
PORTLAND, OR
IMLA's 87th Annual Conference
Civility in
Local Government

CIVILITY *in* LOCAL GOVERNMENT

Moderator: Robert Palmer

General Counsel & Director of Government Affairs

IOWA LEAGUE of CITIES

NATIONAL CIVILITY SUMMIT FOR LOCAL GOVERNMENT

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AGENDA

I. **Frame the issue:** why are we here?

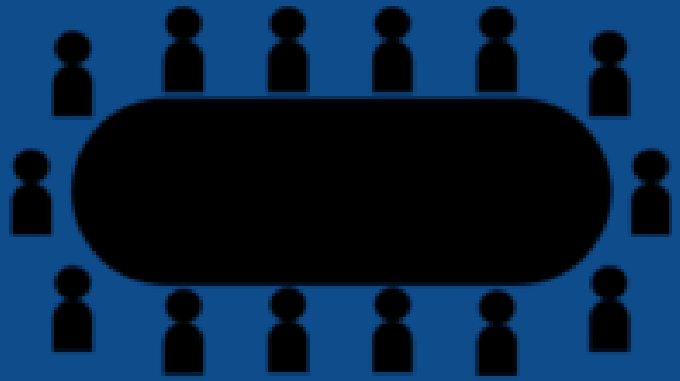
I. **Premeeting:** Prepare *before* an issue arises?

I. **During the meeting:** strategies to maintain order and facilitate a productive meeting?

I. **What happens when it all goes wrong?**

Why are we here?







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Why discuss Civility?

- Surveys / anecdotal evidence: perception is that incivility is increasing

- Over half of cities have not had a major disruption.
  - BUT - those that have wish they had the policies in place when it occurred.

- Local governments are looking for policies and practices that:
  - facilitate civil meetings and
  - promote civility in their communities.

- *This is an exciting subject*

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What's happening?

- Not respecting designated opportunity to speak / time limits
- Insults, threats, harmful language
- ***Heckler's Veto*** Actions at/during a meeting with the goal of intentionally disrupting the meeting to prevent business from occurring

