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## **Public Comment at Meetings of Local Government Boards**

### Part One: Guidelines for Good Practices

■ John Stephens and A. Fleming Bell, II

### Part Two: Common Practices and Legal Standards

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# Public Comment at Meetings of Local Government Boards

## Part One: Guidelines for Good Practices

John Stephens and A. Fleming Bell, II

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*An interested citizen regularly attends board meetings and offers many comments and criticisms. What is the best way to allow him to speak and yet keep the meetings moving?*

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*An angry group of citizens hold up banners and chant slogans during a council meeting. Can the board restrict the demonstration? How can it be kept under control without infringing on the citizens' constitutional rights?*

❑  
*At a public meeting, a citizen charges a government employee with malfeasance. How can the charge best be handled?*

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**B**eing in the public eye as a governmental official—county commissioner, town councilor, school board member, or citizen member of a health, planning, or similar government board—brings with it the joys and the tribulations of dealing with citizens and citizen groups in public meetings. It may seem that citizens come to a meeting only when they want to demand action on a problem. Board members want to be responsive to citizens' concerns, but, as responsible stewards, they must constantly keep in mind the general public good. In addition, they must conduct the board's business in ways prescribed by law. Nevertheless, governmental officials need feedback from the community and therefore should welcome citizens' comments and complaints.

This two-part article addresses public comment at regular meetings<sup>1</sup> of local government bodies in North Carolina. Public officials need to understand what the

law requires government boards to do and forbids them to do as they listen to citizens. Public officials also need to understand the principles of good communication and effective management of meetings. Part One of this article addresses how boards can foster positive exchanges with citizens. It reports on an Institute of Government survey of how North Carolina governmental units provide information about the government, including details on how citizens may speak at board meetings, and it applies general guidelines on citizens' comments to three particularly difficult situations that can arise when citizens address local government boards. Part Two, which will appear in the next issue of *Popular Government*, will discuss the law on public forums and free speech. It also will report on the ways in which municipal and county boards and boards of education typically receive citizens' comments.

Local government bodies, both elected and appointed, are always on the hot seat for several reasons beyond their control. First, they are more accessible than state and federal officials. Even if local policies and practices are guided by rules set in Raleigh or Washington, citizens who dislike those policies and

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practices may take out their resentment on local officials. Second, most citizens perceive that local government has a more direct impact on their day-to-day concerns than either the state or the federal government. Most decisions affecting schools, law enforcement, solid waste disposal, roads, recreation, land use, and human services are made at the local level, and they directly touch the lives of people. While state and federal bodies gain attention for large—even global—issues, they usually act at some distance from the daily concerns of citizens, with little immediate effect on the nitty-gritty matters like garbage collection, youth violence, or traffic congestion. Third, citizens tend to come to board meetings only when they are riled up about something—only when something has gone wrong in their lives that they think can be helped by a particular action by their local board.

Today citizens are increasingly disenchanted with governmental performance,<sup>2</sup> but it appears that Americans have greater confidence in their local officials to “deal with problems facing their communities” than they do in state or federal government.<sup>3</sup> Moreover, confidence in local government appears to be holding steady, while confidence in the problem-solving capabilities of some religious organizations, nonprofit groups, and local media has declined markedly in recent years.<sup>4</sup>

Unfortunately, citizens’ confidence even in local government is low. Only 24 percent of respondents in a national poll said they had “a great deal” or “quite a lot” of confidence in local government’s ability to deal with problems facing their community, but 44 percent had a high confidence in their local schools to handle problems. Churches and voluntary organizations also received higher “confidence scores” than local government.

The only general public-opinion figures for North Carolina local government are more than fifteen years old. In 1980, 58 percent of citizens rated the performance of their mayor as excellent or satisfactory; 12 percent said it needed improvement; and 25 percent said the performance of their city council or board of county commissioners needed improvement. In a Southern Focus poll covering several southeastern states that was conducted in spring 1995, nearly 40 percent believed that local government was doing an “excellent” or “good” job. Another 40 percent rated local government performance as “fair,” and 14 percent said it was “poor.”

Thus citizens who come to a meeting of a local public board may be skeptical about stating their concerns and sharing their ideas. Many North Carolina

public officials lament that they hear only from the citizens dissatisfied with local government, and citizens at public meetings may doubt that they will be understood or have any impact on the problem they face. It seems critically important for boards to know both how the law says they must behave toward citizens at board meetings and how they can make participation by citizens as constructive as possible.

Public officials should recall that public comment is only one indication of how citizens perceive the fairness and the receptivity of their government. A recent study by the Institute of Government<sup>5</sup> identified such factors as “fairness,” “citizen influence,” and “a problem-solving approach” as criteria by which citizens measure the quality of their government. The study showed a significant gap between what citizens expected in terms of their ability to influence board decisions and what they actually received in terms of response.

Whatever the size of the community, local boards need to find ways of ascertaining the concerns of people who do not come to public meetings. Why do they not come? Are the board’s regular business meetings scheduled at such a time that family and job obligations prevent people from attending hearings and board meetings? There will always be a few vocal people who easily express themselves at government board meetings. Perhaps a balance needs to be achieved between these ready speakers and other citizens by especially encouraging participation by the citizens who do not usually state their views. Given the negative feelings many citizens have about public officials and the workings of governmental agencies, a special effort to secure citizens’ comments may have a long-term benefit for the community.<sup>6</sup> Improved citizen participation at board meetings may yield important information for board members and help educate the entire community.

## Encouraging Constructive Public Comment

### Making Information Available

Keeping the citizens informed about the local government is an important step in maintaining a cooperative relationship with the public. Last year the Institute of Government surveyed local governments about how they communicate with their citizens. Dozens of public information officers and clerks from school districts, counties, and municipalities shared their informational brochures and policy statements.

The following paragraphs describe some of the ways in which North Carolina local governments provide information for their constituents.

Davidson County's board of education has an easy-to-read brochure welcoming citizens, describing board meetings, explaining how to express concerns, and presenting brief biographies of the five-member board. The brochures of both the Davidson County school board and the Guilford County commissioners include a useful diagram of the seating arrangement and the names of the board and the staff.

The Clinton city schools include a one-page summary of information for citizens in their systemwide activity calendar. A section titled "Do you have a question?" encourages parents to seek information and to share their concerns with teachers and principals on most matters. A chart lists twenty-five common topics—bus transportation, student health program, students' special needs, and so on—and indicates two contact people for each subject by position or name. The Clinton schools' grievance policy clearly describes, first, how to seek direct negotiation of difficulties and then how to bring a grievance to the board.

Rocky Mount has a very complete directory of city boards, commissions, and committees, most of which are open for citizen comment and membership. It briefly explains the responsibilities and the membership of each public body—from mayor and council to the inspection services advisory committee—and then lists the names, addresses, and telephone numbers of all members, their length of service, and the dates on which their terms expire. It also states when a board member is ineligible for reappointment.

Newton's brochure reports the meeting schedules of the board of aldermen and ten other boards and commissions, and gives departmental telephone numbers. The brochure also gives information on tax rates and municipal utilities.

Guilford County's brochure notes that while members of some boards must have specific skills or training, the board of county commissioners "desire to reflect a broad participation in appointments [to boards and commissions], including male and female citizens, persons from all geographic areas of the County, and persons representing diverse racial and age groups."

The Chapel Hill-Carrboro school board's informational brochure notes its desire to enable people with various disabilities to participate in board meetings.

Possibly reflecting its rapid growth, Cary offers a brochure that focuses on the process for commenting on rezonings, development plans, and changes to the unified development ordinance. The town council's

agendas for all regular meetings contain a "public speak-out" item that allows comments on any topic, whether or not it is on the agenda. The time limit for speakers is five minutes each.

Some local government boards briefly summarize their last meeting before they formally approve the minutes of that meeting. The Stokes County board of education provides a one-page summary of board action and other events at the meetings even if there was no formal board action on a topic. Its general brochure includes photographs and short biographies of the five board members and the superintendent, and notes that there is a regular public-comment period at each meeting. Summaries of meetings, quickly prepared and easily distributed, can help citizens stay informed.

Some government units produce brochures that explain their budgets. Guilford County's summary of appropriations and revenues for its \$360 million budget includes tax rates by jurisdiction—county, city or town, and fire district. The county also produces a monthly calendar of meetings of all local governing boards, municipal as well as county.

Using telecommunications technology, High Point displays the schedule for its council meetings on a cable television bulletin board and places the council's agendas on its Internet home page. The home page includes information on the city's budget, revenues, and expenditures. A printed brochure welcomes High Point citizens and visitors to the city council meeting, encourages participation, and describes how to address the board. The brochure states the time limits for speakers, notes the need for speakers to give their name and address, and asks them to be courteous and succinct. It also describes the difference between ordinances, resolutions, and motions; states the conditions for going into closed session; and explains the quasi-judicial actions the council takes on property matters.<sup>7</sup>

## What Is "Constructive"?

Most public boards strive for balance on citizens' participation at regular business meetings. Since the meetings concern "the public's business," gaining citizens' remarks and responses to questions is an essential part of keeping government open to the public. On the other hand, the meetings must be controlled so that the board can conduct its business in an orderly fashion and make timely decisions in order to meet legal, budgetary, and programmatic needs.

Within the legal requirements and prohibitions (to

be discussed in Part Two), there are several ways public bodies can handle citizens' comments during meetings. What *does* contribute to encouraging input that will be productive in the eyes of citizens and public officials? This section presents five general guidelines for creating a productive atmosphere at meetings and then specific steps to be taken before, during, and after the meeting. A later section of this article deals with ways of handling the difficult situations that may arise during the citizens' comment period of a board meeting.

First, determining what are "constructive" comments from the public is not a strictly objective exercise. Many citizens approach this question by asking, "Do I agree with it? Did I get what I want? Did the board act the way that I think is best?" Focusing on a specific result is understandable if one assumes that "constructive" = "what is positive for me." But this approach can overshadow other important ways for judging productive exchanges between citizens and public bodies.

