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## FEATURE:

### 5th Circuit Holds Decorum Policy Adopted by City Vague, Overbroad, and Viewpoint Discriminatory

### *Merriott v. City of Bossier City,* No. 25-30325 (5th Cir. June 25, 2026)

This case is essentially a textbook example of what not to do when handling a public comment situation as a local government attorney. Weston Merriott, an online journalist in Bossier Parish, began attending Bossier City Council (Council) meetings in 2023 to advocate for term limits and criticize delays by the Council in adopting them. At the first meeting, the City Clerk read decorum rules limiting public comment to three minutes per agenda item with up to four speakers per side and directing the Sergeant at Arms to maintain order. At the next meeting, Merriott criticized the Council's decision to seek outside counsel and questioned that counsel's impartiality due to past representation of Councilmember David Montgomery, prompting interruptions by Montgomery and Councilmember Jeffrey Free.

In the next meeting, the Clerk read a new policy barring "personal, impertinent or slanderous remarks" and "becoming boisterous," requiring remarks to be addressed to the body, and authorizing removal or barring further audience unless allowed by majority vote of the Council. When Merriott again criticized the Council, Free and Councilmember Jeffrey Darby interrupted him, instructed him to stay on topic and ask only questions, and had the Clerk reread the procedures. The following meeting, during an agenda item on authorizing legal action to test the petition's certification, Merriott questioned the need for action and again raised impartiality concerns because the outside counsel the Council sought were the same attorneys Montgomery used privately. Montgomery twice sought his removal but Free allowed him to finish while warning him to stick to the agenda and avoid accusations. Meeting minutes later characterized Merriott as disruptive, which he objected to, but the Council approved the minutes unanimously.

A secret post-meeting conference among councilmembers was recorded, capturing Darby and Montgomery discussing changing public comment rules, asking the City Clerk to draft rules to eliminate comment at each agenda item, and informally counting likely votes in Free's absence.

After the recording surfaced, the City Attorney threatened FBI wiretapping charges to silence discussion and launched an internal investigation directing no discussion without legal counsel present. In response to Merriott's open meetings complaint, the City Attorney confirmed Montgomery threatened removal due to alleged rule violations and confirmed that four councilmembers met after the meeting to change public comment rules in reaction to Merriott's remarks. Merriott sued the City, the City Attorney, and councilmembers Free, Montgomery, and Darby under § 1983 and Louisiana's Open Meetings Law, alleging facial and as-applied First Amendment violations and state law claims. The district court granted a Rule 12(b)(6) motion and dismissed all claims, after which the City reenacted a substantively similar policy limiting only barring individuals during the meeting in which they were allegedly disruptive.

**Legal Question(s):**

1. Whether Merriott plausibly alleged that the City Council's meeting policy barring "personal, impertinent or slanderous remarks" and "becoming boisterous" is facially overbroad in a limited public forum.
2. Whether prohibiting "personal," "impertinent," and "slanderous" remarks constitutes impermissible viewpoint discrimination

**Holdings:**

The court held that the City's "Decorum" policy is facially overbroad and unconstitutionally vague as to its prohibitions on "personal," "impertinent," and "slanderous" remarks and its ban on "becoming boisterous," and that these provisions (except boisterous) also constitute impermissible viewpoint- and content-based restrictions in a limited public forum.

**Analysis:**

Reviewing de novo, the Fifth Circuit addressed the constitutionality of the City's meeting policy in a limited public forum. The first challenge was overbreadth. To prevail on overbreadth, Merriott would have to identify applications beyond his own situation that could violate the rights of a potential third party. Merriott accomplished this goal by pointing to the policy's bans on "personal," "impertinent," and "slanderous" remarks and on "becoming boisterous," all of which lacked limiting principles. The court found that "personal remarks" could encompass a wide range of protected and relevant criticism of officials, rendering the scope nearly limitless. The court concluded that the bans on "personal," "impertinent," and "slanderous" remarks sweep in core protected speech and are facially overbroad, and that a standalone ban on "becoming boisterous" is overbroad because enforcement turns on whether officials are annoyed. Finding no textual basis for a narrowing construction, the court held that the policy encompasses a substantial number of unconstitutional applications relative to any legitimate sweep in a limited public forum intended for debate. The common thread throughout the opinion was the general vagueness of these terms, which the council could invoke at almost any time.

On vagueness, the court held the policy fails to give reasonable notice and invites arbitrary enforcement, as "personal," "impertinent," "slanderous," and "boisterous" are undefined and hinge on subjective listener sensitivity. Citing *Reeves v. McConn*, 631 F.2d 377, 380 n.1, 387–88 (5th Cir. 1980), the court deemed "slanderous" vague and overbroad, and distinguished *Roy v. City of Monroe*, 950 F.3d 245, 253 (5th Cir. 2020) because that ordinance had contextual limits absent here.

On viewpoint discrimination, the court held that prohibitions on "personal," "impertinent," and "slanderous" remarks are viewpoint-based because they target offensive or disparaging speech, while "boisterous" is viewpoint-neutral. As content restrictions in a limited public forum, the

viewpoint-based bans are also unreasonable and impermissible, whereas the "boisterous" prohibition is not facially content-based. Merriott also filed a Monell claim, in which the court held that he plausibly alleged an official policy promulgated by the policymaker and that the policy was the moving force behind threats of removal and interruptions under it. On First Amendment retaliation, the court found Merriott plausibly alleged injury because he self-censored due to fear of removal and retaliation, satisfying the "ordinary firmness" standard. The retaliation claim was cognizable under Monell based on the three policy-based interruptions, but not based on the unpassed proposal to eliminate agenda-item comments.

