

Rule Contrary to Free Speech, Representative Government

Like a childhood bully, the AJC editorial board uses harsh words to scold those who dare to disagree (“PSC joins 21st Century,” August 21). Absent this editorial response, readers would not have a fair account of all viewpoints on ex parte communications.

In a representative form of government, the PSC derives its authority from, and is therefore accountable to, the people. I opposed the rules because they dilute the people’s authority by shifting power from elected representatives to an empowered bureaucracy.

The rules place a gag order on elected officials when communication is needed most - the deliberation phase of a rate case. Consumer groups and the environmental lobby support this gag rule because they oppose recent settlements. They prefer unilateral and punitive decisions against utilities. They disregard the PSC’s obligation to balance the needs of both ratepayers and utility shareholders.

Elected representatives are sent to the PSC to deliberate, which requires one to communicate freely. In fact, the Georgia Supreme Court has ruled that when the PSC performs its ratemaking authority, it does so in its legislative, not judicial, capacity. Can you imagine legislators not being able to meet one-on-one with constituents to hear their views? When elected officials are restricted from negotiating settlements and the free flow of information in these complex matters is halted, flawed orders will result and litigation will increase.

Evidence in the record shows at least ten other states permit communications to freely flow during rate cases. In those states that do prohibit ex parte discussions, such bans were put in place by statute. Here in Georgia, under both Democrat and Republican control, the General Assembly has sided with free speech and declined such a law.

Even more troubling is the blatant move to silence business advocates, who are now treated as second class citizens under these rules. The real purpose of the rules is not to promote more fair hearings as the author states. The editorial itself admits the purpose is to “reign in utility lobbyists.” The headline of an on-line edition to a story published Monday gleefully says limits would be placed on “big business.” By only applying the communication ban to select lawyers and business advocates at the PSC and not other special interests groups or their membership, who are just as active, the rule is discriminatory.

A letter seeking an opinion of the Attorney General was not an attempt to “sabotage” the vote as characterized in the editorial. Instead, given a serious lawsuit challenging the residency qualifications of a colleague, the letter asks a perfectly legitimate question about whether recent or future Commission votes can be overturned if the Commissioner in question is found to have been serving illegally. Given the seriousness of the issues we regularly debate, it would be imprudent not to prepare for this potential outcome.

I believe, as some courts have ruled in other states, that bans on ex parte communications can be so broad they can impair an agency's ability to perform its mission effectively.

"Lyle Harris for the Editorial Board" can attack my character in fifteen more editorials; I will stand by my beliefs.

Stan Wise
Georgia Public Service Commissioner