

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

JULIAN RAVEN,

Plaintiff,

v.

Civil Action No. 26-cv-6561

**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.

**DEFENDANTS THE CITY OF ELMIRA, MAYOR DANIEL J. MANDELL,
COREY COOKE, JOSEPH H. DUFFY, GARY BRINN, JACKIE WILSON, AND
NANETTE M. MOSS'S MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS**

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PRELIMINARY STATEMENT

Defendants, the City of Elmira (“City”), Mayor Daniel J. Mandell, Corey Cooke, Joseph H. Duffy, Gary Brinn, Jackie Wilson, and Nanette M. Moss (collectively, the “City Defendants”), submit this memorandum of law in support of their motion to dismiss Plaintiff Julian Raven’s (“Plaintiff”) Complaint pursuant to Fed. R. Civ. P. § 12(b)(6).

Through his Complaint, Plaintiff seeks to compel the Elmira City Council to reopen a limited public forum it lawfully closed, a result prohibited by controlling First Amendment precedent. Plaintiff challenges the City Council’s elimination of an open public comment period at the end of City Council meetings. However, Plaintiff concedes that the comment period at issue was a limited public forum, and also, that a municipality is not required to maintain such a forum indefinitely. Rather, a municipality may eliminate a limited public forum so long as the decision is reasonable and viewpoint neutral. Here, the City Council’s decision satisfies both requirements; it applied uniformly to all speakers regardless of viewpoint, and it was reasonable given the disruptions Plaintiff himself acknowledges in his Complaint. Because Plaintiff cannot compel the City to reopen a forum it has lawfully closed, it is respectfully submitted that Plaintiff’s Complaint must be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed his Complaint with the Western District of New York on May 20, 2026. (Dkt. 1.) In his Complaint, Plaintiff raises claims for structural prior restraint and forum suppression (First Cause of Action) and viewpoint discrimination and retaliatory forum manipulation (Second Cause of Action), both under the First and Fourteenth Amendment through 42 U.S.C. § 1983. In support of these claims, Plaintiff alleges as follows, which the City Defendants assume as true for purposes of this motion only:

Plaintiff is a City resident. (Dkt. 1, ¶ 16.) Defendants Mayor Daniel J. Mandell, Corey Cooke, Joseph H. Duffy, Gary Brinn, Jackie Wilson, Nanette M. Moss and non-party Nicholas Grasso constitute the City Council (collectively, the “City Council”). (Dkt. 1, ¶¶ 18-20.) Historically, the City Council separated public comments into two discrete sections during its meetings. (Dkt. 1, ¶ 21.) The first public comment section allowed the public to comment on items contained in the City Council’s agenda for that meeting. (Dkt. 1, ¶ 22.) The second public comment section allowed the public to present general comments to the City Council that involved City business, public safety, taxation, policy concerns, etc. (the “General Comment Period”). (Dkt. 1, ¶ 23.) Plaintiff concedes that these comment periods constituted limited public forums concerning city governance and municipal affairs. (Dkt. 1, ¶ 24.)

Over time, however, the City Council recognized that the General Comment Period was becoming a disruption, allowing for inappropriate language and personal attacks, which was viewed as being offensive to other people in the room. (Dkt. 1, ¶ 38.)¹ Accordingly, by resolution adopted in April of 2026, the City Council eliminated the General Comment Period. (Dkt. 1, ¶ 27.) Thereafter, Plaintiff sought to address non-agenda items with the City Council during its meeting on May 18, 2026; however, the City Council allegedly prevented Plaintiff from speaking because his comments did not relate to items on the City Council’s agenda (Dkt. 1, ¶¶ 29-35.)

In this action, Plaintiff contends that the City Council’s elimination of the General Comment Period is an unlawful prior restraint, retaliatory forum manipulation, and viewpoint-discriminatory suppression of protected speech because the City Council had a more narrow

¹ Plaintiff’s Complaint references “statements to the press” (Dkt. 1, ¶ 36,) but fails to cite to or otherwise attach the referenced publication. The quotations included in Plaintiff’s Complaint match the article “Elmira City Council limits public comments to agenda topics only,” published on April 23, 2026 by Kyle Dobrie and available at: <https://www.mytwintiers.com/news-cat/local-news/elmira-city-council-limits-public-comments-to-agenda-topics-only/> (attached as **Exhibit A**). The City Defendants submit this document for the Court’s consideration given it is both incorporated by reference and integral to the allegations contained in the Complaint. *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

alternative available to it, namely regulating actual disruption (Dkt. 1, ¶¶ 7-8, 71.) Ironically, that is the very result the City Council sought to prevent in eliminating the General Comment Period, considering that regulation of speech in this manner likely results in viewpoint discrimination which could potentially expose the City to additional liability. (Dkt. 1, ¶ 37) (“We are 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.”)² Even following the removal of the General Comment Period, City residents remained free to contact their elected officials directly about any and all City issues using the contact information publicly available through the City’s website.³

Although Plaintiff acknowledges the City Council’s authority to maintain order at its meetings (Dkt. 1, p. 17,) his Complaint seeks to override that authority by compelling the City Council to create a limited public forum where none currently exists.

