



Viewpoint discrimination is presumptively unconstitutional, including in limited public forums.

Defendants' Motion largely reframes Plaintiff's claim as if Plaintiff is demanding a right to unlimited access, a right to commandeer government speech, or an improper request for broad injunctive relief. That is not what Plaintiff pleads. Plaintiff seeks to vindicate core First Amendment principles in the digital domain: when government provides a public-comment opportunity and uses a government-controlled broadcast to distribute it, government cannot selectively suppress the message by manipulating the audio feed for disfavored speakers.

Accordingly, the Motion should be denied.

This Opposition addresses Defendants' dismissal grounds in the order they are presented: (1) the First Amendment forum and viewpoint-suppression theory; (2) Defendants' "no duty to amplify" and "government speech" reframing; (3) state action/control of the livestream; (4) municipal attribution under Monell; (5) the Petition Clause and Defendants' redundancy/public-concern arguments; (6) Defendants' "prior restraint" argument; and (7) standing and the scope of declaratory and injunctive relief.

Plaintiff also filed a Notice of Supplemental Authority identifying additional controlling Supreme Court precedent consistent with the authorities cited herein.

## **I. INTRODUCTION AND SUMMARY OF THE DISPUTE**

Plaintiff's core allegation is that Defendants used the government-controlled livestream and its audio controls to suppress Plaintiff's public-comment speech, including by muting the livestream audio during Plaintiff's remarks and restoring it after he finished. Plaintiff alleges that publicly available recordings, including the livestream recording and an audience video, show that the audio was cut during Plaintiff's public-comment slot in a manner that prevented the online audience from receiving Plaintiff's speech.

Defendants' Motion argues, among other things, that (1) Plaintiff fails to state a plausible First Amendment claim; (2) Plaintiff fails to plead municipal liability

under Monell; and (3) Plaintiff lacks standing for forward-looking relief under Lyons and related cases.

To the extent the Court views any official-capacity defendants as redundant to the District, Plaintiff does not oppose dismissal of those redundant parties so long as the claims against the District proceed.

Each argument fails at the pleading stage.

## **II. RELEVANT ALLEGATIONS (AS PLEADED)**

Plaintiff incorporates the Second Amended Complaint's allegations by reference. Defendants' Motion itself summarizes several of the pleaded allegations and frames them as the basis of Plaintiff's claims.

In summary:

1. The School Board conducted a public meeting and provided a public-comment opportunity.
2. Defendants controlled the official livestream/broadcast channel for that meeting.
3. Immediately after Plaintiff was recognized to speak, and during Plaintiff's public-comment slot, the official livestream audio was muted such that the online audience could not hear Plaintiff's first words, and the audio was restored after Plaintiff's comment period concluded.

Clarification: "could not hear Plaintiff's first words" refers to the District-controlled livestream audio feed at the start of Plaintiff's speaking slot, even though Plaintiff was physically speaking in the room. Plaintiff's claim is not premised on an in-room mic cut-off. The claim is that Defendants used District control of the official livestream audio feed to make Plaintiff's remarks inaudible to the online public during his recognized speaking slot, while other speakers and portions of the meeting remained audible.

**No inconsistency:** Defendants' claimed "contradiction" disappears once the two audiences are distinguished. Plaintiff began speaking in the room when recognized, but the District-controlled livestream audio feed was muted at the start of Plaintiff's speaking slot so the online audience could not hear Plaintiff's opening words or the substance of

his remarks. At most, Defendants raise a factual dispute about timing and audibility on the livestream, which cannot be resolved on a Rule 12(b)(6) motion.

4. The suppression occurred in a manner that prevented online viewers from hearing Plaintiff's protected speech, while other portions of the meeting were audible.

5. Plaintiff's intended public-comment topic concerned alleged medical fraud and medical violations affecting approximately 75 students, the public handling and reporting of those issues, and alleged retaliation or cover-up involving an employee who spoke out.

6. The livestream recording and audience video reflect that the Board President called Plaintiff's name and appeared to press a control on the dais at the moment the livestream audio became inaudible during Plaintiff's slot.

