

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

Julian Marcus Raven,

Plaintiff,

V

26-cv-6561-MAV

City of Elmira, Gary Brinn, et al.,

Defendants.

**PLAINTIFF'S RENEWED EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION BASED
UPON NEWLY ARISEN EVIDENCE OF CONTINUING RETALIATION,
CONTINUING IRREPARABLE HARM, AND MATERIAL CHANGED
CIRCUMSTANCES**

INTRODUCTION

Plaintiff respectfully renews his request for emergency injunctive relief based upon significant constitutional developments occurring after the Court's prior consideration of Plaintiff's emergency application.

This Motion is not a request for reconsideration of previously presented facts. Rather, it presents newly arisen evidence demonstrating that the constitutional injuries alleged in the Complaint remain ongoing and that Defendants continue to engage in conduct that, viewed in conjunction with the allegations already before the Court, supports an inference of continuing retaliation against Plaintiff for engaging in constitutionally protected speech, petitioning activity, public participation, governmental oversight, and litigation.

These events occurred during the pendency of this action and materially alter the factual landscape before the Court.

I. PROCEDURAL HISTORY

This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 and challenges Defendants' abolition of Elmira's historically open second public-comment forum during City Council meetings, together with Defendants' alleged suppression of constitutionally protected speech, petitioning activity, and public participation.

Plaintiff commenced this action seeking declaratory and injunctive relief, restoration of the historically existing public forum, nominal damages, and such

further relief as the Court deemed just and proper. Plaintiff contemporaneously moved pursuant to Rule 65 of the Federal Rules of Civil Procedure for a Temporary Restraining Order and Preliminary Injunction to prevent continued enforcement of the challenged public-comment restriction while this litigation proceeds.

Plaintiff's emergency application alleged that Defendants had engaged in viewpoint discrimination, structural prior restraint, retaliatory forum manipulation, and unconstitutional suppression of speech by abolishing the long-standing second public-comment period after publicly acknowledging that criticism of government officials had become offensive, personally directed, and politically inconvenient.

Following briefing and consideration of Plaintiff's emergency application, this Court denied Plaintiff's request for immediate temporary restraining relief. The Court's denial addressed the record then before it and necessarily preceded the subsequent events that form the basis of the present renewed application.

Plaintiff thereafter timely filed an interlocutory appeal to the United States Court of Appeals for the Second Circuit from the denial of emergency injunctive relief pursuant to 28 U.S.C. § 1292(a)(1). Plaintiff's appeal is limited to review of the denial of emergency relief and does not seek review of the merits of Plaintiff's underlying constitutional claims, which remain pending before this Court.

Following the filing of the interlocutory appeal, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6). Plaintiff opposed that motion, demonstrating that the Complaint plausibly alleges violations of the First Amendment arising from Defendants' elimination of a historically open public forum, viewpoint-discriminatory forum manipulation, structural prior restraint, and suppression of protected criticism of government. That dispositive motion remains pending before this Court.

Since the Court's denial of Plaintiff's initial application for emergency relief, and while this constitutional action remains actively pending, significant additional events have occurred involving Defendant Gary Brinn, an existing Defendant in this action. Those events were unavailable to Plaintiff during the Court's prior consideration of emergency relief and materially alter the factual landscape relevant to Plaintiff's request for prospective equitable relief.

This Renewed Motion does not seek reconsideration of facts previously presented to the Court. Rather, Plaintiff respectfully presents newly arisen evidence of alleged continuing retaliation, materially changed circumstances, and continuing irreparable harm occurring during the pendency of this litigation. Plaintiff submits that these subsequent developments bear directly upon the necessity of prospective

injunctive relief and the continuing nature of the constitutional injuries alleged in the Complaint.

II. NEWLY ARISEN EVIDENCE OF CONTINUING RETALIATION BY A NAMED DEFENDANT

Since this Court denied Plaintiff's initial request for emergency relief, which is now pending its own appeal, Defendant Gary Brinn, a named Defendant in this action, has engaged in additional official conduct that materially changes the factual circumstances before the Court.

