

EVERYDAY DEMOCRACY

CITIZEN ADVOCACY CENTER'S SEASONAL NEWSLETTER, THIRD EDITION, 2008

Public Comment Policies Mandating "Niceness" Infringe on the First Amendment

The CAC has identified a new trend stifling political speech: the creation of public comment policies that attempt to regulate the decorum of individual speakers during public comment portions of government meetings – or “niceness” policies.

The Open Meetings Act is an important law that ensures government bodies conduct meetings in the public purview but the statute does not require government bodies to allow for public participation. School boards, per the Illinois School Code, (105 ILCS 5/10-6) are the only Illinois government bodies that must allow for public comment at public meetings. However, once a governmental body provides individuals the opportunity to give public comment, the First Amendment of the U.S. Constitution protects all speakers equally and the only permissible restrictions are content neutral regulations that limit time, place and manner. Moreover, public comment statements at government meetings are political speech by nature and are therefore afforded the strictest of protections under the First Amendment. The result: niceness policies put the First Amendment on trial.

Examples of niceness policies include the following municipalities:

- The Village of Deer Park: “...Disrespectful, insulting, satirical, or offensive comments directed at individual public officials are not permitted.” (Policy is noted on public comment sign-in sheet and read by the mayor prior to public comment period.)
- The Village of Hinsdale: “...Speakers shall be courteous and should not make statements that are personally disrespectful to members of the Village Board. Foul, abusive, or inappropriate language, displays or other materials are prohibited.” (Printed on agenda.)
- The City of Wheaton: “..Respect for the duties of the City Council and for the democratic process will be adhered to—in this regard, civility and a sense of decorum will be strictly followed.....Comments that are personally condescending will not be permitted. Therefore, speakers shall be courteous and should not make statements that are personally disrespectful to members of the City Council.” (Printed on agenda.)

Public bodies certainly have the legal authority to institute regulations so meetings can be conducted in an effective manner and to minimize highly disruptive conduct. Niceness policies are typically undefined, vague and overbroad attempts to restrict critical or offensive speech spoken during the prescribed public comment time limits regarding public policy issues.

Based on an initial survey by the CAC, at least a dozen public bodies in the Western suburbs have niceness policies that are either enacted as local law or informally read aloud by the head of the public body before a meeting. The timing of the Village of Deer Park, the Village of Hinsdale, and the City of Wheaton policies are indicative of the true purpose of niceness policies: all were created in conjunction with outspoken citizens or citizen groups regularly attending and commenting on public issues.

What kind of healthy democracy do we live in if members of the public cannot criticize the status quo during government meetings? What are “offensive,” “disrespectful” comments and how can a public body define, much less police, “satirical” comments? The constitutionality of niceness policies has not been directly addressed by federal courts but there is favorable case law affording free speech protection for political speech. It is the opinion of the CAC that niceness policies that seek to chill offensive speech are unconstitutional and violate the well-established free speech principles of the First Amendment.

This is an area ripe for litigation to hold public bodies accountable. It is also an appropriate area for the General Assembly to pass legislation in order to protect the First Amendment rights of those who take seriously their role as a citizen living in a democracy, as they did with the passage of the “Citizen Participation Act,” or anti-Strategic Lawsuits Against Public Participation legislation.

Citizen Advocacy Center Works with Middle Schools To Enhance Civic Education

The CAC assists teachers in increasing students' knowledge of government. Middle school teachers from Elmhurst's District 205 were among the many teachers we worked with this year. Sandburg Middle School hosted a presidential debate night for the district's three middle schools where hundreds of students watched the debate, electronically voted on issues and immediately saw peer results. The CAC helped launch the event and honor essay contest winners. Winning essays regarding: **Should the Voting Age Be Lowered?** are reprinted.

Winner: Lara Zich (6th grade)

Right now the voting age is just right. If the age went any younger, lots of the younger people wouldn't take voting seriously. If the age went any higher, it wouldn't be fair, because some part of the younger generation should have a say in the election.

Eighteen year olds have gone through preschool, elementary school, middle school, and are now picking what they're going to study in college. They've learned how to make good points and research both sides of the election. They've realized that you can give each candidate a chance, and they have the experience and maturity to take part in voting. They're ready and responsible enough to start doing things on their own, like go to college in a place five states away, unlike sixteen or even seventeen year olds. Anyone younger than eighteen isn't ready to take part in deciding who should lead our country for the next four years.

If the voting age went up any higher, it wouldn't be fair to any of the younger generation. Right now, we're doing an election at Sandburg. Everyone is going to vote for who they think the right candidate should be. It wouldn't be fair or make sense if we learned all about the election now, and then couldn't vote for another ten years. Students are getting taught about the election at a young age for a reason. Voting is in the near future, and everyone will be at least a little bit excited about taking part in such a big decision. Eighteen is far enough away, and it wouldn't be right to make it any farther.

