

RULES FOR PUBLIC COMMENT PERIODS

INTRODUCTION

In 2026, two U.S. Circuit Court decisions clarified the types of rules and restrictions public bodies may impose during public comment periods in order to maintain a constitutional balance between the need for public bodies to work effectively and the free speech rights of people seeking to address those bodies.

BACKGROUND

Previous court cases have established that:

- rules and limitations imposed regarding public comment periods must be reasonable, content-neutral (to prevent viewpoint discrimination), and serve a specific and significant governmental interest;
- government officials may not allow onlookers to engage in a “heckler’s veto” (when officials respond to the reactions of hostile or disruptive listeners by curtailing the speaker’s right to free speech);
- a rule may not be so broad or vague that its application is left to the discretion of government officials, thus opening the door to potential viewpoint discrimination.

BODDY V. GRECH

In *Boddy v. Grech*, the U.S. Sixth Circuit Court of Appeals considered the case of a speaker at a school board meeting where the board had a rule prohibiting comments directed at individual board members.

The Facts

Early in prepared remarks, delivered in a consistently calm and deliberate manner, Darbi Boddy spoke about the “cowardice” of the school district’s superintendent “who cannot perform adequately in his role.” Board President Mary Grech immediately threatened to turn off the microphone. Boddy continued her remarks and some audience members began to boo. About a minute into Boddy’s comments, the board recessed the meeting and Grech took the microphone away. When the meeting resumed, Boddy was not allowed to speak further and so did not receive the usual five minutes of allotted comment time.

Key Holdings

- At trial, Grech and the board pointed to the rule prohibiting comments directed at individual board members as the basis for their actions. In its decision, the Sixth Circuit Court reiterated its own previous finding: “a policy that banned ‘personally directed’ speech was facially unconstitutional” and was impermissible viewpoint discrimination in violation of the speaker’s First Amendment rights.

- Although the Circuit Court had previously established that *ad hominem* attacks (when someone attacks a person's character instead of addressing the logic or substance of their argument) are not protected speech, it interpreted Boddy's use of the word "cowardice" to be a description of the superintendent's performance in his role, rather than a true *ad hominem* attack.
- The Court noted that the U.S. Supreme Court recognizes distinct categories of speech not entitled to First Amendment protection (obscenity, child pornography, defamation, and fighting words) and held that Boddy's use of the words "cowardice" and "failing" in a calm tone did not fall into any of these protected categories.
- Grech and the board argued that halting Boddy's comments was necessary to restore decorum when audience members began booing. The Circuit Court found this to be unconstitutional as well, holding that Grech had in effect ratified a "heckler's veto" and that the behavior of the audience members should have been addressed rather than restricting the rights of the speaker. The Court wrote, "Under First Amendment jurisprudence, the ordinary murmurings and objections of a hostile audience cannot be allowed to silence a speaker."

MERRIOTT V. CITY OF BOSSIER CITY

While the case of *Merriott v. City of Bossier City* was decided by the U.S. Fifth Circuit Court of Appeals and thus does not apply in Michigan, it is still instructive as to the types of rules circuit courts are striking down.

The Facts

During the public comment period at a Bossier City Council meeting, Weston Merriott criticized a decision made by the council and questioned the impartiality of a proposed outside counsel due to the counsel's prior representation of a sitting council member. Merriott was interrupted by that council member and one other, instructing him to "stay on topic."

At the next City Council meeting, a new rule was announced which stated:

"Any person making personal, impertinent or slanderous remarks or who shall become boisterous while addressing the Council shall be ... barred from further audience before the Council" and "All remarks shall be addressed to the Council as a body and not to any member thereof."

Merriott spoke during the public comment period at this and a subsequent council meeting and was again interrupted by council members objecting to his comments, threatened with removal and instructed to "not make any accusations against council members."

Key Holdings

- The Fifth Circuit Court found the City Council's new rules to be vague, overbroad, and impermissible viewpoint discrimination, writing that "An enactment's legitimate sweep may constitutionally encompass disturbances ... but it cannot do so in swaths so broad that nearly anything that could be uttered could fall within its reach."

- The Court noted that, for example, without definition or further clarification, the potential applications of the word “boisterous” are “limitless” and thus a “prohibition on becoming ‘boisterous’ ... turns ‘entirely’ on ‘whether or not a [councilmember] is annoyed.’”
- The Court quoted a Ninth Circuit finding that addressed a very similarly-worded rule, stating that the rule could be taken to include merely “bold criticism of City Council members ... but it is a bedrock principle underlying the First Amendment ... that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

PRACTICAL TAKEAWAYS

The stakes for violating a speaker’s First Amendment Free Speech Clause rights are high; multi-year litigation and an injunction could result. The cases above illustrate the need for public boards and officials to review their rules, plans, training, and decision-making regarding public comment periods.

- Remove prohibitions against individually-directed remarks.
- Evaluate and consider removing or rewriting to narrow the scope of any rules that are broad, vague, and open to interpretation. (Consultation with qualified legal counsel is highly recommended.)
- Even if a crowd of hecklers is more difficult to control than a single unpopular speaker, the municipality must control the hecklers and allow the unpopular speaker to continue speaking.
- Plan ahead and train officials and staff on steps they may take in order to maintain decorum during meetings without infringing on First Amendment free speech rights.
- Provide trainings to ensure officials and staff have a clear understanding of what does and doesn’t constitute protected speech at public meetings.
- While *ad hominem* attacks and defamation are not constitutionally-protected speech, not all criticism counts as an *ad hominem* attack or defamation, even when about or directed at a specific individual.

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 Important Phone Numbers	
MML Risk Management Services	800.653.2483
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Note:

***This document is not intended to be legal advice.
It only identifies some of the issues surrounding this topic.
Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***