Defendant Brinn introduced a proposed municipal policy requiring publication of the identities of citizens submitting requests under New York's Freedom of Information Law ("FOIL"). In publicly defending that proposal, Defendant Brinn stated that the purpose of the resolution was to expose those "weaponizing the tools of open government" and to "hold people accountable" for allegedly "wasteful" FOIL requests.

In the same public explanation, Defendant Brinn expressly referenced recent "frivolous litigation" against the City by an individual who allegedly "didn't even have standing." This was the recent decision in *Raven v Elmira* in the New York

State court index number #2026-1056 regarding whether the Elmira City Sexual Orientation use code Code 457 had any bearing on the issuance of Special Use permits for events advertising 'Drag Shows' as family entertainment and whether the city was under obligation to review the application for compliance with the code prior to issuance of the permit. Gary Brin is also the pastor of the Park Church which was the sponsor of the event.

Although Defendant Brinn did not identify Plaintiff by name, the surrounding circumstances made Plaintiff readily identifiable. At the time of Defendant Brinn's statements:

- Plaintiff had recently commenced this federal constitutional action against Defendant Brinn and other City officials;
- Plaintiff had submitted multiple FOIL requests seeking municipal data for policy development for Plaintiff's campaign for Mayor.
- Plaintiff had repeatedly appeared before the City Council seeking to exercise his First Amendment rights;
- Plaintiff had publicly announced his candidacy for Mayor of Elmira;
- Plaintiff's litigation had recently been the subject of public reporting.

Members of the public immediately understood Defendant Brinn's remarks as referring to Plaintiff, further demonstrating that Plaintiff was readily identifiable despite the omission of his name. See EXHIBIT D - Aiden Yontz video.

“I have a lot of opinions. Tonight’s meeting was a special one. There was a resolution on the agenda, proposed by Gary Brinn that would’ve allowed for the city to post the names of people who make foil request on the website. This is insane for multiple reasons the stated purpose of this resolution is to cut down on frivolous foil request and to stop Fishing expeditions this to me is an obvious response to the multiple lawsuits. Pushed forward by Julian Raven now well I have opinions visually Raven this resolution with literally the useless to stop him from making foil. All it would do is let you know he made request which he already tells us he does so...” Aiden Yontz.

These events occurred while this litigation remains pending and were unavailable to Plaintiff when the Court considered his initial application for emergency relief.

IV. THE SUBSEQUENT CONDUCT IS OBJECTIVE EVIDENCE OF CONTINUING RETALIATORY MOTIVE

The Supreme Court has repeatedly recognized that government officials may not employ governmental authority to retaliate against citizens because they exercise constitutional rights.

In *Lozman v. City of Riviera Beach*, the Supreme Court held that a municipality may be subject to liability where there is objective evidence that official municipal action was motivated by retaliation against a citizen for engaging in protected petitioning activity, including prior lawsuits and public criticism of government officials. The Court further held that, under the unusual circumstances presented there, the existence of probable cause did not categorically bar a First Amendment retaliation claim where the alleged retaliation arose from an official municipal policy directed toward a government critic.

The factual parallels are significant.

Like the plaintiff in *Lozman*:

Plaintiff criticized municipal officials.

Plaintiff petitioned government.

Plaintiff sought governmental records.

Plaintiff filed constitutional litigation.

Plaintiff publicly challenged governmental conduct.

Thereafter, a named Defendant publicly characterized Plaintiff's protected activities as abuses of government, referred to Plaintiff's litigation in disparaging terms, and sponsored legislation designed to expose citizens exercising the very statutory rights Plaintiff had exercised.

Whether this ultimately establishes unconstitutional retaliation is a question for the merits. At this stage, however, these newly arisen facts substantially strengthen Plaintiff's showing that retaliatory motive may reasonably be inferred.

V. EVIDENCE OF A CONTINUING PATTERN OF SILENCING CITIZENS

The subsequent Council meeting further demonstrated that Plaintiff's allegations are not limited solely to his own experience.

