

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:26-cv-21901- ALTONAGA/Reid

RAQUEL PACHECO,	)
	)
<i>Plaintiff,</i>	)
	)
v.	)
	)
CITY OF MIAMI BEACH,	)
a Florida municipal corporation;	)
STEVEN MEINER,	)
in his individual capacity	)
DAVID SUAREZ,	)
in his individual capacity; and	)
WAYNE A. JONES,	)
in his individual capacity.	)
	)
<i>Defendants.</i>	)
_____	)

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' JOINT
MOTION TO DISMISS SECOND AMENDED COMPLAINT

COMES NOW Plaintiff by and through her undersigned attorneys, and responds to the Defendants' Motion to Dismiss Second Amended Complaint (Dkt. No. 77) and says:

INTRODUCTION

Plaintiff's claims in her Second Amended Complaint ("SAC") fall into two categories: (1) Counts I through III assert First Amendment claims centered around government intimidation in response to a social media post; and (2) Count IV asserts a First Amendment claim for blocking Plaintiff's access to what is functionally a governmental website based on objections to the content of her posts. The Counts based on police intimidation state a cause of action. It is well-established that government cannot engage in intimidation of citizens in response to viewpoint-based or content-based objections to the citizen's speech:

"[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech. Hartman v. Moore, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006). If an official takes adverse action against someone based on that forbidden motive, and "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences," the injured person may generally seek relief by bringing a First Amendment claim. Ibid.

Nieves v. Bartlett, 587 U.S. 391, 398 (2019).

That principle applies even if the threats fall short of an actual arrest so long as a person of ordinary firmness would be deterred from speaking because of the government action. *See*, Bennett v. Hendrix, 423 F.3d 1247, 1250–51 (11th Cir. 2005).

Count IV properly states a cause of action based on allegations that Plaintiff was unlawfully blocked from a public social media site because Defendant SUAREZ disagreed with her political views. *See, e.g.*, Lindke v. Freed, 601 U.S. 187 (2024); Attwood v. Clemons, 818 Fed. Appx. 863, 867–68 (11th Cir. 2020).

Since all well-pleaded facts are deemed true at this stage of the proceedings, Defendants cannot defeat Plaintiff's allegations that they acted willfully in violation of clearly established law and that they did so to advance their censorious purposes. Thus, qualified immunity does not insulate Defendants MEINER and JONES from individual liability because any reasonable official in their position would know that government cannot use law enforcement intimidation and public castigation as tools to pressure citizens into abandoning their lawful political speech. Further, Defendants are not entitled to legislative immunity as their actions against Plaintiff were not legislative duties.

STATEMENT OF THE FACTS

Plaintiff RAQUEL PACHECO is a long-time activist and vocal critic of the Mayor and certain of the City's policies. Plaintiff's SAC, ECF 59 at ¶¶ 47-58. Much of that activism takes place through social media such as Facebook. Plaintiff has posted many messages critical of the Mayor and of the City - particularly with regard to ordinances, policies and public statements concerning the conflict in Gaza and the City's treatment of LGBT residents. Id. ¶¶ 52-58.

On January 7, 2026, Plaintiff posted the following statement on Facebook concerning public announcements made by the Mayor, Defendant MEINER:

The guy who consistently calls for the death of all Palestinians, tried to shut down a theater for showing a movie that hurt his feelings, and REFUSES to stand up for the LGBTQ community in any way (even leaves the room when they vote on related matters) wants you to know that you're all welcome here. [Followed by three emojis of clowns].

Id. ¶ 57.

On Sunday, January 11, 2026, at 7:43 P.M., Defendant MEINER forwarded Plaintiff's social media post by e-mail to the City's Chief of Police, Defendant JONES, and others saying: Chief, As we discussed, please see the post below. Id. ¶ 59.

In the early morning hours, on January 12, 2026, at 1:46 A.M., Defendant JONES responded to the Mayor's e-mail about Plaintiff's social media post: [W]hile she didn't issue a direct threat, her allegations are undeniably provocative and have the potential to incite others to escalate to that level. Id. ¶¶ 62-63.

The Police Chief did not state that Plaintiff had committed or was suspected of having committed any crime. Instead, Defendant JONES focused on the possibility that other, unnamed third parties might be provoked by Plaintiff's political commentary.

Despite acknowledging that there was not even arguable probable cause to believe that Plaintiff had committed a crime, Defendant JONES and/or MEINER directed two Miami Beach police detectives to go to Plaintiff's home to interrogate her about her social media post. Id. ¶ 66. The detectives knocked on Plaintiff's front door at approximately 1:45 P.M. on January 12, 2026, and identified themselves as law enforcement officers. Id. ¶¶ 68, 69.

The interaction between Plaintiff and the two detectives is accurately reflected in video taken by Plaintiff which is referenced in the Amended Complaint and is available at

<https://tinyurl.com/ytm7u86a>. *Id.* ¶ 83 n. 2.¹ Although Plaintiff stated that she would not speak to them without her attorney present, the detectives continued to press Plaintiff to confirm that she was the individual who posted the social media commentary at issue. Plaintiff refused to acknowledge that she was the author. *Id.* ¶¶ 77-80. Crucially, one of detectives instructed Plaintiff to refrain from posting similar comments in the future: “I would think to refrain from posting things like that.” *Id.* ¶ 80; Video at 1:23 – 1:26.

Plaintiff was shaken by this encounter. *Id.* ¶¶ 69-73, 84-89. Plaintiff alleged in her Amended Complaint that “[a] reasonable person would perceive such a police visit - initiated in response to protected political speech - as an attempt to intimidate or deter further expression.” *Id.* ¶ 82. And Plaintiff was in fact intimidated and has since refrained from criticizing the City and its officials about their policies, including policies concerning the State of Israel, LGBT rights and their support for Florida legislation that would label certain protestors as terrorists. *Id.* ¶¶ 84-88. Plaintiff would have responded vigorously to those policies through social media – as she had done for years previously – but for her fear of further police action. She decided not to post after all, out of fear that Defendants would become irrationally incensed, which based on her prior experience, she reasonably believed could result in her arrest. *Id.* ¶ 87.

Plaintiff alleges that, in addition to the violation of her First Amendment rights, she has suffered “reputational harm, fear, humiliation, and distress as a result of police officers showing up at her home to confront her about her constitutionally protected speech and order her not to post such content again.” *Id.* ¶ 89. That harm was exacerbated when the Defendants brought up Plaintiff’s social media post at two public hearings. *Id.* at ¶¶ 17-21. Defendants SUAREZ and MEINER took a particularly active role in excoriating Plaintiff for her political views. *Id.* ¶¶ 96-105, 110-12. The Commission generally, and Defendants JONES and MEINER specifically, applauded the law enforcement intrusion at Ms. Pacheco’s home, ratifying the actions of their officers. *Id.* ¶¶ 101-105.

STANDARD OF REVIEW FOR MOTIONS TO DISMISS

For purposes of the Motion to Dismiss, the Court must view the allegations of the Complaint in the light most favorable to the Plaintiffs, must consider the allegations of the Complaint as true, and must accept all reasonable inferences therefrom. *See, Jackson v. Okaloosa County, Fla.*, 21 F.3d

¹ Defendants correctly note that this Court may consider the video recording when evaluating their Motion to Dismiss because it is specifically referenced in the Complaint and is undisputed. *See, generally, Baker v. City of Madison, Alabama*, 67 F.4th 1268, 1277–78 (11th Cir. 2023).

1531, 1534 (11th Cir. 1994); *See, also*, Madaio v. United States, 825 F.Supp. 3d 1308, 1313–14 (S.D. Fla. 2026). “[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007). “[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” Twombly, 550 U.S. at 556.

