

Allen Nitschelm <allen@thehomesteader.com>

3:01 PM (17  
hours ago)

to Nina, Steve, Stow, Scott, Janet, Peter,

Hi Nina,

Thanks again for meeting with us last week and for providing your case law research, which Allen has read. We also received a statement from Peter Ashton confirming everything we talked about with you, and making it clear that he intends to enforce his "no use of names" rule in all circumstances, including for town elected and appointed officials. Such individuals must be referred to by title or some other description, but not their name. He claims this rule is not about preventing criticism, but about trying to retain some civility.

Since Town Meeting is next week, the time to debate this is over. But we have a few questions that are likely to come up which we wanted to ask you in advance so we can work on the presentation and be prepared for your answer if we request Town Counsel's opinion on any of the Moderator's rulings.

1. As we repeatedly made clear during our meeting, it is going to be very cumbersome to try to not use the names of officials. How do we refer to someone who doesn't have a title, or where the title is unknown to the audience, or shared with others? We asked you this question and you agreed that this might be a problem. **We believe it is more than a problem.** We believe Mr. Ashton's intent is to make it more difficult, unclear, and cumbersome to talk about the official conduct of our officials. Specifically, how is a speaker supposed to identify someone who is not sitting on the stage, or their title is unknown or not officially used? Voters will be deprived of following the argument or even knowing to whom it pertains if we can't use the universally understood identification of an individual, which is their name.

2. You have stated that criticism of officials (and we are referring to their actions and decisions, not personal "ad hominem" attacks) is protected by the First Amendment. Therefore, if a rule prevents the exercise of this right a court could overturn it. How would that affect the vote on an Article which was taken after the Moderator thwarted someone's attempt to make a comment using an official's name? Or even if someone filed a complaint claiming that they were prevented, by a "no names" rule from participating in the debate about an Article, and challenged the vote? Could a court declare the vote invalid, weeks or months after Town Meeting? What if this was something such as the School District assessment? Have such unintended consequences of trying to enforce a "no names" rule been considered?

3. Moderator Ashton insists that this rule is just meant to protect civility. We all know the recent history of how and why this rule was put in place. Allen, who has reviewed the information that you gave us, says: "I would assume a court would look carefully at this history and then rule in our favor. The five cases you provided **all support this interpretation of looking at the intent of the government when crafting a rule:**

A. In Deggett v Hooper, the opinion states that "mistakes of judgment made by a moderator that **do not result from wilful, wanton, malicious or dishonest conduct** are not reversible by a court." (emphasis mine.) It later states that "the judgment of the moderator **if made in good faith**...was not subject to review by the court." (emphasis mine.) "[If] his action was **neither malicious nor dishonest**, [the court] cannot substitute its judgment for his." (emphasis mine.)

B. The Rusty Nail case is mostly about plaintiff getting attorneys' fees but contains this gem: "[A] municipality becomes potentially liable under 42 U.S.C. ss 1983 only where the constitutional violations are undertaken according to **official municipal policy**." (emphasis mine.)

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From the Internet:

[42 U.S. Code, Section 1983 - FindLaw](#)

[criminal.findlaw.com](#) › [Learn About The Law](#) › [Criminal Law](#) › [Criminal Rights](#)

If a state actor uses the legal system to deprive you of your constitutional rights you may have a cause of action against them.

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C. In Curnin v Town of Egremont, the concluding paragraph states, "there is **no evidence** of [viewpoint discrimination.] **No evidence** has been presented to suggest that Egremont is attempting to 'give one side of a debatable public question an advantage in expressing its view.' " (emphases mine.)

D. In the Rhode Island Carlow v Mruk, the court writes, "The bedrock principle of viewpoint neutrality demands that the state not suppress speech where the real rationale for the restriction is disagreement with the underlying ideology or perspective that the speech expresses...

"The essence of viewpoint discrimination is not that the government incidentally prevents certain viewpoints from being heard in the course of suppressing certain general topics of speech, rather it is a **governmental intent** to intervene in a way that **prefers one particular viewpoint** in speech over another perspective on the same topic." (emphases mine.)

"[T]here is **no evidence** that the prohibition on nonresidents speaking was viewpoint based." (emphasis mine.)

"There is simply **no basis in the complain for an inference** that ideology sparked the...ban" (emphasis mine.)

"[The plaintiff] has offered **no evidence** that the defendant's...policy was based on bias against its viewpoint..." (emphasis mine.)

"[T]here is **no indication that [the defendant's] action was precipitated by the content of [the plaintiff's] message**." (emphasis mine.)

"The record contains **no indication**, other than the plaintiff's bare allegations, that the *content* of her remarks in any way **motivated the enforcement of the ordinance against her**." (emphases mine.)

E. In MacKen v Town of Canton (MA), "The important point is that in his rulings and behavior [the moderator] should show impartiality, a basic fairness."

"The plaintiffs have **failed to demonstrate that the moderator acted other than in good faith** in the conduct of the proceedings." (emphasis mine.)

If I haven't made my point perfectly clear, we have a large body of evidence that shows Mr. Ashton intended to prevent lawful, Constitutionally protected speech during the reading of his preamble last December, he then prevented such speech when I went to the microphone, and now he has changed his rule to try to continue to do the same.

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The viewpoint that Mr. Ashton is trying to promote is that our elected and appointed officials are doing a fine job, do not deserve any public criticism, and therefore should be trusted to continue to receive support for their budgets and policies. In some specific instances, we have the opposing viewpoint which was suppressed last December and will likely continue to be suppressed if Mr. Ashton gets to keep his "rule" of not allowing the use of names to specifically identify the officials who deserve public criticism.

4. To repeat a previous point and to ask the question simply: Since the votes at Town Meeting are subject to review by the AG's office, would that include consideration by the AG of a possible violation of speakers' Constitutional rights if, during the debate, opponents are prevented from speaking by the Moderator enforcing his "no names" rule?

We look forward to seeing you again next Monday.

Allen and Charlie