

# Free Speech Rights & Public Meetings: How One Man's Case Got the Attention of the U.S. Supreme Court

In *Lozman v. City of Riviera Beach*, the United States Supreme Court considered whether the arrest of the Petitioner at a public meeting constituted a retaliatory arrest in violation of his First Amendment rights. In an 8-1 decision, the United States Supreme Court held that although there was probable cause for Lozman's arrest, given the circumstances of the case, a finding of probable cause did not prevent his First Amendment claims from proceeding. The case pitted First Amendment free speech rights against the right of a local legislative body to control its meetings. Interestingly, this was Lozman's second case before the United States Supreme Court in five years against the City.

In 2006, Lozman brought his floating three-bedroom house into a marina owned by the City of Riviera Beach, Florida and became a City resident. Shortly thereafter, Lozman became a critic of the City's plan to take waterfront homes by eminent domain. Lozman also filed suit against the City alleging a violation of the state's open meeting laws. Lozman alleged that in June 2006, City Council, in a "closed-door session," discussed Lozman's lawsuit and a plan to "intimidate" Lozman at the suggestion of a particular council member.

In November 2006, Lozman addressed the Riviera Beach City Council during the public comment period of the meeting and began talking about public corruption in Palm Beach County. The Council chair, who was the council member, alleged to have suggested the plan of intimidation and instructed Lozman not to address that topic. But Lozman continued. (Video can be seen at [youtube.com/watch?v=8Dqpvh6\\_z0g](https://www.youtube.com/watch?v=8Dqpvh6_z0g)). The Chair then told Lozman to leave or be arrested, and when Lozman did not leave, the Chair ordered him to be arrested. Lozman was handcuffed where he stood and charged with disorderly conduct and resisting arrest. Although the State's attorney found Lozman's arrest was for probable cause, the charges were dropped and Lozman filed suit claiming civil rights violations.

A jury ruled for the City, finding the police had probable cause to arrest Lozman under the Florida statute. The United States Court of Appeals for the Eleventh Circuit upheld the verdict, finding that the jury was improperly instructed that the officer, not the City, was required to have the "retaliatory animus." However, the Court found that the error was harmless since the jury found probable cause for the arrest.

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The United States Supreme Court stated the issue before it was narrow and limited to the particular circumstances of the case; "whether the existence of probable cause bars that First Amendment retaliation claim." Lozman's claim sought to hold the City liable for an "official municipal policy," commonly known as a "Monell" claim. The alleged plan of Council to intimidate him in retaliation for the lawsuit Lozman filed and his criticism of the City are the unique factors the Court focused on. The Court held that the finding of probable cause in these circumstances is not a bar to a First Amendment retaliation claim, as "Lozman's claim is far afield from the typical retaliatory arrest claim," where speech is unlikely an issue. In this case, Lozman must show that by ordering his arrest, City officials carried out a plan of intimidation and retaliation.

The Court noted that "an official retaliatory policy is a particularly troubling and potent form of retaliation." While a police officer may be subject to discipline for a retaliatory act, "there may be little practical recourse when the government itself orchestrates the retaliation," the Court stated, requiring a "need for adequate avenues of redress." A claimant such as Lozman will need to provide "objective evidence of a policy motivated by retaliation" for such a case to proceed to trial. However, a deprivation of liberty in retaliation for criticism of the City and a lawsuit placed "Lozman's speech...high in the hierarchy of First Amendment values." The Court noted that "it must be underscored that this Court has recognized the right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights."

Lozman is not necessarily guaranteed relief as a result of the Court's opinion. The case was remanded to the Eleventh Circuit to determine whether a juror could have found the City had a retaliatory policy, whether the 2006 arrest was an official act by the City, and whether Lozman would have been arrested in any event without the alleged planned retaliation by the City. Twelve years after it began, the case is headed for further proceedings before a final conclusion is reached. The Court has determined in the appropriate circumstances a probable cause finding may not bar a claim of retaliation for the exercise of First Amendment rights. ■

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