ARGUMENT

I. PLAINTIFF STATES A CAUSE OF ACTION FOR VIEWPOINT-BASED DISCRIMINATION AND FIRST AMENDMENT RETALIATION

There is no principle more fundamental to the First Amendment than the idea that government may not retaliate against one of its citizens for engaging in free speech:

Official reprisal for protected speech “offends the Constitution [because] it threatens to inhibit exercise of the protected right,” Crawford–El v. Britton, 523 U.S. 574, 588, n. 10 (1998), and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out, *id.*, at 592; *see also* Perry v. Sindermann, 408 U.S. 593, 597 (1972) (noting that the government may not punish a person or deprive him of a benefit on the basis of his “constitutionally protected speech”). Some official actions adverse to such a speaker might well be unexceptionable if taken on other grounds, but when nonretaliatory grounds are in fact insufficient to provoke the adverse consequences, we have held that retaliation is subject to recovery as the but-for cause of official action offending the Constitution. (additional citations omitted).

Hartman v. Moore, 547 U.S. 250, 256 (2006).

To state a claim for retaliation under the First Amendment, a plaintiff must plead three elements: (1) [the plaintiff] engaged in constitutionally protected speech, such as h[is] right to petition the government for redress; (2) the defendant’s retaliatory conduct adversely affected that protected speech and right to petition; and (3) a causal connection exists between the defendant’s retaliatory conduct and the adverse effect on the plaintiff’s speech and right to petition. Huggins v. Sch. Dist. of Manatee Cnty., 151 F.4th 1268, 1281 (11th Cir. 2025), *quoting* DeMartini v. Town of Gulf Stream, 942 F.3d 1277, 1289 (11th Cir. 2019); *See, also*, Bennett, 423 F.3d at 1250 (Foundational case establishing same three elements).

In Counts I and II of her Amended Complaint, Ms. Pacheco alleges that Defendants targeted her because of their objections to both the content of Plaintiff’s speech and the particular viewpoint adopted (*i.e.* one sympathetic to Palestinian rights and to LGBT individuals). Viewpoint-based

retaliation is a particularly virulent form of content-based discrimination. *See* Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 829 (1995) (“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.... Viewpoint discrimination is thus an egregious form of content discrimination.”). Government discrimination based on viewpoint is “presumptively unconstitutional.” Matal v. Tam, 582 U.S. 218, 248 (2017).

Defendants do not appear to contest the first or third elements of the cause of action. There can be no question that Ms. Pacheco engaged in constitutionally protected speech. She spoke as a private citizen on two of the most disputed political issues of our time: the plight of the Palestinians in the ongoing conflict in Gaza and the treatment of LGBT individuals in the United States and, particularly, in Miami Beach. *See, generally*, Snyder v. Phelps, 562 U.S. 443, 451–52 (2011) (“Speech on matters of public concern is at the heart of the First Amendment’s protection.”)

Defendants devote considerable attention to disputing the accuracy of Plaintiff’s criticism of Defendant MEINER. Whether Plaintiff’s political criticism was accurate, persuasive, or fair, however, is not the issue before this Court. The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). Defendants do not contend that Plaintiff’s speech falls within any historically recognized category of unprotected speech. The constitutional question is whether Defendants responded to that protected political speech with retaliatory governmental action.

With respect to the third prong, the facts alleged in the SAC establish a direct causal link between Plaintiff’s speech and the appearance of two police officers on her doorstep. The facts show that Plaintiff posted a political comment on social media criticizing the Mayor’s policies concerning the conflict in Gaza and LGBT citizens in the community. There is no dispute that the Mayor passed on that social media post to the Miami Beach Chief of Police with the expectation that he would act on the complaint. There is also no doubt that the Police Chief directed two of his officers to go to Plaintiff’s home to ask about the post. Finally, the officers themselves explained that the reason for their visit was to discuss Plaintiff’s social media post and suggest that she not make similar comments in the future (“I would think to refrain from posting things like that.”). There is an obvious and direct link between Plaintiff’s speech, the unwelcome police inquiry and the speech-chilling direction to avoid future political commentary on these topics. That link was further reinforced by the public flogging Plaintiff endured at the February 5, 2026, and May 20, 2026, Commission hearings.

Defendants’ entire argument hinges on whether a “person of ordinary firmness” would have self-censored in response to the government action taken against them, a hurdle which a First Amendment claimant must meet. *See, Bennett*, 423 F.3d at 1250. However, the standard is not accurately described in the Defendants’ Motion. If one accepted the Defendants’ perspective, government officials would be free to intimidate citizens in their own homes in direct retaliation for political commentary, so long as police officers do not threaten them with immediate arrest. Defendants claim that a “person of ordinary firmness” would simply ignore the police interrogation and would continue to engage in the same speech activities which drew law enforcement to their doorstep. It may be that a committed activist, such as Ms. Pacheco, would be undeterred by police intimidation that stopped short of arrest. But a jury is very likely to conclude that the *average* American would be cowed by such an encounter and would immediately censor themselves to avoid further police action.

That is in fact the standard adopted by the Eleventh Circuit:

“[I]t would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity” *Mendocino Env’tl. Ctr.*, 192 F.3d at 1300. There is no reason to “reward” government officials for picking on unusually hardy speakers.

Id. at 1252. The Eleventh Circuit employs an explicitly objective test which does not take into account whether a particular plaintiff is unusually timid or uncommonly bold in resisting government intimidation:

The defendants point to other cases applying a subjective test, under which the plaintiffs would have to show that they were actually chilled in the exercise of their First Amendment rights. ... For the reasons that follow, we join our sister Circuits in adopting an objective test for proving a retaliation claim.

Id. at 1251.

Defendants make much of the fact that Ms. Pacheco appeared at the next City Commission meeting to complain about the police action at her home, and again on May 20, 2026. ECF 77 at 11-12. That was a courageous act on her part. But First Amendment jurisprudence does not expect all of us to be heroes. The fact that Ms. Pacheco had the fortitude to confront her oppressors does not mean that government gets a free pass for trying to shut her up (although as stated in the Complaint, she did in fact refrain from posting certain political content after the police encounter because she feared being targeted by law enforcement and subjected to punishment). *Compare, Kravchenko v. Town of Redington Beach, Florida*, 2025 WL 2943000 at *17–18 (M.D. Fla. 2025), *report and*

recommendation adopted, 2025 WL 2778267 (M.D. 2025) (“That Plaintiff was not personally deterred from displaying messages on his truck is not dispositive of this element.”). In fact, the subjective standard Defendants imply is applicable is inherently problematic, because those who are *actually* intimidated into silence are the least likely to assert their rights in court.

Defendants’ argument also rests on a series of factual characterizations—that the encounter was merely a “brief,” “calm,” or “professional” police interaction and therefore could not have deterred a person of ordinary firmness. *See* ECF No. 77 at 10–15. But those are Defendants’ interpretations of the events, not facts the Court must accept. At the motion-to-dismiss stage, the Court must draw all reasonable inferences in Plaintiff’s favor, not Defendants’. *See Jackson*, 21 F.3d at 1534; *Twombly*, 550 U.S. at 555–56. The relevant question is therefore not whether Defendants can offer an innocent explanation for dispatching police officers to Plaintiff’s home, but whether Plaintiff has plausibly alleged that Defendants used governmental authority in a manner that would deter a person of ordinary firmness from engaging in protected speech. She has.

Defendants conclude that Plaintiff cannot assert a First Amendment claim because she was neither arrested nor threatened with immediate arrest and failed to allege a campaign of harassment. ECF 77 at 10–13.² They reach this conclusion, in part, by presenting a watered-down version of the commission meeting. ECF 77 at 12–13; *Compare to* SAC ECF 59 at ¶¶ 92–103, 110–112; *See also* Section I n.4. But a person of ordinary firmness may be deterred from speaking based on threats other than immediate incarceration. The standard is intentionally low:

In Judge Posner’s words, “[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable.” *Bart*, 677 F.2d at 625.