Public boards want to conduct well-structured, efficient meetings in which speakers use calm, civil language. But some citizens or citizen groups may believe that dramatic, emotionally charged speech will emphasize the depth of their concerns and help persuade the board to adopt their point of view. Sometimes such language is not a deliberate choice: strong emotions can grow out of perceived threats to a person's health or safety and from feelings of unfair treatment. Since citizens offer their views at board meetings with the aim of persuading those in power to act in a particular way, some people may think that a confrontational style will be most effective: after all, "the squeaky wheel gets the grease." Furthermore, much of today's television entertainment and news coverage highlights how confronting, shouting, and even bullying make people take one seriously and help one get one's way. If "constructive" is judged only in a win-lose, support-or-oppose context, someone is likely to feel pressured, overlooked, or defeated.

There are other ways to judge what is constructive in receiving citizens' remarks. It takes both citizens *and* board members to encourage constructive participation and to create a productive forum. *How* things happen in a meeting can be as important as *what* things happen. Some components of constructive citizen-board interaction are whether

- all relevant information is shared between citizens and public officials;
- citizens believe their views are understood by public officials, and vice versa;

- the nature of a problem is clarified, even though there may be different perspectives on the causes and the consequences of the situation;
- options for responding to citizens' concerns are created or explained (including legal, financial, or other constraints on potential solutions);
- in the end, citizens and public officials all believe that they have received respect.

Obviously, not all of these characteristics can be easily accomplished through a two-minute citizen presentation and a brief response from the board. These standards for creating constructive public comment go beyond a single presentation or meeting and should be built into a larger design of improving government services to citizens and businesses and involving citizens in public issues.

Although the following practical steps focus on how to *receive* public comment and promote a positive atmosphere, it is important to remember the interactive nature of public comment and board action in building citizens' confidence in government.

### Fostering a Productive Exchange

What *can* be done in a regular business meeting to support constructive interchanges? Some small, simple steps can help citizens feel welcome and respected while increasing the likelihood that their remarks will be viewed as constructive by public officials. These steps can be modified to fit the level of formality of a meeting or the general style of the jurisdiction. In some smaller municipalities and more rural counties, where the citizens may well be neighbors or acquaintances, a personal style may be more appropriate than the formal ideas that follow.

One important component for constructive exchanges is information. Public bodies need to make information available to citizens and convey information on a continuing basis in ways that are easily understood. Knowing how to give and receive information effectively is important for public officials who want to create a productive exchange with citizens. The following tips for providing information focus on organization and communication skills:

#### *At the Beginning of the Meeting and Earlier*

Have copies of the agenda and other important materials available for people in the audience. This step helps reduce the inevitable gap between the information available to the board members and the

staff about the subjects being discussed, and the information available to citizens.

Provide an information sheet about the conduct of regular business meetings. A simple brochure can help welcome people and give them guidelines for appropriate and timely public comment. The information sheet also should list other ways for citizens to make their views and concerns known. It should explain what people can do when there is insufficient time in the meeting for everyone to comment or when they want to add to their oral presentations (by using the comment sheet and similar vehicles that are provided at the meeting; see the later section on having a comment sheet available).

Prepare a question-and-answer sheet. Citizens are learning about the workings of local government as they observe and make comments. As part of the information brochure or as a separate document, answers to Frequently Asked Questions (FAQs) should be readily available. The FAQ sheet should address

- board meeting days and times;
- the point in the agenda at which general public comment is welcome;
- other ways of contacting staff or elected officials (for example, office hours, telephone numbers, and addresses for written comments);
- the budget process (including at what point comment from citizens will help determine spending priorities);
- the responsibilities and the meeting dates of other public bodies whose work is related to the board that is holding the meeting (for example, for town and city councils, their planning board or transportation board; for boards of county commissioners, the health board or the social services board. Information on school boards, economic development committees, public safety boards, mental health advisory commissions, and area agencies on aging also could be included as a way to inform citizens about services and about opportunities to participate in government);
- whom to contact on common concerns about land use, animal control, and areas of neighborhood conflict like noise, animals, and parking;
- what can and cannot be handled in a public meeting (that is, the limits for public discussion of personnel and legal issues).

Have a comment sheet available. Many people fear speaking in public.<sup>8</sup> A comment sheet circulated throughout the audience allows citizens to share their

## Example 1: Citizen Comment Sheet

*Purpose:* To allow citizens to share their views, complaints, or questions in written form. A citizens' comment sheet can be especially important when a group must designate a single spokesperson to address the board but individual citizens may have concerns that need attention.

### City of Carolinaboro Citizen Comment Sheet

Your question, comment, or criticism:

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Do you have a solution to propose?

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Do you want someone to contact you to address the problem?

Yes  No

If so, how should we contact you?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Best time to reach you: \_\_\_\_\_

Are there other government services you find confusing or think could be improved? Please describe.

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What has worked well in your contact with government agencies (for example, police, development, and health department)?

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views without having to speak in front of a large group. The sheet can be useful for citizens who simply have questions for a board or the board's staff. It can also be used to solicit the citizens' views on specific topics.

The Institute of Government survey suggests that no North Carolina jurisdiction offers a general comment sheet. Example 1 shows a possible format. Many local governments have sign-up sheets that ask citizens

to identify their concern and to indicate whether others have the same concern. Some jurisdictions have produced flyers describing a grievance procedure. For example, school boards provide a brochure that explains how problems between a parent and a teacher or a principal may be resolved. A comment sheet helps citizens who come to a board meeting as members of a group that can have only one or two spokespersons address the board. They can add relevant information or points that they feel are very important but were not sufficiently covered by their spokesperson(s). The sheet also can be useful for a citizen who merely wants to ask a question of the board or the staff. Since having to reply to these comments might become burdensome for the staff, perhaps a pilot period should be used to test the utility of the comment sheets.

The board should periodically assess whether its policies and practices on citizen participation are working well. Usually such an assessment happens only when a problem arises. A specific controversy may cause the board to evaluate its general procedures, but the controversy may unduly focus attention on one particularly troublesome meeting. Even when things are going well, regularly reviewing how citizens' input is dealt with can reveal new opportunities for more effective meetings.

### *During the Meeting*

The following steps will help the board encourage public participation while moving meetings along smoothly. See pages 10–13 for ways of handling three difficult situations.

**Identify which topics are of interest to which members of the audience.** Many jurisdictions have either an advance-notice requirement for placing a citizen's concern on the board's agenda or a sign-up sheet for general comments. Still, if the audience is relatively small, it can be useful to ask citizens individually which agenda items are of interest to them, or to call for a show of hands on each item. The presiding official should confirm whether the interested people wish to speak or prefer to observe before deciding whether they want to comment. Quickly determining which topics are of interest to the audience will help the board structure the meeting and apportion time for public comment. At the beginning of the meeting, the audience should be told whether public comment will be taken during the board's discussion of a particular agenda item or at some other point in the meeting.

**Announce the limits on public comment.** If the agenda provides a specific time for public comment,

the chair or another board member should open the period by describing what issues can and cannot be handled during this part of the meeting (for example, that personnel matters may not be discussed in public). Even if written material is available on how citizens should address the board, an oral summary of those rules by the presiding person will help set the tone. Citizens should be reminded of the available agendas, fact sheets about local government, and comment sheets for providing supplementary input to the board. Drawing attention to the comment sheet can be especially useful for gathering comments from a large group of citizens.

**Estimate when topics of interest will be considered.** If the board takes comments on agenda items one by one, it should estimate when the topic of interest to a particular group will be considered. Such an estimate will allow citizens to relax or leave the room, if necessary, without fearing that they will miss the discussion of their item.

**Provide background information.** For each topic, and especially for a subject clearly of interest to several people in the audience, the issues involved, the relevant information, and past actions regarding the matter should be summarized. Although such a review may be repetitive for board members, it can help citizens understand the context of the matter before the board. Citizens often say, "I never heard of this before. Why do you have to decide so quickly?" Summarizing how an issue or a problem came to the board's attention, what steps have been taken to investigate the situation, and what legal, budgetary, or practical requirements guide the board's judgment on the options may correct misinformation and provide a better basis for citizens to speak to the choices that the board can control.

This process can help improve the way information about the working of the board and important public issues is shared with concerned citizens. While public notice in a newspaper may be all that the law requires, placing information in libraries, community centers, grocery stores, or other locations frequented by citizens may be more effective. Radio announcements or call-in shows also may be useful.

**Listen actively.** So, after all this preparation and preliminary information, the first citizen begins to talk. The board members can sit back and relax, right? Yes and no. *How* they listen may be as important as what a citizen hears them say before or after his or her comment. Listening effectively can be difficult when board members want to review material or talk quietly with one another about the next item on the agenda.



Even quiet paper-shuffling could suggest that a board member is not listening or not taking the speaker's views seriously.

There are three facets to active listening:

1. **Maintaining eye contact.** This practice shows the listener's interest by focusing on the speaker. Staring is inappropriate, but catching the speaker's eye as she or he speaks communicates a great deal to that person.

2. **Being aware of body posture.** Although crossing one's arms may be comfortable or a natural reaction in a cold room, this gesture can imply disagreement with the speaker's views. Similarly, leaning back can imply a distant or judgmental stance toward what the citizen is saying. Such a posture may be more comfortable, but sitting squarely or leaning forward slightly will silently say, "I'm listening."

Nodding one's head is another nonverbal way of encouraging a speaker to continue. That gesture shows interest, but it can be misinterpreted. Although it is intended to mean "I am listening," some people might interpret the gesture as "I am agreeing with you [the speaker]."

3. **Providing verbal feedback.** In a busy meeting, the presiding person may prefer just to thank a speaker for her or his comment, ask whether other board members have a question or a comment for the speaker, and move on to the next speaker. If not every board member has understood the speaker's remarks . . . well, too bad: there are other things to do tonight. Unfortunately, such haste may undercut the effort to provide a constructive atmosphere for citizens' comments. Even if time is short, summarizing the speaker's comments and assuring the citizen that the board understands his or her position are important components of active listening, especially when board members may disagree with the speaker's views. The board chair could make the summary for each speaker, or this task could be rotated among the board members from meeting to meeting.

An effective summary includes the emotional dimension of a citizen's concern. (See Example 2.) Is the person frustrated, confused, angry, or upset? Acknowledging a speaker's emotions or values, in addition to the substance of what the person says, shows understanding of her or his complete message. The chair can summarize the speaker's emotions, even when he or she strongly disagrees with the substance of the remarks, by making it clear that the opinion expressed is the speaker's—for example, "So you feel that . . ." "You believe . . ." "Your view is that . . ." "How you see it is . . ."