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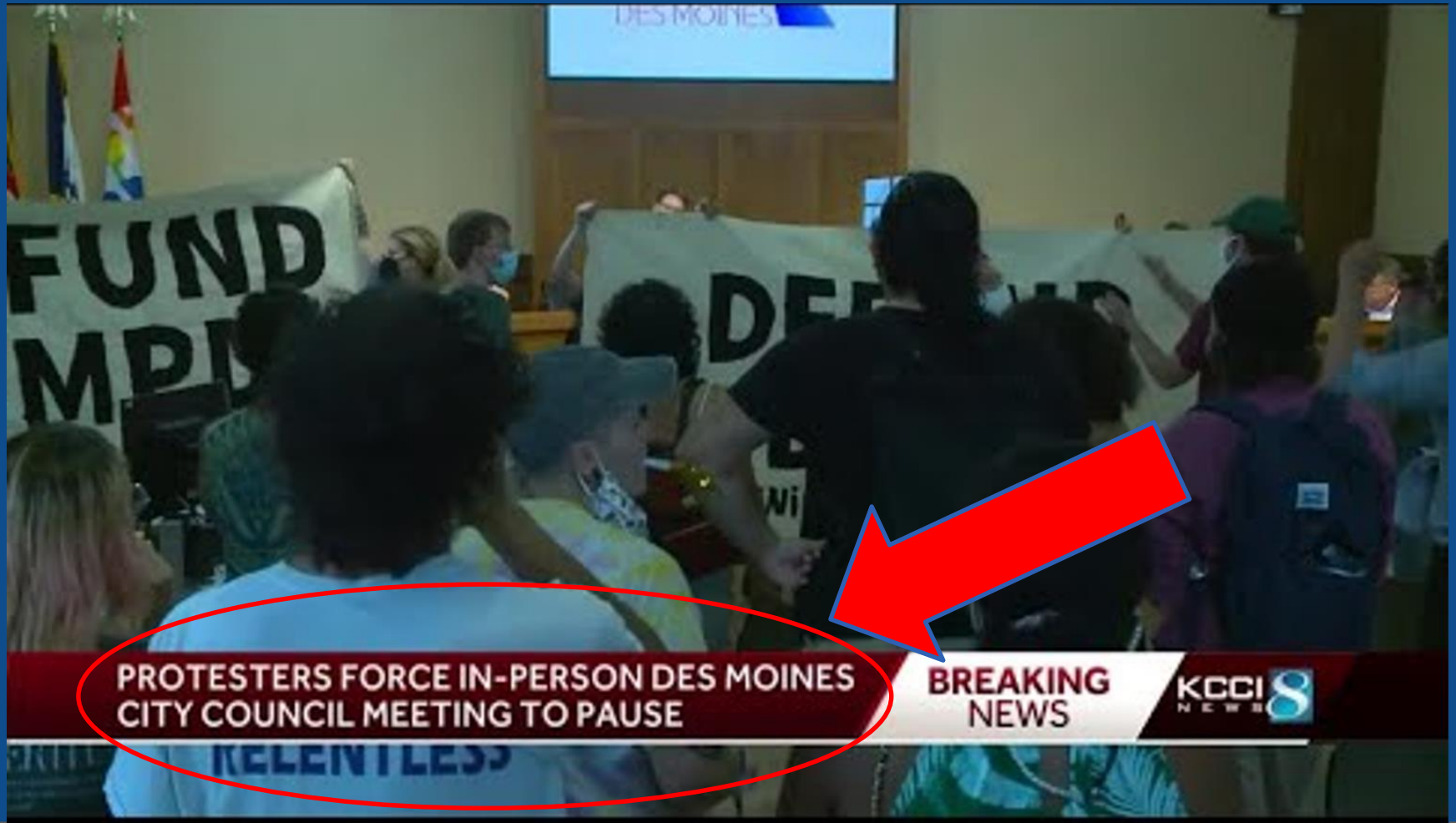

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What impact does this have?

- Makes meetings unproductive - cancellation, delays, confrontation

- Scary for elected officials and other members of the public
  - Hard to attract talent
  - Dissuades other members of the public from participating in Government

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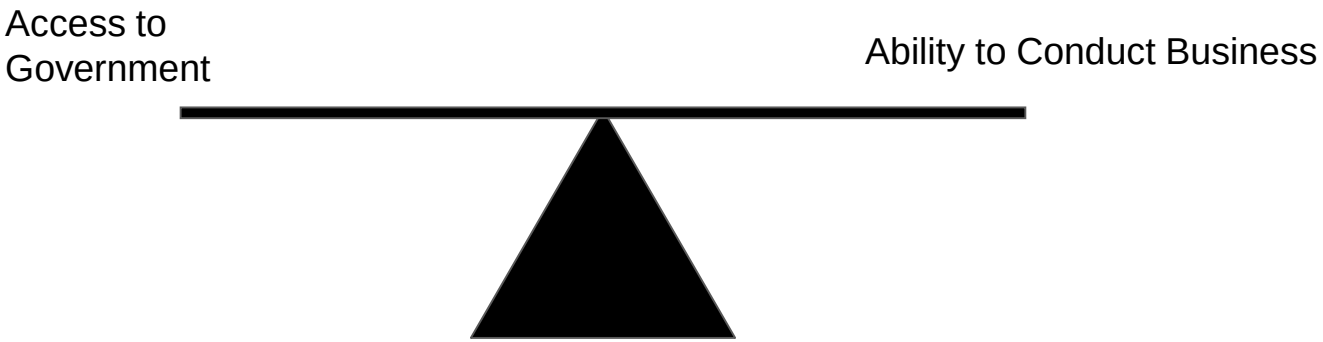