According to publicly available recordings (EXHIBITS B, C, D.) and news reporting (EXHIBIT A), citizens who appeared to address the proposed FOIL resolution were prevented from speaking after the resolution was removed from the

agenda. One individual attempting to address the matter was removed from the Council chambers.

Although this Motion does not ask the Court to adjudicate the constitutional rights of third parties, these events are relevant because they provide additional context regarding Plaintiff's allegations that Defendants have adopted practices restricting or discouraging public participation when citizens seek to criticize governmental action.

These subsequent events are consistent with Plaintiff's allegations that the constitutional injuries at issue are ongoing rather than isolated.

Below are the links to posts made on June 29th, after the Monday, June 29, Elmira City council meeting. These individuals are Democratic activists opposed to Plaintiff's campaign for Mayor and yet they of their own accord are outraged at one of their own, in this case Councilman Brinn for his weaponization of the FOIL process targeting Plaintiff.

EXHIBIT B - Anthony Cantado

<https://www.facebook.com/share/v/1D391ZdNFW/?mibextid=wwXIfr>

EXHIBIT C - Ira Manhoff

<https://www.facebook.com/share/v/18hccxsgzy/?mibextid=wwXIfr>

EXHIBIT D - Aiden Yontz

<https://www.facebook.com/share/v/1ChEJT48YP/?mibextid=wwXIfr>

VI. MATERIAL CHANGE OF CIRCUMSTANCES

When the Court previously considered Plaintiff's request for emergency relief, the foregoing events had not yet occurred.

Accordingly, Plaintiff now presents materially changed circumstances unavailable during the Court's prior consideration.

These developments substantially strengthen Plaintiff's showing regarding:

- continuing irreparable injury;
- the ongoing nature of the controversy;
- the necessity of prospective equitable relief.

VII. IRREPARABLE HARM

The constitutional injury has not ceased.

Instead, while this litigation remains pending, Defendants have allegedly undertaken additional governmental actions that may reasonably deter Plaintiff and other citizens from exercising rights secured by the First Amendment.

Absent judicial intervention, Plaintiff contends that the risk of continuing constitutional injury remains immediate and ongoing.

VIII. REQUEST FOR IMMEDIATE RELIEF

Plaintiff respectfully requests that the Court:

1. Enter a renewed Temporary Restraining Order.
2. Schedule an expedited Preliminary Injunction hearing.
3. Enjoin Defendants from implementing or enforcing any governmental policy or practice that unlawfully retaliates against Plaintiff for exercising rights protected by the United States Constitution.

4. Enjoin Defendants from taking adverse governmental action against Plaintiff because he has submitted FOIL requests, filed litigation, spoken at public meetings, or campaigned for public office.
5. Order Defendants to preserve all documents, electronic communications, text messages, emails, drafts, meeting notes, and other records relating to:
 - Plaintiff;
 - Plaintiff's FOIL requests;
 - Plaintiff's pending litigation;
 - the proposed FOIL resolution;
 - discussions concerning publication of FOIL requesters;
 - communications among Council members concerning Plaintiff or his protected activities.
6. Grant such other and further equitable relief as the Court deems just and proper.

CONCLUSION

The newly arisen evidence demonstrates that the controversy before this Court remains active and evolving. Plaintiff respectfully submits that the conduct occurring after the Court's prior ruling materially bears upon the questions of

irreparable harm, alleged retaliatory motive, and the need for prospective equitable relief. For these reasons, Plaintiff respectfully requests that the Court grant this renewed application for emergency injunctive relief and such additional relief as justice requires.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Julian Raven". The signature is stylized with large, flowing loops and a long horizontal stroke at the bottom.

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14901
julianmarcusraven@gmail.com
607-426-0029
June 30, 2026

CERTIFICATE OF SERVICE

I, Julian Raven, certify under penalty of perjury that on June 25, 2026, I served a true and correct copy of the foregoing Notice of Appeal and Motion for Injunction Pending Appeal, upon counsel for Defendants-Appellees by first class mail and electronic mail.

