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Free Speech and Civility: A View of Public Meeting Participation

Part II

by Richard M. Gardella

Editor's Note: This is the second installment in a two-part series of articles on public meeting participation by citizens. The series comes from a paper originally submitted and published at the International Municipal Lawyers Association's (IMLA) 65th Annual Conference, San Francisco, California, August 2000 and is reproduced with the permission of the Association. The first installment dealt with public meeting participation rules and practices under state law. This installment examines the First Amendment implications of such rules and practices.

THE FIRST AMENDMENT

Central to any discussion of citizen participation at public meetings is the First Amendment of the U.S. Constitution and similar state constitutional provisions. The First Amendment reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."[1]

The Fourteenth Amendment applies the First Amendment to the states and their political subdivisions. That amendment, in pertinent part reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[2]

No municipal lawyer can escape familiarity with the above constitutional amendments in today's federal litigation climate. Parade and public assembly permits; control of solicitation and canvassing; picketing; sign and news rack regulation; rules for street vendors, peddlers and door-to-door salesmen; adult business use zoning; whistle blower employee claims, and even library computer use to access the internet all invoke First Amendment issues. One suspects that public meeting participation, with the growing advent of public debate gadflies, demagogues, free speech bullies and local cable television hogs, will provide a new, fertile field for the growth of First Amendment litigation.

A number of basic First Amendment principles must be kept in mind when viewing that litigation potential in the hopes of avoiding such litigation.

First, our free speech guarantees and the right to petition government are basic, fundamental rights, cherished by Americans. New York City jurors in 1735 took just a few minutes to ignore the prevailing law and the judge's instruction to acquit a German immigrant printer of criminal libel. They were helped along by the stirring summation words of John Peter Zenger's pro bono lawyer, Andrew Hamilton, who exhorted that nullification jury with these words:

"...It is the best cause. It is the cause of liberty; and I make no doubt but your upright conduct this day will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you as men who have baffled the attempt at tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors that to which nature and the laws of our country have given us a right - the liberty - both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth."[3]

Such words are likely to have a similar effect on a jury today provided there is some supporting evidence in the trial record. The courts have held that our First Amendment speech rights are cherished or "preferred" rights, but those rights are not absolute. Before reaching the First Amendment, the Constitution provided for copyright protection among the enumerated powers of Congress contained in Article 1, Section 8. Defamation, obscenity, the fighting words doctrine and the need to protect military secrets all suggest limits on free speech. For the most part those limits have not been defined or delineated with precision.

The difficulty the courts have encountered in trying to define free speech limits arises from the high value our system places on the free exchange of ideas. False or dangerous ideas will be exposed and wither in the unbridled competition of ideas, it is believed.

Writing a concurring opinion in *Whitney v. California*,[4] Justice Louis Brandeis explained:

"...Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government...."[5]

Justice Oliver Wendell Holmes, Jr., who said "Every idea is an incitement,"[6] wrote in 1919:

"...But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment...."[7]

The free trade in ideas often includes extreme, foolish statements. As Justice Felix Frankfurter stated in *Baumgartner v. United States*, "One of the prerogatives of American citizenship is the right to criticize public men and measures - and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation."[8]

More recently, the U.S. Supreme Court dealt with the free speech use of immoderate language in overturning a draft protester's conviction for disturbing the peace. Writing for the majority in 1971, Justice John Harlan explained:

"How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric."[9]

Nearly two decades later, the court struck a Washington, D.C. regulation barring

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Inside . . .

Ethics, Land Use, Public Works Contracts and Police/Fire Disability to Highlight Section Meeting

On January 25, 2001 in conjunction with the 124th Annual Meeting of the New York State Bar Association, the Municipal Law Section will present a full day continuing legal education program at the Marriott Marquis Hotel in New York City. Under New York MCLE's rules, this program has been approved for a total of six (6) credit hours, consisting of three credit hours in practice management and/or areas of professional practice and three credit hours in ethics and professionalism.

The Section is pleased to announce that the Hon. Mary Lou Rath, Chair, New York State Senate Local Government Committee, will be the featured speaker at the Section's Annual luncheon.

