

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 1, 2026

Christopher M. Wolpert
Clerk of Court

JUSTIN SPIEHS,

Plaintiff - Appellant,

v.

LISA LARSEN, City Mayor; COURTNEY
SHIPLEY, City Mayor; BOARD OF CITY
COMMISSIONERS OF LAWRENCE,
KANSAS,

Defendants - Appellees.

No. 25-3061
(D.C. No. 5:23-CV-04107-JAR)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ**, **MATHESON**, and **MORITZ**, Circuit Judges.

Plaintiff Justin Spiehs was evicted from two meetings of the Lawrence, Kansas City Commission for allegedly violating two city rules for the meetings: a decorum standard and a germane standard. He sued, alleging that his evictions were unconstitutional. The district court granted judgment against Plaintiff. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. On appeal Plaintiff challenges the

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

germane standard but has not adequately developed a challenge to the decorum standard. Therefore, he cannot show that he was wrongly evicted from the city meetings.

I. BACKGROUND

The City Mayor presides over City Commission meetings. During the meetings the Commission may open the floor for public comment. The public-comment proceedings are governed by City Resolution 7451. Relevant here, the resolution includes a “germane standard” and a “decorum standard.” The germane standard states that “public comment is limited to three minutes and should be limited to issues and items germane to the business of the Governing Body.” *Aplt. App.*, Vol. 1 at 161; *see also* *Aplt. App.*, Vol. 1 at 162 (“Public comment on specific items shall be germane to the item being discussed”). The decorum standard states that “[t]he following will not be tolerated: uttering fighting words, slander, speeches invasive of the privacy of individuals, unreasonably loud or repetitious speech, and speeches so disruptive of the proceedings that the business of the City is substantially interrupted.” *Aplt. App.*, Vol. 1 at 162.

In 2022 and 2023, Plaintiff was ordered to leave two City Commission meetings by Mayors Courtney Shipley and Lisa Larsen for violating the city resolution. The district court summarized the undisputed facts of Spiehs’s removal from the meetings as follows:

First, Plaintiff attended a meeting on October 11, 2022, presided over by Mayor Shipley. Plaintiff took to the podium for the public-comment period. He offered his observations about the national economy under President

Biden and then compared it to when President Trump was in office. He supported his comparison by citing various economic metrics—inflation rates, gas prices, and mortgage rates. Mayor Shipley then asked Plaintiff how his comments were germane to the City Commission’s business. Plaintiff spoke over Shipley and did not modify his speech. Plaintiff forged ahead and moved for a proclamation “that the city consider how asinine the democrats are” and continued discussing the national economy. After Shipley warned Plaintiff several more times that his speech was not germane, Plaintiff assured Shipley that he would “get to” matters germane to the City Commission’s business. Instead he began to discuss his campaign and sidewalk demonstrations. So Shipley issued a final warning that Plaintiff’s discussion violated the germane standard; Plaintiff issued a rejoinder: “Can you stop, Nazi?” Shipley suspended the meeting and directed that Plaintiff be removed.

Second, Plaintiff attended the July 18, 2023 meeting presided over by Mayor Larsen. Once again, Plaintiff spoke during the public-comment portion. He discussed mask mandates at Lawrence’s local schools. At the time, the City itself did not have a mask mandate in place. So Mayor Larsen asked Plaintiff how the topic related to the City Commission’s business, and Plaintiff ignored the question and continued his discussion of the schools’ mask mandates. Larsen then warned Plaintiff that his comments violated the germane standard, but Plaintiff persisted, so Larsen directed that Plaintiff be removed.

Spiehs v. Larsen, No. 23-4107-JAR-BGS, 2025 WL 721946, at *2–3 (D. Kan. Mar. 6, 2025) (footnotes omitted).

Plaintiff sued the Mayors and the City Commission (Defendants) in the United States District Court for the District of Kansas. The district court construed Plaintiff’s complaint as raising:

two official capacity claims against Defendant City Commission: (1) a facial vagueness challenge to the germane and decorum standards; and (2) a facial challenge to the germane and decorum standards based on forum status. [And six claims] against [Mayors] Larsen and Shipley in their individual capacities: (1) an as-applied challenge to the germane and decorum standards based on forum status; (2) an as-applied content- and viewpoint-discrimination challenge to the germane standard; (3) a First Amendment retaliation claim; (4) a content- and viewpoint-discrimination claim based on

handclapping; (5) a compelled speech claim; and (6) an equal protection challenge.

Spiehs v. Larsen, 728 F. Supp. 3d 1190, 1203 (D. Kan. 2024) (footnote omitted). The district court granted Defendants’ motion to dismiss in part, and later granted summary judgment in favor of Defendants on the remaining claims.

II. DISCUSSION

A. Challenges to Germane and Decorum Standards

The district court held that Plaintiff’s eviction from the two City Commission meetings was because “he defied the germane and decorum standards[.]” *Spiehs*, 2025 WL 721946, at *6. On appeal Plaintiff challenges those evictions.¹ But because the district court treated the germane and decorum standards as alternative standalone reasons for his evictions, Plaintiff must successfully challenge both standards to overturn the court’s grant of summary judgment. *See Lebahn v. Nat’l Farmers Union Unif. Pension Plan*, 828 F.3d 1180, 1188 (10th Cir. 2016) (“When a district court dismisses a claim on two or more independent grounds, the appellant must challenge each of those grounds”). Here, Plaintiff has not adequately challenged the decorum standard.

