



Virginia Local Government Law

Civil Discourse and Free Speech: Can Good Manners be Mandated?

By: Andrew McRoberts. *This was posted Thursday, January 27th, 2011*

What is the proper balance between free speech, with its encouragement of open dialog and debate, and the need for order and civility to accomplish the goals of a public meeting?

What are the rights of the public attending a meeting to speak to the public body? Do the members of the public body have a right not to be personally attacked? And does the public body have an obligation to all citizens to get its business done?

[Virginia Local Government Attorneys](#) and other public officials get presented these difficult questions in various forms, often at a heated or difficult moment. Given the importance of the competing interests, and the likelihood that lay people involved have strong beliefs in their rights in this regard, it is important for local government attorneys to be clear in their legal advice on the matter, and for public officials to be firm and fair.

The importance of these competing interests and the proper balance between the competing public and individual rights and the need for civil public discourse was underscored by the shooting in Arizona which ended in death and injury. That recent incident makes the following essay by my fellow member of the [Sands Anderson Local Government Team](#) on ‘Civil Discourse and Free Speech’ very timely.

Civil Discourse and Free Speech: Can Good Manners be Mandated?

By: M. Ann Neil Cosby, Esquire

Since the deadly attack in Arizona just weeks ago, much ink and air time has questioned whether “political vitriol” has gone too far, and civil discourse and cooperation in America are now mere niceties of the past.

While it does seem that economic distress, nationwide polarization on issues, and widespread personal hardships have led to heated, and sometimes nasty debates, legally speaking, is there anything that local legislators can do to tone it down? Where to draw the line between mandating civil discourse in a public

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meeting and infringing on free speech? Can a local government really stop someone from expressing themselves when political rhetoric turns into a personal attack?

The answer is a resounding – “yes, probably.” While free speech is a [First Amendment](#) constitutional right in this country, it is not free from all restriction. And while many people may be familiar with the [prohibition against yelling “fire” in a crowded theater](#), most may not know what, if any, restrictions may be placed on a speaker in a public forum. Fortunately, in Virginia we have direction from the U. S. Court of Appeals for the Fourth Circuit about how local governing bodies can help keep public discussion peaceful and polite.

In 2008, the Fourth Circuit held in [Steinberg v. Chesterfield County Planning Commission, et al. 527 F.3rd 377 \(4th Cir.2008\)](#), that in a “limited public forum,” like a public meeting, the government has a “significant interest in maintaining civility and decorum during the public comment sessions of its public meetings, both to ensure the efficient conduct of the people’s business and to maximize citizen participation in the discussion.” As such, the Court opined that local government officials were entitled “to cut off speech which they reasonably perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, *whether by virtue of its irrelevance, its duration or its very tone and manner.*” (Emphasis mine)

Explaining further, the Court stated that the “‘disruption’ to which this interest extends — as an ‘evil’ to be avoided — [...] is of course not confined to raw, physical violence, but includes any conduct that significantly violates generally or specially established rules of parliamentary order, and ‘disrupts’ by that means the orderly conduct of a meeting.” As personal attacks on local officials and/or other individuals lead “almost inevitably to a responsive defense or counterattack and thus to argumentation that has the real potential to disrupt the orderly conduct of the meeting,” the Court found that local policies prohibiting “personal attacks” are not *per se* invalid.

The Court cautioned, however, that any restriction, including policies against personal attacks, must not discriminate or be misused “to chill or silence speech” based on a speaker’s viewpoint. In other words, so long as a speaker stays on topic, does not speak unreasonably long, and speaks in a tone and manner that, while pointed and direct – and maybe even a bit heated – could not reasonably be perceived as disrupting the conduct of a meeting, he or she is entitled to express his or her viewpoint. Even one that others might not want to hear, and even those that may be patently offensive.

Have you experienced any display or behavior in a recent public meeting that crossed the line? How was it handled?

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