

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JULIAN RAVEN,

Plaintiff,

v.

**THE CITY OF ELMIRA;
MAYOR DANIEL J. MANDELL,**
in his official capacity;

**COREY COOKE;
JOSEPH H. DUFFY;
GARY BRINN;
JACKIE WILSON;
and NANETTE M. MOSS,**
in their official capacities,

Defendants.

Civil Action No.: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF,
NOMINAL DAMAGES,
AND OTHER RELIEF
UNDER 42 U.S.C. § 1983**

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. This civil-rights action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
2. Plaintiff Julian Raven challenges the City of Elmira's recent abolition of the historically open second public-comment portion of Elmira City Council

meetings and the City's replacement of that historically open civic forum with an agenda-controlled expressive structure permitting citizens to speak only on subjects preapproved and selected by the government itself.

3. For years, Elmira maintained two distinct public-comment portions during City Council meetings:

(a) a comment period tied to agenda items; and

(b) a second public-comment forum during which citizens could raise broader matters concerning city governance, constitutional grievances, charter structure, taxation, public safety, administration, municipal policy, and other matters concerning the City of Elmira.

4. The second public-comment forum constituted an historically open limited public forum concerning matters relating to the governance, operation, and public business of the City of Elmira.

5. Defendants abolished that forum after public criticism became politically uncomfortable, offensive to officials, personally critical of government actors, and legally inconvenient to the City.

6. Public officials reportedly admitted to the press that the forum was removed because comments had become "offensive," involved "personal attacks,"

created perceived “liability,” and because “people shouldn’t have to listen” to such speech.

7. Rather than narrowly regulating actual disruption, Defendants abolished the very forum category through which unscripted public criticism historically occurred.
8. Defendants thereby engaged in structural prior restraint, retaliatory forum manipulation, and viewpoint-discriminatory suppression of protected speech.
9. The constitutional injury is not merely the exclusion of one speaker.
10. The injury is structural.
11. Defendants eliminated the historically open channel through which criticism of government historically flowed.
12. The First Amendment forbids not only direct censorship of individual speakers, but also structural censorship designed to ensure that disfavored speech has nowhere left to occur.

II. JURISDICTION AND VENUE

13. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1343 because this action arises under the Constitution and laws of the United States.

14. Declaratory relief is authorized under 28 U.S.C. §§2201 and 2202.

15. Venue is proper under 28 U.S.C. §1391 because all events giving rise to these claims occurred within the Western District of New York.

III. PARTIES

16. Plaintiff Julian Raven is a property owner in the city of Elmira, New York and citizen of the United States.

17. Defendant City of Elmira is a municipal corporation organized under the laws of the State of New York.

18. Defendant Mayor Dan Mandell acted under color of state law at all relevant times.

19. Defendant Elmira City Council acted under color of state law at all relevant times.

20. Defendants and Elmira City Council members; Corey Cooke, Joseph H. Duffy, Gary Brinn, Jackie Wilson, Nanette M. Moss participated in the challenged actions under color of state law.

IV. FACTUAL BACKGROUND

21. Historically, Elmira City Council meetings included two public-comment portions.

22. The first public-comment segment concerned agenda items.
23. The second public-comment segment historically allowed citizens to raise broader issues concerning city business, constitutional grievances, charter structure, public safety, taxation, administration, policy concerns, municipal governance, and related matters affecting the City of Elmira.
24. Through longstanding policy and practice, Elmira thereby created and maintained a limited public forum concerning city governance and municipal affairs.
25. The constitutional scope of a limited public forum is determined not merely by government assertion, but by the forum's historical practice, actual use, governmental policy, and compatibility with expressive activity.
26. In **Cornelius v. NAACP Legal Defense & Educational Fund, 473 U.S. 788, 802–06 (1985)**, the Supreme Court held that courts determine the nature of a government-created forum by examining governmental policy, historical practice, and the forum's compatibility with expressive activity.
27. Upon information and belief, Defendants recently adopted a resolution in April, 2026 abolishing and/or eliminating the historically open second public-comment portion of City Council meetings.
28. Upon information and belief, Defendants implemented the restriction without meaningful prior public notice, meaningful public participation, or

opportunity for citizens to comment upon the elimination of the historically open forum.

29. Plaintiff went to the Elmira City Clerk's office on or about May 13, 2026 seeking to address the City Council concerning:

- (a) the constitutionality of the City's new public-comment restrictions;
- (b) restoration of Elmira's traditional executive-mayor charter structure;
- (c) elimination of the council-manager model; and
- (d) broader governance reform.