In conjunction with filing his Complaint, Plaintiff also filed a motion seeking a temporary restraining order (“TRO”). (See Dkt. 1.) By Text Order dated May 21, 2026, this Court denied Plaintiff’s motion without prejudice and leave to refile along with a motion for an expedited hearing within 7 days of the Court’s Text Order. (Dkt. 3.) Plaintiff did not make such an application by May 28, 2026. Rather, on June 5, 2026, Plaintiff belated filed a renewed motion for a

² See also “Elmira City Officials Address Changes Made to Council Meeting Procedures,” published on April 20, 2026 by Alecia Solorzano, available at: https://www.weny.com/news/elmira-city-officials-address-changes-made-to-council-meeting-procedures/article_5e2c766b-d481-4480-a39b-35a76eda7fa7.html (attached as **Exhibit B**) (“‘The biggest thing was the liability issue because we also have a fiduciary responsibility to our constituents, and we don’t want to get into a position where we’re getting sued because we’ve cut someone off and we shouldn’t have in a public comment portion,’ said Mayor Mandell. ‘That’s really kind of very, very subjective on someone’s opinion, on what can be discussed and whatnot. At least with the agenda items, it’s strictly agenda items.’”); Exhibit A (“Other council members believed the second comment portion of the meeting was too subjective. That’s because it allowed people to speak about any city matters When Mayor Mandell said liabilities, he and the council were worried about the city getting sued for violating someone [sic] first amendment rights.”).

³ See City Council Staff Directory, publicly available at <https://cityofelmira.ny.gov/Directory.aspx?did=55> and referenced in Exhibits A and B.

TRO/preliminary injunction and motion for an expedited hearing. (Dkt. 5.) The Court has not yet ruled on Plaintiff's application. This motion follows.

ARGUMENT

POINT I

STANDARD OF REVIEW

To survive a motion to dismiss under Fed. R. Civ. P. § 12(b)(6), the Complaint must allege “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. In other words, the complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. In addressing the sufficiency of a complaint, courts are required to accept the well-pleaded factual allegations contained within the complaint as true. *Building Indus. Elec. Contractors Ass’n v. City of New York*, 678 F.3d 184, 187 (2d Cir. 2012). However, the court “need not credit conclusory statements unsupported by assertions of facts[,] or legal conclusions . . . presented as factual allegations.” *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 404 (S.D.N.Y. 2001) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, although this Court is required to construe a *pro se* complaint liberally, it should not accept as true “conclusions of law or unwarranted deductions of fact.” *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 771 (2d Cir. 1994). This Court also “cannot invent factual allegations that [a *pro se* plaintiff] has not pled.” *Chavis v. Chappius*, 618 F.3d 162, 170

(2d Cir. 2010). Even a *pro se* plaintiff is required to offer something more than conclusory assertions of discrimination to avoid dismissal of his complaint at the pleading stage. *See Harris v. NYU Langone Medical Center*, 2013 U.S. Dist. LEXIS 99328, at *52-53 (S.D.N.Y. July 9, 2013), *adopted by Harris v. Langone Medical Center*, 2013 U.S. Dist. LEXIS 139622 (S.D.N.Y. Sept. 27, 2013); *Edwards v. New York State Unified Court System*, 2012 U.S. Dist. LEXIS 172207, at *12 (S.D.N.Y. Nov. 20, 2012).

Applying this standard to the facts alleged in Plaintiff's Complaint, it is respectfully submitted this Court should find that Plaintiff's Complaint fails to assert a cognizable claim and therefore, dismiss Plaintiff's Complaint in its entirety.

POINT II

PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR VIOLATION OF HIS FIRST AND FOURTEENTH AMENDMENT RIGHTS BECAUSE THE CITY COUNCIL WAS FREE TO MODIFY AND/OR CLOSE THE LIMITED PUBLIC FORUM CREATED BY THE GENERAL COMMENT PERIOD.

As a threshold matter, Plaintiff concedes that the General Comment Period was a limited public forum. (Dkt. 1, ¶¶ 4, 24.) This concession is fatal to his claims since a municipality is not required to maintain a limited public forum indefinitely and may limit or eliminate it so long as the restriction is reasonable and viewpoint neutral. Here, it is undisputed that the City Council eliminated the General Comment Period due to disruptions and potential liability. This decision was both reasonable and viewpoint neutral, and therefore does not violate Plaintiff's constitutional rights.