7. At the subsequent Board meeting on October 24, 2024, Plaintiff raised that his public-comment remarks had been made inaudible on the District's official YouTube livestream during his prior speaking slot. During the Board President's remarks, the Board President instructed the public to review the meeting recording and stated the recording would show Plaintiff was never muted. Plaintiff alleges the District uses its YouTube meeting video as the public-facing meeting record for the public to verify what occurred, and that the recording itself reflects that Plaintiff's remarks were made inaudible to online viewers during his recognized speaking slot.

These allegations state a plausible claim of viewpoint-based suppression in a government-controlled forum.

### **III. APPLICABLE LEGAL STANDARD**

A complaint survives a Rule 12(b)(6) motion if it contains sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. At this stage, the Court does not weigh evidence. At the motion to dismiss stage, the Court must accept Plaintiff's factual allegations as true and determine only whether those facts plausibly state a claim for relief under clearly established constitutional law. It asks whether Plaintiff has plausibly alleged facts that, if proven, would entitle Plaintiff to relief.

Defendants' Motion seeks merits-like determinations (for example, disputing the characterization of the muting and its implications) that are inappropriate on a motion to dismiss.

## **IV. ARGUMENT**

### **A. Plaintiff plausibly alleges viewpoint discrimination in a government-controlled public-comment forum**

#### **1. Public comment at government meetings is protected speech, and viewpoint discrimination is presumptively impermissible**

Speech during public-comment portions of government meetings is core First Amendment activity. Government bodies may impose reasonable, viewpoint-neutral rules to manage the forum, such as time limits, sign-up procedures, and decorum rules. But even in a limited public forum, the government may not suppress speech because officials disagree with the speaker's viewpoint. See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) (forum doctrine and permissible restrictions); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (viewpoint discrimination is impermissible).

Here, Plaintiff's public-comment remarks concerned student health and safety and public school accountability: alleged medical fraud and medical violations affecting approximately 75 students, the public handling and reporting of those issues, and alleged retaliation or cover-up involving an employee who spoke out. Those topics are paradigmatic matters of public concern and protected civic speech.

Plaintiff plausibly alleges that Defendants operated a public-comment forum and then selectively suppressed Plaintiff's remarks for the online audience. Taking those allegations as true, Plaintiff states a plausible claim for viewpoint-based discrimination.

**2. The fact that the suppression occurred in a digital broadcast does not reduce First Amendment protection**

The Supreme Court has recognized that cyberspace, and social media in particular, are among the most important places for the exchange of views. *Packingham v. North Carolina*, 582 U.S. 98 (2017). When government uses digital channels to distribute civic participation and public discourse, constitutional limits still apply.

Plaintiff's claim fits that modern reality. Plaintiff does not allege Defendants were required to create a livestream. Plaintiff alleges that Defendants chose to operate and control an official digital broadcast of the meeting, and that this broadcast functioned as the public's means to observe, hear, and evaluate both the proceedings and the public's input. **Because the livestream and its audio feed were operated and controlled by the School District, actions taken to mute or suppress audio constitute affirmative government action for First Amendment purposes. By voluntarily livestreaming a public-comment session of an official board meeting, the School District created a government-controlled forum for public expression subject to First Amendment constraints.** Once Defendants used a government-controlled channel to distribute a public-comment forum, they could not selectively suppress one speaker's viewpoint while transmitting other speakers normally.

***3. Selectively muting the official livestream during Plaintiff's remarks plausibly states unconstitutional suppression***

Plaintiff alleges Defendants used their control of the District's official livestream audio to suppress his remarks, including by disabling or muting the audio during his allotted time and restoring the audio afterward. Plaintiff further alleges the remainder of the meeting was audible and that the loss of audio aligned with Plaintiff's public-comment slot, supporting a plausible inference of selective suppression rather than an across-the-board technical failure. Taken as true, those allegations plausibly state unconstitutional suppression in a government-controlled public-comment forum. See *Rosenberger*, 515 U.S. at 829-30.

Defendants' "he could still speak in the room" framing is beside the point: the injury alleged is viewpoint-based manipulation of the District's official broadcast

of the public-comment forum, which prevented the online audience from receiving Plaintiff's message.

This is not a content-neutral time, place, and manner restriction. Plaintiff does not allege neutral enforcement of decorum, profanity rules, or time limits. He alleges the opposite: Defendants manipulated the government-controlled transmission mechanism so that the online audience could not hear Plaintiff's remarks while other speakers were heard.