² Defendants’ reliance on *Rehberg v. Paulk*, 611 F.3d 828, 850 (11th Cir. 2010), is misplaced. Plaintiff does not allege merely that Defendants conducted a retaliatory investigation but that they also dispatched police officers to her home in response to her protected political speech; questioned her regarding that speech after acknowledging she had made no direct threat; characterized her speech as “concerning”; instructed her to “refrain from posting things like that”; and thereby sought to deter future protected expression. ECF 59 at ¶¶ 58–79. Plaintiff further alleges that Defendants subsequently defended the officers’ conduct and publicly attacked Plaintiff and her speech during the February 5 and May 20, 2026 City Commission meetings, continuing the alleged retaliation. ECF 59 at ¶¶ 92–112. The facts of this case far exceed in severity those of the “retaliatory investigation” discussed in *Rehberg*. Moreover, the Supreme Court has recently reaffirmed that government officials violate the First Amendment when they use their authority to coerce or intimidate private parties into suppressing protected speech even without official enforcement action. *Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175, 189–98 (2024).

Bennett, 423 F.3d at 125; *See, also*, Echols v. Lawton, 913 F.3d 1313, 1323 (11th Cir. 2019) and Eisenberg v. City of Miami Beach, 1 F.Supp. 3d 1327, 1343 (S.D. Fla. 2014) (Both citing Bennet for same proposition). First, if the intent of the officers' visit was not to chill Ms. Pacheco's speech, it is difficult to imagine the purpose of the visit. Since they suggested it would be in her best interests to refrain from posting similar content in the future, it is rather obvious that the objective was to intimidate her into silence.

Second, the police interrogation was part of a broader campaign against Plaintiff which included the orchestrated dressing down she had to endure at the February 5, 2026 and May 20, 2026 commission meetings. And to be clear, the February 5, 2026 public targeting of Plaintiff's speech was not improvised on the spot in response to a random public comment, but was a carefully staged event including a slide show of Plaintiff's public media posts put together by Defendant SUAREZ.

Defendants cite two cases in which First Amendment claims failed because the plaintiffs could allege no more than a public run-in with law enforcement engaged in their normal duties (ECF 77 at 10-11). *See* Bethel v. Town of Loxley, 2006 WL 8437719 (S.D. Ala. 2006) and Kilpatrick v. United States, 2009 WL 5215585 (N.D. Fla. 2009). Those authorities—neither of which are binding on this Court—are entirely different in critical ways. They largely involved routine police investigations into potential criminal conduct or isolated interactions disconnected from protected political expression. Plaintiff alleges something fundamentally different: that senior City officials directed police resources toward a resident because she criticized the Mayor's political views regarding Israel and Palestine. That distinction matters. Plaintiff's claim is not that police merely knocked on her door; it is that government actors subverted law enforcement to serve their own ends: that is, to silence protected political speech.

Not only did Defendants' actions constitute unlawful viewpoint discrimination: they also amounted to unlawful retaliation. Courts have upheld First Amendment retaliation claims under a wide range of circumstances in which nobody was arrested or threatened with arrest. Within the Eleventh Circuit, a retaliation claim was allowed where a detention officer instructed an inmate to stop filing grievances or "have a boot put in your ass." While that statement might have been merely rhetorical, the Court held that "a reasonable jury could find that there was a threat of possible violence that could deter a person of ordinary firmness from filing additional grievances." Pittman v. Tucker, 213 Fed. Appx. 867, 871 (11th Cir. 2007).

In Bailey v. Wheeler, 843 F.3d 473, 479 (11th Cir. 2016), a law enforcement agency was accused of retaliation where it issued a "BOLO" in response to an employee's complaints about racial profiling

which warned that the employee was a “loose cannon” and “a danger to any [law enforcement officer]”. The plaintiff was never actually arrested or threatened with arrest, but the BOLO was sufficient to support the First Amendment claim. Indeed, the Eleventh Circuit went so far as to deny qualified immunity to the offending officer. *Id.* at 483–85.³

In a case close to home, this Court upheld a First Amendment claim in Lozman v. City of N. Bay Vill., 2009 WL 10699944 (S.D. Fla. Feb. 12, 2009) where the retaliatory action was the disbursement of pornographic cartoons suggesting that the plaintiff should abandon his political advocacy or information would be released about a sealed indictment. No information was ever released, and no indictment was ever pursued in this case. Rather, it was the threatening and humiliating cartoon which sufficed to support the claim.

Cases from outside our Circuit are also instructive on this point. In Garcia v. City of Trenton, 348 F.3d 726 (8th Cir. 2003), there was no threat of arrest in reaction to the plaintiff’s First Amendment-protected criticism of the mayor. Instead, the plaintiff received four parking tickets totaling just \$35.00. The plaintiff testified that these minor fines were sufficient to cause “medically diagnosed anxiety” and “she refrained from speaking at city council meetings for fear of additional retaliation.” *Id.*, at 728. The Eighth Circuit upheld the First Amendment claim.

In Dingwell v. Cossette, 327 F.Supp. 3d 462 (D. Conn. 2018), the plaintiff was not arrested or threatened with arrest himself. Instead, the retaliatory action by law enforcement was to “publicly shame and discredit” the plaintiff because his son had been arrested. The Court declined to grant qualified immunity to the police chief at the motion to dismiss stage because “[i]t would be contrary to the purpose of the qualified immunity doctrine to construe it to allow a police department to intentionally silence its critics by using its power and authority, conferred to protect and defend the public, to threaten, intimidate, and embarrass members of the public they are empowered to protect.” *Id.* at 476–77.

³ The statements in the Bailey BOLO can be compared to Defendant SUAREZ’s slideshow comparing Plaintiff to the white supremacist Nick Fuentes and statements that Plaintiff “hates Jews.” Defendant JONES piled on by describing Plaintiff’s social media posts as “potentially inciteful false remarks” which justified police intervention “to ensure there was no immediate threat to the elected official or the broader community that might emerge as a result of the post.” Defendant MEINER added to those embarrassing and intentionally incendiary allegations by claiming that Plaintiff’s political commentary was “literally antisemitism 101” ECF 59 at ¶¶96-105, 110-112).

In Hartley v. Wilfert, 918 F.Supp.2d 45 (D.D.C. 2013), the police relied on the inconvenience of an interview and the possibility of having to fill out paperwork and made no actual threat at all. In that case a demonstrator outside the White House was approached by police and told to move along. If she refused, they informed her that she would have to give “background data” and “submit to questions” which might land her on a Secret Service list. Id. at 53–54.

The case of Cohoon v. Konrath, 563 F.Supp. 3d 881 (E.D. Wis. 2021) presents an interesting parallel to the case at bar as both claims involved police responses to social media posts deemed objectionable by local officials. In Cohoon, a teenager posted on-line about her experiences with COVID-19 at the beginning of the epidemic. Following numerous inquiries from concerned citizens a sheriff’s deputy went to the plaintiff’s home and instructed her to remove the post and she did so. Id. at 886–87. The facts of Cohoon offer a useful comparison to Ms. Pacheco’s experiences in this case. The initial police action in Cohoon was more confrontational as the deputy said that he would “start taking people to jail” if the post was not removed. Id. at 886. On the other hand, the deputy did not direct the teenager to refrain from making posts in the future and there was no organized campaign by local elected officials to embarrass the plaintiff publicly as occurred in the instant case. Ultimately, the court issued declaratory relief in the plaintiff’s favor, finding that the defendants’ conduct violated her First Amendment rights.

Other successful claims of First Amendment retaliation did not involve law enforcement action at all. In Bart v. Telford, 677 F.2d 622, 624 (7th Cir. 1982), the plaintiff was a failed mayoral candidate who suffered retaliation in the form of a series of petty taunts including criticism for bringing a cake to the office to celebrate a coworker’s birthday. Id. at 624. While this may sound more like childish bullying than full-on retaliation, the allegations were enough for the Seventh Circuit:

It is true that a certain air of the ridiculous hangs over the harassment allegations, in particular the allegation that we quoted earlier regarding the birthday cake. But we cannot say as a matter of law that the exercise of First Amendment rights by public employees cannot be deterred by subjecting employees who exercise them to harassment and ridicule through selective enforcement of work rules.