Thursday morning's program will begin with a presentation entitled 'Religious Land Law" by John M. Armentano, Esq., Farrell Fritz, P.C., Uniondale. The second presentation of the morning entitled 'Contractor Default and Municipality Remedies/Finishing the Project: Recovering the Cash" will be presented by Kevin J. Plunkett, Esq., and Jean E. Burke, Esq. both from Thacher Proffitt & Wood, White Plains. Completing the morning program will be a presentation by Peter A. Bee, Esq., Bee, Eisman & Ready, LLP, Mineola and Richard K. Zuckerman, Esq. Rains & Pogrebin, P.C., Mineola entitled "Police/Fire Injuries: Workers Compensation and GML §207-c, Are Entitlements Treated the Same?".

Following the luncheon speaker's remarks, the afternoon program will begin with "The Ethical Application of New Municipal Lobbying Law" presented by Ralph P. Miccio, Esq., Counsel, New York Temporary State Commission on Lobbying, Albany. The program will conclude with "Ethics: How to Draft a Local Municipal Code; Anatomy of a Conflict of Interest Inquiry: A Case Study; Who is the Client: The Employee or the Municipality?" presented by Mark Davies, Esq., Executive Director and Counsel, New York City Conflicts of Interest Board, New York City; Steven G. Leventhal, Esq., Leventhal and Sliney, LLP, Mineola; and Jennifer K. Siegel, Esq., New York City Commission on Human Rights, New York City.

Officials instrumental in planning the conference include Municipal Law Section Chair Edward J. O'Connor, Esq., Bouvier, O'Connor, Buffalo and Program Co-Chairs Barbara J. Samel, Esq., Albany and Owen B. Walsh, Esq., Oyster Bay.

For reservations and further information, please contact the New York State Bar Association at (518) 463-3200.

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sign displays within 500 feet of a foreign embassy that tended to bring that foreign government into "public odium or public disrepute." In *Boos v. Barry*,[10] the court explained, "As a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous speech in order to provide 'adequate "breathing space" to the freedoms protected by the First Amendment....'"[11]

Against the above general free speech background, more detailed review principles must be kept in mind when judging public participation rules for local government meetings. These review doctrines include:

Prior Restraint - The First Amendment's sweep is the broadest in barring prior restraints on speech. The condemnation of censorship through prior restraint is basic and can be found in William Blackstone's Commentaries on the Laws of England. He wrote, "The liberty of the press consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter after an offending article is published."[12] Outside of bona fide military secrets, it is hard to see when "prior restraint" will be permitted by our courts.[13]

Traditional Public Forums - In *Perry Educ. Ass'n v. Perry Local Educators Ass'n*,[14] the U.S. Supreme Court explained:

"In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."[15]

Limited or Designated Public Forums - A limited or designated public forum is created by government designation as "a place or channel of communication for use by the public at large."[16] Such designated fora may be limited for the use of certain speakers or for the discussion of certain subjects.[17] Access limitation must be reasonable and must be view point neutral. As long as it maintains the open character of the fora or meeting, the public body is bound by the same standards as apply to a traditional public forum.

Content Based Regulation - Speaking of traditional fora, the U.S. Supreme Court in *Perry* said:

"In these quintessential public forums, the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."[18]

Content Neutral Regulation - The *Perry* majority went on to explain the lesser scrutiny test for content neutral time, place and manner regulation. The majority wrote, "The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."[19]

Based on the above doctrines and principles, it can be seen that meetings of public bodies are limited or designated public fora which are bound by the same standards applied to traditional fora when they are opened to public comment. Such bodies may enforce reasonable time, place and manner regulation and control their agenda, but those rules cannot discriminate among viewpoints or censor speakers. A review of a few court cases helps demonstrate the First Amendment limits on such regulation.

PUBLIC MEETING CASE LAW

The 1976 Wisconsin case *Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*,[20] indicated that any portion of a public body meeting that is opened for public comment is a designated forum. The U.S. Supreme Court explained that while a public body may confine such meetings to specified subjects and may even hold closed sessions, where it opens the forum to direct citizen participation it cannot generally confine that participation to one category of interested individuals.[21] In that case, the court invalidated a regulation barring teachers' speech on matters subject to collective bargaining.