Defendants attempt to reframe the claim as a demand that the District "amplify" or "separately broadcast" private speech, invoking *Houchins*. *Houchins* addresses a claimed right of access to government information; it does not authorize selective suppression of private speech inside a forum the government has chosen to distribute. But Plaintiff does not claim the District had a constitutional obligation to create a livestream or to disseminate every message through social media. Plaintiff alleges that the District chose to operate a livestream as its official distribution channel for the meeting and public-comment forum, and then selectively made Plaintiff's remarks inaudible to the online audience while carrying others. That is a plausible viewpoint-discrimination claim at the pleading stage, not a request for compelled "amplification."

Defendants' contention that they had no duty to livestream is legally irrelevant because the constitutional violation arises from selective suppression within a forum they voluntarily created, not from the decision to livestream itself.

**Houchins does not control these pleaded facts.** Defendants cite cases about a claimed right to obtain government information or force the government to provide access to a particular information source. Plaintiff is not demanding access to create a broadcast or to compel dissemination. Plaintiff alleges the District chose to operate an official channel to distribute the public-comment forum and then selectively made one speaker inaudible on that channel during his recognized speaking slot. That allegation fits forum doctrine and viewpoint discrimination principles, not a "duty to amplify" theory. Defendants' assertion that "that's not viewpoint discrimination" depends on ignoring the pleaded selective suppression on the District's own channel during Plaintiff's slot, which is the challenged government action here.

**4. The public's right to receive information supports Plaintiff's theory of harm**

The First Amendment protects not only speakers but also listeners, including the public's right to receive information and ideas. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748 (1976); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

Plaintiff alleges Defendants' muting prevented the online public from hearing his remarks. That listener harm is reinforced by the District's own direction to the public to consult the meeting recording to verify what occurred. That allegation is not a trivial technical defect. When a government body chooses to distribute a public-comment forum through its controlled channel, selective suppression of audio plausibly burdens both the speaker and the audience, and therefore plausibly states a First Amendment injury.

5. Plaintiff's Petition Clause claim is plausibly pleaded and not resolved by Defendants' "heard in the room" framing

Defendants argue the Petition Clause adds nothing because Plaintiff was "heard" by the Board, and because the Petition Clause does not obligate the government to broadcast a petitioner's message to the public.

Plaintiff's claim is not that Defendants had a duty to create a livestream or a duty to "amplify" speech. Plaintiff alleges Defendants chose to operate an official livestream distribution channel for the public-comment forum, and then used District-controlled audio controls to selectively suppress Plaintiff's petitioning speech for the online public while transmitting the remainder of the meeting and other speakers.

Defendants also argue the Petition Clause requires "public concern."

Defendants' reliance on a "public concern" element is misplaced in this context. The "public concern" screening test arises in public-employee speech doctrine and is not a required element for a private citizen's speech in a government-run public-comment forum. The cases Defendants rely on for that proposition arise in the public-employee context, not a private citizen speaking during a government-run public-comment forum. In a forum setting, the core questions are whether the government opened the channel for private speech and whether it engaged in viewpoint discrimination. In any event, even if the Court considered "public concern" relevant here, Plaintiff has

alleged speech about student health and safety and public school accountability, including alleged medical fraud and medical violations affecting approximately 75 students, which plainly implicates matters of public concern at the pleading stage.

At the pleading stage, those allegations plausibly state Petition Clause protection and are not defeated by Defendants' attempt to reframe the case as a demand for dissemination.

**6. Defendants' "prior restraint" argument does not warrant dismissal at Rule 12(b)(6)**

Defendants argue Plaintiff cannot state "prior restraint" because Plaintiff spoke in the room and there was no advance edict barring him from speaking.

Plaintiff's core pleaded theory is viewpoint-based suppression of an opened public-comment forum through manipulation of the District's official livestream audio feed.

If the Court concludes "prior restraint" is not the best doctrinal label for a live suppression executed through an official broadcast mechanism, that conclusion does not eliminate the plausible First Amendment violation alleged. The same facts state a claim for viewpoint discrimination and unconstitutional suppression within a limited public forum distributed through an official channel.

**B. Defendants' "government speech" framing does not defeat Plaintiff's claim at the pleading stage**

Defendants attempt to characterize the livestream as government speech or mere editorial discretion. But Plaintiff does not claim a right to force Defendants to publish any message of his choosing. Plaintiff alleges Defendants created and operated a public-comment forum, distributed that forum through an official channel, and then used control over the broadcast mechanism to suppress a disfavored viewpoint within that forum.