30. Plaintiff was informed there was effectively no mechanism through which he could participate because his subject matter was not included within the government-approved agenda.

31. Plaintiff thereafter attempted to address the City Council directly on May 18th, 2026.

32. Plaintiff was prohibited from speaking because his comments allegedly did not concern approved agenda items.

33. Plaintiff sought to place the City on notice that the abolition of the second public-comment forum violated the First Amendment.

34. Plaintiff also sought to begin public discussion concerning restoration of executive mayoral authority under Elmira's original charter structure.
35. Defendants prevented Plaintiff from addressing either issue.
36. Defendants' public statements to the press regarding their resolution to abolish the public comments forum revealed the motive underlying the forum abolition.
37. Mayor Dan Mandell reportedly stated: "We were getting into a situation that we thought as a council that there had been some liability with the second public comment portion of the meeting. So, we decided just to basically get rid of it."
38. Councilman Joe Duffy reportedly stated: "People shouldn't have to listen to what they were saying... the language was terrible, very offensive to other people in the room, and it just turned into personal attacks."
39. Defendants' own statements identify the speech itself — its offensiveness, criticism, and discomfort to listeners — as the reason for abolishing the forum.
40. Defendants did not abolish the forum because the building was unavailable, because meetings could not function, because another equivalent public forum was created elsewhere, or because neutral administrative necessity required closure.

41. Rather, Defendants abolished the forum because protected criticism occurring within that forum became objectionable to public officials.

V. DEVELOPMENT OF LIMITED PUBLIC FORUM JURISPRUDENCE

42. The First Amendment prohibits government from abridging freedom of speech, the right peaceably to assemble, and the right to petition government for redress of grievances.

43. Government-created forums for public expression are governed by forum doctrine developed through decades of Supreme Court jurisprudence.

44. In **Perry Education Association v. Perry Local Educators’**

Association, 460 U.S. 37, 45–46 (1983), the Supreme Court established the foundational categories of public forums, designated forums, limited public forums, and nonpublic forums.

45. Perry held that even within limited public forums government restrictions must remain reasonable and may not constitute “an effort to suppress expression merely because public officials oppose the speaker’s view.”

46. In **Cornelius v. NAACP Legal Defense & Educational Fund**, 473 U.S. 788, 802–06 (1985), the Court held that the constitutional nature of a forum

depends upon governmental policy, historical practice, and the forum's actual use.

47. In **Rosenberger v. Rector & Visitors of University of Virginia**, 515 U.S. 819, 829 (1995), the Court held that viewpoint discrimination is “an egregious form of content discrimination.”

48. In **Good News Club v. Milford Central School**, 533 U.S. 98, 106–07 (2001), the Court held that government may not exclude a perspective on an otherwise permitted subject within a limited public forum.

49. In **Lamb’s Chapel v. Center Moriches Union Free School District**, 508 U.S. 384, 392–94 (1993), the Court held that restrictions within limited forums must remain viewpoint neutral.

50. Elmira’s second public-comment forum historically encompassed matters relating to city governance, constitutional grievances, charter structure, public safety, municipal administration, taxation, and civic criticism.

51. That historical practice constitutionally defined the scope of the forum.

52. Defendants therefore cannot erase the constitutional significance of the forum merely by retrospectively redefining it after criticism became politically inconvenient.

VI. STRUCTURAL PRIOR RESTRAINT AND FORUM SUPPRESSION

53. The First Amendment embodies a profound hostility toward systems of prior restraint.

54. In **Nebraska Press Association v. Stuart**, 427 U.S. 539, 559 (1976), the Supreme Court held that prior restraints are “the most serious and the least tolerable infringement on First Amendment rights.”

55. In **Near v. Minnesota ex rel. Olson**, 283 U.S. 697, 713 (1931), the Supreme Court established the foundational rule that government may not suppress future expression merely because officials anticipate offensive or undesirable speech.

56. In **Bantam Books, Inc. v. Sullivan**, 372 U.S. 58, 67–70 (1963), the Court held that indirect governmental systems designed to suppress objectionable expression violate the First Amendment even absent formal censorship orders.

57. In **Shuttlesworth v. City of Birmingham**, 394 U.S. 147, 150–51 (1969), the Court held unconstitutional systems placing expressive access within the uncontrolled discretion of government officials.

58. In **City of Lakewood v. Plain Dealer Publishing Co.**, 486 U.S. 750, 757–59 (1988), the Court held that unbridled governmental discretion over

expressive access creates unconstitutional censorship dangers and encourages self-censorship.

