

## **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. Court of Appeals for the Sixth Circuit 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 loudly. 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 addressed to individual board members as the basis for their actions. In its decision, the Sixth Circuit Court stated, the fact “that some of Boddy’s speech was directed at [the superintendent] alone does not make it unprotected” speech. The Sixth Circuit Court then reiterated its own finding that: “a policy that banned ‘personally directed’ speech was facially unconstitutional” (*Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*) and was impermissible viewpoint discrimination in violation of the speaker’s First Amendment rights.

- Grech and the board also argued their actions were justified by their rule prohibiting *ad hominem* attacks (when someone criticizes an adversary's character instead of the substance of their argument) and that *ad hominem* attacks are not protected speech. In response, the Sixth Circuit Court first noted that *ad hominem* attacks are not *per se* (automatically) unprotected speech. The Court then went on to find that, in any case, Boddy's speech was not a true *ad hominem* attack but was instead a criticism of the Board and superintendent for their policy choices as public employees. The Circuit Court again quoted one of its prior holdings, that a school board "may not exclude speech merely because it criticizes school officials."
- The Sixth Circuit 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 Sixth 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. Court of Appeals for the Fifth Circuit and thus is not binding in the Sixth Circuit, where Michigan is located, it may still be persuasive.

### 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 U.S. Court of Appeals for the Fifth Circuit found the City Council's new rules to be overbroad, impermissible viewpoint discrimination, and void for vagueness. The Court wrote, "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 U.S. Court of Appeals for the 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.

- Consult with a qualified attorney regarding your rules and procedures for public comment periods.
- With a qualified attorney, evaluate whether your current rules are overly broad or vague, and if so, how those rules can be amended and/or narrowed.
- Consult with your attorney about prohibitions against individually-directed remarks.
- Consider what steps may be taken to encourage both speaker *and* audience decorum in advance of each public comment period.
- Plan ahead for the possibility of negative audience reactions. Train officials and staff on how to manage hecklers so that an unpopular speaker can continue to exercise their First Amendment rights.
- Ensure that officials and staff understand that the government may not censor speech merely because it is offensive to or critical of some people. Critical speech may be protected by the First Amendment, whether directed at an entire governing body or a specific individual within that body.

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**Important Phone Numbers**

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| 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.***