

Frederick B. Goldsmith
4 Harding's Way
Truro, MA 02666

Editor
Truro News

RE: Public Comment at Town of Truro Select Board Meetings

Dear Sir/Madam,

As a lawyer licensed to practice in Massachusetts, after attending the June 11, 2024, regular meeting of the Select Board of The Town of Truro, the question arose in my mind whether a select board member could properly object (invoking a "point of order") to an individual citizen's "orderly and peaceably stated" public comment during the public comment portion of the meeting, on the basis the comments were addressed to, named, and/or were critical of the conduct of a single member of the Select Board, versus the select board as a whole. Under well-established Massachusetts law, the answer to me is clear. This objection, this interruption, and the resulting restriction imposed on the content of this citizen's comments were both illegal.

Last year in the case of *Barron v. Kolenda*, the Massachusetts Supreme Judicial Court (the Commonwealth's highest court) addressed permissible public comment to a select board under Article 19 of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, part of the Massachusetts Constitution. Article 19 provides:

The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

The Court in *Barron v. Kolenda* wrote Article 19 "expressly envisions a politically active and engaged, even aggrieved and angry, populace" and that it applies not only to state representatives and legislative bodies, but also to town officials. The Court continued its discussion of Article 19 (my emphasis below):

The provision also has a distinct, identifiable history and a close connection to public participation in town government that is uniquely informative in this case. ... art. 19 reflects the lessons and the spirit of the American Revolution. The assembly provision arose out of fierce opposition to governmental authority, and it was designed to protect such opposition, *even if it was rude, personal, and disrespectful to public figures, as the colonists eventually were to the king and his representatives in Massachusetts.*

The Court in *Barron v. Kolenda* further explained the wide-open nature of public comment under Article 19, how it is designed to protect the "fullest and freest" and the "fierce" discussion of public

matters, “so long as that criticism is done in a peaceable and orderly manner and is consistent with time, place, and manner restrictions.” The Court wrote:

‘Peaceable and orderly’ is not the same as ‘respectful and courteous.’
There was nothing respectful or courteous about the public assemblies of the revolutionary period.

The Court in *Barron v. Kolenda* considered the Town of Southborough’s civility code and how members of its select board stopped a citizen’s public comments because certain members of the select board did not like the “content” of what the citizen, Louise Barron, said during the officially permitted public comment portion of the town’s select board meeting. The Court wrote (my emphasis below):

Here, the town expressly provided a place for public comment: the meeting of the board. The town also set the time, after the conclusion of the regular meeting, as was the town’s right. Barron presented her grievances at the established time and place. The town nonetheless then sought to control the content of the public comment, which directly implicates and restricts the exercise of the art. 19 right of the people to request “redress of the wrongs done them, and of the grievances they suffer.” The content sought to be prohibited -- discourteous, rude, disrespectful, or *personal speech about government officials and governmental actions* -- is clearly protected by art. 19, and thus the prohibition is impermissible.”

The Court in *Barron v. Kolenda* also found the Town of Southborough’s policy requirement that public comment speech directed at its officials “be respectful and courteous, [and] free of rude ... remarks” as crossing the line “into viewpoint discrimination: allowing lavish praise but disallowing harsh criticism of government officials.”

In this light, I believe the content-based restriction on public comment I witnessed on June 11 was illegal. And if a select Board member claims the right to shut down this type of public comment based on a Town of Truro published “policy,” if the policy conflicts with *Barron v. Kolenda*, the policy is illegal and unenforceable. For the sake of vigorous, Constitutionally-protected public debate, I hope our citizens are never again illegally interrupted or instructed not to criticize an individual select board member. And I hope other would-be public commenters in the future are not cowed. Stand up and speak out. It is your right.

Sincerely,

A handwritten signature in blue ink, appearing to be 'F.B. Goldsmith', with a large, stylized flourish at the end.

Frederick B. Goldsmith