Kevin G. Cope, Esq.
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Daniel J. Pautz, Esq.
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June 30, 2026

Elmira City Council FOIL resolution draws community backlash

Ava Rowland Jun 29, 2026 Updated 11 hrs ago



EXHIBIT A



ELMIRA, N.Y. (WENY) — The Elmira City Council met on Monday evening, and one agenda item drew in quite the crowd.

The proposal would have adopted a policy for the Freedom of Information Law (FOIL) process, listing the names of anyone who makes a FOIL request on the city’s website.

MUST WATCH



Powered by [minute4](#)

“The idea of the FOIL Request Resolution is that the public is entitled to know when their tax dollars are being wasted by weaponizing the tools of open government,” said Elmira City Council Fourth District Representative Gary Brinn.

Councilman Brinn said he came up with the idea during the New York Conference of Mayors and Municipal Officials.

“Many municipalities upstate were discussing the challenges they’re facing with the weaponized tools of open government,” said Councilman Brinn. “This was one of the ideas discussed, and it has been used by other municipalities.”

New York City has implemented similar FOIL policies, but omits the name of the individual submitting the request.

Councilman Brinn said the goal of the resolution was to prevent people from abusing open governance.

“We’ve been seeing the tools of open governance being weaponized,” said Councilman Brinn. “Public comment portions, frivolous litigations; we just recently dealt with a frivolous lawsuit where the individual didn’t even have standing. It costs a significant amount of money for the city to defend against these things.”

Residents and visitors gathered at City Hall to comment on the resolution, but it was removed from the agenda, and they were unable to discuss it with councilmembers.

One man who attempted to speak on the resolution was removed from the chambers.

Elmira resident Anthony Cantando took to Facebook, posting a [video](#) to vent his frustrations.

FIRST WARNING
WEATHER

2 Weather Alerts See All >

Currently in Elmira

83°

Partly Cloudy

83° / 64°

11 AM

85°

12 PM

86°

1 PM

88°

2 PM

89°

3 PM

89°

Forecast

Sky Cams

MacKeeper: Mac maintenance app

Download

60+ million download by Apple. Certified by AV-TEST. Rated 4.2/5

LOCAL EVENTS

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Field Market and Craft Show

Jul 12, 2026...

The Shoppe...

FIND YOUR CROWD

Free ticketing & event promo for event creators!

Create event >

Marye Lobb

Jul 2, 2026 ...

Tabora Farm...

More Events

powered by

What Chicken Does To Dogs

Ultimate Pet Nutrition

Open >

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Elmira resident Anthony Cantando took to Facebook, posting a video to vent his frustrations.

"The next person who went up there said he had left an important meeting to be there, and he really wanted to talk about the removed agenda item, the FOIL resolution," said Cantando. "He was very passionate, and they kicked him out; they straight up kicked him out of the meeting."

The resolution was removed from the agenda by Councilman Brinn because the New York State Committee on Open Government allows anonymous FOIL requests, and he felt it defeated the purpose of his resolution.

"I was not aware that when we were working on this resolution, that the Committee on Open Government in the state of New York allows anonymous FOIL requests," said Councilman Brinn. "That kind of defeats the purpose of holding people accountable for overly broad and wasteful FOIL requests."