Winner: Ushashi Naha (8th Grade)

At 16, Americans are given the privilege of driving. At 18, Americans have the right to smoke. And at 18, Americans are given another right - the right to vote... but is that the right choice? Are 18 year olds ready to take on yet another responsibility? With college, grades, and everything else freshmen need to worry about, do we really need to add on one more adjustment to an already brand-new life? One that most don't even take the time to use? I believe it's time to change the 26th amendment... and raise the voting age to 25!

Even though 18 year olds have the right to vote, it seems as if they are letting that precious right go to waste. A poll by the United States Census Bureau that was printed by The New York Times states that only 47% of 18 to 24 year olds turned out in the 2004 election. Many people may wonder; why aren't more showing up? This particular age group is going through a lot of changes at that point of their lives. Most have headed off to college, and that means new place, new people, new LIFE. If college students really do vote, it takes them a greater effort to get it done, an effort most don't want to take. Because college students are normally away from home, the majority would have to get an absentee vote since they're registered to vote in their hometown. College students are thinking about how to pass the semester, not who should run our government for the next four years! Life is hectic enough for 18 year olds heading off to college, even without having the right to vote as well on their shoulders. In contrast, from the same poll in The New York Times, it said that 56% of 25 to 34 year olds made it to the 2004 elections. Because it's easier for 25 year olds to vote, more of them come to the polls. A 25 year old is out of college, and by then their life is under control. That's the sort of thing that's needed when people are voting - a cool head with a desire to vote.

Yet another reason to raise the voting age to 25 is because of the issue of maturity. Many people, adults and children, claim to be mature. But the true question is when are humans truly mature? People are arguing to lower the voting age to 16; but obviously at that age, there is still a long way to go. People say 16 year olds are incompetent of understanding these issues. I believe 16 year olds are really just ignorant. After all, how can a 16 year old understand foreclosures and mortgages when they're still in high school? At 16, the most

important issues to students are getting a car or getting into a good college. None of them are out on their own, dealing with the difficult issues these days. The same thing can relate really to college students. Yes, they're out of high school, but at that point of their lives students are dealing with college life. And still, the greater part of students haven't had the full impact of reality. College students are still dealing with grades, and still get help from their parents. It's true some do have to pay for their own college, but most have their parents pay for the big expenses such as rooming, food, and textbooks. By the time people reach 25, they have experienced a lot of issues that candidates are talking about. Twenty-five year olds can honestly understand and comprehend what candidates are talking about. Also, they can choose the side they truly support, not because everyone else is voting for that candidate, but because that candidate represents their ideas and beliefs. In fact, there has been a study that says that the brain does mature at the age of 25. So not only do they have the life experience, but 25 year olds have the brains to prove it too! That's who I want voting for our leaders - mature people who understand the issues.

Everyone is talking about the election these days, who's being honest, who's lying, and everything else that goes along with a Presidential election. As important as that is, I think an equally important and valuable topic is the voting age. After all, we not only need smart candidates, but we need smart voters who can choose the best person for the job. Twenty-five is the best time to start this important process of voting. Everything that people look for in voters are in 25 year olds - understanding, maturity, and a desire to put those skills to one of the greatest tests of all.

Twenty-five is the right age to vote. You'll vote for who you think is right, not who anyone else does. It's that age where you'll take voting seriously and you'll have fresh ideas about why you picked that person. Twenty-five really is the perfect age to vote.

Winner: Anna Marie Talamo (7th grade)

Obama? McCain? Obama? McCain? This is one of the main questions on our minds this November. But, another very important question is how old should a person be to make that decision? So many young people want to get involved. But on the other hand, for other young people the most important thing to them right now are their relationships, sports, and hair. So, how do we decide what an appropriate voting age is? We don't. It's already at the right age.

Adults have lived through some pretty bad presidents, so they know what they want and don't want in a president. They understand the consequences of having a bad president. People younger than eighteen are too young to understand who to vote for. They don't have enough life experience and probably don't keep up on what's happening in current events. Heck, I didn't find out about the earthquake in China until a week after it happened. As for the train crash, I didn't find out for two days. Now, this is just me. But, if any other thirteen year old is like me, they probably don't really care either. According to CBBC Newsround, thirty two percent of people believe that the voting age should be thirteen while only twenty percent think it should remain at eighteen. In my opinion, that's completely insane. Along with the fact that thirteen year olds can't even drive themselves to the polling place, they don't nearly have enough education.