It is sometimes difficult to judge which feelings a

## Example 2: Summaries of a Speaker's Content and Emotion

MS. JORDAN, A CITIZEN:

"Thank you, Madam Chairman. I'm Dorinda Jordan. I live at 4522 Cool Spruce Avenue in the Tall Trees neighborhood. I'm really concerned about people speeding on my street. There are a lot of children in the neighborhood, and I think it's dangerous. All the time I see people racing up my street and barely missing my children and my neighbors' children on their bikes and skateboards. I think that having a police car along the road would slow people down. It wouldn't have to be there all the time, just during times when kids are out. This would make a big difference to me and my neighbors. I hope we can have greater police visibility to slow down those speeders and make our neighborhood safer. Thank you."

### Three Possible Summaries

*Summary 1: "Ms. Jordan, you want us to stop speeders in your area, but that means we have to decrease patrols in other parts of the city."*

*This is a poor summary because it is too brief and implies that satisfying the speaker's concern will hurt others.*

*Summary 2: "Ms. Jordan, your main concern is to increase police patrols in your neighborhood, the Tall Trees subdivision, and to slow down traffic passing through. Is this correct?"*

*This summary is better, but it does not capture the emotions behind Ms. Jordan's concern.*

*Summary 3: "Ms. Jordan, you're fearful that your child and other children could get hurt by drivers exceeding the speed limit in your neighborhood, the Tall Trees subdivision. So you are requesting increased police patrols to slow down the traffic. Is this correct?"*

*This summary is best because it reflects both the content and the emotion of Ms. Jordan's statement and is checked for accuracy.*

person is conveying in his or her statement. People show different levels of emotion and expressiveness depending on the situation, their personal traits, or their cultural background.<sup>9</sup> They can be angry and yet speak in a quiet, inexpressive voice—or they can shout and gesture. On the other hand, someone speaking loudly may simply be excited or unaware that his or her voice is raised. The summaries should try to acknowledge the speaker's emotions, but board members should be prepared to correct their impressions of a citizen's feelings or underlying concerns.<sup>10</sup>

### Example 3: An Interim Summary of a Speaker's Concerns on Several Apparently Unrelated Topics

"Mr. Sampson, excuse me. I want to be sure I understand what you have said so far. You are concerned about trash collection, loose animals, loud noise from your neighbors, and spending on the new county jail. It seems that you are frustrated that this board and county employees have not done more to address problems you see in these areas. Is this right? Thanks. Please continue."

Be careful in saying what will be done about a concern or a complaint. A citizen who hears that the matter will be "investigated" can interpret that phrase as meaning that "the problem will be fixed." Occasionally it may be better to say not only what *will* be done but also what *will not* be done until more information is gathered, other people are contacted, or a particular deadline for the board passes. Of course, nothing should be promised that cannot be done with reasonable certainty.

It is equally important to be clear about *when* things will happen. "We'll get back to you" can mean different things. A citizen may expect a call in one or two days, while the board member may intend that a letter be sent or that the staff be allowed time to investigate the situation and provide a full response in a week or more.

When possible, the citizen should be directed to a neighborhood council, an advisory group, or a planning or budget process that is appropriate to the kind of comment or issue she or he raised. A comment sheet will allow citizens to get their views on paper and also to know whom to contact.

Thank each speaker for his or her views. This obvious courtesy is easy to forget when there are many speakers or when a speaker's comments are critical of the board. Showing appreciation for a citizen's views, especially when one or more board members may disagree with them, helps build credibility in the citizen's eyes.

#### *After the Meeting*

When the meeting is over, the board should clarify what follow-up steps are needed in responding to citizens' comments and who will respond. Even if it is the manager or a department head who replies to the concern, the board should be clear about when the response will be made and whether it wants a copy of

any written reply. Follow-up steps could include contacting the citizen after she or he receives a written response or has talked with the appropriate official. Following up not only ensures that commitments are honored but also helps determine whether the citizen considers the response to be effective.

### Handling Difficult Situations

The preceding guidelines will be useful at all times, but what about really tough situations like the following?

*Situation 1: A speaker talks on multiple topics and continues past the formal or informal time limit.*

Occasionally a speaker goes on and on and thereby causes a problem for the board, which has a whole agenda to get through. In such a situation, simply showing that the board has heard and understands the citizen's comments can sometimes help keep the comments focused and bring them to a close. The chair can always cut off a speaker, especially when a time limit has been announced, but doing so can upset the speaker. Other approaches should be tried before the chair uses that option, as follows:

1. **Summarizing.** (See Example 3.) If the speaker is talking about several topics, the chair can volunteer to summarize the points made so far. In general, a speaker should not be interrupted, but breaking in to summarize a rambling presentation is one way to show that the speaker is being heard. Sometimes it can also prompt the speaker to return to his or her most important point.

2. **Clarifying what the speaker seeks.** This task may be difficult, since the person's comments may range from complaints about situations beyond the board's jurisdiction to general criticism about government rules, spending, or responsiveness.

3. **Acknowledging the person's goals and feelings.** Even when the board disagrees with the speaker's opinion or argument or is unable to address the citizen's concern, recognizing the person's frustration, anger, or anxiety may help provide relief for someone with many apparently disconnected concerns.

4. **Clarifying how a citizen can have her or his concern addressed.** (See Example 4.) Individuals and groups often believe that it is entirely up to the board or its staff to solve the problems they bring before the board. But as the board clarifies what a speaker wants, it can suggest perhaps several ways of addressing the problem. Pointing out several options helps people

understand that their concerns have been heard and that they do indeed have influence.

5. **“Reality-checking.”** When a speaker asks for a particular action, the board can help that person understand that it may not be able to grant the request by reminding him or her that there may well be serious objections from other citizens if it does so.

6. **Reminding the speaker.** The board should again state its time limits for public comment and (when appropriate) which matters can and cannot be discussed publicly. The speaker should be asked to understand the board’s need to address other agenda topics or give other citizens a chance to speak.

7. **Offering the speaker a way to be more involved.** Perhaps the board can connect the speaker with a group—among the community’s many formal and informal committees, task forces, neighborhood associations, and other organizations—that addresses at least one of the person’s complaints.

But some speakers may still continue past the time limit, or repeat points, or bring up new topics. At that point, telling them they must stop is appropriate. Still, treating such people firmly but courteously shows respect for them and helps build confidence throughout the community in its local government boards.

*Situation 2: A large group of people attend, express strong views and feelings, and demand action.*

The presence of a large group of angry citizens can be stressful for board members. This kind of gathering can be anticipated when the issue is important, when the number of pre-meeting telephone calls increases, or when group leaders say they are organizing their supporters to attend the meeting and press their concerns. How should an agitated group like this be handled?

It is important to allow extra time at the meeting for this kind of situation. By reconsidering which business is essential and which agenda items it can handle quickly or defer, the board can sometimes revise the agenda to accommodate the group(s) of citizens who wish to share their views on an important issue.

One option is to allow a single speaker to address the full board, followed by small-group discussions with one or two board members in each group. When a single speaker presents the group’s concerns before the full board and audience, everyone can hear the same general concerns and information. Often agitated citizens’ groups gain some degree of satisfaction simply by venting their feelings in an official setting. The board can help to accommodate this desire by

## Example 4: A Way to Help a Citizen Consider More than One Solution

(drawing on the information in Example 2)

“Ms. Jordan, your concern is that people are driving too fast through your neighborhood and endangering children. Let me suggest some other possible ways to address your concern. One way could be to have police cruisers in the area at particular times, as you suggest. Another is for more visible crossing guards at either end of the street, since going and coming from school places the greatest number of children on the street. A third option would be to involve the Neighborhood Blockwatch group and ask parents and other adults to be on the sidewalk to watch the children at certain times of the day. A fourth option is to check with your neighbors to see whether there may be play space for the youngsters off the street. Another possibility is to have the transportation department check on traffic flow and see whether the timing of traffic signals around your neighborhood contributes to people driving too fast down your street. What do you think about these other possible solutions? Do you have other suggestions?”

suggesting that the group have a few high-energy, articulate people speak on the group’s behalf.

The small-group approach has several advantages. Assigning a team of one or two board members to meet with each of several sets of citizens allows the board to hear from more people. This technique also promotes an informal give-and-take between board members and citizens that can be very productive. The conversation in these small groups should begin with the board member(s) listening and making sure that the group members all have a chance to express their views. The board member(s) should summarize the concerns and clarify those that are most important. Then they all can discuss whether the board needs other information in order to act, and they also can explore potential solutions. Finally, the full board should reconvene, with board members reporting on the concerns and the possible solutions discussed in the small groups. It is also appropriate at this time to raise whatever concerns board members have about the citizens’ demands and how they relate to the legal, financial, or other constraints the board faces.

Depending on the specific situation (for example, what the nature of the issue is, who is affected, and whether the situation involves great risk), it may be necessary to agree on some short-term steps and schedule another meeting devoted solely to the problem. This meeting might take the form of a public

## Example 5: Two Ways to Handle a Personal Attack

### Scenario 1: Defend oneself and question the citizen.

MS. WILKES [A CITIZEN]:

You, Mr. Anson, you promised not to raise taxes. And then I read that you voted for an increase in the property tax rate. How do you explain such a lie?

MR. ANSON [A BOARD MEMBER]:

You may think we can raise or lower taxes at will. It's more complicated than that. We are in danger of losing accreditation for our schools. And we are squeezed because of the changes in the funding formula made in Raleigh. Now I don't like raising taxes, but in order to keep the school open, I thought a temporary one-cent increase was the best that could be expected.

CITIZEN WILKES:

But you *promised* not to increase taxes! What other promises are you going to break?

BOARD MEMBER ANSON:

That's unfair. Do you have a better idea? Of course not. You're just here to gripe and get attention. Your time is up.

### Scenario 2: Pause, summarize, and encourage the citizen to consider other factors.

CITIZEN WILKES:

You, Mr. Anson, you promised not to raise taxes. And then I read that you voted for an increase in the property tax rate. How do you explain such a lie?