Ava Rowland

EXHIBIT B



DownTown Elmira

25m · 🌐



<https://www.facebook.com/share/v/1BiYHuLnz2/>



Anthony Cantando for NY ▸ Elmira's Dirty Laundry

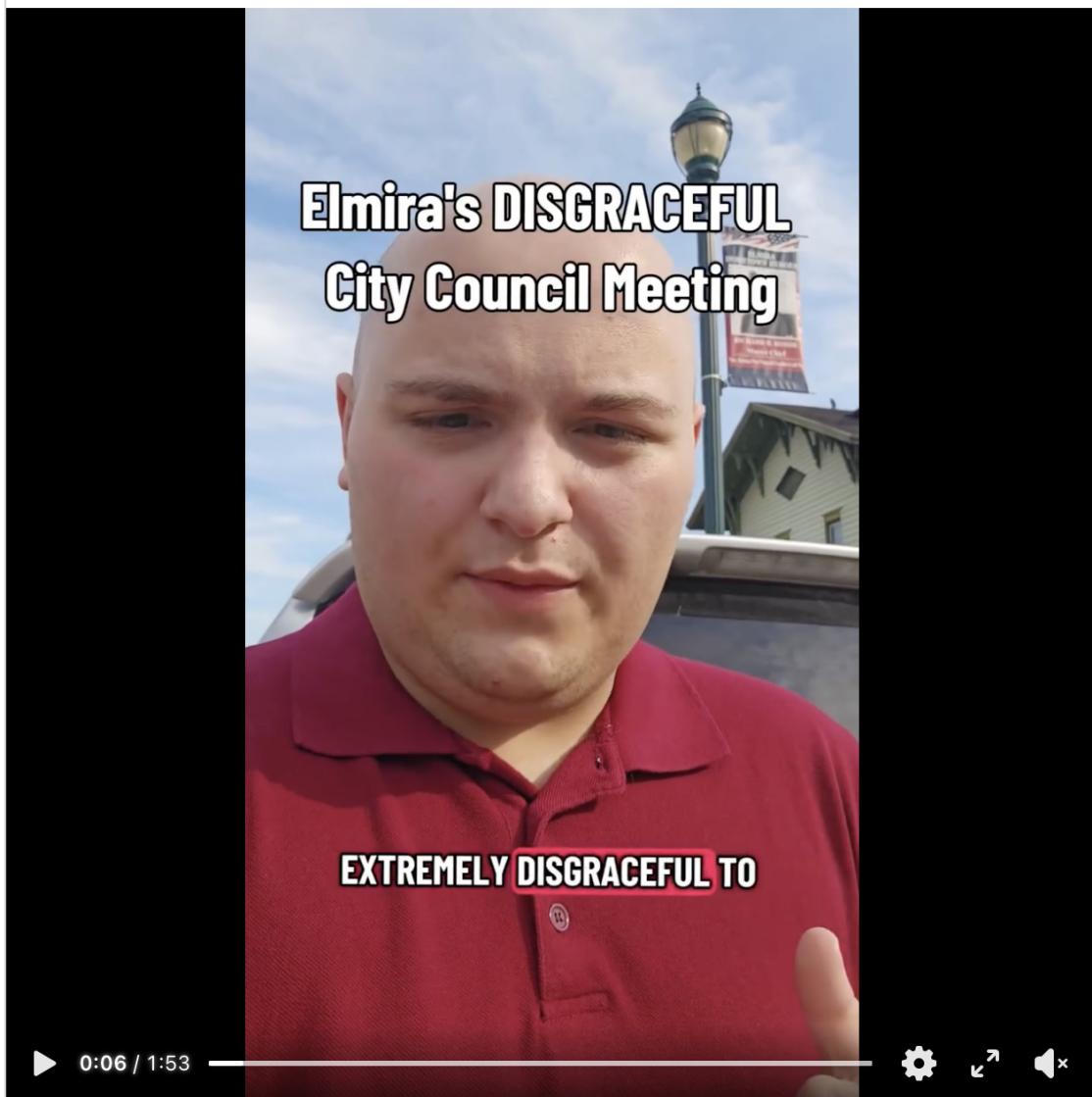
Anthony Cantando for NY · 13h · 🌐



Anthony Cantando for NY is in Elmira.

14h · 🌐

Elmira's disgraceful city council meeting



1

EXHIBIT C



Elmira is Crazy
50501 Twin Tiers · Jun 29 · 🌐

Elmira City Hall tried to censor us when we called out their illegal anti-transparency FOIL request resolution.

EXHIBIT D



Elmira is Crazy

50501 Twin Tiers · 12h · 🌐



Elmira City Hall tried to censor us when we called out their illegal anti-transparency FOIL request resolution.— with **Aiden Yontz** and **Ira Manhoff**.



0:09 / 0:40



154



63



30

