

Raven for Mayor 2027

An Independent Citizens' Campaign for Mayor of the City of Elmira — Where Frustration Becomes Action, Action Becomes Renewal, and Renewal Becomes Hope.

NOTICE OF ANTICIPATED LITIGATION, DEMAND FOR PRESERVATION OF EVIDENCE, DEMAND FOR CORRECTION OF OFFICIAL RECORD, AND NOTICE OF POTENTIAL CLAIMS

September 23, 2026

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ELECTRONIC MAIL AND HAND DELIVERY

To:

Chief of Police, **Kristen Thorne**
Elmira Police Department
317 East Church Street
Elmira, New York 14901

Sgt. **Joseph Linehan**
Elmira Police Department
317 East Church Street
Elmira, New York 14901

Corporation Counsel
City of Elmira

City Clerk / Records Management Officer
City of Elmira

RE: SEPTEMBER 16, 2026 MOTOR-VEHICLE COLLISION, 700 BLOCK OF BALDWIN STREET — SEPTEMBER 22, 2026 EPD PRESS RELEASE — FORMAL DEMAND FOR PRESERVATION, INVESTIGATION, CORRECTION AND SUPPLEMENTATION

Dear Chief, Sgt. Linehan, Corporation Counsel, and Records Management Officer:

Please accept this letter as formal notice that I reasonably anticipate litigation arising from the Elmira Police Department's September 22, 2026 official press release concerning the September 16, 2026 motor-vehicle collision in the 700 block of Baldwin Street.

This letter also constitutes an immediate demand that the City of Elmira and Elmira Police Department preserve all evidence relating to the collision, the investigation, the creation and dissemination of the September 22 press release, and the decision to omit my documented role in the lifesaving response.

It further constitutes a formal demand that the City investigate and correct or supplement both the underlying governmental record and the public statement if, as the contemporaneous evidence demonstrates, either materially misstates, omits or distorts what occurred.

The disputed official statement

The September 22 release is issued on Elmira Police Department letterhead, identifies Sgt. Joseph Linehan as its source, and states:

> “Prior to officers' arrival, a City of Elmira Department of Public Works Employee, who was working nearby, observed the accident and began rendering aid to the injured driver before the arrival of medical personnel.”

The release subsequently thanks the Elmira Department of Public Works, Elmira Fire Department, Elmira Code Enforcement and Erway's Ambulance personnel for their assistance.

It completely eliminates my role.

I dispute the accuracy and completeness of this official account.

STATEMENT OF FACTS

For purposes of this statement, the term **“DPW worker”** refers to the City of Elmira Department of Public Works employee described below; **“driver”** or **“victim”** refers to the driver of the vehicle; and **“professional medical personnel”** refers to the emergency medical personnel who subsequently assumed treatment.

1. My position is that the contemporaneous evidence will establish that I was first at the scene, having heard the truck race by my front door at approximately 10:20 am, before the official emergency responders.
2. I contacted 911 at 10:23 am. My message twice to the female dispatcher was: **“714 Baldwin St., GET HERE NOW!”** I used my address next door, since I knew they would find us, being unable to think of the address of the house next door or waste time trying to work it out.
3. I opened the car door.
4. I could see the DPW worker in his helmet and vest running towards me from the crossroads of Clemens Center and 5th Ave.
5. The driver was flopped all the way over on the passenger seat, though still buckled in.
6. The windshield was smashed through on the right side.
7. The DPW worker went around me to my left side since I was on the right side of the door opening, passing under my arm that was holding the door open, and immediately cut the cream colored airbags wrapping around the driver and proceeded to climb in.
8. He checked for a pulse multiple times and repeatedly said: **“no pulse.”**

