

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

MICHAEL DOYLE

Plaintiff,

Case 2:19-cv-00229-DBH

vs.

TOWN OF FALMOUTH

Defendant.

RESPONSE TO DEFENDANT’S MOTION TO DISMISS

Defendant’s Motion should be denied for the reasons stated below.

MISCHARACTERIZATIONS BY DEFENDANT

This cause of action was not begun due to a Falmouth Councilor asking the public to be ‘respectful during a meeting.’ Councilor Cahan blurted out “stop applauding” (spelled correctly based upon her word) immediately after Plaintiff finished addressing approximately 200 residents at a Council meeting. Councilor Cahan was so incensed that the Plaintiff had garnered such wide acceptance of the points he made during his remarks that she not only ignored the Council Rules but also violated the Rule that required her to get permission from the Chair to speak. Because there were no consequences for this disruptive misconduct another Councilor, Claudia King, recently bristled at being

identified at the public forum for her financial support of democratic candidates and started arguing with the speaker during his five minutes allotted time. When he finished you could clearly hear a female Councilor call the speaker a “son of a bitch”. The possibility that it was someone other than Ms. King is highly unlikely. This is not the first time King has used improper conduct without consequences. During a day long workshop for the Council in a locked Falmouth Police Station, where their personal cars were parked behind the station so passers by would not see them and know that a public Council workshop was in progress, a violation of the open meetings laws of Maine, King, during a team exercise, failed to get several parts to stay together and said, “Fuck it.” If Plaintiff, a Republican, ever called a Councilor a son of a bitch, or said Fuck It during a council meeting he would be escorted from the meeting by the police, but there are once again, no consequences for these democrat Councilors.

The Council Rules clearly state that no Councilor may speak or vote until satisfaction is made for that violation. Consequently every vote that Cahan participated in from that point forward was not valid and corrupts the entire decision by the Council as a whole.

LEGAL STANDARD

The Abuse of Discretion is the point of a violation of the 14th Amendment. There must be “equal protection under the law” or in this case, uniform application of the Law, or the Law has no meaning. If one group, Republicans, is limited to five minutes, yet Democrats are essentially given whatever time they want, that is Abuse of Discretion. If one group, speakers at the public forum portion of Council Meetings, is strictly held to Council Rules, yet Councilors are not held to the same set of Rules, that is Abuse of Discretion. Andrew M. Mead, *Abuse of Discretion: Maine’s Application of a Malleable Appellate Standard*, 57 Me. L. Rev. 519 (2005).

Democrats, Cathy Breen, former Councilor and current State Senator, Bonnie Rodden, former Councilor, and Peggy McGeehee (spelling ?) all have abused the time limit to speak unimpaired by the Council. Currently there are no Republicans on the Falmouth Council and only 17 on the 72-committee seats in Falmouth.

ARGUMENT

Plaintiff is a reporter for www.falmouthtoday.me, and as such was arrested and taken to jail for asking a question that the Scarborough Town Council didn’t like. Plaintiff moved for dismissal with prejudice and it was granted. A Fourteenth Amendment case can very quickly evolve into a First Amendment violation of Freedom of Speech and/or Freedom of the Press. Cahan outburst was designed to

suppress everyone's right at the meeting to express their opinion on the content of each speaker's points and without any regard to, and in spite of any illegal Council Rules based upon content alone. In addition to the above Plaintiff need not be a resident of Falmouth or even the State of Maine to have standing in this action. (*See Fitzgerald v. Baxter State Park Authority*, 385 A2d. 189 (Me. 1978)) That case applied *Sierra Club v. Morton*, 405 U.S. 727,734 (1972). Anyone and everyone can come to the podium (essentially the town square) from any town or State, and "petition the government for redress of grievances". Such comments made by the public must not be allowed to be interrupted by out of control Councilors, or sworn at by Councilors for the sole purpose of intimidating, not just the speaker at the podium, but all other citizens, both present in the chamber, watching at home on TV, or hearing about the Councilors' misconduct from others. Applauding, booing, or any other form of expression is a form of Free Speech at any public meeting by all of those in attendance. Defendant's position is the mere attendance at any public meeting in Falmouth requires the attendees to check their First Amendment Rights at the door. Also in addition this comment by Cahan was a "content" violation that has had numerous SCOTUS rulings, the most recent was *Lozman v. Riviera Beach, FL*.

It is imperative that this Court grant a hearing where this lawlessness can be examined and ruled upon by a jury. This Motion to Dismiss should be denied.

Respectfully submitted this 11th day of June 2019

MICHAEL DOYLE

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2019, I mailed the above Response to the Clerk of the Court and a copy via U.S. mail, first class postage addressed to:

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