The Supreme Court in *Perry Education Ass'n v. Perry Local Educators' Ass'n* established that "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." 460 U.S. 37, 44 (1983). The Supreme Court then established three prototypical forums

in which courts analyze government conduct at various levels of scrutiny. First, in quintessential public forums (*e.g.*, streets and parks), a municipality must demonstrate that any content-based regulation of speech serves a compelling interest that is narrowly drawn to achieve that end. *Id.* at 45. For content-neutral time, place, and manner regulations, the municipality need only demonstrate that the regulation is “narrowly tailored to serve a significant government interest, and leave[s] open ample alternative channels of communication.” *Id.*

Second, a municipality may create a designated public forum where it opens public property “for use by the public as a place for expressive activity.” *Id.* Municipalities are “not required to indefinitely retain the open character of the facility,” but must apply the standards applicable to a traditional public forum so long as the designated public forum remains open. *Id.*

Finally, the “First Amendment does not guarantee access to property simply because it is owned or controlled by the government” and a municipality is free to “reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.*

Following *Perry*, a subset of the designated public forum, the limited public forum, was created, which allows a municipality to “restrict speech in a way that is viewpoint-neutral and reasonable in light of the forum’s established purpose.” *See R.O. v. Ithaca City Sch. Dist.*, 645 F.3d 533, 540 (2d Cir. 2011) (citation omitted). “The level of scrutiny applied to a restriction on speech depends upon the nature of the forum in which the speech occurs.” *Id.* at 549.

Here, the speech at issue relates to City Council meetings, which the Second Circuit has traditionally determined constitute a limited public forum. *See Tyler v. City of Kingston*, 74 F.4th

57, 61 (2d Cir. 2023). Indeed, Plaintiff concedes that the subject City Council meetings are a limited public forum. (Dkt. 1, ¶¶ 4, 24, 66, p. 18.)

In a limited public forum, the municipality “is free to impose a blanket exclusion on certain types of speech, but once it allows expressive activities of a certain genre, it may not selectively deny access for other activities of that genre.” *Tyler*, 74 F.4th at 61. For expressive activities falling outside the genre for which the limited public forum is opened, restrictions only need to be viewpoint neutral and reasonable. *Id.* at 61-62. Regulation of expressive activities outside the genre for which the limited public forum is opened is “subject only to minimal constitutional scrutiny.” *Id.* at 62 (citing *Bronx Household of Faith v. Cmty. Sch. Dist. No. 10*, 127 F.3d 207, 212 (2d Cir. 1997)).

Tyler is instructive. There, plaintiffs challenged the City of Kingston’s prohibition against bringing signs and posters into public meetings of the common council. 74 F.4th at 59. The District Court granted the City of Kingston’s motion to dismiss, “noting that government entities are permitted to regulate the manner in which the public participates in limited public fora.” *Id.* The Second Circuit affirmed the District Court’s decision. *Id.*

Specifically, in *Tyler*, the plaintiffs contended that the signs they sought to bring to city council meetings addressed matters on the common council’s agenda. *Id.* at 62. But the Second Circuit held that “[e]ven if the signs relate to matters on the Common Council’s agenda, they may still undermine the purpose for which the forum was created.” *Id.* The Second Circuit further held that “the *form* or *manner* in which the public participates in Common Council meetings may certainly undermine the purpose for which the forum was created – *e.g.*, to facilitate meaningful discourse on matters of the legislative agenda.” *Id.* (emphasis in original). As a result, the Second Circuit held that “in limited public fora such as city council meetings, government entities are

permitted to restrict the form or manner of speech offered by members of the public, even if such speech addresses the topic or agenda of that forum” and that such restrictions are assessed on “whether the restrictions are reasonable and viewpoint neutral.” *Id.* at 63.

Turning to whether the City of Kingston’s prohibition of signs was reasonable, the Second Circuit noted “the reasonableness analysis turns on the particular purpose and characteristics of the forum and the extent to which the restrictions on speech are ‘reasonably related’ to maintaining the environment the government intended to create in that forum.” *Tyler*, 74 F.4th at 63. Such restrictions “need not be the most reasonable or the only reasonable limitation imaginable ... but simply ‘consistent with the government’s legitimate interest in preserving the property for the use to which it is lawfully dedicated.’” *Id.* at 63 (citation omitted). “[T]he existence of ‘alternative channels’ of communication is a relevant factor in assessing the reasonableness of a restriction on speech in a limited public forum.” *Id.* at 64 (*citing Perry*, 460 U.S. at 554).