The 1997 Popular Government article previously quoted cites two North Carolina cases demonstrating that the courts recognize the discretionary authority local boards have to control their own meetings. Citing a 1990 federal case, *Collinson v. Gott*,[22] the article commented:

"In *Collinson* a person was cut off from speaking and subsequently asked to leave a meeting after he violated a local board's requirement that speakers confine their remarks to the question and avoid discussion of personalities. He sued in federal court. A divided panel of the Fourth Circuit Court of Appeals (which has jurisdiction over North Carolina) held in favor of the board. Although the judges disagreed about the disposition of the case, they all assumed that a presiding officer has at least some discretion to make decisions concerning the appropriateness of the conduct of particular speakers. A concurring opinion noted that the government has a substantial interest in having its meetings conducted with relative fairness: [O]fficials presiding over such meetings must have discretion, under the 'reasonable time, place and manner' constitutional principle, to set subject matter agendas, and 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.., even though such restrictions might have some relation to the content of the speech."[23]

Also cited was an earlier North Carolina State case, *Freeland v. Orange County*,[24] where thirty-one out of an estimated 500 were allowed to speak for about two and a half hours on a zoning issue. The ordinance which resulted from the hearing was upheld by the court which found untenable the contention that the body was required to hear all persons in attendance without limit as to number or time.

However, those time, place and manner regulations can not be used to stifle a particular viewpoint or person. In *Musso v. Hourigan*,[25] a local board of education allowed the comment period to continue over the allotted time, but a speaker was silenced and eventually arrested after he said something one board member did not like. The court found that a rational jury could infer that the arrested speaker was singled out for what he said. If that inference was true, then the action against the speaker was an unconstitutional content-based restriction on free speech.

A 1972 U.S. Supreme Court decision suggests that content-based regulation may not fare well in court even if it is aimed only at profanity. The court in *Rosenfeld v. New Jersey*[26] vacated the conviction of a speaker who used profanity at a school board meeting and remanded the case. No new conviction resulted.

Enforcement of content-based school district bylaws designed to protect school employees against attack were enjoined in a 1996 California case. The

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bylaw in *Baca v. Moreno Valley Unified School Dist.*[27] stated in part:

"No oral or written presentation in open session shall include charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee. If an attempt is made to include charges or complaints against an employee in any way, the Board President will order the presentation stopped at once, and the Board meeting will continue in accordance with the established agenda. All charges or complaints against employees must be submitted to the Board under provisions of Board policy."[28]

A mother, who was a member of the Mexican Political Association, named two employees and detailed complaints against them. When she continued after being warned about the bylaw, she was removed from the meeting by a deputy sheriff and watched over so that she would not return to the meeting.

Applying the State Constitution as well as the Federal Constitution, the court found that the regulation was content-based and was not backed by a compelling state interest or narrowly drawn.

A 1997 California case, *Leventhal v. Vista Unified School Dist.*,[29] found a school bylaw, which also barred complaints or charges against an employee, unconstitutional and issued an injunction. The court cited *Baca* as presenting a strikingly similar bylaw and quoted that court's holding:

"[The] District's interest in protecting its employees' right of privacy is an interest it holds only as an employer, not as a government entity, e.g., a legislative body charged with permitting public comment at its meetings. Thus, its interest as an employer in protecting its employees' right to privacy cannot be characterized as a compelling governmental interest."[30]

By contrast, however, a recent New York federal court case upheld a prohibition against a speaker's disclosure of the names of students who issued evaluations of a professor at the City University of New York who the speaker was criticizing. In *Schuloff v. Murphy*,[31] the court found the design to protect student privacy a compelling state interest and that the restriction was narrowly tailored to effectuate that purpose.

Not all court challenges against governing body rules came from citizen speakers. A former council member in Pasadena, California, brought a suit against the city. The council member had been censured by the council for violating its civility regulation. The regulation read in part:

"2. To perform responsibilities in a manner that is efficient, courteous, responsive and impartial, providing fair and uniform treatment to all persons and actions coming before the board of directors.

