

LEGAL AND REGULATORY NOTES, NOV. 2014

Court Rules on Constitutional Right to Physically Attend Open Meetings

On September 30, 2014, U.S. District Court Judge J. Garvan Murtha ruled that Addison-Rutland Supervisory Union (ARSU) officials violated a man's right to free speech under the First Amendment and due process under the Fourteenth Amendment of the U.S. Constitution when the district banned him from school property and prevented him from attending school board meetings. This ruling impacts not only Vermont school districts, but all municipalities in the state as well.

The case between the ARSU and Marcel Cyr began when Mr. Cyr and his wife became vocal critics of the ARSU and the Benson Village School that their son attended. The Cyrs were unhappy with the education their autistic son was receiving at Benson Village School and the couple filed several administrative complaints against the ARSU. The Cyrs put up yard signs, decorated their car, and handed out flyers advocating their views. School officials reported feeling threatened by Mr. Cyr's large stature and loud voice when interacting with him. There were reports that Mr. Cyr parked near school property and watched as school officials left meetings and did "drive-bys" of the school at odd hours. There were unsubstantiated allegations that their son's teacher saw Mr. Cyr drive by her house in New York, and school officials read threatening comments on-line under a screen name Mr. Cyr had used previously. These occurrences, among others, led the Benson school principal and ARSU superintendent to issue two separate notices against trespass to Mr. Cyr barring him from all ARSU property for two years. Due to the no-trespass orders, Mr. Cyr was unable to physically attend school board meetings. ARSU offered Mr. Cyr the ability to attend school board meetings via telephone or by other "assistive" technological means, however Mr. Cyr contends he did not know what the technologies were, and did not have access to them.

Mr. Cyr filed suit against the ARSU alleging the notices against trespass which prevented him from physically attending school board meetings violated his constitutional rights to access to information, free speech, and due process. Judge Murtha ruled that the ARSU violated Mr. Cyr's right to free speech under the First Amendment and due process under the Fourteenth Amendment of the U.S. Constitution. With regard to Mr. Cyr's right to access claim, the judge ruled that there is no First Amendment right to access to school board meetings and, therefore, there was no violation of the First Amendment by the ARSU.

Judge Murtha held that the notices against trespass issued to Mr. Cyr violated his First Amendment right to free expression by preventing him from physically attending school board meetings, which are a type of "limited public forum" under federal Constitutional analysis. Governments may impose content-neutral time, place, and manner restrictions on speech within this designated category so long as those restrictions are "narrowly tailored to serve a significant government interest and leave open ample alternative channels of communications." The judge ruled that although the trespass order was a "content neutral" restriction, the two-year ban was

not “narrowly tailored,” and did not leave open “ample alternative channels of communication.” Murtha explained that ARSU’s “categorical ban” was not tailored to respond to the “threat” that Mr. Cyr posed to school staff, “a threat that was never articulated as anything more specific than ‘a potential risk of violence to [the principal and director,] or their staff.’” ARSU could have relocated the school board meeting to a neutral and secure location, as well as drafted a trespass notice that was in effect only during school hours or they could have posted a police officer at public meetings held on ARSU grounds. Added Murtha, the ASRU unreasonably singled out Mr. Cyr from school board meetings via the no-trespass orders, while others were still permitted to attend.

The ARSU was also found to have failed to provide adequate alternative channels of communication. “Participating by telephone would have substantially diminished Mr. Cyr’s ability to communicate not only with the school board, but the community members,” said the judge, adding that “physical participation in open school board meetings is a form of local governance, and to the extent that Mr. Cyr cannot be present at these meetings to communicate directly with elected officials, his First Amendment right to free expression is violated.” Therefore, the “First Amendment does not permit the ARSU to confine Mr. Cyr’s speech to telephone or ‘assistive technologies’ by issuing a blanket notice against trespass when less burdensome alternatives exist.”

Mr. Cyr’s other successful claim was that the ARSU stripped him of his Fourteenth Amendment right to due process when officials issued him the notices of trespass. A procedural due process claim is composed of two elements. First, there must be a property or liberty interest that is deprived; second, there must be deprivation of that interest without due process. Judge Murtha recognized that Mr. Cyr had a strong interest in attending school board meetings, where he had a right to express himself. The notices created a “high risk of erroneous deprivation because they were not issued pursuant to any protocol, because they did not set out a process to contest the ban, and because Mr. Cyr did not receive a meaningful opportunity to contest the ban.” And because the notices were not issued pursuant to any protocol, did not specify a process for contesting them, and Mr. Cyr had no meaningful opportunity to contest them, “the notices posed a high risk of erroneously depriving Mr. Cyr of his First Amendment right to freedom of expression.” Lastly, the judge noted that although the ARSU had a significant interest in protecting the safety of school staff, that interest was “not so overwhelming, taxing, or immediate that the ARSU did not have time to set out reasons for their decision and provide Mr. Cyr and opportunity to be heard.”

All municipalities in Vermont should take note of this ruling because they sometimes face situations where certain citizens become vocal critics of the town and town officials, creating a potentially threatening situation. If town officials want to limit a citizen’s access to certain town buildings or even themselves to respond to a particularized danger or threat, they should be very careful to create narrow solutions that address these specific issues and nothing more. Any similar restriction placed upon a citizen should still allow that person to physically attend open meetings, and the town should address any concern for safety, for example, by moving a meeting to a neutral location and having law enforcement present. By taking these steps, a town will ensure that constitutionally-protected rights are not violated. Additionally, if a ban similar to a no-trespass order is issued to a citizen, the town needs to provide due process. Any ban on access should be mindful of “protocol” in the first instance, and there needs to be a “set out process for contesting” a ban, giving the person a meaningful opportunity to contest it.

Due to the serious nature of these matters and the legal implications that follow, a town should always work with its town attorney prior to taking any steps that restrict a person's access to town property and open meetings.

The decision is archived at <http://docs.justia.com/cases/federal/district-courts/vermont/vtdce/1:2012cv00105/21931/33/>

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