59. In **Southeastern Promotions, Ltd. v. Conrad**, 420 U.S. 546, 553–59

(1975), the Court held unconstitutional a city’s denial of access to a municipal theater because discretionary control over expressive forums constituted impermissible prior restraint.

60. Defendants’ actions constitute structural prior restraint because Defendants abolished the historically open second public-comment forum to prevent future offensive, critical, politically uncomfortable, and personally directed speech before such speech could occur.

61. Rather than narrowly regulating actual disruption, Defendants eliminated the forum itself.

62. Defendants thereby transformed agenda control into speech control.

63. Citizens may now speak only upon subjects selected and approved by the government itself.

64. Defendants created a structural censorship system whereby criticism omitted from the government’s agenda is prohibited before expression may occur.

65. Defendants thereby accomplished indirectly what the First Amendment forbids directly: suppression of future protected criticism through forum destruction.

VII. VIEWPOINT DISCRIMINATION AND RETALIATORY FORUM MANIPULATION

66. The second public-comment forum constituted a limited public forum.

67. In **White v. City of Norwalk**, 900 F.2d 1421, 1425–26 (9th Cir. 1990), the court held that councils may regulate actual disruption but may not suppress speech merely because officials disagree with the speaker’s viewpoint.

68. In **Ison v. Madison Local School District Board of Education**, 3 F.4th 887, 893–95 (6th Cir. 2021), the Sixth Circuit struck down restrictions targeting “abusive,” “personally directed,” and “antagonistic” comments because offensive criticism remains protected speech.

69. Defendants abolished the historically open second public-comment forum because officials disliked the content, tone, offensiveness, criticism, and personal nature of speech occurring within it.

70. Defendants thereby engaged in retaliatory forum manipulation and viewpoint discrimination.

71. Defendants cannot evade constitutional scrutiny by abolishing the forum category itself rather than excluding speakers individually.

72. The First Amendment forbids not only direct censorship of disfavored speakers, but also structural censorship designed to eliminate the channels through which protected criticism historically flowed.
73. By limiting public speech exclusively to government-approved agenda topics, Defendants converted a historically open civic forum into a government-scripted expressive structure.
74. Defendants' actions chilled speech, burdened petition rights, and suppressed protected criticism of government.

VIII. NEUTRAL FORUM CLOSURE CASES DISTINGUISHED

75. Defendants may attempt to justify their conduct by citing cases recognizing that government possesses limited authority to close, narrow, or redefine designated or limited public forums.
76. Plaintiff does not dispute that proposition in the abstract.
77. In *Perry* and *Cornelius*, the Supreme Court recognized that government is not always required to indefinitely retain the open character of a designated forum.
78. However, those cases require forum restrictions to remain reasonable and viewpoint neutral.

79. Cases permitting forum restructuring are materially distinguishable from Elmira's conduct because those cases involved neutral operational, logistical, administrative, or safety-based concerns — not admitted hostility toward offensive or critical speech itself.
80. In **Arkansas Educational Television Commission v. Forbes**, 523 U.S. 666 (1998), the Supreme Court upheld exclusion of a fringe political candidate from a televised debate because the exclusion rested upon objective journalistic criteria rather than hostility toward the candidate's viewpoint.
81. In **Lehman v. City of Shaker Heights**, 418 U.S. 298 (1974), the Court upheld a transit advertising restriction because political speech had never historically been permitted within the advertising forum.
82. In **Seattle Mideast Awareness Campaign v. King County**, 781 F.3d 489 (9th Cir. 2015), the Ninth Circuit upheld restrictions involving a transit advertising forum because the county's actions were based upon operational neutrality and safety concerns rather than disagreement with the underlying political viewpoint.
83. Elmira presents the opposite circumstance.

84. Elmira historically maintained a second public-comment forum specifically designed to permit citizens to raise matters concerning city governance outside the narrow confines of the printed agenda.
85. The forum historically encompassed grievances, criticism of officials, constitutional objections, charter reform, public policy concerns, taxation issues, public safety concerns, and broader civic commentary.
86. Defendants did not preserve a historically narrow forum.
87. Rather, Defendants abolished an historically broader forum after criticism became uncomfortable and politically inconvenient.
88. Most importantly, Defendants publicly admitted the reason for the abolition.
89. Officials reportedly justified eliminating the forum because comments were “offensive,” constituted “personal attacks,” created perceived “liability,” and because “people shouldn’t have to listen” to such speech.
90. Those admissions distinguish this case from legitimate neutral-forum-management cases.
91. Defendants’ conduct reflects a structural redesign of the forum motivated by hostility toward the content, tone, offensiveness, and criticism contained within protected speech itself.
92. That distinction is constitutionally dispositive.