Defendants also cannot characterize the livestream as mere "government speech" or discretionary editorial content while simultaneously holding it out as the meeting record the public should rely on to verify what happened. As alleged, when Plaintiff later raised the livestream muting issue, the Board President told the public to check the recording and asserted the recording would show Plaintiff

was never muted. That response supports Plaintiff's allegation that the District's YouTube meeting video functioned as the District's official public-facing record of the public-comment forum, and it reinforces why selective suppression of a speaker's audio on that official channel states a plausible First Amendment claim at the pleading stage.

Forum doctrine applies when the government opens a channel for private speech and then regulates access, audibility, or distribution of that private speech. *Perry*, 460 U.S. 37. The question at Rule 12(b)(6) is not whether the government owns the microphone or the YouTube channel. The question is whether Plaintiff plausibly alleges Defendants used that control to suppress private speech based on viewpoint.

At minimum, Plaintiff plausibly alleges the livestream functioned as a distribution channel for invited private speech in the public-comment forum, and that Defendants manipulated that channel so that Plaintiff's remarks were not heard by the online audience while others were. That is enough to proceed beyond Rule 12(b)(6).

### **C. Plaintiff plausibly alleges state action and government control over the livestream**

Defendants suggest the muting described in the Complaint was not "official conduct." But Plaintiff alleges the conduct occurred during an official Board meeting through the District's meeting audio and official livestream feed. Manipulating a government meeting's broadcast mechanism during the meeting is not private conduct. It is the exercise of governmental control over an official proceeding and the government-operated distribution channel used to carry the public-comment forum.

At the pleading stage, Plaintiff need not prove the identity of every operator or produce internal technical logs. Plaintiff must plausibly allege that the conduct was performed under color of state law through official meeting operations and government-controlled channels. Plaintiff has done so.

### **D. Plaintiff adequately pleads municipal liability under Monell**

This case involves suppression executed through the District's official meeting operations and official broadcast infrastructure. Because the

alleged viewpoint-based muting was carried out using the District's meeting systems and livestream controls during an official proceeding, municipal attribution is plausibly alleged at the pleading stage under at least one recognized Monell pathway.

Defendants argue Plaintiff fails to plead an official policy, custom, or final policymaker decision. That argument applies an unduly rigid standard at Rule 12(b)(6). Rule 8 does not require "magic words" like policy or custom. The Supreme Court has rejected heightened pleading standards for municipal liability, and Rule 8 requires plausibility, not talismanic labels. See *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993). The question at Rule 12(b)(6) is whether the pleaded facts plausibly support municipal attribution through any recognized Monell pathway.

Defendants' argument improperly seeks a heightened pleading requirement by insisting on particular labels. Rule 8 does not require Plaintiff to plead municipal liability with "magic words." The issue is whether the factual allegations plausibly support municipal attribution through a recognized pathway, including an official policy governing meeting operations, a practice/custom surrounding livestream audio control during public comment, delegation of operational authority over meeting systems, or ratification. Plaintiff's allegations plausibly support municipal attribution and therefore defeat dismissal at Rule 12.

A municipality may be liable under Section 1983 where a constitutional violation results from (1) an official policy, (2) a widespread custom or practice, or (3) a single decision by a final policymaker that represents official policy. Defendants' emphasis on subjective "animus" and Board-majority motive attempts to convert Rule 12 into a proof standard. Plaintiff's theory is that the violation was carried out through the District's meeting operations and official distribution channel during public comment. Where the challenged act is executed through official systems and procedures used to administer the forum, the pleading question is municipal attribution and plausibility, not whether Plaintiff can already prove the internal motivations of a Board majority without discovery. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).

Defendants' "button on the dais" framing misstates the issue. Plaintiff is not claiming that a physical button is the "policy." The pleaded policy/custom is

the District's **practice and operational procedure for routing and controlling public-comment audio on the District's official livestream**, including the delegation of discretionary control over whether a speaker is audible to the online public. That operational structure is what made the selective muting possible and is therefore the "moving force" at the pleading stage. Whether the suppression resulted from an express written rule, an established operational practice, delegated authority, or ratification is a factual question that should not be resolved on a Rule 12(b)(6) motion.