¹ Plaintiff sought injunctive and declaratory relief in district court, but because he does not address those remedies on appeal, we consider only his claims for damages. *See Requena v. Roberts*, 893 F.3d 1195, 1205 (10th Cir. 2018) (“[W]e will not consider claims in the complaint not raised on appeal.”).

For a party to bring an argument on appeal, that argument must have been raised to or considered by the district court.² *United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019). And a party’s opening brief must show, with citations to the record, that each challenge was preserved. *See id.*; 10th Cir. R. 28.1(A) (“For each issue raised on appeal, all briefs must cite the precise references in the record where the issue was raised and ruled on” in district court). Here, Plaintiff, who is represented by counsel, did not demonstrate that his decorum challenges were preserved. His most-developed decorum appellate argument—that his lack of decorum was justified because he was interrupted by the Mayors—is briefed without any indication that it was preserved. And although Defendants argued Plaintiff’s lack of preservation, Plaintiff filed no reply brief to contest the argument.

We have often emphasized the importance of preservation, and we have repeatedly warned that “all counsel should understand the potentially serious consequences that could result from noncompliance with the applicable rules of appellate procedure.” *Leffler*, 942 F.3d at 1196. Even if Plaintiff’s brief could be read to present additional decorum-standard arguments, and even if an exhaustive review of the record could show that those arguments had been pressed or passed upon by the court below, we have no obligation to perform such a search or make Plaintiff’s

² We may still consider an argument not raised below under the plain-error standard. *See Leffler*, 942 F.3d at 1196. But we do so only if the party asserting error argues plain error. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011) (the failure to argue for plain error on appeal “marks the end of the road for an argument for reversal not first presented to the district court”). Here, Plaintiff makes no plain-error argument on appeal.

argument for him. *See id.* Because Plaintiff has not shown preservation of any decorum-standard arguments, and because the decorum standard represents an independent ground for Plaintiff's evictions from the City Commission meetings, we affirm the district court on Plaintiff's challenges to his eviction.

B. Remaining Challenges

Plaintiff argues that at summary judgment the district court erred by failing to analyze the claims that the court had previously dismissed on Defendants' motion to dismiss for failure to state a claim. Plaintiff contends that an intervening pretrial order revived the previously dismissed claims.

We need not consider whether a pretrial order can revive a dismissed claim because the pretrial order is consistent with the district court's order of dismissal. The language of the pretrial order tracks the language of the court's order granting Defendants' motion to dismiss in stating which claims were dismissed. And nothing in the pretrial order suggests that any claims were revived. Plaintiff argues that "[t]he lower court's order of dismissal was only limited to a dismissal based upon 'handclapping.'" Aplt. Br. at 47 (emphasis omitted). But this argument misrepresents the district court's analysis and holding. *See, e.g., Spiehs*, 728 F. Supp. 3d at 1203–04 ("Plaintiff fails to state a plausible claim for relief on his vagueness claim, his as-applied claim based on content- and viewpoint-discrimination, and his two handclapping claims."). Plaintiff's claims that were dismissed for failure to state a claim were not revived, and the district court did not err in relying on its previous dismissal.

Plaintiff also challenges the district court's grant of summary judgment on his retaliation claim, his equal-protection claim, and his official-capacity claims.

First, Plaintiff argues on appeal that Defendants retaliated against him by curtailing his speech during the public-comment period. To prevail on this claim, Plaintiff must show that he "engaged in constitutionally protected activity." *VDARE Found. v. City of Colo. Springs*, 11 F.4th 1151, 1172 (10th Cir. 2021). The district court held, however, that Plaintiff's speech at the meeting "was not a constitutionally protected activity" because it violated the City's lawful Policy. *Spiehs*, 2025 WL 721946, at *6. Because Plaintiff has failed to adequately challenge the City Policy, we see no error. And Plaintiff does not argue that he was retaliated against for any other reason.

Next, Plaintiff challenges the grant of summary judgment on his equal-protection claim, which asserts that he is a class of one. The district court granted summary judgment in favor of Defendants, holding that the Mayors had a rational basis for their treatment of Plaintiff. On appeal Plaintiff argues that the district court applied the wrong level of scrutiny. But he does not show that he made this argument below, and in fact he affirmatively states in his Complaint that rational basis is the correct standard for his class-of-one claim. *See* Dist. Ct. Dkt. No. 1 at 38 (Compl.) ("Plaintiff is a class of one and alleges that he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" (internal quotation marks omitted)).

Finally, Plaintiff brought official-capacity claims against the City based on the Mayors' actions. But the City "may not be held liable where there was no underlying constitutional violation by any of its officers." *Fenn v. City of Truth or Consequences*, 983 F.3d 1143, 1150 (10th Cir. 2020). Because Plaintiff has not demonstrated that the Mayors acted unconstitutionally, his official-capacity claims fail.

III. CONCLUSION

We **AFFIRM** the district court's judgment. And we **DENY** as moot Defendants' Motion for Appendix Exemption.

Entered for the Court

Harris L Hartz
Circuit Judge