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MFI CASE BRIEF

Barron v. Kolenda, 491 Mass. 408 (2023)

“The Barron decision makes clear that when public bodies in Massachusetts like city councils and school committees allow public comment, they may not stop someone from speaking simply because they don’t like what the person has to say.”

Bullet-Point Summary

- Massachusetts Supreme Judicial Court (SJC) held that the chair of a town’s board of selectmen violated a woman’s rights to free speech and petition when he stopped her from speaking at a public meeting because she allegedly violated the town’s “civility code.”
- Decision means that if city councils, school committees, and other public bodies allow public comments during meetings, they may not stop someone from speaking simply because they think that what the person is saying is rude or inappropriate. If they do, courts may hold them personally accountable for monetary damages.
- Public bodies can, however, still impose “time, place, and manner restrictions” on speakers, such as limiting how much time people can speak and requiring that people not disrupt other speakers or make threats. They likely can also require that all comments be related to an agenda item.

Introduction

The Massachusetts SJC recently ruled in *Barron v. Kolenda* that city councils, school boards, and other public officials cannot silence speakers at public meetings on the ground that their speech allegedly violates the municipality’s “civility code.” Civility codes are being used throughout the country to prevent people from expressing their opinions on controversial topics during public comment periods at municipal meetings. That practice must now end in Massachusetts, according to the SJC.

Facts

Plaintiff Louise Barron is an elderly, politically active Southborough resident who wanted to speak during the public comment period of a meeting of her town’s board of selectmen in 2018. Like many municipalities, Southborough had a “civility code” that required anyone speaking during public comment periods to keep their remarks “respectful and courteous, free of rude, personal or slanderous remarks.” It also said that “inappropriate language” would not be tolerated.



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Mrs. Barron got up to speak about the town's waste of taxpayer money and its multiple violations of open meeting laws. When she began voicing her concerns about these issues, however, she was interrupted mid-sentence by the board chair, who accused her of violating the town's civility code and abruptly ended the meeting. After Mrs. Barron protested and told the chair to stop "being a Hitler," he screamed that she was "disgusting" and threatened to have her escorted out of the meeting. Not wanting to be arrested, Mrs. Barron left. Afterward, Mrs. Barron sued the chair and the town for violating her rights to freedom of speech and to petition government officials for redress of grievances under Articles 16 and 19 of the Massachusetts Constitution.

Holding

The SJC held that the chair had violated Mrs. Barron's constitutional rights to speech and petition, that the town's "civility code" was facially unconstitutional, and that the chair could be held personally liable for damages resulting from his infringement of Barron's rights. The Court stated that, "[a]lthough civility, of course, is to be encouraged, it cannot be required regarding the content of what may be said in a public comment session of a governmental meeting without violating [the speech and petition] provisions of the Massachusetts Declaration of Rights, which provide for a robust protection of public criticism of governmental action and officials." In addition, the Court found that because these rights had been clearly established in prior cases, the chair was not entitled to qualified immunity, which often protects public officials from suits for money damages.

The Court also made an important distinction between "civility codes," which are unconstitutional, and reasonable "time, place, and manner restrictions," which are generally allowed. It stated that, "[w]hat can be required is that the public comment session be conducted in an 'orderly and peaceable' manner, including designating when public comment shall be allowed in the governmental meeting, the time limits for each person speaking, and rules preventing speakers from disrupting others, and removing those speakers if they do." The Court pointed out that under Massachusetts law, public bodies are not required to allow public comment, but when they do, they must not discriminate based on the content of people's speech, or the viewpoints they express.

Conclusion

The *Barron* decision makes clear that when public bodies in Massachusetts like city councils and school committees allow public comment, they may not stop someone from speaking simply because they don't like what the person has to say. Certainly, speakers cannot threaten government officials or disrupt other speakers, and, if they specify in advance, public bodies can likely require that all comments address topics on the meeting agenda. But this decision makes it clear that no one can be silenced in Massachusetts for simply criticizing the government, no matter how "rude" or "inappropriate" government officials think their criticisms are.