

PUBLIC DECORUM: CONDUCT AT PUBLIC MEETINGS

Wm. Randolph Weber &
Kevin O'Keefe

Decorum of
the Public:

Sometimes
they behave...



... Sometimes
they don't!!!



Waters, et. al.,
v. City of St.
Peters, Case
No. 4:06-CV-
00876-SNL
(E.D. Mo.
2007)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SANDY WATERS, ET. AL.,

Plaintiffs,

vs.

CITY OF ST. PETERS and
DAVID HAYES,

Defendants.

Case No. 4:06CV00876SNL

MEMORANDUM AND ORDER

Plaintiffs have filed this §1983 action alleging that the defendants have retaliated against plaintiffs for exercising their free speech First Amendment rights. This matter is before the Court on the defendants' motion to dismiss, or in the alternative, to strike plaintiffs' first amended complaint (#12), filed August 23, 2006. Responsive pleadings have been filed and this matter is

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Peters

- In Count I, plaintiffs alleged that in retaliation for their critical comments regarding BOA's business practices, the City has taken the following actions: 1) reduced the amount of time allocated to speak during the public comment portion of the Board's meetings; 2) placed the public comment portion of the City's meetings at the end of the meeting; 3) prohibited comments directed at the Mayor and the BOA at any other point of the meetings outside the designated portion of the meetings for public comment; 4) prohibiting any public comment directed to any BOA member or City employee by name; and 5) preventing public viewing by the cable television audience of anyone voicing a public comment during the City's broadcast of public meetings. The plaintiffs contend that these actions were taken to stop the plaintiffs from making critical comments at BOA meetings and as a result of these actions they have suffered "personal humiliation and outrage"
- In Count II, plaintiffs further alleged that alderman engaged in the prima facie tort of outrageous conduct. They alleged that during a BOA meeting, the alderman "gave a non-agenda, rhetorical and chastising speech directed specifically at each of the named Plaintiffs herein . . . and that such speech was intended to "humiliate, intimidate and prohibit further speeches from the Plaintiffs by demoralizing them on public television and characterizing their public criticisms as nothing more than 'spewing bile'."

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Count I

First
Amendment
Retaliation

- "To establish a claim for First Amendment retaliation under §1983, the plaintiffs must show that they 1) 'engaged in a constitutionally protected activity'; 2) that the government official's adverse action caused them to suffer an injury which would "chill a person of ordinary firmness from continuing . . . in that activity'; and 3) that the adverse action was motivated in part by . . . the exercise of [his] constitutional rights."
- "the actions attributed to the BOA and the comments attributed to the alderman may have been "offensive, unprofessional, and inappropriate" but the embarrassment and humiliation plaintiffs allege as the result of these acts are insufficient to deter a person of ordinary firmness from continuing to speak out... The Court finds that plaintiffs have failed to state a §1983 claim of retaliation in Count I of their amended complaint."

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Count II

Legislative Immunity

• "In *Bogan v. Scott-Harris*, 523 U.S. 44 (1998), the United States Supreme Court held that local [municipal] legislators were entitled to absolute immunity from §1983 liability for their legislative activities. Furthermore, the Supreme Court held that officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions. The Supreme Court's holding is actually a reiteration of the Eighth Circuit's similar holding in *Gorman Towers, Inc. v. Bogoslavsky*, 526 F.2d 607 (8th Cir. 1980); see also, *Brown v. Griesenauer*, 370 F.2d 421, 435-437 (8th Cir. 1992). "Whether an act is legislative turns on the nature of the act, rather than the motive or intent of the official performing it." *Bogan v. Scott-Harris*, 523 U.S. at 54."

Personal or Abusive Language

White v. City of Norwalk, 900 F.2d 1421 (9th Cir. 2001).

- "2-1.1(b) Rules of Decorum. While any meeting of the City Council is in session, the following rules of order and decorum shall be observed:
3. Persons Addressing the Council... Each person who addresses the Council shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct **which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting** shall, at the discretion of the presiding officer or majority of the Council, be barred from further audience before the Council during that meeting..."

Personal or Abusive Language

White v. City of Norwalk, 900 F.2d 1421 (9th Cir. 2001).

• The court stated that due to the nature of the city meeting a speaker can become disruptive in ways that would not meet the test of actual breach of the peace or of "fighting words" likely to provoke immediate combat.
• A speaker may disrupt a meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the governing body is prevented from accomplishing its business in a reasonably efficient manner.
• The point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of *discretion*. **Undoubtedly, abuses can occur**, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like.

Personal or Abusive Language

Scroggins v. City of Topeka, 2 F.Supp. 2d 1362 (D. Kan. 1998)

- "Any person making personal, rude or slanderous remarks, or who becomes boisterous, while addressing the Council shall be requested to leave..."
- Court determined that the council's rule focused on inherently disruptive nature of a personal attack in a meeting and not on the expressive content of the personal attack.

Personal or Abusive Language

See Contra,...

- *Bach v. School Board of the City of Virginia Beach*, 139 F.Supp. 2d 738 (E.D. Va. 2001): Board bylaws prohibiting "attacks or accusations regarding the honesty, character integrity or other like personal attributes of any identified individual or group" was an impermissible content-based restriction on speech.
- *Leventhal v. Vista Unified Sch. Dist.*, 973 F.Supp. 951 (S.D. Cal. 1997) and *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F.Supp. 719 (C.D. Cal. 1996): held regulations prohibiting criticism **of officials or employees** of the school districts were impermissible content-based prohibitions on speech.
 - City of Topeka distinguished because their regulation applied to everyone, not just officials or employees.

Words of Wisdom.

- "Never wrestle with pigs. You both get dirty and the pig likes it."
- [George Bernard Shaw](#)

Preamble to Public Comment

PERSONS WISHING TO PARTICIPATE IN THE CITIZEN COMMENT PORTION OF MEETINGS MAY WISH TO BE AWARE THAT THE FOLLOWING STATEMENT MAY BE READ INTO THE RECORD IN ORDER TO AFFORD LISTENERS A FULLER UNDERSTANDING AS TO THE NATURE OF THE PROCEEDINGS

Members of the audience and those reading our minutes or watching these proceedings on video are reminded that the city council does not control or vouch for the accuracy or truthfulness of any statements made by those who participate in the citizen comment portion of our meeting.

The mere fact that we provide this forum for public comment should not be taken as any endorsement or acceptance by the city or the council of the views, opinions or statements made by members of the public. Observers are cautioned to use their own experience, common sense and good judgment to accord comments only such credibility or reliability as the statements and the speakers merit.

A forum such as this allows both the knowledgeable and the uninformed to participate; both the earnest and the malicious; both the righteous and the selfish. Democracy requires active listeners and a cautious audience.

Thank you for understanding.

Questions?




