

Worcester Superior Court Upholds Constitutionality of Southborough Public Participation Policy

On March 8, 2021, Worcester Superior Court Justice Shannon Frison granted defendants' motion for judgment on the pleadings in an action brought against the Town of Southborough and several Town officials by a local resident. Barron v. Kolenda, Worc. Super. Ct., C.A. No. 2085CV00382. After the resident yelled "You're a Hitler!" at the acting chair during the public comment segment of a Board of Selectmen meeting, the acting chair enforced the Board's Public Participation Policy by allegedly yelling back at the resident and instructing her to leave the meeting or else be escorted out. In her Memorandum of Decision and Order, Justice Frison dismissed the resident's claim brought against the acting chair under the Massachusetts Civil Rights Act for interference with her rights to free speech and peaceable assembly under the Massachusetts Declaration of Rights. The acting chair's alleged outburst in reaction to being called a "Hitler" could not reasonably be understood, explained the Court, as an attempt to intimidate the plaintiff. Moreover, his threat to have the plaintiff escorted from the meeting was no more than a threat to use lawful means to remove the plaintiff due to her disruptive behavior. Justice Frison also rejected plaintiff's facial challenge to the Public Participation Policy. To the extent it prohibits "rude, personal, or slanderous" remarks by speakers, the Policy, cautioned the Court, may "border[] close to an unconstitutional prohibition on speech." But considered in the context of other language focused on disruptive conduct, such prohibition is not unconstitutional. Because the public comment segment of the meeting is a limited public forum, Justice Frison upheld the Public Participation Policy as "a reasonable, viewpoint-and-content neutral, restriction that serves the legitimate government interest of preventing disruptions of the Board's meeting." Attorney John J. Davis of PDP represented the Southborough defendants.