

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Joanne Romano, Foster Romano, Michael Sanchez, Susan Sanchez, Karen McKernan, Kevin McKernan, Valerie Frost, Glennn Frost, Oya Turksonmez, Cemil Turksonmez, Steven Ahern, Maureen Ahern, Dennis Traina, Brittni Traina, Roberto Bello, Michael Morello, and Eileen Morello v. Elite Towers, L.P., The Town of Riverhead, Tim Hubbard, individually, Kenneth Rothwell, individually, Bob Kern, in his official capacity as Councilman, Denise Merrifield, in her official capacity as Councilwoman, Joann Waski, in her official capacity as Councilwoman, The Wading River Fire District, and New York SMSA Limited Partnership d/b/a Verizon Wireless

Joanne Romano et al. v. Elite Towers, L.P. et al., 24-CV-08910 (OEM) (ST) (E.D.N.Y. Feb. 26, 2026) · No. 24-CV-08910 (OEM) (ST) · Decided February 26, 2026

SUMMARY

The Eastern District of New York granted defendants’ motions to dismiss an action challenging the Town of Riverhead’s approval of a proposed wireless communication facility. The court held that plaintiffs’ First Amendment petition, prior-restraint, and conspiracy claims were not plausibly alleged and that various defendants were protected by legislative immunity, qualified immunity, or the absence of state action.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Orelia E. Merchant
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	February 26, 2026
DOCKET	24-CV-08910 (OEM) (ST)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved to dismiss the amended complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The court granted the

	motions, dismissed all federal claims, and declined supplemental jurisdiction over the remaining New York state-law claims.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, the plaintiff bears the burden of establishing subject-matter jurisdiction by a preponderance of the evidence. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and determines whether they state a facially plausible claim for relief, disregarding conclusory allegations.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; persuasive authority only
PARTIES	Joanne Romano, Foster Romano, Michael Sanchez, Susan Sanchez, Karen McKernan, Kevin McKernan, Valerie Frost, Glennn Frost, Oya Turksonmez, Cemil Turksonmez, Steven Ahern, Maureen Ahern, Dennis Traina, Brittni Traina, Roberto Bello, Michael Morello, Eileen Morello v. Elite Towers, L.P., The Town of Riverhead, Tim Hubbard, Kenneth Rothwell, Bob Kern, Denise Merrifield, Joann Waski, The Wading River Fire District, New York SMSA Limited Partnership d/b/a Verizon Wireless

TOPICS

[first amendment](#)
[section 1983](#)
[qualified immunity](#)
[motions to dismiss](#)
[subject matter jurisdiction](#)

PRACTICE AREAS

[constitutional law](#)
[civil rights](#)
[municipal law](#)
[civil procedure](#)
[administrative law](#)

QUESTIONS PRESENTED

1. Whether plaintiffs plausibly alleged that Riverhead or the Wading River Fire District violated their First Amendment right to petition by approving the cell-tower application without allowing plaintiffs to present their objections to the Zoning Board of Appeals.
2. Whether the Town Board's approval of the cell-tower application constituted an unconstitutional prior restraint on plaintiffs' speech.
3. Whether plaintiffs plausibly alleged a Section 1983 conspiracy or other state action by private defendants Elite Towers and Verizon.
4. Whether legislative immunity barred claims against councilmembers sued in their official capacities.
5. Whether qualified immunity barred claims against Riverhead officials sued in their individual capacities.
6. Whether the court should exercise supplemental jurisdiction over plaintiffs' New York state-law claims after dismissing all federal claims.

HOLDINGS

1. Councilmembers are entitled to absolute legislative immunity for official actions undertaken in the sphere of legitimate legislative activity, including the Town Board's vote exempting the cell-tower application from zoning requirements.
2. Hubbard and Rothwell were protected by qualified immunity because plaintiffs did not identify clearly established First Amendment rights that placed the alleged unconstitutionality of the Town Board's conduct beyond debate.
3. Elite Towers and Verizon were not liable under Section 1983 because plaintiffs did not plausibly allege that their conduct constituted state action under the compulsion, joint-action, or public-function tests.
4. Plaintiffs failed to state a Section 1983 conspiracy claim because they did not plausibly allege either an agreement among the defendants to violate constitutional rights or an underlying unconstitutional injury.
5. Plaintiffs did not plausibly allege a violation of the right to petition because they had notice of the Town Board meetings, attended or could attend them, and had an opportunity to present their opposition, even though the Town Board rejected their position and did not refer the matter to the Zoning Board of Appeals.
6. The Town Board's approval of the cell-tower application was not a prior restraint on plaintiffs' speech because plaintiffs were not prevented from presenting their opposition to the Town Board and the approval did not suppress speech based on its content before expression.
7. The court declined to exercise supplemental jurisdiction over plaintiffs' remaining New York state-law claims after dismissing all claims within its original federal-question jurisdiction.

KEY QUOTATIONS

“The right to petition in general guarantees only that individuals have a right to communicate directly to government officials, and that individuals have the right of access to the courts to redress constitutional violations.”

“The First Amendment does not guarantee . . . that an elected official will necessarily act a certain way or respond in a certain manner to requests from his constituents.”

“A ‘prior restraint’ on speech is a law, regulation or judicial order that suppresses speech—or provides for its suppression at the discretion of government officials—on the basis of the speech’s content and in advance of its actual expression.”

FACTUAL BACKGROUND

Elite Towers sought approval to construct a cell tower adjacent to plaintiffs' homes in Riverhead, New York. At public meetings, Elite and Verizon asked the Riverhead Town Board to conduct the In re County of Monroe balancing test rather than require approvals from three boards; the Town Board conducted the test, waived three zoning variances, and approved the application. Plaintiffs attended or had notice of the Town Board meetings and presented opposition, but alleged that they were deprived of an opportunity to present their objections to the Zoning Board of Appeals and that defendants conspired to circumvent the zoning process.

