

SJC Finds Public Meeting Comment Restrictions Unconstitutional

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Government boards and committees should review their public comment policies following a decision this week by the Supreme Judicial Court holding that a “civility code” violated the Massachusetts Constitution’s Declaration of Rights and the Massachusetts Civil Rights Act.

In [Barron v. Kolenda](#), resident Louise Barron attended the Southborough Select Board’s public meeting on December 4, 2018, which was led by acting chair Daniel Kolenda. Before allowing public comment, Kolenda reminded attendees of the Town’s civility code, which provided:

“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.”

Following Kolenda’s reminder, Barron stood up holding a sign stating “Stop Spending” on one side and “Stop Breaking Open Meeting Law” on the other. Barron critiqued proposed budget increases, opining that the town “ha[d] been spending like drunken sailors” and was “in trouble.” Barron further critiqued the board for Open Meeting Law violations and told Kolenda to “stop being a Hitler.” Kolenda told Barron to refrain from any further comments and recessed the meeting. During the recess, Kolenda told Barron she was “disgusting” and would have her “escorted out” of the meeting if she did not leave.

Article 19 of the Massachusetts Declaration of Rights provides:

“The people have a right, in an orderly and peaceable manner, to



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assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.”

The SJC found that the text of Article 19 encompassed Barron’s statements and the civility code sought to, impermissibly, control the content of her public comments.

The Court explained that public bodies may impose reasonable restrictions on the “time, place, or manner of protected speech and assembly” provided the restrictions are content-neutral, “narrowly tailored to serve a significant governmental interest,” and that there are “ample alternative channels for communication of the information.”

In addition, the SJC found that the civility code violated Article 16 of the Massachusetts Declaration of Rights, which provides: “The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged.” The SJC determined the civility code was undeniably directed at political speech because it regulated speech in a public comment session of a meeting of the board. It further decided the civility code was content based because it required that the SJC examine what was said.

In finding that the Town’s civility code violated Article 16, the SJC explained the code’s requirement that the speech directed at government officials “be respectful and courteous, [and] free of rude ... remarks” constituted “viewpoint discrimination: allowing lavish praise but disallowing harsh criticism of government officials.” That is, it was not content-neutral.

Finally, the SJC concluded that Kolenda violated the Massachusetts Civil Rights Act by interfering with Barron’s constitutional rights under Articles 19 and 16 via “threats, intimidation or coercion” when he shouted “you’re disgusting,” and threatened to escort her out of the meeting.

The *Barron* decision follows other recent decisions ([Mirick O’Connell Public Education e-Alert \(constantcontact.com\)](#); [Mirick O’Connell e-Alert \(constantcontact.com\)](#)) holding that policies prohibiting remarks during the public comment portion of meetings for being disrespectful, rude, improper, or abusive are unconstitutional infringements upon individuals’ First Amendment rights. Although this decision prohibits certain

restrictions on public comment, the SJC emphasized that government bodies may still require public comment sessions be conducted in an “orderly and peaceable” manner, including designating when public comment is allowed, the time limits for each person speaking, and rules preventing speakers from disrupting others, and removing those speakers if they do.

Of note, the *Barron* decision did not squarely address whether a public body *must* allow public comment at meetings. Under the Open Meeting Law, the public must be allowed access to observe the work of public bodies at meetings, but public comment is only permitted at the discretion of the public body and its chair.

Any policies governing public comment at meetings must comply with the holding in *Barron* and may include reasonable time, place, and manner restrictions so long as they are content-neutral.

Please contact any member of our Public Education or Municipal Law Group if you have any questions about this legal update.