

Dkt. 23, *passim*. Of course, the online audience is not a party to this lawsuit, and Plaintiff cites no authority supporting his claim that the First Amendment obligates CISD to disseminate his comments beyond CISD’s Board room. It doesn’t.

In *Anello v. Anderson*, 191 F. Supp. 3d 262 (W.D.N.Y. 2016), a citizen attended a city council meeting and signed up to speak to the city council. *Id.* at 270. While addressing the city council, one of the city council members “turned off the switch to the microphone recording [the citizen’s] remarks for later broadcast over a local cable television education channel, which was played in city schools.” *Id.* The citizen continued to present his comments to the city council until he was forcibly removed from the podium by a police officer. *Id.* Among other claims, the citizen brought a First Amendment claim against the city councilman who turned off the microphone on the grounds that this act constituted viewpoint discrimination. *Id.* The district court dismissed the citizen’s claim as a matter of law, finding that the citizen had “no First Amendment right to have his remarks recorded for later broadcast over a cable television station.” *Id.* at 274. The district court held:

[The city councilman’s] act of turning off the recording microphone, no matter what the motivation, did not prevent [the citizen] from speaking, did not restrict [the citizen’s] speech in any way, and did not otherwise impact [the citizen’s] ability to relay his remarks during the council meeting.

Id. at 274. This conclusion is not surprising given that “the First Amendment only protects individuals’ negative rights to be free from government action and does not create positive rights—requirements that the government act.” *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 319 (6th Cir. 1998) (citations and quotations omitted).

In sum, all of Plaintiff's free speech theories under the First Amendment and Article I, Section 8 of the Texas Constitution fail because Plaintiff did not have a constitutional right to obligate CISD to disseminate his comments beyond CISD's Board room, and thus CISD did not deprive him of a protected First Amendment right in the first place.

2. Plaintiff did not plead facts demonstrating that his speech involved a matter of public concern.

In his response, Plaintiff attempts to embellish what he purportedly conveyed to CISD's Board by stating, "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." Dkt. 23 at p. 4. None of this is plead in Plaintiff's Second Amended Complaint, and Plaintiff may not shoehorn additional facts into his Complaint by means of a response brief.

B. Plaintiff's Municipal Liability Arguments.

Plaintiff attempts to address Defendants' municipal liability arguments by suggesting that Defendants are requiring him to meet a heightened pleadings standard (which they are not) and otherwise offering the following creative prose:

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. . . . 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.

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The problem with Plaintiff’s argument is that his Second Amended Complaint does not allege *facts* demonstrating proof of a policymaker, an official policy, and a violation of constitutional rights whose “moving force” is the policy or custom. *See Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 247 (5th Cir. 2003) (citations omitted). Plaintiff’s response arguments are insufficient to resurrect constitutional claims where he fails to plead facts supporting each element of municipal liability in his live pleading. Plaintiff’s First Amendment claims are appropriately dismissed via Rule 12 under these circumstances. *See, e.g., Anderson v. Harris Cty.*, 98 F.4th 641, (5th Cir. 2024) (affirming dismissal of First Amendment claims where the plaintiff failed to plead facts supporting the elements of municipal liability); *Monacelli v. City of Dallas, Tex.*, Civ. No. 24-10067, 2024 WL 4692025 at *2-3 (5th Cir. Nov. 6, 2024) (same).

C. Plaintiff Abandons His Texas Open Meetings Act Claim.

Plaintiff does not address any of Defendants’ arguments demonstrating the multiple reasons why his claim under the Texas Open Meetings Act should be dismissed. Dkt. 23 at p. 15. Indeed, Plaintiff appears to concede that this claim should be dismissed while surmising that such dismissal “would not defeat [his] federal First Amendment claims.” *Id.* Plaintiff has abandoned his Texas Open Meeting Act claim and it should be dismissed.

Prayer

Defendants request that the Court grant their Motion to Dismiss Plaintiff's Second Amended Complaint and dismiss all of Plaintiff's claims with prejudice.

Respectfully submitted,

SPALDING NICHOLS LAMP LANGLOIS

/s/ Paul A. Lamp _____
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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on this the 18th day of February 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and that I served the foregoing on Plaintiff via email as addressed below:

Kevin Samuelson

/s/ Paul A. Lamp _____
Attorney for Defendants