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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY

Docket No. BER-L-2677-26

HOWARD FREDRICS,

Plaintiff,

vs.

CIVIL ACTION

BOROUGH OF MONTVALE; MICHAEL
GHASSALI, individually and in his official
capacity, JOHN DOES 1-5 and 6-10,

Defendants.

ORDER

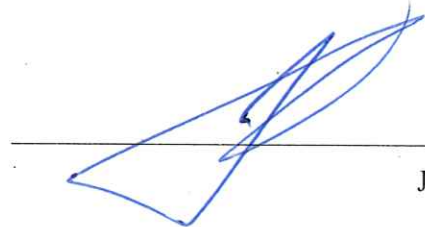
THIS MATTER having been opened to the Court by BOTTA McCASKEY, L.L.C. (Christopher C. Botta, Esq. appearing), attorneys for Defendants, upon the return of these Defendants' Motion to Dismiss Plaintiff's Verified Complaint in Lieu of Filing an Answer, and the Court having read the moving papers, and those submitted in opposition thereto, if any, and for good cause shown;

IT IS on this 17 day of July, 2026;

ORDERED that Defendants' Motion to Dismiss Plaintiff's Verified Complaint is hereby ~~granted~~ ^{Denied}; and it is further

~~ORDERED~~ that Plaintiff's Verified Complaint against the Defendants is hereby
dismissed with prejudice; and it is further

ORDERED that a copy of this Order be served upon all parties through eCourts.



J.S.C.

*For the extensive reasons placed on the
Record.*

JOHN D. O'DWYER, P.J.Cv.

**See Rider attached and
made a part hereof**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

**Howard FREDRICS,
v.
BOROUGH OF MONTVALE, et al.,**

Docket No. BER-L-2766-26

RIDER FOR ORDER DATED: 07-17-2026

I) BACKGROUND

This matter comes before the Court on the Motion of Defendants Borough of Montvale and Mayor Michael Ghassali (collectively, "Defendants") to Dismiss Plaintiff Howard Fredrics' ("Fredrics" or "Plaintiff") Verified Complaint pursuant to Rule 4:6-2(e). Plaintiff alleges that Mayor Ghassali violated his rights under Article I, Paragraph 6 of the New Jersey Constitution by blocking him from the "Mayor Mike Ghassali" Facebook page after Plaintiff posted comments critical of the Mayor's official actions. Accordingly, Plaintiff filed a Verified Complaint against Defendants, asserting claims under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c). The central dispute is whether the Facebook page operated as an official municipal communications channel subject to state constitutional free speech protections, or whether it was a personal page on which the Mayor exercised his own constitutional right to editorial discretion.

The genesis of this action was an Order to Show Cause for Temporary Restraints on filed March 3, 2026. Plaintiff sought an Order: 1) "Directing Defendants to restore Plaintiff's access to the Facebook page titled 'Mayor Mike Ghassali'"; and 2) "Enjoining Defendants from excluding Plaintiff from participation in said page." On March 16, 2026, this Court denied Plaintiff's application for temporary restraints and permitted the Complaint to proceed in the

usual course. At that time, the Court found that “Plaintiff failed to demonstrate irreparable harm.” Additionally, the Court recognized “there is a dispute as to whether the page at issue is defendant Ghassali's personal Facebook page as opposed to an official government communication platform.” This Court permitted the matter to proceed through the ordinary course of litigation.

Defendants filed the instant Motion to Dismiss on May 21, 2026, raising two arguments in support of their motion. First, Defendants argue that Mayor Ghassali's Facebook page is personal, not governmental, and that the Mayor did not engage in state action when he blocked Plaintiff from the page. Second, Defendants contend that even if state action existed, Plaintiff has failed to plead facts sufficient to establish municipal liability under Monell principles, and therefore the claims against the Borough and the official-capacity claims against Mayor Ghassali must be dismissed.

In response, Plaintiff argues that the Verified Complaint pleads each element of a constitutional claim and that the question of whether the page operated as an official channel is a fact-intensive inquiry that cannot be resolved on the pleadings. Plaintiff contends that Defendants are liable for excluding Fredrics from the “Mayor Mike Ghassali” page under Lindke v. Freed, 601 U.S. 187 (2024) because the Mayor: (1) possessed actual authority to speak on the State's behalf; and (2) purported to exercise that authority when he spoke on social media.

In reply, Defendants argue that the Mayor lacked actual authority to speak on behalf of the Borough, and that any posts to the “Mayor Mike Ghassali” page did not purport to exercise governmental authority. Defendants also argue that a disclaimer stating “This is my personal page to share information”--added to the page following Mr. Fredrics' being blocked--should carry significant weight in determining whether the “Mayor Mike Ghassali” page was governmental.