BOARD MEMBER ANSON:

Ms. Wilkes, I see that you are very upset with what you view as my changing my position on tax increases. I

would be upset too if a politician promised one thing and did another, *if* there was no change in the circumstances of the pledge. Do you know why I and the majority of this board voted in favor of a temporary increase in the property tax?

CITIZEN WILKES:

No, and you bet I'm mad about your lie. You promised not to increase taxes! Do you deny this? What other promises are you going to break?

BOARD MEMBER ANSON:

Ms. Wilkes, you see my action as a flip-flop, right? And because of that change, you wonder if I'm going to change other positions. Is that right?

CITIZEN WILKES:

You're darn tootin', you slimeball.

MR. GARDNER [A BOARD MEMBER]:

Ms. Wilkes, expressing your views is fully accepted here, but insults are not.

BOARD MEMBER ANSON:

Ms. Wilkes, to be clear: you believe that I broke a promise about taxes, and you question whether I'll stick to other commitments. Let me say that while I'm willing to take the heat, I do not appreciate vulgar language. I'm trying to do my best in difficult circumstances. So I'm not asking you to change your views, but I'd like to see whether you are willing to hear more from me and other board members about the choices we faced between keeping the property tax at the same rate and having the schools possibly lose their accreditation because of their financial needs. I just want to be sure you understand the choices we faced, though you may still disagree with my vote.

hearing; it might lead to the formation of an advisory group; or it might result in some other approach.

*Situation 3: A speaker verbally attacks or insults one or more board members.*

Probably the most difficult situation a board member can face is a personal attack in a public setting. Sometimes the line between defending a policy or a decision and defending oneself is very thin. Personal attacks must be dealt with, but as constructively as

possible. The presiding officer, while acknowledging the person's underlying concern, should tell the offending speaker that she or he has crossed the line of acceptable speech. Still, the board needs to remember that unless the person is using obscene language or "fighting words," the speaker's remarks attacking one or more board members, while uncomfortable to the board, are probably constitutionally protected free speech. (The legal limits on protected free speech will be examined in Part Two of this article.)

Five strategies can be helpful in this situation:

1. **Taking a deep breath.** This old piece of advice still makes good sense. Harsh personal criticism causes stress. Stress automatically causes the body to bring up its defenses. Muscles tighten, palms become sweaty, and breathing rate increases. These physiological changes are natural, understandable, and useful in preparing for fight or flight. But unless the speaker threatens physical harm and the board member actually wants to flee, the body's reaction may cause the board member's verbal response to be unnecessarily defensive. Taking the time to breathe deeply helps counteract the fight-or-flight syndrome and focuses attention on analyzing what the person is saying rather than on immediately defending oneself.

2. **Summarizing.** (See Example 5.) One way to disarm an upset person is to summarize his or her strong, critical views. The target board member will not agree with the speaker, but summarizing the remarks so as to reflect the depth and the strength of the speaker's feelings will help the board member control his or her own emotions. If possible, another board member should make the summary, for two reasons. First, the board member being criticized or attacked gains more time to prepare a response. Second, summarizing helps determine whether the attack arose from a perceived malfeasance on the part of the entire board or on the part of only one board member.

3. **Asking for clarification.** Agitated people often speak in generalizations: "You're all crooks!" "You don't listen to people!" Asking for specific examples may produce a more fruitful exchange than trying to reply to general statements.

4. **Expressing one's own feelings.** (See Example 5.) No one likes being attacked and put on the defensive, and the target board member should say so in a direct, controlled fashion. The reply may help the board refocus on how best to conduct the public's business.

5. **Examining the speaker's main concerns.** Setting aside the unpleasantness of the speaker's remarks, the board may want to explain its decision-making process if that process is relevant to the angry citizen's concerns. Finally, it may wish to consider whether to open the matter at issue for further discussion at this or a later meeting.

## Summary

People on public boards—elected representatives in powerful city, county, and school positions and citizens who serve on less visible committees—face citizens'

## Assistance in Public Dispute Resolution for North Carolina Government Officials

The Institute of Government, with the financial support of the Love Foundation, now offers assistance to elected and appointed officials in resolving public disputes. The Institute's services include the following:

- **Consulting on public disputes.** The Institute can help evaluate different options for addressing a public issue, including task forces, public meetings, mediation, facilitation, and other techniques to assist parties in resolving their disputes productively.
- **Teaching.** The Institute offers short courses on managing conflict collaboratively, group facilitation, and facilitative leadership. We will work with North Carolina government agencies to provide or broker training in negotiation, mediation, and other consensus-building techniques focused on intergovernmental or community disputes.
- **Locating mediators and facilitators.** The Institute can provide mediation and facilitation of public disputes to a limited extent. We can help secure services from local mediation centers, councils of government, and other impartial providers.
- **Providing a clearinghouse of information.** The Institute can help locate relevant case studies, guidelines, and models for successful negotiation, mediation, and collaboration. The Institute will publish case summaries, role-plays, directories, and guidebooks, and compile information from government officials nationwide to assist North Carolina officials. We also will research and evaluate various public-conflict-management methods.

For more information, contact John B. Stephens at (919) 962-5190 or [stephens.iog@mhs.unc.edu](mailto:stephens.iog@mhs.unc.edu).

comments and criticism in many public meetings. Encouraging citizens to share their views in a constructive way helps rebuild trust in public institutions. Limited resources and state and federal rules may constrain what North Carolina local governments can do to respond to criticism and requests from their citizens. Part Two of this article will address the specifically legal concerns about free speech and acceptable ways to limit public comment. While much is being made about state and national efforts to regain civility in public affairs,<sup>11</sup> local government board members are on the front lines of improving civic engagement in their communities. Helping citizens—including harsh critics—feel welcomed and valued is an important way to create and maintain trust in public service and preserve its legitimacy.

## Notes

1. This article concerns comment during the portions of public meetings that are not designated as public hearings. By "public meetings" we mean official gatherings of North

Carolina local government boards. Under the open meetings law, most official actions of such boards must take place in meetings that are open to the public; that is, anyone may attend and observe. But public meetings typically have a predetermined agenda that may or may not provide for comments from non-board members.

2. Many studies and analyses have probed citizens' alienation from government. Among them are Richard C. Harwood, *Citizens and Politics: A View from Main Street America* (Dayton, Ohio: The Kettering Foundation, 1991); David Mathews, "Putting the Public Back into Politics," *National Civic Review* 80, no. 4 (Fall 1991): 343-51; and William R. Potapchuk, "New Approaches to Citizen Participation: Building Consent," *National Civic Review* 80, no. 2 (Spring 1991): 158-68.

3. A 1996 study reported levels of confidence in government as follows: local government, 24 percent; state government, 19 percent; federal government, 16 percent. Frank Benest, "Serving Customers or Engaging Citizens: What Is the Future of Local Government?" *Public Management* 78, no. 2 (Feb. 1996): A-9.

4. Between 1990 and 1994, confidence in religious institutions fell from 57 percent to 40 percent; in voluntary groups, from 54 percent to 37 percent; and in local media, from 34 percent to 24 percent. Benest, "Serving Customers."

5. Margaret S. Carlson and Roger M. Schwarz, "What Do Citizens Really Want? Developing a Public-Sector

Model of Service Quality," *Popular Government* 60 (Summer 1996): 26-33.

6. A practical resource that covers many aspects of public participation is James L. Creighton, *Involving Citizens in Community Decision-Making: A Guidebook* (Washington, D.C.: Program for Community Problem Solving, 1992).

7. We thank all of the local and state government officials who replied to our survey. Their materials have been added to the Institute of Government library.

8. David Wallenchinsky, Irving Wallace, and Amy Wallace, *The People's Almanac Presents The Book of Lists* (New York: William Morrow and Company, 1977), 469. Forty-one percent cited speaking before a group as their greatest fear; 32 percent said heights; 22 percent said financial problems; and 19 percent said death.

9. Thomas Kochman, *Black and White Styles in Conflict* (Chicago: University of Chicago Press, 1981). Kochman notes culturally different levels of comfort with emotion-filled speech, breaking in on speakers, and so on.

10. Although designed for training young people to be mediators, a useful checklist for listening effectively is "Are You an Effective Communicator?" in *Peer Mediation Conflict Resolution in Schools (Program Guide)*, by Fred Schrupf, Donna Crawford, and H. Chu Usadel (Champaign, Ill.: Research Press, 1991), 55.

11. See Kevin Merida and Barbara Vobejda, "In Search of a Civil Society," *Washington Post National Weekly Edition* (Dec. 23, 1996-Jan. 5, 1997), 6. ■

# Public Comment at Meetings of Local Government Boards

## Part Two: Common Practices and Legal Standards

A. Fleming Bell, II, John Stephens, and Christopher M. Bass



- Three citizens want time at the next meeting of their local board, but the agenda is full. The board has to work on the budget and discuss how to evaluate the city manager. Does it have to put the citizens on the agenda for the next meeting, or may it delay their appearance until the following meeting?
- A board always has an agenda item for general public comment. With cable television, more and more speakers are playing to the camera. May the board just stop receiving general public comment?
- An angry group of citizens hold up signs and wear large protest buttons during a council meeting. May the council restrict the use of signs in its meeting room? What rights do citizens have to express their opinions nonverbally to the council?

**P**art One of this article offered general guidelines for constructive communication with concerned citizens at board meetings.<sup>1</sup> Part Two summarizes

common practices of North Carolina local governments in receiving citizen comment at board meetings, and it addresses legal issues. Public officials should read both parts so that they understand not only principles of effective communication but also legal requirements and prohibitions.

### Common Practices in Receiving Public Comment

#### Boards of County Commissioners

A 1996 survey of North Carolina's 100 boards of county commissioners revealed common practices among these units in receiving public comment.<sup>2</sup> Ninety boards responded to the survey. Of these, 60 have a specific place in the regular meeting agenda for public comment; 30 do not. Among the latter, 20 allow the chair to decide whether and when to receive citizen comment; 7 allow comment if the request to speak is made before the meeting and the item is placed on the agenda; and 3 normally take comment at the close of the business meeting.

In 55 counties the commissioners regularly limit how long each speaker may address the board. Several of these counties apply their limits flexibly, however, often allowing speakers to continue and letting the chair decide when to ask a speaker to finish. Twenty-nine counties have no formal limit.