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LOCAL POLITICS

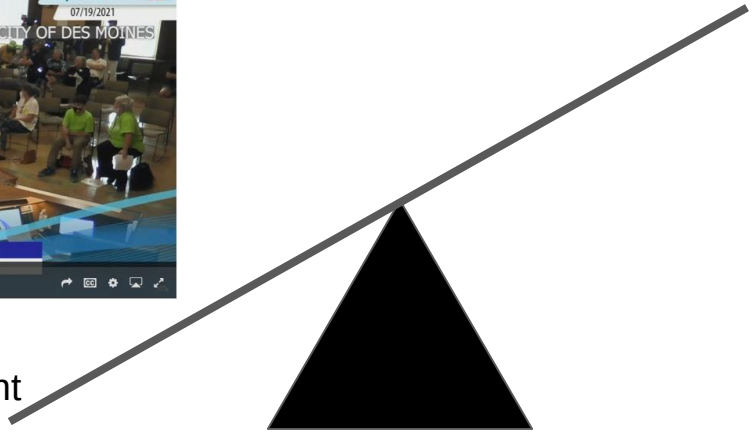
3 arrested for disrupting Des Moines City Council meeting

A juvenile was also arrested during the meeting but was then released to their parents.



Ability to Conduct Business

Access to Government



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Des Moines City Council OKs rules limiting council members' actions, public requests

The procedural rule changes adopted Monday make it harder for Des Moines City Council members to individually propose changes without support from their peers.

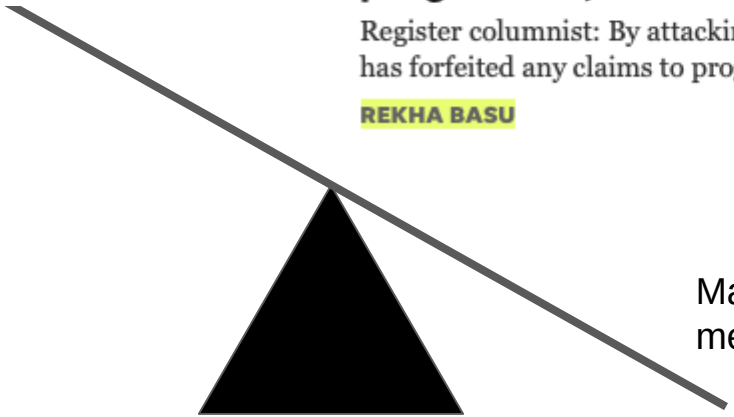
DES MOINES **Melody Mercado** Jan. 27, 2022

■ FOR SUBSCRIBERS

Rekha Basu: Shame on the Des Moines City Council for scheming to silence its only progressive, Black member

Register columnist: By attacking Indira Sheumaker, the rest of the council has forfeited any claims to progressiveness.

REKHA BASU



Maintaining order at a meeting

Best Approach to Balancing Act: Be Prepared



Why are you telling us?

As I said, it's an exciting subject…

Excited elected officials = work for city attorneys

And city officials are excited about this!

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Is this a National subject?

State laws and local ordinances may differ, but the challenges local governments are facing and the best practices to overcome those challenges are nationally applicable.

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[Salt Lake City]

[San Francisco]

[LA]

[Burlington Vermont]







Solution?

