UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEBORAH ALEXANDER, et al.,	:	
	:	No.: 1:24-cv-2444-DG-JRC
Plaintiffs,	:	
	:	
v.	:	
	:	
TAJH SUTTON, et al.,	:	
	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN REPLY TO DEFENDANT SUTTON'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendant Tajh Sutton's opposition, filed in her individual capacity, is irrelevant. In her *official* capacity as President of Defendant Community Education Council 14 ("CEC 14"), Sutton has conceded that she should be preliminarily enjoined. Her co-defendants, including CEC 14 and CEC 14 Vice President Manzanares, agree. *See* Dkt. 32, at 2 n.2. But in the interest of completeness, Plaintiffs are constrained to file this reply.[1]

Sutton fails to address Plaintiffs' arguments that CEC 14's various challenged rules are vague and overbroad. Sutton also fails to address Plaintiffs' arguments that Defendants impose an unlawful prior restraint on accessing CEC 14's X account. And Sutton has presented no evidence that would contradict what is in the record about the CEC 14 Defendants' behavior. Nor has Sutton produced any evidence that Plaintiffs have ever disrupted any meetings or otherwise engaged in any improper behavior. Sutton should thus refrain from gratuitously flinging allegations about "bullying," "screaming, threats, and disruption," "heckler's veto," and the like. Nor do the challenged rules and practices address any such behavior. If CEC 14 maintains any rules about actual disruption, Plaintiffs haven't challenged them.

The record is clear: there is no factual dispute as to CEC 14's unconstitutional Bylaws, rules, and practices. Indeed, the evidence adduced by Sutton's official capacity attorney digs her hole deeper, confirming that Sutton and her co-defendants are engaging in blatant viewpoint discrimination which violates not only Plaintiffs' First Amendment rights, but also the City's rules. Plaintiffs are doubtless

[1] Sutton filed her individual capacity opposition on May 7, past the original May 6 deadline but within the extension she sought in her official capacity, granted for "any defense response." Accordingly, Sutton filed her individual capacity brief early, not late. And this reply is thus timely filed per the order's provision for "any reply."

the "individuals we reconfigured this [CEC 14] meeting to disempower." Dkt. 32-4 (Sutton text message).

Of course, the City has done nothing to address these flagrant violations for months. Its concession that the preliminary injunction should issue, at least against the CEC 14 shenanigans, confirms that this Court, unbounded by the City's political constraints and considerations, affords Plaintiffs the only reliable avenue of relief—relief to which they are now entitled as a matter of law.

SUMMARY OF ARGUMENT

Sutton asserts that she restricts speech at CEC 14's public meetings and on its official social media accounts in a reasonable and content-neutral fashion. According to Sutton, she only stopped Plaintiffs Deborah Alexander, Maud Maron, and Noah Harlan from drowning out all others through their speech. But both the evidence in the record and the text of Sutton's policies demonstrate that Sutton silenced Plaintiffs because she disliked their constitutionally protected speech and political associations. Sutton has made agreement with her views a condition for even attending CEC 14 meetings or viewing CEC 14's X account. Because Plaintiffs are likely to succeed on the merits, this Court should preliminarily enjoin Sutton from continuing to enforce her unconstitutional polices.

ARGUMENT

I. SUTTON'S OPPOSITION IS LARGELY NON-RESPONSIVE.

The words "vagueness," "overbreadth," and "prior restraint" are absent from Sutton's opposition. Plaintiffs' claims along these lines should be deemed conceded.

II. SECURING FREE SPEECH DOES NOT ENABLE MISCONDUCT.

Facing undeniable evidence of her own indefensible behavior, Sutton lobs a stream of invective at Plaintiffs, accusing them of seeking a "'right' to bully and harass individual defendants and schoolchildren . . . to exercise a 'heckler's veto'

over all proceedings at CEC 14, and to disrupt public meetings." Dkt. 31 at 1. Without citation, she claims that Plaintiffs admit to "delight in bullying school board members and attendees, even schoolchildren, who do not share their own right wing views . . ." *Id.* at 2. She accuses Plaintiffs of seeking to "drown out" other views, "impose viewpoint discrimination," "scream [their views] out in CEC 14 meetings," and "interrupt" and "threaten" others. *Id.*

These claims are disconnected from reality, and from anything in the record. Plaintiffs have certainly never "screamed out" in CEC 14 meetings, threatened or denied others their right to speak, disrupted any meetings, or engaged in any of the misconduct Sutton insinuates. If Sutton wants to prove something, "there must be *evidence*; lawyers' talk is insufficient." *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460, 463 (7th Cir. 2009).

Sutton mentions only a single specific fact about Plaintiffs' conduct for which record evidence exists—that Plaintiff Maron told a reporter that an editorialist, alleged to be a student, is a "coward" for publishing his or her controversial views anonymously. Dkt. 31 at 2 & n.2 (suggesting that Maron "threaten[ed]" a schoolchild); *see also* Dkt. 13-3, ¶¶ 18-25. The record demonstrates that Maron did not threaten the writer, does not know the writer's identity, and did not even know whether the author was a student. *Id.* ¶¶ 23-24.