The reason that the voting age was changed in the first place was because eighteen year olds were being drafted and sent to war, but they couldn't vote for the man who was sending them overseas. At the age of eighteen you are allowed to purchase and smoke cigarettes, and you can also move out of your parent's house and become your own person. You no longer have to listen to your parents. When you turn eighteen, you legally become an adult. For the average eighteen year old, you've just finished four years of high school, so now you have the proper learning experience to make an educated vote for the leader of our nation.

When you're sixteen, you are still a child; legally and mentally. They aren't quite adults, so why let them make an adult decision? Sixteen year olds haven't been to war, killed any enemies or served our country in any way yet, so why let them vote? And for that matter, they'll probably just go with the flow and vote for the candidate their friends and parents like. To begin with, not many young people vote, so the election wouldn't be determined by the vote of a sixteen year old.

So as you can see there is a lot of discussion about what the voting age should be. And odds are in the future there will be more discussion. We should not have to add the pressure of voting to our youth. Let's let them be kids while they can and save the adult matters for the adults.

How Public Bodies Use the "Rule of Three" to Block Citizen Referendum

The Illinois Election Code permits citizens and government bodies to place questions of public concern on the ballot in the form of referenda. Ideally, this system serves both legislators and citizens by providing an opportunity to gauge public opinion on topics ranging from local tax levies to national policy. The Election Code provides that no more than three public questions may be submitted to the electors of a political body at any given election. 10 ILCS 5/28-1. When more than three public questions are proposed, only the first three timely and validly initiated questions, with limited narrow exceptions, may be included on the ballot at one time. 10 ILCS 5/28-1. This provision is commonly referred to as the "Rule of Three," and was enacted to avoid overcrowded ballots and potential confusion. In practice, however, government bodies have used this legal limitation to preempt citizen-initiated proposals by adopting three questions of their own an ordinance, regardless of the actual relevance of the referenda.

Although the "first come, first served" timeliness provision of the statute appears fair on its face, government bodies have a distinct advantage over citizen groups. Citizen-initiated referenda requires a petition signed by either 8% or 10% of the population within a certain time period. A government-initiated referenda requires only a simple vote by the public body at any time to place one to three referenda on the ballot. The disparity provides government bodies with a tremendous advantage which could be, and has been, used to block citizens from accessing the ballot.

The Village of Addison has exploited the Rule of Three to block citizen initiated referenda from being placed on the ballot.

Over the last year, a citizen group in Addison has been organizing to address good government issues. They attempted to place two controversial binding referenda on the ballot: one initiative asking voters about the repeal of Addison's home rule power and a second initiative asking voters about implementing term limits. The citizen group was not successful in meeting the strict requirements to place binding initiatives on the ballot, however, far from being discouraged the group vowed to come back at the April 2009 election with legally sufficient initiatives and the resources to fight legal challenges.

Shockingly, anti-democratic maneuvering by the Village of Addison short circuited the group's efforts. Six weeks after the citizen group's initiatives were removed from the ballot, the Addison Village Board voted to put three advisory referenda on the April 2009 election ballot regarding transportation, flood mitigation and a current development. The Village Board also waived the traditional second reading of the advisory referenda ordinances at the next board meeting. The vote to place three advisory referenda on the ballot represents a clear effort to eliminate citizens' advisory or binding referenda from the April 2009 ballot.

The vote by the Village Board to clog the ballot six months before the next election, and several months before the citizen group may legally begin to gather signatures to place binding referenda on the ballot, exploits the Rule of Three. Moreover, the shenanigans of the Village are a prime example of why the law needs to be changed to protect citizen access to the ballot.

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If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution, please feel free to contact or visit us.

Return Service Requested

Remember the Citizen Advocacy Center During the Holiday Season

The Citizen Advocacy Center is a unique organization because our community lawyers simultaneously engage in grassroots organizing, advocacy, litigation, the monitoring of government agencies, and coalition building to build democracy. We are funded 100% by individual contributions and private foundations and do not accept government or corporate funds.

**As an organization that serves the community, we
rely on community support to meet
our financial needs.**

Please support the work of the
Citizen Advocacy Center by:

- Becoming a volunteer;
- Making an in-kind contribution;
- Making a 100% tax-deductible contribution; or
- For seniors, making a rollover tax-free IRA distribution to the CAC.

SAVE THE DATE!

HOLIDAY CHEER & CITIZEN INITIATIVE AWARDS

**Wednesday, December 10th,
6:30PM
Citizen Initiative Awards, 7:30 PM**

The Holiday Cheer Party is the Citizen Advocacy Center's way of saying **THANK YOU** to all those who have donated their time and money to support building democracy.

Help us celebrate another great year and this year's Citizen Initiative Awardees.

Appetizers and refreshments provided.