

The First Amendment is not the last word



In this country today, the First Amendment to the United States Constitution is the foundation of our civil liberty. The freedoms that it lists are crucial to our society. When we read accounts of how these freedoms, in other nations, can be abridged, limited or ignored, we react with horror. And yet it is also important to acknowledge that in the matter of free speech, the First Amendment is not the last word.

“Congress shall make no law...abridging the freedom of speech...”

These 10 words have been interpreted to allow words and actions of an extraordinary breadth and variety. And sometimes, in our public meetings, people engage in hateful, vicious, personal and wide-ranging attacks on institutions and individuals, waving the banner of free speech. They sometimes take actions, defended as free speech, which physically disrupt the meeting.

We would like to offer a framework for consideration of free speech at public meetings, in the hope that it will be helpful to elected officials and local governments struggling with these issues. Our examples are from Washington State. Refer to your state law for the specifics that apply to your situation.

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1. It is important to distinguish between legal concerns and parliamentary procedure. I am not an attorney and this article does not constitute legal advice. These thoughts are offered from the point of view of parliamentary procedure, which is a part of the common law with its own special history and perspective. Taking the parliamentary view into consideration, you will want to be guided by your attorney.
2. A governing body has the right to establish rules for the conduct of its business. This principle is enshrined in Washington state law (see, e.g., [RCW 35A.12.120](#)), in *Robert's Rules of Order*, and in common parliamentary law as affirmed by the courts.
3. We recommend that every council, commission, or other public body establish its own rules of procedure. From our perspective, it makes sense to adopt *Robert's Rules of Order*, and then add your own special additional rules that meet the requirements of your particular situation.
4. Including a time limit on remarks is essential if a body is to conduct its business effectively.
5. A governing body may prohibit offensive speech, personal attacks, insult, etc. by its own members.
6. A member who breaks this rule may be reprimanded, censured, or asked to leave the meeting. Such punishment can be inflicted only by the body itself, not by the chair acting alone. Including such consequences in the rules of procedure, though it may not seem necessary when you adopt them, can prove very helpful if your situation changes.
7. In Washington State, the public has the right to attend meetings, but does not have the right under the state constitution or by statute to speak at them. However, most public bodies have created this right by consistently giving the public an opportunity to speak.
8. In its rules, the body may authorize the chair to make a brief response to a speaker. The chair may state that the body will take the views into consideration during its discussion and may offer to provide information or a response later. (Of course, if you say this, be sure to follow up!)
9. However, the right to speak and ask questions does not, in and of itself, include the right to an answer. It is important for the chair not to get involved in a back-and-forth exchange with members of the public. We all have a natural impulse to defend ourselves when attacked, but remaining calm and moving on the next item of business may be the most prudent and appropriate response.
10. This also prevents the unfortunate situation wherein the chair makes statements that are then interpreted as the position of the whole body, when perhaps they have not been adopted by the body, leading to further wrangling and recrimination.
11. In creating its rules, a council may impose restrictions pertaining to the way in which public comment is offered. It is fine to impose time limits. If state law allows, you may require that remarks be germane (relevant) to the subject at hand, or confine public comment to specified topics. All such restrictions must be viewpoint-neutral.

12. Members of the public may not disrupt the meeting. However, the courts have found that words alone do not constitute disruption. The body may request that speakers be courteous and refrain from profanity, personal attacks, and so on, but it cannot require them to do so.
13. In Washington State, if members of the public who are present actually disrupt the meeting, or physical violence is threatened, they can be ordered to leave, the meeting room may be cleared, or the body itself can adjourn the meeting and reconvene in a different place, without the presence of the public but with the presence of the media. ([RCW 42.30.050](#).) We advise caution in considering whether to order someone to leave. Consult your attorney and be sure that your actions are defensible under the First Amendment.

It is clear from current research into how the human brain functions that when people get loud, offensive, and insulting, a group is not able to do its work. When the amygdala sends out signals of fear and rage, the prefrontal cortex, the part of the brain that is capable of reflecting on and making decisions about complex issues, stops functioning. This means that angry emotions and disruptive actions can have the effect of hijacking a meeting.

► **HONOR THE FIRST AMENDMENT, ESTABLISH RULES, BE PREPARED TO ACT**

Sometimes that's what protesters want. It means, though, that those same protesters are stealing from the public. They are preventing our officials from doing the work that they were elected or appointed to do. We encourage you to be proactive and definite. Honor the First Amendment, establish rules that will protect your group to the best of your legal ability, and be prepared to act when disruption threatens. To do otherwise is to run the risk of wasting your time and the public's resources.

Thank you for your interest in running effective meetings using Robert's Rules of Order. Visit our website, www.jurassicparliament.com, for much more information on how to do this. Or contact us at info@jurassicparliament.com or 206-542-8422. We look forward to hearing from you!

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