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In 22 counties the board typically allows each speaker five minutes, and in 21 counties there is a three-minute limit. Even the counties that normally do not restrict the length of speeches do use limits if the issue is controversial and several people wish to speak. In this instance most counties ask the concerned groups to pick one or more spokespersons and/or limit each speaker to two or three minutes.

### **Municipal Boards**

No formal comprehensive survey has been made of how the boards of municipalities receive citizen comment. Practices vary widely.<sup>3</sup> Most city and town councils have a specific point in the agenda at which they hear citizens, commonly at the beginning or the end of the meeting. They also have a time limit on presentations and may require groups with the same concern to designate one or two spokespersons.

### **School Boards**

The state's school boards use a mix of formal and informal approaches to handling public comment.<sup>4</sup> Most boards have a specific place on the agenda for citizens to speak and a time limit for each speaker. Groups are asked to designate a single spokesperson. Boards usually receive citizens' comments but are not obliged to give an immediate response.

School boards struggle with the problem of allowing citizens' comments while preserving the efficiency and decorum of their meetings. Some of them take comments at the beginning of the meeting. This practice, however, can cause business deliberations to last until late in the evening. But holding citizens' comments until the end of the meeting taxes people's patience and delays their speaking to a time when many board members are weary and eager to conclude the meeting.

Many school boards urge parents and other citizens to pursue complaints through regular channels before they come to the board. For example, boards' policies on public comment note that personnel or confidential matters may not be addressed in public session and that persons with complaints about personnel must follow other specific procedures. Also, boards often have a sign-up list for speakers, with a deadline of up to seven days before the meeting. Some sign-up lists ask prospective speakers to identify the topic of their comment, to state the steps they have already taken to address their concern, and to deposit relevant documents in the board's office before the meeting.

A board's practice may occasionally vary from its policies in unusual circumstances.

### **Planning Boards, Boards of Adjustment, and Other Boards**

Zoning decisions and requests for variances of land-use regulations can generate great public interest and comment. Most municipalities and two-thirds of county governments control land use through zoning regulations and site permits. Planning boards and boards of adjustment conduct their business meetings publicly but for different purposes and under different rules. The relationships between planning boards and their governing boards (that is, boards of county commissioners or municipal councils) vary greatly. Some differences are set by state statute. For example, when the twenty coastal counties are revising their comprehensive land-use plans, they must work within rules promulgated by the Coastal Resources Commission for mandated formal citizen-participation programs. Other county planning boards have similar (though not state-mandated) practices for seeking public comment (for example, neighborhood meetings, formal public hearings, and surveys of citizens).

Other local government entities (usually appointive) have varying degrees of influence on local ordinances and regulations. Social services boards; area mental health, developmental disabilities, and substance abuse boards; community or human relations commissions; public housing authorities; and agencies on aging typically have few problems with public comment at their meetings. Public health boards, though, sometimes have drawn citizens' attention on such issues as livestock operations, smoking ordinances, and permits for septic tanks.

### **Legal Requirements for Public Comment**

The legal requirements and practical guidelines that follow should be useful for all the entities discussed in the preceding section.

### **General Requirements**

Anyone may attend and record meetings of local public bodies in North Carolina. This right of access is guaranteed by North Carolina's open meetings law. It also may be inferred from the First and Fourteenth Amendments to the United States Constitution.<sup>5</sup>



The open meetings law specifies that, with certain limited exceptions, each official meeting of a public body is open to the public and "any person is entitled to attend such a meeting."<sup>6</sup> It also provides that "[a]ny person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open." Further, the law permits the open portions of meetings to be broadcast on radio or television.<sup>7</sup>

The only restrictions on this right of public access relate to keeping order in the meeting. Thus, under the open meetings law, a board may regulate the placement and the use of photographic, filming, recording, and broadcasting equipment in order to prevent undue interference with the meeting. But it must allow the equipment to be placed within the meeting room in a way that permits the intended use, and it may not declare the equipment's ordinary use to be "undue interference." In certain instances a board may require that equipment and personnel be pooled.<sup>8</sup>

In addition, a board may take action if someone disrupts its meeting. Willfully interrupting, disturbing, or disrupting an official meeting and then refusing to leave when directed to do so by the presiding officer is a misdemeanor.<sup>9</sup>

But being able to attend a meeting does not necessarily mean that one may speak at it. In general, local government bodies have no legal obligation to allow members of the public to make comments, to ask questions, or otherwise to participate actively at any particular meeting except during a required public hearing conducted as part of that meeting.<sup>10</sup> However, as discussed later, prohibiting *all* opportunities for citizen comment outside public hearings may go beyond what courts will consider reasonable.

Citizen comment is a necessary part of public hearings<sup>11</sup> because obtaining such input is the very reason for the hearings, whether they are mandated by state statute or voluntarily called by a local board. This article, however, focuses on regular board meetings and boards' discretionary power to allow comment during those meetings at times other than during public hearings. Each board controls its regular meeting agenda, including how items are placed on the agenda, and it may choose to give citizens an opportunity to be included.<sup>12</sup> Boards often require citizens who wish to speak, to specify beforehand the subjects that they plan to discuss. A board has fairly broad discretion to decide what subjects to include on the agenda of a particular regular meeting as long as it does not discriminate among citizens on the basis of their point of view on an issue or single out one citizen for dif-

ferent treatment from all others. Many boards also set aside a time in the meeting for comment from citizens about topics of interest to them, with little limitation on subject matter.

## Free Speech and the "Public Forum" Doctrine

All public bodies must be concerned about freedom of speech and other rights of those who participate in their meetings. The First Amendment to the United States Constitution, which is applied to state and local governments through the Fourteenth Amendment, requires that government make no law abridging "the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Freedom of speech and the press and the right to petition the government can have an effect on meetings of public bodies. Over the years, courts have fashioned rules to balance the right and the responsibility of public bodies to organize their meetings and conduct those meetings in an orderly manner, against individuals' rights under the First and Fourteenth amendments. To understand these rules, one must start with the "public forum" doctrine developed by the United States Supreme Court.

Although the Supreme Court long followed the view that the government, just like a private landlord, may absolutely exclude speech from its own property, the Court has abandoned this ideology and created a body of public forum law. In doing so, the Court has divided government property and activities into three distinct categories: the "traditional" or "quintessential" public forum, the "designated" public forum (the focus of this article), and the "nonpublic" forum.<sup>13</sup> Different rules govern speech at different times and places on public property, depending on the category into which a location or an activity falls.

### *The Traditional Public Forum*

The Court has defined "traditional" or "quintessential" public forums as places such as streets or parks that "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."<sup>14</sup> Restrictions on speech in these forums are generally allowed only if they are concerned with the time, the place, or the manner of the speech, rather than its content. The restrictions must be content neutral and

"narrowly tailored to serve a significant government interest," and they must "leave open ample alternative channels of communication."<sup>15</sup>

To exclude a speaker from a traditional public forum—which has as one of its purposes the free exchange of ideas—because of the content of her or his speech, the government must show that a regulation "is necessary to serve a compelling state interest and . . . is narrowly drawn to achieve that end."<sup>16</sup> Regulations subjected to this standard, called the "strict-scrutiny test," rarely survive a court challenge.<sup>17</sup> Similarly, censorship based on the speaker's viewpoint usually is not allowed. The Supreme Court will generally hold that a regulation applicable to a traditional public forum violates the First Amendment when it denies access to a speaker solely to suppress the point of view she or he espouses.<sup>18</sup>

#### *The Designated Public Forum*

Whenever a government opens public property other than a traditional public forum for use by the public as a place for expressive activity, it creates a designated public forum, the second category. Many of the standards that apply in this category are similar to those that apply in a traditional public forum. This is so even though the government may not have been required to create the forum in the first place and may later choose to change the open character of the property so that it is no longer a designated public forum.<sup>19</sup>

#### *The Nonpublic Forum*

Nonpublic forums, the third category, are not subject to the stringent free-speech requirements that govern traditional and designated public forums. Examples of such forums include meetings of government officials that are not required to be open to the public under the open meetings law, such as meetings solely of professional staff, and closed sessions held during official meetings of public bodies.<sup>20</sup> Most government offices and facilities where day-to-day operations are carried on also are nonpublic forums.<sup>21</sup>

The same space may be used at different times as a designated public forum and a nonpublic forum. For example, a room in city hall may be the scene of a council meeting one evening and the site of a department head meeting the next day. If the council receives public comment during its meeting, a designated public forum exists while the comments are being received. The meeting of department heads, on the other hand, is probably a nonpublic forum.

## **Board Meetings as Public Forums**

Meetings of local government boards bear some resemblance to both traditional and designated public forums. They are like traditional public forums in that space and seats for the public are customarily provided, and public comment and debate often are allowed. But these meetings also resemble designated public forums in that they are held for specified purposes (to conduct the board's business as listed on an agenda). Thus public discussion and active participation are more tightly circumscribed than they would be in a park or another traditional public forum.

One noted First Amendment scholar, William W. Van Alstyne, asserts that local government board meetings fit a description midway between these two types of forums. He suggests that rules for citizen comment in such meetings may be more restrictive than those allowed in traditional public forums but less restrictive than those permitted in certain types of designated public forums.<sup>22</sup> This article adopts a somewhat similar view.

What meetings or parts of meetings of public bodies in North Carolina, then, are designated public forums? In a 1976 Wisconsin case, the United States Supreme Court suggested that any portion of a meeting of a public body that the body opens for public comment is such a forum.<sup>23</sup> The Court noted that Wisconsin's open meetings law requires certain governmental decision-making bodies to hold open meetings. It explained that, although a public body may confine such meetings to specified subjects and may even hold closed sessions, "[w]here [it] has opened a forum for direct citizen involvement," it generally cannot confine participation "in public discussion of public business . . . to one category of interested individuals."<sup>24</sup> In a 1997 case the North Carolina Supreme Court cited the Wisconsin opinion for the idea that "once the government has opened a forum—such as a public meeting—to allow direct citizen involvement, it may not discriminate between speakers based upon the content of their speech."<sup>25</sup>

The decision in the Wisconsin case suggests that any official meeting of a public body covered by this state's open meetings law also may become a designated public forum. If a public body chooses to allow public comment during a portion of its meeting, it subjects that part of the meeting to the rules that apply to designated public forums.<sup>26</sup> Restrictions on speech in designated public forums may be based on either what a speaker has to say—content or view-

point—or when, where, or how the speaker says it—time, place, or manner. Very different rules apply to these two types of restrictions.