3. To seek, in making decisions, the overall public good.

5. To establish effective, courteous and cooperative working relations with fellow members of the board, the city staff, members of advisory bodies, and the public."[32]

The case was settled, however, when the council adopted a resolution eliminating the possibility of using the regulation to censure speech. In *Richard v. City of Pasadena*,[33] the district court found that the council member was the prevailing party and awarded attorney fees of $74,925.53. He had made repeated charges of racism against other council members and used profanity.

The court distinguished *White v. City of Norwalk*,[34] a 1990 California case, where an injunction was denied to a city council speaker against enforcement of speaker rules. The speaker also unsuccessfully sought damages for being cut off by the chair at two meetings. The Ninth District upheld the injunction denial and the jury's rejection of the damage claims. While the suit attacked the regulations prohibiting abusive language, there was evidence that the speaker was cut off because he had become repetitive.

The *Richards* court pointed out that the *Norwalk* regulation subjected speakers to restriction only when their speech "disrupts, disturbs or otherwise impedes the orderly conduct of the council meeting."[35]

In regard to disruptive speech, a 1991 Texas case saw the conviction of a protestor who interrupted a speech by Jesse Jackson overturned because of the criminal statute's overbreath. However, the state appeals court said the statute could be construed constitutionally and remanded the case to the trial court. The Rev. Jackson was able to resume his speech after the shouting protester was removed from the front of the auditorium. The case is *Morehead v. State*.[36]

THE ACTIVIST AND THE GADFLY

The *Richards* case points out the problem with the enforcement of civility rules and the growing emergence of participation conduct that strains the capacity of presiding officers to maintain order.

Part of that potentially disruptive conduct can be seen as a legacy of the war protests and the civil rights movement of the Sixties. Both protests used the streets and civil disobedience when normal governmental channels failed to respond or provide a hall for their voices to be heard. The frustration and cynicism created by that time makes activists today impatient with rules of decorum.

Two recent cases in Westchester County, New York, illustrate the point. In Yonkers, as the school board moved to terminate the tenure of a popular African American school superintendent, thirteen protesters took to the stage and for a time disrupted the meeting. At their trials on disorderly conduct charges, two leaders of the protest, a minister and an NAACP official, argued that they should be allowed to raise the defense of necessity because they had exhausted all legal means to be heard and their protest was the only way to raise their issue. The judge rejected the defense, and earlier this month sentenced the two leaders to community service following their convictions.

In Peekskill, a small city in the northern part of the county, six speakers were arrested when they refused to relinquish the podium at the expiration of their speaker limits.

In December, The Journal News, the county-wide daily, criticized the city council for not relaxing the rules which led to the arrests. The editorial in the December 17, 1999 issue of the paper stated:

"Members of the city's Committee for Justice and the Coalition for Creative Solutions have vehemently opposed the limits that were enacted by the council in March. Those arrested were charged with either speaking longer than the three-minute limit, or for addressing a non-agenda item at the start of the meetings rather than at the end.

Last month , it appeared that the council was headed toward a workable solution when it offered a proposal that would permit each speaker to address any subject for up to three minutes at the start of the meeting. The proposal also offered audience members a chance to speak on any topic for up to five minutes at the end of the meeting.

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Municipal Briefs

Land Use

Recently, President Clinton signed into law the Religious Land Use and Institutionalized Persons Act of 2000 which directly impacts local government's processing of land use applications affecting religious institutions or entities. Under that legislation, a land use regulation which imposes a substantial burden on religious exercise will be subjected to strict scrutiny and will be sustained only if the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

Settlement of Claims

Recently, the Governor signed into law Chapter 428 of the Laws of 2000 amending subdivision four of §68 of the Town Law to permit all towns to settle claims or actions against themselves without the approval of the Supreme Court. Under pre-existing law, only towns having a population of 200,000 or more could settle or compromise claims against them in any amount without the approval of the Supreme Court. Towns with populations below that threshold could only settle claims up to $300 without court approval. The bill is effective immediately.

Variances

In *Cohen v. The Board of Appeals of the Village of Saddle Rock*, __ Misc.2d __ (Sup. Ct. Nassau Co. 2000), Justice Winick has ruled that the State, through the enactment of Village Law §7-712-b(3)[b], has created the standards by which all area variance applications must be determined and inconsistent or contrary standards embodied in local legislation are preempted.