The following facts are drawn from Plaintiff's Verified Complaint and the exhibits attached thereto, which are accepted as true for purposes of this motion.

Defendant Michael Ghassali is the duly elected Mayor of the Borough of Montvale and serves as the Chief Executive Officer of the Municipality. From at least December 2024 through at least September 2025, the "Mayor Mike Ghassali" Facebook page was designated by Facebook as a "Government Official" page and bore Facebook's verification badge. The page displayed Mayor Ghassali's official Borough email address and contained a direct link to the Borough's official website.

According to Plaintiff, Mayor Ghassali used the page to communicate official Borough matters to the public, including public-safety alerts, municipal announcements, litigation updates, and other actions taken in his official capacity as Mayor. Members of the public were permitted to comment on those communications without prior approval, and the interactive portion of the page functioned as a forum for public discussion of municipal governance.

Beginning in December 2024, Plaintiff began posting on the "Mayor Mike Ghassali" page concerning municipal matters. He posted comments questioning the Mayor's authority regarding (1) a declared "no-fly zone" for drones over Montvale; (2) a directive that the American flag be raised to full staff during a national period of mourning; and (3) immigration-related statistics affecting the Borough. Plaintiff contends that these comments addressed matters of public concern.

On January 20, 2025, responding to public criticism of the flag directive, Mayor Ghassali posted that the action was "now the law" and acknowledged that commenters had "exercised their first amendment right."

On March 12, 2025, Plaintiff discovered he had been blocked from the page; replies from other users tagging him remained visible while his own comments had been removed. Other users who did not express disagreement with the Mayor's official actions allegedly remained able to participate.

After Plaintiff, through counsel, sought explanation from the Municipality, the Borough Attorney, David S. Lafferty, Esq., responded on the Borough's behalf by letter dated March 25, 2025, stating that Mayor Ghassali would not reinstate Plaintiff's access and that Plaintiff's comments were "both false and argumentative" and "were taken down for those reasons."

Plaintiff claims that after he objected to his exclusion, a disclaimer was added to the page stating, "This is my personal page to share information." Plaintiff claims that at the time Plaintiff was blocked on March 12, 2025, no such disclaimer existed. Plaintiff contends that since September 2025, the page's designation was changed from "Government Official" to "Public Service," yet the page continues to display the Mayor's official Borough email address, to link to the Borough's website, and to disseminate official municipal communications.

Plaintiff remains blocked.

II) LEGAL STANDARD

A. MOTION TO DISMISS UNDER R. 4:6-2(e)

When reviewing a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the Court must evaluate the legal sufficiency of the factual allegations in the complaint and legitimate inferences therefrom "with liberality to ascertain whether the fundament of a cause of action may be gleaned". Green v. Morgan Properties, 215 N.J. 431, 451 (2013). "The motion judge must accept as true all factual assertions in the complaint . . . [and] accord to the non-moving party every reasonable inference from those facts," with opportunity being given to amend if necessary. Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008); Green, 215 N.J. at 452. On a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the court must only consider "the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). Dismissal is appropriate where factual allegations are

palpably insufficient to support a claim for relief. See Printing Mart-Morristown v. Sharp Electronics, 116 N.J. 739, 746 (1989).

B. FIRST AMENDMENT AND PUBLIC FORUM PRINCIPLES

Plaintiff's claim arises under Article I, Paragraph 6 of the New Jersey Constitution, which in the public-forum and viewpoint-discrimination context is interpreted consistently with, and at least as protectively as, the First Amendment. E & J Equities, Ltd. Liab. Co. v. Bd. of Adjustment of the Tp. of Franklin, 226 N.J. 549 (2016).

Article I, Paragraph 6 of the New Jersey Constitution provides: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." Green Party v. Hartz Mt. Indus., 164 N.J. 127 (2000). In addition, Article I, Paragraph 18 provides: "The People have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." Id.

The First Amendment to the United States Constitution prohibits the government from abridging "freedom of speech" or "the right of the people to petition the Government for a redress of grievances." Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544 (2010). The First Amendment gives people the right to express disagreement with government policy, whether on the national, state, or local level. Id. Our free society must give breathing room for an "uninhibited" and "robust" discussion of public issues, even when it includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Id.

One of the core purposes of the First Amendment is to protect speech on matters of public interest, including speech that the government finds offensive. Id.

A government actor creates a forum when it opens a space for public expression. When the government opens a forum for public comment, viewpoint discrimination occurs when the government suppresses speech because of the perspective it expresses rather than applying neutral rules evenhandedly.