Plaintiff alleges that the District operated an official meeting livestream and that officials controlling meeting operations used that system to disable or mute the livestream audio during Plaintiff's remarks and restore it afterward. Those allegations plausibly support that the challenged conduct was attributable to the District through at least one Monell pathway. Where the alleged suppression is executed through the District's official meeting procedures and official broadcast infrastructure, Plaintiff plausibly alleges conduct attributable to the District for Monell purposes, subject to proof through discovery.

Defendants emphasize that, under Texas law, a board acts through the board as a body corporate. Defendants cite Tex. Educ. Code § 11.051 to argue that individual trustees cannot "act on behalf of the board." That premise supports Plaintiff's attribution theory at the pleading stage. Defendants' own authority confirms that final policymaking for a Texas ISD rests with the Board as a corporate body, and § 11.051 describes the Board's responsibility to oversee district operations and ensure implementation of district "plans, procedures, programs, and systems." Plaintiff alleges the muting occurred through the District's official meeting systems and official livestream operations during an official meeting, which plausibly ties the challenged conduct to Board-controlled district operations for Monell purposes.

Plaintiff does not dispute that general rule. Plaintiff's Monell theory is that the challenged suppression occurred **through the District's official meeting procedures and the Board's chosen operational structure for administering public comment and the District's official livestream**. At the pleading stage, Plaintiff plausibly alleges that the Board, acting as the governing body, **delegated the administration of the public-comment portion of the meeting, including control of the audio routing used for the District's official livestream, to the presiding officer and/or staff operating under Board-adopted meeting**

**procedures.** Even under Defendants' own framing that final policymaking authority can be delegated, Plaintiff plausibly alleges that the Board's meeting procedures and operational structure delegated public-comment administration and livestream audio-routing control to the presiding officer and/or staff operating the District's official systems during the meeting, which is enough to proceed past Rule 12. The question here is plausibility, not proof of internal delegation documents. Where the alleged constitutional violation is executed during an official Board meeting using District-controlled systems that exist only because the Board adopted and maintained that structure, municipal attribution is plausibly alleged.

Plaintiff is not attempting to impose municipal liability based on a private act of an individual trustee. The pleaded conduct occurred during an official Board meeting, through District-controlled meeting systems, and through the District's official livestream channel. At the pleading stage, those allegations plausibly attribute the suppression to the District's official meeting operations. Whether the presiding officer's livestream audio control existed by written policy, delegation, or established operational practice is a factual issue for discovery, not dismissal.

In the alternative, Plaintiff plausibly alleges an actionable custom or practice of discretionary control over livestream audio exists without neutral, written standards, allowing selective suppression during public comment. And to the extent Defendants contend the muting was accidental or unauthorized, discovery will determine whether the District ratified the conduct, adopted it through training or operational practice, or failed to implement viewpoint-neutral safeguards despite known risks.

**E. Plaintiff has standing for declaratory relief and narrowly tailored prospective relief, at least at the pleading stage**

This is not a request for relief based solely on a completed past event. Plaintiff alleges ongoing participation in the same public-comment forum and challenges a continuing practice of discretionary control over the livestream audio feed, creating a plausible real and immediate risk of recurrence absent narrowly tailored, viewpoint-neutral safeguards.

Plaintiff seeks declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, regarding whether Defendants' alleged selective muting of the District-controlled livestream audio during public comment violates the First Amendment. Defendants' "no source of law" argument therefore fails.

Plaintiff also does not seek a vague "obey the law" injunction. Plaintiff seeks narrow, viewpoint-neutral safeguards tied to the challenged practice: Defendants' discretionary use of the District-controlled livestream audio feed during the public-comment forum.

Defendants argue Plaintiff lacks standing for declaratory and injunctive relief, relying on *Bauer v. Texas* and the *Lyons* line of cases requiring a real and immediate threat of future injury, not merely past harm. See *Bauer v. Texas*, 341 F.3d 352 (5th Cir. 2003); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