Here, Section 150-24(B) of the Saddle Rock Zoning Code permitted the Village Zoning Board to grant a variance "only upon a showing of practical difficulty or unnecessary hardship in the way of carrying out the provisions of the Village zoning regulations." Applying this standard, the Zoning Board denied certain area variances on the grounds that the petitioner "did not demonstrate any practical difficulty or unnecessary hardship which is not self-created… that the variance relief was sought only for the personal convenience of the applicant, … [and that] the area variances sought by the [petitioner] exceed the minimum relief necessary for the [petitioner] to make permitted use of his property." By contrast, the State statute requires the Zoning Board to "take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant." Under these circumstances, the Court ruled that the municipality was without authority to enforce a local zoning regulation which alters the standards for Zoning Boards to grant area variances as set forth in Village Law §7-712-b(3).

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But instead of putting an end to it, the council has decided to let John J. Kelly III take up the issue when he takes office as mayor next month.

Kelly wants to create an atmosphere that welcomes public comment, without limiting speakers by either topic or time. Kelly said he plans to change the speaking law during his first month in office.

'Everyone should have the opportunity to speak,' Kelly said. 'But let's do it in a productive manner."[37]

The new mayor has now taken office and meetings are reported calmer. All six were convicted of disorderly conduct. The stricter rules were put in place in March, 1999, when the city began televising the meetings.

A month after its first editorial, The Journal News reported in a second editorial on January 26:

"The new, relaxed rules set aside a one-hour period at the beginning of coucil meetings when audience members may speak for three minutes on any issue. Agenda items will take priority. At the end of the meeting, a second speaking period will be held, where people may talk for five minutes, allowing those who haven't spoken earlier to speak first.

But the rules, say Mayor John J. Kelly III, who took office earlier this month, aren't iron-clad. For instance, there will be no timer set when residents begin talking. And when their initial three minutes are up, they will be signaled by the clerk. But if speakers ask for a minute or two more to tie up a thought, they may be granted additional speaking time, as determined by the chair of the meeting.

It's that kind of latitude that prompts us to support this plan. The hard-and-fast rules set by the previous administration forced residents to stop speaking in mid-sentence or risk being arrested. And six times, the city followed through with the unnecessary arrests."[38]

Less understandable than the meeting heat generated by activists is the growing phenomenon of the "gadfly" who generally is without a program and belongs to no group. The gadfly's distrust of government and dislike of those in government are an apparent common denominator.

Last July, the United States Court of Appeals for the Second Circuit upheld an $85,000 award for violating the civil rights of a self-proclaimed "gadfly." Clay Tiffany, who won the jury award, claimed he was denied equal protection of the laws and his First Amendment rights by the Village of Briarcliff, a neighboring community of Chappaqua where the Clintons are sometimes in residence.

Tiffany, who produces a local cable show and once ran for office, is a constant critic of the village government. Because of alleged disruptive visits to Village Hall he was banned from the hall without an appointment and later arrested for trespass when he ignored the ban. Two of his arrests allegedly prevented him from attending public meetings on a controversial zoning matter. He recently instituted another suit.

In Reno, Nevada, a local government critic, who could be called a gadfly, was arrested last year for repeatedly yelling and swearing at the Reno City Council. He has since filed a federal lawsuit claiming his free speech rights were violated. The controversy has apparently spawned a civil rights task force similar to the Peekskill watchdog group.

CONCLUSIONS

All of the above leads to some conclusions. Reasonable time, place and manner regulations which are content-neutral, will be upheld in the interest of providing for orderly public meeting participation. Content-based regulations are much more problematic. It is not even clear that governmental bodies can punish or control profanity, and Mr. Freeman's suggestion that signs and placards cannot be barred all together, but can be controlled so as not to block the access to the meeting by others, makes sense.

In dealing with disruptive conduct, a presiding officer must make a clear record that the action taken against the disrupter is not related to the content of his speech. For the gadfly, who monopolizes local meetings with abusive and often baseless charges, a proactive approach may be indicated. Seeking an injunction against disruptive rule violation by a gadfly could serve to limit that disruption and insulate the governing body from First Amendment claims.

