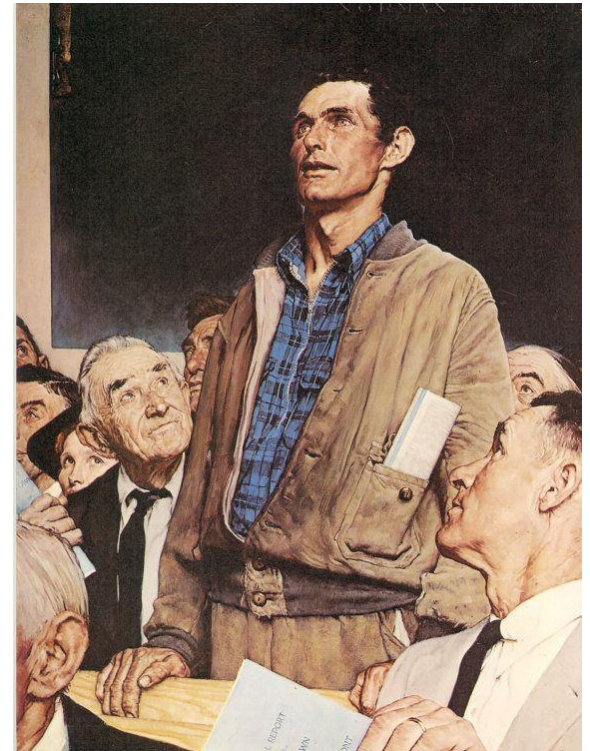


# PUBLIC COMMENT AT SELECTMEN MEETINGS

- “No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body.” G.L. ch. 30A, §20(g)
- However, notwithstanding that statutory limitation, for Andover Selectmen meetings “During all regular meetings, time will be set aside for citizens’ petitions and presentation. Citizens may bring up any matter or question of interest without prior notice given to the Board.” Policy Guidelines of the Board of Selectmen, Section I.6.
- **ISSUE:** Can citizens be limited in the content of what they may discuss in their “petitions and presentations”?
- Recent highly publicized Superior Court case of Spaulding v. Town of Natick School Committee addressed that issue.



## NATICK SCHOOL COMMITTEE POLICY

- Unlike the Andover Selectmen written policy, the Natick School Committee written policy for its Public Speak agenda items stated in part:
  - “3. Individuals may address topics within the scope of responsibility of the School Committee.
  4. Improper conduct and remarks will not be allowed. Defamatory or abusive remarks are always out of order. If a speaker persists in improper conduct or remarks, the Chairperson may terminate that individual’s privilege of address.  
  
• • •
  6. Speakers may offer such objective criticisms of the school operations and programs as concern them, but in public session the [School] Committee will not hear personal complaints of school personnel nor against any member of the school community. Under most circumstances, administrative channels are the proper means for disposition of legitimate complaints involving staff members.”
- This policy is nearly identical to what is set forth in the Massachusetts Association of School Committees reference manual.

## COURT'S ANALYSIS OF THE POLICY

- Regarding the policy which barred “personal complaints of school personnel nor against any member of the school community,” the Court held that this limitation is permissible only to the extent that it covers complaints about employees who are *not* within the School Committee’s direct responsibility or about students. It held, however, that the policy is unconstitutional as it pertains to complaints about an employee within the Committee’s direct responsibility, such as the superintendent, or complaints about “school operations and programs” which are within the Committee’s purview.
- As to the policy which prohibited “defamatory” statements the Court held that until speech is adjudicated defamatory, it is entitled to constitutional protection. The Policy’s prohibition of defamatory remarks is therefore constitutional to the extent that it only prohibits remarks that have already been adjudicated defamatory.
- As to the policy prohibiting “improper” or “abusive” comments, the Court held that “obscenities” or “threats” or “fighting words” or comments which are “likely to provoke violent reaction” could be prohibited but that the broad language in the policy (“improper,” “abusive”) must be narrowly tailored in order to allow it to serve the defendants’ interest in conducting the School Committee’s business in an orderly fashion.

## WHAT WAS SAID

- One speaker said, “I am the mother of a child that was mercilessly bullied into suicide here in Natick.” She was immediately stopped because her speech violated the policy in that it was disparaging to the Natick public schools and she was escorted from the building by police.
- The Court stated:

“...if the bullying to which Spaulding referred was at the hands of other students or teachers, Public Speak was not the forum for that topic; if, however, she believed that the superintendent, school operations, and/or school policies had somehow left her child feeling ‘bullied,’ then Public Speak was the appropriate forum.”
- Another speaker said at a meeting a month later that for the future and wellbeing of her boys and family, they moved out of Natick as a result of the “retaliation and retribution they received at the hands of the Natick Public Schools” and she was present to “voice [her] concern about the hostile, unsupportive climate of fear that exists in the Natick Public Schools.” She was cut off by the Chair who stated that pursuant to the written policy Public Speak session was not for personnel issues or talking about individual students or defamatory comments about the Natick Public schools.
- The Court stated:

“Public Speak was the proper forum for Sutter to discuss the superintendent’s ‘retaliation and retribution’ against her and her family, but she could not discuss any ‘retaliation and retribution’ at the hands of other school staff or students. Further, if the ‘hostile, unsupportive climate of fear’ at the Natick Public Schools was a result of the superintendent and/or school policies, Public Speak was the proper forum; otherwise, it was not.

Sutter also tried to discuss ‘what [she] witnessed a month ago at this meeting’ with respect to ‘the way a public speaker was treated.’ [The Chair] would not permit Sutter to discuss this topic either, and proceeded to suspend the meeting. The Participation Policy does not preclude speakers from using Public Speak to discuss Public Speak. Sutter was therefore wrongly silenced on this basis as well.”

## EFFECT OF COURT DECISION

- Start with the premise that no one has the right to speak per Open Meeting Law.
- However, public bodies may have policies to allow the public to speak.
- Once have policy, must not be unconstitutional.
- This is a Trial Court (not Appellate Court) decision and only binding on the Natick School Committee, but is getting a lot of attention across the Commonwealth.
- “This decision is an important step in protecting free speech in public forums which is a bedrock safeguard of our democracy,” said Ruth Bourquin, senior attorney at the ACLU of Massachusetts.
- Violation of a person’s First Amendment rights can subject a municipal official to being personally liable for damages and attorneys fees in a federal civil rights claim.
- Is this a Pyrrhic victory for free speech? Some public bodies may totally eliminate the public presentation section in their policies and agendas.
- Unlike some limitations of the written Natick School Committee policy which were upheld, the Andover Selectmen written policy has no limitations on the content of discussion in the Selectmen’s agenda item of citizen petitions to Selectmen.