



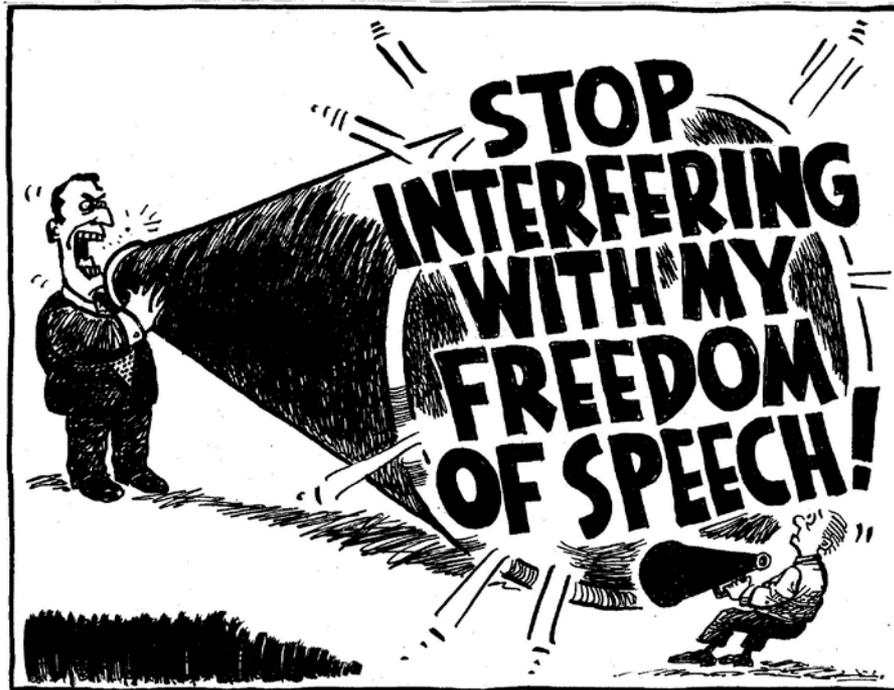
Dealing with Disruptive Behavior by Members of the Public

*Balancing the Constitutional Rights of Citizens with the Duty to
Conduct Meetings in an Orderly Manner*

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Constitutional Law

Board Meetings constitute a *limited* public forum for purposes of First Amendment law

- Broad free speech rights, but limited to matters within subject matter jurisdiction of the legislative body





Constitutional Law

- “Government officials in America occasionally must tolerate offensive or irritating speech.”
 - *Norse v. City of Santa Cruz*, 629 F.3d 966, 979 (9th Cir. 2010);
Cohen v. California, 403 U.S. 15 (1971)
- Councils may restrict public speakers to the specified subject matter.
 - *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175 (1976).
- “While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, [the moderator] certainly may stop him if his speech becomes irrelevant or repetitious.”
 - *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990)(*internal marks omitted*)



The Ralph M. Brown Act *Cal. Gov't Code § 54954.3*



- (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body . . .”



The Ralph M. Brown Act

Cal. Gov't Code § 54954.3



Opportunity for public to address legislative body;
adoption of regulations; public criticism of policies

- (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.



The Ralph M. Brown Act

Cal. Gov't Code § 54957.9



- In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible *and* order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.





Cal. Penal Code § 403

Disturbance of public assembly or meeting

- Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, other than an assembly or meeting referred to in Section 302 of the Penal Code or Section 18340 of the Elections Code, is guilty of a misdemeanor.



Non-Disruptive Conduct





In re Kay, 1 Cal. 3d 930 (1970)

- Only California Supreme Court interpretation of Cal. Penal Code § 403
- Small group of Ag-workers protested during Congressional candidate speech in public park by clapping and shouting slogans
- The demonstration did not affect the program, as the candidate finished his speech
- During the speech, neither the candidate nor the police asked the demonstrators to cease or disperse





In re Kay, 1 Cal. 3d 930 (1970)

California Supreme Court:

- “Audience activities, such as heckling, interrupting, harsh questioning, and booing, even though they may be impolite and discourteous, can nonetheless advance the goals of the First Amendment.”
- The relevant inquiry is the actual activity *substantially impaired* effective conduct of meeting; not simply whether witnesses were “disturbed.”
- The protesters’ actions did not impair the conduct of the meeting.





Norse v. City of Santa Cruz, 629 F.3d 966 (9th Cir. 2010)

- Norse was ejected from a Santa Cruz City Council meeting after giving the Council a silent Nazi salute
- He sued city officials for violating his First Amendment Rights





Norse v. City of Santa Cruz, 629 F.3d 966 (9th Cir. 2010)

- Ninth Circuit held:
 - The city may not overly define “disruptive” to include “constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”
 - The attendee must actually disrupt or impede the meeting to warrant ejection.





Baca v. Moreno Valley Unified Sch. Dist., **936 F. Supp. 719 (C.D. Cal. 1996)**

- School district policy prohibiting, at open sessions of school board meetings, comments which include charges or complaints against any district employee, regardless of whether employee was identified
- Plaintiff attended an open meeting of the District Board and was removed for repeatedly mentioning names of School district employees





Baca v. Moreno Valley Unified Sch. Dist., 936 F. Supp. 719 (C.D. Cal. 1996)

- U.S. District Court for Central District of California held:
 - “[U]nder the California Constitution, District's Board may not censor speech by prohibiting citizens from speaking, even if their speech is, or may be, defamatory.”
 - District's interest in making sure that members of public could not complain about school district employees in a forum where comments would be privileged under California law did not outweigh public's interest in being able to freely express themselves to their elected officials





Leventhal v. Vista Unified Sch. Dist., 973 F. Supp. 951, 960 (S.D. Cal. 1997)

- Similar to *Baca*, School District Bylaws limited attendees rights to voice complaints about individual employees of the District
- During School District Board Meeting, Plaintiff challenged District Superintendent's ability to impartially participate in contract negotiations and performance reviews, given an alleged conflict of interest.