Indeed, the record shows that two of the three Plaintiffs never managed to enter—let alone speak at—CEC 14 meetings. *See* Dkt. 13-4, ¶¶ 8, 31, 33-34; Dkt. 13-5, ¶¶ 11-12, 15, 17-18. Plaintiff Alexander attended two meetings, but she remained entirely silent during one and was ejected from the other after typing a comment into the online group chat that Defendant Sutton had interrupted a speaker. Dkt. 13-3, ¶¶ 4, 6, 9-11, 32, 34-35. Sutton—not Alexander—interrupted other speakers.

Plaintiffs also never interacted with CEC 14's X account. Defendants behaved as if they have the unbridled discretion to grant and deny access to CEC 14's X account, a limited public forum, without any procedural safeguards: an unconstitutional prior restraint. *See Lusk v. Vill. of Cold Spring*, 475 F.3d 480, 493, 495 (2d Cir. 2007). Defendants blocked two of the Plaintiffs from ever reading the account, interacting with it, or even requesting permission to follow it. Dkt. 13-3, ¶¶ 15-16, 36; Dkt. 13-4, ¶¶ 9-10, 35. Plaintiff Harlan requested access to CEC 14's locked account months ago, but he has never received access. Dkt. 13-5, ¶¶ 13-14, 19. The record, therefore, demonstrates that none of the Plaintiffs ever said or acted in any way that might justify excluding them for threats, screaming, or disruptive conduct that prevented the CEC from carrying out its business. Most importantly for purposes of a preliminary injunction, the requested injunction would not enable such behavior. Ending Sutton's viewpoint discrimination and unbounded prior restraint will *bring*, not diminish, order.

III. CEC 14'S SPEECH POLICIES ARE NOT TIME, PLACE, AND MANNER RESTRICTIONS BECAUSE THEY FACIALLY DISCRIMINATE ON THE BASIS OF CONTENT.

Sutton insists that CEC 14's challenged policies are "content neutral" time, place, and manner restrictions, designed merely "to permit CEC 14 to do business without continual disruption." Dkt. 31 at 3. They are not. On their face, these policies cannot be content-neutral time, place, and manner restrictions, because they discriminate on the basis of content. Indeed, they plainly discriminate on the basis of viewpoint.

Tellingly, Sutton never quotes these policies or discusses their terms. *See id.* at 3-4 (referring, without any specifics, to "[r]ules of conduct regulating screaming, threats, and disruption" and "restrictions on postings"). Sutton's failure to even identify rules implementing the prior restraint and blocking practices that Defendants impose on the CEC 14 X account ends her claim that these somehow

manifest some kind of time, place, and manner regulations. In order to have a time, place, and manner regulation, one must first have a regulation.

With respect to CEC 14's "community guidelines" or "agreements," her arguments are likewise specious. "[T]he government may impose reasonable restrictions on time, place, or manner of protected speech, provided," among other requirements, that "the restrictions are justified without reference to the content of the regulated speech." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (internal quotation marks and citations omitted).

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys.

Brokamp v. James, 66 F.4th 374, 395 (2d Cir. 2023) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (internal quotation marks omitted)). "[F]acial distinctions based on a message are obvious" if they "defin[e] regulated speech by particular subject matter." *Id.* (quoting *Reed*, 576 U.S. at 163).

The challenged provisions plainly make "facial distinctions based on [the speaker's] message." Speakers violate the challenged rules if their speech "relat[es] to the competence or personal conduct of individuals," CEC 14 Bylaws, art. IV, § 2, or if it contains, among other things, "name-calling," "disrespect," "bad faith arguments," and "misinformation." *See* Dkt. 13-10 at 2; Dkt. 13-9 at 3. Whatever else these regulations are, they are not "content neutral."

The "time, place or manner" inquiry can thus end at the first prong. But Plaintiffs also note that CEC 14's challenged provisions also fail the test's other elements: they are not "narrowly tailored to serve a significant governmental interest," and they do not "leave open ample alternative channels for communication of the information." *Ward*, 491 U.S. at 791 (internal quotation

marks omitted). In a limited public forum, such as CEC 14's meeting or X account, time, place, and manner restrictions are valid "as long as those restrictions are reasonable and serve the purpose for which the government created the limited public forum," and "the existence of alternative channels of communication is a relevant factor in assessing the reasonableness." *Tyler v. City of Kingston*, 74 F.4th 57, 61 (2d Cir. 2023) (internal quotation marks and citations omitted).

Barring viewpoints that Sutton dislikes does not advance any government interest, especially not the purposes for which CEC 14's fora were created. *Cf.* N.Y.S. Education Law § 2590-e(14) (CEC 14 required by law to "[h]old public meetings at least every month . . . so that parents and the community have a voice and a public forum to air their concerns."). Additionally, Sutton and CEC 14 have left Plaintiffs without any alternative channel for effectively communicating their views. Plaintiffs wish to speak at CEC 14 meetings and interact with CEC 14's X account to express their views on topics clearly central to the purpose of these limited public fora, such as educational policies, curricula, school budget, and school administration. *See* Dkt. 13-3, ¶¶ 32-36; Dkt. 13-4, ¶¶ 31-35; Dkt. 13-5, ¶¶ 15-19. But Defendants' policies and actions prevent Plaintiffs from speaking at CEC 14 meetings, attending CEC 14 meetings, interacting CEC 14's X account, or even viewing the account. Plaintiffs are completely excluded from participating in CEC 14's processes for civic engagement.

CONCLUSION

This Court should grant Plaintiffs' motion for preliminary injunction.

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Respectfully submitted,

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