Id. at 625. Certainly, Ms. Pacheco experienced far worse hazing at the February 5, 2026 and May 20, 2026 City Commission meetings, not to mention the earlier police visit to her home.

In Bloch v. Ribar, 156 F.3d 673 (6th Cir. 1998), the retaliatory action alleged by the plaintiff was the release of highly personal information concerning the plaintiff’s rape. That First Amendment claim was upheld based on the emotional injury suffered by the plaintiff in the absence of any arrest, personal threats, physical injury, or fine. The defendant in that case argued that he “has been unable

to locate a single case recognizing a First Amendment retaliation claim where the injury alleged was solely embarrassment, humiliation and/or emotional distress.” The Sixth Circuit wryly observed that “[a]pparently Ribar did not search very far” before going on to address the numerous cases where such a claim had been allowed. *Id.* at 678–81.

Defendants’ reliance on Shiver, Frank, and Jeffords is misplaced because each involved speech by government officials unaccompanied by a direct exercise of state authority against the plaintiff. *See Shiver v. City of Homestead, Fla.*, 2021 U.S. Dist. LEXIS 217131, *12, *29 (S.D. Fla. Oct. 4, 2021) (retaliation campaign claims failed where official’s statements regarding Plaintiff were made to third parties, and Plaintiff did not allege contemporaneous knowledge of the investigation into them); Frank v. Fine, 2024 U.S. Dist. LEXIS 2891, *4-5, *13 (M.D. Fla. Jan. 5, 2024) (retaliation claims consisting solely of official’s statements made on social media were inadequate to establish retaliation); Jefford v. Columbia Cnty. Bd. of Cnty. Cmm’rs, 2014 U.S. Dist. LEXIS 159133, at *12-13 (M.D. Fla. Nov. 12, 2014) (commissioner’s public criticism of plaintiff was not actionable retaliation).⁴

Here, by contrast, Defendants did not merely criticize Plaintiff publicly. Defendant MEINER forwarded Plaintiff’s protected social media post to Defendant JONES and they engaged in an interaction indicating they sought to categorize her post as falling into the incitement exception to the First Amendment. At Defendants’ direction, two police officers appeared at Plaintiff’s home, questioned her about her protected speech and advised that, if they were in her position, they would not post similar content in the future. A reasonable person would understand such an encounter as an exercise of official authority intended to deter future protected speech. The use of police authority to confront Plaintiff in her own home materially distinguishes this case from those involving only public criticism or political commentary.

Defendants’ reliance on Bennett is likewise misplaced. *See* ECF 77 at 15. Defendants argue that Bennett establishes that government conduct must be more severe or pervasive than the conduct alleged here to constitute First Amendment retaliation. It does not. Rather, the Eleventh Circuit held that a plaintiff states a retaliation claim by alleging governmental conduct that “would likely deter a person of ordinary firmness from the exercise of First Amendment rights.” Bennett, 423 F.3d at 1254. Although the retaliatory campaign in Bennett consisted of repeated surveillance, traffic stops, citations, and public intimidation, the court did not purport to establish a minimum threshold of

⁴ Defendants also argue that the debate regarding Plaintiff’s protected speech during the commission meetings is protected by legislative immunity. Plaintiff rejects that argument. *See* Section VI, n.6, *supra*.

retaliatory conduct required in every case. Instead, it adopted an objective standard that turns on whether the challenged governmental conduct would deter a person of ordinary firmness from engaging in protected expression.

Plaintiff's allegations readily satisfy that standard. Plaintiff alleges that two police officers came to her home in response to her protected political speech, summoned her outside, continued questioning her despite her repeated statements that she wished to speak only through counsel, and cautioned her against posting similar content in the future. Plaintiff further alleges that Defendants subsequently defended the officers' conduct and publicly denounced Plaintiff during two City Commission meetings, labeling her an antisemite and "Jew hater" and comparing her views to those of terrorists.⁵ If Defendants' true concern was the potential for third parties to violently respond to Plaintiff's language, then one would expect them to recognize the language they used to describe Plaintiff during public meetings would create at least as much potential for hateful response. Unlike the passive dissemination of flyers at issue in Bennett, Plaintiff alleges direct, face-to-face confrontations by government officials, first through the exercise of police authority at her home and later through public condemnation at meetings she attended.

This survey of cases conclusively demonstrates that Defendants' narrow view as to what constitutes retaliation under the First Amendment bears no resemblance to the actual law. Defendants retaliated against Plaintiff by sending police officers to her home to investigate her without arguable probable cause, by instructing those officers to warn her against future social media posts and by publicly shaming Plaintiff at the February 5, 2026 and May 20, 2026 commission meetings. A person of ordinary firmness would surely surrender their First Amendment rights in response to such pressures. At the very least, Plaintiff has the right to a jury determination on the matter.

II. PLAINTIFF STATES A CLAIM FOR A FIRST AMENDMENT VIOLATION BASED ON IMPOSITION OF A PRIOR RESTRAINT

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976).

⁵ Further, under Eleventh Circuit precedent, a court evaluates whether a plaintiff's First Amendment speech was chilled by looking at the defendant's prolonged campaign of harassment as a whole, rather than assessing each retaliatory or harassing act in isolation. *See Pittman*, 213 F. App'x at 870 ("We further held that a jury could find that the prolonged campaign of harassment alleged by the plaintiffs in that case could have such a chilling effect.") (quoting Bennett, 423 F.3d at 1254-55). Plaintiff addresses each of Defendants' arguments individually without conceding the validity of their piecemeal analysis.

Plaintiff alleged in her Amended Complaint that the detectives who interrogated her in her home not only asked about her prior social media post criticizing the mayor but also directed her to “refrain from posting things like that” in the future. ECF 59 at ¶¶ 6, 80, 121, 132, 143. This is the basis for Count III of the Amended Complaint which asserts that Plaintiff was the victim of an unconstitutional prior restraint – that is, a restriction on speech in advance of its dissemination. *See, generally, Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975).

Defendants take an exceedingly narrow view of what constitutes a prior restraint, claiming that the doctrine is restricted to an “administrative or judicial order or licensing scheme prohibiting speech before it can take place.” ECF 77 at 15.⁶ However, Supreme Court doctrine is far more expansive than that and recognizes that informal prior restraints are violative of the First Amendment just like formal licensing or permitting schemes.

The quintessential case is *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). In that case, the Rhode Island Legislature enacted a statute creating the “Commission to Encourage Morality in Youth.” The Commission was charged with reviewing books and other works to determine if they “manifestly tend[ed] to the corruption of the youth.” *Id.* at 59. The Commission had no authority to initiate prosecutions or issue fines. Instead, it simply sent out notices to booksellers advising that a certain item was found to be objectionable and stated that a copy of the notice would be furnished to police and prosecutors. *Id.* at 63-64. Sometimes a police officer would follow-up to see what the bookstore intended to do in response to the notice. *Id.* at 63.

The State defended the Commission precisely because it had no formal enforcement powers; it could not fine or prosecute and was essentially advisory in nature. The Supreme Court rejected that argument and held that informal prior restraints on speech violate the First Amendment because of their natural chilling effect:

But though the Commission is limited to informal sanctions - the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation - the record amply demonstrates that the Commission deliberately set about to achieve the suppression of publications deemed ‘objectionable’ and succeeded in its aim. We are not the first court to look through forms to the substance and recognize that informal

⁶ In their Response, Defendants principally rely on the case of *Cooper v. Dillon*, 403 F.3d 1208, 1215 (11th Cir. 2005) for their argument that Count III fails to state a cause of action. But *Cooper* is an odd choice for that effort. The statute at issue in *Cooper* made it a crime to publish information concerning a police internal affairs investigation. By definition, the statute was not a prior restraint because it only punished speech after the fact. *Cooper* is inapplicable to the parties’ dispute which centers on the restraint of future speech.

censorship may sufficiently inhibit the circulation of publications to warrant injunctive relief.

