

# Citizen's Suit Against Individual School Directors For Categorical Ban From Attending Future School Board Meetings Dismissed

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*Barna v. Board of School Directors of the Panther Valley School District*, Case No. 15-3904 (3d Cir. 2017). The United States Court of Appeals for the Third Circuit affirmed the dismissal of a citizen's suit against individual school directors after they categorically banned him from attending future school board meetings due to threatening and disruptive conduct.

## Summary Background

John Barna filed a lawsuit under 42 U.S.C. §1983 alleging that the school board of the Panther Valley School District violated his First Amendment rights by categorically banning him from attending Board meetings after he was threatening and disruptive on several occasions.

Barna attended a school board meeting at which he expressed concern about a particular school district contract. Barna mentioned that he and his friends were confused by the contract, which they perceived as a waste of public resources. The school board President responded by suggesting that Barna bring his friends to the next meeting to which Barna replied: "You wouldn't like that. Some of my friends have guns." Barna later contended that this remark was a joke.

Barna attended the following school board meeting and the school board President told Barna: "Since you say that you have friends with guns, I'm going to have to ask you to leave." Barna stated: "Don't laugh. I may have to come after all of you." Some meeting attendees construed the remark as a threat. Barna alleged that after leaving the meeting room, another school board member standing in the hallway, made threatening gestures toward him. A security guard restrained Barna as he attempted to follow the school director. Barna then returned to the Board room and stated that the school director "just threatened [his] life." The next day, the school district superintendent informed Barna by letter that he would be banned from future attendance at board meetings if he engaged in any threatening or disorderly conduct.

Barna subsequently attended several Board meetings without incident. While attending a meeting several months later, Barna raised his voice and became confrontational after being denied the opportunity to ask questions. The school board President stood up at some point, which Barna apparently interpreted as an invitation to fight. Barna stated: "Do you want to fight? Let's go." Barna admitted that during the meeting he "blew [his] top" and was "just mad." The Board convened again the next day, at which point Barna apologized for his conduct to some, but not all, of the school board members. During a brief recess at the meeting, Barna uttered "[s]on of a bitch" within earshot of meeting attendees, including some children.

Subsequently, the school solicitor sent Barna a letter barring him from attending all Board meetings or school extracurricular activities because his conduct had become "intolerable, threatening and obnoxious" and because he was "interfering with the function of the School Board." Barna was informed, however, that he was permitted to submit "reasonable and responsible" written questions to the school board, which would be answered in a timely manner.

Barna then filed this suit against individual school directors alleging violations of his First Amendment right to free speech and violations of his First and Fourteenth Amendment rights to be free from unconstitutional prior restraint. The District Court granted summary judgment in favor of both the Panther Valley school board as an entity and the individual school directors. The federal court of appeals sustained the decision in favor of the individual school directors, but remanded the

case to the trial court for further proceedings upon Barna's claims against the school entity.

### **Discussion**

A plaintiff seeking relief under 42 U.S.C. § 1983 must demonstrate that the defendants, acting under color of law, violated the plaintiff's federal constitutional or statutory rights, and thereby caused the complained of injury. A defendant sued under § 1983 is 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. A right is considered "clearly established" when a reasonable public official would understand that what he is doing violates that right.

The federal appeals court noted that neither it nor the United States Supreme Court had previously ruled upon the constitutionality of a categorical prohibition of an individual citizen's attendance at a public meeting of a local board. The court acknowledged that it had twice upheld the *temporary* removal of a disruptive participant from a limited public forum like a school board meeting as not violating constitutional rights. The court considered two decisions from other federal courts that reached conflicting results, thus determining that there was no consensus upon the legal question of the permissibility of a wholesale ban from attending public meetings.

In the absence of consistent court decisions on the subject or of any controlling precedent, the court concluded that the ban by school officials of Barna from future school board meetings did not violate a "clearly established" constitutional right. Thus, the individual school officials were entitled to qualified immunity from Barna's suit and, therefore, his claims against them were properly dismissed by the trial court. However, because the principle of qualified immunity does not apply to the school entity itself, the court allowed Barna's case to proceed against the school district.

### **Practical Advice**

As discussed in the court's decision in Barna, courts consistently have allowed local government officials to temporarily remove disruptive participants from municipal and school board meetings to prevent interruptions, disregard of rules of decorum and disruptive behavior. However, as demonstrated by the Barna decision, the constitutional propriety of a categorical exclusion of an individual citizen from attending or participating in public meetings has not been extensively litigated. Notably, because its decision was premised upon the application of the principle of qualified immunity, the Third Circuit did not rule upon this fundamental issue.

Thus, at present, school officials can proceed without reservation to temporarily remove citizens from public meetings for disruptive or threatening conduct. Pending further court decisions or controlling precedent either from the Third Circuit or the U.S. Supreme Court, however, it cannot be stated that a categorical ban from attendance likewise is constitutional. Thus, any decision to ban a citizen from future attendance or participation at meetings should be carefully considered in the context of the severity and pervasiveness of the disruptive or threatening conduct and, as was done in Barna, coupled with the provision of an alternative means for the citizen to obtain information or submit comments for school officials' consideration.

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