C. STATE ACTION UNDER THE NJ CIVIL RIGHTS ACT ("NJCRA")

The New Jersey Civil Rights Act provides a cause of action against any person who, acting under color of law, deprives another of substantive rights secured by the Constitution or laws of New Jersey or the United States. N.J.S.A. 10:6-2(c). Because the NJCRA was modeled on 42 U.S.C. § 1983, federal interpretations of § 1983 guide construction of the Act. Perez v. Zagami, LLC, 218 N.J. 202 (2014); Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165 (2021).

The framework of Lindke v. Freed, 601 U.S. 187 (2024), which governs when a public official's social-media activity is state action, therefore applies here. Under Lindke, a public official's social-media conduct is state action where the official (1) "possessed actual authority to speak on the State's behalf" and (2) "purported to exercise that authority" in the challenged conduct. Lindke, 601 U.S. at 198. Critically, this is a "fact-intensive inquiry" that "turns on substance, not labels." Id. at 197.

III) ANALYSIS

A. STATE ACTION

The central question on this motion is whether Plaintiff has adequately pleaded that Mayor Ghassali engaged in state action when he blocked Plaintiff from the "Mayor Mike Ghassali" Facebook page. Under Lindke, this requires a fact-intensive inquiry into: (1) whether the Mayor possessed actual authority to speak on behalf of the Borough; and (2) whether he purported to exercise that authority when using the page. Lindke, 601 U.S. at 197-98.

Defendants' motion asks the Court to resolve the central factual dispute in this case on the pleadings: whether the "Mayor Mike Ghassali" page operated as an official municipal communications channel. Under R. 4:6-2(e), the Court may not do so. The inquiry is confined to whether a cause of action is "suggested" by the facts alleged; the Court must accept Plaintiff's well-pleaded allegations as true and afford him every reasonable inference. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989).

At the motion to dismiss stage, Plaintiff need only plead facts making state action plausible; he need not prove such allegations. Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008); R. 4:6-2(e). The Complaint alleges that Mayor Ghassali is the elected Mayor and chief executive of the Borough and that he "possessed actual authority to speak on behalf of the Borough concerning municipal matters." The Complaint further alleges that the page was designated a "Government Official" page, displayed the Mayor's official Borough email address, linked to the Borough website, was used to post public-safety alerts, municipal announcements, and litigation updates, and invited public comment on those official communications.

Defendants argue that Mayor Ghassali lacked actual authority because Montvale operates under a "weak mayor–strong council" form of government in which the Mayor does not have unilateral authority to enact legislation. However, Plaintiff does not allege that Mayor Ghassali exercised legislative authority. Plaintiff alleges that Mayor Ghassali exercised communications authority, speaking to the public in his capacity as Mayor through a page displaying his official Borough email address, linking to the Borough's website, and disseminating official municipal communications.

Whether the Borough's written social-media policy, the Borough Administrator's authority over official social-media channels, and the Borough's

practice of permitting official department Facebook pages conferred or ratified the Mayor's authority is a quintessential fact question for discovery, not one that can be resolved against Plaintiff on the pleadings, where every inference runs in his favor.

Lindke asks whether the official possessed authority to engage in the speech at issue, not whether he possessed every governmental power associated with his office. Whether the Borough, by written policy, ordinance, custom, or usage, conferred or ratified the Mayor's operation of an official communications channel is a fact question for discovery, not one that can be resolved against Plaintiff on a motion to dismiss.

Lindke confirms that such authority may rest on "custom" and "usage" that are "so permanent and well settled" as to carry the force of law. Whether the Borough's written social-media policy, the Borough Administrator's authority over official social-media channels, and the Borough's practice of permitting official department Facebook pages conferred or ratified the Mayor's authority cannot be determined without discovery. Id.

Moreover, Defendants' reliance on a "personal page" label and a disclaimer cannot carry the motion. Under Lindke, the line between private conduct and state action "turns on substance, not labels," and "[a]n official cannot insulate government business from scrutiny by conducting it on a personal page." The law is clear that this is a fact-intensive inquiry. Lindke, 601 U.S. at 197-98. Here, the Court, in accordance with its March 16, 2026 Order finds that "there is a dispute as to whether the page at issue is defendant Ghassali's personal Facebook page as opposed to an official government communication platform."

In sum, the Court finds that the allegations, liberally construed, describe a plausible exercise of official authority through a social-media channel designated as governmental, populated with official municipal communications, and linked to the Borough's infrastructure. At this stage, taking all facts as true and affording Plaintiff

every reasonable inference, the Complaint adequately pleads state action under the first prong of Lindke.