Id. at 66–67.

The Eleventh Circuit has adhered closely to Bantam Books:

The district court held that Speech First lacked standing to challenge the bias-related-incidents policy because, the court said, the JKRT couldn't punish students itself but, rather, could only refer them to other university actors for discipline. We hold that the district court erred in focusing so singularly on the JKRT's power to punish. The reason, already explained, is that a government actor can objectively chill speech - through its implementation of a policy - even without formally sanctioning it.

Speech First, Inc. v. Cartwright, 32 F.4th 1110, 1122 (11th Cir. 2022); *See, also*, CAIR-Found., Inc. v. Desantis, 822 F.Supp. 3d 1263, 1273 (N.D. Fla. 2026) *quoting* Bantam Books (“Where a government uses the ‘threat of invoking legal sanctions and other means of coercion ... to achieve the suppression’ of disfavored speech, it functionally creates ‘a system of prior administrative restraints’ that bears ‘a heavy presumption against its constitutional validity.’”); Okwedy v. Molinari, 333 F.3d 339, 342–43 (2d Cir. 2003) (Statements by public officials could “reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official’s request.”); *Compare*, Nat’l Rifle Ass’n of Am. v. Vullo, 602 U.S. 175 (2024) (Indirect pressure through “jawboning” can constitute a violation of the First Amendment). Here, unlike in Bantam and Speech First, where the courts still found unlawful prior restraint, the Miami Beach Police Department *does* possess enforcement power, further strengthening Plaintiff’s claims.

Plaintiff alleges that a Miami Beach detective directed her not to post any additional provocative messages on her social media account and Plaintiff has in fact refrained from doing so because of her reasonable fear of additional law enforcement action. ECF 59 at ¶¶ 6, 14, 80-88, 121, 132, 134, 143. Those allegations are sufficient to sustain a claim of an unconstitutional prior restraint.

III. PLAINTIFF PLAUSIBLY ALLEGES DEFENDANT CITY OF MIAMI BEACH ENGAGED IN VIEWPOINT-BASED DISCRIMINATION AND FIRST AMENDMENT RETALIATION PURSUANT TO A CITY CUSTOM OR POLICY

Defendants argue that Plaintiff fails to establish a Monell claim against Defendant CITY OF MIAMI BEACH because she cannot establish a deprivation of rights pursuant to an official policy or custom of the City. *See* ECF 77 at 15-17. That argument improperly isolates each allegation from the others and disregards the coherent, multi-year course of municipal conduct alleged in the SAC.

A municipality can be held liable under § 1983 in three situations: when a Plaintiff's injury resulted from (1) an official government policy; (2) the actions of an official fairly deemed to represent government policy, or (3) a custom or practice that is so pervasive and well-settled that it assumes the force of law. Monell v. Dep't of Social Services, 436 U.S. 658, 694 (1978). *See also* Denno v. Sch. Bd. of Volusia Cnty., 218 F.3d 1267, 1276 (11th Cir. 2000). At the pleading stage, Plaintiff need only allege facts permitting the reasonable inference that the challenged conduct represented municipal policy or custom and caused her injury. Brown v. City of Fort Lauderdale, 923 F.2d 1474, 1480–81 (11th Cir. 1991). Here, Plaintiff has pled facts showing that her First Amendment injury stemmed both from an official government policy and a custom or practice so pervasive and well-settled in assumes the forces of law (situations 1 and 3).

First, the SAC provides facts identifying formal actions of the Miami Beach City Commission—the City's governing body—that burdened speech and expressive activity critical of Israel. The Commission enacted an ordinance allegedly aimed at restricting pro-Palestinian demonstrations and an ordinance barring the City from contracting with entities that boycott Israel. ECF 59 at ¶¶ 28–29. It also considered a resolution introduced by Defendant MEINER that would have terminated O Cinema's lease and discontinued City grants because the cinema refused to cancel its screening of *No Other Land*, a documentary concerning Palestinian life in the West Bank. *Id.* ¶¶ 30–34. (In the face of widespread public criticism, the Mayor withdrew that proposal, so the City adopted another resolution encouraging the cinema to present a “fair and balanced viewpoint” with respect to Israel. *Id.* ¶¶ 35–36). *See Hoefling v. City of Miami*, 811 F.3d 1271, 1279–80 (11th Cir. 2016) (finding that ordinances and resolutions enacted by a municipality's legislative body constitute official municipal action for Monell purposes).

To be clear: Plaintiff does not contend that the anti-boycott ordinance, standing alone, caused the police visit to her home. Rather, these formal actions plausibly demonstrate that the response to Plaintiff's speech was consistent with an existing City policy of using municipal authority to burden criticism of Israel and advocacy for Palestinians.

The SAC further alleges repeated viewpoint-based discrimination in the conduct of City Commission meetings. Speakers critical of Israel allegedly were interrupted, had their microphones disabled, were denied their full speaking time, and were publicly labeled as engaging in “hate speech” or supporting Nazism, while speakers supporting Israel were permitted to complete their remarks without comparable interference. ECF 59 at ¶¶ 37–45. Taken together, the ordinances, resolutions, threatened economic retaliation, and repeated differential treatment at official meetings plausibly allege

more than the personal opinions of individual officials. They are adequate to infer that the City repeatedly employed official governmental mechanisms against the same disfavored viewpoint.

Furthermore, under Monell's third prong, a municipality may be liable not only for officially adopted policies but also for customs that, although not formally approved through official decisionmaking channels, are so persistent and widespread as to have the force of law. Monell, 436 U.S. at 690–91; Bd. of Cnty. Comm'rs v. Brown, 520 U.S. 397, 404 (1997). Although an isolated event ordinarily is insufficient, Plaintiff alleges a course of conduct extending approximately two years before the police appeared at her home. ECF 59 at ¶¶ 24–27.

Defendants seek to characterize the alleged events as unrelated because they involved different exercises of governmental authority. ECF No. 77 at 16–18. But Plaintiff alleges that City officials repeatedly used municipal authority—legislation, contracting restrictions, economic leverage over a local cultural institution, control of public-comment forums, official denunciation, and ultimately law enforcement—to suppress or punish speech critical of Israel or supportive of Palestinians. ECF 59 at ¶¶ 24–45. The recurrence of the same viewpoint-based objective across different City functions makes the allegations more coherent, not less so. The alleged pattern also involved the City's highest officials and was carried out openly. The Mayor and Commission sponsored, debated, enacted, or attempted the challenged municipal measures. *Id.* ¶¶ 28–36, 42–44. The Mayor, Police Chief, and City Manager communicated concerning Plaintiff's post before officers arrived at her home. *Id.* ¶¶ 59–63. The Police Chief later publicly defended the officers' response as part of the Department's responsibility, and City officials declined to disavow the intervention. *Id.* ¶¶ 96–105. These allegations permit the reasonable inference that the challenged practice were not merely known to those City policymakers with final decisionmaking authority but was expressly ratified by them. *See, Matthews v. Columbia Cnty.*, 294 F.3d 1294, 1297 (11th Cir. 2002) (“[L]iability on the basis of ratification exists when a subordinate public official makes an unconstitutional decision and when that decision is then adopted by someone who does have final policymaking authority.”); *See, also, 625 Fusion, LLC v. City of Fort Lauderdale*, 526 F.Supp. 3d 1253, 1260 (S.D. Fla. 2021) (Citing Matthews for the same proposition).

