Is There a Right to Disrupt School Board Meetings?

The United States Court of Appeals for the Third Circuit weighed into the touchy question of whether there is a constitutional right for a citizen to disrupt school board meetings. The United States Court of Appeals for the Third Circuit, the federal court just below the United States Supreme Court for the states of Pennsylvania, New Jersey, Delaware and the U.S. Virgin Islands, weighed into the thorny thicket of school board decorum in *Barna v. Board of School Directors of the Panther Valley School District*, 2017 U.S. App. LEXIS 24712 (3rd Cir. December 7, 2017) Chagares, Chief Judge.

The situation which the court described is all too typical these days. John Barna sued the school board after several of its officials allegedly violated his First Amendment rights by categorically banning him from attending school board meetings after he was threatening and disruptive on several occasions. The behavior, not so clearly articulated by the court, was that of a yahoo. Barna made remarks that certainly sounded as though he might bring violence upon members of the school board. The citizen raised his voice, became disruptive, and was, among other things, "intolerable, threatening and obnoxious." He interfered with the functioning of the board.

The lower court threw out the claim. The United States Court of Appeals thought differently.

Of particular interest is that the trial court found that the ban on Barna was unconstitutional, but they nevertheless granted qualified immunity resulting in the case being tossed as to both the individual school board members and the school board as a whole. So, what is this mysterious "qualified immunity" which protects school board members and the board, along with many other government agencies and individuals?

Those sued under § 1983 of 42 U.S. Code, enforcing legislation upon the states where the United States Constitution is concerned, are entitled to qualified immunity "unless it is shown that the official violated a statutory or constitutional right that was 'clearly established' at the time of the challenged conduct." What the heck does that mean? A right is "clearly established" when, in the words of the court, its "contours" are "sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Courts determine what that "reasonable official" should "understand." It is common practice to look at Supreme Court precedent and if the Supreme Court has not spoken on a particular subject, then the courts look at decisions from around the country. There is no controlling authority from the United States Supreme Court or the United States

Court of Appeals for the Third Circuit on the issue of citizen disruption of school board meetings. Everyone agrees that a school board meeting is "a subcategory of the designated public forum." In other words, while a school board meeting is a public place, it is "limited" in terms of the right of citizen expression.

After expending many words on the subject, the United States Court of Appeals, in *Barna*, affirmed the trial court's grant of summary judgment dismissing the case in connection with the individual board members. "Qualified immunity" was their get-out-of-jail-free card. The panel from the Third Circuit concluded that the state of the law at the time of the Board's ban was not clear that a citizen has an established right to participate in school board meetings in spite of engaging "in a pattern of threatening and disruptive behavior." That right was just not clearly established. The yahoos go down in flames.

More interestingly was the question as to the immunity of the school board. Municipalities do not enjoy the same qualified immunity from suit for damages as individuals do. There is no immunity from damages against the individual entities flowing from their constitutional violations. However, a board is not automatically responsible for the misdeeds of its members. Under Supreme Court precedent, it must be shown that the local agency adopted a "custom or policy" that is unconstitutional or that is the "moving force" behind any constitutional violation. After considering the issue, the appellate court found that the trial court was wrong to dismiss the claim against the school board. "Exceptional circumstances" permit the review of an otherwise forfeited issue of the board's entitlement to immunity. The trial court was found to have erred in awarding qualified immunity to the Board, and the court of appeals sent that important issue back to the trial court. The Third Circuit appellate tribunal took no position on the viability of the claims against the Board. That in the first instance will have to be decided by the United States District Court for the Middle District of Pennsylvania, the trial court in this instance.

Whatever happened, notwithstanding the permission of the law, to decency, civility, integrity and respect? Perhaps there is something above and beyond what the law permits which ought to guide the conscience of our public officials and citizens. One could not help but wonder whether a quiet discussion between all the parties involved could have resulted in the citizen having a say without the necessity of a school board ban. We do not know this back story, but undoubtedly there is much more in the *Barna v. Board of School Directors of the Panther Valley School District* case than meets the eye.

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