

CLIENT NEWS BRIEF

Court Reaffirms Governing Board's Ability to Impose Reasonable Limits on Public Comment

A California appellate court recently reaffirmed the limitations a governing board of a public entity can impose on public comments during a board meeting (*Ribakoff v. City of Long Beach*).

Background

As was his frequent practice, Joe Ribakoff attended a Long Beach Public Transportation Company (LBTC) board meeting as an interested citizen. LBTC's lone shareholder is the City of Long Beach, and LBTC operates as a public entity. During the public comment period, Ribakoff spoke for the three minutes that an LBTC board ordinance grants members of the public to address the board. When Ribakoff attempted to speak a second time, after the close of public comment, he was denied the opportunity to speak further and his microphone was cut off. An LBTC representative testified that Ribakoff became argumentative and appeared to approach the dais where the board was seated. A police officer was summoned and told Ribakoff that if he disrupted the meeting again, he would be arrested for violation of a city ordinance prohibiting disturbance or interruption of a board meeting.

Ribakoff sued the board, arguing that the board meeting disturbance ordinance violates the First Amendment, and that its three-minute speaking limit violates the Brown Act and the First Amendment.

To support his argument that the ordinance's prohibition on disturbance or interruption of a board meeting violated the First Amendment, Ribakoff pointed to precedent that says an ordinance is unconstitutional if interpreted to allow an arrest based on the content of the disruption. However, that precedent also found that an ordinance is constitutional if it is construed to be a content-neutral "time and place" restriction. The court construed the challenged ordinance to be a legitimate "time and place" regulation that only penalized speech based on whether it was disrupting the meeting, not on what was being said.

The Brown Act permits a public agency's governing board to adopt reasonable time limitations to ensure adequate opportunity for public comment, but prohibits the board from censoring public criticism of it. Ribakoff argued that the three minute limit is not reasonable because the board used it for a purpose other than time limitation—it allowed the board to censor his criticism. However, the court found no evidence to support this argument. The board did not stop Ribakoff from speaking during his initial three minutes, despite his critical statements. It was only when he attempted to speak after his three minutes had expired that he was restrained from speaking further.

Ribakoff also claimed that the time limit is unreasonable because the three-minute limitation applies only to public comment and not the board or its invited speakers. The court disagreed, pointing out the difference in purpose between public comments and board or invited presenter speech. When the board or its invited presenters speak, it is for the benefit of the public. The

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board regulates the number and length of these presentations, and ensures that they do not take more time than necessary. Conversely, public comment is potentially unlimited depending on how many members of the public are at the meeting, so a reasonable time limitation is justified.

The court recognized that board meetings are open to the public, yet are still governmental processes with an agenda and a purpose. Therefore, limitations for the purposes of keeping the board meeting on schedule and on topic are justified.

Takeaways

- Boards are generally not permitted to adopt rules that limit public comment based on the content of the comment. But it is not a free speech violation to limit comments to the topic at hand.
- Cities or other entities with police power may adopt ordinances that authorize penalties for members of the public when their behavior—and not the content of their expression—impairs the conduct of the meeting.
- Boards may adopt reasonable time limitations on public comment.
- Boards may have different time limitations for public comment versus board members or invited speakers.

For questions regarding the *Ribakoff* decision or about public comment or board meetings in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).