Nor must Plaintiff establish, at the pleading stage, that each prior municipal measure independently violated the Constitution before those measures may be considered collectively as evidence of a municipal custom. The question is whether those allegations, including the allegations pertaining to ratification by the City Commission, plausibly establish a persistent municipal pattern of viewpoint discrimination, not whether each incident would independently support a separate judgment. *See Hoefling*, 811 F.3d at 1280. *See generally Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

(holding that at the pleadings stage, the court must accept allegations as true and draws all reasonable inferences in Plaintiff's favor).

Defendants' reliance on Riddle is misplaced. There, the plaintiff attempted to establish a municipal custom by relying on disparate allegations, including the school board's interruption of his mother's public comments, alleged contacts with the employers of individuals opposing CRT and mask mandates, an attempted consensual search of a student's residence, and unanswered requests for information. The court concluded that these "mismatched complaints" were "not similar, consistent, or widespread enough" to establish a municipal "standard operating procedure." Riddle v. Omaha Pub. Sch., 2024 WL 1953758, at *5 (D. Neb. Apr. 19, 2024), *aff'd*, 2024 WL 3964113 (8th Cir. Aug. 28, 2024). Here, by contrast, Plaintiffs allege a coordinated series of closely related municipal actions—including the enactment of an anti-protest ordinance, the passage and proposal of resolutions targeting businesses and speech concerning Israel, official communications threatening adverse consequences, and police action taken in furtherance of those measures—all directed toward suppressing the same protected viewpoint. ECF 59 at ¶¶ 28–44. Plaintiff also alleges ratification, which was not at issue in Riddle. ECF 59 at ¶¶ 12, 96-106, 110-112).

Khoury v. Miami-Dade County School Board, 4 F.4th 1118 (11th Cir. 2021), is likewise distinguishable. There, the Eleventh Circuit rejected the plaintiff's Monell claim because the evidence relied primarily on alleged misconduct by a former police chief that occurred three years before the plaintiff's detention, the School Board investigated those allegations and implemented corrective measures under new leadership, and the later Baker Act incidents involved materially different circumstances and were unsupported by evidence of constitutional violations. *Id.* at 1131–33. Here, by contrast, Plaintiff alleges an ongoing and escalating course of conduct by the City's current policymakers, including the enactment and proposal of municipal measures, official statements targeting protected speech, the public harassment campaign against Plaintiff, and police action taken in furtherance of those measures. Rather than investigating or correcting that conduct, the City continued and affirmatively ratified it.

Finally, to establish municipal liability, a plaintiff must allege "a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." Smothers v. Fulton Cnty., 159 F.4th 930, 931 (11th Cir. 2025) (citation omitted). Plaintiff has done so. Her social media posts criticized Defendants MEINER and CITY OF MIAMI BEACH for the very conduct forming part of the alleged municipal pattern, including the attempted retaliation against O Cinema, restrictions on pro-Palestinian demonstrations, and the City's treatment of Palestinians and their advocates. ECF 59

at ¶¶ 52–58. Mayor Meiner then forwarded Plaintiff’s post to Police Chief Jones and the City Manager, writing, “Chief, As we discussed, please see the post below.” *Id.* ¶ 59. Chief Jones acknowledged that Plaintiff had made no direct threat but characterized her political criticism as provocative and capable of causing others to escalate. *Id.* ¶¶ 62–63. The following day, two City detectives appeared at Plaintiff’s home and advised her to “refrain from posting things like that.” *Id.* ¶¶ 66–80. City officials later publicly defended the police visit and repeatedly condemned Plaintiff’s Palestine-related speech during City Commission meetings. *Id.* ¶¶ 96–105, 110–12. Plaintiff alleges that these events frightened her and caused her to refrain from further criticism. *Id.* ¶¶ 84–89.

These allegations establish far more than temporal proximity. They plausibly describe the City’s policy in action. Plaintiff criticized the City’s viewpoint-based suppression of Palestine-related speech. Mayor MEINER escalated that criticism to the Police Chief and City Manager. The Police Department then confronted Plaintiff at her home and discouraged similar speech in the future. Rather than repudiating that response, City officials publicly defended it. The SAC therefore plausibly alleges a direct causal connection between the City’s policy or custom and Plaintiff’s First Amendment injury.

IV. PLAINTIFF STATES A CAUSE OF ACTION BASED ON DEFENDANT SUAREZ’S FACEBOOK BLOCK

The Supreme Court recently held that “a public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.” Lindke v. Freed, 601 U.S. 187, 198(2024). Plaintiff plausibly alleges both.

Defendants conclude that Defendant SUAREZ’s blocking of Plaintiff from his official Facebook account does not constitute state action under § 1983 because it fails to satisfy those two elements. Defendants reach this incorrect conclusion by both misreading and relying on unpersuasive and nonbinding precedent.⁷

A. Plaintiff Demonstrates Defendant SUAREZ Possessed Actual Authority to Speak on Social Media on Behalf of the City

A public official’s actual authority to speak on the State’s behalf is derived from a “statute,

⁷ Plaintiff maintains that she has been blocked by Defendant Suarez from his Facebook page because Plaintiff cannot view *any* of Defendant Suarez’s posts. *See Lindke*, 204, n.3 (explaining that “a blocked user might be unable even to *see* the blocker’s posts”; “noting that a blocked user is unable to see, reply to, [share], or like the blocker’s [posts].”(citations omitted)

ordinance, regulation, custom, or usage.” Lindke, 601 U.S. at 200. “If an official has authority to speak for the State, he may have the authority to do so on social media even if the law does not make that explicit.” Id. The SAC specifically alleges that the City authorized Defendant SUAREZ to make use of his social media account to attend to City affairs. ECF 59 at ¶¶154-156.

Defendant SUAREZ’s authority to speak on behalf of the City of Miami Beach is derived from Sec. 2.03 and Sec. 2-14(9) of the Miami Beach Municipal Code (“Municipal Code”). Sec. 2.03 of the Municipal Code vests “[a]ll powers of the City” in the City Commission, except for those expressly delegated elsewhere, and further grants the Commission “all powers and privileges” authorized under Florida law, including the power to “do and perform all things necessary for the government of the City.” This makes the Commission the City’s primary governing authority to communicate the City’s positions on matters within its jurisdiction. Sec. 2-14(9) confirms that individual commissioners exercise that authority by expressly authorizing them to respond to constituent inquiries regarding “city business” and provide public updates on matters that they are “directly working with the administration.” These are official governmental communications recognized by the Municipal Code.

Taken together, Sec. 2.03 and Sec. 2-14(9) establish that commissioners possess actual authority to speak on behalf of the City regarding municipal affairs. Plaintiff therefore plausibly alleges that Defendant SUAREZ possessed the authority required under Lindke’s first prong.

B. Plaintiff Plausibly Alleges that Defendant SUAREZ Purported to Exercise that Authority Through His Facebook Account

Defendant SUAREZ argues that because his Facebook page lacks City contact information and contains at least one personal post, he did not purport to exercise official authority through the account. Lindke does not support that conclusion.

To satisfy Lindke’s second requirement, an official “must not only have state authority,” but “must also purport to use it.” 601 U.S. at 201 (internal quotation marks and citation omitted). Whether on or off social media, “[s]tate officials have a choice about the capacity in which they choose to speak.” Id. Some accounts are purely personal, some are official, and others are “mixed-use,” containing both personal and official communications. Id. at 202. Whether an account falls into one of those categories requires a “fact-specific” inquiry. Id. at 203.