#### *Restrictions Based on Content or Viewpoint*

As noted earlier, in a traditional public forum, any restriction on speech that is based on content or viewpoint will be strictly scrutinized by the courts and will almost always be found unconstitutional.<sup>27</sup> A similar rule applies in a designated public forum. In that context, although the meeting organizers may sometimes restrict comment to the subjects for which the forum is designated, they must still allow all viewpoints to be heard.

For example, the Second Circuit Court of Appeals has held that once a board decides to take public comment in a particular meeting, it may not discriminate among speakers on the basis of what they have to say on the subject at hand. In *Musso v. Hourigan*,<sup>28</sup> the time that a local board of education had allotted to hear public comment had expired, but the board continued to permit members of the public to speak. A citizen who said something that one board member did not like was silenced and eventually arrested.<sup>29</sup> The court noted that a rational jury could infer that the plaintiff was singled out because of the board member's dislike for what he had to say. If this inference was accurate, said the court, the action against the citizen was an unconstitutional content-based restriction on protected speech.<sup>30</sup> The case points out the risk that a board may run if it fails to follow content-neutral ground rules concerning a citizen-comment period.

Even if a local governing board feels that a person is spreading untruths or arousing hostilities through his or her comments during a meeting, and even if the board members do not like what the speaker has to say, the board probably may not restrict that person's speech because of the content: "[T]he Supreme Court has frequently recognized that the disruptive or disturbing effects of expression are integrally bound up with the very political value of free speech that the first amendment was designed to safeguard and nurture."<sup>31</sup> The only relevant exceptions pertain to obscenity (which legally goes beyond mere profanity)<sup>32</sup> and "fighting words" (which "have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed").<sup>33</sup> The Supreme Court has specifically explained that the protections of the First Amendment do not turn on the truth, the popularity, or the social utility of an idea or a belief.<sup>34</sup>

#### *Restrictions on Time, Place, or Manner*

The fact that restrictions on speech in designated public forums generally may not be based on what a speaker has to say about a subject does *not* mean that those who attend the meeting may speak freely whenever they wish or on whatever topic they wish. The United States Supreme Court has recognized that a public forum may be created for a limited purpose, such as discussion of certain subjects or use by certain groups.<sup>35</sup>

Restricting a meeting to particular subjects (for example, through the use of an agenda) is permitted as long as the public body is careful to allow all points of view to be presented if and when it hears from audience members about those subjects. That is, local boards may control the conduct of their meetings through the use of reasonable, content-neutral restrictions on the time, the place, and the manner of speech.<sup>36</sup> As Justice Potter Stewart stated in a concurring opinion in the Wisconsin case discussed earlier, "A public body that may make decisions in private has broad authority to structure the discussion of matters that it chooses to open to the public."<sup>37</sup>

Even if a board opens its meeting for general discussion of issues, such as during an open-public-comment period, some subject-matter restrictions are probably permissible. For example, a board might limit comments to subjects that are within its jurisdiction or on which it is competent to act.

On the other hand, the restriction on viewpoint-based regulations means that a governmental body holding a public-comment period may not use an improper reason, such as dislike for a particular speaker's viewpoint, as a basis for adjourning or moving on to the next subject on the agenda. As noted earlier, a local government board may not silence a speaker in such a designated public forum merely because it disagrees with the person's message.

A 1990 case, *Collinson v. Gott*, illustrates the courts' deference to local boards' discretion concerning the organization and the conduct of their meetings, as long as no censorship based on a speaker's point of view is involved. In *Collinson* a person was cut off from speaking and subsequently asked to leave a meeting after he violated a local board's requirement that speakers confine their remarks to the question and avoid discussion of personalities. He sued in federal court.<sup>38</sup> A divided panel of the Fourth Circuit Court of Appeals (which has jurisdiction over North Carolina) held in favor of the board. Although the

judges disagreed about the disposition of the case, they all assumed that a presiding officer has at least some discretion to make decisions concerning the appropriateness of the conduct of particular speakers.<sup>39</sup> A concurring opinion noted that the government has a substantial interest in having its meetings conducted with relative orderliness and fairness: “[O]fficials presiding over such meetings must have discretion, under the ‘reasonable time, place and manner’ constitutional principle, to set subject matter agendas, and to cut off speech which they reasonably perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, whether by virtue of its irrelevance, its duration, or its very tone and manner . . . ,” even though such restrictions might have some relation to the content of the speech.<sup>40</sup> (The judges disagreed on the extent to which content was or should be considered.)

An earlier North Carolina case, *Freeland v. Orange County*,<sup>41</sup> concerned time limits for public comment and limits on the number of speakers. This case involved a public hearing during a board meeting, but the same or similar principles probably apply to public comments at other times during a meeting. The Orange County Board of Commissioners held a public hearing on a proposed county zoning ordinance, and some five hundred people attended. The chair allocated an hour to each side of the issue (though opponents outnumbered supporters four to one) and allowed each side fifteen minutes more for rebuttal.

When the board later adopted the ordinance, some of the opponents sued, arguing that the ordinance had not been properly adopted—apparently because about two hundred persons who wished to speak at the hearing were not allowed to do so. The North Carolina Supreme Court held in favor of the board of commissioners, declaring that “[t]he contention that the commissioners were required to hear all persons in attendance without limitation as to number and time [was] untenable.”<sup>42</sup> It found that the “opponents as well as the proponents were at liberty to select those whom they regarded as their best advocates to speak for them. The General Assembly did not contemplate that all persons entertaining the same views would have an unqualified right to iterate and reiterate these views in endless repetition.”<sup>43</sup>

Even though *Freeland* is not specifically a First Amendment case, it teaches that a board may safely impose time limits on comments in public hearings as long as it allows enough time for each viewpoint to be heard. Boards will obviously need to use some judg-

ment in deciding how much time and how many speakers on a subject are “enough.” For example, in the *Freeland* meeting, with about 500 people in attendance, the board allowed 31 persons to speak for a total of two and one-half hours.

On the other hand, to return to the opening scenario of the three citizens who wish to discuss an agenda item at a meeting that does not include a public hearing, the board may either not hear them at all or limit each one to a few minutes of comments. Even at public hearings, five- and two-minute limits on individual comments have been upheld.<sup>44</sup>

These and cases from other jurisdictions<sup>45</sup> show that local boards have broad latitude in conducting their meetings in an orderly fashion. Whether a board is restricting the debate to a particular subject or limiting the time allotted for public comment, the court will probably uphold a restriction that is viewpoint neutral as long as it is reasonable. What the court will consider reasonable will depend on the facts in each case.

## Discretion in When to Allow Speech

Must opportunities for citizen comment be provided at *all* board meetings? Although there is little case law on the point, the latitude that the courts have given governmental bodies to control the conduct of their meetings through restrictions on the time, the place, and the manner of speech likely includes the discretion to allow public comment in some meetings but not in others.

Returning to the second scenario at the beginning of this article, what about *never* allowing citizen comment except during designated public hearings on particular topics? Nothing in North Carolina’s open meetings law or other statutes requires that public comment be allowed at meetings that do not include public hearings. This suggests that the courts might allow such a prohibition.

It is not clear, however, how the courts would rule on possible First Amendment concerns raised by this type of restriction. A court might well find it to be an unreasonable restriction on speech or on the right to petition the government for a redress of grievances. Although governing boards have a significant interest in controlling their meetings, a court might require a local board occasionally to allow people to appear personally and publicly to address their concerns directly to the board and to request some appropriate response to their grievances, as part of this right to petition.<sup>46</sup>

According to the North Carolina Supreme Court, filing written complaints, appearing at disciplinary hearings, and making critical speeches at board meetings all involve petitioning the government for a redress of grievances.<sup>47</sup>

On the other hand, it might be argued that such a restriction is permissible because boards do provide for citizen comment during public hearings, although the hearings—and hence the comment—might be limited to particular subjects. For example, the North Carolina General Assembly's rules do not allow for public comment during its proceedings, but legislative committees occasionally hold public hearings on particular bills. It also might be asserted that a designated public forum, and hence a need to receive public comment, is created only when a board decides it wishes to create one.

Conceivably, then, a local board might decide not to take public comment at any of its meetings except during the portions that are designated as public hearings. But politically astute and legally cautious boards will probably provide at least occasional periods for general public comment or an opportunity for citizens to be placed on the agenda of regular meetings, to avoid both appearing unresponsive (thereby hurting their chances for reelection) and having the legal issue raised.

### Other Types of Expressive Activity

What about other types of expressive activities, like carrying signs and wearing buttons, as in the third opening scenario? May restrictions be placed on these behaviors in designated public forums? It is important to realize that the "speech" the First Amendment protects involves more than the spoken word. The United States Supreme Court has recognized that freedom of speech encompasses communication through nonverbal symbols.<sup>48</sup> For example, in *Tinker v. Des Moines Independent Community School District*,<sup>49</sup> the Court upheld the right of high school students to wear black armbands to protest the Vietnam War, stating that this was "the type of symbolic act that is within the Free Speech Clause of the First Amendment."<sup>50</sup> Similarly a concurring opinion in *Smith v. Goguen*<sup>51</sup> explained that "[a]lthough neither written nor spoken, an act may be sufficiently communicative to invoke the protection of the First Amendment. . . ."<sup>52</sup>

The Supreme Court sometimes uses the term "freedom of expression" as a synonym for "freedom of speech," indicating that the scope of constitutional

protection extends beyond verbal communication. But not every activity is considered "speech." For actions to be considered expressive, a "speaker" must intend that they communicate.<sup>53</sup> Most symbolic gestures by a citizen during any portion of a local board meeting that has been opened for public comment will be considered expressive conduct under the First Amendment because they will involve an intent to communicate. Included is everything from actually addressing the board to wearing a sticker on one's shirt or carrying a placard.<sup>54</sup>

Because carrying signs and wearing buttons are expressive activities protected by the First Amendment, a board must justify restrictions on them in the same way that it justifies restrictions on verbal speech, and under the same standards. Thus reasonable controls on the time, the place, and the manner of such expression will be allowed.