PROCEDURAL HISTORY

Plaintiffs commenced the action on December 31, 2024, challenging the Town of Riverhead's approval of a proposed wireless communication facility and asserting First Amendment, Section 1983 conspiracy, and New York-law claims under CPLR Article 78 and CPLR § 3001. Plaintiffs filed an amended complaint, and defendants filed fully briefed motions to dismiss in June 2025. The district court dismissed the amended complaint in its entirety.

DISPOSITION

dismissed

CASES CITED

- Nike, Inc. v. Already, LLC, 663 F.3d 89, 94 (2d Cir. 2011)
- Morrison v. National Australia Bank Ltd., 547 F.3d 167, 170 (2d Cir. 2008)
- Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Kramer v. Time Warner, Inc., 937 F.2d 767, 773 (2d Cir. 1991)
- Filarsky v. Delia, 566 U.S. 377, 383 (2012)
- Savarese v. City of New York, 547 F. Supp. 3d 305, 337 (S.D.N.Y. 2021)
- Pitchell v. Callan, 13 F.3d 545, 546-47 (2d Cir. 1994)
- Francisco v. Abengoa, S.A., 559 F. Supp. 3d 286, 318 n.10 (S.D.N.Y. 2021)
- Cole v. Blackwell Fuller Music Publishing, LLC, 16-CV-7014 (VSB), 2018 WL 4680989, at *7 (S.D.N.Y. Sept. 28, 2018)
- Norton v. Sam's Club, 145 F.3d 114, 117 (2d Cir. 1998)
- Olma v. Collins, 499 F. App'x 98, 99 (2d Cir. 2012)
- Tenney v. Brandhove, 341 U.S. 367, 376 (1951)
- Bogan v. Scott-Harris, 523 U.S. 44, 54 (1998)
- Harhay v. Town of Ellington Board of Education, 323 F.3d 206, 210 (2d Cir. 2003)
- Almonte v. City of Long Beach, 478 F.3d 100, 107 (2d Cir. 2007)
- NRP Holdings LLC v. City of Buffalo, 11-CV-472S, 2017 WL 745860, at *7 (W.D.N.Y. Feb. 27, 2017)
- Livant v. Clifton, 334 F. Supp. 2d 321, 326 (E.D.N.Y. 2004)
- Bangs v. Smith, 84 F.4th 87, 95 (2d Cir. 2023)
- Francis v. Fiacco, 942 F.3d 126, 139 (2d Cir. 2019)
- White v. Pauly, 580 U.S. 73, 79 (2017)
- Sutton v. Village of Valley Stream, 96 F. Supp. 2d 189, 194 (E.D.N.Y. 2000)
- United States v. International Brotherhood of Teamsters, 941 F.2d 1292, 1295 (2d Cir. 1991)
- Grullon v. City of New Haven, 720 F.3d 133, 138 (2d Cir. 2013)
- Littlejohn v. City of New York, 795 F.3d 297, 314 (2d Cir. 2015)

- *Sybalski v. Independent Group Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008)
- *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 296 (2001)
- *Betts v. Shearman*, 751 F.3d 78, 85 (2d Cir. 2014)
- *Flagg v. Yonkers Savings & Loan Ass'n, FA*, 396 F.3d 178, 187 (2d Cir. 2005)
- *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999)
- *Ciambriello v. County of Nassau*, 292 F.3d 307, 324 (2d Cir. 2002)
- *Kellner v. City of New York*, 17-cv-1268 (NRM) (MMH), 2025 WL 3507346, at *22 (E.D.N.Y. Dec. 8, 2025)
- *Gordon v. Emmanuel*, 25-CV-2439 (CBA) (SJB), 2018 WL 4688935, at *9 (E.D.N.Y. Sept. 28, 2018)
- *United Mine Workers, District 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967)
- *Franco v. Kelly*, 854 F.2d 584, 589 (2d Cir. 1988)
- *Gagliardi v. Village of Pawling*, 18 F.3d 188, 194-95 (2d Cir. 1994)
- *Kittay v. Giuliani*, 112 F. Supp. 2d 342, 354 (S.D.N.Y. 2000), *aff'd*, 252 F.3d 645 (2d Cir. 2001)
- *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984)
- *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979)
- *EklecCo NewCo LLC v. Town of Clarkstown*, 16-CV-6492 (NSR), 2019 WL 2210798, at *11 (S.D.N.Y. May 21, 2019)
- *Weiss v. Incorporated Village of Sag Harbor*, 762 F. Supp. 2d 560, 575 (E.D.N.Y. 2011)
- *United States v. Quattrone*, 402 F.3d 304, 309 (2d Cir. 2005)
- *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559, 570 (1976)
- *United States v. Salameh*, 992 F.2d 445, 446-47 (2d Cir. 1993) (*per curiam*)
- *In re G. & A. Books, Inc.*, 770 F.2d 288, 296 (2d Cir. 1985)
- *Droz v. McCadden*, 580 F.3d 106, 109 (2d Cir. 2009)
- *Singer v. Fulton County Sheriff*, 63 F.3d 110, 119 (2d Cir. 1995)
- *Levy v. BASF Metals Ltd.*, 15-cv-7317 (GHW), 2017 WL 2533501, at *9 (S.D.N.Y. June 9, 2017), *aff'd*, 917 F.3d 106 (2d Cir. 2019)
- *Bens BBQ, Inc. v. County of Suffolk*, 19-CV-3584 (SJF) (ARL), 2020 WL 3790349, at *2 (E.D.N.Y. July 7, 2020), *aff'd*, 858 F. App'x 4 (2d Cir. 2021)