Accordingly, the absence of City contact information is not dispositive. Even a page labeled “personal” may become a mixed-use account when it is used to conduct official business. *See id.* at 202-03. Likewise, an official cannot “insulate government business from scrutiny by conducting it on

a personal page.” Id. at 202 n.2. Where a page functions as either an official or mixed-use account, a page-wide block may constitute state action. Id. at 204.⁸

Here, Defendant SUAREZ’s Facebook page is, at minimum, a mixed-use account and, based on the allegations, plausibly an official one. The page is titled “David Suarez Miami Beach City Commissioner Group 5,” affirmatively identifying Defendant SUAREZ by his public office. Unlike the Facebook account in Lindke, which the Supreme Court described as being used “prolifically (and primarily)” for personal matters, Defendant SUAREZ’s page is devoted almost entirely to governmental affairs. *See id.* at 192, 202. Had Defendant SUAREZ intended the page to be purely personal, he could have labeled it accordingly or included a disclaimer stating that the views expressed were solely his own (although that alone does not warrant a finding of personal use). *See id.* at 202. He did neither.

Defendant SUAREZ’s own use of the page further demonstrates that he was exercising official authority.⁹ The SAC includes specific examples of those official activities. ECF 59 at ¶ 152.

Those allegations plausibly demonstrate that Commissioner Suarez used the page to perform governmental functions and communicate with constituents in his official capacity.¹⁰

This conclusion is consistent with Attwood v. Clemons, where the Eleventh Circuit held that a plaintiff plausibly alleged state action because the legislator’s social media accounts bore the “trappings” of public office by communicating official governmental information, legislative activities, and government functions. 818 F. App’x 863, 867-69 (11th Cir. 2020). As in Attwood, Plaintiff alleges that Defendant SUAREZ used his Facebook page to communicate official governmental information,

⁸ Whether the page is ultimately characterized as official or mixed use, Plaintiff has plausibly alleged that Defendant SUAREZ exercised governmental authority through the account. Because Plaintiff challenges a page-wide block, the allegations satisfy Lindke’s second prong. Id. at 204.

⁹ The Court may consider Defendant SUAREZ’s Facebook account without converting the motion into a motion for summary judgment, as it is both “central to ... [P]laintiff’s claim and (2) undisputed.” Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005).

¹⁰ The out-of-circuit district court cases cited by Defendants are nonbinding and factually distinguishable. In Chau v. X Corp., the court addressed a single deleted comment, not a complete restriction on access to an official account’s content, as in our case. 2026 U.S. Dist. LEXIS 105151, *30-31 (N.D. Cal. May 12, 2026). In Dixon v. Clayburn, dismissal turned on the plaintiff’s contradictory pleadings, first denying, then vaguely asserting that the account was used under government authority. 2025 U.S. Dist. LEXIS 238967, *10-11 (D.S.C. Oct. 10, 2024). Here, Plaintiff’s allegations consistently establish Defendant SUAREZ’s official use of his Facebook account.

respond to constituent concerns, and facilitate City services. Accepting those allegations as true, Plaintiff has plausibly alleged that Defendant SUAREZ exercised his governmental authority through the Facebook account in question.

V. PLAINTIFF HAS ALLEGED SUFFICIENT FACTS TO AVOID DISMISSAL FOR QUALIFIED IMMUNITY AGAINST DEFENDANT MEINER AND DEFENDANT JONES AT THIS STAGE

Defendants MEINER and JONES separately argue that they are qualifiedly immune from suit because the laws governing retaliatory action under the First Amendment are not sufficiently established under similar facts.¹¹ In particular, they argue that the Eleventh Circuit already determined in Rehberg, 611 F.3d 828 that public officials are entitled to qualified immunity where the First Amendment allegations rely only on a retaliatory investigation. ECF 77 at 22-23.¹² Once again Defendants take a far too narrow a view of both the law and the facts alleged in the SAC.

“Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action.” Jarrard v. Sheriff of Polk Cnty., 115 F.4th 1306, 1323 (11th Cir. 2024) (quotation omitted). Assessing qualified immunity is a two-step inquiry. First, the Defendant bears the “burden of raising the defense of qualified immunity by proving that he was acting within his authority.” Est. of Cummings v. Davenport, 906 F.3d 934, 940 (11th Cir. 2018). The burden then shifts to the plaintiff to show “(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.” Jarrard, 115 F.4th at 1323 (quotation omitted). By asserting

¹¹ Defendants needlessly separate their arguments pertaining to qualified immunity. The reality is that the same law and the same analysis applies to both Defendants as they were part of a single scheme to intimidate Plaintiff so that she would cease her political commentary. Plaintiff alleges that MEINER reached out to JONES with the express purpose of coopting the City’s police department in his effort to silence Plaintiff’s criticism of MEINER’s and the City’s policies. JONES was only too happy to oblige, dispatching two detectives to harass Plaintiff in her home. Both Defendants later joined with other Commissioners to publicly shame Plaintiff for her political beliefs - again for the purpose of censoring her speech. The two Defendants were part of a common plan and their claim of qualified immunity fails for a common reason. *See*, discussion, *infra*.

¹² At least one other Circuit has found that a bad faith police investigation, standing alone, can support a First Amendment claim. *See*, Media Matters for Am. v. Paxton, 138 F.4th 563, 580 (D.C. Cir. 2025) (“In distinguishing between ‘good faith’ and ‘bad faith’ investigations, this court has explained that ‘all investigative techniques are subject to abuse and can conceivably be used to oppress citizens and groups,’ and that bad faith use of investigative techniques can abridge journalists’ First Amendment rights.” (citation omitted)).

qualified immunity in their Motion to Dismiss, Defendants are limited to the facts as alleged in the Complaint, viewed in the light most favorable to Plaintiff. *See, Behrens v. Pelletier*, 516 U.S. 299, 309 (1996).

Almost all qualified immunity disputes turn on whether the law has been so clearly established as to put officials on notice that their actions are unconstitutional.¹³ *See, Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (“[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.”). This case is no different. A plaintiff can demonstrate that a right has been clearly established through three pathways:

First, the plaintiffs may show that “a materially similar case has already been decided.” *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) (*citing Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Second, the plaintiffs can point to a “broader, clearly established principle [that] should control the novel facts [of the] situation.” *Id.* (*citing Hope*, 536 U.S. at 741, 122 S.Ct. 2508). Finally, the conduct involved in the case may “so obviously violate[] th[e] constitution that prior case law is unnecessary.” *Id.* (*citing Lee*, 284 F.3d at 1199). Under controlling law, the plaintiffs must carry their burden by looking to the law as interpreted at the time by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

Terrell v. Smith, 668 F.3d 1244, 1255 (11th Cir. 2012).

Here, Plaintiff relies on the second method: broadly established principles controlling unique or novel facts. The Eleventh Circuit provides the following standards to guide that determination:

[T]he principle must be established with “obvious clarity” by the case law so that “every objectively reasonable government official facing the circumstances would know that the official’s conduct did violate federal law when the official acted.” *Id.* In other words, an official action is not protected under qualified immunity simply because “the very action in question” has not been held unlawful before, but “in the light of pre-existing law the unlawfulness must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987).

Id. at 1256 (11th Cir. 2012). The broad principle at work in this case is that government may not retaliate against its citizens for engaging in First Amendment-protected speech. *See, Hartman*, 547 U.S. at 256 (“[T]he law is settled that as a general matter the First Amendment prohibits government

¹³ Plaintiff reincorporates the arguments made in Section I and II to establish that Defendants violated her constitutional rights. Further, Plaintiff rejects Defendants assertions that Plaintiff’s First Amendment violation claims arising from Defendants deployment of officers to Plaintiff’s home fail. Defendants incorrectly equate Defendant Meiner’s and Defendant Jones’ statements made during the commission meeting and to the media with “irrefutable facts.” ECF 77 at 24. Those statements were not made under oath, and both Defendants have a vested interest in concealing the constitutional violations in which they may have actively participated.

officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out...”. (citation omitted)); *See, also, Rosenberger*, 515 U.S. at 828 (“Discrimination against speech because of its message is presumed to be unconstitutional.”). This right is acknowledged to be well-established in the Eleventh Circuit. *See, Duncan v. City of Sandy Springs*, 2023 WL 3862579 at *6 (11th Cir. 2023) (“The right to be free from retaliation for such speech is clearly established.”).