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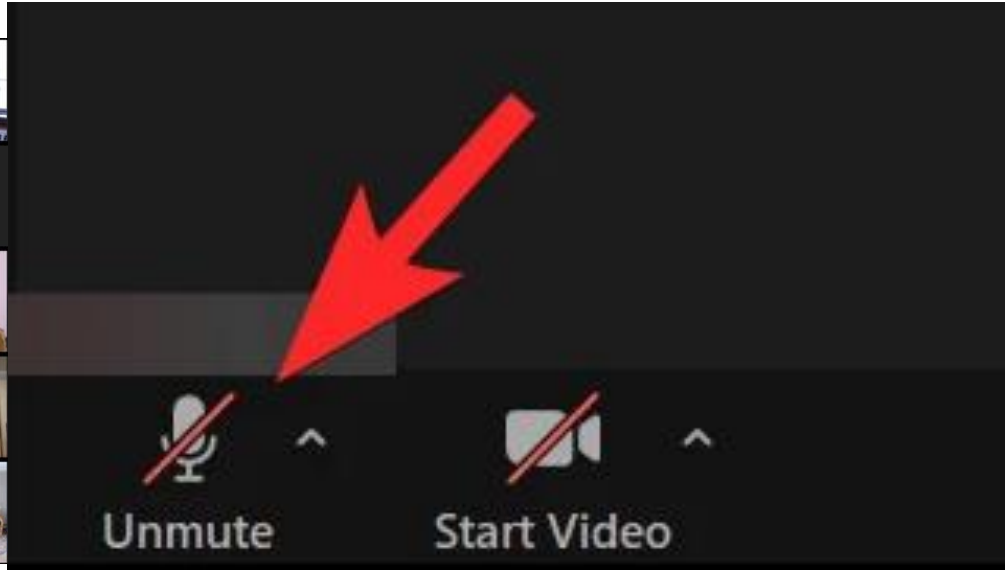



What is the role of a local government in relation to Civility?

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It is the role of the elected officials to step up and guide solutions address this.

It is the role of the City Attorney to be able to guide and inform the elected officials of the viability of options.

Questions to consider:

What is the role of the city attorney in assisting the city, its elected officials, and its staff in promoting or advancing civility?

- During a public meeting?
- Developing policies for engagement?
- Policies for elected official conduct?

What legal considerations exist for a city?

- Federal law?
- State law?

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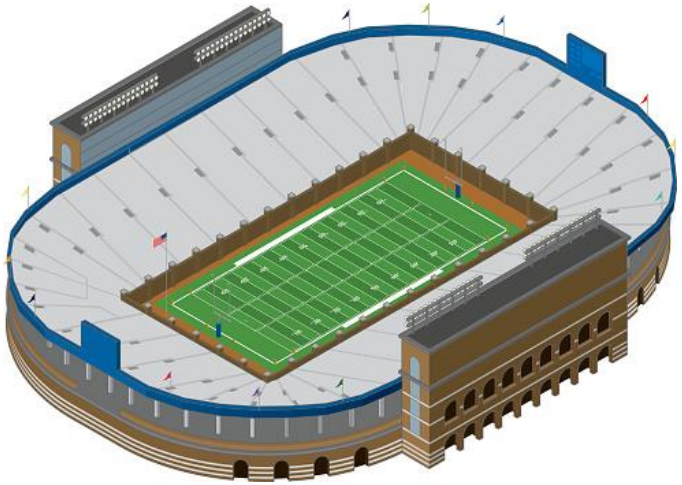

- Structure (forum, rules), Facilitation (meetings, sessions, committees, feedback solicitations)
- The “Stadium” where the game is held, under the rules set by the Local Government:
  - Representative Government is the Game
  - Citizens are the audience
  - Elected officials are the coaches
- **City provides the stadium and the rules of play**
- **<u>Policies</u>: Have, Know, Follow**

Concerns raised about “Civility Initiatives”

“Civility” is in the eye of the beholder. “Civility” is broken (from the viewpoint of elected officials) **if members of the public don’t agree with the governing body. “Incivility” can be a valid demonstration of frustration at feeling oppressed, a response to the feeling that a governing body is indifferent, or in response to the feeling that there are a lack of acceptable avenues to be heard. “Civility" in the face of oppression is the definition of being oppressed**.