9. The DPW worker, at my direction, after having said **“We've got to get him out of here..”**, unbuckled (or attempted to) the driver to his right, reaching
10. down and back beneath the driver since he was still flopped over his seat belt.
11. The DPW worker was still inside the vehicle leaning over to the driver's head area repeatedly looking for a pulse, and also proceeded to cut the seatbelt at the base where it attaches to the left hand side of the seat, freeing the man.
12. Together the DPW worker and I removed the driver from the vehicle, me lifting him from under his arms, and the worker by his belt and waist.
13. The man was heavy, floppy and slipping through my grip on his polyester shirt, as I pulled him out standing in four inches of water surrounded by debris.
14. DPW let go of the man to clear a space, throwing a sheet of sheathing out of the way, and kicking the debris with his boots, where we could immediately lie him down as I barely held on, as his limb body slipped through my grip.
15. Immediately the DPW worker got on his knees on the far side and began rapid chest compressions, as we both looked at the man’s bleeding mouth.
16. He looked like he was thinking what I was thinking, as he hesitated to lean forward to give breaths. We did not want to give him mouth to mouth resuscitation and get a mouthful of blood.
17. At that point, the man lay there like a dead man, motionless, face pale, eyes staring into space, mouth open, skin and lips blueish color, except for the red blood coming from his mouth, except for the shaking from the compressions.
18. I knew I had to give him the breath of life.
19. I cupped my right hand around his open mouth, creating a sealed tube to his face with my fingers and the base of my hand, that I could breathe through to avoid the blood touching my mouth.
20. I administered the breath of life to the victim’s bleeding mouth, while the DPW employee performed continuous chest compressions.
21. After several large breaths, upon which the man’s chest rose significantly, he began to sputter and breathe.
22. I breathed some more to help him as he struggled to breath.
23. The victim began to breathe only after the rescue breaths were administered.

24. The victim stopped breathing after we stopped, causing more compressions and multiple breaths until the victim began to breathe again, before professional medical personnel arrived and assumed treatment.
25. I remained on my knees supporting the man's head with my left hand, above the debris covered floor we had placed him on.
26. I prayed out loud in Jesus name.
27. The emergency workers cut the man's shirt, placed an oxygen breather on his face, and attached the defibrillator pads.
28. They began yelling to stand clear, which I did not understand was directed at me since I was still holding the man's head off the rough ground.
29. The DPW worker had to yell loudly telling me to put the man's head down, which I did as gently yet swiftly as possible as the machine began to send shock waves through his body.
30. I was overwhelmed with adrenalin as I stood there watching, with the man's blood on my hands, at which I began to wipe on my jeans.
31. The DPW worker took off hastily to a truck to get paper towels, which he brought to me and he began wiping the blood off my right hand with them.
32. I spoke with two detectives, John McKraken and WETM and WENY news who recorded my account.

This is not a dispute over whether an official press release was sufficiently complimentary.

It concerns whether a police department possessing—or obligated to preserve—objective evidence concerning an emergency incident created and disseminated an **official governmental account that materially changed the chronology and attribution of an objectively verifiable lifesaving event.**

The governmental-record issue

New York treats governmental records as matters of public integrity. Arts and Cultural Affairs Law §57.25 places responsibility upon local officers to maintain records that adequately document the transaction of public business and to protect those records. The Legislature has expressly stated that public records protect citizens' rights and permit citizens to monitor government and measure the conduct of public officials.

Of particular importance here, the New York State Archives specifically classifies the **official copy of a governmental "press release"** as a local-government record under the LGS-1 retention schedule.

The State's law-enforcement accreditation standards likewise require participating police agencies to maintain a written directive controlling the release of information to the news media. Assessors are specifically instructed to review actual police press releases for consistency with that directive. The accreditation records standard separately requires supervisory review of police reports for **completeness and accuracy**.

Accordingly, please preserve and produce upon proper request the Elmira Police Department directives satisfying those standards, including the Public Information/Media directive and the records-management/report-review directive in force on September 16 and September 22, 2026.

Potential falsification and official-misconduct issues

I am not prejudging the result of an investigation or accusing any individual of a criminal offense before the relevant evidence has been obtained. Nevertheless, knowing manipulation of governmental records can implicate serious provisions of New York law.

Penal Law Article 175 defines a "written instrument" broadly to include written or computerized information capable of being used to the advantage or disadvantage of another person. It defines an "enterprise" to include governmental activity and business records to include records maintained to evidence an enterprise's activity. N.Y. Penal Law §175.00.

Among the provisions requiring investigation if the evidence establishes knowing falsification are:

1. **Penal Law §175.05 — Falsifying Business Records in the Second Degree.** With the required intent to defraud, it includes making a false entry, altering or deleting a true entry, knowingly omitting a true entry where a duty exists to make it, or preventing a true entry from being made.