Plaintiff acknowledges that there are no cases in this jurisdiction which specifically overcame qualified immunity where an improper police investigation was coupled with a directive not to engage in political speech in the future and a public campaign to humiliate and embarrass a citizen for her political views. But a “red cow case”¹⁴ is not required where the broad principle can be fully understood in context. *See, e.g., Amnesty Int’l, USA v. Battle*, 559 F.3d 1170, 1185 (11th Cir. 2009) (“There need not, however, be a prior case wherein the very action in question has previously been held unlawful.”) (citation omitted)). On these facts, there is no possibility that Defendants were acting in good faith; rather they clearly intended to violate Plaintiff’s First Amendment rights and went out of their way to do so. They intentionally attempted to characterize a constitutionally protected social media post as incitement to violence. Sufficient facts are presented in the SAC to avoid qualified immunity at the motion to dismiss stage. *Cf., Darlow v. City of Coral Springs*, 2021 WL 3514826 at *5 (S.D. Fla. 2021), *aff’d sub nom. Darlow v. Babineck*, 2022 WL 15345444 (11th Cir. 2022) (“[A] determination of whether qualified immunity applies in this case - which turns on whether the *Pickering* balance tilts *decidedly* in Plaintiff’s favor - is also better-suited for summary judgment.”).

VI. DEFENDANT SUAREZ IS NOT ENTITLED TO QUALIFIED IMMUNITY

Similarly, Defendant SUAREZ is not entitled to qualified immunity. As to Counts I and Counts II¹⁵, plaintiff reincorporates the arguments made in Section V as they relate to qualified immunity. *See* Section V *supra*. As to Count VI, Plaintiff alleges that Defendant SUAREZ blocked her from his Facebook page because of the viewpoint she expressed in criticizing City officials. Accepting those allegations as true, Plaintiff has plausibly alleged unconstitutional viewpoint discrimination. The Supreme Court has long recognized that viewpoint discrimination is “an egregious form of content

¹⁴ “The term ‘red cow’ is used in Florida to describe a case that is directly on point, that is, a case that not only involves the same animal but also the same color. *Kuvin v. City of Coral Gables*, 62 So. 3d 625, 645 n. 3 (Fla. 3d DCA 2010) (J. Cortiñas dissenting).

¹⁵ Contrary to Defendant SUAREZ’s insistence, both Counts I and II assert claims against him due to his response to Plaintiff’s protected expression. *See* ECF 59 at ¶¶ 97-101, 120, 123-24, 131-33.

discrimination,” Rosenberger, 515 U.S. at 829, and “presumptively unconstitutional.” Matal, 582 U.S. at 248. Although Lindke, 601 U.S. 187 clarified the framework for determining when a public official’s social-media activity constitutes state action, it did not disturb the settled principle that, once a public official acts under color of state law, the First Amendment prohibits viewpoint-based exclusion from an official social-media forum. Id. at 198–99.

Consistent with those settled First Amendment principles, federal courts of appeals had recognized before the events giving rise to this action that public officials violate the First Amendment when they exclude individuals from official social-media accounts because of the viewpoints those individuals express. *See* Davison v. Randall, 912 F.3d 666, 688 (4th Cir. 2019) (denying qualified immunity at the motion-to-dismiss stage where a public official engaged in unconstitutional viewpoint discrimination by banning plaintiff from her official Facebook page); Robinson v. Hunt Cnty., Tex., 921 F.3d 440, 449–50 (5th Cir. 2019) (holding that plaintiff plausibly alleged viewpoint discrimination where she was excluded from the County Sheriff’s Office Facebook page); Knight First Amendment Inst. at Columbia Univ. v. Trump, 928 F.3d 226, 239 (2d Cir. 2019), *abrogated on other grounds by* Lindke v. Freed, 601 U.S. 187 (2024) (holding that President Trump’s blocking of users from his official Twitter account constituted unconstitutional viewpoint discrimination); Garnier v. O’Connor-Ratcliff, 41 F.4th 1158, 1183 (9th Cir. 2022), *vacated and remanded on other grounds*, 601 U.S. 205 (2024), *abrogated on other grounds by* Lindke, 601 U.S. 187 (holding that defendants engaged in viewpoint discrimination by blocking users from Facebook pages used as official government accounts).

Finally, Defendant SUAREZ is not entitled to qualified immunity with respect to Plaintiff’s claims for declaratory and prospective injunctive relief because qualified immunity is “only a defense to personal liability for monetary awards” and therefore “may not be effectively asserted as a defense to a claim for declaratory or injunctive relief.” Ratcliff v. DeKalb County, 62 F.3d 338, 340 n.4 (11th Cir. 1995); *see also* Pearson v. Callahan, 555 U.S. 223, 231 (2009) (describing qualified immunity as protecting officials from “liability for civil damages”).

VII. DEFENDANTS MEINER AND SUAREZ ARE NOT ENTITLED TO LEGISLATIVE IMMUNITY

Defendants MEINER and SUAREZ contend that legislative immunity bars Plaintiff’s claims to the extent they are based on statements made during City Commission meetings or the Mayor’s administration of those meetings. ECF No. 77 at 14–15, 24–25. That argument misconstrues both the doctrine and Plaintiff’s claims.

Legislative immunity protects only conduct that is legislative in nature—that is, acts that are “integral part of the deliberative and communicative processes by which legislators pass laws.” Yeldell v. Cooper Green Hosp., 956 F.2d 1056, 1062 (11th Cir. 1992) (internal quotation marks omitted). Whether immunity applies depends on “the nature of the act,” not the identity of the official performing it. Accordingly, executive or administrative conduct is not transformed into legislative activity merely because it is later discussed or defended during a legislative meeting. Yeldell, 956 F.2d at 1062–63; Smith v. Lomax, 45 F.3d 402, 406 (11th Cir. 1995).

Plaintiff does not seek to impose liability based on Defendants’ participation in legislative debate, their votes, or the enactment of legislation. Rather, Plaintiff alleges that Defendants retaliated against her for engaging in protected speech by causing, participating in, and publicly ratifying the police response to her speech. ECF 59 at ¶¶ 58–79, 91–100. The statements made during the February 5 and May 20 Commission meetings are alleged as evidence of Defendants’ retaliatory motive, ratification of the challenged conduct, and the City’s policy or custom of suppressing viewpoints critical of Israel. Id. at ¶¶ 24–45, 85–103. They are not themselves the basis for liability. Legislative immunity does not bar Plaintiff’s claims.

WHEREFORE, Plaintiff prays that Defendants’ Motion to Dismiss be denied in its entirety.

Respectfully submitted,

BENJAMIN, AARONSON, EDINGER
& PATANZO, P.A.

AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished to ENRIQUE D. ARANA, Esquire (earana@carltonfields.com); SCOTT EVERETT BYERS, Esquire [sbyers@carltonfields.com], 2 Miami Central, 700 NW 1st Avenue, Suite 1200, Miami, Florida 33136; RACHEL ANN OOSTENDORP, Esquire [roostendorp@carltonfields.com], 100 SE 2nd Street, Suite 4200, Miami, Florida 33131; CHARLES MARK GARABEDIAN, JR., Esquire [charles@markmigdal.com], 80 SW 8th St, Suite 1999, Miami, Florida 33131; ETAN MARK, Esquire [etan@markmigdal.com], 80 SW 8th Street, Suite 1999, Miami, Florida 33130; JOSEPH HYAM SEROTA, Esquire [jserota@wsh-law.com], 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; MATTHEW HARRIS MANDEL, Esquire [mmandel@wsh-law.com], 200 E Broward Boulevard, Suite 1900, Fort Lauderdale, Florida 33301, via the CM/ECF System this 29th of July, 2026.

/s/ Gary S. Edinger

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