***Merriott v. City of Bossier City***

## SHORT SUMMARIES:

### 7th Circuit - Mass Actions - Class Actions - Local Event Exception – Jurisdiction

A significant fire allegedly damaged the properties of a large number of people in Richmond, Indiana by emitting noxious gases and requiring evacuation of the area. Over 100 Plaintiffs sued various Defendants in state court in tort. The Defendants moved to remove the case to federal court under the Class Action Fairness Act. In § 1332(d)(2). In reviewing the pleadings, the magistrate judge requested briefing on whether one of the exceptions to federal jurisdiction applied. After review, the court remanded the case to state court. The City of Richmond, which owned several of the sites where the fire occurred, requested authority to appeal and was granted it. On appeal, the panel concluded that the event was a local event under the statute and affirmed the remand. The court opined that the question was jurisdictional, so could be raised at any time.

***Craig vs. City of Richmond***

### 2nd Circuit - Emergency Demolition - Due Process – Takings

This case involves a decision to demolish a building that sat abandoned in the city and became a site for illegal drug use. After a few incidents and an overdose death, the city determined to demolish the building as an emergency. It gave notice to the owners and demolished the building without a pre-demolition hearing. The property owner sued the decision maker and the city. The lower court granted partial summary judgment to the Defendants on the Procedural Due Process, Substantive Due Process, and Section 1983 Monell claims. The panel reversed, concluding that disputed facts regarding the building's condition required a trial. The case is worth a read for those handling similar cases.

***Levin vs. City of Buffalo***

### 5th Circuit – Land Use – Short Term Rentals

In a big win for local governments attempting to make housing more affordable, the 5th Circuit held that Texas law does not recognize a protected property interest in the right to lease one's home on a short-term basis.

Plaintiffs, New Braunfels property owners, appealed summary judgment for the City after challenges to a zoning ordinance restricting short-term rentals in residential districts. The ordinance, which was adopted in 2006 and amended in 2011, bans rentals under 30 days in residential zones without a zoning change. The plaintiffs bought their properties after the ban took effect, in 2011, 2017, and 2018. Most plaintiffs applied for rezoning to allow short-term rentals and were denied after public comment and planning commission review. The district court granted summary judgment to the City after discovery on due process and equal protection claims under the U.S. and Texas Constitutions.

On due process, the court held that plaintiffs must identify a protected property interest under state law to proceed on federal and Texas due process theories. Unable to meet this standard to the court's satisfaction, the court held that the due process and due course claims fail as a matter of law.

On equal protection, the court applied rational-basis review because no suspect class or fundamental right was implicated. Plaintiffs argued the ordinance irrationally distinguishes rentals of twenty-nine days from thirty days and treats similar residential uses differently. The court emphasized extreme deference under rational-basis review and the permissibility of legislative line drawing. The City's stated objectives included preserving residential character, protecting health and safety, conserving property values, and ensuring appropriate land use. The court held that these are legitimate governmental interests that can rationally support restricting short-term rentals in residential zones. The twenty-nine versus thirty-day cutoff and geographic zoning lines were deemed reasonable legislative line drawing, not subject to second-guessing. The record reflected a deliberative legislative process with public hearings and complaints about short-term rentals in neighborhoods. The Fifth Circuit affirmed the district court's judgment in full.

***Marfil v. City of New Braunfels***

## Pennsylvania Supreme Court – Gambling – Skill Games

I typically leave rulings from individual states out of eNews because their applications tend not to have the influence or reach necessary for IMLA's national membership. However, I'm going to make an exception here because I've seen members talk about skill games/vape/kratom shops as a growing issue within their communities, and this case can serve as another data point for those of you trying to regulate these kinds of businesses on behalf of your local governments.

For those unaware, skill games resemble slot machines but include a "skill" component called "Follow Me" that gives the player just enough agency that the games were not considered games of chance under PA law but games of skill. As a result, these games have proliferated enormously across PA and other states where they are considered technically legal. However, the PA Supreme Court held that, under a plain reading of PA's Crimes Code and Gaming Act, skill games are considered gambling. The court found that the elements giving players agency were not meaningful or significant enough to be legally distinct from a regular slot machine. Importantly, the court included a 120-day stay of enforcement as a result of this ruling, giving the legislature time to amend the codes if they so choose.

**Note:** If you have found a recent case from your own state courts that you believe might have ramifications beyond your state, please pass it along to the IMLA legal team for potential future inclusion in eNews.

***In re: Three PA Skill Amusement***

## US Supreme Court – Fourth Amendment – Geofence Warrants

This case has already been briefed by me and our Executive Director, Amanda Karras, via the listservs, but it is worth mentioning here as well. After Okello Chatrie robbed a bank in Virginia, police were able to secure a geofence warrant that geolocated his phone as present in the bank during the robbery. The Chatrie sought to suppress the evidence obtained pursuant to the warrant. The question before the Supreme Court was whether Chatrie had a protected Fourth Amendment interest in his location history data. The court held that he did. Importantly, the case was remanded to the 4th Circuit to determine whether this warrant, in particular, was sufficiently particularized and satisfied probable cause under the Fourth Amendment.

***Chatrie v. United States***