

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

DANIEL A. CEA, RAYMOND BOWLEY,

Plaintiffs,

11 CV 3791 (CS)

vs.

**FIRST AMENDED**  
**COMPLAINT**

RUSSELL POTTER, KARL BRABANEC,  
ACCESS 23 TV,

Defendants.

-----X

By and through their counsel, Michael H. Sussman, plaintiffs complain of defendants as follows:

I. **PARTIES**

1. Plaintiffs, Daniel Cea and Ray Bowley are residents of the Town of Deer Park, County of Orange, State of New York within this judicial district

2. Defendants Russell Potter and Karl Brabanec are residents of the County of Orange, State of New York, within this judicial district. Their actions and omissions, as alleged herein, were undertaken under color of state law.

3. Defendant Access 23 TV is a public access television station situated within this judicial district and may sue be sued.

## II. JURISDICTION

4. As plaintiffs allege that individual defendants Brabanec and Potter used their official positions to infringe upon their First Amendment rights to speech and association, and as defendant Access 23 TV acted in concert with these state actors to violate the constitutional rights of the plaintiffs and is a party necessary to the implementation of injunctive relief, this Court has jurisdiction of this matter pursuant to 28 U.S.C. secs. 1331, 1343 (3) & (4) and 42 U.S.C. secs. 1983 and 1988.

## III. FACTUAL ALLEGATIONS

5. Plaintiff Daniel Cea had a popular political/community show on a Access 23 TV between January 2009 and August 11, 2010.

6. During that time period, Access 23 TV operated out of a building leased to it by the City of Port Jervis and, as set forth below, allowed the individual state actor defendants to control programming decisions to the disadvantage of the plaintiffs.

7. Access 23 TV receives funding from government sources, including contributions from the City of Port Jervis and, upon information and belief, from the Town of Deerpark.

8. In or about July-August 2010, defendant Potter and defendant

Brabanec, the Mayor of the City of Port Jervis and the Supervisor of the Town of Deerpark respectively, exerted pressure upon the directors of defendant Access 23 TV to remove plaintiff Cea from his television show.

9. The defendants exerted such pressure because of the content of Cea's show, which exposed municipal corruption and wrongdoing, including corruption in the respective municipalities they ran.

10. More specifically, Cea revealed that the Town of Deerpark had allowed a councilman to "acquire" a Town-owned piece of heavy equipment for inadequate, if any, consideration.

11. The defendants exerted such pressure and threatened to withhold critical financial support from the station if Cea was permitted to remain on the air.

12. As a direct result of pressure by these individual defendants, defendant station removed Cea from its program schedule, refused to allow him to continue his television show and barred him access to the station.

13. At a station meeting in early August 2010, defendant station's program director, Jay Ortiz, explicitly stated that plaintiff Cea's show needed to be taken off of the air to insure that the City of Port Jervis would renew the station's lease for 2011 and continue funding the station.

14. Another officer of the defendant station stated at a July 2010 meeting

held at the station and in the presence of Mr. and Mrs. Bowley and other station members that the Town of Deerpark Supervisor, defendant Brabanec, had promised financial support for the station if and only if the station took Cea off the air.

15. In January 2011, Cea discussed the Town of Deerpark's role in having his show removed the air with Town Board member David Hoovler, an attorney.

16. Mr. Hoovler admitted that the Town Board, acting through Brabanec, played a part in having Cea's show removed from the air.

17. Before the exertion of individual defendant's pressure, the president of the station, Sal Russo, told Cea how excellent his show was and suggested that Cea do more programming for the station.

18. Plaintiff Ray Bowley had been active on the public access TV station starting in 1993.

19. Between 1999 and 2010, he produced and staged a program called "Wake Up America."

20. In September 2010, the program director and station president advised plaintiff Bowley that he was no longer permitted to do a show on the public access TV station.

21. In the several years before September 2010, no one from station management had advised Bowley of any complaint concerning his show.

22. In removing him from the station, the program manager and President provided Bowley no reason.

22. The reason Bowley was removed from the air was because of his association with, and support for, plaintiff Cea and his stated opposition to the station's capitulation to the demands of the defendants to control the content of the airways and limit Cea's influence at the station.

23. Defendant station retaliated against Bowley for his association with Cea and his effort to insure that the by-laws of the station were properly followed before the station leadership removed Cea from the airways and barred him from the station.

24. In response to his assertion of Cea's right to due process consistent with the station by-laws at meetings in August-September 2010, defendant station removed Bowley's show from the air.

25. After they were disallowed from running their programs at the station, Cea and Bowley learned that signs at the station announced that if they were seen there, they would be subject to arrest by the Port Jervis Police Department, a further indication of the nexus between the City of Port Jervis, through Mayor Potter, and the public access station.

26. The above described actions were intended by defendants to, and did

substantially chill, plaintiffs' First Amendment expression and their ability to publicize their views and opinions on matters of public importance, activity protected by the First Amendment.

27. As a direct consequence of defendants' unlawful conduct, plaintiffs suffered humiliation, anxiety and emotional distress.

28. As a direct consequence of defendants' unlawful conduct, plaintiffs were chilled in the expression of their constitutional rights as they could find no comparable outlet for the expression of their free speech rights.

#### IV. CAUSES OF ACTION

29. Plaintiffs incorporate paras. 1-28 as if fully re-written herein.

30. By dictating that their support for the station was contingent on the suppression of plaintiff Cea's speech, defendants Brabanec and Potter violated the First Amendment rights of plaintiff Cea as made actionable by 42 U.S.C. section 1983.

31. By removing plaintiff CEA from the public access station because of the content of his speech, defendant Access 23 TV violated the First Amendment rights of plaintiff Cea.

32. By removing plaintiff BOWLEY because he defended CEA'S First Amendment right to use the TV station and to remain on the air until he

was barred by actions taken in a manner consistent with the station by-laws, defendant station violated plaintiff BOWLEY'S First Amendment right to freedom of speech and association as implemented by 42 U.S.C. sec. 1983.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court:

- 1) accept jurisdiction over this matter;
- 2) empanel a jury to hear and decide all issues within its jurisdiction;
- 3) award to plaintiff compensatory and punitive damages;
- 4) order defendant station to reinstate both plaintiffs to their television shows;
- 5) order defendants to pay the reasonable attorneys fees and costs arising from this action, and
- 6) enter any other relief which the interests of law and equity require.

Respectfully submitted,

  
MICHAEL H. SUSSMAN [3497]

SUSSMAN & WATKINS  
PO BOX 1005  
GOSHEN, NY 10924  
(845)-294-3991  
Counsel for Plaintiffs  
Dated: September 2, 2011