Suppose a board is concerned that citizens might use signs to strike the opposition or to block the view of others at a meeting. It may impose reasonable restrictions on the size of signs or on signs that are attached to wooden or other solid handles, both to ensure safety and to avoid disruption. Or it may limit the use of signs to certain meetings and not others.

A restriction on what a sign or a button may say about a given subject, on the other hand, will cause difficulties. Comments are generally protected even if they are hostile or vulgar or disagreeable to board members. As noted earlier, censorship of unpleasant messages is a type of restriction that the courts generally do not allow.

May a board prohibit signs entirely in a designated public forum such as the public-comment portion of a meeting? In perhaps the only reported case on this point, Louisiana's supreme court concluded that a local school board could do so.<sup>55</sup> The court upheld the board's rule banning hand-held signs from its office building or any of its rooms. The court explained that the board's rule was content neutral and that the board's interest in orderly and dignified meetings was sufficient to justify this type of restriction on time, place, and manner of expression. The court also noted that there were ample alternative channels for communicating the information, including public-comment times at the board's meetings.<sup>56</sup>

The United States Supreme Court agreed with the Louisiana court's conclusion. Without issuing an opinion, it dismissed an appeal of the Louisiana court's ruling on the ground that the case involved no substantial federal question.<sup>57</sup> Such a dismissal is a

decision on the merits; that is, if the Court had thought that the case raised a significant issue under the First Amendment, it probably would have heard the case. The Supreme Court's dismissal of the appeal suggests that local officials may ban hand-held signs in meeting rooms. A board should be careful, however, to ensure that people have adequate alternative ways to present their views to the board.

### Other Constitutional Claims

As local boards decide who may speak in their meetings, they also should take care not to violate the provisions of the federal and state constitutions that require equal protection of the laws.<sup>58</sup> That is, a board must not restrict someone's speech on the basis of an impermissible reason like race, religion, or national origin. And if the board has an open-public-comment period, the equal protection clause may prevent it from allowing to speak only those who wish to address topics favored by the board.

Boards also may have concerns when speakers deal with religious topics. In general, United States Supreme Court cases indicate that people who wish to speak on religious issues will be subject to the same limitations that are placed on others.<sup>59</sup> But a board should be careful not to appear to favor one religion over another. Such favoritism is unacceptable under the establishment clause of the First Amendment, which forbids government from making laws "respecting an establishment of religion."

### Summary

Local government boards are free to make reasonable rules governing public comments during their meetings. They may choose to allow comments only at certain times, on certain subjects, or in certain meetings, and they may impose time limits and limits on the number of persons who may address a particular issue. They must take care, however, not to exclude or silence a person because of that person's point of view, what he or she has to say about an issue, or, to some extent, how he or she says it. Boards also may not limit a speaker on the basis of his or her race or religion. During periods of open public comment, boards may limit discussion to subjects within their jurisdiction, but they should not restrict a speaker during such a period simply because his or her subject is not popular with the board. Further, if

boards choose to exclude visual expressions of opinion such as signs and banners from their meetings, they should make certain that there are adequate alternative means for communicating ideas to the board.

Helping citizens be involved with their local government is an important role of public officials in a democracy. Becoming knowledgeable about practical ways of encouraging positive discussion with citizens (see Part One of this article) and becoming informed about the legal standards just presented will assist public officials in performing that role.

### Notes

1. Part One appeared in *Popular Government* 62 (Summer 1997): 2-14.

2. Susan Moran, "Report on the NC Clerks Survey: Public Addresses to Boards," Pitt County, N.C., April 25, 1996. Moran was Pitt County's public information officer from August 1994 to October 1996. At the time of the survey, the Pitt County Board of County Commissioners was considering how best to receive public comment during its meetings.

3. E. H. ("Woody") Underwood, director of operations and membership services, North Carolina League of Municipalities, telephone conversations with John Stephens, October 1996.

4. Ann McColl, legal counsel, North Carolina School Boards Association, telephone conversation with John Stephens, June 2, 1996.

5. See generally *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555 (1980), in which the Supreme Court held that, under the First and Fourteenth amendments, the public and the press have a right of access to criminal trials. Some of the reasons that the Court gave for finding such a right of access also may apply to meetings of local government boards. For example, Chief Justice Warren Burger noted that the freedoms of speech and the press and the rights to assemble and to petition the government for a redress of grievances

share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. . . . "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." Free speech carries with it some freedom to listen.

*Richmond*, 448 U.S. at 575-76 (citation omitted). This freedom to listen and to receive information and ideas is enhanced if proceedings are open.

6. N.C. Gen. Stat. § 143-318.10(a) (hereinafter the General Statutes will be cited as G.S.). The terms "official meet-

ing" and "public body" are defined in G.S. 143-318.10(b) through (d). The main exceptions to the law applicable to local governments are the authorizations for closed sessions, found in G.S. 143-318.11.

7. G.S. 143-318.14(a).

8. G.S. 143-318.14(b).

9. G.S. 143-318.17.

10. For a detailed description of the types of public hearings allowed and required under North Carolina city and county law, see David W. Owens, "Zoning Hearings: Knowing Which Rules to Apply," *Popular Government* 58 (Spring 1993): 26-35.

11. A "public hearing" is a portion of a public meeting specifically devoted to hearing from interested citizens, businesses, and civic groups about a specific subject. At the hearing, governmental officials may offer background information, but the goal is for them to receive information, viewpoints, concerns, questions, and so on from citizens. The public officials generally end the hearing before they take any action.

Under North Carolina law, public bodies must hold public hearings before they act only if they are specifically required to do so by statute or case law. The most common statutory instances for cities and counties involve consideration of various land-related and financial matters. Thus city councils and boards of county commissioners, under G.S. 160A-364 and 153A-323 respectively, must hold public hearings, advertised in a specific way, when they wish to take action adopting, amending, or repealing zoning, subdivision, housing, or other types of ordinances specified in G.S. Chapter 160A, Article 19, or G.S. Chapter 153A, Article 18.

Cities and counties also must give published notice and hold hearings before they may engage in certain types of economic development activities [G.S. 158-7.(c)], and cities must hold hearings with specified notice before they adopt annexation ordinances [G.S. 160A-31(c), (d); -37(a) through (d); -49(a) through (d); -58.2]. Both cities and counties must advertise and hold public hearings on the annual budget [G.S. 159-12], on proposed general-obligation bond orders (G.S. 159-54, -56, -57), and on installment-financing transactions involving real property [G.S. 160A-20(g)].

12. A different rule applies to agendas of special meetings of local government boards. Special meetings of most boards are called to deal with specific topics, so their agendas are usually set in advance. Although the agendas of special meetings can sometimes be changed, doing so is often difficult. See, e.g., G.S. 153A-40(b) and 160A-71(b)(1), which require all members of a board of county commissioners or a city council, as appropriate, to be present or to sign a written waiver before items may be added to the stated agenda of a special meeting.

13. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983).

14. *Perry*, 460 U.S. at 45, quoting *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939).

15. *Perry*, 460 U.S. at 45.

16. *Perry*, 460 U.S. at 45, quoting *Carey v. Brown*, 447 U.S. 455, 461 (1980).

17. See, e.g., *Carey*, 447 U.S. at 455, in which the Court applied the strict-scrutiny test under the equal protection clause of the Fourteenth Amendment (Section 1), as well as under the First Amendment, in a case involving content-based discrimination among types of speech.

18. See, e.g., *Perry*, 460 U.S. at 48-49 (text and n.9), in which the Court assumed that discrimination on the basis of viewpoint is generally forbidden by the First Amendment.

19. *Perry*, 460 U.S. at 45-46.

20. G.S. 143-318.10(a), -318.11. As noted earlier, the open meetings law allows public bodies to close their meetings for certain limited purposes, and the United States Supreme Court has approved the holding of such closed, nonpublic sessions: "Plainly, public bodies . . . may hold nonpublic sessions to transact business." *City of Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175, n.8 (1976).

21. Public property that "is not by tradition or designation a forum for public communication" also is considered to be a nonpublic forum. *Perry*, 460 U.S. at 46. As noted in the text, most government offices and facilities used in daily operations fall into this category. Even though much communication obviously takes place in such locations, citizens have no general right to express themselves in most government-owned facilities unless the facilities are traditional public forums or are serving as designated public forums.

Control over access to nonpublic forums may be based on subject matter. For example, a speaker who wishes to address a topic not encompassed in the intended purpose of a nonpublic forum may be prevented from doing so. Control also may be based on a speaker's identity. For example, if a speaker is not a member of the class of speakers for whose special benefit the nonpublic forum was created, he or she may be kept from speaking. The distinctions drawn must be reasonable in light of the purpose that the nonpublic forum at issue serves. *Perry*, 460 U.S. at 49. But it is not necessary to use the *most reasonable* limitation. *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 808 (1985).

22. Letter from William W. Van Alstyne, William R. and Thomas C. Perkins Professor of Law, Duke University, to A. Fleming Bell, II, April 11, 1997. We are grateful to Professor Van Alstyne for his helpful ideas and suggestions concerning this article.

23. *Madison*, 429 U.S. at 174-75.

24. *Madison*, 429 U.S. at 174-75 and nn.6, 8.

25. *Moore v. City of Creedmoor*, 345 N.C. 356, 369, 481 S.E.2d 14, 22 (1997) (citing *Madison*, 429 U.S. at 176).

26. See *Devine v. Village of Port Jefferson*, 849 F. Supp. 185 (E.D.N.Y. 1994) (holding that open meetings in which public discourse is invited on "matters at hand" are limited public forums for First Amendment analysis).

27. One of the few areas in which the Court has allowed content-based restrictions is pornography and obscenity. See, e.g., *Young v. American Mini Theatres*, 427 U.S. 50 (1976) (concluding that a city's interest in the present and future character of its neighborhoods adequately supported its classification of motion pictures according to their

"adult" content); and *Ginsberg v. New York*, 390 U.S. 629 (1968) (finding that a state's interest in the well-being of its youth justified a regulation that defined obscene material on the basis of its appeal to minors).

28. *Musso v. Hourigan*, 836 F.2d 736 (2d Cir. 1988).

29. *Musso*, 836 F.2d at 738-39.

30. *Musso*, 836 F.2d at 742-43.

31. *Thompson v. City of Clio*, 765 F. Supp. 1066, 1072 (M.D. Ala. 1991) (citations omitted).