Pre-meeting

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Have the policies

Know the policies

Follow the policies

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Types of Policies

- Standards for civil discourse:
  - Elected officials / Public
- Public Comment:
  - Let's consider:
    - Registration?
    - Time limits?
    - Location of comment period - before, during, at end of meeting?
    - Mayoral recognition of speakers?
    - Podium approach?
- Ejection/removal of an attendee who becomes disruptive, but know your state law and use judiciously

Pre-Meeting: Be Prepared



Adopt Public Comment Rules & Modify Agenda

- DO IT NOW, not later or in the moment - your city is one incident or one election away
- Encourage council to discuss (even make it part of a workshop) what works for council and the balancing between getting business done and engaging residents. This helps get all members on same page and may avoid “disruptor”. Not all elected officials think the same.
- Decide what part of meeting public comment will occur and if want a separate comment time for agenda items.
- Coach council how modeling of behavior makes a difference for rules of decorum - consider aspirational code of conduct for council

Pre-Meeting: Be Prepared

Adopt Public Comment Rules & Modify Agenda

- Include in the policy the parameters -
  - sign up to speak (name, don't fight about address)
  - time limits
  - total amount of time (if included)
  - suggestion of a spokesperson for repetitive comments
  - request for no profanity or personal attacks
  - remind the council there to listen
- Include in the policy the expectations for Rules of Decorum, including clarifying unacceptable conduct and the importance of order for the public comment period to enable council to hear everyone. Include in policy an overview of process if disruptive behavior.

Pre-Meeting: Be Prepared



Modify Agenda

- Put policy on the agenda
- Have mayor read at the beginning of the meeting
- Incorporate on agenda a “Reports of” on Agenda to close the loop on comments made at previous meetings. This makes public feel there is a place for the loop to be closed and rebuilds trust.

Pre-Meeting: Be Prepared

Post Policy & Educate to Follow

- Clearly post the policy (posted as many places as possible) - community bulletin board, website, on sheet in room
- Have Sign in Sheet to avoid raising hands & calling on people, put policy on sign in sheet
- Remind mayor and all council about importance of enforcing time limits. Run practice meetings.

Pre-Meeting: Be Prepared

Post Policy & Educate to Follow

- Educate council members on what they can say if time limit going over - being an ally to the mayor
- Start enforcing in “good times”, so not all of a sudden enforcing during challenging times
- Discuss with mayor and council how to take necessary breaks, and educate the mayor about giving a warning first. Remind mayor and council to NOT adjourn.

Pre-Meeting: Be Prepared

Anticipate Highly-Charged Meetings

- Educate council members and staff ahead of time of possibility of highly charged meeting.
- Remind all council and staff of the public comment rules, and plan to collaboratively enforce the rules
- Discuss being gracious and not defensive at start of meeting

Pre-Meeting: Be Prepared

Anticipate Highly-Charged Meetings

- Work with the mayor on reading the rules and a prepared statement acknowledging that the meeting is full, thanking public for being there and including the expectations of all in the room with an explanation of the process if there is a disruption.

- Staff coordinate with local law enforcement or sheriff and make sure there is a police presence

- Discuss with public safety/law enforcement the plan for disruptions

- Consider providing alternatives to “hear” public

Clown at County Board Public Comment



During meeting

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Have the policies

Know the policies

Follow the policies

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What is a meeting:

- City council meetings are limited public forums, subject to reasonable limitations as to **time, place, and manner** of speech.

Set the tone

Lead by Example:

- Listen to the other side
- Focus on issues, not people or personalities
- Avoid questioning the motives of others
- Be polite

Civility pledge or statement

- Sets expectations, and tone
- Something to reference back to
- Survey: majority of respondents that have a pledge say it is beneficial.

City council Meetings

Public Comment:

- By creating and incorporating a public comment period, a city council creates a limited public forum. *Perry Educ. Assn. V. Perry Local Educators' Assn.*, 460 U.S. 37 (1983).
- Before, during, or after?

Listening is the Key

- Public wants to be heard
- Show them respect and give them opportunity
- Have clear Comment/Open Forum policy as discussed earlier
- Don’t play favorites in following policy
- Have at least one copy of all materials at meeting for review (commonly not known by councils)
- Include a “Reports of” section on the Agenda – allows council to close loop at next meeting and show public working on issues
- Offer alternatives to “hear” public

When it all goes wrong:

How do you handle a disruptive council meeting?

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Have the policies

Know the policies

Follow the policies

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How to respond?