The success of reasonable rules in providing an orderly process depends in great measure on those enforcing those rules. In order to ensure the possibility of an orderly process, the application of those rules must be fair and firm, but also flexible. The rules also should be clearly stated. In short, the rules should be applied like the Board which heard my client's variance request.

Elimination of public comment or open microphone periods in jurisdictions which do not require them, is not a likely solution. Some Constitutional scholars feel it is only a matter of time before the courts find such periods are a Constitutional right pursuant to the First Amendment's guarantee of the right to petition government.

Finally, where does all this leave the desire for civility? Is that way of doing government's business consigned to the dustbin of 18th, 19th and 20th Century virtues? While it is clear that civility can not be mandated, it might be inspired by aspirational rules and the conduct of the governing board themselves. Civility among board members and to the public might serve to inspire such behavior from the public. Teaching about local government and its importance in our schools can only help. A real understanding of representative government and majority rule supports civil public meeting conduct. A sense of community and a feeling of belonging would also help.

An old philosophy professor of mine once said "Civility arises from a sense of a shared enterprise." I believe he was right. We are all in this great governmental experiment together, and its survival is vital to our survival as a people and a culture. This government is our shared enterprise. To that enterprise, we all owe a duty of civility.

Mr. Gardella is a former corporation counsel for the City of Rye and former village attorney for the Village of Scarsdale. Mr. Gardella now serves as of counsel for the firm of Bertine, Hufnagel, Headley, Zeltner, Drummond & Dohn, LLP in Scarsdale, New York.

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1. U.S. Const. amend. I.
2. U.S. Const. amend XIV.

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3. JAMES ALEXANDER, A BRIEF NARRATIVE OF THE CASE AND TRIAL OF JOHN PETER ZENGER 98-99 (2d ed. 1972).
4. See Whitney v. California, 274 U.S. 357 (1927).
5. *Id.*.
6. Gitlow v. New York, 268 U.S. 652 (1925)
7. Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).
8. Baumgartner v. United States, 322 U.S. 665, 673-74 (1944).
9. Cohen v. California, 403 U.S. 15, 25 (1971).
10. Boos v. Barry, 485 U.S. 312, 322 (1988).
11. *Id.* (citations omitted)
12. WILLIAM BLACKSTONE, COMMENTARIES.
13. *See generally* Near v. Minnesota, 283 U.S. 697 (1931); *See also* New York Times Co. v. United States, 403 U.S. 713 (1971).
14. *See* Perry Educ. Ass'n v. Perry Local Educators Ass'n, 460 U.S. 37 (1983).
15. *Id.* at 45 (quoting Hague v. CIO, 307 U.S. 496, 515 (1939).
16. Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 803 (1985).
17. *See* City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976) (where forum was limited to subject matter of school board business).
18. *Perry*, 460 U.S. at 45.
19. *Id.*
20. *See* Madison Joint School Dist., 429 U.S. 167.
21. *Id.* at 174-75.
22. Collinson v. Gott, 895 F.2d 994 (4th Cir. 1990).
23. Bell et al., *supra* note 4, at 31-32 (citations omitted).
24. *See* Freeland v. Orange County, 273 N.C. 452 (1968).
25. *See* Musso v. Hourigan, 836 F.2d 736 (2d Cir. 1988).
26. *See* Rosenfeld v. New Jersey, 408 U.S. 901 (1972).
27. *See generally* Baca, 936 F. Supp. 719.
28. *Id.* at 725.
29. *See* Leventhal v. Vista Unified School Dist., 973 F. Supp. 951 (1997).
30. Leventhal v. Vista Unified School Dist., 973 F. Supp. at 959.
31. *See* Schuloff v. Murphy, 1997 WL588876 E.D.N.Y.
32. Richard v. City of Pasadena 889 F. Supp. 384, 386 (C.D. Cal. 1995).
33. *See generally id.*
34. *See* White v. City of Norwalk, 900 F.2d 1421 (1990).
35. *Richards*, 889 F. Supp. at 390.
36. *See* Morehead v. State, 807 S.W.2d 577 (Tex. Crim. App. 1991).
37. Editorial, JOURNAL NEWS, Dec. 17, 1999.
38. Editorial, JOURNAL NEWS, Jan. 26, 2000.