32. *See, e.g.*, *State v. Rosenfeld*, N.J. App. Div. (no opinion), *cert. denied*, 283 A.2d 535 (N.J. 1971), *vacated mem. sub nom. Rosenfeld v. New Jersey*, 408 U.S. 901 (1972) [remanded for reconsideration in light of *Cohen v. California*, 403 U.S. 15 (1971), and *Gooding v. Wilson*, 405 U.S. 518 (1972)], *vacated per curiam sub nom. State v. Rosenfeld*, 295 A.2d 1 (N.J. App. Div. 1972), *modified and aff'd*, 303 A.2d 889 (N.J. 1973). *Rosenfeld* involved a person who used a profane descriptive adjective four times during his remarks at a public meeting of a local school board held to discuss racial conflicts. He was convicted of violating a statute that, as interpreted by the New Jersey Supreme Court, prohibited indecent words spoken loudly in a public place that were of such a nature as "to be likely, in the light of the gender and age of the listener and the setting of the utterance, to affect the sensibilities of a hearer." The words had to be "spoken with the intent to have the above effect or with a reckless disregard of the probability of the above consequences." *Rosenfeld*, 303 A.2d at 890-91 [quoting *State v. Profaci*, 266 A.2d 579, 583-84 (N.J. 1970)]. (The lower court did not find *Rosenfeld's* words to be "fighting words," which the state also prohibited. *Rosenfeld*, 303 A.2d at 892.)

The United States Supreme Court vacated this judgment without expressing an opinion and remanded the case to the Appellate Division of the New Jersey Superior Court. Four justices dissented with opinions. *Rosenfeld*, 408 U.S. at 901. The Supreme Court's vacation and remand order may indicate that the Court probably considered a prohibition on language affecting a hearer's sensibilities to be unconstitutional. In a later opinion in the case, the New Jersey Supreme Court recognized that the statutory provision under which *Rosenfeld* was convicted was no longer viable under the Supreme Court decisions cited in the remand order. *Rosenfeld*, 303 A.2d at 893, 894-95.

33. *See, e.g.*, *Gooding*, 405 U.S. at 524.

34. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964).

35. *Madison*, 429 U.S. at 175, n.8; *Perry*, 460 U.S. at 46, n.7 [citing *Madison* and *Widmar v. Vincent*, 454 U.S. 263 (1981)].

36. Compare the broad grant of authority for the conduct of public hearings in G.S. 153A-52 and 160A-81: "The [board of county commissioners/city council] may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to

attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing."

37. *Madison*, 429 U.S. at 180 (Stewart, J., concurring).

38. *Collinson v. Gott*, 895 F.2d 994 (4th Cir. 1990).

39. *See Collinson*, 895 F.2d at 1000, 1005-06, 1011.

40. *Collinson*, 895 F.2d at 1000. Similarly, in *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989), the Eleventh Circuit Court of Appeals found in favor of the mayor and the city council when the mayor rebuked and subsequently removed a citizen from a meeting for speaking on the council's general spending habits instead of the topic at hand. It explained, "[W]e . . . consider the mayor's interest in controlling the agenda and preventing the disruption of the commission meeting sufficiently significant to satisfy" the requirement that a valid regulation of time, place, and manner serve a significant governmental interest. *Jones*, 888 F.2d at 1333.

The court also found that the means employed by the mayor to achieve the stated interest were tailored narrowly enough to meet the "narrow tailoring" requirement for restrictions on time, place, and manner, and that ample alternative channels of communication were available. The citizen could have spoken on general spending policies of the commission during a regular period for public discussion of non-agenda items at the end of the meeting. *Jones*, 888 F.2d at 1333-34.

Another illustrative case, *Wright v. Anthony*, 733 F.2d 575 (8th Cir. 1984), involved a public hearing at which a speaker, Albert R. Wright, was interrupted after his allotted time of five minutes had elapsed. Wright sued. The court again held in favor of the defendants, United States Representative Beryl Anthony and others, explaining that Representative Anthony's action was not caused by the content of Wright's message and that "the restriction may be said to have served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak. Thus, it does not appear that the limitation placed on Wright's speech was unreasonable." *Wright*, 733 F.2d at 577. The court also noted that Wright "was not prevented from introducing all of his prepared text into the written record; he was merely prevented from reading all of it aloud." *Wright*, 733 F.2d at 577.

41. *Freeland v. Orange County*, 273 N.C. 452, 160 S.E.2d 282 (1968).

42. *Freeland*, 273 N.C. at 457, 160 S.E.2d at 286.

43. *Freeland*, 273 N.C. at 457, 160 S.E.2d at 286.

44. *See Wright*, 733 F.2d at 575; *Collinson*, 895 F.2d at 994; respectively.

45. *See, e.g.*, *Tannenbaum v. City of Richmond Heights*, 663 F. Supp. 995 (E.D. Mo. 1987) (finding in favor of the city when the plaintiff was removed from a city council meeting and arrested for refusing to confine her comments to the citizen-comment portion of the meeting); *Kalk v. Village of Woodmere*, 500 N.E.2d 384, 388-89 (Ohio Ct. App. 1985) (citation omitted) (holding that "[t]he right to regulate its own meetings and hearing is an inherent part of the [municipal] legislature's power to make decisions, pass laws and, in the instant case, to determine the merits of a complaint lodged against an official of the municipality"); *New Jersey v. Smith*, 218 A.2d 147 (N.J. 1966) (upholding the conviction of



a person who was removed from a city council meeting and convicted of violating a state statute that prohibited disturbing or interfering with the "quiet or good order" of a place of assembly by noisy or disorderly conduct).

46. Professor Van Alstyne thinks it "a virtual certainty" that a qualified right of this sort will be recognized when a suitable case is presented to the Supreme Court, even though the courts in certain federal district court cases have held to the contrary—e.g., *Stengel v. City of Columbus*, 737 F. Supp. 1457 (S.D. Ohio 1988); *Green v. City of Moberly*, 576 F. Supp. 540 (E.D. Mo. 1983). Letter from Van Alstyne to Bell, April 11, 1997 (see note 22).

47. *Moore*, 345 N.C. at 369, 481 S.E.2d at 23. The court also noted that when Moore spoke at the hearings and the meetings, he was using a public forum. *Moore*, 345 N.C. at 369, 481 S.E.2d at 23.

48. See Melville B. Nimmer, "The Meaning of Symbolic Speech under the First Amendment," *UCLA Law Review* 21, no. 1 (1973-74): 29.

49. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503 (1969).

50. *Tinker*, 393 U.S. at 505 (citations omitted).

51. *Smith v. Goguen*, 415 U.S. 566 (1974).

52. *Smith*, 415 U.S. at 589 (White, J., concurring) (citation omitted). See also *Brown v. Louisiana*, 383 U.S. 131, 141-42 (1966) (noting that First Amendment rights "are not confined to verbal expression").

53. See *Wooley v. Maynard*, 430 U.S. 705, 713, n.10 and accompanying text (1977).

54. As a practical matter, when items of apparel are concerned, it may be difficult to distinguish between public-comment portions and other parts of a meeting.

55. *Godwin v. East Baton Rouge Parish School Bd.*, 408 So. 2d 1214 (La. 1981), *appeal dismissed for want of a substantial federal question*, 459 U.S. 807 (1982).

56. *Godwin*, 408 So. 2d at 1217-19.

57. *Godwin*, 459 U.S. 807 (1982).

58. U.S. Const. amend. XIV, § 1; N.C. Const. art. I, § 19.

59. When the exercise of freedom of speech involves speech concerning religious matters, the United States Supreme Court will be particularly protective:

The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press.

*Employment Div., Dep't of Human Resources of Ore. v. Smith*, 494 U.S. 872, 881 (1990) (citations omitted). But the Court will balance this notion of protection with the idea that "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith*, 494 U.S. at 878-79. Similarly the Supreme Court has stated that "proponents of ideas cannot determine entirely for themselves the time and place and manner for the diffusion of knowledge or for their evangelism. . . ." *Jones v. Opelika*, 316 U.S. 584, 594 (1942). ■

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THE HISTORY OF THE UNITED STATES OF AMERICA

CHAPTER I  
THE DISCOVERY OF AMERICA  
The first discovery of America was made by Christopher Columbus in 1492. He sailed from Spain in search of a westward route to the Indies. On October 12, 1492, he landed on the island of San Salvador in the West Indies. This event marked the beginning of European exploration and settlement in the Americas.

CHAPTER II  
THE EARLY YEARS  
The early years of the United States were marked by the struggle for independence from Great Britain. The American Revolution began in 1775 and ended in 1783. The Declaration of Independence was signed on July 4, 1776. The Constitution was adopted in 1787. The first President of the United States was George Washington.

CHAPTER III  
THE WESTWARD EXPANSION  
The westward expansion of the United States was a major theme in the nation's history. The Louisiana Purchase of 1803 doubled the size of the United States. The Texas Revolution of 1835-1836 led to the Texas Annexation of 1845. The California Gold Rush of 1849 led to the California Admission of 1850. The Oregon Trail and the California Trail were major routes of westward migration.

CHAPTER IV  
THE CIVIL WAR  
The Civil War was fought between 1861 and 1865. It was a conflict between the Union and the Confederacy over the issue of slavery. The Union emerged victorious, and the war led to the abolition of slavery and the Reconstruction era. The Emancipation Proclamation was issued by Abraham Lincoln in 1862. The war resulted in the death of approximately 600,000 soldiers.

CHAPTER V  
THE RECONSTRUCTION ERA  
The Reconstruction era followed the Civil War and lasted from 1865 to 1877. It was a period of rebuilding the South and integrating African Americans into the political and social life of the United States. The Reconstruction Act of 1867 divided the South into military districts. The 14th Amendment was passed in 1868, and the 15th Amendment was passed in 1870. The era ended with the Compromise of 1877.

CHAPTER VI  
THE Gilded Age  
The Gilded Age was a period of rapid industrialization and economic growth in the United States, lasting from the late 19th century to the early 20th century. It was characterized by the rise of big business and the accumulation of vast wealth by a few individuals. The era was marked by social inequality and the rise of the Progressive Movement. The Industrial Revolution transformed the United States into a major industrial power.