The Complaint also adequately pleads that the Mayor purported to exercise official authority through the page. The page's designation as a "Government Official" page, the display of the Mayor's official Borough email address and a link to the Borough website, and the dissemination of public-safety alerts, municipal announcements, and litigation updates all support the inference that the Mayor was purporting to discharge official duties when using the page. The "content and function" analysis required by Lindke is inherently factual and cannot be performed on a motion to dismiss. Defendants emphasize that Mayor Ghassali's posts ranged from official announcements to personal musings, and that he posted "in his personal capacity" on topics of public interest. But Lindke expressly contemplates "mixed-use" pages, and the Supreme Court held that a page-wide block requires the court to consider whether the official engaged in state action with respect to any post on which the plaintiff wished to comment.

B. VIEWPOINT DISCRIMINATION

Defendants do not meaningfully contest the elements of Plaintiff's public forum claim beyond their state action argument. The Complaint alleges that the interactive portion of the page was opened to public comment and was used for discussion of municipal governance. Those allegations establish, at the pleading stage, that the comment section is at least a designated or limited public forum.

Plaintiff's criticism of the Mayor's authority and factual assertions, on the no-fly-zone declaration, the flag directive, and immigration statistics, concerns the conduct of a government official and lies at the core of protected expression. Such speech does not lose protection because an official finds it "argumentative" or disagreeable.

Viewpoint discrimination occurs when the government suppresses speech because of the perspective it expresses rather than applying neutral rules evenhandedly. The Complaint alleges that Plaintiff was blocked and his comments removed following his criticism, while users who did not disagree with the Mayor were left untouched.

Importantly, the reason the Borough gave for the removal, through its Borough Attorney, was that the comments were "false and argumentative." That rationale targets the substance and critical posture of Plaintiff's speech rather than any content-neutral standard. Penalizing speech for being "argumentative" is the essence of viewpoint discrimination. The allegations, taken as true, state a claim for viewpoint-based exclusion from a forum used to discuss municipal governance.

C. MUNICIPAL LIABILITY

Defendants contend that the official-capacity claim and the municipal-liability claim fail for want of a policy or custom. The Verified Complaint, however, alleges exactly what New Jersey law requires: Mayor Ghassali was "a final policymaker for the Borough" with respect to official communications disseminated through the page, including decisions about moderation, removal of comments, and access, and the denial of access "was undertaken pursuant to [his] final policymaking authority and constitutes official municipal action attributable to the Borough."

A municipality is liable under Monell where "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." New Jersey law applies the same principle: a municipality may be liable for a single decision of an official with final policymaking authority over the subject matter, and state law determines who holds that authority. Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544 (2010); Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165 (2021).

A single decision by such a policymaker is enough; Defendants' demand for an additional "widespread custom" misstates the law for final-policymaker liability. The official-capacity claim for prospective relief stands for the same reason: it seeks to restrain ongoing official action by the policymaker responsible for it.

Independently, the Complaint supports municipal liability by ratification. New Jersey recognizes that a municipality ratifies an official's unconstitutional decision when the governing body with supervisory or veto authority fails to disavow it. Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165 (2021). The Complaint alleges that after being formally notified of the exclusion, the Borough responded through its own municipal attorney, who wrote that Plaintiff's comments were "false and argumentative" and "were taken down for those reasons," and that Mayor Ghassali would not restore Plaintiff's access. In so doing, the Borough expressly adopted the Mayor's decision and his stated reasons as its own, ratifying the exclusion as official municipal action.

Whether the Borough's social-media policy and the Administrator's authority over official channels supply an additional policy or custom is a matter for discovery. At the pleading stage, Plaintiff need not prove a policy; he need only allege facts that, if true, establish municipal action, which he has done.

IV) CONCLUSION

For the reasons set forth above, the Court finds that Plaintiff's Verified Complaint states cognizable claims under the New Jersey Civil Rights Act. The allegations, liberally construed, describe state action, viewpoint discrimination in a public forum, and municipal liability through final policymaker authority and ratification.

The question of whether the "Mayor Mike Ghassali" Facebook page operated as an official municipal communications channel is a fact-intensive inquiry that turns on substance, not labels. At the motion to dismiss stage, accepting all factual

allegations as true and affording Plaintiff every reasonable inference, the Complaint adequately pleads each element of Plaintiff's constitutional claim.

Defendants' attempt to resolve disputed factual questions through extrinsic evidence on a Rule 4:6-2(e) motion is procedurally improper. If the Court were to consider materials outside the pleadings, the motion would need to be converted to one for summary judgment with notice and an opportunity for discovery.

Accordingly, Defendants' Motion to Dismiss is **DENIED**.

SO ORDERED.