Leventhal v. Vista Unified Sch. Dist., 973 F. Supp. 951, 960 (S.D. Cal. 1997)

- U.S. District Court for the Southern District of California held:
 - Although content-based restrictions are permissible in nonpublic forum, laws that discriminate not only on the subject matter of speech but also on the viewpoint of the speaker violate core free speech principles
 - The Bylaw effectuates a classic form of viewpoint discrimination





Dowd v. City of Los Angeles,
2013 WL 4039043, at *2 (C.D. Cal. 2013)

- LAMC § 42.15 (2008) provides that “[e]xcept as specifically allowed in this section, no person shall engage in vending” along the Venice Beach Boardwalk.
- In response to the new ordinance, Dowd used profanity and attacked a public official during public comment of a City Council Meeting.





Dowd v. City of Los Angeles,
2013 WL 4039043, at *2 (C.D. Cal. 2013)

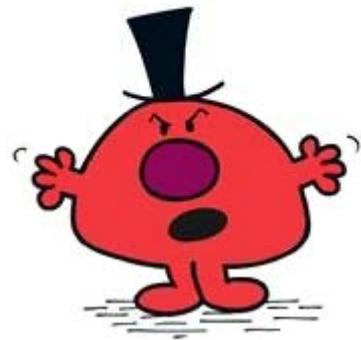
- The use of profanity alone does not warrant ejection, unless the use of profanity disturbs or impedes the meeting
- Unconstitutional to restrict speakers from making personal attacks against City Council members



Disruptive Conduct



MR. RUDE





McMahon v. Albany Unified Sch. Dist.,
104 Cal. App. 4th 1275 (2002)

- McMahon emptied 2 13-gallons of garbage on the floor during school board meeting, in an effort to demonstrate litter problem surrounding high school
- McMahon was arrested and taken the police station
- The meeting resumed





McMahon v. Albany Unified Sch. Dist., 104 Cal. App. 4th 1275 (2002)

- California Court of Appeal for the First District held:
 - “...[S]ection 403 authorizes the imposition of criminal sanctions only when the defendant's activity itself impairs the effective conduct of a meeting”
 - The school board was “forced to adhere to McMahon's agenda, was unable to proceed with its own”
 - Thus, McMahon’s actions *substantially impaired* the School Board’s meeting





White v. City of Norwalk

900 F. 2d 1421 (1990)

- Plaintiff sues City of Norwalk after escorted out of City Council meetings on three separate occasions for speaking out of turn
- Plaintiff argues constitutional challenge to Norwalk City Ordinance governing appearances before the City Council





White v. City of Norwalk

900 F. 2d 1421 (1990)

- Ninth Circuit held:
 - Ordinance penalizing “personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public” and “loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting” is constitutional on its face
 - Speakers are subject to restriction when their speech becomes irrelevant or repetitious.





City of San Jose v. Garbett, 190 Cal.App.4th 526 (2010)

- City filed petitions for injunctions and temporary restraining orders against resident who frequented public meetings at City Hall, and the City Clerk's office with questions or requests for public records
- On one occasion, he seemingly threatened a City Hall employee by stating: "What do I need ... to do to get things done around here? Do I need to take matters into my own hands like that Black man did in Missouri?" referring to an incident in which a man in a Missouri city shot several people at City Hall, killing five of them





City of San Jose v. Garbett, 190 Cal.App.4th 526 (2010)

- California Court of Appeal for the Sixth District held:
 - True Threats of violence is not protected by the First Amendment.
 - The specific intent of the speaker to make a threat is not necessary for a “credible threat”; speech need only place a reasonable person in fear for his or her safety.
 - Because Appellant’s antagonism could escalate into violent conduct, an injunction was necessary to prevent irreparable harm to City employees.





CPR for Skid Row v. City of Los Angeles, 779 F.3d 1098 (9th Cir. 2015)

- Since 2005, the Central City East Association has facilitated “Skid Row Walks” in order to acquaint police officers and representatives of the business community with the neighborhood
- At a Walk in July 2011, CPR Protestors banged on drums and shouted “We are not resisting. This is our First Amendment Right” within close proximity of Walk attendees





CPR for Skid Row v. City of Los Angeles, 779 F.3d 1098 (9th Cir. 2015)

- Ninth Circuit held:
 - Cal. Elec. Code § 18340 is an Exception to Cal. Penal Code §403 for Political Meetings
 - Political meetings require a heightened standard of egregious conduct to qualify as misdemeanor.
 - “Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meetings for the consideration of public questions is guilty of a misdemeanor.”





Non-Disruptive v. Disruptive

- Non-Disruptive Conduct
 - Protest at large rally
 - Silent and fleeting Nazi salute
 - Mentioning public employee names
 - The use of profanity without disrupting or impeding meeting
- Disruptive Conduct
 - Emptying gallons of trash on floor
 - Unduly repetitious or largely irrelevant speech
 - Threats of violence and potentially violent behavior





In Summary

- Individuals or groups may be removed or ejected from a board meeting if he/she/they “actually disrupt” the meeting (cannot be content based though)
- Give warnings and make out-of-order declarations/findings before removing individuals or groups
- Consider crafting rules of order and procedure that comply with statutory and constitutional law