- Preparation
- Opening statement (summarize public comment rules and expectations)
- Recess / adjourn

How to respond?

- Have list of options/motions ready (e.g., motion to revise agenda or approve multiple items at once)
- Proceed despite disruptions, if possible
- Public safety concerns (warn ahead of time; as last resort, ask disruptors to leave; can be trespass violation if they refuse)

An Example of Responding to a Disturbance

June 11, 2019: City of Austin Planning Commission Meeting

- Applicant wants to rezone 97 acres of property for a variety of uses.
- Existing residents are concerned about the redevelopment of the area.

Green v. Nocciero, 676 F.3d 748 (8th Cir. 2012)

- Green, a well-known civil rights activist, was arrested when he refused to leave a public meeting of the St. Louis School Board.

- The Court held, “a person who is disruptive may be asked to leave a government facility and may be arrested for trespass if he refuses to leave.”

- As a result, Officers had probable cause to arrest the disruptive individual for trespass under Missouri law after he disobeyed the rules and refused to leave the meeting.

Farnsworth v. City of Mulvane, 660 F.Supp.2d 1217 (D. Kansas 2009)

- Plaintiff sued after the mayor denied her an opportunity to ask a question about the construction of a casino and the police escorted her out of the meeting.
- There were rules in place but the mayor failed to follow the rules and his conduct constituted view-point discrimination.
  - Concerns with maintaining order.
  - mayor did not want to discuss social ills from gambling.
  - mayor made assumptions about what Plaintiff would say because he knew her stance on building a casino.
- The government must abstain from regulating speech when the motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

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

- Plaintiff sued the city, police officer, and elected leaders for violating 1st Amend. He was ejected and arrested after:
  - giving a silent Nazi salute; and
  - whispering to another meeting attendee.
- City argued that only certain portions of the meetings are limited public forums and once the public comment period concludes no members of the public have 1st Amendment rights.
  - Officer who arrested Plaintiff argued for immunity b/c reasonable officers in his position could have disagreed on the issue of PC - Court agreed.
  - Elected officials argued for immunity - Court disagreed because ejecting someone is not a legislative act. (Four part test to determine whether the action is legislative in nature.)

Moms for Liberty – Brevard County, FL v. Brevard Public Schools, 582 F.Supp.3d --- (2022 WL 272940) [on appeal at 11th Cir.]

- School board adopted a Public Participation Policy that:
  - requires all statements at Board meetings to be directed to the Board Chair, not individual board members.;
  - provides that Board Chair may:
    - interrupt, warn, or terminate a participant's statement when the statement is too long, personally directed, abusive, obscene, or irrelevant; and
    - request that an individual leave a meeting when that person does not observe personal decorum.
- Trial court ruled that the policy is both content- and viewpoint-neutral.
  - Record of even-handed application of the policy was important.
  - Provided warnings before ejecting one participant.
  - Allowed ejected individual to attend subsequent meetings
- Trial court ruled that the policy is not overly-broad or vague.
  - Policy does not affect a substantial amount of constitutionally protected conduct.
  - Policy is not vague – Board Chair explains it regularly.

Summary

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Have the policies

Know the policies

Follow the policies

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Summary

- **Adopt Public Comment Rules**
  - Have a clearly posted policy (posted as many places as possible) and summarize at beginning of meeting
  - Have sign-in sheet to avoid raising hands & calling on people
  - Do not engage – just listen
  - Have a time limit & enforce. Start in “good times”, so not all of a sudden enforcing during challenging times
  - Take necessary breaks, but with a warning first – Remember: do NOT adjourn
  - Incorporate a “Reports of” on Agenda to close the loop on comments made at previous meetings

- **Rules of Decorum**
  - Clarify unacceptable conduct
  - Have mechanism to warn individual
  - Explains removal under policy

Summary

- **Anticipate Highly-Charged Meetings**
  - Educate councilors and staff ahead of time
  - Police presence
  - Read rules
- **Warn Before Ejection**
- **Remain Calm & Carry On**

Questions?