2. **Penal Law §175.10 — Falsifying Business Records in the First Degree.** It applies when §175.05 conduct includes an intent to commit, aid or conceal another crime.
3. **Penal Law §175.20 — Tampering With Public Records in the Second Degree.** It prohibits, under its statutory circumstances, knowingly concealing, making a false entry in, or falsely altering a public record without lawful authority.
4. **Penal Law §175.25 — Tampering With Public Records in the First Degree.** The statute adds an intent to defraud and makes the offense a class D felony.
5. **Penal Law §175.40 — Issuing a False Certificate.** It applies where a public servant authorized to make or issue official certificates or other official written instruments issues such an instrument, knowing it contains false information, with intent to defraud, deceive or injure another person.
6. **Penal Law §195.00 — Official Misconduct.** It applies where a public servant, intending to obtain a benefit or deprive another person of a benefit, knowingly abuses official functions or knowingly fails to perform a legal or inherent official duty. New York defines "benefit" broadly as "any gain or advantage."

Whether any of these provisions was actually violated depends upon facts presently within the City's control, including what the original reports said, what Sgt. Linehan and other officials knew, who authored and edited the release, whether earlier drafts were different, what information was removed, and why.

The preservation of that evidence is therefore essential.

Defamation by implication

The September 22 publication also raises potential civil liability under New York's doctrine of **defamation by implication**.

In *Partridge v. State of New York*, 173 A.D.3d 86 (3d Dep't 2019), the Appellate Division held the State liable where a State Police public presentation created a false defamatory meaning through the selection and presentation of facts even though individual components of the presentation could be characterized as true. The Court specifically recognized that actionable falsity may arise through

omitting or strategically juxtaposing material facts and affirmed a finding of reckless disregard where police officials knew the relevant facts and nevertheless controlled a misleading public presentation.

The Fourth Department has likewise treated the drafting history of an official government press release as material evidence bearing upon knowledge and reckless disregard. In *Tattoos By Design, Inc. v. Kowalski*, 136 A.D.3d 1406 (4th Dep't 2016), revisions made to a government press release **toward greater factual accuracy** supported the officials' defense against actual malice.

The inverse is obvious and requires preservation here: if an earlier draft accurately identified both civilian rescuers and the final release deliberately eliminated one of them, the revision history would bear directly upon knowledge, intent and reckless disregard.

Potential First Amendment retaliation

I am a declared candidate for Mayor of Elmira and have engaged in litigation, petitioning, criticism and other constitutionally protected activity adverse to City officials.

I do not presently assert that political retaliation has been proved. I do place the City on notice that **if discovery establishes that my known participation in this rescue was deliberately removed from the official account because of my political activity, candidacy, litigation or criticism of City government, claims under 42 U.S.C. §1983 and the First Amendment will be pursued against the responsible actors and, where the governing standards are satisfied, against the municipality.**

The question will be determined from evidence, not speculation: who knew my role, who knew of my protected activities, who altered or approved the public account, what communications occurred, and what reason was given for eliminating me from it.

Formal litigation hold

The City and every relevant department, official, employee and agent are now expressly on notice that litigation is reasonably anticipated.

New York courts hold that once litigation is reasonably anticipated, a party must institute an appropriate litigation hold and prevent routine destruction of relevant electronic evidence. *Parkis v. City of Schenectady*, 211 A.D.3d 1444 (3d Dep't 2022).

Accordingly, the City, EPD, DPW and all relevant custodians must immediately preserve, without alteration, deletion, overwriting or routine destruction:

1. Every original, amended, corrected and supplemental incident, accident, unusual-occurrence or investigative report concerning the September 16 collision, including RMS audit histories and records showing creation, access, modification and deletion; all CAD records, CAD histories, dispatch records, 911 audio, radio traffic and associated metadata; all body-worn-camera, dash-camera, surveillance, photographic and audiovisual evidence; all notes, notebooks, memoranda and witness statements of responding officers; all statements, reports and communications involving the DPW employee; all City-held Fire Department, Code Enforcement, EMS or related records concerning the event; every draft and version of the September 22 press release, including Word files, PDFs, metadata, tracked changes, autosaved versions, backups, deleted files and revision histories; every email, text message, instant message, Teams or comparable message concerning the incident or press release, including communications on personal devices or accounts used for City business; every communication between EPD or any City employee and WETM, WENY or any other media outlet concerning the collision, myself, the DPW employee or the September 22 release; all CMS, website and social-media publication records, revision histories, deletion histories, distribution lists and records identifying recipients of the release; all communications involving Sgt. Linehan, responding officers, EPD command staff, the Chief of Police, DPW, City administration, Corporation Counsel, the Mayor's Office or members of City Council concerning my involvement in the incident or publicity surrounding it; the EPD Public Information/Media directive required by Accreditation Standard 28.1 and all versions in effect during September 2026; all policies governing report accuracy, supervisory review, correction, supplementation and amendment; and all documents created after receipt of this letter

concerning whether the September 22 release or underlying police records should be corrected.

The original records must be preserved **as originally created**. No correction should overwrite or replace an original document, metadata or version history. Any correction should be made through a traceable supplemental record.

Demand for correction and supplementation

I hereby formally demand that EPD immediately review the objective record of this incident and:

First, determine whether the underlying incident report, CAD record, officer reports and other official documentation accurately record my presence and participation.

Second, accept and attach my formal witness/rescuer statement to the case record.

Third, if the underlying record omits or materially misstates my participation, issue an appropriate supplemental or corrected report preserving the original and documenting the reason and date of correction.

Fourth, issue a corrected public release accurately identifying the pre-arrival response established by the evidence, including the respective roles of the civilian responders.

Fifth, distribute that correction through substantially the same channels used to disseminate the September 22 release, including every media organization to which the original release was supplied.

Sixth, identify the factual source for the September 22 assertion that the DPW employee "observed the accident and began rendering aid," including whether the employee actually reported witnessing the collision itself and what information EPD possessed concerning other rescuers before publication.

Seventh, identify the author, editor, reviewing supervisor and final approving official for the September 22 press release.

Demand for a written final determination

Please treat this letter as a **formal administrative demand for correction and supplementation of the governmental record**.

If EPD or the City declines any portion of the requested correction, I demand a written final determination identifying:

the request denied; the factual findings supporting that denial; the governmental records relied upon; the official responsible for the determination; the EPD rule, General Order, accreditation policy or other authority governing the decision; and the available internal administrative review or appeal procedure.

This request is made expressly to preserve all rights to judicial review under CPLR Article 78.

CPLR 7803 permits review of whether an officer failed to perform a duty imposed by law and whether governmental action was made in violation of lawful procedure, affected by error of law, arbitrary and capricious, or an abuse of discretion. New York courts describe arbitrary governmental action as action lacking a sound basis in reason or taken without regard to the facts.

Demand for response

Please confirm **within three business days** that a litigation hold has been circulated to all relevant custodians and that automatic deletion, overwriting and routine destruction applicable to the above evidence have been suspended.

Please provide a substantive response to the correction demand **within ten business days**.

If the City determines additional time is genuinely necessary to complete a factual investigation, identify in writing the investigation being undertaken, the person

responsible, the evidence under review and a definite date by which the City will issue its determination.

Failure to preserve relevant evidence after receipt of this notice will be addressed through all remedies available for spoliation.

Failure to correct a knowingly false or materially misleading governmental record after receipt of objective evidence will also be relevant to issues of knowledge, actual malice, reckless disregard, ratification and retaliatory intent.

Notice of anticipated claims

If this matter is not corrected, I intend to pursue such claims and remedies as the evidence supports, potentially including:

defamation and defamation by implication; declaratory and injunctive relief; Article 78 relief compelling compliance with any applicable mandatory duties and challenging arbitrary or factually unsupported determinations; First Amendment retaliation under 42 U.S.C. §1983; municipal liability where the requirements of *Monell* are established; damages for cognizable reputational and economic injuries;

claims arising from subsequent republication after actual notice of falsity; claims against other persons or entities whose knowing participation is established in discovery; and referral of evidence concerning possible violations of Penal Law Articles 175 and 195 to the appropriate prosecutorial or oversight authorities.

Nothing in this letter constitutes a waiver, election of remedies, exhaustive statement of claims, or limitation of any federal, state, constitutional, statutory or common-law cause of action.

Please govern yourselves accordingly.

Respectfully,



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