IX. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Structural Prior Restraint and Forum Suppression

(First and Fourteenth Amendments; 42 U.S.C. §1983)

93. Plaintiff repeats and realleges all prior paragraphs.

94. Defendants abolished the historically open second public-comment forum to prevent future disfavored speech before it could occur.

95. Defendants thereby imposed an unconstitutional structural prior restraint.

96. Defendants' conduct violates the First and Fourteenth Amendments.

SECOND CAUSE OF ACTION

Viewpoint Discrimination and Retaliatory Forum Manipulation

(First and Fourteenth Amendments; 42 U.S.C. §1983)

97. Plaintiff repeats and realleges all prior paragraphs.

98. Defendants abolished the historically open second public-comment forum because officials disliked the criticism occurring within it.

99. Defendants thereby engaged in unconstitutional viewpoint discrimination.

100. Defendants' conduct violated Plaintiff's rights to freedom of speech, assembly, petition, and redress of grievances.

X. IRREPARABLE HARM

101. The loss of First Amendment freedoms, even for minimal periods of time, constitutes irreparable harm as a matter of law.

102. Plaintiff continues to suffer ongoing constitutional injury.

XI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

A. A declaration that Defendants' abolition of the second public-comment forum violates the First and Fourteenth Amendments;

B. Preliminary and permanent injunctive relief restoring constitutionally protected public-comment participation pending judicial review;

C. A declaration that Defendants' agenda-only speech restriction constitutes unconstitutional structural prior restraint and viewpoint discrimination;

D. Nominal damages in the amount of \$1.00;

E. Costs and such further relief as the Court deems just and proper.

XII. MEMORANDUM OF LAW

Preliminary Statement

This case concerns whether government may abolish an historically open public-comment forum because officials became uncomfortable with the criticism occurring there.

Plaintiff respectfully submits that the answer is no.

The City of Elmira did not merely regulate actual disruption.

It abolished the forum category itself.

The City thereby transformed agenda control into speech control.

The constitutional injury is therefore structural.

This Court should grant injunctive and declaratory relief because Defendants' actions violate established First Amendment principles governing prior restraint, limited public forums, and viewpoint discrimination.

Argument I

Defendants Imposed Structural Prior Restraint

The Supreme Court has consistently condemned systems designed to suppress future speech before it occurs.

Near, Nebraska Press, Bantam Books, Shuttlesworth, Lakewood, and Southeastern Promotions collectively establish that government may not structurally redesign expressive systems to suppress anticipated disfavored speech.

Elmira's abolition of the second public-comment forum did precisely that.

Rather than regulate actual disruption through narrowly tailored means, Defendants eliminated the forum itself because officials disliked the speech occurring there.

The First Amendment does not permit government to accomplish indirectly what it may not accomplish directly.

Argument II

Defendants Engaged in Viewpoint Discrimination

The Supreme Court has repeatedly held that viewpoint discrimination represents the most constitutionally suspect form of speech restriction.

Perry, Rosenberger, Good News Club, Lamb's Chapel, White, and Ison establish that even within limited public forums government may not suppress speech because officials dislike the speaker's criticism, tone, or political perspective.

Elmira officials publicly admitted the forum was abolished because comments were offensive, personally critical, and uncomfortable for listeners.

Those admissions reveal viewpoint-based hostility.

Argument III

Defendants Cannot Hide Behind Neutral Forum Closure Cases

Defendants may attempt to rely upon cases permitting forum closure or restructuring.

However, those cases involved neutral administrative or operational concerns.

Elmira's conduct differs fundamentally because officials publicly identified the speech itself as the problem.

The First Amendment forbids structural manipulation of governmental forums designed to eliminate the channels through which protected criticism historically flowed.

XIII. PROPOSED ORDER

IT IS HEREBY ORDERED:

1. Defendants are preliminarily and permanently enjoined from enforcing the challenged abolition of the historically open second public-comment forum pending final judicial review.
2. Defendants shall restore constitutionally protected public-comment participation consistent with the First and Fourteenth Amendments.
3. The Court declares that Defendants' actions constituted unconstitutional structural prior restraint and viewpoint discrimination.
4. Plaintiff is awarded nominal damages in the amount of \$1.00.
5. The Court retains jurisdiction over enforcement of this Order.

SO ORDERED.

XIV. VERIFICATION AND CERTIFICATIONS

I, Julian Raven, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge.

Dated: _____

Julian Raven Pro Se Plaintiff