Under this framework, the Second Circuit found that the City of Kingston’s restrictions were reasonable in relation to the city’s interest in the forum, “namely, ‘keeping the tenor of [Common Council] meetings from devolving into a picketing session inside City Hall.’” *Id.* at 64. The Second Circuit reached this conclusion because “courts can take notice of government interest in that ‘ring [] of common-sense’ ... [a]nd many courts have recognized that preventing disruptive activity is a legitimate and common-sense government interest that can justify restrictions on speech in limited public fora.” *Id.* (*citing Hotel Emples. & Rest. Emples. Union, Local 100 v. City of N.Y. Dep’t of Parks & Rec.*, 311 F.3d 534, 544 (2d Cir. 2002); *see also Make the Rd. by Walking, Inc. v. Turner*, 378 F.3d 133, 148 (2d Cir. 2004) (“The most common reason [for excluding expression in a nonpublic forum] is that the excluded expression is distracting or disruptive.”)).

Potanovic v. Town of Stony Point, 2024 U.S. App. LEXIS 15326 (2d Cir. 2024), is even more directly on point. There, the plaintiff challenged a town’s decision to stop broadcasting the public comment portion of the town’s bi-weekly town board meetings, contending that such action equated to impermissible censorship.⁴ There, the Second Circuit reiterated that “[i]n limited public fora[,] such as city council meetings, government entities are permitted to restrict the form or manner of speech offered by members of the public’ so long as ‘the restrictions are reasonable and viewpoint neutral.’” *Id.* at *3 (citing *Tyler*, 74 F.4th at 63). The Second Circuit further recognized that while “*restrictions* on the form or manner of speech in limited public fora must be reasonable, the First Amendment does not confer a right to compel governments to *create* a limited public forum of a particular scope and character.” *Id.* (emphasis original).

Applying this analysis, the Second Circuit held that the plaintiff’s attempt to require the town to livestream the public comment portion of town meetings “is best understood as seeking to compel the Town to create a limited public forum of the scope and character that [plaintiff] seeks – namely, broadcast online, recorded, and archived.” *Id.* at *4. Given that a party cannot compel the creation of a limited public forum, the Second Circuit affirmed the dismissal of the plaintiff’s First Amendment claims. *Id.*

Here, Plaintiff’s claims are indistinguishable from those rejected by the Second Circuit in *Tyler* and *Potanovic*. Indeed, Plaintiff concedes that the General Comment Period was a limited public forum, which subjects the City Council’s restrictions to minimal scrutiny—requiring only that they be reasonable and viewpoint neutral.

While Plaintiff attempts to invoke heightened scrutiny by alleging that the City Council’s decision was content-based, his own allegations defeat this argument. Specifically, Plaintiff

⁴ Given the *Potanovic* decision is an unpublished decision, it is attached as **Exhibit C**.

acknowledges that the City Council identified that the speakers were using “terrible language and personal attacks” that the City Council found disruptive. (Dkt. 1, ¶ 38; Exhibit A.) The City Council’s response was to eliminate the forum entirely, rather than selectively regulate which speakers or viewpoints could participate. This action is the very quintessence of viewpoint neutrality. Plaintiff identifies no viewpoint the City Council targeted; he identifies only disruptive conduct that the City Council was entitled to address. *See Tyler*, 74 F.4th at 64; *see also White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990) (noting “in dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand” and finding “[t]he meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner.”).

The City Council’s decision was also reasonable given that alternative channels remain available. For example, residents can contact their elected officials directly through the City’s website. (Exhibit A; Exhibit B.) Moreover, the restriction on non-agenda speech at City Council meetings does not extend beyond the Council chamber. Residents remain free to contact officials directly, petition, picket, protest, or leaflet.⁵

Finally, Plaintiff’s invocation of the prior restraint doctrine is misplaced. A prior restraint is an administrative or judicial order forbidding communications when issued in advance of the time that such communications are to occur. *Alexander v. U.S.*, 509 U.S. 544, 550 (1993). This doctrine presupposes an existing right to speak that the government is restraining. But here, Plaintiff has no freestanding right to address any topic he wishes at City Council meetings. Such a right exists only if the City Council chooses to open the forum. Having closed the forum, the

⁵ Courts may take judicial notice of materials in the public record for the limited purpose of noting what the documents state. *Hesse v. Godiva Chocolatier, Inc.*, 463 F. Supp. 3d 453, 463 (S.D.N.Y. 2020) (*citing, inter alia, Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008)).

City Council has not restrained Plaintiff's speech; it has simply declined to provide him with a particular platform of his choosing. And Plaintiff has no constitutional right to compel the City Council to open such a platform.

Based on the foregoing, Plaintiff has failed to state a valid claim for violation of his First or Fourteenth Amendment rights under either cause of action. Accordingly, it is respectfully submitted that his Complaint should be dismissed in its entirety.

CONCLUSION

For the reasons set forth above, this Court should respectfully grant the City Defendants' motion to dismiss and dismiss Plaintiff's Complaint in its entirety, along with such other and further relief the Court deems necessary.

Dated: June 17, 2026

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