But at Rule 12(b)(6), the Court must accept Plaintiff's allegations as true and draw reasonable inferences in Plaintiff's favor. Plaintiff plausibly alleges an ongoing controversy and a non-speculative risk of recurrence. Plaintiff alleges he continues to attend and speak at Board meetings, and that absent judicial relief the risk of repeated suppression during public comment remains. Plaintiff also alleges a concrete intent to continue participating in upcoming Board meetings where the District again livestreams public comment, and the same District-controlled audio-routing setup remains in place. That ongoing, repeated exposure to the same challenged practice is sufficient at the pleading stage to allege a real and immediate threat of recurrence for narrowly tailored prospective relief. Defendants' briefing position that there is no constitutional problem with making a speaker inaudible on the District's official livestream underscores the real risk the same practice will recur absent narrow safeguards. Plaintiff's alleged future injury is not speculative because it arises from repeated participation in the same forum under the same District-controlled operational setup. Plaintiff challenges an ongoing practice of discretionary control over livestream audio during public comment without viewpoint-neutral safeguards. The requested injunction is narrow and practice-specific, not a general "obey the law" order: it targets selective muting or alteration of the public-comment audio feed while preserving Defendants' ability to enforce viewpoint-neutral rules such as time limits and decorum applied equally. Defendants characterize the incident as isolated, but Plaintiff alleges continuing participation in the same forum and seeks

only narrow, viewpoint-neutral constraints on Defendants' use of the livestream audio feed during public comment.

Those allegations support a reasonable inference that the dispute is continuing and that Plaintiff faces a substantial likelihood of encountering the same challenged practice again. Plaintiff therefore plausibly pleads standing for declaratory relief, and at least for narrowly tailored, viewpoint-neutral prospective relief.

Any dispute about the precise scope of equitable relief is better addressed after factual development, particularly where Plaintiff seeks limited constraints aimed at preventing selective muting of public-comment audio rather than an overbroad "obey the law" injunction.

**F. The Texas Open Meetings context supports plausibility and the public-interest theory, without displacing the federal claims**

Plaintiff also invokes the Open Meetings context, including public participation and transparency principles. Federal constitutional claims do not rise or fall on state-law compliance, but the Open Meetings framework reinforces why selective suppression of a government-controlled meeting broadcast plausibly undermines transparency and public participation.

Defendants cite the Open Meetings Act to argue the District "may broadcast" an open meeting over the Internet and therefore had no duty to livestream Plaintiff's comments. Plaintiff's federal claim does not depend on whether livestreaming was mandatory under state law. Plaintiff alleges Defendants chose to operate an official livestream channel and then used District-controlled audio controls to selectively suppress Plaintiff's public-comment audio for the online audience during his recognized speaking slot. Nothing in the Open Meetings framework authorizes viewpoint-based suppression of a speaker's public-comment audio once the District elects to distribute the forum through its official channel, and the First Amendment claim stands independently on that selective suppression allegation. Accordingly, even if any state-law theory (including any TOMA-based theory) were dismissed or narrowed, that would not defeat Plaintiff's federal First Amendment claims. Those claims stand independently on the pleaded allegation that Defendants selectively muted

the District-controlled livestream audio feed during Plaintiff's recognized public-comment slot.

### **G. Defendants' Motion underscores why discovery is necessary**

A central dispute concerns who controlled the livestream audio, what mechanism was used, whether the muting was intentional or directed, and what policies or operational instructions governed livestream audio during public comment. These are discovery issues.

Defendants seek dismissal before Plaintiff can obtain information uniquely in Defendants' possession, including:

- livestream control settings, logs, or technical configuration
- operator instructions, training, and delegation records
- policies governing muting, audio routing, and preservation of meeting records
- testimony from the operator(s) and officials involved

At the pleading stage, Plaintiff has alleged sufficient facts to proceed. The Court should deny the Motion to Dismiss.

## **V. CONCLUSION AND PRAYER**


Even if the Court dismisses any official-capacity defendants as redundant to the District, Plaintiff's First Amendment claims against the District remain and should proceed.

For the reasons stated above, Plaintiff respectfully requests that the Court:

1. Deny Defendants' Motion to Dismiss in its entirety;
2. Award Plaintiff such other and further relief as the Court deems just and proper.

3. In the alternative, if the Court identifies any pleading deficiency, Plaintiff requests leave to amend under Rule 15 to cure it.

Respectfully submitted,



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Kevin Samuelson  
Plaintiff, Pro Se

#### CERTIFICATE OF SERVICE

I certify that on February <sup>9</sup>6, 2026, I served a true and correct copy of this Response in Opposition to Defendants' Motion to Dismiss Second Amended Complaint on counsel for Defendants via email.



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Kevin Samuelson